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Washington State Bar News

THE OFFICIAL PUBLICATION OF THE WASHINGTON STATE BAR ASSOCIATION

APRIL 2011

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Clockwise from bottom: Douglas Cowan; Eric Gaston; Jonathan Rands, Of Counsel; Ted Vosk, Of Counsel; Aaron Wolff, Of Counsel; Matthew Knauss; Christopher Kattenhorn, Associate to Mr. Wolff; William Kirk

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Blame the shooter

Steven Toole asks who is accountable for the tragic shootings in Tucson, Arizona [President’s Corner, March 2011 Bar News]. He concludes that harsh political rhetoric is at least partly to blame. Respectfully, I disagree. Sometimes politics in America does seem to be a blood sport but there is no evidence that Jared Loughner, the shooter in Tucson, paid any attention to political rhetoric. He is obviously mentally disturbed. He apparently had some twisted fascination with Congresswoman Giffords. His obsession turned to violence, but Loughner’s crime was an act of madness, not a political act.

So, who is to blame? I submit that the man who pulled the trigger — Jared Loughner — is to blame. Focusing on the supposed role of harsh political rhetoric in this tragedy distracts us from other areas where we, as lawyers, may actually contribute some positive insight: What role does an under-funded mental health system have in this shooting? Why did the local police let Loughner slip through the cracks? Why did Loughner’s parents and his teachers fail to intervene as he spiraled down into madness? Have we struck the right balance in our gun laws? And upholding the rights of the possibly disturbed individual? Have we struck the right balance in our commitment laws between protecting society from random violence and upholding the rights of the possibly disturbed individual? Have we struck the right balance in our gun laws?

Blaming the Tucson shootings, even in part, on harsh and unpleasant political discourse is a dog that just won’t hunt. John Wilkes Booth and Lee Harvey Oswald were politically motivated assassins. Jared Loughner was not.

Gregory A. Dahl, Mill Creek

Don’t bully Arizona

While I appreciate the tenor of Stephen Toole’s President’s Corner column in the March 2011 Bar News, I take issue with him on two points. First, he claims that “the state of Arizona has become a poster child for the last couple years for the hatred and bigotry that is becoming associated with the politics in this country.” What is the basis for this broad claim? No specifics are provided. This attack on a fellow state is unfair and also seems at odds with the point of President Toole’s column that we should stop negative attacks and stop vilifying those who disagree with us. Surely President Toole is not attacking Arizona as a bastion of hatred and bigotry simply because the state enacted a law, through the democratic process, seeking to curtail illegal immigration? And Arizona’s elections seem to be no more or less spirited than those in other states. Second, President Toole states that negative political attack ads “started to become prevalent in the late 1980s.” I don’t believe that’s accurate. For better or worse, negative political ads (in print and later on TV) have been with us since the beginning of the republic. Supporting John Adams and Thomas Jefferson viciously attacked the other candidate in the critical election of 1800. The election of 1860 contained negative attacks that make modern negative ads seem tame. Republicans accused Grover Cleveland of fathering a child out of wedlock in the election of 1884. The “Daisy Ad” in 1964 suggested that the election of Barry Goldwater would lead to nuclear Armageddon. While the intense blast of media into our daily lives has certainly increased, negative campaigning has been with us for some time.

Bob Howie, Seattle

Civility lessons?

Does civility preclude misusing the Civil Rules to delay justice? Or does the Bar simply define civility as being polite while doing so? The WSBA utilized the civil rules to fight disclosure of employee salaries when the information was requested by a member in the case known as Hiskes v. WSBA. After losing on Summary Judgment the WSBA filed an appeal which essentially had no legal merit. Undaunted, the WSBA forced Mr. Hiskes to respond to the appeal, only dismissing the action when faced with an Appellate Court decision sure to be unfavorable. Bear in mind, the WSBA funded this effort with its members’ money. In addition, the WSBA made a strategic decision and requested certain employees join the lawsuit as named defendants. Upon abandoning the case, the WSBA left its employees in the Court of Appeals without representation. Does this delay, deny and defend policy promote civility in our profession or have we simply adopted that corporate practice as part of business as usual? For those unfamiliar with the case you will find the record in Pierce County and Division II. Mr. Hiskes was never provided an apology or any reimbursement for the time and costs he expended pursuing answers to, what the court found, were legitimate questions. In launching its civility campaign the WSBA needs to be reminded, that, as the old saying goes, charity begins at home.

Lori Haskell, former 7th-Central District governor, Seattle

Let family law practice evolve

I voice opposition to suggestions advanced in the Family Law Special Master article [“Family Law Special Master: Training and Professional Duties for Conflict Resolution with High-Conflict Families,” February 2011 Bar News]. As a mediator, I use Parenting Coaches and have served as a FLSM myself. Availability of professionals has proven quite helpful in the settlement process, in contrast to the support that guardians ad litem and parenting evaluators offer the litigation process.

Before we mindlessly march into labeling the position, certifying it and locking it in — perhaps the thought — by legislation, we need to let the practice evolve. Law schools, CLE courses and the courts now embrace ADR. Collaborative and Cooperative Law offer newer options and they fully avail themselves of and train allied professionals in communication, coaching and child-of-separation specialties. The market supports this growth and evolution. Having taught and attended classes on these, I

(See LETTERS, page 51)
What Makes a Leader?

Philosophers going back to Socrates and Plutarch have pondered the question of the qualities or attributes that make a good leader. There is no easy answer. A simple Internet search of the word “leadership” demonstrates that there are numerous definitions and theories of leadership. A well-accepted, although perhaps simplistic, definition of leadership is “a process whereby an individual influences a group of individuals to achieve a common goal.”¹

Some very famous historical figures have offered other definitions or observations as to leadership or leadership skills. Dwight Eisenhower stated, “Leadership is the art of getting someone else to do something you want done because he wants to do it.” Theodore Roosevelt stated, “The best executive is the one who has sense enough to pick good men to do what he wants done, and self-restraint to keep from meddling with them while they do it.” Henry Kissinger said, “The task of the leader is to get his people from where they are to where they have not been,” and Sam Rayburn said, “You cannot be a leader, and ask other people to follow you, unless you know how to follow, too.”

As for theories as to what makes a good leader, they range from the belief that individuals are born with leadership traits, to the belief that leaders are made, not born. Although I recognize that some people may be so-called “born leaders” and have certain characteristics that could predispose them to being a leader, my experience persuades me that being an effective leader takes more than genes. If you have the desire and willpower, you can become an effective leader. Good leaders develop through a never-ending process of self-study, education, training, and experience.²

By education and training, I am not a philosopher or sociologist or any other type of academician or teacher. I appreciate that better-educated and trained people than I have researched and studied leadership and have come up with theories as to what makes an effective leader. I don’t pretend to be familiar with the myriad of research on this subject. It is not my intent to provide you here with the textbook answers to this age-old debate. I just want to share with you my observations over my life and career.

For those of you who can remember the 1980s, it was a time of human awareness, self-analysis, and attempting to understand the human psyche. Self-help programs were prevalent and people were on a search to better understand not only themselves, but those around them. I participated in several motivational programs, and one of the things we spent a great deal of time looking at were the four personality types: Promoters, Controllers, Analyzers, and Supporters. Most of us are a combination of two or more of these types, having one more dominant than the others. We are all somewhat familiar with personality types, but just as a refresher, here are my definitions:

Promoters are dynamic, often dramatic
individuals who love to have a good time and convince people to go along with them because it is going to be fun and where the action is. If it doesn’t work out, something else can always be tried. They aren’t necessarily the best at following through.

Controllers like to tell people how to do things and can convince anyone, anywhere, to do almost anything. They can complete almost any task by sheer determination. They have excellent powers of persuasion.

Analyzers are great at assessing each and every situation and figuring out the correct way to get something done, but it sometimes takes them a while to complete their analysis and get moving.

Supporters tend to be encouraging of others and go along with the game plan. They don’t rock the boat. They also are nurturing and are great team players. They tend to be very good listeners.

A common belief was that leaders had to have a combination of the Promoter and Controller personalities. Leaders had to be dynamic and high-energy and have the ability to persuade. It was believed by many that this was the way to motivate people; to lead them. I don’t believe this is necessarily true. Leaders possess a wide range of personality traits and come from a variety of diverse backgrounds.

So all of this beats around the bush but doesn’t answer the central question: what are the attributes of a great leader? According to Toole, they center around the ability to get the job done. The most effective leaders have the support and respect of a great many people who want to assist in and be part of the accomplishment of stated goals. A leader can have any one or any combination of the four above described personality styles. There is no “right” or “wrong” personality type. Many of us hang back and tell ourselves we are not leaders because we are not as dynamic or as analytic as someone else, but if the truth were told, sometimes the quiet ones are the most respected and most effective leaders.

Leadership is best determined by the work ethic, heart, and commitment of an individual, combined with genuine respect for others and a willingness to be wrong, admit our mistakes, and learn from them. One can do more to influence and motivate people to action by rolling up his or her sleeves and directly attacking problems. The formula for getting results, especially long-term results, is not to artificially and temporarily promote and manipulate people to action. The way to get results is to be accountable and to lead by example. Don’t ask people to do what you are unwilling to do yourself. Respect the people with whom you are working. Trust them and allow them the room and opportunity to trust themselves. Through your respect and patience, empower them each to be leaders and they will do the right thing. They will both get results themselves and they will lead others into getting results. The synergy will benefit us all.

Leadership is not limited to those serving as CEOs, presidents, chairs, officers, or governors. Leadership is relative to small groups as well as large ones. We have a great need for leaders and leadership, not only in our communities, but in our Bar Association. This leadership role is not limited to high-profile, high-energy people. Any of us who accept that we are accountable for what happens in our lives and who are committed to make a difference have the requisite attributes of a leader. Don’t assume that your actions go unnoticed because you aren’t in a highly visible position. Believe that you are a leader and lead your life with the accountability of a leader. Your actions will be noticed and you will make a difference.
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The days of discretion are gone. Disgruntled employees who once griped to one another now turn to Twitter, Facebook, YouTube, and personal blogs to complain about their jobs. This shift brings new legal risks to employers. Among them, according to the Association of Corporate Counsel, are hostile work

*Three can keep a secret, if two are dead.*
— Benjamin Franklin

By Marc Sanchez
environment and discrimination claims, defamation claims, improper disclosure of confidential information, and damages to an employer’s reputation. Meanwhile, risks identified under new Federal Trade Commission Guidelines include liability for employees endorsing their employer’s services or products through social networks without disclosing the employment relationship. Liability may result, even if the employer did not authorize the comments.

The prevalence of social media in the workplace raises a thorny question: how can an employer monitor the use of social media? And more importantly: when can an employer use that information to take disciplinary action against an employee? The answers depend on when, and often where, the employee uses social media tools.

An Employee’s Right to Privacy on Company Electronic Resources
Public employees should not hold an expectation of privacy in the use of company electronic resources. The United States Supreme Court made that point clear last summer in Ontario v. Quon, 529 F.3d 892 (2010). In Quon, a city police officer exceeded the monthly text allowance on a city pager. The text messages were personal, often lewd, and made both on and off duty. The Court held that Quon maintained a reasonable expectation of privacy in the messages and that the reading of the messages was a search under the Fourth Amendment. The Court, however, further found that the scope of the search — reading of the text messages — was reasonable. The Court grounded its ruling in part in the city’s advance warning that text messages were subject to audit.

Private employees may find privacy protection in state and federal law. Under the common law, if employees can allege intentional intrusion of privacy, then they may have a cause of action for intrusion into their seclusion or solitude. An employer may defend by establishing the employees did not have a reasonable expectation of privacy. The Federal Wiretap Act (1968) and the Electronic Communications Privacy Act (ECPA) of 1986 prohibit intentional interception of electronic communications but make a number of exceptions. It remains unclear how the ECPA applies to e-mail and company e-mail networks. The dearth of case law on any aspect of social media makes practicing in this area challenging.

Meanwhile, the Stored Communications Act (SCA) offers pro-employer case law. The SCA, part of the ECPA, is aimed at preventing public service providers like Yahoo! or Gmail from disclosing the content of private messages. Courts have held that company-owned-and-operated e-mail networks, however, are not subject to the SCA. Courts have distinguished between public and private service providers, holding that the SCA serves as a layer of consumer protection for public service providers only. Thus, the SCA coupled with an express technology-use policy stating e-mails are stored for screening provides a strong case for employer review of company e-mail. Protection of activities outside of company e-mail remains less clear.

State and federal protections of privacy are tempered by Quon. The framework in Quon, finding an audit of text messages reasonable where there is advance warning, remains smart policy for civilian employees. Policies which make it clear that messages on company cell phones, laptops, and computers are not private offer employers the greatest protection.

Advanced warning in a technology-use policy in the employee handbook can go as far as eliminating the attorney-client privilege. A recent California appellate court case illustrates this point. In Holmes v. Petrovich Development Co. (Superior Ct. No. 05AS04356), the plaintiff, Gina
Holmes, claimed she was the victim of sexual harassment and retaliation arising out of her employer’s reaction to her pregnancy. Holmes e-mailed an attorney from work seeking a referral for a lawyer specializing in employment law. In the e-mail she explained the events that unfolded, which formed the basis of her sexual harassment, retaliation, and ultimately constructive discharge claims. When Holmes sued her employer, Petrovich located the e-mails on its computer system and used the e-mails as part of its defense.

The court found Holmes’s e-mails were not privileged under the rules of evidence. The court based its holding on the company’s computer-use policy. The policy stated that employee use of company computers was limited to company business, was monitored, and expressly disclaimed any right to privacy the employee may claim in personal messages. Based on this policy, the court held Holmes’s e-mails to her attorney were not privileged because she used a company computer with knowledge of her employer’s computer-monitoring policy. Simply put, there was no reasonable expectation to privacy. The court analogized the e-mail to “consulting her lawyer in her employer’s conference room, in a loud voice, with the door open....” The case stands for an important lesson — a well-written policy can destroy all expectation of privacy in personal messages, even the attorney-client privilege.

An Employee’s Right to Privacy Off Duty

Employees’ off-the-clock activities are subject to a number of legal considerations. The National Labor Relations Act (NLRA), whistleblower statutes, lawful conduct laws, and communications related to political activities and affiliations are among the hurdles to disciplining employees for off-duty social network communications.

Some states, such as California and Wisconsin, have lawful-conduct laws that protect an employee’s legal off-duty activities. Thus, an employer may not like what it sees on employees’ profiles and blogs but cannot discipline an employee for engaging in lawful activities.

The NLRA is a consideration often overlooked by employers. The NLRA affords employees, even non-unionized ones, the right to engage in “concerted activity,” including the right to discuss, and even criticize, the conditions of their employment with co-workers and outsiders. Thus, an employer must first assess whether the employee en...
gaged in “concerted activity” when they took to Twitter or Facebook to complain before taking any disciplinary action.

Employees may also be protected by whistleblower statutes and by the right to freedom of political speech. Federal and state law affords protection to employees who complain about company conditions affecting public health, safety, and Sarbanes-Oxley violations. Many states also prohibit private employers from regulating the political activities, including communication, of employees. The myriad legal considerations require employers to react slowly to what they discover online. Hasty action could lead to more trouble.

Checking Social Media Before Hiring
Using social media to gather information on applicants opens a Pandora’s box of issues. Accessing social media in the public domain is not per se illegal so long as it does not run afoul of state or federal discrimination laws. Often the problem is in avoiding the appearance of discriminatory use of social-media screening. For example, an employer may inadvertently become aware of a candidate’s protected characteristics such as marital status, sexual orientation, application for bankruptcy, or political activities during a search of social networks. If the applicant is not hired, the employer could face a lawsuit. There is a wide range of protected information an employer should be careful of learning when screening social-media networks.

The law of social media is just emerging, and its application in certain areas remains unclear. For example, the role of social-media screening in a negligent-hiring case has yet to be tested. Employers potentially face a risk of liability for negligent hiring based on employing social-media screening. The principal issue in a negligent-hiring case is whether the employer owed a duty of reasonable care in its hiring and retention of employees. Where such a duty exists, the question becomes whether the employer conducted a reasonable investigation. While the case law has yet to include the screening of social-media sites as part of a reasonable investigation, it may become part of the standard. Until then, it is unclear how a court would react if an employer using social-media screening overlooked or ignored indicia of unfitness.

Employers should develop clear procedures for using social media to screen job applicants. These procedures should avoid the nasty scenario where a manager pretends to be someone else to circumvent an applicant’s privacy settings. It could also be beneficial to have someone who is removed from the decision-making process conduct the search and provide a filtered version of the information collected for the decision-maker to review. A structured process provides better awareness of the risks and threats of using social-media screening.

Policies and Common Sense
There are two basic pieces of advice I give clients about social media: I tell employers to develop clear social-media policies, and I tell employees to exercise common sense when using social-media networks.

Employers should develop clear policies on the use of social media both in and out of the workplace. A social-media policy will vary from business to business; some rely on employees creating social-media profiles, while others merely need a policy akin to a technology-use policy. At a minimum, a social-media policy should state the level of privacy an employee can expect when accessing social-network sites at work, define anti-harassment and appropriate-conduct rules for online interactions in the employee handbook, and create procedures to protect confidential
information. These policies should touch on the gamut of communications — from employees’ messages to friends and other outside parties, to messages among co-workers, to company communications with business partners, vendors, and customers.

A good policy also informs employees of the potential risks of posting to blogs and social networks. This would include reminders that discriminatory, harassing, or defamatory posts, e-mails, or texts are not tolerated. Some studies cite that as many as 70 percent of employees believe it is illegal for their employer to look at their blog or postings on social-networking pages like Facebook. In this environment, it is better not to assume that employees are aware of the rights and risks in using social media. The policy should also state the employer’s expectations for online activities while at work.

Companies that rely more heavily on social media may require more detailed policies. Increasingly, companies are asking employees to maintain a social-media presence — Twitter accounts and Facebook pages, most commonly — as part of their jobs. If the employee adapts his personal page for company use, then a disclaimer on personal posts offers clarity to company clients and customers. The disclaimer can be as simple as, “The following is my personal opinion.” Separate profiles may offer added, and easier, protection. As with other areas in this field, the gap in the case law leads to an overkill approach to protect employers. Given the ease of creating a company profile or implementing a social-media policy, the overkill approach should not be overlooked.

The best advice for employees is to exercise common sense. Reminding employees that what is said online in e-mail, Twitter “tweets,” or status updates is public and permanent can help suppress the urge to say something regrettable. Employees often mistakenly believe use of the Internet provides a cloak of anonymity. It is also important for employees to verify their privacy settings to ensure the public at large cannot view their tweets and status updates. Employees must remember there is a proper time and place for their comments. Judicious use of social media can help them avoid conflicts and possibly litigation.

**Beware of Waiving Policies**
It is important to remind employers to abide by their social-media policies. In *Quon*, the Court noted that the “operational reality” of the workplace led employees to believe that if they paid their overages, their text messages would not be audited — thus creating a reasonable expectation of privacy that destroyed the effect of any notice to the contrary. This is why the Court ruled that the scope was appropriate, not that there was no reasonable expectation of privacy. The actual experience at work increased Quon’s expectation of privacy, despite an express audit policy. This is a “policy-plus” approach used by several appeals courts. For an employer to preserve the protections afforded by a social-media policy, it must be implemented and fully utilized.

Social-media technology offers many benefits to reach consumers and is changing how many companies do business. It should still be seen as a useful tool, but the risks should not be forgotten. Clear policies and common sense will help to ensure the risks are contained while affording employees freedom and privacy.

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Marc Sanchez provides both contract attorney services and representation for small- and medium-sized businesses. He writes for two blogs, one tracking 9th Circuit case law and another focused on developments affecting the food-service industry. He can be reached at www.sanchezmarc.com.

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Arguing a case in the Washington State Supreme Court is stressful. Sometimes, after court, it is soothing to empty the mind and walk. This essay is a short guide to some of the many attractive things to see outside the State Supreme Court building.

Outside the courtroom, in the entry area, torch-like sconces in the wall are held in place by lions 1. Part of the ceiling is mauve, and there is a pattern much like an inverted mushroom forming a frieze around the circumference of the room 2. Balconies between the ground floor and the frieze provide material for the imagination: What are they for? Does anyone use them? The library

on the east side of the building, across from the courtroom, has a lovely, ornate rococo marble molding around the door, a molding so elaborate as to have two cornucopia and an enclosed clock 3, and beautiful insignia in the flat chandeliers. The library has mostly wooden paneling, as befits a law library, with high ceilings, making it lighter and airier than some of the libraries where lawyers toiled before electronic and Internet research.

No matter what the weather, it is pleasant to exit the building, turn left, and walk east, toward the park area, around the building and toward the usually unvisited north side. Leaving the building, the most prominent feature is the row of columns in a spare severe style — no acanthus leaves or sinewy curves here, but rather pyramid shapes reminiscent of Egypt. As one turns left, northbound, huge lovely maples with low muscular branches 4, as serpentine as the law sometimes is, grace the way. But overall, the trees are not burdensome but reminiscent of childhood trees, or perhaps of big, friendly neighborhood trees in books about childhood. This east side of the building, facing Capitol Way and the large park, is noteworthy for undeveloped gardens — does this elicit thoughts about state budgeting? — and the repeated sconce theme, though this time the sconces are without lions!

Following around the building again to the left to the north side, the walk becomes

Washington State Supreme Court Travelogue
Taking a Moment to Explore, Inside and Outside the Temple of Justice

BY ROGER B. LEY

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more interesting. But first it is appropriate to ponder the law enforcement memorial, in honor of officers who died in the line of duty, regardless of what role, if any, law enforcement might have played in the just-past Supreme Court arguments.

There is a vista: a zigzag path down a steep hill, through a park, a view from there of the circular pond called Capitol Lake, and then an isthmus (something most lawyers have never seen) and a view beyond to the outer world, as one sees a bit of the south extreme of Puget Sound. The zigzag path might remind one of the steps that were taken to arrive at the Washington State Supreme Court, because even an emptied mind courses back to argument minutes ago, and that zigzag path might also remind one of how easy it is to start a case in court, or any event in life, and how much it may require to return to the point of beginning. But without more introspection, the path is easy, and there is a mix of nursery plants and wild invaders to admire. Sticker bushes, dandelions, maples with lovely samaras (helicopters), native plants such as blueberries, and spiky grasses struggle and shoulder one another. One could develop metaphors about society, or about order versus chaos, but it isn't necessary, because this walk's purpose is only to soothe, rest, and nourish the mind.

As one descends, the far side of the Court building presents itself as an austere monument whose purpose, in the eyes of its architects and designers, is to impress one with its severity even more so than the spare columns fronting the building. The cupola of that other branch of government is visible over the roof of the Court.

To the right, or east, of the serpentine path are unkempt woods which beckon to some to explore. There are more sticker bushes begging caution of those wearing clothes chosen for arguing in the highest court of Washington. Birds are audible. Beyond that are mysterious buildings whose true
identity can be determined only by reversing the walk and going in a different direction.

At the bottom? Perhaps a young man sits there still, redolent of Kauai, offering marijuana to some who pass by, reminding one again of the impact and importance of Supreme Court decisions. One could walk the circular path and take a cab back to court parking, or admire the ducks in Capitol Lake, or just look at the lake. Most people would turn around and walk back up the hill to the front of the Court building where they started.

This is what I saw. What you see will be different. I hope everyone has a pleasant walk from time to time as they leave the Temple of Justice.

Roger B. Ley graduated from Boston University Law School in 1970, and practiced law in Seattle from 1971 to 2007, with a break during which he worked for the Interior Department in Washington, D.C. He lives in Svensen, Oregon, a rural area east of Astoria across the Columbia River from Washington. (All photos, except as noted, are by Susan Darms.)

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In July 2010, the White House published an ambitious strategy to “undertake a more coordinated national response to the HIV [human immunodeficiency virus] epidemic.”1 While public concern on the issue has waned in recent years, approximately 56,000 people are diagnosed with new HIV infections in the United States each year. The report notes that unless bold actions are taken, the United States faces “a new era of rising infections, greater challenges in serving people living with HIV, and higher health care costs.”2 The Centers for Disease Control and Prevention (CDC) followed in September 2010 with a report that 19 percent of men who have sex with men (MSM) in 21 major U.S. cities were infected with HIV, and nearly half (44 percent) were unaware of their infection.3

The proposed national strategy includes participation by state and local government, people living with HIV, and others.4 The legal community can play a role in helping the United States “become a place where new HIV [or STD] infections are rare.”5

This article outlines current state statutory and common-law principles applied to the transmission of HIV and other sexually transmitted diseases and discusses the inadequacies in current statutory law in achieving the goal of reduction of new HIV infections.

Of course, HIV is just one of many sexually transmitted diseases (STDs). While the devastating health consequences of HIV are well known, the lifelong health impacts of other STDs may be overlooked.6 The legal rights of an individual newly infected with an STD and the legal liability of the person who transmitted the disease are infrequently discussed or litigated in Washington.

Washington law provides civil liability for an individual who knowingly transmits or exposes a sexual partner to an STD. For transmission of HIV, criminal liability may also apply.7 In addition, common-law tort concepts may be used in Washington to hold individuals liable for damages caused by transmission of an STD.

Public health concerns
In 2009, STDs comprised more than 74 percent of communicable diseases or conditions required to be reported to public health authorities in Washington.8 In addition to HIV, well-known reportable STDs are chlamydia, gonorrhea, syphilis, genital herpes simplex, and human papilloma virus.9 Between 2003 and 2007, the Department of Health reported 570 new HIV diagnoses in Washington state per year.10 The actual number of people in Washington living with STDs is likely much higher than reported to the Department of Health. Some STDs have no symptoms, and some produce symptoms that may be mistaken for other conditions. Infected individuals may not seek treatment and may not be tested.

In 1988, responding to emergence of the AIDS epidemic, the Legislature enacted the AIDS Omnibus Act, which became part of RCW 70.24. Provisions of the Act apply to

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Liability for HIV Transmission
What Washington Law Says about HIV and Other Sexually Transmitted Diseases

By June K. Campbell
both HIV and other STDs. Under the Act, both the government and private citizens have the authority to hold individuals legally accountable for activity that places others at risk for exposure to STDs.

Healthcare providers must notify public-health authorities of positive test results for reportable STDs. The required notification includes not only the diagnosis, but also the name, address, telephone number, and date of birth of the infected person. While there are provisions to protect confidentiality, it is not absolute.

State and local health agencies have the authority to examine and counsel individuals reasonably believed to be infected or exposed to an STD. These agencies have the authority to issue orders requiring individuals to submit to testing and counseling as well as restraining conduct, such as sexual contact with others, that could endanger the public. Failure to comply with such orders is a gross misdemeanor. Non-compliance may lead to civil commitment, as dangerous conduct following a cease-and-desist order allows health officers to bring an action in superior court to detain the non-compliant individual.

Washington law requires disclosure of STD status to sexual partners

Under RCW 70.24.140, a person infected with an STD (other than HIV), confirmed by laboratory testing, is legally required to disclose his or her status to a new partner before engaging in sexual intercourse with that person. An aggrieved person has a right of action in superior court and can obtain the greater of actual damages or $1,000 for any negligent violation, or the greater of actual damages or $10,000 for each intentional or reckless violation. Additional damages include attorney fees, costs, or other relief (such as an injunction), as the court may deem appropriate. RCW 70.24.140 does not require that an aggrieved person actually become infected as a result of the sexual contact; the lack of disclosure is the violation.

By mandating disclosure before sexual contact, RCW 70.24.140 is similar to the common-law concept of battery. RCW 70.24.084 encourages an infected individual to disclose his or her status, thus providing a prospective new sexual partner the options of either not engaging in sexual contact with the infected individual at all or taking precautions to avoid becoming infected.

Shortcomings of RCW 70.24.140

However well-intended RCW 70.24.140 might be, it is not likely to achieve the goal of preventing STD transmission. First, HIV is specifically exempted from the disclosure requirements. This exclusion is inconsistent with the legislative purpose of the AIDS Omnibus Act, and was not contained in the original version of the Act in the Senate. However, HIV became specifically excluded from RCW 70.24.140 at the time of adoption. In 1988, there were few treatments for HIV. At that time, the medical community believed that legally requiring HIV disclosure might not only discourage people from seeking HIV counseling and testing but increase discrimination against those carrying the disease. Because the chapter places emphasis on confidentiality and counseling, "it was assumed a greater societal good could be accomplished by excluding HIV from the disclosure requirement." Other professionals believed that "it was prudent for all persons to assume their partner might be HIV-infected, and therefore up to them to protect themselves."

These rationales are arguably no longer appropriate. Better treatments have led to steady increases in the number of people who are living with HIV/AIDS. Current treatments can "lower the amount of the virus circulating in a person's body, thereby reducing their risk of transmitting HIV to others." Because early treatment is more
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Criminal liability for transmission of HIV

The disparate treatment of HIV and other STDs is not confined to RCW 70.24.140. A person infected with HIV can be guilty of a felony assault in certain situations for transmitting the virus. A person who “administers, exposes, or transmits to, or causes to be taken by another person … the human immunodeficiency virus” is guilty of assault in the first degree if the virus is transmitted with the intent to inflict great bodily harm. Individuals responsible for transmission of other STDs are not subject to felony assault charges. The distinction has been upheld.

However, data from the Centers for Disease Control and other studies have shown that intentional HIV transmission is atypical and uncommon. A recent study concluded that HIV-specific laws “do not influence the behavior or people living with HIV” in those states where HIV laws exist. Criminal laws may even “make people less willing to disclose their status by making people feel at even greater risk of discrimination.” Thus, the exclusion of HIV from RCW 70.24.140 is not ameliorated by the existence of a criminal law making intentional transmission of HIV a felony. HIV transmission is more likely to be reduced by promoting knowledge between partners before contact than by the effective, individuals at risk for HIV also benefit from early testing. Disclosure of HIV status allows potential sexual partners to make choices to limit the risk of contracting HIV themselves. One Regional AIDS Service Network, established under the Omnibus Act, has found the exclusion unreasonable, “contrary to public health recommendations, as well as common sense.”
threat of criminal prosecution after the conduct has occurred. Although the criminal statute may satisfy notions of retributive justice, legislators should "reconsider whether existing laws continue to further the public interest and public health."40

Common-law theories of liability
Individuals who infect others with STDs may be liable to their partners under common-law tort theories. Courts in other states have recognized causes of actions based on theories of battery, negligence, fraud or misrepresentation, and intentional infliction of emotional distress.41 These common-law remedies are available to both unmarried and married partners.42

Under a negligence theory, the elements of duty and breach are established by showing that the defendant knew or should have known that he or she was infected with an STD that could be transmitted to a new sexual partner, and failed to disclose such STD to the new partner. A defendant’s lack of knowledge of his or her STD status typically poses a bar to recovery under common-law theories of negligence and battery.43 Similarly, in cases alleging intentional infliction of emotional distress, liability often hinges on the defendant’s knowledge of the infection.44

However, knowledge does not necessarily mean that a person must have a medically confirmed STD. Individuals who engage in sexual contact with others have a duty to not act carelessly in a way that could transmit an STD, such as failing to seek treatment for obvious symptoms of an STD.45 In a Minnesota case, the court held that “the careless failure to recognize an outbreak, or the careless failure to inform a partner about such a possibility can be considered conduct below the acceptable standard.”46

In situations where a defendant is without symptoms or knowledge of exposure to an STD, a legal duty is less clear. For instance, one court has stated that there is no duty to warn a sexual partner merely because the individual is a member of a high-risk group.47 The minimum level of knowledge required to have a duty is either actual knowledge of the STD, having symptoms associated with the STD, or actual knowledge that a prior partner was diagnosed with the STD.48 In fact, a Washington court has held in a negligent infliction of emotional distress case related to STD exposure that a person has no legal duty to his or her spouse to disclose extramarital sexual relations.49

Also, a plaintiff must show proximate causation, which may be the most difficult
element in such cases. Because individuals may be carriers of some STDs without having symptoms, a plaintiff may have acquired the STD at issue before the subject sexual contact. STD testing also typically does not determine when an individual contracted the STD. In fact, due to the range of incubation periods needed to trigger positive results, even a plaintiff’s prior negative test results may not be sufficient. As a result, the plaintiff’s prior sexual and medical history is usually at issue in cases involving STD transmission. The privacy of the parties to the action, as well as prior sexual partners of both parties, may not be protected.

On the other hand, a defendant in such a case will have an uphill battle arguing that the plaintiff consented to the sexual contact and therefore there should be no liability. For instance, courts have rejected defenses of consent in situations in which individuals engaged in consensual unprotected sexual contact without informing their sexual partners of their HIV status.

A higher standard of liability?
With widespread dissemination of information concerning the risks of transmission of STDs in sexual education classes at multiple grade levels and in private and public medical clinics, a higher standard of liability for those who know they are at high risk of having an STD may now be more appropriate. Extending constructive knowledge to cover individuals who engage in high-risk behavior could encourage more testing and disclosure to new partners, reducing transmission of STDs. In fact, some suggest going even further, adopting strict liability for STD transmission to others.

One of the challenges mentioned in the 2010 White House report is reducing the number of people living with HIV who are unaware of their status. Studies have estimated that 21 percent of people with HIV are unaware of their status, and that those who are unaware of their status are more likely to engage in risky behaviors associated with HIV transmission. Since 2006, the CDC has recommended that screening for HIV infection be performed routinely for all patients ages 13–64 in all healthcare settings. Developing a stricter standard of tort liability may therefore have a beneficial impact of increasing testing while decreasing risky behavior.

Sexual health education curriculum
Without knowledge of the legal responsibilities and rights associated with sexual contact in Washington, the provisions of the AIDS Omnibus Act are unlikely to be effective in reducing the transmission of STDs. If individuals are not aware of the criminal and civil liability for transmitting an STD, the law cannot effectively deter risky behavior.

Although Washington has placed a high emphasis on sexual education, sexual health education requirements do not currently include education concerning legal duties of disclosure of STD status or legal consequences of transmitting a STD to others. HIV education is “limited to the discussion of the life-threatening dangers of the disease, its spread, and prevention.” Under the mandatory 2005 Guidelines for Sexual Health Information and Disease Prevention adopted under the Healthy Youth Act, there is no mention of educational requirements concerning the legal consequences associated with transmitting or exposing a partner to an STD. Although sexual health education may vary by districts and might include some coverage of this issue, a statewide policy curriculum may be better suited to ensure that students in Washington receive information about the legal consequences of failure to disclose STD status and transmission of STDs.

Education about STD laws could encourage more testing and more disclosure of STD status as individuals learn that they have a legal obligation to disclose the information and risk potential liability if
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they fail to do so. Further, individuals could have more confidence to inquire about their partners’ status, knowing that they have a legal right to the information. As stated in the White House report, success depends on the commitment of all parts of society, including the legal community, to truly achieve a society where new HIV/STD infections are rare.

June K. Campbell is a shareholder at Lane Powell PC in Seattle. Her litigation practice includes representation of healthcare providers in personal injury matters. She can be reached at campbellj@lanepowell.com.

NOTES
2. Id.
5. Id.
7. See RCW 70.24.015 et seq.; RCW 9A.36.011(b).
9. RCW 70.24.017(13).
11. RCW 70.24.017 (13) (“Sexually transmitted disease’ means a bacterial, viral, fungal, or parasitic disease, determined by the board by rule to be sexually transmitted, to be a threat to the public health and welfare, and to be a disease for which a legitimate public interest will be served by providing for regulation and treatment. The board shall designate chancre, gonorrhea, granuloma inguinale, lymphogranuloma venereum, genital herpes simplex, chlamydia, non-gonococcal urethritis (NGU), trachomatis, genital human papilloma virus infection, syphilis, acquired immunodeficiency syndrome (AIDS), and human immunodeficiency virus (HIV) infection as sexually transmitted diseases, and shall consider the recommendations and classifications of the centers for disease control and other nationally recognized medical authorities in designating other diseases as sexually transmitted.”).
15. RCW 70.24.024(1).
16. RCW 70.24.024(3); For example, see State v. Whitfield, 132 Wn. App. 878, 134 P.3d 1203 (2006) review denied, State v. Whitfield, 139 Wn.2d 1012, 154 P.3d 919 (2007) in which the board issued a cease and desist order to a person who was HIV-positive requiring him to submit names and information about all of his sexual partners to the Health Department, not engage in any activity that might involve exchange of vaginal fluid or semen, and to inform all of his sexual partners that they may have been exposed to HIV.
17. RCW 70.24.080.
18. RCW 70.24.034(1).
19. RCW 70.24.140 ("It is unlawful for any person who has a sexually transmitted disease, except HIV infection, when such person knows he or she is infected with such a disease and when such person has been informed that he or she...")
may communicate the disease to another person through sexual intercourse, to have sexual intercourse with any other person, unless such other person has been informed of the presence of the sexually transmitted disease.

RCW 70.24.050 ("Diagnosis of a sexually transmitted disease in every instance must be confirmed by laboratory tests or examinations in a laboratory approved or conducted in accordance with procedures and such other requirements as may be established by the [Board of Health].").

RCW 70.24.084.

Id.


See RCW 70.24.140.

See Thirty-Sixth Day, Washington Journal of the Senate, Fiftieth Legislature, 485 (1988); In fact, Senator Talmadge in proposing the amendment to the criminal assault statute to include HIV transmission, discussed how this amendment was to deal with the transmission of HIV virus "where somebody, for example, introduces the AIDS virus into blood with knowledge that it was going to be injected into another person." Id. at 483. In his opinion, it was "the next section ... [RCW 70.24.140]. [that] deals with the circumstances where someone transmits [HIV] through sexual intercourse." Id. 483-484 (emphasis added).


Id.

Id.

Id.

Supra n. 10.


See RCW 70.24.400; For more information regarding the six regional Aidsnet Councils, visit the Department of Health Website on HIV prevention, available at www.doh.wa.gov/cfh/hiv/prevention/aidsnets/default.htm.

Aidsnet Council, supra n. 25.

For information regarding the time period for symptoms of various STDs to develop, see Department of Health and Human Services, Center for Disease Control and Prevention Fact Sheets available at www.cdc.gov/std/default.htm.

For instance, STDs have a range of window periods in which a person can be infected but not test positive. These periods range from a couple of days to as long as six months. For information regarding the incubation period of specific STDs, see BC Centre for Disease Control, available at www.stdresource.com/concern/c1_d_3_a.php.

5. RCW 9A.36.011(b).


Id. (citing Horvarth, K.J., Weinmeyer, R., Rosser, S., "An examination of attitudes among US men who have sex with men and the impact of state laws" AIDS Care, 2010 (in press)).

Id. at 36–37.

Id.

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43. See, e.g., Turcotte, supra n. 41 at 269 (“Where plaintiff cannot prove medical diagnosis of HIV prior to the defendant’s actions, he or she must prove the defendant had knowledge of the infection. If the plaintiff is unable to meet this burden, an action for battery arising from the transmission of HIV may not be maintained”) (footnotes omitted).

44. Turcotte, supra n. 41 at 272 (“Without knowledge of infection, it cannot be shown that the defendant’s conduct was substantially certain to inflict severe emotional distress.”).


46. Id.; See, e.g., M.M.D. v. B.L.G., 467 N.W.2d 645 (Minn. Ct. App. 1991) (finding plaintiff had a legal duty to warn his sexual partner about possible infection with genital herpes, supporting a cause of action for the negligent transmission of genital herpes, even though plaintiff did not have medical confirmation that he had contracted the disease, where he had recurring genital sores and a medical evaluation that the sores might in fact be herpes).


48. Id. at 1391; However, evidence of high-risk activities may still be legally relevant to establishing liability. Id. at 1395 (“For instance, if defendant had unprotected sexual contact with multiple partners . . . and suffered symptoms related to the HIV virus that could be construed as “common maladies” (e.g., headaches, nondescript spots on body, weakness and fatigue, shingles, etc.), then this Court would find that defendant did in fact have a duty to act as a reasonable person under the circumstances, e.g., go to a medical professional, have an HIV virus test, refrain from sexual activity, warn sex partners, wear a condom during sexual contact, etc.”).

49. In re Marriage of J.T., 77 Wn. App. 361, 365 891 P.2d 729 (1995). In in re Marriage of J.T., the spouse did not contract HIV from her spouse, basing her negligence claim on the fear that she would contract HIV following her spouse’s extramarital relationship. Id. at 362.

50. “[T]o survive summary judgment, the plaintiff’s showing of proximate cause must be based on more than mere conjecture or speculation.” Miller v. Likins, 109 Wn. App. 140, 145, 34 P.3d 835 (2001).

51. See, e.g., Judd v. Rodman, 105 F.3d 1339 (11th Cir. 2007) (evidence of plaintiff’s prior sexual history.
employment as a nude dancer, and breast augmentation surgery was substantially more probative than prejudicial and did not constitute reversible error).

52. See Whitfield, 132 Wn. App. at 899 (ruling that the defendant was not permitted to raise the defense of consent where he engaged in consensual unprotected sex without informing his sexual partner that he was HIV-positive; see also United States v. Johnson, 27 M.J. 798, 803–804 (1988)) (same); Kathleen K. v. Robert B., 150 Cal. App.3d 992, 198 Cal. Rptr. 273, 276–277 (2d Dist.1984) (in tortuous transmission of genital herpes, any possible consent is vitiated by fraudulent concealment).

53. Turcotte, supra n. 41 at 300 (“The standard of when it should be reasonable for an individual to have constructive knowledge of his or her HIV infection should be extended beyond those people who have a medical diagnosis in fact. The standard should encompass those who have information that they do not share with their partners, such as the knowledge that they have engaged in high risk behavior in the past, or continue to do so.”).

54. Id.


56. www.cdc.gov/mmwr/preview/mmwrhtml/rr5514a1.htm.


58. See RCW 70.24.220; see also RCW 28A.230.070 (AIDS education requirements in public schools); RCW 70.24.240–250. In addition, in 2007, the Healthy Youth Act was passed, ensuring that sexual health education is taught in a medically and scientifically accurate manner. RCW 28A.300.475. Schools must balance the requirements of both the Healthy Youth Act and the AIDS Omnibus Act in educating youth about sexual health. See www.k12.wa.us/hivsexualhealth/faq.aspx#11. For a comparison of the requirements of the Healthy Youth Act and the Aid Omnibus act, see Office of the Superintendent of Public School Instruction Website, available at www.k12.wa.us/hivsexualhealth/pubdocs/comparinghyaandaidsomnibus.pdf.

59. RCW 28A.230.070.

60. RCW 28A.300.475.

61. Washington is generally a local control state. While the State Board of Education plays a role in establishing educational policies, local school districts are in charge of the instructional programs for their schools.
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Too Good to Be True?

Combining Wine and the Law — for a Living

BY VIRGINIA NICHOLSON

Many of us like to drink wine. Some of us love wine. Then there are those of us whose love of wine has blossomed into an interest in how it is made, distributed, and enjoyed. For this last group, this article explores two different paths to follow: (a) starting your own winery (preferably legally themed), or (b) focusing your practice on the wine industry. Luckily, we live in a state with an abundance of vineyards and wineries that produce high-quality grapes and excellent wines, providing opportunities along either path.

Option 1: Making your own wine.

Greg Lipsker, one of the attorneys-turned-winemakers of Spokane’s Barrister Winery, maker of Rough Justice red blend, was kind enough to share his story with this author. Lipsker was a business-law attorney in private practice in Spokane. His Barrister Winery partner, Michael White, served as general counsel to Hecla Mining Company in Coeur d’Alene, Idaho. Their wine careers started with a simple oversight. On a vacation trip in 1997, Lipsker, White, and their wives realized they had made a big mistake — they’d forgotten the wine. They stopped at a local wine shop, discovered that the shop sold wine-making supplies instead of the final product, and gamely bought a five-gallon Zinfandel wine-making kit.

Lipsker’s interest in wine developed back in 1972 after taking a wine-appreciation class from Myles Anderson at Gonzaga University. Lipsker later helped Anderson do the legal work to establish Walla Walla Vintners. When Lipsker and White got tired of making their five gallons of Zinfandel from juice, Lipsker called Anderson and asked if they could purchase some grapes. The next thing they knew, Lipsker and White were using the same cabernet sauvignon grapes used by Walla Walla Vintners and Leonetti Cellars to make their homemade wine in Lipsker’s garage.

By 2000, their homegrown operation had nearly outgrown the house. They were crushing a ton-and-a-half of grapes in Lipsker’s garage, yielding close to 100 cases of wine. This was a bit more than either they or their many friends could consume ("although we did try our hardest," notes Lipsker). The problem with giving wine away to their friends was that they never knew if the wine was really good — or if everybody was just being nice. They sent off four bottles to the Indy International Wine Competition to find out. Their friends weren’t kidding: Lipsker and White received three gold medals and one silver medal. Being business lawyers, the two carefully scribbled a business plan on the back of a napkin and they were off.

While Lipsker is very happy with his career direction, he emphasized that it is a labor of love. Owning a winery is not just about making wine — it is a small business. There are many hats a winery owner/vintner must wear: manufacturing, sales and marketing, employer, and issues regarding state and federal regulations. It is a lot of hard work.

Option 2: Practicing wine law.

For those not ready to take the plunge to open their own winery, a practice dedicated to wine law is an option. A practice focused on wine law encompasses many different areas of legal expertise, and centers on the business issues wineries face. Three such areas are intellectual property, label regulation, and business regulation.

Winery owners should consider trademark protection for brand name, entity name, domain name, and the operating trade name. Usually, this entails federal and/or state protection, and generally, one must file in every country where protection is desired. In addition, wine labels might contain a photograph or print that requires copyright protection.

Labels for wine sold in the United States are regulated within a division of the Department of the Treasury. All wine labels must be approved by the Alcohol and Tobacco Tax and Trade Bureau. The five general requirements for wine labels are:

1. Brand name;
2. Class (i.e., table wine, sparkling wine, etc.). A distinctive or fanciful name is permitted. Appellation (grape growing region) is required when using a varietal name (such as Meiritage) or generic term (Chablis), or if the wine is vintage dated;

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3. Alcohol content;  
4. Who and where bottled; and  
5. Quantity of contents.

There are also wine-industry-specific business regulations and transactions. Wineries are complex businesses, and federal and state regulations can be perplexing. Complicating the issues are the various ways a winery can be structured. For example, there are at least three business models for wine producers. The first is a traditional winery, which involves a wine producer who establishes her own winery and produces her own wine.

For many aspiring wine producers, the necessary start-up costs of a traditional winery are prohibitive. A business model requiring less capital is called the alternating proprietorship model. In this model, the producer uses equipment and resources of an already established winery. In the third model, wine is produced at an already established winery by that winery. This model is called a custom crush.

All three models are viable alternatives for wine producers. Each model comes with its own set of business formation concerns, federal and state licensing requirements, and bond and insurance requirements. In addition, each winery is faced with the usual business decisions shared by all businesses: proper legal structure, state and federal taxation issues, and business-succession plans.

**Getting started in wine law.** There are large firms with thriving wine law practices, but if you do not happen to be one of those lawyers at one of those firms, there is no need for despair. Here are some tips, gleaned from discussions with Lipsker and other winery owners, for attorneys new to the practice:

1. Put yourself in the path of opportunity. Visit wineries! Most are small, so you have excellent opportunities to meet the owner and/or vintner. Taste, ask questions, and learn about the wine and the process. Although many small wineries likely have a small-to-no-budget for legal issues, you can find excellent ways to help them attain their business goals if you offer sliding-scale fees (or work pro bono).  
2. Have an understanding of the issues and challenges facing a small business.  
3. Familiarize yourself with the wine industry. Check out the websites of the Washington Wine Industry Foundation (www.washingtonwinefoundation.org); the Washington Association of Wine Grape Growers (www.wawgg.org); and the Washington Wine Commission (www.washingtonwine.org) as a starting place. To learn more about the legislative issues facing the wine industry, check out the Washington Wine Institute (www.washingtonwineinstitute.org).

The best step to take to get your foot in the door is something you are probably already doing and enjoying — visiting wineries, tasting wine, and learning what you can about the wine industry. Isn’t that a great marketing plan? While you are out there, stop by and taste Barrister Winery’s award-winning Cabernet Franc and, of course, the Rough Justice, named with a nod to their former profession. Barrister Winery is located in Spokane at 1213 West Railroad Avenue.

Virginia Nicholson is an attorney at Schwabe, Williamson & Wyatt’s Seattle office. She is a commercial litigator and wine enthusiast. She can be reached at vnicholson@schwabe.com.
Civility Is Good for Your Health

BY CYNTHIA L. ALEXANDER AND G. ANDREW H. BENJAMIN

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Civility, an ancient value rooted in classical philosophy, is about more than simple courtesy and good manners. In its broad classical sense, civility is about good citizenship and about consciousness regarding how our actions affect the larger community. Chief Justice Warren Burger suggested in a 1971 address that civilization itself is at stake:

With passing time I am developing a deep conviction as to the necessity for civility if we are to keep the jungle from closing in on us and taking over all that the hand and brain of Man has created in thousands of years. . . . [C]ivility . . . is really the very glue that keeps an organized society from flying apart.

A greater consciousness about how our behavior affects others and ourselves will lead to greater civility. As one 20th-century philosopher, Dr. Seuss, noted, “Unless someone like you cares a whole awful lot, nothing is going to get better. It’s not.” A more classical philosopher, Marcus Aurelius Antoninus, in a compelling call to action, stated, “Waste no more time arguing about what a good person should be. Be one.”

The specific rules by which civility operates may vary depending on cultural social norms, but they operate across cultures to facilitate the smooth functioning of society. That civility benefits the community at large is readily apparent, but does the practice of civility also advantage each individual biopsychosocially?

There is growing evidence that incivility is associated with a wide range of risks to both mental and physical health. It is no secret that the legal profession has more than its share of job dissatisfaction, depression, alcohol and drug abuse, and divorce. Research suggests that the incivility that seems to pervade the profession plays a role.

Investigators have begun studying the prevalence and effects of general incivility in the workplace, and have found that it is associated with job dissatisfaction, psychological distress, poorer mental health, and poorer physical health, and that these negative outcomes cannot be explained solely by the presence of job stress. A large survey focused on attorneys practicing in federal courts found that rudeness and disrespect were rampant, with two-thirds of survey respondents reporting that they had experienced general incivility. The study found that job satisfaction decreased and job stress increased as the frequency of mistreatment by others increased, and, perhaps unsurprisingly, that attorneys with the least job satisfaction and most job stress were most likely to consider leaving federal law practice. We believe that incivility in other practice areas would contribute to similar results. A nationwide longitudinal random sampling of lawyers by the American Bar Association (ABA) showed that most lawyers—whether they worked in private, corporate, or government practices—felt increasing dissatisfaction with their practices. After following the lawyers for six years, the ABA documented that only 29 percent were very satisfied (compared with 40 percent at the baseline data collection point). Dissatisfaction grew significantly for this sample of lawyers and prevailed throughout the profession, regardless of the type of practice.

Moreover, incivility can have detrimental consequences that are not so immediately noticeable. Studies have shown that experiencing rudeness adversely affects cognitive processing, working memory, and creativity, and thus interferes with performance. One need not even be the target of incivility to experience these effects; the mere witnessing of rude behavior can reduce performance, creativity, and citizenship behaviors, increase aggressive thoughts, and cause observers to become less concerned for others’ welfare.

The harm caused by incivility is not limited to mental health or subjective well-being; it can also affect physical health in profound ways. It is now well-established that anger, hostility, and aggression are linked to increased risk of cardiovascular disease in men. In a study that followed University of North Carolina law students as lawyers for 30 years, those law students with significantly elevated levels of hostility were far more likely to have died prematurely from cardiovascular disease. The burgeoning field of psychoneuroimmunology is investigating the relationship between our emotions and our immune system functioning. This research is finding growing evidence that negative emotions including depression, anxiety, and anger can have substantial detrimental effects on the immune system, which in turn can increase risks associated with infectious disease, cancer,
Cynthia L. Alexander was a trial attorney with the Civil Division of the U.S. Department of Justice in Washington, D.C., from 1993 to 2010, where she represented the United States in a wide variety of civil cases and had the opportunity to learn firsthand why many consider “civil litigation” an oxymoron. She is currently completing the requirements for her Ph.D. in clinical psychology with a year-long internship at the VA Puget Sound Healthcare System, Seattle Division, and has a particular interest in integrating her training in law and psychology to improve access to healthcare in this country and in the developing world.

While working with families engaged in high-conflict litigation and lawyers suffering from various mental-health and drug-abuse problems, G. Andrew H. Benjamin was named “Professional of the Year” by the WSBA Fam-ily Law Section. He was elected to serve as president of the Washington State Psychological Association and later his colleagues there created an Association award named after him for “outstanding and tireless contributions.” He was honored by the Puyallup Indian Nation’s Health Authority for serving as a “modern-day warrior fighting the mental illnesses, drug-alcohol addictions” of the people served by the Nation’s program. Dr. Benjamin has published 57 peer-reviewed articles in Psychology, Law, and psychiatry journals. He is the author of three books published by APA: Law and Mental Health Professionals (1995, 1998); Family Evaluation in Custody Litigation: Reducing Risks of Ethical Infractions and Malpractice (2003); and The Duty to Protect: Ethical, Legal, and Professional Considerations for Mental Health Professionals (2009).

NOTES
NEW WSAJ Civil Rights Deskbook

We are very excited about the upcoming release of WSAJ’s Civil Rights Deskbook, and wanted to give you a glimpse of all that this amazing resource has to offer.

The WSAJ’s Civil Rights Deskbook will provide attorneys with any level of experience a valuable tool to consult in all stages of litigation. Pull the book off the shelf, when a client comes in to make sure you have a case. And, once your complaint is on file, refer to the deskbook when responding to motions and preparing for trial.

The WSAJ Civil Rights Deskbook includes chapters in all areas of civil rights: Discrimination in Public Accommodation, Housing Discrimination, Voting Rights, Education/IDEA Act, Police Misconduct, Prisoners’ Rights, 1st Amendment, FOIA/PRA, Immunities, and Attorneys’ Fees. All of the authors are experts in their fields and offer valuable insights into this dynamic practice area.

The Deskbook will be released at the Civil Rights Deskbook CLE kick-off event, held on May 27, 2011.

As a WSAJ member, enjoy a significant discount on this or other publications essential to all plaintiff lawyers, such as the Motor Vehicle Litigation Deskbook, A Day with Paul Stritmatter, A Day with Gerry Spence & Paul Luvera, and many more.

To join WSAJ: Go to www.WashingtonJustice.org or call 206.464.1011.
Options from Group Health offer four plans to meet the needs of a wide range of Bar Association members, from large firms to sole proprietorships. Options is a new approach to HMO products and is designed for flexibility and affordability—three of the four Options plans allow you to use the provider of your choice. Options plans offer online services that can save time and money such as same day appointment scheduling, test results, pharmacy services and direct e-mail communications with your doctor.

Contact Natasha Kunz at 206/695/3150 or Natasha.Kunz@kpcom.com to discuss how you can take advantage of this offer today, to make sure you’re covered tomorrow.
The Board’s Work

WSBA Board of Governors Meeting, January 27, 2011 Olympia

Bar Exam
After more than a year of study and debate, the WSBA Board of Governors voted at its January 27 meeting in Olympia to replace the state’s all-essay bar exam with the Uniform Bar Exam (UBE) developed by the National Conference of Bar Examiners (NCBE). Along with the UBE, Washington will administer the Multistate Professional Responsibility Exam (MPRE) and create an online learning component and multiple-choice test covering Indian law and legal areas in which Washington law differs significantly from that of other jurisdictions. The UBE and MPRE will be used in Washington beginning with the July 2013 exam. The Washington-specific component of the test will be developed in the interim and continually evaluated for its effectiveness in testing lawyer competency.

Third District Governor Loren Etnegoff, who brought the motion to adopt the new exam, touted its perceived advantages over the existing Washington exam, including its anticipated “portability” and potential lower cost of administration. He noted that the current exam has no portability. The UBE will be portable in the sense that examinees who take it in one jurisdiction but apply for bar membership in another that uses it can receive credit for the score from the first jurisdiction rather than retaking the exam. However, each state will be allowed to set its own passing score for the UBE and requirements for additional testing.

In debating the bar exam issue at prior meetings, several BOG members voiced skepticism of the UBE because statistical studies showed that previous uniform exams resulted in demonstrably lower scores for minority examinees. However, subsequent analysis of Washington bar exams showed similarly disparate results. Representatives of the NCBE, which created the UBE and its predecessor exams, appeared before the BOG to defend the fairness of the exams and argue that ethnic disparities result from factors encountered by students throughout their lives and academic careers, not from the bar examination process.

Missouri and North Dakota were the only states to have adopted the UBE before Washington, and since the BOG meeting, Alabama also has adopted the UBE and Nebraska has agreed to accept UBE scores in its admission process. However, most observers expect numerous other states to follow soon. The two-and-a-half years remaining before Washington begins administering the new exam is meant to allow law schools, applicants, and bar exam preparation course developers sufficient time to adapt to the new format.

Representatives of the state’s three law schools supported the change to the uniform exam, generally feeling that the portability of the new exam gives law school graduates greater flexibility in planning their careers. With the economic recession still limiting legal employment, Washington law students need the ability to apply for bar membership and jobs in other states if necessary, they maintained. Meanwhile, Sixth District Governor Patrick Palace noted that Washington’s bar has a large “baby boomer”
population that will be retiring within the next several years. Although a seemingly incongruous notion today, it is plausible that Washington will eventually experience a lawyer “gap,” he said. In that case, Washington's use of the UBE will make it easier to attract bar applicants who have taken the UBE elsewhere, Palace added.

The UBE, which includes multiple-choice, essay, and performance formats, is a multi-state test created by the not-for-profit NCBE. The organization is promoting the UBE to state bar authorities across the country as a successor to previous uniform exams. The UBE has three sections: the Multistate Essay Examination (MEE); Multistate Performance Test (MPT); and Multistate Bar Examination (MBE). The UBE is administered over two days. The MPRE, which tests applicants' knowledge of professional responsibility rules, is administered separately by a different testing organization three times a year.

Although Washington will be using a nationally distributed uniform exam as its main testing instrument, State Bar authorities will retain full control over admission to practice law. They will still decide who may sit for the bar exam and continue to make all character and fitness decisions. State examiners will score the essay and performance portions of the exam, and they will prepare and score the Washington-specific and Indian law components.

The BOG motion to adopt the new exam passed 12–0 with two abstentions (Governors Tracy Flood and Philip Buri). Some BOG members supported the new exam format but still voiced reservations about the UBE. Governor at-Large Anthony Gipe said he remained skeptical that the NCBE will adequately address the discriminatory results seen in current uniform exams and questioned whether portability is necessarily good for the existing Washington Bar. He cast doubt on the notion that the state will face a lawyer shortage and argued that the portability of the UBE might actually draw too many lawyers from elsewhere to Washington, exacerbating the already high level of unemployment and under-employment in the profession.

Like other BOG members, District 4 Governor Leland Kerr praised the state Board of Bar Examiners, whose members spend extraordinary amounts of time creating and scoring the test each year. But he agreed that the existing exam doesn’t fit with modern means of testing, is cumbersome to administer, and is open to claims of inconsistency because its content changes completely every exam.

**Governance Committee**

Also at the January meeting, the BOG conducted its first discussion regarding recommendations drafted by the Governance Committee, which had been created by the Board in September 2010 at the suggestion of President Steven Toole.

The committee arrived at four recommendations: 1) suspend the four-year geographic rotation system used for election of the WSBA president-elect/president; 2) retain the limit restricting governors to a single three-year term on the Board; 3) allow sitting governors to run for WSBA president, but discourage a run for president in a governor's first or second year of service; and 4) when a governor departs the Board mid-term, leave replacement of the governor in the complete discretion of the BOG, rather than requiring that the position be filled by another governor with the same constituency.

The proposal regarding the geographic rotation system for president-elect/president prompted the most debate among BOG members. Under the existing system, nominees for president-elect/president must be from a specified geographic area, which rotates in a four-year cycle: 1) west of the Cascades but outside King County, 2) within King County, 3) east of the Cascades, and 4) again within King County. Under the committee's proposal, this system would be suspended for a five-year trial beginning in 2012, with the BOG to reconsider the issue in 2016. During that period, any active WSBA member could seek nomination for president regardless of residence.

The three Governance Committee members representing Eastern Washington initially favored suspension of the geographic rotation but later withdrew their support, leaving the committee split on the issue. At the BOG meeting, governors from eastern Washington — as well as other meeting participants from both sides of the mountains — argued that guaranteeing a president from the eastern side every four years is critical for Bar members there to feel they have a full stake in WSBA. But other governors countered that requiring an eastern Washington president every four years decreases overall diversity in the position because it shuts out the majority of the Bar population for that year, including members of tradi-
nationally under-represented groups, more of whom live in western Washington.

WSBA Executive Director Paula Littlewood noted that under the current system, a candidate from eastern Washington or western Washington outside King County who loses an election for president-elect/president must wait four years to run again. A WSBA member may not stay interested in the position that long, she said, meaning the organization loses well-qualified people from the pool of nominees. Littlewood added that despite popular perception, it is often more difficult to recruit candidates in King County than in the other regions. The BOG did not vote on the proposals at the January meeting and is expected to debate them further.

Diversity Study
In other business at the January meeting, Chach Duarte White, WSBA diversity program manager, advised the BOG that the request for proposals regarding a WSBA membership study was expected to be published in February. WSBA is soliciting proposals from individuals and organizations to help plan, develop, and implement a comprehensive membership study, with specific focus on composition and retention of WSBA membership with regard to diverse attorneys.

LOMAP
Also at the January meeting, the Board received a report from Peter Roberts, manager of the WSBA Law Office Management Assistance Program, which offers low-cost help to WSBA members, including education and advice regarding all areas of office and career management. Roberts noted that, since 2001, the number of WSBA members over 60 years old has increased by 309 percent. Consequently, LOMAP is offering additional services to help senior lawyers transition out of their careers and plan for succession of their practices, if necessary. He also noted that the economic recession has led the program to broaden its services to provide additional help for lawyers seeking to start their own practices or small firms, after losing their jobs with larger firms that have downsized.

Civil Litigation Cost Task Force
In further action at the January meeting, the BOG approved a charter for the Task Force on the Escalating Cost of Civil Litigation. Seattle attorney and former BOG member Russ Aoki will chair the group, which is to assess the costs of civil litigation in the Washington state courts and recommend means to control costs. Costs are defined in the charter to include attorney time as well as expenses advanced for the purpose of litigation. The task force will survey neighboring and similarly situated states to compare the litigation costs in those jurisdictions with those seen in Washington.

The task force will include 10 WSBA members — including at least two who practice in the federal courts and one who is licensed and practices in Oregon — a judge from each level of court (limited jurisdiction, superior, and appellate), and a representative of the court clerks’ association.

Michael Heatherly is the Bar News editor and can be reached at barnewseeditor@wsba.org or 360-312-5156. For more information on the Board of Governors and Board meetings, see www.wsba.org/info/bog. For more information on issues addressed by the Board, visit the WSBA website at www.wsba.org and click on “News Flash” under “WSBA News and Information.”
The only missing piece is you.

The WSBA Moderate Means Program.

So many of our state’s low- and moderate-income families are unable to obtain the legal help they need, simply because they cannot afford it. The need is great, especially in the areas of family, housing, and consumer law.

A survey conducted several years ago found that approximately 75 percent of Washingtonians of moderate means — those who are within 200–400 percent of the federal poverty level — experience at least one legal problem each year. Many go without legal help.

To help address this serious problem, the WSBA created the statewide Moderate Means Program, a reduced-fee lawyer-referral service designed to help bring greater access to justice for people of moderate means. The WSBA is partnering with Washington’s three law schools to implement this exciting Program; law students will handle the client intake and referral to participating lawyers.

Why Should I Participate?

Help yourself while helping others!

- Provide public service and help close the access to justice gap.
- Obtain free referrals to help build your client base.
- Learn new skills and expand your practice areas though free or low-cost online trainings.
- Gain increased access to mentoring and peer support opportunities.

How Do I Sign Up?

In order to be eligible to participate, you must be an active member of the WSBA, and you must carry your own malpractice insurance. All lawyers applying to participate will be subject to a discipline screening. Lawyer registration is done online through mywsba.org, where you will complete a short registration form. Simply go to www.mywsba.org and click on the Moderate Means Program logo.

What’s Next?

Referrals will begin around March 2011. When a service opportunity arises, you will be contacted by a student at one of the three Washington law schools.

For more information, please visit the Frequently Asked Questions page. You can also contact WSBA Public Service Manager Catherine Brown at 206-733-5905 or catherineb@wsba.org.

Enhancing Our Culture of Service

Public service is a hallmark of the legal profession. Through projects like Moderate Means Program, the WSBA is enhancing our culture of service, providing ways for lawyers to give back to the communities of which they are such an integral part.

A partnership between the WSBA and Washington’s three law schools: Gonzaga University School of Law, Seattle University School of Law, and the University of Washington School of Law.
WSBA Presidential Search

Application Deadline: May 2, 2011

The WSBA Board of Governors is seeking applicants for the position of WSBA president for 2012–2013. Pursuant to Article VI (D)(2)(b) of the WSBA Bylaws, the primary place of business of candidates for president for 2012–2013 must be King County. The WSBA member selected to be president will have an opportunity to provide a significant contribution to the legal profession.

Applications for 2012–2013 WSBA president will be accepted through May 2, 2011, 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 16, 2011. 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 3, 2011, Board of Governors meeting in Kennewick. 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 2011, following selection. A one-year term as president-elect will begin at the Annual Business Meeting on September 22, 2011. The president-elect is expected to attend the two-day board meetings held approximately every five to six weeks, as well as numerous subcommittees, section, regional, national, and local meetings. In September 2012, at the WSBA Annual Business Meeting, the president-elect will assume the position of 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. The Bylaws can be found at www.wsba.org/info/bylaws.

Call for Applications for WSBA Board of Governors at-Large Position

Application deadline: April 20, 2011

To increase member representation on the Board of Governors, the WSBA Bylaws provide for three at-large positions. The full text of the Bylaws can be reviewed at www.wsba.org/bylaws. One of these positions is up for election to a three-year term commencing at the close of the annual meeting in September 2011.

The Board of Governors carries out the mission of the Bar and furthers the WSBA’s Guiding Principles, all within the mandate of General Rule 12. Pursuant to Article IV (A) of the WSBA Bylaws, as a representative, each governor is expected to communicate with members about Board actions and issues, convey member viewpoints to the Board, and fulfill liaison duties as assigned. This year’s elected governors shall take office at the close of the final Board meeting of the fiscal year, scheduled for September 22–23, 2011. Governors are elected to a three-year term and are expected to complete their full term.

Persons interested in filling an at-large position should submit a letter of application and résumé. The Board of Governors will elect the at-large governor at their meeting on June 3, 2011. The application should include a statement addressing how the applicant believes he or she meets the intent specified in Article VI, Section D of the Bylaws. There is no intent that these positions are dedicated or rotationally filled by any one element of diversity or group of members.

(Excerpt from the WSBA Amended Bylaws, Article VI, Section D)

There shall be two at-large Governor positions to be filled with persons who, in the Board’s sole discretion, have the experience and knowledge of the needs of those lawyers whose membership is or may be historically under-represented in governance, or who represent some of the diverse elements of the public of the State of Washington, to the end that the Board of Governors will be a more diverse and representative body than the results of the election of Governors based solely on Congressional districts may allow. Under-representation and diversity may be based upon the discretionary determination of the Board of Governors at the time of the election of any at-large Governor to include, but not be limited to, age, race, gender, sexual orientation, disability, geography, areas and types of practice, and years of membership, provided that no single factor shall be determinative.

Members interested in the at-large position on the Board of Governors should submit a letter of application and résumé to the WSBA Executive Director, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101; or call 206-239-2125 for more information. All application materials are due on April 20, 2011, by 5:00 p.m. (Pacific time). Letters of endorsement will be accepted through May 17, 2011.

The Board for Judicial Administration Best Practices Committee

Application deadline: April 5, 2011

The WSBA Board of Governors is accepting letters of interest and résumés from members interested in serving on the Board for Judicial Administration Best Practices Committee. The WSBA will be nominating one member who is appointed by the Supreme Court to serve a two-year term, which will commence on June 1, 2011. The committee’s activity is narrowly focused on creating, testing, and evaluating court performance audit measures. Each measure is designed to evaluate a court’s performance.
based on standards that can be reasonably met by courts at all levels. Approximately 15 measures will ultimately be integrated into a comprehensive court performance audit plan.

Please submit letters of interest and résumés to the WSBA Communications Department, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539; or e-mail barleaders@wsba.org. A letter of interest and résumé are also required if the incumbent seeks reappointment. Further information about the BJA Best Practices Committee can be found online at www.courts.wa.gov/committee/index.cfm?fa=committee.home&committee_id=83, or by contacting them at 360-704-4143.

**Statute Law Committee**
*Application deadline: April 5, 2011*

The WSBA Board of Governors is accepting letters of interest and résumés from members interested in serving a two-year term on the Statute Law Committee, commencing upon appointment in April. This 12-member committee seeks to foster accurate publication of laws and agency rules and oversees delivery of the other services of the Code Reviser’s Office in a professional and strictly nonpartisan and cost-effective manner. The Code Reviser’s primary responsibilities are to periodically codify, index, and publish the Revised Code of Washington, the Washington State Register, and the Washington Administrative Code, and to provide bill drafting services for the Legislature. The committee meets at least twice a year.

Please submit letters of interest and résumés to the WSBA Communications Department, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539; or e-mail barleaders@wsba.org. A letter of interest and résumé are also required if the incumbent seeks reappointment. Further information about the Statute Law Committee can be found online at www.leg.wa.gov/codereviser/pages/statute_law_committee.aspx, or by contacting them at 360-786-6777.

**Commission on Judicial Conduct**
*Application deadline: April 5, 2011*

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

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

The Commission consists of 11 members who serve four-year terms — six non-lawyer citizens, three judges, and two lawyers. Each member has an alternate whose term coincides with their corresponding member’s term. The lawyers must be admitted to practice in Washington and are appointed by the WSBA. Incumbents are eligible for reappointment, limited to two terms as an alternate member and two terms as a full member. Letters of interest and résumés are also required for incumbents seeking reappointment. The term for these positions will commence on June 17, 2011, and expire on June 16, 2015. Please submit letters of interest and résumés to the WSBA Communications Department, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539; or e-mail barleaders@wsba.org.

The Commission on Judicial Conduct has asked the WSBA to conduct discipline checks on all applicants. Upon receipt of a letter of interest and résumé, applicants will be sent a form to authorize the WSBA to release to the WSBA Communications Department representative and the Board of Governors all information contained in the member’s disciplinary record.

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

**ABA House of Delegates**
*Application deadline: May 12, 2011*

The WSBA Board of Governors is accepting letters of interest and résumés from members interested in serving on the ABA House of Delegates representing the WSBA. Three positions, one of which is for a member under 35 years of age, and one alternate position will be available in August 2011. A written expression of interest and résumé are required for any incumbents seeking reappointment. The control and administration of the ABA are vested in the House of Delegates, the policymaking body of the ABA. The House, composed of approximately 550 delegates, elects the ABA officers and board, and meets out of state twice a year. Delegate attendance is required. The WSBA’s allowance is $800 per year per delegate. Terms are two years, and members may serve a maximum of three consecutive terms. Those serving on the ABA House of Delegates must be ABA members in good standing throughout their terms. Submit letters of interest and résumés to the WSBA Communications Department, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539; or e-mail barleaders@wsba.org.

*Application deadline: May 15, 2011*

The Council on Public Defense was established to implement the recommendations of the WSBA Blue Ribbon Panel on Criminal Defense, which was appointed by the Board of Governors in spring 2003 as a first step in addressing concerns about the quality of indigent defense services in Washington. The Council meets once per month on average. One position is available for a private attorney representative. The term begins June 1, 2011, and ends September 30, 2012. If interested, please complete the application posted at www.wsba.org/lawyers/groups/committees.htm, and fax or e-mail the form as directed on the application. For more information about the Council on Public Defense, see www.wsba.org/lawyers/groups/committeeeonpublicdefense.htm.
Board of Governors Ballots Due April 15

Beginning March 15, 2011, all WSBA active members in the 3rd, 6th, 7th-East, and 8th Board of Governors districts have the opportunity to once again help determine the WSBA’s future direction and leadership. For the third year, voting members have the opportunity to cast their votes online, rather than through the traditional paper ballot process. Electronic voting is secure, confidential, and convenient. Members with valid e-mail addresses on file with the WSBA did not receive a paper ballot. All electronic voting began on March 15 and must be completed by 5:00 p.m. PDT on April 15. While the WSBA is encouraging members with e-mails on file with the WSBA to cast votes online, they may request a paper ballot. The WSBA has sent eligible members without e-mail addresses on file the traditional paper ballots. The ballots include instructions on how to access online voting, so those members can vote online if they prefer. Members submitting paper ballots must also make certain to print and sign their name, including their address and Bar number, on the return envelope, and deliver it to the WSBA offices by 5:00 p.m. PDT on April 15. Members may cast votes either online or by paper ballot, but they may vote only once. The WSBA has implemented safeguards to prevent a member from casting multiple votes. The WSBA hopes members will find online, or electronic, voting more convenient than filling out and returning paper ballots. Please contact Pamela Wuest at pamelaw@wsba.org or 206-239-2125 if you have any questions, or to request a paper ballot.

BOG Election Candidate Statements

Voting is underway for the Board of Governors elections for the 3rd, 6th, 7th-East, and 8th districts. Electronic votes and paper ballots will be counted on or about April 15. Following are brief biographical statements received from candidates.

District 3 — Philip Lawrence Brady

Phil Brady is a staff attorney for the Washington Department of Financial Institutions. Phil previously served as staff counsel for the Washington State Senate, and interned for state and federal legislators before and during law school. He is a 2008 graduate of the University of Oregon, with a J.D. and M.S. in Conflict and Dispute Resolution, and has a physics degree from the College of Idaho. He is a new member of the Board of Bar Examiners, and believes that serving on the Board of Governors would allow him to serve a currently underrepresented group: state and local government attorneys.

District 3 — Jane L. Habegger

Assistant Deputy Chief Administrative Law Judge, specializing in conducting public assistance, child support, and vulnerable adult abuse hearings. Deeply committed to diversity and access to justice issues.
- Former Attorney, Washington State Senate
- Produced mock hearing videos with closed captioning, Spanish translations
- Faculty, Cultural Competency CLEs
- Taught 187 credits of WSBA accredited CLEs, 2007–11
- Faculty Member, Washington Judicial College, 2009–10, taught Child Support to Superior Court Judges
- Guest Lecturer, Seattle University School of Law 1998–2011
- Former Officer, Washington Women Lawyers, Olympia
- Recipient, Washington Distinguished Service Award
- Former Chair, Thurston County Refugee Center Board
- Former Volunteer Coordinator, Soup Kitchen, Olympia

District 3 — Brian James Kelly

A lawyer and certified public accountant, I am a principal in the Chehalis law firm of Hillier, Scheibmeir, Vey & Kelly. My practice emphasis is business, tax, real property and probate. I was a founding board member of Lewis County Legal Aid. My bar service includes the Budget & Audit Committee, Judicial Recommendation Committee, Client Security Fund and Lewis County Bar President. I have served on profit, nonprofit and local boards (CPA’s, Estate Planning, Crime Stoppers, Red Cross and Mental Health). It would be an honor representing the members of the 3rd Congressional District on the Board of Governors.

District 3 — Dayann M. Liebman

I have practiced family law for 30 years, the last 25 as a solo practitioner. As a Governor, I would be particularly interested in exploring ways that our Bar might assist in the more effective and affordable delivery of services to our communities.

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without negatively impacting the ability of our members to meet their own financial needs. I'm also fascinated by both the opportunities and the emerging legal issues related to the rapidly evolving technologies used in our practices. I have served on the local family law section, the WSBA Family Law Executive Committee, and my county bar’s Website/IT committee.

**District 3 — Stephen Ssemaala**

Stephen Ssemaala was born and raised in Uganda. He migrated to the United States in 1996 as a political refugee. While in Uganda, he was elected to the Uganda Constituency Assembly, a body that debated and wrote the current constitution of Uganda. Stephen obtained an undergraduate degree in Global Studies and a law degree from the University of Washington in Seattle. He is currently an Assistant Attorney General representing psychiatric hospitals and mental health programs. He is very proud of Washington State for the opportunities afforded to him and his family.

**District 6 — Vernon W. Harkins**

I was raised in Tacoma and graduated from Bellarmine Preparatory School, Gonzaga University, and Gonzaga Law School in 1975. I worked as a deputy prosecuting attorney in Spokane, followed by private practice in Spokane before joining my current firm in 1980. My practice involves plaintiff personal injury and medical malpractice cases. I have served on various committees of the WSBA, the Tacoma-Pierce County Bar Association, including its Board of Trustees, and have also served on and chaired various boards in the Tacoma area. I am a hearing officer for the WSBA Lawyer Disciplinary Proceedings.

**District 3 — Stephen Ssemaala**

Stephen Ssemaala was born and raised in Uganda. He migrated to the United States in 1996 as a political refugee. While in Uganda, he was elected to the Uganda Constituency Assembly, a body that debated and wrote the current constitution of Uganda. Stephen obtained an undergraduate degree in Global Studies and a law degree from the University of Washington in Seattle. He is currently an Assistant Attorney General representing psychiatric hospitals and mental health programs. He is very proud of Washington State for the opportunities afforded to him and his family.

**District 6 — William B. Payne**

I am a solo-practitioner in Clallam and Jefferson counties and member of the Port Angeles Rotary Club. I was President of the Clallam County Bar in 2010, and member of the Clallam and Jefferson County Pro Bono board. The law is a noble profession and I would be honored to participate in the WSBA's work with an emphasis on professionalism, ethics, civility, and competency of the bar. I feel a duty in promoting access to justice. It would be a privilege to be elected by my peers and serve the as District Governor for the 6th District.

**District 6 — Gregory John Wall**

I am a graduate of Gonzaga University Law School, class of 1978. My practice has been in Kitsap County since 1991 and in Seattle from 1978–1990. My practice is primarily defending civil litigation. I have practiced at all levels of our court system, from one case in the Supreme Court of the United States to District Court Actions. I am currently a Hearing Officer for the WSBA. I was the Chairperson of the Executive Board of the Litigation Section. I have served on three bar committees. For more detail, see WLLPS.com.

**District 7 East — Daniel Ford**

Daniel Ford is the statewide Advocacy Coordinator for Columbia Legal Services. He has practiced law in Seattle, the Yakima Valley and Wenatchee for 30 years, mostly representing farm workers and other immigrants in employment, civil rights and education cases. Dan’s work includes complex litigation, legislative advocacy and representation in agency rulemaking. Dan has served on the Board of the Latina/o Bar Association of Washington, as chair and a member of the Access to Justice Technology Committee, as a member of the WSBA Civil Rights Committee, and as a member of the Laurel Rubin Farm Worker Justice Project Steering Committee.

**District 7 East — Malcolm Ross**

Malcolm Ross, an Assistant Attorney General and supervising prosecutor in the AG’s Criminal Justice Division, has represented Washington State for 17 years in administrative hearings, bench and jury trials, and appellate litigation involving licensing actions, child and elder abuse and sexual predation. Since 2002 he has litigated sexual predator cases in trial courts across Washington State and in the Court of Appeals and Washington Supreme Court. He received the Attorney General’s Excellence Award in 2008 and 2011 for his leadership, and trial and appellate work. Malcolm lives with his wife Anne and daughter Alana.

**District 7 East — Chris Robert Youtz**

I have practiced law over 30 years, first with a large firm in Seattle then with a small firm, Sirianni Youtz Spoonemore. I handle a variety of lawsuits, including investor claims, intellectual property disputes, and general business litigation. My pro bono work adds cases in the civil rights and employment areas. Committee memberships include the federal rules committee, the Board of Bar Examiners, and Electronic Discovery Task Force. I have spoken and written on litigation skills, electronic discovery, and mediation. I received the President’s Award from the King County Bar Association for pro bono work.

**District 8 — John C. Peick**

Education: University of Washington, B.A. 1972; UW Law School, J.D. 1975. Member of the WSBA (1975), U.S. District Court, WD, WA (1975), U.S. Tax Court (1976) and Ninth Circuit Court of Appeals (1998). He is a member of the ABA, AHILA, WSAJ (past Board member) and NACA. He practices in the areas of personal injury and healthcare law. Counsel to the Washington State Chiropractic Association. He is an author, taught college level business law courses, and been a frequent speaker at various healthcare seminars and schools. My concerns are access to justice and protection of the public.

**District 8 — Wilton S. Viall III**

I seek your support, that I may advance certain principles in governing our associa-
tion: Justice — keepers of the law recognize their high duty to society; Integrity — candor, honesty, and integrity are the backbone of justice; Respect — courtesy, decency, civility, and a smile bind our wonderfully diverse humanity; Professionalism — pride in supplying quality legal services is our hallmark. My small and large firm experiences give varied insights on practice challenges. I will bring a fresh perspective, from diverse public service in the past: Highline School Board/President, Normandy Park City Attorney, and State Senate Candidate.

**Seeking Questionnaires from Candidates for Judicial Appointments**

*May 6, 2011, for June 17, 2011, 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/judicial recommendation or contact the WSBA at 206-727-8212 or 800-945-9722, ext. 8212; or e-mail judithb@wsba.org.

**2011 WSBA Awards Nominations Sought**

Each year, WSBA members 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 ser-
vice 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 non-lawyers.

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

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

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

**Pro Bono Award.** This award is presented to a lawyer, non-lawyer, law firm, or 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.** Lawyers are known for giving generously of their time and talents in service to their communities. This award recognizes exceptional non-law-related volunteer work and community service.

**Norm Maleng Leadership Award.** This award is given jointly by the WSBA and the Access to Justice Board, in honor of Norm Maleng’s legacy as a leader. He was an innovative and optimistic leader committed to justice and access to justice in both civil and criminal settings. Within the profession, his leadership was characterized by his love of the law and commitment to diversity and mentorship. This award recognizes those who embody these qualities.

**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 go to www.wsba.org/2011wsbaawardsinfo.htm for more information and to download a nomination form. Self-nominations will not be accepted. Please note that the completed nomination form must accompany all nominations in order to be considered. Each nomination will be considered by a committee of the Board of Governors. The awards detailed above may or may not be presented every year. The deadline for the Pro Bono Award and Norm Maleng Leadership Award nominations was March 31, 2011. The deadline for all other nominations is April 29, 2011. Please send nominations to: WSBA, Attn: Annual Awards, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101; fax: 206-727-8310; e-mail: pamelaw@wsba.org. Please contact Events Coordinator Pamela Wuest at 206-239-2125 for more information.

The awards will be presented at the WSBA Annual Awards Dinner in Seattle on September 22, 2011, with the following exceptions: the Pro Bono and Norm Maleng Leadership awards will be presented at the Access to Justice/Bar Leaders Conference in Kennewick, June 3–5, 2011.

**Legal Services Corporation Notice of Availability of Competitive Grant Funds for Calendar Year 2012.** The Legal Services Corporation (LSC) announces the availability of competitive grant funds to provide civil legal services to eligible clients during calendar year.
2011 Licensing and MCLE Information

Licensing Suspensions. If any portion of your license fee or late fee remains unpaid, or if required forms have not been filed, after two months’ written notice of your delinquency, a recommendation for suspension will be submitted to the Supreme Court.

MCLE Suspensions. If you were due to complete MCLE requirements for 2008–2010 (Group 1) and have not done so after two months’ written notice of your delinquency, a recommendation for suspension will be submitted to the Supreme Court.

Get More out of Your Software

The WSBA offers hands-on computer clinics for members wanting to learn more about what office software, such as Microsoft Outlook and Word and Adobe Acrobat, can do for a lawyer. We also cover online legal research such as Casemaker and other resources. Are you a total beginner? No problem. The clinic teaches helpful tips you can use immediately. Computers are provided, or bring your laptop. Seating is limited to 15 members. The April 11 clinic will meet from 10:00 a.m. to noon at the WSBA office and will focus on using MS Word software. Acrobat, can do for a lawyer. We also cover online legal research such as Casemaker and other resources. Are you a total beginner? No problem. The clinic teaches helpful tips you can use immediately. Computers are provided, or bring your laptop. Seating is limited to 15 members. The April 11 clinic will meet from 10:00 a.m. to noon at the WSBA office and will focus on using MS Word software. There is no charge and no CLE credits. To reserve your place, contact Julie Salmon at 206-733-5914, 800-945-9722, ext. 5914, or juliesa@wsba.org.

Weekly and Monthly Job Search Groups

Join us Wednesday, April 13, from noon to 1:30 p.m. at the WSBA office. Attorney John Clynch, of the University of Washington Federal Tax Clinic, will be returning to our monthly group to offer straightforward advice about how to handle the job search. Clynch covers all of the relevant domains: interviewing, networking, pro bono work, identifying one’s ideal job, and self-care in the process. No RSVP is required. WSBA Lawyer Services also hosts a Weekly Job Seeking group that provides strategy and support to unemployed attorneys. The group runs for eight weeks and is limited to eight attorneys. Contact Dan Crystal at 206-727-8267, 800-945-9722, ext. 8267, or danc@wsba.org. To access additional job search resources, visit www.wsba.org/lawyers/services/jobsearchresources.htm.

Work/Life Balance Group

Starting Thursday, April 21, from noon–1:15 p.m., this weekly group will offer an opportunity for discussion and exploration of this topic. This eight-week group, held at the Lawyer Assistance Program office, will focus on goal-setting, understanding and addressing barriers, and developing strategies to achieve better balance between work and life. Contact Heidi Seligman at 206-727-8269, 800-945-9722, ext. 8269 or heidis@wsba.org.

Register for the Lawyers Assistance Program Statewide Conference

The Lawyers Assistance Program’s 14th annual conference will be held April 15–17, 2011, at Campbell’s Resort, Chelan. With a theme of “A Thriving Practice, a Healthy Life: Finding the Ideal Balance,” the conference features tools to make your practice more efficient and profitable as well as skills to take care of yourself in the process. WSBA President-elect Steve Crossland will deliver the keynote speech. The cost is $99 for 7 CLE credits, including meals. Contact Peggy Harkrader at peggyh@wsba.org to register.

Interested in Mindful Lawyering?

A growing number of legal professionals across the nation are applying mindfulness-based skills and training to lawyering. The Washington Contemplative Lawyers group...
is meeting on the last Wednesday of each month at the Lawyers Assistance Program from 8:15 until 9:00 a.m. The group explores ways in which mindfulness practices may lead to more effective delivery of quality legal services, increased professionalism, and lawyer well-being and health. For more information, contact Sevilla Rhoads at srhoads@gsblaw.com. You can learn more about mindful lawyering at www.law.buffalo.edu/baldycenter/mindfullaw.

Help for Judges
The Judges Assistance Services 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.

Facing an Ethical Dilemma?
Members facing ethical dilemmas can talk with WSBA professional responsibility counsel for informal guidance on analyzing a situation involving their own prospective ethical conduct under the RPCs. All calls are confidential. Any advice given is intended for the education of the inquirer and does not represent an official position of the WSBA. Every effort is made to return calls within two business days. Call the Ethics Line at 206-727-8284 or 800-945-9722, ext. 8284.

Search WSBA Ethics Opinions Online
Formal and informal WSBA ethics opinions are available online at http://mcle.mywsba.org/io, 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.

Tip of the Month: Anger Management
Got rage? Does your temper cause problems for staff, family, or friends? Learn constructive ways to handle your anger before you lose someone or something you value. If you’d like suggestions on how to proceed, call the Lawyers Assistance Program at 206-727-8268 or 800-945-9722, ext. 8268.

Upcoming Board of Governors Meetings
April 29-30, Bellevue • June 3, Kennewick • July 22–23, Ocean Shores
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 Margaret Shane at 206-727-8244, 800-945-9722, ext. 8244, or margarets@wsba.org. The complete Board of Governors meeting schedule is available on the WSBA website at www.wsba.org/info/bog/default.htm.

Usury Rate
The average coupon equivalent yield from the first auction of 26-week treasury bills in March 2011 was 0.158 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.
Disciplinary Notices

These notices of imposition of disciplinary sanctions and actions are published pursuant to Rule 3.5(d) of the Washington State Supreme Court Rules for Enforcement of Lawyer Conduct, and pursuant to the February 18, 1995, policy statement of the WSBA Board of Governors. For a complete copy of any disciplinary decision, call the Washington State Disciplinary Board at 206-733-5926, leaving the case name, and your name and address.

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

Resigned in Lieu of Disbarment

William F. Dippolito (WSBA No. 12533, admitted 1956), of Tacoma, resigned in lieu of disbarment, effective December 30, 2010. While not admitting the misconduct alleged, Mr. Dippolito affirmatively admitted that the WSBA could prove by a clear preponderance of the evidence the alleged violations of the Rules of Professional Conduct, and that proof of such violations would suffice to result in disbarment. This resignation is based on conduct involving theft of investors’ funds. According to the Statement of Misconduct:

Mr. Dippolito acted as attorney for individuals and corporations engaging in schemes promoting high yield investment programs designed to defraud investors. Mr. Dippolito acted as the escrow agent for the receipt of investor funds. He used the title “paymaster” and assured investors that he would hold, in trust, investment funds wired to his paymaster account and that he would safeguard their funds until a banking instrument was delivered to him permitting their release.

The principals of Corporation A, for which Mr. Dippolito acted as attorney and “paymaster” in July 2008, falsely alleged to investors that their funds would be used to purchase a 500 million euro high-yield medium-term note to support a non-existent trading program. In fact, the principals intended to abscond with investor funds. In late June or early July 2008, Mr. Dippolito wrote and signed a trust agreement with Investor B stating that Investor B would deposit $2,500,000 via wire transfer into Mr. Dippolito’s trust account to enable Corporation B to purchase the note. The agreement conditioned that Mr. Dippolito would not release the money until the receipt and authentication by Mr. Dippolito of an MT760. On July 17, 2008, Investor A wired $141,000 to Mr. Dippolito’s paymaster trust account. The same day, Mr. Dippolito released investor A’s money to Corporation A’s principals without the issuance or authentication of an MT760 form. Before releasing the money, Mr. Dippolito removed $1,500 from the $141,000 as his payment. Investor A demanded that Mr. Dippolito return the funds. Mr. Dippolito assured investor A that his funds would be returned, but failed to do so. Following a November 2008 civil suit filed by Investor A, Mr. Dippolito stipulated to an entry of judgment against him for damages in the amount of $160,000, but subsequently failed to pay the judgment. The principals of Corporation B, for which Mr. Dippolito acted as attorney and “paymaster” in June and July 2008, falsely alleged to investors that their funds would be used to purchase a 500 million euro high-yield medium-term note to support a non-existent trading program. In fact, the principals intended to abscond with investor funds. In late June or early July 2008, Mr. Dippolito wrote and signed a trust agreement with Investor B stating that Investor B would deposit $2,500,000 via wire transfer into Mr. Dippolito’s trust account to enable Corporation B to purchase the note. The agreement conditioned that Mr. Dippolito would not release the money until the receipt and authentication by Mr. Dippolito of an MT760. In June or July 2008, Investor B wired $2,500,000 to Mr. Dippolito’s trust account. Shortly thereafter, Mr. Dippolito released the money to Corporation B’s principals without the issuance or authentication of an MT760 form. Before releasing the money, Mr. Dippolito removed approximately $17,000 from the $2,500,000 as his payment. Investor B demanded that Mr. Dippolito return the money. Although Mr. Dippolito assured Investor B that his money would be returned, he failed to do so. On April 22, 2009, the Securities and Exchange Commission (SEC) filed a civil fraud action in Los Angeles, California against Mr. Dippolito, charging him with aiding and abetting Corporation B and its principals in perpetrating fraud against investors in violation of the Securities Exchange Act.

Previously, in July 2007, the SEC charged Mr. Dippolito with engaging in fraudulent conduct in a scheme similar to those perpetrated against Investors A and B. As a result, to resolve the suit, Mr. Dippolito consented to being permanently enjoined by the SEC from aiding and abetting violations of the Exchange Act, and to disgorging that portion of investor money he retained as his share of the fraudulent scheme.

Mr. Dippolito’s conduct violated RPC 8.4(b), prohibiting a lawyer from committing a criminal act (here, first-degree theft) that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects; and RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

Kathleen A.T. Dassel represented the Bar Association. Mr. Dippolito represented himself.

Disbarred

Paul H. King (WSBA No. 7370, admitted 1977), formerly of Seattle, was disbarred, effective January 13, 2011, by order of the Washington State Supreme Court following an appeal. This discipline is based on conduct involving the commission of a crime. For more information, see In re King, ___Wn. 2d __, ___P.3d ___ (2011).

Note: While this matter was on appeal, the Supreme Court ordered Mr. King’s disbarment in an unrelated case decided in June 2010 (In re King, 168 Wn.2d 888, 222 P.3d 1095 (2010)). Disbarment was imposed for, among other things, practicing law while suspended. This subsequent, second disbarment does not affect that previous order.

In July 2008, Mr. King was charged in United States District Court with five counts of mail fraud in violation of 18 U.S.C. §1341, based on allegations that he helped an individual fraudulently obtain benefits from the Washington State Employment Security Department. On November 24, 2008, Mr. King signed a plea agreement, admitting he was guilty of the charged offense and admitting to the facts necessary to establish the elements of mail fraud. Before entering the guilty plea, Mr. King testified under oath that his plea was made knowingly, intelligently, and voluntarily. Mr. King was convicted of mail fraud and sentenced to 10 months of imprisonment, followed by three years of supervised release, and ordered to pay $44,858 in restitution to the Washington State Employment Security Department.

Mr. King previously had been suspended three times from the practice of law for conduct involving dishonesty. Mr. King did not dispute the hearing officer’s finding of fact, the presumptive sanction, or the sanction analysis, but rather questioned the fairness of the disciplinary proceedings. The Court found his arguments to be unsubstantiated and that Mr. King’s guilty plea was properly given preclusive effect under ELC 10.4(c).

Mr. King’s conduct violated RPC 8.4(b), prohibiting a lawyer from committing a crimi-
nal act that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects; RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and RPC 8.4(i), prohibiting a lawyer from committing any act involving moral turpitude, or corruption, or any other act which reflects disregard for the rule of law.

Scott G. Busby represented the Bar Association. John R. Scannell represented Mr. King at hearing and before the Disciplinary Board. Mr. King represented himself on appeal to the Supreme Court. Carl J. Carlson was the hearing officer.

### Disbarred

Shange H. Petrini (WSBA No. 40210, admitted 2008), of Canyon, California, was disbarred, effective December 27, 2010, by order of the Washington State Supreme Court following a default hearing. This discipline was based on conduct in two matters involving failure to act diligently, failure to communicate, excessive charges, failure to protect clients’ interests, and failure to cooperate in a Bar Association investigation.

**Matter No. 1:** On October 21, 2008, Client A hired Mr. Petrini to file a dissolution action and paid him a $1,000 advance fee. Mr. Petrini met with Client A to sign the dissolution documents; during the meeting, Client A paid Mr. Petrini an additional $175. Mr. Petrini did not file the dissolution documents. He instead mailed the documents to Client A’s husband, who eventually returned the documents with some changes. Client A called Mr. Petrini and left a message, stating that she agreed to the changes. Mr. Petrini did not return Client A’s call or return the messages and e-mails she subsequently left in an effort to contact him. Mr. Petrini never filed Client A’s dissolution action. He moved to California and abandoned his practice without informing Client A of his move or that he would no longer be working on her case.

In May 2009, Client A sent Mr. Petrini messages terminating the representation, and requesting a refund and copies of her documents. Mr. Petrini did not respond to Client A’s messages or e-mails and never sent her a refund or copies of the documents he prepared. Client A could not afford to hire another lawyer to assist her with her dissolution.

On July 24, 2009, Client A filed a grievance against Mr. Petrini, a copy of which was forwarded to him with a request to respond to the grievance. Mr. Petrini failed to respond or cooperate in any way with the Bar Association’s investigation of Client A’s grievance, and failed to respond to the Bar Association’s petition for interim suspension. On January 29, 2010, the Supreme Court suspended Mr. Petrini’s license pending his cooperation with disciplinary proceedings. Mr. Petrini failed to submit the required affidavit of compliance, and remained suspended from the practice of law until his disbarment.

**Matter No. 2:** On March 6, 2009, Client B hired Mr. Petrini and paid him $2,000 to prepare and file an H-1B visa application. Client B told Mr. Petrini that it was important to file the application as close to April 1, 2009, as possible because his student visa was set to expire and his continued employment was dependent on the visa application being granted. Mr. Petrini prepared the necessary documents, which Client B signed. On April 7, 2009, Client B e-mailed Mr. Petrini to ask if there was anything else he needed to do. Mr. Petrini did not respond to Client B’s e-mail or to any of Client B’s subsequent attempts to contact him over the next two months. Mr. Petrini moved to California and abandoned his practice without informing Client B of his move or that he would no longer be working on Client B’s case.

On June 11, 2009, Client B called the United States Citizenship and Immigration Service and learned that Mr. Petrini never submitted his application. Client B e-mailed Mr. Petrini again and told him that he wanted to cancel his contract and get his $2,000 back. Mr. Petrini did not respond. On July 1, 2009, Client B e-mailed Mr. Petrini again, demanding his money back. Mr. Petrini did not respond.

In July 2010, Client B filed an H-1B visa application himself and later paid another lawyer $1,500 to complete the process for him. In October 2009, Client B filed a grievance against Mr. Petrini, which the Bar Association forwarded to Mr. Petrini and requested a response. Mr. Petrini did not respond to that or to subsequent requests. To date, Mr. Petrini has not responded to Client B’s grievance.

In January 2010, Mr. Petrini refunded $1,000 to Client B. Client B wrote back to Mr. Petrini requesting the rest of the advance fee. Mr. Petrini did not respond. Client B went through great stress and aggravation, and had to pay another lawyer to complete the work that he had hired Mr. Petrini to do.

Mr. Petrini’s conduct violated RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; RPC 1.4(a), requiring a lawyer to promptly inform the client of any decision of circumstance with respect to which the client’s informed consent is required, reasonably consult with the client about the means by which the client’s objectives are to be accomplished, keep the client reasonably informed about the status of the matter, promptly comply with reasonable requests for information, and consult with the client about any relevant limitation on the lawyer’s conduct; RPC 1.4(b), requiring a lawyer to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; RPC 1.5(a), prohibiting a lawyer from making an agreement for, charging, or collecting an unreasonable fee or an unreasonable amount for expenses; RPC 1.16(d), requiring a lawyer, upon termination of representation, to take steps to the extent reasonably practicable to protect a client’s interests; and RPC 8.4(i), prohibiting a lawyer from violating a duty or sanction imposed by or under the Rules for Enforcement of Lawyer Conduct in connection with a disciplinary matter.

Francesca D’Angelo represented the Bar Association. Mr. Petrini represented himself. David A. Thorner was the hearing officer.

### Suspended

Christopher P. Bartow (WSBA No. 29559, admitted 1999), of Ellensburg, was suspended for one year, effective December 9, 2010, by order of the Washington State Supreme Court. This discipline was based on conduct involving lack of respect for rights of third persons and violations of the attorney oath.

**Matter No. 1:** In January 2008, Mr. Bartow represented a client in a marriage dissolution action. During the proceeding, the court appointed a guardian ad litem (GAL) to perform a parenting plan evaluation. The GAL completed her report, recommending that the opposing party retain primary custody of the children. Mr. Bartow filed a lengthy written critique of the GAL’s evaluation, in which he used inflammatory language and made degrading and offensive comments regarding the GAL personally. While Mr. Bartow’s filing of a written response to the GAL report was proper pursuant to RCW 26.12.175(1)(c), which permits parties to file written responses to any report filed by a court-appointed GAL, and some of the response served a legitimate purpose, much of the content was inflammatory, degrading, and inappropriate, and served no purpose other than to embarrass, delay, or burden the GAL or the court.

Mr. Bartow also obtained information from the GAL’s personal dissolution file and provided that information to the Association. This information came from a file that was under seal. Although Mr. Bartow may have been unaware that this private information was under seal, it served no purpose other than to embarrass or burden the GAL.

**Matter No. 2:** On August 7, 2008, Mr. Bartow was representing a client in a voluntary settlement conference in a paternity action. The settlement conference was held in Judge A’s courtroom. Prior to the conference, a domestic violence order had been issued restricting Mr. Bartow’s client from having contact with the opposing party. Judge A began the conference by focusing on the domestic violence issue. Mr. Bartow wanted to focus on the custody and visitation schedule instead. Mr.
Bartow interrupted Judge A on more than one occasion and told her he had had mediation training and that she was not conducting the conference properly. His comments towards Judge A were berating and insulting, and his manner, tone, and demeanor towards Judge A were overly loud, challenging of the judge’s authority, and disrespectful. After several interruptions, speaking in an inappropriately loud and agitated manner and tone, Mr. Bartow disrupted and unilaterally terminated the conference. As he left, Judge A advised Mr. Bartow that he would be no longer permitted in her courtroom.

Mr. Bartow’s conduct violated RPC 4.4(a), which prohibits a lawyer, in representing a client, from using means that have no substantial purpose other than to embarrass, delay, or burden a third person, or using methods of obtaining evidence that violate the legal rights of such a person; and RPC 8.4(k), prohibiting a lawyer from violating his or her oath as an attorney (here, by violating APR 5(e)).

Erica W. Temple represented the Bar Association. Mr. Bartow represented himself. David B. Condon was the hearing officer.

Admonished

David Sherman (WSBA No. 16118, admitted 1986), of Yakima, was ordered to receive an admonition on December 22, 2010, by order of a review committee of the Disciplinary Board. This discipline is based on conduct involving failure to timely file trust account declarations.

Mr. Sherman did not timely file required trust account declarations by February 1, 2006, or February 1, 2007. Mr. Sherman received reminder letters from the Association. He filed both declarations in November 2007. Mr. Sherman suffered from personal problems during 2005–2007 that contributed to his failure to file his trust account declarations.

Mr. Sherman’s conduct violated RPC 8.4(l), prohibiting a lawyer from violating a duty or sanction imposed by or under the Rules for Enforcement of Lawyer Conduct (here, ELC 15.5(a)) in connection with a disciplinary matter.

Natalea Skvir represented the Bar Association. John A. Strait represented Mr. Sherman.

Non-Disciplinary Notice

Suspended Pending the Outcome of Supplemental Proceedings

Rosemary Kamb (WSBA No. 16532, admitted 1986), of Mount Vernon, was suspended pending the outcome of supplemental proceedings, pursuant to ELC 7.3, effective February 1, 2011, by order of the Washington State Supreme Court. This is not a disciplinary sanction.

(LETTERS, continued from page 6)

attest that we have a ways to go before we “lock-in” to the onerous and limiting criteria suggested.

Among the unintended consequences from the suggestions: certification may limit the services provided and the pool of persons serving. Creating a specialty restricts access to the services available. Establishing fixed standards, expectations and training requirements drives up the costs, thus leaving the professionals unavailable to persons of modest means and limiting the services available to those who can afford them.

Courts learned long ago that one cannot write a cookbook large enough to encompass all the solutions needed by diverse and unique families. Neither should we attempt to write one for either the formats of ADR or the professionals who assist within those processes.

Stephen M. Gaddis, Bellevue
Davies Pearson, P.C.  
Attorneys at Law

is pleased to announce that

Mark D. Nelson

has become an associate of the firm practicing family law.

Mr. Nelson graduated from Seattle University School of Law in 2006. He received his Bachelor of Arts degree from University of Washington in 1990.

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mnelson@dpearson.com

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Hay Law Firm, P.S.
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Heather L. Swann

has joined the firm as a Partner, creating the law firm

Hay & Swann PLLC

Heather concentrates her practice in family law. She also practices in the areas of consumer protection, real estate, personal injuries, and trust and estates.

Heather is a graduate of Western New England College School of Law in Springfield, Massachusetts. She obtained her undergraduate degree from Suffolk University. For the past three years, Heather has worked as an associate at the Hay Law Firm, P.S. Heather is admitted to practice in both Washington and Connecticut.

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is pleased to announce that it is opening a new office in Seattle, located at

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and also that

Dawn McPherson has joined the firm as a paralegal. Dawn is qualified as an attorney in New York and as a solicitor in England and Wales. Dawn plans to sit for the Washington Bar in 2011.

Virginia Owens has joined the firm as a Government Relations Director. Virginia has experience running a successful campaign for a Seattle Public Schools Board Member.

Gene F. Miller is consulting with Stafne Law Firm on land use matters. Gene has more than 30 years experience in the land use field, including land use planning.

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Stephen C. Smith, former Chair of the Washington State Bar Association Disciplinary Board, is now accepting referrals for attorney disciplinary investigations and proceedings in Washington, Idaho, Hawaii, and Guam.

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An Overview of Business Valuation
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May 13 — Seattle and webcast. CLE credits pending. By the WSBA Business Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbaadle.org.

**Construction Law**

Insurance in the Construction Industry
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**Criminal Law**

Suppressing Evidence

Evidence: Getting Yours In, Keeping Theirs Out

**Employment Law**

18th Annual Employment Law Institute
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**Environmental Law**

2011 Environmental and Land Use Law Section Midyear Meeting
April 28–30 — Union, WA. CLE credits pending. By the WSBA Environmental and Land Use Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbaadle.org.

Environmental Challenges in Energy Project Development

**Trust and Estate Planning CLE**

April 6 — Portland. 6 CLE credits. By The Seminar Group; 206-463-4400 or 800-574-4852.

**Family Law**

Community Property
April 15 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbaadle.org.

Family Law Skills Training (New Lawyer Education Program)
April 15–16 — Montesano. CLE credits pending. Co-sponsored by the WSBA Family Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Parenting Plans
April 29 — Seattle. 6 CLE credits pending. By KCBA-CLE; 206-267-7057 or cle@kcba.org; www.kcba.org/cle.

Title 11 Guardianship Guardian ad Litem Training
May 5–6 — Seattle. 6.5 CLE credits pending. By KCBA-CLE; 206-267-7057; CLE@kcba.org; www.kcba.org/cle.

Title 11 Guardianship Guardian ad Litem Training Annual Re-Certification
May 6 — Seattle. 6.5 CLE credits pending. By KCBA-CLE; 206-267-7057 or cle@kcba.org; www.kcba.org/cle.

**General**

Promise of Civility — Part 3
April 1 — Seattle. 6 CLE credits. By Seattle University School of Law; www.law.seattleu.edu/continuing_legal_education.xml.
Managing Negotiations and Working with Clients

Marketing and Advertising Law
April 8 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbarealeg.org.

Brain Injuries

Discovery Skills Training Boot Camp Moderated Video Replay
April 13 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbarealeg.org.

Telecommunications Law

Auto Cases
April 20 — Seattle and webcast. 6.5 CLE credits, including .5 ethics. By Washington State Association for Justice; 206-464-1011; www.washingtonjustice.org.

High Impact Presentation Skills: Fast Track Coaching for Busy Attorneys
April 20 — Seattle. 3 CLE credits. By The Seminar Group; 206-463-4400 or 800-574-4852.

Foreclosures Conference
April 29 — Seattle. 5.75 CLE credits. By The Seminar Group; 206-463-4400 or 800-574-4852.

Superior Legal Writing
May 11 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbarealeg.org.

Intermediate Collaborative Law Training

Annual Senior Lawyers Conference
May 13 — Seattle. CLE credits pending. By the WSBA Senior Lawyers Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbarealeg.org.

Institutional Racism and Lawyer Responsibilities
May 18 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbarealeg.org.

Getting Ahead and Staying Ahead — Being Prepared for Trial

Key Approaches to Client Satisfaction and Communication Skills
May 24 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbarealeg.org.

Padilla v. Kentucky
May 25 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbarealeg.org.

Civil Rights

Indian Law

Tribe Water in the Pacific Northwest

Tribal Business Law Institute: Ethics, Sarbanes Oxley, and Criminal Sanctions
April 15 — Seattle and webcast. 3 CLE credits. By Seattle University School of Law; www.regonline.com/indianlaw7.

23rd Annual Indian Law Program
May 20 — Seattle and webcast. CLE credits pending. By the WSBA Indian Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbarealeg.org.

Intellectual Property Licensing
May 26 — Seattle and webcast. CLE credits pending. By the WSBA Intellectual Property Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbarealeg.org.

Real Property, Probate, and Trust

Annual Real Property, Probate and Trust Section Real Estate Seminar
April 21 — Seattle and webcast. CLE credits pending. By the WSBA Real Property, Probate and Trust Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbarealeg.org.

Community Property
April 15 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbarealeg.org.

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Community Property  
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Auto Cases  
April 20 — Seattle and webcast. 6.5 CLE credits, including .5 ethics. By Washington State Association for Justice; 206-464-1011; www.washingtonjustice.org.

2011 Annual Ethics in Civil Litigation Institute: Ethical Advocacy  
April 20 — Seattle and webcast. 6.25 ethics credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Annual Real Property, Probate and Trust Section Real Estate Seminar  
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April 29 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

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WSBA Lawyers Assistance Program Washington State Bar Association
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The Seattle office of Smith Freed & Eberhard is currently seeking an attorney with a minimum of 3 years’ experience in civil defense litigation. Successful candidates must possess excellent client service skills, including the ability to create long-lasting relationships, in addition to possessing outstanding research, writing, and analytical skills. We pay a competitive salary and benefits. For consideration, please send a cover letter and résumé to hr@smithfreed.com and indicate Seattle Civil Defense Attorney in the subject line. To learn more about our firm, please visit www.smithfreed.com.

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good reputation in the legal community and, most importantly, a willingness to be part of a collegial work environment. With roots dating back to 1927, Samuels Yoelin Kantor LLP is one of Oregon's oldest law firms. The firm is widely recognized throughout the Pacific Northwest for the superior legal work it performs on behalf of its corporate and individual clients. For consideration, send résumé and cover letter to Ed Cunningham at ed.cunningham@samuelslaw.com.

Pacific Law Recruiters is executing a search for an associate attorney seeking to take his or her command of litigation and employment law to the next level of accomplishment. Our client, a well-established and respected firm with deep ties to the Northwest legal arena, is seeking a mid-to-senior-level associate to assume a host of duties related to employment law, with an emphasis on litigation and counseling, on behalf of private and public businesses. Prompt consideration will be given to those candidates with five years or more of related experience, coupled with some portable business and Washington State Bar accreditation. Equally important are an excellent academic record and proficient writing ability. This position provides a strong platform for practice development, and affords an attractive compensation and benefits package. Interested candidates are requested to submit a résumé and cover letter in strict confidence to Greg Wagner, Principal, Pacific Law Recruiters, at gww@pacificlawjobs.com. Visit our website: www.pacificlawjobs.com.

Seeking associate litigation attorney for Anchorage, AK. We focus on the representation of financial institutions in matters related to licensing, servicing, mortgage banking, consumer finance, title insurance, real estate finance, and the enforcement and defense of mortgage loans. Looking for at least two years in civil litigation, including jury trials and depositions. Related industry experience a plus. Strong writing skills and ability to work self-directed on a volume of files. Local and statewide travel to courthouses. Salary DOE with full benefits including health insurance, paid vacation, mileage reimbursement, and payment of all required bar dues and CLE fees. Click here to apply online: https://www.hirebridge.com/v3/application/applink.aspx?cid=6505&jid=118169.

A Place for Mom, the largest eldercare referral agency in U.S., based in Seattle, seeks a contract legal counsel — experience with employment, contract law, non-compete, and brings a minimum of two years’ experience working in-house or at a firm that dealt with these types of issues. 20 to 40-plus hours a week, time will fluctuate each week. Starting immediately, three months plus. Potential for permanent position in the future. Reporting to the general counsel. Send résumé to katherynh@aplaceformom.com. Learn more: www.aplaceformom.com.

Real estate attorney — Goodstein Law Group PLLC. Goodstein Law Group PLLC provides legal representation to general and special-purpose governments, public and private corporations, other forms of business entities, and individuals with interests in the Northwest. The firm delivers high-quality legal services, focusing on public port districts, and now seeks one or more attorneys to join its Tacoma office. Ideal candidates will have minimum five years of experience focused on real property, environmental, business, and commercial matters, including experience in negotiating and preparing purchase and sale agreements, leases, operating agreements, interlocal agreements, and resolution of liabilities, including environmental liabilities, arising out of commercial, residential real property, and businesses, as well as the mediation, arbitration, and litigation of issues arising in these areas before administrative agencies, trial courts, and appellate courts. Strong work experience, academic credentials, verbal and writing skills, and interpersonal skills are required. Washington Bar admission is preferred. Full-time or contract position to be negotiated. Submit résumé, writing sample, and letter of application detailing prior relevant work experience via e-mail to Alott@goodsteinlaw.com. EOE.

McNaul Ebel Nawrot & Helgren of Seattle is seeking an experienced associate with a minimum of two years’ experience to join its busy and sophisticated litigation practice. Candidates should possess exceptional legal ability, excellent written and oral communications skills, a strong work ethic, and a can-do attitude. The successful candidate will have the opportunity to deal directly with clients, handle all phases of discovery/trial preparation/settlement negotiations, make court appearances, and participate in trials. McNaul Ebel is an AV-rated law firm populated by Super Lawyers and award-winning attorneys at all levels. Applications will be held in strictest confidence. Send résumé and associated application information to: Firm Administrator, 600 University St., Ste. 2700, Seattle, WA 98101, or fax to 206-624-5128.

Small maritime defense firm with emphasis in defense of seamen’s, LHWCA and passenger claims, and related insurance issues, seeks litigation associate with a minimum of three years’ experience. Familiarity with maritime law and LHWCA a plus. Candidates must write exceptionally well, and either be, or have the tools necessary to develop into, effective trial advocates. We seek a motivated team member capable of interacting effectively with people and working to resolve problems. Contact: ran@nielsenshields.com.

Corporate associate attorney: Pacific Law Recruiters is actively assisting the Seattle office of a national law firm in its search for an associate attorney. Candidates will be immediately considered, provided they hold high academic ratings from a top law school, and a minimum of three years’ corporate experience, to include practical knowledge of securities, mergers and acquisitions, licensing, and compliance-related issues (preferably in a mid-to-large-size firm). Technology industry representative experience is appreciated, as well. Unique in its strong commitment and steady approach to attorney retention and a work-life balance, the firm also provides an excellent compensation and benefits package. Interested candidates are encouraged to submit a confidential résumé and cover letter to Greg Wagner, Principal, Pacific Law Recruiters, at gww@pacificlawjobs.com. Visit our website: www.pacificlawjobs.com.

Reinisch Mackenzie, P.C., a northwest regional law firm located near Quest Field (Seattle), is seeking a full-time litigation associate for our workers’ compensation defense firm. The ideal candidate must be highly motivated to practice Washington workers’ compensation law with emphasis on aggressive defense and client development. Applicant will have a minimum
of two years' litigation experience in Washington workers' compensation defense or civil litigation practice. Candidate must demonstrate a good sense of humor and possess outstanding research, writing, and analytical skills. We offer a team-oriented work environment with competitive salary and benefits. Qualified and interested candidates should submit a cover letter, résumé, and writing sample to Michael Weier, Managing Partner, Reinisch Mackenzie, P.C. 10260 SW Greenburg Rd., Ste. 1250, Portland, OR 97223. No phone calls, please.

**Long-established Centralia general practice law firm** seeks attorney for associate position. Must be self-motivated, organized, reliable, and good with the public. Should be able to work case through to completion (trial). Aggressiveness (when called for) and integrity a must. Compensation depends on experience and will most likely be based on accounts receivable. Send cover letter, résumé, writing sample, and references to PO Box 59, Centralia, WA 98531.

**Associate attorneys** with a minimum of three years' experience are becoming increasingly in demand by some of the Northwest's finest firms. Practical experience in corporate/transactional law, intellectual property, securities, and complex civil and commercial litigation generates immediate consideration, provided candidates also possess superior writing skills, excellent interpersonal attributes, and exemplary academic credentials from a quality educational institution. Current or recent experience in a leading law firm or major business organization is also necessary. Qualified candidates interested in exploring new opportunities are encouraged to forward a confidential résumé and cover letter for immediate consideration to Greg Wagner, Principal, Pacific Law Recruiters, at gww@pacificlawjobs.com. Visit our website: www.pacificlawjobs.com.

**Mid-level litigation associate position** — opportunity to take on a lot of responsibility. Well-regarded Seattle firm seeks a litigation associate who will get an opportunity to work on a variety of cases which include contract/business disputes (including financial services) and various tort defense cases. The associate will also get the opportunity to take on a lot of responsibility, and this firm has a very good record on promotion to partnership. Candidates must have a minimum of three years of general litigation experience in a variety of cases from a well-regarded law firm, and strong academic credentials. Direct all confidential inquiries to Gordon Kamisar, Esq., President, Kamisar Legal Search, Inc., gkamisar@seattlesearch.com; 425-392-1969; www.seattlesearch.com.

**Leading Seattle area Social Security and veterans’ disability firm** (relocating to Seattle soon) seeks associate for representation at federal administrative hearings. Require minimum three years' litigation experience, preferably in Social Security disability or workers’ compensation. Top-of-market compensation and benefits. Great opportunity (e.g., no billable hours, optimal work/life balance) to represent deserving clients in fast-paced collegial office. Send cover letter and résumé to: cshear@rafalaw.com.

**Services**


**Virtual Independent Paralegals, LLC** provides comprehensive 24/7/365 litigation support with expertise in: Medical Record Summaries, Deposition Digests, Transcription (Court Certified) Document Review and Redaction Projects. We hit the ground running, providing highest quality results at unbeatable rates. Locally owned, nationally known, virtually everywhere! VIP, we're here when you need us, just a phone call or email away! 206-842-4613. www.viphelpme.com.

**Résumé/career consultations for attorneys** — 30-minute sessions — $85. Lynda Jonas, Esq., owner of Legal Ease L.L.C. — Washington's Attorney Placement Specialists since 1996 — works with attorneys only, in Washington state only. She has unparalleled experience counseling and placing attorneys in our state's best law firms and corporate legal departments. It is her opinion that more than 75 percent of attorney résumés are in immediate, obvious need of improvement. Often these are quick, but major, fixes. Lynda is uniquely qualified to offer résumé assistance and advice/support on best steps to achieve your individual career goals within our local market. She remains personally committed to helping attorneys land the single best position available to them. All sessions are conveniently offered by phone. Please e-mail legalease@legalease.com or call 425-822-1157 to schedule.

**Experienced fire and product liability litigation attorney**: More than 20 years' experience in complex commercial and residential fire cases. Available for consultation in evaluating fire scene evidence to determine the origin and cause, meeting the requirements of NFPA 921, conducting critical discovery including expert depositions, evaluating your expert's opinions, and preparing for a Daubert challenge. For information, call Eileen Stauss at 206-399-2046.


**Experienced, efficient brief and motion writer** available as contract lawyer. Extensive litigation experience, including trial preparation and federal appeals. Reasonable rates. Lynne Wilson, 206-328-0224, lynnewilsonatty@gmail.com.

**Clinical psychologist** — competent forensic evaluation of individuals in personal injury, medical malpractice, and divorce cases. Contact Seattle office of Gary Grenell, Ph.D., 206-328-0262 or mail@gregrenell.com.

**Experienced contract attorney**: 18 years' experience in civil/criminal litigation, including jury trials, arbitrations, mediations, and appeals. Former shareholder in boutique litigation firm. Can do anything litigation-related. Excellent research and writing skills, reasonable rates. Peter Fabish, pfab99@gmail.com, 206-545-4818.

**Contract attorney available** for research and brief writing for motions and appeals. Top academic credentials, law review, judicial clerkship, complex litigation experience. Joan Roth, 206-898-6225, jlrmcc@yahoo.com.


Appraiser of antiques, fine art, and household possessions. James Kemp-Slaughter ASA, FRSA with 33 years’ experience in Seattle for estates, divorce, insurance, and donations. For details, see http://jameskempslaughter.com; 206-285-5711 or jkempslaughter@aol.com.


Dispute Resolution Center works with attorneys to provide certified mediation services; interest based, facilitative, co-mediators. Sliding scale throughout Snohomish/Skagit/Island. Evening, weekend, and Spanish-language sessions available. Contact 425-212-3931; www.voaww.org/drc.

Personal receptionist: From Redmond, WA, receptionists answer calls with your custom greeting, screening, and announcing. We transfer calls to wherever you are. Starting at $99/month. 425-622-7330; chrisenlaw@aol.com.

Construction claims research and expert witness. Construction defects, exterior envelope water intrusion, standard of care. 37 years’ experience in the AEC industry. Specialize in construction defects research, analysis, and presentation, including interdisciplinary design and construction process, flaws in design and construction contracts, deficiencies in design drawings, and specifications. See www.fairbuildingtechnology.com or e-mail jim@fairbuildingtechnology.com. 206-352-0800.

Attorney has strong research and writing skills, lots of experience, and reasonable rates. I draft trial and appellate briefs, motions, and research memos for other lawyers. Resources include UW Law Library and LEXIS online. Elizabeth Dash Bottman, WSBA #11791. 206-526-5777; bjelizabeth@qwest.net.

Real estate — I am a former real estate attorney and am now acting as a real estate managing broker for buyers and sellers. I am rebating half (sometimes more) of my commission. You can buy any home listed by any company through me and I will rebate 1.5 percent of the sale price back to you. Similar rebate/discount for sellers. I am a full-service broker; not a limited-service broker. My services include, but are not limited to, market price opinions, qualifying buyers and negotiating terms, multiple listing service, open houses, and advertising. Same rebates apply for commercial properties. Honest, reliable, and experienced. Satisfaction guaranteed in writing. J.P. Real Estate, Inc., since 1973. Call or e-mail with any question. Clancy Tipton. 206-947-7514; catipton1@msn.com.


North Cascades Appraisal Service, LLC. Summary of Service: High-quality valuation services in today’s volatile real estate market. We manage all stages of each appraisal from the scoping phase through delivery. We form alliances with real estate brokers, other appraisers, bankers, government agencies, and investors and developers to stay current on the latest real estate trends. The owner has over 10 years of experience appraising a broad range of properties in Oregon and Washington. Property types: We specialize in small- to mid-capitalization commercial properties, including motels, apartments, warehouses, storage unit facilities, in-line retail centers, gas stations, subdivisions, condominium developments, farm, and timber properties. We also appraise individual homes, townhouses, and condominiums. Deliverables and services: expert witness research and testimony for litigation and arbitration purposes; market studies used for lease negotiations and listing price decisions; full range of appraisal reports used for bank loan decisions; form reports for residential and condominium properties. Contact: Sean Rhodes, North Cascades Appraisal Service, LLC, PO Box 526, Mountlake Terrace, WA 98043; 206-356-1848; sean@northcas.com.

Space Available

Downtown Seattle executive office space: Full- and part-time offices available on the 32nd floor of the 1001 Fourth Avenue Plaza Building. Beautiful views of mountains and the Sound! Close to courts and library. Short- and long-term leases. Conference rooms, reception, kitchen, telephone answering, mail handling, legal messenger, copier, fax, and much more. $175 and up. Serving the greater Seattle area for over 30 years. Please contact Business Service Center at 206-624-9188 or www.bsc-seattle.com for more information.

Turn-key — new offices available for immediate occupancy and use in downtown Seattle, expansive view from 47th floor of the Columbia Center. Office facilities included in rent (reception, kitchen, and conference rooms). Other administrative support available if needed. DSL/VPN access, collegial environment. Please call Amy, Badgley Mullins Law Group, 206-621-6566.

Bellevue office space: Two offices available for sublease in downtown Bellevue. Rent includes shared use of conference rooms, small law library, and kitchen. Options include use of copier and covered parking. Please contact asakai@jgslaw.com.

Belltown (Seattle) law firm offering turn-key sublease. Corner lot building with large windows and beautiful cherry wood interiors. Two professional offices
Prime Columbia City (Seattle) office suite. Sub-dividable 1,550 square feet with five offices, reception area, kitchen/bath. Second floor of beautifully renovated historic landmark in the center of vibrant downtown Columbia City’s “restaurant row.” Charming entry, hardwood floors, vaulted ceilings, steps to bus stop, light rail. $3,000 for entire suite, fully serviced (utilities/janitorial included). Contact info@zephyrlaw.com or 206-453-5019.


South Lake Union office space. Perfect for attorneys looking for a professional class “A” office space with all the amenities in Seattle’s hottest commercial sub-market. Street or garage parking available. Energy Star-rated building features men’s and women’s locker rooms with showers and close walking distance to nearby restaurants. Great option for startup law firm or solo practitioners. Rates start as low as $635 for furnished office. Call Greg, 206-652-3274.


Bank of America Plaza (Seattle). Gorgeous top-floor office space; fully furnished with access to all amenities and just a short walk to county courthouse. Onsite receptionist and support staff to provide admin support as needed. Must-see office space features 15’ ceilings and breathtaking city views; perfect for groups of 1–6 occupants. 4 months’ free rent on any new 12-month lease. Call Greg for details, 206-652-3274.

Congenial downtown Seattle law firm — (business, I.P. tax). One office and adjacent staff space available. Rent includes receptionist, conference rooms, law library, kitchen. Copiers, fax, DSL Internet also available. 206-382-2600.


Two Union Square (Seattle). Furnished offices for lease on 42nd floor. Flexible lease terms. Rates start as low as $650/mo. Newly renovated kitchen area and access to 3 conference rooms with video conferencing equipment also included. Free rent discounts apply for leases of 6 months or greater and “virtual office” also available. Call Greg for details, 206-652-3274.

To Place a Classified Ad

Rates: WSBA members: $40/first 25 words; $0.50 each additional word. Nonmembers: $50/first 25 words; $1 each additional word. Blind-box number service: $12 (responses will be forwarded). Advance payment required; we regret that we are unable to bill for classified ads. Payment may be made by check (payable to WSBA), MasterCard, or Visa.

Deadline: Text and payment must be received (not postmarked) by the first day of each month for the issue following, e.g., May 1 for the June issue. No cancellations after the deadline. Mail to: WSBA Bar News Classifieds, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539.

Qualifying experience for positions available — state and federal law allow minimum, but prohibit maximum, qualifying experience. No ranges (e.g., “5-10 years”). Ads may be edited for spelling, grammar, and consistency of formatting. If you have questions, please call 206-727-8262 or e-mail classifieds@wsba.org.

Practice for Sale

Practice for sale. Take advantage of reciprocity with Oregon. Established, highly successful practice for sale in Bend, Oregon, with focus on litigation, business, real estate, personal injury, criminal, etc. High gross/net income. Owner will work for and/or train buyer(s) for extended period. Experience preferred. Serious inquiries only. Owner terms available. Please direct inquiries to John at PO Box 1992, Bend, OR 97709. Will respond or call back promptly.
Welcome to the future

WSBA's new website debuts soon.
<reimagined and redesigned with you in mind>
Racing through Life

The Monte Carlo hillside basked in the midday sun as a brisk white chop dusted the Mediterranean below. I was rounding the Mirabeau Haute corner, on the Avenue des Beaux Arts (you know, at the top of the hill before you descend to that horrendous hairpin). It was the first day I had driven the 2006 Ford GT, and I was still getting used to the course, the same one used for the Grand Prix de Monaco. Seeking a line that would get me around without riding the curb, I slammed the six-speed into second gear. The big V8 screamed like a dental drill, rattling my eyeballs. Its compression alone nearly locked up the rear wheels, but I was dead solid perfect as I reached the apex of the curve and nailed the throttle. Suddenly a streak of British racing green flashed across the Ford’s broad snout. A 1966 Jaguar XJ13 squeezed me out and disappeared down the hill toward Port d’Hercule.

I chucked my PlayStation 3 controller, spilling the bag of zero-trans-fat synthetic microwave popcorn cradled in my lap. It was the third time in a row my console’s CPU and the Gran Turismo 5 algorithms had conspired to send that artificial-intelligence expression of the supercar. Not in real life, anyway. No way should it be owning my modern version of the supercar. Not in real life, anyway. Of course, this wasn’t real life. It was virtual reality, and it had let me down.

Of course, this wasn’t real life. It was virtual reality, and it had let me down.

To cool off, I decided to ride my bicycle around the block. As I pedaled past the neighbor’s daughter on her Rainbow Brite cruiser, it occurred to me: When I’m not sitting behind a desk or otherwise under pressure to dispense advice or solve problems, I’m basically 12 years old. I still like to play. But don’t judge me, because so do you.

Have you been to an REI lately? Forget the recess — ostensibly sane grownups still roam the aisles, eager to disburse their hard-earned cash. And on what? Shiny plastic and metal things that float, bounce, roll, or slide, plus the padded clothes, helmets, and rescue gear needed to avoid premature death while using them. Because despite our species’ evolutionary brilliance, when we have time to do what we really want, we do basically the same things the typical Labrador retriever does, except that the Lab happily acquires its toys for free from mud puddles. (Speaking of which, we’ll also gladly plunk down $75 to put a coat on a canine, regardless of the obvious fact that its biological family has survived as long on this planet as ours and got along fine without clothes and accessories until the past few years.)

So what’s wrong with us? Except for the part about dressing our dogs, nothing. We just have to accept that we never really grow up. It’s OK. It’s not just human, it’s mammalian. Mammals need a long time to learn the skills for staying on the predator side of the predator-prey equation. And much of play is just rehearsal of those skills. If you watch Animal Planet, you know that pretty much all mammals enjoy play, like sliding down hills or splashing through water. And, like us, they keep doing it as adults. Of course, with our fanatically analytical brains and baroque social structures, we’ve made even play absurdly complex. We’ll spend thousands of dollars for transportation and lodging so we can be in this year’s trendiest place to slide down a hill or splash through water. We’ve even invented devices that allow us to pretend to play outdoors without actually leaving the comfort of our couches.

But why? If you could ask the average polar bear mom why she would climb a snow slope just to slide back down, she would say, “Well, because it’s fun. It gives me something to enjoy with my cubs. And when I’m sliding down the snow, that’s all I’m thinking about. I’m not thinking about whether the cubs will be attacked by a rogue male tomorrow or whether my species will be extinct in a few years. All I’m thinking about is how great it feels to slide down a hill on my big bear butt.”

Polar bear mom is right. Life is hard. Raising kids is tough enough. Add to that the pressures of our profession, where the potential for disaster is often right around the corner, and it’s almost unbearable at times (no pun intended). Even worse, unlike other species (as far as we know), we’re painfully aware of our own mortality. Knowing recess doesn’t last forever, we’ll do just about anything to have fun when we get the chance. In the past few days, some of the most exuberant posts among my 40- to 50-year-old Facebook friends have been about getting a new mountain bike, adopting a kitten, and going snowboarding.

As I’m writing this, the weather here in Bellingham has turned back to winter, so I won’t be riding my bike for awhile. But I have $2.6 million in GT5 credits, so you know what I’m going to do? I’m going to upgrade with a titanium racing exhaust and supercharger, then knock that Jaguar back to 1966. Game over, dude.
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