



Litigation Section

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Greetings from the WSBA Litigation Section Executive Committee! This is the second edition of the renewed Litigation Section newsletter. The Section currently intends to release these newsletters bi-annually in order to capture up-to-date information about the Section and changes in the law. As always, we welcome feedback from Section members on topics or submissions for future issues. Please email Litigation Section Chair **Bil Childress** with your comments or questions.

Written By [Michael Brandenburg](#), [Janelle Elysee](#), & [Zachary Strom](#)

LITIGATION SECTION ANNUAL CLE:

On September 4, 2025, the WSBA Litigation Section hosted an excellent full-day CLE program that brought together practitioners from across the state, both in-person in Seattle and online. The program offered 5.5 CLE credits and covered a diverse range of topics essential to modern litigation practice.

The day opened with a fascinating look at cross-border litigation, examining how Canadian courts evaluate American judicial assistance requests. This session highlighted the often-surprising differences between U.S. and Canadian civil procedure and provided practical guidance for any cross-border litigation matters. We then turned to ethics with an engaging session on common pitfalls in litigation practice. Drawing from real-world examples, this presentation offered invaluable guidance on navigating tricky ethical situations.

After the lunch break, the focus shifted to international discovery challenges in our interconnected global economy. The discussion covered topics such as managing jurisdictional issues and addressing extraterritorial discovery challenges, which are timely given today's business landscape.

The afternoon continued with a deep dive into the technical aspects of requests for admission, including CR 36 and CR 37 procedures, strategies for compelling proper responses, and requesting sanctions. This nuts-and-bolts session provided practical tools for managing discovery disputes. The day concluded with an illuminating panel on e-Discovery and digital forensics.

Overall, the program struck an excellent balance amongst international perspectives and local practice concerns, ethics and procedure, traditional discovery, and cutting-edge technology.

We extend our heartfelt thanks to Program Chair Janelle Elysee of Bracewell LLP for organizing such a thoughtful program. Special appreciation goes to all our presenters: Wyatt Pickett and Robert Richardson of Pacific Juris Attorneys; Sandra

Schilling and Erica Temple of the Washington State Bar Association; Carson Phillips-Spotts of Schroeter Goldmark & Bender; Robert Wilke of Gordon Thomas Honeywell LLP; and panelists Bil Childress of Gravis Law PLLC, Forrest Lewis of Teris, and Damon Reissman of Celerity Discovery. Thank you all for making this such a worthwhile event.

JUDICIAL DINNER RECAP

On October 3, 2025, the Executive Committee met with many of the justices from the Washington Supreme Court for dinner and discussion of litigation practice in the state. Held once a year, this event provides a unique opportunity for interaction outside of the courtroom between the members of our state's highest court and representatives of the bar litigating Washington cases.

The evening opened with remarks from Tiffany Wilke, the outgoing chair of the Executive Committee, as well as Chief Justice Debra L. Stephens. This was followed by lively discussion of a number of topics, ranging from legal education to the continuing evolution of technology's use in civil litigation practice. The informal setting allowed judges and lawyers a chance to share their perspectives and interest regarding the ways in which the law is practiced in Washington. The Executive Committee and the Litigation Section will continue to engage with judges, in both state and federal courts in Washington, in order to facilitate further dialogue related to our shared profession.

The Litigation Section is grateful to Cochran Douglas, PLLC, and Ryan, Swanson & Cleveland, PLLC, for their generosity for sponsoring this event. The event would also not be possible without the efforts of the Litigation Section Executive Committee and, in particular, Tiffany Wilke, Robert Wilke, and Matthew Audish.

SECTION UPDATES

- From October 2024-October 2025, the Litigation Section Executive Committee welcomed new members and reengaged in regular monthly meetings.
- In the spring of 2026, the Litigation Section will again be awarding scholarships to law students from Seattle University, University of Washington, and Gonzaga University who demonstrate an interest in and commitment to a career in litigation. Details will be provided to those schools in the new year, and any aspiring litigators are encouraged to apply.
- In addition to putting on the aforementioned CLE and Judicial Dinner, the Executive Committee held elections and welcomed our new Section chair, Bil Childress, as well as several new at-large members, including Zachary Strom and Isaac Prevost.
- The Litigation Section is in the process of planning additional events and continuing legal education, as well as continuing to pair mentees with mentors practicing litigation throughout the state. For more information, visit the [WSBA Litigation Section website](#) and keep an eye out for more newsletters going forward.

CASE LAW UPDATES

Valve Corp. v. Bucher Law PLLC, No. 86585-4-1

On June 30, 2025, Division I of the Court of Appeals published an opinion holding that, by providing “an expedited process for dismissing lawsuits that target activities protected by the First Amendment,” the Uniform Public Expression Protection Act, Chapter 4.105 RCW (Washington’s Anti-SLAPP law), augments the common law immunity afforded to attorneys under the litigation privilege. Under the new statute, a defendant may move for expedited relief within 60 days of being served with a pleading, with notice of the motion operating to stay any discovery or pending motions in the matter.

The plaintiff in this matter (“Valve”) operated a subscription-based video game marketplace, Steam, and required all subscribers to agree to individual binding arbitration. The defendant law firm (“Bucher”) represented thousands of individual Steam users seeking arbitration of disputes related to Valve’s allegedly anti-competitive practices and, in accordance with the subscription agreement, filed each client’s claim in an individual arbitration. Valve filed a lawsuit against Bucher for tortious interference and abuse of process, which Bucher moved to dismiss under UPEPA. The trial court denied this motion.

The Court of Appeals reversed. First, the court noted that appeal from the denial of a motion to dismiss under UPEPA was available as a matter of right, citing the statute and the Supreme Court’s recent decision in *Thurman v. Cowles Co.*, 4 Wn.3d 291, 299, 562 P.3d 777 (2025). Then, the court addressed the three requirements for expedited dismissal under UPEPA: First, the defendant must establish UPEPA applies; second, the plaintiff must fail to establish UPEPA does not apply; and third,

the underlying claim must be subject to dismissal under one of the grounds provided in RCW 4.105.060(1)(c).

On the first element, Bucher established that Valve’s lawsuit was based on Bucher’s “exercise of the right of freedom of speech...on a matter of public concern” given the First Amendment protections applicable to attorneys bringing suit and the implication of the Consumer Protection Act in the underlying arbitrations. On the second element, the Court rejected Valve’s contention that its lawsuit arose out of a communication related to the “sale” of legal services as would render UPEPA inapplicable—the “Bucher Defendants’ communications were acts of legal representation” and not the sale of services. Finally, as to the third element, the litigation privilege was dispositive: Bucher’s “conduct was both ‘pertinent’ and ‘material’ to the relief they sought for their clients,” the arbitrator had power to discipline attorneys for any abuses, and the fact that Bucher stood to benefit financially from a successful result in arbitration did not transform its motives to an “inappropriate and extrinsic end.” With all three elements satisfied, the Court remanded for entry of an order dismissing Valve’s claims with prejudice.

For litigators in Washington, the decision provides helpful guidance on the applicability of Washington’s strengthened “anti-SLAPP” statute as a tool to stay and dismiss non-meritorious claims against attorneys.

Keybank, N.A. v. Elcon Corporation, N. 86189-1-I

On November 17, 2025, Division I of the Court of Appeals published a decision affirming the right of a receiver to access attorney-client privileged materials when those materials constitute property within the receivership estate.

In this matter, Defendant (“Elcon”) obtained a multimillion-dollar line of credit from Plaintiff KeyBank secured by nearly all company assets, which the parties agreed encompassed Elcon’s email accounts. After Elcon defaulted, Plaintiff (“KeyBank”) petitioned for a general receiver to protect the collateral. The receiver was given control over all assets in the receivership estate and sought access to Elcon’s email accounts, but Elcon refused on the basis that many messages contained attorney-client privileged communications. The trial court compelled production, subject to certain protections: the receiver could not disclose privileged content to KeyBank or third parties without a court order; the receiver had to limit review of post-appointment and personal-attorney emails; and the receiver had to protect sensitive personal information. Elcon sought discretionary review.

On appeal, the central issue was whether RCW 7.60.060(1)(c)’s language, allowing a receiver “the power to assert any rights... of the person over whose property the receiver is appointed relating thereto[,]” includes the right to control attorney-client privileged information. Answering in the affirmative, the Court of Appeals construed the term “any rights” to include the right of asserting attorney-client privilege, meaning that the privilege could not operate to bar the receiver’s access to materials in the receivership estate. The Court noted that receivers frequently must investigate, defend, or pursue claims, and that these tasks commonly require access to privileged material.

At the same time, the Court approved of the trial court’s restrictions on use of the privileged information and the scope of the protective order as a lawful exercise of the trial court’s discretion.

For litigators, particularly those representing financially distressed corporate clients, the decision is a reminder that the attorney-client privilege is not absolute, necessitating special precautions. Litigators can mitigate risks to confidentiality by

negotiating protective protocols and seeking clear court guidance before otherwise privileged material is produced.

LOCAL RULE UPDATES

Many counties as well as the Western District of Washington updated their local rules in 2025. The Litigation Section has compiled hyperlinks to the updated local rules below.

[Adams](#)

[Pend Oreille](#)

[Asotin](#)

[San Juan](#)

[Clallam](#)

[Skagit](#)

[Clark](#)

[Snohomish](#)

[Columbia](#)

[Spokane](#)

[Cowlitz](#)

[Stevens](#)

[Ferry](#)

[Thurston](#)

[Garfield](#)

[Wahkiakum](#)

[Grant](#)

[Walla Walla](#)

[Grays Harbor](#)

[Western District of Washington](#)

[Island](#)

[\(federal\)](#)

[Jefferson](#)

[Whatcom](#)

[King](#)

[Whitman](#)

[Lincoln](#)

[Yakima](#)

[Okanogan](#)

[Pacific](#)

Learn more about the WSBA Litigation Section by visiting our [webpage](#).

2025-2026 Litigation Section Executive Committee Members

Chair: Bil Childress

Secretary/Treasurer: Janelle Elysee

Immediate Past Chair: Tiffany Wilke

Committee Members: Mike Brandenburg, Isaac Prevost, Cole Douglas, Zachary Strom, Ian Leifer

New Member Liaison: Matthew Audish

Board of Governors Liaison: Tom Ahearne