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Inadvertent Disclosure

What you should (and shouldn't) know

A New Paradigm for Challenging Breath Test Evidence in Washington

In response to the DUI defense bar's success in obtaining widespread suppression of breath test results through various challenges, the 2004 Legislature retaliated with a measure aimed at taking the power to suppress breath test evidence from the courts. A challenge to the constitutionality of the 2004 amendments spearheaded by this author, along with co-counsel Ted Vosk, who contributed to this article, led to further widespread suppression of breath test results. Our challenge made its way to the state supreme court in October of 2005. In a stunning opinion purporting to deny defense challenges, the Court gave the defense exactly what it sought: continued judicial discretion to exclude breath test results.

> "The legislature has made clear its intention to make BAC test results fully admissible once the State has met its prima facie burden….The act does not state such tests must be admitted if a prima facie burden is met; it states that such tests are *admissible*. The statute is permissive, not mandatory … [t]here is nothing in the bill, either implicit or explicit, indicating a trial court could not use its discretion to exclude the test results under the rules of evidence."

City of Fircrest v. Jensen, 158 Wn.2d 384(2006).

In a per se DUI prosecution, the state must "not only prove [a certain BAC], it must also prove beyond a reasonable doubt that the reading is accurate." *City of Seattle v. Gellein*, 112 Wn.2d 58 (1989). Pre-Jensen, we focused on whether the Washington Administrative Code (WAC) and common law foundational requirements were met for admission—not a very high threshold for the prosecution to meet. Post-Jensen, the potential challenges are limited only by our imaginations.

Under ER 403, relevant evidence can be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. The gem of Jensen is that an invalid, inaccurate or unreliable test should be excluded under ER 403. RCW 46.61.502 requires that analysis of a person's breath be made under RCW 46.61.506, which further provides that for "analysis of a person's blood or breath *to be considered valid* ….[it] *shall* have been performed according to methods approved by the state toxicologist…the state toxicologist is directed to approve satisfactory techniques or methods…." Thus, if the technique or method is not satisfactory, the test is not valid and should be excluded. Likewise, if the test was not performed in accordance with a satisfactory technique or method, it is not a valid test. Invalid tests should be excluded under ER403.

The approved "satisfactory techniques and methods" are published by the state toxicologist and are available on the Washington State Patrol's website. The Washington State Patrol Breath Test Section, Policy and Procedure Manual (2005), states that "deviation [from promulgated standards] may be justified where…the scientific integrity of the procedure, the instrument, the program or any breath alcohol measurement is not compromised." The WSP Training Outline for DataMaster and PBT, Operator Basic (2004) states that "an accurate and reliable breath test requires a good instrument, program, and protocol…the following are required for an accurate and reliable breath test…an instrument in proper working order [which has been] properly calibrated."

The protocol for calibration of the DataMaster is the "Quality Assurance Procedure [which] *ensures the accuracy, precision and forensic acceptability* of the DataMaster instrument … [t]he procedure evaluates critical systems within the instrument to ensure their compliance with strict pre-determined criteria." Clearly, a breath test performed on a machine that has not passed a QAP is not a valid test and should be excluded.

But what if the QAP itself is insufficient to ensure an accurate and reliable test? What are other jurisdictions doing to ensure accuracy and reliability? Are our techniques failing in some essential regard?

By way of example, persons with diabetes can have high levels of acetone on their breath. Acetone has a molecular structure very similar to alcohol. The DataMaster should detect acetone so that an innocent driver who had acetone, not alcohol, on his breath will not be convicted. A rudimentary test for acetone is run during the QAP consisting of a single test with 0.5ml of acetone in a .08 solution. If the machine detects an interferant, the test is passed.

However, there can be no confidence if the linearity of the result is not demonstrated. Testing varying levels of acetone with varying levels of alcohol and water would ensure the linearity of the result. So where diabetics are concerned, are the techniques and methods satisfactory? Can we have confidence in the result if we don't know how the DataMaster may react?

An important safeguard in breath testing is the external simulator test. "The simulator test is of significance in certification of the DataMaster machine, and in the machine's self-testing of calibration which it goes through each time a breath alcohol analysis is performed…the simulator protocol relates to accuracy of breath testing, [an] evidentiary concern." *State v. Straka*, 116 Wn.2d 859 (1991). The toxicologist has promulgated procedures for preparing simulator solutions that fall below the standards other states require. Our procedure permits the use of simulator solutions that have tested more than 2% outside of the acceptable range of the target value. The National Safety Council on Alcohol and Other Drugs requires that solutions must test within 2% of the target value to be placed in use in evidential breath testing. Given the critical function of the simulator, why does our protocol for preparation permit ranges of results more lax than nationally recognized standards?

We must scrutinize the procedures promulgated by the state toxicologist pursuant to the authority granted to him under RCW 46.61.506. We must continually challenge procedures that fail to ensure that only accurate, reliable and valid tests will be used as evidence against our citizens.

By Linda M. Callahan with Ted Vosk
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The Law Firm of Stephen Hayne

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

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

Aaron J. Wolff graduated with honors from the Seattle University School of Law before becoming a DUI prosecutor for the cities of Kirkland and Tukwila. In 2003, Aaron joined the Law Firm of Stephen Hayne where he has limited his practice to defense of DUI's and other serious traffic offenses. He is a graduate of the National College of DUI Defense, the DRE Drug Evaluation classification overview program and is a NHTSA qualified administrator of the Standardized Field Sobriety Tests. In 2004, Aaron completed the factory training program on the BAC Datamaster breath testing machine.

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A Round of Applause, Please

For the Good Work of the WSBA Sections and Committees!

Ellen Conedera Dial, WSBA President

For most members of the WSBA, communication with the Bar consists of completing and mailing the annual licensing form and reporting CLE credits. Yet many thousands of members are also members of one of the 26 sections, and hundreds are members of the executive committees of those sections or of one of the 24 standing committees of the Bar. Like most nonprofit organizations, the WSBA relies on volunteers to do a significant part of its work.

My first experience with volunteering for WSBA activities was in 1981, when I was still in the very early years of my practice. I had graduated from law school later than most of my peers and had two young children at home. I was a newcomer to Washington state, and knew almost no one in the legal community. I was intrigued, though, by the list of committees I received from the Bar office, together with an invitation to let them know if I was interested in serving on a committee. I thought that serving on a committee might be a good way to get to know other lawyers outside of my firm who had similar interests.

I was in my second year as an associate in a modest-sized firm in Seattle. I asked a partner of the firm if the Bar might be interested in having a junior lawyer serve on a committee. He said he thought it would, and that he would call the governor from our district and suggest my name for the committee I was interested in. (It happened to be the Code of Professional Conduct Committee, predecessor to the Rules of Professional Conduct Committee.) He made the call, and I was appointed to the committee. I still know, work with, and count as friends several of the members of that committee.

Just a few years later, I was invited to help the executive committee of the Real Property Probate and Trust Section (RPPT) with the early planning of the second edition of the *Real Property Deskbook*. Later I was invited to write articles for the newsletter. I was eager for the opportunity to increase my knowledge in my practice area, and I volunteered as often as I could. Eventually, I served as editor of the newsletter, then as a member of the executive committee, and eventually as chair of the Section. I got to work with lawyers at the top of the field, to write and comment on legislation, and to work with real estate lawyers throughout the state on issues that were important to them.

It was self-interest that got me involved in committee and section activities. I wanted to develop my knowledge and skills as a lawyer, to acquire and exercise leadership skills, to establish a network of lawyers in my practice area, and to stay abreast of developments in my field and in other areas that were particularly interesting to me. What kept me involved in Bar activities, though, was the opportunity it gave me to work with lawyers throughout the state on the challenges that they faced in their practices. That is the very same reason I volunteer today for the WSBA, and it is the reason that I am writing this column, because I hope that each of you will consider adding committee and/or section work to your volunteer work.

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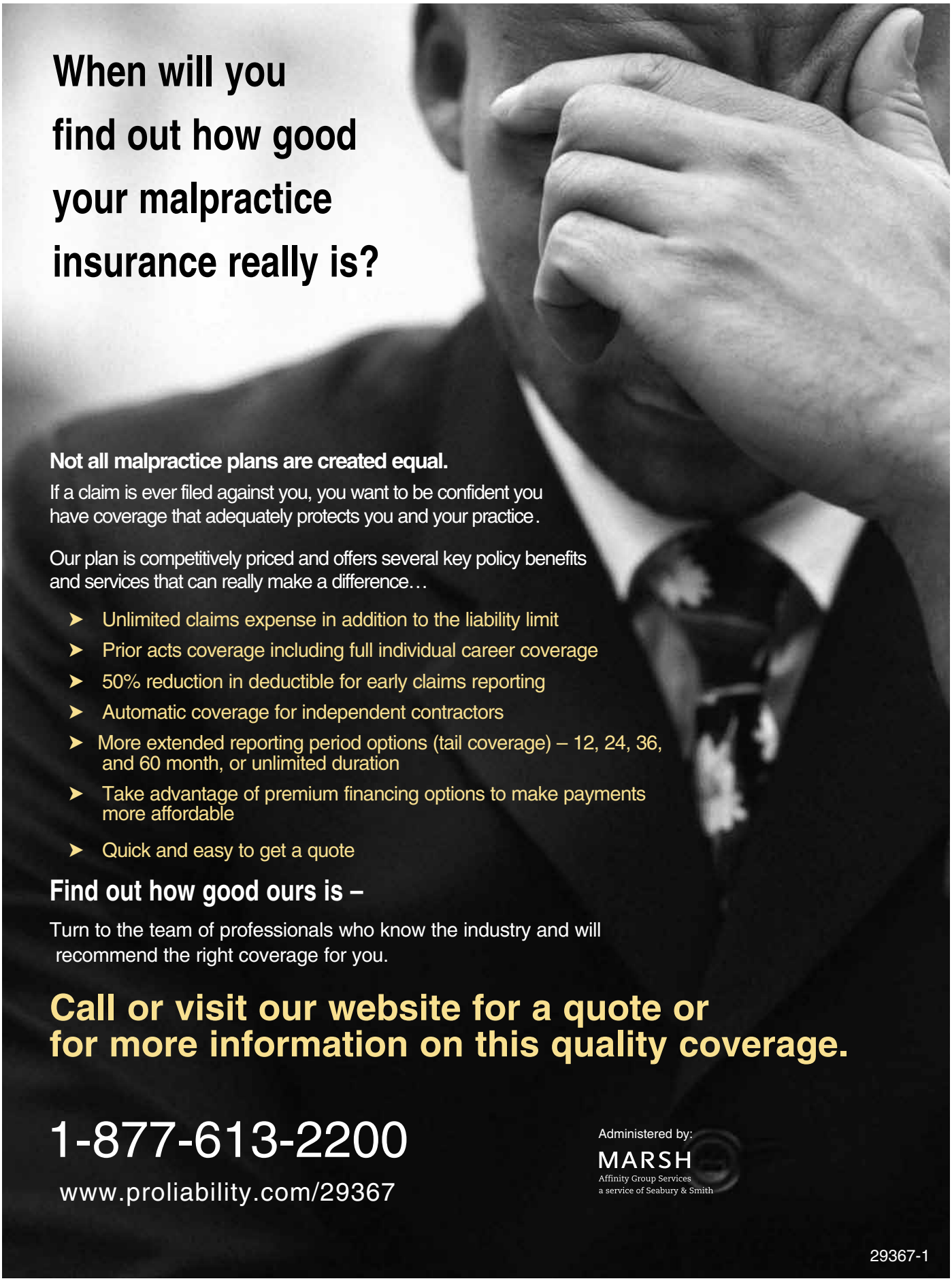
There are 24 standing committees appointed by the Board of Governors. Committees are established by the Board to stay current on the best thinking, knowledge, and practices in a wide range of policies and services, and to assist in doing the work of the WSBA. Most committee members are appointed by the Board of Governors for a limited term; committee chairs are appointed by the president to serve for limited terms, usually one year. Committees report to the Board, and the scope of their work is defined by their charters. Some committees provide services directly to members, such as the Rules of Professional Conduct Committee, which issues informal opinions on questions of ethics; others advise the WSBA on best practices to follow in a variety of areas, such as law office management or editorial content of *Bar News*. Still others make recommendations for specific programs, such as the Committee for Diversity, or rules, such as the Court Rules and Procedures Committee, or operate essential programs for the Bar, such as the Bar Examiners Committee, the Character and Fitness Board, and the Fee Arbitration Panel. Lawyers who serve on a WSBA committee can expect to have a direct impact on the functioning of an important aspect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of the work of the Bar. They can also expect to work with colleagues from around the state on issues of common interest, and to establish a career-long network of contacts and friends.

Unlike committees, sections are largely self-governing, with their own executive committees and significant control over their own budgets. Sections are organized around particular subject areas of practice. Acting within broad charters approved by the Board of Governors, and within the court rules that govern Bar activities generally, sections are free to serve their members and the public in whatever ways their executive committees deem best. Most sections issue newsletters regularly to keep section members apprised of developments in the law in their practice areas, and most offer CLEs in those areas. But sections do much, much more. Many sections, such as the Family Law, Business Law, RPPT, and Creditor-Debtor sections, are active in drafting legislation and supporting or opposing bills introduced in the Legislature, working with the Bar's legislative director. Several offer scholarships or stipends to law students, such as the scholarship offered annually by the Taxation Section to a lawyer pursuing an advanced tax degree, and the stipends offered by the Environmental and Land Use Section to law students who want to pursue summer projects in the environmental field. Several sections have been the moving forces behind specialized deskbooks, such as the recently issued *Public Records Deskbook*, which was a project of the Administrative Law Section working in collaboration with the Office of the Attorney General. The International Practice Section provides a network for lawyers from other countries to work with U.S. lawyers. Several sections, including the RPPT Section, the Family Law Section, the Labor and Employment Section, the Senior Lawyers Section, and the Business Law Section, have sponsored programming for the public on *The Docket*, TVW's program on the law and the justice system. And all of this is only a small part of the important work that sections do. Sections are a powerful and effective voice for lawyers in this state. Since they are also self-governing, they provide many excellent opportunities for developing leadership skills.

It should be obvious by now that I encourage all WSBA members who are interested in the broad issues that face the profession to become active on a committee and/or on the executive committee of their sections. Visit the WSBA website, and learn about the activities of the organizations you find interesting. There is no mystery about how to get involved. If you want to be appointed to a committee, call the governor on the Board of Governors who represents your district. If you are a member of the Young Lawyers Division, call the Board member elected to represent the Young Lawyers. If you are a member whose interests are represented by the at-large governors, call them. Tell them about yourself and your interests, and ask for an appointment to a committee. If you are interested in the work of a section, call the chair of the section. Volunteer to write an article for the newsletter, or to prepare a CLE speech on a current topic, or to work on a special project. You will be glad that you did!

I cannot close this article without acknowledging the superb WSBA staff, who provide indispensable support and guidance to volunteers on committees and sections, as well as to all of our members. I am very grateful for the help and advice I have received over the years from Bar staff, and for all that the Bar staff does today to further the mission and goals of the Bar. Thank you!

Ellen Conedera Dial can be reached at 206-359-8438 or ecdial@gmail.com.

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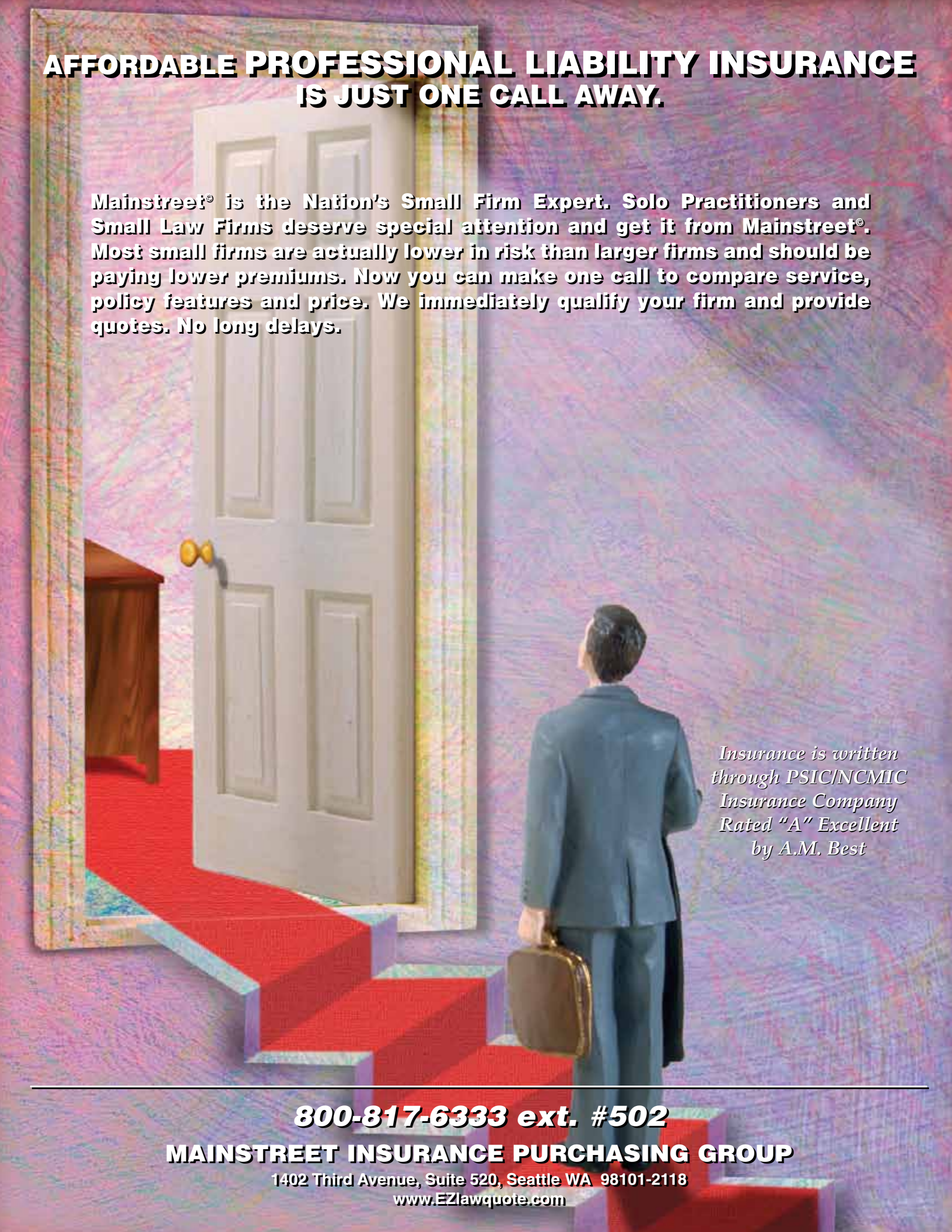

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Protecting Against

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Due to Inadvertent Disclosure

BY GREGORY D. SHELTON AND TARYN M. DARLING HILL

Modern discovery practice can be a burdensome and expensive endeavor for any litigant. The sheer volume of unorganized electronic information and embedded metadata involved in modern document productions increases the risk that attorney-client communications or attorney work product will be inadvertently produced to opposing counsel during discovery. Due to the risk of the possibility of a subject matter waiver arising from such inadvertent disclosure, the burden and expense of discovery are often enormously increased by the countless hours spent by attorneys and paralegals diligently screening potentially responsive documents and electronic information for privileged or protected communications. The "claw-back" agreement has made its way in to recent discovery practice as a means of easing the burden and expense of privilege screening.

Under a claw-back agreement, the parties agree that documents will be produced without any intent to waive privilege or other protections. A typical agreement will provide that if a privileged or protected document is inadvertently produced, the producing party informs the receiving party, who is obliged to return the document and prohibited from using it in the litigation. Parties will commonly present the agreement to the court in the form of a stipulated protective order or case management order.

The new Federal Rules of Civil Procedure 16(b) and 26(f) encourage parties and courts to address privilege issues early in litigation. Federal Rule of

Civil Procedure 26(b)(5)(B) now sets forth procedures for recalling privileged or protected information that is produced in discovery; and the advisory committee note specifically endorses the use of claw-back agreements.[1] On May 15, 2007, the Federal Advisory Committee on Evidence Rules proposed to the Judicial Conference of the United States a new Federal Rule of Evidence 502, which will create a uniform federal law with respect to privilege waiver, and allow for parties to enter into agreements regarding the effect of disclosure of attorney-client privilege or work-product information that would be binding on the parties and non-parties, provided the agreement is incorporated into a federal court order.

Use of claw-back agreements is not without risk. Claw-back agreements do not vitiate the argument that inadvertently produced information was not privileged or protected in the first place, or that waiver occurred due to some reason other than inadvertent production. In addition, an agreement between parties in one proceeding may not apply to third parties or different proceedings, making any privileged information inadvertently produced off-limits in one court, but fair game in another. Before entering into such agreements, counsel should be fully aware of these risks and prepare accordingly.

Attorney-Client Privilege

The attorney-client privilege protects from disclosure confidential communications between a client and her attorney in which the client is seeking or receiving legal advice. In Washington the privilege is codified at RCW 5.60.060(2)(a): "An attorney or counselor shall not, without the consent of his or her client, be examined as to any communication made by the client to him or her, or his or her advice given thereon in the course of professional employment."

The privilege promotes open, honest interaction and encourages parties to seek advice from counsel so that they can act responsibly and within the confines of the law. The United States Supreme Court articulated these principles in *Upjohn v. United States*, stating that the purpose of the privilege is to "encourage full and frank communication between attorneys and their clients and thereby promote the broader public interests in the observance of law and the administration of justice. The privilege recognizes that sound legal advice or advocacy depends on the lawyer's being fully informed by the client."[2] Washington courts have articulated similar purposes for the privilege: "[T]he attorney-client privilege . . . protects confidential attorney-client communications from discovery so clients will not hesitate to fully inform their attorneys of all relevant facts."[3] Indeed, in both the criminal and civil contexts, the attorney-client privilege is closely connected to the constitutional right to effective assistance of counsel.[4]

Attorney Work-Product Doctrine

The attorney work-product doctrine "shelters the mental processes of the attorney, providing a privileged area within which he can analyze and prepare his client's case."[5] The doctrine is often referred to as a qualified privilege or qualified immunity, because it does not completely protect the subject information. Factual information that has been gathered by an attorney can be obtained upon a showing of substantial need for one's case, and the inability to obtain the information from another source.[6] The attorney's mental impressions, research, opinions, and legal conclusions are more closely aligned with the attorney-client privilege and enjoy "nearly absolute immunity."[7]

The United States Supreme Court recognized that protection of attorneys' thoughts, impressions, conclusions, and legal theories is integral to their ability to adequately prepare their clients' cases. In *Hickman v. Taylor*, the court observed that disclosure of such information would have detrimental effects:

> [M]uch of what is now put down in writing would remain unwritten. An attorney's thoughts, heretofore inviolate, would not be his own. Inefficiency, unfairness and sharp practices would inevitably develop in the giving of legal advice and in the preparation of cases for trial. The effect on the legal profession would be demoralizing. And the interests of the clients and the cause of justice would be poorly served.[8]

Thus, the attorney work-product doctrine serves essentially the same public policy as that of the attorney-client privilege: protecting client confidences, allowing the free flow of information between attorneys and clients, and fair administration of justice.

Waiver of Attorney-Client Privilege or Work Product

The attorney-client privilege and the attorney work-product doctrine are at odds with the public's interest of a full disclosure of facts, because application of these principles often results in the exclusion of relevant and material evidence.[9] Therefore, they are narrowly construed and, in the view of one court, must be protected "like jewels — if not crown jewels."[10] It is generally held that the voluntary disclosure of attorney-client communications or attorney work product to an opposing party constitutes a waiver of the privilege or protection.[11]

The scope of waiver varies by jurisdiction and by the circumstances of the disclosure. Where a party has voluntarily disclosed selected privileged information in an attempt to gain advantage, or to use the information for its own purposes, fairness dictates that full disclosure be made to protect against a misleading presentation of evidence. As such, courts may order that all protected information related to the subject matter of the voluntarily waived information be disclosed.[12] On the other hand, where the disclosure of privileged or protected information is accidental or inadvertent, the scope of waiver will often be limited to only the specific information that was disclosed.[13] Some courts (including the 9th Circuit) have held, however, that inadvertent disclosure will result in subject matter waiver.[14]

Inadvertent Disclosure of Privileged or Protected Information

Across the country courts have adopted three different views as to whether an inadvertent disclosure constitutes a waiver of the attorney-client privilege or attorney work-product protection: waiver always occurs; waiver never occurs; or the court must balance several factors to determine if waiver has occurred. While there is some indication that Washington courts would employ the balancing test, no state appellate court appears to have directly addressed the issue of inadvertent disclosure.

Under the so-called strict liability standard, all disclosures to third parties of privileged or protected information constitute waiver.[15] The underlying rationale for the strict liability standard is based on the fact that "the whole basis of the privilege is to maintain the confidentiality of the document. It cannot be doubted that

the confidentiality of the document has been destroyed by the 'inadvertent' disclosure no less than if the disclosure had been purposeful."[16] Likewise, courts that adopt this approach express reluctance to serve as a backstop for those who, in the courts' view, take less care in preserving the privilege than others.[17] This inflexible approach has drawn criticism, however, as "too harsh in light of the vast volume of documents disclosed in modern litigation."[18] It also may have a chilling effect on the free flow of information that the attorney-client privilege and work-product doctrine are meant to protect. Clients will be less likely to openly communicate and attorneys will be less likely to record their thoughts and impressions when even the slightest mistake will open up their confidences to the world.

At the other side of the spectrum are courts that hold that inadvertent disclosure does not waive the attorney-client privilege.[19] These courts base their holdings on the principle that waiver requires a party to intentionally relinquish a known right. Accordingly, waiver by inadvertent or accidental production is inherently contradictory. In addition, the privilege belongs to the client, and more than mere negligence by counsel should be required before the client is deemed to have abandoned the privilege.[20] Such reasoning has been criticized, however, as substituting "semantics for analysis."[21] Implied and inadvertent waivers are frequently recognized in the law. So, too, clients' rights are deemed forfeited by attorney negligence when the attorney fails to file a lawsuit before the statute of limitations runs, or if counsel fails to properly serve a motion. The "no waiver" rule is also criticized, because it does not encourage attorneys and clients to appropriately guard confidential communications and information.

Most courts, including those in the 9th Circuit, take an approach to inadvertent disclosure that requires the balancing of five factors: (a) the reasonableness of the steps taken to prevent inadvertent disclosure; (b) the time taken to rectify the error; (c) the scope of discovery; (d) the extent of the disclosure; and (e) the overreaching issue of fairness.[22] This middle-ground approach looks at whether a party acted reasonably under the circumstances of a particular privilege review. The most obvious circumstance to consider is the volume of information involved in the review.[23] Another significant circumstance is the amount of time that the party has to conduct the review. For instance, it is not reasonable (and often impractical) for a party to conduct a second or third review of millions of documents or computer files in a relatively short time frame.[24] Thus, the balancing test approach seeks to accommodate the rationale underlying both the strict liability approach and the more lenient approach of non-waiver by imposing reasonable burdens on counsel to implement steps to protect the information, but acknowledging the realities of modern-day privilege review where millions of documents or files may need to be screened.[25]

Commentators have indicated that Washington has adopted the strict liability approach to inadvertent waiver.[26] The basis for this assertion, however, is *State v. Thorne*,[27] a case involving the marital privilege where a husband confessed to his wife in the presence of the arresting officers (not inadvertently), that he had committed a crime. The court held that because the conversation was overheard, the communication was not confidential, and could not be privileged. Washington has not squarely addressed the issue of inadvertent disclosure of attorney-client privileged communications or attorney work product, though Chief Justice Alexander argued for the application of the balancing test in his dissent in *Harris v. Drake*.[28]

Harris arose out of an automobile collision. Prior to the commencement of the lawsuit, plaintiff filed a personal-injury protection claim with his insurance company. The insurance company required plaintiff to undergo an independent medical examination, and the insurer's expert wrote two reports regarding his examination of the plaintiff. During discovery, the insurer, who was not a party to the lawsuit, apparently produced the reports to the defendant. After defendant attempted to use the reports and call the doctor as a witness, plaintiff claimed that the doctor was actually his consulting expert, and that the reports were protected as the work product of his insurance company. The insurance company was consulted and stated that it would not take a position adverse to plaintiff, and refused to consent to the doctor being called as defendant's witness. The trial court granted plaintiff's motion to exclude the doctor's testimony.[29] The Washington State Supreme Court affirmed the holding that the reports were work product and that plaintiff had the authority to assert the protection.[30]

Chief Justice Alexander dissented, arguing that the majority overlooked that the reports were inadvertently disclosed by the insurance company. Justice Alexander felt that the majority should have engaged in an analysis of waiver in the context of inadvertent disclosure. In the absence of any applicable Washington law, the Chief Justice advocated for the adoption of the balancing test, under which he would have found that the work-product protection was waived.[31] It is important to note that *Harris* involved only the work-product doctrine, not attorney-client privilege. Thus, the law in Washington is unsettled as to the effect of waiver in the context of

inadvertently disclosed information that is protected by the attorney-client privilege or attorney work-product doctrine.

Utilizing Claw-Back Agreements

Due to the unsettled law in the state of Washington, claw-back agreements may offer some protection against an inadvertent disclosure resulting in a waiver of the attorney-client privilege or the work-product protection. In fact, RPC 1.6 (Confidentiality of Information) arguably dictates an obligation on the part of counsel to enter into claw-back agreements when engaging in large document productions or electronic discovery. Comment [16] to RPC 1.6 advises that "A lawyer must act competently to safeguard information relating to the representation of a client against inadvertent or unauthorized disclosure . . . ." Comment [23] further advises: "A lawyer must make every effort practicable to avoid unnecessary disclosure of information relating to a representation, to limit disclosure to those having the need to know it, and to obtain protective orders or make other arrangements minimizing the risk of avoidable disclosure."[32] Accordingly, parties should use their best efforts to enter into claw-back agreements and present them to the court as a stipulated protective order or case-management order. Courts in Washington have broad discretion to control discovery;[33] thus, once the agreement is entered as an order it should be enforceable between the parties. Courts in other jurisdictions have not only endorsed, but actually encouraged, parties to enter into claw-back agreements.[34]

Even if the claw-back agreement is incorporated into a protective order or case-management order, the use of such agreements is not without risk. Some commentators have expressed skepticism that claw-back agreements protect parties from waiver.[35] And, even if the parties to the agreement are protected, the claw-back is probably not enforceable with respect to third parties.[36]

Claw-back agreements are not a license to entirely forego a privilege review. Under even the most lenient analysis of inadvertent disclosure, an attorney's gross negligence in failing to protect the privilege will result in a waiver. Indeed, a claw-back agreement protects against inadvertent disclosure — failing to undertake even a modest privilege review before production could be considered tantamount to a voluntary waiver.[37]

Possible Protection in Federal Court

In December 2006, the Federal Rules of Civil Procedure 16 and 26 were amended and now impose obligations on the parties and the court to address electronic discovery early in the litigation process. Under the new Rule 16(b)(5), courts have the discretion to enter orders encompassing "any agreement the parties reach for asserting claims of privilege or protections after production." Although nothing in the old rules prevented a court from entering such an order, the new rules increase awareness of the court's ability to address privilege issues early in the case. Rule 26(f) now also mandates that the parties address privilege and work-product issues at their initial pre-discovery conference.

The amendments to Rule 26(b)(5)(B) provide that a party who has inadvertently produced privileged information must notify the recipient and assert the basis for the claim of privilege. The recipient is obligated to "promptly return, sequester, or destroy" the purportedly privileged materials. The parties are permitted to file the information under seal with the court and move for a ruling if the claim of privilege is disputed. It is important to note that Rule 26(b)(5)(B) is not limited to electronically stored information, and it also does not address whether a privilege or protection has been waived by inadvertent production, which is governed by the substantive law of the jurisdiction.

In an attempt to create a uniform standard in the federal courts with respect to the effect of inadvertent disclosure, the Federal Advisory Committee on Evidence Rules has proposed Federal Rule of Evidence 502. If enacted by Congress in its present form, waiver would occur only if the disclosure occurred due to inadvertence, the party's failure to take reasonable steps to preserve the privilege or protection, and the party's failure to make a timely attempt to rectify the error. The proposed rule makes clear that subject-matter waiver would only occur in the case of intentional disclosure. Finally, the proposed rule would allow courts to incorporate claw-back agreements into court orders that would "apply to all entities in federal and state proceedings, whether or not they were parties to the federal litigation."

Conclusion

Chief Justice Alexander's dissent in *Harris* is currently the only substantive discus-

sion of inadvertent production under Washington law, and it is limited to the work-product doctrine, not attorney-client privilege (or even the work product of an attorney). As noted above, because evidentiary privileges result in the exclusion of relevant and material evidence, and Washington courts narrowly construe privilege issues, the courts may ultimately decide to apply the "strict liability" approach to inadvertent production. Thus, while the utilization of claw-back agreements is not without risks, they appear to offer the best protection against waiver due to inadvertent disclosure. Once an agreement is in place, it is less likely that opposing counsel will dispute a request for the return of inadvertently produced privileged or protected information. (Counsel may, however, challenge whether the documents are really privileged or protected.) Moreover, a court that has adopted the parties' claw-back agreement as a stipulated protective order is not likely to employ the strict liability standard if inadvertent production occurs. Finally, while practitioners are obliged not to reveal client confidences, the sheer volume of information and embedded metadata in electronic productions makes it impractical and nearly impossible to screen for every single bit of data that may contain attorney-client communications or attorney work-product protection. Claw-back agreements are an additional useful tool to assist counsel in fulfilling their ethical duties of protecting client confidences.

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NOTES

1. Fed. R. Civ. P. 26(b)(5)(B); Fed. R. Civ. P. 26(f) advisory committee's note.
2. *Upjohn v. United States*, 449 U.S. 383, 389 (1981). *See also, Fisher v. United States*, 425 U.S. 391, 403 (1976) ("The purpose of the privilege is to encourage clients to make full disclosure to their attorneys . . . . [I]f the client knows that damaging information could more readily be obtained from the attorney following disclosure than from himself in the absence of disclosure, the client would be reluctant to confide in his lawyer and it would be difficult to obtain fully informed legal advice.").
3. *Barry v. USAA*, 98 Wn. App. 199, 204, 989 P.2d 1172 (1999).
4. *Martin v. Lauer*, 686 F.2d 24, 32-33 (D.C. Cir. 1982) (observing that litigants' "interest in speaking freely with their attorneys is interwoven with their right to effective assistance of counsel"); *Potashnick v. Port City Constr. Co.*, 609 F.2d 1101, 1118 (5th Cir. 1980) (finding that in both civil and criminal cases "the right to counsel is one of constitutional dimensions and should thus be freely exercised without impingement" and that the need for attorney-client communication is essential in any case); *Odone v. Croda Int'l PLC*, 170 F.R.D. 66, 69-70 (D.D.C. 1997).
5. *United States v. Nobles*, 422 U.S. 225, 238 (1975).

6. CR 26(b)(4); *Harris v. Drake*, 152 Wn.2d 480, 485-86, 99 P.3d 872 (2004); *Heidebrink v. Moriwaki*, 104 Wn.2d 392, 396, 706 P.2d 212 (1985).
7. *Soter v. Cowles Publ'g Co.*, 131 Wn. App. 882, 894, 130 P.3d 840 (2006); *see also* CR 26(b)(4).
8. *Hickman v. Taylor*, 329 U.S. 495, 511 (1947).
9. *Dietz v. Doe*, 131 Wn.2d 835, 843, 935 P.2d 611 (1997); *Versuslaw, Inc. v. Stoel Rives, LLP*, 127 Wn. App. 309, 332, 11 P.3d 866 (2005).
10. *In re Sealed Case*, 877 F.2d 976, 980 (D.C. Cir. 1989).
11. *Limstrom v. Ladenburg*, 110 Wn. App. 133, 145, 39 P.3d 351 (2002) (in an absence of Washington case law, the court held that generally "[i]f a party discloses documents to other persons with the intention that an adversary can see the documents, waiver generally results"); *Halffman v. Halffman*, 113 Wash. 320, 325, 194 P. 371 (1920) (only communication that is intended to be confidential, falls under the protection of the attorney-client privilege).
12. *Martin v. Shaen*, 22 Wn.2d 505, 513, 156 P.2d 681 (1945); *Weil v. Inv./Indicators, Research & Mgmt., Inc.*, 647 F.2d 18, 24 (9th Cir. 1981); *In re Sealed Case*, 877 F.2d 976, 980-81 (D.C. Cir. 1989).
13. *In re Martin Marrietta Corp.*, 856 F.2d 619, 625-26 (4th Cir. 1988) (finding no subject matter waiver with regard to work product); *In re Hechinger Inc. Co. of Del.*, 303 B.R. 18, 26 (D. Del. 2003); *In re United Mine Workers of Am. Employee Benefit Plans Litig.*, 159 F.R.D. 307, 312 (D. D.C. 1994) (finding no subject matter waiver with regard to work product); *Golden Valley Microwave Foods, Inc. v. Weaver Popcorn Co.*, 132 F.R.D. 204, 208 (N.D. Ill. 1990); *Int'l Digital Sys. Corp. v. Digital Equip. Corp.*, 120 F.R.D. 445, 446. (D. Mass. 1988) (no subject matter waiver despite application of "strict liability" waiver rule); *Parkway Gallery Furniture, Inc. v. Kittinger/Pennsylvania House Group, Inc.*, 116 F.R.D. 46, 52 (M.D.N.C. 1987) ("In a proper case of inadvertent disclosure, the waiver should cover only the specific document in issue.").
14. *Weil*, 647 F.2d at 25; *but see Amgen, Inc. v. Hoechst Marion Roussel, Inc.*, 190 F.R.D. 287, 293 (D. Mass. 2000) (court considers, and determines it will express no opinion on subject matter waiver because of potentially far-reaching consequences, and for failure of party to address).
15. *Harmony Gold U.S.A. Inc. v. FASA Corp.*, 169 F.R.D. 113, 118 (N.D. Ill. 1996); *Lifewise Master Funding v. Telebank.*, 206 F.R.D. 298, 303-04 (D. Utah 2002).
16. *Int'l Digital Sys. Corp.*, 120 F.R.D. at 449 (emphasis in original).
17. *In re Sealed Case*, 877 F.2d at 980 ("Although the attorney-client privilege is of ancient lineage and continuing importance, the confidentiality

of communications covered by the privilege must be jealously guarded by the holder of the privilege lest it be waived.").

18. *F.D.I.C. v. Marine Midland Realty Corp.*, 138 F.R.D. 479, 481 (E.D. Va. 1991).
19. *See, e.g.,* G*eorgetown Manor, Inc. v. Ethan Allen, Inc.*, 753 F. Supp. 936 (S.D. Fla. 1991).
20. *Mendenhall v. Barber-Greene Co.*, 531 F. Supp. 951, 955 (N.D. Ill. 1982); *see also Helman v. Murry Steaks, Inc.*, 728 F. Supp. 1099, 1104 (D. Del. 1990); *In re Sealed Case*, 120 F.R.D. 66, 72 (N.D. Ill. 1988); *Kansas-Nebraska Natural Gas v. Marathon Oil Co.*, 109 F.R.D. 12, 21 (D. Neb. 1985).
21. *Bank Brussels Lambert v. Credit Lyonnais (Suisse) S.A.*, 160 F.R.D. 437, 442 (S.D.N.Y. 1995).
22. *United States ex rel Bagley v. TRW, Inc.*, 204 F.R.D. 170, 177 (D. Cal. 2001); *see also Transamerica Computer Co. v. Int'l Bus. Mach. Corp.*, 573 F.2d 646 (9th Cir. 1978); *Lois Sportswear, U.S.A., Inc. v. Levi Strauss & Co.*, 104 F.R.D. 103, 105 (S.D.N.Y. 1985).
23. *Transamerica Computer Co.*, 573 F.2d at 652 (17 million pages screened in three months); *Marine Midland Realty Corp.*, 138 F.R.D. at 483; *Lois Sportswear*, 104 F.R.D. at 105 (16,000 pages screened); *Kansas-Nebraska Nat. Gas. Co.*, 109 F.R.D. at 21 (75,000 documents produced).
24. *F.H. Chase, Inc. v. Clark/Gilford*, 341 F. Supp. 2d 562, 563-65 (D. Md. 2004) (finding that time constraints of review weighed against finding waiver despite party producing 569 pages of privileged information out of 7,155 documents produced); *Kansas City Power & Light Co. v. Pittsburg & Midway Coal Mining Co.*, 133 F.R.D. 171, 174 (D. Kan. 1989) (finding no waiver where procedures employed, including screening, were adequate to prevent inadvertent disclosures given the scope of discovery).
25. *Alldread v. Grenada*, 988 F.2d 1425, 1434 (5th Cir. 1993) (stating that the "circumstances surrounding a disclosure" should be examined to determine if waiver has occurred); *Kansas City Power & Light Co.*, 133 F.R.D. at 172 (refusing to "conceive of further precautions that might have prevented an inadvertent disclosure" and analyzing only the particular circumstances involved in the review).
26. Dennis R. Kiker, *Waiving the Privilege in a Storm of Data: An Argument for Uniformity and Rationality in Dealing with the Inadvertent Production of Privileged Materials in the Age of Electronically Stored Information*, 12 RICH. J.L. & TECH. 15, 25 (2006); John T. Hundley, Annotation, *Waiver of Evidentiary Privilege by Inadvertent Disclosure — State Law*, 51 A.L.R. 5th 603 (2004).
27. *State v. Thorne*, 43 Wn.2d 47, 260 P.2d 331 (1953).
28. *Harris v. Drake*, 152 Wn.2d 480, 99 P.3d 872 (2004).
29. *Id.* at 485.
30. *Id.* at 492.
31. *Id.* at 494-97.
32. RPC 1.6 cmt. 23.
33. *O'Connor v. Dep't of Soc. & Health Servs.*, 143 Wn.2d 895, 905, 25 P.3d 426 (2001); *Soter*, 131 Wn. App. at 892-93.
34. *In re Delphi Corp. Secs.*, No. 05-md-1725, 2007 U.S. Dist. LEXIS 10408 at *26 (D. Mich. Feb. 15, 2007); *Hopson v. Mayor & City Council of Baltimore*, 232 F.R.D. 228, 246 (D. Md. 2005); *Zubulake v. UBS Warburg LLC*, 216 F.R.D. 280, 290 (S.D.N.Y. 2003).
35. 24 Charles Allen Wright & Kenneth W. Graham, Federal Rules of Evidence § 5507 (1986).
36. *Hopson*, 232 F.R.D. at 235 (citing *Westinghouse Elec. Corp. v. Republic of the Philippines*, 951 F.2d 1414, 1426-27 (3d Cir. 1991) (holding agreement between litigant and DOJ that documents produced in response to investigation would not waive privilege does not preserve privilege against different entity in unrelated civil proceeding); *Bowne v. AmBase Corp.*, 150 F.R.D. 465, 478-79 (S.D.N.Y. 1993) (non-waiver agreement between producing party in one case is not applicable to third party in another civil case).
37. *But see Zubulake*, 216 F.R.D. at 290 ("'claw-back' agreements . . . allow the parties to forego privilege review altogether. . . .").

Is a Tenant-in-Common Interest a Security or Fee-Simple Real Estate?

Caution Is the Better Part of Valor

BY WES LARSON

The popularity of tenant-in-common investments (TICs) has grown rapidly since the Internal Revenue Service (IRS) released Revenue Procedure 2002-22 on May 8, 2002 (Rev Proc 2002-22). That procedure specifies the conditions under which the IRS will consider a request for a private letter ruling that a fractional interest in rental real property (a TIC) is not an interest in a business entity (such as a limited liability company or a partnership) and therefore may qualify as real property held for investment purposes eligible for tax deferred treatment under IRC Section 1031.

With the guidance provided by Rev Proc 2002-22, TIC sponsors, or promoters, have structured TIC transactions that qualify as an interest in real property for IRC Section 1031 purposes. Real estate investors, searching for ways to own real estate without day-to-day management headaches, have been feasting on these TICs ever since. According to data maintained by the Tenant-in-Common Association (TICA), since Rev Proc 2002-22 was released, the TIC industry nationwide has grown from total equity of $166 million in 2001 to an estimated $4 billion by the end of 2006.

While the IRS may have concluded a properly structured TIC interest (that is, structured in accordance with Rev Proc 2002-22) is real estate and not an investment in a business entity (a security), the security regulators seem to have reached the opposite conclusion about most syndicated TIC interests sold through private equity markets. Most regulators have decided TIC interests are securities subject to federal and state security laws. Whether a TIC interest is a security or a fee-simple interest in real estate is an important question for attorneys, accountants, and brokers to consider when advising their clients on TIC transactions.

In 1946, the U.S. Supreme Court decided *SEC v. W. J. Howey Co.*, 328 U.S. 293 (1946), the seminal case on the definition of a security. In *Howey*, the Court held a security is any investment contract "whereby the profits are derived solely through the entrepreneurial efforts of others." *Howey*, 328 U.S. at 3. Because most TICs marketed through private equity markets are combined with a management agreement to manage the real estate (investors rely on the efforts of others for their profit), almost all (48 of 50) state agencies charged with enforcement of state securities laws have issued advisory opinions that syndicated TIC investments offered through private equity markets are, in general, a security and not a fee-simple interest in real property. In 2005, the Washington State Department of Financial Institutions' Securities Division issued its own opinion that most of the TICs on the market today will be treated as securities subject to Washington state securities laws.

In a recent article, Dick Lipton, senior tax counsel at the law firm of Baker & McKenzie, argued that a TIC may not be a security if the management contract is excluded from the offering, allowing the investors to choose the manager, and provided the manager is not the sponsor or an affiliate of the sponsor company (*TICTALK*, 4th Quarter, 2006, copyright OMNI Brokerage, Member NASD SIPC). Although the offeror of the TIC may have undertaken all other entrepreneurial efforts, including the acquisition, due diligence, and financing of the TIC, so long as the investors retain direct control over the future management of the asset, it should be treated as a "non-securitized" offering, eligible for sale by a licensed real estate broker. In other words, if the investors retain management rights, then the profits will not be derived "solely" by others, and therefore the investment contract is not a security. However, this opinion is not universally accepted among industry observers. Much recent case law, at the federal as well as the state level, suggests otherwise.

What is not disputed is that if the TIC structure includes a management agreement as part of the "package," it is a security. If a TIC transaction includes a master lease whereby the sponsor/promoter or affiliate of the same is also the master tenant, it will also be considered a security. See *SEC v. Edwards*, 540 U.S. 389 (2004) and *Triple Net Leasing, LLC*, SEC No Action Letter, SEC No-Act. LEXIS 824 (Aug. 23, 2000). In either of the foregoing instances, there is no question that the promoter is providing all the entrepreneurial activities.

Are TICs offered without post-sale management services necessarily real estate and not securities? What is the SEC's position?

This is the key question. Real estate brokers are offering a plethora of TIC investments to the general public in a "non-securitized format," as suggested by Mr. Lipton. May promoters or investors rest assured that they have found a safe harbor?

The answer is apparently "no," so far as the SEC is concerned. At the 2007 Tenants-in-Common membership symposium, Da-

vid Lynn, chief counsel in the SEC Division of Corporate Finance, cited *SEC v. Mutual Benefits Corporation*, 408 F. 3d 737 (11th Cir. 2005) as reflecting — in his opinion — the SEC's position on the issue.

That case concerned viatical settlement contracts. According to Lynn, the case did away with "the artificial distinction between pre-sale and post-sale efforts." In *Mutual Benefits*, the court concluded that: "While it may be true that the "solely on the efforts of the promoter or a third party" prong of the *Howey* test is more easily satisfied by post-purchase activities, there is no basis for excluding pre-purchase activities from the analysis. Significant pre-purchase managerial activities undertaken to insure the success of the investment may also satisfy *Howey*."

The courts have uniformly recognized that Congress intended to make the definition of "security" as broad as possible. Although the courts may approach the issue differently, the courts of appeal have been unified in refusal to give literal meaning to the word "solely," and have held, rather, that "the efforts made by those other than the investor are the undeniably significant ones, those essential managerial efforts which affect the success or failure of the enterprise."

In *SEC v. Glenn W. Turner Enterprises*, 474 F. 2d 476 (9th Cir. 1973), the court held that "in light of the remedial nature of the legislation, the statutory policy of affording broad protection to the public, and the Supreme Court's admonitions that the definition of securities should be a flexible one, the word 'solely' should not be read as strict or literal limitation on the definition of an investment contract, but rather must be construed realistically so as to include within the definition those schemes which involve substance, if not form, securities."

Further, the NASD, in its Notice to Members 05-18 (2005), has stated its position that "when TICs are offered and sold together with other arrangements, they generally would constitute investment contracts and thus securities under the federal securities laws."

Should one successfully argue that federal law does not mandate that all syndicated TICs are securities, each state has its own securities laws, and these must be contended with as well? At a recent WSBA CLE on TIC/1031 exchanges (January 8, 2007), associate counsel for the Washington State Securities Division took the position that where TICs are being structured pursuant to an investment scheme, and post-sale management services are not included as part of that scheme, the investment contract test may still be considered satisfied.

Some states have openly clashed with the federal courts' position on TICs as securities or real estate. In Utah, for example, state law provides that TICs may be sold only as real estate. In other states, such as Idaho and Oregon, legislation is being proposed that would specify conditions under which TICs may be sold as real estate and not be considered securities. This legislation notably includes the critical provision (as stated by Mr. Lipton) that the investors control the management. This obviously relies on a narrow definition of the *Howey* test, one that the SEC and the federal courts may not recognize.

If a TIC is a security, it can be brought to the market only by the issuer or a NASD (National Association of Securities Dealers) licensed broker dealer and a securities licensed registered representative who is subject to supervision of the broker dealer (NASD Rule 3010). The typical TIC is sold as a private placement exempt from the registration process pursuant to Regulation D, and marketed, in general, only to accredited investors (those who have a net worth of greater than $1 million and/or net income of $200,000 for the prior two years; $300,000 in the case of a married couple, or who meet other criteria listed in Regulation D

Rule 501A) with whom the issuer or broker/dealer has a pre-existing relationship. General solicitations to the public, including any form of public advertisements, are strictly prohibited. Rule 506 also requires federal and state notice filings, and no more than 35 accredited investors. Fees may not be shared with non-securities licensed individuals or entities (NASD Rule 2420). NASD NTM 03-71 also sets forth industry standards for a member's due diligence, as well as for investor suitability analysis, promotion, and implementation of internal controls.

A TIC offered as real estate, and sold by real estate brokers, may or may not include the same level of disclosure as a securitized TIC offering, but a security is generally held to a much higher standard of disclosure.

Should the sale of the TIC interest be considered as real estate, the investors' right to receive information would be limited, in any case, to the four corners of the purchase and sale agreement. The duty to inquire and conduct due diligence is shifted to the investor. The Latin caution *caveat emptor* (let the buyer beware) typically applies at some point in a real estate transaction, whereas the operating term in a securities transaction may best be stated, in contrast, as *caveat vendor* (let the seller beware).

Given the rapid growth of the TIC industry, and what many experts claim is an overheated real estate market, the caution flag should be raised. If one is reviewing a proposed TIC transaction, caution is the better part of valor. The advisor is better served viewing any syndicated TIC as a security. Regardless of the perceived quality of a real estate TIC offering, the fact is that the distribution channel will be called into question if and when a securities action is filed; specifically, to whom and by whom was the investment offered, and how was it offered into the market place. One should inform one's client that a violation of the securities laws and resultant legal action may likely result in a default under the loan documents with the bank financing the TIC, with potentially significant economic consequences for all investors. Indeed, a failure by the attorney to make his client aware of these issues could even result in a malpractice claim. An accountant or broker advising his client that the law authorizes investment in such a transaction is in any case offering a legal opinion that he or she is not authorized to make. Penalties for violation of securities laws are considerable. In the worst case, for the promoter of a TIC offering, a claim for securities fraud may result not only in civil liability, but criminal penalties as well.

One may argue that there is a "substantial chance" a TIC may be structured and offered as real estate, and not as a security, but that view is far from the safe harbor your client rightfully expects, and the professional advisor is better off counseling his client to invest in an offer of a TIC only if done so pursuant to Regulation D of the 1933 Securities Act, and subject to the attendant oversight and rules of the SEC and NASD.

In an effort to resolve some of the differences between the real estate and securities industries, including resolution of the issue of sharing fees between real estate and securities practitioners, NASSA, NAR, and TICA have formed a joint task force to review the issues surrounding TICs as securities or real estate. In addition to reviewing proposals for real estate brokers to share in fees, the task force is also considering increased standardization of state securities rules regarding administration of the TIC industry.

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The Mandatory Order for Protection: A Tool for Client Safety

BY JUSTICE BARBARA MADSEN AND GLORIA HEMMEN

Washington has joined a national movement, "Project Passport," aimed at ensuring safety for victims of domestic violence who cross jurisdictional lines. This project enhances the likelihood that Domestic Violence Orders of Protection will be recognized and enforced across state, county, and tribal lines through adopting a model first-page template (model template). In June 2005, after a year of work by a team composed of attorney, court, domestic-violence advocate, and law-enforcement volunteers, the revised Washington State Domestic Violence Order for Protection (ORPRT, WPF DV-3.015) [1] was distributed to presiding judges, county clerks, court administrators, and prosecuting attorneys, and posted on the Washington Courts website.[2] To underscore the importance of "Project Passport," Chief Justice Gerry Alexander and Justice Barbara Madsen, as chair of the Supreme Court's Gender and Justice Commission, issued a memo reminding all parties receiving the new form that:

> Chapter 26.50 RCW protection order forms and the domestic relations forms are mandatory pattern forms pursuant to RCW 26.50.035 and RCW 26.18.220, respectively. You are encouraged to use these new forms immediately.

The changes incorporated in the chapter 26.50 RCW Order for Protection clarify when the order restricts the restrained person's right to possess firearms or ammunition under 18 U.S.C. § 922(g)(8). The order's first page is adapted from a national template designed to facilitate recognition and enforcement of the order for protection in other jurisdictions.

Use of these model orders is critical to achieve the goals of "Project Passport": consistency, enforceability, and safety. Every Order for Protection entered in Washington state courts should be on the most current form to ensure the success of the project.

Consistency

The revised Order for Protection includes a "recognizable" first page with data elements and formatting consistent with a national effort to improve the enforcement of protection orders within and across state and tribal boundaries.

The National Center for State Courts and the National Center on Full Faith and Credit sponsored regional meetings across the country to introduce the model template to states, territories, and Indian tribes. Thirty-two states have adopted or are considering adopting the model template. In the West, Alaska, California, Hawaii, Montana, Nevada, and Washington have adopted or adapted the model template with the goal of keeping key data elements consistent.

Use of these model orders is critical to achieve the goals of "Project Passport": consistency, enforceability, and safety. Every Order for Protection entered in Washington state courts should be on the most current form to ensure the success of the project.

A growing number of tribes have also adopted, or are considering, the model template for their tribal protection orders. Tribes in Alabama, California, Montana, Oklahoma, and Washington have adopted the model template. Tribes in Alaska, Arizona, Nevada, Utah, and Wyoming are considering its adoption. The National American Indian Court Judges Association (NAICJA) fully supports this initiative.[3]

Enforceability

The first page includes elements that will help law enforcement immediately identify the order as a protection order enforceable by any state or tribe:

- the parties' dates of birth
- a bold box highlighting respondent identifiers
- qualifying full faith and credit federal language
- check boxes to indicate that the order includes restraints against acts of abuse or no-contact provisions
- the order's effective date

Safety

The majority of domestic-violence homicides in Washington state have been committed with firearms. Since 1997, abusers have used firearms to kill 200 domestic-violence homicide victims. Between July 1, 2004, and June 30, 2006, abusers used firearms to kill 40 homicide victims.[4]

Improving safety by clarifying when firearms are restricted under federal law is a goal of the revised protection order forms. The first page of the Order for Protection includes qualifying federal notice provisions and checkboxes relating to the parties' relationship. On the second page, the first provision is a restraint against "causing physical harm, bodily injury, assault, including sexual assault, and from molesting, harassing, threatening, or stalking." With the notice provision, a check box for "spouse or former spouse," "parent of a common child," or "current or former cohabitant as intimate partner" checked, and the first restraint provision on the

second page checked, the order qualifies for federal firearm restrictions in accordance with 18 U.S.C. § 922(g)(8). This information enables timely and accurate entry of federal firearm restrictions into the National Crime Information Center Protection Order File (NCIC). Accurate NCIC data informs law enforcement and persons requesting criminal background checks that an individual is subject to federal firearms restrictions and is disqualified from possessing and purchasing a firearm or ammunition.[5]

The safety of domestic-violence victims is important to all of us. The Gender and Justice Commission encourages every attorney who has a client seeking a Domestic Violence Order for Protection to ensure that the order is on the most current form. Check the Washington Courts website for the form that was designed to improve consistency, enforceability, and safety.

Justice Barbara Madsen is the third woman to be elected to a seat on the bench of the Washington State Supreme Court and chair of the Supreme Court's Gender and Justice Commission. Gloria Hemmen is executive director of the Gender and Justice Commission.

NOTES

1. This article focuses on the civil domestic violence Order for Protection. In June 2005, similar changes were made to the mandatory Domestic Relations pattern form restraining orders and to the Domestic Violence No-Contact Orders.
2. Forms published by the Administrative Office of the Courts and the Washington Pattern Forms Committee are located on the Washington Courts website at www.courts.wa.gov/forms. Forms may be updated annually, so attorneys and courts are requested to check the website for the most current version.
3. Denise O. Dancy, Project Director, "Extending Project Passport: Genesis and Goals of the Project," National Center for State Courts, www.ncsconline.org/D_research/Passport/Revised_Passport_Project_Desciption_7_051.pdf.
4. Kelly Starr & Jake Fawcett, *If I had One More Day..., Findings and Recommendations from the Washington State Domestic Violence Fatality Review*, December 2006, 29 (Washington State Coalition Against Domestic Violence, 2006); www.wscadv.org/projects/FR/index.htm, www.wscadv.org.
5. 18 U.S.C. § 922(d)(8) and (g)(8).

The Justice in Jeopardy Initiative

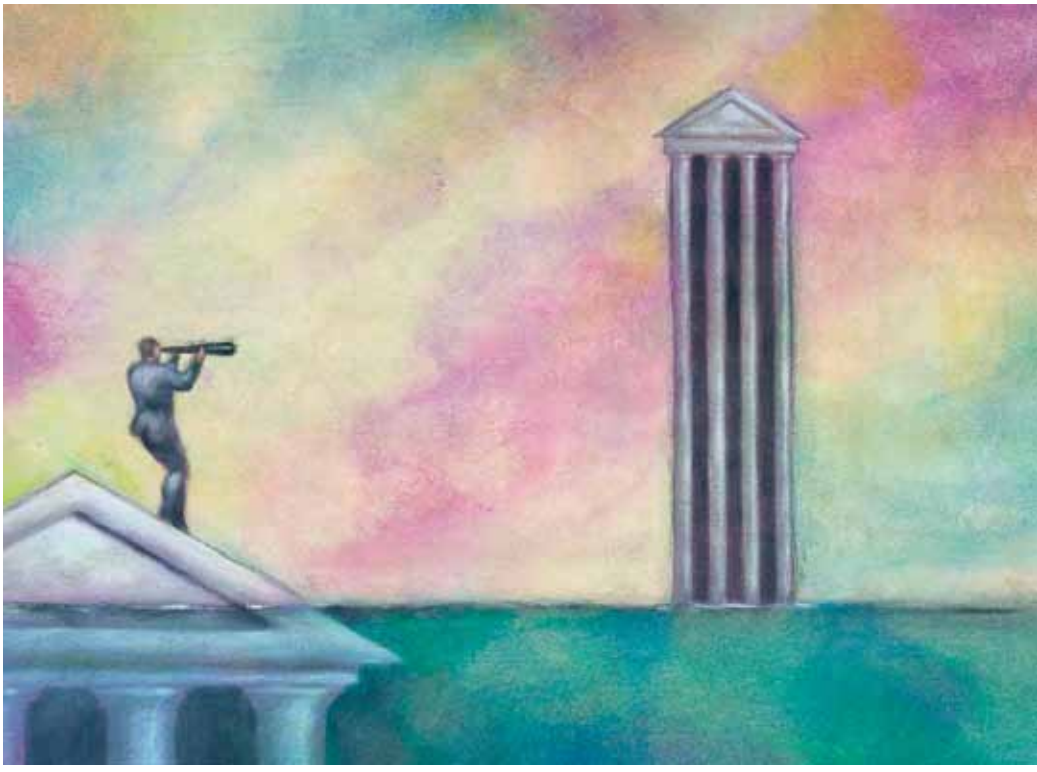
Celebrating Accomplishments and Setting Goals

BY CHIEF JUSTICE GERRY ALEXANDER AND JUDGE DEBORAH FLECK

Some might have asked, "What were they thinking?" when, in 2005, we launched the Justice in Jeopardy Initiative. You may recall that was the year the Legislature was facing a $1.6 billion budget deficit. That was also the session immediately following the December 2004 publication of *Justice in Jeopardy: The Court Funding Crisis in Washington State*, the report of the Trial Court Funding Task Force. This report sought major policy changes by the state accepting new fiscal responsibilities for the trial courts, indigent defense, parent representation in dependency cases, and civil legal aid. Despite these challenging hurdles, by the end of the 2005 session, we were able to report to you that we had taken a solid first step on the path to achieving the goal of adequate, stable, and long-term funding of the trial courts.

A Brief History

Since statehood, the counties and cities have shouldered the bulk of the costs of the trial courts and 100 percent of the cost of indigent defense and parent dependency representation. State funding for civil legal aid has steadily declined and falls far short of the needs chronicled in the 2003 Civil Legal Needs Study. Our goals were to attain *adequate funding* for fiscally strapped trial courts and to attain *stable, long-term funding* through a balance between state and local financial support of the trial courts, akin to a balanced investment portfolio, so that justice would no longer depend on the fiscal health of the county in which a case was pending. Historically, the state has contributed just three-tenths of one percent (0.3 percent) of its budget to the entire judicial branch of government, including funding the appellate courts, the Administrative Office of the Courts, and the state law library. The more we have reflected on our approach seeking to balance the funding responsibility between state and local government, the more convinced we are that this approach is the best in the nation.



The Justice in Jeopardy Initiative is the most significant reform effort of the judicial branch since statehood in 1889. We knew the Initiative would take several biennia to achieve. But in that first session in 2005, recognizing the importance to our democracy of maintaining fair and accessible trial courts, the Legislature accepted, for the first time, a share of the responsibility in court operations beyond the constitutional requirement of paying one half of the superior court judges' salaries plus benefits. The state also accepted a responsibility to contribute to the cost of indigent criminal defense and for funding parent representation in child dependency cases beyond a pilot project they had previously funded. Finally, the state established the Office of Civil Legal Aid under the judicial branch of government and substantially increased civil legal aid funding. Overall, the Legislature contributed almost $20 million to the counties' general funds and allocated 100 percent of its share of new revenue, some $12.7 million, to funding in the four Justice in Jeopardy categories: court operations, criminal indigent defense, dependency representation, and civil legal aid for the poor. These improvements were funded by increases in civil filing fees and other user fees.

Notwithstanding the private good that accrues to individual court users, the

trial courts cannot be funded largely by user fees in meeting their constitutional mandate to resolve disputes between citizens and between citizens and their government. The focus, therefore, has shifted to a more deliberate commitment of state general-fund support for trial courts and related judicial branch operations in recognition of the greater public good served by adequately funding the judicial branch.

Jury Pay Pilot Project

The first step was taken in the 2006 supplemental budget, as the Legislature provided $8.7 million state's general fund to continue to address the substantial funding needs in the four categories. This was a significant new allocation of funds in a supplemental budget year. In court operations, we received funds to conduct a jury pilot project to assess the impact of low juror pay ($10 in most counties, an amount that hasn't been increased in almost 50 years) on the ability of our citizens to serve as jurors. The pilot project being conducted in the District and Superior Courts of Franklin and Clark counties and the Des Moines Municipal Court pays jurors $61, an amount that is equivalent to minimum wage. We expect the study will demonstrate that we are able to achieve greater juror turnout and greater diversity in our jury pools by paying more than a token amount for juror service. With juror pay based on minimum wage, we believe that citizens who are making ends meet in low-paying jobs will be able to carry out their civic obligation to serve on juries, just as citizens who work for larger corporations that continue to pay their salaries are able to do. This is the first study in the nation attempting to isolate the factor of juror pay and its impact on low juror turnout nationwide. If the study, which will be completed with another $325,000 in funding in 2007, does reflect that impact, we will seek to increase juror pay throughout the state.

In 2006, the Legislature also filled an annual $400,000 gap created by the loss of federal funds in the civil legal aid budget associated with services to domestic-violence victims, and allocated an additional $4.5 million to parent dependency representation and $3 million in new money for criminal indigent defense.

We expect the study will demonstrate that we are able to achieve greater juror turnout and greater diversity in our jury pools by paying more than a token amount for juror service. With juror pay based on minimum wage, we believe that citizens who are making ends meet in low-paying jobs will be able to carry out their civic obligation to serve on juries, just as citizens who work for larger corporations that continue to pay their salaries are able to do.

But we still have a long way to go. Working under the Board for Judicial Administration's Trial Court Funding Implementation Committee as a clearinghouse, this legislative session we proposed another ambitious agenda of state funding for trial court operations and these court-related services.

Court Operations

For court operations, we focused on two

areas. The first is providing interpreter services. Imagine for a moment being in a court in a foreign country where your assets or your liberty is at stake. Consider also that you are not able to fully understand what is being said in a court hearing or trial. Or imagine that the adjudication of your property or your liberty must be delayed time and again, in an effort to provide you with an interpreter. Ensuring accurate interpretation of court proceedings and their prompt adjudication is fundamental to a fair system of justice.

The proposal in 2ESHB 2176 for improving interpreter services was structured to leverage the use of precious public dollars in efficient ways and to provide an incentive to obtain the best level of court interpretation possible. Although this policy bill did not pass, the state has taken another step by contributing $2.0 million to assist courts in developing and implementing language access plans and to pay for interpreter services. $610,000 and $950,000 was appropriated to reimburse courts for a share of the cost of state-certified or state-registered language interpreters and interpreters for persons who are deaf in the first and second years of the biennium. We believe the higher rate of pay through shared state and local funding will encourage interpreters to pass the certified or registered interpreter tests in order to qualify for a higher hourly rate of compensation. We also proposed the use of telephone language lines with certified or registered interpreters for some proceedings and also for out-of-court services such as at court service counters, the translation of the courts' core website into seven languages, translation of key court forms, and the development of Limited English Proficiency (LEP) plans mandated by federal law. It is estimated that the funding provided will meet between 20 percent and 25 percent of the need for qualified interpreters over the biennium. This funding also enables us to develop and implement language-assistance plans and ensure that appropriately qualified interpreters are used in many more court hearings. The funding this year is a down payment on the cost for these services, which are fundamental to a fair justice system.

The second area of our request for state funding in court operations was for a significant contribution from the state to expand the CASA (Court Appointed Special Advocates) program. State and federal laws mandate the appointment of a guardian *ad litem* (GAL) for all children in dependency cases involving allegations of neglect or abuse. In 33 counties in Washington, CASA volunteers serve as volunteer guardians *ad litem* to represent the best interests of these children. Statewide, only about half of the 13,000 children in the dependency system currently have a CASA volunteer to represent their best interests. In 2005, 2,188 CASA volunteers served 7,072 children. Of the remaining 6,000 dependent children, approximately half were represented by a staff GAL, typically with a dangerously high caseload in excess of 100 children per FTE; the other half had no GAL representation at all. Because of prioritization of GAL representation for younger children, most adolescents in dependency do not currently have GAL representation. Despite years of recruitment efforts to grow the number of CASA volunteers to meet the need, the number of CASA volunteers has remained steady for several years, due to the limited capacity of local programs to provide volunteer supervision. As a result, each year CASA programs lose as many volunteers as they train.

Washington State Bar News Editor Search

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

$13.6 million in new state funding for the 2007-2009 biennium was requested to develop the capacity of the 31 dependency CASA programs and for expansion to serve the six remaining counties without CASA programs. The Legislature has allocated $6.0 million, which, combined with existing funding, places the state commitment at a total of $7.8 million. The initial priorities for funding will focus on quality: lowering the ratio of volunteers per supervisor and reducing staff GAL caseloads, increasing volunteer recruitment and retention, as well as establishing programs in areas not currently served, and stabilizing the smaller programs.

Civil Legal Aid

With respect to civil legal aid funding, the Office of Civil Legal Aid was granted $5.3 million in additional funding in the 2007 session. The Civil Legal Needs Study (CLNS), published by the Supreme Court's Task Force on Civil Equal Justice Funding in September 2003, documented that more than three-quarters of all low-income households experience at least one important civil legal problem each year and that, of these, nearly nine in 10 do not get the legal help they need to solve that problem. The CLNS further documented that civil legal needs often relate to fundamental issues such as personal and family safety, shelter, security, and access to essential services. Women and children disproportionately experience civil legal needs, with domestic-violence survivors having the highest number of needs of any demographic group surveyed.

According to the Task Force, it would take an additional $36 million each biennium to address the unmet needs in state-authorized areas of legal assistance identified in the Civil Legal Needs Study. The new funds allocated in this biennium will allow the state-funded civil legal aid system to establish minimum levels of presence in six rural regions[1] currently not being effectively served; expand civil legal aid capacity in three regions disproportionately underserved; and establish unified intake, advice, and referral capacity in King County through partnership between the Northwest Justice Project CLEAR system and the King County 211 information and referral system.

Office of Public Defense

The February 2007 issue of *Bar News* was dedicated to the subject of indigent defense and parent dependency representation. The state Office of Public Defense (OPD) sought $19 million for indigent criminal defense and $17 million for parents' dependency representation. The indigent criminal defense amount represented a significant percentage of the total amount needed to bring Washington's jurisdictions up to WSBA public-defense standards. The Legislature appropriated $7.1 million in increased funds for the biennium — far short of the amount needed, but enough to allow the counties and cities to make substantial progress through OPD's RCW 10.101 program for improving public defense. Washington State OPD will also continue its state-funded ongoing programs assisting the counties with public-defense administration, providing training and resource attorneys to trial-level public defenders, and conducting pilot programs to improve public defense.

The amount sought for OPD's Parents Representation Program would bring adequately resourced, effective counsel to all indigent parents involved in dependency and termination cases in Washington. Over the past six years, OPD's new representation model for parents' representation in these cases has been declared a success by four

independent evaluations. The program meets the intent of our laws, allowing more parents success in working to change their lives and consequently safely reuniting with their children. $6.5 million was appropriated by the Legislature this year, which will allow significant expansion of the program to a number of new counties. The upcoming challenge is to obtain sufficient funding to complete the statewide expansion in a timely way, so all poor parents in these cases are afforded adequately resourced representation.

Ensuring the Promise

The State of the Judiciary speeches in 2005 and 2007 were devoted to identifying these pressing financial needs of Washington's trial courts — to demonstrating just how a lack of adequate, stable, and long-term funding jeopardizes the promise of justice for all. The Legislature has again stepped up in 2007 with a total of $26.8 million in additional economic support of the trial courts. But to fulfill the responsibility of the judicial branch of government to provide a fair and accessible forum for the resolution of civil disputes and criminal charges, much more needs to be accomplished. We are developing the plan and the timeline to achieve funding for the trial courts in Washington that will secure our ability to fulfill that responsibility — to ensure that this branch of government is able to truly ensure the promise of fair and accessible justice for all.

Gerry Alexander is chief justice of the Washington State Supreme Court and co-chair of the Court Funding Implementation Committee of the Board for Judicial Administration. Deborah Fleck is judge of the King County Superior Court and co-chair of the Court Funding Implementation Committee of the Board for Judicial Administration.

NOTES

1. The regions targeted for new commitments of civil legal aid resources are: Ferry, Stevens, and Pend Oreille counties; Whitman, Asotin, and Garfield counties; Grant and Adams counties; Clallam and Jefferson counties; Grays Harbor and Pacific counties; and Cowlitz and Wahkiakum counties. Regions targeted for improvements to existing service delivery capacity include: Benton and Franklin counties; Yakima and Kittitas counties; Clark and Skamania counties; and Thurston, Mason, and Lewis counties.

WASHINGTON STATE BAR ASSOCIATION
BOARD OF GOVERNORS

RESOLUTION IN SUPPORT OF LAWYERS WITH DISABILITIES

WHEREAS, individuals with disabilities generally have not been a part of the discussion about diversity in the legal profession; and

WHEREAS, access to the profession is important for people with disabilities for the same reasons it is important to racial and ethnic minorities, sexual minorities and women; and

WHEREAS, statistics indicate that lawyers with disabilities are employed at a lower percentage than are non-disabled lawyers from ethnic and/or racial backgrounds; and

WHEREAS, there is little reliable data on the representation of individuals with disabilities in the legal profession, anecdotal evidence suggests that lawyers with disabilities face many of the same barriers to employment that people with disabilities face in other jobs; and

WHEREAS, attorneys with disabilities continue to face innumerable barriers including but not limited to physical barriers, vision-related communications barriers, hearing-related communications barriers, and attitudinal barriers; and

WHEREAS, attorneys with disabilities, both as applicants and employees, may need a range of accommodations in order to apply for and perform many types of legal jobs and/or to perform the tasks that are required in the pursuit of their work, including but not limited to access to bar examinations, courtrooms and other public venues; and

WHEREAS, some managers of public venues and employers assume that reasonable accommodations will be too costly or difficult to provide; and

WHEREAS, reasonable accommodation obligations extend to ensuring equal access to the "benefits and privileges of employment," which include, but are not limited to, employer-sponsored training, services and social and professional functions; and

WHEREAS, the concept of intersectionality has been defined as the oppression that arises out of the combination of various forms of discrimination, which together produce something unique and distinct from any one form of discrimination standing alone; and

WHEREAS, individuals with disabilities experience intersectional oppression; and

NOW, THEREFORE, BE IT HEREBY RESOLVED:

That the Washington State Bar Association is committed to maintaining both short-range and long-range diversity goals and plans that specifically include lawyers with disabilities; and

BE IT FURTHER RESOLVED:

That the Washington State Bar Association expresses its position that attorneys with disabilities be treated with the same regard, courtesies and protection afforded to other protected classes pursuant to Washington's Law Against Discrimination, which prohibits discrimination based on race, creed, color, national origin, families with children, sex, marital status, sexual orientation, and age.

Adopted by the Washington State Bar Association Board of Governors on April 13, 2007.

Out, Damned Spot! Beware the Bar's Permanent Mark of Shame

BY STEVEN A. REISLER

Let me first swear that I am not now, nor have I ever been a member of the Communist Party, or been disciplined by any bar association ... *at least, not yet, and not as far as I know!* I do represent other lawyers, from time to time, however, as they struggle with the ethical sequelae of certain deeds that they have done. I have learned that there is more than one good reason to tread cautiously when a bar complaint is laid at a lawyer's threshold. This article grows out of that experience through representing others.

The purpose of this essay is not to advise counsel whether to avoid transgressions — that goes without saying. Neither do I express any opinions here on the enforcement of lawyer ethics *per se*. Rather, I intend only to comment on one of the seemingly smaller side-effects at the tail end of the disciplinary process. My subject is ELC 3.5 and the Washington State Bar Association's practice of permanently attaching a blue warning notice and disciplinary hyperlink to a lawyer's Bar listing at the online WSBA lawyer directory.

It has long been WSBA practice to publish notice of certain lawyer discipline such as disbarment, suspension, resignation in lieu of disbarment, or transfer to inactive status. Certain public aspects of these disciplinary files have also long been available for inspection at the Bar Association offices. The practice of linking a disciplinary notice to a lawyer's online directory listing at the Bar, however, is a relatively new phenomenon facilitated by the ubiquity of the Internet. This is important because anyone — whether he is a client or opposing counsel or just someone "out to get you" — can easily research any Washington attorney via the Internet and, just as easily, determine whether he or she has been disciplined.

On its face, there is nothing wrong with that. A deeper analysis, however, raises some troubling issues.

First, the hyperlink notices apply only to lawyers who have been the subject of disciplinary action since the advent of the Internet. Lawyers whose transgressions predated the web are not currently marked by blue discipline notices and, assuming that they are still practicing, there is no electronic public notice about what they might have done in the past. This leads to a curious and disparate treatment of lawyers that depends

mostly on their ages and when they did what they did. Arguably, lawyers who commit unethical acts in the 21st century are liable to be "tagged" forever. On the other hand, lawyers who may have committed the same or similar acts only a decade or so earlier could coast on the misleading implication that no blue hyperlink attaches to their official Bar web listing because they have never been disciplined.

Second, the nature of website searches — a form of research that this veteran lawyer contends is a sometimes shallow, occasionally misleading, and extremely casual method of inquiry — now makes Washington lawyer discipline accessible in seconds to billions of people worldwide. There is something fundamentally different about a paper "public record" and a hyperlinked web file that anyone with a laptop and a mouse can access and repost and redistribute in seconds. Though not yet proved, this author suspects that "web research" generally tends to be more superficial than the review of actual records. Thus, the casual mouser's research could well stop at the WSBA's hyperlink to a lawyer's discipline and never learn about either the specific details of the matter or subsequent events that might ameliorate its significance.

Third, except for admonitions, the blue "disciplinary notice" is never removed. Never. There is not even a mechanism to remove it. It is the 21st century's web-version of a scarlet letter.

The Rules for Enforcement of Lawyer Conduct, ELC 3.5(d), provide that:

> The Association must publish a notice of the disbarment, suspension, resignation in lieu of disbarment, or transfer to disability inactive status of a lawyer in the Washington State Bar News and electronic or other index or site maintained by the Association for public information.

A WSBA Board of Governors policy adopted February 18, 1995, states:

> That expanded discipline notices will be drafted by the Disciplinary Board Counsel. The Bar News disciplinary notices are to include reporting all public discipline actions: the attorney disciplined; bar number; admission date; location (i.e., Seattle, Olympia, etc.); the discipline imposed (i.e., reprimand, six-month suspension, etc.); effective date; the RPC(s) violated and a concise statement of the conduct (i.e., neglect, non-cooperation, etc.); a synopsis of the facts; the hearing officer, if any, disciplinary counsel,

and respondent's counsel. The expanded disciplinary notices should specifically not include: identification of the grievant; names or identification of any clients. The closing sentence of the discipline notice section should provide a phone number for members to order a complete copy of any public disciplinary decision.

My informal poll of other western state bar associations found that bar associations' practices vary from jurisdiction to jurisdiction. Some states, like California, do what Washington does. Some states' bar associations are just beginning to study the issue. Other states only publish on their official websites the current status of an attorney at the time of the inquiry. Thus, a lawyer who has been suspended or disbarred will be so identified. However, unlike in Washington where the disciplinary linkage is permanent, these other states delete the disciplinary web notices once the lawyer is reinstated to the practice of law without restriction.

I understand and fully approve of the publication of the discipline notice in the first place. I do not recommend any change in that regard. The public paper files should also continue to be available at the Bar's office for review by request. I also appreciate why the WSBA never removes a discipline notice. By making a permanent, public record of the discipline previously imposed, the Bar serves the public interest and, to a lesser degree, deflects public or legislative criticism of bar associations generally that they tend to "protect" the interests of their members.

The problem, however, is whether the current practice overbalances the "public interest" against that of the attorneys in certain instances. Could there be a more evenly balanced approach that will serve both the public interest while not branding disciplined lawyers forever in all cases?

Lest anyone reading this article think "Hey, that's not my problem," you should carefully read the Rules of Professional Conduct and particularly the "catch-all" language of RPC 8.4. Let no lawyer in his hubris scoff that he always lives ethically and would never fall down. For unless we live and practice among saints, there are few people who, in the course of a lifetime, may not commit at least one of these broadly defined offenses excerpted below:

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

...

(i) commit any act involving ***moral turpitude****, or corruption, or any unjustified act of assault or* ***other act which reflects disregard for the rule of law****, whether the same be committed in the course of his or her conduct as a lawyer, or otherwise, and* ***whether the same constitutes felony or misdemeanor or not****; and if the act constitutes a felony or misdemeanor,* ***conviction*** *thereof in a criminal proceeding* ***shall not be a condition precedent to disciplinary action, nor shall acquittal or dismissal thereof preclude the***

commencement of a disciplinary proceeding: (emphasis added)

The title of this article, shamelessly borrowed for its dramatic effect, derives from Lady Macbeth's sleepwalking soliloquy of guilty conscience. Although her homicidal acts in Shakespeare's play might aptly stain her forever, should that be the same measure for all types of offenses contemplated by RPC 8.4?

Focusing only on high crimes and misdemeanors for the moment, we indisputably live in an age of inconsistent ethical standards and irregularly enforced codes of conduct with respect to some segments of society. Generally, however, the criminal code, as applied to ordinary people, contains both the sanction of punishment and the clemency offered by rehabilitation. The law generally recognizes that people do change, sometimes because their hormones or medical conditions become more balanced and sometimes because, through natural aging and experience, they gain insight, wisdom, and particularly empathy, that greatest of all markers of intelligent life. That is why the law frequently (and specifically in Washington state) provides for probation, parole, and, in some special instances, the opportunity to vacate and expunge a criminal conviction where genuine rehabilitation can be proved.

Thus, in Washington, a lawyer may have committed a misdemeanor (or a felony in some cases) that subjects him or her to discipline under RPC 8.4, and then, years later, have the guilty plea or conviction subsequently vacated by the courts. Although the lawyer's criminal past may be judicially expunged and however honestly the lawyer might be able to tell prospective employers that he or she has never been convicted of nor pleaded guilty to a crime, the lawyer would still have the blue badge of infamy attached to his or her Bar Association website listing forever and ever. Thus, in certain instances like these, the practice of indefinite web-branding practiced by the Bar could exceed the "criminal stigma" that underlies the original discipline. Does this overemphasize the "public interest" against the interest of attorneys in certain circumstances, or is it appropriate that even when the court has erased the cat, the Bar's Cheshire smile remains?

The current practice of the WSBA in permanently stigmatizing disciplined lawyers with a blue hyperlink on the official Bar website means that lawyers (and lawyers'

lawyers) must be especially careful how they defend criminal charges against them, for a simple guilty plea to even a misdemeanor can result in a permanent career blot that, unlike the misdemeanor itself, might endure forever. Moreover, those who defend lawyers in disciplinary actions must also advise their clients and caution that among the sanctions they might agree to there is another, that of public global web-ostracism, which no future rehabilitation can ever eradicate.

I reiterate that I do not oppose the Bar Association's salutary practice of identifying on the official website those lawyers who have committed ethics violations. The question is simply whether the mark should be permanent or whether there can or should be a mechanism... a possibility... to have the mark removed in appropriate circumstances. "Consistency" cannot be the rationale for inflexibility because, as Oscar Wilde once said, "consistency is the last refuge of the unimaginative."

Edgar Allen Poe wrote his most famous poem, "The Raven," in 1845. The raven represents, among other things, guilt and memory; Pallas, the head of Athena, is the Greek goddess of wisdom, reason, and justice. As though writing apropos of current Bar practice, Poe wrote in the last stanza of his poem:

> And the raven, never flitting, still is sitting, still is sitting
> On the pallid bust of Pallas just above my chamber door;
> And his eyes have all the seeming of a demon's that is dreaming,
> And the lamp-light o'er him streaming throws his shadow on the floor;
> And my soul from out that shadow that lies floating on the floor
> Shall be lifted — nevermore!

In poetry and metaphysics there might be absolutes never changing. In Law, and in the society of lawyers (as with nonlawyers), however, we might want more flexibility and more options in how, and how long, we mark those who have fallen.

Steven Reisler practices civil and commercial law at his micro-mini-boutique in northeast Seattle. He is a past member of the WSBA Board of Governors, past chair of the Washington State Commission on Judicial Conduct, and edited Bar News *from 1980 to 1985.*

Time for a Vacation

BY JEFF TOLMAN

To get away from one's working environment is, in a sense, to get away from one's self; and this is often the chief advantage of travel and change.

— Charles Horton Cooley, American Sociologist

No vacation goes unpunished.

— Karl A. Hakkarainen

The signs that I needed a vacation were becoming less and less subtle.

My conversations sounded like dictation: "Good morning, comma, Laurie. How did you sleep last night? Paragraph."

I began using billable time as clock time: "Andy, I want you home by three-tenths after 10."

Even my dad began receiving my lawyer-self. I would walk into his apartment, shake his hand, usher him to his chair in the living room, look him in the eye, and say, "It's good to see you again, Dad. How can I help you today?"

Coming home after a work day, I began looking through the mail to see if we had received any rebates or refund checks — if the family had brought any money in that day.

When my haircut was done I turned to the barber and compulsively said, "Thank you, Your Honor," before I left her shop.

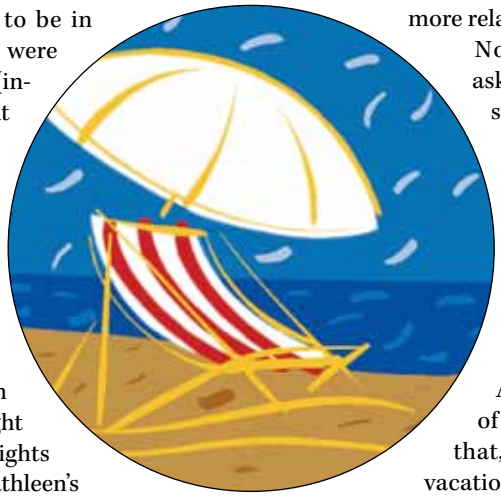
It was time to get away, a jury of my spouse, kids, and partners pronounced.

So Laurie and I went, with another couple (yeah, the other woman on the trip was a lawyer. No "cold turkey" for me), to Ireland. It was my fourth trip to that wonderful country, the first with my wife.

My other occasions on the Emerald Isle had been golfing trips with my pals. Golf courses, pubs, and B&Bs were our fare. Little sightseeing, lots of bunkers with stairs, gorse Tiger Woods couldn't hit out of, howling wind, horizontal rain, rooms 'en suite' and "a pint for my new friend." Great times. Wonderful guy trips.

From the moment the plane cleared the runway in Seattle, I knew things would be different this adventure. There were no phones on the plane. Just Laurie, me, our pals Pete and Paula, my book, and the in-flight console.

No one seemed to be in trauma. Sure, there were a few nervous fliers (including my wife), but no one who looked as if they were seeking a lawyer.



I didn't have my calendar. Nothing was present to tell me which deadlines were upcoming. Our schedule, in fact, was simple. Night one: Adare Manor. Nights two through five: Kathleen's Guesthouse, Killarney. Nights six through 10: Riverfront Hotel, Sligo. Night 11: Rosapenna Hotel. Nights 12 and 13: Belfast. Day 14: fly home.

Yet life went on. Some mornings we had plans; others we had a day for impulse sightseeing, shopping, or simply watching the world go by. Though my golf game didn't improve on a different continent, it seemed more relaxing, exotic, and fun slicing a ball out of bounds or missing an 18-inch putt on hundred-year-old links courses.

Daily I found my lawyerness fading. I laughed more than usual and slept in. Often we spent an hour in the morning reading The *Irish Times* cover to cover. Laurie and I walked miles along the beach talking. We took pictures and toured gardens and listened to Irish music. Nothing competitive or stressful or that required to be set forth in six-minute increments. No phones or computers. No one in trauma. No stress. Having the daily ability to consider what was best for Laurie and me, not a client.

The last night we two couples reminisced over a pint. Our trip had been fun, educational, and relaxing. No conversation sounding like dictation, or ending with "Thank you, Your Honor," or by pointing out that someone had exceeded their 10-minute-a-side time allowance. It was time, though, to get back home and to work.

When I got home I noticed how I had changed. I spent more time with clients. Casual conversations seemed more important. I rated my day more by the interesting clients and cases I had than how much time I billed. My work was done more efficiently and my billings went up without any associated stress or extra hours. I held Laurie's hand more. When I spoke with my kids I listened better. I was happier and more relaxed.

Not too long ago I asked a number of Kitsap County lawyers how much annual vacation they believed an average local practitioner took. Two or three weeks were the dominant responses. A former partner of mine once opined that, "There really is no vacation. You simply, upon your return, have to complete 52 weeks of work in 51 weeks." Maybe. But two or three weeks is just not enough time away from the difficult work we do. If you have any doubt, look at the statistics regarding the amount of clinical depression in our profession.

Take more time off. You'll find your professional life will hold together and you'll be a better lawyer. When you return you'll be more enthused about your practice, more efficient. Your billings and income may even go up. Certainly you'll talk less like a lawyer and feel more human. You may even quit rising whenever your barber enters the room.

Jeff Tolman is a former member of the WBSA Board of Governors and practices in Poulsbo.

New Rule on Malpractice Insurance Disclosure

BY ROBERT WELDEN

Effective July 1, 2007, pursuant to Rule 26 of the Admission to Practice Rules (APR), every active member of the Washington State Bar Association will be required to disclose on the annual licensing form whether or not the lawyer maintains professional liability insurance. The first time current members of the WSBA will be required to report this information to the WSBA will be during the 2008 annual licensing process beginning in December 2007. New admittees and members returning to active status will be required to report at the time of admission.

What is the purpose of required insurance disclosure?

The purpose of the insurance disclosure rule is client protection. Under the Washington Rules of Professional Conduct, one of the basic principles of the lawyer-client relationship is that the lawyer will give the client sufficient information regarding material facts to allow the client to make an informed decision in matters relating to the representation. *See*, *e.g.*, RPC 1.4; 1.7. Whether a lawyer maintains professional liability insurance may be a material fact for some persons in considering whether to hire a lawyer, and it should be easily available to a client or prospective client.

What does the rule require?

APR 26 requires that each active status lawyer certify on the annual license registration form (a) whether the lawyer is in private practice; (b) if so, whether the lawyer maintains professional liability insurance; (c) whether the lawyer intends to continue to maintain insurance; and (d) whether the lawyer is a full-time government lawyer or house counsel and does not represent clients outside that capacity. The form will also require notification to the WSBA within 30 days if the lawyer in private practice ceases to be insured.

Will failure to disclose be a disciplinary violation?

This is an Admission to Practice Rule requiring disclosure, and not a disciplinary rule. It does not mandate that lawyers be insured. However, failure to comply with the disclosure requirement will result in administrative suspension from practice until the information is disclosed, in the same way that lawyers may be suspended for failure to comply with the continuing legal education reporting requirements.

What will be done with this information?

This insurance information will be available to clients or prospective clients by posting it as part of the lawyer directory on the WSBA website or by contacting the WSBA. In practice, the availability of this information will operate similarly to the contractor insurance and bonding information available to the public through the Department of Labor and Industries by contacting the Department or searching the Department's website.

Has this been done elsewhere, and what is the experience there?

Nineteen other states currently require disclosure of insurance, either through the lawyer licensing or regulatory agency (Arizona, Delaware, Idaho, Illinois, Kansas, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New Mexico, North Carolina, Virginia, and West Virginia), or in writing directly to clients (Alaska, New Hampshire, Ohio, Pennsylvania, and South Dakota). The experience in states that have had a disclosure rule in effect for some time has shown no increase in either frequency of insurance claims or in increased premium rates. There also has been no indication of any disproportionate impact on

APR 26. INSURANCE DISCLOSURE

(a) Each active member of the Bar Association shall certify annually in a form approved by the Board of Governors by the date specified by the form (1) whether the lawyer is engaged in the private practice of law; (2) if engaged in the private practice of law, whether the lawyer is currently covered by professional liability insurance; (3) whether the lawyer intends to maintain insurance during the period of time the lawyer is engaged in the private practice of law; and (4) whether the lawyer is engaged in the practice of law as a full-time government lawyer or is counsel employed by an organizational client and does not represent clients outside that capacity. Each lawyer admitted to the active practice of law who reports being covered by professional liability insurance shall notify the Bar Association in writing within 30 days if the insurance policy providing coverage lapses, is no longer in effect or terminates for any reason.

(b) The information submitted pursuant to this rule will be made available to the public by such means as may be designated by the Board of Governors, which may include publication on the website maintained by the Bar Association.

(c) Any lawyer admitted to the active practice of law who fails to comply with this rule by the date specified in section (a) may be ordered suspended from the practice of law by the Supreme Court until such time as the lawyer complies. Supplying false information in response to this rule shall subject the lawyer to appropriate disciplinary action.

Adopted effective July 1, 2007.

new lawyers, solo and small-firm lawyers, or minority lawyers, nor that it has made legal services more expensive or reduced lawyers' willingness to provide pro bono services.

Was notice given before this rule was adopted?

This suggested rule was circulated for comment among the WSBA members. It was e-mailed to approximately 15,000 active WSBA members, posted on the WSBA website, and published in the July 2005 *Bar News*. The WSBA received e-mail responses from about 90 members and a few letters, both pro and con.

What concerns did WSBA members have, and what are the responses?

One concern that was expressed is that such disclosure is misleading because professional liability insurance is "claims made," and the disclosure does not indicate policy limits, deductibles, whether defense costs are within or without the policy limits, etc. In response, it was agreed that when this information is posted on the WSBA website and otherwise made available, there will be additional information about professional liability insurance and suggested questions that a client may want to ask. The website information will note that lawyers may make a responsible decision not to maintain insurance because the lawyer may choose to be financially responsible (self-insured), or is an in-house or government lawyer whose employer has chosen to bear the risk of errors, or for other reasons. (See sidebar for text of website information).

Another issue that was raised concerned government lawyers and in-house counsel who provide pro bono work through qualified legal services providers that maintain professional liability insurance. It was suggested that the rule should specifically address this. However, as the rule is written, if a government lawyer or in-house counsel represents clients outside of that employment, but does so in a context where he/she is insured, then the answer to (a)(2) would be "yes" and the answer to (a)(4) would be "no." (See inset for full text of APR 26.)

Conclusion

Lawyers take their responsibility to the public seriously, and this is one simple means to make this information available.

Robert Welden is WSBA general counsel.

Text of Website Information

Professional Liability Insurance Policies

The purpose of the insurance disclosure rule is client protection. Under the Washington Rules of Professional Conduct, one of the basic principles of the lawyer-client relationship is that the lawyer will give the client sufficient information regarding material facts to allow the client to make an informed decision in matters relating to the representation. *See, e.g.*, RPC 1.4; 1.7. Whether a lawyer maintains professional liability insurance may be a material fact for some persons in considering whether to hire a lawyer, and it should be easily available to a client or prospective client.

Professional liability insurance policies provide insurance coverage for some but not all professional liability (malpractice) claims made against a lawyer. Most professional liability policies are written on a "claims-made" basis. This is different from the usual homeowners or automobile insurance policy. This means that the insurance company providing the insurance has agreed to cover claims that are made against the lawyer during the term of the policy. In other words, the policy that applies to a particular claim is the policy that is in effect at the time the claim is presented to the insurance company with a demand for payment — not the policy in effect when the lawyer's alleged negligence or mistake took place. Malpractice insurance policies typically limit the amount that the insurance company can be required to pay on each claim and the total amount that the insurance company can be required to pay on all claims made against the lawyer during the term (or effective period) of the policy. The maximum amount of coverage provided by a malpractice insurance policy is called the "limits" of the policy.

Although Washington lawyers are not required to have professional liability insurance coverage, they are required to report to the Washington State Bar Association, on a yearly basis, whether they have coverage. They are not required to report the following:

- Who their insurer is, if they have malpractice insurance coverage.
- The limits of their policy.
- The amount of any deductible that the lawyer must pay before the insurance company is obligated to pay a claim.
- Any limitations on or exemptions from coverage. For example, most legal malpractice insurance policies do not cover claims against a lawyer that arise out of illegal conduct by the lawyer.

Not all lawyers maintain professional liability insurance. Some lawyers may make a responsible decision not to maintain insurance because the lawyer may choose to be financially responsible (self-insured), or is an in-house or government lawyer.

The information provided on this website is the information reported to the Washington State Bar Association by each active-status lawyer regarding his or her professional liability insurance as of the date of the lawyer's report to the State Bar. This information is published here because the Washington State Bar Association believes that it may be of value to consumers of legal services. The Washington State Bar Association does not independently verify the insurance information provided by lawyers. There is no guarantee that a lawyer has maintained insurance coverage after the report date or will continue to maintain insurance coverage in the future. There is also no guarantee that a lawyer has adequate insurance limits to cover all potential claims or that a particular claim will be covered by the policy. Note that it is also possible that the information displayed was erroneously reported or incorrectly entered in the State Bar's database.

The following is a list of questions that a prospective client might ask before entering into a lawyer-client relationship with a particular lawyer:

- Do you presently maintain professional liability insurance coverage?
- What is the name of your insurer?
- What are the limits of your coverage? Have any of those limits been used in the payment of other claims?
- What is the deductible under your policy?
- Does your policy cover the type of work you are doing for me?
- What is the term of your current coverage?
- Will you advise me if you discontinue your coverage or change your limits?
- Could you provide me with a Certificate of Insurance (evidence from an insurance company that the lawyer is insured)?
- If you do not maintain professional liability insurance, why have you made that decision?

Treatise Is a Treat

Robert L. Haig, editor in chief, ***Business and Commercial Litigation in Federal Courts,*** **Second Edition,** ABA Section of Litigation-Thomson/West, 2005, 8 vols., hardcover, 9,000+ pp. and forms CD, $960.

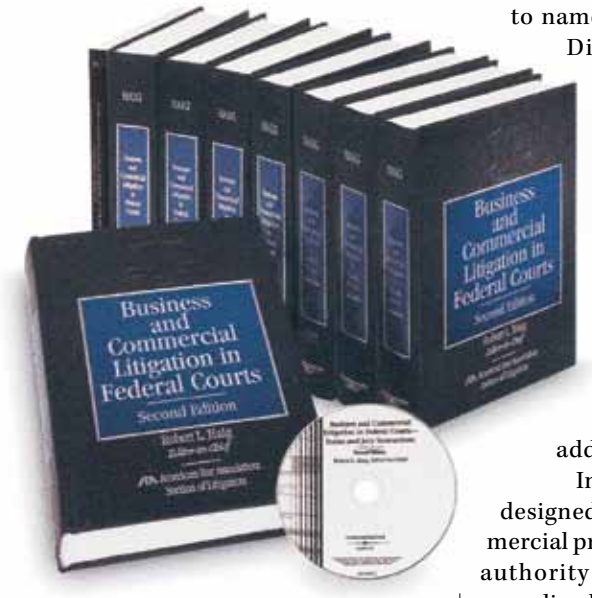
BY JOHN RAY NELSON

My office music collection needs a new place to stay.

For almost 20 years I've kept a select collection of my favorite CDs at the end of the bookshelf immediately above my work station. Ellington and Fitzgerald, Beethoven and Bach, Phish and the Dead — these are the tunes I keep within arm's length, ready to pop in the PC to match my mood while I practice law. The *rest* of this eight-foot bookshelf has always been devoted to those publications I deem essential in my day-to-day work: The current rule books, the *Washington Civil Procedure Deskbook* and the *Washington Trial Manual*, a six-volume set on the Federal Rules of Evidence, and a three-volume guide to Federal Civil Procedure. Recently, however, I have decided that the music will have to go — because I need to make room for the Second Edition of the ABA Section of Litigation's treatise on *Business and Commercial Litigation in Federal Courts*.

This treatise is a truly awesome compilation of information for the commercial litigator. The raw statistics alone reflect the breadth and depth of its material: Eight volumes cover more than 9,000 pages and 96 different chapters by 199 of the United States' most experienced judges and practitioners. The Appendix of Tables and Index (published in paperback to facilitate its annual update) contains 998 pages of case cites. The text of the treatise includes more than 500 pages of sample jury instructions and practice forms, which are also supplied on a CD for ease of use. What the raw statistics do not reflect, however, is the pragmatism and practicality with which the treatise has been prepared — both collectively and as to individual topics.

The overall structure of the treatise reflects a practical appreciation of the



interrelationship between the law of civil procedure that applies to all federal litigation and the underlying substantive law that governs in any given case. The first 60 chapters generally address procedural considerations. This part of the treatise is organized roughly along the lines of the federal rules — from jurisdiction, venue, pleadings, and parties through discovery, motion practice, trials, judgments, and appeals — which makes it easy to find material on any given procedural issue. This is not a purely technical treatment, however. For example, chapters addressing the fundamentally legal requirements of venue and the drafting of a complaint also include thoughtful discussions of the strategic considerations pertinent to the choice of forum and style of pleading, as well as thorough "checklists" to ensure a studied consideration of both legal and strategic issues. These chapters sandwich several new and more purely practical chapters on case investigation and case evaluation, providing ready reference to years of experience in the strategic "art" of commercial litigation, in addition to the law regarding the rules of procedure. This emphasis on *strategy*, as well as process and substance, runs throughout the treatise.

The second portion of the treatise, in chapters 61 through 96, presents thorough discussions of the law and strategy germane to the substantive topics common in federal commercial litigation. Individual chapters address topics such as Antitrust, Securities, Insurance, Banking, Patents, ERISA, and Agency, to name but a few. New chapters on Director and Officer Liability, Broker Dealer Arbitration, Partnerships, Commercial Defamation, and E-Commerce demonstrate an effort to keep the treatise on the cutting edge of federal commercial litigation. All of the chapters in the treatise are cross-referenced to West's "Key Number" Digest, as well as to the A.L.R. Library and other resources, to facilitate additional research.

In sum, this treatise is superbly designed to provide the federal commercial practitioner with both technical authority and strategic consultation regarding both the rules of litigation and the substantive topics at issue. While the price is not a pittance, I think the treatise will quickly pay for itself in reduced research time, not to mention the immeasurable value of the strategic content. As such, it's a resource I will want to have on the shelf above my desk, rather than in the library around the corner. As a consequence, I guess I'll be saying "so long" to Duke, Ella, Wolfgang, and Jerry. Then again, perhaps I can get my 12-year-old son to teach me about downloads and podcasts, and put the CDs in storage.

John Ray Nelson practices law with Foster Pepper, PLLC, in Spokane. He was chair of the WSBA Litigation Section in 2002-03, and is currently serving as a lawyer representative to the 9th Circuit Judicial Conference from the Eastern District of Washington.

Finding the Needle in Olympia's Haystack: A Searcher's Guide

BY LINDSAY THOMPSON

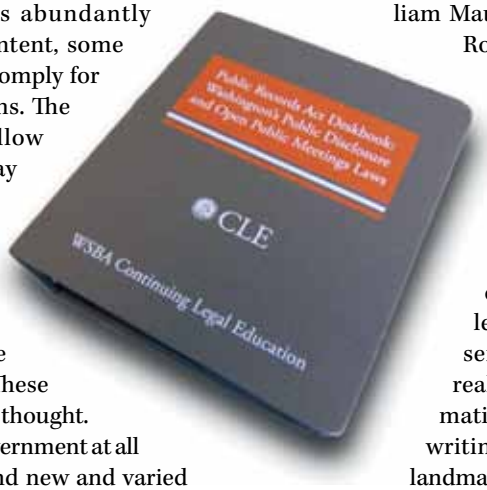
Greg Overstreet, editor in chief, ***Public Records Act Deskbook: Washington's Public Disclosure and Open Public Meetings Laws***, Washington State Bar Association, 2006, 438 pp., $150.

If all WSBA publications are of the quality and value of the recently published deskbook on Washington's public records and meetings laws, WSBA's work as a legal publisher won't remain a light under a bushel.

Public Records Act Deskbook is an easy afternoon's read. While not lacking in citations to case and statute law (including a very helpful double-citation format for the Public Records Act, reflecting its homes in RCW Chapter 42.17 and more recently, in Chapter 42.56), it is written in plain English. Its editors and authors strove to make a work the individual citizen can consult and understand, and for a matter like citizen access to public information, that is a very good thing indeed.

The book reflects a fruitful partnership between the private bar and government lawyers. Washington State Attorney General Rob McKenna, a contributor to the work, has made improvement of public records access a signature issue, and is but one of a group of state lawyers drawing on their expertise to explain how — and why — practices differ from one agency to the next, and how to avoid getting bogged down by minutiae when making a public-records request. Assistant Attorney General Kristal Wiitala, who also brings a government-law perspective to the WSBA Board of Governors, has a really useful chapter on the myriad of exemptions to the public-records laws, and co-authored another chapter on the equally thorny question of access to medical information.

Court of Appeals Judge Kenneth Grosse launches the book's 21 chapters with a well-presented legislative and public-policy history of the Public Records Act. This is a useful thing, as the Watergate-era scandals, which prompted an initiative to create the law, are fading into history and out of the active memory of many people under 50. "An informed citizenry needs access to public records to have the knowledge of public issues necessary to maintain control over our government," he writes. "The voters in 1972 understood this. Courts in the intervening years have recognized the Act's purpose. Despite the Act's abundantly clear legislative intent, some agencies do not comply for a variety of reasons. The chapters that follow discuss day-to-day compliance and the methods for enforcing compliance."



I underlined that last sentence when I read it. "These folks are *serious*," I thought. In an age when government at all levels seems to find new and varied reasons to keep things secret — Attorney General McKenna asked the Legislature for a sunset review of PRA exemptions this year, noting that they have ballooned to more than 300 — *Public Records Act Deskbook* is a hands-on users' guide to getting information from state government, whether one is a lawyer or not. As such, it stands as one of the WSBA's more remarkable and successful efforts to manifest its mission to serve the people of Washington.

The people who made it happen — editor in chief Greg Overstreet; senior editors Signe Brunstad, Michele Earl-Hubbard, and Kristal Wiitala; editor Art Blauvelt; WSBA staff editor Margaret Morgan; and authors Alan Copsey, David Cuillier, Judith Endejan, Judge Kenneth Grosse, William Holt, Alison Page Howard, Michele Earl-Hubbard, Karen Jensen, Steve Marshall, William Maurer, Attorney General Rob McKenna, Bob Meinig, Marshall Nelson, Richard Oehler, Greg Overstreet, Duane Swinton, and Kristal Wiitala — deserve an award. We should have something to recognize literary merit in legal publications: that sensible, but so hard to realize, meeting of information, process, and clear writing. This deskbook is a landmark, hitting the ball out of the park on all three counts.

Lindsay Thompson practices in Port Angeles.

To order the Public Records Act Deskbook*, go to www.wsbacle.org and click on "Deskbooks" and "Public Records," or call the WSBA Service Center at 800-945-WSBA (9722) or 206-443-WSBA (9722).*

Around the State: Spotlight on Spokane

In addition to Spokane hosting the U.S. National Figure Skating Championships and the NCAA First Round, here's how our local legal community has shined in recent months:

Spokane attorney received WSBA'S 2006 President's Award. Bill Hyslop, a principal with Lukins & Annis, P.S., received the WSBA's President's Award from 2005-06 President **Brooke Taylor** at the annual awards dinner in Seattle.

Thanks to the generosity of Spokane's legal community, the **Spokane County Volunteer Lawyer Program**'s annual auction at the Spokane County Bar Association's holiday party was a huge success, and will greatly benefit the ability to continue to provide legal services to those who cannot afford help. In addition, the VLP was recognized for having an advisory board that had the second-highest participation rate in Washington for supporting the Legal Foundation of Washington. **Jamie Donaldson** just celebrated her first year as coordinator for the VLP program. Thanks for doing such a great job!

New faces behind the bench: Spokane's District Court welcomed newly elected judges **Debra Hayes** and **John O. Cooney**. Voters also elected **Teresa Kulik**, Governor Gregoire's appointment to replace **Judge Kurtz**, as judge for Division III of the Court of Appeals. Additionally, Division III has a new commissioner, **Jay Bromme**, who replaced the Hon. **Frank Slak** upon his retirement; and a new clerk/administrator, **Renee Townsley**. Governor Gregoire appointed Spokane appellate attorney **Debra Stephens** to the Court of Appeals from a group of highly regarded applicants. The local bar thanks Hon. **Ken Kato** for his years of service to Eastern Washington.

Spokane's satellite office of the Unemployment Law Project recently celebrated its first anniversary. Managing attorney **Laurie Powers** recruits, trains, and supervises a dynamic staff of law students and volunteer attorneys who provide legal assistance to workers seeking unemployment benefits. For information about ULP's services and volunteer opportunities, visit their website at www.unemploymentlawproject.org or contact Laurie at lpowers@ulproject.org.

Spokane lawyer helps those who make the ultimate sacrifice. Kudos to Spokane attorney, **Bill Dodge**, who recently donated his time (and it was a lot) to assist a soldier who was gravely injured in Iraq. Bill donated his services to secure an adult guardianship for the wounded serviceman. The Spokane Superior Court recently awarded Bill Dodge 2006 Guardian Ad Litem of the Year. Judge O'Connor wrote that Bill consistently receives outstanding evaluations on his cases. Bill also handled a complex case for a veteran from the Middle East pro bono. Bravo, Bill!

And the **Smithmoore P. Meyers Professionalism Award** goes to . . . **Carl Hueber** of Winston Cashatt. This Spokane County Bar Association (SCBA) award is named after a beloved member of our legal community who sets the gold standard for what we all should be as attorneys. This year's recipient certainly represents those qualities. Aside from recognizing and roasting Carl, a highlight of the evening included singing birthday wishes to Smitty and sharing the evening with his beloved wife, Sandi. Congratulations, Carl!

Street Law: The Center for Justice and the Spokane County Bar Volunteer Lawyers Program join forces to provide free legal assistance to those in need on Saturday afternoons in Riverfront Park during the summer months.

The **Law Day** celebration in Spokane culminated in recognizing U.S. Air Force Technical Sergeant **Ronnie M. Flores** of Fairchild AFB as recipient of the annual Liberty Bell Award, which recognizes a lay person's contribution to promote understanding and respect for the law and our courts. TSgt. Flores, a paralegal, volunteered to lead a massive project to enable non-citizen U.S. soldiers serving in Afghanistan to become citizens. As a direct result of his efforts, 61 U.S. soldiers from 31 different countries obtained their citizenship on Veterans' Day.

"And the Oscar goes to . . ." **Spokane Young Lawyers Division** presented its eighth annual "Judicial Theater," where members of Spokane's judiciary find their inner thespian and present skits highlighting ethical dilemmas lawyers routinely face.

Gonzaga Report

BY SPENCER K. NUSSBAUM, 2L

Great events have been happening at Gonzaga University School of Law since the beginning of 2007. Although it took a few weeks, our 1L class has finally recovered from what I call RMFLSG (Received My First Law School Grades) Syndrome, and smiles can sometimes be seen in the library again. Our 2L class just passed the halfway mark and participated in the Linden Cup competition in March. And the often-elusive 3L class keeps counting down the days until graduation.

But amidst all of the normal excitement that accompanies everyday law school life, our many organizations have been busy trying to keep our priorities where they should be. From feeding our spiritual needs to raising money for charities, there is not a week goes by that our great student body is not trying to make our law school experience as pleasantly fulfilling as possible. Here are some of our recent events:

The **J. Reuben Clark Law Society**, a group dedicated to strengthening lawyers through religious principles,

has recently implemented a program in which professors and practitioners address the student body concerning religion and the law. A few of our own faculty members have shared how the practice of law has made them better keepers of their faith. Professor **Vicki Williams** spoke on Judaism, and Professors **DeWolf** and **Beckett** spoke on Catholicism. The next scheduled speaker is Professor **Farid**, who will speak on Islam.

Mass is being held once again in the beautiful chapel on the third floor of the law school every Thursday at noon. Always welcomed by students, this has proved to be a great way to escape from the classroom and meditate on matters of the soul.

Ever working to increase our knowledge of the state of the world in which we live, the Gonzaga University School of Law **Amnesty International Chapter** showed the film *Darfur Diaries*. With more than 400,000 casualties in Darfur, this group is trying to do something about it.

Gonzaga Public Law Interest Project (GPLIP) group held its 18th annual auction on February 9, 2007. Up for bid was everything from tickets to a coveted Gonzaga basketball game to a helicopter ride. As always, the auction was a huge success, raising money for future grants to law students working in the area.

Our **Women's Law Caucus** has been busy too. The WLC put on its second "Trivia Night" of the year. The proceeds from this event go to the Single Parent Scholarship Fund and also the Myra Bradwell Ceremony. This year's Myra Bradwell Award recipient, **Victoria Vreeland**, was honored for her commitment to women's and children's issues through her practice of law.

The **Environmental Law Caucus** is really heating things up. The Oscar-winning documentary *An Inconvenient Truth* was recently shown in our very own moot courtroom. Next on the agenda... swimming lessons.

The **Federalist Society** is keeping us up-to-date on Justice Scalia's jurisprudence with guest speaker Professor **Ralph Rossum** from Claremont McKenna College. Our own professors **Holland**, **DeWolf**, and **Treuthart** contributed to the event by participating in a panel discussion.

The annual **Phi Delta Phi clothing drive** also was a huge success. More than 1,800 items of clothing were collected to benefit local families in need.

This article certainly would be incomplete if I failed to mention the school's trial teams that participated in national tournaments. Members of the **Philip C. Jessup Trial Team** had their hard work pay off by placing third in the regional memorial brief competition. The **Saul Lefkowitz Team** also recently competed and brought home two awards: second place in the oral team argument and third place overall brief and oral argument. Gonzaga's **NAAC Trial Team** performed very well, as did the **National Trial Team**, who demonstrated their talent and represented the school with professionalism and excellence.

The **Office of Career Services** has been busy preparing students for summer positions and great employment opportunities after graduation. Just finishing up its annual Career Fest, which scheduled 197 interview opportunities for law students looking for positions across the Pacific Northwest, Career Services has continued to promote diversity with a special networking reception honoring diversity throughout the state. Through Career Services' efforts, last year's graduates have recorded a 94 percent placement rate — that is enough to keep us all smiling and looking forward to the future.

This year's group participating in **Mission Possible**, the yearly event when students travel during spring break to perform service projects to countries around the world, has been raising money to help those in Honduras buy and install a new roof for a local school. The majority of the expenses for this great project are raised by several fundraisers throughout the school year.

On March 1, the Afghanistan Ambassador to the United States, **Said T. Jawad**, spoke to the students and the community about the redevelopment of Afghanistan and the future of this great nation.

A reception held for Washington State Bar Association President **Ellen Conedera Dial** encouraged those in attendance to start early to increase the reputation of the legal profession in Washington.

With an even brighter future on the horizon, Gonzaga University School of Law continues to prepare each of us for the future. With many more events scheduled during this school year, each day is filled with learning, opportunities, and friendships that will endure for many years to come.

Note: If you'd like items to be included in Spokane's ATS submission, please direct the information to Shelley Szambelan at sstout@spokanebar.org.

Inadvertent Production: Where We've Been and Where We're Going

BY MARK J. FUCILE

When inadvertent-production issues surface in civil litigation, they generally fall into three categories. First, under the Rules of Professional Conduct, is there an ethical duty to notify opposing counsel of the receipt of what appears to be inadvertently produced privileged material? Second, under the applicable procedural rules, how is possible privilege waiver litigated? Third, under the relevant evidence code, has privilege been waived by inadvertent production? There have been significant developments on all three fronts over the past year.

Ethical Duties

Before the Rules of Professional Conduct were amended last September, there was not a specific ethics rule governing inadvertent production. Rather, ethical duties were largely set out in a series of ABA formal and WSBA informal ethics opinions. On the former, ABA Formal Ethics Opinions 92-368 (1992) and 94-382 (1994) counseled that a lawyer receiving what appeared to be inadvertently produced privileged or otherwise confidential materials from an opponent had a duty to notify the lawyer on the other side. On the latter, WSBA Informal Ethics Opinion 1544 (1993) found no duty to notify, but Informal Ethics Opinion 1779 (1997) later adopted the ABA opinions on notification as the preferred position.

In 2002 and 2003, the ABA amended its influential Model Rules of Professional Conduct. That process produced a specific Model Rule, 4.4(b), and an accompanying comment, Comment 2, on inadvertent production. The new rule directly addresses notification: "A lawyer who receives a document relating to the representation of the lawyer's client and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender." Comment 2 leaves to procedural law whether any other actions are necessary and leaves to evidence law whether privilege has been waived. In light of these changes, the ABA withdrew opinions 92-368 and 94-382 and replaced them with two new opinions, 05-437 (2005) and 06-440 (2006), that essentially track Model Rule 4.4(b) and Comment 2. Model Rule 4.4(b), Comment 2, and the new ethics opinions are all available on the ABA Center for Professional Responsibility's website at www.abanet.org/cpr.

Washington has seen a similar evolution in the duty to notify. When our RPCs were amended in September 2006, they included a new rule, RPC 4.4(b), and a new comment, Comment 2, that are identical to their ABA counterparts. This new rule applies to both Washington state court proceedings and under, respectively, Western District General Rule 2(e) and Eastern District Local Rule 83.3(a), federal courts here as well. Washington RPC 4.4(b) and Comment 2 are available from the WSBA website at www.wsba.org/lawyers/rules.

Procedural Framework

The amendments to the Federal Rules of Civil Procedure that became effective this past December contained a new section that specifically outlines the procedure for litigating possible privilege waiver through inadvertent production. FRCP 26(b)(5)(B) now provides:

> If information is produced in discovery that is subject to a claim of privilege or of protection as trial-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The producing party must preserve the information until the claim is resolved.

New FRCP 26(f)(4) also encourages the use of so-called "claw back" agreements (either by informal agreement or stipulated order), under which inadvertently produced confidential material can be "clawed back" by the producing party under specified conditions. The Advisory Committee Notes accompanying these changes emphasize that the intent is not to create a "free pass" for inadvertent production. They highlight, however, that inadvertent production is becoming more common as document production has increasingly evolved from paper correspondence to e-mail and the cost of constructing privilege screens has increased in tandem. The Advisory Committee observed that the new rules are an attempt to provide an orderly framework for resolving inadvertent production issues. Both the new rules and the accompanying Advisory Committee Notes are available on the federal judiciary's website at www.uscourts.gov/rules.

Although the Washington Civil Rules have not been amended in a similar fashion, Washington case law gets to much the same end. In 1996, the Washington State Supreme Court in *In re Firestorm 1991*, 129 Wn.2d 130, 138-39, 916 P.2d 411 (1996), held that lawyers who are confronted with issues about whether privilege applies to information received from the other side or has been waived should seek the court's guidance rather than making those decisions unilaterally. *Firestorm 1991* was not an inadvertent-production case. It dealt instead with information

received through an *ex parte* contact with an opposing party's expert. Nonetheless, *Firestorm 1991* suggests the mechanism for a recipient to test whether privilege has been waived through inadvertent production: Ask the court.

A later case from the U.S. District Court in Seattle that relied on *Firestorm 1991*, *Richards v. Jain*, 168 F. Supp.2d 1195 (W.D. Wash. 2001), illustrates another reason for asking the court: disqualification risk *to the recipient*. *Richards* was not an inadvertent-production case either. In *Richards*, the plaintiff was a former high-level executive of a high-tech company who sued his employer over stock options when he left the company. On his way out, Richards downloaded the entire contents of his hard drive onto a disk and gave it to his lawyers. The disk included 972 privileged communications between the company and both outside and inside counsel. The lawyers did not notify the company or its counsel. Instead, the lawyers used the communications in formulating their complaint and related case strategy without first litigating the issue of whether privilege had been waived. When the documents surfaced during the plaintiff's deposition, the defendant moved for both the return of the documents and for the disqualification of the plaintiff's lawyers. The court found that the documents were privileged and that privilege had not been waived. It then ordered the documents returned. More significantly, however, the court also disqualified the plaintiff's lawyers on the theory that there was no other way to "unring the bell" in terms of their knowledge of the defendant's privileged communications.

Privilege Waiver

Privilege waiver based on inadvertent production has also seen potentially far-reaching developments at the federal level over the past year. The Advisory Committee on Evidence Rules has proposed a new federal rule of evidence addressing privilege waiver that would apply to both the attorney-client privilege and work product and would apply to all federal proceedings, regardless of the basis for federal jurisdiction. Proposed FRE 502(b) addresses inadvertent production and, as I write this, reads:

> A disclosure of a communication or information covered by the attorney-client privilege or work product protection does not operate as a waiver in a state or federal proceeding if the disclosure is inadvertent and is made in connection with federal litigation or federal administrative proceedings and if the holder of the privilege or work product protection took reasonable precautions to prevent disclosure and took reasonably prompt measures, once the holder knew or should have known of the disclosure, to rectify the error, including (if applicable) following the procedures in Fed. R. Civ. P. 26(b)(5)(B).

Like the amendments to the FRCP in this regard, the Advisory Committee on Evidence Rules' report generally reflects the same approach and concerns as expressed by the Advisory Committee on Federal Rules of Civil Procedure. Under 28 USC § 2074(b), Congress must approve any rule creating or affecting an evidentiary privilege and, as I write this, proposed FRE 502 remains under review. If approved, it would take effect in December 2008. The proposed rule, the Advisory Committee's report, and current information on the proposal's status and form are all available on the federal courts' website at www.uscourts.gov/rules.

Although the Washington evidence rules have not been amended in a similar way, Washington case law again arrives at much the same end. Whether privilege has been waived through inadvertent production turns on very similar case-specific factors, including: "(1) the reasonableness of the precautions taken by the producing party to prevent inadvertent disclosure of privileged documents; (2) the volume of discovery versus the extent of the specific disclosure at issue; (3) the length of time taken by the producing party to rectify the disclosure; and (4) the overarching issue of fairness." *Harris v. Drake*, 152 Wn.2d 480, 495-96, 99 P.3d 872 (2004) (Alexander, C.J., dissenting) (citation omitted).

Summing Up

Inadvertent production is an area where both the duties imposed on lawyers and the rationale for those duties has shifted considerably over the past two decades. The last year, however, has seen important developments that bring a level of certainty and uniformity that this evolving area has not seen before.

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

Pride in the Workplace: How to Create a Gay-Friendly Environment

BY BETH BARRETT BLOOM

This month marks the one-year anniversary of amendments to the Washington Law Against Discrimination (WLAD) making it illegal for many employers to discriminate on the basis of sexual orientation.[1] For many law firms across our state, the amendment reflects longstanding employment policies and practices already banning discrimination on the basis of sexual orientation.

By some accounts, the legal profession ranks high in gay-friendliness when compared with other professions. Healthcare benefits for domestic partners and recruitment of openly gay attorneys are on the rise. Law-firm support for lesbian, gay, bisexual, and transgender (LGBT) legal causes and organizations is also growing. QLaw, our new statewide bar association for LGBT attorneys and supporters, held a sold-out banquet of 400 attendees in April 2007, with nearly 20 law firm and corporate sponsors.

Yet despite what some have dubbed a "sea change in attitudes" toward gay and lesbian attorneys, the number of openly gay lawyers reported by member firms of the National Association for Law Placement remains a dismal 1.42 percent. By contrast, a recent population study found nearly 13 percent of Seattle residents identified as openly gay.[2] Representation in the judiciary nationwide is no better. There are only 75 to 100 openly gay judges, with only a handful of those in Washington state, and only one openly lesbian or gay federal judge in the United States.

The truth is, as much as legal employers may publicly embrace diversity, not everyone is completely at ease with the issue of sexual identity. As one news magazine recently claimed, in many American law firms today, "'Don't ask, don't tell' remains the unspoken credo."[3] The inescapable conclusion is that there are many LGBT attorneys, legal professionals, and judges who are not open about their sexual orientation. While many firms focus on recruiting, equally important is the question of how to support the openly gay or closeted LGBT lawyers and legal professionals in our midst.

The first step toward creating a gay-friendly workplace is appreciating that the critical issue is not sexual behavior, which is and should remain private, but the myriad of ways in which sexual orientation affects one's professional and personal life. A conversation about the most mundane of topics — what you did over the weekend or a dinner with your in-laws — will likely reveal who you live with and the name and gender of your spouse or partner. The energy spent avoiding such personal disclosure can be exhausting. Closeted attorneys may appear distant, cold, and even aloof. These are not desirable attributes in the workplace or legal profession. As one gay lawyer described his days in the closet: "People thought I was a loner who took interesting vacations."[4]

Many forward-thinking employers have concluded that maintaining a workplace that is "safe" for or even encourages employees to "come out" is an excellent step toward improving morale and the bottom line. It is important to respect everyone's privacy, yet there are a few important steps that employers can take to welcome and support LGBT employees.

Update and publicize the firm's anti-discrimination policy. Consistent with the WLAD, workplace policies should now reflect the law barring discrimination or harassment on the basis of sexual orientation, gender expression, or identity. A good policy makes clear that discriminatory conduct will not be tolerated, enumerates the types of prohibited behavior, clearly outlines the grievance procedure, and commits to a prompt investigation. The policy should state clearly that retaliation

Upcoming Event:
Second Annual Statewide Diversity Conference. Seattle University, Seattle. June 7 and 8, 2007. Contact Joslyn Donlin at joslynd@wsba.org, 206-727-8216.

Asian Bar Association of Washington
www.abaw.org

The Cardozo Society
www.jewishinseattle.org/JF/About/Attorneys/Attorneys.asp

Filipino American Legal Society
Jesie R. Castro, 253-589-6598

Korean American Bar Association
www.kaba-washington.org

Latina/Latino Bar Association of Washington
www.lbaw.org

Loren Miller Bar Association
www.lmba.net

Northwest Indian Bar Association
www.nwiba.org

Pierce County Minority Bar Association
www.orgsites.com/wa/pcmba

QLaw: The GLBT Bar Association of Washington
www.Q-law.org

South Asian Bar Association
www.sabaw.org

Vietnamese American Bar Association
www.vabaw.com

Washington Attorneys with Disabilities Association
http://groups.yahoo.com/group/Wash-ADG

Washington Women Lawyers
www.wwl.org

Other Events of Interest:
CLE — Litigation and the Legal Rights of Breast Cancer Patients, Seattle, June 28, 2007, 9:00 a.m. to noon.
CLE — Annual Leadership Symposium and Awards Dinner, Seattle, September 28, 2007.
King County Washington Women Lawyers Judicial Appreciation Luncheon, June 13, 2007, www.kcwwl.org.

will not be tolerated.

Offer diversity and anti-discrimination training. Ensure that in-house training, at a minimum, includes sensitivity towards all employment topics involving sexual orientation, gender identity, and HIV status.

Offer complete domestic-partner benefits. Wherever "spouse" is mentioned, "domestic partner" should apply as well. This may include offering health, dental, and other insurance benefits as well as relocation assistance, caretaking and bereavement leave, access to employee assistance programs, and pension and survivor benefits to an employee's domestic partner. *Note: an increasing number of employers account for existing federal tax inequities by "grossing up" an employee's salary to cover the cost of additional taxes from the imputed income of domestic-partner benefits.*[5]

Support LGBT employee families. Treat all children, whether biological, adopted, or stepchildren of heterosexual or lesbian and gay couples, the same. This may require extending childcare, parental leave, family leave, and healthcare coverage, even when those families are not recognized under existing law. Explicitly invite partners as well as spouses to workplace functions.

Support a transgender employee's transition. Treat an employee's transgender status as private and confidential. Upon an employee's request, change the employee's name and sex in all personnel and administrative records, including internal and external e-mail and business cards. Permit a transgender employee to use the restroom consistent with his or her stated gender identity. Provide alternatives for other employees if they are uncomfortable.

Support LGBT employee groups and professional associations. Encourage LGBT employees to establish workplace affinity groups, then respond to the workplace concerns they may identify. Encourage and fund employee membership in gay legal professional associations such as QLaw: The GLBT Bar Association of Washington (www.q-law.org) and the National Lesbian and Gay Law Association (www.nlgla.org).

Demand a respectful workplace from all employees. Prohibit derogatory comments about LGBT employees and move quickly to discipline those who make such comments.

Monitor hiring, promotion, and disciplinary decisions. Guard against and scrutinize potential bias, whether it be your own or a member of your hiring team.

Use language of inclusion. Create an environment where people feel comfortable being out and open. Don't be afraid to say "lesbian," "gay," "bisexual," and "transgender," or the more inclusive "LGBT," when it is appropriate. Learn to say gender-neutral terms such as "partner" or "significant other" as comfortably and easily as you say "wife" or "husband." See the sidebar "You Asked, We Told: A Glossary of Terms."

For employers seeking to improve recruitment and retention of LGBT attorneys, there are plenty of excellent resources, including the Minority Corporate Counsel Association guide, *Creating Pathways to Diversity: Gay and Lesbian Attorneys in the Profession.*[6]

Beth Barrett Bloom is a labor and employment attorney with Frank Freed Subit & Thomas, LLP. She is also president of the GLBT Bar Association of Washington (www.q-law.org) and a past associate director with the National Gay and Lesbian Task Force Policy Institute. She can be reached at laborlaw@frankfreed.com. The information in this article is a summary overview only and does not constitute legal advice. Beth Barrett Bloom and Maureen Mannix are co-editors of this column.

NOTES

1. RCW 49.60.180.
2. Turnbull, Lornet, "12.9 percent in Seattle are gay or bisexual, second only to S.F., study says," *Seattle Times* (Nov. 16, 2006).
3. Chen, Vivia, "Top Law Firms Undergo a Rainbow Revolution," *The American Lawyer* (March 2, 2007).
4. *Id.*
5. See www.hrc.org/.../Work_Life/Get_Informed2/The_Issues/DomesticPartnerBenefits-March2006-Final.pdf.
6. *Available online at* www.mcca.com.

You Asked ... We Told

A glossary of terms to better understand your LGBT colleagues

Gay — The adjective used to describe people whose enduring physical, romantic, emotional, and/or spiritual attractions are to people of the same sex (e.g., gay man, gay people) — though in contemporary contexts, "gay" is more commonly used to describe men, while "lesbian" (n.) is usually the preferred term for women. Avoid identifying gay men and lesbians as "homosexuals." Because of the clinical history of the word "homosexual," it has been adopted by anti-gay extremists to suggest that lesbians and gay men are somehow diseased or psychologically/emotionally disordered — notions discredited by both the American Psychological Association and the American Psychiatric Association in the 1970s.

Gender identity — One's internal, personal sense of being a man or a woman (or a boy or girl). For transgender people, their birth-assigned sex and their own internal sense of gender identity do not match.

Sexual orientation — Describes an individual's enduring physical, romantic, emotional, and/or spiritual attraction to another person. Gender identity and sexual orientation are not the same. Avoid the term "sexual preference," which is typically used to suggest that being lesbian, gay, or bisexual is a choice.

Transgender — An umbrella term for people whose gender identity and/or gender expression differs from the sex they were assigned at birth. The term may include but is not limited to: transsexuals, cross-dressers, and other gender-variant people. Many transgender people can identify as female-to-male (FTM) or male-to-female (MTF). Use the descriptive term (transgender, transsexual, cross-dresser, FTM, or MTF) preferred by the transgender person. Transgender people may or may not choose to alter their bodies hormonally and/or surgically.

Transition — Altering one's birth sex is not a one-step procedure — it is a complex process that takes place over a long period of time. Transition includes some or all of the following cultural, legal, and medical adjustments: telling one's family, friends, and/or co-workers; changing one's name and/or sex on legal documents; hormone therapy; and possibly (though not always) some form of chest and/or genital alteration.

Source: Adapted from Gay & Lesbian Alliance Against Defamation, Media Reference Guide, *7th Ed. 2006 available online at: www.glaad.org/media/guide/index.php.*

Winter 2007 Bar Exam Pass List

Congratulations to the 387 candidates who passed the Winter 2007 Bar Exam! The exam was administered in February at Meydenbauer Center in Bellevue. Of the 508 candidates who took the exam, 76.2 percent passed.

A

Abdullah, Yasmeen Mufeed, *Lacey*
Adams, Sonja M., *Seattle*
Ake, Adam Kenneth, *Dupont*
Alabi, George Salvador, *Mill Creek*
Albertsen, Kenneth Dale, *Palmer, AK*
Ammons, Jennifer Noelle, *Olympia*
Anderson, Brian J., *Spring, TX*
Anderson, Rebecca Jane, *Seattle*
Anderson, Jesse, *Marysville*
Armentrout, Ray, *Seattle*
Ashton, Jennifer R., *Issaquah*
Assefa, Brook, *Bellevue*
Atwood, Thomas K., *Sammamish*
Au, Victoria Ruth, *Costa Mesa, CA*
Avelar, Melissa Campos, *Federal Way*
AyAy, Taila Jade, *Seattle*

B

Babaian, David Christian, *Seattle*
Bailey, Melanie R., *East Wenatchee*
Baird, James Christopher, *Seattle*
Baker-White, Bridget A., *Kent*
Baker-White, Robert A., *Kent*
Baldassin, Matthew A., *Great Falls, MT*
Bales, Mark A., *Seattle*
Bann, Amy Jeanne, *Brooklyn, NY*
Bannerman, Kimberly, *Albuquerque, NM*
Barjesteh, Bobac A., *Bainbridge Island*
Bartlett, Lynn Peter, *Anchorage, AK*
Bass, Aaron J., *Hillsboro, OR*
Beaty, Matt, *Bellingham*
Bechtle, Jonathan D., *Olympia*
Beetham, Scott Phillip, *Kirkland*
Bennett, Michelle, *Issaquah*
Beyer, David Michael, *Seattle*
Blais, Suzanne Katie, *Seattle*
Bocian, Brianna, *Kent*
Boettcher, Lisa Marie, *Phoenix, AZ*
Boisvert, Ian, *Pacifica, CA*
Boyapati, Madhurima, *Miramar, FL*
Brandt, Katherine A., *Burien*
Budihardjo, Daniel, *Portland, OR*
Buerstatte, Kelly Anne, *Walla Walla*
Burbank, Linda Patrice, *Tacoma*
Burleigh, John D., *Gig Harbor*
Burns, Travis H., *Olympia*
Burns-Hart, Patricia Lynn, *Spokane*
Burt, Elena Christian, *Seattle*
Byrd, Lisa A., *Vancouver*

C

Cabrera, Arnaldo, *Loma Linda, CA*
Caldwell, Sekou R., *Renton*
Calica, Direlle R., *Portland, OR*
Cancelmo, Peter Brogan, *Seattle*
Carney, Elizabeth M., *Seattle*
Casas, Alberto Daniel, *Anthony, NM*
Casper, Laura Kathleen Hammer, *Tacoma*
Caughey, Michael, *Seattle*
Cava, Mario Manvel, *Bothell*
Cavallo, Janet, *Seattle*
Champagne, Jennifer L., *Kent*
Channell, Amber Austin, *Lakewood*
Chin, Michael Masue-Mi, *Pullman*
Chipman, Heather Marie, *Brandon, FL*
Chong, Abner John, *Mercer Island*
Christy, Elizabeth Elaine, *Lake Oswego, OR*
Chuang, Sean, *Rolling Hills Estates, CA*
Chung, James H., *Costa Mesa, CA*
Clark, Jacob Russell, *Veneta, OR*
Colgan, Seann C., *Seattle*
Collins, Cameron J., *Seattle*
Comeau, Daniel J., *Olympia*
Conley, Michael A., *Auburn, CA*
Conner, Lea E., *Spokane*
Copeland, Sean William, *Saint Paul, MN*
Correl, Theodore, *Seattle*
Cox, Fiona Carolan, *Seattle*
Creedy, Benjamin Spencer, *Saint Joseph, MO*
Cruz, Henry Marcus, *Seattle*
Curry, Megan M., *Spokane*

D

Dail, James Michael, *Charlotte, NC*
Davidhizar, Matthew H., *Seattle*
Davis, Mark K., *Seattle*
Davis, Micah, *Spanish Fork, UT*
Davy, Robert Roy, *Port Orchard*
DeGracia, Steven J., *Hong Kong*
Denenny, Richard H., *Seattle*
Develay, Arno N., *Savigny, OR*
DeVore, Kristina S., *Puyallup*
Dhoot, Jasbinder Kaur, *Sammamish*
Diaz, Karrie Johnson, *Seattle*
Dickinson, Scott James, *Seattle*
Dietrich, Elizabeth Ann, *Deerfield Beach, FL*
Dirlinger, Michael David, *Woburn, MA*
Douglas, Michael Elvon, *Ketchikan, AK*
Dow, Benjamin Winters, *Richland*
Dresden, Matthew, *Los Angeles, CA*
Dunn, Pamela Jo, *Seattle*
Duran, Sarah Kathleen, *Seattle*
Dye, Chris, *Vancouver*

E

Earle, Wendy Jordan, *Olympia*
Eaton, Dorice Anne, *Vista, CA*
Ebalo, Jay, *El Paso, TX*
Eberhart, Rose Marie, *Tacoma*
Eilers, Heath A., *Seattle*
Eizenhoefer, Joelle L., *Redmond*
Endter, Anna Lucienne, *Seattle*
England, Trent M., *Bremerton*
Eugster, Jennifer Lynn, *Seattle*

F

Ferguson, Eric W., *Burien*
Ficcaglia, Matthew T., *Seattle*
Fite, Benjamin D., *Maple Valley*
Flynn, Sean Joseph, *Santa Fe, NM*
Forrest, Gwen Marie, *Seattle*
Fowley, Denise W., *Seattle*
Fox, Alex, *Wenatchee*
Frazier, K. Allen, *Lake Stevens*
Fredette-Sankey, Christina L., *Seattle*
Freeman, Amy, *Seattle*
Frohman, Charles Godwin, *Minneapolis, MN*

G

Garcia, Victoria Elizabeth, *Seattle*
Gardner, Jolyn E., *Burien*
Gibson, Hanna V., *Port Townsend*
Glass-Cotta, Charity Elizabeth, *Kirkland*
Gombert, Wendy M., *Preston*
Gonzalez, Justo, *Seattle*
Goodman, Marla, *Seattle*
Goodman, Daniel D., *Everett*
Gosalia, Vijay A., *Seattle*
Gould, Shannon A.C., *Tacoma*
Greenspan, David B., *Lake Forest Park*
Griffin, Kevin, *Spokane*
Griswold, Belinda, *Seattle*
Gronski, Kellie, *Issaquah*
Grover, Harold K., *Renton*
Guillot, John Downer, *Seattle*
Guinn, John Alexander, *Seattle*

H

Hackenberg, E.P., *Mount Vernon*
Haddock, Scott Lee, *Camano Island*
Hager, Jared, *Seattle*
Hakes, Hollybeth Goodwin, *Bothell*
Hakim, Samara Nabil, *Kent*
Hall, Sylvia Janelle, *Mandeville, LA*
Harper, Cerissa Andrea Renee, *Moscow, ID*
Harrell, Merrilee S., *Seattle*
Harrison, Olufemi A., *Bellevue*
Hayden, William Eric Lee, *Duvall*
Hazelrigg-Hernandez, Cecily Christine, *Bellingham*
Hedges, Patricia Sipes, *Bellevue*
Heliotis, G. Demetri, *Seattle*
Helling, Julie A., *Blaine*
Hellstern, Teresa Ann, *Seattle*
Hill, Zachary T., *Spokane*
Hivick, Christopher Allen Edward, *Seattle*
Holdaway, Paul Steven, *Liberty Lake*
Holloway, Chad C., *The Dalles, OR*
Honbo, Julie A., *Seattle*
Honea, Dominque, *Topeka, KS*
Hornbuckle, Thomas S., *Houston, TX*
Hornbuckle, Stephen S., *Houston, TX*
Hudson, Jehmal, *Brooklyn, NY*
Huffman, Carey L., *Stockton, CA*
Hurley, Patrick Steven, *Seattle*
Hutson, Teresa Jedd, *Seattle*

I

Iinuma, Shiori, *Lake Oswego, OR*
Ishii, Irene Sakura, *Mercer Island*

J

Jackson, Candice E., *Alhambra, CA*
Jackson, Daniel, *Kent*
Jeffrey, John W., *Seattle*
Johnsen, Justen C., *Woodinville*
Johnson, Cory L., *North Bend*
Johnson, Deanna L., *Spokane Valley*
Johnston, Lori, *Goldendale*
Joner, Loren Matthew, *Battle Ground*
Jones, Bridget Mary, *Carmichael, CA*
Jones, Nicholas, *Mercer Island*
Jones, Aimee N., *Spokane*
Jones, Salem Anice, *Berlin,*
Justus, Benjamin R., *Beaux Arts*

K

Kadoura, Judy Marie, *Bellevue*
Karmali, Hussein, *Redmond*
Kell, David Garrity, *Issaquah*
Kelly, Robert A., *Bellingham*
Kennedy, Benjamin T., *Seattle*
Kessler, Holly A., *Edmonds*
Kim, Hokyeom, *Spokane*
Kim, Christine Hyojin, *Charlottesville, VA*

Kingsley, Lydia Jean, *Santa Rosa, CA*
Kiviat, Aaron S., *Mercer Island*
Klein, Mary, *Seattle*
Kleiner, Aaron P., *Washington, DC*
Knipe, Robin M., *Tacoma*
Knowles, Devon Carroll, *Philadelphia, PA*
Knutsen, Brian Alan, *Seattle*
Knutson, Keon, *Mercer Island*
Ko, Joanne, *Seattle*
Krattli, Darren Roabert, *Dupont*
Krupa, Marcin Piotr, *Seattle*
Kuhlmeyer, Sean Patrick, *Kenmore*

L

Labat, Mercedes J., *Seattle*
Lackey, Mark Adam, *Bellingham*
Larrick, Lisa M., *Spokane*
Larsson, Anders G., *Bonney Lake*
LeBeau, Daniel F., *Moscow, ID*
Lee, Melissa R., *Seattle*
Lee, Peter Y., *Fort Lee, NJ*
Lee, Kyunghee, *Newbury Park, CA*
Lee, Andrew T., *San Francisco, CA*
Lee, Jong M., *Seattle*
Leon, David Mark, *Brooklyn, NY*
Leonard, Curtis Michael, *Bonney Lake*
Lettini, Kara, *Seattle*
Letts, Aleksandra K., *Seattle*
Lisagor, Jamie L., *Bainbridge Island*
Literski, Nicholas Shawn, *Seattle*
Locker, Joshua B., *Seattle*
Longley, Sara Deirdre, *Seattle*
Lupo, Frank, *Anchorage, AK*
Luvai, Kennedy K., *Portland, OR*
Lybbert, Tygh Ray, *Richland*

M

Machel, Kelly, *Renton*
Mahady, Drew, K, *Sammamish*
Martin, Bardi David, *Seattle*
Maryman, Bridgette Eileen, *Seattle*
May, Kristin, *Portland, OR*
McCormack, Elizabeth A., *Eureka, CA*
McDow, Ashley Marie, *Burbank, CA*
McGill, Daniel Clinton, *Stevenson*
McMaster, Mark Thomas, *Duvall*
Mehling, Cristina B., *Issaquah*
Meyer, Kathryn Beth, *Seattle*
Miller, Jordan L., *Chelan*
Miller, Robert Fraser, *Moorestown, NJ*
Millikan, Alison Ruth Dearborn, *Bellevue*
Mishkin, Justin, *Bellevue*
Mooney, Peter C., *Seattle*
Morgan, Marisa M., *Kenmore*
Mosca, Jenny, *Poulsbo*
Mowrer, Marc, *Seattle*
Musikanski, Laura Anne Vanessa Harger, *Seattle*

N

Nashiwa, Karen Mari Takishita, *Pearl City, HI*
Nayar, Venu, *Bellevue*
Nevitt, Terra Kristine, *Seattle*
Nguyen, Tien Huu, *Lynnwood*
Nicholson, Suzanne M., *Sutter Creek, CA*
Niehaus-Rivers, Jennifer L., *Tacoma*
Norton, Lisa, *Seattle*

O

Oreilly, Gail Depolo, *Duvall*
Oriade, Bosede Olutoyin, *Mountlake Terrace*
Orkney, Heather L., *Puyallup*
Ortiz, Ramon E., *Renton*
Oseas, Matthew, *Olympia*
Ostman, Alan E., *Lynnwood*
O'Toole, Elaine Susan, *Portland, OR*

P

Pagay, Kevin, Francis, *Spokane*
Page, James Robert, *Seattle*
Pak, Margaret Ji Yong, *San Francisco, CA*
Park, Jea-Hyun, *Seattle*
Parker, Jacqueline Ann, *Bellevue*
Parry, Jeffrey C., *Anacortes*
Parsons, Jamie L., *Montesano*
Payne, William B., *Ferndale*
Peirce, Jonathan Read, *Edmonds*
Penoyar, William Robin, *South Bend*
Persell, RaeAnn, *Seattle*
Peterson, Michael C., *Wenatchee*
Phillips, Matthew S., *Spokane*
Phillipson, Kennet M., *Kent*
Pickens, Rachel Marie, *Mountlake Terrace*
Pierce, John, *Spokane*
Pilz, Jon A., *Tacoma*
Pinkham, Malena Fairlight, *Kennewick*
Pinsonneault, Deborah, *Olympia*
Ponce, Romelia Beatriz, *Seattle*
Pope, Kevin, *Seattle*
Pope, London Thorne, *Spokane*
Porciuncula, Jamie Lhynn, *Seattle*
Psoinos, Erin, *Port Angeles*

R

Radocha, Christina G., *Seattle*
Ramirez, Heather Colleen, *Renton*
Rao, Nandini, *Novi, MI*
Redman, Helen M., *Seattle*
Reed, Laura, *Mead*
Reese, John R., *Coeur D'Alene, ID*
Reese, Kristilyn, *Redmond*
Reid, Kristen Cavanaugh, *Mount Vernon*
Relyea-Chew, Annemarie, *Bainbridge Island*
Reynvaan, Angela, *Seattle*
Rice, Matthew, *West Linn, OR*
Rich, Janal M., *Kent*
Richardson, Jonathan Lee, *Salem, OR*
Ringer, Eric, *Seattle*
Rivera, Judith Ann, *Harrisburg, PA*
Ro, Victor, *Irvine, CA*
Roberts, Paige Alison, *Seattle*
Robinson, Marshon, *Seattle*
Rogers, Christopher, *Cashmere*
Rollins, Christopher T., *Ellensburg*
Romero, Maria Enriqueta, *Kirkland*
Roshak, Chris, *Renton*
Rubenstein, Ryan S., *Seattle*
Ruyf, Jason Paul, *Seattle*

S

Saku, Mark B., *Seattle*
Samples, Matthew, *Albany, OR*
Sandberg, Roger J., *Edmonds*
Sankey, Anthony Michael, *Seattle*
Sargent, Heidi Maria, *Seattle*
Satagaj, Thomas J., *Bellevue*
Schaures, Lisa Elizabeth, *Seattle*
Schriwer, Tania, *Seattle*
Seitz, Jon Lawson, *Yakima*
Sellers, Stephanie, *Wenatchee*
Shaffer, Melanie Marie, *Seattle*
Shariff, Michael G., *Bloomfield Hills, MI*
Shearer, Darcy W., *Seattle*
Shearin, Robyn N., *Palmdale, CA*
Shepherd, Jennifer D., *Snohomish*
Sheppard, LaRissa M., *Seattle*
Sheridan, Sharon D., *Bellevue*
Shoup, David H., *Anchorage, AK*
Shrotriya, Gauri, *Seattle*
Shteynberg, Anita Gihm, *Seattle*
Slawson, Julie Marie, *Seattle*
Smith, Robbi Michelle, *Shelton*
Smith, Hilary Anne, *Seattle*
Smith, Michael Thomas, *Tacoma*
Smith, Kyle Stanton, *Seattle*
Smith, James Varro, *Marysville*
Smucker, Rebecca Lynn, *Seattle*
Sneller, Jodie M., *Springfield, OR*
Sneva, Joshua C., *Newcastle*
Sohn, Jennifer Yoo, *Mercer Island*
Solovjev, Juliana V., *Burien*
Souza, Erin M., *Seattle*
Sparks, Steven Gaines Ford, *Fort Worth, TX*
Spofford, Shelley Kay, *Arlington*
Stagg, Marshall K., *Foothill Ranch, CA*
Stewart, Steven C., *Mercer Island*
Stewart, Jared Tollefson, *Mercer Island*
Stone, Lynda J., *Seattle*
Stricker, Katherine Marie, *Atlanta, GA*
Stutzer, Jennifer D., *Seattle*
Sullivan, James, *Moses Lake*
Swadberg, Susan M., *San Diego, CA*
Swanson, Robin, *Vancouver*
Swensen, Todd, *Spokane*

T

Tallman, Scott Bradley, *Seattle*
Taylor, Christopher P., *Stanwood*
Teel, Susan M., *Seattle*
Terence, Thomas, *Seattle*
Tesh, Debra Lynne, *Seattle*
Thompson, Jennifer C., *Kent*
Tien, Andrew, *Renton*
Tillotson, Norma J., *Spokane*
Tomkins, Cynthia A., *Edmonds*
Torres, Victor Joseph, *Maple Valley*
Treyve, Daliah Eden, *Bainbridge Island*
Trivett, Patrick M., *Marysville*
Tuerk, Sarah Beth, *Everett*
Tuttle, David Loren, *Seattle*
Tvedt, Colette, *Seattle*

U

Underbrink, PeggyAnne, *Stuart, FL*

V

Valley, Jeffrey M., *Corvallis, OR*
Van Eaton, Joshua Hay, *Arlington, VA*
Villarreal, Carlos David, *Pasco*
Vukshich, Branka, *Auburn*

W

Walker, Daniel J., *Seattle*
Wallace, Elizabeth C., *Spokane*
Walters, Ryan R., *Anacortes*
Warbrick, Perry A., *Seattle*
Wareham, Matthew Franklyn, *Gig Harbor*
Warren, Gina S., *Media, PA*
Watkins, Gary C., *Everett*
Weerasundara, Shanika N., *Kirkland*
Weinberg, Asher Newton, *Aventura, FL*
West, David D., *Bellevue*
Whitmer, Wendy Dee, *Renton*
Wild, L. Zoe, *Gresham, OR*
Wilson, Janie Marie, *Portland, OR*
Wise, Sarah C., *North Hollywood, CA*
Wise, Veronica, *Spokane Valley*
Wolfe, Scott G., *New Orleans, LA*
Wright, Annika, *Seattle*

Y

Yaguchi, Douglas M., *Renton*
Yamaguchi, Kendee Akiko, *Renton*
Yetter, Matthew J., *Salem, OR*
Young, Jeffrey Christopher, *Seattle*

Z

Zhang, Xin, *Seattle*
Zuniga, Alma A., *Eugene, OR*

Opportunity for Service

Washington State Bar Foundation's Loan Repayment Assistance Program (LRAP) Advisory Committee

Application deadline: July 10, 2007

The WSBA Board of Governors is seeking to fill one position to serve a three-year term on the Washington State Bar Foundation's Loan Repayment Assistance Program Advisory Committee. Applicants must be active members of the WSBA. This Washington State Bar Foundation committee has a mission to provide loan forgiveness to attorneys committed to working in the public interest, thereby helping to meet the legal needs of the people of Washington. One of the principal ongoing charges of the Advisory Committee will be to select qualified participants. For more information, see www.wsba.org/lawyers/lrap.htm.

Please submit a letter of interest and résumé to: WSBA Bar Leaders Division, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539 or e-mail barleaders@wsba.org.

Supreme Court Action on WSBA Suggested Amendments to RPCs

On April 5, 2007, the Supreme Court entered an order approving for publication a proposed amendment to RPC 1.15A(e). The amendment would change the language of that section so that the annual written reporting requirement applicable to all client property held by a lawyer would apply to funds only. The proposed amendment was published in the April 24, 2007, Washington Reports Advance Sheets with a 60-day comment period ending June 22, 2007. The Court's order also stays enforcement of the existing reporting requirement during the rulemaking process. For more information on this proposed rule, see the Washington State Courts website at www.courts.wa.gov/court_rules/?fa=court_rules.proposedRuleDisplay&ruleId=100.

The Court also adopted the WSBA's suggested amendment to RPC 1.8(e) pursuant to the emergency provisions of GR 9(j)(1). Rule 1.8(e) regulates lawyer-advanced court costs and expenses. Effective September 1, 2006, the Court had adopted the ABA Model Rule version of Rule 1.8(e), which permits repayment of advanced costs and litigation expenses to be contingent on the outcome of a matter and permits a lawyer to pay court costs and expenses of on behalf of an indigent client. Owing to unforeseen tax consequences of the change, the WSBA requested that the Court amend RPC 1.8(e) so that it would be essentially identical to the prior version of the rule. The amendment became effective upon publication in the April 24, 2007, Washington Reports Advance Sheets. For a copy of the amended rule, please see the Washington State Courts website at www.courts.wa.gov/court_rules/adopted/RPC1.8.doc.

LEADERSHIP INSTITUTE
WASHINGTON STATE BAR ASSOCIATION

WSBA Leadership Institute Seeks Fellows for 2008

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

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

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

WSBA website at www.wsba.org/lawyers/leadership_institute.htm. For further information, contact Camille Campbell at camillec@wsba.org or 206-727-8213.

Equal Justice Coalition Receives ABA Grassroots Advocacy Award

The EJC group receives the ABA Grassroots Advocacy Award: (l. to r.) César Torres, Justice Susan Owens, Judge Greg Tripp, Sara Zier, Ellen Conedera Dial, Caitlin Davis Carlson, Scott Smith, Patrick McIntyre.

The Equal Justice Coalition received the ABA Grassroots Advocacy Award in Washington, D.C., on April 19. The award is given to state, local, territorial, and/or specialty bar associations and access to justice commissions or their equivalent, or individual ABA members who were instrumental in successfully advocating or advancing ABA/organized bar legislative priorities each session of Congress. ABA President **Karen Mathis** presented the award. Justice **Susan Owens** and **Scott Smith** accepted the award on behalf of the Equal Justice Coalition. Congratulations!

WSBA Names Noelle McLean and Ted Watts Local Heroes

The WSBA recently presented Noelle McLean and Charles "Ted" Watts with its Local Hero Award. The Local Hero Award is presented to lawyers who have made noteworthy contributions to their communities.

Kelso attorney Noelle McLean graduated from the University of Puget Sound School of Law (now Seattle University School of Law) in 1993. She is active in the community and has served on many boards and committees, including the YMCA Mock Trial Competition and Cowlitz and Wahkiakum County Youth Commission. She is president of the Washington state chapter of Epsilon Sigma Alpha, a leadership and service organization, and a past executive board member of Cowlitz-Wahkiakum County Bar Association. "[McLean] volunteers to cover any need she sees.... She is an excellent organizer, no matter how complex the task, and works very well with anybody and everybody," said Frank F. Randolph, president of the Cowlitz-Wahkiakum County Bar Association, in his nomination.

Bellevue attorney Ted Watts received degrees from Whitman College and the University of Washington and received his law degree from the University of Washington School of Law. He belonged to the UW Law Review and the Order of the Coif. After admission to the Bar, Watts served three years as an assistant attorney general for the state of Washington, handling construction contract and land condemnation cases, before entering private practice. His current practice focuses on commercial litigation and real estate litigation. Watts has a background in admiralty and marine law and is a member of the King County Bar Association.

WSBA Administrative Law Section Donates *Public Records Act Deskbook*s to County Law Libraries

As part of its annual public-service project that promotes access to administrative justice, the WSBA Administrative Law Section will donate a copy of the *Public Records Act Deskbook: Washington's Public Disclosure and Open Public Meetings Laws* (WSBA-CLE 2006) to each county law library in the state of Washington. The *Deskbook* was produced by the Section over a period of four years, with support from the Washington Attorney General's Office, and published by WSBA-CLE. The deskbook was written for laypersons, attorneys, and judges in Washington as a practical guide to improving access to public records. A brief ceremony announcing the donation and presenting deskbooks to several county law librarians will be held at the June Access to Justice conference in Wenatchee.

WYLD Seeks Award Nominations

The WYLD is accepting nominations for the Thomas Neville Pro Bono Award, Outstanding Young Lawyer of the Year, and the Professionalism Award. All three awards recognize lawyers who epitomize the best in the legal profession. Nominations are also being accepted for Outstanding YLD Affiliate or Organization for recognition of public service and/or member service programs.

If you know of a young lawyer or organization that deserves to be recognized, visit www.wsba.org/lawyers/groups/wyld/

default.htm for full details and nomination form. Self-nominations will not be accepted. Please note that a completed nomination form must accompany each nomination to be considered. Nominations must be received by 5:00 p.m. on August 1, 2007.

Live Preadmission Education Courses Offered by Local Bar Associations

In 2006, the Washington State Supreme Court amended Admission to Practice Rules 5 and 18 to require all Bar applicants to complete four hours of approved preadmission education. Since June 1, 2006, the effective date of this requirement, more than 1,200 bar applicants have completed the mandatory Preadmission Education course, including 237 applicants who attended live seminars presented by local bar associations last fall.

Local bar associations will again offer live Preadmission Education seminars this spring in conjunction with local swearing-in ceremonies. By attending a live Preadmission Education seminar, Bar applicants are able to meet members of their local bar association, learn about local bar activities, and gain the perspective of experienced attorneys and judges about practicing law in Washington. Attendees receive a coursebook with information regarding each topic plus tips, research, and local materials selected by the local bar for each seminar location.

Local bar associations offering these programs, including cities and dates, are:

May 24 — Chelan-Douglas Counties, Wenatchee
May 30 — South King County, Kent
May 31 — East King County, Issaquah
June 7 — Thurston County, Olympia
June 14 — Clark County, Vancouver
June 14 — Snohomish County, Everett

Bar applicants who wish to attend a local course must register in advance. Further details regarding the course and registration information are available at www.wsbacle.org/preadmission. For information about swearing-in ceremonies this spring, contact admissions@wsba.org.

Bar applicants who are unable to attend a live Preadmission Education seminar may take the course online. The online video, as well as the coursebook, are available through the Preadmission website at www.wsbacle.org/preadmission.

Direct questions regarding this program to Yvonne K. Chapman, WSBA-CLE orientation program developer, at yvonnec@wsba.org.

2007 License Fee, Late Fees, and Suspension Information

Contact information. It is always a good idea to check that the WSBA has your correct contact information in its database. APR 13.b states that address updates shall be provided to the WSBA within 10 days of a change. You can go to the online lawyer directory on the WSBA website at http://pro.wsba.org to check your listing. If your contact information has changed, please contact the WSBA Service Center at 800-945-WSBA (9722), 206-443-WSBA (9722), or by e-mail at questions@wsba.org.

Suspension recommendations sent to the Washington State Supreme Court. The WSBA sent to the Washington State Supreme Court a list of members who still had any portion of their license fee, late fees, or LFCP outstanding two months after the WSBA issued a presuspension no-

tice (issued March 16, 2007). The Supreme Court has entered an order suspending these members from the practice of law in Washington.

Trust Account Declaration, MCLE Certification, and other forms. A Trust Account Declaration (one was included in your licensing packet) must be completed by all active members regardless of whether you actually have a trust account. Failure to file this form can result in disciplinary action. Also, Group 3 active members were required to complete a MCLE certification form. There may be other forms included from your licensing packet that you wish to complete and return, such as updating your contact information or reporting pro bono hours.

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

WSBA-CLE Annual Member Appreciation Summer Sale

July 2-13: Online orders only

It only happens once a year! Shop the WSBA-CLE online store for recorded seminars and coursebooks (selected titles only) at substantial discounts. Stock up on A/V credits for your MCLE reporting. Visit the online store at www.wsbacle.org.

Use Your MCLE Homepage to Find Approved CLEs

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

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

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

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

Contract Lawyer Meeting

Discuss the issues with other contract lawyers on June 12 from noon to 1:30 at the WSBA office. Bring your lunch — coffee is provided — and network with other contract lawyers. For more information, contact Julie Salmon at 206-733-5914,

800-945-9722, ext. 5914, or juliesa@wsba.org. Please note the WSBA's new address: 1325 Fourth Ave., Ste. 600, Seattle.

"Foundations of Freedom" Civics Pamphlet Available

The WSBA has created a consumer-information pamphlet called "Foundations of Freedom" that covers the basics of American government and democracy. The pamphlet describes the rule of law, the separation of powers, checks and balances, and judicial independence.

It also includes a short quiz and a list of useful websites. Lawyers and judges are encouraged to bring the pamphlet with them when they speak to students or the public in schools, courtrooms, community organizations, and community centers. Teachers may also request the pamphlet for classroom use. The WSBA can provide reasonable numbers of copies at no charge, or the pamphlet may be downloaded from the WSBA website at www.wsba.org/public/consumer. Requests for copies should be directed to Pam Inglesby at pami@wsba.org.

LAP Solution of the Month: Overwhelmed?

It's easy to become overwhelmed by billable hour requirements, managing your practice, or the sheer volume of files piled in your office. Feelings of being overwhelmed can quickly turn into avoidance, then paralysis. If you'd like some tips on handling overload, call the Lawyers Assistance Program at 206-727-8268.

Learn More About Case-Management Software

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

Casemaker Access

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

Computer Clinic

The WSBA offers a hands-on computer clinic for members wanting to learn more about what Microsoft Office programs such as Outlook, PowerPoint, Excel, and Word, as well as Adobe Acrobat, can do for a lawyer. Are you a total beginner? No problem. The clinic teaches helpful tips you can use immediately. Computers are provided, and seating is limited to 15 members. There is no charge, and no CLE credits are offered. The next clinic will be held on June 11 from 10 a.m. to noon at the WSBA office. For more information, contact Julie Salmon at 206-733-5914, 800-945-9722, ext. 5914, or juliesa@wsba.org. Please note the WSBA's new address: 1325 Fourth Ave., Ste. 600, Seattle.

Problem Getting a Client to Pay?

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

Facing an Ethical Dilemma?

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

Search WSBA Ethics Opinions Online

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

Job Seekers Discussion Group

Looking for a job or making a transition? Join us at the Job Seeker Discussion Group the second Wednesday of each month from noon to 1:30 p.m. The June 13 meeting will feature Law Office Management Assistance Program Advisor Peter Roberts, and

LOMAP Program Coordinator Julie Salmon. The topic will be "The Top 10 Tips for Getting Your Law Practice Up and Running." Practice your networking skills and exchange information and ideas with other lawyers looking to make a change. No fee or pre-registration. Come as you are — no need to RSVP. For more information, contact Rebecca Nerison, Ph.D., at 206-727-8269, 800-945-9722, ext. 8269, or rebeccan@wsba.org.

Speakers Available

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

Assistance for Law Students

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

Help for Judges

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

LOMAP and Ethics on the Road: The 2007 Traveling Seminars

Plan to attend in Pullman on June 19 or Colville on June 20. Registration is $89, and each seminar has been approved for four ethics CLE credits. For more information, contact Julie Salmon at 206-733-5914, 800-945- 9722, ext. 5914, or juliesa@wsba.org, or visit www.wsba.org/lawyers/services/lomapontheroad.htm.

Upcoming Board of Governors Meetings

July 27-28, Quincy • September 20-21, Seattle

With the exception of the executive session, Board of Governors meetings are open, and all WSBA members are welcome to attend. RSVPs are appreciated but not required. Contact Donna Sato at 206-727-8244, 800-945-9722, ext. 8244, or donnas@wsba.org. The complete Board of Governors meeting schedule is available on the WSBA website at www.wsba.org/info/bog/schedule.htm.

Usury Rate

The average coupon equivalent yield from the first auction of 26-week treasury bills in May 2007 was 5.017 percent. Therefore, the maximum allowable usury rate for June is 12 percent. Information from January 1987 to date is on the WSBA website at www.wsba.org/media/publications/barnews/usury.htm.

Groff Murphy Trachtenberg & Everard PLLC

is pleased to announce that

Stacey A. Fitzpatrick

has joined the firm as an associate.

Ms. Fitzpatrick received her law degree from University of Washington School of Law and her undergraduate degree from University of California, Berkeley.

Ms. Fitzpatrick's practice will focus on commercial litigation and construction law.

300 East Pine Street
Seattle, WA 98122
Tel: 206-628-9500 • Fax: 206-628-9506
E-mail: sfitzpatrick@groffmurphy.com

Song Mondress PLLC

is pleased to announce that

Rhiannon E. Lockwood

has joined the firm as an Associate.

Ms. Lockwood will concentrate her practice on ERISA and employee benefits law, representing retirement and health plans in the private and public sectors. Her focus includes counseling plan sponsors, trustees and institutional service providers regarding Department of Labor and Internal Revenue Code compliance, fiduciary and trust standards, and strategies for plan design, modification, and administration.

Ms. Lockwood graduated from the University of Washington School of Law. Her undergraduate degree is from Dartmouth College, *cum laude*, with Departmental High Honors Distinction.

720 Third Avenue, Suite 1500
Seattle, Washington 98104
Telephone: 206-398-1500 • Facsimile: 206-398-1501
rlockwood@songmondress.com

Gordon, Thomas, Honeywell Malanca, Peterson & Daheim LLP

proudly congratulates our partner

Victoria L. Vreeland

2007 recipient of the Myra Bradwell Award by the Women's Law Caucus of Gonzaga University School of Law.

Gonzaga University recognized Vicky with this prestigious award for her outstanding and tireless service promoting women's rights. Vicky is the first person in private practice to receive this honor.

Gordon, Thomas, Honeywell Malanca, Peterson & Daheim LLP
600 University Street, Suite 2100
Seattle, WA 98101
206-676-7500
www.gth-law.com

Sebris Busto James

is pleased to announce that

Evan D. Chinn

has joined the firm as an associate

Evan joins the firm from
The National Labor Relations Board, Region 19.
He has been a member of the
Washington State Bar since 2004.

Sebris Busto James
14205 SE 36th Street, Suite 325
Bellevue, WA 98006
Tel: 425-454-4233 • Fax: 425-453-9005
www.sebrisbusto.com

Reed McClure

is pleased to announce
that on April 1, 2007,

Michael S. Rogers

was elected President of the Firm.

Reed McClure
is also pleased to announce that

Nicole D. Rothrock

has joined the Firm as an Associate Attorney.

Reed McClure
601 Union Street, Suite 1500
Seattle, WA 98101
Tel: 206-292-4900
Fax: 206-223-0152
Website: www.rmlaw.com
E-mail: info@rmlaw.com

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For more information, contact
Advertising Manager Jack Young at
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1325 Fourth Ave., Ste. 600, Seattle, WA 98101

Tom Fender
announces the formation of

Fender Law Group, PLLC

Fender Law provides:
Mediation Services
and
Consultation and Association for the
Technical Aspects of Aviation and Engineering Matters
and for State and Local Government Regulation Issues.

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

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Tom@FenderLaw.com
www.fenderlaw.com

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is pleased to announce that

Susan Boyd
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Brian Rodan,
formerly of Shurgard Storage Centers, Inc.,
has joined the firm of counsel.

Patrick Evatt,
formerly of Freddie Mac,
and prior to that, associated with Foster Pepper,
and
Michael Decina,
formerly of the U.S. Department
of Housing and Urban Development,
have joined the firm as associates.

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

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Seattle, WA 98101-2539
Fax: 206-727-8319
E-mail: comm@wsba.org

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

Business Law

2007 Business Law Section Midyear: Trends and Updates to Refine Your Practice
June 1 — Seattle. 6.5 CLE credits, including 1 ethics. By WSBA-CLE and Business Law Section; 800-945-WSBA or 206-443-WSBA.

Consumer Law

2nd Annual Consumer Law Conference and CLE
July 13-14 — Spokane. 14 CLE credits. By WSTLA; www.wstla.org.

Construction Law

Construction Law Midyear
June 15 — Seattle. CLE credits pending. By WSBA-CLE and Construction Law Section; 800-945-WSBA or 206-443-WSBA.

Criminal Law

Lawyer's Toolbox: Criminal Law
July 25 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Employment Law

A to Zs of Employment Law Essentials
July 26 — Seattle. 6.75 CLE credits pending, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Estate Planning

Lawyer's Toolbox: Estate Planning and Probate Practice
June 5 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Real Property Probate and Trust Section Midyear
June 8 — Spokane. 11.5 CLE credits, including 3 ethics. By WSBA-CLE and RPPT Section; 800-945-WSBA or 206-443-WSBA.

Ethics

Ethics and Tax Essentials: Navigating the Maze
June 1 — Seattle. 3 CLE credits, including 2 ethics. By WSBA-CLE and Taxation Law Section; 800-945-WSBA or 206-443-WSBA.

Family Law

Lawyer's Toolbox: Family Law
June 5 — Seattle. 3.25 CLE credits pending, including .5 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Family Law Midyear
June 22-24 — Spokane. 15.75 CLE credits, including 2.5 ethics. By WSBA-CLE and Family Law Section; 800-945-WSBA or 206-443-WSBA.

General

2nd Annual Solo and Small Firm Conference
July 12-14 — Ocean Shores. Up to 15.5 CLE credits, including up to 2.5 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Guardianships

Guardianship Institute — Day 1 and 2
July 19 and 20 — Seattle. CLE credits pending. By WSBA-CLE and Elder Law Section; 800-945-WSBA or 206-443-WSBA.

Litigation

Litigation Basics
June 6 — Seattle. 5.5 CLE credits, including .5 ethics. By WSTLA; www.wstla.org.

Litigation Section Midyear — Diversity Litigation All-Stars — Successful Litigation in a Changing Legal Landscape
June 22-23 — Chelan. 7.5 CLE ethics credits. By WSBA-CLE and Litigation Section; 800-945-WSBA or 206-443-WSBA.

Lawyer's Toolbox: Civil Litigation
July 25 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Medical

Traumatic Brain Injuries
June 15 — Seattle. 6.5 CLE credits. By WSTLA; www.wstla.org.

Practice of Law

Retiring Your PI Practice
June 1 — Seattle. 3.75 CLE credits, including 1 ethics. By WSTLA; www.wstla.org.

Real Property, Probate and Trust

Real Property, Probate and Trust Section Midyear
June 8-10 — Spokane. 11.5 CLE credits, including 3 ethics. By WSBA-CLE and Real Property, Probate and Trust Section; 800-945-WSBA or 206-443-WSBA.

Lawyer's Toolbox: Residential Real Estate
June 27 — Seattle. 3.25 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

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

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

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

Disbarred

Thomas J. Brothers (WSBA No. 9653, admitted 1980) of Lynnwood, was disbarred, effective January 16, 2007, by order of the Washington State Supreme Court following a stipulation approved by the Disciplinary Board. This discipline was based on his conduct between 1997 and 2000 involving unreasonable fees, conflicts of interest, trust account irregularities, the practice of law while suspended, and commission of criminal acts.

In the 1990s, Mr. Brothers provided estate-planning advice and representation to a husband and wife. At the time of the husband's death in 1997, the estate had assets of approximately $7 million, largely in marketable securities. One of the children (Client A) was named the personal representative of the estate, as well as trustee of certain estate entities. In August 1997, Client A hired Mr. Brothers to settle the estate and to provide representation regarding minimizing the ultimate estate taxation by utilizing limited liability companies (LLCs) to transfer assets prior to the wife's death.

Upon the wife's death in March 1999, Client A hired Mr. Brothers to settle the wife's estate. Mr. Brothers did not enter into a written fee agreement with Client A, did not keep any time records to support his fees, and did not provide regular monthly billings. Between September 1997 and June 1998, Mr. Brothers charged fees totaling $41,490 for settling the husband's estate and creating the LLCs. Upon the death of the wife, Mr. Brothers and Client A orally agreed to a fee of one percent of the gross taxable estate for settling the estate. This fee would have been $51,332. Shortly before filing the estate tax return in June 2000, Mr. Brothers and Client A engaged in a series of discussions regarding his fee. Based in part on Mr. Brothers's estimation of the hours spent on the matter, Client A agreed to pay a fee of $179,166. Mr. Brothers did not give Client A any consideration for agreeing to the increased fee, did not advise her to seek the advice of independent counsel, and neither sought nor obtained Client A's consent to the conflict of interest arising out of the renegotiation of the fee arrangement.

The $179,166 included an advance fee of $50,000 paid in June 2000 for services expected to be rendered in the future. Mr. Brothers and Client A agreed that Mr. Brothers would account for the advance fee on an hourly basis, but Mr. Brothers did not deposit any portion of the $50,000 into a trust account, nor did he provide any accounting. A reasonable fee for settling both estates would have been $45,000. Mr. Brothers collected fees of $220,656 for his work on the combined estates.

In December 1999, in a prior disciplinary proceeding, the Supreme Court suspended Mr. Brothers from the practice of law for three months. At the time, Mr. Brothers was advised of his suspension and about the obligation under the former Rules for Lawyer Discipline requiring him to provide notice of his suspension to all clients. Mr. Brothers concealed his suspension from Client A and continued to provide her with ongoing advice and representation.

In December 1999, Mr. Brothers signed a sworn affidavit pursuant to former Rule for Lawyer Discipline 8.3 attesting to compliance with his duties on suspension. In the affidavit, Mr. Brothers falsely stated, "I was representing no clients at the time of suspension."

Mr. Brothers's conduct violated RPC 1.4(b), requiring a lawyer to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; RPC 1.5(a), requiring a lawyer's fee to be reasonable; RPC 1.7(b), prohibiting a lawyer from representing a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless the lawyer reasonably believes the representation will not be affected and the client consents in writing after consultation and a full disclosure in writing of the material facts; former RPC 1.14(a), requiring all funds of clients paid to a lawyer or law firm be deposited in one or more identifiable interest-bearing trust accounts and no funds belonging to the lawyer or law firm be deposited therein; former RPC 1.14(b)(3), requiring a lawyer to maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his or her client regarding them; former RPC 1.15(a)(1), requiring a lawyer to withdraw from the representation of a client if the representation will result in a violation of the Rules of Professional Conduct or other law; RPC 1.8(a), prohibiting a lawyer who is representing a client in a matter from entering into a business transaction with a client or knowingly acquiring an ownership, possessory, security, or other pecuniary interest adverse to a client unless the transaction and its terms are fair and reasonable and fully disclosed and transmitted in writing to the client, the client is given opportunity to seek the advice of independent counsel, and the client consents; RPC 8.4(b), prohibiting a lawyer from committing a criminal act (here, the unlawful practice of law and false swearing) 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; former RLD 1.1(a) (prohibiting a lawyer from committing any act involving moral turpitude, or corruption, or any unjustified act of assault or other act which reflects disregard for the rule of law), former RLD 1.1(l) (prohibiting a lawyer from engaging in the practice of law while suspended for any reason), former RLD 8.1(a) (imposing duties upon suspension), and former RLD 8.2 (requiring a disbarred or suspended lawyer to discontinue the practice of law).

Randy V. Beitel represented the Bar

Association. Mr. Brothers represented himself.

Disbarred

Jonny Ludington-Green aka Jonny Lee Morales (WSBA No. 18552, admitted 1989), of San Diego, California, was disbarred, effective January 17, 2007, by order of the Washington State Supreme Court following a default hearing. This discipline was based on her conduct between September 2001 and October 2002 involving the commission of a criminal act.

On November 28, 2005, Ms. Ludington-Green pleaded guilty to theft in the first degree, in violation of RCW 9A.56.030(1)(a) and 9A.56.020(1)(a) and (b), in King County Superior Court. Ms. Ludington-Green was the executive director of a domestic-violence outreach service (DVOS). Between September 2001 and September 2002, Ms. Ludington-Green had sole control of DVOS's bank statements, debit cards, and PINs, and she was responsible for reconciling its account records. During that period, approximately $20,000 in undocumented or unauthorized withdrawals and expenditures were made from DVOS's funds. Ms. Ludington-Green used some of those funds to pay her personal debts and some to pay herself for unauthorized and unearned vacation leave, sick leave, and bonuses. Ms. Ludington-Green also forged a check to pay for a non-DVOS-related conference.

Ms. Ludington-Green's conduct violated RPC 8.4(b), prohibiting a lawyer from committing a criminal act (here, theft) that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects; RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; RPC 8.4(i), prohibiting a lawyer from committing any act involving moral turpitude, or corruption, or any unjustified act of assault or other act which reflects disregard for the rule of law; RPC 8.4(k), prohibiting a lawyer from violating his or her oath as an attorney; and RPC 8.4(n), prohibiting a lawyer from engaging in conduct demonstrating unfitness to practice law.

Marsha A. Matsumoto represented the Bar Association. Ms. Ludington-Green did not appear either in person or through counsel. James M. Danielson was the hearing officer.

INSURANCE BAD FAITH

For when they insure it is sweet to them to take the money; but when disaster comes it is otherwise and each man draws his rump back and strives not to pay.

— Francesco di Marco Datini — Florentine businessman, letter to his wife, 14th century.

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Patrick C. Sheldon, former member of the Washington State Bar Association Disciplinary Board, is now accepting referrals for attorney disciplinary investigations and proceedings.

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

WSBA deputy executive director for external relations. Primary responsibilities include facilitating relationships among staff, Board of Governors, members, other stakeholders, and the public in support of the WSBA mission. Develops and maintains a clear external vision/image for the WSBA and is responsible for coordinating the communication of this vision to stakeholders for the purpose of enhancing member, public, and stakeholder relations and developing a public affairs strategy. In collaboration with department directors, develops, directs, and provides oversight for all public, media, and government relations strategies. For additional details, qualifications, and application instructions, see www.wsba.org/jobs/wsba.htm.

City of SeaTac — associate city attorney/prosecutor; 4800 South 188th Street, SeaTac, Washington 98188-8605; Job Line: 206-973-4655, fax: 206-973-4809, TDD: 206-973-4808. Date open: Wednesday, April 25, 2007. Date closed: Open until filled, but priority will be given to applications received by Friday, May 11, 2007. Salary: $4,824-6,175 per month. Duties: Under the direction of the City Attorney, this position prosecutes misdemeanor and gross misdemeanor criminal ordinance violations and provides legal representation for the City, City officials, and City departments in court actions and other legal proceedings in which the City is party or has an interest. Education and experience: Law degree, current member of the Washington State Bar Association, and a minimum of six months' municipal law and/or municipal/district court experience, one year preferred. A combination of experience and training that provides the candidate with the knowledge and skills to perform the job will be considered. Licenses and other requirements: A valid Washington state driver's license with good driving record is required. A three-year driving record abstract must be submitted prior to hire. To apply: Submit a City application, a writing sample on a criminal or municipal law topic (five-page limit), résumé, and a cover letter addressing your qualifications for the Associate City Attorney/Prosecutor position. Application materials are available at www.ci.seatac.wa.us or by calling the Human Resources Department job line at 206-973-4655. EOE.

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and Inquiry will gain an understanding of our grant making processes foundation-wide; develop a thorough knowledge of new IT systems capabilities; identify areas of process alignment and work to gain consensus within the program areas, legal, finance and the IT teams to develop and maintain best practices in our grants making systems; and ensure proper documentation of grant approvals. The Director, Grants Management and Inquiry will also manage the Foundation's Grants Inquiry group, currently composed of six employees. This group serves two primary functions. They support the grants process generally, maintaining data integrity of grants, and generating monthly reports, as well as on-demand reports for data mining. They also serve as the front door of the Foundation, responding to unsolicited e-mails and voicemail letters as well as internal inquiries. Qualifications: A B.A. or a B.S. and a minimum of 10 years of experience in grants administration or related role (ideal experience would include grants management and administration with an advanced degree in a related field); knowledge of grant-making rules and regulations and private foundation policies; experience in project monitoring and evaluation with the ability to plan workflow, manage multiple priorities, and meet deadlines; prior experience with business process analysis and redesign; prior involvement in implementation of complex software system. For more information on this position, visit: www.gatesfoundation.org/AboutUs/WorkingWithUs and submit your résumé online. Due to the volume of inquiries and applications we receive on a regular basis, the online application is the best and only way to ensure that your submissions are reviewed in a timely manner.

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