

**SENIOR LAWYERS SECTION
EXECUTIVE COMMITTEE MEETING AGENDA
October 20, 2020 10:30 am**

Join Zoom Meeting: <https://us02web.zoom.us/j/87263889403>

Meeting ID: 872 6388 9403

By phone: Call 1-253-215-8782, enter 87263889403#

1. **Welcome:** Eleanor Doermann
2. **Secretary's Report:** Al Armstrong
 - Review and approval of minutes from September 15, 2020 meeting
3. **Treasurer's Report:** Ron Thompson
 - Review of August 2020 reports
4. **Introduce Tom McBride, BOG Liaison**
5. **Annual CLE and Mini-CLE:** Carole Grayson and Eleanor Doermann
 - October 30 webinar with Kurt Bulmer:
 - Current registration numbers
 - getting the word out
 - Future webinar plans
6. **Newsletter:** Morrie Shore, Jim Riehl, Eleanor Doermann

Discussion to include but is not limited to:

- Should entire committee act as editorial board? How to divide up the work?
- Generating an ongoing pipeline of content for future newsletters.
- Next edition:
 - When do we want to publish? What is timeline to accomplish goal?
 - Content suggestions? Themes?
 - Recommended target length?
 - Volunteer to write a review of Kurt Bulmer's Oct. 30 webinar

- Review of gathered materials for consideration:
 - Recommended reading list – Morrie
 - Status of obtaining reprint permission for ABA articles – Jim
 - Article on SECURE Act and inherited IRA's – Morrie
 - Interesting articles from prior editions, travel pieces – Steve
 - To consider reprinting – Eleanor
 - Article on Accessing Digital Content from RPPT newsletter
 - NW Sidebar post on Legacy of RBG
 - Emeritus Pro Bono Status from most recent NW Lawyer

7. Other?

8. Adjourn

**SENIOR LAWYERS SECTION
MINUTES OF THE EXECUTIVE COMMITTEE MEETING**

September 15, 2020

This meeting was our seventh consecutive meeting conducted entirely by phone, again due to the coronavirus crisis. As in the last few meetings, we met through Zoom. The following Executive Committee members were present at this meeting: Chair Eleanor Doermann, Ron Thompson, Brian Comstock, Steve DeForest, Jeanine Lutzenhiser, Al Armstrong, Joe Gordon, Jim Riehl, Morrie Shore, Carole Grayson and Eleen Trang of the WSBA. Not able to be present were BOG Liaison Tom McBride and Scott Osborne.

CHAIR'S REPORT

Eleanor welcomed the attendees.

REMEMBERING DUDLEY

We were shocked and saddened by the passing of our fellow Committee member and friend, Dudley Panchot. The attendees each offered fond recollections of Dudley from years past. He was remembered as someone who held our Section together throughout the years. His dry sense of humor, decency and professionalism were recalled. Jim spoke for all of us when he reflected that Dudley was, as a professional and as an individual, the ultimate "Dudley Do Right." He will be missed.

SECRETARY'S REPORT

Al's Minutes of our August 18 meeting were approved by Motion.

TREASURER'S REPORT

Ron indicated that there had been no activity since his last report; our fund balance, as of July 31, 2020, remained at \$9,386.21. Our income for the year is somewhat over \$1,000. Due to the fact that we have, so far, not had any publication expenses, we are about \$1,000 over budget.

Ron's Treasurer's Report was approved by Motion.

Ron indicated that he has timely submitted our proposed Budget for the next fiscal year (2021).

Eleanor indicated that she had, at her own expense, obtained the Zoom account employed for our meetings, and has not sought reimbursement.

ANNUAL CLE

Carole said she had emailed Devorah Signer Hill and asked if she had received word of any speakers' change of plans relative to speakers for our May 14, 2021 CLE.

MINI-CLEs

Eleanor said we will get a registration link for our October 30 Mini-CLE featuring Kurt Bulmer. We will also send word to many other sections regarding this event, and suggested we place a "save the date" notice in our electronic newsletter as additional publicity. Carole said the title of our mini-CLE will be "The Legal Ethics of Emerging Expectations Around Gender and Race." Attendees will receive 1.5 ethics CLE credits. Brian wanted to ensure that all of the 14,000 or so "senior lawyer-age" Bar member get notice.

What to Charge?

Eleanor asked what should we charge? It was suggested that we offer the program at no charge. Eleanor cautioned that we do incur some expenses for these mini-CLEs. Brian said that charging involves credit card hassles and can act as a hindrance to attendance. Brian added that we should look upon this venture as a membership-seeking effort. Steve suggested \$10 for Section members, \$25 for non-members who wish to join, and \$35 for all others. Carole supported not charging members and a special rate to those who join our Section. Brian said he agreed with this. Steve said that would be fine, and let's just drop the \$35 tier. Eleen said we might want to check with Devorah Signer-Hill about this. Carole said that she is uncomfortable with charging Section members. Eleanor offered the insight that sometimes "free" offerings are often ignored, as the prospective attendees are not invested in the program. Joe asked is it necessary that we do not charge the Section members anything? But the general consensus was that members should receive the program for free of charge. Our Treasurer Ron cautioned that if the \$25 admission for would-be "joiners" is indeed seen as their dues, then the WSBA will take \$18.25 of that, leaving us \$6.75 for our coffers. He suggested that the "joiners" be charged \$35.00, with \$25 of that seen as dues, thereby giving us a little more money. Brian suggested that Eleanor work with Carole on this matter, and that they consult with Devorah Signer Hill as well.

Jim suggested that we have a short introduction to the program, informing the attendees that if "you want more of these CLEs, join us and get them all for free". He said that these mini-CLEs not be seen as moneymakers, but as publicity for our Section.

Future Mini-CLEs.

It was decided to present another mini-CLE in January. Yakima attorney Sarah Wixson, a member of Morris' firm, was mentioned as a speaker at that event. Morrie said he would contact her about this.

NEWSLETTER

Eleanor reported that she, Jim and Morrie had put together a proposed multi-colored five-page newsletter, which she had circulated to the Executive Committee members prior to today's meeting. The letter had been transmitted to graphic designer Britt Sutherland, who subsequently, after her input, has submitted it to the WSBA. It was mentioned that the ABA will allow us to place a link in our subsequent newsletters to articles appearing in the ABA publication that may be of interest to our readers. Brian suggested that we try to put more articles in our first electronic newsletter, and that might take a few weeks. Eleanor said that any further reworking of the newsletter would take at least a month, as there are multiple steps that would have to be taken for any such undertaking. Jim said that the newsletter letter as constituted should go out ASAP, and lauded Eleanor for her work on it. Ron said we should get the publication out immediately. Steve agreed and made a Motion to do that. The Motion passed. Steve suggested that, in our next newsletter, we should cover the WSBA's annual dinner honoring the Bar's new 50-year members.

ADJOURNMENT

Eleanor adjourned the meeting.

Our next meeting will take place on a remote-attendance basis on October 20, 2020 at 10:30 am.

**Senior Lawyer's Section
Treasurer's Report
91.67 % FY complete through August 31, 2020**

1.	Fund Balance as of July 31, 2020	\$ 9386.21
	Net income for August, 2020	<u>6.25</u>
	Fund balance as of August 31, 2020	\$ 9392.46
2.	Membership: 9/1/2020 - 226; 2019 -247; 2018 -262; 2017 - 304; 2016 - 295; 2015 - 345; 2014 - 329; 2013 - 315; 2012-311; 2011-327; 2010-297 members	
3.	Section dues per member	\$25
4.	Income since August 1, 2020:	
	Total Income for Period	<u>25.00</u> \$ 25.00
5.	Expenses since August 1, 2020	
	Per member charge	<u>18.75</u>
	Total for month	\$ 18.75
6.	Net income for month	\$ 6.25
7.	Fund balance as of May 31, 2020	\$ 9392.46

Notes: See attached report from WSBA Statement of Activities for month of August, 2020.

We are currently 34 members below budget. The fiscal year ended on October 1st, thus it anticipated that there will be few, if any new members added for the month of September since the registration materials for our mini-cle has just gone out to prospects. Hopefully we will see an increase in October due to the mini-cle.

Our FY 2019 year end fund balance was 8,348.04 and our fund balance as of the end of July 2020 is \$9392.46, representing an increase of \$1044.42. We budgeted for an income of \$81.25 for the year, so we are \$963.17 ahead of budget.

We budgeted for an income item of \$1500 for conducting a mini-cle this fiscal year. Our mini-cle did not occur in FY 2020.

We will probably have an expense item for newsletter expenses for the month of September.

Washington State Bar Association

Statement of Activities

For the Period from August 1, 2020 to August 31, 2020

91.67% OF YEAR COMPLETE

	FISCAL 2020 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
SENIOR LAWYERS SECTION					
REVENUE:					
INTEREST - INVESTMENTS	50.00	-	-	50.00	0.00%
SECTION DUES REVENUE	6,500.00	25.00	5,650.00	850.00	86.92%
MINI-CLE REVENUE	1,500.00	-	-	1,500.00	0.00%
TOTAL REVENUE:	8,050.00	25.00	5,650.00	2,400.00	70.19%
DIRECT EXPENSES:					
CONFERENCE CALLS	-	-	142.44	(142.44)	
PER MEMBER CHARGE	4,968.75	18.75	4,237.50	731.25	85.28%
NEWSLETTER EXPENSES	2,000.00	-	-	2,000.00	0.00%
EXECUTIVE COMMITTEE EXPENSES	1,000.00	-	225.64	774.36	22.56%
TOTAL DIRECT EXPENSES:	7,968.75	18.75	4,605.58	3,363.17	57.80%
NET INCOME:	81.25	6.25	1,044.42		
FUND BALANCE AS OF 9/30/19:	8,348.04		8,348.04		
NEW FUND BALANCE:	8,429.29		9,392.46		

Washington State Bar Association

Statement of Activities

For the Period from August 1, 2020 to August 31, 2020

91.67% OF YEAR COMPLETE

	FISCAL 2020 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
SENIOR LAWYERS SECTION					
REVENUE:					
INTEREST - INVESTMENTS	50.00	-	-	50.00	0.00%
SECTION DUES REVENUE	6,500.00	25.00	5,650.00	850.00	86.92%
MINI-CLE REVENUE	1,500.00	-	-	1,500.00	0.00%
TOTAL REVENUE:	8,050.00	25.00	5,650.00	2,400.00	70.19%
DIRECT EXPENSES:					
CONFERENCE CALLS	-	-	142.44	(142.44)	
PER MEMBER CHARGE	4,968.75	18.75	4,237.50	731.25	85.28%
NEWSLETTER EXPENSES	2,000.00	-	-	2,000.00	0.00%
EXECUTIVE COMMITTEE EXPENSES	1,000.00	-	225.64	774.36	22.56%
TOTAL DIRECT EXPENSES:	7,968.75	18.75	4,605.58	3,363.17	57.80%
NET INCOME:	81.25	6.25	1,044.42		
FUND BALANCE AS OF 9/30/19:	8,348.04		8,348.04		
NEW FUND BALANCE:	8,429.29		9,392.46		

Detail Trial Balance

Tuesday, September 15, 2020 5:07 PM

Includes Activities from August 1, 2020 to August 31, 2020

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Washington State Bar Association

WSBA\ DARSHITAP

Accounts without activities or balances during the above period are not included.

G/L Account: No.: 40000..59999, Global Dimension 1 Filter: SSEN

Posting Date	Document No.	Source No.	DEPT	JOB	Description	Debit Activities	Credit Activities	Balance
Account: 48200		SECTION DUES REVENUE			Beginning Balance			-5,625.00
8/31/2020	T08312020		SSEN		Section Dues Revenue - SSEN		25.00	
Account: 48200		SECTION DUES REVENUE			Beginning Balance			-5,625.00
					Total Activities	0.00	25.00	-25.00
Account: 48200		SECTION DUES REVENUE			Ending Balance			-5,650.00
Account: 50165		CONFERENCE CALLS			Beginning Balance			142.44
Account: 50165		CONFERENCE CALLS			Ending Balance			142.44
Account: 58300		EXECUTIVE COMMITTEE			Beginning Balance			225.64
Account: 58300		EXECUTIVE COMMITTEE			Ending Balance			225.64
Account: 58400		PER MEMBER CHARGE			Beginning Balance			4,218.75
8/30/2020	0820MISC		SSEN		08/20 Per-Member Charge	18.75		
Account: 58400		PER MEMBER CHARGE			Beginning Balance			4,218.75
					Total Activities	18.75	0.00	18.75
Account: 58400		PER MEMBER CHARGE			Ending Balance			4,237.50
					Report Total Beginning Balance			-1,038.17
					Report Total Activities	18.75	25.00	-6.25
					Report Total Ending Balance			-1,044.42

ALBERT ARMSTRONG III:

Name of Book: The Spy and the Traitor

Author: Ben MacIntyre

Published: 2018, Broadway Books.

Summary: Recounts the tale of Oleg Gordievsky, a counterspy working on behalf of Britain's MI6. He was later promoted to the KGB Station Chief position in London. He played a key role in letting the Russians know (*at MI6's urging*) that the West wasn't about to launch a nuclear attack on the USSR, as the Russians had feared, thus avoiding the possibility of an accidental nuclear exchange. Mr. Gordievsky is exposed, called back to Moscow but is successfully extracted from the USSR by the British. Mr. Gordievsky had been exposed by the Russians' own mole, Aldrich Ames, in the U.S.

BRIAN L. COMSTOCK:

Name of Book: Disloyal: A Memoir: The True Story of the Former Personal Attorney to President Donald J. Trump

Author: Michael Cohen (*who had to overcome Trump officials to finally get this book published*)

Published: September 8, 2020, Skyhorse Publishing

Summary: It discloses for the first time intricate workings of Trump enterprises and political concealment leading up to the 2016 election. Cohen was serving time in federal prison for his criminal conduct; however, on May 21, 2020, Cohen was released from prison early due to concerns regarding COVID-19, to serve the rest of his sentence under house arrest.

Name of Book: Too Much and Never Enough: How My Family Created the World's Most Dangerous Man

Author: Mary L. Trump (*the President's estranged niece*)

Published: July 14, 2020, Simon & Schuster

Summary: As a clinical psychologist, Mary Trump provides insight into the unusual history of the Trump family and Donald Trump's role in taking over from his father, Frederick Christ Trump, Sr., the founder. Her observations come across as a sound clinical analysis of what directs the behavior of our President and his basic beliefs or lack thereof.

Name of Book: The Room Where It All Happened

Author: John Bolton

Published: June 23, 2020, Simon & Schuster

Summary: The book, drafted almost a year ago but blocked by dispute and litigation, is now finally hitting the stands. Bolton served as Trump's National Security Advisor from April 2018 to September 2019 and worked about as close to the President as anyone, trusted for far-right views on foreign relations. What happened behind the scenes finally led to Bolton resigning - or being fired, according to the President. Bolton harbors a lot just now being revealed.

STEPHEN E. DeFOREST:

Name of Book: True Crimes and Misdemeanors: The Investigation of Donald Trump

Author: Jeffrey Toobin

Published: August 4, 2020, Doubleday, a division of Penguin Random House LLC

Summary: Jeffrey Toobin, the chief legal analyst at CNN and a staff writer at The New Yorker, has written a definitive account of the Mueller investigation and the impeachment of the President. Based on dozens of interviews with prosecutors in Mueller’s office of special counsel, Trump’s legal team, congressional investigators, White House staffers, and several of the key players, including some who are now in prison, the book is a revelatory narrative that makes sense of the seemingly endless chaos of the Trump years.

Name of Book: One by One

Author: Ruth Ware

Published: September 8, 2020, Scout Press

Summary: For a break from my normal diet of political and historical nonfiction, I read a wickedly good mystery. A review was in “The Mix” section of the 10/4 Seattle Times. The locale is in the French Alps, where a team from a London software company is staying in a luxury chalet for a retreat. There is a battle between those who want to sell the company for a fortune and those who want to stay independent, hoping for an even better reward later. An avalanche isolates the chalet, the pro-sell leader disappears in a snow storm, and the killings begin, one by one.

Name of Book: The Worst Hard Time

Author: Timothy Egan

Published: 2006, Houghton Mifflin Company

Summary: This book masterfully captures the story of our nation’s greatest environmental disaster (to date!). At its peak, the Dust Bowl covered one hundred million acres. The dust storms that terrorized America’s southwest in the darkest years of the Depression were like nothing ever seen before. This is the story of those who stayed behind, for lack of money or lack of sense, and survived.

CAROLE A. GRAYSON:

Name of Book: Anthill
Author: Edward O. Wilson (*Pulitzer prize winning naturalist*)
Published: 2010, W. W. Norton & Company
Summary: A working class Alabama boy who loves nature eventually becomes a lawyer. Conflicts on an ant scale and human scale ensue in this novel heavily threaded with ecology.

Name of Book: The True Believer: Thoughts on the Nature of Mass Movements
Author: Eric Hoffer
Published: December 1951, Harper & Row
Summary: What kinds of people fall sway to mass fanatical movements? This classic by the working class philosopher may be even scarier today than when it first appeared.

Name of Book: The Bone People
Author: Keri Hulme
Published: 1983, Louisiana State University Press
Summary: Be prepared for language that approaches Joycean in a whodunit that meditates on the nature around us, nature within us, life and its meaning (*or lack thereof*) and family (*or lack thereof*). Contains a Maori glossary. This debut novel won the 1985 Booker Prize.

JEANINE BLACKETT LUTZENHISER:

Name of Books: The Three Musketeers and
Twenty Years After

Author: Alexandre Dumas

Published: 1844, George Rutledge and Sons
1907, London: J.M. Dutt & Sons; New York: E. P. Dutton & Co.

Summary: Rich historical fiction, from the intrigues of Richelieu to the execution of Britain's Charles I, to the coming of age of Louis XIV -- with lots of swashbuckling action. Best discovery for me is Twenty Years After, where the intrepid and headstrong D'Artagnan is now in his 50s, and much more mature and reflective as he looks back on his history and career. Next on my list is the third in the series, The Vicomte of Bragelonne. I am thoroughly enjoying escaping into this earlier time with these characters, but it's instructive too - not just escapism.



Name of Book: The Soul of Shame

Author: Curt Thompson, MD

Published: 2015, InterVarsity Press

Summary: A psychiatrist unpacks the soul of shame, revealing its ubiquitous nature and neurobiological roots. He also provides the practical and theological tools necessary to dismantle shame, based on his years of researching its damaging effects and counseling people to overcome deep wounds. As I reread this book for a FaceTime book club I'm doing with an old college friend in California, I was struck by how powerfully I see shame operating in the legal world -- I think it's a big player in the stress lawyers face. Helpful and hopeful book.



Name of Book: The Boys in the Boat: Nine Americans and Their Epic Quest for Gold at the 1936 Berlin Olympics

Author: Daniel James Brown

Published: June 4, 2013, Viking/The Penguin Group

Summary: A shout-out for The Boys in the Boat: I bought this for my dad the year it was published - I thought, "Well, I don't care a whit about this, really, but I think Dad would like it." Dad loved it, MADE me read it - hounded me until I read it - and I'm so grateful! I LOVED it. Amazing story, beautiful writer.

SCOTT OSBORNE:

Name of Book: Concrete Economics: The Hamilton Approach to Economic Growth and Policy

Authors: Stephan S. Cohen and J. Bradford DeLong

Published: 2016, Harvard Business Review Press

Summary: A quick read from two “progressive” economists emphasizing how the legal system and legislation have, and can, further economic progress. One of the more intriguing questions posed is what would the United States look like today had the government decided to sell lands in the western states to the highest bidder rather than allow widespread ownership through the Homestead Act.

Name of Book: The Fifth Risk

Author: Michael Lewis

Published: 2018, W. W. Norton & Company

Summary: Another quick read. A look at the transition from the Obama to Trump administrations as only the author of Money Ball and the Big Short can do. The title is from a list of risks enumerated by the former chief risk officer of the Dept. of Energy, which has, as part of its portfolio, responsibility for maintaining the nuclear arsenal and protecting from nuclear threats. After reciting the possibility of accident, action by Korea and Iran and the failure of the electric grid, the fifth, and most mundane, is “Project Management” or, stated in another way, competency in management. This book is a great reminder of all the stuff government does taken for granted until it doesn’t work.

Name of Book: Capital

Author: John Lanchester

Published: 2012, Faber and Faber

Summary: This one is fiction. It is a wonderful look at the run up to the financial crisis in London; sort of an updated English version of Tom Wolfe’s Bonfire of the Vanities. Very entertaining.

JUDGE JAMES RIEHL (Ret.)

Name of Book: The Splendid and The Vile: A Saga of Churchill, Family and Defiance During the Blitz
Author: Erik Larson
Published: 2020, Crown, a division of Random Penguin House LLC
Summary: A gripping tale of the darkest hour for Great Britain during WWII from 1040-1941 when Germany was bombing London every night and how Winston Churchill held the country together through courage, inspiration and tenacity.

Name of Book: The Widow Cliquot
Author: Tilar J. Mazzeo
Published: 2008, Harper Collins
Summary: A story of an international champagne empire founded in 1772. Thru the efforts of Madame Cliquot after the death of her husband, Cliquot became one of the foremost champagnes in the world.

Name of Book: The Boys in the Boat: Nine Americans and Their Epic Quest for Gold at the 1936 Berlin Olympics
Author: Daniel James Brown
Published: June 4, 2013, Viking/The Penguin Group
Summary: It is the true story of the University of Washington eight-oar varsity crew who came from obscurity to achieve the greatest achievement, winning the gold medal at the 1936 Olympic games in Berlin, Germany, hosted by Adolf Hitler.

MORRIS G. SHORE

Name of Book: The Wise Men
Authors: Walter Isaacson and Evan Thomas
Published: 1986, Updated 2012, Simon & Schuster
Summary: The story of six presidential foreign affairs advisors, starting with FDR and ending with LBJ. The six were Dean Acheson, Charles Bohlen, Averell Harriman, George Kennan, Robert Lovett and John McCloy. A great history of American diplomacy during the time these men served as advisors.

Name of Book: Agent Sonya
Author: Ben Macintyre
Published: 2020, Crown, a division of Random Penguin House LLC
Summary: This is a true story of a very successful Russian spy beginning in the early thirties through the war years and during the cold war. She was a German Jew who became an avowed communist. Like all of Macintyre's books, it reads like a novel. The NY Times review of the book can be found at <https://www.nytimes.com/2020/09/15/books/review/agent-sonya-by-ben-macintyre-an-excerpt.html?smid=em-share>.

Name of Book: American Dirt
Author: Jeanine Cummins
Published: 2020, Macmillan Publishers
Summary: A story about the ordeal of a Mexican woman who had to leave behind her life to escape Mexican drug cartels to the United States as an undocumented immigrant with her son. The book is a good read; however, after its publication it created a number of controversies. According to its critics, the book paints an inaccurate picture of Mexico.

RONALD E. THOMPSON:

Name of Book: Camino Winds
Author: John Grisham
Published: 2020, Doubleday, a division of Penguin Random House LLC
Summary: This is a sequel to Grisham's CAMINO ISLAND. Bruce Kable is a bookseller on Camino Island. He is a collector of old, valuable and some stolen books. Mercer Mann is back to find peace and author a book. They suffer a terrible, devastating hurricane during which there is a brutal, unexplained murder. A whodunnit follows. A page turner.

Name of Book: Theodore Roosevelt for the Defense
Authors: David Fisher and Dan Abrams
Published: 2019, Hanover Square
Summary: Past President Roosevelt is sued by William Barnes for libel after he published a paper claiming Barnes was a corrupt politician in New York. The author uses actual transcripts of the trial and takes you through the highlights and pays particular attention to the direct cross examination of Roosevelt and how he responded. Roosevelt's reputation is on the line. Interesting account of a 1915 major trial.

Name of Book: Beneath the Scarlet Sky
Author: Mark T. Sullivan
Published: 2017, Amazon Publishing
Summary: This is a story of the life of a young Northern Italian male at the outset of WWII. He wants nothing to do with AXIS. He escapes to a Catholic mountain retreat where he leads escapees across the mountains to Switzerland and safety. On his return to Milan he eventually joins the German Army as a spy and becomes the driver for a Nazi general. He falls in love with the general's housekeeper, who is six years older. A good read.

Practice Tip – Accessing Electronic Content From Service Providers

Wendy Janis Malkin & Sharon C. Rutberg – Salmon Bay Law Group, PLLC

Probate clients may want to gain access to electronic information left behind by their loved one. Obtaining this electronic information, or “content,” can require a trip to court.

To streamline a personal representative’s access to digital information, a will should contain language explicitly authorizing the PR to access the contents of electronic communications and the contents of any other type of electronic account, including photos and documents.

It is important for the will to refer to “content of an electronic communication,” because Washington’s Uniform Fiduciary Access to Digital Assets Act, RCW Ch. 11.120, distinguishes between content (which includes the substance of communications) and a catalogue of electronic communications. It is important to include a reference to the “contents of any other accounts” in case electronic photographs and documents are not considered “communications.” A catalogue is a list of sent and received emails with email addresses and dates, but without the content of the emails.

An electronic service provider, such as Google, may require a court order to release electronic content to a PR, even if the decedent included explicit consent in a will, but having the explicit consent will make success in obtaining the content easier and more certain. Having explicit consent to release of content paves the way for obtaining a court order finding sufficient consent under the Federal Stored Communications Act, *18 U.S.C. §§2701 et seq.*, as well as RCW 11.120.

In a recent probate matter, the PR’s deceased husband had a Google account that included Gmail, Google photos, and Google drive. The decedent had stored

family photos on Google photos, used his Gmail account to track the family finances, and stored family documents on Google drive. Understandably, the spouse/PR wanted to retrieve all of this data.

The PR followed Google’s online directions to request post mortem access to an account. In addition to answering basic questions, the online system required her to upload a copy of her driver’s license, a death certificate, and any other supporting documents. The PR uploaded her late husband’s will and her letters testamentary. Notably, the will did not provide consent for the PR to access digital assets. Before the PR could submit her request to Google, she had to click a box agreeing that she would have to obtain a court order to get the contents of the account.

The PR’s request for access was approved, on the condition that she get the court order. Google provided a sample court order and warned that the PR’s order must contain substantially the same language as the sample to have Google release the contents of the account. Google required the court to order that (1) no provision of state law or the Federal Stored Communications Act prohibited Google from disclosing to the PR the contents stored in decedent’s accounts, (2) there was sufficient consent pursuant to the Stored Communications Act to release the contents of the accounts, and (3) the PR had the legal right to obtain the contents of the accounts.

If the will does not explicitly authorize the PR to access the contents of electronic accounts, then language of the Stored

Communications Act, *18 U.S.C. §2702*, does not give a clear answer as to whether there is sufficient consent under the statute to release the contents of an account to a PR. The Act prohibits electronic service providers from voluntarily disclosing the contents of users’ accounts unless certain exceptions apply. One such exception provides that voluntary disclosure may be made with the lawful consent of the originator, addressee, or intended recipient of the communication. A second exception provides that voluntary disclosure may be made to the agent of the intended recipient or addressee of a communication. However, at least one court has held that a PR is not an agent of the decedent.¹

RCW 11.120.070 says that disclosure of the content of electronic communications of a deceased user shall be made if the user consented to such disclosure or if a court directs such disclosure based on certain items of evidence that the PR must produce. One such item is evidence of the decedent’s consent to disclose the content of electronic communications. Evidence of consent of a user may be shown, if not given through an online tool, through language in a will, trust, or power of attorney.

The Washington statute also says that the custodian must be provided with a court order if it requests one. The custodian can request a court order stating that, among other things, disclosure would not violate the Federal Stored Communications Act, the user consented to the disclosure, and disclosure of the content is reasonably necessary for the administration of the estate.

In the probate matter described above, the PR was able to get a court order that used the language

Continued...

Continued from page 11...

Practice Tip

required by Google, which included a finding that disclosure would not violate any state or federal law and there was sufficient consent under the Federal Stored Communications Act, even though there was no explicit consent in the will. Google released the contents of the decedent's Gmail, Google photos, and Google drive to his spouse, the PR. Careful drafting of will provisions to include explicit consent to disclosure of digital content may avoid the need for a PR to show that an exception exists under the applicable statutes and provide a more certain outcome. ■

1 *Ajemian v. Yahoo!, Inc.*, 478 Mass. 169, 84 N.E. 3d 766 (2017), is the only case to address the issue of whether there is sufficient consent under the Stored Communications Act if there is no will authorizing the PR to access the content of the digital assets. The court held that although the PR is not an agent of the account holder, the PR could lawfully consent on the account holder's behalf, bringing the matter within an exception to the Act. At the time *Ajemian* was decided, however, Massachusetts did not have a uniform access to digital assets act.

ADMINISTRATIVE LAW
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Emeritus Pro Bono: Tapping the Potential

BY ALTHEA PAULSON



Althea Paulson

practiced securities and corporate law in New York City and Seattle before she opted for inactive status while raising her family. She has been a small business owner and a freelance writer, and has served on multiple nonprofit and governmental boards. Since 2016, she has done pro bono work for clients of an immigrant rights nonprofit under a U.S. Department of Justice accreditation program. She currently serves on WSBA's Pro Bono and Public Service Committee. She can be reached at altheapaulson@gmail.com.

At its July meeting, the WSBA Board of Governors unanimously approved a set of recommendations aimed at increasing the number of lawyers who opt for emeritus pro bono membership status under the WSBA's Admission and Practice Rules (APRs). After the vote, WSBA President Rajeev D. Majumdar hailed the action as "one of the most significant and structural things we have done during my time on the Board of Governors to affect the actual practice of law and members' ability to contribute to the well-being of society."

The recommendations were submitted by the WSBA's Pro Bono and Public Service Committee (PBPSC) after several years of study and analysis of barriers and disincentives encountered by members seeking emeritus pro bono status.

Emeritus pro bono members may only practice law with Qualified Legal Service Providers (QLSPs), which are Washington nonprofits dedicated to providing legal services to low-income clients.¹ These lawyers are not allowed to receive compensation for their work. They pay annual license fees equivalent to those of inactive members, currently \$200 for attorneys. Although this status has been available for over 20 years, there were just 116 members as of August. In contrast, there are over 5,500 Washington lawyers in inactive status.

Of particular significance to the PBPSC was the 2015 Civil Legal Needs Study, which showed that only 24 percent of Washington's low-income population who face a civil legal issue are able to obtain assistance from an attorney.²

Providing more flexibility in the rules for emeritus pro bono admission is one way to meet the ever-growing need for pro bono legal services while also retaining legal knowledge and skill within the profession. Additionally, it would support WSBA members' transitions across the life of their practices.

The PBPSC reviewed emeritus and pro bono programs in other jurisdictions and sought input from QLSPs throughout the state. Based on this research, the PBPSC recommended, and the Board approved, the following changes:

- Elimination of the requirement of active practice for five out of the last 10 years;
- Waiver of annual license fees for members with emeritus pro bono status who provided at least 30 hours of pro bono service in the previous calendar year;
- Clarification of the rules regarding the return to active status from emeritus pro bono status;
- Affirmation that the rules permit emeritus pro bono members to volunteer with multiple QLSPs;
- Change of the name of the status to "pro bono" status and clarification that members do not need to be retired or close to retiring to qualify, and that inactive members are eligible to apply for the status.

The suggested changes must be submitted to the Washington Supreme Court under General Rule (GR) 9, which sets out a schedule for review. If approved, the changes would become effective on Sept. 1, 2021, unless the Supreme Court grants expedited consideration as allowed by GR 9. The Board has requested expedited consideration because of the ongoing unmet legal needs of people across the state, which have only increased and become more urgent due to the COVID-19 pandemic and resulting economic downturn.

For more information on emeritus pro bono status, see the article in the October 2019 issue of this magazine entitled "Untapped Potential." [BN](#)

NOTES

1. APR 3(g).
2. 2015 Civil Legal Needs Study Update, available here: https://ocla.wa.gov/wp-content/uploads/2015/10/CivilLegalNeedsStudy_October2015_V21_Final10_14_15.pdf.

Providing more flexibility in the rules for emeritus pro bono admission is one way to meet the need for pro bono legal services.



NW Sidebar

The Voices of Washington's Legal Community



I Dissent: The Legacy of Justice Ruth Bader Ginsburg

September
23, 2020



Perhaps the most impactful of Justice Ruth Bader Ginsburg's famous dissents came in a case about gender pay inequity in the workplace: *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007). Plaintiff Lilly Ledbetter began working as a supervisor at the Goodyear Tire plant in Gadsen, Alabama, in 1979. She worked there for 19 years and for most of that time was the only woman manager. In her book, *Grace and Grit*, Ledbetter says she experienced sexual harassment and heard negative comments from male coworkers about women working in the plant. In 1998, much to her surprise and dismay, Ledbetter

found a piece of paper in her mailbox at work that showed her salary \$44,724 and the salaries of her male peers: \$59,028, \$58,464, and \$58,226.

In March 1998, Ledbetter filed a charge with the federal Equal Employment Opportunity Commission (EEOC) alleging that Goodyear paid her less because of her sex, in violation of Title VII of the Civil Rights Act of 1964. She received a right-to-sue letter from the EEOC and sued Goodyear. A jury found in her favor and awarded her \$3.5 million: \$223,776 in back pay; \$4,662 for mental anguish; and \$3,285,979 in punitive damages. The award was reduced by the trial judge to \$360,000. Goodyear successfully appealed to the 11th Circuit on the grounds of untimeliness. And the case ultimately made its way to the U.S. Supreme Court.

The issue for the Court was this: When did the time to file a charge of pay discrimination with the EEOC begin to run? A charge of discrimination must be filed with the EEOC within 180 days (or 300 days in some states like Washington) after the alleged unlawful employment practice occurs. The majority held that each pay-setting *decision* made by Goodyear started the 180-day clock running.

“Ledbetter should have filed an EEOC charge within 180 days after each allegedly discriminatory pay decision was made and communicated to her. She did not do so, and the paychecks that were issued to her during the 180 days prior to the filing of her EEOC charge do not provide a basis for overcoming that failure.” 550 U.S. at 628-629 (2007).

Justice Ginsburg, no stranger to gender discrimination herself as a young lawyer, dissented. She wrote about the realities of gender pay inequity in the workplace:

“Pay disparities often occur, as they did in Ledbetter’s case, in small increments; cause to suspect that discrimination is at work develops only over time. Comparative pay information, moreover, is often hidden from the employee’s view.” 550 U.S. at 645.

A pay raise is different from an employment decision like a failure to promote, which is a discrete act that is communicated to the employee. Pay disparities, Justice Ginsburg argued, are recurring acts that are cumulative in impact over time. Ledbetter started in 1979 at a salary in line with her male peers, but over time discriminatory yearly pay raises resulted in her falling dramatically behind. The back-pay provisions of Title VII allow for back pay for two years—so according to Justice Ginsburg’s reasoning, Ledbetter should have been able to seek damages for the discriminatory paychecks she received in 1997 and 1998.

Justice Ginsburg, who read her dissent from the bench, said, “Once again, the ball is in Congress’ court.” Congress took the ball and ran with it. The Lilly Ledbetter Fair Pay Act of 2009 provides that the time for filing a charge of pay discrimination starts anew with each

discriminatory paycheck. Pub. L. No. 111-2. It was the first law signed by President Barack Obama, with Lilly Ledbetter herself standing next to him. According to an article in the [New York Times](#) written shortly after Justice Ginsburg's death, the justice had a framed copy of the Lilly Ledbetter Fair Pay Act on the wall of her chambers and considered the law's passage one of her greatest achievements.

About the Author



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