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Stephen Hayne has been named one of Seattle’s Best Lawyers by Seattle Magazine, one of Washington’s Top Ten Trial Lawyers by the Washington Law Journal, and a Super Lawyer every year since inception by Washington Law & Politics. He is a past president of the Washington Association of Criminal Defense Lawyers, and has chaired the Criminal Law Sections of the WSBA, WSTLA and the KCBA. In 2003, the Washington Association of Criminal Defense Lawyers awarded him its highest honor; the William O. Douglas Award ‘For extraordinary courage and dedication to the practice of criminal law’.

Steve has taught trial practice at the UW and Seattle U Schools of Law, the National Institute of Trial Advocacy, and the Trial Masters Program, and has been a featured speaker at over 90 continuing legal education programs in the U.S. and Canada. He has published numerous articles in the Bar News, Trial News, Defense, Champion and Overruled magazines. He was lead counsel/co-counsel in State v. Straka, State v. Brayman, Seattle v. Allison, State v. Scott, State v. Ford, and Seattle v. Box. He has tried hundreds of cases from capital murder to reckless driving and currently limits his practice to DUI and serious traffic offenses.

Aaron J. Wolff graduated with honors from the Seattle University School of Law before becoming a DUI prosecutor for the cities of Kirkland and Tukwila. In 2003, Aaron joined the Law Firm of Stephen Hayne where he has limited his practice to defense of DUI’s and other serious traffic offenses. He is a graduate of the National College of DUI Defense, the DRE Drug Evaluation classification overview program and is a NHTSA qualified administrator of the Standardized Field Sobriety Tests. In 2004, Aaron completed the factory training program on the BAC Datamaster breath testing machine.
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Learning from Dr. Bhatia's book, the reader is encouraged to analyze the works of the 19th-century teachers and integrate them into their own teaching practice. This approach allows for a better understanding of the material and enhances the learning experience. For instance, the teachings of Dr. Bhatia emphasize the importance of patience and perseverance, which are crucial qualities for any student. Furthermore, the book highlights the need to adapt teaching methods to the individual student's learning style, a concept that can be easily applied in today's classroom. Overall, Dr. Bhatia's book provides valuable insights into the art of teaching, making it a valuable resource for educators.
**Letters to the Editor**

**Bar News** welcomes letters from readers. We do not run letters that have been printed in, or are pending before, other legal publications with overlapping readership. Letters should be no more than 250 words in length, and e-mailed to letterstotheaditor@wsba.org or mailed to WSBA, Attn: Letters to the Editor, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539. Bar News reserves the right to edit letters. Bar News does not print anonymous letters, or more than one submission per month from the same contributor.

**More on guarding the guardians**

Margaret Dore’s proposal to regulate guardians through the executive branch, not the courts, has little to recommend it. Consider the record of some executive branch agencies in supervising others:

- The Department of Corrections responded to large verdicts for negligent supervision by seeking greater immunity from suit.
- DSHS responded to large verdicts for negligence in protecting abused children (and adults) by hiring a flack to attack victims’ lawyers who talk to the press.
- The Quality Assurance Commissions for various healthcare professions have been the subject of exposés for lax regulation in both major Seattle newspapers.

Having successfully sued guardians, guardianship agencies, lawyers, and theing family members — and caused referral of one guardian’s misconduct for discipline by the Certified Professional Guardian Board — I have found the courts willing and able to rein in guardianship abuses when abuses are competently raised.

While Ms. Dore did litigate Guardianship of Stamm, as the Bar News states, the latest appellate opinion in that case rejected every challenge she made against the guardian and stated: “[T]he record supports the trial court’s findings that Dore greatly contributed to the litigious nature of the guardianship ... repeatedly ignored the court’s orders, driving up the professional fees, and providing no appreciable benefits. 2005 WL 3163901.”

Full disclosure: I have been an adversary of, and a lawyer for, the guardianship agency sued in Stamm.

Franklin W. Shoichet, Seattle

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**Bar newsradio?**

On a recent trip back east I came upon a pleasant reminder of my 43 years as a member of the Washington State Bar Association. While the powers that be at Radio 910 in York, Pennsylvania, undoubtedly had something other than our Bar Association in mind when they selected their call letters, in my mind the letters WSBA can refer to nothing other than the Washington State Bar Association.

Neal J. Shulman, Mill Creek

**Warm thanks**

I would like to personally thank the Environmental and Land Use Law Section (ELUL) leadership for the excellent midyear meeting/seminar held recently in Chelan. In addition to valuable updates on the current state of environmental and land use law, and the opportunity to mingle and network with peers, the seminar presented a very timely emphasis on global warming issues that the Bar (and the greater world) will be challenged with in the years to come.

More importantly, as an ELUL Section and WSBA member, I would like to express my appreciation to the firms that graciously provided financial support to the ELUL Section’s Mid-Year Meeting Scholarship Fund: Buck & Gordon, Charles R. Wolfe, Foster Pepper, PLLC, Hillis Clark Martin & Peterson, K&L Gates, Marten Law Group PLLC, and Stoel Rives LLP.

For the law student considering whether to focus in environmental and land use law, or the young attorney just getting started, or the nonprofit agency attorney, or the non-practicing attorney in a land use or environmental career, such as myself, the scholarship program enables individuals to attend and to participate in a very focused review of current environmental and land use law issues at a reduced cost that is more likely to be within her/his personal budget or employer’s budget.

In addition to the financial benefit for the scholarship recipients, I believe that the scholarship program also provides for a more balanced and diverse discussion, which can only lead to a more balanced and diverse Section. I would encourage other WSBA Sections to establish similar scholarship programs if they have not done so already.

Michael Smith, Ellensburg

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On Thursday, May 24, 2007, King County Prosecuting Attorney Norm Maleng died suddenly at the age of 68. Norm (as he insisted everyone call him) had been King County’s prosecutor for 28 years. An entire generation of people has known no one else as the County’s chief lawyer.

It is hard to imagine the Office of Prosecuting Attorney in King County without Norm Maleng. We have lost a giant in our justice system, a man whose life and career manifested grace, dignity, fairness, respect, and justice. I knew him, as countless others did, as a quiet but charismatic leader, an innovator who nonetheless touched everyone he met with his warmth and optimism.

David Boerner, who started work at the King County Prosecuting Attorney’s Office on the same day that Norm Maleng did, told me that Norm showed what a lawyer is at her or his best, that Norm made lawyers proud to be lawyers. For Attorney General Rob McKenna, Norm set the gold standard for professionalism, civility, and courtesy.

Norm Maleng touched my life, as he touched many others, through his life and work. When I first began to practice law in Seattle, Norm Maleng’s office was nationally known for its sexual assault prosecution unit and victim assistance unit, models of how to prosecute sexual assault crimes while dealing with the trauma experienced by victims. Also, I remember clearly the tragedy that took the life of Norm’s daughter, Karen, and the personal support expressed by the citizens of King County to Norm and his family. More recently, I, like many others in King County and across the state, was relieved that the Green River Killer was brought to justice, and grateful that Norm Maleng’s decision not to seek the death penalty in exchange for information offered the possibility of healing to the dozens of victims’ family members. I have long admired his dedication to public service, and his open and forthright approach to the work of his office.

The first time I actually met Norm Maleng, though, was much more recently, and what struck me was his personal warmth and presence. He was attentive to every person to whom he spoke, and revealed through his words and actions a deeply sympathetic and caring soul. He was an enormously optimistic person, yet calm and thoughtful. He carried the responsibilities of his office with grace and dignity. In preparing this article, I wrote to or spoke with many of his friends, mentors, and colleagues. The words I heard over and over again were “dedication,” “thoughtfulness,” “dignity,” “civility,” and “grace.” Each time I have spoken or corresponded with someone about Norm, I have felt that person was extending to me again the warmth and personal presence of Norm. Acting Prosecuting Attorney Dan Satterberg showed me Norm’s spacious but simple office, with its pictures of Norm at his family’s farm in Acme, Washington, where Norm grew up. Dan described to me how Norm emphasized the importance of doing justice, the personal concern he expressed for the victims of horrible crimes, and the legacy he left of prosecuting attorneys who are proud of their work and proud to be a part of the justice system. He spoke to me of the courtesy and kindness that Norm showed to those around him, and told me that Norm answered all of his e-mail before he left for home in the evening. It was evident that Norm profoundly touched many lives.

Here are some thoughts and words of people who knew Norm well. Whether or not you knew Norm Maleng personally, I believe that you will feel as though you knew him through their words. I want to thank everyone who took the time to meet or speak with me, and to send to me their tributes to Norm.

“One of Norm’s defining moments was his decision on the Ridgway case — declining to pursue the death penalty...”
in order to bring closure to the victims’ families. That closure — identifying and locating the remains of Ridgway’s victims — was more important than the retribution possible through the death penalty. His lengthy press release and statement explaining his reasoning was beautifully written and compelling. Norm opened himself up to sharp criticism from those clamoring for the ultimate punishment and risked his political fortunes in doing so — but his compassion for victims and their families overrode any personal or political considerations.” — Steven M. Clem, Douglas County prosecuting attorney

“He was a friend and a man I will sorely miss. Norm’s legacy as the King County Prosecutor will be one filled with praise for his integrity, compassion, dedication, and commitment to justice. We must also not forget how hard he worked to stay deeply connected to the community. Norm took the time to attend and be an active participant in the events and activities of diverse organizations both legal and civic. He served as a role model for all elected officials of what ‘being involved and committed’ really meant.” — Judge Richard Jones, King County Superior Court

“Norm had a profound effect on every level of our system of justice. It is impossible to separate Norm and his unflagging commitment to justice from the laws, the judges, and the practitioners that he influenced. And the beauty of it is, he made it look effortless. He was the architect of laws that shaped public policy on every aspect of criminal law. He built an office that led the nation in protecting victims — particularly those who were victims of domestic violence. Yet, he was humane and compassionate, and was a true believer in redemption. He also was a man who acted and expected others to do so, as well. . . . It never ceases to amaze me how many of [the] judicial candidates not only came from his office — but how many were deeply influenced by him personally. I came to joke with him about ‘Norm’s Army. The army has legions and we are all grieving.” — Jenny Durkan, Seattle attorney

“Aside from so many of the professional accomplishments in the criminal justice arena, I believe the unique characteristic of Norm was his respect for the dignity of the human person and his absolute commitment to treat each person as an individual. He deeply believed that each person working in the office had something unique to contribute to the larger enterprise, and this included nonlawyers.” — Judge Mary Yu, King County Superior Court

“During the bleakest of times, when federal funding for civil equal justice for the poorest and most vulnerable people in our state was on the chopping block, Norm never wavered in his promise to do all he could to preserve equal justice for all. He served as a role model to other elected officials, encouraging widespread support for the idea and the ideal of equal justice for all in our state. Norm transcended partisan political considerations, and he transcended geography. That transcendence is the mark of a true statesman. That he never sought acclaim or accolades for what he did made him a true servant leader. It was an honor to know him, and a privilege to be blessed with his support and encouragement.” — Ada Shen-Jaffe, Seattle University School of Law, former director of Columbia Legal Services

“He was a special and rare politician who not only instituted important systemic changes (e.g., the victim assistance and sexual assault units, major juvenile law reforms), he touched individuals by his accessibility . . . . [He was] a prosecutor who repeatedly demonstrated that he understood the significance of the blindfold worn by lady justice and the scales she holds.” — Marc Boman, Seattle attorney and former King County deputy prosecuting attorney

“He was an outstanding example of law’s most noble aspirations: a kind, ethical, fair, and honest man who was a devoted public servant . . . . He was a leader for justice and inspired so many lawyers to be their very best selves. He has had a profound and lasting influence on so many lawyers that he will live on in and through the law for decades to come.” — Dean Kellye Testy, Seattle University School of Law

“Norm has left us an incredible legacy of integrity and honor in the pursuit of justice. His optimistic spirit, passion for work and life, and legacy will remain with us all for years to come. He touched many people in his life with his ability to see the best in people and his commitment to support and elevate others. He touched the careers and lives of so many. His ability to connect and touch others was so special. It was a privilege to have known and served under his leadership. He will be truly missed.” — Bonnie Glenn, deputy chief of staff, King County Prosecuting Attorney’s Office

Ellen Conedera Dial can be reached at 206-359-8438 or ecdial@gmail.com.
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Wake-Up Call on
Electronic Discovery

by C. Dean Little and Eric P. Blank

The Federal Rules of Civil Procedure were amended effective December 1, 2006, to deal with discovery of electronically stored information. These new Rules should be a wake-up call to lawyers to pay attention to electronic discovery.

The new Civil Rules essentially codify case law that has been developing over the last 10 years. Many of the cases record the failure of clients and attorneys to preserve and produce electronic information due to inadvertence, inadequate procedures, and ignorance. The cases demonstrate that electronic discovery obligations require both legal and technical know-how.

**Both Trial Counsel and Client Are Responsible for Electronic Discovery**

The law is clear that trial counsel is responsible for instructing clients on the reasonable steps necessary to preserve, access, and produce discoverable electronic information. Trial counsel is also accountable for monitoring their clients’ compliance with instructions. Counsel’s obligation to competently oversee electronic discovery is not only a duty that is imposed by the court, but also a duty that counsel owes to the client.

The new Civil Rules require that, early in a case, trial counsel for all parties discuss specific efforts to comply with electronic-discovery obligations and be prepared to account to the court. Judges, both federal and state, seem to find electronic issues fascinating and have the benefit of continuing education on technological capacities. They will not easily be bluffed by techno-sounding “rigmarole.”

Two helpful sources for preliminary guidance on the new Civil Rules and discovery law are Notes of the Advisory Committee on the Rules and *Electronic Discovery Primer For Judges*, by David K.
Isom, 2005 Fed. Cts. L. Rev. 1. Although these sources discuss legal standards, they do not go into detail on the technical aspects of electronic discovery; however, whether a lawsuit is large or small in scale, technical knowledge and experience are critical to ensuring consistent, thorough, and cost-effective compliance with electronic-discovery responsibilities.

Most law firms and most clients do not have the necessary in-house expertise to competently perform discovery duties — whether the lawsuit is large or small. Some larger law firms have concluded that electronic discovery is best left to outside experts. See “Don’t Try This at Home,” March 2005 ABA Journal, p. 59. This article discusses why engagement of an e-discovery “expert” is a wise decision.

**E-mail Represents 80 Percent of Discoverable Communication**

The effect of electronic communication on discovery has been and will continue to be staggering. More than 99 percent of information is now being created electronically. Most e-mails, other electronic documents, and associated metadata are never printed to a hard copy. E-mail alone represents 80 percent of discoverable communications in civil litigation.5

Newspaper accounts of notorious lawsuits and reported case decisions demonstrate the evidentiary impact of electronic documents. The vast bulk of this electronic data is stored in electronic storage devices (e-stores), which include hard disk drives (HDDs) in PCs, servers, laptops, and PDAs; tapes and disks; and dozens of other e-stores, like the devices listed in the Primer for Judges article. E-stores are numerous and e-information is voluminous.

**Electronic Documents Are Not Like Paper Documents**

Electronic documents are not like paper documents and cannot be treated as such in the course of discovery. The many differences between paper and electronic media have been outlined in numerous published articles. One big difference is that e-stores are small and numerous. Therefore, e-stores are easy to overlook as a source of potential evidence.6

A second major difference is that electronic documents and data are easy to unintentionally alter or destroy by normal use of a computer. Therefore, preservation of electronic information requires prompt action to avoid possible spoliation.7 Another difference is that fake, bogus, and deceptive electronic documents are easy to create.8

A fourth difference between paper and electronic discovery is the fact that failures to preserve and produce electronic documents, whether intentional or unintentional, are more likely to be visible and easily spotted by experienced opposing parties. For these reasons, electronic information gives rise to unique issues relating to authenticity, admissibility, and evidentiary weight.

A trial attorney’s comfortable attitudes and habits for handling paper discovery cannot be applied to electronic information without risking dire consequences. Adverse consequences include: (1) spoliation sanctions for violation of the duty to preserve and produce documents; (2) loss of electronic information that would benefit the client’s case; (3) inaccessibility to authenticate and admit the client’s electronic documents at trial; and (4) unnecessarily high cost for electronic discovery that is undertaken without suitable technical-legal experience and without coordination of attorney and client personnel.10

As the Electronic Discovery Primer for Judges concludes: The moral is clear: judges and lawyers must be conscious of the risks and benefits of electronic discovery and actively manage electronic discovery from the beginning of the case. The duties of lawyers to raise, negotiate and resolve discovery issues, and the need for courts to manage discovery actively, are more important for electronic discovery than they were for paper discovery.

### Why Electronic Evidence Matters

- 90 percent or more of documents are never printed to paper.
- Since 1971, the legal definition of “document” includes “data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into a reasonably readable form.” Amendments to the Federal Rules of Civil Procedure in 2006 doubly underscore judicial recognition of the importance of electronic evidence.
- Computers destroy documents during ordinary computer use.
- “Deleted” documents are easily recovered if you move quickly.
- Metadata not available for paper documents can make a case.
- Many records-management programs do not address electronic documents.
- E-mail and instant message communications are often “uncensored.”
- Electronic evidence can corroborate or impeach witness testimony.

### More Spoliation Cases in Last 10 Years than in Previous 200

In the 10 years from 1994 to 2004, more spoliation cases were reported than in the previous 200 years.11 Spoliation of electronic evidence need not be intentional and may be due to negligence, ignorance, or mere inadvertence. Sanctions in reported cases have included fees and cost awards, fines, contempt orders, adverse inference jury instructions, and default judgments. Sanctions...
for unintentional spoliation have been awarded against clients, managers, in-house attorneys, and trial counsel. As yet, statistics are not available on the number of malpractice claims by clients against counsel relating to electronic discovery.

Why so many spoliation cases in the last 10 years? Because destruction or alteration of electronic information is relatively easy to discover. A technically skilled person can quickly find evidence of failures to preserve evidence. For example, if a creator of an e-mail deletes it, a copy of the e-mail will likely still exist in other locations, including in the free space or file slack of the HDDs used by the creator, by each recipient, or by the Internet service provider, and/or in HDDs, CDs, or tapes used to back up the creators’ or receivers’ networks. In short, discovery errors are likely to be visible and detectable.

**Basic Distinction Between Preserving and Accessing Electronic Data**

Trial counsel must recognize the basic difference between preserving and accessing electronic information. The Catch-22 is this: Data is destroyed when accessed in a forensically improper way.

**Why so many spoliation cases in the last 10 years?**

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making guarantees an increase in cost of discovery.

**Trial Counsel and Client Must Account for Their Electronic Discovery**

Trial counsel and their clients must be prepared to give an accounting of answers to questions like the ones listed below. Such accounting may occur in pre-trial conferences mandated by the FRCP provisions, in answering interrogatories, in Rule 30(b)(6) depositions, in response to motions by the opposing party, and/or in argument over evidentiary issues at trial. These questions are illustrative, are not exhaustive, and do not convey the legal/technical know-how required to answer each query.

- What are the capabilities of the computers and IT systems of the client? Of the opposing party? Of third-party service providers?
- Was an investigation made to find all e-stores as soon as practical?
- Were all e-stores divided into likely and unlikely depositories of discoverable information? Criteria?
- Were the e-stores of likely and unlikely “key players” found? Criteria?
- What were reasonable instructions delivered to the client’s personnel to establish a litigation hold to preserve information?
- Were specific instructions given to client’s personnel on steps required to avoid destruction of metadata when using a computer?
- What was done to monitor compliance by personnel with the instructions?
- Was any auto-delete software turned off or left on? Deliberately? Criteria?
- Were computers allowed to continue in routine use? Deliberately? Criteria?
- If e-stores were left on or in-use, what burden/cost outweighs the benefit in relation to the needs of the case?
- Were any in-use e-stores (1) taken out-of-use, (2) left in-use and mirror imaged for preservation of data, or (3) left in-use? Deliberately? Criteria?
- Was mirror imaging performed forensically by a trained technician with proper hardware and software

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so that electronic information was not altered or destroyed?

- If e-stores were left in-use, what burden/cost outweighs the benefit in relation to the needs of the case?
- Were e-stores that were not in-use and were not mirror-imaged delivered to a retention custodian?
- Is chain of custody unbroken for mirror images and non-in-use e-stores?
- Was electronic information from specific e-stores not accessed for review?
- If not accessed, was the information not readily accessible? Other criteria?
- If not accessed, what burden/cost outweighs the benefit in relation to the needs of the case?
- If not accessed, have such specific e-stores been identified to the opposing party?
- Should non-accessed e-stores be sampled? When? Criteria? Consequences?
- Was cost minimized by conversion of all electronic information into a single native format or other cost-saving review format?
- Was extraneous electronic information filtered out? Criteria?
- What were the search terms, dates, file types, etc. used to identify possibly discoverable electronic information? Criteria?
- Was cost minimized by use of document-management software requiring no scanning?
- Were privileged e-docs efficiently removed before production to the other party?
- Are discovery requests specifically tailored based on technical knowledge of opposing party’s computers and IT systems? Or are requests objectionable as overly broad?
- Was each step of the process documented in order to thoroughly account for preservation and production, and to assure authenticity, admissibility, and evidentiary weight?
- Who is prepared to testify about the process?

Cost-Effective Electronic Discovery Requires Legal and Technical Knowledge

Trial counsel cannot blindly rely on a client’s executives, IT personnel, or in-house counsel to know how to preserve, assess, and produce electronic information — as clearly shown by reported cases over the last 10 years.

Electronic discovery need not be intimidating, risky, inefficient, or overly expensive. But, to be thorough and cost-effective, it requires both legal acumen and technical knowledge of all aspects of electronic discovery. As the Electronic Discovery Primer for Judges points out:

Not only does effective electronic discovery present novel and sometimes difficult technical issues, the cost and complexity of electronic discovery can vary significantly depending on the issues and evidence, and upon the effectiveness of the court, the lawyers, and parties.

A poorly conceived, unorganized, or haphazard approach to electronic discovery not only involves increased risk of problems, but can cost many times as much as efficient discovery orchestrated by a proficient professional. This is true for both “big” and “small” cases.
Consider an Expert as E-Discovery Liaison or Special Master

Courts recognize the need for skill, experience, and coordination in electronic discovery. The U.S. District Court for the District of Delaware has endorsed an E-Discovery Policy that includes the following provision (in material part):

E-discovery liaison. . . . [E]ach party to a case shall designate a single individual through which all e-discovery requests and responses are made (the e-discovery liaison). Regardless of whether the e-discovery liaison is an attorney (in-house or outside counsel), a third-party consultant, or an employee of the party, he or she must be:

- Familiar with the party’s electronic systems and capabilities in order to explain these systems and answer relevant questions.

- Knowledgeable about the technical aspects of e-discovery, including electronic document storage, organization, and format issues.

- Prepared to participate in e-discovery dispute resolutions.

The court notes that, at all times, the attorneys of record shall be responsible for compliance with e-discovery requests. However, e-discovery liaisons shall be responsible for organizing each party’s e-discovery to insure consistency and thoroughness and, generally, to facilitate the e-discovery process.16

In addition to a policy statement like the foregoing, federal courts and litigants are encouraged by FRCP 53, Federal Rule of Evidence 706, and the ABA Civil Discovery Standards to appoint a special master for managing e-discovery, for assisting with privilege review, for dealing with technical issues, and for handling other pre-trial matters.

In appointing such an e-discovery liaison, there are a number of critical factors to consider, including technical and legal understanding, administrative skill, and good witness qualities such as credibility and ability to explain things — since the liaison’s testimony may become necessary. A non-attorney liaison, such as a client’s employee, may not be covered by the attorney-client or work-product privileges. If trial counsel or in-house counsel is e-discovery liaison, they risk becoming a witness in the litigation and risk loss of attorney-client and work-product privileges.

The alternative is to appoint an outside “expert” as e-discovery liaison. A prudently selected “expert” liaison can take the responsibility for e-discovery compliance off of the shoulders of both trial counsel and client. An outside liaison who is an attorney assures that the attorney-client privilege is maintained — at least until testimony is necessary. If testimony is needed, then the outside liaison can function like any other expert witness to explain and justify the e-discovery decisions made to comply with federal rules and related preservation and discovery duties.17

Cost-Effective Preservation, Access, Assessment, and Production

An e-discovery policy statement like that of the Delaware Federal Court is not just for “large” cases. For example, whether a party has five or 5,000 PCs, servers, and other e-stores, it is unnecessarily expensive and imprudent to mirror-image all of these e-stores and transfer the data therein to TIFF images for review purposes. Unfortunately, as the case law shows, unnecessary expense and imprudence often occurs.18

Consistent, thorough, and cost-effective preservation of discoverable electronic information requires that trial counsel recognize the need for technical-legal savvy:

- To properly instruct client personnel on electronic-preservation duties.
- To identify the few particular e-stores with discoverable information.
- To secure all such information from deletion or alteration (including by forensic mirror imaging).
- To assure an indisputable chain of custody.
- To document each decision and action.
- To be prepared to account to the court, the opposing party, and the cli-
Consistent, thorough, and cost-effective access, assessment, and production of the information contained in the selected e-stores require technical-legal savvy:

- To access information from only selected e-stores.
- To filter data not possibly relevant (such as spam and operating system files) and to filter multiple duplicate copies.
- To eliminate additional data unlikely to be discoverable.
- To perform macro keyword searches of the remaining data for information that is likely discoverable.\(^{19}\)
- To present the remaining small subset information for detailed eyes-on review in order to extract the discoverable documents and to screen them for privileged content.\(^ {20}\)
- To produce electronic information requested by the opposing party.
- To document each decision and action.
- To be prepared to account to the court, opposing party, and client for each step in meeting the duty to produce electronic information.

**Summary: The Keys to Effective and Efficient Electronic Discovery**

The keys to efficient e-discovery may be summarized as follows:

1. Immediately preserve all e-stores reasonably expected to contain discoverable information.
2. Reduce information volume in order to minimize time-consuming, expensive eyes-on review by attorneys and paralegals.
3. Appoint a single skilled person to coordinate, document, and account for each step, and consider an outside “expert” as e-discovery liaison.

Judges have had the benefit of continuing education on electronic discovery for several years. It is a topic that has judicial attention and interest. Some lawyers are “waking up” to electronic obligations and opportunities faster than other attorneys. Inadvertent or negligent errors are relatively easy to detect and have dire consequences.

The moral: All trial counsel must “wake up.” Old paper-discovery dogs, like one of the authors of this article, can learn new e-discovery tricks. It takes commitment and the assistance of technically savvy professionals.  

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\(^{19}\) In Zubulake v. UBS Warburg (Zubulake V), 2004 WL 1620866, 229 F.R.D. 422, 432 (S.D.N.Y. 2004), the court clearly stated trial counsel’s obligation: “Counsel must take affirmative steps to monitor compliance so that all sources of discoverable information are identified and searched.” Because of defendant’s failure to preserve and produce electronic documents, the court issued a

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C. Dean Little and Eric P. Blank are principals in Blank Law & Technology P.S. Mr. Little has more than 35 years of experience as an advocate in complex securities and other commercial disputes. Mr. Blank has extensive experience as an intellectual property litigator with particular knowledge of computer and Internet technology.

**NOTES**

1. In Zubulake v. UBS Warburg (Zubulake V), 2004 WL 1620866, 229 F.R.D. 422, 432 (S.D.N.Y. 2004), the court clearly stated trial counsel’s obligation: “Counsel must take affirmative steps to monitor compliance so that all sources of discoverable information are identified and searched.” Because of defendant’s failure to preserve and produce electronic documents, the court issued a
negative inference jury instruction.

2. In *Peskoff v. Faber*, 2006 WL 1933483 (D.D.C. 2006), defendant failed to produce e-mails of an ex-employee claiming that it could not find them on its server. However, the court noted that there were many other e-storage locations where e-mail copies might be found. The court ordered defendant to diligently investigate and file an affidavit detailing the search. See also *In re Livent, Inc. Noteholders Securities Litigation*, 2002 U.S. Dist. LEXIS (S.D.N.Y. 2003).


4. In *Trimble v. Holmes Harbor Sewer District*, Island County Superior Court for the State of Washington, No. 01-2-00751-8 (Oct. 2005), a defendant made representations to the court about its failure to produce electronic documents, but the court found defendant’s explanations to be “essentially a bunch of rigmarole” that was “unacceptable.”


6. See Note 1, above.


8. In *People v. Superior Court*, 2004 WL 1468698 (Cal. Ct. App. 2004), defendant produced letters that bore specific dates, but a forensic witness testified that examination of defendant’s computer showed that the letters were created after the date on the letters.


10. In *Danis v. USN Communications*, 2000 WL 1694325 (N.D. Ill. 2000), trial counsel instructed the CEO on the duty to preserve electronic documents of the company and the CEO delegated the duty to an in-house attorney. Due to inadequate cooperation and organization, documents were destroyed. See also, Note 1, above, and Note 12, below.


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12. In Phoenix Four, Inc. v. Strategic Resources Corp., 2006 WL 1409413 (S.D.N.Y. 2006), trial counsel instructed defendants to find and preserve all electronic documents and defendants’ personnel represented to counsel that they had complied. The representations were wrong. When it was discovered that documents had been destroyed, the court sanctioned trial counsel for gross negligence in failing to make an independent inquiry to verify defendant’s compliance. In GTFM, Inc. v. Wal-Mart Stores, Inc., 2000 U.S. Dist. Lexis 3804 (S.D.N.Y. 2000), trial counsel relied on a senior executive for facts about company’s computer system and did not directly query IT personnel. The representations were wrong, documents were destroyed, and the court fined the executive $10,000. See also Metropolitan Opera Ass’n, Inc. v. Local 100, Hotel Employees (212 F.R.D. 178 (S.D.N.Y. 2003)); Invasion Media v. Federal Ins. Co., 2004 WL 396037 (S.D.N.Y. 2004); and the Wal-Mart and Dell cases in Note 3.

13. In United States v. Arthur Andersen, LLP, 2004 WL 1344957 (5th Cir. 2004), defendant deleted e-mails after notice of start of a government investigation and, in a related case, an individual was prosecuted for destruction of evidence, but copies of these e-mails existed in other e-storage devices.


16. The Delaware District Court’s E-Discovery Policy is available at: www.ded.uscourt.gov/Announce/Policies/Policy01.htm.

17. In Jones v. Goord, 2002 WL 1007614 (S.D.N.Y. 2002), the court noted that electronic information is easily manipulated, and opined a preference for custodians and forensic witnesses who are attorneys rather than nonlawyer technicians “who [are] neither subject to licensing [nor to] ethical constraints imposed on members of the bar.”


19. In In re CV Therapeutics, Inc., 2006 WL 2458720 (N.D. Cal. 2006), defendant objected to plaintiff’s use of de-duplication filter software to reduce 423,000 electronic documents to 125,000, and objected to plaintiff’s use of specific keyword terms to reduce this number to the 4,000 electronic documents actually produced. The court found plaintiff’s de-duplication filter and search terms to be a reasonable way to comply with duties to produce, but ordered plaintiff to specify its filter and search criteria.

20. In Henry v. IAC/Interactive Group, 2006 WL 354971 (W.D. Wash. 2006), the court suggested that a party’s concerns about removal of privileged documents could be handled by a neutral computer forensics expert. See also Playboy Enterprises, Inc. v. Wells, 60 F. Supp. 2d 1050 (S.D. Cal. 1999).
In a groundbreaking move in 2006, the Washington State Supreme Court codified a common-law practice into Civil Rule 23, requiring that at least 25 percent of class-action residual funds in state cases be disbursed to programs that provide legal aid for those in need. Washington is one of the first states to adopt such a rule. While its ultimate impact remains to be seen, supporters of legal aid in Washington are hopeful that the new rule will generate significant funding to provide access to the civil justice system for all Washington’s residents.

This ray of hope for civil legal aid emerged from the common-law *cy pres* doctrine applied to unclaimed class-action funds. *Cy pres* roughly translates to “next best use” and is a court-approved method of distributing a damage fund when the original purpose cannot be achieved. After a class action is resolved and all approved claims have been paid out, additional funds often remain for various reasons. Some class members may not be located or may not submit claims or cash checks, or administrative costs of distributing awards may eclipse the amount of recovery in some cases. Sometimes the relief awarded is so small that it makes no economic sense to try to compensate many thousands of victims who have, for example, suffered $5 in damages. In a theoretical case where a grocery store overcharged many thousands of customers by adding a fraction of an ounce to the reflected weight, it could be very difficult and cost-prohibitive to compensate each victim for their actual loss, and it might be more sensible to direct the total compensation to a charity such as a food bank.

Courts have broad discretion to disburse those residual funds, which can total thousands or millions of dollars. In recent years, a number of federal and state courts have awarded class-action residual funds to legal-aid organizations under the *cy pres* doctrine.
Access to Justice Denied to Many Low-Income People

Three out of four low-income households in Washington face a significant civil legal problem each year, most commonly impacting basic needs such as housing, personal safety, and health. Yet the chance of having legal assistance at such times is remote at best. More than 90 percent of those living in poverty face urgent legal issues without any help at all. Legal aid and volunteer attorney programs offer assistance, but a 2004 Supreme Court task force found that over twice the current funding is needed to ensure that low-income Washington residents have adequate access to the civil justice system. The Legislature has taken initial steps to increase funding for legal aid, but funding still falls far short of the need.

Whirlpool Case Sets the Stage

One of the first cases in Washington to award class-action residual funds to legal aid was a consumer-financing class action, Zachman v. Whirlpool Acceptance Corp. (Okanogan County Superior Court No. 87-2-00223-5). After bouncing up to the Washington State Supreme Court twice, the case ultimately settled in 1995. Defendant took responsibility for administering the settlement fund and distributed checks for $49 to 23,488 class members. Six months after the end of the claims period, almost 6,000 of those checks remained uncashed. Seattle attorney Bill Kinsel represented defendant Whirlpool Financial Corporation and recalled that the question arose as to how the remaining $300,000 should be disbursed.

Redistributing the money to the class was not feasible, since administrative costs would have eaten the majority of the residual amount. And under the circumstances of the settlement, Kinsel knew that he would be unable to gain approval for the money to be returned to defendant. After researching the cy pres doctrine, he determined that the Legal Aid for Washington (LAW) Fund, a charitable organization that raises financial support for legal aid in Washington, would be a good alternative recipient of the funds. “Class-action members are often unable to afford legal representation to pursue their rights individually, and there is a logical relation between them and low-income residents who cannot afford legal representation without legal aid,” Kinsel explained.

Kinsel said his client was enthusiastic about the idea. “It was actually a great way for them to end the case. They believed that they had been wrongly put through the wringer in this litigation, and they were pleased that a significant portion of the money was going to do something positive in the state. You could say that for them it was a sweet final note on which to end a sour concert.” The court ultimately approved distribution of the majority of the unclaimed residual funds to three organizations that support legal services for the poor in Washington: LAW Fund, Legal Foundation of Washington, and Chelan Douglas Community Action.

Cy pres roughly translates to “next best use” and is a court-approved method of distributing a damage fund when the original purpose cannot be achieved.

A Plaintiffs’ Counsel’s Perspective

Mark Griffin, of Keller Rohrback LLP, has represented plaintiffs in several class-action cases that resulted in cy pres awards to support legal aid. “Obviously our primary goal is to try to ensure that everyone harmed by defendants’ actions receives compensation directly,” Griffin stated. “Unfortunately, there are cases where the administrative costs to identify all members of the class would be greater than the amount awarded. But returning the money to the defendants and allowing them to profit from their illegal conduct isn’t right either. It makes more sense to have the funds used in a productive way, which is the purpose of cy pres awards.”

An example of such a case occurred in 2004, when Griffin represented the plaintiff class in Hansen et al. v. Ticket Track, Inc., 280 F. Supp. 2d 1196 (W.D. Wash. 2003). The case alleged that private parking-lot owners had imposed illegal collection fees on customers. The class was certified, and plaintiffs won their summary judgment motion. But the costs of trying to track down every person who had parked in the lots and been subjected to the improper fines would have outstripped the ultimate recovery value. Griffin considered it a prime example of when the cy pres doctrine could bring a positive result so that the money could be used to help low-income people in the state. Judge Marsha Pechman agreed, approving a $227,987 award to LAW Fund to support legal-aid services, the largest known residual fund award to legal aid in the state.

Griffin was encouraged that the Washington State Supreme Court endorsed the practice of awarding unclaimed class-action funds to legal aid by incorporating it into CR 23. “The class-action device was established to try to answer the problem of big corporations illegally taking small amounts of money from a large number of people. The circumstances of some cases, however, do not allow for significant awards to each class member. This is a way for the defendants in those situations to be held accountable and to also do something useful for vulnerable people in Washington.” Griffin hopes that the Supreme Court’s endorsement of the practice will encourage attorneys to think of legal aid when crafting class-action settlements in both state and federal court.

State Rule Adopted to Direct Residual Funds

The idea behind an amendment to Washington’s civil rule governing class actions came from leaders in the legal...
aid community who had observed that class-action residual awards were an occasional source of funding. Jim Bamberger, currently the director of the Office of Civil Legal Aid, comments that, “while the legal-aid community was successful in securing orders directing some residual funds to support civil access to justice, the effort was essentially hit-or-miss, depending on whether anyone was aware of the pendency of the class action and whether class counsel or the trial judge was aware of the possibility of directing the residual funds to support civil access to justice. Over time, members of the civil legal-aid community determined that a more deliberate and consistent approach to the distribution of these funds could help generate urgently needed funding for civil legal aid.”

Representatives of the legal-aid community drafted an amendment to CR 23 addressing administration of residual funds. They grounded their effort in the concept that CR 23’s primary objective is to expand access to the justice system for persons whose claims were unlikely to be prosecuted individually, which dovetails with legal aid’s objective of providing access to the justice system for low-income and vulnerable individuals. Bamberger recalls: “The draft was vetted with a broad array of stakeholders, including plaintiff and defense lawyers, trial court judges, judicial associations, and representatives of the nonprofit community. A consensus approach emerged which (a) defined ‘residual funds’ in a limited manner and protected the prerogatives of class counsel to structure settlements in accordance with the wishes of their clients; (b) directed a portion (at least 25 percent) of residual funds to the Legal Foundation of Washington to promote access to justice for low-income persons; and (c) provided additional guidance to trial courts and counsel with respect to the distribution of the remaining funds.”

Ultimately the proposed amendment was endorsed by the WSBA, the Superior Court Judges’ Association, the Supreme Court’s Access to Justice Board, the Washington State Trial Lawyers Association, the Washington Defense Trial Lawyers Association, and the Legal Foundation of Washington. The Washington State Supreme Court adopted the proposed amendment after a public comment period, and CR 23(f) became effective January 3, 2006.

The amended rule applies to all class actions filed after January 3, 2006, and to all further proceedings in cases that were pending on that date. It applies to all residual funds in state class actions, whether created pursuant to an order of judgment or a court-approved settlement.

Amended CR 23 Breaks New Ground
With the adoption of revised CR 23, Washington became one of the first states to codify what courts have been doing on an ad hoc basis in class-action cases. Most states’ civil rules do not address class-action residual funds. California has a rule that permits, but does not require, courts to allocate residual funds to legal aid. North Carolina’s legislature passed a law effective in October 2005 that directs residual funds to two legal groups serving indigent needs, and Illinois’s legislature is considering a proposed bill that would act similarly to Washington’s rule.

“The Washington Supreme Court is a strong partner in the effort to address access to justice issues. This rule is on the forefront of nationwide efforts to find solutions to the crisis facing low-income clients who do not have access to legal aid,” states Caitlin Davis Carlson, executive director of Legal Foundation of Washington.

Cy Pres Continues in the Federal Arena
The revisions to CR 23 do not extend to federal court, but the common law cy pres doctrine is well recognized by federal courts, many of whom have concluded that if class-action settlements cannot be made to the plaintiffs, legal-aid organizations are a permissible, if not desirable, alternative recipient of unclaimed settlement funds. For example, the 7th Circuit approved a class-action residual award of over $2.3 million to the National Association of Public Interest Law. In re Folding Carton Antitrust Litigation, 1991 WL 32867 (N.D. Ill., Mar. 5, 1991), aff’d in relevant part 934 F. 2d 323 (7th Cir. 1991). And a federal district court in Minnesota approved a $2.5 million dollar residual award to the Minnesota Legal Aid Foundation. Gordon et al v. Microsoft Corp., No. 00-5994, (Minn. Dist. Ct. 2004). (See sidebar for additional case cites.)

The federal Class Action Fairness Act (CAFA), adopted in 2005, also confirms judges’ discretionary power to award residual funds. Under CAFA, when class actions involve coupon settlements, courts have discretion “to require that a proposed settlement agreement provide for the distribution of a portion of the value of unclaimed coupons to one or more charitable or governmental organizations, as agreed to by the parties.” 28 USC § 1712 (e).

Hope for the Future
The access to justice community is cautiously optimistic about the financial impact that the rule will have, but the actual revenue stream is hard to predict. Historically, class actions have not been tracked in Washington, so no one knows how many class-action suits are currently pending in state court. Nor is there any data showing what percentage of certified cases generate residual funds. Furthermore, the new federal jurisdictional rules under CAFA may reduce the total number of class...
Legal Assistance Can Change a Life

The volunteer attorney program that found help for this woman was funded in part by class-action cy pres awards to the Campaign for Equal Justice, which supports legal aid and volunteer attorney programs in Washington.

When faced with an urgent legal problem, the difference between facing the situation alone or receiving help from an attorney can be life-altering. One recent case from Mason County shows the impact legal assistance can make.

A woman came into a legal aid clinic walking with a cane. She was disabled because her long-term live-in boyfriend threw her against a wall and shook her so hard that it caused permanent spinal injury. The case was referred to a volunteer attorney for full representation. It was the first family law case the attorney had done, but he was willing to go to bat for this client with the help of a domestic-violence family law mentor in the program. The client now has a permanent order of protection, has been able to gain public assistance due to her disability, and is living on her own away from the abusive boyfriend.

She sent the clinic a card during the holidays that said: “I wish I could find the perfect words, put them in your hand, and wrap your fingers around them so that you could feel just how very grateful I am for everything you have done for me.”
actions adjudicated in state court.

Even so, one or two large cases a year could have a significant impact on legal aid funding. Past awards of residual funds to legal aid in Washington and other jurisdictions have ranged from thousands to millions of dollars. (See resource list following this article.) “We will be watching with interest to see what kind of financial impact the rule has on the legal-aid funding crisis. It is certainly a step in the right direction to address this critical unmet need,” states Yakima Superior Court Judge Michael Schwab, past president of LFW’s Board of Trustees.

David Leen, of Leen and O’Sullivan, PLLC, is a long-time supporter of legal aid. His practice emphasizes real estate matters and consumer class actions. He was president of the LFW Board of Trustees during 2004 and a sponsor of the amendment. He can be reached at david@leenandosullivan.com. Andrea Axel is an attorney and the grants manager at the Legal Foundation of Washington. She can be reached at andrea@legalfoundation.org.

Class-Action Fund Resources


Cy Pres Cases


In re Motorsports Merchandise Antitrust Litigation, 160 F. Supp. 2d 1329 (N.D. Georgia 2001) (disbursing $250,000 each to Atlanta Legal Aid, Georgia Legal Services, and Lawyers Foundation of Georgia).

In re Folding Carton Antitrust Litigation, 1991 WL 32867 (N.D. Ill., Mar. 5, 1991) (approving residual fund to be disbursed to National Association for Public Interest Law); aff’d in relevant part 934 F. 2d 323 (7th Cir. 1991).


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BY PAUL N. LUVERA

When trial lawyers who are passionate about their client’s cause lose the case, their pain for their client’s loss is palpable. Dealing with losing is always agonizing and something we never get used to if we are competitive trial lawyers striving for our clients’ rights. I’ve often said: Losing hurts worse then winning feels good. My personal rule is that I rejoice for my victories for only 24 hours and limit remorse for losing to just 48 hours. After that, I move on. It’s over. But the truth is, I can recall the details and the pain of every one of the cases I’ve lost. On the other hand, I often have difficulty trying to remember the facts of the cases I’ve won. It is true that great trial lawyers don’t lose very often. My friend Gerry Spence has never in his career lost a criminal case and, for over 30 years, has not had a defense verdict in a civil case either. But the rest of us have to deal with the fear and the reality of losing cases. As the lawyer in the movie Civil Action says:

The odds of a plaintiffs’ lawyer winning in a civil court are two to one against. Think about that for a second. Your odds of surviving a game of Russian roulette are better than winning a case at trial. Twelve times better. So why does anyone do it? They don’t. They settle.

While it is not true that lawyers settle their cases instead of going to trial, the fact remains that losing is part of the life of a trial lawyer. So here’s a collection of thoughts about dealing with losing.

Roy Acuff was right when he said: “Any game you play, you got to lose sometime.” Nobody likes losing. Tennis great Martina Navratilova once said: “Whoever said it’s not whether you win or lose that counts’ probably lost.” The risk of losing is simply part of the act of being a trial lawyer. Vince Lombardi, the great football coach, said it this way:

The price of success is hard work, dedication to the job at hand, and the determination that whether we win or lose, we have applied the best of ourselves to the task at hand.

We suffer our defeats totally alone as trial lawyers. Galeazzo Ciano has correctly observed: “Victory has a hundred fathers, but defeat is an orphan.” There is no one who can really console you when you lose, and it is something we need to grieve about all alone.

The impact of losing is best expressed in the poem Casey at the Bat, by Ernest Lawrence Thayer, with these lines:

Oh, somewhere in this favored land the sun is shining bright. The band is playing somewhere and somewhere hearts are light; And somewhere men are laughing and somewhere children shout. But there’s no joy in Mudville — Mighty Casey has struck out.

It hurts so much to lose when you have given it your best. It is a sword through the heart. Our pride is hurt. As Aaron Nimzovich has said: “How can I lose to such an idiot?” That is our normal reaction. Nobody wants to lose. Reggie Jackson, the baseball great, noted: “I don’t mind getting beaten, but I hate to lose.” It’s always painful. Morris Udall remarked: “I’ve been a winner and I’ve been a loser, and believe me, winning is best.” From the world of sports we have the wisdom of great athletes who have suffered the pain of losing and have learned not to allow it to demoralize them. The great tennis pro Arthur Ashe puts it this way: “Every time you win, it diminishes the fear for a little bit. You never really cancel the fear of losing; you keep challenging it.” And in addition: “You’ve got to get to the stage in life where going for it is more important than winning or losing.”

It is losing heart after a defeat we must resist. Robert Ingersoll observed: “The greatest test of courage on earth is to bear defeat without losing heart.” It is the emotional impact that is our challenge. George Allen puts it: “Every time you win, you’re reborn. Every time you lose, you die a little.”

The courage to get up and carry on after a defeat is best expressed by these lines from the poem Invictus, by William Ernest Henley:

Out of the night that covers me, black as the Pit from pole to pole, I thank whatever gods may be for my unconquerable soul. In the fell clutch of circumstance I have not winced nor cried aloud. Under the bludgeoning of chance my head is bloody, but unbowed.
The Washington State Bar Association Editorial Advisory Board (EAB) is seeking a Bar News editor. This position is open to all practicing WSBA members regardless of residence. This is a paid, part-time contract position. Responsibilities include procuring and editing feature articles; working with authors; managing Bar News correspondence and letters to the editor; writing articles as needed and the "Editor's Page"; attending the WSBA Board of Governors' meetings (10 per year) and writing "The Board's Work"; serving as liaison between contributors and the Bar News managing editor; and attending EAB meetings. The editor works closely with the managing editor in the areas of determining Bar News content and coordinating articles and publication schedules to meet monthly deadlines. Editorial/publication experience is desirable. Please submit a résumé and writing samples to barnewseditor@wsba.org or mail to Bar News Editor Search, WSBA, 1325 4th Ave., Ste. 600, Seattle, WA 98101-2539. It is anticipated that the new editor will begin his or her duties in October 2007.

Applications must be received by July 13, 2007.

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Paul Luvera practices in Seattle and Mount Vernon, and is a longtime Bar News contributor.

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Then there is the courage expressed in John Dryden’s poem Johnnie Armstrong’s Last Goodnight, where Dryden writes:

Fight on, my merry men all, I’m a little wounded, but I am not slain. I will lay me down for to bleed awhile, then I’ll rise and fight with you again.

The ability to learn how to deal with losing is essential if one is to be a great trial lawyer. As the tennis great Chris Evert Lloyd noted: “If you can react the same way to winning and losing, that’s a big accomplishment ....”

We need to have the courage to pick ourselves up and be willing to again face the fear of losing. To quote John Wayne: “Courage is being scared to death, but saddling up anyway.” Theodore Roosevelt was a man of courage. He knew that in spite of the pain of defeat, it’s better to try than not try. He put it this way: “It’s hard to fail, but it’s worse never to have tried to succeed.” His most famous quote on the topic is from a speech he gave:

Far better it is to dare mighty things, to win glorious triumphs even though checkered by failure, than to rank with those poor spirits who neither enjoy nor suffer much because they live in the gray twilight that knows neither victory nor defeat.

And from Alfred Tennyson poems: “Tis better to have loved and lost than never to have loved at all.” In the end, we learn from defeat the truth of the proverb: “The hottest fire makes the strongest sword.” Besides, as Euripides said: “Waste not fresh tears over old griefs.” And the motivational writer Og Mandino advised us to try to learn from the experience:

Whenever you make a mistake or get knocked down by life, don’t look back at it too long. Mistakes are life’s way of teaching you. Your capacity for occasional blunders is inseparable from our capacity to reach your goals.

But, in the end, the greatest lesson we need to learn is to put the loss in perspective. In the great scheme of things, what is the real significance? Astronomer Carl Sagan painted the correct picture for us to use in evaluating our defeats when he wrote:

Who are we? We find that we live on an insignificant planet of a humdrum star lost in a galaxy tucked away in some forgotten corner of a universe in which there are far more galaxies than people.

So there you have it. When you suffer the loss of a case, stop, step back, put the loss in perspective and try to learn from the experience. Then you pick yourself up, dust yourself off, and go back to work on the next case.

Paul Luvera practices in Seattle and Mount Vernon, and is a longtime Bar News contributor.
Defending the Powerless

Seattle lawyers win fight for constitutional rights in the war on terror

BY ROBIN LINDLEY

The Bar News Member Profile column gives you a chance to meet other WSBA members and see what they are up to. This month’s article is about four Seattle attorneys and how they spend their pro bono time. If you would like to tell us about a member you know or even tell us about yourself, please send your Member Profile articles to barnewsaarticles@wsba.org.

[Introductory note: On January 11, 2007, attorney and Assistant Secretary of Defense Charles “Cully” Stimson labeled fellow lawyers “dishonorable” for offering free legal services to U.S.-held detainees at Guantánamo Bay, Cuba. Stimson also called on corporate America to boycott firms whose attorneys “represent terrorists.” The Pentagon later renounced Stimson’s comments, and Stimson released a brief apology. Nonetheless, the 8,000-member San Francisco Bar Association asked the California Bar to investigate whether Stimson, an inactive member, acted unethically. Many attorneys and scholars have blasted Stimson’s position as completely contrary to the core legal principle of providing pro bono representation for the poor and powerless. Stimson’s remarks and detainee treatment were discussed at the national meeting of the American Bar Association in February 2007.]

Four Seattle attorneys from Seattle’s largest law firm, Perkins Coie, helped make legal history last summer in their defense of alleged enemy combatant Salim Hamdan, the Yemeni driver for al Qaeda mastermind Osama bin Laden.

In a 5-3 vote, the United States Supreme Court ruled on June 29 that President Bush overstepped his authority in ordering military tribunals for Hamdan and other detainees at Guantánamo Bay, Cuba. The Court ruled that the tribunals — created in secret without Congressional approval — violated the U.S. Constitution, the Uniform Code of Military Justice, and the Geneva Conventions. The Court’s message to the Bush administration was blunt: “The Executive is bound to comply with the Rule of Law.”

Legal scholars hailed the Hamdan v. Rumsfeld decision as the most important ruling ever on presidential power. Under the ruling, even in wartime, assertions of military necessity may not preclude judicial review of a president’s actions.

Perkins Coie, a Seattle law firm that represents defense contractor Boeing, agreed to defend suspected terrorist Hamdan two years ago. Hamdan’s lead civilian attorney, Prof. Neal Katyal, of Georgetown University Law School, mentioned the case to his former student, Perkins Coie associate David East (now with the McNaul Ebel firm). East alerted firm partner Harry Schneider, who presented the case to the firm’s Pro Bono Board.

The board accepted the case because “it’s critical to assure access to justice for all, including a foreign national seen as an enemy,” East said.

The firm was impressed by the legal positions of Prof. Katyal and Hamdan’s military counsel, Lt. Cmdr. Charlie Swift, who were challenging the actions of the President and Secretary of Defense Donald Rumsfeld for denying to Hamdan, among other things, Geneva Convention protections, the right to be present at his own trial, and the right to examine evidence against him.

East and Schneider, with fellow Perkins Coie attorneys Charles Sipos and Joe McMillan, worked thousands of hours to defend Hamdan.

An overarching executive branch created veritable “law-free zones,” explained Sipos, as Hamdan and fellow detainees languished without charge at Guantánamo. “But the judicial system worked,” Sipos said, and the Supreme Court decision “reflects the genius of the founders in creating three co-equal branches of government . . . But for the courts, an unlawful executive action would have gone unchecked.”

McMillan agreed: “The federal court system was the one institution that checked aggressive claims of executive power by the Bush Administration, as Congress provided no checks, and the press and other institutions were silent.”

The attorneys continue their work on the case. Hamdan is still detained at Guantánamo, awaiting development of procedures under the Military Commissions Act of 2006, passed by Congress in response to the Hamdan decision. McMillan contends that this new law also violates the Constitution and the Geneva Conventions, and these arguments will be presented as the case works its way through the court system.

Federal District Court Judge Robert Lasnik praised the work of the defense team at an early hearing on the case as “in the highest tradition of the bar,” and further commented that “what makes this country so great is not just that we have the most military power or the most wealth, but we have a system in the federal courts where the most vulnerable and most powerless still can get into a courthouse and have their cases heard.”

The attorneys saw their obligation to defend an unpopular, powerless client as self-evident. "As officers of the court, it’s our duty to defend and uphold the U.S. Constitution, and when we see the law flouted, it’s our duty to call it to the attention of the court,” McMillan said. “If lawyers don’t do it, who will?”

This article originally appeared in the December 14, 2006, issue of Real Change, a Seattle weekly. Robin Lindley, a Seattle attorney, was the 2006 chair of the WSBA World Peace Through Law Section. He is a Spokane native and graduate of the University of Washington School of Law. He has worked as a congressional attorney-investigator, federal agency attorney, law teacher, legal consultant, and public health manager/analyst. He is also a freelance writer and visual artist.
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BY PETER ROBERTS

We are often too busy to step back and think about the financial benchmarks or standards that a solo or small law firm should achieve. Doing so is a good idea, because you deserve to know how well your practice is performing. There are obvious and not-so-obvious measures of a practice’s “financial health.” The financial benchmarks to consider include net income, gross fees, realization, and trends.

What is net income for a lawyer? Net income comprises three elements: 1) compensation; 2) fringe-benefit costs; and 3) retirement-plan contributions. The sum of these three components should equal 50 to 75 percent of your gross fees as a solo or per lawyer-owner in a small firm. The remaining percentage pays the overhead expenses of the law firm.

Why is the percentage range this wide? A solo practitioner with staff likely has a net income percentage nearer 50 percent. That lower percentage does not necessarily mean less income than a lawyer with no staff. Having staff can increase your ability to handle more matters. More matters should reflect in higher gross fees. A solo without staff may have a net income percentage up to 75 percent but perhaps with lower gross fees.

Developing a budget for gross fees is important because it:

- Generates data for use in decision-making.
- Defines standards that can be used in performance appraisals.
- Forces planning to occur.
- Creates a need for communication and collaboration.
- Serves as a powerful source of motivation.

A basic way to construct a budget is to use last year’s numbers from your tax return for this year. Budget or no budget, gross fees drive the success of the law firm. Most members I meet know pretty well how well the gross fees are doing each month.

Let’s look closely at what drives gross fees, net income, and everything in between.

Flat or Fixed Fee. It’s your money up front; you earned it with the caveat that if you are unable to do the work, ethics and good client relations suggest that you refund part or all of the fee. The WSBA Board of Governors Trust Account Responsibilities and Retainers Task Force is studying whether and when fees paid to a lawyer in advance must be deposited into a trust account.

Advanced Fee Deposit. These are monies paid to you that are not yet yours. Always insist on this payment. It tests client resolve. Cash in the bank beats an account receivable any day of the week.

Timekeeping. Capture as much effort as possible in your automated or manual system. Time not recorded is time not billed. Use of the telephone is often under-recorded. Devise better ways to record the time spent for your incoming and outgoing calls, such as using Microsoft Outlook’s timer and journal entry feature.

Capture Soft Costs. Bill for reimburse-

## Financial Benchmarks for Your Firm

### Figure 1

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### PIPELINE REPORT

December 31, 20XX

### Practice Tips

**W**
ment of copies, faxes, and long-distance charges. Washington allows a flat nominal percentage of fees for this purpose that avoids the labor of “keeping track” of actual usage by client.4

Billing. Billing means you are extending credit. If you extend credit, know whether the client is capable of writing a check for sufficient funds to pay your bills. “Capable” is one thing, “willing” is quite another. Be sure to assess your overall client service and communication. Good service helps persuade the client to write the check.

Reduce Unnecessary Overhead Costs. Look closely at where your money goes for supporting the practice. How large a Yellow Pages ad do you really need? Is there a way to pass on part of the health-plan cost to employees? Can you sublet an extra vacant office? There are few ways to significantly reduce overhead. That is why it is always more productive to focus on increasing gross fees.

Financial Reports. Limit reports to one page. Use graphs for showing trends. One report I prefer is the “Pipeline Report.” The pipeline illustrates the relationship of unbilled fees to billings to gross fees received. See Figure 1 for an example.

Accounting systems can generate many types of reports in varying detail. Use only those data that are easily understood. Figure 1 combines data from several reports on a spreadsheet to yield a more intelligible overview of the generation of gross fees — the engine of your practice.

In Figure 1, several things may be discerned:

1. The table compares each lawyer with herself or himself last year.
2. The table compares each lawyer with each other lawyer.
3. The listing of lawyers can be sorted by best realization or other criterion each month.
4. A lower realization will signal a higher inventory (balance) of fees receivable.
   See Mr. Piper’s numbers this year.
5. Total fees (adding Ms. Jones’s and Mr. Piper’s fees received together equal $145,000) indicates the two-lawyer firm’s fees received equaled last year’s fees received. Look more closely to find that Mr. Piper’s realization is down to 75 percent from 87 percent. If his realization equaled last year’s 87 percent, the firm would have another $9,600 in fees received. Absent this report, that fact may be overlooked.
6. Contingent-fee matters may obscure below-average realization for hourly-rate work. Use a three-year moving average analysis or similar trend to smooth out spikes in the data.

Qualitative factors in your practice can be as important as financial factors, if not more. Examples include pro bono efforts, new business development activities, and time devoted to mentoring. Acknowledge the importance of these factors often, and do not allow the numbers to dominate your office culture.

Your firm can maximize the profitability and satisfaction of your law practice by understanding the economics that underlie financial success and the qualitative values that underlie your firm’s culture.

Peter Roberts has 18 years of experience as a legal administrator. He has an MBA from the College of William & Mary and a certificate as a Small Business Webmaster from the University of Washington. He is practice management advisor with the WSBA Law Office Management Assistance Program (LOMAP). Contact him at peter@wsba.org, 206-727-8237, or 800-945-9722, ext. 8237.

NOTES
2. See www.wsba.org/lawyers/groups/trustaccounttaskforce/default1.htm for more information.
3. Attend a free Hands-on Computer Clinic to learn this tip and other tips for using Microsoft Outlook. The clinics are held at the WSBA each month. See www.lomap.org for the dates.
5. Consider your firm’s culture. Do the lawyers accept such a circulated report? Consider circulating only a lawyer’s own report with out a comparison with other lawyers. In large firms, it may be possible to segregate the presentation within hourly and contingent-fee practices. Another alternative is not to distribute the report. Keep the report within the management committee. Be sure to understand fully the derivation of all of the numbers so that you can respond to questions on the spot.
6. Realization is the percentage of fees received to fees worked.
The WSBA has created a new consumer-information pamphlet called “Foundations of Freedom” that covers the basics of American government and democracy.

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

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

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

Nothing inspires like identifying a common trace between yourself and others who succeed. The WSBA Leadership Institute (WLI) offers students (known as fellows) an opportunity to hear personal histories of people who do just that. The culminating session of the year-long WLI program introduces the fellows to members of the judiciary. The following is a glimpse into the histories of the Honorable Ricardo S. Martinez, the Honorable Monica J. Benton, the Honorable Susan J. Owens, and the Honorable Theresa M. Pouley. We hope by hearing their stories, you will be encouraged to apply to become a WLI fellow or nominate someone you know who would benefit from this remarkable program.

Tribal Judge Theresa Pouley (not pictured), who sits both on the Colville Appeals Court and as Tulalip Tribal Judge, identifies herself as a member of the Colville Confederated tribes. Her judicial philosophy incorporates native healing as part of an alternative sentencing program.

Judge Martinez sits on the United States District Court as a district judge. He frequently recalls his mother’s courage, as a woman married to a Mexican citizen, although she was a U.S. citizen living in Mexico. Pregnant, she determined to return to the United States so that her child would be born on American soil. At age six, Judge Martinez’s family moved to a small farming town, Lynden, Washington. Their settlement made them pioneers among Latino families who more often migrated throughout the United States for seasonal work. Judge Martinez became a stellar student and the first in his family to attend college and law school.

Justice Owens, a member of the Washington State Supreme Court, relates her unparalleled story of how, as a lawyer from a “one-stoplight town” on the Olympic Peninsula, she became the first and only woman elected judge in Clallam County. Having recently been re-elected statewide to the Washington State Supreme Court, she serves her second six-year term and continues to inspire others to higher office.

Judge Benton, a U.S. magistrate judge, surprises most listeners with her story of being a naturalized American citizen, born in Germany and later adopted by an African-American couple. Her father’s career with the U.S. Army meant she lived abroad until age nine. Yet unquestionably, her parents wanted her to become a U.S. citizen, despite the pernicious legacy of segregation they had experienced in their own lives. Judge Benton established a library within her chambers of historic documents and books from the civil rights movement in dedication to this prominent era in recent American history.

It is uplifting for a WSBA Leadership Institute fellow to hear these stories which illustrate pivotal milestones and tenacity, motivating fellows to succeed in their own personal and professional lives. The WLI educates, empowers, and equips its fellows by enabling them to learn about and from the great trailblazers. Applications for the next class of the Leadership Institute are online at www.wsba.org/lawyers/2007wli_application.htm.

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Keep Up with Your Trust Account and Keep Out of Trouble

by Cheryl M. Heuett

In July 2006, "Ask the Auditor" addressed what to expect during the random examination of a trust account. This column focuses on one of the most common and serious violations found during the random exam: failing to maintain complete records. This violation is very broad, because there are so many components to keeping complete records, and in order to be in compliance with RPC 1.15A and B, you must have all the components in place and in order.

The first thing an auditor checks in a random examination is whether all the money in the trust account can be allocated to clients. A lawyer’s inability to do that is a sign of poor record-keeping. In determining whether all trust account funds are properly allocated, the auditor reviews the bank statement, check register, client ledgers, and reconciliations.

Check register
RPC 1.15B(a)(1) requires a lawyer to keep a check register documenting each transaction that occurs in the trust account. The check register must be detailed enough that anyone looking at it would be able to understand all the transactions in it. Unfortunately, some lawyers simply note a check number and amount. The rule requires more information than that. Even if there were no rule, the best practice for maintaining any check register would be to include: the amount of the transaction, the client on whose behalf the funds were received or disbursed, the date the transaction occurred, the check or other reference number, the type of transaction (e.g., deposit, wire transfer), who the funds were paid to or from, and a running balance.

Client ledgers
In addition to a check register, RPC 1.15B(a)(2) requires lawyers to maintain client ledgers. Think of a client ledger as a check register that contains transactions for only one client. Client ledgers must contain the same information about the transaction as the check register and must also include a running balance.

If you are using some type of computerized record-keeping system, you will usually make only one entry into the check register. Your system will then also record the transaction onto the client ledger. If you are keeping your records in a manual system, you must make two entries for every transaction — one to your check register and one to your specific client ledger. For any correction you make to your trust account check register, you must also make an adjustment to that same entry in the client ledger.

The WSBA auditors have conducted several examinations recently where the attorneys had no client ledgers and were not able to say for whom they were holding funds.

Reconciliations
Quite often in random examinations, auditors find that lawyers keep check registers and client ledgers but do not reconcile them to each other on a regular basis or, even worse, do not reconcile them at all. The reconciliations are part of keeping complete records and are necessary to ensure that any mistakes are caught. Every month you need to perform a reconciliation of (1) your check register to your bank statement and (2) your client ledgers to your reconciled check register.

Check register to bank statement
The reconciliation of the check register to the bank statement consists of comparing items on the bank statement to the items on your check register. If there are any differences, you need to determine why. Did the bank make a mistake? Did you forget to record a transaction? Sometimes when your reconciliation is off, it’s because the bank incorrectly keyed the amount of the check or deposit into the system. Or maybe the error occurred because you entered the amount of the transaction into your system incorrectly. You should make the adjustment to your check register or note the difference on your reconciliation report and have the bank correct any errors found.

Client ledgers to reconciled check register
After the bank statement and check register are reconciled, you then need to reconcile your client ledgers to the check register. Add together all the client ledger balances. Compare this number to the balance of your check register. These numbers should match if there are no mistakes. If the numbers do not match, you need to locate and correct any discrepancies. This reconciliation should be done the same day you perform your bank-statement reconciliation.
reconciliation. That way, your reconciliation reports show how the bank statement, check register, and client ledgers all tie together. Remember that the total of all the client ledgers at any point in time should always match the balance of the trust-account check register.

**Tips for good record-keeping**

1. Record transactions in your register and client ledgers as they occur. This is especially important if you are using a manual record-keeping system or are doing after-the-fact bookkeeping in a computerized system. You will never remember as much about that transaction later as you know at the time you have the file open and are writing the check. Your register is much more likely to be complete if you enter the information about the transaction at the time you write the check or fill out the deposit slip.

2. Write client names and/or matter numbers on disbursement checks and deposit slips. In case something happens to you or your records, you will be able to obtain copies of the cancelled checks and deposit slips from the bank and reconstruct your account.

3. Recalculate the balance in the register and ledgers after each entry. You will always know the IOLTA and client ledger balances and will be less likely to overdraw your account.

4. Reconcile your accounts every month, even if there is little or no activity. If you don’t look at your bank statement every month, you are likely to miss unexpected bank fees, bank errors, or fraudulent activity on your account.

5. Have written proof that you reconcile your accounts and ledgers. If you use a manual system, you can use the form provided on the back of your bank statement for the check-register reconciliation. At the same time, make a list of your clients with their balances, total them, and attach that to your bank statement.

6. Don’t keep everything in your head. If you should die or become incapacitated, someone will need to step in and make sure all the funds in the trust account are disbursed appropriately. This will be nearly impossible if you have no records.

**Correcting the violation**

If a random examination of your records reveals you have failed to keep complete records, correcting that violation can be time-consuming and costly. If you are not keeping a check register, you need to create one. Sometimes it is necessary to order copies of checks and deposited items from the bank in order to recreate your check register and reconcile it to the bank statement.

If you have not been reconciling your bank statements, check register, and client ledgers, you must determine correct balances and begin reconciling on a regular basis. It sometimes takes months of staff time to go back through all transactions to make sure they have been posted to the correct client. In some instances, you may need to hire outside bookkeeping services to help.

You may have funds in your account that you are never able to identify by client. These might even be funds that are due to you, but unless you keep good enough records to show entitlement to them, any unidentified funds in your trust account must be remitted to the State of Washington Department of Revenue Unclaimed Property Division.

If you are having problems getting your accounts to reconcile, or have questions about trust-account records, please feel free to contact the WSBA Audit Department by calling 800-945-WSBA (9722) or 206-443-WSBA (9722). The auditors will be glad to talk to you about any problems you have and can offer suggestions on how to find and correct discrepancies during the reconciliation process. Cheryl Heuett is a WSBA auditor. She performs random examinations and educates attorneys about trust account rules and regulations.

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All Rise! (Or Prepare for Take-off)

by Barbara Sharkey

There were 19 of us left on a Monday morning once the court clerk had excused the lucky ones who had better reasons than I did to be somewhere other than jury duty for five days (although the civic dedication of the 85-year-old fellow who appeared with his son helping him to walk, and who had to be convinced that he was getting a free pass and could go home if he wanted, put most of us to shame). An introductory movie helped the rookies among us feel comfortable as the yoke of responsibility in carrying forth the desires of the founding fathers fell heavily on our shoulders. But after the history lesson, things were off to a very slow start: We sat for three hours in an empty courtroom doing nothing, were excused for a two-hour lunch break, then returned to our room waiting for something — anything — to happen.

Our friendly morning jury clerk had explained that she’d be absent after lunch but that someone would take care of us, yet after 20 minutes of no one seeming to know or care that we had all arrived safely back, talk of mutiny began. Full stomachs had loosened our formerly reticent tongues, and full-scale plotting started in earnest. What would happen if someone finally came to get the jury and we had all left? Could we be arrested for running away? Would they rescind our $10? But before we could complete our plans, another clerk arrived to lead us off to voir dire. Here the judge and both sets of attorneys attempted to discover, through general questions, enough about each of our known and unknown prejudices so they could create the perfect panel for their cause. The judge and attorneys were all polite and tried to dispel our unease with appropriate humor.

The system in this small local court side rooms waiting . . . forever waiting. The instructional film we viewed had emphasized the importance of patience as the wheels of justice turned slowly, but the whole atmosphere of entering through metal detectors, being on uncomfortable seats in a small space with not much to do but read, and being surrounded by strangers for hours at a time seemed . . . vaguely familiar. Rather similar to the cross-country airplane flight I had just returned on days earlier.

Which made me think: What would happen if trials took place on planes? You’ve got all those captive people, a pretty good cross-section of citizens, who could serve as the jury. You could rope off the first nine rows for the courtroom, put the court reporter in the jump seat, turn the first row of seats around for the judge and witnesses, appoint the air marshal as the bailiff, and you’d be in business. Planes always seem to have a doctor or two on board . . . there are probably just as many judges traveling for business or vacation who would be glad to pick up some spending money by presiding over a short trial. Being on an airborne jury would take your mind off turbulence and hunger pains. After the movie was over, instead of watching three hours of reality TV or travelogues, the rest of the passengers could tune in to watch a real-life trial. A guilty defendant would have to take the next flight home; a not-guilty verdict could jump start a celebratory week in Cabo, D.C., or New York.

If that’s too far-fetched, then how about a jury room make-over? To keep a waiting jury happy, my cohorts on hard chairs suggested:

• a few pieces of exercise equipment in one corner, such as a treadmill and exercise bike.
• computer ports and desk access along one wall for those who can work from anywhere.
• a card table and cards for a few rounds of bridge or chips-only poker.
• a small but well-stocked deli with some good sandwiches, salads, and drink options.
• several comfortable upholstered recliners for napping.
• a few private phone booths for cell-phone conversations.
• more than one TV with DVD capa-
Child abuse litigation is tough. But it’s a little less tough if you do it daily.

For eleven years I have been committed to providing superior representation in child abuse cases.

David S. Marshall
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Child Abuse Cases

I work on them every day.

Child abuse litigation is tough. But it’s a little less tough if you do it daily.

For eleven years I have been committed to providing superior representation in child abuse cases.

Barbara Sharkey is a freelance writer living in Seattle. She is a columnist for Play On!, the Washington State Youth Soccer periodical. She can be reached at barbsharkey@comcast.net.
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.

**Joseph C. Bowen**

Joseph Bowen, a Jamestown S’Klallam Tribal Elder, also known by his S’Klallam name, Styachiin, spent his first years in the Dungeness Valley. He moved with his family to California at the age of 11 and earned his law degree from Pepperdine University in Malibu. Bowen devoted his professional life to Native American legal issues. He worked as lead counsel for the Puyallup Indian Tribe and served as superior court judge. He helped lay the foundations for Indian gaming. He was on the National Task Force on Indian Gaming and helped write the Indian Gaming Regulatory Act of 1988.

His daughter Chumahan writes: “He was a storyteller, a ro

*mantic, a shrewd businessman and lawyer, a loyal friend, a creative thinker, and a family man. He showed all who knew him how to make life an adventure and how important it is to love your family.”* Joseph Bowen died February 21, 2007, at the age of 58.

**Mitchell A. Broz**

Mitchell Broz attended the UW School of Law and became a partner in Mikkelborg Broz Wells & Fryer, the firm co-founded by his father. He was known as a man of strong intellect and ethics. His newspaper memorial notice states: “He was committed to this country and was deeply concerned about its current approach to democracy, the environment, civil liberties, and its involvement in war.” He enjoyed traveling, gardening, collecting Asian art, and studying Eastern philosophies. Mitchell Broz died April 4, 2007, at the age of 46.

**Thomas Dinwiddie**

Tom Dinwiddie came to the bar at age 35 as an Army veteran, and spent more than 30 years practicing law in Pierce County. He worked as a deputy prosecutor but was best known as a defense attorney, famous for his zeal in defending clients. Dinwiddie once said that he considered his late entry into the profession a bonus, that his life had been tempered by the same ups and downs his own clients had faced. His interests included sausage-making and brewing beer, and he once toured the country on a motorcycle. “Tom was bigger than life,” said Pierce County Prosecutor Gerry Horne. Thomas Dinwiddie died in March 2007 at the age of 66.

**Arthur Eggers**

Art Eggers moved to Walla Walla in 1955 and entered private practice. He later became a deputy prosecuting attorney, then Walla Walla County prosecuting attorney, and served in that capacity for 25 years. Eggers was known for his gregarious, cheerful personality and his love of jokes. “There was never a dull day at work,” said Superior Court Judge Donald W. Schacht. “He valued his employees. He made it a fun place to work.” In addition to his work, Eggers enjoyed performing with the Little Theatre of Walla Walla, and was proud of his acting experience. He died March 11, 2007, at the age of 87.

**Steven Hale**

Steven Hale was born in Portland, Oregon, and raised in Utah. He began work with the CIA in 1967 as an intelligence officer. Hale moved to Seattle in 1975 to pursue a law career. Twenty years later he joined the firm of Perkins Coie and focused on insurance law. In 2003, Hale became known for heading a legal team that represented an Eastern European couple who had agreed to spy for the U.S. behind the Iron Curtain. Hale died May 5, 2007, at the age of 63.

**Ray W. Hinea III**

Hinea served as an assistant attorney general. His friend and associate Michael Shinn said: “Ray was an excellent ambassador for members of our bar, practicing our craft at a consistently high level of professionalism.” Ray Hinea passed away on April 5, 2007.

**Norm Maleng**

Norm Maleng was raised on a Whatcom County dairy farm, graduated from the UW in 1960, and earned a law degree from the UW in 1966. Maleng was selected to serve as staff attorney for the United States Senate Committee on Commerce. In the late 1980s, Maleng led a state task force that designed Washington’s sex offender notification system. Maleng was elected King County prosecutor in 1978, having risen through the ranks after starting as a deputy prosecuting attorney. He had led the department since, and now the office employs 240 deputy prosecutors. Maleng created a special unit in the prosecutor’s office to deal with child abuse, sexual assault, and domestic violence. The idea has since been copied by many other prosecutors around the nation. After 29 years at the department’s helm, Maleng oversaw the prosecution of some of the most notorious crimes in Washington history. He directed the prosecution following the 1983 Wah Mee gambling club massacre. He handled the case against David Lewis Rice, the man who killed prominent Seattle attorney Charles Goldmark, his wife, and two children on Christmas Eve. Maleng chose not to seek the death penalty in the case of Green River Killer Gary Ridgway in exchange for a full confession. Norm Maleng died after collapsing at a University of Washington event on May 24, 2007, at the age of 68.

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**Rod Mills**

Mills was born on a U.S. military base in Germany and grew up in San Jose, California. He attended Oregon State University and the University of Oregon and graduated with a degree in political science. He received his J.D. from UCLA School of Law and practiced construction law in Oregon and Washington for 22 years. Mills's passions were reading history books, golfing with his father, listening to Bruce Springsteen, traveling, and his family. He died on April 20, 2007, at the age of 49 after a courageous battle with brain cancer. His family said, "He never gave up, never lost his hair, and never lost his sense of humor."

**Bob Nickels**

Bob Nickels was best known for his work with underprivileged children and for being the father of Seattle Mayor Greg Nickels. Bob Nickels was born in Chicago in 1925. He received his bachelor’s and law degrees from the University of Illinois, and a master’s in business administration from the University of Washington. In 1976, Nickels left a career at Boeing to found SCRAP (Society of Counsel Representing Accused Persons), the region’s first public-defenders’ group for low-income children. “That was the big lesson to me. That was ‘follow your dream,’” said Mayor Nickels. The nonprofit practice now has 92 employees and serves 13,000 adult and child clients annually from offices in Seattle and Kent. Nickels also enjoyed collecting Northwest art and refinishing antique furniture. He died on May 13, 2007, at the age of 81.

**Bonita “Bonnie” L. Olson**

Bonnie Olson earned her law degree from the UW School of Law in 1978 and practiced law in the Seattle area for more than 25 years. She was a well-respected trial attorney and mentor. Olson had an artistic side and wrote poetry, created arts and crafts projects, and cooked creative vegetarian meals. She enjoyed camping, hiking, and traveling overseas. Bonnie Olson was 63 when she died on April 4, 2007.

**Kenney Ross St. Clair**

Kenney St. Clare was born in Spokane and grew up in Colville. He was a welter-weight boxer when he attended Washington State University and he received his law degree from the University of Washington. St. Clair spent 40 years representing clients in personal-injury cases and other matters. He was a deputy prosecutor for Skagit County, the town attorney for LaConner, and president of the Skagit County Bar Association. He was an avid hunter and fisherman and loved the outdoors. St. Clair died on January 11, 2007, at the age of 71.

**Vernon W. Towne**

Vernon Towne attended the University of Washington and received his J.D. in 1937. In 1940, he accepted a job as an assistant Supreme Court reporter. In 1945, he moved to Seattle to practice law. Towne wrote the book Washington Practice, first published in 1956; it was widely used for lawyers practicing in Washington state. In 1961, he was appointed a municipal court judge and was re-elected four times. Vernon Towne died February 27, 2007, at the age of 96.
You are cordially invited to attend

The Washington State Bar Association’s Annual Awards Dinner and Business Meeting

Please join us for an evening of inspiration as we celebrate the accomplishments of the 2007 WSBA award recipients. All members of the legal community are invited to attend.

Name ____________________________  WSBA No. ________________
Address ______________________________________________________
Phone ____________________________  E-mail ________________________
Affiliation/organization __________________________________________

Registration is $85 per person (table of 10 = $850). To make your reservation, please return this form (or a photocopy) with your credit-card information or check payable to WSBA. Space is limited, so please make your reservations early. Reservations and payment must be received no later than September 13, 2007 (refunds cannot be made after September 13). Seating will be assigned.

☐ MasterCard  ☐ Visa  No. ____________________________  Exp. date ___________
Name as it appears on card __________________________________________
Signature ____________________________  (no. of persons) X $ ___________ (price per person) = $ ___________ TOTAL

Please list the names of all attendees and indicate meal choices. Be sure to include yourself.

________________________________________  ☐ beef  ☐ salmon  ☐ vegetarian
________________________________________  ☐ beef  ☐ salmon  ☐ vegetarian
________________________________________  ☐ beef  ☐ salmon  ☐ vegetarian
________________________________________  ☐ beef  ☐ salmon  ☐ vegetarian
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________________________________________  ☐ beef  ☐ salmon  ☐ vegetarian
________________________________________  ☐ beef  ☐ salmon  ☐ vegetarian

All those listed on the same registration form (up to 10) will be seated at the same table.

Send to: Washington State Bar Association
Annual Awards Dinner
1325 Fourth Avenue, Suite 600
Seattle, WA 98101-2539
Phone: 800-945-WSBA • 206-443-WSBA • Fax: 206-727-8319

☐ If you need special accommodations, please check here and explain below.
________________________________________________________________________
________________________________________________________________________
You are cordially invited to attend

The Washington State Bar Association’s 50-Year Member Tribute Luncheon

Please join us as we celebrate the accomplishments of the 2007 WSBA 50-year members. All members of the legal community are invited.

Name ___________________________________________ WSBA No. __________________
Address ______________________________________________________________________
Phone __________________________ E-mail ______________________________
Affiliation/organization _______________________________________________________

Registration is $45 per person (table of 10 = $450). To make your reservation, please return this form (or a photocopy) with your credit-card information or check payable to WSBA. Space is limited, so please make your reservations early. Reservations and payment must be received by October 10, 2007 (refunds cannot be made after October 10).

☐ MasterCard  ☐ Visa  No. ___________________________ Exp. date ____________
Name as it appears on card ___________________________________________________
Signature ____________________________________________________________________
_______ (no. of persons)  X  $_______ (price per person)  =  $__________ TOTAL

Please list the names of all attendees and indicate meal choices. Be sure to include yourself.

__________________________________________________________________________
☐ chicken  ☐ salmon  ☐ vegetarian
__________________________________________________________________________
☐ chicken  ☐ salmon  ☐ vegetarian
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☐ chicken  ☐ salmon  ☐ vegetarian
__________________________________________________________________________
☐ chicken  ☐ salmon  ☐ vegetarian

Send to:  Washington State Bar Association
50-Year Member Tribute Luncheon
1325 Fourth Avenue, Suite 600
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Leadership Institute

**WSBA Leadership Institute Seeks Fellows for 2008**

The WSBA seeks applicants for the 2008 WSBA Leadership Institute. The Leadership Institute recognizes that many lawyers, especially those from diverse backgrounds and other under-represented groups, have not been traditionally recruited for leadership positions or made aware of opportunities for leadership training, skill development, and professional growth available through the WSBA. Ten to 12 attorneys in practice for three to 10 years will be carefully selected for the fourth year of the program. The program will take place January to August 2008.

The program is a collaborative, experiential, and individualized curriculum that includes eight professional-development seminars. WSBA Leadership Institute fellows will benefit from the latest trends in professional leadership development, exposure to the legislative and judicial systems; interaction with high-level state and local officials and judges; and opportunities to meet high-profile attorneys from the private and public sectors. The program requires a two-year commitment. Following the completion of the first year, fellows are expected to serve on a WSBA section or committee, or bar-related activity. Fellows will earn a minimum of 30 CLE credits, and there is no charge to participants.

To be considered for the program, applicants must: (1) complete an application with cover letter, résumé, and three references; (2) be an active WSBA member; (3) have practiced law in a U.S. jurisdiction for three to 10 years, i.e., any attorney who has been admitted in a U.S. jurisdiction between January 1, 1998, to December 31, 2005, meets this criterion; (4) be nominated by his/her employer, or if self-employed, by another individual; and (5) provide evidence of interest in community and WSBA activities. The deadline for applications for the 2008 Leadership Institute is September 15, 2007. Application and nomination forms and instructions are available on the WSBA website at www.wsba.org/lawyers/leadership_institute.htm. For further information, contact Camille Campbell at camillec@wsba.org or 206-727-8213.

**WSBA Board of Governors 2007 Election Results**

Congratulations to new 2007-2008 WSBA President-elect Mark A. Johnson. Mark Johnson was unopposed for the office of president-elect (2007-2008) and will serve as the WSBA’s 118th president in 2008-2009. Mr. Johnson will take office as president-elect for one year at the close of the September 20, 2007, annual business meeting, when President Ellen Conedera Dial passes the gavel to current President-Elect Stanley A. Bastian.

Congratulations to the following WSBA governors-elect. The governors-elect will take office at the close of the WSBA annual meeting on September 20, 2007, and will hold office for a term of three years until September 2010.

**2nd District:** G. Geoffrey Gibbs, unopposed, is governor-elect in the 2nd District.

**7th-Central District:** The certified election results from the May 21 ballot counting names Lori S. Haskell as governor-elect in the 7th-Central District.

- Eligible voters: 3,098
- Ballots cast: 464
- Return rate: 15 percent
- Invalid: 11
- Lori S. Haskell: 243 votes, 54 percent
- Keith Scully: 210 votes, 46 percent
9th District: Since there was no candidate with a majority vote at the May 21 ballot counting, a run-off election in the 9th District between Robert L. Beale and David S. Heller was held.

- Eligible voters: 1,409
- Ballots cast: 244
- Return rate: 17 percent
- Invalid: 4
- Robert L. Beale: 97 votes, 40 percent
- David S. Heller: 143 votes, 60 percent

The certified run-off election results from the June 15 ballot counting names David S. Heller as the new governor-elect in the 9th District in accordance with WSBA Bylaws Article III, Section J.

At-Large (A): On June 1, Brenda Williams was elected governor-elect at-large by the Board of Governors in accordance with WSBA Bylaws Article III, Section N: Election of At-large Governors.

Third-Party Liability Information
If your client is involved in a personal-injury case and has received or is receiving medical assistance (Medicaid) payments for their medical care, you are required to contact the Department of Social and Health Services (DSHS) if you are pursuing a recovery of damages for that injured client. RCW 43.20B.060 places a lien against the portion of the settlement or judgment your client receives for medical costs from a third party, which means also their own insurance coverage, that is responsible for your client’s injuries in order to reimburse the medical bills that have been paid by Medicaid. Before settling your client’s claim with the third party and/or their insurance company, please contact the Coordination of Benefits Casualty Unit of DSHS at 800-894-3754, or COB Casualty Unit, PO Box 45561, Olympia, WA 98504-5561 to supply the information that DSHS requires, or go to http://fortress.wa.gov/dshs/maa/1tp. Failure to pay any lien imposed by the department on any settlement or judgment obtained by your client can subject you to personal liability for any funds improperly distributed (RCW 43.20B.070). Because of the recent decision by the U.S. Supreme Court in Arkansas Dept. of Health and Human Services v. Ahlborn, 547 U.S. 268, 126 S. Ct. 1752, 164 L. Ed. 2d 459 (2006), it is even more important for personal injury attorneys to contact the COB Casualty Unit to discuss with this office any action for damages you are bringing on behalf of a Medicaid recipient.

WSBA-CLE Member Appreciation Summer Sale
July 2-13, 2007: Sale Applies to Online Orders Only
Visit www.wsbacle.org between 8 a.m. July 2 and noon on July 13 and enjoy “50/50” savings on selected WSBA-CLE recorded seminars and coursebooks: Audiotapes are being phased out, so close-out “Summer Sale” pricing on all audiotape-plus-coursebook sets is $50 per set (regular price $175). Selected CD-plus-coursebook sets are 50 percent off, or $90. Remember that 15 A/V credits can be earned from recorded seminars. “Summer Sale” prices are good for online purchases only, of selected inventory, while supplies last. Due to the high volume of orders anticipated during the sale, please allow four to six weeks for delivery.

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VotingForJudges.org Receives ABA Silver Gavel Award
This year, the American Bar Association (ABA) selected www.votingforjudges.org to receive the Silver Gavel Award in the New Media Category. The website is a non-partisan source of information on judicial elections in the state of Washington. The ABA has presented these prestigious awards since 1958 to recognize products in media and the arts published or presented during the preceding year that are exemplary in fostering the American public’s understanding of law and the legal system. The Silver Gavel Award is the ABAs highest honor in recognition of this purpose. Eligible categories include books, newspapers, magazines, theatrical productions, television news/documen-

taries, television dramas, radio programs, film/video productions, and new media. ABA President Karen Mathis will present silver gavels to award honorees at a special program event on July 24 in Washington, D.C.

Women of Color Empowered Honors Leaders
On May 18, 2007, Women of Color Empowered presented awards to women who have made significant strides in business and their communities. Of the 12 honorees, three are WSBA members. Grace Chien is CEO of Girl Scouts-Totem Council, a member of the state Commission for National and Community Service, board chair-elect of the Executive Alliance, and treasurer of the Asian Pacific Directors Coalition. Zulema Hinojos-Fall is an administrative judge for the U.S. Equal Employment Opportunity Commission, where she adjudicates employment-discrimination complaints of the federal work force. In 2001, she became the first woman of color to sit on the WSBA Board of Governors. In 2004, Hinojos-Fall received the Outstanding Lawyer Award from the Latina/o Bar Association of Washington. Diankha Linear is an attorney with Cairncross & Hempelmann, P.S. In 2004, she received the Loren Miller Bar Association’s Excellence in the Practice of Law award for her community service. She is a past president of the Loren Miller Bar Association, president-elect of Habitat for Humanity Seattle/South King County, and in 2006 received the WSBA Young Lawyers Division Outstanding Young Lawyer of the Year Award.

ABA YLD Awards Team Announces 2007 Sub-Grant Recipients
The ABA YLD Awards Team recently announced and congratulated the sub-grant recipients for 2007. This year, Washington finished third in terms of total dollars awarded, for activities such as the WYLD’s Expansion of the Greater Access and Assistance Program (GAAP) and the Clark County YLS’s Young Lawyers vs. Senior Lawyers Softball Game and Family BBQ.

“Their grant funds from the ABA, ABA funding to their spring and fall conferences, coupled with their free training and ‘out-of-the-box’ programs, make clear that our involvement with the ABA returns invaluable dividends to the young lawyers of Washington,” said John M. Brangwin, WYLD president.

Mediation that works . . .
Mike Duggan

- Over 30 years litigating the kinds of cases I mediate
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- Vehicle cases / Highway design
- Government / Civil Rights cases
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Energy to get the job done!
Use Your MCLE Homepage to Find Approved CLEs

From your MCLE homepage, you can now find approved live activities that fit your schedule and are in a location that is convenient for you. You can also find live webcasts and teleconferences in which to participate.

To use this feature, go to the WSBA website at www.wsba.org and click on “MCLE Web Site” in the upper left corner. On the next screen, click on the “Member” tab, then select “Member Login.” The online instructions lead you through the process of creating a confidential password and using the system. After you log in, you are at your MCLE homepage.

On your homepage, there is a box in the center with a heading banner “MCLE.” Clicking this link brings you to a “Search Approved Activities” box. Enter the city and state in which you would like to find a CLE course. At the bottom of the box there are date fields called “Start Between ... And.” The dates default to the next 60 days. You can change the date in each field to any other date. To find a live webcast, input “Webcast” in the city field and change the state field to “Any.” To find a teleconference, input “Teleconference” in the city field and change the state field to “Any.” To find courses being given by a particular sponsor, type the sponsor’s name in the “Sponsor” field.

If you have any questions about using the MCLE system, online help is available. You can also call the WSBA Service Center at 800-945-WSBA (9722) or 206-443-WSBA (9722), or e-mail questions@wsba.org.

Problem Getting a Client to Pay?

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

Contract Lawyer Meeting

Discuss the issues with other contract lawyers on July 10 from noon to 1:30 at the WSBA office. Bring your lunch — coffee is provided — and network with other
contract lawyers. For more information, contact Julie Salmon at 206-733-5914, 800-945-9722, ext. 5914, or juliesa@wsba.org. Please note the WSBA’s new address: 1325 Fourth Ave., Ste. 600, Seattle.

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

LAP Solution of the Month: Grief and Loss
Losses of all kinds trigger grief reactions. While these reactions are usually normal and predictable, they can easily overwhelm when you’re already feeling stressed or anxious. Whether you’ve lost a loved one, a case, a job, a pet, or an aspect of your health, you’ll probably experience grief to some degree. If you’d like a supportive ear, call the Lawyers Assistance Program at 206-727-8268.

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

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

Job Seekers Discussion Group
Looking for a job or making a transition? Join us at the Job Seekers Discussion Group the second Wednesday of each month from noon to 1:30 p.m. The July 11 meeting will feature a guest speaker who will discuss the world of the in-house corporate counsel. Practice your networking skills and exchange information and ideas with other lawyers looking to make a change. No fee or pre-registration. Come as you are — no need to RSVP. For more information, contact Rebecca Nersson, Ph.D., at 206-727-8269, 800-945-9722, ext. 8269, or rebeccan@wsba.org.
LOMAP and Ethics on the Road: The 2007 Traveling Seminars
Plan to attend in Moses Lake on August 7 or Wenatchee on August 8. Registration is $89, and each seminar has been approved for 4.0 ethics CLE credits. For more information, contact Julie Salmon at 206-733-5914, 800-945-9722, ext. 5914, or juliesa@wsba.org, or visit www.wsba.org/lawyers/services/lomapontheroad.htm.

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

Pipeline Project RFP Coming
To encourage the development of programs that target groups that have been underrepresented in the legal profession, the Board of Governors has established a grant of $75,000 to fund the establishment of a “pipeline program” over a three-year period. A Request for Proposal (RFP) will be issued this summer. Those interested in receiving the RFP should contact Sarah Guthrie at sarahg@wsba.org.

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

Learn More About Case-Management Software
The WSBA Law Office Management Assistance Program (LOMAP) office maintains a computer for members to review software tools designed to maximize office efficiency. The LOMAP staff is available to provide materials, answer questions, and make recommendations.

To make an appointment, contact Julie Salmon at 206-733-5914, or 800-945-9722, ext. 5914, or juliesa@wsba.org.

Upcoming Board of Governors Meetings
July 27-28, Quincy • September 20-21, Seattle • October 26-27, Winthrop
With the exception of the executive session, Board of Governors meetings are open, and all WSBA members are welcome to attend. RSVPs are appreciated but not required. Contact Donna Sato at 206-727-8244, 800-945-9722, ext. 8244, or donnas@wsba.org. The complete Board of Governors meeting schedule is available on the WSBA website at www.wsba.org/info/bog/schedule.htm.

Usury Rate
The average coupon equivalent yield from the first auction of 26-week treasury bills in June 2007 was 4.991 percent. Therefore, the maximum allowable usury rate for July is 12 percent. Information from January 1987 to date is on the WSBA website at www.wsba.org/media/publications/barnews/usury.htm.
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Disciplinary Notices

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

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

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

Disbarred

Michael O. Riley (WSBA No. 21452, admitted 1992) of Tukwila, was disbarred, effective January 17, 2007, by order of the Washington State Supreme Court following a default hearing. This discipline was based on his conduct in 2004 and 2005 in three matters involving lack of diligence, failure to communicate with clients, unreasonable fees, trust account irregularities, failure to refund unearned fees and return property to a client, commission of a criminal act, dishonesty, and non-cooperation with disciplinary investigations.

**Matter 1:** Mr. Riley was hired to represent a client in a dissolution matter. When the case was resolved, Mr. Riley and the client agreed that Mr. Riley would receive $4,000 from the proceeds to cover unpaid attorney’s fees and fees for possible future representation in connection with post-dissolution motions. In July 2004, Mr. Riley received two checks from the counsel for the opposing party. One check was payable to Mr. Riley for $4,000 and the other, for the balance of the proceeds, was payable to the client. Although he had only earned at most $2,916.65, Mr. Riley deposited the entire $4,000 into his business account. After July 2004, Mr. Riley did not earn any fees from the client or expend any funds on her behalf. The client terminated Mr. Riley’s services and requested a refund of the balance of her funds. Mr. Riley did not refund any money to her. At the end of July 2004, Mr. Riley was suspended from the practice of law for nonpayment of dues. He did not notify the client of his suspension or respond to numerous messages left by the client in August and September. In October 2004, Mr. Riley told the client that a refund of $1,093.35 would be available at the beginning of November. In November 2004, the client filed a grievance with the Bar Association. Mr. Riley intentionally did not provide the client with her funds until February 2005.

**Matter 2:** In March 2004, a client hired Mr. Riley regarding a contractor’s lien on the client’s property. Although Mr. Riley advised the client that the problem would be resolved by July, Mr. Riley neither performed any work that benefited the client nor responded to numerous requests for information on the status of the matter. Mr. Riley also did not inform the client in writing of his July 2004 suspension. During the summer of 2004, the client went to Mr. Riley’s office four times to determine the status of his matter. Mr. Riley was present only on one of those four occasions and informed the client that he could not talk to him because his license had temporarily been suspended.

**Matter 3:** In February 2005, a Texas resident hired Mr. Riley to handle a probate matter. The client’s father had died the previous year. The client was named as personal representative in the will. Mr. Riley agreed to handle the probate matter for $2,000, and he sent the client a fee agreement describing the $2,000 as a “fully earned fee.” The client signed the fee agreement and sent it back to Mr. Riley with a check for $2,000, together with the original will. Mr. Riley did not perform any work on behalf of the estate and did not respond to the client’s numerous attempts to contact him by phone, fax, e-mail, and letter. In September 2005, the client sent a certified letter requesting that Mr. Riley return the original will and the fee if he was unable to handle the matter. Mr. Riley did not respond. In October 2005, the client filed a grievance against Mr. Riley with the Bar Association.

In the three above-described matters, Mr. Riley failed to cooperate with the Bar Association by not providing requested information and documents, by not responding to requests for responses to grievances, by not appearing at a scheduled deposition, and by not producing documents as required by subpoena. During the disciplinary investigation, it was determined that between at least August 2003 and November 2005, Mr. Riley maintained an IOLTA account for which he did not maintain complete records. During that period, Mr. Riley did not record or accurately record 63 trust account transactions, including at least $107,607 of withdrawals. Many of these withdrawals were payable to Mr. Riley or were used to pay for his personal or business expenses. After August 2003, Mr. Riley did not reconcile his trust account records to his bank statement and did not maintain client ledgers for his trust account.

Mr. Riley’s conduct violated RPC 1.3, requiring that a lawyer act with reasonable diligence and promptness in representing a client; RPC 1.4(a), requiring a lawyer to keep a client reasonably informed about the status of a matter and to promptly comply with reasonable requests for information; RPC 1.5(a), requiring a lawyer’s fee to be reasonable; former RPC 1.14(a), requiring all funds paid to a lawyer or law firm, including advances for costs and expenses, be deposited in one or more identifiable interest-bearing trust accounts, and no funds belonging to the lawyer or law firm be deposited therein; former RPC 1.14(b)(4), requiring a lawyer to promptly pay or deliver to the client as requested by the client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive; RPC 8.4(b), prohibiting a lawyer from committing a criminal act (here, theft) that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects; RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; RPC 8.4(i), prohibiting a lawyer from committing any act involving moral turpitude, or corruption, or any unjustified act of assault or other act which reflects disregard for the rule of law; and RPC 8.4(l), prohibiting a lawyer from violating a duty or sanction imposed by or under the rules for Enforcement of Lawyer Conduct (here, ELC 5.3(e) and 14.1(c)) in connection with a disciplinary matter.

Anne I. Seidel represented the Bar Association. Mr. Riley did not appear either
in person or through counsel. Lyle O. Hanson was the hearing officer.

**Suspended**

Michael M. Pacheco (WSBA No. 31209, admitted 2001), of Salem, Oregon, was suspended for four years, effective February 8, 2007, by order of the Washington State Supreme Court imposing reciprocal discipline in accordance with an order of the Supreme Court of the State of Oregon following approval of a stipulation. This discipline was based on his conduct between 2003 and 2005 involving conduct that would prejudice admission to the bar; conviction of a misdemeanor involving moral turpitude; knowingly making a false statement of law or fact to a tribunal; criminal conduct reflecting adversely on a lawyer's honesty, trustworthiness, or fitness as a lawyer; and conduct involving dishonesty, fraud, deceit, or misrepresentation. For more information, see Oregon State Bar Bulletin, Discipline (January 2007), available at www.osbar.org/publications/bulletin/07jan/discipline.html.

Mr. Pacheco's conduct violated Oregon ORS 9.527(1), authorizing discipline whenever it appears to the court that the member has committed an act or carried on a course of conduct of such nature that, if the member were applying for admission to the bar, the application should be denied; Oregon ORS 9.527(2), authorizing discipline when a member has been convicted in any jurisdiction of an offense which is a misdemeanor involving moral turpitude or a felony under the laws of Oregon, or is punishable by death or imprisonment under the laws of the United States; Oregon RPC 3.3(a)(1), prohibiting a lawyer from making a false statement of fact or law to a tribunal or failing to correct a false statement of material fact or law made to a tribunal by the lawyer; Oregon RPC 8.4(a)(2), prohibiting commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects; and Oregon RPC 8.4(a)(3), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on the lawyer's fitness to practice law.

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

**Admonished**

John R. Scannell (WSBA No. 31035, admitted 2001), of Seattle, was admonished following a hearing. The admonition was based on his conduct in 2002 involving failure to exercise adequate supervisory authority over a nonlawyer assistant.

In April 2002, Mr. Scannell began representing the plaintiff in a lawsuit pending in federal district court. At that time, Mr. Scannell hired a paralegal on an independent contractor basis. In October 2002, when the plaintiff’s judgment became final, the court granted the defendant leave to deposit the judgment amount of $1,194.05 into the court registry. Shortly thereafter, without Mr. Scannell’s knowledge or authorization, Mr. Scannell's paralegal prepared and filed two documents: (1) a motion seeking release of the funds deposited in the court registry and (2) a full satisfaction of judgment. The paralegal had affixed a facsimile of Mr. Scannell's signature on each document by using a signature stamp. In November 2002, after reviewing the court file and discovering the two documents, Mr. Scannell filed a handwritten request that the court not act on the October motion because it was not filed under his authority and was signed with a stamp that he had “never seen nor authorized.” The court denied the motion for release of the funds and ordered Mr. Scannell to show cause as to the events pertaining to the stamped pleadings. In December 2002, Mr. Scannell filed a response to the order. In a supporting declaration, Mr. Scannell stated that the paralegal believed he had authority to sign for what he thought was a routine transaction and had affixed the signature stamp to speed things up. Mr. Scannell explained that he had a busy caseload and was unavailable for signatures during the time period in question. Mr. Scannell further stated that he had subsequently warned the paralegal never to sign pleadings in the future without authorization.

In December 2002, the court issued an order releasing the funds in the court registry to Mr. Scannell and his client, in trust, provided that Mr. Scannell submitted a properly signed satisfaction of judgment. The court's order also noted that Mr. Scannell's response to the show cause order did not address “who made the stamp and directed that it be used, even for ‘routine’ matters.” The court also expressed concern about whether Mr. Scannell was exercising control over certain aspects of his legal practice. Mr. Scannell does not know when or where the signature stamp was made, nor did he discover any other pleadings or correspondence that had been approved with the signature stamp.

Mr. Scannell’s conduct violated RPC 5.3(a), requiring that a partner in a law firm make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that a nonlawyer assistant’s conduct is compatible with the professional obligations of the lawyer; and RPC 5.3(b), requiring a lawyer with 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.

Scott G. Busby represented the Bar Association. Mr. Scannell represented himself. Andrekita Silva was the hearing officer.
Non-Disciplinary Notices

Suspended Pending Outcome of Disciplinary Proceedings

Jack L. Burtch (WSBA No. 4161, admitted 1955), of Aberdeen, was suspended pending the outcome of disciplinary proceedings, pursuant to ELC 7.2, effective May 17, 2007, by an order of the Washington State Supreme Court. This is not a disciplinary action.

Lynn M. Abreu (WSBA No. 14241, admitted 1984), of Renton, was suspended pending the outcome of disciplinary proceedings, pursuant to ELC 7.2, effective March 15, 2007, by an order of the Washington State Supreme Court. This is not a disciplinary action.

Mediation Services and Consultation and Association on the Technical Aspects of Aviation and Engineering Matters and Governmental Regulation

Tom Fender, formerly Vice Chair of the Intercity Transit Authority, has 35 years of active bar participation in Washington and Oregon. He has served as a public official, municipal manager, naval aviator, government relations director, tax administrator, assistant professor, and counsel to the Washington Senate Judiciary Committee. Mr. Fender’s formal education includes naval aviation, industrial processes, science, and engineering.

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E-mail: michaelc@michaelcaryl.com
Calendar

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

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

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

Business Law

The Lawyer’s Toolbox: Business Law
August 9 — Seattle. 3.25 CLE credits, including ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Creditor-Debtor

The Lawyer’s Toolbox: Bankruptcy
August 2 — Seattle. 3.0 CLE credits, including ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Criminal Law

Lawyer’s Toolbox: Criminal Law
July 25 — Seattle. 3.25 CLE credits, including ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Employment Law

Employment Law Essentials: Update Your Practice with Views from the Bench and Leading Practitioners
July 26 — Seattle. 6.75 CLE credits pending, including ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Estate Planning

Living Trusts

Family Law

How to Help Your Client Survive a Parenting Evaluation
August 8 — Seattle. August 21 — Spokane. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

General

2nd Annual WSBA Solo and Small Firm Conference
July 12-14 — Ocean Shores. Up to 15.5 CLE credits, including up to 2 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Guardianships

The Guardianship Institute — Day 1: The Nuts and Bolts from A-Z
July 19 — Seattle. 6.25 CLE credits, including .25 ethics. By WSBA-CLE and Elder Law Section; 800-945-WSBA or 206-443-WSBA.

The Guardianship Institute — Day 2: Strategies and Solutions for Meeting the Challenges
July 20 — Seattle. 6.25 CLE credits, including ethics. By WSBA-CLE and Elder Law Section; 800-945-WSBA or 206-443-WSBA.

Law Practice Management

The Lawyer’s Toolbox: Technology and Law Practice Management
August 9 — Seattle. 3.0 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Litigation

Lawyer’s Toolbox: Civil Litigation
July 25 — Seattle. 3.0 CLE credits, including ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

The Lawyer’s Toolbox: Effective E-Document Discovery
August 22 — Seattle. 3.75 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Miscellaneous

Business Continuity Following Disaster
August 15 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Classifieds

Reply to WSBA Bar News Box Numbers at:

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

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Waterfront lot — on Robb’s (saltwater) lagoon, nice, no fresh water available yet, probably want fence, Lot 21, Kingsbury Beach, Tax parcel # 387440-0210-05, Price $40,000. Call Paul Jensen, attorney, for more information, 360-275-4405.

Seattle lawyer would like to sell a complete set of Washington Reports and Wash App. All volumes are in excellent condition. Price negotiable. 800-456-0044.

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Great opportunity for attorney or attorneys building or adding to an existing practice. Retiring attorney with 39-year Bellevue general practice with emphasis on family law seeks to trade phone number for short-term use of part-time office. Good up-to-date print library (Wash. 2d, Wis. App., Wa. Practice, Wa. Digest and RCWA, plus some specialized texts and manuals). Can take over existing location and phone number, or take phone number and relocate. Existing location has space for 2-4 attorneys and staff. Partial kitchen. Conf. room, storage, private balconies. Retiree will need part-time use of small office for 4-6 months. Retiree available for mentoring and by prior arrangement for special projects. 425-747-9252.

Positions

Washington State Bar News editor: The Washington State Bar Association Editorial Advisory Board (EAB) is seeking a Bar News editor. This position is open to all WSBA members regardless of residence. This is a paid, part-time contract position. Responsibilities include procuring and editing feature articles; working with authors; managing Bar News correspondence and letters to the editor; writing articles as needed and the “Editor’s Page”; attending the WSBA Board of Governors’ meetings (10 per year) and writing “The Board’s Work”; serving as liaison between contributors and the Bar News managing editor; and attending EAB meetings. The editor works closely with the managing editor in the areas of determining Bar News content and coordinating articles and publication schedules to meet monthly deadlines. Editorial/publication experience is desirable. Please submit a résumé and writing samples to barnewsexeditor@wsba.org or mail to Bar News Editor Search, WSBA, 1325 4th Ave., Ste. 600, Seattle, WA 98101-2539. Applications must be received by July 13, 2007. It is anticipated that the new editor will begin his or her duties in October 2007.

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Holland & Hart’s Boise office is looking for associate attorneys to join its thriving Business Entities and Transactions Practice Group. These attorneys may potentially assist (on an as-needed basis) with projects in the Real Estate Practice Group. Must have excellent drafting and communication skills and an excellent academic record. Send résumé, cover letter, and transcript to Carol Custy, Professional Recruitment Coordinator, PO Box 8749, Denver, CO 80201-8749, e-mail chcusty@hollandhart.com, or fax to 303-975-5461. Holland & Hart LLP is an Equal Opportunity Employer. No unsolicited résumés from search firms, please.

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Holland & Hart’s Boise office is looking for associate attorneys to join its Construction and Real Estate Litigation Practice Group. Requires four-plus years’ experience on large-scale construction projects and complex construction litigation matters. Prefer candidates with Engineering or Construction Management degree/experience. Must have an excellent academic record, strong research, writing, and communication skills. Please send résumé, cover letter, and transcript to Carol Custy, Recruitment and Development Coordinator, PO Box 8749, Denver, CO 80201-8749, e-mail cbusty@hollandhart.com, or fax to 303-975-5461. Holland & Hart LLP is an Equal Opportunity Employer. No unsolicited résumés from search firms, please.

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Corporate attorney. Foster Pepper LLP is seeking a qualified corporate attorney in our Portland, Oregon, office with two or more years of corporate finance, securities (public company representation beneficial), and mergers and acquisitions experience. Excellent academic record, writing, and oral communication skills required. Please direct replies to Heather Oden, Executive Director, Foster Pepper LLP, 601 SW 2nd Avenue, Suite 1800, Portland, OR 97204, or by e-mail to odenh@fosterpdx.com. EOE.

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The state of Washington’s Department of Health, Health Professions Quality Assurance Division, is seeking qualified attorneys to fill new staff attorney positions in its offices located in Tumwater, WA. Interested members of the Bar should go to the following website: http://www.doh.wa.gov/job_ann/DOH321.doc and click on Hearings Examiner 1 (In-Training); Hearings Examiner 2 (In-Training); Hearings Examiner 3 (Staff Attorney).

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• Review and analyze requests related to free and open source software. Review and analyze requests to join standard setting organizations, including such organizations’ bylaws and participation agreements. Advise development groups on rights and obligations under such agreements;  
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**Will Search**

Looking for the will of Doris Clara Meier, born Doris Clara Borscheid on 12/28/1944 in Frieldendorf, Germany. Died March 13, 2007, in North Bend, WA. If you have any information about a will, please contact Jeff Ouimet, Ouimet Law Offices, PLLC 1800 9th Ave., #1630, Seattle, WA 98101. Tel: 206-624-8489. E-mail: jeff@ouimetlaw.com.

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