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And the beat goes on

For the love of God and all that is good and holy in this world, will the Bar News please give the diversity drum a rest for a while? I’m proud to be from Washington and I’m proud to be a member of the WSBA, but it is embarrassing now that my co-workers chuckle at pretty much every issue of the Bar News that I receive. “What’s the diversity angle this month?” they ask.

Yes, diversity is important and deserves attention. Pretty much everyone agrees with that. But come on folks, are there no other social issues up in Washington equally as deserving of so much constant attention? It’s not very edgy stuff to preach diversity to a group that already supports the basic premise and benefits of this social issue. In fact folks, it’s just lazy. Can your writers and contributors please step it up a little bit and find stories that might be a little more topical, cutting-edge and controversial?

Brian Brunkow, San Diego, CA

Here come da judge

There has been quite a letter-writing point and counterpoint in the Bar News recently between citizens and lawyers concerning the proposed Judicial Accountability Initiative Law (J.A.I.L. for Judges) to bring accountability to our judges. Here is an idea for a change in courtroom procedure that might please the J.A.I.L.-for-Judges citizen proponents. The idea may even please some lawyers.

The judge should enter the courtroom in a business suit without any black robe and walk to a desk at the same level as all other seating in the courtroom. If anything is elevated, it should be the jury box. The judge’s high bench has been permanently removed. The judge addresses the people: “Ladies and Gentlemen of the American public, this is your courthouse, and I am your humble servant. May I please be seated?”

This new courtroom procedure is more befitting the J.A.I.L.-for-Judges paradigm of judges as accountable public servants than the present paradigm of judges as lords of the courtroom, enjoying judicial immunity.

One wonders where the doctrine of judicial immunity comes from, anyway, since anything like judicial immunity appears to be expressly forbidden by the Washington Constitution in Article 1, Section 8, and Article 1, Section 12: “No law granting irrevocably any privilege, franchise, or immunity shall be passed by the legislature (Article 1, Section 8): “No law shall be passed granting to any...
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class of citizens ... privileges or immunities which upon the same terms shall not equally belong to all citizens (Article 1, Section 12).”

Why should any lawyer be upset or threatened by the proposed Judicial Accountability Initiative Law? After all, J.A.I.L. for judges is merely a form of Civil Rule 11, sanctions for judges — something long overdue. Lawyers are subject to CR 11 sanctions and fines imposed by judges for advancing a claim or defense “[un]warranted by existing law.” So why shouldn't judges be subject to sanctions and fines for making any judicial ruling unwarranted by existing law?

The lawyers are held accountable under CR 11 by their superiors — the judges; and the judges should be held accountable under the proposed Judicial Accountability Initiative Law by their superiors — the people. “All political power is inherent in the people ....” (Washington Constitution, Article 1, Section 1).

Tom Stahl, Ellensburg

Do you want to know a secret?

The September Bar News contains articles by Doug Ende and Anne Seidel, both of the WSBA staff, concerning amendments to the RPC which sometimes require lawyers to disclose confidential information, and sometimes make it discretionary. I object to this dilution of the attorney client privilege because it weakens the ability of a lawyer to defend a client.

In order to understand why this rule is so pernicious, it is important to understand what lawyers and courts do. Courts are government and they take money, property, and freedom from individuals and corporations. Lawyers defend their clients from the courts. Of course, lawyers also attack and attempt to take the property of defendants, but it is always the court that signs the orders that deprive an individual or corporation of property or freedom.

Given that the lawyer is the only line of defense to a defendant in court, it is important that the lawyer be loyal. This means the lawyer must act on behalf of the client and not the lawyer. It means that the lawyer’s attention must be directed to the defense of the client and not the lawyer.

The rules intentionally undermine that relationship of loyalty. The lawyer is required to reveal information that might supposedly prevent reasonably certain death or substantial bodily harm. The lawyer risks disbarment and the expense of a painful prosecution if she does not reveal something that might cause “substantial bodily harm.” Since most modern industrial products from paint to airplanes cause “substantial bodily harm” or death in some way, every lawyer defending a corporation would have to inform on the client whenever they counsel them on anything to do with their products. If a client is considering making a product cheaper and better but arguably less safe, the lawyer would have to inform.

At the least, this rule will cause corporations to be less than candid with their counsel because they know that the lawyer is required to inform on them. And while not all lawyers will run to the “authorities” whenever their client makes something, they will at all times be thinking not just about their clients but about their own defense. Their feet will be in two boats.

The discretionary part of the rule, giving lawyers, not clients, the choice of a confidential relationship, has all the bad qualities of the mandatory rule. The discretionary rule allows a lawyer to reveal information to prevent, mitigate, or rectify substantial harm to the financial interests of another that has resulted from the client’s commission of a crime or fraud, where the client has used the lawyer’s services. This puts the client in the utterly vulnerable position of not having confidentiality. It is all subject to the choice of the lawyer. The rule may sound limited, but the U.S. Code has many crimes: economic, conservation, privacy, employment, disclosure of information. Fraud can be broadly defined. The rule covers almost everything. Many lawyers will fear that they will be sued if they do not disclose information that might have to do with some financial interest that might be connected to some possible environmental or securities or regulatory or false-statement crime and someone’s “financial interests." A lawyer whose client is not perfect, even a lawyer whose client is perfect, a lawyer whose client is not popular with the AG, all will find that their feet stand in the bottom of two unsteady boats.

Lawyers should be able to defend their clients. This rule should be abandoned.

Roger Ley, Seattle

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n mid-October, when the days were still warm but sunsets came too early, I was reminded to get out the little light box that has become my winter companion. About eight years ago, after having lived in the Northwest more than 20 years — and in northern climes my entire life — I suddenly found that the absence of daylight in winter months was taking a toll on me. I was tired by mid-afternoon, when I am typically most productive, and found it difficult to wake up in the dark mornings. Normally a cheerful person, I felt grouchy and irritable — even mildly depressed.

Fortunately for me, a friend who had experienced marked symptoms of seasonal affective disorder (SAD) for some time told me about the light box that she used to fight the weariness and mood changes that can visit any of us in the late fall. A quick search on the Internet revealed a number of products intended to stimulate the hormones that keep us alert and functioning during the long dark days of winter. I purchased a small, thin box the size of a paperback book that sits on my desk next to my computer. It holds a number of lights that shine brightly, but without a glare. Following instructions carefully, I turned on the lights while I looked at e-mails first thing in the morning. My afternoons no longer dragged, and, even more important to me, my normal cheerful nature returned. So each fall, I take the little box out of its wrapping and set it up next to my computer screen for the winter.

I am not a scientist, and I will not attempt to tell you how or why it works, but, for me, this little light box is a minor miracle. For others, who suffer more severe symptoms of SAD, which can include serious depression, a daily dose of light from a little light box may not be enough to combat the symptoms of seasonal light deprivation. Fortunately, SAD is understood and is treatable.

**Lawyers at Greater Risk**

While not all Washington lawyers are affected by SAD, as a group, we are nonetheless at much higher risk than the general population of suffering depression, as well as a number of other symptoms that are related to stress. In fact, a number of recent studies have concluded that the practice of law is among the top three or four occupations in incidence of clinical depression. A paper authored by the then-chair of the ABA’s Intellectual Property Section Ethics Committee in 2004-2005 surveyed an impressive history of literature on depression and substance abuse among lawyers and concluded that “depression seriously afflicts the legal community today, and continues to hamper the health of many more lawyers than any other profession.” Another study concludes that “a significant percentage of practicing lawyers are experiencing a variety of significant psychological distress symptoms well beyond that expected of the general population.” The January 2006 edition of the *ABA Journal* reported the results of a 1991 Johns Hopkins University study that concluded that, of the more than 100 occupations studied, “lawyers were most likely to experience clinical depression.”

These studies do not just report the level of suffering of lawyers. They also point out the harmful behaviors that sometimes accompany that suffering, such as alcohol and substance abuse, and the relationship those behaviors can have to a lawyer’s ability to function successfully. The 2004-2005 report states that “substance abuse factors into as many as 80 percent of all disciplinary complaints.” Even more disturbing, “the data ... suggest that lawyers have a higher probability of committing suicide than any other profession.” As one lawyer who was interviewed for the ABA Section study put it: “Lawyers work high-stress jobs in a high-stress world. The rewards of the profession can be great, but so are the pressures. And when a lawyer loses control to addiction, be it to alcohol, drugs, or something else, the lawyer’s colleagues — and clients — often suffer as well.”
Talking About It

Our profession places an extraordinarily high value on competence and ability to function under stress. As lawyers, we tend to be perfectionists, to cultivate the ability to be assertive and "on top of things" all the time. We expect a high level of performance from ourselves. As one author put it, "lawyers in general are wired in such a way that makes them more inclined to suffer the ill effects of stress." Yet the pace of a legal practice today can be daunting to the strongest among us. Indeed, a common topic for bar journals and coffee-room conversations alike is the growing array of techniques for reducing stress while meeting increasingly complex client demands — fitting in that hour at the gym, that weekend away with the family, that in-office meditation break, that long-deferred vacation, while still attending to the cell phone and BlackBerry or Treo.

Although we may be willing to talk amongst ourselves about current popular stress-reducing techniques, according to the ABA Section study lawyers are reluctant to talk about the very real problems of depression and substance abuse that can result from too much stress — whether they are our own problems or another's. How many of us have seen a friend or a colleague in trouble and not known whether — or how — to intervene? It is difficult for us to talk about stresses or behaviors that could be perceived as weaknesses, rather than what they are — evidence that we are human beings. As difficult as it is, though, we need to find a way to talk about these problems if we are going to reduce the incidence of serious depression and related dangerous behaviors among lawyers.

A Helping Profession

Law is a helping profession. We are trained to help our clients solve complex and difficult problems. Often, we help them face crises in their lives. We know how to find good information and act on it. There is a lot of good information about depression and other stress-related problems. Those problems are understood and they are treatable. We are extremely fortunate in this state to have one of the leading experts in the field of lawyer depression and other stress-related problems, as the director of our Lawyers Assistance Program. Barbara Harper is recognized nationally for her knowledge in this field, and for the program that she heads. You can feel confident that a call to Barbara or any of the other excellent members of the Lawyers Assistance Program staff will be held in confidence (per APR 19(b)), whether your call pertains to yourself or to another member of the Bar. The Lawyers Assistance Program telephone number is 206-727-8268 or 800-945-9722, ext. 8268. If you don’t want to call the Washington State Bar Association, you can call the ABA’s toll-free hotline, 866-LAW-LAPS. Or, call your own physician or other trusted advisor. It is important.

Ellen Conedera Dial can be reached at 206-359-8025 or ecdial@gmail.com. If you would like to write a letter to the editor on this topic, please e-mail it to letterstotheeditor@wsba.org or mail it to WSBA Bar News, Attn: Letters to the Editor, 1325 Fourth Ave., Ste., 600, Seattle, WA 98101-2539. Ellen would like to thank Jennifer Favell of the Lawyers Assistance Program for her invaluable assistance in assembling current research for this article.

NOTES
5. Langford, at p. 4.
6. Id.
7. Id. at 14.
9. Langford, at 41.
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WSBA
On The Move

by Stephanie Perry
How do you move a bar association? Well, it takes a little patience, a lot of planning, and plenty of helping hands. On December 8-10, the WSBA will be leaving its present location at 2101 4th Avenue in Seattle and moving to new offices closer to the downtown core — 1325 4th Avenue, Suite 600, in the Puget Sound Plaza building, to be exact. But while the physical move will take just one weekend, the project has actually been in the works for several years.

Assessing the WSBA's Needs
In early 2001, the Board of Governors appointed a committee to study the WSBA’s needs for office space, and how to best meet those needs in the future. The committee asked lawyers around the state about their service needs from the WSBA, and studied the needs of Bar staff as well. The committee examined questions such as whether the Bar should own rather than rent; whether the Bar offices should remain in Seattle or move elsewhere; what facilities visiting lawyers need at the Bar offices; and what facilities the various Bar divisions require. Ensuring adequate visitor parking was also a priority.

“Beginning our search for office space as early as we did was both a blessing and a burden,” explained WSBA Immediate Past-President S. Brooke Taylor. “It gave us time to be very thorough in our search and our analysis, and it also allowed us to be in the market at a time when downtown Seattle lease rates had dropped substantially as a result of the ‘dot-com bust’, and there was a significant amount of space available.” All that research, he said, paid off in the end. “Many factors entered into the decision to move to Puget Sound Plaza, with the key consideration always being to find that facility and location which would be best for our members and for our staff of 135 professionals. Access and parking were huge considerations, with the latter having been a major problem at our existing location.

“I am pleased to report that we have been able to do this without any special assessment or any increase in licensing fees, other than that which we experience annually in order to keep up with inflation,” Taylor added.

The committee found that the flexibility of renting a space, rather than owning, was the preferable option. They also concluded that staying in downtown Seattle would provide the easiest accessibility for staff and visitors. The Bar's new lease is for 10 years, with two options to extend the term for additional terms of five years each. The new location will provide more convenient access to organizations such as the King County Bar Association, the Legal Foundation of Washington, and LAW Fund, as well as lawyers whose offices are located in downtown Seattle.

Puget Sound Plaza
“Our new space in Puget Sound Plaza will afford adequate space for all of WSBA’s staff operations, good parking, a new hearing room for disciplinary hearings, meeting rooms, and a visiting lawyer’s office,” commented WSBA President Ellen Conedera Dial. “The building is in the heart of the downtown business district, with excellent access to bus lines and ferries, and, for visitors and others arriving by car, easy access on and off of the freeway.” The WSBA is also taking advantage of the move to upgrade its telephone system to better serve members, staff, and other callers.

The new space comprises 52,785 rentable square feet, an increase of 17,322 square feet from the Fourth & Blanchard building. The WSBA will occupy floors 6, 7, 8, and a portion of 11. The reception area, public meeting spaces, and the hearing room will all be located on Floor 6.

Customizing the Space
WSBA department directors met with the architects to discuss how each department operates, and the various space needs for storage, offices, workstations, copy areas, meetings, etc. The space at Puget Sound Plaza was designed to accommodate existing staff and temporary workers, as well as projected staff growth over the next 10 years. The new space will accommodate a total of 168 staff. Strict standards were developed to determine how many offices and workstations would be built. The result was 70 offices and 98 workstations. The WSBA’s new offices at Puget Sound Plaza will provide adequate space for staff to do their work, including filing and project areas in each department.
Ensuring adequate meeting space was another important issue. The WSBA hosted more than 2,100 meetings last year, and currently does not have enough room to accommodate the needs of staff and members. The meeting space at Puget Sound Plaza is slightly larger than at Fourth & Blanchard, to better accommodate the various meetings and CLEs that are held on-site. The public meeting rooms are designed so that the larger rooms can be divided into smaller rooms as needed. In addition, medium- and small-sized conference rooms will be spread throughout the space to accommodate smaller staff meetings. The total meeting space (public and internal) programmed for Puget Sound Plaza is estimated to be 12 percent of the usable space (4,144 square feet), compared to 11 percent at the Fourth & Blanchard building (3,562 square feet).

Special Features

A new hearing room is also among the planned improvements. At the Fourth & Blanchard building, 663 square feet of space was leased on the second floor to create a small hearing room. The current amount of space has proven to be inadequate, though, since the nature of WSBA’s hearings has evolved over the years to be more like courtroom trials. Based on feedback from disciplinary counsel, hearing officers, respondents’ counsel, and other staff, the hearing-room facility at Puget Sound Plaza is planned to be just over twice the size of the current hearing room. It will consist of a main hearing room, two witness rooms (which can also be used by others when not being used for hearings), one hearing-officer room, and a storage area.

An Arts Committee was appointed to oversee the look and feel of the new space, including the color palette, décor, carpets, and paint. The committee is also responsible for new signage and the selection of public art. The goal, said Michels, was to create an environment that was "professional, not opulent." She explained, "We picked organic colors to reflect Northwest style, but we also wanted it to have some panache.... It’ll be a better, lighter space. Visitors will notice an upgrade in our furniture, and staff will notice we’re no longer sitting on top of one another! It should be a more collegial place, with areas for people to stand and talk."

The new building is a UNICO property, owned by the University of Washington, which, Michels said, shares the WSBA’s commitment to features such as access for persons with disabilities and wheelchair-accessible restrooms. "It’s a very pleasant, professional, welcoming space for us," she said.

Uninterrupted Service

Moving 135 people — and their workspaces — is no easy task, but preparations have been made to ensure that it goes as smoothly as possible. The WSBA has contracted with a project-management team that is highly experienced in moving organizations in and out of downtown office buildings. The move is planned to occur over the weekend of December 9-10; staff will pack up their own offices and workstations on Thursday and Friday, and unpack them in the new space on the following Monday.

Every effort will be made to ensure that there is as little interruption of service as possible during the move. "We expect that critical computer functions will be functioning right up until the close of business on the Friday before the move, and again first thing on the following Monday morning," said Dial. "We should expect a very busy time for the move, but with professionals at the helm, the move should be a predictable and efficient process. Once we are settled into the new space, we will begin planning an open house for members, staff, and families. We look forward to celebrating the move to new offices!"

Stephanie Perry is the WSBA communications specialist and can be reached at stephaniep@wsba.org.
Since its launch in February 2005, YouTube.com has rapidly grown to become one of the most popular sites on the Web. YouTube allows users to upload videos that others can view as streaming content from its website, all free of charge. With over 70 million videos viewed daily, YouTube is quickly becoming a cultural phenomenon.

The problem for YouTube is that much of the video that is uploaded to and viewed through its site contains copyrighted material that is being posted without the copyright owner’s consent. In July 2006, a California video reporter filed suit in a federal district court, alleging that YouTube infringed on his copyright in news footage that he recorded. The lawsuit, *Tur v. YouTube, Inc.*, No. 06cv4436 (C.D. Cal. filed July 14, 2006), could bring to light the legal uncertainty that has dogged YouTube from the outset.

Will YouTube fare any better than the peer-to-peer file-sharing services that were ultimately shut down for their contribution to massive copyright infringement? The answer will largely depend on how the safe-harbor provision of the Digital Millennium Copyright Act (DMCA), codified at 17 U.S.C. § 512, and the U.S. Supreme Court’s decision in *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 545 U.S. 913, 125 S.Ct. 2764, 162 L. Ed. 2d 781 (2005), are interpreted and applied to YouTube. Given the massive popularity and legal uncertainty surrounding YouTube, the time has come to revisit the state of U.S. copyright law as applied to digital media and analyze YouTube’s legal status.

**The DMCA’s Safe Harbor for Online Service Providers**

The DMCA was passed in 1998 to extend copyright protection to digital media by stiffening penalties for copyright violations on the Internet and criminalizing the use of technologies that circumvent copyright protections. The act, however, also limits the liability of online service providers under 17 U.S.C. § 512. A service provider is broadly defined as a “provider of online services or network access, or the operator of facilities therefor . . .” 17 U.S.C. § 512(k)(1)(B). Service providers are granted a safe harbor from all copyright liability if they adhere to certain requirements. In addition to immunizing service providers that merely act as passive transmitters of users’
files, section 512 also gives safe harbor to service providers that store files and facilitate locating files, as long as they meet several requirements, including the following:

- The service provider must not be aware of any infringing material, and in the event that it becomes aware, it must expeditiously act to remove or disable access to the infringing material.
- The service provider must not receive a financial benefit directly attributable to the infringing activity, in a case in which the service provider has the right and ability to control such activity.
- On notification of a claimed infringement (given in the manner specified in the act), the service provider must act expeditiously to remove or disable access to the claimed infringing material. An agent to receive such notices must be registered with the U.S. Copyright Office.
- The service provider must implement a policy for terminating repeat infringers.

U.S.C. § 512(c)-(d), (i). Unfortunately, there is as yet no guidance as to how narrowly or broadly U.S. courts will read these requirements. Of particular interest is how the requirement of expeditious action to remove infringing material and the prohibition against direct financial benefit from the infringing activity will be interpreted by the courts.

**The Grokster Decision**

Beginning with the groundbreaking case of *A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004 (9th Cir. 2001), U.S. courts have come down hard on services that facilitate the sharing of computer files known to infringe copyrights. Most recently, the U.S. Supreme Court in Grokster strongly endorsed liability for inducing copyright infringement:

We hold that one who distributes a device with the object of promoting its use to infringe copyright, as shown by clear expression or other affirmative steps taken to foster infringement, is liable for the resulting acts of infringement by third parties.

_Grokster_, 125 S.Ct. at 2770. The Court explained the rationale for liability on the part of service providers by noting the impracticality of going after the direct infringers in such instances:

When a widely shared service or product is used to commit infringement, it may be impossible to enforce rights in the protected work effectively against all direct infringers, the only practical alternative being to go against the distributor of the copying device for secondary liability on a theory of contributory or vicarious infringement.

*Id.* at 2776. In Grokster, the defendants provided software that allowed users to locate and share files remotely via a peer-to-peer computer network. Critical to finding liability was evidence that the software was specifically marketed for infringement and the providers actively sought to profit from rampant infringement by people using their software. This form of liability based on active inducement vitiates any claim for immunity under the DMCA’s safe-harbor provision.

**Because the videos available through YouTube are uploaded onto YouTube’s servers and then streamed onto users’ computers via YouTube’s website, the argument can certainly be made that YouTube is in fact more culpable than the mere providers of file-sharing software.**

that the software was specifically marketed for infringement and the providers actively sought to profit from rampant infringement by people using their software. This form of liability based on active inducement vitiates any claim for immunity under the DMCA’s safe-harbor provision.

**The Case Against YouTube**

The recent complaint filed against YouTube alleges direct, contributory, and vicarious copyright infringement. Moreover, it specifically attempts to invoke the inducement theory of liability espoused in Grokster.

Because the videos available through YouTube are uploaded onto YouTube’s servers and then streamed onto users’ computers via YouTube’s website, the argument can certainly be made that YouTube is in fact more culpable than the mere providers of file-sharing software. YouTube may in fact risk liability as a direct infringer for its role in actively distributing copyrighted video. At the least, YouTube may be a contributory infringer for materially contributing to the direct infringement of those uploading copyrighted videos. Inducement liability, as described in Grokster, would exist if it could be shown that YouTube promotes the infringing use of its services.

There is also a case for vicarious liability. Vicarious liability for copyright infringement requires a right and ability to supervise, as well as a direct financial interest in, the infringement. Clearly, YouTube has the ability to police the videos shown through its own site, and it may be argued that it has a direct financial interest if YouTube can be shown that the infringing material draws more users to its site, which in turn creates more advertising revenue. This type of argument for finding financial benefit was supported by the Supreme Court in Grokster.

Although YouTube falls squarely within the definition of a “service provider” under the DMCA, it cannot invoke the safe-harbor provision if it is found to actively induce copyright infringement as suggested in the Grokster opinion. YouTube could also be precluded from claiming safe harbor if a court finds it did not act quickly or effectively enough to stop distributing infringing material that it has become aware of, or if it is found to be receiving direct financial benefit from infringement. The continued access to large quantities of copyrighted material through YouTube’s website could support an allegation that it is not making a good-faith effort to disable access to infringing material, and, as mentioned above, the infringing material could be providing a direct financial benefit in the form of increased advertising revenue.
The Case for YouTube

YouTube has, on the other hand, taken several measures to ensure that it is shielded from any liability for infringement on the part of the users of its site. Its “Terms of Use” and “Copyright Infringement Notification,” both available on its website, carefully track and specifically reference the provisions of the DMCA for copyright owners to provide notice of infringement. YouTube also has a policy for terminating the accounts of repeat infringers. The providers of Napster and Grokster were both stung for not removing copyrighted material from their website or banning repeat infringers.

Moreover, it does not appear that YouTube has promoted the sharing of infringing material using its service. To the contrary, YouTube has marketed itself as a place for people to share homemade videos. It recently set a 10-minute limit on the length of any video, in order to prevent the uploading of full-length copyrighted shows and films. The fact that videos are streamed over the Internet, as opposed to being downloaded onto users’ computers (where they could not be retrieved), also lessens the potential damage to copyright owners and discourages infringement. Hackers have made available simple ways to get around this limitation and allow files to be saved to a user’s hard drive, but YouTube, for its part, has not endorsed this practice and has even adjusted its system to prevent at least the simpler hacks. YouTube has also attempted to structure its business model to minimize the appearance of directly benefiting from infringement. Whereas Grokster’s only substantial source of revenue was from advertising that was clearly linked to the huge flow of infringing material over its network, YouTube has broadened and actively promoted legitimate uses of its network as possible revenue generators. It recently began streaming promotional videos paid for by advertisers, and it partnered with NBC to show previews of upcoming NBC shows. YouTube is even reportedly in talks with music industry executives to make available on YouTube entire libraries of music videos.1

Perhaps most favorable for YouTube, however, is the fact that many people use its services for legitimate purposes. There seems to be a desire in many people to share their amateur videos, and YouTube’s services have allowed millions of users to do just that. Whereas Grokster’s overwhelming use as an aid to copyright infringement defeated any concern for protection of technological innovation, YouTube can make a much stronger case. This brings to mind the Supreme Court’s stance in Sony Corp. of America v. Universal City Studios, Inc., 464 U.S. 417, 104 S.Ct. 774, 78 L. Ed. 2d 574 (1984), in which the Court found that the substantial, noninfringing uses of the VCR were sufficient to prevent Sony from secondary liability for copyright infringement when customers used it to infringe. Although the non-infringing uses of the VCR were at that time minimal — the market for home video rentals was not even considered at the time — the Court gave weight to the potential for future legitimate uses of the technology. The Court has so far refused to directly revisit and clarify the Sony holding, and it
is unlikely that the current case against YouTube will make it that far. Nonetheless, the Court’s attempt to balance the prevention of copyright infringement with the need to protect technological innovations that have lawful uses seems relevant, and as digital media continues to expand, a similar balancing will likely be needed.

Conclusion
In spite of its best efforts to protect itself, YouTube appears to be the next target as copyright holders seek to limit the damage caused by the increasingly widespread sharing of copyrighted digital media. While the merits of Tur v. YouTube, Inc. are not yet clear, it is possible that this will turn out to be the first significant test of the DMCA’s safe-harbor provisions for service providers. If YouTube prevails, it could be a major victory for supporters of file-sharing who are in need of good news following the rebuke of Grokster, whereas a victory for the plaintiff could open the door for massive liability, possibly dooming YouTube to be the next Grokster and raising the question of whether a file- or media-sharing service can ever feel safe from copyright infringement liability. Either way, this case and any similar copyright lawsuits will be interesting to watch, as the interaction of U.S. copyright law and the sharing of digital media continues to evolve.

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NOTES
1. Although it has recently been reported that Universal Music Group has threatened to sue YouTube for copyright infringement if talks between the companies do not yield an agreement.

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True Confessions of a Reservation Attorney

BY JACK FLANDER

I was born and raised on the Yakama Reservation, between the unincorporated town of White Swan and the area known as Medicine Valley. My father, who was born in 1913, was also born there, as was my grandmother, great grandfather, and great-great grandfather. My brother and sisters and I were the first members of our family who were born as U.S. citizens. The rest were merely wards of the government, at least until 1924 when the U.S. Congress granted U.S. citizenship to tribal Indians, in recognition of their tremendous rates of military service. I was the first member of my tribe to become a member of the Washington State Bar Association.

The government of this country, and of this state, has not always been kind to my people. Smallpox and alcohol, crude forms of chemical warfare, were introduced upon them. Homestead Acts displaced them from their homelands. New Deal projects to keep America working destroyed many of their resources. People like my father were sent away to Bureau of Indian Affairs boarding schools to un-learn their language and communal ways. The government succeeded in instilling in him mixed feelings about his own self-worth. I suspect that many of our people, like me, have ambivalent feelings when the flag-waving begins.

Having been told by the government for many years that we are second-class citizens, too pitiful to even portray ourselves on TV westerns, I try on a regular basis to undermine my successes. From Sitting Bull to Bob Satiacum and David Sohappy, the precedent is there. If you become too successful,
you had better start ducking. Although I have been a licensed attorney for some 24 years, I wake up every day expecting to be carted off in handcuffs for some petty offense like most of the people I grew up with.

Like my hero Kamiakin, who was not impressed with the 1855 treaty offered by the U.S. government (and whom I named my son after), I often just want to be left alone. Being an Indian lawyer is both spiritually uplifting and exhausting. Governmental policies have created too many broken lives to fix, and our communal ways have broken many young lawyers who have tried fiercely to improve the lives of too many families while impoverishing their own. The barter system is too deeply ingrained in what little reservation economy there is. It is difficult to explain to your wife that your income for representing people for the month was based on receipt of a pony, a 30-30 Winchester rifle, salmon, and deer meat. As such, I am sometimes reluctant to help people although I know that it is my duty.

If they desire to retain me, they must come out to the house, park on the road, climb the fence, and find me out in the field. I shall never become accustomed to telephones, having been taught as a youth to speak face-to-face if you needed to talk to someone. It is not a style of practicing law that the Bar Association looks kindly upon. It works for me, because I am dealing with people like myself, who understand the desire to stay off the radar screen.

Usually, in this state, I already know what’s going to happen, so it’s just a matter of going to the right shelf, finding one of my timeworn briefs, and blowing the dust off it. If one of my people come calling, it means some poor fella trying to feed his family got arrested for killing a deer or elk according to his treaty rights — or that they got cited for some violation the state has no jurisdiction over on the reservation, such as “burning on a no-burn day” or some other nonsense, or perhaps the sheriff plucked them off tribal trust land where he has no authority. Either that, or someone got arrested for “probable cause,” also known as “one or more reservation Indians in a moving car after sunset.”

This is one of the benefits of being a reservation attorney in Indian Country — the great landmark federal Indian law pronouncements of the U.S. Supreme Court on the rights of my people, and sometimes on civil rights in general, have very little trickle-down effect on rural counties between here and, oh say, Ohio. I get to reenact and argue the great Indian law cases of the past century on a regular basis before the district and justices courts, such as United States v. Washington (establishing Indian treaty fishing rights), Bryan v. Itasca County (states lack regulatory jurisdiction in Indian Country), and United States v. United States Fidelity & Guaranty Company (Indian tribes possess sovereign immunity from suit). For some reason, such precedents don’t stick as well in the outback.

One of the drawbacks — some would say honor — of being a Yakama member attorney among your people is that the culture has to find a place to put you, which usually means you are meowitch. Meowitch is also the name in our language for the male fool hen, a noble bird which sacrifices itself so the rest of its flock can escape capture and survive. You are expected to make great sacrifices and work tirelessly so that the rest of your people can advance. This runs counter to the main reason why most folks go into practicing law — to make a lot of money. The culture also constrains my conduct. A couple of times a week when I get to work, there’s already a grandma or grandpa with some dire issue waiting for me in the parking stall out front. I can’t ask them to pay me for assisting them — the thought wouldn’t even occur to me or them. I am a young, able-bodied man, and they are elders, simple as that. I have a duty to assist them.

I lose several hours a week this way.

It is difficult to explain to your wife that your income for representing people for the month was based on receipt of a pony, a 30-30 Winchester rifle, salmon, and deer meat.

which is why I sometimes encourage the young tribal member attorneys that it is okay for them to be a little remote. Otherwise you end up helping too many people. I tell them that it is difficult to soar with the eagles when you are carrying too many people on your wings.

Practicing law requires a lot of gut-wrenching soul searching for many tribal member attorneys out here. Although we take an oath of admission as a member of the Washington State Bar Association, our unwritten tribal laws take precedence, and the two can be difficult to reconcile.

Once, while serving as in-house counsel for my tribe, one of the newer attorneys complained to me as his supervisor that the Tribal Chairman had given him an assignment that was well outside the scope of his job description. “If the Chairman gave you an assignment, you must do it,” I told him. “It’s the law.”

After I got married, besides being a lawyer, I had to work for my grandmother-in-law — fixing fences, building outhouses, painting sheds, and whatever other demands she made as head of her longhouse — for nearly three years, until someone else married and became the newlywed, or chinutch. It was the law. When my adopted mother died, I quit working for a whole year. It was the law. One time, a prominent man in our community who was discov—
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ed to be a child molester disappeared.
It was the law.

Often, my tribe desires that legal action be taken when the rapid development of this state threatens an important cultural site. I must attempt to do so without disclosing its nature or exact location, because the unwritten laws I am subject to prohibit such disclosure. It is frustrating for me. It is frustrating for the land-use authorities.

As a tribal lawyer, water law is the most frustrating. According to the natural law of the Yakamas, water is the highest resource we are required to protect in its natural state, as all life depends upon it. Western water law, however, does not usually recognize that as a "beneficial use." Instead, the use of water becomes a right only if it is taken out of its natural state and "appropriated" to one's benefit. It is like we are speaking two different languages.

The type of federal Indian law many of us practice down here in the trenches of the district, municipal, and superior courts in the outlands of this state is often not pretty. Your knuckles and your spirit can get a little dirty. I am no longer user-friendly and cannot say that I apologize for it.

I love practicing law, and as I limp toward the end of my career I know that I am, and have been, blessed to be a part of such a great profession. I also love reading the Washington State Bar News and other law journals. Occasionally, articles appear in them which are written by practitioners of federal Indian law. Usually these are handsome, knowledgeable, scholarly, and successful people. Just as my people were not deemed polished or talented enough to portray themselves in the TV movies, however, I often wonder why most of them do not seem the least bit like me.

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The Mother of All Battles
(Sparring with Medicare with Your Mother in the Corner)

BY STEVEN A. REISLER

There are rites of passage in American culture: your first kiss, your first beer, and your first invitation to join the American Association of Retired Persons the moment that you turn 50. A mere decade or so after being recruited by the AARP, you will be introduced to the delights of Medicare, that peculiarly American miasma of administrative rules, procedural spaghetti, and briar patch of politicized healthcare.

Unlike in many modern countries where socialized medical care is a government-subsidized public right, U.S. citizens tend to think of healthcare in terms of private "insurance" — either as an emolument of employment or, to the millions of part-timers or unemployed, as an unaffordable luxury. But even for those "employed" who have medical insurance, at that precise moment when advancing age strikes you from the paycheck rolls, enfeebles your body and your brain, and tosses you into the loving hands of the big pharmaceutical companies, precisely then are you faced with the task of comprehending what the Congress and the United States Administrative Code have wrought for medical care for our senior citizens.

Like most Americans, I learned about Medicare not from the law books, but from trying to decipher it in the context of my own parents; in this instance, in the case of my octogenarian mother.

My mother is a product of New York's Lower East Side. For those of you who are not familiar with The City of the 1920s, '30s and '40s, think of a time when both the Dodgers and the Giants were cross-town baseball rivals. Think also of growing up poor in brownstone tenements, congested and noisy streets, sleeping on fire escapes in your underwear during the summer, broken-bottle gang fights, vegetable carts, fishmongers, and blue-collar working-class immigrants. My mother learned how to scrape and scrabble, how to look out for herself, and how to survive in a mean world. This is a woman who, while a resident in a retirement home in her late 80s, was nearly written up for "conduct unbecoming a senior citizen" after she refused to follow residential "rules" of order that were more ritualistic than meaningful. I refer, of course, to a certain toughness of mind and spirit, though definitely not a toughness of body. Thus in January 2006, when my 88-year-old mother landed in a local hospital for one of her quarter-annual medical emergencies — this time a severe corneal ulceration and infection — she was eventually discharged to a Skilled Nursing Facility (SNF, euphoniously referred to as a "sniff") to undergo rehabilitation for her eventual return to her own apartment and independent living.

Once, I imagined that all parents aged like characters in Norman Rockwell paintings. You know, old men become tri-spectacled, flannel-shirted dispensers of patient wisdom and women became plump and aproned cookie-bakers with a perma-smile and dimpled cheeks. So much for popular mythology. While some people's parents might grow into senior-citizen Madison Avenue archetypes, my long-widowed mother evolved into an anxious, memory-challenged, web-surfing health neurotic who would no more bake cookies than eat anything that contained nuts, egg yolks, salt, sugar, chocolate, seeds, caffeine, fruit skin, tomatoes, yeast, fat, oil, flavor, or anything else that makes eating tasty and meaningful. Now when you compound this idiosyncratic personality with a serious infection (infections often cause confusion in the elderly), the irrational peculiarities of senior mentality, and the physical disabilities of old age, you have a patient who can be very interesting for the staff of a skilled rehabilitation facility trying to do their best. So while some senior citizens might go gently into that nursing home good night, my mother would go kicking and screaming. This makes life rather difficult for the cadre of limited nurse practitioners, social workers, and therapists, who prefer
a more compliant clientele who take their meds and sedatives on schedule, blankly watch television, or sleep the days away. All of which should have warned me that something was not all right when, only a few days after admission, I, as my mother’s nearest kin with power of attorney, was urgently requested to sign a discharge notice agreeing that my mother no longer needed skilled nursing care, could be discharged imminently to care for herself, and that any nursing care provided after date X would be charged to her personally.

A word about how Medicare pays for benefits. Seniors pay premiums for the type of healthcare benefits they want to have, usually described as an alphabet soup of Plan A, B, C, and so forth. Some plans provide only the barest levels of coverage. Other levels of benefits are layered on successively — for an additional premium, of course — and private “supplemental insurance” is also available (also for a price). One wonders, of course, how retired seniors are supposed to pay for this “medical insurance” and how they are supposed to make knowing decisions about which plans to purchase at the time they become “senior citizens,” but that is a discourse for another day.

Medicare, in turn, employs a private company to scrutinize the bills of medical providers, matching services with codes and scouting for signs of over-billing or over-treating. Once a provider’s invoice is approved, Medicare then pays, but at a significantly reduced payment schedule, roughly equatable to a law firm’s senior partners handling a complex matter and then having the bill paid at paralegal rates which are then whacked by an additional 40 percent. Needless to say, this leaves medical providers rather unhappy, and were it not for the volume provided by Medicare, most would not bother at all.

I do not know, but only suspect that Medicare’s stinginess discourages not only excessive medical care but, in some instances, appropriate medical care as well. Notwithstanding the Hippocratic Oath, logically, there must be a limit to which treaters are willing to handle difficult and protracted cases without adequate compensation. That limit, faced with the unique charm of my octogenarian mother enhanced by a personality-distorting infection, probably affected the decision to either push my mother out of the skilled nursing facility or to make her pay full freight for their troubles.

Despite their intention to discharge her, my mother was definitely not ready again for independent living, as was clear from her deteriorating mental condition, her obstinate refusal and inability to perform a Mini Mental State Examination (MMSE), and her physical inability to even locate her eyeballs to administer her own eye drops. Thus, subsequent to the proposed date of discharge, further medical examination determined the obvious: her infection was worse, spreading to other parts of her body and weakening her overall physical and mental capabilities. The resident doctor refused to discharge my mother until she could demonstrate adequate mental faculties, and the ophthalmologist determined that my mother must remain at the skilled nursing center for several more weeks. Unfortunately, as would later prove to be significant, a few of these doctors’ orders were communicated only informally and not always in writing.

During her sojourn at the nursing center, doctors wrote numerous orders certifying her needs for skilled nursing care and therapy lasting at least 30 days, the need for gait training and bed mobility therapy, and
in-patient treatment based on the fact that it was “impossible to care for herself.” Various nursing and therapy notes confirmed the existence of “significant cognitive impairments” resulting from the intensifying infection, and reflected the reality that my mother was not a candidate for return to independent living. Treatment, therapy, and additional antibiotic medications were prescribed and administered for several weeks until, finally, the corneal ulcerations abated, the mental impairments disappeared, and my mother was discharged to her own residence at her baseline health and inimicable self.

So far, so good. Medical mission accomplished. But then came the bill.

Medicare had refused to pay for the skilled nursing treatment. My mother was presented with a personal bill for approximately $4,000 because (a) her son had early on “consented” to her discharge and (b) the services she had received were not “skilled” and could have been provided by herself. It was deemed not significant that my mother had actually deteriorated since the date of the originally intended discharge. It was also irrelevant what the doctors might have said before or subsequent to the signed discharge notice about keeping her in the skilled nursing center because, Medicare’s representatives contended, the services provided were not actually “skilled.”

My mother was not amused to receive the bill, and I shared my mother’s lack of amusement. “You’re a lawyer,” she yammered at me, “so do something!” Having been thus formally retained (pro bono, of course) to challenge the Medicare decision, I set out on a (for me) never-before-attempted administrative challenge to Medicare at some risk of filial malpractice.

What I quickly discovered is that Medicare uses a host of private “out-sourced” insurance adjusting companies to handle all challenges, evaluate them, and buck them up the line. In my mother’s case, my succession of cajolements, requests, and challenges to Medicare’s decision not to pay were rapidly assessed, analyzed, and firmly rejected. The process bounced from one state to another in a matter of days and weeks, each reviewing entity parroting the findings of the other and blessing the initial decision with a host of “independent” reviewers and authorities: Medicare would pay nothing and the bill was entirely the responsibility of the senior

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citizen, otherwise known as my mother.

Having struck out at the adjuster level and worked through my so-called “administrative remedies,” I eventually sought relief before someone with whom I thought I could better communicate: a fellow lawyer, someone who, at least, could read and understand the law — a federal administrative law judge (ALJ).

Prior to submitting a written petition, I endeavored to crack the code ... nothing so subtle as the DaVinci Code, but equally daunting: the Code of Federal Regulations.

There are lengthy provisions of the CFR dedicated to Medicare. Specifically, as I discovered, 42 CFR 409 and various subsections define the requirements for coverage of post-hospital skilled nursing care and the level of care required. As with most of the Code of Federal Regulation, the scheme consists of a general set of policies and guidelines followed by a subset of exceptions to the rules and, sometimes, specific examples of these exceptions. Although there are some federal case decisions reported in the “Fed Supps” and the “FRDs,” only a few were on point. Most of the case law only confirmed that the courts generally would defer to Medicare and to the administrative law judges charged with handling those cases that were coughed up by the system. The key to the appeal, therefore, was the Code itself and the specific exceptions delineated in 42 CFR 409.32 et seq. Thus, in the briefing I provided to the ALJ, the logic of the Code was neatly presented in the context of my mother’s case.

Although the administration of “eye drops” was not, in itself, a instance of skilled nursing, “a service that is usually not skilled... may be considered skilled because it must be performed or supervised by skilled nursing or rehabilitation personnel.” (42 CFR 409.32(b)) (emphasis added). Furthermore, “if the patient’s overall condition supports a finding that recovery and safety can be ensured only if the total care is planned, managed, and evaluated by technical or professional personnel, it is appropriate to infer that skilled services are being provided.” (42 CFR 409.33 subpart ii) (emphasis added). In the factual context of what had happened in my mother’s case, I argued, that was precisely the situation: Regardless of how “skilled” the discrete medical services had been, they were necessarily “skilled” because, under the circumstances, they had to be provided in a skilled and supervised environment.

From a factual perspective, I also questioned how the patient could have been discharged to take care of herself when the resident physician would not discharge the patient at all unless and until she could take and pass an MMSE (which, at the time, she could not do). Catch-22, I argued: How can you go home to take care of yourself if they will not let you even go home?

The hearing in this matter was conducted by video-teleconference using a three-way hook-up. I padded down to my local Kinkos early one morning and through wideband Internet connections, I appeared before the federal administrative law court in California (to present my arguments on behalf of my (now 89-year-old!) mother.

The response of Medicare’s agents was a straightforward regurgitation of the agency’s original position, plus the novel assertion that no weight should be attributed to the resident doctor’s absolute refusal to discharge my mother until and unless she completed a satisfactory MMSE. According to the responding agency, hospitals and nursing facilities administer MMSEs to their patients not to actually assess their mental faculties, but to protect the institutions themselves from suits for medical negligence. Thus, argued Medicare’s representatives, the failure to give my mother an MMSE as a requisite to discharge was merely the agency’s failure to protect itself from a possible lawsuit. Needless to say, this was an eyebrow-raising argument, though hardly one that warranted a response.

Several weeks after oral argument, the administrative law judge rendered his written decision: It was a clean, sweeping, and decisive TKO for Justice and for Mamma. The administrative law judge ruled that the CFRs provided specific legal guidance for the provision of the subject medical care and that it was “an untenable position” that certain technical deficiencies in the record should “trump the evidence” that the patient had, indeed, received necessary and appropriate skilled nursing care. Medicare was ordered to pay the $4,000 SNF bill in full. Although there were still two more administrative levels of review that Medicare could have pursued, it gamely threw in the towel at this point and paid the service provider.

So ends the story. But this is not the end of the story. Warning: For those of you who are solely interested in the procedural and legal aspects of this anecdote, please read no further. For what follows is a comment that, some might argue, does not belong in a column posing as professional. To these critics I say: Just stop reading, or go write your own opinion column.

In sum, my legal foray into administrative Medicare law was a success. The administrative law judge did the right thing. Heart and mind prevailed over the tyranny of procedural word processing. The system worked. This time.

But the system, overall, does not work. The system is positively awful.
The reality is that the only reason why my mother could contest a $4,000 medical bill is because her son is a lawyer and a 26-year veteran of the Bar. I cannot imagine how many times it must happen that a senior citizen of the United States finds him- or herself in a similar situation and does not have a relative at the bar ready or willing to tilt at an agency of the federal government. How many elderly people in this country have benefits denied, care deprived, or their health or meager assets put in jeopardy simply because they are either too feeble to know what to do or do not have the money to defend their rights by hiring an attorney?

Of course, you do not need to hire a lawyer to process your rights and challenge Medicare. The “system” is set up so that laypersons can represent themselves at little or no expense. Sure. The problem is that the elderly are a particularly vulnerable class, and they are particularly in need of legal assistance when they are least able — physically, financially, and mentally — to deal with what even this experienced attorney found to be a complicated experience that involved a fair amount of time, study, research, and analysis.

The additional reality is that the amount of money involved in this particular challenge — and perhaps the majority of denials of coverage by Medicare — makes it hardly worthwhile for a lawyer to undertake the charge. In short, I could make this effort gratis on behalf of my own mother, but give me a steady diet of these types of cases and I would starve to death. And, although there are social-service agencies and public-service law firms available to help, they are all under severe financial stress themselves and hardly able to render the kind of legal attention to matters that might seem relatively small to some, but immense to the senior citizen whose life savings may be at stake.

My mother, like her contemporaries, is a product of the Great Depression and has lived through the world wars that have engulfed humanity since 1914. They have worked, raised families, paid taxes, and paid homage to the usual patriotic mythology, and now, in the autumn of their lives, they have discovered that they have to fight, precisely when they have the least fight left in them, to preserve that which they had earned as a penultimate benefit of citizenship: medical care in their waning years.

The solution is not to further cheapen the benefits of Medicare. The solution is not to further screw down the allowances paid to medical providers. The solution is not to further privatize or outsource the administration of a public service, nor to tweak the administrative procedures. The solution is to abandon a purely market-based mode of thinking that imposes on the weak, the sick, the poor, and the vulnerable the need to justify their own existence and their natural rights. It is not civilized that budgets should be balanced at the expense of those least able to defend their rights. The solution is to allocate funds properly, so that money that ought to be provided for necessary public services is provided for necessary public services. The solution is to change the system for the better and to adjust our priorities.

I rest my mother’s case.

Steven Reisler practices civil and commercial law at his micro-mini-boutique in northeast Seattle. He is a past member of the WSBA Board of Governors, past chair of the Washington State Commission on Judicial Conduct, and edited Bar News from 1980 to 1985.

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On September 29 at the Seattle Hilton, a record crowd turned out to honor the 65 WSBA members who are celebrating 50 years of membership in the Association this year. In recognition of their five decades of service, WSBA President Ellen Conedera Dial and members of the WSBA Board of Governors presented the honorees with 50-year certificates and lapel pins.

Highlights of the afternoon included an address by the chief justice of the Washington State Supreme Court, the Honorable Gerry L. Alexander, and a retrospective look at the class of 1956 by Senior Circuit Judge for the U.S. Court of Appeals for the Ninth Circuit the Honorable Betty B. Fletcher.

Judge Fletcher was introduced by fellow senior circuit judge for the Ninth Circuit and class member the Honorable Robert R. Beezer.

President Dial took attendees back to 1956 when she delivered a talk titled “1956: A Moment in Time.” In 1956, she said, the after-tax income of the average American was $1,700, the average cost of a new house was $11,700, and a gallon of gas was just 22¢. Elvis Presley made his TV debut on “The Ed Sullivan Show,” Grace Kelly became the princess of Monaco, and Marilyn Monroe married Arthur Miller. In Washington, Tonasket native Dr. Walter Brattain received the Nobel Prize for Physics for inventing the transistor.

In addition to more than 30 attendees from the class of 1956, dignitaries in attendance included two former chief justices of the Washington State Supreme Court — the Honorable James A. Andersen and the Honorable Vernon R. Pearson. Several former WSBA presidents, state and federal judges, and former WSBA governors were also present. Two members of the class of 1956 traveled from afar to attend the luncheon — Max D. Crittenden from Bosnia/Herzegovina, and Philip H. DeTurk from North Carolina.

After the presentation of certificates and lapel pins by members of the WSBA Board of Governors, the chair of the WSBA Senior Lawyers Section, Jerome Jager, gave a brief address. The luncheon concluded with closing remarks by President Dial.
WSBA Governor Marcine Anderson with Honoree Douglas Hendel

Honoree Robert Hauth (right) and son Michael (left)

Honoree Nicholas O’Connell Jr. and his wife Marie

Honoree William Cameron and his wife Peggy

WSBA Governor Eric de los Santos (left) with Honoree Shannon Stafford (right)

The Honorable Gerard Shellan with Honoree Ross Rakow

(l. to r.) Honoree Max Crittenden, Senior Lawyers Section’s H. Weston Foss, and Honoree Shannon Stafford

50-Year WSBA Members Honored in 2006

Edwin Charles Anderson Jr., Santa Rosa, California
The Honorable Robert R. Beezer, Seattle
Charles Douglas Bohlke, Olympia
Richard David Bonesteele, Seattle
Fred R. Butterworth, Seattle
William D. Cameron, Seattle
Craig P. Campbell, Seattle
Francis Herbert Chapin Jr., Tacoma
John J. Costello, Seattle
Eugene J. Craig, Sammamish
Max Duane Crittenden, Zenica, Bosnia/Herzegovina
Spirro Damis, Lakewood
Edward A. Dawson, Spokane
Philip H. DeTurk, Pinehurst, North Carolina
The Honorable Robert Edwin Dixon, Redmond
Frank William Draper, Seattle
Dominick V. Driano, Seattle
The Honorable Betty B. Fletcher, Seattle
Wallis W. Friel, Pullman
Floyd Frost Fulle, Clinton
The Honorable Robert E. Graham, Wenatchee
Peter Van Dyke Gulick, Newcastle
Robert John Hall, Seattle
Alan R. Hallowell, Longview
Douglas R. Hartwich, Lake Forest Park
Robert Francis Hauth, Olympia
Douglas R. Hendel, Issaquah
Edward T. Hilpert Jr., Seattle
David Frederick Hiscock, Seattle
Ardith M. Horne, Alexandria, Virginia
Charles Eugene Huppin, Spokane
Evan Eugene Inslee, Sumner
Richard James Jensen, Fircrest
Walter Roger Johnson, Tacoma
Arlis W. Johnson, Hoquiam
The Honorable John Graham Kamb, Mount Vernon
John F. Kovarik, Clyde Hill
John Frederick Kruger, Clyde Hill
John Gerald Layman, Spokane
Gust A. Ledakis, La Tour De Treme, Switzerland
Jeremiah M. Long, Bellevue
Richard Ray Loucks, Pullman
Edmund Eugene Lozier, Tacoma
William Quinn Marshall, Kenmore
Steven Arthur Memovich, Vancouver
Constance Stanton Milliman, Seattle
Charles Norman Mullavey, Seattle
James Arthur Murphy, Edmonds
Nicholas Brown O’Connell Jr., Clyde Hill
Dudley Bradford Panchot, Seattle
William J. Powell, Spokane
Louis Emilio Prediletto, Yakima
Robin Preston, Seattle
Clarence James Rabideau, Pasco
Ross Roland Rakow, Goldendale
John M. Reese, Walla Walla
Ramon Perry Reid, Toppenish
The Honorable Richard John Richard, Spokane
J. Carroll Schueler, Bermuda Dunes, California
David Edgar Schweinler, Vashon
Jerome Shulkin, Seattle
Richard S. Sprague, Bellevue
Shannon E. Stafford, Seattle
William G. Viert, Spanaway
Maxwell James Vincent, Yakima

All photos by Todd Timmcke.
hey sat crowded on narrow wooden benches behind wrought-iron bars. Thirty-nine men were being tried in a Bishkek courtroom for the murder of a member of the Kyrgyz parliament and his three security guards. The iron bars were courtroom cages. I was about to get a glimpse into the most notorious murder trial since Kyrgyzstan’s independence from the Soviet Union in 1991.

Anvar, our ABA/CEELI staff attorney, said last week: “Barbara, I think I can get you into the Akmatbaev murder trial tomorrow. We will have to go early. Bring your passport and embassy registration card.” The next day, we joined a milling crowd of mostly women waiting outside the high iron fence of a nondescript building. Several police and military stood guard at the entrance. We were joined shortly by Tatiana, an official OSCE courtroom observer and former judge, who flashed a gold-toothed smile at us. She and Anvar spoke Russian in conspiratorial whispers. Anvar then told me there were rumors that several of the defendants had been beaten the night before, and the press and observers might not be allowed in.

We stood and waited. Anvar pointed out solemn prosecutors and defense advocates as they showed their papers and entered the building. Finally, at some unseen signal, we moved forward. Anvar spoke to the police; they glanced at my embassy card and waved us through. The courtroom was about 40 feet wide by about 65 feet long, small by American courtroom standards but the largest in Kyrgyzstan. We quickly claimed a bench in the middle of the room. Facing front, we
saw a high raised wood desk about 10 feet long with three high-backed chairs and a huge red Kyrgyz flag covering the wall behind — the judges' bench. Directly in front of the judges' bench were prosecutor and defense advocate tables facing each other. High on the white-washed wall behind the prosecutors, a row of windows ran the length of the room, some open, the warm Central Asian sun streaming through. On the opposite wall were the empty cages that ran the entire length of the room and across the back. The 50 to 60 spectators were primarily relatives of the defendants. Several reporters roamed the courtroom with cameras.

We heard shuffling in the back of the room as the prisoners filed in. They came through a back door directly into the cages and filed toward the front. About 20 sat down in the cage closest to the front. There was no eye contact. A door closed. Seven prisoners were then put in an adjoining cage, that door closed, and the remaining 12 filed into the cage at the back. Some of the women spectators stood, weeping. Armed military stood guard at intervals in front of the cages. Silence fell as we waited for the judge. We stood as a solemn, dignified Kyrgyz judge in a black robe stepped behind the judges' bench and sat down in the middle chair. At the same moment, two camouflage-uniformed military men entered the courtroom with black ski masks over their faces, carrying assault weapons. They walked to the front, turned, and faced the courtroom.

The first 20 prisoners were jammed together on two benches, one behind the other. They were a mixed group of Russian, Kyrgyz, Uzbek, Turk, and Chechen, typical of this ethnically diverse country. They wore the informal dress seen everywhere in Central Asia — knockoff Nikes, Adidas, sports jackets, sweatpants, or jeans, all made in China. The adjoining cage held the actual murderers — the ringleader, Batukaev, and his six cohorts. They sat in relative comfort in their roomier cage. Then, as I craned to see the back cage, I saw a prisoner with a cut and swollen face, one eye shut, unable to hold his head up. Many in the back had their heads shaved. Some sat on the floor.

The member of the Kyrgyz parliament and his security guards had been shot and
killed three months earlier while visiting a prison near Bishkek, the Kyrgyz capital. The trial began with the first witness, a big-boned ethnic Russian. He stood, and a guard handed him a microphone through the bars. He testified from his place inside the cage with expressionless face and voice. Later, I learned he was a former convict and he was visiting the prison the day of the murders along with a friend. During the shootout, his friend was killed. He was rounded up with the rest. Occasionally during the trial, he smiled sardonically, looking at no one.

Each of the three prosecutors asked questions, followed by the defense advocates. The judge occasionally asked a series of questions. The prosecutors were dressed much as Western lawyers in a courtroom — dark conservative suits; the woman prosecutor wore a dark conservative dress. The defense advocates were a more varied lot. The male advocates were dressed casually, some in sport shirts. A young blonde, blue-eyed woman advocate questioned her client in her white short-sleeved shirt and mini-skirt. The advocate who caught my eye, however, was an ethnic Russian woman in her mid-50s — short, plump with bleached-blond bouffant hair, her face a mask of white powder, dark lipstick, and dark eye make-up, dressed entirely in black.

Suddenly, there was a stir at the back of the courtroom, and a woman entered and began to speak from a waiting-area cage. Perhaps an attractive woman at one time, she now looked tired and dejected. She was the sister of the chief defendant, Batukaev, and testified she had been at the prison the day of the murders. The police caught her leaving the prison with guns and several thousand euros. Batukaev's wife followed with her testimony. She had actually lived with her husband at the time of the murders in a sumptuous apartment at the prison. The police also arrested her the day of the murder — she was carrying out guns and cash. Both women testified they had no idea where either the guns or the cash came from. Earlier, an ethnic Turk defendant had testified that he had nothing to do with the murders but came upon the scene directly afterward, picked up the guns, ran the length of the prison, and dropped them into the pockets of the unknowing women. During his testimony, he had the undivided attention of his fellow prisoners, who watched him intently.

As I watched the prisoners in their cages, I saw one small, young Kyrgyz man rest his head on the broad back of the big Russian next to him; another prisoner surreptitiously switched places with another, then caught me watching. His stare at me was chilling. Many were sick, coughing and sweating; all looked exhausted. Anvar said tuberculosis is rampant in the prisons.

As we filed out after the morning's three-hour court session, Anvar explained how the prison system works and why there were three cages. The first cage, with 20 prisoners, contained the "workers" in the prison. They follow the orders of the most "respected," and are not generally mistreated as long as they are compliant and have access to some money. The "respected" prisoners, like the alleged murderer Batukaev and his seven cohorts, rule the prison, both guards and prisoners, directing criminal activity from the prison with money and weapons flowing freely in
and out. Finally, those in the back cages were the “disrespected” prisoners who were weak and young, at the bottom of the social ladder, and whose relatives had no money to protect them. These prisoners were raped, beaten, and tortured by the guards and other prisoners.

The murders continue to have disturbing consequences in Kyrgyzstan. Since the revolution last year, three members of parliament have been murdered. Akmatbaev, the murdered parliamentary member, had had a long-standing feud with the chief defendant, presumably over control of illegal activity. After the member of parliament was killed, his brother, Rysbek Akmatbaev, ran for his brother’s vacant parliamentary seat and won. However, Rysbek Akmatbaev himself was murdered in a shootout outside a mosque on May 10, 2006.

Despite these recent events, there is still hope the rule of law is slowly coming to Kyrgyzstan. The people and opposition leaders have recently demonstrated against the criminalization of their government institutions. But it is hard work, and will take a long time and many dedicated people to make it happen.

The atmosphere of the courtroom clung to me for days. I felt I had had a brief glimpse into hell.

Barbara Standal is a graduate of Gonzaga Law School and a member of the WSBA. Three years ago, Barbara retired from her successful practice in employment/civil rights. For the five years prior to retirement, she was a senior supervisor in the Equal Employment Opportunity Commission’s litigation unit. She came to Kyrgyzstan to work as a Rule of Law Liaison representing the American Bar Association Central European and Eurasian Law Initiative (CEELI).

Kyrgyzstan is a Central Asian country of proud nomadic traditions and great natural beauty. Kyrgyzstan was annexed by Russia in 1864; it achieved independence from the Soviet Union in 1991. Officially the Kyrgyz Republic, and sometimes known as Kirghizia, it is landlocked and mountainous, bordering China, Kazakhstan, Tajikistan, and Uzbekistan. The capital is Bishkek.

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BY LINDSAY THOMPSON

Seattle, September 14-15, 2006

The BOG’s September meeting is always held in Seattle in conjunction with WSBA’s annual meeting and the change of leadership. It’s usually a desk-clearing meeting, as the president and third-year governors prepare to end their service.

The Board had a report from the Lawyers’ Fund For Client Protection, which considers claims by clients whose lawyers cost them money and where there is no other source of recovery. Active WSBA members fuel the fund through an annual mandatory assessment. The Board also approved some housekeeping rules changes from the Fund, and those will go on to the Supreme Court for final action.

Lunching with the board of the Legal Foundation of Washington, the Board heard that body’s annual report. The BOG also approved a number of housekeeping rules changes for the WSBA Foundation; considered some issues relating to when WSBA will offer amicus briefs in appellate cases; changed the term of service for CLE Committee members; and made a raft of appointments.

A new post, that of immediate past-president, was created by the Board and will be filled by the immediate past-president, Brooke Taylor, to be known familiarly as “The Queen Mum.”

In other actions, the BOG created a “Strike Team” to deal with last-minute build-out issues in WSBA’s new office space — the sort of things it wouldn’t be practical to convene the Board to address. The big office move happens December 9-10. In addition, the BOG approved a resolution to the FY 2007 budget that called on management to chop several hundred thousand dollars from the budget to ensure a more balanced budget, consistent with prior years.

At the annual meeting and awards dinner, Ellen Conedera Dial was sworn in as WSBA president. Russell Aoki, Anthony Butler, Peter Karademos, Edward Shea Jr., and Jason Vail joined the Board of Governors. Stanley Bastian joined the team as president-elect. Governor Eron Berg was elected WSBA treasurer. A new post, that of immediate past-president, was created by the Board and will be filled by the immediate past-president, Brooke Taylor, to be known familiarly as “The Queen Mum.”

The Young Lawyers Division leadership changed hands as well. Noah Davis handed the gavel to John Brangwin, of Wenatchee; the president-elect is Mark O’Halloran.

Lindsay Thompson is the editor of Bar News and can be reached at barnews editor@wsba.org.
How to Succeed in Business Since You’re Already Trying

by Peter Roberts

As the WSBA’s practice management advisor, I’ve met many members who have helped me to understand what works and what does not work in a law practice. I want to share some of this wisdom with you.

Key 1: Be Smart About Money

The best way to ensure there is enough money to sustain your practice is to obtain sufficient funds at the outset of the matter in an advanced fee deposit or a flat fee. "Sufficient" depends on the size of the matter. "Insufficient" is defined as needing to accept any new matter in order to obtain an advanced fee deposit to enable you to complete the work that you already have. The spiral that ensues leads to being overwhelmed. And being overwhelmed is probably the most serious situation to face short of discipline, because you risk paralysis of action. Unattended files have a life of their own that can lead to a grievance or malpractice action, or both.

Key 2: Organize Yourself

Organization means three things: 1) managing your time effectively; 2) keeping things in their proper place; and 3) following a protocol for everything that occurs in the law office.

Managing your time means prioritizing your tasks. Do the most important tasks first. It also means taking a break. Try to relax between projects. Above all, limit procrastination.

Keep things in their proper place! Put files into file cabinets or onto shelves. Limit or eliminate the number and size of piles. Stage current projects on a table. Organize filing to facilitate getting documents into the proper client files. Keep frequently used office supplies near at hand. If your printer is too far away, move it as close to your desk as is feasible to cut down footsteps.

Create and follow a protocol for every process that occurs in your office. A "protocol" means defining the procedure and documenting the steps involved for handling:

- Mail
- E-mail
- Telephone notes
- Documents
- Physical files
- Electronic files
- Faxes
- Deliveries
- Other procedures related to your particular practice area

Key 3: Say “No”

We hear this advice a lot. It is often not easy to say "no," because we want to serve people in need or because we feel we need the income. When I meet a newer admittee, I always mention two important rites of passage. The first is declining new work that you otherwise could take, and the second is firing a client. Your law practice is yours, not the client’s. Setting a boundary when it is necessary builds confidence that you are in control. And being in control leads to a lower level of stress.

Key 4: Manage Stress Effectively

Stress is the “elephant in the living room” we prefer not to discuss. In any profession, there is stress. Many of us thrive under a modest level of stress, because it can motivate us to accomplishment. But the higher level of stress that I call “The Beast” is best kept in a locked cage. The Beast can ride you until you cannot endure another moment. Paralysis, error, harmed clients, substance abuse, or other addictions ensue, and can lead to discipline.

Keep The Beast’s cage locked by minimizing monthly overhead expenses. Maintain a moderate lifestyle. Manage your matters so that you can attend to them one at a time. Take regular vacations. Use consistent protocols.

Incidentally, the RPCs do not mention that it is perfectly fine to have fun in your law practice. I try to remind our members that it is a privilege to practice law. Practice law on your terms by following these keys to success and know that it is also okay to have fun doing so!

Peter Roberts is the practice management advisor with the Law Office Management Assistance Program (LOMAP). He can be reached at 206-727-8237, 800-945-9722, ext. 8237, or peter@wsba.org. For more information, visit www.lomap.org.

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Gifts This Year

What a gift she had given me. The reminder that pride is contagious; that wealth is all relative. It was a good day at work when I met Mrs. Davenport.

What a gift she had given me. The reminder that pride is contagious; that wealth is all relative; that she had let me be a part of making sure her hard-earned estate went to the selected heirs; that my concern about how my 401(k) is doing is a worry of luxury. It was a good day at work when I met Mrs. Davenport.

In the middle of the year, an old client entered my office to prepare a new will. The last time I had seen her was in my office, 10 years before. My client was quiet, shy, and somewhat reclusive. We had, though, always enjoyed our time together. "Who would you like to be your personal representative if you pass?" I asked.

She looked at me strangely for a moment, and said, "You, of course. You are my best friend."

After our work was completed and she left the office (no, I did not agree to be her P.R.), I smiled at the gift she had given me; a reminder of how much some clients value our time, friendship, and assistance in their lives.

A couple of months later, I walked into our conference room and introduced myself to new clients, a couple in their seventies. Their eyes were still slightly swollen from recent crying. In a few minutes, I learned Mr. Marichal had been diagnosed with cancer. He had, at most, two months to live. We needed to get things in order. I got the information and the next day had his documents ready. After the documents were signed, I asked Mr. Marichal about his life. For 10 or 15 minutes, he and his wife told an extraordinary story of love, community service, and fun. As our conversation was wrapping up, I asked Mr. Marichal (as I do every client coming in for our last appointment together) what, from his vantage point at the end of his life, I should teach my kids, who are in their early twenties.

"My word has always been my bond," he said. "I’m proud of that. Missie and I have traveled as much as we could and laughed more than the average couple. What you should teach your kids is to work hard, love much, have fun." Since then I have ended nearly every letter or e-mail to my kids, "Work hard. Have fun. Know I love you." A great reminder to me from a fine man.

For the past several years I have wondered, and asked, what motivates driven people. Fear of failure? An innate drive? Money? Recently, my question has changed. Now, in my mid-50s, I query, "What gives you great joy?"

I asked an elderly client that question recently after we had completed our legal work. "What gives me joy?" he asked himself out loud. "Being around my family. Exchanging stories with friends. Holding hands with my wife. An aged bottle of red wine. A 'Good job!' from my boss. Nice, personal conversations like we are having now. That gives me joy." As it did me — and food for thought. Another great gift and reminder.

Happy holidays. May your year be filled with gifts from your clients. And may you always remember who pays your salary and deserves your respect.

Jeff Tolman practices in Poulsbo and is a frequent contributor of "gifts" to Bar News. He can be reached at tolman@tolmankirkfranz.com. Copyright 2006 by Jeff Tolman.
Myth 1: Undocumented immigrants are “illegal”

The term connotes criminality and, more importantly, assumes an individual’s very existence can be unlawful. The fact is, the term “illegal” does not exist in immigration law or in any other U.S. law. In fact, unauthorized presence in the United States is a civil offense, not a criminal one. While someone can have an unauthorized presence by entering the U.S. without inspection, an act that is a crime, other forms of unauthorized presence (e.g., visa overstay) can result from non-criminal activity.

Myth 2: Immigrants cause a rise in crime.

In fact, studies show immigrants have the lowest rates of imprisonment for criminal convictions in the United States, and U.S. nativity is the stronger predictor of incarceration. One study found first-generation immigrants (i.e., foreign-born) were 45 percent less likely, and second-generation immigrants were 22 percent less likely, to commit violent crimes than were third-generation Americans.

Myth 3: Immigrants don’t pay taxes, yet come here to take welfare.

Undocumented immigrants are large contributors to — rather than recipients of — Social Security. In one study, two percent of undocumented Mexican immigrants had ever received public benefits or Social Security payments, yet 84 percent paid taxes. Moreover, undocumented immigrants use public services much less than others do. A 1997 study found a negative association between the anticipated value of public benefits and illegal migration.

Myth 4: Immigrants take away jobs from Americans.

Myth 5: Immigrants are a threat to national security.

In the Secure Fence Act of 2006, signed by President Bush on October 4, 2006, undocumented immigrants are classified in the same group as terrorists. The fact is, the restrictions and other measures targeting immigrants in the name of national security thus far have resulted in no successful terrorism prosecutions. Most security experts will tell you, and as the British have recently shown us, it is good intelligence that helps prevent terrorist attacks.

Perhaps the mosaic of the United States is turning a bit too brown for some? But make no mistake about it — most undocumented immigrants do not want to break the law; they come here to be with their families, to work, and to get an education. The problem is the law itself: arbitrary numerical visa quotas, artificial allocations that give the same number of visas to every country, and archaic work visa allotments. The solution is not a wall; it is comprehensive immigration reform that includes a reduction of the visa backlog, legalization, and a humane guest-worker program. If one looks at the facts, one must wonder what the motivation is behind these myths.

Henry Cruz is an immigration attorney with the law office of Rios Cantor, PS. He is also a member of the LBAW Board of Directors and co-chair of its Subcommittee on Immigration. Column Editor Beth Barrett Bloom is a 2005 WSBA Leadership Institute fellow and president-elect of QLaw. Ms. Bloom is a labor and employment attorney with Frank Freed Sabit & Thomas LLP in Seattle. For feedback, e-mail bbloom@frankfreed.com.
FYI Information

Opportunities for Service

Call for Applications for One of Two Board of Governors At-Large Seats

Deadline: March 1, 2007

To increase member representation on the Board of Governors, the WSBA Bylaws provide for two at-large seats. The full text of the Bylaws can be reviewed at [www.wsba.org/bylaws](http://www.wsba.org/bylaws). One of those seats is up for election to a three-year term commencing at the close of the annual meeting in September 2007.

Persons interested in filling an at-large position should submit a letter of application and current résumé. The Board of Governors will elect the at-large governor at their meeting on June 1, 2007. The application should include a statement addressing how the applicant believes he or she meets the intent specified in Article III, Section N. There is no intent that these seats are dedicated or rotationally filled by any one element of diversity or group of members.

(Excerpt from the WSBA Amended Bylaws, Article III, Section N)

N. ELECTION OF AT-LARGE GOVERNORS.
Any active member of the Bar, except a member previously elected to the Board of Governors, may apply for the office of At-Large Governor. Filing of applications shall be in accordance with Section C of this Article.

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

Members interested in the at-large position on the Board of Governors should submit a letter of application and résumé to the Office of the Executive Director, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101; 206-727-8244 or 800-945-9722, ext. 8244.

2007 Notice of Board of Governors Election

Deadline: March 1, 2007

Three positions on the WSBA Board of Governors will be up for election this year. These are the governors representing the 2nd, 7th-Central,* and 9th congressional districts. These positions are currently held by Eron M. Berg (2nd District), Lonnie Davis (7th-Central District), and James E. Baker (9th District).

The WSBA Bylaws provide that any member in good standing, except a member previously elected to the Board of Governors, may be nominated for the office of governor from the Congressional District (or geographical region within the 7th District*) in which such member is entitled to vote. Nominations are made by filing a nomination form and a biographical statement of 100 words or less.

Generally, members are entitled to vote in the congressional district in which the member resides. All out-of-state active WSBA members are eligible to vote in the district of the address of their agent within Washington for the purpose of receiving service of process as required by APR 5(e), or, if specifically designated to the executive director, within the district of their primary Washington practice.

Nomination forms are available from the Office of the Executive Director, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101; 206-727-8244; and the WSBA website at www.wsba.org. The WSBA executive director must receive nomination forms by 5:00 p.m. on Thursday, March 1, 2007. Ballots will be mailed on or about April 16 and counted on or about May 15. (The biographical statements of nominated candidates will be published in the May issue of Bar News.)

*The 7th Congressional District is divided into three sub-districts, East, Central, and West. These sub-districts are distinguished by zip codes and each has one elected governor. For the coming year, the Central sub-district (zip codes are 98101, 98102, 98103, 98104, 98108, 98109, 98111, 98112, 98114, 98124, 98134, 98138, 98140, 98145, 98158, 98161, 98164, 98166, 98168, 98174, 98181, 98184, 98188, and 98191) will elect a new governor.

Commission on Judicial Conduct

Application deadline: December 28, 2006

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.

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 June 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.
Seeking Applications from Candidates for Judicial Appointments

**Deadlines:** 5:00 p.m., December 29, 2006, for February 14, 2007, interview; 5:00 p.m., March 9, 2007, for April 18, 2007, interview; 5:00 p.m., May 11, 2007, for June 13, 2007, interview.

The WSBA Judicial Recommendation Committee (JRC) is currently accepting applications 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. Application materials must be received by the deadlines listed above at the WSBA office. To obtain an application, visit the WSBA website at www.wsba.org/lawyers/groups/judicialrecommendation or contact the WSBA at 206-727-8212, 800-945-9722, ext. 8212, or barleaders@wsba.org. Specify whether you need the application designed for a judge or an attorney.

**WSBA Emeritus Training — January 26**

If you are considering changing your WSBA membership status in 2007, you might want to consider Emeritus.

APR 8(e) creates a limited license status of Emeritus for attorneys otherwise retired from the practice of law, to practice pro bono legal services through a qualified legal services provider. You do not need to be of retirement age to change your status to Emeritus. A qualified legal services provider is a “not-for-profit legal services organization whose primary purpose is to provide legal services to low-income clients.” There are no MCLE requirements for Emeritus attorneys. The 2007 WSBA licensing fee for Emeritus attorneys is $120. Most qualified legal services providers provide malpractice insurance for their volunteer attorneys.

To register for the Emeritus training and for more information regarding Emeritus status, contact Sharlene Steele at 206-727-8262 or 800-945-9722 ext. 8262; sharlene@wsba.org.

**2007 License-Fee Packets**

The 2007 license-fee renewal packets will be mailed in early December. The packet includes your license-fee invoice, trust account declaration form and, if applicable, the MCLE certification form. If you have not received your license-fee packet by mid-January 2007, call the WSBA Service Center at 800-945-WSBA (9722) or 206-443-WSBA (9722), or e-mail questions@wsba.org to request a duplicate. Please note that it is your responsibility to pay your annual license fee, regardless of whether you receive the license-fee packet.

**Fees.** We encourage you to pay your mandatory fees promptly to avoid penalties. Payments must be postmarked or delivered to the WSBA office by February 1, 2007. WSBA Bylaws require a 20 percent late-payment penalty if the annual license fee remains unpaid after March 1, 2007. After April 1, 2007, a 50 percent late-payment penalty is imposed. If your license fee, penalty assessment, or LFCP assessment remain unpaid after May 2007, the delinquency will be certified to the Supreme Court, which will enter an order of suspension from the practice of law. In order to be reinstated to your former status after suspension for nonpayment, you must pay double the amount of the combined fee and penalty (triple the original fee). For active members, nonpayment of the $15 Lawyers’ Fund for Client Protection (LFCP) assessment (required by APR 15) is also cause for suspension. You may also pay online. To pay online, go to www.wsba.org, select the “For Lawyers” tab, and see “Pay License Fee Online.”

**Contact Information.** APR 13(b) requires all attorneys to update their office address and telephone number within 10 days of the change. You can check your listing by going to the online lawyer directory at http://pro.wsba.org. If any of your contact information (name, address, phone number, or e-mail address) has changed, please update the information by e-mailing questions@wsba.org, faxing the change to 206-727-8319, or calling the WSBA Service Center at 800-945-WSBA (9722) or 206-443-WSBA (9722).

Please note: If you list a home address as your public contact address, that address will be provided to all inquirers as your contact information. All requests for contact information changes must be made directly by the member or with the member’s demonstrated approval.

**Resources.** The 2007 Resources Directory will print the contact information that is in the WSBA membership database on February 1, 2007. Now is the ideal time to check that the WSBA has your correct contact information in its database. You can check by going to the online lawyer directory on the WSBA website at http://pro.wsba.org.

If your contact information has changed, please complete and return the Contact Information Change form included in the license packet to the address shown on the form or by fax to 206-727-8319, or e-mail the changes to questions@wsba.org. Please update your information as soon as possible, but no later than January 31, 2007, for inclusion in Resources.

**More Information.** For more information, see the WSBA website at www.wsba.org.
FYI Information

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


### Credit Requirements

The following credit requirements must be met by December 31 of the last year of an active member's reporting period:

- At least 45 total credits of MCLE Board-approved CLE activities must be taken, which need to include a minimum of 30 live credits and six ethics credits.
- Pre-recorded self-study (A/V) courses cannot be more than five years old, except MCLE Board-approved "skills-based" courses. Pre-recorded self-study courses include the traditional audio-visual (A/V) media of video tapes and cassette tapes. They also include archived webcasts, DVDs, compact discs, and other media with a soundtrack of the MCLE Board-approved course presentation. Written materials should be included with these courses and reviewed prior to claiming credit. In addition, written materials must be purchased by each member, where required by the sponsor, prior to claiming credit.
- Six pro bono credits can be earned per year. Two of these credits are for approved annual training, which must be taken prior to being able to earn credit for the pro bono work. Four pro bono credits may be earned each year if at least four hours of pro bono work was provided through a qualified legal services provider.

#### Carry-over CLE Credits

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

#### C2/C3 Reporting Requirement

All active members due to report are required to file a Continuing Legal Education Certification (C2/C3) form listing all CLE courses taken for credit compliance. The deadline for filing your C2/C3 form is February 1 of the year following the end of your reporting period. Note:

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

### MCLE Late Fees

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

#### Newly Admitted Members

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

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Fax: (206) 343-1001
jeff@coopersmithlaw.com
www.coopersmithlaw.com

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health law group

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

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

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

**MCLE Certification for Group 3 (2004-2006)**

If you are an active WSBA member in MCLE Reporting Group 3 (2004-2006), you will receive your Continuing Legal Education Certification (C2/C3) forms in the license packet that will be mailed in early December. The deadline for returning the C2/C3 form to the WSBA is February 1. Any C2/C3 forms delivered to the WSBA or postmarked after March 1 will be assessed a late fee. Members in Group 3 include active members who were admitted to the WSBA in 1984-1990 or in 1993, 1996, 1999, or 2002. Members admitted in 2005 are also in Group 3 but are not due to report until the end of 2009. Their first reporting period will be 2007-2009; however, any credits earned on or after the day of admittance to the WSBA may be counted for compliance.

The Continuing Legal Education Certification (C2/C3) form that you receive in your license packet is a declaration that lists all the WSBA-approved courses in your MCLE online profile for the 2004-2006 reporting period as of mid-October. If you take other courses after mid-October, you can add these to the back of the C2 form (the C3 form) when you receive it. The C2/C3 form, not your online profile, is the official record of MCLE compliance. The original copy of the C2/C3 form must be returned to the WSBA to meet compliance requirements.

All WSBA-approved courses that you list on your C2/C3 form must have an Activity ID number. This number is listed on your online MCLE profile and is assigned at the time that the Form 1 for each course is reviewed. If you have taken courses that have not yet been approved by the WSBA, please submit Form 1s for these courses immediately to ensure that they are approved before your C2/C3 is due. Because of high volumes from October through February, Form 1s submitted electronically (at http://pro.wsba.org) could take up to four weeks or more to process. Paper Form 1s may take up to six weeks or more to process. If you submit a paper Form 1, you will be notified by mail of its Activity ID number.

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

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

**MCLE Compliance Report (C4/C5) in 2006 License Packets**

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

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the end of their reporting period.

If you receive the C4/C5 form in your 2006 license packet, it is for your information only. No action needs to be taken unless you want corrections to be made. If you want to make corrections to your WSBA MCLE roster, go to http://pro.wsba.org. Click on the “Member” tab, and then on “Member Login.” The online instructions lead you through the process of creating a confidential password and using the system. Online help is available. You may also contact the WSBA Service Center to have corrections made and/or to request an MCLE system instruction booklet at 800-945-WSBA (9722), 206-443-WSBA (9722), or questions@wsba.org.

Ensure Delivery of WSBA-CLE Products by Year-end

The WSBA office will be moving during December; consequently, WSBA-CLE will not have its traditional on-site “bookstore” selling recorded seminar products in December. However, all of these products, which provide A/V-CLE credits, can be ordered online at www.wsbacle.org. Order by December 15 to ensure receipt via standard delivery by December 29.

Ronald R. Ward Named WDTL Outstanding Plaintiffs’ Trial Lawyer of the Year

Former WSBA president Ron Ward (2004-05) was recently awarded the Outstanding Plaintiffs’ Trial Lawyer of the Year award by the Washington Defense Trial Lawyers Association. This award is presented annually by WDTL to an attorney who has promoted the highest ethical and professional standards. Earlier this year, Mr. Ward was also honored with the President’s Award from the Washington State Trial Lawyers’ Association. In addition, the Loren Miller Bar Association recently renamed its President’s Award the Ronald R. Ward President’s Award, in honor of his service as WSBA president and his accomplishments in the areas of court funding, legal services for the financially disadvantaged, maintenance of the independence of the judiciary, and diversity.

21st Annual Goldmark Award Luncheon

The Legal Foundation of Washington will present the 2007 Charles A. Goldmark Distinguished Service Award to Patrick H. McIntyre at the 21st Annual Goldmark Award Luncheon on Friday, February 16, 2007, at the Red Lion Hotel on 5th Avenue in Seattle from noon to 1:30 p.m.

Mr. McIntyre receives this award in recognition of years of wise counsel; extensive volunteer work with the Equal Justice Coalition to increase funding for civil legal aid to the poor; and for contributions to the national civil justice system that have inspired countless lawyers and nonlawyers in Washington state and across the country to continue the work on behalf of the poor. The Goldmark Award honors the memory of Charles A. Goldmark, a Seattle attorney, community leader, and ardent supporter of access to justice. Register online for the luncheon at www.legalfoundation.org.

YMCA Mock Trial Program Seeks Volunteer Attorneys and Judges

The YMCA Youth and Government Mock Trial program allows high-school students to participate in a “true-to-life” courtroom drama. Each team of attorneys and witnesses prepares the case for trial before a real judge in an actual courtroom. A “jury” of attorneys rates the teams for their presentation while the presiding judge rules on the motions, objections, and, ultimately, the merits. Participants develop critical thinking and analytical skills, learn the art of oral advocacy, and gain a respect for the role of law and the judiciary.

The state championship competitions will be held Friday, March 23 through Sunday, March 25 at the Thurston County Courthouse in Olympia. Volunteer attorney raters and judges are needed. To volunteer, please contact Janelle Nesbit at 360-357-3475 or youthandgovexec@cwest.net. Visit www.youthandgovernment.org for more details. This program is sponsored in part by the Washington Young Lawyers Division.

“381 Days: The Montgomery Bus Boycott Story”

“381 Days: The Montgomery Bus Boycott Story,” a traveling exhibit from the Smithsonian, is being presented at the Washington State History Museum through January 16. The exhibit commemorates the 50th anniversary of the arrest of Rosa Parks and the bus boycott that followed. Photographs,
quotes, and historical texts tell the story of the boycott and its political context during the civil-rights era. For more information, visit www.washingtonhistory.org.

**WYLD's De Novo Receives National Award**

At the ABA’s 2006 Annual Meeting, held in Honolulu August 2-8, 2006, it was announced that the Washington State Bar Association Young Lawyers Division newsletter, De Novo, was awarded a first-place Award of Achievement. The annual Awards of Achievement Program provides state and local young lawyer organizations affiliated with the ABA Young Lawyers Division the opportunity to submit their best projects for evaluation and recognition by a jury of their peers. Seattle attorney Jason T. Vail is editor of De Novo. The newsletter is published six times a year and is available online at www.wsba.org/media/publications/denovo.

**Third-Party Liability Information**

If your client is involved in a personal-injury case and has received or is receiving medical assistance (Medicaid) payments for their medical care, you are required to contact the Department of Social and Health Services (DSHS) if you are pursuing damages for that injured client. RCW 43.20B.060 places a lien against the portion of the settlement or judgment your client receives for medical costs from a third party, which also means their own insurance coverage, that is responsible for your client’s injuries in order to reimburse the medical bills that have been paid by Medicaid. Before settling your client’s claim with the third party and/or their insurance company, please contact the Coordination of Benefits Casualty Unit of DSHS at 800-894-3754 or COB Casualty Unit, PO Box 45561, Olympia, WA 98504-5561 to discuss with this office any action for damages you are bringing on behalf of a Medicaid recipient.

**Contract Lawyer Meeting**

The WSBA Law Office Management Assistance Program (LOMAP) hosts a meeting of contract lawyers the first Tuesday of every month at the WSBA office. The next meeting is December 5 from noon to 1:30. For 2007 dates, check www.lomap.org. Bring your lunch — coffee is provided — and network with other contract lawyers.

**LAP Solution of the Month: Holiday Stress?**

Holidays are fun, but the busyness of the season makes it easy to over-commit and under-perform. Don’t be afraid to say “no” if adding an event to your schedule causes undue strain. Remembering to exercise daily and to eat and drink in moderation will also reduce stress. Call the Lawyers Assistance Program at 206-727-8268 for more information.

**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 to access the Casemaker homepage. Click on the Casemaker button to begin. For help using Casemaker, you can contact the WSBA Service Center at 800-945-WSBA (9722) or 206-443-WSBA (9722), or e-mail questions@wsba.org.

**Computer Clinic**

The clinic is cancelled for December. Please check www.lomap.org for the date and location of the January clinic, or call Julie Salmon at 206-733-5914 or 800-945-9722, ext. 5914.

**Problem Getting a Client to Pay?**

Dispute with another lawyer or an expert witness? The WSBA offers two programs to aid in the resolution of disputes involving lawyers. These programs serve both members and the public. The Fee Arbitration Program focuses on fee disputes between a lawyer and his or her client. To participate, both parties must agree to be bound by the arbitrator’s decision. The Mediation Program provides a venue for parties to work together to resolve any dispute involving a lawyer, including those between a lawyer and a client, a lawyer and another lawyer, and a lawyer and another professional. Either party to a dispute may initiate fee arbitration or mediation. Both programs are non-disciplinary, voluntary, and confidential. For more information, visit the WSBA

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**Contact Information**

Private Valuations, Inc.
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Bellevue, Washington
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Adrien E. Gamache, Ph. D., President
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FYI

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.

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.

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.

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-WSBA, ext. 8268, or visit www.wsba.org/lawyers/services/lap.html.

Job Seeker Discussion Group

This group will not convene in December. Please join us January 10 at noon at the new WSBA office at 1325 Fourth Ave, Ste. 600, Seattle.

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 at 206-727-8268 or 800-945-9722, ext. 8268.

Learn More About Case-Management Software

The WSBA’s Law Office Management Assistance Program (LOMAP) office 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 to make recommendations. To make an appointment, contact Julie Salmon at 206-733-5914 or 800-945-9722, ext. 5914, or juliesa@wsba.org.

Upcoming Board of Governors Meetings

December 8-9, LaConner • January 11-12, Tumwater • March 2-3, Bellevue

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 November 2006 was 5.18 percent. Therefore, the maximum allowable usury rate for December is 12 percent. Information from January 1987 to date is on the WSBA website at www.wsba.org/media/publications/barnews/usury.htm.
Announcements

HENDRICKS & LEWIS

is pleased to announce that

J. Bowman Neely

has joined the firm as an associate.

Mr. Neely will practice in the areas of civil litigation, intellectual property, business law, and entertainment and the arts.

HENDRICKS & LEWIS
999 Third Avenue, Suite 2675
Seattle, WA 98104
Phone: 206-624-1933
Fax: 206-583-2716
www.hllaw.com

THE WALTHEW LAW FIRM

is pleased to announce that

Kylee T. MacIntyre

has joined the firm as an associate.

Ms. MacIntyre, former law clerk for Supreme Court Justice Charles W. Johnson, will practice in the areas of Personal Injury and Workers’ Compensation.

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The Walthew Building
Third South and Washington
123 Third Avenue South
Seattle, WA 98104-2690
206-623-5311
Toll-free: 1-866-WALTHEW (925-8439)

Michael Ferring

and

Daniel DeLue

announce the establishment of

FERRING & DELUE LLP

FERRING & DELUE LLP
600 Stewart St., Ste. 1115
Seattle, WA 98101
Phone: 206-508-3804 • Fax: 206-508-3817
mike@ferringdelue.com
dan@ferringdelue.com

STAFFORD FREY COOPER P.C.
is pleased to announce that

Ronald Scott Bemis

has resumed his active practice with our firm.

Mr. Bemis’ 25 years of civil litigation includes an outstanding record in trials — having won every jury verdict — as well as in settlements and in litigating precedent-setting, high-value, and complex cases, both locally and nationally. He joined SFC in 1976 and has served in its management and as its President.

STAFFORD FREY COOPER
3100 Two Union Square
601 Union Street
Seattle, WA 98101
Phone: 206-623-9900 • Fax: 206-624-6885
Wells St. John P.S.
is pleased to announce that

Paul S. Holdaway

has joined the firm as an Associate

and

Robert C. Hyta and D. Brent Kenady

have become Shareholders of the firm.

Wells St. John P.S.
601 W. 1st Ave., Ste. 1300
Spokane, WA 99201-3828

www.wellsstjohn.com

McCullough Hill, PS
announces

Courtney A. Kaylor
and
Courtney E. Flora

have been elected principals of the firm, and

Jessica M. Clawson

has joined the firm as an associate.

Ms. Kaylor, Ms. Flora, and Ms. Clawson will contribute their expertise to the firm’s land use, zoning, environmental, and real estate law practice.

McCullough Hill, PS
701 Fifth Ave., Ste. 7220
Seattle, WA 98104-7042
Phone: 206-812-3388 • Fax: 206-812-3389

www.mhseattle.com

We are pleased to announce that

Joseph H. Marshall, Esq.
is now an associate with the firm of

Williams & Williams PSC

Kinnon W. Williams, Partner
Richard W. Pierson, Of Counsel

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he Lawyers’ Fund for Client Protection Committee meets quarterly to review applications for gifts from the Fund. The Committee is authorized to make gifts of up to $25,000 to eligible applicants. On applications for more than $25,000 the Committee makes recommendations to the Board of Governors, who are the Fund’s trustees. At their meeting on August 25, 2006, the Committee took the following actions:

**Mary Betker — WSBA No. 30429, Washougal, resigned in lieu of disbarment.**

In the statement Betker signed in connection with her resignation in lieu of disbarment, she stipulated to the facts of this application.

The applicant hired Betker for representation in a wrongful termination on a contingent fee plus hourly fee basis. He paid her $3,000. The applicant discussed filing bankruptcy with Betker at a time when Betker was a debtor of the applicant’s, since she should have been holding $1,387.43 of advanced fees and costs in her trust account. Betker agreed to handle the applicant’s bankruptcy knowing that she had a conflict of interest. Betker paid a nonlawyer $300 to prepare the applicant’s bankruptcy petition without any supervision from Betker. The petition contained errors and did not list the wrongful-termination claim. The petition was filed without being signed by the applicant. The bankruptcy court advised Betker that unless the applicant signed the petition and provided Social Security numbers, the petition would be dismissed. Betker employed a nonlawyer who allegedly stole between $3,000,000 and $4,000,000 from the trust account. Brandt stipulated that he could not account for the funds or explain the shortage in his trust account. In addition to these applications, the Committee continued 11 others to their November meeting for further investigation.

The applicant contacted Brandt in 2004 for legal assistance in a financial matter. In 2005 the applicant sold her family home, and Brandt offered to handle the escrow. When the sale closed, Brandt deposited the funds into his IOLTA trust account. The applicant agreed to let Brandt continue to hold the funds while she decided what to do with them. Brandt said that he would disburse funds to her as she needed them, and she received two payments — one of $5,000 and one of $3,000. At that point, Brandt should have been holding $82,327.04, plus accrued interest, in trust for the applicant. He has never paid or accounted for those funds. The Committee recommended, and the Trustees approved, payment of the fund limit of $75,000.

The applicant was the seller in a real-estate transaction handled by Brandt’s office. He was to hold $600 as a utility holdback. Brandt never distributed or accounted for these funds. The Committee approved payment of that amount to the applicant.

John B. Jackson III — WSBA No. 5208, Bremerton, suspended pending discipline.

Jackson pleaded guilty to six counts of felony theft. All of those charges related to funds misappropriated from his trust account. The applicant hired Jackson for representation on a personal-injury claim. She made a cost advance payment of $300, and they agreed on a one-third contingent fee. The claim was settled for $50,000. Jackson paid himself $16,000. He never accounted for the applicant’s funds. Eventually, Jackson sent the applicant’s new lawyer a check payable to the applicant for $32,333. The new lawyer deposited the funds into his trust account. However, Jackson then told him that those funds belonged to other clients and asked him to return the check. After consulting with WSBA professional responsibility counsel, he did not return the funds. The new lawyer also represented another of Jackson’s former clients, and he had been contacted by a third. The three of them agreed to each receive a pro-rata share of the funds from Jackson. This applicant received $14,092.49. The Committee approved payment to the applicant of $18,240.51.

The applicant hired Jackson for representation in a personal-injury claim on a one-third contingent-fee basis. The claim was settled for $25,000. Jackson paid himself $7,086.31. He was also to pay medical bills and pay the balance to the applicant. The medical bills were not paid, and the applicant never received her funds. After learning of Jackson’s suspension, the applicant went to a new lawyer. Jackson sent the new lawyer a check payable to the applicant for $16,271.36. It was returned NSF. As described above, the applicant received a pro-rata share of funds from Jackson in the amount $7,013.69. That leaves $9,257.67 unaccounted for. The Committee approved payment of that amount.

The applicant first hired Jackson in 1999 for representation on a personal-injury claim arising from an auto accident. It was settled for payment of $22,500. Jackson
prepared an undated accounting showing fees of $7,333.33; costs of $218.52; and partial payment of settlement to the applicant of $5,000. It also showed payment of one medical bill, and said Jackson was holding $7,637.41 to pay a lien to a chiropractic clinic of $4,725.19. It was never paid or accounted for.

Jackson also filed an uninsured-motorist claim from this same accident that was settled for $10,000. Jackson was entitled to a one-third contingent fee. The applicant never received any accounting or funds from Jackson.

Jackson also represented the applicant in a second car-accident personal-injury claim. The applicant had been driving a company car, and the Department of Labor and Industries (L&I) was initially handling the matter. However, because Jackson was representing him regarding the first accident, the applicant asked him to handle the second one as well. The claim was settled by payment from an insurer of $14,405.92. L&I entered an order dated August 5, 2005, distributing these funds as follows: $4,628.42 for attorney’s fees and costs; $2,444.38 as net share to the applicant; $7,333.12 for the self-insurer share. In the distribution of funds paid by Jackson as described in the previous reports, the applicant received $11,490.91.

With the applicant’s approval, the Committee approved payment of $4,725.19 directly to the chiropractic clinic; $4,000 directly to the self-insurer; and $3,865.57 to the applicant.

Jackson represented the client in a personal-injury lawsuit. She was insured by the applicant’s insurance company. The case settled for $70,000, and another insurer issued a check in that amount to the client and Jackson. Jackson agreed to pay the applicant $10,000 less a one-third contingent fee to reimburse them for PIP payments. Jackson never paid the applicant. The Committee approved payment of $10,000.

The applicant hired Jackson to represent her in a personal-injury claim on a contingent-fee basis. The fee agreement provided that she was to “maintain a fund of $200 to be held in trust to cover expenses.” She paid him $200. Jackson repeatedly assured her that he was attempting to negotiate a settlement. When she learned of his suspension, she consulted a new lawyer, who obtained her file from Jackson and filed the lawsuit before the statute of limitations had run. There was no evidence that Jackson had done anything on the applicant’s case. The Committee approved payment of $200.

The applicant hired Jackson for representation in a personal-injury claim. It was settled for $29,000. The applicant was to receive $10,000. Jackson was to receive $10,000, and he was to hold the remaining $9,000 in trust to pay medical liens and bills. However, Jackson did not pay the medical liens and bills. The applicant first learned of this when she was contacted by a collection agency. Jackson never accounted for the remaining $9,000. The Committee approved payment of that amount.

Mark A. Panitch — WSBA No. 12393, Seattle, suspended pending discipline.

Panitch was mailed a copy of this application but did not respond. He also failed to respond to the underlying grievance.

Panitch agreed to represent the applicant in a wrongful-death action. The applicant’s mother sent Panitch a check for $3,000 that he had requested to cover litigation costs. In the written contingent-fee agreement, Panitch provided that “I will not obligate you to any cost in excess of $500 without notice and consultation.”

Panitch was served with interrogatories to be answered by the applicant. Rather than obtaining the applicant’s answers by phone, he told her he was coming to Phoenix where she was living. He did not explain that she would be responsible for the costs of this trip, which would exceed $500.

The defendant filed a motion for summary judgment. Panitch requested and was granted several extensions of time to file his response because of health issues. After he did not respond to inquiries from the court, the motion for summary judgment was granted, and statutory attorney fees were assessed against the applicant. Panitch did not inform the applicant of this.

The applicant asked another attorney to review the case. He examined the court file and learned that it had been dismissed. He contacted Panitch, who said that he would file a motion to vacate the dismissal order and would file a response to the motion for summary judgment. Five months later, he filed a motion to vacate. The motion for summary judgment was heard for the second time. Panitch did not tell his clients that the motion was granted for the second time.

The applicant wrote to Panitch requesting a written accounting. His only response was an e-mail saying that he had “used about $2,000” and that “most of that went for the trip to Phoenix.” Panitch has never rendered an accounting for the $3,000 paid to him, nor has he refunded any of it to the applicant or her mother. The hearing officer recommended restitution of $3,000, and the Committee approved payment in that amount.

Michael O. Riley — WSBA No. 21452, Tukwila, suspended pending discipline.

Copies of all applications were mailed to both Riley’s office and home addresses. Those to his office address were returned to the WSBA marked “moved left no forwarding address.” Those to his home address were returned marked “return to sender — no forwarding address on file.”

The applicant’s parents paid Riley $1,000 for representation of the applicant on a DUI charge. The court docket shows no appearance or other action by Riley. The applicant tried repeatedly to reach Riley by phone without success, and finally found that his phone was disconnected. Riley has never accounted for the $1,000 paid to him, and the Committee approved payment of that amount to the applicant’s parents.

The applicant paid Riley $2,000 to probate his father’s estate. The applicant repeatedly called Riley and left messages asking for the status of the estate proceeding. Riley never returned any of the calls. Finally, the applicant sent a certified letter to Riley asking for return of his father’s will and the $2,000. Riley did not respond. The applicant filed a grievance with the WSBA. Riley did not respond and he was subpoenaed for a deposition, but when he appeared, he did not produce all of the subpoenaed records. Riley never returned or accounted for the $2,000. The hearing officer ordered restitution of $2,000, and the Committee approved payment of that amount.
The applicant hired Riley regarding a claim against parties who had contracted with him to build a custom-made aquarium. The applicant was served with a lawsuit commenced by the other parties. The applicant and Riley discussed the case, and the applicant paid Riley $1,000 to respond to the suit. At the time of their next scheduled meeting, the applicant went to Riley’s office, but Riley was moving out and too busy to talk. They agreed to meet at the applicant’s home. That was the last contact the applicant had with Riley. The Committee approved payment of $1,000 to the applicant.

Gail Schwartz — WSBA No. 28994, Spokane, suspended.

Schwartz was sent copies of all applications and requested to respond by both the Fund and the Office of Disciplinary Counsel. She did not respond.

The applicant hired Schwartz for representation regarding custody of his daughter. He made a fee payment of $600. The applicant had worked on Schwartz’s unsuccessful judicial campaign in Spokane in 2004. In order to save fees, it was agreed that he and his wife and sister would prepare some of the documents necessary for the proceeding, including their own declarations.

A petition to modify the parenting plan and the declarations of the applicant and his wife and sister were filed. The applicant was told by Schwartz’s office assistant that their office had not given proper notice to the other party, and that the hearing was continued. After several delays, including misrepresentations regarding hearing dates, Schwartz called the applicant and said, “Sorry, but when you are very busy things get forgotten.” He then received a letter from Schwartz that essentially blamed the applicant for whatever happened or didn’t happen. She said that she should never have taken his case. She did not address the issue of misrepresentations by her and her office regarding hearings that were missed or never set. The Committee approved payment of $600 to the applicant.

The applicant paid Schwartz $500 to represent her fiancé, who was in jail. He had previously been convicted of malicious mischief and placed on probation on various conditions. A probation show-cause hearing was set. The applicant says she told Schwartz that her fiancé would not be able to appear at the show-cause hearing because he was being transferred to Western State Hospital. She says Schwartz was to get the hearing continued. Schwartz did not seek a continuance, and a warrant was issued for her client’s arrest. The applicant learned of this when her fiancé was to be released from jail. After several attempts, she reached Schwartz and Schwartz got the warrant quashed. The show-cause hearing was reset, but Schwartz did not advise them of the hearing date. Later, they learned another warrant had been issued for failure to appear. The applicant called Schwartz and left voicemails but Schwartz never returned her calls. The applicant and her fiancé wrote to Schwartz advising her that they had hired a new lawyer and requesting return of the $500. Schwartz did not respond and never refunded the fee. The Committee approved payment of $500 to the applicant.

The applicant consulted Schwartz regarding a divorce. They signed a fee agreement that provided for a fee of $1,500 plus $120 filing fee. The applicant’s father made three payments to Schwartz totaling $1,500. Schwartz agreed that she would not file the dissolution proceeding until a pending bankruptcy proceeding of the applicant and his wife had been concluded. The order of discharge was entered, and the applicant tried to contact Schwartz to tell her to proceed. When the applicant finally reached Schwartz, she told him she was suspended from practice. He asked about the money paid to her by his father, and she said she would mail a refund. She never did so. The Committee approved payment of $1,500.

The applicant was convicted of second-degree felony murder. The Court of Appeals overturned his conviction based on a Supreme Court decision that assault may not serve as the predicate crime for second-degree felony murder based on the law in effect at the time of his actions. The case was remanded to superior court for further action. The applicant hired Schwartz to represent him on the remand. His mother and a friend paid Schwartz $1,900 on his behalf. Schwartz did not meet with the applicant in jail until just before his second arraignment. He told her he was upset with her representation of him, and she responded that she could either continue as his attorney, or withdraw and return his fee. He told her he wanted her to withdraw. Schwartz withdrew and a public defender was appointed. Schwartz never returned any of the applicant’s money. The Committee approved payment of $1,900.

Other business

The Committee reviewed 18 additional applications that were denied for lack of evidence of dishonest conduct, as fee disputes or claims for malpractice, as civil disputes, or because restitution was made. Six applications were continued to seek further information. The Committee also voted to recommend to the Board of Governors an amendment to the Fund Procedural Rules regarding notice of approved claims.

Annual Report

The Committee prepared the annual report, which was approved by the Board of Governors for submission to the Supreme Court. The total amount paid out this fiscal year was $468,695.25. A summary of Committee and trustee actions is shown below.

Approved for payment: 66
Denied as fee dispute: 33
Denied; no evidence of dishonesty: 11
Denied as malpractice claim: 10
Restitution made: 5
Deferred: 10
Other: 4

The 2006 annual report is available on the WSBA website at www.wsba.org/lawyers/groups/lawyersfund/default1.htm, or by contacting the WSBA Service Center at 800-945-9722, 206-443-9722, or questions@wsba.org.

Restitution

Before payment is made to an applicant, the applicant must sign a subrogation agreement with the Fund, and the Fund seeks restitution from the lawyers. Because in most cases those lawyers have no assets, the chief avenue of restitution is through court-ordered restitution in criminal cases. Prosecuting attorneys cooperate with the Fund in getting the Fund listed in restitution orders. As of August 2006, eight lawyers were making regular restitution payments to the Fund.

The Committee chair is Tacoma attorney Sarah Richardson. WSBA General Counsel Robert Welden is staff liaison to the Committee.
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

Donna J. Light (WSBA No. 22465, admitted 1993), of Renton, was disbarred, effective March 29, 2006, by order of the Washington State Supreme Court following a hearing. This discipline was based on her conduct between 2003 and 2005 in multiple matters.

Ms. Light’s conduct establishing grounds for discipline included the following:

• Failing to competently and diligently represent clients in 16 matters, including failing to timely file pleadings and other paperwork, failing to adequately review the contents of and correct inaccuracies in filed pleadings, failing to perform adequate research, failing to prepare for or appear at hearings and trials, and failing to appear for scheduled meetings with clients.

• Filing bankruptcy schedules, a bankruptcy plan, and other pleadings known to Ms. Light to contain false and misleading information in violation of 11 U.S.C. §152; filing a Chapter 13 bankruptcy plan for a client without the client’s knowledge or consent; and filing bankruptcy schedules and a statement of financial affairs that were never reviewed by the clients.

• Failing to keep clients informed about the status of their cases, failing to maintain an adequate telephone system or address where clients and opposing counsel could reach her, disregarding telephone messages and letters from clients requesting information about their cases, and intentionally concealing her whereabouts from clients.

• Charging unreasonable fees for the amount of work performed, failing to refund unearned fees to clients after having failed to provide legal services, and failing to return documents or files upon client request following termination of representation.

• Losing or destroying most or all of a client file in a bankruptcy matter.

• Misrepresenting case status to clients, falsely representing to clients that she would refile or had already filed pleadings when she had not, deceptively promising to refund fees as a means to lure clients into rehiring her, and deceptively obtaining fees from clients without intending to perform legal services for them (constituting theft by deception).

• In connection with the disciplinary investigation and proceeding, failing to attend a scheduled deposition and failing to deliver client files and records to disciplinary counsel as required by a scheduling order and an order to compel.

In February 2005, Ms. Light was personally served with an order to show cause issued by the Washington State Supreme Court. The order directed Ms. Light to appear in March before the Washington State Supreme Court, which she failed to do. In March 2005, the Supreme Court issued an order immediately suspending Ms. Light from the practice of law. Disciplinary counsel sent Ms. Light a notice of duties upon suspension pursuant to ELC 14.1 Ms. Light continued to engage in the practice of law and failed to comply with the duties upon suspension, which included notifying all clients of the suspension, notifying the tribunal of the inability to act in pending matters, filing an affidavit of compliance, and returning unearned fees and client files.

Ms. Light’s conduct violated RPC 1.1, requiring a lawyer to provide competent representation to a client; RPC 1.2(d), prohibiting a lawyer from counseling a client to engage, or assisting a client, in conduct that the lawyer knows is criminal or fraudulent; RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; RPC 1.4(a), requiring a lawyer to keep a client reasonably informed about the status of a matter and to promptly comply with reasonable requests for information; RPC 1.5(a), requiring a lawyer’s fees to be reasonable; 1.15(d), requiring a lawyer to take steps to the extent reasonably practicable to protect a client’s interests upon termination of representation; RPC 3.1, prohibiting a lawyer from bringing or defending a proceeding, or asserting or controverting an issue therein, unless there is a basis for doing so that is not frivolous; RPC 5.5(a), prohibiting a lawyer from practicing law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; RPC 8.4(a), prohibiting a lawyer from attempting to violate the Rules of Professional Conduct; RPC 8.4(b), prohibiting a lawyer from committing a criminal act (here, theft) that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects; RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; RPC 8.4(j), prohibiting a lawyer from willfully disobeying or violating a court order directing him or her to do or cease doing an act which he or she ought in good faith to do or forbear; RPC 8.4(l), prohibiting a lawyer from violating a duty or sanction imposed by or under the Rules for Enforcement of Lawyer Conduct (here, ELC 1.5, 10.11(g), 14.1(a) and (c), 14.2, and 14.3); and RPC 8.4(n), prohibiting a lawyer from engaging in conduct demonstrating unfitness to practice law.

Jonathan H. Burke and Scott G. Busby represented the Bar Association. Ms. Light represented herself. Timothy J. Parker was the hearing officer.

Disbarred

Joseph P. Whitney (WSBA No. 24073, admitted 1994), of Port Gamble, was disbarred, effective September 29, 2005, by order of the Washington State Supreme Court following a hearing. This discipline was based on his conduct in 2002 involving false testimony under oath and failure to cooperate with a disciplinary investigation. For additional information see In re Discipline of Whitney, 155 Wn.2d 451, 120 P.3d 550 (2005).

In 2001, Mr. Whitney was appointed by the superior court to serve as a guardian ad litem (GAL) for two minor children. The children were the subject of a contested proceeding involving the modification of child support and the revision of a parenting plan. Mr. Whitney received a $1,000 re-
tainer ($500 from each party) for services he was to render and agreed to accept the case for that amount as a flat fee. As a GAL, Mr. Whitney's responsibilities included, inter alia, interviewing persons with knowledge of the children and preparing a report upon completion of his investigation in order to assist the court in making a placement decision. Mr. Whitney's report mentioned the school activities of the two children. At the February 2002 modification trial, Mr. Whitney testified under oath that he had interviewed three teachers at the children's school. In response to questioning, Mr. Whitney provided specific information, which he claimed he had obtained from the teachers. The three teachers testified at the trial that they had never met with or spoken to Mr. Whitney. In response to the apparent dishonesty in the trial testimony, the superior court judge stated, "I think [the] teachers forgot that Joe Whitney called them;" and, "I believe Mr. Whitney that he called them."

After the trial, one of the teachers and the children's father filed grievances with the Bar Association, alleging that Mr. Whitney had lied under oath. Mr. Whitney failed to respond. In September 2002, disciplinary counsel notified Mr. Whitney that if he did not respond, he would be subpoenaed and required to pay the costs of a deposition. Despite this warning, Mr. Whitney failed to respond and was, consequently, deposed. In his deposition, Mr. Whitney again testified that he had spoken to the three teachers.

At the conclusion of the disciplinary hearing, the hearing officer found that "Mr. Whitney's testimony was not credible...." He also found that the testimony of the teachers was "very credible and [that] they had no personal motivation to lie."

Mr. Whitney's conduct violated RPC 3.3(a)(1), prohibiting a lawyer from making a false statement of material fact or law to a tribunal; RPC 3.3(a)(4), prohibiting a lawyer from offering evidence that the lawyer knows to be false; RPC 8.4(b), prohibiting the commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects; RPC 8.4(c), prohibiting conduct involving dishonesty, deceit, fraud, or misrepresentation; RPC 8.4(d), prohibiting conduct prejudicial to the administration of justice; RPC 8.4(f), prohibiting a lawyer from violating a duty imposed by or under the Rules for Enforcement of Lawyer Conduct (here, ELC 5.3(e) and (f), requiring a lawyer to promptly respond to any inquiry or request for information relevant to grievances); and former RLD 2.8(a), requiring a lawyer to promptly respond to any inquiry or request for information relevant to grievances.

Linda B. Eide and Elizabeth A. Turner represented the Bar Association. Mr. Whitney represented himself at the hearing. David G. "Arthur" Wecker represented Mr. Whitney on appeal to the Supreme Court. J.C. Becker was the hearing officer.

Suspended

Philipp C. Serrin (WSBA No. 11961, admitted 1981) of Glenwood, MN, was suspended for 60 days, effective September 18, 2006, by order of the Washington State Supreme Court following a stipulation approved by the Disciplinary Board. This discipline is based on his conduct in 2003 and 2004 involving the unauthorized practice of law.

Mr. Serrin has been a Minnesota resident since 2000. He owns and operates a title company located in Pope County, Minnesota, in which he performs work both for his title company and legal work for Washington state clients. Although not licensed to practice law in Minnesota, Mr. Serrin has occasionally performed or offered to perform legal work for Minnesota residents without advising them that he is not licensed to practice law in Minnesota, and he has maintained an office labeled "Serrin Law Office." Mr. Serrin's revenue from performing legal services for Minnesota residents has been approximately $6,000 during the time that he has resided in Minnesota.

Mr. Serrin's conduct violated RPC 5.5(a), prohibiting a lawyer from practicing in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; RPC 7.1(a), prohibiting a lawyer from making a false or misleading communication about the lawyer or lawyer's services; and RPC 8.4(a), prohibiting a lawyer from attempting to violate the Rules of Professional Conduct.

Nancy B. Miller represented the Bar Association. Mr. Serrin represented himself.

Reprimanded

J. Marvin Benson (WSBA No. 9078, admitted 1979), of Vancouver, was ordered to receive a reprimand on January 26, 2006, following a stipulation approved by the Disciplinary Board. Mr. Benson's conduct violated RPC 8.4(c), prohibiting conduct involving dishonesty, deceit, fraud, or misrepresentation; RPC 8.4(d), prohibiting conduct prejudicial to the administration of justice; and RPC 8.4(f), prohibiting a lawyer from violating a duty imposed by or under the Rules for Enforcement of Lawyer Conduct (here, ELC 5.3(e) and (f), requiring a lawyer to promptly respond to any inquiry or request for information relevant to grievances).

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.
The court granted the petition and appointed a GAL.

In September 2002, Mr. Benson filed a motion to be appointed as the client’s lawyer in the guardianship proceeding. Mr. Benson did not consult with the client prior to filing the motion. He stated in his motion that the attorney-in-fact son had asked Mr. Benson to represent the client and that he was aware of the client’s “expressed preferences” based on past dealings with her. According to Mr. Benson, he visited the client twice after he was appointed as her counsel and, at one such meeting, the client told him the nursing home was “nice” but not where she wanted to live. Members of the family who were present during one such visit by Mr. Benson asserted that Mr. Benson did not recognize the client and that the client was incapable of communicating anything to him or anybody else. In November 2002, upon motion of the client’s other son, the court removed Mr. Benson as the client’s lawyer, finding that the client had not retained him to represent her.

Mr. Benson’s conduct violated RPC 1.2(f), prohibiting a lawyer from willfully purporting to act as a lawyer for any person without the authority of that person; 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 1.13, requiring a lawyer to determine whether a client’s ability to make adequately considered decisions in connection with the representation is impaired because of minority, mental disability, or for some other reason.

Kevin M. Bank represented the Bar Association. Mr. Benson represented himself.

Non-Disciplinary Notices

Joel Santos Manalang (WSBA No. 26675, admitted 1997), of Seattle, was suspended pending the outcome of disciplinary proceedings pursuant to ELC 7.1, effective October 12, 2006, by an order of the Washington State Supreme Court. This is not a disciplinary action.

Jerry J. Yu (WSBA No. 29164, admitted 1999), of Cameron Park, CA, was by stipulation suspended pending the outcome of disciplinary proceedings pursuant to ELC 7.4, effective October 12, 2006, by an order of the Washington State Supreme Court. This is not a disciplinary action.

Legal Malpractice and Disciplinary Issues

Joseph J. Ganz is available for consultation, referral, and association in cases of legal malpractice (both plaintiff and defense), as well as defense of lawyer disciplinary and/or grievance issues.

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

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

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William C. Smart, trial attorney with over 25 years of experience, is available for consultation, referral, or association on failure to defend, failure to settle, excess judgment, negligent claims handling or other insurance bad faith claims, including disability insurance.

WILLIAM C. SMART
KELLER ROHRBACK L.L.P.
1201 Third Avenue, #3200
Seattle, WA 98101
206-623-1900
E-mail: wsmart@kellerrohrback.com

DISCIPLINARY INVESTIGATION and PROCEEDINGS

Patrick C. Sheldon, former member of the Washington State Bar Association Disciplinary Board, is now accepting referrals for attorney disciplinary investigations and proceedings.

FAIN SHELDON ANDERSON & VANDERHOEF PLLC
Bank of America Tower
701 Fifth Avenue, Suite 4650
Seattle, WA 98104
206-749-2371
E-mail: patrick@fsav.com

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northwestdrg@mhpro57.com

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Bradley K. Crosta
Counsel for plaintiff in Stute v. PBMC, Inc., 114 Wn.2d 454 (1990) (General contractor has primary responsibility for the safety of all workers.)

Is available for consultation, association, or referrals.

CROSTA AND BATEMAN
999 Third Avenue, Suite 2525
Seattle, WA 98104-4089
206-224-0900
bcrosta@aol.com

APPEALS

Philip A. Talmadge, former justice, Washington State Supreme Court; fellow, American Academy of Appellate Lawyers

Emmelyn Hart-Biberfeld, former law clerk, Washington State Supreme Court; invited member, the Order of Barristers

Anne E. Melley, former law clerk, Washington State Court of Appeals

Thomas M. Fitzpatrick, former executive director, Snohomish County; former assistant chief, civil, Snohomish County Prosecuting Attorney’s Office; fellow, ABA Center for Professional Responsibility

Available for consultation or referral on state and federal briefs and arguments.

TALMADGE LAW GROUP PLLC
18010 Southcenter Parkway
Tukwila, WA 98188-4630
206-574-6661
Fax: 206-575-1397
E-mail: christine@talmadgelg.com
www.talmadgelg.com

APPEALS

Anne Watson, former law clerk to the Washington State Supreme Court, is available for consultation, association, or referral of appellate cases.

LAW OFFICE OF ANNE WATSON, PLLC
360-943-7614
anne@awatsonlaw.com
Please check with providers to verify approved CLE credits. To announce a seminar, please send information to:

WSBA Bar News Calendar
1325 Fourth Ave., Ste. 600
Seattle, WA 98101-2539
Fax: 206-727-8319
E-mail: comm@wsba.org

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

**Business Law**

**Business, Corporate and Securities Law Update**
December 8 — Seattle. 5.5 CLE credits, including 1 ethics. By The Seminar Group; 800-574-4852 or 206-463-4400.

**3rd Annual Conference on Responsible Corporate Leadership in Washington State**
December 14 — Seattle. 6 CLE credits, including 1.75 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

**Construction Law**

**Construction Defects: Water Intrusion and Other Calamities**
December 8 — Seattle. 6 CLE credits. By The Seminar Group; 800-574-4852 or 206-463-4400.

**Creditor/Debtor Law**

**Liens: How They Arise and How You Can Use Them**
December 6 — Seattle. 6.25 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

**Liens: How They Arise and How You Can Use Them**

**Elder Law**

**Annual Elder Law Program**
January 19 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

**Estate Planning**

**Gifting to Minors and Durable Powers of Attorney**
December 5 — Seattle. 6 CLE credits, including .75 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

**Ethics**

**Annual Ethics Seminar**
December 7 — Seattle. 4 ethics credits. By WDTL; 206-749-0319.

**Ethics with Ease: Ethics for Business Attorneys**
December 11 — TELE-CLE Series. 1.5 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

**Ethics with Ease: Ethics for Employment Law Attorneys**
December 12 — TELE-CLE Series. 1.5 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

**The Fourth Annual Conference on the Law of Lawyering, Day One: Malpractice and Risk Avoidance**
December 13 — Seattle. 6 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

**The Fourth Annual Conference on the Law of Lawyering, Day Two: Ethics and Professionalism**
December 14 — Seattle. 6 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

**Family Law**

**Handling Your First (or Next) Dissolution Trial with Confidence**
December 18 — Seattle. 6 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

**Gaming Law**

**4th Annual Northwest Gaming Law Summit**

December 12 — Spokane. 6.25 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

**December 7-8 — Seattle. 11.5 CLE credits. By The Seminar Group; 800-574-4852 or 206-463-4400.**

**Labor/Employment**

**Employment Law Essentials: What Every Employment Lawyer Needs to Know**
December 6 — Seattle. 6 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

**Landlord-Tenant**

**Tenants in Common/1031 Exchange**
January 8 — Seattle. 5.5 CLE credits. By ClearView Wealth Management, LLC; 425-557-0559 or seminars@cvwm.com.

**Land Use**

**Land Use 2006: Conflict and Consensus**
December 12 — Seattle. 6.5 CLE credits, including 1 ethics. By UW School of Law; 800-CLE-UNIV or 206-543-0059.

**Liability**

**Proving Liability: A Plaintiff Lawyer’s Roadmap to Winning Cases**
December 13 — 5.75 CLE credits. By WSTLA; 206-464-1011 or seminars@wstla.org.

**Litigation**

**Movie Magic: How the Masters Try Cases with Steve Rosen**
December 7 — Seattle, December 8 — Spokane. 6 CLE credits, including 2 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

**Deposition Techniques: Strategies, Tactics, Skills — Featuring David B. Markowitz**
December 19 — Seattle. 6 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

**Mediation and Arbitration**

**Four-Day Intensive Mediator Training Program**
December 5-8 — Seattle. 41.5 CLE credits, including 4.5 ethics. By Alhadeff and Forbes Mediation Services; 206-281-9950.

**Advanced Skills for Effective Communication**
December 12 — Seattle. 5.5 CLE credits. By the Dispute Resolution Center of King County; 206-443-9603, ext. 107.
Classifieds

Reply to WSBA Bar News Box Numbers at:
WSBA Bar News Job Code Bar News Classifieds
1325 Fourth Ave., Ste. 600 Seattle, WA 98101-2539
Positions available are also posted online at www.wsba.org/jobs.


Wanted: Attorney to share office — downtown Yakima. Parking, library, and legal assistant available. Call Ken Therrien at 509-457-5991 or e-mail to kentherrien@msn.com.

Kent office space: Large, fully furnished corner office with private entrance in elegant, newly constructed small law building. Possible referrals. All amenities included. Gated entrance with own parking lot. Highly visible location close to RJC. 206-227-8831.

The Cressman/Lockwood Building, 11033 N.E. 24th St, Bellevue, Washington, offers a choice of one to five private offices on the window line with adjacent areas for staff. This nicely appointed air-conditioned building has excellent access to Hwy-520 and I-405. Congenial sole practitioners. Lease service package includes law library; large, medium, and small conference rooms; receptionist; answering service; nationwide long-distance telephone service. Share workroom with color copier, scanner, fax, and other equipment, plus kitchen. File storage on site. Locker and shower facilities. Walk to tennis, basketball courts, plus ball field. Contact Ms. White or Mr. Cressman, Sr. at 425-451-1202.

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One full/part-time office available. 520
Pike Tower, Seattle. $1,200/month. Includes work station, reception and phone service, copier/fax, Internet, conference room. Rent is negotiable. Please call 206-838-8333.

**Redmond Class-A space** — Premier downtown location with business law referral overflow available. Call 425-867-0512.

**Sublease in established downtown Seattle law firm.** West and north-facing view offices, as well as staff area at 1001 Fourth Ave. (36th fl.) available. Includes use of conference rooms, kitchens, and law library, as well as mail-handling and legal-messenger services. Phones, Internet, copy, scan, and fax devices also available. Please contact Bobn@thefoundationgroup.com.


**Space available:** Northgate, Edmonds, and Renton area (next to Ikea). Great locations and easy access to freeways. For more info, call Bob Nakao, The Foundation Group, at 206-324-9417 or e-mail bobn@thefoundationgroup.com.

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**Will Search**


**Looking for will and/or codicil of Leslie Dean Jones.** He lived in both Spokane and Seattle areas. Please contact Patricia Lane at 425-876-4283 or e-mail to: Isewit@comcast.net.

**Positions**

**Attorneys:** Quality attorney recruitment for contract and direct-hire placement, including lateral-hire partnership and of-counsel positions. We specialize in engagements with Puget Sound’s premier law firms of large to small/solo membership, corporate legal departments, boutique practices, and governmental agencies. Please contact Law Dawgs, Inc., in confidence, at 206-224-8269; e-mail seattle@lawdawgs.com; www.lawdawgs.com.

**Quality attorneys** sought to fill high-end permanent and contract positions in law firms and companies throughout Washington. Contact Legal Ease, LLC by phone, 425-822-1157; fax, 425-889-2775; e-mail legallease@legallease.com; or visit us on the web at www.legalease.com.

**Minzel and Associates, Inc.** is a temporary- and permanent-placement agency for lawyers and paralegals. We are looking for quality lawyers and paralegals who are willing to work on a contract and/or permanent basis for law firms, corporations, solo practitioners, and government agencies. If you are interested, please e-mail your résumé as a Word attachment to resumes@minzel.com. Please visit our website at www.minzel.com.

**Major, Lindsey & Africa,** attorney-search consultants, was founded in 1982 and now has offices in 15 U.S. cities, Hong Kong, and London. In the only legal recruiters’ national surveys ever conducted, MLA was described as being “in a league apart from other legal headhunting firms” and was voted “Best Legal Search Firm in the U.S.” If you are interested in in-house, partner, or associate opportunities, please contact our Seattle office at 206-218-1010, or e-mail your résumé to seattle@mlaglobal.com.

**Lituration position** — Deputy Prosecutor — Civil Division — Lewis County. The Civil Division of the Lewis County Prosecuting Attorney’s Office is soliciting applications for an experienced litigator in tort claims, injury, police liability, civil rights, employment law, and municipal law. The ideal candidate would have four or more years of litigation experience. Those applying must possess a valid driver’s license and be a U.S. citizen and a WSBA member. Applicants must submit a résumé, writing sample, references, and a cover letter which includes a daytime telephone number. The salary for this position depends on qualifications. Excellent benefits. All qualified applicants should send a résumé, cover letter, writing sample, and references by December 1, 2006 to: Douglas E. Jensen, Chief Civil Deputy, Lewis County Prosecuting Attorney’s Office, 345 W. Main St., 2nd Fl., MS:PRO-01, Chehalis, WA 98532-1900, or send via e-mail to jlkambic@co.lewis.wa.us. Lewis County is an Equal Opportunity Employer.

**Yarmuth Wilsdon Calfo PLLC** is an AV-rated Seattle law firm of 15 lawyers with a national commercial litigation practice and a focus on government investigations and white-collar criminal defense. We are looking for an associate with three-plus years of relevant experience. Excellent academic credentials and writing skills are required (and a federal clerkship highly desirable), along with an enthusiasm for trial work and the practice of law. Information about the firm can be found at www.yarmuth.com. Please e-mail résumé and cover letter to Richard Yarmuth at yarmuth@yarmuth.com.

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Would you like to practice business law in a community where there is significant growth and opportunity? Do you want to be part of an established law firm with a reputation for providing high-quality service and expertise? We are seeking the “best of the best” to participate in the firm’s growth, direction, and leadership. Landerholm, Memovich, Lansverk, & Whitesides, P.S., is a 17-attorney firm that is looking for a highly capable attorney with at least five years’ business law experience to join our thriving business practice. Located in Vancouver, Washington, we are the largest law firm in Southwest Washington, which is an area that offers a superior quality of life, excellent schools, affordable housing, and numerous opportunities for community involvement. Vancouver is the fastest-growing city in the state and is part of the fastest-growing county in the Northwest. With that growth, there are excellent opportunities for intellectual, financial, and organizational advancement. Résumés should be sent to rhonda.kates@landerholm.com, or to Director of Operations, Landerholm, Memovich, et al., 805 Broadway St., Ste. 1000, Vancouver, WA 98660.

**The Puyallup Tribe of Indians** seeks applicants for two attorney positions in its in-house legal department. Environmental law attorney works with the Tribe’s environmental department and other departments of the Tribal government on a variety of issues involving Tribal, federal, and state environmental laws, natural resource and habitat protection, and water law. General attorney advises and represents various departments of the Tribal government on a variety of issues, including drafting and interpretation of tribal laws, litigation in various court systems, negotiations, research, compliance with federal laws, contract review and interpretation, and administrative law matters. Contact the Puyallup Tribe of Indians, Human Resources Department, 3009 E. Portland Ave., Tacoma, WA 98404.

**Employee-benefits attorney:** Employee Benefits Institute of America Inc. (EBIA), Seattle. As we await the release of comprehensive IRS regulations on cafeteria plans, we are seeking another experienced employee-benefits attorney. Come join 12 other employee-benefits attorneys in EBIA’s editorial group, and help write and edit our reference manuals, the EBIA Weekly, and other publications. You’ll also present many in-person and web seminars and help us develop new products. You must love teaching and writing and be outstanding at both. You’ll need at least six years of experience in a major law firm as a full-time attorney advising employers and administrators. Extensive cafeteria-plan experience is a must. You’ll also need an entrepreneurial spirit and top academic credentials. Most of our editors served on law review and have 10-plus years of major law firm experience. We have a team of talented, caring, and fun-loving people working on challenging and important issues. Experience life without billable hours, and enjoy meaningful time off. Competitive salary and benefits. Some travel required. Please send a cover letter and résumé to editor2006@ebia.com. For information about us, please visit www.ebia.com.

**Associate attorney for Seattle law firm.** Carney Badley Spellman seeks employment associate for growing employment department; minimum three years’ experience. Ideal candidate will have experience with employment-law advice, trainings, workplace investigations, employment agreements, employee handbooks, and all aspects of litigation. Strong academics, proven communication and writing skills, and leadership qualities. Carney Badley Spellman was named one of “Puget Sound’s Best Places to Work” in 2005 by Seattle
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Socius Law Group, PLLC seeks a litigation associate. This dynamic firm offers a team-oriented work environment that focuses on exceptional client service and civic involvement. Socius offers competitive salary and benefits. Applicants must have a minimum of two years’ litigation experience, exceptional written and oral communication skills, and an ability to work independently with clients. Please send cover letter, references, and résumé to Hiring Partner, Socius Law Group, Two Union Square, 601 Union St., Ste. 4950, Seattle, WA 98101 or e-mail to wager@sociuslaw.com.

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Hillis Clark Martin & Peterson P.S. is seeking an associate to join its lender services group. We are looking for an attorney with two-plus years’ experience dealing with creditors’ rights and bankruptcy issues. Primary responsibilities will include representing financial institutions in litigation matters involving secured transactions, creditor-debtor law, commercial landlord-tenant issues, receiverships, and bankruptcy. Prior commercial litigation experience, including depositions and appearances in both bankruptcy and state courts, is important. Some familiarity with loan origination and documentation would be helpful. The applicant will be expected to have exceptional academic credentials and excellent writing and advocacy skills. Membership in the WSBA is required. Please submit a cover letter, résumé, and a copy of your law school transcript to Eileen Kraabel, Recruiting Administrator, 1221 Second Ave., Ste. 500, Seattle, WA 98101-2925, or e-mail your application materials to ejk@hcmp.com. We are an equal opportunity employer and are committed to a culturally diverse workplace.

Carney Badley Spellman, P.S. seeks a business associate, minimum two years’ corporate and/or estate planning experience; LL.M in tax or CPA preferred. Ideal candidate will have a strong academic and legal background and excellent research and writing abilities. Experience should include entity formation, mergers and acquisitions, and general corporate transactions. Carney Badley Spellman is an AV-rated law firm that was named one of "Puget Sound’s Best Places to Work" in 2005 by Seattle magazine. Please send or e-mail your cover letter and résumé to Deborah Dillard, Legal Administrator, Carney Badley Spellman, 701 5th Ave., #3600, Seattle, WA 98104; or e-mail dillard@carneylaw.com.

Inslee, Best, Doezie & Ryder, P.S. a prominent, mid-size downtown Bellevue law firm, seeks an exceptional associate attorney with three-plus years’ experience in general civil litigation and business transactions. Inslee, Best is committed to the development of its lawyers, the eastside, and other local communities. The firm consciously strives to promote an environment that encourages personal as well as professional growth. Successful candidates will have excellent academic credentials, outstanding research and writing skills, and a commitment to delivering superior client service. Please send résumé and list of professional references to: Hiring Coordinator, Inslee, Best, Doezie & Ryder, P.S., PO Box 90016, Bellevue, WA 98009.

AV-rated Everett general litigation firm seeks to hire an associate attorney. Competitive salary and benefits package. Must be a current member of the WSBA and must have at least one year of experience. Mail cover letter, résumé, and references to: Hiring Partner, 3232 Rockefeller Ave., Everett, WA 98201.

Scheer & Zehnder LLP seeks an associate attorney with two or more years of solid complex litigation experience to join our established and growing firm. We handle a wide variety of matters including commercial and business litigation, insurance coverage, construction defect, appellate, personal injury, tort and civil rights defense, and employment. Excellent research, writing, and analytical skills; attention to detail; and ability to work professionally with clients, attorneys, and staff under pressure with limited supervision are a must. We offer enjoyable work environment, competitive salaries, and excellent benefits. Please send your cover letter and résumé (in Word) to resume@scheerlaw.com. Contact Fareeda Khojandi 206-262-1200; website: www.scheerlaw.com.

Immediate opening for medical malpractice attorney for Seattle law firm emphasizing med-mal and insurance defense. The ideal candidate will have six-plus years of experience with med-mal defense and be licensed by the WSBA. Competitive salary and benefits. All applicants applying for U.S. job openings must be authorized to work in the United States. Robert Half Legal is an Equal Opportunity Employer. To express interest in this position, please contact allison.williams@roberthalflegal.com.

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Seattle and Washington, D.C. Excellent salary, bonus potential, and benefits are all included. For more information or to submit your résumé in confidence, contact allison.williams@roberthalflegal.com. All applicants applying for U.S. job openings must be authorized to work in the United States. Robert Half Legal is an Equal Opportunity Employer.

We are recruiting for a senior corporate attorney for a very well-known Seattle area firm as a partner. Significant corporate experience required; business portfolio preferred. To submit your résumé in confidence, or for additional information, please submit résumé to esther.cuno@roberthalflegal.com.

Labor Ready, Inc. (LRW), one of the nation’s largest employers, is seeking a litigation attorney to manage general liability, employment, and commercial litigation in the legal department at Labor Ready’s corporate offices located in Tacoma, Washington. Reporting to the vice president for legal and government affairs and chief compliance officer, this attorney will be responsible for managing outside counsel on litigation matters, gathering relevant information to support or defend lawsuits, and other litigation practice to achieve successful results. The attorney will also be responsible for developing and implementing cost-control measures, reducing the number of law firms utilized and obtaining preferred rates. The attorney will be responsible for preparing expense forecasts, managing to a budget, preparing litigation reports, and recommending new policies and training to reduce the frequency of claims. Requisite Experience: The successful candidate will have a minimum of three years experience working exclusively in litigation with a mid to large-size firm, or a boutique litigation firm. Labor Ready provides an excellent benefit package, which includes: 401(k), stock purchase program, tuition reimbursement, college fund, and a comprehensive medical/dental program. Labor Ready is an EEO employer and encourages diverse candidates to apply. To apply: Submit your résumé to: Attn: Joanna Monroe, Vice President Legal and Government Affairs Chief Compliance Officer, Labor Ready, Inc., PO Box 2910, Tacoma, WA 98401. E-mail: jmonroe@laborready.com. If you are a candidate responding from out of state or country, please do not submit your résumé unless you can interview immediately and plan to relocate. This position does not pay relocation fees or sponsorship of foreign worker visas.

Labor Ready, Inc. (LRW), one of the nation’s largest employers, is seeking a contract administrator/paralegal in the legal department at Labor Ready’s corporate offices located in Tacoma, Washington. Reporting to a corporate attorney, this key role performs a multitude of contract-related tasks, including negotiating and reviewing supplier and subcontractor agreements and nondisclosure agreements, distributing and revising standard form agreements, and organizing the contract files. Additional duties include administrative and paralegal duties related to corporate governance and management of our corporate subsidiaries. Requisite experience: The successful candidate will have a minimum of three years’ experience in contracting or general business experience. Four-year degree preferred. Labor Ready provides an excellent benefit package, which includes: 401(k), stock purchase program, tuition reimbursement, college fund, and a comprehensive medical/dental program. Labor Ready is an EEO employer and encourages diverse candidates to apply. To apply: Submit your résumé to: Attn: Todd Gilman, Senior Corporate Counsel, Labor Ready, Inc., PO Box 2910, Tacoma, WA 98401. E-mail: jmonroe@laborready.com. If you are a candidate responding from out of state or country, please do not submit your résumé unless you can interview immediately and plan to relocate. This position does not pay relocation fees or sponsorship of foreign worker visas.

Business/tax/T&E position: The Tacoma office of Gordon Thomas Honeywell is seeking a tax associate to join its business/tax law group. We are looking for an attorney with two-plus years’ experience in transactional matters, and research, writing, and analytical skills. The qualified associate will possess good client-management skills and have the ability to identify and solve a wide variety of complex tax issues involving partnerships, closely held corporations/businesses, mergers and acquisitions, real estate, and individual taxation. Business-law experience is a plus. The successful candidate will primarily work with the business/tax law group, but a portion of time will be devoted to the trust and estates practice group acting as a liaison when it comes to tax planning and business succession issues. Our firm values work ethic and client management. We have a tradition of hiring
associates who possess these qualities, and our associates join our team with the expectation of becoming a partner within a relatively short period. If working with a talented group of attorneys at one of the 10 largest firms in the Puget Sound area is what you are looking for, send your résumé, cover letter, writing sample (preferably tax-focused), and transcripts to Brad Maxa, 1201 Pacific Ave., Ste. 2100, Tacoma, WA 98402.

Services

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Don’t let your client’s message get lost in translation! Flores & Associates has been serving the legal community since 1993, providing complete and accurate Spanish interpretation/translation for depositions, hearings, transcriptions, documentation, meetings, conferences, etc. Contact us at 206-526-1961 or via e-mail at interpreters@aol.com. Certified by the U.S. Courts, Washington State, and DSIS.

Contract attorney — more than 20 years’ experience with national employment law firm and as in-house counsel. Stanford Law School graduate. Available for litigation support (summary judgment motions, trial preparation, depositions, research), project work, and temporary employment. High quality. Contact Sandra Heavey at 206-669-6831 or sandraheavey@comcast.net.

Insurance agent/broker standard of care expert witness. Former insurance broker and underwriter, over 30 years’ industry experience. Bob Sedillo, CPCU, ARM, AU, CIC, 425-836-4159.

Attorney’s Medicaid Services, Inc. — Free help is available to make your clients Medicaid eligible. We represent all three insurance companies that are licensed to sell Medicaid qualifying annuities in the state of Washington. Contact Paul S. Jensen, President, WSBA #15071, WAOIC #255390 Tel: 360-275-4405. Fax: 360-275-2482.

Contract attorney available for research, document review, and brief writing for motions and appeals. Top academic credentials, law review, judicial clerkship, and 15 years’ experience. Joan Roth McCabe, 206-784-1016, jlrmcc@yahoo.com.

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Holiday Film Horrors, v. 3
by Lindsay Thompson

What is sauce for the goose may be sauce for the gander, but it is not necessarily sauce for the chicken, the duck, the turkey or the guinea hen.

Buddy, it’s fruitcake weather!
— Truman Capote, A Christmas Memory (1966)

“Tis the say-zin,” an Alabama friend trills this time of year.
Millions of Americans will deal with issues like which parents to spend what holiday with.

Why we have to have stray people no one knows at holiday dinners.
Realizing — in large families — that you may not live long enough to escape the kids’ table at Thanksgiving.
Worrying whether Mom will approve of the white sauce on the new potatoes.
The Dantean hell that is gift-giving.
Those endless newspaper articles of editors’ top-10 stories of the year, as if we’ve all of a sudden gone amnesiac.

And why a Christmas movie, It’s A Wonderful Life, gets shown all the time at Thanksgiving.

Every other year, as a public service, we plumb the treatment of the holidays by Hollywood, scouring the cable channels and video stores for films about holiday misadventures, miseries, and new forms of familial dystopia. Anxious about the impending holiday visits? A good black comedy will persuade you things could be much worse. Much.

Last year, and into this, the press was full of the offspring of Tom Cruise and Katie Holmes. “Katie who?” I asked myself. “Or is it, ‘Katie whom?’ I have to ask Bob Cumbow about that.”

So whaddya know, when I rescreened the movie Pieces of April (2003), there was the very Katie. She plays April, the suburban Pennsylvania girl who moves to New York City, goes all goth, gets tattoos everywhere, wears black, and has a differently ethnic boyfriend.

So naturally she invites her family — including her dying mother — into the city for Thanksgiving dinner. Things go badly, starting with the death of her oven. The family arrives, takes one look at the dodgy building she occupies on an equally sketchy street, and bolts. Complications ensue. For a comedy of errors, it was surprising Christine Baranski didn’t manage to totter through at least one scene, bearing a martini.


In each, big families gather for the holidays in big family houses. They’re so big, each of the many grown children has his or her bedroom preserved from childhood.

In Fingerprints, Dad is a wingnut. One sib brings home a dubious partner. Another daughter discovers the classmate who stayed in town and was boring has become interesting. Noah Wyle is the amiably stoned slacker son who observes the inability of anyone to talk about anything, even as they talk all the way through the film. Arguments are everywhere: in the kitchen, the attic, and over the Big Bird.

Christine Baranski, regrettably, is absent.

The Family Stone treads the same ground, but for laughs. Mom’s the wingnut in this version. Oh, she’s dying, too. One sib brings home a dubious partner. Another daughter discovers the classmate who stayed in town and was boring has become interesting. Luke Wilson is the amiably stoned slacker son who observes the inability of anyone to talk about anything, even as they talk all the way through the film. Arguments are everywhere: in the kitchen, the attic, and over the Big Bird. What’s different is the whole family decides the uptight (her hair is pulled back so tight it would probably give Sarah Jessica Parker whiplash if improvidently unclasped) fiancée son Everett brings home is totally unacceptable, and sets about torturing her. They stop short of waterboarding, but not by much.

Christine Baranski, regrettably, is absent here as well.

So there’re some new choices for enjoying the holiday miseries of others. Pie, anyone? 🍰

Lindsay Thompson practices law on Salmon Bay and edits Bar News. He can be reached at barnewseditor@wsba.org.
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