

American Board of Trial Advocates™



Washington Chapter Newsletter August 2022

This Issue:

- President's Message
- Free CLE
- Trial Tip of the Month - Voir Dire
- Upcoming Events
- Call for Nominations
- Membership Status Change Deadline
- Civic Learning Council
- Welcome New Members

PRESIDENT'S MESSAGE



Even though we are all enjoying the summer weather and the return to group gatherings, the annual meeting in November will come upon us quickly.

We are seeking nominations for lawyer and judge of the year. Please forward any nomination at your earlier convenience. Being a trial lawyer or a trial judge is a

demanding job so please recognize any lawyer or judge that you think deserves this recognition.

Sincerely,
Ketia

FREE CLE

The ABOTA Foundation is holding a free virtual CLE on August 16th, 2022 from 12:00 P.M. - 1:30 P.M. Central

Opening Statements

Learn from some of the best in the business. Presenters will talk about strategy and provide concrete skills and tips you can use at your next trial.

Presenters:

Eugene Brown Jr., San Francisco Chapter
Cynthia McGuinn, San Francisco Chapter

Moderator:

Peter Riley, Minnesota Chapter

Register at https://us06web.zoom.us/webinar/register/WN_d1xOLgl9TC-UJ7nui5fbKg

CIVIL TRIAL TIP OF THE MONTH



With the prevalence of virtual trials around our state, we are partnering with King County Superior Court to provide a “Civil Trial Tip of the Month” by a designated superior court judge. This will help us improve our practices and also get to know the judges a little better.

This month’s tip is from King County Superior Court **Judge James E. (Jim) Rogers.**

Virtual Voir Dire

“We have a..jury system which is superior to any in the world, and its efficiency is only marred by the difficulty of finding twelve men every day who don’t know anything and can’t read.” - Mark Twain

While virtual civil jury trials may not be long for this world, it is very possible that virtual voir dire is here to stay. For civil trial lawyers, it has one giant advantage: we can summon more people virtually than we could ever bring into the courthouse, and so you will never wait for sufficient jurors, like the old days meaning two years ago. Whatever your lightly held opinion on this topic may be (yes, I may have heard from some of you), I hazard to offer a few tips on virtual voir dire and what I’ve seen.

One: Remember the days when judges would fight with the members of the venire panel over whether they *really, truly* had a hardship? Those days are gone. The days of hearings dentists claim that they would not pay their staffs if they had to serve (so

you never take vacation?). The days of losing every person in sales who claims that their work is one hundred percent commission. The days of hearing the parsimonious and outrageous leave policies of certain large companies. The days of hearing a Microsoft manager saying that she/he is the only important person on project "X" and your personal computer and your stock holdings will crash tomorrow if he/she is not excused immediately. And yes, the Microsoft supervisor letters are a form excuse letter, in case you were wondering.

Why the change in the attitude of judges on hardship? Because of Covid-19. Judges began defaulting to excusing everyone who had a hardship due to sickness or work. Over time, judges moved from imposing a burden on the juror for their claimed hardship to an expectation that any hardship results in being excused, whether or not the hardship is explored. This also means that mysteriously, in the course of excusing hardships, many of the jurors who claimed that they could not be fair also get excused. Isn't it odd how someone's vacation cruise schedule correlates with their inability to be fair on all conceivable topics?

The burden is now on you to ask to keep in the venire panel and question a juror that you may want to keep about the hardship. Our judges will do so. But you have to ask.

Two: The new questionnaires are a fantastic innovation. You have far more information than before the pandemic. We ask many "stock" questions for every trial plus your questions. In response, you receive an Excel spreadsheet that organizes all the juror responses. This is great all the way around.

Three: In Zoom voir dire, you typically question about eighteen jurors at a time. Most lawyers still treat this as if it was the Donahue method, with speeches, general questions. Two points on this.

General questions (what does anyone think about ----?) don't work very well, in my experience. Zoom is just not very conducive to it. You *can* get jurors to respond to an answer, but it is a lot easier for the juror to sit quietly. The more successful general question method I have seen is to ask and require every juror respond. Yes, you have to call on them, but it works quite well.

But I would approach this form of voir dire very differently. I would consider using the old voir dire method of questioning one juror at a time. With so many jurors already excused for hardship, the first twenty-two jurors you see are very likely to serve (that's fourteen for the jury, eight peremptory strikes including alternates). Use your time to really get them to talk.

We are proposing permanent virtual voir dire rules. We think it is superior for a number of reasons. But in any case, we will need to use it for some time in King

County Superior Court for public health reasons. As long as the CDC and State Department of Health advise that a person in contact with someone who tests positive, and that guidance would cause entire in-person venire panels to be discharged if someone in a large panel were to test positive, we will continue virtual voir dire to reduce trial disruption. We have five thousand pending criminal cases and hundreds of murder cases alone. To get civil trials out in the midst of this criminal backlog, virtual voir dire is required for the foreseeable future.

Good luck out there in the virtual world!

UPCOMING EVENTS

November 10th - MIT

Washington Athletic Club

More details to follow

November 10th - Annual Meeting Dinner and Awards

Washington Athletic Club

More details to follow

CALL FOR NOMINATIONS

We are seeking nominations for the following awards to be presented at our Annual Meeting on November 10th.

- Trial Judge of the Year
- Trial Lawyer of the Year

You can submit your nominations to Nicole Battles at abotawashington@gmail.com by August 31st.

MEMBERSHIP STATUS CHANGE DEADLINE

If you are thinking about retiring and/or changing your ABOTA membership classification, please note the following deadlines.

If you are planning to apply for Senior, Inactive, or Emeritus status for the 2023 dues cycle, **please submit your request to the Chapter no later than October 1, 2022.**

ABOTA requires your membership dues to be paid in full for the current year before considering your request. If your change of status application for 2023 is not

received by October 1, 2022, it cannot be processed before the 2023 dues statements are run.

Please note that ABOTA membership classifications may not be the same as your state bar license classifications. For example, the ABOTA classification of "Senior" requires you to cease the practice of law, including mediation to qualify.

If you have any questions, or to submit your completed application, please email Nicole Battles at abotawashington@gmail.com by October 1, 2022.

[Senior/Inactive Application](#)

[Emeritus Application](#)

ABOTA - CIVIC LEARNING COUNCIL CONNECTION

The scholarships this program provides continue to be appreciated by the recipients. Recently, two Washington teachers were awarded grants to attend education programs.

Jade Anderson from Skagit Academy received a grant to attend the National Constitution Center's Constitutional Conversations and Civil Dialogue Teacher Institute in Philadelphia. She wrote:

"I recently returned from the (conference) and I wanted to share with you what I learned, etc. It was a fantastic experience and I learned an incredible amount! Here are a few things that come to mind - I am still digesting what I learned. :)"

First, the opportunity to connect and share ideas with skilled educators from around the country was incredibly valuable. I look forward to collaborating with them throughout my career.

Second, I left with many strategies and resources I plan to use and share when it comes to having potential "sharp" conversations in my classes. I particularly liked the Harkness Method and Deliberation Pods. I have already reached out to my school's leadership to share these strategies with my colleagues. I also liked how we focused on teaching being informed versus directing beliefs...or allowed/could versus should. This will be very useful when it comes to exploring constitutional/political issues.

Third, I walked away with many writing ideas, like sentence starters and student legal briefs among others, that I plan to implement in many of my classes, not just Civics. I

am a strong believer in fostering reading and writing skills - these skills are the foundation for so much else.

I was also invited to be part of the NCC's Teacher Advisory Council as a rep for alternative learning programs. I look forward to continuing to learn from the NCC in the years to come - what an amazing and important place!

Finally, but not least, I am incredibly grateful for the support of the Civic Learning Council. Your grant/support helped cover the very expensive airplane ticket to Philadelphia (of all the participants, I had the furthest to travel). Additionally, you all inspire me to serve and support my community...or as I tell my 7 year old son, "Do good." Thank you again."

Sander Stone is a student who received a grant to attend the YMCA Youth and Government Conference on National Affairs. He wrote:

"I wanted to say thank you for the opportunity to go to CONA -- it was an amazing experience and it was one of those things that feels life-changing.

Getting to meet such a variety of people from other states and other backgrounds was fantastic and I can't even begin to express how much I learned about team-building, bonding with people you don't know, debating skills, and what problems we face as a nation and how to address them. Seeing how everyone there is dedicated to making changes and creating a better world gave me a lot of hope for the future.

Before I joined, I was more interested in a career in politics, but now I'm really considering becoming a constitutional lawyer, because I think there are too many people who don't understand what the constitution says. I'm applying to colleges this fall and have a lot decisions to make.

Sometimes I'm really pessimistic about the future of our country, and the world in general, but this program has changed that a bit, and I appreciate your help in getting me there."

The Washington Civic Learning Council (CLC) is a 501(c)(3) organization with the mission of bolstering civic learning for all Washington State Students. In past years, the Washington Chapter of ABOTA has made donations to the CLC and its predecessor organization, the Council on Public Legal Education to help finance the Civic Learning Initiative Summits in 2017 and 2018 to address gaps and provide

resources and support for K-12 schools and youth development programs involved in civic learning. In late 2021 the ABOTA Foundation matched the Washington Chapter's five thousand dollar donation to the CLC; and the CLC established an educational grant program funded entirely (\$10,000) by the ABOTA donations.

For more details on the grants, see

<https://www.courts.wa.gov/content/publicUpload/Education/Civic%20Education%20Grants.pdf>

WELCOME NEW ABOTA MEMBERS

Please join us in welcoming our three newest members. They will be inducted at the Annual Meeting on November 10th.

If you have suggestions for new members, please fill out the [Nomination Form](#) and email it to Nicole at abotawashington@gmail.com.



Hon. Timothy L. Ashcraft



Hon. Bradley Maxa



Thomas McPherson