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Most-cited case

In the interest of accuracy, Thorndike v. Hesperian Orchards is not the most cited decision of the Washington Supreme Court [”Parrish v. West Coast Hotel Co. — Did This Washington Case Cause the Famous ‘Switch in time That Saved Nine?’,” December 2010 Bar News]. As of December 1, a Westlaw search shows that case has been cited in 499 decisions. State ex rel. Carroll v. Junker has been cited in 1,044 decisions.

Kelly Kunsch, Seattle University School of Law

Keller Deduction

The Arbitrator’s ruling on my 2010 Keller deduction challenge: “Mandatory dues were spent by the WSBA in deciding to co-sponsor the ABA Resolution re Repeal of Federal Ban on Extending Benefits to Lawfully Married Same Sex Marriages... such decision by WSBA constitutes political or ideological activity and that such support was not reasonably related to the regulation of the legal profession nor improving the quality of legal services.” Sound familiar? It should, because I told you last year in a letter to the Bar News editor that the WSBA had violated my constitutional rights by spending my money on the exact same political and ideological activity. Even though the WSBA was on notice of their violation in June, 2009, with the Arbitrator’s ruling on my 2009 Keller deduction challenge, they proceeded to trample on my rights again with their actions in July 2009.

Arbitrator’s 2010 ruling: “The WSBA Statement/Brief... suggests a reasonable comparison between the WSBA actions here and civil rights directives issued by Presidents Johnson and Obama. These comparisons fail. Presidents are supposed to be political. They need not deal with a Keller case. They most certainly were not trying to finance their goals by using the bar dues of Attorney Rea L. Culwell.”

I urge all members: 1) request your Keller deduction; 2) review the 2010 Keller calculation; and 3) review WSBA’s activities to determine if all non-chargeable activities are included. Protect your right to free speech.

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Fifty years ago, the average annual salary in this country was $5,315; the average house cost $16,500; a postage stamp was four cents; a loaf of bread cost 20 cents and a gallon of gas cost a quarter. The Russian craft Sputnik 5 carried two dogs and several rats and mice into orbit, and returned them safely back to Earth. Kennedy and Nixon met in the first-ever televised presidential debate. To Kill a Mockingbird, by Harper Lee, was published. Popular television shows were The Flintstones, Candid Camera, and The Twilight Zone. Elvis Presley ended his two-year stint in the U.S. Army. Notable movies were Psycho, Spartacus, and The Alamo. And, my personal favorite, The Ohio Art Company launched the Etch A Sketch in time for the holiday season. In Washington state 50 years ago, Stanley Ann Dunham, mother of President Barack Obama, graduated from Mercer Island High School; Washington voters chose Richard Nixon over John F. Kennedy for U.S. President; and Albert Rosellini was elected to a second term as governor.

At the Washington State Bar Association, 40 people passed the winter bar exam and 87 candidates passed the July exam, compared with 355 people passing the February 2010 bar exam and 625 passing the July 2010 exam; and license fees increased from $20 to $25 for members in practice five years or more and fees for members practicing less than five years rose from $10 to $15.

So why am I taking you on this trip down memory lane? Other than the notion that I find these types of facts interesting, I recently had the occasion to reflect on the calendar year 1960 as I was preparing remarks for the Washington State Bar Association’s annual 50-Year Member Tribute Luncheon, which takes place in November. Every year, we have a new group of attorneys who celebrate 50 years as a member of the WSBA. This year, there were 53 such people being honored and, of those, 24 were in attendance with their families, friends, and colleagues. As president of the WSBA, it was my great honor and privilege to preside over this luncheon. In that capacity, I was called upon to make a few opening remarks. I was told by past WSBA presidents that this tribute luncheon was one of the highlights of their presidential year. In preparing my remarks, I kept asking myself, “Why?” What was so significant about this 50-year celebration such that my presidential predecessors would be so affected?

To answer this question, I needed to first determine what it was we were truly celebrating. Were we just acknowledging age and good health? I don’t mean to belittle this as a great basis for a celebration, particularly for those who are being honored. However, for my predecessors to be so touched by this event, I thought there must be more. Undoubtedly, there are multiple reasons as to why this event and tribute are so significant to each of the honorees and the reasons may vary. But why is this celebration so meaningful for the others who are in attendance? Why was this going to be an event whose memory I would cherish above so many other events I would be attending, presiding over, and participating in as president of the Washington State Bar Association?

Upon consideration, I realized this celebration was an opportunity to reflect on 50 years of professional and personal accomplishments and perseverance. It is not often that we sit down and take the time to think about our lives. We are generally too caught up in living those lives and dealing with the issues that life presents us on a daily basis to take such reflection time. However, when we pay tribute to someone for 50 years of his or her life, how can you not take time to ruminate? This tribute luncheon gave these 50-year members just such an opportunity; to reflect and to reminisce with their families, friends, and colleagues.

As I thought more about this, I appreciated that the opportunity to reflect was more than just considering past accomplishments. It was also a time to consider past failures, the lessons learned from them, and how those experiences helped to shape the lives of these honorees and who they ultimately became. This is a celebration of 50 years of living and gaining wisdom and then sharing that with other, perhaps younger, colleagues and friends. This luncheon provided the occasion to
think about and cherish the personal and professional friendships made over the past 50 years and the families raised, the children, grandchildren, and perhaps great-grandchildren.

Those to whom we are paying tribute are also able to reflect on the lives they’ve touched and influenced. They are likely unaware of so many of the people they have influenced; the attendee at a seminar who received some great words of wisdom or practicality from the 50-year member who was one of the presenters, the attorney sitting in the back of the courtroom watching and learning from what he or she observed when this experienced attorney addressed the court or the jury, the young associate who watched how this old pro negotiated a settlement or a contract in a case. The examples can be many.

Just as important as the opportunity to reflect on the past 50 years, this luncheon provides a chance for these honored members to consider what they still have to accomplish in their lives. Many of those who attend are still vibrant members of the legal community and are active in their practices, pro bono activities, bar activities, and community activities. They are not ready to put away their pen and briefcase and merely retire to a warmer climate and a life of travel, golf, shopping, and people-watching. That is one of the perks of the practice of law; we can continue it at some level so long as our minds continue to function. The legal profession provides us unending opportunities to give and to serve others. In this regard, the one constant that is true about everyone celebrating 50 years of membership in the WSBA is that they have spent a lifetime serving others; of being in service. The legal profession provides us unending opportunities to give and to serve others. In this regard, the one constant that is true about everyone celebrating 50 years of membership in the WSBA is that they have spent a lifetime serving others; of being in service.

Those people we celebrate once a year at this tribute luncheon all pursued a career in a profession of which we are all proud. It is a profession that is now and has always been considered honorable. In being in service for 50 years, the honorees have helped many people; they have made a difference — to their clients, their profession, and their communities. These lawyers are unsung heroes, being in service in the trenches, day after day, for 50 years. For many, they have received no acknowledgment until this 50-year member tribute. They have spent a career having to put up with all the bad lawyer jokes and bad press that is showered upon lawyers and have never touted their own horns as to all the good things they have done and continue to do. The first thing we tell new lawyers to do is to get involved with their communities and volunteer their time, energy, and knowledge of the law. Those 50-year honorees received the same advice from their mentors and as the lawyers before them, they got involved and continued to be involved, for 50 years. They got involved in community associations, civic and other volunteer boards, and other grassroots organizations. They gave their time, energy, and legal expertise and they never sought compensation, attention, or praise.

As I mentioned, at the November 2010 50-Year Member Tribute Luncheon, we were honoring 53 people who were celebrating 50 years as members of the Washington State Bar Association. Collectively, that is 2,650 years of lawyering; 2,650 years of serving others and doing honorable work. Those 24 who attended the tribute luncheon earned the right to have an opportunity to reflect and bask in what they have accomplished in their careers. They earned the right to share this celebration with their families, friends, and colleagues, to share their stories and memories, and to be acknowledged.

As for me, I now know why my predecessors as president of the Washington State Bar Association consider this tribute luncheon to be one of the highlights of their presidential year. 🍽

For photos and a recap of the event, see page 28 in this issue.

WSBA President Steven G. Toole can be reached at steve-wsba@stgoolelaw.com or 425-455-1570.
On Being Nice (and Clearing Ice)

traveled to Vancouver, B.C., earlier this fall and as I thumbed through the newspaper one morning during breakfast in the hotel restaurant, the following story grabbed my eye:

Canada needs more people like Kevin Jacobs of Newfoundland, who helped the hungry, isolated people of Hickman’s Harbor through Hurricane Igor in the past few days by organizing a volunteer flotilla and raising $30,000 in aid.

This country in 2010 must cultivate a culture of personal responsibility, and build what David Cameron, the British Prime Minister, calls the “big society,” which he describes as the “biggest, most dramatic redistribution of power from elites to the man and woman on the street.”

The City of Toronto tells its residents each winter to “be nice, clear your ice,” yet it has 6,300 addresses on file of people who cannot. Instead, municipal workers are sent to chop it up and remove it for them. Why must the infirm and aged rely on a city to remove snow and ice from their sidewalks? Where are their neighbours?

The City of Edmonton already has a program encouraging neighbours to shovel snow for neighbours. Snow angels, such people are called. Canada needs more snow angels.... — *The Globe and Mail* (October 1, 2010)

I say I was thumbing through the paper, but this short article actually appeared at the very top of the front page in Canada’s national newspaper. What struck me as I read it was the priority placement of the story: the piece was not only above the fold, it was above the masthead — it was meant to catch one’s attention and there was no missing it.

I, of course, pondered briefly whether I would ever see such a story, or placement of such a story, in a U.S. newspaper, but I was struck more by the paper’s willingness to challenge a nation to be more selfless and concerned for the welfare of others. Then I wondered, is it really that easy? Just put an article in the national newspaper and see the landscape change?

Of course not, and I don’t think the editors of *The Globe and Mail* think that either. But the paper’s action was bold, and it certainly seemed to signal the beginning of a systemic approach intended to reach a vast number of people — and certainly it would get people thinking and talking.

For our own profession, many feel that the rapidly increasing size of the bar and the limitations on personal contact engendered by new technology have weakened the culture of professionalism and civility that the members of the bar once enjoyed. There are many initiatives aimed at helping to reverse this trend, such as WSBA’s Professionalism Outreach Initiative, which is a partnership between the WSBA (through our Professionalism Committee) and the three Washington law schools. Through this affiliation, WSBA staff and volunteers visit each Professional Responsibility class every year at each law school in the state in order to lead a class session on professionalism and civility.

The goals of the program are to join lawyering, professionalism, and legal analysis at the beginning of each student’s career to build a culture of professionalism; establish professionalism as a key element of each lawyer’s practice (the open sky as compared to the relative “floor,” or minimum requirements, as codified in the Rules of Professional Conduct); and develop a long-term connection between the Bar and students by bridging the gap between doctrinal education and the realities of the practice, including legal ethics and professionalism.

In this issue of *Bar News*, you will find the first in a series of articles that will highlight a new initiative to enhance civility in the practice of law sponsored by Robert’s Fund, a small family foundation, and led by Seattle University School of Law Professor Paula Lustbader (see page 27). Topics in upcoming issues will cover areas such as “civility is good for parties, practitioners, the profession and for justice”; “civility and access to justice”; “civility and effective advocacy”; and many others. Like the article in the Canadian newspaper, this series of articles alone will not change the landscape of our profession with respect to heightened esteem and courtesy for each other. But the authors hope that through this series of columns, along with a curriculum for law schools and CLE programs, they will spur discussion on civility within our profession and how we regain more of it, not only in our profession but in society as a whole.

In these difficult times, this conversation takes on even more import, and our profession, which at its core is one of service, is well positioned to engage in this dialogue. And, as Paula Lustbader outlines in her article this month, lawyers are turned to as leaders in our society. I believe, given our role in society as lawyers and the number of lives we touch in any given day, we are uniquely positioned to be the snow angels for change.

Paula Littlewood is the WSBA executive director and can be reached at paualal@wsba.org.
Reconsidering Block-Billing Practices

BY MICHAEL R. CARYL

By now, lawyers today are under greater scrutiny than ever by clients, the media, and popular culture. Clients retain lawyers because they have legal problems — small or large, but often stressful and contentious — and the legal process can be anything but clear, efficient, and predictable. Couple this with the average lay client’s lack of familiarity with the legal process and the result is often confusion, frustration, anger, and disbelief. Disputes over the reasonableness of attorney’s fees and a lawyer’s billing practices often erupt from this context. While the lawyer cannot control the course of litigation or even the client’s sometimes inconsistent goals or plans, the lawyer can control the education of the client as to fees and billing practices. Careful attention to these two matters can avoid most fee disputes. This article is about block billing, one of the best examples of an area where lawyers’ billing practices spawn client confusion, suspicion, discontent — and often fee disputes, bar complaints, and malpractice claims.

Perhaps the most commonly used format for billing of legal services is the block hour. A lawyer’s hourly fee invoice is more apt to be attacked by a client today than at any other time in history. The most common form of attorney hourly billing in Washington and elsewhere is known as “block billing.” Block billing is “the timekeeping method by which each lawyer and legal assistant enters the total daily time spent working on a case, rather than itemizing the time expended on specific tasks.”

The following is an example of the difference between “block billing” and “itemized billing”:

**Block billing**

10/10/2010: Phone conf. with expert Jones; review documents for cross prep; msgs to and from client re files etc.; prepare cross and exhibits for defendant; msgs to and from court.

**Total: 4.0 hours**

**Itemized billing**

10/10/2010: Phone conf. with expert Jones (.4) review documents for cross prep (.8); msgs to and from client re files etc. (.3); prepare cross and exhibits for defendant (2.4); msgs to and from court (.1)

**Total: 4.0 hours**

The practice of block billing has been under attack by academics and consumers now for several decades. As discussed below, courts throughout the country, including federal courts in the Ninth Circuit and Washington state, have expressed disapproval of block billing and have reduced attorneys’ fee awards because of it.

Judges and sophisticated clients are becoming sensitive to the problems inherent with block-billed invoices. These invoices are so prevalent in Washington legal practice today that only a small minority of lawyers actually apportion a day’s legal services by task. While no Washington court has yet addressed whether block billing fails to meet the requirements of RPC 1.5(a) in a published opinion, a slight shift in the views of the Washington bench will expose practitioners to risks of heavily reduced fee awards in fee-shifting determinations of client bills based on blocked invoices.

Virtually every lawyer has block billed, or come across block-billing practices, in his or her career. The method is well-liked by attorneys because it is the fastest and easiest method of recording time. Various tasks for a single client on any given day often run together or overlap, so segregating each item — a phone call, an e-mail, research task, co-counsel meeting, drafting session — each with its own duration, may seem arduous. However, the block-billing method obviously obscures the amount of time spent on each task and exposes the attorney to risks of reduced fee awards in fee-shifting determinations.
and reasonableness of fee assessments. The issue of reasonableness of attorneys’ fees is a factual matter where the lawyer always has the burden of proof. The fact is that the burden of documenting the attorney’s hours is upon the attorney, and evidence must be submitted to support a fee request. A simple list of tasks may no longer cut it.

Trial courts must independently decide what represents a reasonable amount of attorney fees; they may not merely rely on the billing records of the prevailing party’s attorney. Nordstrom, Inc. v. Tampourlos, 107 Wn.2d 735, 744, 733 P.2d 208 (1987). Trial courts must also create an adequate record for review of fee award decisions. Mahler, 135 Wn.2d at 435.

It should become clear that the time-cost of contemporaneously segregating one’s time is very minor, in the face of the substantial benefits and peace of mind earned by attorneys wise enough to adopt the practice. Benefits such as greater assurance of complete fee awards in fee-shifting motions, increased trust from clients and judges that comes with billing transparency, and the upper hand in defending the challenges to the reasonableness of billed fees are all inherent positive by-products of detailed invoices. In cases where attorney’s fees are recoverable for only some of the claims made in a case, the ability to segregate time spent on various claims is absolutely necessary. Conversely, the use of block billing puts attorneys in a weak position with both clients and courts, since their time entries may appear to be nebulous, or even “padded,” because they are vague and impossible to analyze. The legal community would be well advised to consider moving away from the blocked-invoice tradition, especially when the answer is so painless: form the simple habit of segregated time recording.

But the System Is Broken . . .

Many of us go by the phrase, “If it isn’t broken, don’t fix it.” When faced with questions about the efficacy of their block-billing habits, many attorneys predictably invoke this idiom in the hope of avoiding change from a long-established time recording method. Sadly, it does not matter that block billing is “the way it has always been done.” In the coming years, I expect that the obvious weaknesses and potential abuses of block billing will render it a relic of a bygone era, like oral contingency fee agreements and fees based on the size of a probate estate.

The prevalence of block billing derives from its ease of time recording and the way it fulfills an attorney’s short-term billing needs. An attorney who works a given client’s case for three hours may end up performing six or more discrete tasks during that period. To block bill, the lawyer need only list those tasks and then write a “3” in his day-planner or electronic time recorder to block bill his time. This allows the lawyer to bill the client and get paid for a minimum amount of billing effort. However, it does not afford the lawyer the ability, six months, two years, or five years later, to respond to a questioning client or a trial court in a fee-shifting or reasonableness context. How can one know how much time was spent on each letter, email, motion, memo, or research in order to justify the fee charged or to be charged? Proving what was actually done and for how long, years later, is simply impossible.

This situation poses a real danger to attorneys who seek to collect their entire fees from the opposing party in fee-shifting cases. The fact is, even if the attorney has actually spent the time recorded, she has no way of showing the court how much time was spent on each task. Accordingly, courts across the country have begun reducing fee awards where hourly fees were block billed. The attorney is rarely given the benefit of the doubt in these situations. When fee disputes, reasonableness determinations, or routine fee-shiftings arise, unapportioned time creates a built-in incentive and means for the court to reduce the fees sought to be upheld.

Pressure on the Court

Block billing is frequently attacked in the fee-shifting context. Consider the case of Sutherland v. Kitsap County. In this case, the plaintiff’s motion for attorney’s fees was reduced by 60 percent for several factors, one of which was block billing:

Due to poor documentation, the Court is left without a reasonably precise manner in which to determine the time and labor required. It appears that a majority of the Plaintiff’s requested hours contain inadequate descriptions and/or block billing. The showing also raises suspicion that Plaintiff’s submission of hours spent may have been created after the fact rather than from records kept concurrently with the work being done.

It is well known, ever since the U.S. Supreme Court’s decision in Hensley v. Eckhardt, that the courts have discretion in adjusting a fee award because of the inadequacy of the lawyer’s documentation. What is new in the Sutherland case is the strong language in a Washington state federal opinion against the specific inadequacies of block billing. And in Washington State Democratic Party v. Reed, Judge Burgess of the Western District of Washington cut a fee application of $457,922 to $178,159, in part due to block billing.
Decisions like that in *Sutherland* are becoming more common in many jurisdictions, and courts are increasingly demonstrating their frustration with block billing. In California, where progressive jurisprudential trends are often born, *Welch v. Met. Life*, 480 F.3d 942 (9th Cir. 2007) affirmed a trial court’s ability to reduce block-billed invoices as long as they provide a showing that the reduction is fair. This case relied on a report from the State Bar of California that declared that the practice of block billing may increase time claimed by attorneys by 10 to 30 percent. See also *Bell v. Vista Unified Sch. Dist.*, 82 Cal. App. 4th 672, 689 (2001).

This approach has been followed by many courts. For instance, in *Miller v. Bill Herbert Constr.*, in debunking rationalizations in favor of allowing the block billing to stand, Judge Lamberth decided that precise time-keeping is necessary in a fee-shifting case and “lumped together” tasks make it impossible to evaluate reasonableness. As a result, he reduced the lodestar determination of the plaintiff by 10 percent. To quote Judge Lamberth:

The Court acknowledges that more consistently precise time-keeping might prove somewhat disruptive to work-flow, but in a fee-shifting case, it is necessary to facilitate subsequent judicial review. Most saliently, counsel’s time entries are riddled with conferences, telephone calls, and meetings involving multiple professionals, but it is impossible to determine how long these conclaves lasted — or, as noted above, what subject matter they involved. Without such basic details, the Court simply cannot ascertain whether this time was reasonably expended. Because relator’s counsel’s time records “lump together multiple tasks, making it impossible to evaluate their reasonableness,” this Court finds that a wholesale reduction in the lodestar is appropriate. See *Role Models Am., Inc.*, 353 F.3d at 971.

In *Lahiri v. Kornhauser*, the court affirmed as within the trial court’s discretion, the estimation that 80 percent of the billing entries were block billed, and the trial court’s decision to reduce those block billings by 30 percent. See *In re Dutta,* where the court affirmed the bankruptcy court’s refusal to permit full recovery for block billing. See *In re Thomas,* where the bankruptcy appellate panel for the Ninth Circuit reversed and remanded an award of attorney’s fees to a bankruptcy trustee where “the extensive use of block billing entries deprived the bankruptcy court of the ability to adequately assess whether the amounts requested were reasonable, or whether Farmer (the trustee’s attorney) had engaged in proper billing judgment.”

**Breaking the Habit**

Block billing does more harm to attorneys than what is laid out above. The use of block billing also feeds the public’s distrust of attorneys and contributes to the negative stigma of our profession. Block billing is seen by sophisticated clients as a smokescreen for bill padding. If (or when) Washington attorneys try to defend their right to use the method, it will cast us all in a negative light. Block billing is not yet illegal; no cases in Washington rule it out of hand, and the Rules of Professional Conduct (RPC) do not yet proscribe it. However, the fact remains that attorneys who adopt an apportioned hourly billing method are more likely to be more appealing to clients, will enhance the general reputation of lawyers in the eyes of the public and judiciary, and will ultimately avoid fee-shifting reductions. Openness and honesty is exactly what our clients expect to see, and apportioned invoices are one quick and easy way to achieve that.
way to achieve that trust we would like to achieve and maintain.

The transition to apportioned time recording is not necessarily complicated, and if time is kept contemporaneously, will not cost anything more. Electronic time-management systems all possess functionality that allows for assigning a time for each task, and a simple day-planner can accomplish the same. The inertia of having done it the blocked way is the biggest hurdle. Nonetheless, if old dogs can be taught new tricks, we can change our current billing practices and benefit accordingly.

For solos and small firms, delivering a clear and honest billing each month will remove many of the headaches that result from clients having questions about their bills, not to mention the court’s inquiries. And for medium- and large-sized firms, having a more transparent billing system is another easy way to rise above the competition and maintain long-term relationships with business and individual clients. Speaking personally, I also feel better when looking back at my invoices and knowing how I spend my time. It helps me learn where I can become more efficient, and what is taking up most of my time for each particular client. It also allows me to answer client questions about the amount of time spent on a given project.

Conclusion
The lawyer’s freedom to contract for attorney’s fees has eroded over the past 40 years. Contingency and flat-fee agreements must now be in writing (RPC 1.5(e), 1.5(f) (2006)), and any fee agreements in violation of the RPC are now deemed unenforceable. Simburg, Ketter, Sheppard & Purdy, L.L.P. v. Olshan, 97 Wn. App. 901, 909, 988 P.2d 467 (1999). Certain fees have been declared entirely unlawful, such as those based on a percentage of the probate estate. The doctrine of fee forfeiture for breach of fiduciary duty has reached full flower now in Washington. See, e.g., Eriks v. Denver, 118 Wn.2d 451, 824 P.2d 1207 (1992); Caryl, Michael, “Breach of Fiduciary Duty: The Nuclear Weapon of Fee Disputes” (January 2005 Bar News). Today, fee disputes between lawyers and clients are on the rise, and the import of RPC 1.5(a) (“A lawyer shall not make an agreement for, charge, or collect an unreasonable fee”) is only beginning to be felt. As the years pass, clients are growing ever more comfortable with the idea of challenging their lawyers’ fees. In addition, clients are following the lead of judges in fee-shifting cases where the fees sought to be passed on the losing party are closely examined and often reduced. Insurers and other institutional payers of attorneys’ fees now commonly use professional fee-evaluating reviewers to judge the reasonableness of fees charged to a client.

The courts have no obligation, as Judge Lambeth characterized it, “to undertake the futile task of separating the plaintiff’s block entries into their constituent tasks and apportioning a random amount of time to each.” Nor should a client be forced to accept a sizable monthly billing with no reasonable way to determine if the charges are reasonable. The federal courts and more state courts are now reducing lodestars by a factor of 10–30 percent because of block billing. Authority elsewhere empowers a reviewing court to simply exclude block-billed entries from fee-shifting consideration altogether. This places the responsibility for lost fees on the party who occasioned it, not the party required to indemnify. As these decisions grow more frequent, Washington attorneys would be wise to grow more accustomed to billing the smart way: contemporaneously segregating each task performed with its own time value. It stands to reason that before long, a published decision in Washington will attack block billing.
and reduce fees. As the Supreme Court did with non-refundable flat fees in late 2008,\(^2\) in my view, I expect that eventually a mandating rule by the Supreme Court in the form of a Rule of Professional Conduct will address block billing. Lawyers are better off to be on the upside of the trend and derive the benefits now, rather than to be caught later and deprived of a substantial part of their fee, or to suffer a client challenge because of an outdated billing.\(^*\)

Michael R. Caryl graduated from Georgetown University Law Center in 1972 and has practiced trial work for over 37 years.

**His current practice focuses on litigation and expert witness services in disputes over attorneys’ fees. He can be reached at michaelc@michaelcaryl.com.**

**NOTES**


2. The billable hour has come under attack by academics and consumers of legal services for several decades. See, e.g., Turow, Scott, “The Billable Hour Must Die,” ABA Journal (August 2007); “The Scourge of the Billable Hour,” Slate.com, January 2, 2008; “The Billable Hour Is Dead,” Minneapolis Personal Injury Lawyers 2008-


5. The reasonableness of attorneys’ fees many be challenged by a client in common tort cases (RCW 4.24.005), in arbitrations of healthcare malpractice cases (RCW 7.70A.060(4)), and by any client pursuant to RPC 1.5(a).


7. Gates v. Gomez, 60 F.3d 525 (9th Cir. 1995).


13. See e.g., Mendez v. Gonzalez, 540 F.3d 1109 (2008). As for the block-billed time entries, it was fully appropriate for the court to reduce those claimed hours. See Welch, 480 F.3d at 948 (affirming court’s discounting of block-billed hours because they may overstate the hours incurred and make it ‘more difficult to determine how much time was spent on particular activities’).


16. Lahiri v. Kornarens , 606 F.3d. 1216, 1222–23 (9th Cir. 2010).

17. In re Dutta 175 B.R. 41 (9th Cir. B. Panel 1994).


19. Imagine the feeling of the client in a case like Washington State Democratic Party v. Reed, discussed above, where the client has already paid its law firm 100 percent of the fees, but the court reduced the fee award by 61 percent because of block billing. Who would want to be the billing partner responsible for explaining that to a client?

20. Adopting RPC 1.5(f) limiting and prescribing rules for such fee arrangements.
The mission of the Washington State Bar Foundation is to provide financial support for programs of the Washington State Bar Association that promote diversity within the legal profession and enhance the public’s access to and understanding of the justice system.

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Adverse Possession (AP) is often considered by non-lawyers as “legalized theft.” End Adverse Possession Now (EAP-NOW) is a Washington-based organization that on its website states: “Like other reprehensible laws of history, such as the Fugitive Slave Act of 1793, adverse possession is simply wrong — it is an insidious, immoral, and obsolete law that provides no social benefits.”

In 2009, EAP-NOW was successful in convincing a bipartisan group of Washington House Legislators to introduce House Bill 1479. HB 1479 was a bill designed to achieve the aim of EAP-NOW — complete “prohibition” of adverse possession laws in Washington state. By general resolution, HB 1479 was automatically reintroduced and retained in the 2010 Regular and First Special Sessions. As written, the 2009–2010 House Judiciary Committee chair determined that HB 1479 was not worthy of a hearing and it expired. However, no fewer than two of HB 1479’s sponsors are planning to reintroduce it as a new bill this year. Unless properly altered, though, any subsequent iteration will almost certainly meet with a similar fate as that of HB 1479. Instead, any new AP bill should at a minimum (1) seek to address problems with AP, instead of seek its repeal; and (2) have the support of the WSBA Real Property, Probate and Trust Section.

The reason for this is undeniable. Despite EAP-NOW’s stated position, AP is an important and valuable body of real property law. This is because most people make residential real estate purchases prior to a land survey. As a result, they purchase with mistaken expectations as to the location of their boundaries. Over time, these expectations become fixed. Fixed, that is, unless these boundaries are somehow later altered. These subsequent alterations are the problem with AP. More to the point, in its current form, AP allows an unacceptable number of land thieves to succeed in their aims. Following is a set of suggestions to mitigate this problem without eliminating AP altogether. First, a little background is in order.

RCW 4.16.020, Washington’s principal AP statute, is judicially recognized as (1) actual possession that is (2) open and notorious; (3) hostile; (4) exclusive; and (5) held continuously for a 10-year statutory period. However, this has not always been the case. Just over a quarter-century ago, in Chaplin v. Sanders, the Washington State Supreme Court removed its own judicially inserted element of good faith/subjective intent. This was done in large measure as a result of William B. Stoebuck’s first law review article, “The Law of Adverse Possession in Washington State.” Notably, last year marked the 50-year anniversary of its publication.

In “The Law of Adverse Possession in Washington State,” Stoe buck argued that the element of [good faith/] subjective intent should be eliminated because its inclusion made the law of AP both unclear and unharmonized. It is true that prior to Chaplin, AP was an absolute mess. However, just as the complete elimination of AP is too much, the complete elimination of good faith may have also been a step too far. Instead, perhaps a more
nuanced approach that incorporates circumstantially shifting burdens of good faith and a little “something more” would be appropriate.

First, let’s establish a working definition of a (boundary dispute) land thief. This type of land thief is “one who wrongly moves, or causes to have moved, the boundary line with the intention of increasing the dimensions of his or her land.” Well, upon acting in this intentionally wrongful manner, the land thief at some point will either (1) sell this land along with his or her true parcel or (2) hold onto it for the statutory period. Land thieves who sell their real property generally do so to unsuspecting buyers who fail to conduct a survey; have never heard about AP; and have no idea that typical title insurance policies disclaim AP issues. In cases requiring adverse possessors to tack (i.e., add their possession to that of their predecessors in interest), lawmakers might find insight by stepping back from real property law and instead look at how good faith is treated within the Uniform Commercial Code (UCC).

An apt explanation may be found by reviewing how this operates with respect to negotiable instruments. UCC §3-103(4) defines good faith as “honesty in fact and the observance of reasonable standards of fair dealing.” Thus, good faith requires two components: one objective and the other subjective. Honesty in fact is the subjective standard. Reasonable standards of fair dealing is the objective standard. Here, consider a hypothetical involving Anthony and Bridget. Anthony, who fails to safeguard his checkbook, later finds that a thief has written checks against his account. Bridget is the store clerk who, in the normal course of her business (i.e., the objective standard), accepted a check written by the thief.

Between Anthony and Bridget, who has the greater liability? The answer is Anthony, because he is deemed to have a greater degree of control to prevent this type of occurrence. This is, of course, unless Bridget, who accepted the check, knows that it was written by a thief. If that were the case, the subjective standard would not be met.

Returning to AP, the objective standard might change if surveying land prior to property purchase becomes the predominant practice of real property buyers. Until then, title holders who (1) notice that an adjacent property is for sale and (2) are aware of a boundary issue to their detriment should be estopped from seeking
to correct a boundary line in their favor with the subsequent adverse possessors. Yet this places the burden upon the subsequent adverse possessors to prove estoppel. Instead, we should grant these subsequent adverse possessors, who have otherwise proven the required elements of AP, a rebuttable presumption of good faith. If the title holders can overcome it, then the land can be quieted in their favor. Stated simply, the law should allow title holders the opportunity to prove that the subsequent adverse possessors were dishonest.

In those cases in which the adverse possessors own their property first, regardless if the adverse possessors have held it for 10 years or need to tack their possession to meet the statutory period, so long as they can satisfy the other elements of AP, they need not demonstrate good faith — it can be presumed. Their case is essentially one of mutual recognition and acquiescence. However, in those cases in which the title holders and the adverse possessors have both been in possession of their respective lands for over 10 years, but the title holders were in possession first — look out! These are instances where land thieves are most likely to be making their illicit land grab. The reason lies in the very nature of the theft itself. Sometimes the theft starts as a toehold, and next becomes a stronghold, before finally becoming a stranglehold. This is to say that neighborly accommodations may become more and more exploited over time.

Perhaps more typical, land thieves will often make an unnoticed alteration of the boundary. Then, despite this lack of notice, they will claim that there was constructive notice. Unfortunately, title holders will not likely get far claiming that they had provided AP-defeating “Constructive Permission.” Instead of perpetuating these constructive fictions, is there a more appropriate course? In those cases where the opposing parties have both owned their respective parcels for the 10-year statutory period and the title holders owned prior to the adverse possessors, why not give adverse possessors an option? Allow them to either prove that they took their land from their predecessors with the boundary at its present location or allow them to prove AP by estoppel.

If the adverse possessors can prove (1) that the boundary line has not been moved from the time they took possess-}

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NOTES


3. The 2009-2010 Judiciary Committee chair was Rep. Jamie Pedersen (D), re-elected — 43rd Legislative Dist.

4. The Judiciary Committee chair has the power to selectively approve hearings of the many bills that are sent to the Judiciary Committee. If provided a hearing, a majority of the 11 House Judiciary Committee members must approve any bill before it may advance. Bills which do advance out of the Judiciary Committee then move to the Rules Committee instead of directly to the House floor.

5. A reintroduced HB 1479, whether altered in form or not, will receive a new bill number upon its introduction.

6. Hostility is a legal construct meaning to lay a superior claim; it does not mean enmity or ill will.


8. The actual language of RCW 4.16.020 states: “The period prescribed for the commencement of actions shall be as follows: Within ten years: (1) For actions for the recovery of real property, or for the recovery of the possession thereof; and no action shall be maintained for such recovery unless it appears that the plaintiff, his or her ancestor, predecessor or grantor was seized or possessed of the premises in question within ten years before the commencement of the action….”


10. A.k.a. “Good Faith Claim of Right.”


12. Stoebuck, “The Law of Adverse Possession in Washington,” 35 Wash. L. Rev. 53 (1960). At the time this article was published, Stoebuck was in his first year of practice.

13. See note 9, supra.

14. A boundary dispute land thief is not the same as a “squatter” who seeks to enter possession of the whole real property parcel. To address this type of land thief, trespass laws may need to be separately rewritten.

15. As a practical matter, raising the issue prior to a sale is also the point at which title holders have the greatest leverage to negotiate a correction. Of course, if the issue is raised after a purchase and sale agreement has been executed, the original adverse possessors may have a tort claim for interference with business relations.

16. “Constructive Permission” does not exist in the law of adverse possession.

17. CR 8(d)(2) states “[a] party may also state as many separate claims or defenses as he has regardless of consistency ...”. Of course, claiming and proving are completely different matters. Because these are such diametrically opposed ideas, it is virtually inconceivable that adverse possessors would attempt to claim both.
Taxing Times in Native America

BY GABRIEL S. GALANDA AND ANTHONY S. BROADMAN

Just as general tax matters run throughout every facet of civil practice, in Washington, Indian tax issues permeate the law. From the family law attorney who must evaluate trust assets of a Native American spouse, to the business practitioner minimizing his clients’ tax exposure, to the public lawyer serving state or local government, Washington lawyers are often confronted with the abstruse world of Indian tax, due in no small part to the resurgence of tribal economies and related rise of a tribal middle class.

The rumors of tax-free Native America have been greatly exaggerated. Ironically, for an ostensibly tax-free zone, Indian tribes and lands are rife with nuanced tax issues that both tribal clients and non-Indian entities interacting with them must confront.

The commonly held but mistaken belief that individual tribal members are exempt from federal income tax tells only the beginning of the story. Both tribal governments and non-tribal parties doing business in Indian Country must carefully navigate the pitfalls of Indian tax law, which can often hinge on subtle factor-based tests and sprawling inquiries into the character of a putative taxable event and its players. If they and their counsel are successful, significant federal, state, and local tax savings can flow from Indian reservation-based transactions.

Still, the jurisdictional complexity of Washington’s sovereign domestic nations certainly adds a layer of intricacy to an already labyrinthine area of the law.

Indian Tax Ground Rules

The U.S. Constitution vests the federal government with authority over tribal “commerce.” Art I, Sec. 8, Cl. 3. As a corollary of this authority, and in recognition of the inherent sovereignty retained by Indian tribal governments even after formation of the United States, Indian tribes and tribal members are exempt from state taxation within tribal territory. Period. In fact, federal courts applying this rule characterize it as “per se” tax exemption. Outside of Indian Country, tribes and individual members cannot be taxed when a treaty with the United States — “the supreme Law of the Land” — precludes such taxation. U.S. Const. Art. VI, Cl. 2.

Even some state or local attempts to tax non-Indians doing business within the boundaries of a reservation are preempted by federal law, which presents an opportunity for them to obtain a significantly larger yield on their investment in Indian Country than might be available off the reservation.

But Anglo-American law makes converse, equally bright-line rules about when taxes must be paid. In general, unless they are exercising treaty rights or are otherwise immune, Indians conducting business outside Indian Country are likely subject to taxes like B&O, public utility, and sales taxes. These issues arise constantly among clients starting or winding up businesses in Washington Indian Country.

These are the clear rules. As discussed below, the gray areas provide more fodder for disagreement among the Washington State Department of Revenue, county assessors, tribes, and non-tribal businesses transacting in Indian Country. Like Indian law in general, often subtle, seemingly
arbitrary facts dictate outcomes in tribal tax matters.

**Property Taxes on Tribal Governments**

As Chief Justice Marshall observed in 1819, “The power to tax involves the power to destroy.” In exercise of this principle, the U.S. Supreme Court has repeatedly held that a state is without power to tax reservation trust lands, or permanent improvements thereto, unless Congress has made its intent to allow state taxation “unmistakably clear.”

Oddly, unmistakable clarity has been found in the General Allotment Act of 1887 as to fee land currently owned by tribes. *County of Yakima v. Confederated Tribes and Bands of Yakima Nation*, 502 U.S. 251 (1992). Trust land itself, however, is unmistakably non-taxable.

**Governments Without Property Tax Bases**

Most governments that provide services to their constituents draw revenue from a wide tax base. Washington tribal governments provide substantial and costly services to their members and local communities, but often lack a meaningful source of tax revenue, most notably property taxes.

As some tribal and state government leaders and legislators have recognized, one obvious solution is to expand the “essential government services” exemption to protect tribal commercial activity off-reservation like it protects noncommercial activity from property taxes off-reservation, as described below.

Another less dramatic solution lies in the sovereign power of tribes over their particular corners of Indian Country. It is hornbook Indian law that in Indian Country, tribes possess regulatory authority over nonmembers who have entered into consensual commercial relationships with tribal government or business. This regulatory power extends — at least — to taxing authority, and likely far beyond. As tribes look for ways to provide much-needed social services and governmental functions to their memberships, taxes on businesses operating within their jurisdiction may provide the answer — including sales, hospitality, “sin,” other excise, and B&O taxes. Balanced by a desire to encourage economic growth within the boundaries of reservations, tribes can take advantage via taxation of the non-tribal businesses discovering emerging post-gaming Indian Country markets.

Lawyers representing businesses subject to a tribe’s taxing authority must advise their clients regarding this taxing power of the “third sovereign.” While nobody enjoys paying taxes, often efficient tribal regulatory structures — for example, obtaining a permit in days rather than months or years — can offset the novel costs associated with doing business on Indian lands.

**Tribes and Members: Sovereignty and Taxpayers**

The income of tribal governments is exempt from federal taxation. Income tax statutes do not tax Indian tribal governments. Income earned by the tribe is not subject to tax, regardless of whether the business activity is inside or outside of Indian-owned lands. The income of federally chartered tribal corporations are also not subject to federal taxation, regardless of where such corporation earns income because, it has been determined, they have the same tax status as the tribe. The IRS has taken the position that a corporation organized by an Indian tribe under state law is subject to federal income tax regardless of the location of the activities that generate the income. The revenue of tribally owned corporations
Taxes and Tribal Governmental Gaming

The most misunderstood component of Indian tax law may be in the tribal governmental gaming arena. According to the Indian Gaming Regulatory Act of 1988, states per se cannot tax tribal governmental gaming activity. The IRS, however, taxes distributions of gaming revenue to individual tribal members; in fact, the federal law on Indian gaming requires tribal governments to notify their members that such distributions are taxable. In other words, if tribes reinvest gaming money into governmental functions, the IRS sees no tax dollars. But if tribal government distributes that money on a per capita basis to their members, each member enjoys taxable income according to the IRS, which in turn requires tribes to follow withholding and reporting requirements.

More on Individual Indian Taxpayers

When a state attempts to levy a tax directly on a tribal member inside Indian Country, courts employ a "categorical" approach: absent federal law to the contrary, the state cannot tax reservation lands and reservation Indians. For instance, taxes on Indian-owned personal property and Indian income earned on a reservation have both been struck down by the U.S. Supreme Court. That said, courts have held that tribal members who reside outside of a reservation are subject to state taxes on income, regardless of whether the income was derived from within an Indian reservation.

In addition, while states may not tax trust or allotment lands, and may not apply an excise tax to the sale of any land within an Indian reservation, states can
tax reservation real property owned in fee by an individual Indian or non-Indian.

State Sales Tax: From Tobacco to Reservation Economies

Sales to Indians in Indian Country are exempt from Washington retail sales taxes. To constitute a sale in Indian Country, the State Department of Revenue requires that personal property be delivered to a tribal member or tribe in Indian Country or the sale must “take place,” i.e., in a store, in Indian Country. WAC 458-20-192(5)(a)(i). Retail sales taxes are not imposed on services performed for an Indian or a tribe in Indian Country. As long as tangible personal property is acquired in Indian Country by an Indian or the tribe for at least partial use in Indian Country, use tax is also inapplicable.

In general, non-Indians must pay retail sales tax on sales on reservations. This usually includes sales on cigarettes. However, difficulty in the enforcement of such taxes has caused Washington’s tribal and state governments to enter into agreements that often allow tribes to collect taxes rather than the state, as discussed below.

The exception to the general rule regarding sales taxes preempts taxes on even non-Indians in some situations. In some cases, state sales and use taxes are preempted where tribal and federal interests in the object of taxation outweigh the state’s interest in taxation. This analysis is extremely fact-sensitive, and often hinges on the amount of value the tribe has added to a particular event or object. The Department of Revenue rules on tax preemption on a case-by-case basis, per agency rule.

Tribal-State Tax Agreements

Often arising in the tobacco and fuel sales tax context, tax agreements or “comparments” provide tribal governments with the ability to collect taxes in disputed jurisdictional situations. They allow the state to ensure that taxes are collected in tribal territory because, according to the U.S. Supreme Court, Washington lacks any meaningful ability to enforce state taxes on tribal lands or enforce them against Indian governments. Washington v. Confederated Tribes of Colville Indian Reservation, 447 U.S. 134, 162 (1980); Oklahoma Tax Comm’n v. Potawatomi Tribe, 498 U.S. 505, 514 (1991).

Under a tribal/state compact regime, if the state of Washington contends that it has the right to tax non-members on
the sales of tobacco on a specific reservation, and the tribe on that reservation disagrees, the parties may agree that the tribe can collect taxes on such sales, as long as they are set at a certain level to prevent substantial price disparity. In doing so, the state focuses on the benefit that comes with certainty of taxed sales, closer pricing among tribal and non-tribal sellers, and social goals like smoking cessation, rather than the expense and risk of litigation. The tribe remains focused on using tobacco and fuel tax proceeds to fund essential governmental services and programs for their members and non-Indian neighbors.

**State B&O Taxes in Indian Country**

Washington’s particular business revenue tax is limited by function of state and federal law. In general, income from sales made and services provided in Indian Country to tribes or Indians is not subject to B&O taxes. But taxpayers are responsible for maintaining suitable records to prove such exemption. For purposes of professionals like accountants or lawyers, services are performed substantially outside of Indian Country if 25 percent or more of the time taken to perform the service occurs outside of Indian Country.

**Indian Tax Burdens and Opportunities**

Although tribes do not pay federal taxes on income, according to the IRS, they are subject to federal tax laws. PLR 200420028. Courts generally support the IRS’s position that Indian tribes are generally taxable entities with respect to federal taxes other than income tax. For instance, tribes have been subjected to FICA and FUTA. *Matter of Cabazon Indian Casino*, 57 B.R. 398, 402 (9th Cir. BAP 1986). Tribes also generally have to comply with reporting and withholding requirements for payments, such as those to employees. Rev. Rul. 59-354. But for entrepreneurs and the lawyers who represent them, the federal tax structure also offers opportunity to businesses operating in Indian Country. Certain business property on Indian reservations is entitled to accelerated depreciation; the IRS sets out depreciation deduction recovery periods. The standards are relatively low except that such property cannot be for purposes of conducting gaming. Certain infrastructure property is
Welcome Bill and Brit

SCHROETER GOLDMARK & BENDER is pleased to announce that Bill Bowman and Brit Mercer have joined SGB’s Criminal Defense practice as Of Counsel.

BILL BOWMAN will bring his established practice and significant expertise in DUI defense to SGB. A former public defender and Deputy King County Prosecutor, Bill has successfully defended DUI cases in over 18 counties across the state. He has been repeatedly selected as a “Super Lawyer” by Washington Law & Politics magazine and has been named to Seattle Magazine’s list of “Seattle’s Best Lawyers.”

BRIT MERCER will focus her practice at SGB on a range of criminal cases, including DUI and misdemeanor charges. Since graduating from the University of Washington School of Law in 2002, Brit has devoted her career to defending individuals accused of crimes. Her hard work and integrity have earned her the respect of her peers, adversaries and clients. In 2005, 2008, 2009 and 2010 she was selected as a “Rising Star” by Washington Law & Politics magazine and has been named to Seattle Magazine’s list of “Seattle’s Best Lawyers.”

WE warmly welcome Bill and Brit to our Criminal Defense group, and to the SGB team as a whole.

Washington State Bar News | January 2011
Igniting a Culture of Civility

BY PAULA LUSTBADER

ow does a loving brother pay homage to his only sibling? "With Robert goes one of the last pure, kind, and generous persons I know," my father said. These brothers were raised to have integrity, to care and respect others, to make a positive contribution to their community, and to be of service — basically, to abide by the Golden Rule and treat others as they would like to be treated. In his very humble manner, Robert upheld these values as he walked in this world. He was a caring brother, husband, father, grand father, uncle, colleague, friend; he generously gave to numerous charities that promoted humane treatment of animals, supported the poor, and helped the young; he tutored refugees; and he worked for peace. Three months before he passed away, he folded his extra-large body into his compact car and drove from Florida to New Orleans to participate in a veterans’ demonstration for peace. That was my uncle.

To honor his brother, my father, Alfred Lustbader, established Robert’s Fund, a small Seattle-based foundation devoted to fostering more civility in our lives. "Civility" suggests different things to different people. At Robert’s Fund we think of civility not only as a display of good manners, but also as behavior that reflects respect and courtesy to others. Sadly, the lack of civility is rampant in our current high-stress, fast-paced, materialistic, and instant-gratification culture. We are losing our sense of humanity, decency, and consideration for others. Our world is becoming smaller through technology. Our planet is becoming more fragile. The need for civil behavior is more significant than ever.

As one of a variety of initiatives, Robert’s Fund is launching The Civility Promise: Fostering Care and Respect in the Legal Profession. This is a coordinated program to enhance civility in the practice of law. Robert’s Fund has joined with Bar News to publish a series of monthly columns to be written by some of the finest in our profession. In addition, in collaboration with other attorneys and with Seattle University School of Law, Robert’s Fund is developing curriculum for law schools and a series of CLE programs addressing civility within the profession. This year we will offer a three-part CLE series at Seattle University School of Law: On February 4, we will present "Igniting a Culture of Civility: Defining and Understanding Civility in the Legal Profession"; on March 4, we will present "Civility Matters: The Benefits to the Parties, the Practitioner, and the Profession"; and on April 1, we will present "Civility Speaks: The Behaviors that Embody Care and Respect." In addition, we will conduct an eight-day seminar in Sovana, Italy, in October.

Why should we focus on lawyers? As a law professor, I am saddened when I hear about the growing disillusionment with the legal profession. However, I am gratified when I hear about former students making a positive difference. Lawyers exert a powerful influence within society. They play a significant and powerful role in governing this country. They shape our values and laws as judges and as politicians. Throughout our history, 59 percent of U.S. presidents were lawyers. Currently, 59 percent of U.S. senators, 40 percent of U.S. representatives, and 24 percent of state governors are lawyers. Lawyers also serve vital roles in private industry. Even when they are not in leadership positions, they are often the ones who negotiate and set policy for these organizations. Lawyers also work with individual clients to either prevent conflict in transactional practices or to resolve conflict in litigation. Finally, they serve as leaders in our respective communities in their capacity as lawyers or as members of a group. Like it or not, as lawyers we are role models for many people.

The promise of civility is greater personal satisfaction in our lives and careers. Civility is good for our health, our profession, and our clients. When we are civil, we can help de-escalate conflict and reduce rudeness. Civility is more than politeness and affability. Civility is courage with kindness. Civility can increase client loyalty and client base. Civility leads to more successful outcomes. Civility is a code of behavior that we can restore in our everyday lives and in the practice of our profession.

Nothing or no one can ever replace my beloved uncle. However, through the work of Robert’s Fund, our hope is to further his legacy by encouraging everyone to think about the impact their behavior has on others.
WSBA Members Honored for Five Decades of Service

The class of 1960 is recognized for a half-century of dedication

On November 10, 2010, guests gathered at the Sheraton Hotel in Seattle to pay tribute to 53 attorneys and judges who celebrated 50 years of WSBA membership in 2010. WSBA President Steven G. Toole welcomed the guests and proudly expressed heartfelt gratitude to the 24 50-year members present for their decades of dedication to the law. In appreciation, President Toole and members of the Board of Governors presented 50-year certificates and lapel pins to the members who joined the Bar in 1960.

The honorees and their friends and families gathered at noon to mingle and greet old friends before the ceremony and luncheon began.

President Toole welcomed the guests with opening remarks about notable events in 1960 at the WSBA, in Washington, and worldwide. Washington State Supreme Court Chief Justice Barbara A. Madsen gave remarks honoring the 50-year members. After the presentation of certificates and lapel pins, the chair of the WSBA Senior Lawyers Section and fellow class of 1960 member, Stephen De Forest, gave an address congratulating the members and encouraging them to join the Senior Lawyers Section. The luncheon concluded with closing remarks by President Toole; the 50-year members then gathered for a commemorative group portrait.

The WSBA class of ’60 has seen many changes — cultural, political, and societal — during their years in the legal profession. Those who have joined the Bar since owe these individuals a debt of gratitude for their inspirational work, achievements, and half-century of serving the public. 🎁
50-Year Members in 2010

Mr. Wilbert C. Anderson, Seattle
Mr. Denny E. Anderson, Seattle
Mr. Basil Badley, Camano Island
Mr. Arnold Joseph Barer, Medina
Mr. Charles Conrad Becker, Edmonds
Mr. Thomas R. Beierle, Bainbridge Island
Mr. Glen M. Bendixsen, Cary, NC
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Mr. Duane E. Erickson, Gig Harbor
Mr. William Henry Grady, Santa Fe, NM
Mr. John Allen Hackett, Hansville
Mr. M. Gerald Herman, Seattle
Mr. Allen Wesley Hodge Jr., Kirkland
Mr. C.E. "Monty" Hormel, Ephrata
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Mr. William Lay Kinzel, Bellevue
Mr. Melvin L. Kleweno Jr., Kent
Mr. Gilbert H. Kleweno, Vancouver
Mr. Robert H. Lamb, Seattle
Mr. Harry Levitch, Spokane
Mr. Gary F. Linden, Seattle
Mr. Timothy R. Malone, Olympia
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Mr. Walter David Palmer Sr., Seattle
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Mr. John R. Quinlan, Spokane
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Mr. P. Bruce Wilson, Edmonds
Mr. Earl E. Yates, Mountlake Terrace

UW School of Law Dedicates Academic Year to Paul Steven Miller

Henry M. Jackson Professor of Law, Civil Rights Pioneer, Former White House Advisor, and the Longest-Serving EEOC Commissioner

University of Washington School of Law

As the University of Washington School of Law prepares to celebrate its 75th anniversary, it dedicates its academic year to Paul Steven Miller, a leading voice in employment and disability law and a member of the law school's faculty since 1986. Miller, who passed away in 2010, was a prominent civil rights attorney and a strong advocate for equal opportunity and disability rights.

Miller's contributions to the field of law were significant and far-reaching. He was instrumental in the drafting of the Americans with Disabilities Act, which marked its 20th anniversary a few years ago. In the Clinton White House, Miller served as deputy director of the U.S. Office of Consumer Affairs, White House liaison to the disability community, and a director in the Office of Presidential Personnel.

Miller took Senator Humphrey's advice and never stopped working hard, right up to his death in October 2010 at age 49. Born with achondroplasia, a genetic condition that results in dwarfism, Miller became a leading voice in employment and disability law nationally and internationally. A 1983 graduate of the University of Pennsylvania in history and English, Miller earned his J.D. at Harvard University Law School in 1986. He drew post-graduation attention from major law firms, but after face-to-face interviews, none extended offers. According to a 2004 Seattle Post-Intelligencer story, one interviewer told Miller his firm couldn't hire a dwarf because clients would be put off by a "freak."

Miller, however, refused to give up, and eventually landed a job with a firm in Los Angeles, where he became a litigator known for deep knowledge of equal-opportunity law. And so begins his 13-page résumé documenting his dedication to public service, including serving as director of litigation for the nonprofit Western Law Center for Disability Rights.

After President Bill Clinton appointed him to the Equal Opportunity Employment Commission in 1994, Miller spent much of his time on best ways to enforce the ADA. Miller was instrumental in writing the Office of Presidential Personnel.

In 2004, Miller joined the University of Washington School of Law, and from 2006 to 2009, he served as the director of the University of Washington's Disability Studies Program, an interdisciplinary program that examines the social, cultural, historical, and personal experience of disability. At Miller's professorial installation at the law school in 2008, colleague and college classmate Professor Anna Mastroianni spoke of Miller as a "human catalyst." She described Miller as "the rare combination of intellectual firepower along with the energy and insights to make the other people he works with better."

Miller’s unique contributions to issues related to genetics and disability lie with his approach to arriving at pragmatic but principled approaches. Shortly after Miller arrived in Seattle to lead the University of Washington School of Medicine, remembers his friend and his legacy, "Miller's unique contributions to issues related to genetics and disability lie with his approach to arriving at pragmatic but principled approaches. Shortly after Miller arrived in Seattle to lead the UW Disabilities Studies Program, a controversy emerged about using medicine to limit the growth of children with profound disabilities.

Miller was the co-principal investigator on a project with the Treuman Katz Center for Pediatric Bioethics at Seattle Children's and funded by the Greenwall Foundation and the Simpson Center for the Humanities. The project included two public symposia at the Law School and a sustained engagement of clinicians, scholars, and activists over a year that culminated in a paper published in the November 2010 Hastings Center Report that navigated a course for middle ground that most of this diverse group could agree with. Miller had particular talent in helping people see beyond their own views and reaching pragmatic compromise. He emphasized process, fairness, and a willingness to give weight to all perspectives.

After the election of President Barack Obama, Miller was named special assistant to the President in the Presidential Personnel Office and served on the transition team from February to August 2009. "In a world where persons with disabilities are still too often told 'you can't,' Paul spent his life proving the opposite," recalls President Obama. "More important than any title or position was the work that drove him. He dedicated his life to a world more fair and more equal, and an America where all are free to pursue..."
their full measure of happiness — and all of us are better off for it.”

Miller’s professional accomplishments are many, but he found teaching the most rewarding. “Of all the titles that I’ve had in my career, there is really no better one that I can imagine than ‘professor’ and that is because I have had some marvelous teachers and mentors in my life,” he said. Miller went on to recognize his students: “I learn more from them than they learn from me and it just doesn’t seem fair.”

What doesn’t seem fair is the loss of Professor Miller. Janet Gwilym, one of his students, said, “Having Professor Miller as our entry into law school with his patient teaching, goofy jokes, props for torts cases, and serious discussions will stay with my section mates and me for life. He was the one professor last year who took us all to his house for dinner, often went out to coffee with us, let us play with his kids…”

Julie Myers, Miller’s research assistant for nearly three years, remembers Miller as more than a boss. “Music always streamed from Paul’s computer and his printer never seemed to be working properly. The disarray of the physical space was an absolute foil to his smart, self-assured, witty demeanor. Although I didn’t know about his many accomplishments yet, I was impressed. He knew as much about civil rights as he did about South Park and other pop-culture delights.”

Professor Clark Lombardi, Miller’s colleague and long-time friend, recalls Miller as a person with “a wicked sense of humor, and his self-confidence (which was considerable) was leavened by his ability to view himself with critical distance and to tell exceptionally funny and self-deprecating stories at his own expense. I will miss all of that terribly, as, I think, will many others.”

As dean of the University of Washington School of Law, I am so proud to dedicate the 2010–2011 academic year to Professor Miller. This year and beyond, we will celebrate his life by infusing his dedication to public service and to equal justice in all we do. We will miss our dear friend and colleague more than we can say.

Dean Kellye Testy is the first woman to join the distinguished group of permanent law school deans at the University of Washington. A prolific scholar, outstanding teacher, and experienced dean, Dean Testy came to the University of Washington School of Law in 2009. She can be reached at 206-543-2586 or lawdean@uw.edu.
In Memoriam

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

John Arum

John Arum was raised in New York City. His father, Bob Arum, was a lawyer and boxing promoter; the first fight he promoted featured Muhammad Ali, who became a family friend and attended John’s bar mitzvah. Arum graduated from Reed College and the University of Washington Law School, where he was editor of the Law Review. A respected environmental lawyer and activist, he focused on tribal law and also represented the state on environmental issues. He developed a close relationship with the Makah Tribe over 20 years of representing them in matters relating to fishing and whaling rights, and was inducted into the Tribe as an honorary member. He enjoyed skiing, kayak trips with his wife, and bird-watching. An avid climber, Arum had set a personal goal of climbing the 100 highest peaks in Washington; he had summited more than 80 when he apparently fell while climbing Storm King Peak, in the North Cascades National Park.

John Arum died in September 2010, at the age of 49.

Delos R. Clark

Del Clark received his law degree from Willamette University and worked in Sherwood as a tax attorney. Elected to the Sherwood City Council two years ago, Clark was active in his community; he was a member of the Sherwood Urban Renewal Policy Advisory Commission and a past-president of the Sherwood Chamber of Commerce, and enjoyed volunteering at community events such as the Sherwood Onion Festival. At the age of 22, Clark suffered from a brain tumor; last fall, he was diagnosed with colon cancer, and less than a month later learned that he also had another brain tumor. Even while undergoing chemotherapy and brain surgery, Clark was dedicated to his work with the City Council and attended meetings as long as he was able.

Del Clark died on September 24, 2010, at the age of 41.

Sandra L. Cohen

Sandra Cohen was born in Scarsdale, New York, and received her law degree from Harvard Law School. After moving to Seattle, she worked for the prosecutors’ offices of King and Snohomish counties before joining the City of Seattle’s law department, where she worked for 14 years. As head of the municipal law section of the Seattle City Attorney’s Office, she was involved in major local issues such as the sidewalk-sitting law and the Seattle Art Museum’s move into the former Washington Mutual Tower; she was also the legal adviser to the city’s Ethics and Elections Commission. Cohen enjoyed fly-fishing, scuba diving, skiing, and bird-watching; she taught herself to snowboard in her fifties and grew vegetables in her yard to share with neighbors. She and her husband were avid travelers, including a three-year journey to 21 countries.


Judge Walter “Jack” J. Deierlein Jr.

Judge Jack Deierlein, a lifelong resident of Skagit County, received his undergraduate degree in pre-law studies from the University of Washington while spending his vacations working on passenger freighter ships with the Alaska Steamship Company during the Great Depression. He joined the United States Army Reserves as a second lieutenant, rose to the rank of lieutenant colonel during World War II, and was awarded the Bronze Star for his service. After his return from the war, Deierlein received his law degree from the University of Washington Law School. He was elected prosecuting attorney for Skagit and Island counties, serving two four-year terms, and was president of the Washington Association of Prosecuting Attorneys. In 1966, he was appointed Superior Court judge of Skagit and Island counties; he also served as president of the Superior Court Judges’ Association. In retirement, Deierlein and his wife traveled extensively, seeing such sights as the Great Wall of China, the pyramids of Egypt, and the Taj Mahal.

Jack Deierlein died on October 22, 2010, at the age of 92.

George M. Emory

George M. Emory grew up in Seattle. He was proud of his Emory ancestry, tracing his lineage in this country to Benjamin Franklin. A third-generation Seattleite and third-generation lawyer, he loved the Pacific Northwest. He received his undergraduate and law degrees from George Washington University and a master’s in taxation law from Boston University School of Law. He taught at the University of Iowa and the University of California – Davis, and was a visiting professor at the law schools of Duke University, UCLA, Southern Methodist University, the University of Pennsylvania, the University of Nebraska, Northwestern University, and Tulane. Emory served as the founding director of the University of Washington School of Law’s graduate school program in taxation, and retired from its faculty in 2004. An avid book collector, he also cherished opera, poetry, and literature; he was instrumental in the creation of the Seattle Chamber Music Festival, and served on the Seattle Public Library Board and the University of Washington Friends of the Libraries.

George Emory died on October 8, 2010, at the age of 79.

Donald A. Ericson

Donald Ericson was born in Spokane. Following his graduation from North Central High School, he was accepted into the Naval Officer Training Corps V-5 Aviation Cadet Program; he joined the Naval Reserve in 1946 and retired 20 years later at the rank of lieutenant commander. He received his undergraduate degree from the University of Washington in economics and his law degree from Gonzaga University School of Law. He became a partner with the firm of Richter, Wimberley & Ericson in 1965; after retiring, he and his wife moved to Poulsbo, where Ericson did pro bono work for Kitsap County Legal Services and joined a photography club.

Donald Ericson died on August 27, 2010, at the age of 84.

Judge Harold “Jerry” B. Hanna

Judge Jerry Hanna grew up in Wenatchee and was a distinguished athlete in football, basketball, and baseball at Wenatchee High School. During World War II, he was awarded numerous military awards, including the Bronze Star, Croix de Guerre, Combat Infantry Badge, Victory Medal, and a Certificate of Combat Merit from the French government. After the war, he earned his law degree from Valparaiso University, practicing law in Wenatchee. In 1956, he was elected state senator, serving three consecutive terms representing Chelan-Douglas County. In 1972, he was appointed Chelan County Superior Court
Judge Jerry Hanna died on October 5, 2010, at the age of 89.

Peter J. Harris
Peter Harris was born in Burbank, California, and spent his childhood in several exotic locales, including a two-year stint in Australia. He received his undergraduate degree from the University of California – Davis and his law degree from Cornell Law School. Harris was a staff attorney for the State of Washington’s Department of Health Medical Quality Assurance Commission. He was known for his quick wit and love of eye-rolling puns.

Peter Harris died on August 27, 2010, at the age of 49.

David M. Kanigel
David Kanigel was born in Brooklyn, New York. He attended school in Florida and received his law degree from the University of Florida College of Law. He spent three years in the United States Air Force before moving to Colorado, where he worked as a prosecuting attorney at the City of Denver and later at his own practice. In 1997, he and his wife moved to Seattle, where he served as legal counsel for the Washington State Council of City and County Employees.

David Kanigel died on June 5, 2010, at the age of 65.

Wayne Knight
Wayne Knight was born in Tacoma in 1930 and attended Stadium High School. He served in the Naval Reserve and flew the F9F Cougar jet fighter in the Korean War. After his military service, he graduated from the UW School of Law. He practiced law for 52 years before retiring in 2009. He and his family lived on a 27-acre homestead farm with a view of Mt. Rainier. They raised Irish Wolfhounds and numerous farm animals. Knight and his wife enjoyed traveling, skiing, and hiking.

Wayne Knight died May 8, 2010, at the age of 79.

Malcolm Stewart McLeod
Malcolm McLeod was born in 1919. He served as a commander in the U.S. Navy during World War II.

Malcolm McLeod died August 12, 2010, at the age of 91.

James K. Neill
James Neill was born in Portland, a descendant of pioneer families. He studied business at Oregon State University and earned his law degree at the UW School of Law. He spent his career working for the state of Washington, most recently as an administrative law judge. In the 1960s, he served in the Army and while on tour in Italy, he developed a lifelong appreciation of art, music, and gardens.

Judge Philip Nausid died June 23, 2010, at the age of 64.

“Paul and the whole staff were wonderful and kept in touch frequently. I would use him again in a heartbeat.”

— Suzanne S., Great Falls, MT

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“Paul and the whole staff were wonderful and kept in touch frequently. I would use him again in a heartbeat.”

— Suzanne S., Great Falls, MT
Richard Robinson was born in Yakima, Washington, and graduated as valedictorian from Pasco High School. He earned his law degree from Gonzaga School of Law. In a law career of more than 30 years, he worked as a city attorney, for independent counsel, and most recently as a partner at Layman, Layman and Robinson. He enjoyed golfing, sailing, and waterskiing.

Richard Robinson died June 25, 2010, at the age of 57.

Walter R. Rodgers III
Walter Rodgers was born in Philadelphia, attended Amherst College, and graduated from the University of Pennsylvania School of Law. He served in the Air Force in World War II, and was recalled to active duty during the Korean War where he was stationed at Fairchild Air Force Base in Spokane. While in Spokane, Rodgers served as a house counsel, assistant U.S. district attorney, and in private practice. In 1968, the Rodgers moved to Mercer Island and he became house counsel for the Jack Benaroya Company. He was a member of Mercer Island’s Historical Society, Planning Commission, and Presbyterian Church. He was a founding member of Mercer Island PROBUS and served on the Board of the Hamlin-Robinson School for Dyslexics. He loved reading history, crossword puzzles, hiking, and travel.


Stanley M. Samuels
Stan Samuels was born in Portland. He practiced as a labor-management dispute attorney. Clark Kerr, a noted economist at Columbia University and economist at Columbia University and economics at Columbia University and the University of Washington where he earned his master’s in economics and a law degree. She continued studying law and economics at Columbia University and practiced as a labor-management dispute attorney. Clark Kerr, a noted educator and chancellor of the University of California–Berkeley, recruited Smith to head the Institute of Industrial Relations. In the 1960s, she was appointed assistant vice president of the UC system. In the 1970s, President Nixon appointed her to lead the newly formed Fund for the Improvement of Postsecondary Education, an agency whose mission was making college available to everyone, not just those who could afford it. Smith became president of Vassar College in 1977 and served until 1986.

Virginia Smith died August 27, 2010, at the age of 87.

Roland “Ron” L. Skala
Ron Skala was born in Great Falls, Montana. He practiced law for many years with Skala and Associates in Yakima.

Ron Skala died September 23, 2010, at the age of 60.

Virginia B. Smith
A Seattle native, Virginia Smith, despite economic hardship, attended the University of Washington where she earned her B.S. and J.D. degrees from the University of Washington. He practiced transactional real estate law for more than 50 years. He first practiced with his uncle, then later was a founding partner of Samuels, Samuels Yoelin & Weiner. He eventually left the Samuels firm and became a partner at what would become Preston Gates & Ellis. In 2005, he and his partner, Randy Bateman, established a new firm. Samuels was an author and speaker on real estate topics and was proud that an updated version of his Checklist of Real Estate Transactions, first published in 1975, is still being used.

Stan Samuels died October 4, 2010, at the age of 78.

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Ron Syria was born in Wenatchee. He attended the University of Washington, where he earned a business degree. He fulfilled his childhood dream of being a lawyer when he received his law degree from the University of Oregon School of Law in 1984. He practiced at several firms and eventually with Syria Law Offices in

James Neill died September 1, 2010, at the age of 64.

Kristin Ollenbrook
Kristin Ollenbrook was born in 1967 and grew up on Queen Anne Hill in Seattle. She attended Seattle University and graduated from Willamette University College of Law. Ollenbrook worked as a defense attorney, public defender, track and field coach, judge pro tem, magistrate, Clark County court commissioner, published poet, and most recently as athletic director and assistant for Franciscan Montessori School in Portland. Her love of travel took her to sights around the world.

Kristin Ollenbrook died September 20, 2010, at the age of 42.

Robert E. Prince
Bob Prince attended Ballard High School, was a history major at Stanford University, and earned his J.D. at the UW School of Law. He served in the U.S. Marine Corps Reserves for seven years. He was a family law attorney at the Prince Law firm and an advocate for those in need of legal advice regardless of their ability to pay. He had a lifelong love of tennis, and enjoyed golf, reading, traveling in his motor home, and spending time on Camano Island.

Bob Prince died July 3, 2010, at the age of 75.

Virginia Smith died August 27, 2010, at the age of 60.
Kirkland. Ron loved the outdoors and skied the Andes and the Alps, and water-skied from Washington to Florida. He suffered a ski accident that left him with constant pain that ended his ability to practice law.

Ron Syria died on September 26, 2010, at the age of 51.

**Irwin “Woody” F. Woodland**

Woody Woodland was born in New York City. He served in the U.S. Army Air Corps during World War II as a navigator. He was a prisoner of war at Stalag Luft 111 and was released in 1945. He graduated from Columbia University in 1948 and from The Ohio State University College of Law in 1959. He lived in Pacific Palisades, California, until 1988. He became a member of the WSBA in 1991 and spent his retirement years in Seattle.


*Bar News* has also learned of the deaths of Linda M. Fisher on July 30, 2010, Oleg Y. Rovner on September 17, 2010, and Isabella M. Zampino on October 8, 2010.

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The Board’s Work

WSBA Board of Governors Meeting — October 29, 2010
Vancouver, WA

BY MICHAEL HEATHERLY

At its regular meeting on October 29, 2010, in Vancouver, Washington, the Board of Governors debated how to handle WSBA’s public records disclosure obligations, approved conducting a concurrent bar examination in Spokane again next summer, and heard the annual report on the Lawyers’ Fund for Client Protection.

Regarding public records, WSBA currently follows its own set of rules regarding public disclosure of its records. However, the BOG has discussed that it may wish, or be compelled, to become subject to rules created by the Supreme Court or the Legislature. At the October meeting, BOG members discussed WSBA’s options and the potential consequences with WSBA General Counsel Bob Welden and Kristal Wiitala, a former BOG member now on a Board for Judicial Administration committee evaluating disclosure issues.

Wiitala noted that WSBA could voluntarily seek to be defined as a “judicial agency” in proposed amendments to General Rule 31 of the state Court Rules. In that scenario, WSBA would follow the same disclosure rules as the state’s court-related entities. BOG members acknowledged that GR 31 likely will require somewhat greater disclosure of records than WSBA’s existing rules require. Alternatively, WSBA could voluntarily subject itself to the Public Records Act (PRA), RCW 42.56, which governs disclosure by state government entities in general. However, the PRA is considered to require even greater disclosure than GR 31.

On the other hand, WSBA could attempt to exclude itself from both GR 31 and the PRA and continue under its own rules. However, BOG members acknowledged that, by choosing that option, the Bar would run the risk that either the Supreme Court or the Legislature would compel them to follow GR 31 or the PRA. Recognizing that whichever route is taken likely will result in significantly altered disclosure procedures for the Bar, the BOG voted unanimously to have a subcommittee draft a proposed amendment to GR 12 (which governs WSBA operations) identifying the types of information critical for WSBA to protect from disclosure and areas for which disclosure would be acceptable.

The BOG is scheduled to vote at its December 10–11, 2010, meeting in La Conner on which course to pursue regarding public records. In January, the Board for Judicial Administration is scheduled to decide whether to forward the proposed GR 31 amendments to the Supreme Court for consideration.

Also at the October meeting, Director of Regulatory Services Jean McElroy reported that the July bar examination, conducted concurrently in Bellevue and Spokane, went off “flawlessly.” It was the first time in recent history that the exam was staged simultaneously on both sides of the Cascades. The 2010 two-venue exam was done as a trial run, and the BOG voted unanimously to administer the exam concurrently again in summer of 2011.

McElroy also advised the Board that a subcommittee is continuing to study issues involving the possibility of revamping the bar exam format. The issue has been under discussion by the BOG for over a year. The subcommittee expects to present a report of its findings at the January BOG meeting.

In other business, the BOG received the annual report of the Lawyers’ Fund for Client Protection, which compensates individuals who have sustained economic losses as a direct result of impropriety by their attorneys. In the 2010 fiscal year, which marks the 50th anniversary of the program’s existence, the fund paid $554,270 to clients, up from $449,050 in 2009 but below the record $899,672 in 2008. The report was approved by the BOG and will be forwarded to the state Supreme Court.

Also at the October meeting, the BOG:

• Heard the first reading of two proposals regarding the Washington State Bar Foundation, presented by Ron Ward, the Foundation’s president. The proposals would increase the number of Foundation trustees from 12 to 15 and add an “opt-out” item for WSBA member contributions to the Foundation on the annual WSBA licensing form.
• Previewed the redesigned WSBA website, expected to launch in the first quarter of 2011. The new site will feature a streamlined layout, fewer but more useful links, easier access to news and other frequently viewed items, and an events calendar.
• Approved a proposal for the BOG Committee on Diversity to organize or support a forum organized by another entity on “Racial Bias in the Justice System: Myth or Reality?”
• Received an update from WSBA Executive Director Paula Littlewood regarding the new Moderate Means Program, through which the Bar and Washington’s three law schools will team up to provide legal assistance at reduced fees to people within 200 and 400 percent of the federal poverty level. Recruitment of lawyers for the program was to take place in December and the program was expected to begin serving clients in early 2011.
• Heard a report from Littlewood about the ongoing WSBA/Northwest Justice Project Home Foreclosure Legal Aid Project. To date, volunteer lawyers had provided legal service to approximately 570 households through the program, Littlewood said. She noted that in the third quarter of 2010, the Seattle area led the nation in home foreclosure filings with a 70 percent increase. WSBA is applying for additional grants to continue the program.

Michael Heatherly is the Bar News editor. For more information on the Board of Governors and Board meetings, see www.wsba.org/info/bog. For more information on issues addressed by the Board, visit the WSBA website at www.wsba.org and click on “News Flash” under “WSBA News and Information.”

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Michael Heatherly is the Bar News editor. For more information on the Board of Governors and Board meetings, see www.wsba.org/info/bog. For more information on issues addressed by the Board, visit the WSBA website at www.wsba.org and click on “News Flash” under “WSBA News and Information.”
WSBA 2011–12 Committee, Board, and Panel Application Form

The WSBA Board of Governors invites applications for appointments to WSBA committees, boards, and panels. Appointments are limited, and only active WSBA members may be appointed. However, most committee meetings are open to the public and may be attended by any member. More information is on the WSBA website at www.wsba.org/lawyers/groups/committees.htm. Brief descriptions of the committees, boards, and panels can be found on page 39. Please note that the WSBA will send appointment letters by September 2011.

**Deadline: Completed applications and materials must be received at the WSBA office by March 11, 2011.**

You may submit your application online by logging on to myWSBA: www.mywsba.org.

1) Please provide your name, WSBA number, and indicate up to three committee(s), board(s), and/or panel(s) for which you are applying. See page 39 for available committees, boards, and panels.

2) Tell us why you would like to serve, and describe all relevant skills or experience.

3) Attach a résumé or C.V. (strongly encouraged but not required, except for the Hearing Officer Panel and Conflicts Review Officer). Also, you may, but are not required to, submit up to three letters of recommendation to support your application.

4) Complete the demographic information. Please note that this section is required. If you prefer not to provide this information, please check “Choose not to respond” next to the applicable question.

5) Sign the waiver. Your application will not be processed without your signature.

**Materials must be received by March 11, 2011, to be considered for appointment.**

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**Step 1: Provide your name, WSBA number, and committee(s), board(s), and/or panel(s) choices.**

Your Name (print) _________________________________________ WSBA number ______________

Indicate which committee(s), board(s), and/or panel(s) you are applying for:

1st choice ________________________________________________
   □ Check here if you have served on this committee previously. Approximate years of service: ____________

2nd choice ________________________________________________
   □ Check here if you have served on this committee previously. Approximate years of service: ____________

3rd choice ________________________________________________
   □ Check here if you have served on this committee previously. Approximate years of service: ____________

**Step 2: Describe why you would like to serve, and any relevant skill(s) you may possess.**

*Why would you like to serve on a particular committee, board, or panel?*

_________________________________________________________________________________________________

_________________________________________________________________________________________________

_________________________________________________________________________________________________

_________________________________________________________________________________________________

*Describe your relevant skills or experience.*

_________________________________________________________________________________________________

_________________________________________________________________________________________________

_________________________________________________________________________________________________
Step 3: *Attach a résumé or C.V. and/or letters of recommendation (optional).*

Note: This is optional except for applicants for the Hearing Officer Panel and Conflicts Review Officer, who are required to submit a résumé or C.V. and a letter of interest.

Step 4: *Provide demographic information (required).*

The WSBA promotes diversity, equality, and cultural competence in the courts, legal profession, and the bar. In so doing, the WSBA is committed to ensuring that its committees, boards, and panels reflect the diversity of its membership. Please check all boxes that apply.

**Ethnicity:**
- [ ] American Indian/Native American/Alaskan Native
- [ ] Black/African descent
- [ ] Pacific Islander
- [ ] Multi-racial
- [ ] Choose not to respond
- [ ] Asian
- [ ] Caucasian/White
- [ ] Spanish/Hispanic/Latina/o
- [ ] Other ______________

**Gender:**
- [ ] Male
- [ ] Female
- [ ] Choose not to respond

**Disability:**
- [ ] Yes
- [ ] No
- [ ] Choose not to respond

**Sexual orientation:** Do you openly identify as a sexual minority, to include the following: gay, lesbian, bisexual, or transgender?
- [ ] Yes
- [ ] No
- [ ] Choose not to respond

**Number of years in practice:** ____________
- [ ] Choose not to respond

**Employer:** ____________________________________________________________
- [ ] Choose not to respond

**Area(s) of practice:** ______________________________________________________
- [ ] Choose not to respond

**Number of lawyers in law firm:**
- [ ] solo
- [ ] 2–5
- [ ] 6–10
- [ ] 11–20
- [ ] 21–35
- [ ] 36–50
- [ ] 51–100
- [ ] 101+
- [ ] Choose not to respond

Step 5: *Sign the waiver.*

I understand and agree that as part of the application process, the WSBA routinely checks the grievance and discipline files for any records related to applicants. Thus, I waive confidentiality of these materials to WSBA staff and the Board of Governors.

Signature ____________________________________________ Print name ____________________________

E-mail ____________________________________________ Daytime phone ____________________________

Please mail, fax, or e-mail (PDF or Word document) to:

Washington State Bar Association
Communications Department
1325 Fourth Ave., Ste. 600
Seattle, WA 98101
Fax: 206-727-8319
E-mail: barleaders@wsba.org

Application Deadline: March 11, 2011

*Log on to myWSBA.org to apply online. Thank you for your interest in serving!*
Overview of Standing Committees, Regulatory Boards, and Panels for 2011–12

STANDING COMMITTEES

Amicus Curiae Brief Committee
Reviews all requests for amicus curiae participation by the WSBA, and provides a recommendation to the Board of Governors pursuant to the WSBA Amicus Curiae Brief Policy. Appointment is for a two-year term.

Continuing Legal Education (CLE) Committee
Provides policy guidance for the WSBA Education and Outreach Department in fulfilling its mission of serving the ongoing education needs of Washington lawyers. The WSBA-CLE and its efforts have to be fiscally self-sustaining, which requires a business focus in the Committee. Standing subcommittees are quality control, technology, section/external relations, and a fourth “as needed” programming subcommittee to support the Department in achieving its tradition “The Innovator in Continuing Legal Education.” Appointment is for a three-year term.

Courts Rules and Procedures Committee
Studies and develops suggested amendments to designated sets of court rules on a regular cycle of review. Performs the rules study function outlined in GR 9 and reports its recommendations to the WSBA Board of Governors. The Civil Rules Committee, Mandatory Arbitration Rules Committee, and Civil Rules for Courts of Limited Jurisdiction Committee will be reviewed in 2011–12. Lawyers with experience or interest in these areas are encouraged to apply. Appointment is for a two-year term.

Committee for Diversity
Works to increase diversity within the membership and leadership of the WSBA; promote opportunities for appointments or elections of diverse applicants to the Board of Governors; and support and encourage opportunities for minority attorneys; aggressively pursue employment opportunities for minorities; and raise awareness of the benefits of diversity. Appointment is for a two-year term.

Editorial Advisory Committee
Acts mainly in an advisory capacity, supervising the publication of Washington State Bar News, including the recommendation of finalists for the editor position for selection by the WSBA Board of Governors, and the establishment of guidelines for format, content, and editorial policy. Appointment is for a two-year term.

Judicial Recommendation Committee
Screens and interviews candidates for state Court of Appeals and Supreme Court positions. Recommendations are reviewed by the WSBA Board of Governors and referred to the governor for consideration when making judicial appointments. Appointment is for a three-year term.

Legislative Committee
Reviews proposals from WSBA sections for state legislation that relate to the practice of law and the administration of justice, and makes recommendations to the Board of Governors for a position thereon. Appointment is for a two-year term.

Pro Bono and Legal Aid Committee
Deals with questions in the fields of pro bono and legal aid with respect to (1) supporting activities that assist volunteer attorney legal services programs and organizations, and encouraging pro bono participation to meet the aspirational goals in RPC 6.1, Pro Bono Publico Service; (2) adopting the WSBA Rule of Professional Conduct to address and refer complaints to the Bar regarding the pro bono participation of attorneys; and (3) cooperating with other agencies interested in these objectives. Both active and emeritus members may serve. Appointment is for a two-year term.

Professionalism Committee
Recommends programs to increase professionalism by assisting attorneys in fostering better client relations; improving responses to the media and public; and promoting educational opportunities focusing on issues related to professionalism, ethics, and civility. Appointment is for a two-year term.

Rules of Professional Conduct Committee
Considers and responds to inquiries arising under the Rules of Professional Conduct (RPC) and may, upon request, express its opinion to the Board of Governors concerning proper professional conduct. Appointment is for a two-year term.

REGULATORY BOARDS

Board of Bar Examiners
Prepares the questions and grades the papers for the bar examinations under the direction of the WSBA Board of Governors, in accordance with the Admission to Practice rules as approved by the Supreme Court. Appointment is for a four-year term.

Character and Fitness Board
Deals with matters of character and fitness hearing on qualifications of applicants for admission to practice law in Washington; makes recommendations to the Board of Governors and Supreme Court; and decides to disbarment. Appointment is for a three-year term. Prerequisite: Members must have been active members of the WSBA for at least seven years. Two positions are available: one that must be filled by a member from District 2, and one by a member from District 8.

Disciplinary Board
Carries out the functions and duties assigned to it according to the Rules for Enforcement of Lawyer Conduct adopted by the Washington State Supreme Court. The full board meets at least six times a year, reviewing hearing officer decisions and stipulations. Three-member review committees meet at least an additional three times a year and review disciplinary investigation reports and dismissals. Considerable reading and meeting preparation are required. Appointment is for a three-year term. Prerequisite: Members must have been an active member of the WSBA for at least seven years. Three positions are available: one that must be filled by a member from District 3, one by a member from District 5, and one by a member from any district.

Law Clerk Board
Supervises the Law Clerk Program in accordance with Rule 6 of the Admission to Practice Rules; considers applications for enrollment in the program; interviews and evaluates law clerks and tutors during the course of study; and certifies that law clerks have successfully completed the educational requirement for the Washington State Bar Exam. The board meets four times a year. Appointment is for a three-year term. Members are appointed with consideration for the geographic distribution of the law clerks in the program. One position is available. This position will serve primarily the Bellevue area. Preference will be given to applicants from Districts 1, 6, 7, and 8.

Lawyers’ Fund for Client Protection Board
Pursuant to APR 15, reviews claims for reimbursement of financial loss sustained by reason of an attorney's dishonest action or failure to account for client funds; decides claims up to $25,000; and makes recommendations to the Board of Governors on claims for greater amounts. The board meets four times a year. Appointment is for a three-year term.

Mandatory Continuing Legal Education Board
Approves courses and educational programs that satisfy the educational requirements of the mandatory CLE rule and considers MCLE policy issues, as well as reporting and exception situations. The board meets five to six times a year. Appointment is for a three-year term.

Mandatory Continuing Legal Education Board

PANELS

Adjunct Investigative Counsel (AIC) Panel
Panel members assist the Office of Disciplinary Counsel as needed pursuant to Rule for Enforcement of Lawyer Conduct 2.9. AIC volunteers may be asked to investigate a grievance against a lawyer; assist staff disciplinary counsel with a portion of an investigation; serve as special disciplinary counsel and represent the Association in the prosecution of a disciplinary case; provide staff disciplinary counsel with an outside opinion on an area of law; serve as a probation monitor following imposition of a disciplinary sanction; serve as a file custodian when a lawyer dies, disappears, or otherwise becomes incapable of protecting clients’ interests; or serve as a limited guardian or guardian ad litem for an incapacitated lawyer. Appointment is for a five-year term. Prerequisite: Members must have been an active or judicial member of the WSBA for at least seven years with no record of disciplinary misconduct.

Hearing Officer Panel
Panel members serve as hearing officers for lawyer disciplinary matters and are expected to make evidentiary rulings, rule on motions, and prepare written findings of fact, conclusions of law, and (as necessary) sanction recommendations according to strict deadlines. Attendance at annual training is required. Hearing officers may not serve as expert witnesses on professional conduct issues, represent respondents in disciplinary matters, or serve as special disciplinary counsel or adjunct investigative counsel. The Hearing Officer Selection Panel reviews applications and makes recommendations to the Board of Governors for appointments to the panel. In addition to the application form, applicants are required to submit a letter of interest (highlighting relevant skills and experience) and resume to the Hearing Officer Selection Panel, WSBA, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539 or elizabeth@wsba.org. Officers serve five-year terms. Prerequisites: Must be a WSBA member in good standing for at least five years, hold a law degree from an accredited institution, and possess substantial legal experience. Application must be submitted in order to be considered for appointment, and the Selection Panel may request a writing sample or additional information during the evaluation process. Initial appointment is for one year commencing October 1, 2011, and may be followed by reappointment for five-year terms. Prerequisites: Please review the Rules for Enforcement of Lawyer Conduct, particularly ELC 2.5 to 2.6 and ELC Title 10, prior to applying. A hearing officer must be an active member of the WSBA, have been an active or judicial member of the WSBA for at least seven years, have no record of public discipline, and have experience as an adjudicator or advocate in contested adjudicative hearings.

OTHER POSITIONS

Conflicts Review Officer
The Conflicts Review Officer (CRO) is appointed pursuant to Rule 2.7 of the Rules for Enforcement of Lawyer Conduct. The CRO, with support from the Office of General Counsel, is a lawyer outside the discipline system who reviews and makes initial determinations for grievances filed against disciplinary counsel and other lawyers employed by the Association, hearing officers, and members of the WSBA Disciplinary Board, the WSBA Board of Governors, and the Washington State Supreme Court. The CRO may dismiss the grievance, defer the investigation, refer the attorney for diversion evaluation, or have the grievance assigned to special disciplinary counsel for further investigation. The CRO acts independently of disciplinary counsel and the Association. To maintain the staggered terms required under the ELCs, one CRO will be appointed to a full three-year term and a second CRO will be appointed to a one-year term. The Washington State Supreme Court makes the appointments based on recommendations from the WSBA Board of Governors. The CRO must have prior experience as a Disciplinary Board member, disciplinary counsel, or adjunct investigative counsel, and have no other role in the disciplinary system while serving as CRO. If you are interested in the position, please submit a letter of interest, references, and resume along with the completed committee application form. Please review Rules for Enforcement of Lawyer Conduct, particularly ELC 2.7, prior to applying.

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Opportunities for Service

2011 Notice of Board of Governors Election

Application deadline: March 1, 2011

Five positions on the WSBA Board of Governors will be up for election this year. These are the governors representing the 3rd, 6th, 7th-East,* and 8th Congressional Districts, and one at-large position. These positions are currently held by Loren S. Etengoff (3rd District), Patrick A. Palace (6th District), Catherine L. Moore (7th-East District), Brian L. Comstock (8th District), and Anthony D. Gipe (at-large).

The WSBA Bylaws provide that any member in good standing, except a member previously elected to the Board of Governors, may be nominated or apply 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 or applications 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 and application forms are available from the WSBA Office of the Executive Director, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539; by phoning 206-239-2125; and on the WSBA website at www.wsba.org/info/bog/2011bogelections.htm. The WSBA executive director must receive nomination or application forms for district races by 5:00 p.m. (Pacific time) on March 1, 2011. Nominations or applications for the at-large governor position must be received by the executive director by 5:00 p.m. (Pacific time) on April 20. The Board of Governors determines the official dates of the election. Paper ballots for district elections will be mailed on or about March 15 and must be returned by 5:00 p.m. (Pacific time) on April 15. For the third year, the WSBA will also use an electronic voting system. Members with e-mail addresses on file with the WSBA will not receive a paper ballot unless requested. All electronic voting will also begin on March 15 and must be completed by 5:00 p.m. (Pacific time) on April 15. The at-large governor will be elected by the Board of Governors at its June meeting. See “Call for Applications for WSBA Board of Governors At-Large Position.” Note: Biographical statements of nominated candidates will be published in the April 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, a governor from the East sub-district (zip codes are 98105, 98115, 98118, 98122, 98125, 98144, 98155, 98178, and 98185) will be elected.

Call for Applications for WSBA Board of Governors At-Large Position

Application deadline: April 20, 2011

To increase member representation on the Board of Governors, the WSBA Bylaws provide for three at-large positions. The full text of the Bylaws can be reviewed at www.wsba.org/bylaws. One of these positions is up for election to a three-year term commencing at the close of the annual meeting in September 2011.

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 3, 2011. The application should include a statement addressing how the applicant believes he or she meets the intent specified in Article VI, Section D of the Bylaws. There is no intent that these positions are dedicated or rotationally filled by any one element of diversity or group of members.

(Excerpt from the WSBA Amended Bylaws, Article VI, Section D)

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 that end 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; or call 206-239-2125 for more information. All application materials are due on April 20, 2011, by 5:00 p.m. (Pacific time). Letters of endorsement will be accepted through May 17, 2011.

Emeritus/Pro Bono Membership — Annual WSBA Training and Orientation: January 13, 2011

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

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

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

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

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

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

**WSBA-CLE Publications Offers Two New Releases**

The fourth and final volume covering real property/real estate issues in the Washington Real Property Deskbook series (4th edition) is now available for purchase. Volume 4 covers causes of action, taxation, and regulation topics and comes with more than 40 forms on CD. Go to www.wsbaclé.org and click "Deskbooks" and "Real Property" to review the full table of contents and list of forms on CD and to order online. Additional stand-alone volumes in this series covering land use and environmental law topics will be released in 2011 and 2012. If you would like to be advised as these new volumes are released, please e-mail your request to orders@wsba.org.

The 2010 supplement to the Public Records Act Deskbook: Washington’s Public Disclosure and Open Public Meetings Laws, from WSBA-CLE and the WSBA Administrative Law Section, has also been released. To purchase this update to the 2006 Deskbook online, go to www.wsbaclé.org and click "Deskbooks" and "Business Law.”

**Seeking Questionnaires from Candidates for Judicial Appointments**

*February 11, 2011, for March 25, 2011, interview; May 6, 2011, for June 17, 2011, 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/judicialrecommendation or contact the WSBA at 206-727-8212 or 800-945-9722, ext. 8212; or e-mail judithb@wsba.org.

**Coming Soon: an All-New**

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**WSBA.org**

a website reimagined and redesigned with you in mind

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Inventive • Effective • User-friendly
Nominees Sought for Public Legal Education Award

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

Nominations, which are due March 1, 2011, should be made in the form of a letter (maximum 500 words) describing the nominee’s work and how it addresses the mission of the CPLE. The letter should also include the name of a reference who can provide additional information about the nominee. Supporting materials may be submitted; please limit print materials to 10 pages and audio-visual materials to 30 minutes. Self-nominations are encouraged. All nominations will be kept confidential.

Submit nominations to: Pam Inglesby, WSBA, 1325 Fourth Ave., Ste. 600 Seattle, WA 98101-2539 or by e-mail to pami@wsba.org. Further information about the CPLE may be found at www.wsba.org/cple.

Northwest Justice Project Notice of Public Meetings

Year 2011 quarterly meetings of the Board of Directors of the Northwest Justice Project, a 501(c)(3) not-for-profit organization which provides civil legal services to eligible low-income clients, will be held on the following dates: January 22, 2011; April 30, 2011; July 30, 2011; and October 29, 2011. The Northwest Justice Project receives primary funding from the state and through the federal Legal Services Corporation and maintains 13-plus offices throughout Washington state. These public meetings generally commence at 9:00 a.m. While they are usually held in Seattle for cost economy reasons, and to accommodate board member travel, specific meeting sites may vary from meeting to meeting based on space availability or other program purposes. All meetings are open, except that limited portions may be closed, pursuant to a vote of a majority of the Board of Directors, to hold an executive session. In such sessions, the Board reviews, considers, and, in some cases, votes upon matters related to: 1) litigation to which the program is or may become a party; or 2) internal personnel, operational, investigative, and sensitive labor relations matters. Any such closed sessions will be as authorized by pertinent laws and regulations and will be duly noted, in summary form, in open session and corresponding minutes. Closed sessions will also be formally certified by the program’s executive director or general counsel as authorized. A copy of the certification will be maintained for public inspection at the program’s main office located at 401 Second Ave. S, Ste. 407, Seattle, WA 98104, and will be otherwise available upon request.

For specific meeting site information or the need for any reasonable accommodations for disabilities or non-English language assistance, please call Lisa Giuffré at 206-464-1519 or toll-free at 888-201-1012.

25th Annual Goldmark Award Luncheon to Be Held February 25

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

2011 Licensing and MCLE Information

Have you used mywsba? Last year, almost half of WSBA members completed their license renewal entirely online at www.mywsba.org. License renewal forms and the section membership form were mailed together in mid-October. Remember, there is no longer a “grace period” for the month of February, so renewal and payment must be completed by February 1, 2011. WSBA Bylaws require a 30 percent late-payment fee if the annual license fee remains unpaid after February 1, 2011. For detailed instructions, go to www.mywsba.org.

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

If you are due to report MCLE compliance for 2008–2010 (Group 1), you should have received your Continuing Legal Education Certification (C2) form in the license packet that was mailed in mid-October. Lawyers in Group 1 include active members who were admitted through 1975, and in 1991, 1994, 1997, 2000, 2003, and 2006. (Members admitted in 2009 are also in Group 1, but are not due to report until the end of 2013.) All credits must be completed by December 31, 2010, and certification (C2 form) must be completed online or be postmarked or delivered to the WSBA by February 1, 2011, or a late fee will be assessed. Last year, 58 percent of reporting members submitted their C2 certification forms quickly and easily online. For detailed instructions, go to www.mywsba.org.

Get More out of Your Software

The WSBA offers hands-on computer clinics for members wanting to learn more about what Microsoft Office programs — Outlook and Word, as well as Adobe Acrobat — can do for a lawyer. We also cover online legal research such as Casemaker and other resources. Are you a total beginner? No problem. The clinic teaches helpful tips you can use immediately. Computers are provided, or bring your laptop. Seating is limited to 15 members. The January 10 clinic will meet from 10:00 a.m. to noon at the WSBA office and will focus on using Microsoft Word. The January 13 clinic will meet from 2:00 to 4:00 p.m. and will focus on using Adobe Acrobat Professional — Version 9 (not the Reader) and
Never needed more…

...Never more in need.

- Nearly 30% of Washington residents live below 200% of the poverty level
- Only 1 in 5 people will receive help for an urgent legal problem this year
- Since 2009, top requests for legal help have drastically increased:
  - Domestic Violence Advocacy ↑ 109%
  - Foreclosures ↑ 556%
  - Unemployment ↑ 890%

Sources: 2010 US Census; King County Crisis Clinic (2008-2010 comparison)

Please consider supporting the Campaign when renewing your bar license, by making a secure online contribution at www.c4ej.org, or by sending your donation by mail to the address below.

LAW Fund & the Campaign for Equal Justice | 1325 4th Ave., Ste. 1335, Seattle, WA 98101 | 206.623.5261
**McKinley Irvin**

is pleased to announce that

**Susan J. Shulenberger**

has joined the firm as Of Counsel.

Ms. Shulenberger has been practicing law in Seattle for over 28 years. At McKinley Irvin, she will continue focusing her practice on divorce and family law cases involving complex property valuation and distribution issues.

Ms. Shulenberger is a leader within the legal community, where she is involved in issues of ethics in the practice of law. She is chair of the Washington State Bar Association’s Lawyers’ Fund for Client Protection Board and former member of the Rules of Professional Conduct Committee. She is the immediate past chair for the WSBA Character and Fitness Board, where she served for four years, two of them as chair. Ms. Shulenberger also worked as disciplinary counsel for the WSBA, where she argued before the Washington State Supreme Court as well as the Disciplinary Board of the Bar Association. She recently contributed to the Washington State Family Law Desk Book regarding the use of professionals in family law litigation. Along with her substantive knowledge in family law and significant strategic litigation experience, Ms. Shulenberger is also trained in alternative dispute resolution procedures, including mediation and arbitration.

**McKinley Irvin–Seattle**

Susan J. Shulenberger  
Of Counsel  
425 Pike Street, Suite 500  
Seattle, WA 98101  
Phone: 206-625-9600  
sshulenberger@mckinleyirvin.com

www.mckinleyirvin.com

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**Mills Meyers Swartling**

is pleased to announce

**Janna J. Annest**

has become a principal in the firm.

Her practice includes adoption, insurance coverage, real property, commercial law and product liability.

**David W. Howenstine**

has joined the firm as an associate.

His practice will include aviation law, employment law, insurance coverage and tort defense.

**Law Offices of Mills Meyers Swartling**

1000 Second Avenue, 30th Floor, Seattle, WA 98104-1064  
Telephone: 206-382-1000 • Facsimile: 206-386-7343  
E-mail: info@mms-seattle.com

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1325 Fourth Ave., Ste. 600, Seattle, WA 98101
FLOYD, PFLUEGER & RINGER, P.S.

is pleased to announce that

Nicholas L. Jenkins

has become a partner of the firm.

The firm's litigation practice emphasizes complex civil litigation and medical malpractice including the defense of construction defect claims, claims of professional negligence, and toxic torts.

2505 Third Avenue, Suite 300
Seattle, WA 98121-1445
Telephone: 206-441-4455
Facsimile: 206-441-8484

www.floyd-ringer.com

Ogden Murphy Wallace, P.L.L.C.

The Members of Ogden Murphy Wallace, P.L.L.C. announce that

John J. O'Donnell

has retired from the Firm and from the practice of law as of October 31, 2010.

John joined the Firm in 1990 and over the course of his 20 years here, built a substantial tax and estate planning practice. His practice spanned over 30 years in Seattle. Thanks in part to John’s efforts, the tax and estate planning practice at Ogden Murphy Wallace is a vibrant and thriving practice able to meet the ongoing needs and challenges faced by its clients.

John's long-time partner, Leslie Pesterfield, and their associate, Amber Quintal, are honored to carry on John's legacy. The tax practice is also pleased to announce that Monica Langfeldt has recently joined the Firm.

John's daily presence and counsel will be missed. He remains a great friend of the Firm. We wish him all the best as he embarks on this new chapter in his life.

Seattle Office
1601 Fifth Avenue, Suite 2100
Seattle, WA 98101-1686
206-447-7000

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Wenatchee, WA 98801
509-662-1954

www.omwlaw.com

Kimberly Seely is pleased to announce the opening of

COASTLINE LAW GROUP, PLLC

Opening in August 2010, Coastline Law Group is a boutique environmental law firm located on the waters of the Pacific Northwest in Tacoma, Washington. We represent municipal corporations as well as private entities in complex environmental litigation and regulatory matters. Areas of expertise include cost recovery, remediation, compliance, agency negotiations, insurance recovery, judicial and administrative proceedings, and managing private and public environmental liability. In addition to founder Kimberly Seely, also joining the firm are William Maer and Margaret Lee. Our attorneys have over 35 years' experience representing a variety of clients, both large and small, who are faced with potential environmental liability.

4015 Ruston Way, Suite 200
Tacoma, WA 98402
Telephone: 253-203-6226
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DAVID B. HUSS

Former insurance adjuster and defense counsel, now plaintiffs’ attorney. 30 years’ combined experience in insurance and law.

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INSURANCE AND CLAIMS HANDLING

Consultation, testimony, mediation, and arbitration in cases involving insurance or bad faith issues.
Adjunct Professor Insurance Law.
25 years’ experience as attorney in cases for and against insurance companies.
Developed claims procedures for major insurance carriers.

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LAWYER DISCIPLINE
AND LEGAL ETHICS

Former Chief Disciplinary Counsel Anne I. Seidel
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MAC ARCHIBALD

Mac has been a trial lawyer in Seattle for over 40 years. He has tried a wide range of cases including maritime, personal injury, construction, products liability, consumer protection, insurance coverage, and antitrust law.

Mac has over 15 years of mediation experience. He has mediated over 1,000 cases in the areas of maritime, personal injury, construction, wrongful death, employment, and commercial litigation.

Mac has a reputation as not only being highly prepared for every mediation, but also for providing as much follow-up as is necessary to settle a case.

LAW OFFICES OF EDWARD M. ARCHIBALD
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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 disciplinary notices should be read carefully for names, cities, and bar numbers.

Resigned in Lieu of Disbarment

Peter Moote (WSBA No. 6098, admitted 1975), of Freeland, resigned in lieu of disbarment, effective November 8, 2010. Mr. Moote affirmatively admitted that the WSBA could prove by a clear preponderance of the evidence the alleged violations of the Rules of Professional Conduct, and that proof of such violations would suffice to result in disbarment, but did not affirmatively admit the facts and misconduct herein. This discipline is based on conduct involving failure to act diligently, failure to communicate, conversion of client funds, filing false documents with the court, misrepresentations to a tribunal, the commission of criminal acts, and fraud. The Statement of Misconduct reads as follows:

Client A: From May 2004 until March 2010, Mr. Moote represented Client A in personal injury claims against a third-party insurer (TPI) and against Client A’s underinsured motorist coverage (UIM) carrier. The claims arose following an auto accident in May 2001. In August 2005, without her knowledge or permission, Mr. Moote settled Client A’s claim against TPI for $85,000 and dismissed her suit. He never informed Client A of the settlement or of his receipt of her settlement check and documents. On August 22, 2005, Mr. Moote received two settlement checks from TPI—one for $28,333.05, representing his fee, and one for $56,666.05, payable to Client A and representing her share of the settlement money. Mr. Moote forged Client A’s signature to her settlement check, deposited the check into an account other than his IOLTA account, and converted Client A’s money for his own use.

On July 28, 2005, Mr. Moote notified Client A’s UIM carrier that damages to Client A exceeded $85,000, and that Client A would pursue her claim against them. During the next five years Mr. Moote repeatedly misrepresented to Client A that he was in contact with her UIM carrier and attempting to schedule an arbitration to decide her claim when in fact he had no further contact with the UIM carrier about her claim.

In March 2010, knowing that no UIM arbitration had taken place, Mr. Moote misrepresented the status of the UIM claim to Client A and to the King County Superior Court, and attempted to defraud the UIM carrier. Mr. Moote fabricated and filed with the court three false UIM arbitration decisions and orders attached to three Petitions For Judicial Review seeking a determination of bad faith by the UIM carrier.

When Client A was injured in a second accident in April 2006, Mr. Moote told her that he would represent her in that matter. After he made preliminary contacts with the third-party insurer, however, Mr. Moote failed to pursue Client A’s claim and allowed the statute of limitations on her claim to expire, precluding Client A from receiving compensation for her injuries.

Client B: From February 2005 until April 2010, Mr. Moote represented Client B in her personal injury claim arising from an accident in November 2004 at a Country Club. In August 2009, at a mediation to resolve Client B’s case, the parties agreed to settle Client B’s claims for $100,000. On August 17, 2009, the Country Club’s attorneys finalized the settlement by mailing Mr. Moote a check for $100,000, settlement and release documents, and an order of dismissal of Client B’s suit. Mr. Moote failed to notify Client B of the receipt of the check and documents or that the case had been finally settled. Without Client B’s knowledge and permission, Mr. Moote deposited Client B’s settlement check into his IOLTA account, and, within days of its receipt, converted Client B’s share of the money to himself for his own use.

During fall and winter 2009, Mr. Moote did not return Client B’s numerous telephone messages or answer her letters requesting the status of the personal injury settlement and legal materials. He also failed to provide her with documents or to inform her about the status of her case. Client B’s suit was dismissed by the Superior Court on November 17, 2009, for lack of activity.

On November 2, 2009, and December 22, 2009, Mr. Moote sent Client B two checks totaling $15,000 that he claimed were partial payments to Client B of settlement funds owed to her. Mr. Moote misrepresented to Client B that he could not distribute the remainder of the settlement money owed to her until he had satisfied non-existent medical liens.

On February 18, 2010, knowing he had converted all of the settlement funds, Mr. Moote prepared and sent Client B a fraudulent IOLTA accounting sheet misrepresenting to her that almost $83,000 of Client B’s settlement funds remained in his IOLTA account. Mr. Moote owes Client B $49,000.

Mr. Moote’s conduct violated RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; RPC 1.4, requiring a lawyer to keep a client reasonably informed about the status of a matter, promptly comply with reasonable requests for information, and explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; RPC 1.15A(b), prohibiting a lawyer from using, converting, borrowing, or pledging client or third-person property for the lawyer’s own use; 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 3.3, prohibiting a lawyer from knowingly making a false statement of fact or law to a tribunal and from offering evidence that the lawyer knows to be false; RPC 8.4(b), prohibiting a lawyer from committing a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects; and RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

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

Disbarred

Mark Alan Schneider (WSBA No. 18398, admitted 1988), of Tacoma, was disbarred, effective September 17, 2010, by order of the Washington State Supreme Court. This discipline is based on conduct involving failure to abide by a client’s decision concerning the objectives of representation, conversion of client funds, the commission of a criminal act, and dishonesty.

Mark Alan Schneider is to be distinguished from Mark William Schneider, of Seattle, and Mark Alan Schneider, of Bellevue.

In November 2004, a client hired Mr. Schneider to represent her in a personal injury claim related to injuries sustained in an automobile accident. On August 22, 2006, the client died of causes unrelated to the accident. At the time of her death, the client’s personal injury claims were outstanding and no suit had been filed. On April 2, 2007, knowing the client had died, and without the permission of the client’s daughter and personal representative, Mr. Schneider settled the client’s claim and received a settlement draft in the amount of $35,000. At Mr. Schneider’s request, the insurer made the draft payable to Mr. Schneider’s IOLTA account. On April 10, 2007, Mr. Schneider endorsed the draft and deposited the money into his IOLTA account. Mr. Schneider did not tell the attorney for the client’s estate (Attorney B) or the client’s family that he had settled the case and received settlement funds.

Ten months later, in February 2008, Attorney B
learned of the settlement. He told Mr. Schneider to prepare an accounting and deliver the settlement funds to him. Mr. Schneider misrepresented to Attorney B that the client’s daughter had authorized him to settle the case and to receive the settlement funds. Although he assured Attorney B that he would deliver the funds to him, Mr. Schneider did not do so. Over the next year, Attorney B repeatedly told Mr. Schneider that the settlement funds were the property of the client’s estate and that he must deliver the funds to the estate, which Mr. Schneider failed to do.

Mr. Schneider’s conduct violated RPC 1.2(a), requiring a lawyer to abide by a client’s decisions concerning the objectives of representation and to consult with the client as to the means by which they are to be pursued; RPC 1.15A(b), prohibiting a lawyer from using, converting, borrowing, or pledging client or third-person property for the lawyer’s own use; RPC 8.4(b), prohibiting a lawyer from committing a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects and RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

Kathleen A.T. Dassel represented the Bar Association. Mr. Schneider represented himself. Octavia T. Hathaway was the hearing officer.

**Suspended**

**Drago Campa** (WSBA No. 23947, admitted 1991), of Los Angeles, California, was suspended for 18 months, effective June 22, 2010, 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 a default hearing. This discipline is based on conduct in two matters involving failure to competently perform legal services, failure to obey a court order, violating a duty to communicate, failure to provide a written accounting of client funds, withholding client property, trust account irregularities, conduct prejudicial to the administration of justice, and violations of the Rules for Enforcement of Lawyer Conduct. The suspension will be followed by two years’ probation upon reinstatement.

In April 2005, Mr. Klessig agreed to represent a client in litigation concerning a commercial lease. Client made an initial payment of $1,500 and additional payments thereafter. Even though Mr. Klessig’s fee agreement provided that a monthly detailed accounting would be sent, and the client made specific requests to receive such an accounting, Mr. Klessig provided only sporadic statements.

The trial in the client’s case was set for December 7, 2006. In response to a demand from Mr. Klessig, the client provided an additional $1,500 fee deposit in November 2006. Mr. Klessig failed to provide the client with a statement reflecting that payment until September 2007. Mr. Klessig told the client that the case would probably settle. On December 5, 2006, the trial date was stricken because the parties were working out the details of a settlement. On April 12, 2007, the court entered a Stipulated Order of Dismissal with Prejudice. Mr. Klessig did not notify the client of the dismissal.

Between September 2007 and November 2007, the client made a written request to Mr. Klessig for a refund of the November 2006 payment and left him multiple voice-mail messages. On November 6, 2007, the client received a voice-mail message from Mr. Klessig’s legal assistant stating that the account was being reviewed. Having heard nothing more, the client made another written request for a refund on November 26, 2007, adding that she might “seek assistance from the Washington State Bar Association.” Shortly thereafter, the client received a check from Mr. Klessig in the amount of $1,036.47 and a statement dated October 20, 2007. That was the first statement sent to the client since September 2006. The statement showed a balance of $1,036.47 as of December 20, 2006 and no indication of any work performed after December 20, 2006. On December 7, 2007, the client spoke with Mr. Klessig and questioned the amount of the refund. Mr. Klessig told her that he needed time to review her account and that he would contact her after he did.

In January 2008, having heard nothing more from Mr. Klessig’s office, the client filed a grievance. In response to the grievance, Mr. Klessig stated in writing that he would send the client a check for $463.53 to resolve their dispute, which he did on March 10, 2008. In June 2008, disciplinary counsel sent Mr. Klessig an Additional Request for Response to Grievance. Disciplinary counsel asked that Mr. Klessig explain what work was done on the client’s case after November 1, 2006, and why the balance of the client’s November 2006 payment was not refunded before November 29, 2007. Disciplinary counsel also asked Mr. Klessig to provide certain billing and trust account records related to the grievance. Mr. Klessig did not respond. After receiving a second notice in June 2008, Mr. Klessig telephoned the client to ask her to withdraw her grievance. He also telephoned disciplinary counsel to tell him that he had not received the June 2008 Additional Request for Response to Grievance and that he thought the grievance was closed. Disciplinary counsel told Mr. Klessig that the grievance was not closed and sent him additional copies of the Additional Request for Response to Grievance. In spite of multiple requests from disciplinary counsel, Mr. Klessig failed to provide a complete response to requests for records and information.

Mr. Klessig’s conduct violated RPC 1.15A(c), requiring a lawyer to keep the client reasonably informed about the status of the matter; RPC 1.15A(d), requiring a lawyer to promptly notify a client or third person of receipt of the client or third person’s property; RPC 1.15A(e), requiring a lawyer to promptly provide a written accounting to a client upon request and to provide at least annually a written accounting to a client for whom the lawyer is holding funds; RPC 1.15A(f), requiring a lawyer to promptly pay or deliver to the client the property which the client is entitled to receive; RPC 1.15A(h)(2), requiring a lawyer to keep complete trust account records; RPC 1.15A(h)(6), requiring a lawyer to reconcile trust account records as often as bank statements are generated or at least quarterly and to reconcile the check register balance to the bank statement balance and reconcile the check register balance to the combined total of all client ledger records; RPC 1.15A(h)(8), prohibiting disbursements on behalf of a client or third person from exceeding the funds of that person on deposit; former RPC 1.14(b)(3) and current RPC 1.15B, 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; 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. Bushy represented the Bar Association. Mr. Klessig represented himself. Barbara Ann Peterson was the hearing officer.

**Suspended**

**Antonio Salazar** (WSBA No. 6273, admitted 1975), of Seattle, was suspended for one year, effective July 7, 2010, by order of the Washington State Supreme Court following a default hearing. **Note: This order does not contradict or modify the order which disbarred Mr. Salazar from the practice of law, effective May 12, 2010.** This discipline is based on conduct involving failure to act diligently, dishonest conduct, and a pattern of neglect demonstrating unfitness to practice law.

**Matter No. 1** In March 2007, Mr. Salazar was retained to represent clients in a dispute regarding the sale of their truck and trailer. In April 2007, Mr. Salazar filed a Complaint for Damages in superior court on behalf of the clients. In June 2007, the opposing party filed for bankruptcy. Mr. Salazar advised his clients that, because of the pending bankruptcy action, they could not proceed with their lawsuit. The case was dismissed on August 16, 2007.

On August 24, 2007, Mr. Salazar’s office received notice that the opposing party’s bankruptcy had been dismissed. Mr. Salazar told the clients it would cost $500 to reopen the civil suit, and received two checks from the clients totaling $500 for filing fees to re-open their civil suit. Mr. Salazar’s office cashed both checks and recorded one in the client ledger. The other check was copied to the clients’ file, but was not entered in the register. Mr. Salazar took no action to reopen the suit and did not return the $500 to the clients. He ultimately told the clients that he would not work on their case, and sent them their file in June 2008. In a letter to the Association dated March 20, 2009, Mr. Salazar falsely stated that he “never agreed to reopen the case” and if the clients had sent his office checks to refile an action, then the checks would have been returned to the clients.

**Pattern of Neglect:** In July 1990, Mr. Salazar stipulated to censure for failing to complete a client’s alien employment law certification application over a period of three years and for failing to file an extension of another client’s resident visa. In September 1994, a review committee of the Disciplinary Board admonished Mr. Salazar for failing to file a criminal defendant’s appeal brief, process his appeal, or notify the client that he was no longer working on his appeal. In February 1998, a hearing officer recommended that Mr. Salazar be admonished for failing to cooperate in eight separate disciplinary investigations. In December 1999, a review committee of the Disciplinary Board admonished Mr. Salazar for failing to ensure that his staff properly calendared an appeal date for a client in a BIA (Board of Immigration Appeals) appeal. In September 2001, a hearing officer recommended that Mr. Salazar be censured for failing to timely file a client’s appeal brief to the BIA. In February 2005, the Supreme Court suspended Mr. Salazar for failing to expedite his clients’ visa application, failing to respond to clients’ requests for information, failing to provide a client with an Immigration and Naturalization Services Request for Evidence letter in a timely fashion, failing to communicate to his client, failing to account to a client regarding his fees, and failing to respond promptly to the Association’s requests for responses regarding four separate grievances. In March 2008, a hearing officer recommended that Mr. Salazar be reprimanded for misrepresenting to opposing counsel that Mr. Salazar’s client had accepted a settlement offer when in fact he had not obtained his client’s agreement. On October 30, 2009, a hearing officer recommended that Mr. Salazar be disbarred. The hearing officer concluded that Mr. Salazar had engaged in a pattern of neglect with respect to client matters and caused serious injury, or potential serious injury, to more than one client. Mr. Salazar was subsequently disbarred effective May 12, 2010.

Mr. Salazar’s conduct violated RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; RPC 1.5(a), prohibiting a lawyer from making an agreement for, charging, or collecting an unreasonable fee or an unreasonable amount for expenses; 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and 8.4(n), prohibiting a lawyer from engaging in conduct demonstrating unfitness to practice law.

Erica Temple represented the Bar Association. Mr. Salazar represented himself. Carl J. Carlson was the hearing officer.

**Suspended**

**Richard Dale Shepard** (WSBA No. 16194, admitted 1986), of Tacoma, was suspended for two years, effective September 9, 2010, by order of the Washington State Supreme Court following an appeal. This discipline is based on conduct involving failure to act diligently in representing a client, failure to communicate, conflicts of interest, and the unauthorized practice of law. For further information, see *In re Shepard __ Wn.2d __ 239 P3d 1066* (2010).

In 2003, Mr. Shepard, a solo practitioner, agreed to enter into a business arrangement with Mr. C, who intended to sell living trusts in Washington. Under the proposed agreement, clients who purchased a living trust package from Mr. C would be referred to Mr. Shepard for legal services relating to those trusts. Mr. C would independently market and sell the trusts and would arrange to have each purchaser sign a fee agreement with Mr. Shepard. The fee agreement required clients to pay Mr. Shepard a flat fee of $200 in exchange for his agreement to independently review and make recommendations regarding each client’s estate-planning needs. Mr. C informed Mr. Shepard that he was not a lawyer. He told him he was a “certified estate planner,” but did not mention that he had been previously convicted in California for selling fraudulent insurance products.

After affiliating with Mr. Shepard, Mr. C began selling living trusts to seniors. Many of the prospective clients did not understand the differences between various estate-planning options. Much of the information provided by Mr. C was either inaccurate or misleading. In particular, Mr. C exaggerated the costs and difficulty of probating an estate in Washington. Many clients were sold trusts that they did not need without being fully informed on how the trusts worked. Mr. Shepard never accompanied Mr. C on these sales visits. As part of Mr. C’s sales pitch, prospective clients were told that an attorney would review the estate-planning documents and were presented with the previously mentioned attorney-client fee agreement.

Both the trust packages sold by Mr. C and Mr. Shepard’s fee agreements were generated by ATDS, a third-party contract paralegal service. Upon agreement with Mr. C to purchase a living trust package, clients were asked to fill out a questionnaire that included the client’s assets and beneficiary information. The questionnaire was then sent to ATDS, which would generate the trust documents and a short table summarizing the client’s answers on the questionnaire. These documents were forwarded to Mr. Shepard, but Mr. Shepard did not carefully review them. Mr. Shepard simply called his clients to verify the information provided in the questionnaire was accurate. Once the information was verified, the trust packages were forwarded to Mr. C, who delivered them to the clients along with a form letter written by Mr. Shepard explaining how to execute the trusts. When the trusts were finally delivered, Mr. Shepard considered his job complete and never followed up with any of his clients to ensure that the trust documents were executed correctly.

Mr. Shepard did not provide the services promised in his fee agreement, never discussed with his clients their estate-planning needs, and did not review the clients’ assets to determine an appropriate estate-planning strategy. During the brief telephone calls he did make to clients, Mr. Shepard never disclosed that he had an ongoing business relationship with Mr. C which might give rise to a conflict of interest. In all, Mr. Shepard represented more than 70 clients and received $200 for each one.

Although many of the living trust package purchasers were couples, Mr. Shepard often spoke to only one spouse over the phone. He sometimes made notes during the calls about concerns he had regarding clients’ competency. In one instance, one of Mr. Shepard’s clients specifically notified Mr. Shepard that his wife was incompetent to execute a trust. Although Mr.
Shepard’s fee agreement stated that an in-office consultation was required if undue influence or incapacity issues appeared possible. Mr. Shepard made no effort to investigate the accuracy of the information and did not require the couple to come to his office to speak with him. The husband signed the trust documents for his wife using a previously executed power of attorney that specifically prohibited his revoking or changing any estate-planning or testamentary documents for his wife. Mr. Shepard did not discuss the prior power of attorney with the couple, and as a result the trusts they purchased and attempted to execute were legally invalid.

At some point in 2003, Mr. Shepard was introduced to Mr. C’s brother, an insurance agent who worked with Mr. C offering insurance products to clients who purchased trust packages. Mr. C and Mr. C’s wife and brother intended to use the personal and financial information obtained through the sale of the trust packages to sell annuities and reverse mortgages to clients through fraudulent means. Many clients who purchased the trust packages were pressured into purchasing these insurance products, most of which were eventually canceled and the premiums returned after intervention by the Office of the Insurance Commissioner (OIC).

Around March 2004, Mr. Shepard was contacted by Ms. P, the daughter of two of his clients, who informed Mr. Shepard that her parents were not competent to execute the trust documents. Ms. P’s mother had Alzheimer’s disease and her father was bedridden. She was concerned that the documents they had signed were not executed properly, which turned out to be correct. Ms. P also informed Mr. Shepard that, in addition to the trust package her parents had purchased, Mr. C had attempted to sell her parents both an annuity and a reverse mortgage. Mr. Shepard spoke with Mr. C about his conversation with Ms. P but made no changes with regard to the way the trusts or insurance products were sold.

In February 2005, Mr. Shepard was contacted by an OIC investigator. OIC informed Mr. Shepard of their investigation of Mr. C and his wife for their role in selling insurance products to seniors and told Mr. Shepard about Mr. C’s prior felony conviction in California. Despite this information, Mr. Shepard continued to accept clients referred to him by Mr. C well into 2005. The OIC informed both the Bar Association and the Attorney General’s Office about their concerns regarding Mr. and Mrs. C, their business, and Mr. Shepard. The Bar began investigating Shepard’s role in the scheme.

In response to the ongoing investigations, Mr. Shepard initiated efforts to mitigate problems with his conduct. He sent letters to his clients urging them to make an appointment with him to review their trust documents and informed clients of the investigations.

Mr. Shepard’s conduct violated RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; former RPC 1.4, requiring a lawyer to keep a client reasonably informed about the status of a matter, promptly comply with reasonable requests for information, and explain a matter to the extent necessary to permit the client to make informed decisions regarding the representation; former RPC 1.7(b), prohibiting a lawyer from representing a client if the representation of that client may be materially limited by the lawyer’s own interests, unless the lawyer believes the representation will not be adversely affected and the client consents in writing after a consultation and a full disclosure of the material facts; RPC 5.3(a) requiring a partner in a law firm, with respect to a nonlawyer associated with a lawyer, to make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person’s conduct is compatible with the professional obligations of the lawyer; and RPC 5.5(b), prohibiting a lawyer from assisting a person who is not a member of the Bar in the performance of activity that constitutes the unauthorized practice of law.

Kevin M. Bank represented the Bar Association at the hearing. Kathleen A.T. Dassel represented the Bar Association on appeal. Brett A. Purtzee represented Mr. Shepard. Gregory J. Wall was the hearing officer.

Reprimanded

Robert P. Abernethy (WSBA No. 14239, admitted 1984), of Seattle, received a reprimand by order of a hearing officer on October 12, 2010, following approval of a stipulation by the Disciplinary Board. This discipline is based on conduct involving the commission of a crime.

Mr. Abernethy failed to pay and file taxes for 2006 and 2007 to the city of Seattle. During that time period, he further engaged in his law business in Seattle without having first obtained a business license.

On February 21, 2008, Mr. Abernethy entered a guilty plea in Seattle Municipal Court to Failure to Pay Taxes and Engaging in Business Without a License, both gross misdemeanors. He was given a two-year deferred sentence. Mr. Abernethy complied with all of the conditions of his sentence and, on February 19, 2010, his case was dismissed with prejudice.

Mr. Abernethy’s conduct violated RPC 8.4(b), prohibiting a lawyer from committing a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects.

Erica W. Temple represented the Bar Association. Mr. Abernethy represented himself.

Reprimanded

Rami Amaro (WSBA No. 29389, admitted 1999), of Hayden, Idaho, received a reprimand on November 8, 2010, by order of the Washington State Supreme Court imposing reciprocal discipline in accordance with an order of the Idaho State Supreme Court following approval of a stipulation. This discipline is based on conduct involving the unauthorized disclosure of client information. For more information, see the Idaho State Bar’s official publication, The Advocate (September 2009), available at http://isb.idaho.gov/pdf/advocate/issues/adv09sep.pdf.

Ms. Amaro’s conduct violated Idaho’s RPC 1.6, prohibiting a lawyer from revealing information relating to representation of a client unless the client has informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by the rules; and Idaho’s RPC 1.9, prohibiting a lawyer who has formerly represented a client in a matter from thereafter using information relating to the representation to the disadvantage of the former client or from revealing information relating to the representation except as permitted by the rules.

M. Craig Bray represented the Bar Association. Ms. Rami represented herself.

Reprimanded

Ronald Anthony Gomes (WSBA No. 31074, admitted 2001), of Lacey, received two reprimands following approval of a settlement by a hearing officer on September 7, 2010. This discipline was based on conduct in two matters involving failure to act diligently and failure to communicate.

Matter No. 1: Mr. Gomes represented Client A in a contentious child custody and support modification matter. Client A became entangled in a dispute with her ex-husband as to whether she would deliver the children to him, or whether he would pick up the children at her house. After opposing counsel faxed Mr. Gomes notice of a motion for a temporary restraining order (TRO) to be heard the following morning at the court’s ex parte calendar if Client A did not deliver the children to her ex-husband that evening, Mr. Gomes made no attempts to inform Client A of opposing counsel’s motion and failed to appear at the following morning’s ex parte calendar to oppose the motion. As a result, the court granted the request for a TRO and assessed $1,000 in attorney’s fees against Client A.

Matter No. 2: After appearing in a dissolution matter on behalf of Client B, Mr. Gomes failed to respond to opposing counsel’s letters and telephone calls concerning pretrial and discovery matters. Mr. Gomes failed to respond to discovery requests or to appear for a hearing on opposing counsel’s motion for discovery. He further failed to respond to opposing counsel’s attempts to set a CR 26(i) conference to resolve discovery issues or to a motion to compel interrogatory answers. After the court granted opposing counsel’s motion to compel, Mr. Gomes continued to fail to produce the interrogatory answers. When Mr. Gomes appeared for Client B’s dissolution trial, January 2011 | Washington State Bar News 51
the judge refused to allow Mr. Gomes to put on evidence and granted all of the relief sought by the opposing party because of his failure to comply with discovery. Subsequently Mr. Gomes filed an appeal, which was dismissed by the Court of Appeals as being untimely.

Mr. Gomes's conduct violated RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; and RPC 1.4, requiring a lawyer to promptly inform the client of any decision of circumstance with respect to which the client's informed consent required by these Rules, reasonably consult with the client about the means by which the client's objectives are to be accomplished, keep the client reasonably informed about the status of the matter, promptly comply with reasonable requests for information, consult with the client about any relevant limitation on the lawyer's conduct when the client expects assistance not permitted by the Rules or other law, and explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Leslie C. Allen represented the Bar Association. Mr. Gomes represented himself. Frederic G. Fancher was the hearing officer.

Reprimanded

Kenneth L. Grover (WSBA No. 21581, admitted 1992), of Burien, received an admonition on October 1, 2010, by order of a review committee of the Disciplinary Board. This discipline is based on conduct involving violations of the regulation of the legal profession.

During 2006 and 2007, Mr. Grover employed a Rule 9 intern. He did not supervise the intern because, besides already having another Rule 9 intern, Mr. Grover believed that this intern was being supervised by a law professor. Although he initially provided training, Mr. Grover’s supervision quickly dropped to approximately one hour per week. The intern’s Rule 9 license expired during his employment with Mr. Grover. The intern represented hundreds of clients in court during the time he worked for Mr. Grover. No client complained about his work.

Mr. Grover’s conduct violated RPC 5.5(a), prohibiting a lawyer from assisting in the unauthorized practice of law.

Joanne S. Abelson represented the Bar Association. Patrick C. Sheldon represented Mr. Grover.

Reprimanded

J.J. Sandlin (WSBA No. 7392, admitted 1977), of Prosser, was ordered by a hearing officer to receive a reprimand on April 5, 2010. This discipline is based on conduct involving a conflict of interest.

In 2006, Mr. Sandlin received an unsecured loan of $5,000 from a client. Mr. Sandlin did not advise the client in writing of the desirability of seeking the advice of independent legal counsel regarding the transaction, and did not give the client a reasonable opportunity to seek such advice.

Mr. Sandlin’s conduct violated RPC 1.8(a), prohibiting a lawyer from entering into a business transaction with a client or knowingly acquiring an ownership, possessory, security, or other pecuniary interest adverse to a client unless the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client, and are fully disclosed and transmitted.

Randy V. Beitel and Jeffrey L. Tilden represented the Bar Association. Mr. Sandlin represented himself. Anthony A. Russo was the hearing officer.

Reprimanded

Georgina D. Sierra (WSBA No. 16854, admitted 1987), of Redmond, stipulated to two reprimands, followed by two-year probation, approved by order of the hearing officer on August 28, 2010. This discipline was based on trust account irregularities, failure to properly supervise a non-lawyer assistant, and failure to cooperate during a Bar Association investigation. Ms. Sierra stipulated to the discipline without affirmatively admitting the facts and misconduct herein.

In February 2007, the Association began conducting a random examination of Ms. Sierra’s trust account. Ms. Sierra did not respond to the Bar Association auditor’s request to schedule an appointment. Between March and August 2007, the auditor tried repeatedly to schedule an appointment with Ms. Sierra’s then-law office manager to begin the random examination. Ms. Sierra’s law office manager asked repeatedly for delays. At an August 15, 2007, meeting with Ms. Sierra, the auditor examined her trust account records. Because the records were incomplete, Ms. Sierra and the auditor agreed that an outside bookkeeper recently hired by Ms. Sierra should be given an opportunity to complete her ongoing organization of the records. After receiving the bookkeeper’s completed work, the auditor requested further information. In subsequent telephone calls and correspondence, Ms. Sierra did not provide the auditor with all the information requested. Based in part on her failure to cooperate, the auditor recommended an investigation of Ms. Sierra’s trust account practices.

On May 20, 2008, Ms. Sierra was deposed by Disciplinary Counsel regarding the Association’s investigation of her trust account practices. Ms. Sierra produced some of the information subpoenaed for the deposition, but not all of it. Much of the information subpoenaed for the deposition had previously been requested by the auditor. On August 5, 2008, another Association auditor wrote a letter to Ms. Sierra’s counsel requesting further documents relating to her trust account practices from 2006 onwards. Ms. Sierra did not provide the requested documents despite repeated requests. The Association issued a subpoena duces tecum for Ms. Sierra’s deposition because she had failed to cooperate. At the deposition, or shortly after, she provided the previously requested documents.

An audit of Ms. Sierra’s trust account records was completed on October 28, 2009, covering two time periods: one during which her law office manager maintained her trust account records and the other during which Ms. Sierra personally maintained her trust account records. During both periods, Ms. Sierra did not maintain adequate records, did not reconcile her trust account bank statements with her trust account check register, and did not reconcile her trust account bank statements with the combined total of all client ledgers. When Ms. Sierra’s law office manager maintained her account, Ms. Sierra delegated all aspects of her law practice, including management of the trust account, to him. Although Ms. Sierra was the only person with signing authority on the account, her law office manager would prepare checks for her to sign. During this period, Ms. Sierra frequently had shortages in her trust account. She used funds of clients with positive balances on behalf of other clients with negative balances to cover the shortages. Ms. Sierra also disbursed funds to herself that could not be identified to specific clients. When Ms. Sierra personally maintained the account, she overwrote it on one occasion.

Ms. Sierra’s conduct violated former RPC 1.14 and current RPC 1.15A(c)(1), requiring that all funds of a client paid to a lawyer be deposited into an identifiable interest-bearing trust account and that no funds belonging to the lawyer be deposited therein except as permitted by rule; RPC 1.15A(b)(2), requiring a lawyer to keep complete records of his trust account; RPC 1.15A(b)(6), requiring trust account records to be reconciled as often as bank statements are generated or at least quarterly and requiring the lawyer to reconcile the check register balance to the bank statement balance and to the combined total of all client ledger records; RPC 1.15A(b)(8), prohibiting trust account disbursements on behalf of a client or third person from exceeding the funds of that person on deposit and prohibiting the funds of a client or third person from being used on behalf of anyone else; RPC 5.3(b), requiring a lawyer having direct supervisory authority over a non-lawyer make reasonable efforts to ensure that the non-lawyer’s conduct is compatible with the professional obligations of the lawyer; and RPC 8.4(i), 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) and ELC 15.2).

Kevin M. Bank represented the Bar Association. Kurt M. Bulmer represented Ms. Sierra. Terence M. Ryan was the hearing officer.
Reprimanded

Lawrence L. Taylor (WSBA No. 20595, admitted 1991), of Portland, Oregon, received a reprimand on November 8, 2010, by order of the Washington State Supreme Court imposing reciprocal discipline in accordance with an order of the Supreme Court of the State of Oregon. This discipline is based on conduct in which Mr. Taylor's non-lawyer investigator improperly obtained an opposing party's school records to which his client had previously been denied access. For more information, see the Oregon State Bar Bulletin (November 2009) at www.osbar.org/publications/bulletin/09nov/baractions.html. Lawrence L. Taylor is to be distinguished from F. Lawrence Taylor Jr., of Renton, and Lawrence E. Taylor, of Long Beach.

Mr. Taylor's conduct violated Oregon's RPC 5.3(a), requiring a lawyer having direct supervisory authority over a nonlawyer to make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; Oregon's RPC 5.3(b) requiring a lawyer to be responsible for the conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if the lawyer orders or ratifies the conduct involved or the lawyer has direct supervisory authority over the person and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action; and Oregon's RPC 8.4(a)(4), prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice.

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

Reprimanded

James N. Turner (WSBA No. 16199, admitted 1986), of Bellingham, received a reprimand on September 23, 2010, following approval of a stipulation by a hearing officer. This discipline is based on conduct involving failure to act diligently and failure to communicate. James N. Turner is to be distinguished from James Spencer Turner, of Beaux Arts, and James Stanley Turner, of Chehalis.

During 2007 and 2008, Mr. Turner represented three individual clients; two on traffic violations and one on a probation matter. While representing each of these individual clients, Mr. Turner failed to appear for hearings in their cases, failed to inform clients that he had not appeared for their hearings, failed to return their telephone calls or respond to their attempts to obtain information about their cases, and failed to keep them reasonably informed about the status of their cases.

Mr. Turner’s conduct violated RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; and RPC 1.4, requiring a lawyer to promptly inform the client of any decision or circumstance with respect to which the client’s informed consent is required by these Rules, reasonably consult with the client about the means by which the client’s objectives are to be accomplished, keep the client reasonably informed about the status of the matter, promptly comply with reasonable requests for information, consult with the client about any relevant limitation on the lawyer’s conduct when the lawyer knows that the client expects assistance not permitted by the Rules or other law, and explain a matter to the client in a manner calculated to inform the client of any limitation on the lawyer’s ability to assist the client (Civil) or to avoid conflicts of interest (Civil and Criminal).

Debra J. Slater represented the Bar Association. Mr. Turner represented himself. Erik S. Bakke Sr. was the hearing officer.

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work closely with law school faculty and staff, law student groups, the Washington State Bar Association, the Spokane County Bar Association, non-profits, legal services organizations, and local attorneys. Candidates must have demonstrated an interest in, and dedication to, access to justice and public service. For a full position description and to apply, please visit www.gonzaga.edu/employment.

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

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


Convenient downtown Seattle law firm offering turn-key sublease. Corner lot building with large windows and beautiful cherry wood interiors. Two professional offices (18’ x 16’ and 14’ x 11’), plus one paralegal office and two staff workstations. Office share available with use of one of the professional offices and one paralegal office. Possible third professional office and additional paralegal office availability. If shared, the office facilities include furnished reception room with working fireplace, built-in reception desk, furnished conference rooms, library, kitchen, working file room with high-speed copier/fax/scanner, and large basement file storage. Administrative support of high-speed Internet, cable, and VoIP is available. Contact accounting@aiken-lawgroup.com.

Furnished executive offices at Bank of America Plaza (Seattle) — Two blocks from the courthouse. Individual private offices or small suites, perfect for solo practitioner attorney or small law firms. Receptionist service included, plus access to conference rooms, printer/copier services and much more. Four months’ free rent on any new 12-month lease. Call Greg for details at 206-652-3274.

Two Union Square (Seattle) furnished offices for lease on 42nd floor. Flexible lease terms. Rates start as low as $650/mo. Offices can accommodate 1–8 users. Receptionist and other amenities available. Free rent discounts apply for leases of six months or greater. Call Greg for details at 206-652-3274.

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Tuscany: six-bedroom farmhouse and farmhouse with four apartments, both near Florence. 500 to 2,100 euros per week, depending on season and number in party. Contact kenlawson@lawofficeofkenlawson.com.
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Joe Sullivan  
WSBA No. 16660

I became a lawyer because all the other jobs were taken. Seriously, I have always worked in areas where the focus was problem-solving. As a systems analyst (fancy name for a computer programmer), there was good work to be had in the early 1980s. However, there was not a lot of personal contact with the people for whom you were solving the problem. My desire was a profession where I could use these analytical skills to help people more directly in their day-to-day lives. The practice of law fit the bill.

The future of the practice of law is the balance between (1) using the efficiency of technology to best benefit our clients and (2) maintaining a personal relationship with those clients and those on the opposing side when technology allows us to be more and more impersonal.

One of the greatest challenges in law is dealing with the stresses placed on us and our fellow attorneys that negatively impact our clients, our families, and our profession.

If I were not practicing law, I would probably still be working in the field of computer systems and programming.

If I could change one thing about the law, it would be to teach law students and new attorneys that while the “battle” is necessary at times, the resolution that best solves your client’s needs is the true goal. Often, we as lawyers seek the “win” as we define the “win” and not as our client’s needs define it.

This is the best advice I have been given: Always consider your audience. Whether you are writing a brief, presenting an oral argument, or giving a closing argument to a jury, always consider what your audience needs to hear. All else is superfluous; get rid of it.

I would share this with new lawyers: If you work long and hard enough, you can buy your children anything they want, except what they really want — you. Drive a less expensive car and spend more time going to your daughter’s basketball game. Time around the dining room table laughing with your family over dinner sure beats a couple of extra hours at the office.

Traits I admire in other attorneys: Balance. Lawyers I admire most have a sense of who they are beyond just the practice of law. They appreciate family, friends, and how to enjoy their lives. While they love the law, they are not defined by their practice of the law.

I would give this advice to a first-year law student: In 2005, the State Bar of Montana did a survey of its members. An unexpected correlation was found. Those who said they were very satisfied with their practice/career also indicated a high level of participation in volunteer activities within and outside of the practice of law. It is a healthy habit that can be initiated while in law school and will be beneficial if carried on throughout one’s law career.

I am most proud of this: Three very intelligent and lovely young ladies I get to call my daughters.

I’ve been the most happy when I’m sitting around with my family giving each other a hard time and laughing at past experiences we shared.

My favorite hobby/interest: For the last 12 years, I have devoted most of my “spare” time to starting a new Great Falls Central Catholic High School. As a product of Catholic education for all but three years of my academic career, I value what can be done for students in a smaller classroom setting, with more individualized attention, and with a faith-based atmosphere.

Best stress reliever: A long, hard bicycle ride.

What keeps me awake at night: The thought I have a perfect argument just beyond the grasp of my recollection.


Technology is a tool. Like any tool, its use makes it a positive or a negative. Being a cup-half-full kind of guy, our technology can assist us in serving our clients more efficiently and cost effectively and in such a way that we truly love what we are doing while giving us the time to do those things outside the practice of law we desire.

This is the hardest part of my job: Telling a client they have a case, but to reach the results they deserve is cost-prohibitive.

This is the best part of my job: The reaction of a client you have served well when they truly appreciate what you have done.

My name is Joe Sullivan and I am the current president of the State Bar of Montana. I was previously on the Bar’s Board of Trustees from 1993–2007; was the Bar’s secretary/treasurer in 2008 and 2009; and was the president-elect in 2010. I am a graduate of Gonzaga University and the Gonzaga University School of Law. I had the pleasure of working under the tutelage of then-U.S. Magistrate Smithmoore P. Myers. I’ve been a member of the Washington State Bar Association since 1986 and I am currently a partner in the law firm of Deschenes and Sullivan in Great Falls, Montana.

To learn more about “Briefly About Me” and to submit your own, go to www.wsba.org/lawyers/brieflyaboutme.doc.
Shuffling

I am constantly receiving notes from readers along these lines: “Dear Mr. Editor: Heatherly — I’ve seen more than enough in Bar Beat about your pets, your kids, your legal career, etc. What I really want to know is what is on your iPod. I mean, seriously, what exactly is pulsing through your earbuds these days?” Of course, I’m lying. Nobody has ever asked me anything like that. But the column I did about music a while back prompted as much positive feedback as anything I’ve done, so I’m going to do something I’ve been thinking about for a while. I’m going to put my iPod on “shuffle” and write something about the first 10 songs it spits out, in order, regardless of what they might be. I invite you to check out these songs for yourself, but beware that some are not safe for work or for delicate ears, such as those of first-year associates.

Mrs. Officer (Lil Wayne, 2008) — Wee-oh-kee-oh-kee, we start with a paean to female law enforcement professionals recorded by, appropriately enough, the frequently arrested but lyrically arresting Lil Wayne. Oddly, this song contains one of the sweetest and most melodic choruses in hip-hop.

All You Need Is Love (The Beatles, 1967) — Despite the song’s theme and the Beatles’ reputation for artistic integrity, this tune was technically a pure sellout. The BBC commissioned Lennon and McCartney to write it for Our World, a two-and-a-half hour music and arts event that was the first-ever live global television production, viewed via satellite by 400 million old beatniks, young hippies, and other pre-medicinal marijuana enthusiasts. The song was the anthem for the “Summer of Love,” and if you watch the video on YouTube, you can smell the patchouli oil emanating from your monitor.

On Call (Kings of Leon, 2007) — Although they’ve recently incorporated more alternative and arena rock influences, these three brothers and a cousin from rural Tennessee have almost singlehandedly held down the grand tradition of soulful Southern rock, a genre pioneered by the Allman Brothers and Lynyrd Skynyrd. What does the world need more of today? Hillbillies layin’ it down.

Chips Ahoy (The Hold Steady, 2006) — Frontman Craig Finn looks like he could be, well, a lawyer. But this nerdily hip Brooklyn outfit cranks out soaring rock that manages to tell stories with actual characters, in Springsteenian fashion. It’s like riding a rollercoaster while listening to books on tape. This track is about a guy hung up on a woman who gambles on a race horse named after a brand of prefabricated cookies.

Work It (Missy Elliott, 2002) — If you made it this far in life without putting your thing down, flipping it, and reversing it, I am not suggesting that you start doing so now. However, you might at least want to get your hair did, just so you can say you have.

I’m Sensitive (Jewel, 1995) — It’s a miracle my iPod didn’t vanish in a matter/anti-matter collision when juxtaposing this track with Missy’s workout. Jewel’s Alaska hippie-van charmer is the perfect palate cleanser. Her earnestness and first-guitar-lesson musicanship make you want to stick this song to your refrigerator door with a daisy magnet. You just don’t hear much innocent music anymore.

Death on the Stairs (The Libertines, 2002) — Well, you certainly don’t get any innocence with these guys, as you might guess from their name. Before self-destructing amid intra-band turmoil and substance abuse (the first rock band to have encountered such problems, I would think), these Brits produced two magnificent albums in the early 2000s. They recently reunited, at least temporarily, so maybe there’s hope for more Libertineism one day.

My First Single (Eminem, 2004) — This is a gross song that is on my iPod only because I downloaded the whole album (Encore). That is to say, I hate some of what Eminem does, but love other things. His work is too complex to address here, but while most consider him to be the Great White Rapper, I think of him as sort of a white Richard Pryor. He has a direct link to the best and worst of what lives in our souls and serves as sort of an exorcist, albeit while offending our sensibilities at the same time.

Peace (Weezer, 2005) — Eeesh. Weezer’s first four albums were bursting with driving guitar rock and clever, quirky lyrics. Then leader/songwriter Rivers Cuomo went to college and ruined everything. This track, from the album Make Believe, is an excellent example of what you don’t want to hear from these guys. Rock star is the one category of professional that does not benefit from further education.

Miss Teen Wordpower (The New Pornographers, 2003) — I’m thrilled that the manic gerbil in my iPod dredged this one up because my love for this Vancouver, B.C., band — which includes Tacoma’s own country singer-songwriter Neko Case — knows no bounds. Fun facts: 1) this band is not actually pornographic, at least not as compared to some of the other artists on this list, and 2) Canadian bands are required by NAFTA to have at least eight members. It has something to do with exchange rates, I think.

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