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Contingency Fees and Insurance Companies

I enjoyed Michael Caryl’s article on Ethical Limits to the Contingency Fee [June 2012 Bar News]. But I thought he neglected an important point during his discussion of the “fairly apparent policy limits case”: some members of the insurance industry choose not to timely pay what are obviously policy limits claims. Any plaintiff’s attorney who has practiced for some years will have experienced the case — like the Guardianship of A.G.M. case discussed in the article — where the claim is certainly worth more than the policy, except that the insurer refuses to pay. Not until much time, effort, and expense has been wasted does the insurer finally do what was inevitable. I am not suggesting this is commonplace, but it is a distinct change from historical insurance practices and is apparently used to discourage litigants and establish an insurer’s reputation as tough to obtain settlements from.

For the contingency fee attorney, this poses a dilemma. If the claim appears to be a “fairly apparent policy limits case” and the attorney adjusts his fee at the outset downward, then he may short himself when the claim turns into much more work. Rewriting fee agreements upward is not an option. I suppose that a graduated contingency fee is an option, but what are the triggers? The onset of litigation, the need for discovery, an impending trial or arbitration date? And don’t such triggers hold the risk of potentially putting the attorney at odds with his client by providing the attorney with an incentive to reach a trigger that bumps the fee up?

In my view, a few members of the insurance industry have created this problem. In response, plaintiff’s attorneys can reasonably charge full fees for the fairly apparent limits case and then adjust their fees, if appropriate, at settlement to serve their clients while protecting themselves.

Bruce Clark, Seattle

Referendum Reflections

Perhaps the most common mantra for our democracy is that we are a nation of laws and not men, but I would suggest that the opposite is the perceived truth. Candidates for office make every effort to sell themselves rather than a coherent program. Similarly in vetting judges the question is what his or her judicial philosophy might be rather than whether he or she is capable of understanding precedent and reasoning to generally acceptable conclusions of law.

Turning then to the question of how the public will perceive the recent results of the referendum to reduce dues of the WSBA, I would suggest that it is almost inevitable that any result that appears to benefit attorneys will be given a jaundiced interpretation. To suggest to the public that the use and maintenance of our legal system is a common responsibility and not one of the WSBA alone may be startling to a complacent public that votes predictably for candidates who promise lower taxes while continuing to expand the funding of American military intervention in sovereign nations throughout the world, with a current emphasis upon Yemen and Pakistan.

In this case the WSBA referendum process failed to obtain a passionate commitment on either side from the majority of lawyers in the state who cast no votes for or against the measure. This 57% of members who maintained silence may be a measure of the inertia, even within the bar, for discretionary decisions which cannot be made without first ascertaining the funds available. Is the general public more concerned and more likely to take a view that does not imply self-interest or indifference than attorneys who are most closely allied to our legal processes when dealing with critical funding decisions? I suggest that any outrage that may be directed at attorneys as a group would be better spent at citizen self-examination and in reclaiming the rule of law by realizing that only citizens committed to the rule of law are the strength of a nation. This insight will end the assumption that attorneys individually or as a group may function in a sort of paternal role and make up for ignorance and inertia in the body-politic as a whole. For this reason directed outrage at attorneys may finally motivate some effort to reclaim a democracy that, to this viewer at least, seems to be threatened at every level with outrages to our Constitution as manifested by Executive Branch “kill lists,” to take but a single example, and by a proliferation of secrecy at all levels of government.

Thomas Mengert, Keyport

Letter to Letter to the Editor

A retort to Timothy Farrell of Hood River, Oregon, who feels the WSBA Board should resign because it’s not in touch with the membership [Letters to the Editor, June 2012 Bar News]:

1. Glad you practice in OR, not WA.
2. 52% of the 43% of eligible voters who voted adds up to about 22% of the membership, not a majority by a long shot.
3. A guess as to why those not-voting eligibles didn’t vote? Probably were comfortable either way. Better guess? Those truly opposed to current policies most certainly would have and did vote. That says to me something like 77% of the membership were just fine with the way things were going. Sadly, our membership is just like most of the rest of America that fail to exercise the most sacred political right ever acknowledged, the right to vote.
4. I guess we deserve the result.

Blair Paul, Seattle
Life Is Happening

Reflecting on the people and events of my first eight months

Over the last couple of months since the referendum, it seems that when I meet members, often the question is, “How are you doing?” The sentiment is that there has been a death in the family.

In fact, there has been a rebirth in the family.

When I was sworn in as president, I had some plans and ideas as to how “my year” as president would go. In February, I was attending a national bar leaders’ conference (no, not in Hawaii or Dubai) and one of the break-out sessions was entitled, “What do you do when your year is hijacked?” I thought I could be on that panel, or perhaps even teach the class myself.

The fact is that it’s been a rich year, including the time and effort put into making beneficial, if not difficult, changes in our organization. I was reflecting gratefully upon many of the other things that have happened “while I was making other plans.” There have been innumerable wonderful events and encounters that have additionally made this year a very rewarding and memorable one. I will take a few minutes to share just a few of the many people and things that have made this year a great one.

I began the year with the intention of following a plan that my good friend Jeff Tolman suggested I follow during my year. He related the experience of his small hometown newspaper editor randomly picking a citizen and writing a story about that citizen — the idea being that everyone has an interesting story to tell, but seldom gets the chance to tell it (see the “Voices of the Bar” feature in this issue starting on page 13). So my first interview occurred in Vancouver with Mila Boyd. I met with her when I was giving a brief address to the Fall Judicial Conference in Vancouver. We met in a McDonald’s and I conducted my first “interview.” She told a very heartwarming story of how she became a lawyer because of a life experience that left an impact on her and her family. It involved how a lawyer helped her family and it made an impression on her. She told of how, as a result, she gives back to the profession and also to her community through her passion for the arts. I knew I was on a roll with her interview. If I could just find eight more interviews like her, I was golden. Life was about to happen.

A little later, a very heartening story came to me about a lawyer in Colville who singlehandedly has carried out the pro bono program in his community. I thought if our 35,000 members were as committed to access to justice as he is, we would have a much smaller mountain to climb in meeting the needs of our fellow citizens who are less fortunate and need legal assistance. Life is happening.

The fact is that it’s been a rich year, including the time and effort put into making beneficial, if not difficult, changes in our organization. I was reflecting gratefully upon many of the other things that have happened “while I was making other plans.”
In early January, I attended the swearing in of Justice Steven González, which in and of itself was a powerful and moving event! Shortly after I arrived, I was met by the irrepressible Don Horowitz. Don (as only Don can do) exclaimed, “Steve, I loved your president’s column referring to the mentor.” The article apparently inspired him to recall how in 1958 he was a clerk with a Washington State Supreme Court justice. The justice had a speaking engagement in Wenatchee. Don and the justice were driving to Wenatchee, and upon approaching Cashmere the justice announced to Don that he needed to introduce Don to “one of the best lawyers in the state of Washington.” As it turns out, that lawyer was the one I was so fortunate to have as my mentor during the first eight years of my life as a lawyer. Life is happening.

The March meeting of the Board of Governors (BOG) was in Walla Walla. As is our practice, the officers and executive director usually go to the community where the BOG meeting is held to meet with the local judges and bar leaders. I think this is a wonderful practice and I hope that the lawyers and judges with whom we meet likewise feel it is beneficial. A wonderful addition to our Thursday afternoon meeting in Walla Walla was the chance to meet with students from Whitman College and Walla Walla University who are either involved in a pre-law program or who have an interest in the practice of law. I recall there were perhaps 20 or so students who attended for an exchange and question-and-answer period. It was so encouraging to meet with so many bright, thoughtful, and engaged young men and women who have a developing interest in our profession. Their questions and comments were very intelligent and mature. I left feeling that if these young men and women should choose our profession, the future is bright for our profession and our community at large. Life is happening.

The final reflection I will share with you is the Law Day Meeting of my own Chelan-Douglas County Bar Association. Justice Susan Owens was the keynote speaker and did a wonderful job of leading us through an exercise allowing us to analyze disciplinary decisions. Frankly, the members were harsher in terms of discipline than even the WSBA Disciplinary Board or the Supreme Court, in many cases. What was so inspiring for me was reflecting on the strength of my local bar association; the strength of my state bar association; and the strength, openness, and helpfulness of the members of our Supreme Court. Life is happening.

We, as a profession, are exemplary. We are a profession we can take pride in. Indeed, we are not perfect and we will get better. What I am impressed with is that we are trying to be, and historically are, at the forefront of doing just that — getting better. In my encounters with bar leaders across the nation, we, the lawyers in Washington, and all of the parts that comprise us (individual members; local, minority, and specialty bars; the WSBA; Supreme Court; etc.) are indeed revered as being very professional and focused on being the best. Life is happening.

Thanks to all of you for making this profession in our state what it is. 🙌

WSBA President Steve Crossland practices in Cashmere and can be reached at steve@crosslandlaw.net or 509-782-4418.
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Bill Bowman

Briteney Mercer

Joseph Campagna

Bill, recognized as one of the state’s best DUI defense attorneys, leaves our team this fall to serve as a King County Superior Court Judge.

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WSBA Listening Tour

Why are you going to places where there are so few members? We got several emails asking this question after President Crossland and I announced our Listening Tour road trip across the state. Maybe it was a factor influenced by a WSBA president and executive director who grew up in small towns east of the Cascades, but I think it was more that we both felt it important to reach out to those areas where the WSBA Board of Governors does not travel for meetings and has not had the chance to hear from our members in these areas.

I use only a couple of apps on my iPhone and I feel like WSBA is the same for me — I know you do a lot of great things, but I only know about a couple of them.

What we both enjoyed most about the Tour was getting to sit down and engage in dialogue with the members we visited, not just listening or giving speeches. From smaller meetings with three lawyers to larger ones with a couple of dozen — everyone had lots of questions and ideas to share. We learned as much from you as hopefully we were able to provide information to you all.

We started in Spokane, where about 25 people met us for a robust conversation during a mid-afternoon meeting in City Hall. We began each meeting by giving an update on the various things, but I only know about a couple of them.

From Spokane, we headed south to Clarkston, where we enjoyed a two-hour meeting with three members of the Hells Canyon Bar Association, which encompasses the three-county area of Asotin, Columbia, and Garfield. The three members assembled had wonderful input on how we are missing the mark for attorneys practicing in rural areas in terms of services and support provided.

One person outlined a great distinction between apathy and atrophy. He pointed out that local attorneys weren't apathetic about the WSBA as much as people's interest in the Bar had atrophied. When talking to people about coming to the meeting that night, he said they responded "Why? Why do I care?" His point was that people were so used to being ignored and not heard that their interest in the bar had atrophied. And I think one of our favorite analogies we heard came out of this meeting: "I use only a couple of apps on my iPhone and I feel like WSBA is the same for me — I know you do a lot of great things, but I only know about a couple of them."

The next morning took us to Ephrata, where we were again joined by about 25 members upstairs at the Grant County Courthouse. Here we heard a theme that we heard in each of our meetings: the WSBA's involvement with political and social issues has alienated many portions of the Bar, and if the WSBA continues to do this, it will continue to divide the Bar. We heard this feedback at each stop, not only from people who didn't agree with the positions taken but also from people who did agree with the stands the WSBA had taken. We also appreciated a comment from one of the attendees who, toward the end of our time together, noted that when politicians go on a listening tour it is generally to come explain to the people how things are, but he appreciated that we clearly had come to listen and learn.

From Ephrata we raced to Lyle (no, the speeding ticket didn't come on this leg, but it was the first of two late arrivals!)

I don't think of myself as a Washington lawyer, but as an Asotin lawyer.

where a group of eight members joined us at the Lyle Hotel on the shores of the Columbia River. One interesting aspect of our meeting here was that several of the people assembled were also licensed in Oregon, so we heard some feedback based on things that these members like and don't necessarily like about what they receive from the Oregon State Bar.

One person pointed out how in rural areas like Klickitat and Skamania counties, they practice old "Atticus Finch" law — on occasion bartering for their services, such as one attorney receiving horseshoes for her horse and another receiving leaded windows in exchange for services. The Ethics Line, CLE resources, and Casemaker were among the topics focused on in this meeting.

The next morning took us to South Bend (this is where the speeding ticket came in . . . note that GPS time estimates aren't always accurate!), where we joined eight local members and our District 3 governor, Brian Kelly, for lunch. We heard positive feedback about Bar News and the statewide Moderate Means Program during this discussion and also concern about the Limited License Legal Technician Rule that was pending before the Supreme Court at the time.

WSBA is the most friendly and cooperative of all the bars I'm a member of.
1. President Steve Crossland and Paula Littlewood in front of Spokane City Hall.

2. Members of the Hells Canyon Bar Association with President Crossland in Clarkston.

3. Members of the Grant County Bar Association greet President Crossland in Ephrata.

4. Chatting with Klickitat-Skamania Counties Bar Association members in Lyle.

5. Listening to members of the Pacific County Bar Association in South Bend.


7. The listening lunch with members at the WSBA offices in Seattle.

Listening Tour by the Numbers

Miles Driven: 947
Speeding Tickets: 1
Members Visited: 88
Cheapest Gas: $3.89 (Chimicum)
On-time Arrivals: 71%
Spilled Coffees: 2
Dead Batteries: 1
Counties Driven Through: 21
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- Co-Author, Defending DUIs in Washington State (Lexis Nexis Publishing)
- Litigator and counselor for clients from all walks of life including workers, executives, and professional athletes

Our meeting that evening was in Port Townsend, and we enjoyed conversation with 11 attorneys from that area. The WSBA’s Law Office Management Assistance Program (LOMAP) was highlighted by many, as it had been in all of our meetings, and we heard a need for the WSBA to be more supportive of county bars by providing information and support, in particular for these non-staffed county bars.

The next morning we headed back into Seattle for our final meeting on the Tour with those members who had been randomly selected from all those who had provided feedback to the president via email after the referendum passed. A dead battery that morning made it nip and tuck getting to the WSBA offices, but we managed an on-time arrival and heard a number of specific suggestions regarding discipline, the WSBA’s Guiding Principles, legal education, and law-student debt. Again, themes we had heard all around the state were reinforced through the feedback in this meeting.

Since my June column, it has been a month of actions and activities as the WSBA continues taking steps that move us closer to a transformed bar aimed at operating more effectively and efficiently while meeting the needs of members at all stages of their careers. The Board made many significant decisions at its May 22 special meeting and its regular meeting on June 8. I encourage you to visit the WSBA homepage and click on the "Shaping a New WSBA" box for more detailed information on all of these decisions. In addition, Editor Mike Heatherly summarizes the Board’s work in his column on page 36.

President Crossland and I were both energized by the Listening Tour and thank all of the members who took time out of their busy schedules to spend time with us and provide such quality input and feedback. We will be conveying the themes and suggestions that we heard with the Board of Governors and executive management staff at the Board’s retreat and meeting this month. Thank you for your continued engagement, and we remain committed to expanding and enhancing this important dialogue.

Paula Littlewood is the WSBA executive director and can be reached at paulal@wsba.org or 206-239-2120.

In the past, I have asked incoming Bar presidents to vary from the usual presidential columns and write about our members. My suggestion has been rewarded with nods, but so far little ink. Hats off to President Crossland who, after his year was “hijacked” by the referendum, was finally able to sit down and write about the members he has met in his presidential journey (see page 7). Likewise, I am putting my keyboard where my mouth is with this, the first installment of “Voices of the Bar.” I am calling lawyers and judges and reporting their thoughts. Some calls will be random, others to folks I think have something to bring to the table regarding our profession. It isn’t intended to be a poll balanced in any way, just an attempt to find what our colleagues are thinking about our great profession.

**TOM ROACH**

Tom Roach was my first call. Though Tom and I had not previously met, his brother Jerry and I are friends, having graduated from Gonzaga Law School together. The Roach family has been a foundation of the Tri-Cities legal community for decades. Tom, brother Pat, and nephew Brian practice in Pasco; Jerry is now the Franklin County District Court judge; and brother Dan has an office in Walla Walla. For about 20 years, Tom was the only full-time, private immigration law attorney in eastern Washington. Tom’s journey back to Pasco after law school led him to New York City (an attempt to work at the United Nations), Washington, D.C. (working for Alaska Senator Mike Gravel), and to Columbia University for a master’s in international affairs. His travels have taken him to 44 countries, and inspired his interest in immigration law. Tom’s son is a second-year student at Gonzaga Law School and will likely join Tom in his practice after graduation.

Tom described our profession this way: “We make sure society keeps moving forward. We are the conduit by which things that otherwise wouldn’t get done, get done. While everyone beats up on lawyers as a group, who is their first call to when a problem arises? Their lawyer.”

The WSBA has most value to Tom for its CLEs and enforcement of the ethical rules.

We make sure society keeps moving forward. We are the conduit by which things that otherwise wouldn’t get done, get done. While everyone beats up on lawyers as a group, who is their first call to when a problem arises? Their lawyer. — Tom Roach

**GENE ANNIS**

For a senior lawyer’s perspective, I called Gene Annis in Spokane. Gene

We make sure society keeps moving forward. We are the conduit by which things that otherwise wouldn’t get done, get done. While everyone beats up on lawyers as a group, who is their first call to when a problem arises? Their lawyer. — Tom Roach
Put your expectations aside. You will work long and hard, and often the work will be routine, not always exciting. Keep yourself physically and emotionally fit and constantly think about having balance in your life. — Gene Annis

Through this professional social group (Kitsap County Bar YLD), Brittany has a forum to discuss the issues of the day, finding that many lawyers battle the same personal and professional issues.

Brittany Cline

entered the WSBA in 1959 and just retired last December. In 1972, Gene and Scott Lukins merged firms to form the highly respected Lukins & Annis. Gene lived through an enormous evolution in the Bar. From charging mostly flat fees, to minimum fee schedules, to billing by the hour. Keeping track of time was, for Gene and his generation, “a trying transition.” When asked what advice he would give someone wanting to enter the profession, he said, “Put your expectations aside. You will work long and hard, and often the work will be routine, not always exciting. Keep yourself physically and emotionally fit and constantly think about having balance in your life.” Over the past 52 years, Gene has seen many lawyers’ lives get out of balance and end up distressed.

On the “state of the profession,” Gene indicated, on the positive side, there remains a lot of honor among lawyers. We are genuinely concerned about our clients and our ethics. It continues to be a great profession where lawyers think of their clients’ needs first. On the negative side, there is too much manipulation and posturing in discovery. Too much effort to dodge true answers. Too much time and money on unnecessary discovery.


Brittany Cline

My next call was just down the road in Poulsbo, to Brittany Cline, a young lawyer at Lineberry & Kenney. Brittany graduated from law school in Baltimore, after a career as a program manager at a nonprofit mental health organization. Her major practice components are bankruptcy, contracts and contract disputes, and stressed real estate resolution. Brittany feels her prior experience dealing with people under great stress has been helpful in her career as a lawyer. While she never thought about being a small-town lawyer, over her nearly two years in practice, she has come to value and enjoy the relationships within her firm and the community, and the daily differences her work holds. She is active in the Kitsap County Bar Young Lawyers Division and feels a great kinship with the other young lawyers she has met through the YLD. Through this professional social group, Brittany has a forum to discuss the issues of the day, finding that many lawyers battle the same personal and professional issues.

When asked if she would recommend the profession to someone, Brittany hesitated, due to the high cost of the education and the significant student loan debt a law degree creates. “It’s a great profession . . . if you can afford it.” (My words, not Brittany’s.)

JUDGE JIM RIEHL

For a judge’s thoughts, I called Jim Riehl. Jim and I have been acquainted since our days in the late 1970s on the local Evergreen Legal Services Board. Jim was a Poulsbo guy (his dad, Gene, was principal of North Kitsap High School) who attended Western Washington University, then law school at the University of San Diego. After graduation, Jim re-
turned to Kitsap County, practicing first with Maddock & Bell in Port Orchard, then with the Walgren firm in Bremerton. Jim has served on the Kitsap District Court Bench since 1983. He had the unique experience of asking to delay his first day of work so he could take a trip around the world, having won it on Hollywood Squares while in law school. From time to time, lawyers aware of this experience will elicit a knowing smile by saying, “Judge, we are going to recall witness Smith to block.”

Jim indicated he would encourage someone to go into law “in a second,” but to be pragmatic, too. Because of the huge student loan debt incurred, people must look at how they want to use their law degree and see if it makes economic sense.

In trials, Judge Riehl sometimes sees lawyers who see each is-

Young lawyers of my generation were interested in those who came before us; who they were; how we got here. Now lawyers don’t seem to have the same interest in the past. — Judge Jim Riehl

Judge Jim Riehl

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sue (tree), but not the forest. How does your case look and smell to a jury as a whole? He suggests lawyers bounce their case off their non-lawyer family members and friends. These groups can give great, broad input on how a jury will view the matter.

Finally, Jim expressed a concern that there has been a decline from his years as a young lawyer in the historical perspective of the Bar. “Young lawyers of my generation were interested in those who came before us; who they were; how we got here. Now lawyers don’t seem to have the same interest in the past.”

YVONNE KINOSHITA WARD

Yvonne Kinoshita Ward, an Auburn sole practitioner whose practice encompasses both civil and criminal cases, was my next call. I had not met Yvonne, but know her as a respected poster on the NW Trial Lawyers College email tree. From the minute we started discussing clients, lawyers, and our profession, her enthusiasm was apparent. She is a passionate advocate, describing how she “loves our profession,” and, like me, loves hanging around other lawyers. Yvonne described her colleagues as “hard-working,” “amazing,” and “so dedicated to their clients.” She would recommend that everyone interested in attending law school first serve an internship with a law office or agency to see what lawyers really do, to see if this is how you want to spend your professional life. Such an internship at a public defender’s office drove Yvonne toward the law.

As our conversation evolved, Yvonne spoke of her concern about the WSBA lobbying — that we have so many diverse positions within the profession that the group’s voice should be smaller in Olympia in advocating any particular legislative position. She is an advocate for a “minimalist” bar association.

Yvonne and I spoke of the great joy we find in our initial consultations with clients. Meeting someone new, hoping to help them ease a burden in their life. She said, “I am not a lawyer who pushes a fee agreement in front of a client at our first meeting. In most cases, we will be working together for two or three
... Yvonne spoke of her concern about the WSBA lobbying — that we have so many diverse positions within the profession that the group’s voice should be smaller in Olympia in advocating any particular legislative position. She is an advocate for a “minimalist” bar association.

YEARS. I want to make sure both of us feel comfortable in such a relationship before we sign any paperwork.” And with her passion and contagious enthusiasm, I am sure most of her new clients are.

BILL SPENCER
It was, as always, a joy to speak with Bill Spencer, a fabulous insurance defense lawyer at Murray Dunham & Murray in Seattle, and truly splendid fellow. I have tried a couple of cases against Bill and he is a terrific, ethical, persuasive, professional advocate. Bill attended WSU (and still bleeds crimson and gray), then UW Law School. After six years at the Snohomish County Prosecutor’s Office, Bill joined his present firm. He recently finished a three-week jury trial in which the plaintiff asked for $22 million — a big-stakes case tried by outstanding lawyers.

When I asked Bill what he would say to someone considering going to law school, he said, “I would tell them to keep your options open. The skills you learn as a lawyer can go in so many
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I would tell them to keep your options open. The skills you learn as a lawyer can go in so many different directions. Everyone won’t be a trial lawyer.

— Bill Spencer

I hope you enjoy these vignettes from our colleagues. I’ll keep writing until I run out of lawyers and judges, or the editor becomes convinced the space can be better utilized. Until then, don’t be surprised if your receptionist comes in and says, “There is a guy from Poulsbo who wants to speak with you about being a lawyer. Do you want to take the call?” We are, after all, in this great profession together.

Jeff Tolman is a former WSBA governor and a frequent Bar News contributor. He practices in Poulsbo and can be reached at tolman@tolmankirkclucas.com.

APPEALS

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Former Washington State Court of Appeals Commissioner
DAVID EASH and LOMAP: An Effective Office Makes for a Better Practice

David Eash was born and raised in Spokane. He received his undergraduate degree from the University of Washington and is a graduate of Gonzaga University School of Law. David's law firm is Ewing Anderson PS, a wide-ranging general practice firm with 12 lawyers. He joined the firm in 1977, shortly after the founding of the firm. David's practice has focused on business and commercial matters, with emphasis on creditor-debtor relations and remedies, including collections, construction claims, liens, work-outs, reorganizations, and extension agreements. David currently serves as president of the firm. He has served on the Board of Directors of the Bankruptcy Section of the Federal Bar of the Eastern District of Washington and is also a member of the Idaho State Bar.

The Law Office Management Assistance Program (LOMAP) was established in 1998 as a program of prevention that offers educational resources and services to members for improving the administrative aspects of a law firm. LOMAP performs “general maintenance reviews” of a practice by performing consultations on identified problems and procedures. LOMAP also provides reference materials, a lending library, a computer lab, and webinar teaching tools on a wide variety of subjects. The Program website at www.lomap.org offers resources for opening a practice, maintaining a practice, and winding down a practice.

Describe your involvement with the WSBA Law Office Management Assistance Program (LOMAP), and what prompted you to get involved.

I first became aware of LOMAP when I decided to find a place in the committee structure of WSBA to become more involved in the Bar. LOMAP seemed like it would be a practical and informative way of learning more about what the WSBA does.

What value have you personally received from LOMAP?

I have learned that the WSBA provides valuable services to its members that are designed to help lawyers manage their practices in ways that will allow them to succeed. These services have generally been offered at little cost to WSBA members. The LOMAP office is there to provide guidance in how best to make decisions about technology, trust account management, and other important aspects of keeping the back office efficient and purring away. I have found that Pete Roberts, who is the LOMAP practice management advisor, has a wealth of information and experience in law office management, and Pete is a resource I highly regard.

Why would you recommend that other lawyers get involved/participate in LOMAP?

As noted, LOMAP has been a service offered by the WSBA that truly helps lawyers do their job better. Without involvement, lawyers simply are not taking advantage of this service. It is a service every lawyer should be aware of.

Have you experienced benefits from LOMAP that you didn't expect?

Through LOMAP, I was exposed to the “solo- and small-practice” list serve. Even though I am with a firm, I am pleased to be a part of it and see how small-office lawyers are improving their practice through give and take. I am also impressed with how lawyers are willing to acknowledge to others that they do not know all the answers all the time, as well as the willingness of lawyers to share knowledge and resources.

What do you want other attorneys to know about LOMAP?

That it is a practical and informative service...
that can help them manage their practice.

What’s one thing people may not know about you, that you’re willing to share?
My practice has included work in Idaho since 1994. I am proud to be serving on the Board of Directors of the Concordia University Foundation of Portland, Oregon, because Concordia is about to open the first full three-year program law school in Boise.

What’s your greatest hope for the legal profession in 10 years?
I hope that every new generation of young lawyers continues to practice with the highest ethical standards and continues to recognize the benefits to their clients (and themselves) of treating the law as a collegial profession.

DOLLY HUNT and the WSBA Leadership Institute: From Fellow to Leader

Dolly Hunt is a deputy prosecuting attorney with the Pend Oreille County Prosecuting Attorney’s Office and a special deputy prosecuting attorney for the Lincoln County Prosecuting Attorney’s Office. She has been involved with the WSBA Leadership Institute (WLI) both as a fellow and as a member of the Advisory Board. Dolly, who calls Newport home, has been a member of the WSBA since 2003 and currently serves as chair of the WSBA Judicial Recommendation Committee.

The WLI is a leadership-development program created in 2004 by the WSBA Board of Governors at the behest of then-president Ron Ward. The program operates under the direction of an Advisory Board and provides eight training sessions to the participants (fellows) per year. WLI graduates have contributed to their communities throughout the state in numerous ways, including serving on boards of legal and community organizations, assuming leadership roles in the WSBA and other state legal organizations, and serving in leadership roles in national organizations.

Describe your involvement with the WLI, and what prompted you to get involved.
I am currently on the WLI Advisory Board. I am also a graduate from the 2008 class. Judge David Edwards of Okanogan County encouraged me to apply.

What value have you personally received from the WLI?
The first thing that came to mind when I thought about this question was connections. I have met so many wonderful people in this program who have truly inspired me. I have made connections with people I am happy to call my friends — people who have helped me learn more about myself and the world around me. I practice in Pend Oreille County, which can be isolating at times. The WLI has provided me the opportunity to connect with professionals from many different arenas all over the state and has helped me in my own professional development. I have met outstanding attorneys who are at the same stage of practice and are struggling with similar issues, and it has reminded me that I am not alone because of these connections.

Have you experienced benefits from the WLI that you didn’t expect?
Absolutely! I did not expect the incredible dedication that the Advisory Board members past and present have given to this program, as well as the dedication from speakers and faculty members who manage to find time each year to share their knowledge and experiences with the fellows. All of these wonderful people are busy effecting positive change all over the state, but they contribute their time and resources to inspire a future generation of leaders for our profession. I also did not expect the renewed sense of hope and dedication to the legal profession that came from my participation in the WLI. I am grateful to be part of such a wonderful program.

What’s your greatest hope for the legal profession in 10 years?
I hope that lawyers continue to be leaders in our communities . . . that we remain compassionate, professional, and just in our pursuits, and that we remain steadfast in maintaining respect for the legal field. — Dolly Hunt
Life often involves circuitous routes, and in Edith Bowler’s case, a path involving animal rescue wound its way into helping save people’s homes from being lost. Edith Bowler is a solo practitioner in Seattle whose areas of practice include civil litigation, contracts, elder law, and most recently, home foreclosure.

“I do a lot of work with animal rescue, including working with Dane Outreach to rescue Great Danes who need new homes,” says Bowler. “The last couple of years we got calls from people losing their homes who were unable to take their Danes to an apartment or rental house. I thought it would make more sense if I could find a way for the family to keep their home, rather than find a new home for their dog.”

After doing some web searching, Bowler discovered WSBA’s Home Foreclosure Legal Aid Project, and today she is helping families keep both their homes and their pets. The Home Foreclosure Legal Aid Project was created by the WSBA in 2009 as a response to the foreclosure crisis in our state. To date, more than 600 attorneys in Washington have provided pro bono representation to homeowners with legal problems related to foreclosure.

The project adds service capacity to existing legal aid programs by providing a pool of volunteer lawyers capable of providing representation to clients. WSBA partners with the Northwest Justice Project to provide these services statewide.

Bowler says she has personally received great value from participating. “You really do feel like you’ve made a big difference in people’s lives. Even if you can’t save their home, people appreciate that someone is listening. And you give them some kind of control in the process by standing up against the ‘bad guys’ [lenders ignoring homeowner’s rights].”

Other benefits Bowler has derived from her participation include learning more about an area of law she knew little about, meeting a lot of good people doing this work, and earning free CLE credits in the process. “There are so many more people who need help in this area than you can imagine,” says Bowler. “The ones you read about are just the tip of the iceberg.” She encourages fellow attorneys to find the time for pro bono work. “You make a difference, and end up getting as much as you give.”

When Bowler isn’t raising or rescuing Great Danes, or helping families in foreclosure, you might ask her to pull out photos from her motorcycle road-racing days in the early ’70s. She was pictured in a national publication, Motorcycle Weekly, as the first female road racer in the Pacific Northwest.

In looking toward the future, Bowler hopes there are more attorneys doing pro bono work 10 years from now. “Everybody should have the benefit of the laws written to protect them,” she says. “It’s very hard for many to access that protection without our help.”

For more information on WSBA’s public service programs, contact Catherine Brown at catherineb@wsba.org or 206-733-5905.
Mount Vernon lawyer Gail Smith has actively served on the WSBA Pro Bono and Legal Aid Committee (PBLAC), including a term as committee chair. While his comments specifically address service with PBLAC, other WSBA committees offer similar opportunities to get involved, meet other like-minded lawyers, and make a difference.

Describe your involvement with PBLAC and what prompted you to get involved.

I have had a lifetime commitment to the principle of equal justice for all. Upon graduation from college, I worked for a year as a community organizer before starting law school. That experience motivated me to go to law school with the objective of providing legal services to community-based organizations. I had, during law school, the tremendous opportunity as an intern to be trained by and work with attorneys at Seattle Legal Services who are now recognized as pillars of the legal services community. They helped provide me with structure, guidance, and a vision of what could be. They have been great mentors.

After going into private practice, I participated in the establishment of the Skagit County Volunteer Lawyer Program and have remained an active participant for more than 25 years. I viewed the WSBA Pro Bono and Legal Aid Committee as an opportunity to both learn new creative means of delivering legal services at the local level as well as the opportunity to participate in the pursuit of equal justice for all at the state level. I have not been disappointed in either regard. I have actively participated in the drafting of amendments to the RPC regarding pro bono activities, adoption of the in forma pauperis rule, and implementation of the Long Distance Lawyer Pilot Project. I have both worked on subcommittees and served as Committee chairperson.

What value have you personally received from PBLAC?

I have made great friendships with outstanding individuals who are deeply committed and dedicated to the concept of access to justice. I have had the opportunity to develop a greater understanding and appreciation of the interaction between various programs within the equal justice network. I have had the personal pleasure of participating in initiatives which I truly believe have made a difference.

PBLAC members uniformly have great enthusiasm and energy that they bring to the committee. Committee members also bring a wealth of personal experience in the delivery of legal services to indigent persons. The Committee has served as a “think tank” concerning creative means of encouraging greater pro bono participation. The Committee has also served as an instigator of pilot projects to test new concepts. I have been able to draw on this wealth of experience that other members have to learn concepts and procedures which I have been able to bring back to the local Volunteer Lawyer Program for implementation.

Why would you recommend that other lawyers get involved/participate in PBLAC?

Attorneys who become actively involved in PBLAC will enjoy great personal satisfaction in making a real difference in the pursuit of access to justice for all. The Committee addresses real and practical means of enhancing and encouraging pro bono participation. — Gail Smith
porate attorneys, as well as attorneys involved in the political system. The one thing that they all have in common, however, is a deep commitment to civil equal justice. The members recognize and embrace the idea that the ethical obligation to provide pro bono legal services is not restricted to the private practitioner; it is the responsibility of all attorneys.

Have you experienced benefits from PBLAC that you didn't expect?
I now have a network of friends from around the state of Washington with whom I share a common bond and commitment. That network has proven beneficial not only in the context of committee work, but in my private law practice. I have had the opportunity to call on these individuals for input and insight into local practice difference. (And I have also made use of their conference rooms when my practice takes me to their area!)

What do you want other attorneys to know about PBLAC?
The Pro Bono and Legal Aid Committee is a dynamic and goal-oriented committee. The Committee takes on several projects each year. There is the opportunity for members to participate in a number of the projects and to play a leadership role. There is a lot of work accomplished at the subcommittee or work group level between full Committee meetings.

PBLAC has, for the last few years, started the year off with a “brainstorming” session where creativity and grand objectives are encouraged. The Committee then refines some ideas and undertakes them as new projects. These are in addition to the ongoing efforts on projects commenced in earlier years.

The projects undertaken by the committee are often not achievable in only a year or two. Some have required many years before being brought to fruition. The end result is unquestionably worth the extensive effort made by succeeding committees.

What is one thing people may not know about you that you are willing to share?
I, at one time, contemplated a career in medical research.

What is your greatest hope for the legal profession in 10 years?
It is my sincere hope that the legal profession will find the means and mechanisms by which the slogan “Access to Justice for All” becomes a reality. This will be accomplished only if, as the Board of Governors has suggested, the members of the Bar incorporate into their professional lives a universal “culture of service.” I would hope that the ethical obligation held by attorneys to provide legal services to indigent individuals becomes universally recognized and accepted not only as an aspirational goal, but as a personal commitment.

There are, in our state, a great number of attorneys who have a deep commitment to provide pro bono legal services to indigent individuals. Many of these attorneys toil in anonymity and seek no recognition for their efforts. They are committed instead simply to doing the right thing. The number and dedication of these attorneys is overwhelming. I hope that ultimately all members of the legal profession embrace this principle and avail themselves of the opportunity to perform pro bono services.

The events of September 11th inspired me to get more involved with my community. I regret that it took an event so tragic to get me and others to understand what a difference we can make when we devote a little bit of our own time to serving the community.

— Jenni Frere Volk

JENNI FRERE VOLK AND FORD CLARY — Serving Those Who Serve the Community with the First Responder Will Clinic Program

Jenni Frere Volk and Ford Clary are co-chairs of the First Responder Will Clinic Program, run by the Washington Young Lawyers Division. At the will clinics, volunteer attorneys provide free estate-planning advice and documents, such as wills, powers of attorney, and healthcare directives, to first responders. Jenni and Ford introduced the program to Washington in 2006, and to date, nearly 1,200 officers and their spouses/registered domestic partners have been assisted at 27 clinics held throughout the state.

Jenni Frere Volk has been a member of the WSBA since 2004. Originally from Bellingham, Jenni now makes her home in Seattle and practices at the Volk Law Firm PLLC. She is passionate about public service, and in addition to the First Responder Will Clinic Program, has been involved with the American Cancer Society and Big Brothers Big Sisters.

After 9/11, I felt like I needed to personally contribute something positive to the world. I was in awe, as many were, of the heroism shown by police and firefighters... — Ford Clary
Ford Clary has been a member of the WSBA since 2005. Ford is from Montana originally, but grew up on Bainbridge Island. He now lives in Seattle where he is a trust officer for Merrill Lynch Trust Company. Ford enjoys playing and watching all kinds of sports in his free time.

Describe what prompted you to get the First Responder Will Clinics started and your ongoing involvement.
Ford: After 9/11, I felt like I needed to personally contribute something positive to the world. I was in awe, as many were, of the heroism shown by police and firefighters at that time. I thought there were many estate-planning attorneys who felt the same, but did not know how to help. I believed this would be the perfect opportunity to connect people who wanted to help with people who could use the help. I also wanted to increase the opportunities for law students to get good experience in estate planning.

After the first clinic, I was encouraged that it could be successful and wanted to see how we could make it better. It is very satisfying to help people out who do so much for the community and don’t often get acknowledged for it. Now we have put so much into the will clinics that I just want to make sure it continues for everyone’s sake. Our hope is that everyone involved gets something out of it, and I think that has been the case so far.

Jenni: The events of September 11th inspired me to get more involved with my community. I regret that it took an event so tragic to get me and others to understand what a difference we can make when we devote a little bit of our own time to serving the community. When Ford approached me with an idea to do free estate planning for our local first responders as a way to thank them for their devotion to our local communities, I immediately jumped on board. About a year later, we held our first Will Clinic.

What value have you personally received from the Will Clinics?
Jenni & Ford: Feeling that we have made a contribution to the greater good; showing gratitude for the opportunities we’ve had in our lives by taking advantage of them for the betterment of others.

Why would you recommend that other lawyers get involved with or participate in the Will Clinics?
Jenni & Ford: It’s a fun way to connect with your community and other lawyers, and to rekindle your passion for why you wanted to do this kind of work. The amount of time that an attor-
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Have you experienced benefits from the Will Clinics that you didn’t expect?

Jenni and Ford: It has been incredibly humbling to see the dedication of our volunteers over and over again. When we created the clinic, we had no idea if anyone else would want to participate, but after over 20 clinics (27, to be exact!), we are still in awe of the generosity, selflessness, and commitment of our volunteers. They are the stars of our program. Many volunteers leave the clinics asking what else they can do to help and when is the next opportunity to volunteer. The clinic’s mission inspires them, and they continue to inspire us. It’s a win-win. And it’s the reason the Will Clinic Program is still successful after so many years.

What do you want other attorneys to know about the Will Clinics?

Ford and Jenni: That the service we provide is truly important to the police and firefighters, and they are very grateful.

What’s one thing people may not know about you, that you’re willing to share?

Ford: I am a third-generation lawyer.
Jenni: I am a first-generation lawyer (ha, ha). Also, I coach a high school gymnastics team (go Beavers!).

What’s your greatest hope for the legal profession in 10 years?

Ford: That all the classic virtues, including civility, community involvement, and fairness, make a roaring comeback.
Jenni: My greatest hope is that the legal community begins to place more emphasis on public service within the workplace. I challenge law firms to recognize their attorneys who contribute to public-service projects and allow them to receive the appropriate billable hours for donating their services. ☺

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Author, Attorney Fees in Washington

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BY JOHN P. AHLERS AND LINDSAY K. TAFT

This is the second installment of a two-part article addressing the legal issues associated with construction contract written claim notice requirements. This first article, which appeared in the May 2012 Bar News, analyzed the pertinent legal precedent pursuant to which construction contract written notice requirements are analyzed. This second installment deals with the legal theories employed to get around the harsh forfeiture consequences of a contractor’s failure to comply with the strict notice requirements, as well as a call for a return to the “prejudice” standard, which will equitably resolve contract notice questions in the future.

In the May 2012 Bar News, we elaborated on the State Supreme Court’s MMJ1 decision and how that ruling had influenced construction contract drafters to modify the written claim requirements to take advantage of what we termed the “no-prejudice rule” to defeat change order requests on purely procedural grounds irrespective of the merits of the contractor’s claim. For example, Bignold2
remains an impediment to the arbitrary enforcement of forfeiture if notice technicalities are not complied with to the letter. We also explained that the Supreme Court precedent of American Safety serves to further exacerbate the contractor's chances of negotiating the intricacies of what have become exceedingly one-sided written notice requirements. In this piece, we provide the reader with further authorities and arguments which lessen the impact of and perhaps counteract the MMJ ruling. We point out that, despite the MMJ roadmap which invites owners to include forfeiture clauses, the biggest public-works owners in the state have declined that invitation. The federal government, the Department of Enterprise Services (formerly General Administration), the University of Washington, and the Washington Department of Transportation mandate that a contractor only forfeits its claim for failure to strictly comply with the notice provisions if the owner was prejudiced by the contractor's late or defective notice. The owner and the contractor are protected because "prejudice" determines whether the claim is barred, not wooden adherence to procedural compliance that renders equity meaningless. These owners reason that if they keep their contract provisions balanced and fair, they will attract more contractors to bid on their projects, thus driving the cost of public works down and saving money on unnecessary administrative expenses in dealing with the procedural paperwork nightmare that strict adherence to written notice requirements creates. Before examining these owners' responses to MMJ, however, we first pick up where we left off last month with legal precedent that may serve as an antidote to the severe impact of MMJ.

The Prevention Doctrine and Implied Obligations

In light of the above potential unjust result, does the contractor have any defense? One such avenue may be found with the application of the "Prevention Doctrine." The Prevention Doctrine, which has been adopted in Washington, precludes a party to a contract from causing the failure of a condition in a contract and then later benefiting from that failure. For example, if an event or circumstance is discovered that will result in additional work or contract time and the owner is on notice of the event, it is up to the owner — not the contractor — to determine how the contractor is to proceed. If the owner delays in providing the contractor with such instruction or the extent of the event is still being determined, how can the contractor possibly provide the owner with a detailed breakdown of the contractor's claim and increase in contract cost or time? Under MMJ, presumably, the contractor's failure to comply with the notice provision would render the contractor's claim forfeited.

Accordingly, if a design deficiency is discovered during the project that results in a substantial change to the contractor's scope of work, yet the owner refuses to timely address the deficiency or respond to the contractor's requests for information, it is impossible for the contractor to fully comply with the notice (claims submission) requirements. Under the Prevention Doctrine, the owner's failure to perform a condition precedent (providing the required information for the contractor to properly analyze its claim) to the contractor's fulfillment of the notice requirements excuses any of the contractor's procedural shortcomings. The owner cannot substantially contribute to the contractor's inability to comply and then, after-the-fact, rely on the notice provision and MMJ to deny compensation.

Further, this result comports with the implied duty to not hinder or delay the contractor, an implied obligation relied on in Bignold:

In every construction contract there is an implied term that the owner or person for whom the work is being done will not hinder or delay the contractor, and for such delays, the contractor may recover additional compensation.

The same duty has been stated affirmatively as an implied obligation of both contract parties to cooperate with each other. The Washington State Supreme Court has espoused the rule that the "person for whom the work is contracted to be done... will in all ways facilitate the performance of the work" of the contractors. Thus, it follows that to the extent the owner fails to timely and cooperatively provide the contractor the necessary information (direction and design clarification) to appropriately comply with the contract notice requirements, the owner has breached its implied obligation, providing the contractor recourse under well-settled Washington legal precedent.

Similarly, where the owner's original design is deficient and that design deficiency prompts numerous, frequent, and pervasive changes to the project such that the contractor's ability to comply with the notice provisions is made practically impossible, application of the Prevention Doctrine suggests that the owner cannot create a condition (the multiplicity of changes) and then rely on the contract's written notice clause (another condition) to jettison (forfeit) an otherwise meritorious contractor claim.

Other Washington Precedent Supports the "Prejudice" Rule's Abhorrence of a Forfeit

Requiring strict compliance with a construction contract's notice, protest, and claims submission procedures — without consideration of any prejudice the owner may or may not have suffered as a result — elevates considerations of the form of the contractor's submittal over the substance of the underlying construction issues on the merits. Such considerations are contrary to the Washington courts' approach in other aspects of the law. In the highly analogous context of enforcement of notice provisions in insurance policies, the courts have consistently maintained an insured's compliance with notice of claims and cooperation clauses as a defense to coverage only if the insurer was actually prejudiced by the insured's breach. At issue in Liberty Mutual v. Tripp, for example, was an insured's failure to give its underinsured motorist (UIM) carrier notice of a tentative settlement with the liability carrier and the impact the settlement would have had on reducing the UIM carrier's obligation to pay benefits. The Court held that the insurer could realize a windfall if it were allowed to completely deny the insured's UIM coverage, and reasoned that the insurer should be permitted to escape paying UIM benefits only in amounts "equal to the actual prejudice" it suffered on account of the insured's breach of the notice provision in the insurance contract. The Court rejected the insurer's form-over-substance argument and used a prejudice analysis to put the insured's breach of the policy's notice requirement in its proper perspective.

Justice Madsen, the primary author of the majority's opinion in MMJ, emphasized in a recent dissent that, where the principal on a performance bond failed to provide timely notice, under well-established Washington law "even inadequate notice of the principal's default relieves its surety of liability only to the
extent of any resulting prejudice.”15 Considerations of prejudice, substance over form, and avoiding forfeitures of a party’s substantive rights are also found in other decisions by Washington courts.16 These same policy considerations are equally applicable to construction contracts and should not have been overlooked by the Court in MMJ.

Steps Toward the Prejudice Standard
Irrespective of the potential defenses to the no-prejudice rule, the better solution is nevertheless a return to the prejudice standard as the general rule rather than the exception. As predicted, after the MMJ case was published, owners raced to “tighten up” contract written notice procedures to include forfeiture clauses as the punishment for tardy notice.18 In some instances, this enthusiastic rewriting process resulted in an almost incomprehensible series of written notice and claim requirements that are virtually impossible to comply with. In the heat of this “arms race,” surprisingly, some of the largest procurers of construction work in Washington have acknowledged the unjust outcome (and increased long-term costs) resulting from the “no-prejudice” rule and have declined to incorporate the forfeiture language into their construction contracts, instead advocating for the more equitable result of the prejudice rule.

Washington State Department of Enterprise Services (DES): Prejudice Standard
For 2011, the DES (formerly the General Administration) construction budget was $586.4 million.19 Its contract notice provision requires that the contractor give DES written notice of an event giving rise to a claim within seven days of the event’s occurrence but qualifies its forfeiture provision with the prejudice standard:

Failure to give such written notice shall, to the extent the Owner’s interests are prejudiced, constitute a waiver of Contractor’s right to an equitable adjustment (emphasis added).20

DES, an entity with a half-billion dollars’ worth of construction work on its books, has opted for a fair standard (the prejudice rule) and will forfeit a contractor’s claim only to the extent that the lack of written notice prejudices the owner’s interest in some manner. Although the MMJ decision provided DES with a road map of how to craft its specifications and take advantage of a contractor’s lack of written notice, DES resisted the temptation to exploit this short-sighted opportunity. DES’s refusal to jump on the MMJ bandwagon was not born from some sort of altruism but instead is based on sound economic consideration. By keeping its contract provisions evenhanded, DES reasons that it will attract more bidders on its projects and will not spend money on unnecessary administrative expenses associated with managing the paperwork nightmare caused by harsh, unreasonable notice provisions.

University of Washington: Prejudice Standard
The 2011 construction budget for the University of Washington, which also uses DES’s general conditions for its construction work, was $106 million.21 Just as with the DES, unless there is demonstrated prejudice to the University of Washington, a contractor’s right to an equitable adjustment is not forfeited simply because the contractor failed to comply with the written notice requirements. The economic long-term consequences of forfeiture notice clauses simply do not justify the short-term advantage of defeating a contractor’s
claim on procedural notice grounds.

**Federal Government: Prejudice Standard**

The federal government’s 2011 construction budget for the Corps of Engineers, Department of Defense, and FHWA combined was $22.6 billion.\(^2\) Remarkably, the largest purchaser of construction services in the world does not resort to the expeditious but unfair practice of simply imposing forfeiture on a contractor’s claim in the event of tardy notice (on federal contracts, strict enforcement of written notice requirements depends on the government’s ability to show it was prejudiced by the contractor’s tardy notice).\(^2\) Federal courts will simply take late notice or nonspecific cost estimates into account when evaluating a claim’s merit, only deeming a contractor’s claim forfeited for lack of notice if the federal government can show it was prejudiced by the contractor’s tardy notice.

**Washington State Department of Transportation**

Finally, the Washington State Department of Transportation (WSDOT) construction budget for 2009–2011 was $5.4 billion.\(^2\) WSDOT, however, takes an interesting approach to the forfeiture issue. Its standard specifications outwardly indicate that failure to comply with the notice requirements results in a forfeiture of the contractor’s claim (see WSDOT Standard Specification 1-09.11(2) 2010). The notice provisions in the **MMJ** case were based on the WSDOT specifications. WSDOT officials, however, are quick to point out that WSDOT has never strictly enforced the forfeiture clause in the event of a contractor’s failure to comply with the written notice requirements of the contract.\(^2\) In other words, although WSDOT has the ability, it does not typically use the contract provision as a defense to an otherwise valid contractor’s claim.

Combined, DES, University of Washington, and WSDOT perform a significant percentage of public construction work in Washington state. These giants (who frugally administer public projects) have recognized that reasonableness and leniency are better policies than strictness and irrationality, deciding not to fall into the **MMJ** trap of strictly construing the notice provisions when no purpose for enforcement of the forfeiture provision is served. By employing the prejudice standard, these public owners avoid subjecting...
contractors to harsh results and forfeiture and themselves to higher administrative costs and bid prices, yet continue to preserve the underlying purpose of the notice provisions. If the owner can show that it was prejudiced as a result of the contractor’s late notice, the contractor will lose its claim and the owner remains protected. “Prejudice” determines whether the claim is barred, not some wooden adherence to procedural compliance that renders equity meaningless.

In light of these sophisticated owners’ refusal to employ forfeiture unless prejudiced by the lack of notice, the question then arises: why do port districts, school districts, counties, and cities cling so jealously to harsh notice clauses when these provisions ultimately increase the cost of public projects? As previously noted, contractors have no opportunity to “negotiate” a public contract before it is bid. In these harsh economic times, it is particularly disturbing that public owners would insert overreaching clauses in projects funded by taxpayers (contractors pay taxes, too) to take advantage of desperate contractors who overlook or misinterpret the onerous and often impossible to satisfy notice requirements. Particularly in those instances where public owners are not hurt (prejudiced) by the tardy notice, such forfeiture is punitive and against the evenhanded treatment we expect of our public institutions. It further results in the unjust enrichment of our public bodies in the short-term and higher costs for all in the long run.

Conclusion
When changes arise on public projects, it is only appropriate that contractors be fairly and equitably compensated for the extra work. For projects with harsh notice provisions in place, should a contractor miss the notice deadline, the knee-jerk reaction from an owner’s representative is to forfeit the claim resulting in a windfall to the owner who ultimately receives the contractor’s work for free. Margins are already tight, and the inevitable reaction from the contractor will be to engage in a paperwork battle on the project to the detriment of the quality of the work performed as well as increasing costs for taxpayers/owners. In turn, owner representatives confident in the strength of their contract clauses fight notice issues to the overall detriment of the construction project. The issue, at a huge cost to society, eventually ends up in court, and
potentially the Supreme Court, where resources are further wasted due to the intransigence of each side’s legal position.

Arguably, such harsh claim notice clauses cause more litigation and unnecessary administration instead of resolving disputes on their merits. Thus, taxpayers lose in two ways: first, projects are more expensive to administer; second, bidders who submit prices on projects with forfeiture clauses increase their prices to account for compliance with exacting written notice and complicated claim provisions — another huge administrative cost. In the end, everyone loses. The owners of the largest construction projects in the state and the nation have accepted the inherent fairness, justice, and efficiency of the prejudice rule and realized that forfeiture comes with a high societal price. It is time for courts, legislators, and, more importantly, other owners to jump on the same bandwagon and put societal resources into the construction of quality projects — not into the administration and resolution of unnecessary disputes.

John P. Ahlers is a founding partner of Ahlers & Cressman PLLC, a firm dedicated to resolution of construction disputes. Lindsay K. Taft is an associate at Ahlers & Cressman PLLC. Ahlers and Taft can be reached at www.ac-lawyers.com, and both are frequent contributors to the Construction Law Blog at www.washingtonconstructionlaw.com.

NOTES
2. C.W. Bignold v. King County, 65 Wn.2d 817, 399 P.2d 611, 614 (1965).
5. See, e.g., Weber Const., Inc. v. County of Spokane, 124 Wn. App. 29, 98 P.3d 60 (2004) (holding that the County waived strict compliance when it failed to provide the contractor requested design information that was necessary to calculating the claim amount).
12. Id.
13. Id. at 17.
14. The Court also stated it was the insurer’s burden to prove prejudice and that prejudice was an issue of fact, which can seldom be established as a matter of law. Id. at 18.
16. See Duskin v. Carlton, 136 Wn.2d 550, 965 P.2d 611 (1998) (Department of Labor and Industries form letters constituted a proper demand to assign a worker’s compensation action to the Department. Notice statutes in civil cases should fairly and sufficiently apprise those who may be affected of the nature and character of an action. Unless someone is actually misled or confused, notice is deemed adequate. The gravamen of a legal demand is its notice providing function.); State v. Starhoff, 133 Wn.2d 523, 946 P.2d 783 (1997) (In the absence of actual prejudice, incorrect notice from the Department of Licensing did not invalidate revocation of three defendants’ licenses); Real v. City of Seattle, 134 Wn.2d 769, 954 P.2d 237 (1998) (holding amendment to complaint to name the real party in interest after the statute of limitations had expired permitted where there is no prejudice to the defendant; the purpose of CR 15(e) is to permit amendment provided the defendant is not prejudiced and has notice); Clark v. Pacific Corp., 116 Wn.2d 804, 809 P.2d 176 (1991) (holding failure to comply with mandatory notice provisions in Worker’s Compensation Act did not bar subsequent action by claimant when the purposes of the notice requirements met by alternative means and Department was not prejudiced), overruled on other grounds Gilbert H. Moon Co. v. Island Steel Erectors, Inc., 128 Wn.2d 745, 761, 912 P.2d 472 (1996).
20. See General Conditions § 7.02 A (a)-(b).
23. “The delay in assertion of a claim by a contractor inevitably causes some degree of prejudice to the government; however, the existence of prejudice resulting from the dilatory notice usually serves to increase the burden of persuasion facing the contractor asserting its claim for equitable adjustments rather than to bar its claim entirely.” Mingus Constructors, Inc. v. United States (emphasizing added), 812 F.2d 1387, 1392 (1987).
25. Interview with WSDOT officials.
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April, May, and June 2012 WSBA Board of Governors Meetings

BY MICHAEL HEATHERLY

April 27, 2012 — Tulalip

The WSBA Board of Governors began the process of reducing the budget for fiscal year 2013, and in separate action reviewed the findings from a comprehensive demographic and social study of the Bar membership. The Board also approved a proposal that would standardize family law procedure into a set of special civil rules, and again debated whether to remove admonitions as an option in disciplinary cases.

2013 Budget

In response to this year’s membership referendum to modify the annual active-member license fee from $450 to $325, the Board has begun cutting expenses throughout the budget. A license fee reduction of this amount will result in about a 28 percent shortfall in active license fee revenue — well over $3 million — compared to recent years.

At the April meeting, the Board voted to use $1 million of unrestricted reserves to offset expenses in 2013. The Board may take similar steps over the following few years, depending on how other factors affect the budget in the meantime. The Board has not yet set the license fee for 2014, but the assumption is that the Board will continue the $325 fee designated by the referendum for the foreseeable future.

The Board voted unanimously to reaffirm its commitment to the priorities stated in the WSBA Mission, Guiding Principles, and 2011–2013 Strategic Goals. At the same time, the Board, the Budget and Audit Committee, and the WSBA staff immediately undertook a review of all WSBA operations to determine how expenditures could be cut sufficiently to balance the budget for 2013.

The Board approved a recommendation to find $100,000 in savings within its own expenses as well as $200,000 in savings from staff-related costs. The BOG approved additional cost-reduction measures, including elimination of support and staffing of the annual Access to Justice/Bar Leaders Conference after the 2012 event.

For more information on the budget process and related issues, see the joint President and Executive’s Report in the June 2012 Bar News (pp. 7–8), and visit the WSBA website at www.wsba.org. Updated information regarding the budget and other changes is available by clicking on the “Shaping a New WSBA” box on the homepage. In addition, more news about the budget from subsequent meetings of the Board appears below.

Membership Study

The Board received the findings of a WSBA membership study conducted from September 2011 through February 2012 by TrueBearing LLC, a research and evaluation firm. The study (which was commissioned before the license fee issue arose) was designed to gain an accurate picture of the profession’s composition, as well as to understand the
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reasons why attorneys leave the profession. Results of the study were intended to help direct the WSBA leadership and others involved in assisting those serving in the profession.

The complete results of the study, as well as an executive summary, are available by clicking on the box “Membership Study Results” on the homepage of the WSBA website. Besides demographic information, the results include data and comments from WSBA members regarding their attitudes toward the profession and the Bar.

Among the most noteworthy of the results were the following:

- A total of 56 percent of WSBA members is projected to retire, change professions, or significantly reduce their practices within the next five years. Board members and WSBA staff debated how many lawyers considering these options will indeed follow through when the time comes to make a decision.
- Of all variables studied, job satisfaction has the strongest impact on career stability.
- 59 percent of WSBA members are located in the Puget Sound area (from Pierce County north to the U.S./Canada border, west of the Cascades, and excluding the Olympic Peninsula). 13 percent are on the Peninsula or in Southwest Washington, 3 percent are in Central Washington, 7 percent are in Eastern Washington, and 18 percent are outside the state.
- The average number of years of experience among WSBA members is 19.
- 21 percent of WSBA members are over age 60. Of all WSBA members, 45 percent are women, 12 percent are members of racial minorities, 9 percent are members of sexual orientation minorities, and 21 percent have disabilities or impairments.

The Board and WSBA staff are expected to make significant use of the study in deciding on programs and policies in coming years.

Policy on Admonitions

The Board continued a long-running debate regarding admonitions, the lowest level of public disciplinary action in the lawyer discipline system. In discussing proposed revisions to the Rules for Enforcement of Lawyer Conduct, several Board members have suggested the possible elimination of admonitions. They argue that although admonitions are imposed for relatively minor disciplinary violations, the public tends to see little distinction between admonitions and the more severe forms of discipline. Also, because of the pervasiveness and persistency of Internet data, records of admonitions may still haunt lawyers on search engines long after the matter was resolved with the Bar.

On the other hand, the WSBA chief disciplinary counsel and the chief hearing officer urged the Board to retain admonitions as a disciplinary option because they can be helpful in resolving low-level disciplinary cases, and because admonitions are included in the American Bar Association’s model rules and standards for lawyer discipline systems. The Board decided not to take action on the proposed rules at the April meeting. Instead, a task force that has been working on the ELC rules revision will draft a version for the Board’s consid-
eration that will include a non-public form of admonition.

**Family Law Civil Rules**
The Board approved submission of a set of proposed Family Law Civil Rules to the Supreme Court. The rules, drafted over several years by the WSBA Local Rules Task Force, would combine the portions of the civil rules that pertain specifically to family law into one section. Meanwhile, the rules would apply statewide, replacing the patchwork of local rules created by each county to handle family law litigation in various different ways.

The text of the proposed rules is available online at http://bit.ly/KDH8Qb.

**May 22, 2012 — Seattle (special meeting)**
The BOG conducted a special meeting primarily to continue work on addressing the impact of the license-fee reduction for fiscal year 2013. The Board took action on several proposals, some of the more significant of which are as follows:

- **New/Young Lawyers** — The Board voted to convert the Washington Young Lawyers Division into a standing WSBA committee. Switching from a division to a committee format will require less administrative support and is expected to result in an annual savings of approximately $125,000.

  The WYLD had been the only WSBA entity holding the status of a division, and it has its own governing body, a board of trustees. Even before the current budget issue arose, the system sometimes caused tension between the WYLD and the rest of the WSBA, as it created a two-tiered leadership scheme regarding new/young lawyers’ activities.

  In the weeks leading up to the Board vote on the matter, many current and past WYLD members and supporters expressed concern that the change might weaken new/young lawyers’ presence in the WSBA. At the meeting, Board members were careful to reaffirm their commitment to supporting the new/young lawyers, and several expressed their opinion that the new structure will improve relations by making the Board directly responsible to new/young lawyers, with no separate governing body in between.

- **Casemaker** — The Board voted to retain Casemaker, the online legal research tool available on the WSBA website, as a free member benefit rather than instituting a user fee.

- **Volunteer Travel Reimbursement** — The Board voted to maintain reimbursement of travel expenses for committee and board volunteers. The Board may, however, consider revising expense policies to increase fiscal prudence.

- **Lawyer Services** — The Board voted to maintain existing funding levels in WSBA Lawyer Services while also moving toward a more broad-based “outreach” model for providing services to members.

- **Practice of Law Board** — The Board voted to seek Court authority to discontinue WSBA funding of the Practice of Law Board, which had been created by the Supreme Court but administered by the Bar.

- **Communications** — The Board voted to continue placing a high priority on
More details about these and other budget actions taken by the Board of Governors are available on the WSBA website.

June 8, 2012 — Yakima

At its regular June meeting, the Board elected the WSBA president-elect/president for 2013–2014, as well as a new Young Lawyers representative on the Board. The governors also approved restructuring of the Board to accommodate the state’s new 10th Congressional District, and got a preliminary glimpse of the 2013 budget, which will be further adjusted at the July meeting and voted upon at the final meeting of the fiscal year on September 20–21 in Seattle.

President-Elect/President

The Board elected Tacoma lawyer Patrick Palace to serve as president-elect for fiscal 2013 and president for fiscal 2014, succeeding Michele Radosevich, who will take office as president in September. Palace was unopposed for the position. He was a member of the Board in 2008–2011 and also served as WSBA treasurer during the last year of his term.

Palace has been a WSBA member since 1992 and is the owner of Palace Law Offices P.S.C., which practices primarily in the areas of workers’ compensation, civil rights, Social Security, and personal injury. He opposed the WSBA license-fee reduction referendum but told the Board he spent considerable time communicating with referendum proponents and believes he can help unite Bar members from both sides of the issue. Palace said a key question during his presidency will be, “How is it that we reunite our tribe?”

Rather than promoting a particular personal “vision” for the WSBA, Palace identified five characteristics he believes the organization should try to embody. The WSBA, he said, should 1) be member-centric, 2) define its own success in terms of the success of the members, 3) instill a feeling of “us” rather than “us versus them” between the association staff and the members, 4) strive for 100 percent participation among members, and 5) be relevant and necessary to members.
Young Lawyers Representative
The Board elected Spokane Lawyer Robin L. Haynes to fill the Young Lawyers (at-large) seat on the Board through 2015. In a secret ballot, she defeated Seattle lawyer Timothy T. Parker for the position. Haynes is a partner with the firm of Reed & Giesa, P.S., practicing primarily in the area of commercial litigation. She has been a member of the Washington Young Lawyers Division Board of Trustees since 2010. Haynes told the Board that while not all members of the Young Lawyers leadership approved of the conversion of the Young Lawyers organization from a division to a committee (see May report above), most are now reignited in their interest to carry the organization forward.

10th Congressional Seat
Following up on an issue last discussed at the March 2012 meeting, the Board voted to reduce the number of Board seats from the 7th Congressional District from three to two and reallocate the third seat to the newly created 10th Congressional District. By law, the Board must include at least one representative from each congressional district. The Board rejected possible options to the proposal, which included seeking legislative authority to expand the Board or eliminating one of the three at-large positions (one representing the Young Lawyers, and two representing historically under-represented groups). Both options had drawn significant opposition.

The first election of a 10th District representative will take place next year, when the term of the 7th District-Central representative expires. In the meantime, the WSBA staff will study the makeup of the redrawn 7th District and recommend how best to re-divide the district to obtain proper geographic balance between its two remaining seats.

2013 Budget Preview
After voting on several 2013 budget-cutting matters in April and May, the Board took no budget action at the June meeting. However, further action will be taken at the July meeting, at which time a full draft of the budget is to be available. The final budget must be approved at the last meeting of the fiscal year, in September.

At the June meeting, the WSBA staff presented a preview of the 2013 budget, based in part on assumptions arising from the Board’s cost-reduction efforts to date, necessitated by the license fee referendum. Additional cost reductions likely will be made at the remaining meetings. The draft shows a projected reduction of $1,169,106 in overall general fund expenditures. Of that figure, $734,259 is from savings in salaries, benefits, and overhead. Much of the savings comes from elimination or restructuring of numerous WSBA programs, which in turn allows for staff attrition (retirements and other voluntary departures) as well as layoffs.

Michael Heatherly is the Bar News editor and can be reached at barnewseditor@wsba.org or 360-312-5156. For more information on the Board of Governors and Board meetings, see www.wsba.org/bog. For more information on issues addressed by the Board, see NewsFlash at www.wsba.org/newsflash.
Family Law Information Alert — Federal Office of Child Support Enforcement

Effective June 1, 2012, all income withholding orders (IWOs) requiring an employer to withhold payments, including those issued by court and private attorneys, must direct payments to the State Disbursement Unit (SDU).

What is an IWO?
Commonly known as an income withholding order, the Income Withholding for Support (IWO) is the Office of Management and Budget-approved standard form that must be used by all entities to direct employers to withhold income for child support payments.

What is the SDU?
The State Disbursement Unit (SDU) is a centralized collection and disbursement unit for child support collections from employers, income withholders, and others. An SDU is responsible for:
- Receiving and distributing all payments.
- Accurately identifying payments.
- Promptly disbursing payments to custodial parents.
- Furnishing payment records to any parent or to the court.

Why were standard forms and payment directions developed?
Under provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Congress required the use of a standard withholding process to increase child support collections for all families, promote self-sufficiency for low-income families, and reduce the burden on employers. States were also required to establish and maintain SDUs to receive child support payments from employers and other sources for all IV-D cases and for all non-IV-D cases with support orders initially issued on or after January 1, 1994, payable through income withholding.

Are there exceptions to income withholding?
Yes, § 466(a)(8)(B)(i) of the Social Security Act allows two exceptions, as stated below:

- The income of a noncustodial parent shall be subject to withholding, regardless of whether support payments by such parent are in arrears, on the effective date of the order; except that such income shall not be subject to withholding under this clause in any case where (I) one of the parties demonstrates, and the court (or administrative process) finds, that there is good cause not to require immediate income withholding; or (II) a written agreement is reached between both parties which provides for an alternative arrangement.

How is income withholding ordered?
When entering a child support order, judicial and administrative officials must enter an IWO. Some states use the following language in the child support order: “Reference is hereby made to a separate income withholding order, the entry of which is required of this (Court) (Agency) by law and specifically incorporated herein as part of this (Court’s) (Agency’s) order in this case.”

Is use of the OMB-approved IWO required?
The IWO form has been required since August 22, 1996, for orders issued or modified on or after January 1, 1994. Effective June 1, 2012, IWOs not using the OMB-approved form will be returned to the sender by employers. All IWOs that order an employer to withhold payments, including those issued by court and private attorneys, must direct payments to the SDU.

All entities or individuals authorized under state law to issue income withholding orders to employers must use the OMB-approved IWO form and direct payments to the SDU.

The revised IWO form with accompanying instructions and a revised process flow was published on May 16, 2011. (See Action Transmittal 11-05.) A fillable version of the form is available at www.acf.hhs.gov/programs/cse/forms/OMB-0970-0154.pdf.

National Center for State Courts (NCSC)
The NCSC has recognized the issue and considers it to be a high priority. It is proactively communicating with chief justices, court administrators, and other leadership it serves to bring focus to the issue and to the actions that need to be taken to prevent problems that may occur after May 31, 2012. For more information, contact Kay Farley at kfarley@ncsc dni.us.

Additional resources
Section 466 of the Social Security Act
Action Transmittal 11-05 (AT-11-05)
45 CFR 303.100 — Procedures for income withholding
Intergovernmental Referral Guide (IRG) — State’s IWO procedures
State Contact and Program Information — State-specific information and contacts for questions
Employer Services — Private sector and federal agency employer processes for the IWO notice, withholding calculations, and examples

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The 2012 Washington State Bar Association Annual Awards Dinner

Please join us on Thursday, September 20, 2012, at the Hyatt at Olive 8 in Seattle for an evening of inspiration as we celebrate the accomplishments of the 2012 WSBA award recipients. All members of the legal community and guests are invited to attend.

Reception: 5:30 p.m. (no-host bar) • Dinner/Program: 6:30 p.m. • 1635 Eighth Avenue, Seattle

Name ___________________________________________ WSBA No. __________________
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Registration is $95 per person (table of 10 = $950). To make your reservation, please return this form (or a photocopy) with your credit-card information or check payable to WSBA. Space is limited, so please make your reservations early. Reservations and payment must be received no later than September 13, 2012 (refunds cannot be made after September 14). Seating will be assigned.

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Judicial Information Systems Committee
Application deadline: July 5, 2012
The WSBA Board of Governors is accepting letters of interest and résumés from members interested in serving a three-year term on the Judicial Information System Committee (JISC). The term will commence upon appointment and expire on July 31, 2015. The JISC 2 Rule specifically states that the Washington State Supreme Court Chief Justice shall consider for appointment only those individuals who have demonstrated an interest and commitment to judicial administration and to automation of judicial systems and functions.

The JISC is the policy-level steering committee for the court’s automation system. The committee is composed of four members from the appellate court level; four members from the superior court level; four members from the courts of limited jurisdiction level; and three at-large members from outside the judiciary, one who is a member of the WSBA, one who is a member of the Washington Association of Sheriffs and Police Chiefs, and one who is a member of the Washington State Association of Prosecuting Attorneys. For more information about the JISC, go to www.tinyurl.com/7eflxtg, or contact Pam Payne, senior administrative assistant, at 360-705-5277 or pamela.payne@courts.wa.gov.

Letters of interest and résumés are required for incumbents seeking reappointment. Please submit letters of interest and résumés to: WSBA Communications Department, 1325 Fourth Ave., Ste. 600, Seattle, WA 98191-2539; or email barleaders@wsba.org.

Certified Professional Guardian Board
Application deadline: August 24, 2012
The WSBA Board of Governors is accepting letters of interest and résumés from members interested in serving on the Certified Professional Guardian Board. The WSBA will be nominating one member who is appointed by the Supreme Court to serve a three-year term on the board commencing October 1, 2012. The Certified Professional Guardian Board is the regulatory authority for the practice of Certified Professional Guardians — individuals and agencies — in Washington state. The board is charged with establishing the standards and criteria for the certification of professional guardians in Washington state, as defined by RCW 11.88.008. The board meets regularly to review applications for certification, adopt and implement regulations relating to standards and practice, ethics, and training for professional guardians, and to review grievances. For further information about this board, go to www.courts.wa.gov/programs_orgs/professional_guardian, or contact Shirley Bondon at 360-705-5392 or shirley.bondon@courts.wa.gov.

The incumbent is eligible for reappointment and must submit a letter...
Northwest Justice Project Board of Directors

Application deadline: September 5, 2012

The WSBA Board of Governors (BOG) is accepting letters of interest and résumés from members interested in appointment to a three-year term of volunteer service on the Board of Directors of Northwest Justice Project (NJP). The BOG will fill three attorney positions for terms commencing January 1, 2013. A fourth attorney appointment will be made by the NJP Board. Three incumbents are eligible for reappointment and must submit a letter of interest and résumé if interested in reappointment.

The Northwest Justice Project is a 105-attorney statewide not-for-profit law firm providing free legal services to low-income people from 13 offices throughout Washington. NJP is funded primarily by the state of Washington and the federal Legal Services Corporation. Its 2012 budget is approximately $19.5 million. Board members play an active role in setting program policy and assuring adequate oversight of program operations, and must have a demonstrated interest in, and knowledge of, the delivery of high-quality civil legal services to low-income people. Board members are expected to attend quarterly meetings in Seattle (normally on the last Saturday of January, April, July, and October), attend the Goldmark Luncheon in February, attend the annual Access to Justice Conference in June, and serve actively on at least one Board committee.

For more information, please email César Torres, NJP executive director, at cesart@nwjustice.org, or Russell J. Speidel, board development chair, at russ.speidel@speidellaw.com. Please submit letters of interest and résumés to: WSBA Communications Department, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539; or email barleaders@wsba.org.

WSBA Court Rules and Procedures Committee 2012–2013 Agenda

During its October 1, 2012–September 30, 2013, term, the WSBA Court Rules and Procedures Committee is scheduled to review the Rules of Appellate Procedure (RAP) and the Rules for Appeal from Decisions of Courts of Limited Jurisdiction (RALJ). Suggestions regarding these rules or questions about the committee should be directed to Elizabeth Turner at 206-239-2109 or email wsbacourtrules@ wsba.org. Interested individuals are encouraged to participate in the work of the committee. For more information and a schedule of committee meetings, see www.wsba.org/legal-community/committees-boards-and-other-groups/court-rules-and-procedures-committee.

Seeking Questionnaires from Candidates for Judicial Appointments

August 3, 2012, deadline for September 14, 2012, interview

The WSBA Judicial Recommendation Committee (JRC) is accepting questionnaires from attorneys and judges seeking consideration for appointment to fill potential Washington State Supreme Court and Court of Appeals vacancies. Interested individuals will be interviewed by the Committee on the date listed above. The JRC’s recommendations are reviewed.

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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/jrc or contact the WSBA at 206-727-8226 or 800-945-9722, ext. 8226; or email pami@wsba.org.

**2011 Lawyer Discipline System Annual Report Now Available Online**

The 2011 WSBA Lawyer Discipline System Annual Report is now available in electronic format on the WSBA website. In an effort to reduce costs, the WSBA is no longer publishing a hard copy version of the report; you can access it at www.wsba.org/licensing-and-lawyer-conduct/discipline. The report provides information about Washington state’s lawyer discipline system and summarizes information about its work and achievements during the 2011 calendar year.

**“Foundations of American Democracy” Civics Pamphlet**

The WSBA offers a pamphlet for the public called “Foundations of American Democracy” that describes the basics of American government: the rule of law, the separation of powers, checks and balances, and a fair and impartial judiciary. 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 the community. 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. Requests for copies should be directed to Pam Inglesby, WSBA outreach programs manager, at pami@wsba.org.

**Facing an Ethical Dilemma?**

Members facing ethical dilemmas can talk with WSBA professional responsibility counsel for informal guidance on analyzing a situation involving their own prospective ethical conduct under the RPCs. All calls are confidential. Any advice given is intended for the education of the inquirer and does not represent an official position of the WSBA. Every effort is made to return calls within two business days. Call the Ethics Line at 206-727-8284 or 800-945-9722, ext. 8284.

**Search WSBA Advisory Opinions Online**

WSBA advisory opinions are available online at www.wsba.org/advisoryopinions. You can search opinions by number, year issued, ethical rule, subject matter, or keyword. Advisory 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.

**Get More out of Your Software**

The WSBA offers hands-on computer clinics and webinars for members wanting to learn more about what Microsoft Office Outlook and Word, as well as Adobe Acrobat, can do for a lawyer. We also cover online legal research, such as Casemaker and other resources. Are you a total beginner? No problem. The clinic teaches helpful tips you can use immediately. Bring your laptop or use provided computers. Seating is limited to 15 members. The July 9 clinic will meet from 10 a.m. to noon at the WSBA offices and on-line, and will focus on Casemaker and online research. On July 12, from 2 to 4 p.m., we will discuss Microsoft Outlook and Word. There is no charge and no CLE credit. To reserve your seat and obtain conference call instructions, contact Peter Roberts at peter@wsba.org, 206-727-8237, or 800-945-9722, ext. 8237.

**LOMAP Lending Library**

The WSBA Law Office Management Assistance Program (LOMAP) Lending Library is a service to WSBA members. We offer the short-term loan of books on the business management aspects of your law office. How does it work? You can view available titles at www.wsba.org/resources-and-services/lomap/lending-library. Books may be borrowed by any WSBA member for up to two weeks. LOMAP requires your WSBA ID and a valid Visa or MasterCard number to guarantee the book’s return to the program. If you live outside of the Seattle area, books can be mailed to you; you will be responsible for return postage. For walk-in members, we recommend calling first to check availability of requested titles. To arrange for a book loan or to check availability, please contact Julie Salmon at 206-733-5914.

**Individual Consultation**

The Lawyers Assistance Program pro-
vides treatment for those struggling with depression, work stress, addiction, and life transition, among other topics. Our licensed counselors can offer up to 10 sessions on a sliding scale. The first appointment is $20. We also provide consultations on job seeking and can offer informational and referral resources on a range of topics. Contact us at 206-727-8268, 800-945-9722, ext. 8268, lap@wsba.org, or go to www.wsba.org/lap.

**Weekly Job Search Group**
The Weekly Job Search group provides strategy and support to unemployed attorneys. The group runs for eight weeks and is limited to eight attorneys. We provide the comprehensive WSBA job search guide “Getting There: Your Guide to Career Success,” which can also be found online at www.tinyurl.com/7xhe8b. For more information about monthly and weekly job group programming or to schedule a career consultation, contact Dan Crystal at danc@wsba.org, 206-727-8267, or 800-945-9722, ext. 8267.

**Work/Life Balance Group**
The WSBA Lawyers Assistance Program (LAP) is offering “From Surviving to Thriving: Achieving a Meaningful Work/Life Balance.” This eight-week group offers both specific skills and a supportive environment for this critical topic. If you are interested in participating in the next group, contact LAP therapist Heidi Seligman at 206-727-8269, 800-945-9722, ext. 8269, or heidis@wsba.org.

**Help for Judges**
The Judges Assistance Services 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.

**Mindful Lawyers Monthly Group**
A growing number of legal professionals across the nation are applying mindfulness-based skills and training to lawyering. The Washington Contemplative Lawyers group meets on the last Wednesday of each month (July 25) at the Lawyers Assistance Program office from 8:15–9:00 a.m. For more information, contact Seville Rhoads at srhoads@gsblaw.com or go to www.wacontemplativelaw.blogspot.com.

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425.368.1262

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Dearmin Fogarty PLLC is pleased to announce that Mary C. Przekop has joined the firm as an associate.

Ms. Przekop’s practice focuses on the defense of personal injury and employment and professional liability claims, as well as representing businesses and individuals in commercial disputes.

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These notices of imposition of disciplinary sanctions and actions are published pursuant to Rule 3.5(d) of the Washington State Supreme Court Rules for Enforcement of Lawyer Conduct, and pursuant to the February 18, 1995, policy statement of the WSBA Board of Governors. For a complete copy of any disciplinary decision, call the Washington State Disciplinary Board at 206-733-5926, leaving the case name, and your name and address.

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

**Disbarred**

Kaaren L. Barr (WSBA No. 22092, admitted 1992), of Emmett, Idaho, was disbarred, effective March 9, 2012, by order of the Washington State Supreme Court. This discipline is based on conduct involving failure to provide competent representation, failure to communicate, conduct prejudicial to the administration of justice, and willfully disobeying a court order.

Ms. Barr was a sole practitioner who concentrated her practice on immigration law. In 2005 and 2006, Ms. Barr was sanctioned by the Ninth Circuit in five immigration matters. In October 2008, the Ninth Circuit issued an Order to Show Cause to Ms. Barr to show why she should not be sanctioned for “repeated violations of this court’s rules and orders and the rules of professional conduct, and for conduct unbecoming a member of this court’s bar in many of the 236 cases” in which Ms. Barr had appeared before that court. Ms. Barr’s violations included:

- Filing briefs with the Ninth Circuit that consisted of boilerplate language, with very little application of law to fact;
- Filing briefs that demonstrated failure to monitor changing case law, included arguments previously rejected by the Ninth Circuit, and waived her clients’ asylum claims because they did not address certain issues;
- Filing briefs that compromised her clients’ chances of prevailing before the Ninth Circuit; and
- Failing to file timely appeals in the Ninth Circuit on behalf of clients or to exhaust issues before the Board of Immigration Appeals (BIA).

At a hearing in the Ninth Circuit on February 17, 2009, Ms. Barr admitted to all of the allegations in the Order to Show Cause and proposed that she resign from practice rather than have the Ninth Circuit suspend her for her actions. The Ninth Circuit report recommended that Ms. Barr be allowed to resign on condition that she also withdraw from all cases pending before the BIA within 30 days, provide clients in pending cases with the clerk of the court’s address, and advise clients of her intent to resign and have the clients notify the court immediately in writing if they wished to retain new counsel or to represent themselves on appeal. On May 12, 2009, the Ninth Circuit adopted the report and recommendation and ordered that Ms. Barr was no longer eligible to practice before the Ninth Circuit or BIA. Contrary to the Court’s order, Ms. Barr did not review her files to determine how many of her clients had cases pending before the BIA. Instead, as clients’ briefs came due, Ms. Barr withdrew or gave them advice about how to proceed.

Ms. Barr was retained by Client X in 2003 to represent him in immigration proceedings. Client X paid Ms. Barr $1,500 to file an asylum claim on his behalf. On September 2, 2003, Client X attended his individual hearing in Immigration Court. Ms. Barr spent approximately half an hour preparing Client X for this hearing, which was inadequate preparation. The immigration judge dismissed Client X’s asylum claim. Ms. Barr told Client X that she would appeal his case; however, Client X was unable to contact Ms. Barr to discuss his case. In July 2004, Ms. Barr filed a brief with the BIA to appeal the immigration judge’s decision after the scheduled deadline, along with a motion to allow late filing. In the motion, Ms. Barr stated that she had “failed to calendar the briefing schedule.” In a declaration, Ms. Barr wrote that she had discussed the appeal with Client X and advised him that she would be filing a brief on his behalf. Client X denies that he knew about the brief or knew that Ms. Barr had failed to timely file it.

The BIA refused to accept the late filing and dismissed Client X’s matter in August 2004. Ms. Barr did not inform Client X of the dismissal. In September 2004, without discussing this decision with the client, Ms. Barr filed a Petition for Review of the BIA’s August 2004 decision with the Ninth Circuit. The Ninth Circuit dismissed the petition and remanded the case back to the BIA, allowing Client X another “bite at the apple.” Ms. Barr did not inform Client X that the case was again pending in front of the BIA or review his case with him. She filed a “boilerplate” brief with the BIA in July 2008, which was nearly identical to the 2004 brief she had previously filed on Client X’s behalf. Neither the facts nor the law in the brief had been updated to reflect current conditions.

As of the Ninth Circuit’s May 12, 2009, order, Client X’s case was still pending before the BIA. Ms. Barr did not notify Client X that she could no longer represent him, which violated the Ninth Circuit’s Order. The BIA again dismissed Client X’s appeal. The deadline to appeal this decision was 30 days. Client X received a copy of this decision in the mail but did not understand what it meant and was unable to contact Ms. Barr by phone. Instead of contacting Client X directly, whose contact information had not changed, Ms. Barr sent Client X’s friend an email asking him to tell Client X to contact her. Ms. Barr met with Client X in December 2009 and, for the first time, told Client X that she was no longer allowed to practice in the Ninth Circuit or the BIA and that he should hire a new lawyer to appeal the BIA’s decision. Ms. Barr failed to timely inform Client X of the proceedings against him before the Ninth Circuit, which was a condition of her being permitted to resign.

Client X did not file a timely appeal of the BIA’s November 2009 decision and, as a result, was arrested and spent 39 days in detention. Ms. Barr did not tell Client X that he was at risk of being taken into custody. While in detention, Client X’s wife retained lawyers who assisted him in getting out of detention and reopened Client X’s case based upon changed conditions in Client X’s county of origin and ineffective assistance by Ms. Barr. Client X had an individual hearing in Immigration Court. The judge denied his application for asylum and withholding of removal and ordered him to depart the country.

Ms. Barr’s conduct violated RPC 1.1, requiring a lawyer to provide competent representation to a client; RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; RPC 1.4(a)(1), requiring a lawyer to promptly inform the client of any decision of circumstance with respect to which the client’s informed consent is required by these Rules; RPC 1.4(a)(3), requiring a lawyer to keep the client reasonably informed about the status of the matter; RPC 1.4(a)(4), requiring a lawyer to promptly comply with reasonable requests for information; RPC 8.4(d), prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice; and RPC 8.4(j), prohibiting a lawyer from willfully disobeying or violating a court order directing him or her to do or cease doing an act which he or she ought in good faith to do or forbear.

Erica W. Temple represented the Bar Association. Kaaren L. Barr represented herself. Barbara Ann Peterson was the hearing officer.

**Disbarred**

Melvin H. Champagne (WSBA No. 6680, admitted 1976), of Spokane, was disbarred, effective April 6, 2012, by order of the Washington State Supreme Court following approval of a stipulation. While not affirmatively admitting to the misconduct, Mr. Champagne admitted there is a substantial likelihood that the WSBA could prove, by a clear preponderance of the
In December 2004, Mr. Champagne represented Client A's grandson and others, who would have a contract claim in his bankruptcy schedules. Mr. Champagne was aware that Client A suffered from medical and mental illnesses, and represented her in two involuntary commitment proceedings. In April 2000, Client A executed a Special Needs Trust, in which Client A assigned all of her beneficiary interest in a Family Trust. The Special Needs Trust was prepared by Mr. Champagne, who was named trustee. Client A's son was named the alternate trustee and beneficiary on Client A's death.

In July 2000, Mr. Champagne resigned as trustee of the Special Needs Trust, leaving Client A's son as sole trustee. In 2005, through independent counsel, Client A amended the Special Needs Trust to include certain bequests to her grandson and other individuals, and gifted the remainder of the estate to Mr. Champagne and his wife. There is insufficient evidence to prove any undue influence by Mr. Champagne in connection with Client A's gift to him. Client A's son and grandson were not aware of the provisions in the Special Needs Trust.

In late September 2007, Mr. Champagne received $164,934.88 on behalf of Client A, representing her share of a disbursement from the Family Trust. In December 2007, Mr. Champagne received $8,781.46, representing Client A's final distribution from the Family Trust. Although he was no longer trustee of Client A's Special Needs Trust, Mr. Champagne opened a bank account in his name as trustee for Client A's Trust, in which he deposited the $173,715.80. Between October 5, 2007, and January 18, 2008, Mr. Champagne intentionally transferred funds, totaling $100,000, from Client A's Trust to individuals involved in another, unrelated client matter, for which Mr. Champagne may have had personal liability exposure. Although he used some of the funds to pay Client A's expenses, the majority of funds in Client A's Trust were not used for Client A. In September 2008, Client A's Trust had a balance of $94,26. Mr. Champagne started depositing his own funds into Client A's Trust to pay Client A's expenses and routinely provided legal services to Client A without charging her for the services.

In March 2010, Client A died. At that time, Client A's Trust contained $23.58. Mr. Champagne attempted to borrow funds to place into Client A's Trust, but was unsuccessful. In August 2010, Mr. Champagne filed a Chapter 7 bankruptcy and listed Client A as an unsecured creditor who was owed $35,000 on a malpractice claim in his bankruptcy schedules. Mr. Champagne subsequently obtained an order of discharge and his bankruptcy was closed. Client A's grandson and others, who would have received special bequests totaling $39,000 after Client A's death, never received any proceeds due to Mr. Champagne's misappropriation of funds.

**Matter No. 1:** In December 2004, Mr. Champagne was hired to represent Client B in an estate matter (the Estate) in which Client B was a beneficiary. In September 2006, Mr. Champagne received a check for $53,346.54 representing funds belonging to the Estate. Client B had an interest in the funds. Mr. Champagne deposited the check into his IOLTA account, commingling the Estate's funds with other client funds. During the period that Mr. Champagne handled the Estate's funds, he failed to maintain accurate financial records for his IOLTA account transactions. Mr. Champagne intentionally used most of the Estate's funds for personal purposes. On October 2, 2007, the balance in Mr. Champagne's IOLTA account was $6,127.13. As of that date, none of $53,346.54 belonging to the Estate or Client B had been disbursed on their behalf and Mr. Champagne had misappropriated at least $47,219.41 of Estate's funds.

On March 30, 2007, Mr. Champagne received $38,870.56 in connection with a personal loan. Mr. Champagne deposited the $38,870.56 into his trust account and used the money to make disbursements to Client B and the Estate. In addition, Mr. Champagne wrote off his attorney fees. Since Mr. Champagne did not maintain accurate trust account and billing records, the precise amount of the Estate's funds that were ultimately misappropriated cannot be ascertained, but available information indicates that the combination of returning funds and writing off attorney fees resulted in no net loss to Client B or the Estate.

Mr. Champagne's conduct violated RPC 1.15(b), prohibiting a lawyer from using, converting, borrowing, or pledging client or third-person property for the lawyer's own use; RPC 1.15(b)(8), prohibiting disbursements on behalf of a client from exceeding the funds that person on deposit; former RPC 1.14(a) and RPC 1.15A(b)(2), requiring a lawyer to keep complete records as required by the rules; RPC 1.15A(b), prohibiting a lawyer from using, converting, borrowing, or pledging client or third-person property for the lawyer's own use. Jonathan H. Burke represented the Bar Association. Melvin H. Champagne represented himself.

**Disbarred**

**Noble C. Njoku** (WSBA No. 36351, admitted 2005), of Federal Way, was disbarred, effective March 9, 2012, by order of the Washington State Supreme Court following a default hearing.

During a review of Mr. Njoku's trust accounts, business account, and other records, which covered the period 2006 through early 2009, the WSBA auditor found the following misconduct by Mr. Njoku:

- Using a client's funds for personal and business expenses and on behalf of other clients;
- Failing to include information about costs, including whether they would be deducted before or after the contingent fee was calculated, in one or more of his contingent-fee agreements with clients;
- Failing to provide one or more of his clients with written fee settlement statements;
- Misrepresenting to a client how the client's funds were to be used or disbursed;
- On one or more occasions, failing to deposit and hold client funds in his trust account and disbursing funds on behalf of clients that exceeded the amounts on deposit for those clients;
- Failing to maintain complete trust account records, including failing to keep copies of documents supporting one or more disbursements, and failing to keep copies of bank statements, cancelled checks, and deposit slips after September 1, 2006; and
- Failing to reconcile his trust account.

Mr. Njoku's conduct violated RPC 1.5(b), requiring a lawyer to communicate to the client the scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible, preferably in writing, before or within a reasonable time after commencing representation; RPC 1.5(c)(2), requiring that a contingent-fee agreement state the method by which the fee is to be determined; RPC 1.5(c) (3), requiring that, upon conclusion of a contingency matter, the lawyer provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination; former RPC 1.14(a) and RPC 1.15A(b)(8), prohibiting disbursements on behalf of a client from exceeding the funds of that person on deposit; former RPC 1.14(b) and RPC 1.15A(b)(2), requiring a lawyer to keep complete records as required by the rules; RPC 1.15A(b), prohibiting a lawyer from using, converting, borrowing, or pledging client or third-person property for the lawyer's own use; RPC 1.15A(c)(1), requiring a lawyer to deposit and hold in a trust account funds subject to the Rules; RPC 1.15A(c)(2), requiring a lawyer to hold property of clients and third persons separate from the lawyer's own property and to deposit into a trust account legal fees and expenses that have been paid in advance; RPC 1.15A(e), requiring a lawyer to promptly provide a written accounting to a client or third person after distribution of property or upon request; RPC 1.15A(h)(6), requiring that trust account records be reconciled as often as bank statements are generated or at least quarterly; RPC 1.15A(h)(4), requiring that a lawyer's records include copies of any statements or accountings to clients or third parties showing the disbursement of funds to them or on their behalf; RPC 1.15A(a)(7), requiring that a lawyer's records include bank statements, copies of deposit slips, and cancelled checks or their equivalent; RPC 8.4(b), prohibiting a lawyer from committing a criminal act (here, the crime of theft) that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects; RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving
dishonesty, fraud, deceit, or misrepresentation; and RPC 8.4(i), prohibiting a lawyer from committing any act involving moral turpitude, or corruption, or other act which reflects disregard for the rule of law.

Kevin M. Bank represented the Bar Association. Noble C. Njoku did not appear either in person or through counsel. Lawrence R. Mills was the hearing officer.

Suspended

Keenan Powell (WSBA No. 380/59, admitted 2006), of Anchorage, Alaska, was suspended for six months, effective May 4, 2012, by order of the Washington State Supreme Court imposing reciprocal discipline in accordance with an order of the Alaska Supreme Court. Ms. Powell will serve 90 days of the suspension and have 90 days of the suspension stayed pending successful completion of a two-year probation period that will start when she returns to practice after serving the 90-day suspension. This discipline is based on conduct involving failure to supervise a non-lawyer assistant and fee sharing.

In late 2007, Ms. Powell discovered that a contract employee, Ms. M, had embezzled in excess of $7,000 from her law firm’s petty cash account. Ms. Powell filed a report with the Anchorage Police Department. Second-degree theft and second-degree forgery charges were filed against Ms. M as a result of the alleged embezzlement; a warrant was issued in April 2008, but was later dismissed in July 2008.

In May 2008, Ms. M filed a complaint with the Alaska Bar Association against Ms. Powell. The investigation found that Ms. Powell had a reasonable basis to report her suspicions. It also revealed that Ms. Powell hired Ms. M in the late 1990s as a contract employee. Ms. M worked the hours she chose, provided her own office space, and paid the salaries of persons who occasionally worked for her. Ms. Powell provided letterhead and paid for copier and postage costs. Ms. M never submitted timesheets and Ms. Powell never paid Ms. M a separate salary; rather Ms. Powell generally paid Ms. M at the conclusion of a case from profits. The percentage of profits assigned to Ms. M varied on a file-by-file basis. Ms. Powell would discuss with Ms. M her decision about how much to pay on a particular case. It was an informal arrangement that took into account the financial needs of running the office and paying case costs as the first priority.

In 2007, Ms. Powell discovered that Ms. M was working for another attorney. In October 2007, Ms. Powell fired Ms. M because of a pattern of neglecting clients and files, lying to cover up poor performance, and extending unauthorized settlement offers. Ms. Powell discovered the alleged embezzlement from her petty cash account approximately one week later.

Ms. Powell's conduct violated Alaska's RPC 5.3(a)(2), requiring a lawyer to make reasonable efforts to ensure that her non-lawyer employee's conduct was compatible with the professional obligations of a lawyer; Alaska's RPC 5.4, prohibiting a lawyer from sharing legal fees with a non-lawyer except in limited exceptions; Alaska's RPC 5.4(a)(3), prohibiting a lawyer from including a non-lawyer in a compensation or retirement plan based in whole or in part on a profit-sharing arrangement if the non-lawyer is not an employee; and Alaska's RPC 5.4(b), prohibiting a lawyer from forming a partnership with a non-lawyer if any of the activities in the partnership consist of the practice of law.


Reprimanded

Mark R. Cassidy (WSBA No. 11246, admitted 1980), of Lynnwood, was ordered to receive a reprimand following approval of a stipulation by the chief hearing officer on April 6, 2012. This discipline was based on conduct involving dishonesty.

On February 18, 2011, Mr. Cassidy, an employee of a community college, was deposed by counsel for a staff member appealing her termination from the college. During the deposition, Mr. Cassidy intentionally gave false testimony, under oath, about a matter of marginal relevance. Mr. Cassidy testified falsely by denying his ownership of a Facebook account, claiming a fictitious person owned the site, and that the fictitious person, not Mr. Cassidy, made a posting to another Facebook page. After counsel for the staff member continued Mr. Cassidy's deposition to allow him to provide contact information for the owner of the site, Mr. Cassidy confessed to his lawyer that he had not told the truth, and his lawyer contacted the staff member's lawyer and told him Mr. Cassidy's statements were false. When the deposition continued, Mr. Cassidy fully retracted his false statements, admitted that he was the owner of the Facebook site, and testified that he had made the posting.

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

Kathleen A.T. Dassel represented the Bar Association. Mr. Cassidy represented himself. Joseph Nappi Jr. is the chief hearing officer.

Reprimanded

Peter Dirk Nansen (WSBA No. 9142, admitted 1979), of Bellingham, was ordered to receive two reprimands following approval of a stipulation by a hearing officer on March 19, 2012. This discipline is based on conduct involving failure to communicate, trust account irregularities, communicating directly with a represented person about a matter, and implying disinterest when dealing with an unrepresented person.

Matter No. 1: Mr. Nansen filed a petition on behalf of Client A seeking guardianship over her boyfriend, Mr. J. Eight days later, Mr. Nansen met with Mr. J and told him that he was representing his estate and trying to help him. Mr. Nansen obtained Mr. J’s signature on documents establishing an irrevocable trust naming Client A as trustee, and transferring property into the trust. Mr. J reasonably believed that Mr. Nansen was representing his interests or that he was, at least, disinterested. Mr. Nansen knew that the interests of Client A and Mr. J had the possibility of conflicting, but did not adequately clarify his role. The court appointed a lawyer to represent Mr. J in the guardianship proceeding. While Mr. J was represented, Mr. Nansen met twice and spoke nine times with Mr. J by telephone without obtaining authorization from his counsel to communicate directly to him.

Matter No. 2: Mr. Nansen entered into a written fee agreement with Client B that provided for a $2,500 “non-refundable fee,” but did not meet the requirements of RPC 1.5(f). Mr. Nansen received $15,637 of Client B’s funds, but did not directly deposit any of the funds into a trust account even though he had not yet earned the fees. He deposited $2,500 into his general account and deposited $13,095 into a subaccount within his general account. Mr. Nansen then subsequently disbursed $10,300 to himself for attorney’s fees without providing Client B with written notice of his intent to do so. At the end of his representation of
On June 16, 2009, Client B, Mr. Nansen provided Client B with an “accounting” that did not completely or accurately reflect all the transactions related to Client B’s funds.

Mr. Nansen’s conduct violated RPC 1.4(a) and (b), requiring a lawyer to keep the client reasonably informed about the status of a matter and explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; RPC 1.5(f)(2), allowing a lawyer to charge a flat fee for a specified service and not deposit it into a trust account if agreed to in advance in a writing signed by the client; RPC 1.15A(c)(1), requiring a lawyer to hold property of clients and third persons separate from the lawyer’s own property and to deposit and hold in a trust account funds subject to this Rule; RPC 1.15A(c)(2), requiring a lawyer to deposit into a trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred; RPC 1.15A(e), requiring a lawyer to promptly provide a written accounting to a client or third person after distribution of property or upon request; RPC 1.15A(h)(3), requiring a lawyer to give reasonable notice prior to withdrawing the unearned advance fees. At the time, Mr. Quillian was not keeping accurate billing records for legal services provided to Client A, and his use of Client A’s unearned advance fees, which he subsequently earned, was due to his poor record-keeping. During the investigation, the Association discovered that Mr. Quillian issued a check from his trust account for cash in the amount of $1,000.

Reprimanded

Robert M. Quillian (WSBA No. 6836, admitted 1976), of Olympia, was ordered to receive a reprimand following approval of a stipulation by a hearing officer on March 21, 2012. This discipline was based on conduct involving conversion of client property, trust account irregularities, and failure to maintain trust account records.

Matter No. 1: In May 2008, Mr. Quillian was hired by Client A to appeal his criminal convictions. Mr. Quillian did not have a written fee agreement with Client A. During all material times, Mr. Quillian did not maintain a check register for his trust account with a running balance; did not reconcile his trust account and client ledgers; and did not keep copies of bank statements, deposit slips, and cancelled checks for his trust account. Client A’s mother paid Mr. Quillian $5,000 in advance fees, which he deposited into his trust account. In July and August 2008, Mr. Quillian withdrew from his trust account approximately $3,650 of unearned advance fees held on behalf of Client A. During that same time period, Mr. Quillian also received approximately $350 of advance fees on behalf of Client A, which were deposited into his general account and used for other purposes. Mr. Quillian did not send any billing statements or accounting to Client A or Client A’s mother prior to withdrawing the unearned advance fees. At the time, Mr. Quillian was not keeping accurate billing records for legal services provided to Client A, and his use of Client A’s unearned advance fees, which he subsequently earned, was due to his poor record-keeping. During the investigation, the Association discovered that Mr. Quillian issued a check from his trust account for cash in the amount of $1,000.

Matter No. 2: On June 16, 2009, Client B was convicted of assault and harassment. In September 2009, Client B’s grandfather hired Mr. Quillian to handle Client B’s potential post-conviction motions and sentencing at $200 per hour. Mr. Quillian did not have a written fee agreement. On September 12, 2009, Mr. Quillian was paid $3,000 in advance fees to represent Client B, which he deposited into his general account and used before the funds were earned. Mr. Quillian did not provide a billing statement to Client B or his grandfather before withdrawing the $3,000. Mr. Quillian ultimately earned the $3,000 and received another $1,000 in earned fees for legal services provided to Client B. Mr. Quillian also wrote off some earned fees.

Mr. Quillian’s conduct violated RPC 1.15A(b), prohibiting a lawyer from using, converting, borrowing, or pledging client or third-person property for the lawyer’s own use; RPC 1.15A(c), requiring a lawyer to hold property of clients and third persons separate from the lawyer’s own property; RPC 1.15A(e), requiring a lawyer to promptly provide a written accounting to a client or third person after distribution of property or upon request; RPC 1.15A(h)(3), requiring a lawyer to give reasonable notice prior to withdrawing the unearned advance fees. At the time, Mr. Quillian was not keeping accurate billing records for legal services provided to Client A, and his use of Client A’s unearned advance fees, which he subsequently earned, was due to his poor record-keeping. During the investigation, the Association discovered that Mr. Quillian issued a check from his trust account for cash in the amount of $1,000.

Robert M. Quillian (WSBA No. 6836, admitted 1976), of Olympia, was ordered to receive a reprimand following approval of a stipulation by a hearing officer on March 21, 2012. This discipline was based on conduct involving conversion of client property, trust account irregularities, and failure to maintain trust account records.

Matter No. 1: In May 2008, Mr. Quillian was hired by Client A to appeal his criminal convictions. Mr. Quillian did not have a written fee agreement with Client A. During all material times, Mr. Quillian did not maintain a check register for his trust account with a running balance; did not reconcile his trust account and client ledgers; and did not keep copies of bank statements, deposit slips, and cancelled checks for his trust account. Client A’s mother paid Mr. Quillian $5,000 in advance fees, which he deposited into his trust account. In July and August 2008, Mr. Quillian withdrew from his trust account approximately $3,650 of unearned advance fees held on behalf of Client A. During that same time period, Mr. Quillian also received approximately $350 of advance fees on behalf of Client A, which were deposited into his general account and used for other purposes. Mr. Quillian did not send any billing statements or accounting to Client A or Client A’s mother prior to withdrawing the unearned advance fees. At the time, Mr. Quillian was not keeping accurate billing records for legal services provided to Client A, and his use of Client A’s unearned advance fees, which he subsequently earned, was due to his poor record-keeping. During the investigation, the Association discovered that Mr. Quillian issued a check from his trust account for cash in the amount of $1,000.

Matter No. 2: On June 16, 2009, Client B was convicted of assault and harassment. In September 2009, Client B’s grandfather hired Mr. Quillian to handle Client B’s potential post-conviction motions and sentencing at $200 per hour. Mr. Quillian did not have a written fee agreement. On September 12, 2009, Mr. Quillian was paid $3,000 in advance fees to represent Client B, which he deposited into his general account and used before the funds were earned. Mr. Quillian did not provide a billing statement to Client B or his grandfather before withdrawing the $3,000. Mr. Quillian ultimately earned the $3,000 and received another $1,000 in earned fees for legal services provided to Client B. Mr. Quillian also wrote off some earned fees.

Mr. Quillian’s conduct violated RPC 1.15A(b), prohibiting a lawyer from using, converting, borrowing, or pledging client or third-person property for the lawyer’s own use; RPC 1.15A(c), requiring a lawyer to hold property of clients and third persons separate from the lawyer’s own property; RPC 1.15A(e), requiring a lawyer to promptly provide a written accounting to a client or third person after distribution of property or upon request; RPC 1.15A(h)(3), requiring a lawyer to give reasonable notice prior to withdrawing the unearned advance fees. At the time, Mr. Quillian was not keeping accurate billing records for legal services provided to Client A, and his use of Client A’s unearned advance fees, which he subsequently earned, was due to his poor record-keeping. During the investigation, the Association discovered that Mr. Quillian issued a check from his trust account for cash in the amount of $1,000.
to withdrawing earned fees; 1.15A(h)(5), requiring all withdrawals to be made only to a named payee and not to cash; 1.15A(h)(6), requiring all trust account records to be reconciled as often as bank statements are generated or at least quarterly; RPC 1.15A(h)(8), prohibiting disbursements on behalf of a client or third person from exceeding the funds of that person on deposit; RPC 1.15B(a), requiring a lawyer to maintain current trust account records; and RPC 1.15B(a)(2), requiring that trust account records include individual client ledger records containing either a separate page for each client or an equivalent electronic record showing all individual receipts, disbursements, or transfers.

Jonathan H. Burke represented the Bar Association. Mr. Quillian represented himself. Nadine D. Scott was the hearing officer.

Admonished

Charles W. Rehm (WSBA No. 10708, admitted 1980), of Seattle, was ordered to receive an admonition on March 23, 2012, by order of a Review Committee. This discipline was based on conduct involving failure to communicate, failure to promptly conclude a probate, and failure to timely distribute to client the funds held in his trust account.

From 2000 through 2011, Mr. Rehm represented the personal representative in an estate matter. Resolution of the estate matter was complicated by a wrongful death action and by a motion to determine the beneficiaries. On April 2, 2010, the court ordered $10,000 placed in Mr. Rehm’s trust account to pay the personal representative’s fees and legal fees associated with closing the probate. On April 9, 2010, Mr. Rehm deposited the funds into his trust account. Around this same time, Mr. Rehm’s relationship with his client became uncomfortable. In October 2011, Mr. Rehm provided the $10,000 to another lawyer, so new counsel could complete the probate. During the year-and-a-half delay, Mr. Rehm did not respond to his client’s requests for information, take any steps to complete the probate, or provide the client an accounting of the funds held in his trust account.

Mr. Rehm’s conduct violated RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; RPC 1.4(a)(4), requiring a lawyer to promptly comply with reasonable requests for information; and RPC 1.15A(f), requiring a lawyer to promptly pay or deliver to the client or third person the property which the client or third person is entitled to receive.

Francesca D’Angelo represented the Bar Association. Mr. Rehm represented himself.

Non-Disciplinary Notices

Interim Suspension Pursuant to ELC 7.2(a)(1)
Rolando M. Adame (WSBA No. 16006, admitted 1986), of Moses Lake, was suspended pursuant to ELC 7.2(a)(1), effective May 2, 2012, by order of the Washington State Supreme Court. This is not a disciplinary sanction.

Interim Suspension Pursuant to ELC 7.3
Ronald A. Gomes (WSBA No. 31074, admitted 2001), of Lacey, was suspended pursuant to ELC 7.3, effective April 27, 2012, by order of the Washington State Supreme Court. This is not a disciplinary sanction.

Interim Suspension Pursuant to ELC 7.2(a)(3)
Harry L. Perfater Jr. (WSBA No. 20564, admitted 1991), of Kenmore, was suspended pursuant to ELC 7.2(a)(3), effective April 30, 2012, by order of the Washington State Supreme Court. This is not a disciplinary sanction.

Interim Suspension Pursuant to ELC 7.2(a)(2)
Fredric Sanai (WSBA No. 32347, admitted 2002), of McMinnville, Oregon, was suspended pursuant to ELC 7.2(a)(2), effective May 22, 2012, by order of the Washington State Supreme Court. This is not a disciplinary sanction.

Never needed more…

...Never more in need.

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

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

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

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

CLE seminars are subject to change. Please check with providers to verify information. To announce a seminar, please send information to:

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

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

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Litigation Section Midyear
August 24 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Business Law

Advanced Commercial Leases
July 19 — Spokane. 8.75 CLE credits, including 1 ethics. By The Seminar Group; 800-574-4852 or 206-463-4400; www.theseminargroup.net/seminar.lasso?seminar=12.aclsp.

Company Dissolution and LLC Member Disputes
July 26 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Litigation Section Midyear
August 24 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Civil Litigation

Successfully Applying the Pinkerton Doctrine in Supporting the Pleading of Civil RICO Conspiracy
July 25 — Seattle and webcast. 1.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Criminal Law

Less Risky Business: Proactive Malpractice Risk Reduction Techniques
August 10 — Seattle and webcast. 6 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Creditor/Debtor Law

Residential Real Property in a Distressed Market: What Are Your Client’s Options?
August 7 — Seattle and webcast. 6.5 CLE credits. By the WSBA Creditor Debtor Rights Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Elder Law

Your Elder Law Practice
July 13 — Seattle and webcast. 1.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Employment Law

Labor and Employment Law Boot Camp: The Basics You Need to Know
July 11 — Seattle and webcast. 6.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Family Law

Representing Clients in the Child Support Administrative Hearing Process
July 25 — Seattle and webcast. 1.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Drafting and Enforcing Parenting Plans
August 8 — Seattle. 1 CLE credit. By McKinley Irvin Family Law Speaker Series; 206-625-9600; www.mckinleyirvin.com/resources/cle.

General

Exiting Your Practice
July 13 — Seattle and webcast. 1.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

7th Annual WSBA Solo and Small Firm Conference: Reinvent, Recharge, and Rejuvenate Your Practice!
July 19–21 — Ocean Shores. 16.75 CLE credits, including 3 ethics. By the WSBA Solo and Small Practice Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Company Dissolution and LLC Member Disputes
July 26 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Bad Faith Claims
July 27 — Seattle. 6 CLE credits, including 1 ethics. By The Seminar Group; 800-574-4852 or 206-463-4400; www.theseminargroup.net/seminar.lasso?seminar=12.badwa.

All The Right Moves in Tort Litigation: Learn from Masters of the Game
August 14 — Seattle and webcast. 6.25 CLE credits including .75 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

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Marijuana Law
August 29 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Litigation
Washington State Association for Justice/Oregon Trial Lawyers Association Convention

Litigation Section Midyear
August 24 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Personal Injury
All The Right Moves in Tort Litigation: Learn from Masters of the Game
August 14 — Seattle and webcast. 6.25 CLE credits including .75 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Real Estate Law
Residential Real Property in a Distressed Market: What Are Your Client’s Options?
August 7 — Seattle and webcast. 6.5 CLE credits. By the WSBA Creditor Debtor Rights Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Senior Lawyers
Exiting Your Practice
July 13 — Seattle and webcast. 1.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Solo and Small Practice
Exiting Your Practice
July 13 — Seattle and webcast. 1.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

7th Annual WSBA Solo and Small Firm Conference: Reinvent, Recharge, and Rejuvenate Your Practice!

Trust and Estates
Estate Planning Fundamentals: Planning Strategies, Drafting Trusts, and Counseling Clients
August 2 — Seattle and webcast. 6.5 CLE credits including 1.25 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Webcast Seminars
Labor and Employment Law Boot Camp: The Basics You Need to Know
July 11 — Seattle and webcast. 6.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Less Risky Business: Proactive Malpractice Risk Reduction Techniques
August 10 — Seattle and webcast. 6 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Successfully Applying the Pinkerton Doctrine in Supporting the Pleading of Civil RICO Conspiracy
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Estate Planning Fundamentals: Planning Strategies, Drafting Trusts, and Counseling Clients
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Residential Real Property in a Distressed Market: What Are Your Client’s Options?
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Less Risky Business: Proactive Malpractice Risk Reduction Techniques
August 28 — Seattle and webcast. 1.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

All The Right Moves in Tort Litigation: Learn from Masters of the Game
August 14 — Seattle and webcast. 6.25 CLE credits including .75 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Your Elder Law Practice
July 13 — Seattle and webcast. 1.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Exiting Your Practice
July 13 — Seattle and webcast. 1.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

7th Annual WSBA Solo and Small Firm Conference: Reinvent, Recharge, and Rejuvenate Your Practice!

July 25 — Seattle and webcast. 1.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Marijuana Law
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Bellevue office space available in the heart of downtown at Key Center, Skyline, and Bellevue Place. We have immediate occupancy available in three of the finest Bellevue buildings. Our offices are completely furnished, move-in ready. Our professional staff will receive your mail, greet your clients, answer your calls, book a meeting in one of our conference rooms, etc. We also offer virtual office options for those who don’t need to be in the office daily. Two months’ free rent for all new clients. In addition, we have space in Redmond and Carillon Point (Kirkland). Call or email Gina; 206-235-0889 or gina.mcginnis@regus.com.

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Teddy Edward Chow

I became a lawyer because I’m not good at math. All those stereotypes about Asian parents are true; Mom and Dad were seriously hoping for a doctor or engineer. They eventually came around to my decision, though, I have been a deputy prosecutor for the entirety of my legal career, and I have no regrets. I love what I do.

The future of the practice of law is, to paraphrase a colleague, up in the air. Case law has been changing so swiftly and widely in the last four or so years, from Arizona v. Giant, 129 S.Ct. 1710 (2009), to State v. Sandoval, 171 Wn.2d 163 (2011), I can’t take any of my prior knowledge for granted. Each month it seems the law of search and seizure is tweaked, and now I have to worry about whether a defendant’s attorney has fully informed him of immigration consequences and what other “collateral” consequences to a conviction may have to be reexamined sometime in the future.

One of the greatest challenges in law today is budget constraints. Any attorney employed through a local or state agency probably knows what I’m talking about. It’s hard to do your job when what’s handed to you is not investigated as much as you’d like. Justice costs money.

If I were not practicing law, I would be a plumber or an electrician. I’d be making a lot more money, and my father would approve of either of these “very practical” professions. And my wife would finally be glad when I bring work home.

If I could change one thing about the law, it would be the availability of good mentors — there just aren’t enough of them. Ironically, as a new deputy prosecutor in Grant County I was fortunate to have a strong (and unwitting) mentor outside the office, a very good defense attorney who had moral character and integrity. He explained to me the local economy of law. Every county has a slightly different price on lower level crimes. What is a DUI worth? In one county, they usually reduce a first-time DUI to a Negligent Driving 1. In other counties, you’ll be looking at least five or 10 days. Why? I learned that district courts operate not just upon the personalities of local judges but on the culture and mores of a region.

Traits I admire in other attorneys: Honesty and professionalism. It’s an adversarial system, but I really admire attorneys who can compartmentalize and not take it personally. Do your utmost best, but be professional.

I would give this advice to a first-year law student: Live a little. So many people get so focused on school they forget who else they are. You made it this far, so live a little. I was fortunate to attend law school in the Willamette Valley, and every chance I had I’d take wine tours, travel the area, just get away from the books.

Someone whose opinion matters to me: Mom and Dad. It took until I was in my 20s to realize they really have my best interests in mind. And they were, in hindsight, usually right. They came to America in 1973. Culturally, they were fairly naïve; for instance, they thought President Theodore Roosevelt’s actual name was “Teddy,” and thus I was christened Teddy. But their instincts for what is good and just, always spot-on. I admire their common sense.

People living or from the past I would like to invite to a dinner party and why: I’d put down a hefty sum of money to have a conversation with Teddy Roosevelt, Richard Nixon, and Barack Obama. I’d like them all together. WWI and the fruition of spreading Manifest Destiny, Richard Nixon exiting us from Vietnam, and Barack Obama killing Bin Laden — I think of these as pivotal points in history. We moved into foreign affairs; we tried to act upon foreign affairs; and finally, foreign affairs came to us on 9/11. They represent the complete circle.

I am most proud of this: I was able to stand up to a former boss when I thought something unethical was happening. I lost my job over it, but I had to speak up. I’m still here, I’m still standing, I’m still a deputy prosecutor and loving it.

My favorite vacation place: I really like Prague; it’s a historical city that was still in nearly pristine condition. Thankfully the Soviets didn’t have a chance to tear it down and rebuild it.

Best stress reliever: Gardening. Plants don’t talk back. And home improvement projects.

What keeps me awake at night: Evil people. Seriously.

Technology is a double-edged sword. It helps with law enforcement, but I suspect jurors want to be entertained CSI-style in every trial now.

This is the hardest part of my job: Striking a fair balance. I have the rule of law on one hand, and then I have living, breathing victims and defendants on the other. Lots of judgment calls, which is why a good criminal defense attorney makes my job so much saner.

This is the best part of my job: I get to wear the white hat. I get to do justice.

I would like to add this: We are fortunate to do what we do for a living. Being a lawyer has been an honor. Nevertheless, it’s a mistake to place so much emphasis on what we do for our bread and butter. We are more than our jobs. I was between jobs a year ago, and it was shattering; it made me really wonder who I was. My identity was so wrapped up in my chosen profession that I had to unlearn this imagined self. My heart goes out to people struggling in their career paths. If you find you are in the wrong profession, if it doesn’t fit — or if you must make waves to do what’s right and jeopardize your career — remember, you’re still you. Undo the golden handcuffs. How much money you make, how you answer questions, all that is extraneous. Any attorney employed through a local or state agency probably knows what I’m talking about. It’s hard to do your job when what’s handed to you is not investigated as much as you’d like. Justice costs money.

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Generations

To illustrate my June column about bass lines, I used a fuzzy, indistinct photo from my fuzzy, indistinct musical career. In the picture I’m playing a bass guitar that was bought for me (I can now admit without shame) by my mom. I was a starving college student and had a chance to play in a band. But the job was for a bassist and I only had a guitar. Mom couldn’t really afford it, but she knew I couldn’t either, so she did what moms do. She dipped into her pinochle money or whatever and bought me the Fender Precision Bass you see in the picture.

I was reminded of the provenance of that P-Bass (which I sadly no longer have) when I celebrated my mom’s 80th birthday recently. I spent a weekend with her, along with her brother and sister and their spouses. When we first gathered, I looked around and it struck me that all but one of them has known me my entire life. I mean, literally, they held me when I was a baby. They now all live hundreds of miles from me, and it has been 15 years since I last saw them together. But you don’t have to be a theoretical physicist to realize things aren’t that simple. My normally forward-looking son’s mentioning the old guitar instantly took us backward in time to when he was a teenager and I was the hopeful dad fixing him up with a musical instrument. And then I took another mental step back, to when I was about the age he is now and my mom was doing the same for me.

During the birthday weekend with my mom, aunts, and uncles, we spent most of our time looking back, even poring over two books of photos covering three previous generations. But as we marveled at pictures of her father as a young boy in his hometown of Florence, Italy, my mom started talking about things she hopes to do the next time she visits Europe. That caught my ear, as she had never before mentioned a desire to return to Europe, where she has only been once, maybe 15 years ago. But then I remembered something else about my mom. She grew up in a small town in Idaho, and as soon as she graduated from high school, she took off to Los Angeles and enrolled in fashion design school. Before then, the only metropolis she had visited was Spokane. I remember as a kid stumbling onto a sketchbook of her work and being astounded — my mom used to live in L.A. and design clothes! But she tired of the Southern California lifestyle pretty quickly, returned to the Northwest, got married, and never designed clothes for a living. Nevertheless, I’ve always admired her courage in giving it a try. Maybe she saw a glimpse of that adventurous spirit in me when I quit college in hopes of being a rock star.

Ever since I first heard about the concept of time travel, I’ve been waiting eagerly for someone to invent a workable time machine. But until that happens, I’m doing pretty well just hanging out with two generations of my family, appreciating the past while still looking forward to the future.

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