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WASHINGTON STATE BAR ASSOCIATION • JUNE 2020

FEATURES

10 COVID-19 Need to Know
A look at the ways the WSBA is responding to the ongoing health crisis

32 Weathering Coronavirus
How business interruption insurance could help businesses survive the pandemic

44 Possible Risk With Online Advertising
Pay-per-click advertising that records client calls—a threat to confidentiality?

COLUMNS

4 Editor’s Note
Retaining Hope in Uncertain Times
BY KIRSTEN ABEL

12 President’s Corner
No Liberty Without Access to Justice
BY RAJEEV D. MAJUMDAR

14 By Invitation:
Guest Column
BY DENISE DISKIN

18 Treasurer’s Report
Excellent Financial Outlook at Halfway Point
BY DANIEL D. CLARK

22 Ethics & the Law
A Cautionary Tale
BY MARK J. FUCILE & CHERYL M. HEUETT

27 Innovation in Law
8 Predictions About Post-COVID-19 Law Practice
BY JORDAN L. COUCH

30 Write to Counsel
Show, Don’t Tell
BY REBECCA TALBOTT

ESSENTIALS

6 Inbox
20 NWSidebar: There’s More on the Blog
52 Discipline & Other Regulatory Notices
55 On Board
56 Need to Know
58 Professionals
61 Classifieds
64 Beyond the Bar Number: James F. Johnson

36 A Complex Bouquet of a Case
Beyond wedding cakes and flowers—examining State v. Arlene’s Flowers and the developing jurisprudence around religious exemptions from public accommodation laws that prohibit discrimination based on sexual orientation

BY LUCIEN J. DHOOGE

40 The Lavender Rights Project
Serving LGBTQ+ communities across Washington

BY LUKE SAVOT & DUSTY WEBER LAMAY

42 A Look at the Nikki Act
‘Gay panic defense’ and the history behind HB 1687

BY DANA SAVAGE

47 Winter 2020 Lawyer Bar Exam Pass List

48 2019 WSBA Discipline System Annual Report Snapshot

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Editor’s Note

Retaining Hope in Uncertain Times

In the foreword to her book, Hope in the Dark, Rebecca Solnit writes, “It’s important to say what hope is not: it is not the belief that everything was, is, or will be fine. ... The hope I’m interested in is about broad perspectives with specific possibilities, ones that invite or demand that we act.”

I don’t have any particularly inspiring words to say in this note. This is a bizarre and difficult time. Daily life feels both surreal—a masked trip to the grocery store—and too real—a conversation with a grieving family member or a friend who just lost their job. Some days, I feel overwhelmingly grateful. Other days, I am sustained solely by the presence of my dog. I only want to say that I hope we come through this with more understanding, patience, and compassion for one another.

I also want to point readers to several COVID-19-related resources and articles in this issue. First, on page 32, an article by Thomas M. Williams analyzing coronavirus-related claims under “business interruption” insurance policies. Next, on page 27, in his Innovation in Law column, Jordan Couch makes eight predictions about what the legal profession might look like post-COVID-19. And finally, a list of resources and news—including information about the summer bar exam—on page 10.

Because June is Pride Month, this issue also features several articles that speak to the theme of LGBTQ rights. The Washington Supreme Court has twice declined to carve out a religious exemption from the public accommodation statute for a business that declined to provide flowers for a same-sex wedding. As we wait to see if the U.S. Supreme Court will again grant review in State v. Arlene’s Flowers, our cover story places it within the context of similar cases decided and still pending in federal and state courts throughout the country (page 30). On page 14, hear from Denise Diskin, the executive director of the QLaw Foundation. On page 40, learn about the Lavender Rights Project and the work the organization is doing to help bridge the access-to-justice gap for transgender people in rural Washington. And on page 42, read about the Nikki Kuhnhausen Act, passed by the Washington Legislature in its most recent session, which prohibits the use of the “gay panic defense.”

Lastly, I want to remind you that the content in this magazine is written by volunteer authors willing to share their expertise with the WSBA membership. If you would like to contribute to a future issue of Bar News, please fill out this Google form: https://forms.gle/Agx6ubGTtGMfdxaXEA.

Kirsten Abel is the editor of Washington State Bar News and can be reached at kirstena@wsba.org.
Maryhill is now showcasing regionally inspired food along with approachable, high-quality wines in Goldendale, Spokane, Vancouver and Woodinville, Washington. Family owned since 1999, Maryhill is proud to showcase the rich and diverse flavors of Washington state wine with passion, patience and balance. Visit one of Maryhill’s destination tasting rooms and experience award-winning wines along with stunning views, live music and a quality food menu to enhance your wine tasting experience.
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BAR NEWS LETTERS TO THE EDITOR POLICY

Bar News reserves the right to edit letters for space, clarity, civility, and grammatical accuracy. Bar News does not publish anonymous letters, more than one submission per issue from the same contributor, or letters that do not respond to content presented in the magazine. If we receive more letters than we have space to publish, we reserve the right to select only certain letters for publication based on the following criteria.

- Quality of writing: Points should be made clearly, so as to be grasped on a first reading.
- Brevity: The ideal length for letters is about 150 words.
- Accuracy: Writers are, of course, entitled to their own opinions, but we do our best to check factual assertions made.
- Frequency of contribution: The Inbox should be a space for a variety of voices and perspectives. If you have had a letter published within the last three issues, we may choose not to publish your letter in order to give space to a writer who has not been published so recently.
- Balance of opinions: When multiple writers submit letters responding to the same piece of content, we may choose not to publish more than one letter expressing the same viewpoint. Instead, we may choose to publish one letter (chosen based on quality of writing, brevity, accuracy, and frequency of contribution) per viewpoint in an effort to present a balanced sampling of reader opinions.

As with all content in Bar News, the opinions expressed in letters to the editor represent the views of the respective authors and do not necessarily carry the endorsement of the WSBA or its Board of Governors.

More Bar History Please

I thoroughly enjoyed [WSBA] President-Elect Kyle Sciuchetti’s article entitled, “The Curious Case of the Missing WSBA President.” [March 2020 NWLawyer.] Although I did not know the subject of that article, A.A. Hull, I did know the other two lawyers from Hull’s Chehalis law firm, Grant Armstrong and Jim Vander Stoep, each of whom, like Hall, served a term as president of the WSBA. I vividly recall numerous conversations with the energetic and friendly Jim Van der Stoep in which he expressed pride in the fact that their small-town law firm had made such a major contribution to Washington’s legal profession and the community as a whole.

I also appreciated the companion article entitled, “Presidents of the WSBA.” Seeing photos of the many outstanding lawyers who have served in that important position brought back fond memories of the WSBA presidents I’ve had the pleasure of knowing over the years.

I hope that we can continue to see bar history articles. I say that even though I know that some readers think history is a bit dull. As a self-proclaimed history buff, I obviously do not share that view. The presentation of history does not have to be boring. Indeed many of us old-timers will recall articles authored by former WSBA President John Rupp, which often graced this magazine when it went under the more appropriate title, Washington State Bar News. Rupp’s articles, which clearly fell under the category of bar history, were humorously informative. I am sure there are lawyers out there among our membership who can fill that same bill today—let’s hear from them more often.

Gerry Alexander
Olympia

Editor’s note: The magazine returned to its former title, Washington State Bar News, with the April/May 2020 issue.

Cooking Comparison

In reading William Bailey’s report of how he was finally allowed to teach law [“Scaling Langdell’s Wall,” March 2020 NWLawyer], I am reminded of a place I read about where it was deemed necessary to license cooks.

There were two ways to become a licensed cook: One could work under the careful supervision of an experienced licensed cook for five years in a kitchen, or one could go to cooking school for three years. After taking one of these two paths, one took a three-day exam administered by a committee of licensed cooks. In order to take the exam, one must have either graduated from cooking school or apprenticed in a kitchen for five years.

In cooking school, for three years the aspiring cook studied under a faculty almost none of whom was a licensed cook. There were no kitchens in the cooking school. There was no food in the cooking school.
Most of the faculty had never been in a kitchen. The school operated under what was called the recipe theory. The students bought books of failed recipes and unsatisfactory menus, which they read so that they could be questioned about them the next day in class. The faculty member in charge of the class would then pick out one of the aspiring cooks and ask him or her questions about the menu or recipe and why it had failed or succeeded. The pedagogical theory was that by a process of induction the students in assimilating many culinary failures would come to understand culinary success. After completing cooking school, the aspiring cooks were, together with the apprentice cooks, ready to take the qualifying examination. The qualifying exam was thorough, covering everything from deep-fat frying doughnuts and French fries to making toffee, kneading bread, sautéing squid, and roasting an ox. Since cooking school had not prepared the aspiring cooks for the examination, most of them paid for and took an additional series of courses, these conducted by actual cooks, in order to prepare for the exam by acquiring actual minimal knowledge of every phase of cooking.

The exam disclosed—as well as an exam conducted entirely with written answers to written questions could—who could show that he or she had the general minimal theoretical ability to be a licensed cook and who could not. Different parts of the exam were written by different licensed cooks. That was because by three years after taking the exam, almost no one actual cook could have passed the entire exam again without cramming. To some degree, every surviving cook had specialized so that instead of not knowing enough to cook anything, every successful cook had by actual practice learned enough about some area of cooking that he or she could actually prepare some kind of food. After passing the exam and paying one’s dues, one became a licensed cook and could take money for cooking.

I cannot remember where I read of this place where the theory of cooking is so honored, but I understand that their Legislature is now considering bills to disqualify anyone who has ever played football from coaching football at the college level and requiring that optometrists be blind.

George R. Landrum
Seattle

Presumptions Are Not Facts

I am writing in response to the article “An Inconvenient CLE Requirement” [March 2020 NWLawyer] by Asia N. Wright. For a lawyer to write an argument based entirely on her own personal presumptions is somewhat surprising, but there it is in Bar News. The entire article by Wright consists entirely of her personal presumptions and conclusions, without a single supporting fact—not one.

For example, she states as fact that “usually” ethics credits...
are taken “at the eleventh hour” by lawyers and that “any ethics topic will do.” Is it too much to ask where she got this supposed fact? Likewise, she claims we all have something called “implicit bias” that “without awareness” of which renders us “incapable” of interrupting our decision-making, perpetuates social inequities, and contributes to social oppression of “entire communities.” If there is any source for such a conclusion, none is mentioned.

Another glaring omission is that nothing in the article defines what she means by the term “bias.” Without defining what it is, she goes on to claim that “no one is immune from bias,” and that we all have biases. If we all have them, it should not be overly difficult to define exactly what they are.

I have to take issue with all of these assertions, including Wright’s claim that “the aim of the proposed CLE ethics credit is not to pass judgment on the biases” she presumes we have. How can it possibly be otherwise if an arbitrary judgment is being made as to what does and does not constitute a “bias”? How can it be otherwise if what constitutes “bias” is left to a select few?

I will admit to one bias: lawyers who present their own personal presumptions and conclusions as facts without offering anything in support of the presumption other than the conclusion.

The other problem I have with including such topics in the category of Continuing Legal Education is that they have virtually nothing to do with the practice of law. None of them make me a better lawyer and all appear designed to impose someone’s arbitrary ideas about what it means to be “biased.”

I also have some personal perspective on how much progress has been made in terms of “diversity” among our profession. I attended the University of Washington School of Law in the mid ’60s. At that time there were two women, one Asian [student], and one African American [student] in each of the three student bodies. My freshman class petitioned the dean to open admission requirements so as to enroll more women and minorities; the dean refused. We responded that we would occupy the building and chain the doors shut. We meant it, they caved, and the rest is history. Within five years of our action, the University of Washington School of Law was almost half women and included [students from] a wide variety of minority [groups].

John Anthony Goodall
Marmeaux, France

Author’s Response: I appreciate Mr. Goodall reading my opinion piece and starting a conversation about CLEs. Unfortunately, Mr. Goodall missed the fact that I wrote an “opinion piece,” which the publication clearly stated at the top was a “perspective” in a forum for members to express opinions.

Mr. Goodall stated that my opinion piece had not one supporting fact; however, he conveniently overlooked the parts in my opinion piece containing statistics and citations to supporting sources. Also, he missed the point that my own experiences can be supporting evidence or facts, if you will. Fact: My lawyer friends and colleagues procrastinate when it comes to CLEs. Just as Mr. Goodall bases his opinion on his admirable experience at the University of Washington School of Law, I, as a member of the Mandatory Continuing Legal Education Board, based my opinion on the fact that several times a year I hear petitions and appeals of members who are delinquent in meeting their CLE requirements.

I thank Mr. Goodall for writing to the editor because his response is further evidence supporting my opinion. If Mr. Goodall requires a definition of what constitutes bias, it only proves my point that CLEs on bias, explicit and implicit, are needed. His lack of understanding of how attitudes and stereotypes can influence the practice of law, let alone opposing counsel, jury members, or judges only further illustrates the need for such CLEs. Mr. Goodall and others seeking more information on what bias is and how it influences decision-making, whether it be about litigation strategy or hiring, can find helpful resources on the WSBA’s Diversity & Inclusion Resources webpage.

Mr. Goodall challenges my statement that we all have bias, when my writing and Mr. Goodall’s letter are clear examples of past experience bias. My circle of legal acquaintances could be outliers and could be contradicting the reality that attorneys are actually punctual and conscientious when it comes to attending and selecting CLEs. Mr. Goodall’s activism that resulted in a dramatic change at his law school within a short period of time does not mean the work of equity and inclusion in our legal profession ends. While the increasing presence of women and people of color attending law schools demonstrates progress in equality, it does not mean they are being treated equitably. While they have been invited to the proverbial party, the real question is, are they being asked to dance?

Asia N. Wright
Seattle

Regarding Emotion

I read with interest the article by Joel Matteson about the impact of emotions in litiga-
issue, I often point out to the client that there is a silver lining to what they are reporting in that the conduct may become relevant in the case and will, ultimately, help their case. This is particularly true when RCW 4.24.630 becomes involved.

Steve Whitehouse
Shelton

Censorship on Little Cat Feet

Carl Sandburg once wrote a poem about fog moving in “on little cat feet.” Sometimes censorship does that, too. Page six of the April/May 2020 Bar News lays out the “Updated Letters to the Editor Policy.” Where did this policy come from? Apparently it snuck in quietly—on little cat feet.

There are four problems with this policy:

First, the policy states that the ideal length for letters is 150 words. But is that realistic? 300 to 400 words would be a much fairer and more realistic suggested letter length considering the size and complexity of many legal issues that lawyers may need to address.

Second, the policy allows the WSBA to omit a letter if the writer was published within the last three issues. This is overly restrictive. The Bar News only comes out nine times per year. A writer may therefore be delayed several months before being published. At that point the editor may decide that the subject matter of the letter is untimely and therefore refuse to print the letter.

Third, the policy allows the WSBA to print only one letter per viewpoint in an effort to maintain a “balance of opinions.” This ignores the nuances of why people hold such viewpoints. Thus many cogent reasons and reasonings will be ignored and never make it into print. Also, if opinions are heavily weighted in one direction, the reader will never know that because only one representative letter from each side will be published.

Fourth, the policy limits writers to respond only to matters appearing in the magazine. However, the Bar News is not the only source of legal issues and controversy. For example, if the Legislature were debating a bill that the Bar News had not previously discussed, this policy would prevent lawyers from writing in to discuss the bill.

Who owns this publication anyway? It is largely the lawyers who pay for it. Since in the April/May 2020 issue, the WSBA president got two pages, the executive director got one page, the treasurer got one page, and the editor got one-half page, then the thousands of lawyers who pay for the publication should have at least two pages, and more if need be.

The Bar News should print every letter. If space is a consideration, then leave out a feature article or two in that issue.

Patricia Michl
Ellensburg

Editor’s note: Of the 40 letters to the editor received in the last year, 35 were published. The remaining five did not respond to content in the magazine.

Bar News Returns!

What an absolute pleasure to once again receive Bar News. When the first issues of NW-Lawyer arrived a few years ago, I thought it was a promotional offer for some new western legal publication. I trust with this return to our roots, the WSBA will also be taking a step back from its efforts to social engineer and advocate political correctness.

Carleton B. Waldrop
Clarkston

A NOTE TO READERS

The WSBA intends to continue the highest level of service to members and the public while also cooperating to slow the spread of COVID-19 in the weeks to come. For updates on how the WSBA is responding, visit: www.wsba.org/COVID-19

The Discipline Process and the Constitution

A citizen who receives a misdemeanor driving ticket has greater constitutional protections than a lawyer facing a disciplinary proceeding in Washington, even though the consequences for the lawyer may be more serious. Here are four examples:

1. The rules of evidence provide due process and confrontation clause protections to court litigants. The rules enhance the reliability and fairness of the result. The WSBA is not required to follow the rules of evidence in its proceedings.

2. Washington substantive law also provides due process and in some cases contracts clause protection to court litigants by defining rights, duties, and responsibilities. Unfortunately, the WSBA is not required to decide its cases in accord with our state’s substantive law. This can lead to diverging results (in fee agreement cases, for example) between the courts and the WSBA.

3. The due process clause right to an independent trier of fact protects the right to a jury trial for our hypothetical misdemeanor traffic person because he/she can (in theory) be detained. The WSBA can detain a lawyer in some circumstances during its proceedings. Unfortunately, our hypothetical lawyer has no right to a jury trial even though the penalties are more serious than a traffic matter.

4. The due process clause right to an impartial tribunal protects (in theory) the right to a level playing field. Without a level playing field, there is no justice.

As far as I know, the Washington Supreme Court has never published an opinion entering judgment against the WSBA and in favor of the individual lawyer in one of these cases, no matter what the facts were.

In 2018, 44 years after my first trial in 1974, I completed my final trial and closed my practice. I duly notified the Chief Justice and the WSBA records unit in writing that I had permanently cancelled and terminated my membership in the Washington Bar.

When I think about the issues above, I ask myself: “Is this the best bar association system we can come up with? If not, how can we do better?” Personally, I favor repeal of the State Bar Act ... as the better route to a better future for the legal profession in Washington. Good luck in such efforts from a former lawyer.

John Muenster
Bainbridge Island

The WSBA responds: Discipline cases are decided in accordance with the Rules of Professional Conduct and the Rules for Enforcement of Lawyer Conduct enacted by the Washington Supreme Court and case law interpreting those rules. When it enacted the Rules for Enforcement of Lawyer Conduct (ELC), the Supreme Court specifically set forth the rules of evidence that apply during disciplinary hearings. See ELC 10.14(d). The ELCs contain no provision authorizing detention of a person, nor does the WSBA engage in unauthorized acts of detention. Discipline cases are decided by adjudicators appointed by the Supreme Court and/or the Supreme Court itself. Parties have an opportunity to argue their positions on the law to those adjudicators.
HOW THE WSBA HAS RESPONDED

The WSBA has a unique ability to gather legal professionals, resources, and strength of voice to navigate the current crisis and beyond. With that objective in mind, the WSBA has been responding to the COVID-19 crisis by:

Creating a Coronavirus Response Task Force, a group of members with wide-ranging experiences formed to support, advise, and triage the WSBA’s response and resources for members and the public.

Creating and updating a COVID-19 information hub with news and resources in categories such as law firm management, free CLEs, court orders, opportunities to help, and more.

Offering a slate of free live and on-demand CLEs in May and June on COVID-related topics such as tips to access Payroll Protection Program funds, executing estate planning documents, working remotely and safely, and professional responsibilities.

Continuing governance, remotely. The Board of Governors held its April meeting in a virtual-only format, as allowed by temporary emergency modifications to the Open Public Meetings Act.
COVID-19 NEED TO KNOW

Summer bar exams. The 2020 Uniform Bar Exam will be administered in Washington on July 28 and 29 and September 9 and 10 for applicants who met the deadlines to take the July bar exam in Washington (no new applications are being accepted for either exam date). If you have applied to take the July exam, you do not need to submit a new application for the September exam. The exams will be administered on both dates in the Seattle/Tacoma/Everett area and the Spokane area, at specific testing sites that will be identified later, and all administrations will comply with then-existing public health guidelines. For more information, see page 55 or the May 13 letter from the Washington Supreme Court, available at https://bit.ly/WSBABarExam.

License suspension deadline moved to June 30. The Washington Supreme Court has extended the deadline for the WSBA to send its recommendations for license suspensions from May 5 to June 30. This applies to all members who are currently late complying with licensing payments and MCLE requirements (members on the suspensions list will be notified directly).

Due to report MCLE compliance in 2020? The MCLE Board recognizes the significant effects and practice restrictions members are experiencing due to the COVID-19 pandemic. If you are due to report this year and face a hardship, you may petition the MCLE Board for an extension or modification. As a reminder, there is no requirement to attend live or real-time seminars. You may earn all your CLE credits by viewing recorded events. The WSBA provides many free and low-cost CLE credits, and the MCLE team has a list of accredited sponsors who offer free and low-cost CLEs. Questions? Contact mcle@wsba.org.

COVID-19 Pro Bono Research Project Clearinghouse. Washington law schools, in partnership with Foster Garvey, have launched a COVID-19 pro bono research initiative. Visit www.wsba.org/for-legal-professionals/member-support/covid-19/legal-aid-opportunities to learn more and sign up.

Free WSBA CLEs. The WSBA is offering nearly 20 credits of free on-demand CLEs through June 30 on COVID-related topics such as tips for executing estate planning documents, working remotely and safely, and meeting your professional responsibilities. For more information, visit www.wsbalce.org and click on “COVID-19 Resources.”

Court Recovery Task Force. On May 8, the Board for Judicial Administration (BJA) approved the creation of the Court Recovery Task Force to address court impacts from COVID-19. The BJA Court Recovery Task Force will assess current court impacts from COVID-19; develop and implement strategies to ensure that every court can provide fair, timely, and accessible justice; and provide recommendations for ongoing court operations and recovery after the public health emergency subsides. The task force is anticipated to convene by early June and meet monthly thereafter.

Information for job seekers. The WSBA’s Career Center is a free member benefit provided and operated by YM Careers that provides personalized job search tools: View job openings and profiles of employers, have your resume reviewed by expert writers within 24 hours, post your resume, and receive email notices about job openings that match your skills and desires. Visit https://jobs.wsba.org/help/ to learn more and to register.

Information for employers and special discount for nonprofits and small firms. The WSBA does not want pricing to be a barrier to posting jobs on the Career Center’s job board as the legal community navigates the effects of the COVID-19 crisis. Please contact Michael Reynolds at 612-968-3431 or michael.reynolds@communitybrands.com for more information on a special discounted rate for nonprofit and small-firm employers available through July 31, 2020.

Additional helpful content on the WSBA blog. Visit NWSidebar at https://nwsidebar.wsba.org to find a variety of articles on legal issues and the pandemic.

ONLINE RESOURCES

WSBA COVID-19 resource web page. All WSBA resources, including member support, law firm management, free CLEs and webinars, information about Washington courts, opportunities to help, and resources for the public can be found here: www.wsba.org/COVID-19.
No Liberty Without Access to Justice

“[T]he end of law is not to abolish or restrain, but to preserve and enlarge freedom: for in all the states of created beings capable of laws, where there is no law, there is no freedom: for liberty is, to be free from restraint and violence from others; which cannot be, where there is no law: but freedom is not, as we are told, a liberty for every man to do what he lists: (for who could be free, when every other man’s humour might domineer over him?) but a liberty to dispose and order as he lists, his persons, actions, possessions, and his whole property, which the allowance of those laws under which he is, and therein not to be subject to the arbitrary will of another, but freely follow his own.”

John Locke, Two Treatises of Government (1689)

The most important function of our profession, especially in times of crisis, is to ensure the freedom of every person in our society, including the freedom to have access to recourse through the justice system. While our systems are not perfect, the lack of access—especially for the vulnerable—to dispute resolution and remedies to harm is a threat to our state and our nation that only our profession can stand up and confront.

When I was younger, I was very invested in my ideological and political positions. Over the years, as I have grown tired of people with hot emotions (including myself) throwing words at each other fruitlessly, I seem to have increasingly embraced what I jokingly call radical moderatism. I don’t know what that means, but what I do know is that I have become much more interested in our processes that allow us to solve disputes: the ability of our society to have a meaningful look at information and have an opportunity to engage in dialogue about it. That is one of the many things I love about our profession—ideally, we have structured discourse in a method that gets all the information transparently on the table so that we can get to the “truth.” Of course, “truth” seems to be in the eye of the beholder. The fact that we can disagree over the meaning of the same materials is the whole reason we have a legal system and a political system: so we can nevertheless come to peaceable resolutions, temporary or permanent. It does not mean that we are always happy with the resolutions. I am frequently unhappy with results of both the legal system and our political system, but that does not mean I think the systems are fatally flawed. People who know me know that I believe our system is fundamentally amazing, but one that needs constant attention, refining, and improvement as we seek to build an ever more perfect and inclusive nation.

The problem, however, is that if you do not have access to the justice system, there is no political or legal freedom. Our history is rife with attempts of one group of people preventing some other group of people from accessing our systems of just resolution making. As officers of the court, I believe our most sacred duty is to not only keep those pathways to the courts open for all people, but also to make sure that the subsequent processes involved are fair to all seekers of justice.

As an example of how my thinking has evolved about access to processes, I am going to share a personal perspective. In my lifetime, the issue I had felt the most burning passion and political attachment to was the issue of same-sex marriage—or to be specific, the lack of recognition thereof. To me, it was an issue of structural inequality and denial of justice. And yet, that huge societal issue was suddenly resolved by the U.S. Supreme Court in a way that was pleasing, but sudden and unexpected, to me. In my own naiveté, in the immediacy of the ruling, I thought that the U.S. Supreme Court holding resolved the issues faced by LGBTQ members of our society and resolved the issues that I could be involved with as a lawyer on that front. However, not every problem our profession and our society deals with is a high-profile structural issue, and there is a lot of work and service to do in the world that isn’t solved by changes in the law, and cannot be changed by the diktat of any government body.

The U.S. Supreme Court intended its ruling to grant “equal dignity in the eye of the law,” but it is more accurate to say that it granted equal recognition in the eyes of the government. There is more to creating equal access to society’s systems and resources than government acknowledgment. This became evident to me in private practice while assisting same-sex couples in dealing with private entities, and then even more poignantly while serving on the board of Northwest Youth Services, an organization that serves homeless youth in Whatcom and Skagit Counties. One thing that becomes starkly evident in working with homeless youth, and what was shocking to me in looking at the statistics, is how disparate the access-to-justice systems and societal resources are for youth in our society based on their gender and their sexual expression and orientation. For example, nationwide, around 40 percent of homeless youth identify as LGBTQ compared to 7 to 10 percent of the general youth population. That means that LGBTQ youth are at staggeringly higher risk of becoming homeless than their straight peers. That is a statistical outcome that is driven by millions of events of injustice, and a lack of access to remedies. All manner of things—from domestic violence in the home,
a lack of advocacy for resources for youth and their families; and a lack of ability to interface with schools, law enforcement, and health services—are problems that lawyers can help solve. We are advocates, and we are path builders for those without means to advocate effectively for themselves in our systems.

Because of my interest in lawyers serving as conduits for communities that have traditionally not had access to justice, I invited the QLaw Foundation to articulate some of the gaps that their clients face in accessing legal services. (See page 14.)

But that is just one community, and there is so much more need for the skills of lawyers on behalf of the vulnerable. Vulnerability in this sense can be caused not only by immutable characteristics one is born with, but also factors like geographic isolation, disability, economic poverty regardless of background, and personal choices of conscience such as religion, politics, and philosophy. The innovative and dynamic strength of our state and our nation comes from the ability of each and every member of society to make their own choices, and that only works if each and every member of society has access—equal access—to our justice system to seek recourse. It is up to us as a profession to ensure that our reality most closely reflects this ideal.

The coronavirus has presented new challenges for our profession in clearing what is often an already obstacle-filled path for all members of our society to access the justice system. I think it important, even as we struggle with the troubles and anxiety that this societal and economic disruption has brought into our own lives, that we remember how devastating this will be to people who need to seek recourse and do not have the resources available to do so. As we journey through and emerge from this crisis, our profession will be needed more than ever to do the hard work of ensuring that all people have access to our systems of dispute resolution and venues for seeking to be made whole.

NOTES
2. Lesbian, gay, bisexual, transgender, or queer/questioning.
3. Obergefell, 135 S. Ct. at 2608.
QLaw: Promoting the Dignity and Respect of LGBTQ+ Washingtonians

BY DENISE DISKIN

This year marks my 11th year as a lawyer, but my 21st as an out queer person. When I came out, I was fortunate that the community around me was made up of transgender, lesbian, gay, bisexual, and queer people from a wide variety of cultural backgrounds. Together, we built an even stronger community and supported each other as we learned to live with joy, authenticity, and pride.

Back then, the legal landscape for me and for other LGBTQ+ people looked very different than it does today. Bowers v. Hardwick, 478 U.S. 186 (1986), a decision that upheld as constitutional laws that criminalized consensual sexual behavior within our community, was still good law. There was no policy allowing people to change their names or gender identity markers on government documents, and inclusion of sexual orientation and gender identity as protected classes under Washington’s Law Against Discrimination was still several years away. Without these policies and protections, LGBTQ+ communities like mine did what our LGBTQ+ elders had done and what communities of color and other marginalized communities know deeply—we built movements for change around shared community knowledge. We shared survival information—like which employee at the local licensing office would change your gender marker by classifying it as a typographical error, or which employers could be counted on to keep you safe from harassment at work. Too often, we also had to share the other kind of knowledge—like which employers allowed harassment or assault on the job, which doctor would claim not to understand “people like you” well enough to treat you, or which shelter would make you sleep on the streets if your gender or sexual orientation did not fit within their religious beliefs.

While the law has changed in many ways to reflect the humanity and protect the rights of LGBTQ+ people, we still rely on each other for safety and survival. Important progress has been made, such as statewide inclusion of sexual orientation and gender identity in anti-discrimination laws and new policies recognizing transgender and nonbinary people in government documents, but discrimination remains pervasive. In particular, LGBTQ+ communities still experience an access gap in the legal system, particularly the 22 percent of LGBTQ+ individuals in Washington who earn less than $24,000 per year. According to the Washington Supreme Court’s 2015 Civil Legal Needs Study, 70 percent of low-income households in Washington face at least one significant civil legal problem each year, with the average number of problems per household increasing to 9.3 significant legal problems. For LGBTQ+ low-income households, however, that number is higher, at 10.3 legal issues per year.

Legal issues impact LGBTQ+ communities in every category, including domestic violence (13.8 percent compared to 8.4 percent), race discrimination (19 percent compared to 14 percent), disability discrimination (17 percent compared to 12 percent), and discrimination on the basis of immigration status (14 percent compared to 5 percent). The QLaw Foundation of Washington was founded in 2007 out of a need to address this legal-access gap in LGBTQ+ communities. Our mission is to promote the dignity and respect of LGBTQ+ Washingtonians within the legal system through advocacy, education, and legal assistance. Our vision is a world in which no LGBTQ+ person will face additional barriers to authentic living, access to justice, or equality before the law because of their queer identity. We are LGBTQ+ community members and allies who have stepped up to provide legal assistance and education, but even more than that, to provide affirming and inclusive support centered around the unique ways that legal issues impact LGBTQ+ communities.

Low-income LGBTQ+ communities experience higher rates of legal need, as compared with low-income individuals who participated in a statewide survey, in almost every category, including domestic violence (13.8 percent compared to 8.4 percent), race discrimination (19 percent compared to 14 percent), disability discrimination (17 percent compared to 12 percent), and discrimination on the basis of immigration status (14 percent compared to 5 percent).

While the law has changed in many ways to reflect the humanity and protect the rights of LGBTQ+ people, we still rely on each other for safety and survival.

WHAT QLaw FOUNDATION DOES

• Offers free legal clinics in Seattle and statewide by phone. QLaw Foundation offers services to anyone, regardless of legal issue, sexual orientation/gender identity, income, or citizenship status, but our services are specifically geared toward LGBTQ+ communities. As of this writing, we have doubled our available appointments, holding legal clinics weekly by phone to support community members through the COVID-19 crisis.

• Partners with Ingersoll Gender Center, a support group serving multiply marginalized transgender and nonbinary individuals, to provide a monthly free legal clinic. A specialized group of volunteer attorneys provides legal support to transgender and nonbinary commu-

LEARN MORE
To support QLaw Foundation financially or through volunteer service, please visit www.qlawfoundation.org.
“Queer” is a term that has a complicated historical use as an adjective, it refers to things that are odd, strange, or eccentric. (See Merriam Webster, https://www.merriam-webster.com/dictionary/queer) In recent years, it more generally refers to being a person whose sexual orientation is not heterosexual and/or whose gender identity is not cisgender. Many people in LGBTQ+ communities find its use upsetting because it was used against them as a slur, while others have found strength in its connotations of diversity and difference. I and others find it a helpful umbrella term to describe ourselves when other terms, such as lesbian, gay, bisexual, or transgender feel inaccurate.

1. Bowers v. Hardwick decided the constitutionality of a Georgia sodomy statute which criminalized oral and anal sex. While the statute criminalized those sexual behaviors regardless of the sexual or gender identities of the people engaging in it, it was primarily used as a tool to target gay and transgender people of color, particularly those engaged in sex work.

2. Williams Institute, “Impact of COVID-19 on LGBTQ People” (https://williamsinstitute.law.ucla.edu/sites/default/files/images/LGBTQ%20%20COVID19-IssueBrief-032020-FINAL.pdf). These omissions are not intended to be an indictment of the organizations working to quantify the need for legal services, but rather to demonstrate how critical it is for LGBTQ+ people not to be left out of future research.

3. https://www.lsc.gov/sites/default/files/images/TheJusticeGap-2017 FULLREPORT.pdf. These omissions are not intended to be an indictment of the organizations working to quantify the need for legal services, but rather to demonstrate how critical it is for LGBTQ+ people not to be left out of future research.

4. WSU Social & Economic Sciences Research Center, Civil Legal Needs of Low-Income LGBTQ Individuals: Supplement to the 2014 Civil Legal Needs Study Update, Pullman, 2016. SESRC Technical Report 2016-39. The Office of Civil Legal Aid conducted a supplemental study of LGBTQ+ populations in Washington because our communities were not broken out in the 2015 Civil Legal Needs Study. Nor were LGBTQ+ communities measured in the national Legal Services Corporation study published in July 2017 measuring unmet civil legal needs in the United States. See https://www.lsc.gov/sites/default/files/images/TheJusticeGap-FullReport.pdf. These omissions are not intended to be an indictment of the organizations working to quantify the need for legal services, but rather to demonstrate how critical it is for LGBTQ+ people not to be left out of future research.

5. Id.

6. Entre Hermanos promotes the health and well-being of Latino/a LGBTQ+ communities in a culturally appropriate environment through disease prevention, education, support, services, advocacy and community building.

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Bruce Heller
Former King County Superior Court Judge

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Treasurer’s Report

Excellent Financial Outlook at Halfway Point

COVID-19 impacts on budget will be assessed

As WSBA treasurer, I am committed to increasing communication to the membership, transparency, and quality of information regarding the WSBA budget and financial issues. As many of us have experienced in our personal and professional lives, this global pandemic crisis has made it even more important to look carefully at finances to prioritize critical services and nimbly adjust to changing revenue and expenditure forecasts.

In line with this commitment, I want to give you a snapshot of our budget halfway through the fiscal year (October - September). It is important to note that the numbers in this report reflect revenue and expense data through March 31. Due to COVID-19 and the related stay-at-home orders, it is difficult to fully anticipate how revenues and expenses will be impacted in the immediate and long-term future. Chief Financial Officer Jorge Perez and I agree that a top priority right now is gathering more information to be able to adjust our budget assumptions as we get a handle on COVID-19 financial ramifications. Tune in to upcoming Budget and Audit Committee meetings for more information, and I will also use this column to update you in the coming months. Please know that we are diligently reviewing ongoing trends as we build the budget for fiscal year 2021 and responsibly manage resources for the remainder of fiscal year 2020.

Daniel D. Clark
WSBA Treasurer

Clark is a senior deputy prosecuting attorney with the Yakima County Prosecuting Attorney’s Office, Corporate Counsel Division. He can be reached at DanClarkBOG@yahoo.com.

Current Summary of WSBA Fund Balances

Budget surplus halfway through the year: $998,731 in actual revenue over actual expenditures.

<table>
<thead>
<tr>
<th>SUMMARY OF FUND</th>
<th>FUND BALANCES AT END OF FY2019</th>
<th>BUDGETED BALANCES FOR FY2020</th>
<th>FUND BALANCES AS OF MAR. 31, 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Client Protection Fund</td>
<td>$3,816,143</td>
<td>$4,190,457</td>
<td>$4,765,569</td>
</tr>
<tr>
<td>CLE Fund</td>
<td>$526,285</td>
<td>$502,972</td>
<td>$610,273</td>
</tr>
<tr>
<td>Section Funds</td>
<td>$1,121,224</td>
<td>$866,984</td>
<td>$1,251,074</td>
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<tr>
<td>Operating Reserve Fund</td>
<td>$1,500,000</td>
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<td>$1,500,000</td>
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<tr>
<td>Facilities Reserve Fund</td>
<td>$550,000</td>
<td>$550,000</td>
<td>$550,000</td>
</tr>
<tr>
<td>Total General Fund</td>
<td>$4,736,537</td>
<td>$4,144,622</td>
<td>$5,735,267</td>
</tr>
</tbody>
</table>

| Net Change in General Fund | -$591,915                      | +$998,731                     |
| Total Fund                | $10,200,189                     | $9,705,035                    | $12,362,184                     |

| Net Change in Total Fund  | -$495,154                      | +$2,161,995                   |

NOTE: The numbers in this chart are subject to change as we weather the current COVID-19 crisis.

Considering that the WSBA had originally budgeted a $591,915 deficit for this fiscal year (to be paid out of reserves), this reforecasted budget surplus of $998,731 is extremely positive fiscal news for the organization. At this point in the budget, we are ahead approximately $1.6 million as compared to what was originally projected. With anticipated expenses for the rest of the year, we expect to meet the reforecast projection, which is about $500,000 in total revenue for the year—or $800,000 ahead of the original budget, which had a $300,000 deficit.

As I have mentioned in previous columns, the net gains are a result of two factors: The original budget was built very conservatively (based on the minimum amount of revenue and the maximum amount of expenses that were realistic to project), and the reforecasted budget accounts for actual revenue and expenditure streams. We have also been systematically looking for efficiencies, including consolidating work flows and not filling several staff positions when they became vacant. However, as I have mentioned, these robust gains may significantly decline in the second half of the fiscal year based on impacts from COVID-19.

At the April Board of Governors meeting, the entire board received the budget reforecast report and approved the reforecasted numbers as the operating budget for the remainder of the fiscal year.

The Budget and Audit Committee is continuing to examine other potential increases in efficiencies and savings to the membership while maintaining robust services to members and the public. The Budget and Audit Committee is also considering a request to the Washington Supreme Court for a one-time reduction to the Client Protection Fund for fiscal year 2021 in order to provide some economic relief for members impacted by COVID-19. We will also review recommendations for setting member license fees for fiscal years 2022 and 2023 and start the fiscal year 2021 budget process.

The meetings of the Budget and Audit Committee are open for anyone to attend. Find the schedule and access information at www.wsba.org/about-wsba/finances. If you have any questions, comments, or concerns, please do not hesitate to contact me or Chief Financial Officer Jorge Perez (jorgep@WSBA.org). It continues to be an extreme honor to serve as the WSBA treasurer.
Turning over the full-time care of a loved one to a nursing home or care facility that promises safe, skilled care is never easy. It is agonizing when their loved one dies as a result of negligent policies or care. This scenario can happen when care facilities place cost savings and profit before patient care. — ATTORNEYS JEFF CAMPICHE AND PHIL ARNOLD

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— Madeline Gauthier, Attorney

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Scott, while remaining retired from the practice of law, will continue his independent mediation practice through Scott Horenstein Mediation, LLC. He will also continue serving the Vancouver legal community by mentoring the next generation of family law attorneys.

Carolyn joins the firm with nearly 30 years of family law experience in the Vancouver community. She will continue her full-time practice as a family law attorney, representing clients with domestic relation matters in SW Washington—including divorce, collaborative law, and custody/parenting time issues.

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A Cautionary Tale:

INTERNET SCAM TARGETING LAWYER TRUST ACCOUNTS

BY MARK J. FUCILE & CHERYL M. HEUETT

Q. Why did you rob banks?
A. Because that’s where the money is.
Willie Sutton, bank robber (attributed)

Unfortunately, criminals have learned that lawyers have money in their trust accounts. Moreover, the internet has increased the number, types, and sophistication of the schemes targeting law firm trust accounts. Washington is not immune from this trend. In fact, the WSBA has a “scam alert” page on its website compiling the latest frauds targeting law firms and listing resources to combat them.¹

In this column we’ll look at a scam that has the potential to cause significant—and possibly uninsured—losses to law firms. Although variants of this particular scheme have been around for years, the electronic nature of today’s practice makes unwary law firms especially vulnerable. We’ll first outline the common pattern of the scam, flag its principal consequences, and then turn to practical steps law firms can take to guard against it.
Mark J. 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 former chair of the WSBA Committee on Professional Ethics and is a member of the Oregon State Bar Legal Ethics Committee. He is a co-editor of the WSBA Law of Lawyering in Washington, the WSBA Legal Ethics Deskbook, and the OSB Ethical Oregon Lawyer. He also teaches legal ethics as an adjunct for the University of Oregon School of Law. He can be reached at 503-224-4895 and mark@frllp.com.

Cheryl M. Heuett is the audit manager with the Washington State Bar Association, where she has worked since 2005. Her duties there include conducting for-cause audits and monitoring lawyers who are on probation or in diversion. She educates lawyers about trust account rules by responding to phone and email questions and speaks at several CLE classes throughout the year. Including her work at the Bar, she has over 25 years of experience in both public and private accounting. She can be reached at 206-733-5937 and cherylh@wsba.org.

THE SCAM
A law firm receives an electronic inquiry from a new “Client” requesting that the firm collect on a debt—$250,000 in our example. The firm opens the matter and sends a collection letter to the “Debtor” at an address supplied by Client. Debtor quickly forwards a cashier’s check satisfying the debt that the law firm deposits into its trust account. Client congratulates the firm for a job well done and asks the law firm to expedite transfer of the $250,000. The law firm views its trust account online and sees that the bank has given it credit for the deposit. In the spirit of excellent service, the firm quickly wires the $250,000 to Client. Once it has wired the funds, the firm doesn’t hear further from Client. Instead, two weeks later, the bank informs the firm that Debtor’s cashier’s check was uncollectible. Although the cashier’s check appeared to be drawn on a reputable bank, it was actually counterfeit. Because the firm had over $250,000 in its trust account that it was holding for other clients when it wired the money to Client, that money is gone. In effect, the criminals behind the scam used the firm to facilitate the theft of other clients’ money in the firm’s trust account.

Naturally, the firm’s other clients want their money back. The firm contacts the bank. The bank asks the firm to read the fine print in its deposit agreement, which places responsibility for fraudulent transfers on the law firm. The law firm then contacts its malpractice carrier. The carrier asks the firm to read the fine print in its policy excluding trust account thefts from coverage. The deficit in the trust account also triggered an overdraft notification to the Bar Association.

CONSEQUENCES
How could this happen?
RPC 1.15A underscores our basic duty of trust account administration in its title: “safeguarding property.” One of the ways we safeguard the funds of clients who, for example, have given us advance fee deposits or for whom we are holding the proceeds of a settlement is to make sure inbound checks have cleared before we write outbound checks on those same funds.

In our example, the bank had extended a provisional credit on the $250,000 deposit from Debtor’s cashier’s check even though the check had not yet “cleared” in the sense of collecting “good funds” from the bank on which the check was written. Granting a provisional credit is discretionary with the bank involved—but is often extended to business customers like law firms. Time periods for checks to clear—again, actually collecting the funds from the bank on which a check is written—vary due to many factors and are governed largely by the Federal Reserve rather than the RPCs—principally Regulation CC that addresses the availability of funds and collection of checks. Here, the bank had extended a provisional credit, but then revoked it when Debtor’s check turned out to be counterfeit. By not waiting until Debtor’s check had cleared, the law firm unwittingly transferred other clients’ money to the criminals—and the money—are long gone.
Although this kind of fraud could—and did—happen in “the old days,” the internet has made law firm trust accounts more tempting targets for thieves. Lawyers today in a wide variety of practice areas only meet their clients electronically, and therefore, communicating solely by email is not unusual. It is also much easier today for thieves to learn about their targets—including, based on information on the firms’ own websites, which firms practice in areas where they might ordinarily have reasonably high balances in their trust accounts.

The financial consequences to a law firm can be severe. In Bank of America NT & SA v. Hubert, 153 Wn.2d 102, 120, 101 P.3d 409 (2004), for example, the Supreme Court concluded that a law firm—rather than its bank—bore the loss from a trust account theft because, in relevant part, the deposit agreement with its bank read: “[Customer] shall be liable for any loss or damage to which your negligence contributed ... Such liability includes instances when a current or former authorized representative effects one or more funds transfers to your detriment.” Similarly, in Stouffer & Knight v. Continental Casualty Company, 96 Wn. App. 741, 982 P.2d 105 (1999), the Court of Appeals affirmed a malpractice insurance carrier’s denial of coverage over the embezzlement of funds from a law firm trust account. Although both of these Washington examples involved “old-fashioned” thefts, decisional law nationally suggests that more recent internet scams involving trust accounts risk the same results. Beyond the immediate financial impact, loss of funds from a firm trust account—even when the lawyer is not a knowing participant—may result in regulatory discipline. In Hubert, for example, the Supreme Court noted that the lawyer involved stipulated to regulatory discipline over the theft involved even though he had not participated directly in the scheme.

**SAFEGUARDS**

Scams like those described above suggest two practical risk management safeguards: vetting potential clients and taking a conservative approach to trust account disbursements.

Vetting Potential Clients. In today’s legal marketplace, it is not unusual for clients to locate lawyers through the internet or to communicate with them primarily through email or other electronic media. These changes in the way lawyers interact with potential clients, however, also put a premium on adequately vetting them. Standard risk management tools such as conflict checks and engagement agreements should be used—possibly along with some research by the firm from readily available public sources on the prospective client. “Red flags” include initial communications to the firm along the line of “dear counselor” that appear to have targeted several firms in an effort to see which one takes the bait, client email addresses that are similar to legitimate companies but vary in small respects, and debtors that pay with unusual speed.

Trust Account Disbursements. Federal Reserve Regulation CC does not specify a precise waiting period that automatically assures that a check has cleared. Firms need to be appropriately sensitive, therefore, to the distinction between “provisional credits” discussed earlier and checks that have “cleared” through the receipt of funds by the depositor’s bank from the check writer’s bank. Particularly when the circumstances are similar to our example, prudent law firms should contact their banks to assure the receipt of “good funds” before issuing a corresponding disbursement from their trust accounts.

Although the focus of this column is on taking proactive steps to avoid becoming a victim of a scam, this same prudent approach to trust fund management can play an equally important role in everyday handling of routine trust account deposits and disbursements. A major source of trust account overdrafts—and their potential regulatory and financial risks—occurs when lawyers simply assume they can issue disbursements because a corresponding deposit is shown online as being an available credit. Beyond scams, there are many mundane reasons why inbound checks may later be declared uncollectible by a law firm’s bank—including insufficient funds in the check writer’s account, a stop payment by the check writer, or an inability to process the check because of a technical reason such as a printing error involving the payor bank’s routing number. Again, careful trust account management includes ensuring that inbound funds have actually been collected by the law firm’s bank before disbursing those same funds.

**SUMMING UP**

Thefts targeting law firm trust accounts are not new. The internet, however, has magnified the threat significantly. In light of these new threats, we need to be wary—or we will be sorry.

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**NOTES**

2. RPC 115B addresses related trust account record requirements.
7. 153 Wn.2d at 120; see also In re Trejo, 163 Wn.2d 701, 185 P.3d 1160 (2008) (lawyer disciplined for trust account violations when his secretary used firm trust account for check-kiting scheme).
8. This is not intended to be an exclusive list of risk management steps. The New York City Bar opinion noted earlier—Formal Opinion 2015-3—surveys practical safeguards extensively as does an “ethics alert” from the California State Bar Committee on Professional Responsibility and Conduct issued in January 2011. Both are available on their respective websites.

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The electronic nature of today’s practice makes unwary law firms especially vulnerable.
Open for Business…

Like a lot of you, we at Brewe Layman are handling matters a bit differently these days. Telephonic client meetings and court hearings. Mediations, depositions and arbitrations via Zoom. We are open for business working with existing and new clients as we always have — diligently, adeptly and tenaciously — albeit remotely or from a safe and secure office setting.

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8 Predictions About Post-COVID-19 Law Practice

BY JORDAN L. COUCH

It’s March 31. I’m sitting on the couch in my one-bedroom apartment, where my wife and I have been working for the last three weeks. My wife, a teacher, has claimed our breakfast nook as her work station and is using a nearby hutch as her standing desk. My laptop, my tablet, and I alternate between the aforementioned couch and the window seat in the bedroom, depending on the views outside and whether I need a closed door. Before much of our nation went into lockdown, I had planned to write a column about “re-framing” as a problem-solving tool and its uses in the legal profession—as I’m writing this column today, that topic feels almost trivial. I’m sure I’ll return to the subject soon, but for this installment I wanted to offer some thoughts on what this pandemic might mean for the future of the profession and suggestions on how to prepare for that future.

Remote work will expand. Remote work options have been a growing trend in the legal profession for a long time; the COVID-19 pandemic made remote work a requirement almost overnight. Every lawyer in the country is now acutely aware that they don’t have to be in the office to be productive. Even more surprising, that realization is not confined to lawyers. In our office, the paralegals, the bookkeeper, and the receptionist are all working from home without missing a beat. (We have the productivity stats to prove it.) When this pandemic is over there will be a lot of law firm leaders who want to bring everyone back into the office as if nothing has changed, but that horse has left the barn (so to speak), and it may be difficult to corral it back in. Although many staff may want to return to the office (I know I do), others will question why they have to show up in person. Many more will want to maintain the flexibility to work from home on occasion. Law firms with a strong culture will do best to embrace the new remote work mentality and give everyone the flexibility they want. Not only will it improve morale, it can also improve the bottom line. See #2 below.

Rent will start to look like unnecessary overhead. There are two reasons lawyers pay for expensive real estate: (1) to have a place to work, and (2) to have a place to meet with clients. If more of your employees are working remotely, that space can be reduced. I suspect when this pandemic is over many firms will adopt a model similar to what firms like PwC have been doing for years: a collection of unassigned work stations where any employee can sit and plug in. Even if only a few of your employees are working from home part of the time, unassigned work stations could drastically decrease the physical space needed for firms. When you combine that with the fact that law firms are now adjusting to handling all client communication remotely (by phone, text, or video), the law firm of the future will be substantially less brick and mortar.

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3 There will be more virtual access to justice. Unfortunately, I don’t think the current pandemic will cause the U.S. to embrace Online Dispute Resolution (ODR) as the essential tool for access to justice that it is. However, courtrooms will have to make substantial improvements in technological capabilities in order to prevent a catastrophic backlog of cases clogging the system for years. There is a lot of low-hanging fruit in the world of courtroom technology. Telephonic or video depositions, hearings, and even bench trials are easy. I practice workers’ compensation; most of my court work is done before the Board of Industrial Insurance Appeals, where technology is already pretty common. I’ve done video depositions with doctors in other states, argued summary judgment motions on the phone, and seen full bench trials conducted without the judge in the room. Technology like this can improve access to justice by making it easier, faster, and less costly to schedule witnesses, address motions, and present evidence. If we can do it during a pandemic, why can’t we do it all the time? I can’t imagine that litigants who have seen the benefits of decentralized courtroom proceedings in both cost and efficiency won’t demand the same rights when social distancing is no longer a government mandate.

4 Cloud will become king. Broad adoption of cloud-based practice will be a necessary result of my first three predictions. If remote work expands, lawyers give up or shrink their office space, and courtrooms are at least partially virtual, this new world will run a lot smoother if everyone is using cloud-based services to run their practice (or courtroom). As they say, water always finds the path of least resistance. Cloud-based services like Office 365, G Suite, Dropbox, or Clio are by nature easily accessible anywhere, on any device, by anyone with authorization. Based on my conversations with lawyers in Washington and around the country, the ease with which lawyers have transitioned to working under stay-at-home orders is directly proportional to the extent to which they had already adopted cloud-based services to run their practice.

5 Different law firm financial models will (by necessity) be adopted. The law firm/partnership business model has always been an interesting one to me. With outside investment prohibited by law, most law firms live and die by the individual financial practices of the partners who share ownership. This is a terrible financial model for a business (and yes law firms are businesses like any other). The firms that will do best during and after this pandemic will be those that consistently invest in their firms like a business, that don’t drain the profits away every year, that keep close tabs on their expenses, and that have three months of costs stashed away in savings. No matter what your practice area is, this pandemic will likely lead to a downturn in your income. Firms that don’t already have sound financial practices will be forced to adopt them or suffer.

6 Firms that survive will be changed forever. Unfortunately, not every firm will survive this pandemic. Even more will have to change substantially. I’ve already seen firms, including some I really respect, choose to close their doors in the face of what is coming. Layoffs in big and medium firms are being reported daily, and lawyers in a number of firms are taking salary decreases for the first time since the 2008 recession.

In some ways it felt like the legal profession was still recovering from the economic downturn of more than a decade ago; demand from low- to middle-income consumers was still low and in-house counsel continued to take business from large corporate firms. In truth, these were just signs that the legal industry had adapted to a new normal based on the lessons learned in 2008.

7 Online law school curriculum will become a new norm. Why is this not already a thing? When I was at Maurer School of Law, my evidence class was done online—like fully online, work at your own pace, no recorded lectures. It wasn’t my favorite, but it was fine. I got a good grade, I learned evidence, and I am now a litigator. In other words, it worked. For many years now, law schools with their (over)dependence on the Socratic Method have resisted the idea of online education. Now that online classes have been mandated, at least in the short term, law schools have done a pretty great job of adapting to this new reality. It’s not ideal, but given a little more time and investment, online education can work just as well as in-person classes.

Rigid classroom-dependent coursework is a hindrance for many to be able to enter the legal profession, and part-time night classes can only go so far toward solving that problem. Online law schools can take us the rest of the way. Now that law schools have proven to themselves and the public that online courses can work, students will demand them, and savvy law schools will see it as a great opportunity to expand their offerings to a broader demographic.

8 Changes will come to administration of the Bar Exam. My Twitter feed has been filled with people talking about what should happen with the upcoming bar exam. Should qualified graduates be given limited licensing without taking the exam? Should the exam be rescheduled? Should those graduates just have to wait to start practicing law? All of these proposed solutions address only the current crisis. In my opinion, it’s absurd that in 2020 the only way to become an attorney

In other indicators, the legal industry was booming. Law schools were seeing a bump in admissions and had record-high tuitions, firms of all sizes were going all in with hiring and mergers, and salaries and bonuses had been on the rise for years. Now we face another downturn. Just as we’ve learned in the years since 2008, things will never go back to the way they were before. Some firms will go away and others will have to change the way they practice to meet with a new, more cautious client demand.

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is to take a test offered just twice per year and in-person only (sometimes at only one location in a state). I just don’t think the advantages of this system outweigh the substantial burden it places on people. Most standardized tests can be taken in testing centers with video surveillance to monitor for cheating and computers provided (and maintained) by the testing facility.

Unfortunately, of all my predictions I think this is the least likely to come true. Every year I read about a mess with some state’s bar exam, questions released, answers shared, or computer and internet crashes. We’ve seen it all. And none of that has led to any systemic change in the bar exam. Still though, there is hope. This year unlike in previous years, the risk is national and the risk is of lawyers being over-admitted instead of over-excluded. (See page 11 for information about Washington’s 2020 summer bar exams.)

A FINAL LOOK AHEAD

There are probably thousands of other ways the legal profession will be permanently affected by the COVID-19 pandemic. For example, the internet could start being treated like a utility and become widely accessible in rural areas. Or universal health care could get another push and disrupt personal injury law practice. I cannot tell you how to respond to each specific change that may be coming your way; all I can do is implore you to be mindful that “It is not the strongest of the species that survives, nor the most intelligent that survives. It is the one that is most adaptable to change.” Though Darwin never actually said those words, there can be no doubt that he would agree.

NOTES

2. If you’re interested in learning more about ODR, I highly recommend Richard Susskind’s book Online Courts and the Future of Justice, available on Amazon.
3. I suspect this pandemic will also feed the growing demand for removing the barriers to outside investment in the legal industry.
5. The quote likely comes from a 1963 speech by Professor Leon C. Megginson, in which Megginson was paraphrasing Darwin’s ideas.
Show, Don’t Tell
How to (invisibly) persuade through facts

BY REBECCA TALBOTT

What is wrong with the following factual description, assuming it were to appear in the facts section of a brief?

The collision took place at the intersection of Alameda Avenue and Galer Street. The defendant was speeding and driving recklessly when he caused the collision. The collision destroyed the plaintiff’s car.¹

Actually, there is a lot wrong with it. But I would like to focus on the conclusory nature of the factual descriptions: describing the defendant as “speeding,” the driving as being done “recklessly,” the defendant as having “caused” the collision—these are all conclusory. They are conclusory labels that we apply to a set of constituent facts when we conclude that the facts merit it. Such use of conclusory labels or characterizations is commonly described as “telling” rather than “showing” your facts.

In this article I hope to: (1) demonstrate the benefits of showing rather than telling your facts in legal writing, (2) offer tips for how to do it effectively, and (3) provide guidance for when this technique can be deployed most appropriately.

WHY SHOW YOUR FACTS?

Showing your facts can improve your legal writing and help you avoid the pitfalls that come from mere telling in at least three ways.

1. Conclusory descriptions leave your facts vulnerable to dispute; showing your facts makes them unassailable. Imagine this is your assertion about a witness: “She was drunk.” This assertion can be easily disputed. Opposing counsel (or opposing counsel’s witness or declarant) can simply negate the conclusion by asserting the opposite: “No, she was not.” If you need to establish that fact for your case—for example, to win a summary judgment motion—you will have failed, because you left open a path for your adversary to dispute it.

Adding an adjective only amplifies the problem: “She was very drunk.” Unfortunately, adding the adjective has only made the assertion easier to dispute. Now, to dispute the assertion, your adversary needs only to assert that she wasn’t “very” drunk—an even lower evidentiary bar.

If you instead describe the witness’s behavior using specific facts, you take away the other side’s power to dispute your assertion. You might, for example, explain that the witness slurred her words when she spoke, stumbled as she was walking, dropped her driver’s license when she tried to hand it over, estimated she had had approximately 10 drinks over the course of three hours, and so on. If you lay out all those facts, then you’ve shown the witness was drunk without even needing to say it, and the other side is powerless to dispute it.

2. Conclusory descriptions leave your facts vague; showing your facts makes them vivid. Using constituent facts rather than conclusory descriptions also helps paint a clearer picture in the mind of the reader. Being drunk can comprise a lot of different factual characteristics; it is not very specific. But if you describe all of the witness’s specific behaviors, you do not even need to label her as drunk. The reader develops an image in her mind of what the witness’s behavior and demeanor were like, and from that the reader can draw her own (ineluctable) conclusion.

3. Conclusory descriptions sound argumentative; showing your facts makes them appear more objective. When you assert, “She was drunk,” or, “He was driving recklessly,” your factual retellings sound argumentative—they sound as if you’re trying to persuade someone. And that diminishes your credibility. By contrast, when you show your facts, you (the author) disappear from the story; the facts appear to parade themselves in front of the reader on their own, without packaging or agenda. You become invisible.

HOW TO SHOW YOUR FACTS

As human beings, we rely on conclusory labels all the time. It would be exhausting to have to explain in everyday conversation the constituent facts that led you to conclude that the person you saw in the street just now was Bob, your former next-door neighbor—you just assert it. But because we rely on conclusory labels so often in daily life, it is sometimes hard to observe when we are doing it in our legal writing.

To determine whether you are relying
on a conclusory assertion, imagine trying to use it in a cross-examination. If a testifying witness could argue with you, your description is probably too conclusory.

Take the “witness was drunk” example. Say you’re cross-examining a police officer, and you want to establish through her that a lay witness who claimed your client pulled a knife was drunk. Here’s your hypothetical exchange, using the conclusory label:

“Officer, isn’t it true she was drunk?”
“No, I wouldn’t say so.”

Oops. There goes your defense. The most you can do at this point is argue with the testifying witness, which never goes well:

“Come on, officer—you’ve been a police officer for a long time, you’ve seen lots of drunk people—she was drunk right?”
“No, I’ve seen many people before who were much more drunk than she was. I wouldn’t call her drunk.”

The problem in these exchanges is that you are trying to establish a conclusion in place of a constituent fact. And the witness can simply resist the conclusion, since the conclusion entails a judgment.

Here’s how your hypothetical cross-examination might go, using showing rather than telling:

• Officer, when you first encountered Ms. A, she was at the Three Sheets Saloon?
• That’s a bar, correct?
• They serve alcohol there?
• She told you she’d been there since 8 p.m.?
• It was shortly after 11 p.m. when you got there?
• The bartender referred to her by name?
• You asked Ms. A to come outside?
• She stumbled as she was walking out?
• She grasped the door frame to catch herself?
• You asked her to hand you her ID?
• She dropped it as she was handing it to you?

And so on. Building your factual description out of constituent facts helps to insulate your ultimate factual conclusion from attack. You can do the same thing in your writing. Converting those leading questions into affirmative sentences will create a description that supports your ultimate factual conclusion in a way that is vivid, unassailable, and (seemingly) objective.

Here are some ways you can double-check that you are converting your conclusions into constituent facts.

• **First, check your verbs.** Are you using forms of “to be,” such as “is” or “was”? If so, you may be making a conclusory assertion. Instead, opt for active and evocative verbs. Don’t say the witness was drunk. Say she *tripped, slurred* her words, and *dropped* her ID.

• **Second, use concrete sensory descriptions.** Imagine you are establishing your facts through a movie. Describe your facts using concrete sensory descriptions that could be captured by a movie: what a person who was there could see, hear, or observe. Include revealing quotes rather than summaries of dialogue. Avoid focusing on non-observable facts such as what a person decided or thought or wanted. Instead of saying she wanted him to leave, say she *slammed* down her drink and *shouted*, “Get out of here!”

• **Third, use juxtaposition in place of causation.** If you say that the defendant was traveling at 52 mph in a 25 mph speed zone, then crossed three lanes of traffic to whip a right turn onto a side street, where he then slammed into the plaintiff’s car, you have not told the reader that the defendant caused the collision. But your juxtaposition sure has suggested it in her mind.

**WHEN TO SHOW YOUR FACTS**

In spite of the virtues of showing your facts, it is not always necessary or appro-

**ASK US**

*If you have a question about legal writing that you’d like to see addressed in a future “Write to Counsel” column by UW Law writing faculty, please submit it to wabarnews@wsba.org, with the subject line “Write to Counsel.”*

**NOTES**

1. This example has been intentionally stylized for effect (and to protect the guilty). Nonetheless, similarly conclusory descriptions have appeared in the facts sections of briefs filed in both trial and appellate courts in Washington state.

2. In addition, relying on such argumentative-sounding labels could even, perhaps, lead your factual statement to appear out of compliance with Washington court rules. See, e.g., RAP 10.3(a)(5) (providing that the Statement of the Case in an appellate brief should contain “[a] fair statement of the facts and procedure relevant to the issues presented for review, without argument” (emphasis added)).

3. Of course, it is permissible for a witness to testify that she believed a person was drunk. See, e.g., State v. Montgomery, 163 Wn.2d 577, 591 (2008) (“A lay person’s observation of intoxication is an example of a permissible lay opinion.”); ER 701 (allowing lay opinion testimony if it is “[a] rationally based on the perception of the witness, (b) helpful to a clear understanding of the witness’[s] testimony or the determination of a fact in issue, and (c) not based on scientific, technical, or other specialized knowledge”); accord Fed. R. Evid. 701 (substantially the same). However, just because something is permissible under the rules of evidence does not mean it is effective. See, e.g., Fed. R. Evid. 701 advisory committee’s note (1972) (observing that rigidly policing the line between fact and lay opinion as an evidentiary matter may not be necessary, as effective lawyers recognize that “the detailed account carries more conviction than the broad assertion”).
WEATHERING CORONAVIRUS:
How Business Interruption Insurance Could Help Businesses Survive the Pandemic

BY THOMAS M. WILLIAMS
Washington’s Department of Health confirmed the first case of the novel coronavirus COVID-19 in the United States on Jan. 21. In less than three months, the state had more than 11,000 confirmed cases, and the virus had claimed the lives of nearly 600 Washingtonians. To try to curb the spread of the disease, Gov. Jay Inslee first ordered many businesses to close their doors. Then he ordered everyone to stay home. These measures have devastated businesses, both large and small, that rely on day-to-day operations to keep afloat. It is estimated that 75 percent of the independent restaurants that were ordered to close simply won’t make it. These are hard times. But many businesses with “business interruption” insurance are hopeful that their policies may help them make it through.

To that end, the response from the insurance industry has been less than encouraging. Immediately after the outbreak started, some insurers took a public position of “no coverage.” For example, four of the nation’s largest insurer-run organizations wrote a letter to Congress claiming that these policies could never cover coronavirus losses: “Business interruption policies do not, and were not designed to, provide coverage against communicable diseases such as COVID-19.”

Despite such a conclusive proclamation, there is precedent to support an argument that business interruption insurance generally should cover losses caused by COVID-19. But the ultimate decision maker will likely be the courts—business owners in at least eight states have already filed COVID-19 coverage lawsuits.

BUSINESS INTERRUPTION COVERAGE FOR COVID-19 LOSSES

Business interruption coverage is a common form of insurance that is often included as part of a business’s property policy. As one Washington court explained, business interruption insurance is designed to “protect the [business’s] earnings”:

> The essential nature and purpose of a business interruption policy is to protect the earnings which an insured would have enjoyed had there been no interruption of business. Business interruption coverage indemnifies an insured for losses sustained because of his or her inability to continue to use specified premises.


To trigger coverage, most business interruption policies require a disruption of operations caused by “direct physical loss of or damage to property.” This phrase will likely be the focus of the anticipated wave of COVID-19 coverage litigation—most insurers have already taken the position that COVID-19 does not cause “direct physical loss of or damage to property,” even if the virus is on or inside the insured’s property. That assertion can be challenged on at least two fronts. First, many courts have held that the phrase “physical loss of ... property” does not require a showing of physical damage. Second, even if damage were required, cases from several jurisdictions suggest that COVID-19 does cause damage.

COVID-19 Losses May be Covered Even Absent Physical Damage to Property

The use of the word “or” is key to understanding a business interruption policy’s requirement that there be “direct physical loss of or damage to property.” “Or” is disjunctive, meaning that a business owner can show either “physical loss of ... property” or “damage to property” to trigger coverage. As one Washington federal district court judge explained, any other reading would render the two phrases “superfluous”:

[If “physical loss” was interpreted to mean “damage,” then one or the other would be superfluous. The fact that they are both included in the grant of coverage evidences an understanding that physical loss means something other than damage.


CONTINUED >
Weathering Coronavirus

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If “loss of property” must mean something different from “damage to property,” the next logical question is: “What constitutes a ‘loss of . . . property’ sufficient to trigger coverage?” Noting the importance of an insurer’s decision to use the phrase “loss of property”—instead of “loss to property”—the Total Intermodal court found that the misplacement of property would be covered:

Under an ordinary and popular meaning, the “loss of” property contemplated that the property is misplaced and unrecoverable, without regard to whether it was damaged . . . “[D]irect physical loss of” should be construed differently from “direct physical loss to” or “direct physical loss.

Total Intermodal, 2018 WL 3829767, at *3-4 (emphasis in original). The court therefore held that the policy covered missing property even though that property had not suffered any physical damage. Similarly, in Source Food Tech., Inc. v. U.S. Fid. & Guar. Co., 465 F.3d 834 (8th Cir. 2006), a company could not sell an entire shipment of beef because of suspected mad cow contamination. When it was later determined that the beef had not been contaminated, the 8th Circuit found coverage because there was no property damage, but also recognized that coverage would have been more likely “if the policy’s language included the word ‘of’ rather than ‘to,’ as in ‘direct physical loss of property.’” Source Food, 465 F.3d at 838 (emphasis in original).

A similar rationale has been applied by courts throughout the country to find coverage for the loss of use of property even absent evidence of physical damage. In Murray v. State Farm Fire & Cas. Co., 203 W. Va. 477, 509 S.E.2d 1, 17 (1998), the Supreme Court of West Virginia found that a policyholder had suffered a “direct physical loss” of property “when it became clear that rocks and boulders could come crashing down [and damage property] at any time.” Murray, 203 W. Va. at 493 (emphasis added). Thus, “[l]osses covered by the policy, including those rendering the insured property unusable or uninhabitable, may exist in the absence of structural damage.” Id.; see also TRAVCO Ins. Co. v. Ward, 715 F. Supp. 2d 699, 708 (E.D. Va. 2010) (“The majority of cases appear to support Defendant’s position that physical damage to the property is not necessary, at least where the building in question has been rendered unusable by physical forces.”). Another court held that “the temporary loss of use” of an electrical grid was covered, even though the system did not suffer any tangible damage. See Wakef ern Food Corp. v. Liberty Mut. Fire Ins. Co., 406 N.J. Super. 524, 541-44, 968 A.2d 724 (App. Div. 2009).

These same principles could apply to losses caused by COVID-19: Businesses throughout the country have lost the use of the premises that they operate in. That loss is the result of an unprecedentedly widespread and easily communicable disease that—according to Gov. Inslee, health care professionals, and other industry leaders—has rendered nearly all indoor public spaces unusable for their intended purposes. Counsel advocating for their business-owner clients should therefore argue that COVID-19 has caused a “physical loss of . . . property,” and that those losses are covered.

Courts routinely find that intangible things like COVID-19 can cause ‘physical damage to property’ even if they don’t visibly alter the property.

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COVID-19 Arguably Causes Physical Damage to Property

An alternative argument can be made that COVID-19 does “cause physical damage to property” sufficient to trigger coverage. Perhaps the most obvious evidence of this are the government orders that forced businesses to close their doors. For example, New York City Mayor Bill de Blasio issued an order that closed restaurants, gyms, and other venues “because the virus physically is causing property loss and damage.” Napa County’s “shelter in place” order was similarly based on “evidence of . . . the physical damage to property caused by the virus.” Similar orders have been issued throughout the country.

Moreover, courts routinely find that intangible things like COVID-19 can cause “physical damage to property” even if they don’t visibly alter the property. For example, a federal judge in New Jersey found that the release of ammonia in a business’s facility “physically transformed the air” and was covered because it “rendered the facility unusable for a period of time.” Gregory Packaging, Inc. v. Travelers Prop. Cas. Co. of Am., No. 2:12-CV-04418 WHW, 2014 WL 6675934, at *6-7 (D.N.J. Nov. 25, 2014). In Sentinel Mgmt. Co. v. New Hampshire Ins. Co., 563 NW.2d 296, 300 (Minn. Ct. App. 1997), asbestos contamination was deemed covered property damage even though it “did not result in tangible injury to the physical structure.” A New York court found coverage for noxious dust from the collapse of the World Trade Center that had “settled in the carpets and on other surfaces in offices [because it] constitutes property damage.” Schlamm Stone & Dolan, LLP v. Seneca Ins. Co., 6 Misc. 3d 1037(A), 800 NY.S.2d 356 (Sup. Ct. 2005).

Other jurisdictions have followed suit, ruling that odors, gases, and even diseases can cause “physical damage to property.” Business owners should argue that this same logic applies to COVID-19—experts agree that the virus physically adheres to and impacts the surfaces that it comes into contact with. Courts may find that COVID-19, just like the other intangible conditions addressed in these cases, causes “physical damage to property.”
8 of Hurricane Gustav did not trigger civil authority coverage because the order was not “based on property damage.” Jones, Walker, Waechter, Poitevent, Carrere & Denegre, LLP v. Chubb Corp., No. CIVA. 09-6057, 2010 WL 4026375, at *3 (E.D. La. Oct. 12, 2010). At the same time, that court recognized that a related order “could trigger civil authority coverage because it prohibit[ed] access ... in light of damage sustained.” Id.

Unlike the orders in United Air Lines and Jones, Gov. Inslee’s order was issued, in part, because of COVID-19’s ongoing “effect” on property. COVID-19 was also widespread in Washington before the order was issued. Businesses may therefore have a strong basis to pursue civil authority coverage, in addition to standard business interruption coverage.

**CIVIL AUTHORITY PROVISIONS—ANOTHER AVENUE TO COVERAGE?**

Many policies with business interruption coverage also have civil authority coverage, which covers lost earnings when a civil authority—e.g., a government official—prohibits access to the policyholder’s business because of property damage at some other location. In other words, a policyholder may not need to show that its place of business was exposed to COVID-19 to trigger coverage. Gov. Inslee prohibited access to businesses because of the widespread outbreak of COVID-19 throughout Washington. Thus, assuming COVID-19 is deemed to cause property damage, a business with civil authority coverage may have a strong argument that its losses are covered.

But some insurers have already dismissed the validity of civil authority claims, citing a series of cases that denied coverage for losses incurred when businesses were closed after 9/11 and before the landfill of large storms. But the orders in those cases may be distinguished from the situation presented by COVID-19 because those orders closed businesses before any damage had occurred. For example, in United Air Lines, Inc. v. Ins. Co. of State of PA, 439 F.3d 128, 134 (2d Cir. 2006), the court found no civil authority coverage for losses sustained by the closure of an airport following the attack on the World Trade Center because: (1) the closure was ordered before the Pentagon—the only damaged property nearby—was attacked; and (2) the decision to close the airport “was based on fears of future attacks.” Id. A federal judge in Louisiana similarly held that an evacuation order issued in anticipation of Hurricane Gustav did not trigger civil authority coverage because the order was not “based on property damage.” Jones, Walker, Waechter, Poitevent, Carrere & Denegre, LLP v. Chubb Corp., No. CIVA. 09-6057, 2010 WL 4026375, at *3 (E.D. La. Oct. 12, 2010). At the same time, that court recognized that a related order “could trigger civil authority coverage because it prohibit[ed] access ... in light of damage sustained.” Id.

**CONCLUSION**

So what does this all mean if you represent a business that is—like so many others these days—hurting as a result of the coronavirus pandemic? First, you should submit an insurance claim immediately. You should then expect a denial letter. But don’t let that discourage you. Have a coverage attorney analyze the denial letter in light of your client’s policy language and unique circumstances to help determine whether you can argue that the denial was improper. Bottom line: if your client has business interruption coverage, in addition to civil authority coverage, or both—you may be able to successfully argue that those business losses are covered.

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**NOTES**


4. See Cajun Conti LLC et al. v. Certain Underwriters at Lloyd’s, London et al., Case No. 20-02558, Civil District Court for the Parish of Orleans, State of Louisiana; Chickasaw Nation Department of Commerce v. Lexington Ins. Co. et al., Case No. CV-20-35, District Court of Pontotoc County, State of Oklahoma; French Laundry Partners, LP et al. v. Harford Fire Ins. Co. et al. case number unavailable, Superior Court for the State of California, Napa County; Big Onion Tavern Group, LLC et al. v. Society Ins., Inc., Case No. 120-cv-02005, U.S. District Court for the Northern District of Illinois Eastern Division; Snowden v. Twin City Fire Ins. Co., Case No. 2020-19538, District Court of Harris County, Texas; Prime Time Sports Grill, Inc. v. Certain Underwriters at Lloyd’s London, Case No. 820-cv-00771, U.S. District Court, Middle District of Florida, Tampa Division; Indiana Repertory Theatre, Inc. v. The Cincinnati Cas. Co., Case No. 49D01-2004-PL-01317, Superior Court for the State of Indiana; LH Dining L.L.C. v. Admiral Indem. Co., Case No. 2:20-cv-01869, U.S. District Court, E.D. of Pennsylvania. Given the speed at which this issue is developing, it is very likely that additional lawsuits will have been filed by the time this article is published.

5. Executive Orders issued by the governors of Illinois and Hawaii express concern regarding COVID-19’s “propensity to physically impact surfaces and personal property.” A proclamation from the Mayor of New Orleans states that the spread of COVID-19 “caus[es] property loss and damage.” An executive order from the governor of West Virginia was issued “because of physical contamination of property due to [COVID-19’s] ability to remain on surfaces for prolonged periods of time.” Although Gov. Inslee did not expressly say that COVID-19 causes property damage, he did acknowledge that the virus “affects property”: “[T]he worldwide outbreak of COVID-19 and the resulting epidemic in Washington State ... remains a public disaster affecting ... property.”


When ‘I Do’ Leads to ‘I Won’t’

Beyond wedding cakes and flowers—examining State v. Arlene’s Flowers and the developing jurisprudence around religious exemptions from public accommodation laws that prohibit discrimination based on sexual orientation.
SETTING THE STAGE:
THE FACTUAL BACKGROUND TO
STATE V. ARLENE’S FLOWERS

Robert Ingersoll and Curt Freed are residents of Kennewick. They had been in a long-term relationship since 2004 and decided to get married in September 2013. Ingersoll had been a customer of Arlene’s Flowers, located in neighboring Richland, since 2004 and had spent thousands of dollars at the store. Ingersoll and Freed considered Arlene’s Flowers to be “their florist.” Arlene’s Flowers is owned and operated by Barronelle Stutzman. Stutzman identifies as a Southern Baptist. Although she had hired openly gay employees over the years, she has stated that she believes marriage can only exist between one man and one woman.

Ingersoll asked Stutzman about purchasing flowers for the upcoming wedding in March 2013. He did not specify the kind of flowers or arrangements he was seeking nor whether Stutzman would bring the flowers to the wedding venue or if they would be picked up at the store by another party. Stutzman refused to sell flowers to Ingersoll based upon her religious beliefs.

THE LEGAL JOURNEY IN ARLENE’S FLOWERS:
TO SCOTUS AND BACK AGAIN

Two separate lawsuits resulted from Stutzman’s refusal to sell flowers to Ingersoll and Freed. The first lawsuit was filed by the Washington Attorney General’s Office and alleged discrimination in violation of the public accommodation statute and unfair trade practices. The second lawsuit was filed by Ingersoll and Freed nine days later and alleged discrimination and a violation of Washington’s Consumer Protection Act.

The Superior Court entered judgment in favor of the state and the individual claimants in the consolidated cases on March 27, 2015. Arlene’s Flowers was assessed a $1,000 fine, $1 in attorneys’ fees and costs, and enjoined from violating the public accommodation statute.

The Superior Court’s judgment was unanimously affirmed by the Washington Supreme Court on Feb. 16, 2017. The court concluded that the defendants had engaged in prohibited discrimination. The court went on to hold that:

1. The public accommodation statute did not contain an exception for objections to same-sex marriage or require the state to balance religious rights with the rights of protected class members.

2. Application of the statute did not compel Stutzman or her business to speak in favor of same-sex marriage and was not an unconstitutional interference with the defendants’ free exercise rights.

3. The statute was a neutral law of general applicability which was reasonably related to a legitimate governmental purpose.

The defendants sought review by the U.S. Supreme Court, which granted certiorari on July 14, 2017. The Court vacated the judgment and remanded the case to the Washington Supreme Court for reconsideration in light of its holding in Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission.

The Washington Supreme Court unanimously reaffirmed its previous opinion on June 6, 2019. In so doing, the court cited the holdings in Masterpiece Cakeshop that:

1. Adjudicatory bodies are to remain neutral and their deliberations and decisions must be free from animus toward religion.

2. Such bodies may not disparage religious beliefs and must treat similarly situated parties equally regardless of their beliefs or the absence thereof.

Applying these standards, the court concluded that Washington courts had resolved the underlying disputes with tolerance.

The Washington Supreme Court’s opinion may not be the last word concerning
When ‘I Do’ Leads to ‘I Won’t’

CONTINUED >

Cases involving denials of accommodation to members of the LGBTQ community predate Arlene’s Flowers and have not been restricted to wedding-related services. For example, in Cervelli v. Aloha Bed & Breakfast, the Hawaii Court of Appeals held that the denial of a room to a lesbian couple was a violation of the state’s public accommodation statute despite the owner’s religious-based objection to homosexuality. The most high-profile cases to date have addressed issues arising from services relating to same-sex weddings or commitment ceremonies. For example, in Elane Photography, LLC v. Willock, the New Mexico Supreme Court held that the refusal of photographers Jonathan and Elaine Huguenin to provide services to a same-sex couple at their commitment ceremony violated the New Mexico Human Rights Act. The court held that the act was a neutral law of general applicability and its enforcement did not offend the Huguenins’ free exercise of their religion.

Recently, courts have been more receptive to religious freedom claims. Four decisions are particularly noteworthy, two of them from the U.S. Supreme Court.

The best known of these opinions is Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission. The refusal of Jack Phillips, the owner of Masterpiece Cakeshop, to make a wedding cake for a same-sex couple resulted in the filing of a complaint with the Colorado Civil Rights Commission. The commission ordered Masterpiece to provide cakes for same-sex weddings, train its staff regarding public accommodations discrimination, and file quarterly reports for two years documenting its compliance.

The commission’s decision was affirmed by the Colorado Court of Appeals. The court held that the act of making the cake was part of the expected conduct of Phillips’s business and was not speech or the exercise of religion. The Colorado Supreme Court denied certiorari.

The U.S. Supreme Court granted certiorari but did not reach the underlying question of religious exemptions to public accommodation laws. Instead, the Court held that the Colorado Civil Rights Commission had expressed animus toward Phillips’s sincerely held religious beliefs to such a degree as to invalidate its decision. The commission subsequently withdrew its complaint in March 2019.

The result in Masterpiece Cakeshop affected another pending case in Oregon. In Klein v. Oregon Bureau of Labor and Industries, the Oregon Court of Appeals affirmed a decision by the Bureau that the refusal by Sweet Cakes by Melissa to make a cake for a same-sex wedding violated the state’s public accommodation statute. The court also upheld the Bureau’s imposition of a $135,000 fine against the business. However, the U.S. Supreme Court vacated the Bureau’s order in June 2019 based upon its holding in Masterpiece Cakeshop and remanded the case to the Oregon Court of Appeals, where it was pending at the time of publication.

The most recent opinions have taken the step that the U.S. Supreme Court declined to take in Masterpiece Cakeshop. In Telescope Media Group v. Lucero, a divided U.S. Court of Appeals for the Eighth Circuit reversed the dismissal of a declaratory judgment action filed by Carl and Angel Larsen against the Minnesota Department of Human Rights seeking an order permitting them to work exclusively with heterosexual couples. The court held that the state’s Human Rights Act would violate the constitutional ban upon compelled speech by requiring the Larsens to produce videos in conflict with their religious beliefs.
and transportation providers;
• Businesses that are absent from the ceremony but may be present at a subsequent reception such as bakers, caterers, providers of the venue, and entertainment;
• Businesses that are absent from the ceremony and reception but provide goods or services such as garment rental companies, invitation printers, jewelers, providers of honeymoon venues, and travel agencies; and
• Businesses whose behavior may otherwise facilitate a same-sex marriage such as employers of persons entering same-sex marriages and housing providers to married same-sex couples.

In a separate opinion in Telescope Media Group, Judge Jane Kelly raised just this possibility. While acknowledging that visual artistry may warrant careful consideration and enhanced protection by courts, Judge Kelly expressed the following concern:

But what about bakers, fashion designers, florists, graphic designers, tattoo artists, calligraphers, jewelers, chefs, tailors or musicians? Are all those businesses allowed to refuse service to gays and lesbians whenever doing so would conflict with the business owner’s personal religious or philosophical beliefs? What about more traditional public accommodations, like hotels? Can an innkeeper deny a same-sex couple access to the honeymoon suite because handing over the keys would ‘express’ an endorsement of their marriage?\[34\]

The U.S. Supreme Court may answer these questions should it grant certiorari in Arlene’s Flowers, Inc. v. State. Food (but perhaps not cake) for thought indeed. [BR]

NOTES
2. RCW 49.60.030(1)(b).
3. RCW 49.60.040(2).
4. RCW 26.04.010(5), (6), (7)(b).
9. Id. at 826-30.
10. Id. at 830-49.
11. Id. at 856.
14. Id. at 490-93.
15. Id. at 493-94.
16. Id. at 536.
18. 189 P.3d 959 (Cal. 2008).
21. Id. at 75.
27. 139 S. Ct. 2713 (2019).
28. 936 F.3d 740 (8th Cir. 2019).
29. Id. at 752-56.
30. Id. at 756.
33. Id. at 903-25.
The Lavender Rights Project

BY LUKE SAVOT

Seattle has one of the highest populations of lesbian, gay, bisexual, trans, and queer (LGBTQ+) people in the country,¹ and is praised as one of the most welcoming cities for LGBTQ+ communities in the world. Washington was one of the first states to legalize marriage equality through popular vote, and its Legislature adopted some of the first LGBTQ+-inclusive protections against discrimination.

However, LGBTQ+ Washingtonians—and, in particular, Black and Indigenous folks and people of color in our communities—continue to face alarming rates of discrimination, harassment, violence, and criminalization, while also being less likely to access legal services to combat these injustices.² Helping to address this gap in legal services for LGBTQ+ Washingtonians is the Lavender Rights Project.

The Lavender Rights Project (LRP) is a grassroots nonprofit organization advancing a more just and equitable society by providing low-cost legal services and community education centered in values of social justice for trans and queer low-income people and other marginalized communities. At LRP’s core is the belief that homophobia and transphobia cannot be eradicated without also addressing the injustices of white supremacy and colonialism, patriarchy and toxic masculinity, classism, ableism, and other oppressive systems, as these are all areas in which trans and queer community members are heavily impacted.

LRP isn’t just serving queer and trans people, though—it’s also hiring them. Integral to the foundation of LRP is its “by-and-for” model, which promotes LGBTQ+ representation in both its clients and employees. Since its formation in 2016, the organization has invested in queer and trans legal professionals and law students, who often face considerable barriers to succeeding in the legal field. Providing support for LGBTQ+ people within legal communities not only increases queer and trans representation in the field, but also improves the efficacy of the services provided by LRP.

Many of LRP’s clients report being denied legal services, advocacy, and even resources due to service providers’ ignorance around LGBTQ+ issues—even legal services that are accessible fi-

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There are approximately 45,000 transgender residents in Washington, each with their own legal needs. About 8,500 (19 percent) of those gender-diverse Washingtonians live in a rural or geographically isolated area. And those transgender residents in non-urban areas experience a lack of equitable legal services when compared to their urban peers. The Trans Advocacy in Rural Places (TARP) program was created to ensure that the legal needs of transgender people in rural Washington don’t fall through the cracks.

LaMay, grew up in rural Oklahoma and has lived in many rural places since. LaMay experienced firsthand the isolation from important social, medical, and legal services that most rural trans people face in their daily lives. As a law student and young lawyer, his professional experiences illustrated to him the disproportionate impact of local laws on rural trans folks, as well as the limited access to legal services this group can face. These experiences drove him to develop TARP in order to address these gaps in legal equity.

One of the main areas in which TARP provides legal support to transgender or gender-diverse people is with name and gender changes on identity documents—a nearly universal legal need of trans and gender-diverse people. TARP offers local county-specific forms and instructions as well as in-person ID Document Update Clinics to assist rural trans folx in updating their ID documents to accurately reflect their correct names and gender identifiers. An accurate ID can be quite powerful. One study published by *The Lancet Public Health* journal in March found that transgender adults who had identity documents showing their preferred name and gender experienced fewer instances of serious psychological distress, suicidal ideas, and suicide planning than those without matching IDs. According to the study, which used data from the 2015 U.S. Transgender Survey, transgender people are three to four times more likely to attempt suicide than adults in the general population.

TARP pushes back against the notion that rural places can’t be safe places for gender-diverse people and encourages resiliency in rural transgender communities by improving legal supportive services for civil rights, educating the public, and increasing trans community capacity to self-represent.

TARP also hosts issue-specific events like transgender-focused DIY estate planning workshops and professional competency trainings for courts, bar volunteer attorney groups, legal aides, and Tribes.

WSBA members can plug into the program through local trainings hosted by TARP, through volunteering with TARP in their local counties, and by reaching out for any case or issue assistance that may be needed. Community members can connect to TARP in the following ways:

- Through the program website: [www.lavenderrightsproject.org/tarp](http://www.lavenderrightsproject.org/tarp).
- Via phone or email: 206-639-7955, ext. 703, and dusty@lavenderrightsproject.org.
- At one of the upcoming local ID Document Clinics to be hosted in their county. Check the website for details and dates. TARP will be hosting clinics in almost all 39 counties during June and July.

Trans people are everywhere in Washington and deserve equitable and local legal help. Connect with the program now to get involved before the fellowship ends.

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**NOTES**

10. Due to uncertainty caused by the coronavirus pandemic, we encourage you to visit TARP’s website (www.lavenderrightsproject.org/tarp) for the most up-to-date information regarding clinic dates.
A Look at the Nikki Kuhnhausen Act

Understanding the ‘gay panic defense’ and the history behind Washington’s new legislation

BY DANA SAVAGE

In early March, after nearly two years of attempts by lawmakers to pass it, Gov. Jay Inslee signed into law House Bill 1687. Dubbed the Nikki Kuhnhausen Act, HB 1687 adds a new section to Chapter 9A.16 RCW that limits the defense of diminished capacity in cases where the accused party appears to have been motivated by knowledge of a victim’s sexuality or gender identity. The bill ultimately cleared both chambers with overwhelming support; however, the path to the vote spanned more than one legislative session, and it was ultimately the tragic loss of a life that served as a wakeup call and helped secure the law’s passage.

Violence against transgender people is nothing new. In recent years, the United States has seen a spike in hate crimes against people who identify as LGBTQ+, especially LGBTQ+ people of color. This is a result of many factors, including racism, homophobia, and transphobia. According to the 2015 U.S. Transgender Survey, half of the nearly 28,000 transgender people surveyed experienced some form of intimate partner violence. At least 10 percent experienced violence at the hands of family members after they told them they were transgender, 9 percent said they had been physically attacked for being transgender within the previous year, and 10 percent reported they were sexually assaulted in the same time period.

The spike in hate crimes comes at a time when LGBTQ+ rights are being eroded at the national level. This environment makes LGBTQ+ communities, and particularly LGBTQ+ people of color, much more susceptible to violence, more likely to be living on the street when they are turned away from homeless shelters because of their gender, and more likely to be forced into precarious or abusive economic relationships when employers or educators are discriminatory.

In the summer of 2018, representatives from the QLaw Foundation, QLaw Bar Association, Legal Voice, Gender Justice League, Greater Seattle Business Association, and Equal Rights Washington began informally discussing the disturbing trends of hate crimes against LGBTQ+ individuals across the country. Although we were collectively thankful that those of us in Washington enjoy more protections from hate crimes and discrimination than in other parts of the country, it was a point of frustration that a defendant in a criminal case could still simply raise what is colloquially known as the “gay panic defense” or “trans panic defense” as a legal justification for harming queer people. In utilizing the defense, perpetrators of hate crimes seek exoneration or mitigation of penalties for their crime on the ground that they were so disturbed to discover their victim’s LGBTQ+ identity that they temporarily could not tell right from wrong and should, therefore, not be held fully accountable for the harm they caused to their victim(s).

The panic defense has been used successfully in several murder trials. James Miller of Austin, Texas, who fatally stabbed his neighbor Daniel Spencer in 2015 after claiming Spencer propositioned him—sending him into a “gay panic”—was ultimately convicted of manslaughter and sentenced to six months in jail, 10 years of probation, and 100 hours of community service. Similarly, James Dixon of Harlem, New York, stated to detectives that he was sent into a “blind fury” after being mocked by friends for flirting with a trans woman, Islan Nettles. By all accounts, it appears Dixon intentionally beat Nettles to death. Nevertheless, he raised the panic defense, and prosecutors did not seek murder or hate crime charges, opting instead to charge Dixon with first-degree manslaughter. Dixon ultimately pleaded guilty and was sentenced to 12 years in prison—less than half of the maximum penalty of 25 years.

In 2018, only three states had outlawed the use of the panic defense: California, Illinois, and Rhode Island. With instances of violence against queer-identified individuals on the rise across the nation, our group of advocates resolved to try to add Washington to that list. We endeavored to bring it up when discussing LGBTQ+ legal policy at all levels from candidate forums and speaking engagements, to direct lobbying of elected officials and other change-makers in our state. While most were receptive to our efforts, it also became increasingly clear that many people did not realize there was a need for such
a law in the first place. In short, it took some convincing.

By 2019, we were successful in getting Washington lawmakers to hear our requests, and HB 1687 was first introduced to the House Public Safety Committee by then-Rep. Derek Stanford (Stanford is now a state senator). Many of us made the trip to Olympia to testify in favor of the bill, but even then it seemed that some lawmakers were questioning whether the defense was necessary in Washington. Several amendments were proposed in an attempt to “clarify” the legislation by stating that the panic defense could still be raised by a defendant if the victim had been engaged in criminal conduct. These amendments were uniformly opposed by HB 1687’s sponsors on the grounds that it could lead to unintended consequences for people such as LGBTQ+ sex workers who are victims of hate crimes. Serious questions were raised as to the language of HB 1687 and—given the perceived lack of urgency—the bill was tabled until the 2020 legislative session. Fortunately, several other states that year did pass their own bills on the panic defense and we were hopeful that Washington lawmakers would finally see the need for the law here.

As we were gearing up to renew our advocacy efforts in December 2019, news broke of the discovery of Nikki Kuhnhausen’s body near Vancouver. Kuhnhausen, an 18-year-old trans woman, had been missing since June 2019. David Bogdanov, her last known contact on the night of her disappearance, was charged with her murder after his cell phone GPS records allegedly put him at the site where her body was discovered on the night she went missing. Bogdanov had previously told authorities that he had not seen Kuhnhausen since he kicked her out of his van that evening in June upon learning her gender identity, stating that “it was offensive to his culture.” He has pleaded not guilty and is currently awaiting trial.

As the case surrounding her murder developed, Kuhnhausen’s story was the wakeup call lawmakers needed to take up the issue of the gay and trans panic defense seriously. Lisa Woods, Kuhnhausen’s mother, contacted those of us working on HB 1687 and stated that she would not rest until she honored her daughter’s memory by seeing the panic defense outlawed in our state. We welcomed her efforts and I sincerely believe it was her passionate testimony that secured the bill’s passage. By this point, lawmakers were not interested in any of the proposed amendments that would allow the panic defense to still be raised in certain circumstances. In fact, the sole amendment adopted was to formally name HB 1687 the Nikki Kuhnhausen Act.

What followed was a quick passage in the House by a 90-5 margin and another round of testimony in the Senate Law and Justice Committee. Just two weeks later, HB 1687 was brought for a final vote in the Senate and passed by a vote of 46-3. Washington thus became one of the states that year to enact such protections, consistent with its history of affirmatively championing the rights of minorities, although often only in incremental steps over time and sometimes, as here, after loss of life became the impetus to act.

NOTES
6. Id.
9. See RCW 9A.64.0801(c); RCW 49.60.040(25)-(26).
12. See Cal. Penal Code Ch. 1 Sec. 192(7) (c); 720 ILCS 5/9-1, 2; and 12 R.I. Gen. Laws Sections 12-17-17, 12-17-18, & 12-17-19.
13. See “2017 Hate Crimes Statistics;” FBI Uniform Crime Reporting Program, supra n.3.
One of the cornerstones of the client-lawyer relationship is the client’s trust that their lawyer will keep information confidential. At a time when advertising is becoming more sophisticated and consumers are relying on their computers or mobile devices to find and communicate with attorneys, what steps can and should you take to ensure client-lawyer confidentiality in digital communication? How can you rely on technology to market your practice and remain in compliance with the ethics rules? These questions are especially pertinent when lawyers and clients use methods of communication that third parties may be able to access or monitor.

A lawyer has a duty to provide competent legal services, which includes, under RPC 1.1, the competent use of technology. Comment 8 to the rule states:

To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

As part of the duty of confidentiality, lawyers are also required, under RPC 1.6(c), to “make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.” A recent ABA Formal Opinion and the Comment to RPC 1.6(c) emphasize that an attorney’s obligation in preserving a client’s confidentiality is one of “reasonable efforts” rather than strict liability. See ABA Formal Opinion 483 (2018) and Comment 18 to RPC 1.6(c). The ABA Opinion further advises that if an inadvertent or unauthorized disclosure does occur, a lawyer has a duty under RPC 1.4 (communication) to inform a current client about the breach.

**PPC AND SEO**

Digital marketing is usually divided into two categories—pay-per-click (PPC) and organic search engine optimization (SEO). Most lawyers would like to appear on page one of Google results when potential clients are doing an internet search. Organic SEO refers to algorithms used to obtain a high ranking on search engine results. This is typically unpaid, and thus is a low-cost solution, but it can sometimes take time to boost a ranking.

By contrast, pay-per-click advertising is an easy (but expensive) way of achieving this goal. PPC is a digital form of paid marketing, where the advertiser pays a fee each time their ad is clicked. When the ad is clicked, the potential client is taken to the lawyer’s website. PPC is essentially buying visits to a site rather than organically earning them. Under WSBA Advisory Opinion 201401, lawyers can engage the services of a lead generation company for a fee, so long as the lawyer does not give anything of value to the company for “recommend—ing” the lawyer’s services. See RPC 7.2(b). The lawyer can pay the fee that the company charges for a pay-per-click, but the generator cannot personally recommend or endorse the lawyer’s abilities or make any false or misleading statements. In other words, the digital marketing company must be using objective criteria and not violate the prohibition on lawyers paying others for referrals.

Because of its simplicity and potential for quick results, many attorneys opt for PPC. But is there a hidden risk?

As part of the pay-per-click process, some lead generator vendors record calls of their unsuspecting customers, sometimes with little or no notice. This can be accomplished by a masked number, i.e., one that is different than the attorney’s number but automati-
cally forwards to the attorney’s number. Vendors may either put a tracker on the masked number or record anonymized data. Although the caller (i.e., the client) may receive a message that the vendor is recording, such as “this call is being recorded,” unless the client informs the attorney during the conversation, the attorney may never become aware that the call is being recorded. In some cases, the attorney may have unwittingly “consented” to this practice in the user agreement with the vendor, by not carefully reading the small print.

Some vendors maintain that the recording of calls is simply to collect data in an anonymous way and to prevent fraud. Lawyers may never be able to find out exactly how the vendor is using the data, however, or know who or what is listening to the calls. In several states, such as California and Illinois, class action lawsuits have been filed against vendors who collect voice data without the customer’s consent.

It is possible that lawyers could be held responsible for violating confidentiality under RPC 1.6 by failing to make reasonable efforts to assure that the calls are not being recorded by the vendor. Although the client may be given a brief warning that a call is being recorded, that may not be enough to constitute informed consent to disclosure of confidential information under RPC 1.6. The client may assume that because they are calling the lawyer’s phone number, the lawyer believes there is no problem with the recording of the call. The client may not be aware that a third party, and not the lawyer, is recording the call.

WSBA Advisory Opinion 2215 states that in the context of choosing a cloud computing provider, a lawyer has an obligation to “conduct a due diligence investigation of the provider and its services and cannot rely on lack of technological sophistication to excuse the failure to do so.” The same obligation would likely apply to choosing a digital marketing service.

So, if you want to use PPC, how do you exercise due diligence to assure that calls are not being recorded?

First, test your advertising links yourself and make sure that callers are not receiving messages telling them they are being recorded.

Second, carefully read the user agreement and look for any language about how the company collects data for marketing, privacy, security, fraud, or other language stating that it has the right to collect anonymized data through voice recording. In addition, be aware that many online vendors change their technology, so you should continue to check your online account for updates or changes.

**Michele Carney** is a partner at Carney & Marchi. She serves on the Practice of Law Board, American Immigration Lawyers National Technology Summit and Innovation Task Force, and National Ethics Committee where she chairs the Compendium. Carney has previously served as chair of the Washington State Bar Association Disciplinary Board. She obtained her law degree from SMU in Dallas, TX. She can be reached at mcarney@carmarlaw.com.

**Kevin Bank** has a private practice focusing on legal ethics, attorney discipline, bar admissions, and immigration appeals. From 1999 through 2018, he served as disciplinary counsel, managing disciplinary counsel and assistant general counsel at the WSBA. Bank writes and lectures frequently on ethical issues. He is a member of the National Ethics Committee of the American Immigration Lawyers Association. He can be reached at kevin@kevinbanklaw.com.

Most lawyers would like to appear on page one of Google results when potential clients are doing an internet search.
JAMS Welcomes
Hon. Faith Ireland (Ret.)
Washington Supreme Court Justice

Served as a full-time neutral since 2005; spent more than two decades on the bench, most recently on the Washington Supreme Court and, prior to that, on the King County Superior Court; also handled business, torts and family law matters in private practice.

Highly sought after for her listening skills and ability to quickly get to the heart of a matter and help parties assess the financial and emotional costs of litigation; known for her tenacity in achieving resolution.

Available in person or remotely as an arbitrator, mediator and neutral evaluator in business/commercial, class action/mass tort, construction, real estate, employment, family law, professional liability and personal injury/torts matters.

Contact Case Manager Michele Wilson at 206.292.0457 or mwilson@jamsadr.com.

HAS SOMEONE YOU KNOW BEEN DIAGNOSED WITH MESOTHELIOMA?

We hold companies accountable for exposing workers to asbestos.

SGB’s asbestos team fights for the compensation our clients deserve.

Greg Glava
Luke Everett
Tom Brenn
Kathleen Weight
Colin Minday

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Of the 296 candidates who took the Winter 2020 Lawyer Bar Exam, 141 candidates passed. Congratulations! The full pass list is printed below.

**A**
Achille, Megan • Seattle
Afshar, Abraham Khalil • Marquette, MI
Arjomand, Abdulazim • Bellevue
Atchley, James Daniel • Seattle
Atwal, Jagbir • Bonney Lake
Avveduto, Rosario • Seattle
Ayubi, Kyla Cook • Lynden

**B**
Baals, Katherine Elizabeth • Seattle
Barber, Emmalone Rose • Seattle
Barros De Farias Duarte, Dayane Karla • Redmond
Beers, Jessica • Fox Island
Bilof, Nicholas George • West Vancouver, B.C.
Birkild, Audrey Suzanne • Edgewood
Bommakanty, Shvani Durga • Mercer Island
Bond, Dwight Howard • Colbert
Boparai, Katrina • Seattle
Brethauer, Daniel John • Shelton
Buchanan, Alicia Nicole • Nine Mile Falls
Budinick, Jennifer Mae • Seattle

**C**
Carey-Cordoba, Priscilla • Bellingham
Carlson, Grace Edith • Issaquah
Cen, Mengjia • Seattle
Chan, Adrian Yick Man • Bellevue
Chaudhery, Kamilla Aziz • Seattle
Chen, Wan-Tzu • Coquitlam, B.C.
Cheney, Galen • Seattle
Chou, Elaine • San Jose, CA
Claridge, Reed Manugian • Bremerton
Cole, Carolyn Jeanette • Tacoma
Connolly, Alyssa Anne • Marysville
Craig, Adrienne • Fort Collins, CO

**D**
Davies, Robert • Washington, D.C.

**E**
Earnest, Caitlin • Longview
Fanelli, Shealina Ann • Scottsdale, AZ

**G**
Garcia, Rachel Aneesa • Mountain View, CA
Genschow, William Tyosh • Seattle
Ghazvini, Milad • Redmond
Gilleland, Amanda Kay • Prescott, AZ
Goodman, James D. • Spokane
Grewal, Chandnee Chelsea • Oklahoma City, OK
Gryphon, Catarina Ferreira • Seattle
Guillette, Lane • Phoenix, AZ

**H**
Hansen, Jennifer • Charlotte, MI
Harvey, Maria Denise • Redmond
Hawzini, Jonathan Patrick • Seattle
Herring, Taylor Steven • Arlington
Holder, Amanda Sarah • Indian Trail, NC
Hoy, Veasna A. • Renton
Hsieh, Jenna Debbie-Marie • Seattle
Hunsinger, Susan • Seattle

**J**
Jacob Lopes, Ana Gabriela • Renton
Jain, Ritu • Tacoma
James, Vanessa • Olympia
Jensen, William Potter • North Bend
John, Aaron A. • Seattle
Johnson, Laina Grace Durnal • Spokane
Jordan, Benjamin Maxwell • Spokane

**K**
Kageyama, Mariko • Seattle
Kaur, Satvir • Moses Lake
Kazempour, Sima M. • Kirkland
Kibret, Sisay B. • Burien

**L**
LeTexier, Kiyaa Marie Bishop • Spokane
Li, Juan • Chongqing, China
Liu, Lin • Issaquah
Liu, Kevin • Seattle
Loja Yi, Paola Alejandra • Lynnwood

**M**
Mahoney, Jonathan Daniel • Seattle
Maloney, Heather Lynn • Issaquah
Manigbas, Glorioso • Puyallup
Manzo, Yessenia Hernandez • Renton
Marth, Christopher James • Redmond
Mathis, Laura Esther • Dublin, CA
McCoy, Julie • Chehalis
McGowan, Ryan Patrick • Everett
Means, Katherine • Seattle
Minogue, Camille Diane • Seattle
Mitchell, Olivia M. • Seattle
Moore, Sean Ward • Seattle

**N**
Naish, Linda Elizabeth • Mountlake Terrace
Newsom, Rebecca Christina • Tacoma
Nguyen, Michael Anthoni Lee • Pasco
Nguyen, Vy H. • Port Townsend
Nyden, Katharine Allende • Seattle

**O**
Ochocka, Klaudia • Tumwater
Oh, Finis Hwang • Seattle
Ohlinger, Kristina • Bothell
Oldham, Eric Douglas • Portland, OR

**P**
Paker, Aaron D. • Federal Way
Palm, Danielle Janet • Liberty Lake
Park, Hye Young • Olympia
Pederson, Kayla Noel • Puyallup
Peebles, Foster L. • Atlanta, GA
Pepin, Marie-Andree • Bellevue
Petrosky, Melville Lee • Olympia
Pitts, Taylor Jeanne • Longview
Prather, Dean • Bellingham

**R**
Rabb, Fred McHenry • Seattle
Raczykowski, Alissa D. • Spokane
Reynolds, Jaclyn Marie • Everett
Rice, Kathleen Ashley • Bainbridge Island
Richardson, Genissa Marie • Bellingham
Rollo, Emmanuelle Lucia • Seattle

**S**
Saha, Rumpa • Bothell
Sale, Amelia Lynn Marie • Mount Vernon
Sanchez, Samantha Ann • Miramar, FL
Schacht, Eric Fillip • Tacoma
Schatlo, Dovran • Spokane
Serns, Richard Steven • Winlock
Sharp, Bradley Wayne • Spokane
Sindorf, Rachel Lois • Mercer Island
Sisti, Michelle Marie • Seattle
Soto, Destiny • Spokane
Southworth, McKenzie Judith • Ann Arbor, MI
Starosta, Rebecca Yona • Houston, TX
Stefanski, Rachelle Renee • Lynnwood
Stiefel, Miriam Rose • Seattle
Streuli, Christina Anne • Tumwater
Swan, Madeline Dover • Seattle
Swensen, Aaron B. • Spokane

**T**
Tan, Kristin • Seattle
Theret, Michelle Elizabeth • Seattle
Tierey, Adrienne Knecht • Mercer Island
Tindall, Tyre Lewis • Edmonds
Tocheny, Laura E. • Langley
Tsai, Beverly • Seattle

**V**
Vanderpol, David K. • Tukwila
Wagoner, Katrina Tiffany • Temecula, CA
Wang, Yanfei • Edmonds
Wheeler, Quinlan Jamere • Seattle
Williams, Clinton Todd • Wenatchee
Wilson, Heather Marie • Bonney Lake
Wolfe, Joseph • Seattle
Wormus, Freya Rachel • Seattle

**Y**
Yaday, Abigail Nicola • Seattle
Yealmai, Raofa • Hillsboro, OR

**Z**
Zahm, Shannon • Las Vegas, NV
Annually, the Washington State Bar Association publishes a report on Washington’s discipline system. This report summarizes the activities of the system’s constituents, including the Office of Disciplinary Counsel (ODC), the WSBA’s Office of General Counsel (OGC), the Disciplinary Board, hearing officers, and the Client Protection Fund. The report also provides statistical information about discipline for those licensed to practice law in Washington for the calendar year. These pages provide an informal overview of the 2019 Discipline System Annual Report.

STRUCTURE

How the Lawyer Discipline and Disability System Works

The Washington Supreme Court has exclusive responsibility and inherent authority over regulation of the practice of law in Washington. This authority includes administering the discipline and disability system. Many of the Court’s disciplinary functions are delegated by court rule to the WSBA, which acts under the supervision and authority of the Court. Under the Supreme Court’s mandate in General Rule 12.2, the WSBA is committed to administering an effective system of discipline in order to fulfill its obligations to protect the public and ensure the integrity of the profession. The prosecutorial and investigative functions of the discipline system are discharged by ODC, while the adjudicative functions are handled by the Disciplinary Board and hearing officers, which are administered by OGC.

WSBA Office of Disciplinary Counsel (ODC)
- Answers public inquiries and informally resolves disputes
- Receives, reviews, and may investigate grievances
- Recommends disciplinary action or dismissal
- Diverts grievances involving less serious misconduct
- Recommends disability proceedings
- Presents cases to discipline-system adjudicators

Hearing Officers (Administered by OGC)
- Conduct evidentiary hearings and other proceedings
- Conduct settlement conferences
- Approve stipulations to admonition and reprimand

Disciplinary Board (Administered by OGC)
- Reviews recommendations for proceedings and disputed dismissals
- Serves as intermediate appellate body
- Reviews hearing records and stipulations

Washington Supreme Court
- Has exclusive governmental responsibility for the system
- Conducts final appellate review
- Orders sanctions, interim suspensions, and reciprocal discipline

MORE ONLINE

ODC's intake staff receives all phone inquiries and written grievances and conducts initial review of grievances. After initial review, some grievances are dismissed, and others are referred for further investigation by ODC investigation/prosecution staff. Grievances that are not dismissed or diverted after investigation may be referred for disciplinary action. When warranted and authorized by a review committee of the Disciplinary Board, these matters are prosecuted by disciplinary counsel with the assistance of professional investigators and a support staff of paralegals and administrative assistants. In 2019, ODC received more than 1,680 grievances.

A CLOSER LOOK

Number and Nature of Grievances

In 2019, the most common grievance allegations against Washington lawyers related to unsatisfactory performance and interference with the administration of justice. Of grievances arose from criminal law, family law, and tort matters.

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Grievance Filings in Detail

In 2019, the majority of grievances against Washington lawyers originated from current and former clients and opposing clients. Discipline files are opened in the name of the Office of Disciplinary Counsel when potential ethical misconduct comes to the attention of disciplinary counsel by means other than the submission of a grievance (e.g. news articles, notices of criminal conviction, trust account overdrafts, etc.) or through confidential sources. “Other” may include grievances filed by family members, neighbors, non-client members of the public, or other individuals.
Disciplinary "actions," which include both disciplinary sanctions and admonitions, result in a permanent public disciplinary record. In order of increasing severity, disciplinary actions are admonitions, reprimands, suspensions, and disbarments. If a lawyer should be cautioned, review committees of the Disciplinary Board have authority to issue an advisory letter, which is neither a sanction nor a disciplinary action and is not public information. For less serious misconduct, ODC may divert a grievance from discipline if a lawyer agrees to a diversion contract, which if successfully completed results in dismissal of the grievance. In 2019, 22 matters were referred to diversion.

In 2019, 56 lawyers were disciplined. The chart below tracks the number of disciplinary actions imposed in 2019.

### A CLOSER LOOK

#### Disciplinary Actions Taken

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In 2019, 56 lawyers were disciplined. The chart below tracks the number of disciplinary actions imposed in 2019.

<table>
<thead>
<tr>
<th>DISCIPLINARY ACTIONS</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Admonitions</td>
<td>16</td>
</tr>
<tr>
<td>Reprimands</td>
<td>20</td>
</tr>
<tr>
<td>Suspensions</td>
<td>5</td>
</tr>
<tr>
<td>Resignation in Lieu of Discipline</td>
<td>12</td>
</tr>
<tr>
<td>Disbarments</td>
<td>3</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>56</td>
</tr>
</tbody>
</table>

### OTHER COMPONENTS

#### Other Licensed Professionals and the Discipline System

Limited Practice Officers (LPOs) and Limited License Legal Technicians (LLLTs) are also authorized to practice law in Washington, through regulatory systems administered by the WSBA. A Washington Supreme Court-mandated regulatory board oversees each limited license. Each licensee is subject to license-specific rules of professional conduct and disciplinary procedural rules. The WSBA administers a discipline system for each of these licenses. At the end of 2019, there were 838 LPOs and 38 LLLTs actively licensed to practice. In 2019, the WSBA received one disciplinary grievance against an LPO and no disciplinary grievances against LLLTs.

#### Lawyer Disability Matters

Special procedures apply when there is reasonable cause to believe that a lawyer is incapable of properly defending a disciplinary proceeding, or incapable of practicing law, because of mental or physical incapacity. Such matters are handled under a distinct set of procedural rules. In some cases, the lawyer must have counsel appointed at the WSBA’s expense. In disability cases, a determination that the lawyer does not have the capacity to practice law results in a transfer to disability inactive status. In 2019, five lawyers were transferred to disability inactive status based on an incapacity to practice law.

### MORE RESOURCES ONLINE

For more information on the discipline system and to read the full 2019 Discipline System Annual Report, go to [www.wsba.org](http://www.wsba.org).
more than ever, the Washington State Bar Foundation needs your support.

The Washington State Bar Association public service programs that we help fund address issues that are seeing new urgency during the COVID crisis; they ensure people can access legal assistance with housing, unemployment benefits, family law issues and more.”

Kristina Larry, President
Washington State Bar Foundation

Support these important programs today!
wsba.org/foundation
 Notices

D I S C I P L I N E & O T H E R R E G U L A T O R Y N O T I C E S

Disbarred

John Rolflng Muenster (WSBA No. 6237, admitted 1975) of Bainbridge Island, was disbarred, effective 2/27/2020, by order of the Washington Supreme Court. Muenster’s conduct violated the following Rules of Professional Conduct: 1.15A (Safeguarding Property), 1.15B (Required Trust Account Records), 1.4 (Communication), 1.5 (Fees), 1.15A (Safeguarding Property), 1.15B (Required Trust Account Records)

In relation to his solo practice primarily in the area of civil rights law, the hearing officer recommended, and the Supreme Court ordered, that Muenster be disbarred following a hearing. Muenster was found to have violated the Rules of Professional Conduct by: 1) failing to maintain a complete and accurate trust account check register; 2) failing to maintain complete and accurate client ledgers; 3) failing to reconcile his trust account on a monthly basis; 4) failing to maintain copies of his trust account reconciliations; 5) depositing $30,000 in fees that he had fully earned into his trust account rather than his general account; 6) failing to give reasonable notice to his clients of his intent to withdraw earned fees from his trust account, through a billing statement or other document, before disbursing such funds; 7) using and converting client A’s fee payments that exceeded the $45,000 fee called for in the fee agreement without entitlement to the funds; 8) failing to deposit all funds client A advanced for fees and for costs and expenses into his trust account, and by failing to hold such funds in trust until he was entitled to withdraw them; 9) using for his own purposes and converting $20,669.86 of the funds client A had advanced for costs and expenses; 10) withdrawing client A’s funds from trust without first advising him in writing of an intent to do so; 11) failing to promptly provide a written accounting to client A upon his request, and failing to provide him an accounting at least annually; and 12) failing to maintain a complete and accurate client ledger, on a contemporaneous basis, for funds received and disbursed in connection with his representation of client A.

Natalea Skvir, Debra Slater, and Scott G. Busby acted as disciplinary counsel. John Rolflng Muenster represented himself. Terri R. Luken was the hearing officer. Keith P. Scully was the settlement hearing officer.

The online version of Washington State Bar News contains links to the following documents: Hearing Officer’s Decision; Disciplinary Board Order Declining Sua Sponte Review; and Washington Supreme Court Order.

Resigned in Lieu of Discipline

Jerry J. Davis (WSBA No. 33294, admitted 2002) of Spokane, resigned in lieu of discipline, effective 2/25/2020. Davis agrees that he is aware of the alleged misconduct in disciplinary counsel’s Statement of Alleged Misconduct, related to his representation of homeowners in foreclosure matters, and includes: 1) filing and prosecuting frivolous claims; 2) failure to include the required citations to the record, thus increasing the burden of time, effort, expense, and other resources the Court of Appeals would have to invest to review and evaluate the merits of his client’s appeal; 3) asserting claims and defenses in lawsuits that were frivolous and by filing a bankruptcy without having a basis in fact or law for doing so; 4) unreasonably delaying and/or prolonging cases; 5) filing a lawsuit based on assertions that were frivolous in order to enjoin or restrain unlawful detainer actions, which had no substantial purpose other than to delay a litigant, and that was prejudicial to the administration against the allegations, he wishes to permanently resign from membership in the Association. The Statement of Alleged Misconduct reflects the following alleged violations of Rule of Professional Conduct: 8.4 (Misconduct).

Davis’ alleged misconduct, as stated in disciplinary counsel’s Statement of Alleged Misconduct, related to his pleading guilty to criminal conduct in Benton County Superior Court. Disciplinary Counsel’s Statement of Alleged Misconduct includes: 1) committing the crime of possession of depictions of a minor engaged in sexually explicit conduct; and 2) committing the crime of first degree child molestation.

Joanne S. Abelson acted as disciplinary counsel. Jerry J. Davis represented himself. The online version of Washington State Bar News contains a link to the following document: Resignation Form of Jerry J. Davis (ELC 9.3(b)).

J. J. Sandlin (WSBA No.7392, admitted 1977) of Zillah, resigned in lieu of discipline, effective 3/24/2020. Sandlin agrees that he is aware of the alleged misconduct in disciplinary counsel’s Statement of Alleged Misconduct and rather than defend against the allegations, he wishes to permanently resign from membership in the Association. The Statement of Alleged Misconduct reflects the following violations of the Rules of Professional Conduct: 1.4 (Communication), 1.6 (Confidentiality of Information), 1.15A (Safeguarding Property), 3.1 (Meritorious Claims and Contentions), 3.2 (Expediting Litigation), 4.4 (Respect for Rights of Third Person), 8.4 (Misconduct).

Sandlin’s alleged misconduct, as stated in disciplinary counsel’s Statement of Alleged Misconduct, related to his representation of homeowners in foreclosure matters, and includes: 1) filing and prosecuting frivolous claims; 2) failure to include the required citations to the record, thus increasing the burden of time, effort, expense, and other resources the Court of Appeals would have to invest to review and evaluate the merits of his client’s appeal; 3) asserting claims and defenses in lawsuits that were frivolous and by filing a bankruptcy without having a basis in fact or law for doing so; 4) unreasonably delaying and/or prolonging cases; 5) filing a lawsuit based on assertions that were frivolous in order to enjoin or restrain unlawful detainer actions, which had no substantial purpose other than to delay a litigant, and that was prejudicial to the administration.

THESE NOTICES OF THE IMPOSITION OF DISCIPLINARY SANCTIONS AND ACTIONS

are published pursuant to Rule 3.5(c) of the Washington Supreme Court Rules for Enforcement of Lawyer Conduct. Active links to directory listings, RPC definitions, and documents related to the disciplinary matter can be found by viewing the online version of the Washington State Bar News at www.wsba.org/news-events/wabarnews or by looking up the respondent in the legal directory on the WSBA website (www.wsba.org) and then scrolling down to “Discipline History.”

As some WSBA members share the same or similar names, please read all disciplinary notices carefully for names, cities, and bar numbers.
of justice; 6) failing to convey to clients information about the status of their case and to explain adequately the strength of their claims and options; 7) intentionally disclosing client’s confidential bank account information to a third party without the client’s consent; 8) filing and prosecuting a lawsuit under circumstances where the allegations had no basis in fact or law; and 9) placing advance payment in his general account rather than his trust account, and by taking a deposit for his own use, rather than withdrawing earned fees only after giving reasonable notice to the client of intent to do so.

M Craig Bray acted as disciplinary counsel. Leland G. Ripley represented respondent. The online version of Washington State Bar News contains a link to the following document: Resignation Form of J.J. Sandlin (ELC 9.3(b)).

Christopher John Wright (WSBA No. 22903, admitted 1993) of Spokane, resigned in lieu of discipline, effective 2/11/2020. Wright agrees that he is aware of the alleged misconduct in disciplinary counsel’s Statement of Alleged Misconduct and rather than defend against the allegations, he wishes to permanently resign from membership in the Association. The Statement of Alleged Misconduct reflects the following violations of the Rules of Professional Conduct: 1.3 (Diligence), 1.4 (Communication), 3.2 (Expediting Litigation), 8.4 (Misconduct).

Wright’s alleged misconduct, as stated in disciplinary counsel’s Statement of Alleged Misconduct, related to his representation of multiple clients in several litigation matters. His alleged misconduct includes: 1) failing to reasonably communicate with litigation clients, including failure to respond to or act on multiple email and voicemail messages, failure to inform clients of discovery requests, and failure to inform clients about motions and entry of orders on summary judgment; and 2) failing to diligently represent clients, including failure to comply with client’s directions and requests, failure to respond to or appear for hearings, failure to respond to discovery requests, failure to draft and file summary judgment motions, and failure to notify clients of and respond to summary judgment motions.

Jonathan Burke acted as disciplinary counsel. Christopher John Wright represented himself. The online version of Washington State Bar News contains a link to the following document: Resignation Form of Christopher John Wright (ELC 9.3(b)).

**Suspended**

Monty James Booth (WSBA No. 19785, admitted 1990) of Seattle, was suspended for four months, effective 4/01/2020, by order of the Washington Supreme Court. Booth’s conduct violated the following Rules of Professional Conduct: 1.7 (Conflict of Interest: Current Clients).

In relation to his representation of a client in a family law matter, Booth stipulated to a four-month suspension for sharing multiple inappropriate, sexually explicit comments and text messages with his client. Although Booth never engaged in any inappropriate physical contact with his client, Booth’s conduct created a significant risk that his representation of his client would be materially limited by his personal interest.

Joanne S. Abelson acted as disciplinary counsel. Kevin M. Bank represented Respondent. Rebecca L. Stewart was the hearing officer. Nadine D. Scott was the settlement hearing officer. The online version of Washington State Bar News contains links to the following documents: Disciplinary Board Order Approving Stipulation; Stipulation to Four Month Suspension; and Washington Supreme Court Order.

Mark John Holady (WSBA No. 19662, admitted 1990) of Beaverton, OR, was suspended for 60 days, effective 1/07/2020, by order of the Washington Supreme Court imposing reciprocal discipline in accordance with an order of the Supreme Court of the State of Oregon. Joanne S. Abelson acted as disciplinary counsel. Mark John Holady represented himself. The online version of Washington State Bar News contains a link to the following document: The Washington Supreme Court Order.

Chris Jackman (WSBA No. 46182, admitted 2013) of Seattle, was suspended for seven months, effective 3/02/2020, by order of the Washington Supreme Court. Jackman’s conduct violated the following Rules of Professional Conduct: 1.4 (Communication), 4.1 (Truthfulness in Statements to Others), 8.4 (Misconduct).

In relation to his representation of a client in a personal injury claim, Jackman stipulated to a seven-month suspension for the following: 1) making false statements to his client regarding communications from client’s insurer and insurer’s counsel regarding the terms of settlement, and by transmitting an altered release document to the client; and 2) making false statements to the client’s insurer’s counsel regarding communications from the client and the terms of settlement, and by transmitting to insurer’s counsel an original first page of the release document, when the client had signed a release containing an altered first page. Jackman did not act with intent to injure or defraud his client or client’s insurer, and did not act for his own financial benefit. As a result, the Office of Disciplinary Counsel could not prove by a clear preponderance of the evidence that Respondent committed the crime of forgery.

M Craig Bray acted as disciplinary counsel. Leland G. Ripley represented Jackman. The online version of Washington State Bar News contains links to the following documents: Disciplinary Board Order Approving Stipulation; Stipulation to Suspension; and Washington Supreme Court Order.

Harold M. Turner (WSBA No. 33341, admitted 2003) of Federal Way, was suspended for 12 months, effective 4/01/2020, by order of the Washington Supreme Court. Turner’s conduct violated the following Rules of Professional Conduct: 1.3 (Diligence), 1.4 (Communication), 1.5 (Fees), 1.6 (Confidentiality), 3.2 (Expediting Litigation), and 8.4 (Misconduct).

In relation to his representation of two clients in separate matters involving civil litigation and family law, Turner stipulated to a 12-month suspension for the following: 1) failing to diligently represent his client in a civil lawsuit; 2) failing to comply with his clients’ reasonable requests for information on the status of matters, and failing to explain legal matters to the extent reasonably necessary to permit the client to make informed decisions about the representation; 3) failing to complete work that a client had hired him to do; 4) failing to refund unearned fees to clients; 5) failing to respond to the Office of Disciplinary Counsel’s (ODC) requests for response to grievances and by not timely providing documents subpoenaed by ODC.

**MORE ONLINE**

Access further details of the notices by clicking the links in the online version: [www.wsba.org/news-events/wabarnews](http://www.wsba.org/news-events/wabarnews).
Marcia Marie Meade (WSBA No. 11122, admitted 1980) of Spokane, is suspended from the practice of law in the state of Washington pending the outcome of disciplinary proceedings, effective 2/13/2020, by order of the Washington Supreme Court. This is not a disciplinary sanction.

Gerri M. Newell (WSBA No. 29316, admitted 1999) of Spokane Valley, is suspended from the practice of law in the state of Washington pending the outcome of disciplinary proceedings, effective 2/13/2020, by order of the Washington Supreme Court. This is not a disciplinary sanction.

Transfer to Disability Inactive Status

Rob Renee Cottle (WSBA No. 36841, admitted 2005) of Spokane, was by stipulation transferred to disability inactive status, effective 3/11/2020. This is not a disciplinary action.

John Preston Dukes (WSBA No. 30968, admitted 2001) of Washington, UT, was by stipulation transferred to disability inactive status, effective 3/11/2020. This is not a disciplinary action.

Amos R. Hunter (WSBA No. 20846, admitted 1991) of Spokane, was by stipulation transferred to disability inactive status, effective 2/18/2020. This is not a disciplinary action.
A Summary of the Board of Governors Meeting

The WSBA Board of Governors determines the Bar’s general policies and approves its annual budget.

Note: Because of public directives to curb the spread of the coronavirus, the April 2020 meeting was held in a virtual-only format. For more coronavirus-specific updates, see page 10.

TOP 6 TAKEAWAYS

1. How to proceed with the July bar exams? In the midst of uncertainty about the length and scope of public-health directives to keep people safe during the COVID-19 crisis, members of the Washington Supreme Court, WSBA Board of Governors, and graduating law-school students held a lengthy discussion about how to plan for the July bar exams and possible alternatives. The Board of Governors declined to support a request made by the students for diploma privilege (whereby law school graduates can become bar members without sitting for the bar exam) if the July exams are canceled. Ultimately, everyone agreed this crisis situation calls for flexibility to mitigate any potential hardships to graduating law-school students, their employers, and the communities they serve.

Meeting follow-up: Following the Board meeting, the Washington Supreme Court met and made several decisions regarding the bar exam. The 2020 Uniform Bar Examination will be administered in Washington on July 28 and 29 and September 9 and 10 for applicants who met the deadlines to take the July bar exam in Washington (no new applications are being accept-
ed for either exam date). If you have applied to take the July exam, you do not need to submit a new application for the September exam. The exams will be administered on both dates in the Seattle/Tacoma/Everett area and the Spokane area, at specific testing sites that will be identified later, and all administrations will comply with then-existing public health guidelines. Please see the May 13 letter from the Washington Supreme Court at www.wsba.org/COVID-19 for more information. The WSBA will be working hard to provide a safe and appropriate testing setting for every applicant.

2. Supporting members and the public during the COVID-19 crisis. See page 10 to learn the many ways the WSBA is responding to the pandemic.

Good financial news: the WSBA’s budget reforecast—a process to update actual revenues and expenditures in light of original budgetary assumptions and in light of ongoing efficiency measures—calculated a net savings of about $800,000 compared to what was budgeted this fiscal year. (See the Treasurer’s Note on page 16 for more information.)

4. The election results are in! Please congratulate the winners of this year’s four district races for the WSBA Board of Governors: Brent Williams-Ruth (District 8), Brett Purtzer (District 6), Lauren Boyd (District 3), and Matthew Dresden (District 7-North). The WSBA Board of Governors will elect an incoming president-elect and at-large governor at its June meeting.

5. Ethics recommendations. The Board of Governors approved two recommendations from the Committee on Professional Ethics: to support the Pro Bono Council’s request to withdraw a proposal regarding Comment [8] to RPC 6.5 (nonprofit and court-annexed limited legal service programs); and to submit a comment asking the court to not adopt the revised proposed amendment to Rule 7.3 (solicitation of clients).

6. The WSBA’s role and responsibilities in administering court-appointed boards. The Board of Governors approved a charter roster for a new task force that will work with the Washington Supreme Court to better understand the WSBA Board of Governors’ role and responsibilities—substantive, fiscal, and administrative—in administering court-appointed boards. These boards include the Access to Justice Board, Disciplinary Board, Limited License Legal Technician Board, Limited Practice Board, Mandatory Continuing Legal Education Board, and Practice of Law Board.

Release of WSBA Hostile Work Environment Investigation Report and ABA Journal Article: The Board of Governors in December made some important changes to its anti-harassment policy upon the recommendation of former Washington Supreme Court Chief Justice Mary Fairhurst, who commissioned an investigation into complaints made by several WSBA employees. In early May, the Administrative Office of the Courts released the report from that investigation in response to a public records request. The ABA Journal published an article about the investigation on May 21. For members who would like to learn more or have questions, a recap of the information about the process can be found here: www.wsba.org/about-wsba/who-we-are/board-of-governors/letter-from-the-president.

MORE ONLINE

The agenda, materials, and video recording from this Board of Governors meeting, as well as past meetings, are online at www.wsba.org/about-wsba/who-we-are/board-of-governors.
THE BAR BUZZ

**Free Ethics CLE**

Join us for a free live ethics CLE webinar, Ethics Booster, at 1 p.m. on July 21. Faculty will focus on mental health, addiction and stress, and digital security.

To register, visit https://bit.ly/ethicsbooster

Sandra Schilling: sandras@wsba.org, 206-239-2118, 800-945-9722, ext. 2118; or Darlene Neumann: darlenen@wsba.org, 206-733-5923, 800-945-9722, ext. 5923.

**Become a Young Lawyer Liaison to a Section**

The WSBA Young Lawyer Liaison to Sections Program creates leadership opportunities for new and young lawyers to serve on a section executive committee. This year, 15 WSBA Sections are looking for their next Young Lawyer Liaison to bring their perspective to develop educational programming, events, and other activities tailored to new and young lawyers. Application deadline is June 22. For more information and to apply, visit www.wsba.org/for-legal-professionals/new-members/public-service-and-leadership-award.

**Lending Library**

Due to the coronavirus-related closure of the WSBA office, the WSBA Lending Library is closed (as of press time), but you can continue placing holds online. Visit www.wsba.org/library for more information.

**Legal Research Tools**

The WSBA offers free resources and member benefits to help you with your research. Visit www.wsba.org/legalresearch to learn more and to access Casemaker and Fastcase for free.

**WSBA Connects**

WSBA Connects provides all WSBA members with free counseling in your community on topics including work stress, career challenges, addiction, and anxiety. Visit www.wsba.org/for-legal-professionals/member-support/wellness/wsba-connects or call 800-765-0770.

**The ‘Unbar’ Alcoholics Anonymous Group**

The Unbar is an “open” AA group for attorneys that has been meeting weekly for over 25 years. Due to coronavirus, the group is holding virtual meetings via Zoom; contact them at unbarseattle@gmail.com. You can also find more details at www.wsba.org/for-legal-professionals/member-support/wellness/ad-diction-resources.
Career Consultation
Get help with your résumé, networking tips, and more—www.wsba.org/for-legal-professionals/member-support/wellness/consultation—or email wellness@wsba.org.

Virtual Job Group
Starting July 23, this group will offer skills and support to attorneys looking for jobs both inside and outside the legal profession. This will be offered via Zoom and, on account of the coronavirus, will be offered for free. The group will meet from 9:30-11 a.m. on Thursdays and will run for six weeks. Contact wellness@wsba.org if you are interested.

COMMUNITY NETWORKING

New Lawyers List Serve
This list serve is a discussion platform for new lawyers of the WSBA. To join, email newmembers@wsba.org.

Join the WSBA CLE Faculty Database
Current and interested CLE faculty are encouraged to register in the database. Log in to your myWSBA account, go to “My WSBA Profile” and select “CLE Faculty Database Registration.”

QUICK REFERENCE

June 2020 Usury
The usury rate for June 2020 is 12.00%. The auction yield of the May 4, 2020, auction of the six-month Treasury Bill was 0.132%. The interest rate required by RCW 4.56.110(3)(a) and 4.56.115 for June 2020 is 2.132%. The interest rate required by RCW 4.56.110(3)(b) and 4.56.111 for June 2020 is 5.25%.

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Email wabarnews@wsba.org if you have an item you would like to place in Need to Know.

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**FREEDOM OF SPEECH**

(See, e.g.):

Yates v. Fithian, 2010 WL 3788272 (W.D. Wash. 2010)

City of Seattle v. Menotti, 409 F.3d 1113 (9th Cir. 2005)


Fordyce v. Seattle, 55 F.3d 436 (9th Cir. 1995)


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Classifieds

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King County practice specializing in marijuana law with a stellar reputation within the community. In 2019, the practice brought in over $940,000 in gross receipts. The practice has substantial advance fees with cases documented, and the practice uses Google Suite allowing for easy remote access. If you are interested in exploring this opportunity, would like the freedom to be your own boss and/or increase your current book of business substantially, then this is perfect for you. Email info@privatepracticetransitions.com or call 253-509-9224.

Profitable Pierce County law practice that has been a staple in Pierce County for over 20 years. In 2019, the practice brought in over $700,000 in gross receipts! The practice/case breakdown is 35% real estate; 30% residential, commercial, corporate, employment, and general litigation; 20% personal injury including wrongful death; 10% business formation; and 5% other. The practice is located in a 2,500 SF, fully furnished office that is also available for sale, if desired. If you are interested in exploring this opportunity, would like the freedom to be your own boss, and/or increase your current book of business substantially, then this is perfect for you. Email info@privatepracticetransitions.com or call 253-509-9224.

Profitable Northwest Oregon law practice located in Marion County. The practice was established in 1991 and has a practice/case breakdown by revenue of 34% probate and trust administration, 30% estate planning, 20% real estate transactions, and 10% business law and contracts. The practice is completely turnkey and has a strong client base. If you are interested in exploring this opportunity, would like the freedom to be your own boss and build upon a thriving practice, then this practice is perfect for you! Email info@privatepracticetransitions.com or call 253-509-9224.

Thriving Grants Pass, Oregon family law practice with cases in Josephine and Jackson Counties. The owner has built a firm with a stellar reputation and desires to sell the business as a turnkey operation in order to retire. The average gross revenue for the past two years is over $530,000, and the 2019 Seller’s Discretionary Earnings (SDE) was over $350,000! The practice/case breakdown is 100% family law. The practice was established in 1975 and is located in a desirable, fully furnished office. The practice employs three staff, including the owner. Email info@privatepracticetransitions.com or call 253-509-9224.

Central Washington elder law & estate planning practice with a practice/case breakdown by revenue of approximately 34% probate, 30% estate planning, 19% guardianship, 13% Medicaid planning, and 4% vulnerable adult. The practice has average gross revenue of over $266,000 the last three years (2017-2019), with 2019 gross revenue over $300,000. The owner of the practice is open to selling the office building to the person who purchases the practice, if desired. Contact info@privatepracticetransitions.com or call 253-509-9224.

Real estate legal practice with two locations is headquartered in the fastest growing metro area in the fastest growing state (Idaho). This real property law firm has two locations (Spokane and Coeur d’Alene), two attorneys, three support staff, and average gross revenue over $625,000 the last three years (2017-2019). For more information on this turnkey practice, contact info@privatepracticetransitions.com or call 253-509-9224.

Extremely profitable Seattle immigration law practice that has average gross revenue of over $1,600,000 the last three years (2017-2019). Even more, in 2019 the gross revenue was over $1,800,000! This successful firm has substantial advance fees in trust. The practice employs two attorneys in addition to the partners, seven paralegals, three full-time administrative staff, and one part-time support staff. If you are interested in exploring this opportunity, would like the freedom to be your own boss and/or increase your current book of business substantially, then this is perfect for you. Email info@privatepracticetransitions.com or call 253-509-9224.

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Established Tumwater family law & estate planning practice that was established in 1998 and has approximately 150 active clients as of December 2019. The average gross revenue the last three years was over $1,017,000. The practice/case breakdown by revenue is approximately 70% family law, 15% estate planning, 5% real estate, 5% business, and 5% other. The practice is located in a 1,022 SF building that is also available for sale, if desired. With 2019 gross revenue right around $286,000 and 166 active clients, this practice is poised for growth under new ownership. Contact info@privatepracticetransitions.com or call 253-509-9224.

Established Pierce County insurance defense practice that was established in 1998 and has approximately 150 active clients as of December 2019. The average gross revenue the last three years was over $1,017,000. The practice/case breakdown by revenue is approximately 48% personal injury, 43% family law, and 9% other (estate planning, probate, general litigation, etc.). The practice employs six people: one owner/attorney, one associate attorney, three legal assistants, and one office administrator. Contact info@privatepracticetransitions.com or call 253-509-9224.

Established Seattle estate planning practice that has a practice/case breakdown by revenue of approximately 45% estate & trust administration, 40% estate & probate, 15% other (collateral matters, estate tax preparation, real property issues, etc.). The practice is located in the heart of downtown Seattle, has average gross revenue of over $286,000 the last three years (2016-2018), and is poised for growth under new ownership. Contact info@privatepracticetransitions.com or call 253-509-9224.

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Thriving Stevens County personal injury & family law practice that was established in 2009, has a strong client base, and brought in over $855,000 in gross revenue in 2018. The practice/case breakdown by revenue is approximately 48% personal injury, 43% family law, and 9% other (estate planning, probate, general litigation, etc.). The practice employs six people: one owner/attorney, one associate attorney, three legal assistants, and one office administrator. Contact info@privatepracticetransitions.com or call 253-509-9224.

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James F. Johnson

BAR NUMBER: 45750

I am an attorney at Emery Reddy. My practice is focused on workers’ compensation and personal injury. I am also the 2020-21 president of the Loren Miller Bar Association. I can be reached at James@emeryreddy.com.

I became a lawyer because I wanted to understand the law. Imagine my delight when I learned on day one of law school that the common answer to most legal questions was “it depends.”

The best advice I have for new lawyers is remember who you were before becoming a lawyer and stay true to yourself.

During my free time, I try to hang out with my friends and have fun.

The most memorable trip I ever took was to Bohol, Philippines.

If I took one day off in the middle of the week, I would work out then have a nice steam and massage.

In my life, I work on improving myself and things that I can control.

This changed my life: having kids. It changed things in so many ways, but I love it.

I grew up in many places. Born in Anchorage, Alaska, raised in Charleston, South Carolina, and moved to the Seattle area in the fifth grade.

My best parenting advice is zippers over buttons/snaps when it comes to clothing on babies.

Friends would describe me as honest, loyal, and funny (I hope).

This makes me roll my eyes: keyboard gangsters—someone who acts tough in an email or letter but is extra cordial with you in person.

This makes me smile: people who can make, and take, a joke.

My best habit is staying positive and trying to share that energy with all I encounter.

I am thankful that things have turned out how they have thus far. If you would have shown 20-year-old me a preview of what was to come, there is NO WAY I would have believed you.

My motto is shoot for the moon, and if you miss you’ll still be among the stars.

My favorite restaurant is not a restaurant at all. I love street food and I’m torn between Thailand and Mexico for my favorite place to indulge.

If I could pick a superpower, it would be teleportation. I like to travel and see new things.

If $100,000 fell into my lap, I would knock down my student debt!

If I could get free tickets to any event, I would go to the summer Olympics.

My all-time favorite movie is Inception.

I would like to learn another language.
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