

Washington State

# BarNews

THE OFFICIAL PUBLICATION OF THE WASHINGTON STATE BAR • JANUARY 2008



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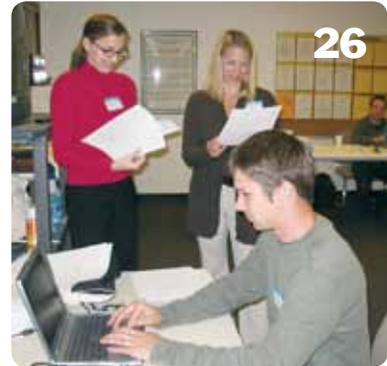
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### Not our morals

I write in response to “Legislating Morals” by Jeanette Burrage in December *Bar News* (Letters to the Editor). Any argument can be won when the proponent defines the terms. Ms. Burrage is entitled to feel the issue of sexual orientation is one of morality but could she refrain from foisting her baseless assumption on the rest of us?

Morals are fluid — subject to change and refinement. In the middle ages, the Catholic church felt it *moral* to sanction torture or death upon those the church believed had committed heresy. Nowadays, most of society does not automatically consider others immoral for disagreeing with the Catholic church. (Please forgive me if this is not the perfect analogy — I bear no animosity to present-day Catholics.) At one time in the United States, slavery and discrimination of women was considered *moral*, not to mention, legal.

Many reputable professional organizations including The American Medical Association, The American Psychiatric Association, and The American Psychological Association, consider sexual orientation to be a legitimate part of who one is — not a moral choice.

Viewed in this light, since mainstream scientific associations hold that sexual orientation is not morality based, then it is entirely appropriate for the WSBA to hold a position (hopefully against) discrimination against others predicated upon sexual orientation. An orientation, which like other immutable characteristics, is a result of birth, not a character flaw.

*Andy Hess, Spokane*

In the “Letters” section of the December *Bar News*, Jeanette Burrage of Des Moines writes, “When the legislature recently created domestic partnerships for same-sex couples,

they knew the majority of the people of this state would not agree. That is why they wrote the bill so that a referendum by the people was not allowed.”

Ms. Burrage is mistaken. Chapter 156, Laws of 2007 (Substitute Senate Bill 5336) does not contain a declaration of emergency and was therefore subject to referendum under Article II, sec. 1(b) of the state Consti-

tution. The act took effect on July 22, 2007, which date followed by 90 days the April 22, 2007, adjournment of the Legislature. It is this 90-day period that our state Constitution (Art. II, sec. 41) provides for the filing of referendum petitions. In the case of Substitute Senate Bill 5336, no such petition was filed.

*Steve Jones, Olympia*

### Updates and Clarifications

Concerning the article “Procedural Perfection Required,” by Mark A. Johnson, which appeared in the December 2007 *Bar News*: After the December issue went to print, the Washington State Supreme Court issued an opinion in *Wright v. Terrell*, 2007 WL 3293393 (November 8, 2007). The opinion reversed and remanded the decision of the Court of Appeals in *Wright v. Terrell*, 135 Wn. App., 722 (2006) in which, citing the Supreme Court’s decision in *Bosteder v. City of Renton*, 155 Wn. 2d 18 (2005), the Court of Appeals held that, even if a lawsuit is filed only against employees of a municipality, and not the entity, serving a non-judicial claim under former R.C.W. 4.96.020 was mandatory if the conduct at issue was committed by the employees within the scope and course of their employment for the municipality. The *Wright* Supreme Court held that since five justices in *Bosteder* had found “that former RCW 4.96.020 does not apply to claims against individuals,” the *Bosteder* decision was not a plurality on the point (as the *Wright* Court of Appeals had concluded) and, therefore, the Court of Appeals had “misread” its opinion and “that former RCW 4.96.020 (2001) does not apply to claims against individual government employees” (emphasis added).

Readers should note that after the Supreme Court’s decision in *Bosteder*, the Legislature amended the statute to require the filing of claims when the conduct of individual employees is at issue. Given that the statute has now been amended, and given the prolific number of appellate decisions challenging compliance with the jurisdictional prerequisite of properly serving and filing a non-judicial claim, the author suggests that, irrespective of the Supreme Court’s decision in *Wright*, a claim should be served and the statutory waiting period observed in every case in which the conduct of an employee of a state or a municipal corporation is at issue.

In addition, under the section of the article entitled “Hospitals Can Hurt You,” the following sentence needed clarification: “Nearly every county in the state has a hospital operated by a county-owned public hospital district.” In fact, only King County has a “county-owned” hospital (Harborview). In other counties the PHDs are municipal corporations. The author would like to thank Richard Goldsmith, director of Legal and Public Affairs of the Association of Washington Public Hospital Districts, for pointing out the muddy language. A list of the public hospital districts can be found on the Association’s website at [www.awphd.org](http://www.awphd.org).



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# Be the Judge: Do We Pay Them Enough?



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*Salary restoration would help to ensure an impartial and quality judiciary*

**A**t our meeting in October 2007, the WSBA Board of Governors voted to support an initiative to secure "salary restoration" for the federal judiciary. If successful, this initiative will result in an immediate and substantial increase in pay for federal judges, which they clearly need and deserve. However, the concept of salary restoration means more than just a pay raise. The intent is to restore judicial pay to levels where once again a judicial appointment can be considered to be the capstone to a distinguished legal career. It should not be used as a stepping stone to a lucrative position in private practice.

Since 1969, the salaries of federal judges have significantly declined when adjusted for inflation; in fact, the decline is almost 25 percent. During the same time, the pay for the average American worker increased by approximately 19 percent. In many years, federal judges are not even given a cost-of-living increase. They were denied such increases in 1994, 1995, 1996, 1997, 1999, and 2007. Since 1993, the pay for most federal employees has increased by 61 percent and inflation has increased the cost of living by 36 percent. However, judicial pay has lagged far behind.

In 1969, a federal district court judge earned 20 percent more than a law school dean and about 30 percent more than a senior professor at a top law school. Currently, deans at some of the top law schools make twice as much as district court judges, and senior law professors at those same schools make nearly 50 percent more than the judges. In fact, federal trial

judges now earn less than many law school graduates earn in their first year of private practice. It doesn't make any sense that an inexperienced first-year associate at a top law firm can now make almost as much,



if not more, than an experienced and seasoned federal trial judge.

Unfortunately, the workload for federal judges has increased almost as dramatically as their pay has decreased in real terms. Since 1960, the caseload for district court judges has climbed by almost 60 percent and the caseload for circuit court judges has increased by more than 200 percent. Clearly, our federal court judges are working harder for less pay, and just as clearly, this inequality needs to change.

The Board's interest in this issue stems from one of the Bar Association's core values, which is to support and foster a fair and impartial judiciary. Our system of government and the rights we enjoy as citizens depend on a strong, independent,

fair, and impartial judiciary. However, this requires, at the very least, good judges. Unfortunately, low pay makes it increasingly difficult to attract and retain these judges. Low salaries force some judges to leave the

bench and return to the higher compensation offered by the private sector. Many of the federal judges who have recently resigned or retired have indicated that financial considerations were a factor. Additionally, some lawyers who would be outstanding judges have no doubt chosen not to even seek appointment, because it would involve an unacceptable cut in pay. Either way, the system loses when good people choose not to serve.

The Federal Judicial Salary Restoration Act of 2007 (S. 1638) was introduced in the United States Senate several months ago and, if passed, the salary for a district court judge would be increased from \$165,200 to \$247,800. The salaries for circuit court judges would be increased to \$262,700, associate justices of the U.S. Supreme Court would receive \$304,500, and the salary for the Chief Justice would be set at \$318,200. As president of this Bar Association, I have sent a letter to every member of the Washington State congressional delegation asking them to support this bill. We need your help, and I encourage all of you to write a similar letter.

P.S. I would like to thank and acknowledge the contribution of United States Magistrate Judge Mary Alice Theiler, who sent me the materials and information used to prepare this column. 

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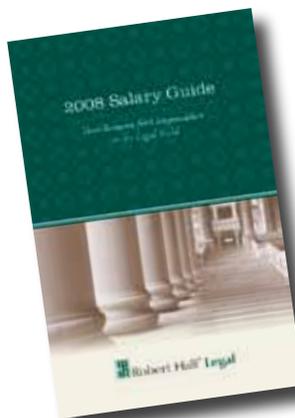
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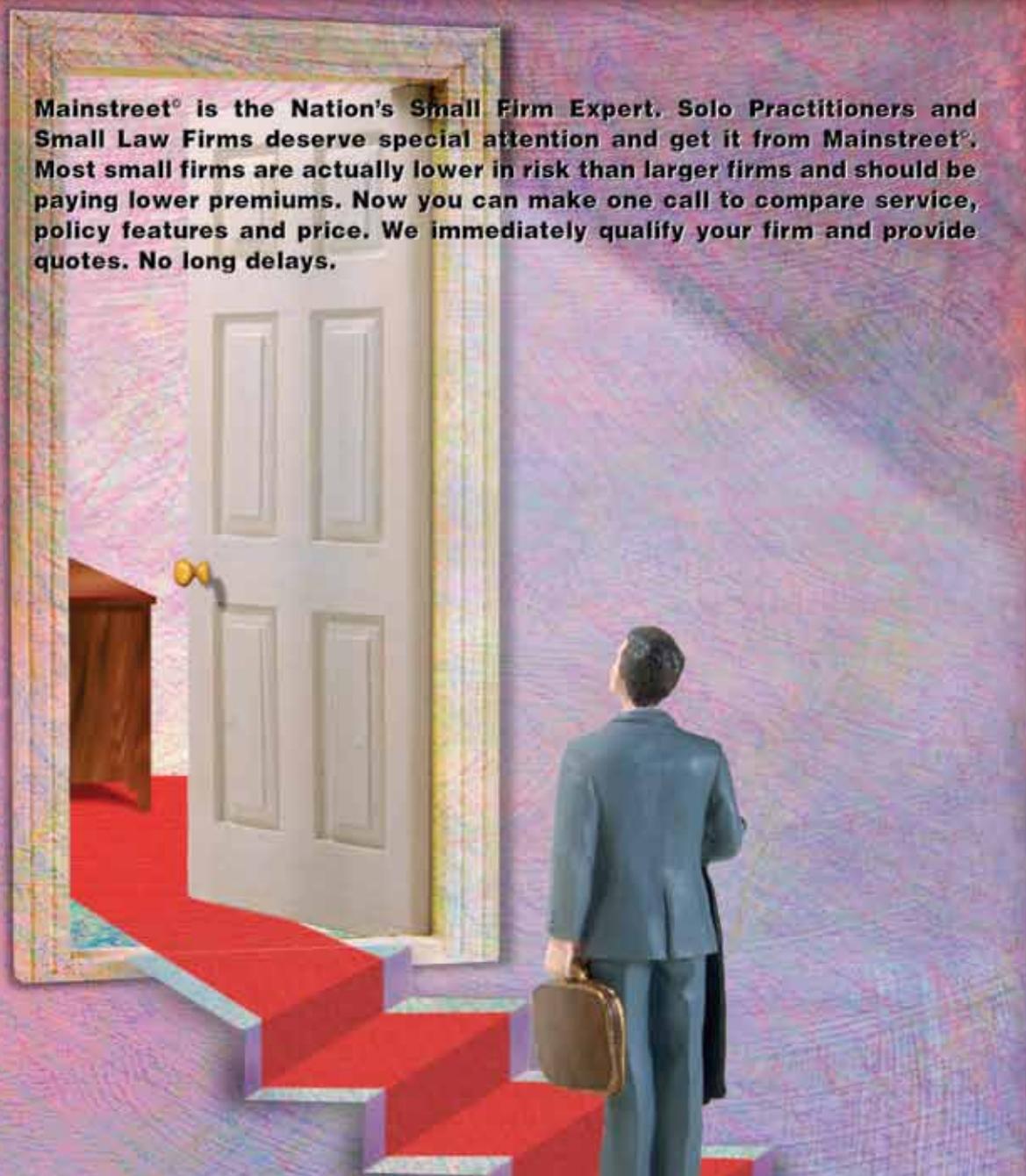


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## *Lawyers' Roles in Preparing for and Responding to Disasters*

BY JOSEPH V. PANESKO

**T**he field of emergency management has blossomed after the terrorist attacks of 9/11, and even more so after the twin natural disasters of Hurricanes Katrina and Rita. Washington state faces its own unique set of potential natural disasters. Many areas were hard hit by flooding this past December, earthquakes occur without warning, and the Cascades are studded with active volcanoes. Emergency preparedness efforts have similarly increased on the public health arena, as fueled by the spread of the H5N1 strain of avian influenza and the increased concern by public health officials that this particular virus could mutate into a deadly strain that triggers a global pandemic.<sup>1</sup> As the emergency management field has grown over the last several years, it has developed a philosophy of preparedness that can benefit all individuals.

The philosophy of governmental emergency management rests upon four pillars: prevention, preparedness, response, and recovery.<sup>2</sup> Emergency management guidance also emphasizes "all-hazards planning."<sup>3</sup> Instead of choosing one particular kind of disaster and preparing for that specific event, emergency managers take a broader focus of guarding critical public services from any kind of event that could befall them. This approach to emergency preparedness can offer guidance to all citizens and businesses, including attorneys and their firms, in how to plan for and protect ourselves against any kind of disaster, whether caused by terrorists or Mother Nature.

### Focusing on the Target

Before emergency managers can take any meaningful steps, they must first identify and assess the threats for which to prepare. This assessment process is called the "Hazard Identification and Vulnerability Assessment" (HIVA).<sup>4</sup> Managers must identify the natural and human-caused hazards that could occur within their jurisdictions. They then determine the likelihood of those events occurring (risk), and the damage that those events could cause (vulnerability). The HIVA process allows emergency managers to "rate the risk, determine vulnerability, and predict the adverse impact of disasters and emergencies."<sup>5</sup> As an example of the HIVA process, one can determine the likelihood of a tsunami occurring along a particular coastal community by looking at the pattern of historic tsunamis in that location as revealed through geological analysis. One can determine the potential damage a tsunami could cause to a particular community by looking at factors such as the elevation of land and the type of building construction.

### Prevention

The HIVA process enables emergency managers to prioritize their prevention efforts. The concept of prevention involves minimizing the vulnerability of critical public services to damage from hazards. Prevention steps can include identifying and removing weaknesses from the infrastructure, or else fortifying those weaknesses that cannot be removed. Another prevention step could be to build redundancies into the critical systems. Emergency-management literature often calls these kinds of prevention steps "mitigation."<sup>6</sup>

The hazards identification and vulnerability assessment can be utilized by individual homeowners to implement effective prevention steps. Wildfires constitute potential hazards in rural areas. A landowner building a home in a rural area should identify the wildfire hazard, recognize the high risk of wildfires occurring, and realize that cedar shingles present a higher vulnerability than a metal roof. Builders could use this analysis to recommend particular building materials and implement other mitigation measures, such as removing trees and bushes from around the immediate outside of a home.

Businesses can also rely upon the HIVA process to identify prevention steps. A business that relies heavily upon electronic data would identify a power outage as a particular hazard and take steps to fortify the networks and create redundant off-site backup copies of the data.

### Preparedness

Preparedness activities build off of the HIVA process and prevention efforts. Although mitigation projects recommended by the HIVA process can minimize the damage caused by a disaster, not all vulnerabilities of critical infrastructure can be completely removed. In other words, one must concede that disasters

will continue to occur, and they will continue to inflict damage on our society. Preparedness for emergency responders focuses on being ready to respond to disasters with the goals of protecting life and property, and containing the damages as best as possible.

From the perspective of emergency management, preparedness involves anticipating

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the disasters likely to occur in the region, planning the elements of the anticipated response to the event, training the individuals responsible for carrying out the plan, and conducting regular exercises to ensure that both individuals and equipment function as planned. Emergency managers in the public sector have developed written plans detailing the roles and responsibilities of all emergency responders. On the national level, the federal government relies upon the National Response Plan (NRP), which lays out the "structure and mechanisms for national level policy and operational direction for Federal support to State and local incident managers" during a disaster.<sup>7</sup> In Washington state, state agencies

are guided by the Comprehensive Emergency Management Plan (CEMP).<sup>8</sup> Both the NRP and CEMP divide emergency response components into 15 different "emergency support functions," or ESFs.<sup>9</sup> The ESFs include areas such as transportation, communications systems, public works and engineering, firefighting, public health, and public safety. On the state level, the CEMP assigns various state agencies to each of the ESFs, and those agencies are responsible for being prepared to serve the needs of that function in the time of a disaster. ESF functions are normally deployed when those resources are requested by a local jurisdiction that has been overwhelmed by an event.

Individuals and families can create similar preparedness plans. A family can identify suitable evacuation routes from their home in case of a fire, identify a common meeting place outside the home, establish an evacuation plan, and rehearse that plan. Each family member could have assigned tasks, such as one member being responsible for locating and retrieving the family pet. All these steps constitute reasonable steps of preparedness.

Past disasters have shown that divergent government agencies can have difficulties joining together to present a unified emergency response. In response, the Federal Government has adopted the National Incident Management System (NIMS).<sup>10</sup> This system sets out a template for the "incident command system," or ICS, and all levels of government emergency responders, whether local, state or federal, are required to implement the ICS template into their operational structures to qualify for numerous Homeland Security grants. The imposition of this federally mandated template ensures that all levels and all components of governmental emergency responders utilize the same command structure and terminology so that they can integrate and work together seamlessly during a disaster. As a result, NIMS and ICS are integral components of all emergency response agencies' preparedness plans.

Another significant component of emergency preparedness for governmental entities involves the use of mutual aid agreements. When a large disaster occurs, local government emergency responders may be overwhelmed. The Washington State Legislature has encouraged local emergency managers to enter into mutual aid agreements with other local jurisdictions so that, in the case of a disaster, jurisdictions not as severely impacted can lend their extra resources to the jurisdiction at the epicenter of the event.<sup>11</sup> If a local jurisdiction has exhausted its own resources and also exhausted resources available through local mutual aid agreements, then that jurisdiction can turn to the state and request state assistance. If the state's resources get overwhelmed in responding to an event, the state can then turn to a nationally implemented state-to-state mutual aid agreement called the Emergency Management Assistance Compact (EMAC) to obtain the assistance from other states.<sup>12</sup> During Hurricanes Katrina and Rita, more than 65,000 personnel and massive amounts of equipment were sent from other states to the Gulf states through EMAC.<sup>13</sup>

Washington state has also joined an international mutual aid agreement called the Pacific Northwest Emergency Manage-

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ment Arrangement (PNEMA), which has been signed by Alaska, Idaho, Oregon, British Columbia, and the Yukon Territory.

To avoid the common saying of best-laid plans going awry, the Washington State Emergency Management Division offers numerous classes and seminars for state and local emergency response officials.<sup>14</sup> Online training opportunities also exist on both the state and federal levels.<sup>15</sup> The Emergency Management Division also conducts numerous tabletop exercises, drills, and full-scale exercises with participating federal, state, and local agencies in order to make sure that all emergency responders learn and rehearse their assigned responsibilities. Large exercises involve multiple state and local governmental agencies so that these diverse entities, which may not normally work together in carrying out their routine daily functions, can test their ability to integrate their efforts.

State and local emergency managers also include private enterprises and non-governmental organizations (NGOs) within the scope of their planning, training, and exercises. Much of the critical infrastructure that society relies upon (including, but not limited to, power, natural gas, and telecommunications) is operated by non-governmental or quasi-governmental entities. Those entities have a critical role in the planning process, because their ability to recover their services directly impacts government responders and all citizens. In a similar fashion, emergency managers recognize that NGOs can contribute significant resources to disaster response. For example, the American Red Cross is specifically called out as having numerous support roles in both the National Response Plan and the Washington State Comprehensive Emergency Management Plan.

### Response and Recovery

In the best of worlds, emergency managers simply implement and follow their existing emergency response plans after a disaster. Every situation, however, involves unforeseen contingencies. In order for emergency managers to adapt and respond adequately, they must have access to timely and accurate information about the status of the situation. All agencies working on the response must communicate and coordinate effectively. The initial focus in any disaster response will be preserving life and minimizing damage to property, as well as continuing essential services.

One of the most significant challenges during a large-scale disaster involves the ability of the multiple entities involved to communicate with each other. If the various

agencies with response roles do not have interoperable communications systems, they cannot coordinate response efforts or share a common operating picture.

As the immediacy of the disaster passes and the immediate risks ebb, responders slowly transition to a recovery stance that includes both short-term and long-term recovery goals. Points of concern for recovery include addressing critical infrastructure and key resources necessary for society to function, addressing the long-term health and safety of the citizens, addressing the environmental and economic impact of the disaster, and restoring the systems necessary to return governmental and private services

to their normal levels. Effective recovery efforts require a deep understanding of the interconnectedness of critical infrastructure. Resources are typically sparse in the aftermath of a disaster, and recovery planners must prioritize the application of those resources to maximize the recovery efforts.

### What Do Attorneys Have to Do With Emergency Response?

#### Public Attorneys

When one imagines the ranks of first responders arriving at the scene of a disaster, one may think about firefighters, police, and emergency medical technicians. If the disaster



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spans multiple counties and overwhelms local responders, one may see numerous state agencies and National Guard units assisting. Depending on the type of disaster, employees from other public and private sectors may respond as well, such as road repair crews from the Washington State Department of Transportation, repair crews from power

and water utilities, and local or state public health officials.

Citizens asked about emergency responders may not typically envision an active role for public-sector attorneys who represent any of the governmental entities involved in the response. Whenever a large-scale disaster spans multiple governmental jurisdictions,

tests the limits of the first responders, or casts civil order into disarray, legal counsel can play an invaluable role to the executive branch of government in charge of the emergency response. The following list provides just a sampling of the legal issues that can arise:

- who determines the circumstances under which mass evacuations can be ordered and the conditions required for an evacuation;
- the restrictions a governor can impose on public access to residential areas and disaster sites;
- curfew provisions and the conditions required to impose them;
- the range of public health powers available to control contamination and to permit destruction of private property that may constitute a potential hazard, and the compensation obligations that are required of government;
- gubernatorial authority to impose protections and controls for access to critical infrastructure;
- gubernatorial access to various types of intelligence information from other levels of government;
- the scope of existing joint-powers agreements with other governmental bodies;

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- the command structure for emergency management and the governor's role in that structure;
- the parameters for sharing intelligence and disaster information with the news media;
- the applicability of freedom of information and open meeting laws during a crisis;
- the authority to exceed appropriations and disregard set budgets during an emergency;
- the applicability of personnel rules during a disaster;
- the circumstances under which emergency appointments are permitted;
- the extent to which liability rules apply to the state during a disaster; and
- laws that are subject to suspension during times of emergency.<sup>16</sup>

The more that public attorneys are involved with prevention and preparedness efforts of their client agencies, the more likely they will be better prepared to provide prompt answers to these hard-hitting legal questions when government responders are fully engaged in the midst of a disaster.

#### **Private Attorneys**

Just as emergency responders and government leaders need legal advice to help respond to the unique situations in the midst of a disaster, private attorneys play an equally important role in advising their clients who are struggling to survive the harsh impacts of the disaster. Before attorneys can serve their profession, however, they should first ensure that they are personally prepared to face the impacts of a disaster. All individuals should have disaster plans that account for provision of food, clothing, shelter, and finances, to name just a few. Numerous resources are available on the Internet providing recommendations on how individuals and families can prepare themselves to weather the adverse impacts of a disaster.<sup>17</sup> An attorney who does not have an adequate personal preparedness plan may be prevented from devoting any time to clients. Law firms can take steps to maximize their employees' self-preparedness, thereby increasing the chances of those employees being more able to work after a disaster. A firm could go to the extent of making provisions for alternative housing, schools, and counseling for employees.<sup>18</sup>

Law firms, whether solo practices or the larger firms in the state, must also deal with the impacts of the disaster on their internal business structure before being able to serve clients. Besides needing personnel to do the work, offices must also contend with issues

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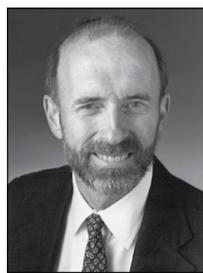
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regarding facilities, finances, communications, computer networks, and data access. It is critical that a firm engage in business-continuity planning so that it is better prepared to weather the impacts of a disaster. A firm conducting business-continuity planning would first identify the essential services that the firm desires to sustain even in the face of a disaster, and then identify the critical resources necessary to provide those essential services. Extensive resources regarding business-continuity planning can be found on the Internet. One of the more comprehensive guides in this respect is the National Fire Protection Association (NFPA) Standard 1600, "Standard on Disas-

ter/Emergency Management and Business Continuity Programs."<sup>19</sup>

Law firms can engage in further preparedness efforts beyond business-continuity planning by anticipating the kinds of legal issues that are likely to face the firms' clients at the time of a disaster. First, clients will face the same kinds of business-continuity challenges as law firms. They may need legal advice addressing the fundamental needs of personnel, facilities, finances, and equipment. Second, clients impacted by disasters may face numerous tort and contract issues. Third, clients will likely need legal assistance in addressing insurance issues. Fourth, many clients could

have direct interactions with governmental emergency responders, and a number of those interactions could give rise to legal issues. Finally, clients may need legal assistance in determining the availability of federal reimbursement or aid in the aftermath of a disaster. Law firms that anticipate these issues and develop expertise in these areas may be in high demand after a disaster. The lawyer's ability to provide these services may assist both the community and the law firm in recovery and restoration efforts.

### Conclusion

By emulating the planning and preparedness efforts of emergency managers, attorneys can strengthen their personal and professional resistance to the adverse impacts of disasters. By having a deeper understanding of the governmental emergency response philosophy and structure, private attorneys can themselves be better prepared and able to serve their clients suffering the impacts of a disaster. The availability of emergency legal services in the time of a disaster can help both the public and the private sectors better endure and survive the impacts of those inevitable natural disasters that occur in the Pacific Northwest. 

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### Business Disaster Planning Resources

Pacific Northwest Economic Region's Center for Regional Disaster Resilience: [www.regionalresilience.org](http://www.regionalresilience.org)

American Bar Association website: [abanet.org](http://abanet.org) (run separate searches for "disaster planning," "disaster checklist," and "continuity" to find available resources)

FEMA website: [www.fema.gov](http://www.fema.gov) (search for "continuity")

[www.ready.gov](http://www.ready.gov) (national website on continuity planning)

[www.3days3ways.org](http://www.3days3ways.org) (Pacific Northwest regional website hosted by King County focusing on personal preparedness)

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this article was prepared for a WSBA-sponsored CLE of the same title, which was held on August 15, 2007, in Seattle.

#### NOTES

1. See the U.S. Department of Health & Human Services national website at [www.pandemicflu.gov](http://www.pandemicflu.gov).
2. See, e.g., Homeland Security Presidential Directive-5, ¶ 3 (setting out the policy for domestic incident management) (Feb. 28, 2003) (available at <http://homeland.cq.com/hs/flatfiles/permanentItems/eap/HSPD/HSPD5.pdf> (last visited 6/25/07)).
3. See Washington State Comprehensive Emergency Management Plan Planning Guide at page i (Washington State Military Department, Emergency Management Division, May 2007), available at [www.emd.wa.gov/plans/documents/comp\\_planning\\_guide.doc](http://www.emd.wa.gov/plans/documents/comp_planning_guide.doc) (last visited 7/30/2007).
4. *Id.*
5. *Id.*
6. See, e.g., [www.emd.wa.gov/grants/grants\\_hazard\\_mitigation.shtml](http://www.emd.wa.gov/grants/grants_hazard_mitigation.shtml) (hazard mitigation includes efforts to reduce the effects of hazards and/or vulnerability to future disaster damage) (last visited 7/30/2007). This concept of "mitigation" is conceptually distinct from mitigation encountered in the context of environmental regulation. If a development causes environmental harm that cannot be avoided, the developer may be required to mitigate that harm by conducting projects elsewhere designed to enhance the environment. In the emergency management context, one conducts mitigation by taking preventative steps that fortify the infrastructure so as to minimize the damage that could occur during a hazardous event.
7. *Id.* at (16)(a). The 2004 edition of the NRP is available at [www.dhs.gov/xlibrary/assets/NRPbaseplan.pdf](http://www.dhs.gov/xlibrary/assets/NRPbaseplan.pdf). Some changes were made through a separate document in 2006. FEMA is in the process of revising the National Response Plan, and the new draft document has been renamed the National Response Framework. See [www.fema.gov/emergency/nrf/mainindex.htm#](http://www.fema.gov/emergency/nrf/mainindex.htm#) (last visited 9/5/07).
8. The CEMP is a living document produced by the Emergency Management Division, which is part of the Washington State Military Department. The CEMP is in the process of being updated, and the new 2007 version should be released shortly.
9. The NRP has 15 ESFs. The draft 2007 CEMP utilizes those same 15 ESFs, but also has an additional ESF regarding the use of National Guard forces to assist civil authorities.
10. See [www.fema.gov/emergency/nims/index.shtml](http://www.fema.gov/emergency/nims/index.shtml) for numerous documents and guidance regarding NIMS.
11. See RCW 38.52.020(1)(c) (setting out the legislative policy); RCW 38.52.091 (authorizing the use of mutual aid arrangements for emergency management aid and assistance).
12. See RCW Chapter 38.10 (setting out the provisions

of EMAC).

13. See Emergency Management Assistance Compact 2005 Hurricane Season Response After-Action Report at EX-1 (issued by the National Emergency Management Association), available at [www.emacweb.org/?1455](http://www.emacweb.org/?1455) (last visited 6/25/2007).
14. See the EMD training calendar at <http://emd.mhsoftware.com/> (last visited 7/30/2007).
15. See [www.hsi.wa.gov](http://www.hsi.wa.gov) for state training opportunities and <http://training.fema.gov/IS/crslist.asp> for federal training opportunities (last visited 7/30/2007).
16. National Governors Association Center for Best Practices, *A Governor's Guide to Homeland Security* 16-17 (2007) (quoting Ernest B. Abbott, *Draft Checklist for State and Local Government Attorneys to Prepare for Possible Disasters*, American Bar

Association State and Local Government Law Section, March 2003). The ABA Checklist has since been updated in 2005, and is available at [www.abanet.org/statelocal/checklist406.pdf](http://www.abanet.org/statelocal/checklist406.pdf) (last visited 7/30/2007).

17. See, e.g., [www.fema.gov/plan/index.shtm](http://www.fema.gov/plan/index.shtm) (FEMA resources for individual planning); [www.govlink.org/3days3ways](http://www.govlink.org/3days3ways) (King County and regional partnership site emphasizing personal planning).
18. See Laura Walker Plunkett, Walter F. Wolf III, and Kathryn M. Knight, *When Disaster Strikes: Disaster Planning for Lawyers*, Probate & Property (vol. 20, no. 5, Sept./Oct. 2006), available at [www.abanet.org/rppt/publications/magazine/2006/so/plunkett.shtml](http://www.abanet.org/rppt/publications/magazine/2006/so/plunkett.shtml) (last visited 7/30/2007).
19. Available at [www.nfpa.org/assets/files/pdf/nfpa1600.pdf](http://www.nfpa.org/assets/files/pdf/nfpa1600.pdf) (last visited 7/30/2007).

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**T**he Washington State Bar Foundation is a non-profit organization whose focus is to improve the delivery of legal services to all segments of the public; foster improvement of relations among the Bar, the judiciary and the public; advance programs related to new lawyer development; support diversity efforts; and promote the administration of justice. As such, the Foundation has undertaken projects to help attorneys enter and stay in public-service work through its Loan Repayment Assistance

Program (LRAP); through the Presidents' and Governors' Diversity Scholarship fund to benefit law school students; and through grants and donations in support of WSBA programs and services.

The Washington State Bar Foundation would like to thank the following contributors to various funds and programming in the Foundation between October 1, 2006, and September 30, 2007.

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For more information about the Foundation, please visit [www.wsba.org/lawyers/wsbfd.htm](http://www.wsba.org/lawyers/wsbfd.htm).

# Old West Backdrop for October Board Meeting

BY MICHAEL HEATHERLY

Winthrop, October 26-27, 2007

**T**he rescheduling of debate on marriage-and-the-law issues highlighted the Board of Governors' public session conducted on October 26 in Winthrop. Other items addressed by the BOG included a revised WSBA fiscal-policy manual and appointments to several panels.

Regarding marriage and the law, in past months it had appeared that the state Legislature might consider legislation regarding same-sex marriage in the 2008 session. Accordingly, the BOG had anticipated addressing that issue itself in January. The governors needed to decide whether the BOG would take an official stand on proposed legislation and what that stand would be. However, the governors learned that the most recent word from Olympia was that the Legislature appeared unlikely to tackle marriage legislation in 2008.

As the urgency for the BOG to take immediate action had disappeared, the Board voted to remove discussion of the topic from its January meeting. However, it appeared that a majority of governors wished to foster ongoing discussion of the subject and maintain a leadership role on the issue. Accordingly, the motion to remove the topic from the January meeting was amended to specify that the BOG would plan an open forum to address the issue in the near future regardless of whether any bill appears in the Legislature. Following further discussion, the BOG passed an additional motion, by Gov. Peter Karademos, to schedule forums on the issue at two upcoming regular BOG meetings: March 7-8, 2008, in Tacoma and April 25-26, 2008, in Spokane.

Meanwhile, the BOG adopted most sections of a WSBA "Fiscal Policies and Procedures Manual" to replace the former "Accounting Policy Manual." Essentially,

the manual sets out specific rules for the handling of fiscal accounts under WSBA's administration. It includes such things as policies for reimbursing staff, volunteers, and BOG members for WSBA-related expenses. For the most part, changes in the new manual were routine, meant to ensure that the policies were in line with proper accounting practices and tax regulations.

One item that attracted special attention, however, dealt with WSBA reimbursement of expenses incurred by spouses or domestic partners of BOG members in connection with BOG-related events. The

provision at issue states, "Reimbursement for a spouse, domestic partner, or guest will only be made for meals at Board of Governor functions." Board members pointed out that spouses and domestic partners often accompany them to the eight or so weekend BOG meetings conducted across the state each year, for which WSBA covers hotel lodging and reimburses for mileage. As a practical matter, a spouse or partner's sharing a hotel room and travel in a private car adds no expense and would not be affected by the new rule. By its terms, the new rule would continue the practice of

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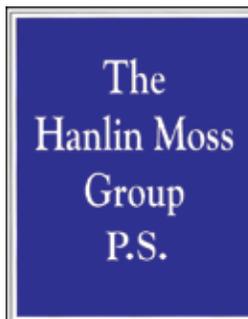
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reimbursing for the spouse or partner's meals. However, the rule would appear to prohibit WSBA from reimbursing for a spouse or partner's airfare, which becomes an issue when it is impractical for the BOG member and spouse/partner to travel from their home to the meeting location by car. Coverage of a spouse or partner's airfare has been allowed in the past, and several board members expressed disappointment that the new rule would appear to prohibit it.

In discussing the new rule, several board members applauded WSBA policies that promote the participation of spouses

and partners at BOG functions. They contended that spouse/partner participation increases collegiality at BOG-meeting weekends and makes for more productive meetings. On the other hand, Governor David Heller stated that it was unheard of in other professional organizations in which he has been involved for the organization to cover the expenses of spouses or partners. He urged the use of fiscal restraint in the WSBA policies.

Ultimately, the BOG approved the new fiscal policy manual, except for the provisions regarding BOG members. That por-

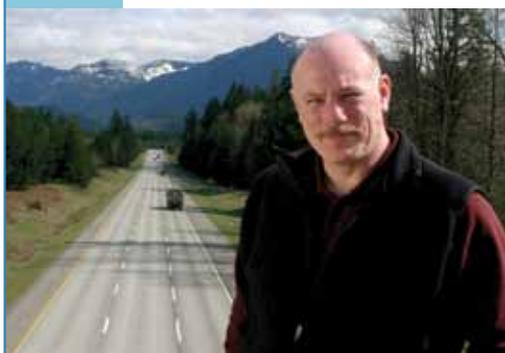
tion of the manual will be discussed again at the December 7-8 meeting in Everett.

The BOG also took in a multi-media, audience-participation presentation by the Honorable Marlin Appelwick and Judith Billings, co-chairs of the Council on Public Legal Education, and WSBA Public Legal Education Manager Pam Inglesby. The Council is now an advisory committee of WSBA, reporting directly to the BOG. The presentation outlined the accomplishments of the Council, which was created to promote better public understanding of the law, legal rights, and responsibilities. Programs are particularly aimed at youth. Highlights include working to re-emphasize civics education in K-12 schools, maintaining a citizen-oriented legal information website ([www.lawforwa.org](http://www.lawforwa.org)), promotion of youth courts, support for high school-level Street Law programs, a Law School for Legislators workshop, and The Flame of Democracy Award, given this year to the Washington State League of Women Voters' Education Fund. Besides continuing the current programs, in 2008 the Council will co-sponsor Washington's first youth court conference, push for further public debate regarding civics, and focus on strengthening staffing and finances for the lawforwa website.

Finally, the BOG approved the following appointments: Judge Theodore Spearman as Legal Foundation of Washington trustee, and Michael J. Pontarolo and Tom Morris (alternate) to the Commission on Judicial Conduct. 

Bar News Editor Michael Heatherly practices in Bellingham and can be reached at 360-312-5156 or [barnewseditor@wsba.org](mailto:barnewseditor@wsba.org).

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# The Essential Book for Every Golfing Lawyer

*The Little Green Book of Golf Law*, by John H. Minan; 250 pp.; paperback; \$19.95 list; American Bar Association (2007).

BY HOWARD L. GRAHAM

John H. Minan, a professor of law at University of San Diego School of Law,<sup>1</sup> has combined the two passions in his life, golf and the law, to create a memorable reading excursion into the favorite pastime of many lawyers — the game of golf. *The Little Green Book of Golf Law — The Real Rules of the Game of Golf*<sup>2</sup> is written for a general audience with an interest in either of these subjects. Once read, few lawyer-golfers will ever walk on a golf course without being reminded of the legalities of the game.

The literary device the author uses to make this book so readable is a collection of 19 actual cases crafted into 19 short stories, presented in a style that O. Henry would have enjoyed. These cases track the 18 holes typically played in a “stipulated round” of golf, and a story for the favorite “hole 19” of all lawyers.<sup>3</sup>

I found the author’s unique ability as a storyteller well used in developing a very enjoyable read on the law of golf. Each of the 19 “stories” is supported by legal citations of the actual case giving rise to the story to satisfy the legal scholar’s quest for authenticity. The legal issues are highlighted by the inevitable wry humor that all great storytelling embraces.

*The Little Green Book of Golf Law* discusses a professional’s right of publicity, personal injuries occurring on and off the golf course, patent and trademark disagreements, a contract dispute involving a hole-in-one contest, a product liability case for a defective golf club, a criminal prosecution under the endangered species act, a fight with the Internal Revenue Service over tax deductions for golf-related expenses, and more.

The legal scholar who obsesses with golf’s legalities can go well beyond the discussion in the book and review the actual case, thanks to the foresight of the author’s inclusion of the citation of the official version of the case. For example, the official case involving Tiger Woods’s right of publicity is more than 40 pages of single-spaced text. In the book, this episode is of necessity condensed to several pages in length.

The “Inside the Rules” segment found at the end of each chapter is a valuable bonus supplementing the stories. Based on the interpretations of the Rules of Golf,<sup>4</sup> by the United States Golf Association and the Royal and



Ancient Golf Club of Saint Andrews, the segments assist the reader who would like to become well-versed on the actual rules of the game.

Many of the cases discussed by the author indirectly raise questions about the rules or the decisions that are discussed in “Inside the Rules.” In *Hennessey v. Pyne*, for example, the plaintiff sued the defendant because the

plaintiff was injured by a golf ball that was hit “out of bounds” by the defendant. The case provides an ideal opportunity to review the “out-of-bounds” rule. Another example is *Zurla v. Hydell*, where three golfers were playing together as a group. Most people would describe the group as a “threesome.” But, as the reader will discover, the rules define the term “threesome” differently than conventional usage.

*The Little Green Book of Golf Law* is a wonderful example of what a scholarly lawyer can accomplish when applying the law to the one of the more enjoyable pursuits of everyday life. Golfers, lawyers, and golf “widows,” as well as the non-golfing nonlawyer who enjoys great storytelling and would like to appear knowledgeable around the “19th hole,” would do well to add this book to their collection. Ⓜ

Howard L. Graham is an attorney practicing in Tacoma.

## NOTES

1. John H. Minan, B.S. 1965, University of Louisville; M.B.A. 1966, University of Kentucky; J.D. 1972, University of Oregon.
2. Published by the American Bar Association. Available to purchase online at amazon.com.
3. A “stipulated round” consists of playing the holes on a golf course in their correct sequence unless otherwise authorized by the Committee. The number of holes in such a round is 18. Rules, definition of “Stipulated Round.”
4. *The Rules of Golf* (2006-2007).

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# Wills for Heroes — Protecting Those Who Protect Us

BY SARAH ONDRAK

**O**n September 22, 2007, Washington's Wills for Heroes program held its largest clinic to date. The fifth clinic proved as successful as the previous four. At each clinic, volunteer attorneys provide free estate-planning advice and estate-planning documents to firefighters and police officers who risk their lives every day protecting our local communities. More than 75 volunteers from the legal community met at the Starbucks Support Center to counsel more than 100 first responders and their spouses.

Clients are asked to fill out a thorough questionnaire before arriving at the clinic, and once there, they are given the chance to meet with a volunteer attorney for approximately one hour. The volunteer attorneys (with the help of a team of law clerks, notaries, witnesses, and other support staff) are able to draft a Health Care Directive, General Durable Power of Attorney, and Last Will and Testament for each client. At the most recent clinic, clients were able to snack on scones, muffins, cookies, and Starbucks espresso drinks while waiting for their documents to be drafted.

A Seattle police officer who attended the recent clinic said: "Everyone involved was very organized and professional. Even though they were offering the service for free, they still treated us with a high level of respect and professionalism. I really felt like the organizers put a lot of effort into providing a high-quality service."

Attorneys Ford Clary and Jenni Frere Volk introduced the program to Washington in 2006; soon after, they presented the concept to the Public Service Committee of the WSBA Young Lawyers Division. The WYLD was enthusiastic about the idea and agreed to sponsor the program. In September 2006, after nearly one year of organizing and planning by the founders, the Seattle Fire Fighters Union Local 27 hosted the first clinic for its members. "The event was an overwhelming success," Co-chairman Ford Clary said, "and it was very rewarding to

see so many local attorneys donate their time on a Saturday to help this group of first responders."

In the first year alone, the program helped more than 50 first responders, who left the clinics with estate-planning documents in hand. In 2007, the program helped more than 300 firefighters and police officers in Washington. Washington's Wills for Heroes program also offers a venue for law students to interact with experienced practicing attorneys in an effort to foster practical, hands-on legal experience.

Sadly, a Wills for Heroes client recently passed away after a battle with cancer. His fellow officers reported that he took some solace in knowing that his loved ones would be taken care of upon his passing. "We were all devastated to learn of the officer's passing, and we can only hope that our contribution made things a bit more comforting for the family during this difficult time," said Jenni Frere Volk.

The program was initially inspired by the events of 9/11, after a South Carolina attorney, Anthony Hayes, began looking for ways that he could use his legal expertise to give back to his local community. The American Bar Association recently selected Wills for Heroes as its Public Service Project of the Year. For more information about the national Wills for Heroes Foundation, please see [www.willsforheroes.org](http://www.willsforheroes.org).

The Washington Wills for Heroes Program is always looking for volunteer attorneys and support staff to help out at the clinics, as well as donations of paper, printer ink, and used printers. If you

would like to get involved, please contact Jenni Frere Volk ([jenni@volklawfirm.com](mailto:jenni@volklawfirm.com)) or Ford Clary ([fordclary@hotmail.com](mailto:fordclary@hotmail.com)).

*Sarah Ondrak is an attorney in Seattle. She has been the volunteer coordinator on the Wills for Heroes Committee for the past two years. Her e-mail address is [sondrak@ballardlawyers.com](mailto:sondrak@ballardlawyers.com).*



**Top (left to right):** Kari Martin, Jaquetta Little, and Iain Lawn organize paperwork. **Bottom (left to right):** Charity Anastasio, Julie O'Brien, Michelle Siebenaler, and Emi McElroy welcome clients.





BY MARK J. FUCILE

Law-firm marketing regulation is a blend of theory and practice. The “theory” comes to us in the form of a series of United States Supreme Court decisions beginning in 1977 that paved the way for the broad ability to market that we have today. The “practice” comes to us in the form of the Rules of Professional Conduct regulating this area that reflect those same Supreme Court decisions. In this column, we’ll look at “theory” and then follow in my next with “practice.”

Given the pervasive nature of law-firm marketing today, it is easy to forget the distance traveled in a relatively short time from an era where virtually no law-firm marketing was permitted at all. The first set of national professional rules was the American Bar Association’s Canons of Professional Ethics adopted in 1908. Canon 27 prohibited advertising outright. Similarly, Canon 28 prohibited direct solicitation “except in rare cases” involving “ties of blood, relationship or trust.” Washington adopted the ABA Canons under former Remington’s Compiled Statutes Section 139-15, and lawyers were disciplined over the years for violating the advertising and solicitation rules.<sup>1</sup> When the ABA moved from the Canons to its Model Code of Professional Responsibility in 1969, the advertising ban continued. Again, Washington followed in 1972 when we moved to the CPRs.<sup>2</sup> Until the mid-1970s and the then-emerging doctrine of commercial-free speech,<sup>3</sup> the United States Supreme Court had upheld these severe restrictions on professional advertising in cases like *Semler v. Oregon State Board of Dental Examiners*, 294 U.S. 608, 55 S.Ct. 570, 79 L.Ed. 1086 (1935).

In 1977 and 1978, however, the United States Supreme Court issued two decisions

whose impact still resonates in all law-firm marketing today.

The first, *Bates v. State Bar of Arizona*, 433 U.S. 350, 97 S.Ct. 2691, 53 L.Ed.2d 810 (1977), addressed advertising. It arose on very prosaic facts. Two young former legal aid lawyers in Phoenix started a legal clinic

*Ass’n*, 436 U.S. 447, 98 S.Ct. 1912, 56 L.Ed.2d 444 (1978), dealt with in-person solicitation. In *Ohralik*, a lawyer had been disciplined for violating Ohio’s ban on in-person solicitation (patterned on the then-current version of the ABA Model Code) by visiting a young automobile accident victim while she was in

## Law-Firm Marketing — Part 1: Theory

focused on low-cost consumer matters for clients who were just above the income ceiling for legal aid. They found that it was difficult to make themselves known to a consumer clientele in the absence of media advertising. Notwithstanding Arizona’s ban on advertising that mirrored the ABA Canons and Model Code, they ran an ad in the city’s largest newspaper outlining the scope of their services and their rates. The president of the State Bar of Arizona filed a complaint against them. An administrative panel of the Bar found them guilty, and the Bar’s Board of Governors recommended suspension. The lawyers appealed to the Arizona Supreme Court, arguing that the advertising ban as it related to price was a violation of the Sherman Antitrust Act and that, more fundamentally, the ban on advertising was an unconstitutional infringement of their commercial free-speech rights under the First Amendment. The Arizona Supreme Court rejected both arguments. The United States Supreme Court granted review and affirmed on the Sherman Act issue, but reversed on the First Amendment argument. In doing so, the Supreme Court relied on then-recent commercial free-speech cases from other fields to reject the outright ban on law-firm advertising. At the same time, the Supreme Court noted that law-firm advertising could be regulated to prohibit false and misleading advertising, and that reasonable restrictions on the time, place, and manner of advertising would also be permitted. The Supreme Court also did not foreclose regulation on claims regarding the quality of service that are not susceptible to empirical measurement or the possible use of warnings or disclaimers. Nonetheless, *Bates* opened the door and law-firm marketing was never the same.

The second, *Ohralik v. Ohio State Bar*

traction in a hospital, and her equally young passenger as she recuperated at home, in an effort to have them sign contingent-fee agreements with him. After *Bates*, the lawyer sought review by the United State Supreme Court, arguing that the ban on in-person solicitation was also unconstitutional. The Supreme Court took review, but affirmed. The Supreme Court drew a sharp distinction between general media advertising of the kind involved in *Bates* and the high-pressure, in-person solicitation involved in *Ohralik*: “The balance struck in *Bates* does not predetermine the outcome in this case. The entitlement of in-person solicitation of clients to the protection of the First Amendment differs from that of the kind of advertising approved in *Bates*, as does the strength of the State’s countervailing interest in prohibition.” 436 U.S. at 455. The Supreme Court then concluded that the state’s legitimate interest in protecting the public justified continued regulation of in-person solicitation.<sup>4</sup>

The twin threads woven in *Bates* and *Ohralik* have continued to define the Supreme Court’s approach to law-firm marketing: generally expanding Constitutional protection for media and written forms of advertising and generally continuing to sustain prohibitions and other regulation on in-person solicitation involving potentially coercive circumstances and closely related situations.

On the former, the Supreme Court, in *In re R.M.J.*, 455 U.S. 191, 102 S.Ct. 929, 71 L.Ed.2d 64 (1982), approved general direct-mail advertising as long as it met *Bates*’s standard of being truthful. It did the same for targeted print and direct-mail advertising in, respectively, *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626, 106 S.Ct. 2265, 85 L.Ed.2d 652 (1985), and *Shapiro v. Kentucky Bar Ass’n*, 486 U.S. 466, 108 S.Ct. 1916, 100 L.Ed.2d 475 (1988). In *Peel v. At-*

*torney Registration & Disciplinary Comm'n of Ill.*, 496 U.S. 91, 110 S.Ct. 2281, 110 L.Ed.2d 83 (1990), the Supreme Court found that a lawyer had a First Amendment right to advertise his certification as a trial specialist by the National Board of Trial Advocates and in *Ibanez v. Florida Dep't of Bus. & Professional Regulation*, 512 U.S. 136, 114 S.Ct. 2084, 129 L.Ed.2d 118 (1994), concluded that a lawyer could include her credentials as a certified public accountant and a certified financial planner in her advertising.

On the latter, the Supreme Court in *Edenfield v. Fane*, 507 U.S. 761, 113 S.Ct. 1792, 123 L.Ed.2d 543 (1993) (involving in-person solicitation by a CPA), and *Tennessee Secondary Athletic Association v. Brentwood Academy*, \_\_\_ U.S. \_\_\_, 127 S.Ct. 2489, 2493-95, 168 L.Ed.2d 166 (2007) (involving in-person high school athletic recruiting) emphasized that *Ohralik* was limited generally to circumstances that inherently lend themselves to potential coercion and undue influence. Nonetheless, the Supreme Court continued to adhere to *Ohralik* and relied on it and *Edenfield* (among others) in *Florida Bar v. Went for It, Inc.*, 515 U.S. 618, 115 S.Ct. 2371, 132 L.Ed.2d 541 (1995), upholding a Florida rule that prohibited personal injury

lawyers from sending targeted direct-mail solicitations to accident victims for 30 days following the accident involved. Although *Florida Bar* was a direct-mail case, its analysis is framed in terms of the Supreme Court's approach to solicitation rather than advertising.

The Washington State Supreme Court cited both *Bates* and *Ohralik* in *Hahn v. Boeing Company*, 95 Wn.2d 28, 35-36, 621 P.2d 1263 (1980). Although its discussion was comparatively brief, the Washington State Supreme Court noted the same twin threads first articulated in *Bates* and *Ohralik*. As both the ABA (in 1983 and 2002) and Washington (in 1985 and 2006) moved to and then updated the Rules of Professional Conduct, *Bates*, *Ohralik* and the cases that followed continued to shape the regulatory structure we have today, even as marketing itself increasingly moved from the older print forms to electronic media. We'll look at that in my next column. 

*Mark Fucile, of Fucile & Reising LLP, handles professional responsibility, regulatory, and attorney-client privilege matters and law-firm-related litigation for lawyers, law firms, and*

*legal departments throughout the Northwest. He is a past chair and a current member of the WSBA Rules of Professional Conduct Committee, a past member of the Oregon State Bar's Legal Ethics Committee, and a member of the Idaho State Bar Professionalism and Ethics Section. He is a co-editor of the WSBA's Legal Ethics Deskbook and the OSB's Ethical Oregon Lawyer. He can be reached at 503-224-4895 and mark@frllp.com.*

#### NOTES

1. See, e.g., *In re Winthrop*, 135 Wn. 135, 237 P. 3 (1925); *In re Steinberg*, 44 Wn.2d 707, 269 P.2d 970 (1954).
2. See *Lightfoot v. MacDonald*, 86 Wn.2d 331, 336, 544 P.2d 88 (1976) (noting the continued ban on lawyer advertising).
3. See, e.g., *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. 748, 96 S.Ct. 1817, 48 L.Ed.2d 346 (1976) (allowing prescription drug price advertising by licensed pharmacists).
4. The Supreme Court in *In re Primus*, 436 U.S. 412, 98 S.Ct. 1893, 56 L.Ed.2d 417 (1978), drew a distinction where solicitation is through an organization in furtherance of political rights and accorded political rights in this context much greater protection than "commercial" rights.



We congratulate **Mimy Bailey** on her call to the Bar and welcome her to our firm as a **new associate**.

A 2007 graduate of Seattle University School of Law, Mimy will continue the tradition of SKWC's representation of individuals who have suffered serious brain or spinal cord injuries or other catastrophic harm, as well as wrongful death.



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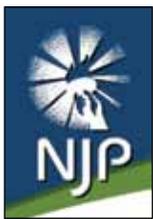
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### Northwest Justice Project Opens Legal Aid Offices in Longview and Aberdeen

The Northwest Justice Project (NJP), Washington's statewide legal aid program, has



opened two new offices, in Longview and Aberdeen, to provide free legal assistance in civil matters to low-income families, individuals, and senior citizens serving Wahkiakum and Cowlitz counties and Grays Harbor and Pacific counties.

"I am especially gratified that this year's increased funding for civil legal aid has made it possible for the Northwest Justice Project to open a staffed legal aid office in Aberdeen," said Aberdeen native Chief Justice **Gerry Alexander**. "We can all be proud of our steady progress toward meeting the huge, unmet civil legal needs of Washington's poor, especially in distressed rural communities."

"I am extremely proud of our Legislature's commitment to address the unmet civil legal needs of low-income Washingtonians by increasing the civil legal aid presence in rural and semi-rural communities such as Wahkiakum and Cowlitz counties," said Seattle University School of Law Professor **John McKay**. "The opening of a legal aid office in Longview underscores our state's commitment to the cherished principle of equal justice for all."

In addition to providing direct representation to eligible clients, NJP's Longview and

Aberdeen offices will engage in ongoing community education, and will work to identify the most pressing civil legal needs of the communities so that residents can better utilize NJP's services and the court system.

### Christine Gregoire Named One of *Governing* Magazine's Public Officials of the Year

Governor **Christine Gregoire** was named one of 2007's Public Officials of the Year by *Governing* magazine. When she



became governor of Washington in 2005, Gregoire had previously served as both state attorney general and environmental protection chief. Since 1994, *Governing* magazine

has honored individual state and local government officials for outstanding accomplishment by naming them Public Officials of the Year. Elected, appointed, and career officials from any branch of state or local government are eligible. The Public Officials of the Year are honored at an awards banquet, and their profiles appear in the November issue of *Governing*. Read more about 2007's Public Officials of the Year at [www.governing.com/poy/2007/index.htm](http://www.governing.com/poy/2007/index.htm).

### WSBA President Stanley A. Bastian Admitted to American College of Trial Lawyers

Congratulations to WSBA President **Stanley A. Bastian**, who was recently inducted as a fellow to the American College of Trial Lawyers (ACTL) at their 2007 annual meeting in Denver, Colorado. The College extends fellowships only to trial lawyers whose professional careers have been marked by the highest standards for ethical conduct, professionalism, civility, and collegiality. Lawyers must have a minimum of 15 years' trial experience before they are eligible for fellowship. Membership in the College cannot exceed one percent of the total number of lawyers in a state or province. There are approximately 5,660 members in the United States and Canada, including active, judicial, honorary, and emeritus fellows. According to the ACTL, there are currently 143 members in Washington state.



Stan Bastian being sworn in as 2007-2008 WSBA President by Chief Justice Gerry Alexander in a photo from October 2007.

Founded in 1950, the College is dedicated to maintaining and improving the standards of trial practice, the administration of justice, and the ethics of the profession. Qualified lawyers are selected from among advocates who

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### Judge Debra Stephens Appointed to Supreme Court

On December 4, Governor Christine Gregoire appointed Court of Appeals Judge **Debra Stephens** to the Washington State Supreme Court, to fill the position vacated by retiring Justice **Bobbe Bridge**.



Judge Stephens, who received both her B.A. and J.D. from Gonzaga University, is the first woman who was raised and practiced law in Eastern Washington to serve on the State Supreme Court. Gregoire said that Stephens has appeared before the State Supreme Court more than 100 times in her career as an attorney. "It's essential for that bench to have somebody who has been here arguing before them," the governor said. Judge Stephens has taught constitutional law at Gonzaga and has extensive private-practice experience focusing on appellate law. Congratulations to Judge Stephens!

### Northwest Indian Bar Association Elects New Leadership

The national award-winning Northwest Indian Bar Association (NIBA) announced the results of its annual Governing Council election. NIBA's 2007-2008 Governing Council is composed of the following members: **Naomi Stacy** (Confederated Tribes of the Umatilla Indian Reservation), president; **Lael Echo-Hawk** (Pawnee), president-elect; **Brooke Pinkham** (Nez Perce), treasurer; **Michael Douglas** (Haida), secretary; **Juliana Repp** (Nez Perce), at-large member; **Lee Shannon** (Cowichan), at-large member; and **Diana Bob** (Lummi), at-large member. Founded in 1991, NIBA is a nonprofit organization of Native and Indian law attorneys, judges, spokespersons, and students in Washington, Oregon, Idaho, and Alaska. Over the past few years, NIBA has worked to increase the number of Native attorneys in the Pacific Northwest through legal education and advocacy. For more information, visit [www.nwiba.org](http://www.nwiba.org).



### Legal Foundation of Washington News

The Legal Foundation of Washington will present the 2008 Charles A. Goldmark Distinguished Service Award to brothers **John McKay** and **Mike McKay** at the 22nd Annual Goldmark Award Luncheon, to be held February 29, at the Sheraton Seattle Hotel from noon to 1:30 p.m.

The McKays are receiving this award in recognition of years of volunteer work with the Equal Justice Coalition to increase funding for civil legal aid to the poor, and for the leadership each has brought to the local and national scene in the effort to provide a justice system whose doors are open and welcoming to all citizens.

The Goldmark Award honors the memory of Charles A. Goldmark, a Seattle attorney, community leader, and ardent supporter of access to justice. Mr. Goldmark served as the Legal Foundation's president at the time of the tragic assault that led to his death in 1986.

At the November 20 meeting, the Legal Foundation of Washington Board of unanimously elected **Nancy L. Isserlis**, principal, Winston and Cashatt Lawyers, as the

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Foundation's president for 2008. **Nicholas P. Gellert**, of counsel, Perkins Coie, was elected vice president; **Michele G. Radosevich**, partner, Davis Wright Tremaine, was elected secretary; and **Rima J. Alaily**, partner, Heller Ehrman, was elected treasurer.

Appointed by the Washington State Supreme Court to his second two-year term as a trustee is **William Hyslop**, of Lukins & Annis. Beginning their first two-year terms in January are WSBA appointee Judge **Theodore Spearman**, Kitsap County Superior Court, and gubernatorial appointees **Art Wang**, Washington Employment Security Department, and **Barbara Fox**, limited practice/escrow officer. **Wallace Webster II**, Bank of America, will return as trustee.

### MAMAS Celebrates First Anniversary

On October 29, the Mother Attorneys Mentoring Association of Seattle (MAMAS) celebrated its first anniversary by hosting a reception and a panel presentation of state and federal



judges who addressed the role of diversity in the Bar. The panelists included Judge **Mary Kay Becker**, Wash-

ington Court of Appeals, Division I; Magistrate Judge **James P. Donohue**, United States District Court for the Western District of Washington; Justice **Mary E. Fairhurst**, Washington State Supreme Court; Sr. Circuit Judge **Betty B. Fletcher**, U.S. Court of Appeals, Ninth Circuit; Judge **Ricardo S. Martinez**, United States District Court for the Western District of Washington; Judge **Marsha J. Pechman**, United States District Court for the Western District of Washington; and Acting Chief Judge **Ann Schindler**, Washington Court of Appeals, Division I. The panel shared their views on diversity, gave advice on how to juggle family demands and a legal career and how law firms can better accommodate lawyers who have significant family obligations, and shared their personal stories of how they have found balance in their lives.

In opening remarks, President **Rachel Black**, of Susman Godfrey L.L.P., told how MAMAS has become a source of inspiration and support for women who are struggling to find balance between a successful professional career and a fulfilling family life, and a foothold for those women who are seeking to re-enter the profession after taking time away for family reasons or who are doing everything they can to remain in the profession despite

sometimes overwhelming family demands. MAMAS has also become a voice to support the promotion of mother attorneys within the profession so more women become law firm partners, general counsel, judges, or advance to other positions of stature.

### Washington Judges Foundation Presents Judge William Nevins Award

Kitsap County Superior Court Judge **Leila Mills** was presented with the 2007 Judge William Nevins Award. Washington State Supreme Court Chief Justice **Gerry Alexander** presented the award to Judge Mills at the

Fall Judicial Conference held in Vancouver, Washington.



Judge Mills was selected from judges statewide for her outstanding contribution to youth education and to public understanding of the law. In 2001, Judge Mills was instrumental in creating the Kitsap County Youth Court. Since that time, she has coached students at Central Kitsap High School for the annual YMCA Mock

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Trial Competition. For the past three years, Judge Mills has team-taught the Street Law Program at Central Kitsap High School.

The Nevins Award was created by the Washington Judges Foundation to honor those members of the judiciary who display extraordinary dedication to the judicial branch of government. The Washington Judges Foundation determined that Judge Mills exemplifies the meaning of the Nevins Award through her consistent, long-term commitment to youth education and public understanding of the law and the role of the judiciary in American society.

### Superior Court Judges, Court Commissioners, and Staff Brighten Tacoma

Nothing brightens a home like a new coat of paint, and nothing brings a smile to a homeowner like having others do the painting. Homeowner **Valerie Troger** is smiling a lot these days, as the Pierce County Superior Court judges, commissioners, and staff spent four Mondays last summer pressure-washing, scraping, priming, and painting her house. Headed by Judge **Stephanie Arend** and Judge **Vicki Hogan**, most of the 22 judges and seven commissioners, as well as several court staff and family members, participated

in the project. "We had nearly 100 percent participation from the judges and commissioners. We were also joined by employees of Gray Lumber and Sandy's Concrete," Arend said. Those who couldn't help paint contributed by bringing food and beverages for the workers or providing funds to acquire a few



Top (front to back): Judge John Hickman, Deputy Court Administrator Bruce Moran, and Adam van Buskirk (Judge van Doorninck's son) offer up their painting skills. Middle (front to back): Judge Kitty-Ann van Doorninck, Judicial Assistant Candy Augustin, and Commissioner Robyn Lindsay ply their paintbrushes. Bottom: Valerie Troger's Tacoma home gets a makeover.

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extra touches to further brighten up Troger's home. For example, many years ago a portion of the concrete pad on the front porch was cut away for a planter. The hole in the porch was filled and the porch graced with two beautiful cushioned chairs, a small table, an exquisite pot of plants, new house numbers, a hanging basket of flowers, and a whimsical frog. The flower beds got a boost of mulch. The missing sections of fence were replaced.

"They have transformed my house — it looks beautiful," 71-year-old Troger said. "They are a wonderful group of people. My goodness, I enjoy having them here." Divorced and the mother of two adult sons, Troger qualified for the program as a low-income senior citizen. She has resided in her home for more than 30 years.

This is the fourth year that Superior Court has participated in the Paint Tacoma-Pierce Beautiful project, which is sponsored by Associated Ministries of Pierce County. "As public servants, we understand the importance of contributing to our community. The Paint Tacoma-Pierce Beautiful project provides the members of the judiciary with a unique and tangible way to make a difference," Arend said. The judges were assigned the Troger home by **Sallie Shawl** of Paint Tacoma-Pierce Beautiful. Since 1985, when the program began, 1,654 homes have been painted by crews from churches, service clubs, unions, businesses, schools, local government and military employee groups, and individuals.

### Seattle Attorney Athlete Honored

Seattle attorney **Theresa Goetz** was recently honored by Washington State University,



along with many other women athletes, as part of WSU's "Honoring the Legacy in Women's Athletics" celebration on September 29, 2007. Goetz, a partner at Schiff-

frin, Olson, Schlemlein and Hopkins, P.L.L.C. in Seattle, was part of history for women's athletics. Some of the women honored played sports in the 1940s and are now in their 80s. Goetz attended WSU from 1980 to 1984, which was a pivotal time for women's athletics — the case *Blair v. WSU* was initially decided in 1982, while she was a student. That decision brought more funding for women's sports and provided women with a greater variety of sports in

which to compete.

Goetz put herself through school at WSU. In her freshman year, she made the swim team and received a varsity letter each year at college. WSU awarded her an athletic scholarship for her final two years, after *Blair v. WSU*. Goetz was WSU Female Athlete of the Year in 1983–1984. She also won the S. Town Stephenson (STS) Award (WSU honors program) as well as the WSU Journalism Achievement Award her senior year. In 1984, she was elected as an Academic/Athletic All American by CoSIDA (College Sports Information Directors of America). Goetz attended the University of Washington School of Law, where she graduated in 1987. Goetz has practiced real estate and employment law in Seattle for 20 years. She also enjoys swimming, cooking, and raising her two children with her husband, Steve.

### WSTLA News

In July 2007, Seattle attorney **Karen Koehler**,



of Stritmatter Kessler Whelan Coluccio, became the 54th president

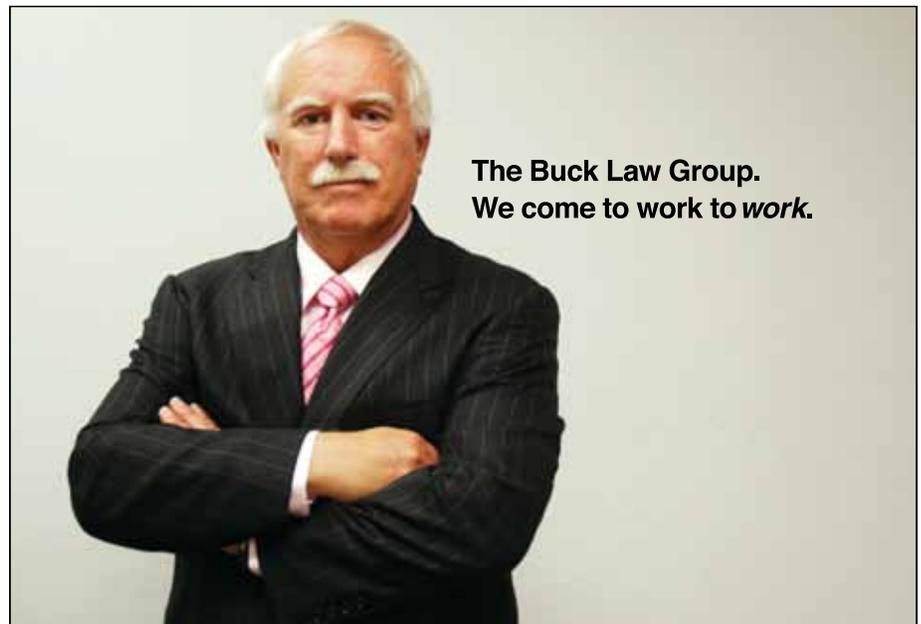
of the Washington State Trial Lawyers As-

sociation (WSTLA). Koehler is a Seattle civil justice attorney and first woman of color to lead the organization since its inception in 1953. Koehler has practiced law for more than 20 years, spending the majority of her career securing justice for families who have experienced serious injuries or the deaths of loved ones because of negligence. She also has extensive experience helping clients recover damages from insurance companies for bad-faith practices.

"WSTLA is in great hands with Karen in this leadership role," said outgoing WSTLA president **Deborah Nelson**. "She is tireless, tenacious, smart, and totally committed to fighting for justice."

WSTLA honored attorneys for their efforts to preserve the civil justice system and protect the public at an awards ceremony that took place during the WSTLA Annual Meeting on July 27 in Coeur d'Alene, Idaho.

**Brad Fulton**, of Carter & Fulton PS, Everett, was selected for the President's Award to honor his dedication to protecting the civil justice system, in representing WSTLA and the people of the state of Washington at the negotiating table, and in championing the cause of those who deserve redress for injury to person, property, and civil rights.



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**Victoria Vreeland**, of Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim, Seattle, was honored as Trial Lawyer of the Year. Vreeland is a civil justice attorney with 31 years of experience helping people who have been wronged by those in a position of power. Vreeland's distinguished career in public service and private practice has blazed trails for women lawyers. Vreeland was the first Washington State Honors Intern in the United States Department of Justice and the first female clerk for the Washington State Court of Appeals, Division III.

**Bill McGonagle**, of Sherrard McGonagle Bohannon & Miller, P.S., Bainbridge Island, received the Professionalism Award. McGonagle is noted for being an honorable, dedicated trial lawyer who faithfully represents all his clients, no matter the size or type of case. He is a dedicated volunteer in his community and is widely respected by his peers, who say he is fair and always plays by the rules.

The Carl Maxey Award was presented to **Lori Haskell**, of the Law Offices of Lori S. Haskell, Seattle. It is presented to a WSTLA member who has demonstrated sustained commitment to diversity in the legal profes-

sion, and represents those who challenge discrimination and make extraordinary efforts to promote diversity. Haskell was honored for her years of work to increase diversity within WSTLA.

The Pillar of Justice Award went to **Bryan Harnetiaux**, of Spokane. Harnetiaux was honored with the Pillar of Justice Award for his 25 years of service as coordinator of the WSTLA Amicus Program. Harnetiaux was nominated for the award because of his focus on the long-range progress of the law and vigilant protection of the right to trial by jury and the civil justice system.

### American Jewish Committee Honors Seattle Attorney

The Seattle chapter of the American Jewish Committee announced that Seattle businessman and attorney **Stan Barer** has been selected as the 2007 recipient of its prestigious Human Relations Award. Chapter President **Moshe Dunie** said Barer is deeply committed to human rights and mutual understanding around the world: "Stan has done so much for our



community and our nation. It is hard to know where to begin. But considering it all, it is clear that in Stan Barer we have a man who exemplifies so many of the values that the American Jewish Committee cherishes and seeks to promote."

### Justice Center Gets Maleng's Name

The late **Norm Maleng** was honored in a ceremony bestowing his name on the regional justice center in Kent. King County officials and others from the criminal-justice and law-enforcement community turned out for the ceremony. County Executive **Ron Sims** presented a memorial plaque to Maleng's family that will be posted in the building. Built in 1997, the Norm Maleng Regional Justice Center houses superior and district courts and a 1,457-bed jail. Maleng was widely respected for his service as King County prosecutor, serving eight terms and often winning re-election in a landslide. He held the prosecutor's post for nearly 30 years until his unexpected death from cardiac arrest in May 2007.



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the date specified annually. The information you complete on the form must 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?**

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 my firm fill out my declaration for me?**

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.

## New User-Friendly Model: Completing Your Trust Account Declaration Form

All WSBA attorneys should have received their annual licensing packet by now. In your packet, you'll notice an updated Trust Account Declaration (form B1). Every year we try to make the declaration easier to understand, but every year it seems to get more complicated. Part of the difficulty is that Regulation 106 requires us to ask for specific information. But this newly updated form is in response to comments we've received about the complexity of the declaration. We hope the new form is easier to understand.

All active attorneys must complete and submit a trust account declaration every year. This applies to every WSBA member in active status, whether or not you are actually practicing law or have a trust account. These forms are due February 1, 2008. 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. Following is a short Q&A on the Trust Account Declaration to help you complete your form for this year.

**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

You must answer every question in Part I. You complete Part II only if you have an IOLTA account.

**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

**Question B on the form relates to handling client funds. What is meant by client funds?**

Client funds are funds in your or your law firm's possession that belong to your clients or third persons. These funds are received in connection with a representation for which you are required to use your Washington license. Examples 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 check that you do not handle client funds.

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**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 re-

lates 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 should not provide information regarding those accounts on your Washington Trust Account Declaration.

**Question C relates to a Washington IOLTA. Does this mean my IOLTA account must be located in Washington state?**

No. A Washington IOLTA is any IOLTA account where the interest goes to the Legal Foundation of Washington. These accounts can be located in any state. But we are interested only in Washington IOLTAs. Please do not include IOLTAs where the interest goes to other states' funds.

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

No. Provide bank account information only 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. You will 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 the WSBA Service Center at 800-945-WSBA (9722) or 206-443-WSBA (9722) or e-mail [questions@wsba.org](mailto:questions@wsba.org).

*Trina Doty is the WSBA audit manager. She is a CPA and a certified fraud examiner. She oversees the random-examination program, conducts "for cause" audits, and educates attorneys about the trust account rules and regulations. She can be reached at [trinad@wsba.org](mailto:trinad@wsba.org).*

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## Opportunities for Service

### Washington State Bar Foundation Board of Trustees — Nonlawyer Position

**Deadline: February 15, 2008**

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

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

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

**Deadline: March 3, 2008**

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

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

*(Excerpt from the WSBA Amended*

#### **Bylaws, Article III, Section N)**

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

At the regularly scheduled June meeting of the Board of Governors following the regular election of Governors from Congressional Districts, or at a special meeting called for that purpose, the Board of Governors shall elect additional Governors from the active membership at-large. Election may be by a secret written ballot. There shall be two at-large Governor positions to be filled with persons who, in the Board's sole discretion, have the experience and knowledge of the needs of those lawyers whose membership is or may be historically under-represented in governance, or who represent some of the diverse elements of the public of 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 WSBA Office of the Executive Director, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101; call 206-727-8244 or 800-945-9722, ext. 8244, for more information.

### 2008 Notice of WSBA Board of Governors Election

Four positions on the WSBA Board of Governors will be up for election this year. These are the governors represent-

ing the 3rd, 6th, 7th-East,\* and 8th Congressional Districts. These positions are currently held by Kristal K. Wiitala (3rd District), Salvador A. Mungia (6th District), Liza E. Burke (7th-East District), and Douglas C. Lawrence (8th District).

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

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

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

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

\*The 7th Congressional District is divided into three sub-districts, East, Central, and West. These sub-districts are distinguished by zip codes, and each has one elected governor. For the coming year, the east sub-district (zip codes are 98105, 98115, 98118, 98122, 98125, 98144, 98155, 98178, and 98185) will elect a new governor.

**Northwest Justice Project Notice of Public Meetings**

Year 2008 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 12, April 12, July 19, and October 18. The Northwest Justice Project receives primary funding from the state and through the federal Legal Services Corporation and maintains more than 13 offices throughout Washington state.

These public meetings generally com-

mence 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 regulations 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, WA 98104, and will be otherwise available upon request. For specific meeting site information, please call Lisa Giuffrè, 206-464-1519 or toll-free at 1-888-201-1012.

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**Seeking Questionnaires from Candidates for Judicial Appointments**

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

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

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

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

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questions@wsba.org to request a duplicate. Please note that it is your responsibility to pay your annual license fee, regardless of whether you receive the license packet.

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

You may also pay online. To pay online, go to [www.wsba.org](http://www.wsba.org), select the "For Lawyers" tab, and see "Pay License Fee Online."

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

**WSBA Members on Active Military Duty.** WSBA Bylaw II.E.1.b., providing for a fee exemption for eligible members of the Armed Forces, was amended in March 2006. Please contact the WSBA Service Center at 800-945-WSBA (9722) or 206-443-WSBA (9722), or [questions@wsba.org](mailto:questions@wsba.org), or contact Kevin McKee at [kevinm@wsba.org](mailto:kevinm@wsba.org) or 206-727-8243 for application information. All requests for exemption must be postmarked or delivered to the WSBA office on or before March 1.

**Resources.** 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](mailto:questions@wsba.org). Please update your information as soon as possible, but no later than January 31 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](http://www.wsba.org/lawyers/licensing/annuallicensing.htm). The WSBA Service Center is available to assist you Monday through Friday, 8:00 a.m. to 5:00 p.m., at 800-945-WSBA (9722), 206-443-WSBA (9722), or by e-mail at [questions@wsba.org](mailto:questions@wsba.org).

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

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

Members in Group 1 include active members who were admitted to the WSBA through 1975 or in 1991, 1994, 1997, 2000, or 2003. Members admitted in 2006 are also in Group 1 but are not due to report until the

end of 2010. Their first reporting period will be 2008-2010; however, any credits earned on or after the day of admittance to the WSBA may be counted for compliance.

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

All MCLE Board-approved courses that you list on your C2/C3 form must have an Activity ID number. This number is listed in your online MCLE profile and is assigned at the time that the Form 1 for each course is input to the MCLE system. If you have taken courses that have not yet been approved by the MCLE Board, please submit Form 1s for these courses immediately to ensure that they are approved before your C2/C3 is due. A "Certificate of Attendance" or other sponsor-provided certification is not sufficient

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to receive course credit. If the sponsor has not received course accreditation from the Washington MCLE Board, you must submit a Form 1 application and full agenda for the course in order to receive credit. Because of high volumes from October through February, Form 1s submitted electronically (at <http://pro.wsba.org>) could take up to four weeks or more to process. Paper Form 1s may take up to six weeks or more to process. If you submit a paper Form 1, you will be notified by mail of its Activity ID number.

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

If you have questions about the Form 1 process or MCLE compliance, please contact the WSBA Service Center at 800-945-WSBA

(9722) or 206-443-WSBA (9722), or e-mail [questions@wsba.org](mailto: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.)

Group 1: Admitted through 1975, 1991, 1994, 1997, 2000, 2003, or 2006

Group 2: Admitted in 1976 through 1983, 1992, 1995, 1998, 2001, 2004, or 2007

Group 3: Admitted in 1984 through 1990, 1993, 1996, 1999, 2002, or 2005

Reporting Group	Next Reporting Period	Complete Credits by	File C2/C3 Form by
Group 1	2005-2007	December 31, 2007	February 1, 2008
Group 2	2006-2008	December 31, 2008	February 1, 2009
Group 3	2007-2009	December 31, 2009	February 1, 2010

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

reporting period:

- At least 45 total credits of MCLE Board-approved CLE activities must be taken, which need to include a minimum of 30 live credits and six ethics credits. The courses must meet the requirements of APR 11, but they do not need to be taken in Washington state. Many courses are offered around the world which meet the requirements of APR 11. “Live” courses include classroom instruction, live webcasts (not pre-recorded webcasts), and teleconferences.

“Ethics” courses, and segments of larger courses, must meet the requirements of APR 11 Regulation 101(n) or (o) to be considered for ethics credit.

- Pre-recorded self-study (A/V) courses cannot be more than five years old, except MCLE Board-approved “skills-based” courses. Pre-recorded self-study courses include the traditional audio-visual (A/V) media of video tapes and cassette tapes. They also include archived webcasts, DVDs, compact disks, and other media with a sound track of the MCLE Board-approved course presentation. Written materials should be included with these courses and reviewed prior to claiming credit. In addition, written materials must be purchased by each member, where required by the sponsor, prior to claiming credit.

- Six pro bono credits can be earned per year. Two of these credits are for approved annual training, which must be taken prior to being able to earn credit for the pro bono work. Four pro bono credits may be earned each year if at least four hours of pro bono work was provided through a qualified legal services provider.

**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.

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- C2/C3 forms are included in the license packets sent in early December to all members due to report (Group 1 members this year).

- All CLE courses listed on member rosters as of October 2007 will be printed on the back of the C2 form. If you took more CLE courses after October 1, and if they appear on your online roster and you do not want to hand-write them on the back of the C2 form, you may print a copy of your roster and attach it to your C2/C3 form. State on your C2/C3 form that the attached online roster printout is a true and correct statement of the CLE courses taken for credit compliance.

- You must verify that the credit hours listed on the C2/C3 and on your online profile correctly reflect the hours actually attended for each CLE. Online credits may be edited by clicking on the "edit" link next to each course. Credits on the C2/C3 may be corrected manually.

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

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

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

**MCLE Comity.** If you are an active member of the WSBA and your primary office for the practice of law is outside of Washington and if you are a member of the Oregon, Idaho, or Utah state bars (comity states), you may meet your Washington mandatory CLE requirements by providing proof of current MCLE compliance from your comity state bar. Only a Certificate of MCLE Compliance

from your comity state bar (not a "Certificate of Good Standing"), sent with your WSBA C2/C3 form, will satisfy your MCLE requirements in Washington.

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

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

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

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

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

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

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the end of their reporting period.

If you received the C4/C5 form in your 2008 license packet, it is for your information only. No action needs to be taken unless you want corrections to be made. If you want to make corrections to your WSBA MCLE roster, go to <http://pro.wsba.org>. Click on the "Member" tab, and then on "Member Login." The online instructions lead you through the process of creating a confidential password and beginning to use the system. Online help is available. You may also contact the WSBA Service Center to have corrections made and/or to request

an MCLE system instruction booklet at 800-945-WSBA (9722), 206-443-WSBA (9722), or [questions@wsba.org](mailto:questions@wsba.org).

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The Success Strategies "hands-on/how-to" workshops teach new-to-practice attorneys or more experienced attorneys the skills and processes to better manage their law practices in an ethical, effective, efficient, and profitable manner. Through a combination of teaching methods and experiences

in a confidential workshop setting held at the WSBA office, law office management consultant Ann Guinn will assist attorneys in solo or small firms to develop and reach their career goals. Workshops will be held the first Wednesday of each month, beginning January 2 from 5:30 to 8:30 p.m. There are three MCLE-approved CLE credits per workshop. For information or to pre-register, contact Ann Guinn at 253-946-1896, 800-945-9722, ext. 1896, or [anngp15@aol.com](mailto:anngp15@aol.com), or Jennifer Favell, Ph.D., at 206-727-8267, 800-945-9722, ext. 8267, or [jenniferf@wsba.org](mailto:jenniferf@wsba.org).

**Contract Lawyer Meeting**

Discuss the issues with other contract lawyers on January 15 from noon to 1:30 at the WSBA office. Bring your lunch — coffee is provided — and network with other contract lawyers. For more information, contact Julie Salmon at 206-733-5914, 800-945-9722, ext. 5914, or [juliesa@wsba.org](mailto:juliesa@wsba.org).

**LAP Solution of the Month: The "Blues" or Depression?**

Many lawyers are depressed but don't realize it. Symptoms include sad mood, loss of pleasure or interest in activities, weight gain or loss, sleep problems, feeling restless or slowed-down, fatigue, trouble thinking or concentrating, and thoughts of death. Untreated, it can cause serious work dysfunction and more. Talk to your doctor, or call the Lawyers Assistance Program at 206-727-8268 or 800-945-9722, ext. 8268.

**Computer Clinic**

The WSBA offers a hands-on computer clinic for members wanting to learn more about what Microsoft Office programs — Outlook, PowerPoint, Excel, and Word, as well as Adobe Acrobat — can do for a lawyer. Are you a total beginner? No problem. The clinic teaches helpful tips you can use immediately. Computers are provided, and seating is limited to 15 members. There is no charge, and no CLE credits are offered. The January 14 clinic will focus on getting started, navigating Windows, computer features, security, and maintenance. Sessions are held from 10 a.m. to noon at the WSBA office. For more information or to RSVP, contact Julie Salmon at 206-733-5914, 800-945-9722, ext. 5914, or [juliesa@wsba.org](mailto:juliesa@wsba.org).

**Job Seekers Discussion Group**

Looking for a job or making a transition? Join us at the Job Seekers Discussion Group the second Wednesday of each month from noon to 1:30 p.m. The next meeting is January 9 at

the WSBA office. The group discusses where to look for jobs, how to grow your network of contacts, strategies for résumés and cover letters, and how to keep yourself organized and motivated. Exchange information and ideas with other lawyers looking to make a change. Come as you are — no need to RSVP. Bring your business cards and practice networking skills. For more information, call 206-727-8269 or 800-945-9722, ext. 8269, or e-mail [rebeccan@wsba.org](mailto:rebeccan@wsba.org).

**Problem Getting a Client to Pay?**

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](http://www.wsba.org/lawyers/services/adr.htm) or call the ADR coordinator at 206-733-5923 or 800-945-9722, ext. 5923.

**WSBA Ethics Line**

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.

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](http://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.

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## Learn About WSBA's Sections and Committees and the Work They Do

The Washington State Bar Association has sections, standing committees, and boards, which contribute greatly to the work of the Bar.

The current sections are:

- Administrative Law
- Animal Law
- Antitrust, Consumer Protection and Unfair Business Practices
- Business Law
- Construction Law
- Corporate Counsel
- Creditor-Debtor
- Criminal Law
- Dispute Resolution
- Elder Law
- Environmental and Land Use Law
- Family Law
- Health Law
- Indian Law
- Intellectual Property
- International Practice
- Juvenile Law
- Labor and Employment Law
- Legal Assistance to Military Personnel
- Litigation
- Real Property, Probate and Trust
- Senior Lawyers
- Sexual Orientation and Gender Identification Legal Issues
- Solo and Small Practice
- Taxation Law
- World Peace Through Law

The current standing committees and boards are:

- Alternative Dispute Resolution Committee
- Amicus Brief Committee
- Bar Examiners Committee
- Character and Fitness Board
- Civil Rights Committee
- Continuing Legal Education Committee
- Court Rules and Procedures Committee
- Committee for Diversity
- Disciplinary Board
- Editorial Advisory Board
- Judicial Recommendation Committee
- Law Clerk Committee
- Law Office Management Assistance Program (LOMAP) Committee
- Lawyers Assistance Program Committee
- Lawyers' Fund for Client Protection Committee
- Legislative Committee
- MCLE Board
- Pro Bono and Legal Aid Committee
- Professionalism Committee
- Rules of Professional Conduct (RPC) Committee

For 2007 section annual reports and more information on WSBA's sections, visit the sections homepage at [www.wsba.org/lawyers/groups/sections.htm](http://www.wsba.org/lawyers/groups/sections.htm). 2007 committee annual reports and more information on committees can be found at [www.wsba.org/lawyers/groups/committees.htm](http://www.wsba.org/lawyers/groups/committees.htm).

### 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.

### Assistance for Law Students

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

### Learn More About Case-Management Software

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

### Upcoming Board of Governors Meetings

*January 17, Olympia • March 7-8, Tacoma • April 25-26, Spokane*

With the exception of the executive session, Board of Governors meetings are open, and all WSBA members are welcome to attend. RSVPs are appreciated but not required. Contact Donna Sato at 206-727-8244, 800-945-9722, ext. 8244, or [donnas@wsba.org](mailto:donnas@wsba.org). The complete Board of Governors meeting schedule is available on the WSBA website at [www.wsba.org/info/bog/schedule.htm](http://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 2007 was 3.296 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](http://www.wsba.org/media/publications/barnews/usury.htm).

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is proud to announce

**Brooke A. Johnson**

and

**David A. Sanders**

have joined the firm as new associates.

Ms. Johnson is a 2007 graduate from Gonzaga University School of Law. Ms. Johnson's practice will focus on federal taxation, intellectual property, and general business law.

Mr. Sanders is a 2007 graduate from Northwestern University School of Law. Mr. Sanders will focus on general and commercial litigation, personal injury, and appellate practice.

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& PRICE, PLLC**

*Attorneys at Law*

is pleased to announce that

**Jane E. Clark**

has joined the firm.

Ms. Clark's practice focuses on the representation of plaintiffs in medical malpractice, dental malpractice, personal injury, and insurance coverage cases.

Ms. Clark is licensed to practice in Washington, Oregon, England, and Wales and has practiced for 18 years in the area of medical malpractice and personal injury litigation.

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## **MCNAUL EBEL NAWROT & HELGREN PLLC**

is pleased to announce that

**Michelle Gail**

has become a member in the firm.

Michelle Gail's transactional practice will continue to focus on real estate, hospitality, and corporate law.

Her experience includes documenting, negotiating, and closing real estate, hotel, and business transactions across the United States. Ms. Gail has extensive experience with purchase and sale agreements, joint venture agreements, loan documentation, commercial leases, development and management agreements, construction contracts, and architect agreements.

### **MCNAUL EBEL NAWROT & HELGREN PLLC**

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## **SOHA & LANG, P.S.**

is pleased to announce that

**David J. Fisher**

has joined the firm Of Counsel.

The firm is also pleased to announce that

**Matthew A. Miller**

and

**Paul R. Rosner**

have joined the firm as associates.

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### **SOHA & LANG, P.S.**

701 Fifth Avenue, Suite 2400  
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## **VELIKANJE HALVERSON P.C.**

is pleased to announce that

**John W. Huibregtse**

has become an associate of the firm. Mr. Huibregtse recently completed a CPA internship with Alegria & Company and was admitted to the Washington State Bar Association in November 2007. Mr. Huibregtse will practice in the areas of Corporate Law, Business Transactions, Municipal Law, Land Use, and Real Estate Law.

509-248-6030  
[jhuibregtse@vhlegal.com](mailto:jhuibregtse@vhlegal.com)

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### **VELIKANJE HALVERSON P.C.**

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

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

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

### Resigned in Lieu of Disbarment

**William B. Knowles** (WSBA No. 17211, admitted 1987), of Seattle, resigned in lieu of disbarment, effective September 20, 2007. This resignation was based on conduct in 2004 involving two felonies. *William B. Knowles is to be distinguished from William F. Knowles of Seattle.*

In or about June or July 2004, Mr. Knowles engaged in sexually related communications over the Internet with someone he believed to be a 14-year-old girl from Portland, Oregon. Mr. Knowles arranged over the Internet to meet with this individual for the purposes of engaging in sexual activity and traveled from Seattle to Portland for this encounter. Unbeknownst to him, the person with whom he had been communicating was an FBI agent, not a 14-year-old girl. In July 2004, Mr. Knowles was arrested in Portland at the location where the meeting had been arranged. Mr. Knowles was charged with violating 18 U.S.C. § 2422(b) (Coercion and Enticement) and 18 U.S.C. § 2423(b) (Interstate Travel with the Intent to Engage in Sex with a Minor), both of which are felonies. In August 2007, a jury found him guilty on both counts.

Mr. Knowles closed his law practice in July 2004 after his arrest. Two of Mr. Knowles's remaining clients at the time had hired him to represent them in employment matters. Mr. Knowles did not perform the specified services according

to his fee agreement with each client and failed to refund unearned fees to these clients after his law firm closed. A third remaining client had hired Mr. Knowles to appeal a whistleblower complaint against his employer to the Merit Systems Protection Board. During the time Mr. Knowles represented this client, the client did not receive any billing statements or any indication of the time Mr. Knowles had spent on his case or how much of the fee had been expended.

Mr. Knowles's conduct violated former RPC 1.4, requiring a lawyer to keep a client reasonably informed about the status of a matter, to promptly comply with reasonable requests for information, and to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; former RPC 1.5(a), requiring a lawyer's fee to be reasonable; former RPC 1.15(d), requiring a lawyer to take steps to the extent reasonably practicable to protect a client's interests upon termination of representation; RPC 8.4(b), prohibiting a lawyer from committing a criminal act (here, coercion and enticement and interstate travel with the intent to engage in sex with a minor) that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects; RPC 8.4(i), which prohibits a lawyer from, *inter alia*, committing any act which reflects disregard for the rule of law, whether the same be committed in the course of his or her conduct as a lawyer.

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

### Disbarred

**Shane C. Han** (WSBA No. 30466, admitted 2000), of Burnaby, British Columbia, was disbarred, effective August 16, 2007, by order of the Washington State Supreme Court following a hearing.

Between November 2000 and January 2003, Mr. Han engaged in the following conduct giving rise to the discipline:

- Charging unreasonable fees to two clients, one of which was a "shell" corporation formed by Mr. Han and associates in order to give the impression that it was a legitimate corporation pursuing public interest lawsuits;
- Bringing California Unfair Competition Law (UCL) lawsuits without merit and

where there was no basis to do so, defrauding UCL defendants in order to generate income for himself and his law group, engaging in a course of conduct that involved dishonesty, and making numerous misrepresentations to UCL defendants during the course of the UCL litigation;

- Filing lawsuits on behalf of a client without authorization to do so and failing to pay over funds received in connection with lawsuits filed on behalf of two clients as named plaintiffs;
- Engaging in conduct demonstrating unfitness to practice law by developing and carrying out a "game plan," which involved the manipulation of the legal system for his own personal gain; and
- Practicing law in California prior to his admission to the California Bar.

Mr. Han's conduct violated RPC 1.5(a), requiring that a lawyer's fee be reasonable; RPC 3.1, prohibiting a lawyer from bringing or defending a proceeding, or asserting or controverting an issue therein, unless there is a basis in law and fact for doing so that is not frivolous; RPC 4.1, prohibiting a lawyer, in the course of representing a client, from knowingly making a false statement of material fact or law to a third person or failing to disclose a material fact when disclosure is necessary to avoid assisting in a criminal or fraudulent act by a client; RPC 5.5, prohibiting a lawyer from engaging in the unauthorized practice of law or assisting another to do so; RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; RPC 8.4(d), prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice; 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; and RPC 8.4(n), prohibiting a lawyer from engaging in conduct demonstrating unfitness to practice law.

Debra Jo Slater and Kathleen A.T. Dassel represented the Bar Association. Mr. Han represented himself. Julian C. Dewell was the hearing officer.

### Disbarred

**Joel Santos Manalang** (WSBA No. 26675, admitted 1997), of Seattle, was disbarred,

effective August 15, 2007, by order of the Washington State Supreme Court following a default hearing. This discipline resulted from conduct involving money laundering, perpetration of fraud, and conflicts of interest.

Mr. Manalang operated an escrow business in connection with his law practice, using his trust account for closing deposits and disbursements. In September 2003, in connection with an escrow transaction, Mr. Manalang accepted \$176,600 in currency on behalf of a client for a down payment to purchase a residence. A mortgage broker, TL, made arrangements for the transaction and delivered the currency to Mr. Manalang in a shoe box. Mr. Manalang deposited the currency into his trust account and wrote a check for the down payment. Mr. Manalang knew the currency was proceeds from illegal drug transactions and he did not file a federal Form 8300, Report of Cash Payments Over \$10,000, for the transaction. In May 2005, federal agents contacted Mr. Manalang and explained that the use of Form 8300 applies to law firms, escrow accounts, and real estate transactions. In late summer 2005, TL delivered several hundred thousand dollars in currency to Mr. Manalang in duffle bags in connection with another real estate purchase. Mr. Manalang did not create records regarding receipt of the currency nor deposit it into his trust account, instead storing it in his home for several weeks. Mr. Manalang knew the currency, estimated to be \$600,000, was proceeds from illegal drug transactions and he did not file a federal Form 8300 regarding his receipt of the cash. Over time, Mr. Manalang returned all of the funds to TL, as no real estate transaction took place. In August 2006, Mr. Manalang pled guilty to one count of money laundering in violation of Title 18, USC §1956(a)(1)(b)(i) and (ii), which is a felony.

In late 2002, the home of Mr. and Mrs. K was in foreclosure proceedings. English was a second language for them, and their primary source of income was Social Security payments. Mr. and Mrs. K located mortgage broker TL and spoke with him about getting a loan to protect their home from foreclosure. Documents were represented to Mrs. K by TL as being loan documents, but were actually sale documents transferring their residence to TL and his wife (collectively TL) for a purported purchase price of \$230,000. At the time, Mr.

and Mrs. K owed approximately \$147,000 in two mortgage loans to their bank. Mr. Manalang handled the closing escrow. At the request of TL, Mr. Manalang prepared two sets of closing settlement statements. The first set was given to TL's lender and provided that Mr. and Mrs. K would receive \$69,050.10 from TL as a purchase payment. Mr. Manalang signed a statement dated March 23, 2003, certifying: "The Settlement Statement which I have prepared is a true and accurate account of funds received and funds disbursed or to be disbursed in this transaction." The second set showed a line item of "Seller Contribution to Closing" of \$69,000 from Mr. and Mrs. K, in essence "giving" their equity in the property to TL, and showing an amount due from the "Seller" of \$823.11. Mr. Manalang disbursed the funds in accordance with the second closing statement. Mr. and Mrs. K were unable to make their required payments to TL, which they understood were loan payments, but TL denominated as rent. After TL sued Mr. and Mrs. K for unlawful detainer, they brought suit against TL and the mortgage company where he was employed, claiming violations of the Consumer Protection Act, Mortgage Broker Practices Act, and other fraudulent acts. The matter was settled in February 2006 through TL's payment to Mr. and Mrs. K of \$70,000, plus attorney's fees, and deeding the home back to Mr. and Mrs. K.

Mr. Manalang's conduct violated RPC 1.2(d), prohibiting a lawyer from counseling a client to engage, or assisting a client, in conduct that the lawyer knows is criminal or fraudulent; RPC 1.7, prohibiting a lawyer from representing a client if the representation will be materially limited by the lawyer's responsibilities to another client, a third person, or the lawyer's own interests, unless the lawyer reasonably believes the representation will not adversely affect the relationship with the other client, and each client consents in writing after consultation and a full disclosure of the material facts; RPC 4.1(a), prohibiting a lawyer, in the course of representing a client, from knowingly making a false statement of material fact or law to a third person; RPC 8.4(b), prohibiting a lawyer from committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects; RPC 8.4(c), prohibiting a lawyer from engaging in conduct

involving dishonesty, fraud, deceit, or misrepresentation; RPC 8.4(d), prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice; and RPC 8.4(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.

Nancy B. Miller represented the Bar Association. Mr. Manalang did not appear either in person or through counsel. Octavia Y. Hathaway was the hearing officer.

## Disbarred

**Dale L. Raugust** (WSBA No. 6904, admitted 1976), of Spokane Valley, was disbarred, effective July 18, 2007, by order of the Washington State Supreme Court following approval of a stipulation by the Disciplinary Board. This discipline was based on conduct involving false claims made during an investigation in order to avoid disciplinary action.

In January 2004, Mr. Raugust agreed to prepare, file, and serve a response to a petition for dissolution that had been served on his client. It was understood that the response would be filed as a *pro se* pleading and that Mr. Raugust would not appear in the proceeding on the client's behalf. Mr. Raugust prepared a response, but the client did not come to Mr. Raugust's office to sign the response. Thus, the response was not timely filed and served. In February, an order of default was entered.

In October 2005, the client filed a grievance alleging that Mr. Raugust failed to inform him that he needed to come to his office to sign the response to the petition. In Mr. Raugust's written response to the grievance, he claimed that after preparing the response to the petition for dissolution, he instructed his assistant to telephone the client on a daily basis to notify him that he needed to come to the office to sign the response. He also included with his response a copy of a letter dated February 9, 2004, that he claimed to have sent to the client. In fact, Mr. Raugust created the letter in October 2005.

In January 2006, Disciplinary Counsel sent a request to Mr. Raugust for (1) the address and telephone number of his assistant; (2) a detailed description of the procedures used in attempting to contact the client; and (3) a copy of Mr. Raugust's client file. In a written response in Febru-

ary, Mr. Raugust described certain office procedures that he claimed to have had in place at the time he prepared the client's response to the petition for dissolution and repeated the claim that he had sent a letter to the client. Mr. Raugust provided a copy of what he claimed was his entire client file. That file contained another copy of the letter dated February 9, 2004, that Mr. Raugust claimed to have sent to the client. In February 2006, the Bar Association investigator interviewed Mr. Raugust at his office. When asked about office procedures, Mr. Raugust showed the investigator an "Employee Handbook of Office Procedures" and directed her attention to Section 2.D under the heading "Receptionist's Job Duties." This section described a procedure for contacting clients who need to sign documents. Mr. Raugust told the investigator that this section had been in his "Employee Handbook of Office Procedures" since February 2001, when in fact it was created by Mr. Raugust a few days before the interview and in anticipation of that interview.

Mr. Raugust's conduct violated RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; RPC 8.4(d), prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice; and RPC 8.4(l), prohibiting a lawyer from violating a duty or sanction imposed by or under the Rules for Enforcement of Lawyer Conduct in connection with a disciplinary matter.

Scott G. Busby represented the Bar Association. Mr. Raugust represented himself.

## Disbarred

**Tracy Montgomery Shier** (WSBA No. 12827, admitted 1982), of Seattle, was disbarred, effective October 4, 2007, by order of the Washington State Supreme Court following a hearing by the Disciplinary Board.

Between February 1999 and July 2003, Mr. Shier engaged in the following conduct which gave rise to the discipline:

- Disbursed approximately \$59,953 from a charitable remainder trust, of which Mr. Shier was trustee, and converted the funds for his own use;
- Disbursed approximately \$39,000 of a client's escrow funds from his trust account and converted the funds for

his own use; and

- Failed to maintain complete and adequate trust account records.

Mr. Shier's conduct violated former 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 maintained as set forth in the rules and that no funds belonging to the lawyer or law firm be deposited therein; former RPC 1.14(b)(3), requiring a lawyer to maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his or her client regarding them; former RPC 1.14(d), stating that escrow and other funds held by a lawyer incident to the closing of any real estate or personal property transaction are client funds subject to this rule regardless of whether the lawyer, law firm, or the parties view the funds as belonging to the clients or non-clients; RPC 8.4(b), prohibiting a lawyer from committing a criminal act (here, theft) that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects; RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and RPC 8.4(i), prohibiting a lawyer from committing any act involving moral turpitude, or corruption, or any unjustified act of assault or other act which reflects disregard for the rule of law.

Francesca D'Angelo represented the Bar Association. Leland G. Ripley represented Mr. Shier. David A. Summers was the hearing officer.

## Disbarred

**Darin H. Spang** (WSBA No. 30359, admitted 2000), of Selah, was disbarred, effective August 15, 2007, by order of the Washington State Supreme Court following a hearing. This discipline was based on conduct between October 2004 and July 2005 in two matters involving lack of diligence, misappropriation of funds, and misrepresentation.

In October 2004, Mr. Spang agreed to represent a client in a municipal court matter. Mr. Spang did not execute a written fee agreement with the client, but asked her to pay him in cash. The client paid Mr. Spang \$250 in cash, which he

deposited into his law firm's general account and wrote a "Receipt for Funds." Mr. Spang filed a notice of appearance on behalf of the client and made at least five court appearances with the client. At some or all of those appearances, the client made additional cash payments for legal services. Mr. Spang appropriated the funds for his own use instead of paying them over to the firm. In April and July 2005, the client made cash payments to Mr. Spang's associate and legal assistant, who each gave the cash to Mr. Spang. In both instances, Mr. Spang appropriated the cash payments for his own use instead of paying them over to the firm.

In May 2005, Mr. Spang agreed to prepare and file a motion on behalf of a client to bifurcate a bankruptcy into two separate cases and to convert the client's bankruptcy case into a Chapter 7 bankruptcy. Mr. Spang did not execute a written fee agreement with the client, but asked her to pay him in cash. Between June and July 2005, the client made several cash payments to Mr. Spang at his request for legal services and expenses "for filing fees and amendments." Mr. Spang appropriated these funds for his own use instead of paying them over to the firm or paying filing fees. In July, the firm terminated Mr. Spang's employment. Other than a notice of appearance, Mr. Spang had filed nothing in the client's bankruptcy case and never refunded any of the money the client had paid to him.

Mr. Spang's conduct violated RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; former RPC 1.14(a), requiring that all funds paid to a lawyer or law firm be deposited into one or more identifiable interest-bearing trust accounts maintained as set forth in the rules, and no funds belonging to the lawyer or law firm be deposited therein; former RPC 1.15(d), requiring a lawyer, when withdrawing from the representation of a client, to take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, etc.; RPC 3.2, requiring a lawyer to make reasonable efforts to expedite litigation consistent with the interests of the client; RPC 8.4(b), prohibiting a lawyer from committing a criminal act (here, theft) that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in

other respects; RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and RPC 8.4(i), prohibiting a lawyer from committing any act involving moral turpitude, or corruption.

Scott G. Busby represented the Bar Association. Mr. Spang represented himself. Erik S. Bakke Sr. was the hearing officer.

## Suspended

**Michael A. Cartelli** (WSBA No. 19710, admitted 1990), of Arcadia, California, was suspended for 90 days, effective July 6, 2007, by order of the Washington State Supreme Court imposing reciprocal discipline in accordance with an order of the Supreme Court of the State of California following approval of a stipulation. This discipline is based on conduct involving failure to promptly disburse settlement proceeds. For more information, see *California Bar Journal* (August 2007), available at [www.calbar.org](http://www.calbar.org).

Mr. Cartelli's conduct violated California Rules of Professional Conduct, Rule 4-100(B)(4), which requires an attorney to promptly pay or deliver, as requested by the client, any funds, securities, or other properties in the possession of the member which the client is entitled to receive.

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

## Suspended

**John L. Meader** (WSBA No. 14672, admitted 1984), of Camas, was suspended for six months, effective October 18, 2007, by order of the Washington State Supreme Court following approval of a stipulation by the Disciplinary Board. This discipline resulted from conduct involving the filing of improper attorney liens.

Between January 2004 and July 2005, to secure payment of attorney fees owed by clients in six different dissolution matters, Mr. Meader filed notices of attorney's liens against the real property of clients, of clients and their spouses, and of third persons in violation of RCW 60.40.010. By filing the liens, Mr. Meader engaged in the following conduct which gave rise to the discipline:

- Violated the order of the Clark County Superior Court prohibiting the encum-

brance of a client's property, thereby impeding the dissolution proceedings;

- Encumbered real property of a client's former spouse in one matter and, in two other matters, encumbered real property owned by third persons in order to obtain fees owed by clients; and
- Filed a lien on, and acquired an interest in, the marital home of a client, which was the subject matter of the litigation.

Mr. Meader's conduct violated former RPC 1.8(j), prohibiting a lawyer from acquiring a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may acquire a lien granted by law to secure the lawyer's fees and expenses and contract with a client for a reasonable contingent fee in a civil case; RPC 3.4(c), prohibiting a lawyer from knowingly disobeying an obligation under the rules of a tribunal; former RPC 4.4, prohibiting a lawyer in the course of representing a client from using means that have no substantial purpose other than to embarrass, delay, or burden a third person; and RPC 8.4(d), prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice.

Kathleen A.T. Dassel represented the Bar Association. Mr. Meader represented himself.

## Suspended

**John A. Walsh** (WSBA No. 20603, admitted 1991), of Bellevue, was suspended for eight months, effective July 18, 2007, by order of the Washington State Supreme Court following approval of a stipulation by the Disciplinary Board. This discipline was based on conduct involving lack of communication, charging unreasonable fees, and conflicts of interest. *John A. Walsh is to be distinguished from John P. Walsh of Seattle.*

**Matter 1.** In August 2004, Mr. Walsh was hired to represent a client who had been booked into jail on suspicion of violating a no-contact order. The client's father gave Mr. Walsh his credit card number, to which Mr. Walsh charged his \$5,000 fee. Mr. Walsh did not tell the client's father that the fee was non-refundable or that there would be additional fees should the case go to trial. Mr. Walsh never attempted

to communicate with the client about his fee or billing practices. When Mr. Walsh learned that no charges had been filed and that the client would be released from jail, Mr. Walsh met with the client's father at the courthouse and had him sign a written fee agreement providing that the \$5,000 paid was a "retainer" and "non-refundable fee earned upon receipt." In the course of the representation, Mr. Walsh answered phone calls from the client's family, but never met with the client and spoke with him only once, which was by telephone. During that one phone call, the client requested that Mr. Walsh assist him in getting the no-contact order with his wife lifted. Mr. Walsh advised the client to stay away from his wife, but made no attempt to get the order lifted. No further work was done on the case. Mr. Walsh refused to refund any part of the \$5,000 fee.

**Matter 2.** In July 2004, a client hired Mr. Walsh to represent her following an altercation with her husband on a U.S. military base. Mr. Walsh told the client that he would represent her for \$2,000. In October 2004, the client was charged in U.S. District Court with a misdemeanor assault for scratching her husband. By the time the charge was filed, the client's husband had been deployed to Iraq. In a written statement he made before his deployment, the client's husband stated that the scratches he incurred were "purely accidental." The morning of the client's arraignment in December 2004, Mr. Walsh provided her with a written fee agreement indicating that the \$2,000 he had already received was a "non-refundable fee earned upon receipt." The terms of the fee agreement, which had not been communicated to the client prior to that day, also indicated that additional fees would be necessary should the case go to trial. The client signed the agreement before going into the courtroom. Mr. Walsh advised the client of her options. He did not include dismissal as an option. When she informed him that she wished to get the matter resolved quickly, Mr. Walsh did not explain to her the government's speedy trial limitation or the evidentiary problems that existed in the case. The client pleaded guilty at arraignment rather than setting the case for trial. The court appointed the federal public defender to represent the client in post-conviction proceedings, and she filed a stipulated motion with the assistant United States attorney to vacate the judg-

ment and dismiss the charges.

**Matter 3.** In August 2005, an individual charged with a Hit and Run Unattended hired Mr. Walsh to represent him. The client's mother delivered to Mr. Walsh a check from her son for \$900 to cover the representation. Just before leaving his office, Mr. Walsh had the client's mother sign a fee agreement that provided for a \$4,000 "non-refundable fee earned upon receipt" on a line above the words "Third Party/Guarantor." In September 2005, while in court with Mr. Walsh's associate, the client signed the fee agreement on a line above the word "client." Neither the client nor his mother was given a copy of the fee agreement. Mr. Walsh never consulted with the client about obligating the client's mother to pay his legal fee, and the client never agreed to such an arrangement. In November 2005, Mr. Walsh telephoned the client's mother several times to demand that she pay her son's legal fee and threatened to sue her if she did not. Shortly thereafter, Mr. Walsh signed a complaint form alleging Breach of Contract against the client's mother and caused the complaint to be served on her, although the complaint was never filed.

Mr. Walsh's conduct violated RPC 1.4(b), requiring a lawyer to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; RPC 1.5(a), requiring that a lawyer's fee be reasonable; RPC 1.5(b), requiring that when a lawyer has not regularly represented a client, or if the fee agreement is substantially different than that previously used by the parties, the basis or rate of the fee or factors involved in determining the charges for legal services and the lawyer's billing practices shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation; RPC 1.8 (f)(1), prohibiting a lawyer from accepting compensation for representing a client from one other than the client unless (1) the client consents after consultation; (2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and (3) information relating to the representation of the client is protected as required by the rules.

Robert B. Gould and Scott G. Busby represented the Bar Association. Kurt

M. Bulmer represented Mr. Walsh. Lee Grochmal was the hearing officer.

### Suspended

**Daniel S. Wittenberg** (WSBA No. 36518, admitted 2005), of Denver, Colorado, was suspended for 90 days by order of the Washington State Supreme Court imposing reciprocal discipline in accordance with an order of the Supreme Court of the State of Colorado following approval of a stipulation. This discipline was based on conduct involving the submission of a false expense report. For more information, see the Colorado Supreme Court Summary *Wittenberg, Conditional Admission* (under June 2007) available at [www.coloradosupremecourt.com/pdj/pdj.htm](http://www.coloradosupremecourt.com/pdj/pdj.htm).

Mr. Wittenberg violated Colorado's RPC 8.4(c), stating that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

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

### Reprimanded

**Palmer A. Hoovestal** (WSBA No. 19575, admitted 1990), of Helena, Montana, was ordered to receive a reprimand, entered August 7, 2007, by order of the Washington State Supreme Court imposing reciprocal discipline in accordance with an order of the Supreme Court of the State of Montana. This discipline was based on conduct in 2003 that involved making misrepresentations to a tribunal and falsifying evidence in a matter. For more information, see *Montana Lawyer, Discipline* (June 2007), available at [www.montanabar.org](http://www.montanabar.org).

Mr. Hoovestal's conduct violated Montana RPC 3.3, requiring a lawyer to act with candor toward the tribunal; Montana RPC 3.4(b), prohibiting a lawyer from falsifying evidence, counseling or assisting a witness to testify falsely, or offering an inducement to a witness that is prohibited by law; Montana RPC 4.1(a), prohibiting a lawyer, in the course of representing a client, from making a false statement of material fact or law to a third person; Montana RPC 8.1, prohibiting a lawyer in connection with a disciplinary matter from knowingly making a false statement of material fact or failing to disclose a fact

necessary to correct a misapprehension known by the person to have arisen in the matter; and Montana RPC 8.4, making it professional misconduct for a lawyer to violate or attempt to violate the Rules of Professional Conduct or to induce another to do so; to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects; to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation; to engage in conduct that is prejudicial to the administration of justice; to state or imply an ability to influence improperly a government agency or official or achieve results by means that violate the Rules of Professional Conduct or other law; or to knowingly assist a judge or judicial official in conduct that is a violation of applicable code of judicial conduct or other law.

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

### Reprimanded

**Charles A. Kimbrough** (WSBA No. 134, admitted 1965), of Bellevue, was ordered to receive four reprimands on January 10, 2007, by order of the hearing officer. This discipline was based on conduct involving lack of diligence in a client matter, failure to communicate, misrepresentations to a client, and non-cooperation in a Bar Association investigation.

Between 1999 and 2005, Mr. Kimbrough engaged in the following conduct while representing a client in an employment discrimination matter:

- Negligently failing to provide the opposing party's counsel with a signed settlement and release agreement, and failing to finalize a settlement with the opposing party before the case was dismissed;
- Negligently failing to keep his client reasonably apprised of the status of the case, including that it had been dismissed without prejudice and before the settlement was finalized;
- Negligently misleading his client into believing that the settlement had been finalized when it had not; and
- Negligently failing to timely respond to the grievance subsequently filed by the client with the Bar Association.

Mr. Kimbrough's conduct violated RPC 1.3, requiring a lawyer to act with

reasonable diligence and promptness in representing a client; former RPC 1.4(a), requiring a lawyer to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information; RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and RPC 8.4(l), prohibiting a lawyer from violating a duty or sanction imposed by or under the Rules for Enforcement of Lawyer Conduct in connection with a disciplinary matter (here, ELC 5.3(e)).

Michael D. Hunsinger represented the Bar Association. Leland G. Ripley represented Mr. Kimbrough. William S. Bailey was the hearing officer.

### Reprimanded

**Patrick J. Leahy** (WSBA No. 10912, admitted 1980), of Tacoma, was ordered to receive a reprimand on September 12, 2007, following a stipulation approved by a hearing officer. This discipline was based on conduct in 2006 involving deceptive conduct.

In July 2006, Mr. Leahy called the home of an individual (KB) who had been in an automobile accident while driving her parents' car. Mr. Leahy asked for KB, identified himself as Patrick Leahy, and said he was a representative of her parents' insurer. In fact, Mr. Leahy represented the driver of the other car involved in the accident. Mr. Leahy also told KB that he had some documents he wanted to deliver the next day and asked when would be a good time to have them delivered. The documents to which he was referring were a summons and complaint instituting a lawsuit against KB and her parents based on the accident.

KB asked Mr. Leahy to hold on and got her mother. At that point, KB's mother knew Mr. Leahy was not an agent of the insurance company, that he represented the other driver in the auto accident involving her daughter, that negotiations had broken down, and that they might be sued. She questioned Mr. Leahy about his identity. He again identified himself as Patrick Leahy from their insurer and asked whether anyone would be home the next day to receive some documents. KB's mother asked Mr. Leahy about his relationship to the documents, to which he eventually answered by stating that he

was working with a process server. When asked if he was a lawyer, Mr. Leahy said no. Mr. Leahy eventually hung up. KB and her parents were served with a summons and complaint by a process server in late August 2006.

Mr. Leahy's conduct violated RPC 4.1(a), prohibiting a lawyer, in the course of representing a client, from knowingly making a false statement of material fact or law to a third person; and RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

Joanne S. Abelson represented the Bar Association. Leland G. Ripley represented Mr. Leahy. William S. Bailey was the hearing officer.

### Reprimanded

**David M. Simmonds** (WSBA No. 6994, admitted 1976), of Redmond, was ordered to receive a reprimand on June 15, 2007, following approval of a stipulation by a hearing officer. This discipline is based on conduct involving dishonesty, fraud, deceit, or misrepresentation.

In 1999, Mr. Simmonds bought a diamond ring and setting for \$118,300. With Mr. Simmonds's knowledge and agreement, the Bellevue jeweler used an Ohio address for "shipment" on the receipt to avoid payment of sales tax of \$10,410.40, but the jewelry was not shipped out of state.

Mr. Simmonds sued the jeweler in 2002, after he received a report indicating that the diamond was of an inferior grade. The suit was dismissed with prejudice in August 2004 and Mr. Simmonds appealed the Superior Court decision. In September 2005, during oral argument, an appellate judge asked whether Mr. Simmonds had reported the failure to pay tax to the Bar Association or made any subsequent payment of tax to the State Department of Revenue after the 1999 purchase. Mr. Simmonds paid tax to the Department of Revenue and reported nonpayment of sales tax to the Bar Association on September 29, 2005.

Mr. Simmonds's conduct violated former RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

Nancy B. Miller represented the Bar Association. Mr. Simmonds represented himself.

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partners, who are leaders in their field and who would have a portable book of business. Quid Pro Quo delivers discreet highly personalized service. You may contact, in confidence, Jean Seidler Thompson, Esq. at [JT@QPQLegal.com](mailto:JT@QPQLegal.com) or 206-224-8270.

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# Author, Author!

*You provide the raw material for our stories*



**WSBA Bar News Editor  
Michael Heatherly**

**T**hink of *Bar News* as a car factory. At a car factory (and I will admit here that my knowledge of car factories is pretty much limited to what I have seen in cartoons), gargantuan loads of steel, glass, and plastic roll in one end; and shiny Ford Mustangs roll out the other. For all the factory's technological wizardry, it can produce nothing without raw materials.

Likewise, for all our wizardry at *Bar News*, we can produce nothing without raw materials. And the only raw materials we have to work with are ink, paper, words, and pictures. The printers round up the ink and paper. The editorial and advertising departments are responsible for the words and pictures. It's a big job. Besides the advertisements, announcements, columns, and informational sections, we need to fill 20 pages or so every month with general editorial content. And by "general editorial content," I mean *stories*. Whether they take the form of educational articles, essays, or biographical sketches, I think of them all as stories.

For a 30,000-circulation magazine, we have a small editorial staff. We cannot possibly produce 20 pages a month of stories on our own. Fortunately, we are blessed with a few gifted regular contributors, such as Jeff Tolman, Mark Fucile, and Bob Cumbow. In addition, we receive a slow but fairly steady stream of educational and informational pieces from law professors, judges, and other experts in various fields. These nuts-and-bolts articles form the backbone of our editorial content and are an important service to our readers.

However, as I alluded to in my column last month, we are committed to broadening the range of content in *Bar News*. In particular, we wish to incorporate more stories from the realm generally labeled

as "human interest." Although the term is dated, it describes exactly what we're looking for: stories focusing on the many interesting human aspects of our professional and personal lives.

I suspect that every WSBA member has at least one great story to tell. If we could get just one or two of you to send us a story each month, we would be well on our way to making *Bar News* an even better read. I am inviting — no, challenging — you to do just that.

Your story need not be an epic. In fact, for the love of *Beowulf*, please do not send an epic. A well-written piece of 750 to 1,500 words (one or two pages in print) is ideal. Reality TV, blogs, and YouTube have shrunk our attention spans. We are more likely to read something we can finish in one short sitting. Also, your story need not be in standard narrative form. For example, an interview in Q&A format is easier to write and read. Likewise, a tidy piece on "10 Things I Have Learned from My Clients About Human Nature" will be read, while "I Am Now Going to Recite All the Facts from My Illustrious Career" will not.

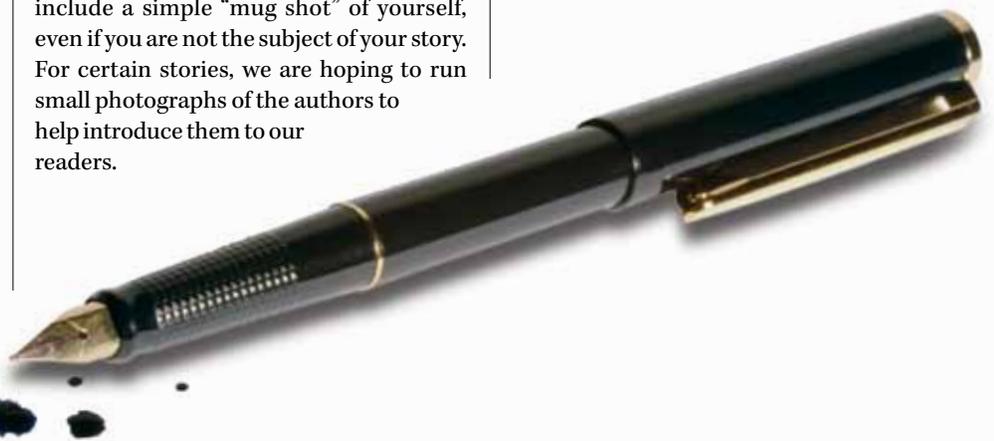
Another result of our TV- and Internet-obsessed society is that people expect pictures with their words. Preferably, your submitted story will be accompanied by a pertinent photograph or two. This can include a simple "mug shot" of yourself, even if you are not the subject of your story. For certain stories, we are hoping to run small photographs of the authors to help introduce them to our readers.

I began this column by comparing *Bar News* to an automobile factory. One unfortunate difference between us and the Ford Motor Company is that we have no budget to pay for our raw materials. All we have to offer is the opportunity to share your story with 30,000 of your colleagues. There is something to be said for that, though, isn't there? Besides getting a few proverbial pats on the back, you'll get your name out there among your peers in a positive light, which never hurts.

If you have a story idea, the best approach is to e-mail me a brief pitch at [barnewseditor@wsba.org](mailto:barnewseditor@wsba.org). I will read it and give you my feedback. It is always helpful to discuss a story idea before you begin investing your time in writing it. Nevertheless, if you have a piece already written, send it along. I look forward to hearing from you. ☺

---

*Bar News Editor Michael Heatherly practices in Bellingham and can be reached at 360-312-5156 or [barnewseditor@wsba.org](mailto:barnewseditor@wsba.org).*



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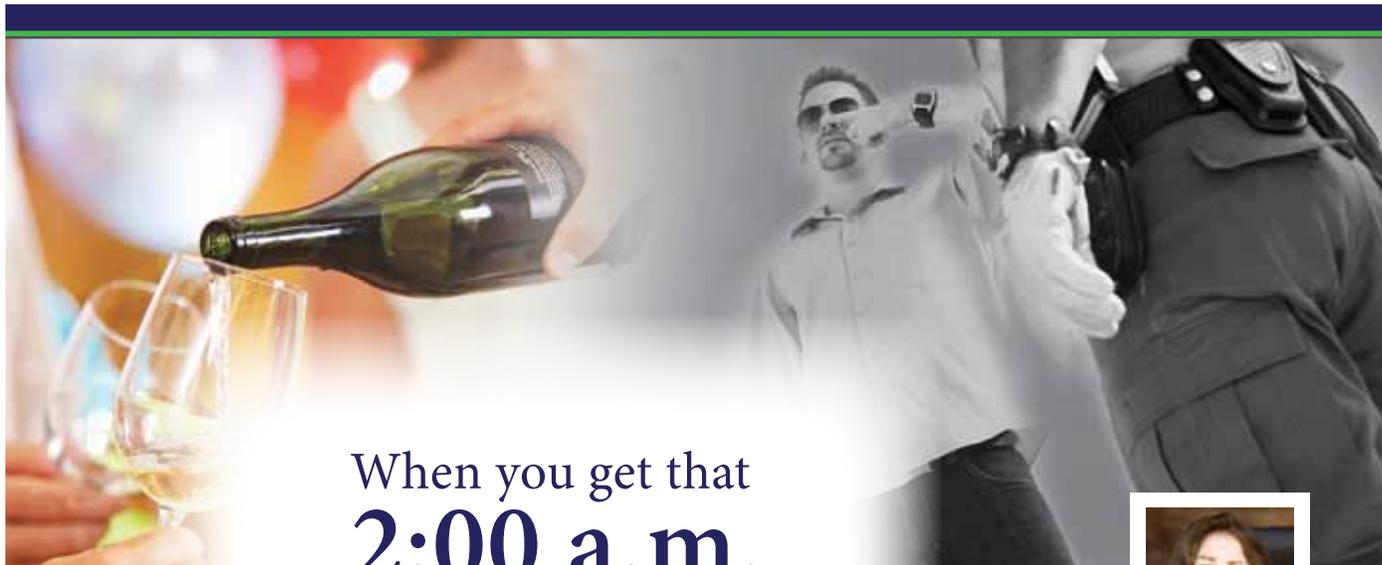
Washington's strict DUI laws can have a devastating effect on lives, even for first-time offenders. That's why anyone accused of a DUI needs the most tenacious and innovative defense lawyer around. They need a defense team that explores every avenue and relentlessly pursues every option. At Fox Bowman Duarte, we've successfully defended thousands of DUI cases. And our eight lawyers have accumulated more than 100 years of DUI litigation experience. Fox Bowman Duarte. Put your clients in the best of hands. Ours. To find out more visit [foxbowmanduarte.com](http://foxbowmanduarte.com).

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When you get that  
**2:00 a.m.**  
 call from your client  
 will you know  
 what to say?

You know that DUI law and science are forever evolving and that you have probably not kept up with the the latest changes. Wrong advice at this critical moment could irreparably harm your caller's case, their career, their life. This caller, your client, family member, or friend, needs a lawyer skilled in the science of breath and field sobriety testing, as well as DUI law. Ms. Callahan is that lawyer.

Trained by the DataMaster manufacturer, certified to administer field sobriety tests, she is a frequent speaker at CLEs relating to DUI defense. Thomson-West selected her to author the *DUI Handbook* for Washington, and a chapter on *DUI Scientific Evidence* in a forthcoming treatise, *Inside the Minds*. Ms. Callahan is also the author of *The DUI Book, Washington Edition*, to be released in 2008.

Ms. Callahan and her associate Keith Hall have received overwhelmingly favorable reviews from clients as posted on the firm's website. Ted Vosk, of Counsel to Callahan Law has distinguished himself as one of the most brilliant lawyers of our generation, taking the lead in the recent challenge to the irregularities in the procedures of the state toxicology lab.

Callahan Law brings more than basics to the bar; they bring innovation, creativity, and talent combined with aggressive advocacy. They are inspired to render the most important service one can give: peace of mind and full confidence in the lawyer's skill, experience and diligence. Everyone at Callahan Law is devoted to providing extraordinary service, and focused on seeking winning strategies for every case. Entrust your caller to Callahan Law, where your call will be answered 24/7/365.



Linda M. Callahan  
*Principal*



Keith R. Hall  
*Associate*



Ted W. Vosk  
*Of Counsel*



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