

# American Board of Trial Advocates™



## Washington Chapter Newsletter March 2023

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### PRESIDENT'S MESSAGE



Dear Members,

The Executive Committee continues to meet monthly over Zoom. Although we have become comfortable with the convenience of Zoom meetings, I am hoping to get back to in person meetings, at least a few times this year.

We are busy planning our Spring Event, Masters in Trial CLE and Annual Meeting. We are also planning for the remainder of the National Board meetings this year. Our chapter has increased our presence at the National Board meetings. Through our presence and participation, our chapter was a finalist for Chapter of the Year for 2022. This speaks to our past and most recent leadership. We owe a debt of gratitude to all of our leaders. I have had the privilege to watch and learn from stalwarts like Lish Whitson and Sim Osborn. Additionally, before becoming your President, I had the privilege of serving in the administrations of Mike Wampold, Ray Dearie, Roy Umlauf and most recently Ketia Wick.

Our Membership Committee chaired by Kelley Sweeney and Bruce Megard have been working diligently on evaluating new members. We will soon announce our newest members. We have three candidates currently being considered, so please be sure to [vote by March 24th](#). We welcome nominations, especially for areas outside of King County. ABOTA is an invitation-only organization. Members must have at least five years of active experience as trial lawyers, have tried at least 10 civil jury trials to conclusion and possess additional litigation experience. Members must also exhibit the virtues of civility, integrity and professionalism by following our [Code of Professionalism](#) and [Principles of Civility](#).

Past President Roy Umlauf is undertaking a goal of increasing our participation as Fellows of the ABOTA Foundation. He plans to call several members asking for their commitment to support the good work of the ABOTA Foundation. The Foundation can only accomplish its vital work with your support. Donations to the Foundation, as a 501(c)3, are tax-deductible to the extent allowed by law. Each month the ABOTA Foundation hosts a free webinar on a variety of topics.

Across our country and abroad, ABOTA members are participating in programs such as Civility Matter, Masters in Trial, James Otis Lecture Series, The Trial College at Yale and The Trial Academy at the National Judicial College in partnership with the ABA. Finally, and most importantly, ABOTA members work tirelessly for the Independence of the Judiciary, Preservation of the Rule of Law and promotion of the civil jury trial right provided by the Seventh Amendment to the U.S. Constitution.

## 2023 DUES REMINDER

You should have already received your 2023 dues statements from the National office. The deadline to pay dues is 3/31/23. This is earlier than in past years, so please be sure to get your dues in before that date. Members who have not paid by the deadline will have their membership suspended and will not be eligible to participate or vote in ABOTA meetings.

Your dues help support all of ABOTA's programs and initiatives. \$315 of your dues payment comes back to the Washington Chapter to help fund our local efforts.

If you have not yet paid your dues, you can view your statement and make a payment online at [www.abota.org](http://www.abota.org), or contact the Membership Department at [membership@abota.org](mailto:membership@abota.org) for a copy of your statement. If you pay online, click on Membership and select "Current Members". From there, select "Pay Dues". While on the ABOTA website be sure to review your profile and make any changes. You may also consider making a donation to the ABOTA Foundation.

## FREE CLE

The ABOTA Foundation is holding a free virtual CLE on April 18, 2023 from 1:00 P.M. - 2:00 P.M. Central

### **Focus Groups: Effective Jury Testing on a Budget**

This session will discuss the different types of jury testing focus groups available to trial lawyers seeking to better understand their cases and the themes in which jurors will be interested. But many trial lawyers reserve jury testing for only the largest cases. This session will discuss the benefits of running focus groups for even your small cases and tell you how to run them on an economic basis. This session will also discuss the ethical considerations and confidentiality concerns related to jury focus groups and how to best preserve privilege.

### **Presenters:**

**Laura Brown**, Brown Trial Firm, Waco, TX

**Elizabeth M. Fraley**, Professor of Law and Co-Director of the Executive LL.M. in Litigation Management, Baylor University School of Law

**Stephen Rispoli**, Assistant Dean of Student Affairs and Strategic Initiatives / Director of Innovation and Scholarship, Executive LL.M. in Litigation Management, Baylor University School of Law

**James E. Wren**, Leon Jaworski Chair of Practice & Procedure and Co-Director of the Executive LL.M. in Litigation Management, Baylor University School of Law

**Register at**

[https://us06web.zoom.us/webinar/register/WN\\_TIm1JaB2QP-RD1KPmy2FcA](https://us06web.zoom.us/webinar/register/WN_TIm1JaB2QP-RD1KPmy2FcA)

## **UPCOMING ABOTA CLE**

### **A More Perfect Jury: Seating a Fair and Diverse Panel**

The right to a trial by jury is central to the justice system and our democracy. The function and proper use of the peremptory challenge sits at the center of that right. During this symposium, lawyers, judges, law students, and experts will work to understand and improve the exercise of this critical tool, explore where our jury pools come from, and understand why a diverse panel is so important.

This multi-year symposium will address challenges facing the American Jury System. Join us for the first installment, laying the groundwork for a discussion of the peremptory challenge.

Up to 6 hours of CLE will be applied for.

Thursday, April 6th

9am-3pm Central

Remote Attendance Available

[https://www.abota.org/Online/Events/Event\\_Display.aspx?EventKey=23MPJ](https://www.abota.org/Online/Events/Event_Display.aspx?EventKey=23MPJ)

Congratulations to ABOTA Washington Executive Committee Member Coreen Wilson on her appointment to the King County Superior Court.

## CIVIL TRIAL TIP OF THE MONTH



This month's Trial Tip is from King County Superior Court **Judge Coreen Wilson**.

Judge Wilson was appointed to the King County Superior Court bench by Governor Inslee in 2022. Prior to her judicial appointment, Judge Wilson was a civil trial lawyer with more than 22 years of experience in the courtroom. She has tried more than forty cases and has litigated hundreds more, including the nation's first binding civil jury trial to be litigated via Zoom. This experience generated a passion for technology and an innovative approach trial advocacy via video conference. She quickly became known as a leader in this field and has spoken across the country regarding remote litigation. She recently authored a practice guide on remote witness testimony for Lexis Nexis, which is currently in the editorial review process.

Judge Wilson is a member of the American Board of Trial Advocates, has been named a Super Lawyer by Washington Law & Politics Magazine, and has been recognized as a Top Attorney in Washington by Seattle Met Magazine. She is an instructor with the National Institute of Trial Advocacy and recently taught at NITA's Women in Trial seminar. She has published a number of articles in a variety of legal journals and has presented at numerous seminars. She is a member of American Mensa and is highly regarded for her strategic approach to trial advocacy.

Her interest in the law began at a young age, and she participated in the YMCA Youth and Government Program, competing in mock trial competitions through all four years of high school. Because of the impact this program had on her career, she has continued her involvement, both as a rater for local and state competitions and as an attorney coach. She also volunteers her time to foster and develop trial skills in young attorneys through various NITA programs. Additionally, she has worked to improve the judicial process through her service on the Washington State Bar Association's Court Rules and Procedures Committee and on the King County Bar Association's Judicial Survey Committee.

Outside of her professional obligations, she enjoys spending time with her family and her dog, playing fantasy football, and watching movies.

### **Agreed Protective Orders versus Orders to Seal**

CR 26(c) permits protective orders related to discovery for good cause shown when justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. Protections under this rule can include a provision that the contents of a deposition not be disclosed or be disclosed only in a designated way, or that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court. Agreed protection orders related to discovery can permit sealing on good cause shown. This is because, “[m]uch of the information that surfaces during pretrial discovery may be unrelated, or only tangentially related, to the underlying cause of action. As this information does not become part of the court’s decision making process, [Washington State Constitution] [article I, section 10](#) does not speak to its disclosure.” *Dreiling v. Jain*, 151 Wn.2d 900, 909, 93 P.3d 861 (2004).

Sealing or redacting court records or proceedings is subject to an entirely different analysis. Under GR 15, court records cannot be redacted or sealed unless the court makes and enters written findings that the specific sealing or redaction is justified by identified compelling privacy or safety concerns that outweigh the public interest in access to the court record. Sufficient privacy or safety concerns that may be weighed against the public interest include findings that:

- (A) The sealing or redaction is permitted by statute; or
- (B) The sealing or redaction furthers an order entered under [CR 12\(f\)](#) or a protective order entered under [CR 26\(c\)](#); or
- (C) A conviction has been vacated; or

(D) The sealing or redaction furthers an order entered pursuant to [RCW 4.24.611](#);  
or

(E) The redaction includes only restricted personal identifiers contained in the court record; or

(F) Another identified compelling circumstance exists that requires the sealing or redaction.

Agreement of the parties alone does not constitute a sufficient basis for the sealing or redaction of court records.

The leading case on sealing is *Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 640 P.2d 716 (1982). The court in *Ishikawa* stressed the right under the Washington State Constitution to the open administration of justice, [Const. art. 1, s 10](#), and the importance of weighing the public's interest against the interests of the parties in determine whether to deny public access to court proceedings. "When a perceived clash between a defendant's fair trial right and the right of free speech arises, courts have an affirmative duty to try to accommodate both of those interests. Therefore, rather than engage in idle 'balancing,' it is our hope that careful judicial craftsmanship will help preserve 'two of the most cherished policies of our civilization.'" *Id.* at 45.

While *Ishikawa* involved a criminal trial, the same principles were applied to a civil case in *Dreiling v. Jain*, 151 Wn.2d 900. The *Dreiling* court discussed at length the importance of the constitutional right of the public and press to open courts, explaining:

Open access to government institutions is fundamental to a free and democratic society. Open access to the courts is grounded in our common law heritage and our national and state constitutions. For centuries publicity has been a check on the misuse of both political and judicial power. As a leading theorist of the Enlightenment wrote:

Let the verdicts and proofs of guilt be made public, so that opinion, which is, perhaps, the sole cement of society, may serve to restrain power and passions; so that the people may say, we are not slaves, and we are protected—a sentiment which inspires courage and which is the equivalent of a tribute to a sovereign who knows his own true interests.

*Id.* at 908. The court continued: "Proceedings cloaked in secrecy foster mistrust and, potentially, misuse of power. Again, the operations of the courts and the judicial conduct of judges are matters of utmost public concern." *Id.* For this reason, blanket protective orders are disfavored, especially once documents have

been filed. *Id.* at 912. Because courts are presumptively open, the burden of justification rests on the parties seeking sealing or redaction. *Id.* at 914, and the requesting party must make a showing, for each particular document it seeks to protect, of that specific prejudice or harm will result if no protective order is granted. *Id.* at 917.

Openness is presumptive, but it is not absolute. It may be limited to protect other interests, such as a party's right to a fair trial. *Id.* at 913. When sealing is justified, it must be no broader in application or duration than necessary to serve its purpose. *Id.* at 914. Unsubstantiated allegations will not satisfy the rule. *Id.* at 916. The requesting party must support, where possible, its request by affidavits and concrete examples. *Id.* at 916-17. Entire documents should not be protected where mere redaction of sensitive items will satisfy the need for secrecy. *Id.* at 917. If you are seeking to seal or redact court records, be prepared to address these issues and present detailed findings of fact in your proposed order to support your request.

## **ABOTA - CIVIC LEARNING COUNCIL**

### **CLC-ABOTA Civic Education Grants**

ABOTA continues to fund a 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.

#### **Recent Grants:**

4<sup>th</sup> grade class at Greenwood Elementary to purchase a complete set of "The State We're In: Washington", a guide to state, tribal and local government.