

# HearSay

THE OFFICIAL MAGAZINE OF THE CLARK COUNTY BAR ASSOCIATION

May 2020





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## Clark County Bar Association

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# HEARSAY MAGAZINE

*The CCBA's Official  
Members' Magazine*

*The Clark County Bar Association is a professional organization that serves to support our local attorney community through providing education and networking opportunities designed to enhance and foster better relationships within the local legal community.*

## MEDICAL MALPRACTICE WRONGFUL DEATH PERSONAL INJURY



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# May Hearsay Contributors



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Paige practices Real Estate and Construction law at Schwabe, Williamson & Wyatt. She is the current President of the CCBA.



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Erica practices Family Law at Gevurtz Menashe. She is a former President of the CCBA Family Law Section.



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Kathryn aims to give personalized, wise counsel and looks forward to a long and fulfilling career as a corporate attorney.



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More than 25 years of experience training and working with attorneys and legal staff in all aspects of law firm financial records.



**Heather  
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Heather's sole practice focuses on Estate Planning. She especially enjoys making house calls to clients.



**Jill  
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Jill Sasser's practice emphasizes estate planning, trust and estate administration, probate, and guardianships.

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# Like a Mother

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- Over 50 jury trials to conclusion in Clark County
- 2019 Clark County Injury Verdicts:  
Insurance offer of \$20,000 — Verdict of \$205,000  
Insurance offer of \$12,000 — Verdict of \$40,000
- Fee splits as per RPCs are welcome.

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# DEAR CCBA MEMBERS,

We know that this is a very difficult and unprecedented time for our legal community and the world. It certainly has been a crazy time for every one of us at the Clark County Bar as well, but we continue to try and find ways to serve you, our members. If you have an idea or just need something, please do not hesitate to reach out to one of the Board of Trustees or Lisa Darco. We appreciate you and are committed to serving our growing legal community in this changing landscape. Be on the lookout for new content and information in the next few weeks!

We are reaching out today to give you an update on CCBA operations. The CCBA General Meeting was scheduled to take place in mid-March. We had hoped to reschedule it to later this spring, but with the extended Stay Home Order, we want to take this opportunity to offer you a mid-year assessment of the CCBA and updates from our sections and committees. We would have loved to have conducted this meeting in-person with all of you over a delicious lunch at the Fort Vancouver Red Cross Building, but will need to settle for a written report (at least for now). Please take a moment to review the information provided below. We can see each other (hopefully) in September for our annual meeting.

Please note that we have updated our website with links to each of the Orders issued by the Clark County Superior and District Courts. That link is: <https://www.ccbawashington.org/member-resources/covid-19-resource-page>

Stay safe and healthy!

Your CCBA Board of Trustees



## Section and Committee Updates:



**Superior Court: Hon. Scott Collier**

The additional Judge 11 was passed by the Legislature and signed into law by the Governor. We are waiting to see how this COVID-19 effects the implementation and timing. We should know that in a few weeks. We are starting to plan on how we transition back to full court operations but there isn't anything to report at this time as much of it will be controlled by future decisions of the Governor and Supreme Court.



**District Court: Hon. Kelli Osler**

COVID19 is bringing a new normal to District Court. Recently, the Supreme Court of Washington filed a new revised and extended order regarding court operations.

As a result, District Court has amended our most recent Administrative Order regarding our local court practices. For further details, this order may be found on our district court webpage located at [www.clark.wa.gov/district-court](http://www.clark.wa.gov/district-court). With the forced partial closure of courthouse operations many court dockets were cancelled. Our staff has been diligently working on developing a platform to handle a variety of court hearings telephonically/virtually. We anticipate even with the Governor eventually lifting the restrictions of the current Stay at Home – Stay Safe Order that our future in-person dockets will be run at a much smaller capacity than in the past to ensure the health and safety of all courthouse participants. In the very near future you will receive more detailed notification on the rescheduling of court cases that were unable to be held as well as the scheduling of upcoming new cases. In the meantime, per our webpage you will be able to see the many matters we are still processing electronically. Thank you for your anticipated cooperation as we develop our new normal.



**Treasurer's Report: Jesse Jacobs**

The Bar's financial position continues to build on strong prior years. Moving our mailing to a digital format has significantly decreased our costs. Revenue continues to trend strong and our collection of bar dues is on pace with prior years.

CLE revenue has also been trending up as attendance has increased over the last year. Due to the pandemic and cancellations of upcoming CLEs, however, we are anticipating a loss by the end of the fiscal year. The loss is somewhat minimized due to our current strong position and reserves.



### **Family Law Section Report: Emily Roberts**

FLS has postponed its April and May meetings until the summer. June 2020 is still scheduled as normal at this point. FLS is accepting nominations for next year's FLS board – please nominate yourself or others. The positions are President, Vice President, Secretary, Treasurer, and Membership Coordinator.



### **Young Lawyers Section Report: Blake Van Zile**

YLS held our elections late this year, but we are happy to report a full board and we have significantly increased attendance at our events this year. We were very lucky to have (now Chief) Justice Debra Stephens speak at our ethics CLE in September. We have had a handful of fun happy hours since and got to a Winterhawks game just under the wire on March 8! We have been working on several new events for the spring/summer, but we may have to save them until next year. YLS would like to thank the CCBA and the greater Clark County community for their continued support of our section. We ask that you continue to encourage new lawyers to get involved and of course come to our events!



### **Guardianship, Probate & Elder Law Section: Rachel Brooks**

We are trying to arrange webinars for our members so that they can keep learning and getting credits, and we welcome anyone who has ideas or wants to volunteer to present to us.

### **Hearsay Committee:**

It's the little magazine that could! To save costs, we brought the production of Hearsay in house this year, and the efforts of Lisa Darco and Mariah Mantzke are so appreciated. We also thank all of our contributors, and our committee (Christina Phelan, Jesse Jacobs, Brad Thayer, Jill Sasser, Art Bennett, Kathryn Unbehaun, David Ridenour and Nathan Petersen) for their time and hard work. We always need more writers, photographers and committee members. We want your substantive legal

updates, your section reports, your CLE recaps, your funny anecdotes, your beautiful travel photos and your hilarious local gossip! Please consider writing a piece for Hearsay, sending in some pictures or joining the committee!

### **CLE Committee:**

All CLEs scheduled for this spring have been moved to the fall. If you pre-registered we will be sending you information on new dates & times and all other relevant details as we have them. We will have an exciting and robust CLE program ready to kick off this fall! If you have ideas for topics please reach out to Jane Clark, jane@janeclearklegal.com or Lisa Darco, ccbamanager@ccbawashington.org.

### **Southwest Washington Lawyer Referral Service:**

The SWLRS is still open and operational. Calls will not be answered live but messages will be returned in a timely fashion. If you know of someone who needs legal assistance please direct them to (360) 695-0599.

If you're interested in participating in the SWLRS and receiving referrals, please check out our website for more information: <https://www.ccbawashington.org/member-resources/join-the-southwest-washington-lawyer-referral-service>

### **Formal Swearing In Ceremony:**

Our Spring Formal Swearing In Ceremony was cancelled. If you know of someone that wishes to be sworn in, please see the information below:

APR 5(f) – The Washington Supreme Court has issued an order temporarily waiving the requirement that the oath be taken in open court and authorizes judges to administer the oath remotely or virtually using face-time technology. If the judge conducting the swearing-in is equipped and has approved this type of process, please email the judge a copy of the oath form for his/her signature. Once all parties have signed the oath form, the applicant is responsible to submit the completed oath by email to admissions@wsba.org. Please keep a copy for your records.

If you want to schedule a telephonic oath, you can contact Clark County District Court Administrative Assistant Rebecca DeMoss at 564.397.4171 or via email Rebecca.demoss@clark.wa.gov

Finally, if you need help during this time, or you are someone that can assist others during this time, please reach out to Lisa Darco at the CCBA office (ccbamanager@ccbawashington.org) and we will try to connect you. We are all in this together.





# *Like a Mother*

by: Erica Aquadro

Oprah Winfrey once said, "Biology is the least of what makes someone a mother." As many of you know, my husband and I welcomed a baby girl to our family last September. She is happy and healthy and perfect in every way. What many of you may not know is that I am also a stepmother. My husband's children were two and four years old when I met them and they are about to turn eight and ten. We are fortunate enough to spend about 90% of the year with them and it probably goes without saying that I love them like they are my own.

I often joke that stepmothers get a bad rap. With the exception of a certain '90s tearjerker starring Susan Sarandon and Julia Roberts, the general consensus in movies is that stepmoms just want your dad's money and they'll ship you off to boarding school in Switzerland at the first opportunity, which is ridiculous because everyone knows the best boarding schools are in France! Kidding aside, I am so thankful I met them when they were young. I sympathize with those who met their stepkids when they were older and faced more pushback. It's no small thing to accept a new parent figure, especially if there is any turbulence between your biological parents at the time. I am beyond lucky that ours have always been loving and accepting towards me. It probably helps that they are the sweetest kids on the planet. Although they aren't teenagers yet, so I know I'm not entirely out of the woods!





Parenting is hard (especially during a pandemic), but it is also incredibly rewarding. I try not to compare myself to other parents because, if I looked, I'm sure I'd feel inadequate in some way. There is so much material out there about motherhood and, of course, the 'balance' for working moms (not so much dads...), which can create a lot of pressure to do things perfectly or meet some unrealistic standard. The truth is our kids don't need the perfect mom – they just need a happy mom. And you don't have to have given birth to be an instrumental figure in a child's life; motherhood comes in all shapes and sizes. To everyone who's ever offered a helping hand or kind words while I navigate this crazy journey: I appreciate you! To anyone who's out there struggling or fighting an invisible battle: I support you! It takes a village!



# Bookkeeping Tips:

## PPP Loan Forgiveness: Overview and Thoughts for Tracking

by: *Emanuela Sandri*

### Overview

Here is a summary of the PPP (Paycheck Protection Plan) loan forgiveness conditions. More detail is available at [hershnerhunter.com](https://hershnerhunter.com) > News & Articles > Legal Updates and Resources regarding Coronavirus (COVID-19) > SBA Financing Updates > Maximizing PPP Loan Forgiveness.

- 8 week forgiveness period begins on date lender makes funds available to borrower.
- Headcount - From <https://www.jdsupra.com/legalnews/ppp-loan-forgiveness-further-guidance-10550/>

**THE HEADCOUNT REDUCTION.** The amount you manage to pay out in approved costs for the eight-week period determines your maximum forgiveness. But, this can be further reduced due to declines in headcount.

You begin by measuring the number of full-time equivalents (FTEs) during the eight-week period. The FTEs equal the average number of employees you have over a given period who work at least 40 hours per week. Say that for a given week you had three employees who worked 40 hours that week, two who worked 20, and four who worked 10. For that week, you would have five FTEs. For longer periods, you would take the numbers of regular hours (not to exceed 40 per week per employee) divide that by the number of weeks in the period, and divide that by 40. So, if during the eight-week period you had 1,472 regular hours, divided by eight weeks, that means 184 hours per week, then divide by 40 and you get an average of 4.6 FTEs.

After calculating your FTEs for the eight-week period, you will then compare this to the FTEs you had in either of two baseline periods. The baseline period can be either 2/15/19 to 6/30/19 or 1/1/20 to 2/29/20, whichever has fewer FTEs. If you had 10% fewer FTEs in the eight-week period than in your baseline period, then your loan forgiveness is proportionately reduced, by that same 10%.

- At least 75% of funds must be used for payroll costs
- What counts as payroll costs?

Wages (\$100,000 annualized cap for each employee) – because loan forgiveness is based on an 8 week period and not monthly, the amount of forgiveness paid to an employee that makes more than \$100,000 is \$15,385

Health insurance – company paid portion (e.g., if total amount paid to the health insurance company is \$5,000 and employee deduction on paycheck is \$1,000, the amount of forgiveness is \$4,000)



## 401k company contributions

Company paid state and local payroll taxes on compensation, such as state unemployment, Washington Labor & Industries and Oregon Tri-Met

- What does not count as payroll costs?

Excess compensation for employees with annualized salaries over \$100,000

Employer share of FICA taxes (Social Security and Medicare)

Compensation of an employee whose principal place of residence is outside of the United States

Qualified sick or family leave wages which a credit is allowed under the Families First Coronavirus Response Act) which was already paid

- 25% of funds can be used for nonpayroll costs in force, started or incurred before February 15, 2020

Rent under lease agreements (in addition to office rent, there is yet no guidance if rent includes equipment leases, such as copier and postage machine)

Utilities (electric, gas, water, transportation [no guidance yet, but has been interpreted to mean fuel costs for business vehicles], telephone (no clear guidance if this includes cell phones) and internet access

Interest on mortgage obligations

## Thoughts for Tracking PPP Loan

### Create Accounts

- If a new bank account is opened, add new bank account named PPP Checking Bank Name
- Create a new long term liability account named PPP Loan Bank Name – PPP can be paid back in 2 years, thus the account type long term liability
- Create a new Other Income account named PPP Loan Forgiveness

### Record Proceeds

- Enter deposit in bank account and select the long term liability account PPP Loan Bank Name (the 8 week period for loan forgiveness starts the day you got the loan)

### How to Account for Forgiveness

- Calculate forgiveness amount – here's a spreadsheet:  
[https://www.youtube.com/watch?v=tAX\\_PAQp3hA](https://www.youtube.com/watch?v=tAX_PAQp3hA)
- For forgiveness amount, create a general journal entry to Debit long term liability account PPP Loan Bank Name and Credit other income account PPP Loan Forgiveness



# *The Good Boy<sup>🐾🐾</sup> Files*

*by: Kathryn Unbehaun*

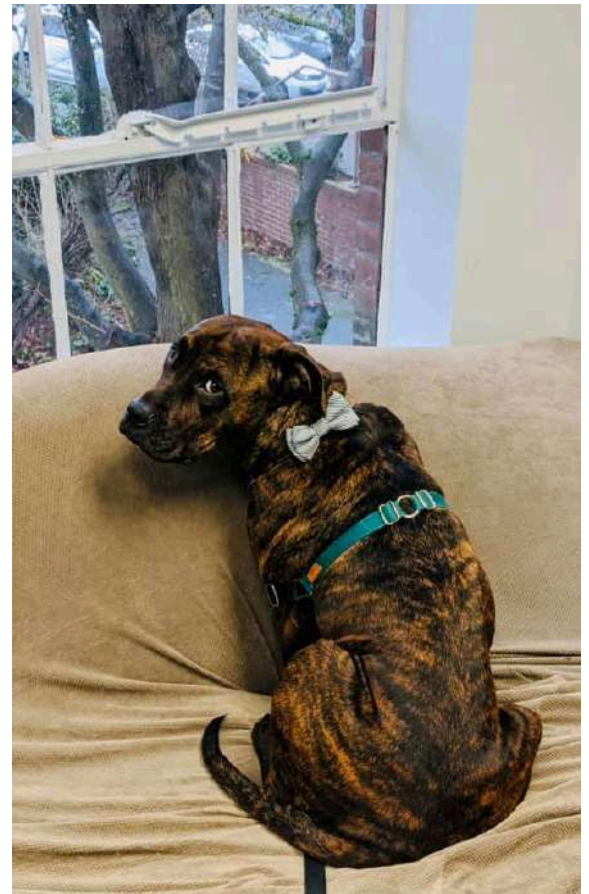
Finally, the premium content you've been begging for is here! We're making fetch happen. We're working pro-bone-o to bring you profiles on law office dogs (and dogs/cats/hamsters/lizards/fish) in Clark County. We're barking up all the trees. Digging up all the... you get it. Without further ado here are this month's Good Boys and Girls!

## **Maverick**

Owners: Eli Marchbanks and Amber Rush

Firm: Navigate Law Group

Amber and I got Maverick from the Camas humane society in 2016. He was about a year old at the time. All we know about his past was he came from a shelter in San Jose, CA and spent a couple weeks in Camas before we found him. We have no idea what his breed make-up is. There's almost definitely boxer and maybe mastiff. He's clumsy, goofy, and sweet. He's friends with everyone at Navigate and even some of the clients. However, he has four best friends, Nina (assistant at Navigate), Raasi (Amber's sister), Derek (Amber's brother), and Terry (Eli's mom). He is a pretty well-behaved boy and adheres to his training unless he's with one of his best friends. In that case he finds creative ways to technically comply with his training commands and still play. For example, if he is commanded to lay down and one of his best friends walks in, he will army-crawl scoot to them, but somehow still stay laying down. He would have made a good lawyer.



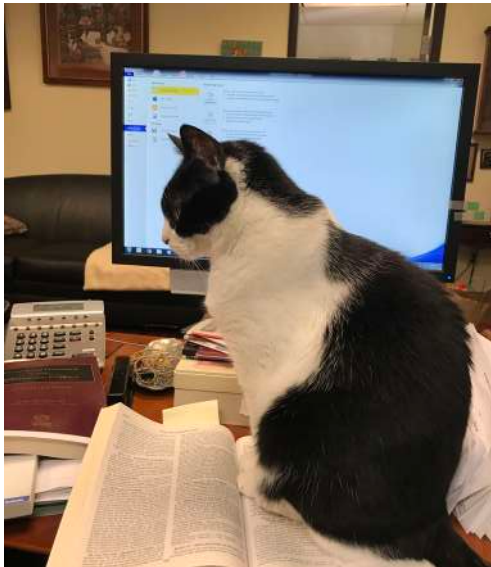


## Alibi

Owner: Hon. Suzan Clark

Firm: Clark County Superior Court

Alibi wandered into my dad's machine shop in March, 2013. After being scanned for a microchip at the local vet and a check with the local humane society, Dad called me about providing a home for the stray kitty. As Dad lives on a farm out in the country, dumped animals arrive at his doorstep periodically. Initially thought to be a girl, I was more than a little surprised when the vet called to say she was a he and had a neutering scar where his testicles used to be! We think he is about 8 years old.



During my two year rotation at the Family Law annex, Alibi frequently came to work on Fridays when I was making a trip to see Dad at the farm for the weekend after work. He was very popular with staff and attorneys. I swear the parties settled at every settlement conference he attended! Alibi was a champion spider hunter during his annex career. Alibi is exceptionally laid back and gentle. If he heard me getting stern with someone on the video monitor from court, he would hide under the desk. Many people including attorneys and police officers stopped by to visit him. After my return from the annex to the main courthouse, he retired from working. Occasionally he comes in on a Sunday to assist with probable cause duty.

## Winston

Owners: Michelle & Ryan Nisle

Firm: Miller Nash Graham & Dunn LLP

When he started coming to work: As soon as I joined Miller Nash. It was one of the conditions for my joining the firm because previously, I was out on my own and he came with me every day! Although I'm not sure Winston would approve of the term "coming to work with me," as he believes himself to be my (and everyone else's) supervisor.





What he likes best about work: The “aunties”!!! He has many aunties that he visits throughout the day to go “grocery shopping” for treats. They have all started to stock their stations, and he “shops” his way up and down the hallways to get attention and treats.

How old he is: On May 4, he turned 8 years young!



How he joined your family and a little about his personality: Winston is adopted from GPA Northwest, a nonprofit that drives all over the country to pick up retired racer greyhounds and transport them to places where there is no longer racing and there are more potential homes in which to place the retirees! Win was a foster dog, and we were meant to get him ready to be adopted—when dogs come straight off the track, they are not at all prepared to live in human homes. They don’t understand stairs, toys, beds, or anything else. While I was away on a trip, Ryan, my husband, picked him up from GPA and they came together to get me from the airport, with Win in the back of our SUV. When I went to put my bags in the backseat, his tiny head attached to his loooooong neck popped up over the seat and he licked my face (not necessarily something that greyhounds are known for), and at that moment I knew he was MY DOG and we were “foster failures.” Win is an absolute troublemaker when left alone (his favorite thing to do is to eat paper . . . tissues, napkins, you name it). When he is with me, he sleeps about 95% of the time. Even though I do most (read ALL) of the work, he happily takes all the credit from my clients, and most of them pay him handily in treats and toys! He attends almost all my client meetings and work meetings. Recently I was diagnosed with epilepsy, and Win has become a certified service dog. After my seizures I tend to wander and get into dangerous situations, so Win has been trained to respond when I am having a seizure and keep me in place and safe from danger.

**\*\*Would you like your good boy or girl to be featured in Hearsay? Email Kathryn at [kathryn@sampath-law.com](mailto:kathryn@sampath-law.com) and your dog/cat/hamster/lizard/fish, (we don’t discriminate) could appear in the next issue. Bonus points if you include a picture of your dog at the office.**

# Law Library

## ACCESS LAW LIBRARY SERVICES REMOTELY

The Law Library is physically closed to all until directives from the governor, court, and health officials recommend reopening. Under the governor's 4-step plan, the earliest we can reopen is the week of June 15, although it may well be later than that. In the meantime, we want to be sure you are aware of resources that can help you.

### Legal service providers on our website

Westlaw and Lexis have both made their legal research services available remotely. We have a link to each of them on our home page at [www.clark.wa.gov/law-library](http://www.clark.wa.gov/law-library) where you can sign up. Access is time/hour limited, but will allow you to access excellent resources while home. Lexis has even included more materials than we currently have in our contract with them

### Reference by phone or email

We are providing remote reference from home. Please feel free to call us at 564-397-2268 or email us at [lawlibrary@clark.wa.gov](mailto:lawlibrary@clark.wa.gov) with your questions. We will get back to you with possible resources or information. During our normal open hours, 9-3 Monday-Friday, we are returning calls and emails within an hour. If we call, please note that our phone number will display as blocked. If we are calling a phone on which you have disabled blocked numbers, we will be unable to return your call.

### Document delivery

I am in the office once per week, on the weekends. If you have need of information from a CLE or a practice guide, please let us know. Within reason, we are happy to scan and send materials to you. You can request a particular cite or you can let us know what as much about what you are seeking and let us select something to send that we believe will be helpful.

### Reopening

We are making preparations for reopening, including purchasing disinfectants, hand sanitizer, and masks for staff to wear. We are also figuring out how to provide in-person services going forward while maintaining physical distance and minimizing contact. When we reopen, we will also be reactivating keycards.

### Stay updated

We are keeping an email list of people who want to be notified when we reopen. If you would like to be on that list, please send us an email and let us know. You can also see the latest information on our homepage where we will post anything we learn about reopening dates or any restrictions on our services.

Thank you for your support while we all navigate the "new normal" world.





# *Lawyer BFFs*

*by: Jill Sasser*

## **Dear Members:**

We are happy to present the latest installment of “Lawyer BFFs,” the series that celebrates lawyers and friendship. During this difficult time, friendship and connection are more important than ever. We hope that you are hanging in there, and connecting with your friends. This month, we are happy to feature “Lawyer BFFs” Jesse Jacobs and Christina Phelan. Lawyer BFFs Jesse and Christina are keeping in touch these days through Zoom happy hours. If you have a lawyer BFF (even if that BFF is not a local lawyer), please email me at [jill.sasser@landerholm.com](mailto:jill.sasser@landerholm.com). We’d love to feature you in a future issue!

### **1. How did you meet?**

Jesse: We had lunch on doilies with our dads and talked about nepotism.

Christina: Our dads made us go to lunch together and then Jesse asked if I wanted to be nepotism friends.

Editor’s note: Jesse’s dad is local personal injury attorney Don Jacobs. Christina’s dad is local criminal defense attorney Tom Phelan.

### **2. What makes you lawyer BFFs?**

Jesse: We hang out basically on muscle memory at this point and we're the best part of group texts. Plus, I can wander through the bushes to get to her office.

Christina: Our offices are next door to each other so it makes it really easy to take impromptu coffee breaks. Also, Jesse has a Super Nintendo with Mario games...

### **3. Favorite thing about your lawyer BFF?**

Jesse: She's my designated Lyft driver and supports my sense of fashion.



Christina: His weird sense of humor and terrible fashion choices that he freely lets me make fun of.

#### **4. Favorite memory with your lawyer BFF?**

Jesse: Recurring Barrister's Ball raffles and after socializing.

Christina: This one night at Boomers (RIP) when a bar patron kept asking both Jesse and I to Ballroom dance with him

#### **5. Favorite thing to do with your lawyer BFF?**

Jesse: Squad nights. #cannolitogo

Christina: "Squad Nights" where we drink wine with Mark Sampath and Ben Melnick

#### **6. Anything else you want to share about being lawyer BFFs?**

Jesse: Christina, John Terry and I all went out together for their first romantic evening. Editor's note: John Terry (criminal attorney) and Christina Phelan are now married.

Christina: Jesse knows I hate the song Tubthumping by Chumbawamba and will remotely play it from the jukebox at Paul's Elbow Room whenever I am there. That about sums up our relationship.



# ***But How Do We Notarize All Them Documents?***

## ***A guide to Remote Online Notarization in Washington***



*by: Heather Norton*

As I write this, the Coronavirus rages on and we are on day thirty of Washington's stay-at-home order. Governor Inslee has now implemented some twenty-nine (?—I've lost count) executive orders to put out or manage the fires that keep popping up as a result of this pandemic. And in the mean time, we are at home compulsively washing our hands, rationing toilet paper, and cleaning our garages—because what else are we going to do while we're stuck at home?

I look out the window and wonder how this is affecting my colleagues, since we are all making changes to the way we practice law and are still adjusting to this new "weird normal." I've (firstly) been grateful that I still to have a job! And I've (secondly) been grateful that I have not had to scramble too much to implement new practice procedures. My small estate planning practice is based on a virtual business model. I work primarily from home, traveling to meet clients in their homes or meeting them via web conference or phone. My assistant works from home as well. So, the day-to-day operation of my practice has (thankfully) been largely unaffected. With the exception of one thing—the signing, notarization, and witnessing of the documents I create.

Right now, I have a slew of clients whose estate planning documents are ready to be signed, witnessed, and notarized. Thanks to Governor Inslee's executive order #20-27 and Senate Bill 5641, (the topic of this article) which authorize the remote online notarization of documents, my clients now have an option that allows them to execute at least some of their documents. Unfortunately, the order does not do anything to help with other documents (like wills, for example) which require that witnesses sign the document "in the presence of the testator." This explains why yesterday I, and my two witnesses, found ourselves standing outside the window of an elderly client's assisted living facility, watching through the window and communicating on speaker phone as he signed his will. But that's a story for another article.

Governor Inslee's executive order number 20-27 / SB 5641 is a huge help for folks who need documents notarized but who obviously can't be in the presence of a notary due to social distancing requirements. This article will take a look at Remote Online Notarization—what it is, how it works, and what this could mean for your practice now and in the future.

But first, some background...

Washington is one of twenty-one states to enact legislation to allow Remote Online Notarization (or RON), which allows a signer to appear before a notary using two-way

audio/video communication. RON should not be confused with “electronic notarization.” Electronic notarization (or e-Notary) requires that all the participants and the notary be physically present in the same room. In an e-Notary process, the signers and notary work together to effectuate a digital document. The signers affix their digital signature to the document and the notary affixes her electronic notary stamp. E-Notary offers a number of benefits—namely superior security, authenticity, audit trails, and document integrity, not to mention savings in cost and time, since it speeds up the signing process. These laws have particularly benefitted the mortgage and real estate industries. (because hello... have you seen how many documents are signed in a mortgage closing?) Washington authorized the use of e-Notary on July 1, 2018, under RCW 42.45.190, and WAC 308-30. Under these laws, Notaries who have received an electronic records notary public endorsement from the State department of Licensing may notarize electronic documents.

About a year later, Senate Bill 5641 was signed—which authorized Washington e-Notaries to perform notarial acts for remotely located individuals. (Remote online notarization, or RON). The law was set to add a new chapter to RCW 42.45 and become effective on October 1, 2020. But Governor Inslee’s emergency Order #20-27 removed the effective date provisions of SB 5641, allowing the law to be implemented immediately. (Side note: the order expires at midnight on April 26, 2020, unless, of course, Governor Inslee extends the order).

What are the legal requirements?

In a nutshell, the legal requirements for Washington’s RON law can be broken down into the following:

“Personal appearance” requirement. The law states that a remotely located individual may comply with the requirement to personally appear for a notarial act by using communication technology that allows the e-Notary and the remotely located individual to communicate with each other simultaneously by sight and sound.

The document. The e-Notary must be able to reasonably confirm that the record she is notarizing is the same document the remotely located individual is signing.

The signer’s identity. The e-Notary must identify the individual through personal knowledge, the oath or affirmation of a credible witness, or by using at least two different types of identity proofing.

Notarial certificate. This requires that a certificate of notarial act, indicating the act was performed using communication technology, be present with the printed notarial statement.

Record keeping. The e-Notary must create an audiovisual recording of the performance of the notarial act, which must be retained for at least 10 years.

Technology. The e-Notary must file with the Director of Licensing, the technologies the Notary will be using to conduct Remote Online Notarizations.



What does this mean logistically?

So how do these legal requirements translate into an actual RON process? Or, in other words, how does RON work in real life? If you were a Washington e-Notary, the process would look something like this:

- 1) You upload the documents to your RON platform (the third-party vendor you've contracted with to assist you in performing RONs).
- 2) After receiving the documents, the RON platform sends notice to the signer.
- 3) The signer accesses the RON platform's website and begins the identity authentication process.
- 4) The e-Notary receives notice the signer has accessed the website, and the platform connects the signer and the e-Notary over the shared document.
- 5) A two-way audio/video session is opened that records the session and completes the identity authentication process.
- 6) The signer electronically signs the document, and the e-Notary electronically notarizes the document (while each party can see and hear the other).
- 7) Copies of the executed documents are returned to you and the signer.
- 8) The audio/video recording and the authentication data is deposited in the Notary's electronic journal, along with the notarized documents.

What are the options for your practice?

While that may sound simple enough, there seems to be a fairly hefty learning curve involved in getting yourself (or your office staff) set up to notarize documents for your clients remotely. (Of course, if you have a Millennial in your office, it may not be a big deal). As near as I can tell, as of right now there is only one vendor, DocVerify, that allows you or someone from your office to act as the e-notary for your own clients. (Side note: I found their website to be confusing and not very user-friendly.)

A second option is to simply direct your clients to a provider like Notarize.com or NotaryCam.com. These providers allow you to upload the documents, and then assign a notary to work with your client. While you and your staff won't be the ones to provide the notary services, it can be a great way to get your clients' documents notarized quickly and remotely. Pricing starts at around \$25 per notarization.

The pros and cons

Of course, Remote Online Notarization is hugely beneficial as we find ourselves in the midst of COVID social distancing requirements. But even after this passes (this is going to pass... right?), I see a lot of benefits to adding a RON option for my clients. It can improve efficiency, offer greater convenience and flexibility and elevate the client

experience. That said, some client's may not appreciate the additional cost—especially when clients are becoming more cost conscious and consumer savvy. And for attorneys who would really prefer to act as the Notary, be prepared for a tricky learning curve in getting yourself set up. (If you venture down this path and find other, more helpful resources, let me know... or better yet- write a follow-up Hearsay article so we can all be in the know).

### Problems to address

Of course, with exciting changes come interesting new legal issues. For example: How to minimize or deal with unexpected parties who appear onscreen but who have not given their consent to be filmed and recorded (like a spouse who walks through the room); or how to allocate liability (say, between the notary, the platform, and the third party identity verification vendor). It will be interesting to see the issues that arise over the coming years and how they are resolved.

### Some handy references:

If you're interested in learning more, here are some handy resources:

#### Washington Notary laws:

<https://app.leg.wa.gov/RCW/default.aspx?cite=42.45>

<https://apps.leg.wa.gov/wac/default.aspx?cite=308-30>

#### Washington Notary handbook:

<https://www.dol.wa.gov/business/notary/docs/notary-handbook.pdf>

#### Articles:

[https://www.americanbar.org/groups/business\\_law/publications/committee\\_newsletters/banking/2019/201907/fa\\_2/](https://www.americanbar.org/groups/business_law/publications/committee_newsletters/banking/2019/201907/fa_2/)

<https://www.nationalnotary.org/notary-bulletin/blog/2019/11/the-state-of-remote-online-notarization>

<https://www.nationalnotary.org/notary-bulletin/blog/2020/03/states-emergency-action-remote-notarization>

<https://www.natlawreview.com/article/race-to-embrace-remote-online-notarization-on-response-to-covid-19-pandemic>



# *The Hearsay Needs You!*

How are you "Lawyering in the Time of Corona"? We want to see your workspaces, hear about your technology wins, and how you're balancing work and virtual schooling.

Remember vacations? Send us a picture and brief description of your last amazing vacation. We're all wishing and planning for the trips we'll take in the future.

Book reviews! What are you reading while you're spending more time at home?

Favorite recipes! Did you find that foolproof sourdough starter recipe? Have you made all the bread? Maybe donuts? Do you have some healthy choices that we should all know about to help us avoid the Quarantine 15?

Is there anything you're doing that we should know about??? Are there things you're curious about that we could put a roving reporter on? Let us know!

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PLEASE SEND ALL YOUR IDEAS AND SUBMISSIONS  
TO LISA AT THE CCBA  
[CCBAMANAGER@CCBAWASHINGTON.ORG](mailto:CCBAMANAGER@CCBAWASHINGTON.ORG)



Home: Vancouver, Washington has been my home for the last 19 years though I am originally from the Arizona desert.

Age: 41

Profession: Family Law Attorney, and mom to three rapidly growing teenagers.

Hobbies: I have definitely embraced life in the Pacific Northwest. I love taking family trips to Long Beach, hiking the beautiful Gorge trails and skiing at Mt. Hood. I also spend a lot of time watching my kids' soccer & basketball games along with their theater performances. When I am needing a rest I enjoy a good book or a Netflix binge while snuggling with my two Cavalier King Charles spaniels.

Last Book Read: Bear Town - by Fredrik Backman (author of a Man Called Ove - also really good book.). This one is about a small town obsessed with their youth hockey team. Definitely an engaging book about small town life, pressures on youth and craziness of sports spectators.

Legal Philosophy: Quality legal representation should be available to all.

Latest Accomplishment: Jumping into the legal profession after 16 years of staying home to raise my children.

Why I Do What I Do: I like solving problems and helping clients improve their lives anyway I can.

Profile: Hard working, logical, sincere and someone who avoids drama. I appreciate real relationships that are based on laughter, trust and loyalty.

Beverage of Choice: My favorite drink ever is from Andina restaurant in Portland - Sacsayhuaman - habanero vodka with passionfruit - seriously unique and tasty.

# *Hearsay Profile:*

## Marla Rapp



# Clark County Bar Association

Clark County Bar Association

Board Meeting Minutes

March 25, 2020

The Clark County Bar Association Board Meeting was called to order at 12:05 pm on March 25, 2020 by Paige Spratt. The meeting was held via teleconference

Present: P. Spratt, C. Emrich, J. Jacobs, J. Green, C. Phelan, J. Sasser & L. Darco

## Approval of Minutes

The February 2020 meeting minutes were not addressed. To be approved at the May Board Meeting.

## Treasurer's Report

J. Jacobs reports that finances are stabilizing but expresses concern over decreased Lawyer Referral Dues and cancelation of upcoming CLEs due to COVID-19. Overall CCBA has adequate reserves to carry us through this uncertain time.

## Old Business

- 1) Membership – Not addressed
- 2) Barrister's Ball Recap
  - a) 196 Tickets Sold. Highest attendance ever.
  - b) Most receipts are in and we look to have generated a profit that will help offset any budget shortfalls for the fiscal year.
  - c) Christie and Lisa will be actively looking for a new venue for next year.
- 3) Lease Review/Finalization – Not addressed
- 4) Riverview Bank (need to finalize) – Not addressed

## New Business

### 1) COVID-19 Response

- a) Create a resource for membership containing all updated orders from the Governor's Office, Superior Court, District Court and any Federal or pertinent Oregon Courts.
- b) Discussion on ways to assist membership ie: mentorship, virtual practice tips, CLE on ethics of Remote Practice in the time of COVID-19, etc...
- c) Reschedule CLEs – will wait and see regarding May 9th. Paige, Jill & Lisa will make determination as we get closer
- d) Cancel General Meeting – Send agenda and reports via email to membership.

Adjourned at 12:30pm. The next CCBA Board Meeting will be held via teleconference at 12:00pm on May 6, 2020.

## Representing Injured Workers on Their Washington Claims



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# Clark County Superior Court

## BENCH/BAR COMMITTEE MEETING MINUTES

### CLARK COUNTY SUPERIOR COURT

April 14, 2020

**Persons in attendance:** Nicholas Alexander ([nick@clarkcountyelderlaw.com](mailto:nick@clarkcountyelderlaw.com)), Sean Downs ([sean@greccodowns.com](mailto:sean@greccodowns.com)), Matthew Kimball ([Matthew.Kimball@clark.wa.gov](mailto:Matthew.Kimball@clark.wa.gov)), James Smith ([james.smith2@clark.wa.gov](mailto:james.smith2@clark.wa.gov)), Emily Sheldrick ([Emily.sheldrick@clark.wa.gov](mailto:Emily.sheldrick@clark.wa.gov)), Curtis Welch ([cwelch@sussmanshank.com](mailto:cwelch@sussmanshank.com)), Jessi Anderson ([jessi@ccvlp.org](mailto:jessi@ccvlp.org)), Rachel Brooks ([rachel@guardianship-law.com](mailto:rachel@guardianship-law.com)), Jolene Sell ([Jolene.sell@clark.wa.gov](mailto:Jolene.sell@clark.wa.gov)), Denise Lukins ([dlukins@lukinslaw.com](mailto:dlukins@lukinslaw.com)), Judge Vanderwood ([Derek.Vanderwood@clark.wa.gov](mailto:Derek.Vanderwood@clark.wa.gov)), and Judge Fairgrieve ([John.Fairgrieve@clark.wa.gov](mailto:John.Fairgrieve@clark.wa.gov)).

*If you have matters that you would like to bring to the attention of the Bench/Bar, you are welcome to contact the above-mentioned members of the committee.*

#### I. **OLD BUSINESS:**

No old business to report.

#### II. **NEW BUSINESS:**

- a. Jessi: CCVLP is working hard to know to handle evictions that we believe are coming because of the economic slowdown. 2 issues – If court are opening and stay-at-home order is still in place, what does that mean for our clients and their responsibilities? Also, pro se clients are having a difficult time with the court being closed and not having access to e-filing – has put them at a disadvantage.
  - i. Vanderwood: Nothing substantial will happen with the courts until the stay-at-home order is lifted.
  - ii. Emily: Clerks office should be contacted to address concerns.
  - iii. Denise: Will evictions be the same once courts reopen? Or more telephonic?
    1. Judge Fairgrieve: Nothing is known, but likely will still have some social distancing – UD docket is hard because of pro-se defendants.
    2. Judge Vanderwood – too much uncertainty, everything won't go back to normal automatically after stay-at-home is lifted.
- b. Sean Downs: Follow up with 1<sup>st</sup> appearance dockets – they are running smoothly; scanning and faxing orders to be signed by defendants is the most challenging/time consuming part and has been a bottleneck, also working with the interpreter has been challenging with the defendant in custody. Proposed court rule will alleviate defendant's appearance with signed waiver.
  - i. Judge Fairgrieve: Probability high we will keep some of the features such as video hearings, only drawback is that we are less efficient than face-to-face.
- c. Rachel Brooks: Asking how telephonic conferences are going?
  - i. Fairgrieve: First appearance docket is going well; defendants stay in the jail and video conference. Slower but able to perform efficiency. Change of plea docket

taking about twice as long and other matters are also being cited in on change of plea docket.

- ii. Vanderdood: special set dockets working ok as long as not too many parties. Family law and civil dockets the same. Ex parte policies are moving matters through well, I've heard, no personal experience but attorneys are submitting material beforehand which has worked.
- d. Denise: Want to find out plans of the court to keep attorneys safe – it sounds like a work in progress.
  - i. Judge Vanderwood: We understand the issues out there, keeping everything day-to-day and week-to-week.
  - ii. Judge Fairgrieve: We will likely see more guidance from the Supreme Court before May 4<sup>th</sup>.
- e. Jolene: HB 2302 - There are two major parts of this new legislation: changes to how income is imputed to an un- or under-employed parent, and abatement of child support for a justice-involved parent. The changes to imputation are effective 6-11-20; the abatement provisions aren't effective until 2-1-21.
- f. James: We will likely make several proposals to allow restarting jury trials while complying with social distancing requirements. These may include holding trials at locations other than the courthouse. PA's office also hopeful for the court to restart out-of-custody change of pleas in some fashion – creative solutions and proposals likely to be necessary.
  - i. Judge Fairgrieve: written statement by victim is fine but defer to prosecutors.
- g. Emily: Civil is very busy dealing with changes to department litigation; questions about trial dates. Will Civil trial dates get bumped for criminal trials? It would be helpful to get guidance from the bench.
  - i. Vanderwood: if trial scheduled for after May 4<sup>th</sup> its still on the books and going. Criminal has priority so we anticipate there will be some civ trials bumped.
  - ii. Fairgrieve: stay in contact with the judge to see their trial schedule as the status of trial may change.
- h. Curtis: Jury selection questionnaire was being worked on with Emily, got sidelined with COVID-19 but will circle back. Will keep everyone updated.

Respectfully Submitted,

Nicholas Alexander

# Clark County Bar Association 2019/2020 OFFICERS & TRUSTEES



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