PRACTICING LAW DURING A PANDEMIC

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-Thomas Jefferson

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Kiera M. Silva
Editor’s Note

Why I Appreciate My Daily Death Reminder

“There’s a Twitter account called Daily Death Reminder that has been tweeting out the same line every day for years: “You will die someday.” Although the reminder is less necessary during a pandemic, I appreciate this Twitter account. Over the past year, I have often oscillated between two general states of mind: one in which I want to put my head down and lose time until the pandemic ends, and one in which I want to do the opposite—capture this time and use it.

The Daily Death Reminder helps me to embrace the latter. It says, yes, you have suffered. You will continue to suffer. Things may never be the same again. So you can put your head down from time to time, but afterward, don’t wait until things feel good again to try to be a better person, friend, partner, sister, writer. You will have to try to become these things, sometimes, in the midst of disaster.

The COVID-19 pandemic has been awful in many ways that all of us know. It has coincided with other ongoing crises including racism and poverty. In Washington, where nearly 5,000 people have died of the disease, a sobering and frightening housing situation is also taking shape.

As we near the March 31 eviction moratorium deadline, some are calling for the plan to try to prevent mass evictions on page 44.

Also in this issue: the results of a recent WSBA survey provide a broad look at how the pandemic has affected WSBA members (page 42), WSBA Governor Sunitha Anjilvel shares how she has adapted as a solo family law practitioner (page 36), mediator Kathleen Wareham discusses some upsides of mediating remotely (page 34), and more.

Another James Baldwin quote—to end on a slightly more positive note: “People who in some sense know who they are can’t change the world always, but they can do something to make it a little more, to make life a little more human.”

NOTES
1. The quotes in this article come from the phenomenal book of Baldwin’s uncollected writings entitled The Cross of Redemption. The first quote is from an essay entitled “The Journey I mean, not ‘make it’ in the American sense.” The second is from one entitled “The Uses of the Blues.”

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More Than a Month

Thank you for publishing the interview with Dr. Quintard Taylor and his daughter, State Rep. Jamila E. Taylor. I had the pleasure of having Charles Z. Smith as a professor at the UW School of Law, and of having Virgil S. Clarkson as a mentor and writing his short profile for the BlackPast website. The website [www.blackpast.org] is an awesome resource and I commend it to anyone who cares for Black history for more than a month annually.

Claudia Cuykendall
Olympia

Thanks for Serving

I took away many lessons from my time in WSBA governance, but the most important was the value of cherishing the volunteers that make our Association function.

The WSBA would not function if it were not for the 1,400-plus volunteers who take time out of their practices to make our wonderful regulatory and service entity function. From sections to governance and discipline, our talented staff and volunteers work hand in hand to enable our members to better serve the public and carry out the regulatory mandates the Supreme Court has delegated to us to execute. Beyond the satisfaction of contributing to the betterment of the profession and learning, many of the benefits of such necessary volunteerism have been halted by the COVID-19 crisis. For myself, at least, there was a real joy to meeting with people from across Washington face to face, discussing ideas, and sharing meals—it’s just not the same on Zoom. So I wanted to thank those of you who continue to volunteer your time, even under more difficult, less rewarding conditions.

In particular, however, I wanted to express my admiration and thanks for the volunteerism of WSBA President Kyle Sciuchetti. Being president of the WSBA is a life-consuming volunteer obligation that has very few perks (aside from getting your picture on the cover of the magazine, which is a double-edged sword!).
president effectively becomes the complaint-receiver-in-chief and the bearer of a lot of negative energy. President Sciuchetti, however, whose whole term thus far has been under COVID-19 rules of engagement, has been a paragon of calm, collaborative, and tireless leadership. I have been impressed with his ability to try to find common ground, and his leadership on the issues that face our profession and society today. It is a more than full-time job, seven days a week, during a president’s term in which a lot of sacrifices are made in terms of career and time with family—and I am not sure that is well understood. He loves recognizing the accomplishments of others and giving honor where honor is due, but it is President Sciuchetti who should be recognized. Thank you, you are making our Bar better and I deeply appreciate the sacrifices and stresses you have taken on. I hold you, our Board, section leaders, and the rest of our 1,400-plus volunteers in awe.

Rajeev D. Majumdar
Blaine

License Fees Again

Our friend and colleague from Enumclaw showed up again in the Bar News Inbox [February 2021 issue]. She writes: “My wish for 2021 would be for the WSBA to become voluntary, which is probably as likely as snowballs melting in hell.”

So ... it’s a certainty then?

Richard A. Nielsen
Seattle
There’s More on the Blog

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What the WSBA is Tracking in State’s 2021 Legislative Session

The 2021 session of the Washington State Legislature is certainly like none in the history of the state—but so far things are going smoothly. With the ongoing COVID-19 pandemic, the Legislature […]

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I used to take breaks during the day to take a brisk walk or sugar-up at the vending machine. Now I break from days filled with Zoom meetings and conference calls to make sure my kids are in their online classes (and not watching YouTube), managing eruptions of frustration over assignments and restarting the wireless router at least once a day. When the kids’ school days are over, that’s my golden time to focus on getting my tasks for the day accomplished. While the specifics might be different, the overall effect is likely much the same for you as it is for me: The global pandemic has certainly changed the way we work and live. In so doing, it has shaken loose many of our assumptions about how and where we do our jobs and what’s possible. My intent is to capitalize on this newly expanded sense of what’s possible. In a world of fewer physical space limitations, how can we continue to tear down barriers and increase access to the WSBA, the courts, and all of our critical institutions?

First, some context: The Washington State Bar Association comprises more than 41,000 members spread across 71,000 square miles in Washington—not to mention various other states, countries, and continents. During the last Listening Tour, WSBA leaders and I traveled to all corners of the state to meet members in their communities. It was clear to me that many of you want and expect to feel a connection to the state Bar, but you often do not because of the physical distance to the WSBA offices and a feeling that the organization is “Seattle-centric.”

I returned from the Listening Tour with one question swirling: “How can we create a sense of community and connection among a group this large and diverse?” That question predated COVID-19, and is now front and center as I envision what’s next for the WSBA post COVID-19. I have been impressed—though not surprised—by the productivity of WSBA staff and volunteers in the wake of this abrupt transition to working from home. The transition has caused us to prioritize our technology and norms so that remote participation is the main event, rather than just an add-on to what’s happening in person, in a conference room, in downtown Seattle. The efficiency of the WSBA’s remote work has been so encouraging that the Board of Governors in January authorized me to move forward on a plan to continue to support a remote workforce and reduce our physical footprint—a plan that dovetails with an employee survey showing that the majority of WSBA staff would prefer to work primarily remotely going forward.

I see many benefits to the WSBA becoming less bound to a central office. While I don’t know the exact shape or logistics, my vision is to reallocate physical and face-to-face resources where they count, which may be in your community. Imagine if we created WSBA hubs, where members could gather to attend CLEs or committee meetings, meet with a WSBA practice-management or well-being consultant, or even rent a professional conference or event space?

A more remote work force commits the WSBA to continue to innovate to create virtual spaces for people to connect and contribute. I hasten to add that I know many of us are eager to meet in person again (see President’s Corner on page 12). Relationships certainly feel easier to build over a shared meal, a cup of coffee, or an elevator ride. Still, while the WSBA strives to reach across the state to include as many voices and experiences as possible in its boards and committees, it can’t be easy for people outside the King County area to fully participate. We are now implementing the technology and protocols to ensure a robust remote platform to support participation without regard to geography, whether from Port Townsend or Prosser or Paris. These are tools that can knock down barriers in many forms, not just geographic, to invite greater diversity and connection. As an example, the WSBA Board of Governors in October was able to convene a well-attended conversation with Minority Bar Association leaders—with participation from people across the state—at noon on a Tuesday. Participation and engagement with your state Bar should be available for all, not just for those with travel budgets, proximity to Seattle, or an abundance of free time on their calendars.

When I look at the state of my work and life these days, I do feel some frustration and exhaustion, but I also know how privileged I am. Privileged to have this job and the ability it affords me to keep my family healthy and safe. That privilege is not afforded to everyone, which reminds me to appreciate this extra time with my kids, the ability to toss a load of laundry at lunch, and spending substantially less time on a bus each day. I hope that as the threat of the pandemic lifts, we can use what we’ve learned to create a stronger, more inclusive, and more equitable community with every person who seeks to engage with the WSBA.
President’s Corner

Proud to be Your Pandemic President

by the time this edition of Bar News reaches you, we will have been living with the COVID-19 pandemic for a year. I am convinced that the impact this virus has had on how we live now will continue to affect us far into the future.

Not only do I serve as your WSBA president, I continue to maintain a full-time business and litigation practice providing counsel and advice to businesses across the Pacific Northwest. Since late-March 2020, I have primarily been practicing law from my dining room table. I’ve spent countless hours on Zoom or Teams meetings. I have contracts spread over tables and organized piles of documents that I attend to every day. I know many of you are doing the same.

Prior to COVID-19, I used to say that if I had to, I could practice from anywhere. I have a stable group of clients, some of whom have been with me for decades. I have just enough computer sense to be able to draft documents, pleadings, and correspondence needed in the day-to-day practice of law. But while I can practice law this way, do I want to?

Many of us practice in law firms or in-house for businesses and government agencies. We enjoy our partners, colleagues, and clients. Working away from them for so long has been a challenge, and less than satisfying, in so many ways. I long for the day that I can wander down the hall and talk with a colleague about an employment issue or a tax question that I am ill-suited or challenged to answer. I miss the human interaction that we never had to think about before.

My fear is that law firms and businesses will learn that what we once accomplished with in-person meetings can now be done over the internet with little or no personal contact. Only time will tell what law firms and the practice of law look will like in the future. I hope we will continue to value interaction with and reliance upon colleagues and staff, and the synergy of teamwork, to continue to provide the highest-quality legal services people and businesses have come to expect. When we hire new legal practitioners and staff, I hope we don’t have to get to know each other as squares on a screen coming to us from living rooms, home offices, kitchens, and vehicles in a Zoom call. I hope we don’t decide that virtual meetings are better because they are more efficient and don’t require the time and energy to travel and meet people face to face. That type of efficiency comes at a price, and that cost is the human connection, empathy, and understanding that comes from personal interaction.

Not long ago, I attended a conference presented by the National Conference of Bar Presidents. In any other year, presidents from state, county, and municipal bar associations from around the country come together in a single location to share ideas about issues that confront their respective bar associations. During the pandemic, we all gathered virtually in a Zoom format. While the meeting was functional and enabled attendees to talk and confer with each other, it was not the same. It is exceedingly hard to connect with folks appearing on video from a webcam in your dining room. It is difficult, if not impossible, to forge the types of lasting relationships that transcend a single conference and create the type of cooperation and collaboration that makes all of our bar associations better. It is difficult to find positivity under these circumstances.

Yet, there it was. A bar president from another state offered this silver lining: While we may not be able to travel and meet and learn in person like past bar presidents, we “get” to be the “COVID-19 Presidents.” We get a different experience. We get to be innovative. We get to do things differently. We are invited to think, act, and advance our bar associations under circumstances we have not seen during an epidemic in over 100 years, using technology and tools that were never before available to people suffering through a global pandemic. This is different and it’s important.

For me, this pandemic has highlighted how our WSBA members who are struggling with COVID-19, substance use, mental health issues, or changes in careers (job change or retirement) is essential. Our Member Engagement Workgroup and the work they do has never been so imperative. We need to support each other in these uncertain times. We need a bar association that looks to the future and envisions what the practice of law looks like in five, 10, 15, and 20 years. The WSBA’s recently empaneled Long-Range Strategic Planning Committee has been meeting to do just that.

Currently, the WSBA leases several floors of its office space in a building in downtown Seattle. In 2026, the term of its lease will be up. What should the organization do? Is paying for this office space the

Kyle Sciuchetti
WSBA President

Sciuchetti is a partner of Miller Nash Graham & Dunn LLP, where he serves as outside counsel for businesses. He can be reached at kyle.s@board.wsba.org.
best use of money and resources? Over the years, many other state bar associations have chosen to purchase buildings to house their headquarters. Those decisions have enabled bar associations to offer benefits to its membership like conference rooms to attorneys needing space to hold depositions, mediations, and client meetings. Some state bar associations have decided to purchase or lease buildings in smaller cities away from the center of the most populated and high-priced metropolitan areas in order to save money on rent over the long term and make such headquarters more accessible to its members across the state.

The WSBA’s Long-Range Strategic Planning Committee is considering many of the same possibilities. What if the WSBA chose to relocate to a building in SeaTac, Tacoma, Federal Way, Spokane, Wenatchee, or Olympia? What if the WSBA was able to offer conference rooms to its members at a discounted rate to help them thrive in a post-COVID-19 world? What if the WSBA was able to offer CLEs, volunteer opportunities, member well-being, and practice assistance from this location to members far and wide? What if the organization adopted a hybrid model of in-person and virtual meetings that allowed for face-to-face connection and maximum volunteer engagement?

This past year showed us that we can operate differently. As lawyers, we need to be able to pivot to represent our clients and deliver essential legal services despite the obstacles that may be thrown our way. We must adapt and we must change. We cannot be stagnant. If anything, the pandemic of 2020-2021 has shown us that in order to remain responsive and effective we must do what we can to modify what we have done in the past and chart a course for the future. Let’s do this together. Please contact me at kyle.s@board.wsba.org. I want to hear your ideas about what our future could look like and your ideas for getting us there.

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NOTE
1. For more information, visit www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/member-engagement-work-group.
Treasurer’s Report

Spring is Time to Reforecast—and Not Just the Weather

Welcome to the onset of spring, which, if you’re like me, means when you leave the house in the morning, you are prepared for a full range of weather conditions, as the forecast can quickly move from sun to rain to snow to sun. At the WSBA, spring has also become a critical time to recheck our sunny- and rainy-day assumptions—that is, our financial bottom line. Launched by Chief Financial Officer Jorge Perez and me last year, we are once again in the middle of our reforecasting process, a mid-fiscal-year comparison of budgeted revenues and expenditures in each cost center with actual revenues and expenditures. The result is an updated forecast of our current condition versus our original budget, which we can use to make fiscal course corrections, if necessary, to ensure that we end the year with expected reserves. The goal of the reforecast is to provide the Board of Governors and all of you with much more accurate and timely financial information about WSBA operations.

Expect to hear more about the reforecast in the next issue of Bar News, after CFO Perez and I finish it and present it to the Board of Governors at our April meeting. In the meantime, I want to provide a detailed update on our current performance as compared to budget. My goal as treasurer and District 4 Governor for the past 16 months has been to increase financial transparency; this includes ongoing communication because members deserve to understand how their license fees are being used. It has also been a major ongoing goal to attempt to maximize the impact of current WSBA expenditures while increasing member benefits and services provided by the WSBA.

FINANCIAL UPDATE

The WSBA has closed the books on more than one-third of its fiscal year, which started Oct. 1. We are on the positive side of budgeted projections during the ongoing pandemic, which has brought many unknowns. For January, the WSBA gained $195,076.09 in the unrestricted General Fund; this contributes to an overall $825,648 net revenue (over expenses) for the fiscal year. Considering the FY 2021 budget anticipated a deficit of $202,782 for the year ending Sept. 30, this positive balance is, indeed, good news.

During the 16 months I’ve been treasurer, spanning FY 2020 and FY 2021, the WSBA has enjoyed a tremendously positive financial picture. We grew the General Fund by $742,695 in FY 2020, and—as noted in the preceding paragraph—we are on track to come out with a positive balance this year. For both years, we anticipated overall negative balances. In other words, our initial budgets anticipated using almost $800,000 in reserves, when in reality we have gained more than $1.5 million—so we are “beating” our budgeted expectations for the past 16 months by more than $2.3 million. Overall, this is a great result, as it helps to generate enough surplus to support stable license fees and/or investment in important resources and services. Again, for those of you that are not aware, the Budget and Audit Committee voted to recommend to the Board of Governors at their November 2020 meeting not to raise lawyer license fees through 2026. The Board of Governors voted to keep the active-lawyer license fee flat at $458 for 2022 ($240 for active LLLTs and $200 for active LPOs), and to reassess fees for 2023 and beyond after long-term planning is complete—with the commitment not to raise active attorney license fees.

As I write this, I have less than two-thirds of my term left as treasurer for this fiscal year. It’s my hope that the WSBA will continue to maximize opportunities to increase efficiency, reduce expenditures, and increase revenue through investment opportunities during the rest of FY 2021 and beyond. I would like to thank and recognize the outstanding hard work of the following people: CFO Perez, all of the talented WSBA employees who comprise the WSBA financial team, and the individual governors of the Budget and Audit Committee: Lauren Boyd, Matthew Dresden, P.J. Grabicki, Carla J. Higginson, Tom McBride, Bryn Peterson, and Brett Purtzer.

The successes that I have enjoyed as WSBA treasurer truly are due to a team approach and a team outcome. I’m very proud to get to work with such talented and dedicated teammates on the Budget and Audit Committee!

I hope that each of you and your families are staying safe during this terrible COVID-19 pandemic.

Daniel D. Clark
WSBA Treasurer

Clark is a senior deputy prosecuting attorney with the Yakima County Prosecuting Attorney’s Office, Corporate Counsel Division. He can be reached at DanClarkBOG@yahoo.com.

One major ongoing goal is to attempt to maximize the impact of current WSBA expenditures while increasing member benefits and services provided by the WSBA.
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Don’t Try This at Home

Responding to cyber intrusions and data breaches

BY MARK J. FUCILE

“Data breaches and cyber threats involving or targeting lawyers and law firms are a major professional responsibility and liability threat facing the legal profession.”
ABA Formal Opinion 483 at 1 (2018)

The Office of the Attorney General publishes an annual report on data breaches in Washington. It makes for sobering reading. The current report, its predecessors, and related information on the attorney general’s website collectively reflect that in recent years hundreds of businesses have experienced data breaches affecting thousands of Washington residents. Professional service firms are among the businesses reporting significant breaches.

When a data breach or other intrusion occurs at a law firm, panic is an understandable reaction. There may also be an all-too-human instinct to try to fix the problem without outside help. Even for larger firms—let alone small and mid-size ones—forsaking outside help could cause an already difficult situation to get much worse. As they used to say on television when demonstrating something dangerous, “Don’t try this at home.” Rather, a law firm will likely need help on two fronts. First, the firm should immediately retain technical assistance to determine the nature of the intrusion and what, if any, information has been accessed, and to undertake any repairs or restoration necessary. Second, if personal information has been accessed, the firm will likely need legal help to navigate complex and overlapping data breach notification laws. Even if personal information has not been accessed, the firm may still need legal help in notifying clients if, for example, the firm has been “locked out” of its files through a “ransomware” attack and time-sensitive ongoing matters will be affected while data is being restored. In this column, we’ll survey both.

Before we do, however, three preliminary points are in order.

First, although we will focus here on aftereffects, firms must take reasonable proactive steps appropriate to their size and practice to guard against intrusions. Comment 8 to RPC 1.1 emphasizes that our duty of competence includes understanding the technology that we use in our practices. RPC 1.6(c), in turn, obliges us to “make reasonable efforts to prevent the ... unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.” The leading ABA opinion on data breach response, quoted at the beginning of this column, notes that proactive steps include ongoing monitoring for potential intrusions, training firm lawyers and staff on security measures, and response planning. Advance planning should also include insurance. Malpractice policies may—or may not—include coverage for technical assistance in the wake of a breach and for any required notification. Firms, therefore, should carefully review their coverage and obtain either a rider on their malpractice policy or a separate cyber risk policy.

Second, many of the same considerations we will discuss for firm networks are triggered if an unencrypted firm laptop or other “smart device” is lost or stolen. In years past, a paper file left behind at a restaurant following lunch with a client would probably still be there when we returned to retrieve it. An expensive computer is both a more inviting target for thieves and, for many lawyers, may hold the functional equivalent of their entire “file room.”

Third, although a data breach or other intrusion is unquestionably bad, mishandling the response can make the situation...
immeasurably worse. In addition to any disciplinary consequences, the RPCs cited earlier are not too far-removed from the standard of care for legal malpractice. The regulatory standards for protecting client confidentiality also broadly reflect our underlying fiduciary duty—raising the specter of further civil damage risk. RCW 19.255.040 provides statutory remedies to both the attorney general and consumers injured by reporting failures. Sophisticated clients who have incorporated their own reporting requirements into engagement agreements with law firms may also pursue breach of contract claims if the required reporting does not follow a breach. In short, firms face significant risk on a variety of fronts if they do not assess and handle intrusions appropriately.

**TECHNICAL HELP**

Not all intrusions are created equal. Some intruders may surreptitiously gain access to a law firm’s network to steal sensitive client information. In one well-publicized incident, for example, hackers gained access to internal networks at several prominent New York law firms to read confidential emails that detailed potential deals that had not yet been announced publicly, in order to profit on the stock prices of the companies involved. Others involving “ransomware” encrypt a firm’s files and then demand money for the decryption key. Although some ransomware schemes involve accessing the files involved, others simply encrypt them.

Once an intrusion is discovered, it is critical to get competent technical help in two primary areas without delay.

First, a forensic analysis should be undertaken to determine the nature of the intrusion and whether information has been accessed. If personal information of clients or others has been compromised, then the data breach notification laws discussed in the next section will likely have been triggered. By contrast, if the firm has simply been “locked out” of its files through a ransomware attack, notification statutes may not have been triggered because no personal information has been accessed or taken. Even if notification statutes are not triggered, however, a firm will likely have been accessed, disclosed or lost in a breach.

If the firm has data breach insurance coverage, the carrier should be contacted immediately to coordinate the necessary technical assistance. If not, the firm’s malpractice carrier will still be a valuable resource for referrals to the specialized forensic assistance needed.

Second, technical help will also likely be needed to stop the breach, repair the systems affected, and restore any data lost.

**LEGAL HELP**

If a breach has occurred and it is either apparent or reasonably likely that personal information has been compromised, Chapter 19.255 RCW outlines disclosure obligations. RCW 19.255.005(1) and RCW 19.255.005(2) define, respectively, “breach” and “personal information.” The former is framed as the “unauthorized acquisition of data that compromises the security, confidentiality, or integrity of personal information” and the latter includes identifying information such as Social Security numbers, driver’s license numbers, and dates of birth. RCW 19.255.010, in turn, addresses the timing, content, and means for notice in the event of a breach that includes defined personal information. Although law firms instinctively think in terms of clients, notice in this context extends to both clients and non-clients affected. A defense firm, for example, might have plaintiffs’ medical or tax records in its electronic files. If the breach involves more than 500 Washington residents, the attorney general must also be notified under RCW 19.255.010(7).

Depending on the information involved, Chapter 19.255 RCW may just be the starting point. For a firm with clients from multiple states that have been impacted, analogous statutes in the other states enter the mix. Although statutes in this area are generally similar, they are not uniform. The nuances of each jurisdiction involved, therefore, must be parsed. Further, depending on the type of information compromised, specialized federal statutes protecting medical or financial privacy may also come into play. Depending on the residence of the persons involved, foreign laws may be involved as well.

Given this complexity, it is not surprising that cybersecurity has become a distinct practice area. And this complexity, together with the comparatively short deadlines for notification in the statutes involved, and the penalties for failure to meet the requirements, means that the immediate aftermath of a breach is not a good time to learn a new area of law. For firms with cyber insurance, the carrier should be contacted promptly so it can also arrange for appropriate legal help. For those without insurance, the firm’s malpractice carrier remains a practical resource for referrals. Firms specializing in this area often can also assist with associated facets of the breach ranging from interfacing with law enforcement to analyzing insurance coverage for business interruption and claims against the firm from the breach.

**SUMMING UP**

Law firms are in the information business. As a result, we are targets for bad actors who either want to steal that information or hold it hostage. In addition to proactive security, firms must respond appropriately in the event of a breach or other intrusion. Given the technical and legal complexity involved, getting specialized help is critical. In short, “Don’t try this at home.”
NOTES


8. See, e.g., Hiscox Ins. Co. v. Warden Grier, LLP, No. 4:20-cv-00237-NKL (W.D. Mo.) (complaint filed March 27, 2020) (alleging that law firm breached contractual terms of engagement by failing to notify plaintiff of data breach).


11. Id. at 14.

12. ABA Formal Opinion 483 notes as to clients (at 10-15) that although Model Rule 1.4 is only framed in terms of current clients, data breach statutes generally extend reporting obligations to former clients as well.


14. See generally ABA Cybersecurity Handbook, supra note 4, Apps. A (federal reporting statutes) and C (federal regulations).

15. See, e.g., European Union General Data Protection Regulation, available at www.gdpr.eu; see generally ABA Cybersecurity Handbook, supra note 4, Ch. 5 (addressing international aspects).
Q. What is the most valuable benefit members get from joining your Section that they can’t get anywhere else?
Our Section provides multiple ways to connect with environmental and land use attorneys throughout the state, including our midyear conference, our annual ethics CLE, our law school mixer, and our email distribution list. We endeavor to continually and regularly provide opportunities for the interchange of ideas.

Our Section represents a diverse membership with individuals who are often on different sides of an issue, but who are all committed to civil and professional cooperation for the protection and enhancement of our communities.

Q. What is a recent Section accomplishment or current project that you are excited about?
We have a new website for our Section (https://wsba-elul.org/). The website provides articles describing and analyzing changes and updates to the law that are easy for lawyers to read and digest within their schedules. This website was a longstanding goal of the Section.

We are pleased with the Section’s successful efforts to transition its events to online formats due to COVID-19. We provided a law student mixer by webinar, collected tips from practicing attorneys to share with law students, and moved our midyear conference to a webinar format.

Q. What advice do you have for building a successful practice in the area of law related to your Section and how does membership in your Section help do that?
The ELUL Section is highly effective at staying on top of legal developments in the environmental and land use practice areas through our midyear CLE, mini-CLEs, website article posts, and regular legislative updates. Our members also share thoughts and seek advice through our email distribution list. Being tuned in to legal developments is the best way to develop and sustain expertise in your field and to enhance your knowledge base.

Connections with other attorneys are also essential to land use and environmental private practice. The number of private environmental and land use attorneys is few, and most of those attorneys have some involvement in the ELUL Section. If a new lawyer wishes to build an environmental or land use practice, then the ELUL Section provides an effective way to become acquainted with practicing attorneys. Those attorneys often send referrals if they cannot accept clients due to conflicts of interest. Those referrals often lead to transition of clients, which can result in additional referrals and a successful practice.

Q. In addition to membership in your Section, what are the best ways to stay up on the developing law in this practice area?
There are many different ways to stay up to date with developing law! For case law, you can sign up for email updates on recent Washington court decisions on the Washington Courts website (www.courts.wa.gov/). Subscriptions to E&E News or Law360 can provide relevant and timely updates on environmental law, if your firm or employer has access to these services. Local and national news can be helpful to understand the political decisions and matters relevant to land use and environmental law. We often use Google Alerts to provide updates on specific issues or topics. Finally, some find that relevant American Bar Association committees are helpful as well.

The Section membership year is Jan. 1 - Dec. 31. For more information and to join the Environmental & Land Use Law Section, or any other Section, visit https://wsba.org/legal-community/sections/sections.
No one should suffer in an abusive environment.

When only the best will do.

Your clients, colleagues and friends deserve nothing less than the best. Refer with confidence to Brewe Layman: One of Washington State's preeminent family law firms.

Brewe Layman is highly regarded regionally and nationally for our adept and tenacious representation in complex divorce-related matters involving significant estates, business entanglements, prenuptial agreements, contentious support issues, cohabitation conundrums and other family law-related topics.
A new Washington Rule of Appellate Procedure (RAP 18.17) governing the formatting of appellate motions, petitions, and briefs will go into effect on Sept. 1. This article highlights the changes to the formatting requirements and offers general advice and tips on briefing, motion practice, and oral argument gleaned from my experience as an appellate practitioner and as a staff attorney at the Washington Court of Appeals.

BY ANDREW VAN WINKLE

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BRIEFING

**DO:** Pay attention to new RAP 18.17. New RAP 18.17 replaces almost all of the old formatting requirements, primarily found in RAP 10.4(a) and (b). Instead of stating that briefs are limited to
50 pages, the amended rule provides that opening briefs are limited to 12,000 words and most other briefs are limited to between 2,500 and 6,000 words. (These word limits approximate the old page limits.) Page limit and formatting requirements found in other parts of the RAPs are deleted and now refer readers to RAP 18.17. Furthermore, all documents must be accompanied by a “certificate of compliance” attesting to compliance with these limits. RAP 18.17 permits lawyers to rely on the word count generated automatically by Microsoft Word and similar word processing software. The forms in the appendix to the RAPs are amended to show lawyers how to format their word count certifications.

The other big change is that all documents—including footnotes—must be in 14-point font (rather than the 12-point that most people use). Documents must still be in a serif or sans serif font equivalent to Times New Roman or Arial. Briefs produced by hand or typewriter are exempt from most of these new procedures, but are still subject to page limits. Margins, paper size, paper weight, and double/single spacing requirements remain unchanged.

**DO:** Follow the GR 14 Appendix 1 Style Sheet and other style rules.

Appendix 1 to Washington General Rule 14, the Office of Reporter of Decisions Style Sheet, applies to all court levels, tells you how to format citations to legal authority, provides exceptions to the Bluebook, adopts The Chicago Manual of Style as the authority for punctuation and style, and adopts Webster’s Third New International Dictionary of the English Language as the authority for spelling. RAP 10.4(f) requires use of the abbreviations “CP,” “Ex,” and “RP” for all citations to the clerk’s papers, exhibits, and reports of proceedings in appellate briefing.

**DO:** Use headings, subheadings, and even sub-subheadings.

An organized brief is a persuasive brief. While not required by court rule, headings (especially subheadings) are powerful tools. A good introductory paragraph will cue to the reader what your message will be. But a good heading will ensure that your reader does not miss that cue. Far too often, appellate judges and staff attorneys read a section of a brief and come away not knowing what that section was about, or get halfway through a subsection before realizing that the writer has changed topics.

For example, a lawyer arguing ineffective assistance of counsel might transition from arguing deficient performance to arguing prejudice, but will not tell the reader that they have transitioned. This causes the reader to waste time rereading the section just to figure out what the issue is. Similarly, a lawyer may forget all about prejudice and only argue deficient performance. Adding subheadings during the editing process may remind a lawyer that they have analyzed only half of the issue. While subheadings and sub-subheadings take up space on the page, they don’t require many words and, given their organizational and persuasive impact, should be used more widely in light of RAP 18.17.

**DO NOT:** Attach additional evidence as appendices to your briefs.

RAPs 9.10 and 9.11 govern how to supplement the record on appeal with additional evidence (i.e., adjudicative facts); the RAPs do not permit you to just attach such material as an appendix to your brief.

Documents that you may provide in an appendix include copies of statutes and rules. RAP 10.4(c). If an exhibit, such as a contract or plat map, is at issue, it is often helpful to provide a copy in your appendix—provided you made the proper RAP 9.6 designation. Your appendix may also include non-adjudicative facts, including “legislative facts” and other matters capable of judicial notice. Legislative facts are “background information a court may take into account when determining the constitutionality or proper interpretation of a statute, or when extending or restricting common law rule.” Cameron v. Murray, 151 Wn. App. 646, 658-59, 214 P.3d 150 (2009) (internal citation and quotation marks omitted). Legislative facts include scholarly works, scientific studies, and social facts. Wyman v. Wallace, 94 Wn.2d 99, 102, 615 P.2d 452 (1980). If you will be asking the court to take judicial notice of a fact, the best strategy is to bring a separate motion, because your definition of a matter capable of judicial notice might not meet the court’s definition or might not be admissible in the context of your case. See City of Everett vs. Pub. Employment Relations Comm’n, 11 Wn. App. 2d 1, 151 Wn. App. 646, 214 P.3d 150 (2009).

Andrew Van Winkle is a senior staff attorney at the Washington Court of Appeals, Division III. The opinions expressed in this article are solely the author’s and are not endorsed by any court or judge. He can be reached at andrew.vanwinkle@courts.wa.gov.
Dos and Don’ts on Appeal  
CONTINUED

**MOTIONS**

**DO:** Address the factors for discretionary review.

Sometimes being right is not enough. If you are seeking interlocutory review, you need to explain why your error requires fixing now, and why it cannot wait to be fixed until after a final judgment is entered. You do this by addressing the factors in RAP 2.3(b) and RAP 13.5(b). If you are seeking discretionary review of a case from a court of limited jurisdiction or discretionary review of a court of appeals opinion, you need to address the factors in RAP 2.3(d) or RAP 13.4(b). Additional rules apply when seeking direct review at the Supreme Court. RAP 4.2, 4.3. The underlying merits of the case are often secondary to the factors laid out in these rules.

**DO NOT:** Include motions to strike and other procedural motions in your brief.


**DO:** Make a motion for attorney fees in the argument section of your brief.

Failure to follow RAP 18.1(b) will preclude an award of attorney fees. Maytown Sand and Gravel, LLC v. Thurston County, 191 Wn.2d 392, 447-48, 423 P.3d 223 (2018).

**DO NOT:** Ask for attorney fees as a sanction for a frivolous appeal.

Do not unless it really was frivolous. Washington appellate courts are extremely disinclined to find an appeal frivolous and impose sanctions. The court reviews these motions from the perspective of a detached observer, not from the perspective of exhausted lawyers who have been skirmishing for the better part of a decade. All doubts as to whether an appeal is frivolous are resolved in favor of the appellant. Tiffany Family Trust Corp. v. City of Kent, 155 Wn.2d 225, 241, 119 P.3d 325 (2005).

You might think that it can’t hurt to ask. But remember, your reputation is on the line as well as your professional ethics. Your best tool for seeking sanctions for a frivolous appeal is to thoroughly research past cases where sanctions motions have been granted and to explain to the court why your case is like those cases. Ask a colleague who was not involved in the case if they think the appeal was actually frivolous, and not merely lacking in merit.

**ORAL ARGUMENTS**

**DO:** Arrive early and introduce yourself to the bailiff.

This lets the court know whether the parties are ready to proceed as scheduled or if the court needs to hear a different case first.

**DO NOT:** Give the court a written outline of your oral argument.

Outlines and other supplemental materials may be rejected as improper supplemental briefs, regardless of how you characterize them. See the advice on statements of additional authorities.

You may use visual aids during oral argument. RAP 11.4(i). More often than not, however, visual aids detract from your argument. You are there to have a conversation with the court, not to give a sales presentation.

**DO:** Answer the question you are asked, not the question you wish you had been asked.

Respond to the actual question the court asks. Similarly, answer each question when it is asked—never tell the court you will get back to their question later in your argument. Remember, oral argument is a conversation.

At some point in your appellate career you will be asked a question that you do not want to answer. It might be that the candid answer will be detrimental to your client’s position. Or it might be that you do not want to betray your ignorance. No matter how uncomfortable it may feel, the right answer is the answer that leaves your reputation and ethics intact. Sometimes that means conceding an issue that your client does not want you to concede. RPC 3.1. Sometimes that means telling the court you don’t know. Part of being a competent lawyer is admit-

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n.1, 451 P.3d 347 (2019) (rejecting filing of various studies and “other new evidence” not reviewed by the administrative agency).

**DO:** Maintain civility toward opposing counsel in briefing and oral argument.

Washington’s appellate courts thoroughly review the record in every case. The court sees how many times you asked for sanctions against opposing counsel (and vice versa) during discovery. It sees the snarky emails that you attached to your sanctions motions at the trial court. The court does not need you to explain in excruciating detail why you believe opposing counsel is the worst human being since (insert least favorite dictator here). You’ve made your record; let the record do the talking for you (provided your argument still complies with RAP 10.3(a)(6)).

**DO NOT:** Use statements of additional authorities as supplemental briefs.

A statement of additional authorities should contain no argument and at most a single sentence telling the court what issue the new authority applies to. Furthermore, RAP 10.8 is only “intended to provide parties an opportunity to cite authority decided after the completion of briefing. We do not view it as being intended to permit parties to submit to the court cases that they failed to timely identify when preparing their briefs.” O’Neill v. City of Shoreline, 183 Wn. App. 15, 23, 332 P.3d 1099 (2014).

**DO:** Include a short conclusion stating the precise relief sought.

See RAP 10.3(a)(7). State exactly stating the precise relief sought.

**DO NOT:** Include motions to strike other procedural motions in your brief.


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Failure to follow RAP 18.1(b) will preclude an award of attorney fees. Maytown Sand and Gravel, LLC v. Thurston County, 191 Wn.2d 392, 447-48, 423 P.3d 223 (2018).

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ting when you don’t know something. The law is vast and no lawyer can be expected to know it all.

One oral argument that sticks out in my memory was in a civil case that intersected with criminal law. Unfortunately for the civil practitioners on the case, most of the judges’ questions dealt with the criminal aspects. One of the lawyers did not know this area of law and was unprepared for the court’s questions. The judges kept repeating one question over and over in different ways. The lawyer kept trying to answer, but it was obvious after a while that the lawyer was just trying to cover a lack of knowledge. The best response is: “Your honor, I do not know the answer, but if you would like, I would be happy to research it and file a supplemental brief by any deadline you set.” Usually, the court will not take you up on this offer, but it tells the judges what they need to hear (although perhaps not what they need to know) and lets you get your argument back on track. Trying to save yourself from embarrassment will waste a lot of your allotted time for argument and will result in your not being able to present all the points you wanted to make.

**DO NOT:** Expect to make it through your prepared remarks.

All of Washington’s appellate courts are routinely “hot” benches. It’s not uncommon for appellant’s counsel to not even finish introductory remarks before the judges start firing questions. The judges might even forget to have respondent’s counsel introduce themselves for the record before lobbing questions.

But once your allotted time has expired, you need to promptly finish your sentence and sit down. Oral argument is the court’s time, not your time. "SEIU Healthcare Northwest Training Partnership v. Evergreen Freedom Foundation, 5 Wn. App. 2d 496, 427 P.3d 688 (2018). If the judges want to give you more time, they will let you know. In the less common situation where you find that the panel has run out of questions, do not be afraid to yield your remaining time and sit down.

**NOTE**

1. You can access the rulemaking page, including the text of the changes, at: www.courts.wa.gov/court_rules/?fa=court_rules.proposedRuleDisplay&ruleId=3722.
n March 2020, law firms joined other industries in shuttering offices and directing their employees to work from home, in an effort to slow the spread of COVID-19. While considered a temporary measure at the time, remote work, once an anomaly in the legal industry, has now become the norm. As Washingtonians slowly become eligible for the COVID-19 vaccine, it seems time to talk about what reopening may look like for law firms. Will the law office as we knew it in 2019 return in 2022? This article discusses how the ways attorneys in Washington have adapted their law practices in the face of the COVID-19 pandemic may influence how law offices reopen and what the new normal might look like for the legal industry.

Like a lot of Washington attorneys, I have adjusted to working from a home in which, in various corners, the rest of my family is working, attending school, or playing video games (all of which somehow involve simultaneous videoconferences at high volumes). Unlike many attorneys, I worked from home before the COVID-19 pandemic made remote work the norm. I practice at a small virtual law firm where the entire team—attorneys, a paralegal, legal assistants, and office assistants—works remotely. When COVID-19 hit, I already had a dedicated home office with a real desk and a door that shuts, a fast internet connection, and colleagues seasoned in the idiosyncrasies of remote work.

While I do appreciate the calming effect of hearing my dog snoring in the corner while waiting to argue a motion at a hearing, I cannot wait to get back to normal, even if the new normal is not going to be identical to my practice in 2019. I suspect that I will continue to open probates by mail or online in most cases, that Zoom and telephonic hearings will continue to be routine, and that more client meetings will be held via phone or Zoom than before the pandemic. Many of the adjustments attorneys have made to how we practice law are more efficient and convenient, for both attorneys and clients. That said, I look forward to attending some hearings in the courthouse, offering clients the option of meeting in person, and occasionally working in a location that is not my home office. But while I look forward to fewer household interruptions, I just might keep morning recess.

One thing appears certain, however, and that is that the pandemic has accelerated preexisting trends toward remote work in the legal services industry. For example, participants at a Septem-
ber 2020 roundtable hosted by commercial real estate services firm CBRE Group, Inc., discussed how, after attorneys and support staff alike abruptly switched to working from home to slow the spread of COVID-19, law firms discovered that remote work does not necessarily reduce productivity.¹ The roundtable participants predicted that a “hybrid” approach to work will likely become the norm, with attorneys and staff rarely spending all their time at the office—but also rarely working entirely at home.²

Similarly, a 2020 Bloomberg Law Legal Technology Survey found that 86 percent of law firms responding to the survey expected their firm’s work-from-home options to continue in some form even after the pandemic.³ Commercial real estate brokerage Cushman & Wakefield noted similar trends for law firms in its 2020 report.⁴ The Cushman & Wakefield survey shows how quickly law firm attitudes toward remote work changed during 2020. In the first quarter of 2020 (pre-COVID-19) and for the five previous years, two-thirds of firms responding to the survey believed that fewer than 10 percent of attorneys at their firms would work remotely more than two days a week. However, the firm’s summer 2020 survey revealed a significant shift in expectations regarding remote work, reporting that 90 percent of law firms responding to the survey expected more than 10 percent of attorneys would work remotely on a regular basis.⁵

In the Seattle area, the COVID-19 pandemic has impacted office space occupancy. The “For Rent” signs popping up on office buildings over the last several months are visible evidence of trends observed by the commercial real estate industry. For example, commercial real estate firm Kidder Matthews reports that Seattle-area office vacancy rates in the fourth quarter of 2020 increased to 8.37 percent, from 5.24 percent for the same period in 2019.⁶ On the Eastside, office vacancies were lower than in Seattle but they were still up from 2019 levels, with a fourth-quarter vacancy rate of 5.62 percent, up from 4.04 percent in 2019.⁷ South King County has the greatest amount of vacant office space in the Puget Sound region, with fourth-quarter vacancies at 14.12 percent, up from 13.38 percent in 2019.⁸ Matt Christian, executive managing director in Cushman & Wakefield’s Seattle office, noted that overall leasing activity in the area is the lowest it has been in a decade and that the majority of office workers in Seattle continue to work from home, as of January 2021, with only 10 to 20 percent working in office space. Christian has observed, “[t]his has led to mostly short-term renewals as well as downsizing space needs as firms continue to be cautious about the future.” According to Christian, while the majority of attorneys in the Puget Sound region have been working remotely since March 2020, attorneys with offices in low-rise buildings outside downtown areas are more likely to have continued to go into the office during the pandemic.

I reached out to attorneys across the state to learn how their use of office space has changed during the COVID-19 pandemic and how they have adapted their practices. There has not been a one-size-fits-all response to the pandemic for law firms in our state. Some practice areas are more conducive to remote work than others. In addition, some firms have discovered that it is possible to keep their offices open, with safety precautions for attorneys, staff, and clients, in contrast to larger firms working in high-rise buildings.

Susan Donahue has a law office in a 12-by-20 log cabin in Twisp, in Okanagan County. In spring 2020, Donahue began to meet with clients under an apple tree in the garden outside her office, as a COVID-19 precaution, and discovered that it was not only possible to maintain confidentiality while meeting with clients outdoors, but also extremely pleasant. As temperatures dropped and the snow piled up this winter, Donahue shifted to meeting with clients under a heater she installed on the office porch. Donahue also switched to working from home unless a client needed to meet in person. While working from home has an undeniable appeal, Donahue has no plans to give up her office space and looks forward to being back in the office on a regular basis after the pandemic.

“I want to return to an idea that I do my law work at my office and enjoy myself at home,” Donahue told me. “Now it is all mixed up at home with work always being there.”

While Donahue looks forward to return-
Sherry Bosse Lueders practices in the areas of business law, estate planning, and probate as an of counsel attorney with the virtual law firm of Stacey L. Romberg, Attorney at Law—www.staceyromberg.com. She can be reached at sherry@staceyromberg.com or 206-784-5305.

Following the office after the pandemic, other attorneys have no plans to go back to their 2019 office schedules. Education attorney Lara Hruska is a founding partner of Cedar Law PLLC, a 12-person civil rights firm with offices in Seattle and Yakima. After shifting to remote work due to COVID-19, the firm decided to reduce its Seattle office space from a partial floor in a downtown Seattle tower to a single office, with the entire Seattle team working remotely. Hruska has seen positives from the client side due to the shift to remote work, noting that “depositions have been more comfortable, and we had a few super emotional cases go to mediation where the clients have stated that they really liked participating from their living room without the possibility of bumping into an adverse party in the hallway.” Hruska expects remote hearings, depositions, and client meetings to remain the norm post pandemic and is contemplating a post-pandemic schedule that may include limited time in the office two or three days per week. Hruska’s experience reflects a larger trend, with Cushman & Wakefield’s Christian reporting that the firm expects to see attorneys adopting a hybrid model where days at work are divided between home and the office.

How conducive their office space is to socially-distant client meetings and specific client needs may also have an impact on whether attorneys choose to maintain the space. Cedar Law’s Yakima office provides a contrast to the firm’s experience with its Seattle office during the pandemic. Attorney Shannon McMinimee has continued to go into the office most days. Unlike the firm’s downtown Seattle office, its Yakima office is in a single-story building that provides clients with easy access to meeting space while observing social distancing precautions. McMinimee also notes that the firm has more clients in Yakima who lack access to technology and Wi-Fi or who face other barriers that prevent participation in a Zoom meeting. In addition, she has found it easier to continue to meet in person with clients who require an interpreter to be present.

Other attorneys have no plan to return to the office. Shaun Watchie Perry already worked remotely the majority of the time prior to the COVID-19 pandemic, but she has nearly eliminated the time she spends in the office. Before the pandemic, Perry maintained a virtual downtown Seattle office for her real estate and business law practice, with a receptionist available to answer calls and a conference room for client meetings. Now, she no longer has a receptionist to answer the phone, and Perry meets with most clients via Zoom. While she misses the convenience of having a receptionist to answer calls, Perry has found that Zoom has enabled her to hold effective meetings with clients and with other attorneys. She plans to continue to work re-
motely full-time after the pandemic but still maintain a virtual presence in downtown Seattle.

As more attorneys shift to remote work, it is important to keep in mind that the Washington Rules of Professional Conduct (RPCs) still apply, whether a law practice is based at home, in a downtown Seattle office tower, or under an apple tree in Okanagan County. WSBA Advisory Opinion 201601 addresses virtual law offices, noting, “[t]he core duties of diligence, loyalty, and confidentiality apply whether the office is virtual or physical.” Advisory Opinion 201601 confirms that there is no requirement under the RPCs that attorneys maintain a physical office address. It also discusses an attorney’s duty in working remotely to maintain confidentiality, both in their use of public spaces to work and in their use of technology.

Do more attorneys working from home or maintaining a virtual office make it more challenging to serve pleadings on opposing counsel? WSBA Advisory Opinion 201601—issued long before the COVID-19 pandemic, in 2016—recommends seeking an agreement with opposing counsel for pleadings to be served by email if an attorney does not want to provide an address for hand-delivery. In addition, an attorney using a home office as a primary office may want to consider whether they want their clients—or opposing counsel—to know where they live. For most Washington attorneys and law firms, it is likely that the law office will continue to exist in some form after the pandemic, although it may have a smaller footprint than prior to COVID-19.

Is remote work going to be more common for attorneys post COVID-19? Probably. Is it going to be the norm? Probably not. While the shift to remote work due to COVID-19 will likely lead to an increase in the number of attorneys, like me, who work remotely nearly all of the time, many attorneys have plans to return to the office on a regular basis after the pandemic. In addition, there are a fair number of attorneys, particularly at smaller firms, who have continued to go to the office during the pandemic, sometimes to better serve clients and sometimes because the office is a better place to work. The bottom line is that COVID-19 has accelerated a trend toward increasing flexibility in what constitutes a “law office” where attorneys can work productively and maintain client confidentiality.

There has not been a one-size-fits-all response to the pandemic for law firms in our state.

NOTES
2. Id.
5. Id. at 7.
7. Id.
8. Id.
10. While a physical office is not required by the RPCs, the WSBA does require attorneys to provide a physical residence address and a principal office address, although the latter need not be a physical address. WSBA Advisory Opinion 201601 states, “Section III(B)(1) of the Bylaws of the Washington State Bar Association (WSBA) requires that each member furnish both a ‘physical residence address’ and a ‘principal office address.’ The physical residence address is used to determine the member’s district for Board of Governors elections. The principal office address does not need to be a physical address. Similarly, Admission and Practice Rule (APR) 13(b) requires a lawyer to advise the WSBA of a ‘current mailing address’ and to update that address within 10 days of any change. Nothing in that rule indicates the mailing address must be a physical address.”
11. Id. See also WSBA Advisory Opinion 2217 (2012), addressing email security and noting that a lawyer must “take reasonable care to protect the confidentiality” of electronic communications; and WSBA Advisory Opinion 2215 (2012) addressing the duty to maintain confidentiality in the use of online data storage by attorneys.
12. Id.
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While the COVID-19 lockdowns have created uncertainty about the future of office buildings, the pandemic has also created opportunities for companies and industries—the legal industry in particular—to reinvent the office environment for a post-COVID-19 world. This article will look at ways the legal sector might rethink how office space is utilized and will zero in on the current state of commercial real estate for law offices in Eastern Washington.

**Benefits of the Hybrid Model**

Matt Christian, an executive director in the Seattle office of commercial real estate brokerage Cushman & Wakefield, expects that the work-from-home model will continue into the foreseeable future, and that a hybrid remote and in-office model will evolve as a flexible option for law firms as they reconsider their space post-COVID-19. An example of the hybrid office model would be to move a law firm’s headquarters away from the major central business district (CBD) while allowing for short-term leases of space in the CBD for client meetings or presentations. The main office space could be located close to where a critical mass of the firm’s employees live, reducing commute times and potentially cutting costs if the new office is outside of the more expensive downtown core. In addition, short-term leases of smaller spaces or coworking spaces could be established wherever lawyers are willing to travel, allowing for potential growth in clientele in these areas.

Another benefit of the hybrid model—over continuing an exclusive work-from-home model—is that new and young employees have been disproportionately negatively impacted by remote work, according to the Workplace Ecosystems of the Future report, published by Cushman & Wakefield and the Center for Real Estate and Urban Analysis at George Washington University. Informal mentoring, training opportunities, and connection to company culture is critical to the long-term development of new employees. Without some form of office environment, these developing employees could easily lack guidance or connection with the firm.

**Office Space: Where, How Much, and What Will It Cost?**

There are currently only a few options for coworking space in Eastern Washington...
Could more coworking options develop in downtown Spokane?

(less than 7,500 square feet); all of them are found in the Spokane CBD. Christian believes there is significant demand for more coworking options in the greater Spokane area. He expects coworking demand to continue growing post-pandemic as users want shorter-term, flexible space options.

Cushman & Wakefield’s Tenant Advisory Group Director Ryan Hoopes notes that real estate is the second-largest expense for law firms behind employees. That may be why, prior to COVID-19, the legal sector was already shifting the workplace environment in terms of technology and office density. In its Legal Sector COVID-19 Update, Cushman & Wakefield reported that in 2019, when firms in the top 10 U.S. markets relocated, they reduced their overall square footage on average 29 percent, versus 19 percent when a firm restructured/renewed. This trend is expected to continue even while a variety of lockdowns persist for law firms across the nation. Firms looking to relocate have this among many other factors to consider post-pandemic.

CoStar Group reports market rents in Eastern Washington decreased 3 cents per square foot since the COVID-19 lockdowns to $19.32. Spokane CBD rent is $19.55, which is a 9-cent decrease since the outbreak of COVID-19 at the end of the first quarter of 2020. While the price difference between rent outside and inside the CBD has narrowed, it may not be enough to entice firms to keep or lease more expensive Spokane CBD office space if they can take advantage of remote working opportunities and short-term leases of smaller spaces inside the CBD when needed.

As rents narrowed between Spokane’s suburban submarkets and the CBD, sublease space increased, although not as much as in many other major markets across the country. According to CoStar, Eastern Washington available sublease space finished 2020 at just under 194,000 square feet, a marginal 13.6 percent increase from 170,000 square feet available prior to the lockdowns. This is nowhere near the over 250-percent increase in sublease space in the Seattle market. Over 92.2 percent of available sublease space is currently sitting vacant in Eastern Washington, although the available figure is barely over a quarter of a percent of total inventory, therefore not giving occupiers a ton of new options.

Unlike most of the country, Eastern Washington office vacancy rates decreased slightly throughout 2020. According to CoStar, the overall vacancy rate finished 2020 at a rate of 6.6 percent, which is a 10-basis points (bps) decrease since the end of the first quarter of 2020. Spokane CBD’s overall vacancy finished 2020 at 10 percent, which is a 170 bps decrease quarter-over-quarter and a 70 bps decrease since the outbreak of COVID-19. Low vacancies and no signs of sublease space on the horizon mean that law firms and other Eastern Washington companies will need to be creative to find the best fit for the future.

In 2019, 8.6 percent of work completed by lawyers and judges was done remotely. Legal support workers reported their share of remote working as 6.2 percent, according to Cushman & Wakefield and George Washington University. It is safe to assume the 2020 numbers (not yet released) will be significantly higher, as employees were forced into a remote-work scenario for most of the year. For the law firms that found value in remote work, a hybrid model seems a likely and beneficial path forward. While office space will still be a requirement for law firms in the future, new short-term lease options are becoming more readily available, allowing firms to reinvent the way they do business.

New short-term lease options are becoming more readily available, allowing law firms to reinvent the way they do business.

NOTES
2. Id.
Mediating in Virtual Spaces

Clients can participate from a space of their choosing with ease

BY KATHLEEN WAREHAM


Nothing in these words conjures a personal connection. And yet, we’ve been experiencing over the past year the necessity of remote, online, virtual, and distant meetings and experiences. Weddings, graduations, birthday gatherings, happy hours, business meetings, court hearings and trials, and mediations are continuing, providing legal, business, and social connection with physical distancing.

As one who highly values the in-person connection in mediation, I’ve been surprised by the ability to still have personal, lively, and effective contact and communication via mediation by videoconference. I haven’t had an in-person mediation since last March. As my clients and I have adapted, we are finding a settlement rate as high with mediations by videoconference as with in-person, and an overall experience that works quite well, with most clients saying they don’t want to go back to the “old normal.” The “new normal” that evolves for in-person mediations, even with successful vaccines, will likely still require, for some time, physical distancing, masks, a limited number of participants in a room, and separation by plexiglass—an experience likely to be far less personal than videoconferencing.

With videoconferencing, verbal and nonverbal communication take place with ease on screens. Participants are each in a space they choose. They don’t face the uncomfortable circumstance of running into someone they don’t want to see or don’t know. Participants are assured password-protected, confidential, private conversations with completely separate virtual “rooms.” The mediator moves seamlessly between these virtual rooms. Additional breakout meetings can easily be set up on the spot. Email and screen-sharing allow participants to review documents, including settlement agreements, before, during, and after the mediation.

Mediation by videoconference is a stretch of our experience. But, as said by distinguished designer Sara Little Turnbull, who founded and led the Process of Change: Laboratory for Innovation and Design at the Stanford Graduate School of
As we’ve stretched to mediate during a global pandemic, with stay-at-home orders in place, we’ve discovered a new edge, and many advantages. In fact, many people are finding they are more at ease with mediation by videoconference. The commute is a breeze; geographical barriers go away; scheduling can be more flexible and customized to the needs of the case. I’m finding people are quite comfortable in their own spaces. Some choose to use a virtual background, perhaps to maintain a separation from their home spaces or to protect their privacy. Others choose spaces in their home where artwork or bookshelves show some aspect of their personality, and where they are at ease. A cat walks across a desk in front of the screen; children’s voices playing outside or doing school work are heard in the background; a baby wakes from a nap. These everyday human experiences don’t get in the way of the conversations; they enhance them.

Even with the added stress and multitasking that goes hand in hand with most people’s working-at-home experience, we still get the job done, in the same time frame. Even as lawyers and our clients face enormous challenges and pressures—economic, technological, and emotional—mediations by videoconference provide an ease that I didn’t always find in the intensity of the “old normal.” I’m finding that most lawyers display an increased patience and focus when their clients are at ease. Perhaps clients are more at ease because they are in the comfort of their own homes, rather than in a formal meeting room. Perhaps clients appreciate the level of attention and focus they receive in these “remote” mediations, with a format that recognizes and respects their work-life balance.

I’m also finding a shared connection between clients and their counsel, and between opposing parties: an extra bit of kindness. Interactions often begin with “how are you?” and “how is your family?” In spite of the increased stress and uncertainty in the world at large, there is more patience for the needs of individuals. The universal primacy of health and well-being is a strong connector that can be experienced in mediation despite difference and dispute.

It is more important now than ever to mediate in a manner that works, is safe, and feels comfortable. Litigants, risk managers, and claims representatives, who always face uncertainty forecasting a judicial outcome, now face courthouse closures and delays, and increased anxiety, grief, and uncertainty in the world at large and personally. A mediation by videoconference allows disputes to be resolved despite the numerous limitations imposed by our public and personal health needs, and provides a low-stress, effective route to resolution. Rather than finding it a barrier to settlement, mediation participants are finding the videoconference format an effective and satisfying way to mediate.

There will, of course, be a time in the future when live, face-to-face mediation resumes, but until that time, we who are new to these technologies (“digital immigrants”) are learning we can have “face-to-face” connection on screens, and the generation that was raised in this digital world (“digital natives”) are teaching that virtual connections can feel personal and effective. As a profession, we are adapting. It’s been the “end of the world as we know it” but we are “fine.” We work in a service industry that is weathering the global pandemic. I’m thankful, in the midst of uncertainty and fear, that mediators are able to continue providing a service people need in a way that is safe, effective, kind, and respectful.

NOTES
For the majority of my 30-year career as a lawyer, licensed in three jurisdictions, I have been a proud solo practitioner. As a solo, I have enjoyed the freedom to adapt my practice to my life, as well as to the volatile nature of the world at large. When I relocated to Washington from California in 2008, it was in the wake of the real estate market crash, and the entire legal industry was suffering. I built my family law practice using my website as the foundational conceptual brick; the other key bricks consisted of my home office technology and my willingness to meet clients in coffee shops.

This unlikely model was successful, and within a year I was able to obtain office space in a brick-and-mortar building, first in Redmond and later, for five years, on the 42nd floor of a building in downtown Seattle, near the King County Courthouse. In March 2020, when the pandemic disrupted the collective landscape, I decided that the smartest business decision for me was to let go of my Seattle office space and work exclusively from home.

As the pandemic wreaked havoc across the world, our country and state were also plagued by racial and social unrest. These issues had been building for a long time and came to a head after the killing of George Floyd. This was personal to me. As a person of color and a mother, I was heartened when our state Supreme Court wrote a letter decrying injustices past and present and calling on the legal profession to do better. As the current co-chair of the WSBA Diversity Committee, my focus is on working to help the profession acknowledge and adjust its biases and practices, so that issues of equity and inclusion are appropriately addressed.

As stay-at-home directives went into effect and just about everything shut down, my clients’ needs expanded: Family conflicts inevitably increased as ways for people to blow off steam or separate themselves appropriately decreased. My high-conflict cases imploded, and clients inundated me with questions for which I did not always have clear answers (nor could any of us contemplate what those answers might look like): “Can I withhold visitation if the other parent will not wear a mask or participate in social distancing?”
“Can I force the other parent to get a test?”
“How do I navigate travel restrictions and quarantines if I live out of state and am scheduled to have a visit with my child?”

Tolstoy famously wrote: “All happy families are alike; each unhappy family is unhappy in its own way.” Most family lawyers understand exactly what this means; our clients have particular issues that are unique to their situation and deeply personal. Meeting clients over a computer screen to discuss these issues is a challenge, but it is the unfortunate new normal. As the demand for family lawyers continues during this pandemic, I have met and retained a fairly steady stream of new clients via Zoom.

And the pandemic has affected not just how I interact with my clients, but how I represent those clients in court. Zoom hearings and trials are radically different from in-person proceedings. Family law hearings are predicated on a back and forth between judicial officers and the lawyers who appear before them. Trials involve lay and expert witnesses whose live testimony will help determine the outcome of a case. Reading body language and interpreting facial cues are integral aspects of this process and, unfortunately, are inhibited when viewed through the distant lens of a video screen.

In the midst of all of these challenges, my gifted young paralegal was accepted into law school—a happy but untimely event for my practice that compelled me to interview (virtually, of course) and ultimately hire a new paralegal.

In the months since I gave up my Seattle office space, I have come to appreciate that my physical office was, in fact, the least critical aspect of my practice. I also appreciate that as much as I am generationally a bit of a Luddite, I have to relate to technology as my friend—my computer, scanner, printer, and legal software are more than tools; they are my practice’s life jackets.

From my perspective, the biggest price to pay for my current iteration of a virtual practice is the loss of a feeling of connectedness. A peculiar kind of existential alienation comes with the physical separation from people that social distancing requires. My solutions are to try to video conference rather than phone my clients and potential clients so that at least a visual connection is sustained. I also meet via Zoom with my paralegal regularly throughout my workday to check in and get the benefit of her excellent insights as we talk through our work for the day “face to face.” This model most approximates the feeling of physically being in the office with my valued co-worker.

This last challenging year has laid bare some inescapable conclusions about the “new” fundamentals of a solo legal practice. While legal knowledge, skill, and experience remain key, a robust digital and technological infrastructure is critical to keep the business of law moving forward. Solos and small firms need to develop web presences and social media voices that speak to clients; we also need to maintain seamless virtual meeting spaces. With the right tools and processes, a virtual solo law office can be a state of mind.

Sunitha Anjilvel was elected by the Board of Governors in May 2019 as 1st-District Governor to complete the term of a vacated position. She has practiced family law and estate planning in the Pacific Northwest since 2008. Since her first admission to practice law in 1990, Anjilvel has practiced in a variety of courts in Canada, California, and Washington state in the areas of family law, criminal law, and civil litigation. She is committed to social justice and currently is a member of the WSBA Diversity Committee and a director on the Board of DRAW (Domestic Relations Attorneys of Washington). She has a B.A. from McGill University and a J.D. from Dalhousie Law School.

When the pandemic disrupted the collective landscape, I decided that the smartest business decision for me was to let go of my brick-and-mortar office space and work from home.
Adapting to Remote Justice

Depositions, mediations, hearings, and trials in the age of COVID-19

BY SHANE CAREW

COVID-19 has shocked the legal system in ways that are yet to be completely understood. One area changed almost immediately: adoption of remote technology to conduct the judicial system’s business.

King County Superior Court Judge Judith Ramseyer observed: “In four to six weeks, superior courts went from conducting most hearings in person to conducting our essential hearings by telephone and video.” Similarly, and just as quickly, depositions and mediations pivoted to remote participation.

Judge Ramseyer is one of three co-chairs of the Court Recovery Task Force of the Board of Judicial Administration (BJA), created to address both the short-term and long-term issues caused by the pandemic. The focus of this article is on remote proceedings, a small subset of all the changes facing our justice system.

THEN: GLACIAL MOVEMENT IN ADAPTING TO TECHNOLOGY

The legal profession and the judicial system normally change at a glacial pace, and their slow slog in adapting to new technology, pre-COVID-19, is illustrated by two examples:

1. Federal courts adopted the civil rule of procedure governing

the taking of remote trial testimony in 1996. It took the state of Washington 14 more years to adopt the identical rule.

2. Twenty years after electronic filing started in King County, the Washington Supreme Court held that a county clerk could compel a transition to electronic filing and records, over the objections of the superior court judges of the counties. Burrowes v. Killian, 195 Wn.2d 350, 352, 459 P.3d 1082 (2020).

NOW: ADAPTING TO TECHNOLOGY ON THE FLY

Recognizing that they no longer have the luxury of bouncing ideas among committees and constituencies for years to craft the perfect rule, state and federal judiciaries in Washington have been in the vanguard, nationwide, of changes necessitated by the pandemic. The once glacial pace of change has become a flash-flood torrent.

After the first COVID-19 cases in Washington were confirmed, the Washington Supreme Court took about 20 days (not 20 years) to implement vitally necessary changes. In less than a month, the court entered an order suspending civil and criminal jury trials; ordering all emergency matters to be heard remotely; and suspending what many argue are constitutionally protected timelines for criminal arraignments and trials,

Our federal bench was likewise in the vanguard of change for the federal court system. One week after the outbreak, with only 216 confirmed cases in the entire country, the Western District of Washington entered the first of nine “general orders.” In re Court Operation Under the Exigent Circumstances Created by COVID-19 and Related Coronavirus, General Order No. 01-20 (March 6, 2020). Initially, the court simply continued all civil and criminal matters calling for in-court appearances, continued all grand jury proceedings, and suspended application of the Speedy Trial Act to criminal defendants. Id. As facts developed, the Western District has entered amended orders to adapt to circumstances.

The Eastern District followed shortly after with its own general order, vacating all hearings and trials for civil and criminal matters, and temporarily vacating grand juries, pending further orders. In re Court Operations Under the Exigent Circumstances Created by the (COVID-19), General Order No. 20-101-1 (March 18, 2020).

The pandemic has also fast forwarded the implementation of video capabilities in the courtroom in counties that were lagging behind others. This will help make hearings more accessible to those involved, and will result in proceedings being more accessible to the public.

After implementing the necessary changes, courts are now starting to post training videos for civil jury trials. The King County Superior Court website now has a page called “Virtual Civil Jury Trial Preparation” that includes four videos covering pretrial proceedings, jury considerations, and recommendations to attorneys. The federal court for the Western District sponsored a “Virtual Civil Jury Trial Seminar” on Feb. 5, 2021, for federal judiciary and staff.

COORDINATING SYSTEMWIDE CHANGE
Rapid change requires systemwide coordination. The state and federal court systems are attempting to coordinate and adopt changes fairly consistently through frequent coordinated meetings—online, of course. These efforts include weekly calls conducted by Hon. Ricardo Martinez, chief judge of the United States District Court for the Western District of Washington, with all the Western District’s respective government personnel, including the Marshal’s Service, U.S. Attorney, Federal Public Defender’s office, and court staff. To facilitate communication among the federal courts, the Administrative Office of the U.S. Courts has created the inter-governmental Federal Judiciary COVID-19 Task Force.

Superior Court Administrators are conducting monthly strategy meetings statewide, and the state’s judiciary is coordinating through the previously mentioned Court Recovery Task Force along with its dozen committees and subcommittees.

CHANGING THE NORMS
Depositions
The new norm of remote depositions will take some adjusting to, but Rick Friedman of Friedman Rubin in Seattle was ahead of the game. Friedman practiced for many years in Alaska which, by geographical necessity, is far ahead of other states in conducting remote depositions. Friedman, who has not taken a “live” deposition in several years, believes he has had better results using remote depositions. The goal of a deposition is to obtain information, to pin witnesses down to specifics in their testimony. A lawyer asking questions through a window in a computer screen is less intimidating, and that’s precisely the point: Friedman firmly believes that when witnesses feels more comfortable, they are actually more likely to be more forthcoming.

Mediations
Edward M. Archibald has been a full-time, independent, unaffiliated mediator for 20 years. He hasn’t conducted an “in person” mediation since February 2020. “When the pandemic forced us to consider reasonable alternatives, remote mediations immediately became the norm,” Archibald said.

Archibald believes that COVID-19 has impacted alternative dispute resolution in some surprising ways. For one thing, he has conducted more “early” mediations—pre-litigation or early in the litigation process. Archibald attributes that to several factors: (1) the uncertainty of case schedules and trial dates; (2) limitations on “in-person” discovery; (3) the apparently shared belief that the opposing side may be incentivized to settle sooner rather than later; and (4) the lower cost and greater convenience of a remote mediation, particularly if a party is located out of state. (In some instances, overseas underwriters have been directly involved in the mediation process, rather than local representatives, which Archibald believes also helps the settlement process.)
Adapting to Remote Justice

These impacts are not a local anomaly. The cases Archibald has mediated in 2020 were pending in Washington, Alaska, Oregon, and California. “The cases have resolved in a manner similar to what I would have expected if the mediation had been conducted in person, and the same percentage of cases are settling,” Archibald said.

Trials

Civil Trials. There haven’t been many civil trials across the state since March 2020. And lawyers who have developed a comfort level in jury trials may mourn the lost opportunity to employ those skills in a remote trial: Where you position yourself in the “well” of the courtroom while examining witnesses, your posture, your physical gestures to convey a point—all are gone. Eye contact with jurors, assessing interest or understanding based on the jurors’ body language—also gone.

Jeff Keane, a seasoned trial attorney in Seattle who participated in an almost four-week Zoom jury trial in King County in December 2020, affirms this. “I missed the connection you develop with jurors,” Keane said. “Voir dire, in particular, is very disconnected. I prefer the ‘Phil Donahue’ method of addressing jurors: asking who among the jurors has a point of view on the issues they will hear in the case, and having a one-on-one dialogue with individual jurors.

“I also think something is lost because jurors don’t get to bond with one another. They haven’t gotten to see one another in the jury pool, talk about lunch or the weather during time in the jury room. I feel much better when jurors can connect with one another. Now, everyone refers to the other jurors only by juror number. Something is definitely lost.”

However, there is at least one benefit to remote jury trials. “The chance in a complicated case to put every exhibit on each juror’s screen for close scrutiny undoubtedly helped,” said Keane.

Judge Marsha Pechman of the Federal District Court for the Western District of Washington conducted one of the first federal civil bench trials during the pandemic, and now four jury trials. She was on the committee that compiled a “Virtual Trial” handbook for attorneys, and notes, “We have received enthusiastic positive feedback for the handbook. It has really helped attorneys adapt more quickly than you might expect.”

Criminal Trials. Addressing all of the potential consequences of conducting criminal jury trials during the pandemic is beyond the scope of this article, which will focus just on the process of jury selection—an area that has created some new concerns about fundamental fairness. Leslie Brown, communications manager for the King County Department of Public Defense, points out that the pandemic will make it even harder to convene juries that are representative of the community. Even before the pandemic, in those cities with more racial diversity, Black people were underrepresented in jury pools. Furthermore, she says, studies show that Black defendants are convicted at a higher rate than white defendants when there are no Black members of the jury pool. “In other words, the composition of the jury pool matters to our clients, who are poor and disproportionately Black people of color,” Brown said.

Criminal defense counsel, on the whole, believe the disproportionality will get worse as jury trials start up again under a “new normal,” because the court’s response so far requires access to technology that many poor people don’t have. And of course, people of color have been harder hit by the pandemic, both economically and physically, thereby making it more likely that they would ask for a hardship exemption from jury service.

Kittitas County was ahead of most Washington counties in reaching Phase 3 of the governor’s Healthy Washington plan and resumed convening juries on July 7, 2020. The jury pool of 68 citizens was directed to appear at the Kittitas Valley Event Center. Chairs were set up at appropriate distances. In an encouraging sign, prospective jurors self-imposed social distancing, and all wore masks.

The trial lasted two days. The
Shane Carew is a 1980 graduate of Tulane School of Law and practices in Seattle in the areas of maritime law and legal malpractice.

courtroom was rearranged to attempt to maintain the appropriate social distancing among all the participants, including the jurors. The jurors deliberated in a jury room with individual desks for each juror, rather than the usual conference table, which was commented upon favorably by almost all the jurors. “After each case we are tweaking the process to improve it, and the parameters are constantly changing,” said Sarah Keith, the court administrator for Kittitas County.

THE VIEW FROM THE BENCH

The court administrators and judges interviewed for this article welcomed the opportunity to directly address the members of the Bar about our collective future.

Washington Supreme Court Associate Chief Justice Charles W. Johnson noted that something is lost when all court business is conducted on the internet, an opinion shared by almost every judge interviewed for this article. In Justice Johnson’s view: “There is a reason why our body politic had historically invested in courthouses with impressive architecture, beautiful finishing, and furnishings inside courtrooms: it is to imbue in the citizens seeking justice a sense of solemnity and respect for the important matters addressed in the courthouse. Being physically present at the Supreme Court sets the appropriate atmosphere for the advocates and the citizens entering—something that online oral arguments just can’t fully replicate.”

And Judge Ricardo Martinez, Chief Judge of the United States District Court for the Western District of Washington, offers this advice: (1) For those who have civil cases on the docket, please speak to your clients about trying their case to a judge, not a jury. We have several senior status judges who are ready to conduct trials now, during the pandemic. (2) Engage your opposing counsel to consider creative ways to bring cases to a hearing or conclusion, and we, on the bench, will give your suggestions serious consideration. (3) Petition your Congressional representatives to fill the five active judge positions that are now vacant.

CONCLUSION

We are at a critical inflection point in our justice system. As members of a self-governing bar, if we are true to our oath, we must get involved—now and in the future—to help address extensive case backlogs, access-to-justice barriers, ongoing safety and fairness concerns, new technology needs and training, facilities costs, and ongoing procedural changes.

As a start, check in regularly with the Washington Courts’ dedicated COVID-19 website, www.courts.wa.gov/COVID19. Other opportunities to help exist in your community, or your practice area.


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NOTES

1. The Board of Judicial Administration is one of those behind-the-scenes entities that’s relatively unknown but is vital to maintaining a viable justice system. Its voting membership comprises 15 judges from around the state from every level of the judiciary. www.courts.wa.gov/programs_orgs/pos_bja/.

2. “For good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location.” Fed. R. Civ. Pro. 43(a).


6. The seminar is posted online at www.youtube.com/playlist?list=PLQQODreSvdKFxJJBZBxh2AN1WGBKpKyZ

7. The Task Force committees are: Technology Considerations; General Civil Litigation; Lessons Learned; Criminal Matters; Appellate Courts; Family Law; Child Welfare; Facilities and Logistics; and Public Outreach and Communication. The three Task Force subcommittees are: Juvenile Criminal Civil, Therapeutic Courts, and Adult. www.courts.wa.gov/programs_orgs/pos_bja/?fa=pos_bja.TFcommittees


Impacts Felt by WSBA Members

ABOUT THE NOVEMBER 2020 MEMBERSHIP SURVEY

After taking initial actions to support WSBA members during the COVID-19 pandemic, the COVID-19 Internal task force (CITF) and External task force (CETF) wanted to learn how best to continue supporting members. After reviewing the survey data, the CITF and CETF recommended continuing actions already taken—such as providing relevant CLEs—and planning ways to keep members connected with each other and the courts as the pandemic continues.

Q. Since Gov. Inslee’s first “Stay Home — Stay Healthy” proclamation in March 2020, choose the statement that best describes any change in your business volume:
- 18.6% Has substantially decreased
- 26.1% Has somewhat decreased
- 21.8% Has stayed the same
- 15.9% Has somewhat increased
- 7% Has substantially increased
- 10.6% Not applicable

Q. Since the first “Stay Home — Stay Healthy” proclamation, choose the statement that best describes any change in your income:
- 21.9% Has substantially decreased
- 25.7% Has somewhat decreased
- 40.7% Has stayed the same
- 8.8% Has somewhat increased
- 2.9% Has substantially increased
- 10.6% Not applicable

Q. During the pandemic, how easy is it for you to get information about hearings, trials, or court operations where you regularly practice?
- 14.8% Very easy
- 20.8% Somewhat easy
- 16.4% Neutral
- 21.5% Somewhat difficult
- 9% Very difficult
- 17.6% Not applicable

Q. As a result of the pandemic, I am considering the following professional changes: (Select all that apply)
- Adding a new practice area 13.9%
- Working with a new or different firm 10.1%
- Working with a public agency/nonprofit 8.1%
- Working as in-house counsel 6.2%
- Reducing workload or number of clients 15.3%
- Retiring 12.2%
- Leaving the practice of law 15.5%
- None 43.6%

Q. What changes to your practice brought on by the pandemic would you like to continue in the future: (Select all that apply)
- Remote or online meetings with clients 67%
- Remote or online court hearings 52.5%
- Remote or online depositions 25.7%
- Remote or online hearings 44.7%
- Remote or online trials 16.1%
- Electronic signatures on legal docs 71.1%
- Remote or electronic notarization 38.7%
- Remote work (work from home) 73.4%
- Online collaboration with other lawyers 39%
- Online meetings with opposing counsel 33.9%
- Online socialization with other lawyers 16.8%
- Online CLEs or other training 76.2%
- Online marketing/client development 13.5%
- Social distancing and masks 27.5%

44% of respondents would not make any professional changes.

76% would like to see online CLEs continue in the future.
Q. Rate the following ways in which the WSBA could support you (and/or your practice) as the pandemic continues:
(1 is least impactful, 5 is most impactful)

- Job search resources
- Job search support groups
- Affinity groups with lawyers facing similar issues
- Mental health and well-being resources
- Physical health and well-being resources
- Mentoring resources
- Ethics resources specific to the pandemic
- Best practices for working with clients in a pandemic
- Practice management resources specific to pandemic
- Pro- or low-bono opportunities

- 37%
  felt that best practices advice was the most/somewhat impactful WSBA support.

Q. Rate the impact of the following factors on your ability to provide legal services during the pandemic?:
(1 is least impactful, 5 is most impactful)

- Caring for children
- Providing home schooling for children
- Caring for parent or other family member
- Sharing a computer or internet connection
- Slow or poor internet connection
- Feeling isolated staying and working from home
- Lack of secure hardware for myself and staff
- Lack of private space to do work

- 41%
  said that feeling isolated was the most/somewhat impactful factor.

When asked to choose one remote or online solution to communicate with courts, clients, and other attorneys during the pandemic, 47% of respondents said Zoom (followed by phone at 27%).

SURVEY PARTICIPANT INFORMATION

- 1 LLLT-Active
- 2 LPO-Active
- 358 Attorney-Active
- 5 Attorney-Emeritus Pro Bono
- 18 Other
- 12 House Counsel
- 1 Judicial

MEMBER TYPE:

- 77.7% Full-time
- 9.3% Part-time
- 6.4% Part-time (due to COVID-19)
- 2.9% Unemployed
- 3.7% Unemployed (due to COVID-19)

CURRENT EMPLOYMENT STATUS:

- 10.6% Below $25,520 (low income)
- 13.6% Between $25,521-$51,040 (mod. means)
- 38.2% Above $51,041
- 37.5% Not applicable

YEARS LICENSED:

- 14.7% Under 6
- 25.9% 6-15
- 22.5% 16-25
- 16.9% 6-35
- 20% 36 and over

GENDER IDENTITY:

- 53% Female
- 40.1% Male
- 5.6% Prefer not to disclose
- 1.3% Other (Non-binary, Transgender, Two-Spirit, Not listed)

NOTE: The survey was sent to all active members of the WSBA at the beginning of November, and people took the survey throughout the month of November. 616 people responded, which represents approximately 1.5% of the total membership.
The state of the state’s plans to prevent a tsunami of evictions and avoid a homelessness crisis

BY COLIN RIGLEY

For the past few weeks I’ve been obsessing over numbers. Obsessing because, frankly, they scare the hell out of me.

These numbers portend a crisis so unprecedentedly massive it’s unfathomable. When you listen to people who are most closely involved with this crisis, there’s an undercurrent of anxiety—bafflement at the task ahead and the consequences of failure. In conversations among legal aid officials, service providers, and courts, there’s a phrase repeated so often it’s become cliché—shorthand for the disaster so many want so desperately to prevent: a tsunami of evictions.

Once COVID-19 began evaporating large segments of the job market, it was easy to predict what would flow from there: lockdowns would lead to lost income would lead to unpaid rent would lead to evictions en masse.

This eviction/homelessness crisis would be upon us if not for the key stopgap measure that has kept the tsunami from making landfall in Washington so far: Last March, Gov. Jay Inslee issued a moratorium on evictions for nonpayment of rent. The order was set to last for a month but has since been extended five times, most recently from Dec. 31, 2020, to the end of March. Similar moratoriums have been enacted at the local level and federally. Generally speaking, March 31 remains the looming expiration date plaguing the thoughts of many indebted tenants and cash-strapped landlords.

Eviction moratoriums, of course, haven’t solved the underlying societal problem, but they do buy some time. Meanwhile, tenant debt keeps growing and landlord expenses are pushing many to the brink. Tenants who fall behind in rent typically have already cut back on every other expense; barring a miraculous new income source they will continue to struggle to make monthly payments, let alone repay the thousands of dollars of back rent accrued.

In Washington, there are a few plans in motion and arterial spurts of funding to help both tenants and landlords, but the sheer volume of the need is already stressing the limits of our systems—and there is so much more to come.

THE SIZE OF THE WAVE AND WHO IS IN ITS PATH

There are two crucial things to understand about this crisis: the near-impossible size of it and who is most at risk—people of color and tenants without legal representation.

CONTINUED >
Is a Housing Crisis Lurking? (Continued)

“Hands down, eviction is a civil rights issue, and you can quote me on that,” said Tim Thomas, a postdoctoral scholar at the University of California, Berkeley Urban Displacement Project and a co-author on the 2019 study “The State of Evictions: Results from the University of Washington Evictions Project.”

That study uncovered a “huge racial disparity of Black adults who faced eviction filings.” For example, Black adults were evicted 5.5 times more than white adults in King County and 6.8 times more in Pierce County. Latinx adults were 1.9 and 1.4 times more likely to be evicted in King and Pierce Counties, respectively.

It further revealed that about half of unlawful detainer cases ended in default judgments. Tenants who had legal representation were twice as likely to stay housed as compared with pro se defendants, but less than 10 percent of tenants had a lawyer. Comparatively, about 90 percent of landlords had legal representation, according to other facts presented to the Washington State Minority and Justice Commission earlier this year.

Without drastic intervention, we can predict that at-risk tenants will be broke, too frightened or overwhelmed to defend themselves in court, and disproportionately people of color. Only a fraction will have a lawyer and about half of these cases will result in default judgments for landlords, who are much more likely to be better prepared and represented.

“Unfortunately I feel alone,” a Latinx woman facing eviction told the state Senate Committee on Housing & Local Government in January, repeating a similar story of lost work and fears of homelessness as about a half-dozen others who testified. “I feel like I can’t go on anymore. I need you to listen to my voice and show compassion for me.”

And there are likely tens of thousands of similar stories just in Washington.

The U.S. Census Bureau’s Household Pulse Survey—a weekly nationwide survey that last April began collecting information on COVID-19-related needs—estimates that about one-quarter of Washingtonians are at risk of eviction or foreclosure, based on a six-month average. The number of Washingtonians behind on rent has ranged widely, from a low of about 100,000 in late May 2020 to a high of nearly 263,000 in mid-July 2020, while trending upward over the past year.

The National Council of State Housing Agencies’ “Analysis of Current and Expected Rental Shortfall and Potential Evictions in the U.S.” estimated that total unpaid rent nationwide was $34.3 billion as of January. Had the eviction moratorium not been extended, the report predicted 170,000 eviction filings in Washington in January.

It’s possible to gloss over that number without realizing its truly cataclysmic implications: 170,000 evictions is nearly the total of all evictions filed in the state over a 10-year period. One hundred seventy thousand evictions could result in nearly eight times the number of Washingtonians experiencing homelessness than were counted in 2019. It would be as if every resident of Edmonds, Olympia, Walla Walla, and Wenatchee suddenly needed new shelter—plus about 4,000 other people.

Requests for rental assistance to Washington 2-1-1—a statewide hotline connecting people to local assistance—nearly tripled in 2020 compared to 2019. The Washington State Department of Commerce estimates that the combined unpaid rent across the state is $151 million per month, which is only slightly less than the total rental assistance funding the state received through the Coronavirus Aid, Relief, and Economic Security (CARES) Act last year: $166 million for about 37,000 households.

More CARES Act rental assistance is set to become available this month, a total of $510 million, of which $185 million will go directly to the cities of Seattle and Spokane, as well as to Benton, Clark, King, Kittitas, Pierce, Snohomish, Spokane, Thurston, Whatcom, and Yakima Counties, according to a department spokesperson. Inslee’s 2021-23 biennial budget includes $164 million from the state coffers to help with rent-
Colin Rigley is a communications specialist with the WSBA. He has nearly 15 years of experience in journalism and communications. He can be reached at colinr@wsba.org.

Rental assistance, and on Feb. 11 he announced another $43.5 million to serve as a bridge until federal funds can be spent.

Still, the Commerce Department has concluded that the “need continues to outweigh available resources for rental assistance.” And when rental assistance has become available, it has disappeared quickly.

Last year, King County had to implement a lottery system to dole out its $41 million for distressed households. The county processed applications for about one-third of 25,000 requests and stopped accepting new applications on Dec. 4. Approximately 40 percent of the eligible tenants who applied were Black and roughly 20 percent were Latinx.

So what’s the plan for when the eviction moratorium ends?

TRIAGE

COVID-19 began wreaking havoc on Washington courts even before a tsunami of unlawful detainer filings began building. With a series of orders beginning in March 2020, the Washington Supreme Court suspended most civil and criminal cases throughout the state, revamped its own operations, and organized a number of work groups to plan for the mounting backlog of cases.

Last summer, then-Washington Supreme Court Chief Justice Debra Stephens, in a letter to the Superior Court Judges Association, requested a plan for a “court-based unlawful detainer early resolution process.” Soon after, an Unlawful Detainer Work Group comprised of landlord and tenant representatives, judges, legal aid advocates, and nonprofit dispute resolution providers developed a proposal for an Eviction Resolution Program, which would launch in six pilot counties—Clark, King, Pierce, Snohomish, Spokane, and Thurston—that account for about 80 percent of evictions in the state. The Supreme Court authorized the program on Sept. 9, 2020.

The Eviction Resolution Program is intended to divert eviction cases from courts and utilize a network of Dispute Resolution Centers (DRCs) and civil legal aid housing justice projects to address the needs of tenants and landlords.

First established by the state Legislature in the 1984 Court Improvement Act, DRCs are private, nonprofit organizations that mediate nonviolent civil disputes and offer the option of free and low-cost services. The Eviction Resolution Program leverages those DRCs to funnel potential unlawful detainer actions into a nonjudicial, negotiated resolution between landlords and tenants.

Before they can evict, the program requires landlords to send at least two notices advising tenants of the available resources for rental assistance and mediation. Only with a certification from the DRCs that a landlord has complied with the program can they file an unlawful detainer action. It doesn’t require they reach an agreement, but the hope is that the landlord’s desire to recover owed rent and the tenant’s desire to retain housing and maintain a good record will bring both together through the DRC. The DRC will then refer tenants to housing justice projects for legal advice, get them qualified for rental assistance if any is available, and facilitate a payment plan for the tenant to backfill what they owe. Under the eviction moratorium, it has been in a quasi-active state where landlords have been encouraged to voluntarily refer tenants.

Pilot county DRCs were allocated $1.5 million to hire staff and purchase equipment (DRCs are requesting $4.3 million in post-pilot funding), but there were hiccups. Funding wasn’t available in September as planned, which delayed DRCs in beefing up their resources. By the time the money was available, in November, the DRCs had little time to use it before a Dec. 31 deadline, essentially condensing four months of prep work into about six weeks. The funding deadline has since been extended through June 30, but bureaucratic delays are far from the only challenge, and the way the Eviction Resolution Program was built is not without its critics.

Mediators and other dispute resolution specialists have raised red flags about the absence of mediators and dispute resolution specialists in the work group. Commercial mediator Roger Moss, vice-chair of the WSBA Alternative Dispute Resolution (ADR) Section executive committee, told me that “key stakeholders were excluded from ERP [Eviction Resolution Program] planning, impairing its neutrality and creating a program devoid of tech innovation and current mediation techniques.”

At a recent meeting of the ADR and Real Property, Probate & Trust Sections, members met with representatives of DRCs and
others in the work group who helped create the Eviction Resolution Program. Darcia Tudor, a licensed lawyer and mediator who is also co-owner of Tudor Properties LLC, a 40-year-old property management company whose tenants have included low-income renters, asked a question that no one seemed able to answer: “Were there any people of color in the [work] group?”

For Tudor, the program is setting the framework for a redundant bureaucracy based on key false assumptions. For example, money: Landlords in fear of bankruptcy need it, tenants don’t have enough to enter a payment plan, and there are already organizations in place well suited to help.

“To me it shows the total ... arrogance of the people at the table; you’re assuming that they’re [tenants] going to have some money at some point in time to catch up,” Tudor told me.

Tudor pointed to a network of charitable organizations to which landlords can refer their tenants to find rental assistance. Meanwhile, she believes the DRCs have been given an impossible task with limited staff and insufficient time to get them trained for the onslaught of cases. And driving it all remains a misguided notion that tenants will be able to pay back-owed rent.

“When we have a tenant problem, the first thing we do is give our tenants this information so they can reach out and get someone to work with,” Tudor said, referring to the Washington Multi-Family Housing Association’s “Rental Assistance for Tenants” webpage that lists organizations across the state and the assistance each can provide and to whom.

“So the tenant walks away with zero past due so they can start again—because they are bankrupt, most of these people—and the charities are good at [providing assistance],” Tudor said.

When I asked what message Tudor most wants readers to take away, she responded: “We need to stop forgetting to have all the real stakeholders at the table. We wouldn’t be here if you had at least one tenant, or two tenants. ... They would say, ‘I’m broke. How’s a payment plan going to help me?’”

“You don’t grow wealth through legal fees, first of all,” she went on. “And you’re thinking it’s going to benefit these people by paying for mediators; that’s not going to help them.”

**They’re Going to Drown**

Edmund Witter has managed the King County Bar Association Housing Justice Project since 2017. He was also one of the architects of the Eviction Resolution Program, as a member of the original Unlawful Detainer Work Group, and has been a frequent speaker on the topic with various stakeholders.

**SIDEBAR**

**How You Can Help**

The following list will help you learn more about the Eviction Resolution Program, volunteer for organizations in need of assistance, and find educational resources if you’re interested in volunteering.

- **Eviction Resolution Program:**
  www.courts.wa.gov/newsinfo/EvictionResolutionProgram
- **Clark County Volunteer Lawyers Program:**
  https://ccvlp.org
- **King County Bar Association:**
  www.kcba.org/For-Lawyers/Pro-Bono-Services
- **Eastside Legal Assistance Program:**
  https://elap.org
- **TacomaProbono Community Lawyers:**
  https://tacomaprobono.org
- **Snohomish County Legal Services:**
  https://snolegal.org
- **Spokane Volunteer Lawyer Program:**
  www.SpokaneVLP.org
- **Thurston County Volunteer Legal Services:**
  https://tcvls.org
- **WSBA Sections Hosting Regular Forums on the Eviction Moratorium**
  - Real Property, Probate and Trust:
    www.wsba.org/legal-community/sections/real-property-probate-and-trust-section
  - Alternative Dispute Resolution:
    www.wsba.org/legal-community/sections/alternative-dispute-resolution-section
- **WSBA COVID-19 Pro Bono Opportunities:**
  www.wsba.org/covid-19/legal-aid-opportunities

So his response when I asked him how the initial rollout was going was nothing short of alarming.

“The program’s not going to work,” Witter said.

Just a few weeks after the state began to dip its toe in the eviction waters, the caseload quickly overwhelmed available resources.
While it was intended to prevent evictions and reduce the burden on already stressed courts, in practice the program is more of a communication strategy that tweaking how evictions are handled but doesn’t address the root societal problems leading to them, Witter said. A few months in, it mostly created another box for landlords to check ahead of an eviction and shifted the caseload bottleneck from courts to DRCs.

“The entity that’s going to get blamed ... is dispute resolution centers,” Witter said. “People will blame mediation because they were basically given an impossible task. ... They’re going to drown.”

In December alone Witter’s office handled 438 rental assistance cases. The flood of requests, hundreds per day, forced the office to create an automated message informing that it couldn’t handle any new requests. About half the tenants seeking help are Black, Witter said, stressing the racial disparity endemic to these types of cases. One of his biggest fears is that people will lose their housing while they’re stuck waiting for help.

“People are going to lose their home not because the resources weren’t there, not because we couldn’t prevent it, but because we were so log jammed,” he said. “... The problem is—it’s a good idea, and I helped design this program—we can’t keep up with this number. We simply don’t have the capacity to do it.”

A number of people I spoke to lamented that a few landlords—particularly those with larger properties—have inundated DRCs with blanket referrals for all of their tenants, regardless of whether they were actually behind in payments. And DRCs and other advocates already have to pour significant time into making contact with a household.

“These cases are very labor intensive and providers are continuing to work through questions/confusion about how it works, how to access resources, and trust in the process,” Superior Court Judges Assoication President and King County Superior Court Judge Judith Ramseyer said via email. “Work to overcome any confusion or reluctance will continue. Initial results unquestionably show there is a need for this program and it has a positive result to offer.”

Approximately three months after the program began, the six pilot DRCs had received referrals for 2,392 households, opened 1,627 cases, and completed 860, according to LaDessa Croucher, senior director of Dispute Resolution Centers for Volunteers of America Western Washington.

“The Unlawful Detainer Workgroup is reviewing forms, notices, and procedures based on the pilot experience to date,” Croucher said via email. “We expect to have revised guidance soon. Overall, tenants are mostly scared, confused, and incredibly grateful that assistance is available. Landlords are grateful we will help them connect to the tenant with rent assistance, information[,] and legal resources.”

As much as a bottleneck at a DRC can delay or prevent a client from connecting with a lawyer, the reverse is also an issue.

“Suddenly our ERP [Eviction Resolution Program] program can’t do anything because our job as a DRC is to get that tenant connected to a lawyer,” said Leslie Ann Grove, executive director of Northwest Mediation Center in Spokane. “And if we can’t get them connected to a lawyer then everything stops.”

Then there are the changing rules to navigate as program officials attempt to patch problems as they emerge.

“There are just so many moving pieces and it is frustrating for all of us, and the rules keep changing for our programs because of the discoveries made along the way,” Grove said.

The Dispute Resolution Center of King County has also received more than its usual caseload and, according to Implementation Project Manager Sue McCarthy, the first wave of its referrals reflected racial disparities, it being clear that “this is not representative of the demographics of the county.”

After becoming aware of the disparity, that DRC began intentionally partnering with grassroots organizers and targeting distressed ZIP codes.

“If this is truly an equity issue, we need to be reaching out into the community, connecting with BIPOC [Black, Indigenous and people of color] organizations that are in touch with the tenants,” McCarthy said. “We can’t possibly work with every single tenant who’s out there, so we want to make sure that we prioritize tenants who are most in need of our services.”
Is a Housing Crisis Lurking?

CONTINUED >

Even when resources have been available in the past they have not always been utilized. Kim Thornton, judge pro tempore and a volunteer attorney with the Thurston County Volunteer Legal Services Housing Justice Project, said defendants in unlawful detainers occasionally seek legal help from the Housing Justice Project ahead of their hearing, but much of the legal representation takes place in the hallways with hurried attempts to gather the basic facts and confer with opposing counsel—something that is exceedingly difficult when hearings take place virtually. A positive outcome, Thornton said, is anything that will stop the immediate eviction so the tenant can move out voluntarily and avoid the stain of “eviction” on their record—something that makes it exceedingly difficult to secure new housing.

“Most of them are terrified,” Thornton said. “They don’t know what to do … and they think if they just block it out it will go away.”

THE NEAR HORIZON

In a joint interview, Benton-Franklin Superior Court Judge and Unlawful Detainer Work Group Chair Jackie Shea-Brown, Crissy Anderson from the Administrative Office of the Courts, and Jim Bamberger from the Office of Civil Legal Aid said the Eviction Resolution Program is a work in progress.

“It’s happening, it’s working, and it needs tweaking to be effective,” Judge Shea-Brown said. Program stakeholders coordinate frequently to figure out what is and is not working and where people are getting confused. “We realized that each county has specific needs.”

Said Anderson: “One really encouraging part of this process was the way in which courts and stakeholders were able to collaborate.”

One clear concern is funding. Bamberger’s office helped support the Administrative Office of the Courts’ effort to secure funding for the DRCs, and a fast-tracked supplemental budget bill will continue funding through June 30, while efforts to continue and expand the program are ongoing.

“This is a program that was created by the judiciary to manage court resources and to protect the ability of courts to operate effectively when the moratorium [expires] and that’s the principal object here,” Bamberger said. “It’s not a social policy program. The thought is that if you can bring the three components together—legal aid, dispute resolution, … and rent assistance, that we can divert the cases away. The Legislature is going to do a lot of other things in this space and we defer to them to do that.”

LEGISLATIVE RESPONSE

Some tenant and landlord advocates have noted that Washington falls short compared to other areas in how it manages housing issues like evictions. For example, New York City’s tenant right to counsel law has been credited for a 30 percent decrease in eviction filings since 2013, according to the National Coalition for a Civil Right to Counsel. To more holistically address its housing issues, Cleveland developed a special Housing Court 50 years ago. Likewise, British Columbia’s Residential Tenancy Branch and online tools have reportedly prevented 200,000 evictions.

In Olympia, several bills making the rounds seek to change Washington’s eviction laws and address the coming tsunami. Senate Bill 5160 shares a lot of the same DNA with the Eviction Resolution Program and would effectively codify it, plus some additional components. Notably, the bill would create a legal right to counsel for indigent tenants (recall that only about 8 percent typically have any legal representation).

SB 5160 has arguably gained the most support—even if tepid at times—among tenants and tenant representatives. On Jan. 20, speaking before the Senate Committee on Housing & Local Government, Saka-ra Remmu of the Washington State Black Lives Matter Alliance said the organization had originally opposed the bill, but changed its position to “other” after meeting with legislators. Remmu said the bill did not do enough to limit the influence of institutional racism in courts or housing issues affecting communities that are marginalized.

“Black and indigenous communities of color need a non-legal entity process first that does not involve lawyers and having that
option if needed,” Remmu said.

One sticking point drawing criticism was SB 5160’s provision to impose an eviction moratorium for two years following a public health emergency, which was later removed in a second substitute bill. For housing providers, the moratorium has mostly halted their regular income and many are going broke without more help.

“I think what it comes down to is the eviction moratorium is a blanket approach to a problem that has many different facets and not everyone’s situation is the same,” said Brett Waller, director of government affairs for the Washington Multi-Family Housing Association. “And we believe that we should be directing the resources to those that need it the most and using other initiatives or concepts and ideas to assist folks who may need the assistance less.”

When rental assistance has come through, it has been far from a panacea. One Washington real estate company told the Senate Housing & Local Government Committee that it received $3.3 million in rental assistance for 833 residents, but by late-January 59 percent of them were behind again.

“The longer that a tenant goes without being able to pay their rent the more difficult it becomes for that tenant to ultimately pay their rent,” Waller said. “We believe that the state needs to continue to step up and step into the rental-assistance issue.”

House Bill 1228 has garnered wider landlord support. It would continue the Eviction Resolution Program and immediately suspend the eviction moratoriums while appropriating up to $600 million in rental assistance this budget cycle. However, other advocates have criticized such elements as a COVID-19 hardship affidavit requirement for tenants.

As of press time, an SB 5160 substitute bill was awaiting a Senate floor vote. HB 1228, however, remained stuck in the House Committee on Housing, Human Services & Veterans.

THE FARTHER-OUT HORIZON

If you’ve seen footage of a tsunami, it doesn’t break like a normal wave—it surges. The waters push forward with surreal force, eliminating the landscape in a few chaotic moments, and it just keeps coming.

Thomas, the evictions researcher who co-authored the UW evictions study, said he expects significant increases in evictions to the “vulnerable population,” those whose rents are 50 percent or more of their monthly income.

“The problem with evictions is that’s the tail end of a very precarious situation that a household went through,” he said. “By the time they’ve had an eviction it’s almost like they had a heart attack and it’s been five hours since they got to the hospital.”

He seemed sure there will be a “lag effect” from the pandemic that could continue to cause spikes in housing security issues into 2022 and even 2023.

You can think of COVID-19 as the earthquake that triggered the early ripples of disaster to come. And somewhere beyond the horizon, the accumulating debt by renters and financial hardship for their landlords have been feeding the tsunami for a year. For now, we’re still standing on the beach, staring across a barren shore wondering what will happen when the full force of it all finally comes surging back in.

NOTES


WSBA NEWS

Presuspension Notices Mailed
If you have not completed all mandatory portions of your license renewal, including trust account declaration and disclosing professional liability insurance or financial responsibility, if applicable, you are delinquent and your license is at risk of administrative suspension. You may complete licensing requirements either online at https://licensing.wsba.org or by using the License Renewal form. Visit www.wsba.org/licensing to learn more.

Comment on MCLE Proposal
The Washington Supreme Court is seeking comments on a proposed change to Admission and Practice Rule (APR) 11 that would require legal professionals to devote at least one of six mandated ethics credits, per reporting cycle, to the topic of “equity, inclusion, and the mitigation of bias in the legal profession and practice of law.” The proposal was suggested by the MCLE Board with support from the WSBA Board of Governors. The MCLE Board appreciates all the input provided thus far and encourages everyone—even those who have previously commented—to provide their comments to the court at this time. The deadline for comments is April 30. Comments are to be submitted to the clerk of the Supreme Court at supreme@courts.wa.gov, or mailed to P.O. Box 40929, Olympia, Washington 98504-0929. (Note: emailed comments must be less than 1,500 words.) Learn more at www.courts.wa.gov/court_rules.

WSBA Board Feedback

Send your feedback to the newly created email address: boardfeedback@wsba.org.
Please note that all WSBA emails are subject to public records requests.

Receive Notice of Upcoming Board Meetings
Join the new Board meeting notice subscription list to receive WSBA Board of Governors meeting notices straight to your inbox! To join, email barleaders@wsba.org or complete the form on www.wsba.org/about-wsba/who-we-are/board-of-governors.

VIRTUAL LEADERS WANTED

Volunteer with the Lawyer Discipline System
The annual WSBA volunteer application and selection cycle opens March 15. The WSBA and the legal community greatly benefit from the incredible dedication, skill, and knowledge of our 1,000 (and counting) volunteers. More information here: www.wsba.org/connect-serve/volunteer-opportunities.

Volunteer with the Lawyer Discipline System
Learn more about volunteering as an adjunct disciplinary counsel (ADC). ADCs assist as needed in carrying out the functions of the lawyer discipline system pursuant to Rule 2.9 of the Rules for Enforcement of Lawyer Conduct. An ADC must have been an active lawyer or judicial member of the WSBA for at least seven years at the time of appointment. Appointment is for a five-year term. Visit www.wsba.org/adc-panel or contact theaj@wsba.org to learn more.

Custodians Needed
The WSBA is seeking interested lawyers as potential volunteer custodians of files and records to protect clients’ interests. Visit www.wsba.org/connect-serve/volunteer-opportunities/act-as-custodian, or contact Sandra Schilling: sandras@wsba.org, 206-239-2118, 800-945-9722, ext. 2118; or Darlene Neumann: darlenen@wsba.org, 206-733-5923, 800-945-9722, ext. 5923.

Information for Job Seekers and Employers
Visit the WSBA Career Center to view or post job openings at https://jobs.wsba.org. The special discounted rate for nonprofit and small-firm employers, to prevent pricing from becoming a barrier as the legal community continues to navigate the effects of the COVID-19 crisis, has been extended through June 30. Contact Michael Reynolds at 612-968-3431 or michael.reynolds@communitybrands.com for more information.

Virtual Career Group
The Virtual Career Group began March 1 and will meet weekly for six weeks. This group provides skills and support in your job search with focus on applying for jobs, interviewing, and résumé review. Email wellness@wsba.org if you are interested or visit www.wsba.org/wellness and look under “What’s New” to sign up for upcoming groups.

Career Consultation
Get help with your résumé, networking tips, and more—www.wsba.org/for-legal-professionals/member-support/wellness/consultation—or email wellness@wsba.org.

Free Consultations and Practice-Management Assistance
The WSBA offers free resources and education on practice management issues. For more information, visit www.wsba.org/pma. You can also schedule a free phone consultation with a WSBA practice-management advisor. Visit www.wsba.org/consult to get started.

Lending Library
Due to the COVID-19-related
closure of the WSBA office, the WSBA Lending Library is closed. Visit www.wsba.org/library for more information.

Free Legal Research Tools
The WSBA offers resources and member benefits to help you with your research. Visit www.wsba.org/legalresearch to learn more and to access Casemaker and Fastcase for free.

ETHICS
Ethics Line
Members facing ethical dilemmas can talk with WSBA professional responsibility counsel for informal guidance. Learn more at www.wsba.org/for-legal-professionals/ethics/ethics-line or call the Ethics Line at 206-727-8284.

WSBA Advisory Opinions Available
WSBA advisory opinions are available online at www.wsba.org/for-legal-professionals/ethics/advisory-opinions. For assistance, call the Ethics Line at 206-727-8284.

WSBA MEMBER WELLNESS
WSBA Connects
WSBA Connects provides all WSBA members with free counseling on topics including work stress, career challenges, addiction, and anxiety. Visit www.wsba.org/for-legal-professionals/member-support/wellness/wsba-connects or call 800-765-0770.

The ‘Unbar’ Alcoholics Anonymous Group
The Unbar is an “open” AA group for attorneys that has been meeting weekly for over 25 years. Due to COVID-19, the group is holding virtual meetings via Zoom; contact them at unbarseattle@gmail.com. You can also find more details at www.wsba.org/for-legal-professionals/member-support/wellness/addiction-resources.

WSBA COMMUNITY NETWORKING
Sign Up for Low Bono
The Moderate Means Program connects moderate income clients with family, housing, consumer law, and unemployment cases to legal professionals who offer reduced fees. Find out more details at www.wsba.org/connect-serve/volunteer-opportunities/mmp.

New Lawyers List Serve
This list serve is a discussion platform for new lawyers of the WSBA. To join, email newmembers@wsba.org.

ALPS Attorney Match
Attorney Match is a free online networking tool made available through the WSBA-endorsed professional liability partner, ALPS. Learn more at www.wsba.org/connect-serve/mentorship/find-your-mentor or email mentorlink@wsba.org.

QUICK REFERENCE
March 2021 Usury
The usury rate for March 2021 is 12.00%. The auction yield of the Feb. 1, 2021, auction of the six-month Treasury Bill was 0.071%. The interest rate required by RCW 4.56.110(3)(a) and 4.56.115 for March 2021 is 2.071%. The interest rate required by RCW 4.56.110(3)(b) and 4.56.111 for March 2021 is 5.25%.

HAVE SOMETHING NEWSWORTHY TO SHARE?
Email wabarnews@wsba.org if you have an item you would like to place in Need to Know.

CAST YOUR VOTE
Congressional District Positions
March 15 - April 1
At-Large Position
(Young Lawyer)
June 1 - June 15

FOR MORE INFORMATION GO TO:
www.wsba.org/elections

FOR QUESTIONS, PLEASE CONTACT:
barleaders@wsba.org

YOUR VOTE MATTERS
The WSBA Board of Governors is the governing body of the Bar. It determines the policies of the Bar and approves its budget each year. Subject to the plenary authority and supervision of the Washington Supreme Court and limitations imposed by Statute, Court Rule, Court Order or case law, the Board possesses all power and discretion on all matters concerning the WSBA.

OPEN POSITIONS
• District 1
• District 4
• District 5
• District 7
• At-Large* (Young Lawyer)
• President-elect*

3 Year Term: Sept. 2021 - Sept. 2024
*Filing deadline for the At-Large (Young Lawyer) and President-elect positions is April 20. Per the WSBA Bylaws, applicants for President-elect must have their primary place of business located in Eastern Washington.

FILL THE BALLOT
Go to www.wsba.org/your-vote for more information. For assistance, call 800-765-0770.

For more information go to:
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1 2 3 4 5

7 South

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Resigned in Lieu of Discipline

Marcia Marie Meade (WSBA No. 11122, admitted 1980) of Spokane, resigned in lieu of discipline, effective 2/01/2021. Meade agrees that she is aware of the alleged misconduct in disciplinary counsel’s Statement of Alleged Misconduct and rather than defend against the allegations, wishes to permanently resign from membership in the Association. The Statement of Alleged Misconduct reflects the following alleged violations of the Rules of Professional Conduct: 1.15A (Safeguarding Property), 8.1 (Bar Admission and Disciplinary Matters), 8.4(b) (Criminal Act), 8.4(c) (Dishonesty, Fraud, Deceit or Misrepresentation), 8.4(d) (Prejudicial to the Admin. of Justice), 8.4(l) (ELC violation).

Meade’s alleged misconduct, as stated in disciplinary counsel’s Statement of Alleged Misconduct, related to her handling of funds in her trust and operating bank accounts. Meade’s alleged misconduct includes: 1) converting funds belonging to clients A, B, C, D, E, or others; 2) failing to maintain the funds of clients A, B, C, D, E, or others in a trust account; 3) failing to promptly pay or deliver to clients A, B, E, or others the funds they were entitled to receive; 4) disbursing funds from the trust account on behalf of multiple clients in excess of what those clients had on deposit using other client or third party funds to cover those disbursements; and 5) failing to cooperate with a disciplinary investigation.

Benjamin J. Attanasio acted as disciplinary counsel. Marcia Marie Meade represented herself. The online version of Washington State Bar News contains a link to the following document: Resignation Form of Marcia Marie Meade (ELC 9.3(b)).

Fred Michael Misner (WSBA No. 5742, admitted 1974) of Gig Harbor, resigned in lieu of discipline, effective 1/26/2021. Misner agrees that he is aware of the alleged misconduct in disciplinary counsel’s Statement of Alleged Misconduct and rather than defend against the allegations, wishes to permanently resign from membership in the Association. The Statement of Alleged Misconduct reflects the following alleged violations of the Rules of Professional Conduct: 1.3 (Diligence), 1.7 (Conflict of Interest: Current Clients), 1.8 (Conflict of Interest: Current Clients: Specific Rules), 1.15A (Safeguarding Property), 1.15B (Required Trust Account Records), 3.2 (Expediting Litigation), 8.4(b) (Criminal Act), 8.4(c) (Dishonesty, Fraud, Deceit or Misrepresentation), 8.4(d) (Prejudicial to the Admin. of Justice).

Misner’s alleged misconduct, as stated in disciplinary counsel’s Statement of Alleged Misconduct, related to the handling of his relative’s estate, as personal representative. Misner’s alleged misconduct includes: 1) taking more money from relative’s estate than he was entitled to under the terms of the will; 2) serving as personal representative of relative’s estate and by failing to advise that relative to contact a lawyer about any proposed change to the terms of relative’s will where the proposed terms were not fair and reasonable to the estate and/or the other beneficiaries, and were not transmitted in writing, and where relative did not give informed consent in writing; 3) failing to act diligently and failing to expedite litigation; and 4) failing to reconcile the trust account check register balance to the sum of all client ledgers, failing to reconcile the trust account check register to the bank statements, and failing to maintain required trust account records.

Sachia Stonefeld Powell acted as disciplinary counsel. Fred Michael Misner represented himself. The online version of Washington State Bar News contains a link to the following document: Resignation Form of Fred Michael Misner (ELC 9.3(b)).

Tarl Raud Oliason (WSBA No. 11923, admitted 1981) of Seattle, resigned in lieu of discipline, effective 2/02/2021. Oliason agrees that he is aware of the alleged misconduct in disciplinary counsel’s Statement of Alleged Misconduct and rather than defend against the allegations, wishes to permanently resign from membership in the Association. The Statement of Alleged Misconduct reflects the following alleged violations of the Rules of Professional Conduct: 1.3 (Diligence), 1.5 (Fees), 3.2 (Expediting Litigation), 3.4 (Fairness to Opposing Party and Counsel), 8.1 (Bar Admission and Disciplinary Matters), 8.4(d) (Prejudicial to the Admin. of Justice), 8.4(l) (ELC violation).

Oliason’s alleged misconduct, as stated in disciplinary counsel’s Statement of Alleged Misconduct, related to his handling of multiple estate matters. Oliason’s alleged misconduct includes: 1) ceasing to carry through on his responsibilities to the A and/or B estates, and/or by abandoning the practice of law without providing for the clients’ and/or the beneficiaries’ needs; 2) failing to comply with multiple court orders in the A matter, and/or the court order issued in the B matter; 3) collecting fees for legal services in the A matter after the death of the per-
A petition for reinstatement after disbarment has been filed by Dean Dinh Nguyen (WSBA No. 30148), who was admitted in 2000 and disbarred in 2012. The April 9, 2021 hearing on Nguyen’s petition before the Character and Fitness Board has been rescheduled to take place on June 4, 2021. Anyone wishing to do so may file with the Character and Fitness Board a written statement for or against reinstatement, setting forth factual matters showing that the petition does or does not meet the requirements of Washington State Supreme Court Admission and Practice Rule (APR) 25.5(a). Except by the Character and Fitness Board's leave, no person other than the petitioner or petitioner's counsel shall be heard orally by the Board.

Communications to the Character and Fitness Board should be sent to Renata Garcia, Counsel to the Character and Fitness Board, Washington State Bar Association, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539, or to renatag@wsba.org. This notice is published pursuant to APR 25.4(a).

Transfer to Disability Inactive Status

Jose Carlos Garcia Morales (WSBA No. 46518, admitted 2013) of Pasco, was by stipulation transferred to disability inactive status, effective 1/1/2021. This is not a disciplinary action.

Rachel Graves (WSBA No. 55677, admitted 2019) of Tacoma, was by stipulation transferred to disability inactive status, effective 12/29/2020. This is not a disciplinary action.

Timothy Trent Hickel (WSBA No. 17899, admitted 1988) of Olympia, was by stipulation transferred to disability inactive status, effective 1/1/2021. This is not a disciplinary action.

Richard E. Kriger (WSBA No. 16346, admitted 1986) of Everett, was by stipulation transferred to disability inactive status, effective 1/1/2021. This is not a disciplinary action.
Public Notice for Request for Qualifications (RFQ) for Water Law Legal Services

(AWB) is accepting Statements of Qualifications from qualified law firms and attorneys to develop a roster of qualified persons to provide legal review of water rights and represent water right holders in the event of a water rights adjudication in the Nooksack Basin. AWB will be accepting this information for its own use, for use by Watershed Improvement Districts (WIDs) in Whatcom County, and for use by water right holders who will be retaining separate legal representation before and/or during a water right adjudication.

Submittals shall not be more than 5 pages including cover letter, and shall be submitted no later than April 2, 2021. Submittals must include the names of attorneys who would represent water rights holders in an adjudication, a summary of water law and other relevant experience, any participation in water rights adjudications in Washington or other states, general litigation experience, rate structure, and other terms of representation. Minority, veteran and women owned business are encouraged to submit information.

Statements of Qualifications shall be submitted to:

Henry Bierlink, Administrator
Ag Water Board
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has joined the firm as a partner and Chair of the Environmental Practice Group, and

JACQUELINE C. QUARRÉ

has joined the firm as of counsel and a member of the Environmental and Land Use Practice Groups

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have joined the firm as associates in its Seattle office.

Neeka is working on the Business team and Real Estate and Construction industry group. She takes a personal approach to advising a wide range of clients on business and real estate legal matters. She earned her J.D. from Seattle University School of Law.

Treja joins the firm’s Litigation team and helps clients resolve complex disputes through various stages of litigation. She focuses her practice on construction litigation, maritime matters, and employment litigation. Treja earned her J.D. from the University of Washington School of Law.

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2010 WL 3788272
(W.D. Wash. 2010)
City of Seattle v. Menotti,
409 F.3d 1113 (9th Cir. 2005)
State v. Letourneau,
100 Wn. App. 424 (2000)
Fordyce v. Seattle,
55 F.3d 436 (9th Cir. 1995)
LIMIT v. Maleng,
874 F. Supp. 1138 (W.D. Wash. 1994)

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THE BAR NUMBER

Kiera M. Silva

BAR NUMBER: 34897
LAW SCHOOL: University of Hawai‘i, Richardson School of Law

I am a working mother of an 9-year-old boy and a 6-year-old girl. I am currently of counsel at Jager Clark PLLC in Seattle and have been practicing since 2004. I am also a practicing real estate broker in the Seattle area, and I consult for my husband’s general contracting business in West Seattle.

I became a lawyer because there had never been an attorney on either side of my family tree (before or since) and I knew I wasn’t good enough to play professional soccer overseas.

Before law school, I obtained my B.A. from Gonzaga University where I played NCAA soccer.

My greatest talent as a lawyer is my ability to recall minute details of a complex case that sometimes prove pivotal.

My career has surprised me by teaching me that I am not defined by the fact that I am a lawyer.

The best advice I have for new lawyers is have confidence but not too much confidence. Learn to find the answers first, then ask for assistance. For law students or aspiring law students, I wish someone would have given me the following advice: Go to law school where you think you might want to live and practice. The pipeline for internships, summer jobs, and clerkships is extremely localized. Getting a job after law school is much tougher without said pipeline.

My long-term professional goal is to make my real estate practice and, potentially, my lei-making business my primary professions and to be able to call law practice my “side hustle.”

The most humbling experience I have had as a lawyer was when I forgot to silence my cell phone in the courtroom. I was with my new boss, in a motion hearing with multiple parties and oodles of lawyers—and of course my phone went off. Sounds small, but at the time I felt like I wanted to crawl inside my briefcase and never come out again.

The most memorable trip I ever took was to Japan in 2018, sans children. My husband and I went to visit Kyoto, Atami, and Tokyo. My dad came too. He was never able to visit in life, so I took him after death. And part of him remains there.

I create work/life balance by doing this:

A couple years ago I promised myself that I would take a solo vacation for a long weekend or a few days once a year. At first I was judged by others outside my family, but I didn’t care and I encourage all mothers (not just working moms) to do this. The keyword is “solo.”

This changed my life: having my son nine years ago and my father dying four weeks later.

I grew up in Hawai‘i on the island of Oahu—Kaneohe town.

My fondest childhood memory is playing in the streams and valleys, and on the beaches of Oahu, with my many cousins.

I absolutely can’t live without a view of, or proximity to, the ocean.

Nobody would ever suspect that I am part Japanese.

I care about raising kind humans.

Friends would describe me as loyal, passionate, thoughtful, and (maybe too often) blunt.

I am thankful that I have a healthy family, a roof over my head, and options for employment.

My idea of misery is skiing. I literally cry.

My favorite restaurants are (currently) So Moon Nan Jib (Korean BBQ in Federal Way), Phoenecia West Seattle (Lebanese), and my forever fine dining/special occasion favorite, Canlis.

I would like to meet Queen Lili‘uokalani because she was a dignified, intelligent, and selfless leader of the Kingdom of Hawai‘i.

If $100,000 fell into my lap, I would invest half of it, give 25 percent to Hale Kipa (house for troubled youth), and use the rest to finish my house.

During my free time, I love to make head leis (lei po‘o) in the Hawaiian Wili style. I love using seasonal foliage and flowers from my yard. Most of what I use, I grow myself in my garden. I made leis on occasion growing up on Oahu, but I only reignited the passion during the pandemic and quarantine. I needed the outlet of creativity, the beauty of flowers, and to keep my hands busy.

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