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JUDICIAL DISPUTE RESOLUTION
Truth in advertising

It was with dismay that I read the President’s Corner column in the February edition. While on the one hand our President indicates the WSBA took no position on R-67, on the other he “thanks” those who voted for it. I am not sure the two statements can be reconciled particularly if we consider his reason for the “thanks” being offered which is allegedly for “standing up to lawyer-bashing” which he described in the ads against the measure as “false.”

The advertising on both sides was misplaced. However, if the WSBA truly took no position on R-67, I would anticipate our President to comment that the advertisements in favor of R-67 were no less “false” to the extent they asserted R-67 would make bad faith “illegal” in Washington. Bad faith was already “illegal” in Washington. The only meaningful change in the law was to make punitive damages available and yet the ads in favor portrayed the initiative as constituting a substantive change, making illegal what was once legal. R-67 did no do that. It may be argued that increasing damages increases deterrence, but that is not what the ads said; the ads told otherwise unknowing voters R-67 was creating a new prohibition, making something newly “illegal.” That simply was not factually accurate.

You need not have been in favor or opposed to R-67 to see the advertisements of both sides were, at times, not entirely fair. I am not sure the two state-ments can be reconciled particularly if we consider his reason for the “thanks” being offered which is allegedly for “standing up to lawyer-bashing” which he described in the ads against the measure as “false.”

The advertisements in favor of R-67 were less than fair. They made bad faith “illegal” in Washington. Bad faith was already “illegal” in Washington. The only meaningful change in the law was to make punitive damages available and yet the ads in favor portrayed the initiative as constituting a substantive change, making illegal what was once legal. R-67 did no do that. It may be argued that increasing damages increases deterrence, but that is not what the ads said; the ads told otherwise unknowing voters R-67 was creating a new prohibition, making something newly “illegal.” That simply was not factually accurate.

WSBA President Stan Bastian responds:

The WSBA President and I did not take a position on R-67, but I chose to condemn the misleading lawyer-bashing ads which were published during the election campaign. The anti R-67 ads could not be ignored, and the intent of my February column was to safeguard the reputation of my colleagues, the vast majority of whom are professional and honorable. The office of WSBA President has many duties, but none is more important than defending the members of this profession when they are unfairly attacked.

Is tolerance discrimination?

Steven T. O’Ban says in the February 2008 Bar News that resistance to same-sex marriage isn’t “invidious discrimination” against gays and lesbians, because the trend is toward greater “tolerance.” Tolerance? If someone says he or she tolerates Blacks or Hispanics, would anyone doubt racial or ethnic bias is being expressed? Mr. O’Ban’s tolerance of gays and lesbians is no different.

He asserts the purpose of marriage is to provide a structure for procreation and child-rearing, and claims he is supported by history. Scholarly texts on the history of marriage, however, tell us marriage has had several purposes, including (for example) creating family and political alliances, perpetuating a male surname, and establishing boundaries for expressing sexual attraction.

Mr. O’Ban asserts children fare better when their biological parents raise them, thus suggesting that children raised by gays or lesbians will suffer. The evidence contradicts him. Dr. Gregory Herek (American Psychologist, 2006) reviewed the published research and concluded: “Empirical studies comparing children raised by sexual minority parents with those raised by otherwise comparable heterosexual parents have not found reliable disparities in mental health or social adjustment.” [Citations omitted].

Responding to all of Mr. O’Ban’s points is unnecessary, because ultimately it comes down to values, not evidence. Many of us accept gays and lesbians, and think it’s wrong to deny them equal rights. Others disapprove of gays and lesbians. From their standpoint, “tolerating” them is enough.

David A. Summers, Seattle

Flat fee redux

I oppose the proposed flat fee ethics rule (February 2008 Bar News), which would allow lawyers to charge flat fees for services, but then give the client the power to “take back” the flat fee and demand arbitration of the fee.

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when it attempts to take away personal or economic freedom: life, liberty, and the pursuit of happiness. If the Washington State Bar is able to pass a law which guts the ability of a lawyer to collect a fee, then it has gone a long way to destroying the ability of lawyers to defend their clients.

The rule says that a lawyer must restore to a trust account any amounts that are reasonably disputed and then the lawyer, not the client, must take steps to “resolve the dispute.” In other words, the lawyer must put himself on trial to determine what part of the fee is disputed, and then must sue himself, or herself, in order to collect the fee. This means that many lawyers will not be able to use the fee because they might have trouble paying it back. No new house, no new car, no Corpus Juris Secundum. It probably means that most lawyers will consider the entire fee disputed, to be safe, and it means that it may take a long time to earn a fee, because clients, and their new contingent fee lawyers, can be difficult about bringing a fee dispute to trial. Fees will increase, lawyers and clients will be embittered against each other, and after a few publicized cases of lawyers losing their fees to the judgment of strangers on arbitration panels, the practice of defending the life, liberty, and property of our citizens will become unpopular.

Roger B. Ley, Astoria, Oregon

Online payment fees-ibility

The WSBA permits members to pay their Bar dues with a credit card through its website. However, members are not allowed to take the Keller deduction if they choose to pay their Bar dues in this manner (nor purchase the WSBA’s Resources directory). By failing to allow members to make the Keller deduction when Bar dues are paid over the Internet, a member is being forced to make a mandatory contribution that he or she may not agree with, which supports political or ideological activities that are not reasonably related to the regulation of the legal profession or improvement of the quality of legal services. Are members who pay through the website who wanted to take the Keller deduction given an opportunity for a refund? I believe that the failure to permit the Keller deduction on-line totally guts the spirit of the Keller decision, if it is not an outright violation of the terms of that decision. I frequently make Internet purchases at websites that allow me to deduct certain costs or fees. It would have been easy for the WSBA to provide for the Keller deduction, as well as for the purchase of the Resources directory through its website. Its failure to do so is more than a shame, it’s wrong. I realize that the WSBA is providing a service to its members by allowing bar dues to be paid through its website, but I do not understand why the WSBA has not provided for the Keller deduction to be taken.

Joel Green, Seattle

WSBA DIRECTOR OF REGULATORY SERVICES Jean McElroy responds: Members may use their Visa or Mastercard credit cards to pay their licensing fees in several ways: online through our website; by way of the paper licensing form that is mailed out to each member; or over the telephone. If the credit card payment is made via the paper form or the telephone, the member may deduct the Keller amount from the payment. Unfortunately, because our current online payment processes are not set up to handle the optional Keller deduction, a member paying licensing fees online using a credit card may not claim the deduction in that payment transaction. The WSBA is working on providing paperless (online) licensing that will include the option of claiming the Keller deduction for those opting for this payment method. For now, if a member pays online and wants to take the Keller deduction, the member may contact the WSBA to request a refund for the deduction.

The Resources directories can be ordered online through the WSBA CLE online bookstore. We have also added a link on the licensing payment page that will take you to the bookstore page where you can place that order.

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A Conversation with Dean Earl Martin

Gonzaga University School of Law Dean Martin talks about preparing for a legal career

This month I want to introduce you to Earl Martin, the dean of the Gonzaga University School of Law in Spokane. Dean Martin arrived at Gonzaga in July 2005 after several years with the U.S. Air Force JAG Corps and teaching at Texas Wesleyan University in Fort Worth, Texas. He is a fourth-generation lawyer from Kentucky, and was educated at the University of Kentucky and Yale Law School. I met him last year during a visit to the law school for a Bar-related function and was impressed with his dedication, enthusiasm, and energy. It was clear to me, even after only a brief visit, that Dean Martin is committed to both his school and its students.

The law-school experience is evolving beyond the traditional case dialogue method of instruction that most of us remember, and Dean Martin is one of the leaders of this change. Law students at Gonzaga are challenged to do more than just learn to “think like lawyers.” They are encouraged to approach the legal profession as a path to power — the power to serve, the power to help, the power to change society, and the power to positively affect the lives of others. His students learn that this power comes with the responsibility to serve and improve both their chosen profession and their community.

Dean Martin graciously agreed to answer some questions, and I hope you find his answers interesting.

Stan Bastian: What are your plans for the law school? How will it be different in five years than it is now?

Dean Martin: Strategic planning is now underway with an effort to revise and reform our curriculum. This work is being led by our faculty, with input from students and alums, and we hope to have it completed within the next 18 months. The planning is focused on reorganizing our curriculum around three guiding principles: acquisition of knowledge, enhancement of professionalism, and mastering lawyering skills.

Three of our most exciting initiatives are a new enrollment plan, the creation of a new Center for Commercial Law, and a new Indian Law Program. Our enrollment plan, which calls for the law school to decrease its student body by 75 to 100 students, will put us in the best possible position to deliver the excellent legal education that we promise to our students. The Center for Commercial Law and our Indian Law Program present us with a chance to build on current and historic strengths, and to connect our students and faculty with important external constituencies.

Stan Bastian: Why should a student choose to attend law school at Gonzaga instead of one of the other law schools in this state?

Dean Martin: Gonzaga University School of Law is a student-centered institution. This is exemplified by our mission promise of providing an excellent legal education informed by our humanistic, Jesuit, and Catholic traditions and values. This means that our students get personal attention from professors whose number-one priority is the education of their students. It also means that our students are supported by a staff that is committed to making the entire experience as rich and rewarding as possible. The physical beauty and wonderful outdoor activities offered by the Inland Northwest are added benefits that round out what is a perfect law-school experience in Spokane.

Stan Bastian: Law-school graduates are entering the profession with large debt from student loans. Is this a problem for the legal profession, and if so, what can the Bar Association do to help?

Dean Martin: The amount of education debt (including undergraduate, graduate, and law-school debt) that new lawyers bring with them into the profession is a problem for the entire Bar in a number of different ways. First, the need to repay this debt severely limits the ability of many law-school graduates to take jobs in public service, where salaries are usually lower than the private sector. Second, the amount of debt is having a negative impact on the sense of job satisfaction that new graduates find in the profession, leading to more frequent job changes and greater costs for firms and other employers. And third, the imbalance between the cost of a high-quality legal education and the ability of new graduates to finance that cost with starting salaries that have generally lagged over the last 15 years threatens the ability of our law schools to continue to provide the excellent legal education that has become the standard.

Members of the Bar can do a number of things to help alleviate this problem. First, any member who has the ear of an aspiring lawyer should counsel that student to make wise choices when it comes to borrowing for their education and how that money will be spent. The old adage “Live like a lawyer when you are a law student and you will live like a student when you become a lawyer” has application here. Second, individual members of the Bar can make an impact by providing...
financial support to their alma maters. The only way law schools will be able to provide a high-quality education at a reasonable cost is if our graduates continue to increase the support they provide to their schools. Third, the Bar Association and its members should seriously invest in a loan repayment program that supports graduates who go to work in public service. These essential jobs will get done only if graduates can afford to take the jobs in the first place, and a vigorous loan repayment program is an important part of the solution to this problem.

SB: I have heard you comment to students that the legal profession is a “path to power.” What do you mean by that?

DM: Relative to other work environments and professions, lawyers are given the opportunity to have a disproportionate impact on society. Judges and lawyers in private practice and public service routinely make decisions and take actions that affect the lives of many people. This is a “power” that is not possessed by many others, and with it comes the responsibility to exercise this privilege in good faith and with good judgment. I have made this observation most often when talking about the imperative to ensure that the Bar reflects the diversity found in society so that no segment of our community is denied the opportunity to use the profession’s inherent power to positively affect society.

SB: Have law-school students changed in the past 25 years?

DM: I think they have changed, and especially in the following four ways. First, they are far more capable and comfortable with technology. You rarely encounter a student who is not armed with a laptop, cell phone, and iPod. Second, they appreciate the benefits of living in a diverse world, and they expect that their educational and work environments will reflect and celebrate that diversity. Third, they are oriented to the global economy and are very interested in connecting to people, entities, and institutions from around the world. And fourth, they expect that their classroom environment will be dynamic and that the material will be presented in a variety of ways. The “talking head” lecture doesn’t cut it with today’s students.

SB: In your opinion, is the job market different in eastern Washington than western Washington?

DM: The big difference is the pay scale. The “Cascade Curtain” exists here, just as it does in so many other aspects of life in Washington. Beyond the pay issue, I see both parts of the state as offering a lot of opportunity to our young lawyers. The business climate is strong in both places, and the entire Northwest region offers an outstanding quality of life.

SB: Diversity is a core value of the WSBA, but unfortunately, the legal profession in this state is not very diverse. Based on self-reporting statistics, 90 percent of the members of the WSBA are Caucasian. Only 2 percent are African-American, 1.8 percent are Asian, 1.7 percent are Latino/Latina, 0.8 percent are Native American, and only 36.9 percent are women. What is the law school at Gonzaga doing to foster diversity in the legal profession?

DM: Gonzaga University School of Law has efforts underway across the entire spectrum of our program that will increase the diversity of our student body and enhance the experience that minority students have at our institution. I will briefly describe some of these efforts.

In the fall of 2005, we began hiring one of our recent graduates to serve as a traveling recruiter for the school with a special emphasis on connecting with potential students from diverse communities. This coming fall, we will be going back to meet with students we have been talking to for three years running, and, by doing that, they can see we are serious about wanting them to join us in Spokane.

Since the fall of 2005, we have greatly increased the amount of scholarship support that we are offering to students who will foster diversity in our law school. For the entering 1L class of 2005, we offered $339,000 worth of scholarship support. In our recruiting efforts for the 1L class of 2007, we offered $1,455,000 worth of scholarship support to 144 students from racially/ethnically diverse communities. Our hope is that we will be able to increase this support in the future.

Starting in June of this year, we plan to have our first-ever diversity coordinator for the law school. This person will have jurisdiction over all of our diversity efforts and will be tasked with making sure that we offer our diversity students as welcoming and supportive a learning environment as we possibly can. Creating this position was one of the initiatives to come out of the first round of our strategic planning process.

This past fall, we began implementing another strategic planning initiative that called for us to create an Indian Law Program. Efforts in this area already include working with the Kalispel Tribe of Indians to draft a commercial code for the tribe, and partnering with the Confederated Tribes of the Colville Reservation to put on a water law program. We are presently putting together an advisory board for the program and seeking to hire a director who will start this summer.

In partnership with the Spokane County Bar Association Diversity Section, we have enlisted a number of local law firms to create paid summer internships for diversity students who have completed their first year of law school. These internships will provide our students with a wonderful opportunity to gain valuable experience under the watchful eye of a mentor within the Spokane legal community. It is anticipated that the experience will encourage more students from diverse communities...
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SB: One of the issues that I have emphasized this year is the need for lawyers to practice ethically, professionally, and with civility. What does the law school at Gonzaga do to teach these values to its students?

DM: It has long been the commitment of Gonzaga University School of Law to graduate lawyers who will be compassionate counselors and ethical advocates. In order to accomplish this task, the first requirement is that all of our professors and staff model behavior that exemplifies these values and characteristics. At its most basic level, this means that we must show up on time for class prepared to lead that day’s discussion and that we undertake that task in a way that fosters civility and respect for others.

We also make it a habit of celebrating the professional behavior of our students and, on those rare occasions when it occurs, acting very intentionally about any instance where someone falls short of the expectation. Our Jesuit commitment to public service and social justice goes a long way towards creating an environment that brings out the best of everyone in the school.

Finally, as mentioned earlier, one of the guiding principles for our curriculum reform effort is the goal of strengthening the professionalism training and experience that we provide to our students. I fully anticipate that this effort will put us in the position of being a leader in legal education by fostering a deep commitment to a lifetime of professionalism on the part of our graduates.

SB: What can the WSBA do to help law students prepare for the practice of law? In other words, how can we help them have successful legal careers?

DM: The main thing is for the members of the WSBA to offer themselves up as mentors to the lawyers that follow them into the profession. Nobody graduates from law school ready to do it all as a lawyer — there is still so much to learn and understand. Every graduate could benefit tremendously from an experienced member of the Bar (or two, or three) taking an active interest in their professional growth and development.

Stan Bastian can be reached at stanb@jdsalaw.com or 509-662-3685.
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Judging Judicial Selection: A Framework for Analysis

In June 2006, the Washington State Bar Association Board of Governors established the Judicial Selection Task Force. The purpose of the Task Force was to consider the following questions:

1. Are judicial elections presently serving their intended purpose?
2. Would it be appropriate to implement a commission selection process for some or all judicial positions?
3. If it would be appropriate to move to a commission selection process, what might that process look like?

The Task Force was composed of members of the WSBA Board of Governors, the judiciary, the legislature, the practicing bar, and members of the public. Over the course of six months, the Task Force invited individuals and organizations to meet to discuss the benefits and problems associated with both the elective and commission systems. In addition, the Task Force reviewed many articles dealing with the subject, including materials from the Walsh Commission. After deliberation, the Task Force issued two reports on their findings. The majority report recommends that the manner in which we select judges be changed from an elective process to a commission selection system. The minority report favors retention of the election system.

In this issue of Bar News, we will hear from both sides with the hope of also hearing from you. After publication of this issue, the matter will be presented to the Board of Governors for consideration. The governors would like to hear from you to help inform their decision.

This issue of Bar News challenges readers to wrestle with and form their own opinions about the best method of judicial selection for Washington. This article proposes that a good judicial selection system should embody the following qualities: an appropriate balance between independence and accountability; attraction and selection of the best judicial candidates; consistency with democratic principles; and public acceptance and respect. This article simply poses the questions and begins to identify how those questions relate to the current system and a commission system. And you, the reader, will have to draw your own conclusions.

Independence versus accountability

Most observers and critics of judicial selection would agree that independence is a core value of any judicial system, if not the most important quality we look for in judges. By independence we mean the ability of a judge to make decisions without regard to outside pressure or influence. Ultimately, the greatest threat to judicial independence is probably the judge’s fear of losing the next election if interests unhappy with the judge’s decisions stir up opposition and defeat the judge.

But isn’t that what democracy is all about — the right of the electorate to replace unsatisfactory officials, to throw the rascals out? This fundamental democratic principle of accountability is the counterweight to judicial independence. We wouldn’t want judges who are so independent that they ignore the law or the Constitution. We want to be able to replace unsatisfactory judges with better ones.

Any judicial selection system can be placed somewhere along a continuum between total judicial independence and total accountability. The federal system falls squarely on the independence end of the spectrum. Where do our current electoral system and a commission system fall on the independence/accountability continuum? Under our current elections, accountability is not a major focus of campaigns for open seats, because the candidates have not previously held the office and cannot be held accountable for the court’s prior decisions. A judge running for a higher court can theoretically be held accountable for decisions in a current position, but this seldom seems to occur. But accountability can be a major issue for a challenger running against an incumbent seeking re-election, as occurred in Washington’s 2006 Supreme Court
elections. Unfortunately, the pressures of a statewide election tend to oversimplify the issues and to ignore the bigger picture of the incumbent’s other decisions. It is also difficult in the election to convey any sense of other aspects of the incumbent’s performance, such as the quality of legal reasoning, the clarity of guidance for the future, the incumbent’s diligence, and the incumbent’s administrative ability.

A commission system elevates judicial independence and changes the nature of accountability. For the initial appointment, a commission narrows the field of candidates to a small number, and the governor then appoints from the approved list. The appointee then serves for a stated period of time before standing for a retention election. In the retention election, the only issue is accountability, but there is less incentive for anyone to campaign against the incumbent on the issue.

Both our current election system and a commission system can be focused more precisely on accountability through a comprehensive program of judicial evaluation. Such programs collect evaluations of all judges from a variety of participants in the judge’s court — lawyers, parties, witnesses, and jurors. To make accountability more meaningful, judicial evaluation programs should be extended to evaluate the challengers as well as the incumbents.

Attraction and selection of the best judicial candidates

Most people would probably agree with the American Bar Association’s “enduring principles” that judges should: uphold the rule of law (in other words, decide cases based on the law, not on personal opinion), be independent, be impartial, possess the appropriate temperament and character, possess the appropriate capabilities and credentials, enjoy public confidence, and reflect the society they represent. Does our current electoral system attract and select the candidates who best personify these qualifications? Would a commission system perform better?

It seems almost indisputable that many fine judicial candidates are deterred from running for election by the daunting prospect of organizing and mounting an election campaign, as revealed by a survey conducted by Washington State University Associate Professor David Brody and discussed in the majority report of the WSBA Judicial Selection Committee Task Force.

Would more good candidates apply for appointment under a commission system? In light of the Brody survey, more candidates would surely apply for appointment, especially if they did not have to face an election campaign after appointment.

Which system would select the best judges from among the field of candidates? Proponents of the current election system inevitably argue that we have fine judges now and don’t need any other system. Proponents of the commission system argue that the voters are simply insufficiently informed to vote intelligently in judicial elections. They also point to the pervasive and corrosive influence of money and the random effects of irrelevant factors like the candidates’ names and the general serendipity of elections.

Consistency with democratic principles

Proponents of our current system can argue that popular election of judges is more consistent with our democratic system than delegating the task of selection to a selected panel. The arguable consistency between the election of judges and democratic principles may be more theoretical than real. For democracy to function, the electorate must be informed about the candidates and issues in order to exercise the franchise intelligently. Unfortunately, the voters consistently complain that they lack sufficient information about judicial elections.

Commission systems will be more consistent with democratic principles if they are designed to give a prominent role to ordinary voters, instead of to lawyers or political office holders. If ordinary citizens dominate the commission, the commission becomes much more like the jury — a group of citizens to whom society has delegated the important role of judging disputes between litigants. A commission would similarly be a group of citizens to whom has been delegated the important role of selecting the best judicial candidates.

Public acceptance and respect

Our courts depend entirely on public acceptance and respect to give their decisions the dignity and gravity to merit enforcement. Which system of judicial selection best promotes public acceptance and respect?

One would think that public election would lead to public acceptance and respect. But the general lack of information about judicial candidates and the courts tends to undermine public confidence.

Voters frequently voice their discomfort with judicial elections. This discomfort is evident when people vote in the better-known races, such as presidential, senatorial, or gubernatorial, but “roll off” or fail to vote in the judicial elections. In 2006, for example, only 67 percent of the voters cast a vote in the one Supreme Court election on the general election ballot. Another factor undermining confidence in the courts is the public perception that campaign contributions influence a judge’s decisions, as disclosed by surveys conducted in 2004 and 2007.

Public acceptance and respect probably depends largely on the design of the commission system. Acceptance and respect are probably enhanced if political factors are reduced and the role of nonlawyer, non-public official citizens is increased. Respect for the electoral system is probably increased if the influence of special interest money can be minimized and public awareness of judicial candidates can be broadened and deepened.

Conclusion

The rule of law depends entirely on the independence and integrity of our judges. As you read the articles in this issue, ponder which selection system best advances and balances the qualities you find most important in judicial selection.

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1. In articulating this list of qualities, I have drawn on a very thoughtful Symposium on Judicial Selection at 34 Fordham Urban L.J. 1 et seq. (2007).
The question of whether judges are better elected or appointed using a commission process is a long-standing one. Although many judges are still elected officials, 32 states and the District of Columbia today use commissions for the selection of some or all of their judges. In our state, the debate between election and a commission process began at the Constitutional Convention in 1889 and continues to this day. During the Convention, the issue of how to select judges was a subject of substantial discussion. The Constitution approved by the delegates provides for election of judges, but a vocal minority of delegates recognized the inherent tension created by judicial elections.

History
In 1934, the newly formed Washington State Bar Association appointed a “Committee for the Selection of Judges and Bar Activities Related Thereto.” The committee surveyed WSBA members and reported that 67 percent of the respondents wanted to change the way judges are selected, and 56 percent favored a constitutional amendment providing for the appointment of judges of the Superior and Supreme Court.

In 1969, Governor Daniel Evans appointed a 20-person Constitutional Revision Commission consisting of lawyers and nonlawyers. The Commission determined that “the traditional election method... is not suitable for selecting judicial officers,” and recommended a constitutional amendment establishing a statewide “judicial nominating commission,” which would make non-binding recommendations to the governor; each appointment would be followed by a retention election after a two-year probation period, and retention elections every four years thereafter.

In 1995, Chief Justice Barbara Durham convened the Walsh Commission, and directed its 24 members to review all aspects of judicial selection. A year later, the Walsh Commission issued its report recommending that judges be selected using citizen-based nominating commissions, with each appointee standing for re-election in a single contested nonpartisan election after a probation period, and unopposed retention elections thereafter.

In June of 2006, the WSBA Board of Governors established a Judicial Selection Task Force for the purpose of evaluating whether or not a commission system of selecting judges should be adopted in the state of Washington. A majority of that task force, which includes the authors of this article as well as the Honorable John A. Schultheis and David Endicott, concluded that it would be appropriate to explore changes and to consider adopting some form of a commission selection system.

Are judicial elections presently serving their intended purpose?
The reasons commonly given for wanting to have judges elected are:
- The people want the power to select their judges.
- Elections educate the public on the importance and role of the judiciary.
- By electing judges, the power of the governor or any other appointing authority is limited, maintaining a separation of powers.
- Electing judges preserves the independence of the judiciary.
- Elections provide a check on judicial abuses of power.
- Elections allow the best people possible to serve as judges.

While these are notable goals, the evidence shows that these objectives are not being met and that confidence in the judiciary is slipping:

1. Most judges are not elected. Since statehood:
   - 58 percent of superior court judges were appointed to the bench. From 1994 to 2004, 73 percent of the superior court judges taking the bench in the five largest counties were appointed.
   - 66 percent of the judges in the Court of Appeals were appointed. As of August 2007, 14 of the 22 sitting Court of Appeals judges (63.63 percent) initially attained their positions by appointment.
   - More than half of the justices on the Supreme Court have been appointed.

2. Once attaining the bench, most sitting judges do not face subsequent contested elections. In larger counties (having populations in excess of 100,000), if a superior court judge is unopposed, his or her name won’t even appear on the ballot.

3. If a vacancy occurs in the office of a judge of the Superior Court, Court of Appeals, or Supreme Court, the governor fills the position by appointment. There are no limitations on the governor’s power to appoint.

4. People just don’t vote for judges. Nationally, statistics indicate that 80 percent of the people don’t vote in judicial elections. For those who do participate in elections, it is common for 25 to 33 percent of Washington’s voters to stop at mid-ballot and to not vote for the judicial candidates.

5. Most voters are uninformed about
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A Seattle University School of Law graduate (1997), Craig served the citizens of Washington State in an outstanding ten year career as a King County Senior Deputy Prosecuting Attorney.
judicial candidates. It has been reported that 80 percent of the people are unable to identify judicial candidates.10 There is little information available to the public about judicial candidates, their credentials, and, for incumbents, their performance while serving on the bench. There is also a general lack of knowledge about civics and the different roles the three branches of government have in our tripartite system. 11

6. The role of money has, at a minimum, created a perception that judges can be influenced by campaign contributions. Studies indicate that 90 percent of the public believe that elected judges are influenced by campaign contributions; 46 percent of judges believe campaign contributions have some influence on their decisions; and four percent believe that it has a great deal of influence on decisions.12 (See John Ruhl’s article “Flood of Money Endangers Perception of Judges’ Impartiality” on page 27.)

7. Many qualified candidates will not run. A recent survey was conducted to determine why attorneys may or may not want to run for judicial office. The survey, conducted by Associate Professor David Brody of Washington State University (the 2007 Brody Survey), was sent to 4,000 attorneys in all 39 counties. Responses were received from 1,109 attorneys from 37 counties. The survey results are informative:

- 86 percent of the respondents who had run for a judicial position found the personal financial requirements of a campaign to be a problem, with 56 percent saying it was a large problem.
- 69.8 percent of the respondents who decided not to run for a judicial position said the personal financial requirement had a large impact on their decision.
- 82 percent of the respondents who had run for a judicial position said the time commitment for a campaign was a problem, with 54 percent saying it was a large problem.
- 56.3 percent of the respondents who decided not to run for a judicial position said that the time commitment was a large factor in their decision.
- 60.3 percent of the respondents who decided not to run for a judicial position indicated that their personal distaste for having to campaign was a large factor in their decision.
- 72.7 percent of the respondents who decided not to run for a judicial position indicated that the need for fundraising was a large factor in their decision.
- 66 percent of the respondents who decided to run for a judicial position stated that their practices were negatively impacted during the campaign.

Why a commission selection system?

Most voters don’t know who the candidates are, what their qualifications are, or even what it takes to be a good judge. This is distorted further by the influence of significant dollars now pouring into judicial campaigns. Although candidates in high-profile positions such as the Supreme Court and Court of Appeals often gain greater exposure to the community through the press, they are also the positions that are most likely to be targeted by special interests. It will be very difficult to preserve the confidence of the public in the impartiality of the judiciary if those positions continue to be filled using an election process. Campaign-reform legislation may provide some degree of relief, but it will be difficult, if not impossible, to contain or control independent expenditures. The judiciary needs to be impartial, independent, and have the appearance of fairness. This objective is at risk if judges continue to be elected.

A commission selection process will provide a process where our judges are selected by members of the public who have the opportunity to understand who the candidates are and what their qualifications are through careful and deliberate study of the candidates.

A commission system is also more likely to enhance the diversity of the judiciary. Of the 20 minority judges sitting in the appellate and superior courts as of February 4, 2005, only three were elected. The other 17 (85 percent) were first appointed to the bench. This is consistent with the experience in New Mexico and Arizona. With the implementation of the commission system, more minorities and women are now being appointed than were previously being elected.13

What should the commission selection system look like?

The commission system should have the following qualities:

- The membership of the commission must be broad-based with strong lay involvement.
- There must be broad diversity among the commission members.
- Commission members must be selected in a way that minimizes or eliminates the influence of special interests and political parties.
- The commission’s activities must be open to the public to prevent “backroom deals.”

Retention elections are also a necessary part of the process to provide accountability. However, to make the retention elections effective, there should also be a system that provides the public with comprehensive evaluations of our judicial officers.

Washington should model its commission selection system on Arizona’s. Arizona changed from an election system to a commission selection system in 1974 by constitutional amendment. In 1992, the Arizona Constitution was amended again, establishing a formal judicial performance-evaluation process. Under Arizona’s system, two-thirds of the commission members must be nonlawyers. There are requirements that membership be balanced among political parties. At least three nominees must be submitted to the governor, and no more than 60 percent of the nominees may be members of the same political party. There is significant openness and public participation throughout the process. The public can review résumés, and can attend the candidate interviews. Performance evaluations are prepared for all judges. The results of the evaluations are made public and are mailed to voters.14 Arizona is widely recognized as being a national leader in this arena, and the public support for the Arizona system is very high.

Conclusion

The question is often asked: “Won’t a commission system take away the people’s right to participate in the process?” In fact, a commission system will enhance the public’s ability to control the quality of the state’s judiciary. Instead of having most judges appointed by the governor, they will instead be selected by members of the public serving on the commissions. The public will also have a more meaningful say through the implementation of a retention-election system that incorporates objective and publicly available performance evaluations for the judges.

A majority of the lawyers responding to the 2007 Brody Survey indicated that they are dissatisfied with the current election process. Only 36.4 percent of those responding wanted some form of election of trial court judges, and only 30.3 percent of the respondents wanted some form of election of appellate court judges. The statistics show that most judges are not elected, and
that when they are elected, they are chosen by a small percentage of the population that is often ill-informed about the candidates and their qualifications. With the increasing role of money, the public’s trust in our judicial system is eroding. The judiciary and the people of the state of Washington will be best served by implementing a commission system for the selection of judges that involves the public and that provides transparency to the process. Judges who are appointed to the bench should stand for re-election on a periodic basis. A comprehensive system of judicial evaluations similar to that used in Arizona should be considered, and the information that is compiled through that process should be made available to the public. We should join the 32 jurisdictions nationwide that use judicial-selection commissions. Moving to a commission system will help to assure that our state will continue to be served by an excellent judiciary.

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5. As of February 2008, only one of the nine sitting Supreme Court Justices initially attained that position by appointment.
8. Id., art. 4, §§3, 5; RCW 2.06.080.
10. Id. at 5.
13. Information provided by Professor Leo Romero, former chair of the New Mexico Judicial Selection Commission; former dean and current professor of law at the University of New Mexico School of Law; Arizona Judicial Nominating Commission FAQs, www.supreme.state.az.us/jnc/faq.htm.
limiting the right to vote has frequently been used to disenfranchise certain groups of people in the United States from the fundamental process that is key to our democracy. There may be flaws and problems with the election of judges, but eliminating the election of judges does not cure any of the perceived problems. Instead, the election process should be improved by providing more information to voters and education to students before they reach voting age.

The WSBA Judicial Selection Task Force was asked to address three questions related to the selection of judges:

1. Are judicial elections presently serving their intended purpose?
2. Would it be appropriate to implement a merit selection process for some or all judicial positions?
3. If it would be appropriate to move to a merit selection process, what might that process look like?

The Task Force submitted two reports to the WSBA Board of Governors, answering these questions differently. The divergence in opinion came with the answer to Question No. 1, above. Nine members of the Task Force answered “No” to Question No. 1 and filed the majority report, recommending replacement of Washington’s current judicial election process with a commission system of judicial selection. Six members of the Task Force filed a minority report which answered Question No. 1, “Yes, judicial elections are presently serving their intended purpose.” Although the current system is imperfect, a constitutional amendment replacing the election of judges with a commission selection process and retention elections would not solve the perceived problems with judicial elections.

Those of us subscribing to the minority report believe the purposes of judicial elections are to recruit, select, and retain qualified, honest, hardworking, and impartial judges and, at the same time, hold the elected judges accountable for their acts and omissions. Washington began electing judges at statehood in 1889 and is one of 12 states that currently elect judges on a nonpartisan basis. The intent of Washington’s founders was to keep as much power as possible in the hands of the people. There is no hard evidence that the election process is not meeting the purposes of elections, as stated above. To the contrary, overwhelming evidence is that Washington state courts at every level have excellent judges who appear to make fair and equitable decisions.

Article IV of the Washington State Constitution requires that judges be elected. Changing to a commission selection system will require the adoption of a constitutional amendment. This may be difficult, since there is no groundswell of dissatisfaction with the current judges around the state, nor is there a public outcry to replace our current judicial election system. Finally, there is no evidence that implementing a commission selection system will produce “better” judges. It is hard to imagine that Washington voters would willingly give up their right to vote for judges.

Will voter participation be increased by a commission selection process?

Proponents of a commission selection process argue that the electorate would be better served by that model. It is true that judicial elections are a mystery to many voters. In fact, attorneys frequently become their own “mini-commission” by answering questions from their friends about judicial candidates. It is quite possible that the lack of information about judicial candidates causes the 25 percent to 33 percent voter fall-off, where those who vote in other races on the ballot do not cast votes in the judicial contests. To us, it does not appear that the solution to 25 percent or 33 percent voter fall-off would be the 100 percent elimination of all voting for judges. This was a concern addressed by the Walsh Commission in 1996, when it recommended three types of voter information to better inform the electorate about judicial candidates: (1) a process for collecting and publishing information about judicial performance; (2) a process for collecting and publishing information about candidates for judicial office; and (3) the publication of a judicial voter pamphlet. Not all of these recommendations were adopted. The website www.votingforjudges.org is an innovation that has provided a great deal of information on judicial candidates as well as the process for elections. Technology today can provide voters with candidate information that was not easily available even 10 years ago. Increasing voter education will increase voter participation. Elimination of voting for judges will certainly not increase voter participation.

Will the commission selection process be independent?

Much has been written about the independence of the commission selection process. In theory, the commission selection process would be the epitome of objectivity and impartiality. This theory fails to recognize that the commission selection process could be more politicized than the election of judges, as asked in the Task Force minority report, “Who is to select the selectors?” Many commission selection processes rely on commissions composed of members appointed by the governor, legislature, or professional groups. Attorneys who serve are likely to be surrogates for their
client-base constituency, or professional and political allies. Lay citizen members are typically prominent individuals who have been political supporters of the governor or agency appointing them and are likely to support the selection of judges favored by their patron. Thus, the judges named by commissions are more likely to be perceived as “elitist” appointees than if they were elected by voters. Removing the selection of judges from the public electorate could establish a process controlled by subterranean politics made up of special-interest groups who are likely to master the system to gain membership on the proposed commissions.

Even when commission members are elected by a vote of the people, there is no assurance that the election of commissioners will produce better results than the election of judges. What purpose would be served by substituting one type of election for another?

Which process creates a more diverse bench?

Studies rely on anecdotal information about how women and people of color fare in the election and commission selection processes. A 2005 report prepared by the Lawyers’ Committee for Civil Rights under the Law stated:

Despite a lack of data on the effectiveness of elections in creating diversity, minority communities traditionally prefer the election model over an appointment system. . . . There has been an historic pro-election view among many in communities of color, because of a suspicion of the appointment and merit selection process. The concern is that insiders will be less likely to select diverse candidates.

(Lawyers’ Committee for Civil Rights Under the Law, *Answering the Call for a More Diverse Judiciary* at 14 (June 2005)).

Commenting on the effectiveness of the judicial appointment process, Marisa Demeo, regional counsel of the Mexican American Legal Defense and Educational Fund, describes her perception that under the appointment process there is a cap on the number of minorities that can be appointed: “There is generally perceived to be caps on how many minorities you can actually appoint, while there doesn’t necessarily have to be a cap on how many white males that you’re going to appoint.

(Lawyers’ Committee for Civil Rights Under the Law, *Answering the Call for a More Diverse Judiciary* at 11 (June 2005)). She further commented on the composition of the Texas 13th Circuit Court of Appeals where all six elected justices in 2005, including the chief, were Latinos: “I can tell you that if there was an appointed system there would have been a cap put on the appointment of Latinos way before you got to be able to fill all seats with Latinos.” (Lawyers’ Committee for Civil Rights Under the Law, *Answering the Call for a More Diverse Judiciary* at 11 (June 2005)).

Other factors that limit judicial diversity such as “racially polarized voting and the inability to raise sufficient campaign funds” were also cited in the Lawyers’ Committee report, at 5. One conclusion reached in the Lawyers’ Committee report, at 21, was that “a community’s political clout and influence were essential to creating a more representative judicial system.” There is certainly no overwhelming evidence that an appointive process will result in a more diverse bench than an elected judiciary.

Can the commission selection process be used statewide?

It is also extremely important to note that the commission selection system has been implemented only in urban parts of states that have a significant rural population. Arizona uses its merit selection process only for the appellate court and superior court judges in Maricopa and Pima counties. Rural counties continue with the system of judicial elections. Similarly, rural Washington counties, such as Walla Walla County with approximately 100 WSBA members, would not seem to be particularly amenable to the commission selection system.

Conclusion

The judiciary and the people of the state of Washington will best be served by improving the election process for the selection of judges. This should include improvements in the curricula of all elementary, middle schools, high schools, colleges, and universities in the state to better educate the public about the role of the law, the legal system, and the judiciary as an impartial, equal, and independent branch of government. More and better information about judges running for election should be placed in the hands of voters to increase voters’ participation in the election of judges, not only for the general election but also the primary. A system perceived to be run by politicians and people in the know should not replace the wisdom of Washington voters.

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In May 2002, the Board for Judicial Administration (Board) adopted a policy position supporting the election of judges at all court levels in Washington. This action was an affirmation of the current system of contested nonpartisan elections for judges of the Supreme Court, Court of Appeals, Superior Court, and District Court, and a call to establish contested nonpartisan elections as the method of selecting and retaining Municipal Court judges.

The Board’s position relative to municipal court judges is straightforward: The current system of initial appointment and subsequent re-appointment by the city legislative authority or the city executive with legislative confirmation creates a judicial branch within city government that is wholly dependent upon another branch of government. The independence of the court, and therefore its fairness and impartiality, are called into question, if not actually compromised. At its root, the issue differs little from one of the enumerated grievances in the Declaration of Independence wherein the colonists complained of King George III that: “He has made Judges dependent on his Will alone for the tenure of their offices, and the amount and payment of their salaries.” The Board has, accordingly, actively promoted and pursued legislation to require that municipal court judges be selected and retained in the same manner as the other judges of the state: by contested nonpartisan election.

The broader debate in Washington, as in many other states, has been spurred on by the cost of recent Supreme Court races which have seen burgeoning candidate campaign war chests and an explosion of independent expenditures. The resulting discussion frequently centers on a comparative analysis among various selection and retention structures, and how they promote and balance independence and accountability while maintaining a qualified, competent judiciary. What is clear from these discussions is that every system has its weaknesses. Washington’s system, some contend, is vulnerable to independent expenditures. So-called merit selection systems are subject to the same funding pressures during retention elections in which voter fall-off is even more pronounced. The answer, therefore, appears to lie with improving the current system rather than changing the basic selection and retention structure.

The current threat to the independence of the judiciary posed by the influx and influence of special-interest money in judicial elections is not likely to be abated by moving to a retention election system. We say that because, in retention elections, independent expenditures are likely to focus more squarely on negative messages aimed at the incumbent unbalanced by response that one would ordinarily see in a contested election. One answer to this problem is campaign finance reform. In 2006, the State Legislature enacted 3SHB 1226, which extended existing state campaign contribution limits to judicial candidates, a reform initially proposed by the Walsh Commission in its 1996 report titled “The People Shall Judge.” The current Legislature has considered several proposals for public financing of judicial elections, notably HB 1186, introduced during the 2007 legislative session, and HB 3336, introduced in 2008. While the Board for Judicial Administration has remained neutral on these public financing proposals, what can be said is that this solution is neutral to the underlying structure and focuses directly on countering the issue of special-interest money influence on judicial elections.

Fall-off in voter participation in judicial elections is a well-known phenomenon, as is the public’s complaint regarding having insufficient information on which to base a vote in a judicial election. These issues are present in all structures for judicial selection and retention that include an election. Since 1996, in response to the Walsh Commission Report, the Washington Supreme Court has sponsored the publication of a judicial primary voters’ pamphlet distributed in Washington’s daily and weekly newspapers. This effort has clearly enhanced the voting public’s knowledge on judicial candidates and their level of confidence in casting their votes in judicial elections. The Board for Judicial Administration actively supports the Secretary of State’s effort to pass legislation providing for a statewide, direct-mailed primary voters’ pamphlet. While policy legislation failed to pass in the current legislative session, funding for a pamphlet was secured in the state budget for the upcoming 2008 primary election. Furthermore, the Board for Judicial Administration joins in recognizing the broad level of voter awareness and education supported by the award-winning website votingforjudges.org and the media reports which directed citizens to the site for information on judicial candidates and races.

Attracting experienced mid-career attorneys to the bench and retaining qualified and competent judges is a high priority for
the judiciary. Indeed, one could argue that this has not been an issue in Washington: The recent King County Bar Association judicial evaluations demonstrate that practicing attorneys hold the King County Superior Court bench in high regard. I suspect that attorneys in other parts of the state have similar views about the judges in their jurisdiction. In addition, a recent law review article found the Washington Supreme Court to be the second most followed state supreme court in the nation. These indicators are evidence of the high quality of Washington's bench, a direct result of our current system of contested nonpartisan judicial elections. As with other issues, however, obtaining high-quality judges is also directly tied to other support measures such as education and competitive compensation. In this regard, the judiciary has been actively engaged in efforts to ensure that our judiciary is qualified and competent. Since the early 1970s, the Board for Court Education has sponsored the judicial college for all new judicial officers. With the adoption of GR 26 in 2002, the Supreme Court made judicial college attendance mandatory and required that every judicial officer complete 45 hours of continuing education every three years. Insofar as compensation is concerned, the Board for Judicial Administration with support from the Bar has worked diligently with the Washington Citizens’ Commission on Salaries for Elected Officials to ensure that the salaries of judges in Washington remain sufficient to attract and retain mid- and late-career attorneys to the bench.

While the recent increases in the costs of judicial elections have given some pause, there is little evidence that our citizenry has been ill-served by our current system of contested nonpartisan election, a system that has been in place for over a century. It is the position of the Board for Judicial Administration that the current system should be retained and expanded to include all court levels in Washington. The path to improving the public’s trust and confidence in the fairness and impartiality of Washington’s judiciary lies not in removing the public from the process, but in continuing the efforts to improve the current system.

The Honorable Gerry L. Alexander is the chair of the Board for Judicial Administration and chief justice of the Washington State Supreme Court.

Vern Smith has almost 20 years of experience defending DUIs and has well earned his reputation as a tenacious trial advocate for his clients. He was one of the first lawyers in the country to be Board Certified in DUI defense* and was named Super Lawyer in 2006 and 2007. Vern is also a founding member of the National College for DUI Defense.

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Recent studies show that most American citizens believe that judicial candidates take careful note when large sums of money are paid out to advance their judicial election campaigns, and that such expenditures influence their decision-making once they are elected. If that is an accurate perception, then the public image and credibility of Washington’s courts may be in for some serious strain. Consider the following facts from the 2006 Washington State Supreme Court elections:

• In 2006, for the third time in four election cycles, Washington’s Supreme Court candidates set a fundraising record. There were more independent expenditures by third-party advocacy groups — from both the left and the right — than in any other state’s high-court campaigns in 2006.

• Washington was the only state where every one of the campaign television advertisements (1,081 of them) was paid for by outside groups rather than by the candidates’ own campaigns.

Washington appears to have joined the ranks of many other states where high-court races are targeted and heavily influenced by major “independent expenditures,” that is, money spent by entities other than the candidates’ own campaigns.

Although the top fundraising candidate in the 2006 Washington State Supreme Court election was not elected, that result appears to be an exception to the rule. Nationwide, there is a direct correlation between the number of dollars spent to elect a judicial candidate and the candidate’s prospects of success. For example, in 2003–2004, 35 out of 43 high-court races were won by the candidates who were the top fundraisers, a success rate of 81 percent.

What is the fruit contributors can hope to reap? Two recent studies of the Ohio and Louisiana high courts have shown that elected appellate judges in those states tend to vote in favor of their contributors. In a 2006 study, the New York Times examined several years of decisions by the Supreme Court of Ohio and found that, on average, individual justices had ruled in favor of their contributors 70 percent of the time. One justice had favored his contributors 91 percent of the time. A similar conclusion is reached in a separate study to be published soon in the Tulane Law Review. The article reports that the justices of the Louisiana Supreme Court, on average, have voted in favor of their contributors 65 percent of the time, and two of the justices have favored their contributors 80 percent of the time.

The Ohio justice with the 91 percent record was quoted in the Times as saying that “any effort to link judicial campaign contributions received by a judicial campaign committee for major media advertising to case outcomes is misleading and erodes public confidence in the judiciary.” In a recent article in a separate publication, another judge responded: “No one can argue with that statement. But when the public knows that this judge has ruled in favor of his contributors 91 percent of the time, the public’s perception is that there is a definite link — and that justice can be bought.”

Almost 120 years ago, those who authored the Washington State Constitution grappled with this very same issue. At the state constitutional convention in 1889, a delegate successfully urged his colleagues to protect the impartiality of the Supreme Court by increasing the number of justices from three to five, arguing that: “[I]t will be easier to control three men than five. All a corporation would have to do would be to control one man in a court of three to get a favorable decision.”

In 1907, the Washington Legislature stepped forward to protect the courts from the political machines that controlled judicial elections. At that time, judicial candidates were nominated solely by political parties, and their party affiliations appeared on the ballot. A judicial candidate’s party loyalty was the single most important criterion for success in an election. The 1907 Legislature helped free the Court from political-party control by including judicial candidates in the newly enacted primary-election process. The new law provided that “[n]o person who desires to become a candidate [for judicial office] shall certify his party affiliation.”

In 1909, the law was amended further to provide that judicial ballots were to be printed and labeled separately from the other ballots, and that “any voter shall have the privilege of voting [the “Non-Partisan Judiciary Ticket”] alone.”

These were major improvements at that time. But they did not root out the problem that remains today: In order to attract any significant attention from voters (and those who purchase mass advertising to influence voters), judicial candidates must campaign just like other office seekers.

In a case decided earlier this year, several justices of the U.S. Supreme Court warned of the dangers of mixing money with judicial politics. Although concurring with the majority’s decision that the Supreme Court had no constitutional grounds to invalidate or alter New York’s judicial election system, Justices Anthony M. Kennedy and Stephen G. Breyer nevertheless seriously questioned whether the conflicting influences of political parties, special-interest groups, and no-holds-barred election spending may be at odds with “the perception and the reality of judicial independence and judicial excellence.”

Similarly, in a separate concurring opinion, Justice John Paul Stevens, joined by Justice David H. Souter, emphasized that the majority’s narrow holding should not be misread as ... disagreement with the findings of the District Court that ... lend support to the broader proposition that the very practice of
electing judges is unwise. But as I recall my esteemed former colleague, Thurgood Marshall, remarking on numerous occasions: “The Constitution does not prohibit legislatures from enacting stupid laws.”

One thing is certain: If the current spending wars in judicial elections continue to escalate, it may be very difficult for judges to avoid the pitfall that was frankly acknowledged by one of the judges quoted in the Walsh Commission report, namely, “[having] to look over his or her shoulder at the political wind that’s blowing with regard to each decision — or perhaps be forced into rendering a political decision rather than a decision of justice.”

John R. Ruhl is a member of the Seattle office of Eisenhower & Carlson PLLC. He is the immediate past president of the King County Bar Association. He also serves as a member of the WSBA Judicial Selection Task Force and helped draft the Task Force’s majority report.

NOTES
1. At the November 2005 Summit on Judicial Selection and Judicial Independence at Seattle University School of Law, Washington State University Professor David Brody presented figures indicating that approximately 80 percent of voters believe that elected judges’ decisions are influenced by campaign contributions. His presentation is posted at www.wcgsa.org/scriptcontent/kcba/judicial/selection/summit.cfm. Similarly, the Brennan Center at New York University Law School reported that a March 2004 nationwide survey of 1,204 American voters found that 71 percent believe that campaign contributions from interest groups affect judges’ courtroom decisions. See www.faircourts.org/files/zoghypollfactsheet.pdf.
14. Justice Kennedy wrote:
When one considers that elections require candidates to conduct campaigns and to raise funds in a system designed to allow for competition among interest groups and political parties, the persisting question is whether that process is consistent with the perception and the reality of judicial independence and judicial excellence. The rule of law, which is a foundation of freedom, presupposes a functioning judiciary respected for its independence, its professional attainments, and the absolute probity of its judges. And it may seem difficult to reconcile these aspirations with elections.
[Emphasis added]
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Pattern Jury Instructions: Free Public Access on Trial Basis

One-year pilot project expands access to the Washington Pattern Jury Committee’s work

by the Honorable Sharon S. Armstrong, the Honorable William L. Downing, and Richard F. Neidhardt

Until now, Washington’s pattern jury instructions have been available only by purchase from a commercial publisher, Thomson/West Publishing Company (West). West has held an ongoing copyright interest in these materials since our first volume was published over 40 years ago. The times, though, are changing. Starting in March, and extending for at least one year, the pattern jury instructions and related materials will now be available to all, free of charge, on a public website. This free access is being provided under a one-year pilot project that the Washington Pattern Jury Instruction Committee (Committee) has recently negotiated with West.

The Committee hopes to negotiate a further agreement that would extend this free access beyond the one-year period. Whether we will be successful in this endeavor depends on several factors, including the effect on sales of the existing West products, the extent to which Bar members support the move to free access, perhaps the availability of outside financial sources, and West’s willingness to continue the arrangement. West has been very accommodating so far, and we applaud them for their assistance.

Background
West has owned the copyright interest in our pattern instructions since the publication of our first edition in the mid-1960s. In exchange for this copyright interest, West agreed in a series of contracts to edit, print, and distribute the instructions in bound volumes (and later in electronic format) and to pay the Committee a royalty, which is calculated as a percentage of net sales. These royalties are how the Committee pays for its ongoing expenses in updating and expanding the instructions.

Over time, members of the Bar and the public have expressed a growing interest in having free access to the pattern instructions. The Committee has become increasingly convinced of the importance of, and the growing need for, providing free access to the instructions and accompanying material.

In the summer of 2006, we began negotiating with West for ways to expand public access to our work. The Committee (with the approval of the Washington State Supreme Court) and West recently entered into the agreement for the one-year pilot project. Providing free access to our work will reduce the royalties that the Committee receives from the net sales of our instructions as well as reducing West’s revenues. The parties agreed that a trial period was the best means for evaluating the project’s ongoing financial feasibility.

How the website will work
For the one-year trial period, West will operate a public website that will include the pattern jury instructions, notes on use, and comments, for both civil and criminal cases. Links for the new website will be available on the judiciary’s website (www.courts.wa.gov), and on Casemaker’s library of Washington materials, which is accessed through the WSBA website (www.wsba.org). You will not need to use a password or register in order to access the new website, and the site will be free of advertising. As new updates are made to the instructions on this website, we will take steps to announce the changes as they are made. More detailed information on this will be included on the website.

More frequent updates
Having the pattern jury instructions on a public website will allow the Committee to update the instructions more frequently, as we will no longer be limited by the constraints of paper publishing. Nor will we need to wait until we have prepared enough material to justify the expense of a new printed pocket part. The Committee will also consider high-priority changes to the criminal instructions during our civil review cycle, as the need arises, and vice versa. This change will allow us to respond more quickly to significant legislative enactments and appellate opinions.

Caveats as to frequent updates
While the changes being announced today will provide many benefits to Bar members and pro se litigants, we need to add a few caveats. First, because we will be updating our instructions more frequently, you will need to stay alert to announcements on the public website that the instructions are being updated. Second, because we will be updating our instruction in a more piecemeal manner, you will need to pay close attention to each instruction’s “current as of” date. Finally, please note that these changes do not mean that we will be able to immediately update our instructions when changes in the law occur. The Committee’s process is very thorough and takes time. Subcommittees of expert
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Inter-relationship with West’s commercial products

West will continue to sell the pattern instructions on Westlaw, on CDs, and in the volumes of the Washington Practice series. Many users prefer to have the instructions available in books, both for ease of reading and research and also for easier portability. Additionally, the electronic instructions that West sells include research features not available on the free public website, such as hyperlinked cross-references for the cases and statutes that are cited in the Comments, and hyperlinked cross-references to related resources available in other West products (e.g., online treatises, forms, and materials from our state and elsewhere).

How you can help

As the pilot project unfolds, we will want to hear from practitioners. Does this free access make a significant difference in your practice? Does it contribute meaningfully toward enhancing access to justice, including for pro se litigants? Is free access important enough to justify pursuing additional funding sources if additional funds are needed?

As always, we also welcome your suggestions for improving the instructions themselves. Your input is particularly helpful when you propose new language that improves an instruction. The final good news we will mention is that you now will be able to send us your feedback and input through the new public website.

We look forward to hearing from you.

King County Superior Court Judges Sharon S. Armstrong and William L. Downing are the co-chairs of the Washington Pattern Jury Instruction Committee. Richard F. Neidhardt, the Committee’s staff person, is a principal legal analyst with the Administrative Office of the Courts. They can be reached at sharon.armstrong@kingcounty.gov, william.downing@kingcounty.gov, and rick.neidhardt@courts.wa.gov.

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In our last column, we looked at the "theory" underlying law-firm marketing in the form of the United States Supreme Court decisions over the past 30 years that shaped the right to advertise that lawyers have today. As those decisions evolved, so did the lawyer marketing regulations — both at the national level and here in Washington. The ABA substantially rewrote its law-firm marketing regulations in 1983 when it adopted its influential Model Rules of Professional Conduct and modified them further in 2002 when it updated its Model Rules. Washington followed suit in 1985 when we moved to the Rules of Professional Conduct and then modified them further in 2006 when we updated our RPCs and adopted accompanying official comments.1

Broadly put, today’s law-firm marketing rules address three general areas: (1) “advertising,” which includes print, media, and other electronic marketing such as law-firm websites, together with specialized subsets such as law-firm names; (2) “solicitation,” which includes direct in-person, telephone, electronic, and mail communications; and (3) referrals, which include lawyer-to-lawyer referrals, referrals from nonlawyers, and other referral mechanisms such as “networking” organizations. We’ll look at each in turn.

Advertising
Print, media, and electronic advertising are covered primarily in RPCs 7.1 and 7.2. The former sets out the basic rule that all advertising must be truthful. Comments 2 and 3 to RPC 7.1 also generally limit comparative advertising and require that advertising results or testimonials be true and suggest that they be accompanied by a disclaimer.

Solicitation
As we discussed in the first installment in this two-part series, at the same time the U.S. Supreme Court liberalized the advertising rules in cases like Bates, it retained regulations on solicitation in potentially coercive situations like those it found in Ohralik v. Ohio State Bar Ass’n, 436 U.S. 447, 98 S.Ct. 1912, 56 L.Ed.2d 444 (1978), and has applied restrictions even to analogous situations involving targeted direct mail like Florida Bar v. Went for It, Inc., 515 U.S. 618, 115 S.Ct. 2371, 132 L.Ed.2d 541 (1995) (upholding a restriction on targeted direct mailings to accident victims for 30 days following the accident concerned). Those restrictions carried through here in Washington as we updated our marketing rules since the mid-1970s to reflect both the developments coming from the U.S. Supreme Court and the ABA.

RPC 7.4...generally allows lawyers to communicate their fields of practice but generally limits the use of the term “specialist” in describing the lawyer’s practice focus.

Law-Firm Marketing — Part 2: Practice

The latter allows lawyers to pay for both the direct cost of placing ads and associated expenses for creating them. It also permits payment for marketing consultants who are advising on broader business-development strategy. RPC 7.4, in turn, generally allows lawyers to communicate their fields of practice but generally limits the use of the term “specialist” in describing the lawyer’s practice focus. RPC 7.5 deals specifically with law-firm names and, among its provisions, allows trade names (as long as they are not misleading or imply a connection with a government agency or a legal services organization) but prohibits lawyers from suggesting that they practice together as an entity when they do not.2

There are two fundamental characteristics of the advertising regulations as they exist today.

The first is that they broadly encompass all forms of media communication. Echoing the terms of the rule itself, Comment 3 to RPC 7.2 notes specifically that electronic advertising is both permitted and falls within its regulatory scope:

Television is now one of the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting television advertising, therefore, would impede the flow of information about legal services to many sectors of the public . . . . Similarly, electronic media, such as the Internet, can be an important source of information about legal services, and lawful communications by electronic mail is permitted by this Rule.

The second is that all law-firm advertising must be truthful. From the point the United States Supreme Court opened the door to law-firm marketing in Bates v. State Bar of Arizona, 433 U.S. 350, 97 S.Ct. 2691, 53 L.Ed.2d 810 (1977), it made very clear that commercial free-speech rights under the First Amendment do not extend to false advertising. Although there have not been many Washington State Supreme Court decisions on marketing after Bates, those that have been issued (see, e.g., In re Romero, 152 Wn.2d 124, 129, 94 P3d 939 (2004)), make that same point, as does Comment 1 to RPC 7.1: “Whatever means are used to make known a lawyer’s services, statements about them must be truthful.”
contact as a part of a nonprofit lawyer referral service. Even in this circumstance, RPC 7.3(b) prohibits contact if either the solicitation involves “coercion, duress or harassment” or the recipient has “made known” to the lawyer that he or she does not wish to be contacted. By contrast, RPC 7.3 generally permits written (paper or electronic) communication with prospective clients (again unless the restrictions just noted apply). Comment 5 to RPC 7.3 and In re Romero, 152 Wn.2d 124, both emphasize that solicitations are also subject to the same truthfulness requirement that govern print, media, and electronic advertising. Similarly, RPC 7.3(a) and accompanying Comment 8 make the point that a lawyer cannot use a nonlawyer or an associated business owned by the lawyer to engage in solicitations that the lawyer would not be able to make on the lawyer’s own.

**Referrals**

Referrals from other lawyers have long been permitted, and that generally remains the case under RPC 1.5(e) (fee splits between lawyers with client consent) and RPC 7.2 as amended in 2006. Referrals from nonlawyers have also long been permitted, and that generally remains the case under RPC 7.2. But, what was long prohibited (see Danzig v. Danzig, 79 Wn. App. 612, 617-19, 904 P.2d 312 (1995) (discussing “runners” under former RCW 9.12.010), and generally remains prohibited under the 2006 amendments (see RPC 7.2(a)), is paying for referrals.

Comment 9 to RPC 7.2 notes that Washington did not adopt the portion of ABA Model Rule 7.2 that allows lawyers to enter into reciprocal referral agreements (i.e., those with a specific “quid pro quo”) with nonlawyers. Therefore, reciprocal referral agreements (again those with a specific “quid pro quo”) remain limited to lawyers and are subject to the limitations imposed by RPC 7.2(b)(4) and accompanying Comment 8, which include the requirements that they not be exclusive and that the clients involved be informed of the nature of the agreement. By contrast, RPC 1.5(e), which governs fee-splitting among lawyers working on a matter for the same client, remains applicable to the more common situation where lawyers refer cases to other lawyers on an ad hoc basis. In that situation, RPC 1.5(e) requires lawyers who are splitting a fee to do so in proportion to their relative work on a case or otherwise assumes joint responsibility for the representation, to obtain client consent and to charge an overall fee that is reasonable.

In interpreting RPC 7.2 as amended in 2006 and its similar predecessor, the WSBA Rules of Professional Conduct Committee has generally taken the position (in Informal Ethics Opinions 1975 (2002) and 2123 (2006) (available on the WSBA’s website at www.wsba.org)) that “networking” associations that require reciprocal referrals to nonlawyers violate RPC 7.2(b). Similarly, the RPC Committee has generally taken the position (in Informal Ethics Opinions 2106 (2006), 2116 (2006) and 2146 (2007)) that participation in for-profit “matching” services are prohibited under RPC 7.2(b) (2) because Washington, unlike some other states, limits participation in referral services to non-profit ones.

RPC 7.6 is new with the 2006 amendments and generally prohibits lawyers or their firms from accepting “a government legal engagement or an appointment by a judge if the lawyer or law firm makes a political contribution or solicits political contributions for the purpose of obtaining or being considered for that type of legal engagement or appointment.”

**NOTES**

1. The Washington Consumer Protection Act, RCW Ch. 19.86, prohibits deceptive advertising in “trade or commerce.” The CPA has been held to apply to the business aspects of law practice. See Short v. Demopolis, 103 Wn.2d 52, 691 P.2d 163 (1984).
2. RPC 5.8(b)(3) as amended in 2006 now deals with the use of a suspended or disbarred lawyer’s name formerly found in RPC 5.5.

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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. He is a past member of the Oregon State Bar’s Legal Ethics Committee and a member of the Idaho State Bar Professionalism & Ethics Section. He is a co-editor of the WSBA’s Legal Ethics Deskbook and the OSB’s Ethical Oregon Lawyer. He can be reached at 503-224-4895 or mark@frllp.com.
Report from the LFCP Committee Meeting

The Lawyers’ Fund for Client Protection Committee meets quarterly to review applications for gifts from the Fund. The Committee is authorized to make gifts less than $25,000 to eligible applicants. On applications for $25,000 or more, the Committee makes recommendations to the Board of Governors, who are the Fund’s trustees. At their meeting on November 30, 2007, the Committee took the following actions, and discussed potential Fund financial problems which were reported to the Fund’s trustees as discussed below.

Mary Betker — WSBA No. 30429 (formerly of Washougal) — Resigned in lieu of disbarment 2/16/06. The applicant hired Betker to represent her in an action against her former employer. Their fee agreement provided for $3,000 “non-refundable deposit” and a provision that the applicant would be charged against this deposit at a rate of $125/hour for Betker, $100/hour for her legal assistant, and $75/hour for “law clerk, legal assistant, or legal secretary.” In August 2005, the applicant received an invoice showing charges of $1,612.50 and a balance of $1,387.50. In December 2005, the applicant received a letter from Betker saying that she was quitting her practice due to health issues. She tried to reach Betker for recommendations of other attorneys and to obtain a refund of her unearned deposit. She got no reply. She searched the Internet and discovered that Betker had resigned from the Bar in lieu of disbarment.

In March 2006, the applicant wrote another letter to Betker and got no response. She then filed a Small Claims Court action. Judgment was entered in the applicant’s favor in the principal amount of $1,487.50, plus costs, for a total judgment of $1,586.14.

The applicant received a letter from Betker stating: “I am willing to settle our case quickly for $1,000.00. Call me, if so & I’ll have a cashier’s check and satisfaction of judgment for your signature.” The applicant told Betker that the time to settle the case was before going to court, not after, and she demanded full payment of the amount of the judgment. No payment was made. The Committee approved payment to the applicant of $1,387.50.

Thomas J. Brothers — WSBA No. 9653 (Lynnwood) — Disbarred 1/16/07.

The applicant, with the assistance of his son, hired Brothers to make changes to a family trust after his wife died. After some delay, Brothers sent the applicant a letter enclosing an Affidavit of Successor Cotrustees to be signed by the applicant and his son, along with a letter with various instructions. It said that after the papers were returned to him along with the mother’s death certificate and Social Security number, he would record the affidavit and obtain a new Tax Identification Number (TIN). He also sent a bill for $350.

The applicant mailed a check for $350 and the signed affidavit to Brothers, along with the death certificate and Social Security number. The applicant and his son heard nothing further from Brothers. Brothers never advised them that he had
been disbarred in January.

Brothers's letter of instruction was not clear and did not provide the applicant with necessary and understandable information. Brothers never secured the TIN. He did complete the affidavits, but the affidavit was never recorded and thus was of no value to the applicant. The Committee approved payment of $350 to the applicant.

Robert Louis Butler — WSBA No. 448

Seattle) — Disbarred 10/20/81; reinstated 6/10/88; resigned in lieu of disbarment 5/7/07. Robert L. Butler is to be distinguished from Robert David Butler of Bellingham.

Butler was the personal representative (PR) of Estate A. He had previously held the decedent’s power of attorney. He filed an “appraisal” he prepared that valued the estate assets at around $200,000.

One of the estate beneficiaries was a family friend who had cared for the deceased. He left her 25 percent of his estate. Butler made various distributions to the heirs, including three to the friend totaling $42,500. The friend died in April 2003. At that time, Butler had not filed an accounting or closed Estate A. For this reason, the attorney for the friend’s estate, Estate B, did not know the value of Estate B. Butler told the attorney for Estate B that at least $15,000 was due to the estate. When Butler did not close Estate A, the attorney for Estate B filed a petition to remove Butler as PR of Estate A. Butler was removed and the applicant was appointed the new PR (he was also the PR of Estate B). Butler was ordered to deliver the Estate A files and pay costs of $2,625 to the attorney. He failed to do so. In September 2005, he was ordered to pay an additional $1,575 to the attorney. He failed to do so. He never filed an accounting for the Estate A assets.

The Office of Disciplinary Counsel subpoenaed bank records for Estate A from June 1998 until the account was closed in June 1999. The highest balance during that period was $7,000.

Bank records were subpoenaed for a second Estate A account for the period January 1995 until the account was closed in September 1998. As of August 1995, the account balance was $42,736. In September 1995, a deposit of $25,000 was made to the account, leaving a balance of $70,281. After September 1995, funds were withdrawn in a series of checks and wire transfers until the account was closed in September 1998. In his resignation, Butler promised to pay restitution to Estate A of $15,000. He has not done so and the Committee approved payment of that amount to the estate.

James E. Graham — WSBA No. 15290

(Renton) — Suspended for nonpayment of dues 8/3/05; disbarred 10/5/06; deceased 6/6/07.

The applicant contacted the WSBA after he read that Graham had been killed in a car accident, and said that Graham was handling four cases for the applicant. He wanted to know who to contact to get his files. After contacting Graham’s family, no files or records were located.

Graham represented the applicant in several matters including drafting of a will, a dispute with Medicare, a matter relating to a child day-care center run by the applicant, and a landlord-tenant dispute. The Committee found that Graham never advised the applicant that he was suspended from practice or that he was disbarred, and that he continued to collect fees for allegedly ongoing representation after he was suspended. The Committee approved payment to the applicant of $3,455.
Robert W. Huffhines Jr. — WSBA No. 11279 (Kelso) — Suspended for nonpayment of dues 7/28/04; suspended pending discipline 3/25/05; disability inactive status 11/16/07.

Huffhines was hired by the applicant to represent him on appeal in a matter where he won a partial judgment in 2000. The defendant deposited $9,663.54 with the court pending the outcome of the appeal. The applicant’s lawyer at the trial had filed an attorney’s lien for $6,123.39. Those funds were released to him on 6/18/01. The balance continued to be held by the court.

The Court of Appeals issued its decision on 8/10/01, affirming the trial court.

On 8/27/03, the county clerk’s office wrote to Huffhines stating that they had been holding $2,742.93 since 6/19/01, and that unless they heard from Huffhines within 30 days, the funds would be submitted to the state as unclaimed property. On 9/24/03, Huffhines’s legal assistant wrote to the applicant, enclosing a motion to release the funds. It read:

Mr. Huffhines would like to know your opinion as to the amount of funds recovered you would feel it would be fair for him to retain for his services in recovery. It would be greatly appreciated if you could contact the office as soon as possible to advise us as to your thoughts on the matter. Please send a letter in the enclosed envelope stating any amount you are agreeable to, and we will forward the remaining balance to you as soon as we receive the funds from the clerk.

The applicant responded, “I asked an attorney friend regarding this matter, who indicated $100.00 would be adequate. Please let me know if this is not satisfactory.”

On 9/15/03, an order was entered releasing the funds to Huffhines and stating “Attorney Huffhines will have the responsibility of delivering the funds to the plaintiff.” Huffhines never paid the funds to the applicant and never provided any billing or accounting. The Committee approved payment of $2,642.93 to the applicant.

Michael Johnson-Ortiz — WSBA No. 23580 (formerly of Seattle) — Disbarred 9/15/04.

Johnson-Ortiz abandoned his high-volume immigration practice in January 2004 and left more than 300 open files. The Committee has reviewed 112 applications and approved 70 totaling $122,421.91.

The applicant, an immigrant from El Salvador, hired Johnson-Ortiz in 1997 to obtain legal status in the United States. Johnson-Ortiz said he would file for Temporary Protected Status (TPS) and attend any interview or hearing required (however, under TPS there is no interview). The applicant paid Johnson-Ortiz $3,000 at that time. He understood “that the TPS portion of my case was about half of the cost, while the court or interview would be the other half, about $1,500.” The applicant received TPS and a work permit in 1998, without any hearing or interview. He also filed an application for asylum. Over the next few years he paid Johnson-Ortiz $750 annually to renew his TPS and work permit.

In 2000, the applicant met with Johnson-Ortiz who told him that there was a new law, the Nicaraguan and Central American Relief Act (NACARA), that would allow him to adjust his status to permanent resident. The applicant paid him $750 plus the filing fees. Johnson-Ortiz told him that there would be an interview or hearing on this application. The applicant says “I told him...
that I had already paid for this, under our initial agreement, and he agreed.”

After 2002, the applicant concluded that he could file his TPS renewal himself rather than continue paying Johnson-Ortiz. He heard nothing further from Johnson-Ortiz.

In 2005, the applicant received notice to attend a hearing on his NACARA application. He tried to contact Johnson-Ortiz, but he could not be found. He attended the interview by himself. He later hired another immigration lawyer who told him that Johnson-Ortiz had left the country. The Committee approved payment to the applicant of $1,500.

**William B. Knowles** — WSBA No. 17211 (Seattle) — Interim suspension 9/14/07; resigned in lieu of disbarment 9/20/07. William B. Knowles is to be distinguished from William F. Knowles of Seattle.

Knowles resigned in lieu of disbarment based, in part, on a jury verdict on 8/17/07, finding him guilty of interstate travel with the intent to engage in sex with a minor, and of coercion and enticement, felonies under federal law.

**Matter 1:** The applicant paid Knowles $3,000, which their fee agreement said was payment for 14 hours of attorney’s time on three matters relating to her former employment with the United States Postal Service (USPS): (1) an Office Workers Compensation Program (OWCP) hearing; (2) an EEO proceeding pending with the USPS; and (3) a potential Office of Personnel Management (OPM) appeal. She had previously been represented by Knowles on related issues.

After Knowles’s arrest, the applicant received a letter advising her that Knowles’s office was closing and she should arrange to pick up her files. When she did, the people at Knowles’s office had difficulty finding all of her files, and what was found was in disarray.

In response to the applicant’s grievance, Knowles claimed to have spent seven or eight hours on the applicant’s matters, including speaking with officials at USPS, preparing EEO and appeal papers, and reviewing medical records. He wrote that he would estimate that the applicant would be entitled to a refund of approximately $1,500. The Office of Disciplinary Counsel concluded that it did not appear that Knowles provided any meaningful representation to the applicant. The OWCP hearing occurred while Knowles was in jail, and the applicant represented herself. The USPS EEO investigator sent the applicant a request for additional information which, because of Knowles’s incarceration, she had to respond to herself. And, from a review of the files, it did not appear that Knowles did anything regarding the possible OPM appeal. The ODC concluded that Knowles’s fee was unreasonable, and the Committee approved payment of $3,000 to the applicant.

**Matter 2:** In June 2007, the applicant paid Knowles $2,500 for representation in an EEO complaint against the Bureau of Indian Affairs (BIA). Their fee agreement states that the $2,500 was a “non-refundable retainer” to cover the first 13 hours of attorney’s time. During their initial meeting, Knowles contacted a law firm that had formerly represented the applicant and prepared and faxed a letter signed by the applicant to the BIA. She says she had no further contact with Knowles despite several attempts to contact him.

One month later, she learned that Knowles had been arrested in Portland. She received a letter advising her that Knowles’s hearing should come with warning labels, too.

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law office would be closing and she should pick up her file. She was also told that they would refund any unearned fee. However, she was later told that there were no funds in the trust account.

When the applicant obtained her file, there were some handwritten notes and some documents faxed to Knowles from the BIA. She contacted the BIA and learned that Knowles had not initiated any claims on her behalf.

In its investigation, the Office of Disciplinary Counsel noted that the applicant’s file contained no legal research, time records, or any substantiation that Knowles initiated any claim. They concluded that, under the circumstances, the $2,500 fee was unreasonable. The Committee approved payment of $2,500 to the applicant.

**Other Business:** The Committee reviewed 12 additional applications that were denied for lack of evidence of dishonest conduct, as fee disputes or claims for malpractice, as civil disputes, because restitution was made, or were continued to seek further information. In addition, the Committee made two recommendations for payments of $25,000 or more that were denied by the trustees because there was no attorney-client relationship between the applicants and the lawyer.

**Meeting with Trustees:** Committee Chair Christopher Mertens reported to the Board of Governors, who serve as trustees of the Fund, at their January 2008 meeting regarding the potential impact on the Fund caused by former attorney Barry A. Hammer who resigned in lieu of disbarment. Hammer engaged in a Ponzi scheme that has resulted in substantial losses to his clients and investors. There are currently more than 30 Fund applications regarding this lawyer which, if they all qualified for recovery from the Fund, would total more than $1.9 million. These are in addition to all other applications to the Fund. The Fund is budgeted to have not more than $1.1 million this fiscal year. The Committee asked for guidance from the Board on how to proceed, including the possibilities of asking the Supreme Court to increase the current annual $15 assessment on all active members; seeking a special assessment; or prorating payments based on available funds. The Board directed the Committee to proceed on the assumption that the Fund will be limited to the amount budgeted, and to report back to the Board at the end of the fiscal year. The Committee intends to begin its review of these applications at its August meeting.

**Restitution:** Before payment is made to an applicant, the applicant must sign a subrogation agreement with the Fund, and the Fund seeks restitution from the lawyers. Because in most cases those lawyers have no assets, the chief avenue of restitution is through court-ordered restitution in criminal cases. Prosecuting attorneys cooperate with the fund in getting the Fund listed in restitution orders. As of November 2007, eight lawyers were making regular restitution payments to the Fund totaling $32,860 since 10/1/06. In addition, on 11/9/07, pursuant to order of the Supreme Court, $15,260 was deposited into the Fund from abandoned and unidentifiable funds in the trust account of former attorney Barry A. Hammer.

---

The Committee chair is Kennewick attorney Christopher J. Mertens. WSBA General Counsel Robert Welden is staff liaison to the Committee.
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Bn07/07
Strategic Financial Goal
The WSBA's strategic financial goal is to be fiscally responsible — to operate a well-managed and financially sound association, to be accountable to our members and the public, and to use our resources wisely in ways that accomplish our mission.

Fund Categories
WSBA accounts for revenues and expenses in four categories: General Fund, Continuing Legal Education (CLE), Sections, and Lawyers' Fund for Client Protection (LFCP).

General Fund
The general fund consists of WSBA regulatory functions and most services to members and the public. It is funded by member license fees and revenues from services. For FY 2007, the general fund had revenues in excess of expenses of $599,584. As of September 30, 2007, the general fund balance was $5,423,398, of which $1,234,601 is designated as an operating reserve, $1,445,000 is designated as a facilities reserve, $500,000 is designated as a capital reserve, and $275,000 is designated as a board program reserve. The remaining $1,968,797 is unrestricted.

Continuing Legal Education (CLE) Fund
CLE programs and products are entirely self-funded by seminar registration fees and sales of deskbooks and other publications. The CLE fund budgeted for revenues over expenses of $44,637. Actual results were $37,597, bringing CLE's fund balance as of September 30, 2007, to $1,991,838.

Sections Fund
The WSBA's 26 sections are a voluntary activity for WSBA members and are supported through section dues and fees for section products and services. All net income from sections is carried forward in each section's net assets for use by that section in future years. The sections budgeted for $167,143 expenses over revenues (in order to use past

Percentage of FY 2007 Expenses Used by Activity

Percentage of FY 2007 Revenues Collected from Various Sources
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<thead>
<tr>
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<td><strong>Total Unrestricted — General</strong></td>
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<td><strong>14,011,799</strong></td>
<td><strong>599,584</strong></td>
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<td><strong>CLE Seminars</strong></td>
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<td><strong>2,175,820</strong></td>
<td><strong>40,830</strong></td>
<td><strong>2,407,612</strong></td>
<td><strong>2,198,119</strong></td>
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<td><strong>Total Unrestricted — CLE</strong></td>
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<td><strong>37,597</strong></td>
<td><strong>3,191,843</strong></td>
<td><strong>2,822,628</strong></td>
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<td><strong>Unrestricted Sections Operations</strong></td>
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<td><strong>18,113</strong></td>
<td><strong>556,938</strong></td>
<td><strong>458,250</strong></td>
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<td><strong>Restricted — Lawyers’ Fund for Client Protection</strong></td>
<td><strong>481,852</strong></td>
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<td><strong>476,090</strong></td>
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<td><strong>Total</strong></td>
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<td><strong>558,378</strong></td>
<td><strong>18,205,719</strong></td>
<td><strong>16,859,864</strong></td>
<td><strong>1,345,855</strong></td>
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Accumulated reserves to benefit their members). Actual results for the sections were that revenues exceeded expenses by $18,113. The sections fund balance at September 30, 2007, was $896,930.

**Lawyers’ Fund for Client Protection (LFCP)**
The LFCP may be used for relieving a loss sustained by a person due to the dishonesty of, or failure to account for money entrusted to, a member of the WSBA in connection with the member’s practice of law. It is funded by an annual assessment on all active WSBA members. The LFCP fund budgeted for revenues over expenses of $190,900. Actual results were expenses over revenues of $96,916. LFCP’s fund balance as of September 30, 2007, was $699,239.
WSBA Presidential Search
Application Deadline: May 15, 2008
The WSBA Board of Governors is seeking applications for the position of WSBA president for 2009–2010. Pursuant to Article IV (A)(2) of the WSBA Bylaws, the primary place of business of candidates for president for 2009–2010 must be Western Washington (non-King County). The WSBA member selected to be president will have an opportunity to provide a significant contribution to the legal profession.

Applications for 2009–2010 WSBA president will be accepted through May 15, 2008, 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 23, 2008. 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 6, 2008, Board of Governors 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 2008 following selection. A one-year term as president-elect will begin at the Annual Business Meeting in September 2008. 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 2009, 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.

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, Greater Olympia District; trustee, King County District; trustee, North Central District; trustee, Northwest District; trustee, South Central District; trustee, Southeast District; president-elect, Washington state. Applications must be received by 5:00 p.m. on Thursday, May 1, 2008. For detailed information and application instructions, please visit www.wsba.org/lawyers/groups/wyld.

American Bar Association (ABA) House of Delegates
Application deadline: May 16, 2008
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. Four positions will be available in August 2008. 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 policy-making 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.

Law Clerk Committee — Two Positions
Application Deadline: June 15, 2008
The Law Clerk Committee is a regulatory board composed of seven lawyers who are appointed for six-year terms: Two members’ terms are ending on September 30, 2008. Members are appointed with consideration for the geographic distribution of the law clerks in the program. The positions starting October 1, 2008, serve primarily the South Sound/Southwestern Washington and Spokane/Eastern Washington regions. Preference will be given to applicants in these areas of the state. The Committee is composed of both law school graduates and those who completed the Law Clerk Program; a balance of experience is sought.

Each Committee member acts as liaison to an average of six law clerks enrolled in the program. A liaison receives monthly exams and certificates to review and assess the law clerks’ progress. The Law Clerk Committee meets quarterly in February, May, August, and November. At the quarterly meetings, the liaison makes recommendations to the Committee on petitions of enrolled law clerks and on the admission of new law clerks and tutors to the program, as well as other issues. Screened applicants to the program are required to meet in person with a liaison, so the liaison must be willing to host a meeting in his or her office or travel to the potential tutor’s office. The time commitment is generally four to eight hours per month in addition to the quarterly six-hour meetings and possible special meetings and projects.


Members interested in participating on the Law Clerk Committee should submit a letter of application and résumé to: WSBA Regulatory Services, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539; 206-239-2112 or 800-945-9722, ext. 2112.
2008 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 Petrus Award for Lawyers in Public Service. Named in honor of the late Angelo R. Petrus, 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.

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.

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.

Community Service Award. This award was created in 2006. Lawyers are

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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.

Norm Maleng Leadership Award. This award was created in 2007 and is given jointly by the WSBA and the Access to Justice Board, honoring Norm Maleng’s legacy by recognizing those who embody the qualities that characterized his leadership.

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 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 and Norm Maleng Leadership Award nominations was March 31, 2008. The deadline for all other nominations is April 30, 2008. Please send nominations to: Washington State Bar Association, Attn: Annual Awards, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539; fax: 206-727-8310; e-mail: greggh@wsba.org.

The awards will be presented at the WSBA Annual Awards Dinner in Seattle on September 18, 2008, with the following exceptions: The Pro Bono and Norm Maleng Leadership Awards will be presented at the Access to Justice/Bar Leaders Conference in Vancouver on June 7, and the Outstanding Judge Award will be presented at the Fall Judicial Conference.

Seeking Questionnaires from Candidates for Judicial Appointments

Deadline: May 1 for June 12 interview

The WSBA Judicial Recommendation Committee (JRC) is 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 date 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 at the WSBA office by the deadline listed above. 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.

Notice of Intent to Form a WSBA Civil Rights Law Section

Petitions are now being circulated to form a new WSBA Civil Rights Law Section pursuant to Article IX of the WSBA Bylaws. This area of law falls within the purposes of the WSBA as provided in General Rule (GR) 12. There currently is no other section or WSBA entity whose primary focus is on civil rights law, other than the Civil Rights Committee. Whether the Board of Governors determines to continue or discontinue the Committee, the Section, supported by section member dues, would be in a stronger position to present CLE programs, publications, and work with other WSBA entities such as the Council on Public Legal Education, the Committee for Diversity, and others. A subcommittee of the WSBA Civil Rights Committee chaired by Patricia Paul, and including Tracy Flood, Molly Maloney, Sharon Payant, and Wilberforce Agyekum, will work on this during the required six-month waiting period. They intend to report to the Board of Governors with a recommendation not later than September 2008. For more information, please contact Ms. Paul at 360-230-2369, or e-mail patriciapauljd@msn.com.

Intended jurisdiction: The Civil Rights Law Section would address concerns with all aspects of civil rights law in Washington within the parameters of GR 12.

2008 Licensing and Suspension Information

Presuspension Notices Have Been Mailed. If you have not paid all of your license fees and late fees, or if you are on Active status and have not paid your Lawyers’ Fund for Client Protection assessment or filed your Mandatory Professional Liability Insurance Disclosure Form, please do so now. Failure to pay in full or to file the required insurance disclosure form will result in your suspension from the practice of law in Washington.

To Pay/Confirm Online. License fee payments can be made using MasterCard or Visa and confirmed (10 days after payment was sent) online at http://pro.w MBA.org. The system allows payments only for the full amount billed, i.e., no Keller deductions or status changes.

To Mail in Forms and/or Payment. Send checks (with License Fee Form) in the white envelope from your license packet. Send credit-card payments (with License Fee Form) in the blue envelope from your license packet. Send forms (Mandatory Professional Liability Insurance Disclosure, Mandatory Trust Account Declaration, Continuing Legal Education Certification, and any voluntary forms) in the blue envelope from your license packet. If you do not have the license packet envelopes, mail forms and payment to the WSBA, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539.

Provide WSBA with Current Contact Information. Does the WSBA have your current contact information? APR 13(b) states lawyers shall provide address updates to the WSBA within 10 days after any change. APR 13(c) provides that lawyers should provide a current e-mail address to the WSBA. 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 and available on the Annual Licensing webpage. Forms should be mailed to the WSBA, faxed to 206-727-8313, or e-mailed to questions@wsba.org.

For More Information. Full explanations of license fees, forms, policies, and deadlines are on the WSBA website at: www.wsba.org/lawyers/licensing/annual licensing.htm. 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.

APR 11 Amendments Published for Comment

The amendments to Admission to Practice Rule (APR) 11 and Appendix APR 11, sent to the Supreme Court in June 2007, have been published for com-
ment by the Court. The amendments and instructions for making comments can be found at www.courts.wa.gov/court_rules/?fa=court_rules.proposed. The comment period will close on April 30, 2008. The suggested amendments to APR 11 would:

- Change the official title of the Board of Continuing Legal Education to the “Mandatory Continuing Legal Education Board” or “MCLE Board”;
- Bring all of the credit requirements for mandatory continuing legal education for lawyers into one rule (APR 11.2), pulling some out of the existing regulations;
- Reduce the number of credits that must be earned as “live” credits;
- Do away with a three-month grace period for lawyers to become compliant with their MCLE requirements after the end of their actual reporting period; and
- Separately set out provisions of APR 11.4 and 11.6 regarding enforcement and appeals from decisions, to make them easier to locate and understand.

The suggested amendments to APR 11 Appendix would:

- Make the requirements for course accreditation and the requirements imposed on all sponsors more uniform, assuring quality education through a system of advance submission of agendas, review of course materials (when appropriate), evaluations by attendees, and spot audits of seminars;
- Eliminate the existing limits on the number of credits that can be earned through open and closed-in house CLE seminars sponsored by private law firms, corporate legal departments, and government agencies, addressing concerns raised by those groups regarding the current Regulation 104(e);
- Increase the list of topics eligible for accreditation, allowing for accreditation of more topics applicable to small- and solo-practices and more topics related to mental-health issues;
- Revise requirements for sponsors to become “accredited sponsors” (sponsors allowed to set credit awards for their own courses, subject to review by the MCLE Board);
- Streamline some regulatory processes; and
- Clarify and simplify the wording of the regulations.

A more detailed explanation of each amendment will be available on the WSBA website, on the MCLE Board’s APR 11 Review Project 2007 page: www.wsba.org/lawyers/groups/mcle/apr11review07.htm.

**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>Group</th>
<th>Reporting Period</th>
<th>Complete Credits by</th>
<th>File C2/C3 Form by</th>
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<tbody>
<tr>
<td>Group 2</td>
<td>2006–2008</td>
<td>December 31, 2008</td>
<td>February 1, 2009</td>
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FOR RATES AND SCHEDULING
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 Regulation 101(n) or (o) to be considered for ethics credit.

- Pre-recorded self-study (A/V) courses cannot 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 disks, and other media with a sound track 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 was 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 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 1 members this year).
- All CLE courses listed on member rosters as of October 2007 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. Online credits may be edited by clicking on the “edit” link next to each course. Credits on the C2/C3 may be corrected 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 active 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 2006, you will not report for this reporting period (2005-2007) even though you are in Group 1. You will first report at the end of the 2008-2010 reporting period. Members admitted in 2007 will not report until the end of the 2009-2011 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 outside of Washington and if you are a member of the Oregon, Idaho, or Utah state bars (comity states), you may meet your Washington mandatory CLE requirements by providing proof of current MCLE compliance from your comity state bar. Only a Certificate of MCLE Compliance from your comity state bar (not a “Certificate of Good Standing”), sent with your WSBA C2/C3 form, will satisfy your WSBA CLE 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 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. Online help is available. If you have 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, members are limited to a total of 15 credits of private-lawfirm CLEs and 15 credits of corporate-legal-department CLEs in each reporting period, regardless of who the private legal sponsor was and regardless of whether the course was open or closed. There are no limitations 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.

Residential Time Summary Report
The Pattern Forms Committee approved changes to the Residential Time Summary Report, form WPF DR 01.0410. The effective date for the new form is April 1, 2008. To view and download the form, go to www.courts.wa.gov/forms. You can find the new form in the following areas: Divorce (Dissolution), Legal Separation, Declaration Concerning Validity of Marriage, Objection to Intended Relocation (Objecting party), and List of All Forms.

Solo and Small Firm Conference in Wenatchee
Registration is now open for the 3rd Annual Solo and Small Firm Conference that will take place in Wenatchee on July 17–19. It features more than 20 speakers, including evidence author Karl Tegland, and the Honorable Charles W. Johnson, justice, Washington State Supreme Court, as keynote speaker. The conference offers at least 14 CLE credits for only $295 tuition. For details and online registration, go to www.wsbcle.org/seminars and enter seminar number 08555WEN in the search box.

ADR Training Announcement — 2008 Fee Dispute Mediation Training Seminar
The ADR Committee is pleased to announce the 2008 Fee Dispute Mediation Training Seminar. The training will be held at the WSBA office in Seattle, on Thursday, May 29, 2008, from 1:00 to 4:00 p.m. The trainers include: professional responsibility counsel from the WSBA, speaking on the topic of ethics and ADR; Dispute Resolution/Ethics Program Coordinator Darlene Neumann, speaking on the topic of ADR Program history, objectives, and fees; and guest mediator Stephanie Bell, from the King County Alternative Dispute Resolution Program, speaking on the mediation process and its benefits, and the benefits of the WSBA Mediation Program for attorneys. The seminar also features a practical segment during which the speakers, in conjunction with ADR sub-committee members, will tackle the topics of pitfalls during mediation and dealing with difficult
people during mediation. Please note that admission for the seminar is free, but seating is limited.

Open registration will be on a first-come, first-served basis. There are 2.75 CLE credits, including one ethics. For additional information or to register, contact Darlene Neumann at 206-733-5923 or 800-945-9722, ext. 5923, or darlenen@wsba.org.

LAP Solution of the Month: Overwhelmed?
It’s easy to become overwhelmed by billable hour requirements, managing your practice, or the sheer volume of files piled in your office. Feeling overwhelmed can quickly turn into avoidance, then paralysis. If you would like some tips on handling overload, call the Lawyers Assistance Program at 206-727-8268 or 800-945-9722, ext. 8268.

Success Strategies Workshop
The Success Strategies Workshops hands-on/how-to intensives will teach new-to-practice attorneys or more experienced attorneys the skills and processes to better manage their law practices in an ethical, effective, efficient, and profitable manner. Through a combination of teaching methods and experiences in a confidential workshop setting held at the WSBA office, law office management consultant Ann Guinn will assist attorneys in solo or small firms to develop and reach their career goals. Workshops will be held the first Wednesday of each month from 5:30–8:30 p.m. You may join during any month. Three MCLE-approved CLE credits are available for each workshop. For information or to pre-register, contact Ann Guinn at 253-946-1896 or amngp15@iol.com or Jennifer Favell, Ph.D., at jenniferf@wsba.org or 206-727-8267 or 800-945-9722, ext. 8267.

Recovery Support Group for Lawyers
The Lawyers Assistance Program is offering a new weekly group in Seattle for lawyers in their first three years of recovery from drug or alcohol dependency. The group meets on Tuesdays from 8:15 to 9:30 a.m. Discussion topics include relapse prevention, improving relationships, work/life balance, and other themes chosen by the group. Coed. Sliding fee scale of $5–15 per session. Call Abby Smith, LAP addictions counselor, at 206-733-5988.

The Asian Bar Association of Washington (ABAW) will host the 20th Annual National Asian Pacific American Bar Association (NAPABA) Convention in Seattle on November 20–22, 2008. This event will mark NAPABA’s first return to Seattle since ABAW hosted the convention in 1991. The 2008 theme is “Building on Our Legacy: 20 Years of NAPABA.” More than 1,200 legal professionals and guests from around the country are expected to attend. For general information about the convention, contact Planning Committee Co-Chairs Benes Aldana (206-217-6401; benesaldana@comcast.net) or Marcine Anderson (206-296-0430; marcineanderson@comcast.net).

Contract Lawyer Meeting
Discuss the issues with other contract lawyers on April 8 from noon to 1:30 at the WSBA office. 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.

Casemaker Online Research
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, 800-945-9722, ext. 5914, or juliesa@wsba.org, or call the WSBA Service Center at 800-945-WSBA (9722) or 206-443-WSBA (9722).

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, or 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.

**Computer Clinic**

The WSBA offers a hands-on computer clinic for members. Learn what programs such as Outlook, PowerPoint, Excel, Word, and 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 April 14 clinic will be held from 10:00 a.m. to noon at the WSBA office and will focus on using Windows, using a mouse, and making adjustments to the screen. The April 17 session will be held from 2:00 to 4:00 p.m. and will focus on Outlook and practice-management software. For more information or to RSVP, contact Julie Salmon at 206-733-5914, 800-945-9722, ext. 5914, or juliesa@wsba.org.

**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.

**Learn More About Case-Management Software**

The WSBA Law Office Management Assistance Program (LOMAP) maintains a computer for members to review software tools designed to maximize office efficiency. The LOMAP staff is available to provide materials, answer questions, and make recommendations. To make an appointment, contact Julie Salmon at 206-733-5914, or 800-945-9722, ext. 5914, or juliesa@wsba.org.

**Assistance for Law Students**

The Lawyers Assistance Program offers counseling to third-year law students attending Washington schools. Sessions are held in person or by phone. Treatment is confidential and available for depression, addiction, family and relationship issues, health problems, and emotional distress. A sliding-fee scale is offered ranging from $0–30, depending on ability to pay. Call 206-727-8268, or 800-945-9722, ext. 8268, or visit www.wsba.org/lawyers/services/lap.htm.

**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.

**Speakers Available**

The WSBA Lawyers Assistance Program offers speakers for engagements at county, city, and bar association meetings. 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.
minority, or specialty bar associations, or other law-related organizations. Topics include stress management, life/work balance, and recognizing and handling problem-personality clients. Contact Jennifer Favell, Ph.D., at 206-727-8267 or 800-945-9722, ext. 8267.

**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 9 at the WSBA office. The group discusses where to look for jobs, how to grow 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 206-727-8269 or 800-945-9722, ext. 8269, or e-mail rebeccan@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.

**Upcoming Board of Governors Meetings**

*April 25–26, Spokane • June 6, Vancouver • July 25–26, Walla Walla*

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 WSBA Executive Director Paula Littlewood at 206-239-2120, 800-945-9722, ext. 2120, or paulal@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 2008 was 1.852 percent. Therefore, 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.

**Consumer Alert**

It has come to our attention that an ad on page 59 of the March Bar News advertising the availability of puppies is potentially fraudulent. A news release issued by the American Kennel Club and the Council of Better Business Bureaus warns about scams targeting unsuspecting consumers (see www.bbb.org/alerts/article.asp?ID=766). We will be reviewing our advertising policies to prevent this from happening in the future, and apologize for any inconvenience this may have caused readers.

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**Groff Murphy, PLLC**

is pleased to announce that

**Andrew M. Weinberg**

has joined the firm as an associate.

Mr. Weinberg received his law degree from Seattle University School of Law, and his undergraduate degree from Miami University. Mr. Weinberg’s practice will focus on environmental and construction litigation.

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

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**Tupper Mack Brower PLLC**

is pleased to announce that

**Lynne M. Cohee**

has become Of Counsel to the firm, where she will continue her administrative litigation and appellate practice in the areas of land use, water resources, and environmental law.

**Brad Doll**

former Clerk to the Honorable Charles Johnson, Washington Supreme Court, has joined the firm as an associate practicing in the areas of land use, environmental, civil litigation, and real estate law.

2025 First Avenue, Suite 1100
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Michael & Alexander PLLC

is pleased to announce that

Paul M. Nordsletten

has joined the firm as a partner.

Mr. Nordsletten’s practice will continue to focus on employment counseling, advice, litigation, and traditional labor law.

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Tel: 206-442-9696
Fax: 206-442-9699
www.michaelandalexander.com

Ogden Murphy Wallace, P.L.L.C.

is pleased to announce the following individuals in our Seattle office have been elected as Members

Angela S. Belbeck
Douglas K. Yoshida

Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim, LLP

welcomes new partners

Steve I. Victor
Howard R. Morrill
James E. Horne
and
Michael E. Ricketts

Mr. Victor, former Sr. City Attorney, City of Tacoma, focuses on commercial contracts, real estate and land use law and is practicing on our Tacoma office.

Mr. Morrill, previously with Bundy & Morrill in Seattle, practices commercial litigation and focuses on franchise and distribution law. He joins our Seattle office.

Recently of Kingman, Ringer & Horne in Seattle, Mr. Ricketts continues his successful career in civil trial work with extensive experience with fire claims and property loss.

Also from Kingman, Ringer & Horne, Mr. Horne brings expertise in complex and commercial litigation (including toxic torts), trial and appellate practice, and insurance coverage litigation. Both Mr. Ricketts and Mr. Horne have joined our Seattle office.

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Sheila C. Ridgway
and
Lisa W. Gafken
announce the formation of their new firm

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Ridgway and Gafken, P.S., will focus on the litigation of estate, trust, guardianship, and vulnerable adult matters and the administration of decedents’ estates and guardianships.

Ms. Ridgway has been practicing since 1984, and she has served as chairperson of the King County Bar Association Probate Litigation and Ethics CLE from 1998 through 2007.

Ms. Gafken’s practice focuses on contested and non-contested estate, trust, and guardianship matters.

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www.ridgwaygafken.com

The Law Office of
MARY ANNE VANCE, P.S.
is pleased to welcome
Terri R. Luken
to our firm.

Ms. Luken previously practiced law as a Senior Deputy Prosecuting Attorney with the King County Prosecuting Attorney’s Office. A 1989 graduate of the University of Washington School of Law, Ms. Luken’s practice will focus on probate, trust, and guardianship matters. She joins Kenneth Taylor and Mary Anne Vance in fostering the firm’s core mission in estate planning, trust, guardianship, and probate administration.

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terri@vancelaw.com
www.vancelaw.com

The Rants Group
Commercial Real Estate Brokerage
is pleased to announce that
Nicole M. Potebnya
has been named its in-house corporate counsel.

After graduating from Seattle University School of Law cum laude in 2005, Ms. Potebnya served as an assistant attorney general with the Washington State Attorney General’s Office prior to rejoining our firm.

The Rants Group has focused on commercial real estate development, sales, leasing, and management in Thurston County since 1973. Ms. Potebnya, an associate real estate broker, engages in all aspects of commercial real estate.

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Montalvo v. Spirit Airlines,
508 F.3d 464 (9th Cir. 2007)
Sanders v. City of Seattle,
160 Wn.2d 198 (2007)
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E-mail: michaelc@michaelcaryl.com

INSURANCE BAD FAITH
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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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.

**Suspended**

Hyon Chun Pak (WSBA No. 24238, admitted 1994), of Tukwila, was suspended for one year, effective January 4, 2008, by order of the Washington State Supreme Court following approval of a stipulation. This discipline is based on conduct in two matters involving representing clients in a court where he was not admitted, failing to monitor clients' cases and failing to act with reasonable diligence, failing to communicate, charging unreasonable fees, and failing to protect clients' interests.

**Matter 1:** In May 2003, a client hired Mr. Pak to file an appeal with the Ninth Circuit Court of Appeals in an immigration matter. The client did not speak English and communicated with Mr. Pak through an interpreter. The client paid Mr. Pak $2,000 when she hired him and later paid Mr. Pak's interpreter $3,000, which the interpreter turned over to Mr. Pak. Mr. Pak considered the funds he received from the client earned upon receipt and did not place them in a trust account. The client, however, did not understand or agree that Mr. Pak would treat the funds she provided him as earned upon receipt.

Mr. Pak filed a petition for review on the client's behalf with the Ninth Circuit in May 2003. He paid the filing fee of $250. Mr. Pak was not admitted to practice before the Ninth Circuit when he filed the petition. Shortly thereafter, the Ninth Circuit Clerk's office advised Mr. Pak that he needed to become admitted to that court or withdraw from representation. Mr. Pak began the process of becoming admitted to the Ninth Circuit but did not complete it, and did not withdraw...
from representing the client before the Ninth Circuit. The administrative record was filed in the client's case in August 2003. Mr. Pak filed two motions for extension of time to file his appellate brief, which were granted, but he never filed the brief. The court dismissed the appeal in January 2004 for lack of prosecution. Mr. Pak did not monitor the status of the client's case and never advised the client that her case had been dismissed. The client tried to contact Mr. Pak many times about the status of her case but generally was unable to reach him. The dismissal of the client's case made her immediately eligible for deportation.

In November 2005, the client hired a new lawyer to represent her in her appeal. The new lawyer contacted the Ninth Circuit and learned that the client's case had been dismissed. He then tried repeatedly to contact Mr. Pak to obtain the client's file and sent him a notice of withdrawal and substitution. Mr. Pak received the notice, but did not sign it or otherwise respond to the new lawyer because he was angry at the new lawyer for stealing his client. The new lawyer filed a motion to reopen the client's appeal with the Ninth Circuit on grounds that Mr. Pak had provided ineffective assistance of counsel. The Ninth Circuit granted the motion and reinstated the appeal.

**Matter 2:** In early 2004, a client hired Mr. Pak to file an appeal with Ninth Circuit in an immigration matter. The client did not speak English and communicated with Mr. Pak through an interpreter. The client paid Mr. Pak $3,000 to assist her in filing a brief with the Ninth Circuit. Mr. Pak considered the funds he received from the client earned upon receipt and did not place them in a trust account. The client, however, did not understand or agree that Mr. Pak would treat the funds she provided him as earned upon receipt. Mr. Pak filed a petition for review on the client's behalf in April 2004 and paid the $250 filing fee. The petition indicated that it was filed by the client pro se, but listed Mr. Pak's address instead of hers so that the record and other correspondence would come to him. The administrative record was filed in July 2004. Mr. Pak took no action in the case. The court dismissed the appeal in September 2005 for lack of prosecution. Mr. Pak did not monitor the status of the client's case. The client tried to contact him many times about the status of her case, but generally was unable to reach him. Mr. Pak never advised the client that her case had been dismissed. According to Mr. Pak, he did not realize that the case had been dismissed. The dismissal of the client's case made her immediately eligible for deportation. In December 2005, the client hired a new lawyer to represent her in her appeal. The new lawyer contacted the Ninth Circuit and learned that the client's case had been dismissed. The new lawyer tried repeatedly to contact Mr. Pak to obtain the client's file and sent him a notice of withdrawal and substitution. Mr. Pak received the notice of withdrawal and substitution but did not sign it or otherwise respond to the new lawyer because he was angry at him for stealing his client. The new lawyer filed a motion to reopen the client's appeal with the Ninth Circuit on grounds that Mr. Pak had provided ineffective assistance of counsel. The Ninth Circuit granted the motion and ordered the case remanded to the Bureau of Immigration Appeals.

Mr. Pak's conduct violated RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; former RPC 1.4, requiring a lawyer to keep a client reasonably informed about the status of a matter, to promptly comply with reasonable requests for information, and to 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; former RPC 1.15(a)(1), prohibiting a lawyer from representing a client if the representation will result in a violation of the Rules of Professional Conduct or other law; former RPC 1.15(d), requiring a lawyer to take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fees that has not been earned; RPC 5.5(a), which prohibits lawyers from practicing law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; and RPC 8.4(d), prohibiting conduct prejudicial to the administration of justice.

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

**Suspended**

**Howard K. Michaelsen** (WSBA No. 3928, admitted 1959), of Spokane, received a reprimand on December 4, 2007, following approval of a stipulation by the hearing officer. This discipline was based on conduct involving failure to maintain complete trust account records, disbursement of funds in excess of funds clients had on deposit in his trust account, and disbursement of funds from the trust account before corresponding deposits had cleared the bank.

Between July 2002 and July 2005, Mr. Michaelsen maintained an IOLTA client trust account, for which he failed to keep a check register with a running balance. During this time period, Mr. Michaelsen also failed to reconcile his trust account bank statements to his own records on a regular basis, failed to maintain ledgers for individual client matters,
made deposits totaling $4,770.44 without identifying the client, and made withdrawals totaling $5,784.89 without identifying the client. During this time period, Mr. Michaelsen disbursed funds in excess of funds that the clients had on deposit in his trust account and before corresponding deposits had cleared the bank, resulting in a $5,559.28 shortage in his trust account. Upon being notified of the shortage by the Bar Association in November 2005, Mr. Michaelsen reimbursed his trust account; however, in some instances, he was unable to identify clients who had positive balances in his trust account. After Mr. Michaelsen and the Bar Association auditor were able to identify the clients who had positive balances in the trust account, Mr. Michaelsen refunded the positive balances to these clients in October and November 2007.

Mr. Michaelsen's conduct violated former RPC 1.14(a), requiring all funds of clients paid to a lawyer or law firm be deposited in one or more identifiable interest-bearing trust accounts maintained as set forth in the rules; and former 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 to render appropriate accountings to his or her clients regarding those funds.

Kevin M. Bank represented the Bar Association. Mr. Michaelsen represented himself. Richard B. Geissler was the hearing officer.

Reprimanded

Dean E. White (WSBA No. 27282, admitted 1997), of Spokane, was ordered to receive a reprimand on October 9, 2007, following approval of a stipulation by the hearing officer. This discipline was based on conduct in two matters involving failure to timely file bankruptcies, filing incomplete and inaccurate information, and failure to protect clients' interests.

Matter 1: In October 2004, Mr. White was hired to represent a client in a Chapter 7 bankruptcy. The client paid Mr. White a $350 flat fee and $210 for advance costs. In 2004, the client provided Mr. White with financial information, including client information worksheets. Mr. White delayed filing the bankruptcy for over six months. In May 2005, Mr. White filed the bankruptcy, but the petition, schedules, and other documents were incomplete and inaccurate. The petition did not include the client's complete address. Mr. White was later informed that the client did not receive notices sent to him by the bankruptcy court because the court did not have a correct mailing address. Mr. White never informed the court of the client's correct mailing address, which was readily accessible from the materials he received. The 341 meeting of creditors was scheduled for June 2005. Mr. White did not inform the client about the meeting and, not having received notice from Mr. White or the court, the client did not appear at the meeting. The 341 meeting was rescheduled for August. Mr. White did not inform the client about the rescheduled meeting and, not having received notice from Mr. White or the court, the client did not appear at the August meeting. The trustee filed a motion to dismiss the client's bankruptcy for failure to attend the 341 meeting. Mr. White did not respond to the motion and did not contact the client to inform him about the pending motion. The court entered an order dismissing the client's bankruptcy. Mr. White did not attempt to inform his client about the dismissal and did not return the client's phone messages. The client finally contacted Mr. White after he discovered his bankruptcy was dismissed and requested a refund. Mr. White did not refund any fees.

Matter 2: In December 2004, Mr. White was hired to represent a client in her bankruptcy and received $330 in attorney's fees from the client. The client provided Mr. White with sufficient information to file the bankruptcy at the time he was hired. Between May and July 2005, the client sent Mr. White 10 e-mails expressing concern that he had not yet filed her bankruptcy and complaining about a creditor who was garnishing her wages. Mr. White did not respond to her until July 28, 2005. The next day, Mr. White filed her bankruptcy petition and schedules. The petition did not include her signature, as required by the Bankruptcy Code, and the schedules did not include some of her debts. Between August and October 2005, Mr. White received several pleadings from the U.S. Trustee regarding information that was not included in the client's petition and bankruptcy schedules, including a complaint commencing an adversary proceeding seeking to deny the client's discharge. Mr. White did not timely respond to the pleadings. In mid-December 2005, the client called and left several messages asking to discuss the U.S. Trustee's Notice to Deny Discharge. The client then sent an e-mail demanding Mr. White contact her no later than the next day. Mr. White eventually spoke to the client in late December and told her he would promptly file an amendment to her bankruptcy petition, but did not do so. The client terminated Mr. White's services in January 2006 and filed the amended schedules herself, paying an additional $30 to amend the schedules. The U.S. Trustee's adversary proceedings were dismissed and the client discharged her debts.

Mr. White's conduct violated RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; former RPC 1.4, requiring a lawyer to keep a client reasonably informed about the status of a matter, to promptly comply with reasonable requests for information, and to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; and RPC 3.2, requiring a lawyer to make reasonable efforts to expedite litigation consistent with the interests of the client.

Jonathan H. Burke represented the Bar Association. Mr. White represented himself. John H. Loeffler was the hearing officer.

Admonished

Gerald G. Burke (WSBA No. 17773, admitted 1988), of Tacoma, was ordered to receive an admonition on September 7, 2007, by order of a Review Committee. This discipline was based on conduct involving lack of candor toward a tribunal. Gerald G. Burke is to be distinguished from Jerry L. Burke of Yakima.

In March 2001, Mr. Burke agreed to represent his daughter in a marriage dissolution action. In June 2002, the opposing party in the action appeared in front of Commissioner A in the morning for a return hearing on an ex parte temporary restraining order. Commissioner A vacated the restraining order because Mr. Burke did not appear. In the afternoon of that same day, Mr. Burke appeared in front of Commissioner B for the same return hearing on the same ex parte temporary restraining order. Commissioner B indicated that Commissioner A would have to deal with this order and that either party could re-note this matter for hearing on a date agreeable to the parties. The next day, Mr. Burke filed a motion and declaration for an ex parte stay of Commissioner A's order, alleging the vacation order was improperly obtained. Mr. Burke's motion did not mention the order entered by Commissioner B. Mr. Burke presented his motion to Commissioner C, who reinstated the restraining order.

Mr. Burke's conduct violated RPC 3.3(f), requiring a lawyer in an ex parte proceeding to inform the tribunal of all material facts known to the lawyer that should be disclosed to permit the tribunal to make an informed decision, whether or not the facts are adverse.

Randy Beitel represented the Bar Association. Mr. Burke represented himself.
Animal Law

6th Annual Animal Law Conference
April 24 — Seattle. 6.5 CLE credits, including .5 ethics. By the WSBA Animal Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Arts Law

Recent Developments in Art and Cultural Property Law
April 1 — Tele-CLE. 1.5 CLE credits, including .25 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Entertainment Law: Music, Film, Publicity, and Book Publishing
April 8 — Tele-CLE. 1.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Dispute Resolution

2008 ABA Dispute Resolution Conference "Pacific Currents: Sound Perspectives on ADR"
April 3–5 — Seattle. Up to 18 CLE credits available. By University of Washington CLE, Washington Law School Foundation, 206-543-0059 or 800-CLE-UNIV.

Environmental and Land Use Law

The 2008 Environmental and Land Use Law Section Midyear Meeting and Seminar: Context and Conflict: Differing Perspectives on Environmental and Land Use Issues in Washington State
May 15–17 — Blaine. 13.25 CLE credits, including 1 ethics. By the WSBA Environmental and Land Use Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Estate Planning

Estate Planning for Small- to Medium-Sized Estates
April 16 — Seattle. 6.75 CLE credits, including .5 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Ethics

Ethics in Civil Litigation Institute
April 23 — Seattle. 6.25 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Indian Law

Annual Indian Law Conference
May 2 — Seattle. CLE credits pending. By the WSBA Indian Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Labor and Employment Law

Annual Employment Law Institute
April 9 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Law Office Management

Marketing without Madison Avenue
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Litigation

Ethics in Civil Litigation Institute
April 23 — Seattle. 6.25 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

How to Handle Your First/Next Vehicle Accident Case
May 7 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Video Replay: High-Profile Cases
May 28 — Friday Harbor. 6.5 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Real Property, Probate and Trust

View Covenants, Easements, Liens, and Encumbering Title
April 25 — Seattle. April 30 — Spokane. 6.25 CLE credits. By the WSBA Real Property, Probate and Trust Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Special Needs Trust
May 20 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Senior Lawyers

Senior Lawyers Section Annual Meeting and CLE
May 2 — SeaTac. 6 CLE credits, including 1 ethics pending. By the WSBA Senior Lawyers Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Sports Law

Hot Topics in Sports Law
April 15 — Tele-CLE. 1.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Taxation Law

Oregon-Washington Tax Institute
May 1–2 — Seattle. 9 CLE credits pending. By the OSB Taxation Section, OSB CLE Seminars, the WSBA Taxation Law Section, and WSBA-CLE; 503-431-6413.
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Will Search

Will search for Hugh Cosgrove of Belfair, Kitsap County, died in Olympia, WA (married to Alice Cosgrove). Please contact Todd Carson Cosgrove at 503-975-0851.
right off. I noticed something different about Chuck Flimsy Jr., my frequent courtroom adversary. His usual lackluster rambling had been replaced with stunningly forceful oratory. Answering my penny-ante motion to compel, he came on like Clarence Darrow at the Scopes Monkey Trial. Flimsy seemed transformed, even physically. His doughy middle-aged form had given way to a robust physique that strained the shoulders of his Men's Wearhouse suit jacket. When the judge nodded my way and asked, “Rebuttal, counsel?” I didn’t bother. I was 10–2 lifetime against Flimsy and accepted that I was about to go 10–3, and justifiably so.

Afterward in the hall I approached the previously docile litigator with my congratulations. “Fine job, Flimsy. I didn’t know you had it in you,” I said, extending my right hand.

“I got tired of losing to guys like you,” Flimsy barked. “So I stepped up my game.” With that he applied a vise-like grip to my hand that shot searing pain to my shoulder.

As I returned to my office, I was haunted by Flimsy’s cryptic remark about stepping up his game. Then it hit me like a Louisville Slugger: Flimsy was juiced.

As I returned to my office, I was haunted by Flimsy’s cryptic remark about stepping up his game. Then it hit me like a Louisville Slugger: Flimsy was juiced. Suddenly I could go all night. I’d analyze 10, 12 cases, write a brief, get a couple hours of sleep, then show up in court, fit as a fiddle. I was unbeatable!”

“But Flimsy, you’re living a lie. Those victories are tainted,” I said.

“Believe me, I know. When I look at myself in the mirror I’m ashamed. If I’m found out I’ll be a disgrace to my family. And who knows what damage I might be doing to my body. Already, I think I’m starting to grow . . . . ”

“I get the picture, Flimsy,” I said. “Look, I’ll give you a week to clean yourself up. Otherwise, I’m turning you in.”

A week later I faced Flimsy in court on another motion. I was relieved to see that his old mediocrity and lack of confidence had returned. His belly was creeping back over his belt, and he bored the judge to tears within the first two minutes of his argument. I won the motion and got $500 in costs that I hadn’t even requested.

I caught up with Flimsy in the hall and gave him a pat on the back, which knocked the wind out of him. Looking me square in the eye, he said, “I want to thank you for setting me straight. I may get fired for poor performance, but I don’t care. What’s important is that what you’re looking at is the real me, not some over-inflated, drug-fueled monster.”

“You’re a good man, Flimsy,” I said. “A good man.” As we left the courthouse I made a mental note to file for summary judgment before Flimsy got canned and the case got reassigned to one of those cut-throat punks with an iPhone.
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