

The Paralegal's Guide to the Methodology of Effective Legal Research



All rights reserved. These materials may not be reproduced without written permission from NBI, Inc. To order additional copies or for general information please contact our Customer Service Department at (800) 930-6182 or online at www.NBI-sems.com.

For information on how to become a faculty member for one of our seminars, contact the Planning Department at the address below, by calling **(800) 777-8707**, or emailing us at speakerinfo@nbi-sems.com.

This publication is designed to provide general information prepared by professionals in regard to subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional service. Although prepared by professionals, this publication should not be utilized as a substitute for professional service in specific situations. If legal advice or other expert assistance is required, the services of a professional should be sought.

Copyright 2011
NBI, Inc.
PO Box 3067
Eau Claire, WI 54702

57078

The Paralegal's Guide to the Methodology of Effective Legal Research

Author

Michael Kaiser
Seattle Legal Research
1233 Taylor Avenue North, Suite 401
Seattle, WA

Presenter

MICHAEL KAISER is president of the Kaiser Legal Group and founder of Seattle Legal Research, a company focusing primarily on discovery and legal research services. Seattle Legal Research has researched and briefed for, among others, the legal team representing in federal court arguably the greatest basketball player in history. Mr. Kaiser also was recently brought in to conduct research for an expected upcoming series of cases almost certainly destined to be the most ambitious and potentially far-reaching animal-law litigation to date. He also has reported on legal-affairs for local radio and has been a law-school guest speaker on the subject of how different court systems address those suffering from mental illness. In addition, Mr. Kaiser has worked with local judges and members of the King County Bar Association's Judiciary and the Courts Committee to draft new rules for King County Superior Court and also has served on the King County Bar Association's Judicial Evaluation Committee. He earned his B.A. degree from the University of Washington in Seattle and his J.D. degree from Seattle University.



The Institute for Paralegal Education

Welcomes You to the
Teleconference/Webcast:

The Paralegal's Guide
to the Methodology of
Effective Legal
Research.





The Paralegal's Guide to the
Methodology of Effective Legal
Research

Tuesday, October 25, 2011. 1:00-2:00 p.m.
Eastern Time

Presented by Michael Kaiser, J.D.





Program Topics

1. Setting Up General Research Guidelines
2. Narrowing the Scope and Framing the Question
3. Types and Weight of Authority
4. Other Sources
5. Knowing When You Are Done
6. Presenting What You Have Found



SETTING UP GENERAL RESEARCH GUIDELINES

Legal Research is a Process

- Way of thinking.
- Method of approach.
- Not about finding a shortcut or the perfect search term.
- Learn and react to the client's situation.
- Ask questions.




Program Topics

1. Setting Up General Research Guidelines
2. **Narrowing the Scope and Framing the Question**
3. Types and Weight of Authority
4. Other Sources
5. Knowing When You Are Done
6. Presenting What You Have Found



Narrowing the Scope

- Legal Research is a process of elimination.
- A good way to narrow the scope of your search is to follow a four-step process that includes:
 - #1 Analyzing the facts and framing the question,
 - #2 Getting an overview of the subject area,
 - #3 Conducting an in-depth search for legal authority,
 - #4 Evaluating your authority and bringing what you have found up to date.



#1 Analyze the Facts and Frame the Question

- Make sure you have a firm grasp of the relevant facts. Ask more questions if need be.
- Seek out more than one opinion.
- Fuse the facts to the legal issue or issues. There may be more than just one legal issue.



#2 Get an Overview of the Subject Area

- Define your terms. Also recognize that some terms can have different meanings in a legal sense. (See *Black Law Dictionary's* many definitions of property.)
- Move on to background or secondary research.
- Take advantage of the pyramid effect. Starting out with sources that cover the topic more broadly will help funnel you in the right direction and also provide you with narrower sources, such as cases.



#3 Conduct an In-depth Search for Legal Authority.

- The Internet can be more efficient for this step.
- Start out with broad search terms. Let the database do the heavy lifting.
- “Natural Language” versus “Terms and Connectors.” Which is best?



#4 Evaluate the Primary Authority and Bring the Law Up-To-Date.

- “Shepardize,” “Keycite,” or check the pocket-parts.
- Nothing will cast you in a less-authoritative light than presenting out-dated information.
- The supervising attorney can be sued for malpractice.



Program Topics

1. Setting Up General Research Guidelines
2. Narrowing the Scope and Framing the Question
3. **Types and Weight of Authority**
4. Other Sources
5. Knowing When You Are Done
6. Presenting What You Have Found



Types of Authority

- Primary or Mandatory Authority
- Persuasive Authority
- Secondary Authority



Primary Authority

- Is binding on the court. Court must apply it.
- Can include cases, laws, statutes, and regulations from the same jurisdiction.
- The order of precedence is the United States Supreme Court, Federal Circuit Courts of Appeals, Federal District Courts, State Supreme Courts, State Appellate Courts, and lower State Courts.



Four Main Sources of Primary Authority

- Constitutions—Federal or state
- Statutes (laws)
- Cases
- Regulations promulgated by administrative agencies



Constitutions

- United States Constitution is the supreme law of the land.
- State Constitutions, however, are more often what you will be looking at when you are addressing constitutional issues.
- State Constitutions are the supreme law in a state except where they conflict with federal law.



Statutes (Laws)

- Sometimes called black-letter law.
- They are enacted by the legislature and signed into law by the Executive.
- A court can, and often does, modify—through an “interpretation” of the law—the original law or how it has been implemented. However, this is not considered “common law.”



Cases

- This is typically where your research is going to get the most complicated and involve the most work.
- You must sift, at least in part, through an entire applicable body of cases and/or case summaries until you are confident that, not only have you obtained the relevant law, but also that it is the most up-to-date and final expression of the law available.



Regulations

- The vast majority of rules that we live by are promulgated by Administrative Agencies. (Environment (EPA), Labor (Dept. of Labor), Insurance (State Insurance Commissioner), etc.)
- The system of adjudication involving administrative law “judges” is a world onto its own, and rarely does any of it reach the normal appellate level. The first and, almost always, last step in an appeal of an administrative decision is the lower court level at which most other types of cases start. Thus, very often there is no published or binding court precedent as only higher appellate courts issue published decisions that can be used as binding precedent.



- So in most instances your task will be to find the applicable regulation, which often times is no small undertaking, and then argue, based upon your own very case-specific information, why it should be applied in the manner you wish. Or you may be looking up a regulation simply to advise a client as to what his or her responsibilities are under the regulation.



Persuasive Authority

- Law that is not binding but that may be relevant and help persuade a decision-maker.
- Cases of first impression. How an issue is addressed the first time can have influence regardless of the jurisdiction.
- Cases from outside your jurisdiction that have addressed statutes, laws, or fact patterns similar to yours.



Secondary Authority

- Typically used to buttress a brief.
- Sources that often times have been used as underpinnings of the original case, law, or legal principle at issue.
- May include quotes or material from Restatements, Treatises, Law Reviews, and similar type sources.



Restatements

- Excellent secondary authority!
- Contain model laws and the explanations behind them.
- Many jurisdictions have copied these model laws word-for-word or very closely and thus the authors are those who literally wrote the law. Anything on point from a Restatement is going to be looked at with respect. The “Comments” are key. (See example from *Restatement, Second, Contracts*.)



Treatises

- In-depth analysis of a particular area of law such as Contracts, Trusts and Estates, and Torts (personal injury).
- Very good starting point. Widely used in law school.
- Treatises also provide leads that can aid in your search for cases from your own jurisdiction.



Law Reviews

- They are typically published by law schools and are a collaboration of faculty and law students.
- Subjects usually addressed in rather narrow fashion.
- Almost always well written and can be cited with confidence.
- Certain established members of the legal community recently have argued that Law Reviews are becoming too “far out” in what they address. Not as relevant to everyday legal issues.



Program Topics

1. Setting Up General Research Guidelines
2. Narrowing the Scope and Framing the Question
3. Types and Weight of Authority
4. **Other Sources**
5. Knowing When You Are Done
6. Presenting What You Have Found



Three Other Major Sources

- Legal Encyclopedias
- Hornbooks
- Deskbooks



Legal Encyclopedias

- Set out general rules not particular to any jurisdiction.
- Typically not a great source to cite directly but an excellent place to start and to get background info and leads on relevant cases.
- Two main legal encyclopedias are Corpus Juris Secundum (C.J.S.) and American Jurisprudence (Am. Jur. 2d). (See example from *American Jurisprudence*.)



Hornbooks

- Similar to a textbook and often used in law schools as a supplement to a textbook.
- Like encyclopedias, they also can be an excellent source for cases on your topic. (See example from *Real Estate Finance Law*.)



Deskbooks

- One of my favorites. Designed for the practitioner. Often published by Bar Associations.
- Very practical and jurisdiction-specific.
- Great source for how the law has been applied in your jurisdiction.
- However, very rarely used as formal legal authority.



Program Topics

1. Setting Up General Research Guidelines
2. Narrowing the Scope and Framing the Question
3. Types and Weight of Authority
4. Other Sources
5. **Knowing When You Are Done**
6. Presenting What You Have Found



Knowing When You Are Done

- If your primary authority answers your question and is as up-to-date as possible, you are done!
- Have confidence in your findings.
- The truth is that if an attorney has assigned it to you, it probably is because he or she either could not find the answer or did not want the task. Thus, you are fulfilling a very important role and should recognize that.



Program Topics

1. Setting Up General Research Guidelines
2. Narrowing the Scope and Framing the Question
3. Types and Weight of Authority
4. Other Sources
5. Knowing When You Are Done
6. **Presenting What You Have Found**



Presenting What You Have Found

- Some attorneys have a formal manner in which they wish to have you present the information to them. Most do not.
- Typically what they are looking for is something they can file away and that answers itself even if you are not there.



Elements of a Memo (See Hypo)

- Statement of Facts—Brief synopsis of relevant facts from the case.
- Issue Statement—One sentence outlining the legal issue within the context of the facts of your case. (e.g. Is Jane guilty of murder if she intentionally burned her house down and accidentally killed someone who was burglarizing the house?)
- Discussion—Discussion of where the authority stands on the issue.
- Conclusion—What you think the authority overall ultimately concludes. Not always necessary or appreciated.



Sources for Learning How to Conduct Legal Research

- *The Process of Legal Research*—Christina L. Kunz, et. all.
- *Basic Legal Research—Tools and Strategies*—Amy E. Sloan.
- *Legal Research: A practical guide and self-instructional workbook*—Ruth Ann McKinney and Scott Childs.



Acknowledgements

Special thanks to West Publishing, a Thomson-Reuters business, for generously allowing the use in this presentation of examples from its publications Black's Law Dictionary (Slide #9), American Jurisprudence (Slide #36), and Real Estate Finance Law, 5th (Slide #38).



THANK YOU

for attending today's
Teleconference/Webcast

Please visit us online at www.ipe-sems.com for a complete list of upcoming learning opportunities or for more information.



made in court to the character of the victims or the physical or mental impact of the loss of the victims on their families, nor are the accused's rights violated by the inclusion of letters written by family members of the victims in the pre-sentence investigation report, where the letters do not describe the physical or mental impact of the loss of the victims on the families.⁴⁰

§ 2215 Mitigation

Research References

West's Key Number Digest, Sentencing and Punishment ☞ 1615, 1625, 1653, 1757

A capital sentencing scheme inflicts cruel and unusual punishment unless the accused is allowed to introduce and the sentencer allowed to consider any relevant mitigating evidence regarding the accused's character or record or any circumstances of the offense, and there is an individualized determination on the basis of these factors.

A capital sentencing scheme inflicts cruel and unusual punishment unless the accused is allowed to introduce¹ and the sentencer is allowed to consider² and give effect to³ any relevant mitigating evidence regarding the accused's character or rec-

ord or any circumstances of the offense⁴ that the defendant proffers as a basis for a sentence less than death.⁵ Thus, a capital sentencing scheme that requires unanimity and prevents the jury from considering, in deciding whether to impose the death penalty, any mitigating factor the jury does not unanimously find violates the Eighth Amendment.⁶ The mere fact that a supplemental instruction informs the jury that it can consider evidence of mitigating circumstances is insufficient to satisfy the Eighth Amendment, absent a vehicle for the jury to give effect to such evidence.⁷ Furthermore, there must be an individualized determination on the basis of these factors,⁸ and such determination must include a broad inquiry into all constitutionally relevant mitigating evidence.⁹

Thus, a mandatory death sentence statute inflicts cruel and unusual punishment,¹⁰ as would a statute allowing consideration only of aggravating factors,¹¹ or prohibiting the consideration of nonstatutory mitigating factors.¹² It is irrelevant whether barriers to the consideration of mitigating evidence are interposed by statute, by the sentencing court, or by ev-

⁴⁰Ind.—Hough v. State, 560 N.E.2d 511 (Ind. 1990).

[Section 2215]

¹U.S.—California v. Brown, 479 U.S. 538, 107 S. Ct. 837, 93 L. Ed. 2d 934 (1987).

²U.S.—Oregon v. Guzek, 126 S. Ct. 1226, 163 L. Ed. 2d 1112 (U.S. 2006); Smith v. Texas, 543 U.S. 37, 125 S. Ct. 400, 160 L. Ed. 2d 303 (2004); Blystone v. Pennsylvania, 494 U.S. 299, 110 S. Ct. 1078, 108 L. Ed. 2d 255 (1990).

³U.S.—Oregon v. Guzek, 126 S. Ct. 1226, 163 L. Ed. 2d 1112 (U.S. 2006); Blystone v. Pennsylvania, 494 U.S. 299, 110 S. Ct. 1078, 108 L. Ed. 2d 255 (1990).

⁴U.S.—Monge v. California, 524 U.S. 721, 118 S. Ct. 2246, 141 L. Ed. 2d 615 (1998).

⁵U.S.—Roper v. Simmons, 543 U.S. 551, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005).

⁶U.S.—McKoy v. North Carolina, 494 U.S. 433, 110 S. Ct. 1227, 108 L. Ed. 2d 369 (1990).

N.C.—State v. Barnes, 330 N.C. 104, 408 S.E.2d 843 (1991).

⁷U.S.—Penry v. Johnson, 532 U.S. 782, 121 S. Ct. 1910, 150 L. Ed. 2d 9 (2001).

⁸U.S.—Sumner v. Shuman, 483 U.S. 66, 107 S. Ct. 2716, 97 L. Ed. 2d 56 (1987).

⁹U.S.—Jones v. U.S., 527 U.S. 373, 119 S. Ct. 2090, 144 L. Ed. 2d 370 (1999).

¹⁰U.S.—Roberts v. Louisiana, 431 U.S. 633, 97 S. Ct. 1993, 52 L. Ed. 2d 637 (1977).

¹¹U.S.—Jurek v. Texas, 428 U.S. 262, 96 S. Ct. 2950, 49 L. Ed. 2d 929 (1976) (per Mr. Justice Stevens with two Justices concurring and three Justices and the Chief Justice concurring in the judgment).

¹²U.S.—Hitchcock v. Dugger, 481 U.S. 393, 107 S. Ct. 1821, 95 L. Ed. 2d 347 (1987).

external thing over which the rights of possession, use, and enjoyment are exercised <the airport is city property>. [Cases: Property ◊1.]

"In its widest sense, property includes all a person's legal rights, of whatever description. A man's property is all that is *his in law*. This usage, however, is obsolete at the present day, though it is common enough in the older books. . . . In a second and narrower sense, property includes not all a person's rights, but only his proprietary as opposed to his personal rights. The former constitute his estate or property, while the latter constitute his status or personal condition. In this sense a man's land, chattels, shares, and the debts due to him are his property, but not his life or liberty or reputation. . . . In a third application, which is that adopted [here], the term includes not even all proprietary rights, but only those which are both proprietary and *in rem*. The law of property is the law of proprietary rights *in rem*, the law of proprietary rights *in personam* being distinguished from it as the law of obligations. According to this usage a freehold or leasehold estate in land, or a patent or copyright, is property; but a debt or the benefit of a contract is not. . . . Finally, in the narrowest use of the term, it includes nothing more than corporeal property — that is to say, the right of ownership in a material object, or that object itself." John Salmond, *Jurisprudence* 423-24 (Glanville L. Williams ed., 10th ed. 1947).

abandoned property. (1841) Property that the owner voluntarily surrenders, relinquishes, or disclaims. Cf. *lost property*; *mislaid property*. [Cases: Abandoned and Lost Property ◊1.]

absolute property. Property that one has full and complete title to and control over.

adventitious property. 1. *Roman law.* Property coming to a son or daughter from anyone other than the paterfamilias. — Also termed *peculium adventitium*. 2. *Hist.* Property coming to one from a stranger or collateral relative.

appointive property. A property interest that is subject to a power of appointment. [Cases: Powers ◊4.]

common property. (17c) 1. Real property that is held by two or more persons with no right of survivorship. Cf. *joint property*. [Cases: Common Lands ◊1.] 2. COMMON AREA.

community property. See COMMUNITY PROPERTY.

complete property. The entirety of the rights, privileges, powers, and immunities that it is legally possible for a person to have with regard to land or any other thing, apart from those that all other members of society have in the land or thing.

corporeal property. 1. The right of ownership in material things. 2. Property that can be perceived, as opposed to incorporeal property; tangible property. [Cases: Property ◊1, 2.]

distressed property. (1927) Property that must be sold because of mortgage foreclosure or because it is part of an insolvent estate. [Cases: Bankruptcy ◊3067.1.]

domestic-partnership property. Property that would be marital property if the domestic partners were married to each other. See DOMESTIC PARTNERSHIP; DOMESTIC-PARTNERSHIP PERIOD. [Cases: Marriage ◊54.]

dotal property. *Civil law.* Separate property that the wife brings to the marriage to assist the husband with the marriage expenses. Cf. *extradotal property*. [Cases: Dower and Curtesy ◊10.]

exempt property. See EXEMPT PROPERTY.

extradotal property (ek-strā-doh-tal). *Civil law.* 1. That portion of a wife's property over which she has complete control. 2. All of a wife's effects that have not been settled on her as dowry; any property that a wife owns apart from her dowry. • In Louisiana, after January 1, 1980, all property acquired by the wife that is not community is neither dotal nor extradotal; it is simply her separate property, as has always been true of the husband. La. Civ. Code art. 2341. — Also termed *paraphernal property*. Cf. *dotal property*.

general property. Property belonging to a general owner. See *general owner* under OWNER.

income property. Property that produces income, such as rental property.

incorporeal property. (18c) 1. An *in rem* proprietary right that is not classified as corporeal property. • Incorporeal property is traditionally broken down into two classes: (1) *jura in re aliena* (encumbrances), whether over material or immaterial things, examples being leases, mortgages, and servitudes; and (2) *jura in re propria* (full ownership over immaterial things), examples being patents, copyrights, and trademarks. 2. A legal right in property having no physical existence. • Patent rights, for example, are incorporeal property. — Also termed *incorporeal chattel*; *incorporeal thing*.

intangible property. (1843) Property that lacks a physical existence. • Examples include stock options and business goodwill. Cf. *tangible property*. [Cases: Property ◊1, 2.]

intellectual property. See INTELLECTUAL PROPERTY.

joint property. Real or personal property held by two or more persons with a right of survivorship. Cf. *common property*. [Cases: Joint Tenancy ◊1.]

limited-market property. See *special-purpose property*.

literary property. See LITERARY PROPERTY.

lost property. (1810) Property that the owner no longer possesses because of accident, negligence, or carelessness, and that cannot be located by an ordinary, diligent search. Cf. *abandoned property*; *mislaid property*. [Cases: Abandoned and Lost Property ◊10.]

marital property. (1855) Property that is acquired during marriage and that is subject to distribution or division at the time of marital dissolution. • Generally, it is property acquired after the date of the marriage and before a spouse files for separation or divorce. The phrase *marital property* is used in equitable-distribution states and is roughly equivalent to *community property*. — Also termed *marital estate*. See COMMU-

§ 8.15 The Chapter 13 "Wage Earner" Plan

The Chapter 13 plan to some extent is to the salaried person or wage earner what Chapter 11 is to the corporate or other commercial entity. Such a proceeding may be utilized by an individual who has a regular income and owes secured debt not in excess of \$922,975 and unsecured debt not exceeding \$307,675.¹ The plan must be completed within three years of confirmation unless the bankruptcy court approves a longer period not to exceed five years.² The Chapter 13 trustee may exercise the same avoidance powers that are available to his or her straight bankruptcy counterpart.³ However, the trustee usually is passive and the debtor typically remains in possession of the estate.⁴ Even though the Act confers no general avoidance powers on the debtor, bankruptcy courts frequently authorize the debtor to exercise such powers.⁵ The legislative history of Chapter 13 provides a valuable insight into its purpose and operation:

§ 8.15

1. 11 U.S.C.A. § 109(e).
2. 11 U.S.C.A. § 1322(d). Under the Bankruptcy Reform Act of 2001, for a debtor whose income exceeds the median family income for the debtor's state, the plan period will usually be five years. *Id.*
3. 11 U.S.C.A. § 1302(b).
4. 11 U.S.C.A. § 1306(b); Henning, *An Analysis of Durrett and its Impact on Real and Personal Property Foreclosures: Some Proposed Modifications*, 63 N.C.L.Rev. 501, 526 n. 154 (1984).
5. See e.g., *Thacker v. United Companies Lending Corp.*, 256 B.R. 724 (W.D.Ky. 2000); *Matter of Hoyos Precsas*, 73 B.R. 338 (Bkrty.P.R.1987); *Matter of Ottaviano*, 68 B.R. 238 (Bkrty.Conn.1986); *In re Willis*, 48 B.R. 295 (S.D.Tex.1985); *In re Dudley*, 38 B.R. 666 (Bkrty.Pa.1984); *In re Wheeler*, 34 B.R. 818 (Bkrty.Ala.1983); *Matter of Lozano*, 42 B.R. 966 (D.P.R.1984); *In re Worcester*, 28 B.R. 910 (Bkrty.Cal.1983); *In re Cowart*, 43 B.R. 110 (Bkrty.Fla. 1984); Henning, *supra* note 4 at 526, n. 154. *Contra*: *In re Tillery*, 124 B.R. 127 (Bkrty. Fla.1991) (avoidance power was enacted to enable the trustee to enhance estate assets for the benefit of the unsecured creditors and not to permit debtors to avoid liens on properties they were retaining); *In re Driscoll*, 57 B.R. 322 (Bkrty.Wis.1986); (trustee, not debtor is the appropriate plaintiff for purposes of avoiding fraudulent transfer). For a complete analysis of the varying approaches to the Chapter 13 debtor's avoidance powers, see *Matter of Hamilton*, 125 F.3d 292, 295-298 (5th Cir.1997).

Most of the recent decisions tend to negate Chapter 13 debtor standing unless he

or she is exercising the avoidance power with respect to exempt property. See *In re Hanson*, 322 B.R. 8 (10th Cir.BAP 2005) (trustee has exclusive power to exercise avoidance powers); *In re Stangel*, 219 F.3d 498 (5th Cir.2000) (Chapter 13 debtors do not have independent standing to exercise the trustee's avoidance powers); *In re Wood*, 301 B.R. 558 (Bkrty.W.D.Mo.2003) (Chapter 13 debtor lacked standing to assert the trustee's power to avoid a preference, but Chapter 13 trustee was an indispensable party and was added as a party plaintiff to ensure that the avoidance occurred); *In re Montoya*, 285 B.R. 490 (Bkrty.D.N.M.2002) (Chapter 13 debtor lacked standing to bring fraudulent transfer avoidance proceeding in order to avoid mortgage on nonresidential real estate when there was not indication the property was exempt); *In re Holcombe*, 284 B.R. 141 (Bkrty.N.D.Ala.2002) (Chapter 13 debtor lacked standing to pursue strong-arm or preference avoidance claims other than in aid of her exemption rights). *Cf.*, *Matter of Ryker*, 301 B.R. 156, 160 (D.N.J.2003) ("[A] Chapter 13 debtor undoubtedly does have standing to initiate an avoidance action when the property to be reclaimed or recaptured is exempt from execution. * * * However, the record does not indicate whether the Debtor's avoidance action is based, at least in part, on an exemption claim; and thus, it is not clear whether the Debtor can utilize this avenue to commence this § 548 avoidance proceeding.").

But see *In re Cohen*, 305 B.R. 886 (9th Cir.BAP 2004) (Chapter 13 debtors have standing to exercise trustee's avoidance powers without the necessity of obtain permission of bankruptcy court).

REPORTER'S NOTE

This Section is based on former § 35. In the former Restatement, Subsections (c) and (d) of that Section, dealing with impossibility and illegality, were explained in former §§ 49 and 50. The Restatement in the Courts shows only one citation to either of those sections from 1933 to 1954: *People's Banking Co. v. Fidelity & Deposit Co.*, 165 Md. 657, 663, 170 A. 544, 547, 171 A. 345 (1934). That case was held governed by former § 502, rendering the contract voidable, rather than former § 49, which would prevent the formation of a contract. See 1 Williston, *Contracts* § 50A (3d ed. 1957); 1 Corbin, *Contracts* § 90 (1963 & Supp. 1980).

§ 37. Termination of Power of Acceptance Under Option Contract

Notwithstanding §§ 38–49, the power of acceptance under an option contract is not terminated by rejection or counter-offer, by revocation, or by death or incapacity of the offeror, unless the requirements are met for the discharge of a contractual duty.

Comment:

a. Option contracts. An option contract is a promise which meets the requisites of a contract and limits the promisor's power to revoke an offer. See § 25. The power given the offeree by such an option differs from a power to specify particulars of performance after a contract is made, since the offeree under an option contract can choose not to undertake any contractual duties at all. But both types of choice may be given to the same offeree at the same time. See § 34(1).

b. Requirements for discharge. An option contract binds the offeror and gives rise to a duty of performance conditional on the offeree's acceptance exercising the option. The rules governing discharge of contractual duties therefore apply. See Chapter 12; compare Comment *c* to § 42; § 256 on the nullification of a repudiation.

Illustrations:

1. A leases land to B, giving B an option to purchase the land for \$10,000 in cash during the term of the lease. Misinterpreting the lease, B attempts to exercise the option by tendering a mortgage for \$10,000. A refuses to accept the mortgage. B retains power to exercise the option by a tender conforming to the terms of the lease.

See Appendix for Court Citations and Cross References

To: Senior Partner

From: Michael Kaiser

Date: October 25, 2011

Re: Jane Getrich's liability for the death of Johnny Lucky.

Background Facts—At this point I am giving you many more facts than will be included in the “Statement of Facts” so you can see how one whittles things down to only the relevant facts for purposes of the “Statement of Facts.” Thus, this portion would not appear in your formal memo, but rather your memo would start with the “Statement of Facts” that appears shortly.

On May 10, 2011, forty-three-year-old Jane Getrich received notice that her creditors were suing her for \$80,000. She owed \$67,000 to Nordstrom Department Store and \$13,000 to Pamper-Your-Pet for manicures, grooming, and massages for her Pekingese dog.

Ms. Getrich was despondent. Her second husband had left her long ago after suffering his second stroke, following a long 10-hour shift at his “third” job, a job taken so that Ms. Getrich could take care of herself and her Pekingese in a style to which she felt they were accustomed to in a former life. She had tried to remarry, but she lived in a rather small town and it seemed to her that every time she even approached a man the man would turn around and flee. She was not sure if this was her imagination or not.

So one night over drinks, and more drinks, she decided that the answer to her problems was to burn her house down and collect the insurance money. Fortunately for her, the house was paid off. She had insisted to her first husband that the house needed to be paid off within five years of purchase and her first husband had complied before dropping dead of a heart attack at the age of thirty-two.

Ms. Getrich set the following Thursday night as the night for the fire. That would allow her to watch “True Tales of the Rich and Famous” at 9:00 p.m. before having to get dressed and fixed up to endure the inconvenience of standing on the pavement watching the house burn. Early the next morning she also made arrangements to send her valuables to storage.

However, unbeknownst to Ms. Getrich, her manner of living and spending had caught the eye and ear of Johnny Lucky. News travels well in small towns. Mr. Lucky had just been released from prison after serving five years for a robbery-gone-awry. He had held up a store only to discover later that the older lady behind the counter was the Police Chief's mother. The Chief was not amused and made it his life mission to capture the culprit, which he did, capturing Mr. Lucky as he was spending the last of the \$27 he had netted in the robbery. The only other blotch on Mr. Lucky's record was an incident earlier in his life when he had stolen a credit card and taken it to another county where he tried to use it, only to discover the card belonged to the clerk behind the counter.

Thus, fate brought many forces and circumstances together on that Thursday night of the fire. While Ms. Getrich finished watching “True Tales of the Rich and Famous”

and then did her hair up and applied her makeup in preparation for setting the fire, Mr. Lucky climbed over a fence in the rear of her yard and headed for the back door of the house where he intended to pick the lock and enter, wrongly assuming Ms. Getrich would be in bed by now. However, inside the house Ms. Getrich had just scooped up her Pekingese and put him in a basket. She then set the fire, not thinking that she was setting it only about ten feet from a propane tank attached to the outside of her house that she kept as a backup generator and that had been smelling strange lately. Mr. Lucky entered the house just as Ms. Getrich was exiting the front door. Ms. Getrich almost made it out to the street before an explosion rocked the neighborhood, sending her flying into a neighbor's yard. Mr. Lucky, however, was not so fortunate. All that was left of him was his nose, which was found several blocks away in the litter-box of a neighborhood cat. The authorities were able to identify the nose as Mr. Lucky's because his DNA sample was on file from an earlier arrest.

The police quickly put two and two together and when they confronted Ms. Getrich and threatened that if she did not confess she would never see her dog again, she spilled the beans. She was charged with arson and the murder of Mr. Lucky.

Statement of Facts:

On Thursday, June 2, 2011, Ms. Getrich, by her own admission, burned her house down in an attempt to collect insurance money to pay off outstanding debts. Mr. Lucky, who was in the process of burglarizing her house at the time of the fire, was killed. Ms. Getrich has been charged both with arson and the murder of Mr. Lucky.

Issue:

Is Ms. Getrich guilty of murder or even a lesser charge if she intentionally burned her house down and accidentally killed someone who was burglarizing the house?

Discussion:

Authority differs on the issue of whether a defendant is liable for murder, manslaughter, or at all if someone unintentionally dies as a result of the defendant's arson. In the case of *Jones v. Washington*, 123 P.2d (2002), the court found that someone charged with murder is guilty if a person dies as a result of an arson committed by the person charged. In that case four firefighters were killed trying to put out the fire.

However, in *Jones* it obviously was not the victims' commission of a crime that put them in harm's way, let alone the commission of a crime against the defendant as is the fact in our case. My. Lucky clearly would not have died if he had not been burglarizing Ms. Getrich's house at the time of the fire.

There are other cases that also support the view that a defendant is guilty of murder if a person accidentally dies as a result of a defendant's seemingly unrelated crime. In *Wiley v. Washington* the defendant was firing a gun into the sky and the bullet came down and killed someone. The defendant was a convicted felon and unable to lawfully possess a firearm and so the court found that he was guilty of felony murder because he was committing a felony by firing the gun and the firing of the gun led to the defendant's death. In *Randolf v. Steeves* the defendant was robbing a bank and a customer had a heart attack. The defendant was found guilty of second degree murder. None of these fact patterns match the facts of our case but the legal principles are the same. As with Ms.

Getrich, the defendants in those cases were committing felonies that led to someone dying accidentally. In fact, in *Randolf*, it was discovered later that the victim was in the bank intending to commit a forgery at the time of his demise. Still, that made no difference in finding the defendant guilty.

However, in the case of *Reilly v. State*, Judge Manifest Freedom, writing for the court, stated, “When the issue comes down to whether someone will be able to take care of themselves and their Pekingese in the style they were accustomed to in a former life versus the life of another person, one must balance very closely the competing interests.” In our case Ms. Getrich had a legitimate concern related to her being sued and how it would affect the lifestyle she and her Pekingese were accustomed to in a former life. Furthermore, Mr. Lucky was committing a crime when Ms. Getrich burned her house down. An argument can be made that Ms. Getrich’s interest should triumph.

There also are other cases that have found that while someone is guilty of homicide in circumstances such as ours, they are guilty of the lesser charge of manslaughter. See *Eamon v. State* and *Michaels v. Patterson*. In *Eamon* the victim drowned as a result of being caught in the path of water from a city dam that had been compromised by the defendant who was trying to get the city to move the dam so the defendant could get a better price for his property. This is somewhat similar to our case in that in both cases the defendant was trying to profit by unleashing the forces of nature. (You have to get creative when you are doing this. No two cases are ever the same. It is your job to make the comparisons and contrasts. That is what the law is all about.)

Conclusion:

The weight of legal authority indicates Ms. Getrich is liable for the death of Mr. Lucky. The question then becomes to what degree. There does not seem to be a sharp line in the cases between what qualifies as manslaughter and what qualifies as murder. Thus, taking into account the fact she confessed to the crime and Mr. Lucky was committing a crime against her when he died, it is not unreasonable to consider that the prosecutor might be willing to accept a plea to manslaughter. If we take this to trial there certainly is ample case law that will support the prosecutor’s determination to obtain a conviction for murder.

Chapter 9A.32 RCW Homicide

RCW Sections

[9A.32.010](#) Homicide defined.

[9A.32.020](#) Premeditation -- Limitations.

[9A.32.030](#) Murder in the first degree.

[9A.32.040](#) Murder in the first degree -- Sentence.

[9A.32.050](#) Murder in the second degree.

[9A.32.055](#) Homicide by abuse.

[9A.32.060](#) Manslaughter in the first degree.

[9A.32.070](#) Manslaughter in the second degree.

Notes:

Capital punishment -- Aggravated first degree murder: Chapter [10.95](#) RCW.

Controlled substances homicide: RCW [69.50.415](#).

9A.32.010 **Homicide defined.**

Homicide is the killing of a human being by the act, procurement, or omission of another, death occurring at any time, and is either (1) murder, (2) homicide by abuse, (3) manslaughter, (4) excusable homicide, or (5) justifiable homicide.

[1997 c 196 § 3; 1987 c 187 § 2; 1983 c 10 § 1; 1975 1st ex.s. c 260 § [9A.32.010](#).]

Notes:

Excusable homicide: RCW [9A.16.030](#).

Justifiable homicide: RCW [9A.16.040](#) and [9A.16.050](#).

9A.32.020 **Premeditation — Limitations.**

(1) As used in this chapter, the premeditation required in order to support a conviction of the crime of murder in the first degree must involve more than a moment in point of time.

(2) Nothing contained in this chapter shall affect RCW [46.61.520](#).

[1975 1st ex.s. c 260 § [9A.32.020](#).]

9A.32.030

Murder in the first degree.

(1) A person is guilty of murder in the first degree when:

(a) With a premeditated intent to cause the death of another person, he or she causes the death of such person or of a third person; or

(b) Under circumstances manifesting an extreme indifference to human life, he or she engages in conduct which creates a grave risk of death to any person, and thereby causes the death of a person; or

(c) He or she commits or attempts to commit the crime of either (1) robbery in the first or second degree, (2) rape in the first or second degree, (3) burglary in the first degree, (4) arson in the first or second degree, or (5) kidnapping in the first or second degree, and in the course of or in furtherance of such crime or in immediate flight therefrom, he or she, or another participant, causes the death of a person other than one of the participants: Except that in any prosecution under this subdivision (1)(c) in which the defendant was not the only participant in the underlying crime, if established by the defendant by a preponderance of the evidence, it is a defense that the defendant:

(i) Did not commit the homicidal act or in any way solicit, request, command, importune, cause, or aid the commission thereof; and

(ii) Was not armed with a deadly weapon, or any instrument, article, or substance readily capable of causing death or serious physical injury; and

(iii) Had no reasonable grounds to believe that any other participant was armed with such a weapon, instrument, article, or substance; and

(iv) Had no reasonable grounds to believe that any other participant intended to engage in conduct likely to result in death or serious physical injury.

(2) Murder in the first degree is a class A felony.

[1990 c 200 § 1; 1975-'76 2nd ex.s. c 38 § 3; 1975 1st ex.s. c 260 § [9A.32.030](#) .]

Notes:

Effective date -- Severability -- 1975-'76 2nd ex.s. c 38: See notes following RCW [9A.08.020](#).

9A.32.040

Murder in the first degree — Sentence.

Notwithstanding RCW [9A.32.030](#)(2), any person convicted of the crime of murder in the first degree shall be sentenced to life imprisonment.

[1982 c 10 § 2. Prior: (1) 1981 c 138 § 21; 1977 ex.s. c 206 § 3; 1975 1st ex.s. c 260 § [9A.32.040](#). (2) 1981 c 136 § 55 repealed by 1982 c 10 § 18.]

Notes:

Severability -- 1982 c 10: See note following RCW [6.13.080](#).

Severability -- 1981 c 138: See RCW [10.95.900](#).

Effective date -- 1981 c 136: See RCW [72.09.900](#).

Capital punishment -- Aggravated first degree murder: Chapter [10.95](#) RCW.

9A.32.050
Murder in the second degree.

(1) A person is guilty of murder in the second degree when:

(a) With intent to cause the death of another person but without premeditation, he or she causes the death of such person or of a third person; or

(b) He or she commits or attempts to commit any felony, including assault, other than those enumerated in RCW [9A.32.030](#)(1)(c), and, in the course of and in furtherance of such crime or in immediate flight therefrom, he or she, or another participant, causes the death of a person other than one of the participants; except that in any prosecution under this subdivision (1)(b) in which the defendant was not the only participant in the underlying crime, if established by the defendant by a preponderance of the evidence, it is a defense that the defendant:

(i) Did not commit the homicidal act or in any way solicit, request, command, importune, cause, or aid the commission thereof; and

(ii) Was not armed with a deadly weapon, or any instrument, article, or substance readily capable of causing death or serious physical injury; and

(iii) Had no reasonable grounds to believe that any other participant was armed with such a weapon, instrument, article, or substance; and

(iv) Had no reasonable grounds to believe that any other participant intended to engage in conduct likely to result in death or serious physical injury.

(2) Murder in the second degree is a class A felony.

[2003 c 3 § 2; 1975-'76 2nd ex.s. c 38 § 4; 1975 1st ex.s. c 260 §[9A.32.050](#) .]

Notes:

Findings -- Intent -- 2003 c 3: "The legislature finds that the 1975 legislature clearly and unambiguously stated that any felony, including assault, can be a predicate offense for felony murder. The intent was evident: Punish, under the applicable murder statutes, those who commit a homicide in the course and in furtherance of a felony. This legislature reaffirms that original intent and further intends to honor and reinforce the court's decisions over the past twenty-eight years interpreting "in furtherance of" as requiring the death to be sufficiently close in time and proximity to the predicate felony. The legislature does not agree with or accept the court's findings of legislative intent in *State v. Andress, Docket No. 71170-4 (October 24, 2002)*, and reasserts that assault has always been and still remains a predicate offense for felony murder in the second degree.

To prevent a miscarriage of the legislature's original intent, the legislature finds in light of *State v. Andress, Docket No. 71170-4 (October 24, 2002)*, that it is necessary to amend RCW [9A.32.050](#). This amendment is intended to be curative in nature. The legislature urges the supreme court to apply this interpretation retroactively to July 1,

1976." [2003 c 3 § 1.]

Effective date -- 2003 c 3: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [February 12, 2003]." [2003 c 3 § 3.]

Effective date -- Severability -- 1975-'76 2nd ex.s. c 38: See notes following RCW [9A.08.020](#).

9A.32.055

Homicide by abuse.

(1) A person is guilty of homicide by abuse if, under circumstances manifesting an extreme indifference to human life, the person causes the death of a child or person under sixteen years of age, a developmentally disabled person, or a dependent adult, and the person has previously engaged in a pattern or practice of assault or torture of said child, person under sixteen years of age, developmentally disabled person, or dependent person.

(2) As used in this section, "dependent adult" means a person who, because of physical or mental disability, or because of extreme advanced age, is dependent upon another person to provide the basic necessities of life.

(3) Homicide by abuse is a class A felony.

[1987 c 187 § 1.]

9A.32.060

Manslaughter in the first degree.

*** CHANGE IN 2011 *** (SEE [5045.SL](#)) ***

(1) A person is guilty of manslaughter in the first degree when:

(a) He recklessly causes the death of another person; or

(b) He intentionally and unlawfully kills an unborn quick child by inflicting any injury upon the mother of such child.

(2) Manslaughter in the first degree is a class A felony.

[1997 c 365 § 5; 1975 1st ex.s. c 260 § [9A.32.060](#).]

9A.32.070

Manslaughter in the second degree.

*** CHANGE IN 2011 *** (SEE [5045.SL](#)) ***

(1) A person is guilty of manslaughter in the second degree when, with criminal negligence, he causes the death of

another person.

(2) Manslaughter in the second degree is a class B felony.

[1997 c 365 § 6; 1975 1st ex.s. c 260 § [9A.32.070](#).]

Chapter 9A.32.010 RCW Homicide defined

Homicide is the killing of a human being by the act, procurement, or omission of another, death occurring at any time, and is either (1) murder, (2) homicide by abuse, (3) manslaughter, (4) excusable homicide, or (5) justifiable homicide.

[1997 c 196 § 3; 1987 c 187 § 2; 1983 c 10 § 1; 1975 1st ex.s. c 260 § [9A.32.010](#).]

Notes:

Excusable homicide: RCW [9A.16.030](#).

Justifiable homicide: RCW [9A.16.040](#) and [9A.16.050](#).

Chapter 9A.32.055 RCW

Homicide by abuse

(1) A person is guilty of homicide by abuse if, under circumstances manifesting an extreme indifference to human life, the person causes the death of a child or person under sixteen years of age, a developmentally disabled person, or a dependent adult, and the person has previously engaged in a pattern or practice of assault or torture of said child, person under sixteen years of age, developmentally disabled person, or dependent person.

(2) As used in this section, "dependent adult" means a person who, because of physical or mental disability, or because of extreme advanced age, is dependent upon another person to provide the basic necessities of life.

(3) Homicide by abuse is a class A felony.

[1987 c 187 § 1.]

Title 230 WAC Gambling commission

Chapters

- [230-01](#) About the commission.
- [230-03](#) Permitting and licensing rules.
- [230-05](#) Fees.
- [230-06](#) Rules for all licensees.
- [230-07](#) Charitable and nonprofit rules.
- [230-09](#) Fund-raising event rules.
- [230-10](#) Bingo rules.
- [230-11](#) Raffles.
- [230-13](#) Amusement game rules.
- [230-14](#) Punch board and pull-tab rules.
- [230-15](#) Card game rules.
- [230-16](#) Manufacturer, distributor, and gambling service supplier rules.
- [230-17](#) Hearing rules.
- [230-18](#) Promotional contests of chance not licensed by the Washington state gambling commission.
- [230-21](#) Public disclosure.

Chapter 230-05 WAC Fees

WAC Sections

[230-05-001](#) Prorating or refunding of fees.

[230-05-005](#) Fees for review of gambling equipment, supplies, services, or games.

[230-05-010](#) Returned checks.

[230-05-015](#) Two-part payment plan for license fees.

[230-05-020](#) Charitable or nonprofit organization fees.

[230-05-025](#) Commercial stimulant fees.

[230-05-030](#) Fees for other businesses.

[230-05-035](#) Individuals license fees.

230-05-001

Prorating or refunding of fees.

(1) We may prorate organization license fees when we adjust expiration dates to schedule our workload.

(2) We may adjust expiration dates to end on the same day for organizations licensed for more than one activity. Whenever we adjust license expiration dates under this provision, we may prorate the required fees.

(3) We will not prorate or refund fees when:

(a) You discontinue your gambling activities; or

(b) You voluntarily surrender your license or permit; or

(c) We suspend or revoke your license.

(4) We keep a portion of your application fees whether we deny or administratively close your application or you withdraw it.

(5) If you are a commercial stimulant or a charitable or nonprofit licensee, you have one year from your license expiration to apply for a partial refund of your license fee if your annual gross gambling receipts are less than the minimum for your license class. After our approval, we refund you the difference between the fees you paid and the fees for the license class level you actually met.

[Statutory Authority: RCW [9.46.070](#). 07-21-116 (Order 617), § 230-05-001, filed 10/22/07, effective 1/1/08; 06-07-157 (Order 457), § 230-05-001, filed 3/22/06, effective 1/1/08.]

230-05-005

Fees for review of gambling equipment, supplies, services, or games.

You must apply to us if you want to submit gambling equipment, supplies, services, or games for our review. You must pay the application deposit before we perform the review. You must also reimburse us for any additional costs of the review.

[Statutory Authority: RCW [9.46.070](#). 06-07-157 (Order 457), § 230-05-005, filed 3/22/06, effective 1/1/08.]

230-05-010**Returned checks.**

(1) If your bank returns your check for license fees to us for any reason, you must:

- (a) Pay us in full, by certified check, money order, or cash, within five days of notification; and
- (b) Pay an additional processing charge of thirty dollars.

(2) If you fail to pay within five days of notification:

- (a) We will administratively close your application; or
- (b) Your license expires and all gambling activity must stop.

(3) If we administratively close your application or your license expires, you must give us a new application with fees paid by certified check, money order, or cash in order to be considered for a license.

[Statutory Authority: RCW [9.46.070](#). 06-07-157 (Order 457), § 230-05-010, filed 3/22/06, effective 1/1/08.]

230-05-015**Two-part payment plan for license fees.**

(1) If you are renewing an annual license or applying for an additional license, you may pay the license fee in two payments if:

- (a) You elect to participate; and
- (b) The license fee is at least eight hundred dollars; and

(c) You pay an administrative processing fee as set out in WAC [230-05-020](#) or [230-05-030](#), plus one-half of the annual license fee at the time of application or renewal.

(2) We issue licenses under the two-part payment plan with an expiration date of not more than one year and a second-half payment due date.

(a) If we receive your second-half payment on or before the due date, the license will remain in effect until the expiration date.

(b) If you fail to submit the second-half payment on or before the due date, the license expires and gambling activities must stop.

(3) Your gross gambling receipts during the first-half payment period must not exceed fifty percent of the authorized class limitation for annual gross gambling receipts. Licensees whose gross gambling receipts exceed fifty percent of the authorized level must apply for a license at the appropriate license class and pay the full upgrade fee, plus an administrative processing fee, as set out in WAC [230-05-020](#) and [230-05-030](#).

[Statutory Authority: RCW [9.46.070](#). 06-07-157 (Order 457), § 230-05-015, filed 3/22/06, effective 1/1/08.]

230-05-020**Charitable or nonprofit organization fees.**

Bona fide charitable and nonprofit organizations must pay the following fees to us when applying for gambling licenses, permits, miscellaneous changes, or inspection services:

1. Amusement games

License	Annual Gross Gambling Receipts	Fee	
Class A	Premises only	\$58	
Class B	Up to \$10,000	\$58	
Class C	Up to \$25,000	\$319	
Class D	Up to \$50,000	\$513	
Class E	Over \$50,000	\$894	

2. Bingo

License	Annual Gross Gambling Receipts	Fee	One Time Variance*
Class A	Up to \$25,000	\$58	\$1,000
Class B	Up to \$75,000	\$185	\$1,000
Class C	Up to \$150,000	\$380	\$2,000
Class D	Up to \$350,000	\$1,026	\$4,000
Class E	Up to \$650,000	\$1,732	\$8,000
Class F	Up to \$1,500,000	\$3,486	\$15,000
Class G	Up to \$2,000,000	\$5,028	\$23,000
Class H	Up to \$3,000,000	\$6,722	\$30,000

Class I	Up to \$4,000,000	\$8,400	\$38,000
Class J	Up to \$5,000,000	\$10,078	\$45,000
Class K	Up to \$6,000,000	\$11,306	\$53,000
Class L	Up to \$7,000,000	\$12,922	\$60,000
Class M	Up to \$8,000,000	\$14,542	\$65,000
Class N	Up to \$9,000,000	\$15,818	\$70,000
Class O	Up to \$10,000,000	\$17,454	\$75,000
Class P	Up to \$11,000,000	\$19,090	\$80,000
Class Q	Up to \$12,000,000	\$22,908	\$85,000
Class R	Up to \$13,000,000	\$26,180	\$90,000
Class S	Up to \$14,000,000	\$29,454	\$95,000

*See chapter [230-06](#) WAC, Exceeding license class.

3. Card games

License	Description	Fee
Class A	Nonhouse-banked - fee to play	\$641
Class B	Limited card games - hearts, rummy, pitch, pinochle, and cribbage - fee to play	\$185
Class C	Tournament only - no more than thirty consecutive days per tournament	\$58

Class D	Nonhouse-banked - no fee to play	\$58
---------	----------------------------------	------

4. Fund-raising event

License	Description	Fee
Class A	One event - not more than 24 consecutive hours	
	First time applicant	\$380
	Previously licensed applicant	\$223
Class B	One event - not more than 72 consecutive hours	
	First time applicant	\$641
	Previously licensed applicant	\$393
Class C	Additional participant in joint event - not lead organization	\$185
Class D	Limited fund-raising event - one event - not more than six consecutive hours	
	First time applicant	\$167
	Previously licensed applicant	\$111
Class E	Fund-raising event equipment distributor - rents or leases equipment no more than ten times per year	\$253
Class F	Fund-raising event equipment distributor - rents or leases equipment more than ten times per year	\$641

5. Punch boards/pull-tabs

License	Annual Gross Gambling Receipts	Fee	One Time Variance*
Class A	Up to \$50,000	\$611	\$5,000
Class B	Up to \$100,000	\$1,090	\$5,000
Class C	Up to \$200,000	\$2,062	\$10,000
Class D	Up to \$300,000	\$2,998	\$10,000
Class E	Up to \$400,000	\$3,874	\$10,000
Class F	Up to \$500,000	\$4,676	\$10,000
Class G	Up to \$600,000	\$5,420	\$10,000
Class H	Up to \$700,000	\$6,100	\$10,000
Class I	Up to \$800,000	\$6,722	\$10,000
Class J	Up to \$1,000,000	\$7,620	\$20,000
Class K	Up to \$1,250,000	\$8,460	\$25,000
Class L	Up to \$1,500,000	\$9,240	\$25,000
Class M	Up to \$1,750,000	\$9,880	\$25,000
Class N	Up to \$2,000,000	\$10,466	\$25,000
Class O	Up to \$2,500,000	\$11,500	\$30,000
Class P	Up to \$3,000,000	\$12,218	\$35,000

Class Q	Up to \$4,000,000	\$14,400	\$40,000
Class R	Up to \$5,000,000	\$16,362	\$50,000
Class S	Up to \$6,000,000	\$18,544	\$60,000
Class T	Up to \$7,000,000	\$20,728	\$70,000
Class U	Up to \$8,000,000	\$22,908	\$80,000
Class V	Over \$8,000,000	\$25,090	\$80,000

*See chapter [230-06](#) WAC, Exceeding license class.

6. Raffles

License	Annual Gross Gambling Receipts	Fee
Class A	Up to \$5,000	\$58
Class B	Up to \$10,000	\$185
Class C	Up to \$25,000	\$380
Class D	Up to \$50,000	\$641
Class E	Up to \$75,000	\$1,026
Class F	Over \$75,000	\$1,540

7. Combination license

License	Description	Fee
Class A	Allows gross gambling receipts of up to \$25,000 from bingo, \$7,500 from raffles, and \$7,500 from amusement games, not to exceed \$30,000 combined gross gambling receipts from	\$115

	all such activities. Allows Class D card games.		
Class B	Allows gross gambling receipts of up to \$60,000 from bingo, \$15,000 from raffles, and \$15,000 from amusement games, not to exceed \$75,000 combined gross gambling receipts from all such activities. Allows Class D card games.	\$300	
Class C	Allows gross gambling receipts of up to \$125,000 from bingo, \$30,000 from raffles, and \$30,000 from amusement games, not to exceed \$150,000 combined gross gambling receipts from all such activities. Allows Class D card games.	\$696	

8. Special property bingo

Once annually	\$27
---------------	------

9. Permits

Recreational gaming activity	\$58
------------------------------	------

10. Changes

Type	Fee
Name	\$27
Location	\$27

Fund-raising event date or time	\$27
License class	\$27
Duplicate license	\$27

11. Other fees

Type	Fee
Replacement identification stamps	\$27
Failing to apply for license class upgrade	Up to fifty percent of the difference between our fees for the licensee's present license class and the new license class or one thousand dollars, whichever is less, plus \$26
Review, inspection and/or evaluation of equipment, paraphernalia, services, or schemes	Deposit and fees as required

12. Two part payment plan participation

Annual participation	\$27
----------------------	------

[Statutory Authority: RCW [9.46.070](#), 07-23-083 (Order 621), § 230-05-020, filed 11/20/07, effective 1/1/08; 07-03-082 (Order 606), § 230-05-020, filed 1/18/07, effective 1/1/08; 06-07-157 (Order 457), § 230-05-020, filed 3/22/06, effective 1/1/08.]

**230-05-025
Commercial stimulant fees.**

All commercial stimulant license applicants must pay the following fees to us when applying for gambling licenses:

1. Card games - Nonhouse-banked

License	Description	Fee
Class B	Up to five tables of limited card games - hearts, rummy, pitch, pinochle, and/or cribbage - fee to play	\$189
Class C	Tournament only, no more than thirty consecutive days per tournament	
C-5	Up to five tables	\$189
C-10	Up to ten tables	\$346
C-15	Up to fifteen tables	\$576
Class D	Up to five tables - no fee to play	\$59
Class E	Fee to play	
E-1	One table only	\$460
E-2	Up to two tables	\$792
E-3	Up to three tables	\$1,318
E-4	Up to four tables	\$2,644
E-5	Up to five tables	\$3,980
Additional tables	Per table - up to a maximum of fifteen	\$1,152
Class F	Endorsement/upgrade of Class E includes permission to use alternative fee collections and use of player-supported jackpots	\$1,732

2. Card games - House-banked

All tables within a card room operating any house-banked card game must be licensed under this license class.

License	Fee	
Annual	\$6,944	
Additional fee per table - up to fifteen tables	\$1,732	

3. Punch boards and pull-tabs

License	Annual Gross Gambling Receipts	Fee	One Time Variance*
Class A	Up to \$50,000	\$628	\$5,000
Class B	Up to \$100,000	\$1,122	\$5,000
Class C	Up to \$200,000	\$2,116	\$10,000
Class D	Up to \$300,000	\$3,080	\$10,000
Class E	Up to \$400,000	\$3,980	\$10,000
Class F	Up to \$500,000	\$4,806	\$10,000
Class G	Up to \$600,000	\$5,570	\$10,000
Class H	Up to \$700,000	\$6,270	\$10,000
Class I	Up to \$800,000	\$6,906	\$10,000
Class J	Up to \$1,000,000	\$7,832	\$20,000
Class K	Up to \$1,250,000	\$8,692	\$25,000
Class L	Up to \$1,500,000	\$9,494	\$25,000
Class M	Up to	\$10,156	\$25,000

	\$1,750,000		
Class N	Up to \$2,000,000	\$10,756	\$25,000
Class O	Up to \$2,500,000	\$11,820	\$30,000
Class P	Up to \$3,000,000	\$12,218	\$35,000
Class Q	Up to \$4,000,000	\$14,400	\$40,000
Class R	Up to \$5,000,000	\$16,362	\$50,000
Class S	Up to \$6,000,000	\$18,544	\$60,000
Class T	Up to \$7,000,000	\$20,728	\$70,000
Class U	Up to \$8,000,000	\$22,908	\$80,000
Class V	Over \$8,000,000	\$25,090	\$80,000

*See chapter [230-06](#) WAC, Exceeding license class.

[Statutory Authority: RCW [9.46.070](#), 07-23-083 (Order 621), § 230-05-025, filed 11/20/07, effective 1/1/08; 07-03-082 (Order 606), § 230-05-025, filed 1/18/07, effective 1/1/08; 06-07-157 (Order 457), § 230-05-025, filed 3/22/06, effective 1/1/08.]

230-05-030

Fees for other businesses.

All other business license applicants must pay the following fees to us when applying for gambling licenses, miscellaneous changes, or inspection services:

1. Commercial amusement games

License	Annual Gross Gambling Receipts	Fee
Class A	Premises only	*\$327/\$150
Class B	Up to \$50,000	\$460

Class C	Up to \$100,000	\$1,184
Class D	Up to \$250,000	\$2,644
Class E	Up to \$500,000	\$4,640
Class F	Up to \$1,000,000	\$7,968
Class G	Over \$1,000,000	\$9,970

*We reduce the license fee by \$177 when you apply for additional licenses at the same business premises, apply for multiple licenses at the same business premises, or a licensee is renewing an annual license.

2. Distributor

License	Annual Gross Sales	Fee
Class A	Nonpunch board/pull-tab only	\$659
Class B	Up to \$250,000	\$1,318
Class C	Up to \$500,000	\$1,980
Class D	Up to \$1,000,000	\$2,644
Class E	Up to \$2,500,000	\$3,446
Class F	Over \$2,500,000	\$4,242

3. Fund-raising event equipment distributor

License	Description	Fee
Class A	Rents or leases equipment for fund-raising event or recreational gaming activity up to 10 times per year.	\$260
Class B	Rents or leases equipment for fund-raising event or recreational gaming activity more than 10 times per year.	\$659

4. Gambling service supplier

License	Fee
Annual	\$687
Financing, consulting, and management contract review	\$143

5. **Linked bingo prize provider**

License	Fee
Annual	\$4,414

6. **Manufacturer**

License	Annual Gross Sales	Fee
Class A	Pull-tab dispensing devices only	\$659
Class B	Up to \$250,000	\$1,318
Class C	Up to \$500,000	\$1,980
Class D	Up to \$1,000,000	\$2,644
Class E	Up to \$2,500,000	\$3,446
Class F	Over \$2,500,000	\$4,242

7. **Permits**

Type	Description	Fee
Agricultural fair	One location and event only	\$27
Agricultural fair annual permit	Annual permit for specified different events and locations	\$189
Recreational gaming activity		\$59
Manufacturer's special sales permit		\$211
Punch board and pull-tab	Initial application fee	\$236

service business permit		
Punch board and pull-tab service business permit	Renewal	\$56

8. Changes

Application	Description	Fee
Name		\$27
Location		\$27
Business classification	Same owners	\$59
Exceeding license class	New class fee, less previous fee paid, plus	\$27
Duplicate license		\$27
Corporate stock/limited liability company shares/units		\$59
License transfers		\$59

9. Other fees

Type	Fee
Defective punch board/pull-tab cost recovery fees	Up to \$100
Failing to apply for license class upgrade	Up to fifty percent of the difference between our fees for the licensee's

	present license class and the new license class or one thousand dollars, whichever is less, plus \$27
Review of gambling equipment, supplies, services, or games	Cost reimbursement

10. Identification stamps

Type		Fee
(a) Punch boards and pull-tabs		
(i) Standard	Wagers fifty cents and below	\$.28
	Wagers over fifty cents	\$1.11
(ii) Progressive jackpot pull-tab series	Per series	\$11.19
(iii) Pull-tab series with carry-over jackpots and cumulative prize pool pull-tab series	Per series	\$1.11
(b) Pull-tab dispensing devices		
(i) Mechanical and electro-mechanical		\$.28
(ii) Electronic	Dispensing devices that require initial and ongoing evaluation of electronic components or	\$112.04 annually

	functions, such as reading encoded data on pull-tabs, accounting for income or prizes	
Replacement of identification stamps		\$26
(c) Disposable bingo cards		
(i) Single game sets of individual cards or sheets of cards		\$.28
(ii) Multigame card packets		\$1.22
(iii) Cards used to play for linked bingo prizes	Fee per 250 cards	\$.44
(iv) Cards used to play for linked bingo prizes	Fee per 5,000 cards	\$8.96
(d) Coin or token-activated amusement games		
Annually - operated at any Class A amusement game license location		\$28.00
(e) Electronic bingo card daubers		
Annual		\$11.19
(f) Electronic card facsimile table		
Annual		\$381.50

11. Two-part payment plan participation

Annual participation	\$27
----------------------	------

[Statutory Authority: RCW [9.46.070](#), 09-17-077 (Order 657), § 230-05-030, filed 8/14/09, effective 1/1/10; 07-23-083 (Order 621), § 230-05-030, filed 11/20/07, effective 1/1/08; 07-03-082 (Order 606), § 230-05-030, filed 1/18/07, effective 1/1/08; 06-07-157 (Order 457), § 230-05-030, filed 3/22/06, effective 1/1/08.]

**230-05-035
Individuals license fees.**

Individuals must pay the following fees to us when they apply for gambling licenses, permits, miscellaneous changes:

1. Charitable or nonprofit gambling manager

License	Fee
Original	\$185
Renewal	\$88
Change of employer	\$88

2. Linked bingo prize provider representative

License	Fee
Original	\$260
Renewal	\$158

3. Commercial gambling manager

License	Fee
Original	\$189
Renewal	\$90
Change of employer	\$90

4. Distributor's or gambling services supplier's representative

License	Fee
Original	\$260

Renewal	\$158
---------	-------

5. Manufacturer's representative

License	Fee
Original	\$260
Renewal	\$158

6. Public card room employee

License	Fee
Class A - Performs card room employee duties in a Class E card room	
Original	\$189
Renewal	\$90
Class B - Performs card room employee duties in enhanced and house-banked card rooms	
Original, in-state	\$258
Original, out-of-state	\$320
Renewal	\$158
Transfer/additional employee/conversion/emergency waiver request	\$61

7. Other fees

Change of name	\$27
Duplicate license	\$27

8. Military personnel returning from service

If a license expires while an individual is on active military service, the individual may apply to have their license reissued at the renewal fee. The application must be received within six months after completing their active military service. The applicant must provide evidence of the completion date of active military service.

[Statutory Authority: RCW [9.46.070](#), 07-23-083 (Order 621), § 230-05-035, filed 11/20/07, effective 1/1/08; 07-03-082 (Order 606), § 230-05-035, filed 1/18/07, effective 1/1/08; 06-13-069 (Order 600), § 230-05-035, filed 6/19/06, effective 1/1/08; 06-07-157 (Order 457), § 230-05-

035, filed 3/22/06, effective 1/1/08.]

Chapter 230-05-005 WAC

Fees for review of gambling equipment, supplies, services, or games

You must apply to us if you want to submit gambling equipment, supplies, services, or games for our review. You must pay the application deposit before we perform the review. You must also reimburse us for any additional costs of the review.

[Statutory Authority: RCW [9.46.070](#). 06-07-157 (Order 457), § 230-05-005, filed 3/22/06, effective 1/1/08.]

THANK YOU

for choosing IPE for your
continuing education needs.

Please visit our website at
www.ipe-sems.com
for a complete list of
upcoming learning opportunities.

IPE
INSTITUTE *for*
PARALEGAL EDUCATION™