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THE WASHINGTON STATE BAR  
ASSOCIATION'S STATEMENT

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 [Tiffany Wilke](#) with your comments or questions.

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

## **LITIGATION SECTION SPRING EVENT:**

### **“CIVILITY AND THE LAW” WITH HON. MICHELLE PETERSON**

On May 22, 2025, the Litigation Section held its spring event, “Civility and the Law,” which explored professional courtesy in today's challenging legal landscape. The event was a fireside chat with the Honorable Michelle L. Peterson and generously hosted by K&L Gates. [G. William Shaw](#) and [Robert Wilke](#) both provided opening remarks, and the fireside chat was directed by [Janelle Elysee](#).

During the fireside chat, Judge Peterson spoke on the various ways that civility has impacted litigation in recent years, including topics such as: use of artificial intelligence in the writing and analysis of court filings; lasting impacts of the COVID-19 pandemic on litigation; and overreliance on virtual communications in lieu of telephonic or in-person communications between opposing parties. The ensuing Q&A between Judge Peterson and the attendees prompted a thoughtful discussion on examples of conduct she and her colleagues would prefer to see from practitioners and as well as behaviors to avoid in the courtroom.

The Litigation Section is grateful to Judge Peterson for providing her time and insight and K&L Gates for the hospitality and generosity for hosting this event. The event would not be possible without the efforts of the Litigation Section Executive Committee and, in particular, [Matthew Audish](#), Janelle Elysee, and Robert Wilke. Photos from the event can be found on the Litigation Section's [LinkedIn page](#).

This spring event is an example of the type of programming the Litigation Section Executive Committee plans on providing as a benefit for members of the litigation section. The Litigation Section is committed to creating opportunities for its members to gain practical tips on practicing in Washington through programming Continuing Legal Education. To stay updated on what the Executive Committee is planning, please follow our new LinkedIn Page: [www.linkedin.com/company/wsba-litigation-section/](https://www.linkedin.com/company/wsba-litigation-section/).

#### *More About Judge Peterson*

Judge Peterson is a magistrate judge on the United States District Court for the Western District of Washington. Prior to joining the bench, Judge Peterson was of counsel at a national law firm, a partner at a large regional Seattle firm, and a partner at a small boutique litigation firm. Immediately before taking the bench, Judge Peterson operated her own firm, where her practice focused on white collar criminal defense, government investigations, False Claims Act litigation, civil rights, and commercial litigation.

Judge Peterson has long been an active member of the Western District of Washington Federal Bar. She served as a Ninth Circuit lawyer representative and co-chaired the Local Rules Committee for the Western District of Washington. Additionally, Judge Peterson was a member of the Federal Pro Bono Panel, a Criminal Justice Act panel attorney for the Federal Public Defenders Office, and the Federal Bar Association liaison for the Western District of Washington's Drug Reentry Alternative Model (“DREAM”). Judge Peterson is also a former president of the William L. Dwyer American Inn of Court, a former member of the Ninth Circuit Wellness Committee, and previously served on the Remote Access Working Committee during the COVID-19 pandemic.

## **SECTION UPDATES**

- In the spring of 2025, the Litigation Section awarded scholarships to law students from Seattle University (Haley Moss), University of Washington (Taylor Shoecraft), and Gonzaga University (Koby Brown & Jaren Perry) who demonstrated an interest and commitment to a career in litigation. Congratulations to these students for their hard work and dedication to the practice of law in Washington. We look forward to continuing to provide scholarship opportunities to prospective litigators each year.
- The Litigation Section sponsored the lunches for the Washington State Bar Association's 2025 Trial Advocacy CLE Program, which took place on June 5 and 6. This informative program covered the full cycle of a trial from voir dire to closing arguments. Be on the lookout for the TAP program in on the Washington State Bar Association's CLE store in late August.
- The Litigation Section will host its annual all-day CLE on September 4, 2025. This CLE will be a corollary to our popular CLE program, "Strangers in a Strange Land." The annual CLE will include topics centered around discovery such as including extraterritorial discovery and wrinkles in e-discovery, as well as ethics concerns among litigators. Our previous CLE program, "Strangers in a Strange Land," sold out within a few days, so plan to sign up early for this upcoming program. You may register using the following [link](#) and additional information will be circulated in a separate email and provided on our [LinkedIn page](#).
- This fall, the Executive Committee expects to meet with many of the justices from the Washington Supreme Court for dinner and discussion of litigation practice in Washington.
- The Litigation Section is in the process of planning additional events and continuing legal education seminars. If you or your firm wishes to host an event or collaborate with the Litigation Section to put on a CLE, please contact Rob Wilke, Ian Leifer, and Janelle Elysee.
- The Litigation Section Newsletter is a great way to stay up to date on our upcoming programming and CLE. Further information can also be found on the [Litigation Section website](#) and our [LinkedIn page](#).

## **CASE LAW UPDATES**

### **Green v. Kootenai Heart Clinics, LLC**

On April 22, 2025, Division III of the Washington Appellate Court published the above-captioned decision, providing additional direction regarding parties' respective burdens during discovery, as well as a tip (and/or a warning) for attorneys who are unable to resolve discovery disputes.

The plaintiff ("Green") in this case filed a personal injury action against Kootenai Heart Clinics, LLC and several affiliates ("Kootenai") after being struck by a delivery van belonging to the defendants. Prior to trial, the parties engaged in protracted discovery disputes, which resulted in the trial court excluding the testimony of three of Green's witnesses. The trial date had been continued to allow for the parties to depose their respective medical experts. Following the deposition of its expert, Dr. Heller, Kootenai moved to exclude three of Green's newly disclosed rebuttal witnesses on the basis that Kootenai's expert would narrow his testimony.

In ordering that Green's witnesses be excluded, the trial court addressed the *Burnet* factors, finding that: (1) exclusion was the only way to mitigate prejudice to Kootenai because there was no time to depose the newly disclosed witnesses; and (2) Green had willfully violated the discovery rules by failing to depose Kootenai's expert prior to the previously set trial date.

On appeal, the Appellate Court overturned the trial court's ruling, finding that the trial court failed to hold Kootenai to its burden of rebutting the presumption in favor of admissibility absent a willful violation of the discovery rules, pursuant to *Burnet* and its progeny. The Appellate Court also found that the burden of producing adequate discovery regarding Kootenai's expert opinions had been improperly shifted onto Green ("Kootenai, not Mr. Green, had the duty to disclose Dr. Heller's opinions.... Instead of faulting Kootenai for spending two years evading its discovery obligation, the court faulted Mr. Green for not bringing a motion to compel.") and that the trial court had not adequately considered less severe, monetary sanctions.

Perhaps most notably, the Appellate Court included a footnote with its decision, which explicitly stated that,

"[t]he lesson for attorneys is this: Comply with your discovery obligations. The lesson for trial judges is this: Rather than imposing a severe remedy such as excluding a witness, strongly consider ordering a trial continuance and requiring the at-fault attorney to pay a price for their discovery violation. For example, an attorney charging a percentage-fee can be ordered to charge a lesser percentage. An attorney charging hourly can be ordered to disgorge fees or to not charge for certain tasks associated with future trial preparation. Attorney monetary sanctions may be the surest way to correct attorney behavior."

This decision from Division III indicates that courts will not look favorably upon having to resolve these issues on appeal, and attorneys who cannot resolve their discovery disputes before trial run the risk of costing their clients significant unnecessary time and expense. Additionally, this decision emphasizes the direction to trial judges that exclusion of witnesses should be a last resort.

As noted in the WSBA Litigation Section's Winter Newsletter, the Civil Rules were recently updated, in part to address the issue of when expert opinions must be disclosed during the discovery process. See our previous newsletter for more detail on those changes in the rules.

*Alfonso Tavaglione V. Dehkhoda & Qadri, P.C.*

On May 27, 2025, Division I of the Washington Appellate Court published a decision in which it held that a law firm that is also a registered debt collection agency may not rely upon a litigation privilege when it is acting in its capacity as a collection agency.

The plaintiff in this case ("Tavaglione") successfully vacated a default judgment that had been obtained against him by the defendant law firm for debt he did not owe. Tavaglione then counter-sued the defendant for causes of action that included a violation of the Washington Collection Agency Act ("WCAA"). The trial court dismissed the lawsuit on the basis that the defendant was immune from such liability because its statements filed in the collection action were protected under the litigation privilege.

The Appellate Court overturned the trial court's ruling, holding that, although collection activity may culminate in a judicial proceeding, the proper analysis is whether the defendant was acting as a debt collector rather than a law firm. The Appellate Court further reiterated that the WCAA does not categorically exclude lawyers and law firms from its requirements if they are functioning as collection agencies and for the primary purpose of the collection of consumer debt.

For litigators in Washington, whether representing a client against a collection action or filing an action to collect a consumer debt, an analysis of the WCAA and the application of its requirements to each such case is the best practice. Law firms that deal in a significant collections practice may not be shielded from liability if they fail to adhere to each of the WCAA's requirements.

## **LITIGATION SECTION ELECTION RESULTS**

Elections were recently conducted for the Litigation Section Executive Committee. Below are results for the election:

<b>Position</b>	<b>Name</b>	<b>Term</b>
Chair-elect	Bil Childress	Remainder of current term ending September 30, 2025
Secretary / Treasurer	Janelle Elysee	October 1, 2025–September 30, 2026
At-large Member	Zachary Strom	Remainder of current term ending September 30, 2027
At-large Member	Isaac Prevost	October 1, 2025–September 30, 2028
At-large Member	Michael Brandenburg	October 1, 2025–September 30, 2028

Please join us in congratulating the winners of the election and the new members.

If you want to learn more about the executive committee and responsibilities, please reach out to Tiffany Wilke.

# **The Washington State Bar Association's Statement in Support of an Independent Legal Profession Free from Government Retaliation**

On March 12, 2025, the WSBA Board of Governors adopted this [statement in support of an independent legal community, free from government retaliation](#). Executive Director Terra Nevitt and President Sunitha Anjilvel, on behalf of the Board, explained that the WSBA will continue to stand up for lawyers' ability to meet their obligations under their professional code of ethics, which includes shouldering the responsibility for the quality of justice in Washington and preserving government under law. As President Anjilvel said, "This statement is a show of support for every legal professional in Washington who might otherwise feel a chill from recent executive orders. At the end of the day, the state bar regulates the profession to ensure qualified, competent representation for all interests in Washington. We champion justice. To do that, it is a core tenet of our legal system that lawyers be independent and willing to represent clients of all kinds, especially those who are vulnerable or outside of political favor."

The WSBA is currently offering a free, on-demand CLE program entitled "[Rule of Law and Constitutional Crises for Lawyer Ambassadors](#)." This CLE focuses on the Rule of Law in our constitutional democracy, threats to an independent judiciary and legal profession, and how to best communicate to the public about these important topics. The CLE is part of the tool kit for the WSBA's "Rule of Law Ambassadors" program. Those interested may also check out the ABA series, "The Rule of Law in America," which is free to ABA members and explores the integrity of our legal system and the vital role of an independent judiciary.

The Litigation Section supports the WSBA's efforts to equip legal professionals to provide such work to their local communities, and to reiterate to the public why an independent judiciary is a core tenet of our democracy.

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

2024-2025 Litigation Section Executive Committee Members

Chair: [Tiffany Wilke](#)

Chair-Elect: [Bil Childress](#)

Secretary/Treasurer: [Janelle Elysee](#)

Immediate Past Chair: [Rob Wilke](#)

Committee Members: Mike Brandenburg, Ric Jacobs, Cole Douglas, Ian Leifer, Zachary Strom

Young Lawyer Liaison: Matthew Audish

Board of Governors Liaison: Allison Widney