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Letters to the Editor

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 letterstotheeditor@wsba.org or mailed to: WSBA, Attn: Bar News 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.

The banks’ role in foreclosures

I read with interest the article on Washington foreclosures [“The Practice of Law Is Like the Practice of Medicine — The Foreclosure Epidemic: Analogy and Analysis,” November 2010 Bar News]. Although a good primer on the law, it does not describe what the banks are actually doing. All I do is represent victims of unlawful foreclosures. Most of my clients have had a difficult couple of years, but are not back on their feet again. Unfortunately, the banks are not willing to negotiate a loan modification and are pushing through foreclosures.

I am finding that the banks and trustees are not following the law when they do so. They are not giving proper notice, they are not filing and recording the appropriate documents, and they sometimes have difficulty even proving they have title. When challenged, they are immediately stopping the process and offering to modify the loans. As such, rather than advising clients to accept cash for keys, I advise them to challenge the foreclosure. I hope others that represent homeowners that are being victimized by the banks will do as well.

Timothy MB Farrell, Bingen

Lawyers leading by example

Picture it: 1978, Ms. Health’s class, Molly was her name and bullying was her game. Lately, the news has given me flashbacks to third grade. In the last few weeks, five children have committed suicide at least in part due to being bullied. There has been the Assistant Attorney General in Michigan who has admittedly been personally targeting the 20-year-old student body president of the AAG’s former college and making what most would describe as vicious attacks. We have seen grown adults yelling, screaming, and pointing their fingers and worse at political rallies.

We might think this is just children, or children in adult bodies, behaving badly, yet week after week, I am reminded that there are many attorneys who seem unable to advocate for their clients without resorting to nothing less than schoolyard bullying behavior. We have no control, or very little, of the facts of a case. We do have control over what goes into a pleading, what is argued in court, how it is argued; and how we behave towards each other.

On the first day of law school, my class
was told that we were the leaders in this society. Whether that is true or not, that is how many view us. Let’s start acting like leaders. Let’s say enough to behavior that can be classified as nothing better than third-grade bullying.

Brita Long, Seattle

Defining diversity

Steve Toole writes that he is pleased with “diversity” in the WSBA ["President’s Corner," November 2010 Bar News]. True diversity would mean the presence of conservative, leftist, Democratic, Republican, union, management, socialist and capitalist advocates. It would mean contingent fee lawyers, industry lawyers, corporate lawyers, prosecutors, and defense lawyers. It would mean advocates of judicial power and advocates of judicial restraint. With a diverse group, it would be refreshing to have robust polite debate amongst factions. Often “diversity” is code for the opposite, for adhering to leftist policies. Hopefully this is not the case with the WSBA.

The WSBA is a state regulatory agency. It is unconstitutional for the agency to discriminate on the basis of race in allocating positions on the Board of Governors. It is further undemocratic and perhaps illegal for an administrative agency to include only representatives of the regulated industry, rather than the people of Washington. This may be the reason for lack of diversity.

Roger B. Ley, Astoria, Oregon

WSBA General Counsel Robert Welden responds:

Mr. Ley is incorrect if he believes the WSBA discriminates on the basis of race in allocating positions on the Board of Governors. The WSBA Bylaws provide that members of the Board may elect two at-large Governors based upon under-representation and diversity:

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

As for his other points about diversity, any member of the WSBA may run for election to the Board, regardless of his or her political, economic, or social leanings; and the Board has in the past considered whether non-lawyers should be elected to the Board but concluded not to do so. However, that is one of the issues that will be considered by the Governance Committee recently appointed by WSBA President Steve Toole.

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The Monkey and the Moldy Peanuts

Embracing Change in a Changing Profession

Deep in the jungles of South America, an old tribesman wanted to trap a monkey. Monkeys were very difficult to trap and as such, monkey meat was greatly prized by the villagers. The hunter dug a small hole in the trunk of a large tree and he placed three fresh peanuts in the small hole, hoping to lure a monkey with the aroma of the peanuts. A monkey smelled the peanuts, reached his open hand in and grabbed the peanuts, closing his fist around them. Now the monkey was trapped because the hole was too small for the monkey to pull his hand out while holding the peanuts in a fist.

The hunter watched in amazement as the monkey twisted and grappled, yanking his arm, frantically trying to get free, yet refusing to let go of the peanuts.

The hunter got caught up in the intrigue of the monkey’s dilemma and decided not to kill the monkey right away. He decided to see just how stubborn the monkey could be. The day wore on and the monkey continued to struggle, apparently never once considering releasing the fistful of peanuts. Alas, nightfall was coming and the hunter had to return to his tribe before it got dark. The next day, the hunter checked in amazement as the monkey twisted and grappled, yanking his arm, frantically trying to get free, yet refusing to let go of the peanuts.

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The monkey had become gaunt and the hunter could see him deteriorating physically. The monkey looked at the hunter with despondent resignation, but never once did the monkey seem to consider the possibility of releasing the now-moldy peanuts.

The hunter walked a few paces out of the monkey’s reach and opened a basket he had prepared that morning. It was a virtual feast, steaming dishes of rice, meat, fruit, and water. The hunter laid it all out on the forest floor like a holiday banquet. The monkey watched with rapt attention. It was plain that the monkey was very hungry and thirsty and wanted nothing more than to dive into the feast, except he refused to release his moldy peanuts, even for an instant. The monkey whined a high-pitched mewing of misery but nothing about the feast could convince the monkey to release the peanuts. It was as if the monkey had forgotten why or what he was holding within the tree trunk, but he remained committed nonetheless.

Several days later, the hunter once again passed by the monkey trap, hoping somehow the monkey had freed himself. He was saddened to find the lifeless body of the monkey lying next to the tree, his hand finally freed from the enslaving hole. Next to his open hand lay three moldy peanuts.

As in all fables, this one has lessons from which everyone can learn. Over the years, I have come to realize that some of the moldy peanuts that so many of us are unwilling to let go of is the belief that change is something to fear. We hold on so tightly to what we have that we don’t consider, or sometimes even see, other options that are available to us. For instance, it doesn’t matter how unhappy or unfulfilled we are in our present job; we settle for getting a paycheck. We have adjusted our lives so that we can put up with the job and get by. To make a change, either by getting a new job or starting our own practice, has so many uncertainties that we are afraid to take that next step. We would rather have the moldy
To survive, many attorneys will have to tighten their belts, get creative, and show great courage. It would be easy to fear change and throw in the towel or accept a less-than-satisfying job just so that you can barely get by. Of course, this assumes that there are viable alternatives.

I don’t have any magic answers for anyone, other than to say in my experience, creativity is at its peak when one is excited and upbeat, not when one is depressed and focusing inward. Looking at the glass as half-full as opposed to half-empty is the starting point. This gets us back to those moldy peanuts. If we let our fear of change control us and we continue to hang onto those moldy peanuts, we will be unwilling and unable to see the opportunities that exist. These are the opportunities that take creative thinking and that often require us to look outside the box.

The leadership of the Washington State Bar Association is well aware of the horrible economy, the changing practice of law, and the great dissatisfaction with life and career that so many of our members are going through at this time. As Executive Director Paula Littlewood outlined in her November Bar News column, the Board of Governors has adopted a strategic goal for 2011–2013 that tries to address these concerns: “The WSBA should use existing programs, and should implement new programs, to improve our members’ level of satisfaction with their lives and with the practice of law.” In addressing this dissatisfaction, we must consider not only limited financial opportunities, but also limited, or perceived limited, opportunities to serve and give back to our communities. To help achieve this goal, the WSBA is going to focus on enhancing the culture of service within the WSBA membership; providing more assistance to lawyers with the business side of practicing law; providing more assistance to lawyers in avoiding or dealing with the stress of practicing law; and conducting a detailed study of the composition of the legal profession in Washington and retention rates within our profession.

In last month’s Bar News, Executive Director Littlewood described several of the programs and projects that already exist or are underway, such as the Moderate Means Program, the Contract Attorney Panel, the Lawyers Assistance Program (LAP), and the Law Office Management Assistance Program (LOMAP). Another program she briefly referenced was iCivics. This is a nationwide program. We are teaming with local educators and under the state leadership of Supreme Court Justice Mary Fairhurst and Margaret Fisher, we are going to bring the iCivics online interactive games to middle schoolers throughout the state. The Washington State Bar Association’s role will be to recruit and train our members to join with the teachers and go into the classrooms and lead the students in the online games that are designed to teach the middle schoolers about the Rule of Law, the workings of the U.S. Supreme Court, and other civics education that is now missing from our school curriculum. You will hear more about this later.

The efforts of the WSBA are not going to stave off the tides of change. Change is inevitable. The WSBA is hopeful that it can assist the lawyers who are dissatisfied with their lives and practices to address the changing times head-on and with support. It is my belief that we should embrace change; consider it our friend. Change is an opportunity and should be a source of excitement and hope. It is a guiding light steering us in the direction we need to next go in our life’s journey. To resist change is nothing but settling; settling for less than who we are and who we can be. In considering your options, trust that you can let go of those moldy peanuts and not only survive, but thrive.

WSBA President Steven G. Toole can be reached at steve-wsba@stoolelaw.com or 425-455-1570.
Enhancing Our Culture of Service

In last month’s column, I outlined the WSBA’s Strategic Goals for 2011–2013, one of which is to enhance the culture of service within the WSBA membership. The Strategic Planning Committee and the Board of Governors deliberately chose the word “enhance” because we know that WSBA members already have a strong commitment to giving back to the community. That being said, we also realize that with a membership of more than 34,000, how members would like, and are able, to give back varies drastically.

Thus, as we work to implement this goal, the WSBA is working to create a menu of service opportunities for our members. At its core, ours is a profession of service, so by creating a range of opportunities for giving back we hope to help our members provide service in areas that complement their skills and interests. Among these options is the recently launched Moderate Means Program. I highlight this Program because it will be launched this month, and I hope you will consider signing up to take a case through the Program.

The WSBA Moderate Means Program, a Partnership with Washington’s Law Schools

A partnership between the WSBA, Gonzaga University School of Law, Seattle University School of Law, and the University of Washington School of Law, the WSBA Moderate Means Program is a statewide reduced-fee lawyer-referral program designed to help bring greater access to justice for people of moderate means in Washington state.

The WSBA’s role is to handle recruitment, training, and outreach for the lawyers signing up for the Program. The three law schools will handle the intake and referral of cases to lawyers. The Law Schools’ Intake and Referral Teams will include one project attorney for Western Washington and one project attorney for Eastern Washington based at the law schools and funded by WSBA. The Western Washington project attorney will oversee law students at Seattle University School of Law and the University of Washington School of Law. The Eastern Washington project attorney will oversee law students at Gonzaga University School of Law. Law students at the three schools will conduct client screening and intake, and refer appropriate cases to participating lawyers.

Serving Those Who Fall in the Gap

The main goal of the Program is to bring greater access to justice for people of moderate means in Washington state through attorneys who agree to represent these clients for a reduced fee. An important aspect of the Program is that it extends legal services to moderate-income Washingtonians who are within 200 to 400 percent of the federal poverty level (FPL). This population is targeted because these individuals are not eligible for free legal services, which are typically available to those in the 0–200 percent range of the FPL, and they cannot afford a lawyer at full prices. For example, a family of four whose annual income does not exceed $88,000 would be eligible to receive services through the Program.

By providing legal assistance at a critical time, participating lawyers may be able to prevent these individuals from dropping below 200 percent of the FPL and ending up with more legal problems. In some instances, when low-income Washingtonians below 200 percent of the FPL are not eligible...
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Neither the WSBA nor the law schools will be involved in setting, monitoring, or enforcing fee structures. The fees lawyers charge will be an agreement between lawyer and client only. Lawyers are encouraged to reduce their normal fees depending on the income level of clients. Using the FPL, the WSBA has created the following reduced-fee sliding-scale as a guideline for participating lawyers. These are recommendations only:

<table>
<thead>
<tr>
<th>CLIENT INCOME</th>
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<tr>
<td>0–200% FPL</td>
<td>Pro bono*</td>
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<td>200–250% FPL</td>
<td>Reduce normal fee by 75%</td>
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<tr>
<td>250–350% FPL</td>
<td>Reduce normal fee by 50%</td>
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<tr>
<td>350–400% FPL</td>
<td>Reduce normal fee by 25%</td>
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*Clients who are under the 200 percent of the federal poverty level will initially be referred to and screened by an Alliance for Equal Justice agency (e.g., the CLEAR line). If the client cannot obtain pro bono representation through the Alliance, then the Program will attempt to find a lawyer willing to take the case pro bono or at a reduced rate.

A Culture of Service
As I wrote in my November column, I believe that at our core, lawyers want to serve. Many of us went to law school because we wanted to be of service and to make a difference. The WSBA is committed to bringing enhanced services, like the Moderate Means Program, to our members and also to providing avenues for lawyers to give back to the communities of which they are such an integral part.

Whether you are interested in taking a case, mentoring, or serving as faculty on a Program-related CLE — or maybe all three — please consider signing up at www.mywsba.org when the Program is launched this month.

Paula Littlewood is the WSBA executive director and can be reached at paulal@wsba.org.
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- Statutes of Limitation and Claim Filing Requirements for Claims Against Governmental Entities
- Commencing Litigation - The Initial Pleadings
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Doing Business in Washington State [Fifth Ed.]

Debuts in China

WSBA International Practice Section’s publication key in encouraging foreign trade

December 2010  |  Washington State Bar News  | 17

BY RANDY J. ALIMENT AND TRACEY X. ZHENG

On September 13, 2010, Governor Christine Gregoire led a delegation of more than 100 Washington business, education, science, and technology leaders to China and Vietnam in an effort to expand export opportunities, encourage new investments, and create new jobs in Washington state. We were among the delegates invited to join the governor on this trip.

To support the governor’s mission to China, the WSBA International Practice Section, in collaboration with the Washington State Department of Commerce, released the revised and updated fifth edition of Doing Business in Washington State. The guide aims to introduce foreign investors and business representatives to fundamental business issues in Washington. By helping to create a basic understanding of our legal and business concepts, the guide provides foreign investors with the confidence needed to succeed in doing business in our state. So along with our luggage, we packed well over 1,000 discs containing English with Chinese translation of all 27 chapters and a video introduction to the many business and recreational opportunities in our state, narrated by Governor Gregoire. The guide was featured at our business meetings in Beijing, Shanghai, and Guangzhou and was scooped up by the Chinese business and political representatives who attended.

So why did the governor schedule this mission and why did she ask the WSBA to support it with our book? The answer became clear as we prepared for, and then participated in, this important trip. Our state has a long and cooperative relationship with China dating back to the 1860s, when the first Chinese immigrants arrived in Seattle. In 1909–1910, the University of Washington established its first China studies program. Washington’s positive relationship with China continued with its political leadership, including Senator Warren Magnuson, who became a leading advocate for normalized relations with China during the 1950s, and former governor, now U.S. secretary of commerce, Gary Locke. China’s political leadership is similarly quite friendly with Washington; every Chinese president since Deng Xiaoping in 1979 has made Seattle the first stop on official visits to the United States. When Chinese president Hu Jintao visited Seattle in 2006, he commented that Washington state serves as an important American gateway to China and the rest of Asia.

In 2005, Governor Gregoire led her first trade mission to China. The business ties made during that trip have since netted $23 million in sales for Washington companies. Our governor decided to return this year, in large part because China is a country that values commitment and relationships. They call it guanxi, meaning mutually beneficial relationships. When doing business in China, one must understand the cultural significance of guanxi. Governor Gregoire’s return trip to China with several business leaders from our state showed the Chinese people, government, and businesses that Washington remains dedicated to continuing our long and prosperous relationship with China. Washington and China have very good guanxi.

Despite the economic downturn in the United States and most of the world, the Chinese economy grew nearly nine percent in 2009, due in large part to strong government stimulus investments. This growth has created a large and growing middle class in China, who are demanding even more world-class products from around the globe. They are, in fact, playing an increasingly important role as consumers, much to the benefit of Washington exporters. China is also the fastest-growing source of global tourism, and it is expected that by 2012, nearly 100,000 Chinese tourists will visit our state annually. To capitalize on this rapidly growing economy, Governor Gregoire
established the Washington Export Initiative, designed to open additional export opportunities for Washington businesses and to create new jobs for Washington residents. Under the initiative, State agencies are charged with helping to increase the number of Washington exports by 30 percent, thereby aiding 5,000 Washington businesses to achieve $600 million in new export sales over the next five years. With 8,000 Washington companies currently exporting products and services overseas, Washington is the largest U.S. exporter on a per capita basis. One in three Washington jobs is tied directly to trade. Efforts to expand Washington’s strict trading opportunities complement the national export initiative and President Obama’s plan to double U.S. exports by 2015.

Doing Business in Washington State, authored by several WSBA members, was revised and updated at the request of James Palmer, the Washington State Department of Commerce economic development manager. The plan was to use it to support the governor’s trade mission to China. Professor Tarrant Mahony, of the Temple Program, Tsinghua University School of Law, and Professor Daniel J. Mitterhoff, director, Beijing Autumn Semester Program in Comparative Business Law, Central University of Finance and Economics, coordinated the translation of the book from English to Chinese. Finally, Margaret Morgan, WSBA associate director for continuing legal education, helped assemble the finished product. This comprehensive “introductory how-to” publication on business investments and opportunities in Washington covers the A to Z of international business law and procedures from entity creation to alternative dispute resolution; from tax law to clean-energy technology; and from the Uniform Commercial Code to commercial litigation. Doing Business in Washington is the one-stop shop for nearly all fundamental legal issues related to business. There are also future plans to translate the guide into other foreign languages, including Spanish, German, Korean, and Japanese.

The China portion of the governor’s trip was focused on improving market access for Washington products and businesses, while forging a closer relationship with Chinese companies interested in establishing a presence in Washington. At the same time, the trip encouraged an increase in leisure and business travel to Washington and promoted educational and cultural exchanges between Washington and China. Although the trip to China was only a short six days, results were seen immediately: the American Enterprise Center in Shanghai pledged to invest in and assist two Washington biomedical companies, Geospiza and Iverson Genetics, to enter and succeed in the rapidly growing Chinese market. The Center also told the governor that it is looking to invest in possibly hundreds of Washington companies over the next five years.

The success and effectiveness of the guide was evident throughout this trip, as delegates and guests who received the guide voiced their appreciation for the information it provides. The impact of this guide, like the governor’s trip, will be felt for many years to come, helping to place Washington state as the premier destination for international businesses and visitors.

Randy J. Aliment and Tracey X. Zheng travelled with Governor Gregoire on this trade mission to China. Mr. Aliment is a member in the Seattle office of Williams Kastner and serves on the firm’s board of directors. He collaborates extensively with the firm’s Chinese affiliate, Duan & Duan, working in their offices in Shanghai, Beijing, and Hong Kong in his representation of U.S. and Chinese entities in various transactions. He was the editor of, and a contributing author for, Doing Business in Washington State. Ms. Zheng is a senior associate in the Seattle office of Williams Kastner. Her legal practice focuses on tax law and commercial litigation. She was a contributing author for Doing Business in Washington State.

To learn more about and to order a copy of the WSBA-CLE/International Practice Section’s joint publication Doing Business in Washington, see the FYI item on page 42.
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The Physics of Pronunciation and Distressed Lawyers

by Robert C. Cumbow

Last time I wrote about the vagaries of the pronunciation of American English. This time I want to follow up on that discussion in two ways. First, a little more about pronunciation, inspired by an e-mail I received from a reader’s sharing of pet pronunciation peeves, and leading to the discovery of a rule of English pronunciation. Then, having introduced you to Mondgreens in my last column, I’d like to tell you a little about another phenomenon, Crash Blossoms, which result not from mispronouncing or mishearing words but from misplacing them.

A loyal reader who cloaks himself (herself?) behind the veil of the mysterious pseudonym “Southie” wrote to share a few pronunciation peeves. Southie called these “working-animal peeves,” leading me to conclude that they are much more serious than pet peeves.

One of Southie’s peeves I had mentioned in my last column: pronouncing the word “forte” (meaning a strength or specialty) as if it were the musical term for strong or loud, rather than with a silent “e.” Many, perhaps most, folks pronounce the word “fortay,” no matter which of the two meanings is intended. Correctionists will point out that in a phrase such as “the weirdness of language is my forte,” the word should be pronounced simply “fort”; while in music, “fortay” is correct. In fact, though, both usages come from the same Latin word for “strength” or “power,” descending to us through Italian, and there’s no reason we shouldn’t pronounce them both the same way — the Italian way, which would be something in between the two pronunciations we currently accept: the “e” shouldn’t be dragged out as in “fortay,” but it shouldn’t be silent, either. Rather it should be barely aspirated, sounding something like “fort-teh.” The ending of “latte” should sound that way, too—but ”lah-tay” is so well established in coffee-English that I’m afraid there’s no going back. The Italians laugh at us, though, and who can blame them?

Southie also complained of the mispronunciation of “short-lived” with a short “i.” This mispronunciation is so nearly universal that it’s more common than the correct pronunciation, and has undoubtedly become validated by many dictionaries. The term “short-lived” does not mean “having lived (or been lived in) for a short time”; it means “having a short life.” A person possessed of longevity is “long-lived,” a flash in the pan is a phenomenon that is “short-lived,” and in both of those words the “i” is properly long, like the i-sound in the word “life,” from which both words come.

But, Professor Bob, you ask, the word “live” comes from “life,” too — so why don’t we pronounce it with a long “i”? Well, we do, when we are using it as a synonym for “alive” (“live bait”) or in its sense of physically present (“a live concert”). We don’t when we mean it in its ordinary verb sense of “to exist” (“live long and prosper”). The term “lived” in “short-lived” comes from the noun “life,” not from the verb “live,” and that’s the closest I can get to explaining why it should have a long “i.” Think of “short-lived” as a corruption, or a simplification, of the word “short-lifed,” and you may see the logic.

Pronunciation and the Laws of Conservation

Interestingly, Southie also observed, Americans add a letter when saying “Tijuana” (as if it were “Tiajuana”) but subtract one when saying “Niagara” (as if it were “Niagra” — and I used up all my Viagra jokes last time, so don’t expect any more here), “I think,” wrote Southie, “it has something to do with physics.”

This was a moment of revelation for me. Could it be that the superfluous syllable added to “Tijuana” has a direct relation to the syllable elided from “Niagara”? That this tendency to add a syllable where none belongs is balanced by a tendency to drop a syllable that does belong? Could there be a law of conservation of syllables requiring
this, so that for every “realator” there is also a “Wensday”?

The answer is a resounding yes! In fact, we already have a precedent for this sort of thing in the Law of Conservation of Rs. This law, in case you are unfamiliar with it, provides that every R dropped from the end of a word must turn up at the end of another word that lacks an R. The balance of nature demands that if you are going to pronounce “car” as “cah,” you must also pronounce “law” as “lore.”

This is because a dropped R behaves like a free electron, moving around in word space until it finds an R-less ending to which it can attach itself. Interestingly, the same phenomenon can be observed even with respect to internal Rs. Though you would expect them to be more tightly attached, “shielded” by the other letters around them, this is not the case. So, for example, “bird” might be pronounced “boid”; but if this happens, then the Law of Conservation of Rs demands that “toilet” be pronounced “terlet.” So we observe that this impulse is not limited by the position of the R in the original word. So far, however, there are no reported instances of initial Rs being dropped.

There are conflicting schools of thought regarding this tendency of our language to conserve Rs. Some say it is due to a characteristic of the R itself, that the R sound wants to be free; but having freed itself, needs to re-attach, because nature abhors a free-floating R. Others believe that words that do not have Rs yearn to attract them, while words that do have Rs are compelled to be rid of them. But no matter how it is described, this never-ending tension causes a strange orderliness in what at first seemed to be a chaotic tendency in English pronunciation. Professor Joseph Birack has stated that “while there is order in the universe, it is not at all what we had in mind,” and this is a splendid example of that principle as applied to spoken language.

This is a fascinating topic for further research. Rs have begun behaving in new and mysterious ways lately, ways that have not been as easily charted or explained as the Law of Conservation of Rs would seem to suggest. Consider, for example, the phrase “all right” — which, by the way, has always been a two-word phrase. There is no such word as “alright,” though that fact seems somewhat arbitrary in light of the fact that we have “all ready” and “already.” However, “alright” is simply a misspelling of “all right” (it means the same thing); whereas “already” has a different meaning from “all ready,” But I digress.

In certain quarters, the phrase “all right” has begun to be truncated, first to “ah-ight” and more recently to simply “ight.” So the behavior is not limited to Rs. Nor is it restricted to the loss of letters. In the part of the country I suspect Southie comes from, a W attaches itself onto the front of a short-O sound, changing “Bobby” to “Bwobby,” “coffee” to “quaffy,” and “Boston” to “Bwoston.”

**Mispronunciation Has Its Own Logic**

Another reader wrote to expand my logbook of mis-hearings, saying that he and his brother grew up wondering why their father wanted his beef accompanied by “old rotten potatoes.” Yet another pointed out that some mispronunciations actually go beyond confusion about the proper saying or hearing of a word, and reveal a new logic of their own. She reported, for example, hearing someone say, “His political decisions are dictated by his affluent donors.” A word such as “affluent” may spring to life as a result of the speaker’s (or writer’s) misunderstanding of a single word; but it may also arise from confusing two words. In this case, “affluent” and “influential” have become conflated and given us “affluential.” And the best part is that this word does double duty and makes the sentence more meaningful than either word alone could have done.
Another recent sighting (or hearing): “The details are intrical to the process.” Could be a combination of “intricate” and “integral”; could be a new diet drink.

My correspondent called these “hybrid words.” Lewis Carroll, who personally invented many such words (such as “fumious”), called them “portmanteau words,” because of the extra baggage they carry. They illustrate the point that what may seem no more than an ignorant error may in fact have a compelling logic all its own. It may even be that every mispronunciation has its own logic, waiting to be discovered, if we would only try hard enough. It is with some regret that I leave such other laws of mispronunciation unexplored for now, but these must remain subjects for further research, because I have already labored pronunciation too much, and I promised to introduce you to the wonderful world of Crash Blossoms.

**Distressed Lawyers**

Not long ago, I received an e-mail with an intriguing subject line: “Preventing Sexual Harassment Training.” You can bet I opened it quickly. Could it be that someone was promoting ways to prevent sexual harassment training? You can see how a person might want to do that. After all, we are trying to do away with sexual harassment, so why should we want to allow training in it?

Of course, the frequently encountered phrase “sexual harassment training” designates not a course in how to do it but rather ways of becoming sensitized to it, so that it may be avoided. And so it was with the e-mail I received, which, as it turned out, referred not to the prevention of sexual harassment training but to training in the prevention of sexual harassment. I suspect that the original title of the e-mail was “Sexual Harassment Training,” but its author recognized the unintended meaning in that construction. However, instead of fixing the problem, the author only created another unintended meaning.

This points out the importance of word placement in our language. English allows its speakers and writers more latitude in word-order than do many other languages; but the dark side of the expressive freedom that gives us is that we must be extra careful how we order our words, lest we be misunderstood. Thus, we might say “Sexual Harassment Prevention Training” or “Training in Preventing Sexual Harassment,” but we are also free to put an entire adjectival phrase in front of a noun and say “Preventing Sexual Harassment Training” — and only after doing so, do we realize that it could convey the very opposite of what was intended.

This is what’s known as a “crash blossom.” Another example presented itself to me recently when I saw a headline in a legal news publication referring to “distressed commercial real estate lawyers.” I assumed the story concerned commercial real estate lawyers who were distressed about the decline in work in their chosen field due to the current economic situation. You can tell that I don’t practice in the field of real estate — let alone “distressed commercial real estate,” which I quickly found out is a specific focus within the field of commercial real estate, dealing with devalued properties subject to foreclosure.

When you put a separate modifier in front of a phrase that already contains one or more modifiers, it is not immediately clear whether all of the modifiers are meant to modify the same noun (a distressed lawyer who practices commercial real estate), or the first modifier separately modifies the remaining string of modifiers (a lawyer who practices in the field of distressed commercial real estate). Under the “rules” (such as they are) of English usage, the phrase could mean either thing. This is why I occasionally get snickers when I mention that I am not only a trademark lawyer but also an alcoholic beverage lawyer.

Why are these word-collisions called “crash blossoms”? They occur most commonly in news headlines in which a word
has been chosen and placed in such a way that it may be read as one part of speech or misread as another. The headline giving rise to the name was VIOLINIST LINKED TO JAL CRASH BLOSSOMS. An editor read the headline, seeing "blossoms" as a noun rather than a verb, and wondered what a "crash blossom" was. Thus did a new species of unintended humor find its name.

Nancy Friedman — whose surname could easily be part of a crash blossom itself — cites in her (highly recommended) blog "Fritinancy" an article by John Zimmer and another blog by John McIntyre, illuminating the concept of a crash blossom and providing several of the most comical examples. I pass seven of the choicest on to you for your amusement — but also for your education, lest something you write in earnest should end up being held up to ridicule for having confused or amused where it intended to inform or advocate.

SQUAD HELPS DOG BITE VICTIM
GATOR ATTACKS PUZZLE EXPERTS
MCDONALD’S FRIES HOLY GRAIL FOR POTATO FARMERS
RED TAPE HOLDS UP NEW BRIDGE
ELIGIBLE PET OWNERS CAN GET FREE NEUTERING
MENTAL HEALTH PREVENTION OFFICE OPENS
ASTRONAUTS PRACTICE LANDING ON LAPTOPS

Always proofread your own work to make sure it doesn’t make you — or your reader — laugh. Unless, of course, you wanted it to. Word choice and placement have consequences. Thus endeth the lesson.

Robert C. Cumbow, a shareholder at the Seattle firm of Graham & Dunn PC, contributes occasional columns on language and writing to Bar News. He teaches at Seattle University School of Law and in its Film Studies Program, and writes on law, language, and movies. He thanks Estera Gordon, Aaron Caplan, Nancy Friedman, Martha Brockenbrough, Patrick J. Murray, and “Southie” for their contributions to the continuing voyages that have now taken this wandering starship of a column well past its original five-year mission.
Did This Washington Case Cause the Famous “Switch in Time That Saved Nine”? 

BY JUSTICE GERRY L. ALEXANDER

Last fall, I participated as a presenter at a CLE held at the Temple of Justice and sponsored by the Washington Courts Historical Society. The session focused on 11 landmark cases that over the years have gone from Washington’s trial courts to the state Supreme Court, and in a few instances on to the Supreme Court of the United States. Interestingly, three of the cases we examined came out of the Chelan County Superior Court. One of them had the distinction for many years of being the most cited decision of the Washington Supreme Court, Thorndike v. Hesperian Orchards, Inc. Readers may recall the excellent two-part article about that case, written by Seattle attorney Bob Henry and published in the July and August 2009 issues of Bar News. The second Chelan County case we discussed at the CLE was Wilbour v. Gallagher, a case that led to a key decision of the Washington Supreme Court relating to the environment. Indeed, it was that case that led to much of the environmental legislation that was passed during the administration of Governor Dan Evans, including the Shoreline Management Act.

It was the third of the Chelan County cases that I was honored to present on that day, and it is my favorite. I favor it not only because it is an important part of the legal history of our state and nation, but also because it arose out of a lawsuit that was brought by an ordinary Washingtonian of modest means, by any measure, was in no position of influence in her community. This person was simply seeking what most litigants want when they come to court, and that is to have the court fairly apply the law, including any applicable statutes. Fortunately, even though the amount of controversy in that case was not great, the plaintiff was fortunate to find excellent attorneys who were willing to represent her throughout the entire course of the litigation. I have a strong sense that the lawyers who handled her case from beginning to end were doing so pro bono because they believed their client had been wronged and that resort to the courts was the only way she could obtain justice. What makes this case particularly notable is that the result this ordinary citizen of our state achieved has benefitted millions of other low-income Americans who were unknown to her. Indeed, the impact of the final decision in the case was felt at the highest levels of our nation’s government, up to the Office of the President of the United States. The case I am talking about is Parrish v. West Coast Hotel Co., a case that started out in 1935 in the Chelan County Courthouse in Wenatchee.

Now some readers of this article may know a bit about the Parrish case, but for those who are not familiar with it, let me give you a few of the facts that led to this lawsuit. From 1933 to 1935, a woman by the name of Elsie Parrish worked as what in those days was known as a chambermaid. Her place of employment was the Cascadian Hotel in downtown Wenatchee, a building that still stands on Wenatchee’s main downtown street.

Ms. Parrish commenced her lawsuit in Chelan County Superior Court against the operator of the Cascadian, the West Coast Hotel Company. She claimed there that the
wage she had been paid by the hotel was less than the minimum wage as fixed by our state’s Industrial Welfare Commission. That commission, pursuant to a state law, had set the wage for women and children at $14.50. That was not $14.50 per hour, or even $14.50 per day. Rather, it was $14.50 per week, for 48 hours of work. Although that wage seems shockingly low, we must remember that in 1935 our nation was in the midst of the Great Depression and such wages were then par for the course. In her complaint, Ms. Parrish sought back wages, which she claimed totaled $216.96 — today a small claims court matter. At trial, which occurred in October 1935 at the Chelan County Courthouse, Ms. Parrish conceded that she had endorsed the paychecks that had been tendered to her in the lesser amount, saying, “I took what they gave me, because I needed this work so badly and I figured the company would pay me what was right . . . the state wage.”

The then-judge of the Chelan County Superior Court, Judge W.O. Parr, presided at the trial. Relying on a 1923 decision of the United States Supreme Court, *Adkins v. Children’s Hospital*, he concluded that Washington’s statute, which authorized the Commission to establish a minimum wage for women, was unconstitutional as an interference with freedom to contract. Judge Parr, therefore, awarded Ms. Parrish only $17.00, that sum being the difference between what she had been paid and the amount the hotel had agreed to pay her, which was less than the statutory minimum wage. The record showed that the hotel company had offered the $17.00 to Ms. Parrish after she commenced her suit, but she refused the tender.

Elsie Parrish appealed the trial court’s decision to the Washington Supreme Court. On April 2, 1936, our court reversed Judge Parr, sustained our state’s minimum wage, and directed judgment for Ms. Parrish. In doing so, the court did its best to distinguish the *Adkins* decision, hanging its ruling largely on the fact that the *Adkins* case dealt with an act of Congress that applied only to the District of Columbia. Our court said, “The United States Supreme Court has not yet held that a state statute such as one at the case at bar is unconstitutional and until such time *Adkins v. Children’s Hospital* is not controlling.” Frankly, this statement was rather slim support for the decision but it was about all the Washington Supreme Court had going for it, since the *Adkins* case was a U.S. Supreme Court case and was factually “on all fours,” as Superior Court Judge Parr had said in his summation.
Happily for the hotel, at least, the U.S. Supreme Court granted its petition to review the decision of the Washington Supreme Court. Argument was thereafter held in Washington, D.C., in December 1936, in the relatively new U.S. Supreme Court building. It is worth noting, parenthetically, that things moved fast in those days — a little over one year from a trial in Wenatchee to a hearing at the U.S. Supreme Court in Washington, D.C., with a stop in between at the Washington Supreme Court in Olympia. Needless to say, the arguments of counsel at the U.S. Supreme Court focused primarily on the continued viability of the above-mentioned Adkins decision.

Incidentally, although Wenatchee attorney C.B. Conner represented Ms. Parrish at trial and on appeal to the Washington Supreme Court, at the U.S. Supreme Court she was represented by Sam Driver of Wenatchee, an attorney who later served as a justice of the Washington Supreme Court. W.A. Toner, an assistant attorney general of the state of Washington, also appeared and argued in support of the constitutionality of Washington’s minimum-wage law. The West Coast Hotel Company was represented by Seattle attorneys E.L. Skeel and John Roberts. They had replaced Wenatchee attorney Fred Crollard, who had represented the hotel company at trial and on appeal to the Washington Supreme Court.

Before I tell you what the U.S. Supreme Court did in this case, let me step away from the Parrish case for a moment and say a word about some of the political and judicial currents swirling around the other Washington at this time. In 1936, the U.S. Supreme Court was precariously balanced between conservatives and liberals — not unlike today’s Court. In the early days of Franklin Roosevelt’s long tenure as president, which had commenced in 1933, a group of unyielding conservatives, commonly known as the “four horsemen,” had the upper hand on the Court.

In 1936, the U.S. Supreme Court was precariously balanced between conservatives and liberals — not unlike today’s Court. In the early days of Franklin Roosevelt’s long tenure as president, which had commenced in 1933, a group of unyielding conservatives, commonly known as the “four horsemen,” had the upper hand on the Court.
four horsemen of the apocalypse. Those who admired them saw them more as the four horsemen of Notre Dame, the famous Notre Dame backfield of 1924. Whether one liked them or not, it was a fact that the members of the Court were considered by many to be rather old, their average age being 71. Five of the justices were 74 or older. They were also, in a philosophical sense, 19th-century men who regarded laissez-faire, the principle that government ought to leave the marketplace alone, as enshrined in the Constitution. Three reliable liberals stood against them in many cases, Louis Brandeis, Benjamin Cardozo, and Harlan Fiske Stone, the latter justice eventually becoming chief justice. This meant that the balance of power resided in the then-chief justice, Charles Evans Hughes, and Justice Owen Roberts.

Chief Justice Hughes was a very distinguished-looking man. In pictures he looks like he had been sent to the Court by central casting in Hollywood. He also had a fabulous career. The chief justice had served as governor of New York in the early part of the 20th century, and in 1910 was appointed as an associate justice of the U.S. Supreme Court by President Taft. He stayed on the Court until 1916, when he was nominated by the Republican Party as its candidate for the presidency. Hughes lost to President Woodrow Wilson in a close election that year and returned to law practice where he stayed until 1921, when he began a four-year stint as secretary of state. In 1930, President Hoover appointed him chief justice of the U.S. Supreme Court, and he served in that position until his retirement in 1941. Justice Felix Frankfurter once remarked that to see Hughes preside was like watching Toscanini lead an orchestra.

The other swingman, Justice Roberts, was an interesting person as well. He was from Pennsylvania and had come to the Court in 1930 by virtue of appointment by President Hoover. Early on in his Supreme Court career he was thought to be somewhat of a liberal, but this reputation did not last. Starting in the mid-1930s, he began to side with the Court’s conservatives in a series of controversial rulings that toppled pillar after pillar of New Deal legislation such as the National Recovery Act (NRA), Agricultural Adjustment Act (AAA), and Railroad Employees Act. Indeed, between 1934 and 1936, the Court rendered a dozen decisions declaring New Deal measures invalid.

Pertinent to the Parrish case, Justice Roberts joined with the four horsemen in the spring of 1936 in overturning a New York state law that, like Washington’s, set a minimum wage for women. This decision, because it dealt with a state law, cast even greater doubt on the correctness of the decision that the Washington Supreme Court had handed down in favor of Elsie Parrish.

These decisions by the Court’s “old men” infuriated President Roosevelt, who told reporters that the U.S. Supreme Court had created a “no man’s land” where neither the federal nor state government was permitted to act on the citizenry’s behalf. One ardent New Dealer decried the Court’s actions as “economic dictatorship.”

The backlash against the Court’s decision was thought to have contributed to President Roosevelt’s landslide win in the
The backlash against the Court’s decision was thought to have contributed to President Roosevelt’s landslide win in the presidential election of November 1936. Very likely it emboldened him early in 1937 to unveil his famous “court-packing plan.”

Later, Justice Roberts again joined the liberals in upholding the Wagner Labor Act, and six weeks later he was with them again when the Social Security Act passed constitutional muster. Although the president’s court-packing plan soon fizzled, Justice Roberts’s conversion from conservative to liberal engendered a bit of Washington, D.C., humor based on Benjamin Franklin’s famous maxim of thrift that “a stitch in time saves nine.” The new post-Parrish version was that “a switch in time saves nine.”

Although Roosevelt’s court-packing plan eventually fizzled in Congress, historians have pondered whether the spectre of it caused Justice Roberts to desert the four horsemen. We will never know for certain, because Justice Roberts was a private man and was quite closemouthed about his thinking in the matter for the remainder of his life. The closest he came to revealing his thoughts was in a memorandum he drafted after he stepped down from the bench in 1945. He did this at the request of Justice Felix Frankfurter, and it was published after Justice Roberts’s death in 1955. In it, he attributed his change of heart in the two cases involving the minimum wage (Morehead and Parrish) to what he called the “timidity” of the New York lawyers in Morehead to request that the court overturn the Adkins decision. Actually, this after-the-fact explanation is not really accurate because the petition for writ of certiorari in Morehead indicates that the New Yorkers wanted Adkins overturned. Regardless of what caused Roberts to vote in favor of Elsie Parrish’s position and overturn Adkins and Morehead, there is no question that the opinion in Parrish v. West Coast Hotel Co. has had enduring significance. Not only did it give the green light to the states to pass minimum-wage laws, which are
ubiquitous today, but it quickly opened the floodgates to other New Deal legislation such as the Social Security Act, which, whether one likes them or not, have had a huge effect on just about everyone in our nation.

It is the view of some that the Court’s decision to grant review of the Parrish case had nothing to do with the court-packing plan. They say that because the plan wasn’t unveiled by President Roosevelt until after review was granted. It may well be that the liberals on the Court joined by the chief justice granted review in Parrish because they were looking for a case that would allow them to overrule Adkins, an opinion that even the chief justice at the time, former President Taft, a conservative, didn’t like — indeed, he dissented. It takes only four votes to grant review at the U.S. Supreme Court — unlike our court in Olympia, where it takes five — and it is possible that the liberals thought they might pick up one more vote to overturn Adkins. As it turned out, they did pick up the vote.

Did the court-packing plan influence the court? Although that will remain a mystery, we do know that the Parrish case made history. But it is history that would not have been made if a woman from our state, Elsie Parrish, had not sought to assert her right in court . . .

“never forsake the cause of the defenseless or oppressed.”

Justice Gerry L. Alexander was first elected to a seat on the Washington Supreme Court in 1994. He joined this state’s highest bench at that time with over two decades of trial and appellate court experience, having served as a judge of the Superior Court for Thurston and Mason Counties from 1973 through 1984, and as a judge of the Court of Appeals, Division Two, from 1985 through 1994. In 2000, Justice Alexander was re-elected to the Supreme Court. Shortly thereafter, his col-

leagues elected him to a four-year position as chief justice, effective January 8, 2001. Chief Justice Alexander was re-elected chief justice in 2004 and 2008 and was re-elected to the court in 2006. Although Justice Alexander stepped down as chief justice on January 11, 2010, his nine years of service as chief justice gives him the distinction of being the longest-serving chief justice in the state’s history.

NOTES
1. 54 Wn.2d 570, 343 P.2d 183 (1959).
Supporting Inclusiveness at Seattle U. and in the Law

My first serious thoughts about the need to advocate for the diversification of law school faculty arose while I was a student at Stanford Law School. After a semester-long externship at the NAACP Legal Defenses Fund in Washington, D.C., in 1990, the fall of my third year, I returned to law school feeling a bit disconnected from my studies and my classmates. One of my closest friends, Alexandra McKay (currently an executive vice president at Casey Family Programs Foundation in Seattle), convinced me to work with a group she was helping to organize called Coalition for a Diversified Faculty. The group had been inspired, in large part, by our study of the burgeoning scholarly discipline of Critical Race Theory and by some of its pioneers, like my professor and mentor Chuck Lawrence and my current Seattle University School of Law colleague Richard Delgado.

The group was a true coalition of a wide range of student organizations dedicated to a single objective: the promotion of racial, gender, ethnic, sexual orientation, religious, national origin, and other diversity in our law school. We worked for months on what we called an “affirmative action plan” for law school hiring, going through scores of drafts and addressing and resolving the kinds of disagreements and fissures that arise in any broad coalition. I quickly took on the role of co-chair of the coalition with Alex, and we created a product that everyone in the coalition could agree upon and take pride in. United, we scheduled a meeting with the dean to discuss our proposal, but were shocked and disappointed to find that he was not interested in hearing the student perspective on the lack of diversity at the school nor the benefits that enhanced diversity could provide Stanford University’s law school.

Looking back, I am sure that part of the reason for the dean’s dismissive response was his belief that his law school had done much in the pursuit of gender and racial justice in the decades since he was a law student, and the dean rightly felt a sense of pride in those achievements. I went on to graduate and then to a successful legal career — first in private practice, then at the United States Department of Justice, and later as a professor and associate dean at American University Washington College of Law, and now as dean of the Seattle University School of Law.

One of the many things that drew me across the country to Seattle University from my hometown of Washington, D.C., was the school’s focus on diversity and its commitment to promoting social justice within and beyond the four walls of the academy. This commitment includes a robust dedication to attracting faculty, staff, and students from the broadest range of backgrounds and experience. In many ways, Seattle University School of Law is the kind of school that my colleagues in the Coalition envisioned during my days as a student.

Accepting the appointment as dean of Seattle University School of Law has been the high point in my career. I did not hesitate to take on this wonderful opportunity to lead one of the most respected law schools in the country. As I get to know students, faculty, staff, alumni, and Washington State Bar members, I am even more confident I made the right choice.

The time I have spent at Seattle
University School of Law has already exceeded my expectations. The support and enthusiasm that I have experienced from everyone, including the school’s alumni and the rest of Seattle’s legal community, has been overwhelming and gratifying.

As dean of Seattle University School of Law, I will work hard to avoid resting on the laurels of what has already been achieved. Each generation has its own diversity issues and objectives. Progress in some areas should never be used as a reason not to remain vigilant in the ongoing mission of creating a just, equitable, and inclusive world. I will be open to the ideas and suggestions of students, colleagues, and legal professionals to define what diversity means in the twenty-first century and to create the best strategies for achieving, protecting, and enhancing this diversity now and for years to come.

It became clear to me, almost from my first day in Seattle, that each of Washington’s three law schools plays a vital role in supporting inclusiveness in the legal profession. I look forward to partnering with students, faculty, bench and bar, and community members to inspire and educate a new generation of lawyers dedicated to working toward inclusiveness and justice for all.

Stanford Law graduate Mark C. Niles joined Seattle University School of Law as dean and professor of law on July 1, 2010. He left a position as associate dean for academic affairs and professor at American University Washington College of Law. After graduating from Stanford Law, he served as a clerk for the Honorable Francis Murnaghan Jr., of the U.S. Fourth Circuit Court of Appeals, and has practiced in both private practice and at the U.S. Department of Justice. Dean Niles has published numerous articles and essays on subjects including the Ninth Amendment, federal tort liability, airline security regulation, and the first decade of the tenure of Justice Clarence Thomas. This column is edited by the WSBA Committee for Diversity.

To learn more about diversity and the WSBA, visit www.wsba.org/wsbadiversity.htm, where you will also find a link to the latest diversity newsletter.

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At the September 23–24, 2010, meeting in Seattle, the Board of Governors approved the WSBA budget for fiscal year 2011 and voted to maintain the current $450 annual license fee for active members for 2012. However, the BOG will review the budget for areas to reduce expenses for fiscal 2012 and consider a fee increase for subsequent years to keep the budget balanced.

The budget for fiscal year 2011 projects revenue of $17 million and expenditures of $16.9 million in the general fund. However, BOG member and WSBA 2009–2010 Treasurer Geoff Gibbs cautioned that without either an increase in fees, reduction of expenses, or both, the budget will fall into deficit in the coming years. He estimated that if expenditures were to remain unchanged, fees might need to be increased to $465 for 2012 and $478 for 2013 to balance the budget.

In debating the issue, BOG members discussed both cutting of expenses and possible increases in licensing fees. Governors Loren Etengoff and Anthony Gipe suggested that license fees be raised, starting right away but done in small increments (as the 2011 rate is already fixed, 2012 would be the first year in which an increase could be imposed). That would be preferable to holding the fees at the current level for a year or two and then having to institute a relatively large increase to catch up, they argued. Ultimately, though, the BOG voted to maintain the current $450 fee for 2012 and consider cost-cutting measures before deciding on the fee for subsequent years.

The BOG then approved motions to have the Budget and Audit Committee review all WSBA programs and provide a report with specific recommended spending cuts for the fiscal 2012 budget. The Committee is to complete the report before the BOG begins consideration of the budget in latter 2011.

Governor David Heller noted that the BOG can’t necessarily rely solely on fee increases to balance the budget, as any substantial increase might be deemed unreasonable by the Supreme Court or trigger a member referendum.

Several BOG members acknowledged the necessity of cutting expenses. Governor Lori Haskell remarked that contrary to most societal entities these days, WSBA’s budget has continued to expand. She said it is time to take a tough look at programs and consider such factors as how many members each program serves. However, the governors also acknowledged that about half of the expenditures in the WSBA budget are for activities the bar is legally required to provide, such as attorney licensing and discipline. They also noted that some of the largest cost areas — such as employee retirement benefits, which are administered under the state retirement system — cannot be altered.

Also at the September meeting, the BOG approved the final version of the revised WSBA Bylaws, the product of a months-long process in which all areas of the Bylaws were reviewed. The final version includes changes that addressed concerns raised at the July BOG meeting regarding rules for judicial WSBA members. The proposed rules originally recommended that judicial members, who had not previously been assessed a fee for WSBA membership, be charged a fee to be determined by the BOG — with a $200 figure being recommended. The Superior Court Judges’ Association and U.S. District Court judiciary adamantly opposed the proposal, arguing they had been given inadequate opportunity to voice their opinions when the rule was being drafted. Under the revised rule, approved by the BOG, those in judicial status can choose to pay a $50 fee per year while on the bench. If a judicial member chooses not to pay the annual fee and then converts to another membership class upon leaving the bench, the former judicial member would have to retroactively pay the active license fee amount for those years she or he had been on the bench. This bylaw change is prospective and does not go into effect until 2012.

In other business at the September meeting, the BOG approved a resolution responding to Arizona’s Senate Bill 1070 requiring law enforcement officials to confirm individuals’ immigration status.
when making a traffic stop and finding reasonable suspicion to believe a person is present unlawfully in the U.S. The BOG resolution concludes as follows:

Now, therefore, be it resolved that the Washington State Bar Association encourages Washington public officials, both at the State and Local levels: (1) to oppose the enactment of similar legislation in this State, and (2) to determine how best to address immigration issues without violating the Federal or the State Constitution, without undue risk of disregarding respect for human dignity, and without undue risk of causing people to be treated differently because of their appearance, the color of their skin, or their national origin.

Also at the September meeting, the governors approved creation of a BOG Governance Committee, proposed by WSBA 2010–2011 President Steve Toole. Questions to be addressed by the Committee include these:

1. Should the geographic rotation system currently followed for election of the WSBA president be eliminated?
2. Should governors be allowed to serve multiple terms on the BOG?
3. Should a sitting governor be allowed to run for WSBA president?
4. Should the BOG have a layperson member?
5. Should the BOG have an Executive Committee and, if so, how should it be selected and what will be its authority?
6. If a governor leaves office mid-term, should that governor be replaced with a former governor with the same constituency, willing to fill out the balance of the term?
7. Should there be a BOG committee to review and nominate candidates for WSBA treasurer to the entire BOG, instead of it being the president-elect’s nomination?
8. Should the WSBA president be given a stipend so that more people will be able to consider running for president?

In further action at the September meeting, the BOG:

- Adopted the recommendations of the Strategic Planning Committee. The plan provides that WSBA “should use existing programs, and should implement new programs, to improve our members’ level of satisfaction with their lives and with the practice of law.” To carry out the goal, WSBA is to: 1) enhance the culture of service within WSBA membership, 2) provide more assistance to lawyers with the business of law practice, 3) provide more assistance to lawyers in avoiding or dealing with the stress of law practice, and 4) conduct a detailed study of the composition of the legal profession and retention rates within the profession in the state.
- Appointed Spokane attorney Joseph Nappi Jr., as chief hearing officer for fiscal 2011. Besides being an experienced hearing officer, Nappi has served as chair of the Board of Bar Examiners and is a past BOG member.
- Approved a slate of revisions to court rules as recommended by the Court Rules and Procedures Committee. Included were a proposed new CrR 4.11 (the “recording rule”), revisions to CrR 4.8 (criminal subpoenas), and revisions to the Mandatory Arbitration Rule’s eliminating the need to file proof of service on a request for trial de novo as a jurisdictional requirement following mandatory arbitration.
- Heard the annual report from the Legal Foundation of Washington, which received grants of $1.5 million from WSBA and $3 million from the Bill & Melinda Gates Foundation to help offset losses of revenue from other sources.
- Heard the annual report for the Washington Young Lawyers Division by outgoing President Julia Bahner and witnessed the swearing-in of new WYLD President Kari Petrasek.

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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Changing Horses in Midstream—Modifying Fee Agreements

BY MARK J. FUCILE

Regardless of the compensation method used, lawyers often spend considerable time before taking on representations negotiating their fee agreements with clients. In most instances, the lawyer and the client reach agreements that both understand and are performed without event. Sometimes, however, lawyers later attempt to modify fee agreements in their favor. The reasons are many and range from rates increasing during the duration of the matter involved to fundamental changes in assumptions upon which the representation was predicated. In still others, the lawyers simply conclude they didn’t negotiate a very good deal at the beginning and would like a bigger piece of the “pie.”

In this column, we’ll first briefly survey the law governing fee modifications. We’ll then turn to practical steps that can be taken in the beginning to anticipate and provide for contingencies which may develop over the course of a matter. We’ll conclude with some cautionary notes about what can happen when lawyers simply try to impose unilateral modifications later.

Fee Modifications Generally


Review of an attorney’s fee agreement renegotiated after the attorney-client relationship was established requires particular attention and scrutiny. . . . Such modification is considered to be void or voidable until the attorney establishes “that the contract with his client was fair and reasonable, free from undue influence, and made after a fair and full disclosure of the facts upon which it is predicated.” . . .

A fee agreement modified to increase an attorney’s compensation after the attorney is employed is unenforceable if it is not supported by new consideration. (Citations omitted.)

Washington’s rigorous approach rests on three legs. First, once formed, an attorney-client relationship is a fiduciary of modification to secure unpaid fees in an ongoing matter.

Practical Steps to Avoid Problems

Ward and its companion cases don’t say that lawyers may never renegotiate fees — just that any resulting modifications will be closely scrutinized and may be unenforceable if they don’t meet the high standards noted. Given that risk, the practical point for anticipating and addressing possible change is in the original fee agreement. When contingencies for change are wired into the original fee agreement, they aren’t

one as a matter of law. Second, the Rules of Professional Conduct, including RPC 1.7(a)(2), impose parallel duties when there is a conflict between the business interests of the lawyer and client. Third, fee agreements — and subsequent amendments — are subject to standard contract principles.

Ward was a contingent fee case. The standards noted, however, apply with equal measure to all fee agreements, regardless of the particular compensation method involved. In Simburg, Ketter, Sheppard & Purdy, L.L.P. v. Olshan, 109 Wn. App. 436, 988 P.2d 467 (1999), amended, 109 Wn. App. 436, 33 P.3d 742 (2000), for example, Division I used these principles in an hourly fee context to decide whether there had been “full revelation” necessary for an accord and satisfaction when billing rates were changed without notice to the client. Similarly, these standards apply to modifications beyond the dollar terms of a fee agreement. In Valley/50th Ave., L.L.C. v. Stewart, 159 Wn.2d 736, 153 P.3d 186 (2007), for example, the Washington State Supreme Court applied these principles when addressing foreclosure of a trust deed that had been added by way “modifications.” Rather, they are circumstances that were disclosed, bargain for, and supported by consideration before the fiduciary duties inherent in the attorney-client relationship attached.

Providing a mechanism for periodic hourly rate adjustments or for a higher contingent fee on appeal are ready examples of monetary provisions that can be anticipated and included at the outset. Reserving an advance fee deposit for later in a case, such as 90 days before trial, is an equally ready example of a non-monetary provision that can also be included in an original agreement. The key is that these provisions were agreed by the client and the lawyer at the beginning of the representation, rather than imposed unilaterally by the lawyer later.

Like all contracts, ambiguity in fee agreements is generally construed against the drafter — which is usually the lawyer. When including contingencies in a fee agreement, therefore, they need to be clear in both their scope and triggering events. Beyond formal rules of construction, lawyers also need to be sensitive to the practical consideration that a reviewing court may not cut much slack for a
Not every fee modification will involve *Cotton’s* toxic stew. *Cotton* does, however, offer a stark example of the range of remedies potentially available to clients when fee modifications are disputed.

lawyer-drafter who failed to address an ambiguity. In examining ambiguity in a fee agreement concerning the percentage applicable upon post-trial settlement, for example, Division III in *Forbes v. American Bldg. Maintenance Co. West*, 148 Wn. App. 273, 288, 198 P.3d 1042 (2009), commented pointedly: “If she had intended to provide herself a specific contingency for settlement after a trial on the merits and judgment, she could have drafted appropriate language clearly indicating that the parties agreed to that contingency.”

**Consequences**

*Cotton v. Kronenberg*, 111 Wn. App. 258, 44 P.3d 878 (2002), is an extreme but useful example of the range of consequences possible when a lawyer falls short of the standards discussed. The lawyer in *Cotton* took on a criminal case at an hourly rate, with the fee secured by land and a trailer the client owned. A few days later, however, the lawyer changed the agreement to a flat fee and took the land and the trailer in exchange. There was no new consideration for the amendment. The lawyer was later disqualified after he paid the prosecution’s key witness for his silence and bought the witness a one-way ticket out of town (both apparently unbeknownst to the client). Despite his disqualification, the lawyer refused to refund the fee. The client sued. Following cross-motions for summary judgment, the case went to Division I of the Court of Appeals.

The Court of Appeals found that the lawyer’s modification breached his fiduciary duty to the client and violated the RPCs. It also noted the lack of new consideration. As a result, the Court of Appeals held that the modification was unenforceable. It also concluded that the trial court had the discretion to direct the lawyer to return all fees collected under the circumstances rather than allowing the lawyer to retain a portion under *quantum meruit* (see generally *Eriks v. Denver*, 118 Wn.2d 451, 824 P.2d 1207 (1992) on fee disgorgement). Because the agreement involved the business aspects of the lawyer’s practice, the client also brought a Consumer Protection Act claim against the lawyer (see generally *Short v. Demopolis*, 103 Wn.2d 52, 691 P.2d 163 (1984) on CPA claims relating to law practice) and sought fees in the refund litigation under the CPA. Although the Court of Appeals found that fact issues precluded summary judgment on that claim, it did not reject the legal basis for that potential additional remedy and remanded the CPA claim for further proceedings. The lawyer was eventually disbarred for the witness-tampering in the underlying criminal case (*In re Kronenberg*, 155 Wn.2d 184, 117 P.3d 1134 (2005)).

Not every fee modification will involve *Cotton’s* toxic stew. *Cotton* does, however, offer a stark example of the range of remedies potentially available to clients when fee modifications are disputed. Those remedies, moreover, are equally available to a client contesting a fee collection action by a lawyer as they are in the context of a lawsuit by a client against the lawyer.

**Summing Up**

Fee issues can become flashpoints in an attorney-client relationship. The simplest way to avoid potential problems from modifications is to incorporate likely contingencies into the original fee agreement using terms that are clear in their scope and triggering events.

Mark Fucile, of Fucile & Reising LLP, handles professional responsibility, regulatory, and attorney-client privilege matters, and law-firm-related litigation for lawyers, law firms, and legal departments throughout the Northwest. He is a past chair and a current member of the WSBA Rules of Professional Conduct Committee, a past member of the Oregon State Bar’s Legal Ethics Committee, and a member of the Idaho State Bar Professionalism and Ethics Section. He is a co-editor of the WSBA Legal Ethics Deskbook and the OSB Ethical Oregon Lawyer. He can be reached at 503-224-4895 and mark@frllp.com.
T he Lawyers’ Fund for Client Protection Board (LFCP Board) meets quarterly to review applications for gifts from the Fund. The LFCP 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 Board of Governors, who are the Fund Trustees. At their meeting on August 23, 2010, the LFCP Board conducted the following business:

Christina S. Denison, WSBA No. 25096, of Bellevue — suspended one year 4/28/10.

Applicant A and her husband hired Denison to represent her to apply for alien relative, adjustment of status, and employment authorization. They signed a fee agreement at that meeting for a “non-refundable retainer” of $1,000 and for an additional $1,000 to be paid in monthly installments. Denison told them she would set an appointment for the applicant to complete the necessary forms and to pay the monthly installment. When the applicant and her husband did not hear from Denison, they went to her office and Denison said she was sorry she had not completed the applicant’s applications, but that she would work on them. Again, they did not hear from Denison. Finally, the applicant hired a new lawyer who contacted Denison, told her he was taking over the application matters, and requested the applicant’s file and a refund of the $1,000. Denison initially refused, but finally delivered the file. She refused to make any refund.

Denison claimed that she had completed four applications but refused to release them to avoid the applicant receiving “unjust enrichment.” The hearing officer found that Denison’s “clients did not receive any benefit from any of the work that she performed.” The hearing officer recommended restitution to Applicant A of $1,000, which the Disciplinary Board and the Supreme Court approved.

Applicant B, who lived in Fiji, married a U.S. citizen and moved to the United States.

When the applicant was two years old, she was bitten by a dog. Her parents hired Loun to represent her in a lawsuit against an insurer. Settlement of the claim was approved by the court, which provided that the applicant would receive $4,000 per year for four years upon reaching her 18th birthday on 6/7/09. (The applicant reported that she received the $4,000.) As her 18th birthday approached, the applicant began assembling her records. She could not locate the account number, so the applicant and her mother attempted to contact Loun. They learned that he had had a stroke. They were able to recover the applicant’s file from Loun’s office and someone from Loun’s office contacted her and gave her the account number. She learned that on 1/14/03 the account was closed and the funds, $600 plus interest, were transferred to Loun’s business account. Loun’s counsel and others went through all file storage boxes and could find no record of the applicant’s funds, other than what was in the file given to the applicant. The LFCP Board voted to pay the applicant $600.

Theodore A. Mahr, WSBA No. 19555, of Moses Lake — stipulation to three-year suspension 11/10/09.

As a condition of Mahr’s stipulation to discipline, he stipulated to pay restitution to his former clients within 90 days of the date of the stipulation, which was July 28, 2009. He has paid no restitution. The LFCP Board voted to pay restitution. Repayment to the Fund is a condition for Mahr’s reinstatement.

Applicant C paid Mahr $1,250 as a flat fee to represent him in seeking permanent residency. He gave Mahr various documents. Mahr filed the applicant’s Petition for Residency, but the Department of Homeland Security (DHS) notified Mahr that the petition was deficient and would be denied if the deficiencies were not cured within 60 days. Mahr did not advise the applicant of this. He failed to cure the deficiencies and did not tell the applicant his petition was denied. He stipulated to pay $1,250 as restitution to the applicant.

Applicant A and her husband hired Denison to represent her to file a Supplemental Notice of Approval of I-360 from Homeland Security at her residence. It directed her to file an I-765 Application for Employment Authorization. The applicant tried unsuccessfully over a three-month period to contact Denison. The applicant went to Denison’s office and showed up unannounced. Denison told her she could not see her without an appointment and threatened to call security unless she left the building. In January 2007, the applicant wrote three letters to Denison without response. She then wrote to Homeland Security and the WSBA complaining about Denison’s misconduct.

The hearing officer noted that Denison kept no time or billing records, but that she had performed some services for the applicant. The hearing officer recommended, and the Disciplinary Board and the Supreme Court approved, restitution to Applicant B of $500, and the LFCP Board voted to pay that amount to the applicant.

Charles S. Ferguson, WSBA No. 18024, of Seattle — suspended for discipline 11/12/08; disability inactive 2/3/10.

The applicant paid Ferguson $1,000 to file a marriage dissolution proceeding. After that, the applicant had difficulty reaching Ferguson, and when the applicant was able to speak with him, Ferguson told him he had been hospitalized. They met in July 2008 at Ferguson’s home. Ferguson presented the applicant papers to sign and requested an additional $250 for the filing fee, which the applicant paid. He never heard from Ferguson after that. A search of King County court records disclosed that Ferguson never filed a dissolution action on behalf of the applicant. The LFCP Board voted to pay $1,250 to the applicant.

Paul J. Lehto, WSBA No. 25103, formerly of Everett — interim suspension 10/18/07; disbarred effective 3/24/10.

The applicants hired Lehto to bring a replevin action to recover their boat from a repair shop. They paid him an advance fee deposit of $5,000 on 6/30/06. The fee agreement says that Lehto would charge $200/hour. Lehto did nothing on the case after that. In 2008, the boat was sold at auction by the repair shop. The LFCP Board voted to pay $5,000 to the applicants.

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In late March, Mahr placed calls to the applicant’s wife and cousin and misrepresented to them that he could guaran-
tee the applicant’s release if they paid him an additional $5,000. When the applicant learned of this, he termi-
nated Mahr as his lawyer. On 8/3/07, the Board of Immigration Appeals denied the motion to reopen because it was untimely and legally deficient. Mahr stipulated to pay $1,500 to Ap-
plicant D as restitution, and the LFCP Board voted to pay that amount to the applicant.

Applicant E, wife of a U.S. citizen, hired Mahr to seek permanent residency status (LPR). He agreed to do so for a flat fee of $750, which she paid. He also agreed to represent her in seeking renewal of her employment au-
thorization for a flat fee of $500. He also agreed to represent her in resubmitting or appealing temporary protective status (TPS) denial for a fee of $500. The applicant had been in the United States legally for a number of years pursuant to her TPS.

When the applicant met with Mahr on 3/10/06, she gave him necessary documents to file the petition for permanent residency, and told him the petition had to be filed before the TPS expired on 9/9/06. The applicant called Mahr regularly to check on the status of the petition and to set an appointment to meet with him. He said he would call back, but never did, and he did not set an appointment to meet with the applicant.

Unable to check with Mahr, the applicant submitted her TPS renewal form, and was told it was rejected due to her failure to sign it. In October, Mahr met with the applicant and told her that he would resolve the TPS matter but she would need to pay an additional $500, which she did at that meeting. Mahr submitted a letter and the same unsigned petition, which was again rejected. Mahr told the applicant that there was nothing more he could do. He did not advise the applicant that she was in danger of being deported.

In March 2007, the applicant called Mahr, and Mahr told her that he had filed a petition for LPR in 2006 and that he was waiting for a response from the government. This was un-
true; he had filed nothing. In March 2007, Mahr met with the applicant and again told her that he had filed the petition in 2006, but in fact he did not file it until March 2007. The applicant consulted new counsel and learned that the pet-
tition that Mahr filed was incomplete, as there were four other documents that needed to be filed with it. Mahr stipulated to pay restitution of $1,750 to Applicant E, and the LFCP Board voted to pay that amount to the applicant.

Applicant F called Mahr regarding filing a petition to reopen a deportation order against his wife and to seek permanent residency. Mahr told them to meet him at the Yakima County Courthouse the next day. On 12/13/07, Mahr met with the applicant and her husband for about 10 minutes. They told Mahr about the wife’s situation and gave him documents and information from their previous counsel. Mahr told them he would charge a flat fee of $500, which they paid at that time. Mahr set an appointment to meet with the applicant on 12/14/07 at his Moses Lake office. The wife was taken into custody by immigration that morn-
ing. Her husband met with Mahr, terminated their representation, and requested a refund of the $500. Mahr refused to make the refund. In his stipulation, Mahr agreed to pay $500 to Applicant F. and the Board voted to pay that amount to the applicant.

Applicants G and H hired Mahr to seek permanent residency through the status of their minor son, a U.S. citizen. Mahr agreed to represent them for a flat fee of $2,500, which they paid. When applicants would call Mahr, he was unable to talk to him. They went to his office but he did not open the door; only when they called and said they were outside his office did he let them in and meet with them. Approxi-
mately seven months after first meeting with the applicants, Mahr told them that citizenship was not available through their child, and that he would instead obtain employment for them in Oregon. They terminated his representation and requested a refund, which he refused. In his stipulation, Mahr agreed to pay $2,500 to Applicants G and H, and the Board voted to pay that amount to the applicants.

Applicants I, J, and K are Egyptian citizens working in the United States. In November 2007, all three employed Mahr in their effort to seek asylum and permanent residency, as well as renewal of their expired temporary work permits. Two of the applicants are married to U.S. citizens. Mahr agreed to represent the three of them for a flat fee of $4,000, which they paid. At the initial meeting, they paid him $2,000 and gave him their passports, work permits, visas, and other information. On 12/11/07, the three applicants were arrested by immigration authorities at their residences in Montana and transferred to a holding facility in Florence, Arizona. They and their families called Mahr to tell him what had happened and to set up a meeting with him. Mahr told them that he would call them back but he never did, nor did he make an appointment to meet with them. He subsequently told them that he would fly to Arizona to represent them if he was paid an additional $500, which one applicant’s sister paid in December 2007. Mahr did not travel to Arizona but instead appeared telephonically and moved for re-determination of bond and change of venue to Seattle.

The applicants were released after posting bond of $5,000 each. They were advised by the court that Mahr had not submitted their asylum petitions. They attempted to meet with Mahr, but he would not meet with them or return phone calls. The applicants requested that Mahr refund the $500 to the one applicant’s sister, which he refused to do.

A hearing was set for June 2008 and continued to 10/20/08 because Mahr had not filed the necessary asylum documents with the court. On 7/22/08, without notice and consent from two of his clients, Mahr filed motions for their voluntary departure from the United States to return to Egypt. When they learned of this, they deman-
ded that Mahr withdraw the motions. He did not. On 9/26/08, without notice and consent from the third applicant, Mahr filed a motion to change the venue for his hearing to Virginia, and moved to withdraw from his representation. The motions were granted, and the applicant had to find new counsel in Virginia. The applicants terminated Mahr’s

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The applicant and her fiancé were married. After the marriage, the applicant called Mahr requesting an appointment to meet with him regarding the status of her matter. He did not respond. Applicant terminated Mahr as her attorney and requested return of the $1,500. He did not make any refund. Mahr stipulated to pay Applicant O $2,500, and the LFCP Board voted to pay that amount to the applicant.

In November 2007, Mahr faxed a one-page form motion to the immigration court for the applicant to voluntarily depart from the United States. It had no supporting documentation. Mahr never appeared before the immigration court on behalf of the applicant. Although the applicant asked to be kept advised of the status of his immigration matter, Mahr failed to do so. In his stipulation, Mahr agreed to pay Applicant O $2,500, and the Board voted to pay that amount to the applicant.
Applicant P paid Mahr $1,250 to represent her husband to obtain permanent residency status. He agreed to meet with the applicant and her husband the next day at the Tacoma courthouse where the husband had a hearing regarding compliance with payment of fines on a drunken driving charge. The husband was represented in that matter by another attorney. Mahr met with the applicants, but said he did not have time to discuss the immigration matters, and made an appointment to meet with them at his Moses Lake office. At that meeting, the applicant signed a fee agreement, and they gave Mahr information and documentation regarding the husband’s immigration matter.

After that, Mahr failed to respond to telephone messages from the applicant. In September 2006, the applicant telephoned Mahr and told him that husband was detained for deportation. Mahr misrepresented to the applicant that he was working on the immigration case, but told her he would need an additional $1,000 to continue working, which she paid. On 10/11/06, Mahr filed a one paragraph Motion to Re-open and Stay Removal without any supporting documentation. It was denied as untimely. The husband was deported to Honduras in December 2006. Mahr stipulated to pay Applicant P $2,250, and the LFCP Board voted to pay that amount to the applicant.

Shane O. Nees, WSBA No. 29944, of Fairfield — interim suspension 11/19/08; disbarred 6/03/10.

Nees represented the applicant’s company to collect debts. This application involves two collections:

Nees obtained a judgment and order directing the debtor’s employer to garnish the debtor’s wages and pay the applicant’s company $386.60. The employer paid Nees by check made payable to him, which Nees cashed without advising the applicant and he did not pay the funds to the applicant’s company. He was not entitled to the funds.

The hearing officer in Nees’s disciplinary proceeding recommended restitution of $2,198.95 to the applicant, which was approved by the Disciplinary Board and the Supreme Court. The LFCP Board voted to pay that amount to the applicant.

Dennis G. Ott, WSBA No. 12172, of Kelso—resigned in lieu of disbarment, 6/5/09.

The applicant paid Ott $800 to file a Chapter 7 bankruptcy proceeding and $675 to avoid a lien in 2005. A discharge was entered in the bankruptcy case. However, Ott did not file a motion to avoid the lien. The applicant learned of this when he attempted to refinance his home. He hired a different attorney who had the bankruptcy proceeding reopened and obtained an order avoiding the lien. The LFCP Board approved payment to the applicant of $675.

Glenn A. Prior, WSBA No. 2248, of Fife — Deceased 7/19/09.

Prior died while on vacation in Ecuador in July 2009. He was a sole practitioner operating under the firm name Pacific Law, Inc., P.S.; most of his practice was in immigration, but he also maintained a general practice. There were no funds in Prior’s trust account — his fee agreements provided that fees were “retainers . . . earned at the time of payment” and were “nonrefundable.”

Applicant Q and his wife hired Prior on 2/26/08 to adjust the applicant’s status. The applicant paid Prior $4,200 and provided various documents to Prior, but Prior told him to wait until there was an anticipated change in the law. Prior died before taking any action on the applicant’s case. The LFCP Board approved payment to Applicant Q of $4,200.
Applicant R hired Prior on 9/26/08 “to retain and secure his availability and representation in our behalf on a possible upcoming problem with an application we were filing.” The applicant had filed an application for adjustment of status. He thought he would need Prior’s help to prove hardship for an out-of-country interview he was expecting. He paid Prior $3,950, half of the total agreed fee of $7,900, when he signed the fee agreement, plus $500 as advanced costs. The applicant said that $400 was used to file an application and that the remaining $100 was to be held in trust. Prior died before the interview was scheduled. The LFCP Board approved payment to Applicant R of $4,050.

Applicant S hired Prior on 4/30/09. The applicant paid Prior $5,000. The applicant says that Prior appeared with him at a master hearing on 5/4/09 that lasted 10 minutes, and that an individual hearing was set for 11/23/09, by which date Prior had died. The LFCP Board approved payment to Applicant S of $5,000.

Mark Alan Schneider, WSBA No. 18398, of Tacoma — interim suspension 9/28/09; disbarred 9/17/10.

Schneider did not respond to the disciplinary proceeding, and a default was entered against him. He abandoned his practice, his landlord turned over his files to the WSBA, and his whereabouts are unknown.

Schneider represented the applicant in a personal injury action stemming from an auto accident. He filed a complaint in the Pierce County District Court in 2006. In September 2008, without the applicant’s knowledge or consent, he settled her claim for $15,000. He drove to the defendant’s lawyer’s office, signed a stipulation to dismiss the applicant’s case, and picked up the insurance check made payable to the applicant and Schneider. He then forged the applicant’s endorsement to the check, cashed it, and misappropriated the proceeds. Over the next several months, Schneider misrepresented to the applicant that the case was still pending and that he expected to resolve it shortly. The applicant fired Schneider and employed new counsel, who learned that the case had settled in October 2008 and that Schneider had forged the applicant’s endorsement to the settlement check.

The new lawyer filed a Declaration of Forgery with the bank that honored the forgery. They paid the applicant $10,000 which, by their calculation, was the amount the applicant would have received after Schneider was paid his one-third contingent fee. The LFCP Board approved payment to the applicant of $5,000.

**Other Business:** The LFCP Board reviewed 17 additional applications that were denied for lack of evidence of dishonest conduct, as fee disputes or claims for malpractice, because restitution was made, or for other reasons.

**Board of Trustees’ Action:** The LFCP Board of Trustees reviewed four Fund applications for more than $25,000, and approved the LFCP Board’s recommendation that they be denied. The Trustees also approved the LFCP Board’s recommendation that all approved applications in FY 2010 be paid in full up to the Fund cap of $75,000.

**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 June 30, 2010, five lawyers were making regular restitution payments to the Fund totaling $3,281 since October 1, 2009.

The 2009–2010 Fund Board chair was Seattle attorney Thomas Lerner. WSBA General Counsel Robert Welden is staff liaison to the Fund Board, assisted by WSBA Assistant General Counsel Elizabeth Turner.

### A Trusted Voice for Victims of Negligence

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“Two years ago, my close friend Tammy died while in the emergency room of a local hospital for flu symptoms. They told us she died from pneumonia, but we knew that wasn’t the case. In fact, she had sleep apnea and was put on a heavy narcotic but was not seen by a doctor or properly monitored. She died within minutes.

“I was put in charge of Tammy’s affairs and got really lucky when I was referred to Gene Moen. This was the first time I worked with an attorney, and Gene and his whole office did a phenomenal job. I was in good hands the entire time. Gene was clearly doing this from the heart, and he knew how important it was to fight for a settlement to take care of her three young sons. They will now be able to get the education Tammy wanted for them.”

—Allyson Y., Burlington, WA

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To access mywsba, see the link on the WSBA homepage (www.wsba.org) or go there directly (www.mywsba.org).

If you have questions or don’t have a valid e-mail address on file, help is only a phone call or e-mail away. The WSBA Service Center is staffed Monday through Friday, 8:00 a.m. to 5:00 p.m., with friendly, knowledgeable representatives eager to be of assistance. Call 800-945-WSBA (9722) or 206-443-WSBA (9722), or e-mail questions@wsba.org.

Using mywsba, you can:

- View and update your profile, which includes address, phone and fax, e-mail, website, etc.
- View your current MCLE credit status and access your MCLE page where you can update your credits
- Complete all of your annual licensing forms (skip the paper!)
- Certify your MCLE reporting compliance
- Pay your annual license fee using MasterCard or Visa
- Join a WSBA section
- Access Casemaker free legal research
- Access CourtTrax docket research service
- Register for a WSBA CLE seminar
- Shop at the WSBA store (order CLE recorded seminars, deskbooks, Resources, etc.)
- Voluntarily report your pro bono hours under RPC 6.1
- Volunteer for the Home Foreclosure Legal Aid Project
- Volunteer for the Moderate Means Program
Consider Emeritus/Pro Bono Membership — Annual WSBA Training and Orientation: January 13, 2011

Now that the 2011 WSBA licensing period is here, you may be thinking of changing your membership to accommodate your current career or lifestyle. If you no longer need your active WSBA license, here’s why you should consider Emeritus/Pro Bono membership.

Emeritus/Pro Bono membership under APR 8(e) allows lawyers otherwise retired from the practice of law to practice law on a volunteer basis through Qualified Legal Services Providers (QLSP) whose primary purpose is to provide legal services to low-income clients. The purpose of the rule is to encourage pro bono participation by skilled and experienced lawyers who wish to make a significant contribution to access to justice-related efforts. The QLSPs include county pro bono programs, Northwest Justice Project, Columbia Legal Services, some public defender agencies, and other legal service programs. A list of the more than 40 QLSPs is available at www.wsba.org/lawyers/licensing/membershipchanges.htm#e/pb.

Like Inactive members, Emeritus/Pro Bono members do not need to comply with MCLE requirements while they are Emeritus/Pro Bono members. Also, the license fee for Emeritus/Pro Bono membership is the same as Inactive membership ($200). In addition, the requirements for returning to Active membership from Emeritus/Pro Bono membership are the same as returning from Inactive membership. The requirements for returning to Active from Emeritus/Pro Bono are available at www.wsba.org/lawyers/licensing/membershipchanges.htm#to%20a%20from%20e/pb.

Emeritus/Pro Bono membership does not mandate that lawyers be of retirement age. Most of the QLSPs do not require a minimum number of volunteer hours, so scheduling your volunteer time to fit your personal schedule should be relatively easy. Many of the provider programs offer free substantive training in poverty law topics for their volunteers, and some provide mentoring services. Additionally, most of the providers offer free malpractice insurance for their volunteers.

The mandatory Emeritus/Pro Bono training is scheduled for January 13, 2011, at the WSBA offices. The training begins at 10:00 a.m. and will last until about 2:00 p.m. Lunch will be provided. The training will include an introduction to the Washington State Alliance for Equal Justice. Representatives from the provider organizations will be present to talk about specific volunteer opportunities and to address any questions and concerns about fitting volunteer work into your personal schedule. The training is also available on DVD for those unable to attend in person.

If you would like to be an Emeritus/Pro Bono member, please complete and return an application for Emeritus/Pro Bono membership (by January 6, 2011, for the live training). Applications are found at the web address below. If you have questions about being an Emeritus/Pro Bono member, or the requirements to return to Active membership from Emeritus/Pro Bono, visit the WSBA website at www.wsba.org/lawyers/licensing/membershipchanges.htm or call 206-239-2131 or 800-945-9722, ext. 2131, or e-mail membershipchanges@wsba.org.

2011 Licensing and MCLE Information

Have you used mywsba? Last year, almost half of WSBA members completed their license renewal entirely online at www.mywsba.org. License renewal forms and the Section Membership form were mailed together in mid-October. Remember, there is no longer a “grace period” for the month of February, so renewal and payment must be completed by February 1, 2011. However, as the section membership year is October 1, 2010, through September 30, 2011, we encourage you to join or renew sections soon to receive the full benefit of the membership. For detailed instructions, go to www.mywsba.org.

WSBA Bylaw Article III(H)(1)(a)(2) on Armed Forces Fee Exemption provides for a membership fee exemption for eligible members of the Armed Forces whose WSBA membership is active. The WSBA will accept fee exemption requests until February 1, 2011, for the 2011 licensing year.

If you are due to report MCLE compliance for 2008–2010 (Group 1), you should have received your Continuing Legal Education Certification (C2) form in the license packet that was mailed in mid-October. Lawyers in Group 1 include active members who were admitted through 1975, and in 1991, 1994, 1997, 2000, 2003,
Seeking 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 Governor Gregoire for consideration when making judicial appointments. Materials must be received at the WSBA office by the deadlines listed above. To obtain a questionnaire, visit the WSBA website at www.wsba.org/lawyers/groups/judicial recommendation or contact the WSBA at 206-727-8212 or 800-945-9722, ext. 8212; or e-mail judithb@wsba.org.

WSBA-CLE Store Information

Please note: This December, there will not be a CLE “Bookstore” selling recorded seminars on CD at the WSBA offices. Instead, we are encouraging members to try On Demand recorded seminars online as the most convenient way to get end-of-year credits. Go to www.wsbaCLE.org, click “On Demand CLE,” and browse our catalog of more than 1,000 recorded segments in all major practice areas, including ethics. Half of the required credits each reporting period, including all six ethics credits, can be A/V. With On Demand CLE, you can purchase the exact number of credits you need. Try the free demo and see how easy and convenient On Demand CLE is. Need a little more help to get started? Call 206-239-2111 or 800-945-9722, ext. 2111, or e-mail chadc@wsba.org.

Doing Business in Washington

Now Available from WSBA-CLE and the International Practice Section

Updated for distribution in China as part of Governor Gregoire’s September trade mission, Doing Business in Washington covers the basic A to Z of international business law in Washington — from entity creation to bankruptcy and creditor protection; from clean energy technology to industrial insurance and workplace safety; and from the Uniform Commercial Code to commercial litigation and alternative dispute resolution. This comprehensive “introductory how-to” publication on business investment within the state of Washington is one that Washington attorneys will want for themselves, their clients, and potential clients. The cost is $75 plus shipping and handling and tax for the print or the CD version; volume discounts are available for larger orders. For a full table of contents, or to order, go to www.wsbaCLE.org, click “Deskbooks,” and sort by business law as the practice area, or enter the title in the Search box. Questions? Call 206-733-5918 or 800-945-9722, ext. 5918, or e-mail orders@wsba.org.

Order by December 10 for 2010 Delivery of WSBA-CLE Products

If you plan to order WSBA-CLE recorded seminars on CD and need to receive them before December 31, 2010, please place your order by December 10 to give us the best chance of getting your order to you, via standard delivery within Washington, by the end of the year. After December 10, or for delivery outside Washington, contact orders@wsba.org, 206-733-5918, or 800-945-9722, ext. 5918 for express delivery options.

Nominees Sought for Public Legal Education Award

The Council on Public Legal Education (CPLE) is accepting nominations for its Flame of Democracy Award, which will be presented in 2011 to an individual, organization, or program in Washington state that has made a significant contribution to increasing the public’s understanding of law, the justice system, or government. The mission of the CPLE is to advance and promote the public’s understanding of the rule of law and its confidence in the legal system. The award was established to highlight the important educational work being done by teachers, judges, lawyers, the media, and a variety of advocacy and community organizations and individuals.

Nominations, which are due January 1, 2011, should be made in the form of a letter (maximum 500 words) describing the nominee’s work and how it addresses the mission of the CPLE. The letter should also include the name of a reference who can provide additional information about the nominee. Supporting materials may be submitted; please limit print materials to 10 pages and audio-visual materials to 30 minutes. Self-nominations are encouraged. All nominations will be kept confidential. Submit nominations to: Pam Inglesby, WSBA, 1325 Fourth Ave., Ste. 600 Seattle, WA 98101-2539 or by e-mail to pami@wsba.org. Further information about the CPLE may be found at www.wsba.org/ple.

Goldmark Award Luncheon to Be Held February 25

The Legal Foundation of Washington will present the 2011 Charles A. Goldmark Distinguished Service Award to the King County Bar Association at the 25th Annual Goldmark Award Luncheon on February 25, 2011, at the Red Lion Hotel in Seattle. Norm Rice, president/CEO of the Seattle Foundation, will give the keynote speech. The Goldmark Award honors the memory of Charles A. Goldmark, a Seattle attorney, community leader, and ardent supporter of access to justice. For more information, visit www.legalfoundation.org.

“Foundations of American Democracy” Civics Pamphlet

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/foad.htm. Requests for copies should be directed to Pam Inglesby, WSBA outreach programs manager, at pami@wsba.org.

Save the Date: 25th Annual LOMAP and Ethics Traveling Seminar
WSBA comes to you! Join us in Port Angeles on December 7 or in Port Townsend on December 8. Four ethics credits are available. Cost is $99 for lawyers and $29 for non-lawyer staff. To register, call or e-mail Julie Salmon at 206-733-5914, 800-945-9722, ext. 5914, or juliesa@wsba.org.

Get More out of Your Software
The WSBA offers hands-on computer clinics for members wanting to learn more about what Microsoft Office programs — Outlook and Word, as well as Adobe Acrobat — can do for a lawyer. We also cover online legal research such as Casemaker and other resources. Are you a total beginner? No problem. The clinic teaches helpful tips you can use immediately. Computers are provided, or bring your laptop. Seating is limited to 15 members. The December 13 clinic will meet from 10:00 a.m. to noon at the WSBA office and will focus on Outlook and practice management software. The December 16 clinic will meet from 2:00 to 4:00 p.m. and will focus on Outlook and practice management software. There is no charge and no CLE credits. To reserve your place, contact Julie Salmon at 206-733-5914, 800-945-9722, ext. 5914, or juliesa@wsba.org.

Facing an Ethical Dilemma?
Members facing ethical dilemmas can talk with the 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.

Weekly and Monthly Job Search Groups
Join us Wednesday, December 8, from noon to 1:30 p.m. at the WSBA office to hear Jeff Minzel speak about the job search process. Mr. Minzel is an attorney who founded his own legal staffing company, Minzel and Associates, so he knows as much as anyone about getting a legal job in Seattle. He will be describing methods for identifying your ideal legal job and ways of making meaningful connections towards that end. He always leaves plenty of time for questions, so you will have the opportunity to “ask the expert.” The Weekly Job Search Group meets Mondays at 10:30 a.m. Each group runs for eight weeks and costs $40. Contact Dan Crystal at 206-727-8267, 800-945-9722, ext. 8267, or danc@wsba.org. To access additional job search resources, visit www.wsba.org/lawyers/services/jobsearchresources.htm.

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Search WSBA Ethics Opinions Online
Formal and informal WSBA ethics opinions are available online at http://mcle.mywsba.org/io, 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 Peggy Harkrader, lawyer services coordinator, at 206-727-8268, 800-945-9722, ext. 8268, or peggyh@wsba.org.

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


Upcoming Board of Governors Meetings

December 10–11, La Conner • January 27–28, 2011, Olympia • March 18–19, 2011, Spokane

With the exception of the executive session, Board of Governors meetings are open, and all WSBA members are welcome to attend. RSVPs are appreciated but not required. Contact Margaret Shane at 206-727-8244, 800-945-9722, ext. 8244, or margarets@wsba.org. The complete Board of Governors meeting schedule is available on the WSBA website at www.wsba.org/info/bog/20102011meetingschedule.htm.

Usury Rate

The average coupon equivalent yield from the first auction of 26-week treasury bills in November 2010 was 0.157 percent. Therefore, the maximum allowable usury rate for December is 12 percent. Information from January 1987 to date is on the WSBA website at www.wsba.org/media/publications/barnews/usury.htm.

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).

Learn More About Case-Management Software

The WSBA Law Office Management Assistance Program (LOMAP) maintains a computer for members to review software tools designed to maximize office efficiency. The LOMAP staff is available to provide materials, answer questions, and make recommendations. To make an appointment, contact Julie Salmon at 206-733-5914, 800-945-9722, ext. 5914, or juliesa@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. Call 206-727-8268, 800-945-9722, ext. 8268, or visit www.wsba.org/lawyers/services/lap.htm.

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).

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The Washington State Bar Association announces that 625 candidates passed the Bar Exam administered in July 2010, at Meydenbauer Center in Bellevue and Spokane Convention Center in Spokane. Of the 922 candidates who took the exam, 67.8 percent passed.
Get More out of Your Software!

The WSBA offers hands-on computer clinics for members. Learn what programs such as Outlook, PowerPoint, Excel, Word, and Adobe Acrobat can do for you.

Are you a total beginner? No problem. The clinics teach 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. Clinics are held each month. The December 13 and 16 clinics will focus on Outlook and practice management software.

For more information, contact Julie Salmon at 206-733-5914, 800-945-9722, ext. 5914, or juliesa@wsba.org.
In the matter of Daniel John Shea. Mr. Shea is to be distinguished from Daniel J. Shea of Redmond. Mr. Shea was suspended indefinitely from the practice of law by Order of the Montana Supreme Court on August 3, 1989. In violation of rules 3.1, 3.4(c), 8.4(c), and 8.4(d), Mr. Shea engaged in conduct involving欺骗和误导. He also failed to cooperate with the Office of Disciplinary Counsel in the investigation of the grievance.

The Office of Disciplinary Counsel requested that the Disciplinary Board permit the dismissal of the grievance. The Bar Association opposed the request, arguing that the grievance remained pending and that Mr. Shea had failed to comply with the requests of the Office of Disciplinary Counsel.

On May 30, 2007, while Mr. Scannell's suit was pending, disciplinary counsel filed a formal disciplinary complaint against Mr. Scannell. Mr. Scannell responded with a series of duplicative motions to recuse or disqualify disciplinary counsel, all proposed hearing officers, and the entire Disciplinary Board for reasons that were groundless. These reasons included that the hearing officers were adverse parties to his lawsuit, creating a conflict of interest, and that the hearing officers and Disciplinary Board were biased by ex parte contacts with disciplinary counsel when defending against the lawsuit.

Mr. Scannell objected to the setting of a hearing in the matter and twice moved to postpone the hearing date.

Mr. Scannell requested extensive discovery, asking the Office of Disciplinary Counsel to review all of its grievances files since 1997. He hoped to discover facts related to his theory that disciplinary counsel's requests for documents were retaliation for a grievance Mr. Scannell filed against another lawyer. The hearing officer allowed Mr. Scannell’s discovery request only as to the time period when his grievance was being investigated. Meanwhile, Mr. Scannell never completely responded to the Bar's discovery requests, claiming lack of time and resources to produce all of the documents. The discovery requests sought documents that disciplinary counsel had previously subpoenaed three times, beginning in 2005.

Mr. Scannell's discipline hearing occurred in December 2008. The hearing officer recommended a suspension for not less than two years. The Disciplinary Board concluded that Mr. Scannell intentionally failed to cooperate in the Bar Association investigations with the intent to frustrate and delay the disciplinary proceedings and the Board unanimously voted to disbar Mr. Scannell. The Supreme Court upheld the decision.

Mr. Scannell's conduct violated former RPC 1.7(b)(2), prohibiting a lawyer from representing a client if there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer; RPC 3.1, prohibiting a lawyer from bringing or defending a proceeding, or asserting or controverting an issue therein, unless there is a basis in law and fact for doing so that is not frivolous; 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.

Scott G. Busby represented the Bar Association. Mr. Scannell represented himself. Timothy J. Parker was the hearing officer.

### Disbarred

**John R. Scannell** (WSBA No. 31035, admitted 2001), of Seattle, was disbarred, effective September 9, 2010, by order of the Washington State Supreme Court following an appeal. This discipline is based on conduct involving conflicts of interest and non-cooperation with disciplinary counsel. For more information, see In re Scannell, 169 Wn.2d 723, 239 P.3d 332 (2010).

As early as 2003, Mr. Scannell represented a client in two civil cases; in one of the cases Mr. Scannell hoped to gain the biggest contingency fee of his career. While those cases were pending, the client and his wife were charged with stealing computers. Mr. Scannell represented both the client and his wife in the criminal case. Mr. Scannell discussed the possibility of a conflict of interest with them, but not exhaustively. He did not discuss that each spouse might have an interest in shifting blame to the other or that their interests might diverge from Mr. Scannell's because of his financial stake in the success of the client's civil suit. Mr. Scannell never obtained any written consent to the joint representation, nor did he know that such informed consent was required. Mr. Scannell advised the couple to enter Alford pleas, in which the defendants plead guilty without conceding guilt, in order to minimize the impact of the convictions on the client's civil cases. While the client was sentenced to five months of work release, his wife plead to a higher-level offense and was sentenced to one year in prison.

During Mr. Scannell's representation of the couple, the client performed computer work for Mr. Scannell in exchange for a $500 retainer fee that Mr. Scannell usually charged for civil cases. Their agreement was informal. There was no written contract, nor was there any evidence that Mr. Scannell advised the client to seek advice from another attorney before agreeing to perform the work.

In February 2005, the Bar Association began investigating two grievances filed against Mr. Scannell. One grievance was related to the above-mentioned representation and the second was for an unrelated matter. In May 2005, the Bar Association requested from Mr. Scannell certain documents regarding the joint representation of the client and his wife. Mr. Scannell did not respond, and instead asked that the investigation be deferred while the client's two civil cases were pending. Disciplinary counsel declined to defer the investigation because the civil cases were not related to the criminal case which gave rise to the grievance, or to the terms of the business transaction with the client.

Mr. Scannell delayed responding to the second grievance as well, requiring disciplinary counsel to issue him a second notice after granting him an extension of time to respond. When he finally did respond, Mr. Scannell did not provide any documentation, and denied the existence of a “business transaction” with his client, claiming the term was too vague to understand and professed confusion about the charges in the second grievance. Disciplinary counsel then served Mr. Scannell with a subpoena duces tecum for a deposition, requiring him to produce files and documents related to the two grievances. Mr. Scannell avoided producing documents for over three years by repeatedly delaying, rescheduling, or refusing to attend depositions for reasons that were frivolous and were raised in an untimely fashion. For example, Mr. Scannell drove to the site of a deposition on the day it was scheduled to deliver a letter stating he would not attend the deposition because the Bar Association had not provided him with witness travel fees pursuant to BCW 2.40.020.

The Bar Association served Mr. Scannell two more times with subpoenas duces tecum. The deposition eventually occurred on September 25, 2006, but Mr. Scannell refused to attend. In the end, Mr. Scannell never attended a deposition. He did not produce any of the requested documents until December 2008.

Mr. Scannell filed a “Petition for Writ of Prohibition, Mandamus, Injunction, [and] Complaint for Declaratory Judgment” in superior court against the State, the Bar, the Disciplinary Board, the former chair of the Disciplinary Board, and disciplinary counsel. The Bar's general counsel moved to dismiss the petition and the Board unanimously voted to disbar Mr. Scannell. The Supreme Court upheld the decision.
Richard Collins (WSBA No. 27007, admitted 1997), of Big Bear Lake, California, was suspended for a minimum of two years, effective September 15, 2010, by order of the Washington State Supreme Court imposing reciprocal discipline in accordance with an order from the Supreme Court of the State of California. This discipline is based on conduct involving trust account irregularities and misappropriation of client funds. For more information, see the California Bar Journal (August 2010), available at www.calbarjournal.com.

Mr. Collins’s conduct violated California’s RPC 3-700(D)(2), requiring a lawyer to promptly refund any part of a fee paid in advance that has not been earned; and California’s Business and Professions Code § 6106, prohibiting a lawyer from committing any act involving moral turpitude, dishonesty, or corruption, whether the act is committed in the course of his relations as an attorney or otherwise.

Joanne S. Abelson represented the Bar Association. Mr. Collins represented himself.

Suspended

Andrew Francis Hiblar Jr. (WSBA No. 7648, admitted 1977), of University Place, was suspended for nine months, effective August 1, 2010, by order of the Washington State Supreme Court following approval of a stipulation. This discipline resulted from conduct involving trust account irregularities and failing to produce records in response to a subpoena.

Mr. Hiblar is a solo practitioner who practiced primarily in the area of family law. Since at least 2002, Mr. Hiblar personally made all deposits to and withdrawals from his trust account, and maintained all trust account records.

The Association’s auditor conducted an audit of Mr. Hiblar’s trust account covering the time period August 15, 2006, through December 31, 2008 (audit period). During that time period, Mr. Hiblar often received advance fee deposits and advance cost deposits.

Between December 28, 2006, and January 30, 2009, four checks in amounts ranging between $23 and $750 were presented for payment against Mr. Hiblar’s trust account. Two of the checks were dishonored and returned by the bank due to insufficient funds in the account. Two other checks were paid by the bank, but resulted in negative trust account balances. One of the returned checks was presented a second time for payment, paid by the bank, and resulted in a negative trust account balance. In March 2008 and May 2008, two merchant withdrawals, for $65 and $25 respectively, were presented for payment against insufficient funds in Mr. Hiblar’s trust account. In February 2009, two instruments, each in the amount of $25, were presented for payment against Mr. Hiblar’s trust account and were dishonored by the bank due to insufficient funds in the account. With the exception of one of the overdrafts, Mr. Hiblar did not report any of the overdrafts to the Association required by ELC 15.4(d).

During the audit period, Mr. Hiblar did not maintain a check register or client ledgers for his trust account. At his February 13, 2008, deposition by the Association, Mr. Hiblar produced a check register for January 2008 and two client ledgers. However, Mr. Hiblar did not maintain check registers before or after January 2008, and he created the client ledgers in response to the Association’s subpoena. Mr. Hiblar did not continue to maintain any client ledgers after the deposition. He acknowledged that, for his trust account, he has not maintained client ledgers or reconciled check registers to his bank statements since 2002. Mr. Hiblar further acknowledged that he has never reconciled check registers to client ledgers, maintained documents supporting deposits to his trust account, or maintained complete records supporting disbursements from his trust account. During the audit period, Mr. Hiblar did not maintain records that allowed determination of the ownership of all funds in his trust account at all times.

On November 29, 2007, the Association sent Mr. Hiblar a letter notifying him that his handling of client funds violated the Rules of Professional Conduct. The letter directed Mr. Hiblar to review specific rules and the Association’s publication Managing Client Trust Accounts. After receiving the letter, Mr. Hiblar continued to follow his usual practice and did not bring his trust account records into compliance with the rules.

During the audit period, Mr. Hiblar wrote 57 checks, totaling $22,530, payable to “Cash.” He did not maintain records identifying the recipients of the cash withdrawals or the client matters for which the disbursements were made.

On eight occasions during the audit period, Mr. Hiblar deposited a check to his trust account and immediately received cash back from the bank. On two occasions, in October 2006 and December 2006, Mr. Hiblar’s trust account was short in client funds. Because of Mr. Hiblar’s failure to maintain adequate trust account records, the Association’s auditor was unable to determine whether Mr. Hiblar’s trust account had shortages on other occasions and was unable to ascertain whether Mr. Hiblar delivered to clients and third parties all funds that they were entitled to receive.

During the audit period, Mr. Hiblar withdrew fees from his trust account without first notifying clients in writing that he intended to withdraw the funds. He did not maintain complete records showing the amount of fees earned, the amount of fees disbursed from his trust account, or the clients for whom the fees were disbursed.

On nine occasions during the audit period, Mr. Hiblar deposited his own funds in the form of rent checks totaling $7,878 to his trust account and deposited earned fees to his trust account when clients paid outstanding fees by credit card. During the audit period, Mr. Hiblar paid personal and business expenses directly from his trust account, failed to maintain records demonstrating that he was entitled to funds he disbursed from his trust account, and failed to maintain records identifying the client matters for which the funds were purportedly earned.

Mr. Hiblar also failed to promptly and fully respond to the Association’s requests for information and records during the grievance investigation, requiring the Association to subpoena Mr. Hiblar for five depositions. At each deposition, Mr. Hiblar agreed to produce information requested by the Association following his deposition, but did not do so. To date, Mr. Hiblar has not fully responded to the Association’s requests.

Mr. Hiblar’s conduct violated RPC 1.15(a)(1), requiring a lawyer to hold property of clients and third persons separate from the lawyer’s own property and to deposit and hold in a trust account funds subject to this Rule pursuant to the rules; RPC 1.15(a)(1), prohibiting a lawyer from depositing funds belonging to the lawyer in a trust account except as allowed by the rules; RPC 1.15(a)(2), requiring a lawyer to keep complete records as required by Rule 1.15B; RPC 1.15A(h)(3), allowing a lawyer to withdraw trust account funds when necessary to pay client costs, and to withdraw earned fees from the trust account only after giving reasonable notice to the client of the intent to do so through a billing statement or other document; RPC 1.15A(h)(4), requiring receipts to be deposited intact; RPC 1.15A(h)(5), requiring all withdrawals to be made only to a named payee and not to cash, and to be made by check or by bank transfer; RPC 1.15A(h)(6), requiring trust account records to be reconciled as often as bank statements are generated or at least quarterly pursuant to Rule 1.15A(a)(2);
Beneficiary A has hired a lawyer to pursue a civil action against Mr. Knodel.

Mr. Knodel's conduct violated RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; RPC 1.4(a), requiring a lawyer to promptly inform the client of any decision of circumstance with respect to which the client's informed consent is required, to reasonably consult with the client about the means by which the client's objectives are to be accomplished, to keep the client reasonably informed about the status of the matter, to promptly comply with reasonable requests for information, and to consult with the client about any relevant limitation on the lawyer's conduct; and RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

Kathleen A.T. Dassel represented the Bar Association. Patrick C. Sheldon represented Mr. Knodel.

Suspended

David B. Knodel (WSBA No. 13147, admitted 1983), of Tacoma, was suspended for 18 months, effective September 9, 2010, by order of the Washington State Supreme Court following approval of a stipulation. This discipline is based on conduct involving failure to act diligently, failure to communicate, and misrepresentations.

In 2006, four beneficiaries of a trust hired Mr. Knodel to represent them in a lawsuit against the trustee for failing to collect interest related to the sale of trust real estate during the periods that the purchaser was in default. Although he had done nothing to advance the beneficiaries' claim from March 2008 through January 2009, Mr. Knodel misrepresented to Beneficiary A that he was diligently handling the claim and that he had sent a demand letter to the trustee, who had rejected the trust's offer to settle the suit through a payment of $150,000. In spring 2008, Mr. Knodel forwarded a draft complaint when, in fact, he had neither filed suit nor at the time, in fact, he had neither filed suit nor attempted to serve the trustee. In November and December 2008, Mr. Knodel misrepresented to Beneficiary A that the attorney for the trustee had made offers to settle the case.

In January 2009, after learning that two other trust beneficiaries had received "settlement draws" of $4,000 each from Mr. Knodel, Beneficiary A contacted the trustee and learned that no complaint had been served on him and that Mr. Knodel had not spoken to him since February 2007. When she confronted Mr. Knodel, he admitted that he had not filed suit, and that he paid "draws" to the other beneficiaries from his personal funds. Mr. Knodel negotiated settlements for his failure to timely file suit with three beneficiaries for $15,000 each. Mr. Knodel has paid one beneficiary in full, and owes $4,900 combined to the other two beneficiaries.

Reprimanded

Jerry L. Kagele (WSBA No. 4851, admitted 1972), of Spokane, received a reprimand following approval of a stipulation on July 30, 2010, by order of the Disciplinary Board. This discipline is based on conduct involving failure to act diligently and engaging in conduct that is prejudicial to the administration of justice.

Mr. Kagele represented an immigration client. The I-130 visa petition filed on the client's behalf had been revoked, and the client came to Mr. Kagele after the period for challenging the revocation had passed. Mr. Kagele filed a Notice of Intent to Proceed in the United States District Court for the Eastern District of Washington. The court instructed Mr. Kagele to file a motion for reinstatement of the client's petition within 30 days, or the petition would be summarily denied. He did not file the motion.

Mr. Kagele's conduct violated RPC 1.15(b), prohibiting disbursements on behalf of a client or third person from exceeding the funds of that person on deposit or the funds of a client or third person being used on behalf of anyone else; RPC 1.15B, requiring a lawyer to maintain current trust account records, in electronic or manual form, for at least seven years and to include certain minimum requirements in the maintenance of the records; 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, failing to notify the Association of the overdraft and failing to cooperate with the Association's investigation).

Marsha Matsumoto represented the Bar Association. Mr. Hiblar represented himself. Jane B. Risley was the hearing officer.

Suspended

Jesse Edward Yarbrough (WSBA No. 16921, admitted 1987), of Tacoma, was suspended for six months, effective May 12, 2010, by order of the Washington State Supreme Court following approval of a stipulation. This discipline is based on conduct involving the commission of a felony.

On August 20, 2009, law enforcement officers executed a search warrant at the location which serves as both Mr. Yarbrough's law office and residence. During the search, they seized approximately 75 grams of harvested marijuana plants, along with other marijuana plants. That same day, Mr. Yarbrough was arrested. On November 20, 2009, the prosecuting attorney filed a criminal information against Mr. Yarbrough, accusing him of the unlawful manufacture and possession of a controlled substance in violation of RCW 69.50.401(1)(2)(c). This offense is a class-C felony. RCW 69.50.401(1)(2)(c). On March 29, 2010, Mr. Yarbrough pleaded guilty to one count of Unlawful Manufacture of a Controlled Substance and waived his right to appeal.

Mr. Yarbrough's conduct violated RPC 8.4(b), which prohibits a lawyer from committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects; and RPC 8.4(i), prohibiting a lawyer from committing any act involving moral turpitude, or corruption, or any unjustified act of assault or other act which reflects disregard for the rule of law, whether the same be committed in the course of his or her conduct as a lawyer, or otherwise.

Kathleen A. T. Dassel represented the Bar Association. Todd Maybrown represented Mr. Milstein.

Suspended

Jonathan William Milstein (WSBA No. 27564, admitted 1997), of Bellevue, was suspended for 18 months, effective September 9, 2010, by order of the Washington State Supreme Court following approval of a stipulation. This discipline is based on conduct involving the commission of a crime, acts involving moral turpitude, and disregard for the rule of the law.

In 2006, under the Internet username "bi-seattle06," Mr. Milstein joined online sexual networking websites. From December 2006 until May 2008, Mr. Milstein, portraying himself on the websites as a woman, engaged in sexual banter with website members. On multiple occasions, Mr. Milstein informed members that his name was "V," a real person who had previously been a friend of Mr. Milstein and his wife. Mr. Milstein, impersonating "V," gave "V"s home telephone number to members, asking them to call her for an in-person sexual encounter. As a result, between December 2006 and May 2008, V received telephone calls at home from members who wanted sexual encounters with her. While pretending online to be V, Mr. Milstein, at times, would provide members with a pornographic photo of a woman that Mr. Milstein falsely identified as V, before telling them to call her for an in-person sexual encounter.

The FBI investigated and determined that the IP addresses on the adult websites were sent from Mr. Milstein's Internet account, and eliminated other members of Mr. Milstein's household as suspects. On July 29, 2009, the prosecuting attorney filed an amended complaint in district court charging Mr. Milstein with one count of Telephone Harassment (RCW 9.61.230(1)(a) and (b) and RCW 9A.08.020(1) and (2)(a)), a gross misdemeanor. On August 5, 2009, Mr. Milstein pleaded guilty to the amended complaint and was sentenced to 12 months of unsupervised probation, 240 hours of community service, and a fine of $250.

Mr. Milstein's conduct violated RPC 8.4(b), prohibiting a lawyer from committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects; and RPC 8.4(i), prohibiting a lawyer from committing any act involving moral turpitude, or corruption, or any unjustified act of assault or other act which reflects disregard for the rule of law, whether the same be committed in the course of his or her conduct as a lawyer, or otherwise.

Kathleen A.T. Dassel represented the Bar Association. Todd Maybrown represented Mr. Milstein.
of Appeal of the revocation of the I-130 petition without taking any steps to have the appeal considered timely filed, and then failed to file a brief in the appeal. Mr. Kagele failed to follow up with the Administrative Appeals Unit on the status of the case and, as a result, he was not aware that the Administrative Appeals Unit did not have the case pending before it due to an administrative error. Mr. Kagele further failed to file an appeal with the Board of Immigration Appeals.

The client’s case was subsequently set for hearing before the immigration judge. Mr. Kagele filed a Motion for Waiver and other Relief and Brief on Removability. His motion was denied and his client ordered deported. Mr. Kagele appealed the decision to the Board of Immigration Appeals, asserting that the judge could have corrected the I-130 revocation. The appeal was dismissed because the immigration court lacked jurisdiction to consider the revocation of the I-130, which may only be considered on direct appeal in separate proceedings.

Mr. Kagele’s conduct violated RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; and RPC 8.4(d) prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice.

Debra J. Slater represented the Bar Association. Kurt M. Bulmer represented Mr. Kagele.

Reprimanded

John R. Scannell (WSBA No. 31035, admitted 2001), of Seattle, was ordered by the Disciplinary Board to receive a reprimand on December 17, 2009. This discipline is based on conduct involving failure to act diligently, lack of communication, failure to expedite litigation, and conduct prejudicial to the administration of justice.

In 2004–2005, Mr. Scannell represented a client in a lawsuit against his former employer. A U.S. District Court judge dismissed all the client’s claims with prejudice and imposed sanctions due to Mr. Scannell’s failure to communicate with defense counsel, failure to timely file the complaint, failure to timely amend the complaint to name the proper defendant, repeated failures to meet court deadlines, failure to heed the court’s warnings about meeting court deadlines, failure to produce discovery, and failure to inform his client of a duly noted deposition.

Mr. Scannell’s conduct violated RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; former RPC 1.4, requiring a lawyer to keep a client reasonably informed about the status of a matter, promptly comply with reasonable requests for information, and explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; RPC 3.2, requiring a lawyer to make reasonable efforts to expedite litigation consistent with the interests of the client; and RPC 8.4(d), prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice.

Linda B. Eide and Scott G. Busby represented the Bar Association. Mr. Scannell represented himself. Vernon W. Harkins was the hearing officer.

Non-Disciplinary Notices

Suspended Pending Outcome of Supplemental Proceedings

Brenda Joyce Little (WSBA No. 17688, admitted 1988), of Seattle, was suspended pending the outcome of supplemental proceedings pursuant to ELC 7.3, effective October 18, 2010, by order of the Washington State Supreme Court. This is not a disciplinary sanction.

Suspended Pending the Outcome of Disciplinary Proceedings

Stanley D. Tate (WSBA No. 17943, admitted 1988), of Seattle, was suspended pending the outcome of disciplinary proceedings pursuant to ELC 7.2(a)(2), effective October 19, 2010, by order of the Washington State Supreme Court. This is not a disciplinary sanction.
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and

Barbara Schmidt
Formerly with Eklund Rockey Stratton, P.S.
University of Washington School of Law, 1989
Joined the firm as an associate

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and

Erik R. Olsen has become an associate of the firm practicing Criminal Defense.

Mr. Olsen graduated from the University of Washington in 2007 with a B.A. in philosophy, and received his J.D. from Gonzaga University School of Law, graduating magna cum laude.

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welcomes attorney Matthew Blum

Matt has practiced law in Washington since 2007, where he started as an associate attorney for a Spokane firm focusing on civil litigation. While practicing in Spokane, Matt provided litigation support for a six-week dental malpractice trial that resulted in a $15 million jury verdict for his client. Matt shifted his focus solely to family law in 2009 working for the Vancouver location of Stahancyk, Kent & Hook, P.C., and made the move to our office in September 2010. Matt’s calm demeanor and reasoned approach with clients has led to a reputation as an attorney who brings stability to an often chaotic practice. Matt provides our office with experienced legal support and a growing client base.

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Please check with providers to verify approved CLE credits. To announce a seminar, please send information to:

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

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

Alternative Dispute Resolution

Family Mediation Training
December 6, 8, and 9 — Seattle. 21.25 CLE credits, including 1 ethics. By Dispute Resolution Center of King County; kaseya@kcdrc.org; www.kcdrc.org.

Settlement Conference Mediator Training
December 7 — Tacoma. 2.75 CLE credits, including 1 ethics. By Pierce County Center for Dispute Resolution; 253-572-3657; settlementconference@pccdr.org; www.pccdr.org.

Professional Mediation Skills Training Program
January 14–16 and 29–30 — Seattle. 36 CLE credits, including 2 ethics. By University of Washington School of Law; 206-543-0059; uwcle@u.washington.edu; www.law.washington.edu/cle.

Civil Law

2010 Washington Judicial Highlights: Civil and Ethics
December 17 — Seattle. 4 CLE credits, including 1 ethics. By Rubric CLE; 206-714-3178; www.rubriccle.com.

Construction Law

7th Annual Construction Defects: Update and Strategies

Corporate Law

Corporate and Securities Law Insights

Criminal Law

Energize Your Felony Defense

Elder Law

Elder Law: Best Practices
January 21 — Seattle. 6 CLE credits pending. By the WSBA Elder Law Section and WSBACLE; 800-945-WSBA or 206-443-WSBA; www.wsbcle.org.

Employment Law

Investigating Workplace Complaints: Beyond 101
December 9 — Seattle. 5.5 CLE credits and 1 ethics credit. By King County Bar Association; 206-267-7057; www.kcba.org/cle.

Labor and Employment Law

Environmental and Land Use Law

Solar Electric Installation: Getting on the Grid

3rd Annual Solar Power Projects and Permitting

Environmental and Land Use Law Section Present: What You Need to Know for 2011
December 8 — Seattle. 6 CLE credits, including 1 ethics pending. By King County Bar Association; 206-267-7057; www.kcba.org/cle.

Land Use 2010: The Sequel
December 16 — Seattle. CLE credits pending. By University of Washington School of Law; 206-543-0059; www.law.washington.edu/cle; uwcle@uw.edu.

Land Use 2011: Law and Practice
December 16 — Seattle. 6.75 CLE credits, including 1 ethics credit. By University of Washington School of Law; 206-543-0059; uwcle@uw.edu; www.law.washington.edu/cle.

Estate Planning

Implementation of the Estate Plan: After the Client Signs — What Now?
December 6 — Seattle and webcast. 7 CLE credits, including 1 ethics pending. By the WSBA Real Property, Probate and Trust Section and WSBACLE; 800-945-WSBA or 206-443-WSBA; www.wsbcle.org.

Estate Tax Updates and Practice Pointers: The Lawyer’s Toolbox
December 17 (afternoon session) — Seattle and webcast. 3 CLE credits pending. By the WSBA Taxation Section and WSBACLE; 800-945-WSBA or 206-443-WSBA; www.wsbcle.org.

Ethics

Ethics with Ease: Employment Law
December 8 — Tele-CLE. 1.5 CLE credits
pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Ethics of Communicating with Jurors

Sssshhh! A Primer on Attorney Confidentiality

Estate Planning

Implementation of the Estate Plan: After the Client Signs — What Now?
December 6 — Seattle and webcast. 7 CLE credits, including 1 ethics pending. By the WSBA Real Property, Probate and Trust Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Estate Tax Updates and Practice Pointers: The Lawyer’s Toolbox
December 17 — Seattle and webcast. 3 CLE credits pending. By the WSBA Taxation Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Family Law

Family Law Hot Topics
December 3 — Seattle. 5.25 CLE credits, including .75 ethics. By King County Bar Association; 206-267-7004; www.kcba.org/cle.

Family Law Boot Camp
December 7 — Seattle and webcast. 6 CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Family Law and Advocacy: Succeeding on Family Law Calendars
December 8 — Seattle. 3 CLE credits pending. By Seattle University School of Law; www.regonline.com/FamLawAdvocacy.

General

Appellate Strategies and Essentials
December 1 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

How to Succeed in the Hot Seat

8th Annual Northwest Gaming Law Summit

Winter Conference and Exposition

Issues in Condemnation

Emerald City Open College Mock Trial Tournament
December 4–5 — Seattle. By University of Washington School of Law; www.students.washington.edu/uwmt.

Monkey Trial to Intelligent Design: The Evolution of Religion in the Classroom

9th Annual Washington CLE Bootcamp

Best of CLE
December 9 — Seattle and webcast. 6 CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Best of Rubric 2010
December 30 — Seattle. 6.5 CLE credits, including 2 ethics. By Rubric CLE; 206-714-3178; www.rubriccle.com.

Insurance Law

Insurance Law Primer
December 2 — Seattle and webcast. 6.75 CLE credits, including 1 ethics pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Intellectual Property Law**

**Attorney CSI: Using Criminal Forensic Methods to Win Civil Cases**

**Harnessing the Power of the Internet for Your Practice**
December 14 — Seattle and webcast. 3 CLE credits, including 1 ethics pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Real Property, Probate, and Trust**

**17th Annual Fall Real Estate Conference**
December 3 — Seattle and webcast. 6.5 CLE credits pending. By the WSBA Real Property, Probate and Trust Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Implementation of the Estate Plan: After the Client Signs — What Now?**
December 6 — Seattle and webcast. 7 CLE credits, including 1 ethics pending. By the WSBA Real Property, Probate and Trust Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Trust Accounting Essentials — Part One**
December 16 — Seattle and webcast. 2 CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Estate Tax Updates and Practice Pointers: The Lawyer's Toolbox**
December 17 — Seattle and webcast. 3 CLE credits pending. By the WSBA Taxation Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Trust Accounting Essentials — Part Two**
December 27 — Seattle and webcast. 2 CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Ethical and Practice Management Tips for the Solo/Contract Attorney**
December 14 — (morning session) Seattle and webcast. 3.75 CLE credits, including 3 ethics pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Webcast Seminars**

**Ethics and Literature**
December 1 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Appellate Strategies and Essentials**
December 1 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Insurance Law Primer**
December 2 — Seattle and webcast. 6.75 CLE credits, including 1 ethics pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**17th Annual Fall Real Estate Conference**
December 3 — Seattle and webcast. 6.5 CLE credits pending. By the WSBA Real Property, Probate and Trust Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Implementation of the Estate Plan: After the Client Signs — What Now?**
December 6 — Seattle and webcast. 7 CLE credits, including 1 ethics pending. By the WSBA Real Property, Probate and Trust Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Family Law Boot Camp**
December 7 — Seattle and webcast. 6 CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Best of CLE**
December 9 — Seattle and webcast. 6 CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Privileges, Protected Information, and Waiver**
December 10 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Ethical and Practice Management Tips for the Solo/Contract Attorney**
December 14 (morning session) — Seattle and webcast. 3.75 CLE credits, including 3 ethics pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Harnessing the Power of the Internet for Your Practice**
December 14 (afternoon session) — Seattle and webcast. 3 CLE credits, including 1 ethics pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Liens: How to Create Them — How to Enforce Them**
December 15 — Seattle and webcast. 6.75 CLE credits pending. By WSBA Creditor Debtor Rights Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Trust Accounting Essentials — Part One**
December 16 — Seattle and webcast. 2 CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Estate Tax Updates and Practice Pointers: The Lawyer’s Toolbox**
December 17 — Seattle and webcast. 3 CLE credits pending. By the WSBA Taxation Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Deposition Techniques: Strategies, Tactics, Skills**
December 20 — Seattle and webcast. 6 CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Trust Accounting Essentials — Part Two**
December 27 — Seattle and webcast. 2 CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Washington Law — Gaining a Better Understanding — Day 1**
December 28 — Seattle and webcast. 7.5 CLE credits including 2 ethics pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Washington Law — Gaining a Better Understanding — Day 2**
December 29 — Seattle and webcast. 7.5 CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.
Be the Face of the WSBA!
Your Photo in WSBA’s New Membership Guide

The WSBA is seeking photos of members to include in its new full-color Membership Guide, which is sent out to all new members and includes information about WSBA services, governance, sections, and much more.

If you would like a chance to be featured in the WSBA’s new Membership Guide, please send us a high-resolution digital photo of yourself to membershipguide@ yahoo.com by December 27.

Some guidelines:
• No head shots, please. We’re looking for pictures of you at your office, a library, a courthouse, or out and about, either indoors or out. Make sure your face is visible and in focus.
• Photos must be high-resolution digital color. Photos taken with a 3-megapixel (3MP) or higher digital camera should work.
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• Please include your Bar number and a daytime phone number.
• You must be an active member of the WSBA.
• Be creative!

We’ll notify you if your photo is chosen, and you’ll receive special recognition. For more information, contact Stephanie Perry at stephaniep@wsba.org or call 206-733-5932 or 800-945-WSBA, ext. 5932.

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Positions available are also posted online at www.wsba.org/jobs.

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Intellectual property litigation associate — Pacific Law Recruiters is currently searching for an associate attorney to join the Seattle office of an international law firm. Requirements include a minimum of two years’ intellectual property litigation experience and top-flight academic credentials (an undergraduate degree in electrical engineering, mechanical engineering, or computer science is preferred). Washington State Bar Association license (or eligibility to waive in) is necessary, as is practical experience in state and federal court. Litigation practice will focus on patent and trademark protection and enforcement, trade secrets, and licensing in representative matters involving telecommunications, software, medical devices, semiconductors, and other related technology concerns. Acknowledged for its collegiality and as a proponent for both personal and professional satisfaction, the firm provides a platform to work closely with some of the country’s leading intellectual property attorneys. A strong mentoring program affords immediate responsibility, with opportunities for lawyers to make the most of their abilities and propel their own growth potential. Interested candidates are encouraged to submit a résumé and cover letter in strict confidence to Greg Wagner, principal, at gww@pacificlawjobs.com. Visit our website: www.pacificlawjobs.com.

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Lewis & Clark Law School anticipates need for one or more visiting professors for the 2011–12 academic year. We are looking for candidates to cover one or more of the following subjects: civil procedure, consti
tutional law, contracts, employment law, environmental law, family law, immigration law, legal writing, and wills and trusts. In furtherance of the Law School’s commitment to a diverse faculty, we especially encourage applications from women and members of minority groups. Lewis & Clark Law School is a very collegial community, located in one of the most beautiful cities in the country. For more information, please visit our website at http://law.lclark.edu. Interested persons should send résumé, list of references, writing sample, and an indication of teaching interests to Doreen Corwin, Director of Law Faculty Services, preferably as an e-mail attachment to corwin@lclark.edu, or by mail to her at Lewis & Clark Law School, 10015 SW Terwilliger Blvd., Portland, OR 97219.

McNaul Ebel Nawrot & Helgren is seeking an experienced associate attorney licensed in Washington with a minimum of two years’ experience for its transactional real estate practice. The successful candidate must have the ability to deal directly with clients and have experience with real estate acquisitions, development, financing, and leasing. Candidates should possess exceptional legal ability, excellent written and oral communication skills, and a strong work ethic. Send résumé and relevant information to: Firm Administrator, 600 University Street, Suite 2700, Seattle, WA 98101, or fax to 206-624-5128.

Services


Résumé/career consultations for attorneys — 30-minute sessions — $85. Lynda Jonas, Esq., owner of Legal Ease L.L.C. — Washington’s Attorney Placement Specialists since 1996 — works with attorneys only, in Washington state only. She has unparalleled experience counseling and placing attorneys in our state’s best law firms and corporate legal departments. It is her opinion that more than 75 percent of attorney résumés are in immediate, obvious need of improvement. Often these are quick, but major, fixes. Lynda is uniquely qualified to offer résumé assistance and advice/support on best steps to achieve your individual career goals within our local market. She remains personally committed to helping attorneys land the single best position available to them. All sessions are conveniently offered by phone. Please e-mail legalease@legalease.com or call 425-822-1157 to schedule.

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Turn-key — new offices available for immediate occupancy and use in downtown Seattle, expansive view from 47th floor of the Columbia Center. Office facilities included in rent (reception, kitchen, and conference rooms). Other administrative support available if needed. DSL/VPN access, collegial environment. Please call Amy, Badgley Mullins Law Group, 206-621-6566.

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.

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Downtown Everett: Class-A Everett office — Located on the third floor of the Frontier Bank building; 14’ x 14’, $800 per month. Staff workstations available with potential staff share, full kitchen, new high-speed copier/fax/scanner, conference room with 50” flat screen and digital cable, high-speed Internet. Plenty of parking and close to courthouse. Potential client referrals. View photos at http://photos.frontier302.info/. Lease terms negotiable. Contact Mark Olson at 425-388-5516 or Mark@molsonlaw.com or John Williams at 425-252-8547 or John@WilliamsLawPLLC.com.


Flexible office sharing/rental arrangement available with small Bellingham law firm. Offices within one minute of the courthouse. Reception and staffing is available. Contact 360-671-9212 or tom@rhf-law.com.

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Will Search


Searching for will for John James Boston, previously resided in Clark County and Auburn, Washington. Please contact Dawn Harrison at 360-735-9142 or dharrison1605@msn.com.

Vacation Rentals

Tuscany, six-bedroom farmhouse and farmhouse with four apartments near Florence. 500 to 2,100 euros per week, depending on season and number in party. Contact kenlawson@lawofficeofkenlawson.com.

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My name is Michelle Hull and I represent victims of domestic violence and sexual assault in Indian Country. I work for Lummi Nation Victims of Crime, where we help victims get Protection Orders and file for child custody and dissolutions. I graduated from Willamette College of Law in 1998 and have been licensed in Washington state for 12 years. Most of that time, I have been employed by Native American tribes trying to decrease domestic violence and sexual assault and to protect victims and their children. I have two children; Kennedy is 16 and Gabriel is 9. I live in Blaine, Washington.

To learn more about “Briefly About Me” and to submit your own, go to www.wsba.org/lawyers/brieflyaboutme.doc.
opening statements. As the prosecution prepares to begin its case in chief, the judge nods to the bailiff, who retrieves a cardboard box from behind the bench and begins circulating through the courtroom, handing out envelopes from the box. The judge addresses the entire room.

Judge: Ladies and gentlemen, those opening statements were captivating, weren’t they? If that was any indication, we’re in for a blockbuster of a trial. Let me tell you, this case has it all: intrigue, unforgettable characters, ferocious controversy over facts and law. This is just the kind of case that you, the loyal fans of the Hardup County justice system, have come to expect: one that packs the highest level of justice into a thrill-ride of a trial.

But as you know, justice like this doesn’t pay for itself. Our county, like governments everywhere, has suffered devastating budget cuts. For us to keep delivering the high-quality yet entertaining judicial services you love, we need your help. The bailiff is handing each of you a 2011 Hardup County “Cash for Courts” pledge-drive envelope. On behalf of the judiciary and county administration, I urge you to contribute what you can.

[The judge motions toward the courtroom video screen, on which a photograph appears depicting a sad-eyed 30-ish man seated on a threadbare sofa eating instant ramen from a plastic bowl.]

Judge: Ladies and gentlemen, this is Eddie. Until last year, Eddie was one of our most promising courthouse employees. He had an exemplary work ethic and his future was promising courthouse employees. He had to let him go. This photo was posted to his Facebook profile a few months ago. [Judge’s voice cracks slightly.] The last we heard, Eddie was trying to make ends meet by selling home tattoo-removal kits online. [Several people in the courtroom dab their eyes.]

We realize many of you are facing financial hardships of your own, and we understand you may be limited in what you can give. But even a modest gift can do wonders. A few dollars just might be enough to prevent one of your fellow citizens from going home tonight without having received his or her desperately needed cupful of justice. Now, I hear Hardup County has a special way to show its appreciation to those who contribute, right, Helen? [The judge nods to the court clerk, who rises at her desk.]

Helen: That’s right, Your Honor. As a proud employee of Hardup County, I am pleased to announce that everyone who donates $100 or more to the “Cash for Courts” pledge drive will receive a copy of the upcoming DVD “Legal Action,” a 90-minute video of highlights of the most spectacular moments from Hardup County court sessions of 2010. These are actual recordings from the courtroom audio/video system, remastered to Blu-ray video and Dolby Surround Sound audio. “Legal Action” captures the real-life heart-stopping drama of criminal and civil trials, motions for dismissal and summary judgment, guilty pleas and sentencings, dependency hearings, and much, much more. No serious court fan wants to be without this DVD.

Judge: Thank you, Helen. I guess we’ve talked enough for now. So let’s get back to our trial. The prosecution may call its first witness . . .
“Unless you strive to exceed what you’ve already accomplished, you will never grow.”

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