

American Board of Trial Advocates™



Washington Chapter Newsletter November 2022

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PRESIDENT'S MESSAGE



I am very excited to see everyone at the MIT and Annual meeting/dinner on Thursday, November 10th. There is still time, so [please register](#) if you have not done so already. We will be welcoming new members, taking care of some chapter business, and introducing our new 2023 Executive Committee and incoming President (JD Smith). We will also be honoring George Kargianis and Jan Peterson; and awarding Judge of the Year to the Honorable Michael Price, and Trial Lawyer of the Year to Rando Wick. It has been great to start in person events again in 2022 and the goal will be to continue them.

Sincerely,
Ketia

FREE CLE

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

Attorney Mental Health and Wellbeing

The stress and personal challenges of practicing law are ever increasing. The consequences of this distress affect not only the attorney, but also clients, colleagues and families. Fortunately, there is help and hope for the attorney in need. This webinar discusses approaches and programs that promote attorney wellbeing in their practices as well as in their everyday lives.

Presenters:

Sarah B. Cole, Marshall Dennehey, Wilmington, DE

Joanna M. Litt, Attorney, Studio City, CA

Rich Lombino, Attorney and Therapist, Lombino Counseling, Wilmington, DE

Carol Waldhauser, Executive Director, Delaware Lawyers Assistance Program

Moderator:

Thomas Leff, Delaware Chapter of ABOTA

Register at

https://us06web.zoom.us/webinar/register/WN_4_HYyiuAQg6E1_jOCWaclA

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 Superior Court **Judge Adrienne McCoy**.

Judge McCoy joined King County Superior Court in November 2021. Prior to November 2021, she was a trial lawyer for 23 years at the King County Prosecutor’s Office where her last 10 years were spent trying complex homicide and violent crime cases. Judge McCoy currently serves on King County Superior Court’s Diversity, Equity & Inclusion and Courts and Community Committees, and she is a trustee for the Superior Court Judge’s Association. Judge McCoy earned her bachelor’s degree from Wake Forest University and her law degree from the University of Washington.

TIP: Limitations of the Business Records Hearsay Exception

The Business Record Hearsay exception is not as expansive as it seems. Out of court assertions are not automatically admissible because they are within a business record. Parties may offer a Business Record into evidence without considering that oftentimes portions of the record, beyond the “act, condition or event” it records, are inadmissible hearsay. There may be, however, a different exception that allows admission of other out of court assertions. Analysis beforehand can help you respond to most objections and/or have a properly redacted exhibit ready to go.

A record of an act, condition or event, shall in so far as relevant, be competent evidence if the custodian or other qualified witness testifies to its identity and the mode of its preparation, and if it was made in the regular course of business, at or near the time of the act, condition or event, and if, in the opinion of the court, the sources of information, method and time of preparation were such as to justify its admission.

ER 803(a)(6)(RCW 5.45.020).

Before offering an unredacted business record, determine which hearsay exceptions apply to which portion of the record. The Business Record Exception covers only events, acts, and conditions that are entered into the record near the time of the event, act, or condition. A computer-generated record, like a call detail record from a phone company or a bank statement will be entirely admissible under this rule because no declarant is asserting anything other than a contemporaneous act, event, or condition.

However, not all information contained in business records constitutes an act, condition, or event. You must analyze that other information to determine if a) it fits within another exception to hearsay or b) is non-hearsay, such as the statement of a party opponent.

For example, portions of a medical record such as the date, time, activity, and provider’s contemporaneous observations of the patient’s condition (including diagnosis) will be admissible. However, an opinion of causation goes beyond the business record and is inadmissible without the provider’s in-court testimony. See, e.g. Young v. Liddington, 50 Wash. 2d 78, 84, 309 P.2d 761, 765 (1957); State v. Doerflinger, 170 Wash. App. 650, 285 P.3d 217 (2012). Other parts of the record may be admissible under other hearsay exceptions such as patient statements for medical diagnosis and treatment or non-hearsay if patient is a party opponent. Hearsay does not become admissible just because it is within a business record.

Another example is a police report, which is certainly made in the ordinary course of business. Whether its contents are admissible as a business record turns on the purpose for which the record was created and the nature of the information within the record. Records of events and documentation of items seized are generally admissible, while records containing subjective observations generally are not. Compare: State v. Bellerouche, 129 Wash. App. 912, 916-17, 120 P.3d 971 (2005) (police trespass notice admissible); State v. Quincy, 122 Wash. App. 395, 401, 95 P.3d 353 (2004) (list of stolen merchandise admissible); Det. of Coe,

175 Wash.2d at 502, 505, 286 P.3d 29 (computer report aggregating details from police reports inadmissible); State v. Hines, 87 Wash. App. 98, 101-02, 941 P.2d 9 (1997) (report of officer's observations inadmissible). Lab reports follow a similar analysis in civil cases. See Matter of Welfare of M.R., 518 P.3d 214, 223 (Wash. 2022) for a list of cases where verifiable scientific tests were admissible.

In Matter of Welfare of M.R., 518 P.3d 214, 223 (Wash. 2022), the Washington Supreme Court seems to have expanded the business record exception by ruling that a drug treatment record containing a staff member's observations of a client cheating his UA test was admissible. This case is also an excellent digest of Washington Business Record Exception cases.

A few minutes of advance analysis will make for a smooth offer and admission of your exhibits.

UPCOMING EVENTS

Masters In Trial

November 10th | 8:30AM-3:30PM

Washington Athletic Club

[Register for In-Person Attendance](#)

[Register for Remote Attendance](#)

Annual Meeting Dinner and Awards

November 10th

5:30PM Reception | 7:00PM Dinner

Washington Athletic Club

[Register](#)

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:

\$2,520 to Middle College High School in Seattle for the purchase of 20 textbooks and teacher's guide of "Street Law: A Course In Practical Law" for the government/civics class.

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