The National Highway Traffic Safety Administration (NHTSA) began developing a battery of Standardized Field Sobriety Tests (SFSTs) in the late 1970s “[t]o develop sensitive tests that would provide reliable evidence of impairment.”1 After nearly two decades of study, NHTSA concluded, “[i]t is unlikely that complex human performance, such as required to safely drive an automobile, can be measured at roadside.”2 In a 1996 study including persons who had consumed no alcohol, officers determined sober persons to be impaired 46% of the time—based on SFST performance.3

SFSTs measure neither impairment nor the ability to drive.4 Researchers lament that there are still “many individuals, including some judges, [who] believe that the purpose of a field sobriety test is to measure driving impairment,” an “incorrect assumption.”5 Yet the American Prosecutors Research Institute (APRI) promotes the use of SFST evidence to obtain convictions, ignoring NHTSA’s conclusions. They proclaim, “[t]he importance of field sobriety tests cannot be overemphasized”…an officer’s testimony concerning the defendant’s SFST performance “could easily be as least as important as the results of a BAC test when assessing whether a defendant was impaired by the use of alcohol.”6

It shocks the conscience that prosecutors who know SFSTs do not measure impairment rely on them for convictions. When a person’s liberty is at stake, fundamental fairness demands that our government not engage in such deception. Unfortunately, as in the Duke Lacrosse “rape” scandal, sometimes convictions are more important than the truth.

Misuse of SFSTs is not limited to “proving” impairment. In one of NHTSA’s final studies “validating” SFSTs, BAC results were used to gauge the accuracy of arrest decisions based on the SFSTs. A BAC greater than .08 meant the SFSTs yielded the correct result; under .08, an incorrect result. The study required two breath samples to be within .02 of each other, but the research “arbitrarily” used only the first of two BAC readings.7 Based on this study, researcher Marceline Burns reported that arrest decisions based on SFST performance were correct 95% of the time.8

Taking the study at face value, the “95% accuracy” conclusion is somewhat misleading. The mean BAC of the 206 drivers purportedly arrested in the study was .15. Given that a BAC of .15 is “a severely impairing alcohol level,” it is unlikely officers needed any tests at all to determine such persons were impaired.9

Incredulously, 80.5% of drivers in the study had BACs over .08. Thus, if officers had simply arrested everyone stopped, the “accuracy” of the SFSTs would have still been over 80%. Since the overwhelming majority of those contacted were over .08, it was guaranteed that a high proportion of arrests would “show” that the SFSTs were accurate. Moreover, based on figures reported in the study, 18% of those with BACs under a .08 were incorrectly arrested. Thus, 1-in-5 persons with BACs under the legal limit were incorrectly arrested.10

Researchers admit that arrest decisions “at borderline BAC’s can be problematic.”11 To determine how problematic, this author obtained the study’s raw data from NHTSA. Significant discrepancies were found. Based on NHTSA data and criteria, 42.6% were incorrectly arrested—more than twice what the “validation” study reported. Even more alarming, for those with BACs of .06 to .08, 58.8% were incorrectly arrested—amounting to just under 3 out of 5 persons. Further investigation revealed that researchers made an exception to their own methodology. Instead of using the first of the two BAC readings in all cases, “where [an officer] noted that the first test was a ‘low blow’ and where only the second measurement was 0.08% or above”, researchers deviated from their predetermined experimental design and used the second BAC instead of the first!12 It appears the study data was manipulated and misreported to artificially elevate “correct arrest” rates and minimize “incorrect arrests”.

Examination of the raw data seems to confirm this frightening suspicion. For every test with a first blow under .08 and a second over, the readings were within .02 of each other. Thus, there was nothing anomalous to indicate any of the first blows were “low blows.” Moreover, to ensure the raw data matched the conclusions, every single one of these tests had to be counted as a “correct” decision even though each should have been counted as “incorrect” under the study’s experimental design. Simply put, the result of every test that tended to disprove the researcher’s initial hypothesis was manipulated to support the initial hypothesis. Were these “scientists” so motivated by personal agendas that they purposely deceived the government and citizens?

Due to the gravity of this question, the author contacted Ms. Burns and gave her an opportunity to explain. First, she responded that I had the wrong data. After repeating that NHTSA had provided the data and asking to see her data, she refused. She stated she had stored the data where her assistants did not have access and that she was not inclined to retrieve it herself. Attempts to accommodate and offers to wait until her next trip to storage were responded with, “No. Why don’t you forget about the data and just trust my conclusions?”

Why not? Because science does not work that way. Pseudoscience relies on faith. Real science requires repeated scrutiny, examination, and openness.

Will prosecutors rethink their reliance on SFSTs? One can only hope professional ethics and personal conscience will prevail, unlike Mr. Nifong in the Duke Lacrosse cases. If not, it is the duty of defense counsel to make every judge and jury aware of these facts and the deception being perpetrated.

For our justice system to work, the people must have confidence that their government will deal with them honestly. Democracy takes a heavy toll when liberties are stolen by deceit. If our government does not act with honesty and candor voluntarily, it is up to us to hold the line and preserve our Republic by forcing it to do so. A free nation can settle for nothing less.

5. See FN.2 at 27.
6. See FN.2 at 28.
7. See FN.2 at 34.
8. See FN.2 at 11.
9. See FN.8 at 12.
10. See FN.8 at 11.
11. See FN.8 at 16.
12. See FN.8 at 11.
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After graduating with honors from the Seattle University School of Law Mr. Wolff became a DUI prosecutor for the cities of Kirkland and Tukwila. During his tenure as a prosecutor, Mr. Wolff successfully prosecuted hundreds of DUI cases. In 2003, Mr. Wolff joined the Law Firm of Stephen Hayne, where he has limited his practice to defense of DUI’s and other serious traffic offenses. He is a graduate of the National College of DUI Defense, the DRE Drug Evaluation classification overview program and is a NHTSA qualified administrator of the Standardized Field Sobriety Tests. Washington State utilizes the BAC Datamaster breath testing device manufactured by National Patent Analytical Systems in all DUI prosecutions. In 2004, Mr. Wolff completed the BAC Datamaster training program at National Patent’s Datamaster manufacturing facility in Mansfield, Ohio.

Mr. Wolff is a member of the National College for DUI Defense, the Washington Association of Criminal Defense Lawyers and the Washington State Trial Lawyers Association. He also serves on WACDL’s legislative affairs committee and is a board member of Citizens for Judicial Excellence.

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Not the end of the (guardian) story

Franklin Shoichet’s letter to the editor [August 2007 Bar News] disputing the value of regulating guardianships through the executive branch raises two important issues:

(1) He notes that other programs supervised by the executive branch have resulted in newspaper exposés and large verdicts for negligence — which, in turn, led to seeking immunity from suits and the hiring of a “flack” to attack the victims’ lawyers who speak to the press. I would point out that the probate courts have been the subject of repeated exposés over the last year in the Seattle Times. The judiciary has been held up to public ridicule. While there have, as he implied, been no suits for court negligence or corruption, that is only because of judicial immunity. If such immunity didn’t exist, the probate courts would be inundated with suits for corruption and negligence . . . .

There is a cost to the judicial farce playing out in the probate courts. Respect for the judicial system is rapidly diminishing as family members receive “junk” justice and witness the rank corruption of their vulnerable family members being bartered and sold.

(2) Mr. Shoichet has found “the courts willing and able to rein in guardianship abuses when abuses are competently raised.” I have found just the opposite, in Washington State and across the nation.

The more important issue, however, is the meaning of monitoring. If the courts are truly doing the monitoring, then abuses don’t have to be raised, competently or otherwise. The courts have perverted the noble intentions of the guardianship program and converted it to an organized crime. The monitoring of this program needs to be taken out of the courts and put into the hands of those with medical and financial backgrounds so that they can truly monitor and prevent this legal-ized abuse of vulnerable citizens.

Sharon Denney, Seattle

It’s not my choice

We’ve now had an article in Bar News teaching us “how to create a gay-friendly environment” since “sexual orientation” is a statutorily protected classification “[Pride in the Workplace: How to Create a Gay-Friendly Environment,” July 2007 Bar News]. The president of the GLBT Bar Association teaches us that “Sexual orientation — Describes an individual’s enduring physical, romantic, emotional, and/or spiritual attraction to another person.… Avoid the term ‘sexual preference’ which is typically used to suggest that being lesbian, gay, or bisexual is a choice.” Isn’t that interesting. Sexual orientation can involve a “spiritual” element, whereas moral or religious opposition thereto is “extremist.” If homosexuals can be spiritually attracted to one another, why can’t I be spiritually repulsed by it? And by all means, let’s don’t call it a “sexual preference” since that might imply “a choice.” Yet, the State Supreme Court in Andersen v. King County/State of Washington declared that “The plaintiffs do not cite other authority or any secondary authority or studies in support of the conclusion that homosexuality is an immutable characteristic” (emphasis mine). In other words, there is no proof that homosexuality is anything other than a choice.

In any event, “non-discrimination” has become the politically correct device to promote not just diversity but perversity. Yet, we as a society make discriminatory judgments all the time. Nearly all of our laws both civil and criminal are based on some notion of morality or concept of right and wrong. We do not think twice about proscribing incest, bigamy, bestiality [sic], prostitution, drug abuse, obscenity, euthanasia, and child pornography. In other words, we discriminate against those who engage in certain conduct we deem inappropriate and unacceptable. These things we view as simply wrong in an enlightened, civilized society. Homosexuality, with its rejection of family structure and the sanctity of procreation, along with its embrace of perverted sex and an epidemic of AIDS, falls within the category of things which are simply wrong and we have every right, indeed the obligation, to “discriminate” against it. By the way, I believe what I just said is protected by RPC 3.1.

Brian L. McCoy, Payallup

Faith-based initiative?

As a member of the Washington State Bar Association, and a member who upholds the value and dignity of all people, I found the article “Pride in the Workplace: How to Create a Gay-Friendly Environment” to be one of propagating for a particular secularist agenda that excludes people of faith. Ms. Bloom’s position obviously goes beyond the law of making it illegal for employers
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to discriminate on the basis of sexual orientation, and instead seeks to mandate an agenda which would have a chilling effect on fundamental rights. These rights include freedom of speech, freedom of religion, and freedom of association.

Many other members of the WSBA are practicing Evangelical Christians, Roman Catholics, Jews, and Latter Day Saints who find cross dressing, transgender transition, and “gender expression” as offensive behaviors well beyond the scope of tolerance. Such behaviors are conducive to a distracting work environment. Must these members of the Washington State legal community and their respective communities of faith be forced to accommodate values that clash and offend their religious convictions? Does refusing to adopt Ms. Bloom’s suggestions for creating a “gay-friendly environment” subject a bar member to discipline under the Rules of Professional Conduct 8.4(g)?

Are Washington state lawyers with religious beliefs allowed to publically [sic] agree with the agenda of the Christian Coalition, American Family Association, and Sound the Alarm, which hold that homosexual/transgendered lifestyles are “sinful”? May lawyers publically denounce gay/lesbian/transgendered lifestyles in public speeches?

If Evangelicals, Mormons, and other attorneys with a faith tradition do not submit to this politically correct agenda sponsored by the diversity police, and chose to speak out publically by verbalizing their objections in the marketplace of ideas, would they be singled out as non-conformist instigators of discrimination who should face appropriate sanctions?

Richard F. Lee, Spokane

Thank you, Legislature

An article in the June [2007] Bar News [“The Justice in Jeopardy Initiative: Celebrating Accomplishments and Setting Goals”] reported on the important strides the Legislature is taking to invest in critical justice system functions. I join the authors in thanking the Legislature, and, in particular, Representative Pat Lantz, Chair of the House Judiciary Committee who has worked tirelessly to improve access to justice for all. While the article noted that the Legislature increased state funding for legal aid this year, the article mistakenly reported that “state funding for civil legal aid has steadily declined.” In fact, since the publication of the Civil Legal Needs Study in 2003, the Legislature has consistently acted to increase state funding for civil legal aid in an attempt to gradually close the gap between available resources and urgent needs.

The additional funding will help thousands of families who faced serious legal problems but had nowhere else to turn. But the Legislature recognizes that additional funding is needed because we still have a long way to go to ensure that all members of our community obtain the basic protections of our legal system.

With the strong support we’ve had from our judiciary, from bar and community leaders, and from legislative leaders in both parties, I am confident that the Legislature will continue its commitment to improving access to justice. After all, as the Alliance for Equal Justice says, “It’s not justice if it’s not equal.”

Scott A. Smith, chair, Equal Justice Coalition, Seattle

Hidden agenda?

It is constantly disturbing to see the WSBA, a public agency, serve as the handmaiden for the Democratic party. I refer to a trio of presentations in the July Bar News. First, the editors express their distaste for the Republican president by putting his picture in a collage at the very bottom of the cover, as if almost sliding off, with Democratic President Lyndon Johnson in the prime, favorable upper right position. Second, the Bar News almost endorses the lawyers who challenged the administration detention of Guantanamo prisoners [“Member Profile: Seattle Lawyers Win Fight for Constitutional Rights in the War on Terror”], talking about an overreaching executive branch, unlawful executive action and “aggressive claims of executive power by the Bush administration.” Nothing from the other side. The matter of captured “enemy combatants” is not so simple. Both the courts and the executive branch as institutions have the capacity to adjudicate cases. The constitution gives the Congress power to make rules for the government of the land and naval forces, article 1 section 14, and to make laws that are necessary and proper to carry out its functions. The due process clause applies to adjudications in all branches. Third, the Bar News lavishes praise on a court rule that would expropriate money “left over” in class action lawsuits [“Unclaimed Class-Action Funds Offer Hope for Equal Justice”] and give it to Columbia Legal Services. Columbia is a political and lobbying group whose policies almost always support those of the Democratic Party. They never support the Republican Party. Yet here the WSBA all but endorses this advocacy group, which incidentally spends between 10 and 20 million dollars every year to promote its policies.

The Bar News should publish both sides of public issues.

Roger Ley, Seattle

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Have you ever had the experience of being in a meeting, courtroom, or other venue with clients and other lawyers and thinking: “I am the only [fill in the blank] in the room?” If current statistics about lawyers in Washington are to be believed, at least 35 percent of you have had that experience. (I explain my conclusion below.) Imagine how it must feel to be a client who knows nothing about contracts, pleadings, depositions, courtroom procedures, or other complex legal matters, dealing with a legal matter that is unfamiliar but vital to that person, and to have the same experience of being the only one in the room who is like him or her. There are many levels at which this is an important issue, beginning with our ability to communicate effectively and clearly with clients, and extending to whether people whose lives intersect with the legal system perceive it to be fair and just. It is difficult to imagine a more important issue for the future of our profession than our ability to inspire in others the belief that our system of laws and justice will treat them with fairness and justice. I believe that if we are to be successful, our profession needs to mirror, socially and culturally, the society that it serves. Moreover, I believe that we will not be able to continue to attract the best and the brightest to the practice of law in all of its variations unless we do so.

According to the statistics kept by the WSBA (based on voluntary reporting), we know that as a profession, we are doing a poor job of mirroring our communities in at least those areas for which statistics are available. Persons of color make up more than 23 percent of Washington state’s population, but only about 10.5 percent of the Washington State Bar Association. Women make up just over 50 percent of the general population, but about 35 percent of the Bar. We do not have statistics for other important areas of diversity in our population. We are similar to the profession nationally in our percentage of women members, but lag behind the nation in the percentage of lawyers of color who are members of our Bar. In fact, many of us have had the experience of being the only one in the room like us. I would guess that almost every lawyer who is a person of color, who is disabled, or who identifies as gay, lesbian, bisexual, or transgender, has had this experience, as have almost all women. How are we to remain a vital and thriving profession, and how are we to inspire confidence that our justice system serves our communities justly and well, if we do not attract, promote, and retain talented lawyers from these communities?

Bar associations all over the country are working on the “attracting” part of that formula, and the programs aimed at attracting people to the practice of law are often called “pipeline programs.” There are a number of pipeline programs in place in Washington state, but until now there have been none with the backing and support of the WSBA. Later this year, the WSBA will award its first-ever grant for a pipeline program to serve one or more communities of young people that are currently underserved. The Board of Governors has approved a three-year grant of a total of $75,000 to support such a program, and Microsoft will match this amount with its own grant in support of the program. The winning proposal, then, will be entitled to receive a total of $150,000 over three years.

Pipeline programs take many forms. Perhaps most common are education programs that expose young people to the legal profession. Street Law, a program sponsored by Street Law, Inc. (www.streetlaw.org), places law students in local high school classrooms to teach classes on legal topics of particular interest to youth. Many organizations and law schools hold conferences that bring youth to law schools, into court, or to law firms to introduce them to the profession. Some organizations run summer camps and internship programs. Others provide tutoring or mentoring to help young people succeed in school, or sponsor mock trials. Apart from the format, pipeline programs also differ in the particular demographic and/or age groups they serve, and the outcomes identified as goals for the
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What all pipeline programs have in common, however, is the goal of helping young people overcome barriers to success so that they have the skills and tools necessary to become professionals and take their places as leaders in their communities. Part of that effort is to make it clear that the legal profession is a part of, and serves, all communities without regard to race, ethnicity, gender, sexual orientation, disability, or geography. For students who are already thinking about a profession, pipeline programs aim to entice them to consider a career in the law. In fact, some pipeline programs are designed specifically to help law students successfully enter the legal profession, while others, notably the program sponsored by the State Bar of Texas, focus on the needs of grade-school children to have a connection in their own lives to successful professionals.

A blue ribbon committee is working now on the WSBA’s request for proposals, to be issued later this summer. Please ask yourself whether your local or specialty bar association might be interested in sponsoring — or co-sponsoring — a new pipeline program to serve your community. All three of the law schools in the state have offered to partner with others to provide administrative support for a program. Imagine what you can do in your communities to inspire young people to believe in their futures and in the future of our system of justice. We need them to lead our profession forward.

Ellen Conedera Dial can be reached at 206-359-8438 or ecdial@gmail.com.

NOTES
2. For a copy of the Board’s resolution authorizing the pipeline grant, go to www.wsba.org/pipelinegrant.pdf. For a copy of the background paper on pipeline programs in Washington, go to www.wsba.org/diversitylegalprofession.pdf.
Why so many spoliation cases in the last 10 years? Because destruction or alteration of electronic information is relatively easy to discover. A technically skilled person can quickly find evidence of failures to preserve evidence. For example, if a creator of an e-mail deletes it, a copy of the e-mail will likely still exist in other locations...
Guest Columnist Gabriel Galanda writes about a WSBA historic first

**Bar None! The Social Impact of Bar Testing Federal Indian Law in Washington**

_Last month we, the WSBA and all of Washington state, celebrated a historic first — an occasion that will mark the beginning of meaningful social changes in our bar and our state. On July 24 and 25, 2007, aspiring Washington lawyers sat for the bar exam, with the possibility of being tested on federal Indian law for the first time in the history of the WSBA._

_In October 2004, the WSBA Board of Governors (BOG) unanimously agreed that, effective this summer, the 23 possible bar exam topics would include Indian law jurisdictional topics. While the WSBA followed precedent set by the New Mexico Supreme Court — which, in 2002, made their state the first to bar test Indian law — it is Washington's bar-exam policy that galvanized national interest in the topic. Consider that in the wake of the BOG’s decision:_

- Washington's bar-exam change was covered by such national news media as _USA Today, National Law Journal_, and _Indian Country Today_;
- South Dakota became the third state to include Indian law on its bar exam in 2006, and Oklahoma recently included one Indian law question on its summer test; and
- Bar leaders in Arizona, Oklahoma, Wisconsin, Minnesota, Montana, Oregon, Idaho, and California are now considering whether to also test the topic.

_Indian law — and tribal bar-exam policy — is sweeping legal America._

_Our legal community must pause to consider the significant positive social impact of bar testing Indian law in Washington state. This article explains how our new Indian bar-exam policy helps ensure the protection of the public; allows indigent Native and non-Native persons access to justice in an ever-increasing number of disputes arising out of Indian Country; increases the diversity of the legal profession; and heals the historically strained relations between state and tribal sovereigns._

**Enhancing Lawyer Competence**

_At its core, the issue of including Indian law on bar examinations is one of competence and professionalism. As Tim Woolsey, a tribal attorney for the Colville Nation, writes:_

_Including American Indian law on the bar exam will produce new attorneys that can spot issues and competently represent tribal and non-tribal clients . . . . [I]t is our professional responsibility to be skillfully and thoroughly aware of these issues to uphold minimum standards of competence . . . [and] to zealously advocate for all clients to the best of our ability.2_

_Further, according to the National Conference of Bar Examiners and the ABA Section of Legal Education and Admission to the Bar:_

_This article explains how our new Indian bar-exam policy helps ensure the protection of the public; allows indigent Native and non-Native persons access to justice in an ever-increasing number of disputes arising out of Indian Country; increases the diversity of the legal profession; and heals the historically strained relations between state and tribal sovereigns._

-The bar examination should test the ability of an applicant to identify legal issues . . . such as may be encountered in the practice of law, to engage in a reasoned analysis of the issues and to arrive at a logical solution by the application of fundamental legal principles . . . . Its purpose is to protect the public.3_

_Fundamental to WSBA’s Indian bar-exam policy is that including basic Indian law among the topics on our bar exam will serve to protect the Washington public — Indians and non-Indians alike — from the unknowing, unwitting, or unethical practice of Indian law._

_With the upsurge in tribal economic development in Washington — and a correlate direct contribution of $3.2 billion and 30,000 jobs to the state economy in 20044 — comes a sharp_
increase in non-Indian citizens seeking business, employment, or recreation on tribal lands. Such interactions give rise to an array of litigation and transactional matters that implicate federal Indian jurisdictional questions. I have no doubt that every lawyer practicing in our state will some day encounter questions about whether a tribal, state, and/or federal court, if any, has or would have authority to adjudicate a dispute arising out of tribal lands in Washington.

Recognizing that a two-day exam should not force prospective lawyers to learn all that is a 200-plus-year-old body of highly convoluted federal Indian law that comes to bear in Washington courts, the BOG agreed that new lawyers must at a minimum learn the following four tribal jurisdictional principles to ensure the protection of the public:

1. Tribal self-governance — the legal notion that Washington tribes possess “the right . . . to make their own laws and be ruled by them.”

2. Tribal criminal and civil jurisdiction — i.e., whether tribal, state, and/or federal courts have adjudicatory authority to adjudicate a dispute arising out of Indian Country.

3. Sovereign immunity — common law holding that tribes and tribal agencies, entities, and enterprises are generally immune from civil suit, whether in tribal, state, or federal court and/or arising on or off the reservation, as recently affirmed by the Washington State Supreme Court in Wright v. Colville Tribal Enter. Corp.

4. Indian Child Welfare Act — a federal statute which, inter alia, mandates that “[i]n any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child’s tribe shall have a right to intervene at any point in the proceeding.”

By and through an enhanced understanding of these federal Indian jurisdictional concepts, our legal community can and will protect that which is sacred to everyone in Washington — health, freedom, home, economic security, and family.

Ensuring Access to Justice

Our state and local bars’ failure to understand basic Indian law, and resultant anxiety about handling matters that implicate tribal jurisdiction or practice, deprives indigent Washingtonians from obtaining legal help. In turn, the poor, be they Indian or non-Indian, are not allowed access to tribal, state, or federal courts for the adjudication and resolution of matters affecting basic familial and property rights.

An ABA study published in 1994 estimated that some 75 percent of the nation’s low-income families facing civil legal issues do not get legal assistance. Nationally, tribal legal aid lawyers estimate that only 20 percent of Indian peoples’ legal needs are met. As John Sledd, former director of the Northwest Justice Project’s Native American Unit in Washington, writes:

[Local legal aid] intake lawyers tell me that three-quarters of volunteer lawyer programs and most staff legal service lawyers will not handle Indian or tribal law cases. Ignorance of the law is a major reason why. As a result, poor Native Americans get help for only one in ten important legal problems, according to the statewide legal needs study. Non-Natives get help for one problem in seven. Both statistics are shocking, but the disparity for Native people is an intolerable discrimination. [emphasis added]

The knowledge of basic Indian law that will be instilled in new lawyers through bar testing will translate into legal help for indigent Indian and non-Indian people throughout our state.

Diversifying the WSBA

Indians remain the single most under-represented pan-ethnic demographic in our legal profession. Depending who you ask, Native attorneys comprise between 0.02 to 0.07 percent of the WSBA’s 30,000 members. Nationally, although the U.S. Census reports that there are 2.6 million self-identified Native Americans and one million lawyers in the United States, there are only 1,800 — yes, eighteen hundred — Indian attorneys. And, there is but one Indian jurist sitting on the state or federal bench; he sits on the Utah Court of Appeals.

Our new bar-exam policy has sent, and will continue to send, a loud and clear message to Indian Country that the practice of law is relevant to life on the reservation. As a result, Washington tribal members, particularly Indian youth, will more seriously consider the legal profession as a career option. In time, we will see more Native faces
reflected throughout our bar, as well as the state and federal judiciary.

**Strengthening State-Tribal Relations**

In 2004, the National Congress of American Indians, following the lead of the Association of Washington Tribes and the 54 Pacific Northwest tribes comprising the Affiliated Tribes of Northwest Indians, resolved that Washington (and 21 other states) should bar-test Indian law, declaring that:

> [I]f attorneys for the American public, particularly federal, state and local government, better understood the legal concepts of Tribal self-governance and Tribal jurisdiction, there would be fewer disputes and government-to-government dialogue would be greatly enhanced.

Indeed, one result of the new bar-exam policy will be that tribal leaders and lawyers will no longer have to spend valuable time and resources educating assistant attorneys general and other state lawyers about the basics of tribal sovereignty.

By October 2004, incoming Governor Christine Gregoire signed onto the successful lobby to bar-test federal Indian jurisdiction in Washington — a profound moment in WSBA history. And, shortly after the BOG rendered its decision, state and tribal elected officials and dignitaries, including the likes of Swinomish Chairman Brian Cladoosby, longtime fishing-rights activist Billy Frank, Attorney General Rob McKenna, former U.S. Attorney John McKay, and King County Prosecutor Norm Maleng, joined one another in celebration of that milestone in state-tribal relations.

Over 100 years ago, the U.S. Supreme Court famously wrote that "[b]ecause of the local ill feeling, the people of the states where [tribes] are found are often their deadliest enemies." That ill feeling between states and tribes still exists to varying degrees. In New Mexico, state bar leaders explain that "including Indian law as a testable subject for the bar exam shows respect for a significant minority whose ancestral lands we happen to occupy" and thus helps quell that ill feeling. The same holds true in Washington: in a state that has hanged Indian leaders, strong-armed treaties, burned villages [and] beat up Indian fishermen," our bar-exam policy helps harmonize state and tribal voices and exemplifies modern government-to-government relations.

Now, as bar leaders throughout America discuss whether to join the Indian bar-exam movement galvanized by the WSBA, we should pause to appreciate not only how our policy has already helped ease the historical ill feeling amongst tribes and their fellow Washingtonians; but how it will heighten the bar for legal professionalism and diversity while lowering the bar indigent people must overcome to secure access to justice here.

Come one and all to the WSBA. And we will bar none.

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**NOTES**


7. 25 U.S.C. 1911(c).


As a result of new compacts between Washington state and Washington state tribes, those tribes\(^1\) could spend between $80 million and $120 million on slot machines over the next few years.\(^2\) This article provides an overview of some of the issues encountered when entering into and enforcing contracts between a tribe or tribal entity and a nonmember of that tribe when those contracts regard tribal gaming and are executed and performed on Indian lands.\(^3\)

Before entering into a tribal gaming contract, all parties should address at least three distinct but interrelated issues: (1) federal regulation of tribal gaming, (2) tribal sovereign immunity, and (3) judicial enforcement of tribal gaming contracts. Resolution of these issues should be made on a case-by-case basis and should include a review of applicable federal law, state law, and tribal law.\(^4\)

**Federal Regulation of Tribal Gaming**

*The Indian Gaming Regulatory Act*

Prior to 1988, tribes were allowed to conduct gaming activities on Indian lands unhindered by state regulation. Some states attempted to assert jurisdiction over tribal gaming activities on Indian lands because of federal and state concerns over the potential for such tribal gaming activities to attract criminal elements.\(^5\) In court, the tribes successfully resisted the state's efforts to assert jurisdiction over tribal gaming activities on Indian lands.\(^6\)

In 1988, Congress addressed these concerns and attempted to resolve the conflicts between the tribes and the states by passing the Indian Gaming Regulatory Act (IGRA),\(^7\) which divides tribal gaming activities into Class I gaming, Class
II gaming, and Class III gaming.

Class I gaming consists of “social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations.”

Class I gaming is “within the exclusive jurisdiction of the Indian tribes.”

Class II gaming includes “bingo” and “card games.” Class II gaming does not include “banking card games” or “electronic or electromechanical facsimiles of any game of chance or slot machines of any kind.” The IGRA allows a tribe to engage in Class II gaming only if the tribe adopts a gaming ordinance or resolution approved by the National Indian Gaming Commission (NIGC). Class II gaming is “within the jurisdiction of the Indian tribes, but shall be subject to the provisions of [the IGRA].”

Class III gaming includes “all forms of gaming that are not Class I gaming or Class II gaming.” The IGRA allows a tribe to engage in Class III gaming only if the tribe adopts a gaming ordinance or resolution approved by the NIGC, and only if such Class III gaming is conducted in conformance with a Tribal-State compact entered into by the Indian tribe and the State in which the Class III gaming will occur. The United States district courts have jurisdiction of most disputes involving Class III tribal-state compacts, and the tribes and states may allocate civil and criminal jurisdiction involving the licensing and regulation of Class III gaming.

Tribal IGRA Ordinances

Class II and Class III tribal gaming ordinances address a multitude of issues, including, among other issues: (1) tribal contracting authority, (2) tribal licensing of suppliers of gaming devices, (3) technical equipment standards for gaming devices, (4) tribal gaming commissions, (5) tribal gaming corporations, (6) tribal gaming enterprises, (7) tribal sovereign immunity, (8) tribal waiver of sovereign immunity, (9) tribal waiver of sovereign immunity for certain contracts, and (10) consent to tribal jurisdiction.

Tribal-State IGRA Compacts

The IGRA allows Class III tribal-state compacts to address any “subjects that are directly related to the operation of gaming activities.” Hundreds of Class III tribal-state compacts have been approved by the Secretary of the Interior addressing a multitude of issues, including, among other issues: (1) tribal licensing of suppliers of gaming devices, (2) state certification of suppliers of gaming devices, (3) technical equipment standards for gaming devices, (4) sovereign immunity, (5) allocating jurisdiction between the tribe and the state, (6) providing for exclusive tribal jurisdiction, and (7) providing that Class III tribal-state compacts control over inconsistent tribal laws or inconsistent state laws.

Tribal Sovereign Immunity

The Doctrine of Tribal Sovereign Immunity

Tribes are domestic dependent nations that exercise inherent sovereign authority over their members and territories and have the power to make their own tribal substantive law and to enforce that law in their own tribal courts. A corollary to tribal sovereignty is the doctrine of tribal sovereign immunity barring lawsuits against tribes.

At one time, there was a question of whether tribal sovereign immunity applied to tribal commercial activities as well as tribal governmental activities. Another question was whether tribal sovereign immunity applied to tribal commercial activities that occurred off Indian land as well as those that occurred on Indian land. In 1998, the United States Supreme Court answered both questions as follows: “Tribes enjoy immunity from suits on contracts, whether those contracts involve governmental or commercial activities and whether they were made on or off a reservation.”

Some courts and judges have been critical of tribal “sovereignty” and tribal “sovereign immunity” as doctrines that have perhaps outlived their purposes. Despite this judicial criticism, tribal sovereign immunity is routinely asserted in federal courts, state courts, and tribal courts.

The Extension of Tribal Sovereign Immunity to Tribal Entities

Whether tribal sovereign immunity extends to tribal entities such as unincorporated tribal enterprises or tribal corporations generally depends on the degree to which the tribe and the tribal entity are related. While unincorporated tribal enterprises are generally created under tribal law, tribal corporations may be created under federal law, state law, or tribal law. Depending on whether the contracting party is a tribe or a tribal entity or both, and depending on the form and structure of a contracting tribal entity, the legal rights of all contracting parties differ greatly. Sorting out these different legal rights can be difficult. For example, one court observed that:

Because of the doctrine of tribal immunity, businesses that deal with Indian tribes do so at great financial risk. In this case appellant could only have protected itself by investigating the [tribe’s] Constitution and Bylaws, by investigating [the unincorporated tribal enterprise’s] Plan of Operation and by investigating the [tribal corporation’s] Charter. This investigation would have revealed the fact that [the unincorporated tribal enterprise] was not a subsidiary of the [tribal corporation] but, rather, was a subordinate economic organization of the [tribe] acting under its Constitution and Bylaws, and as such, was entitled to tribal immunity. Confronted with this fact, appellant only then could have taken steps to protect its interests.

When confronted with the issue of whether tribal sovereign immunity extended to tribal corporations in a non-IGRA context, the Washington State Supreme Court could only muster a contentious plurality. The lead opinion suggested that “as a matter of law . . . tribal sovereign immunity protects tribal governmental corporations and controlled by a tribe, and created under its own tribal laws.” The concurring opinion would supplement the lead opinion’s three-factor “bright-line rule” with a fourth-factor — i.e., “the purposes for which the tribe founded” the tribal corporation. The concurring opinion also agreed that “in some cases fact-finding may be necessary to determine whether sovereign immunity applies.” The dissenting opinion recognized that...
Tribal Sovereign Immunity May Be Waived

Tribal sovereign immunity may be waived by contract but any such waiver must be “clear” and “unequivocal.” There is no bright-line test of what constitutes a “clear” or “unequivocal” express contractual waiver of tribal sovereign immunity. One tribal court remarked that “Although a waiver must be ‘unequivocally expressed,’ courts have not required valid waivers to explicitly state, ‘sovereign immunity is hereby waived,’ or any other ‘magic’ words for there to be a valid waiver.”

In addition to the requirement that a tribal waiver of sovereign immunity by contract be “clear” and “unequivocal,” tribal waivers of sovereign immunity are generally narrowly construed and limited in scope in favor of the tribe. And, of course, it is assumed that any document containing language that attempts to waive tribal sovereign immunity will not also contain contradictory language that attempts to reserve tribal sovereign immunity.

Tribal Authority Required for Waiver of Sovereign Immunity

An otherwise valid waiver of a tribe’s or a tribal entity’s sovereign immunity is ineffective if the person signing the waiver lacks tribal authority to waive the tribe’s sovereign immunity.

Tribal authority to waive sovereign immunity arises out of tribal law. Since tribal authority is grounded in tribal law, tribes have asserted the lack of tribal authority to waive sovereign immunity even when the waiver has been signed by such high-ranking officials as a tribal chairman, a chairman and chief executive officer of the tribal council, a tribal council, a CFO of a tribal entity, and a comptroller of a tribal entity. It has also been argued that even if an individual has authority to enter into a contract on behalf of a tribe or a tribal entity, that individual’s authority to contract does not include tribal authority to waive sovereign immunity. Accordingly, it would not be prudent to rely on the apparent authority of an individual to establish the effectiveness of a waiver of tribal sovereign immunity, although one court has upheld a waiver of tribal sovereign immunity based upon apparent authority.

Judicial Enforcement of Tribal Contracts

Synopsis of the Courts’ Respective Jurisdictions

While parties including tribes and tribal entities may by contract consent to existing court jurisdiction, parties cannot by contract or stipulation create subject matter jurisdiction, even in the event where a tribal party has voluntarily waived its sovereign immunity in order to subject itself to being sued. The surrounding facts and circumstances particular to each commercial transaction with a tribe or a tribal entity will determine whether a federal court, a state court, or a tribal court will have subject-matter jurisdiction over a dispute arising out of that commercial transaction and whether such jurisdiction is exclusive or concurrent. Additionally, a federal court, state court, or tribal court cannot properly exercise its existing jurisdiction over a tribe unless that tribe has waived its sovereign immunity.

Federal Court Jurisdiction and Exhaustion of Tribal Remedies

It is problematic to acquire federal court jurisdiction over a tribal gaming contract dispute since federal courts are courts of limited jurisdiction. As to federal-question jurisdiction, neither contract disputes nor the IGRA provide a basis for federal-question jurisdiction. As to federal-diversity jurisdiction, since tribes are not citizens of any state for purposes of diversity jurisdiction, federal diversity jurisdiction is not available when a tribe is a party to the litigation.

When a tribal court and a federal court both have subject-matter jurisdiction over a cause of action, the federal court may dismiss or stay the federal court proceeding and require “the litigants to exhaust their tribal court remedies before a federal district court may evaluate the existence of a tribal court's jurisdiction.” The federal courts are somewhat divided as to whether parties including tribes and tribal entities may by contract waive the tribal exhaustion doctrine.

State Court Jurisdiction and Deferral to Tribal Courts

It is also problematic to acquire state court jurisdiction over a tribal gaming-contract dispute. As a general rule, absent a federal grant of state jurisdiction, state courts may not assert civil jurisdiction over disputes involving tribes and tribal entities that occur on Indian land. Also as a general rule, state courts may assert civil jurisdiction over disputes that occur off Indian land.

When a tribal court and a state court have concurrent jurisdiction over a
The WSBA has created a new consumer-information pamphlet called “Foundations of Freedom” that covers the basics of American government and democracy.

The pamphlet describes the rule of law, the separation of powers, checks and balances, and judicial independence. It also includes a short quiz and a list of useful websites.

Lawyers and judges are encouraged to bring the pamphlet with them when they speak to students or the public in schools, courtrooms, and community centers. Teachers may also request the pamphlet for classroom use.

The WSBA can provide reasonable numbers of copies at no charge, or the pamphlet may be downloaded from the WSBA website at www.wsba.org/public/consumer. Requests for copies should be directed to Pam Inglesby at pami@wsba.org.
cause of action, a state court may under the
principals of comity defer to the jurisdiction of the tribal court.\(^\text{101}\)

**Tribal Court Jurisdiction**

Tribal ordinances may provide that a nonmember consents to tribal juris-
diction by entering tribal lands.\(^\text{102}\) Tribal commercial transactions with a
nonmember may also result in that nonmember consenting to tribal jur-
discretion because those commercial transactions involve “consensual
relationships”\(^\text{103}\) between the tribe and the nonmember. In the event
that commercial relationships do involve “consensual relationships,” civil jurisdiction
over disputes arising out of those commercial transactions presumptively lies
in an existing tribal court.\(^\text{104}\)

The civil subject-matter jurisdiction of tribal courts varies in scope. While
some tribal courts have broad general jurisdiction over all civil cases and con-
troversies,\(^\text{105}\) other tribal courts may not even have jurisdiction over breach
of-contract or negligent claims.\(^\text{106}\) Furthermore, some tribes do not have tribal
courts\(^\text{107}\) or have established a tribal court only recently.\(^\text{108}\)

The degree to which tribes have embraced American jurisprudence varies.
Jury trials are one example. While some tribal courts deny the right to a jury trial
in all civil cases,\(^\text{109}\) other tribal courts provide a jury trial in civil cases but only
upon motion by the party seeking the jury trial.\(^\text{110}\) Appeals from tribal trial court de-
cisions are another example. On the one hand, some tribes have established tribal
appellate courts with tribal appellate judges to consider appeals from tribal trial court
decisions and require those tribal appellate judges to file their decisions with the clerk of the tribal court.\(^\text{111}\) On the other hand, some tribes allow appeals from tribal trial court decisions to be considered only by the tribal council, do not require the tribal council to file its decision, and provide that the tribal council’s decision is final.\(^\text{112}\)

The quality of tribal courts seems to vary. While it has been noted that “advances in the responsibilities and competence of the [tribal] courts have been rapid and substantial,”\(^\text{113}\) some courts and judges have been critical\(^\text{114}\) of tribal courts. One federal court refused
to enforce a tribal court order because the tribal court’s proceedings denied
nonmember parties the “full and fair opportunity to litigate the [sovereign
immunity] issue in” the tribal court.\(^\text{115}\) Another federal court was faced with,
but did not decide, the issue of whether proceeding in a tribal court would be
futile because of the tribal court’s alleged bias.\(^\text{116}\) One state court judge noted that none of the tribal judges were lawyers and questioned the tribal court’s lack of judicial independence.\(^\text{117}\)

**Judicial Enforcement and Tribal Law**

Some tribal non-IGRA laws,\(^\text{118}\) tribal IGRA Class II and Class III gaming ordi-
nances,\(^\text{119}\) and tribal-state IGRA gaming compacts\(^\text{120}\) address subject-matter jur-
discretion over commercial transactions, consent to tribal jurisdiction, choice of
law issues,\(^\text{121}\) and the exhaustion of tribal remedies. Another state court judge
observed that it is common knowledge that tribal courts should be “avoided” and
suggested that “[w]e need to move as quickly as possible to abolish all tribal
courts.” (See Granite Valley Hotel Ltd. Partnership v. Jackpot Junction Bingo and
Casino, 559 N.W.2d 135, 146, 183 (Minn. Ct. App. 1997)).

**Conclusion**

Many of the issues raised by this article have been addressed by some tribes
in their tribal non-IGRA laws, tribal IGRA Class II and Class III gaming or-
dinances, and tribal-state IGRA gaming compacts.\(^\text{122}\) Indeed, one tribal council in its “Legislative Intent and Findings” found both “that Sovereign Immunity is vital to the functioning of the Tribe” and
found also “that the waiver of the Tribes’ Immunity from suit or action is an es-
sential element of entering into certain transactions and is, in and of itself, an
exercise of the Tribes’ sovereign authority.”\(^\text{123}\) Tribal gaming contracts with tribal nonmembers seem to fall within
the scope of those “certain transactions” referred to in those tribal “Legislative
Intent and Findings.”

Tribal gaming revenues were $5.4 billion in fiscal year 1995, increased to
$10.9 billion in fiscal year 2000,\(^\text{124}\) and increased to $22.6 billion in fiscal year
2005.\(^\text{125}\) These tribal gaming revenues make “more and more needed dol-
ars available to meet essential” tribal needs\(^\text{126}\) such as healthcare,\(^\text{127}\) hous-
ing, and college scholarships for tribal members.\(^\text{128}\) On balance, it appears that the contracting tribes, the contracting tribal entities, and the contracting nonmem-
bers will all benefit by entering into arms’ length, enforceable tribal gaming
contracts.

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Robert A. Medved graduated from the Seattle University School of Law, cum laude, and was editor in chief of the Law Review. He clerked for the Honorable Jesse W. Curtis, district judge, United States Dis-


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1. In this article, the terms “tribe” and “tribal” and all derivatives of those terms shall have the same meaning as the definition of “Indian tribe” provided in 25 U.S.C. § 2703(5).
3. In this article, the terms “Indian country,” “Indian lands,” “Indian reservation,” and “reservation” and all derivatives of those terms shall have the same meaning as the definition of “Indian lands” provided in 25 U.S.C. § 2703(4).
4. In this article, the term “tribal law” and all derivatives of that term shall mean the amalgamation of tribal charters, codes, common
law, constitutions, customs, ordinances, regulations, statutes, treaties, and the like.
12. The Te-Moak Tribe of Western Shoshone Ordinance No. 93-ORD-TM-03 (1993) is an example of a tribal gaming ordinance that addresses only Class II gaming.


15. See, e.g., Spokane Indian Tribe v. United States, 972 F.2d 1090 (9th Cir. 1992).


33. See, e.g., Tribal-State Compact for the Conduct of Class III Gaming Between the Chitimacha Tribe of Louisiana and the State of Louisiana (2001), § 6(D); Tribal State Gaming Compact.


36. See, e.g., Tribal State Gaming Compact Between the Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas and the State of Kansas (1995), § 14(B); Winnemayo Tribe of Nebraska and the State of Iowa Gaming Compact (1998), § 28(a); Amended Gaming Compact Between the Turtle Mountain Band of Chippewa Indians and the State of North Dakota (1999), ch. XVIII, § 18.1; St. Croix Chippewa Indians of Wisconsin/State of Wisconsin Gaming Compact of 1991, ch. XXIII, § A.

37. See, e.g., Tribal-State Compact for Regulation of Class III Gaming on the Mississippi Band of Choctaw Indians Reservation in Mississippi (1993), § 5.1.


44. The author expresses no opinion on this criticism but only reports the courts’ and the judges’ published statements.

45. See Granite Valley Hotel Ltd. Partnership v. Jackpot Junction Bingo and Casino, 559 N.W.2d 133, 182 (Minn. Ct. App. 1997) (Randall, PJ, concurring specially) (“Indian ‘sovereignty’ today is used principally for three reasons: (1) for the tribal government and its casino interests to shield tribal enrollees on and off the reservation from how much money [the tribe has] taken in; (2) as a shield for alleged [tribal] law breakers to attempt to avoid prosecution under applicable state and federal criminal laws. . . ; and (3) as a shield to keep [tribes] from having to answer as defendants in bona fide civil lawsuits.” (citations omitted)).

46. See, e.g., Kiowa Tribe of Okla. v. Manufacturing Technologies, Inc., 523 U.S. 751, 758 (1998) (“At one time, the doctrine of tribal immunity from suit might have been thought necessary to protect nascent tribal governments from encroachments by States. In our interdependent and mobile society, however, trial immunity extends beyond what is needed to safeguard tribal self-governance. This is evident when tribes take part in the Nation’s commerce. Tribal enterprises now include ski resorts, gambling, and sales of cigarettes to non-Indians. In this economic context, immunity can harm those who are unaware that they are dealing with a tribe, who do not know of tribal immunity, or who have no choice in the matter, as in the case of tort victims.”); Wright v. Colville Tribal Enterprise Corporation, 159 Wash.2d 108 (2006) (4-2-3 decision).

47. Id. at 112 n.2 (Sanders, J., lead opinion).

48. Wright involved two tribal “wholly-owned” corporations. Id. at 110. Neither the lead opinion, the concurring opinion nor the dissenting opinion addressed the issue of extending tribal sovereign immunity to a corporation that is only partially-owned by the tribe.

49. Id. at 113. The lead opinion cautioned that “a tribe may waive the immunity of a tribal enterprise by incorporating under state law, rather than tribal law.” Id. at 115.

50. Id. at 114 n.3.

51. Id. at 126 (Madsen, J., concurring opinion).

52. Id. at 121.

53. Id. at 130-31 (C. Johnson, J., dissenting opinion).

54. Id. at 131.


56. See, e.g., White Mountain Apache Gaming Ordinance (2000).


66. Wright involved two tribal “wholly-owned” corporations. Id. at 110. Neither the lead opinion, the concurring opinion nor the dissenting opinion addressed the issue of extending tribal sovereign immunity to a corporation that is only partially-owned by the tribe.

67. Id. at 113. The lead opinion cautioned that “a tribe may waive the immunity of a tribal enterprise by incorporating under state law, rather than tribal law.” Id. at 115.

68. Id. at 114 n.3.

69. Id. at 126 (Madsen, J., concurring opinion).

70. Id. at 121.

71. Id. at 130-31 (C. Johnson, J., dissenting opinion).

72. Id. at 131.


74. See, e.g., White Mountain Apache Gaming Ordinance (2000).


78. 246 F.3d 1044 (9th Cir. 2006); Ferguson v. SMS Gaming Enterprise, 475 F.Supp.2d 929 (D. Minn. 2007); World Touch Gaming, Inc. v. Massena Management, LLC, 117 F.Supp.2d 271 (N.D.N.Y. 2000); Filer v. Tohono O’odham Nation Gaming Ordinance (2000).
70. A tribe may also provide for waivers of sovereign immunity in its tribal laws. See, e.g., Cherokee Code, pt. II, ch. 16, § 16-7.03 (2005); Hockaday v. Krauk Tribal Housing Authority, 32 Indian L. Rep. 6169, 6170 (Karuk Tr. Ct. 2005).


78. See, e.g., Comanche Indian Tribe of Oklahoma v. 49, LLC, 391 F.3d 1129, 1131 n.3 (10th Cir. 2004); Altheimer & Gray v. Sioux Manufacturing Corporation, 983 F.2d 803, 812 (7th Cir. 1992); Hydrothermal Energy Corporation v. Port Bidwell Indian Community Council, 216 Cal.Rptr. 59, 63 (Ct. App. 1985).


See Rush Creek Solutions, Inc. v. Ute Mountain Ute Tribe, 107 P.3d 402 (Colo. Ct. App. 2004). At least one author has criticized the Rush Creek decision. See Paul M. Yost, supra n. 81.


See, e.g., Tribal State Gaming Compact Between the Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas and the State of Kansas (1995), § 14(B); Winnebago Tribe of Nebraska and the State of Iowa Gaming Compact (1998), § 28(a); Amended Gaming Compact Between the Turtle Mountain Band of Chippewa Indians and the State of North Dakota (1999), ch. XVIII, § 18.1; St. Croix Chippewa Indians of Wisconsin/State of Wisconsin Gaming Compact of 1991, ch. XXIII, § 8.


See, e.g., Wisconsin v. Ho-Chunk Nation, 463 F.3d 655, 661 (7th Cir. 2006).


See, e.g., Peabody Coal Company v. Navajo, 373 F.3d 945, 951-52 (9th Cir. 2004).


See, e.g., Susanville Indian Rancheria Ordinances (2003).


The author expresses no opinion on this criticism but only reports the courts’ and the judges’ published statements.

See Burrell v. Armijo, 456 F.3d 1159, 1172-73 (10th Cir. 2006) ("[T]he procedural posture leading up to the tribal court’s ruling gives this court pause. Although the first tribal judge conducted two days of evidentiary hearings, he failed to make any rulings on the parties’ pending motions after four years. . . . Further, when the [nonmember parties] returned to the tribal court, they encountered a new tribal judge who had not presided over the two days of hearings. Whether the new judge had reviewed or had any knowledge of the testimony from those hearings is unclear, but the record reflects that the first tribal judge never responded to the [nonmembers] parties’ request for a transcript of the proceedings. Without any further hearings . . . the second tribal judge issued a one-page order granting the [tribe] sovereign immunity . . . and dismissed the [nonmember parties]’ claims. This one-page order contained no reference to any testimony from the evidentiary hearing, or for that matter any explanation of the tribal court’s reasoning.”).

See Attorney’s Process and Investigation Services, Inc. v. Sac and Fox Tribe of the Mississippi in Iowa, 401 F.Supp.2d 952, 955 (N.D. Iowa 2005) (“API asserts that [the Tribal] Council and the attorneys whom the Tribe has employed in the instant lawsuit ‘created the Tribal Court and enacted the dispute resolution provision of its Code as well as Rules of Civil Procedure and other substantive law provisions.’ API further alleges: ‘[S]ome of the substantive law provision were enacted with specific regard to API and litigation anticipated in the new Tribal”.)
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Frederick N. Halverson • Chad L. Hatfield • Lawrence E. Martin
Kevan T. Montoya • Terry C. Schmalz • Linda A. Sellers
Michael F. Shinn • Sara L. Watkins
Court against APL.

117. See Teague v. Bad River Band of the Lake Superior Tribe of Chippewa Indians, 665 N.W.2d 899, 927 (Wis. 2003) (Prosser, J., dissenting) (“How many of the current tribal judges are lawyers? None. . . . Today, Wisconsin tribal courts are more mature and sophisticated than they once were. Even so, given the structure of some tribes and bands, there are lingering concerns about judicial independence.”). See also Cohen v. Little Six, Inc., 543 N.W.2d 376, 395 (Minn. Ct. App. 1996) (Randall, J., dissenting) (“The lethal flaw of Indian tribal courts is that they are not independent autonomous bodies”).


120. See, e.g., Tribal-State Compact for Regulation of Class III Gaming on the Mississippi Band of Choctaw Indians Reservation in Mississippi (1993), § 5; Agreement Between the Crow Indian Tribe and the State of Montana Concerning Class III Gaming (1998), ch. IV; Tribal State Gaming Compact Between the Kickapoo Tribe of Indians of The Kickapoo Reservation in Kansas and the State of Kansas (1995), § 14; Winnemago Tribe of Nebraska and the State of Iowa Gaming Compact (1998), § 20.

121. See, e.g., Confederated Tribes Code, pt. II, ch. 7, § 7-2(d) (2005); Sault Ste. Marie Tribe of Chippewa Indians Tribal Code, ch. 81, § 81.105 (2004); Mille Lacs Band Statutes, tit. 5 (2003); Te-Moak Tribe of Western Shoshone Ordinance No. 87-ORD-TM-03, tit. I, ch. 3, § 1-3-9 and § 1-3-10 (2003). Choice of law issues can be critical to the outcome of a dispute regarding commercial transactions between a tribe or a tribal entity and a nonmember. On the one hand, some tribal commercial laws are relatively sophisticated and codify portions or all of the Uniform Commercial Code into their tribal laws. See, e.g., Mille Lacs Band Statutes, tit. 18; ch. 4, § 301 (2003) (adopting all of Minnesota’s Uniform Commercial Code and providing for exclusive jurisdiction in the tribal courts for all causes of action arising under that adopted Uniform Commercial Code); Cherokee Code, pt. II, ch. 16D, § 16D-1 (2005) (adopter Article 1 and Article 9 of the Uniform Commercial Code but only with respect to tribal gaming); Rosebud Sioux Tribe Law and Order Code, tit. 14 (2004) (codifying Articles 1, 2 and 9 of the Uniform Commercial Code). On the other hand, other tribal commercial laws address commercial transactions in a less sophisticated manner. See, e.g., Confederated Tribes of Warm Springs Tribal Code, chs. 700-730 (1971-2003); Poarch Band of Creek Indians Tribal Code (2004); Te-Moak Tribe of Western Shoshone Ordinances (2003).

122. See supra notes 22-31, 33-39, 83-86, 118-121 and accompanying text.


124. See National Indian Gaming Commission, Growth in Indian Gaming (undated).

125. See National Indian Gaming Commission, Tribal Gaming Revenues (undated).


Legislation of Interest to Lawyers

A round-up of the year’s law-related bills from Olympia

by Senator Adam Kline and Representative Patricia Lantz

During the 105 days of the 2007 Legislature, a record number of bills were up for consideration, and legislation was produced that addressed many challenging issues of interest to civil and criminal-defense lawyers. This article summarizes some of those bills, many of which were worked on in the House and Senate Judiciary committees. Included in this summary are bills giving specific rights to domestic partners, creating a public guardianship office to exercise oversight on behalf of vulnerable persons, lowering the tort liability standard for local government probation departments, creating greater felony sentencing authority in auto-theft cases, creating and defining a “good faith” standard in insurance-claims practices, and defining “disability” as the term is used in the Law Against Discrimination.

There is not enough space in this article to provide a full discussion of the content of each bill. However, all bills and bill reports from the 2007 legislative session may be obtained online at the legislative website, www.leg.wa.gov. In addition, a full description of all bills that passed the 2007 Legislature can be obtained by ordering the 2007 Final Legislative Report. To order, contact the Legislative Information Center at 360-786-7573. House Judiciary Committee staff may be contacted at 360-786-7122, or by sending inquiries to PO Box 40600, Olympia, WA 98504-0466. Senate Judiciary Committee staff may be contacted at 360-786-7455.

Civil Law

ESHB 1008: Protecting vulnerable adults

ESHB 1008 makes significant changes to the Abuse of Vulnerable Adults Act, particularly with respect to the protection-order process. The legislation expands the persons who may petition for a vulnerable-adult protection order to include certain “interested persons” and allows the Department of Social and Health Services (Department) to bring a petition without the consent of the vulnerable adult if the Department believes the vulnerable adult lacks the ability or capacity to consent.

Particular notice requirements are established when a
petition for a protection order is filed by someone other than the vulnerable adult, and a process is created for resolving a petition where the vulnerable adult does not consent to the petition. Other revisions to the protection-order process include: allowing protection orders to extend for five years; exempting the petitioner from the filing fee; creating a process for modifying or terminating a protection order; and requiring the development and use of standard petition and protection-order forms for orders sought or issued after October 1, 2007.

A deceased vulnerable adult’s cause of action under the Act for damages resulting from abuse, exploitation, or neglect while residing at a facility or receiving care from a home health or hospice agency survives to the vulnerable-adult’s estate for recovery of the economic losses to the estate if there are no surviving statutory beneficiaries.

**SHB 1041: Modifying plurality voting for directors**  
**Prime Sponsor: Rep. Jamie Pedersen**

The Washington Business Corporations Act’s provisions on election of corporate directors are revised to give corporations the increased ability to deviate from or modify plurality voting without amending their articles of incorporation. A corporation may adopt in its bylaws a voting method for electing directors that specifies the number, percentage, or level of votes required for election, and that allows for the counting of votes cast against or votes withheld in determining whether a candidate has received the required vote. A corporation may alter the rule requiring that a director remain in office until a successor is elected or appointed, and shorter terms of office may also be provided for directors who are elected by less than some specified vote. A director’s resignation may be made effective contingent upon the happening of some future event, and a notice of resignation contingent upon the failure to receive a specified vote may be made irrevocable.

**HB 1042: Modifying the share acquisition time period for engaging in a significant business transaction**  
**Prime Sponsor: Rep. Jay Rodne**

The Washington Business Corporation Act is amended to add an exemption to Washington’s takeover statute. The new exemption allows a corporation to engage in a significant business transaction with an acquiring person after the person’s share acquisition and notwithstanding the five year “freeze-out” period, if the significant business transaction is: (1) approved by a majority of the board of directors; and (2) authorized, at an annual or special shareholder meeting, by at least two-thirds of the outstanding voting shares, not including the acquiring person’s voting shares.

**ESHB 1114: Regulating the marketing of estate distribution documents**  
**Prime Sponsor: Rep. Jay Rodne**

It is unlawful for anyone who is not authorized to practice law in this state to market “estate distribution documents” in or from the state. “Estate distribution documents” are documents such as wills or trusts that have either been prepared for a specific person or have been prepared as marketing materials. The unauthorized marketing of these documents is also a violation of the Consumer Protection Act. A person who is not authorized to practice law in this state may nonetheless gather information or assist in preparing estate distribution documents if he or she is employed by someone who is authorized to practice law in this state and does not provide legal advice. Financial institutions are exempt from the act.

**SHB 1144: Providing a uniform method of transferring a municipal court judgment into district court**  
**Prime Sponsor: Rep. Brendan Williams**

District courts are granted jurisdiction over proceedings to civilly enforce any money judgment from a municipal court or municipal department of a district court. The proceeding may be brought in the district where the municipal court or municipal department is located. Once transferred, the municipal judgment is recognized as a judgment of the district court, but the district court may not vacate or amend the judgment. The district court filing fee to transfer the judgment is $43.

**HB 1145: Modifying the definition of**
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imposed as a result of a lawsuit are paid in full. Mandatory suspension is not required where the defendant has entered into a payment plan with the court.

HB 2236: Disposing of certain assets
Prime Sponsor: Rep. Roger Goodman

A number of changes are made to a variety of provisions of the probate and trust laws. The Uniform Simultaneous Death Act (USDA) is amended to establish a general rule that in a simultaneous death situation a person is deemed to have died first if it is not established by clear and convincing evidence that he or she survived the other relevant person or persons by at least 120 hours. Circumstances under which this rule applies are provided. Other changes to the USDA include providing rules on determining death and establishing immunity from liability for a good-faith payment under the USDA under certain circumstances.

Nonprobate asset provisions are amended to expand the definition of nonprobate asset to include certain brokerage accounts, contracts, and other written instruments that may provide for the nonprobate transfer of property and to provide that the termination of a spousal beneficiary designation in a nonprobate asset instrument upon a marriage dissolution is no longer restricted to dissolution decrees from courts of “this state.” Other changes include: creating a definition of “surviving spouse” and revising the definitions of “representation” and “posthumous child”; allowing separate lists designating recipients of tangible personal property to be used in conjunction with irrevocable trusts; allowing the tolling of the four-month period for contesting a will by the filing of a petition with the court; and allowing a court to award costs and attorneys’ fees under the ‘Trust and Estate Dispute Resolution Act without finding that the litigation benefited the trust or estate involved.

SSB 5228: Revising provisions concerning actions under the Consumer Protection Act
Prime Sponsor: Sen. Adam Kline

The attorney general is given authority to bring parentes patriae actions under the Consumer Protection Act on behalf of persons residing in the state. In cases in which the attorney general has brought an action under the CPA for antitrust violations, the court is authorized to order restoration for an injured party regardless of whether the injury was the result of a direct or indirect purchase of goods or services. The ability of the state itself to sue for damages under the CPA is expressly made applicable to cases in which the state is indirectly injured by a violation of the act’s antitrust provisions.

SSB 5320: Creating an Office of Public Guardianship as an independent agency of the judiciary
Prime Sponsor: Sen. Rosa Franklin

An Office of Public Guardianship (Office) is created within the Administrative Office of the Courts, and the Supreme Court is directed to appoint a public guardianship administrator. The initial implementation of the public guardianship services are on a pilot basis in at least two geographical areas, one that is urban and one that is rural. The Office will contract with public or private entities or individuals to provide guardianship services to people whose income does not exceed 200 percent of the
federal poverty level or who are receiving long-term care through the Department of Social and Health Services.

SSB 5340: Defining disability in the Washington Law Against Discrimination
Prime Sponsor: Sen. Adam Kline

“Disability” is defined as a sensory, mental, or physical impairment that is medically diagnosable, exists in a record, or is perceived to exist. For purposes of qualifying for reasonable accommodation from an employer, the impairment must substantially limit the employee in his or her employment.

ESSB 5726: Creating the Insurance Fair Conduct Act
Prime Sponsor: Sen. Brian Weinstein

An insurance company may not unreasonably deny an insurance claim. A first-party claimant may recover actual damages, attorneys’ fees, and treble damages if an insurer unreasonably denies an insurance claim or violates one of several enumerated provisions of the Washington Administrative Code regulating equitable insurance-claims handling.

SSB 5910: Modifying the notice requirement of intent to file a medical-malpractice claim
Prime Sponsor: Sen. Dale Brandland

Notice of intent to commence an action against a healthcare provider for negligence must be provided by regular mail, registered mail, or certified mail with return receipt requested or by depositing the notice, postage prepaid, in the post office addressed to the defendant. The notice may be addressed to the chief executive officer, administrator, Office of Risk Management, or registered agent for service of process of the healthcare entity if the defendant is a healthcare provider entity or an agent or employee of the healthcare entity at the time of the alleged negligence. If the notice of intent to commence an action against a healthcare provider is served within 90 days of the expiration of the applicable statute of limitations, the time for the commencement of the action will be extended 90 days from the date the notice was mailed. After the 90-day extension passes, the claimant has five court days to commence the action.

SB 6059: Allowing attorneys to recover actual costs for service of process
Prime Sponsor: Sen. Mike Carrell

The prevailing party, upon judgment, is allowed certain sums by way of indemnity for expenses in the action, including the actual amount of money charged and incurred for the service of a process server. An exempt or registered process server is allowed to charge and collect, for each service assignment delivered to the process server for service, the following fees: (1) the actual amount if the fee is less than $100 or (2) a reasonable amount if the fee is greater than $100.

Criminal Law

E3SHB 1001: Combating auto theft

The act known as the Elizabeth Nowak-Washington Auto Theft Prevention Act makes comprehensive changes to provisions relating to motor-vehicle crimes. Separate statutory provisions are created to specifically cover the crimes of theft or possession of a stolen motor vehicle. The crime of taking a motor vehicle without permission in the first degree is redefined and expanded. The act provides for increased penalties for these offenses and triple scoring of prior motor-vehicle-related offenses. Home detention is established as an option for first-time adult offenders. Juvenile offenders are subject to risk assessments, home detention, and increased penalties and mandatory minimum sentences for these motor-vehicle theft-related offenses. A new crime is created to cover the making and possession of motor-vehicle-theft tools. A Statewide Auto Theft Prevention Authority is created to study and make recommendations on combating the problem of motor-vehicle theft in Washington.

ESSB 5312: Addressing the issue of stolen metal property
Prime Sponsor: Sen. Rodney Tom

Record-keeping requirements are established for scrap-metal businesses engaging in non-ferrous metal transactions with the general public. Limitations are established as to when scrap-metal businesses may engage in transactions involving...
commercial metal property, metallic wire, and beer kegs. Scrap-metal businesses are prevented from paying cash for transactions involving metal property valued at greater than $30, and penalties for metal theft are established. The crimes of first- and second-degree theft and first- and second-degree possession of stolen property are added to the list of aggravating factors when: (1) the property damage to the victim caused in the course of the theft of metal property is more than three times the value of the stolen metal property or (2) the theft of the metal property creates a public hazard.

**Family Law**

**SSB 5336: Protecting individuals in domestic partnerships by granting certain rights and benefits**  
Prime Sponsor: Sen. Ed Murray

The state domestic-partnership registry is created in the Office of the Secretary of State (OSOS). Individuals seeking to register domestic partnerships must meet specific eligibility criteria and file the appropriate paperwork with the OSOS. Certain powers and rights granted to spouses are granted to state-registered domestic partners. A certificate of domestic partnership issued by the OSOS fulfills eligibility requirements for the partner of the public employee to receive benefits.

**2SSB 5470: Revising provisions concerning dissolution proceedings**  
Prime Sponsor: Sen. Jim Hargrove

The presumption that a child will reside with the parent who has taken greater responsibility for the daily needs of the child is eliminated. Instead, the ability of the court to order the child to frequently alternate between residences is emphasized if it is in the best interests of the child. An initial point-of-contact program is established for parties seeking to file petitions for a dissolution that will provide information about alternatives to the dissolution and litigation, effective July 1, 2009. A reduced-fee mediation service is established pre- and post-decree for parties within one year of the filing of a dissolution petition, effective January 1, 2009. Interpreters are provided for parties to a dissolution, and a task force is created to study dissolution matters and make recommendations. Data tracking of orders for division of residential time is established in each county.

**Domestic Violence**

**SHB 1642: Concerning criminal violations of no-contact orders, protection orders, and restraining orders**  
Prime Sponsor: Rep. Jamie Pedersen

The statute describing when it is a gross misdemeanor to violate a no-contact, protection, or restraining order is amended in response to trial court holdings that a violation of a restraint provision in one of these orders is a gross misdemeanor only if the violation would require an arrest under the mandatory arrest statute. The act establishes that it is a gross misdemeanor when a person who is subject to a no-contact, protection, or restraining order knows of the order and violates a restraint provision prohibiting acts or threats of violence against, or stalking of, a protected party, or a restraint provision prohibiting contact with a protected party, regardless of whether the violation is one for which an arrest is required.

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Sen. Adam Kline has served for 10 years as the senator for the 37th District of Washington. Before entering law school, he worked as a merchant seaman and as a newspaper reporter. He practiced law for 32 years before retiring in 2004 to work for the Laborers Union. Rep. Patricia Lantz has represented the 26th Legislative District of Washington since 1997. She is chair of the House Judiciary Committee. She was formerly an attorney in private practice focusing on land use and immigration law. Sen. Kline and Rep. Lantz would like to thank Edie Adams and Lidia Mori for their assistance with this article.
Leadership and Values

BY STAN BASTIAN

The WSBA Leadership Institute (WLI) gives students, known as fellows, access to our Bar’s leaders. Stan Bastian’s essay is but one example of a perspective on leadership that can be gained through the WLI’s leadership skills-building curriculum.

Bellevue attorney Marijean Moschetto called last April and asked me to write a short essay on the relationship between leadership and values. To be honest, I didn’t really want to do it. I was already busy enough balancing my legal practice, family responsibilities, and duties as WSBA president-elect. Where would I find the time for this project? More importantly, I was intimidated by the subject matter, because I had never given it much thought. I am not very philosophical by nature and this topic seemed beyond my expertise. But Ms. Moschetto can be very persuasive (she is, after all, a good leader) and she was eventually able to convince me to give it a try. She then told me that the deadline was only a few weeks away. No doubt, this example of strategically withholding critical information was also a display of her leadership skills.

I soon warmed up to the subject and began to make a list of values that I have observed in leaders from my life. I used as examples other lawyers who I have either admired for some reason or who have been mentors to me. I didn’t have to look too far. In addition to Ms. Moschetto, I had plenty of examples, including my senior partners Gar Jeffers and Jim Danielson; both are experienced, skilled, and busy lawyers who have spent countless hours mentoring me to become a better lawyer. Additionally, I have been fortunate to know some fine leaders working with the WSBA, including the other governors and officers who have served with me over the last three years. In my opinion, these leaders all share similar values, although they may exhibit them in different ways. Individual leaders have their own characteristics and styles, but when those differences are stripped away, these similarities remain.

**Priorities.** Leaders identify the goal early and stay focused on achieving it. They recognize that adjustments may be necessary along the way, but the end goal is always in sight. Leaders admit and learn from their own mistakes, and they make thoughtful and timely decisions even under stress. When practicing law, leaders know that resolving the client’s legal trouble is the lawyer’s primary concern. A good lawyer does not use the client primarily as a vehicle to showcase their talents in the courtroom or earn a big fee. Those collateral benefits will come naturally.

**Courage.** Practicing law and representing clients requires a measure of courage. It is not always easy or expedient to take a hard case and fight a difficult legal battle. Good lawyers and leaders don’t back down in the face of adversity, but are willing to compromise when necessary. Most importantly, good lawyers know how to compromise. Both good lawyers and good leaders have courage to address the challenge, whether they admit it or not.

**Preparation.** Leaders are prepared. They investigate the facts, interview the witnesses, read the documents, research the law, and double-check the citations in their legal briefs. They read the court rules and know which ones apply to their case. They don’t expect the judge or court clerks to do their work for them. They have their case prepared and ready. Leaders are prompt and meet deadlines for timely filing of lawsuits, pleadings, discovery deadlines, and scheduled court appearances.

**Balance.** Leaders recognize that maintaining good physical and mental health is essential to a successful law practice. They devote adequate time to personal and family interests. Leaders give proper credit and recognition to others on the team such as partners, associates, paralegals, and secretaries. They help train new lawyers and inspire others with their ideas, vision, and dedication.

**Truth and Integrity.** Last May I attended a seminar in Richland on the federal civil rules where the keynote speaker was former United States Attorney John McKay. His topic was ethics and his message was very simple. According to Mr. McKay an ethical leader always has three goals: (1) telling the truth, (2) seeking the truth, and (3) practicing law with integrity. It can’t be said any better or more simply than that.

There is nothing official about this essay. These are simply my observations from the point of view of a trial lawyer practicing in a small town on the east side of the state. The list might be different if written from the perspective of a lawyer just out of law school, or a lawyer with a different type of practice than mine. These are my thoughts and I welcome your input. Beware, though, comments from readers may be the subject of one of my upcoming President’s columns in Bar News.

If you find this essay on leadership and access to leaders like Stan Bastian inspiring, you are encouraged to apply to become a WLI fellow. Or perhaps you know of someone who would make a good leader and benefit from this remarkable program. For applications and more information, visit www.wsba.org/lawyers/leadership_institute.htm.

Stan Bastian is a former public defender for the City of Renton and prosecutor for the City of Seattle, and is a shareholder in the Wenatchee and Moses Lake firm of Jeffers, Danielson, Somm & Aylward, PS. His practice focuses on civil litigation, employment law, labor negotiations, and insurance defense. He was elected to the office of WSBA governor for District 4 in 2004. He now serves as WSBA president-elect, and will assume the office of WSBA president this fall.
The Truth About Robert’s Rules of Order

BY ANN G. MACFARLANE

fter 35 years of active involvement in nonprofit boards and voluntary organizations, I believe that Robert’s Rules of Order is like democracy. Readers may recall Winston Churchill’s famous dictum: “Democracy is the worst system of government in all the world, with the exception of those other systems that have been tried from time to time.” Similarly, I have to say that Robert’s Rules of Order is a terrible book. It is too long (704 pages!), too complicated, and badly organized. Unfortunately, it is also indispensable. In other words, we’re stuck with it. Approximately 90 percent of the voluntary organizations in this country use Robert’s as the authority for their meetings. Properly applied and used, parliamentary procedure and Robert’s Rules can be the key to great meetings.

I’ve had the privilege of sharing some of General Robert’s kernels of excellence with the 2006 and 2007 WSBA Leadership Institute classes. My experience of the dozen up-and-coming leaders selected as fellows is that they are sharp, lively, and willing to take a risk. It was great fun, on a Saturday last January, to offer them the opportunity to play around with Robert’s. This article describes some of the topics that we covered in “Jurassic Parliament,” a humorous introduction to parliamentary procedure using toy dinosaurs and Robert’s Rules of Order Newly Revised, 10th Edition.

Leading a meeting successfully requires mastering a paradox

A person who is leading a meeting of a voluntary organization is placed in a highly paradoxical situation. On the one hand, since human beings are social primates, anyone at the head of a room is in one sense the most important person in that room. A meeting takes its tenor, its emotional tone, from the leader. If the presider shows up late and confused, dropping papers and not quite certain about the agenda, the participants will begin to worry that they’re not going to have a good meeting. If the presider is rigid and dogmatic, insisting that everyone pay attention and glaring at the person whose cell phone goes off, participants will feel as if they were being treated as school children and become restive. In preparing for any meeting, it is essential for the presider to look to herself and prepare internally, in addition to all the ordinary administrative preparations.

At the same time, in another sense, the person leading a meeting is the least important person in the room. The leader is there as the servant of the group, to help the group determine what it wants to do. This is made dramatically clear in the rule that for a large group, the presider will not even vote, but will serve strictly as a facilitator. Putting one’s own views and opinions aside in order to assist the group to find its way isn’t easy for the determined, achieving Type-A individuals who usually get elected president of boards and organizations. And yet this is what a presider is called upon to do.

A presider must be strict on process — a benevolent dictator

One of the most important roles of any presider is to enforce the rules of discussion. The WSBA Bylaws state, for instance, that a member may speak only once on a given topic. If a member starts to speak a second time, the president must cut him off. More harm is done by wishy-washy presidents, who allow extroverted members and old-timers to dominate discussion, than by tyrannical presidents. A group will eventually rise up against a tyrant, but a wishy-washy presider is pitied for weakness; meetings muddle along, wasting the time of all concerned.

The most ignored rule in all of Robert’s

If your group has bylaws like the WSBA’s, discussions can be short (if not sweet). It’s rare for bylaws or rules of order to allow members to speak only once, however, and therefore discussion in many settings becomes repetitive and unproductive. People hash over the same positions and the quiet types sit in the corner, wishing that the meeting were over. (This is particularly true in committee meetings or other less-formal settings.) One simple rule, the most ignored in all of Robert’s, can improve the situation: “No one may speak twice until everyone who wishes to do so has spoken once.” How much time would be saved if this rule were widely accepted and applied! When everyone in a meeting has the chance to give an opinion, frequently it becomes perfectly clear what the group wants to do. Debate is shortened, a vote confirms the outcome, and the group can go on to its next agenda item.

Applications are now available for the 2008 WSBA Leadership Institute. If I am invited to offer these thoughts to the next class, it will be a pleasure to throw toy dinosaurs around the room and share some of the paradoxes that make Robert’s Rules of Order, despite its faults, an excellent guide for a voluntary organization. I hope to see you there! ☺

You are encouraged to apply to become a WLI fellow — or nominate someone you know who would benefit from this remarkable program. To learn the qualifications and for applications, see www.wsba.org/lawyers/leadership_institute.htm.

Ann G. Macfarlane is a partner in ERGA, an association management firm. She presented “Jurassic Parliament” to the 2006 and 2007 WLI classes. She is a registered parliamentarian and a member of the National Association of Parliamentarians and the American Institute of Parliamentarians. She can be reached at ann@jurassicparliament.com.
The Board’s Work

BY AMEE TILGER

Wenatchee, June 1, 2007

At its June meeting, the WSBA Board of Governors elected and appointed a number of individuals to positions on the Board and various committees. Seattle attorney Mark A. Johnson was unanimously elected as President-Elect for 2007-2008. The Board also elected a new governor for an at-large seat. After hearing candidate presentations from Brenda Williams, Janice Smith-Hill, Dennis Morgan, and Carrie Copпinger Carter, the Board elected Brenda Williams to the at-large seat. Kathleen O’Sullivan was appointed to serve as a member of the Commission on Judicial Conduct. The Board of Governors also selected three representatives to the ABA House of Delegates, one of whom was required to be a lawyer 35 years old or younger. James Williams was re-appointed as a delegate, as well as Deborah Perluss and Michael Pellicciotti, who was selected as the young lawyer delegate. The Board voted to support Governor Kristal Wiitala for appointment to the Public Records Exemption Committee. Regarding special appointments, President Ellen Conedera Dial raised the issue of how to best select candidates for these positions, balancing increased opportunities for participation with the president’s flexibility to appoint. After some discussion about increasing candidate diversity and targeting those in specific practice areas, the Board decided to post these positions to create a pool of candidates from which the president could choose, subject to approval by the Board.

The Board heard reports on several important proposals. Jon Ostlund, George Yeannakis, and Bob Boruchowitz, with the Committee on Public Defense, presented a report on its plans for revising the State Supreme Court’s Conflict of Interests Policy. Even after revisions by General Counsel Bob Welden, opposition could be clarified. The Board voted to postpone consideration of this issue to the July meeting for revisions.

The Board voted to approve the replacement of the Storage Area Network (SAN) upon which the WSBA office relies. The replacement was more costly than anticipated, but was much needed, as the SAN is the storage facility’s backbone. It is anticipated that this update can be relied upon for the next four to five years.

At the meeting’s conclusion, the Board presented Immediate Past President Brooke Taylor with a token of appreciation for his work on the Executive Director Search Committee.

Ameе Tilger is a member of the WSBA Editorial Advisory Board and a deputy prosecuting attorney at the Chelan County Prosecutor’s Office in Wenatchee. She has worked in the district court division for three years. A Gonzaga University Law School graduate, Ms. Tilger clerked for the Chelan County Superior Court prior to working for the Prosecutor’s Office. She and her family live on the other side of the river (“the side with the better view!”) in East Wenatchee.

The Board’s Work

Discussion ensued about such issues as the waiver form’s comprehensibility for the target age group, the need for a court’s colloquy with defendants, potential conflicts regarding representation of co-defendants, and training of defense attorneys working in juvenile court. The Board ultimately approved the proposed changes to JuCR 7.15, and the proposed rule will be submitted to the Supreme Court for consideration.

On behalf of the System Efficiencies and Legislative Changes Subcommittee, Mr. Boruchowitz proposed three recommendations for system improvement: the implementation of a two-track system for contempt of court proceedings in child-support matters; expansion of the use of diversion programs; and a five-part recommendation regarding the criminal justice system’s dealings with unrepresented persons. After some discussion about the applicability to private practitioners, Governor Peter Karademos suggested postponing consideration of the first proposal to the July meeting to refer it to the Family Law Section Executive Committee for review and comment, to which the Board agreed. The second proposal regarding diversion was passed unanimously. However, the third proposal garnered considerable discussion about the burdens placed on judges by the recommendations and the propriety of mandating training. Governor Sal Mungia suggested removing the recommendation for increased disciplinary action against judges for failing to enforce court rules and encouraging training rather than mandating it, and the Board approved the third recommendation with those changes.

Director of Regulatory Services Jean McElroy reported on the MCLE Board’s widely broadcasted proposed amendments to APR 11, which the Board approved. Proposed amendments include changes regarding closed in-house CLEs, the ratio between live and self-study CLE credits allowed, and the expansion of CLE topics for accreditation.

The Board also revisited its proposed Conflict of Interests Policy. Even after revisions by General Counsel Bob Welden, questions remained about the definition of “immediate family” and how the definition could be clarified. The Board voted to postpone consideration of this issue to the July meeting for revisions.
Snohomish County Bar Association

by Joyce Wood

**General Membership Meeting.** The General Membership meeting was held on the last Friday of January 2007, with the highest numbers of attendance in 13 years. The Attorney of the Year Award for 2006 was awarded to Ian Millikan, of Marysville. Ian had several family members attend the event to honor him. Annual election of officers was also held and the results are: Jennifer Gogert, president; Peter Camp, vice president; Halley Hupp, treasurer; and Elizabeth Cullen, secretary.

**Fundraising.** An evening to benefit Snohomish County Legal Services with our 13th Annual “Shamrocks and Gold” Auction was held on March 10 at the Holiday Inn Hotel in downtown Everett. It was a great success with a gross of $72,000. Everyone enjoyed the social hour and charity gambling games before the live auction and dinner.

**CLEs.** Our most recent CLE, “Meet the GAL,” was held on May 11 on the County Campus in our new administration building hearing room. We had high attendance, including new guardians ad litem, local attorneys, and members of the superior court bench.

**Law Day.** May 1 was a great success with positive feedback from students about shadowing their choice of a judge, public defender, or prosecutor. At the luncheon we had speakers from different positions and point of views regarding the practice of law. We had nine high schools with 44 students participating.

**Swearing-In.** Our Spring Swearing-In Ceremony here in Snohomish County was June 14, with 17 candidates sworn in. We had a reception hosted by the Snohomish County Bar Association for our new attorneys, their friends, and their families in the law library.

**Social Events.** Everyone enjoyed the SCBA Night at the Aqua-Sox in Everett on June 29, where members of the Snohomish County Bar Association were admitted free. Next up: Our annual golf tournament on September 14 at Legion Memorial Golf Course in Everett.

**Family Law Section.** Our Family Law Section is strong with a growing membership. The section meetings are held every month on the third Monday in the Kinard Room located on the fourth floor of the Snohomish County Courthouse.

**Guardianship Section.** Our Guardianship Section has a new project, assisting people with their Title 11 processes, that was implemented several months ago. The section decided this would be a good project due to the closing of the ARC of Snohomish County. Meetings are held on the third Thursday of every month at the courthouse.

**Young Lawyers Division.** Our Young Lawyers Division meets at the Flying Pig at 5:00 p.m. on the second Monday of the month.

Chelan-Douglas Counties Bar Association

**by Chuck Zimmerman, immediate past-president, Chelan-Douglas Counties Bar Association**

Members of the Chelan-Douglas Counties Bar Association actively participate throughout the year providing volunteer attorney services for the less fortunate by taking on full and complete individual cases or periodically serving one afternoon each week as the free legal services consultation attorney through our local Volunteer Attorney Services Program.

We host CLE bar lunches each month, utilizing the talents of our members and...
providing an opportunity for members to earn CLE credits. Over the past year, the following attorneys graciously gave of their time and talent: Steve Crossland, Kathleen Kilcullen, Judge T.W. “Chip” Small, Robbie Scott, Judge Lesley Allan, Scott Volyn, John Brett, Judith Lurie, Peter Spadoni, John Sobba, Brian Walker, and Julie Norton. In addition, Jim Danielson arranged for Doug Ende of the WSBA to provide a presentation on the new Rules of Professional Conduct.

Part of the work of the Chelan-Douglas Bar over the past several years has included raising funds to support our For a Safer Future Program headed by our Volunteer Attorney Services, a nonprofit corporation. A highlight of the year is our Volunteer Attorney Services Awards Presentation. This year, we were fortunate to have local bar member and WSBA President-elect Stan Bastian as a guest speaker. Congratulations to attorneys Susan Cawley, Kathleen Schmidt, and Robin Gaukroger who were honored with this year’s Volunteer Attorney Services awards.

Our operating year is June through May and our year just wrapped up with the annual Spring Golf Tournament and Bar Dinner, which was successfully organized by Brett Amrine. Our Bar Association should continue to operate smoothly into the next year under the financial stewardship of Treasurer Erik Wahlquist and with the leadership of our new president, Judith Lurie.

King County Prosecutors & Defenders Claim 2007 Seattle Lawyers Basketball League Title

by Anthony C. Johnson, commissioner, Lawyers Basketball League

The King County Prosecutors & Defenders squad defeated the Washington Attorney Generals in an all-public-sector-lawyers team clash to claim the 2007 Seattle Lawyers Basketball League title. On May 30, the No. 6 seeded underdog, Prosecutors & Defenders, prevailed over the No. 1 seeded Generals, 40-39, in a low-scoring slugfest. The Generals overcame an early 8-0 deficit to lead 18-16 just before the half, when the Prosecutors & Defenders scored on a last-second inbound play to knot it up at 18. Nobody gained more than a two-point advantage during the second half. The Generals bombed in a three-pointer with four seconds left to take a one-point lead. However, a full court inbound play resulted in a lay-up for the Prosecutors & Defenders with one second remaining. There were to be no more miracles, as the Generals ended the season with an 11-2 record.

Thurston County Volunteer Legal Services

On May 1, Thurston County Volunteer Legal Services (TCVLS) held its annual Volunteer Appreciation Awards Breakfast. The breakfast was an opportunity to celebrate the successes of our volunteers, and to extend a call to action to stand for the rule of law by providing legal representation for low-income people. The breakfast was also an occasion to recognize some of the amazing work of Thurston and Mason County volunteer attorneys, paralegals, support staff, and partners. Specifically, TCVLS recognized the dedication of three volunteers and one law firm that have been committed to providing low-income people with legal advice, representation, and support during 2006.

The award for Clinic Administrator of the Year was given to Diane Partridge, from the Office of the Attorney General. Diane has become a fixture at the TCVLS legal clinics over the past couple of years and continues to serve regularly at both the family law and domestic violence legal clinics. In addition to her work at the legal clinic, Diane has helped organize the local Family Support Center auction, which brings in a great deal of support to TCVLS and other agencies operating at the Center.

The award for Pro Bono Attorney of the Year was given to John Jarrett, an attorney in private practice and frequent pro tem commissioner at Family and Juvenile Court in Thurston County. John has been a volunteer for the Thurston County VLP for more than two decades, in which time he has taken over 45 pro bono cases on behalf of low-income people.

The award for Clinic Attorney of the Year was given to Judith Anne Redford-
Hall, recognizing her tireless advocacy on behalf of clients in the most dire of situations. She helped establish the Mason County Volunteer Legal Clinic and facilitated its success by serving as the attorney mentor at almost every clinic in Mason County in 2006.

The award for Pro Bono Law Firm of the Year was presented to Laurel Smith and Associates. Laurel Smith and her colleagues, including Jean Pirzadeh and Nancy Hull, have been dedicated to providing legal services at Olympia legal clinics for many years, as well as providing direct representation to scores of low-income individuals in the rural parts of Thurston County over the years.

The keynote speaker at the volunteer breakfast was Seattle University School of Law Visiting Professor John McKay. Mr. McKay discussed the importance of attorneys acting as pillars of the rule of law, describing a justice system with strong pillars based on integrity, ethics, and the willingness to represent clients who are unable to pay. “The justice system is not a justice system unless it serves the poor and the powerless,” noted McKay.

**Lawyers in Uniform**

Seattle attorney and WSBA member Joseph J. Velling was recalled on active duty for the 2007 Spring Offensive in Afghanistan. Captain Velling is a Navy Reserve Judge Advocate General assigned to Bagram Airbase serving as the staff judge advocate for Task Force Cincinnatus and Bagram Airbase Operations. Prior to his recall, Captain Velling commanded the Navy Reserve Regional Legal Service Office 319 located at Naval Base San Diego, and his unit was awarded the 2007 Gilbert Cup for the best Navy Reserve JAG unit in the nation.

**Gates Foundation Donates $1.75 Million to Support ABA’s World Justice Project**

The American Bar Association’s charity fund has received a $1.75 million grant from the Bill & Melinda Gates Foundation to help underwrite a project to advance the rule of law in the United States and abroad. The World Justice Project will be sponsored by organizations representing numerous disciplines from around the world. Current sponsors are the ABA and the International Bar Association.

ABA President-Elect William H. Neukom, a partner in the Seattle office of Kirkpatrick & Lockhart Preston Gates Ellis, said that recent events at home — such as the denial of due process to detainees held at Guantanamo Bay — and abroad — such as terrorism and the threat of pandemics — show the growing urgency of strengthening the rule of law in societies around the world.

“The rule of law is the platform for communities of opportunity and equity,” Neukom said. “Whether you are a lawyer in Lebanon, Missouri, or a civil engineer in the nation of Lebanon, strengthening the rule of law will help you do your job better and bring greater stability to society.”

As one example, Neukom said, organizations that deliver AIDS drugs to Africans can enhance their effectiveness if they can operate in environments free of conflict and corruption. “The rule of law is needed to make communities safe, lift people out of poverty, root out corruption, protect people from disease, and open up classroom doors to all,” Neukom said.

In addition to traditional rule-of-law advocates, such as government officials, academics, and nongovernmental organizations, the project will engage representatives from such fields as architecture, the clergy, education, engineering, environment, labor, media, medicine and the military.

Neukom said the project’s working definition of the rule of law includes four components: a system of self-government in which all persons, including the government, are accountable under the law; a system based on fair, publicized, broadly understood, and stable laws; a fair, robust, and accessible legal process in which rights and responsibilities based in law are enforced; and diverse, competent, and independent lawyers and judges.

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Joseph Velling in front of his office at Bagram Airbase Operations in Afghanistan with the Hindu Kush Mountains in the background. The Base Operations building used to be the Soviet Air Force headquarters building when Bagram was built and run by the Soviets.
The “Who Is the Client?” Question Revisited

BY MARK J. FUCILE

In March 2006, I wrote a column called the "Who Is the Client?" Question" that looked at two related questions in the context of representing organizational clients. First, who is your client when you represent an entity such as a corporation, a partnership, or a governmental unit? Second, how does the "no contact" rule work in the organizational setting? I noted at the time that a potentially significant clarification was in the offing in this area, because the then-proposed amendments to the Washington Rules of Professional Conduct included a specific rule on entity representation. The Supreme Court approved the amendments last year, including the new entity-representation rule — RPC 1.13 — and they became effective in September 2006. Given that change, it seemed appropriate to revisit the two questions I posed in my earlier column to see how the new rule impacts the answers.

### Entity Representation Under RPC 1.13

When Washington moved from the Code of Professional Responsibility to the Rules of Professional Conduct in 1985, the drafters rejected an earlier proposed version of ABA Model Rule 1.13 which specifically addressed entity practice. The legislative history from the time reflects that the drafters felt that this was an area better left for development through case law rather than a professional rule. The case law, however, didn't develop as anticipated, and Washington lawyers and judges alike more often looked to the ABA Model Rule and a series of ABA formal ethics opinions interpreting that rule in analyzing entity representation issues.2

When the ABA revised its Model Rules in 2002 and 2003, it expanded Model Rule 1.13 to address confidentiality issues in the entity context in light of the Enron scandal and the Sarbanes-Oxley Act (and the accompanying regulations). But the ABA kept the core idea behind Model Rule 1.13: A lawyer representing an entity represents the organization alone and not its constituents (such as officers and employees).

When we revised our own RPCs, the Ethics 2003 Committee recommended that Washington adopt a specific entity-practice rule patterned on ABA Model Rule 1.13. With a few Washington-specific modifications, the Supreme Court did so last year, and we now have our own Washington professional rule on entity representation: RPC 1.13.

Washington RPC 1.13 generally follows the same structure as its ABA counterpart:
- Section "a" articulates the baseline principle that a lawyer representing an entity represents the organization alone.
- Sections "b" through "e" address several facets of the confidentiality rule in the entity context and counsel that a lawyer who learns of a violation of the law within the organization that could result in substantial injury to the organization should report that violation "up" the entity's chain of command and, in some circumstances, may report the violation "out" of the entity to the appropriate authorities.
- Section "f" reinforces the principle of entity representation by suggesting that a lawyer for an entity explain that role to organizational constituents such as directors, officers, and employees so the constituents will not inadvertently be led to think that the lawyer also represents them as individuals by virtue of the lawyer's representation of the entity.
- Section "g" notes that a lawyer for an organization may also represent an entity constituent, but that representation would be subject to RPC 1.7's multiple-client conflict rules.
- Section "h" differs from the ABA Model Rule by incorporating former RPC 1.7(c)'s rule on governmental representation that generally limits the representation in that setting to the specific agency involved rather than the larger governmental unit of which the agency is a part.

RPC 1.13 is accompanied by 15 comments that elaborate on each of its subsections. Both RPC 1.13 and its comments are available on the WSBA's website at www.wsba.org. Because RPC 1.13 is patterned on the corresponding ABA Model Rule, the ABA formal ethics opinions exploring various facets of entity representation, such as ABA Formal Ethics Opinion 95-390 that addresses often difficult issues of corporate affiliate representation, should now also offer more direct guidance for Washington lawyers. The ABA's ethics opinions are available on the ABA Center for Professional Responsibility's website at www.abanet.org/cpr. Some of the WSBA's informal ethics opinions already cited to the ABA's ethics opinions in this area and those, too, are available on the WSBA's website. Finally, the WSBA Legal Ethics Deskbook in Chapter 10 contains a discussion of entity representation and is being updated to reflect the new rule.

Although the new rule is a very useful clarification, it is neither the sole source for entity-representation law, nor will it provide all of the answers.

On the sources, the general rule for determining whether an attorney-client relationship exists is the first place remains governed by case law rather than the RPCs.2 The leading case on that point remains Bohn v. Cody, 119 Wn.2d 357, 832 P.2d 71 (1992). In Bohn, the Supreme Court articulated a two-part test for determining whether an attorney-client relationship exists. The first element is subjective: Does the client believe that an attorney-client relationship has been formed? The second element is objective: Is the client's subjective belief objectively reasonable under the circumstances? Both elements of Bohn's two-part test must be met for there to be an attorney-client relationship.

On the lingering questions, many applications of RPC 1.13 will remain very fact-specific. As noted earlier, one of the
most difficult areas in the entity context is whether representation of a corporate affiliate will be construed as representation of a broader “corporate family” for conflict purposes. As also noted earlier, ABA Formal Ethics Opinion 95-390 provides a framework for analyzing this issue, but it remains very fact-specific. 95-390 generally looks to whether the client has told the lawyer that the broader corporate family should be considered a unified whole and, if not, whether the corporate affiliate shares majority ownership with the corporate parent and whether they share common general and legal affairs management. The answers to these questions can have great practical consequence when representing corporations. The past year, for example, saw several cases turn on these issues and resulted in disqualification of the law firms involved, including Jones v. Rabanco, 2006 WL 2237708 (W.D. Wash. Aug. 3, 2006), and Ali v. American Seafoods Co., 2006 WL 1319449 (W.D. Wash. May 15, 2006).

The “No Contact” Rule in the Entity Context
Washington’s “no contact” rule is found at RPC 4.2. A key question in applying the “no contact” rule in the corporate context is: Who is the represented party? Or stated alternatively, if the corporation (or other entity) is represented, does that representation extend to its current and former officers and employees?

The leading case in Washington on this point is Wright v. Group Health Hosp., 103 Wn.2d 192, 691 P.2d 564 (1984). Wright was decided under Washington’s former DR 7-104(A)(1). Nonetheless, Comment 10 to RPC 4.2, adopted in 2006, notes that “[w]hether and how lawyers may communicate with employees of an adverse party is governed by Wright[].”

In Wright, the Supreme Court drew a relatively narrow circle of employees who fall within the scope of corporate counsel’s representation — particularly as it relates to a line employee whose conduct is at issue: This interpretation is consistent with the declared purpose of the rule to protect represented parties from the dangers of dealing with adverse counsel…. We find no reason to distinguish between employees who in fact witnessed an event and those whose act or omission caused the event leading to the action. . . . We hold current Group Health employees should be considered “parties” for the purposes of the disciplinary rule if, under applicable Washington law, they have managing authority sufficient to give them the right to speak for, and bind, the corporation. Since former employees cannot possibly speak for the corporation, we hold that CPR DR 7-104(A)(1) does not apply to them. 103 Wn.2d at 200-01 (emphasis in original).

Wright’s explicit reliance on substantive evidence law produces an interesting dichotomy depending on whether the underlying case is pending in state or federal court. Professor Robert Aronson of the University of Washington notes this difference in his treatise Law of Evidence in Washington:

ER 801(d)(2)(iv) provides that the statement of a party’s agent or servant is imputed to the party only if the agent or servant is “acting within the scope of the authority to make a statement for the party.” This is a more stringent requirement than FRE 801(d)(2)(D), which exempts from hearsay treatment admissions by a party’s agent “concerning a matter within the scope of his agency or employment, made during the existence of the relationship.” ER 801(d)(2)(iv) requires that the declarant be a “speaking agent.” See Comment 801(d); Kadiak Fish Co. v. Murphy Diesel Co., 70 Wn.2d 153, 422 P.2d 946 (1967). Thus, the statement of a truck driver after an accident, “Sorry, I was speeding,” would be admissible against the truck company in federal court (because it is within the scope of his authority to act), but not in Washington courts (because the truck company did not authorize him to speak on its behalf). Robert H. Aronson, The Law of Evidence in Washington, § 801.04[3][b][v] at 801-32 through 33 (Rev. 4th ed. 2006) (emphasis in original).

In other words, senior officers and directors are “off limits,” and line-level employees whose conduct is at issue may or may not be “off limits” depending on their status as “speaking agents” under applicable evidence law. By contrast, line-level employees who are simply occurrence witnesses (to borrow from Professor Aronson’s example: another company truck driver who simply observed the accident) and former employees of all stripes are “fair game.” In communicating with a former employee, however, RPC 4.4(a) and its accompanying Comment 1 suggest that the contact cannot be used to invade the former employer’s attorney-client privilege.

Summing Up
Even with the adoption of RPC 1.13, the “who is the client?” question will remain a very fact-specific exercise. As always, a lawyer can help answer that question by carefully defining the client in a written engagement letter and then handling the representation consistent with that engagement agreement. *

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

NOTES
2. See ABA Formal Ethics Opinions 95-390 (corporate representation), 91-361 (partnerships), 92-365 (trade associations) and 97-405 (governmental units).
3. Paragraph 17 of the “Scope” section of the RPCs notes: “For purposes of determining the lawyer’s authority and responsibility, principles of substantive law external to these Rules determine whether a client-lawyer relationship exists.”
The Washington Chapter of the American Judicature Society (AJS) has been increasingly active in our state on issues concerning the judiciary, such as judicial independence, the method of judicial selection, campaign financing, and voter information.

The mission of the American Judicature Society is to maintain and enhance the independence and effectiveness of the judicial system. AJS dedicates its resources exclusively to addressing problems and concerns of the justice system at all levels. Because AJS recognizes that our system of justice belongs to all Americans, AJS enlists lawyers, judges, and the public in working to ensure a judicial system that warrants the public support necessary for government to function effectively.

The American Judicature Society was founded in 1913. In its first five years, AJS achieved several major plans, including:

- A statewide model Judicature Act, designed to unify fragmented state courts into a single system. Today, most states have unified their courts to some degree.
- A nonpartisan plan for the selection of judges (which later became the Missouri or “merit” plan). Today, 32 states and the District of Columbia use some form of merit plan to select some or all of their judges.

As Roscoe Pound noted in 1940, AJS “has been behind every significant advance over the years, in judicial organization and procedure for a generation.”

The work of the American Judicature Society includes the following:

- Minimizing the role of politics in judicial selection.
- Promoting improvements in the operation of the courts.
- Supporting an independent judiciary while promoting the highest standards of conduct and ethics in the courts.
- Promoting the selection of the most qualified judges.
- Increasing public understanding and appreciation of the justice system.
- Building knowledge through empirical research on justice-system issues.
- Utilizing science in a way that supports fair and equitable justice-system outcomes.

The AJS national office, in Des Moines, Iowa, oversees several important programs, including the following:

- The Center for Judicial Ethics, which acts as a clearinghouse for information about judicial ethics decisions.
- The Center for Judicial Independence, which was created in 1997 in response to an increase in unfair criticism and efforts to remove from the bench judges who have made unpopular decisions.
- The Elmo B. Hunter Center for Judicial Selection, a nationally recognized research center started in 1997, that conducts and disseminates empirical research on a wide range of judicial-selection issues.
- The Institute of Forensic Science and Public Policy, devoted to improving the administration of justice through the application of cross-disciplinary research. The Institute was started in January 2006 in Greensboro, North Carolina, and is currently working on problems in eyewitness identification.
- The National Jury Center website, a resource for potential jurors and court administrators.

The Washington Chapter of the American Judicature Society has been behind every significant advance over the years, in judicial organization and procedure for a generation.

What Is the American Judicature Society?

The Washington AJS Chapter has, in conjunction with its annual meeting, sponsored forums and debates on judicial-independence, criminal-defense, and judicial-selection issues. The Chapter has actively participated in the Judicial Selection Coalition, a group of more than 20 organizations working on judicial-selection issues.

The chapter seeks to expand membership to other interested judges, lawyers, and members of the public. Current dues are $25 per year and members are also required to join the National AJS. Questions can be addressed to any of the current board members. The AJS website is www.ajs.org.

Mary Wechsler is the immediate past-president of the Washington Chapter of the American Judicature Society and serves on the American Judicature National Board of Directors. She is a partner at Wechsler Becker, LLP, where she handles complex family law cases, and also serves as a mediator and arbitrator. Ms. Wechsler serves as vice-chair of the Board for Court Education and is on the Judicial College Trustees. She is a past president of the King County Bar Association and a former president of the Washington Chapter of the American Academy of Matrimonial Lawyers.

If you would like your law-related organization featured in Bar News, please submit your article to barnewsarticles@wsba.org.
You are cordially invited to attend

The Washington State Bar Association’s Annual Awards Dinner and Business Meeting

Please join us for an evening of inspiration as we celebrate the accomplishments of the 2007 WSBA award recipients. All members of the legal community are invited to attend.

Name __________________________________________ WSBA No. __________________

Address ______________________________________________________________________

Phone ___________________________ E-mail ______________________________

Affiliation/organization ________________________________________________________

Registration is $85 per person (table of 10 = $850). To make your reservation, please return this form (or a photocopy) with your credit-card information or check payable to WSBA. Space is limited, so please make your reservations early. Reservations and payment must be received no later than September 13, 2007 (refunds cannot be made after September 13). Seating will be assigned.

☐ MasterCard  ☐ Visa No. __________________________ Exp. date ____________

Name as it appears on card____________________________________________________

Signature ____________________________________________________________________

_______ (no. of persons) X $ _______ (price per person) = $ _______ TOTAL

Please list the names of all attendees and indicate meal choices. Be sure to include yourself.

__________________________________________________________________________

☐ beef  ☐ salmon  ☐ vegetarian

__________________________________________________________________________

☐ beef  ☐ salmon  ☐ vegetarian

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☐ beef  ☐ salmon  ☐ vegetarian

__________________________________________________________________________

☐ beef  ☐ salmon  ☐ vegetarian

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☐ beef  ☐ salmon  ☐ vegetarian

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☐ beef  ☐ salmon  ☐ vegetarian

__________________________________________________________________________

☐ beef  ☐ salmon  ☐ vegetarian

All those listed on the same registration form (up to 10) will be seated at the same table.

Send to: Washington State Bar Association
Annual Awards Dinner
1325 Fourth Avenue, Suite 600
Seattle, WA 98101-2539
Phone: 800-945-WSBA • 206-443-WSBA • Fax: 206-727-8319

☐ If you need special accommodations, please check here and explain below.

__________________________________________________________________________

__________________________________________________________________________

WSBA office use only:
Date ________________
Check No. ________________
Amount ________________
No. AAD 92007
You are cordially invited to attend

The Washington State Bar Association’s 50-Year Member Tribute Luncheon

Please join us as we celebrate the accomplishments of the 2007 WSBA 50-year members. All members of the legal community are invited.

Name ___________________________________________ WSBA No. __________________
Address _______________________________________________________________________
Phone ___________________________ E-mail ________________________________
Affiliation/organization _________________________________________________________

Registration is $45 per person (table of 10 = $450). To make your reservation, please return this form (or a photocopy) with your credit-card information or check payable to WSBA. Space is limited, so please make your reservations early. Reservations and payment must be received by October 10, 2007 (refunds cannot be made after October 10).

☐ MasterCard ☐ Visa No. ___________________________ Exp. date ______________
Name as it appears on card ______________________________________________________
Signature _______________________________________________________________________

______ (no. of persons)  X  $______ (price per person)  =  $_________ TOTAL

Please list the names of all attendees and indicate meal choices. Be sure to include yourself.

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☐ chicken ☐ salmon ☐ vegetarian
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Send to:  Washington State Bar Association
50-Year Member Tribute Luncheon
1325 Fourth Avenue, Suite 600
Seattle, WA 98101-2539
Phone: 800-945-WSBA or 206-443-WSBA • Fax: 206-727-8319

☐ If you need special accommodations, please check here and explain below.
________________________________________________________________________
Board for Judicial Administration Best Practices Committee

Application Deadline: August 28, 2007

The WSBA Board of Governors will be nominating one member who is appointed by the Supreme Court to serve a two-year term on the Board for Judicial Administration Best Practices Committee. The committee actively and extensively participates in the selection, endorsement, dissemination, and implementation of best practices in court operations and administration and is committed to a process of continuously assessing and updating the practices.

Please submit a letter of interest and résumé to the Bar Leaders Division, WSBA, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101, or e-mail barleaders@wsba.org.

Civil Legal Aid Oversight Committee

Application deadline: August 28, 2007

The WSBA Board of Governors is seeking to fill one position to serve a term beginning on appointment and expiring June 30, 2009, on the bipartisan Civil Legal Aid Oversight Committee. Established in 2005, the Committee's charge is to oversee the activities of the Office of Civil Legal Aid; review the performance of the director of the Office of Civil Legal Aid; and, from time to time, make recommendations to the Supreme Court, the Access to Justice Board, and the Legislature regarding the provision of state-funded civil legal aid. The Oversight Committee consists of 11 members, one of whom is appointed by the WSBA. For additional information, see www.ocla.wa.gov.

Please submit a letter of interest and résumé to: WSBA Bar Leaders Division, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539, or e-mail barleaders@wsba.org.

Washington State Center for Court Research Advisory Board

Application deadline: August 28, 2007

The WSBA Board of Governors will be nominating one member who is appointed by the Supreme Court to serve the remaining two years of a three-year term on the Washington State Center for Court Research Advisory Board. The mission of the Center is to conduct objective research that informs judicial policy and strives to improve the functioning of the justice system. The Center’s research is intended to address issues of importance to the Washington State courts, including influences from and upon the larger criminal justice system in which the courts operate. This Advisory Board position requires extensive knowledge of the courts and a desire to perform court research to provide analysis of court procedures and expenses. Please submit a letter of interest and résumé to the Bar Leaders Division, WSBA, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101, or e-mail barleaders@wsba.org.

Commission on Judicial Conduct

Application deadline: August 28, 2007

The WSBA Board of Governors is seeking applicants interested in serving as an alternate member on the Commission on Judicial Conduct. One alternate position is available. Alternates on the Commission play an active role and are expected to attend meetings and participate in discussions ever where they may not vote on the ultimate question. Alternates have a vote in any cases where their corresponding member is recused or absent, and sometimes serve on hearing panels.

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

The Commission consists of 11 members who serve four-year terms — six nonlawyer citizens, three judges, and two lawyers. Each member has an alternate whose term coincides with their corresponding member's term. The lawyers must be admitted to practice in Washington and are appointed by the WSBA. The term for this alternate position will commence immediately upon appointment and expire on July 16, 2008. Please submit a letter of interest and résumé to WSBA Bar Leaders Division, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539, or e-mail barleaders@wsba.org. Further information on the Commission can be found at their website, www.cjc.state.wa.us, or by contacting them at 360-753-4585.

Seeking Questionnaires from Candidates for Judicial Appointments


The WSBA Judicial Recommendation Committee (JRC) is currently accepting questionnaires from attorneys and judges seeking consideration for appointment to fill potential Washington State Supreme Court and Court of Appeals vacancies. Interested individuals will be interviewed by the Committee on the dates listed above. The JRC’s recommendations are reviewed by the WSBA Board of Governors and referred to Governor Gregoire for consideration when making judicial appointments. Materials must be received by the deadline listed above at the WSBA office. To obtain a questionnaire, visit the WSBA website at www.wsba.org/lawyers/groups/judicial recommendation or contact the WSBA at 206-727-8212 or 800-945-9722, ext. 8212, or barleaders@wsba.org.
WSBA Leadership Institute Seeks Fellows for 2008

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

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

To be considered for the program, applicants must: (1) complete an application with cover letter, résumé, and three references; (2) be an active WSBA member; (3) have practiced law in a U.S. jurisdiction for three to 10 years, i.e., any attorney who has been admitted in a U.S. jurisdiction between January 1, 1998, to December 31, 2005, meets this criterion; (4) be nominated by his/her employer, or if self-employed, by another individual; and (5) provide evidence of interest in community and WSBA activities. The deadline for applications for the 2008 Leadership Institute is September 15, 2007. Application and nomination forms and instructions are available on the WSBA website at www.wsba.org/lawyers/leadership_institute.htm. For further information, contact Camille Campbell at camillec@wsba.org or 206-727-8213.

WACDL Honors Four Outstanding Lawyers

The Washington Association of Criminal Defense Lawyers (WACDL) selected four outstanding lawyers at its annual conference in Chelan on June 8. The Champion of Justice Award, recognizing an individual who has staunchly preserved or defended the constitutional rights of Washington residents and endeavored to ensure justice and due process for those accused of crime, went to Joanne L. Moore, director of the Washington State Office of Public Defense. Moore was honored for her passion and diligence in creating and securing funding for the Parents’ Representation pilot program. Seattle attorney Jeff Ellis is the recipient of a 2007 President’s Award, recognizing outstanding service to the criminal defense bar. Ellis is known across the state for his exceptional death-penalty work, as well as his persistence in obtaining the best possible outcomes for his clients. Michael Iaria was also selected to receive a 2007 President’s Award. Iaria is a dedicated, talented, and accomplished criminal defense attorney, an active member and former board member of WACDL, former co-chair of WACDL’s Death Penalty Committee, and a frequent lecturer at WACDL’s seminars. Todd Maybrown was the recipient of the 2007 William O. Douglas Award given in recognition of extraordinary courage and dedication to the practice of criminal law. Maybrown is an active member of WACDL, having served on the board of directors and as co-chair of the Strike Force Committee. Currently, he is co-chair of the Death Penalty Committee, and will serve as treasurer in the upcoming year.

Welden Appointed to ABA Committee on Professional Discipline

WSBA General Counsel Robert Welden has been appointed to the ABA Standing Committee on Professional Discipline. This committee was established in 1973 to assist the judiciary and the bar in the development, coordination, and strengthening of disciplinary enforcement throughout the country. In his 26-year career with the WSBA, Welden has served as disciplinary counsel as well as general counsel. His work with the ABA includes serving as chair of the Advisory Commission on Lawyers’ Funds for Client Protection, and as chair of the Standing Committee on Client Protection.

Pipeline Project RFP Coming

To encourage the development of programs that target groups that have been underrepresented in the legal profession, the Board of Governors has established a...
grant of $75,000 to fund the establishment of a “pipeline program” over a three-year period. A Request for Proposal (RFP) will be issued this summer. Those interested in receiving the RFP should contact Sarah Guthrie at sarahg@wsba.org.

WSBA-CLE Thanks Members
The WSBA CLE Department extends its sincere thanks to those who participated in this year’s Member Appreciation Summer Sale (July 2-13). This annual online event continues to expand and develop into an exciting member benefit. Be sure to check www.wsbacle.org regularly for the latest information on WSBA-CLE publications and seminars.

2007 License Fee, Late Fees, and Suspension Information

Contact information. It is always a good idea to check that the WSBA has your correct contact information in its database. APR 13.b states that address updates shall be provided to the WSBA within 10 days of a change. You can go to the online lawyer directory on the WSBA website at http://pro.wsba.org to check your listing. If your contact information has changed, please contact the WSBA Service Center at 800-945-WSBA (9722), 206-443-WSBA (9722), or by e-mail at questions@wsba.org.

Suspension recommendations sent to the Washington State Supreme Court. The WSBA sent to the Washington State Supreme Court a list of members who still had any portion of their license fee, late fees, or LFCP outstanding two months after the WSBA issued a presuspension notice (issued March 16, 2007). The Supreme Court has entered an order suspending these members from the practice of law in Washington.

Trust Account Declaration, MCLE Certification, and other forms. A Trust Account Declaration (one was included in your licensing packet) must be completed by all active members, regardless of whether you actually have a trust account. Failure to file this form can result in disciplinary action. Also, Group 3 active members were required to complete a MCLE certification form. There may be other forms included from your licensing packet that you wish to complete and return, such as updating your contact information or reporting pro bono hours.

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

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

To use this feature, go to the WSBA website at www.wsba.org and click on “MCLE Web Site” in the upper left corner. On the next screen, click on the “Member” tab, then select ”Member Login.” The online instructions lead you through the process of creating a confidential password and using the system. After you log in, you are at your MCLE homepage.

On your homepage, there is a box in the center with a heading banner “MCLE.” Inside that box is a link that says “Search for approved upcoming CLE courses.” Clicking this link brings you to a “Search Approved Activities” box. Enter the city and state in which you would like to find a CLE course. At the bottom of the box there are date fields called “Start Between … And.” The dates default to the next 60 days. You can change the date in each field to any other date. To find a live webcast, input “Webcast” in the city field and change the state field to “Any.” To find a teleconference, input “Teleconference” in the city field and change the state field to “Any.” To find courses being given by a particular sponsor, type the sponsor’s name in the “Sponsor” field.

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

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

Contract Lawyer Meeting
Discuss the issues with other contract lawyers on August 14 from noon to 1:30 at the WSBA office. Bring your lunch — coffee is provided — and network with other...
contract lawyers. For more information, contact Julie Salmon at 206-733-5914, 800-945-9722, ext. 5914, or juliesa@wsba.org. Please note the WSBA's new address: 1325 Fourth Ave., Ste. 600, Seattle.

LAP Solution of the Month: Taking a Vacation?
If not, why not? All work and no play make you grumpy and inefficient. Vacations are good for you and your family, so plan now to get out of town. And turn off your cell phone while you're there! If you feel guilty about even contemplating time off, call the Lawyers Assistance Program at 206-727-8269.

LOMAP and Ethics on the Road: The 2007 Traveling Seminars
Plan to attend in Moses Lake on August 7 or Wenatchee August 8. September locations are Port Angeles on 9/18, Port Townsend on 9/19, and Port Orchard on 9/20. Registration is $89. This seminar has been approved for four CLE ethics credits. For more information and a complete calendar of fall seminars, contact Julie Salmon at 206-733-5914, 800-945-9722, ext. 5914, or juliesa@wsba.org, or visit www.lomap.org.

Computer Clinic
The WSBA offers a hands-on computer clinic for members wanting to learn more about what Microsoft Office programs such as Outlook, PowerPoint, Excel, and Word, as well as Adobe Acrobat, can do for a lawyer. Are you a total beginner? No problem. The clinic teaches helpful tips you can use immediately. Computers are provided, and seating is limited to 15 members. There is no charge, and no CLE credits are offered. The August 13 clinic will focus on using Excel and conducting Internet research. The August 22 clinic will focus on the basics of getting started, Windows navigation, computer features, and security and maintenance. Clinics are held from 10 a.m. to noon at the WSBA offices. For more information or to RSVP, contact Julie Salmon at 206-733-5914, 800-945-9722, ext. 5914, or juliesa@wsba.org. Please note the WSBA's new address: 1325 Fourth Ave., Ste. 600, Seattle.

Job Seekers Discussion Group
Looking for a job or making a transition? Join us at the Job Seekers Discussion Group the second Wednesday of each month from noon to 1:30 p.m. The next meeting is August 8 at the WSBA offices. Abby Smith, LAP counselor, will talk about "Stress: What Can It Do for Us? To Us? How to Manage 'The Beast.'" Benefit from opportunities to network and exchange information and ideas with other lawyers looking to make a change. Come as you are — no need to RSVP. For more information, contact Jennifer Favell, Ph.D. at 206-727-8267, 800-945-9722, ext. 8267, or jenniferf@wsba.org.

Problem Getting a Client to Pay?
Dispute with another lawyer or an expert witness? The WSBA offers two programs to aid in the resolution of disputes involving lawyers. These programs serve both members and the public. The Fee Arbitration Program focuses on fee disputes between a lawyer and his or her client. To participate, both parties must agree to be bound by the arbitrator's decision. The Mediation Program provides a venue for parties to work together to resolve any dispute involving a lawyer, including those between a lawyer and a client, a lawyer and another lawyer, and a lawyer and another professional. Either party to a dispute may initiate

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fee arbitration or mediation. Both programs are non-disciplinary, voluntary, and confidential. For more information, visit the WSBA website at www.wsba.org/lawyers/services/adr.htm or call the ADR coordinator at 206-733-5923 or 800-945-9722, ext. 5923.

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

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

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

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

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

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

**Upcoming Board of Governors Meetings**
*September 20-21, Seattle • October 26-27, Winthrop • December 7-8, Everett*
With the exception of the executive session, Board of Governors meetings are open, and all WSBA members are welcome to attend. RSVPs are appreciated but not required. Contact Donna Sato at 206-727-8244, 800-945-9722, ext. 8244, or donnas@wsba.org. The complete Board of Governors meeting schedule is available on the WSBA website at www.wsba.org/info/bog/schedule.htm.

**Usury Rate**
The average coupon equivalent yield from the first auction of 26-week treasury bills in July 2007 was 5.012 percent. Therefore, the maximum allowable usury rate for August is 12 percent. Information from January 1987 to date is on the WSBA website at www.wsba.org/media/publications/barnews/usury.htm.
Disciplinary Notices

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

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

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

Disbarred

Satwant Singh Pandher (WSBA No. 17269, admitted 1987), of Everett, was disbarred, effective February 6, 2007, by order of the Washington State Supreme Court following a default hearing. This discipline was based on his conduct between 1998 and 2005 in a number of matters involving multiple acts of misconduct.

Mr. Pandher’s conduct establishing grounds for discipline included the following:

• Failing to diligently pursue and protect client interests in three immigration matters and one boundary dispute matter.
• Failing to communicate with clients, making misrepresentations to clients about the status of their cases, failing to respond to client requests for information, and instructing a client not to contact him or the tribunal in order to conceal his own nonfeasance.
• Consulting with an individual about a dissolution matter and then representing the adverse party in the same proceeding without obtaining written consent after a full disclosure of material facts.
• Communicating with a party represented by counsel about subject matter of the representation.
• Continuing to represent a client in an immigration matter despite an inability to communicate with the client owing to a language barrier.
• Misrepresenting facts to an adverse party.
• Failing to communicate to a client the basis, rate, and factors involved in determining the fee charged, charging an unreasonable fee, and charging a fee for which no services were performed.
• Failing to give a client reasonable notice that he was terminating the representation and failing to refund the unearned portion of the fee.

Mr. Pandher’s conduct violated RPC 1.1, requiring a lawyer to provide competent representation to a client; RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; RPC 1.4, requiring a lawyer to keep a client reasonably informed about the status of a matter, promptly comply with reasonable requests for information, and explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; RPC 1.5(a), requiring a lawyer’s fee to be reasonable; RPC 1.5(b), requiring a lawyer, when the lawyer has not regularly represented the client or if the fee agreement is substantially different than that previously used by the parties, to communicate to the client the basis or rate of the fee or factors involved in determining the charges for the legal services; RPC 1.9(a), prohibiting a lawyer who has formerly represented a client in a matter from representing another client in the same or a substantially related matter in which that person’s interests are materially adverse to the interests of the former client unless the former client consents after consultation and a full disclosure of the material facts; former RPC 1.15(d), requiring a lawyer to take steps to the extent reasonably practicable to protect a client’s interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee that has not been earned; RPC 3.1, prohibiting a lawyer from bringing or defending a proceeding, or asserting or contending an issue therein, unless there is a basis in law and fact for doing so that is not frivolous; RPC 4.1, prohibiting a lawyer, in the course of representing a client, from knowingly making a false statement of material fact or law to a third person; RPC 4.2, prohibiting a lawyer, in representing a client, from communicating about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter; and RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

Kathleen A.T. Dassel represented the Bar Association. Mr. Pandher did not appear either in person or through counsel. Moses F. Garcia was the hearing officer.

Suspended

Gail Schwartz (WSBA No. 28994, admitted 1999), of Spokane, was suspended for six months by order of the Washington State Supreme Court following a default hearing. This discipline was based on her conduct involving lack of competence, lack of diligence, failure to expedite litigation, failure to communicate with a client, and failure to abide by a client’s decisions.

In November 2000, a client hired Ms. Schwartz to represent her in a tort matter that had arisen in October or November 1999 when a pitbull terrier escaped from its owner’s yard, ran into the client’s yard, and attacked and injured the client’s dog. While trying to separate the dogs, the client fell and sustained physical injury. The attack occurred within the city limits of Almira, Washington, where a city ordinance prohibited pitbull terriers within the city limits. The client wished to file an action against the dog’s owner and to pursue an action against the city of Almira for failure to enforce the ordinance. The statute of limitations for the client’s tort claim against the city expired three years from the date of her injury (October or November 2002). In January 2000, the client filed a “citizen complaint” with the city of Almira regarding the pitbull attack.
Ms. Schwartz agreed to represent the client and bring an action against the city of Almira, its insurance carrier, and the pitbull’s owner. The client informed Ms. Schwartz that she specifically wanted the matter filed in Spokane County because she felt that she would not receive a fair hearing in Lincoln County. Ms. Schwartz never informed the client that, owing to jurisdictional issues, the matter could not be filed in Spokane County. In October 2001, Ms. Schwartz filed a lawsuit against the pitbull’s owner and the City of Almira in Lincoln County. Ms. Schwartz met with the client twice to discuss the case, but subsequently did nothing more on the matter. The client attempted to contact Ms. Schwartz several times without success.

In early 2002, the client discussed the case with another lawyer. The lawyer informed Ms. Schwartz that the claim was probably deficient and that Ms. Schwartz should dismiss the lawsuit and refile it in an adjoining county in the proper form. The lawyer also recommended that Ms. Schwartz obtain the client’s medical records and communicate more with the client. Ms. Schwartz assured the lawyer that she planned to refile the matter in Spokane County and that she would contact the client and obtain the medical records promptly.

In September 2002, the lawyer contacted Ms. Schwartz and found she had still not done anything on the client’s matter. After referring Ms. Schwartz to the appropriate court rule, the lawyer told Ms. Schwartz that she still thought there was time to take a voluntary nonsuit and refile the claim. She also told Ms. Schwartz that if she wanted to terminate representation, she should file the claim first to protect the client’s rights. In November 2002, Ms. Schwartz dismissed the Lincoln County action with the intent of refile it in Spokane County, but she never refiled the lawsuit.

Ms. Schwartz’s conduct violated RPC 1.1, requiring a lawyer to provide competent representation; RPC 1.2(a), requiring a lawyer to abide by a client’s directives concerning the objectives of representation; RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; RPC 1.4, requiring a lawyer to keep a client reasonably informed about the status of a matter, to promptly comply with reasonable requests for information, and to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; and RPC 3.2, requiring a lawyer to make reasonable efforts to expedite litigation consistent with the interests of the client.

Sachia Stonefeld Powell represented the Bar Association. Ms. Schwartz did not appear either in person or through counsel. Frederic G. Fancher was the hearing officer.

Non-Disciplinary Notice

Suspended Pending Outcome of Supplemental Proceedings

Sharon L. Gain (WSBA No. 27972, admitted 1998), of Puyallup, was suspended pending the outcome of supplemental proceedings, pursuant to ELC 7.3, effective June 19, 2007, by an order of the Washington State Supreme Court. This is not a disciplinary action.
Ekman, Bohrer & Thulin, P.S.
is pleased to announce that

David Tuttle
has joined the firm as an associate attorney.

Mr. Tuttle received his law degree from Seattle University. His practice will support the Firm’s continuing practice of ERISA and employee benefits law, including the joint labor and management sector.

220 West Mercer Street, Suite 400
Seattle, WA 98119
Telephone: 206-282-8221 • Facsimile: 206-285-4587
E-mail: d.tuttle@ekmanbohrer.com

Groff Murphy, PLLC
is pleased to announce that

Theodore A. Sheffield
has joined the firm as an associate.

Mr. Sheffield received his law degree from Duke University and his undergraduate degree from Pomona College.

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

300 East Pine Street
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Seattle, WA 98104
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Website: www.rmcomplaw.com

Michael H. Weier
has been elected President and Managing Shareholder of the firm.

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has become a member of the firm.

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Michael P. Iaria

for receiving the President’s Award for distinguished service to the highest traditions of the criminal defense bar from the Washington Association of Criminal Defense Lawyers.

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INSURANCE BAD FAITH
For when they insure it is sweet to
them to take the money; but when
disaster comes it is otherwise and
each man draws his rump back and
strives not to pay.
— Francesco di Marco Datini —
Florentine businessman, letter to his wife,
14th century.

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Tom Fender,
formerly Vice Chair of the Intercity Transit
Authority, has 35 years of active bar
participation in Washington and Oregon.
He has served as a public official, municipal
manager, naval aviator, government relations
director, tax administrator, assistant professor,
and counsel to the Washington Senate Judiciary
Committee. Mr. Fender’s formal education
includes naval aviation, industrial processes,
science, and engineering.

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