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Stephen Hayne

Aaron Wolff
B.A., Emory University, Atlanta, Georgia; J.D. (cum laude), Seattle University School of Law; Former prosecutor for the cities of Kirkland and Tukwila, where he successfully prosecuted hundreds of DUI cases; Graduate, National College for DUI Defense; NHTSA Qualified Standardized Field Sobriety Test Administrator; Graduate, National Patent Analytical Systems BAC Datamaster training program; Graduate, Drug Recognition Evaluation Overview Course; Member, Washington Association Criminal Defense Lawyers, Washington State Trial Lawyers Association; Executive Board Member, Citizens for Judicial Excellence; Executive Committee Member of the Washington State Bar Association Criminal Law Section and named “Who’s Who” in DUI/DWI Defense for 2008 by Washington Law and Politics Magazine.
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**Check your language and balances**

With all due respect, I must take exception to the Honorable Evan Sperline's comment in his recent letter to the editor in the June 2008 issue of Washington State Bar News.

In the second paragraph of his letter, Judge Sperline stated that "[A]t the other end of the spectrum, the justices of the Supreme Court are policy makers." I submit that it is dangerous for the WSBA and the legal profession to let this view slide by unchallenged. It is also a disservice to all the general public to believe it to be true, if indeed his view is repeated in the general media.

For many in our profession and the general public to believe the misconception that the Supreme Court is a "policy maker" is flat out wrong. The Supreme Court is the interpreter of policy and the legislature is the maker of policy. We need to be more precise in how we use the English language and keep this straight in our mind, especially if more and more of the judiciary become appointed rather than elected. Regardless of one's political, moral, religious, or social point of view, a policy making judiciary can create changes in our society that are consistent with those who appoint the judges, but may be inconsistent with the electorate. We are a stronger society and more representative of the electorate when we ensure that the separation of powers, in respect to the judiciary, remains where it belongs, viz. interpreting policy, not making it.

Ivan Gorne, Gig Harbor

**And another thing**

The proposed legal technician rule, allowing non-lawyers to provide services in dissolutions, is unconstitutional. The Washington Supreme Court does not have authority to regulate the legal industry or set policy concerning the practice of law.

The federal constitution requires that each state have a republican form of government, which means there must be courts, an executive and a legislature. Due process requires court neutrality toward all parties. Legislatures pass laws and courts decide cases.

Here the court would create legislation affecting a major industry, the practice of law, and it articulates policy for legal services. The court cannot be neutral in litigation challenging this legislation because they are the authors of it, and they cannot be neutral on policy issues because they have already set forth their own policy.

This principle applies too to the rules of professional conduct, a criminal procedural code enacted by the court. Appeals are heard by the authors of the code. DUI lawyers have parsed every phrase of DUI codes, yet there are no RPC challenges. Perhaps that is because lawyers believe it is futile and unwise to challenge a code written by judges. The principle also applies to support and indirect subsidies for Columbia Legal Services.

Courts do not have inherent power over lawyers because all powers of courts come from the people through the constitution.

The 250 word limit on letters serves to censor comment.

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Growing Pains: The Cost of Doing Business

Inflation and rising expenses have hit everyone hard, including the WSBA

As an integrated, unified, and mandatory bar association, the WSBA has many duties, responsibilities, and functions including bar examinations, admissions, character and fitness reviews, member services, CLE compliance, and discipline. These are all expensive programs, and most are funded primarily from the WSBA general fund.

This year, the WSBA is facing a significant budget deficit and the Board of Governors must soon make some important decisions regarding finances and member license fees. Since 2004, these fees ($414 in 2008) have increased by only two percent annually. Unfortunately, this increase has not kept pace with inflation and the cost of doing business. Expenses are increasing at a faster rate than revenues, causing a budget deficit. In addition, as the WSBA membership continues to rise, so do demands for additional member services.

The expected budget deficit was caused by five primary factors:

1. Cap on License Fees
The general fund’s primary source of revenue is license fees; in fact, approximately 73 percent of the general fund budget is supported by these fees ($11 million per year). License fees for fiscal years 2007 through 2009 were established back in 2005, and at that time projections were made regarding both revenue and expenses. However, the economic landscape has changed significantly and expenses increased beyond what was predicted three years ago. Expenses for office rent, staff salaries, and staff benefits all increased faster than expected.

2. Rent
The cost for office rent has increased 40 percent since 2005. This was not unexpected, and in fact two things were clear when the 2006 office move was first contemplated. First, more space was necessary, regardless of whether the WSBA moved or stayed in the old location. The Bar Association had clearly outgrown its space and our staff had been in cramped quarters for several years. An additional 17,000 square feet was acquired when the office was moved into the new location at Puget Sound Plaza. Second, higher rent was unavoidable. Member surveys indicated a desire to keep the WSBA offices in downtown Seattle, but staying at the old location in the Fourth and Blanchard Building would have resulted in much higher rent rates than under the old and expired lease. Fortunately, the rent that the WSBA is now paying is below market rates, and this is because the new lease was negotiated at the bottom of the local rental market (in 2003).

Unfortunately, the cost for commercial leases has almost doubled since 2003, and the WSBA must plan for the possibility of significantly higher rent when the current lease expires in eight years. As a result, the WSBA may have to move its offices out of downtown Seattle at the end of its current lease.

3. Staff Salaries
The WSBA is a strong and vital organization in large part because of our dedicated and professional staff. They are a valuable and important asset, and they are responsible for managing most of the Bar Association’s work and programs. However, a professional and loyal staff requires competitive compensation. The compensation system was thoroughly reviewed in 2006, and it was discovered that staff salaries had fallen behind -- WSBA staff were significantly underpaid in relation to comparable positions in the market. Consequently, necessary adjustments were made and salary costs have increased by 30 percent in the last few years.

4. Benefits
Staff benefit costs have also increased — over 62 percent in the last three years. This was fueled by increases in overall staff salaries, increases to the cost of retirement contributions to the Public Employee Retirement System, and increases in the medical insurance premiums for WSBA employees. The Bar Association has no control over either the amount of retirement contributions or the amount of insurance premiums, because these rates are set by the state.
5. Business Costs
Expenses have risen for the numerous committees, boards, and panels which help develop and oversee WSBA policies, procedures, and regulations. The cost of travel is the primary culprit, and it is no surprise that as oil prices continue to rise, so does the cost of food, lodging, office supplies, and equipment.

The Board of Governors and staff are taking the necessary steps to address this fiscal situation. We are realigning and reducing WSBA programs to save money, and we have established reserve funds and long-term investments in anticipation of higher expenditures in the coming years. We have also started a comprehensive review to limit and focus WSBA efforts to serving key guiding principles.

Over the next few months, the Board will begin discussing these budget issues, and those discussions will raise difficult questions and choices. The Board does not want to raise your license fees, but unfortunately, a raise may be necessary. This decision will not be easy, but I assure you that it is being taken very seriously. We understand the universal desire to keep bar dues as low as possible and we share those views. We also believe the WSBA must maintain a professional and competent staff to serve members, the court, and the public.

The Board and I are committed to maintaining the WSBA’s fiscal integrity. But we are also committed to improving the legal system for individuals throughout Washington and to maintaining the highest levels of integrity within the bar. 

WSBA President Stan Bastian can be reached at stanb@jdslaw.com or 509-662-3685.

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Legal Technicians: Helpful
In this issue, we continue the debate over a proposed amendment to the Admission to Practice Rules that would allow non-lawyer legal technicians to perform certain tasks for family law clients that can be done only by lawyers under existing law. The June Bar News featured an overview of the proposed new rule as well as an accompanying column by WSBA Executive Director Paula Littlewood and WSBA President Stan Bastian. This month’s issue contains two articles by proponents and two articles by opponents of the proposal focusing on particular aspects of the rules.

or Harmful?

The WSBA Board of Governors will address the proposal at its regular September meeting in Seattle. The Board will then communicate its position on the issue to the Washington State Supreme Court, which must decide whether to enact the new rule. The Board of Governors, WSBA officers, and the Supreme Court all wish to hear feedback from WSBA members concerning the proposal. Please take a moment after reading the articles in the June and July issues of Bar News to communicate with your representative on the Board of Governors, the Supreme Court, WSBA Executive Director Paula Littlewood, or WSBA President Stan Bastian. Or, you may e-mail your comments to barnewscomments@wsba.org.

The full text of the proposed rules and other related information is available at www.wsba.org/lawyers/groups/practiceoflaw. — M.H., ed.
have carefully followed the discussion concerning the wisdom of creating legal paraprofessionals by enacting the proposed legal technician rule and regulations. Having 20 years of experience directing four different legal-aid programs, as well as having been involved in private practice and volunteering in state and national efforts to address the legal needs of low-income people for many additional years, I have first-hand knowledge of the challenges presented in serving those who cannot afford an attorney. This includes both those who are utterly destitute and those who have limited income, usually from low-wage jobs that provide only the necessities of life. I also briefly served on the WSBA prepaid group legal services organization that was created a few years ago to provide access to services for those who fall in the middle, i.e., people whose income exceeds the poverty guidelines for free legal aid but are still unable to afford an attorney. That experience also influences my opinion on the legal technician issue.

In our state, the bar and the judiciary have been concerned for many years about the lack of available resources enabling people to address legal problems in their lives and the lives of their children. The bar’s advocacy and support for legal-aid funding in our state has been instrumental in expanding services to low-income people. However, delivering services to those of moderate means has not received the same attention, even though they are frequently visible in our courts as pro se litigants.

Some argue that pro bono work will solve the problem. The organized bar in Washington has made great strides in encouraging pro bono efforts to help extend available services. While this support has been extraordinarily helpful, the need has always been recognized as being far in excess of the ability of private attorneys to respond. The Washington State Civil Legal Needs Study (September 2003), commissioned by the Supreme Court, documents the unmet legal needs of people of low and moderate means. This report sets forth the areas of greatest need as well as quantifying the continuing extent of unmet need for low-income people. The study calculated that, at that time, 88 percent of all such legal needs were not being met under the present system. Despite the pro bono contributions of thousands of lawyers in our state, it is painfully apparent that neither people living below the poverty line nor those of modest means — the work-
ing poor — can retain lawyers. In many instances, government regulations impose unrealistic financial restrictions that prevent the working poor from qualifying for the free legal services that are available in our state. With recognition of these realities, something needs to be done, and the

... the legal technician rule is designed to help those who cannot come up with even the reduced fees offered by some lawyers. These are people working minimum-wage jobs, seasonal jobs, or a patchwork of part-time employment in an effort to provide food for their families as well as housing, often substandard.

enactment of the legal technician rule is a first step in addressing the problem. The rule and regulations create a framework in which trained and qualified non-lawyers could provide limited services charging fees much lower than attorneys.

The legal technician rule and regulations would benefit those who are not utterly impoverished but cannot afford to hire an attorney. It is doubtful that for poor enough to qualify for assistance by legal-service programs — our poorest Washingtonians — the rule would be helpful in addressing the challenges identified in the Supreme Court’s Legal Needs Study. Most of these individuals do not have enough money to keep up with the necessities of life such as housing, food, transportation, and health services, let alone afford to hire a lawyer or a paralegal. On the other hand, people who can afford a lawyer will always get one, given that a lawyer can do everything needed to represent a client and resolve a matter. Many lawyers, particularly in small or solo practices, charge people of limited means a relatively low fee, and that will continue.

Instead, the legal technician rule is designed to help those who cannot come up with even the reduced fees offered by some lawyers. These are people working minimum-wage jobs, seasonal jobs, or a patchwork of part-time employment in an effort to provide food for their families as well as housing, often substandard. When a legal crisis arises, they either must try to handle it themselves, without any understanding of the legal framework involved, or turn to unregulated “paralegals” or others offering their services. Increasingly, people of limited means are being victimized by unscrupulous individuals providing ineffective and sometimes unethical services to the desperate. These individuals claim to have the expertise to provide legal assistance, at a price. Although this situation has proliferated in several areas of practice, it seems most rampant with regard to family law and, in Eastern Washington, with unlicensed “notario” services.

With these circumstances in mind, the Washington State Supreme Court created the Practice of Law Board. Its responsibilities are twofold: to address the unauthorized practice of law and to make recommendations back to the Court as to circumstances under which non-lawyers may be involved in the delivery of certain types of legal and law-related services (GR 25 (a)). The Board developed the proposed rule for trained and tested “legal technicians,” who would be certified to provide limited law-related services.

The Practice of Law Board has recommended that the people who qualify as technicians would be certified only for limited practice in certain specific areas of family law (RCW 26). The proposal has strict limitations as to the subject matter within Title 26 as well as the services that may be performed by the technician.

Should other areas of practice be recommended and subsequently approved by the Supreme Court in future years, the proposed rule and regulations provide the overall structure. The limitation on permissible tasks, and the education and testing requirements, will not be different for other areas of practice, although the specific subject matter permitted may differ with the practice area.

Legal technicians will be required to attend an approved course of study and thereafter pass an examination in the legal area of practice. Furthermore, in order to practice, a technician will be required to provide a variety of safeguards to consumers of the services, including entering into a written contract which permits rescission at any time, full refund of unearned fees, and return of all client documents. No one other than a certified technician can provide the service for the client. The street-corner offices or Internet sites where untrained people — often posing as paralegals — claiming to provide services of which they have little or no knowledge would be clearly outside of acceptable and legal practice.

The proposed legal technician rule incorporates the ethical standards applicable to lawyers and imports the same requirements for the handling of client funds that are imposed upon lawyers. All legal technicians must comply with all of the terms and conditions of the APR, except where the Rules of Professional Conduct are inapplicable. This is a far cry from the current unregulated practice by non-lawyers, in which there has been no enforcement of the rules that bind lawyers regarding such things as safeguarding client funds and documents, and abiding by the ethical precepts of law practice.

Legal technicians violating the ethical standards of attorneys, or otherwise attempting to circumvent the conditions under which they are permitted to engage in limited practice, would be subject to a structure of discipline, as set forth in the proposed regulations. A disciplinary process would be undertaken by Practice of Law Board designees, with final review by the Supreme Court. In this manner, the Court would maintain its ultimate authority for the appropriate limited practice, just as it has such final authority over attorney discipline.

Why, then, should WSBA members support the creation of the proposed legal technician rule and regulations? Because after years of trying to fulfill our professional responsibilities to address the enormous unmet legal needs of the poor and the near poor, we are not meeting the
challenge. The problem is just too big for solution without supplemental resources born of creative thinking. Certified technicians will not, and should not, take the place of lawyers. We have the training and experience, the depth of knowledge, to reach for relief for our clients that paraprofessionals do not have. But just as a combination of nurses, nurse practitioners, and EMTs augment the resources available to patients of MDs, trained, tested, and certified legal technicians can supplement the resources available to the segment of the public that falls between free legal aid and those who have the resources to retain private counsel.

Legal technicians will be able to practice within the confines of a law firm or a nonprofit agency or perhaps even in a courthouse, where they would be available to provide the limited services for which they are trained — thus freeing up lawyers to provide the more sophisticated representation only they can offer. The rule also will permit technicians to provide limited service outside the confines of an agency or law firm. In no circumstance will legal technicians be able to represent clients in court hearings. But they will serve an important function in providing accurate information on court procedure, forms, and meaningful use of exhibits or witnesses. My experience tells me that judges who have to deal with unrepresented people will welcome this new resource. It will also be particularly appreciated by other judicial officers who are frequently faced with the dilemma of trying to assist a pro se party without giving legal advice.

In the May Bar News, WSBA President Stan Bastian correctly observed that, “Lawyers have a monopoly on the practice of law.” This unique economic circumstance places a special responsibility on us. The enactment by the Supreme Court of the proposed legal technician rule and regulations will not eliminate the problem of the paucity of legal representation for those who cannot afford an attorney. But it can be one means of expanding resources so that attorneys may be used in the most efficient manner to provide the most urgent service and help their clients experience some positive aspects of our system of justice.

Gregory R. Dallaire is a member of the Access to Justice Board and chairs the Access to Justice Board’s State Plan Oversight Committee. He was the founding director of Evergreen Legal Services in 1976. Before then, he managed legal services programs in Oakland, Seattle, and the state of Georgia. In 1985, he moved to the commercial law firm of Garvey, Schubert and Barer, where he was the managing director until his retirement in 2002.

Why, then, should WSBA members support the creation of the proposed legal technician rule and regulations? Because after years of trying to fulfill our professional responsibilities to address the enormous unmet legal needs of the poor and the near poor, we are not meeting the challenge.
Cowan Kirk Gaston are pleased to announce our firm’s name change and to introduce Matthew Knauss, our newest associate.

Matthew Knauss has most recently been a prosecuting attorney for the cities of Kirkland, Medina and Clyde Hill, where he emphasized the prosecution of DUI charges.

The WSBA has created a 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.
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The Washington State Supreme Court Should Decline to Adopt the Family Law Legal Technician Proposal

by Mark A. Johnson and David S. Heller

Lawyers, above all other professionals, should be able to debate and decide difficult issues without resort to fallacious arguments or personal attacks. Although the Practice of Law Board’s (POLB) Family Law Legal Technicians Program (FLLTP) is a contentious issue, it is appropriate to debate method and manner only; it is not appropriate to attack motives. Justice is our goal, and we can achieve justice only through reasoned and ethical debate.

The Proposed Family Law Legal Technicians Program

If the POLB’s proposal were adopted by the Washington State Supreme Court, it would represent a landmark change in the practice of law. It would create the profession of family law legal technicians (FLLTs), non-lawyer legal representatives who would be permitted to have autonomous offices, direct relationships with clients, and, at times, assist those clients in adversarial proceedings (including domestic-violence issues) in which the opposing party is represented by an attorney. They would be permitted to exercise independent legal judgment. The proposed rules would permit a FLLT to:

1) Ascertain whether the problem is within the defined practice area of family law, and, if so, obtain relevant facts, and explain the relevancy of such information to the client....

5) Review pleadings or exhibits presented by the client from the opposing party, and explain the documents, and...

8) Advise the client as to other documents which may be necessary (such as exhibits, witness declarations, or party declarations) and explain how such additional documents or pleadings may effect the client’s case....

(See, POLB Proposed Admission to Practice Rules, Exhibit A to Steve Crossland letter to Chief Justice Gerry Alexander, January 7, 2008; hereafter “Crossland Letter”; www.wsba.org/reporttocourt.pdf.)

The Crossland Letter cites the Arizona Legal Document Preparers Program, implemented in 2003 by the Arizona Supreme Court, and the California Legal Document Assistant Program, instituted in 1998, as programs which have reduced the cost of obtaining
Is it probable that many top-notch, college-educated paralegals would leave multi-year employment with a law firm to set up a legal technician office in a single, restricted area of law?

document preparers (CDPs) to assist with completing pre-printed forms and providing general factual information. CDPs are not allowed to give case-specific advice nor exercise independent legal judgment (“...may not provide any kind of specific advice, opinion, or recommendation to a consumer about possible legal rights, remedies, defenses, options, or strategies...”). (See Arizona Code of Judicial Administration Part 7, Chapter 2, Section 7-208 F. 1 a-e; Role and Responsibilities of Certificate Holders.)

The California program allows legal document assistants (LDAs) to provide “self-help service to a member of the public who is representing himself or herself in a legal matter.” (Cal. Bus. & Prof. Code, Section 6400, subd. (a).) “Self-help” service is defined as:

Completing legal documents in a ministerial manner, selected by a person who is representing himself or herself in a legal matter, to assist the person in representing himself or herself. This service in and of itself, does not require registration as a legal document assistant. (Cal. Bus. & Prof. Code, Section 6400, subd. (d)(2)).

Making published legal documents available to a person who is representing himself or herself in a legal matter. (Cal. Bus. & Prof. Code, Section 6400, subd. (d)(3)).

Filing and serving legal forms and documents at the specific direction of a person who is representing himself or herself in a legal matter. (Cal. Bus. & Prof. Code, Section 6400, subd. (d)(4)).

Thus, unlike the proposal in our state, neither the Arizona nor the California program permits the exercise of independent legal judgment, case-specific advice, nor advice regarding necessary evidence.

The FLLTP Will Not Attract a Sufficient Number of People to the Program to Make an Appreciable Reduction in the Family Law Legal Services Gap

Although the POLB’s proposed rules are based upon the assumption that the knowledge, training, and legal judgment of a lawyer are not necessary in every family law matter, the POLB actually did recognize that many family law matters should be excluded from FLLT services or provided by FLLTs only under the “direct and active supervision” of a lawyer or after the FLLT’s work has been “reviewed and approved” by a lawyer. The list of excluded and/or supervisory-required services is, justifiably, broad, and includes divorces involving business property, pensions, and transfer of real estate. (For a complete list of permitted and excluded activities, see Crossland Letter, pp. 3–5.) The POLB thus acknowledges that attorney representation or supervision is necessary in many family law matters.

But the concomitant reduction of FLLT income that would result from these practice restrictions militates against the probability that the program could attract a sufficient number of FLLTs to effect an appreciable reduction in the services gap. Also, given the number of tasks that must be performed under the direct and active supervision of a lawyer (who would charge for the work), the cost savings assumption itself is frail.

Moreover, just as the POLB appropriately excluded FLLTs from representing clients in many family law matters, the POLB also chose to require FLLTs to be highly educated. A certified FLLT must graduate from an ABA-accredited (or FLLT Commission-approved) paralegal program of 90 quarter hours, and have an associate’s
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Access to justice is, as it should be, at the pinnacle of the WSBA’s priorities, and our more than 30,000 members have invested heavily in this cause, both financially and via an enormous number of volunteer hours. These commitments must be maintained, but the WSBA’s financial resources are finite and under pressure.

The POLB proposes to administer the FLLTP through a “Non-Lawyer Practice Commission.” Proposed Non-Lawyer Practice Regulations 3 F and G state that the WSBA “shall provide the Commission with an administrator (Commission Administrator) and any additional staff support as designated by the Executive Director of the WSBA” and that “[the] WSBA shall pay all expenses reasonably and necessarily incurred by the commission pursuant to the budget and the expense policy of the WSBA.”

Therefore, the WSBA would be required to set up and administer the program with WSBA staff and facilities, and fund it through WSBA member licensing fees. The necessary functions would include space, staff, and economic support for the proposed commission; character and fitness investigations; determining that each FLLT has the requisite financial responsibility; administering the FLLT licensing exam; setting up CLE programs; investigating FLLT ethical grievances; and conducting FLLT discipline hearings. The POLB’s estimate of $200,000 to start the program, and the assertion that the program will be self-supporting, are the POLB’s alone; the WSBA has not performed a fiscal analysis. The accuracy of the POLB’s fiscal impact estimate is questionable.

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The Statewide GAAP Program Is the Best Means for Reducing the Civil Legal Services Gap for Moderate-Income People

The Greater Access and Assistance Project (GAAP) Committee is a standing committee of the Access to Justice Board, working with the Washington Young Lawyers Division (WYLD). The committee’s mission is to: “Establish a structure to support viable moderate means panels in Washington State.” (Emphasis added. See ATJ Board Annual Report, February 2008, page 8.) In 2007, the WSBA spent $20,000 for a GAAP feasibility study. The GAAP Committee looked at the successful local GAAP programs operating in Spokane and Snohomish counties and those being planned in Kitsap and Whatcom counties, and the committee is now developing a statewide program proposal. GAAP is intended to serve those who do not qualify for legal aid by connecting them to lawyers willing to work at reduced rates. Reduced-fee lawyer panels avoid all the restrictions of the FLLTP, and would not require the creation of an entire “shadow bar association” as FLLTP would. We should give the GAAP program the time to work and the dollars it needs to succeed. GAAP, not FLLTP, is the right way to provide legal services to people of modest means.

Conclusion

Equal access to justice should be our preeminent goal. Relegating people who do not qualify for civil legal aid, but who also cannot afford an attorney, to lesser, limited, non-lawyer representation is neither equal nor just. Our Supreme Court should not adopt the FLLT proposal.

Mark A. Johnson practices plaintiffs’ professional liability and personal-injury law at the law firm of Johnson-Flora, PLLC in Seattle. He served on the WSBA Board of Governors from 2003–2006. He is WSBA president-elect and will take office as WSBA president in September. David Heller is the WSBA governor serving the Ninth Congressional District.
Legal Technicians: Myths and Facts

by Rita L. Bender and Paul A. Bastine

1. MYTH: Legal Technicians Would Not Serve People Who Are Most in Need of Legal Services.

FACT: The Washington State Civil Legal Needs Study (2003) commissioned by the Washington State Supreme Court provides information indicating areas of greatest need as well as quantifying the dimensions of unmet need for low-income people. It is calculated that approximately 88 percent of all such legal needs are unmet.

Legal assistance is not available to many people in this state. The economics of legal practice are such that low-income people — the working poor who may have too much income to qualify for legal services programs, even when such programs have the capacity to provide additional services — simply cannot afford a lawyer. This unmet legal need can be addressed in some part by a functional framework for non-lawyer limited practice.

Legal technicians will be able to provide limited services to people who will litigate their cases pro se. The use of technicians for the more routine tasks will free lawyers to undertake pro bono representation of clients in court, or to assume responsibility for the more complex issues which are prohibited to the legal technician.

2. MYTH: This is the Beginning of Non-Lawyers Taking Over the Legal Profession.

FACT: Non-lawyers already offer legal services, even though they often are not trained or supervised, and there is no regulation by the courts or legal professionals. There are scores of individuals and entities operating in this state, ranging from Internet operations such as legalzoom.com (which advertises having served over half a million people) to untrained paralegals and “notarios.” Consumers are not adequately protected in the event of negligence or abuse. The legal technician rule would safeguard the public by specifically defining the role of non-lawyer technicians and placing them under the supervision of the Supreme Court — making them a legitimate part of the legal community. When courthouse facilitators were authorized, the same argument was made in opposition that is being used to oppose legal technicians. Despite the threat of dire consequences, that program did not result in a “takeover of the legal profession,” although it has helped some pro...
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The March 2008 report on the courthouse facilitator program by the Washington State Center for Court Research, Administrative Office of the Courts, reports that of litigants who did not receive assistance by attorneys or courthouse facilitators, 43 percent obtained their litigation assistance from friends or relatives, 16 percent from the Internet, and 29 percent nowhere. The need for assistance for poor and modest-income people is staggering.

3. MYTH: The Practice of Law Board Inappropriately Circumvented the Board of Governors by Submitting the Rule to the Supreme Court.

FACT: In March 2006, the POLB presented the proposed legal technician rule to the full Board of Governors for comment. The BOG voted not to support the rule as it was presented. A second motion invited the POLB to further refine the rule. A study committee was appointed, composed of the POLB, a Supreme Court justice, two members of the BOG (who are liaisons to the POLB and attend non-executive session portions of POLB meetings), the president of the Young Lawyers Division, and the present chair of the Family Law Section’s Executive Committee. This committee unanimously decided that the POLB should study areas and scope of practice and make a refined further proposal. It has done so. The POLB further sought legal counsel as to anti-trust/restraint of trade concerns. The advice received was clear and unequivocal: The proposal should be sent directly to the Supreme Court, limiting the likelihood of creating problems for either the WSBA or the Supreme Court regarding restraint of trade. GR 25 provides that the WSBA may comment on such proposals, as it has indicated it will do. GR 25 does not require that the WSBA must approve any proposal, for the reasons just indicated. At all times, the staff and the BOG of the WSBA have been aware of the actions of the POLB.

4. MYTH: Those Opposing the Rule Are Doing So to Protect the Consuming Public.

FACT: The WSBA is an organization whose mission is to “serve the public and the members of the Bar.” That certainly is an appropriate mission, but when the members’ interests are inconsistent with the interests of consumers, there is a conflict. The position of those opposing the rule might be best summed up by the following statement in a King County Bar Bulletin article:

The legal technicians also would directly compete with attorneys and, as nothing within the rule limits a legal technician to indigent clients, attorneys and legal technicians would have significant overlap in their client bases.

The rule which the POLB proposes would allow trained and regulated people to offer limited legal services at lower cost to those pro se litigants who cannot afford a lawyer. The legal technicians would provide services that are now being inappropriately provided by untrained and unregulated individuals. There is more than enough need for services to low- and moderate-income people that the provision of those services will not jeopardize the livelihood of lawyers.

5. MYTH: Legal Technicians Will Be Insufficiently Trained.

FACT: Under the proposal, a legal technician must be a graduate of a paralegal/legal assistant program that is approved by the American Bar Association or the commission created under the rule. The technician must have an associate’s degree or a degree from a paralegal/legal assistant program that consists of a minimum of 90 quarter hours, at least 45 quarter hours of which are substantive legal courses; or a bachelor’s degree in paralegal/legal assistant studies; or a post-baccalaureate certificate in paralegal/legal assistant studies. In addition, the legal technician is required to have experience under the supervision of a lawyer of a minimum of two or three years, depending upon the degree held. Each legal technician also must complete approved or accredited education during each calendar year, in courses certified by the commission.

6. MYTH: Legal Technicians Will Be Untested.

FACT: The legal technician must complete an examination which shall, at a minimum, cover the Rules of Professional Conduct, rules of ethics, attorney-client privilege, and procedural and substantive law issues related to the area of practice. The commission, composed of lawyers and legal educators, will create the proficiency test.

7. MYTH: Legal Technicians Will Not Be Held to Ethical Standards.

FACT: Legal technicians acting within the scope of the proposed rule shall be held to the standard of care of a lawyer, and to the same ethical standards as a lawyer, except to the extent that the Rules of Professional Conduct conflict with the rule, in which case the rule shall apply.

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held to the standard of care of a lawyer, and to the same ethical standards as a lawyer, except to the extent that the Rules of Professional Conduct conflict with the rule, in which case the rule shall apply.

The Supreme Court, in considering the enactment of the rule, will need to consider whether the privilege which an attorney is bound by would extend to a legal technician by virtue of the rule, or whether it will be appropriate to seek legislation to extend the privilege to legal technicians. Courthouse facilitators, who presently perform services for both sides of the same case, are not currently bound by privilege. Legal technicians will be restricted from serving conflicting parties, they do not represent any party, and they suffer the loss of certification if they act outside the scope of the rule.

All funds that come into a legal technician’s possession are subject to RPC 1.15.

8. **MYTH:** Legal Technicians Will Litigate Cases.

**FACT:** The legal technician shall not represent clients in court proceedings or negotiations but may provide limited legal assistance to a *pro se* litigant. The technician may operate only within the scope authorized by the rule, regulations, and Supreme Court directives. Work that requires the special skills of a lawyer will have to be referred.

9. **MYTH:** Legal Technicians Will Hire Untrained Assistants to Actually Provide Client Services.

**FACT:** Anyone providing services must be certified pursuant to the rule, have a staffed office for the acceptance of service in Washington, and personally perform the client services. A legal technician shall not supervise a non-certified individual to perform the services in the legal technician’s stead.

10. **MYTH:** Legal Technicians Will Practice Outside the Authorized Area.

**FACT:** A legal technician may not provide services when assistance is required which exceeds the practice authorized. The technician then must inform the client when the client requires the services of a lawyer. In the event a legal technician acts outside of the scope of authorized practice, disciplinary action could remove the technician’s certification. The scope of family law practice under RCW 26, as recommended for approval by the Supreme Court, is limited, prohibiting the legal technician from assisting clients in areas where the Supreme Court determines that the skills of a lawyer are required.

11. **MYTH:** The Legal Technician Rule Would Be Too Costly.

**FACT:** After a start-up period in which the commission which will administer testing and oversee the system is put in place, it is anticipated that the legal technicians will pay for themselves through fees. The rule provides that there will be a fee for testing, just as for attorney applicants taking the bar examination, as well as an annual certification fee. Fees will be adjusted based upon the costs incurred and the number of applicants for certification. GR 25 requires “that the costs of regulation . . . be effectively underwritten within the context of the proposed regulatory regime.”

The costs of the start-up period may be funded by a variety of sources, which the Supreme Court will undoubtedly consider. Those might include the Administrative Office of the Courts, loans from the WSBA, private foundation grants, or some combination of these. In any event, the start-up expenses are not anticipated to go beyond approximately three years, after which the program should be self-supporting.

12. **MYTH:** The WSBA Cannot Afford to Fund the Legal Technician Proposal.

**FACT:** In October 2006, the WSBA, through the BOG, submitted a proposed rule to the Supreme Court which was adopted effective September 1, 2007, in which the Bar Association agreed to “paying expenses reasonably and necessarily incurred” by the POLB among others (GR 12.2). This was six months after the first full presentation of the rule to the BOG, when it was known that the proposal would be further developed and then recommended by the POLB to the Supreme Court. Yet no objection or modification to the WSBA obligation was made in its request to the Supreme Court to clarify the Association’s role in funding the POLB. When GR 24 and 25 were adopted, the WSBA had agreed with the Supreme Court to fund the operations of the POLB. Five years later, it was no surprise to the BOG that there would be expenses.

The Bar Association fully covers the operations of the Limited Practice Officer Program and has done so since 2002, when it took that responsibility over from the Court. It makes a net profit from that operation, almost $20,000 as set forth in the 2007 budget. With a WSBA budget of approximately $18,000,000 and reserves of $6,000,000 (October 2007 WSBA budget), it is unconscionable to argue that the WSBA should not assist in the limited expenses in aid of access to justice for the working poor. Such commitment is consistent with the mission of the Bar “to promote justice and serve its members and the public.”

13. **MYTH:** It Would Be Inappropriate for the Supreme Court to Authorize Non-Lawyer Practice.

**FACT:** The Supreme Court intended that non-lawyer practice might be authorized when it adopted GR 24 and GR 25 and directed the POLB to make recommendations for such practice. This proposed rule responds to that directive.

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In the event a legal technician acts outside of the scope of authorized practice, disciplinary action could remove the technician’s certification. The scope of family law practice under RCW 26, as recommended for approval by the Supreme Court, is limited, prohibiting the legal technician from assisting clients in areas where the Supreme Court determines that the skills of a lawyer are required.

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It is consistent with the Supreme Court recognition of the role of non-lawyers in the closing of real estate transactions. The Supreme Court authorized the limited practice officer rule for that purpose. Likewise, the proposed legal technician rule is consistent with the holdings in *Cultum v. Heritage House* (103 Wn 2d 623, 694 P2d 630 (1985)), (authorizing real estate agents to practice law by completing earnest money and other related contractual agreements) and *Perkins v. CTX* (137 Wn 2d 93, 969 P 2d 93 (1999)), (authorizing non-lawyers to prepare and complete other legal documents). The rule recognizes the positions of the U.S. Department of Justice and the Federal Trade Commission requiring that non-lawyers be allowed to perform what was traditional legal work, where appropriate.

**14. MYTH:** The Supreme Court and the Bar Cannot Effectively Operate a Non-Lawyer Program While Protecting the Public.

**FACT:** The limited practice officer rule has operated effectively, with very few complaints and few liability issues. The courts and the Bar are the entities that can and should provide oversight for non-lawyer practice. This is where the skill and knowledge for oversight exists. It is a mistake to let the current uncontrolled non-lawyer practice continue and expand without limitation. The legal technician rule will provide a “bright line” for prosecutors, attorneys general, and the public as to appropriate, supervised, and regulated non-lawyer practice.

**15. MYTH:** There Are No Sufficient Financial Responsibility or Insurance Requirements for Legal Technicians.

**FACT:** Each certified legal technician will be required to show proof of ability to respond in damages resulting from acts or omissions in the performance of services. (On the other hand, there is no requirement in Washington that attorneys carry malpractice insurance, or show proof of ability to respond.)

**16. MYTH:** The Legal Technician Will Not Be Able to Operate at Lower Cost than an Attorney.

**FACT:** Legal technicians will have fewer costs to pay than attorneys. For example, the legal technician will not have the burden of costly law school loans to repay. According to the American Bar Association, the average law school student loan is approximately $88,000. Legal technicians’ offices will not require access to costly legal research or library subscriptions. Some legal technicians may be hired by not-for-profits to serve their clientele, in which case the overhead would be covered by the agency’s funding source. Other legal technicians may rent space in low-rent agency facilities. Still others may obtain affordable space in neighborhoods in which their low- and modest-income clients are likely to be located.

**17. MYTH:** Legal Technicians Will Provide Second-Class Representation.

**FACT:** The legal technicians will not provide representation, in that they cannot appear in court or negotiate a case. What they can do is assist *pro se* litigants in understanding the pleadings and evidence which the litigant will need to present in order to succeed in litigation. They also can help to demystify the process for the *pro se* litigant.

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Conclusion
There seems little doubt that if a client could choose between having the full services of a lawyer, or the very limited assistance of a legal technician, the client would select an attorney. However, the people likely to be served by legal technicians are those who cannot afford an attorney and would be otherwise forced to proceed without help. We hope a time will come when all people in need of legal assistance will have attorney representation. The courts and the bar have an obligation to continue pushing for the funding necessary to reach that goal. The legal technician rule is not the ultimate solution, but it is a step toward full access to justice.

Rita L. Bender is a 1968 graduate of Rutgers University School of Law. She has practiced in the public defender offices in Newark, New Jersey, and taught law in the Rutgers Urban Legal Clinic. In Seattle, she practiced at the Public Defender Association, and was the regional director of the Legal Services Corporation regional office. She is a principal in the Seattle firm Skellenger Bender, where her practice focuses on family law and adoption and legal ethics. She has worked on issues of access to justice on various committees over the years: as one of the original appointees by the WSBA Board of Governors to the Legal Foundation of Washington and she was appointed by the Washington State Supreme Court to the Practice of Law Board upon its creation. She has written and spoken throughout the country on the complexities and necessity of restorative justice.

The Honorable Paul A. Bastine has served as presiding judge for Spokane County Superior Court and became the first family law judge dedicating his full judicial time to the administration of justice in family law. He retired from full-time judicial activity in January 2005, but still serves as a pro tem judge. Judge Bastine has volunteered his time for many access to justice efforts. He served as an initial member of the Access to Justice Board; was appointed by the Washington State Supreme Court to the Legal Foundation of Washington and served as president of that board; and served as trustee and president of the Spokane County Bar Association. He was appointed to the Practice of Law Board at its inception and serves as vice-chair. In 1998, he was awarded the Goldmark Award from the Legal Foundation of Washington.

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Legal Technicians Aren’t the Answer: The Family Law Section’s Executive Committee Weighs In

by Jean Cotton

In January 2008, the Practice of Law Board (POLB), contrary to GR 25 Regulation 8D, bypassed the WSBA Board of Governors (BOG) and presented its proposal for expanding the practice of law to non-lawyer legal technicians directly to the Washington State Supreme Court.

Since spring 2003, the WSBA Family Law Section Executive Committee (FLEC) has become vitally concerned about the potential impact on the public that would result from creating new avenues for non-lawyers to practice law. In October 2005, FLEC wrote to the POLB and BOG to express the growing concerns of the Section.

At its March 2006 meeting, the BOG, after hearing the POLB proposal for implementation of a legal technician rule and considering comments in opposition to the proposed rule from nearly every WSBA section present, rejected the proposal by a 12–2 vote. Nevertheless, the POLB drafted rules to create a multi-year pilot project for one or more practice areas within which legal technicians would be allowed to operate. Although others were invited, only stakeholders consisting of representatives from the BOG, the Washington Young Lawyers Division, and FLEC attended meetings from April 2006 through January 2007. The stakeholders offered concerns and constructive suggestions, which were dismissed. In addition, the POLB frequently conducted its discussions in executive sessions or private discussions that the stakeholder representatives were excluded from attending.

These stakeholders attempted to suggest creative, alternative means that would provide affordable legal services to those identified in the Washington State Civil Legal Needs Study1 (CLNS) as most in need. These suggestions included:

- Funding and bolstering of low-income services through Northwest Justice Project, Greater Access and Assistance Project (GAAP), and similar programs.
- Expansion and further education of courthouse facilitators and facilitator programs.2
- Incentive programs for increasing pro bono services offered by private attorneys, such as loan forgiveness or CLE credit.
- Minimal but mandatory pro bono service requirements for all WSBA members.
- Simplification and consolidation of mandatory
pattern forms.

The POLB ignored all such suggestions. By October 2006, the POLB had identified four areas of practice to study via a subcommittee process for purposes of establishing a legal technician pilot project: elder law, landlord-tenant, family law, and immigration. FLEC formally requested that a seat be reserved on each of the subcommittees for a representative from the affected section’s leadership, but no section leadership was invited to participate. Except for POLB members serving as chairs, none of these subcommittees’ members had participated in any of the meetings between April and October 2006, where the issues were most openly discussed. This effectively eliminated exposure to dissenting opinions. Stakeholders then asked to be allowed to attend subcommittee meetings to observe the deliberations and to be kept up-to-date on the activities, but once again these requests fell on deaf ears.

As others became aware of the POLB’s proposal, they began to voice concerns. With elder law targeted as one possible pilot project area, the Elder Law Section and the National Academy of Elder Law Attorneys, Washington Chapter sent letters to the POLB expressing their strong opposition and concern regarding the use of legal technicians. Opposition also has been expressed by the Washington State Trial Lawyers Association, Washington Defense Trial Lawyers, WSBA Litigation Section, Washington Chapter of Immigration Lawyers, Tacoma-Pierce County Bar Association, and others. In each case, the concerns focused primarily on the complexity of the practice of law and the potential harm to the public if legal technicians were authorized to practice law. Protecting the public is our highest priority.

Family law has now been selected by the POLB as the first area in which to authorize legal technicians. However, the POLB has indicated its intent to expand legal technicians into elder law, landlord-tenant, and other areas of practice.

Family law is one of the most challenging areas of legal practice, balancing the skill of litigation with knowledge of the law, the psychology of clients going through one of the most stressful events of their lives, and developing the necessary financial acumen to make a practice thrive. Providing inaccurate or inadequate legal services in family law cases can lead to long-term, disastrous results for the families of our state.

Family law is one of the most stressful events of their lives, and developing the necessary financial acumen to make a practice thrive. Providing inaccurate or inadequate legal services in family law cases can lead to long-term, disastrous results for the families of our state.

The emotional and financial cost to clients to correct most of these types of errors would far exceed the cost of doing them right the first time with the assistance of an experienced attorney. In many cases there is no way, short of an extremely expensive appellate process, to correct such errors and, in some cases, no means at all.

The POLB has refused to include financial need as a component of its proposal or as an underlying qualifying factor for providing legal services by legal technicians. Those most in need of legal services in this state, those falling under the low-income category, would have to compete for the services of legal technicians on the same basis as individuals in the higher income categories, thus perpetuating even further a system of “haves” versus “have-nots.”

Although unknown factors (such as the number of legal technicians) make it difficult to project costs, the WSBA estimates the cost of the Legal Technician Program to be nearly a million dollars over a five-year period. It should be noted that the WSBA, through use of its members’ dues, has already funded the POLB with $573,133 since its inception in 2002 through April 2008.

Although the POLB was to provide the BOG with meaningful estimates of the costs of the proposed pilot projects including economic viability data, i.e.,

The emotional and financial cost to clients to correct most of these types of errors would far exceed the cost of doing them right the first time with the assistance of an experienced attorney.

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suggestions that expenses will be reduced by such measures as legal technicians’ use of nonprofit organizations’ relatively low-cost facilities. Similarly, the POLB’s report cites the low cost of services available on the Internet without noting that these services are available only for non-contested or default actions not requiring litigation. Early estimates suggested that legal technicians would likely have to charge upwards of $150 per hour or “whatever the market will bear” for their services, but this information is absent from the POLB’s report.

The areas identified in the CLNS as having the greatest need for civil legal services were housing, family, consumer, employment, health, and public services. However, the category of family law included legal issues that affect low-income families four times more often than higher income families, i.e., issues involving foster care and child-welfare authorities in what are commonly known as dependency proceedings. In dependencies, however, low-income parents and children are now entitled to legal representation at state expense. Even at that, the CLNS found that “[Family law is] not the area of greatest need [revealed] in either survey, and accounts for only 13 percent to 14 percent of legal issues experienced by low-income people.”

Meanwhile, the CLNS revealed that a far greater percentage of family law cases involved the assistance of an attorney for low-income clients than any other category of need identified. Although there clearly remains an unmet need, attorneys already are providing services either at reduced rates or on a pro bono basis for their family law clients much more often than for any other type of clientele. Nearly half of all low-income people did not seek legal assistance because they did not know that there were laws to protect them or that relief could be obtained through the justice system.

**Nearly half of all low-income people did not seek legal assistance because they did not know that there were laws to protect them or that relief could be obtained through the justice system. This would seem to call for greater education of the public rather than watering down the quality of legal services in the state by authorizing non-lawyers to practice law.**

The benefit of having attorney assistance speaks for itself. “The data demonstrates that getting help from an attorney dramatically improves satisfaction with the outcome of a legal problem as well as feelings about the justice system. Among those with legal problems who seek but do not get an attorney’s help, only 19 percent were satisfied with the way their legal problems work out. When households receive an attorney’s help, however, the satisfaction rate more than triples, to 61%,”

The public — especially those who are most in need — would be better served by the WSBA and others supporting existing programs designed to help our low-income citizenry; e.g., GAAP and the Northwest Justice Project, as well as expanding the role of and funding for courthouse facilitator programs, and educating the public on available legal resources including the availability of unbundled legal services from lawyers.

The POLB has often cited the concern that without opening up the practice of law to more non-lawyers, the Bar could face anti-trust litigation from the federal government via the Justice Department and the Federal Trade Commission. However, Washington already allows many law-related services to be performed by non-lawyers. For example, limited practice officers can handle real estate transactions, non-lawyer guardians ad litem and certified professional guardians can file pleadings and function similar to an attorney in court proceedings. courthouse facilitators can assist with the preparation of family law pattern forms, and non-lawyer mediators can help parties negotiate settlements. Accordingly, many observers feel no justification exists for an anti-trust action.

In summary, the Family Law Section’s Executive Committee has respectfully urged the WSBA Board of Governors to recommend to the Washington State Supreme Court the rejection of the POLB’s proposal for implementation of any legal technician program. Viable solutions to address the problem of unmet legal needs for Washington’s poor have been propounded, and many are already in place. Allowing inexpert non-lawyers to practice the complex specialty of family law poses a risk to the public that cannot be ignored. We invite every attorney to submit letters in opposition to the proposed project and rule to their respective governor and to the Supreme Court. This is not a family law problem. This is an issue of significant importance to all attorneys and every citizen in this state.

Jean Cotton is chair of the WSBA Family Law Section.

**NOTES**

1. See the full report at www.courts.wa.gov/newsinfo/content/taskforce/civillegalneeds.pdf.
3. RCW 13.34 et seq.
4. CLNS p. 36.
5. CLNS p. 25.
6. CLNS p. 55.
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Ten Years with the ACLU

What I have learned from the outstanding, collegial, and supportive bench and bar of this state

by Aaron H. Caplan

June 1, 2008, marked my 10-year anniversary as staff attorney at the American Civil Liberties Union of Washington. It was also one of my last days on the job. I am making a transition— I have accepted a position teaching constitutional law at Loyola Law School in Los Angeles. When Bar News invited me to offer some thoughts on the occasion, I was delighted, as I have learned much from the outstanding, collegial, and supportive bench and bar of this state.

When I left private practice in 1998 to begin with the ACLU, I knew that the position would allow me to work on some interesting and important cases. I did not predict that I would be, in the words of that aphorism that is part blessing and part curse, practicing civil liberties law in “interesting times.” I had a front-row seat when the city of Seattle overreacted to anti-WTO demonstrations in 1999 by declaring most of downtown a “No Protest Zone.” New computer technologies turned me, somewhat by accident, into an authority on the rights of public school students who get suspended for using the Internet to say things their school principals don’t like. Most important, I did not predict that much of the ACLU’s work in the years since the terrorist attacks of September 11 would be devoted to defending the concept of the rule of law itself, which has been assailed by the pernicious argument that it is somehow an unaffordable luxury for the government to follow the rules that protected our nation’s freedoms for two centuries.

Here are a few lessons that I learned during my time working at the ACLU in these interesting times.

Abstract Rules Have Real Effects on Real People

Quick: Does a seizure of assets pursuant to Treasury Department blocking notice issued by the authority of an executive order under the International Emergency Economic Powers Act fall within an exception to the warrant requirement of the Fourth Amendment? “A nice topic for a law review article,” I can hear you say, “but not one I would ever want to read.” Admittedly, it is pretty dry stuff—unless you happened to be our clients who saw the entire inventory of their corner grocery hauled away in semi trucks because of a piece of paper faxed from the Treasury Department. Federal agents confiscated the cash register, emptied all the meat out of the freezer, and stripped the shelves of every last box of cereal and every last roll of toilet paper. Why? Because the grocery on Seattle’s Rainier Avenue shared an address with the local franchise of an international money-transfer service that was under suspicion, and the faxed order said nothing more than that the assets at the address were to be “blocked.”

Blocking notices are ordinarily instructions sent to banks, directing them to freeze the account of a foreign government or foreign national. In our case, the Office of Foreign Assets Control had determined, based on virtually no evidence, that the headquarters of an international money-transfer service based in Somalia had been infiltrated by al Qaeda. (As later acknowledged by the 9/11 Commission, this was not so. The entire series of choreographed and highly publicized raids on Somali-owned businesses in cities across America was largely a publicity stunt that added nothing to national security.) So the government decided that “blocking” would mean confiscating everything owned by the local branch of the transfer service, down to the chairs and the pencils. This opened the door to confiscating everything owned by the grocery store that sublet to the transfer service.

If the Treasury Department had followed the Fourth Amendment, it would have obtained a warrant from a neutral
judge. The judge would have required evidence that the action was justified, and the articles to be seized would have been described with particularity. Obtaining warrants is not difficult — it happens thousands of times every day — but it avoids problems like ours. The administration's unwillingness to follow the rules led to a tragedy for a small business and the refugee families that depended on its income.

My grandfather ran a corner grocery when he immigrated to this country, so the case resonated strongly with me. With the help of volunteer attorneys and accountants, we were able to negotiate a $100,000 settlement to cover some of our clients’ losses, although it took two years to do it. Our clients learned the hard way that the difference between a constitutionally adequate warrant and a fax backed up only by an agency’s say-so is far from academic.

The Facts Matter
Just as legal rules have enormous impact on the stories of individuals, under our common law system the stories of individuals have enormous impact on the law. You can talk until you are blue in the face about why a blocking order is not a warrant, but it will not resonate until you connect the legal concept back to the immigrant grocers losing their livelihood.

Our post-WTO litigation demonstrated this principle in many different ways. Seattle’s infamous “No Protest Zone” was inaugurated with a televised press conference where the mayor and police announced: “We’re going to adopt a policy [to] prohibit any demonstration within that core area for the remainder of the week. Our position is that anyone who goes into that area to protest will be arrested.” Amazingly, the City argued in court later that same day that the policy was not to prohibit protest downtown, but only to restrict the area to people who lived or worked there — and that those people allowed into the area could demonstrate if they liked.

In later proceedings, we attacked this assertion with a barrage of facts. We had clients who did not live or work downtown but were allowed in so long as they took their political buttons off their coats. (Another bit of pointless theater in which freedoms were suppressed in exchange for absolutely no gain in security.) We also were able to test the City’s theory with the help of an attorney whose office was in the affected area. If it was really true that persons working within the Zone were allowed to protest, then they should be able to carry signs on the street outside their offices. Our tester gathered a team from his firm who carried signs saying “Protect Free Speech!”; “Say No to WTO”; and my personal favorite, “Downtown Workers Against the WTO.” Sure enough, these people were ordered to put down their signs, on pain of arrest.

We obtained early settlements for three of our seven clients, but four of them remained in the case through an appeal. In another demonstration of the importance of the facts, the two clients who ultimately prevailed were the ones who had videotaped evidence showing exactly what had happened to them. On remand, we negotiated settlements of $62,500 for a credentialed conference observer who was wrongly arrested and $12,500 for a demonstrator whose sign was confiscated on videotape. Putting a face to the legal violation — in this case, making the face visible literally — matters enormously.

Read Your History
Although every modern constitutional question has its novel elements, it will usually have more than a passing resemblance to events from the past. For example, the ACLU’s work opposing current attempts to inculcate religious doctrines in public school science classes under the name “Intelligent Design” traces directly back to the attempts to do the same thing in the 1980s under the name “Creation Science,” and ultimately back to the Scopes Trial of 1925 (one of the ACLU’s first cases). The clampdown on immigrants after September 11 is eerily similar to the Palmer Raids of 1919–21, when federal agents arrested and deported political dissidents and even some lawful immigrants in response to the panic caused by a terrorist attacks (this time by anarchists).

Recognizing historical parallels can help you frame a successful argument. We were contacted by students who were threatened with suspension from school not because of anything they had written on the Internet, but because they had created a bulletin board for open discussion on which other anonymous students had said punishable things. In many important respects, the case resembled the famous sedition trial against John Peter Zenger in 1735.

Zenger was an early publisher of newspapers, which at the time were a new and unfamiliar technology that allowed people to express their ideas to a wider audience at an unprecedentedly low cost. Zenger got into trouble not for his own writings, but for creating a platform where other anonymous speakers criticized the British bureaucrat then running the New York colony. The jury refused to convict Zenger, and his story motivated the framers of the Constitution to include strong protections for freedom of speech and press.

The analogy between our modern high-school students and John Peter
Constitutional Lawyering Is Lawyering

One nice feature of ACLU litigation is the mechanics of the litigation are not rarefied. We use the same tools as other lawyers.

For example, I initially found the least familiar and most intimidating area of the ACLU’s caseload to be our work around prison and jail conditions. In 1999 we had a two-week trial about the substandard medical care at the Washington Corrections Center for Women at Purdy. Our clients were found guilty of felonies, but they had been sentenced to a term of imprisonment, not to death or disfigurement from easily preventable ailments. Coming from a commercial litigation practice, I first thought this was a completely different universe.

But one can research this case law just like any other. It quickly became apparent that a claim for cruel and unusual punishment under the Eighth Amendment had well-defined elements just like any other cause of action. One element is that prison officials had “deliberate indifference” towards the consequences of their health-care practices. How could we prove this element? The same way a lawyer would prove any claim. We talked to our clients. We exchanged written discovery. We took depositions.

Our clients told us that the prison dentist had earned the nickname “Dr. Yank” in honor of his preference for pulling teeth that other dentists would try to salvage. At deposition, I decided to confirm another rumor the prisoners told me. “Does your car have vanity plates?” I asked. “Yes,” he said. “What do they say?” I asked. “DR YANK,” he responded. We made sure to emphasize this in our post-trial brief and explain why it supported the element of deliberate indifference. The case ultimately settled, with agreements to improve conditions and a fund for further enforcement.

Another way in which constitutional lawyering resembles ordinary lawyering is the magical effect of well-prepared correspondence to resolve cases before they erupt into litigation. In addition to the typical demand letter, this can also take the form of a public-records request. One of our clients was a beer importer who was denied the ability to sell a fancy Belgian ale in the state of Washington because the label (featuring an artistic nude from a well-known Flemish painter) allegedly violated an outdated regulation banning alcohol labels that Liquor Control Board (LCB) deemed to be “immoral, undignified, or in bad taste.”

We sent a request asking the LCB to provide records showing all instances in which labels had been rejected in the past three years. A few days later, I got a call from an LCB commissioner saying that they would certainly respond to the records request — but in the meantime, could I please just tell him which rules the ACLU thought needed changing. One letter later (explaining how government cannot restrict speech based on vague or subjective terms), the unconstitutional rule was eliminated.
Perhaps personal injury referrals should come with warning labels, too.

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WSBA Mission Statement
The Washington State Bar Association's mission is to serve the public and the members of the Bar, ensure the integrity of the legal profession, and to champion justice.

WSBA Guiding Principles
The WSBA will operate a well-managed association that supports its members and advances and promotes:
- Access to the justice system;
- Diversity, equality, and cultural understanding throughout the legal community;
- A fair and impartial judiciary;
- The public's understanding of the rule of law and its confidence in the legal system; and
- The ethics, civility, professionalism, and competency of the Bar.

2008–2011 Strategic Goals
Adopted by the WSBA Board of Governors on September 21, 2007
1. WSBA engaging in a systematic review of all its programming.
2. WSBA strengthening its connection with its membership.
3. BOG improving its relationship with the WSBA staff.
A recent article in the *University of California Davis Law Review* analyzes how often state supreme court opinions have been followed in other jurisdictions. The article concludes that the Washington State Supreme Court is the second most influential state high court in the nation, behind only the California Supreme Court.

To determine the influence of a court’s opinions, the article’s authors obtained data from the Shepard’s Citations Service and counted the number of cases that have been “followed” in other jurisdictions. The Shepard’s “followed” designation means that an opinion has been cited and relied on “as controlling or persuasive authority.”

The data examined are voluminous: "nearly 24,400 state high court decisions that were followed at least once, and most only once, by out-of-state courts during the sixty-six years under review." The resulting citation analysis provides an objective measure of the extra-jurisdictional significance of the opinions of all 50 states’ high courts.

Based on the Shepard’s data, the Washington State Supreme Court ranked in second place in every category measured:

- Decisions followed at least once by an out-of-state court from 1940 through 2005
- Decisions followed three or more times by out-of-state courts from 1940 through 2005
- Decisions followed five or more times by out-of-state courts from 1940 through 2005
- Decisions followed three or more times by out-of-state courts from 1986 through 2005
- Decisions followed five or more times by out-of-state courts from 1986 through 2005

The article offers the following hypotheses for Washington’s production of more followed decisions than the highest court of every other state except California:

- In some ways, the results for Washington defy the state’s demographics, given its smaller population base and correspondingly smaller court system, as compared to California and many other states. We found, however, that Washington employs appellate practices that produce a focused review selection process. Moreover, Washington requires by statute [RCW 2.06.040] that intermediate appellate dispositions be made by written opinions with reasons stated, and Washington’s Supreme Court, similar to California’s, utilizes a professional central staff of attorneys to carefully scrutinize petitions for review of underlying intermediate appellate opinions.

The following Washington cases have been followed six or more times:

- 16 times: *State v. Ward*, 123 Wn.2d 488, 869 P.2d 1062 (1994) — rejecting constitutional challenges to the sex offender registration statute; majority by Guy, J.
- Eight times: *Queen City Farms, Inc. v. Cent. Nat’l Ins. Co. of Omaha*, 126 Wn.2d 50, 882 P.2d 703 (1994) — construing an insurance policy’s pollution exclusion; lead opinion by Brachttenbach, J.
- Seven times: *State v. Barefield*, 110 Wn.2d 728, 756 P.2d 731 (1988) — construing the Interstate Agreement on Detainers as applied to sentencing; opinion by Dore, J.
- Six times: *Pappas v. Holloway*, 114 Wn.2d 198, 787 P.2d 30 (1990) — discussing the applicability and waiver of the attorney-client privilege in attorney malpractice actions; opinion by Dolliver, J.
- Six times: *State v. Cauthron*, 120 Wn.2d 879, 846 P.2d 502 (1993) — analyzing the admissibility of DNA evidence; majority by Durham, J.
- “Our results also show that in recent decades some of the previously highest-ranked state high courts have been eclipsed by other courts such as the Supreme Court of Washington.”
- “[T]he Supreme Court of Washington has produced a high number of followed decisions, disproportionate to its population.”
- “In our more recent data based on followed cases, Washington has become the dominant second-ranked court, with Arizona, New Jersey, and Kansas in the next positions.”
- “Some . . . states [other than California], most notably Washington, appear to have gained sway while yet other traditionally influential jurisdictions have become less so.”

Since both of the article’s authors are on the California Supreme Court staff, their likely purpose in analyzing the data was to document the preeminence of their court. They had no stake in the rankings of other courts, and no doubt they were surprised to discover that the Washington State Supreme Court has been more influential than the high courts of far larger states. Washington attorneys are probably far less surprised.

**Tim Fuller is reporter of decisions of the Washington State Supreme Court.**

**NOTES**

2. Dear and Jessen, supra at 690 (quoting Shepard’s internal, unpublished manual for its attorney editors).
3. Dear and Jessen, supra at 693.
4. Dear and Jessen, supra at 704 n.55.
5. Raw data of “followed” cases provided to the author by Edward W. Jessen, California reporter of decisions.
6. Dear and Jessen, supra at 683.
7. Dear and Jessen, supra at 709 n.87.
8. Dear and Jessen, supra at 697.
9. Dear and Jessen, supra at 710.
Dealing with Phone Grazers

BY JEFF TOLMAN

The phone rang on cue. It was 9:00 Saturday morning, the opening bell for the phone grazers.

“Tolman, Kirk and Franz,” I answered. “I’m thinking about getting a divorce,” the voice on the other end of the line said. “What kind of a deal will you give me?”

I’d been through similar conversations many times before. The caller had not given his name. He was afraid I would send him a bill for any legal advice if I knew his identity. There was no interest in establishing a long-term relationship. If, a year from now, he were injured in a car accident he would spend Saturday mornings grazing again. This time it would be, “I’m thinking about hiring a lawyer for a personal injury claim. What kind of a deal will you give me?” He was not a client I wanted.

“I’ll buy you a weed eater after I finalize your third divorce through our office,” I responded.

“That’s stupid,” the caller said and hung up, no doubt already dialing the lawyer below me in his phone book.

He was right. My answer was stupid, but so was his question. I can’t imagine calling medical offices: “I’m thinking about getting a colonoscopy. What kind of a deal will you give me?” And (to use a bad pun), in the end, would I want the procedure performed by someone who I had negotiated into a modest fee? I recall that on one of the early Apollo flights the commander was asked how it felt in space. “I’m a little nervous,” he responded, “being way up here in a craft built by the lowest bidder.”

Despite the frequent wasting of time, I always take cold calls. Anyone who takes the time to call my office gets to talk to a lawyer, even the grazers. Once in a while a good case or client comes out of the call. There are some telltale signs, though, to watch for in callers seeking advice over the phone.

Does the caller give his name? Any caller who opens by saying “This is Sally Mulligan, I just have a quick question” gets a good answer. They aren’t trying to hide anything or be deceptive. An issue she thinks may be simple is bugging her. Will I answer her question? Sure. My interest wanes immediately when the caller does not state his name, and when I ask “To whom am I speaking?” either hangs up or says “you don’t know me,” or, my personal favorite, mumbles and coughs, as if a petit mal seizure occurred the moment my question was uttered: “This is cyel (cough) liuywe (clear throat).”

Does the caller want a specific answer to a general question? Recently a grazer called and asked if I knew much about homeowners’ associations. “Some,” I responded. “What is your question?”

“Is there a specific time homeowners association meetings need to take place?”

“It depends on what the association bylaws say,” I responded. “Often a specific date and time for the annual meeting are set forth in those documents.”

“Well, apparently you know a different side of Millie Guenther than I do!” the caller angrily responded. She immediately hung up, and began dialing, no doubt, another lawyer who may not side with me! “What is your question?”

“Are there any specific time homeowners association meetings need to take place?”

“Is there a specific time homeowners association meetings need to take place?”

“It depends on what the association bylaws say,” I responded. “Often a specific date and time for the annual meeting are set forth in those documents.”

“Well, apparently you know a different side of Millie Guenther than I do!” the caller angrily responded. She immediately hung up, and began dialing, no doubt, another lawyer who may not side with the infamous, but unknown to me, Ms. Guenther.

Does the caller value your time? So often the grazers, since they don’t plan on paying anyway, think they own your day. They will start: “This is kind of a long story, though, I’ll try to make it short. Dad told me once, years ago when I was about 10, that I was conceived in the Antlers Motel in Greybull, Wyoming. My mom’s pregnancy was smooth, but the delivery was long...” Cut them off or feign a fire in your office. This grazer will keep you on the phone as long as you will let him, without any interest in hiring you at the end of the call. “Thanks. I appreciate your time and will get back to you,” they will say when your patience finally runs out, but won’t.

Does the caller think she has the right answer already and is only looking for assurance? “Last night on law talk radio I heard (already a giant red flag) that you should make 11 originals of your will and file each in a different state. Does your office do that?” a grazer may ask, or say “A lawyer I just spoke with, I don’t remember her name, told me...” Run away screaming from this caller. Tell her the question is so complicated that she needs to come in and discuss it with you face-to-face. She won’t. Or encourage her to trust the advice she just received from the no-doubt-competent attorney she just called. If you don’t take an aggressive course of action, you will get dribs and drabs of information, then if you disagree with the prior attorney’s advice at all you will get one final question: “Do you do malpractice? I think the last attorney I spoke with gave me bad advice!”

In the end it’s important to remember the type of clients every lawyer is after. Those with whom we can develop a long-term attorney-client relationship. Those who will refer their friends, family members, and coworkers to us. Those who won’t second guess us every second. Those who won’t constantly be looking for a good deal at 9:00 Saturday morning.

Jeff Tolman is a partner with Tolman, Kirk & Franz in Poulsbo. Since 1981, he has served as district and municipal court judge pro tem. He can be reached at 360-779-5561 or jefft851@aol.com.

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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.

**Backstein, Robert J.**
Bob Backstein was stationed at Fort Lewis while serving in the Army. He received his law degree from the University of Arizona. During his nearly 50-year career, he served as city attorney for Phoenix, and several Pierce County communities, including Tacoma. Bob Backstein died April 20, 2008, aged 75.

**Brosche, William**
William Brosche was born in 1930. A graduate of Laurelhurst Grade School, Roosevelt High School, Seattle University, and the University of Washington Law School, Brosche was a devoted Husky and Mariner fan and greatly enjoyed British comedy. He was an attorney with Unigard Insurance for 30 years. He died on May 5, 2008, aged 77.

**Callow, Keith McLean**
From Don Gulliford: “The news of retired Chief Justice Keith Callow’s passing was hard to take. With a wonderful sense of humor, a deep insight into human foibles and frailty, Keith Callow was also a wonderful morning coffee partner, especially when the Court of Appeals was in the Pacific Building with our then law firm’s offices.

“We shared a wonderful nutcake hobby, the collecting of awful legal writing mistakes, malaprops, editorial goofs, etc. — the worse the better. All-time winner was ‘Our’ C.W. in a prominent lawyer’s letter — so awful that some comrades never did ‘get it.’ We pondered together the attenuated subtlety of whether any amount of tutoring could cure the secretary, or the lawyer who did not read before signing. Awards to many others, including ‘heirs and emissions’ in insurance policy letters.

“With the courage of the seasoned combat veteran that he was, he always cheerfully discussed his election defeat and how much he later enjoyed helping emerging nations establish justice and judicial systems. He always forcefully told me the U.S. justice system was the very best of them all. Same for him.”

Justice Keith Callow served in the Attorney General’s Office; in private practice; and on the King County Superior, Washington State Appeals, and State Supreme courts. He also worked for the U.S. State Department. Keith Callow died April 4, 2008, aged 83.

**Clark, Donald J.**
Don Clark was born in Spokane in 1924. He served in the Navy in World War II. He obtained his law degree from Gonzaga University School of Law and practiced in Yakima. Clark held the office of prosecuting attorney for Yakima County. He was a regional attorney for the Interstate Commerce Commission and then practiced privately in Pasco. He liked to fly planes, especially a light aircraft on business trips throughout Eastern Washington. Don Clark died January 14, 2008, aged 83.

**Coulter, Lee**
Lee Coulter served his country in the Navy and attended law school at Northwestern University. He worked for Hartford Insurance and was the attorney for the Association of Washington Industries (AWI). He composed the AWI digest used almost exclusively by legislators. He then worked for the General Telephone Co. of the Northwest and Alaska (now Verizon). After retiring, he spent his time on Vashon Island as a “country” lawyer. He always said, “If you enjoy what you are doing, life is easy.” Lee Coulter died March 29, 2008, aged 84.

**Dixon, Robert E.**
Robert Dixon graduated from the UW School of Law and became a deputy prosecuting attorney. Judge Dixon overcame a speech impediment and advanced through the legal system to a Superior Court judgeship. He was known as fair and kind, especially as a juvenile court judge, and even went so far as to bring home one of the troubled children after a month on the job. He enjoyed singing, woodcarving, photography, cooking, and growing roses with his wife. Robert Dixon died April 26, 2008, at the age of 78.

**Esposito, Joseph A.**
A graduate of Gonzaga School of Law, Joseph Esposito was a bankruptcy, business, and estate lawyer. He served in the Army Artillery. A longtime resident of Spokane, Esposito loved his children and grandchildren and spent many hours coaching them, swimming with them, racing with them down Schweitzer Mountain, hunting and fishing with them, and preparing delicious Italian meals. Joseph Esposito died May 30, 2008, aged 76.

**Getches, Meredith Ann**
Meredith Getches was the first woman to be appointed hearing officer for the City of Seattle and served from 1990 to 2003. She decided many controversial land use and environmental cases. She gained the respect of city officials, developers, and neighborhood organizers who saw her as fair and even-handed. Before becoming involved in the field of law, she was a teacher and urban planning consultant. Getches earned degrees in history, environmental studies, environmental
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planning and her J.D. from the University of Oregon School of Law. Meredith Getches died June 4, 2008, at the age of 63.

**Hines, William Thomas**
Bill Hines was born in Owensboro, Kentucky. He was a criminal defense attorney for 20 years. He pursued a law degree after an assortment of odd jobs, including bus driver and chauffeur. He was hired as a federal public defender right out of law school and performed his work with skill and integrity. Hines was funny, intelligent, and enjoyed nature, engaging conversations, motorcycles, and good coffee. His wife, Amy, was the love of his life. Bill Hines died May 13, 2008, at the age of 60.

**Jonson, Carl A.**
Carl Jonson graduated from the UW School of Law in 1939 and practiced law in Seattle for more than 50 years. He founded the firm of Jonson & Jonson, P.S., now owned by his two sons, Michael and Richard. He was 92 when he died on April 13, 2008.

**Martin, Howard John**
Longtime District Court Judge Howard Martin from Walla Walla enlisted in the Army Air Corps, flew more than 25 missions out of England in World War II, and earned the Distinguished Flying Cross. He graduated from UW School of Law in 1950, served as a JAG in the Air Force, entered private practice, and won various elected positions including district court judge, municipal court judge, and deputy prosecutor. He was a voracious reader and loved war and spy novels. Howard Martin died May 13, 2008, at the age of 83.

**Mayhew, Alvin “Skip”**
Alvin Mayhew was born in 1947 in Rockford, Illinois, and moved to Washington in 1957. Mayhew received his law degree from the University of Puget Sound School of Law (now Seattle University). He was a member of the Puyallup Elks, Blue Knights Washington II, and the Gold Wing Riders Association. Judge Mayhew was a municipal judge in Orting. He enjoyed camping, waterskiing, fishing, duck hunting, and riding motorcycles. He died on May 7, 2008, aged 60.

**Sakahara, Toru**
Born in Tacoma in 1916, Toru Sakahara received his bachelor's degree from UW in 1940, and was one of the first Japanese-American students to gain admission to the University of Washington School of Law, where he studied until he was sent to an Idaho relocation camp in 1942. After his release, he completed his law degree at the University of Utah in 1944. In 1965, he founded Sakahara and MacArthur, a groundbreaking minority-and-female-owned firm. Sakahara served as president of the Japanese American Citizens League, Seattle Japanese Community Service, Jackson Street Community Council, and the Seattle Housing Citizens Board. His long-standing service to the community was honored by the Emperor of Japan, who awarded him the Order of the Sacred Treasure, Fourth Class, in 1984. He died on April 26, 2008, aged 91.

**Wilson, Warren Laurence**
Larry Wilson grew up in Everett. During high school, he was a member of the Cord King Quartet. He served in the Navy and graduated from the UW School of Law in 1965. He was elected as district court judge for the South Snohomish County District Court and served 1972–1994. After retirement, Judge Wilson lived in Port Townsend and was legal advocate for the Domestic Violence and Sexual Assault Program of Jefferson County. He was an avid sailor and enjoyed RVing. Larry Wilson died April 10, 2008, at the age of 71.
A t its April 25–26 meeting in Spokane, the WSBA Board of Governors addressed a projected $1 million budget deficit for fiscal year 2009 that likely will prompt an increase in the annual member license fees for 2010–11. Meanwhile, as part of a project to streamline WSBA operations, the Board placed on inactive status three committees whose major responsibilities already had been shifted to WSBA staff.

The Board heard a report from Governor and Treasurer Doug Lawrence regarding the expected budget deficit and measures being taken to manage it. Upon recommendation of the Budget and Audit Committee, the Board unanimously approved an increase in the general operating reserve fund from $1.2 million to $1.5 million and an increase in the facilities reserve fund from $1.4 million to $2.5 million.

The expanded reserves will help protect WSBA general funds against anticipated increases in major expense areas. These include an expected significant increase in rent when the 10-year lease on the new WSBA headquarters expires. The current lease is at below-market rates, and lease payments are expected to be considerably higher whether the WSBA stays in the current space or moves at the end of the term.

In related action, the BOG voted to shorten the term for which annual WSBA member license fees are set from three to two years. The Budget and Audit Committee recommended the change in order to allow more flexibility in setting fees to respond to changes in WSBA finances.

Comments made during discussion of the financial measures suggested that a proposed license fee increase for fiscal years 2010 and 2011 is all but unavoidable. Lawrence noted that even the increased reserves would dwindle to zero in five years if the anticipated deficit persists. Many expenses cannot be reduced, or could be reduced only at the expense of critical WSBA services, he said. Meanwhile, license fees are the primary source of income that could make up the deficit.

A specific fee proposal was not discussed. Under a revised timetable, the Budget and Audit Committee is to make its preliminary recommendation regarding fees for 2010–11 by mid-July. The BOG is scheduled to discuss those recommendations at the July 25–26, 2008, meeting in Walla Walla. The Budget and Audit Committee will then make its final recommendation in late August. At the September 18–19 meeting in Seattle, the last of the fiscal year, the Board will vote to set the fees and to approve the 2009 fiscal year budget. The BOG’s decision on fees would then be subject to approval by the Supreme Court.

In other business, the BOG took action on several recommendations by the Strategic Planning Committee, which is reviewing all WSBA committees, boards, and panels to improve efficiency. The Board voted to suspend operation of three standing committees: the Alternative Dispute Resolution Committee, the Law Office Management Assistance Program Committee, and the Lawyers Assistance Program Committee. The functions previously carried out by the affected committees have been taken over by full-time, staffed WSBA programs.

The BOG voted to place the appointment of members to the Civil Rights Committee on hold pending the expected formation of a Civil Rights Section, which would have broader authority than a committee. Work to create the section is under way and could be completed within the next few months. How-
ever, the Board rejected a proposal to place the Professionalism Committee into hiatus while a comprehensive effort to promote professionalism is carried out. Meanwhile, the BOG voted to table consideration of a proposal to realign the Pro Bono and Legal Aid Committee (PBLAC) to operate under the Access to Justice (ATJ) Board rather than the BOG. Dan Young, PBLAC chair the past three years, told BOG members he was unconvinced that the ATJ Board was the appropriate body to oversee PBLAC’s functions or that the ATJ Board was even interested in doing so. ATJ Board member Greg Dallaire asked the BOG to defer action until the ATJ Board can discuss the matter and present its position. The proposal was to be taken up again at the June 5–6 BOG meeting in Vancouver.

Finally, the Board approved a request to add a second non-lawyer position on the Washington State Bar Foundation Board of Trustees. The foundation is a nonprofit organization that raises money to fund programs including the Loan Repayment Assistance Program and the Presidents’ and Governors’ Diversity Scholarship. The trustees are attempting to broaden the organization’s base beyond the legal community. After approving the addition of the second non-lawyer position, the BOG appointed the two non-lawyer trustees for the next term: Barbara Potter, executive vice-president of Laird Norton Tyee Trust Co., and Bart Wilson, CPA, shareholder in Bader Martin, PS.

Bar News Editor Michael Heatherly practices in Bellingham and can be reached at 360-312-5156 or barnewsseditor@wsba.org.
At first blush, it might seem odd that you need to say who your client is. In many circumstances, you may be dealing with more than one person or entity as a part of the background context of a representation — multiple company founders, a developer and a property owner, one distinct part of a corporate group, or several family members. In those situations, it is important to make clear to whom your duties will — and will not — flow, so that if the other people in the circle you are dealing with are dissatisfied, it is becoming more common for businesses and even some individuals to have more than one lawyer handle discrete aspects of their legal needs. If you are handling a specific piece of a client’s work, it is prudent to set that out in the engagement letter. That way, you are less likely to be blamed later if another aspect of the client’s work, which you were not responsible for, doesn’t turn out to the client’s liking.

**Defensive Lawyering**

(And Why It’s Good for Both Lawyers and Clients)

I recently did a series of law firm risk-management classes with two lawyers who represent, respectively, claimants and lawyers in legal malpractice litigation and two others who prosecute and defend bar grievances. Despite their varying practice perspectives, they all shared a common theme: Lawyers need to contemporaneously document key client decisions throughout the course of a representation. For lawyers, the documentation provides a clear record of advice given. For clients, that same documentation provides an equally clear channel for communications on the key aspects of the representation.

For a variety of reasons, lawyers’ decisions today are increasingly being “second guessed,” and the civil and regulatory consequences of “wrong” decisions are potentially more severe than in the past. One way lawyers can protect themselves in the face of these trends is “defensive lawyering” — managing your practice in a way that attempts to reduce civil and regulatory risk by documenting the key milestones in a representation: at the beginning, along the way, and at the end.

**At the Beginning**

Defensive lawyering should begin at the beginning. When you are taking on a client (or a new matter for an existing client), it is important to define who your client will be and the scope of your representation, to confirm any necessary conflict waivers, and to set out your compensation arrangements. Engagement letters offer an ideal venue for covering all four.

**Defining the Client.** At first blush, it might seem odd that you need to say who your client is. In many circumstances, pointed later, they can’t claim you were representing them too, and that you didn’t protect them.

In Washington, whether an attorney-client relationship exists in a particular circumstance is governed by a twofold test set out by the Washington State Supreme Court in *Bohn v. Cody*, 119 Wn.2d 357, 363, 832 P.2d 71 (1992). The first element is subjective: Does the client subjectively believe you are the client’s lawyer? The second element is objective: Is that subjective belief objectively reasonable under the circumstances? Engagement letters allow you to set out clearly who your client will be in a given circumstance. Depending on the setting, polite “nonrepresentation” letters to those you will not be representing may also offer a useful supplement to an engagement agreement to let the nonrepresented parties know which side you are on. In the face of an engagement agreement with your client, conduct consistent with that agreement, and depending on the circumstances, nonrepresentation letters, it will be difficult for another party to assert that you were his or her lawyer, too, under either element of the *Bohn* test. Defining who is being represented also benefits your client because it clarifies from the outset whom you will be looking to for strategic and tactical decisions on the “client side” of the relationship.

**Defining the Scope of the Representation.** Engagement letters offer an excellent opportunity to define the scope of a representation. As the law grows more complex, it is becoming more common for clients to handle discrete aspects of their legal needs. If you are handling a specific piece of a client’s work, it is prudent to set that out in the engagement letter. That way, you are less likely to be blamed later if another aspect of the client’s work, which you were not responsible for, doesn’t turn out to the client’s liking.
separate counsel, the two clients may have effectively eliminated any potential conflict that would have precluded a single lawyer from defending both. An engagement letter is the perfect place to document structural arrangements of this kind.

**Documenting Conflict Waivers.** Lawyers have important professional responsibilities for managing conflicts. See generally RPCs 1.7 (current client conflicts), 1.8 (lawyer self-interest conflicts), and 1.9 (former client conflicts). At the same time, conflicts of interest (or alleged conflicts of interest) can also present themselves in other litigation directed against lawyers — including disqualification, breach of fiduciary duty, fee forfeiture, and Consumer Protection Act claims: see, e.g., *Oxford Systems, Inc. v. CellPro, Inc.*, 45 F. Supp. 2d 1055 (W.D. Wash. 1999) (disqualification); *Eriks v. Denver*, 118 Wn.2d 451, 824 P.2d 1207 (1992) (breach of fiduciary duty); *Cotton v. Kronenberg*, 111 Wn. App. 258, 44 P.3d 878 (2002) (fee forfeiture and CPA). Given these risk factors, carefully documenting client consent to conflicts is important — both ethically and practically — and engagement letters offer an ideal time to do that.

Both RPC 1.7, which governs current client conflicts, and RPC 1.9, which controls former client conflicts, require that conflict waivers be confirmed in writing. Engagement letters that either include a conflict waiver or incorporate a separate stand-alone waiver protect both the lawyer and the client because they (1) document the disclosures that the lawyer made to the client and (2) confirm the basis upon which the client granted the waiver. In that context, the more detailed the letter, the better — both from the perspective of fully explaining the issues involved to the client and increasing the likelihood that the client will be held to the waiver.

**Documenting Rates and Mechanisms to Change Rates.** An engagement letter is a great venue to both confirm existing rates and related charges for the work to be performed and to preserve your ability to modify those rates and charges during the course of the representation. The new version of RPC 1.5(b) adopted in 2006 requires an explanation of fees and expenses "preferably in writing." (RPC 1.5(c) requires contingent fee agreements to be in writing.) Moreover, clearly communicating current rates can prevent misunderstandings with the client later. Finally, reserving the right to change those fees will generally avoid having to go back to the client for specific consent, because the ability to modify the rate has been built-in up front.

**Along the Way**

Even with the best of intentions and honorable motives, memories fade and recollections can vary from reality. Therefore, it is important to document important strategic and tactical decisions reached by the client during the course of a representation. The amount of the documentation will vary with the gravity of the decision involved. In many circumstances, however, the documentation need not be overly detailed. A quick e-mail back to the client following a telephone call will often suffice. It is the contemporaneous record that will be important later. Confirming decisions with the client again fosters communication with the client and provides the client with a useful record of decision-making in the case as well.

**At the End**

The end of a representation may seem like an odd topic for defensive lawyering. With most matters, we know when we have come to the end of a specific project — the advice sought has been given, the transaction has been closed, or the final judgment has been entered. And, in some instances, the next work for a client flows seamlessly from one project to another. But at least in some situations, when we complete a project for a client we’re not sure whether the client will be back even if we got a very good result. For example, we might have done a great job in a case for an out-of-state company, but that firm might have only very occasional operations here. In those situations, defensive lawyering becomes important in documenting the completion of the representation, so that if circumstances change over time and another client asks us to take on a matter against that out-of-state company in my example, we aren’t left wondering whether that company is a current client or a former client.

The distinction between classifying someone as a current or a former client is significant when it comes to conflict waivers. Current clients have the right to object to any representation a lawyer proposes to take on adverse to them. This right flows from the broad duty of loyalty lawyers owe their current clients. Former clients, by contrast, have a much narrower right to object. Under RPC 1.9, former clients can block an adverse representation by denying a conflict waiver only when the new work is essentially the same or substantially related to the work the lawyer handled earlier for the former client or would involve using the former client’s confidential information adverse to the former client. Absent one of these two triggers, a lawyer is permitted to oppose a former client without seeking a waiver.

That’s where defensive lawyering comes in. If you have completed a project for a client and you think it is relatively unlikely that you may see the client again, a polite letter thanking the client for the opportunity to handle the completed matter and letting the client know that you are closing your file may play a key role later in classifying the client as a former client. In the face of an “end of engagement letter,” it will be difficult for a former client to argue later in the context of, most likely, a disqualification motion that the former client reasonably believed that you were still representing it.

**Summing Up**

Defensive lawyering isn’t an insurance policy. But in an environment in which lawyers’ decisions are increasingly being “second guessed” and the consequences of “wrong” decisions can be significant, defensive lawyering can give you practical tools to reduce civil and regulatory risk. And, because it is built around the goal of clear communication with clients, lawyers shouldn’t be defensive about defensive lawyering.

Mark Fucile, of Fucile & Reising LLP, handles professional responsibility, regulatory, and attorney-client privilege matters and law-firm-related litigation for lawyers, law firms, and legal departments throughout the Northwest. He is a past chair and a current member of the WSBA Rules of Professional Conduct Committee, is a past member of the Oregon State Bar’s Legal Ethics Committee, and is a member of the Idaho State Bar Professionalism and Ethics Section. He is a co-editor of the WSBA’s Legal Ethics Deskbook and the OSB’s Ethical Oregon Lawyer. He can be reached at 503-224-4895 and mark@frllp.com.

**NOTES**

The Lawyers’ Fund for Client Protection Committee meets quarterly to review applications for gifts from the Fund. The Committee is authorized to make gifts less than $25,000 to eligible applicants. On applications for $25,000 or more, the Committee makes recommendations to the Board of Governors who are the Fund’s Trustees. Because of funding issues this year, the Committee is authorizing payment of approved applications only up to $5,000, with any additional approved payment to be withheld until the end of the fiscal year in September, when it will be determined whether the balance of approved payments will need to be apportioned against available funds. At their meeting on May 16, 2008, the Committee conducted the following business.

Courtenay D. Babcock — WSBA No. 22674 (Blaine) — Suspended nonpayment of dues 6/12/06 — Disbarred 3/31/08.

Application A: Applicant, a Canadian citizen, paid Babcock $8,000 to apply for permanent residency in the United States. A year later, Applicant became concerned because Babcock had never had him sign any documents. He talked to Babcock, who assured him that the forms had been prepared and things were going ahead. Applicant then talked with another lawyer, who told him that “if things were going ahead, I should have been called in to sign documents.” Applicant met with Babcock, who admitted that little, if any, work had been done. Applicant asked for a refund of his $8,000. Babcock said he didn’t have the money, but after repeated requests, he paid Applicant $4,000 and also gave him a promissory note for the $4,000 balance, due by 7/1/06. On 7/1/06, Applicant went to Babcock’s office and found it vacated. He never received the remaining $4,000. The Committee approved payment of that amount to Applicant.

Application B: Applicant, a Canadian citizen, paid Babcock $2,000 to obtain lawful entry into the United States. Babcock advised her that she would need to apply for a non-immigrant waiver (I-192) and that first she needed to obtain a Royal Canadian Mounted Police criminal record check. Applicant says that, while waiting for the record check, she spoke with another lawyer who advised her that she did not need a non-immigrant waiver to enter the United States. Over the next year, Applicant made numerous phone calls to Babcock without being able to reach him. She then wrote to him requesting return of her $2,000. Babcock did not respond. She hired another attorney who successfully completed her entry into the United States without seeking an I-192 waiver. Babcock never accounted for the $2,000. The Committee approved payment in that amount to Applicant.

Application C: Applicant paid Babcock $3,000 for future preparation and processing of an immigration application. Subsequently, Applicant decided not to pursue the immigration application, and he contacted Babcock and requested a refund of the $3,000. Up to that time, Babcock had performed no services for Applicant. Babcock told him he had spent the $3,000, but that he would return the funds. He returned $1,000. Over the course of the next several months, Applicant made numerous unsuccessful attempts to contact Babcock. He never received the balance of the funds. The Committee approved payment of $2,000 to Applicant.

Bruce E. Hawkins — WSBA No. 25414 (Gig Harbor) — Disbarred 2/3/06.

Hawkins associated with several non-lawyers who maintained websites that promoted a program to reduce or eliminate consumer credit-card debt through private arbitrations. He allowed his name to be used in promotional materials and allowed an interview explaining this theory to be posted on these websites. He represented that credit-card debtors were not bound to the arbitration services specified in their cardholder agreements and that, because national banks cannot lend credit, debtors should not have to repay their debts. (For further background on Hawkins, see Bar News, June 2006, p. 39.)

Hawkins told Applicant that credit-card companies were lending credit in violation of the law, and that for $26,622.01, he would help her expunge her total debt. She says she told him she was then current with all her creditors, and he told her to stop paying them because now that she had discovered the “fraud,” continuing to pay them would constitute her agreement with the fraud. She stopped making payments.

Applicant paid Hawkins fees totaling $15,644.76. Hawkins sent her a letter she was to mail to her creditors, along with a brief and other documents. He instructed her that after 90 days, she should contact Solomon Arbitration Group and ask them to arbitrate the claims. Hawkins did not disclose that he was an owner of Solomon Arbitration Group. She sent them a total of $2,085 as arbitration fees, and they sent her arbitration awards.

She then learned that these “arbitration awards” were worthless unless entered in a court. She contacted Hawkins, who told her that if she wanted his help in enforcing the awards, she would need to pay $250/hour. She told him she had no money. He told her she could do it herself, and that the attorneys for the credit-card companies wouldn’t show for court. She filed the arbitration awards, “and all the attorneys did show and I wasn’t prepared to represent myself, so I was forced to drop the case.”

Applicant then filed for bankruptcy. She disclosed the arbitration awards, which the trustee researched and deemed worthless. A discharge was entered, and it was dismissed as a “no asset” case. The Committee advised the trustee that it might make a payment to Applicant, and the trustee responded that she did not intend to reopen the bankruptcy. The Committee approved payment of $17,729.76 to Applicant.


Application A: Applicant paid Huffhines $700 to file a Chapter 7 bankruptcy proceeding. Applicant says that he had difficulty reaching Huffhines, and when he did, Huffhines would say only that he was waiting for some paperwork to clear. Applicant went to New York to seek employment. He received a letter from Huffhines enclosing a Chapter 7 petition, which he noted was out-of-date and incomplete. He recommended that Applicant consult a lawyer in New York. He also wrote, “I can arrange in the future to refund some of the fee that you paid in.” A few weeks later, Applicant called Huffhines and Huffhines said he could not file any petition. Huffhines refused to return any of Applicant’s money. The Committee approved payment of $200 to Applicant, representing the
unused filing fee, and denied the balance as a fee dispute.

**Application B:** Applicant paid Huffhines $495 to file a Chapter 7 bankruptcy proceeding along with a $200 filing fee. Applicant gave Huffhines the necessary information and documentation to prepare the petition. Subsequently, Applicant contacted Huffhines, who told him the petition and papers were ready for signature. Applicant and his wife signed them. At the time, they were missing at least two creditors’ addresses. When Huffhines was asked in a deposition during the disciplinary investigation why he had Applicants sign the petition when he didn’t have all the information, he testified, “I’m not sure exactly.”

Applicant continued to receive calls from creditors, so he contacted Huffhines, who said that he had not filed the petition because he needed the addresses of creditors and that he needed $30 for postage to mail the petitions to the bankruptcy court, which Applicant paid. He heard nothing further until he called Huffhines in April 2004. Huffhines told him his office was closing and to pick up his paperwork. He told Applicant he could have his money back at some future date. He never refunded any Applicant he could have his money back at some future date. He never refunded any

**Application C:** Applicant paid $230 to Applicant, representing the unused filing fee and postage costs, and of $230 to Applicant, representing the funds. The Committee approved payment of $230 to Applicant, representing the unused filing fee and postage costs, and of $230 to Applicant, representing the funds. The Committee approved payment

Bradley R. Marshall — WSBA No. 15830

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**Thomas P. Sughrua** — WSBA No. 14117

(Seattle) — Suspended 5/10/07.

Applications A, B, and C: Marshall represented 15 longshoremen in a workplace racial discrimination case, including these applicants. For additional facts, see In re Discipline of Marshall, 160 Wn. 2d 317 (2007).

In 1995, several longshoremen contacted Wayne Perryman, who did business as Consultants Confidential. Perryman is not a lawyer, but he and the longshoremen signed an agreement that he would prepare a racial discrimination lawsuit for $5,000. They also agreed that Perryman would act as their representative throughout the case, and that they would pay him and his company 10 percent of any settlement. Perryman contacted Marshall’s law office and Marshall became the lead attorney in the case. The parties agreed to mediation, and 14 of the 15 plaintiffs agreed to a settlement of $800,000.

The Supreme Court opinion states that Marshall retained slightly less than 30 percent for attorney fees, and charged the plaintiffs over $100,000 in costs. It says Perryman initially asked for Marshall to pay him $80,000, or 10 percent of the settlement, but at Marshall’s urging, he reduced his fee to $70,000 plus costs of $1,459. The Court found that Marshall had subtracted $108,122.91 from the settlement proceeds for costs. This included $9,473.75 that Marshall paid to other attorneys for work on the lawsuit. However, the fee agreement provided that any lawyer associated with the lawsuit would be associated without additional expense to the plaintiffs. Therefore, this sum should not have been taken as costs.

In addition, the Court found that Marshall admitted inflating the costs by $41,000 because of an “accounting mistake.” During the litigation, the plaintiffs had collectively advanced $41,000 to cover costs, with some plaintiffs paying more than others. When the case settled, Marshall returned to each plaintiff the amount they had paid him for costs. When he obtained the settlement, he paid the costs, but he also considered the return of the $41,000 as an additional cost.

The Court ordered restitution of the $41,000 he overcharged for costs and the $3,473.75 he charged in excess of his agreed fee, totaling $44,473.75. Marshall has paid no restitution. The Committee determined that each client is entitled to 1/14 of $44,473.75, or $3,176.70, and approved payment of that amount to each applicant.

**Roger D. Ost Jr.** — WSBA No. 22141

(Seattle) — Interim suspension 11/29/07 — Disbarred 12/7/07.

Applicant paid Ost $4,500 to pursue a claim against a contractor and its licensing bond. Ost contacted the contractor and claimed to have contacted the bonding company. Ost told Applicant that arbitration with the bonding company would be held in September 2006. Applicant contacted Ost in August and Ost told him that the arbitration would be rescheduled. Applicant waited to hear, not knowing how long it would take. He says it wasn’t until early 2008 that he again tried to contact Ost, but his phone calls were not returned. He then checked the WSBA website lawyer directory and learned that Ost was disbarred. He called Ost and this time reached him. Applicant asked for return of his $4,500, and Ost told him to call back in February. That was the last time Applicant was able to reach Ost. Ost returned none of Applicant’s funds. The Committee approved payment of $4,500 to Applicant.

**Application A:** Applicant paid Sughrua $2,500 to file a lawsuit against a bank. Applicant says that despite the fact that Sughrua assured him that he had a “solid case,” nothing was ever filed. After Sughrua
was disbarred, Applicant attempted to contact him for the return of his files, without success. Finally, accompanied by a county sheriff, Applicant went to Sughrua’s home, and Sughrua gave him what he said was all he had of Applicant’s files. A review of the materials given to Applicant discloses not a single letter, phone memorandum, draft pleading, or other work product. The only thing that indicated any work was done on the case was collection of a few court cases and Securities and Exchange Commission orders. Sughrua never accounted for the $2,500. The Committee approved payment of that amount to Applicant.

Application B: Applicant paid Sughrua $500 to extend a judgment, which was granted. The next step was to levy against property to force a sheriff’s sale. Sughrua e-mailed Applicant that he needed “a $500 cash bond for eviction; and a $2,000 cash bond for the levy sale.” Applicant sent Sughrua a check for $2,500. A month later, Applicant e-mailed Sughrua regarding the status of the proceeding. He responded that “I have time on Friday to finalize the pleadings for filing.” He said the whole process would take about 30 days. A few weeks later, Applicant again e-mailed him, noting that he had not returned several messages she had left for him. On 9/6/07, Sughrua responded that he had been in trial for the past two weeks, but would update her by the following Monday. He said he had a jury trial beginning on 10/9/07 and would have their case completed before that date. That was the last she heard from Sughrua. The court docket shows that nothing was filed with the court after entry of the order extending the judgment. Sughrua has never accounted for the $2,500, and the Committee approved payment of that amount to Applicant.

Other Business: The Committee reviewed 14 additional applications that were denied for lack of evidence of dishonest conduct, as fee disputes or claims for malpractice, or because restitution was made. One of them was deferred while Applicant exhausts other remedies, and two were deferred for further investigation.

Restitution: Before payment is made, the Applicant must sign a subrogation agreement with the Fund, and the Fund seeks restitution from the lawyers. Because in most cases those lawyers have no assets, the chief avenue of restitution is through court-ordered restitution in criminal cases. Prosecuting attorneys cooperate with the fund in getting the Fund listed in restitution orders. As of March 31, 2008, seven lawyers were making regular restitution payments to the Fund totaling $22,156 since October 1, 2007. This includes $15,260 deposited into the Fund pursuant to Supreme Court order from abandoned and unidentifiable funds in the trust account of former attorney Barry A. Hammer.

The committee chair is Kennewick attorney Christopher J. Mertens. WSBA General Counsel Robert Welden is staff liaison to the committee.
Opportunity for Service

Chief Hearing Officer
The Board of Governors invites applications from members interested in serving as chief hearing officer (CHO) pursuant to Rule 2.5(f) of the Rules for Enforcement of Lawyer Conduct. The CHO, with support from the Office of General Counsel, is responsible for assigning hearing officers to cases, monitoring and evaluating the performance of hearing officers, establishing and supervising hearing officer training, hearing prehearing motions when no hearing officer has been assigned, and performing other administrative duties necessary for an efficient and effective hearing system. Applicants should be familiar with the disciplinary system and have excellent legal reasoning skills, management aptitude, appellate practice experience, judicial hearing, impartial demeanor, and commitment to public service. Candidates with experience as a WSBA hearing officer will be given the strongest consideration. The position is on a one-year independent contractor basis, with compensation to be determined. Interested members should submit a letter of interest, references, and résumé to Office of General Counsel, WSBA, 1325 4th Ave., Ste. 600, Seattle, WA 98101-2539 not later than August 1, 2008.

Seeking Questionnaires from Candidates for Judicial Appointments

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

2008 Licensing and Suspension Information
Suspension recommendations sent to the Washington State Supreme Court. If you have not paid all of your license fees and late fees, or if you are on active status and have not paid your Lawyers’ Fund for Client Protection assessment or filed your Mandatory Professional Liability Insurance Disclosure Form within 60 days of the date a Presuspension Notice was mailed to your address on record (March 14, 2008), your name was on the Suspension Recommendation List sent to the Washington State Supreme Court.

Provide WSBA with current contact information. You are required to keep your contact information current; see Admission to Practice Rule 13. If your contact information has changed, complete and return the Contact Information Change Form available at www.wsba.org/info/newaddresschangeform.pdf. Forms should be mailed to the WSBA, faxed to 206-727-8313, or e-mailed to questions@wsba.org.

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

WSBA Board of Governors 2008 Election Results
Congratulations to the following WSBA governors-elect. The governors-elect will take office at the close of the WSBA annual meeting on September 19, 2008, and will hold office for a term of three years until September 2011.

3rd District: Loren S. Etengoff, unopposed, is governor-elect in the 3rd District.

6th District: The certified election results from the May 20 ballot counting names Patrick A. Palace as governor-elect in the 6th District.
- Eligible voters: 1,866
- Ballots cast: 455
- Return rate: 24 percent

7th-East District: The certified election results from the May 20 ballot counting names Catherine L. Moore as governor-elect in the 7th-East District.
- Eligible voters: 2,810
- Ballots cast: 358
- Return rate: 13 percent
- Invalid: 4
- Catherine L. Moore: 197 votes, 55 percent
- Stephen A. Teller: 161 votes, 45 percent

8th District: The certified election results from the May 20 ballot counting names Brian L. Comstock as governor-elect in the 8th District.
- Eligible voters: 3,533
- Ballots cast: 510
- Return rate: 14 percent
- Invalid: 6
- Brian L. Comstock: 294 votes, 58 percent
- Jeff Smyth: 216 votes, 42 percent

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 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 15561, Olympia, WA 98504-5561 to supply the information that DSHS requires or view their website at http://fortress.wa.gov/dshs/maa/ltpr. 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)

Contract Lawyer Meeting
Discuss the issues with other contract lawyers on July 8 from noon to 1:30 p.m. at
Vancouver Judge Recognized for Youth Education Work

Judge James P. Swanger of the District Court of Clark County was recently named Educator of the Year by the national organization Street Law, Inc., for his innovative work with high-school students in Vancouver. Judge Swanger volunteers in the Street Law program, a partnership of the WSBA’s Council on Public Legal Education (CPLE) and the Washington Judges Foundation (WJF). In this program, judges teach a high-school law class with a local teacher using textbooks supplied by the WJF. Not only does Judge Swanger co-teach classes at three high schools, he also invites students to sit with him on the bench during trials, arranges for students to shadow him at the courthouse, and presents at the CPLE’s annual training workshop for Street Law judges and teachers. Chief Justice Gerry Alexander’s nomination letter cited many other public legal education programs Judge Swanger has volunteered for, including the YMCA Youth and Government mock trial competition and youth court. Judge Swanger accepted the award in April at the Street Law 2008 Awards Dinner in Washington, D.C.

WSBA-CLE Annual Member Appreciation Summer Sale

8:00 a.m. July 14 — noon on July 25: Online orders only

July 14 kicks off WSBA-CLE’s biggest sales event of the year! Submit your order online and pay half price for selected recorded seminar sets, while supplies last. If 2008 is your MCLE reporting year, remember that one-third of your credits can be from recorded seminars. New this year — we’ll take half off on any coursebook you purchase online during the sale! Visit the online store at www.wsbacle.org.

LOMAP and Ethics Traveling Seminar

Join us for the LOMAP and Ethics Traveling Seminar July 8 in Moses Lake, July 9 in Wenatchee, August 19 in Port Angeles, or August 20 in Port Townsend. The seminar includes: Safeguarding Client Property; Required Trust Account Records; Minding Your Matters; and Winding Down: The Golf Course Beckons. Contact Julie Salmon at 206-733-5914, 800-945-9722, ext. 5914, or juliesa@wsba.org to register.

Recovery Support Group for Lawyers

The Lawyers Assistance Program is offering a new weekly group in Seattle for lawyers in their first three years of recovery from drug or alcohol dependency. The group meets on Tuesdays from 8:15 to 9:30 a.m. Discussion topics include relapse prevention, improving relationships, work/life balance, and other themes chosen by the group. Coed. Sliding fee scale of $5–15 per session. Call Abby Smith, LAP addictions counselor, at 206-733-5988 or 800-945-9722, ext. 5988.

Casemaker Online Research

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.

LAP Solution of the Month: Taking a Vacation?

If not, why not? All work and no play makes you grumpy and inefficient. Vacations are good for you and your family, so plan now to get out of town. And turn off your cell phone while you’re there! If you feel guilty about even contemplating time off, call the Lawyers Assistance Program at 206-727-8268 or 800-945-9722, ext. 8268.

Computer Clinic

The WSBA offers a hands-on computer clinic for members. Learn what programs such as Outlook, PowerPoint, Excel, Word, and Adobe Acrobat can do for a lawyer. Are you a total beginner? No problem. The clinic teaches helpful tips you can use immediately. Computers are provided, and seating is limited to 15 members. There is no charge, and no CLE credits are offered. The July 14 clinic will be held from 10:00 a.m. to noon at the WSBA office and will focus on using Outlook and practice management software. The July 17 session will be held from 2:00 to 4:00 p.m. and will focus on using Excel and Word. For more information or to RSVP, contact Julie Salmon at juliesa@wsba.org.
FYInformation

Job Seekers Discussion Group
Looking for a job or making a transition? Join us at the Job Seekers Discussion Group the second Wednesday of each month from noon to 1:30 p.m. The next meeting is July 9 at the WSBA office. The group discusses where to look for jobs, how to grow your network of contacts, strategies for résumés and cover letters, and how to keep yourself organized and motivated. Exchange information and ideas with other lawyers looking to make a change. Come as you are — no need to RSVP. Bring your business cards and practice networking skills. For more information, call 206-727-8269 or 800-945-9722, ext. 8269, or e-mail rebecca@wsba.org.

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

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

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

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

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

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) 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 25–26, Walla Walla • September 18–19, Seattle • October 24–25, Spokane
With the exception of the executive session, Board of Governors meetings are open, and all WSBA members are welcome to attend. RSVPs are appreciated but not required. Contact Margaret Shane at 206-727-8244 or 800-945-9722, ext. 8244, or margarets@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 2008 was 1.997 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.

Disciplinary Notices

These notices of imposition of disciplinary sanctions and actions are published pursuant to Rule 3.5(d) of the Washington 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

Tyler M. Morris (WSBA No. 26190, admitted 1996), of Walla Walla, was disbarred, effective April 8, 2008, by order of the Washington State Supreme Court following approval of a stipulation. This discipline is based on conduct involving soliciting and accepting bribes. Tyler M. Morris is to be distinguished from James Tyler Moore of Walla Walla.

At all relevant times, Mr. Morris was employed as an assistant city prosecutor for the City of Kennewick, which operated a recreation program (Home Base) that provided a place for teens to go after school. The City of Kennewick and the City Attorney’s Office permitted persons charged with misdemeanor criminal offenses and civil infractions to make donations to Home Base to have their cases dismissed or their charges significantly reduced. On more than one occasion between approximately January 1, 2005, and March 1, 2006, Mr. Morris, in his official capacity as an assistant city attorney, corruptly accepted and agreed to accept money from a defense attorney. Mr. Morris agreed to accept the money from the defense attorney intending to be influenced or rewarded in connection with the reduction or dismissal of charges against the defense attorney’s clients in Benton County District Court. Mr. Morris asserts that he has no personal knowledge as to where the money he received from the defense attorney came from, or as to the intentions of the defense attorney or his clients as to where the money would be deposited. According to the plea agreement Mr. Morris signed on September 11, 2007, the money came from the defense attorney’s clients and was intended by the clients to be donated to Home Base operated by the City of Kennewick. Mr. Morris retained the money he received from the defense attorney for his personal use. It was not donated to Home Base.

The value of the series of transactions involving payment of money to Mr. Morris from the defense attorney for the reduction or dismissal of charges during the relevant time period exceeded $5,000. The precise amount has yet to be judicially determined. In December 2006, Mr. Morris was charged by indictment with violating several federal statutes in connection with the facts set forth above. On September 11, 2007, Mr. Morris pleaded guilty to violating 18 U.S.C. § 666(a)(1)(B) (soliciting a bribe), which is a felony.

Mr. Morris’s conduct violated former RPC 8.4(b), prohibiting a lawyer from committing a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects; and former RPC 8.4(i), prohibiting a lawyer from committing any act involving moral turpitude, or corruption, or which reflects disregard for the rule of law, whether the same constitutes a felony or misdemeanor or not.

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

Suspended

James B. Holcomb (WSBA No. 1695, admitted 1967), of Bainbridge Island, was suspended for six months, effective December 20, 2007, by order of the Washington State Supreme Court following an appeal. This discipline was based on conduct involving conflicts of interest.

In 1998, Mr. Holcomb agreed to represent a client for an hourly fee to review files and make recommendations regarding an equal employment opportunity action that the client had filed pro se. Mr. Holcomb and the client later signed a second fee agreement in which Mr. Holcomb agreed to represent the client in an Equal Employment Opportunity Commission (EEOC) hearing. When the EEOC denied the client’s claim and the client decided to appeal to the U.S. District Court, the client and Mr. Holcomb agreed to a contingent fee arrangement and signed a third agreement. In 2003, after the District Court dismissed the client’s appeal, Mr. Holcomb and the client entered into a fourth fee agreement in which Mr. Holcomb agreed to file a notice of appeal at the Ninth Circuit Court of Appeals and seek mediation of the client’s claim. Sometime in early March 2003, the client and Mr. Holcomb reached an impasse regarding the representation in the appeal, and Mr. Holcomb withdrew.

From December 1999 through March 2001, Mr. Holcomb borrowed from the client a total of $52,300 in 24 individual loans. The amount of each individual loan ranged from $750 to $3,500. Most of the loans were outstanding for no more than two weeks; the last loan was outstanding for over a year. Mr. Holcomb eventually repaid all of the loans. The loans were not subject to a written loan agreement, payment of interest, penalties or fees, or a schedule for repayment of the principal. Mr. Holcomb did not provide security for the loans, did not advise the client that his personal interests might conflict with
the client’s interests, did not obtain a written waiver of a conflict of interest, did not provide the client with information about his current financial condition, and did not advise the client that he could seek independent counsel about the suitability of his loan request. Eleven of the loans were made by cashier’s check to Mr. Holcomb and contained references to the client; 13 of the loans were made by personal check from an account in the name of the client and his wife’s trust and were signed by either the client or his wife. Mr. Holcomb repaid the loans by personal checks made payable to the client.

Mr. Holcomb’s conduct violated former RPC 1.7(b), prohibiting a lawyer from representing a client if the representation of that client may be materially limited by the lawyer’s own interests unless the lawyer reasonably believes the representation will not be adversely affected and the client consents in writing after consultation and a full disclosure of the material facts; and former RPC 1.8(a), prohibiting a lawyer from entering into a business transaction with a client unless the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client, the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction, and the client consents thereto.

M. Craig Bray represented the Bar Association. Brett A. Purtzer represented Mr. Holcomb. David K. Hiscock was the hearing officer.

**Suspended**

**Brian M. Keith** (WSBA No. 14404, admitted 1984), of San Diego, California, was suspended for two years, effective November 6, 2006, by order of the Washington State Supreme Court on reconsideration dated May 1, 2008, imposing reciprocal discipline in accordance with an order from the Supreme Court of the State of Arizona. This discipline is based on conduct involving the commission of a felony.

In March 2005, Mr. Keith drove a vehicle while under the influence of alcohol in Placer County, California. As a result of driving under the influence, Mr. Keith failed to stop for a red light and collided with another vehicle. Three other persons were injured in the collision. Police responded to the site of the collision and performed a blood alcohol test, from which Mr. Keith’s blood alcohol content was determined to be .28, above the legal limit. In May 2006, Mr. Keith pleaded guilty to one count of Driving Under the Influence Causing Injury, a felony, in violation of Vehicle Code 23153(a) of the State of California, and was sentenced to a state prison for a term of 16 months.

Mr. Keith violated Arizona’s Ethics Rule (ER) 8.4(b), making it professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects.

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

**Admonished**

**William R. Walton** (WSBA No. 14712, admitted 1984), of Tacoma, was ordered to receive an admonition on March 25, 2008, by order of the hearing officer following approval of a stipulation. This discipline was based on conduct involving lack of diligence, failure to communicate with a client, and retaining a fee not fully earned.

In spring 2005, a client hired Mr. Walton to handle a modification of a parenting plan and child-support order. The client paid Mr. Walton $1,000 for the representation. In July, Mr. Walton attended a hearing on the client’s matter. At that hearing, the court wanted additional information to be provided within 30 days; the client promptly provided the information to Mr. Walton, but Mr. Walton did not provide it to the court. Between August and November 2005, the client attempted to contact Mr. Walton many times by telephone, fax and mail to determine the status of her matter. Mr. Walton did not return her contacts. In December 2005, Mr. Walton received a call from the Bar Association asking him to contact the client. Mr. Walton contacted the client and apologized for not getting back to her sooner. Mr. Walton assured the client that he would take care of her matter. He also re-requested the additional information, which the client again provided. The client did not hear from Mr. Walton again about her matter. In February 2006, Mr. Walton intended to contact one of the client’s sons to obtain additional information, but did not do so.

Mr. Walton did not complete the modification for the client and did not earn the $1,000 fee. He has already paid to the client $400 of the $1,000 he owes her. After Mr. Walton ceased work on the client’s matter, the client did not pursue the modification. Without the modification, the client’s sons did not obtain financial assistance from their father and were not able to attend college.

Mr. Walton’s conduct violated RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; RPC 1.4, requiring a lawyer to keep a client reasonably informed about the status of a matter, promptly comply with reasonable requests for information, and explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; RPC 1.5, requiring a lawyer’s fee to be reasonable; and former RPC 1.15(d), requiring a lawyer to take steps to the extent reasonably necessary to protect a client’s interests, such as refunding any advanced payment of fee that has not been earned.

Sachia Stonefeld Powell represented the Bar Association. Mr. Walton represented himself. Mary H. Wechsler was the hearing officer.

**Admonished**

**Michael W. Gendler** (WSBA No. 8429, admitted 1978), of Seattle, was ordered to receive an admonition, effective February 29, 2008, by order of a Review Committee of the Disciplinary Board. This discipline was based on conduct involving failure to clearly communicate to a client the basis of his fees.

In January 2004, Mr. Gendler agreed to investigate potential claims against a credit repair company. His fee agreement indicated that the claim could be individual or class action. In August 2004, Mr. Gendler filed a class action complaint against the company in U.S. District Court.

In 2006, Mr. Gendler discovered that the company was near bankruptcy and likely judgment proof. He negotiated a settlement on behalf of his client individually. The total settlement amount was $17,500. Mr. Gendler’s client agreed to the settlement; however, she wanted to resolve the amount of his fees afterward. Mr. Gendler offered to disburse $2,500 of the settlement to his client. The fee agreement Mr. Gendler drafted did not clearly explain the procedure for determining his fees in the case of individual settlement and indicated that his fees would be submitted to the court for approval. Mr. Gendler did not submit his fees to the court for approval.

Mr. Gendler’s conduct violated former RPC 1.5(b), requiring the lawyer to communicate to the client, preferably in writing, before or within a reasonable time after commencing the representation, the basis or rate of the fee or factors involved in determining the charges for legal services and the lawyer’s billing practices.

Kevin M. Bank represented the Bar Association. Mr. Gendler represented himself.

**Non-Disciplinary Notices**

**Suspended Pending the Outcome of Supplemental Proceedings**

**Paul R. Lehto** (WSBA No. 25103, admitted 1995), of Ishpeming, Michigan, was suspended pending the outcome of supplemental proceedings, pursuant to ERC 7.3, effective May 7, 2008, by order of the Washington State Supreme Court. This is not a disciplinary action.

**Suspended Pending the Outcome of Disciplinary Proceedings**

**Bradley R. Marshall** (WSBA No. 15830, admitted 1986), of Seattle, was suspended pending the outcome of disciplinary proceedings, pursuant to ERC 7.2(a)(2), effective May 1, 2008, by order of the Washington State Supreme Court. This is not a disciplinary action.
Announcements

**Velikanje Halverson, PC**

is pleased to announce that

*West H. Campbell*

has joined the law firm as a shareholder as of May 1, 2008. Mr. Campbell was formerly a partner in the Portland, Oregon, litigation firm of Hoffman, Hart & Wagner. Mr. Campbell will continue his practice of civil litigation, trial practice, mediation, and arbitration.

**Velikanje Halverson, PC**

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is pleased to announce that

*James M. Owen, Jr.*

has become a member of the firm. Mr. Owen represents clients in all phases of business and commercial litigation, with an emphasis on construction defect, premises liability, and professional malpractice defense.

We are also pleased to announce that

*Nicole N. McGrath*

has joined the firm as an associate.

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is pleased to welcome

**Tyler H.L. Tornabene**

as a new associate with the firm.

Mr. Tornabene is a former deputy prosecutor for Kitsap County and *magna cum laude* graduate of Gonzaga University School of Law.

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INSURANCE BAD FAITH
For when they insure it is sweet to them to take the money; but when disaster comes it is otherwise and each man draws his rump back and strives not to pay.
— Francesco di Marco Datini — Florentine businessman, letter to his wife, 14th century.

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Stephen C. Smith, former Chairman of the Washington State Bar Association Disciplinary Board, is now accepting referrals for attorney disciplinary investigations and proceedings in Washington, Idaho, Hawaii, and Guam.

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Scene: A downtown Seattle street in the not-too-distant future. The economy has continued to deteriorate because of plunging property values and skyrocketing food and gasoline prices. Two mid-career lawyers, Max Billings and Cash Pyle, approach one another on the sidewalk. Both are wearing tailored Italian suits, but the fine wool is tattered and stained. Their hand-cobbled loafers are scuffed and reinforced with duct tape.

Pyle: Billings, is that you?
Billings: Pyle! I barely recognized you. How long has it been?
Pyle: Well, let’s see. Last time we met, I still had the Lexus. So, that was a couple of years ago.
Billings: That Lexus was a sweet ride.
Pyle: Yeah, but I had to quit driving when the gas bills exceeded the loan payments. On the bright side, I was able to live in it for awhile after the house went into foreclosure.

Billings: Where are you living now?
Pyle: Under the viaduct between Yesler and Columbia.
Billings: That’s a nice area, close to the ferry and all.
Pyle: Yeah, I’m in the third Frigidaire box on the left when you’re facing north. How about you?
Billings: We’ve been staying in a stairwell at the Quest Field parking garage, but we’re thinking about moving to Green Lake for the summer. The kids love the water. We have our eyes on a little equipment shed with a broken lock. Are you still at your firm?
Pyle: No, I got downsized a while back. Lately I’ve been playing the ukulele in front of Nordstrom and writing a few wills to make ends meet.

Billings: Well, at least you’re keeping busy. I’m still at my firm, but they’ve really cut costs. I’m sharing my desk with an associate and two paralegals. Last week they sold the laser printers on Craigslist and hired a scrivener — an obsessive-compulsive guy who was willing to work for free if we let him live in the broom closet.

Pyle: Where are you headed?
Billings: Starbucks! I’ve been saving up since Christmas for a latte. [Holds up a plastic shopping bag full of dollar bills] Too bad they’re back down to just the original store. It’s kind of a hike from here.

Billings: I was able to wean myself off the lattes, but I tell you, I would trade my gold Montblanc for a bowl of good rice.

Pyle: [Motioning for Billings to move closer] Look, I’ve got a connection. My guy is holding a couple pounds of basmati. I’m talking pure Ranbirsinghpura from Pakistan. You should see the grains on this sh*t. You put some red curry on that and you’ll be flying high for hours, trust me.

Billings: Yeah, but how much?
Pyle: He’s asking $1,200 an ounce.
Billings: That’s too rich for my blood. I’m pretty much an Uncle Ben’s guy these days.
Pyle: I feel your pain. Hey, I’d better let you go. But listen — stop by my place one of these days, okay? I bought a bottle of Thunderbird in January and I’ve been saving it for a special occasion.

Billings: I heard January was an excellent month for the fortified wines. I’ve always admired your taste, Pyle. Third Frigidaire box on the left, you said?
Pyle: That’s the one. If I’m not there, look for the guy under the gray tarp by the dumpster. He used to be my investment adviser. He’ll know where to find me.

The two men nod, part and go their separate ways. After a few steps, Billings stoops to pick up a nickel and a cigarette butt. He puts them in his pocket and continues toward Starbucks as Pyle disappears around a corner.

Bar News Editor Michael Heatherly practices in Bellingham and can be reached at 360-312-5156 or barnewseditor@wsba.org.
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