

American Board of Trial Advocates™



Washington Chapter Newsletter December 2022

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PRESIDENT'S MESSAGE



Dear Members,

We are coming to the end of 2022. It passed quickly but I hope you all feel, as I do, that it was a successful year. We started the partnership with the King County bench for the civil trial tip of the month, thanks to Presiding Judge Tonya Thorp. It was such a success that we will be extending it to judges in other counties in 2023. We put on several free CLEs, we had three in person events (spring event, summer sunset and drinks at the Thompson Hotel, and the annual MIT/dinner), and we had several members attend the national ABOTA meetings around the

continent. I had a great time meeting and greeting new and old members. It is a great honor to be part of ABOTA with all of you.

I would like to congratulate our award winners from this year's annual dinner: Judge Michael P. Price (Judge of the Year); Rando B. Wick (Trial Attorney of the Year); and Roy Umlauf (Lifetime Achievement Award). In addition, we honored attorneys George Kargianis, Jan Peterson, and William W. H. Bailey for the important impact/contributions they made during their lifetimes.

I now ask you to join me in welcoming your 2023 president, JD Smith. JD is a very impressive lawyer. Not only has he done both Plaintiff and Defense work, he is active in ABOTA national and will be secretary of the ABOTA Foundation while he is also our chapter president. Having a member of our chapter hold a national executive board officer position is quite impressive.

I would also like to thank our 2022 executive director Nicole Battles and committee officers: Roy Umlauf, JD Smith, Eron Cannon, Tom Vertetis, and Dave Corey. Their energy and collaboration has been infectious. I am sending a special thank you to Shellie McGaughey for her work as our membership chair; and Bruce Megard and Kelley Sweeney for their work as MIT chairs. These positions are time consuming and the results they achieved were noteworthy and very effective.

Finally, I would like to thank Noah Wick of Trial Exhibits. He and his team recorded and disseminated our MIT virtually in the face of WAC technical difficulties and did it with calm, grace and resolve. Thank you, Trial Exhibits!

We will have a great 2023 under JD's leadership. Happy Holidays to Everyone!

Sincerely,

Ketia

FREE CLE

The ABOTA Foundation is holding a free virtual CLE on December 13th, 2022 from 12:00 P.M. - 1:00 P.M. Central

Substance Use Disorders and Addiction

This program will continue the discussion of Attorney mental health and wellbeing from our November webinar and focus on substance use disorders and addiction within the context of the legal community.

Presenter:

Michael Perley, Buffalo Chapter of ABOTA

Register at

https://us06web.zoom.us/webinar/register/WN_dve3je8QSbW2NYopwN0oPg

CIVIL TRIAL TIP OF THE MONTH



ABOTA Washington is 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 **Judge Janet Helson**. Judge Helson was appointed to the King County Superior Court bench in May 2015. She was the Chief Unified Family Court Judge in 2020 and 2021 and will be the Lead Dependency Judge in 2023. She has also served on both the civil and criminal rotations. She currently chairs the Washington State Domestic Relations Pattern Forms Subcommittee. Judge Helson started her career with two federal court clerkships, the second of which brought her to Seattle to clerk for Judge Betty Fletcher on the Ninth Circuit Court of Appeals. She then spent 12 years at Evergreen and Columbia Legal Services before joining Skellenger Bender in 2004. Judge Helson earned her bachelor’s degree from Harvard/Radcliffe Colleges and her law degree from UC Berkeley (Boalt) School of Law.

Two Tips for the Price of One – Proof of Service and Proposed Orders

Proof of Service of Motions

Frequently judges must deny motions noted without oral argument because there is no proof in the court file that the motion, supporting documents and Notice of Hearing have been properly served on all parties. Listing a party or counsel as a party who is required to be served in the Notice of Hearing does *not* constitute proof that they were served with the Notice and other documents. Civil litigators often include the proof of service at the bottom of the motion and proposed order, indicating that the “above document” has been served on all parties, but omit a declaration or certificate of service that the Notice of Hearing itself has been served.

The easiest and best solution, when the other parties or counsel are opted into e-service (as they are required to be by Local General Rule 30 unless they are pro se and have not availed themselves of e-filing), is to use the court’s e-service function. When you or your staff file the Notice of Hearing, motion and supporting documents, you can then e-serve through the court’s e-filing system and create and file a certificate of service. The resulting certificate of electronic service lists all documents that have been e-served, including the Notice of Hearing. Alternatively, if you are going to serve by messenger or mail, or by e-mail pursuant to a filed e-mail agreement, you must complete and file a declaration or certificate of service that lists all documents served, including the Notice of Hearing.

Remember that e-mailing documents does *not* constitute valid service under the court rules. Before e-service was available, counsel often entered agreements to service by e-mail. Some counsel appear to have continued this practice. If you have an agreement to accept e-mail service and it is in the court file, then e-mail service is sufficient. But that is really an outmoded approach. It relies on the judicial officer locating and verifying your e-service agreement. Frequently, the agreement to accept service by email is not in the court file. As noted above, the better approach is to e-serve and create a certificate of service through the court’s e-filing portal.

Finally, make sure that you have complied with any specific service requirements for the motion in question. For example, Civil Rule 55(f) requires that, if more than a year has elapsed after service of the summons, 10 days’ notice to the defaulting party is required before entry of a default or default judgment. Civil Rule 55(f)(2) specifies how notice must be provided. In the case of an unrepresented defendant, there must be proof of service by certified mail with a return receipt or there must be personal service. If you were to obtain a default or

default judgment without complying with Civil Rule 55, those orders would be faulty and unenforceable.

Proposed Orders

Local Civil Rule 7 requires that a proposed order be submitted with any motion or response. Your proposed order should list all documents submitted to the court in support of your motion. If you are the moving party, the best practice is to update your proposed order at the time of your reply, specifically listing the documents which have been filed in response and in reply. If specific findings are required for the court to grant the relief you have requested (either as the moving party or in opposition), you should include those findings in your proposed order.

Frequently proposed orders arrive at the court with no signature by the proposing attorney. This even occurs with “agreed” orders that have been submitted through the bailiff. In some cases, depending on the posture of the motion, your order may be entered without requiring your signature. However, agreed orders should be rejected by the court unless there is a signature (including an /s/) from all parties or counsel. When submitting an agreed order, please ensure that all necessary signatures are included and, where documentation of e-mail authorization is required, include that authorization.

By paying attention to the details of service and proposed orders, you will ensure that you and your clients receive needed orders promptly.

UPCOMING EVENTS

There are no upcoming events.

ABOTA - CIVIC LEARNING COUNCIL

CLC-ABOTA Civic Education Grants

As reported previously, ABOTA has funded an education grant program through the Washington Civic Learning Council (CLC). The CLC is a 501(c)(3) organization whose mission is to address gaps in, and provide resources and support for, K-12 schools and youth development programs involved in civic development and education. In addition to the three grants awarded at the time of my last report, CLC has awarded two more grants, one involving the acquisition of technology/videographic equipment for use by the Washington Youth

Legislature as part of the YMCA Youth and Government program. The other is a grant to help defray travel expenses for an advanced placement government class to travel to the state capitol in January to participate in the We the People competition. In the three school-year months the program has been operational, the program has funded six programs furthering educational opportunities for students and educators, and providing resources to underserved school districts. We are making a difference. Thank you for your support.

Recent Grants:

\$1,500 to Heritage High School for Ms. Haberl's AP Government class trip to Olympia to compete in the We The People competition.

\$2,520 to Middle College High School for Street Law.