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WSP and DOL: the Long and Strong Arm of DUI Enforcement

This article explores two issues: Department of Licensing (DOL) goals in direct conflict with due process, and Washington State Patrol (WSP) interference with due process hearings.

In today's mobile society, the ability to drive is virtually indispensable to employment and daily requirements of modern life. Thus, a driver’s license is an important property interest that must be protected against an erroneous deprivation. Our constitution requires that Department of Licensing hearings be free from prejudice, fair, meaningful opportunities to be heard, and that the tribunal (the department) be impartial and disinterested.

Citizens delegated this duty of constitutional magnitude to DOL through Initiative 242. Should citizens reassess the worthiness of that delegation?

Well, DOL’s latest Strategic Plan boldly proclaims, “we plan to reduce the driving under the influence (DUI) administrative suspension dismissal rate.” This shocks the conscience! The agency entrusted with the constitutional duty to be fair, impartial and disinterested in the outcome of hearings publicly announces its goal is to suspend more driver’s licenses!

It gets worse--DOL uses dismissal rates as a measure of performance! Through public disclosure requests to DOL and WSP, the author has discovered evidence of institutional pressure from within not to contact individual HOs.

In an email from DOL Administrator Craig Nelson to all Hearing Officers (HOs):

“The overall dismissal rate is 21%...a marked improvement from just a year ago.... The dismissal rate and our appeal rate are tentatively our designated measures....I want to particularly recognize the work of hearing officers in region 3. They....were below 20% in dismissals. [Names omitted] deserve our thanks and a round of applause”.

Hearing Officer K. Koehler, with courage and astute awareness of the gravity of the situation replied,

“Craig – Do you really think that one of our ‘measures of performance’ should be the dismissal rate?...Using dismissals as a measure of performance is like telling us that we will be rewarded for not dismissing cases. I don’t think that

measure fits very well with affording Petitioners all of their due process rights, particularly the “appearance of fairness.” Can you imagine what the defense bar would do with that “measure of performance” in the appellate courts?”

Governor Gregoire, can we have Ms. Koehler in charge of DOL? She seems to understand due process and the Constitution.

DOL has target dismissal rates! From E. Graham to Nelson:

“It looks like an overall dismissal rate of 25% was the target until July 2004 when it changed to 20%...If we extended out further it drops again to 15%.”

Meanwhile, the WSP “continues to work closely” with DOL to reduce “dismissals statewide.” 3Q06 Rpt. WSP is “striving for a DOL dismissal rate of less than 10%,” will “monitor dismissals by hearing officer,” and has hired “actual defense attorneys” to assist with mock testimony. Hearing Officers must email every dismissal to WSP Lt. Reichert.

In return, he comments to Nelson or others:

• To Dr. Logan: “FYI–dismissal number 18 and counting–just for today–DOL seems to be having a hay day with this one.” (City of Seattle v. Clark-Munoz, non-compliance with WAC 448-13-035; of course, HOs had no choice but to dismiss)  
• To Nelson: “Craig, I am disappointed with this dismissal ... the HO found every possible reason to look for a dismissal here. I find this dismissal extremely nitpicky....” (No second mouth check after break in observation period)  
• To Nelson: “Craig...I am going to take a stand on this one...the trooper did indicate that the roadway was covered with snow but...we do not give free passes for people to be all over the road just because some lines may not be visible at times.” (Nelson’s response: “You’re right. I’ll talk to her.”) Then WSP Chief Beckley: “Have we had issues with this hearing officer prior before?”

• To Nelson: “Craig...If the trooper stopped the vehicle for not displaying a vehicle license plate light and articulated that in his report I have to give the credibility to the trooper.” (Video indicates the plate is visible in the dark and probably illuminated.)

In 2006, Reichert suspects HOs are not sending him dismissals and he emails Nelson who tells the HOs: “it helps them and us.” Various Hearing Officers respond:

• “Only if it is promised that the hearing officer does not get an irate phone call from an officer complaining about a decision”
• “Or forwarded a nasty email criticizing the legal analysis of the hearing officer”
• “Or the chief of the WSP complaining directly to the director because he does not agree with the decision”

This entire chain, identifying each hearing officer, was inadvertently cc’d to WSP and caused some discussion as to how to mend fences. Suggestions included a meeting with the director of DOL and orders to troopers not to contact individual HOs. They decided to give Nelson an award.

Finally, in a very disturbing string of emails, Trp. Denton complained to a DOL manager about a particular Hearing Officer and she told him the Hearing Officer was “her biggest problem.” The emails state Nelson also sides with the trooper over the Hearing Officer. Chief Beckley responds to his underling:

“You are doing the right thing by bringing these to the attention of the supervisor. If there is one particular hearing officer who is continually dismissing on minor technicalities (that even the supervisor agrees is in error) we need to elevate the discussion a level with either you or Dr. Logan to the next level in DOL.

Thus, Hearing Officers face institutional pressure from within not to dismiss cases given the target dismissal rates. Then, when due process or the constitution requires that they must dismiss a case, they face harassment and criticism from law enforcement, to the extent that high levels of command at WSP suggest “elevating” discussions about them to the next level with their employers! And they have no comfort there either, because rarely, do those in authority above them take their sides or cover their backs.

When can a citizen facing a license suspension, have a fair, impartial, unbiased hearing with a department that has no interest in the outcome? When such hearings are moved from the Department of Licensing to another branch of our government.

Linda M. Callahan
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Cracking the glass ceiling

Marcine Anderson said “time flies,” and Karen Andersen gave us sobering statistics concerning women as “unequal partners” (October 2007 Bar News). Both themes struck a chord with me. I started law school 30 years ago and have been admitted to the practice of law in three states; worked in large firms, small firms, and run one of my own; raised three children; and — gulp — been divorced three times. I am a bit older and wiser than the starry-eyed young woman who believed her law class would be the one to level the playing field in the nation’s law firms. My role in the failure of women lawyers to break the glass ceiling in our profession is one of the few failures I readily admit and heartily regret.

I am now happily married to the best litigator I’ve ever known and the best friend I’ve ever had. For the first time in 30 years, I am a full partner with a man who says he holds me in the highest esteem of any lawyer he knows, and that I lifted him to be the best lawyer he knows. How my ego soars to hear it! My grown sons are awesome. They have no interest in being lawyers. My fifteen-year-old daughter has high school and boys on her mind, but I see the seeds of a great litigator. Watch out, fellows! This next generation of “girls” will give you a run for your money and I, for one, will be right there cheering them on!

Gail Ragen, Seattle

Poking at Polk?

I certainly enjoyed reading about the service of Jeannette Hayner who was a hard-working and effective legislator (“Three Lady Lawyer Legislators Who Showed Us the Way,” November 2007 Bar News). It did not serve any purpose, other than to call into question the veracity of the author, for George Scott to repeatedly slam legislator William Polk. It was legislator Polk, a very bright and also effective legislator who managed to work effective compromise in 1977 with only about 36 percent of the House in his caucus. The major bills coming out of that session included the Juvenile Justice Act and state pension reform for fiscal stability. Representative Polk’s leadership as caucus chair of that small majority led to the House Speakers position for his co-leader Duane Berentsen a few years later, while he was majority leader.

Representative Polk spoke for a large number of the state who wanted a well-managed government without cronyism. This is something that he had a great deal in common with Jeannette Hayner. Mr. Scott’s brand of legislator apparently has great disfavor with the “citizen legislator” of whom William Polk was one of the finest examples. It was unfortunate for the state that the needs of his family’s education and the continuing demands of time had him “retire” to his profession.

I have not seen Bill Polk for over 20 years but I will never forget his undying commitment to forthrightness in government. The needless slam by author Scott seriously lessens the readability and reliability of his article and any message that might be in it.

David C. Mitchell, Everett

Legislating morals

Our entire legal system is based on morals. It is based on what our society has determined is right or wrong. Our society believed it is immoral to steal something from someone else, and made it illegal. The federal government determined that it was immoral for children to work long hours and limited the number of hours children can work. The issue of same-sex marriage is one of morals. It is a social and political issue.

Many people believe that homosexual acts are immoral and that the State government should not encourage such behavior. It has been immoral under most religions for thousands of years. A majority of Muslims, Jews, and Christians agree on this issue and a vast majority of people across the world now and in the past have agreed.

Creating same-sex marriage in Washington will open the doors for more modifications to please other moral minorities (September 2007 Bar News). Polygamy has been accepted in some societies, and shouldn’t they be accommodated too? The age requirement for marriage is somewhat artificial and different in different societies. The sanctity of marriage will suffer if its definition is diluted to include anyone who wants to do anything.

Some people are dissenting from the morals and ideas of past generations.

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The legislature has accommodated this minority by allowing homosexuals to adopt children. This created some moral acceptance of behavior that a majority of the people of Washington State still considered to be immoral. When the legislature recently created domestic partnerships for same-sex couples, they knew the majority of the people of this state would not agree. That is why they wrote the bill so that a referendum by the people was not allowed.

A minority of people are changing the morals of the law and forcing their ideas on the majority. This is not how our republican form of government is supposed to work.

Some may say that by holding to the morals that served societies all over the world for thousands of years, we show we do not like the people who are having same-sex relationships. It is not that we do not like them, we love them, but believe they are doing the wrong thing.

The same-sex marriage issue is definitely one of morals, which makes it a political and social issue. The WSBA should not take a position on the issue of same-sex marriages because the morals of the bar members are diverse.

Jeanette Burrage, Des Moines

Equal marriage divides

Although I have supported same-sex marriage since the mid-90s, I hope the WSBA will not take an official stand on the matter (September 2007 Bar News).

The American Bar Association, the American Medical Association, the National Education Association, and even labor unions have cost themselves membership and the respect of the public by taking public stances on divisive issues like abortion and gun control. In so doing, they have also diminished their influence and their ability to serve their professions.

The WSBA will not lose membership over this question, but it will invite segments of the Washington legal community opposed to gay marriage to attempt to have their personal political views enshrined in “official” positions. After all, if they are required to be part of a political organization, they might as well strive to make its politics match their own. This will turn the WSBA into a political battleground like any other.

The politicization of the WSBA will cost all of us respect and trust in the eyes of the public.

The notion that same-sex marriage relates to the “administration of justice” because marriage touches so many areas of law strikes me as exactly the kind of legalistic sophistry that gives our profession a bad name in many quarters. However, even if it may be fairly said the WSBA can take a position on this or any other political question, it ought to refrain.

Robert Lyman, Portland, Oregon
My name is Mike Heatherly and I am honored to be the new editor of Bar News. This job combines the two passions around which my career has revolved: law and journalism. Although I have been practicing law the past 16 years, I was a newspaper reporter and editor for seven years before law school. A couple of years ago, I vowed to reincorporate my journalistic roots into my work. I became editor of our local bar association newsletter and have done some freelancing, including editing a high school textbook on U.S. Supreme Court decisions. When the opportunity arose to apply for the Bar News position, I couldn’t pass it up.

Through such newfangled gizmos as the telephone, the facsimile machine, and that fancy electrical mail on the Internets, I will be able to fulfill my editorial duties even though I live way up here in Bellingham, which — though technically part of the United States — lies perilously close to Canada and the Arctic.

In preparing myself for this job, I have learned that the herculean task of actually producing Bar News every month is carried out by a wonderful staff at WSBA headquarters including Todd Timmeke, managing editor and graphic designer; Stephanie Perry, who writes, proofreads, and assists in editing many of the regular features; Camille Campbell, who handles such things as the subscription list, classified ads, and posting the online Bar News; Jack Young, the advertising manager; and Judy Berrett, director of the WSBA Member and Community Relations Department, who oversees Bar News.

As Bar News editor, my primary job will be to solicit and select the major articles each month and do the substantive editing of those pieces. I will work with the authors, who will include WSBA officers and staff, members of the judiciary, law professors, regular contributors, and WSBA members who submit articles on their own initiative. I will supervise special projects, such as themed editions of Bar News, of which we expect to have a few this coming year. I am also responsible for reporting on the work done by the WSBA Board of Governors at its regular meetings. Meanwhile, I will write a monthly column in which I will attempt to inform and entertain, or do at least one of the two.

I do not expect to revolutionize Bar News. I believe the prior editor, Lindsay Thompson, and the staff have done an excellent job, constantly improving the quality of the publication. Unlike a commercial magazine, Bar News is obligated to devote much of its content each month to important, albeit routine, informational items regarding WSBA operations. This content consumes human resources and pages, both of which are limited by practicality and budgets. With the remaining resources, Bar News strives to provide the more in-depth, creative articles intended to educate, enlighten, and amuse readers. I believe the publication has done an impressive job in that regard, and I feel we can do even better. In particular, I hope to tap into the fascinating human-interest stories that undoubtedly exist among WSBA’s 30,000 members.

Finally, I should note that I do not expect Bar News to shy away from articles reporting and commenting on controversial issues that are of legitimate interest to WSBA members. For at least as long as I have been reading Bar News, it has been the publication’s philosophy to cover such issues. My responsibility as editor is to ensure that the coverage is fair. Although part of my job is to work in conjunction with WSBA’s officers, the Board of Governors, and various groups and individuals within the organization, I am not being asked to serve as a mouthpiece for them on issues. I welcome input from people on all sides of issues and I invite all Bar News readers to contact me with any feedback you have about the publication’s content. ☏

Bar News Editor Michael Heatherly practices in Bellingham and can be reached at 360-312-5156 or barnewseditor@wsba.org.
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Being John McKay

Stan Bastian talks with former U.S. Attorney John McKay to find out what really happened when McKay was asked to resign last December

My column this month consists of an interview with John McKay, the former U.S. Attorney for the Western District of Washington. John and I first worked on this project last June, and the idea came to me after I heard him give a speech at a CLE in Kennewick which was both thought-provoking and inspiring. (I don’t know too many people who can be inspiring after being fired in such a public way.) My plan was to print the interview in this December edition of Bar News because it is the first anniversary of when he was fired as U.S. Attorney. I thought that retelling the story would be a good reminder to everyone of the importance of keeping our judges and prosecutors free from political influence.

Little did I know that John’s story would still be current when this column was actually published. Between the time when the interview was written in June and then published in December, this controversy has resulted in congressional hearings and investigations, and the resignation of several senior members of the Department of Justice, including Attorney General Alberto Gonzales. It continues to tarnish the reputation of the Bush Administration.

What follows is the story of John McKay, told in his own words in response to my questions.

Stan Bastian: Explain/describe your professional background which led up to your appointment as U.S. Attorney for the Western District of Washington.

John McKay: Well, first I’m a trial lawyer who loves the practice of law and considers himself fortunate to be a member of the WSBA since attending the University of Washington and graduating from Creighton Law School in 1982. I practiced at two great law firms, Lane Powell Spears Luberksy and Cairncross & Hempelmann, and was privileged to serve as a White House Fellow in 1989-90 as special assistant to the director of the Federal Bureau of Investigation. Before my nomination as U.S. Attorney by President Bush and confirmation by the Senate in 2001, I was president of the Legal Services Corporation in Washington, D.C., appointed by its bipartisan board in 1997.

You may know that my brother Mike McKay was U.S. Attorney during Bush 41; we’ve been told we are the only brothers to serve in the same district as U.S. Attorney. Our younger brother Bill (we are from a family of 12 children) is also a lawyer, and some say he may also get to be U.S. Attorney. Frankly, I think his chances are a little slim at this time.

Stan Bastian: After five successful years in office as U.S. Attorney, why did you decide to resign in December 2006?

John McKay: I was told “the Administration” wished me to resign in an early-morning phone call I received on December 7, 2006. I was given no explanation and was told of no dissatisfaction with my performance or that of my office, despite my requests for any information about this surprise phone call.

Stan Bastian: At that time, why did you believe that you were being asked to resign? What were you told by those who requested your resignation?

John McKay: The call was actually made by my friend Mike Battle, who had served with me as U.S. Attorney in Buffalo and was the director of the Executive Office for U.S. Attorneys at the Department of Justice. Mike is a fine guy, and he was clearly uncomfortable in making this call. While the conversation was short, he did tell me that “sometimes when you get a call like this you think you’ve done something wrong, and that isn’t always the case.” He indicated he could not elaborate, and would not confirm that others were also being dismissed. I thanked him for his friendship and we ended the call cordially.

Stan Bastian: When you resigned, what explanation did you provide the public and why?

John McKay: All U.S. Attorneys understand that they serve “at the pleasure” of the President — we don’t own the job, and many others are qualified to represent their country in court. I told only my senior staff and a few family members of the circumstances of my dismissal (what little I knew of them) and announced on December 14 that I would be “returning to the private sector.”

Stan Bastian: Why didn’t you tell the truth about your resignation? Why didn’t you just explain that the Bush Administration had asked you to leave?
John McKay: I believed that it was my duty to resign quietly, and that doing so would avoid drawing attention to myself and disrupting the work of the incredibly dedicated men and women of my office and in federal law enforcement. At the time, it was important to me that I carry myself with as much grace as I could muster, and, despite my personal disappointment, to do nothing that would reflect poorly on the President who appointed me or upon the Justice Department which I loved.

Stan Bastian: When you resigned, did you know that other U.S. Attorneys had also been asked to resign the same day?

John McKay: I suspected I wasn’t the only one getting this call, because I had received only a few months earlier an outstanding evaluation for myself and more importantly, the assistant U.S. Attorneys, and support and administrative staff of my office for whom the accolades in the detailed report were rightfully earned. I knew that federal agents with whom I worked as the region’s chief federal law-enforcement officer respected and supported my leadership. I also knew that community leaders, including those in the African-American, immigrant, and Islamic communities, had praised my outreach during difficult times, including the dark days following the 9/11 attacks.

Stan Bastian: When did you discover that other colleagues had been forced to resign? How did you find out?

John McKay: I was the first to announce my resignation, and following our protocols, I alerted my fellow U.S. Attorneys that I would be resigning later that day. Within minutes, I received a cryptic e-mail from my friend and colleague, the outstanding U.S. Attorney in New Mexico, David Iglesias (whose experiences as a Navy JAG lawyer were the basis for the play and movie A Few Good Men). He asked whether I had received “the same phone call” he had. I was shocked, as David was a highly regarded U.S. Attorney and had been rumored for appointment to other senior law-enforcement positions. Over the next several days, we learned that seven of us had been dismissed on the same day, an unprecedented action and one never before occurring in the history of the Justice Department.

Stan Bastian: When did you discover that you were on a list of disposable U.S. Attorneys?

John McKay: That’s a descriptor I haven’t heard before, but I suppose that it is accurate. Ironically, it appears I may have been on two lists. The first was dated September 13, 2006, and senior officials, including Attorney General Gonzales, have given different and shifting explanations for how I might have been on this or other lists for termination. First, it was “performance issues,” then “policy differences,” then “poor judgment,” including my work on a highly successful law-enforcement information-sharing system for which I received the Navy’s highest civilian award and for giving an interview to the Seattle PI — which was published almost two weeks after the list was created. Later, it was revealed the Department of Justice had redacted documents showing I was on a list in March 2005 during the heat of the controversy surrounding the 2004 Governor’s election, making the U.S. Attorney General’s sworn testimony incorrect and raising the specter that I was fired for refusing to use the power of my office to overturn the election to benefit Republicans.

Stan Bastian: When and why did you go public with criticisms about the process?

John McKay: By mid-January, while still in office, a number of us were in contact, and we all observed the Attorney General testify to the U.S. Senate under oath that he did not intend to avoid Senate confirmation of our replacements. I considered this to be false, since I knew he had done nothing to replace us, and others had been appointed under a new provision slipped into the USA PATRIOT Act making interim appointments indefinite. I and all of my colleagues concluded that our continued silence would make us part of his lie, and so we began to speak out. In early February, the deputy Attorney General, Paul McNulty, admitted that at least one of us had been replaced for purely political motives and that the rest had “performance problems.” I considered this an attack on the work of my office and the women and men of federal law enforcement I led, and resolved to speak out in rebuttal, having left office on January 26, 2007.

Stan Bastian: How did the Bush Administration respond to your criticisms? Did they offer new or other reasons to explain your resignation?

John McKay: While no official would admit to placing me or any of my colleagues on a list to be fired, among the more disturbing reasons given for my being listed in 2005 was because I had “pushed too hard” for resources in the Tom Wales investigation. Tom was a brave and highly regarded assistant U.S. Attorney in Seattle who was shot in the back through the window of his Seattle home while writing e-mails to his college-aged children away at school. Tom died on October 11, 2001, and his killer or killers remain uncaught, with the F.B.I. publicly stating they believed he was killed in the line of duty by someone he prosecuted. I freely admit that I strongly and passionately advocated for appropriate resources to apprehend Tom’s murderers, and consider this latest excuse to be the most cynical, the most reprehensible advanced thus far by the Attorney General’s office. They have dishonored Tom and his memory by using this excuse to cover up their lies and misconduct.

Stan Bastian: Do you have concerns about the process leading up to your resignation? If so, explain.

John McKay: Well, it’s hard to criticize a process when no one takes responsibility for the action. The Attorney General can’t seem to recall much, except that he agreed with the recommendation for reasons he’s unsure of now. He delegated enormous authority to his staffers, including Monica Goodling and Kyle Sampson, both of whom have resigned because of this matter. He secretly authorized them to exercise authority over the hiring and firing of other Justice Department personnel, and they have admitted to inappropriately advancing partisan political considerations. All of us should be concerned about this blatant politicization of the criminal justice system; it flies in the face of the fair and impartial administration of justice we were sworn to uphold.

Stan Bastian: You took this job knowing that you served at the pleasure of the President. Why, then, do you have concerns about the process?

John McKay: The President may certainly discharge a U.S. Attorney for any or no reason, but not for an illegal one. Firing a U.S. Attorney because she convicted a Republican Congressman (Carol Lam, former U.S. Attorney in San Diego) or because he failed to rush an indictment of a Democrat to help a Republican win an election (David Iglesias in New Mexico), would be, if true, obstruction of justice.

Stan Bastian: How did the simple act of replacing seven or eight political appointees
John McKay: Because they lied and covered up possible serious wrongdoing, a lesson obviously missed by some in the White House and Justice Department after Watergate.

Stan Bastian: Has the scandal hurt the Department of Justice? How? Can this damage be repaired? How?

John McKay: On "Meet the Press," I said a black cloud hung over the Justice Department, and I believe it will be there for as long as the Attorney General fails to tell the truth, and until the White House owns up to the Congress and the public about their role. It is enormously unfair to call into question the integrity of U.S. Attorneys still serving, or the prosecutors and trial attorneys who must now answer questions about political motivation where none exists. What's at stake here is prosecutorial independence from partisan politics and renewed dedication to fair and impartial justice which is tempered by compassion. These things are driven by evidence, not politics, and the public must have its trust in these qualities restored by appointing leaders who believe them.

Stan Bastian: What lessons should be learned from this scandal?

John McKay: See above.

Stan Bastian: Should the manner in which U.S. Attorneys are selected or replaced be changed?

John McKay: No. With Congress exercising appropriate oversight and Senate confirmation once again required for appointment, the system should function well, as it has for over 200 years.

Stan Bastian: Should the PATRIOT Act be amended to require the confirmation of U.S. Attorneys?

John McKay: Yes, this has already happened.

Stan Bastian: Is it important for U.S. Attorneys to be confirmed by the Senate? Why?

John McKay: These events have underscored the role of the Senate in presidential appointments in which it must exercise its "advice

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and consent.” In this case, both Senators Murray and Cantwell expressed their concern about my dismissal, and Senator Murray attended closed sessions to assure fairness and accountability. U.S. Attorneys wield enormous power locally and regionally in the name of the United States government, and the framers of our Constitution had it right when it came to checks and balances.

Stan Bastian: Who do you believe made the decision to ask for your resignation and resignation of your colleagues?

John McKay: Attorney General Gonzales and ultimately the President are responsible for these resignations. The Keystone Cops made more sense than the Attorney General and his cohorts, all of whom have resigned. It amazes me that they are all gone because of their roles in our firings, but that the Attorney General “stands by” his decision even though he can’t remember why he did so. As lawyers, we are all engaged in a search for the truth, and we have an expectation that our Attorney General will share that goal with judges, juries, prosecutors, and defense attorneys. Anyone who has watched his testimony, including his failure to recall important meetings, conversations, and decisions, must conclude that the truth may be among his last considerations.

Stan Bastian: Do you believe that this scandal involves criminal behavior by someone?

John McKay: In addition to the Congressional investigations, the inspector general of the Department of Justice is investigating. The IG could well recommend a criminal investigation based on the facts, involving David Iglesias in New Mexico and Carol Lam in Southern California.

Stan Bastian: How has this experience affected you? What are your plans for the future?

John McKay: I was enormously privileged to serve as United States Attorney in western Washington for over five years. I don’t regret one moment of my service, from prosecuting the sentencing and appeals of Ahmed Ressam to negotiating the settlement of the University of Washington billing scandal. I worked with great public servants in my offices in Seattle and Tacoma who continue to serve with passion and dedication. I learned that I have many friends in the community and among lawyers who took the time to write or call with messages of support. I have the unconditional love and support of my large family, and am so grateful to them. In the end, of course, it was not a tragedy that a federal prosecutor lost his job. Instead, I was given the responsibility to help lead a national conversation about prosecutorial independence and the importance of keeping partisan politics out of the critical issues of crime and punishment in our society.

I will continue to teach at Seattle University School of Law where I taught Constitutional Law of Terrorism and will co-teach National Security Law this fall. I am excited about the social justice mission and commitment to academic excellence of Jesuit education and am grateful for the opportunity to be a part of it. As I told my students as I concluded my class this spring, “It’s good to be a lawyer.”

John McKay is currently the director of the new Ethics Center at the Seattle University School of Law. In September, John received the WSBA Courageous Award, which is presented to lawyers who have displayed exceptional courage in the face of adversity, thus bringing credit to the legal profession. John not only deserved the award — in my opinion, he defines it.

Stan Bastian can be reached at stanb@jdsalaw.com or 509-662-3685.

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SPEEDING TICKET?
TRAFFIC INFRACTION?
CRIMINAL MISDEMEANOR?
Every three years or so, the Board of Governors sets out the long-range plan for the WSBA for the coming years. This year, the Long Range Planning Committee (LRPC) performed a more systemic review of the WSBA’s goals and proposed a revised way of looking at who WSBA is, why it exists, and therefore where it should be spending its resources and energy. The Committee this year was chaired by Governor Sal Mungia (Sixth District), who will continue as the chair of the newly named Strategic Planning Committee (SPC) in FY 2008.Outlined below are the recommendations of the LRPC adopted by the Board at its September meeting.

New Mission Statement for the WSBA

The newly adopted mission statement serves as a strong foundation for how the public should perceive the Bar, and how we, as the Bar, should perceive ourselves. In attempting to formulate strategic goals for the upcoming planning period, the Committee first began its work by examining the Bar’s mission statement as that statement provides, or at least should provide, an encapsulation of why the WSBA exists as an organization.

One item the Committee felt was lacking from the current mission statement is that one of the core reasons the WSBA exists is to ensure the integrity of the legal profession. The WSBA mission was:

The mission of the Washington State Bar Association is to promote justice and serve its members and the public.

As recommended by the LRPC, the Board adopted the following new mission statement for the WSBA:

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

The Committee believed that the order of the various items in the mission statement also says something about the organization. Accordingly, service to the public has been moved to the beginning of the mission statement in order to remind all of us as to where the WSBA’s priorities should lie and will also make a strong statement to the public as to why the WSBA exists. Finally, the Committee wanted a stronger message regarding the WSBA’s role as it pertains to justice issues — thus, the change from promoting justice to indeed championing justice.

New Guiding Principles Adopted

In going through the task of formulating strategic goals for the upcoming three-year period, the Committee came up with a list of items that all on the Committee agreed go to the core mission of what the WSBA is about. These were values that the WSBA has held, is currently holding, and will always hold in the future. The Committee determined that these principles were not strategic goals, but instead were principles that should always guide the WSBA. Accordingly, these principles were adopted by the Board as just that — guiding principles and not strategic goals. They are as follows:

The WSBA will operate a well-managed association that supports its members, and advances and promotes:

• Access to the justice system;
• Diversity, equality, and cultural understanding throughout the legal community;
• A fair and impartial judiciary;
• The public’s understanding of the rule of law and its confidence in the legal system; and
• The ethics, civility, professionalism, and competency of the Bar.

Strategic Goals for the Next Three Years

After agreeing to a set of Guiding Principles, the Committee next held a brainstorming session listing items that it thought the WSBA should do during the next three years. In order to help narrow a lengthy list of proposed strategic goals, the Committee developed the following criteria that strategic goals should meet:

1. The goal should be something that the WSBA either has not been doing or something that the WSBA has been doing but that the resources devoted to that activity should be dramatically increased to take that activity to a much higher level.
2. The goal should be achievable and measurable.
3. The goal should be a goal in and of itself and not a means to another goal.
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Given that set of criteria, the list was easier to hone. For example, while the Committee members all agreed that access to the civil justice system is an important activity to which the WSBA should devote its resources, this is something that the WSBA already does — in fact, it is embodied in the Guiding Principles as something to which the WSBA will always devote resources. In contrast, the following three activities are activities that the WSBA has not engaged in, or, if it has engaged in, should be taken to a much more intense level:

1. The WSBA engaging in a systematic review of all its programming.
2. The WSBA strengthening its connection with its membership.
3. The WSBA Board of Governors improving its relationship with the WSBA staff.

The Board agreed with the Committee’s recommendation and adopted these three goals. Thus, in the next three years, the WSBA will:

• Devote resources to institute a systematic review of all WSBA programs on a regular basis to ensure that the WSBA is obtaining an effective return on its investment of resources.
• Enhance outreach to members. While the WSBA has made efforts to connect with members in the past, adoption of this goal shows the WSBA’s commitment to taking this communication to a higher level, to foster a greater connection among members and the organization.
• A strong strategic partnership between staff and the Board is always critical. Accordingly, during the next three-year period, the WSBA will focus on enhancing the Board’s relations with the WSBA staff.

The Committee’s work this past year was significant and has set a strong foundation for our organization going forward. As always, we welcome your thoughts with regard to any of these issues. If you have thoughts about how best to implement them, please pass them along!

Paula Littlewood is the WSBA executive director and can be reached at paulal@wsba.org. Sal Mungia serves on the WSBA Board of Governors representing the Sixth District.
Washington continues to have its share of helicopter accidents, including one on August 2, 2007, involving a small helicopter crash near Easton tragically taking four lives. During the past 25 years, there have been 215 helicopter accidents in the state, of which 38 involved fatalities. Washington is ranked sixth among states with the most general-aviation accidents. Washington courts have also experienced their share of helicopter accident litigation, including cases that resolved legal issues with regional and national significance.

In the Northwest, helicopters are an everyday method of transport for many modern-day pursuits, including aerial news and traffic reporting, search and rescue, air ambulance, aerial lifting, aerial firefighting, aerial photography, survey and inspection, heli-logging, aerial agriculture application, and, of course, personal transport for work and pleasure.

The utility of these machines is second to none. Notably, airports and runways are not needed, because helicopters can take off and land from almost anywhere, even in the mountains, on building rooftops, and on small ships at sea.

In addition to flying more slowly than most fixed-wing aircraft, there is another trade-off for the greater utility of helicopters: They are more dangerous to operate than airplanes, plain and simple. The National Transportation Safety Board Aviation Accident (NTSB) statistics for 2001–2005 show an accident rate for helicopters of 9.3 accidents per 100,000 flight hours. The rate for fixed-wing non-commercial general aviation aircraft was 6.6 accidents per 100,000 flight hours.

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Helicopter Design and the Washington Product Liability Act

The Federal Aviation Regulations (FARs) govern helicopter manufacturing activity and set forth the minimum safety standards for FAA certification. 14 Code of Federal Regulations (CFR) Parts 27 and 29 provide the airworthiness standards for rotorcraft, covering areas such as performance, operating limitations, stability requirements, rotor-blade clearance, fuel and oil system requirements, emergency systems, and operations, to name a few.

Under Washington law, a helicopter manufacturer’s failure to comply with these regulations, when causally related to an accident, may subject the manufacturer to strict product liability.

Case in point: On May 11, 2001, two Washington pilots departed Boeing Field in a brand-new four-place light helicopter. Fifteen minutes later, near Gorst, Washington, the helicopter tail rotor contacted the tail boom, causing an in-flight break-up. The helicopter crashed and both pilots died. The NTSB found no evidence of mechanical failure or malfunction, and attributed the accident to “an abrupt application of the tail rotor/anti-torque pedal by an unknown pilot resulting in tail rotor contact with the tail boom.”

The subsequent wrongful-death claims were filed in King County Superior Court. After expert investigation and discovery, it became apparent that the helicopter was flying straight and level when the tail section sliced off, making it unlikely that any pilot input was the initiating factor. Plaintiffs moved for summary judgment based on the following.

Section 27.661 of the FARs, entitled “Rotor Blade Clearance,” mandates for helicopter design:

There must be enough clearance between the rotor blades and other parts of the structure to prevent the blades from striking any part of the structure during any operating condition.

RCW § 7.72.030, which is part of the Washington Product Liability Act (WPLA), provides:

(1) A product manufacturer is subject to liability to a claimant if the claimant’s harm was proximately caused by the negligence of the manufacturer in that the product was not reasonably safe as designed . . . .

(2) . . . [w]hen the injury-causing aspect of the product was not, at the time of manufacture, in compliance with a specific mandatory government specification relating to design or warnings, the product shall be deemed not reasonably safe under RCW 7.72.030(1).

Based on the above legal argument and the underlying facts, a King County judge granted plaintiffs’ motion for summary judgment, holding that the helicopter “was not...
reasonably safe as a matter of law," and that "the defective helicopter caused the accident and deaths" of the pilots. The only issue remaining for trial was damages.

The NTSB’s original probable-cause finding, despite strong evidence contradicting the NTSB’s original theory involving excessive pilot input. The deceased pilots were at least vindicated by the justice system.

Defenses

Despite the requirement of mandatory compliance with government regulations and the policing effect of the WPLA, on the other side of the coin there are two additional aviation-related defenses which may be available to helicopter manufacturers.

First, the General Aviation Revitalization Act (GARA), which became effective in 1994, is a federal statute of repose enacted to cut off the otherwise unlimited tail of product liability on general aviation aircraft. GARA places an 18-year time limit on bringing product liability actions against manufacturers of allegedly defective “general aviation aircraft” and component parts. GARA contains specific elements that must be met, and also contains numerous exceptions.

By its own terms, GARA applies to “general aviation aircraft,” which are defined as aircraft that are FAA certified. However, in a case arising out of a helicopter accident in Washington, the Ninth Circuit extended GARA to cover manufacturers of military-surplus helicopters, and held that GARA commences to run from the date the helicopter is delivered to the military before any FAA certification.

In Estate of Kennedy v. Bell Helicopter, a heli-logging pilot was killed in 1996 near Leavenworth, Washington, when the vertical fin and tail rotor assembly separated from the tail boom, causing complete loss of control. The trial court denied the manufacturer’s motion for summary judgment based on GARA, even though the helicopter was 26 years old, because it was originally delivered to the Navy where it flew for 14 years. Therefore, it was not a “general aviation aircraft” at that time, and GARA did not commence running until the helicopter was certified for civilian use, which was less than 18 years before the accident.

The Ninth Circuit reversed, holding that GARA applies to protect manufacturers of military-surplus helicopters, and commences to run when the “aircraft” was first delivered to the Navy (1970), even if it was not a “general aviation aircraft” at that time. The court recognized that this was a matter of strict statute interpretation, even though there was no supporting legislative history. The court held that the helicopter must be a “general aviation aircraft” at the time of the accident. Kennedy is significant, because military-surplus helicopters and their component parts are widely used in heli-logging and other helicopter operations in the Northwest, of which manufacturers may reap broad GARA protection in the years to come.

Another Washington case further interprets the breadth of GARA. Though the legislative history of GARA clearly reflects that it was enacted to protect U.S. manufacturers, Washington courts have extended GARA’s veil of protection to include foreign manufacturers. In LaHaye v. Galvin Flying Service, Inc., the Ninth Circuit affirmed the Washington District Court in holding that GARA’s “general aviation aircraft” includes “any aircraft” for which the FAA has issued a type certificate or airworthiness certificate, regardless of the manufacturer’s country of residence. GARA does not limit itself to U.S. manufacturers, and therefore foreign manufacturers are protected.

Second, when a manufacturer originally builds aircraft for the United States, the government-contractor defense (GCD) may arise...
to shield the contractor from liability. The GCD is another defense somewhat unique to aviation that found its way to Olympia and the Washington State Supreme Court.

The GCD was solidified in the 1988 U.S. Supreme Court decision *Boyle v. United Technologies, Inc.* In a nutshell, the defense is an extension of sovereign immunity. It insulates contractors for design defects when they contract with the government to build products based upon government-approved specifications. One of the reasons cited for the doctrine is that courts should not be involved in reviewing discretionary policy decisions involving "the trade-off between greater safety for greater combat effectiveness."

Virtually all military helicopters were designed and manufactured pursuant to government contracts. Since the Vietnam War ended, thousands of these helicopters and millions of parts have been sold as surplus in the commercial market. Courts have generally held that even when government products end up in the civilian market, the GCD is still available.

As set out by Justice Scalia in *Boyle*, the GCD contains the following elements:

Liability for design defects in military equipment cannot be imposed, pursuant to state law, when (1) the United States approved reasonably precise specifications; (2) the equipment conformed to those specifications; and (3) the supplier warned the United States about the dangers in the use of the equipment that were known to the supplier but not to the United States.

In addition to the common law GCD, Washington has a statutory-based government-contractor defense which is part of the WPLA. RCW 7.72.050(2) provides in relevant part:

When the injury-causing aspect of the product was, at the time of manufacture, in compliance with a specific mandatory government contract specification relating to design or warnings, this compliance shall be an absolute defense.

This provision gives aircraft manufacturers under government contracts additional protection for cases governed by Washington law. Yet, unlike most states, Washington has carved out an exception to both the *Boyle* GCD and WPLA defenses for claims of post-sale failure to warn.

*Timberline Air Serv., Inc. v. Bell Helicopter- Textron, Inc.* involved an action against the manufacturer of a military-surplus helicopter.

When the dust cleared, the Washington State Supreme Court held that a claim for post-manufacture failure to warn is not covered by the common law GCD or statutory. The Court reasoned in part that complying with government-approved design specifications is one thing, yet failing to warn of dangers post-sale is another, especially when the government does not impose a contractual requirement for such warnings. Claimants need precise pleading in order to stay the course and avoid summary judgment.

Last, a third defense is one that is raised in nearly every helicopter accident case: pilot error. Of course, sometimes the defense is justified, such as when the pilot inadvertently allows the main rotor blade to contact trees or other obvious obstructions. A closer call arises when there is a complete engine failure and the pilot is left to land the helicopter safely. This is where helicopters may be more dangerous than fixed-wing aircraft, because helicopters cannot glide back to earth like airplanes. Their glide path is much steeper, giving them less available terrain to select for an emergency landing. When that occurs, assuming there is enough altitude and time, pilots will set up for an autorotation landing.

Autorotation occurs when the engine stops driving the main rotor blades yet the blades continue turning (windmilling) because of the passage of air. In other words,
as the helicopter descends, the relative wind (which flows opposite to the direction of travel) pushes up through the rotor blades, causing them to continue to turn, which normally provides a desired increase in rotor RPM. When the helicopter is close to the ground, the pilot rapidly increases the main rotor-blade pitch angle (by collective control input), which substantially slows the helicopter’s rate of descent seconds before contacting the ground. This power-off flare procedure is challenging even to the best of pilots. Yet a worse situation arises when the free rotation of the main rotors is impeded for some reason, causing a loss of glide capability and the helicopter to fall to earth.

There is a dangerous flight envelope that helicopter pilots are well aware of, called the height velocity curve (sometimes referred to by the misnomer “dead man’s curve”). This refers to a curve contained on a graph in the pilot operating manual which depicts an airspeed/altitude relationship, below which, if an engine malfunction occurs, a safe landing by autorotation will be difficult or impossible because of the inability to sustain the requisite main rotor RPM. This regime of flight is not prohibited, just potentially dangerous. When an accident occurs while a helicopter is flying within the height velocity curve, and the pilot does not perform a successful autorotation, defendants will claim pilot error by alleging that the pilot should not have flown in this zone of danger. What cannot be overlooked, however, is that helicopter manufacturers advertise and market their products’ utility while in flight regimes within the height velocity curve. Plaintiffs’ counsel can make a strong argument that a manufacturer should be estopped from arguing pilot error in this type of case, because the manufacturer uses the very same flight regime (inside the dead man’s curve) to market and sell their product. They also do not prohibit flight operations inside the curve.

Conclusion

As helicopter use continues to rise in Washington, more accidents are inevitable, because humans make mistakes — “humans” being manufacturers, pilots, mechanics, line persons, and air traffic controllers. Hopefully the national helicopter accident rate will come down to a level more on par with their fixed-wing counterpart. However, Washington courts will continue to decide challenging issues arising from helicopter accidents, which, fortunately, will be easier to handle than an emergency autorotation.

Robert Hedrick practices law at Hedrick Smith PLLC in Seattle, where his practice focuses on aviation accident litigation, wrongful death, and product liability. He is also a commercial pilot, aircraft mechanic, past skydiver and jump pilot, and adjunct professor at Seattle University where he teaches aviation accident law. He can be reached at hedrick@air-law.com or 206-464-1177.

NOTES

1. NTSB Report SEA01FA089.
2. Even if pilot input were causally related to the failure of the tail rotor system, that mechanical condition would likely violate the FARs. See generally 14 CFR 27.141, 27.151, 27.397, 27.683.
3. RCW Ch. 7.72.
4. RCW § 7.72.030(1).
5. RCW § 7.72.050(2) (emphasis added).
8. 283 F.3d 1107, (9th Cir., 2002, WA).
11. Id. at 513.
12. See, e.g., Glassco v. Miller Equip. Co, 966 F.2d 641 (11th Cir. 1992); See also Timberline, infra, at 323-324.
13. Id. at 512.
There's exciting new personnel news at the Olympic Law Group PLLP, in Seattle, and no one could be more enthusiastic about it than Dennis J. McGlothlin, founder and Managing Partner of the firm. “As a small but proven litigation firm, we offer a unique solution to the civil law needs of area clients. The changes to our team definitely add to that uniqueness!”

In fact, Mr. McGlothlin is talking about not just two new additions to the attorney team, but the advancement of Ms. Helen Y. Hsu to the position of Partner.

Ms. Hsu, who joined the Olympic Law Group in June of 2006, was previously with the Clegg Law Group, and Chang & Pettler. She focuses on Family Law, Immigration Law, and Personal Injury, and has been a member of the Washington Bar since 1999, after graduating from Washington University School of Law in St. Louis that same year and following her BA from the University of Washington. “I like to believe that passion and diligence are my strong points,” said Ms. Hsu. “I just love it when I’m able to meet my client’s needs. It definitely gives me a sense of personal meaning from my work.”

The two new additions to the attorney team are Ms. Serin Ngai and Ms. Shelby Hopkins.

Ms. Ngai joined the Olympic Group in February of this year after receiving her law degree from Seattle University School of Law in 2006, where she was given the honor of Co-Commencement Speaker, along with designation as ARC Scholar, Dean’s Diversity scholar, and two CALI Excellence awards.

Previously, Ms. Ngai received her Bachelor degree from the University of Washington, Phi Beta Kappa. Ms. Ngai is undoubtedly being modest when she cites being an “effective writer and oralist” as among her strengths—after all, she is the author of seven produced plays and is an actress and published poet.

No less a unique addition to the Olympic group is Ms. Shelby Hopkins, a member of the Washington State Bar since 1999, and a graduate of Seattle University School of Law, magna cum laude ’98. She was also the recipient of a Faculty Scholar Award and lead article editor of the Law Review. Following her graduation and clerkship to the Honorable Ronald E. Cox of the Washington State Court of Appeals, Ms. Hopkins has practiced law in both North Carolina and Seattle, most recently at the Law Office of Janet A. George, Inc., P.S. She has also served as Adjunct Professor at the Seattle University School of Law.

Along the way, Ms. Hopkins feels she has learned a lot about the realities of practicing law. “I love going to trial,” she says, “but I’m very conscious of the fact that this is sometimes not the best way to settle things for the parties. I love using my skills to solve disputes for clients, but I hate what can sometimes be the ungodly expense and unproductive rancor of the system.”

It should come as no surprise that Mr. McGlothlin agrees. “Our ultimate concern in every case is not simply ‘the law,’ but rather the welfare and best interests of our clients in the broadest sense. And while the earliest, most affordable and equitable outcome is the goal—always being prepared for trial is the best avenue to that outcome. Our newest partner, Helen, and two new attorneys, Shelby and Serin, will greatly strengthen our ability to live up to that.”
Procedural Perfection Required

Since January 2000, there have been a mind-boggling 80-plus appellate decisions, both reported and unreported, memorializing the difficulties Washington attorneys have encountered with the preparation and perfection of state and local government non-judicial claims. In the past 10 years, there have been more than 100 such decisions. Many of the cases reach the appellate courts following summary dismissal of the plaintiff’s claims because counsel for the plaintiff failed to comply with the statutorily imposed notice of claim requirements, a jurisdictional prerequisite for filing a lawsuit which the courts have essentially interpreted as requiring procedural perfection.

Lawsuits against the State of Washington are governed, generally, by RCW Chapter 4.92. The procedures for presenting a non-judicial claim are described in RCW 4.92.100, RCW 4.92.110, and 4.92.210(1). Claims against “local governmental entities” — cities, towns, counties, municipal corporations, quasi-municipal corporations, and public utility and public hospital districts — are governed by RCW 4.96 et seq. Both statutes require service of a verified claim, signed by the plaintiff (unless the plaintiff is a minor, is incapacitated, or resides out of state), on a designated agent and impose a 60-day waiting period prior to filing a lawsuit. The statute of limitations is tolled during the waiting period — essentially, a 60-day extension. RCW 4.92.210(1) requires that claims against the state be served on the State Department of Risk Management in Olympia. RCW 4.96.020(2) requires that each local governmental entity appoint an agent to accept service of claims and that such person’s identity and address be kept on file in the office of the county auditor in the county where the entity is located.

Although attorneys have, on occasion, been successful in arguing that the governmental entity should be equitably estopped from asserting the defense of failure to comply with non-judicial claim filing requirements, or that the entity waived its right of asserting a claim-filing defense, more often than not, the argument is rejected.

Since the primary purpose of this article is to highlight the most common errors made by attorneys in preparing and filing non-judicial claims, the following principles are gleaned from both reported and unreported decisions.

1. You Can’t Sign It, Counselor

Although signing pleadings as the legal representative of a client is what lawyers do on a daily basis, representational capacity does not extend to governmental claims. The claim must be verified and signed by the client himself unless the client is incapacitated, a minor, or a nonresident. Absent those circumstances, if an attorney signs a claim, the case will be dismissed. In Levy v. State, Schoonover v. State, Fields v. Knauss, and Shannon v. State, the plaintiffs’ cases were dismissed because the lawyer, not the client, signed the claim.

2. A 60-Day Waiting Period Means That 60 Days Have Elapsed — Not 59, Not 56, Not 1

In Troxell v. Rainier School District No. 307, the plaintiff filed suit against the school district on the 60th day after filing notice of tort claim with the district. The Washington State Supreme Court concluded...
that strict compliance with the statutory time period required that 60 full calendar days elapse between service of the claim and commencement of the action. Because the plaintiff filed the lawsuit on the 60th day, the court dismissed the case against the school district.

In *Sievers v. City of Mountlake Terrace*, the plaintiff filed her tort claim the day before the expiration of the three-year statute of limitations and then waited 59 days to file her lawsuit, reasoning that since the 60th day was a Saturday, the statute of limitations (tolled during the 60-day waiting period) would expire that day. In *Kleyer v. Harborview Medical Center*, the plaintiff served his tort claim on a claims manager in the Department of Risk Management at the University of Washington, not the office of Risk Management in Olympia. The Court of Appeals dismissed the case, holding that since Saturday and Sunday would not be included in the limitations period, the lawsuit would have been timely commenced had it been filed on Monday.

In *Medina v. PUD No. 1 of Benton County*, the Supreme Court, requiring strict compliance with the 60-day waiting period, dismissed the case of a plaintiff who waited 56 days. In *Pirtle v. State*, the claimant filed her lawsuit 16 days after filing a tort claim; case dismissed.

In *Schmitz v. State*, the plaintiff filed a summons and complaint one day after filing a tort claim, but did not serve the State until well after the 60-day period had expired (but before the 90-day grace period in RCW 4.16.170 did). The court held that the action was commenced when the summons and complaint was filed and the 60-day waiting period requirement was, therefore, violated. The court stated: “This illustrates the flaw in Schmitz’s argument. He contends, on the one hand, that the action was not commenced under RCW 4.16.170 when he filed his complaint in superior court on July 19 and, therefore, he did not violate the 60-day waiting requirement of RCW 4.92.110. However, in order to obtain the 90-day grace period of RCW 4.16.170 which would make his October 17 service on the State timely, he must concede that the action was commenced for statute of limitations purposes on July 19 when the complaint was filed. Accordingly, under the facts of this case, we conclude that the filing of the complaint did commence the action as provided in RCW 4.16.170.”

The 60-day waiting provision “essentially” adds 60 days to the end of the applicable statute of limitations.

3. **Right Department, Wrong Location**

The state statute requires that the claim be served on the Office of Risk Management, in Olympia. The non-judicial claim service requirement should not be confused with the service of the summons and complaint which must be served on the attorney general, by leaving the summons and complaint in the Office of the Attorney General with the attorney general or an assistant attorney general. In *Kleyer v. Harborview Medical Center*, the plaintiff served his tort claim on a claims manager in the Department of Risk Management at the University of Washington, not the office of Risk Management in Olympia. The risk manager denied the claim and offered $8,000 in settlement. After suit was filed, the case was dismissed on motion by the defendants based on failure to serve the claim on the Office of Risk Management in Olympia even though the claim would have been referred to the risk manager who was served for handling. As to municipalities, each entity must designate an agent who will receive all claims for damages and the claim must be served on that agent. In *Nichol v. Snohomish County Sheriff’s Dept.*, the plaintiff submitted a claim with an agent of the county who was not authorized to accept such claim on the county’s behalf — even though the county had designated an agent for accepting claims. The *Nichol* court dismissed the case based on plaintiff’s failure to meet the strict prerequisites...
of filing a claim under RCW 4.96.13

4. Even if the Case Is Brought Only Against Individuals, a Claim Must Be Filed if They Are Agents of a Governmental Entity

In *Bosteder v. City of Renton*, the plaintiff filed a claim for damages with the city and later served a copy of a summons and complaint on the city, naming as defendants the city as well as several employers of the state.14 The Washington State Supreme Court concluded that the tort claim filing requirement applies to suits against individuals when the alleged acts were committed in the scope of their employment. The *Bosteder* court dismissed the individual defendants from the action because the alleged acts were committed within the course of their employment and the plaintiff had failed to properly file a tort claim.

In *Woods v. Bailey*, the court dismissed the plaintiff’s medical malpractice case for failure to file a tort claim, holding that Pac Med (a public corporation organized by the City of Seattle) was a local governmental entity as defined in RCW 4.96.010.15 The dismissal included the claims against the individual physicians, with the court holding that the doctors who performed surgery on the plaintiff were Pac Med employees and could not be sued individually in the absence of a properly filed tort claim. See also *Hardesty v. Stenchiever*, where the court dismissed a medical malpractice case against individual University of Washington-employed physicians in the absence of a proper tort claim filing.16

5. Hospitals Can Hurt You

By all appearances, Valley Medical Center (VMC) in Kent is a privately owned hospital. The owner of VMC is, however, King County, through King County Public Hospital District No. 1. Nearly every county in the state has a hospital operated by a county-owned public hospital district. The Washington State Department of Health publishes a Directory of Community Hospitals and the Association of Washington Public Hospital Districts has a website (www.awphd.org), each of which should be consulted before suing any hospital. The State of Washington, of course, operates the University of Washington Medical Center, but it also deploys its residents and physicians employed by it to Children’s Hospital and Harborview Medical Center, among others. If you are representing a plaintiff in a medical negligence action against a public hospital district and you do not file a claim prior to filing suit, or if you have a case against the University of Washington or any of its physicians, interns, or residents (see the following sections) and you do not file a claim with State of Washington Department of Risk Management, you have not complied with a statutory condition precedent to filing suit, the case has been defectively commenced and it will be dismissed.

6. Not Just Torts, But Contract Claims Too (Sometimes)

The language of RCW Chapter 4.92 clearly indicates, and Washington courts have determined, that the claim-filing requirement applies to actions against the state arising out of the state’s tortious conduct only. In *Horst v. State*, the plaintiff filed a tort claim with the State of Washington’s Office of Risk Management, seeking damages under several tort claims and a breach of contract claim. The court concluded that because RCW 4.92.110 does not apply to claims against the state other than those arising out of tortious conduct, the statute of limitations was not tolled for 60 days for the breach-of-contract claim. Thus, because the plaintiff filed her breach-of-contract claim after the three-year statute of limitations had expired (believing that the...
statute was tolled for 60 days), the court dismissed the claim as time barred. On the other hand, Washington courts have interpreted RCW Chapter 4.96 to apply to both claims arising out of tortious and non-tortious conduct. In *Harberd v. City of Kettle Falls*, the Division III Court of Appeals held that the general requirements of the government claim-filing statute apply to all damage claims, while more specific requirements apply solely to claim arising out of tortious conduct. Accordingly, any person asserting a claim of damages must first file a claim of damages since the applicable claim filing provisions apply to both tort and breach of contract claims.

**How to Protect Your Client (and Yourself)**

As soon as you open a file, immediately identify each governmental defendant and the agent for receiving a claim. Prepare and serve the claim as soon as you have identified a governmental defendant. If you need to wait, note the claim service requirement on your case list and calendar. When you prepare your complaint, always contain an averment that the plaintiff has complied with the procedural requirements of the statute — force the defendant to expressly admit or deny that you have complied and follow up with a request for admission or interrogatory as necessary. In medical-negligence cases, always check to see if the defendant is a public hospital district. Serve a claim even if the error occurred in an emergency room and it is operated by a corporation distinct from the hospital (as they often are), even if you do not intend to rely on the doctrine of ostensible agency.

*Mark A. Johnson practices plaintiffs' professional liability and personal-injury law at the law firm of Johnson-Flora, PLLC in Seattle. He served on the WSBA Board of Governors from 2003-2006. He took office as WSBA president-elect in September and will become WSBA president in September 2008.*

**NOTES**

9. RCW 4.92.100; RCW 4.92.210(1).
10. RCW 4.92.020.
12. 4.96.020(2).
Fifty Is Nifty: The WSBA’s Class of 1957

Honoring Those Celebrating 50 Years of Service to Our State

BY STEPHANIE PERRY

Friends, families, and dignitaries enjoyed a luncheon at the Renaissance Seattle Hotel on October 17 to pay tribute to 48 attorneys and judges who joined the WSBA in 1957 and have been members for 50 years. In appreciation for their half-century of serving the public, WSBA President Stanley A. Bastian and the Board of Governors presented 50-year certificates and lapel pins to the members who joined the Bar in 1957. That was the year that Sputnik was launched, President Dwight D. Eisenhower began his second term, Elvis Presley’s “All Shook Up” and “(Let Me Be Your) Teddy Bear” topped the music charts, and the first production Boeing 707 rolled out in Renton.

Washington State Supreme Court Chief Justice Gerry L. Alexander made brief remarks honoring the 50-year members. WSBA President Bastian presented a retrospective look at historical events of 1957, the year the award recipients were first licensed to practice law in Washington.

In addition to the members of the class of 1957, dignitaries in attendance included Senior United States District Court Judge Justin L. Quackenbush and former WSBA presidents Dale L. Carlisle, Stephen DeForest, J. Richard Manning, and Robert Redman. 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 Bastian.

50-Year honorees who attended the luncheon gather to record the moment. For 2007, 48 individuals were honored. All photos by Todd Timmcke.

Honoree William Mays with former partner John Barline.

Honoree George Lundin with son Roy Lundin.

Honoree Robert Redman and his wife, Harriet. Mr. Redman served as 1983–1984 WSBA president.
The 50-Year Members for 2007

- Thomas Conley Adams Jr., Lacey
- David Henry Allard, Evans, Georgia
- The Honorable Eugene Carroll Anderson, Anacortes
- William James Barker, Tacoma
- William T. Beeks Jr., Seattle
- Ernest A. Bentley Jr., Bellingham
- Donald Hy Brazier Jr., Olympia
- Ralph M. Bremer, Lake Forest Park
- James David Burns, Seattle
- Donald Aubrey Cable, Seattle
- James Reber Callaghan, Medina
- Frank Richard Chastek, Spokane
- The Honorable Milton Richard Cox, Vancouver
- James Richard Cunningham, Olympia
- Julian Correll “Pete” Dewell, Seattle
- William Hudson Dunn Jr., Vancouver
- Frank L. Farrar, Britton, South Dakota
- Thomas Stephen Foley, Washington, DC
- James B. Gober, Chehalis
- Thomas Jerome Greenan, Seattle
- Bernard D. Greene, Seattle
- Lewis Guterson, Bellevue
- The Honorable Terence Hanley, Gig Harbor
- Bruce A. Harlow, Poulsbo
- The Honorable Richard M. Ishikawa, Seattle
- Jerome L. Jager, Seattle
- Donald Louis Johnson, Bellevue
- Charles J. Keever, Honolulu, Hawaii
- James Edward Kennedy, Bellevue
- Arthur Timothy Lane, Seattle
- Raymond Jourdan Lee, Livingston, Texas
- George Sanfrid Lundin, Seattle
- William Hillyer Mays, Gig Harbor
- C. Robert Ogden, Spokane
- The Honorable Frank W. Payne, Federal Way
- John Richard Praeger, Seattle
- The Honorable Justin L. Quackenbush, Spokane
- Richard Que Quigley, Kennewick
- Robert R. Redman, Yakima
- Theodore Archie Roy, Yakima
- Payton Smith, Seattle
- John Raymond Sullivan, Rockport
- Fredric Tausend, Seattle
- Donald Herbert Thompson, Tacoma
- Robert H. Thompson, Seattle
- Harold F. Vhugen, Seattle
- Robert K. Waht, Sammamish
- Robert M. Westberg, San Francisco, California

1957: A Moment in Time

- A car costs about $2,100, and a house $18,000. Gasoline is 31 cents a gallon, and a postage stamp is just three cents. Bread costs 19 cents a loaf, and milk is $1.00 per gallon. The stock market is 436, the average annual salary is $5,500, and minimum wage is $1.00 per hour.
- General Foods Corp. introduces Tang breakfast beverage crystals. Velcro is patented by George de Mestral of Switzerland. The Frisbee is renamed and nationally marketed. Eveready produces “AA” size alkaline batteries for use in “personal transistor radios.”
- At the age of 14, Bobby Fischer first successfully defends his United States Junior Chess Championship title, then wins the United States Open Chess Championship.
- The first large-scale American nuclear power plant goes into operation.
- In September, Eisenhower sends federal troops to Arkansas to provide safe passage into Central High School for the Little Rock Nine.
- Albert Camus receives the Nobel Prize for literature. Nikita Kruschev is named Time Magazine’s “Man of the Year.”
- Theodore Geisel, aka Dr. Seuss, writes The Cat in the Hat.
- Jackie Robinson announces his retirement from baseball. On September 4, the last game is played at Ebbets Field in Brooklyn as the Dodgers prepare to move to Los Angeles.
- Sputnik is launched. The world’s first artificial satellite is about the size of a beach ball, weighs 183.9 pounds, and orbits the Earth in 98 minutes.
- Elvis Presley performs at Sicks’ Seattle Stadium, drawing an estimated 16,200 people (90 percent of them teenage girls) — the biggest crowd for a single performer in Seattle up to this point.
- The Washington State Highway Department establishes a special office charged with acquiring property within the established right-of-way of the Seattle Freeway, now the Seattle portion of I-5. Along a route some 20 miles long that cuts through the city, some 4,500 parcels of land, most improved with homes, apartment buildings, and businesses, are slated for acquisition and property clearing.
- As announced in Bar News, the City of Vancouver offers a monthly salary of $665 for the position of city attorney.
- Bertha M. Snell, said to be the first woman admitted to the Washington State Bar, dies at the age of 84.
- Fred C. Palmer is the WSBA president, T.M. Royce is counsel, and Alice O’Leary Ralls is executive secretary (this position is later re-named executive director). The Annual Meeting is held in Seattle for the first time since 1949, and 800 lawyers attend — the Ladies’ Auxiliary of the Seattle Bar Association plans “a full program of activity for wives of lawyers,” including fashion shows, flower arrangement talks, and lectures on antiques.
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It’s not justice if it’s not equal.
A conversation with lead editor of the Guide Joan Tierney, immediate past-president of Washington Women Lawyers.


The distinguished editorial board of the Guide consists of the Honorable Bobbe Bridge, Justice of the Washington State Supreme Court; the Honorable Mary Fairhurst, Justice of the Washington State Supreme Court; the Honorable Susan Owens, Justice of the Washington State Supreme Court; and the Honorable Mary Yu, Judge of the King County Superior Court.

What is the Breast Cancer Legal Resources Guide?

As you can imagine, hearing the words “breast cancer” is crushing. Coping with the diagnosis, and with life after the diagnosis, can be overwhelming for anyone.

The Breast Cancer Legal Resources Guide was published in the fall of 2007. The Guide is a resource for women and others interested in helping women with breast cancer. It was written primarily by Washington attorneys and law students and an Oregon attorney whose wife was recently diagnosed. It is available to download on the WSBA website at www.wsba.org/breast+cancer+guide+0907.htm, with interactive links to a wealth of resources. We originally designed it for WSBA members, but it quickly became important to all kinds of cancer patients, social workers, families, and caregivers, many of whom requested copies or even draft copies to help in addressing legal issues after a diagnosis.

The Guide is intended to be read easily. In fact, we reviewed it many times to ensure its readability and ease of use. The intent was to provide easy-to-understand information to absolutely everyone, whether an attorney, a healthcare provider, a friend, or a patient, while maintaining the integrity of the Guide as a legal resource. It provides practical legal information regarding employment, housing, estate planning, and insurance and privacy issues, among others.

Introducing the Washington State Breast Cancer Legal Resources Guide

This is a huge project. How did it get off the ground?

We held a CLE on breast cancer in March 2007. Attorneys Carla Lee and Lish Whitson worked selflessly for over a year and a half, bringing ABA speakers from around the country to Seattle. Based on the evaluations from the CLE, we offered a second one in June 2007, focusing more on Washington law. Those two CLEs inspired a conversation with the WSBA; the Washington Women Lawyers (WWL); Carla Lee, WWL co-vice president; and Dana Hess of the Human Rights Commission about what our next steps might be. We later learned that the State Bar of Texas has a Breast Cancer Legal Resources Manual on their website. We used the Texas model as a guide in creating a list of chapter topics to update and research under Washington state law.

How did the WSBA get involved?

2006-2007 WSBA President Ellen Conedera Dial asked me, as president of WWL, if I could get a Washington legal guide together, and relying on my network of women colleagues, especially Joslyn Donlin, Dana Hess, and Carla Lee, I said “yes” and the guide was launched. Having the document available on the WSBA’s website makes it easily available to download. We felt the WSBA, on behalf of the entire legal community, needed to stand behind and support the Guide, and they agreed. You can imagine our delight when the Washington State Gender and Justice Commission offered to publish 200 hard copies to be distributed as well.

What kinds of legal topics does the Guide cover?
The Guide covers every legal area impacted by the diagnosis. Its 15 chapter titles include: Informed Consent; HIPAA and WHCRA; Health Insurance; Public Benefits; Dealing with Hospital Medical Debt; Viatical Settlements; Disability Benefits; Employment and Cancer; Housing Issues; Saving Your Home; Guardianship; Estate Planning; End-of-Life Issues; and Liability Issues. There is also a chapter for women of color. The Guide ends with five pages of national, state, and local resources with phone numbers and websites for every kind of resource known to any of us.

Now that you have the list of chapters, let me give you a small sample of legal topics covered. In chapter two, dealing with HIPAA, you will find a list of the “Five Steps to Understanding HIPAA.” In the same chapter you will find a similar breakdown for WHCRA, or the Woman’s Health and Cancer Rights Act of 1988. Chapter five covers Charity Care. How many of us know what Charity Care is, or that it applies to all hospitals, including psychiatric hospitals? How many lay people would know they have an appeal right after a denial of Charity Care?

Chapter six covers viatical settlements, a term derived from the Latin word viaticum, meaning “provisions for a long journey.” How would a lay person know who is eligible for a viatical settlement? In the Guide, we lay out practical guidelines for these settlements. In chapter seven, we discuss the rules and eligibility for state SSI and Federal Supplemental Income. We also cite the WLAD and the ADA; we outline McClarity v. Totem Electric; we discuss SB 5340, the new law that widens Washington state’s definition of “disability”; and we offer practical advice to both the employer and the employee with cancer. We also offer ways to save your home from foreclosure using redemption. Our final chapter covers breast cancer and women of color. Did you know that women of color are less likely to be diagnosed, and once diagnosed, less likely to survive a diagnosis of breast cancer?

How does someone use the Guide?

Most of the Guide is in a question-and-answer format, so that the reader can skip to the topic that best relates to the concern
at hand. It cites RCWs, WACs, and relevant cases, and it offers practical approaches to common concerns involving breast cancer. It is important to mention that the Guide is not a substitute for legal advice from an attorney, but it will close the gaps for anyone touched by breast cancer, with practical, readable guidelines and laws.

How do I get a copy, and is it free?
It is absolutely free online and in hard copy. It is also in circulation at the Seattle University Law Library and will be offered to the UW School of Law. It is available at the Seattle Public Library and, of course, it can be found online through the WSBA and WWL websites. The online version links the reader directly to a wealth of resources. We are updating and expanding the Guide and will provide hard-copy slip updates and, of course, the online versions will be continually updated.

Does it apply to other chronic illnesses?
Yes, it definitely does. This was written for breast-cancer patients, but it can be used for any cancer or catastrophic illness.

As president of Washington Women Lawyers, Joan, what does this publication mean to women in Washington?
This Guide is monumental for women. Did you know that Washington state has the third-highest incidence of breast cancer of all states? For a breast-cancer patient, it means everything to have a resource for basic legal questions. But what you do not see on the pages of this Guide are the hearts, souls, and lives of the women and men behind it, their stories, and their pain. Many of the authors survived breast cancer. Others are touched by the diagnosis through a family member or a friend. Some survived different kinds of cancer.

As I look back on this whole intense experience, the subject is so tragic, yet the project itself was so life-affirming. For one thing, every person I approached to contribute said “yes,” whether to write, research, edit, or provide other support. Several judges gave up vacation time, and everyone who contributed did so in the spirit of providing a service to a vulnerable population of women and families. As lawyers, we share a unique opportunity and indeed, an obligation, I believe, to give back to the community. Service to the community is central to everything I believe in. I am deeply proud of this effort, a product of all walks of the legal community, from the State Supreme Court to Seattle University law students, all of whom stepped up to contribute selflessly.

It’s not over, of course; the fight continues. But we are all in it together.

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WWW Past-President Joan Tierney is a KCBA trustee; a member of the WSBA Committee for Diversity; a pro bono attorney with KCBA VLS, HJR, and VAPWA programs; and an ABA Foundation fellow. She is associate director of Seattle University School of Law Center for Professional Development and adjunct faculty member of the Edmonds Community College Paralegal Program. Assistant Attorney General Maureen Mannix is editor of this column.
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2007 Gifts

Columnist Jeff Tolman reflects on a year of gifts — as a lawyer, colleague, friend, husband, and father

January: Shortly after 2007 began, my assistant’s house burned to the ground. From the burning inferno, she, her dog, and her purse were the only survivors. Everything else was lost. To say she was devastated would be an understatement. No family pictures remained, no clothes, no documents. When I got to the office Monday morning, I posted an e-mail on our county bar association e-mail list about the tragedy. Sharon had worked in three law firms in the county over 15 years. I assumed there would be some empathy and help. $300—400, I predicted. The first day, $1,500 arrived. She was thrilled and overwhelmed and, more than anything, truly astounded that so many people cared enough to take action. I, too, was overwhelmed by the generosity of my colleagues. Some lawyers knew Sharon well, others not at all, yet they understood the loss and gave to a member of the extended legal community. My January gift was a reminder of the power of generosity.

February: Two different clients came in with agreements they’d pulled off the Internet. One covered a transaction worth $350,000, the other a house sale for $700,000. Both agreements were awful and caused more problems than they solved. The $1,000 or so I would have charged to draft appropriate documents is a lot less than they’ll spend for me to stitch up the bleeding their agreements caused. My February gift was realizing that I am still a better lawyer than the Internet, and being reminded that an experienced lawyer will save clients a lot of money if given the opportunity.

March: My proposal to have the silhouette of Chief Justice Gerry Alexander on the Washington state quarter goes unheeded. Instead, Mount Rainier and a salmon are chosen. Wrong decision. The Chief is smarter than all of the salmon in Washington combined, and younger and less likely to erupt than Mount Rainier. Most important, he is what we lawyers, judges, and citizens should be like. If people across the country envisioned we Washingtonians as Gerry Alexander, it would be quite a compliment. My March gift was realizing that having role models is still an important part of my personality.

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April: A colleague of mine, a fine person and lawyer, files bankruptcy. Unfortunately, my April gift is the reminder that our profession must be a combination of heart and head; that as we work for charities and pro bono, we must also watch out for ourselves.

May: Laurie and I go to France. I struggle with the language, am amazed by the scenery, and realize that the French may be right to have a mid-day couple of hours for a long lunch, a glass of wine, and a nap. My May gift was going away from the office and realizing that, after 29 years, I still look forward to coming back.

June: I read a new study, Social Isolation in America, which reports a sharp decline in friendships. The average American, according to the report, has two friends. Nearly a quarter of the people surveyed reported having no one to confide in. Our frenetic lives — and the Internet — are killing personal relationships. This is a scary realization. One of the great joys of practicing law is the human interaction, the friends I’ve made. My June gift is a reminder to call my friends more often and assure them that we are in this profession, and life, together.

July: My sons enter the next chapters of their lives. Chris begins flying for American Eagle; Andy is looking for a job in D.C. as a legislative staffer (anyone who has an “in” with a senator or representative, please call. Andy is a great young man!). The little boys I played catch and hide-and-seek with are now men — fortunately, good, honest, hard-working men who call their parents even when they don’t need money and still say “I love you.” My July gift is raw pride in my offspring.

August: Three golf pals and I travel to Scotland and play in the Carnegie Shield at the Highlands. Royal Dornoch Golf Club is the hardest course I’ve ever played. By far. In the wind and rain, trying to dodge the deep bunkers and tall rough, I shoot 118. I hadn’t shot 118 since I weighed 118, and didn’t plan on shooting it again until I was 118! Such is the game of links golf. Through it all, I am smiling. What would I rather be doing than playing golf, in Scotland, with my friends, meeting new people from around the globe? My August gift is the reminder that a golf score is just that, a golf score.

September: I make a hospital call to a client who has leukemia. He is quite appreciative. My September gift was the appreciation of having good health. No surgeries or major illnesses. As a client of mine said, “Happiness is just another way of saying good health.”

October: A friend stopped by for coffee early one morning. His mother had just moved into a local assisted-living complex. He had dinner with her the first night. “How was your dinner?” I asked. “Good,” he responded. “I looked around at the tables. At Mom’s table were folks I had done wills for, and for one, I represented their daughter in her divorce. Across from Mom was a fine lady I had represented in a contentious boundary dispute 30 years ago. At the next table were two people for whom I’d written a partnership agreement in 1978 to buy some investment property. The income from that property is paying for their care now….” And on he went, around the room, not realizing even as he told the tale how many of the people there he had helped as a lawyer. My October gift was the reminder of how many lives we touch professionally.

November: My workdays were filled with new clients, facts, problems, and experiences. I continue to be amazed and invigorated by the variety and uniqueness of every workday lawyers have. Few jobs are like that. What more could any worker ask for? My November — Thanksgiving month — gift is appreciating the excitement each morning of wondering what the day will bring, and that clients continue to ask me to be part of their personal problem-solving.

December: 2008 is nearly here. Another year has passed. Quickly. Way too quickly. 2008 will be my 55th year. That used to be old. I always assumed 55-year-olds were boring, wrinkled, asexual, and on their last legs. Instead, my family, friends, and I have more plans than ever. Travel. Golf. Laurie will be near graduation from college. New and old clients and cases to keep me active and working hard. Maybe a grandchild this year or next. Watching my kids earn their stripes working hard at their new careers. Perhaps most important, knowing there will be gifts to give and to receive over the next 12 months. Happy holidays. May your 2008 be happy and healthy.

Jeff Tolman is a former member of the WBSA Board of Governors and practices in Poulsbo. He can be reached at jefft851@aol.com.
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Most of the Board’s Work

BY EDWARD P. SAGER

September 20–21, Seattle

It was told to me that the final Board of Governors meeting prior to the end of the fiscal year is the most interesting meeting of the year; consequently, those of you who drifted over to this column will find more information to digest than normal.

Trust Account Responsibilities and Retainers Task Force Report (TARRTF)

Although the presentation of the report was well-orchestrated and expertly given, attempting to harmonize and synthesize the elimination of old terms and the integration of new terms seemed difficult to most in attendance. Fortunately, providing attorneys training and education is a major part of the report.

Formal Ethics Op. No. 186, “The Proper Handling of Advance Fee Deposits and Retainers,” was withdrawn by the BOG in 2005 following the State Supreme Court’s decision in In re DeRuiz, 152 Wn.2d 558 (2004). This withdrawal created a vacuum with respect to the handling of advance fee payments and TARRTF was formed to fill that vacuum. No longer can attorneys use “nonrefundable,” “earned upon receipt,” or “minimum” in fee agreements without running afoul of the RPCs. Conclusions reached during discussion include the following:

• This proposed RPC does not overrule fee agreements that include: “funds will be deposited into a trust account and then taken out as earned.” However, attorneys must be trained to use the term “advanced fee” instead of “retainer.”
• Guidance as to the definition of “retainer” can be found in Comment 13 to Proposed RPC 1.5.

Having resolved BOG concerns, a motion was introduced to recommend the new RPCs and it passed unanimously.

Committee on Public Defense (CPD)

The goal of the CPD is to study and craft public defense standards to ensure that public defense is up to constitutional requirements and allows for effective assistance of counsel. These standards provide guidance to attorneys and benchmarks for locales and organizations engaged in public defense work.

It was stated that few non-caseload standards needed to be changed because most standards “stood the test of time,” but the four standards which needed modification, clarification, or updating involved compensation, administrative costs, support services, and qualifications of attorneys.

A motion to approve the non-caseload standards was introduced and unanimously passed.

Caseload Standards

A complex examination of psychological factors, the reality of current caseloads, and desirable goals were sorted out during this agenda item. The contenders: 300 maximum misdemeanor caseload, with the ability to adjust upwards to 400 depending upon certain circumstances versus 400 maximum misdemeanor caseload with the goal to reduce that amount to 300. The full CPD, in a close vote, decided to not approve the CPD Standards Subcommittee’s 13–12 decision in favor of the 400 maximum with 300 as a goal, instead approving a 300 maximum, with the opportunity to adjust upwards to 400.

A concern was voiced regarding the loss of state funding if counties cannot comply with the 300 standard. President Dial and the CPD clarified that funding is given to achieve the standards or to make progress towards achieving the standards.

Several public attendees spoke passionately about why the 300 caseload was better. Arguments made in favor of the 300-case standard included that misdemeanor cases are more complex than they were when the standards were set in 1990, and that setting the standard at 300 would send a message to the counties that we take funding public defense seriously and that it is as important as courts, judges, and prosecution.

In favor of the 400-caseload limit, one governor commented that we are discussing effective assistance of counsel, not necessarily great counsel. Also, 93 percent of public defense attorneys reported satisfaction with 400 cases.

A motion was introduced to accept without change the recommendations of the CPD other than the misdemeanor caseload, and to change the misdemeanor caseload to 400 with the goal of 300. This motion failed 8–5. A follow-up motion was introduced to accept without change the CPD caseload standards. The vote was unanimous in favor of the motion.

The BOG then recognized the CPD co-chairs for their thoughtful and thorough work. Bill Hyslop and Jon Ostlund were presented with framed posters of artwork by Jacob Lawrence representing the 50-year anniversary of the NAACP.

WYLD Report

WYLD President John Brangwin gave the WYLD report and spoke with passion and humility about the need to fund a statewide GAAP, the Greater Access and Assistance Program. President Brangwin stated, without reservation, that GAAP is the least expensive and best alternative to the “ill-conceived Practice of Law Board’s legal technician proposal.” At the end of
the WYLD report, President Brangwin introduced the new WYLD president, Mark O’Halloran. President Dial conducted the swearing-in ceremony.

It was clear that this successful day of decisions was made easier by the conscientious and thorough work by the various task forces, committees, and boards.

**Bar News Editor Selection**

The BOG meeting reconvened Friday at 8:30 a.m. with the Bar News editor candidate interviews and discussion first on the agenda. The final three candidates (Paul Fjelstad, Michael Heatherly, and William Trippett) were given five minutes to introduce themselves and then the floor was opened to the BOG to ask questions of each candidate for five to 10 minutes.

In May 2007, the Editorial Advisory Board (EAB) was charged with the duty to present to the BOG three candidates for a new Bar News editor. The EAB quickly formed an editor search subcommittee, advertised the position, collected applications, and interviewed candidates.

Several of the questions asked of the candidates dealt with the role of the Bar News in promoting the BOG views and policies, as well as the expressed desire of the BOG to eliminate the tension which has sometimes existed between the BOG and the Bar News. The candidates generally agreed that a cordial and cooperative relationship with the BOG was desirable.

After the candidate Q&A, a lively discussion began with EAB Co-Chair Anh Nguyen and EAB member Shelley Szambelan describing the weighted-point system used to select/review candidates. A motion to select Mr. Heatherly as the next Bar News editor was introduced and passed unanimously.

The BOG then recognized the efforts of Donna Sato (executive assistant to the executive director) and President Dial. Both were given gifts and thanked for their service.

**Loan Payment Assistance Program**

Dwight Williams, chair of the Loan Payment Assistance Program, presented an impassioned and frank oration, stating that now is the time to decide whether the WSBA and attorneys will financially support the program, and if not, then to please eliminate the program, rather than allow it to wither on the vine.

Educational loan giant AES previously provided funding, but that may not continue. There has been no success with persuading large law firms to contribute to this program and very little success with the various committees, sections, and boards. In order for this program to continue, it needs members of large law firms to champion contribution efforts. The general consensus of the BOG is that this program needs to continue. The BOG recognized Dwight Williams’s tireless efforts with a round of applause and a gift.

**FY 2008 Budget**

Treasurer Eron Berg presented the FY 2008 budget. Highlights include:

- Reserves exist for future specific BOG programs.
- Net operating loss of $228,000. New and tighter budgeting process allowed for less of a loss than previously calculated.
- Recommendations include conducting program reviews in FY 2008 and greater license-fee growth for FY 2010 and beyond.

A lively discussion then occurred over the statewide GAAP which was not included in the FY 2008 budget. Governor Karademos moved to amend the budget to find funds for a statewide GAAP. The main argument against currently funding a statewide GAAP is that the current GAAP proposal does not address all the concerns associated with the WSBA administering such a program. WSBA General Counsel Bob Welden also stated that there might be liability concerns. The BOG wants to support GAAP; it just needs a more refined proposal.

Governor Karademos withdrew his motion so the BOG could vote on whether to approve the budget as is and then propose and vote on amendments. A motion was introduced to approve the budget with the understanding that the budget will be balanced next year. The motion passed 12–1.

Gonzaga University School of Law Dean Earl Martin and the Gonzaga Law School SBA president attended the BOG Meeting via telephone to discuss a Spokane Bar exam, estimated to cost $36,000 plus additional staffing. Dean Martin presented the issue as one of equity: Traveling from eastern Washington to take the Bar exam can affect performance, and combined travel costs each year for Gonzaga law students alone is greater than $100,000. According to Dean Martin, a $45 increase in Bar exam fees would cover the costs. Dean Martin also stated that Gonzaga and the entire Spokane County legal community will do everything they can to support a Bar exam in Spokane, including providing volunteers and working to find appropriate facilities. A few BOG members and WSBA General Bob Welden stated that there are many potential logistical and legal problems. A recess for lunch was called and Dean Martin was invited back for the afternoon session. Unfortunately, I had to leave and missed the afternoon discussion. However, by now, the minutes of the September 2007 BOG meeting will have been approved and the minutes of the September 21, 2007, afternoon session revealed.

Having never previously attended any BOG meetings, I was impressed with the amount of content and depth of discussion which crossed the Big Table during the one-and-a-half days I attended. As expected, more weighty issues were given higher priority and more time for discussion than less-controversial subjects. None of the governors held back their passion, disappointment, excitement, and enjoyment during the discussions and presentations. Thank you, Board of Governors, for showing me the important and vast amount of work you do. Thank you, Lindsay Thompson, for your past Bar News service. And finally, best wishes to Michael Heatherly as the new Bar News editor.

More information on the Board of Governors meetings can be found at www.wsba.org/info/bog/default.htm, where links to the minutes are located in the right-hand column.

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Edward P. Sager was the co-chair for the 2006–2007 WSBA Editorial Advisory Board. He is a solo contract attorney in Kirkland emphasizing disability, appellate, and immigration work. Mr. Sager graduated from Brigham Young University with a B.S. in finance and received his J.D. in 1996 from Gonzaga University School of Law. He can be contacted at 425-823-1111 or www.edsager.com.
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Washington State Access to Justice Board

Application deadline: December 31, 2007

The Washington State Access to Justice Board (ATJ Board) announces one vacancy, effective May 2008, for a judge or attorney.

The Washington State Supreme Court established the Access to Justice Board in 1994 to assure equal access to the civil justice system for those facing economic and other significant barriers. The ATJ Board works to achieve this mission through the oversight of its State Plan for delivery of civil legal aid; coordinating and implementing statewide initiatives for improving access for unrepresented and underrepresented populations in Washington state; and building leadership, funding, and other support for equal access to the civil justice system.

The ATJ Board consists of nine members, including up to two lay members, selected on the basis of a demonstrated commitment to, and familiarity with, access to justice issues. Board members may serve up to two three-year terms. The ATJ Board has approximately seven full-day meetings throughout the year in Seattle. Additionally, the Board has an annual retreat and meets at the annual Access to Justice Conference. Travel expenses are reimbursed.

Responsibilities of ATJ Board members include attending Board meetings and the annual planning sessions; serving as liaison to at least one Board committee; and actively participating in Board initiatives. A demonstrated commitment to equal justice principles and an enthusiastic commitment to serve in equal justice community leadership are required, as are strong communication skills and an ability to see the “big picture.” The ATJ Board strives to have a membership that reflects inclusion, diversity (including geographic diversity), and cross-cultural competence. For more information about the ATJ Board, please contact WSBA Justice Programs Manager Joan Fairbanks at 206-727-8282, 800-945-9722, ext. 8282, or joan@wsba.org, or visit www.wsba.org/atj.

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

Council on Public Legal Education (CPLE)

Application deadline: December 31, 2007

The WSBA Board of Governors seeks two members to serve on the Council on Public Legal Education beginning February 1, 2008. One position expires September 30, 2009, and the other September 30, 2010. Both positions are renewable for three years. The mission of the CPLE, which is an advisory committee of the WSBA, is to promote public understanding of the law and civic rights and responsibilities. The CPLE pursues this mission by conducting, coordinating, encouraging, and publicizing public legal education efforts in Washington state. The CPLE’s 25 members comprise attorneys, judges, educators, and community leaders. The CPLE’s accomplishments include creating the lawforwa.org website, increasing the amount of civics education in the state’s K–12 schools, and sponsoring the state’s first youth court conference. Please submit a letter of interest and résumé to: WSBA Bar Leaders Division, 1325 Fourth Ave., Ste. 600, Seattle WA 98101, or e-mail barleaders@wsba.org. For further information on the CPLE, contact the WSBA public legal education manager, Pam Inglesby, at pam@wsba.org or 206-727-8226, or 800-945-9722, ext. 8266.

WSBA ABA House of Delegates Alternate

Application deadline: December 31, 2007

The WSBA Board of Governors is accepting letters of interest and résumés from members interested in serving as an alternate for the ABA House of Delegates. The alternate would participate in the ABA House of Delegates if one of the WSBA delegates were unable to attend a meeting. Full voting capacity can exist at all times. Preferably, the alternate should be someone who usually attends the ABA Midyear and Annual meetings, since the substitution may need to be made on fairly short notice. The term of service is two years, and the alternate may serve a maximum of three consecutive terms. The ABA House of Delegates alternate must be an ABA member in good standing throughout his/her term. 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.

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

Application Deadline: March 3, 2008

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. One of these seats is up for election to a three-year term commencing at the close of the annual meeting in September 2008.

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 6, 2008. 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
Members interested in the at-large position on the Board of Governors should submit a letter of application and résumé to: WSBA Office of the Executive Director, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539; 206-727-8244 or 800-945-9722, ext. 8244.

**2008 Notice of Board of Governors Election**

Four positions on the WSBA Board of Governors will be up for election this year. These are the governors representing the 3rd, 6th, 7th-East*, and 8th Congressional Districts. These positions are currently held by Kristal K. Wiitala (3rd District), Salvador A. Mungia (6th District), Liza E. Burke (7th-East District), and Douglas C. Lawrence (8th 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 statement of interest 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 WSBA executive director, within the district of their primary Washington practice. However, the member must reside in the congressional district to be eligible for election.

Nomination forms are available from the WSBA Office of the Executive Director, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539; 206-727-8244, or 800-945-9722, ext. 8244, and the WSBA website at www.wsba.org/info/bog/default.htm. The WSBA executive director must receive nomination forms by 5:00 p.m. on March 3, 2008. The Board of Governors determines the official dates of the election. Ballots are mailed on or about April 15 and are counted on or about May 15. Note: 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 East sub-district (zip codes are 98105, 98115, 98118, 98122, 98125, 98144, 98155, 98178, and 98185) will elect a new governor.
**Seeking Questionnaires from Candidates for Judicial Appointments**

**Deadlines: January 31, 2008, for March 13, 2008, interview; May 1, 2008, for June 12, 2008, interview**

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

**2008 License Fee, Late Fees, and Suspension Information**

**2008 License Fee Packets.** Licensing packets will be mailed in early December. This year’s packet has been condensed. The packet includes your license-fee invoice with status change request to inactive or for resignation, as well as contact information changes and contact restriction requests. Active members will have a mandatory trust account declaration form, backed by a mandatory professional liability insurance disclosure form and, as applicable, separate MCLE information or certification forms. All members will receive the voluntary pro bono and demographic information form. If you have not received your licensing packet by mid-January 2008, please 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 licensing packet.

**New Fee to Change Status to Active.** Beginning January 1, 2008, all members on inactive, judicial, or emeritus status who apply for a change to active status will be required to pay a $100 investigation fee at the time of filing an application for a change of membership status to active. The Board of Governors approved the fee to help defray the costs associated with researching a member’s background and membership history.

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, 2008. WSBA Bylaws require a 20 percent late-payment penalty if the annual license fee remains unpaid after March 3, 2008. After April 1, 2008, a 50 percent late-payment penalty is imposed. If your license fee, penalty assessment, or LFCP assessment remain unpaid after May 2008, 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). 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 2008 Resources directory will print the contact information that is in the WSBA membership database on February 1, 2008. 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, 2008, for inclusion in Resources.

**WSBA Bylaw on Armed Forces Fee Exemption.** The WSBA will begin processing
Armed Forces Exemption requests in December for the 2008 licensing year. WSBA Bylaw Section II.E.1.b, provides for a fee exemption for eligible members of the Armed Forces. This section of the WSBA Bylaws provides: “An active member of the Association who is activated from reserve duty status to full-time active duty in the Armed Forces of the United States for more than sixty days in any calendar year, or who is deployed or stationed outside the United States for any period of time for full-time active military duty in the Armed Forces of the United States shall be exempt from the payment of membership fees and assessments for the Lawyers’ Fund for Client Protection upon submitting to the Executive Director satisfactory proof that he or she is so activated, deployed or stationed. All requests for exemption must be postmarked or delivered to the Association offices on or before March 1st of the year for which the exemption is requested. Eligible members must apply every year they wish to claim the exemption. Each exemption applies for only the calendar year in which it is granted, and exemptions may be granted for a maximum total of five years for any member.”

WSBA members whose membership status is active and who are otherwise eligible for the Armed Forces exemption as described above can apply for a waiver of WSBA license fees beginning in December. (WSBA members whose WSBA membership status is inactive or emeritus must still pay the annual WSBA license fees for that status.) If you are an active member and you believe you are eligible for the fee exemption, please contact the WSBA Service Center at 800-945-WSBA (9722) or 206-443-WSBA (9722), or questions@wsba.org; or contact Kevin McKee at kevinm@wsba.org or 206-727-8243 or 800-945-9722, ext. 8243, for application information.

**More Information.** For more information, please see the WSBA website at www.wsba.org/lawyers/licensing/annuallicensing.htm, or contact the WSBA Service Center at 800-945-WSBA (9722), 206-443-WSBA (9722), or questions@wsba.org.

**MCLE Certification for Group 1 (2005-2007)**

If you are an active WSBA member in MCLE Reporting Group 1 (2005-2007), 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, 2008. Any C2/C3 forms delivered to the WSBA or postmarked after March 3, 2008, will be assessed a late fee.

Members in Group 1 include active members who were admitted to the WSBA through 1975 or in 1991, 1994, 1997, 2000, or 2003. Members admitted in 2006 are also in Group 1 but are not due to report until the end of 2010. Their first reporting period will be 2008-2010; 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 received in your license packet is a declaration that lists all the MCLE Board-approved courses that were in your MCLE online profile for the 2005–2007 reporting period as of mid-October 2007. If you took other courses after mid-October, you can add these to the back of the C2/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 MCLE Board-approved courses that you list on your C2/C3 form must have an Activity ID number. This number is listed in your online MCLE profile and is assigned at the time that the Form 1 for each course is input to the MCLE system. If you have taken courses that have not yet been approved by the MCLE Board, please submit Form 1s for these courses immediately to ensure that they are approved before your C2/C3 is due. A “Certificate of Attendance” or other sponsor-provided certification is not sufficient to receive course credit. If the sponsor has not received course accreditation from the Washington MCLE Board, you must submit a Form 1 application and full agenda for the course in order to receive credit. 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, 2007, and need more time to complete your credits, an automatic extension will be granted until May 1, 2008. There is no need to apply for it. However, a late fee will be assessed if you took 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 will be $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 Certification for Active Members

Due Date for MCLE Reporting. WSBA members are divided into three MCLE reporting groups based on year of admission. (Newly admitted members are exempt. See “Newly Admitted Members” below.)


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

- At least 45 total credits of MCLE Board-approved CLE activities must be taken, which need to include a minimum of 30 live credits and six ethics credits. The courses must meet the requirements of APR 11, but they do not need to be taken in Washington state. Many courses are offered around the world which meet the requirements of APR 11. “Live” courses include classroom instruction, live webcasts (not pre-recorded webcasts), and teleconferences.
- “Ethics” courses, and segments of larger courses, must meet the requirements of APR 11 Regulation 101(n) or (o) to be considered for ethics credit.
- Pre-recorded self-study (A/V) courses cannot be more than five years old, except MCLEBoard-approved “skills-based” courses. Pre-recorded self-study courses include the traditional audio-visual (A/V) media of video tapes and cassette tapes. They also include archived webcasts, DVDs, compact disks, and other media with a sound track of the MCLE Board-approved course presentation. Written materials should be included with these courses and reviewed prior to claiming credit. In addition, written materials must be purchased by each member, where required by the sponsor, prior to claiming credit.
- Six pro bono credits can be earned per year. Two of these credits are for approved annual training, which must be taken prior to being able to earn credit for the pro bono work. Four pro bono credits may be earned each year if at least four hours of pro bono work was provided through a qualified legal services provider.

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

C2/C3 Reporting Requirement. All active members due to report are required to file a Continuing Legal Education Certification (C2/C3) form listing all CLE courses taken for credit compliance. The deadline for filing your C2/C3 form is February 1 of the year following the end of your reporting period. Note:
- Your online roster is not a substitute for filing the C2/C3 form.
- The C2/C3 form is a declaration and must be signed and dated, and the city and state where signed must be identified.
- C2/C3 forms are included in the license packets sent in early December to all members due to report (Group 1 members this year).
- All CLE courses listed on member rosters as of October 2007 will be printed on the back of the C2 form. If you took more CLE courses after October 1, and if they appear on your online roster and you do not want to hand-write them on the back of the C2 form, you may print a copy of your roster and attach it to your C2/C3 form. State on your C2/C3 form that the attached online roster printout is a true and correct statement of the CLE courses taken for credit compliance.
- You must verify that the credit hours listed on the C2/C3 and on your online profile correctly reflect the hours actually attended for each CLE. Online credits may be edited by clicking on the “edit” link next to each course. Credits on the C2/C3 may be corrected manually.
- The C2/C3 form should be filed by February 1 even if all the credits needed for compliance have not been completed.

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

Newly Admitted Members. If you are a newly admitted member, you are exempt
from reporting CLE credits for the year of your admission and the following calendar year. If you were admitted in 2006, you will not report for this reporting period (2005–2007) even though you are in Group 1. You will first report at the end of the 2008–2010 reporting period. Members admitted in 2007 will not report until the end of the 2009–2011 reporting period. When you report at the end of your first reporting period, you may claim all CLE credits earned on or after your date of admission to the WSBA.

**MCLE Comity.** If you are an active member of the WSBA and your primary office for the practice of law is outside of Washington and if you are a member of the Oregon, Idaho, or Utah state bars (comity states), you may meet your Washington mandatory CLE requirements by providing proof of current MCLE compliance from your comity state bar. Only a Certificate of MCLE Compliance from your comity state bar (not a “Certificate of Good Standing”), sent with your WSBA C2/C3 form, will satisfy your 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 prep-time credit; and search for approved courses being offered.

To use the MCLE system, go to the WSBA website at www.wsba.org and click on “MCLE Web Site” in the upper left corner. On the next screen, click on the “Member” tab, then select “Member Login.” The online instructions lead you through the process of creating a confidential password and using the system. Online help is available. If you have questions about using the MCLE system or about the MCLE compliance requirements, see the online FAQs at www.wsba.org/lawyers/licensing/faq-mcle.htm, call the WSBA Service Center at 800-945-WSBA (9722) or 206-443-WSBA (9722), or e-mail questions@wsba.org.

**New APR 11 Regulation 104(e) Requirements for In-House CLEs.** Starting with the 2005–2007 reporting period, members are limited to a total of 15 credits of private law firm CLEs and 15 credits of corporate-legal-department CLEs in each reporting period, regardless of who the private legal sponsor was and regardless of whether the course was open or closed. There are no 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. The Supreme Court will not be changing this requirement in 2007.

**MCLE Compliance Report (C4/C5) in 2008 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 2008 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 ensure correct reporting and compliance at the end of their reporting period.

If you receive the C4/C5 form in your 2008 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 beginning to use 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.

**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 a recovery of 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 means also 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 supply the information that DSHS requires or go to http://fortress.wa.gov/dshs/maa/ltp. Failure to pay any lien imposed by the department on any settlement or judgment obtained by your client can subject you to personal liability for any funds improperly distributed. (RCW 43.20B.070)

**CLE Credits-To-Go at WSBA-CLE Bookstore December 17-31**

No time to attend live seminars to get your required end-of-the-year CLE credits? Pick up credits-to-go in the form of recorded seminars at the WSBA-CLE bookstore, located at the WSBA office, weekdays from December 17 through December 31 (excluding December 24 and 25, when the store will be closed).

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Hours are 9:00 a.m. to 4:30 p.m. except for December 31, when the hours are 9:00 a.m. to noon. A limited supply of selected recorded seminars with coursebooks, approved for MCLE A/V credit, will be for sale. (You may claim up to 15 total A/V credits for the current reporting period. All 6 ethics credits can be acquired using approved A/V self-study.) Payment may be made by cash, check, MasterCard, or Visa, and there are no shipping and handling charges for members who take their purchases with them. For members outside the Seattle area, shop online at www.wsbacl.org and order in-stock recorded seminar products by December 10 to ensure delivery by December 31.

**Thinking of Changing Your WSBA Membership Status? Consider Emeritus**

As the 2008 WSBA licensing period approaches, you may be thinking of changing your membership status to accommodate your current career or lifestyle. If you no longer need your active WSBA license, here’s why you should consider Emeritus status.

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. 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 (although you may attend optional CLE seminars at no cost so that you are aware of changes in the law). The 2008 license fee for Emeritus is $120. This is a significant savings in time and money if you are paying for an active license that you no longer need. Under most circumstances, Emeritus attorneys can remain in Emeritus status indefinitely without having to re-take the bar exam if/when returning to active status. Most qualified legal services providers provide malpractice insurance for Emeritus volunteers. There is no age requirement for Emeritus attorneys. Volunteering for a “qualified legal services organization” allows you to control your own schedule. Most importantly, the Emeritus program provides an opportunity for attorneys to give something back to their communities by helping those who are less fortunate.

An Emeritus training session has been scheduled for January 21, 2008, at the WSBA office. This training is a requirement for changing to Emeritus status and provides an opportunity for you to meet representatives from qualified legal services providers. Travel expenses will be reimbursed. For more information about the Emeritus program, registration for the training session, and the logistics of changing your WSBA status to Emeritus, please contact Sharlene Steele, WSBA access to justice liaison, at 206-727-8262, 800-945-9722, ext. 8262, or sharlene@wsba.org.

**Contract Lawyer Meeting**

Discuss the issues with other contract lawyers on December 11 from noon to 1:30 at the WSBA office. Bring your lunch — coffee is provided — and network with other contract lawyers. For more information, contact Julie Salmon at 206-733-5914, 800-945-9722, ext. 5914, or julesa@wsba.org. Please note the WSBA’s new address: 1325 Fourth Ave., Ste. 600, Seattle.

**LAP Solution of the Month: Financial Stress**

How fiscally sound is your law practice? Do you struggle with untimely billing or failure to collect your receivables? Financial distress can wreak havoc with a law practice. For help with getting your firm onto a stable financial footing, call the Law Office Management Assistance Program at 206-733-5914 or 800-945-9722, ext. 5914.

**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.

**Computer Clinic**

The WSBA offers a hands-on computer clinic for members wanting to learn more about what Microsoft Office programs — Outlook, PowerPoint, Excel, and Word, as well as Adobe Acrobat — can do for a lawyer. Are you a total beginner? No problem. The clinic teaches helpful tips you can use immediately. Computers are provided, and seating is limited to 15 members. There is no charge, and no MCLE credits are offered. The December 10 clinic will focus on getting started, navigating Windows, computer features, security, and maintenance. Sessions are held from 10 a.m. to noon at the WSBA office. For more information or to RSVP, contact Julie Salmon at 206-733-5914, 800-945-9722, ext. 5914, or julesa@wsba.org. Please note the WSBA’s new address: 1325 Fourth Ave., Ste. 600, Seattle.

**Job Seekers Discussion Group**

Looking for a job or making a transition? Join us at the Job Seekers Discussion Group the second Wednesday of each month from noon to 1:30 p.m. The next meeting is December 12 at the WSBA office. The group discusses where to look for jobs, how to grow your network of contacts, strategies for résumés...
and cover letters, and how to keep yourself organized and motivated. Exchange information and ideas with other lawyers looking to make a change. Come as you are — no need to RSVP. Bring your business cards and practice networking skills. For more information, call 206-727-8269 or 800-945-9722, ext. 8269, or e-mail rebeccan@wsba.org. Please note the WSBA’s new address: 1325 Fourth Ave., Ste. 600, Seattle.

LOMAP and Ethics on the Road: The 2007 Traveling Seminars
Plan to attend in Oak Harbor on December 4, Bellingham on December 5, or Marysville on December 6. Registration is $89. This seminar has been approved for four CLE ethics credits. For more information and a complete calendar of fall seminars, contact Julie Salmon at 206-733-5914, or 800-945-9722, ext. 5914, or juliesa@wsba.org, or visit www.lomap.org.

Problem Getting a Client to Pay?
Dispute with another lawyer or an expert witness? The WSBA offers two programs to aid in the resolution of disputes involving lawyers. These programs serve both members and the public. The Fee Arbitration Program focuses on fee disputes between a lawyer and his or her client. To participate, both parties must agree to be bound by the arbitrator’s decision. The Mediation Program provides a venue for parties to work together to resolve any dispute involving a lawyer, including those between a lawyer and a client, a lawyer and another lawyer, and a lawyer and another professional. Either party to a dispute may initiate fee arbitration or mediation. Both programs are non-disciplinary, voluntary, and confidential. For more information, visit the WSBA website at www.wsba.org/lawyers/services/adr.htm or call the ADR coordinator at 206-733-5923 or 800-945-9722, ext. 5923.

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.

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

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

Learn More About Case-Management Software
The WSBA Law Office Management Assistance Program (LOMAP) maintains a computer for members to review software tools designed to maximize office efficiency.

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The LOMAP staff is available to provide materials, answer questions, and make recommendations. To make an appointment, contact Julie Salmon at 206-733-5914, or 800-945-9722, ext. 5914, or juliesa@wsba.org.

**Usury Rate**
The average coupon equivalent yield from the first auction of 26-week treasury bills in November 2007 was 3.918 percent. Therefore, the maximum allowable usury rate for December is 12 percent. Information from January 1987 to date can be found at www.wsba.org/media/publications/barnews/usury.htm.

**Upcoming Board of Governors Meetings**

- **December 7-8, Everett**
- **January 17-18, 2008, Olympia**
- **March 7-8, 2008, Tacoma**

*Information posted at www.wsba.org/info/bog/schedule.htm*

**WSBA Announces Three New Staff Appointments**

The WSBA recently made three new staff appointments: Gregg Hirakawa is the new deputy executive director for external relations; Douglas J. Ende is the new chief disciplinary counsel/director of the Office of Disciplinary Counsel; and Moni Law is the new bar leaders program manager.

**Gregg H. Hirakawa**
received his bachelor’s degree in journalism from the University of Oregon, and his law degree from the Seattle University School of Law. Gregg worked as bureau chief/ correspondent for The MacNeil/Lehrer News Hour in Seattle, and as the communications director for the Seattle Department of Transportation.

As deputy executive director for external relations, Gregg’s duties will include handling public outreach and communication activities, as well as overseeing several WSBA departments and initiatives, including the Continuing Legal Education, Justice and Diversity Initiatives, Lawyer Services, and Member and Community Relations departments, and the Loan Repayment Assistance Program.

**Douglas J. Ende**
received his bachelor’s degree from The Johns Hopkins University, and his law degree from the University of Washington School of Law. Prior to joining the WSBA in 1998, he practiced law in a variety of contexts, including as managing partner at Ende, Subin & Philip, staff attorney with the Washington Appellate Defender Association, and associate at Lane Powell Spears Lubersky. He also served as law clerk to the Honorable Roselle Pekelis at the Court of Appeals.

Doug worked as a lawyer in the Office of Disciplinary Counsel (ODC), and later as assistant general counsel and professional responsibility counsel at the WSBA before becoming chief disciplinary counsel/ODC director.

Doug is responsible for the overall leadership and management of the WSBA’s Office of Disciplinary Counsel. With a staff of 35, he is responsible for managing Washington’s lawyer discipline and disability system, which includes the grievance intake process, investigation, dismissal, diversion, alternative resolution, or prosecution of grievances alleging ethical violations by Washington lawyers.

“I am eager to serve the profession and the public,” says Doug. “Together with an experienced and dedicated disciplinary counsel and staff, I am committed to ensuring a timely and responsible discipline system that will protect the public, discharge our profession’s obligation to maintain appropriate standards of ethical conduct, and help lawyers raise professional standards.”

**Moni T. Law**
received her bachelor’s degree from the University of California at Berkeley, and her law degree from the University of San Francisco School of Law. She practiced law with Evergreen Legal Services, Blaine Tamaki and Associates, and Levinson Friedman in Yakima and Seattle. Moni served on various WSBA and Washington State Trial Lawyers committees, and briefly as judge pro tem for the Office of Administrative Hearings in Seattle. She also operated a solo practice with an emphasis on personal injury/auto accidents and employment matters.

The bar leaders program manager develops and implements strategies and tactics to deliver a high level of service to the WSBA; monitors and assesses the effectiveness of programs; and works creatively to involve sections, the Young Lawyers Division, and committees in the work of the Bar. The program manager also serves as manager of the WSBA Leadership Institute.

“I look forward to serving my fellow lawyers and the citizens of Washington state as the new bar leaders program manager,” Moni stated. “I have a three-fold mission: to provide prompt and effective assistance to lawyers and judges in our state who serve on various committees and sections to continue the work of developing a diverse pool of top-caliber talent through the nationally acclaimed WSBA Leadership Institute; and to demonstrate to our state’s citizens that we are here to serve them.”
Congratulations to the 644 candidates who passed the Summer Bar Exam! The exam was administered this past July at Meydenbauer Center in Bellevue. Of the 909 candidates who took the exam, 70.8 percent passed. This pass list, along with statistical information, can be found on the WSBA website at www.wsba.org.

A

Nichole Linette Abbott, Seattle
Leslie Aherman, Seattle
Danika Adams, Seattle
Dylan O. Adams, Seattle
Ian G. Adams, Seattle
Andrew T. Albertson, South Colby
Jessica C. Allen, Gainesville, FL
Leah Rachel Altaras, Seattle
Rita F. Amer, Seattle
Kimberly May Anderson, Snoqualmie
Katherine A. Baker, Seattle
Jonathan Sheldon Baker, Seattle
Christian Lynn Babich, Seattle
Andrew Ross Atkins, Seattle
Jessica Marie Andrade, Seattle
Ryan Patrick Anderson, Seattle
Gaurab Bansal, Seattle
Levi F. Barber, Kennewick
Adam Leonard Barnett, Seattle
Jason Barnwell, Seattle
Abigail Laura Baron, Moscow, ID
Jared M. Barrett, Seattle
Aaron Bartlett, Lake Oswego, OR
Jonathan Bashford, Seattle
Etan Micah Basseri, Seattle
Farrah Batchelor, Seattle
Timothy Aurelien Bear, Snoqualme
Matthew Scott Beebe, New York, NY
Scott Beimer, Seattle
Thomas Andrew Belush, Seattle
Jennifer Berg, Centralia
Pedro Bernal, Seattle
Jason Eric Bernstein, Benton
Alison Maria Romano Bettles, Seattle

John Anthony Bianchi, Vashon
Derek Allan Bishop, Seattle
Matthew Bisutiris, Vancouver
Tyler James Black, Spokane
Lacey Nicole Blair, Spokane
Adam Joseph Blake, Thornton, CO
Megan Leigh Bledsoe, Portland, OR
Renee Lynn Grant Bluechel, Washington, DC
Matthew T. Blum, Spokane
Jonathan C. Blustein, Renton
James Daniel Bodell, Vancouver
Deborah Ann Boe, Silverdale
Stephanie Joanna Boehl, Lake Forest Park
Gena Marie Bonotti, Seattle
Andrew Jonathan Bond, Stoney Creek, ON
Manish Borde, Fairfield, CA
Catherine R. Borden, Seattle
Landin F. Boring, Seattle
Sherry L. Bosse, Seattle
Louise Bowman, Redmond
Molly Boyajian, Seattle
James A. Braschler, Seattle
Niccole L. Brennan, Denver, CO
Anthony S. Broadman, Seattle
Kari Brotherton, Seattle
Alex D. Brown, Seattle
David Alden Brown, Camano Island
Eric J. Brown, Anchorage, AK
Jason D. Brown, Spokane Valley
Jennifer Claire Brown, Tacoma
Jennifer Gozdowski Brown, Tacoma
Russell G. Brown, Seattle
Margaret Jane Bruya, Seattle
Dustin Eric Buehler, Los Angeles, CA
Niky Bukovca, Seattle
Paulette R. Burgess, Spokane
Jeffrey Edward Burkhart, Tacoma
Artt D. Butani, Cerritos, CA
Eric Roche Byrd, Spokane
Kristen M. Byrd, Highland, UT

Angela Y. Chang, Seattle
Hsu-Lin Chang, Richland
Vera Chen, Seattle
Jeffrey B. Christensen, Seattle
Craig Christian, Seattle
Matthew D. Clark, Seattle
Lettitia Catharina Coffin, Seattle
Jessica Aviva Cohen, Seattle
Loren McBride Cohen, Tacoma
Bruce Hayden Conklin, Grass Valley, CA
Kelly Dustin Connor, Seattle
Jill Kristin Conrad, Spokane
Brian James Considine, Seattle
Marc Cote, Juneau, AK
Benjamin Robert Couture, Spokane
Wendy Gerwick Couture, Spokane
Mark A. Craig, Seattle
Mary Elizabeth Crawford, Kent
Catherine Croft, Shoreline
Cassidy Rae Croghan, Seattle
Erin Watanabe Croman, Seattle
Abigail W.S. Cromwell, Seattle
Matthew Zachary Crotty, Spokane
Brook L. Cunningham, Spokane
Laura Cunningham, Lake Forest Park
Jillian M. Cutler, Washington, DC

Kelly Jeanne Diggins, Boston, NY
Darren Michael Digiacinto, Seattle
Lisa Hoang Do, Lynnwood
Nguyen Khoi Do, Bellevue
Matthew C. Dodge, Vancouver
Rick Dodson, Bellingham
Brendan Wesley Donckers, Seattle
Colleen Donohoe, Spokane
Brian Michael Donovan, Washington, DC
Blake Nathaniel Dore, Portland, OR
Kelly Drew, Spokane
Laura Caryne Dunlop, Seattle
Natalie Lynn Durlfnger, Spokane

Elizabeth A. Eames, Seattle
John Heberling Eaton, Vancouver
Keith Anthony Echterling, Spokane
Laura Eckert, Bellingham
Jennifer H. Egan, Lincoln City, OR
Kirsten Michelle Elliott, Spokane
Stefanie J. Ellis, Spokane
Michael Lewis Ellsworth, Seattle
Michael A. Eloranto, Centennial, CO
Sandy M. Eloranto, Centennial, CO
Justin G. Elser, Seattle
Kelsey E. Endres, Seattle
Melissa Sue Engelmann, Clearwater, FL
Lynne Suzanne Erickson, Salem, OR
Sean M. Evans, Seattle
Kymberly Kathryn Evanson, Washington, DC
Laura Ewbank, San Francisco, CA
Travis A. Exstrom, Issaquah

Caroline Yuhua Fan, Redmond
Chad D. Farrell, Seattle
Jennifer Kent Fauhion, Seattle
Candace A. Faunce, Coupeville
Rhianne Jean Felton, Seattle
Matthew Richard Fersch, Mercer Island
Nicholas R. Filer, Minneapolis, MN
David J. Fisher, Poulsbo
Scott I. Fitzgerald, Redmond
Christina Force, Wenatchee
Michele Lynn Foster, Issaquah
Rebecca Sirius Fritch, Eugene, OR
Erik Furer, Seattle

Andrew J. Gabel, Spokane
Mona Lisa Cuarte Gacutan, Seattle
Denice Gagner, Seattle
Patrick J. Galloway, Richland
Jill A. Gannon-Nagle, Spokane
Maria Diana Garcia, Pasco
David P. Gardner, Spokane
Marriane Elisabeth Maxwell, Gelakoska, Centroville, WA
Kristen E. Gustaut, Seattle
Jeffrey Glenn Giametta, Modesto, CA
Megan K. Gibbons, San Francisco, CA
Steven James Gillespie, Seattle
Jessica Giner, Redmond
Ryan Dodds Grant, Seattle
Erin Crisman Glass, Bellingham
Norman Paul Golden, Seattle
Jeffrey B. Goldman, Mercer Island
Craig A. Gonzales, Edmonds
Jerilynn Gonzales, Seattle
Stacy Sue Goodman, Issaquah
Brooke Goossen, Ellenburg
Erin E. Grant, Seattle
John Edward Grant, Seattle
Paul Spencer Graves, Des Moines
Alan Hayes Green, Spokane
Samuel I. Groberg, Salem, OR
Rebecca June Guadamud, Seattle

H

Megan Haller, Seattle
Alan David Hambleton, Seattle
Cynthia Ann Hamra, Seattle
Robert H. Hamrick, Portland, OR
Robert Hanson, East Boston, MA
Paul C. Harmon, Kent
Tyrone K. Harper, Mercer Island
Karen Elizabeth Harris, New York, NY
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Disciplinary Notices

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

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

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

Suspended

Michael L. Doss (WSBA No. 25664, admitted 1996), of Portland, Oregon, was suspended for six months, effective July 3, 2007, by order of the Washington State Supreme Court imposing reciprocal discipline in accordance with an order of the Supreme Court of the State of Oregon following a stipulation. This discipline was based on his conduct in 2005 and 2006 involving neglect of a client matter, failure to communicate with a client, excessive fees, trust account irregularities, and noncooperation with a disciplinary investigation. For more information, see Oregon State Bar Bulletin (May 2007), available at www.osbar.org/publications/bulletin/07may/discipline.html.

Mr. Doss’s conduct violated Oregon RPC 1.3 (neglect); Oregon RPC 1.4 (failure to communicate); Oregon RPC 1.5(a) (excessive fee); Oregon RPC 1.15-1(a) (failure to prepare and maintain complete records of clients’ funds); Oregon RPC 1.15-1(c) (failure to maintain clients’ funds in trust); Oregon RPC 1.15-1(d) (failure to promptly deliver client funds) and Oregon RPC 8.1(a)(2) (failure to timely respond to requests of disciplinary authorities).

Felice P. Congalton represented the Bar Association. Michael L. Doss represented himself.

Non-Disciplinary Notices

Suspensions Pending the Outcome of Disciplinary Proceedings

Jeffrey L. Finney (WSBA No. 15618, admitted 1986), of Kennewick, was suspended pending the outcome of disciplinary proceedings, pursuant to ELC 7.1, effective September 21, 2007, by order of the Washington State Supreme Court. This is not a disciplinary action.

John G. Gissberg (WSBA No. 19677, admitted 1990), of Seattle, was suspended pending the outcome of disciplinary proceedings, pursuant to ELC 7.2(a)(3), effective October 12, 2007, by order of the Washington State Supreme Court. This is not a disciplinary action.

William B. Knowles (WSBA No. 17211, admitted 1987), of Seattle, was suspended pending the outcome of disciplinary proceedings, pursuant to ELC 7.1, effective September 14, 2007, by order of the Washington State Supreme Court. This is not a disciplinary action. William B. Knowles is to be distinguished from William F. Knowles of Seattle.

Paul R. Lehto (WSBA No. 25103, admitted 1995), of Ishpeming, Michigan, was suspended pending the outcome of disciplinary proceedings, pursuant to ELC 7.2(a)(3), effective October 18, 2007, by order of the Washington State Supreme Court. This is not a disciplinary action.

Tyler M. Morris (WSBA No. 26190, admitted 1996), of Walla Walla, was suspended pending the outcome of disciplinary proceedings, pursuant to ELC 7.1, effective October 1, 2007, by order of the Washington State Supreme Court. This is not a disciplinary action. Tyler M. Morris is to be distinguished from James Tyler Moore of Walla Walla.
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Mr. Macario's practice includes complex civil litigation, with an emphasis in real estate, construction, and employment disputes.

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Dan Budihardjo

and

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have joined the firm as associates.

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has joined the firm “of counsel.”

Mr. Brain earned his B.S. from the University of Washington (1978) and his J.D. from the University of Puget Sound (1983). Mr. Brain has more than 20 years’ experience representing business clients in complex commercial litigation with a focus on real estate development, including securities fraud claims related to failed real estate developments, et al. His representation in a family-held asset-holding company established new valuation standards for businesses under Washington’s dissenters’ rights statute.

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has joined the firm as a partner.

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RONALD W. ATWOOD, PC

is pleased to announce a recent addition to the Firm:

Aja Hicks

She has joined the Firm as an associate.

Ms. Hicks is licensed to practice in Oregon and Washington and will represent employers in workers’ compensation claims in both states.

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PREG & O’DONNELL GILLET PLLC

is pleased to announce

Jeffrey W. Daly

became a Member of the Firm on January 1, 2007.

William Fitzharris, Jr.

formerly of Kingman, Peabody, Fitzharris and Ringer, has become “Of Counsel” to the Firm.

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has joined the firm as an associate.

Mr. DeNike is a 2007 graduate of Seattle University School of Law. He contributes expertise to the firm’s land use, zoning, environmental, and real estate law practice.

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

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

The WSBA can provide reasonable numbers of copies at no charge, or the pamphlet may be downloaded from the WSBA website at www.wsba.org/public/consumer. Requests for copies should be directed to Pam Inglesby at pami@wsba.org.

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Estate Planning for Business Owners
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Ethics with Ease: Ethics for Employment Lawyers
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Ethics in Literature
December 6 — Seattle. 3 CLE ethics credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

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December 10 — Tele-CLE. 1.5 CLE ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Law of Lawyering: Regulations, Conflicts, and Risk Avoidance — Day One
December 12 — Seattle. 6 CLE ethics credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Law of Lawyering: Malpractice, Risk Management, and Fees — Day Two
December 13 — Seattle. 6 CLE ethics credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Alternative Dispute Resolution for Family Law Cases: Staying out of Court — Featuring Stuart G. Webb, Founder of the Collaborative Law Process
December 17 — Seattle. 6.25 CLE credits, including 1 ethics pending. By WSBA-CLE, WSBA Family Law Section, and WSBA Dispute Resolution Section; 800-945-WSBA or 206-443-WSBA.

Estate Planning for the Small- to Medium-Sized Estate
January 25 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

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December 6 — Spokane; December 14 — Seattle. 6.25 CLE credits, including 1.5 ethics credits for full day; 3 CLE credits, including .75 ethics for morning or afternoon session only. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Family Law

Elder Law

Elder Law Advocacy: Lessons from Litigation
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December 28 — Seattle. 5.5 CLE ethics credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

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**Deposition Techniques**

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**Movie Magic**

December 20 — Seattle. December 21 — Spokane. 6 CLE credits, including 2 ethics pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

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