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FEATURES

12 Meth Labs: An Environmental Bad Dream for Property Owners, Tenants, and Neighbors
by Michael A. Nesteroff

18 “Dear Mr. Douglas...”
by Doug Johnson

22 Legal Ins and Outs of Establishing and Operating a Business by Foreign Investors in Russia
by Elena V. Yushkina

COLUMNS

9 President’s Corner
A Greater Need to Know
by Ellen Conedera Dial

DEPARTMENTS

7 Letters to the Editor

30 Zeitgeist Postcard
No Immigration Without Emigration: Consequences for Countries Left Behind
by Norma Linda Ureña

33 Ask the Auditor
Completing Your Trust Account Declaration Form
by Cheryl M. Heuett

35 FYI

46 In Memoriam

48 Disciplinary Notices

LISTINGS

42 Summer 2006 Bar Exam Pass List

52 Announcements

53 Professionals

54 Calendar

54 Classifieds

59 Index to 2006 Bar News (Volume 60)
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Letters to the Editor

A new low for Bar News?

Congratulations and bravo on your lead story of sex with horses ("Substantive Due Process and the Problem of Horse Sex," Bar News, November 2006). This publication has officially hit rock bottom. What a waste of printing costs and my bar dues. I look forward to future constitutional analysis regarding important issues such as women's mud wrestling and the copyright issues surrounding Hooters' t-shirts.

I am not sure why it takes seven pages to ponder and analyze the social and legal implications of raping a horse (or any other barnyard animal for that matter). I will try to summarize my position briefly — raping any animal is animal cruelty regardless of what representatives in Olympia do and regardless of any motives or political objectives for a vote. I hope this is not something the WSBA will consider for a "healthy debate."

You do not really need years of legal education or honed legal practice skills to achieve moral clarity on the sexual assault of barnyard animals. Wrapping and analyzing important constitutional arguments around raping a horse is like wrapping used toilet paper around an old family heirloom you have had in the family two hundred plus years. It is a total lack of respect for said subject matter and somewhat disingenuous.

There has been a great disconnect between the WSBA and the average law practitioner. However this article helps display how profound the disconnect really is. The author's topic and the subsequent approval and printing of this fine scholarly article by the WSBA displays that there is always time for an extra therapy session.

Joel H. Wolff, Lynnwood

Proving the point

Response to the "Horse" article by Ms. Daniels: She says the murder statute is moral but primarily empirical (result based) in nature; we want people around to pay taxes, etc. If an officer faced with a gunman, otherwise a good taxpaying citizen, about to kill a bum who does not pay any taxes (and is generally a drain on society) takes down that gunman, he will not be charged with a crime. Her murder example is wholly flawed.

Every action has an effect. Results of different actions may, and do, have different "incubation periods" by which effects are realized. Further, to say legislation is or should be based upon results is dishonest. "Results" analysis is a red herring and she has been duped. Let me prove the point. If homosexuality and illicit sex did not occur in America, there would be no AIDS in America. I realize there have been other methods of transference but there would be no opportunity for blood used in transfusions to be infected if the platform for its entry had not existed in the first place. Even if AIDS had made it into the country, the infection would have been isolated. Some theorize that AIDS itself (or the virus that causes AIDS if you prefer) is a product of bestiality. So, if we want to use empirical analysis for legislation, sex outside of marriage should immediately be prohibited under penalty of death. After all, it has caused the death and misery of untold millions. But no one is proposing this measure.

There is no real result based legislation because there is no way to measure effect. Those who say certain actions should not be illegalized because there is no victim are either lost, or lying.

Legislating morality? All legislation of whatever character or category is a moral line drawn. The question is not whether morality can or should be enforced, the question is to what extent morality should be enforced. Currently we are facing a pseudo morality called fundamental rights. Interestingly enough, the new fundamental rights advocate will scoff at natural rights while using a natural rights analysis based on personal preference. Not even American tradition and legal history is fundamental to this breed. See Justice Bridge's dissent in Andersen. Simply put, where there is no morality, there is no law. There is law, because regardless of acknowledgement, there is morality. This debate is like the debate over
absolutes. To say there are no absolutes creates the imperative that absolutes must exist. No absolutes? No morality? Give it up, you lose.

She says there is no justification for legislation predicated upon animal protection because there are already laws protecting animals. The RCW and USC are full of laws the bases of which overlap. Protection would still be a legitimate goal of the State.

Regarding her conclusion, she ignores the reality and legitimacy of gradations. It is not wholly inconsistent for a gay proponent to reject bestiality. I agree the line is thin and that justification for homosexuality is inextricably linked to a justification of bestiality (though one does not exist for either). That does not mean there is no difference between the two. More concerning is her pro-life/head covering link. Head covering is particularly sectarian. Pro-life clearly is not.

For reasons given and more, it is incumbent upon us to look elsewhere. It is clear God is not a creation, but the Creator. We must, with earnest, seek wisdom to determine which of His laws are to be societally enforced. The Framers of the Constitution understood this and sought to strike a balance, one which has not been entirely followed.

Scott Etherton, Pasco

Checking references

The November issue of Bar News included an article entitled “Substantive Due Process and the Problem of Horse Sex.” I found the article to be a thought provoking piece of work. I did, however, notice an error in scholarship. Regarding whether a law impinges on a fundamental right, at page 17 it states: “Instead of rational-basis review, courts apply a strict scrutiny standard, meaning that the law in question must be found unconstitutional unless the governmental objective in question is compelling, and the regulation applied is absolutely necessary to achieving that goal.” The phrase “absolutely necessary” is inaccurate. Notably, the article’s supporting citation — 16A Am. Jur. 2d Constitutional Law section 403 — does not discuss the strict scrutiny test. Rather section 387 teaches: “Whenever it is determined that legislation significantly interferes with the exercise of a fundamental right, a court must review the legislation with strict judicial scrutiny, under which the state generally has the burden of establishing that a state restriction which affects a fundamental right is necessarily related to a compelling state interest, and the state's objectives could not be achieved by any less restrictive measures.”

Section 387 goes on to discuss the need for narrowly tailoring legislation to achieve a compelling state purpose. There is no authority for the proposition that the legislation applied be “absolutely necessary” to achieving such a goal. Instead, as section 387 continues: “The state generally has the burden of establishing that a state restriction which affects a fundamental right is necessarily related to a compelling interest.”

Robert Lee Griffin, Anchorage, AK

On the same page

I am a recent law school graduate and member to the Washington Bar. I began drafting appellate briefs in 2002 while still in law school and arguing appeals in 2004. Since then I have continued to write and argue appeals in the Court of Appeals, the Supreme Court, and recently I began working with the DAC in Pierce County writing RALJs, or appeals from district and municipal courts.

In the course of my collaboration with the DAC, I was stunned to learn that, due to budgetary constraints, the DAC does not have online access to or hard copies of such basic research staples as Washington Practice, including Mr. Karl Tegland’s masterful Courtroom Handbook on Washington Evidence. Considering the fundamental importance of adequate representation for indigent defendants, it came as quite a shock to learn that DAC attorneys are expected to argue in court and draft briefs and motions without ready access to basic research materials unless they can purchase them personally.

Since we are nearing the end of the year and it is time for large firms and successful attorneys to refresh their reference library, I would strongly encourage attorneys to donate their old copies of Mr. Tegland’s Handbook on Evidence and any hard-copy volumes of Washington Practice that are no longer needed to the local Department of Assigned Counsel.

Reed Speir, University Place
As lawyers, each time we pick up the telephone, answer an e-mail, or meet with a client, we know that what is said must be protected against further disclosure by Rule 1.6 of the Rules of Professional Conduct (RPCs). This protection lies at the heart of the attorney-client relationship. It encourages people to be open and candid with their lawyers, even if the facts and circumstances they describe are damaging, by giving them assurance that what they say will be held in confidence. We need our client's candor in order to be effective lawyers and to give them good legal advice.

This new mandatory rule places on lawyers a larger duty to society. We no longer have discretion to determine whether we will place the client's interests at risk in order to protect third parties in these limited circumstances; the decision has been made for us. How will this new role as mandatory reporters affect the attorney-client relationship, if at all?

The RPCs tell us what information must be kept confidential, and under what circumstances that confidential information can nevertheless be divulged without the client's consent. The RPCs guide us in balancing our fiduciary duty to clients with our fiduciary duty to our system of justice — duties that sometimes appear to be in conflict with one another. Recent changes to Washington's RPCs governing confidentiality shift that balance. There are two added circumstances in which lawyers may (in one case, must) reveal otherwise confidential information in order to provide information that others have an urgent need to know. This shift seems to me to correspond to a fundamental change in our expectations as a society of what information will be available to help us make sound decisions about our individual and collective welfare.

For more than 20 years, our RPCs have allowed lawyers to reveal otherwise confidential information in limited circumstances in order to protect third parties. For example, the RPCs have allowed disclosure to prevent a client from committing a crime, and to inform a tribunal if a client who is a court-appointed fiduciary violates a fiduciary duty. The two new rules I mentioned, though, significantly expand the concept of what information can be disclosed without client consent.

Moreover, in adopting the revised RPCs, the Supreme Court gave us the first mandatory disclosure rule that we have seen in our RPCs. The mandatory disclosure rule is RPC 1.6(b)(1), which requires lawyers to disclose confidential information "to prevent reasonably certain death or substantial bodily harm." The ABA's Model Rules (although not Washington's RPCs) have long permitted a lawyer to reveal otherwise confidential information in order to prevent reasonably certain death or substantial bodily harm. In considering the model rule again this past year, the Supreme Court decided not only to adopt an exception to the rule of confidentiality in those instances, but to make disclosure mandatory. Comment 6 to the rule describes what "reasonably certain" means. The comment also gives an example of a circumstance where disclosure will be required — an accidental poisoning of a town's water supply with a highly toxic substance. Although neither the rule nor the comments speak directly to the issue of intentional physical assault, it seems likely to me that lawyers will need to disclose information to prevent serious domestic violence and child abuse that are reasonably certain to occur. Of course, there will be many other circumstances in which the rule will come into play.

RPC 1.6(b)(1) marks an important change in our role as lawyers. We have long been the keepers of the integrity of the attorney-client relationship. As officers of the court, we also have a duty to support and protect the integrity and independence of the court. The rules allowing disclosure without client consent, however, historically have allowed lawyers to make the decision themselves whether or not to disclose. This new mandatory rule places on lawyers a larger duty to society. We no longer have discretion to determine whether we will place the client's interests at risk in order to protect third parties in these limited circumstances; the decision has been made for us. How will this new role as mandatory reporters affect the attorney-client relationship, if at all? Specifically, will clients be less likely to disclose important information to their lawyers if they believe that lawyers will not keep it in confidence? This is one of the many questions raised by new RPC 1.6(b)(1).

The other new rule that allows disclosure to protect third parties mirrors a model rule regarding corporate fraud, and stems directly from the work of the ABA
Task Force on Corporate Responsibility. RPC 1.6(b)(3) allows (but does not require) a lawyer to disclose confidential information to protect persons who have been or may be harmed financially by criminal or fraudulent acts. Under RPC 1.6(b)(3), a lawyer may reveal confidential information in certain circumstances “to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client’s commission of a crime or fraud in furtherance of which the client has used the lawyer’s services.” The rule is directly related to recent corporate fraud scandals such as the collapse of Enron and the resulting harm to its stockholders, and is intended to assure that lawyers’ services will not be used to perpetrate — or perpetuate — a fraud on investors.

In my view, promulgation of this rule by the ABA, and adoption of it by our Supreme Court, results in part from the increased number of individuals of modest means who own stock in public companies — an investment strategy that our society encourages — and whose financial security can be seriously affected by the wrongful acts of the managers of the corporations whose stock they own. The rule reflects a belief that individuals need to know about serious wrongdoing in the management of companies in which they invest in order to protect themselves, that lawyers should not be used as a means of perpetrating that harm, and that the public need to know in this limited instance outweighs a client’s need for confidentiality. It evidences once again a shift in the balance of confidentiality and the public need to know, and gives greater weight to protecting the public.

Protecting the confidentiality of attorney-client communications is essential to our ability to protect and preserve the individual rights and collective values that are distinguishing characteristics of our system of government. Without that protection, individuals will not seek out legal advice, will not have important guidance in how to obey the law, and will not be able to take advantage of the benefits and protections of our legal system. The rule of confidentiality, however, is not absolute. It is intended to, and does, reflect the changing needs of the people our legal system is intended to serve. These two new rules signal a greater focus on the needs of the public for information that is essential to their ability to protect themselves, both in personal safety and in financial security. They also stand for a refusal to allow lawyers to be complicit, willingly or not, in perpetuating these kinds of wrongs.

Ellen Conedera Dial can be reached at 206-359-8025 or ecdial@gmail.com. If you would like to write a letter to the editor on this topic, please e-mail it to letterstotheeditor@wsba.org or mail it to WSBA Bar News, Attn: Letters to the Editor, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539.

NOTES
1. RPC 1.6(b)(2).
2. RPC 1.6(b)(7).
3. The Supreme Court did not adopt Model Rule 3.3, which would require a lawyer to disclose confidential information in certain circumstances to prevent a fraud on a tribunal.
4. Perhaps Washington did not previously adopt this model rule because of Washington’s long-established rule (not a part of the Model Rules) that lawyers may reveal otherwise confidential information in order to prevent a client from committing a crime.
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We all get urgent phone calls from clients late in the day with problems or surprises that need immediate attention; some we can resolve quickly and others may just confound us because of their seeming novelty. Few, for example, probably have had any experience dealing with a meth lab or dump site. So when a client calls because they just found evidence of a clandestine drug lab on a property the client is interested in buying and developing, the attorney’s initial response is to start researching. What you’ll find is that meth labs and dump sites are anywhere and
An Environmental Bad Dream

The problem arises from the simplicity of the manufacturing method and the easy availability of the chemicals used in production. The process involves cooking everyday cold medicine containing pseudoephedrine with combinations of chemicals such as ether, denatured alcohol, lantern fuel, acetone, paint thinner, kerosene, battery acid, lithium, brake cleaner, iodine, red phosphorus, anhydrous ammonia, or lye. It does not take a trained chemist to make methamphetamine, and the cooks rarely take any safety precautions. Consequently, fire or explosions are common ways that a meth lab is discovered. For example, residents of an Arlington apartment complex had to be evacuated after a meth lab in one of the units exploded, spreading contamination throughout the building. One of the tenants apparently had been venting his lab into the attic of the apartments.

Epidemic of Incidents

Between 2001 and October 2006, the Washington Department of Ecology listed more than 7,500 meth-lab or meth-dump sites. While one-half to two-thirds of the reported meth-lab incidents were in King, Pierce, Snohomish, and Thurston counties, none of Washington’s counties has been immune. Hundreds of labs and dump sites also have been found in Spokane, Benton, Clark, Whatcom, and Yakima counties. Nor is Washington alone in the proliferation of meth labs. Every state has reported multiple incidents. Federal Drug Enforcement Administration statistics listed more than 12,000 sites nationwide in 2005, and between 16,000 and 17,000 each year between 2002 and 2004.

Most meth labs have been the small-time variety — some law enforcement officials call them “Beavis and Butthead” labs — manufacturing a few ounces per day. Because of the highly toxic chemicals used in the process, even a small operation can present a major impact for a property owner and neighbors. The chemicals and their vapors can permeate walls, flooring, furniture, and toys. Cleanup can be expensive and, until clean, the property is rendered unusable. Even after cleanup, the long-term effects from a meth-lab operation are still uncertain. Furthermore, every pound of product produced by a methamphetamine lab results in five to six times as much hazardous waste, which frequently is flushed down toilets, dumped in streams, or deposited on undeveloped property, and presents a potential environmental nightmare reaching far beyond the immediate confines of the lab.

The health department requires the property owner to demonstrate that the property is decontaminated and meets the standards for decontamination. The warning must inform the potential occupants that hazardous chemicals may exist on, or have been removed from the premises and that entry is unsafe. Within 14 days of the health department receiving notification, it must inspect the property to determine whether the site is contaminated. The inspection evaluates the length of time the property was used for the manufacture or storage of illegal drugs, the size of the site, what chemical process was used, what chemicals were removed, the location of the manufacturing or storage site in relation to living spaces of the property, the presence of chemical stains, evidence of releases or spillage of hazardous chemicals on the property, and whether there is any glassware or other paraphernalia associated with the manufacture of illegal drugs on site. The health department can coordinate with the Department of Ecology, which has a Spill Response Program that dispatches regional response teams available around the clock to provide response and disposal services. Once a health department makes a determination of contamination, the property is posted prohibiting the use of all or portions of the property. The health department must notify the state health department verbally within one working day of the determination and in writing within 10 working days. The contamination determination also must be served on all known occupants of the property and persons having a recorded right, title, estate, lien, or interest in the property. The health-department determination must contain a description of the department’s intended course of action, including measures the property owner must take to have the property decontaminated. A property owner on the receiving end of such an order has the right to request a hearing before the local health officer or local health board, but the request must be made within 10 days of service of the order and a hearing held within 20 to 30 days after service of the order. In any such hearing, the property owner bears the burden of showing that the property is decontaminated and meets the standards for decontamination. If the property is not contaminated, the health department is required to document its findings. Washington law requires the use of a contractor authorized to clean up a meth lab and approval of the work plan by the local health officer. The property owner...
is responsible for the costs of any property testing and decontamination. Cleanup of a 1,200-square-foot home averages $6,500, the bulk of which may have to come from the owner’s pocket, since many homeowners’ insurance policies do not cover meth-lab decontamination. Although the Washington Department of Ecology has a grant program for investigation and cleanup assistance, the funds are available only to state and local governments to help defray their costs.

After completing cleanup, the property owner is responsible for petitioning the local health officer to review the cleanup records and declare the property decontaminated. The health department must perform the review within 10 days after receipt of a request and may require the property owner to perform more extensive testing and assessment. If the health department determines the site is decontaminated according to standards, then a release for reuse is recorded and a copy sent to the property owner, state department of health, and local building or code-enforcement department.

How Clean Is Clean?
Washington is one of only a few states to set specific decontamination standards in statute, regulation, or guideline. The existence of a cleanup standard, however, does not mean there is general agreement on how clean a site needs to be in order for it to be considered habitable. Washington’s 0.1 microgram per 100 square centimeters is one of two generally accepted standards. Other states, such as Oregon, have a more restrictive standard of 0.5 micrograms per square foot, but there is no agreement whether either standard or perhaps some other is more protective of human health and the environment.

Congress passed legislation, the Methamphetamine Remediation Research Act of 2006, that would establish a federal research program and a program to develop voluntary guidelines to help states clean up and deal with the environmental consequences of meth labs. Testimony at a House of Representatives committee hearing on the measure described a wide spectrum of clean-up and remediation procedures among the states — from simply directing that a property be aired out for a few days and scrubbing with ordinary household cleaning products, to detailed procedures for preliminary assessment, decontamination, and confirmation sampling. Washington falls towards the latter end, but the testimony on the bill indicated that the core issue remains how clean is clean for reoccupation purposes.

Dr. John Martyny, a senior industrial hygienist in the Division of Environmental and Occupational Health Sciences at the National Jewish Medical and Research Center, testified that it is well understood meth contaminates virtually every area in and around a lab, but no one knows how long it persists, what effect activities such as vacuuming might have, and what cleanup methods work best. The measure would give the federal Environmental Protection Agency $3 million over the next two fiscal years to develop voluntary decontamination guidelines for states to use.

Legal Liability
In addition to a property owner’s obligation to pay for assessment and cleanup, a host of other legal issues arise when a meth lab is found on a property. Federal and state environmental laws may come into play, as well as statutory and common-law nuisance, premises liability, landlord-tenant, tort, and contract.

The federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) and the Washington Model Toxics Control Act
both impose strict joint and several liability on the owner or operator of a facility from which a release of a hazardous substance occurs. Many of the chemicals used in meth production fall within the definition of a “hazardous substance” under CERCLA and MTCA. A “release” for purposes of liability under both statutes can come from the actual cooking process, from the disposal of the wastes, or from improper storage and handling of the chemicals. Finally, almost any place where meth is made can constitute a “facility” for CERCLA and MTCA purposes, but particularly a home, apartment, or motel room would fall within this definition.

Since CERCLA and MTCA liability is based on status, such as ownership, rather than causation, a property owner can face strict liability for 100 percent of the costs to clean up a meth lab. This has particularly onerous consequences for owners of rental property, where half of the residential drug labs are found, if the owner is not aware that a drug lab is operating on the site.

In addition to the environmental statutes, liability also can arise under statutory or common-law nuisance and negligence. Either a local government or neighbors of a meth lab can bring an action to have a property declared a nuisance, seek an injunction, require abatement, and collect damages.

Where an apartment building or mobile-home park is affected by a meth lab, tenants who are dispossessed by an order to decontaminate could have claims against the landlord under the landlord-tenant statutes, including claims for termination of the lease and refunds for any diminished rental value of the property. Furthermore, tenants might have claims for negligence against a landlord for other damages they may incur, such as health impacts arising from exposure to meth-lab chemicals.

A meth lab can also present a major complication for a real-estate transaction. Washington law requires sellers of residential property to disclose certain environmental problems, such as the presence of underground storage tanks, but Washington does not require specific disclosure that a meth lab was found at a property. Oregon, by contrast, has a statute that prohibits transfers of property where illegal drugs were manufactured unless the site was determined fit for use or, if not fit for use, the seller has made full written disclosure to the prospective purchaser.

Because of the proliferation of meth labs, prudence suggests including a search for evidence of meth-lab activity as part of the pre-closing due diligence, including checking the available databases for lists of meth-lab addresses and having environmental site assessors look for evidence of any such activities during a Phase I inspection. The presence of a former lab also can have an adverse impact on the value of the property, both as a result of the actual contamination and from the stigma arising from perceptions of impairment.

**Conclusion**

The meth-lab epidemic, while slowing somewhat, shows little sign of going away and every indication that it will continue presenting environmental problems for property owners, tenants, and neighbors. Landlords can protect themselves, their tenants, and their property by being vigilant in the rental process — making sure prospective tenants complete an application; doing a full background check of a tenant’s rental and employment history, credit, and criminal records; meeting every adult who will be living on the premises; and being aware of a renter’s appearance and behavior. While this is time-consuming and expensive, it may save a great deal of headache and legal expense later.
However, even the best of precautions cannot prevent every meth lab. While no one asks for a meth lab on their property or next door, when a meth lab is discovered, the mechanisms of the law in Washington are intended to ensure that the property is returned quickly to productive use.

Michael Nesteroff is a shareholder in the Seattle office of Lane Powell P.C., where he focuses on environmental and real estate litigation. He can be reached at 206-223-6242 or nesteroffm@lanepowell.com

NOTES

2. Id.
5. Id.
6. RCW 64.44.020; WAC 246-205-510.
7. Id.; WAC 246-205-520(1).
8. Id.
9. Id.; WAC 246-205-520(2) & -530.
10. Id.; WAC 246-205-530(1) & (2).
12. WAC 246-205-540.
14. WAC 246-205-560.
15. WAC 246-205-560(4).
16. WAC 246-205-560(6).
17. WAC 246-205-560(6)(d).
18. WAC 246-205-540(3).
19. WAC 246-205-570.
20. Id.
22. The Washington Model Toxics Control Act, RCW 70.105D.070, authorizes grant funds to, among other things, “assist local government in the assessment and cleanup of sites of methamphetamine production activities, but not to be used for the initial containment of such sites.” Grants cover a wide range of costs for activities delegated to the health departments, including inspections, assessment, contractor fees for public sites, disposal fees, equipment, posting, notification, and review. Grants are not available for agencies’ initial site containment, legal fees, destruction or landfill materials, or administrative proceedings. See, Ecology Solid Waste & Financial Assistance Program, Remedial Action Program Guidelines, Pub. No. 99-505, at 26-29 (June 2003).
23. WAC 246-205-570(5)(d).
24. WAC 246-205-580.
25. WAC 246-205-590.
26. RCW 64.44.070(2); WAC 246-205-541.
27. WAC 246-205-580.
30. Id.
31. Testimony of Dr. John W. Martyny, Hearing Before House Committee on Science, at 32 (March 3, 2005).
32. H.R. 798, Section 3.
34. RCW 70.105D
36. RCW 7.48.010, et seq.
37. Id.; see also, RCW 7.43.010, et seq. (drug nuisances).
38. RCW 59.18.090 (residential tenant’s remedies for landlord’s failure to remedy defective condition); RCW 59.20.220 (manufactured/mobile home tenant remedies).
39. RCW 64.06.020 (residential real-property transfer disclosure statement).
40. ORS 453.867 & .870 (transfers without disclosure are voidable at the option of the purchaser).
41. King County, for example, maintains a list of meth-lab addresses with their cleanup status (see, www.metrokc.gov/health/methlabs/methcleanup-reports.pdf). Pierce County also maintains a web-accessible database at www.tpchd.org/files/library/a21748f258263882.pdf.
Dear Professor Wizner,

Hello! First of all, I’m going to introduce myself. My name is Flor Sanchez. I attend Davis High School in the state of Washington. I’m a junior in high school and I find school to be interesting. Most people hate school but I tend to like it. It helps me be whoever I want to be. It also helps me find out who I am and who I want to be in life. So I’m one of those teens who want to become someone in life to make a little bit of difference in the lives of those who are misguided by the bad things in the streets.

I have many goals I want to fulfill. My main goal in life is to attend a University that best fits my needs and wants. I want to major in law or medicine. Either one would make me a happy camper. I want to major in either of those careers because I want to help people economically and physically. My second goal is to have a family and care for them. But I don’t really worry about that yet because there’s plenty of time for that.

I know little about you and your career/job, it would be nice of you to talk about your life and your job. You’re a professor, so how does it differ from being a lawyer? What is it like to hold the same seat as William O. Douglas? William O. Douglas was a student here at Davis and later became a Federal Supreme Court Justice. He was a great person at heart and an excellent author. On behalf of the student body here at Davis, we are forever more thankful for him graduating from here. Do you have any personal stories or memories about Justice Douglas, if you ever got to know him or meet him?

In our class, we have learned the Latin phrase, “de novo” which means “as if new” like in Spanish it means “de nuevo.” Do you know if many cases get tried again after they go to appeal? I’m not very familiar with this phrase. But I do know what it means in Spanish because I’m Hispanic.

Well, I want to thank you for taking time out of your busy schedule and reading my letter. I am forever more thankful and I will be waiting to hear from you.

Thank you,
Flor Sanchez

"Dear Mr. Douglas..."

was the first thing some high-school students wrote last September, and this started a journey of reflection for high-school juniors in Yakima, where William O. Douglas went to school. The journey for the students was into the world of court cases, hiking, and history. Since the U.S. Supreme Court Justice went to school at Davis High School, where these students study, one English teacher decided maybe it would be fun to write to Justice Douglas, as if he were “Emily” in the play Our Town. Between a student’s world of the Internet and MP3 players, trying to hook students into American literature and civics can be like trying to sell dental work without the use of anesthesia. The teacher thought this might work.

There were some other reasons the project seemed like a good idea. For one thing, it was simple. Writing quick notes to each other is something many students do. Another
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I know little about you and your career/job, it would be nice of you to write me back. I am very pleased that you have evinced an interest in the issues underlying your questions.

Thank you for taking time out of your busy schedule to read this letter and hopefully write me back.

Sincerely,

Flor Sanchez
was that a newly inaugurated William O. Douglas hiking trail allowed the students to explore around the places that Douglas used to hike. Douglas also wrote *Go East, Young Man,* and *Of Men and of Mountains,* so the students were able to read his contribution to American literature, as they discovered other works.

So instead of just reading *The Scarlet Letter,* or writing a summary about the *Dred Scott* decision and Frederick Douglass’s essays on slavery, the students wrote to Justice Douglas each week asking his opinion on each week’s work in American literature class. This all would have been just another teacher gimmick that stayed in the classroom, except for one key component that made it real to the students — the Washington State Bar Association. With a group of 50 volunteer lawyers who agreed to write one or two letters to students, the American literature class became an informal exploration of the ideals and passions that motivated the writers of American literature to put their pens to the page. These volunteer lawyers accepted the letters and questions from these students, and, in responding back, they sparked learning that could have never taken place without community interaction.

The advantage to introducing students to all of these concepts is that they are coming at the ideas in literature, civics, and law for the first time. They do have a chance to believe in the ideals of the legal system. Thanks to the Washington State Bar Association, there was a direct impact on these students that took on a life of its own, because not only were the students able to write to Justice Douglas — they were able to write to many people in Washington’s legal community.

There were other benefits to the students — not only did the legal community answer their questions about the literature, they took the chance to jot down notes of encouragement to the students about setting goals and college. Two of the lawyers even came to the classroom on their own time to speak to the students and tell their own personal stories of going to college and then becoming successful attorneys. All of this encouragement and special attention paid to the students provided them with voices of inspiration that might someday turn them toward college.

That’s a great shot in the arm for the students. Slogging through case law and court dates doesn’t paint the picture of a "horizon that is unlimited" for a typical lawyer in the trenches every day. Attorneys and judges struggle forward in the system holding to ideals that took hold of them somewhere in high school, or in a pre-law course, or maybe around the dinner table listening to Dad or Mom talking through some case. Whatever the case, lawyers were inspired at some point to make the world a better place by becoming — using the Latin term, *advocatus* — a person called to give evidence. These volunteers who wrote letters and spoke to the students provided evidence and a new perspective that may well spur some of the students on toward legal careers.

The letter writing and learning about Justice Douglas took on a life of its own, and pretty soon, the group of lawyer volunteers who wrote letters inspired other people to write the high-school juniors. Thanks to Jeremie DuFault, a recent Harvard Law graduate and Davis
High School graduate, Douglas's widow, Cathy Douglas-Stone, wrote to the students. David Rosenberg, of Harvard Law School, wrote the students. Stephen Wizner, of Yale Law School, wrote the students. Washington State Supreme Court Chief Justice Gerry Alexander and Justice Mary Fairhurst wrote the students. It expanded further — Dr. Andrew Soward, a Douglas scholar from the University of Idaho, wrote the students. All of these people wrote with similar themes encouraging students to stay in school and to pursue their dreams through hard work and study. The response was overwhelming and greatly encouraging.

The students learned not only about literature, but about the realities of the legal system, and the positive influence the legal community has on life in America. These students come from diverse backgrounds — Davis High School is more than 50 percent Hispanic. Some of the students don’t seek professional or academic careers. These letters helped alter the students’ perceptions of what their futures could be like, and for some of the students, what it means to be professional. Further than that, the project sparked one volunteer to offer a scholarship to the student who displayed the most potential to work hard like William O. Douglas. Because of that effort, even more scholarships have been generated.

The students, through their writing back and forth, were able to generate an exhibit at the Bar Leaders/Access to Justice Conference last June. The teacher hopes to repeat this project again with a new set of volunteer letter writers and some more students of American literature. From all the students from last year and especially the teacher — thanks.

Doug Johnson is an English teacher at A.C. Davis High School in Yakima. He is a Ph.D. candidate in educational psychology interested in legal issues related to poverty and education. He teaches as an adjunct professor at Heritage University and will have a constitutional analysis of the No Child Left Behind Act published in the Journal of Education and Public Society in 2007. He can be reached at johnson.doug@ysd.wednet.edu.
Types of Foreign-Business Presence in Russia and Applicable Law

There are several possible choices for foreign investors to establish their presence in Russia. These include establishing newly formed Russian companies as limited liability companies (LLCs) and joint stock companies (JSCs) or subdivisions of an existing foreign company as its representative office (RO) and its branch. Along with the Civil Code of Russian Federation, which provides fundamental requirements of these legal forms (LLC, JSC, representative office, and branch), Russian corporate law governs issues of operating a legal entity in Russia. These laws include

To determine the appropriate legal way to commence business in Russia, foreign investors must consider their project goals and they must be aware of key distinctions between the types of legal entities mentioned above (LLC, JSC, RO, and branch). This article is intended to provide a general overview of legal issues regarding the entities that foreign investors who plan to establish business in Russia should keep in mind. In addition, the article will cover some legal aspects related to a wholly foreign-owned limited liability company and a representative office of a foreign company, comparing these two legal forms. These two forms are the most widely used by foreigners to establish businesses in Russia.

**Joint Stock Companies and Limited Liability Companies**

Among the various corporate forms of legal entities, corporate legislation provides for the joint stock company (JSC), which can either be open (OJSC) or closed (CJSC), and the limited liability company. There are a few significant differences between OJSC and CJSC. An open joint stock company is usually chosen by companies planning to have unlimited numbers of stockholders or large public stock offerings. A closed joint stock company limits stockholders to a maximum of 50. In addition, in open JSCs, stockholders can sell their shares without limitation, while in closed JSCs, the existing stockholders have the prevailing right of acquisition of the shares being sold. Thus, the stockholders of a closed JSC selling their shares must first offer the shares being sold to existing stockholders, who have the right of first refusal.

Closed joint stock companies and limited liability companies are the most commonly used legal forms that offer limited liability in Russia. These corporate entities are most appropriate for the individual starting a company alone or with a small number of people. CJSCs and LLCs may be founded by a minimum of one and maximum of 50 stockholders (participants). However, it should be noted that a company cannot be founded by one shareholder (participant) if the sole founder is another legal entity that itself has only one shareholder (participant).

**Business Activities Requirements and Restrictions**

Both entities may perform any activity not prohibited by law. It is advisable to list all anticipated activities in a charter.

**Documents Required for Incorporation**

- Formal Application for Registration
- Charter (Bylaws)
- Foundation Agreement (if the company is established by more than one founder)
- Minutes of a general meeting of founders (reflecting the company formation and appointment of its
executive body. Where the company has only one founder, the sole founder resolution will do.)

- Proof of legal status of a foreign founder
- Proof of payment of the applicable state fee

Name Requirements and Restrictions
There do not appear to be any specific name requirements or restrictions, except that use of the words “Russia” and “Russian Federation” or phrases with those words requires an additional state fee. The words reflecting the company’s corporate form must appear along with the company’s name.

Incorporation Procedure
After concluding the foundation agreement, adopting the charter, and signing the minutes, a company must file the application for its registration accompanied by the documents specified above with the registered body. The authorized registered body is a local office of the Federal Tax Service in the area of the company’s location (hereinafter Tax Inspection). Effective January 1, 2004, the registration procedure for Russian companies is simplified by the introduction of a “one window” approach to the registration process. Tax Inspection shall complete the company’s registration within five days from the receipt of the required documents and register the company with all applicable state pension funds, and social and medical insurance funds. After this, the company should register itself with the state statistics committee. Thereafter, the company has full legal capacity and receives a document certifying its incorporation. To engage in most activities, a license under Russian law is required. In addition to the incorporation procedure described above, registration of the stock emission is required for joint stock companies.

Management
General meetings of stockholders (participants) is the company’s supreme body. The shareholders of a company participate in the management of the company business through a general meeting. Every stockholder (participant) has an equal right to propose its own questions for the general meeting and to vote on all issues. Generally, unless a charter provides otherwise, a shareholder (participant) has votes proportional to shareholding. In LLCs and CJSCs, a different number of votes is required for decisions made by majority votes. In an LLC, the decision can be adopted by no less than two-thirds of votes, while in a CJSC, no less than 75 percent of votes is needed. Russian law provides strict rules regarding the procedure for calling a general meeting and the decision-making procedure. Russian law also dictates issues that constitute the exclusive competence of this executive body. The sole authority of a general meeting set forth in the law cannot be reduced by a charter.

The general director or president is a sole executive body of a company elected by stockholders (participants) for the term defined by the charter. A general director (president) represents the company in relation to third parties and acts without a power of attorney. She also issues powers of attorney and concludes contracts, agreements, and
Premieres Sunday
January 7 at 8 PM
The Docket
• Interview with ‘Hamdan’ Attorney
  Lt. Commander Charles Swift
• 2007 Legislative Session Preview

www.tvw.org
transactions on behalf of the company. The sole executive body approves a personnel structure, issues orders, and gives instructions, which are binding for all company employees. A general director is responsible for day-to-day management and liable for a company’s failure to pay taxes, fictive bankruptcy, and other illegal acts. A general director (president) is, in certain circumstances, subject to administrative and criminal sanctions.

In addition to the said executive bodies, the law provides for the existence of the following optional executive bodies that may be fixed in the charter: the collective executive body — executive committee; the company supervising body — board of directors; and the company controlling body — auditor. In general, forming optional bodies may be reasonable for a company with a large number of participants in order to maintain better control.

Capital Requirements
In an LLC, capital is divided into quotes (similar to shares), and in a joint stock company, authorized capital is divided into shares, which are considered securities.

Minimum capital
The registered capital of CJSC and LLC must not be less than 100 times the monthly minimum wage. For open joint stock companies, the required minimum capital is 1,000 times the monthly minimum wage.

For a limited liability company, at least half of the registered capital must be contributed prior to registration. For a joint stock company, 50 percent of capital must be paid within three months from the date of state registration.

For both corporate entities, the capital must be fully paid within one year of the registration of the companies.

Payment for shares
The share capital may be paid in cash or by contributions in kind if the value of these contributions has been verified by the company’s general meeting of stockholders (participants). If the value of such non-monetary contributions is higher than approximately $700, then an independent appraisal is required.

Alienation of shares
Unless a charter provides otherwise, CJSC stockholders and LLC shareholders may transfer their stock and quotes respectively without limitation. However, the other existing stockholders (participants), and a company itself, if provided by a charter, have the right of first refusal to purchase the share being sold.

Withdrawal
LLC participants have the right to withdraw from the company at any time without the consent of the other participants. The share of the withdrawing participant must be returned to the company.

A foreign company can establish its presence in Russia by opening a branch or a representative office.

Under Russian law, branches and representative offices are not independent legal entities, but subdivisions of a foreign company. Branches and ROs are permitted to exercise and defend interests of a foreign company in Russia.

JSC stockholders may dispose of stocks at their own discretion, including sale of stock to a third party.

In a JSC, the stockholder cannot be expelled from the company. Russian law provides for LLC participants holding more than 10 percent of the company’s capital a chance to exclude, under specific circumstances, another participant through a court order.

Taxation
CJSCs are subject to the same taxes and same rates as LLCs, such as income tax, value-added tax, Social Security taxes, property taxes, transportation taxes, and other applicable taxes. In addition to corporate taxes, dividends and profit shares are taxed as part of stockholders’ (participants’) income. American investors will be subject to either U.S. taxation or Russian taxation, according to the treaty between the Russian Federation and the United States of America, to avoid double taxation and prevent fiscal evasion with respect to taxes on income and capital.

Civil Liability of Shareholders
For both corporate entities, shareholders are not liable for debts or obligations related to operations of the business and bear the risk of losses to the extent of their investments in the corporation. In a JSC, stockholders’ liability is limited to the nominal value of their shares. In an LLC, participants are liable to the extent of their contributions in a charter capital.

CJSC or LLC?
Although a closed joint stock company and a limited liability company are similar in many instances, the main differences between them pertain to the formation of authorized capital, decision-making procedures, shareholders’ liability, and withdrawal requirements. The regulations provided to a CJSC make it best suited to investors planning to enter a joint venture with a number of Russian partners, while a limited liability company is likely to better suit a sole founder setting up a company with 100 percent foreign ownership.

Branches and Representative Offices
A foreign company can establish its presence in Russia by opening a branch or a representative office. Under Russian law, branches and representative offices are not independent legal entities, but subdivisions of a foreign company. Branches and ROs are permitted to exercise and defend interests of a foreign company in Russia. Acting on behalf of a foreign company, representative offices and branches can
negotiate, market, and provide other business support to the foreign company. Representative offices are not allowed to undertake any commercial activity and generate profit on their operations in Russia. However, branches may conduct business in Russia in the name of the foreign company. The foreign company is liable for all activities carried out by its branch or representative office in Russia.

Management
Both the RO and branch are managed by an executive body (a head of the RO or branch) appointed by the foreign company. The executive body is authorized to act for and on behalf of the foreign company pursuant to the power of attorney.

Accreditation Procedure
To open a representative office or branch, it must be accredited with the State Registration Chamber and entered into the Summary State Register. The certificate issued by the chamber serves as an official document confirming such registration. Besides the accreditation with the State Registration Chamber, the following must be completed:

- The local office of the Federal Tax Service (Tax Inspection)
- Pension Fund
- Social Insurance Fund
- Medical Insurance Fund
- State Committee of Statistics

Documents Required for Accreditation

- Application
- Certificate of Formation (Registration) of the foreign company
- Articles of Corporation (charter or LLC agreement) of the foreign company
- Board resolution regarding the opening of the representative office
- Regulations (rules) of the representative office in Russia
- Letter from the bank confirming the foreign company solvency
- Letter from IRS confirming the foreign company EIN
- Two recommendation letters of the foreign company’s Russian partners
- The power of attorney authorizing the representative office manager to act on behalf of the foreign company in Russia
- The power of attorney issued to a person authorized to handle the registration procedure in Russia
- The document confirming the representative office’s address in Russia (either a rent agreement or a guarantee letter can serve as such confirmation)
- The formal document containing the foreign company’s data
- The sketch of the representative office’s stamp to be approved by the chamber

Taxation
According to the Russian Tax Code, there is no distinction between a branch and a Russian LLC in terms of tax compliance. A representative office is required to submit reports on its activities and possible income every quarter and it is subject to payroll taxes, retirement taxes, road taxes, Social Security taxes, and other taxes provided by the Russian Tax Code.
State Accreditation Fee
For a representative office, the fee may vary from $1,000 for a one-year accreditation to $2,500 for a three-year accreditation. There is a 60,000 ruble (approximately $2,100) flat fee for the accreditation of a branch in Russia.

Foreign Personnel
After the accreditation, a representative office and branch receive employment permits. Afterwards, every foreign employee, even one who has a personal accreditation card, must also obtain a personal work permit.

Comparison of establishing a business in Russia as a representative office or as a limited liability company wholly owned by a foreign investor
For those foreign investors who plan to establish a business in Russia as a representative office or a Russian limited liability company (obshchestvo s ogrаниченной ответственностью or OOO) with 100 percent foreign ownership, the major factors influencing a foreign investor’s choice between these two types of entities are liability issues, management control, and taxation. LLC is preferable in terms of liability protection, while a representative office is much better in terms of a foreign company’s management control. This is because a representative office is limited to conducting only those activities expressly provided by the power of attorney, whereas the director of the LLC can have the powers provided by Russian legislation, including the right to act on behalf of the LLC without the power of attorney. A well-drafted power of attorney with the director of the representative office can also go a long way towards reducing the foreign company’s liability risk. In terms of taxation, a representative office is subject to less applicable taxes than a limited liability company. Where a foreign investor intends to use its Russian office primarily for marketing and negotiating, the representative office would be the best approach for a foreign company planning to establish its presence in Russia.

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when you think of the problems associated with immigration, perhaps you think of Latin men standing on street corners asking for work, or maybe an image of families working in the fields comes to mind. But there is no doubt that mental pictures of Latinos illegally crossing the United States border are certain to fill your thoughts.

Certainly you’ve read about the effects the recent and continuing wave of immigration is having — or is thought to be having — upon the United States. Of course, there is much impassioned debate whether the effects are good or bad. Clearly, arguments to support both sides can be made. Nevertheless, a large influx of laborers willing to work for any wage above $2 an hour arguably creates a wide range of consequences for U.S.-born workers. Some argue for the benefits of increased cultural diversity; others emphasize the burdens undocumented aliens place upon the social services of American towns, cities, and states. Some argue that the immigration of low-skilled, primarily Latino workers is valuable because it provides employers with a ready supply of labor to do the work that Americans consider to be undesirable and under-compensated; still others argue that the addition of such immigrants to the workforce will ultimately drive down the level of wages even in more desirable work situations. In any case, if you still find yourself undecided, there are plenty of talk shows, political debates, and newspaper articles dedicated to the analysis on both sides of the issue.

Interestingly enough, throughout all this debate, little — if anything — is said about the effect on the Latin American countries people are leaving to come to the United States. Take Mexico, for example. When my father left a small village in Jalisco in 1950, he was 20 years old and the oldest of six children. As the oldest son, he was also set to inherit the ejido (a communally owned Mexican farm) passed on to his father as a result of the Mexican Revolution in the 1900s. Instead, he had heard that he could make more money working in the fields for other people than harvesting sugarcane and corn from his own land. So, my father and two of his friends showed up at a gathering in Guadalajara. This gathering was set up at the request of U.S. farmers looking for braceros or manual laborers. Wages were minimum, but room and board were included, as well as transportation to and from the border. My father was chosen and he was told to report to the border town of Nogales. His first work assignment was in Stockton, California. He worked at this assignment for a few years and eventually earned the right to legal permanent-residency status. That was all in the years following World War II, when the United States needed hard-working men to replace those who had lost their lives in the war.

However, times in the United States are different now. Even though the United States is at war, there is no shortage of manual labor. Now, landowners — both farmers and ranchers — no longer need to cross the border to recruit workers to come here. Those workers who were wooed in the past with promises of room, board, and decent wages no longer need to be convinced. Today, workers freely come to the United States to work, cross-
Eighteen years ago, I spent a summer in my father’s village in Jalisco. I was in college then, and I have always had a strong and fond connection to the place. We used to spend our summers there when we were kids. I remember those days as if it were yesterday. The days seemed endless. Mornings began around 5:30 a.m. It was hard to know exactly what time it was, because no one had a watch or a clock. Early in the morning, I would accompany my cousin to the mill to grind our corn into flour for tortillas. We would cook the tortillas over an open fireplace, which was built into the kitchen wall. That summer, I spent Sundays watching soccer games at the village soccer field. Each Sunday, a different neighboring team would challenge the local team. Sometimes the team would have to travel for the game and the whole village would travel with them. Talk about team spirit! During the week, my cousin and I would saddle our horses and ride up to the mountains and pick oranges. On Saturdays, my cousins and I would dress up and go to dances at the neighboring villages. There was always a wedding, a quinceañera, or a baptism. There was at least one dance every Saturday.

Once, my cousin and I went to four dances in one weekend! There were also horse races in the weekends. Sundays also meant that we would go into the city in the evening and hang out at the plaza to cenar, or have supper. We would buy fresh fruit smoothies and eat snacks. But the most fun was strolling around the plaza. The men walked counterclockwise and the women clockwise. The plaza would get packed with young people moving in circles. Occasionally, a man would hold out a flower to us as we passed to show his interest. If we were interested, we would take the flower. Then eventually, at some point there would be an invitation to leave the circle and move to one of the many surrounding benches to talk. That summer I celebrated my 21st birthday there. I was awakened that morning by a birthday serenata. The serenata group was a few guys from the village and they brought rocks and sticks. Endearing.

I left at the end of the summer, not realizing that I would not return for 18 years. Even if I had realized that I wouldn’t be returning for such a long time, I would never have guessed how drastically life in Mexico would have changed by the time I did eventually return.

Finally, I returned in October 2005. I was so excited to visit, as if I was returning for a homecoming. However, everything had changed. The first sign that the village was not the same was waking up in the morning to the sound of trucks driving on the cobblestone streets. There had been very few cars when I had last been there. Now SUVs ruled the roads. There were practically no horses left. The sugarcane fields were gone. The corn fields were gone. I was there for 10 days and did not see anyone make tortillas. The sound of the mill was replaced by the trucks that came into the village from the big city of Guadalajara to sell tortillas and the dough for tortillas. The soccer field was overgrown with weeds. In fact, no one could remember when the last soccer game was played. The place where the horse races were held was no longer noticeable. The plaza was empty.
but it seemed that fatherless families were more prevalent than not. I visited a few surrounding villages and found the same — no young adult men.

But, strangely enough, the houses were fancier, thanks to the materials shipped in from the United States. The village had a brand-new plaza and a brand-new church. There was a new kindergarten/daycare center, although the elementary school was the same. Almost all the homes had satellite television, a Dodge Ram truck, coffee makers, and even gas stoves. No more open fires. Even the traditional molcajete had been replaced by the convenient blender. The village certainly prospered from having its labor force working for dollars in the United States. But the negative consequences of migration were evident in its daily life. The loss of the social customs of dating — a change culturally devastating in and of itself — was emblematic of the destruction of community and traditions and their replacement by the depersonalizing accumulation of commodities. A change to last forever.

It became obvious to me that the issue of immigration is not confined to the topic of cheap labor in the United States. Mexico and other Latin American countries are deeply affected by the loss of their young adult men. The absence of young adult men has created a damaging hole in the social infrastructure of Mexico. Mexico cannot possibly protect itself against a foreign invasion, whether military or cultural, when so many of its young able-bodied men are living and working in the United States. Nor can Mexico successfully push itself into a prominent position in world markets without their help. Worst of all, Mexico is on the verge of losing its culture — a way must be found to keep its men at home.

In its willing sacrifice of the most productive years in the lives of its men in the American labor market, Mexico has been heedlessly complicit in the uprooting of its cultural heritage, its characteristic ways of life, and its traditional values. On the other hand, the United States has accepted the sacrificial gift, has benefited greatly from it, but has remained largely unaware of the consequences, other than those which directly affect its economy. A workable and just U.S. immigration policy must take fully into account the consequences of emigration as well. Likewise, Mexico must no longer remain willfully ignorant of the consequences of unrestrained emigration and must negotiate agreements with the United States accordingly. Only if two countries work together, attentive to the indirect as well as the direct consequences of immigration, can the rancorous debate be transformed into a constructive discussion and an acceptable, lasting solution be found. ☞

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**Completing Your Trust Account Declaration Form**

All active attorneys must complete and submit a trust account declaration (form B1) every year. This applies to every WSBA member in active status, whether or not you are actually practicing law or have a trust account. Trust account declarations are the blue forms included in your annual licensing packet. These forms are due February 1, 2007. If you did not receive your annual licensing packet, you should contact the WSBA Service Center at 800-945-WSBA (9722) or 206-443-WSBA (9722) to obtain one. Some of the responses and comments we receive with the declarations indicate there may be some confusion about how to complete them. Following are some questions and answers on the trust account declaration to help you complete this year’s form.

**Must I complete this form every year, even if the information hasn’t changed since last year?**

Yes. It isn’t sufficient to indicate on the form that there has been no change from the previous year. Rule 15.5 of the Rules for Enforcement of Lawyer Conduct requires each active lawyer to complete, execute, and deliver to the Association this declaration by the date specified annually. The information you complete on the form needs to be current and complete, including your trust account information.

**If I don’t send in a form, won’t it be obvious to WSBA that I don’t have a trust account?**

No. If you fail to send in a trust account declaration, we will not assume that you do not maintain a trust account and you may be subject to discipline.

**Do I have to answer every question if I’m not engaged in the practice of law?**

Not always. If you are a government lawyer or foreign-house counsel who does not otherwise engage in the practice of law, check one of those boxes under Part I. Then check “No” to Question 1 and sign on the first signature line at the bottom of Part I.

**I’m an associate in a large firm and have nothing to do with the trust account. How can I certify trust account records and client funds are being maintained in compliance with the trust account rules?**

Every attorney must personally respond to the request to certify that funds are handled correctly. If you work for a firm and have questions about the trust account, talk to the managing partner and/or accounting staff until you feel comfortable signing the certification. You should have an understanding of how a trust account works and how your firm manages its account.

**Can I have my firm fill out my declaration for me and mail it in?**

Someone in your firm may complete Part II or prepare a separate piece of paper with the firm’s trust account information on it to attach to your declaration. However, you must personally certify whether you are in compliance and sign and date the form under Part I. If you do not, the form will be returned to you as incomplete.

**The first question on the form asks if I handle Washington client funds. What is meant by that?**

Washington client funds are funds in your possession that belong to your clients or third persons in connection with a representation for which you are required to use your Washington license. Examples of client funds are advance fee deposits, settlement proceeds, escrow funds, and client overpayments. Earned fees you receive are not client funds. If you receive only earned fees from clients, you should answer “no” to the question asking if you handle client funds.

**Are there ever any circumstances when I would indicate that I do not handle client funds, but that I do maintain an IOLTA account?**

Not usually. Some attorneys respond this way because they no longer accept client funds, but still have residual client money that needs to be refunded. If that’s the case, you should indicate that you are handling client funds. These client funds should then be refunded so you can close your trust account. If you cannot locate the clients or discover funds in your trust account that you cannot identify as belonging to you or your client, these should be remitted to the Unclaimed Property Division of the Washington State Department of Revenue.

Attorneys often believe they are required to have an IOLTA account to maintain their license, whether they handle client funds or not. If you do not handle client funds, you do not need to open an IOLTA account.

**If I practice in multiple states and/or...**
Canadian provinces, whose rules do I follow regarding the trust account and client funds?

The WSBA trust account declaration relates only to the practice of law under your Washington license. All states and provinces have different requirements regarding safekeeping of client funds. When you receive client funds, you must analyze if you are holding these funds in connection with a representation where you are using your Washington license. If you are using your Washington license, then you must place these funds in an IOLTA account that meets the requirements of RPC 1.15A.

If you have IOLTA accounts in other states or Canadian provinces, you do not need to provide information regarding those accounts on your Washington trust account declaration.

Do I need to list all trust accounts I maintain in Part II of the declaration?

No. You only need to provide bank-account information for any IOLTA or pooled interest-bearing accounts you have open. You do not need to provide bank-account information for your individual client trust accounts.

Do I need to update my trust account declaration when I open or close an IOLTA account or change banks during the year?

No. Update your information when you file next year’s trust account declaration.

If you have a question about your trust account declaration that isn’t answered here, please feel free to call WSBA Audit Manager Trina Doty (206-727-8242 or 800-945-9722, ext. 8242), Auditor Cheryl Heuett (206-733-5937 or 800-945-9722, ext. 5937), or Auditor Jim Roberg (206-733-5921 or 800-945-9722, ext. 5921).

Cheryl Heuett is a WSBA auditor. She performs random examinations, and educates attorneys about trust account rules and regulations.
Opportunities for Service

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

**Deadline: March 1, 2007**

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

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

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

**N. ELECTION OF AT-LARGE GOVERNORS.**

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

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

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

**2007 Notice of Board of Governors Election**

**Deadline: March 1, 2007**

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

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

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

Nomination forms are available from the Office of the Executive Director, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101; 206-727-8244 or 800-945-9722, ext. 8244; and the WSBA website at www.wsba.org. The WSBA executive director must receive nomination forms by 5:00 p.m. on Thursday, March 1, 2007. Ballots will be mailed on or about April 16 and counted on or about May 15. (The biographical statements of nominated candidates will be published in the May issue of Bar News.)

*The 7th Congressional District is divided into three sub-districts, East, Central, and West. These sub-districts are distinguished by zip codes and each has one elected governor. For the coming year, the Central sub-district (zip codes are 98101, 98102, 98103, 98104, 98108, 98109, 98111, 98112, 98114, 98124, 98134, 98138, 98148, 98154, 98158, 98161, 98164, 98166, 98168, 98174, 98181, 98184, 98188, and 98191) will elect a new governor.

**Court Interpreter Certification Advisory Commission**

**Deadline: February 15, 2007**

The WSBA Board of Governors will be nominating one member to be appointed by the Washington State Supreme Court to serve the remainder of a three-year term on the Washington State Court Interpreter Certification Advisory Commission. The term will commence upon appointment and is effective through September 30, 2008.

The Commission, which operates under a Supreme Court rule, has three standing committees to maintain critical operations of the interpreter program: the Issues Committee, the Disciplinary Committee, and the Judicial and Court Administration Committee.

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

**The Defender Association Board of Directors**

**Deadline: February 15, 2007**

The Defender Association, a nonprofit law firm providing public defender services to King County and the City of Seattle in felony, misdemeanor, juvenile, family advocacy, and civil commitment cases, and appeals at all levels of the state courts, seeks two members to serve on its board of directors, one for a two-year term, and one for a three-year term. Both terms will commence upon appointment. The board generally meets 10 times per year. Please submit a letter of interest and résumé to: Bar Leaders Division, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101, or e-mail barleaders@wsba.org.
MCLE Certification for Group 3 (2004-2006)

If you are an active WSBA member in MCLE Reporting Group 3 (2004-2006), 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. Any C2/C3 forms delivered to the WSBA or postmarked after March 1 will be assessed a late fee.

Members in Group 3 include active members who were admitted to the WSBA in 1984-1990 or in 1993, 1996, 1999, or 2002. Members admitted in 2005 are also in Group 3 but are not due to report until the end of 2009. Their first reporting period will be 2007-2009; however, any credits earned on or after the day of admittance to the WSBA may be counted for compliance. The Continuing Legal Education Certification (C2/C3) form that you 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 2004-2006 reporting period as of mid-October 2006. 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. 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. 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, 2006, and need more time to complete your credits, an automatic extension will be granted until May 1, 2007. There is no need to apply for it. However, a late fee will be 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 Form by</th>
</tr>
</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 CLE activities must be taken, which need to include a minimum of 30 live credits and six ethics credits.
- Pre-recorded self-study (A/V) courses cannot be more than five years old, except MCLE Board-approved “skills-based” courses. Pre-recorded self-study courses include the traditional audio-visual (A/V) media of video tapes and cassette tapes. They also include archived webcasts, DVDs, compact discs, and other media with a soundtrack of the MCLE Board-approved course presentation. Written materials should be included with these courses and reviewed prior to claiming credit. In addition, written materials must be purchased by each member, where required by the sponsor, prior to claiming credit.
- Six pro bono credits can be earned per year. Two of these credits are for approved annual training, which must be taken prior to being able to earn credit for the pro bono work. Four pro bono credits may be earned each year if at least four hours of pro bono work was provided through a qualified legal services provider.

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

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

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

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

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

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

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

**New APR 11 Regulation 104(e) Requirements for In-House CLEs.** Starting with the 2005-2007 reporting period, you are limited to
FYI

Information

Nickerson & Associates

Economic and Statistical Consulting

- Economic Analysis and Damages Calculation
- Statistical Testing and Inference
- Wage and Hour Analysis
- Database Development and Compilation of Computerized Business Records
- Mediation Preparation and Settlement Administration

Peter H. Nickerson, Ph.D.

Phone: 206-332-0270
Fax: 206-332-0252
520 Pike Street, Suite 1200
Seattle, WA 98101

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

MCLE Compliance Report (C4/C5) in 2007 License Packets

All active members who are not due to report MCLE compliance at the end of this year, including new admittees, received a report (the C4/C5 form) in their 2007 licensing packets. Each member’s report lists all credits reported to the WSBA for the member’s current reporting period as of mid-October 2006. 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 will help non-reporting active members to better track their credits as well as to ensure correct reporting and compliance at the end of their reporting period.

If you received the C4/C5 form in your 2007 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 will 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) or 206-443-WSBA (9722), or questions@wsba.org.

2007 License Fee Packets

Licensing packets were mailed in early December. The packet includes your license fee invoice, trust account declaration form and, if applicable, the MCLE certification form. If you have not received your licensing packet by now, please call the WSBA Service Center at 800-943-WSBA (9722) or 206-443-WSBA (9722), or e-mail questions@wsba.org to request a duplicate. Please note that it is your responsibility to pay your annual license fee, regardless of whether you receive the licensing packet.

If you are mailing your forms and payment. The return envelopes for your forms and payments have instructions on the reverse side for improvement in processing and ease of use. Please review them carefully before mailing your forms and payment.

If you are paying your fees online. To pay your fees online, go to http://www.wsba.org, click on the “For Lawyers” tab, and see “Pay Your License Fees Online.” Sign in with your WSBA Bar # and password. Prompts will lead you through the process to pay your 2007 license fees by MasterCard or Visa. The system only allows payments for the full amount billed, e.g., no Keller deductions or status changes. Note that you do not need to return the A2 form if you pay online. Active members have other forms in their packets that must be postmarked or delivered to the WSBA office by the due date. There may be other voluntary forms in the packet that you may want to complete and return to the WSBA.

Payment deadline: 2007 license fees are due no later than February 1, 2007. Please note that if your payment is postmarked or delivered to the WSBA office later than March 1, 2007, WSBA bylaws require a 20 percent penalty be assessed and a pre-suspension notice are mailed. On April 3, 2007, a 50 percent penalty will be assessed if your payment has not been postmarked or delivered to the WSBA office prior to this date.

If either your license fee, late fee or, for active members, the Lawyers’ Fund for Client Protection assessment remains unpaid two months after the mailing of the pre-suspension notice, the delinquency will be certified to the Washington State Supreme Court, which will enter an Order of Suspension from the practice of law.

WSBA members on active military duty.

WSBA Bylaw I.E.1.h., providing for a fee exemption for eligible members of the Armed Forces, was amended in March 2006. Please contact the WSBA Service Center at 800-943-WSBA (9722) or 206-443-WSBA (9722), or questions@wsba.org; or contact Kevin McKee at kevinm@wsba.org or 206-727-8243 or 800-945-9722, ext. 8243 for application information. All requests for exemption must be postmarked or delivered to the WSBA office on or before March 1st.

How has the armed forces exemption changed? Not all active Armed Forces members stationed in the United States will be eligible for consideration unless activated from reserve status to full-time active duty. This must be for more than 60 days of the applicable licensing year. Otherwise, those who are deployed or stationed outside the United States for any period of time for full-time active military duty will still be considered for eligibility. Members must submit satisfactory proof that he or she is so activated, deployed, or stationed.

Resources. The 2007 Resources directory will print the contact information in the WSBA membership database as of February 1, 2007. Now is the ideal time to check that the WSBA has your correct contact information in its database. You can check by going to the online lawyer directory on the WSBA website at http://pro.wsba.org.
If your contact information has changed, please complete and return the Contact Information Change form included in the license packet to the address shown on the form or by fax to 206-727-8319, or e-mail the changes to questions@wsba.org. Please update your information as soon as possible, but no later than January 31, 2007, for inclusion in Resources.

More Information. Full explanations of license fees, forms, policies, and deadlines are on the WSBA website at: www.wsba.org/lawyers/licensing/annuallicensing.htm or 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), or 206-443-WSBA (9722), or at questions@wsba.org.

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

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

2006 WYLD Awards
The Washington Young Lawyers Division (WYLD) is proud to announce its 2006 awards recipients. The Outstanding Young Lawyer award was presented to Seattle attorney Diankha Linear, of Cairncross & Hempelmann, for her commitment to the community and her dedication to promoting and diversifying the legal profession. Seattle attorney David East, of McNaul Ebel Nawrot & Helgren, received the Thomas Neville Pro Bono award for demonstrating initiative and leadership in public service. The Professionalism award was given to Seattle attorney Sarah Dunne, of the ACLU of WA, for balancing a litigation practice with a commitment to pro bono service and other community work. The Outstanding Affiliate Award was presented to the Kitsap County Bar Association Young Lawyers Section for its consistent work on providing programming and events geared towards young lawyers, as well as the organization’s dedication to serving its members.

WSBA Holds Fifth Annual Law Student Reception
On November 9, the WSBA held its fifth annual law student reception, organized by the WSBA Committee for Diversity in conjunction with Seattle University School of Law, University of Washington School of Law, and the WSBA Board of Governors. At the event, law students enjoyed the collegial atmosphere and the opportunity to network with lawyers and judges. The highlight of the evening was a keynote address by former governor Gary Locke. Other speakers were WSBA President Ellen Conedera Dial, Lael Echo-Hawk and Rick Rasmussen (co-chairs of the Committee for Diversity), John Chung (assistant director for public interest/services, UW School of Law, and president-elect of the Korean American Bar Association), and WSBA Governor Marcine Anderson.

Latina/o Bar Association of Washington Celebrates 15th Anniversary
The Latina/o Bar Association of Washington (LBAW) is celebrating its 15th year with its Anniversary Banquet, to benefit student scholarships and Consejo’s Villa Esperanza. The event will be held on Friday, January 26, 2007, at 5:30 p.m. at the Fairmont Olympic Hotel in Seattle.

Consejo’s Villa Esperanza is a new two- and three-bedroom apartment project with 23 units in South Seattle for victims of domestic abuse and their children. Developed by Consejo Counseling and Referral Services, these transitional units will cater primarily to Spanish-speaking families who have survived domestic-violence tragedies and are the face of hope.

The event will raise funds for Consejo’s Villa Esperanza, as well as the Foundation’s scholarship fund, during its pre-dinner silent auction and dinner live auction. Local businesses have donated various items, including hotel stays in Mazatlan, massage therapy, dinners, and artwork. For more information on the event, including a list of sponsors and partners, visit www.lbaw.org.

Consumer Counseling Northwest Approved for Mandated Bankruptcy Counseling and Education
The Puget Sound Region nonprofit Consumer Counseling Northwest (CCNW) has been approved by the Executive Office of the U.S. Trustee for Region 18 to provide Chapter 7 and 13 pre-filing bankruptcy counseling and pre-discharge debtor education as mandated under the Bankruptcy Abuse and Consumer Protection Act of 2005.

CCNW offers these services in three Western Washington locations. Pre-filing bankruptcy counseling is offered by phone
FYI

Do you look forward to going to work? If not, why not? If you're unhappy doing your current job but aren't sure what to do about it, call the Lawyers Assistance Program at 206-727-8284 or 800-945-9722, ext. 8268, to schedule a free, confidential consultation. Life is short — why not enjoy it?

Computer Clinic

The WSBA offers a hands-on computer clinic for members wanting to learn more about what software programs — such as Outlook, PowerPoint, Excel, Word, and Adobe Acrobat — can do for a lawyer. Are you a total beginner? No problem. The clinic teaches helpful tips you can use immediately. Computers are provided, and seating is limited to 15 members. There is no charge, and no CLE credits are offered. The next clinic will be held January 8 from 10 a.m. to noon at the WSBA office. For more information, contact Pete Roberts at 206-727-8237, or 800-945-9722, ext. 8237, or peter@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, and a lawyer and another professional. Either party to a dispute may initiate fee arbitration or mediation. Both programs are non-disciplinary, voluntary, and confidential. For more information, visit the WSBA website at www.wsba.org/lawyers/services/adr.htm or call the ADR Coordinator at 206-733-5923 or 800-945-9722, ext. 5923.

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.

Job Seekers Discussion Group

Looking for a job or making a transition? Join us at the Job Seeker Discussion Group the second Wednesday of each month from noon to 1:30 p.m. The next meeting is January 10 at the WSBA office (1325 Fourth Ave., Ste. 600, Seattle). The group discusses where to look for jobs, how to use 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 and bring your lunch — no need to RSVP. For more information, contact Rebecca Nerison, Ph.D. at 206-727-8269, or 800-945-9722, ext. 8269, or rebeccan@wsba.org.

or in-person. Upon completion, clients receive certificates of completion, which allow them to start the bankruptcy process with their attorneys. The pre-discharge debtor education helps people gain control of their financial lives. Pre-discharge debtor education is available in-person or online.

For more information, visit www.ccnw.org or contact CCNW Attorney Services Coordinator Sam Qureshi at 800-244-1183, ext. 303, or samq@ccnw.org.

Casemaker Access

Casemaker is a powerful online research library provided free to WSBA members. To access Casemaker, go to the WSBA website at www.wsba.org and click on the Casemaker logo on the right sidebar to access the Casemaker homepage. Click on the Casemaker button to begin. For help using Casemaker, you can contact the WSBA Service Center at 800-945-WSBA (9722), or 206-443-WSBA (9722), or e-mail questions@wsba.org.

Contract Lawyer Meeting

LOMAP hosts a meeting of contract lawyers the second Tuesday of every month at the WSBA conference room facility. The next meeting is Tuesday, January 9 from noon to 1:30 at the WSBA office (1325 Fourth Ave., Ste. 600, Seattle). Please bring your lunch — coffee is provided — and network with other contract lawyers.

LAP Solution of the Month: Job Satisfaction

Do you look forward to going to work? If not, why not? If you're unhappy doing your current job but aren't sure what to do about it, call the Lawyers Assistance Program at 206-727-8284 or 800-945-9722, ext. 8268, to schedule a free, confidential consultation. Life is short — why not enjoy it?
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.

PILA to Hold Twelfth Annual Auction
The Public Interest Law Association of the UW School of Law will hold its twelfth annual auction Friday, February 2, 2007, at the W Hotel in downtown Seattle. The majority of auction proceeds will provide grants to UW law students who devote a summer to pro bono legal work in public interest law, as well as contribute to the newly formed UW Law School Loan Repayment Assistance Program endowment. To RSVP for the event or for more information, contact PILA at info@uwpila.org.

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

Northwest Justice Project: Notice of Public Meeting
Year 2007 quarterly meetings of the Board of Directors of the Northwest Justice Project, a 501c(3) not-for-profit organization which provides civil legal services to eligible low-income clients, will be held on the following dates: January 21, April 29, July 29, and October 21, 2007. The Northwest Justice Project receives primary funding from the state and through the federal Legal Services Corporation and maintains more than 10 offices throughout Washington state.

These public meetings generally commence at 9:30 a.m. While they are usually held in Seattle for cost economy reasons, and to accommodate board member travel, specific meeting sites may vary from meeting to meeting based on space availability or other program purposes. All meetings are open, except that limited portions may be closed, pursuant to a vote of a majority of the Board of Directors, to hold an executive session. In such sessions, the Board reviews, considers, and, in some cases, votes upon matters related to: 1) litigation to which the program is or may become a party; or 2) internal personnel, operational, investigative, and sensitive labor relations matters. Any such closed sessions will be as authorized by pertinent laws and regulations and will be duly noted, in summary form, in open session and corresponding minutes. Closed sessions will also be formally certified by the program’s executive director or general counsel, as authorized. A copy of the certification will be maintained for public inspection at the program’s main office located at 401 Second Ave. S., Ste. 407, Seattle, and will be otherwise available upon request.

For specific meeting site information, please call Lisa Giuffré, 206-464-1519 or 888-201-1012.

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

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.

Upcoming Board of Governors Meetings
January 11-12, Tumwater • March 2-3, Bellevue • April 13-14, Kelso
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 December 2006 was 5.03 percent. Therefore, the maximum allowable usury rate for January is 12 percent. Information from January 1987 to date is on the WSBA website at www.wsba.org/media/publications/barnews/usury.htm.

Congratulations to Our Rising Star
Anthony R. Scisciani III

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FAX: (206) 223-4065
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Congratulations to the 717 candidates who passed the Summer 2006 Bar Exam! The exam was administered in July 2006, at Meydenbauer Center in Bellevue. Of the 973 candidates who took the exam, 73.7 percent passed. This pass list, along with statistical information, can be viewed on the WSBA website at www.wsba.org.
This In Memoriam section contains brief obituaries of WSBA members who died in 2006. The list is not complete and contains only those notices that the WSBA has learned of through newspapers, magazine articles, trade publications, and letters. Some members not on this list were featured in the January, May, and June 2006 issues of Bar News. Each entry begins with the member’s name, then the date of death, followed by some information about that person (in some instances no further information could be obtained). We regret that space doesn’t allow for a more complete tribute for each of these WSBA members.

Agranoff, Efrem Z. — 06-22-2006
— Born 01-06-1933 in San Diego, CA. Served in the U.S. Army during the Korean conflict. Practiced law in Snohomish County for more than 45 years. Loved his two dogs. Was the recipient of a heart transplant in 1990.

Albert, Douglas F. — 04-18-2006 — Born 09-29-1921 in Tacoma. Earned his law degree at UW School of Law. Practiced corporate law in Federal Way for more than 50 years. Active in many fraternal, community, and service organizations. He loved pets, bird-hunting, his Hood Canal retreat, and his wife's cooking.

Barker, Charles F. — 05-08-2006 — Born 06-10-1913 in San Francisco.

Caldwell, John C. — 08-09-2006 — Born 09-17-1958. A graduate of Seattle U. School of Law. Loving father, son, brother, and uncle.

Clarke, George W. — 06-25-2006 — Born 06-22-1906 in Perry, IA. A resident of Mercer Island since the age of two. Graduated from UW School of Law. Served in the state House of Representatives in 1966-71 and the state Senate in 1971-85. Helped establish the Mercer Island park over Interstate 90. A lifelong member of the Seattle Tennis Club.

Clarke, Michael Albert — 10-28-2006 — Aged 57, of Arlington. Practiced law in Everett for more than 30 years. Loved the outdoors, hiking, fishing, and skiing, and had a passion for travel.


Cranston, Ralph S. — 06-23-2006 — Born 06-02-1951 in Dunkirk, NY. Received his J.D. from the U. of California-Berkeley. A talented businessman, lawyer, and writer who was editor for Diversity News.

Creighton, M. Lee — 05-28-2006 — Aged 47. Received his J.D. from the UW School of Law. Served as the first elected judge for the Olympia Municipal Court. Loved his family, the mountains, and travel. Enjoyed Clint Eastwood films with friends over beer and pizza.

Culp, Gordon C. — 03-23-2006 — Born 02-17-1927 in Auburn. Served in the U.S. Navy as an electronic electrician's mate. Graduated from UW School of Law. Worked as counsel for Senator Henry M. Jackson’s Subcommittee on Territories and Interior Affairs and helped create the Alaska and Hawaii Statehood acts.

Dimmick, Cyrus A. — 04-21-2006 — Born 03-07-1918 in Pasco. A graduate of UW School of Law. Served in World War II. Served as assistant attorney general and practiced law in Olympia and Seattle. His “real career” was golf.

Doherty, Howard Vincent Sr. — 09-10-2006 — Born 03-06-1912. Served in the U.S. Navy as a lieutenant commander. Practiced law in Port Angeles. Served as a Clallam County prosecutor. Served on the Bar Legislative Committee and as U.S. Magistrate for Whidbey Island Naval Air Station. Believed that “law is a service, not a business,” that “a lawyer’s fee should be commensurate with the ability of the client to pay,” and that “the courtroom was where the poor and the rich were truly equal.”

Duree, James Earl “Jim” — 03-16-2006 — Born 06-19-1917 in the Willapa Valley. Inspired by FDR's fireside chats, he became a committed lawyer and fighter for civil liberties and the environment. Served in the U.S. Army Air Corps during World War II. Attended the National University School of Law. Served as Pacific County prosecuting attorney and practiced in Raymond, Ocosta, and Westport.

Friedman, Bernie — 08-03-2006 — Born 12-31-1942. Earned his law degree from Duke U. School of Law. Served as lieutenant colonel and meteorologist in the U.S. Air Force. Brought a tough new approach to the state Department of Social and Health Services, creating a risk management office in 2000. Was chair of the WSBA Disciplinary Board at the time of his death.

Gehri, Alfred P. — 03-04-2006 — Born 10-04-1951. Received his law degree from UW School of Law and joined the Snohomish County Prosecutor’s Office in 1979. An avid reader, photographer, and history buff.


Howard, Frank “Don” — 01-29-2006 — Born 10-06-1931 in Seattle. A graduate of UW School of Law and the U.S. Coast Guard Academy. Served as Lt. Commander, USCGR. Appointed to the King County Superior Court in 1969 and the U.S. Federal Bankruptcy Court in 1988. Loved his work, golf, sailing, travel, and Husky football.


Lane, Edward M. — 01-15-2006 — Born 04-07-1928. Graduated from the UW School of Law. Practiced in Tacoma for more than 50 years. Served as WSBA governor and as a leader and member of many associations and civic organizations. Loved golf and the Huskys.

McInturff, James “Ben” — 05-11-2006 — Born 03-20-1924. Served in the U.S. Marine Corps, where he contracted polio, which left him without the use of his legs.
and left arm. A longtime Spokane resident, graduated from Gonzaga U. School of Law. Became a Spokane County district judge in 1953 and a judge for the Washington State Court of Appeals in 1972. Helped to pioneer the very first access to justice programs.

**McLeod, Donald A.** — 02-26-2006.

**McMullen, Larry Edward** — 10-29-2006 — Born 02-13-1959 in Laramie, WY. A loving father, avid bicyclist, accomplished sailor, and enthusiastic singer. Graduated from the U. of Puget Sound School of Law.


**Otto, Filis** — 03-22-2006 — Aged 81. One of the first female lawyers and judges in Pierce County. Served as District Court judge for 28 years. Active in many charities and organizations. A mentor to many throughout her distinguished career, a pioneer for women in the profession, and known for her wonderful sense of humor and brilliant mind.

**Parker, Wayne R.** — 02-12-2006 — Born 01-16-1925.

**Sauve, Melissa Verginia** — 10-07-2006 — Born 06-29-1951 in Seattle. Loved fishing, sewing, and was a master cook. Generously provided pro bono service for those in need.

**Scaringi, Michael** — 05-04-2006 — Aged 61. A former Mercer Island police officer. Coached sports, helped Boy Scouts, and built houses in Mexico. Enjoyed sharing food and wine with family and friends. A member of the Sons of Italy.


**Sheahan, Don** — 07-25-2006 — Born 10-04-1923 in Thornton. A lifelong resident of Whitman County. Served in the U.S. Navy during World War II. Earned his J.D. from Gonzaga U. School of Law. Served as a district court judge in Colfax. He saw law as an opportunity to serve others and devoted time to many fraternal, civic, and community organizations.


**Short, Kenneth Powell** — 04-15-2006 — Born 02-23-1918 in Seattle. Graduated from UW School of Law. Served in World War II. Served as president of the Seattle-King County Bar in 1965 and as WSBA president in 1974. Was an ABA delegate for many years. A member of the boards of many civic and charitable organizations. He and his wife were avid golfers.

**Silva-Wayling, Tracey Anne** — 06-28-2006 — Aged 47. Raised in McAlester, OK. Became a fashion photographer and then an attorney. Moved to Seattle in 1998 to practice law. She loved the ocean and enjoyed cooking, entertaining, Christmas, and gardening.

**Slagle, Franklin Jay** — 09-24-2006 — Born 09-26-1947. Graduated from Gonzaga U. and the U. of Florida School of Law. Practiced law in Spokane for four years before becoming a professor at the U. of South Dakota School of Law, where he taught for 22 years. Had a passion for learning, telling stories and jokes, and portraying "Chipper" the clown for the Sioux Falls Shriners.

**Smith, Carmen Louise** — 09-08-2006 — Born 09-18-1948 in Miami, FL. A former flight attendant, graduated for Georgetown U. Law Center in 1980. Helped organize private ventures to create low-income housing. Loved to hike and climb — scaling the Canadian Rockies and the Dolomites and traversing the Grand Canyon.


**St. Yves, Kenneth** — 01-11-2006 — Born 09-06-1967. A graduate of Gonzaga U. School of Law. Loved rooting for the Mariners, Seahawks, the Sonics, and especially the "Zags."

**Stamos, Christopher Lee** — 07-21-2006 — Of Olympia. Enjoyed being an attorney and helping people of the community. Hobbies included gardening, cooking, and watching old movies.

**Taylor, Robert Maxwell** — 05-30-2006 — Aged 59. Earned his law degree at Boston U. School of Law. Nationally recognized for his courtroom skills, teaching at the U. of Virginia's Trial Advocacy Institute. Served as a federal prosecutor. Skilled at interior design. Always willing to offer humor, wisdom, and "kernels of truth" — many stopped by his office for a "Bob-fix."

**Thorbeck, Thomas** — 07-11-2006 — Born 12-06-1945 in Nebraska. Attended the U. of Michigan School of Law and practiced in Seattle since 1974. Diagnosed with multiple sclerosis in 1986, he viewed having the disease as only a "change." He competed as a triathlete and hand cyclist and learned to play the cello. He played in a community orchestra and enjoyed "music camp."

**Watson, Steve** — 04-29-2006 — Aged 76. Practiced real estate law. Passionate about his children, skiing, and collecting art. A supporter of women’s rights. Provided legal services to Southeast Asian refugee organizations and chaired the Woodland Park Zoo Commission, helping to turn the zoo into a world-class facility.
Disciplinary Notices

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

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

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

Disbarred

Roland T. Hunter (WSBA No. 29488, admitted 1999), of Olympia, was disbarred, effective July 21, 2006, by order of the Washington State Supreme Court following a default hearing. This discipline was based on his conduct in 2004 and 2005 involving sending sexually explicit material to a minor client, asking the minor client to engage in sexual relations with him, the crime of attempted possession of depictions of a minor engaged in sexually explicit conduct, and the crime of tampering with a witness.

In October 2004, Mr. Hunter began representing a 17-year-old client in a criminal matter. During the course of the representation, the minor client e-mailed Mr. Hunter about the status of her case. Mr. Hunter responded via e-mail, and, over time, Mr. Hunter’s e-mails to the client became sexually explicit. Among other things, Mr. Hunter asked the client to have sex with him, described different sexual acts he wanted to engage in with the client, and asked if he could take pictures and videos of the client performing sexual acts with him. Mr. Hunter also e-mailed the client sexually explicit pictures, including nude photographs of himself.

In December 2004, a police detective interviewed Mr. Hunter about the sexually explicit e-mails and photographs sent to the client. Mr. Hunter denied sending them, claiming that they had been sent by his ex-girlfriend without his knowledge or permission. Sometime later, Mr. Hunter contacted his ex-girlfriend and asked her to falsely testify that she was the one who had sent the sexually explicit e-mails and pictures. In exchange for doing so, Mr. Hunter promised to provide certain monetary benefits. In November 2005, Mr. Hunter was charged with attempted possession of depictions of a minor engaged in sexually explicit conduct (RCW 9A.28.020 and 9.68A.070), a gross misdemeanor, and tampering with a witness (RCW 9A.72.120(1) and 10.99.020), a felony. Mr. Hunter pleaded guilty to both counts.

Mr. Hunter’s conduct violated RPC 1.7(b), prohibiting a lawyer from representing a client if the representation of that client may be materially limited by the lawyer’s responsibilities to another client or to a third person, or by the lawyer’s own interests, unless the lawyer reasonably believes that the representation will not be adversely affected and the client consents in writing after a full disclosure of material facts; RPC 1.8(k), prohibiting a lawyer from having sexual relations with a current client unless a consensual sexual relationship existed between them at the time the lawyer/client relationship commenced; RPC 8.4(a), prohibiting a lawyer from attempting to violate the Rules of Professional Conduct; RPC 8.4(b), prohibiting a lawyer from committing a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects; and RPC 8.4(i), prohibiting a lawyer from committing any act involving moral turpitude, or any unjustified act of assault or other act which reflects disregard for the rule of law, whether the same be committed in the course of his or her conduct as a lawyer, or otherwise.

Joanne S. Abelson represented the Bar Association. Mr. Hunter did not appear in the proceeding either personally or through counsel. Vernon W. Harkins was the hearing officer.

Disbarred

Edward L. Tezak (WSBA No. 23541, admitted 1994) of Mukilteo, was disbarred, effective July 25, 2006, by order of the Washington State Supreme Court, following a default hearing. This discipline was based on his conduct in 2000 leading to his conviction of the crimes of wire fraud and money laundering.

Mr. Tezak was a principal of a purportedly tax-exempt charitable organization. He was also a director and officer of a limited liability company, which was purportedly a lender for a private development project. In May 2000, Mr. Tezak represented to various individuals that he had access to approximately $20 million in funds from a particular individual. Mr. Tezak participated in an interstate telephone call with a representative of an investment bank, during which he facilitated the issuance of a letter by that representative affirming the existence of more than $20 million in assets on deposit. In two letters dated May 11, 2000, Mr. Tezak affirmed the availability of those funds, plus $43 million in additional private financing, for investment in the development project. Mr. Tezak knew that his representations in the letters were false and fraudulent. Mr. Tezak had reason to know that one of the letters was faxed in interstate commerce.

Prior to his making false representations concerning the availability of funding for the development project, Mr. Tezak had entered into an agreement to be paid $250,000 by the developer for up to five verifications of financing that he would provide. Pursuant to that agreement, and based on the verification of funds that Mr. Tezak performed, the private developer paid Mr. Tezak $50,000 for his services in the form of a cashier’s check payable to Mr. Tezak’s charitable organization. Thereafter, Mr. Tezak deposited the cashier’s check into his brother’s bank account in Montana and later directed the funds to be transferred to the bank account of the charitable organization, which was also located in Montana. From that account, Mr. Tezak withdrew and used the funds for a variety of personal purposes knowing that the funds were derived from an underlying wire-fraud scheme and that the transaction was designed for the purpose of concealing the nature, location, source, and/or ownership of the funds.

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

Marsha A. Matsumoto represented the Bar Association. Mr. Tezak did not appear either in person or through counsel. Catherine L. Moore was the hearing officer.

**Suspended**

Christopher P. Bartow (WSBA No. 29559, admitted 1999), of Ellensburg, was suspended for six months, effective June 9, 2006, by order of the Washington State Supreme Court, following a stipulation. This discipline was based on his conduct in 2004 involving the crime of third-degree assault.

In October 2004, Mr. Bartow was charged by information in Snohomish County Superior Court with the felony of third-degree assault in violation of RCW 9A.36.031(1)(g) (assault on a law enforcement officer or other employee of a law enforcement agency who was performing his or her official duties at the time of the assault). In November 2004, a jury convicted Mr. Bartow as charged.

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

Linda B. Eide represented the Bar Association. Mr. Bartow represented himself.

**Suspended**

Leanne M. Bowker (WSBA No. 16737, admitted 1987), of Portland, Oregon, was suspended for 30 days, effective May 9, 2006, by order of the Washington State Supreme Court imposing reciprocal discipline based on an order of the Supreme Court of the State of Oregon following a stipulation. This discipline was based on her conduct in 2004 and 2005 involving conflicts of interest and disclosure of confidential information.

In 2004, Ms. Bowker was engaged to represent the lender in a loan transaction. The borrower in the transaction was Ms. Bowker’s former client in an estate-planning matter. The lender was the mother of the former client. Ms. Bowker believed that she was representing only the lender. However, based upon Ms. Bowker’s prior lawyer-client relationship with the borrower, meetings she had had with the borrower regarding the loan, and other circumstances, the borrower had a reasonable expectation that Ms. Bowker was representing the borrower in the matter. Ms. Bowker prepared a promissory note secured by a trust deed granting the lender an interest in the borrower’s home. The borrower subsequently executed a different promissory note prepared by another lawyer.

In July 2005, Ms. Bowker met with both the borrower and lender regarding problems that had arisen in connection with the loan. Ms. Bowker undertook to represent the lender in collecting the loaned funds from the borrower without obtaining the informed consent of the former client. In connection with her collection efforts, Ms. Bowker, at the lender’s instruction and despite objection by the borrower, sent the borrower’s brother a copy of the draft promissory note and trust deed she had prepared in 2004.

Ms. Bowker’s conduct violated Oregon DR 5-105(E), prohibiting a lawyer from representing multiple current clients in any matters where such representation would result in an actual or likely conflict; Oregon RPC 1.9(a), prohibiting a lawyer who has formerly represented a client in a matter from thereafter representing another person in the same or a substantially related matter in which that person’s interests are materially adverse to the interests of the former client unless each affected client gives informed consent, confirmed in writing; and Oregon RPC 1.9(c)(2), prohibiting a lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter from thereafter revealing information relating to the representation except as the rules would permit or require with respect to a client.

Felice P. Congalton represented the Bar Association. Peter R. Jarvis represented Ms. Bowker.

**Suspended**

Mark E. Lehinger (WSBA No. 15544, admitted 1985), of Spokane, was suspended for one year, effective upon his return to active status, by order of the Washington State Supreme Court following a hearing. This discipline was based on his conduct between 2003 and 2005 involving practicing law while suspended, failure to inform clients of his suspension, and making false statements in connection with a disciplinary investigation.

In August 2003, Mr. Lehinger received notice from the Washington State Bar Association that he had been suspended from the practice of law for failure to pay licensing fees. In September 2003, believing the statute of limitations applicable to the claim would soon expire, Mr. Lehinger filed a summons and complaint for damages in Spokane County District Court, signing the complaint as “Attorney for the Plaintiffs.” Mr. Lehinger did not inform his putative clients of his suspension.

In October 2003, the Bar Association informed Mr. Lehinger that a grievance had been opened and requested his written response to the allegation that he practiced law while suspended. Mr. Lehinger’s response included the following statements: “I filed the summons and complaint, even though I had not yet heard back from the Bar Association concerning my reinstatement. Subsequently, I learned that the check I sent in payment of the dues and penalty did not clear . . . .” These statements were false. The Bar Association had informed Mr. Lehinger the day before he filed the summons and complaint that his license would not be reinstated because his check had been returned for “NSF.” That day, a WSBA employee had informed Mr. Lehinger by telephone that he was required to make payment by cashier’s check or money order.

Ms. Bowker.

Suspended
order and could not do so by credit card. After paying his license fees in December 2003, Mr. Lehinger was reinstated to active status. Mr. Lehinger has subsequently changed his status with the WSBA to inactive.

Mr. Lehinger’s conduct violated 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 5.5(e), prohibiting a lawyer from engaging in the practice of law while on inactive status, or while suspended from the practice of law for any cause; RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and RPC 8.4(l), prohibiting a lawyer from violating a duty or sanction imposed by or under the Rules for Enforcement of Lawyer Conduct in connection with a disciplinary matter.

Marsha A. Matsumoto and M. Craig Bray represented the Bar Association. Mr. Lehinger represented himself. David L. Broom was the hearing officer.

Suspected

Jeffrey L. Needle (WSBA No. 6346, admitted 1975) of Seattle, was suspended for 60 days, effective July 26, 2006, by order of the Washington State Supreme Court, following a hearing. This discipline was based on his conduct in 2002 involving use of means that had no substantial purpose other than to embarrass or burden a third person, commission of the crime of fourth-degree assault, conduct prejudicial to the administration of justice, and violation of the oath of attorney.

In October 2002, Mr. Needle was attending a deposition on behalf of the plaintiff in a wrongful-termination action. Prior to the deposition, there had been an atmosphere of disagreement between Mr. Needle and the lawyer representing the defendant. The deposition had been ordered following a motion to compel, opposed by Mr. Needle. At the commencement of the deposition and in its early stages, Mr. Needle appeared irritated and angry. At times during the deposition, the witness sobbed and cried. As the deposition progressed, Mr. Needle became more hostile and angry, raising his voice. Just over halfway through the deposition, Mr. Needle began to criticize the defendant’s lawyer and call her names in an unprofessional manner. Mr. Needle characterized the defendant’s lawyer as “a disgrace” and “a total ass.” When the defendant’s lawyer advised Mr. Needle to start acting like a civilized person, Mr. Needle told her that she did not deserve civilized treatment.

After the deposition was concluded, Mr. Needle confronted the defendant’s lawyer in the deposition conference room. Mr. Needle approached the defendant’s lawyer in a hostile manner and raised his voice. He came within six to eight inches of her face and body and yelled unprofessional remarks, frightening both her and the court reporter. As Mr. Needle continued to push towards her, the defendant’s lawyer placed her left hand on the front of Mr. Needle’s right shoulder area, thereby attempting to restrain Mr. Needle’s motion toward her as she was being backed up against the conference room table. She asked Mr. Needle several times to “leave” or “just to leave.” Mr. Needle persisted, continuing his unprofessional verbal comments to her. Once or twice, Mr. Needle told the defendant’s lawyer to remove her hand from him. When she failed to do so, Mr. Needle struck her on the left side of her face with his palm. Mr. Needle then turned and departed.

Mr. Needle was subsequently arrested and charged with fourth-degree assault. The criminal matter was resolved pursuant to an agreement to continue the case for dismissal. In the wrongful-termination action, the superior court judge removed Mr. Needle as legal counsel and held Mr. Needle personally responsible for attorney’s fees and costs incurred in connection with the motion. Following the incident, the defendant’s lawyer experienced swelling, redness, bruising, and pain to the left side of her face. The day after the incident, the defendant’s lawyer went to see a physician and was sent to a radiologist for a CT scan, incurring medical expenses of $1,277.54.

Mr. Needle’s conduct violated RPC 4.4, prohibiting a lawyer, in representing a client, from using means that have no substantial purpose other than to embarrass, delay, or burden a third person; RPC 8.4(b), prohibiting a lawyer from committing a criminal act (in this case, assault) that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects; RPC 8.4(d), prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice; and RPC 8.4(k), prohibiting a lawyer from violating his or her oath as an attorney.

Debra J. Slater represented the Bar Association. James E. Lobsenz represented Mr. Needle. Julian C. Dewell was the hearing officer.
professional judgment on behalf of the lawyer's client will be or reasonably may be affected by the lawyer's own financial business, property, or personal interests; and DR 5-105(E), permitting a lawyer to represent multiple current clients in instances otherwise prohibited when such representation would not result in an actual conflict and when each client consents to the multiple representation after full disclosure.

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

Reprimanded

Michael R. Karber (WSBA No. 24044, admitted 1994), of Tempe, Arizona, was ordered to receive two reprimands on May 22, 2006, following a stipulation approved by a hearing officer. This discipline was based on his conduct involving failure to put a contingent-fee agreement in writing and trust-account irregularities.

Mr. Karber represented a client in a lawsuit to recover for damage to the client's pond. The client had been previously represented by another lawyer in the matter. Mr. Karber and the client agreed to a 25 percent contingent fee with a cash advance of $4,000. Although Mr. Karber was aware of the requirement that agreements for contingent fees be in writing, he neglected to put the contingent-fee agreement in writing. In April 2004, the matter settled at mediation when two insurance carriers agreed to pay $25,000 each. As part of the mediation, the client agreed to give her previous lawyer a lien of $1,500 on the settlement proceeds. An environmental expert involved in the matter agreed to limit her charges to $13,000, providing that the remaining balance of $9,000 would be paid out of the proceeds of the settlement. Mr. Karber agreed to reduce his fees if necessary to ensure there would be sufficient funds to repair the client's pond. At the time, Mr. Karber believed the repairs could be accomplished for a sum that would allow him to collect the full 25 percent contingency fee of $12,500.

Mr. Karber deposited the first $25,000 check into his trust account. Mr. Karber paid the environmental expert $9,000, and, with the client's consent, he withdrew an additional $1,000 as a fee advance. The second $25,000 check was sent directly to the client. Out of the $15,000 remaining in the trust account, Mr. Karber was entitled to the remainder of his fee, which could have been up to $7,500. However, the exact amount of Mr. Karber's fee was indeterminate until the cost of repairing the client's pond was determined. Mr. Karber intended to assist his client in getting the work contracted. Owing to a medical condition, Mr. Karber's ability to assist his client was impaired at the time. This, coupled with the unavailability of the environmental expert during this period, led to a failure to obtain a contractor to do the work.

Although he was not able to determine the amount of additional fee to which he was entitled, Mr. Karber made a series of disbursements to himself between April and June 2004, totaling $8,100. Mr. Karber did not maintain individual client ledgers or a check register for his trust account, other than carbon copies of the check stubs. Consequently, Mr. Karber had no running balance of his client's funds apart from periodic bank statements. Due to his medical condition and the inadequacy of his records, Mr. Karber was not aware that he had taken $600 more than the maximum of fees to which he could have become entitled.

In late June 2004, Mr. Karber left the area to seek medical treatment. In November 2004, he relocated to Arizona. Feeling remorse for his inability to assist his client in arranging for the pond repairs, Mr. Karber decided he would refund the client all of her fees absent the $5,000 advances. To accomplish this, Mr. Karber deposited $8,100 of his own funds into his trust account, representing the $7,500 of his fee that he was forgoing and the $600 excess fee disbursement he had taken. Mr. Karber subsequently issued a $13,500 check to the client, retaining $1,500 in his trust account pending resolution of an apparent dispute between his client and her previous lawyer over a $1,500 lien.

Mr. Karber's conduct violated RPC 1.5(e)(1), requiring that a contingent-fee agreement be in writing; RPC 1.14(a), requiring that all funds of clients paid to a lawyer or law firm, including advances for costs and expenses, be deposited in one or more identifiable interest-bearing trust accounts and that no funds belonging to the lawyer or law firm be deposited therein; and RPC 1.14(b)(3), requiring a lawyer to maintain complete records of all funds, securities, and other property of a client coming into the possession of a lawyer and render appropriate accounts to his or her client regarding them.

Randy V. Beitel represented the Bar Association. Mr. Karber represented himself. David B. Condon was the hearing officer.

Admonished

Non-Disciplinary Notices

Brian M. Keith (WSBA No. 14404, admitted 1984), of San Diego, California, was suspended pending the outcome of disciplinary proceedings pursuant to ELC 7.1, effective November 6, 2006, by an order of the Washington State Supreme Court. This is not a disciplinary action.

Stephen J. Plowman (WSBA No. 21823, admitted 1992), of Bellevue, was suspended pending the outcome of disciplinary proceedings pursuant to ELC 7.1, effective November 2, 2006, by an order of the Washington State Supreme Court. This is not a disciplinary action.
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is pleased to announce that

**Michael W. Babcock**

and

**Nicole M. Volpe**

have joined the firm.

Mr. Babcock, formerly of Montgomery Purdue Blankinship and Austin, PLLC, has joined as of counsel. His practice focuses on resolving construction, real estate, and business disputes. Ms. Volpe, a 2005 graduate of Seattle University School of Law, has joined as an associate.

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**Christopher J. Nye**
Mr. Nye, an associate in our Seattle office, has been named a Seattle 2006 Rising Star.

**Janice Sue Wang**
Ms. Wang has recently joined our Seattle office as Of Counsel. Ms. Wang was formerly with Cozen O’Conner.

**Elaine J. Brown**
Ms. Brown has recently joined our Portland office as an associate.

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

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

Calendar

Mediation and Arbitration

Professional Mediation Skills Training
January 12-13; 27-28 — Seattle. 34 CLE credits, including 2 ethics. By UW School of Law; 800-CLE-UNIV or 206-543-0059.

Two-Day Advanced Mediator Training Program
January 24-25 — Seattle. 16.75 CLE credits, including 1.5 ethics. By Alhadeff & Forbes Mediation Services; 206-281-9950 or www.mediationservices.net.

Four-Day Intensive Mediator Training Program
February 13-16 — Seattle. 41.5 CLE credits, including 4.5 ethics. By Alhadeff & Forbes Mediation Services; 206-281-9950 or www.mediationservices.net.

Essentials of Elder Law: TEDRA & How to Protect Your Elder Clients
January 19 — Seattle. Full day: 6 CLE credits, including 1 ethics; morning only (TEDRA): 3.25 CLE credits; afternoon only (Protecting Your Elder Clients) 2.75 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Elder Law

Insurance

29th Annual Insurance Law Seminar
January 18 — Spokane; January 19 — Tacoma. 6 CLE credits. By WSTLA; 206-464-1011 or seminars@wstla.org.

Insurance

Miscellaneous

Four Fascinating Jewish Trials that Changed History — Espionage and the Rosenberg Case
January 17 — Seattle. 1.5 credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Four Fascinating Jewish Trials that Changed History — Freedom of Religion and Goldman v. Weinberger
February 7 — Seattle. 1.5 credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Four Fascinating Jewish Trials that Changed History — Espionage and the Rosenberg Case
January 17 — Seattle. 1.5 credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

WDTL Northwest Snowbreak Conference
February 1-2 — Park City, Utah. 6 CLE credits, including .5 ethics. By WDTL; 206-749-0319.

WDTL Northwest Snowbreak

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Independent rural eastern Washington title company for sale. Includes escrow collections department and transaction closing departments. Excellent opportunity for part-time work with satisfying compensation. WSBA Blind Box #676, 1325 4th Ave., Ste. 600, Seattle, WA 98101-2539.

Space Available


Kent office space: Large, fully furnished corner office with private entrance in elegant, newly constructed small law building. Possible referrals. All amenities.

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Available December 1st, attorney office in penthouse suite with unobstructed view of downtown area and Lake Union. Includes receptionist, shared library and conference room, basic legal messenger service, basic phone/fax/DSL. Ceiling to floor windows and roof access, great for 4th of July! Interested applicants please call Jay or Kelsey at 206-441-1980.

New offices available for solo or small firm downtown Seattle, expansive view from 47th fl. of the Columbia Center. Share reception, kitchen, conference rooms (included in rent). Other administrative support available if needed. DSL/VPN access, collegial environment. Please call Jeannie, Badgley Mullins Law Group at 206-621-6566.

Furnished office space in Puyallup. $850/month includes receptionist/phone answering and use of conference room. Possible referrals. Contact Scott at 253-255-2227.

Seattle law office sublease: Law practice located in Pioneer Square is offering a fully furnished office (high-end executive desk and chair) for sublease. Practice is in close proximity to King County Courthouse. Rent includes internet access, copy machine, utilities, janitorial service, and use of law library materials. Two separate private telephone/fax lines will be made available for your own separate lines. Call office manager to set up appointment 206-264-8999.

Retirement of established attorney creates opportunity to practice in Langley and live on South Whidbey Island. Office space available in historic mercantile building, with views of Saratoga Passage. Office is fully equipped with library, office equipment, furniture, and furnishings. Please call 360-221-8589 for more information.

Downtown Bellevue sub-lease. One, two, or three offices available in great location and grade-A building. Completely equipped law office, including shared receptionist, high-speed Internet access, and copier access. Possible referrals. IT support available. Winston 425-213-0553.


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Will Search

Beagle, Burke and Associates, Special Administrator for the Estate of Edward L. Wynne, is seeking information re any estate planning that Mr. Wynne may have done since 1979. If you have prepared a will or trust for Mr. Wynne, please contact Rebecca Fetters at 360-694-5177.

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

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Thurston County law firm seeking an experienced attorney for well-established general practice. Immediate opening. Applicants must be able to work independently with clients, be detail-oriented with strong organizational skills, and dedicated to ethical and professional standards. Partnership opportunity. Send cover letter and résumé to Taylor & Berg, 6510 Capitol Blvd. SE, Tumwater, WA 98501, or fax to 360-705-0389.


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Employee benefits attorney: Employee Benefits Institute of America Inc. (EBIA), Seattle, Washington. As we await the release of comprehensive IRS regulations on cafeteria plans, we are seeking another experienced employee benefits attorney. Come join twelve other employee benefits attorneys in EBIA’s editorial group, and help write and edit our reference manuals, the EBIA Weekly and other publications. You’ll also present many in-person and web seminars and help us develop new products. You must love teaching and writing and be outstanding at both. You’ll need at least six years of experience in a major law firm as a full-time attorney advising employers and administrators. Extensive cafeteria plan experience is a must. You’ll also need an entrepreneurial spirit and top academic credentials. Most of our editors served on law review and have ten-plus years of major law firm experience. We have a team of talented, caring, and fun-loving people working on challenging and

Senior attorney and corporate board searches. We are currently searching for talented lawyers who might be ready for a new challenge as senior associates/partners in real estate law, a junior associate in environmental litigation, and midlevel transactional attorneys with good law firm experience for in-house positions. Houser Martin Morris has been recruiting and placing attorneys with Northwest corporations and law firms for two decades. We specialize in attorney searches for corporations, lateral partners for law firms, and members for corporate boards of directors. Visit our website at http://www.houser.com for current openings. Contact us at vharris@houser.com, kstred@houser.com or send confidential résumé to info@houser.com.

National consumer protection firm seeks WSBA licensed attorney to manage the expansion of the firm’s practice area in Washington. Areas of litigation include: warranty litigation (lemon law) and consumer fraud. Applicants should be interested in litigation and have at least one year of experience. The position requires well-developed writing skills, a high level of organization, and computer literacy. Please e-mail résumé and cover letter to akrohn@consumerlawcenter.com. Web: http://www.krohnandmoss.com.

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Of counsel: Goddu Langlie is a two-attorney firm founded in 1982 with clients and offices in Woodinville and Seattle (Ballard). Our practice is primarily real estate, estate planning/probate, and business/commercial law; it is very client-focused. We are looking for an “of counsel” arrangement with an experienced individual or firm to provide continuity to our clients while we take a sabbatical and as an exit strategy three to five years out. More information on the firm is available at our website, http://www.goddulanglie.com. If interested, please contact Peter Goddu or Margaret Langlie at 206-782 5074 or 425-483 5878. All inquiries will be kept confidential.

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Qualifying experience for positions available: State and federal law allow minimum, but prohibit maximum, qualifying experience. No ranges (e.g., “5-10 years”). If you have questions, please contact Dené Canter at 206-727-8213 or classifieds@wsba.org.
“Foundations of Freedom”
Civics Pamphlet Now Available

The WSBA has created a new consumer-information pamphlet called “Foundations of Freedom” that covers the basics of American government and democracy.

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

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

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

insurance companies that are licensed to sell Medicaid qualifying annuities in the State of Washington. Contact Paul S. Jensen, President, WSBA #15071, WAOIC #255390 Tel: 360-275-4405. Fax: 360-275-2482. E-mail: pjlensen@wave.com.

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By Author

Ambrose, Kim
The New Juvenile Law Section: What Is Juvenile Law?
OCT p15

Andersen, Karen A.
Law Firm Partners — To Stay or To Go?
APR p24

Appelwick, Judge Marlin
(w/Judith Billings)
Bringing Civics Back to the Classroom: You Can Help
JUN p30

Billings, Judith
(w/Judge Marlin Appelwick)
Bringing Civics Back to the Classroom: You Can Help
JUN p30

Bloom, Beth Barrett
Dynamic Partnerships
OCT p39

(w/Henry Cruz)
What Are They So Afraid Of? Facts and Myths About Immigration
DEC p39

Breen, Tom
Reciprocity Admission in Oregon: Easier than You Think
MAY p30

Chung, Sam
In Memoriam: Remembering Kevin Jung
OCT p42

Cruz, Henry
(w/Beth Barrett Bloom)
What Are They So Afraid Of? Facts and Myths About Immigration
DEC p39

Cumbow, Robert C.
Not Just for Decoration
MAR p33

Seven Types of Ambiguity ... More or Less
NOV p24

Daniels, Natalie
Substantive Due Process and the Problem of Horse Sex
NOV p16

Davis, Angelique M.
(w/Joslyn K.N. Donlin)
Increasing Diversity in the Legal Profession: A Collaboration — The 2006 Statewide Conference on Diversity
SEP p33

Davis, Noah
WyLD About You
JAN p16

Dial, Ellen Conedera
Building a Future Together
OCT p11

The Global Practice of Law
NOV p9

Seeing the Light: WSBA Offers Help to Members in Need
DEC p12

Donlin, Joslyn K.N.
(w/Angelique M. Davis)
Increasing Diversity in the Legal Profession: A Collaboration — The 2006 Statewide Conference on Diversity
SEP p33

Leading in the 21st Century — The WSBA Leadership Institute Enters Its Second Year
APR p30

Doty, Trina
The New RPCs and Your Accounts
NOV p42

Downing, William L.
March of the Plea Bargains
MAR p39

Ellington, Judge Anne
(w/Allison Peryea)
Ensuring Equal Access to the Courts for People with Disabilities
APR p18

Ende, Douglas
Supreme Court Adopts “Ethics 2003” Amendments to Rules of Professional Conduct
SEP p13

Feldman, Leonard J.
(w/Charles Ha)
Avoiding Liability for Securities Fraud: The Legal Significance of Integration (and Non-Reliance) Clauses Under State and Federal Law
MAY p18

Ferguson, Mary Jane
Improving Public Defense — Working Together to Fulfill Gideon’s Promise
FEB p30

Fiander, Jack
True Confessions of a Reservation Attorney
DEC p22

Fields, Hank
Divorce Settlements: Shedding New Light on Old Assumptions
JUL p22

Flood, Tracy S.
The WSBA Leadership Institute Experience
JAN p27

Frank, Jeffrey G.
The State of the State: An Interview with Chief Justice Alexander, Attorney General McKenna, and 2005-06 WSBA President Taylor
OCT p22

Fucile, Mark J.
Discovery Ethics: Playing Fair While Playing Hard
MAY p26

A Tri-State Look at the Tri-Partite Relationship: Key Insurance Defense Issues in Washington, Oregon, and Idaho
NOV p39

Have License, Will Travel: A Roadmap to Licensing Around the Northwest
JUL p37

Keeping Counsel: The Attorney-Client Privilege Within Law Firms
JAN p32

The “Who Is the Client?” Question
MAR p37

George, Kathy
The Commish: Unsung Hero of the Washington State Supreme Court
SEP p37

Giewat, Gary
(w/Craig C. New and Samantha Schwartz)
Witness Preparation by Trial Consultants: Competitive Advantage or Invitation to Discoverability
MAY p22

Ha, Charles
(w/Leonard J. Feldman)
Avoiding Liability for Securities Fraud: The Legal Significance of Integration (and Non-Reliance) Clauses Under State and Federal Law
MAY p18

Hallisky, Seann W.
Digital Media and U.S. Copyright Law: Is YouTube the Next Grokster?
DEC p39

Hayne, Stephen
Demystifying Jury Selection
MAR p16

Heuett, Cheryl
Random Trust Account Examinations: What to Expect
JUL p35

Jeske, Jacqueline
Children of the Poor: Ensuring a Future for Washington’s Young
JUL p30

Klosterman, Amy
Washington State Office of the Attorney General Honored with TCVLS Pro Bono Award
OCT p35
<table>
<thead>
<tr>
<th>Author</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>Konior, Barbara J.</td>
<td>Everything You Always Wanted to Know About Casemaker (But Were Afraid to Ask)</td>
</tr>
<tr>
<td>Lindley, Robin</td>
<td>The World Peace Through Law Section at 25 — A Conversation with Former Section Chair Randall Winn</td>
</tr>
<tr>
<td>Littlewood, Paula</td>
<td>The WSFB Loan Repayment Assistance Program Selects Its First Five Recipients</td>
</tr>
<tr>
<td>Maranville, Deborah (w/the University of Washington School of Law Gender Study Committee)</td>
<td>Findings From the University of Washington School of Law Gender Study</td>
</tr>
<tr>
<td>Medved, Robert A.</td>
<td>E-Discovery and the Proposed Amendments to the Federal Rules of Civil Procedure: A Primer</td>
</tr>
<tr>
<td>Michels, M. Janice</td>
<td>Attending the Western States Bar Conference — Innovators Sharing Ideas</td>
</tr>
<tr>
<td>Miles, Anthony R. (w/John J. Tollefsen)</td>
<td>Your Role in Providing for High-Quality Appellate Judges</td>
</tr>
<tr>
<td>Miller, Kathleen (w/Janice Reha)</td>
<td>A New Era Deserves a New Divorce Model</td>
</tr>
<tr>
<td>Miller, Nancy Bickford</td>
<td>Mom Pays for Son's Dissolution — Now What? Any Ethical Problems?</td>
</tr>
<tr>
<td>New, Craig C. (w/Samantha Schwartz and Gary Giewat)</td>
<td>Witness Preparation by Trial Consultants: Competitive Advantage or Invitation to Discoverability</td>
</tr>
<tr>
<td>O'Connell, Kelly</td>
<td>A New Tool for Safety: Introducing Washington’s Sexual Assault Protection Order</td>
</tr>
<tr>
<td>Perry, Stephanie</td>
<td>WSBA On The Move</td>
</tr>
<tr>
<td>Peryea, Allison (w/Judge Anne Ellington)</td>
<td>Ensuring Equal Access to the Courts for People with Disabilities</td>
</tr>
<tr>
<td>Plichta, Joanna</td>
<td>Restoring Faith in an Independent Judiciary Through Judge Greer’s Story</td>
</tr>
<tr>
<td>Powell, Sachia Stonefeld</td>
<td>Do the Crime, Do the Time. But Lose Your License?</td>
</tr>
<tr>
<td>Reha, Janice (w/Kathleen Miller)</td>
<td>A New Era Deserves a New Divorce Model — We Need to Talk</td>
</tr>
<tr>
<td>Reisler, Steven</td>
<td>The Mother of All Battles (Sparrow with Medicare with Your Mother in the Corner)</td>
</tr>
<tr>
<td>Roberts, Peter</td>
<td>How to Succeed in Business Since You're Already Trying</td>
</tr>
<tr>
<td>Schwartz, Samantha (w/Gary Giewat and Craig C. New)</td>
<td>Witness Preparation by Trial Consultants: Competitive Advantage or Invitation to Discoverability</td>
</tr>
<tr>
<td>Seidel, Anne I.</td>
<td>Confidentiality Under the New Rules of Professional Conduct</td>
</tr>
<tr>
<td>Standal, Barbara J.</td>
<td>A Criminal Trial, Kyrgyz-Style</td>
</tr>
<tr>
<td>Steele, Sharlene</td>
<td>All for One and One for All — Access to Justice Conference Attendees Unite for Cause</td>
</tr>
<tr>
<td>Sutton, Chris</td>
<td>Informal Opinion Roundup 2005</td>
</tr>
<tr>
<td>Taylor, S. Brooke</td>
<td>And Talk We Did</td>
</tr>
<tr>
<td>Tolman, Jeff</td>
<td>Doctors or Lawyers: Who Really Has It Better?</td>
</tr>
<tr>
<td>Tryferis, Alfredo</td>
<td>Shirley Naccarato: Ten Thousand Chocolate Days</td>
</tr>
</tbody>
</table>

---

The President's Essay Contest
May p15

A Privilege Like No Other
Sep p8

South Dakota Heads for “J.A.I.L.”
Jun p13

Tales From the Taxicab
Feb p13

Thompson, Lindsay
The Board’s Work
Jan p30; Feb p50; Mar p36; Apr p34; Nov p36; Dec p36

Holiday Film Horrors, v. 3
Dec p64

... a little touch of Harry in the night
Feb p64

Mr. Potato Head’s revenge
May p64

Rig Ship for Dive
Jan p28

Seasonally Affective Spring
Apr p64

THAT MOVIE
Mar p64

The WYLD is coming! The WYLD is coming!
Jan p15

Tollefsen, John J. (w/Anthony R. Miles)
Your Role in Providing for High-Quality Appellate Judges
Jun p35

Troubled over a ringing phone
Jul p38

Tryferis, Alfredo
Shirley Naccarato: Ten Thousand Chocolate Days
May p38
**Ask the Auditor**

**APR p41**

Random Trust Account Examinations: What to Expect

**JUL p35**

The New RPCs and Your Accounts

**NOV p42**

**Awards**

Exceeding Excellence: Congratulations to WSBA’s 2006 Annual Awards

**Recipient**

**NOV p32**

Celebrating 50 Golden Years: Honoring Washington State Bar Association’s 50-Year Members

**DEC p30**

**Bar Exam Pass List**

Winter 2006

**JUL p40**

**Board of Governors**

The Board’s Work

**JAN p30; FEB p50; MAR p36; APR p34; NOV p38; DEC p36**

WSBA Welcomes New Officers and Governors

**OCT p20**

**Book Review**

March of the Plea Bargains

**MAR p39**

Rig Ship for Dive

**JAN p28**

**Casemaker**

Everything You Always Wanted to Know About Casemaker (But Were Afraid to Ask)

**APR p26**

**Child Support**

Children of the Poor: Ensuring a Future for Washington’s Young

**JUL p30**

**Digital Media**

Digital Media and U.S. Copyright Law: Is YouTube the Next Grokster?

**DEC p18**

**Disabilities**

Ensuring Equal Access to the Courts for People with Disabilities

**APR p18**

People First: Ensuring Equal Access for People with Disabilities


**AUG p14**

**Disciplinary Notices**

**JAN p52; FEB p53; MAR p52; APR p55; MAY p50; JUN p51; JUL p49; AUG p52; SEP p53; OCT p52; NOV p50; DEC p52**

**Diversity and the Law**

Findings From the University of Washington School of Law Gender Study

**FEB p16**

Increasing Diversity in the Legal Profession: A Collaboration - The 2006 Statewide Conference on Diversity

**SEP p33**

Dynamic Partnerships

**OCT p39**

True Confessions of a Reservation Attorney

**DEC p22**

What Are They So Afraid Of? Facts and Myths About Immigration

**DEC p39**

**Editor’s Page**

. . . a little touch of Harry in the night

**FEB p64**

Holiday Film Horrors, v. 3

**DEC p64**

Mr. Potato Head’s revenge

**MAY p64**

Seasonally Affective Spring

**APR p64**

THAT MOVIE

**MAR p64**

The WYLD is coming! The WYLD is coming!

**JAN p15**

Troubled over a ringing phone

**JUL p64**

**Education**

Bringing Civics Back to the Classroom: You Can Help

**JUN p30**

E-Discovery and the Proposed Amendments to the Federal Rules of Civil Procedure: A Primer

**JUN p16**

**Electronic Discovery**

Discovery Ethics: Playing Fair While Playing Hard

**MAY p26**

**English Language**

Not Just for Decoration

**MAR p33**

Seven Types of Ambiguity . . . More or Less

**NOV p24**

**Ethics and the Law**

Confidentiality Under the New Rules of Professional Conduct

**SEP p40**

Discovery Ethics: Playing Fair While Playing Hard

**MAY p26**

Do the Crime, Do the Time. But Lose Your License?

**JUN p37**

Have License, Will Travel: A Roadmap to Licensing Around the Northwest

**JUL p37**

Keeping Counsel: The Attorney-Client Privilege Within Law Firms

**JAN p32**

Mom Pays for Son’s Dissolution — Now What? Any Ethical Problems?

**FEB p32**
Substantive Due Process and the Problem of Horse Sex
NOV p16

Supreme Court Adopts “Ethics 2003” Amendments to Rules of Professional Conduct
SEP p13

The “Who Is the Client?” Question
MAR p37

True Confessions of a Reservation Attorney
DEC p22

A Tri-State Look at the Tri-Partite Relationship: Key Insurance Defense Issues in Washington, Oregon, and Idaho
NOV p39

Executive’s Report
Attending the Western States Bar Conference — Innovators Sharing Ideas
JUN p15

Changing Landscapes: 2007 Issues Review
NOV p13

It Takes All of Us
APR p15

Supreme Court Adopts “Ethics 2003” Amendments to Rules of Professional Conduct
SEP p13

The New Juvenile Law Section: What Is Juvenile Law?
OCT p15

Jury Selection
Demystifying Jury Selection
MAR p16

Juvenile Law
The New Juvenile Law Section: What Is Juvenile Law?
OCT p15

Lawyers’ Assistance Program
Seeing the Light: WSBA Offers Help to Members in Need
DEC p12

Lawyers’ Fund for Client Protection
JAN p34; FEB p41; JUN p39; SEP p38; DEC p49

Legislation/Regulation
Avoiding Liability for Securities Fraud: The Legal Significance of Integration (and Non-Reliance) Clauses Under State and Federal Law
MAY p18

E-Discovery and the Proposed Amendments to the Federal Rules of Civil Procedure: A Primer
JUN p16

Legislation of Interest to Lawyers: Legal News You Can Use
SEP p19

A New Tool for Safety: Introducing Washington’s Sexual Assault Protection Order
JUN p32

The State of the State: An Interview with Chief Justice Alexander, Attorney General McKenna, and 2005-06 WSBA President Taylor
OCT p22

Substantive Due Process and the Problem of Horse Sex
NOV p16

Letters to the Editor
JAN p7; FEB p7; MAR p7; APR p7; MAY p7; JUN p7; JUL p7; AUG p7; SEP p7; OCT p7; NOV p7; DEC p7

Loan Repayment Assistance Program
The WSBF Loan Repayment Assistance Program Selects Its First Five Recipients
JUN p36

Medicare/Medical Profession
And Talk We Did
APR p13

Doctors or Lawyers: Who Really Has It Better?
FEB p29

The Mother of All Battles (Sparring with Medicare with Your Mother in the Corner)
DEC p25

Practice of Law
A New Era Deserves a New Divorce Model
JUL p16

Demystifying Jury Selection
MAR p16

Divorce Settlements: Shedding New Light on Old Assumptions
JUL p22

Everything You Always Wanted to Know About Casemaker (But Were Afraid to Ask)
APR p26

Law Firm Partners — To Stay or To Go?
APR p24

Structuring Attorneys’ Fees: What’s All the Fuss?
FEB p23

Witness Preparation by Trial Consultants: Competitive Advantage or Invitation to Discoverability
MAY p22

Practice Tips
How to Succeed in Business Since You’re Already Trying
DEC p37
<table>
<thead>
<tr>
<th><strong>Reciprocity Admission in Oregon: Easier than You Think</strong></th>
<th><strong>Professionalism</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>MAY p30</td>
<td>Random Acts of Professionalism Program</td>
</tr>
<tr>
<td></td>
<td>JUN p64</td>
</tr>
<tr>
<td></td>
<td><strong>Public Defense</strong></td>
</tr>
<tr>
<td></td>
<td>Improving Public Defense — Working Together to Fulfill Gideon's Promise</td>
</tr>
<tr>
<td></td>
<td>FEB p30</td>
</tr>
<tr>
<td></td>
<td><strong>Reading Around</strong></td>
</tr>
<tr>
<td></td>
<td>March of the Plea Bargains</td>
</tr>
<tr>
<td></td>
<td>MAR p39</td>
</tr>
<tr>
<td></td>
<td>Rig Ship for Dive</td>
</tr>
<tr>
<td></td>
<td>JAN p28</td>
</tr>
<tr>
<td></td>
<td><strong>Reciprocity</strong></td>
</tr>
<tr>
<td></td>
<td>A Tri-State Look at the Tri-Partite Relationship: Key Insurance Defense Issues in Washington, Oregon, and Idaho</td>
</tr>
<tr>
<td></td>
<td>NOV p39</td>
</tr>
<tr>
<td></td>
<td>Have License, Will Travel: A Roadmap to Licensing Around the Northwest</td>
</tr>
<tr>
<td></td>
<td>JUL p37</td>
</tr>
<tr>
<td></td>
<td>Reciprocity Admission in Oregon: Easier than You Think</td>
</tr>
<tr>
<td></td>
<td>MAY p30</td>
</tr>
<tr>
<td></td>
<td><strong>Rules of Professional Conduct</strong></td>
</tr>
<tr>
<td></td>
<td>Confidentiality Under the New Rules of Professional Conduct</td>
</tr>
<tr>
<td></td>
<td>SEP p40</td>
</tr>
<tr>
<td></td>
<td>Keeping Counsel: The Attorney-Client Privilege Within Law Firms</td>
</tr>
<tr>
<td></td>
<td>JAN p32</td>
</tr>
<tr>
<td></td>
<td>Informal Opinion Roundup 2005</td>
</tr>
<tr>
<td></td>
<td>FEB p26</td>
</tr>
<tr>
<td></td>
<td>The New RPCs and Your Accounts</td>
</tr>
<tr>
<td></td>
<td>NOV p42</td>
</tr>
<tr>
<td></td>
<td>Supreme Court Adopts &quot;Ethics 2003&quot; Amendments to Rules of Professional Conduct</td>
</tr>
<tr>
<td></td>
<td>SEP p13</td>
</tr>
<tr>
<td></td>
<td><strong>Sections</strong></td>
</tr>
<tr>
<td></td>
<td>2004-2005 Committee and Section Reports</td>
</tr>
<tr>
<td></td>
<td>FEB p34</td>
</tr>
<tr>
<td></td>
<td>The New Juvenile Law Section: What Is Juvenile Law?</td>
</tr>
<tr>
<td></td>
<td>OCT p15</td>
</tr>
<tr>
<td></td>
<td>The World Peace Through Law Section at 25 — A Conversation with Former Section Chair Randall Winn</td>
</tr>
<tr>
<td></td>
<td>APR p20</td>
</tr>
<tr>
<td></td>
<td><strong>Technology</strong></td>
</tr>
<tr>
<td></td>
<td>Digital Media and U.S. Copyright Law: Is YouTube the Next Grokster?</td>
</tr>
<tr>
<td></td>
<td>DEC p18</td>
</tr>
<tr>
<td></td>
<td><strong>The Board's Work</strong></td>
</tr>
<tr>
<td></td>
<td>JAN p30; FEB p50; MAR p36; APR p34; NOV p36; DEC p36</td>
</tr>
<tr>
<td></td>
<td><strong>Tort Reform</strong></td>
</tr>
<tr>
<td></td>
<td>An Open Letter to Physicians — We Need to Talk</td>
</tr>
<tr>
<td></td>
<td>JAN p13</td>
</tr>
<tr>
<td></td>
<td>And Talk We Did</td>
</tr>
<tr>
<td></td>
<td>APR p13</td>
</tr>
<tr>
<td></td>
<td><strong>Trust Accounts</strong></td>
</tr>
<tr>
<td></td>
<td>Random Trust Account Examinations: What to Expect</td>
</tr>
<tr>
<td></td>
<td>JUL p35</td>
</tr>
<tr>
<td></td>
<td>The New RPCs and Your Accounts</td>
</tr>
<tr>
<td></td>
<td>NOV p42</td>
</tr>
<tr>
<td></td>
<td><strong>View Point</strong></td>
</tr>
<tr>
<td></td>
<td>Gifts This Year</td>
</tr>
<tr>
<td></td>
<td>DEC p38</td>
</tr>
<tr>
<td></td>
<td><strong>WSBA</strong></td>
</tr>
<tr>
<td></td>
<td>2004-2005 Committee and Section Reports</td>
</tr>
<tr>
<td></td>
<td>FEB p34</td>
</tr>
<tr>
<td></td>
<td>Financial Highlights and Statements of Activities for Fiscal 2005</td>
</tr>
<tr>
<td></td>
<td>MAY p34</td>
</tr>
<tr>
<td></td>
<td>Leading in the 21st Century — The WSBA Leadership Institute Enters Its Second Year</td>
</tr>
<tr>
<td></td>
<td>APR p30</td>
</tr>
<tr>
<td></td>
<td><strong>WSBA On The Move</strong></td>
</tr>
<tr>
<td></td>
<td>DEC p15</td>
</tr>
<tr>
<td></td>
<td><strong>WSBA Employee Profile</strong></td>
</tr>
<tr>
<td></td>
<td>Shirley Naccarato: Ten Thousand Chocolate Days</td>
</tr>
<tr>
<td></td>
<td>MAY p38</td>
</tr>
<tr>
<td></td>
<td><strong>WSBA Leadership Institute</strong></td>
</tr>
<tr>
<td></td>
<td>Leading in the 21st Century — The WSBA Leadership Institute Enters Its Second Year</td>
</tr>
<tr>
<td></td>
<td>APR p30</td>
</tr>
<tr>
<td></td>
<td>The WSBA Leadership Institute Experience</td>
</tr>
<tr>
<td></td>
<td>JAN p27</td>
</tr>
<tr>
<td></td>
<td><strong>WSBA Member Profile</strong></td>
</tr>
<tr>
<td></td>
<td>The Commish: Unsung Hero of the Washington State Supreme Court</td>
</tr>
<tr>
<td></td>
<td>SEP p37</td>
</tr>
<tr>
<td></td>
<td><strong>Young Lawyers/WYLD</strong></td>
</tr>
<tr>
<td></td>
<td>The Other Editor’s Page</td>
</tr>
<tr>
<td></td>
<td>JAN p17</td>
</tr>
<tr>
<td></td>
<td>The WSBA Leadership Institute Experience</td>
</tr>
<tr>
<td></td>
<td>JAN p27</td>
</tr>
<tr>
<td></td>
<td>WyLD About You</td>
</tr>
<tr>
<td></td>
<td>JAN p16</td>
</tr>
<tr>
<td></td>
<td>The WYLD is coming! The WYLD is coming!</td>
</tr>
<tr>
<td></td>
<td>JAN p15</td>
</tr>
<tr>
<td></td>
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</tr>
<tr>
<td></td>
<td>JAN p18</td>
</tr>
<tr>
<td></td>
<td><strong>Zeitgeist Postcard</strong></td>
</tr>
<tr>
<td></td>
<td>A Criminal Trial, Kyrgys-Style</td>
</tr>
<tr>
<td></td>
<td>DEC p32</td>
</tr>
<tr>
<td></td>
<td>Doctors or Lawyers: Who Really Has It Better?</td>
</tr>
<tr>
<td></td>
<td>FEB p29</td>
</tr>
<tr>
<td></td>
<td>Two Wheels Good; Four Wheels Bad: A Lawyer Joins the Chain Gang</td>
</tr>
<tr>
<td></td>
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</tr>
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