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Ms. Callahan and her staff of client specialists receive overwhelmingly favorable reviews from clients as posted on the firm’s website. Ted Vosk, of Counsel to Callahan Law has distinguished himself as one of the most brilliant lawyers of our generation, taking the lead in the recent challenge to the irregularities in the procedures of the state toxicology lab.

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Aaron Wolff
B.A., Emory University, Atlanta, Georgia; J.D. (cum laude), Seattle University School of Law; Former prosecutor for the cities of Kirkland and Tukwila, where he successfully prosecuted hundreds of DUI cases; Graduate, National College for DUI Defense; NHTSA Qualified Standardized Field Sobriety Test Administrator; Graduate, National Patent Analytical Systems BAC Datamaster training program; Graduate, Drug Recognition Evaluation Overview Course; Member, Washington Association Criminal Defense Lawyers, Washington State Trial Lawyers Association; Executive Board Member, Citizens for Judicial Excellence.
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Missing y’all

Every month, I looked forward to reading Lindsay Thompson’s column. It was literate, entertaining, sometimes folksy, and always informative. Thompson had a common sense and balanced perspective of bar issues, often accented by the values of his southern upbringing. His prose was a refreshing change from the tedious jargon and irritating polemics of most of the legal commentary out there. I’m sorry to see him move on.

Len Stevens, Portland, Oregon

Font of information

I want to offer my sincere thanks to the Washington Legislative Information Center, which recently made a beneficial change to the webpage used to search for RCWs and WACs (see www.leg.wa.gov). As many of you have experienced, when an RCW or WAC is opened on the Legislative webpage, the color, size, and style of font used for its various components (header, text, and footnote) are different. Consequently, if you cut and paste the cite directly from the webpage to an e-mail/Word file you have to alter these attributes to create an acceptable looking document. After explaining the problem, the Legislative Information Center has now changed the “Print Version” of both the RCWs and WACs on the website, which now shows these laws in black Arial text using one font size. This small inconvenience has now been repealed, and it did not take an act of Eyman, just a simple request from a member of the Bar. Thank you.

Bill Fosbre, Tacoma

Which three days?!

Just in time for the holidays, the Supreme Court decided Christensen v. Ellsworth, case number 79128-7. On the merits, the case is a win for landlords and a loss for tenants. From a practicing lawyer’s standpoint, it is a bad decision. The issue is simple: A landlord may not commence an eviction action until three days have passed after service of a notice to pay or vacate. RCW 59.12.030(3). Like many statutes, this one does not state whether the three days are calendar days or business days. However, the time period is crucial as the Court has determined that its passage is a jurisdictional prerequisite to filing the suit. Without dissent, the Court ruled that the three days are calendar days. This critically shortens the time available for tenants to work out the problem and increases litigation. So, Tiny Tim, Scrooge can evict your family on the Tuesday following any of the half-dozen three day holidays, including in some years, Christmas. But I don’t expect the Court to have compassion for the poor.

I do expect though, that I be able to practice law. For 30 years, whenever a landlord or tenant asked me the question presented to the Court, I have replied with confidence: When a statute is unclear, we turn to Civil Rule 6, which applies “in computing any period of time prescribed ... by any applicable statute,” and all is made certain: do not count weekends and holidays. Most landlords have learned this rule. Now, with much learned discussion, the Court has blown all that certainty and simplicity out the window. It seems that not all statutes are “applicable”; not all jurisdictional prerequisites are part of a “proceeding.” Which ones those might be is anybody’s guess.

I wish the Court would not attempt to decide a landlord-tenant issue without the benefit of amicus curiae briefs. Every jot and tittle of that statute is a political compromise. Every word has been parsed in trial courts. The Court should allow itself to be enlightened by practitioners in the field before it tinkers with settled doctrine.

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Thank you to those who voted to approve Referendum 67 and stood up to lawyer-bashing

On behalf of the members of the Washington State Bar Association, I want to thank the voters in this state for rejecting the false and misleading anti-lawyer rhetoric expressed during the recent campaign against Referendum 67. Lawyer-bashing is nothing new. Listeners can probably find entire monologues devoted to the subject on the radio on any given day. However, the recent campaign opposing R-67 was particularly disappointing. Those opposing R-67 put forward little more than an insult-filled campaign claiming the measure was merely a windfall for “greedy” lawyers.

For the record, the WSBA did not take a position on R-67. As an organization, we did not write it, we did not support it financially, and we did not endorse it. Whether the law should provide for damage awards in certain cases was a legitimate issue before Washington voters. We would have preferred a more robust and substantive public discussion on the issues surrounding R-67. Instead, citizens heard little more than inaccurate and misleading attacks on lawyers. I would like to set the record straight.

The vast majority of lawyers are scrupulously ethical. In fact, it is against the law to file frivolous lawsuits in Washington. The lawyers I know are trustworthy, dedicated, and honorable.

Lawyers are hard-working men and women who serve our communities in many ways. At every level, Washington lawyers protect the elderly from fraud and children from injury. They prosecute criminals, and defend civil rights. They help families plan their future, and assist businesses to grow and prosper. They defend those who cannot defend themselves. The Washington State Bar Association and its members work to serve the public, ensure integrity within the legal profession, and champion justice.

Members of the WSBA are particularly concerned about access to justice for low-income citizens in our state. Many face legal difficulties yet fail to seek legal counsel. These citizens often do not know their legal rights, nor can they afford a lawyer. Nothing is more important than ensuring every citizen receives equal justice under the law. Each year, the WSBA applies more than a half million dollars of its members’ dues to support issues regarding access to justice and low-income legal services.

The WSBA has recently helped to secure funding for new law offices serving low-income citizens in Aberdeen, Longview, and Port Angeles. Bar members also provide hundreds of thousands of hours in no-cost pro bono legal services to low-income citizens across the state each year. The WSBA's goal is to provide greater access to the court system for all citizens regardless of income.

Washington lawyers also accept responsibility should a WSBA member misuse a client’s funds or property. The WSBA Lawyers' Fund for Client Protection compensates clients who may have suffered losses resulting from their lawyer’s dishonesty. Since the indemnity fund’s inception in 1960, Washington lawyers have given more than $3 million to the victims of the few dishonest lawyers in this state. No public funds were involved; these gifts were and are financed solely by payments from lawyers practicing in Washington.

The WSBA also spends about $3.7 million annually, or more than one third, of our members’ dues in investigating and disciplining lawyers who do not adhere to our strict code of ethics. In fact, the WSBA may be the only professional organization in the state to take such direct responsibility for the misdeeds of its members.

The image of lawyers was unfairly tainted over the last few months. It has happened before, and it will no doubt happen again. Lawyers are not perfect, but the WSBA is proud of its members and the dedication they show in helping resolve disputes or manage transactions across the state. More importantly, lawyers help their clients by making sound professional judgments using reason and the rule of law, rather than empty rhetoric.

I am proud to be a lawyer, and proud to be the president of this excellent organization.

Stanley A. Bastian
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February 2008 | Washington State Bar News
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WHY VOTERS, STATE GOVERNMENTS, AND THE COURTS SUPPORT THE

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MARRIAGE LIMITATION

BY STEVEN T. O’BAN
In September 2007, Bar News was dedicated to a single subject: marriage and the law. Our intent through the articles in that issue was to educate, debate, inform, advise, and stimulate our members’ thoughts on this important issue. We heard from several folks in the ensuing months, including Mr. O’Ban, who expressed concern that the articles included did not adequately represent all sides of the issue. In response, I asked him whether he would be willing to submit an article articulating his views on the subject in order to further the discussion and he readily agreed.

In March and April, the Board of Governors plan to hold discussions in conjunction with the Board meetings in Tacoma and Spokane, respectively, about legal issues surrounding marriage and the law in Washington state. In particular, how this issue affects the legal profession and the services we provide to our clients will be discussed — areas such as property transfers, tort proceedings, evidentiary privilege, and employment and pension benefits. All interested WSBA members are encouraged to attend.

For more information about these forums, please visit the WSBA website at www.wsba.org. Thanks to all of you for your continued engagement in this important issue of the day.

Paula Littlewood, WSBA executive director

In February 2004, our state was caught up in the wave of lawsuits breaking across the country following the Goodridge v. Dept. of Public Health\(^1\) decision. In Goodridge, a divided Massachusetts Supreme Court mandated for the first time that same-sex marriage was required by that state’s constitution. Same-sex marriage advocates in Washington filed similar state constitutional challenges later consolidated as Anderson v. King County.\(^2\) I represented lawmakers and urban and religious leaders who intervened and successfully defended the one man/one woman limitation (or, “marriage limitation”). At the time, Mr. Doug Wheeler, one of my clients, was the director of an urban private school that serves children in Seattle’s Central Area. Mr. Wheeler told the Court why he felt compelled to intervene and defend the marriage limitation:

> Although so many of our kids lack a father or mother, they need to have kept before them the goal of marriage between a husband and wife. We are trying to put children and homes back together and critical to achieving that goal is being able to hold up before their eyes the standard of marriage and that its main purpose is to nurture and love children.

Mr. Wheeler’s statement to the Court evokes the central question of the marriage debate: What is the purpose of civil marriage? Examining the two different views of the purpose of civil marriage is predictive of whether or not one believes a legitimate public-policy reason exists for supporting the marriage limitation.

**The Purpose for Civil Marriage Advanced by Proponents of Same-Sex Marriage**

Proponents of same-sex marriage claim the state recognizes marriage to aid adults in taking care of one another. Patricia Novotny, who represented the plaintiffs in the Anderson case, wrote in the September Bar News that the state “through marriage helps family members care for one another” to “stabiliz[e] society and minimiz[e] the demands on it from dependent citizens. By enhancing private caretaking, the state enhances public welfare.” Ms. Novotny acknowledges that a great deal of private caretaking activity already occurs among family members without the stabilizing effect of marriage, e.g., children caring for their parents. Nonetheless, she says society created marriage to help adults do private caretaking “more effectively.” It is easy to see that if Ms. Novotny is correct, there might not be a rational reason for denying marriage to same-sex couples.

Undeniably, married couples on the whole take better care of one another than if they were not married. But Ms. Novotny doesn’t explain why we should accept her formulation as the primary purpose of marriage, other than to claim, without authority, that it is the one “[v]iewed historically and presently.” But as we shall see, effective private caretaking is not the primary purpose of marriage to the vast majority of Americans, or viewed historically, or as recognized by the courts.

**The Purpose of Marriage Supported by Most Americans, History, and the Courts**

It surely hasn’t escaped the reader’s notice that when given the opportunity to cast a ballot on the legal definition of marriage, Americans overwhelmingly vote to protect the marriage limitation. For example, in 2004, a majority of Oregonians voted for Democratic presidential candidate John Kerry and for a constitutional amendment to protect the marriage limitation from judicial review. Without exception, every ballot measure to protect the marriage limitation by constitutional amendment, 26 in all, has passed by large majorities. Forty-five states have either a constitutional amendment or statute expressly limiting marriage to one man and one woman.

**Marriage, as we shall see, is about encouraging heterosexual procreation within marriage.**

**Not a Single State Has Enacted Same-Sex Marriage Through the Legislative Process or by Ballot Measure**

The explanation can’t be invidious discrimination against gays, lesbians, or their relationships when the trend is toward greater tolerance of gays and lesbians. The most reasonable explanation for the widespread support for the marriage limitation, while Americans are at the same time approving greater legal protections for gays, is that voters believe the purpose of marriage is furthered by opposite-sex couples, generally speaking, but not by same-sex couples. It follows that, to the majority of Americans, marriage is about something more than helping adults more effectively care for one another and reduce state dependency. Marriage, as we shall see, is about encouraging heterosexual procreation within marriage.

The view that society sanctions civil marriage to reduce state dependency does not square with history. Marriage preceded the emergence of the welfare state by centuries; indeed it has been with us as long as recorded history. Government as provider of basic social services on a broad scale is a late 19th-century phenomenon, first carried out in Germany under Bismarck. For that matter, marriage predated the emergence of the nation-state and, before that, feudalism. There is simply no historical support for the notion that...
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on being elected to the Board of Regents of the American College of Trial Lawyers. Paul will serve as the Regent for the states of Alaska, Washington, Oregon, Idaho and Montana, and the Canadian provinces of British Columbia and Alberta.

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Marriage Channels Heterosexual Sex into a Stable Environment for Children

Sexual intercourse commonly results in pregnancy. And pregnancy results in a child. That child needs rearing by responsible adults. The institution of marriage forges a link between sex, procreation, and child-

civil marriage was intended as society’s complement to state welfare services and benefits.

The courts confirm both the historical and conventional view of the purpose of marriage. Since the 1800s, when polygamy advocates last challenged the marriage limitation, courts discussing marriage consistently linked their decisions to the family structure of one man, one woman, and their children.\(^3\) The United States Supreme Court characterized the right to marry as fundamental: “Marriage and procreation are fundamental to the very existence and survival of the race.”\(^4\) The Court reaffirmed the connection between marriage and procreation and child-rearing when it placed the “decision to marry” on “the same level of importance as decisions relating to procreation, childbirth, child-rearing and family relationships.”\(^5\) Courts have continued to rely on the link between marriage and procreation in recent decisions.\(^6\)

Even a decision heavily relied upon by same-sex marriage proponents supports the link between marriage, procreation, and children. In *Loving v. Virginia*, anti-miscegenation laws interfered with marriage between a man and a woman in pursuit of invidious racial segregation policies. Unlike anti-miscegenation laws, the marriage limitation reinforces, rather than disrupts, the historical understanding of marriage as a unique male-female relationship.\(^7\) While marriage has always been defined as a male-female relationship, it was defined by race only when racial marriage restrictions were imposed as badges and incidents of slavery. “In this respect, Southern anti-miscegenation laws ran counter to the Western tradition of marriage law.”\(^8\)

A string of recent court decisions have recognized that channeling procreation into marriage is the principal purpose of marriage.\(^9\)

Thus, the popular view of marriage, history, and nearly every appellate court decision since the 1800s point to the purpose for civil marriage — encouraging child-bearing and child-rearing in the optimal environment headed by the two people most responsible for that child’s very existence. This is the rational basis relied on by all the courts for the marriage limitation.\(^10\)
Mark P. Scheer (Managing Partner 2000-2007) handed over the reins to John on January 1, 2008. The Firm would like to thank Mark for a job well done and congratulate him for growing Scheer & Zehnder from a four attorney firm in Seattle to a dynamic group of 14 lawyers with offices in Seattle and Portland. Though Mark has relinquished his role as Managing Partner, he will not be slowing down. Mark will continue to manage and litigate cases, and otherwise dedicate himself to providing excellent customer service to the firm's clients.

SCHEER & ZEHNDER LLP is proud to announce that John E. Zehnder, Jr. has been named Managing Partner!

Mark P. Scheer (Managing Partner 2000-2007) handed over the reins to John on January 1, 2008. The Firm would like to thank Mark for a job well done and congratulate him for growing Scheer & Zehnder from a four attorney firm in Seattle to a dynamic group of 14 lawyers with offices in Seattle and Portland. Though Mark has relinquished his role as Managing Partner, he will not be slowing down. Mark will continue to manage and litigate cases, and otherwise dedicate himself to providing excellent customer service to the firm's clients.

Homosexual couples cannot, as a matter of biology, produce their own offspring and so children of homosexual parents will in 100 percent of all cases be raised by at least one non-biological parent.

the procreation that is sure to take place into marriage. An important function of marriage is to create more stability and permanence in the relationships that cause children to be born. The obligations and benefits of marriage offer an inducement to opposite-sex couples who make a solemn, long-term commitment to each other. And in so doing, the two persons most responsible for creating the child are encouraged to raise the child.

Public-policy makers could conclude that the rationale for marriage does not apply with comparable force to same-sex relationships. Homosexual couples cannot, as a matter of biology, produce their own offspring and so children of homosexual parents will in 100 percent of all cases be raised by at least one non-biological parent. It follows that government may confer recognition on opposite-sex marriages, which may produce children, but not confer recognition on same-sex "marriages." There is simply no equivalent to marriage of a man and a woman.

The Purpose for the Marriage Limitation is Not Weakened by Including Infertile Opposite-Sex Couples and Excluding Same-Sex Couples with Children

Same-sex marriage proponents contend that procreation and child-rearing are no longer, if they ever were, the bases for
the marriage limitation because fertility has never been a condition of civil marriage. But most laws are underinclusive or overinclusive. That fact does not render the classification invalid. Moreover, inquiry into the procreative intentions and capacity of prospective couples would raise obvious privacy concerns under the Constitution.

Same-sex marriage proponents also argue that an opposite-sex couple must not be the optimal structure or else the state would not permit gays to adopt or to have children through artificial means. However, the state’s desire to protect the biological relationship does not require the state to outlaw adoptions or otherwise to prevent parents from raising children to whom they are not biologically related. It does, however, allow the state to express a preference for biological parents. This policy supports a marriage law, which is not only limited to male-female couples, but which extends the benefits of marriage to those willing to undertake a legal and lengthy financial commitment to each other and their children.

In certain cases, the best interests of children may necessitate placing a child in a non-traditional home. But the state’s focus is just that, on the best interests of children in less than ideal circumstances. Alternative arrangements, such as adoption, arise not primarily in deference to the emotional needs or sexual choices of adults, but to meet the needs of children whose biological parents fail in their parenting role. The state may reasonably conclude that the optimal family form does not always work for some children, while still preferring the family headed by a mother and father as the preferred environment for procreating and raising children.

Nothing about adoption or placing children in a single-parent home undermines the state’s preference for rearing children by their natural parents. And leaving the area of reproductive technology unregulated is not the same as elevating that technology to a status equal with procreation by the biological parents of the offspring.

Opposite-Sex Couples Model Both Halves (Genders) of Humanity to Children
Policy makers could also conclude that the state has a further interest in promoting heterosexual marriage that does not apply with equal force to same-sex couples. Fundamental to human life in society is the co-existence of male and female persons. This co-existence is expressed in the paradigm of marriage of a man and woman. Intuition and experience suggest that a child benefits from having before his or her eyes, every day, living models of what both a man and a woman are like. Opposites in sex, appearance, body structure, and outlook model the importance of community through diversity. Marriage presents to children and society at large the value of creating community with others unlike themselves. Children not only fare better when their biological parents raise them, but they need intimate contact with both halves of humanity, male and female.

It is reasonable for policy makers to assume that children with both a father and a mother benefit from the balance of a two-gender household.

Marriage Should Reinforce the Importance of the Role of Fathers (and Mothers)
Today more than ever, society can ill afford to lose any further influence in establishing as normative procreation within marriage to ensure that children are raised by those responsible for bringing them into the world. Mr. Wheeler’s real-life observation in the opening paragraph of this article is

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such a warning.

Princeton University lecturer and psychiatrist Dr. Jeffrey Satinover stated in his declaration filed in the Anderson litigation that numerous peer-reviewed studies confirm that numerous peer-reviewed studies confirm that from fatherless homes come 63 percent of all youth suicides, 90 percent of all homeless and runaway children, 85 percent of all children with behavioral problems, 71 percent of all high school dropouts, 85 percent of all youths in prison, and well over 50 percent of all teen mothers. Quantifiable deficits occur in literally every area of development due in part to the absence of a father — social, psychological, intellectual, educational, emotional, relational, and medical and other health risks. Same-sex marriage would result in the incongruity of conferring state approval on unions that would ensure children were raised in fatherless (or motherless) homes. The state has a vital interest in maintaining the simple and internally consistent definition of marriage.

To the extent procreation in the optimal context of heterosexual marriage is a state interest, the state has a corresponding interest in refraining from deliberately redefining marriage to include unions which cannot, as an entire category, satisfy this interest.

Laws not only regulate behavior through coercive powers, but also in “expressing social values and in encouraging social norms to move in particular directions.”17 “The expressive function of law is important because the social norms it fosters encourages good behavior; without this effect, coercion or economic pressure might be needed to induce desirable behavior.”18 Law must not only be logical and coherent, it must be clear so that its expressive function is not muted.

Thus, choosing to permit or restrict marriage is a choice of what political and social organizing principle society will follow. If and when the Legislature takes up the issue of whether to redefine marriage, it will be considering whether to reordering society. This is not the function of judges in our system of democratic government.

If Marriage Is About Recognizing the Personal Choices of Individuals Who Wish to Care for Each Other, Then There Is No State Interest in Recognizing Some But Not All Such Private Arrangements

Same-sex marriage proponents argue that marriage is the state’s recognition of individuals’ choices to marry the persons they love or wish to be committed to for mutual caretaking. In other words, marriage recognition is driven by the private values and personal preferences of adults, not society’s choice of the optimal environment in which to channel heterosexual sex for the sake of their children.

What proponents seem to ignore is that adopting their formulation for marriage recognition would create a presumption against any state regulation of marriage that interfered with the personal preferences of adults. The burden would shift to the state to justify each regulation that excluded some group of adults. The power to choose the basic organizing unit of society would be stripped from the state and placed in the hands of any two or more individuals who express mutual commitment or love. The prohibitions against polygamy, for example, would fall next if the prohibition against same-sex marriage is declared invalid.19 In other words, the theory of same-sex marriage contains no principle that would include members of the same sex, but still limit marriage to couples.

By contrast, the theories underlying the marriage limitation for recognizing marriage and conferring benefits focus on the uniqueness of the male-female couple as the only union of two persons that can produce children, raise their own offspring, and provide intimate contact with both halves of humanity. This theory of marriage is coher-
ent both in the union it recognizes (and those it does not) and the public-policy reasons for creating the obligations and benefits associated with marriage.

It is important to note that the marriage limitation does not single out same-sex marriage for exclusion. Other forms of marriage are invalid because they do not further the state’s interest in procreation within the optimal environment for children. Hence, if the justifications for the marriage limitation are illegitimate, then there is nothing left to support the state’s interest in sanctioning marriage as a special relationship. All relationships would be on an equal footing.

Advocates of same-sex marriage commonly respond by reframing the question: “How would same-sex marriage discourage opposite-sex couples from procreating within marriage?” It may or may not, but it would certainly change the purpose and definition of marriage. But perhaps more to the point, this is not the question that courts answer in the face of the public’s clear public-policy preference for marriage defined as one man and one woman. As discussed above, nearly all laws are underinclusive. The question for courts reviewing statutory classifications is whether there is a rational basis for the Legislature drawing the classification as it has. The Washington State Supreme Court and nearly every other appellate court to consider the question have concluded that a rational basis unquestionably exists.

The Washington State Supreme Court rejected various arguments that the denial of marriage to same-sex couples implicated fundamental rights requiring strict scrutiny analysis. Under federal constitutional analysis, for a fundamental right to exist it must be “objectively” and “deeply rooted in this Nation’s history and tradition” and “implicit in the concept of ordered liberty,” so that “neither liberty nor justice would exist if they were sacrificed.” To date, no appellate court has held that a fundamental right to same-sex marriage is deeply rooted in this nation’s history and tradition; even the Goodridge court conceded this. Similarly, the Court rejected the argument that the limitation targets a suspect class, homosexuality. Every court asked to do so, including the Ninth Circuit, has declined to hold that homosexuality is a suspect class requiring heightened scrutiny.

Conclusion

Though the principal public-policy reason for recognizing marriage does not include same-sex couples and other relationships, it is undeniable that some of the interests of opposite-sex couples are shared by same-sex couples and others who cannot marry. The Legislature recently created domestic partnerships to confer inheritance, property, hospital visitation, and other rights to same-sex couples. It is unclear why those same benefits should not be provided to two sisters, for example, who live together, pool their resources, and provide mutual care and support, but cannot marry either. In any event, the best way to address the legitimate needs of the adults who cannot marry is through a different institution than marriage.

Marriage law is not about discriminating against homosexuals. Marriage predated the emergence of homosexuals as an identifiable group by millennia. Marriage is about forging a vital social connection between heterosexual sex, the children who are the consequence of that union, and the optimal environment in which to raise those children.

Steven T. O’Ban is a trial lawyer and a member of Ellis, Li & McKinstry PLLC. He can be reached at soban@elmlaw.com.
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NOTES
3. Anderson, 158 Wn. 2d at 36-37.
7. 388 U.S. 1, 87 S.Ct. 1817 (1967).
10. Hernandez v. Nobles, 855 N.E.2d 1, 7 (N.Y. 2006) (The Legislature "could find that an important function of marriage is to create more stability and permanence in the relationships that cause children to be born").
12. Id.
13. Anderson 158 Wn. 2d at 31-32.
17. Id. at 586.
18. Id.
19. One commentator observes that "[t]he Equal Protection argument for same-sex marriage also applies to polygamy. The ban on polygamy discriminates ... against ... bisexuals, who cannot act on their sexual preference within marriage unless they can have multiple spouses." Dent, supra, at 628. So too with first-cousin marriages: "[T]he main arguments for endorsing gay marriage — individual autonomy in intimate affairs and validation of loving relationships — also apply to endogamy." Id. at 631.
22. Anderson., 158 Wn. 2d at 21; High Tech Gays v. Defense Indus. Sec. Clearance, 895 F.2d 563, 573 (9th Cir. 1990); Lofton v. Secretary of the Dept. of Children and Family Serv., 358 F.3d 804, 817 (11th Cir. 2004) ("all of our sister circuits that have considered the question have declined to treat homosexuals as a suspect class").
ABSTRACT
Trust Account Responsibilities and Retainers Task Force (TARRTF) proposed amendments to RPCs 1.5 and 1.15 (a)

(1) The TARRTF was created in 2005 as a result of the BOG’s repeal of Formal Ethics Opinion 186 and its decision not to adopt proposed Formal Ethics Opinion 198 (both of which pertain to advanced fee payments) and the resultant lack of guidance for our members with respect to their trust account obligations for advanced fee payments and the propriety of charging flat or fixed fees and characterizing those fees as nonrefundable.

(2) Lawyers have long charged flat fees, and since the repeal of 186 and the decision not to adopt 198, lawyers have continued to do so and have continued to place those fees into their operating accounts, using fee agreements containing terms such as “earned upon receipt” and “nonrefundable.” The WSBA Office of Disciplinary Counsel (ODC) believes that under current decisional authority and the RPCs, fee arrangements of this type are ethically improper and expose the lawyer to discipline. Lawyers, particularly in the criminal defense, family law, and immigration law bars, contend that clients appreciate the security of knowing the extent of their fee exposure, that the law firms operate on low margins which require that they have immediate access to fees for operating, that the first fee payment may be the only one they receive, and that being able to place advanced fee payments into an operating account allows them to provide access to justice for semi-indigent individuals who do not qualify for a public defender or civil legal aid. The criminal defense bar also asserts that courts are reluctant to let them withdraw even if they are not being paid.

(3) The TARRTF proposed amendments to RPC 1.5 and 1.15(A)(c)(2) create two exceptions to the general rule that advanced fee payments must be placed into trust to be withdrawn only as services are performed:
- Availability retainers (ARs)—fee paid for a lawyer’s availability for a specified time or on a specified matter;
- Flat fees (FFs)—a set fee for a specified legal service, paid in whole or in part in advance of providing the services.

(4) The proposed amendments provide that a lawyer may place an AR or FF into the firm operating account when received if there is a writing signed by the client. With regard to FFs, the rules establish a five-part written disclosure requirement which includes:
- A description of the scope of the services;
- The total amount of the fee and the terms of the payment;
- That the fee is the lawyer’s property on receipt and it will not be place into trust;
- That the fee agreement does not alter the client’s right to terminate the attorney-client relationship; and
- If the services are not completed the client may, or may not, have a right to a refund.

(5) The proposed amendments also provide that, in the event of a dispute, a lawyer must:
- Immediately return the amount the lawyer “reasonably believes” is unearned; and
- Place into trust within 30 days the amount that “a reasonably prudent lawyer would believe to be reasonably in dispute” and take “reasonable and prompt action” to resolve the dispute.

(6) The proposed RPC amendments also:
- Forbid the use of the terms “nonrefundable,” “earned upon receipt,” or minimum fee; and
- Amend 1.15(A) to clearly state that, subject to the two exceptions, a lawyer must deposit advanced fee payments into trust to be withdrawn as earned. 1.15(A)(c)(2).

(7) The WSBA Office of Disciplinary Counsel opposes the rule changes, contending that the rules do not provide adequate protections for the client. The Washington Association of Criminal Defense Lawyers and the WSBA Family Law Section support the rules changes. The BOG voted to unanimously to approve the changes.
Historical Background

Lawyers frequently receive money from clients in advance of providing services. The general rule with respect to the treatment of money so received is that it must be placed into a trust account, to be withdrawn as services are performed. When the relationship terminates, the client is entitled to a refund of any fee advance that has not been earned. See RPC 1.15(A) and RPC 1.16(d). With the exception of a true "availability," "engagement," "general," or "classic" retainer — an agreement between a lawyer and a client whereby the lawyer agrees simply to be available to the client for a specified time or for a specified matter, exclusive of charges for services to be provided — money so received is characterized as an advance payment for services and must be placed in trust.¹

In an attempt to clarify the distinction between funds that must be held in a trust account and those that should not be, in 1990 the Board of Governors approved Formal Ethics Opinion No. 186, entitled “The Proper Handling of Advance Fee Deposits and Retainers.”

At its December 2005 meeting in Bremerton, the Board withdrew Formal Ethics Opinion No. 186 and declined to adopt a replacement opinion proposed by the RPC Committee (Proposed Formal Ethics Opinion 198, entitled “Engagement Retainers and Advance Payments”). The decision to withdraw Formal Opinion 186 was precipitated by the Washington State Supreme Court’s decision in In re Discipline of DeRuiz, 152 Wn.2d 558, 99 P.3d 881 (2004), in which the Court disciplined a lawyer who failed to return unearned fees pursuant to a “nonrefundable” fee agreement. In his defense, Mr. DeRuiz contended that his fee agreement complied with Formal Opinion 186. The DeRuiz Court disagreed, distinguishing between the type of fee agreement referenced in Formal Opinion 186 and the agreement drafted by Mr. DeRuiz, and noting that the former was a true “retainer” intended “to secure a lawyer’s availability over a given period of time.” Id. 573 (emphasis in original). According to the Court, Mr. DeRuiz’s fee was “more accurately characterized as a flat fee for legal services in a particular matter . . . .” Id. at 573. The primary holding in DeRuiz was that the fee was unreasonable because the services were not provided; the Court did not find flat fees to be impermissible, nor did it address the trust account issue.

The Board’s withdrawal of Formal Opinion 186 and its declination to adopt a proposed replacement created a void in guidance for our members with respect to advanced fee payments. It also crystallized a difference of opinion between the Office of Disciplinary Counsel and many criminal defense, family law, and other practitioners about the proper trust account treatment of flat fees received in advance of providing services. The Bremerton meeting was well attended by vocal practitioners who contended that their economic survival depended on their ability to charge flat fees received in advance of services, coupled with the ability to deposit those funds upon receipt into their firm operating accounts.

The Task Force

At the December 2005 meeting, the Board authorized creation of a task force to address the issues raised by the withdrawal of Formal Opinion 186 and ambiguities concerning the way lawyers handle certain fees paid in advance.

The members of the Task Force appointed by the Board of Governors reflected all major perspectives on the issue. Ten lawyer members and one nonlawyer member participated actively in the work of the Task Force. Members of the Task Force were Mark A. Johnson (chair, Seattle), Randy Beitel (WSBA Office of Disciplinary Counsel), Professor David Boerner (Seattle

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¹See also RPC 1.16(d).
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Lawyers are fiduciaries. The fiduciary nature of the client-lawyer relationship imposes many obligations, including unfailing loyalty; complete disclosure; and utter honesty, good faith, and fair dealing.

Analytic Approach of the Task Force

Lawyers are fiduciaries. The fiduciary nature of the client-lawyer relationship imposes many obligations, including unfailing loyalty; complete disclosure; and utter honesty, good faith, and fair dealing. Our fiduciary obligations extend to the amount we can charge our clients for our services, whether that money must, or must not, be placed into a trust account, and the circumstances under which money deposited into trust may be withdrawn. Our obligations with respect to the treatment of money we receive from our clients are memorialized in Rules of Professional Conduct 1.5, 1.15, 1.16(d), applicable ethics opinions, and decisional authority addressing issues of the reasonableness of various types of fee agreements, lawyer discipline, and civil liability.

The TARRTF initially considered whether the issue delegated by the Board of Governors would be resolved most effectively by issuance of a formal ethics opinion or by adoption of a Rule of Professional Conduct. Believing that clarity was of utmost importance, that an RPC would be more accessible to practitioners and the public, and that the Office of Disciplinary Counsel is able to charge violation of an RPC only,
but not an ethics opinion, the Task Force chose the rule-drafting option, resulting in a recommendation to add new provisions to RPC 1.5, together with counterpart amendments to RPC 1.15(A). In addition to the text of the rule amendments set forth and described below, the TARRTF is recommending adoption of amendments to the official Washington Comments to the rule, which will illustrate the meaning and purpose of the amendments and provide interpretive guidance.

The Task Force believes that the suggested rule amendments proposed herein reflect a reasonable balance of interests, and that the proposal as a whole has been conscientiously crafted to protect our clients’ right to informed consent.

The Suggested Solution

The solution proposed by TARRTF is to create two exceptions to the general rule that fees paid in advance of services must be placed in trust: an exception for the classic availability retainer and an exception for a “flat” fee, i.e., a fixed amount prepaid in whole or in part for specified services. The policy foundations for the exception for flat fees are as follows:

1. A significant number of our members, the vast majority of whom are scrupulously honest, contend that the ability to charge fixed fees for specified services and to place that money upon receipt into their firm operating account is necessary for their economic survival;
2. In certain circumstances, particularly in criminal defense representation, the initial payment will often be the only money the lawyer ever receives — and in criminal cases a lawyer may ordinarily withdraw from the representation only with court permission;
3. Clients appreciate knowing the extent of their fee exposure;
4. Allowing criminal defense lawyers to accept flat fees will increase the availability of legal services to middle- and low-income individuals and take pressure off an overburdened indigent criminal defense system;
5. Clients entering into flat-fee arrangements will be protected by the requirement of a signed fee agreement disclosing that the client’s right to terminate the client-lawyer relationship is not affected by prepayment; and
6. The rule places an affirmative duty on the lawyer to act reasonably in the event of a dispute over a right to a refund.

The Office of Disciplinary Counsel contends that the proposed rule does not adequately protect the public and that, absent availability retainers, funds received in advance of services always remain the property of the client until the services are performed and must be placed in a trust account to be withdrawn as earned.

Payments Received by Attorneys in Advance of Services: The TARRTF Proposed RPC 1.5(f) and (g)

The TARRTF amendments to RPC 1.5 create two exceptions to the general rule that fees paid in advance of services remain the property of the client and must be kept in trust. The exceptions are: (1) availability retainers, and (2) flat fees for specified services. See paragraphs 1.5(f)(1) and (2) of the draft rule. The rule, for both types of fee agreements, requires a writing signed by the client. Id. Flat fees require an additional disclosure substantially similar to the form set out in the rule, the purpose of which is to advise the client that the fee will immediately be placed into the lawyer’s operating account and that payment of a flat fee in advance does not impair the client’s right to terminate the client-lawyer relationship, nor does it extinguish the possibility that the client may, or may not, have the right to a refund. Id. The rule also contains a dispute resolution mechanism, see paragraph...
(f)(3), and prohibits the use of the terms “nonrefundable,” “earned upon receipt,” and “minimum.” See paragraph (g).

TARRTF Proposed RPC 1.5(f)

(f) Fees and expenses paid in advance of performance of services shall comply with Rule 1.15A, subject to the following exceptions:

The first sentence of the TARRTF proposed rule is intended to state the general rule that advanced fee payments must be handled in compliance with RPC 1.15(A). The general rule is immediately followed by its two exceptions.

TARRTF Proposed RPC 1.5(f)(1)

(1) A lawyer may charge a retainer, which is a fee that a client pays to a lawyer to be available to the client during a specified period or on a specified matter, in addition to and apart from any compensation for legal services performed. A retainer must be agreed to in a writing signed by the client. Unless otherwise agreed, a retainer is the lawyer’s property on receipt and shall not be placed in the lawyer’s trust account.

Paragraph (f)(1) sets out the definition of what is commonly referred to as the “true,” “general,” “availability,” “classic,” or “engagement” retainer. This paragraph identifies such a retainer as an exception the general rule that a fee is required to be placed in trust if so agreed in a writing signed by the client.

TARRTF Proposed RPC 1.5(f)(2)

(2) A lawyer may charge a flat fee for specified legal services, which constitutes complete payment for those services and is paid in whole or in part in advance of the lawyer providing the services. If agreed to in advance in a writing signed by the client, a flat fee is the lawyer’s property on receipt, in which case the fee shall not be deposited into a trust account under Rule 1.15A. The written fee agreement shall, in a manner that can easily be understood by the client, include the following: (i) the scope of the services to be provided; (ii) the total amount of the fee and the terms of payment; (iii) that the fee is the lawyer’s property immediately on receipt and will not be placed into a trust account; (iv) that the fee agreement does not alter the client’s right to terminate the client-lawyer relationship; and (v) that the client may be entitled to a refund of a portion of the fee if the agreed-upon legal services have not been completed. A statement in substantially the following form satisfies this requirement:

[Lawyer/law firm] agrees to provide, for a flat fee of $__________, the following services: ______________. The flat fee shall be paid as follows: ______________. Upon [lawyer’s/law firm’s] receipt of all or any portion of the flat fee, the funds are the property of [lawyer/law firm] and will not be placed in a trust account. The fact that you have paid your fee in advance does not affect your right to terminate the client-lawyer relationship. In the event our relationship is terminated before the agreed-upon legal services have been completed, you may or may not have a right to a refund of a portion of the fee.

Since parties in disputes over money often take extremely self-interested positions with respect to the amount in issue, it may not be uncommon for the lawyer to believe that he or she is entitled to 100 percent of the fee and for the client to believe that the lawyer is entitled to nothing.

Paragraph (f)(2) is the “flat fee” portion of the proposed rule. It creates a second exception to the general rule that advance fee payments must be placed in trust. The exception applies to flat fees for specified services, whether paid in whole or in part in advance of services. The rule requires that the fee agreement contain a five-part written disclosure (addressing scope of services, total amount of fee, that the fee upon receipt becomes the lawyer’s property and will not be placed in trust, that the agreement does not alter the client’s right to terminate the client-lawyer relationship, and that the client may, or may not, have a right to a refund if the agreed-upon services have not been provided).

TARRTF Proposed RPC 1.5(f)(3) — The Dispute Resolution Mechanism

(3) In the event of a dispute relating to a fee under paragraph (f)(1) or (f)(2) of this Rule, the lawyer shall immediately refund to the client that portion of the fee, if any, that the lawyer reasonably believes is unearned. If the lawyer and the client disagree about the client’s entitlement to a refund or the amount of a refund, the lawyer shall, within 30 days of the accrual of the dispute, deposit into a trust account governed by RPC 1.15A the amount that a reasonably prudent lawyer would believe to be reasonably in dispute. The lawyer shall maintain the funds in trust until the dispute is resolved. The lawyer shall take reasonable and prompt action to resolve the dispute in compliance with Rule 1.15A(g).

Situations will arise when a lawyer has received an availability retainer or a flat fee in advance of services pursuant to RPC 1.5(f)(1) or (2) and the relationship terminates before the specified period ends or the matter resolves (in the case of an availability retainer) or before the specified legal services are provided (in the case of a flat fee). Because of the scientific certainty that such disputes will arise, the TARRTF determined that Proposed Rule 1.5 should contain a dispute resolution mechanism. The Task Force considered three alternative mechanisms, including the one ultimately proposed.2 One of the dispute resolution mechanisms not selected called for the lawyer to place the “lesser of” the amount in dispute or 50 percent of the fee collected into a trust account and “take reasonable and prompt action” to resolve the dispute. Another simply required the lawyer to “take reasonable and prompt action to resolve the dispute.”

Since parties in disputes over money often take extremely self-interested positions with respect to the amount in issue, it may not be uncommon for the lawyer to believe that he or she is entitled to 100 percent of the fee and for the client to believe that the lawyer is entitled to nothing. Given this backdrop, the TARRTF concluded that the best protective mechanism for both parties would be to place on the lawyer — the party better acquainted with the value of the legal services, the RPCs, and the decisional authority with respect to fees — an obligation to determine amount in dispute by applying a reasonably prudent lawyer standard. For example, a lawyer...
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may have essentially completed the representation when the client fires the lawyer and demands his or her money back. Faced with these facts, the lawyer knows that pursuant to the doctrine of substantial completion, he or she is reasonably entitled to the full fee. If, on the other hand, the lawyer is in a situation more akin to that in DeRuiz, supra, the lawyer is in the best position to appreciate the degree to which a portion of the work has not been performed and assess how much money ought to be returned to the client.

TARRTF Proposed RPC 1.5(g) — The Terms “Nonrefundable,” “Minimum,” and “Earned Upon Receipt”

(g) A lawyer shall not characterize any fee as “nonrefundable,” “minimum,” or “earned upon receipt.”

The Rules of Professional Conduct mandate that every fee be reasonable, as measured by the factors specified in RPC 1.5(a) which are relevant to the type of fee agreement at issue. A variety of circumstances may cause a fee treated by a lawyer as “nonrefundable,” “minimum,” or “earned upon receipt” to be, or to become, unreasonable, the most fundamental being situations where the agreed-upon services are not provided. In addition, the pertinent decisional authority establishes that a client’s right to terminate the client-lawyer relationship is absolute, and that a client may discharge a lawyer at any time even without a reason. In re Discipline of Kagele, 149 Wn.2d 793, 72 P.3d 1067 (2003). A corollary to the client’s absolute right to discharge a lawyer is that no fee agreement may restrict that right by imposing a financial penalty on the client’s right to discharge. Accordingly, no fee agreement may contain terms that a client could justifiably construe as implying that the lawyer cannot be discharged without the client automatically incurring the financial penalty of forfeiting all money paid.

Fee agreements that characterize money paid in advance as “nonrefundable,” “minimum,” or “earned upon receipt” may mislead lawyers into believing that they can insist on a legal right to keep an unreasonable fee even if the client-lawyer relationship is terminated before the services are provided. Additionally, such terms may mislead clients into believing that they will be subject to a financial penalty if the client exercises the absolute right to discharge counsel. In light of these risks, the Task Force concluded that the three terms should be expressly prohibited.

TARRTF Proposed Amendment to the Trust Account Rule — RPC 1.15(A)(c)(2)

Except as provided in Rule 1.5(f), and subject to the requirements of paragraph (h) of this Rule, a lawyer shall deposit into a trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

TARRTF proposes adding a new paragraph to RPC 1.15(A), specifically RPC 1.15(A)(c)(2), which will serve (1) to state the general rule with respect to the trust account treatment of fees paid in advance of services and (2) to specify that the only exceptions to the general rule are set out in RPC 1.5(f).

Conclusion

If the Supreme Court votes to adopt the proposed amendments to RPC 1.5 and 1.15, practitioners and the Office of Disciplinary Counsel will have finally have clear guidance on the trust account treatment of advance fee payments. The rule changes
Mark A. Johnson practices plaintiffs’ professional liability and personal-injury law at the law firm of Johnson-Flora, PLLC in Seattle. He served on the WSBA Board of Governors from 2003–2006. He is the WSBA president-elect and will become WSBA president in September 2008. He can be reached at mark@johnsonflora.com.

NOTES


2. The mechanism recommended by TARRTF approximates Louisiana Rule of Professional Conduct 1.5(f), which provides that when a dispute arises:

   [t]he lawyer shall immediately refund to the client the unearned portion of the fee, if any. If the lawyer and the client disagree on the unearned portion of the fee, the lawyer shall immediately refund to the client the amount, if any, that they agree has not been earned, and the lawyer shall deposit into a trust account an amount representing the portion reasonably in dispute. The lawyer shall hold such disputed funds in trust until the dispute is resolved, but the lawyer shall not do so to coerce the client into accepting the lawyer’s contentions. As to any fee dispute, the lawyer should suggest a means for prompt such as mediation or arbitration, including arbitration with the Louisiana State Bar Association Fee Dispute Program.


4. See In re Discipline of Deruiz, supra; WSBA Informal Ethics Opinion No. 2034 (listing death of the client or lawyer, lawyer’s loss of his license, or failure of lawyer to perform the contracted services as events that may trigger a duty to reassess the reasonableness of a fee).
Trends
Healthy (or Healthful) and Otherwise
by Robert C. Cumbow

Languages evolve; vocabularies grow; the senses and meanings of words change. Many of these changes enrich the language. Some grammarians rail against new usages as “incorrect,” as if to maintain that any variance is bad for a language. Others recognize that changes to the language are often beneficial, and in any case most are unstoppable. It is educational to recognize how dramatically mainstream English changed during the 200 years between Chaucer’s Canterbury Tales and Shakespeare’s Hamlet. More than twice that time has passed since Hamlet; yet we can still read it with ease (and joy), but most of us need a glossary to read Chaucer.

Changes to our language can work both benefit and loss. The best we can do is to try to guide those changes to avoid the ones that most harm the language. People who write and speak about language are often accused of taking a “schoolmarm” approach, adhering to traditional correctness for its own sake. A lot of the classic “Mrs. Grundy” rules of usage are unnecessary now, and probably always were. Principles such as “don’t split an infinitive” and “don’t end a sentence with a preposition” and “don’t start a sentence with a conjunction” have no basis in the logic or the expressiveness of our language, and don’t do anything to foster clearer writing or a broader arsenal of articulated meaning.

But two kinds of popular usage should be attacked as incorrect. The first kind consists of usages that, if they become part of the language by popular adoption, impoverish our language by blurring the distinction between words whose different meanings enable us to express ideas with clarity and precision. English is extraordinarily rich in having a vocabulary built of words from many other languages — Greek, Latin, Romance, Germanic, Asian. Extremely subtle distinctions can be made in English by simple word choices. But when popular misunderstanding of these distinctions brings people to use words interchangeably when their meanings in fact differ, the language is under threat of having its working vocabulary and its ability to articulate with precision reduced rather than increased. Consider, for example, the advantages our language offers by enabling us to distinguish between prone and supine, between a lectern and a podium, among a wharf, a dock, and a pier. Then consider what we lose when sloppy usage regards those terms as if there were no differences among them. You can see why devoted users of our language criticize such uses as “incorrect.”

The second type of popular usage that, if left unchecked, harms our language consists of uses that work against the logic of the language itself. Every language has its own internal logic that — at the risk of going all Chomsky on you — its speakers grow to understand and perceive unconsciously as they learn the language. This is why in English a double negative makes a positive, while in French it simply further emphasizes the negative. It’s also why — to use an example from Chomsky’s own observations — we refer to a “big red balloon” and never to a “red big balloon.”

I tell you all of this to suggest why certain usage trends trouble me, and therefore seem worth writing about, while others do not. I tell you this also to stress that I don’t attack usages that are merely non-traditional, but I do attack those that threaten to impoverish our language and
our ability to use it effectively.

End of ponderous introduction. The topic for this column is trends I have observed that are not necessarily healthful for our language, because they either blur distinctions that are worth preserving or violate the inherent logic of our language's structure.

For example, people used to have a clear idea of the difference between "loath" and "loathe." It’s not a hard distinction to make, after all: "loath" is an adjective meaning "reluctant" or "hesitant," and it’s pronounced with an unvoiced "th," rhyming with "oath." "Loathe," by contrast, is a verb meaning to hate or abhor, is spelled with a terminal "e," and is therefore pronounced with a voiced "th," rhyming with "clothe." But these days you hear or see people saying or writing "loathe" when they mean "loath"; and you rarely hear "loath" at all. Unless some consciousness-raising is done quickly, the word "loath" will disappear from our language altogether, and the word "loathe" will come to have two different meanings, which will make it a more ambiguous and less effective word.

Mea Culpa
Lest I should sound too self-righteous, let me point out that my own usage comes in for the most intense criticism — from myself as well as others. It was my wife who pointed out to me — after I had been writing professionally (meaning "for pay," not "for a living") for some years — that I didn’t know the difference between "which" and "that." Recently I had a similar — though not quite as dramatic — awakening. In my last column, I wrote:

Another legal word that spell-checkers have never heard of is "tortious," so be very careful when you run your spell-checker over that complaint for tortious interference with contractual relations, or you’ll end up puzzling the court with multiple references to "tortuous" interference — which may be agonizing, but isn’t illegal.

I am grateful to have received an e-mail from a distinguished reader — Judge Ronald Gould of the Ninth Circuit bench — pointing out that my attempted witticism confused the word "tortuous" (which means "winding and curving") with the word "torturous" (which indeed means "agonizing"). These are distinctions worth preserving. I learn from my own misuses as much as from those of others.

On the other hand, I have also tended to develop certain personal distinctions in my own use of words that aren’t necessarily reflected in dictionaries or popular usage. I’m frequently asked, for example, the difference among “insure,” “ensure,” and “assure.” Notwithstanding the annoying tendency of some insurance companies to refer to themselves as being in the “assurance” business, I think the following distinction makes practical sense, even if it doesn’t have dictionary support: “Insure” means to provide a financial guarantee against loss; “ensure” means to “make sure” that something will or will not happen; and “assure” means to provide encouraging information or support. My cars are insured by State Farm, which ensures that, in the event of damage, I can rest assured that my costs will be covered. That’s a purely personal distinction, but it makes sense to me, and it seems to help rather than hurt my ability to express ideas in English.

Healthy (Healthful?) Trends
A trend that sometimes enriches and

Leachman Joins Dunn Carney

Dunn Carney Allen Higgins & Tongue LLP is pleased to announce that Tamsen L. Leachman has joined the firm, Of Counsel. Leachman will draw from her 14 years of experience representing employers in all areas of employment law to support the firm’s growing workplace law practice. Leachman will represent employers in labor and employment disputes, and provide counsel, training and advice to management and business owners, focusing on prevention through compliance.
sometimes abuses our language is the increasingly imaginative use of the suffix “-ful.” Recently, within the space of a single day, I heard “planful” and “Zenful.” The first was used apparently because the writer wanted a single word to indicate “good planning” and couldn’t call up “prudent” or “circumspect” or “foresighted” or “anticipatory” or any of a number of other words that might have fit the occasion. I thought “planful” sounded stilted, forced, artificial. On the other hand, I thought “Zenful” was delightful, since we don’t already have a ready adjective that means “of or pertaining to Zen,” and in the context “Zen-like” just wouldn’t have done the job. “Zenful” is what H.W. Fowler, in his Modern English Usage, might have termed a “jocularity”—less effective in a serious or scholarly situation, but in conversational writing, colorful.

While I’m on “-ful,” I should mention another error, one of continuing rather than recent usage. “Healthy” means “in good health,” while “healthful” means “promoting health” or “contributing to health.” This is not a difficult distinction, though a lot of people fail to make it. It doesn’t help that “healthy” also has the metaphoric meaning of “large” or “generous,” as in the seemingly contradictory “a healthy serving of potato chips.” The “healthy” business becomes more problematic when one ventures into adverb-land, with “healthily” and “healthfully” getting about equal attention and equal misuse.

Another troubling trend is the confusion of cash, cache, and cachet. We all know what “cash” means, both as a noun and as a verb. The word “cache,” pronounced the same way as “cash,” means a hiding place, and comes from the French word “caché,” meaning “hidden.” The word “cachet,” pronounced “kashay,” refers to a distinguishing mark or feature, such as a stamp or seal on a document, and has come to mean a sign or expression of approval: The “Louis Vuitton” label has a certain cachet. People today are increasingly getting “cache” and “cachet” confused, and pronouncing the former like the latter. No one seems to make any mistakes, however, when it comes to “cash.”

In the last couple of months I have several times observed people using “ironic” when they mean simply “coincidental.” The word “ironic” refers specifically to something not merely coincidental or unexpected, but with a deeper reverse implication. The fact that, while on a trip to Chicago, I ran into someone from Seattle was coincidental, not ironic. If I had gone to Chicago specifically to avoid a meeting with that person, my running into him in Chicago would have been ironic.

**Lapses in Linguistic Logic**

Here’s one that is harmless enough, but is really illogical and unnecessary, and I’m seeing it with increasing frequency, so I think I should mention it (and do what I can to squelch it before it gets too far): the use of the abbreviation “can’t” for “continued.” This is just plain weird, and wouldn’t be worth comment except for the fact that I’ve seen it three times just this week, and it appears to be spreading. The abbreviation of “continued” is “cont.,” “cont’d,” or “cont’d” but definitely not “con’t.” One simple reason for that is the fact that an apostrophe is used to indicate deleted material. Thus, in “cont’d,” the apostrophe tells us that the string “ine” has been dropped from the word “continued” for brevity’s sake. But in “con’t,” what has been dropped between the “n” and the “t”? Nothing at all. The apostrophe doesn’t belong there. This increasingly common misuse seems to arise from the writer’s faulty memory of “cont’d.”

I’ve also started seeing and hearing “couldn’t help but” a lot. This is one of those phrases that cut against the logic of the language by actually meaning the opposite of what the speaker intends. The construction “could not help but” is actually a conflation of two other phrases that cut against the logic of the language by actually meaning the opposite of what the speaker intends: “could not but” and “could not help.” The word “but” is a negative, so the double negative “could not but” means the same thing as “could only” or “had to.” As an illustration, recall the Ogden Nash poem about Professor Twist, the conscientious scientist who never bungled and always got everything precisely correct. One day, on expedition, he missed his wife.

She had, the guide informed him later,

Been eaten by an alligator.

Professor Twist could not but smile.

“You mean,” he said, “a crocodile.”

“Could not but smile” means “could do nothing but smile” or “could only smile.” The same thing could have been expressed as “could not help smiling,” though that would have spoiled the rhyme. Anyway, the point is that “could not but smile” and “could not help smiling” mean the same thing: but “could not help but smile” adds another negative, causing the phrase to mean the opposite of what the speaker intended. However, this construction is increasingly common, the negative sense of “but” is lost to modern ears, and attacking “couldn’t help but” may not be a battle worth fighting. Still, those who value precision in language will choose one of the two more correct constructions.

Another recent tendency is to confuse the preposition “into” with the phrase “in to,” which creates some laughable images. “He drove down the street and turned into a Starbucks” may look all right to you, or it may suggest to you that the driver of the automobile was suddenly transformed into a coffee shop. The driver actually turned in to a coffee shop, he didn’t turn into one. And the student didn’t turn her paper into the teacher; she turned it in to the teacher. But when she kissed the frog, it definitely turned into a prince.

**Telling Time**

On a point that could have consequences more serious than laughable, I am increasingly concerned about the use of the term “p.m.” Calendar features in Microsoft Outlook and on Blackberry, as well as other time-keeping software, have begun to identify the hour of noon as “12 p.m.” This not only is linguistically inaccurate but also risks creating an ambiguity that could result in the utter misidentification of time of day, with potentially significant consequences in, for example, contract and criminal cases.

The abbreviation “p.m.” stands for “post meridiem,” which means “after midday”—that is, “after noon.” Obviously, 12:00 noon cannot be both “noon” and “after noon,” so the term “12 p.m.” is a misnomer. For greatest clarity, all times before noon should be identified as “a.m.” (“ante meridiem” = “before noon”) and all times after noon should be “p.m.” Noon itself is by definition neither before nor after noon, and should be identified as noon, not “12 p.m.”

This also creates an interesting question with respect to midnight. Since 12:00 midnight is both before noon of the next day and after noon of the previous day, it could be either “12 a.m.” or “12 p.m.”

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**Washington State Bar News | February 2008**
I’ve spent nearly 40 years working hard to justify the trust that comes from your referrals. My passion for this practice continues to this day, not only in my own personal practice, but in teaching the next generation of premier DUI Defense Attorneys. That’s why I wrote the book Defending DUls in Washington. I look forward to introducing you to our team.

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Since 1957
Neither is more correct than the other; yet, by convention, midnight is referred to as “12 a.m.” The clearer and more precise approach is to refer to 12:00 noon as “noon,” 12:00 midnight as “midnight,” all times after midnight and before noon as “a.m.,” and all times after noon and before midnight as “p.m.”

But even that doesn’t avoid all problems. Noon is the middle of the day, so when we say “noon, February 27,” there is no question of what specific moment we are talking about. But when we say “midnight, February 27,” do we mean the last minute of that day or the first minute of that day? Using “a.m.” or “p.m.” doesn’t solve the problem. So when writing contracts, rules, or regulations that require an expression of time, I recommend avoiding midnight, and choosing a time that, however weird, is at least unambiguous. “12:03 a.m. Pacific Time February 27” is an odd time to have your contest end, but at least it is unmistakable.

**Parting Shot**

One last thought to keep your mind busy until the next time this column appears:

If you had it drummed into your head in grade school, as I did, that “the earth rotates on its axis, and revolves around the sun,” did you ever wonder why those doors in the fronts of big buildings, which rotate about a stationary vertical axis and don’t go anywhere at all, are called “revolving doors”?

Robert C. Cumbow is a shareholder at the Seattle firm of Graham & Dunn PC. He teaches at Seattle University School of Law and writes on law, language, and movies.
In Memoriam

This In Memoriam section contains brief obituaries of WSBA members. The list is not complete and contains only those notices that the WSBA has learned of through newspapers, magazine articles, trade publications, and correspondence. Additional notices will appear in subsequent issues of Bar News. Please e-mail notices or personal remembrances to inmemoriam@wsba.org.

Crowder, Martin T.
A graduate of UW School of Law, Marty Crowder was a partner and former president of Karr Tuttle Campbell law firm. He served as commodore of the Poulsbo and Seattle yacht clubs. He was a trustee and president of the Princess Louisa International Society. Marty Crowder died December 8, 2007, aged 67.

Felthous, Robert A.
Bob Felthous served as a lieutenant in the Navy in World War II. He earned his law degree from the University of San Francisco. A longtime resident of Selah, it was in Yakima County where he established his own law firm. Felthous served as president of the Yakima County Bar Association, on the boards of the Yakima YMCA and Yakima Memorial Hospital, and as a state administrative law judge. He was also a scuba instructor, private pilot, Boy Scout leader, Sunday school teacher, and volunteer firefighter. Bob Felthous died November 25, 2007, aged 87.

Gordon, Elizabeth A.
Born in Colfax and a graduate of Willamette University Law School, Elizabeth Gordon worked as an assistant district attorney in Roseburg, Oregon, and as the assistant attorney general for the Oregon Appellate Court. She enjoyed gardening, traveling, history, and reading. She was a pilot and volunteered at the humane society. Elizabeth Gordon died July 19, 2007, at the age of 39.

Hooper, Richard B.
Dick Hooper was born in Puyallup. He received his J.D. from Harvard University Law School in 1940. He started work at the Seattle law firm of Jones and Grey, which later became Stoel Rives L.L.C. He served in the Navy for 25 years as a member of the Seabees and retired with the rank of captain. He was president, director, and board member for numerous companies. He enjoyed tennis, trains, classic cars, and traveling. He donated many hours to the Friends of Youth organization. Dick Hooper died October 8, 2007, aged 91.

Knappert, Anton L. “Larry”

Marsh, Douglas B.
Doug Marsh, a graduate of Gonzaga University School of Law, started his career in Everett at the county prosecutor’s office. Eventually he became a founding member of Marsh Mundorf Pratt Sullivan & McKenzie in Mill Creek. In 2000, he was chosen as Attorney of the Year by the Snohomish County Bar Association. He met his wife, Tanis, at the 1962 Seattle World’s Fair. He was transporting visitors in a pedicab, and she was selling tickets and souvenirs. She remembers her husband paying for housing for clients who feared their husbands. “He was just kind,” she said. Marsh was a skilled skier and golfer. Doug Marsh died October 8, 2007, aged 64.

Masterson, Michael
Mike Masterson earned his J.D. from the UW School of Law in 1999. After graduating, he and his wife, Serena, moved to Pierce County, where he worked at the Department of Assigned Counsel. In 2001, he opened his own law practice in Tacoma. He enjoyed reading, fishing, political discussions, Ozzfest, and the Pittsburgh Steelers. Mike Masterson died October 12, 2007, at the age of 39.

McNally, James P.
Jim McNally was born in Ireland and was a longtime resident of Ione. He enlisted in the Army in World War II and served with the 82nd Airborne, 504 Division. During his tour of duty, a shell burst and injured his eye. He was grateful to the Lions Club for its support of corneal transplants. McNally graduated from Gonzaga University School of Law, and moved to Ione in 1956 to practice with Lloyd Ek. He served as deputy prosecuting attorney, prosecuting attorney, legal counsel for P.U.D. No. 1, city attorney for Ione, Metolino, Metolino Falls, and Cusick, and attorney for the Port of Pend Oreille and the Selkirk School District. Jim McNally died October 5, 2007, aged 83.

Robbins, Burton S.
Burt Robbins, a native of Seattle and alumnus of Garfield High School, received degrees in law and literature from the University of Washington. He served as King County deputy prosecuting attorney. He later partnered with his father, Morris Robbins, and practiced law for more than 50 years. He loved his friends, fishing, music, books, and travel. He was a founding member of Impossible Dreamers, a Mariners support group. Burt Robbins died October 1, 2007, aged 85.

Selander, Kenneth J.
Kenny Selander earned his law degree from George Washington University Law School, served in the Navy in World War II, became assistant U.S. attorney for the Western District of Washington, and was a founding partner of Selander Espedal Clark and Leavitt law firm. He served as president of the WSBA Senior Lawyers Section. Kenny Selander died November 3, 2007, aged 89.

Thomas, William R. Jr.
William Thomas Jr. graduated from the University of Michigan School of Law. He was a member of Sigma Chi and Delta Theta Phi fraternities. He served as lieutenant JAG in the Navy during World War II and was promoted to commanding officer. Known to friends and comrades as “The Skipper,” he served with the Christian Science Committee on Publication and the U.S. National LST Association. William Thomas Jr. died on November 15, 2007, aged 83.

Titzler, Scott K.
Scott Titzler was born in Akron, Ohio, and grew up in Palos Verdes, California. He studied marine biology and became a commercial fisherman along the Northwest Pacific coast. He sold his fishing boat and attended law school, graduating in 1987. For 16 years, he was deputy district attorney for Josephine County in Grants Pass, Oregon. Scott Titzler died June 27, 2007, at the age of 57.

Witress, William M. Jr.
William Wittress Jr. graduated from the University of Washington. He served for 22 years as an U.S. Air Force officer. He was involved in the development of cutting-edge aircraft and missiles and led the team that launched the first-ever satellite into geosynchronous orbit of the earth. Wittress was also a business manager for Boeing in Australia. William Wittress Jr. died November 5, 2007, aged 65.
Program Review, Immigration Ethics, and Financial Policies on the Docket

by Michael Heatherly

December 7–8, 2007
Everett, Washington

The upcoming departure of one BOG member, a proposed overhaul of WSBA committees, and reports from several bar-related organizations highlighted the December 7–8 BOG meeting in Everett.

Governor Jason Vail, who represents the Washington Young Lawyers Division, announced he will resign from the BOG after the March meeting. He is relocating to Chicago to take a position with the Sargent Shriver National Center on Poverty Law. The process to replace the WYLD BOG member requires the WYLD Board of Trustees to nominate two or more candidates, from which the BOG elects the replacement. WSBA President Stanley Bastian urged the WYLD and BOG to move swiftly so a replacement would be in office by the April meeting. The BOG approved a motion to conduct the election at the March meeting.

WSBA Executive Director Paula Littlewood presented a preliminary report regarding an ongoing comprehensive review of the structure of WSBA’s more than 35 committees, boards, and panels. The review is part of a WSBA strategic goal to systematically evaluate all the association’s programs to ensure they are in keeping with WSBA’s mission statement and guiding principles. No BOG action was requested at the meeting. Littlewood, the WSBA department directors, and the Strategic Planning Committee expect to further refine the recommendations before requesting BOG approval. Two initial recommendations that prompted discussion by BOG members involved limiting most committees to 14 members (down from 28 or more on some committees currently) and creating a more comprehensive appointment process. In place of the current process, which relies heavily on members taking the initiative to volunteer in response to the annual Committee Application Form, the revamped process would include active outreach to potential committee members through networks, such as county, minority, and specialty bars; WSBA sections; and the WYLD. Goals would include greater geographic, ethnic/racial, and practice-area diversity as well as inclusion of newer WSBA members.

The BOG was presented with an interim report by Lish Whitson, co-chair of the Local Rules Task Force. The task force was created in hopes of reducing the ongoing proliferation of local rules enacted by counties across the state. Local rules, which can differ drastically from county to county, often prove a hindrance to lawyers, especially those who practice in more than one county. Whitson pointed out that the numbering used in the state rules. In some instances, local rules simply fail to comply with the state rules, he added. The task force expects to present an evaluation from its membership — including judges, lawyers, and court administrators — at the January BOG meeting. The task force was assigned to complete its work and bring recommendations to the BOG by spring 2009. Possible solutions range from an effort to convince counties to better coordinate their rules to abolishment of most local rules.

Meanwhile, the BOG heard testimony and took action on an ethical issue raised by several civil rights and minority bar organizations. A previously withdrawn Formal Opinion (No. 167) had explicitly prohibited attorneys from threatening to report a person to immigration authorities in order to intimidate the person in an unrelated civil matter. The opinion had been withdrawn at least in part because it was based on the old ethics that were supplanted by the current RPCs. Although the practice of using such a threat to intimidate a party or witness presumably would be prohibited by general provisions of the current RPCs, the lack of a current formal opinion or specific RPC on the subject has created a loophole that has been exploited. M. Lorena González, president of the Latina/o Bar Association of Washington, told the BOG that her organization’s concern was prompted by an incident in which a Latina litigant was picked up by immigration officials during a court proceeding, apparently after being reported by opposing counsel. Dan Ford, of Columbia Legal Services, stated that another lawyer accused of using such a threat successfully escaped sanctions by pointing out that the prior formal opinion had been withdrawn. The BOG passed a motion to direct the RPC Committee to draft a new formal opinion to explicitly ban the practice and to draft an RPC that would specifically address the practice as well.

Following up on an item from the October BOG meeting, the board clarified its policy on two items involving expense reimbursements. The board approved a provision stating that hotel/motel accommodations for a BOG member or WSBA officer may be reimbursed where an overnight stay is “reasonable and prudent” in order to attend a required event. The board also approved a provision stating that for the spouse, domestic partner, or guest of a BOG member or WSBA officer, the WSBA would pay for group meals (or individual meals if no group meal is provided) at BOG meetings as well as reasonable transportation costs for travel to and from BOG meetings.

The BOG reviewed a preliminary summary of WSBA’s finances for fiscal year 2007. The unaudited figures, which could differ slightly after final review, show that the total balance of all WSBA funds as of September 30, 2007, was $9,017,925, up $564,899 from the same date in 2006. The board approved four actions in that regard: 1) consolidating the Facilities Reserve Fund into a single fund (rather than the split fund used to facilitate

The Board’s Work
the move to the new WSBA offices), 2) designating $500,000 of unrestricted net assets to the General Fund reserves ($55,000 to the Board Program Reserve Fund and $445,000 to the Facilities Reserve Fund), 3) designating a gain of $34,601 on investment of the General Fund Reserve as part of the reserve itself, and 4) authorizing the WSBA officers to allocate up to an additional $250,000 to the Facilities Reserve Fund, with the exact amount depending on the final financial figures after auditing.

Kristin Olson, president of the Washington State Bar Foundation, and Ronald R. Ward, trustee of the organization, presented the foundation’s annual report. They advised the BOG that the nonprofit foundation is at a “crossroads” and likely will need significantly increased revenue to continue and expand its funding of programs, which includes loan repayment assistance, scholarships, and support of other bar-related service and educational organizations. The foundation’s total net cash balance was $137,633 as of September 30, 2007. Ward suggested a figure of $1.3 million as being more realistic for the foundation to effectively carry out its mission, given the greater role that such foundations are being asked to play nationally and locally. The foundation is expected to return to the BOG at the March meeting with a specific proposal, which might include a dues check-off system to encourage contributions from WSBA members and a contract with an outside development director for fundraising.

The board viewed a video entitled “Justice for All: Our Profession, Our Responsibility,” produced by the 2007 class of the WSBA Leadership Institute, a leadership development program for newer lawyers with diverse backgrounds. The video, which is on DVD and linked to the preadmissions area of the WSBA website (www.wsbacle.org/preadmission), uses true stories and testimonials to encourage lawyers to participate in pro bono work.

The BOG also received a report of the Washington Young Lawyers Division, presented by President Mark O’Halloran. O’Halloran reported on WYLD meetings conducted in October in Seattle and December in Bellingham.

Bar News Editor Michael Heatherly practices in Bellingham and can be reached at 360-312-5156 or barnewseditor@wsba.org.
Washington State Bar Foundation
Board of Trustees — Nonlawyer Position
Application deadline: February 15, 2008

The Washington State Bar Foundation is a nonprofit organization whose focus is to improve the delivery of legal services to all segments of the public; foster improvement of relations among the bar, the judiciary, and the public; advance programs related to new lawyer development; support diversity efforts; and promote the administration of justice. Foundation trustees serve three-year terms. The bylaws provide for trustees to be selected as follows: three persons from the WSBA Board of Governors, one past president of the WSBA, four WSBA members, and one nonlawyer. The nonlawyer position is currently available.

WSBA members are encouraged to inform nonlawyers of this opportunity for service. Interested individuals should submit a letter of interest and résumé to WSBA Bar Leaders Division, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539; or e-mail barleaders@wsba.org.

Call for Applications for One of Two Board of Governors At-Large Seats
Deadline: March 3, 2008

To increase member representation on the Board of Governors, the WSBA Bylaws provide for two at-large seats. The full text of the Bylaws can be reviewed at www.wsba.org/bylaws. One of these seats is up for election to a three-year term commencing at the close of the annual meeting in September 2008.

Persons interested in filling an at-large position should submit a letter of application and current résumé. The Board of Governors will elect the at-large governor at their meeting on June 6, 2008. The application should include a statement addressing how the applicant believes he or she meets the intent specified in Article III, Section N. There is no intent that these seats are dedicated or rotationally filled by any one element of diversity or group of members.

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

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

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

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

Notice of Board of Governors Election for 2008

Four positions on the WSBA Board of Governors will be up for election this year. These are the governors representing the 3rd, 6th, 7th-East*, and 8th Congressional Districts. These positions are currently held by Kristal K. Wiitala (3rd District), Salvador A. Mungia (6th District), Liza E. Burke (7th-East District), and Douglas C. Lawrence (8th District).

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

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

Nomination forms are available from the Office of the Executive Director, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539; 206-727-8244 and on the WSBA website at www.wsba.org/info/bog/default.htm. The WSBA executive director must receive nomination forms by 5:00 p.m. on March 3, 2008. The Board of Governors determines the official dates of the election. Ballots are mailed on or about April 15 and must be returned by May 15.

Note: Biographical statements of nominated candidates will be published in the May issue of Bar News.

*The 7th Congressional District is divided into three sub-districts, east, central, and west. These sub-districts are distinguished by zip codes, and each has one elected governor. For the coming year, the east sub-district (zip codes are 98105, 98115, 98118, 98122, 98125, 98144, 98155, 98178, and 98185) will elect a new governor.
Seeking Questionnaires from Candidates for Judicial Appointments
January 31 for March 13 interview; May 1 for June 12 interview
The WSBA Judicial Recommendation Committee (JRC) is accepting questionnaires from attorneys and judges seeking consideration for appointment to fill potential Washington State Supreme Court and Court of Appeals vacancies. Interested individuals will be interviewed by the Committee on the dates listed above. The JRC’s recommendations are reviewed by the WSBA Board of Governors and referred to Governor Gregoire for consideration when making judicial appointments. Materials must be received at the WSBA office by the deadline listed above. To obtain a questionnaire, visit the WSBA website at www.wsba.org/lawyers/groups/judicial-recommendation or contact the WSBA at 206-727-8212 or 800-945-9722, ext. 8212, or barleaders@wsba.org.

2008 License Fee, Late Fees, and Suspension Information

2008 License Fee Packets. License packets were mailed in early December. This year’s packet has been condensed. The packet includes your license-fee invoice with status change request to inactive or for resignation, as well as contact information changes and contact restriction requests. Active members receive a mandatory trust account declaration form, backed by a mandatory professional liability insurance disclosure form and, as applicable, separate MCLE information or certification forms. All members receive the voluntary pro bono and demographic information form. If you have not yet received your packet, please call the WSBA Service Center at 800-945-WSBA (9722) or 206-443-WSBA (9722), or e-mail questions@wsba.org to request a duplicate. Please note that it is your responsibility to pay your annual license fee, regardless of whether you receive the license packet.

Fees. We encourage you to pay your mandatory fees promptly to avoid penalties. Payments must be postmarked or delivered to the WSBA office by February 1, 2008. WSBA Bylaws require a 20 percent late-payment penalty if the annual license fee remains unpaid after March 3, 2008. After April 1, 2008, a 50 percent late-payment penalty is imposed. If your license fee, penalty assessment, or LFCP assessment remain unpaid after May 2008, the delinquency will be certified to the Supreme Court, which will order an order of suspension from the practice of law. In order to be reinstated to your former status after suspension for nonpayment, you must pay double the amount of the combined fee and penalty (triple the original fee). For active members, nonpayment of the $15 Lawyers’ Fund for Client Protection (LFCP) assessment (required by APR 15) is also cause for suspension.

You may also pay online. To pay online, go to www.wsba.org, select the “For Lawyers” tab, and see “Pay License Fee Online.”

New Fee to Change Status to Active. Beginning January 1, 2008, all members on inactive, judicial, or emeritus status who apply for a change to active status are required to pay a $100 investigation fee at the time of filing an application for a change of membership status to active. The Board of Governors approved the fee to help defray the costs associated with researching a member’s background and membership history. WSBA Members on Active Military Duty. WSBA Bylaw I.I.E.1.b., providing for a fee exemption for eligible members of the Armed Forces, was amended in March 2006. Please contact the WSBA Service Center at 800-945-WSBA (9722) or 206-443-WSBA (9722), or questions@wsba.org, or contact Kevin McKee at kevinm@wsba.org or 206-727-8243 for application information. All requests for exemption must be postmarked or delivered to the WSBA office on or before March 1.

Contact Information. Now is the ideal time to check that the WSBA has your correct contact information in its database. You can check by going to the online lawyer directory on the WSBA website at http://pro.wsba.org.

If your contact information has changed, please complete and return the Contact Information Change form included in the license packet to the address shown on the form or by fax to 206-727-8319, or e-mail the changes to questions@wsba.org. Please update your information as soon as possible.

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

APR 11 Amendments Published for Comment
The amendments to Admission to Practice Rule (APR) 11 and Appendix APR 11, sent to the Supreme Court in June 2007, have been published for comment by the Court. The amendments and instructions for making comments can be found at www.courts.wa.gov/court_rules/?fa=court_rules.
proposed. The comment period will close on April 30, 2008. The suggested amendments to APR 11 would:

- Change the official title of the Board of Continuing Legal Education to the “Mandatory Continuing Legal Education Board” or “MCLE Board”;
- Bring all of the credit requirements for mandatory continuing legal education for lawyers into one rule (APR 11.2), pulling some outstanding the existing regulations;
- Reduce the number of credits that must be earned as “live” credits;
- Do away with a three-month grace period for lawyers to become compliant with their MCLE requirements after the end of their actual reporting period; and
- Separately set out provisions of APR 11.4 and 11.6 regarding enforcement and appeals from decisions, to make them easier to locate and understand.

The suggested amendments to APR 11 Appendix would:

- Make the requirements for course accreditation and the requirements imposed on all sponsors more uniform, assuring quality education through a system of advance submission of agendas, review of course materials (when appropriate), evaluations by attendees, and spot audits of seminars;
- Eliminate the existing limits on the number of credits that can be earned through open and closed in-house CLE seminars sponsored by private law firms, corporate legal departments, and government agencies, addressing concerns raised by those groups regarding the current Regulation 104(e);
- Increase the list of topics eligible for accreditation, allowing for accreditation of more topics applicable to small- and solo-practices and more topics related to mental health issues;
- Revise requirements for sponsors to become “accredited sponsors” (sponsors allowed to set credit awards for their own courses, subject to review by the MCLE Board);
- Streamline some regulatory processes; and
- Clarify and simplify the wording of the regulations.

A more detailed explanation of each amendment will be available on the WSBA website, on the MCLE Board’s APR 11 Review Project 2007 page: www.wsba.org/lawyers/groups/mcle/apr11review07.htm.

MCLE Certification for Group 1 (2005-2007)

If you are an active WSBA member in MCLE Reporting Group 1 (2005-2007), you should have received your Continuing Legal Education Certification (C2/C3) forms in the license packet that was mailed in early December. The deadline for returning the C2/C3 form to the WSBA is February 1, 2008. Any C2/C3 forms delivered to the WSBA or postmarked after March 3, 2008, will be assessed a late fee.

Members in Group 1 include active members who were admitted to the WSBA through 1975 or in 1991, 1994, 1997, 2000, or 2003. Members admitted in 2006 are also in Group 1 but are not due to report until the end of 2010. Their first reporting period will be 2008-2010; however, any credits earned on or after the day of admittance to the WSBA may be counted for compliance.

The Continuing Legal Education Certification (C2/C3) form that you received in your license packet is a declaration that lists all the MCLE Board-approved courses that were in your MCLE online profile for the 2005-2007 reporting period as of mid-October 2007. If you took other courses after mid-October, you can add these to the back of the C2/C3 form when you receive it. The C2/C3 form, not your online profile, is the official record of MCLE compliance. The original copy of the C2/C3 form must be returned to the WSBA to meet compliance requirements.

All MCLE Board-approved courses that you list on your C2/C3 form must have an Activity ID number. This number is listed in your online MCLE profile and is assigned at the time that the Form 1 for each course is input to the MCLE system. If you have taken courses that have not yet been approved by the MCLE Board, please submit Form 1s for these courses immediately to ensure that they are approved before your C2/C3 is due. A “Certificate of Attendance” or other sponsor-provided certification is not sufficient to receive course credit. If the sponsor has not received course accreditation from the Washington MCLE Board, you must submit a Form 1 application and full agenda for the course in order to receive credit. Because of high volumes from October through February, Form 1s submitted electronically (at http://pro.wsba.org) could take up to four weeks or more to process. Paper Form 1s may take up to six weeks or more to process. If you submit a paper Form 1, you will be notified by mail of its Activity ID number.

If you were not able to meet the credit requirement by December 31, 2007, and need more time to complete your credits, an automatic extension will be granted until May 1, 2008. There is no need to apply for it. However, a late fee will be assessed if you took any courses after December 31 that are needed for compliance or if your...
C2/C3 form is submitted late. If this is the first reporting period in which you will not meet MCLE compliance requirements, the late fee will be $150. The late fee increases by $300 for each consecutive reporting period you are late in meeting MCLE requirements.

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

**MCLE Certification for Active Members**

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


<table>
<thead>
<tr>
<th>Reporting Group</th>
<th>Next Reporting Period</th>
<th>Complete Credits by</th>
<th>File C2/C3 Form by</th>
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</thead>
<tbody>
<tr>
<td>Group 2</td>
<td>2006–2008</td>
<td>December 31, 2008</td>
<td>February 1, 2009</td>
</tr>
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**Credit Requirements.** The following credit requirements must be met by December 31 of the last year of an active member’s reporting period:

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

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

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

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

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• The C2/C3 form should be filed by February 1 even if all the credits needed for compliance have not been completed.

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

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

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

MCLE System — Course Listing and Member Profiles. You can use the online MCLE system to: review courses taken and credits earned; apply for course approval; apply for writing credit, pro bono credit, or prep-time credit; and search for approved courses being offered.

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

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

MCLE Compliance Report (C4/C5) in 2008 License Packets

All active members who are not due to report MCLE compliance at the end of this year, including new admittees, should have received the C4/C5 form in their 2008 licensing packets. The report on the C4/C5 form lists all credits reported to the WSBA for the member’s current reporting period as of mid-October 2007. APR 11.6(a)(3) requires that the WSBA provide an annual report to each active member regarding the credits and courses posted to their MCLE online rosters. This report helps non-reporting active members to better track their credits, as well as ensure correct reporting and compliance at the end of their reporting period.

If you received the C4/C5 form in your 2008 license packet, it is for your information only. No action needs to be taken unless you want corrections to be made. If you want to make corrections to your WSBA MCLE roster, go to http://pro.wsba.org. Click on the “Member” tab, and then on “Member Login.” The online instructions lead you through the process of creating a confidential password and beginning to use the system. Online help is available. You may also contact the WSBA Service Center to have corrections made and/or to request an MCLE system instruction booklet at 800-945-WSBA (9722), 206-443-WSBA (9722), or questions@wsba.org.

Notice of Intent to Form a WSBA Civil Rights Law Section

Petitions are now being circulated to form a new WSBA Civil Rights Law Section pursuant to Article IX of the WSBA Bylaws. This area of law falls within the purposes of the WSBA as provided in General Rule (GR) 12. There currently is no other section or WSBA entity whose primary focus is on civil rights law, other than the Civil Rights Committee. Whether the Board of Governors determines to continue or discontinue the Committee,
the Section, supported by section member dues, would be in a stronger position to present CLE programs, publications, and work with other WSBA entities such as the Council on Public Legal Education, the Committee for Diversity, and others. A subcommittee of the WSBA Civil Rights Committee chaired by Patricia Paul, and including Tracy Flood, Molly Maloney, Sharon Payant, and Wilberforce Agyekum, will work on this during the required six-month waiting period. They intend to report to the Board of Governors with a recommendation not later than September 2008. For more information, please contact Ms. Paul at 360-230-2369, or e-mail patriciapauljd@msn.com. Intended jurisdiction: The Civil Rights Law Section would address concerns with all aspects of civil rights law in Washington within the parameters of GR 12.

YMCA Mock Trial Program Seeks Volunteers State Championships
The YMCA Youth & Government Mock Trial program allows high school students to participate in a “true-to-life” courtroom drama. Each team of attorneys and witnesses prepares the case for trial before a real judge in an actual courtroom. A “jury” of attorneys rates teams for their presentation while the presiding judge rules on the motions, objections, and ultimately the merits. Participants develop critical thinking and analytical skills, learn the art of oral advocacy, and gain a respect for the role of law and the judiciary. The state championship competitions will be held Friday, March 28 through Sunday, March 30, at the Thurston County Courthouse in Olympia. Volunteer attorney raters and judges are needed. To volunteer, please contact Janelle Nesbit at 360-357-3475 or youthandgovexe@qwest.net. Visit www.youthandgovernment.org for more details. This program is sponsored in part by the Washington Young Lawyers Division.

WSBA Lawyer Services
Department Sponsors Law Office Management Workshops
The Success Strategies Workshops hands-on/how-to intensives will teach new-to-practice attorneys or more experienced attorneys the skills and processes to better manage their law practices in an ethical, effective, efficient, and profitable manner. Through a combination of teaching methods and experiences in a confidential workshop setting held at the WSBA office, law office management consultant Ann Guinn will assist attorneys in solo or small firms to develop and reach their career goals. Workshops will be held the first Wednesday of each month from 5:30–8:30 p.m. You may join during any month. Three MCLE-approved CLE credits are available for each workshop. For information or to pre-register, contact Ann Guinn at 253-946-1896 or ann@wsba.org or Jennifer Fuvell, Ph.D., at jenniferf@wsba.org or 206-727-8267 or 800-945-9722, ext 8267.

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

Contract Lawyer Meeting
Discuss the issues with other contract lawyers on February 12 from noon to 1:30 at the WSBA office. Bring your lunch — coffee is provided — and network with other contract lawyers. For more information, contact Julie Salmon at 206-733-5914, 800-945-9722, ext. 5914, or juliesa@wsba.org.

LAP Solution of the Month: Stress Reduction
Sometimes it’s tempting to reduce stress by overdoing alcohol, prescription drugs, food, sex, gambling — even work. These methods usually provide short-term relief and long-term pain, effectively giving you another problem to cope with down the road. Learn to reduce your stress without self-harm. If you need a hand, call the Lawyers Assistance Program at 206-727-8268.

Computer Clinic
The WSBA offers a hands-on computer clinic for members. Learn about what programs, such as Outlook, PowerPoint, Excel, Word, and Adobe Acrobat, can do for a lawyer. Are you a total beginner? No problem. The clinic teaches helpful tips you can use immediately. Computers are provided, and seating is limited to 15 members. There is no charge.
FYInformation

and no CLE credits are offered. The February 11 clinic will be held from 10 a.m. to noon at the WSBA office and will focus on Outlook and practice-management software. The February 14 session will be held from 2 to 4 p.m. and will focus on Excel and Word. For more information or to RSVP, contact Julie Salmon at 206-733-5914, 800-945-9722, ext. 5914, or juliesa@wsba.org.

Job Seekers Discussion Group
Looking for a job or making a transition? Join us at the Job Seekers Discussion Group the second Wednesday of each month from noon to 1:30 p.m. The next meeting is February 13 at the WSBA office. The group discusses where to look for jobs, how to grow your network of contacts, strategies for résumés and cover letters, and how to keep yourself organized and motivated. Exchange information and ideas with other lawyers looking to make a change. Come as you are — no need to RSVP. Bring your business cards and practice networking skills. For more information, call 206-727-8269 or 800-945-9722, ext. 8269, or e-mail rebeccan@wsba.org.

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

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

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

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

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

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

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

New Urban Indian Legal Clinic to Open in Seattle

In late March 2008, a new Urban Indian Legal Clinic will open at the Chief Seattle Club in Seattle (206-292-6214). The clinic is looking for volunteer attorneys. In preparation for the clinic’s opening, a free all-day CLE on basic Indian law, “Representing Native Americans in Washington State: An Indian and Tribal Law Primer,” will be held at the WSBA office on February 28. The CLE will include cultural competency and Indian law fundamentals in key areas such as jurisdiction, criminal law, and family law as they relate to tribes and tribal members, and will also serve as a training session for lawyers interested in volunteering at the new clinic. The Clinic and CLE are sponsored by the Northwest Indian Bar Association, the WSBA Indian Law Section, the King County Bar Association, and the Northwest Justice Project.

Upcoming Board of Governors Meetings

March 7-8, Tacoma • April 25-26, Spokane • June 6, Vancouver

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

Usury Rate

The average coupon equivalent yield from the first auction of 26-week treasury bills in January 2008 was 3.275 percent. Therefore, the maximum allowable usury rate for February is 12 percent. Information from January 1987 to date is on the WSBA website at www.wsba.org/media/publications/barnews/usury.htm.

Washington Lawyers Activate Hotline for Free Legal Services for Low-Income Flood Victims

The WSBA has activated a hotline for low-income residents needing legal help to recover from the flooding in Western Washington in December. Families and individuals with legal problems caused by the recent flooding and who cannot afford their own lawyer can get free legal advice from volunteer WSBA attorneys. Flood victims needing legal assistance, but who cannot afford an attorney, are advised to call the Disaster Legal Services toll-free line at 866-519-7099 and leave a message. Attorneys willing to volunteer legal services for flood victims should also call the hotline. WSBA staff monitor the line daily.

A Washington Young Lawyers Division (WLYD) lawyer will contact the caller to gather more information, and match flood victims with volunteer attorneys. The WSBA activated the hotline following a federal major disaster declaration after the floods. WSBA attorneys provide volunteer legal services through the ABA Young Lawyers Division’s Disaster Legal Services Program in coordination with FEMA. WLYD member Julia Bahner is coordinating these efforts.

The WSBA volunteer legal assistance includes:

- Help with insurance claims for doctor and hospital bills, loss of property, loss of life, etc.
- Drawing up new wills and other legal papers lost in the flood.
- Help with home repair contracts and contractors.
- Advice on landlord/tenant problems.
- Advice on eviction or foreclosure problems.
- Preparing powers of attorney.
- Help with guardianship and other similar legal papers.

In the aftermath of last year’s storms and floods, WSBA volunteer attorneys successfully assisted individuals and families primarily resolve renter’s insurance matters, and legal issues involving businesses destroyed in the storm.

A huge thank you to the attorneys who offered assistance or who have taken on cases on behalf of flood victims. Listed below are some of the attorneys who have provided pro bono assistance. Bar News would like to recognize all attorneys who have helped out; if your name is missing from the list, please e-mail barleaders@wsba.org, so we can publicly recognize you in a future issue.

Jason Amala, Tacoma
Sharon Chirichillo, Olympia
Aaron Christensen, Bellevue
Joseph Devlin II, Tacoma
Michael Dewitt, Lacey
Raymond Gessel, Kent
Don Mullins, Seattle

Martin Pujolar, Seattle
Marc Ramme, Lynnwood
Paul Roesch, Longview
Hector Steele Rojas, Seattle
Patricia Simon, Seattle
Tim Spellman, Seattle
Rachel Tallon, Everett

The WSBA presented a free telephone CLE titled “Are You Prepared to Provide Disaster Legal Services to Flood Victims?” on January 23 offered for 1.5 CLE credits. This CLE was prepared in response to the flood disaster and with the goal of providing relief for those affected. More than 140 lawyers registered for the CLE.
Announcements

The Shareholders of

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...together with associate attorneys...

...are pleased to welcome new associate attorneys...

...Ms. Torrez was previously a Judicial Law Clerk for the... Division II.

...Mr. Talbot was previously a Staff Attorney for the... Ombudsman.

...Mr. Crowner was previously a Staff Attorney for the... Division II.

The Firm is also pleased to announce the purchase of a downtown office building, which will house its new offices in spring 2008.

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Mr. King's practice is focused on motor vehicle dealerships, commercial litigation, construction law, real property and general business.
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to reflect the addition of its new partner
Rebecca S. Ringer
We are also pleased to announce
Kerry B. Gress
has become a partner of the firm.
Also joining the firm as associates:
David J. Corey
Melisa K. Thompson
and
Tammy L. Williams
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is pleased to announce

Melanie T. Stella

has become a shareholder in the firm.

Ms. Stella focuses on appellate practice, insurance coverage disputes, and other complex matters. A 1998 graduate of Gonzaga University School of Law, Ms. Stella has been with the firm since 2000.

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BAROKAS MARTIN & TOMLINSON

is pleased to announce that

Aric S. Bomsztyck
and
Hans P. Juhl

have joined the firm as new associate attorneys.

Mr. Bomsztyk’s practice will continue to emphasize commercial and civil litigation, state and federal appeals, personal injury, and criminal defense.

Mr. Juhl’s practice will continue to emphasize commercial and civil litigation, construction, estate planning, real estate, business formation, and catastrophic injury.

The firm welcomes their experience and expertise as it continues to practice in the areas of business and contract law, construction law, real estate, and all aspects of litigation.

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congratulates our new partners

Valarie S. Zeeck
and
James W. Beck

Ms. Zeeck successfully defends employers in employment-related litigation and advises and trains owners, managers, and employees of employment law with the goal of reducing litigation risk and expense.

Mr. Beck, former law clerk to the Honorable Gerry L. Alexander, Chief Justice of the Washington Supreme Court, is a talented trial lawyer whose practice focus is civil rights, personal injury, and complex litigation.

DAVIES PEARSON, P.C.
Attorneys at Law

is pleased to announce that

Christopher J. Marston

has become an associate of the firm practicing in construction law, general business, civil litigation, real estate law, and contract review and preparation.

Mr. Marston graduated from Seattle University School of Law in 2000, cum laude. He received his Bachelor of Arts degree from the University of Puget Sound in 1997.

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Bradley K. Crosta

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

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• Fee-Related Ethics and Discipline
• Expert Testimony (lodestar/fee division/quantum meruit)
• Arbitration, Mediation
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E-mail: michaelc@michaelcaryl.com

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

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

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

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

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

Clarification: In the January 2008 Bar News disciplinary notices, it should have been noted that John L. Meader, of Camas (WSBA No. 14672, suspended for six months, effective October 18, 2007) is to be distinguished from John S. Meader of Olympia.

Disbarred

Lynn M. Abreu (WSBA No. 14241, admitted 1984), of Renton, was disbarred, effective November 20, 2007, by order of the Washington State Supreme Court following a default hearing. This discipline was based on conduct involving two counts of theft.

In January 2006, Ms. Abreu signed as escrow agent on a standby letter of credit escrow agreement for a financial transaction between a corporation located in Turkey (Corporation A) and a corporation located in Illinois (Corporation B). The purpose of the agreement was to allow Corporation B to obtain funds needed for construction of a power plant in India through lease of a standby letter of credit. Ms. Abreu’s part in the transaction was simply to receive and hold the funds transmitted to her on behalf of Corporation B in her trust account and then to transmit them, less her fee, upon Corporation A’s performance of its obligations under the agreement. To fulfill its obligations under the agreement, Corporation B went to outside investors and obtained $485,000, which was then wired directly to Ms. Abreu’s account. The account that Ms. Abreu provided to receive the funds was not a trust account. Under the escrow agreement, Ms. Abreu was required to return the funds to the individual investors if Corporation A did not produce a required standby letter of credit within 45 international banking days of her receipt of the funds. Corporation A did not produce the letter within the required time. In November 2007, the president of Corporation B wrote Ms. Abreu demanding that the funds be wired to the individual investors no later than the third business day following her letter. Ms. Abreu failed to return the funds.

In April 2006, Ms. Abreu signed as escrow agent on a standby letter of credit escrow agreement for a financial transaction between the previously mentioned Corporation A and a biotechnology company located in Canada (Corporation C). The purpose of the agreement was to allow Corporation C to obtain funds needed for research through lease of a standby letter of credit. Ms. Abreu’s part in the transaction was simply to receive and hold the funds transmitted by Corporation C in her trust account and then to transmit them, less her fee, upon Corporation A’s performance of its obligations under the agreement. The agreement provided that if Corporation A did not perform its obligations under a related memorandum of understanding, the money was to be refunded less the escrow fee of $5,000. Pursuant to its obligations under the agreement, Corporation C wired $305,000 to Ms. Abreu. The account that Ms. Abreu provided to receive the funds was not a trust account. Corporation A did not perform its obligations and, in June 2006, the president of Corporation C wrote Ms. Abreu to request the immediate return of the company’s money. Ms. Abreu returned $100,000 of the $305,000 in July 2006. Along with the funds, Ms. Abreu sent an e-mail stating that this amount was being sent “while the accounting is concluded” with the failed transaction. Corporation C informed Ms. Abreu, through outside counsel, of her obligation to refund the entire sum immediately upon notification that the transaction between the parties would not take place. Despite repeated requests, threats of bar complaints, and civil litigation, Ms. Abreu failed to return Corporation C’s funds.

In both matters, the majority of the funds associated with the transactions were either used by Ms. Abreu and transferred to her personal account or forwarded to individuals associated with Corporation A. Neither activity was authorized in either matter by the respective escrow agreements. Ms. Abreu’s actions violated various state and federal prohibitions regarding theft and fraudulent use of wire transfers (including RCW 9.56.030 and 18 U.S.C. § 1343) and deprived both Corporation B and Corporation C of needed funds.

The Washington State Bar Association received grievances from Corporation C in October 2006 and from Corporation B in December 2006. Ms. Abreu avoided service in connection with these grievances and deliberately failed to cooperate with the disciplinary process.

Ms. Abreu’s conduct violated RPC 8.4(b), prohibiting a lawyer from committing a criminal act (here, theft) that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects; RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and RPC 8.4(i), prohibiting a lawyer from committing any act involving moral turpitude, or corruption, or any other act which reflects disregard for the rule of law.

Linda B. Eide represented the Bar Association. Ms. Abreu was not represented either in person or by counsel. Bertha B. Fitzer was the hearing officer.

Disbarred

Michael L. Doss (WSBA No. 25664, admitted 1996), of Portland, Oregon, was disbarred, effective October 4, 2007, by order of the Washington State Supreme Court following a default hearing. This discipline was based on conduct involving the practice of law while suspended.

Effective August 3, 2005, Mr. Doss was suspended from the practice of law in Washington for failure to pay his license fee. In July 2005, Mr. Doss was sent a copy of the suspension order by certified mail along with a notice advising him that, inter alia, he must notify all clients of his suspension, he must serve an affidavit of compliance as required by the rules, he must cease to hold himself out as a lawyer until reinstated, and he must not practice law after the date of his suspension.

At the time of his suspension, Mr. Doss had at least two active Washington clients whom he did not notify of his suspension. Mr. Doss never served an affidavit of compliance and continued to hold himself out as a lawyer licensed to practice in Washington. In November 2005, Mr. Doss signed and filed petitions for adoption, along with other related pleadings, in two Superior Court matters and noted both matters for December hearings. He delivered to the clerk two checks for filing fees, both of which were returned for insufficient funds. After the checks were returned for insufficient funds, the clerk learned that Mr. Doss was suspended and told him that he could not appear.
In January 2004, a client hired Mr. Juhl to pursue a lawsuit against a former employer for back wages and they entered into a contingency-fee agreement. Mr. Juhl subsequently made the following misrepresentations to the client:

- Mr. Juhl told the client that he filed a lawsuit on behalf of the client and served notice on the employer, filed and prevailed on a summary judgment motion against the employer, hired a private investigator to locate and freeze several of the employer's accounts, filed and prevailed on a motion to assess daily fines against the employer, and filed and prevailed on a subsequent motion to increase the daily fine against the employer. In fact, no lawsuit was filed, no judgments were obtained, and no motions were filed or granted.
- Mr. Juhl gave the client two documents that appeared to be signed, conforming copies of court orders bearing a King County Superior Court cause number. The case number on the orders does not exist, and the orders had not been entered by the court.
- Mr. Juhl told the client that he had received court approval for the sheriff to seize the employer's assets, that the sheriff's office was fined for not timely executing the seizure order, and that he collected a net recovery of $847,000 on behalf of the client. None of these statements were true. Between January 2004 and July 2005, the client filed for bankruptcy. The client's bankruptcy attorney informed the client that he had to list the "recovery" as an asset in his bankruptcy schedules and that Mr. Juhl had to file an application with the bankruptcy court for approval of any attorney fees he was owed from the "recovery." Mr. Juhl provided a sworn declaration for filing with the bankruptcy court indicating that, on a recovery of $847,000, he would be owed one-third for attorney's fees. The bankruptcy court entered an order directing Mr. Juhl to transfer $10,000 to the Chapter 13 trustee and to refund the remaining balance to the client. Mr. Juhl did not transfer the money, but later gave the client a check for $490,000 that appeared to be signed, conforming a check. At a meeting in November 2005 with the client, and later in a phone call to the client's bankruptcy lawyer and in a sworn statement to the bankruptcy court, Mr. Juhl admitted that he had never filed the client's lawsuit, had not obtained a judgment, and had not collected any money for the client.

Matter 2: In 2001, Mr. Juhl agreed to represent a client in an attempt to recover post-high school education expenses for the client's children from her ex-husband. Mr. Juhl did not charge the client a fee for this work. Mr. Juhl subsequently made the following misrepresentations to the client:

- Mr. Juhl told the client that he had served her ex-husband with notice of a hearing they were seeking under an order of child support for the client's children entered in 1995. In fact, no matter had been filed or served.
- Mr. Juhl gave the client copies of two documents, both of which appeared to be signed judgments indicating the client had been awarded judgments in the amount of $174,935 against her ex-husband. In fact, no judgments were obtained.
- Mr. Juhl told the client that she could have a lawyer from Maryland collect payment on the judgments as the client's ex-husband lived in Maryland) and Mr. Juhl discussed with a Maryland lawyer subsequently hired by the client plans for a collection action against the ex-husband. Both the client and her Maryland lawyer requested certified copies of the judgments from Mr. Juhl. On one occasion, Mr. Juhl stated that he had sent the certified copies to the Maryland lawyer. In August 2005, the client went to Mr. Juhl's office, terminated his services, and requested her files. Mr. Juhl returned the files that had been given to him in 2001. The client subsequently hired another lawyer to represent her, who ascertained that no documents or judgments had been filed in the client's case after 1995.

Mr. Juhl'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 3.3(a)(1), prohibiting a lawyer from knowingly making a false statement of material fact or law to a tribunal; RPC 4.1(a), prohibiting a lawyer in the course of representing a client from knowingly making a false statement of material fact or law to a third person; RPC 8.4(b), prohibiting a lawyer from engaging in conduct involving
Dishonesty, fraud, deceit, or misrepresentation; RPC 8.4(d), prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice; and RPC 8.4(i), prohibiting a lawyer from committing any act involving moral turpitude, or corruption, or other act which reflects disregard for the rule of law.

M. Craig Bray represented the Bar Association. Mr. Juhl represented himself.

**Disbarred**

Gail Schwartz (WSBA No. 28994, admitted 1999), of Spokane, was disbarred, effective August 16, 2007, by order of the Washington State Supreme Court following a hearing. Between 2003 and 2005, Ms. Schwartz engaged in the following conduct giving rise to the discipline:

- Represented co-defendants in criminal cases without advising them about the risks of joint representation and without obtaining written conflict waivers;
- Communicated false information to a client and the client’s subsequent lawyer;
- Failed to deposit funds into a client trust account, removed funds without the client’s permission, failed to promptly return funds when requested to do so, failed to abide by the client’s instructions to provide the funds to a third party to invest, and invested the funds with another entity without the client’s knowledge or permission;
- Failed to keep accurate trust account records;
- Charged excessive fees for managing a client’s trust account and removed the fees from the trust account to pay herself, even after she had been discharged; and
- Prepared and signed a loan agreement on her client’s behalf that lacked a prepayment penalty, included a payoff provision that would result in a $10,000 windfall to the borrower, failed to state an interest rate, and was secured by a Deed of Trust listing Ms. Schwartz (and not the client) as the beneficiary.

Ms. Schwartz’s conduct violated RPC 1.1, requiring a lawyer to provide competent representation to a client; RPC 1.2, requiring a lawyer to abide by a client’s decisions about the objectives of representation and to consult with the client as to the means by which they are to be pursued; RPC 1.4, requiring a lawyer to keep a client reasonably informed about the status of a matter, to promptly comply with reasonable requests for information, and to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; RPC 1.5(a), requiring a lawyer’s fee to be reasonable; RPC 1.7, prohibiting a lawyer from representing two clients in the same matter whose interests are directly adverse; former RPC 1.14(b)(3), requiring a lawyer to maintain complete records of all funds, securities, or other properties of a client coming into the possession of the lawyer and render appropriate accounts to his or her client regarding them; RPC 1.15, governing the circumstances in which a lawyer may withdraw from representation; RPC 8.4(b), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; RPC 8.4(i), prohibiting a lawyer from committing a criminal act (here, theft) that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects; RPC 8.4(c), prohibiting a lawyer from violating a duty imposed by or under the Rules for Enforcement of Lawyer Conduct.

Francesca D’Angelo represented the Bar Association. Gail Schwartz represented herself. Paul M. Larson was the hearing officer.

**Suspended**

Daphne M. Barry (WSBA No. 30175, admitted 2000), of Spokane, was suspended for three months, effective November 21, 2007, by order of the Washington State Supreme Court following approval of a stipulation by the Disciplinary Board. This discipline is based on conduct involving dishonesty and non-cooperation with a Bar Association investigation.

In June 2004, Ms. Barry commenced work as a law clerk for a law firm located in Phoenix, Arizona (Firm). Ms. Barry and the Firm had an understanding that upon her admission to the Arizona Bar she would become a construction litigation attorney with the Firm. Ms. Barry took and passed the February 2005 Arizona Bar exam; however, she did not submit an application for admission to the Arizona Bar, a prerequisite for admission, until October 2005. Between May and October 2005, Ms. Barry’s supervising attorney asked her when she would be admitted to the Arizona Bar and why her admission was taking so long to process. She told him that the Arizona Bar was delaying her admission because it needed more information about her previous employers, which was untrue. In November 2005, Ms. Barry told the ethics counsel for the Firm that she had not applied for admission to the Arizona Bar until October 2005. The Firm terminated Ms. Barry’s employment on November 28, 2005.

The Firm filed a grievance with the Arizona Bar, who forwarded the grievance to the Washington State Bar Association (Association) because Ms. Barry had not been licensed to practice in Arizona. Between January and March 2006, the Association sent two requests for a response to the grievance using Ms. Barry’s official address on record and using an alternate address. Both requests were returned as undeliverable; Ms. Barry was using her mother’s and her brother’s addresses in Washington while she looked for work. The Association subsequently contacted Ms. Barry by telephone and advised her that they were trying to send information to her. She provided her brother’s address in Washington as a current address and received the two requests. Between April and June 2006, the Association sent to Ms. Barry letters by certified and first-class mail, and left voicemail messages, advising her that they would issue a subpoena for her deposition if she did not respond to the grievance. In June 2006, the Association received a facsimile from Ms. Barry acknowledging that she had received a copy of the grievance and the Association’s request for response. Ms. Barry never responded to the grievance. The Association issued a subpoena *duces tecum*. The process server attempted to serve Ms. Barry five separate times at the Washington address she had provided as her physical home address, but was unable to locate and serve her.

Ms. Barry’s conduct violated RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and Rules for Enforcement of Lawyer Conduct (ELC) 5.3(f)(3), making a lawyer’s failure to cooperate fully and promptly with an investigation as required by the rules grounds for discipline.

Leslie C. Allen represented the Bar Association. Ms. Barry represented herself.

**Suspended**

David R. Hellenthal (WSBA No. 18311, admitted 1988), of Spokane, was suspended for 18 months, effective September 6, 2007, by order of the Washington State Supreme Court following approval of a stipulation by the Disciplinary Board. Upon meeting conditions for reinstatement, the suspension is to be followed by a three-year period of probation. This discipline was based on conduct in
three matters involving failure to abide by a client’s objectives for representation; lack of communication; charging unreasonable fees; conflicts of interest; prohibited transactions; improper conduct with a disabled client; and conduct involving dishonesty, fraud, deceit, or misrepresentation.

Matter 1: In October 2004, Mr. Hellenthal was hired by a client with a disability who was concerned about the potential effect of a recent inheritance on his continued eligibility for government benefits. Mr. Hellenthal deposited the client’s inheritance proceeds into his trust account. Between November 2004 and January 2005, Mr. Hellenthal transferred a total of $33,000 out of trust as legal fees. Mr. Hellenthal prepared a trust instrument by which he would inherit the client’s trust assets if the client died without a will. Mr. Hellenthal knew the client did not have a will and did not consult with the client about any conflicts of interest. The trust prepared by Mr. Hellenthal did not comply with the Medicaid regulations for a qualified special needs trust, and could have subjected the client to several years of ineligibility for Medicaid benefits as a penalty or been rejected by the Department of Social and Health Services (DSHS). The client did not understand the trust nor its potential negative ramifications and risks for him. In January 2005, the client hired a new lawyer who removed Mr. Hellenthal as trustee, hired a professional trustee, drafted a will for the client, and sought court approval for the trust. The client’s new lawyer requested that Mr. Hellenthal reduce the $33,000 in attorney’s fees. Mr. Hellenthal refunded a portion of the fees, retaining $7,130.87 for his services. Other Spokane-area lawyers charge $1,000 to $3,500 for the creation of a special needs trust.

Matter 2: In March 2004, Mr. Hellenthal was hired to assist a married couple in qualifying the husband for Medicaid. The couple had been in a serious automobile accident in July 2003, which left the husband with a traumatic brain injury and physical impairments. Mr. Hellenthal did not meet with either client and never spoke to the husband. Mr. Hellenthal advised that the husband and wife should legally separate to qualify the husband. He suggested to the wife that they were considering a nursing home for the husband. He suggested to the wife that the couple obtain a legal separation to qualify for Medicaid, even though the couple had substantial assets to pay for his care. The wife did not understand why Mr. Hellenthal wanted her to separate from her husband, but signed for her and her husband all the legal separation documents sent to her by Mr. Hellenthal. These documents awarded the wife all the couple’s assets. In July 2003, the husband was found to be “gravely disabled” based on a diagnosis of longstanding dementia that had been worsened by the stroke, and was involuntarily transferred to a psychiatric ward. At about the same time the wife informed Mr. Hellenthal that her husband was in a psychiatric ward, she received a fee agreement stating that Mr. Hellenthal had “explained to their satisfaction the advantages and disadvantages of common representation...” Mr. Hellenthal had never explained the fee agreement to the wife and never told her there might be a conflict with his representing both her and her husband. Mr. Hellenthal filed the legal separation papers in Superior Court. The pleadings did not inform the court of the husband’s mental status. Mr. Hellenthal had the wife sign quit claim deeds on various properties and began transferring assets into the wife’s name. Approximately $1.6 million of assets were transferred, all while the husband was involuntarily detained in a psychiatric ward. The husband died shortly thereafter.

Mr. Hellenthal’s conduct violated RPC 1.2(a), requiring a lawyer to abide by a client’s decisions concerning the objectives of representation and consult with the client as to the means by which they are to be pursued; RPC 1.4, requiring a lawyer to keep a client reasonably informed about the status of a matter, promptly comply with reasonable requests for information, and explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; RPC 1.5(a), requiring a lawyer’s fee to be reasonable; RPC 1.7(a) and (b), prohibiting a lawyer from representing a client if the representation of that client is directly adverse to another client, or materially limited by the lawyer’s responsibilities to another client or to a third person, unless the lawyer reasonably believes the representation will not adversely affect the relationship with the other client and each client consents in writing after consultation and a full disclosure of the material facts; RPC 1.8(c), prohibiting a lawyer, in representing a client in a matter, from preparing an instrument giving the lawyer or a person related to the lawyer as parent, child, sibling, or spouse, any substantial gift from a client, including a testamentary gift, except where the client is related to the donee; former RPC 1.13, requiring a lawyer to determine whether a client’s ability to make adequately considered decisions in connection with the representation is impaired because of minority, mental disability, or for some other reason; and RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

Joanne S. Abelson and Natalea Skvir represented the Bar Association. Mr. Hellenthal represented himself.

Suspended

Andrew Mankowski (WSBA No. 22999, admitted 1993), of Glendale, Arizona, was suspended for six months, effective August 17, 2007, by order of the Washington State Supreme Court imposing reciprocal discipline in accordance with an order by the Supreme Court of the State of Arizona. This discipline was based on conduct involving the unauthorized practice of law and non-cooperation in a bar association investigation.
For more information, see the State Bar of Arizona’s Arizona Attorney (September 2007), available at: www.azlawreg.pdf.

Mr. Mankowski’s conduct violated Arizona Revised Statutes (Ariz.R.S.Ct.) Rule 42, Arizona Rules of Professional Conduct ER 5.3, requiring a lawyer from practicing law in a jurisdiction in violation of the regulation of the legal profession of that jurisdiction or assisting another in doing so; ER 8.1(b), prohibiting a lawyer, in connection with a disciplinary matter, from knowingly failing to respond to a lawful demand for information from disciplinary authority; Ariz.R.S.Ct. Rule 31(c), stating that no member who is currently suspended or on disability inactive status and no former member who has been disbarred shall practice law in this state or represent in any way that he or she may practice law in this state; and Ariz.R.S.Ct. Rule 53(f), stating that the failure to furnish information or respond promptly to any inquiry or request from bar counsel, a hearing officer, the Board, the commission, or this court, made pursuant to these rules for information relevant to complaints, grievances, or matters under investigation concerning the conduct of a lawyer, or failure to assert the ground for refusing to do so, constitutes grounds for discipline.

Felice P. Congalton represented the Bar Association. Mr. Mankowski represented himself.

**Suspended**

Elizabeth B. Matthews (WSBA No. 8777, admitted 1978), of Monroe, Louisiana, was suspended for three years and one day, effective August 17, 2007, by order of the Washington State Supreme Court imposing reciprocal discipline in accordance with an order from the Supreme Court of the State of Colorado. This discipline was based on conduct in nine client matters involving neglect of legal matters, failure to communicate with clients, failure to protect client interests, disobedience of an obligation under the rules of a tribunal, and assisting in the unauthorized practice of law. For more information, see The Colorado Lawyer (September 2005), available at www.cobar.org/tcl. Elizabeth B. Matthews is to be distinguished from Elizabeth D. Matthews of Seattle.

Ms. Matthews’s conduct violated Colorado RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client and prohibiting a lawyer from neglecting a legal matter entrusted to that lawyer; Colorado RPC 1.4(a), requiring a lawyer to keep a client reasonably informed about the status of a matter, to promptly comply with reasonable requests for information, and to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; Colorado RPC 1.16(d), requiring that, upon termination of representation, a lawyer take steps to the extent reasonably practicable to protect a client’s interests; Colorado RPC 3.4(c), prohibiting a lawyer from knowingly disobeying an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists; and Colorado RPC 5.5(a), prohibiting a lawyer from practicing law in a jurisdiction where doing so violates the regulations of the legal profession in that jurisdiction.

Felice P. Congalton represented the Bar Association. Ms. Matthews represented herself.

**Suspended**

Craig Stilwill (WSBA No. 17740, admitted 1988), of Kennewick, was suspended for three months, effective July 18, 2007, by order of the Washington State Supreme Court following approval of a stipulation by the Disciplinary Board. This discipline was based on conduct involving failure to take any action in a client matter, lack of communication, trust account irregularities, failure to return client funds when requested to do so by the client, and failure to file a trust account declaration.

In January 2003, Mr. Stilwill was hired by a client to research and prepare for him, if possible, an expungement of a criminal conviction. Mr. Stilwill received $750 by check for his fee, which he did not deposit into his trust account. On several occasions in the winter of 2003, the client asked Mr. Stilwill about the status of the matter. Mr. Stilwill started the research and compiled information, but did not communicate the results of his efforts to the client and completed no work that benefited the client. In March, Mr. Stilwill closed his law practice and began to work as a court commissioner. When closing down his office, Mr. Stilwill did not inform his client that he would no longer be able to represent him. The client continued to call Mr. Stilwill to find out the status of his case. The client never heard back from Mr. Stilwill and, eventually, the telephone number for Mr. Stilwill’s office was disconnected.

In approximately May 2004, the client sent a letter to Mr. Stilwill by certified mail asking for an accounting or a refund. Mr. Stilwill subsequently telephoned the client and told him he was leaving town and would check his files when he returned and refund his fee to him. Mr. Stilwill did not provide an accounting or refund to the client.
wrote to Mr. Stilwill again in April 2005, with no response. The client filed a grievance with the Bar Association in May.

When Mr. Stilwill closed his trust account in August 2005, he had no trust account records to document the ownership of the balance he removed from his trust account. In a letter to the Bar Association, Mr. Stilwill stated that “[w]ith the exception of $37.00 (which was part of the initial deposit to open the account), I cannot inform you as to the source of the funds in the account.... However, I am confident that I was the owner of the balance of the money and had not billed for it yet.” The $699.95 that Mr. Stilwill removed from his trust account in August 2005 had been in the trust account since at least January 2002. From approximately April 2003, when he closed his practice, until August 2005, when he closed his trust account, Mr. Stilwill did not maintain complete trust account records and did not reconcile his trust account ledger cards to his trust account statement. The Bar Association had been unable to identify the ownership of the funds in Mr. Stilwill’s trust account at the time he closed it. No clients complained about missing funds or funds Mr. Stilwill should have been holding in their behalf.

Former Rule 13.5(a) of the Rules for Lawyer Discipline (RLD) required each active lawyer to complete, execute, and deliver to the Bar Association a trust account declaration annually. In 2002, the deadline for filing the trust account declaration was February 1, 2002. Mr. Stilwill did not file a trust account declaration in 2002. The Bar Association sent him letters in May and June reminding him of his obligation to file the declaration, regardless of whether he had a trust account. Mr. Stilwill did not respond to these letters.

Mr. Stilwill’s conduct violated RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; RPC 1.4, requiring a lawyer to keep a client reasonably informed about the status of a matter, to promptly comply with reasonable requests for information, and to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; former RPC 1.14(b)(4), requiring a lawyer to promptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive; and former RLD 13.5(a), requiring a lawyer to file a trust account declaration with the Bar Association.

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

Reprimanded

Paul D. Jacobson (WSBA No. 26939, admitted 1997), of Redmond, was ordered to receive a reprimand on February 5, 2007, following approval of a stipulation by a hearing officer. This discipline was based on conduct in 2004 involving lack of diligence, failure to communicate, and failure to properly supervise a nonlawyer employee.

Beginning in January 2004, Mr. Jacobson began representing a client in various matters, including a criminal case. The criminal matter came to trial in July, resulting in a hung jury. In October, after a second trial, the client was convicted of the criminal charges and sentenced to 400 months in prison. At some point prior to sentencing, Mr. Jacobson had a discussion with the client about how the client’s assets and property should be handled in the event of his incarceration. Mr. Jacobson was instructed by the client to assist the client’s girlfriend in removing and safeguarding the personal property located at a house they shared in Monroe. They also discussed liquidating some of the property. Mr. Jacobson did not clarify with the client who would be taking custody of the property or how the liquidation would be accomplished. The client maintains that he did not specifically authorize Mr. Jacobson to liquidate his property.

At the time of the two trials in 2004, the client was separated from his wife and she had filed for dissolution proceedings. Mr. Jacobson began representing the client in the dissolution proceeding in October 2004. In the dissolution proceeding, the client’s wife was claiming a share of the community assets, including items stored at the Monroe house. Mr. Jacobson sent his paralegal and some of her family members to assist the client’s girlfriend in moving the client’s personal property from the Monroe house to a storage facility. Mr. Jacobson paid his paralegal and her family members for providing these services. Mr. Jacobson did not provide his paralegal with any specific instructions to inventory, label, or otherwise account for the client’s property. Neither Mr. Jacobson, nor his paralegal, nor anyone else from Mr. Jacobson’s office ever prepared an inventory or any other accounting of the property that was removed from the Monroe house.

Sometime in October, Mr. Jacobson, his paralegal, and the client’s girlfriend visited the storage facility and Mr. Jacobson noticed there were some items not appropriate for storage. Following the visit, Mr. Jacobson advised his paralegal and the client’s girlfriend that they should remove the items and store them “someplace else.” Subsequently, without further instructions from Mr. Jacobson, his paralegal removed the items and took them to her residence. Mr. Jacobson was aware that his paralegal was storing some of the client’s items at her residence, because he saw them there when he picked her up at her residence on one or more occasions.

In October, without Mr. Jacobson’s knowledge, his paralegal sold some of the client’s property. She received a total of $440, which she retained. One of the items she sold, a Gibson-brand electric guitar, was worth considerably more than the $300 she received for it. In late October or November, Mr. Jacobson noticed that some of the property was missing and asked his paralegal about the missing items. She admitted she had sold them. Mr. Jacobson gave his paralegal funds to repurchase the items, but she was unable to purchase back the Gibson electric guitar.

Sometime in October 2004, Mr. Jacobson took another of the client’s guitars, from either the storage unit or from his paralegal’s residence, intending to show it to his son’s Boy Scout group. Mr. Jacobson kept the guitar in the trunk of his car for several weeks, but did not show it to the Boy Scout group. In November, Mr. Jacobson returned the guitar to his client’s brother. In December, Mr. Jacobson terminated his paralegal’s employment.

Mr. Jacobson’s conduct violated RPC 1.3, requiring a lawyer to act with reasonable promptness in representing a client; former RPC 1.4(b), requiring a lawyer to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding representation; and former RPC 5.3(b), requiring a lawyer having direct supervisory authority over a nonlawyer to make reasonable efforts to ensure that the person’s conduct is compatible with the professional obligations of the lawyer.

Kevin M. Bank represented the Bar Association. Leland G. Ripley represented Mr.
Jacobson. Gregory J. Wall was the hearing officer.

Reprimanded

F. Lawrence Taylor Jr. (WSBA No. 3329, admitted 1971), of Renton, received a reprimand on September 19, 2007, following approval of a stipulation by a hearing officer. This discipline was based on conduct involving unreasonable fees and improper use of attorney's liens.

Mr. Taylor's practice consists mostly of plaintiff personal injury, and many of his clients are from Russia and the Ukraine. When clients hire him, Mr. Taylor has them execute a fee agreement written in English. If the client speaks little or no English, clients meet with one of Mr. Taylor's Russian-speaking or Ukrainian-speaking staff to ensure that they understand the agreement. Prior to March 2007, the fee agreement provided that in the event the client discharges the attorney or the attorney withdraws for cause, the client would agree to pay reasonable compensation for services rendered which would be calculated as "not less than the time expended, or the agreed upon contingency percentage of the last offer received whichever is more...[C]lient understands that when attorney has been able to obtain the receipt of an offer, attorney has substantially performed the contingency herein." Mr. Taylor asserts that he never enforced this provision in his fee agreement.

In November 2004, Mr. Taylor terminated a bilingual paralegal. This paralegal later did contract work for a Bellevue law firm. Approximately 30 of Mr. Taylor's clients transferred their cases to the Bellevue firm. Shortly thereafter, Mr. Taylor sent some of these former clients a "Bill for Services Rendered" (bill). He included with the bill a "Notice of Attorney Lien" (notice), which indicated that a lien had already been recorded with the King County Recorder's Office by Mr. Taylor. Several of the bills included charges for preparing and sending out copies of the notice and, in one or more instances, the client whose real property could have been affected by the lien did not learn about Mr. Taylor's intention to file an attorney's lien until after he sent the client the notice. Mr. Taylor filed at least 20 such notices, ranging between $509.39 and $16,665.12, with the King County Recorder's Office. The notices were entered into the Recorder's Office public record. Mr. Taylor asserts that he filed the liens because there was no agreement to apportion fees between himself and the firm, who had assumed representation of the clients.

In the fall of 2005, one of Mr. Taylor's former clients tried to refinance his home. The former client states that he was told by his mortgage broker that Mr. Taylor's lien would need to be satisfied from any loan proceeds received by the client in the refinance. The client asserts that because he disputed the amount claimed by Mr. Taylor, he was not willing to pay the lien and, as a result, he decided not to proceed with the refinance. The client maintains that he lost the opportunity to obtain a particularly favorable rate, and that it would cost him more to refinance now. Mr. Taylor subsequently released all his attorney's liens for the relevant clients and changed his fee agreement to remove the language regarding the contingency being substantially performed based on receipt of an offer by the opposing party.

Mr. Taylor's conduct violated RPC 1.2(a), requiring a lawyer to abide by a client's decisions concerning the objectives of representation and consult with the client as to the means by which they are to be pursued; RPC 1.5(a), requiring a lawyer's fee to be reasonable; and RPC 8.4(d), prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice.

Kevin M. Bank represented the Bar Association. Mr. Taylor represented himself. David W. Wiley was the hearing officer.

Non-Disciplinary Notices

Transferred to Disability Inactive Status

Robert W. Huffhines (WSBA No. 11279, admitted 1980), of Kelso, was by stipulation transferred to disability inactive status, effective November 16, 2007. This is not a disciplinary action.

Suspended Pending the Outcome of Disciplinary Proceedings

Thomas P. Sughrue (WSBA No. 14117, admitted 1984), of Seattle, was suspended pending the outcome of disciplinary proceedings, pursuant to ELC 7.4, effective December 12, 2007, by order of the Washington State Supreme Court. This is not a disciplinary action.

Suspended Pending the Outcome of Disciplinary Proceedings

Jonathan D. Sweigert (WSBA No. 20781, admitted 1991), of Kirkland, was suspended pending the outcome of disciplinary proceedings, pursuant to ELC 7.2(a)(3), effective December 6, 2007, by order of the Washington State Supreme Court. This is not a disciplinary action.

Calendar

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

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

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

Business Law

28th Annual NW Securities Institute
February 22-23 — Seattle. 9.75 CLE credits, including 1 ethics. By WSBA-CLE and the WSBA Business Law Section; 800-945-WSBA or 206-443-WSBA.

Criminal Law

Ethical Problems During Pretrial in Criminal Cases
March 4 — Tele-CLE. 1.5 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

What You Can and Cannot Do in Voir Dire and Jury Selection
March 11 — Tele-CLE. 1.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Laying the Groundwork in Case of Appeal
March 18 — Tele-CLE. 1.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Sealing the Record
March 25 — Tele-CLE. 1.5 CLE credits. By
Positions

Experienced patent attorney — Well-regarded boutique firm working exclusively in the area of Intellectual Property law with offices in downtown Seattle seeks a patent attorney with five-plus years of patent counseling and prosecution experience who demonstrates initiative, creativity, and leadership. Excellent academic credentials; a stable employment history; and stellar writing, communication, and interpersonal skills are essential. This is an opportunity to work with experienced professionals and an established, exciting client base, and grow into a management role. We work with clients in the following areas: medical and electromechanical devices, bioengineering, biotechnology, and other types of bio-science and general processing technologies. Existing client relationships and experience with licensing and trademark matters are desirable. Please submit your résumé with a cover letter and writing sample (or published patent or patent application) in confidence to info@speckmanlaw.com.

Public finance attorney opening. Gottlieb, Fisher & Andrews, PLLC is looking...
for an experienced attorney to join our thriving, regional public finance practice located in Seattle. Enjoy our small-firm environment while participating in our large-firm practice. Applicants should have at least two years’ experience serving as bond counsel, underwriters’ counsel, conduit borrowers’ counsel, and/or Section 103 tax counsel in governmental and/or qualified private activity bond transactions. We concentrate on both governmental and private activity bond financings and serve as bond counsel, underwriters’ counsel, borrowers’ counsel, developers’ counsel, disclosure counsel, and credit-enhancers’ counsel. Send résumé by mail or e-mail to: Gottlieb, Fisher & Andrews, PLLC, 1501 Fourth Ave., Ste. 2150, Seattle, WA 98101, Attention: Irene M. Fisher. irene@goandfish.com.

Gonzaga University School of Law is now accepting applications for an Indian Law program director and clinical supervisor. This is a new faculty position initially funded for three years with the prospect of becoming permanent with an anticipated start date of June 1, 2008. One-half of the director’s time will be devoted to supervising clinical students in the Law School’s in-house legal clinic in conjunction with the clinic’s provision of civil and criminal legal services to enrolled Kalispel tribal members and other Indians. The other half of the position will entail responsibility for directing, building, and creating a vision for the Law School’s budding Indian Law Program. The Indian Law Program will focus, in part, on Indian economic development and commerce and is expected to partner with the Law School’s Commercial Law Center in creating educational opportunities for law students and in continuing Gonzaga University’s history and mission of working to support Native American communities. The Indian Law program director may also work on curriculum enhancement, strategies to support Native students, conferences and symposia, teaching exchanges, and scholarly research and writing. The ideal candidate will have experience as a practicing attorney and law teacher in the areas of Indian Law and commerce. He or she should also have a commitment to academic scholarship in these areas and to continuing professional development. It will be necessary for the applicant to be a licensed attorney capable of practicing in Washington under the state’s Admission to Practice Rules (which may or may not require taking the Washington state bar exam). Gonzaga University is located in Spokane in Northeastern Washington state. The region boasts several Indian tribes that play an important role in the cultural and economic life of the Inland Northwest. Gonzaga University is pursuing several educational initiatives relating to the area of Indian Studies and outreach to the Native community. Gonzaga University is a Jesuit Catholic humanistic institution interested in candidates who can contribute to its distinctive mission. As an AA/EQ educator and employer, it is also committed to diversity. Contact: Professor Cheryl A. Beckett, Chair, Faculty Recruitment Committee, Gonzaga University School of Law, PO Box 3528, Spokane, WA 99220. 509-323-3721, cbeckett@lawschool.gonzaga.edu.

Washington State Bar Association diversity program manager — Justice and Diversity Initiatives Department, exempt, full-time, starting salary range: $64,000–71,000/year DOE, plus benefits. The diversity program manager is responsible for working to institutionalize and facilitate the WSBA’s commitment to diversity as embodied in the WSBA’s Guiding Principles, which include a commitment to operate a well-managed association that will advance and promote diversity, equality, and cultural understanding throughout the legal community. This position reports to the director of justice and diversity initiatives. The diversity program manager plays a primary role in the strategic development and programmatic direction of the WSBA’s efforts to enhance diversity in the legal profession through work with WSBA leadership, the WSBA Board of Governors, and other organizations in the legal community. This position will be responsible for recommending, planning, and executing diversity-specific events and programs in collaboration with, and as directed by, the WSBA Board of Governors, the WSBA Committee for Diversity, and WSBA leadership. The position provides liaison support to the WSBA Committee for Diversity. A primary role of this position will be to facilitate relationships throughout the legal community to promote diversity in the legal profession. Qualified candidates will have a law degree (JD) and previous experience working in an educational, governmental, or non-profit organization. Experience working with volunteers is desirable. Well-qualified candidates will have experience working in a position in a legal setting in which diversity concerns were the primary focus of the job; experience in public speaking and experience writing articles and developing and delivering CLE-level training. This position requires a demonstrated ability to build relationships with and among various interest groups; competency with issues relating to inclusion, diversity, and cross-cultural competency; the ability to work in a multi-cultural environment, including with underrepresented and disenfranchised individuals and communities; the ability to work in a fast-paced environment with demonstrated ability to handle multiple and competing demands. Proficiency in MS Office (Word, Outlook) is required. Some travel throughout the state is required. To apply for this position, please mail your résumé and a cover letter to: WSBA, Attn: Human Resources, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539; fax to 206-727-8321; or e-mail to hr@wsba.org.

Associate attorney: Medium-sized general practice firm in Vancouver, Washington, is seeking a WSBA-licensed family law attorney with a minimum two years’ experience. Practice experience should be in family law, or must have a strong desire to practice family law. Candidate will also be expected to practice in multiple other areas of law. Competitive benefits and compensation package. For more information on MH&K, see our website at www.marsh-higgins.com. Please send cover letter and résumé to: Marsh, Higgins, Beaty & Hatch, PO Box 54, Vancouver, WA 98666, or cassie_gorrell@marsh-higgins.com.

Tacoma AV law firm is looking for a litigation associate dealing primarily with contract, real property, construction, and general litigation. The applicant should have a minimum of four years’ experience. Please provide a résumé and writing sample to: Management Committee, Smith Alling Lane, P.S., 1102 Broadway Plaza, #403, Tacoma, WA 98402.

Litigation associate. McKinley Irvin seeks associate attorney with at least two years’ litigation experience to support and work closely with experienced
senior attorneys and firm partners. The following experience is required: drafting motions, legal memoranda, declarations, mediation materials, and trial briefs; a working knowledge of court rules; and working directly with clients and witnesses. Experience in family law litigation is preferred. Successful candidate must possess a passion for family law, strong academic credentials, superior written and oral presentation skills, and the ability to work as part of a team. Position offers a competitive salary and benefits package, and an outstanding group of professionals to practice with. Please forward cover letter, transcript, résumé, writing sample, and three professional references to tod@mckinleyirvin.com. Please visit our website at www.mckinleyirvin.com for more information about our firm.

McDermott Newman, PLLC, a small litigation firm located in downtown Seattle, is seeking an associate interested in a broad civil litigation practice with significant time spent on both plaintiffs’ and defense cases. The successful candidate will be well-organized, detail-oriented, an excellent writer, and have at least one year of civil litigation experience. Preference will be given to those with some defense experience. Interested lawyers should e-mail questions or a résumé, cover letter, writing sample, and law school transcript to eric@mcdermottnewman.com. All inquiries will be kept confidential.

Established Bellingham firm seeking two associates, two years’ experience in family law, 60-100K, salary DOE, plus benefits. Send résumé to Lori at Tario & Associates, P.S., 119 N. Commercial St., #1000, Bellingham, WA 98225; or by fax to 360-733-7092; or by e-mail to lori_tariolaw@qwest.net.

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Attorneys. Quid Pro Quo is the leading provider of quality attorney recruitment for direct hire and contract attorney placement in the Puget Sound, including lateral hires. For over 12 years, Quid Pro Quo, the attorney placement division of Law Dawgs, Inc., has specialized in engages with Puget Sound’s premier law firms, boutique practices, corporate legal departments, and governmental agencies. We have current openings for litigation contract attorneys. We also have current in-house counsel, partner, of counsel, and associate opportunities. Interested attorney candidates, please contact Quid Pro Quo in confidence at 206-224-8269 or JT@QPQLegal.com. Please visit our website at www.QPQLegal.com for attorney openings.

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Employment law — of counsel or partner: A highly regarded downtown Seattle law firm seeks to add an of counsel or partner-level employment law attorney to its practice. Candidates should have a portable book of business and at least 10 years’ combined experience in: (a) advising and counseling employers and (b) employment law. For immediate and serious consideration, contact Jean Seidler Thompson, Esq., Director of Attorney and Executive Placement, in confidence, at 206-224-8270 or JT@QPQLegal.com at Quid Pro Quo, Attorney Search Consultants. All inquiries are held in the strictest confidence.

Mandarin-speaking attorneys — positions in Hong Kong, Beijing, and Singapore. Are you an attorney who is bilingual in English and Mandarin and would like to work for a prestigious U.S.-based law firm in Hong Kong, Beijing, or Singapore? We have current partner and associate openings in these Asian cities for U.S.-educated attorneys who have at least four-plus years of experience in one or more of the following areas: (1) U.S. securities law; (2) corporate transactions, including mergers and acquisitions; (3) intellectual property, including patent prosecution and patent litigation (pharmaceutical background required); (4) trademark and copyright infringement (fluency in Cantonese and Mandarin required); and (5) immigration law. Qualifications include: (1) fluency in Mandarin and English and understanding of Chinese culture preferred; (2) J.D. from U.S. top-tier law school; and (3) admitted to at least one U.S. state bar. These are excellent opportunities with highly competitive compensation packages. Please contact us at SearchTeam@QPQLegal.com, in confidence, or call Marcia McCraw, Esq. at 206-224-8269 at Quid Pro Quo, Attorney Search Consultants. All inquiries are held in the strictest confidence.

Regional securities in-house counsel: Would you like to be the lead regional counsel for one of the world’s leading financial firms? Current employees describe this company as a “phenomenal company with a great brand name” that is in a substantial “growth mode.” This position will be based in scenic San Francisco, California. This financial company has offices worldwide and seeks a lead attorney to act as the primary legal advisor to all its offices located in the Northwest region of the U.S. You will act as primary legal advisor to the Regional Manager, the Regional Management Team, and the Regional Market Managers and their staff on all legal matters. Responsibilities include: (1) act as primary legal advisor on all legal matters; (2) assist in training on significant legal and compliance risks; (3) interface
regularly with the home office, in addition to legal and compliance personnel; and (4) travel throughout the nine-state Northwest Region, as well as to the Home Office on the East Coast. Requirements include: (1) J.D. degree and admitted to practice law in California; (2) eight-plus years’ securities experience; and (3) ability to demonstrate significant experience in advising and counseling business partners or clients on a wide variety of legal and risk issues. For immediate and serious consideration, contact Marcia McCraw, Esq., in confidence, at MM@QPQLegal.com at Quid Pro Quo, Attorney Search Consultants. All inquiries are held in the strictest confidence.

Partner opportunities — Do you need a law firm that will provide a better platform and greater support for your practice? Quid Pro Quo, Attorney Search Consultants, has multiple exceptional opportunities for the discerning partner. We are presently assisting highly regarded law firms in the Seattle area with their search for laterals with expertise in the following: (1) Business law with a transactional emphasis supporting private or public companies and closely held businesses; (2) Patent prosecutors and patent litigators; (3) Employment law with experience in employment litigation and advising/ counseling employers; (4) Real estate and/or land use law, preferably representing developers; and (5) Financial institutions litigation or transactional work with a practice focused on representation of financial institutions, including banks, credit unions, or securities firms. Initial inquiries welcome. All inquiries are held in the strictest confidence. We are seeking partners who are leaders in their field and who would have a portable book of business. Quid Pro Quo delivers discreet highly personalized service. You may contact, in confidence, Jean Seidler Thompson, Esq. at JT@QPQLegal.com or 206-224-8270.

Business and securities attorney — Spokane. Imagine you have no commute. Imagine you live in a city with a reasonable cost of living and affordable housing. Imagine you have amazing relationships with your clients. Imagine a new opportunity where you are given quick client access and are able potentially to inherit origination credits. Quid Pro Quo has a rare opportunity for a corporate securities associate or of counsel to inherit a client base with a Washington state law firm in Spokane. This mid-sized law firm has a partner-level attorney who will be retiring. He has a substantial and active client base in transactional corporate and securities work. You will be able to work with this attorney to develop these client relationships, including attending client company and executive board meetings. You should have at least three-plus years or more of business and securities background with experience in filing with state and federal agencies. For immediate and serious consideration, contact Marcia McCraw Esq., Attorney Recruiter, in confidence, at 206-224-8269 or MM@QPQLegal.com at Quid Pro Quo, Attorney Search Consultants. All inquiries are held in the strictest confidence.

Deputy prosecuting attorney III. The Clallam County Prosecuting Attorney’s Office is accepting applications for an experienced attorney to serve as part of its Civil Division. The attorney will be tasked with advising a broad client base that includes both elected officials as well as department heads within the County organization. Among other duties, the attorney will be tasked with advising elected officials and County departments on land-use-related matters including representing the County in complex land use litigation in both state and federal courts as well as in administrative hearings. Knowledge and experience in representing governmental entities in employment litigation and administrative proceedings including, but not limited to, tax appeals is also a plus. The attorney chosen to fill this position will also serve as a deputy coroner and be required to perform limited duties associated with this designation. Equally important to the skills identified above is that the attorney enjoys working with and advising others as part of a team effort. Excellent communication, interpersonal, and problem-solving skills are thus required. This position is full-time, includes a variety of benefits, and has a salary range from $64,008 to $77,987 annually DOQ. Applicants must be a member in good standing with the WSBA and have a valid Washington driver’s license. The successful applicant must establish residency in Clallam County within one month of accepting employment. Because of the sensitive nature of the position, applicants are subject to a background check. Applicants should submit a letter of interest, completed Clallam County application form (available at www.cla-lam.net/employment), résumé, writing sample, and references to Elaine Sundt, 223 E. 4th St., Ste. 11, Port Angeles, WA 98362. Candidates selected for interview will be contacted by telephone.

The Benton County prosecuting attorney has an opening for deputy prosecuting attorney in the criminal area. Starting salary is $3,935–$4,014 per month. Good benefits. WSBA membership required. See www.co.benton.wa.us for details. Send résumé to Andy Miller, Benton County Prosecutor, 7122 West Okanagan Place, Kennewick WA 99336.

Snohomish County Public Utility District (Everett, WA), the 12th-largest public utility in the nation, is seeking an astute legal professional to serve as the new
general counsel. The general counsel will report to the general manager (the PUD’s chief executive officer) and serve as the chief legal advisor to the general manager and the district’s publicly elected Board of Commissioners. The general counsel will manage the day-to-day activities of a staff of seven, which includes five staff attorneys. In addition, the general counsel has oversight management responsibility for the district-wide Records Information Management Program. A proven and experienced situational manager who serves as a mentor to his/her staff while providing clear directions is of particular interest. The successful candidate must possess an excellent working knowledge of federal, state, and local laws as they pertain to Washington state public utility operations, regulations, and records information management. Eight years of progressively more responsible experience in providing legal opinions and advice in the energy and/or electric utility industry, with three of those years performing in a lead counsel capacity is desired. A Doctor of Jurisprudence degree and admission to the Washington State Bar prior to employment is required. Experience providing legal services to a public utility and/or other certified professional designations is a plus. Salary range: $156,798–$235,197, including an excellent benefits package. Contact James Lincoln, Lincoln & Associates @ 323-937-6838 and/or james@lincolnrecruiting.com, as soon as possible to be considered for this outstanding career opportunity.

**Services**


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I recently turned 50 years old. This is far older than I have ever been before. As recently as November 11, 2007, I was only in my forties. For the preceding 10 years, I had been able to convince myself that forty-something was still young. Okay, youngish, at least. After all, there are big league baseball players in their forties. There are actors and musicians in their forties who can still be referred to as “hot” with a straight face. But 50?

Now, wait. I realize that many of you reading this passed the 50-year barrier years, even decades, ago, and you’re still going strong. I did not set out to demean those over 50, especially now that I am one. But, seriously, how did I get this old so fast?

When I was about 10, I calculated that by the turn of the millennium I would be 43. I remember thinking that in the unlikely event I was still alive at that age, it would hardly matter. I would be so out of touch with the world as to be pretty much irrelevant. I didn’t even stop to think that I might still have a job at that advanced age. I vaguely imagined that I would spend most of my time sitting in front of a television — or whatever people would be sitting in front of in the distant future (computer screens, as it turns out) — drooling all over myself and longing for the good old days.

I remember around the same time having a deep discussion with my best friend about what age was the best. We debated what age we would want to be if we could stay that age forever. He chose 16 or something, on the theory that he could date girls. At the time, my interest in girls took a back seat (so to speak) to my desire to avoid responsibility. I wanted to stay 10. At 10, I could cross the street by myself and hang out with my friends, but I didn’t have to have a job. I pretty much just had to clean up around the house, do my homework and avoid swearing, and my parents would buy me all the candy bars and Hot Wheels I needed.

Sometimes I think my 10-year-old self was smarter than my 50-year-old self. My 10-year-old self was definitely in better shape.

Sometimes I think my 10-year-old self was smarter than my 50-year-old self. I am not retired, as evidenced by the fact that I am sitting in my office writing this rather than sitting on a beach in Puerto Vallarta sipping margaritas. And more to the point, AARP’s kind invitation means that, by some demographic measure, I am now officially old. I realize that AARP is a highly political organization that will stretch its age boundaries downward to boost membership — but still.

A T-shirt I once saw in a gift shop cleverly pointed out that while getting old is hell, it beats the alternative. All right, I’ll keep that in mind. Statistically, I should have another quarter century or so to go, and medical science is improving matters every day. By the time I hit 70, someone may have cloned me a new high-performance heart and installed hydraulic limbs so I can run around like those spring-loaded cyborgs in I, Robot. Until then... oops.
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