KCBA KING COUNTY BAR ASSOCIATION

Justice... Professionalism... Service... Since 1886

.75 Law & Legal CLE Credit – A/V Approval #1078228

Recording Date – October 9, 2017
Recording Availability – August 24, 2018

Meeting Location	Date	Time	Topic
King County Bar Association 1200 Fifth Avenue - Suite 700 Seattle, WA	**Monday, October 9, 2017**	12:00 PM to 1:15 PM	Division I Update

---

AGENDA

12:00 PM Introduction

12:10 PM Presentation: 'Division I Update', by Hon. James R. Verellen, Washington Court of Appeals Div. 1; Richard Johnson, Washington Court of Appeals Div. 1

Chief Judge Verellen and Clerk Johnson will provide an update on what's new at Division I of the Court of Appeals, including:

- Court administration status, case processing developments, electronic filing, and new technology;
- What the Court of Appeals committees are working on; and
- Other new developments at Division I

1:15 PM Adjourn

SPEAKER BIOGRAPHY:

Hon. James R. Verellen, Washington Court of Appeals Div. 1 - Chief Judge James Verellen was appointed to the Court of Appeals effective November 1, 2012 by Governor Christine Gregoire. Judge Verellen received his Bachelor of Arts in political science from Washington State University in 1973 and his Juris Doctorate from Willamette University in 1976. He was a law clerk for the Honorable Vernon Pearson at Division II of the Washington State Court of Appeals. For fourteen years he had a broad civil practice with the law firm currently known as Vandeberg, Johnson and Gandara. Then he served as a Commissioner at Division I of the Washington State Court of Appeals from 1992 - 2011. Judge Verellen was a mediator, arbitrator and litigation consultant at Judicial Dispute Resolution, LLC at the time of his appointment. Judge Verellen has served on a variety of court committees. For several years he has

spoken at Seattle area high schools about the selection of judges. He has been a guest speaker at the University of Washington School of Law and Seattle University Law School. He was the first honorary member of the Washington Appellate Lawyers Association. Judge Verellen has served on the boards of youth ballet and baseball organizations. He has coached youth soccer and basketball. Judge Verellen and his wife, Claudia, live in West Seattle. Their three adult children and their families also live in Seattle.

Richard Johnson, Washington Court of Appeals Div. 1 - Richard D. Johnson is the Court Administrator/Clerk of Division I, Court of Appeals. Prior to joining the Washington State Court of Appeals in 1998, Mr. Johnson was the Deputy Court Administrator of Branch Operations and Information Systems for the Los Angeles Municipal Court. Mr. Johnson has a Master's Degree in Public Administration and Certification in Judicial Administration from the University of Southern California. He is also a Fellow of the Institute for Court Management.

HOW DO I EARN CREDIT FOR SELF-STUDY OR AUDIO/VISUAL (A/V) COURSES?

For pre-recorded A/V (self-study) programs, although the sponsor should apply for accreditation, **lawyers need to report the credits earned for taking the course.**

To add an approved course to your roster, follow the procedures below:

- Go to the "mywsba" website at www.mywsba.org/.
- Log in.
- Click on the "Access MCLE" link in the "MCLE Info" box on your home profile page.
- Click on "Add Activity." Search to find the approved course in our system. (See search suggestions on the screen.)

Adding a Recorded Course

Select Recorded Course from the Add New Activity screen.

This will prompt you to search for the activity in case the activity has already been accredited in the MCLE system.

You can search by Activity ID or by specific Activity Details. For the Activity Details search, you can use keywords for the title, sponsor name and date.

After entering your search criteria and selecting Search at the bottom of the screen, a list of possible activities will be provided.

You can select the correct one by clicking the Activity ID. This will take you to the specific activity. Entered the date(s) on which you began and ending viewing this recorded activity.

Then claim the correct credits for which you attended this activity in the Credits Claimed fields and click the Submit button at the bottom of the page.

You will receive a confirmation message at the top of your screen stating, “The activity has been added to your roster.

King County Bar Association
Appellate Practice Section
October 9, 2017

Chief Judge James R. Verellen
Richard D. Johnson, Court Administrator/Clerk
Division I, Court of Appeals

Welcome and Introductions

Chief Judge's Report

Court Administrator/Clerk's Update

Electronic Filing Portal

OnBase Document Management System

E-Filing Best Practices

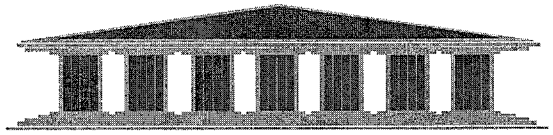
Appellate Electronic Court Records

Question and Answer

Adjourn

Washington Appellate Court
E-Filing Portal

- Second Generation Portal – COA & SC
- Registration Required – GR 30 Provisions
- Streamlined Filing and Service Process
- OnBase Interface and Indexing
- Improvements and Limitations
- Best Practices/Frequently Asked Questions



Appellate ECMS Project

OnBase - Document Management System

- One DMS for WA Appellate Courts
- Internal System Replaces Existing Local Systems
- Interface with ACORDS Case Management System
- Electronic Filings Ingested Directly into OnBase from Appellate Electronic Filing Portal
- Electronic Workflow Case Processing
- No External Access to Documents
- Maintaining Paper Case File
- Moving towards Paper on Demand Environment

Electronic Filing
Best Practices

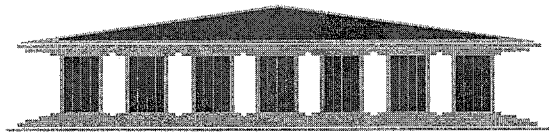
Do's	Dont's
File Electronically	Make Us Scan It!
Register for the Portal	Confuse with JIS LINK
Index Documents Accurately	Use "Other"
Use Portal to Serve	Fail to Serve Unregistered
OCR/Searchable Docs	File Unsearchable Docs
File Related Docs Together	File Dec/Affidavit Separately
Be Aware of File Size	Color/2 sided/hand written
Request More Time	File Draft or Incomplete

Appellate ECMS
Strategic Plan

- Release 1 – July 2017
- Release 2 – Stabilization and Maturation June 2018
- Phase II – System Enhancement 7/18 – 6/19
- Phase III – Appellate Electronic Court Records

19 - 21 Biennium

- Public Access and Enhanced Interface with Litigants, Lawyers, and Justice Partners



Use and Abuse of Citing Unpublished Opinions

James Verellen (personal views only) - October 2017

1. Revisions to GR 14.1 have been in effect since September 2016

2. Basics –

    a. Wn. App. unpublished opinions have no precedential value but post 3/1/13 opinions "may be cited as non-binding authorities, if identified as such by the citing party, and may be accorded such persuasive value as the court deems appropriate." GR 14.1(a).
    b. Another jurisdiction's unpublished opinion may be cited only if permitted by that jurisdiction. GR 14.1(b).

3. Trends – anecdotal

    a. In briefs, most cite to unpublished opinions sparingly, BUT a few can't resist comprehensively surveying all slightly related unpublished opinions.
    b. A handful of opinions have cited unpublished opinions…GR 14.1(c) provides "appellate courts should not, unless necessary for a reasoned decision, cite or discuss unpublished opinions in their opinions." See e.g. Guardado v Guardado, 2017 WL 3599884 at n.3 (No. 48903-1-II, August 22, 2017)("We discuss [a specific unpublished opinion] because it is the only case that addresses this issue.")

4. Mechanics – split of authority

    a. Division III "When citing to unpublished opinions under GR 14.1, either in this court or in the trial court, a party must do more than simply identify the opinion as unpublished. The party must point out that the decision has no precedential value, is not binding on any court, and is cited only for such persuasive value as the court deems appropriate. The party should also cite GR 14.1." Crosswhite v DSHS, 197 Wn. App. 539, 544 (2017).
    b. Division II "With due respect to the panel that decided Crosswhite, we conclude that based on the plain language of GR 14.1(a), a party may cite an unpublished case from this court and merely identify it as unpublished. Nothing more is required." Karanjah v DSHS, 199 Wn. App. 903, 913 (2017).
    c. Division I and Supreme Court? My suggestion – clearly identify as "unpublished", and consider a note "cited as persuasive authority under GR 14.1".

5. If your goal is to persuade, consider why the panel decided not to publish.

6. Reduced to its essence, the decision whether to publish turns on the need for guidance and whether the opinion will provide meaningful guidance. See RAP 12.3.

    a. IF there is no need for guidance because plenty of published authority is on point, then that published authority is going to persuade.
    b. See State v Sharp, unpublished, 2017 WL 4351467 (No. 74963-3-I, October 2, 2017)("For briefs that will be most helpful to this court, parties should examine the published cases cited as authority in the unpublished cases they are citing and focus on those published cases. Because the unpublished opinions cited by the parties on this case are not necessary for a reasoned decision, we do not cite or discuss them.")
    c. WHEN a party cites an unpublished opinion in an area that may have some need for guidance, I always ask myself why did the panel decide not to publish? A variety of factors may caution against publishing…odd facts, skimpy facts, an incomplete or undeveloped record, and perhaps most troublesome - poor or incomplete briefing. If a panel decided not to publish to avoid the mischief that may result from binding, precedential decision in such circumstances, those same concerns undercut any persuasive value.
    d. As a consequence, the panel considering your appeal may be skeptical of the persuasive value of the unpublished opinions you are citing.

7. Examples of helpful citations to unpublished opinions.

    a. If an unpublished cases is truly the only case addressing your issue and the analysis is germane and helpful under your facts.
    b. If there is a genuine split of authority reflected in unpublished opinions, then identifying that split may be helpful, especially to the panel's decision whether to publish in your appeal.
    c. If an unpublished opinion identifies some recent, emerging trend or conflict in the law not yet addressed in any published opinion and that trend or conflict directly impacts the outcome of your appeal.

8. CONCLUSION

    a. Published opinions drive the outcome of the vast majority of appeals.
    b. For a variety of reasons, panels may be skeptical of the persuasive value of unpublished opinions.
    c. Extensive citations to unpublished opinions that are only indirectly related to your issue on appeal, will dilute the impact of your direct authority on point.
    d. Use restraint if tempted to cite to unpublished opinions.