Lawyers for Sustainability

Weekend Getaways

Sick and Safe Leave: Is Your Firm Prepared?

International Arbitration: The Need for the Model Law

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Letters to the Editor

Referring to the Referendum

I find it amazing to see so many private lawyers who want to keep license fees the same. Heatherly breaks it down to a monthly amount as if we should create a flexible spending account to direct deposit into every month to pay a frivolous $450. Here in Whatcom County, the local Bar is pushing to keep the rate at $450. The local Bar . . . of course heavily dominated by private counsel. How about this: government/public service lawyers, doing the public service work for our State, get to pay $150 less every year; the private lawyers who vote for $450 get to pay $600. What’s the difference between $325 and $450, you ask? Heck, what’s the difference between $450 and $600?

Darrin L. Hall, Bellingham

In addition to being a member of the Washington Bar, I am a member of the Pennsylvania Bar where I pay $200 per year, compared to $480 in Washington. Why the difference? Pennsylvania is not a “unified” bar. I do not have to join the state bar association unless I choose to. I don’t have to pay for view offices and comparable salaries. I don’t pay for association travel or lobbying. I only pay for essential functions like licensing and discipline. Washington’s licensing fee could be much reduced if WSBA membership, except for licensing and discipline, were voluntary. Lawyers who are underemployed or find WSBA dues burdensome could choose to pay for licensing and discipline only, at much lower cost. A dues rollback would be unnecessary. Separating licensing from bar association membership could actually make the WSBA stronger by making it more responsive and less expensive. WSBA appears to suffer some of the problems of a monopoly, including indifferent cost discipline. If membership were voluntary, it would have to provide value to attract members. Perhaps Washington should move away from a “unified” bar.

Lee Roussel, Tacoma

Voting on the license-fee referendum is open until 5:00 p.m. (PDT) April 6.

☐ Your vote is important!
See www.wsba.org/referendum
Family Matters

Govern a family as you would cook a small fish — very gently.

— Chinese proverb

Perhaps this is unprecedented in WSBA president column history, but I will again devote at least a part of this column to the referendum. As I write this, the ballots are still being cast, and the results of the election will be known shortly after you read this message. Obviously, my perspective today is not from a position of knowledge of the results. Frankly, I think I would make the following comments regardless of the outcome of the referendum vote.

I would like to accomplish at least two things with this column. First, I would like to make clear that I feel that this referendum has been a healthy process. I think it has provided a vibrant forum for dialogue and encouraged the WSBA leadership to listen and respond. That process is always helpful. Second, I would like to reflect on what I think is the most important component of the WSBA and that is you, the members.

This year, as Bar president and during this referendum process, I have come to realize that the WSBA membership is like a family. Like family members, we are unavoidably tied to each other — not by DNA, but by being members of a mandatory bar association. Like a family, we often have differing views on issues presented to us. Like a family, I believe that we have respect for each other and what we stand for in the greater community. Like many families, we care about being of service to our society in a variety of ways.

During my year as president, and to some extent before, I have had a tremendous opportunity to visit lawyers, judges, justices, law students, and local bar associations around the state. One common theme presents itself. There is a reverence, respect, and passion for and about our profession. I am going to give you a few “snapshots” of events that I have attended around the state that give me great hope and respect for you, our members. The following are but a few of the mental snapshots on the “refrigerator” of my mind.

- Tacoma Pierce County Bar Convention — bar convention? Yes indeed! For the second consecutive year, I attended their annual convention. This local bar association embodies all that is good about being professional, working hard, and playing hard. I commend the members of the TPCBA and their leaders.
- Thurston and Lewis County Bar leaders, Government Lawyers Bar leaders, and judges. When the Board of Governors meets in various venues around the state, we try to meet with local bar leaders and the judiciary in those venues. The meeting in Olympia is always well-attended, and this year was no exception. It was a delight to see how involved and dedicated the lawyers we met with truly are.
- I am always impressed at how well-organized the King County Bar Association is. They represent the largest local bar association in the state and they do so with distinction. From CLE programs to providing leadership on issues of significance to our profession, KCBA is always there!
- The Board of Governors recently met in Walla Walla and again we had the pleasure of meeting with the local judges and bar leaders. We learned some tips from their volunteer legal services program about how to maximize resources and provide greater service. We also had the pleasure of meeting with about 30 or more Whitman College and Walla Walla University pre-law students. I left that gathering very content knowing that if these young men and women are our professionals of tomorrow, we are in good shape.
- I had the honor to speak at the new lawyer swearing-in at Gonzaga School of Law last November. The Law School, under the leadership of Dean Jane Korn, hosted the event at their beautiful
facilities. The Spokane County Bar and judiciary conducted a very dignified ceremony. WSBA Governor/Treasurer Nancy Isserlis did a masterful job of overseeing the ceremony. It was moving to see the levels of the judiciary in the very stately courtroom setting. Add to that the beaming new admittees and their very proud families. It was a great event.

- When the Board of Governors met for its monthly meeting in Bellingham with Governor Phil Buri acting as host governor, we had the opportunity to meet with Whatcom County judges and bar leaders. I was very impressed at how collegial and forward-thinking both groups are in attending to the needs of the profession and the public that we serve. There is a lot of very positive energy and great leadership in that part of our state.
- I thoroughly enjoy the connection with the minority bars, sections, committees, and boards with whom I have had a chance to interact.

- Then there is my own local bar association, the Chelan-Douglas Bar Association. Our association is healthy, active, and very vital. There is a history in the CDBA that extends long before my membership and continues as strong as ever that supports collegiality and professionalism. I attribute that to those lawyers who came before me, as well as those local lawyers who are good role models and a strong judiciary which also provides leadership and guidance. In addition to monthly CLE meetings, the association members meet for at least three social functions each year.

So what is my point? My point is we are all in this profession together — like family. We are all trying to advance our profession; ensure that the rule of law is protected; and care for the legal needs of our citizens, friends, and neighbors. We are the only self-regulated profession. That is an opportunity and a responsibility. We need to embrace that concept and guard it.

I have viewed the recent referendum as an opportunity to engage in meaningful dialogue between the leadership of the Bar Association and its members. I can assure you that regardless of the outcome of the referendum, on all sides of the issue you were heard!

I also want to take this moment to thank the Board of Governors, Bar officers, and WSBA staff for their incredible efforts to run this organization, year in and year out. The WSBA governors give three years of their professional and personal lives to help “do the business” of the Bar Association. This job is without compensation and sometimes without thanks. I thank all of you for your efforts!

Like a family, we have had a tough discussion and now it is time to go about the business of responding to the discussion and move to a better place for all of us.

Thanks to everyone for your involvement in the dialogue on all sides of the issue. We are all better for it!

WSBA President Steve Crossland practices in Cashmere and can be reached at steve@crosslandlaw.net or 509-782-4418.
What Is It Worth?
Assessing the value of WSBA programs with a mission-focused approach

During the referendum this winter, there has been a lot of discussion among the WSBA membership about the value members receive from paying their license fee. Comments have ranged from lauding the work of the WSBA to feedback and comments about WSBA being a bloated organization that does too much, has too many staff, doesn’t provide value, and is out of touch with its membership.

This feedback is important to hear, not only because your input matters, but because it’s your Bar. The WSBA can do a better job of communicating and connecting with you on an ongoing basis about the operational work the WSBA does — how the Board of Governors makes decisions, how you can participate and impact those decisions, and what the results and outcomes from these decisions are.

Shortly after I became executive director in 2007, it was clear that expenses had begun to exceed revenues and it was time to review all of the programs that WSBA was currently operating. In 2008–2009, under President Mark Johnson’s leadership, the Program Review Committee chaired by then-Treasurer Russ Aoki reviewed each of WSBA’s programs thoroughly.

The process for the Committee included reviewing a written summary of the program and a presentation by the staff director responsible for the program. The Committee engaged in discussion and dug deep into the nuts and bolts of each program. Factors examined included how the program was structured, staffed, and funded; the program’s history and achievements; problems, concerns, or issues raised; and the program’s costs compared to benefits. In addition to the programs reviewed, the Committee also finished the review of WSBA’s standing committees that the Board of Governors’ 2007–2008 Long Range Planning Committee had started the previous year.

Some of the changes that resulted from the program review included: WSBA’s Alternative Dispute Resolution program was sunsetted; duplication of effort was found among the various diversity committees leading to some consolidations and changes that are still underway; and more training for members wanting to do pro bono work was identified as a need, which led to a comprehensive training program to support pro bono attorneys being rolled out and implemented. Some WSBA staff positions that were open were not filled and work was reassigned.

Another significant undertaking occurred in 2009–2010, when the Board of Governors did a top-to-bottom review of WSBA’s Bylaws, and many changes were made to streamline governance and licensing processes. A key decision of benefit to members was to change the requirements for lawyers on inactive status who want to return to active status. Prior to 2010, members who were on inactive status for more than five years had to take the Bar Exam to be readmitted. The Bylaws were changed to require members on inactive status for six or more consecutive years to take a 15-hour readmission course as opposed to re-taking the Bar Exam.

While the work of the Program Review Committee was significant, it was a review of the merits of each WSBA program individually and did not provide a comprehensive look at all WSBA programming in relation to one another. The Board’s work was not finished; the WSBA’s mission was still broad and budget issues remained. Under a Board of Governors’ directive, the Budget and Audit Committee and staff spent the 2010–2011 year reviewing the WSBA’s budget and programming with an eye toward developing a focus and reduc-
ing WSBA’s footprint.

A common refrain heard throughout last year was “a mile wide and an inch deep” to describe WSBA’s programming and efforts. With that in mind, we began discussing our mission, direction, and future, which led to an extensive review process involving the Budget and Audit Committee, the Board of Governors, and staff.

Ultimately, this effort produced two mission focus areas for WSBA: ensuring competent and qualified professionals and promoting the role of lawyers in society. The former refers to our responsibility to support members from the cradle to grave of their professional lives. As the regulatory agency, we must ensure that those who carry a license meet the requirements set out by the Supreme Court through its rules and regulations, but we must also support the health and well-being of our members through programming that supports members as they ply their trade and deal with the stress of the profession.

The latter focus refers to WSBA’s need to highlight the role of lawyers in society of serving the public and upholding the oath we’ve all taken, while also raising the level of public awareness of the essential function lawyers play in a democratic society.

Developing two mission-focus areas, though, was only a first step in refining WSBA’s focus, and we realized we needed to establish criteria for evaluating all existing programs as well as any future proposed programs. Five questions were developed to capture the evaluation criteria:

- Does the program further either or both of the WSBA’s mission-focus areas?
- Does the WSBA have the competency to operate the program?
- As the mandatory bar, how is the WSBA uniquely positioned to successfully operate the program?
- Is statewide leadership required in order to achieve the mission of the program?
- Does the program’s design optimize the expenditure of WSBA resources devoted to the program, including the balance between volunteer and staff involvement, the number of people served, the cost per person, etc.?

Using these two lenses (mission-focus and evaluation criteria), the Board moved to eliminate further programming and a resulting reduction and/or redirection of staff time. Programs eliminated included public legal education programming and the Council on Public Legal Education (which has received a 501(c)(3) designation to continue its work independent of WSBA), as well as Resources (the printed WSBA directory), and redefining the business model for the annual Bar Leaders/Access to Justice Conference to make it self-sustaining. The Board of Governors also voted to eliminate one board meeting a year to reduce expenses.

As one governor summed up the use of the focus areas and criteria on an ongoing basis: the question is not “Is the program good?” but rather “Should it be WSBA’s program?” We continue to review the programming supported through license fees to ascertain which programs should be eliminated.

This work over the last several years has been significant and I urge you to take the time to read the full report that can be found on the WSBA website, accessible from www.wsba.org/about-wsba. Clearly, value is defined by each individual and simply telling you that your Bar is of value is not enough. We must deliver. We have learned a lot through this referendum process. Most importantly, we have heard you and we value your input. The WSBA is your Bar, and while we have worked hard over the past few years to ensure our efforts deliver value to you and the public we serve, that work is only the beginning and we can always do better.

I welcome your comments or questions. Feel free to email me at comments@wsba.org.

Paula Littlewood is the WSBA executive director and can be reached at paulal@wsba.org.

Working from our **mission statement**

The Washington State Bar Association’s mission is to serve the public and the members of the Bar, ensure the integrity of the legal profession, and to champion justice

**two mission-focus areas** were developed:

- Ensuring competent and qualified professionals (focusing on regulation and assistance in all stages of one’s career, beginning in law school).
- Promoting the role of lawyers in society (focusing on service and professionalism).

In the process, **criteria for evaluating WSBA programs** were established:

- Does the program further either or both of the WSBA’s mission-focus areas?
- Does the WSBA have the competency to operate the program?
- As the mandatory bar, how is the WSBA uniquely positioned to successfully operate the program?
- Is statewide leadership required in order to achieve the mission of the program?
- Does the program’s design optimize the expenditure of WSBA resources devoted to the program, including the balance between volunteer and staff involvement, the number of people served, the cost per person, etc.?
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Steve Scott
Former King County Superior Court Judge

James Verellen
Former Washington State Court of Appeals Commissioner
Sick and Safe Leave:  
Is Your Firm Prepared?

A New Sick and Safe Leave Ordinance May Affect Seattle–Area 
and Washington Businesses

BY LARIE JOHNSTON

Does your firm provide only unpaid leave in the event an employee faces domestic violence issues? Does your firm’s policy prevent carrying over any accrued sick leave to the next calendar year? Does your firm grant attorneys discretion over time taken off as long as they meet the firm’s billable hour goal? Does your firm have a sick leave or paid time off (PTO) policy that ties to an employee’s date of hire rather than the calendar year? Does your firm have a no-fault attendance policy?

If your firm is located in Seattle or if it has employees who work in Seattle and you answered yes to any of these questions, as of September 1, 2012, your firm may be in violation of the new Seattle City Sick and Safe Leave Ordinance.

On September 12, 2011, the Seattle City Council passed an ordinance requiring most employers operating in the City of Seattle to provide paid sick and safe leave for employees.1 While the Ordinance does not take effect until September 1, 2012, employers need to begin planning now to ensure they are in compliance when the Ordinance takes effect.

ORDINANCE OVERVIEW

What Is It?
The Sick/Safe Leave Ordinance requires employers to provide paid sick and safe leave to employees at the same hourly rate and with the same benefits, including healthcare benefits, as the employee would have earned during the time the paid leave is taken.2

Who Does It Apply to?
The Ordinance applies to all private employers operating in the City of Seattle that have more than four employees and to public employees of the City of Seattle.3 Consequently, if firms or their clients have a single employee doing any work in the City of Seattle, the Ordinance may apply if certain thresholds are met.

The Ordinance establishes three tiers which set leave accrual rates, total annual allowances, and carryover allowances in order to determine whether an employer meets the threshold requirements or applicable tier.

<table>
<thead>
<tr>
<th>Number of FTEs</th>
<th>Tier</th>
</tr>
</thead>
<tbody>
<tr>
<td>0–4</td>
<td>Not applicable</td>
</tr>
<tr>
<td>More than 4–49</td>
<td>Tier 1</td>
</tr>
<tr>
<td>50–249</td>
<td>Tier 2</td>
</tr>
<tr>
<td>250 plus</td>
<td>Tier 3</td>
</tr>
</tbody>
</table>

The applicable tier is based on an employer’s total number of employees, regardless of where they work. For example, if a 300-person New York law firm has one remote employee working in Seattle, that firm is a Tier 3 employer for
purposes of the Ordinance, even though it has only one Seattle employee.

Tiers are also based on the employer’s average number of full-time equivalent (FTE) employees and temporary workers. Specifically, it is based on the “average number of FTEs paid per calendar week during the preceding calendar year” measuring “all compensated hours of all employees,” including, but not limited to, part-time employees and temporary-agency employees. For non-exempt employees, the FTE calculation is based on every paid hour of employment, averaged using a 40-hour work week. For exempt employees, the calculation is based on a 40-hour work week.

The calculation of “Total Employees” is performed for each week of the 52 weeks and averaged for the year. A sample weekly calculation is set out below.

### Weekly Example

<table>
<thead>
<tr>
<th>Calculation</th>
<th>Example</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of full-time exempt employees</td>
<td>20</td>
</tr>
<tr>
<td>Number of part-time exempt employees</td>
<td>3 PTE x 30 hrs = 90/40 = 2.25</td>
</tr>
<tr>
<td>All time worked by non-exempt employees</td>
<td>1,150 hrs total/40 = 28.75</td>
</tr>
<tr>
<td>All time worked by temporary employees</td>
<td>80 hrs total/40 = 2</td>
</tr>
<tr>
<td>Total employees</td>
<td>53</td>
</tr>
</tbody>
</table>

A shortcut may be used for calculating leave for non-exempt employees. Track all non-exempt hours paid for the year, divide by 52, then divide by 40 (e.g., 59,800 annual non-exempt hours / 52 weeks = 1,150 / 40 hours = 28.75 non-exempt FTEs). This number is then added to the annual weekly average for exempt employees. While these calculations can be complex, the final figures will generally be significant only if an employer is near one of the tier cut-off points.

### Which Employees Are Covered?

All Seattle City employees and any private employee who works in Seattle are covered, except:

1. **Work-study participants.** While work-study participants are not covered under the Ordinance, regulations have not yet defined what qualifies as a work-study program.

2. **Employees who work primarily outside of Seattle and work less than 240 hours/year in Seattle.** By virtue of this provision, employers must track any work performed in Seattle. However, for employees who work primarily outside of Seattle, the ability to use — if not accrue — leave is delayed. Normally, qualifying Seattle employees may use accrued leave after 180 days of employment. However, if an employee works only occasionally in Seattle, the Ordinance will not apply until 240 hours are worked in Seattle. In such cases, accrual starts with the first hour worked in Seattle.

3. **Those who qualify under the new business exception.** The new business exception applies to new employers of fewer than 250 employees at the outset of business operation. For these businesses, the Ordinance applies 24 months after the hire date of the business’s first employee. The calculation to determine whether an employer meets the 250 employee threshold is based on “the first 90 calendar days following the hire date of their first employee.”

4. **Those who qualify for a waiver under a Collective Bargaining Agreement.** Unions may bargain away the provisions of the Ordinance. A key question on this point will be whether sick-leave provisions created in a collective bargaining agreement which differ from those set out in the Ordinance will be sufficient or whether a statement that the parties do not intend to be bound by the Ordinance will be required. This waiver is applicable only to union agreements — individuals cannot waive the provisions of the Ordinance.

5. **Temporary employees.** For purposes of the Ordinance, temporary employees are not counted as employees of their temporary employer, but rather are covered by the agency that outsources their work. For example, employee Brown works for a Seattle-based staffing agency and is placed in a Seattle law firm for secretarial work. Brown will accrue sick/safe leave and, after working 180 hours, will be eligible to use accrued leave. The leave must be paid by the staffing agency, not the law firm.

### How Much Leave Do Employees Get?

Employees may earn 40 to 72 hours of sick/safe leave each year, depending on the employer’s tier and the employee’s hours worked.

The employee’s leave accrual is based on the number of hours worked starting at either the beginning of the calendar year or the beginning of employment.

<table>
<thead>
<tr>
<th>Tier</th>
<th>Hours</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tier 1</td>
<td>1 hour for every 40 hours worked</td>
</tr>
<tr>
<td>Tier 2</td>
<td>1 hour for every 40 hours worked</td>
</tr>
<tr>
<td>Tier 3</td>
<td>1 hour for every 30 hours worked</td>
</tr>
</tbody>
</table>

The Ordinance makes special provisions for exempt employees. In that case, accrual is based on a 40-hour work week, even if the employee works more than 40 hours. If an exempt employee’s normal work week is less than 40 hours, hours accrued should be calculated based on
the employee’s normal work week.

While an employee accrues time based on the employer’s applicable tier, the accruals are also subject to an annual cap based on the tier.

<table>
<thead>
<tr>
<th>Tier</th>
<th>Annual Cap of Hours Paid</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tier 1</td>
<td>40</td>
</tr>
<tr>
<td>Tier 2</td>
<td>56</td>
</tr>
<tr>
<td>Tier 3</td>
<td>72</td>
</tr>
</tbody>
</table>

For example, assuming no vacation or overtime, a Tier 1 full-time employee could earn all of his allowed 40 hours of leave by October. Once he meets the annual cap, he would cease accruing leave for that year.

A Tier 2 or 3 employee will not reach the annual cap in the first year unless he works overtime. However, in subsequent years, his annual accrual plus any carryover leave could reach the annual cap.

The Ordinance requires employers to allow carryover of unused accrual up to certain caps.

<table>
<thead>
<tr>
<th>Tier</th>
<th>Hrs Allowed to Carry Over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tier 1</td>
<td>40</td>
</tr>
<tr>
<td>Tier 2</td>
<td>56</td>
</tr>
<tr>
<td>Tier 3</td>
<td>72</td>
</tr>
</tbody>
</table>

What Can Employees Use Leave for?

Sick Time
In general, sick leave is for illness of the employee, or illness of her family member or partner registered under the City of Seattle Registration of Domestic Partnership Ordinance. Specifically, paid sick leave is for:

a. An absence resulting from an employee’s mental or physical illness, injury, or health condition; to accommodate the employee’s need for medical diagnosis care, or treatment of a mental or physical illness, injury, or health condition; or an employee’s need for preventive medical care;

b. To allow the employee to provide care of a family member with a mental or physical illness, injury, or health condition; care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or care of a family member who needs preventive medical care.16

The sick leave provisions largely parallel the Washington Family Care Act both in the scope of illness and the definition of family (e.g., spouse, parent, grandparent, parent-in-law, child).

If an employee is absent for three or more days on sick leave, documentation confirming the illness may be required.17 An employer may not ask the employee’s healthcare provider for the reason for the absence, only for medical confirmation that the sick time is covered by the Ordinance. Additionally, if the employer does not offer insurance to its employees, the employer must pay half of the out-of-pocket cost for obtaining the medical documentation.

The employer is not only responsible for half of any necessary doctor’s visit, but also shares the cost for professional services, including the services of healthcare facilities, testing prescribed by healthcare professionals, and transportation to the location where such services are provided.18

Safe Time
In general, safe leave provides paid time off for time not worked for safety reasons, including the closure of business or schools for public safety or paid time off to deal with domestic violence issues.

Specifically, paid safe leave is for:

a. When the employee’s place of business has been closed by order of a public official to limit exposure to an infectious agent, biological toxin, or hazardous material;

b. Accommodating the employee’s need to care for a child whose school or place of care has been closed by order of a public official for such a reason;

c. Any of the reasons related to domestic violence, sexual assault, or stalking, as set out in RCW 49.76.030.19

With the passage of the Seattle Ordinance, Seattle employers are now required to provide paid leave (to the extent leave has been accrued under the provisions of the Ordinance) under circumstances similar to those set out in the 2008 Washington Domestic Violence Leave Act, which provides for unpaid leave under a number of circumstances related to domestic violence.

However, the notice requirements of Seattle’s Ordinance and the Domestic Violence Leave Act differ. While Seattle’s Ordinance allows an employer to request documentation only if the employee misses three consecutive days, the state law allows employers to immediately request documentation for such leave.20

Enforcement
Seattle’s Ordinance aims to prevent discrimination, retaliation, or other adverse action against employees. Specifically: it shall be a violation for an employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this chapter; it shall be a violation for an employer to take adverse action or to discriminate against an employee because the employee has exercised in good faith the rights protected under this chapter; and it shall be a violation for an employer’s absence control policy to count paid sick or safe time covered under this chapter as an absence that may lead to or result in any adverse action taken against the employee.21

The Ordinance requires the adherence of not only businesses, but also individuals. In fact, as written, it appears virtually anyone can violate the Ordinance as it applies to “individuals, partnerships, associations, organizations, trade or professional associations, corporations, public corporations, cooperatives, legal representatives, trustees, trustees in bankruptcy and receivers, firms, institutions, or any group of persons.”22

An employee has 180 days to allege a violation of the Ordinance to the Seattle Office for Civil Rights (SOCR). The charge must be made in writing. The SOCR is charged with investigating charges and will be developing forms and procedures in conjunction with its regulations for the handling of the charges. If the SOCR finds that there is no reasonable cause that the employer violated the Ordinance, the employee has 30 days to appeal the finding to the
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In cases where a violation is found, a remedy "may include (but is not limited to) hiring, reinstatement or upgrading with or without back pay, lost benefits, attorney’s fees, or such other action as will effectuate the purposes of this chapter, including action which could be ordered by a court . . . ." It is unclear whether the Ordinance grants employees a private civil right of action.

Miscellaneous Provisions

The Ordinance is extremely lengthy and includes a variety of provisions that cannot all be summarized here. However, there are a few miscellaneous noteworthy provisions. The Ordinance sets minimum increments in which leave may be taken. Non-exempt employees may take leave in hourly increments or, if allowed by policy, less than one hour. Use of leave for exempt employees is controlled by company policy and wage and hour laws, but time docked from the employee’s leave bank cannot be less than one hour. However, policies that require exempt employees to take a half day or full day do not appear to violate the Ordinance.

There are some special rules for “eating and/or drinking establishments.” If the employee requests paid sick/safe time, the employer may offer the employee substitute hours/shifts instead of paid time off. Nevertheless, employers are not required to do so, and employees are not required to accept such offers.

The Ordinance also sets special provisions for rehired employees. If any employee is rehired within seven months, certain accruals, etc., apply retroactively. After seven months, the employee may be treated as a new employee.

Finally, there is no requirement to pay out accrued leave upon termination. However, companies may make other provisions by policy.

**How Should Your Firm Be Preparing?**

**Notice and Posting**

The Ordinance requires employers to provide notice of the provisions of the Ordinance to employees by posting a poster, including information in its handbook, or distributing information to new employees.

The SOCR will be preparing a poster presenting the minimum notification requirements.

The overbroad posting requirements of the Ordinance do not factor in a less stringent notice requirement for employers outside of Seattle. The Ordinance requires that “Employers” give notice to “Employees,” and neither definition is limited to Seattle. So, for example, based on the Ordinance’s language, if a New York firm employed one employee remotely in Seattle, the firm arguably would have to provide notice of the Ordinance to not only the Seattle employee, but its New York employees as well. As another example, a restaurant chain with a single restaurant in Seattle may be required to provide notice of the Ordinance to all of its employees, regardless of their location.

Additionally, there are specific penalties provided for failure to properly post notice of the Ordinance. An employer who “willfully violates the notice and posting requirements . . . shall be subject to a civil fine in an amount not to exceed $125 for the first violation and $250 for subsequent violations.”

**Reviewing and Revising Policies**

The Ordinance implicates a number of policies or practices that may need to be
revised. Employers should review each of these policies or practices carefully.

**Qualification Periods**

Does your firm have a sick leave policy but require an employee to work a minimum period of time before accruing leave, or does your firm require an employee to work more than 180 days before utilizing leave? If so, the firm will likely need to revise these policies. Hours for accrual must begin with the first day worked and employees may begin using accrued leave after 180 days of employment.

**Leave Accrual Rates**

Does your firm give 40 hours of sick leave but split the accrual for that 40 hours evenly throughout the year? For example, if your employees accrue 3.33 hours of sick leave each month, this method will not comply with the Ordinance for full-time employees. The minimum threshold under the Ordinance is 1 hour for every 30 to 40 hours worked (depending on the applicable tier). If an employee works 40 hours a week, the Ordinance requires he accrue leave hours at an average rate of 4.32 hours per month for the first nine months plus one week of the calendar year. Thereafter, the employee’s accrual for that year would cease.

Employers may always establish a more generous policy. For instance, if a company provides an exempt employee 56 hours of sick leave per year, the company could safely prorate the leave time over the year. Alternatively, many firms award the employee’s entire sick leave balance at the beginning of the calendar year. This solution is also likely to be acceptable.

Still, some more generous solutions may prove problematic under the new Ordinance. Firms that follow a practice of granting attorneys discretion over when they take time off as long as they meet the firm’s billable hour goal may find themselves at odds with the Ordinance. While such a policy may otherwise meet leave requirements, it will need to be accompanied by written policies to ensure it is in conformance with Seattle’s Ordinance.

**Annual Leave Carry-Over**

Many sick leave policies do not allow for carry-over of accrued but unused leave. These policies will need to be changed to comply with the Ordinance’s minimum threshold requirements.

**Attendance Policies**

Any firm with a no-fault attendance policy or practice will need to modify the policy to bring it into compliance, as the Ordinance prevents any “adverse action” or discrimination for exercising rights under the Ordinance. A no-fault attendance policy (e.g., after six absences an employee receives a written warning, after eight absences an employee receives a second written warning, and after 10 absences an employee is terminated) would run afoul of this Ordinance because the employer is taking action at least partially based on protected leave.

**Minimum Usage Increments**

Some companies require non-exempt employees to take a half or full day off if utilizing sick leave. Such a provision would violate the Ordinance. Non-exempt employees must be able to utilize as little as an hour of leave at a time.

**Calendar Year vs. Date of Hire**

Do your employees accrue leave based on a calendar year or date of hire (DOH) calculation? With this Ordinance, leave accruals and carry-over are based on a
leave policies will need to be rewritten to incorporate safe leave requirements.

**Paid Time Off Policies**

The Ordinance allows for paid time off (PTO) policies. A PTO policy typically combines vacation hours, sick leave hours, and personal days into one pool of hours that an employee can draw upon for any reason as long as it complies with the company’s notice requirements.

Tier 1 and Tier 2 employers may use a PTO policy as long as it meets the minimum requirements of the Ordinance, and the leave may be used for the reasons provided by the Ordinance. Employees may also use PTO for vacation, PTO is typically allowed anywhere. Moreover, if your firm needs to switch to a PTO policy in which the 40 hours could be used for either vacation or sick leave. There is no provision that prevents implementation of a PTO policy that is more generous than the requirements under the Ordinance.

Tier 1 and Tier 2 employers who provide PTO will be required to carry over leave hours at the same rate as they would if it provided sick/safe leave (e.g., Tier 1: 40 hours / Tier 2: 56 hours).

The Ordinance requires the threshold levels of accrual for Tier 3 employers with a PTO policy. Although the Ordinance was purportedly intended to allow sick employees leave from work, the Ordinance requires larger employers to allow sick employees leave from work, for a total annual accrual of no less than 108 hours. Moreover, the Ordinance requires larger employers to allow carryover of all 108 leave hours.

There are benefits and detriments to a PTO policy. One benefit is that it can be easier to track time. Advance notice can be required for vacation, thus allowing more predictability for employee attendance. Many employees often prefer the flexibility of these plans.

However, many employees do not use the full amount of their sick leave. If they now have leave available for vacation, that leave time may increase. Payout of accrued leave can also become a problem. Many employers pay out vacation, but not sick leave. Under a PTO plan, employers may end up paying more to departing employees than they would like. Still, since there is no requirement in Washington to pay out either vacation or sick leave, employers may be able to create a policy to work around this issue.

**Policies for Occasional Seattle Work**

As discussed above, the new Ordinance applies to any business that operates in the city of Seattle. This broad definition will likely prove problematic as sick/safe leave will accrue for hours worked in Seattle for anything from employees attending CLEs to attorneys conducting

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**Safe Leave**

While many firms may have a generous sick leave policy, how many apply that policy equally to safe leave? Many sick employees may also use PTO for vacation. However, many employees do not use the full amount of their sick leave. If they now have leave available for vacation, that leave time may increase. Payout of accrued leave can also become a problem. Many employers pay out vacation, but not sick leave. Under a PTO plan, employers may end up paying more to departing employees than they would like. Still, since there is no requirement in Washington to pay out either vacation or sick leave, employers may be able to create a policy to work around this issue.

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depositions in the city. Arguably, even driving through the city while “on the clock” would count. While an employee must work a minimum of 240 hours before leave can be used, accrual begins on the first hour worked in Seattle.

Out-of-town firms whose employees work in Seattle will need to develop a system for tracking Seattle hours worked. In the event a violation is alleged, if an employer fails to track Seattle hours worked, a violation is presumed. Firms may want to implement a policy requiring that employees provide notice of any hours worked in Seattle.

Out-of-town firms will also have to find a way to mesh existing policies with Seattle’s new requirements. While use of the accrued time is limited to work in Seattle, employees may be accruing leave under the firm’s normal sick leave plan.

Record Keeping
The Ordinance includes specific record keeping requirements. For instance, employers must maintain records of “hours worked by employees and paid sick time taken by employees” for a period of two years. In addition, the Ordinance requires that each “time wages are paid, employers shall provide, in writing, information stating an updated amount of paid time available to each employee for use as either sick time or safe time.” Employers may do this either by including the information on the pay stub or by making the information available to employees online.

Educating Managers
It is in the best interest of both the business and managers to be fully aware of the Ordinance and the possible ramifications of violating the Ordinance. Educating the firm’s front line will be a major step toward avoiding violations of the new Ordinance. This is especially so as managers can be charged for their own violations and companies can be held vicariously liable for violations committed by its managers.

It is easy to envision inadvertent pressuring of employees to work while they are sick (e.g., “I’m sorry you’re sick, but we really need you”). It is also not difficult to foresee allegations of retaliation in response to poor performance reviews following use of paid leave. While the performance demands may
be completely justifiable, such situations will have to be handled carefully.
Managers will also need to be educated as to the scope of allowable questions, confidentiality, and documentation related to leave. Under the Ordinance, employers are somewhat limited in the questions they can ask about employees’ qualifying conditions for leave. Moreover, reasons for leave as well as any records regarding leave will need to be kept confidential.

**Timeline for Implementation**
The Ordinance takes effect on September 1, 2012. In March, the proposed regulations for the Ordinance were made available for comment for at least 14 days. In April, public hearings will be held to discuss the proposed regulations with the goal of finalizing the regulations in May.

**Conclusion**
This is an extraordinarily complex ordinance with far-reaching implications. There are few firms or companies that operate in Seattle that will not have to change some of their policies or practices to conform to the new Ordinance. Evaluate those policies now in hopes of minimizing the problems later.

Laurie Johnston is a partner at Gordon & Rees LLP. Her practice focuses on defense of employers in employment litigation and preventive employment counseling. She can be reached at ljohnston@gordonrees.com.

**NOTES**
1. Seattle City Ordinance No. 123698.
2. SMC 14.16.010 (O). This excludes compensation for lost tips or commissions.
3. While the Ordinance applies to both public and private employers, this article focuses on private employers.
4. SMC 4.16.010 (T).
5. Arguably, if your average FTEs are anything above four (e.g., 4 1/2), then the Ordinance applies. Greater than four, not five, is the threshold.
6. SMC 4.16.010 (T).
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Shakespeare's *King Lear* and the Importance of Good Legal Drafting

“A lawyer, a lawyer, my kingdom for a lawyer”

by Thomas E. Tyner

It is shocking how few commentators recognize Shakespeare’s classic tragedy *King Lear* for what it is: a cautionary tale about the importance of careful legal drafting.

Indeed, most so-called Shakespeare experts will tell you that *King Lear* is a play about human folly, the triumph of evil, the sin of pride, love, loss, and reconciliation; a play that questions the existence of justice in the world; a play that asks if the universe is fundamentally indifferent, if not outright hostile, to humankind. In this regard, *King Lear* is not unlike an episode of *Jersey Shore*.

*King Lear* is undeniably brutal, filled with acts of almost unimaginable human cruelty, flagrant examples of heinous and despicable behavior, terrifying storms, and tragic deaths. The play is dark and disturbing, invoking continuing motifs of madness, betrayal, and blindness.

But in the end, all of the tragic events of *King Lear* could have been avoided had Lear simply taken the time to engage the services of a marginally competent real estate lawyer and asked that lawyer to draft a simple legal document. But before we get to that, let’s quickly recount the basic story of *King Lear*, in case you’ve forgotten it.

**King Lear — A Synopsis**

Lear is a proud and powerful king who rules a vast kingdom while at the peak of his powers. But Lear is also vain, and in many ways a foolish man. Inexplicably, Lear announces that he will divide his kingdom among his three daughters, and that each daughter shall be given a share of the kingdom commensurate with how much that daughter claims to love her father. Evil and greedy daughters Regan and Goneril fall over each other shamelessly professing their undying (and false) love for their dear father, and are rewarded with large portions of Lear’s kingdom. Lear’s third daughter, the sweet and honest Cordelia, refuses to lie to her father, and simply says she loves Lear exactly as a daughter should love her father, no more and no less.

The foolish and proud Lear flies into a rage, banishes Cordelia from his sight, and divides his entire kingdom between evil daughters Regan and Goneril.

Lear is foolish and vain, but not entirely off his nut quite yet. In bequeath-
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- Litigator and counselor for clients from all walks of life including workers, executives, and professional athletes


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Photo: Meryl Schenker
Lear grants each of his evil daughters half of his kingdom on the condition that he be allowed to spend half of each year with one daughter and the other half of the year with the other. In addition, Lear insists that he be allowed to retain 100 knights with him at all times, knights whose care and feeding would be the responsibility of Lear's daughters.

In their haste to get their hands on their premature inheritance, Regan and Goneril agree to Lear's condition, and almost immediately begin scheming on how they might get out from under the burden of caring for their "beloved" father and his entourage. Here's where things get interesting.

Having wisely conditioned his foolish gift on what anyone who has suffered through a first-year law school class on real property would recognize as the conveyance of fee simple title subject to a reserved life estate, Lear commits the legal equivalent of a mortal sin by failing to document the details of his reserved life estate in the deed by which he divests himself of his kingdom.

Predictably, chaos ensues. Lear's ungrateful daughters tire of the burden of caring for Lear and his retinue, and quickly hatch schemes to pare down and eventually eliminate Lear's posse. Lear is outraged, and ultimately expelled from the castles of both daughters. Without an enforceable contract upon which to assert his rights, Lear has no legal leg to stand on. This drives him crazy, metaphorically and literally, and he wanders alone on the heath in a terrifying storm, raging against the gods and ultimately going mad. In the meantime, through a series of cold-hearted betrayals, naked grabs for power, and murderous lust and envy that makes American presidential politics look like a Junior League tea party, most of the rest of the characters in the play manage to kill themselves off. In the end, Lear recovers his sanity just long enough to be reunited with Cordelia, who has gone off and married the King of France and returned to invade Lear's kingdom and recover his throne. For a brief moment, Lear realizes the error of his ways and is reconciled with his one good and true daughter just moments before she dies one of the saddest and most tragic deaths in English literature.

For a brief moment, Lear realizes the error of his ways and is reconciled with his one good and true daughter just moments before she dies one of the saddest and most tragic deaths in English literature. The Liberal Shakespeare Elite will tell you that *King Lear* is a commentary on the terrible uncertainty of life, an inquiry into the nature of good and evil, and a survey of contemporary notions of truth, justice, politics, and family dynamics, rather than a cautionary tale about the dire consequences of poor legal drafting. I could agree with them, but then we'd both be wrong. But all critics agree that *King Lear* represents some of Shakespeare's finest writing.

The Liberal Shakespeare Elite invariably fail to mention the seminal lesson of the play: had Lear taken the time to hire a good real estate lawyer and ask that lawyer to draft an airtight deed which included a clear and unambiguous enumeration of the terms and conditions applicable to Lear's reserved life estate as well as a detailed recitation of the rights and obligations of the parties with respect to continued room and board for his knights, none of what happened to Lear would have happened, and we would have ended up with a very different play. As I will argue persuasively below, a close and tedious reading of the entire play indisputably supports this thesis.
Tedious discussion and argument in favor of my thesis supported by extensive citations from the play itself as well as lengthy and obtuse excerpts from academic literature, including some pointed jabs at the liberal Shakespeare elite.

[Intentionally omitted.]

In conclusion, I am right and The Liberal Shakespeare Elite is wrong about the significance of King Lear in the canon of English literature. My qualifications for making this assertion are unquestioned. Thank you.

Thomas E. Tyner is Western Division legal director for The Trust for Public Land (TPL), a national land conservation organization. During his 18-year tenure at TPL, he has handled the closing of some 400 conservation real estate transactions, several involving reserved life estates, but none involving a king. Tyner joined TPL in 1993 after serving for 11 years as in-house counsel for Bank of America in Los Angeles and San Francisco. He was previously a member of the adjunct faculty at the University of California Hastings College of Law, where he taught a seminar in contract drafting to third-year law students. He received his B.A. in English literature and his law degree from the University of Southern California. Tyner is a former board member and past-president of the Bainbridge Island Land Trust, and writes a bi-weekly humor column for the Bainbridge Review. The author would like to thank everyone who had a hand in the preparation and review of this manuscript, and would particularly like to thank Andrew J. McClurg, author of The World’s Greatest Law Review Article, a classic in the genre. The author freely admits to stealing Mr. McClurg’s idea, but takes comfort in the old legal maxim, which holds that while stealing an idea from one person is plagiarism, stealing ideas from many people is research.

NOTES

1. “Shocking” is perhaps too strong a word here. I might have said “surprising” or “notable,” but the gain in accuracy would have been offset by the loss in dramatic effect.
2. This is probably as good a place as any to admit that I can’t stand footnotes and endnotes. Noel Coward said that reading a footnote is like going downstairs to answer the door while upstairs making love. So if you’re reading this endnote at the moment, you have my condolences. But all respected works of legal scholarship have extensive footnotes or endnotes — indeed, many of them seem to consist entirely of endless footnotes supplemented only by the occasional scrap of actual text. Because this is a work of serious legal scholarship, I will suspend my animosity toward footnotes and endnotes of any stripe and make copious and conspicuous use of them throughout this article. I’ll leave it to you to decide whether or not you wish to answer the downstairs doorbell when it rings.
3. This list includes distinguished literary critics, noted Shakespeare scholars, eminent professors of literature, and other pointy-headed intellectual know-it-alls of similar ilk whom we’ll call “The Liberal Shakespeare Elite,” cleverly using quotation marks in this instance to subtly discredit them.
4. My effortless (albeit possibly grammatically incorrect) use of the word “motif”
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The Need for the Model Law

by Thomas J. Brewer, Steve Y. Koh, and Jared D. Hager

In a recent keynote speech at an International Chamber of Commerce UK event, leading international arbitrator Professor Julian Lew QC issued a warning to major arbitration jurisdictions — England, France, Sweden, Switzerland, and the United States. Continued nonadherence to the UNCITRAL Model Law on International Commercial Arbitration (Model Law) could prove a deterrent to parties seating their arbitrations there. As parties and their lawyers become increasingly comfortable with the Model Law and its adaptations, Professor Lew posited that they will choose to avoid jurisdictions where it has not been adopted. By retaining their own law, Professor Lew says, jurisdictions send out an unfortunate message to Model Law countries: “The Model Law may be good enough for you; but we do things better.”

In the United States, the law sends out an even more mixed, more unfortunate message. At the federal level, international arbitration is governed by the relatively arcane Federal Arbitration Act (FAA), which was enacted in 1925, 60 years before the Model Law was born. At the state level, each state can regulate international arbitration in its own way, so long as it is not inconsistent with the FAA’s purposes. A handful of U.S. states have chosen a “dual-track” approach to arbitration, enacting separate laws to govern international and domestic arbitration respectively. Most “dual-track” jurisdictions adopt the Model Law to govern arbitration between parties from different countries and a separate law for arbitration between parties from the same country. Mexico, California, Oregon, and British Columbia all have such “dual-track” regimes, with statutes based on the Model Law governing international arbitrations, as does Singapore. The state of Washington is one of two jurisdictions on the Pacific coast that does not have such a “dual-track” regime. The Washington Uniform Arbitration Act (WUAA) governs both international and domestic arbitration in Washington.

We believe Washington could do more than it does now to promote itself as a desirable seat for international arbitrations, and that important advantages could be gained if it did so. To this end, we recommend that Washington adopt legislation based on the Model Law to govern international arbitrations conducted in this state. Separately regulating international arbitration under the standards of the UNCITRAL Model Law, as 70 countries and all of our immediate West Coast neighbors do, would signal to commercial parties around the world that Washington is a good place to arbitrate international disputes. It would give comfort to potential users, some of whom may be wary of arbitrating in the United States, which is not considered a Model Law jurisdiction.

Part I of this article discusses the main characteristics of international arbitration as reflected in the Model Law. We note that the WUAA differs from the Model Law in several key respects — most importantly, by providing for court supervision of, and possible involvement in, several aspects of the arbitral process and by making several types of “American style” litigation procedures available in arbitrations conducted pursuant to the statute. In Part II, we examine some reasons for adopting specific legislation to govern international arbitration separately from domestic arbitration. We also consider whether any important state interests would be compromised if Washington were to adopt the Model Law. We conclude that Washington will be a more desirable venue for international arbitrations if it adopts the Model Law, that important advantages could be realized by the state by doing so, and that no important state interests would be sacrificed by enacting the Model Law.

International Commercial Arbitration, the Model Law, and Washington’s Uniform Arbitration Act

International arbitration is widely recognized as a beneficial alternative to domestic litigation because it permits parties to obtain neutral, private, and final decisions that are yielded by a process they help control and that are relatively easy to enforce under the New York Convention. Importantly, international arbitration permits parties to do so without subjecting themselves to the jurisdiction of the other party’s national courts. In international disputes, parties will usually be of different nationalities, may speak different languages, and often hail from different legal and cultural backgrounds. They may have very different ideas about how a dispute can or should be resolved reasonably and fairly. Levels of distrust may be
high and exacerbated by distance. Each may be particularly fearful and suspicious of entrusting resolution of the dispute to the other’s court system. In addition, parties attempting to litigate cross-border disputes judicially may face difficult issues relating to personal and subject matter jurisdiction, service of process, discovery, and, most importantly, enforcement of judgments. Properly drafted international arbitration agreements often ameliorate many of these problems. For these reasons, international arbitration has become “companies’ preferred dispute resolution mechanism for cross-border disputes.”

International arbitration is distinguishable from domestic arbitration in three ways: 1) the place of international arbitration (the “seat” of the arbitration) is typically neutral, having no connection to either party; 2) the parties to international arbitration are almost always businesses, states, or state entities, not individuals; and 3) the sums in dispute are often considerably larger in international arbitration.11 In regulating arbitration between domestic parties, which may include resident individuals, there may be good reason to avoid shielding the process from court supervision. For example, the parties are less likely to fear the neutrality of the courts and they are more likely to welcome court involvement in certain aspects of the process than are the parties to an international commercial arbitration. In short, international arbitration is different. The difference demands greater protection from local court interference and getting away from the assumption, not shared in many parts of the world, that the only fair way to resolve a commercial dispute is by using procedures customary in U.S. courts.

In an era of increasingly transnational business, international arbitration primarily owes its popularity to the fact that it is a neutral and autonomous form of dispute resolution. If a U.S. company wants to do business with a company from the Middle East and, as is usual, neither company wants to litigate disputes openly in the other party’s home courts, the deal may hinge on an agreement to submit disputes to arbitration in, say, London, under English law. To preserve its neutrality and autonomy, international arbitration laws by design make the process relatively free from interference by local courts.

The Model Law typifies this non-interventionist approach to international arbitration. Adopted in 1985 by the United Nations Commission on International Trade Law, the Model Law was designed to harmonize and improve existing national laws on arbitration based on findings that “domestic laws are often inappropriate for international cases and that considerable disparity exists between them.” A central tenet of the Model Law is the delimitation of court assistance and supervision. Accordingly, Article 5 states that no court shall intervene in matters governed by the Model Law, except as specifically provided for by the Law.12 The Model Law allows court involvement in limited circumstances. The first set of circumstances relate to appointment, challenge, and termination of an arbitrator (Articles 11, 13, and 14), jurisdiction of the arbitral tribunal (Article 16), and setting aside the arbitral award (Article 34). The second set relates to court assistance in taking evidence (Article 27), recognition of the arbitration agreement (Articles 8 and 9), and recognition and enforcement of arbitral awards (Articles 35 and 36).

Among its central provisions, Article 8 of the Model Law allows the court to determine only whether an arbitration agreement exists. Article 8 does not require, but simply permits, court intervention and, even then, only to determine whether the agreement is null and void, inoperative, or incapable of being performed. Similarly, Article 16 adopts the two important principles of “Kompetenz-Kompetenz” and of separability of the arbitration clause by allowing the arbitral tribunal to rule on its own jurisdiction, including any objections to the existence or validity of the arbitration agreement. Only where the tribunal rules as a preliminary question that it has jurisdiction does Article 16 provide for court supervision, presumably to avoid an unnecessary waste of time and money.

Washington’s Uniform Arbitration Act, in contrast, has a nonwaivable provision that requires the local court to decide whether an arbitration agreement exists and whether a controversy is subject to the agreement to arbitrate.14 The arbitrator is expressly authorized to decide only whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable.15 In cases where a party challenges the existence of, or claims that a controversy is not subject to, an agreement to arbitrate, the arbitration may proceed pending the court’s final resolution of the issue — cold comfort for a foreign company that wants to avoid the added expense and perceived non-neutrality of parallel litigation in local courts.16 Because international companies choose arbitration in part to avoid local court supervision, the WUAA discourages parties from selecting Washington as the venue for their international arbitration. To the extent Washington’s geographic location is advantageous, parties can simply opt for a different Pacific Coast jurisdiction that specially protects international arbitration from local court supervision.

The WUAA differs from the Model Law in other important respects as well. For example, local courts have “exclusive jurisdiction” to enter judgment on an arbitral award issued in Washington.17 The Model Law, on the other hand, allows a party to enforce an arbitral award in a competent court of any jurisdiction that has adopted the Model Law, regardless of the country in which the award was made.18 The Model Law’s approach is far more compatible with the New York Convention’s provisions governing international enforcement of awards than the WUAA.

In addition, the WUAA contains many provisions that appear to contemplate that “American-style” litigation practices, such

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as consolidation of proceedings, motion practice, and discovery, will be a part of the arbitral process. Such procedures may be anathema to many international parties who are trying to decide where to seat an international arbitration and who may view such practices as major and unwelcome departures from normal practices in international arbitration. In sharp contrast, the Model Law leaves the parties free to fashion the type of proceeding that best meets their needs and expectations, which may or may not be an “Americanized” process.

In sum, the Model Law and WUAA differ in significant ways with respect to local court intervention and the type of arbitral proceeding contemplated. The Model Law offers a simple, comprehensive set of rules for international arbitration which takes into account the needs of international business. Because the neutrality of international arbitration depends on the process being relatively free from judicial interference, and because the point of international arbitration is to allow a neutral, flexible but predictable, private process that may depart in important respects from either party’s local legal practices, Washington should consider adopting legislation based on the UNCITRAL Model Law.

The Benefits of Adopting the Model Law in Washington

International arbitration is different than domestic arbitration, and the difference merits a different legal regime. Users of international arbitration will eventually insist on one, predicts Professor Lew. By catering to the preference and expectation of international parties, the chief benefit of adopting the Model Law in Washington is that Washington would become a more attractive place to arbitrate international disputes.

The location of the arbitral seat has important legal and practical consequences that can materially affect the course of a dispute. Most significantly, the law of the seat determines when local courts may intervene to either supervise or assist the arbitration. Court supervision, of course, greatly increases the time, cost, and complexity of the arbitral process, and it can also constrain the parties’ ability to choose the type of proceeding that they believe will best address their needs in a particular dispute. Thus, when selecting a seat for a dispute resolution clause, local law is a primary con-
sideration for corporate counsel. Washington will not be a competitive seat if it is less protective of international arbitration than its West Coast neighbors, such as Mexico, California, Oregon, and British Columbia, all of which have adopted the Model Law.

The field of international commercial arbitration is specialized and typically involves substantial amounts in controversy. The business of arbitration has proven lucrative enough to inspire many countries to modernize their laws to become hospitable to arbitration and thereby attract users. One study shows a "statistically significant increase" in the number of International Chamber of Commerce arbitrations held in countries after enactment of new arbitration laws. Whatever the actual impact, we believe that adopting the Model Law would improve the perception of Washington as a desirable place to arbitrate international disputes.

Likewise, while difficult (if not impossible) to pin down, there is a corresponding economic benefit to those countries enacting new arbitration laws. In one famous but probably exaggerated estimate, Lord Cullen asserted during parliamentary debate on the English Arbitration Act of 1979 "that a new arbitration law might attract to England as much as £500 million per year of 'invisible exports,' in the form of fees for arbitrators, barristers, solicitors, and expert witnesses." Whatever the exact benefit, it is clear that commercial parties are increasingly choosing international arbitration to resolve their cross-border disputes.

This possibility should resonate in Washington. Washington's economy depends on exports. It is difficult to understand why a state so dependent on cross-border transactions would not do all it can to make itself an attractive seat for the resolution of disputes arising out of such transactions. Moreover, in addition to disputes that might involve our own state's businesses, Washington can make itself an attractive choice as a neutral seat for other international arbitrations that do not involve a Washington party. If our laws were not an obstacle, for example, Washington might well be a good neutral choice as the seat for disputes between Mexican and Western Canadian parties or, more generally, for disputes between Asian, Latin American, or European parties, on one hand, and parties from Western Canada or other Western U.S. states, such as California, on the other. These cases will be seated somewhere. Our state limits its appeal to
be chosen as the seat in such cases by not offering a legal framework for international arbitrations consistent with international norms and expectations.

There appears to be little disadvantage against the clarity and likely economic benefit of adopting the Model Law. The Model Law would impose no cost on the state and, by limiting court intervention, might actually preserve local judicial resources.

The state’s interest in mandating expanded judicial supervision of international arbitration and designating whether “American-style” litigation procedures are to be used in such proceedings seems quite remote. As discussed above, virtually all of these cases are cross-border, business-to-business disputes where commercial parties, often very sophisticated parties disputing huge sums, have voluntarily submitted their dispute to an alternative, arbitral forum. When deciding where to seat such a proceeding, the overriding goal of such parties is to find a neutral forum with a legal framework that will permit and facilitate a private resolution of their dispute using procedures they choose as appropriate and consistent with their expectations. These are not cases in which a large company and a Washington resident are resolving disputes where the state very appropriately may determine that it has a higher duty of oversight, such as employment termination or consumer protection cases. Large commercial disputes will be submitted to international arbitration in any event and will simply be seated elsewhere if Washington does not do what it can to make itself an appealing seat.

Given that the Model Law has already been enacted in 70 other countries and in most of our West Coast neighboring states, it is especially hard to identify any legitimate state interest that would be compromised by enacting the statute in Washington. Indeed, at a time when our state’s court system is reeling from budget constraints arising out of the current recession, reducing judicial oversight and involvement in international arbitrations is one positive way to lighten the burdens on the courts, while strengthening the state’s commercial interests.

Conclusion
International businesses increasingly select international arbitration to govern disputes. The practice of international arbitration is significant and growing. Washington should not be left behind. To increase its attractiveness as a place to arbitrate international disputes, Washington should adopt legislation based on the Model Law.

In making this recommendation, we understand that many places promote themselves as good choices to host international arbitrations and that parties choosing where to seat their future arbitrations consider many factors in addition to the local statutes, including perceived neutrality, transportation and hearing resources, convenience, and other considerations. We believe, however, that making this legislative change would allow Washington to compete on a level legal playing field with our immediate neighbors.

The authors are grateful to Henri Alvarez QC for his review and helpful comments. Any errors, of course, are the authors’ only. Thomas J. Brewer is a full-time ADR neutral based in Seattle. Since 2000, he has limited his practice to service as an arbitrator, mediator, and special master. He devotes a substantial part of that practice to arbitrating international and domestic business disputes. He can be reached at tjbrewer@tjbrewer.com. Steve Y. Koh is a partner at Perkins Coie LLP and the chair of its International Arbitration and Litigation practice. He teaches Advanced International Commercial Arbitration at Seattle University School of Law. He can be reached at skoh@perkinscoie.com. Jared D. Hager is an associate at Perkins Coie LLP, focusing his practice on international commercial arbitration and complex products liability claims. He teaches Advanced International Commercial Arbitration at Seattle University School of Law. He can be reached at jhager@perkinscoie.com.

NOTES
5. Alaska is the other. See Alaska Arbitration Act, Alaska Stat. §§ 09.43.010 et seq.
6. See Uniform Arbitration Act, ch. 7.04A et seq. RCW.
7. 21 U.S.T. 2517, T.I.A.S. No. 6997 (1970). In brief, and
with a few limited exceptions, the New York Convention binds most of the countries in the world to (i) enforce private arbitration agreements, and (ii) enforce awards rendered in international arbitrations using procedures that, for ease and effectiveness, have no parallel when attempting to enforce court judgments internationally.


10. The PriceWaterhouse Survey, for example, reported that 74 percent of the international arbitrations covered by that study involved private corporations only and that another 21 percent of the disputes involved a state enterprise. PriceWaterhouse Survey, at 3.

11. See Blackaby and Partasides, supra note 8, §§ 1.16–1.22.


13. Model Law, supra note 2, art. 5; Model Law Explanatory Note, supra note 12, ¶¶ 14–16.

14. RCW 7.04A.060(2).

15. RCW 7.04A.060(3).

16. RCW 7.04A.060(4).

17. RCW 7.04A.260(2).

18. Model Law, supra note 2, art. 35.

19. See RCW 7.04A.100, .150, & .170.

20. But see, e.g., Beerbower, John E., “International Arbitration: Can We Realise the Potential?” 27 Arb. Int’l 75 (2011) (suggesting that such procedures might encourage arbitrators to dispose of issues or claims summarily, thus increasing the speed and decreasing the cost of arbitration).

21. See Model Law, supra note 2, art. 19 (concerning on the parties and, failing their agreement, on the tribunal, wide discretion to determine procedural rules).

22. See generally Blackaby & Partasides, supra note 8, §§ 3.34-3.87, 7.01-7.65. Arbitration laws are typically territorial in scope; any arbitration taking place in Washington is subject to the WUAA and its mandatory procedural rules.


27. See, e.g., Fulbright & Jaworski, “2011 Fulbright Litigation Trends Survey,” available at www.fullbright.com/index.cfm?fuseaction=newsdetail&article_id=9902&site_id=286 (last visited Dec. 18, 2011) (surveying corporate counsel and reporting that more than 40 percent of energy, manufacturing, engineering, and technology sector respondents were a party to at least one international arbitration in the past year).

Sustainability and Law

Introducing Washington Lawyers for Sustainability

BY DAVID R. FRANKEL

Sustainability is the overarching challenge of our times. It encompasses assuring the continuing capacity of the earth, the economy, and society to provide for our material and human needs and those of future generations. We now increasingly notice the consequences of patterns of environmental abuse, economic waste, and social inequities in the form of climate change, violent weather, degraded ecosystems, depleted resources, depressed economies, displaced populations, and disrupted societies. It can be difficult to escape the sense of a diminished future rushing inexorably towards an unprepared humanity at an ever-accelerating rate.

The diffuse and complex problems that the concept of sustainability seeks to address are already pervasive and pressing here in Washington. Local manifestations include the alarming ecological deterioration of Puget Sound, one of the most diverse and naturally productive marine ecosystems in the world. The nuclear waste mess at Hanford is still largely unmitigated, and it threatens the waters of the Columbia River. Our transportation system relies almost entirely on petroleum, vastly expensive but outmoded infrastructure, and single-occupancy automobiles, yet struggles to enable convenient personal mobility and move goods efficiently. Our energy economy does little to encourage distributed generation of renewable energy. We continue to lose irreplaceable farmland to development and soil degradation. There are concerns about adequate water supply and food safety. The spluttering private sector economy is beset by high unemployment, and the public sector struggles to educate our children to be productive, engaged citizens of a democracy, and to provide other basic public goods upon which our economy and civil society depend.

The news is not all bad. We have a growing number of nonprofit organizations in our state dedicated to various aspects of assuring a sustainable future. Other social institutions involved in this work include private business and agencies of government, as well. Collectively, these groups are applying the myriad talents and expertise of thousands of very intelligent and devoted people to positively influence what that future will look like locally and globally. Their efforts may determine whether the natural world, the economy, and civil society will continue to provide resources, sustenance, support, and justice in our children’s generation and beyond.

Many Washington lawyers have played active, vital roles in these environmental and social organizations. Lawyers have essential skills and valuable attributes to bring to bear on the complex issues of sustainability. Many of us are persuasive. We interact with all kinds of clients and other people who are often key societal decision-makers. We listen to and learn from those we encounter, and we are often strategically placed to make policy and issue connections that others do not have the vantage points to see. Most importantly, we are uniquely
trained and licensed to work with the rules that govern our society. These attributes are essential for us to achieve the goal of sustainability. We must mobilize lawyers to address systematically the deep relationship between sustainability and law, including suggesting appropriate new legal tools and, just as importantly, by proposing removal of superseded legal barriers to sustainability.

Until recently, there has been no organization in Washington dedicated to motivating lawyers to participate in sustainability, encouraging them to brainstorm about sustainability solutions, and organizing them to work cohesively to make sustainable solutions real. A group of concerned lawyers founded Washington Lawyers for Sustainability (WLS), a volunteer-run, 501(c)(3) nonprofit organization, incorporated in 2009 to help fill this role.

The mission of Washington Lawyers for Sustainability is to find effective ways for lawyers to use our professional skills and influence to move society in more sustainable directions, primarily through education, role modeling, client counseling, and advocacy. The hope is that our work as lawyers will contribute to tangible, positive changes that will amount to much more than rearranging the deck chairs on an unsustainable Titanic. What we as lawyers do here in Washington can positively influence others outside of the state, too.

WLS seeks to be an educational resource for lawyers and others in their efforts to make our society more sustainable. WLS has presented, and will continue to develop, CLE programs on law and sustainability issues that are also of interest to the broader community. On April 20, 2012 — the Friday before Earth Day — WLS will be joining with Seattle University School of Law to present a full-day symposium, “Sustainability and the Law: Making Sustainability Legal, Economically Viable, and Socially Just.” The presentations will focus substantively and pragmatically on topics of local concern and suggest action pathways for addressing them. The WLS website (www.washingtonlawyersforsustainability.org) contains details about the April 20 symposium and more information about WLS, including membership and volunteer opportunities.

Lawyers can make a difference through their daily habits. WLS seeks to encourage and teach lawyers and law firms, as well as government and corporate legal departments, to “walk the talk” and set an example by adopting sustainable practices in running their own operations. WLS will be working to develop and promulgate a set of best sustainable practices for adoption by law offices. While the direct impact on the environment of law offices adopting sustainable practices may seem slight, the psychological and influential impact is much larger. We hope this indirect impact will carry over into our roles as counselors and advocates for sustainability.

WLS is undertaking to develop and inculcate meaningful and professionally responsible ways to incorporate sustainability counseling into advising our public and private sector clients. This approach recognizes that it is not only the geophysical climate that is...
changing, but also the climate of public opinion and regulation. The message we seek to impart is that consideration of sustainability issues today increasingly is a professional duty for attorneys and a valuable service to our clients. WLS is in the process of identifying thought leaders who practice in a range of relevant areas of law to propose appropriate counseling models, and is also assembling panels of attorneys willing to provide subject matter-specific pro bono assistance to other sustainability focused nonprofits and relevant causes.

Finally, WLS focuses substantive attention on the critical legal issues at the hinges of the most significant local sustainability concerns. WLS is coordinating projects intended to propose changes to existing laws and regulations that affect sustainability. These include local land use and building codes and other regulations that affect the quantity and pollutant load of storm water runoff into streams and ultimately Puget Sound, laws and policies affecting such concerns as mobility and transit and the development of community-scale renewable energy generation, and state laws governing permissible corporate missions and activities. Many people, including lawyers, are not aware of the legal barriers a business entity faces as it considers moving toward more sustainable practices. As lawyers, we can help locate and overcome those barriers.

WLS primarily focuses its efforts on areas where we can be uniquely effective as lawyers. Our intention is to work collaboratively with other organizations that have complementary missions, and with organizations that represent other professions. Truly effective solutions to the complex of sustainability problems will necessitate combining the visionary with the pragmatic, and are most likely to emerge through the open exchange of ideas between motivated people who approach issues from a variety of perspectives and with the fullest possible range of expertise.

The current legal landscape tilts against sustainable practices in many ways. As lawyers, we recognize the importance of policy and law in leveling the ground so that the force of legal gravity no longer impedes, and will even come to assist, sustainable outcomes. Driving the transformation to truly sustainable business models will be very challenging. Lawyers must recognize the essential role they will need to fulfill, together with business and social institutions, to make sustainability — a prospering economy and inclusive society in a healthy environment — a viable reality.

David R. Frankel is a founder and president of Washington Lawyers for Sustainability. He also practices business and commercial law focused on entrepreneurial and technology-based businesses, as the principal attorney at The Law Office of David R. Frankel, and teaches intellectual property licensing as an adjunct faculty member at the University of Washington School of Law. WLS is a 501(c)(3) organization based in Seattle that welcomes new members and volunteers interested in making progress towards a more sustainable society. For more information about WLS and the April 20 Sustainability Symposium, see www.washingtonlawyersforsustainability.org. To discuss volunteer opportunities, contact David Frankel at david@davidfrankellaw.com. The opinions and views expressed in the article are those of the author.
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Congratulations on a well-earned spring break weekend away from your clients and the courts. The WSBA YLD would like to invite you to visit some Pacific Northwest gems — weekend getaways that are affordable, relaxing, and close to home, no matter which corner of the state you live in.

**Olympic Peninsula**
Where to go: Olympic National Park. Forks makes a great home base for a trip to both the coastal and the inland rainforest regions of the park. (Picking up a Twilight souvenir is optional.) The Hoh Rainforest Visitor Center is about 50 minutes from Forks, and the National Park Service has an information center in Forks itself (551 S. Forks Ave.).

Another great day trip from Forks is the Mora/Rialto Beach section of the park. There is a campground near the banks of the Quillayute River, which runs through the park, as well as nearby day-hiking trails and a boat launch. On the Pacific coast itself, several miles of breathtaking beach are accessible from the park. Sand, driftwood, tidal inlets, rock formations, and evergreens make a great environment for hiking, strolls along the beach, picnics (picnic areas are provided), wading, or kite flying.

**Oregon**

**Hood River**
What to do: There’s great hiking all over the place, Double Mountain Brewery is delicious, and there are a ton of swimming holes along the Columbia River.

Where to stay: The Columbia Gorge Hotel is cute in an old-timey way (it was built in the 1920s and renovated in the 1970s).

**Oregon Coast**
What to do: We all know Cannon Beach, but the Tillamook Cheese and Ice Cream Factory, less than an hour from there, is a favorite — you can get huge grilled cheese sandwiches and every ice cream flavor you can think of. If you go in August, you can visit the Tillamook County Fair, where they have the biggest demolition derby in the state. Nostalgic film buffs also may look to nearby Astoria, which has the Goonies house, the school from Kindergarten Cop, and the bridge from Short Circuit.

Where to stay: The town of Manzanita, about 20–30 minutes south of Cannon Beach, is cute. Also consider staying at the Chinook Winds Casino Hotel on the coast, where you can get rooms on the beach and wake up to the waves crashing onto the shore.

**Portland**
Where to go: Washington Park includes a Japanese Garden, the International Rose Garden, the Oregon Zoo, Hoyt Arboretum, and the Portland Children’s Museum. There’s also a great playground near the rose garden. Be advised that the parking lot tends to fill up quickly, so you might want to visit earlier in the day.

Where to stay: McMenamins Kennedy School is an old school that’s been converted to a house, a movie theater, a restaurant, and the hotel. While I haven’t stayed there, I did have dinner and a movie in the theater, and the food is pretty good. The movies are second run, and are cheap — $3! (www.mcmenamins.com/11-kennedy-school-room-rates).

On your way back up I-5: Visit Mount St. Helens. The National Monument has Johnston Ridge Observatory, trails, and the Ape Caves, where you can hike through lava tubes. Be advised that you’ll need a good flashlight and a jacket to stay warm in the cool caves.
Port Townsend

What to do and where to stay: The Manresa Castle, a converted Jesuit college, will take you back in time to the Victorian era. Not only is the castle a short distance from Port Townsend’s thriving artsy main street populated with soda shops and galleries, but the castle has sweeping views of the Sound and an excellent restaurant, the Castle Key. Be sure to check the schedule for their live jazz performances.

San Juan Islands

How to get there and away: You have to take the ferries. If you’re driving, show up at least an hour early to get on the ferry at your desired time. While it’s easier to make the ferry if you walk on, San Juan is big enough to justify bringing a car.

Where to stay: If you love romance and history, try Roche Harbor’s Quarryman Hall or Hotel De Haro, favorites for weddings and romantic weekends. You can have breakfast at the café on the pier, and tour a historical graveyard and mausoleum.

What to do: Kayaking, whale watching, shopping, and taking in stunning views. Kayak rentals are expensive and not always pay-per-hour, so you may want to get up early to get the most from your day on the water. The weather can quickly change from relatively sunny to pouring rain. So if you’re in a time crunch, be sure to kayak when the opportunity presents itself.

San Juan Island has several can’t-miss parks. Two National Historic Parks, the American Camp and English Camp, grace each end of the island. These camps are remnants of the 1859 Pig War and the occupation of San Juan Island. The American Camp boasts breathtaking wildlife (nesting bald eagles, red foxes, and orcas), a public beach, and miles of hiking trails for all levels of difficulty. The English Camp is full of historical buildings, a formal garden from the days of the camp, an old military cemetery, and a trek up Young Hill for a view. The Park also hosts a week-long military reenactment every July.

Seattle

Where to eat: Pike Place Market and the Space Needle may get all the glory, but have you had brunch at The Portage Bay Café? Its French toast toppings bar, local root vegetable hash, pitchers of mimosas, and colorful rowing décor are the stuff of legend. Just ask anyone waiting in the line stretching from the coffee bar out the door: Portage Bay Café is worth it (www.portagebaycafe.com).

Twisp

What to do: The arts! Twisp was a Wild West town that reinvented itself as a center for the arts. Concerts, theaters, and galleries abound, and the annual music festival (July 26–August 4) has five major concerts and plenty of places for that post-concert glass of wine.

Walla Walla

Where to stay: The Marcus Whitman Hotel, well reputed for its vineyards and wine-and-dine evenings. Downtown Walla Walla features numerous tasting rooms that offer the latest sips from local vineyards.

What to do: For the agriculturally minded, Walla Walla has a great farmer’s market during the summer, and even a Sweet Onion Festival (July 14–15).

Wenatchee

Where to eat: I’d be remiss if I didn’t tell you where to find the finest hospitality and the best cider in the capital of apple country. Look no further than McGlinn’s Public House. Never in the Great Annals of Apples has such an unassuming Irish pub concocted potions worthy of the Cider Gods. Really a top-end restaurant in disguise, McGlinn’s has the best pub chips (potatoes grown locally!) and spiced cider you’ll ever taste.

Where to stay: Run by a British couple retiring on the sunny side of the Cascades, The Apple Country Inn offers hospitality by the bushel. The hosts will treat you to morning tea after a night in the softest beds you’ve ever slept in. Be advised: you must love throw pillows.

What to do: The dam tour. The Rocky Reach Dam (free and open to the public) has great family activities including fish ladders, picnic grounds, and an impressively extensive museum on Washington history. And if you’re in the Spokane area, you might enjoy a similar trip across Grand Canyon-esque landscapes to the Grand Coulee Dam and Steamboat Rock.

Yakima

Where to eat: For a great glass of wine in downtown Yakima, try Gilbert Cellars. They have a fantastic collection of local wines. Then you can pop in next door for a bite to eat at 5 North.

Where to go: Visit the Yakima River Canyon. Between Yakima and Ellensburg, the canyon is designated as a state scenic route and offers superior wildlife viewing, river rafting, camping, and fishing.

Where to stay: The much-recommended Canyon River Ranch offers fly fishing, cooking classes, wildlife viewing, and a spa.

Mark H. Bardwell is a WSBA attorney who works in the other Washington (D.C.). He has had the pleasure of vetting many of these getaways and would like to thank all the DeNovo staff who contributed their favorite places from around the state.
WSBA Board of Governors Meeting

January 26, 2012, Olympia

BY MICHAEL HEATHERLY

At the January 26, 2012, meeting in Olympia, the WSBA Board of Governors debated a proposed overhaul of the Civil Rules regarding family law, approved an official comment to the Rules of Professional Conduct regarding the use of an individual’s immigration status in litigation, and affirmed its support for legalizing same-sex marriage.

Family Law Civil Rules

The WSBA Local Rules Task Force presented the first reading of a set of proposed Family Law Civil Rules. The BOG is expected to decide at a subsequent meeting whether to endorse the rules, which then would be forwarded to the Supreme Court for possible adoption. The task force, created in 2007, was appointed to propose revisions to the Civil Rules that would reduce inconsistencies that have developed as a result of the proliferation of local rules adopted over the years. The first target was the civil rules pertaining to family law, which have become voluminous and vary considerably from county to county.

The BOG had approved a previous draft of the Family Law Civil Rules in 2009. However, the proposal was revamped after the Superior Court Judges’ Association voiced objections. At the January BOG meeting, governors commented on the proposal and asked questions of task force members.

Governor Phil Buri (District 2, Bellingham) noted that the proposal splits family law off from other areas of civil law, which is counter to the trend in recent legal history to combine disparate areas of law into a single court system with unified rules. Task Force Chair Lish Whitson replied by holding up the nearly three-inch-thick volume of local rules and saying revisions such as the current proposal are the only way to make the rules practicable for lawyers who practice in multiple jurisdictions and for pro se litigants. Consistency in the general civil rules is impossible because of the complexity and diversity of the rules as they apply to family law, he added.

Governor Roger Leishman (District 7-West, Seattle) argued that the practice of family law is as different from other areas of civil law as is criminal law, which has its own set of court rules, Governor Tracy Flood (at large, Port Orchard) commented that the huge book of local rules is hard enough for lawyers to follow, and can be used as a virtual weapon against pro se litigants.

Governor Susan Machler (District 9, Seattle) noted that counties already have local family law rules that are segregated from the general civil rules, so family law practitioners are used to working with that format. Governor Marc Silverman (District 1, Bellevue) added that the most critical uniformity addressed by the proposal is uniformity across all 39 counties in Washington.

Task Force member Jeff Tilden pointed out that the lawyers on the task force originally felt that all local civil rules should be abolished, with all cases to be governed only by the state rules. However, the judges and court administrators on the task force defended the use of local rules, so the task force eventually abandoned the notion of abolishing local rules. Instead, the task force is working with the counties to reform the local rules to improve consistency. Whitson, the task force chair, implored all lawyers at the meeting to encourage their local judges to consult with the task force to facilitate the process.

Comment to RPCs Regarding Immigration Status

The BOG voted to approve a comment to Rules of Professional Conduct Section 4.4 as it relates to the use, or threatened use, of an individual’s immigration status in unrelated civil litigation. The proposed comment will be submitted to the Supreme Court for possible enactment.

The proposed comment is the product of the Immigration Advisory Work Group. The group was created to address situations in which opposing counsel have used or threatened to use a litigant’s or witness’s status (or supposed status) as an unauthorized immigrant to intimidate the person in litigation unrelated to immigration. For example, the group heard complaints about litigants being questioned about their immigration status during depositions, or being seized by Immigration and Customs Enforcement officers as the result of opposing counsel reporting them as possibly unauthorized immigrants.

The proposed comment refers to RPC 4.4(a), which provides that in representing a client “a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.” The proposed comment provides in part that communications prohibited by RPC 4.4(a) include “a lawyer’s assertion or inquiry about a third person’s immigration status when the lawyer’s purpose is to intimidate, coerce, or obstruct that person from participating in a civil matter.”

Governor Bill Viall (District 8, Seattle) expressed concern that the comment would apply to inquiries as well as assertions, noting that in some cases an inquiry about immigration status might be legitimate even if it isn’t the primary subject of the litigation. He also pointed out that another part of the proposed comment provides that an implied assertion could be considered a violation of the rule, which might invite unfounded complaints, he argued.

On the other hand, Governor Leishman maintained that the comment doesn’t go far enough in protecting individuals. The “no substantial purpose” proviso creates such a broad exception that it would be nearly impossible to find that someone had violated the rule, he argued.

Governor Silverman, who chaired the work group, remarked that the comment was not intended to cover all the possibilities of what might be proper or improper behavior. Instead, the group hoped that enactment of the comment would put lawyers on notice of the issue and prompt them to familiarize themselves with the applicable cases, he said.

Marriage and the Law

The BOG voted to affirm a resolution it originally passed on September 19, 2008, stating that WSBA “resolves to support equal access for same-sex couples to civil marriage and its attendant legal rights and obligations.”

Governor Leishman made the motion to affirm the resolution, noting that the Legislature appeared ready to consider a bill to legalize same-sex marriage. (Shortly thereafter, the Legislature indeed passed such a bill, which was then signed into law by Governor Christine Gregoire.)

Governors Brian Kelly (District 3, Chehalis) and Viall argued that the issue of same-sex marriage is insufficiently related to the practice of law for WSBA to take a
position. Affirming the resolution might just renew the divisiveness that arose within WSBA when the referendum was originally adopted, they said. Governor Leland Kerr (District 4, Kennewick) questioned whether there was a need for WSBA to take a position again, as it appeared the bill already had sufficient support to pass the Legislature. The move might stir up new trouble with legislators who objected to WSBA taking a position in 2008 and responded with proposals to eliminate the Bar Association in its current form, he said. Kerr moved to table Leishman’s motion until the governors had time to consult with their constituents on the issue.

Several other BOG members spoke in favor of affirming the resolution, which passed by a vote of 8–3 after Kerr’s motion was defeated. Governor Leishman commented that if the BOG waited any longer, it likely would never act on the issue. He argued that it is appropriate for WSBA to take a position on the subject. Civil marriage — as distinguished from religious marriage — is purely a creature of law, he said. Meanwhile, family law is a major area of the legal profession and affects people in a deeply personal way, which is the essence of the administration of justice, he added.

In other business at the January meeting, the BOG:

• Passed a resolution conveying the Bar’s gratitude to recently retired Justice Gerry Alexander for his 38 years in the Washington judiciary, including his service as chief justice of the State Supreme Court. The resolution noted that Justice Alexander is the longest-serving chief justice in the state’s history and stated that he has “worked tirelessly to lead Washington’s historic efforts to improve the funding structure of our state’s trial courts, public defense, and civil indigent defense systems.” The resolution described Justice Alexander’s legacy as one of “service, commitment, and professionalism” and described him as “a man of integrity, honor, and generosity . . . a well-respected and beloved member of Washington’s legal community; and . . . a true Champion of Justice.”
• Heard the first reading of a proposal to include a donation check-off on the annual WSBA license renewal form for the Washington State Bar Foundation, which funds WSBA programs such as the Home Foreclosure Legal Aid Project. The check-off would be similar to the one already appearing on the form to support the Campaign for Equal Justice.
• Voted to co-sponsor two American Bar Association measures: 1) proposed standards for language access in the courts for those with limited English proficiency, and 2) a resolution from the ABA Commission on Disability Rights urging entities that administer law school admission tests to provide accommodations that best ensure the skills of test-takers are measured regardless of any disabilities.

Michael Heatherly is the Bar News editor and can be reached at barneweditor@wsba.org or 360-312-5156. For more information on the Board of Governors and Board meetings, see www.wsba.org/bog. For more information on issues addressed by the Board, see NewsFlash at www.wsba.org/newsflash.
WSBA Presidential Search

**Application Deadline: May 4, 2012**

The WSBA Board of Governors is seeking applicants for the position of WSBA president for 2013–2014. Pursuant to Article VI (D)(2) of the WSBA Bylaws, the 2013–2014 president-elect may be an individual from anywhere within the state. The WSBA member selected to be president will have an opportunity to provide a significant contribution to the legal profession.

Applications for 2013–2014 WSBA president will be accepted through May 4, 2012, 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, 2012. 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 8, 2012, Board of Governors meeting in Yakima. Following the interviews, the Board will select the president. Although prior experience on the WSBA 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 2012, following selection. A one-year term as president-elect will begin at the Annual Awards Dinner on September 20, 2012. The president-elect is expected to attend the two-day Board meetings held approximately every five to six weeks, as well as numerous subcommittee, section, regional, national, and local meetings. In September 2013, at the WSBA Annual Awards Dinner, 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, email, 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 http://bit.ly/xlZbkB.

Washington Pattern Jury Instructions Committee

**Application deadline: May 14, 2012**

The WSBA Board of Governors is accepting letters of interest and résumés from members interested in serving a four-year term on the Washington Pattern Jury Instructions Committee. One position is available. The four-year term will commence upon appointment and expire on July 15, 2016. The incumbent is eligible for reappointment and must submit a letter of interest and résumé if interested in reappointment. Washington Pattern Jury Instructions Committee members review, discuss, and vote upon instructions in the civil or criminal area as drafted by subcommittees or staff. The committee meets monthly in Seattle on Saturday for three or four hours (except July and August), and requires a considerable time commitment. It is a large committee with more than 30 members, including judges and lawyers, and two WSBA representatives. Please submit letters of interest and résumés to: WSBA Communications Department, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539; or email barleaders@wsba.org.

Civil Legal Aid Oversight Committee

**Application deadline: May 14, 2012**

The Civil Legal Aid Oversight Committee is a judicial branch entity established by RCW 2.53.010. It is responsible for overseeing the activities of the Office of Civil Legal Aid (OCLA), reviewing the performance of the OCLA director and making recommendations to the Legislature, the Supreme Court, and the Access to Justice Board on matters relating to the delivery of state-funded civil legal aid services.

The Civil Legal Aid Oversight Committee consists of 11 members, four of whom are appointed by the Legislature, two by the Board for Judicial Administration, one by the Governor, one by the Washington State Bar Association, and three by the Washington State Supreme Court, upon recommendation of the Access to Justice Board. The position appointed by the WSBA is the subject of this notice.

This position is for a three-year term commencing July 1, 2012, and running through June 30, 2015. The individual appointed to this position may seek reappointment for a second three-year term. No compensation is provided for service on the Civil Legal Aid Oversight Committee, but members may be reimbursed for travel and other related expenses in accordance with general state policies.

The Civil Legal Aid Oversight Committee seeks members who:

- Have a demonstrated interest and history of involvement in working to ensure equal justice in our state’s civil legal system;
- Are committed to promoting bipartisan understanding of and support for state-funded civil legal aid services;
- Are committed to effective non-partisan oversight of the state-funded civil legal aid system;
- Offer relevant leadership experience and/or potential;
- Have relevant client community-based relationships; and
- Will help enhance the ethnic, cultural, geographic, political, and other diversity of the Civil Legal Aid Oversight Committee.

Individuals interested in appointment to the Civil Legal Aid Oversight Committee should submit letters of interest and résumés to: WSBA Communications Department, 1325 4th Ave., Ste. 600, Seattle, WA 98101-2539; or email barleaders@wsba.org.

ABA House of Delegates

**Application deadline: May 14, 2012**

The WSBA Board of Governors is accepting letters of interest and résumés from members interested in serving on the ABA House of Delegates representing the WSBA. Four positions will be available in August 2012. 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, comprised of approximately 550 delegates, elects the ABA officers and board, and meets out of state twice a year. Delegate attendance is required (the alternate would participate in the House of Delegates if one of the WSBA delegates were unable to attend a meeting, so full voting capacity can exist, etc.).
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 required for incumbents seeking reappointment.

The term for these positions will commence on June 17, 2012, and expire on June 16, 2016. Please submit letters of interest and résumés to: WSBA Communications Department, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539; or email 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.cjc.state.wa.us, or by contacting them at 360-753-4585.

Community Representatives Sought for WSBA Boards

Application deadline: May 25, 2012

The WSBA seeks members of the public to serve on two boards and one council for terms beginning October 1, 2012: the Character and Fitness Board (three-year term), the Practice of Law Board (three-year term), and the Council on Public Defense (one-year term). This is an excellent opportunity for non-lawyers to get an insider’s view on how the practice of law is regulated in Washington state. WSBA members are encouraged to share this opportunity with potential applicants. Further information about all of the boards including application instructions is available at http://tinyurl.com/non-lawyer-volunteers. The application deadline is May 25, 2012. If you have questions, email barleaders@wsba.org.
Ballots Due April 13
Beginning March 15, 2012, active WSBA members in the 4th Congressional District have the opportunity to once again help determine the WSBA’s future direction and leadership. Although four district positions are up for election this year, districts 1, 5, and 7-West will not have a contested election since there is only one candidate from those three districts.

Active members in District 4 can cast their vote online or through a traditional paper ballot. Electronic voting is secure, confidential, and convenient. Members with valid email addresses on file with the WSBA did not receive a paper ballot, and while the WSBA encourages members with emails on file with the WSBA to cast votes online, they may request a paper ballot. Electronic voting began on March 15 and must be completed by 5:00 p.m. PDT on April 13. The WSBA has sent paper ballots to active members in District 4 who do not have valid email addresses on file with the WSBA. The ballots include instructions on how to access online voting, so those members can vote online if they prefer. Members submitting paper ballots must make certain to print and sign their names, 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 13. 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. Please contact Pamela Wuest at pamelaw@wsba.org or 206-239-2125 if you have any questions, or to request a paper ballot.

Candidate Statements
Voting is underway for the Board of Governors elections for District 4. The elections for the 1st, 5th, and 7th-West districts were uncontested this year — congratulations to Governors-elect Ken Masters in District 1, Paul Bastine in District 5, and Barb Rhoads-Weaver in District 7-West. Electronic votes and paper ballots will be counted on or about April 13. Following are brief biographical statements received from candidates.

District 1 — Ken Masters — Unopposed
Ken Masters has worked closely with the Board of Governors, currently chairing the WSBA’s Court Rules and Procedures Committee, and previously chairing its Amicus Committee. Ken also serves on the Washington State Supreme Court’s Strategic-Planning Steering Committee, and the KCBAs Judicial Conferencing, CLE, Awards, and Judicial Screening committees. Over the last 20 years, Ken has assisted many great trial lawyers, handling hundreds of civil appeals at Masters Law Group (formerly Wiggins & Masters). He is a president of the Washington Appellate Lawyers Association, and a Fellow of the American Academy of Appellate Lawyers. For Ken, serving is an honor.

District 4 — Brian J. Anderson
I was born and raised in Sunnyside and have been a resident of Kennewick since shortly after graduating law school. I received an accounting degree from Brigham Young University in 2001 and a law degree from the University of Houston Law Center evening program in 2006. I served as a public defender in Benton and Grant Counties from 2007–2010, and have since worked in private practice devoted to plaintiffs’ personal injury and related litigation. I strive to promote access to justice and I would be honored to represent the members of the 4th Congressional District on the Board of Governors.

District 4 — J. Jay Carroll
I have been in practice in Yakima for almost 25 years devoting the majority of my time to civil litigation matters. I have also been married for almost 25 years to my wife, Jill, and we have two wonderful kids currently attending college. I have been a shareholder with the firm of Velikanje Halverson since 1993. I was born and raised in Eastern Washington and wanted to come back to actively practice law once I graduated from law school. I would be honored to bring those Eastern Washington values to the table as your representative to the Board of Governors.

District 4 — Rickey C. Kimbrough
Rickey C. Kimbrough, age 63, is a graduate of Whitman College (1970), and Northwestern School of Law, Lewis & Clark College (J.D. 1973). His practice is primarily civil litigation and probate. Rick is a past member and president of the WSBA General Practice Section, ABA House of Delegates, and WSBA committee on Lawyer Succession. In addition to his private practice, he served as Municipal Court Judge and school board member. Professional memberships and associations, past and present, include: WSBA, WSAJ, ABA, ATLA, Yakima County Bar Association, and John Gavin Inns of Court. Rick resides and practices in Grandview, Washington.

District 4 — Jerry J. Moberg
I would be honored to serve the WSBA members from the 4th District as your representative. If elected, I would do my very best to ensure your Bar Association pays special attention to the diverse needs of its members in the 4th District. I graduated from Gonzaga in 1973 and have proudly served as a trial attorney throughout my career. I served as a Superior Court judge in Grant County from 1989–1992. My career has been devoted to litigation of all types. I have worked in a variety of firms from sole practitioner to a mid-sized firm (Lukins & Annis).

District 5 — Paul A. Bastine — Unopposed
Paul Bastine received his Juris Doctorate Degree, Gonzaga University Law School, 1964; served in the Peace Corps in Brazil; was a Deputy Prosecuting Attorney; in private practice since 1966 until appointed to Superior Court (1995), retired in January 2005; pro tem judge until 2010, currently a private trial judge/arbitrator/mediator. President of Spokane County Bar Association, served on Access to Justice Board, Board of Legal Foundation of Washington, Practice of Law Board. Received: Gonzaga Law School’s Distinguished Service Award; Goldmark Award, Legal Foundation of Washington; Washington State Chapter Trial Advocates, Judge of the Year; Distinguished Judicial Service Award Gonzaga School of Law.

District 7-West — Barb Rhoads-Weaver — Unopposed
I am a sole practitioner with large firm experience. Currently I am the Treasurer of QLaw — the GLBT Bar Association of Washington. As a member of the Board of Governors, I would work to fulfill the WSBA’s motto of championing justice for all. I have a common-sense, practical approach to serving my clients’ legal needs. My firm is guided by the principle of making sure today’s actions and decisions are consistent with future goals. If elected, these are the values that will guide my service on the Board of Governors. Thank you for your consideration.
Legal Services Corporation Notice of Availability of Competitive Grant Funds for Calendar Year 2013

The Legal Services Corporation (LSC) announces the availability of competitive grant funds to provide civil legal services to eligible clients during calendar year 2013. A Request for Proposals (RFP) and other information pertaining to the LSC grants competition will be available from www.grants.lsc.gov during the week of April 9, 2012. In accordance with LSC’s multi-year funding policy, grants are available for only specified service areas. To review the service areas for which competitive grants are available, by state, go to www.grants.lsc.gov/about-grants/where-we-fund and click on the name of the state. A full list of all service areas in competition is posted on that page. Applicants must file a Notice of Intent to Compete (NIC) through the online application system in order to participate in the competitive grant process. Information about LSC grants funding, the application process, eligibility to apply for a grant, and how to file a NIC is available at www.grants.lsc.gov/about-grants. Complete instructions will be available in the Request for Proposals Narrative Instruction. Refer to www.grants.lsc.gov for filing dates and submission requirements. Email inquiries pertaining to the LSC competitive grants process to competition@lsc.gov.

Tacoma Foreclosure Legal Clinic Needs Volunteers

Volunteers are needed to help homeowners facing foreclosure. The WSBA Home Foreclosure Legal Aid Project and Tacoma-Pierce County Volunteer Legal Services are seeking volunteer attorneys to help homeowners avoid foreclosure at a free legal clinic on Saturday, May 5, from 10:00 a.m. to 3:00 p.m. in Tacoma. Free training will also be available for those registered to volunteer at the May 5 clinic. The Northwest Justice Project’s Foreclosure Prevention Unit will host a live foreclosure prevention webinar on May 3, from 2:00 to 3:30 p.m. (1.5 CLE credits pending). To register for the webinar and clinic, email Ariel Speser at ariel@nwjustice.org.

Land Use Volumes of Real Property Deskbook Released by WSBA-CLE

Update your library now: The 2012 revised land use volumes (Volumes 5 and 6) of the fourth edition of the Washington Real Property Deskbook series are now available. Guided by Editor-in-Chief Alexander W. (Sandy) Mackie of Perkins Coie, Seattle, top Washington practitioners have written and edited two new and completely revised land use volumes that replace Volumes VI and VII of the third edition. Volume 5 (planning) comprehensively covers land use regulation and regulatory processes at the programmatic level while outlining how future growth problems may be addressed. Volume 6 (development) takes a practical, project-oriented look at how the land use rules are applied in given circumstances and focuses on project-specific concerns. To review the full tables of contents or to purchase, go to www.wsbcle.org and click “Deskbooks” or call 206-733-5918 to order by phone.

Online Directory of Pro Bono Opportunities

The WSBA is pleased to announce the launch of www.probonowa.org, an online directory of pro bono opportunities around the state. Designed to link attorneys with opportunities to serve low- and moderate-income clients in Washington, www.probonowa.org will connect attorneys with organizations in need of pro bono attorneys. As part of WSBA’s strategic goal to enhance the culture of service among its members, the WSBA is excited to maximize the valuable work and dedicated commitment of pro bono attorneys. The WSBA will maintain and update www.probonowa.org, ensuring that attorneys seeking volunteer opportunities have the most up-to-date information available needed to link their skills with the clients who need it most. Special thanks to the Northwest Justice Project, Probono.net, and the Washington Young Lawyers Division Pro Bono and Public Service Committee for their invaluable partnership and support to launch probonowa.org!

2012 Licensing and MCLE Information

Licensing Suspensions. If any portion of your license fee, LFCP assessment, 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 2009–2011 (Group 2) and have not done so after two months’ written notice of your delinquency, a recommendation for suspension will be submitted to the Supreme Court.

Judicial Member Licensing

If you are still eligible for judicial membership and have not filed your renewal within 60 days of the date of the written notice, your eligibility to transfer to another membership class upon leaving service as a judicial officer will not be preserved. If you are no longer eligible for judicial membership, you must notify the Bar within 10 days and, if you want to continue your affiliation with the WSBA, you must change to another membership class within the Bar. Contact Membership Changes at membershipchanges@wsba.org or 206-239-2131 if you need to change your membership. For detailed instructions, go to www.wsba.org.

Lawyers Assistance Program 15th Annual Statewide Conference: A Thoughtful Approach to Your Practice and Your Career

The 15th annual Lawyers Assistance Program Statewide Conference will take place April 13–15 at Campbell’s Resort, in Chelan. Join us in examining ways to better communicate with your clients, set goals for your practice, and take care of your-
self in the process. WSBA President Steve Crossland will be delivering the keynote for this memorable CLE. For $120, you will receive 9 CLE credits, including 2 ethics, and three meals. Go to tinyurl.com/82qoqozz to sign up or call Julie Salmon at 206-733-5914 or juliesa@wsba.org.

Get More out of Your Software

The WSBA offers hands-on computer clinics and webinars for members wanting to learn more about what Microsoft Office Outlook and Word, as well as 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. Bring your laptop or use provided computers. Seating is limited to 15 members. The April 9 clinic will meet from 10:00 a.m. to noon at the WSBA offices and online, and will focus on Microsoft Outlook and Word. On April 12, from 2:00 to 4:00 p.m., we will discuss Casemaker and Outlook and Word, as well as Adobe Acrobat, and webinars for members wanting to advance their legal skills. Contact Peter Roberts at 206-727-8237, 800-945-9722, ext. 8267, or peter@wsba.org.

Work/Life Balance Group

The WSBA Lawyers Assistance Program (LAP) is offering “From Surviving to Thriving: Achieving a Meaningful Work/Life Balance.” This eight-week group offers both specific skills and a supportive environment for this critical topic. If you are interested in participating in the next group, contact LAP therapist Heidi Seligman at 206-727-8269, 800-945-9722, ext. 8269, or heidis@wsba.org.

Search WSBA Advisory Opinions Online

WSBA advisory opinions are available online at www.wsba.org/advisoryopinions. You can search opinions by number, year issued, ethical rule, subject matter, or keyword. Advisory 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.

Upcoming Board of Governors Meetings

April 27–28, Tulalip
June 8, Yakima
July 13–14, Union

Except for 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/about-wsja/governance/board-of-governors.

Usury Rate

The average coupon equivalent yield from the first auction of 26-week treasury bills in March 2012 was 0.132 percent. Therefore, the maximum allowable usury rate for April is 12 percent.

2012 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 service to the Bar and/or the public, although it has also been presented in recognition of a single, extraordinary contribution or project. It is awarded to individuals only — both lawyers and nonlawyers.

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

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

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

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

Excellence in Diversity Award. This award is made to a lawyer, law firm, or law-related group that has made a significant contribution to diversity in the legal profession’s employment of ethnic minorities, women, persons with disabilities, and other persons of diversity.
Outstanding Elected Official Award. This award is presented to an elected official for outstanding service, with special contributions to the legal profession. It is awarded to an individual who has demonstrated a commitment to justice beyond the usual call of duty.

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

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

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

Community Service Award. 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/awards for more information and to download a nomination form. Self-nominations will not be accepted. Please note that the completed nomination form must accompany each nomination in order to be considered. Each of the nominations will be considered by a committee of the Board of Governors. The deadline for the Pro Bono Award and Norm Maleng Leadership Award nominations was March 31, 2012. The deadline for all other nominations is April 27, 2012. Please send nominations to: WSBA, Attn: Annual Awards, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101; fax: 206-727-8310; email: 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 20, 2012, with the following exceptions: the Pro Bono and Norm Maleng Leadership awards will be presented at the Access to Justice/Bar Leaders Conference in Yakima, June 8–10, 2012.

FLOYD, PFLUEGER & RINGER, P.S.

is pleased to announce that

John A. Safarli

has joined the firm as an associate.

Floyd, Pflueger & Ringer’s diverse litigation team emphasizes defense of complex civil litigation matters, including medical malpractice and professional liability, retail and premises liability, construction claims (defect and injury), fire and catastrophic events response, employment law, and transportation.

200 W. Thomas Street, Suite 500
Seattle, WA 98119-4296
Tel: 206-441-4455 • Fax: 206-441-8484
www.floyd-ringer.com

LANDERHOLM, P.S.

is pleased to announce that

Timothy J. Calderbank

has joined the firm as Of Counsel

and

Marshall K. Stagg

has joined the firm as an Associate

LANDERHOLM, P.S.
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Wilson Smith Cochran Dickerson is pleased to announce that Alfred E. Donohue has become a Director of the firm.

John K. Butler
University of Minnesota Law School, 1998, became a Member of the Firm effective January 1, 2012;

Jennifer D. Loynd
Lewis and Clark Law School, 2002, and formerly with Mullin Law Group, PLLC, has become an associate in our Seattle office; and

Mark Wilkerson
Willamette University College of Law, 1983, has joined our Seattle office in an Of Counsel status.

They join our talented team of lawyers:
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Portland Office:
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Deno Millikan Law Firm, PLLC is pleased to welcome Jennifer C. Gogert as our newest partner.

A 2001 graduate of Willamette University College of Law, Ms. Gogert joined the firm in 2005. In 2011, Ms. Gogert was honored by SuperLawyers as a Rising Star. She is Past-President of the Snohomish County Bar Association and the current President of SCBA’s Family Law Section. Ms. Gogert continues to serve on the boards of Snohomish County Legal Services and Washington Women Lawyers. She is also a member of Washington State Association for Justice, North Sound Collaborative Law, and the International Association of Collaborative Professionals.

Ms. Gogert welcomes your referrals and is available for association of counsel in the areas of family law, collaborative law, estate and probate, and personal injury.

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Metro Regional Government
has appointed

Alison Kean Campbell

as the Metro Attorney, the agency’s General Counsel. Ms. Kean Campbell, has practiced law for 23 years, and has been an attorney for the Metro regional government for 16 years. Ms. Kean Campbell graduated from the University of Michigan Law School in 1988, where she served on the Michigan Law Review, and has a degree in Economics from Case Western Reserve University. In 2008, Ms. Kean Campbell was promoted to the role of Deputy Metro Attorney, and in February 2011, she was appointed as the Acting Metro Attorney. Prior to working at Metro, Ms. Kean Campbell worked in private law practice in Washington, D.C., Seattle, and Portland, focusing on complex civil and commercial litigation. Ms. Kean Campbell is licensed to practice law in both Oregon and Washington.

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is pleased to announce that

Sarah Stevens Visbeek

has joined our firm as an Associate.

Ms. Visbeek is a 2011 graduate of Seattle University School of Law. And

Maggie B. Kirschner

was awarded Outstanding Associate of the Year for 2011.
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 206-733-3926, 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.

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**Disbarred**

David P. Butler (WSBA No. 20395, admitted 1991), of Aberdeen, was disbarred, effective November 23, 2011, by order of the Washington State Supreme Court following a default hearing. This discipline was based on conduct involving failure to act with reasonable diligence, failure to communicate, conversion of client funds, failure to protect clients’ interests, dishonest conduct, failure to cooperate in a grievance investigation, and conduct demonstrating unfitness to practice law.

**Matter No. 1:** In January 2005, Mr. Butler represented Client A in an appeal of an unlawful detainer action, in which the opposing party was awarded a writ of restitution and attorney’s fees. He also represented Client A in a lawsuit against the business from whom Client A had subleased space. In a 2007 unpublished opinion, the Court of Appeals decided that the opposing party had properly obtained the writ of restitution and attorney’s fees awarded against Client A. When the opposing party tried to collect, Mr. Butler filed a separate lawsuit on behalf of Client A, which was dismissed on summary judgment because the suit had been filed against an individual rather than the business entity and because the claims were time-barred. Mr. Butler failed to adequately explain the unlawful detainer action or the lawsuit to Client A. The Court of Appeals dismissed the appeal in 2008 when Mr. Butler failed to perfect the record on appeal.

**Matter No. 2:** In March 2010, Client B hired Mr. Butler to represent him in a tribal court criminal matter for a flat fee of $1,000. Client B’s partner paid $500 that day and later paid the balance. Without explanation, Mr. Butler failed to appear for Client B’s hearing in tribal court. The judge appointed a public defender to represent Client B. The public defender informed the court that on or about June 1, 2010, Mr. Butler had vacated his office. Mr. Butler did not refund Client B’s unearned fees, which he knowingly converted for his personal use.

**Matter No. 3:** In March 2010, Client C hired Mr. Butler to represent her in a criminal matter for a flat fee of $3,500. She paid Mr. Butler $3,000 and Mr. Butler appeared with Client C at her March 30, 2010, arraignment. The court set a May 21, 2010, pre-trial hearing. The first week of May, Client C met briefly with Mr. Butler to discuss her case. Mr. Butler did not appear at the May 21, 2010, hearing and did not refund Client C’s unearned fees. Client C could not reach Mr. Butler and subsequently obtained new counsel to resolve her charges.

**Matter No. 4:** In April 2010, Mr. Butler was hired by Client D to vacate his criminal conviction. Mr. Butler and Client D signed a fee agreement for a flat fee of $8,000; however, the Washington Appellate Project had filed a Notice of Appeal and Order of Indigency for Client D in February 2010. In April 2010, Client D’s family sent Mr. Butler $2,000, which he converted for his personal use. Mr. Butler knowingly failed to communicate about the case and failed to file a Notice of Appearance or otherwise act on the appeal. In October 2010, Client D’s daughter sent Mr. Butler an email requesting a refund of the $2,000. Mr. Butler did not respond and did not refund the unearned fees.

**Matter No. 5:** The individuals involved in the previous matters filed grievances against Mr. Butler, who failed to respond to the Association’s numerous requests for responses.

Mr. Butler’s conduct violated RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; RPC 1.4, requiring a lawyer to promptly inform the client of any decision of circumstance with respect to which the client’s informed consent is required by these Rules, 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 explain a matter to the client to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; RPC 1.15(b), prohibiting a lawyer from using, converting, borrowing, or pledging client or third-person property for the lawyer’s own use; 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, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee or expense that has not been earned or incurred; RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; RPC 8.4(f), prohibiting a lawyer from violating a duty or sanction imposed by or under the Rules for Enforcement of Lawyer Conduct in connection with a disciplinary matter; and RPC 8.4(n), prohibiting a lawyer from engaging in conduct demonstrating unfitness to practice law.

Linda B. Eide represented the Bar Association. Mr. Butler did not appear either in person or through counsel. Octavia Y. Hathaway was the hearing officer.

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**Disbarred**

Kimberly Lynn Grijalva (WSBA No. 29771, admitted 1999), of Yakima, was disbarred, effective January 12, 2012, by order of the Washington State Supreme Court following a default hearing. This discipline is based on conduct involving the commission of criminal acts, interference with the administration of justice, and acts reflecting disregard for the rule of the law.

Ms. Grijalva was a criminal defense lawyer. She arranged for her home landline phone number to be placed on a list maintained by the Department of Assigned Counsel. Calls to the phone numbers on this list by county jail inmates were designated privileged and not recorded or monitored by jail personnel. The purpose of the list was to facilitate communication between the inmates and their counsel or prospective counsel. Other than calls to phone numbers on this list, jail inmates were charged to make local calls at a flat rate of $2.50 for calls up to 15 minutes. These calls were recorded or monitored by jail personnel. Ms. Grijalva arranged for calls from the jail inmates to her home landline to be forwarded to a cell phone registered in her name. Ms. Grijalva had given that cell phone to Ms. S, who lived with her.

Between approximately April 21, 2010, and June 4, 2010, two jail inmates, neither of whom were represented by Ms. Grijalva during the relevant time period, made more than 900 free, unrecorded calls to Ms. Grijalva’s privileged attorney-client phone line. Ms. S dated both inmates. Many of the calls made by these two inmates were forwarded to her cell phone and were not subject to the jail’s fee and recording requirements. Ms. Grijalva encouraged the call-forwarding scheme, which she knew circumvented the jail’s requirements and resulted in theft of services exceeding $750.

On October 23, 2010, Ms. Grijalva went to the maximum-security fourth floor of the county jail to visit an inmate who was a prospective client. Ms. Grijalva met the inmate in a meeting room that had a narrow pass-through slot under the window that
Ms. Grijalva’s conduct violated RPC 8.4(b), prohibiting a lawyer from committing a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects; RPC 8.4(d), prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice; and RPC 8.4(i), prohibiting a lawyer from committing any act involving moral turpitude, or corruption, or any unjustified act of assault or other act which reflects disregard for the rule of law.

Joanne S. Abelson represented the Bar Association. Kimberly L. Grijalva represented herself. David A. Thorner was the hearing officer.

Suspended

Bernice C. Delorme (WSBA No. 31148, admitted 2001), of Silver Spring, Maryland, was suspended for 30 days, effective January 12, 2012, by order of the Washington State Supreme Court imposing reciprocal discipline in accordance with an order from the North Dakota Supreme Court. This discipline is based on conduct involving unreasonable fees.

Ms. Delorme had no written fee agreement with Client. She orally agreed to an hourly rate of $125, but instead charged $175 per hour and $210 per hour for court time. Ms. Delorme failed to reflect a payment by Client; overbilled for mileage; billed to review Veterans’ Affairs medical records of Client’s children when the children had never been to Veterans’ Affairs; billed Client more than 24 hours on June 16, 2008; and billed for time when she provided no legal services while Client reviewed paperwork.

Ms. Delorme’s conduct violated N.D.R. Prof. Conduct 1.5, which prohibits a lawyer from making an agreement for, charging, or collecting an unreasonable fee.

Scott G. Busby represented the Bar Association. Ms. Delorme represented herself.

Reprimanded

Ronald P. Abernethy (WSBA No. 14239, admitted 1984), of Seattle, was ordered to receive a reprimand on July 29, 2011, following approval of a stipulation by a hearing officer. This discipline is based on conduct involving failure to communicate the basis or rate of his fee and violating a duty in connection with a

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In August 2010, Mr. Abernethy was hired to represent Client in a criminal matter. He charged Client a flat fee of $8,500 to represent him. There was no written fee agreement. In August 2010, Mr. Abernethy received a $2,500 advance fee into his trust account. Client did not have liquid funds to pay the remaining $6,000. Mr. Abernethy agreed to accept two motor vehicles as payment. He failed to fully disclose in writing the terms on which he obtained his ownership interest in the motor vehicles or the value assigned to each vehicle. Mr. Abernethy negligently failed to disclose the basis of the fee, even after his client terminated him and requested an accounting of attorney fees.

In December 2010, Client filed a grievance against Mr. Abernethy with the Bar Association. Mr. Abernethy failed to promptly and timely cooperate with the Bar Association’s investigation of the grievance.

Mr. Abernethy’s conduct violated RPC 1.5(b), requiring that the lawyer communicate the scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible, preferably in writing, before or within a reasonable time after commencing the representation; RPC 1.15A(c)(2), requiring a lawyer to deposit into a trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred; and RPC 8.4(l), prohibiting a lawyer from violating a duty or sanction imposed by or under the Rules for Enforcement of Lawyer Conduct in connection with a disciplinary matter.

Jonathan H. Burke represented the Bar Association. Mr. Abernethy represented himself. J.C. Becker was the hearing officer.

Admonished

Eugene C. Wong (WSBA No. 31957, admitted 2001), of San Francisco, California, was admonished following approval of a stipulation by the Disciplinary Board on January 11, 2012. This discipline is based on conduct involving failure to refund unearned fees and failure to place fees in a trust account. Eugene C. Wong is to be distinguished from Eugene W. Wong of Seattle.

Client paid Mr. Wong $5,000 to assist her in an immigration matter. Client signed Mr. Wong’s fee agreement, which stated that the $5,000 was not refundable regardless of the outcome of the cases or if the case was withdrawn at any time. The fee agreement did not comport with the RPC 1.5(f)(2) requirements for flat fee agreements, under which Mr. Wong is required to place the $5,000 in his trust account. Mr. Wong did not place any of Client’s advanced fees into his trust account. Client terminated Mr. Wong’s services before he had done any significant work on the case. Client asked for a refund of her unused fee, but Mr. Wong refused, arguing that the $5,000 fee was non-refundable. Mr. Wong refunded Client’s fee only after she filed a grievance with the Bar Association.

Mr. Wong’s conduct violated RPC 1.5, prohibiting a lawyer from making an agreement for, charging, or collecting an unreasonable fee or an unreasonable amount for expenses; RPC 1.15A(c)(2), requiring a lawyer to deposit into a trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred; and 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, such as refunding any advance payment of fee or expense that has not been earned or incurred.

Francesca D’Angelo represented the Bar Association. Patrick C. Sheldon represented Mr. Wong.

Non-Disciplinary Notice

Suspended Pending the Outcome of Disciplinary Proceedings

Phillip A. Zajdel (WSBA No. 29165, admitted 1999), of Bellevue, was suspended pending the outcome of disciplinary proceedings pursuant to ELC 7.2(a)(3), effective February 21, 2012, by order of the Washington State Supreme Court. This is not a disciplinary sanction.
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Employment Law
19th Annual Employment Law Institute
April 25 — Seattle and webcast. 7 CLE credits, including 1 ethics. WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbcle.org.

Environmental Law
2nd Annual Regulation of Water in Alaska: The Changing Environment of Permitting and Enforcement
April 19 — Anchorage. 6.25 CLE credits. By The Seminar Group; 800-574-4852 or 206-463-4400; www.theseminargroup.net/lasso?seminar=12.cwaak.

Pacific Northwest Timberlands Management
April 26–27 — Portland. 9 CLE credits. By The Seminar Group; 800-574-4852 or 206-463-4400; www.theseminargroup.net/lasso?seminar=12.uplor.

Business Law
32nd Annual Northwest Securities Institute
April 13–14 — Seattle and webcast. 10 CLE credits, including 1.25 ethics. By the WSBA Business Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbcle.org.

Advertising and Marketing Law
April 18 — Seattle and webcast. 6.75 CLE credits, including .5 ethics. WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbcle.org.

Lincoln on Professionalism

13th Annual Venture Capital Financing

Staying Ahead of the Curve: Emerging Issues for Business Lawyers
May 18 — Seattle and webcast. 6.5 CLE credits, including 1 ethics. By the WSBA Business Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbcle.org.

Alternative Dispute Resolution
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2012 Environmental and Land Use Law Section Midyear Meeting and Seminar
May 3–4 — Leavenworth. 11.5 CLE credits, including 1 ethics. By the WSBA Environmental and Land Use Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbcle.org.

Ethics

Lincoln on Professionalism
April 24 — Seattle and webcast. 2.75 ethics credits. WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

### Family Law

**Community Property**
April 12 — Seattle and webcast. 6.25 CLE credits. WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Systemic Solutions for Families in Crisis**

**The Benefits of Modeling in Divorce Cases**
May 9 — Seattle. 1 CLE credit. By McKinley Irvin Family Law Speaker Series; 206-625-9600; www.mckinleyirvin.com/resources/cle.

### General

**Communication with Clients**

**An Overview of Relocation Cases**
April 11 — Seattle. 1 CLE credit. By McKinley Irvin Family Law Speaker Series; 206-625-9600; www.mckinleyirvin.com/resources/cle.

**High Impact Presentation Skills: Fast Track Coaching for Busy Attorneys**
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**Superior Legal Writing**
May 9 — Seattle and webcast. 6.75 CLE credits, including .75 ethics. WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Annual Senior Lawyers Seminar**
May 11 — SeaTac. 6.25 CLE credits. By the WSBA Senior Lawyers Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

### Intellectual Property

**Intellectual Property**

**Intellectual Property: Advanced Licensing**
May 21 — Seattle and webcast. CLE credits pending. By the WSBA Business Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

### Health Law

**Constitutionality of Health Care Reform**
April 5 — Teleconference with online PowerPoint. 2 CLE credits. By Rubric CLE; 206-714-3178; www.rubriccle.com.

### Litigation

**Auto Cases**
April 11 — Seattle and webcast. 6 CLE credits, including .5 ethics credit. By WSAJ Legal Educational Seminars; 206-464-1011; www.washingtonjustice.org.

**Personal Injury Law Boot Camp**
May 16 — Seattle and webcast. CLE credits pending. WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Reptile, with David Ball and Don Keenan**

### New Lawyer Education

**Starting Your Solo Practice**
May 17 — Seattle and webcast. CLE credits pending. By WSBA New Lawyer Education, WYLD; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org/nle.

**Advising the Small- to Mid-sized Business**
May 8 — Seattle and webcast CLE credits pending. By WSBA New Lawyer Education, WYLD; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org/nle.

### Real Estate

**Annual Spring Real Estate Seminar: Insurance Essentials for Real Property and Land Use**
April 19 — Seattle and webcast. 6.25 CLE credits. WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Foreclosures: An Update on Status, Procedure, and Best Practices**
April 26 — Seattle. 6.25 CLE credits. By The Seminar Group; 800-574-4852 or 206-463-4400; www.theseminargroup.net/seminar.lasso?seminar=12.forwa.

### Senior Lawyers

**Annual Senior Lawyers Seminar**
May 11 — SeaTac. 6.25 CLE credits. By the WSBA Senior Lawyers Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

### Trust and Estates

**Real Property, Probate and Trust Section Spring Seminar**
April 19 — Seattle and webcast. 6.25 CLE credits. By the WSBA RPPT Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

### Webcast Seminars

**Auto Cases**
April 11 — Seattle and webcast. 6 CLE credits, including .5 ethics. By WSAJ Legal Educational Seminars; 206-464-1011; www.washingtonjustice.org.

**Community Property**
April 12 — Seattle and webcast. 6.25 CLE credits, including 1.25 ethics. By the WSBA Business Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**32nd Annual Northwest Securities Institute**
April 13–14 — Seattle and webcast. 10 CLE credits, including 1.25 ethics. By the WSBA Business Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Advertising and Marketing Law**
April 18 — Seattle and webcast. 6.75 CLE credits, including .5 ethics. WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.
Real Property, Probate and Trust Section Spring Seminar
April 19 — Seattle and webcast. 6.25 CLE credits. By the WSBA RPPT Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

10th Annual Ethics in Civil Litigation Institute
April 20 — Seattle and webcast. CLE credits pending. WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Lincoln on Professionalism
April 24 — Seattle and webcast. 2.75 ethics credits. WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

19th Annual Employment Law Institute
April 25 — Seattle and webcast. 7 CLE credits, including 1 ethics. By the WSBA Environmental and Land Use Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

2012 Environmental and Land Use Law Section Midyear Meeting and Seminar
May 3–4 — Leavenworth. 11.5 CLE credits, including 1 ethics. By the WSBA Environmental and Land Use Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Superior Legal Writing
May 9 — Seattle and webcast. 6.75 CLE credits, including .75 ethics. WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Personal Injury Law Boot Camp
May 16 — Seattle and webcast. CLE credits pending. WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Staying Ahead of the Curve: Emerging Issues for Business Lawyers
May 18 — Seattle and webcast. 6.5 CLE credits, including 1 ethics. By the WSBA Business Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Intellectual Property: Advanced Licensing
May 21 — Seattle and webcast. 6.75 CLE credits, including .5 ethics. By the WSBA Business Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Workers’ compensation paralegal — Our small Bellevue firm, representing great employer clients, offers generous salary, bonuses, profit-sharing, medical/dental, flexible hours, free parking, and a positive work environment with reasonable case loads. Candidate must have at least five years’ Washington workers’ compensation experience with at least two years as a paralegal. Must be well organized, proactive, and a team player. Please submit résumé and cover letter to classifieds@wsba.org, referencing Box 743 in the subject line. All applications reviewed in confidence.

GEICO’s staff counsel offices in Seattle and Tacoma, Washington, are seeking litigation attorneys with a minimum of five years’ experience to defend lawsuits pending in the Seattle and Tacoma area. Job duties will include the defense of first- and third-party cases, conducting all aspects of discovery, and assisting with determinations regarding liability, damages, and coverage as requested by the Claims Department. The ideal candidate will possess excellent writing, analytical, and computer skills. Experience in the field of insurance defense and/or personal injury is strongly desired. All applicants must be licensed in the state of Washington. Our associates’ quality of life is important to us. Full-time GEICO associates are offered a comprehensive Total Rewards Program, including: 401(k) and profit-sharing plans; medical, dental, and life insurance; paid vacation, holidays, and leave programs; undergraduate tuition reimbursement; associate assistance program; flexible spending accounts; business casual dress; fitness and dining facilities (at most locations); associate clubs and sports teams; volunteer opportunities; GEICO Federal Credit Union. Benefit offerings may vary for part-time associates and interns. For 75 years, GEICO has stood out from the rest of the insurance industry! We’re one of the nation’s largest and fastest growing auto insurance companies, thanks to our low rates and great customer service. As a wholly owned subsidiary of Berkshire Hathaway, we offer new hires career advancement in a stable, supportive, and rewarding environment, and an excellent Total Rewards benefits program. GEICO is an equal opportunity employer. Background and credit checks, and hair or urine drug testing are required as part of our pre-employment process. Please go to https://atsprod.geico.com/psp/atsprod/employee/hrms/c/jhrs_hram.hrs_ce.gbl?Page=hrs_ce_hm_pre for additional information.

Overhead killing your net? Clients getting fed up with high bills? Want to retire, but have to feed the overhead monster? We have a solution. Ten experienced Washington lawyers (average 26 years in practice) have formed Advocates Law Group PLLC, using a revolutionary business platform: a virtual law firm, eliminating the need for expensive office space and salaried support staff. Your overhead could be reduced as much as 80 to 90 percent, depending on the services you use. Visit our website at www.advocateslg.com/ to learn more. Consider applying to join our exclusive, collegial group. Only lawyers with at least 10 years’ experience, a good book of business, and, relatively, technological savvy should apply. Contact George Tamblyn; gtamblyn@advocateslg.com; 206-236-2769.
Costco Wholesale seeks in-house real estate attorney to handle international real estate matters. Must have at least 10 years’ relevant law firm and/or in-house counsel experience. International business law experience and fluency in Chinese (Mandarin), Korean, or Japanese are desirable but not required. Reports to vice president corporate counsel. Please email cover letter and résumé to sgardner@costco.com.

Career opportunity: Ahlers & Cressman PLLC — an 11-member construction law firm located in downtown Seattle — is seeking a lawyer with at least four years of experience to participate in all aspects of construction law, both transactional and dispute resolution services. Our firm is a group of motivated, hard-working professionals. We believe that responsiveness and high-quality work result in both satisfied clients and a prosperous organization. Compensation is negotiable based upon qualifications and experience. All inquiries will remain confidential. If interested, please send résumé and cover letter to: Chris Achman, Administrator, Ahlers & Cressman PLLC, 999 Third Ave., Ste. 3800, Seattle, WA 98104–4088; Fax: 206-287-9902; website: www.ac-lawyers.com; email: cachman@ac-lawyers.com.

Associate attorneys — Pacific Law Recruiters is actively searching for associate-level attorneys with a minimum of two years’ experience. Practical knowledge of general and commercial litigation, corporate and securities, estate planning, labor and employment, business and corporate, securities and white collar litigation, real estate and tax, and intellectual property 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 with some of the Northwest’s finest law firms are encouraged to forward a confidential résumé and cover letter to Greg Wagner, principal, at: gww@pacificlawjobs.com. Visit our website: www.pacificlawjobs.com.

Eisenhower, a mid-sized business law firm in Tacoma, is seeking an experienced litigation associate. The successful candidate should have a minimum of three years of litigation experience. Excellent academic credentials and communication skills required. Eisenhower offers a collegial environment and an excellent opportunity to develop legal skills and professional growth. Please send résumé, cover letter, law school transcript, and writing sample to: Clemencia Castro-Woolery at ClemenciaC@Eisenhowerlaw.com.

Lateral partner: Smith Alling, PS seeks a lateral partner to join the firm’s sophisticated and diverse business, estate planning, real estate, construction, and litigation practice at its office in Tacoma. Successful candidates will have portable business, excellent credentials, at least 10 years’ experience, a good reputation in the legal community, and, most importantly, a willingness to be part of a collegial work environment. Smith Alling, PS is widely recognized throughout the Pacific Northwest for the superior legal work it performs on behalf of its corporate and individual clients. For confidential consideration, send résumé and cover letter to mmc@smithalling.com.

WSBA director of justice and diversity programs — The WSBA is seeking a lawyer to institutionalize and facilitate the WSBA’s commitment to diversity and continuing leadership in access to justice and public-service-related initiatives. The position manages the department’s operations; supervises three program managers; and provides strategic vision, leadership, and community building. For details and how to apply, visit us at www.wsba.org/about-wsba/careers/wsba-jobs.


Superior brief and motion preparation, trial consultation. 25 years’ experience in criminal trial and appellate work, personal injury plaintiff and defense, and extensive litigation experience. Reasonable rates. Contact Bruce at brucehanify@msn.com; 360-461-7318.


Contract attorney with excellent research and writing skills available to draft motions, trial briefs, appellate briefs, and research memos. Willing to help with other civil litigation-related projects. Strong academic credentials, law review, and complex litigation experience. Contact Peter@apexlg.com for more information.

Exclusive private investigator: Licensed and insured. Specializing in trademark/branding infringements, locating people and their assets, tandem police investigations, and executive-level background checks. www.LionInvestigation.com; 888-571-0811; Info@LionInvestigation.com.


Long-term care specialist — WSBA member, licensed as independent long-term care insurance producer. Can pro-
vide insurance solutions for your estate planning, dissolution, and business clients. Individuals, employee benefit plans, sponsored groups. Contact Helen Boyer, 425-557-5372; helen.boyer@ltcfp.net; or visit www.helenboyer.ltcfp.com.


Expert witness/insurance bad faith consultant: Over 30 years’ combined experience: former claims adjuster, claims manager, insurance defense counsel, and current plaintiffs’ counsel. Consulted for both sides on over 50 cases. CPCU, ARM, and J.D. w/honors. Contact: dbuss@hotmail.com or office phone 425-776-7386.


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 email legalease@legalease.com or call 425-822-1157 to schedule.

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@garygrenell.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.


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.vaaww.org/drc.

I buy homes and condos. Honest and reliable. Refer your clients with confidence. Clancy Tipton, J.D., Real estate broker. 206-947-7514; catipton1@msn.com.

Experienced contract attorney with strong research and writing skills drafts trial and appellate briefs, motions, and research memos for other lawyers. Resources include University of Washington Law Library and LEXIS online. Elizabeth Dash Bottman, WSBA #11791, 206-526-5777; ebottman@gmail.com.


Space Available

Tenth floor shared office suite in Seattle’s historic Hoge Building, located at 2nd and Cherry, just one block from the King County Courthouse. Offering four offices with great views, ranging from 12’ x 16’ to 7’ x 12’, kitchen, conference room, standard office equipment, and a new Sharp copier MXM623W (scan and fax capable). Reception desk area is also available to negotiate. Inquiries: Christina 206-324-6677 or chenry@SeattleDebtLaw.com.

Downtown Seattle executive suites — Fantastic location just off I-5 across the street from REI. Easy access for you and your clients! On-site services include mail sorting, conference room, business class Internet/phones, on-site parking, production-quality printer/scanner/copier. Great rates! Call 888-878-2925 or email chloe@inclinemgt.com.


Downtown Seattle executive office space: Full- and part-time offices on the 32nd floor of the 1001 Fourth Avenue Plaza Building with short- and long-term lease options. Close to courts and library. Conference rooms and office support

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services available. $175 and up. Serving the greater Seattle area for over 30 years. Contact Business Service Center at 206-624-9188 or www.bsc-seattle.com for more information.

In the heart of Seattle’s business district (4th Ave. and Union) are two generously sized offices. Larger office: $1,075/month; smaller office: $975/month; and paralegal workspace: $300/month. Included are reception (your phone line), shared kitchen, and conference room. Please contact Geoff if interested, 206-284-2932.


Federal Way: Office share with general practice attorney in newly remodeled building in Federal Way professional district. Rent includes use of shared conference room, Internet, fax, copier, utilities, kitchen, and parking. Secretary/work stations also available. Lease terms negotiable. Call 206-399-2046.

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 (18’ x 16’ and 14’ x 11’), plus one paralegal office and one staff work station. The office facilities include furnished reception room with working fireplace, built-in reception desk, furnished conference rooms, library, kitchen, working file room with high-speed copier/fax/scanner, and large basement file storage. Administrative support of high-speed Internet, technology law firm. Rent includes receptionist, reception area signage, conference rooms, library, kitchen/lunchroom, black-and-white/color copiers, scanners, and fax. High-speed LAN and Internet available. 206-382-2600.


Federal Way: Office share with general practice attorney in newly remodeled building in Federal Way professional district. Rent includes use of shared conference room, Internet, fax, copier, utilities, kitchen, and parking. Secretary/work stations also available. Lease terms negotiable. Call 206-399-2046.

Furnished executive offices at Bank of America Plaza located on the 41st and 42nd floor, in the heart of downtown Seattle's financial district and two blocks from the courthouse. Individual private offices or small suites, perfect for solo practitioner attorney or small law firms. Surround yourself with complete style and comfort with a furnished office ready for move-in. We coordinate your office setup to ensure it runs smoothly. Whether you are in the office or traveling, rely on a professional receptionist and staff you can trust to handle your calls and mail and greet your guests and prospects. Meeting rooms and videoconferencing studios available to book by the hour or by the day. Very little upfront costs required to occupy and no build-out necessary. Two months’ free rent on any new 12-month lease. Call Gina for details: 206-235-0889.

Renton office available: Join our small group of lawyers in an ideal office space. Included in full service lease is conference room, copier, kitchen, waiting room. Support staff and case referrals a possibility. Centrally located in downtown Renton with free parking. Karen, 425-417-8483.

Seeking last will of Elise E. Burnham, Tacoma resident. Contact L. Paul Alvestad at 253-383-0775.
Greg Guedel
WSBA No. 24150

I became a lawyer because my wise grandfather said I would — when I was two years old.

The future of the practice of law is finding ways to make “justice” a reality for people, not just an aspiration.

If I were not practicing law, I would have continued serving our country in the Army.

If I could change one thing about the law, I would eliminate financial and procedural barriers that prevent access to justice.

This is the best advice I have been given: “Be careful, Greg.”

I would share this with new lawyers: Helping people makes the hard work worth it.

Traits I admire in other attorneys: Zealous but respectful advocacy, and a true desire to help others.

Someone whose opinion matters to me: My wife. And always listen to your doctor.

I am most happy when I’m with my family.


What keeps me awake at night: Our pug’s snoring.

Technology is a key element in eliminating poverty and protecting human rights.

Currently playing on my iPod/CD player: John Coltrane and Jimi Hendrix.

If I could live anywhere, it would be right here in the great Northwest.

This is the best part of my job: Seeing a smile from someone I’ve helped.

My name is Greg Guedel and I serve as chair of Foster Pepper’s Native American Legal Services Group. My practice emphasizes complex construction, government contracting, and business law. I regularly assist clients with business and construction planning and management, serving government, private, and tribal entities. I also serve as editor of Foster Pepper’s Native American legal blog: www.nativelegalupdate.com.

If you would like to be featured in Briefly About Me or know someone you would like your fellow lawyers to get to know, visit www.wsba.org/barnews.
A Worthwhile Life: Readers’ Choice

In my January 2012 column, I presented a stream-of-consciousness list of things that make life worth living for me, inspired by a scene from the 1979 Woody Allen movie, *Manhattan*. I invited readers to submit their own lists. I didn’t know what to expect, but I received some heartfelt feedback to the column as well as a couple of hundred or so additional things that make life worth living for one or more of you. The list is below. But first, I’ll share a comment that helps explain what makes this column worth writing.

Mr. Heatherly,

I am sitting in my office waiting for a call from an expert regarding a drug-related DUI. While I’m waiting (I think I’ve been stood up), I have been looking at the most recent *Bar News* . . . I want to thank you for the thoughts/observations contained in your list, many of which I appreciate as well . . . A few days ago, I was wondering what I was doing that made my life worth living. I lost my wife in August of 2006; the pain is less but sometimes the loneliness is worse. I seem to struggle to pay the bills, even after 40 years of being a lawyer. In other words, I think I had started to feel sorry for myself. Your wonderful article brought me right out of that funk and helped me realize what I already knew: We live right in the middle of paradise, life is good, and the opportunity for fulfillment is endless. Thanks.

From readers’ lists:

- *Peanuts* and good old Charlie Brown
- Olive oil
- The San Francisco Giants
- King Felix
- Grits and butter
- My wife, Lago Como
- Erroll Garner’s “Misty”
- Willie Mays
- Roger Angell
- Two out, so what?
- Itzhak Perlman
- Pumpkin pie
- Muhammad Ali
- Jack Benny
- Woody Allen
- Richard Pryor
- Duke Ellington
- Steinway 9-foot concert grand
- Bill Evans
- *Body and Soul*
- Diana Krall
- Artichoke hearts
- Catherine Deneuve
- Susan Sarandon
- Charlie Theron
- Coffee
- Chocolate
- Beethoven’s 5th played full tilt on a stormy day
- Glassapalooza at Aglowing Art Studio in Port Angeles
- Seven-letter words in Scrabble
- Farmers’ markets
- Watching my daughters achieve anything — a new skill in school, riding a bike, successfully carrying fine china
- Coloring inside the lines
- Coloring outside the lines
- Looking at snowflakes up close
- The mental head slap (“Oh, no. That’s exactly what my mother would have said!”)
- The mental high-five (“Yes! That’s exactly what my mother would have said!”)
- Doing the cross-word puzzle in pen
- D’Ambrosio gelato on a summer evening with good friends
- *Remember the Titans*
- The San Francisco 49ers
- The Catch
- The Play
- The Big House
- The Zags
- The Lady Zags
- Rowing the Cut
- Sitting in the Semiahmoo bar after sunset looking at the lights of White Rock
- Not hitting a poor tee shot
- Seeing/smelling a fresh cut lawn
- Nordstrom’s shoe return policy
- Cotton bamboo towels from Lands’ End
- Ruby red ports
- Roasting a chicken
- Grilling a steak
- Picking basil
- Smelling lavender
- Life under the Ubirani sun
- Rosa Parks
- Thurgood Marshall
- The Little Rock Nine
- *Glory Road*
- *Chocolat*
- “Clear eyes, full hearts, can’t lose.”
- Audio books
- Serving an ace
- Catching Hood Canal shrimp
- Sea turtles
- Skype
- Planning a trip
- Justice William O. Douglas
- Ft. Lauderdale, FL
- Fred Couples
- Bakeman’s meatloaf sandwich
- Sand between my toes
- Summer in Seattle
- Carmine’s Il Terrazzo
- Jury trials
- Proud to be a lawyer
- Trivia
- Ted Williams’s swing
- Lasagna
- Key lime pie
- The Woodland Park Rose Garden
- Martin Luther King’s speeches
- Steam and massage
- A really nice straw hat
- Emeralds
- A good deal
- *My Fair Lady*
- Leather jackets
- *Moonlight Sonata*
- The double play
- Judy Garland
- Marian McPartland
- Beegie Adair
- Bookstores
- Johnny Hodges
- Johnny Mathis
- John Dos Passos
- *Gershwin*
- *Ripe* peaches
- Tillamook cheddar
- Oregon pinot noir
- Sunshine
- Traveling by train
- The bank shot
- Running the table
- Having a best friend
- Tropical shirts
- Forest green
- Dungeness crab
- Oysters at Moran’s on the Weir with Guinness
- Champagne and pâté de champagne
- Fresh baguette
- Safeo Field
- The Beatles
- Crazy, sung by Patsy Cline
- Pebble Beach
- Ping Eye 2 irons
- *The Hustler* with Paul Newman
- *The Big Lebowski*
- Bill Russell
- “The Big O” (Oscar Robertson)
- “Pistol Pete” Maravich
- Greg Maddux
- Premier cru chablis
- Miró and Vermeer
- Chocolate almonds
- My granddaughter’s eyes
- The ’92 Allante
- Paris
- San Francisco
- Stanford
- Gore-tex
- Pocket aces
- Harvest Vine
- Desert sunsets
- Bushmills neat
- Crossing the finish line
- Secret Santa or any secret good deed
- The smell of apple pie or fresh-baked bread
- Finding shapes in the clouds
- The feel of a little hand in mine on a walk
- Piles of leaves in the fall.

Bar News Editor Michael Heatherly practices in Bellingham. He can be reached at 360-312-5156 or barnewseditor@wsba.org.
MEET THE TEAM

DLA Piper’s Seattle office has an experienced and tested white collar defense team: Jeff Coopersmith, John Wolfe and Tyson Harper. Our team members are recognized both regionally* and nationally** by their white collar defense peers for their skillful and creative approach to resolving difficult legal issues.

Our team is experienced in resolving a range of domestic securities, criminal antitrust, environmental, FCPA, health care, and tax investigations, as well as international criminal investigations.

With offices throughout Asia (including Japan, Singapore and three offices in China), Australia, Europe and the United States, our team can address matters confronting your clients wherever and whenever they may occur.
Jennifer Payseno
Partner, Seattle
Super Lawyers® 2011, 2010

David B. Starks
Managing Partner, Seattle
AAML Fellow
Best Lawyers® 2012
Super Lawyers® 2011, 2010

Marc T. Christianson
Partner in Charge, Tacoma
AAML Fellow
Best Lawyers® 2012
Super Lawyers® 2011-2006

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Jennifer Payseno
Partner, Seattle
Super Lawyers® 2011, 2010

Super Lawyers
2011

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