A Warning to Commercial Drivers, Their Employers, and Their Lawyers

In 2006, our legislature responded to the federal government’s threat to de-certify Washington’s Commercial Driver’s License (CDL) program and to withdraw federal transportation funding by enacting SSB 6552, “An act relating to commercial driver’s licenses.” Unfortunately, the Act did not go far enough to protect CDL holders who come under its draconian measures, which treat commercial drivers more harshly when driving non-commercial vehicles with a breath or blood alcohol content (BAC) of 0.08 or higher, than when driving a commercial vehicle with alcohol in their systems. The measure also adversely affects businesses whose drivers come under the purview of the Act.

For some time, the law has prohibited persons from driving commercial vehicles with a BAC of 0.04 or higher.1 A person will be disqualified from driving a commercial vehicle for at least one year2 if the Department of Licensing (DOL) receives a report that a person driving a commercial vehicle refused a test or had a test result of 0.04 or higher.3 Likewise, a CDL holder convicted of DUI in a non-commercial vehicle will be disqualified for at least one year.4 However, prior to disqualification, the driver is entitled to due process safeguards: a formal hearing,5 an "automatic" stay during an appeal of an adverse decision,6 and "de novo" review in superior court.7 These provisions remain in place for persons driving commercial vehicles, and for persons convicted of DUI involving a non-commercial vehicle.

In contrast, the new provisions require that persons arrested for but not convicted of DUI or Physical Control do not explain the consequence to a CDL where a non-commercial vehicle is involved. Our Supreme Court has consistently held that the purpose of the implied consent law is to afford the driver an opportunity to exercise intelligent judgement in deciding whether to take or refuse a test.9 The Legislature neglected to revise the current warnings.

Second, persons suspended by the DOL on arrest, not conviction, are denied a hearing to contest the disqualification of their CDL,9 denied an automatic stay, and denied a de novo hearing in superior court. This is so in spite of the fact that, in terms of livelihood, this driver is similarly situated to a driver arrested while driving a commercial vehicle. There appears to be no rational basis for the differential treatment. By virtue of the size and weight of commercial vehicles, the often precious persons or hazardous cargo they carry, and the number of hours on the road, the public is at greater risk from alcohol-impaired drivers operating commercial vehicles than those operating private vehicles. Accordingly, the current statutory scheme may violate due process and equal protection provisions of our constitutions.

Finally, the DOL is prohibiting CDL holders from a stay of the revocation of their CDL when in a deferred prosecution program under RCW 10.05, even though certain provisions explicitly exclude deferred prosecutions.11 Accordingly, the Implied Consent DOL hearing should not be waived for CDL holders intending to enter a deferred prosecution program.

The new law leaves CDL holders and their employers confused. This article is intended to highlight some of the issues the legislation has raised, but is not an exhaustive review of the concerns or the challenges that may be brought, nor does it substitute for the advice of counsel based on the particular facts in any given case. Please call us if we can help your clients save their CDL and thereby, their livelihoods.

1 RCW 46.25.090(1)(B); A commercial vehicle is "a motor vehicle designed or used to transport passengers or property; (a) if the vehicle has a gross weight rating of 26,001 or more pounds; (b) if the vehicle is designed to transport sixteen or more passengers, including the driver; (c) if the vehicle is transporting hazardous materials... (d) if the vehicle is a school bus regardless of weight or size. RCW 46.25.01(6). This article does not address the consequences for persons transporting hazardous materials.
2 Lifetime for a second disqualification.
3 RCW 46.25.120.
4 RCW 46.25.090(1)(a).
5 RCW 46.20.329; 46.20.332; 46.25.120(5).
6 RCW 46.25.120(5).
8 RCW 46.25.090(a), (b). This also applies to drivers under twenty-one pursuant to RCW 46.61.503.
10 RCW 46.25.090(1) which provides for automatic disqualification if the driver comes under the purview of RCW 46.20.308.
11 RCW 46.20.308(10)(b); RCW 46.20.070(4) (specifically excluding deferred prosecutions under 10.05); RCW 46.63.070(5)(c) (limiting deferrals only to "this section" pertaining to traffic infractions.)

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The mission of the Washington State Bar Association is to promote justice and serve its members and the public.
Stephen Hayne has been named one of Seattle’s Best Lawyers by Seattle Magazine, one of Washington’s Top Ten Trial Lawyers by the Washington Law Journal, and a Super Lawyer every year since inception by Washington Law & Politics. He is a past president of the Washington Association of Criminal Defense Lawyers, and has chaired the Criminal Law Sections of the WSBA, WSTLA and the KCBA. In 2003, the Washington Association of Criminal Defense Lawyers awarded him its highest honor; the William O. Douglas Award ‘For extraordinary courage and dedication to the practice of criminal law’.

Steve has taught trial practice at the UW and Seattle U Schools of Law, the National Institute of Trial Advocacy, and the Trial Masters Program, and has been a featured speaker at over 90 continuing legal education programs in the U.S. and Canada. He has published numerous articles in the Bar News, Trial News, Defense, Champion and Overruled magazines. He was lead counsel/co-counsel in State v. Straka, State v. Brayman, Seattle v. Allison, State v. Scott, State v. Ford, and Seattle v. Box. He has tried hundreds of cases from capital murder to reckless driving and currently limits his practice to DUI and serious traffic offenses.

Aaron J. Wolff graduated with honors from the Seattle University School of Law before becoming a DUI prosecutor for the cities of Kirkland and Tukwila. In 2003, Aaron joined the Law Firm of Stephen Hayne where he has limited his practice to defense of DUI’s and other serious traffic offenses. He is a graduate of the National College of DUI Defense, the DRE Drug Evaluation classification overview program and is a NHTSA qualified administrator of the Standardized Field Sobriety Tests. In 2004, Aaron completed the factory training program on the BAC Datamaster breath testing machine.

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**Island County: The rest of the story**

As long-time supporters of the proper funding of indigent criminal defense, we commend the Bar News for the February 2007 issue largely devoted to public defense.

We do wish to set the record straight as to one statement appearing in Robert C. Boruchowitz’s article, “Right to Counsel Remains Threatened in Washington.” On the second page of his article, Mr. Boruchowitz states: “One contract defender in Island County recently lost his job after he based his proposal for renewal of his contract on implementing the WSBA-endorsed caseload standards.”

This statement is erroneous, or at least misleading, in several particulars. First, there is only one contract public defender in Island County. Secondly, the proposal submitted by the prior public defender (a law firm in Coupeville) was not for renewal of its contract. The former public defender’s contract expired at the end of 2006. The Island County Board of Commissioners advertised a request for proposals seeking a public defender for the years 2007-09. The RFP indicated that a number of factors would be considered in determining the public defender to be selected. These factors included not only cost, but also ability, capacity, experience, quality of previous performance, compliance with statutes and rules relating to public defense, reputation, and responsiveness to the Public Defense Department’s obligations and time limitations. Using these criteria, the board selected the current public defender, a skilled attorney with many years of experience in public defense.

Thirdly, and most importantly, Mr. Boruchowitz’s statement seems to imply that the former public defender was not awarded the contract because his proposal included implementation of the WSBA-endorsed caseload standards. That is not true at all.

We take pride in the fact that since 1991, the public defender’s contract with Island County has *required* compliance with WSBA-endorsed caseload standards, with the exception of misdemeanors. With regard to misdemeanors, Island County requires compliance with the ABA-endorsed standards.

All three proposals for the 2007-09 contract stated that they could, and would, comply with these standards. The current public defender will be required to hire sufficient attorneys to meet these standards. It should also be noted that the Island County Public Defense Department, at our request, conducted a compliance review of these standards in 2005. The prior public defender certified that it was meeting these standards under its contract.

Vickie I. Churchill, Superior Court Judge, Island and San Juan Counties  
Alan R. Hancock, Superior Court Judge, Island and San Juan Counties
Public defense another way

Thank you for highlighting the problem of public defense in Washington State. Quite frankly, it was about time. Twenty years ago I left Seattle in part because there was too little support for criminal public defenders as far as solo practitioners were concerned, and moved to Tokyo for 15 years to represent corporate clients with better funding. I have now been back in New York for five years in semi-retirement, and have found that the situation here is quite different.

Twenty years ago, the only possible public defense role for private practitioners was on the conflicts panel for Juvenile Court at $22 an hour, with cases few and far between. The public defense role was mostly handled by Associated Counsel for the Accused — not to say that they didn't do an excellent job of public defense, but their caseload was horrendous. Now there are several other contractors, but the situation is still ridiculously untenable from a financial and professional standpoint, at least as far as I can see from this distance.

It always did and still does make me angry to see certain liberal white-shoe Seattle law firms getting the Pro Bono Award at the annual bar association meetings and regularly congratulating themselves on their liberal efforts, as though the contributions they made really made a difference. I don't really mean to criticize any particular firm, since they did have good intentions and there were no other firms making even minimal efforts to help the poor. Putting overpaid inexperienced associates, albeit with a sincere commitment to helping the poor, in the trenches for a little slumming did very little good at all, yet gave the image and appearance of self-serving “noblesse oblige.”

I think that perhaps Washington State can learn from New York, which has a very progressive and well-funded commitment to providing legal counsel to indigent persons, although it is still somewhat flawed and in need of tweaking.

The two main programs are the Law Guardian program and Assigned Counsel programs. The Law Guardian program provides free legal counsel to children, and pays the court-appointed Law Guardians $75 an hour plus mileage. The Assigned Counsel programs allow judges to appoint free lawyers for indigents in criminal cases, and most notably, in Family Court cases, pursuant to County Law 722 and 18-b. Assigned Counsel are paid $75 an hour for felonies and Family Court, and $60 an hour for misdemeanors, plus mileage, with a $4,000 cap, which can be exceeded with judicial approval in extraordinary circumstances. In NYC and larger cities, they have a system similar to Seattle, with public defender agencies and conflict panels, but Assigned Counsel there are also paid a reasonable fee of $75 an hour. Since the rate was raised from $25 an hour (which deterred many practitioners) two years ago, many rural counties are seriously looking at public defender programs due to the expense. It remains to be seen how that will all work out. By working in several counties, or in urban areas, Assigned Counsel can make enough to at least survive in a beginning law practice.

Of course, notable big differences for New York are the population, tax base, and an income tax. The state of social
disintegration in New York is such that the legal system would come to a halt without Assigned Counsel — without Family Court assigned counsel probably the cases of homicidal fathers would increase, and without assigned counsel in general perhaps armed revolution might become imminent.

As is the case in general with indigent defense counsel, Assigned Counsel often feel that they are merely processing indigents through the legal system, and simply being co-opted and supporting the facade of a legal system for poor people. However, occasionally the rights of indigent defendants are protected and defended as would not be the case without the programs. At least there is an incentive for some assigned counsel to adequately research the legal options of indigent clients, and a support system through the private New York Defenders Association, which provides advice to members in complex cases.

One very beneficial result of the Assigned Counsel programs is that neophyte attorneys can learn to proficiently practice criminal and family law while being adequately compensated for their time. At least they can have a client base and minimal income from Assigned Counsel cases which can cover expenses, a big problem in Seattle which young solo private practitioners face on a daily basis without any support. The low-income referral panels of the Seattle-King County Bar Association were and probably still are totally inadequate to provide counsel for low-income families or survival wages for young attorneys.

I guess my point is that if you want a viable public defense program, you have to bite the bullet and make an actual commitment to funding a realistic program which actually involves private practitioners. Relying on pro bono and the defender associations alone will simply not cut it. The New York solution, although flawed, has many good points, and does provide financial incentives for young practitioners to defend poor people. Without such incentives, the poor will continue to get the short end of the stick, and young lawyers who wish to represent oppressed poor people will simply starve to death, get out of the practice of law, represent corporations, or move away.

Albert K. Gustafson, Cobleskill, New York

Just fine?
I just finished paying my bar dues, I paid late (three days past the deadline), and I paid the 20 percent late fee. I’m not making any excuses for paying late, and I fully expected to pay a late fee — I’m just wondering if anyone else thinks 20 percent is a bit much.

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Mentors, Present and Future

Ellen Conedera Dial, WSBA President

I have been fortunate in my life to have mentors who helped me see the next logical step and who helped identify — even create — opportunities for my professional growth. Those mentors sometimes appeared at unexpected times and in unexpected places. Perhaps my most unusual mentor was a psychology professor who suggested that I drop out of graduate school and take another look at what I wanted in my life when, despite academic success, I was not truly engaged in the work. During law school, professors were important mentors, helping me decide what my direction and goals should be, and helping me gain confidence that the law offered a fascinating career for me. My most influential mentor was Justice Charles Horowitz, the Washington State Supreme Court Justice for whom I clerked after law school — two of the most important years of my professional life. Justice Horowitz helped me see the breadth and depth of the law as a discipline that calls upon us to use our intellects, to be sure, but also to understand how the law intersects with our personal beliefs and values. He shared his passion for the law and for achieving a just outcome. I had intended to return to academia to teach law after my clerkship. Justice Horowitz encouraged me to try practicing law, solving real problems for other people and trying to put some things right that needed fixing. It is impossible to overstate the important role he played in helping to shape my career. He was also a wonderful friend and advisor for many years.

The Right Person at the Right Time

There is a proverb whose origin I have not been able to confirm, but which speaks clearly to the role of a mentor: “When the student is ready, the teacher will appear.” I think of a mentor as being the right person at the right time — someone who opens a window of opportunity, perhaps in one’s thinking, perhaps in more concrete terms — at just the time when one is prepared to take advantage of it.

I think of a mentor as being the right person at the right time — someone who opens a window of opportunity, perhaps in one’s thinking, perhaps in more concrete terms — at just the time when one is prepared to take advantage of it.

The Challenge to Find Mentors

With so many experienced and smart lawyers around us every day, why, then, is it so hard to find mentors? When I began to practice law after my clerkship, I was surprised to learn that finding mentors to help with the day-to-day challenges of a law practice was hard. There were ties for professional growth. The Columbus (Ohio) Bar Association found that experienced lawyers asked for mentoring help when they were changing directions in their careers. In Westchester County, New York, a group of veteran lawyers and judges asked for help with the challenges of technology and were paired with new lawyers and law students, resulting in a program now known as “Mentor a Dinosaur.” Although I might dispense with the title (at least as applied to myself!), I enthusiastically support the concept.
There are many answers to this question, but most, I believe, are directly related to the demanding nature of a legal career. Most lawyers are very willing — even happy — to take time to give advice. Taking on the role of mentor is something else again. Being effective as a mentor means thinking about the best interest of another person, and taking actions to bring that person along in his or her career. It is an attitude, a way of thinking. And it takes time and careful thought.

Most lawyers find that it is difficult enough to do one’s own job well. Devoting serious thought and attention to someone else’s professional life can simply exceed available “bandwidth.” Then, too, differences in age, cultural backgrounds, and life experiences may hamper even the most willing lawyers in their efforts to be successful mentors. Yet having mentors is more important than ever to a lawyer’s sense of satisfaction and achievement.

Recognizing the Importance of Mentoring
It is gratifying, then, to learn that mentoring is making a serious comeback in the legal profession. Law firms and bar associations across the country are building formal mentoring programs, sometimes involving several mentors for each new lawyer. Mentoring programs are often key elements in programs aimed at increasing diversity in the profession, and in keeping the pipeline of talent into the profession healthy and vital. Georgia and Ohio are now running pilot projects that involve compulsory mentoring and/or new-lawyer training.® Recognition of the importance of mentoring is driving institutional changes in the way legal jobs are structured, so that lawyers are being asked to become active mentors as a part of their work — and are learning excellent mentoring skills along the way.

At the heart of this phenomenon is the fact that being a good lawyer requires wisdom, knowledge, and experience, and that we all need help if we are to be successful. The practice of law is an enterprise that involves life-long learning. We will all find ourselves in need of teachers from time to time. As learners, we will need to be open to the possibility of learning from those around us, recognizing the teachers when they appear. But we also need to be honing our own mentoring skills, looking at our roles not just as helping solve our clients’ problems, but also as helping promote the success of the lawyers around us. Whether or not bar associations or employers adopt formal mentoring programs, we share a responsibility for being active mentors ourselves. Just as it has been important to each of us in our own careers to have mentors, we need to offer mentorship to others whenever we can.®

NOTES
3. Ibid.
4. Ibid.
5. Ibid.

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Goodbye Goodbye words are hard to say and even harder to live and feel. I’m giving my farewell with the richest of emotions and fondest of memories I have accumulated over nine years of experience with the WSBA, its leaders, staff, and members, and I leave bursting with pride in the many accomplishments and successes we have had together.

My daughter, Kristan, in describing raising her newborn child last fall, could only say, “I am so honored to be sharing her life.” I feel the same about the WSBA. The body of work presented to me in the spring of 1998 was fledgling. The 1990s had been tumultuous for the WSBA, with licensing-fee contentions, low staff morale, and members demanding — and deserving — more transparency. To the outside world, the WSBA was quiescent and just beginning to develop and move the agenda of “Justice for All,” timely and proportionate discipline, and valuing member relations. In my interview for the executive director position, I was asked what I thought of the State Bar. I could only say, “It seems sleepy for an organization of over 25,000 members.” Well, it isn’t sleepy anymore! We’re internally vital, respected, appreciated by many members, enjoy a national reputation, and its activities; articles of interest from myriad of information about the WSBA by practice area and geographic area; a credit tracking; a lawyer look-up sortable date event notices; CLE schedules and offers members and the public up-to-date access and an interactive website. Coming into the modern times with technology, the WSBA added what has grown to a 5,000-page website. The web technology, the WSBA added what has improved the state’s discipline system, and deterioration system in 1995. Improvements since their first look at a system in 1995. Improvements since their first look at a deteriorated system in 1995.

Open records and meetings In 2000, the Board of Governors adopted a Bylaw change mirroring the state’s public disclosure and open meetings act. Since that time, all WSBA Board meetings, committee meetings, and other activities have been made as transparent and open as possible. Meeting minutes and financial statements are routinely posted on the WSBA website.

Addition of web access and an interactive website Coming into the modern times with technology, the WSBA added what has grown to a 5,000-page website. The web offers members and the public up-to-date event notices; CLE schedules and credit tracking; a lawyer look-up sortable by practice area and geographic area; a myriad of information about the WSBA and its activities; articles of interest from Bar News; and individual pages for sections, committees, and the WYLD.

Timely and effective discipline In 1998, it took up to five years to resolve a grievance. Members and their insurers were just hanging in the gloom for years. By 2002, the WSBA was meeting the Board-adopted aspirational guidelines of 90 percent of grievances being resolved within 90 days. Thanks for this feat go to Barrie Althoff, Joy McLean, and a superb disciplinary counsel team. In 2006, the ABA was invited to do a “spot check” on the WSBA’s discipline system, and they noted significant innovations and improvements since their first look at a deteriorated system in 1995.

Culturally diverse and competent Some members chafe at the word “diversity” and the many WSBA efforts to embrace diversity of all kinds in its Board, committees, and appointments. Diversity at the WSBA is not about political correctness; it is about embracing the breadth of our membership and our future, and recognizing that this country’s and our state’s lawyers and client base are multi-ethnic, multilingual, and multicultural. Embracing diversity is about being a good world citizen. Since 1998, the WSBA has increased the diversity of the Board of Governors, implemented by a broad definition of diversity, added a diversity advocate position, and funded the WSBA Leadership Institute, creating a pipeline of diverse candidates for leadership roles.

New quarters with a potential of a 20-year lease In December 2006, we culminated a four-year effort to locate and move to new quarters. The choice to move was based on member and staff input about the important factors for the look and feel of the WSBA headquarters. At the new location in Puget Sound Plaza, the WSBA enjoys professional, well-managed quarters, easy access and parking, a favorable lease which is extendable for up to 20 years, and space enough for current staff and projected staff growth for the term of the lease. This move was accomplished within the budget set aside for this purpose.

M. Janice Michels, WSBA Executive Director
License fee stability
Since 2002, the WSBA has managed to accommodate growth in members, services, and staff with less-than-inflationary annual license fee increases. This has been possible through prudent management, new-member growth, and the adjustments to self-supporting services.

Strong and stable operations
Though perhaps a mundane accomplishment to some, the WSBA’s success in establishing a strong internal infrastructure has allowed us to excel in our programs and services and work more efficiently and cost-effectively. Our fiscal policies and controls pass audits without findings or management notes, technology supports all WSBA regulatory systems and other programs, and prudent human resource policies and practices have kept us out of court on personnel matters for the past nine years. We have built a base of policies and procedures which operate like a variation of the rule of law in creating consistency in the predictability of our regulatory functions and fiscal decisions. Having appropriate policies and procedures also adds to the transparency of the WSBA to its members.

Voice of the profession
The WSBA exercises a strong voice on public policy in the areas of court funding, public defense, civil legal services, and public legal education. Our credibility is high, and our opinions are listened to by policy makers.

In closing...
I have had the pleasure of supporting 10 WSBA presidents and 53 Board members, each with their unique flavor and bent. I count many of these past presidents and governors as friends. I have met and worked with countless bar leaders of local, specialty, and minority bar associations; WSBA sections and committees; law-related entities; and special task forces. I have encountered exceptional lawyers committed to their community and profession.

I am honored to have worked with WSBA directors and staff, all of whom represent the highest levels of professionalism and caliber. I want to stress how fortunate the WSBA is to attract and retain the staff we have. Staff are the backbone of the WSBA and hold a passionate commitment to elevating the practice of law and supporting the Board, members, and citizens of the state. These are 140 of the most hard-working and dedicated persons the WSBA could wish for. They have earned my deepest respect and gratitude.

These past nine years have been rewarding and fulfilling, and I thank you for the honor of serving as your executive director.

WSBA Executive Director Jan Michels can be reached until April 30 at jann@wsba.org.

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The Proper Care and Feeding of Clients

by Stephen Hayne

Practicing law must be the best job in the world. Why else are so many bestselling books, movies, and television shows devoted to our profession? And where else could we get paid so much for essentially well, standing around talking? No wonder everybody hates us but wants to be us at the same time! Despite its obvious benefits, it is a tough business. To keep the wolves at bay, you have to get clients in the door. Then you have to sign them up. Then you have to get them to pay a lot of money. Then you have to tell them bad news. Then you have to make them feel okay about it. Then you have to make sure they leave pleased with what you did for them. Doing all that ain’t easy.

Every once in a while I hear friends complain, “You know, the practice of law would be great if it weren’t for the clients.” It’s sometimes true: Client relations can be the hardest part of the business. But there are some basic steps you can take to make it a lot easier and more gratifying for both yourself and your clients.

First: recognize that clients usually come to us in terrible distress — afraid, confused, ashamed, defiant, and angry. Many lawyers are uncomfortable dealing with their distress. After all, it’s really quite irrelevant to the legal problem, isn’t it?

No, it’s not, and it is also critical to what kind of relationship the lawyer and client are going to have, from beginning to end. The failure to appreciate and empathize with the client’s psychological struggle will be a barrier to good client relations, no matter how brilliant the lawyer or fantastic the result. If there is a single prerequisite, a single key to keeping clients happy, it is seeing them as someone who is suffering first, and as someone with a legal problem second. Doing so offers the client the most fundamental component of a good lawyer/client relationship: trust. Trust that the lawyer is on the client’s side no matter what the client did, no matter how worthless the client feels. Trust that no matter how ugly it gets, the lawyer won’t cut and run.

Consider what the client is experiencing when he walks in your door: “There’s a monster trying to break down my door, it wants to destroy me and I’m helpless to stop it. And it’s my fault it’s there. I feel worthless and ashamed. I’ve failed everyone who cares about me. Oh, how I wish I could go back and start over!”

I don’t care how stoic the client appears: When he shows up at a lawyer’s office, something like that is usually going on inside. It must feel pretty awful. So what is the client looking for? What does he need and want from you? He needs someone capable and strong to join him in the fight, someone who knows the monster, someone who has fought it before and is not afraid of it, someone who will protect him. And he needs someone who will resist the temptation to judge him, who won’t align himself with his enemies. In short, someone he can trust.

That is the foundation of a good attorney/client relationship.

This kind of trust can only develop when the lawyer pays attention, really hears the client, tries to understand the client’s pain, and does so without even a hint of judgment. Being on the client’s side doesn’t mean you approve of what he or she did. It means you’re going to help your client deal with it, to begin the process of putting his life back together, and to help him forgive himself. It also means resisting the temptation to join the self-righteous legions surrounding him, whose disapproval haunts him day and night. The client already has more than enough people judging him — what he needs is an unwav-
My experience working for Irv taught me Lesson Number Two: When it comes to making clients happy, it isn’t about winning or losing. It’s about how you treat the clients in the process. I can’t count the number of times folks were effusively grateful after I lost their case. They appreciated the fact that I was on their side, that I cared, and that I treated them with dignity and respect when no one else would.

When I left to begin private practice, I shared space with an established lawyer known for his take-no-prisoners attitude. Through the thick brick wall separating our offices, I winced as he loudly berated clients, demanding they follow his advice and not ask stupid questions. He ended up fighting a series of bar complaints and eventually gave up on the practice of law. I was not surprised. We lawyers operate in a world that is mysterious and frightening to our clients. We speak to judges and each other in a language they don’t understand. We assume that if we know something is in the client’s best interests, they will, too.

We would be wrong. Explaining complicated legal principles and tactical decisions is a pain, requiring patience, empathy, good listening skills, and a lot of time. But it must be done. It presents Lesson Number Three: It doesn’t matter that the lawyer knows what’s best for the client — what matters is that the client knows and agrees. Otherwise, clients can’t move on; they are tormented with uncertainty, wondering whether they made the right decision. And they will blame the lawyer for the anxiety they feel. We owe it to our clients to remove the confusion as well as we can at each stage of the proceedings, by making sure they understand and approve of the decision before we ask them to make it.

As I learned how to practice law, every once in a while a client would get mad at me. The complaints usually seemed trivial: I didn’t return calls promptly, or failed to follow up, or was late to court, or sent another lawyer in my place, or contradicted myself on some minor point. I’d often respond defensively, without much genuine concern. ‘That just made ’em madder. Eventually I realized that what I was doing: creating molehills, then challenging clients to make them into mountains. I learned there is no such thing as a “trivial” client complaint.

This led me to Lesson Number Four: Always return calls promptly, encourage questions from clients, respond immediately to complaints with sincere concern, keep them informed, explain your advice,
be on time to court, and never promise something you're not positive you can deliver. Attention to these details goes a long way toward calming nervous clients.

I occasionally receive calls from other lawyers' clients who want to fire them and hire me. The complaints are rarely about the lawyer's competence or the results attained. It's almost always over frustration with the lawyer's inability or unwillingness to explain the lawyer's actions or advice. I hear them out, then almost always suggest that they go back to their lawyer, discuss the problem, and give her or him a chance to resolve it. I rarely hear from them again.

Which brings me to Lesson Number Five: If you have an unhappy client and are lucky enough to hear from her before some other lawyer or the Bar Association does, for gosh sakes take it seriously. Sit down, shut up, listen attentively, explain without a bunch of excuses, and apologize when appropriate. Figure out what the client needs to feel okay about it and move on. In such cases, the warning "act in haste, repent at leisure" is dead on. The worst thing a lawyer can do in response to a client's complaint is to blow it off, even if the client is wrong. Yes, client complaints often seem frivolous, unfair, or misguided. They are sometimes exaggerated or distort the facts. In reality, they are often manifestations of the client's unresolved fear, guilt, or shame. But they are real to the client and must be treated as such by the lawyer. In doing so, you are providing the client with what all clients need — the means to let go of all that emotion and move on.

Occasionally, we all run into clients who want their money back. This sometimes seems patently unreasonable. You feel you earned it twice over. The client was very demanding even irrational. You achieved a terrific result. Maybe you had a bad month and need the money. It feels like a complicated question. Should you return all of the client's money? Should you return any of it? Isn't it unfair to you? Didn't the client sign the fee agreement freely and voluntarily? However you answer these questions, there is only one appropriate response. Let's call it Lesson Number Six: Give it back. And if necessary to make the client happy, give it all back.

I don't care why the client wants it back. I don't care how much it is, or how hard you worked on the case, or what a great job you did. I don't care if the client is crazy, a complete jerk, or a con artist. I know it hurts, but give it back anyway. Suffice to say, I've known a lot of lawyers who didn't, and every one eventually really wished they had. It is simply not worth the hassle. By the time the complaint reaches the Bar Association, the client will likely be complaining about everything you did and a lot you didn't. It will expand into a general indictment of your competence and ethics. It will require massive amounts of time, money, and effort to defend. It will not be worth it. So, just give it back and move on, sadder but wiser.

Over the many years of your career, you will likely repeat many of the same mistakes I've made. None of us is perfect. All we can ask of ourselves is to do our best and learn from our experiences. I hope you can benefit from mine. Yes, this can be a tough job, but even after 30 years, I still think it's the best job in the world. Not despite the clients, but because of them.

SGB NEWS

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Anne Kysar will continue her successful leadership of SGB's Social Security disability appeals practice.

Lorena González is a 2005 graduate of Seattle University School of Law and the President-Elect of the Latina/o Bar Association of Washington. Most recently she worked as an associate at Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim. Ms. González will continue to focus her practice in the areas of employment discrimination, medical malpractice, wage and hour litigation, and serious personal injury.

Steven Hayne practices in Bellevue. A past member of the WSBA Editorial Advisory Board, Hayne last appeared in Bar News in March 2006, with his article "Demystifying Jury Selection."
“TIE ONE FOR THE GIPPER”

... and Other Failed Cheers

by Louis D. Peterson

Reaching a compromise in America is a challenge, because our culture applauds winning above all else. And if you are not a winner, you are a loser.

In soccer, the world’s most popular team sport, tie scores are commonplace. But soccer has never captured the American spirit. In baseball, the emblematic American sport, there is no place for ties. Teams play extra innings until a winner emerges. In basketball, another American invention, games routinely require overtime periods to anoint the victor.

American football once allowed for ties, but tie scores left us feeling empty. Ties were abandoned in favor of overtime and sudden death, so that no one need leave the stadium without superiority on the gridiron having been determined. When Knute Rockne (or, at least, Pat O’Brien’s movie Rockne, invoking Ronald Reagan’s George Gipp) implored his team to “Win one for the Gipper,” he was expressing a quintessentially American value. Rockne would never have settled for a tie.

Our obsession with winning extends to our compulsion to rank everyone and everything: the Fortune 500 “Largest American Corporations,” the Forbes “400 Richest Americans,” the Princeton Review’s “Best Colleges,” the AP “Top 25 College Football Teams,” People’s “100 Most Beautiful People.” It is important for us to identify winners and losers.

This singular ethos is probably both the fuel and the product of American capitalism, that voracious competitive energy that has driven the development of the greatest industrial economy in the history of the world.

In jurisprudence, the courtroom is the playing field upon which emerge the victors and the vanquished. No one seeks a tie during the trial battle.

This classic American personality is a hindrance in the world of mediation, where the goal itself is a “tie” of sorts — a compromise — the type of score, or ranking, that resonates of failure or inferiority. Mediators and trial lawyers will be more successful in crafting settlements if they better understand the competitive landscape on which they labor.

It may be too much to expect that the mediator or trial lawyer can transform a party’s archetype from truculent to tractable. No matter the urging, a party’s instinct for superiority will likely emerge during negotiations. Therefore, a key to reaching a successful compromise may lie in redefining the goal for the parties so that they are still competing for a kind of “victory.” Defining the nature of that victory is an interesting challenge for counsel and conciliator. Even though it may lack the panache of a ninth-inning walk-off home run, I suggest that this kind of victory may be found in reaching for a settlement in the favorable end of the reasonable settlement range.

Almost no lawsuit has a uniquely “correct” trial judgment amount. Similarly, few cases have a uniquely correct settlement number. But for every case, there is a range of reasonable settlement results — and a successful negotiation will result in settlement within this range. Although the factors that influence the bandwidth and location of the reasonable settlement range on the spectrum of possible results are numerous, they include such things as...
the relative sympathies of the parties; the nature of the claims; 
the types of damages; the dissonance among expert witnesses; 
and the costs of the litigation.

If both parties are represented by competent counsel, as is 
often the case, each side's settlement analysis may be similar. 
In a case where the possible results at trial range from $0 to 
$X, the reasonable settlement range can be illustrated by the 
following drawing, not to scale:

![Settlement Range Diagram]

A fair settlement is one that is located anywhere in this 
settlement range. There is no uniquely “best” settlement num-
ber. Therefore, a settlement goal consistent with the American 
preoccupation with winning is the attainment of a compro-
mise in the shaded segment of the settlement range nearest 
that party's end of the spectrum of possible results at trial.

Based upon my participation as a mediator in several 
hundred settlement negotiations, I have observed the strategy 
with which parties have most consistently achieved this type 
of settlement “victory.”

Plaintiff’s settlement goal is to end up at P (or better, of 
course, if Defendant is overmatched), and similarly, Defen-
dant’s settlement goal is to end up at D or better. Theoretically, 
equal negotiators would end up settling the case at S. It is my 
experience that most negotiations are not between equally 
skilled negotiators, and that one side or the other will “win” 
the battle for turf within the settlement-range field of play.

Each party, by its first offer, has an opportunity to influence 
the framework for settlement. For example, contrast Plaintiff’s 
decision to begin the negotiations at Px with the decision to 
start at P1:

![Initial Offers Diagram]

Other than the possible spleen-venting satisfaction of 
throwing a large number at Defendant, a Px opening offer is 
a disservice to Plaintiff. It does not suggest that Plaintiff has 
come to the mediation to negotiate in good faith, but even 
more, it is likely to lead to a settlement for Plaintiff at the 
wrong end of the settlement range. Why is that? Because it 
fails to send any meaningful signal to Defendant, and Plaintiff’s 
future negotiating moves will lack credibility. I have observed 
that, more often than not, a “meaningless” opening offer of Px 
will lead to a less satisfactory final settlement for Plaintiff.

In contrast, Plaintiff’s decision to open at P1 serves a 
strategic purpose. It conveys to Defendant that Plaintiff is 
realistic about settlement and negotiating in good faith. More 
importantly, it is the first step in a series of meaningful signals 
that will affect the final settlement amount. Since there is no 
chance that a settlement at P1 will be acceptable to Defendant, 
there is no downside risk for Plaintiff. If the negotiations prove 
unsuccessful, Plaintiff has not “rung the bell” at an inappro-
priate number.

In later rounds, Plaintiff can move in successively smaller 
steps, as follows, to signal that it is creeping closer to its limit:

![Subsequent Offers Diagram]

Contrast Plaintiff’s preferred strategy with this Defendant’s 
ill-advised strategy:

![Defendant Offers Diagram]

Here, Defendant has started at D1, a trivial (perhaps even 
insulting) amount that acquiesces to the American primordial 
urge to demonstrate domination. Then, Defendant’s succes-
sive moves to D2, D3, and D4 communicate, at best, confu-
sion whether Defendant even has a negotiating strategy — or 
worse, whether Defendant understands the case. This desul-
tory style often results in a less favorable settlement number 
for Defendant.

When only one party negotiates in these principled steps, its 
prospects for a “victorious” settlement are enhanced. If both par-
ties negotiate in harmonious symmetry toward positions D and 
P on the field of play, they may temporarily be stalemated. But 
once both parties are within the settlement range, it is relatively 
straightforward to bridge the remaining gap. And even though 
neither party can be smug with a “winning” settlement, each of 
them will know that a fair result has been achieved.

Whether the parties will understand the boundaries of the 
reasonable settlement range for their case depends in great mea-
sure upon their lawyers’ abilities to analyze the case. Prior to the 
mediation, it is incumbent upon trial counsel to educate their cli-
ents about the range of reasonable settlement results, and about 
rational negotiating tactics. During the course of the mediation, 
the mediator should be unequivocally clear when a party has an 
unrealistic notion of the settlement value of the case.
CONSUMER CLASS ACTIONS

FMS, Inc. v. Dell Inc., et al.
Case No. 03-2-23781-SEA (King County, Washington)
$23.4 Million Cash Refund Settlement

--J.D. Stahl, co-lead counsel for plaintiffs

J.D. Stahl is available for referral, consultation or association in consumer class action litigation.

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In 1966, before college football abolished tie games, No. 1 Notre Dame played No. 2 Michigan State to a famous 10-10 tie. With 1:24 left in the game, Notre Dame coach Ara Parseghian chose to run out the clock and play for the tie rather than go for the win. Consistent with the American attitude that disdains striving for anything short of victory, Parseghian was roundly criticized for his decision. As the iconic Green Bay Packers Coach Vince Lombardi once said, “Winning isn’t everything. It is the only thing.”

Yet in litigation, almost all civil cases ultimately settle before trial. With an awareness of the American psyche that is centered on winning and only winning, and with the proper perspective on reaching the most favorable compromise in fair settlement territory, trial lawyers can better represent their clients — and mediators can more effectively assist in the settlement process. 

Louis D. Peterson is a trial lawyer, mediator, and arbitrator. He is the managing principal of Hillis Clark Martin & Peterson, PS, in Seattle.
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Mediation Magic

by Fred R. Butterworth

There may or may not be something magic about mediation as a legal process. Just in case magic is a factor, there are some basic fundametals for the lawyer preparing to represent a client to consider. In order to assist in making the job easier, it seems reasonable to break down the approach to preparation into three separate steps. Initially, is the attorney's own preparation; next, the preparation of the client; and finally, the preparation of the mediator.

Preparation Basics

As always, a clear understanding of your case facts begins the process, closely followed by an understanding of what you and your client want to accomplish. Remember in your planning that mediation involves a wise use of compromise. Selecting a mediator is important and should be based on reputation and ability to resolve disputes. Obviously, all mediators are different, but remember, it is not a popularity contest — results should count. In your planning, remember the mediator as a neutral has one objective in mind — to settle the case on terms fair and agreeable to both parties. You should include this in your preparation and use it to your advantage. Make sure that you are in a position to evaluate both your strengths and weaknesses and are prepared to discuss them in the mediation. Legal issues can be important, so be aware and do your homework. It’s not a good idea to have a legal matter raised that you are not able to deal with.

If you are an aggressive, hard-hitting, take-charge personality, take the time to evaluate how that is likely to play out in the mediation setting. Remember, it’s your client’s case, not necessarily a showplace for your talents, wonderful as they may be. Make sure you know what the mediator’s views are about giving opening statements at the initial meeting. Many, if not most, don’t want such a statement. You don’t want to waste time if it’s not necessary.

Do you have a good understanding of the other side’s position, and if so, have you figured out how to deal with their positions? This doesn’t call for guesswork. You must be certain you understand what you will face at the hearing. Depositions and discovery do have a place in preparing for the mediation, so use them if you think it necessary.

When to Mediate

Another area that needs your attention is the oft-asked question, "When to mediate?" The easy answer is "when you and your client are ready to proceed with a sense that success is a realistic goal." This can be before you have filed a claim or right up to the time a jury or judge is ready to make a decision. Considerations would be to make certain that the facts and issues are properly in order; witnesses, if any, have been interviewed with statements or affidavits; and your client is available and comfortable with proceeding. Economics must be considered in terms of how much you can save in fees and costs by early scheduling.
The idea is to have the mediation when you sense it will be most likely to result in resolution. Keep in mind that the settlement numbers in mediation can be reasonably counted on to be in the 80-to-90 percent range.

There is probably no other legal process that allows for such creativity and imagination in fashioning a resolution of the dispute between parties, so when considering mediation, don't be surprised by unexpected results. Keep your mind open to new ideas and new approaches to resolution.

Confidentiality is an important part of mediation and must be respected. In your preparation, be sure to explore areas in your case where confidentiality may apply. If there are areas that fall into this category, make certain to include them in your preparation and advise the mediator in a timely manner. In providing information to the mediator, you can submit a separate letter dealing only with facts you do not want revealed to the other party or counsel. In the same vein, when dealing with facts or issues raised during negotiations and in caucus that you feel are important, remember that opposing counsel, parties, and the mediator are going to rely on the information you provide. They form the basis for discussion and are going to be part of the plan to resolve the case. A word of serious caution: Dropping new facts, issues, or demands into the discussion, taking everyone by surprise, is not an acceptable tactic. Changing the deal in mid-stream generally leads to the conclusion that you are not negotiating in good faith and often leads to unsuccessful results. Part of the ability of the process to work is based on the mediator having all the important facts and issues, and being able to rely on them. Withholding relevant information at any time is certain to damage the process.

In the Beginning

Generally, most sessions begin with a gathering of the parties and counsel in the same room, even though there are no "opening statements." Other housekeeping concerns are considered, and it also compels the litigant’s counsel and other representatives to begin in a face-to-face setting. Often the mediator has issues and questions that are best resolved in a joint session. Your responsibility is to make a determination if such a joint meeting will be detrimental to settlement, and having the parties in the same room would not be advisable. If you believe that to be the case, discuss it in advance with opposing counsel and the mediator. Along the same line, it is probably a good idea to have had at least some minimal discussion about the case with opposing counsel. Arriving at the mediation without having had any meaningful discussion is not an absolute roadblock, but it is probably not conducive to success.

The question of who should attend the mediation should be considered. The best answer is anyone who has a personal or economic interest should attend. There really should be no exceptions to this rule; however, there are some circumstances that force parties to circumvent the ideal. Often the defendants represented by counsel and insurance companies do not appear unless there are factual or liability issues compelling their attendance. More difficult is the insurance carrier that opts not to send representation or elects to be "immediately available by telephone." Assuming the "purse" is not present, or available only by phone, is not the least bit helpful and deprives that party of the benefit of the give-and-take of the negotiation process. It tends to indicate to the complaining party that their issues are not very important, which again increases the workload for the mediator. In preparing the case, you should know who is going to be present and who is not. Can you, or should you, even consider discussing your case during the mediation with the mediator? You can, and you should, if, in your opinion, the situation calls for such a discussion. What about the client in such a situation? Be honest and forthright — it may hurt a bit at the time but may well aid in the settlement process.

Client Preparation

It is always said that mediation is the client’s process and an opportunity to participate directly in resolving their dispute. This is true. Thus, make very clear to your client that you expect him or her to be active in the discussion. This means they must be well aware of all issues, good and bad, that will be involved. Discuss the confidentiality aspect of mediation and assure your client that it is important to take advantage of its availability. Don’t forget to explain that “neutrality” means that the mediator is not on anyone’s side — someone who is not specifically a decision maker but a person facilitating the settlement as it proceeds.

The question of unreasonable expectation can be a problem. Here, the assumption is that you, as counsel, are realistic and not guilty of such thoughts. This demon most often arises in the negotiation process, where in the course of events an insulting offer or demand is made.

Prepare your client for such an occurrence, remembering that the whole exercise revolves around give-and-take, compromise, and good-faith efforts to resolve the dispute. Try very hard to avoid either you or your client “digging in your heels” and uttering, “We want a judge.” That kind of position might distress the mediator and often leads to an impasse. When this happens, it requires everyone involved to use creative imagination and try harder.

Lawsuits involve many things a nonlawyer might not think of or might not understand — an investment of time, emotional commitment, risk and uncertainty, expense, and unsatisfactory results, as well as the trial itself. The
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reason or another, refuses to be reason- able. The mediator should be a part of the solution to this dilemma. Hopefully, during the negotiations, some respect and rapport have developed among you, your client, and the neutral. This may be the time when the neutral's opinion or specific recommendation should be requested. Rest assured, the mediator does have his or her own views on a reasonable outcome and, when asked, will probably be willing to express them. This should not impair their impartiality; rather, it’s an informal expression of reality which, coupled with the mediator’s credibility with your client, often is significantly impressive enough to resolve the impasse.

Finally, it is probably not all that helpful to be overly sensitive to what may appear to be slights or failure of the other party or counsel to agree with every position you present. In other words, be patient and optimistic. Don’t constantly tell the mediator that you have “had it” or that you’re leaving because it’s not working or making progress. Make every effort to assure the neutral that you and your client are working together to achieve satisfactory results.

Hopefully, this article will be helpful both in preparing for your future mediations and encouraging your clients to seek mediation of their disputes.

Fred R. Butterworth is a mediator and arbitrator at JAMS in Seattle. He was with the firm of Keller Rohrback from 1958 to 1997 and began mediating and arbitrating cases in 1990.

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Tips for Avoiding Fee Disputes with Clients

And How the WSBA Can Help When Fee Disputes Arise

BY MARILYN J. ENDRISS FOR THE WSBA ADR COMMITTEE

Most of us are fortunate in that we only infrequently encounter dissatisfied clients who refuse to pay all or a significant portion of their bill. When this type of dispute occurs, what options are available? Are there steps we can take to avoid these conflicts in the future?

The WSBA Lawyer Services Department provides an ADR Program that offers both arbitration and mediation services to lawyers and clients when disputes about attorneys’ fees arise.

Fee Arbitration Program

The WSBA’s voluntary Fee Arbitration Program was established in the mid-1970s as an inexpensive and quick method to settle fee disputes between lawyers and clients. Participation is voluntary and confidential. Both the lawyer and the client must agree to participate, and both must agree about the amount in dispute. Arbitrators are lawyer and nonlawyer volunteers who have been appointed by the Board of Governors to five-year terms. Arbitrators render a binding award regarding the fair and reasonable value of the lawyer’s legal services to the client.

Mediation Program

The WSBA’s Mediation Program was established by Admission to Practice Rule 16 in September 1999 as an informal way for lawyers and clients, lawyers and lawyers, and lawyers and other professionals to resolve disputed matters with the assistance of a neutral third-party mediator. Participation is voluntary and confidential, and both parties must agree to mediate the dispute. Mediators are lawyer and nonlawyer volunteers who facilitate settlement negotiations between the parties. If a resolution is reached, the mediator can help the parties write a settlement agreement which they may sign, and if they agree, make binding.

Are there steps to take to avoid these disputes over fees from arising? “Yes!” say the mediators and arbitrators who volunteer on these pro bono panels. Panel members report that there are common issues to the cases they have mediated or arbitrated, and these issues share the same theme — the importance of open and continuous communication.

Avoiding Disputes

Are there steps to take to avoid these disputes over fees from arising? “Yes!” say the mediators and arbitrators who volunteer on these pro bono panels. Panel members report that there are common issues to the cases they have mediated or arbitrated, and these issues share the same theme — the importance of open and continuous communication.

1. Written fee agreements

A substantial number of the cases that are arbitrated or mediated arise because there was no written fee agreement. Or, if there was a fee agreement, material terms (usually about money) were written in vague and ambiguous language. In some instances, the lawyer changed the terms (about money) unilaterally and without any prior notice to the client.

Lawyers are encouraged to prepare a written fee agreement for every client that clearly describes (a) the nature and scope of the legal services that will be provided; (b) how legal fees will be calculated; (c) the hourly rate of their fees; (d) payment terms for legal fees and costs; and (e) how often billing statements will be sent. The agreement should include reference to the WSBA Fee Arbitration and Mediation Programs as a preferred way of resolving any disagreements about fees. This agreement should be signed by the client and the attorney prior to the lawyer providing legal services.

2. Billing practices

A number of fee disputes have arisen because of irregular and infrequent billings. Billing a client for an 18-month period and mailing the bill several weeks after having been terminated as counsel is likely to generate a fee dispute. Describing work performed as “review documents” and “telephone call” is too vague to provide the client with a clear sense of what work the attorney has performed. Clients have disputed bills when they have been charged costs without any detail information or without having been provided a copy of the third-party bill. With the user-friendly software now on the market, lawyers are encouraged to set up a billing system that ensures that client bills are sent on a regular monthly basis, specifying date, work performed, amount of time, fees incurred to date, and a detailed ledger of costs.
3. Talk about costs
At the outset, lawyers should be up-front with their clients and explain about projected costs — what types of expenses will be required for this particular type of case, how much the case is likely to cost, and what the payment arrangements will be. Clients repeatedly complain that their attorneys are not up-front about projected costs at the start of the attorney-client relationship.

Don’t be afraid to talk directly with your client about projected costs. You might say: “Litigation in this area is expensive. We’ll have to hire two or three medical experts. We’ll need to take depositions of all the decision-makers whose opinions factored into the action the defendant took, as well as the medical experts the defense hires. We’ll be photocopying all the records that pertain to what happened to you. The costs will be substantial, and, over the 20 months until trial, could amount to $50,000, or the equivalent of a Lexus. Let’s talk about how these costs will be paid.” Confirm your conversation with a follow-up letter. Clients need to know what they are signing on to.

4. Stay connected
Pro bono arbitrators and mediators report hearing a common refrain from clients in many of the cases that come before them: “My lawyer did not communicate with me!” When you receive a message that a client has called, do you return the call within 12, 24, or 48 hours? Do you promptly reply to clients’ e-mails? How long before you are reminded that you have not had contact with a client — 30 days? 45 days? 60 days?

Clients need to have connection with their lawyers. When the need for connection is unmet, clients can begin to feel disrespected, anxious, suspicious, and even angry. Some attorneys have created a simple “check-in” letter that they send to clients periodically, whether or not action has occurred on their clients’ case, to keep the communication connection open.

5. Straight talk
When your client asks you questions, do you answer them honestly, in a straightforward manner and using language that your clients understand? Do you refrain from making promises that you aren’t likely to be able to keep? Do you answer the hard questions? Or do you dodge and create false hope? Some of the cases suggest that clients have felt led on, manipulated, and outside the decision-making process. This disconnect can lead to problems down the road.

A number of fee disputes have occurred because there was little or no communication about the expected size of the bill. As is true for all of us, clients need financial security. They want to know what their financial risks are. They need information from the lawyer about what this legal endeavor is going to cost in terms of time and money. It is important that lawyers convey this information honestly to their clients. Although none of us has a crystal ball, we can provide clients with benchmarks based on our own experiences with cases of a similar nature. Clients begin to lose trust when the statements lawyers have made (that are heard as promises) do not come true. When lawyers tell their clients that they will be performing specific work, that it will take a certain amount of time to get the matter resolved, and that it will cost a certain amount in fees and expenses to obtain the desired result, the clients rely on the lawyers to carry out these promises. Relationships become sour when promises are not kept, excuses are made, and work does not get done. Lawyers can avoid these pitfalls if they take time to communicate with their clients and avoid making empty promises. If the situation changes, let the client know and explain the changed circumstances.

Clients hire lawyers because we’re in the business of giving legal counsel and advice. It is important, then, that we listen carefully to our clients — hear their stories, assist them in figuring out what is in their best interest, and talk to them respectfully in ways they can hear and understand. When your clients ask you the tough questions, check your own level of discomfort, address it, and then “give it to them straight.” Clients want to trust their lawyers and to know you’ll be there on the easy days and on the hard days and that you’ll be honest, straightforward, and respectful.

6. Do the work and do it well
Another common refrain heard from clients is: “My lawyer wasn’t adequately prepared. He didn’t meet with me ahead of time.” Ask yourself: Do I spend sufficient time familiarizing myself with my client’s circumstances and legal case? Do I obtain the additional information that will assist me in evaluating the strengths and weaknesses of my client’s case? Do I take the time to sit down and make a deliberate assessment? Do I proof my final product, whether a letter, a motion, or a brief? Do I set aside time for my clients to convey information to me? (And do I hear what they’re saying?) Am I adequately prepared for my court appearances? How do I come across? Am I perceived as a knowledgeable lawyer or a fancy-talking showman?

There are hundreds, if not thousands, of clients who receive disappointing results from the court system. Orders in response to motions for summary judgment, jury verdicts, and bench decisions all bring
one of the parties bad news. Yet not every client objects to paying his or her attorney, even when they are the ones receiving the bad news. In those cases when the client is disputing payment of fees, it is common to hear that the lawyer did not meet and talk with his or her client in preparation of the upcoming legal event, or that the lawyer did not review materials that the client had provided and made blatant errors in oral argument or in written submissions. In either case, the client has felt left out and not at all responsible for the outcome. Blame is easily shifted to the lawyer and, depending on how disconnected the client feels from the lawyer, any monetary responsibility may likewise be placed on the lawyer. Once again, communication and being prepared are key elements to a successful attorney-client relationship, even when the outcome is not.

7. Don’t sleep with your client, and, maybe, don’t represent your lover or best friend
Cases have come to the WSBA ADR Program when attorneys and clients have blurred boundaries and each feels taken advantage of by the other. Expectations may have been misconstrued; favors may be misinterpreted. Because of the social relationship, the lawyer and client often find themselves with heightened personal feelings and unable to negotiate. Rule 1.8(k) of the Rules of Professional Conduct prohibits lawyers from engaging in sexual relations with a current client unless there was a pre-existing consensual relationship at the time the lawyer-client relationship started. And even a pre-existing consensual relationship can go sour. The lawyer may find himself or herself accused of professional misconduct amid allegations of sexual harassment. See RPC 8.4(g). Our best advice? Don’t begin a social relationship with your client until the case is closed or it has been referred to another lawyer. And refer your lover to another attorney. It’s not worth risking disciplinary action, should the relationship take an (un)expected turn.

Bottom Line — Communicate With Your Clients!
When the lines of communication break down, problems begin to occur. As clients feel more and more disengaged, trust is lost, suspicions grow and, before too long, there is a breakdown in connection. The client no longer feels obligated to pay all or some portion of the attorney’s fees — “My lawyer didn’t live up to my expectations; why should I live up to his?” If the lawyer invests the time to maintain open channels of communication with his or her clients, many of these fee disputes will not occur. When they do occur, fortunately for both lawyers and clients, there are resources within the WSBA to help bring about a fair resolution, quickly and inexpensively.

Marilyn Endriss is a principal in Sound Conflict Solutions, LLC, a conflict-resolution firm that provides mediation services and training in collaborative law, communication skills, and team-building. She was a member of the WSBA ADR Standing Committee (2005-2006) and served as 2005-2006 chair of the WSBA Dispute Resolution Section. She serves as a volunteer mediator on the WSBA Pro Bono Mediation Panel. She may be reached at mendriss@soundconflictsolutions.com. The author would like to thank Jerome Alhadef, Lisa E. Schuchman, and Elizabeth Martin for their insights and contributions to this article.
FRAUD PREVENTION IN YOUR LAW OFFICE

Twice a month, on average, I receive some sort of communication from an attorney who has discovered fraud in his law practice. Sometimes the fraud is perpetrated by a total stranger, but often it's done by someone the attorney knows and trusts. It's never easy to hear an attorney discuss the betrayal of a trusted employee.

While it's impossible to completely prevent fraud, there are things you can do to make perpetrating a fraud more difficult. If a fraud has already been committed, there are steps you can take to help discover it more quickly. Keep in mind that some fraud schemes can be extremely sophisticated.

This column will focus on some easy things that you can do right now. Most of these items are geared toward solo practitioners or small-sized firms.

The most common fraud scheme is disbursement fraud. Although there are many different types of disbursements (e.g., wire transfers or ATM withdrawals), checks are the most common. Disbursement frauds almost always involve writing a check to or on behalf of the person committing the fraud. These checks are usually forged, but if the scheme is sophisticated enough, may not be. A common scenario involves writing checks to pay personal utilities or other bills. If your law firm has the same utility service as the fraudster, these types of payments can be difficult to detect.

The key to preventing these types of disbursement frauds is to have a separation of duties. For example, one person prepares the check, another signs and mails the check. The point of this is that once the check is signed, it isn’t returned to the preparer and thus cannot be altered. A separation of duties can be very difficult for law practices with only a few employees. Often it requires changing or shifting job duties between the employees.

Something else you can do is to be sure the check signer reviews the invoices that are being paid. Do you know the vendor? A common scheme is to create fictitious vendors who charge for “consulting services.” Is the amount being paid correct? An overpayment can be made on purpose in hope that the overpaid portion is returned to the fraudster, who then alters the payee and cashes the check. Is this invoice for the law firm? Many check signers give a cursory glance to common invoices such as utility payments, thus allowing personal bills to sneak through.

Simply following the steps above will not prevent someone from forging a check. The best way to detect forged or fraudulent checks is to review your bank statement every month. The bank statement should come to you unopened. Open the statement and review the transactions. You're looking for unauthorized withdrawals or transactions that look strange. If you normally write five checks a month but your bank statement shows 20, further investigation is warranted.

While it's impossible to completely prevent fraud, there are things you can do to make perpetrating a fraud more difficult. If a fraud has already been committed, there are steps you can take to help discover it more quickly. Keep in mind that some fraud schemes can be extremely sophisticated. This column will focus on some easy things that you can do right now.

For law practices with only a few employees, a separation of duties can be very difficult. For example, one person prepares the check, another signs and mails the check. This prevents the preparer from altering the check. By reviewing the invoices that are being paid, the check signer can verify that the vendor is legitimate. Be sure to look at the endorsements on the back of the check. Were any checks endorsed over to a third party, like an employee?

Something else you might want to consider using is a budget. If you have a budget in place, you can often spot discrepancies. A budgeted amount may vary by a huge margin from an actual amount paid. If this is the case, you can research why these amounts are so different. A budget is especially helpful for tracking things like utility and rent payments.

The second most common type of fraud involves deposits and a process called “skimming.” Skimming happens when a business receives cash, but instead of recording the sale, the money is pocketed by an employee. This type of fraud is most common in retail businesses, but some law firms do a fair bit of business with cash. In any situation where cash is received, a receipt book should be used. It’s best to use a carbon-copy receipt book.
with pre-numbered receipts. A sign asking “Did you receive your receipt?” should be prominently displayed by the front desk. Be sure any missing receipts are explained.

For both disbursements and deposits, one of the best fraud prevention and detection techniques is to complete a monthly bank reconciliation. A reconciliation lists any differences between the bank statement and the deposits and withdrawals listed in your checkbook. Completing a bank reconciliation can help prevent fraud because if your employees know that you’re actively reviewing the bank transactions, this can discourage fraudulent activity.

Most attorneys rely on someone else to complete the bank reconciliation. While there’s nothing wrong with that, you should personally review the reconciliation in order to spot anything that looks suspicious. This is how a reconciliation can help you detect fraud. For example: If you’ve written down a $500 deposit in your checkbook, there should be a corresponding $500 deposit on your bank statement. If the deposit didn’t show on the bank statement, it would be listed on the reconciliation as an outstanding item. You’d want to investigate why the deposit didn’t make it to the bank. In general, there should not be any outstanding deposits on your bank reconciliation.

Another type of fraud deals with modifying invoices. If an employee is stealing payments that clients are sending in to pay their invoices, the client billing must be altered. If it’s not, clients will be calling and asking why their last payment was not credited to their account. To prevent that from happening, the person stealing the payment will often alter the invoices. They can do this in one of two common ways. The first way is to simply write off the amount owed as bad debt. This is usually the simplest way and is easy to do if an attorney doesn’t review invoices closely.

The second most common way is to apply a different client’s payment to the invoice, commonly called a “lapping” scheme. That scenario works like this: Client A sends in payment for an invoice. Payment is stolen. Client B sends in payment. Client B’s payment is applied to Client A’s invoice. Client C sends in payment. Client C’s payment is applied to Client B’s invoice, and so on. This type of scenario can go on for a long period of time but can become very confusing. Most people who do this type of fraud have some way of tracking the payments. As such, they rarely take vacations for fear that the invoice postings will not be properly handled while they are gone. The best way to find this type of fraud is to insist that your employees take regular vacations and have another staff person fill in.

These are just a few of the most common ways frauds are committed. While it’s impossible to prevent all types of fraud, if you take an active role in reviewing the financial transactions of your law practice, you can make perpetrating a fraud more difficult.

Trina Doty is the WSBA audit manager and is a CPA and a certified fraud examiner. She oversees the random examination program, conducts “for cause” audits, and educates attorneys as to trust account rules and regulations.
As the practice of law has grown more complex, the law governing how we practice has grown in equal measure. The American Bar Association adopted its first set of ethics rules, the Canons of Professional Ethics, in 1908. At that time, there were only 32 Canons numbering just a few pages. Since then, both the ABA and Washington have adopted professional codes that are considerably longer. Case law interpreting the rules has grown apace, and reference works have been developed both nationally and here in the Northwest interpreting the interpretations. Lawyers have always been charged with knowing and following the professional rules. In today’s practice environment, however, knowing the rules isn’t just a matter of professional ethics. The ethics rules now form the subtext for many areas of professional liability, ranging from legal malpractice to disqualification. And the flip side of increased cross-border practice is the need to know the rules in more than one jurisdiction. In this column, we’ll look at the principal resources on the law of lawyering, both here in the Northwest and nationally. We’ll focus especially on those available over the web.

Washington
The amendments to the Washington RPCs that became effective this past September brought with them some new rules, some tweaks to old rules, and an all-new accompanying set of comments. The new rules (in both text and comparative form) and a summary of significant changes and the accompanying comments are all available on the ethics page on the WSBA website at www.wsba.org/lawyers/ethics. For further research into the new rules, the WSBA website also has an online archive of the reports from the Ethics 2003 Committee that developed what (for the most part) became the new rules, the Board of Governors’ review of the rule proposals, and other historical resources making up the “legislative history” of the new rules.¹

For interpretive resources, the WSBA website has an excellent ethics-opinion search engine that literally puts all of its formal (issued by the Board of Governors) and informal (issued by the Rules of Professional Conduct Committee) ethics opinions at your fingertips. In print form, the WSBA also publishes the Legal Ethics Deskbook. The Deskbook, which is being updated to reflect the new rules and comments, features in-depth analysis of such areas as conflicts and confidentiality from the specific reference point of Washington law and practice. The Deskbook also contains many useful forms (including conflict waivers), along with practical advice on using them. Finally, the Casemaker database available to WSBA members offers a direct link to the Washington and federal cases dealing with the RPCs, the attorney-client privilege, and the law of lawyer civil liability.

Beyond the RPCs, the WSBA website also has links to the Rules for the Enforcement of Lawyer Conduct, which are the procedural rules governing lawyer discipline, and the Admission to Practice Rules, including the state court pro hac vice rule and information on reciprocal licensing both with and beyond Washington. The U.S. District Courts for Western and Eastern Districts, meanwhile, have their rules for full and pro hac vice admission available at, respectively, www.wawd.uscourts.gov and www.waed.uscourts.gov.

Oregon
The Oregon State Bar website at www.osbar.org is a comprehensive source for Oregon’s primary ethics and licensing materials. The new Oregon RPCs (which were adopted effective January 2005), the former Oregon Disciplinary Rules, Oregon’s Rules of Bar Procedure (which are analogous to the Washington Rules for the Enforcement of Lawyer Conduct), its admission rules and licensing forms (including reciprocal admission, house counsel admission, and pro hac vice admission), the newly (in 2005) updated Oregon ethics opinions and its Disciplinary

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Report (containing detailed coverage of lawyer disciplinary proceedings) are all available there. Oregon is included in the Casemaker database and offers state and federal case law interpreting both the new RPCs and the former Oregon Disciplinary Rules. Information on admission to the U.S. District Court for the District of Oregon, in turn, is available on its website at www.ord.uscourts.gov. For Oregon State Bar members, the Oregon Professional Liability Fund, which is its mandatory malpractice carrier, has a variety of risk-management articles and forms (along with copies of the PLF’s basic and excess plans) available on its website at www.osplf.org. In print form, the Oregon State Bar Ethical Oregon Lawyer was updated in 2006 to reflect both the new Oregon RPCs and the accompanying ethics opinions. The Ethical Oregon Lawyer is similar to the WSBA Legal Ethics Deskbook and remains the single best summary for legal ethics and lawyer civil liability in Oregon.

Idaho
Like Washington and Oregon, the Idaho State Bar website at www.state.id.us/isb offers a comprehensive counterpart collection of the Idaho RPCs (which were updated in 2004), the accompanying official comments (which were also updated in 2004), and licensing information and forms (including reciprocal admission, house counsel admission and pro hac vice admission). Idaho’s ethics opinions are not available on the web, but can be obtained by contacting the Idaho Bar Counsel’s Office. Corresponding admission information for the U.S. District Court for the District of Idaho is available on its website at www.idd.uscourts.gov. The Casemaker database also includes Idaho case law. Although the Idaho State Bar does not publish a direct equivalent to the WSBA Legal Ethics Deskbook or the Oregon State Bar Ethical Oregon Lawyer, its Professionalism and Ethics Section sponsors an issue of the ISB Advocate annually with articles on ethics-related topics focused on the Idaho RPCs and case law.

Nationally
The ABAs influential Model Rules of Professional Conduct have been adopted (with variations) in almost all states (California and New York are the notable exceptions). The ABAs Model Rules, the accompanying commentary, and its ethics opinions interpreting the Model Rules are all available on the ABA Center for Professional Responsibility’s website at www.abanet.org/cpr. In 2000, the American Law Institute issued the Restatement (Third) of the Law Governing Lawyers, which is a comprehensive summary of ethics law in restatement form that is being cited increasingly in both court and bar opinions. Although there are several outstanding national ethics and risk-management treatises available in paper form from local law libraries, one of the most accessible sources of ethics law nationally is Cornell University School of Law’s American Legal Ethics Library available on the web at www.law.cornell.edu/ethics.

Our neighbors to the far south and far north both have a wide variety of ethics and licensing materials on their state bar websites at www.calbar.org for California and www.alaskabar.org for Alaska.

Summing Up
Although there is certainly more law governing lawyers than when the ABA adopted its first Canons nearly a hundred years ago, the advent of the web has made that law very accessible to all of us. Finally, if you ever need to find this column (and previous “Ethics and the Law” columns) with its catalog of resources again, it will be available in the Bar News archives at www.wsba.org/media/publications/barnews and in the legal resources section of my firm’s website at www.frllp.com. 

Mark Fucile, of Fucile & Reising LLP, handles professional responsibility, regulatory, and attorney-client privilege matters and law-firm-related litigation for lawyers, law firms, and legal departments throughout the Northwest. He is a past chair and a current member of the WSBA Rules of Professional Conduct Committee and a past member of the Oregon State Bar Legal Ethics Committee. He is a member of the Idaho State Bar Professionalism and Ethics Section and is a co-editor of the WSBA Legal Ethics Deskbook and the OSB Ethical Oregon Lawyer. He can be reached at 503-224-4895 and mark@frllp.com.

NOTES
Opportunities for Service

Commission on Judicial Conduct
Application deadline: May 15, 2007
The WSBA Board of Governors is seeking applicants interested in serving on the Commission on Judicial Conduct. Two positions are available: one as a member and one as an alternate.

The Commission reviews complaints of ethical misconduct against judicial officers, discusses the progress of investigations, and takes action to resolve complaints. The goal of the Commission is to maintain confidence and integrity in the judicial system by seeking to preserve both judicial independence and public accountability. The public interest requires a fair and reasonable process to address judicial misconduct or disability, separate from the judicial appeals system that allows individual litigants to appeal legal errors.

The Commission consists of 11 members who serve four-year terms — six nonlawyer citizens, three judges, and two lawyers. Each member has an alternate whose term coincides with their corresponding member’s term. The lawyers must be admitted to practice in Washington and are appointed by the WSBA. Incumbents are eligible for reappointment, limited to two terms as an alternate member and two terms as a full member. Letters of interest and résumés are also required for incumbents seeking reappointment. The term for this alternate position will commence on June 17, 2007, and expire on June 16, 2011. Please submit a letter of interest and résumé to WSBA Bar Leaders Division, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539; or e-mail barleaders@wsba.org.

Further information about the Commission can be found at their website, www.cjc.state.wa.us, or by contacting them at 360-753-4585.

WSBA Presidential Search
The WSBA Board of Governors is seeking applicants for the position of WSBA president for 2008-2009. Pursuant to Article IV (A)(2) of the WSBA Bylaws, the primary place of business of candidates for president for 2008-2009 must be King County. The WSBA member selected to be president will have an opportunity to provide a significant contribution to the legal profession.

Applications for 2008-2009 WSBA president will be accepted through May 15, 2007, and should be limited to a current résumé, a concise application letter stating interest and qualifications, and no fewer than five or more than 10 references. The Board of Governors will consider endorsement letters received by May 18, 2007. Applications and endorsement letters should be sent to the WSBA Executive Director, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101.

Direct contact with the Board of Governors is encouraged. All candidates will have an interview with the full Board of Governors in open session at the June 1 meeting. Following the interviews, the Board will select the president.

Although prior experience on the WSBA’s Board of Governors may be helpful, there is no requirement that one must have been a member of the Board of Governors or had previous experience in Bar activities. The candidate must be willing to devote a substantial number of hours to WSBA affairs and be capable of being a positive representative for the legal profession.

The position is unpaid. Some expenses, such as WSBA-related travel, are reimbursed.

The commitment begins in June 2007 following selection. A one-year term as president-elect will begin at the Annual Business Meeting in September 2007. The president-elect is expected to attend the two-day board meetings held approximately every five to six weeks, as well as numerous subcommittee, section, regional, national, and local meetings. In September 2008, at the WSBA Annual Business Meeting, the president-elect will assume the position as president. During his or her service, the president-elect and president will also be required to meet with members of the Bar, the courts, the media, and public and legal interest groups, as well as be involved in the Bar’s legislative activities. Appropriate time will need to be devoted to communication by letter, e-mail, and telephone in connection with these responsibilities.

The duties and responsibilities of the president are set forth in the WSBA Bylaws.

Seeking Questionnaires from Candidates for Judicial Appointments
Deadline: 5:00 p.m., May 11, 2007, for June 13, 2007, interview
The WSBA Judicial Recommendation Committee (JRC) is currently accepting questionnaires from attorneys and judges seeking consideration for appointment to fill potential Washington State Supreme Court and Court of Appeals vacancies. Interested individuals will be interviewed by the Committee on the dates listed above. The JRC’s recommendations are reviewed by the WSBA Board of Governors and referred to Governor Gregoire for consideration when making judicial appointments. Materials must be received by the deadlines listed above at the WSBA office. To obtain a questionnaire, visit the WSBA website at www.wsba.org/lawyers/groups/judicialrecommendation or contact the WSBA at 206-727-8212 or 800-945-9722, ext. 8212, or barleaders@wsba.org.

WYLD President-Elect and Trustee Applications Sought
Young lawyers interested in serving on the WYLD Board of Trustees are invited to submit applications for the following positions: trustee, at-large; trustee, King County District; trustee, Snohomish County District; trustee, Southwest District; trustee, Spokane County District; and president-elect, Washington state.

Applications must be received by 5:00 p.m. on Tuesday, May 1, 2007. For detailed information and application instructions, please visit www.wsba.org/lawyers/groups/wyld/default.htm.

WSBA Leadership Institute Seeks Fellows for 2008
The WSBA seeks applicants for the 2008 WSBA Leadership Institute. The Leadership Institute recognizes that many lawyers, especially those from diverse backgrounds and other underrepresented groups, have not been traditionally recruited for leadership positions or made aware of opportunities for leadership training, skill development, and professional growth available through the WSBA. Ten to 12
attorneys, in practice for three to 10 years, will be carefully selected for the fourth year of the program. The program will take place January to August 2008.

The program is a collaborative, experiential, and individualized curriculum that includes eight professional-development seminars. WSBA Leadership Institute fellows will benefit from the latest trends in professional leadership development; exposure to the legislative and judicial systems; interaction with high-level state and local officials and judges; and opportunities to meet high-profile attorneys from the private and public sectors. The program requires a two-year commitment. Following the completion of the first year, fellows are expected to serve on a WSBA section or committee, or bar-related activity. Fellows will earn a minimum of 30 CLE credits, and the program is no charge to participants.

To be considered for the program, applicants must: (1) complete an application with cover letter, résumé, and three references; (2) be an active WSBA member; (3) have practiced law in a U.S. jurisdiction for three to 10 years, i.e., any attorney who has been admitted in a U.S. jurisdiction between January 1, 1998, to December 31, 2005, meets this criterion; (4) be nominated by his/her employer, or if self-employed, by another individual; and (5) provide evidence of interest in community and WSBA activities. Applications for the 2008 WSBA Leadership Institute will be available June 1, 2007. The deadline for applications for the 2008 Leadership Institute will be early September 2007. Application and nomination forms and instructions will be available on the WSBA website at www.wsba.org/lawyers/leadership_institute.htm. For further information, contact Camille Campbell at camillec@wsba.org or 206-239-2116.

**Paula Littlewood Selected as New WSBA Executive Director**

The Board of Governors is pleased to announce that after an extensive nationwide search, Paula Littlewood has been selected as the new WSBA executive director. She will begin her duties in May, upon the retirement of Executive Director Jan Michels. Paula, who has served as WSBA deputy executive director since September 2003, is known to many WSBA members and is eminently qualified for the position. WSBA President Ellen Conedera Dial said: “Paula has impressed us all with her deep commitment to the values and mission of the WSBA, to the interests and concerns of the WSBA staff, and to the future of the legal profession.” Congratulations, Paula!

**2007 License Fee Payment Deadline and Suspension Information**

**2007 License Fee Payment Deadline.** If your payment is postmarked or delivered in person to the WSBA offices after April 2, 2007, a 50 percent penalty fee will be assessed.

**Presuspension Notice.** A presuspension notice was issued in mid-March to those members who had not paid their 2007 license fees. If you received a presuspension notice and have paid your license fees, you can confirm receipt by the WSBA 10 days after you sent your payment by checking online at http://pro.wsba.org or contacting the WSBA Service Center at 206-443-WSBA (9722), 800-945-WSBA (9722) or questions@wsba.org.

**Important Note About Unpaid License Fees.** If any portion of the license fee, penalty or assessment remains unpaid two months after WSBA issues a presuspension notice, the Supreme Court will enter an order suspending you from the practice of law in this state.

**2007 License Fee Packets.** Licensing packets were mailed in December 2006. The packet includes your license fee invoice, trust account declaration form and, if applicable, the MCLE certification form. If you have not received your licensing packet by now, please call the WSBA Service Center at 800-945-WSBA (9722) or 206-443-WSBA (9722), or e-mail questions@wsba.
org to request a duplicate. Please note that it is your responsibility to pay your annual license fee, regardless of whether you receive the licensing packet. Active members must complete, sign and return a Trust Account Declaration and, if applicable, an MCLE certification form. There may be other forms included in the packet that you wish to complete and return, such as updating your contact information or reporting Pro Bono hours.

If You Are Mailing Your Forms and Payment. The return envelopes for your forms and payments have instructions on the reverse side for improvement in processing and ease of use. Please review them carefully before mailing your forms and payment. The white envelope should be used for returning your licensing form (A2) with a check payment. The blue envelope should be used for your licensing form when making a payment by credit card. Also use the blue envelope for mailing the Trust Account Declaration, MCLE certification form and any voluntary forms.

If You Are Paying Your Fees Online. To pay your fees online, go to our website http://www.wsba.org, click on the “For Lawyers” tab and select “Pay License Fee Online.” Sign in with your WSBA Bar No. and password. Prompts will lead you through the process to pay your 2007 license fees by MasterCard or Visa. The system only allows payments for the full amount billed, e.g., no Keller deductions or status changes. Note that you do not need to return the A2 form if you pay online. If you are an active member, there are other forms in the packet that must be postmarked or delivered to the WSBA office by the due date. There are other voluntary forms in the packet that you may want to complete and return to the WSBA as well.

Trust Account Declaration. The Trust Account Declaration included in your licensing packet must be completed by all active members regardless of whether or not you have a trust account. Failure to file this form can result in disciplinary action.

WSBA Members on Active Military Duty. All requests for the Armed Forces Exemption (AFE) must have been postmarked or delivered to the Association offices on or before March 1. WSBA Bylaw IIE.1.b., providing for a fee exemption for eligible members of the Armed Forces, was amended in March 2006. Please contact the WSBA Service Center at 800-945-WSBA or 206-443-WSBA, or questions@wsba.org or contact Kevin McKee at kevinm@wsba.org or 206-727-8243 for application information.

Contact Information. Please ensure that the WSBA has your correct contact information in its database. APR 13.b states address updates shall be provided to the WSBA within 10 days after the change. APR 13(c) provides as follows:

Electronic mail address: An attorney should advise the Washington State Bar Association of a current business electronic mail address if one exists. An attorney whose business electronic mail address changes should, within 10 days after the change, notify the Executive Director of the Washington State Bar Association, who shall forward changes weekly to the Office of the Clerk of the Supreme Court for entry into the state computer system. Use of electronic mail addresses for court notice, service and filing must comply with GR 30.

You can go to the online lawyer directory on the WSBA website at http://pro.wsba.org to check your listing. If your contact information has changed, please complete and return the Contact Information Change form included in the license packet. Forms should be returned to the address shown on the form or by fax to 206-727-8313, or e-mail the changes to questions@wsba.org.

More Information. Full explanations of license fees, forms, policies, and deadlines are on the WSBA website at www.wsba.org/lawyers/licensing/annuallicensing.htm. Also, the WSBA Service Center is available to assist you Monday through Friday, 8:00 a.m. to 5:00 p.m., at 800-945-WSBA (9722), 206-443-WSBA (9722) or by e-mail at questions@wsba.org.

MCLE Certification for Group 3 (2004-2006) If you are an active WSBA member in MCLE Reporting Group 3 (2004-2006), you should have received your Continuing Legal Education Certification (C2/C3) forms in the license packet that was mailed in early December. The deadline for returning the C2/C3 form to the WSBA was February 1. Any C2/C3 forms delivered to the WSBA or postmarked after March 1 were assessed a late fee.

Members in Group 3 include active members who were admitted to the WSBA in 1984-1990 or in 1993, 1996, 1999, or 2002. Members admitted in 2005 are also in Group 3 but are not due to report until the end of 2009. Their first reporting period will be 2007-2009; however, any credits earned on or after the day of admittance to the WSBA may be counted for compliance.

The Continuing Legal Education Certification (C2/C3) form that you received in your license packet is a declaration that lists all the MCLE Board-approved courses that were in your MCLE online profile for the 2004-2006 reporting period as of mid-October 2006. If you took other courses after mid-October, you can add these to the back of the C2/C3 form. The C2/C3 form, not your online profile, is the official record for your MCLE reporting period.

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Built to complement your role as primary counsel, Coopersmith Health Law Group concentrates its practice exclusively on healthcare compliance, claims disputes, carrier contract negotiations, and fully capturing revenue earned.

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www.coopersmithlaw.com

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of MCLE compliance. The original copy of the C2/C3 form must be returned to the WSBA to meet compliance requirements. All MCLE Board-approved courses that you list on your C2/C3 form must have an Activity ID number. This number is listed in your online MCLE profile and is assigned at the time that the Form 1 for each course is input to the MCLE system.

If you have taken courses that have not yet been approved by the MCLE Board, please submit Form 1s for these courses immediately to ensure that they are approved before your C2/C3 is due. A “Certificate of Attendance” or other sponsor-provided certification will not be sufficient to receive course credit. If the sponsor has not received course accreditation from the Washington MCLE Board, you must submit a Form 1 application and full agenda for the course in order to receive credit. Because of high volumes from October through February, Form 1s submitted electronically (at http://pro.wsba.org) could take up to four weeks or more to process. Paper Form 1s may take up to six weeks or more to process. If you submit a paper Form 1, you will be notified by mail of its Activity ID number.

If you were not able to meet the credit requirement by December 31, 2006, and need more time to complete your credits, an automatic extension will be granted until May 1, 2007. There is no need to apply for it. However, a late fee will be assessed if you took any courses after December 31 that are needed for compliance or if your C2/C3 form is submitted late. If this is the first reporting period in which you will not meet MCLE compliance requirements, the late fee will be $150. The late fee increases by $300 for each consecutive reporting period you are late in meeting MCLE requirements.

If you have questions about the Form 1 process or MCLE compliance, please contact the WSBA Service Center at 800-945-WSBA (9722) or 206-443-WSBA (9722), or e-mail questions@wsba.org.

**MCLE Certification for Active Members — Due Date for MCLE Reporting**

WSBA members are divided into three MCLE reporting groups based on year of admission. (Newly admitted members are exempt. See “Newly Admitted Members” below.)


<table>
<thead>
<tr>
<th>Reporting Group</th>
<th>Next Reporting Period</th>
<th>Complete Credits by</th>
<th>File C2 Form by</th>
</tr>
</thead>
<tbody>
<tr>
<td>Group 2</td>
<td>2006-2008</td>
<td>December 31, 2008</td>
<td>February 1, 2009</td>
</tr>
</tbody>
</table>

**Credit Requirements.** The following credit requirements must be met by December 31 of the last year of an active member’s reporting period:

- At least 45 total credits of MCLE Board-approved CLE activities must be taken, which need to include a minimum of 30 live credits and six ethics credits. The courses must meet the requirements of APR 11, but they do not need to be taken in Washington state. Many courses are offered around the world which meet the requirements of APR 11. “Live” courses include classroom instruction, live webcasts (not pre-recorded webcasts), and teleconferences. “Ethics” courses, and segments of larger courses, must meet the requirements of APR 11. “Live” courses may be more than five years old, except MCLE Board-approved “skills-based” courses. Pre-recorded self-study courses include the traditional audio-visual (A/V) media of video tapes and cassette tapes. They also include archived webcasts, DVDs, compact discs, and other media with a soundtrack of the MCLE Board-approved course presentation. Written materials should be included with these courses and reviewed prior to claiming credit. In addition, written materials must be purchased by each member, where required by the sponsor, prior to claiming credit.

- Six pro bono credits can be earned per year. Two of these credits are for approved annual training, which must be taken prior to being able to earn credit for the pro bono work. Four pro bono credits may be earned each year if at least four hours of pro bono work were provided through a qualified legal services provider.

**Carry-over CLE Credits.** Carry-over credits from the previous reporting period may be used to meet the requirements of the current reporting period. If your current reporting period credits total exceeds 45, you may carry over a maximum combined total of 15 credits to your next reporting period. Only two ethics credits and five A/V credits may be carried over.

**C2/C3 Reporting Requirement.** All active members due to report are required to file a Continuing Legal Education Certification (C2/C3) form listing all CLE courses taken for credit compliance. The deadline for filing your C2/C3 form is

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**FYI Information**

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**MAY 10 & 11, 2007**

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Great Value: $445 Full program including course materials, 13.75 CLE credits (including 1.0 ethics), approved in WA & pending in OR

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February 1 of the year following the end of your reporting period. Note:

- Your online roster is not a substitute for filing the C2/C3 form.
- The C2/C3 form is a declaration and must be signed and dated, and the city and state where signed must be identified.
- C2/C3 forms are included in the license packets sent in early December to all members due to report (Group 3 members this year).
- All CLE courses listed on member rosters as of October 2006 are printed on the back of the C2 form. If you took more CLE courses after October 1, and if they appear on your online roster and you do not want to hand-write them on the back of the C2 form, you may print a copy of your roster and attach it to your C2/C3 form. State on your C2/C3 form that the attached online roster printout is a true and correct statement of the CLE courses taken for credit compliance.
- You must verify that the credit hours listed on the C2/C3 and on your online profile correctly reflect the hours actually attended for each CLE. You can edit credits online by clicking on the "edit" link next to each course. You can correct credits on the C2/C3 manually.
- The C2/C3 form should be filed by February 1, even if all the credits needed for compliance have not been completed.

**MCLE Late Fees.** All members who have not completed their credits by December 31 of the last year of their reporting period, or who submit their C2/C3 reporting forms after March 1 of the following year (the end of the grace period after the February 1 deadline), must pay a late fee. The late fee for the first reporting period of noncompliance is $150 and increases by $300 for each consecutive three-year reporting period of noncompliance.

**Newly Admitted Members.** If you are a newly admitted member, you are exempt from reporting CLE credits for the year of your admission and the following calendar year. If you were admitted in 2005, you will not report for this reporting period (2004-2006) even though you are in Group 3. You will first report at the end of the 2007-2009 reporting period. When you report at the end of your first reporting period, you may claim all CLE credits earned on or after your date of admission to the WSBA.

**MCLE Comity.** If you are an active member of the WSBA and your primary office for the practice of law is in Oregon, Idaho, or Utah, you may meet your Washington mandatory CLE requirements by providing proof of current MCLE compliance from the Oregon, Idaho, or Utah state bar. Only a Certificate of MCLE Compliance from your primary state bar, not a “Certificate of Good Standing,” sent with your WSBA C2/C3 form, will satisfy your MCLE requirements in Washington.

**MCLE System — Course Listing and Member Profiles.** You can use the online MCLE system to: review courses taken and credits earned; apply for course approval; apply for writing credit, pro bono credit, or prep-time credit; and search for approved courses being offered. To use the MCLE system, go to the WSBA website at www.wsba.org and click on “MCLE Website” in the upper left corner. On the next screen, click on the “Member” tab, then select “Member Login.” The online instructions lead you through the process of creating a confidential password and using the system. Online help is available. If you have any questions about using the MCLE system or about the MCLE compliance requirements, see the online FAQs at www.wsba.org/lawyers/licensing/faq-mcle.htm, call the WSBA Service Center at 800-945-WSBA (9722) or 206-443-WSBA (9722), or e-mail questions@wsba.org.

**New APR 11 Regulation 104(e) Requirements for In-House CLEs.** Starting with the 2005-2007 reporting period, you are limited to a total of 15 credits of private-law-firm CLEs and 15 credits of corporate-legal-department CLEs in each reporting period, regardless of who the private legal sponsor was. There are no limits on the number of credits you may earn at CLEs sponsored by government agencies. These limitations are the result of amendments to APR 11 Regulation 104(e) adopted by the Supreme Court that went into effect on November 8, 2005.

**MCLE Compliance Report (C4/C5) in 2007 License Packets**

All active members who are not due to report MCLE compliance at the end of this year, including new admittees, received a report (the C4/C5 form) in their 2007 licensing packets. Each member’s report lists all credits reported to the WSBA for the member’s current reporting period as of mid-October 2006. APR 11.6(a)(3) requires that the WSBA provide an annual report to each active member regarding the credits and courses posted to their MCLE online rosters. This report will help non-reporting active members to better track their credits as well as to ensure correct reporting and compliance at the end of their reporting period.

If you received the C4/C5 form in your 2007 license packet, it is for your information only. No action needs to be taken unless you want corrections to be made.

If you want to make corrections to your WSBA MCLE roster, go to http://pro.wsba.
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FYI Information

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org. Click on the “Member” tab, and then on “Member Login.” The online instructions will lead you through the process of creating a confidential password and beginning to use the system. Online help is available. You may also contact the WSBA Service Center to have corrections made and/or to request an MCLE system instruction booklet at 800-945-WSBA (9722) or 206-443-WSBA (9722), or questions@wsba.org.

APR 11 Review Project — Input Invited

The MCLE Board is undertaking a project to review all the rules and regulations that govern mandatory legal education in the State of Washington (APR 11) to update and clarify them. A comprehensive review of APR 11 was last done in 1997-1999 with new rules and regulations being adopted by the Supreme Court in 2000. All members, sponsors, and other stakeholders were invited to give input to this process in February 2007 by responding to an online survey to give feedback on significant MCLE issues. You may also send input to be considered by the Board to the MCLE Board executive secretary, Kathy Todd, at kathyt@wsba.org. Updates to the APR 11 revision process will be posted on link from the “Mandatory CLE Board” page on the WSBA website at www.wsba.org/lawyers/groups/mcle.

Online, On-Demand CLEs from WSBA-CLE

Want CLE credits without having to stir from your office? WSBA-CLE now offers 200 online courses in 20 practice areas, including ethics. Most are one-hour segments, providing 1.0 CLE A/V credit each, so you can purchase exactly the amount of credits you need. From your computer, you get audio and text from a course originally presented live. Once you purchase a course, you have three months to listen to it. Go to www.wsbacle.org/ondemand to browse the offerings.

Coming Soon — 2007 WSBA-CLE Publications Catalog

WSBA members, watch your mailboxes this month for delivery of the 2007 Publications Catalog — your convenient guide to outstanding products and services from WSBA-CLE, the leader in innovative legal education. Save your catalog as a reference for ordering premier deskbooks, recorded seminars, coursebooks, and more — online, or by phone, fax, or mail. Need another one? Call the WSBA Service Center at 800-945-WSBA (9722) or 206-443-WSBA (9722).

Use Your MCLE Homepage to Find Approved CLEs

From your MCLE homepage, you can now find approved live activities that fit your schedule and are in a location that is convenient for you. You can also find live webcasts and teleconferences in which to participate.

To use this feature, go to the WSBA website at www.wsba.org and click on “MCLE Web Site” in the upper left corner. On the next screen, click on the “Member” tab, then select “Member Login.” The online instructions lead you through the process of creating a confidential password and using the system. After you log in, you are at your MCLE homepage. On your homepage, there is a box in the center with a heading banner “MCLE.” Inside that box is a link that says “Search for approved upcoming CLE courses.” Clicking this link brings you to a “Search Approved Activities” box. Enter the city and state in which you would like to find a CLE course. At the bottom of the box there are date fields called “Start Between … And.” The dates default to the next 60 days. You can change the date in each field to any other date. To find a live webcast, input “Webcast” in the city field and change the state field to “Any.” To find a teleconference, input “Teleconference” in the city field and change the state field to “Any.” To find courses being given by a particular sponsor, type the sponsor’s name in the “Sponsor” field.

If you have any questions about using the MCLE system, online help is available. You can also call the WSBA Service Center at 800-945-WSBA (9722) or 206-443-WSBA (9722), or e-mail questions@wsba.org.

2007 WSBA Awards Nominations Sought

Each year, members of the WSBA are asked to identify those who deserve the legal profession’s recognition and appreciation. Nominations are sought for the following awards:

Award of Merit. First given in 1957, this is the WSBA’s highest honor. The Award of Merit is most often given for
long-term service to the Bar and/or the public, although it has also been presented in recognition of a single, extraordinary contribution or project. It is awarded to individuals only — both lawyers and nonlawyers.

**Professionalism Award.** This honor is awarded to a member of the WSBA who exemplifies the spirit of professionalism in the practice of law. "Professionalism" is defined as the pursuit of a learned profession in the spirit of service to the public and in the sharing of values with other members of the profession.

**Angelo Petruss Award for Lawyers in Public Service.** Named in honor of the late Angelo R. Petruss, a senior assistant attorney general who passed away during his term of service on the WSBA Board of Governors, this award is given to a lawyer in government service who has made a significant contribution to the legal profession, the justice system, and the public.

**Outstanding Judge Award.** This award is presented for outstanding service to the bench and for special contribution to the legal profession at any level of the court.

**Pro Bono Award.** This award is presented to a lawyer, nonlawyer, law firm, or local bar association for outstanding efforts in providing pro bono services. This award is based on cumulative efforts, as opposed to a lawyer's or group's pro bono hours or financial contribution.

**Courageous Award.** This award is presented to a lawyer who has displayed exceptional courage in the face of adversity, thus bringing credit to the legal profession.

**Excellence in Diversity Award.** This award is made to a lawyer, law firm, or law-related group that has made a significant contribution to diversity in the legal profession's employment of ethnic minorities, women, persons with disabilities, and other persons of diversity.

**Outstanding Elected Official Award.** This award is presented to an elected official for outstanding service, with special contributions to the legal profession. It is awarded to an individual who has demonstrated a commitment to justice beyond the usual call of duty.

**Lifetime Service Award.** This is a special award given for a lifetime of service to the WSBA and the public. It is given only when there is someone especially deserving of this recognition.

**President’s Award.** The President’s Award is given annually in recognition of special accomplishment or service to the WSBA during the term of the current president.

**Excellence in Legal Journalism Award.** This award recognizes that describing the context, facts, and players involved in the legal system with fairness and sensitivity requires intelligence, knowledge, dedication, and skill. This award is given to the journalist and his/her organization that has set the standard for relevance, clarity, accuracy, and understanding in reporting.

**Community Service Award.** This award was created in 2006. Lawyers are known for giving generously of their time and talents in service to their communities. This award recognizes exceptional non-law-related volunteer work and community service.

**Award presentation:** It is important to note that presentation of any WSBA award is made only when there is a truly deserving recipient. Some years, no award is given in some categories. Awards are limited to one recipient per category, except when a group of individuals earned the award together.

**Nomination submissions:** If you know an individual who fits the criteria set forth above, please visit [www.wsba.org/barleadershomepage.htm](http://www.wsba.org/barleadershomepage.htm), and complete and submit the nomination form. Self-nominations will not be accepted. Please note that the completed nomination form must accompany each nomination in order to be considered. The deadline for Pro Bono Award nominations was March 31, 2007. The deadline for all other nominations is April 30, 2007. Please send nominations to: Washington State Bar Association, Attn: Annual Awards, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101; Fax: 206-727-8319; E-mail: denec@wsba.org.

The awards will be presented at the WSBA Annual Awards Dinner in Seattle on September 20, 2007, with the following exceptions: The Pro Bono Award will be presented at the Access to Justice Conference in Wenatchee on June 2, and the Outstanding Judge Award will be presented at the Fall Judicial Conference.

**Kitsap County Bar Association Announces New Officers and Trustees**

The Kitsap County Bar Association has...
installed its new officers and trustees for 2007. The new officers and trustees are Edward E. Wolfe, president; Alyse R. Collins, vice-president; Paul Fjelstad, secretary; Steven Olsen, treasurer; Jeffrey J. Jahns, trustee and 2006 president; Roy A. H. Rainey, trustee; Ryan Witt, trustee; and Stephen T. King, trustee.

**Contract Lawyer Meeting**
The WSBA Law Office Management Assistance Program (LOMAP) hosts a meeting of contract lawyers the second Tuesday of every month at the WSBA office. The next meeting is April 10 from noon to 1:30. Bring your lunch — coffee is provided — and network with other contract lawyers. For more information, contact Julie Salmon at 206-733-5914, 800-945-9722 ext. 5914, or juliesa@wsba.org. Please note the WSBA’s new address: 1325 Fourth Ave., Ste. 600, Seattle.

**2007 Fee Dispute Mediation Training Seminar**
The WSBA ADR Committee is happy to announce the 2007 Fee Arbitration Training Seminar, to be held at the WSBA offices in downtown Seattle, on Thursday, May 24, 2007, from 1:00 to 4:00 p.m. This year’s program will focus on the WSBA’s Fee Arbitration Program and will include demonstrations of key parts of the process. Admission for the seminar is free; however, seating is limited as seats will be reserved for WSBA Fee Arbitration and Mediation panel members. Open registration will be on a first-come, first-served basis. For more information or to register, contact Natalie Cain, ADR program coordinator, at 206-733-5923, 800-945-9722, ext. 5923, or nataliec@wsba.org.

**LAP Solution of the Month: Job Satisfaction**
Sometimes it’s tempting to reduce your stress by over-doing alcohol, prescription drugs, food, sex, gambling — even work. These methods usually provide short-term relief and long-term pain, essentially giving you another problem to cope with down the road. Learn to reduce your stress without creating more problems. If you need a hand, call the Lawyers Assistance Program at 206-727-8268 or 800-945-9722, ext. 8268.

**Casemaker Access**
Casemaker is a powerful online research library provided free to WSBA members. To access Casemaker, go to the WSBA website at www.wsba.org and click on the Casemaker logo on the right sidebar. Click on the Casemaker button to begin. For help using Casemaker, contact Julie Salmon at 206-733-5914 or juliesa@wsba.org, or the WSBA Service Center at 800-945-WSBA (9722) or 206-443-WSBA (9722).

**Computer Clinic**
The WSBA offers a hands-on computer clinic for members wanting to learn more about Microsoft Office programs such as Outlook, PowerPoint, Excel, and Word, as well as Adobe Acrobat, can do for a lawyer. Are you a total beginner? No problem. The clinic teaches helpful tips you can use immediately. Computers are provided, and seating is limited to 15 members. There is no charge, and no CLE credits are offered.
The next clinic will be held on April 9 from 10 a.m. to noon at the WSBA office. For more information, contact Julie Salmon at 206-733-5914, 800-945-9722, ext. 5914, or juliesa@wsba.org. Please note the WSBA’s new address: 1325 Fourth Ave., Ste. 600, Seattle.

Problem Getting a Client to Pay?
Dispute with another lawyer or an expert witness? The WSBA offers two programs to aid in the resolution of disputes involving lawyers. These programs serve both members and the public. The Fee Arbitration Program focuses on fee disputes between a lawyer and his or her client. To participate, both parties must agree to be bound by the arbitrator’s decision. The Mediation Program provides a venue for parties to work together to resolve any dispute involving a lawyer, including those between a lawyer and a client, a lawyer and another lawyer, and a lawyer and another professional. Either party to a dispute may initiate fee arbitration or mediation. Both programs are nondisciplinary, voluntary, and confidential. For more information, visit the WSBA website at www.wsba.org/lawyers/services/adr.htm or call the ADR coordinator at 206-733-5923 or 800-945-9722, ext. 5923.

Facing an Ethical Dilemma?
The WSBA Ethics Line can help members analyze a situation involving their own prospective conduct, apply the proper rules, and reach an ethically sound decision. Calls made to the Ethics Line are confidential, and most calls are returned within one business day. Any advice given is intended for the education of the inquirer and does not represent an official position of the WSBA. Call the Ethics Line at 206-727-8284 or 800-945-9722, ext. 8284.

Search WSBA Ethics Opinions Online
Formal and informal WSBA ethics opinions are available online at http://pro.wsba.org/io/search.asp, or from a link on the WSBA homepage, www.wsba.org. You can search opinions by number, year issued, ethical rule, subject matter, or keyword. Ethics opinions are issued by the WSBA to assist members in interpreting their ethical obligations in specific circumstances. The opinions are the result of study and analysis in response to requests from WSBA members. For assistance, call the Ethics Line at 206-727-8284 or 800-945-9722, ext. 8284.

Job Seekers Discussion Group
Looking for a job or making a transition? Join us at the Job Seekers Discussion Group the second Wednesday of each month from noon to 1:30 p.m. The next meeting is April 11 at the WSBA office. The group discusses where to look for jobs, how to use your network of contacts, strategies for résumés and cover letters, and how to keep yourself organized and motivated. Exchange information and ideas with other lawyers looking to make a change. Come as you are — no need to RSVP.

Bring your business cards and practice networking skills. For more information, call 206-727-8268, 800-945-9722, ext. 8268, or e-mail rebeccan@wsba.org. Please note the WSBA’s new address: 1325 Fourth Ave., Ste. 600, Seattle.

Speakers Available
The WSBA Lawyers Assistance Program offers speakers for engagements at county, minority, or specialty bar associations, or other law-related organizations. Topics include stress management, life/work balance, and recognizing and handling...
American Bar Association (ABA) House of Delegates
Application deadline: May 15, 2007
The WSBA Board of Governors is accepting letters of interest and résumés from members interested in serving on the ABA House of Delegates representing the WSBA. Three positions, one of which is for a member under 35 years of age, will be available in August 2007. A written expression of interest and résumé are required for any incumbents seeking reappointment.

The control and administration of the ABA are vested in the House of Delegates, the policymaking body of the ABA. The House, composed of approximately 550 delegates, elects the ABA officers and board, and meets out of state twice a year. Delegate attendance is required. The WSBA’s allowance is $800 per year per delegate. Terms are two years, and members may serve a maximum of three consecutive terms. Those serving on the ABA House of delegates must be ABA members in good standing throughout their terms. Submit a letter of interest and résumé to WSBA Bar Leaders Division, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539; or e-mail barleaders@wsba.org.

Help for Judges
The WSBA Judges Assistance Program provides confidential assistance to judges experiencing personal or professional difficulties. Telephone or in-person sessions are available on a sliding-scale basis. For more information, call the program coordinator at 206-727-8268 or 800-945-9722, ext. 8268.

LOMAP and Ethics on the Road: The 2007 Traveling Seminars
Plan to attend in Vancouver on May 1, Aberdeen on May 2, or Olympia on May 3. Registration is $89, and each seminar has been approved for four ethics CLE credits. For more information, contact Julie Salmon at 206-733-5914, 800-945-9722, ext. 5914, or juliesa@wsba.org, or visit www.wsba.org/lawyers/services/lomapotheroad.htm.

Upcoming Board of Governors Meetings
April 13-14, Kelso • June 1, Wenatchee • July 27-28, Quincy
With the exception of the executive session, Board of Governors meetings are open, and all WSBA members are welcome to attend. RSVPs are appreciated but not required. Contact Donna Sato at 206-727-8244, 800-945-9722, ext. 8244, or donnas@wsba.org. The complete Board of Governors meeting schedule is available on the WSBA website at www.wsba.org/info/bog/schedule.htm.

Usury Rate
The average coupon equivalent yield from the first auction of 26-week treasury bills in March 2007 was 5.06 percent. The maximum allowable usury rate for April is 12 percent. Information from January 1987 to date is on the WSBA website at www.wsba.org/media/publications/barnews/usury.htm.

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Disciplinary Notices

These notices of imposition of disciplinary sanctions and actions are published pursuant to Rule 3.5(d) of the Washington State Supreme Court Rules for Enforcement of Lawyer Conduct, and pursuant to the February 18, 1995, policy statement of the WSBA Board of Governors.

For a complete copy of any disciplinary decision, call the Washington State Disciplinary Board at 206-733-5926, leaving the case name, and your name and address.

Note: Approximately 30,000 persons are eligible to practice law in Washington state. Some of them share the same or similar names. Bar News strives to include a clarification whenever an attorney listed in the Disciplinary Notices has the same name as another WSBA member; however, all discipline reports should be read carefully for names, cities, and bar numbers.

Disbarred

William Dean Adams (WSBA No. 7565, admitted 1977), of Oak Harbor, was disbarred, effective November 2, 2006, by order of the Washington State Supreme Court following a stipulation approved by the Disciplinary Board. This discipline was based on his conduct in multiple matters involving the communication of false information to clients and commission of multiple acts of forgery. Mr. Adams is to be distinguished from William Douglas Adams of New Berlin and William Grey Adams of Carnation.

Between 2003 and 2005, Mr. Adams represented clients in four unrelated matters. Two of the matters were adoptions, and two were marital dissolutions. Mr. Adams took little or no action to pursue or complete the cases. In two of the matters, Mr. Adams never filed papers to initiate the cases and did not tell the clients that there were no pending proceedings. Eventually, Mr. Adams persuaded each client that the matter was final by fabricating and providing the client with a fake decree, in some instances bearing the forged signature of a superior court judge.

In 2006, Mr. Adams pleaded guilty to four felony counts of forgery. He was sentenced to serve a total of four months in jail and to pay restitution to the clients.

Mr. Adams’s conduct violated RPC 1.4, requiring a lawyer to keep a client reasonably informed about the status of a matter, promptly comply with reasonable requests for information, and explain a matter to the
extent reasonably necessary to permit the client to make informed decisions regarding the representation; RPC 8.4(b), prohibiting a lawyer from committing a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects; RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and RPC 8.4(i), prohibiting a lawyer from committing any act involving moral turpitude, or corruption, or any unjustified act of assault or other act which reflects disregard for the rule of law.

Joanne S. Abelson represented the Bar Association. Mr. Adams represented himself.

Disbarred

Robert E. Brandt (WSBA No. 23058, admitted 1993), of Bothell, was disbarred, effective September 19, 2006, by order of the Washington State Supreme Court following a stipulation approved by the Disciplinary Board. In entering into the stipulation, Mr. Brandt agreed that if the matter were to proceed to a public hearing, there was a substantial likelihood that the Bar Association would be able to prove, by a clear preponderance of the evidence, the facts and misconduct described therein (and summarized herein).

The discipline was based on his conduct in 2004 involving conflicts of interest, trust account irregularities, failure to comply with discovery requests, false statements, failure to adequately supervise a nonlawyer employee, commission of a criminal act, dishonesty, and conduct prejudicial to the administration of justice.

Mr. Brandt operated a high-volume real estate escrow business, known as Escrow Authority, which was the assumed business name of Mr. Brandt’s law firm/professional corporation. Escrow Authority was Mr. Brandt’s primary business; he handled only a few legal matters for family and friends. Mr. Brandt used his law firm’s trust account to receive and disburse funds associated with the real estate closings handled by Escrow Authority, which operated two limited liability corporations out of the Escrow Authority office, as well as several branch offices.

In June 2005, the Kirkland Police Department executed a search warrant on Escrow Authority’s Kirkland office and seized some of its business records. Subsequently, it was discovered that there was a shortfall of about $3 million in Mr. Brandt’s trust account. This shortfall was allegedly due to the theft by one or more of Mr. Brandt’s employees. Mr. Brandt could not account for the shortfall, which resulted in the filing of a number of grievances against him. The following conduct, which did not arise from the theft of trust account funds, established grounds for discipline:

- Failing to maintain complete records of client funds in the trust account and failing to provide an accounting of trust account funds;
- Failing to reimburse funds to a client when requested;
- Failing to maintain client funds in a trust account, to properly review trust account records, and to supervise his staff in handling these records;
- Falsely stating under oath that he did not have malpractice insurance;
- Permitting an employee to handle a real estate closing when the employee was the purchaser and reseller of the real property;
- Failing to disclose to parties in three different matters that the limited liability corporation and Escrow Authority, to which they were paying various fees, were his businesses and that the fees were being paid to him;
- Failing to ensure that the conduct of employees handling client escrow funds was compatible with Mr. Brandt’s professional obligations as a lawyer, such as ensuring that documents were being notarized by persons having personal contact with the parties, that closing disbursements were not being made until after the recording of the deeds, and that tax payments and any promised reimbursement for tax penalties were promptly made;
- Failing to promptly disburse funds from the trust account in accordance with escrow instructions.

Mr. Brandt’s conduct violated RPC 1.5(b), requiring that when a lawyer has not regularly represented the client, or if the fee agreement is substantially different than that previously used by the parties, the basis or rate of the fee or factors involved in determining the charges for legal services and the lawyer’s billing practices shall be communicated to the client, before or within a reasonable time after commencing the representation; RPC 1.7(b), prohibiting a lawyer from representing a client if the representation of that client may be materially limited by the lawyer’s responsibilities to another client or to a third person, or by the lawyer’s own interests, unless the lawyer reasonably believes the representation will not be affected and the client consents in writing after consultation and a full disclosure in writing of the material facts; RPC 1.14(a), requiring that all funds of clients paid to a lawyer or law firm, including advances for costs and expenses, be deposited in one or more identifiable interest-bearing trust accounts and that no funds belonging to the lawyer or law firm be deposited therein; RPC 1.14(b)(3), requiring a lawyer to maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his or her client regarding them; RPC 1.14(b)(4), requiring a lawyer to promptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive; RPC 1.15(d), requiring a lawyer to take steps to the extent reasonably practicable to protect a client’s interests upon termination of representation; RPC 3.4(d), prohibiting a lawyer, in pretrial procedure, from failing to make reasonably diligent efforts to comply with a legally proper discovery request by an opposing party; RPC 4.1(a), prohibiting a lawyer, in the course of representing a client, from knowingly making a false statement of material fact or law to a third person; RPC 5.3(a), requiring that a partner in a law firm make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that a nonlawyer assistant’s conduct is compatible with the professional obligations of the lawyer; RPC 5.3(b), requiring a lawyer with direct supervisory authority over a nonlawyer assistant to make reasonable efforts to ensure that the person’s conduct is compatible with the professional obligations of the lawyer; RPC 8.4(b), prohibiting a lawyer from committing a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects; RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and RPC 8.4(d), prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice.

Debra J. Slater represented the Bar Association. Joel E. Wright represented Mr. Brandt. Michael J. Heatherly was the hearing officer.

Disbarred

Alan L. Gallagher (WSBA No. 16116, admitted 1986), of Canby, Oregon, was disbarred,
James E. Graham (WSBA No. 15290, admitted 1985), of Renton, was disbarred, effective October 5, 2006, by order of the Washington State Supreme Court following a default hearing. This discipline was based on his conduct between 2000 and 2005 involving commission of criminal acts with intent to defraud a client, dishonesty, failure to keep a client reasonably informed, lack of competence, lack of diligence, failure to expedite litigation, failure to maintain appropriate records of client funds, and failure to cooperate with a disciplinary investigation.

From 1995 until early 2005, Mr. Graham lived in a furnished apartment in Renton. Mr. Graham paid no rent during the time he lived there, instead performing legal work for the building owner ("client") and her family. Under their arrangement, Mr. Graham did not charge the client any legal fees, but would charge her for costs incurred in connection with litigation and other legal matters. Mr. Graham did not provide his client with actual bills, court receipts, or an accounting of how he spent the money she gave him for costs. He also did not maintain records of his receipts and disbursements. Between May 2000 and September 2004, Mr. Graham provided the client with eight forged documents, including falsified court orders, judgments, and other correspondence, thereby fraudulently inducing her to give him money for nonexistent legal costs.

In November 2004, in a matter pending in superior court, the judge dismissed the case with prejudice because Mr. Graham had failed to comply with a discovery order and failed to respond to the adverse party's third motion to dismiss. Mr. Graham never informed his client that her case had been dismissed.

In February 2005, disciplinary counsel transmitted to Mr. Graham a copy of the client's grievance and requested a response. Mr. Graham never provided a response, did not comply with a subpoena duces tecum issued by disciplinary counsel, and failed to otherwise cooperate during the disciplinary investigation.

Mr. Graham's conduct violated RPC 1.1, requiring a lawyer to provide competent representation to a client; RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; RPC 1.4(a), requiring a lawyer to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information; RPC 1.14(b)(3), requiring a lawyer to maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to the lawyer's client regarding them; RPC 3.2, requiring a lawyer to make reasonable efforts to expedite litigation consistent with the interests of the client; RPC 8.4(b), prohibiting a lawyer from committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects; RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; RPC 8.4(i), prohibiting a lawyer from committing any act involving moral turpitude, or corruption, or any unjustified act of assault or other act which reflects disregard for the rule of law; RPC 8.4(l), prohibiting a lawyer from violating a duty or sanction imposed by or under the Rules for Enforcement of Lawyer Conduct in connection with a disciplinary matter; and RPC 8.4(n), prohibiting a lawyer from engaging in conduct demonstrating unfitness to practice law.

Natalea Skvir represented the Bar Association. Mr. Graham did not appear either in person or through counsel. Lawrence R. Mills was the hearing officer.

Disbarred

F. Curtis Hilton (WSBA No. 4028, admitted 1958), of Lakewood, was disbarred, effective September 18, 2006, by order of the Washington State Supreme Court following a default hearing. This discipline was based on conduct between 1996 and 2004 involving failure to communicate with a client, lack of diligence, attempting to settle a matter without client authority, failure to expedite litigation, failure to put a contingent fee agreement in writing, conduct prejudicial to the administration of justice, and conduct involving dishonesty, fraud, deceit, or misrepresentation.

In May 1996, Mr. Hilton was hired to represent a client in a hearing involving the forfeiture of certain personal items seized by the county sheriff's office. The client believed Mr. Hilton was representing her pro bono. Mr. Hilton believed that he and the client had entered into a contingent fee agreement under which he was to be paid one-third of any recovery, but Mr. Hilton had neither prepared a written contingent fee agreement nor had his client sign one. After a hearing examiner upheld the forfeiture of the client's property, Mr. Hilton filed a petition for judicial review. Mr. Hilton took no further action on the case and did not communicate with his client for the next 16 months.

In March 1998, the court issued a notice
of dismissal for want of prosecution. Mr. Hilton filed a response, signed under penalty of perjury, stating, "Petitioner will immediately proceed to prosecute this claim by her undersigned counsel." Mr. Hilton took no action in the case for another 16 months. In July 1999, the court clerk again sought to dismiss the case for want of prosecution. Mr. Hilton filed another response again stating, "Petitioner will immediately proceed to prosecute this claim by her undersigned counsel." Mr. Hilton filed a motion to set the briefing schedule, but did not file the brief as required. In November 1999, the defendant in the case filed a motion to dismiss for want of prosecution. The court denied the motion. For the next 19 months, Mr. Hilton took no action. In June 2001, the court clerk issued another notice of dismissal for want of prosecution. Mr. Hilton again filed a declaration stating, "Petitioner will immediately proceed to prosecute this claim by her undersigned counsel."

In June 2001 and February 2003, the client sent Mr. Hilton letters in which she informed him of her current address and requested information about her case. Mr. Hilton did not respond. In August 2003, in response to another dismissal for want of prosecution from the court clerk, Mr. Hilton filed a motion requesting a briefing schedule. At that point, the deputy prosecuting attorney sent Mr. Hilton a letter indicating his willingness to discuss a settlement. The letter offered an equal distribution of the proceeds of the seized property, but stated that the offer would only be held open for a brief period. Mr. Hilton did not communicate the settlement offer to his client. In October 2003, the court clerk issued another dismissal notice.

In December 2003, Mr. Hilton and the deputy prosecutor reached agreement on the terms of a settlement. Mr. Hilton did not tell his client of the settlement offer or that he would request the court to dismiss the case if the papers were not signed and returned to him. Mr. Hilton did not respond to either letter and did not inform his client about the situation.

In April 2004, the court dismissed the case on its own motion. Mr. Hilton did not tell his client that her case had been dismissed. She learned about the dismissal after reviewing the docket for her case online. In response to an e-mail from the client, Mr. Hilton advised her that the case had been settled and that he held a bank draft in his file for $1,500. Mr. Hilton met with the client shortly thereafter, at which time Mr. Hilton admitted that he only had a draft of the settlement agreement and agreed order of dismissal in his file, not a bank draft for $1,500. Mr. Hilton then had his client sign the settlement agreement, without telling her that the settlement offer had been withdrawn. He transmitted the signed agreement to the deputy prosecutor with a request to remit settlement funds. The deputy prosecutor replied that the offer had been withdrawn in March 2004 and that he would no longer honor the settlement proposal.

Mr. Hilton's conduct violated RPC 1.2(a), requiring a lawyer to abide by a client's decisions concerning the objectives of representation and consult with the client as to the means by which they are to be pursued, and to abide by a client's decision whether to accept an offer of settlement of a matter; RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; RPC 1.4, requiring a lawyer to keep a client reasonably informed about the status of a matter, promptly comply with reasonable requests for information, and explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; RPC 1.5(c)(1), requiring that a contingent fee be in writing; RPC 3.2, requiring a lawyer to make reasonable efforts to expedite litigation consistent with the interests of the client; RPC 8.4(a), prohibiting a lawyer from attempting to violate the Rules of Professional Conduct; RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and RPC 8.4(d), prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice.

M. Craig Bray and Debra J. Slater represented the Bar Association. Mr. Hilton represented himself. William J. Murphy was the hearing officer.

Suspended

Stephen B. Blanchard (WSBA No. 12294, admitted 1982), of Edmonds, was suspended for six months, effective October 12, 2006, by order of the Washington State Supreme Court following a hearing. This discipline was based on his conduct in two matters involving lack of diligence, failure to communicate with clients, trust account irregularities, failure to refund unearned fees, and failure to cooperate with disciplinary investigations.

Matter 1: In January 1997, a married couple [Mr. and Mrs. W] hired Mr. Blanchard to help them collect on $187,592.87 in loans owed to them by one of Mrs. W's sons. The loans were consolidated into a single promissory note secured by deeds of trust on three pieces of property. In 1996, the son had filed Chapter 7 bankruptcy and had failed to make payments on the promissory note. Through the bankruptcy, two of the properties were sold, while the third property [Lot A] remained part of the bankruptcy estate.

Mr. Blanchard told the clients that he would charge an hourly fee for the collection matter. At the end of January, Mr. Blanchard sent Mr. W a $1,578.92 bill for fees relating to a prior representation. Mr. W sent Mr. Blanchard a check for $1,500, which contained the handwritten note "Advance on Legal Service." Mr. Blanchard deposited the check into his general account, not his trust account. At the end of February 1997, Mr. Blanchard sent Mr. W a $229.71 bill for additional fees.

In October 1998, Mr. Blanchard requested $1,000 from Mr. and Mrs. W so that he could seek authorization for the sale of Lot A. Mr. Blanchard received the check and deposited it into his general account, but he did not pursue the foreclosure on Lot A.

In April 1999, Mr. W died. Mrs. W and her other son met with Mr. Blanchard in August 1999, during which she requested paperwork regarding the money her husband had paid to Mr. Blanchard. Mr. Blanchard said he would send an accounting. He did not provide an accounting or any paperwork regarding the money paid, and he had no further contact with Mrs. W.

Between 1999 and 2001, Mrs. W's son wrote five letters to Mr. Blanchard requesting an accounting and a refund. Mr. Blanchard received all five letters, but failed to respond or provide an accounting or refund. Mr. Blanchard did not have any records to demonstrate that he earned the $770.29
difference that was paid in October 1998 in excess of the $229,71 billed. In March 2001, Mrs. W’s son’s bankruptcy closed and Lot A was distributed back to him. Subsequently, another lawyer assisted Mrs. W in foreclosing the deed of trust.

In December 2001, Mrs. W filed a grievance with the Bar Association and was referred to fee arbitration. Mr. Blanchard failed to respond to Mrs. W’s fee arbitration petition, and she renewed the grievance in November 2002. Mr. Blanchard did not respond to the grievance until served with a subpoena duces tecum.

**Matter 2: In August 2002, a client hired Mr. Blanchard to represent him in a dissolution action. The client informed Mr. Blanchard that he wished the dissolution to move along as quickly as possible. The primary issue was the division of the parties’ property. Mr. Blanchard and the client agreed that Mr. Blanchard would charge an hourly fee of $175 per hour. No written fee agreement was executed. The client paid Mr. Blanchard an initial $750.**

At the end of August, Mr. Blanchard had the client sign dissolution pleadings he had prepared. On the same day, Mr. Blanchard filed the summons and petition for dissolution. However, the petition did not contain the client’s signature. Mr. Blanchard never filed a petition that was signed by the client.

The lawyer representing the opposing party informed Mr. Blanchard that her client would not accept service of the summons and petition and that he needed to properly serve her client. Between October and December 2002, the opposing attorney sent Mr. Blanchard three letters reminding Mr. Blanchard that her client had yet to be served. Mr. Blanchard’s client repeatedly informed Mr. Blanchard that he wanted the case to move forward quickly and that he would not put up with stalling tactics. The client also repeatedly asked Mr. Blanchard to take action to secure personal items that remained in the opposing party’s possession. Mr. Blanchard did not serve the opposing party and did not file a motion for the return of his client’s personal property.

Around October 2002, Mr. Blanchard requested $1,500 from the client without providing a billing statement. The client, thinking the money was for the costs of a deposition of the opposing party, provided the sum to Mr. Blanchard, who deposited the payment into his general account. Mr. Blanchard attempted to schedule the deposition, but opposing counsel would not allow her client to be deposed until the summons and petition had been properly served. When the deposition was canceled, Mr. Blanchard’s client learned for the first time that the summons and petition had never been served.

After hiring a new lawyer, the client also learned that the petition for dissolution was unsigned and invalid. In January 2003, the client sent a letter to Mr. Blanchard informing him that he no longer wished to use his services and requesting a refund. Although Mr. Blanchard originally indicated that he would give the client a refund, he later informed him that he would not refund any money. The client filed a grievance with the Bar Association. Because Mr. Blanchard failed to respond, disciplinary counsel was obligated to issue a subpoena duces tecum in order to obtain the requested information.

Mr. Blanchard’s conduct violated RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; RPC 1.4, requiring a lawyer to keep a client reasonably informed about the status of a matter, promptly comply with reasonable requests for information, and explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; RPC 1.5(a), requiring a lawyer’s fee to be reasonable; RPC 1.14(a), requiring that all funds of clients paid to a lawyer or law firm, including advances for costs and expenses, be deposited in one or more identifiable interest-bearing trust accounts and that no funds belonging to the lawyer or law firm be deposited therein; RPC 1.14(b), requiring a lawyer to promptly notify a client of the receipt of his or her properties, identify and label client property on receipt and put it in a safe deposit box or other place of safekeeping as soon as possible; maintain complete records of all client property coming into the lawyer’s possession, and promptly pay or deliver to the client property in the lawyer’s possession which the client is entitled to receive; RPC 1.15(d); requiring a lawyer to take steps to the extent reasonably practicable to protect a client’s interests; RPC 3.2, requiring a lawyer to make reasonable efforts to expedite litigation consistent with the interests of the client; and RPC 8.4(f), prohibiting a lawyer from violating a duty or sanction imposed by or under the Rules for Enforcement of Lawyer Conduct [here, ELC 1.5 and 5.3].

Natalaea Skvir and Marsha A. Matsumoto represented the Bar Association. Kurt M. Bulmer represented Mr. Blanchard. Robert Hardy was the hearing officer.

**Suspended**

Donald B. Kronenberg (WSBA No. 13979, admitted 1984), of Seattle, was suspended for two years, effective May 12, 2006, by order of the Washington State Supreme Court following a stipulation approved by the Disciplinary Board. This discipline was based on Kronenberg’s conduct in 1996 involving a conflict of interest and refusal to refund the unearned portion of a fee. The stipulation incorporated by reference of the facts set forth in Cotton v. Kronenberg, 111 Wn. App. 258, 44 P.3d 878 (2002). Mr. Kronenberg was previously disbarred by Supreme Court order effective August 18, 2005. See In re Discipline of Kronenberg, 155 Wn.2d 184, 117 P.3d 1134 (2005).

In March 1996, Mr. Kronenberg was hired by a client charged with three counts of felony rape of a child. The client signed a fee agreement prepared by Mr. Kronenberg which provided that attorney fees would be charged at the rate of $140 per hour. At the time, the client signed a statutory warranty deed granting a parcel of real property to Mr. Kronenberg. The client also transferred to Mr. Kronenberg title to a mobile home located on the property. A few days later, the client signed another agreement prepared by Mr. Kronenberg. The second agreement set forth the terms of a “nonrefundable fee” for defense against the child rape charges. The agreement estimated that fees “could be anywhere from $10,000 to $30,000.” The agreement further provided for the transfer of the realty and mobile home to Mr. Kronenberg in full satisfaction of all fees earned in the case. Within a week, Mr. Kronenberg recorded the deed, and within months he sold the property for $42,000.

In July 1996, the trial court granted a motion by prosecutors to have Mr. Kronenberg removed from the case based on allegations of witness tampering. Thereafter, new counsel for the client negotiated a plea and sentence recommendation. As a result of these negotiations, no criminal charges went to trial.

After Mr. Kronenberg’s dismissal, the client requested a refund of the unearned balance of the fees generated by the sale of the realty and mobile home. Mr. Kronenberg denied the request.

Mr. Kronenberg’s conduct violated RPC 1.5(a) requiring a lawyer’s fee be reasonable; RPC 1.8(a), prohibiting a lawyer from entering into a business transaction with a
In May 2003, a Washington resident died intestate leaving three adult children: Child A, Child B, and Child C. The three children had grown up in the same neighborhood with Mr. Hayes, and Child A had maintained contact with Mr. Hayes after high school. To save money, the siblings initially did not retain the services of a lawyer to help them prepare court papers or assist them with the administration of the estate. On May 21, a superior court commissioner appointed Child B, who had no prior experience administering an estate, to be the administrator. Soon after that, Child A began calling and writing to Child B, demanding a full accounting and requiring her to perform services.

In June 2003, Child A telephoned Mr. Hayes and asked Mr. Hayes to assist both him and Child C by reviewing the superior court probate file and intervening with Child B to require her to provide an accounting. In a letter confirming the telephone call, Child A informed Mr. Hayes that both he and Child C decided they needed Mr. Hayes’s “help and assistance” in dealing with Child B. Child A enclosed a personal check in the amount of $250. Child A signed the letter as “your friend, although now I guess client.” Mr. Hayes went to the courthouse, reviewed the probate file, and confirmed by telephone with Child A that he had received the check for $250. Mr. Hayes reported to Child A that there had been no new activity in the court file since the probate documents were filed in May. Mr. Hayes then wrote a letter to Child B on behalf of Child A requesting a full accounting of the estate assets, a copy of a power of attorney the decedent had executed to Child B before her death, and information about transactions under the power of attorney. At the end of June, Child B wrote to her two siblings and included some receipts and summaries of their mother’s assets. She also forwarded to them a letter that she had sent to Mr. Hayes asking him to represent her as administrator of the estate.

In July 2003, Child A and Mr. Hayes talked by phone. At Mr. Hayes’s direction, Child A confirmed in writing that the $250 check was an “advance prepayment . . . for legal representation of the estate of [the decedent] where [Child B] is the Administrator.” That same month, Mr. Hayes and Child B entered into a written fee agreement which referenced the $250 as a “retainer fee paid . . . in advance.” In July 2003, Child A wrote to Mr. Hayes and thanked him for helping Child B as administrator of the estate. In August, Child A wrote to Child B that he was “glad that [Mr. Hayes] is helping you.” Child A was aware that Mr. Hayes was no longer his personal lawyer but was performing legal services on behalf of Child B as the estate administrator. By these actions, Child A expressly agreed and consented to Mr. Hayes’s representation of Child B as administrator.

Two months later, Child A wrote Child B a letter stating that she was being unfair and had still not provided a full accounting of the estate assets to him. He also filed a pro se petition to remove Child B as administrator of the estate. Mr. Hayes, on behalf of Child B, filed a declaration in opposition to the petition. In November 2003, the court commissioner ordered the appointment of a substitute independent administrator.

In December, Mr. Hayes signed a fee agreement and filed a notice of appearance to represent Child B “in her individual capacity as an heir to her mother’s estate.” Child A never consented to Mr. Hayes’s representation of Child B in her individual capacity as heir.

In January 2004, Child A wrote to Mr. Hayes asking him for a refund of the $250 he had sent him in June 2003. Child A stated that Mr. Hayes’s bill to the estate indicated that he had only spent one hour drafting the letter to Child B on Child A’s behalf, and therefore Mr. Hayes should only be entitled to receive $90 (his hourly fee). Mr. Hayes responded that he did not owe him a $160 refund and that the $250 payment had been credited equally among the three heirs to the estate. Child A filed a motion in the probate proceeding in which he raised the issue of Mr. Hayes’s representation of Child B by stating that he and Child C would not release or waive Mr. Hayes’s potential conflict of interest arising from his representation of Child B individually in the probate matter.

In January 2004, the commissioner appointed a new personal representative. An order approving final account and a decree of distribution were filed in March 2005. As part of the distribution, Child A was refunded the $250 fee paid to Mr. Hayes.

Mr. Hayes’s conduct violated RPC 1.19(a), prohibiting a lawyer from representing another person in the same or a substantially related matter in which that person’s interests are materially adverse to the interests of the former client unless the former client consents in writing after consultation and a full disclosure of the material facts.

Kevin M. Bank represented the Bar Association. Mr. Hayes represented himself. Stephen J. Henderson was the hearing officer.

Reprimanded

Robert L. Hayes (WSBA No. 21239, admitted 1991), of Tacoma, was ordered to receive a reprimand on September 29, 2006, following a hearing. This discipline was based on his conduct in 2003 involving a conflict of interest.

In May 2003, a Washington resident died intestate leaving three adult children: Child A, Child B, and Child C. The three children had grown up in the same neighborhood with Mr. Hayes, and Child A had maintained contact with Mr. Hayes after high school. To save money, the siblings initially did not retain the services of a lawyer to help them prepare court papers or assist them with the administration of the estate. On May 21, a superior court commissioner appointed Child B, who had no prior experience administering an estate, to be the administrator. Soon after that, Child A began calling and writing to Child B, demanding a full accounting and requiring her to perform services.

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Mr. Hayes’s conduct violated RPC 1.19(a), prohibiting a lawyer from representing another person in the same or a substantially related matter in which that person’s interests are materially adverse to the interests of the former client unless the former client consents in writing after consultation and a full disclosure of the material facts.

Kevin M. Bank represented the Bar Association. Mr. Hayes represented himself. Stephen J. Henderson was the hearing officer.

Reprimanded

John C. Moore (WSBA No. 21880, admitted 1992), of Lake Oswego, Oregon, received a reprimand, effective October 27, 2006, by order of the Washington State Supreme Court imposing reciprocal discipline in accordance with an order of the Supreme Court of the State of Oregon following a stipulation. This discipline was based on his conduct in 2005 involving use of a notary stamp to attest and verify a signature in violation of the requirements of Oregon's notary statute. For more information, see Oregon State Bar Bulletin, Discipline (July 2006), available at www.osbar.org/publications/bulletin/archive.html. Mr. Moore is to be distinguished from John S. Moore Jr. of Yakima, John A. Moore Jr. of Yakima, John C. Moore of Seattle, and John D. Moore of Hong Kong.

Mr. Moore’s conduct violated Oregon RPC 3.3(a)(5), prohibiting a lawyer from knowingly engaging in illegal conduct or conduct contrary to the Rules of Professional Conduct.

Felipe C. Congalton represented the Bar Association. Mr. Moore did not appear either in person or through counsel.
Announcements

Patrick Rawnsley
and
Jason Fugate
announce the establishment of

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Fax: 360-357-6398
pat@rawnsleyfugate-law.com
jason@rawnsleyfugate-law.com

Groff Murphy
Trachtenberg & Everard PLLC
is pleased to announce that

Daniel Connolly
has joined the firm as an associate.

Mr. Connolly received his law degree from Yale School of Law and his undergraduate degree from UCLA.

Mr. Connolly’s practice will focus on commercial litigation and construction law.

300 East Pine Street
Seattle, WA 98122
Phone: 206-628-9500 • Fax: 206-628-9506
E-mail: dconnolly@groffmurphy.com

GORDON, THOMAS, HONEYWELL, MALANCA, PETERSON & DAHEIM LLP
is proud to announce that

Steven Reich
has become our newest partner! Congratulations!
Mr. Reich practices personal injury law in our Seattle office.

John T. Cooke
formerly of the Attorney General’s Office, has recently joined the Real Estate/Land Use Group in our Tacoma office as an Associate.

Daniel Potts
has joined our Seattle office as a Senior Associate and primarily practices construction law. Mr. Potts was formerly with Holmes, Weddle & Barcott.

And

Kyle Karinen
recently of Jeffers, Danielson, Sonn & Aylward, PS in Wenatchee, WA, joined our Tacoma office as a Senior Associate to build his practice in taxation, trusts and estates, and corporate/partnership work.

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LeSourd & Patten, P.S.
is pleased to announce
Richard L. Johnson
has become an Associate of the firm

Mr. Johnson graduated *cum laude*, 2006, from Seattle University School of Law. While at Seattle University, Mr. Johnson focused on business and tax law and interned with the Office of the Chief Counsel of the IRS, where he assisted in a variety of civil tax controversy cases.

Currently, Mr. Johnson’s practice consists of tax controversy matters before the Internal Revenue Service. His recent cases include work on offers in compromise, penalty abatements, and general tax collection issues.

LeSourd & Patten, with a history in Seattle dating back to 1922, focuses on tax matters. The firm’s tax practice includes both tax litigation and tax planning, with a major part of the firm’s work being representation of businesses and individuals before the IRS and the Department of Revenue.

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Oles Morrison Rinker & Baker LLP
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has joined the firm as a Partner.

Ms. Eakes’ practice focuses on employment law matters.

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Oles Morrison Rinker & Baker LLP is one of Seattle’s oldest law firms, dating from 1893. The firm has continued to embrace the philosophy of its founders and its significant members, finding practical approaches to its clients’ legal issues. The firm has a solid base of litigation attorneys with expertise in construction, supply and service contracts; corporate practice; insurance coverage matters; commercial law; and estate and tax planning.

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Fax: 206-682-6234

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Ronald A. Van Wert
has become a partner in our firm.

Mr. Van Wert will continue to practice primarily in the areas of medical malpractice, criminal, and municipal defense.

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Attorneys & Counselors
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Phone: 509-747-9100 • Fax: 509-623-1439
ettermcmahon@ettermcmahon.com
Bennett Bigelow & Leedom, p.s.
is pleased to announce that

Theresa Rambosek
and
Jennifer Moore
have joined the firm as Senior Attorneys
and

Megan Grembowski
has joined the firm as an Associate.

Ms. Rambosek graduated from Gonzaga University School of Law in 1987. She advises acute care hospitals, physician groups, and other health care providers regarding transactions and contracts, employment matters, risk management and medical staff affairs, governance, and regulatory compliance.

* * * *

Ms. Moore graduated from Seattle University School of Law in 2000. Her practice is focused on the defense of hospitals, clinics, physicians, nurses and other health care providers. She represents health care professionals and their employers in medical negligence and negligent hiring lawsuits, arbitrations, and administrative hearings.

* * * *

Ms. Grembowski is a 2006 graduate of the University of Washington School of Law. During law school she externed at the California Medical Association. She is expecting to earn her Master’s degree in public health in 2007.

Merrick, Hofstedt & Lindsey, p.s.

is pleased to announce that

Thomas R. Merrick
has joined the firm as a Shareholder
and that
Laurence Erickson “Erick” Walker
has joined the firm as an Associate.

Messrs. Merrick and Walker will continue their practice in a full range of litigation.

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is pleased to announce that

Jason C. Holloway
and
Justin M. Sedell
have joined the firm as associates.

Mr. Holloway and Mr. Sedell will practice in the areas of Complex Family Law.

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For when they insure it is sweet to them to take the money; but when disaster comes it is otherwise and each man draws his rump back and strives not to pay.

— Francesco di Marco Datini —
Florentine businessman, letter to his wife, 14th century.

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Counsel for plaintiff in State v. PBMC, Inc., 114 Wn.2d 454 (1990) (General contractor has primary responsibility for the safety of all workers.)
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WSBA Bar News Calendar
1325 Fourth Ave., Ste. 600
Seattle, WA 98101-2539
Fax: 206-727-8319
E-mail: comm@wsba.org

Information must be received by the first day of the month for placement in the following month’s calendar.

Automobile
Auto Cases: A Crash Course
April 19 — Seattle. 6.25 CLE credits. By WSTLA; 206-464-1011.

Business Law
Holding Real Estate Assets Through Partnerships and LLCs
April 4 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Estate Planning’s Effect on Business Owners
May 2 — Seattle. 6 CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Dispute Resolution/Mediation
15th Annual Northwest Dispute Resolution Conference
May 4-5 — Seattle. CLE credits pending. By UW School of Law; 206-543-0059 or 800-CLE-UNIV.

Four-Day Intensive Mediator Training Program
April 17-20 — Seattle. 41.5 CLE credits, including 4.5 ethics. By Alhadeff & Forbes Mediation Services; 206-281-9950.

Conflict Resolution Skills for the Workplace
April 19 and 20 — Seattle. 10.25 CLE credits. By the Dispute Resolution Center of King County; 206-443-9603, ext. 107, jericatsd@kcdrc.org, or www.kcdrc.org.

Four-Day Intensive Mediator Training Program
May 8-11 — Seattle. 41.5 CLE credits, including 4.5 ethics. By Alhadeff & Forbes Mediation Services; 206-281-9950.

Advanced Skills for Effective Communication
May 15 — Seattle. 5.5 CLE credits. By the Dispute Resolution Center of King County; 206-443-9603, ext. 107, jericatsd@kcdrc.org, or www.kcdrc.org.

Environmental
ELUL Midyear: Earth, Wind, Fire and Water
May 17-19 — Chelan. 13.5 CLE credits pending. By WSBA-CLE and ELUL Section; 800-945-WSBA or 206-443-WSBA.

Of Salmon, the Sound and the Shifting Sands of Environmental Law — A National Perspective
April 20-21 — Seattle. CLE credits pending. By UW School of Law; 206-543-0059 or 800-CLE-UNIV.

Estate Planning
Handling Trust and Estate Litigation
April 20 — Spokane. 6.25 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Estate Planning’s Effect on Business Owners
May 2 — Seattle. 6 CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.
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Ethics

Annual Ethics in Civil Litigation Institute
April 25 — Seattle. 6.25 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Franchise

Franchising Conference
April 6 — Seattle. 6.25 CLE credits. By The Seminar Group; 206-463-4400 or 800-574-4852.

General

Growing the Law Firm Practice: Generating New Business Now!
April 13 — Seattle. 3.25 CLE credits. By The Seminar Group; 206-463-4400 or 800-574-4852.

Health

HIPAA Privacy and Security
April 19 — Seattle. 7 CLE credits, including 1 ethics. By WSBA-CLE and Real Property, Probate and Trust Section; 800-945-WSBA or 206-443-WSBA.

Indian Law

Annual Indian Law Conference
May 4 — Seattle. 6.25 CLE credits. By WSBA-CLE and Indian Law Section; 800-945-WSBA or 206-443-WSBA.

Intellectual Property Law

IP for the Rest of Us
May 9 — Seattle. CLE credits pending. By WSBA-CLE and Intellectual Property Law Section; 800-945-WSBA or 206-443-WSBA.

Litigation

Dare to Discover: How to Employ and Respond to Discovery Tactics
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Annual Ethics in Civil Litigation Institute
April 25 — Seattle. 6.25 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Trying a Case in Clark County
April 26 — Vancouver. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Professionalism

14th Annual Professional Responsibility Institute
May 12 — Seattle. 6 CLE credits. By UW School of Law; 206-543-0059 or 800-CLE-UNIV.

Real Property, Probate and Trust

Holding Real Estate Assets Through Partnerships and LLCs
April 4 — Seattle. 6.25 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Condominium Development
April 19 — Seattle. 6 CLE credits. By WSBA-CLE and Real Property, Probate and Trust Section; 800-945-WSBA or 206-443-WSBA.

Condominium Development
April 27 — Spokane. 6 CLE credits. By WSBA-CLE and Real Property, Probate and Trust Section; 800-945-WSBA or 206-443-WSBA.

Senior Lawyers

Senior Lawyers Annual Conference
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Will Search


Searching for will of Samuel Williams. DOB: 02-16-1916, DOB: 01-17-2007, King County, Washington. Please contact Thomas E. Gates, Gates' Law, PLLC, 1801 Southcenter Parkway, Tukwila, WA 98188, 253-332-7899 with any information.

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April 2007 • Washington State Bar News
33 Moves

by Lindsay Thompson

In New York, a citizen is likely to keep on the move, shopping for the perfect arrangement of rooms and vistas, changing his habitation according to fortune, whim, and need.

— E.B. White, “Goodbye to Forty-Eighth Street” (1957)

The New York Times Style section keeps me up on things people are obsessing about in the better circles of big cities, things I’d have never worried about otherwise.

They ran a piece about how some people, a number of them celebrities, feel the need to revisit old family homes. Apparently Goldie Hawn turns up on the doorstep of her childhood manse with some regularity.

If I wanted to visit “home,” I wouldn’t know where to begin.

My first nine moves were my parents’ doing, across five towns as my dad moved up the career ladder. Then I was an academic nomad for a decade. That period accounts for the next 13 moves. In the 1980s in Portland, three classmates and I got a Multnomah bungalow for $90 each a month. It had gone unsold for a long time. The yard was a mess. I set about restoring it. It looked great by midsummer. The house promptly sold. The new owner offered to let us continue living upstairs as long as we paid the sharply upped rent (to cover her mortgage) and became vegans. I moved on. Several times.

I managed six years in a cave-like Vancouver apartment done up in 1970s brown colors, with acres of wall space for bookcases. I had a lot of those back then. In 1991, I moved to Kelso. Sixty-two trains a day ran across the street from me. It was Eraserhead’s pad, only above ground.

I moved to Seattle in 1993. I landed an apartment in a century-old shotgun house a dentist ran as a tax loss. There was a spectacular view across Lake Union, from St. Mark’s Cathedral to Queen Anne High School. I could seat 12 for dinner.

The garden — again — was a right mess. Three years later, just as the revived yard was reaching maturity, the dentist put the house up. I’d another one sold out from under me. The new owner loved the garden. She offered to let me stay on as long as I paid the sharply upped rent. She expressed no views on veganism. (Later, she let the yard go back to ruin, and last fall the house burned down.)

By then, however, I had fallen in love. The ex (to jump ahead a bit) persuaded me the sale was a sign from the real estate gods to buy a house together. We did: a new, shiny townhouse on the street where they filmed the grunge-era Seattle comedy Singles. The real residents of that apartment building turned out way weirder than their movie counterparts, but I got to start a garden from scratch. It was filling in nicely our fourth summer there, when the ex’s e-mail came inviting me to move on — and out.

The new owner loved the garden. He didn’t invite me to stay on under any circumstances. I didn’t learn his thoughts on meat consumption, either.

A client happened along who’d bought a big, subdivided, Tudor pile on North Capitol Hill. I got a smart bachelor flat. After a year or so, I made my shortest move — about 15 feet down the hall from 201 to 202. It was a beauty: 18-foot ceilings, a big kitchen, huge fireplace and windows, a loft bedroom. There was a lawn service, so no garden to restore. I wouldn’t let them sell this one out from under me, I thought. I devoted myself to making my flat worthy of Architectural Digest, and when my client sold the building, mine was the display unit for a stream of condo developers. In due course, I got three pounds of paper offering to sell me my 910 square feet for $335,000. I liked it, but not that much. They sold it to someone else for $480,000.

Farewell, Capitol Hill: I decamped to West Seattle. Great neighbors, wonderful water view, a garden service, and no redecorating. It was a nice set of digs, albeit with a unique set of eccentricities attending occupancy. After two years there, and 13 in Seattle, I began to ponder life without an hour commute each day, without endless civic debates about the provision of basic services and infrastructure, of life generally in a city that has gotten to taking itself way too seriously. Seattle granted me my 15 minutes of fame. I figured I’d run through it when a one-time neighbor and sometime friend sent me an invitation to a fundraiser and put someone else’s name in the salutation.

Long ago, on a visit, I filed Port Angeles away in mind as an interesting potential home. Talking over my life — an imploding mess, I felt — with a friend there, he said, “C’mon up. It’ll do you good.” So I did. The movers told me my life — home and office — weighed 6,480 pounds. Crossing the Hood Canal Bridge, I picked up a Canadian station on the car radio. The program reminded me of when I was in law school.

One Saturday afternoon, Garrison Keillor, the host of radio’s A Prairie Home Companion, read birthday greetings from my North Carolina family on the air. “That young man,” Keillor added, “has gone about as far from home … as he can get.”

It seems I have.

Lindsay Thompson practices in Port Angeles and can be reached at barnews editor@wsba.org.
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