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Steve Hayne has practiced criminal law for over 30 years and for over 20 years has limited his practice to defense of DUls and serious traffic offenses. He offers personal attention, sincere compassion, and extraordinary experience to clients facing the devastating impact of a DUI charge.

In 2003, Mr. Hayne was awarded the highest honor accorded by the Washington Association of Criminal Defense Lawyers; The William O. Douglas Award “For extraordinary courage and dedication to the practice of criminal law.” He has been named one of “Seattle’s Best Lawyers” by Seattle Magazine, one of the state’s “Ten Best Trial Lawyers” by the Washington Law Journal, and a “Super Lawyer” every year since inception by Washington Law & Politics. His cases of significance include lead counsel/of counsel in State v. Straka, State v. Brayman, State v. Scott, State v. Ford, State v. Franco, Seattle v. Box and Seattle v. Allison.

Mr. Hayne is a past President of WACDL and has chaired the Criminal Law Sections of the WSBA, WSTLA and KCBA. He has taught trial practice at the University of Washington and Seattle University Schools of Law, the National Institute of Trial Advocacy and the Trial Masters Program. He has been a featured speaker at over 80 CLE programs in the U.S. and Canada and has published articles in the Bar News, Trial News, Defense and Overruled magazines. Mr. Hayne is also a founding member of the Washington Association of Criminal Defense Lawyers, the National College for DUI Defense, and the Washington Foundation for Criminal Justice.
Just like our school district clients, sometimes we get a new principal.

Patterson Buchanan Fobes Leitch & Kalzer, P.S., Inc. is pleased to announce that Donald F. Austin is now a principal of the firm, joining founding principals Mike Patterson, Pat Buchanan, Duncan Fobes, Charles Leitch and Karen Kalzer.

Don has been with PBFL&K since the inception of the firm in June 2007. He is a great contributor to our public entity practice, particularly in the area of school law where he has defended school districts in litigation, administrative hearings, and in developing legislation to help school districts.

What makes him different is his 26 years experience as an employee of school districts, first as a high school English teacher and coach, and then as an in-house attorney for a large school district.

All of us at PBFL&K welcome Don and look forward to his contribution as a principal of the firm.

If you need results-oriented legal representation at reasonable rates, please contact us.
Thanks to Mark Johnson!

I just read the October Bar News and responsive to what Sal Mungia has requested all of us to do, I want to convey my most sincere thanks for not only your outstanding service as our Bar President, but especially for what you have done to provide some modicum of continuing access to our civil legal justice system for the low income people residing in our state. You are a real role model for others and a real hero for many of us. You will never be forgotten.

Thank you, thank you, thank you, and please be assured that due to your great example, I will do my best to continue doing my part.

Mark A. Hutcheson, Seattle

Keller Challenge

Arbitrator’s ruling on my Keller deduction challenge: “Are the statements favoring same sex marriage made by the WSBA political and/or ideological? The answer is ‘yes’...” “Are the statements regarding same sex marriage germane, being reasonably related to the legal profession or to improving the quality of legal services? The answer is ‘no.’” WSBA must refund part of my fee.

I urge all members to: 1) request your Keller deduction; 2) review the 2009 Keller deduction calculation; and 3) review WSBA’s activities to determine if all non-chargeable activities are included in the deduction.

I have been unable to determine whether the WSBA will include in the next deduction its expenditures on co-sponsoring the ABA resolution regarding same-sex marriage. If not, I will be challenging the deduction. I urge you to do the same. The arbitrator decided my case on May 11 and clarified it on June 16, 2009. WSBA decided to co-sponsor the ABA resolution during the July 24–25, 2009 BOG’s meeting.

To same-sex marriage supporters and opponents: my position regarding the unconstitutionality of WSBA actions had nothing to do with my personal position regarding same-sex marriage. If WSBA had opposed the same-sex marriage law, I would have arbitrated and argued the same law and analysis... it was the fact that WSBA took a position with which I had issue. To learn my personal opinion regarding same-sex marriage, e-mail me at reaculwell@hotmail.com.

Rea Culwell, Dayton

WSBA General Counsel Robert Welden notes: Pursuant to the WSBA Keller deduction policy, the deadline for requesting arbitration over the deduction is February 1 of each year.

Bar News welcomes letters from readers. We do not run letters that have been printed in, or are pending before, other legal publications with overlapping readership. Letters must be no more than 250 words in length, and e-mailed to letters to theeditor@wsba.org or mailed to: WSBA, Attn: Letters to the Editor, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539. Bar News reserves the right to edit letters. Bar News does not print anonymous letters, or more than one submission per month from the same contributor.
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ACCEPTING REFERRALS
The WSBA: Leader, Follower, or Bystander?

In my younger days (much younger), I used to climb mountains. You either led or followed. If you led, you had to break the trail through snow, test the integrity of snow bridges, and place the protection in rock. It was both harder and often riskier to lead than to follow, but leading was always more satisfying. The worst, however, was missing the climb.

Save $2.3 million in municipal court costs. Add an additional $2.19 million in county court savings. How about $4.5 million in prosecution costs and another $5 million in savings in defense costs?

That, and a little more, is how much Senate Bill 5615 would produce in savings—approximately $16 million overall. (As the old saying goes, $16 million here, $16 million there, and pretty soon we’re talking some real money.) In addition, if passed, SB 5615 would raise approximately $1 million, with close to $600,000 being made available for drug treatment and prevention programs. Should the Legislature pass it? Should a drowning man reach out for a life ring?

SB 5615 would reclassify possession of 40 grams or less of marijuana from a misdemeanor to a civil infraction. And despite the fact that there are savings of over $16 million (that’s according to the Washington State Office of Financial Management), passage of SB 5615 is as uncertain as a dry June day in the Northwest.

Why?

It’s not as if SB 5615 is a huge policy leap. Shoot, it’s about a small a step that can be taken while still claiming movement. It doesn’t change the existing system where there are criminal penalties if you sell marijuana—in any amount. It doesn’t change criminal penalties for those under 18 years old possessing marijuana—in any amount. It doesn’t provide society’s stamp of approval for possessing marijuana—in any amount. Even if you possess the small amount of 40 grams or less you will still pay a penalty. However, under SB 5615, the penalty is a civil infraction—no criminal convictions, no jail time (currently, you must serve at least one day in jail), no criminal record, no appointed counsel.

Instead, SB 5615 would shift resources (about $16 million worth) currently used to prosecute those possessing 40 grams or less of marijuana and devote those resources to other needs of the criminal justice system. As stated in the Senate Bill Report in the staff summary, those testifying in favor of SB 5615 noted:

Police are unavailable to apprehend the real criminals for committing real crimes because their time is spent chasing after people possessing marijuana. Time should be spent on domestic violence, pedophiles, burglars, and robbers who are truly infringing upon others’ rights. The costs increase because the persons arrested and convicted of these low level crimes spend the rest of their lives struggling to get jobs and homes and are prohibited from receiving federal student financial aid. These people then become a burden on society for the rest of their lives. Making this crime a civil infraction would greatly reduce the costs attributable to these crimes. This legislation is not soft on crime, nor does it encourage drug abuse. Rather, it makes more resources available to address the real crimes and allows for a more efficient, fair, and proportionate use of resources.

There are those who argue that marijuana is so bad that its possession, even in small amounts, must be punishable by criminal sanctions to stop people from using it. And others argue that it is a gateway drug to harder drugs and thus criminal sanctions are appropriate. Leaving aside the dangerousness of marijuana (for some reason, those same people have no problems with alcohol and cigarettes—substances that result in much more harm to society) and whether it is a gateway drug (there is no evidence of this occurring), marijuana usage has remained the same for the past seven years (prior to seven years ago, usage historically increased). So not only are we not getting a bang for our 16 million bucks, we aren’t even getting a little fizzle.

Should the WSBA voice an opinion on this issue? Especially when the state Legislature fails to fund the court system so that both criminal and civil cases have to wait years before being heard, court staff have to be furloughed, and deputy prosecutors and public defenders laid off, our Association has the duty to advise the Legislature regarding how scarce resources should be used in funding the justice system.
used in funding the justice system. Just as this Association has weighed in on issues of court funding, compensation for assigned counsel in death penalty cases, and the need for public funding for civil legal aid, it has the duty to provide its guidance on the prudent allocation of resources for the justice system.

There are those who claim that this is a political/partisan issue and that there are legislators who will seek retribution against the WSBA if it supports this bill. First of all, this is not a partisan issue. In fact, SB 5615 was voted out of committee with a bipartisan "do pass" recommendation and will be considered by legislators in 2010. There are Democrats who support the bill (Kohl-Welles, Kline, McDermott) and Republicans (McCaslin, Chapin, Nixon).2 When asked about the reclassification of 40 grams or less of marijuana, King County Prosecutor Dan Satterberg said: "If that’s the way the Legislature wants to go, I wouldn’t have an issue."3 Sally Bagshaw, former chief of the civil division of the King County Prosecutor’s Office under Norm Maleng, supports reclassifying marijuana.4 Retired Whatcom County Superior Court Judge David Nicholas is advocating its adoption:

> After serving as a Whatcom County superior court judge for 20 years, I can assure you that the prohibition of marijuana has been a colossal failure. Arresting, prosecuting, and jailing people are an expensive and ineffective way to address a public health issue.5

The bill addresses a matter of how we, the citizens of this state, use our limited resources. That answer doesn’t depend on whether you are a Republican or Democrat, liberal or conservative, or reside west or east of the mountains. Instead, the issue is whether we want to spend $16 million of our limited resources without seeing a return for that money.

Thirteen states have already concluded that imposing criminal sanctions for the possession of small amounts of marijuana is not a prudent use of their resources. Those states range in diversity from North Carolina and Mississippi to New York and Oregon.

Second, I find it hard to believe that a legislator would retaliate against the WSBA on other WSBA-supported legislation because the WSBA backed SB5615. Legislators take an oath to uphold the Constitution and to always act in the best interests of society. Legislators would be breaching the duty they owe to the public if they engaged in retaliatory tactics. If a legislator disagrees with our Association’s position on SB 5615, I fully expect that the legislator will still consider, without any bias, other legislative proposals that our Association supports and judge each such proposal on its merits.

There are those that believe that the WSBA should not take a stand on SB 5615 unless our support would make a difference — in other words, we should take a stand only if our support would be the deciding factor in its passage. If that were the test, then the WSBA would rarely, if ever, take a position on proposed legislation. We would be silent in matters of gender and racial equality, civil rights, and even court procedural matters, because it would be unlikely that our voice would ever be the deciding factor in those issues.

Moreover, eight years ago the WSBA took a position such that it would be incongruous for it to now not support SB 5615. In 2001, the Board of Governors, in a resolution regarding drug policies, declared:

> 2. For many years, society has responded to the problems of drug and alcohol abuse by emphasizing and devoting the majority of resources to imposition
of criminal sanctions, rather than to treatment and prevention.

…

4. Despite years of considerable resources being devoted to the prosecution of drug crimes, the problems of drug and alcohol abuse continue to have a significant deleterious effect on the health, safety and livelihoods of many individuals, their families and the communities of Washington State. There also has been a disparate negative impact on communities of color, despite studies that indicate equivalent drug use in non-minority populations.

5. The emphasis on prosecuting persons possessing drugs for personal use or selling small amounts of drugs to support a drug addiction has strained state and local budgets, and has impaired the courts’ ability to administer justice fairly and efficiently.

6. The Washington State Bar Association agrees … that it is time to expand and reorient society’s approach to the problems of drug and alcohol abuse. More emphasis must be placed upon, and more resources devoted to, providing drug and alcohol treatment to those who need it. . . . [“L]ow level” drug crimes, such as simple possession, should be approached as health problems, not criminal problems.

In light of the 2001 Resolution, the question is not whether the WSBA should support SB 5615; instead, the issue is how can the WSBA not support it? Short of rescinding the 2001 Resolution, it’s hard to understand why we would now be silent on this proposal.

As is often true in life, it is much easier to stand on the sidelines, especially when controversy is involved. Following the lead of others is much more comfortable. What takes both courage and conviction — the conviction that you are correct — is to take the first position, to break the trail, so that others may follow. The importance of having the WSBA support this bill shouldn’t be underestimated. The WSBA is a mainstream organization that endeavors, as one of its fundamental duties, to safeguard the administration of justice. The WSBA has the duty to be a leader, not a follower, when it comes to proposals that safeguard the fiscal integrity of the administration of justice. The WSBA cannot afford to shy away from proposals that others may attempt to paint as controversial or political when, in reality, those proposals are about the effective administration of justice. If we break the trail, take the lead, it will make it easier for others to follow. And, trust me, they will follow.

WSBA President Salvador Mungia can be reached at smungia@gth-law.com.

Editor’s Note: The WSBA Board of Governors will discuss the issue of whether to support SB 5615 at its December 4–5 meeting in Tacoma. You have the opportunity to let the Board know your opinions by contacting your governor at www.wsba.org/info/bog/bog+2009-2010.htm.

NOTES

1. For those of us who are metrically challenged, that is about 1.4 ounces.

2. Kohl-Welles, Kline, McDermott, and McCaslin all currently serve as state senators. Chapin and Nixon are former state representatives.


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Keeping You Connected

Introducing New WSBA Deputy Director for External Relations Steve Larsen

or the period 2008–2011, one of the WSBA’s strategic goals is to strengthen our connection with our members. In adopting this goal, the Board of Governors realized that, while outreach had certainly been done, we wanted to significantly commit to taking this communication to a higher level in order to foster a greater connection among members and the organization. By all accounts, outreach to the membership was in the category of having been done, but much more of it was needed.

Many ideas and actions came on the heels of adopting this strategic priority, including the creation of a deputy director for external relations position. We realized as an organization that if we didn’t have someone devoted to this priority, we would not advance the goal as we hoped to do in the coming years. In July of this year, we hired Seattle attorney Steve Larsen as deputy director for external relations. Steve is one of two deputy directors within the Bar Association, and his duties include handling public outreach and communication activities, as well as overseeing several WSBA departments and initiatives that focus on member and public outreach.

Many of you may already know Steve, as he is a Washington native raised in Olympia who has lived and worked in many locations around the state, including Bellingham, Spokane, and Seattle. Steve received his undergraduate degree from Western Washington University and his law degree from Gonzaga University School of Law. Prior to joining the WSBA, he spent two years in southern California working as chief of staff, external relations for the Orange County Great Park Corporation in Irvine.

Steve began his legal career in Spokane in private practice. He joined the Washington State Attorney General’s Office in 1998, representing the Department of Social and Health Services handling dependency cases. He spent the bulk of his nearly 10 years at the Attorney General’s Office working in the Consumer Protection Division focused on Internet fraud-related cases, identity-theft initiatives, and assisting with legislative and policy-related work of the attorney general. As section chief for operations in the Consumer Protection Division, he was involved with the Division’s Lemon Law Program, Consumer Services, outreach and education, and High Tech Unit.

At the WSBA, Steve hit the ground running, with the roll-out of mywsba.org only a few months after his arrival, and the launch of the Home Foreclosure Legal Aid Project (www.mywsba.org/hflap) having occurred only a few short weeks prior to his start date. Other outreach efforts that are in the near future include the WSBA’s entrance into the social media arena, which we hope will help facilitate communication among members through tools such as Facebook and Twitter — as well as avenues not yet conceived! WSBA is also undertaking a complete overhaul of its website, with an eye toward making it not only more user-friendly for our members but also more easily accessible for the public we serve.

In response to the member survey (www.wsba.org/pulseprofessionalsurvey0709.pdf) we conducted last year, WSBA President Mungia will also be forming a task force to look at the escalating cost of litigation, an issue of interest and concern that rose to the top of the list not only in our member survey but in a national ABA survey conducted two years ago. Another major project you will see the WSBA undertaking in the coming year is the launch of a statewide moderate-means program. “Moderate means” programs are aimed at providing lower-cost legal services to those who otherwise might not be able to afford legal services — generally within 200–400 percent of the federal poverty level (approximately $88,000 a year income for a family of four) — by lawyers who agree to take these cases on at a reduced fee.

Steve states: “The Washington State Bar Association and its more than 33,000 members offer an amazing opportunity to serve and participate. I am excited by the many outstanding projects already underway, as well as those I can help move forward. No one can do all of this great work alone, so I need and welcome all the help I can get.”

It is a full plate of ideas to keep Steve running, and there are many more ideas that we haven’t yet heard about or thought of, so please take a moment to share your thoughts about enhancing our member services and outreach and drop Steve a line!

Paula Littlewood is the WSBA executive director and can be reached at paulal@wsba.org. Steve Larsen is the WSBA deputy director for external relations and can be reached at stevel@wsba.org.
On Spoliation of Evidence

Using Your Discovery Arsenal to Disinfect Cavalier Discovery

by David R. Goodnight, Bryan J. Anderson, and Aric H. Jarrett

Why would I travel an hour to search a construction warehouse for documents? Troy asked his senior partner. "Shouldn't Construct Now! search for its own documents?"

Troy had a point. It was the middle of winter, snow blanketed the region, and Construct Now! had already certified under oath that other documents simply did not exist.

"True," Dexter replied, "but we asked Construct Now! for the documents in discovery over a year ago, and just last week their night shift supervisor testified that he documented the repair procedures and measurements during the quality-control process. And remember, the court reduced our fees award on the motion to compel production of electronic documents because we didn't agree to conduct a forensic search of their computers and servers."

And with that, Troy left Dexter's office, bound for a warehouse in the middle of nowhere. His mission: to find the repair procedures, measurements, and other quality-control documentation concerning the rebuild of the No. 2 Blast Furnace at High-Five Iron Works performed two years earlier by Construct Now!

When Troy got to the warehouse, Yolanda — lead counsel for Construct Now! — greeted him. Troy immediately got down to business. "Where are the documents kept?" he asked.

"I'll show you," answered Yolanda, guiding Troy past an empty maintenance shed and into a large warehouse. Soon they came to a nondescript metal door on the south side of the building. The door was not locked.

Troy flipped on the lights. "Is this the only place documents are kept?" he asked. The room was musty, the lone light flickering. Dozens of open boxes were strewn across the five-by-twelve-foot concrete closet. Design drawings — some unwound, some tightly rolled — were scattered everywhere. Only a few boxes were labeled.

With a curt "Yes — other than the computers," Yolanda set out for her client's conference room. "I'll check back soon. Let me know if you find any documents." She resented Troy's distrust of her client's work; Construct Now! had already searched for documents twice and had not found anything.

Overwhelmed, Troy glanced around the room and saw a box that said, "High-Five Iron Works Rebuild: Quality Control/Quality Assurance." He opened the box, but it contained only empty hanging files, no documents.

Troy continued his semi-detailed review and tried another box, which had no identification. It was full of material receiving reports, daily logs, and employee timesheets, all regarding the No. 2 Blast Furnace. Troy marked the box for copying and photographed examples of the contents with his cell phone. Unfortunately, the unlabeled box didn't contain the measurements or repair procedures created by the night shift supervisor.

After two hours and with very few interruptions by Yolanda, Troy carried two boxes of documents to Yolanda for reproduction. Troy left the warehouse with a sense of accomplishment; he found one group of documents and confirmed that the other group of documents — the detailed measurements and repair procedures — did not exist.

What Is Discoverable?

Discovery comprises a substantial portion of most litigation, and the days of producing documents only in paper form are over. Today, and especially because of significant amendments to the Federal Rules of Civil Procedure beginning in 2006, litigators must devote special attention to electronically stored information (commonly referred to as "ESI"). From e-mails, voice-mails, text messages, and website postings to digital photographs, PDF files, and other electronic records, the scope of ESI seems almost limitless.

The ever-increasing volume of ESI — much of it due to the ease of creating, replicating, and transferring ESI — can present significant challenges during the discovery process. Add to that the fact that most companies are not in the business of document maintenance, storage, or organization, and the quest for document production may seem
like a massive undertaking.

Yolanda’s cavalier approach to discovery compromised her case. Troy discovered two boxes of documents in the warehouse after Construct Now! certified it had produced all responsive documents. Troy’s discovery, combined with his confirmation that Construct Now! no longer had the documents created by its night shift supervisor, provided the foundation for High-Five Iron Works’ motion for sanctions for spoliation of evidence.

Spoliation is the “intentional destruction, mutilation, alteration, or concealment of evidence ….” — Black’s Law Dictionary 1437 (8th ed. 2004). Although making a spoliation case is rarely easy, litigators must effectively employ the entire arsenal of discovery tools to gather as much information as possible about the creation and preservation of documents and ESI. Be careful what you ask for, however; opposing counsel likely will demand the same from you.

Maximizing Your Discovery Arsenal

Records Retention Policies
Issuing interrogatories and document requests under CR 33 and 34 to identify any records retention and/or destruction policies is an essential first step to learning about your opponent’s documents. Apart from asking about the existence of a records-retention policy, counsel should request a detailed description of all methods, practices, and policies for maintaining documents and ESI. A document request pursuant to CR 34 allows counsel to obtain copies of any documents evidencing those methods, practices, and policies.

Evidence of culpability in document destruction is important when pursuing a spoliation motion. For example, indicia of culpability may include destruction of documents despite a policy to retain the documents beyond the date of destruction. Courts scrutinize document retention policies when spoliation is at issue. See Lewy v. Remington Arms Co., 836 F.2d 1104, 1112 (8th Cir. 1988) (“[A] corporation cannot blindly destroy documents and expect to be shielded by a seemingly innocuous document retention policy.”)

Early in the discovery process, Troy served interrogatories and document requests on Construct Now! Based on the responses, Troy determined that Construct Now! had a written document-retention policy that prescribed an automatic destruction date for both hard copies and ESI. From that schedule, Troy concluded that Construct Now! began destroying its measurements and repair procedures for the rebuild of the No. 2 Blast Furnace one month after he filed the Complaint.

Litigation Holds

Upon receiving notice of pending or anticipated future litigation, counsel should issue a litigation hold to all persons who may have potentially relevant information (commonly referred to as “custodians”). That litigation hold should (1) command all custodians to take affirmative steps to preserve potentially relevant paper documents and ESI; (2) suspend the document-retention policy, if any; (3) identify the relevant time period and parties to the matter; and (4) provide counsel’s contact information for any questions.

Prompt cooperation between the IT staff and the legal department is imperative. The failure to preserve potentially relevant evidence in anticipation of litigation alone is sufficient to sanction a party for spoliation of evidence. Henderson v. Tyrrell, 80 Wn. App. 592, 609, 910 P.2d 522 (1996); see also Silvestri v. Gen. Motors Corp., 271 F.3d 583, 591 (4th Cir. 2001) (holding the duty to preserve evidence arises when a party knows or reasonably should know the evidence may be relevant to pending or anticipated future litigation); Fujitsu Ltd. v. Fed. Express Corp., 247 F.3d 423, 436 (2d Cir. 2001) (same). More than just bad-

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faith destruction, spoliation encompasses destruction with conscious disregard for the potential relevance of documents. *Henderson, 80 Wn. App. at 607.

Issuing an interrogatory to determine the existence of any litigation hold, the date it was issued, the recipients of the hold, and the name of the person issuing the hold will arm counsel with critical information regarding the identification, location, and preservation of paper documents and ESI, as well as the identities of records custodians. A document request allows counsel to obtain copies of any litigation hold.

Don’t be surprised if opposing counsel objects to those requests on the basis of attorney-client privilege and/or the work-product doctrine. Although it is not settled whether litigation holds are exempt from disclosure on either of those grounds, at least one court has held that a party may (1) discover the identities of each person who receives a litigation hold, and (2) inquire into the facts regarding what litigation hold recipients did in response. See *In re eBay Seller Antitrust Litig., No. C 07-01882, 2007 WL 2852364, at *1, *2 (N.D. Cal. Oct. 2, 2007).

In response to his interrogatories and requests for production concerning litigation hold, Troy learned that Construct Now! did not suspend its document-retention policy even after High-Five Iron Works filed its Complaint.

**Records Custodians: More Than Just Persons with Knowledge**

Litigators often issue interrogatories designed to elicit the identities of persons with knowledge of the facts and critical issues. Apart from defining the scope of potential fact witnesses, such interrogatory circumscribes the potential records custodians. This information can be especially useful if you later need to determine the disposition of documents and ESI that have not yet been produced.

**CR 30(b)(6) Electronic Records Depositions**

Efficient discovery requires a plan. Relevant information — especially ESI — may be at several locations. Accordingly, counsel may use a CR 30(b)(6) electronic records deposition to identify specific locations of documents and ESI, and also to confirm whether your opponent identified, located, preserved, and produced all such documents and ESI.

CR 30(b)(6) requires your opponent to designate one or more persons to testify about the matters set forth in the notice of deposition “known or reasonably available to the organization.” See CR 30(b)(6). In addition to the topics discussed above, deposition topics can include:

- Network architecture
- Software
- Use of computers and other data storage devices (including personal digital assistants such as BlackBerry devices, voice-mail servers, and flash drives)
- Operation, maintenance, modification, backup, and restoration of the network, computers, and other data-storage devices
- Steps taken to search, identify, preserve, and produce electronically stored information that is not privileged and is responsive to discovery requests in the litigation
- Policies, procedures, and/or instructions to employees and/or contractors regarding preservation of electronic documents related to the litigation

**Applying Discovery to Motion Practice**

**Motions to Compel**

Troy issued interrogatories and document requests to obtain relevant information and to identify locations of potentially relevant information. Troy then conducted a CR 30(b)(6) electronic-records deposition focused on Construct Now!’s document retention policy and search for responsive documents. Based on that information, Troy learned Construct Now! did not search individual employees’ computers. Troy moved to compel Construct Now! to search those computers and also produce any measurements and repair procedures for its rebuild of the No. 2 Blast Furnace, in both hard copy and electronic form.

The court ultimately granted that motion and ordered Construct Now! to immediately produce all responsive documents and to certify the disposition of any document created by Construct Now! but no longer in its possession, custody, or control. In response, Construct Now! certified that it conducted another document search and that it already had produced all responsive documents and ESI.

The CR 37 motion to compel can be a key tool to uncover spoliation and ultimately bolster your request for sanctions for spoliation. That motion can establish a framework for illustrating a pattern of evasive discovery practices.

**Spoliation Motions**

Construct Now!’s discovery problems did not
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end with the motion to compel. Months later, Construct Now!’s night shift supervisor testified that he created numerous documents not yet produced in discovery. Construct Now! was suddenly forced to backtrack on its prior certifications. Following that testimony, Troy discovered two boxes of documents in Construct Now!’s warehouse and confirmed that Construct Now! no longer possessed the measurements and repair procedures created by the night shift supervisor. In this case, both may constitute spoliation.

In Washington, litigators may have at least two bases for a spoliation claim: CR 37 and common law. Henderson, 80 Wn. App. at 605-06; Newhall Jones, Inc. v. Classic Cedar Constr., 80 Wn. App. at 605-06.

CR 37: Sanctions for Concealment of Documents?
CR 37 authorizes a court to sanction a party for failure to make discovery, including answering interrogatories, responding to document requests, and/or failing to comply with a court order. CR 37(a), (b); see also Newhall Jones, 2000 WL 194658, at *6 (citing Henderson, 80 Wn. App. at 605-06).


Because he had used the numerous discovery tools available, Troy had a strong basis for a spoliation motion. In that motion, Troy juxtaposed Construct Now!’s certification that it had produced all relevant documents with his photographs from Construct Now!’s warehouse. Troy highlighted that Construct Now! did not detail the disposition of the night shift supervisor’s measurements and repair procedures as ordered by the court.

Henderson v. Tyrell: Sanctions for Common-Law Spoliation
Separate from CR 37, Washington courts also apply the two-prong test set forth in Henderson: (1) the potential importance or relevance of the missing evidence, and (2) the culpability or fault of the adverse party. 80 Wn. App. at 605.

The first prong focuses on whether a party obtained an investigative advantage as a result of the spoliation or whether other sources of that information exist. Id. at 607; Homeworks Constr., Inc. v. Wells, 133 Wn. App. 892, 899, 138 P3d 654 (2006). A “party responsible for the destruction of potential evidence has no right to a presumption that the documents destroyed were irrelevant.” Leon v. IDX Sys. Corp., No. C03-1158P, 2004 WL 5571412, at *3 (W.D. Wash. Sept. 30, 2004), aff'd in part, rev'd in part, 464 F3d 951 (9th Cir. 2006) (applying Washington law). Obviously, the potential relevance depends on the facts of each case.

The second prong examines whether a party acted in bad faith or with conscious disregard of the importance of the evidence or whether there was some innocent explanation for the destruction. Henderson, 80 Wn. App. at 609. Bad faith is not a prerequisite; instead, actions may be improper — thus, constituting spoliation — where a party had a duty to preserve evidence and failed to do so. Homeworks Constr., 133 Wn. App. at 900. The duty to preserve may be based on pending or anticipated litigation, statutory requirements, industry standards, or contractual obligations. Id. at 901; Henderson, 80 Wn. App. at 610; Silvestri, 271 F3d at 591; Fujitsu, 247 F3d at 436.

Through discovery, Troy learned that Construct Now! failed to timely suspend its document retention policy or issue a litigation hold. Troy cited Construct Now!’s
written document retention policy, which required Construct Now! to maintain the measurements and repair procedures for 10 years. And despite contractual and statutory obligations to preserve the details of such work, no other contemporaneous documents of Construct Now!’s rebuild of the No. 2 Blast Furnace remained. Troy had no means of examining Construct Now!’s work short of depositions filled with self-serving testimony.

**Sanctions for Spoliation: Punishment and Deterrence**

Because spoliation encompasses a broad range of acts, Washington courts have wide discretion to fashion an appropriate remedy. *Henderson*, 80 Wn. App. at 604-05. Typical remedies include imposition of monetary sanctions, imposition of a rebuttable presumption that the destroyed evidence would be unfavorable to the spoliator, precluding the spoliator from admitting certain evidence, and entry of default. See CR 37; see also *G-K Props. v. Redevelopment Agency of the City of San Jose*, 577 F.2d 645, 647 (9th Cir. 1978); *Leon*, 2004 WL 5571412, at *5. Although courts must consider less drastic sanctions, they are unwilling to allow a spoliator to profit from its misdeeds. See *G-K Props.*, 577 F.2d at 647; *Leon*, 2004 WL 5571412, at *5.

Because tactical nondisclosure and destruction of evidence damages the integrity of the judicial process and renders a fair trial impossible, courts have rejected constitutional due process challenges to entry of default for spoliation. See *G-K Props.*, 577 F.2d at 648 (citing *Hammon Packing Co. v. Arkansas*, 212 U.S. 322, 29 S. Ct. 370, 53 L. Ed. 530 (1909)).

As with Troy’s motion, it is not uncommon to have a lengthy evidentiary hearing concerning spoliation because of the gravity of the relief requested. The court ultimately entered default against Construct Now! resulting from the tactical nondisclosure of documents in the warehouse, evasive discovery responses, and destruction of documents and ESI. In so doing, the court rejected monetary sanctions as failing to offset the investigational advantage enjoyed by Construct Now!, excluding evidence as futile — Construct Now! had already destroyed the most salient evidence, and establishing an evidentiary presumption in favor of High-Five Iron Works as leaving it helpless to rebut any evidence offered by Construct Now! to overcome such a presumption.
David Goodnight is a trial lawyer and member at Stoel Rives LLP, with trial experience in commercial, product liability, civil rights, telecommunications, securities law, malpractice, and land use cases. He is a graduate of Valparaiso University and Yale Law School. He can be reached at 206-386-7586 or drgoodnight@stoel.com. Bryan Anderson is a litigation associate in the trial practice group at Stoel Rives LLP, where he focuses on products liability, commercial, and appellate matters. He is a graduate of the Missouri School of Journalism at the University of Missouri-Columbia and Wayne State University Law School. He can be reached at 206-386-7587 or bjanderson@stoel.com. Aric Jarrett is a litigation associate in the trial practice group at Stoel Rives LLP, with experience in a variety of business and commercial cases involving contract disputes, business torts, property damage, and trademark and copyright matters. He is a graduate of Whitman College and Seattle University School of Law. He can be reached at 206-386-7522 or ahjarrett@stoel.com.

NOTES

A Hanging in Spokane

The 1897 Case of State of Washington vs. George Webster

by Dick Krutch

The following story is adapted from the book Law Stories, Volume I by Dick Krutch and friends. Law Stories is a collection of tales written by lawyers — an inside look at law cases over the past 50 years.

About 250 people in the state of Washington received personal invitations from Spokane Sheriff G.A. Cole to attend the execution by hanging of George Webster on March 30, 1900, between the hours of 10:00 a.m. and 3:00 p.m. The sheriff had compiled the list himself and made sure the printed invitation stated “Not Transferable.” The two Spokane County courts and most of the offices were closed for the day.

George Webster would be the first white man to be hanged in Spokane County. Colonel George Wright had hanged quite a few Indians, and a Chinese man was hanged for murdering his friend, but Webster was the first white. He had been convicted almost three years earlier of the first-degree murder of a woman, Lise Aspland, a farmer’s wife, at Cheney on May 8, 1897.

Most of those invited were law enforcement officers and elected officials.

George Webster was born in Madison, Wisconsin, in July of 1871 and would be only 29 when he breathed his last. He answered a few questions to reporters from the Spokane and Cheney newspapers. He had little formal schooling, but was a voracious reader. He had worked and been on his own since age 13, working where he could — in the woods, generally. He worked in North Dakota and Montana for the railroad on the line, or as a farmhand. He had been in Spokane County for about seven years. He recalled working on farms at Spangle, Cheney, Chatteroy, and some other small towns. He said he was never afraid of work and always did his share.

Did he think he had had a fair trial? He felt that he had, but questioned the first-degree murder conviction, and the need to be hanged for a crime he did not recall. He especially denied that he had ever confessed to the crime, but said if he had pulled the trigger, he was certainly sorry.

The Hanging

The Spokane Daily Chronicle of March 30, 1900, reported the pre-hanging procedures, which included the last sacraments administered to Webster by Dean Perine of the Spokane Episcopal Church. The sheriff inquired whether Webster had anything to say before his execution, Webster having previously stated that he knew nothing about the shooting, and could not identify who the victim saw out in the farmyard at the time of the shooting.

Following the sheriff’s inquiry, the dean read an appropriate prayer commending Webster’s soul to a merciful God, and Webster was led to the trap, where the sheriff’s deputies adjusted leather straps which held his arms and wrists close to his body. Another strap was placed around his ankles. A black cap was placed over his head, and a deputy placed the noose with the large knot just in front of his left ear so it would break his neck when he fell.

At a signal from the sheriff, Dean Perine stepped forward and said aloud, “Unto God’s gracious and merciful protection we commend thee. The Lord bless thee and keep thee. The Lord lift up his countenance upon thee, and give thee peace, both now and ever more.”

There was a moment’s hesitation; the crowd held its breath as Sheriff Cole, with his hand on the knob, pulled the wire. The body shot down with a thud. There was a short gurgling sound as the air escaped from the man’s lungs and the body swung quietly at the end of the rope, having dropped just about the man’s height. There was not the usual quivering of the muscles as they contract, nor a struggle of any kind. Webster’s neck had been broken and consciousness must have been destroyed immediately.

Dr. Freeman and Dr. Martin at once loosened the straps about Webster’s wrists. For exactly 11 minutes and 29
Deceased was in agony and prayer, in view of approaching death, and her husband remained in the room with her, but observed the defendant back again in the parlor or bedroom striking a match. The defendant said: “Who has been shooting?” The husband said, “We knew well enough.”

She Locked Him Out

“Within some ten minutes after they retired the defendant complained of being warm, and was told by Aspland to open the window, which he did. He then remarked that he wanted a drink of water, and was told by Aspland he would find water in the rear of the kitchen. He went through the kitchen, and outside, for water. On returning, he passed through the kitchen, and caught or squeezed the arm of one of the little girls, who seemed to be asleep, and who cried out and was frightened. He was told by the deceased to leave the room, but he then asked the deceased if he might not stay in bed with them. He was ordered out, and went and retired to the bed he had left. The deceased, after the occurrence, arose and lighted a lamp and locked the two doors to the kitchen. The defendant, a short time after he returned to bed with Aspland, arose and said he desired to take some medicine, and was told where he could find a spoon. He got the spoon and poured out his medicine, spilling some on the pillow of the bed. He offered some of this to Aspland, who declined to take any. Defendant remarked that he had taken himself putting out the light.”

All Took a Drink

“Defendant, upon arriving at Aspland’s, desired admission to the house, was received, and was recognized by the son of Aspland, about thirteen years of age. He was not at first recognized by Aspland. The family were at the time in the kitchen, a large room where there was a bed. There were the deceased, two daughters, one aged thirteen and the other eleven, and the son aged thirteen. It was rainy and stormy during the night. Defendant had with him a pint bottle of whiskey, only partially filled. He offered a drink of whiskey to Aspland, the husband, who accepted the invitation and tasted the whiskey. He also offered the whiskey to the deceased, who likewise tasted it. He then drank himself. Defendant stated that he was looking for work, and Aspland said he desired a farm hand, and employed defendant at a stipulated price. An ordinary conversation about farming and similar topics then took place, when, about eleven o’clock the family and defendant all retired for the night; the deceased and her two little girls occupying the bed in the kitchen, the defendant, Aspland and the little boy leaving the kitchen, going through an adjoining room, called the “parlor” by some of the witnesses, to a bedroom adjoining the parlor, and all retiring, the defendant being the last one who retired, in the room with Aspland, and himself putting out the light.”

The Shooting

“He then went out of the room, on the outside, and around to a window of the kitchen, lowered the window, and de-

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manded his hat and coat, stating that he would then go to Cheney. The deceased told him she would hand him his hat and coat through the window, and thereupon placed his hat upon a broom and passed it through the top of the window to him, and reached for the coat and was in the act of passing it over the window when the defendant shot through the window with a revolver pistol, the ball striking the deceased in the abdomen and fatally wounding her. Immediately after the shot was heard the husband and son came in to the kitchen, the door of which was unlocked by the deceased for them to enter, and deceased exclaimed that she was shot fatally and stated by whom the shot was fired, and implored her husband to take the children upstairs or they would all be killed; that defendant would shoot again. The husband thereupon took the children into an upper room and returned to the kitchen with deceased. Deceased was in agony and prayer, in view of approaching death, and her husband remained in the room with her, but observed the defendant back again in the parlor or bedroom striking a match. The defendant said: “Who has been shooting?” The husband said, “We know well enough.” The defendant then returned to bed and remained there until arrested. The husband shortly afterward brought the children again into the kitchen, where their mother was, and went to a neighbor’s, not far off, where a physician was sent for, and also two officers at Cheney, who came to the residence of deceased at early dawn and took defendant into custody.”

**Identified by His Victim**

“Defendant, after he was taken into custody, was taken into the kitchen where the deceased was lying on her bed, and she then stated he was the man who shot her, and he also stated he was sorry for it. The defendant afterwards, while in the custody of the officers, admitted that he had shot the deceased. The defendant, at a Cheney drug store had bought a bottle of cantharides and also one of saxeline or vaseline, which he carried to the Aspland residence with him, and he had also a half pint of whiskey in his coat pocket in addition to the bottle from which he offered the drink to Aspland and wife. The bottle of whiskey, the bottles of cantharides and vaseline and also a 38-caliber revolver were upon his person, and were taken into possession of by the officers and...
produced at the trial. Mrs. Aspland died on the second day after her removal to Medical Lake hospital, where a surgical operation had been performed upon her. The death was occasioned by the revolver shot in the abdomen.”

**Trial and Verdict**

The trial took seven days of testimony, instructions to the jury, and argument of prosecution and defense to the jury. After 70 hours of deliberation, the verdict was unanimously for murder in the first degree, which required death by hanging. The Washington Code defined the crime as follows: “Every person who shall purposely, and of deliberate and premeditated malice, or in the perpetration, or attempt to perpetrate, any rape, arson, robbery or burglary, or by administering poison, or causing the same to be done, kill another, shall be deemed guilty of murder in the first degree, and upon conviction thereof shall suffer death.” Attorney Del Cary Smith moved for a new trial, which was not granted, and Webster’s execution date was set. Attorney Smith appealed the conviction to the State Supreme Court which affirmed the verdict and sentence. Smith was not through, and took an appeal to the Ninth Circuit Court of Appeals on constitutional grounds which again postponed the hanging. The Ninth Circuit denied the appeal and Smith applied to the United States Supreme Court, which bought Webster more time to live and Smith to keep searching for the man who Mrs. Aspland said was out in the yard with Webster when he shot her. This man left the Aspland place and left the county while George Webster calmly went back to bed and slept.

With the news of the Supreme Court’s refusal to hear the case, all hope was gone for Webster, but attorney Del Cary Smith would not quit. He appealed personally and directly to the governor. He had petitions from more than 100 lawyers and more than a thousand laypersons, including elected officials, asking for clemency. His petition was supported by an affidavit of new evidence. The man who had left Cheney that evening of May 5 with Webster was back in town. He had been gone from the jurisdiction using several aliases. It was also stated that further examination of the windows through which the bullet passed which killed Mrs. Aspland led experts to doubt that Webster could have fired the shot. Witnesses also claimed to have had a conversation with Mr. Aspland in which Aspland said he didn’t think George Webster could have killed his wife.

Governor Rogers also read in the petition of jury error or misconduct. All jurors were asked if the first-degree murder verdict was the verdict of the jury and their own personal verdict, to which each had answered yes. Once this was done, the verdict was entered and the jury dismissed. Subsequent to this, a jury cannot impeach its own verdict, which prevents any future change of heart or mischief from upsetting that which is final. However, the trial court was not told that when the jury was polled, there was left behind in the jury room a written statement signed by jurors Frasier and Thomas saying that the verdict was not their verdict. In other words, they lied when they said it was their verdict. The other 10 jurors also knew that Frasier and Thomas were lying, so the 10 lied when they said the verdict was the jury’s verdict. What is unusual about this claim is that the evidence existed and was in the jury room before the verdict and not conjured up some time after the trial was over. The prosecutor never contested the existence of this statement. Why did
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NOTE
1. These quotes come from the Spokane Daily Chronicle article of March 30, 1900, and are reprinted with permission of the Spokesman Review. Permission is granted in the interest of public discussion and does not imply endorsement of any product, service, or organization otherwise mentioned herein.

Born in Spokane in 1930, Dick Krutch attended Gonzaga Prep, graduating in 1948. He attended the University of Washington, graduating in 1952 majoring in history, and received his law degree from the University of Washington School of Law in 1955. Krutch practiced in Seattle until 1995. He has been a member of the American Bar Association and the American College of Trial Lawyers. For 30 years, his trial practice focused on aviation litigation, and involved representing plaintiffs from 19 major air carrier crashes, and hundreds of general aviation and military crashes. He was an expert in conflicts, choice of law, and forum non conveniens issues. His practice took him to many foreign countries and most of the western states of the United States. His current activities include writing, skiing, windsurfing, lawn mowing, naps, and family.

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WSBA Annual Awards Recipients Honored at Gala Dinner

Recognizing outstanding work and achievement in the law

BY STEPHANIE PERRY

The Washington State Bar Association Board of Governors congratulates the recipients of the 2009 WSBA Annual Awards.

The WSBA Annual Awards Dinner and Business Meeting was held on September 24, 2008—2009 President Mark Johnson led the annual business meeting and was master of ceremonies for the Awards Dinner where 460 WSBA members and guests were in attendance at the recently opened Hyatt@ Olive8 ballroom. Immediate Past President Stan Bastian and outgoing governors were paid tribute, and Chief Justice Gerry Alexander swore in 2009–2010 President Salvador Mungia. President-elect Steven Toole, and the incoming WSBA governors. The room fell silent as new President Mungia passionately explained why he sought a career in the law. King County Superior Court Judge Steven González spoke of President Johnson's accomplishments and Judge Ronald Leighton gave the keynote address on the topic of lawyers giving a voice to those who have no voice. President Johnson presented the awards and each recipient was enthusiastically applauded. (The Pro Bono Awards and the Norm Maleng Leadership Award were presented at the Access to Justice/Bar Leaders Conference in Yakima in May.) The following people were honored for their outstanding work and accomplishments:

Professionalism Award — Richard E. Mitchell

This honor is awarded to a member of the WSBA who exemplifies the spirit of professionalism. “Professionals” is defined as the pursuit of a learned profession in the spirit of service to the public and in the sharing of values with other members of the profession.

Richard Mitchell was the first African-American, and youngest, general counsel to the Washington State Office of the Governor, where he developed a legal extern program that introduced young, diverse lawyers to governance and legal-advice work. Mitchell served as general counsel to the governor for four years, returning to private practice in December 2008. He is currently a partner at Summit Law Group PLLC.

Mitchell has been a member of the Loren Miller Bar Association since 1995, and served as its president from 2006–07. He served on the King County Bar Association Legislative Committee, and is currently a board member of the Syracuse University Law School Alumni Association. He is a member of the King County Bar Association Board of Trustees, and was its treasurer from 2007–09. Mitchell also served for several years on the board of the Washington Low Income Housing Network, an advocacy organization that supports the development of low-income housing policies, and as a board member of the International Community Health Services Foundation, which provides free or low-cost healthcare to the Asian community and those in need.

Angelo R. Petrucci Award for Lawyers in Public Service — Roger D. Wynne

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

Roger Wynne is an assistant city attorney for the city of Seattle, where he focuses on land use and municipal law. Since 2004, he has been a board member of the Northwest Justice Project (NJP), the state's largest provider of civil legal services to low-income individuals, during a unique period of challenge and change for NJP and the rest of Washington's access-to-justice community. Wynne currently serves as NJP's vice president and chairs its Board Development Committee. He has also volunteered with the King County Bar Association neighborhood legal clinic program since 2002 and has served on the committee that oversees and coordinates the program.

Wynne has served for six years, the last three as chair, on the WSBA Court Rules and Procedures Committee. Wynne also served a three-year term on the Executive Committee of the WSBA Environmental and Land Use Law Section.

Wynne teaches land use law at the Washington State Association of Municipal Attorneys' (WSAMA) annual new attorney training seminar, served on the WSAMA Amicus Committee, volunteered with the University of Washington School of Law Professional Mentoring Program for several years, and served on the advisory board for an environmental law student group.

Excellence in Diversity Award — Washington Minority Bar Associations

This award is made to a lawyer, law firm, or law-related group that has made a significant
and other low-wage workers in class-action cases involving employment discrimination and civil-rights violations. In 2009, Radillo worked in the legislative arena as a registered lobbyist with a team of Columbia attorneys to increase protections for farm workers by proposing updates to the Farm Labor Contractor Act that would increase protections for farm workers in the area of farm labor recruitment and employment.

Outstanding Judge Award — The Honorable Lesley A. Allan

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

Judge Lesley Allan has served as a superior court judge in Chelan County since 1998. For the past four years, she has served as the chair of the Washington State Civil Legal Aid Oversight Committee. The 11-member committee was created by the Legislature in 2005 to ensure long-term, bipartisan oversight of the then-newly created Office of Civil Legal Aid (OCLA). As the first chair, Allan was tasked with establishing the Committee as a respected member of the community of organizations working to support effective delivery of civil legal aid to low-income Washington residents. She also served as the principal liaison between the Committee and OCLA, building a culture of support and active engagement between the organizations while allowing the two bodies to function independently.

Community Service Award — Captain Alexander M. Straub

Lawyers are known for giving generously of their time and talents in service to their communities. This award recognizes exceptional non-law-related volunteer work and community service.

Captain Alexander Straub is an assistant full-time judge advocate at the Washington National Guard Legal Office in Tacoma, where he is a legal advisor to the Washington National Guard and provides legal assistance to National Guard members and their families.

In spring 2008, Captain Straub conceptualized Attorneys Assisting Citizen-Soldiers and Families (AACF) (http://aacf.wordpress.com) as a collaboration between the Washington State National Guard and the WSBA Legal Assistance to Military Personnel (LAMP) Section to provide pro bono assistance to members and families of the Washington State National Guard deployed to Iraq.

With assistance from the LAMP Section and volunteers, the AACF developed, recorded, and distributed training sessions for use by new recruits. Straub developed processes to screen clients and match them with volunteer attorneys in the client’s geographical area, coordinating efforts with National Guard Family Programs, the WSBA, and the managing Judge Advocate General (JAG) attorneys’ offices.

Award of Merit — The Honorable Deborah D. Fleck

First given in 1957, this is the WSBA’s highest honor. The Award of Merit is most often given for long-term service to the Bar or the public, although it has also been presented in recognition of a single, extraordinary contribution or project. It is awarded to individuals only — both lawyers and non-lawyers.

Judge Deborah Fleck is being honored for her leadership in advocating for adequate funding for Washington state courts and promoting access to justice for all. She is particularly being recognized for her role in the Justice in Jeopardy Initiative, which includes her current service as co-chair of the Justice in Jeopardy Implementation Committee.

Judge Fleck has been a King County Superior Court judge since 1992, serving as chief judge of the Regional Justice Center and in the criminal, civil, and juvenile departments. She has served in many capacities for the Board for Judicial Administration (BJA), the policy-making body for Washington’s judicial branch of government, including as BJA co-chair with Chief Justice Gerry Alexander from 2003 to...
President’s Award honoree Lembhard Howell.  
President’s Award honoree J. Donald Curran.  
Community Service Award honoree Captain Alexander Straub with his wife and WSBA member Heather Straub.  
Courageous Award honoree Ernest Radillo (center) with Columbia Legal Services’ Joe Morrison and Claudia Zarate.  
Angelo R. Petruss Award honoree Roger Wynne.  
Excellence in Diversity Award honorees Thuy Nguyen Leeper and Kenneth Payson.  
2006–2009 President Mark Johnson (left) congratulates Excellence in Diversity Award honorees Kim Tran and Michael Heath.  
Outstanding Judge Award honoree the Honorable Lesley Allan.  
Professionalism Award honoree Richard Mitchell.  
Award of Merit honoree the Honorable Deborah Fleck.  
Lifetime Service Award honoree the Honorable Robert Harris.
2005; as chair of the Long Range Planning Committee; and as chair of the Judiciary and the Media Committee. Judge Fleck has also served in a variety of roles with the Superior Court Judges’ Association, including a term as president from 2002–2003, and with the Minority and Justice Commission, where she chairs the Workforce Diversity Subcommittee.

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

J. Donald Curran formed a partnership in 1961 with Joseph P. Delay, which became the firm of Delay, Curran, Thompson, Pontarolo & Walker, P.S. His practice is exclusively plaintiffs’ personal injury and representing lawyers with disciplinary problems.

Curran served on the WSBA Board of Governors from 1988–1991, is a former member and past-chair of the WSBA Disciplinary Board, and has also served as a hearing officer in disciplinary cases. He is a past-chair of the Lifetime Service Award — The Honorable Robert L. Harris

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

In addition to devoting three decades of service to Clark County citizens, making him the longest-serving superior court judge in the state, Judge Robert Harris has served in many community organizations. He is a past-president of the Washington State Superior Court Judges’ Association, and has also served on the Board of Judicial Administration in a variety of roles.

Judge Harris has served as president of the Washington Judges Foundation (WJF) since 2005. The mission of the WJF is to support programs that advance public understanding of the law and the role of the judiciary. It funds several educational programs for youth, including We the People; the YMCA Mock Trial Competition; youth courts; and Street Law, a partnership with the WSBA Council on Public Legal Education that uses volunteer judges as instructors in high school classrooms.

Pro Bono Award — Jonathan Yeh

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

Jonathan Yeh is a principal attorney at Blank Law and Technology P.S., where his practice includes general commercial transactions and litigation, computer forensics, electronic evidence, technology risk management, and intellectual property.

Yeh has been associated with the International District Legal Clinic for more than eight years. As a law student, he began volunteering as a clinic administrator. He later volunteered as an attorney, and has served for the past four years as the clinic coordinator. More than 300 clients were served at the clinic in 2008, thanks in large part to Yeh’s work, as well as the hard work and dedication of the clinic’s many attorney and law student volunteers. In 2008, he organized the clinic’s expansion to a second site, which he also coordinates; the Chinese Information and Service Center branch continues to serve the downtown Seattle area, while the original clinic has relocated to a new facility in the Rainier Valley neighborhood.

In addition to his work with the clinic, Yeh takes on several pro bono cases each year, and serves on the WSBA Pro Bono and Legal Aid Committee.
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Pro Bono Award — Dan R. Young

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

Dan Young is a solo practitioner focusing on landlord-tenant, real estate, consumer, and general civil litigation. Young has participated regularly with the King County Bar Association’s Volunteer Legal Clinics. Often, the complexity of the matter prompts Young to volunteer his services pro bono, and he has handled hundreds of cases for low-income individuals in this way throughout his career. Since 2003, Young has also served on the WSBA Pro Bono and Legal Aid Committee (PBLAC), serving as chair of the committee for the past three years.

One individual who can personally vouch for Young’s dedication to pro bono is Snohomish County resident Brenda Wood (formerly Brenda King). Unable to afford an attorney and find pro bono representation, Wood (then Ms. King) represented herself in a custody trial. Her former husband was represented by counsel, and she lost custody of her children; the Washington State Supreme Court ruled that there was no constitutional claim of right to appointed counsel at public expense. Wood discovered Young’s name on the WSBA website through his affiliation with PBLAC and contacted him directly to see if he would help her find an attorney. Young ended up taking the case himself and succeeded in obtaining a modification of the parenting plan, reuniting her with her children.

“[Young] reunited my family after a long two-year battle,” wrote Wood of his nomination. “For these good deeds, and for so much more, I not only support his nomination, but truly believe if he is awarded this honor, he will be an inspiration to all attorneys that they can make a difference.”

Norm Maleng Leadership Award — The Honorable Mary I. Yu

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

Judge Mary Yu was appointed to the bench by then-Governor Gary Locke in 2000. Prior to her appointment, she served as deputy chief of staff to King County Prosecutor Norm Maleng, and director of the Peace and Social Justice Office for the Archdiocese of Chicago.

Judge Yu serves as co-chair of the WSBA Leadership Institute Advisory Board; on the Board of Directors for FareStart, an organization dedicated to assisting homeless individuals develop job skills in the culinary industry; on the Board of Trustees for the King County Law Library; on the State of Washington Minority and Justice Commission; and on the Board of Directors for the King County Bar Association Future of the Law Institute. She is also the 2009 dean for the Washington State Judicial College.

Judge Yu has mentored dozens of students and new lawyers. She offers internship opportunities not only to law students, but also to high school and college students, many of whom have pursued legal careers.

Stephanie Perry is the WSBA communications specialist/website editor and can be reached at stephaniep@wsba.org.
I became a lawyer because I believe in truth and justice and felt that I could make a difference.

The future of the practice of law is boundless if lawyers remember the importance of our role in society and that we each have a responsibility to the profession and the people we serve.

This is the best advice I have been given: Don’t argue with the judge.

I would share this with new lawyers: Your legal career is what you make of it. Be professional; at the end of the day, your integrity is one of the few things someone can’t take from you.

Traits I admire in other attorneys: Candor and fair-mindedness.

I would give this advice to a first-year law student: Respect yourself and respect others.

People living or from the past I would like to invite to a dinner party: Gandhi, Jane Austen, Supreme Court Chief Justice Earl Warren, Oprah, and Michael Jackson.

I am most proud of this: That I graduated from law school and passed the bar exam.

I am the most happy when I’m enjoying family and friends.

My favorite non-job activity is shopping.

On television, I try not to miss NCIS.

Best stress reliever: A massage.

What I had for lunch: Pizza with Canadian bacon.

I would never eat frog legs.

I am currently reading Match Me If You Can by Susan Elizabeth Phillips.

My favorite vacation place is Hawaii.

One of the greatest challenges in law today is manageable caseloads, so people can get adequate legal representation.

If I were not practicing law, I would either be traveling to exotic locales or be a fashion magazine editor.

Currently playing on my iPod/CD player: Bebel Gilberto — “Momento.”

If I could live anywhere, I would live in Kauai, Hawaii.

I can’t live without my curling iron.

What keeps me awake at night: Difficult cases I’m working on.

If I could change one thing about the law, it would be more money to fund the criminal justice system.

This is the best part of my job: The variety of issues, people, and cases I work with on a daily basis. It’s never boring.

Dolly Hunt is currently a deputy prosecutor for Pend Oreille County and a special prosecutor for Lincoln County. As a prosecutor for both counties, she handles felony drug prosecutions and civil forfeitures. She was a 2008 fellow with the WSBA Leadership Institute and is currently a member of the WSBA Leadership Institute Advisory Board, the WSBA Professionalism Committee, and the WSBA Judicial Recommendation Committee. She can be reached at dhunt@pendoreille.org. Pictured is Dolly and her friend Bryan Pham.

Briefly About Me gives you a glimpse into the thoughts of your fellow WSBA members. If you would like to be featured in Briefly About Me or know someone who would, please visit www.wsba.org/lawyers/brieflyaboutme.doc.
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The Lawyers’ Fund for Client Protection Board Meeting — August 14, 2009

BY ROBERT WELDEN

The Lawyers’ Fund for Client Protection Board meets quarterly to review applications for gifts from the Fund. The Board is authorized to make gifts less than $25,000 to eligible applicants. On applications for $25,000 or more, the Board makes recommendations to the WSBA Board of Governors, who are the Fund’s Trustees. At their meeting on August 14, 2009, the Fund Board conducted the following business:

**Thomas P. Sughrua** — WSBA No. 14117, of Seattle — disbarred 2/20/08.

The applicants bought a house that they discovered had a crumbling foundation, rats in the walls, and other problems that were not disclosed by the sellers. In November 2006, they posted a notice they were seeking a lawyer on a website. Sughrua came to their home and “seemed like a great guy, real personable.”

In March 2007, Sughrua requested $8,000 cash. The applicants said that when they hired Sughrua, he agreed to accept payments on credit cards because they did not have a lot of money. However, they purchased a cashier’s check on 3/29/07 for $8,000, which they gave to Sughrua. After that, they heard little from him. In a series of e-mails in September and October 2007, Sughrua gave reasons for the delays but kept promising to work on the applicants’ case. It appears that he did nothing.

The Fund Board voted to pay the applicants $8,000.

**Jonathan D. Sweigert** — WSBA No. 20781, of Kirkland — suspended 12/6/07; disbarred 3/18/09.

The applicant hired Sweigert on 7/20/07 for representation on a driving under the influence charge and a driver’s license revocation. He paid a total of $3,000; $750 represented the fee for the license revocation hearing. The applicant then received a notice from DOL that his license was suspended due to missing the court dates and that a warrant was issued for his arrest. After numerous calls to Sweigert, the applicant received a call from Sweigert saying that there was a clerical error at the court and that he would get back to the applicant. He also told the applicant that he had negotiated a deal with the prosecutor whereby the applicant would plead guilty to negligent driving. None of this was true. Again, he did not tell the applicant that he had been suspended. That was the last the applicant heard from Sweigert. He hired a new attorney. On 5/5/08, the applicant wrote to Sweigert requesting a refund of his fees. He received no response.

The Fund Board voted to pay the applicant $2,250.

**Therese M. Wheaton** — WSBA No. 18208, of Shelton — resigned in lieu of disbarment 6/8/09.

The applicants hired Wheaton on 4/12/05 for representation on a claim against a contractor who had installed kitchen and bathroom cabinets in their home that were defective. They paid Wheaton $1,000 at that time, which Wheaton deposited into her trust account. The fee agreement provided for fees at an hourly rate of $150, with a cap of $2,000 “unless further approval.”

The applicant contacted Wheaton several times about the status of his case and was told that it was not “his turn” on her schedule. Wheaton came to their home several times for dinner. She learned that the applicant was taking Vicodin for pain, and asked for one of his pills. He was shocked, but felt that he had no choice but to give it to her. He said that she made the same request 18 additional times.

The applicants discovered that the defective cabinets were also moldy. When they told Wheaton, she said she would...
need additional funds to hire a mold expert. On 1/16/06, Wheaton had the applicants sign a second fee agreement and pay a new “retainer” of $2,500, which they paid on 2/20/06. It contained the same provision regarding disbursement only upon client’s signature of initial pleadings. She deposited the $2,500 into her trust account. The WSBA Office of Disciplinary Counsel investigation determined that there was no record of any work done by Wheaton on behalf of the applicants between the signing of the first and second fee agreements. She did record approximately eight hours from April 2006 through July 21, 2006, for a total of $1,050 in fees. She withdrew that amount from her trust account on July 31, 2006, despite the fact that the applicant had not signed the initial pleadings as provided for in her fee agreements.

On 9/13/06, the applicant paid Wheaton an additional $1,000. Wheaton had told her that she did not have enough money to pay her staff, and the applicant offered to make an advance payment for fees Wheaton would earn on the case. Although this was an advance fee payment, Wheaton did not deposit it into her trust account. During the ODC investigation, she falsely claimed that these were funds to pay for furniture that the applicants had purchased from her. In fact, they purchased nothing from her.

In November 2006, Wheaton began work on drafting a summons and complaint for the applicants’ case. On 11/13/06, she withdrew $1,000 from her trust account, despite the fact that the applicants had still not signed the initial pleading and despite the fact that this was $295 more than she was owed according to the invoice that she produced.

The applicants terminated Wheaton’s services on 2/7/07 and hired new counsel; on 2/9/07, Wheaton told the new lawyer that she had forwarded the draft summons and complaint to the applicant on 1/19/07. The ODC investigation showed that a review of the properties of the complaint from Wheaton’s computer showed it was created on 1/29/07. The applicant denied ever receiving a copy of the complaint.

On 2/26/07, Wheaton deposited $1,150 into her trust account and refunded $2,300 to the applicants. By the time the applicants terminated Wheaton and hired new counsel, the statute of limitations to file a claim against the cabinet company’s bond had expired.

The Fund Board voted to pay applicants $2,200.

**Other Business:** The Fund Board reviewed 10 additional applications that were denied for lack of evidence of dishonest conduct, as fee disputes or claims for malpractice, because restitution was made, for unjust enrichment, or were deferred for further investigation.

**Restitution:** Before payment is made, the applicant must sign a subrogation agreement with the Fund, and the Fund seeks restitution from the lawyers. Because in most cases those lawyers have no assets, the chief avenue of restitution is through court-ordered restitution in criminal cases. Prosecuting attorneys cooperate with the Fund in getting the Fund listed in restitution orders. As of August 31, 2009, five lawyers were making regular restitution payments to the Fund totaling $14,932 since October 1, 2008. 

The 2008–2009 Fund Board chair was Seattle lawyer Sims Weymuller. WSBA General Counsel Robert Welden is staff liaison to the Fund Board.
The Board’s Work

Board of Governors Meeting
September 24–25, 2009 — Seattle

by Michael Heatherly

A

t the September 24–25 meeting in Seattle, the Board of Governors adopted an agreement under which the WSBA and LAW Fund will work together to increase donations to civil legal aid programs. The agreement was part of a year-long effort to rescue financially struggling legal assistance organizations statewide.

LAW Fund and the affiliated Legal Foundation of Washington distribute money raised from IOLTA (Interest on Lawyers’ Trust Account) funds to legal-aid programs. However, low interest rates and the economic recession have combined to drastically reduce IOLTA income, leaving programs at risk of collapse. Earlier this year, the BOG agreed to contribute $1.5 million of WSBA reserve funds to help save the programs. As a condition of that commitment, which avoided imposing a surcharge on member fees, the Board and LAW Fund agreed to cooperate on permanent voluntary fundraising efforts.

The WSBA and LAW Fund hope to expand the existing “Campaign for Equal Justice” and collect contributions of at least $1.5 million to $2 million annually. The WSBA is providing the opportunity for Bar members to contribute voluntarily to the fund when they pay their 2010 licensing fees online or by mail. That program will continue annually, along with additional fundraising efforts.

The BOG addressed a separate fundraising issue at the September meeting as well. The BOG approved a request by the Washington State Bar Foundation to add two half-time WSBA positions dedicated to assisting the foundation in its fundraising efforts. The BOG committed to maintaining the positions — a development director and an administrative assistant — for two years. The Foundation administers diversity scholarship funds and provides other support to promote social justice.

Also at the September meeting, the BOG continued work on changes to various court rules proposed by the WSBA Court Rules and Procedures Committee. Rule changes approved by the BOG will be forwarded to the Supreme Court for possible enactment. One proposal prompting significant discussion was an amendment to CR 43 providing that “[f]or good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location.” The amendment would allow trial testimony by telephone or live video feed, for example.

...the Board of Governors adopted an agreement under which the WSBA and LAW Fund will work together to increase donations to civil legal aid programs. The agreement was part of a year-long effort to rescue financially struggling legal assistance organizations statewide.

The provision would bring the state rule into line with the corresponding federal civil rule, which has been adopted by the majority of states as well. Proponents of the amendment, including the Washington State Association for Justice (formerly Washington State Trial Lawyers Association), argued that it recognizes that bringing witnesses to court is often impractical or economically unfeasible and that judges and jurors are now accustomed to information being presented by telephone or video. Opponents, including the Washington Defense Trial Lawyers, maintained that it is too difficult to evaluate witnesses’ credibility without seeing them in person. Ultimately, the BOG approved the proposed amendment for forwarding to the Court.

The BOG also approved a proposed new rule of evidence, ER 502, which would specify what happens when privileged communications or work product are inadvertently disclosed. The proposed rule is based on a corresponding federal rule. The effects of such disclosure are not clearly defined under existing Washington law. The full text and discussion of all the proposed rules can be found in the meeting materials at www.wsba.org/info/bog/september09bogbook.htm.

At the September meeting, the BOG also heard the first reading of a proposal by WSBA President Salvador Mungia to establish a program under which lawyers would serve as volunteer mentors to children in grades K–3 and donate money for books and other materials. The effort
would begin as a pilot program at one to three schools and target Title One schools, which serve primarily students from low-income households. The goal of the program is for all students to enter fourth grade with a solid background in reading, writing, and arithmetic as well as grade-appropriate knowledge of civics.

In other business, the BOG:

- Approved a proposed comment to RPC 1.3 specifying that to comply with the duty to act with reasonable diligence, "a lawyer should plan for protecting client interests in the event of the lawyer’s death, disability, impairment, or incapacity." Under the proposal, such a plan should be in writing and designate another attorney who has agreed to make arrangements to protect the interests of the disabled attorney's clients. The rule, which would require Supreme Court approval for enactment, was proposed by the WSBA Planning Ahead Task Force.
- Approved an initiative proposed by WSBA Executive Director Paula Littlewood and the WSBA Professionalism Committee under which WSBA volunteers and staff will visit each law school’s professional responsibility classes every year to discuss the importance of professionalism in the practice of law.
- Welcomed incoming Washington Young Lawyers Division President Julia Bahner, of Seattle, who was sworn in at the meeting. Ms. Bahner succeeds Jaime Hawk, who presented her final report to the BOG regarding the WYLD’s activities for the past year. The WYLD’s goals for the Division include focusing on transition into practice, new/young lawyer representation and advocacy, and pro bono work and other public service.
- Adopted the WSBA budget for the 2010 fiscal year. Revenue for the general fund is projected at $16.5 million for the year. New budget items include redesign of the WSBA website, a part-time professional responsibility counsel to help staff the Ethics Line, and a part-time investigative attorney to assist with character-and-fitness evaluations relating to admissions. The budget also provides for a moderate-means program to make more legal services available to Washington residents who earn too much to qualify for low-income pro bono programs but too little to afford full-cost legal representation.
- Approved a plan by which it will enter into discussions with the Supreme Court regarding the future of the Law Clerk Program, under which individuals can qualify to practice law through a four-year program of full-time employment with a lawyer/tutor, tutoring and testing in legal courses, and practical experience rather than attending law school. While BOG members and others expressed support for the program, questions were raised as to whether there are ways it could serve more people, and whether the WSBA is the appropriate entity to house it.

Michael Heatherly is the Bar News editor and can be reached at barnewseditor@wsba.org or 360-312-5156. For more information on the Board of Governors and Board meetings, see www.wsba.org/info/bog. For more information on issues addressed by the Board, visit the WSBA website at www.wsba.org and click on “News Flash” under “WSBA News and Information.”
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The Washington State Bar Association congratulates the 626 individuals who passed the Bar Exam administered in July 2009, at the Summer 2009 WSBA Bar Exam Pass List.

Abells, Joshua William, Seattle
Ackley, Andrew N., Seattle
Adams, Timothy J., Tacoma
Addis, Jennifer, Seattle
Alsahel, Tbeamh, Seattle
Alvarado, Emily Laura, Seattle
Amundson, Melati Bahrabs, Seattle
Anderson, Jennifer Michelle, Seattle
Anderson, Aryna, Seattle
Anderson, Katherine Leone, Seattle
Anderson, Kevin Daniel, Mount Vernon
Anderson, Adam Keith, Yakima
Andres, Adam Morgan, Lake Forest Park
Ang, Marie Kristin, Seattle
Archer, Brandi Lynn, Seattle
Ashcraft, Christopher R., Bremerton
Auriemma, Anthony, Seattle
Baltensperger, Reed C., Rochester, MN
Bailey, Rebecca Alma Marie, Shoreline
Baird, Adam, Seattle
Baker, David Aleksander, Seattle
Baker, Scott Thomas, Alexandria, VA
Banijamali, Sahar, Seattle
Banks, James E., Seattle
Barker, Matthew, Bellevue
Barta, Nikolaus, Seattle
Barton Kimbrell, Colleen M., Vancouver
Baum, Dorian, Seattle
Beauchene, Holly L., Seattle
Becker, Catherine Ann, Seattle
Been, Claire Louise, Seattle
Bennett, Katherine DeWeese, Mill Creek
Bennett, Lawrence A., Benicia, CA
Bennett, Jackson T., Seattle
Benson, Carrie Louise, White Salmon
Bentsen, David Joel, Renton
Bergstrom, Mari Lou, Kennewick
Blackburn, Morgan Rippe, Medina
Blair, Steven Robert, Kirkland
Boenecke, Gabriel Dupree, Spokane
Bogar, Shon William, Camas
Bornholdt, Jeffrey Ryan, Spokane
Bowen, Bradley David, Seattle
Brady, Philip Lawrence, Olympia
Braswell, David C., Renton
Bridge, Marc Daniel, Mercer Island
Brittingham, Joshua Daniel, Renton
Brogge, Marisa E., Seattle
Brooker, Jordan J., Grand Rapids, MI
Brown, Tristan St. John, Seattle
Brown, Joseph William, Olympia
Buck, Heidi E., Seattle
Buffington, Andrew Robert, Seattle
Bullington, Tristan N., Champaign, IL
Burland, Olivia, Stanwood
Burland, Reid Sinclair, Seattle
Burns, Jamia, Bellingham
Burwell, Kelsey D., Spokane
Bushaw, Emily Anne, Lacey
Butler, Jules R., Edmonds
Byrne, Paul Reginald, Seattle
Cadarannel, Robert Joseph, Bellevue
Caffer, Jeffrey R., Notre Dame, IN
Cahalan, Jerry R., Port Orchard
Cahill, Kevin Patrick, Poulsbo
Cairns, Sandra Jean, Redmond
Caldwell, Abigail J., Seattle
Callahan, Kaci Annalisa, Makah\teo
Callow, Edward J., Seattle
Cameron, Katherine Eileen, Seattle
Campbell, Jason Thomas, Seattle
Carey, Margaret L., Monroe, CO
Carlín, Emily, Lynnwood
Carmody-Rampey, Amanda Jean, Seattle
Carmody, Sarah Elizabeth, Ann Arbor, MI
Carper, Megan Elizabeth, Kennewick
Casady, Ben, Seattle
Case, Bryan Joseph, Sammamish
Cashman, Anna M., Seattle
Chaikin, Damarla Harnett, Seattle
Champion, Amelia D., Redmond
Chan, Larissa Leigh, Seattle
Chan, Philip Wai Yip, Seattle
Chan, Alexander Ying-Chi, Mercer Island
Chavez, Eric S., Seattle
Chee, Jane Jessica, Seattle
Chiarelli, Dominic, Seattle
Chin, Michael Spencer, Lynnwood
Cho, Sarah D., Seattle
Christensen, Jessica, Portland, ME
Clark, Douglass B., Issaquah
Clark Hendryx, Arin, Spokane
Clifft, Nathan, Seattle
Cloutier, Prairie Rain, Edmonds
Clyburn, Michael J., Clinton
Cochrane, Jenny, Bellevue
Cohen, Monique E., Edmonds
Cohon, Dylan Ringer, Shoreline
Colignon, Marya Erin, Poulsbo
Collins, James C., Yakima
Collins, Ronald Allen, Covington
Combs, Nancy Beth, Seattle
Connely, Katherine Miller, Houston, TX
Connely, Kevin Roland, Houston, TX
Conway, Jessica David, Vancouver
Corbett, David C., Sequim
Corvin, Sara Lynn, Shoreline
Covin, Christina Anne, Summanwish
Crawford, Holly Ann, Graham
Cross, Danielle Marie, Seattle
Cunningham, Adina Lisa Kobayashi, Eastsound
Curnutt, Jeffrey G., Auburn
Currey, Linda Leigh, Spokane
Curtis, Joshua Glenn Ray, Lynnwood
Cutler, Jessica Thalenfeld, Seattle
Cutting, Christopher Daniel, Seattle

Dacanay, Kathryn M., Renton
Dai, Ling, Seattle
Davidson, Lauren Christine, Seattle
Davies, Zachary E., Seattle
Davies, Daniel T., Seattle
Davies, Sean-Michael V., Olympia
Davis, John Christopher, Vancouver
Davis, Kadi, Seattle
Davis, Summer L., Seattle
DeBleck, Heather Lynn, Spokane
Decker, Aimee Kim, Seattle
DeFor, Timothy Clement, Seattle
Deaph, Michelle, Seattle
Dellino, Michelle Teresa, Seattle
Dempsy, William B., Seattle
DeVault, Kerri Nicole, Bothell
Dewar-Manaks, Tamara L., Seattle
Dilworth, Stephen Gregory, Bellevue
Doty, John Dylan, Seattle
Douli, Joshua, Issaquah
 Doyle, Danielle Muriel, Seattle
Du Braille, Justin Paul, Wenatchee
Dudek, Gregory Jay, Seattle
Duffy, Rose Catherine, Seattle
Duncan, Jeanne Lee, Seattle
Duncan, Eric Toshiro, Seattle
Duong, Tuong Vi Thi, Kenmore
Earling, John D., Seattle
Eastman, Courtnie Marie, Port Orchard
Eckhood, Charissia A., Denver, CO
Edmondsen, Ryan William, Seattle
Edwards, Allyson Anne, Surrey, BC
Ehrlich, Daniel Benn, Edmonds
Eisenberg, Eric Wantuck, Olympia
Eisentout, Julia Lindsay, Olympia
Elder, Heather, Spokane
Eldred, Justin Eric, Spokane
Elliott, Lisa Marie Boybal, Gig Harbor
Elslger, William L., Seattle
Epsteen, Yaffa, Minneapolis, MN
Edlinger, Doris P., Bellevue
Espegard, Ryan C., Seattle
Etter, William O'Reilly, Spokane
Eugenio, Francis Xavier, Seattle
Euteneier, Gregory Todd, Spokane
Evans, Peter, Spokane
Evans, Dana Marie, Yakima
Everett, Russell Hews, Seattle
Fairley, Erin M., Seattle
Falacy, Calandra Marie, Kirkland
Farmer, Justin D., Seattle
Farrish, Cheryl J., Seattle
Fawcett, Kathleen H., Everett
Fay, Kristin Audrey, Renton
Frechtmeier, Alicia Marguerite, Seattle
Feldman, Patrick James, Edmonds
Feldman, Christopher, Edmonds
Findley, Fletcher L., Randle
Fioretti, Ivy, Bellevue
Fiorillo, Kathleen Marie, Las Vegas, NV
Fisher, Lindsay A., Seattle
Fisher, J. Camille, Seattle

Fisher, Stephen Mark, New Haven, CT
Forbes, Natalya, Kirkland
Fouhy, John Michael, Mercer Island
Fouty, Megan M., Seattle
Fox, Matthew Joseph, Bellevue
Frawley, Joseph Donald, Bothell
Freiheit, Andrew VN, Kirkland
Friedman, Elizabeth D., Palmer, AK
Galazin, David Andrew, Wailaki, HI
Gambardella, Thomas Gary,
Doyleston, PA
Gamble, Sean, Tacoma
Garce, Courtney Anne, Snohomish
Gardiner, Steven Winfield, Seattle
Gauen, Benjamin Carter, Seattle
Ghandehari, Setareh, Seattle
Ghassemieh, Minal Kode, Newcastle
Ghassemieh, Mehrdad, Edmonds
Gibs, Anthony F., Seattle
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Glad, Brittan A., Spokane
Goddard, Jordand Dylan, Kirkland
Goez, Darcey Julia, Long Beach
Goldberg-Hoss, Tyler Robert, Seattle
Graham, Thomas F., Seattle
Grant, Andrew Halsey, Summanish
Gray, Bridgett Vasser, Tukwage, AL
Greaves, Lionel, Seattle
Greenberg, Carissa Ann, Pullman
Gregg, Caitlin Ann, Colbert
Griffiths, Shaine Robert, Spokane
Grist, Charlotte Roxanne, Seattle
Groves, Travis S., Payaylip
Gupta, Samona Das, Seattle
Habib, Kamyrus Cyru, Kirkland
Hackinen, Kaj Andersen, Seattle
Hale, Megan Elizabeth, Seattle
Hall, Loren Michael, Seattle
Hall, Garrett R., Spokane Valley
Hallock, Elizabeth, San Francisco, CA
Halvere, Kevin Robert, Camas
Hancock, David Douglas, Seattle
Hansen, Zachary J., Seattle
Hansen, Dennis Alan, Pasco
Hardwick, Amber L., Seattle
Hare-Heiderich, Ilaria Larissa, Seattle
Hartsock, Monica Lea, Seattle
Hartzell, John Leonard, Yorba Linda, CA

Harwood, Eric A., Seattle
Harwood, Melissa M., Seattle
Hastings, Kevin Michael, Lacey
Hayton, Genevieve, Mount Vernon
Healing, Kristy Lynn, Seattle
Heinecicus, Peter A., Seattle
Hemwaying, Lauren Kimberly, Seattle
Hendrickson, Thomas D., University Place
Hernandez, Sofia M., Seattle
Hendrickson, Thomas D., Kirkland
Hewitt, Joseph Donald, Bothell
Freiheit, Andrew VN, Kirkland
Friedman, Elizabeth D., Palmer, AK
Galazin, David Andrew, Wailaki, HI
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Ghandehari, Setareh, Seattle
Ghassemieh, Minal Kode, Newcastle
Ghassemieh, Mehrdad, Edmonds
Gibs, Anthony F., Seattle
Gilman, Eric Daniel, Seattle
Gist, Ryan Cooper, Seattle
Glad, Brittan A., Spokane
Goddard, Jordand Dylan, Kirkland
Goez, Darcey Julia, Long Beach
Goldberg-Hoss, Tyler Robert, Seattle
Graham, Thomas F., Seattle
Grant, Andrew Halsey, Summanish
Gray, Bridgett Vasser, Tukwage, AL
Greaves, Lionel, Seattle
Greenberg, Carissa Ann, Pullman
Gregg, Caitlin Ann, Colbert
Griffiths, Shaine Robert, Spokane
Grist, Charlotte Roxanne, Seattle
Groves, Travis S., Payaylip
Gupta, Samona Das, Seattle
Habib, Kamyrus Cyru, Kirkland
Hackinen, Kaj Andersen, Seattle
Hale, Megan Elizabeth, Seattle
Hall, Loren Michael, Seattle
Hall, Garrett R., Spokane Valley
Hallock, Elizabeth, San Francisco, CA
Halvere, Kevin Robert, Camas
Hancock, David Douglas, Seattle
Hansen, Zachary J., Seattle
Hansen, Dennis Alan, Pasco
Hardwick, Amber L., Seattle
Hare-Heiderich, Ilaria Larissa, Seattle
Hartsock, Monica Lea, Seattle
Hartzell, John Leonard, Yorba Linda, CA

Harwood, Erin A., Seattle
Harwood, Melissa M., Seattle
Hastings, Kevin Michael, Lacey
Hayton, Genevieve, Mount Vernon
Healing, Kristy Lynn, Seattle
Heinecicus, Peter A., Seattle
Hemwaying, Lauren Kimberly, Seattle
Hendrickson, Thomas D., University Place
Hernandez, Sofia M., Seattle
Hendrickson, Thomas D., Kirkland
Hewitt, Joseph Donald, Bothell
Freiheit, Andrew VN, Kirkland
Friedman, Elizabeth D., Palmer, AK
Galazin, David Andrew, Wailaki, HI
Gambardella, Thomas Gary,
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Civil legal aid programs currently are experiencing a flood of clients facing homelessness due to foreclosures, a skyrocketing need for bankruptcy assistance, and other serious legal problems as a result of the economic downturn.

Please join us in donating the equivalent of at least one billable hour to the legal community’s annual Campaign for Equal Justice. Your charitable contribution to the Campaign gives our state's 26 legal aid programs the ability to address critical survival needs of Washington’s most vulnerable.


2009–2010 Campaign Co-chairs Paula Boggs & Bill Neukom

It’s not justice if it’s not equal.
Council on Public Defense  
**Application deadline: December 31, 2009**  
The WSBA Board of Governors seeks applications for service on the Council on Public Defense (CPD) beginning January 2010. Four positions are available: two positions are reserved for private attorneys; two are for non-lawyers. The members of the Council are appointed for one-year terms, renewable for up to three years. The CPD brings together representatives of the bar, prosecutors, private and public criminal defense counsel, the bench, elected officials, and the public. The mission of the CPD is to recommend to the WSBA Board of Governors improvements to the provision of public defense services in Washington state. Please submit a letter of interest and résumé by December 31, 2009, to: WSBA Bar Leaders Division, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101, or e-mail barleaders@wsba.org. For further information on the CPD, please contact Jennifer Carter at jenniferc@wsba.org or 206-239-2116.

Court Interpreter Certification Advisory Commission  
**Application deadline: December 31, 2009**  
The WSBA Board of Governors will be nominating one member to be appointed by the Washington State Supreme Court to serve a three-year term on the Washington State Court Interpreter Certification Advisory Commission. The term will commence upon appointment and expire September 30, 2012. The Commission, which operates under Supreme Court rule, has three standing committees to maintain critical operations of the interpreter program: the Issues Committee, the Disciplinary Committee, and the Judicial and Court Administration Committee. 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.

Bench-Bar-Press Committee of Washington  
**Application Deadline: February 12, 2010**  
The WSBA Board of Governors is accepting letters of interest and résumé from members interested in serving on the Bench-Bar-Press Committee of Washington. Two positions are available. A written expression of interest and a résumé are also required for any incumbent seeking reappointment. The Committee is designated as the body to give advice with respect to the application of the provisions of the Code of Judicial Conduct to officials of the Judicial Branch as defined in Article 4 of the Washington Constitution and shall from time to time submit to the Supreme Court recommendations for necessary or advisable changes in the Code of Judicial Conduct (GR 10). The Committee communicates regularly by e-mail regarding opinion requests. The Committee also meets from time to time in person, although such meetings are infrequent. 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.

Supreme Court Ethics Advisory Committee  
**Application Deadline: February 12, 2010**  
The WSBA Board of Governors is accepting letters of interest and résumé for members interested in serving on the Supreme Court Ethics Advisory Committee. The Board of Governors will nominate one member who is appointed by the Supreme Court. The term will commence upon appointment and expire October 31, 2011. The incumbent is eligible for reappointment and must submit a written expression of interest and a résumé if interested in reappointment. The Committee is designated as the body to give advice with respect to the application of the provisions of the Code of Judicial Conduct to officials of the Judicial Branch as defined in Article 4 of the Washington Constitution and shall from time to time submit to the Supreme Court recommendations for necessary or advisable changes in the Code of Judicial Conduct (GR 10). The Committee communicates regularly by e-mail regarding opinion requests. The Committee also meets from time to time in person, although such meetings are infrequent. 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.

Accepting Questionnaires from Candidates for Judicial Appointments  
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 the Governor 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/judicialrecomendation or contact the WSBA at 206-727-8212 or 800-945-9722, ext. 8212; or e-mail judithb@wsba.org.

MCLE Certification for Group 3 (2007–2009)  
Active WSBA members in MCLE Reporting Group 3 (2007–2009) received Continuing Legal Education Certification (C2/C3) forms in license packets mailed in mid-October. Lawyers in Group 3 include active members who were admitted to the Bar in 1984 through 1990, 1993, 1996, 1999, 2002, and 2005. Members admitted in 2008 are also in Group 3 but are not due to report until the end of 2012. Their first reporting period
will be 2010–2012; any credits earned on or after the day of admission may be counted for compliance.

To avoid late fees, Group 3 members who are due to certify compliance: (1) should have completed required credits by December 31, 2009; and (2) must certify compliance no later than February 1, 2010.

See the following "MCLE Certification Information for Active Members" item for important information about the MCLE compliance process. If you have questions, please contact the WSBA Service Center at 800-945-WSBA (9722), 206-443-WSBA (9722), or questions@wsba.org.

MCLE Certification Information for Active Members

Due date for MCLE credit completion and certification

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


<table>
<thead>
<tr>
<th>Group</th>
<th>Report</th>
<th>Complete Credits by</th>
<th>Certify MCLE Compliance by</th>
</tr>
</thead>
</table>

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. For example, if you were admitted in 2008, you will not report for this reporting period (2007–2009) even though you are in Group 3. You will first report and certify credits at the end of the 2010–2012 reporting period. For your first reporting period, you may claim all CLE credits earned on or after your date of admission to the WSBA.

Credit requirements.

- At least 45 total credits of MCLE Board-approved CLE activities must be taken, including a minimum of 22.5 live credits and a minimum of 6 ethics credits.
- Credits required for compliance must be completed by December 31 of the last year of your reporting period.
- Courses must meet the requirements of APR 11 to be accredited, 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 are held at a specific time; they are not pre-recorded. During the course, attendees have the opportunity to ask questions of the instructor(s) and hear the questions of others in real time. Live courses include teleconferences, webinars, and webcasts as well as traditional in-person events.
- "A/V" courses are pre-recorded. These courses are the only type that can be used for earning "self-study" credits. A/V courses include audio and video tapes, compact discs, DVDs, archived webcasts, and other media that include the soundtrack of an MCLE Board-approved course presentation. These programs cannot be more than five years old from the date of recording, except MCLE Board-approved "skills-based" courses. Written materials must be included with the A/V program and reviewed by the applicant to earn credit. Written materials must be purchased by each member, when required by the sponsor, to claim CLE credit for listening to or viewing an A/V program borrowed from another party.
- "Ethics" courses, and sessions of larger courses devoted exclusively to ethics, must meet the specific requirements of APR 11. Regulation 101(g) to be considered for ethics credit.
- "Read only" and "read-and-test" courses are not accredited in Washington.

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 the total of your current reporting period credits exceeds 45, you may carry over a maximum of 15 credits to your next reporting period. Of these 15 credits, up to 2 can be ethics credits and up to 5 can be A/V credits. No credits will be carried over if a Certificate of Compliance from a comity state is used for compliance certification (See "MCLE comity," following).

MCLE compliance certification requirement

All active members due to certify MCLE compliance are required to: (1) complete the credit requirements, and (2) certify the credits taken for MCLE compliance. Your online roster showing credit compliance is not a substitute for certifying MCLE compliance (APR 11.6(b)). You must complete the online certification process or submit a completed CLE Certification (C2/C3) form.

Online certification

If you are credit-compliant, online certification is available for the first time this year through www.mywsba.org. Go to www.mywsba.org. (Note: You must have a valid e-mail address on file with the WSBA to log in. If this is your first time accessing your MCLE roster through www.mywsba.org you must use the "Reset password" link to set up a new password. Your user name will still be your bar number. If you do not have a valid e-mail address on file, contact the Service Center at questions@wsba.org or by phone at 800-945-9722 or 206-443-9722 to have an e-mail address added to your records.) Log in and click on the "MCLE Reporting — C2/ C3" link to access your online MCLE certification form.

Paper certification

If you do not want to certify online or are not credit-compliant, you can file a Continuing Legal Education Certification (C2/C3) form listing all CLE courses taken for credit compliance. Note:

- C2/C3 forms are included in the license packets mailed in mid-October to all members due to report and certify credits (Group 3 members this year).
- The data printed on the C2/C3 form is taken from your online MCLE roster in mid-September.
- If you earn more credits after the C2/C3 form was printed, add them to the form.
- All courses you list on the form must be approved by the MCLE Board. Approved courses have an Activity ID number. (See the "Course approval" section.)
- You must verify that the credits listed on the C2/C3 form are accurate. The credits for CLE courses you took should reflect your actual attendance. Credits on your online MCLE roster may be edited by clicking on the "edit" link next to each course. Credits on the C2/C3 form may be corrected manually.
- If you do not want to handwrite the additional credits you earned on the back of the C2 form, you may print a copy of your online MCLE roster and attach it to your C2/C3 form. State on your C2/C3 form that the attached roster printout is a true and
correct statement of the CLE courses taken for credit compliance. Alternatively, you may print an updated C2/C3 form from the link on your mywsba home page. The C3 side should include all courses that are on your online roster as of the date of printing.

- The C2/C3 form is a declaration and must be signed and dated, and the location where signed must be identified.

**Deadlines**

All required credits must be completed by December 31 of the last year of your reporting period. All credits must be certified by February 1 of the year following the end of your reporting period (or the next business day, if February 1 is on a weekend) (APR 11.2(a)).

**Grace period elimination**

There is no grace period for certifying compliance. You must complete the online MCLE certification process (if you are credit-compliant) at www.mywsba.org or postmark or deliver your C2/C3 form by February 1 (APR 11.6(b)).

**Credits not complete — no automatic extension until May 1**

There is no automatic extension. If your credits are not complete by December 31 of the last year of your reporting period, you must complete these requirements by the following February 1: File a C2/C3 form listing the credits taken to date even though you have not completed the credit requirements. Then file a Supplemental Declaration form for all subsequent credits earned for compliance (APR 11.6(b)). Submit a petition to the MCLE Board. Provide a complete explanation as to the reason that you need an extension. The Board will consider factors of undue hardship, age, or disability in determining whether an extension will be granted (APR 11.6(c)/(4) and APR 11 Regulation 107(a)).

**MCLE late fees**

Late fees are assessed when credits are not completed by December 31 of the last year of your reporting period and/or credits are not certified by February 1. Credits may be certified online, or postmark or deliver the C2/C3 certification form to WSBA by the deadline.

The late fee for the first reporting period of non-compliance is $150 and increases by $300 for each consecutive reporting period of non-compliance.

**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 office — sent with your WSBA C2/C3 form will satisfy your MCLE requirements in Washington. The forms must be postmarked or delivered by February 1.

- Note: A "Certificate of Good Standing" or a list of courses taken to meet your comity state's credit compliance requirements is not acceptable for fulfilling the comity requirements. Your Washington state and your comity state reporting periods do not need to be identical. To meet compliance requirements in Washington, your Certificate of Compliance from the comity state just needs to show that you met the MCLE compliance requirements for your most recent comity state reporting period.

**Course approval**

All courses that you list on your C2/C3 form must be Washington MCLE-Board approved and have an Activity ID number. This number is listed in your online MCLE roster and is assigned at the time of application. A "Certificate of Attendance" or other sponsor-provided certification is not sufficient for receiving course credit.

If you have taken courses that are not yet approved by the MCLE Board, submit Form 1s for these courses immediately to ensure that they are approved before your certification is due. See www.wsba.org/lawyers/groups/mcle/mcleboardform1.htm for information about submitting a Form 1.

Each Form 1 application must include a full agenda in order to receive credit. The agenda must include the start and end times for each session and break. Because of high volumes from October through February, Form 1s submitted online 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.

**Pro bono credits**

Six pro bono credits can be earned per year (APR 11 Regulation 103(f)). Of the six credits, two are for the required annual pro bono training. Four credits may be earned per year for pro bono service credits if at least four hours of pro bono work were provided through a qualified legal services provider and if two credits of approved pro bono training were completed within the same calendar year.

**New MCLE rule and regulation amendments**

New MCLE rule and regulation amendments went into effect on January 1, 2009. The amendments include: the number of live credits required was reduced from 30 to 22.5; the number of A/V credits allowed (of the 45 required) was increased from 15 to 22.5; there is no longer an automatic extension; and a member may earn no
more than 8 credits per day taking courses. See www.wsba.org/lawyers/groups/mcle/apr11review07.htm for more information.

In-house CLEs
Beginning with the 2007–2009 reporting period, there are no restrictions on the number of in-house credits that a lawyer may claim for compliance. However, lawyers associated with or employed by a private law firm or corporate legal department that maintains an office within Washington state may not apply to receive credit for a continuing legal education course sponsored by that private law firm or corporate legal department. The sponsor must apply for accreditation. (APR 11 Regulation 104(b)(2)).

MCLE system
You may use the online MCLE system to review and edit courses taken and credits earned; apply for course approval; apply for prep time, pro bono, moot court, or writing credit; and search for upcoming approved courses.

Questions
If you have any questions about using the MCLE system or about the MCLE compliance requirements, see www.wsba.org/lawyers/licensing/faq-mcle.htm and www.wsba.org/lawyers/licensing/faq-mcle-credits.htm or contact the WSBA Service Center at 800-945-WSBA (9722), 206-443-WSBA (9722), or questions@wsba.org.

Despair Defined
There is no event more joyful than the birth of a healthy child and none more devastating than when a baby is neurologically damaged during labor or delivery. We have extensive experience in birth injury cases. We would appreciate the opportunity to work with you to help your client.
Thinking of Changing Your WSBA Membership Status? Consider Emeritus

Annual WSBA training and orientation: January 12, 2010

As the 2010 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 2010 license fee for emeritus is $200. 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.

One or more qualified legal service organizations are present in most Washington state counties. These include Columbia Legal Services, a statewide legal services program; Northwest Justice Project, a central statewide point of access for clients; specialized legal services programs (such as Unemployment Law Project and Northwest Immigrant Rights Project); and county volunteer attorney programs. These organizations offer a wide variety of volunteer opportunities such as direct representation, mentoring, advice clinics, self-help clinics, board membership, telephone advice, and document preparation.

Emeritus also allows for pro bono services for criminal cases through some public defender agencies. Many of these organizations offer training for their volunteers. We will do our best to find a niche to fit your legal expertise, interest, and schedule.

An emeritus training and orientation session is scheduled for January 12, 2010, in Seattle at the WSBA office. This training is a requirement for changing to emeritus status and will provide 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 or sharlene@wsba.org. You can review APR 8(e) at www.wsba.org/lawyers/licensing/faq-rule8e.htm.

“Foundations of American Democracy” Civics Pamphlet Available

The WSBA offers a pamphlet for the public called “Foundations of American Democracy” that describes the basics of American government: the rule of law, the separation of powers, checks and balances, and a fair
and impartial judiciary. 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 the community. 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/load.htm. Requests for copies should be directed to Pam Inglesby, WSBA public legal education manager, at pam@wsba.org.

55 and Over?
WSBA's Lawyers Assistance Program is offering a new group, "Lawyers in Transition: For Attorneys 55 and Over." A range of topics will be covered, such as making changes in one's career, nurturing interests outside of the law, and giving and receiving support to fellow lawyers at a similar life stage. The group will meet at the WSBA office on Tuesdays at 10:30 a.m. The cost is $10 per session. If you are interested in taking part or have questions or recommendations, please call Dr. Rebecca Nerison at 206-727-8269, 800-945-9722, ext. 8269, or rebeccan@wsba.org.

Monthly Lawyer Discussion Roundtable
Get ideas and support from new colleagues and WSBA Lawyer Services Department staff who will answer questions on ethics, practice, and substantive law. The discussion group meets from noon to 1:30 p.m. December 15 is the next scheduled meeting date. Walk-ins are welcome! The roundtable is held at the WSBA office.

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

LOMAP and Ethics Traveling Seminars
Join us in Oak Harbor on December 8 or Bellingham on December 9. The cost is $99, and four credits are available, including some ethics credits. To register, call or e-mail Julie Salmon at 206-733-5914, 800-945-9722, ext. 5914, or juliesa@wsba.org.

LAP Solution of the Month: Holiday Stress?
Holidays are fun, but the busyness of the season makes it easy to over-commit and under-perform. Don’t be afraid to say no if adding an event to your schedule causes undue strain. Reduce stress by exercising daily and consuming in moderation. For more information, call the Lawyers Assistance Program at 206-727-8268 or 800-945-9722, ext. 8268.

Computer Clinic
The WSBA offers a hands-on computer clinic for members. Learn what programs such as Outlook, PowerPoint, Excel, Word, and Adobe Acrobat can do for a lawyer. Are you a total beginner? No problem. The clinic teaches helpful tips you can use immediately. Computers are provided, and seating is limited to 15 members. There is no charge, and no CLE credits are offered. The December 14 clinic will be held from 10:00 a.m. to noon at the WSBA office and will focus on using Outlook and practice management software. The December 17 clinic will meet from 2:00 to 4:00 p.m. and will focus on using Adobe Acrobat Professional Versions 8 and 9 (not the Reader). For more information or to RSVP, contact Julie Salmon at 206-733-5914, 800-945-9722, ext. 5914, or juliesa@wsba.org.

Monthly Job Search Session
Join us December 12 to hear Paul Anderson, of Prolongo, speak on strategic relationship-building, how to use social media to find contacts, and best practices for follow-up. These meetings take place the second Wednesday of each month from noon to 1:30 p.m. at the WSBA sixth floor conference center. For more information, call 206-727-8269, 800-945-9722, ext. 8269, or e-mail rebeccan@wsba.org. Come as you are — no need to RSVP unless you would like to attend the meeting by telephone (RSVP by December 11).

Weekly Job Finders Strategy and Support Group
Unemployed? Discounted — or trying not to be? Our weekly job group focuses on job search basics such as résumés, cover letters, and informational interviewing. The group meets on Monday mornings from 10:30 to noon, and new groups begin every eight weeks. Contact Dan Crystal, Psy.D., at 206-727-8267, 800-945-9722, ext. 8267, or dancw@wsba.org if you are interested in this group.

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

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

Speakers Available
The WSBA Lawyers Assistance Program offers speakers for engagements at county, minority, and specialty bar associations, and other law-related organizations. Topics include stress management, life/work balance, and recognizing and handling problem-personality clients. Contact Barbara Harper at 206-727-8265, 800-945-9722, ext. 8265, or barbara@wsba.org.

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. Contact 206-727-8268, 800-945-9722, ext. 8268, or visit www.wsba.org/lawyers/services/lap.htm.

Help for Judges
The WSBA Judges Assistance Services
Disciplinary Notices

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

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

Disbarred

Richard M. Chiu (WSBA No. 23462, admitted 1993), of Houston, Texas, was disbarred, effective August 25, 2009, by order of the Washington State Supreme Court imposing reciprocal discipline in accordance with an order from the Evidentiary Panel of the Texas State Bar District No. 4F11 Grievance Committee. This discipline was based on conduct involving trust-account irregularities.

In or around July 2005, Mr. Chiu represented two clients in a personal injury matter that occurred in California. When the case ultimately settled, the clients authorized Mr. Chiu to pay their medical providers with available settlement proceeds. Mr. Chiu, however, failed to notify or promptly tender payment to Dr. S for the medical services rendered to the clients. Once Dr. S learned of the settlement, his attorney made numerous attempts to contact Mr. Chiu to secure payment. Finally, on April 27, 2006, Mr. Chiu sent two checks made payable to Dr. S on behalf of the clients. The checks were drawn on Mr. Chiu’s IOLTA account. When Dr. S presented the checks for payment, they were returned because the account had been closed. Dr. S’s attorney again made numerous attempts to collect payment from Mr. Chiu. On August 11, 2006, Mr. Chiu sent two more checks in the same amount to cover the aforementioned medical expenses on behalf of his clients, as well as a check to cover the expenses incurred by Dr. S. These checks were drawn on a second IOLTA account at a second bank. One of the checks for services and the expense check were thereafter returned for insufficient funds. On March 6, 2007, Mr. Chiu sent a payment to cover the costs of the returned checks; however, this check, which had been drawn on Mr. Chiu’s operating account, was also returned for insufficient funds.

Mr. Chiu’s conduct violated Texas RPC 1.14(a), failing to hold funds or other property belonging in whole or in part to clients or third persons that are in a lawyer’s possession in connection with a representation separate from the lawyer’s own property in a separate trust account designated as a trust or escrow account; Texas RPC 1.14(b), upon receiving funds or other property in which a client or third person has an interest, failing to promptly notify the client or third person; failing to promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive; and upon request by the client or third person, failing to promptly render full accounting regarding such property; and Texas RPC 8.04(a) (3), engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

Joanne S. Abelson represented the Bar Association. Mr. Chiu represented himself, but did not respond.

Disbarred

Daniel A. Wright (WSBA No. 11560, admitted 1981), of Tumwater was disbarred, effective October 6, 2009, by order of the Washington State Supreme Court, following a default hearing. This discipline was based on conduct involving failure to act with reasonable diligence, failure to communicate, making false statements in connection with a disciplinary matter, dishonest conduct, and violating a duty imposed under the Rules for Enforcement of Lawyer Conduct.

In September 2005, a client hired Mr. Wright to represent her in the dissolution of her marriage. As part of the dissolution, the client’s husband executed a promissory note in favor of the client, which was secured by a trust deed on a certain piece of real property. The client’s husband executed the note and trust deed on or about February 1, 2007. Mr. Wright did not record the promissory note or trust deed. In June 2007, the client retrieved her client file from the firm where Mr. Wright was an associate. She subsequently learned that the trust deed had not been recorded and that a senior lien holder had foreclosed on the property on May 7, 2007.

On August 14, 2007, the client telephoned Mr. Wright about his failure to record the trust deed. Mr. Wright told his client that she had instructed him not to record the trust deed and that he had sent her a letter at that time confirming those instructions. The client told Mr. Wright that she had not given him instructions not to record the trust deed. She also told Mr. Wright that she had not received any letter from him confirming those instructions and that she intended to file a grievance with the Association. Mr.
In July 2002, Mr. Pell filed a (WSBA No. 15107, admitted level of .08. On November 3, 2005, Mr. Doran's breathalyzer test revealed a blood alcohol of alcohol in Lincoln County. Mr. Doran's orders.

Disciplinary Board. This discipline is based following approval of a stipulation by the order of the Washington State Supreme Court 1985), of Coeur d' Alene, Idaho, was suspended in person or through counsel. Malcolm L. Edwards was the hearing officer.

Mr. Wright's conduct violated RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; RPC 1.4, requiring a lawyer to promptly inform the client of any decision of circumstance with respect to which the client's informed consent is required, reasonably consult with the client about the means by which the client's objectives are to be accomplished, keep the client reasonably informed about the status of the matter, and promptly comply with reasonable requests for information; RPC 8.1(a), prohibiting a lawyer, in connection with a disciplinary matter, from knowingly making a false statement of material fact; RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and RPC 8.4(l), prohibiting a lawyer from violating a duty or sanction imposed by or under the Rules for Enforcement of Lawyer Conduct in connection with a disciplinary matter (here, ELC 5.3(e)).

Debra J. Slater represented the Bar Association. Mr. Wright did not appear either in person or through counsel. Malcolm L. Edwards was the hearing officer.

Suspended

James R. Doran (WSBA No. 15107, admitted 1985), of Coeur d'Alene, Idaho, was suspended for three months, effective October 7, 2009, by order of the Washington State Supreme Court following approval of a stipulation by the Disciplinary Board. This discipline is based on conduct involving the commission of multiple misdemeanors and violating court orders. James R. Doran is to be distinguished from James M. Doran, of Bellingham.

On August 28, 2005, Mr. Doran was driving a motor vehicle while under the influence of alcohol in Lincoln County. Mr. Doran's breathalyzer test revealed a blood alcohol level of .08. On November 3, 2005, Mr. Doran entered a guilty plea to driving under the influence (DUI) in Lincoln County District Court, and was convicted of a gross misdemeanor. Mr. Doran was sentenced to 364 days in jail, with 363 days suspended for two years; a fine of $2,500, with $1,650 suspended; 12 months of supervised probation; and 12 months of unsupervised probation. He was also ordered not to drive a motor vehicle without a valid license and insurance and not to commit any criminal traffic violations.

On February 11, 2006, Mr. Doran was driving while license suspended in Okanogan County. He was cited for driving while license suspended in the third degree. On July 7, 2006, Mr. Doran entered into a Stipulated Order of Continuance in Okanogan District Court. On April 3, 2007, Mr. Doran was driving under the influence in Okanogan County. Based on his April 3, 2007, actions in Okanogan County, Mr. Doran's suspended sentence in the Lincoln County case was revoked on June 12, 2007. He was sentenced to 30 days, with 333 days of suspended jail time remaining. Mr. Doran's probation supervision was extended to July 1, 2008, and his probation conditions were expanded to require that an interlock ignition device be on any vehicle driven by him. Mr. Doran entered into a deferred prosecution on August 31, 2007.

On April 16, 2008, Mr. Doran was driving a motor vehicle while his license was suspended in the second degree and without an ignition interlock device in Garfield County. Mr. Doran entered a guilty plea in July 2008 to driving without a valid operator’s license in Garfield County District Court and was fined $250.

Mr. Doran's actions violated RPC 8.4(i), prohibiting a lawyer from committing any act which reflects disregard for the rule of law, whether the same be committed in the course of his or her conduct as a lawyer, or otherwise, and whether the same constitutes a felony or misdemeanor or not; and RPC 8.4(j), prohibiting a lawyer from willfully disobeying or violating a court order directing him or her to do or cease doing an act which he or she ought in good faith to do or forbear.

Christine E. Gray represented the Bar Association. Mr. Doran represented himself.

Suspended

Reed C. Pell (WSBA No. 6821, admitted 1976), of Yakima, was suspended for two years, effective September 16, 2009, by order of the Washington State Supreme Court. This discipline was based on conduct in four matters involving failure to provide competent representation, failure to act with reasonable diligence and to expedite litigation, failure to communicate, falsifying and offering false evidence, commission of a criminal act, dishonest conduct, and engaging in conduct demonstrating an unfitness to practice law. The Court imposed conditions on reinstatement and probation.

Matter No. 1: In July 2002, Mr. Pell filed a Chapter 7 Bankruptcy Petition on behalf of Clients A (husband and wife). Mr. Pell was going to convert Clients A’s Bankruptcy Plan to a Chapter 13 in October 2002. In March 2003, Mr. Pell filed an amended Disclosure of Compensation of Attorney for Debtor, which disclosed a fee arrangement of $750, but did not show Clients A this disclosure prior to filing it. Thereafter, Mr. Pell failed to timely file documents, causing the trustee to file a Motion to Dismiss for Failure to Timely File Documents. Mr. Pell then filed the required documents and the court denied the trustee's Motion to Dismiss.

The trustee objected to confirmation of the Chapter 13 Plan and the case was set for trial. A pre-trial hearing on valuation was scheduled for November 3, 2003. With regard to a possible stay, the court ordered Mr. Pell to file a Motion for Stay and amended schedules by no later than October 27, 2003. Mr. Pell did not file the motion or the schedules. On the day of the valuation hearing, Mr. Pell faxed a letter to the Bankruptcy Court and to the lawyer for the Chapter 13 trustee stating that he was not ready for the hearing due to personal issues. The letter asked the court to refrain from dismissing the bankruptcy case and to continue the valuation hearing for two weeks. In support of the request for continuance, Mr. Pell included a document termed a declaration (actually, an unsworn letter) that purportedly bore Mr. A's signature and that indicated that Mr. A also wanted the hearing continued. Mr. Pell knew that Mr. A's signature had been forged on the document, but nevertheless presented it as being true.

Mr. Pell appeared at the November 3, 2003, hearing and told the court he would attempt to find another lawyer to represent Clients A, whereupon the court continued the valuation hearing for two weeks. Mr. Pell filed a motion to voluntarily dismiss the case and a notice of intent to withdraw and substitute Attorney B. Attorney B handled the remaining issues surrounding dismissal of the case. Mr. A was unaware that Mr. Pell had withdrawn or that attorney B had substituted as counsel. Thereafter, the Bankruptcy Court dismissed Clients A's bankruptcy case.

Prior to the dismissal, Mr. Pell had filed a Chapter 13 Flat Fee Agreement that provided he was to receive a flat fee of $2,000, paid from the plan. After the bankruptcy case was dismissed, Clients A delivered $2,000 to Mr. Pell from the funds they were refunded by the court that they had paid into the plan. Clients A believed that Mr. Pell had agreed to file on their behalf a second Chapter 13 bankruptcy
petition without charging any additional fees for the second case. Mr. Pell filed the second bankruptcy petition in January 2004, at a time when Mr. A was out of the country on military duty and his wife had power of attorney. Clients A did not understand that the plan and filings called for payment of $2,000 attorney’s fees from the bankruptcy estate for the second bankruptcy. At some point during the representation, Mr. Pell had Clients A (one or both of them) sign documents in blank. Mr. Pell filed a proposed Chapter 13 Plan in the second bankruptcy purportedly bearing Mrs. A’s signature; however, she did not sign the proposed plan. Clients A either did not see or did not understand the proposed plan prior to Mr. Pell filing it. Other documents were filed under Mrs. A’s purported signature, but she did not sign the documents.

**Matter No. 2:** In March 2005, Mr. Pell filed a Voluntary Petition for Chapter 13 Bankruptcy for Client B. On May 16, 2005, Mr. Pell contacted the office of the Chapter 13 trustee and discovered that Client B’s case was scheduled for a creditor’s meeting on May 18, 2005. At that point, Mr. Pell had not yet filed a proposed Chapter 13 Plan or schedules or other documents. He stated to the lawyer for the Chapter 13 trustee that he was in the process of finishing the documents and would do so before the meeting. Mr. Pell in fact did not file the documents and did not communicate with Client B regarding the creditor’s meeting. Client B called the office of the Chapter 13 trustee to see if she should appear at the creditor’s meeting. At the creditor’s meeting, the court set a Motion to Dismiss Client B’s case on June 2, 2005, based on Mr. Pell’s failure to file proposed plan and schedules. Mr. Pell subsequently filed a proposed Chapter 13 Plan and various other documents, and the Motion to Dismiss was denied. Various plan documents, including the plan, Flat Fee Agreement, and a declaration concerning schedules were purportedly signed by Client B, but in fact were falsely signed by Mr. Pell. Documents prepared and submitted by Mr. Pell in Client B’s bankruptcy were incomplete, inadequate, and failed to make certain entries, which may have expedited or potentially expedited the ability of certain creditors to get relief from an automatic stay and foreclose on the Client B’s property. Mr. Pell moved to dismiss Client B’s bankruptcy and thereafter no further action was taken by Mr. Pell. Client B thereafter was represented by different counsel.

**Matter No. 3:** Client C was involved in a dissolution and custody dispute with her estranged husband. Client C’s ex-husband had obtained a temporary *ex parte* restraining order restricting Client C from contact with their children and had filed a motion to extend the restraining order. Client C was concerned about the restriction on seeing her children. Mr. Pell agreed to appear for Client C at a hearing set on September 6, 2005, but did not submit a notice of appearance or any written response. During the September 6, 2005, hearing, Mr. Pell and Client C were in dispute as to whether the matter should be continued. Mr. Pell was also either intoxicated or under the influence of excessive amounts of prescription drugs. He presented an unkempt appearance and engaged in blurred and barely understandable speech. Mr. Pell was in full view and within the hearing range of a number of persons in the courtroom, including some non-lawyers. The judge who presided over the hearing determined that Mr. Pell was unable to represent Client C adequately. Client C did not want the hearing continued, creating additional time before the visitation restriction could be revised or lifted. However, the hearing was continued until September 9, 2005, and Client C was represented by another lawyer.

**Matter No. 4:** On September 6, 2005, Mr. Pell appeared on Client D’s behalf at a bail/probable cause hearing. Client D had been booked on charges of threatening to bomb or injure a school. At Client D’s hearing, Mr. Pell appeared disheveled and apparently under the influence of some substance or alcohol. The same was noticed by the judge, who called Mr. Pell into his chambers following the hearing to point the same out to Mr. Pell.

Mr. Pell’s conduct violated RPC 1.1, requiring a lawyer to provide competent representation to a client; RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; RPC 1.4(b), requiring a lawyer to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; RPC 3.2, requiring a lawyer to make reasonable efforts to expedite litigation consistent with the interests of the client; RPC 3.3(a)(4), prohibiting a lawyer from offering evidence that the lawyer knows to be false; RPC 3.4(b), prohibiting a lawyer from falsifying evidence; RPC 8.4(b), prohibiting a lawyer from committing a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects; RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; RPC 8.4(d), prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice; and RPC 8.4(n), prohibiting a lawyer from engaging in conduct demonstrating unfitness to practice law.

M. Craig Bray represented the Bar Association. Timothy R. Weaver and John Adam Moore Jr. represented Mr. Pell. David L. Broom was the hearing officer.
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Stephanie started her career in the insurance industry, working as a commercial insurance broker for both publicly held national brokers and independent regional insurance brokers for over 12 years. She handled large commercial accounts in the hospitality, construction, transportation, and real estate arenas. Stephanie also has over five years’ experience as an insurance coverage lawyer, representing policyholders in complex coverage and bad faith litigation. Stephanie’s extensive familiarity with both the brokerage and legal sides of the insurance industry gives her a unique perspective on the resolution of coverage disputes. She is available for consultation, association, referral, or as a contract attorney.

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Carolyn Boies Nitta

and

Thomas P. Holt

have joined the firm as associates.

Ms. Boies Nitta is a 2004 graduate of the University of California, Berkeley: Boalt Hall School of Law, and was most recently an associate at Winterbauer & Diamond PLLC. She will continue her employment law practice.

Mr. Holt, a 2007 University of Washington School of Law graduate, was formerly a law clerk for the Honorable Stephen J. Dwyer, Acting Chief Judge, Washington State Court of Appeals, Division One. His practice will focus on employment law and civil litigation.

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

## Business Law

### Ethics with Ease: Business Lawyers
December 1 — Tele-CLE. 1.5 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbaicle.org.

### Freedom from Contracts — The “Great Escapes”
December 3 — Seattle. 6.75 credits, including .5 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbaicle.org.

### The Lawyer’s Toolbox: Tax Issues for Business Transactions
December 11 — Seattle. 3 credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbaicle.org.

### Privileges, Protected Information and Confidences
December 16 — Seattle. 6.25 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbaicle.org.

## Commercial Law

### Commercial Law Developments CLE
December 4 — Spokane. 3 credits. By Gonzaga Law School; [www.law.gonzaga.edu/academic-program/cle/default.asp](http://www.law.gonzaga.edu/academic-program/cle/default.asp).

## Construction Law

### Construction Law Year End
December 10 — Spokane. CLE credits pending. By the WSBA Construction Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbaicle.org.

## Creditor and Debtor Law

### Judgments: You’ve Won! Now What?
December 15 — Spokane. 6.25 credits, including .5 ethics. By the WSBA Creditor Debtor Rights Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbaicle.org.

### Judgments: You’ve Won! Now What?
December 17 — Seattle/live webcast. 6.25 credits, including .5 ethics. By the WSBA Creditor Debtor Rights Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbaicle.org.

## Elder Law

### The Nuts and Bolts of an Elder Law Practice: Elder Law 101
January 22 — Seattle. 6.5 credits, including .75 ethics pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbaicle.org.

## Environmental Law

### Solar Power Projects and Permitting

### Resolving Ethical Dilemmas in Environmental and Land Use Law
December 3 — Seattle. By WSBA Environmental and Land Use Law Section. Contact Jill Guernsey at [guerns@co.pierce.wa.us](mailto:guerns@co.pierce.wa.us).

### Land Use 2010: Earth, Wind and Fire (and Water)
January 28 — Seattle. 6.75 credits, including 1 ethics credit. By UW School of Law; [www.uwcle.org](http://www.uwcle.org); 206-543-0059.

## Estate Planning

### Advanced Probate

## Ethics

### Ethics with Ease: Business Lawyers
December 1 — Tele-CLE. 1.5 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbaicle.org.

### The Resourceful Lawyer: Inner Tools for an Ethical Practice
December 4 — Seattle. 6.25 ethics credits. By Jane Faulkner and Colleen Yamaguchi; [www.embodiedliving.com](http://www.embodiedliving.com).

### Ethics with Ease: Employment Lawyers
December 7 — Tele-CLE. 1.5 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbaicle.org.

### Privileges, Protected Information and Confidences
December 16 — Seattle. 6.25 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbaicle.org.

### Annual Spokane Ethics CLE

### Annual Seattle Ethics CLE

### Ethical Marketing of Legal Services
December 29 — Tele-CLE. 2 ethics credits. By Rubric CLE; [www.rubriccle.com](http://www.rubriccle.com); 206-714-3178.

## Family Law

### Community Property: The New Challenges in Today’s Economy
December 15 — Seattle. 6 credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbaicle.org.

## General

### Technology CLE
December 1 — Spokane. 5 credits, including 1 ethics. By Technology 4 Attorneys, LLC; [www.law.gonzaga.edu/academic-program/cle/default.asp](http://www.law.gonzaga.edu/academic-program/cle/default.asp).

### December 8 — Seattle/live webcast. 6 credits, including .75 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbaicle.org.
Best of CLE
December 2 — Seattle/live webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org

Best of CLE
December 3 — Spokane. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org

You Gant Do That! Current Issues in Search and Seizure

A Day with Paul Stritmatter

Trial by Fire, Part I
December 4 — Seattle. 3.5 credits, including .5 ethics. By Rubric CLE; www.rubriccle.com; 206-714-3178.

Trial by Fire, Part I
December 8 — Spokane. 3.5 credits, including .5 ethics. By Rubric CLE; www.rubriccle.com; 206-714-3178.

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Trial by Fire, Part II
Dec. 9 — Spokane. 3.5 credits, including .5 ethics. By Rubric CLE; www.rubriccle.com; 206-714-3178.

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December 11 — Seattle. 3.5 credits, including .5 ethics. By Rubric CLE; www.rubriccle.com; 206-714-3178.

Privileges, Protected Information and Confidences
December 16 — Seattle. 6.25 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

John Marshall: Soldier, Lawyer, Legislator, Diplomat
December 16 — Tele-CLE. 1 credit. By Rubric CLE; [www.rubriccle.com](http://www.rubriccle.com); 206-714-3178.

2009 Washington Judicial Highlights
December 18 — Seattle. 4 credits, including 1 ethics. By Rubric CLE; www.rubriccle.com; 206-714-3178.

The New Washington Death with Dignity Act
December 22 — Tele-CLE. 1.5 credits, including .5 ethics. By Rubric CLE; www.rubriccle.com; 206-714-3178.

Video Replay: The Rules of Professional Conduct — A Year Later
December 30 — Seattle. 6 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Best of Rubric 2009
December 30 — Seattle. 4 credits pending; ethics credits pending. By Rubric CLE; www.rubriccle.com; 206-714-3178.

Insurance Law

Annual Insurance Law Seminar

Annual Insurance Law Seminar

Intellectual Property

IP Licensing
December 9 — Seattle. CLE credits pending. By the WSBA Intellectual Property Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Labor and Employment Law

Ethics with Ease: Employment Lawyers
December 7 — Tele-CLE. 1.5 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Litigation

Video Replay: Sidebar with the Bench — with Live Moderator
December 1 — Seattle. 6 credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Freedom from Contracts — The “Great Escapes”
December 3 — Seattle. 6.75 credits, including .5 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Movie Magic
December 11 — Seattle. 6 credits, including 2 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Judgments: You’ve Won! Now What?
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Deposition Techniques
December 18 — Seattle. 6 credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Demystifying Appeals from Start to Finish
December 22 — webinar. 1 credit pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

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Announcement
Citizens for Judicial Excellence, a political action committee created to promote excellence in the trial court judiciary, is actively seeking highly qualified lawyers interested in running for judge. The CJE is currently screening candidates for endorsement and support in the 2010 judicial elections. Potential candidates should have at least five years’ trial court experience, exceptional professional credentials, impeccable ethical standards, a record of community involvement, and a sincere commitment to providing the highest level of judicial intellect, integrity, and justice. For more information, please contact Patricia Fulton at patricia@glblaw.com or 206-467-3190.

Position Available
WSBA Professional responsibility counsel — The WSBA is seeking a professional responsibility counsel to provide guidance and respond to ethics inquiries from WSBA members regarding their prospective conduct, primarily by phone. This part-time position will assist the current professional responsibility counsel in conducting legal research and maintaining a comprehensive
level of proficiency in all aspects of legal ethics and professionalism by using multiple sources of information. As needed, this position writes articles and informational resources, and provides educational presentations on ethics news. Other duties may include management of the custodianship process and original wills, and performing other duties as assigned. The position reports to the WSBA general counsel and has no supervisory responsibilities, although the position provides work direction to the ethics program coordinator and paralegal. Visit www.wsba.org/jobs to review qualifications and further details.

Washington State Bar Foundation development director — This half-time position is responsible for developing a strategic plan for cultivating donors and funding sources for long-term programming for the Washington State Bar Foundation (WSBF) and in support of WSBA programming. Working with the WSBA executive director and WSBF Board of Trustees (BOT), WSBA staff, and related parties, this position identifies programs in need of support; develops fundraising goals and implements immediate and long-term funding strategies; identifies and evaluates prospective donors; and coordinates fundraising programs and activities. This position supervises a half-time administrative assistant and reports directly to the executive director, who serves as secretary to the Foundation. The position works under general supervision of the executive director and in close collaboration with the BOT. It is essential that candidates have experience assisting in the management and reporting oversight of investments and have managed comprehensive fundraising efforts for a foundation or other not-for-profit organization. Visit www.wsba.org/jobs for further details.

WSBA new lawyer education program development specialist — The WSBA is seeking a new lawyer education program development specialist who will lead development of the strategy and project plan for new lawyer education throughout Washington, including free and low-cost programming, in collaboration with the WSBA Young Lawyers Division. Duties include: program marketing; enhancing content development; recruiting speakers and chairs; managing event project details; managing the WSBA-wide delivery of new lawyer training/education in a comprehensive fashion; managing “mini-CLE” programming; supporting the CLE Department in selecting/utilizing appropriate software systems; and contracting with vendors to develop the actual online e-programming. Requirements include a B.A. in education or education-related field with a minimum of two years’ experience in continuing legal education. A law degree or a master’s in education, plus CLE experience, is preferred. Also required: excellent project-management skills; experience working with volunteers; experience designing and delivering live and e-learning programs; experience administering learning management systems; experience utilizing databases for project and programming analysis; excellent oral and written communication skills; customer-service skills; curriculum-development skills; knowledge of effective marketing techniques; budgeting experience; and proficiency in MS Office Suite. Visit www.wsba.org/jobs for details.

Olympia attorney seeks associate interested in building a family law and bankruptcy practice. Please respond in writing to Manager, 545 McPhee Rd. SW, Olympia, WA 98502.

Family law attorney: McKinley Irvin is a 10-attorney law firm focused on complex divorce and family law matters. We are seeking an attorney with a minimum three years’ family law experience in King and/or Pierce County. The right attorney would possess actual hands-on experience as described below, observe the highest standards of professionalism, produce exceptional work product, and deliver attentive client service. The right personality would be a bright, confident, friendly self-starter who is comfortable working in a team environment. A commitment to excellent work product and client service is a must. The following hands-on experience is required: research and drafting motions, legal memoranda, witness declarations, mediation materials, discovery, and trial briefs, ER 904 preparation, working knowledge of state and local court rules, some court experience, and working directly with clients and witnesses. Position offers the right candidate an opportunity to practice law that is both interesting and challenging and also makes a difference in the lives of real people and their families. We offer a competitive salary and benefits package, excellent administrative support, good work/life balance, and a fun and collaborative work environment. Bob and his wife, Marilyn, have three children and live in the Seattle area. Please respond in writing to Dan Gerace, 1027 3rd Ave., Suite 2705, Seattle, WA 98101. To apply, please visit our website at www.mckinleyirvin.com for more information about our firm.

Established Everett law firm seeking criminal law attorney to handle all criminal and traffic matters. Excellent writing and research skills. Strong negotiation and presentation skills. Salary based on qualifications and experience. Competitive salary and benefits package. E-mail résumé and references to matt@russellandhill.com.

Busy Puyallup firm seeks attorney on contract counsel basis with opportunity to be an associate. Duties include court appearances, drafting memoranda, briefs, etc. Must have excellent research and writing skills. Must be a self-starter and a team player. Will provide guidance to recent admittees. For consideration, please fax résumé and writing sample to 253-445-9529.

Faculty positions — legal research and writing. Seattle University School of Law is currently accepting applications for two positions teaching in its Legal Writing Program. The positions are contract positions, with a three-year initial contract that begins...
on August 1, 2010. The starting salary is $70,000–$79,000. Lateral hires could come in at a higher salary, depending on qualifications and experience. Seattle University is an established leader in the field of legal writing. It founded the Legal Writing Institute, it has hosted seven Legal Writing Institute summer conferences, and its faculty has published numerous books and articles relating to legal writing. As a result, for the last four years, U.S. News & World Report has ranked Seattle University’s Legal Writing Program as one of the top two legal writing programs in the United States. Individuals teaching legal writing at Seattle University receive extensive training in teaching legal writing. Currently, individuals teach both a first-year course that introduces students to legal research, legal reading, legal analysis, and effective writing, and a second-year course that introduces students to persuasive writing and oral advocacy. Professors are in the classroom seven hours a week, spend about 10 hours a week meeting with students on a one-to-one basis, and spend about 20–25 hours a week critiquing and grading student writing. Seattle University is looking for candidates with a strong academic record, experience working as a judicial law clerk or as an attorney, teaching experience, excellent writing skills, and excellent interpersonal skills. The Hiring Committee will begin reviewing applications as it receives them, starting in October 2009. The positions will close when both positions are filled. Seattle University, founded in 1891, continues a more than 450-year tradition of Jesuit Catholic higher education. The University’s Jesuit Catholic ideals underscore its commitment to the centrality of teaching, learning, and scholarship; of values-based education grounded in the Jesuit and Catholic traditions; of service and social justice; of lifelong learning; and of educating the whole person. Located in the heart of dynamic Seattle, the University enrolls approximately 7,750 undergraduate and graduate students in eight colleges and schools. Students enjoy a university ethos characterized by small classes, individualized faculty attention, a strong sense of community, a commitment to diversity, and an outstanding faculty. Seattle University School of Law educates ethical lawyers who distinguish themselves through their outstanding professional skills and their dedication to law in the service of justice. Faculty, students, and staff form a vibrant, diverse, and collaborative community that promotes leadership for a just and humane world. The school’s commitment to academic distinction is grounded in its Jesuit Catholic tradition, one that encourages open inquiry, thoughtful reflection, and concern for personal growth. Innovation, creativity, and technological sophistication characterize our rigorous educational program, which prepares lawyers for a wide variety of successful careers in law, business, and public service. Seattle University is an equal-opportunity, affirmative-action employer. Finding prejudicial discrimination inconsistent with the mission of the University and the spirit of free academic inquiry, Seattle University does not discriminate in hiring on the basis of age, sex, race, religion, national origin, familial status, sexual orientation, or disability. This policy complies with the spirit and the letter of applicable federal, state, and local laws.

Individuals interested in the position should send a letter of application, a résumé or vitae, a writing sample that has not been edited by another person, and the names and contact information for three references either by e-mail to rideout@seattleu.edu or by mail to the following address: Professor Chris Rideout, Seattle University School of Law, 901 12th Ave., PO Box 222000, Seattle, WA 98122-1090. For more information about Seattle University’s writing program, see www.law.seattleu.edu/Academics/Legal_Writing_Program, or contact Professor Laurel Currie Oates at loates@seattleu.edu, or Professor Chris Rideout at rideout@seattleu.edu.

**Workers’ compensation/labor and industries attorney** — large Pacific Northwest law firm seeks a workers’ compensation/labor and industries attorney with a minimum of three years’ experience for a position in its Olympia office. Experience preferably includes a strong workers’ compensation background, WISHA appeals, and Department of Labor and Industries audits. The successful candidate will be expected to manage a fast-paced workers’ compensation practice representing large employers throughout the state. Please send a cover letter, résumé, and writing sample to Mr. Len Roden, Manager of Attorney Recruiting, Lane Powell PC, 1420 Fifth Ave., Ste. 4100, Seattle, WA 98101-2338, or e-mail rideout@lanepowell.com.

**Seattle, four-attorney firm** with established litigation/general practice is seeking an experienced attorney to join its downtown office. The successful candidate will have superior credentials, a strong commitment to client service, a healthy client base, and a desire to work as part of our team to build and enhance our existing practice. Submit résumé and work history to Managing Partner, 819 Virginia St., Ste. C-2, Seattle, WA 98101.

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The Seattle office of Perkins Coie, a premier technology transaction law firm, is seeking an associate with at least three years of experience to join its Licensing and Technology Group. Successful candidates must have excellent academic credentials, as well as experience structuring, negotiating, and documenting arrangements to acquire, develop, protect, and distribute technologies, both domestically and internationally. These include agreements for licensing and distribution, OEM relationships, outsourcing, JVs and strategic alliances, manufacturing/supply, Internet/e-commerce, and marketing, promotion, and merchandising. To apply, please submit your résumé, law school transcript, and transaction list to: lateralhiringSEA@perkinscoie.com. Principals only.

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Qualifying experience for positions available — state and federal law allow minimum, but prohibit maximum, qualifying experience. No ranges (e.g., “5-10 years”). Ads may be edited for spelling, grammar, and consistency of formatting. If you have questions, please call 206-727-8213 or e-mail classifieds@wsba.org.

Consulting attorney experienced in environmental and energy cases — combined education and experience in petroleum engineering, environmental engineering, and law. Washington Bar. Details at www.mfelts.com. Contact margaret@mfelts.com or 916-468-8443.

Executive Office Suites available, furnished or unfurnished in downtown Poulsbo or 4423 Pt. Fosdick Dr., Gig Harbor. Prices begin at $350 for an individual office. Contact 253-851-2008.

View office available in Bellevue law firm. High-quality finished offices and support staff space available. Rent includes kitchen, two conference rooms, reception, copy room. DSL/T-1 access. Easy access and free parking. Available immediately. Please e-mail classifieds@wsba.org, referencing Code #718 in the subject line.

To meet the demand for sublease in downtown Bellevue. Rent includes shared use of conference rooms, small law library, and kitchen. Options include use of copier and covered parking. Please contact asakai@jgslaw.com.

Pioneer Square (Seattle). Congenial, full-service offices available (Maynard Building). Walking distance to courthouse. Includes receptionist, conference room, messenger service, library, DSL, fax, copier with e-mail scanner, kitchenette. Steve, 206-447-1560.

Pioneer Square (Seattle) firm offering sublease for two professional offices and one staff office. For details, see Craigslist ad titled “3 Offices Available (Pioneer Square).” Contact Griff Flaherty at 206-682-2616.

Kent office for rent — perfect for solo practitioner, 11’ x 14’ windowed office in existing suite in Centerpoint Office Complex, reception area, conference room, high-speed copier, fax, scanner, messenger service, space for receptionist/legal assistant. Call Mike, 253-398-2600.

Downtown Pike Place Market office space — two Sound-view offices to share with established practitioners. Adjacent to Pike Place Market and Seattle Athletic Club, includes secretarial station, shared receptionist, and conference room. Parking available. Contact Gil Levy at 206-443-0670.

Beautiful Pioneer Square (Seattle) office (Mutual Life Building), minutes away from the King County Superior Court. Sole practitioner seeks new tenant to share space which includes a friendly receptionist, copy machine, DSL, kitchen, conference room, and two private offices with large windows. We look forward to meeting you. Please call Liz at 206-622-9050 to arrange a time to tour the space.

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

Pioneer Square (Seattle). Congenial, full-service offices available (Maynard Building). Walking distance to courthouse. Includes receptionist, conference room, messenger service, library, DSL, fax, copier with e-mail scanner, kitchenette. Steve, 206-447-1560.

Executive Office Suites available, furnished or unfurnished in downtown Poulsbo or 4423 Pt. Fosdick Dr., Gig Harbor. Prices begin at $350 for an individual office. Contact 253-851-2008.

View office available in Bellevue law firm. High-quality finished offices and support staff space available. Rent includes kitchen, two conference rooms, reception, copy room. DSL/T-1 access. Easy access and free parking. Available immediately. Please e-mail classifieds@wsba.org, referencing Code #718 in the subject line.

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Dog Tales

I could hardly call myself a columnist if I never got around to writing a dog story, and this is a good time for one. I lost two canine buddies in 2009, one to death and the other to complications of divorce. Molly, a Rottweiler/retriever adopted from a feed store, succumbed suddenly to heart failure a few months ago. She was the kind of dog who never hurt a soul but made it clear she would gladly tear the limbs off anyone who threatened her family. Buoy, now retired in Eastern Washington, is a 200-pound Newfoundland who has been half-blind and half-lame for years but maintains an indomitable zest for life. Years back, we had a second Newfie, Barkley, and we all lived on 10 acres at the edge of what used to be a dairy farm. Our menagerie also included four cats; three pygmy goats; indoor and outdoor fish; a biblical plague’s worth of mice; occasional possum, raccoon, and coyotes; and — for an hour or so each — a horse and a peacock, escapees from neighboring homes.

Our dogs lived up to the cliché of being part of the family. When our daughter and son played baseball, softball, and soccer, we hauled our 400 pounds of dog to the ball fields in a succession of overburdened SUVs and pickup trucks. The idea was to get some exercise for the dogs and ourselves while still being able to watch the kids play. But it usually ended up as a circus act with inquisitive kids mauling the Newfies, who were busy fighting each other and Molly over fetch toys or bolting after someone’s mortified Chihuahua. Later, we’d stop at Dairy Queen and treat the dogs to ice cream cones, which Molly would gulp down while the Newfies licked theirs daintily into a vanilla-slobber froth. The trade-in credit for Heatherly vehicles was abysmal but mitigated by the entertainment value we enjoyed in the meantime.

Newfies were bred as water dogs and Buoy was aptly named. The first time we took him to a lake, when he was maybe nine months old, he attempted to “rescue” some boys who were diving off a fishing dock. Instantly noting the youngsters’ shouting and splashing, Buoy was riveted. You could see the wheels turning in his shaggy oversized head: Centuries of breeding told him someone needed saving and it was his job. He galloped the length of the dock, hesitated a split second at the edge, then plunged in with the grace of a garbage can falling off a curb. Upon hitting the water, he immediately abandoned his mission, reversed course, and paddled clumsily to shore, his snout straining skyward, the nostrils flaring desperately. From then on, Buoy was the strongest and most indefatigable swimmer on the lake. He wasn’t Michael Phelps, of course, but rather a tugboat, paddling and fetching nonstop for hours. He could tow swimmers effortlessly and didn’t even mind when kids would hitch a ride by grabbing his tail, which trailed him like a rudder.

A few months ago, circumstances left me and Molly, the rottweiler/retriever, as lone housemates. Although the dogs had lived outdoors, I welcomed some companionship and began letting Molly in for the night. We watched movies and ate snacks together and I appreciated her more than ever. However, I noticed she seemed uncomfortable when lying down and had less than her customary ravenous appetite. Although I first attributed this to her being separated from Buoy and the rest of the family for the first time, a trip to the vet revealed devastating news. Molly, inexhaustible her entire life, had severe congestive heart failure. Within days she was euthanized, the only alternative to keeping her on heavy drugs and in pain for the brief time she would have had left. My previous experience with a dying dog had given me more time to prepare for the loss. Barkley, the older Newfie, had lifelong orthopedic problems. After only seven years, he was disabled and ended up in hospice care in our garage. We fixed him up with a comfy bed, all the food he wanted, and regular visits from us. Because of his failing joints, it took him several painful tries to stand up and we had to help him limp outside for bathroom breaks. Seeing our once-heroic companion reduced to a wobbly shadow of his former self was heart-wrenching. To give him fresh air, we would leave the garage door open a few inches. One morning I went to check on him and was astonished to see he was gone. He had managed to drag his ravaged body under the door. I began searching the yard, fully expecting to discover him lifeless nearby. Instead, we found him an hour later a half-mile away, wandering our rural road as he and the other dogs had done numerous times after escaping the yard.

Within a few days after Barkley’s last lap, he was gone for good. I just hope that when my time comes, I can summon the strength to rise and stumble around the block once more, in honor of all the old dogs that have gone before me. 😺

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