Susan J. Shulenberger, Of Counsel

Like all McKinley Irvin family law attorneys, Susan Shulenberger is a leader in her profession and her community.

Susan has been practicing law in Seattle for more than 28 years. With a potent combination of both family and commercial law experience, Susan excels in cases with complex valuation and distribution issues—she has successfully represented clients with more than $1 billion in assets in their family law matters.

Susan is currently the chair of the WSBA Lawyer’s Fund for Client Protection Board. She has served in several meaningful capacities with the WSBA throughout her career, focusing on issues of ethics in the practice of law.

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**Block billing: Details**

As a lawyer who began practicing 15 years ago in insurance defense before switching to primarily plaintiffs’ work, I found Michael Caryl’s article (“Reconsidering Block-Billing Practices,” January 2011 Bar News) both interesting and misleading. Insurance companies are notoriously relentless clients in demanding detailed, itemized bills, and yet the irony is that these insurance company clients may be getting more (bills) than they wish for in the end. Compare the results for billing on a matter for three tasks: a five-minute phone call, followed by a five-minute e-mail exchange, and then a five-minute letter. Itemized billing results in a bill of .3 for these three tasks, while block billing results in a bill of .25. Which bill would your client prefer?

When every task is given a six-minute minimum and each task is itemized, the client loses. By contrast, tracking your work on a matter through a given day and then billing in a block entry invariably saves the clients money in the long run.

Although I agree that block billing on a case can pose a risk when counsel later asks a court for a fee award, this risk can be avoided or at least drastically reduced by 1) always preparing detailed (though not necessarily itemized) block bills, and 2) segregating billing entries for work on those claims in a case on which fees might be recovered from work performed on those claims on which fees are not recoverable.

The advantage to our clients of block billing far outweighs any downside. Consequently, we should avoid using the very real problem of poorly detailed billing entries to condemn block billing in its entirety.

Dave von Beck, Seattle

**Author Michael Caryl responds:** In support of his belief that my earlier article was “misleading,” Mr. von Beck poses the hypothetical that where the lawyer has...
Once again we turned on the television and heard tragic news, this time about a deadly shooting in Tucson, Arizona, outside a Safeway store. It appears that Arizona Congresswoman Gabrielle Giffords was the primary target, but in the melee that followed the initial shot, a federal judge and five others were killed, including a nine-year-old child, and numerous others were injured. Congresswoman Giffords miraculously survived a shot to her head at point-blank range, although it will be quite some time before the full extent of her recovery is known.

Americans watching and reading about this senseless tragedy reacted with horror, grief, anger, sadness, concern, and the emotions go on. We were in shock at the sight of such a violent attack, particularly as it was aimed at a sitting member of Congress and prematurely ended the life of a young, innocent child. Politicians denounced the shooting and after a short period of reacting emotionally, we all turned to blame. Who was to blame for this act of violence? Was this an act of terrorism? Was it a conspiracy? Is there more violence to come? Since Gabby Giffords is a Democrat and had taken a lot of heat for supporting President Obama’s healthcare legislation, people questioned whether politics played a role in this tragedy. Even former Governor Sarah Palin was blamed due to campaign literature attributed to her in which the crosshairs of a rifle were laid over Congresswoman Giffords’ congressional district with a message that Giffords’ district should be “targeted.”

As the investigation continued and days passed, we learned that the shooter, Jared Loughner, was a person losing his sanity. It now appears that these tragic shootings were the actions of one disturbed individual. With this conclusion reached, the families of the victims and Americans in general were still faced with grief and sadness, but we could at least proceed to the healing stage. We turned our attention to praying for the recovery of those injured, mourning those who lost their lives, and praising those who acted as heroes. We breathed a deep sigh of relief and attributed this craziness to an isolated, unpredictable incident; a tragic case of being in the wrong place at the wrong time. We were now satisfied that it was highly unlikely that this horror would ever happen to one of us or one of our loved ones — and we moved on.

But does it end here? Can we conclude that these shootings in Arizona were truly senseless and unpredictable, and were solely attributed to a fringe element of our society over whom we have no control or accountability? Were we totally innocent in setting the stage for the chain of events that led to the tragedy outside the Safeway store in Tucson? I recognize that logic and accountability cannot necessarily be applied to someone who is mentally unstable. But even these people read the papers, watch television, and listen to the news. They are exposed to the same rhetoric and hatred that the rest of us hear every day. The problem is that they are less able to separate reality from fantasy. They are less able to control their emotions and their actions. However, this doesn’t mean that we cannot reasonably anticipate these lunatic reactions. Indeed, if we create an atmosphere of distrust and hatred, we are fostering an environment in which the
Unfortunately, the state of Arizona has become a poster child the last couple years for the hatred and bigotry that is becoming associated with politics in this country. The cooperative spirit of bipartisan politics is virtually lost.

Jared Loughners of our world are nurtured and can feel justified in wanting to “cure” the world by going on killing sprees and wiping out the people that they — and apparently a part of our society — blame for all our problems.

Unfortunately, the state of Arizona has become a poster child the last couple years for the hatred and bigotry that is becoming associated with politics in this country. The cooperative spirit of bipartisan politics is virtually lost. Leaders from all political sides spew forth vitriol that sends out the message that if you aren’t with us, you’re against us. If you don’t agree with us on this particular issue (i.e., healthcare reform), then you are the enemy and you are going to be responsible for the downfall of America. You are going to put people out of work, cause people to go homeless, and starve. We overlook our Constitution and the constitutional right to freedom of speech. We demonize our opponents for merely exercising those constitutional rights. We blame them for everything that is not working in our lives and we talk about violence and hatred. Of course, for most of us, this is only talk. We are venting. But aren’t we accountable for putting the sentiments out there, into the added minds of the people who aren’t able to distinguish speech from actions and believe that the people who think differently from them are evil and need to be extinguished?

For years, I have been complaining to anyone who will listen about the evils of negative political attack ads. They started to become prevalent in the late 1980s and have now become a mainstay of our fall election campaigns. It is not enough to run a campaign based on the merits of a particular candidate or a particular initiative; it is easier to prevail by personally attacking your opponent — and not just attacking, but destroying. It appears to be a fair game to take a small truth and spin it until it is entirely out of context and then use that spin to paint your opponent as someone who hates America and is out to destroy our way of life. Our goal is not just to persuade people to vote for us, but to get them so emotionally charged that they become zealots and sell our spin to anyone who will listen. This is all done by frightening people. Give them just enough information so that they believe they are well informed and then scare them into action. The fact that we hide the truth is irrelevant. The only thing that matters is that we win. Is this really the way we believe our children should be raised — to believe that the ends justify the means, at all costs? Is it any wonder that we have more and more violence in our society, particularly related to political matters? Can we really disclaim any responsibility for those predictable few who are out of touch with reality and get carried away and decide to right the world by going on killing sprees?

Members of Congress reported 42 cases of threats of violence in the first three months of 2010. This was nearly three times the 15 cases reported during the first quarter of 2009. And most of these threats related to the healthcare legislation promoted by President Obama. What is this all about? In my opinion, it is a direct response to the political and corporate leadership of our country following a strategy of “win at all costs.” Rile up the masses and scare them into believing that those supporting the other point of view are intentionally trying to destroy life in America. Admittedly, if the American public didn’t buy into this extremism, the negative attack campaigns would not work. But human nature being what it is and with the busy lives we all lead, it’s difficult to thoroughly educate ourselves on all sides of an issue. If each side is going to spend millions of dollars sprucing up their candidates, hiring gifted speech writers who are virtually free to make up what they want, and then hire psychologists and marketing specialists whose business is to know how to influence people and get them riled up, we have no chance — our society is doomed.

In history, the great empires that rise to the top always eventually fall. My fear is that we are in the beginning of the decline of the American empire. Somewhere our leadership bought into the concept that it is okay to manipulate people to get what you want; that truth is not important; that winning is. My response to this is: shame on us. We should know better and we need to do something about it. We cannot continue to sustain an environment that allows people like Jared Loughner to become empowered. We cannot bury our heads in the sand and tell ourselves that we are not accountable for what is going on in our society. We are better than that, and it is not too late. We need to take the high road and not succumb to the dirty tricks played on us through rhetoric. We can start with our own lives and initially take small steps to spread civility, truth, and honesty. We can make a difference.

Leaders from all political sides spew forth vitriol that sends out the message that if you aren’t with us, you’re against us. If you don’t agree with us on this particular issue (i.e., healthcare reform), then you are the enemy and you are going to be responsible for the downfall of America. You are going to put people out of work, cause people to go homeless, and starve.

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sometime soon, somewhere in Tbilisi, Georgia, someone will be the victim of a historic murder. Although it will be no less tragic than any other death, the victim will be the first in Georgian history on whose behalf justice will be delivered by jury verdict. Either that, or the alleged killer will be the first wrongfully accused defendant to be acquitted by jury after being afforded a presumption of innocence and a higher government burden that resembles our “beyond a reasonable doubt” standard. Or, perhaps, Georgia will experience its first hung jury. Regardless, history is about to be made in Tbilisi — although, sadly, the loss of a life will have initiated the process.

As many may know, Georgia recently and radically changed its criminal justice system, and the changes are just now being implemented. This past summer, I traveled to Georgia to teach Georgian prosecutors how to conduct jury trials with a specific concentration on murder cases. As a former criminal prosecutor and current trial advocacy professor, the experience was fascinating on every level.

**Georgia and Georgians**

Most Americans think of Georgia as being a little country that was essentially Russian until very recently. Georgia, however, is so much more. Often described as being situated at the crossroads of Europe and Asia, Georgia is beautiful. It is bordered by the Caucasus Mountains to the north; Turkey, Armenia, and Iran to the south; Azerbaijan to the east; and the Black Sea along the west. The people speak Georgian and are proud of gaining their independence from Russia in 1991.

Georgia’s government is progressive, proactive, and pro-Western. But it has been a struggle. Joseph Stalin was Georgian, and there are still old monuments to him littered throughout the country. After emancipating itself from Russia in 1991 and officially voting out the Communist government, the Georgian government, led by former Soviet Foreign Minister Eduard Shevardnadze (a Georgian), devolved into a Mafia-controlled corrupt bureaucracy. In 2003, however, 36-year-old Mikheil Saakashvili led a peaceful revolution (called the Rose Revolution) and forced President Shevardnadze to step down. The people immediately elected Saakashvili with 96 percent of the vote in 2004. Interestingly, Saakashvili attended Georgetown University and Columbia Law School and still enjoys the strong support not only of his people but of the United States and many European nations as well. Most recently, after a short but bloody war in August 2008, Russia took back two regions in Georgia (Abkhazia and South Ossetia), and Russian troops are now stationed approximately 20 miles from Georgia’s capital city of Tbilisi.

Geographically, the country is the size of South Carolina, with a population of 4.4 million. The greatest concentration of people live in Tbilisi (population 1 million). A mostly Christian nation, Georgia’s commitment to religious freedom and tolerance is unique in that part of the world. In Tbilisi, for example,
one can find a synagogue, mosque, Georgian basilica, Armenian Church, and Zoroastrian temple all within walking distance of each other. Tbilisi is a quaint city, currently and actively improving its infrastructure. Despite its size and location on the cusp of Asia, it has a very European feel. There are many cobblestone streets lined with shops and cafés, bars and boutiques. The Mtkvari River wends through the city, cleaving the cliffs picturesquely (though one might wish to ignore the color of the water).

The Georgian people are warm, inviting, and appreciative of the foreign aid and partnership with the United States. Indeed, the United States has invested heavily in Georgia to transform it into a successful democracy and stable economy. In 2008, for example, the United States government pledged $1 billion in aid and support. The cultural differences between Americans and Georgians, generally speaking, are impossible to miss. Unlike most Americans, many Georgians tend to stay up very late, sleep in late, and smoke all day. And although they religiously enjoy their Georgian wine, Georgian moonshine (called chacha) is a popular method of ensuring the worst hangover imaginable. From what I hear, you understand.

Traffic and driving in Georgia are challenging. As a passenger or pedestrian, you are quite simply risking your life anywhere near a street in Georgia. Ordinary Georgians make New York City cab drivers look like proverbial little old ladies. As a visiting pedestrian, crossing the street is not recommended. Georgians, however, seem to have no problem walking right into traffic that is moving between 40 and 80 miles per hour. The big streets in Tbilisi have many under-street tunnels for pedestrian crossing, yet most elect the life-threatening, above-ground challenge. Why? Most likely they’re running a little behind schedule.

Far from punctual, Georgians operate under what they jokingly refer to as “GMT” — Georgia Maybe Time. Things don’t start early, but they definitely end late. There is an apropos myth about how the Georgians originally received their land from God. When God was distributing land to the peoples of the Earth, so the story goes, the Georgians arrived late because they were having a party and had been drinking too much. When God informed them that all the land had been distributed, they explained to God that they were late because they were raising their glasses in praise of him. God was so pleased that he gave them the land he had saved for himself — Georgia.

Georgia’s New Justice System

As mentioned earlier, history is about to be made in Georgia because, for three months now, and only in Tbilisi, Georgian courts can begin the process of hearing their first jury trials in murder cases. Last year, with the assistance of the United States and other nations, Georgia enacted its new Criminal Procedure Code (CPC). The CPC went into effect last October and for the first time in the region’s 1,500-year history. The new CPC institutes an adversarial system complete with the right to trial by jury.

The CPC is nowhere near comprehensive. In places, it will raise the eyebrows of American prosecutors and defense attorneys alike. But it replaces the often corrupt, Soviet-styled inquisitorial system (with one judge) where prosecutors worked with the court to secure convictions and, not surprisingly, enjoyed a 100 percent conviction rate. It is unquestionably a much fairer system
than Georgian criminal defendants have had before. Indeed, U.S. Secretary of State Hillary Clinton, while in Georgia last July, described the new CPC as a “landmark law for positive change in Georgia.” U.S. Vice President Joseph Biden, also in Tbilisi in July, similarly praised the new law.

Although the CPC is just 116 single-spaced pages, divided into 333 articles, it is the entire body of law controlling Georgia’s new adversarial system. It was the result of much debate and consideration. It is not annotated, and there is no case law to provide further definition or limitation. To American trial lawyers, it is shocking in its brevity and, in places, its breadth.

For example, regarding the prosecutor’s burden of proof, the new law provides that “[a]ny doubt arising while evaluating evidence that cannot be resolved under the procedure established by law shall be settled in favor of the defendant.” (CPC, Article 5). This essentially makes the burden of proof beyond “any” doubt as opposed to beyond a reasonable doubt. And unlike our burden of proof, it does not limit the doubt only to the elements of the crime charged. I can hear Georgian defense attorneys licking their chops in anticipation.

On the other hand, consider the CPC rule limiting the use of a defendant’s prior convictions and, arguably in the last line, use of prior bad acts against defendants:

The Jury shall not be informed about previous criminal prosecution or administrative proceedings against the defendant or his/her prior conviction (unless such information is submitted by the prosecution as one of the qualifying elements of the crime, or/and [sic] is intended to verify reliability of the defendant’s statements) before announcement of the verdict; neither shall they be informed about any evidence, which is not related to proving defendant’s guilt. (CPC, Article 238)

Georgian judges, prosecutors, and defense attorneys read this rule as basically prohibiting the use of prior convictions. But because the CPC contains no rule like our own ER 404(b), there is no further limitation on what “evidence related to proving a defendant’s guilt” means. A prosecutor could have a field day with the last sentence of Article 238.

Hearsay will be a problem for both sides in Georgia. In American courtrooms, the rules about hearsay testimony are perhaps the most complicated, least understood,
and most often violated of all rules. The Georgian CPC has made it very simple:

The testimony of a witness based on information provided by another person shall be an indirect testimony. An indirect testimony shall be admissible only if the information source is identified. During the substantial consideration of a case by the court, hearsay shall be admissible evidence if supported by the body of other evidence. (CPC, Article 76)

Translation? If you can provide a name (or maybe even just a face), hearsay is admissible.

Perhaps the most significant difference between our system and theirs, however, is the way the CPC addresses closing arguments and unanimous verdicts. Closing arguments will be conducted more like the European model, where the defendant (or defense attorney) always gets the last word. This obviously favors the defendant and is unlike our system, where the prosecutor gives the last rebuttal argument because the prosecutor has the burden of proof and the requirement of unanimity to obtain a conviction.

Georgia’s CPC, however, hedges the unanimity requirement in this way: in cases not carrying a life sentence, the verdict must be unanimous if it is reached within the first three hours of deliberation. Once three hours has expired, though, the jury can convict by a vote of eight out of twelve. (CPC, Article 261). In other words, the jury can sit around drinking coffee and chatting for three hours before needing only eight out of twelve to convict. Translation? A Georgian criminal prosecution just became easier to prove than an American civil trial.

My sources inform me that the U.S. Department of Justice urged the Georgians to keep the jury verdict unanimous under the new CPC. The Georgian response was that Georgians are not a “consensus” people and that Georgian citizens would not be able to arrive at a group consensus in unanimous terms. Thus, the previous compromise was settled upon. The new CPC may be amended in the future to include a completely unanimous requirement. The U.S. Department of Justice and the American Bar Association continue to jointly lobby for such an amendment.

Even with the new law’s idiosyncrasies, the introduction of the jury trial into Georgian culture is a critical step toward advancing justice and due process. Once the citizenry adapts to this new criminal justice phenomenon, the government intends to phase in jury trials throughout the country and for all types of cases. The story of how Georgians adapt to jury trials remains to be written and will no doubt be fascinating to observe.

Department of Justice Trial Skills Program

Like Secretary Clinton and Vice President Biden, I was also in Georgia last July. And although we stayed in the same hotel, my trip was covered slightly less in the international papers. As a former King County deputy prosecutor and present UW adjunct law professor, I was excited to be asked to come teach and honored to participate in such a major change in Georgia’s criminal justice system. I taught two three-day training sessions to groups of 25 prosecutors whose range of experience varied from one to 30 years. The training sessions were the result of a concentrated effort of manpower and resources by the U.S. Department of Justice. In addition to me, several American federal prosecutors conducted the prosecutorial training sessions throughout the summer. In addition, American federal judges were there training Georgian judges, and defense attorneys trained defense attorneys with the help of the American Bar
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Teaching through an interpreter is exhausting. At the King County Prosecutor’s Office, I had worked with interpreters frequently in hearings and at trial, but teaching through an interpreter was another experience entirely. My constant concern was that the translation was losing the instructive message, since the subject of jury trial advocacy is completely foreign to the prosecutors who attended the training sessions. Well, that is not entirely true — a few had seen “Twelve Angry Men” and some had watched “Law and Order.”

I was able to gauge whether my lectures were sticking by monitoring the content of the prosecutors’ questions. They picked up the technical concepts quickly, but the cultural differences became evident in the depth of their skepticism about whether Georgians would be fair or effective jurors.

Their system provides for voir dire to be conducted three days before the beginning of trial, and in that time the prosecutors wanted to know how much “investigating” into the jurors’ backgrounds could be accomplished. When I explained that we do not do that in America, they were shocked to learn that U.S. prosecutors simply accept the jurors’ answers on the juror questionnaire forms as true. They wanted to send “their people” out to “look into” the veracity of the prospective jurors’ answers. Like the saying about the girl and Texas, you can take the Russians out of Georgia, but you can’t take the Russian out of the Georgians.

My favorite question of the entire trip was asked during a discussion about jury selection. We were talking about peremptory challenges and the CPC’s incredibly broad rule in this regard (Article 223 prohibits strikes based on “race, skin color, language, sex, belief, religion, political views, membership in any association, ethnic, cultural or social belonging, origin, family, financial and official status, place of residence, health condition, life style, place of birth, age, or any other ground”). One prosecutor from a small town asked: “Would you excuse a coffin-maker from the jury?” The confused look on my face probably prompted him to explain that because a coffin-maker would see death as necessary for his work and not as a tragedy, the coffin-maker may not make a good juror for the prosecution’s side of the case. Given that there is probably a coffin-maker in every Georgian town, it wasn’t such a crazy question. My answer, incidentally, was basically, “If you’re in doubt, keep them out.” I was hoping those words also rhymed in Georgian and betting the prosecutors would not notice the obvious theft of Johnny Cochran phraseology.

My second-favorite question was one that illustrated the depth of the change on the way. One prosecutor asked the question that the room’s head-nodding told me was on everyone’s mind: “Do prosecutors get fired in the United States when they lose a case?” Naturally, I explained that this does not happen and that prosecutors often lose cases under our system. My audience was baffled to learn that, to the contrary, if you lose a big enough case in America, you write a book and become famous.

Sam Chapin is a lawyer and an adjunct professor in the Trial Advocacy Department at UW School of Law.
In Memoriam

WILLIAM W. BAKER

August 21, 1940 - January 17, 2011

Judge Baker was a graduate of Stanford University, majoring in Political Science, and the University of Washington Law School. Before he joined the Court, Judge Baker led the litigation department of the Anderson Hunter law firm in Everett, where he tried over 75 jury trials. Judge Baker's impressive list of professional accomplishments included service as President of the Snohomish County Bar Association, as a board member of the American Judicature Society, and as a charter member of the Judicial Conduct Commission.

Before joining JDR in June 2009, Judge Baker served 18 years on the Washington State Court of Appeals, Division I, where he authored 1500 opinions and served terms as Chief Judge and Presiding Chief Judge of the full court. In 2006, he was named Snohomish County Judge of the Year.

Judge Baker had a great zest for life. He was devoted to his family and to his diverse circles of friends. He was a voracious reader and was a longtime and perceptive member of two book clubs. He was an enthusiastic golfer and fisherman. Coming from modest roots, Judge Baker became an honored member of the Everett community.

Judge Baker lived by the views he expressed to the Everett Herald when he retired from the Court in 2008: “The law and the legal system are essential parts of a civilized society. The law is the glue.” Judge Baker lost his battle to leukemia on January 17, 2011.

The Washington State legal community, and we at JDR, will miss him terribly.
Gotcha! Endings to Worker Status Questions

by Robert W. Wood

In O. Henry’s “The Gift of the Magi,” desperate to buy a platinum chain for the heirloom pocket watch that is her beloved husband Jim’s most prized possession, Della cuts off and sells the flowing long hair that is her most distinctive feature to a wig maker. Desperate to please his young wife and showcase her locks, Jim sells his watch to buy combs for Della’s hair. This simple but gut-wrenching surprise knocks the wind out of the reader in O. Henry’s last paragraph. We are cunningly brought into this couple’s cramped turn-of-the-20th-century cold-water flat in Greenwich Village, experiencing surprise and irony before we go.

In “Two Thanksgiving Gentlemen,” we are transported to the same era’s Thanksgiving Day, where a vagabond is fed each year to a grand dinner out with all the trimmings by his businessman benefactor. Knowing how important the grand meal is to the vagabond, the businessman, himself down on his luck that year, starves for days not to let the vagabond down. Knowing how important the Thanksgiving ritual is to his kindly benefactor, the vagabond plays along, despite having already been treated to two holiday meals that day. So each endures it — the starving businessman hiding frayed cuffs and hunger, the vagabond hiding a stomach already full to bursting. The reader is sated with both irony and surprise, as O. Henry delivers the role-reversing sucker punch.

Former Commissioner of the Internal Revenue Service Lawrence B. Gibbs has described IRS rulings on independent contractor versus employee status as “O. Henry short stories, because the reader is left guessing whether the worker will be classified as an employee or an independent contractor, right up to the surprise ending.” Sadly, there is considerable truth in this metaphor. The traditional IRS 20 factors (set out at the end of this article), in use since the 1980s, give a seesaw-like list of criteria one must ride out with a kind of glass-half-full/half-empty balancing act. Yet there is no minimum or maximum number of factors that spells either employee or independent contractor status.

Similarly, although the IRS 20 factors remain good law, in recent years the IRS has taken to grouping its analyses into three topical areas, perhaps believing that we will be less hit with O. Henry-style endings using this three-pronged analytical tool.

The first is behavioral, asking whether the company controls — or has the right to control — what the worker does and how the worker does his or her job. The right to control is enough to spell employee classification, even if the company chooses not to exercise that right.

The second tranche is financial. The query here is whether the business aspects of the worker’s job are controlled by the payer. These include such basics as how the worker is paid, whether the worker’s expenses are reimbursed, who provides tools/supplies, and so on.

The final category is what the IRS refers to as relationship control. This includes questions such as whether there are written contracts or employee-type benefits, such as a pension plan, insurance, vacation pay, etc. The IRS wants to know whether the relationship will continue and whether the work performed by the worker is in a key aspect of the business.

The IRS exhorts that businesses must weigh all these factors when determining whether a worker is an employee or an independent contractor. Some factors may
indicate that the worker is an employee while others may indicate that he or she is an independent contractor. The IRS itself recognizes that there is no magic number of factors that earmark the worker an employee or an independent contractor.

Over and over again, the IRS cautions that no one factor stands alone in making this determination. Moreover, the IRS notes, factors which are relevant in one situation may not be relevant in another. This is a giant mish-mash, a mosh pit of give and take, a purée of ingredients that defies taste, texture, and odor.

The keys, says the IRS, are to look at the entire relationship, consider the degree or extent of the right to direct and control, and finally, to document each of the factors used in coming up with the determination. Yet this amalgam of mush is of critical importance. Indeed, nothing seems more fundamental than the distinction between independent contractors and employees.

With employees, you must pay their wages, withhold taxes, and give them employee benefits. You can be held liable for their acts of negligence and can face the scrutiny of state and federal law concerning nondiscrimination, discipline, and termination. These downsides give employers big incentives to deal with independent contractors.

Since you withhold and pay income and employment tax on employees and not on independent contractors, disputes with taxing agencies are the most obvious potential problem. But not all worker status disputes involve government agencies, and it’s easy to see why. If a delivery driver is your employee when he causes an accident, the company is liable under agency law. If the driver is a true independent contractor, the liability is his alone, not the company’s.

Sometimes independent contractors themselves sue seeking employee benefits, damages for discrimination, wage and hour protections, etc. Some companies ask how a worker can claim “employee” benefits after signing a contract expressly waiving benefits and agreeing to independent contractor status. Yet a written contract purporting to establish an independent contractor relationship may not be as bulletproof as you thought. Courts discount written contracts even more readily when signed by unsophisticated workers with no bargaining power.

**Big Bucks**

How big a problem is this, and how much money is involved? Billions. In one famous case, a group of freelance programmers sued Microsoft, claiming they were entitled to stock options. The programmers signed contracts saying they would receive no benefits. They were paid through accounts receivable, not payroll, and got a higher rate than comparable Microsoft employees.

Microsoft’s problems started with the IRS, which ruled the independent programmers were employees for tax purposes. However, learning of the IRS ruling, the programmers sued Microsoft for employee benefits and got them. Clearly, employers cannot rely solely on labels.

There is often interaction between tax controversies and other worker status inquiries. In fact, state taxing authorities may follow federal or vice versa. A state employment development audit may trigger an IRS or state tax audit, or a suit by workers. A major reclassification controversy can start with a simple workers’ compensation claim, making the dollars involved hard to assess. A $500 workers’ compensation dispute may lead to much more.

Who is and is not an employee is getting heightened press, and worker classification disputes are occurring across a wide array of
settings. Classically, an independent contractor works for himself or herself and provides a one-time service (think doctors or dentists). In contrast, employees classically work day-in and day-out for one company, subject to supervision and control.

Independent contractors exercise independent judgment to produce an end result (say, installing a pool in your backyard) or getting you from point A to point B (like a taxi driver). Exactly how they do it is no one’s business but their own. Employees take orders about everything, or at least are subject to orders. The employer may choose to let them go about their work untutored, but could give them orders.

Whether a company has control over workers — even though it may not exercise it — might seem obvious. Yet control issues can be terribly fact-intensive. Courts and administrative agencies look to a variety of factors to define the often-blurred lines.

As noted earlier, the IRS traditionally identifies 20 relevant factors, but there’s no litmus test for how many factors prove a worker is an independent contractor or employee. You have to wade through them all:

1. **Instructions** — Instructions to workers suggests they are employees.
2. **Training** — Training of workers suggests they are employees.
3. **Integration** — Close integration of the work with the employer’s overall business suggests the worker is an employee.
4. **Services rendered personally** — A requirement that a worker must personally do the work and cannot delegate it to someone else suggests employee status.
5. **Hiring, supervising, and paying assistants** — A person who hires, supervises, and pays their own assistants is more likely to be an independent contractor.
6. **Continuing relationship** — A long-term working relationship (e.g., 10 years versus three weeks) suggests the worker is an employee.
7. **Set hours of work** — Prescribed hours of work (e.g., 9 a.m. to 5 p.m.) is one sign of employee status.
8. **Full-time required** — Working full-time (rather than freelancing) tends to suggest employee status.
9. **Performing work on employer’s premises** — Working on the employer’s premises (rather than from home or from the worker’s own place of business) weighs in favor of employee status.
10. **Order or sequence set** — Performing services in a prescribed order or sequence tends to weigh in favor of employee status.
11. **Oral or written reports** — Reports to an employer tend to suggest employee status.
12. **Payment by hour, week, or month** — Payment by the hour, week, or month is likely to suggest employee status; payment by the job, the reverse.
13. **Payment of business and traveling expenses** — Paying worker’s business and traveling expenses tends to suggest employee status.
14. **Furnishing of tools and materials** — Furnishing significant tools, materials, and other equipment suggests employee status.
15. **Significant investment** — A worker’s significant investment tends to indicate independent contractor status, while little or no worker investment tends to suggest employee status.
16. **Realization of profit or loss** — A worker’s potential to realize a profit or suffer a loss suggests independent contractor status.
17. **Working for more than one firm at
a time — Working for more than one firm at the same time suggests independent contractor status.

18. Making services available to the general public — Making services available to the general public on a regular and consistent basis suggests independent contractor status.

19. Right to discharge — The right to discharge a worker tends to suggest employee status.

20. Right to terminate — A worker’s right to terminate the relationship without incurring a liability suggests employee status.

Beware

A worker can be an independent contractor despite many factors that suggest he is an employee. The converse is also true, which makes the analysis quite nuanced.

It is also connected in ways you might not imagine, with agencies communicating among themselves much more seamlessly than ever before. Once one domino falls, other agencies and private parties can show up with their hands out. It may seem expedient in the short run to label workers as independent contractors even if they could have no reasonable chance of withstanding scrutiny. In the long run, it rarely saves money.

Companies should have realistic expectations and should harmonize contract language and actual practice as much as possible. There are still many circumstances where independent contractors are perfectly legitimate. Yet, often companies big and small don’t try to address problem areas (in their contracts and otherwise) until it’s too late. Employers who skirt the rules and don’t have a good case should remember that sometimes when something looks too good to be true, it is.

Robert W. Wood practices law with Wood & Porter in San Francisco (www.woodporter.com), and is the author of Taxation of Damage Awards and Settlement Payments (4th Ed. 2009), Qualified Settlement Funds and Section 468B (2009), and Legal Guide to Independent Contractor Status (5th Ed. 2010), all available at www.taxinstitute.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.

NOTES

Padilla v. Kentucky
A Professional Lesson from the Medical World

by Won Kidane

The “Athenian Stranger” in Plato’s last dialogue, *Laws*, says that the slave doctor, himself a slave of the doctor of the freeman, provides his services differently than his master. He makes a hurried visit, orders some remedies, and moves on to the next ailing slave. The freeman’s doctor, by contrast, studies the nature of the disorder carefully, reaches back to the patient’s family history, and consults the patient about possible remedies before he prescribes a particular remedy. After he prescribes, he attempts to persuade compliance. Today, the latter approach is a condition of maintaining a professional license to practice medicine. Before prescribing any remedy, modern-day doctors have to determine, among other things, if there are any contra-indications. They ask questions that often seem irrelevant for the ordinary patient. For example, before they prescribe a simple prescription-strength Tylenol for a pain caused by a fractured bone, they might want to know what killed the patient’s grandfather and how old he was when he died. The doctors ask these kinds of ostensibly far-fetched questions because if they fail to do so, some serious but preventable health consequences could occur. If such consequences occur due to the responsible doctor’s failure to ask the right questions, the doctor is said to have committed medical malpractice and would pay dearly for the error.

If a criminal defense lawyer advises a person accused of shoplifting to plead guilty and take a suspended sentence of 365 days, ordinarily the client goes home a free person, and the case gets closed. If the client is an immigrant, however, the immigration service detains that person and puts her in removal proceedings, because immigration law independently considers her an aggravated felon. Not only will she be ineligible for any form of relief, but she will also be permanently barred from coming back, no matter what the personal circumstances might be.

*Padilla v. Kentucky* is the U.S. Supreme Court’s latest attempt to mitigate these kinds of decidedly harsh and unreasonable consequences of Congress’s choice of governing immigrants through crimes. Immigrants may not be considered “the people” that the Fourth Amendment protects, or “persons” who could enjoy the full range of protections that the First or the Fifth amendments offer, but when they face the government’s prosecutorial might, the United States has never denied them the protection that the Sixth Amendment provides its citizens. Yet again, because deportation is said to be a civil sanction rather than a punishment, they do not get government-appointed counsel in deportation proceedings. That means, for the overwhelming majority, the last lawyer they will ever see before they get deported is the defense counsel who tries to help them in their criminal trial.

*Padilla* requires this defense counsel to do exactly what a reasonable doctor would do before he prescribes a remedy to his patient — obtain detailed and comprehensive information.
about the patient as a matter of routine intake procedure. That is how contra-indications are avoided, or at least significantly mitigated. If the doctor is uncertain about the interaction between the medicine he wants to prescribe and some other medicine the patient is taking, he would consult a specialist. Similarly, Padilla requires defense counsel to avoid immigration contra-indications. To the extent they can determine the contra-indication, they must attempt to do so by advising the client of the consequences of their “prescription.” If a specialist is needed, they must refer the client to such specialist. Hence, to meet the Padilla requirements and avoid malpractice — called “ineffective assistance” — defense counsel must develop and use a comprehensive set of questions much like the doctors’ questionnaires, because determining the immigration consequences of a plea deal or a conviction requires complete information. Determining if a person is a citizen or an immigrant is not a simple task and requires eliciting relevant information. Moreover, immigration law attaches significance to, among other things, the length of stay; number and nature of the crime or crimes; manner of the disposition of the case; age of the offender when the crime was committed; nature, magnitude, and length of the penalty; existence of extenuating or aggravating circumstances; identity of the victim; prior convictions or misconduct, etc.

To use James Madison’s words, deportation banishes a person from “where he enjoys, under the law a greater share of the blessings of personal security and personal liberty than he can elsewhere hope for.” If deportation is not said to be a punishment, “it is difficult to imagine a doom to which the name could be applied.” In defending an immigrant accused of a crime, it is always important to remember that the Constitution does not protect her from being twice put in jeopardy of life or limb in the form of deportation. However disguised it might be, Padilla purports to make sense of centuries of ominous jurisprudence. It requires us to act like the freeman’s doctor. Do you have a doctor-like Padilla questionnaire? How about easy access to a Padilla specialist? How about a Padilla service plan?

NOTES
3. Id.
7. See, e.g., Fong Yue Ting v. United States, 149 U.S. 698 (1893).
9. See INA Sec. 240(b)(4)(A).
10. Madison, 4 Elliot, Deb quoted in Fong Yue Ting v. United States, 149 U.S. 698, 748-49 (1893) (Field J. dissenting).
11. Id.
Looking at the World Through Other People’s Eyes

BY JEFF TOLMAN

What do lawyers really do? The student asked me, and I gave a general answer about rights and justice and being a counselor and advocate. Once, on Law Day, I asked the same question to a group of students. My favorite response was, “Lawyers sit on their butts and make phone calls and money.” Maybe.

The question, though, haunted me, much as the question “Do you teach quality?” touched the protagonist in Robert Pirsig’s brilliant novel Zen and the Art of Motorcycle Maintenance.

What do we attorneys really do? We are our clients’ voice, their confidant, protector, and advisor. The ultimate base of what lawyers do, though, is that we look at the world through others’ eyes.

Through Judges’ Eyes

To give good advice and make persuasive arguments, lawyers must look at their case through a judge’s eyes. Is our argument on solid legal ground? Does it make sense? Is our position consistent with current law? Is justice furthered by the conclusion we are proposing? A judge once shared the tale of a lawyer asking for CR 11 sanction against an opponent for missing the deadline to respond to a motion. The responding lawyer conceded she had missed the deadline. She was at the hospital anxiously waiting through her child’s emergency surgery. The judge, a parent herself, understood the lawyer had her priorities right. While looking through the eyes of the Civil Rules, the moving lawyer may have had a point; looking through the eyes of the judge — or any parent — his argument lacked merit.

Through Our Clients’ Eyes

Lawyers spend most of their work life looking at the world through the eyes of our clients. To understand their position. To convey their story in a human, personal way. To bring life to their argument.

In 1994, I had the privilege of spending a month at the Trial Lawyers College on Gerry Spence’s Thunderhead Ranch outside Dubois, Wyoming. While much of the month was spent on trial skills, the biggest single element of the course was how to understand and convincingly convey a client’s story.

One of the visiting professors asked to be the protagonist in a psychodrama exercise. “I’ve always wanted to ask my dad why he really didn’t attend my Harvard Law School graduation,” he said. “He was just out of prison and said he didn’t have a hat, so he couldn’t come. Rising from a usually single-parent family in the South, with no running water in our home, to graduating from Harvard Law School, I thought he’d be the proudest parent in the auditorium. But . . . he didn’t come. He didn’t have a hat.”

“Who can understand his dad?” Gerry asked. And my hand involuntarily shot up.

“I do,” I said, and looked the protagonist in the eye. “I loved you enough not to go to your graduation, though there was no one prouder of any student graduating that day than I was of you. You have accomplished more than I could have dreamed. I loved you enough to stay away. All I could think about was the get-togethers among your friends and classmates. Your classmates would introduce their parents as this great person or someone with that great accomplishment. About all you could say about me was that I wasn’t in prison right then. I love you too much to put you in that position. I didn’t want to argue with you or in any way taint your great day, so I said I didn’t have a hat. I did have a hat, and do still have a very proud heart that loves you very much. Enough to stay away from an extraordinarily important event in your life and mine, whether I had a hat or not.”

Somehow, some way, I could see the moment through the eyes of the Southern felon with a remarkable son.

My friend Paul Stritmatter had a case years ago in which his client became bed-bound. To look through his client’s eyes, Paul spent two days in bed in a nursing home next to his client. What he discovered was that the nights, when you couldn’t sleep and no one was around, were almost unbearable. The screams and moans, the itches that couldn’t be scratched, the impending hopeless feeling. Paul conveyed his client’s situation through experienced eyes and helped acquire funds to assist his client for the remainder of the young man’s life.

Through Our Opponents’ Eyes

A quality advocate views the case through the eyes of his opponent. Anticipating defenses, arguments, and strategic moves, and preparing counter-actions. I often ask clients to give our opponent’s arguments. Initially they get mad, or think the exercise...
So many of our state’s low- and moderate-income families are unable to obtain the legal help they need, simply because they cannot afford it. The need is great, especially in the areas of family, housing, and consumer law.

A survey conducted several years ago found that approximately 75 percent of Washingtonians of moderate means — those who are within 200–400 percent of the federal poverty level — experience at least one legal problem each year. Many go without legal help.

To help address this serious problem, the WSBA created the statewide Moderate Means Program, a reduced-fee lawyer-referral service designed to help bring greater access to justice for people of moderate means. The WSBA is partnering with Washington’s three law schools to implement this exciting Program; law students will handle the client intake and referral to participating lawyers.

**Why Should I Participate?**

Help yourself while helping others!

- Provide public service and help close the access to justice gap.
- Obtain free referrals to help build your client base.
- Learn new skills and expand your practice areas though free or low-cost online trainings.
- Gain increased access to mentoring and peer support opportunities.

**How Do I Sign Up?**

In order to be eligible to participate, you must be an active member of the WSBA, and you must carry your own malpractice insurance. All lawyers applying to participate will be subject to a discipline screening. Lawyer registration is done online through mywsba.org, where you will complete a short registration form. Simply go to www.mywsba.org and click on the Moderate Means Program logo.

**What’s Next?**

Referrals will begin around March 2011. When a service opportunity arises, you will be contacted by a student at one of the three Washington law schools.

For more information, please visit the Frequently Asked Questions page. You can also contact WSBA Public Service Manager Catherine Brown at 206-733-5905 or catherineb@wsba.org.

**Enhancing Our Culture of Service**

Public service is a hallmark of the legal profession. Through projects like Moderate Means Program, the WSBA is enhancing our culture of service, providing ways for lawyers to give back to the communities of which they are such an integral part.

A partnership between the WSBA and Washington’s three law schools: Gonzaga University School of Law, Seattle University School of Law, and the University of Washington School of Law.
is stupid, or wonder if I am on their side. After we discuss the varying arguments and views in the case, my clients more often understand our strong and weak points, get more reasonable expectations, and can better assist in preparing our case.

Years ago, I asked a bunch of my mentors, “What is the single most important question a lawyer needs to ask herself and her client?”

Frank Shiers responded, “Why would they do that?”

The question requires someone to put themselves into the opponent’s position — to look through their adversary’s eyes — and often can show how unreasonable, or reasonable, a particular demand is. If my client can’t think of a reason the opponent would accept our offer, it is really no offer at all.

**Through Witnesses’ Eyes**

Persuasive attorneys look through the eyes of each witness, turning their place in the case into a puzzle piece that fits nicely, and favorably to the client. Not asking too much or too little. Providing the fact-finder information which ties up your case one piece at a time. Bringing life to their words.

**Through Father Time’s Eyes**

Finally, and perhaps most importantly, a lawyer looks at the world through the eyes of Father Time. Sometimes the best result does not give immediate gratification, but over time is a wise, practical solution. I often tell my clients that I am more interested in how they view our decisions a year later than how they view them a month later.

Years ago, I represented a bank president’s wife in their dissolution. She would take no maintenance or child support, no matter how much she deserved it. “If I take a penny, he’ll hold it against our son forever,” she said. “I won’t do that to my child.” No matter how much I argued and pleaded, she refused. When we went to court to finalize the dissolution, the judge tried just as hard to persuade her. In the end, he (reluctantly) signed the supportless, maintenanceless decree. Two years later, I went to a nursing home to do a GAL report. In the hallway, on her knees cleaning up after a resident, was my client. I shuddered, got down on my knees, looked her in the eye, and, quite shaken, asked, “Do you hate me?” “No,” she said, “we did the right thing.” Three years later, our paths crossed again. She had a new marriage and child. For the next decade, our paths crossed often at school events and on ballfields. Finally, I gathered my courage and asked her about her decision those years ago. “It was the right decision for the long term,” she said. “My older son and his father have a great relationship.” Sometimes the best long-term decisions are painful in the present.

The ability to look at the world through other people’s eyes can be remarkably awakening and fun in our personal life, as well as our professional life. Seeing the world through my sweet granddaughter Kinzie’s eyes makes me want to dance to silly songs, kick balls, chase the cat, pull open drawers, throw plastic containers on the floor, read picture books, and be in constant motion until it’s time for a nap.

That is not a bad way to look at life. For a lawyer or a grandpa. 🎉

Jeff Tolman is a former member of the WBSA Board of Governors and practices in Poulsbo. He can be reached at jefft851@aol.com.
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Swimming Lessons for Baby Sharks: The Essential Guide to Thriving as a New Lawyer
By Grover E. Cleveland
West, St. Paul, MN (2010), 146 pages

Reviewed by Michael Heatherly

WSBA member Grover Cleveland, a former partner at Foster Pepper PLLC, has fashioned a concise yet thoughtful handbook for new lawyers. The book and chapter titles play on the image of lawyers as a school of sharks, the message being that newcomers need to get right into the swim of things if they hope to avoid a watery professional grave.

Cleveland dives right into such topics as “Sink or Swim: The Transition from Law School to Law Practice,” “Feeding with Fellow Sharks: Getting and Doing Work,” “Shark Supply: Law Firm Economics,” and “Enjoying the Swim: Managing Your Life.” He offers consistently straightforward, practical guidance in these and other areas that should incite a feeding frenzy among legal newbies. It’s a feast of the proverbial stuff they don’t teach you in law school.

Sharks is eminently readable, with clear prose and plentiful, useful checklists. Cleveland illustrates his points with often amusing or amazing anecdotes. For example, he tells the story of an associate who wasted thousands of dollars in time by continually using the wrong name for a prominent public facility as a search term while doing routine legal research. He also recounts how a summer associate believed she was advancing her career by offering free massages to male lawyers at a social function when in fact she was guaranteeing she would never receive a permanent job offer at the firm, which had no interest in risking a sexual-harassment claim.

Besides outlining the nuts and bolts of practicing law, Cleveland provides insight into the financial workings and office politics of law firms, helping to demystify the environment in which new lawyers often find themselves. Although the book, written for a national audience, generally assumes the reader is an associate in a conventional medium to large law firm, much of the advice would translate to other types of practice as well. In fact, things like his cautionary tales about e-mail got my attention, and it’s been 20 years since anyone called me a new lawyer.

I don’t know why any new lawyer—or law firm that hires new lawyers—wouldn’t clamp their jaws around a copy of Sharks.

Finding the Answers to Legal Questions
By Virginia Tucker and Marc Lampson

Reviewed by Michael Heatherly

Virginia Tucker is the librarian for the Whatcom County Law Library and a faculty member at the San Jose State University School of Library and Information Science. Marc Lampson, a WSBA member, is the executive director of the Unemployment Law Project and a longtime instructor in research and writing at law schools and in courses at library and information-science programs. Their collaboration provides both a primer on basic legal principles and a guide to researching the law. Although it doesn’t purport to enable non-lawyers to represent themselves, the book contains information that would be useful for those who choose to do so. However, the book’s stated primary audience is individuals such as librarians, paralegals, and students who need to research or better understand the law from time to time.

Finding the Answers is divided into four sections, each further split into chapters. The first section outlines the federal and state legal systems and provides an overview of how to locate statutory and case law in the various jurisdictions. The second gives more detail on how to conduct legal research. The third summarizes basic principles of several commonly encountered areas of law (family, landlord-tenant, creditor-debtor, employment, etc.), while the fourth describes how to build a basic collection of print or online legal research materials.

The book is notably comprehensive and includes numerous specific references to websites and other additional sources of information. It includes helpful guidance on such things as how to evaluate the trustworthiness of websites and self-help books. The chapters on particular areas of law are necessarily generalized, as the book is written for a national audience; however, the overviews point the reader in the right direction for answers to the most common questions arising in each area of law.

Clearly written and well organized, Finding the Answers should be particularly helpful to its primary audience of non-law librarians, paralegals, students, and others who need to research the law for various purposes. As the book itself acknowledges, a pro se litigant would need to research primary materials directly before having enough information to draft a document or file a pleading. However, the book gives a better broad synopsis of the law than one would likely receive in a high-school or college class. It would seem fitting as a textbook as well as a suitable addition to a library reference collection. It also might be of use in the offices of a government agency, non-profit organization, or private business where non-lawyers often need to look...
Defending Gary: Unraveling the Mind of the Green River Killer
By Mark Prothero with Carlton Smith Jossey-Bass, San Francisco (2006), 558 pages

Reviewed by Joanna Plichta Boisen

Representing Gary Ridgway in his capital murder trial had a profound impact on the author, Mark Prothero, and the team of defense attorneys who represented and tried to understand him. Ridgway was one of the most notorious serial killers in Washington history, having murdered at least 48 women, and more likely somewhere in the realm of 75. He was able to perpetrate these evil crimes for so long because he was not your “typical” serial killer. Soft-spoken, calm, eerily polite, strange, manipulative, and a chameleon who tried to fit into his surroundings despite his psychopathic tendencies, Ridgway hid in plain sight for decades. Morbidly interesting and opinionated, the book provides meaningful commentary about the criminal justice system and the delicate balance between punishing serial killers via the death penalty to attain justice for victim’s families versus the great deal of knowledge law enforcement can gain from a serial killer’s morbid and ill mind.

This book challenges the reader to think about the death penalty and how the criminal defense system works. What is fair? What is true justice? Readers will grapple with these issues from chapter to chapter and try to understand why Ridgway’s defense team fought so hard to save him from being executed for his many heinous crimes when so many believed the only just punishment was death.

I would recommend this book to anyone interested in the criminal psyche or any law student who is considering criminal law practice. Based on numerous conversations with Ridgway, transcripts, various meetings, and the author’s personal journal, the book explores controversial intricacies of the criminal defense system while giving the reader a intimate look into the mind of one of Washington’s most feared and loathed serial killers.

Joanna Plichta Boisen is pro bono counsel at Foster Pepper PLLC. She can be reached at boisj@foster.com.

Michael Heatherly is the Bar News editor and can be reached at barnewseditor@wsba.org.
Few areas in the law of lawyering have seen as near-constant evolution over the past 20 years as inadvertent production. Ironically, the principal reason is the equally constant evolution of technology during that same period. When paper reigned supreme, courts were much less forgiving of lawyers who inadvertently produced confidential communications that were labeled plainly with law firm or general counsel letterhead. As communications between lawyers and their clients moved increasingly to electronic form, however, it both increased the volume of documents needing to be screened for privilege and made the screening process more difficult and expensive. That technological change, in turn, has affected the development of the law of inadvertent production on ethical duties, procedural rules, and evidentiary privilege.

Over the past several years, we have tracked the developments in the law of lawyering on inadvertent production. Because significant changes have again occurred since we last visited this area, it merits another look.

**Ethical Duties**

Before the Rules of Professional Conduct were amended in 2006, there was no specific ethics rule governing inadvertent production. Instead, ethical duties were largely defined by a series of American Bar Association formal and Washington State Bar Association informal ethics opinions. On the former, ABA Formal Ethics Opinions 92-368 (1992) and 94-382 (1994) counseled that a lawyer receiving what appeared to be inadvertently produced privileged or otherwise confidential materials from an opponent had a duty to notify the lawyer on the other side. On the latter, WSBA Informal Ethics Opinion 1544 (1993) found no duty to notify, but Informal Ethics Opinion 1779 (1997) later adopted the ABA opinions on notification as the preferred position.

In 2002 and 2003, the ABA amended its influential Model Rules of Professional Conduct. That process produced a specific Model Rule, 4.4(b), and two accompanying comments, Comment 2 and 3, on inadvertent production. The new rule directly addresses notification: “A lawyer who receives a document relating to the representation of the lawyer’s client and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender.” Comment 2 leaves to procedural law whether any other actions are necessary and leaves to evidence law whether privilege has been waived. Comment 3, in turn, commits the voluntary return of inadvertently produced material to the receiving lawyer’s discretion (again subject to procedural and evidentiary law). In light of these changes, the ABA withdrew opinions 92-368 and 94-382 and replaced them with two new opinions, 05-437 (2005) and 06-440 (2006), that essentially track Model Rule 4.4(b) and its comments.

Washington has seen a similar evolution in the duty to notify. When our RPCs were amended in 2006, they included a new RPC 4.4(b) and new accompanying comments that are identical to their ABA counterparts. RPC 4.4(b) applies both to Washington state court proceedings and under, respectively, Western District General Rule 2(e) and Eastern District Local Rule 83.3(a), federal courts here as well.

Although RPC 4.4(b) is limited to notification, it offers the advantage of rule-based clarity. The initial ABA ethics opinions, by contrast, were cobbled together from a variety of analogous legal precepts — including the law of bailment (a rarely cited concept in ethics opinions). Further, when combined with the more recent procedural and evidentiary amendments discussed next, lawyers in both Washington’s federal and state courts now have a set of “bright line” rules to guide them through the matrix of issues raised by inadvertent production.

**Procedural Rules**

The amendments to the Federal Rules of Civil Procedure adopted in 2006 and the amendments to the Washington Civil Rules adopted in 2010 address the proce-
protection as trial-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; and must take reasonable steps to retrieve the information if the party disclosed it before being notified. Either party may promptly present the information in camera to the court for a determination of the claim. The producing party must preserve the information until the claim is resolved.

FRCP 45(d)(2)(B) and CR 45(d)(2)(B) contain similar language in the context of subpoenas directed to third parties.

The emphasis on the courts — rather than the litigants — determining privilege waiver echoes earlier case law, including In re Firestorm 1991, 129 Wn.2d 130, 916 P.2d 411 (1996) (unauthorized contact with opposing party’s expert), and Richards v. Jain, 168 F. Supp.2d 1195 (W.D. 2001) (unauthorized use of privileged communications taken by client when he left adverse party). Firestorm and Richards also suggest the penalty for lawyers who use an opponent’s privileged material without first getting a ruling from a court that privilege has been waived: potential disqualification. The rationale for disqualification as a remedy is that simply returning the documents involved once they have been thoroughly analyzed and used isn’t enough. As Richards in particular emphasizes, the only way to “unring the bell” may be to remove the lawyers involved from the case altogether.

**Evidentiary Privilege**

Privilege waiver based on inadvertent production has also seen significant recent developments both nationally and in Washington.

Nationally, in September 2008, Federal Rule of Evidence 502 became law and creates specific criteria for waiver through inadvertent production. FRE 502(b) is framed in the negative and finds that no waiver occurs if: “(1) the disclosure is inadvertent; (2) the holder of the privilege or protection took reasonable steps to prevent disclosure; and (3) the holder promptly took reasonable steps to rectify the error, including (if applicable) following . . . [FRCP] 26(b)(5)(B).”

This past September, Washington adopted ER 502, which mirrors its federal counterpart and includes the same three factors for assessing waiver.

The federal (FRE 502(e)) and the state (ER 502(e)) versions of the rule also encourage the use of so-called “claw back” agreements under which parties stipulate (either by direct agreement or through a stipulated court order) in advance to return inadvertently produced material.

The criteria for assessing waiver incorporated into the respective federal and state rules generally reflect the standards that a majority of courts had

**Summing Up**

Collectively, the evolving ethics, procedural, and evidence rules offer a much more cohesive approach to inadvertent production issues than in years past. Although any given case will continue to turn on its individual facts, the movement to a rule-based approach should provide relatively straightforward guidance as lawyers confront these issues with increasing frequency in an era where electronic communications now reign supreme.

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

(Letters, continued from page 6) performed three five-minute tasks, adds up the time to 15 minutes and bills a quarter of any hour, the client is better off than if the lawyer has billed 1/10 each for the five minute tasks. That may be true, but so what! The same lawyer could use “billing judgment” (*Hensley v. Eckerley*), as he/she is ethically obligated to do, and bill nothing for one of the tasks, apply a courtesy discount at the end of the bill or make part of the billing entry “no charge.” Some lawyers do this, most do not. Many lawyers do not even keep contemporaneous time (meaning logging the time each day as they perform the services), but rather reconstruct at a later time. Those lawyers could not use apportioned billing honestly unless they changed their timekeeping practices. Further, there is no rule anywhere that a lawyer has to use a six-minute minimum for any task. I typically do not record the time at all if the task takes less than six minutes.

Like the earlier writer (Letters to the Editor, February 2011 *Bar News*), Mr. Duvall, Mr. von Beck seems to assume that I invented the criticism of block billing. One need only read the many articles and cases I cited and discussed in the article to recognize the seriousness of the problem that block billing poses, as courts, lay critics, and even the organized bar all have recognized. Further, neither critic of the article seems to acknowledge that block billing, along with many other questionable lawyer practices, creates suspicion and distrust between lawyers and their clients. Business as usual as seemingly espoused by these two gentlemen fails to address the likelihood that unless changes are made voluntarily by lawyers, more onerous rules are likely to be imposed upon us that will further infringe on our independence as lawyers. My article was intended as a caution. We lawyers may heed it or ignore it, and take the consequences as they arise.
Civility: The Preservation of Access to Justice

by Ronald R. Ward

A n immigrant person who does not speak English, or speaks it only with limited facility, facing an unwarranted and unlawful eviction and having no place else to turn, musters the courage to approach a courthouse counter, unaware that the clerk cannot give legal advice. The clerk — all too human in his reality — under the increasing pressure wrought by decreased justice system funding, an ever-increasing workload, and a line of people stretching out the door, responds abruptly and impatiently. The person is alarmed, fearful, dispirited — and walks away. She never seeks legal advice and she and her family are ultimately evicted from their home.

For many in our society, the mere act of entering a courthouse is something to be feared, let alone availing oneself of the potential justice to be acquired there. Those persons can include, but are not limited to: parents who desire custody of their children to protect them from a household with domestic violence and/or child abuse; elderly people who are fraudulently swindled out of their homes by predatory lenders; families who are denied essential support services (e.g., health insurance for their children) to which they are legally entitled; people with developmental disabilities who are unlawfully evicted from their housing; and many others.

There are myriad reasons that may spawns a barrier to access to justice: lack of education, unawareness of rights, inadequate economic means, inequality of economic resources, and, yes, the incivility at times found within the justice system itself.

Incivility of legal counsel — manifested by those who think that to be obnoxious, or abusive, or intimidating is to be effective — can rank high in the primary of obstacles to the attainment of access to justice.

Most of us came into the law envisioning it as what it is: a noble profession that improves people's lives; resolves disputes peacefully; improves the quality of life; and is a vehicle to heal the community. It is not intended to be an incivility vehicle which brutalizes everything it touches: clients, judges, and other lawyers. Our societal role as problem-solvers, advocates, guardians, teachers, counselors, and leaders requires us to seek justice and find reasonable solutions to conflict for all.

Public trust and confidence in our courts is critical to our nation's civic health. Our courts must be fair, open, and protective of the rights of every individual, and they must be perceived by the public to be so. Sadly, this is increasingly not the case. Ongoing surveys indicate it is not just specific groups of people who see inequality. It is the public at large.

Even so, people from all over the globe continue risking everything, even their very lives, to reach American shores. One of the primary reasons (aside from economics) is their perception of this justice system and the access to equal justice which it offers. People do — and should — expect the very best of all of us, lawyers and judges alike, in terms of our competence, humanity, civility, and our commitment to equal justice; and we should be ever ready to provide this and no less.

In January 2010, I read an article in which Kent Hickey, principal at Seattle Prep School, talked about curis personalis, Latin for “care for the person.” He said, “The words are meaningless unless they are lived, even if living them out is difficult or unpopular. When we voice a commitment to curis personalis, but then pick and choose to whom we should extend our care, then I would question our real commitment to this principle.” I respect and embrace Mr. Hickey’s sentiment. It compellingly applies to the concept of equal justice and the question of whether we as a society will achieve recognition of our shared humanity; whether we will achieve the reality that each person in this country has equal worth. It often starts with civility.

Lawyers are leaders in this society and will continue to be, to the degree we focus on our role as problem-solvers, on serving our clients and society, and on the core values of the profession. Those core values are truth, integrity, and honesty. We need an ongoing unified commitment from lawyers to advance the interests of the profession, with primacy on achievement of access to justice. We can advance access to justice by doing pro bono work, by considering the economic costs of litigation, and by treating all parties with care and respect as we work towards fair outcomes. We have an obligation to our clients and to the justice system to search for justice. We must use consciousness, creativity, and community to foster and maintain the civility that will sustain the spirit and assure the success of our quest.

This series produced in association with:

Robert’s Fund
fostering care and respect

Ronald Ward is the current president of the Washington State Bar Foundation, former president of the Washington State Bar Association, a member of the Advisory Council of the Washington Equal Justice Coalition for the provision and support of legal services to deprived citizens, and the founder of the nationally honored WSBA Leadership Institute.
Should the WSBA Increase Licensing Fees to Meet the Growing Costs of Doing Business?

by WSBA Treasurer and 6th District Governor Patrick A. Palace

Most lawyers have an opinion, if asked, about how much the WSBA should be charging for licensing fees. Some members, when asked, have opinions how the WSBA may save money by cutting programs. Others have opinions about expanding existing programs or creating new programs they think are needed. However, rarely do I hear anyone discussing the Bar’s budget using real dollars. Indeed, it has only been since my foray into the inner workings of the Bar — as a governor and now as your treasurer — that I have come to better understand and appreciate the way the WSBA manages our money, the actual amounts of money we collect, the amounts we spend, and the reasons for the expenditures.

For example, over the last couple of years, all companies, including large non-profit organizations such as the WSBA, have faced huge increases in costs caused by our changing economy. Because we are a program-driven organization, employee costs make up nearly 70 percent of our budget. Although the economy is in recession, the future cost of employee salaries is a concern we must address, because salaries will not remain stagnant for long and we must remain competitive in the market to recruit and retain good employees. Also, our Bar is part of the state retirement system (PERS) and participates in medical benefits administered by the state, so we are subject to the rates set by the state. Over the past few years, the state has underfunded the state pension system, and must now find ways to adequately fund it. Therefore, like all state entities, we will see dramatic increases in the employer contribution rates for our employees, with costs nearly doubling in three years. Because rates are based on our salary pool, the fiscal impact is significant.

Medical costs are rising as well, although we are fortunate to be part of the state system, which is able to control costs better than the private insurance market. Other employment taxes such as unemployment and workers’ compensation continue to rise, although these are a small part of our budget. The cost of maintaining 150 employees of the State Bar has raised concerns about our ability to continue all our WSBA programs.

So, should we raise licensing fees, cut programs, redesign the WSBA, or all of the above? We have taken a careful look at each of these approaches, but concluded that it is important that we look beyond the numbers and focus on the work of our Bar as a first step. Trimming the budget is an effective process only when programming priorities are established and defined. We first need to know where the WSBA’s future lies and what the needs of our members are.

For these reasons, the WSBA is working to refine itself. There have been high-level and widespread discussions focused on WSBA’s future, mission, and direction. As your governor and treasurer, I am working with the Budget and Audit Committee, staff, and your governors to formulate policy guidelines regarding what the functions of the Bar should be. In short, our goal is developing lines regarding what the functions of the Bar are, and our money, the actual amounts of money we collect, the amounts we spend, and the reasons for the expenditures.

For example, over the last couple of years, all companies, including large non-profit organizations such as the WSBA, have faced huge increases in costs caused by our changing economy. Because we are a program-driven organization, employee costs make up nearly 70 percent of our budget. Although the economy is in recession, the future cost of employee salaries is a concern we must address, because salaries will not remain stagnant for long and we must remain competitive in the market to recruit and retain good employees. Also, our Bar is part of the state retirement system (PERS) and participates in medical benefits administered by the state, so we are subject to the rates set by the state. Over the past few years, the state has underfunded the state pension system, and must now find ways to adequately fund it. Therefore, like all state entities, we will see dramatic increases in the employer contribution rates for our employees, with costs nearly doubling in three years. Because rates are based on our salary pool, the fiscal impact is significant.

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Ironically, looking at the budget in isolation today, there is no obvious reason for the Bar to take significant steps to pare down programs or expenditures. We had a healthy net income in 2010, and our 2011 budget is sound. The WSBA is solvent and healthy, and recently received another clean audit from Clark Nuber (rare in the industry but standard for WSBA). Indeed, I am happy to report that from 2009 to 2010, the Bar’s total net assets have increased by nearly $1.1 million. Because we are a mandatory bar, overall revenues have increased; at the same time, we tried to hold the line on expenses. However, regardless of how fiscally sound the WSBA is today, future projections about revenues and expenditures do not look great — in other words, expenditures will be rising faster than revenues and at some point our reserves will need to be used to cover deficits. The fiscally prudent thing to do is get ahead of the curve and address the future deficits now while we are in a good position to do so.

Finally, let me address licensing fees briefly. The Board of Governors has voted to maintain license fees at their current levels in 2011 and in 2012, despite the fact that costs are dramatically rising and Bar programming has expanded to meet the needs of our members. There may be a time in the future that licensing fees must increase to keep up with the increasing costs of doing business, but it is my goal as treasurer and the goal of the governors to find and exhaust every other potential means first.

In this spirit, it is my goal to continue to find ways to cut costs, to be more efficient, to focus WSBA functions, and to grow our culture of service among members. We are moving in the right direction even through these tough economic times. In 2011, our Bar will become even more focused and our footprint may shrink. We can all be proud of our Bar and its performance in 2010. With the leadership of President Steve Toole, our Executive Director Paula Littlewood, and outstanding staff, I anticipate 2011 will be remembered as a defining year of growth and redirection.

Patrick Palace opened Palace Law Offices in 1995, a firm that emphasizes workers’ compensation, civil rights, and personal injury matters. Palace was elected to the WSBA Board of Governors for the Sixth District in 2008 and was elected treasurer in July 2010. He can be reached at patrick@palacelaw.com.
New Court Rule Ensures Access to Courts for All

BY ANDREA AXEL

The Washington State Supreme Court recently acted unanimously to ensure that people living with very low incomes are not prevented from accessing the judicial system because of an inability to pay mandatory filing fees and other surcharges. Effective December 28, 2010, General Rule 34 establishes uniform standards and procedures for the waiver of court filing fees and surcharges in civil cases on the basis of indigency.

Prior to the adoption of GR 34, the standards for obtaining waivers varied by county and sometimes by judge. Leslie Savina, advocacy coordinator at Northwest Justice Project, keeps a six-inch-thick binder of the different procedures and forms from every county in the state. “In addition to basic filing fees, required surcharges add up significantly,” Savina says. “Many counties also impose local fees which are required but never waived. Added together, these fees and surcharges impose a huge burden on low-income litigants, requiring them to either pay from their limited resources or forego judicial relief.”

In the past, counties commonly required a written declaration and a court appearance to obtain a fee waiver, taking several hours of advocacy by a pro bono or legal aid attorney before the substance of the case could be addressed. Gail Smith, a member of the WSBA Pro Bono and Legal Aid Committee, which proposed the rule for adoption, says the new rule “will benefit pro bono attorneys by allowing them to devote their time and efforts to the substantive legal issues confronting clients rather than spending the time obtaining IFP [in forma pauperis] orders that should be pro forma.”

In public comments to the Supreme Court in support of the proposed rule, the Northwest Justice Project (Washington’s largest publicly funded legal aid program) chronicled multiple cases where court-imposed fees created unfair results. One example involved a woman with a disabil-
ity attempting to free herself from an abusive marriage. Faced with paying $250 in deferred court fees and surcharges before her divorce could be finalized, the woman paid the fees from her monthly Social Security check. As a result, she was unable to afford her HIV medications that month.

Savina notes that “many litigants unable to secure a waiver never come to our attention — they withdraw, not able to even get through the courthouse door to request relief. This rule will remove a significant barrier to access to justice for low-income people.”

Washington State Supreme Court Chief Justice Barbara Madsen commented on the rule: “Making our courts available to all, regardless of the ability to pay multiple fees and surcharges, is of great imperative to the Supreme Court and to me personally. This new rule introduces uniformity in the manner in which judges may waive fees and will ensure that all parties have the same access to our courts regardless of their ability to pay. The biggest beneficiaries will be parties who are unable to afford attorneys, which is a very common situation in family law matters. At the same time, the rule will provide judges a tool by which to improve the efficiency of their courts as these matters are considered.”

The new rule covers “filing fees or lawfully established fees and surcharges, the payment of which is a condition precedent to a litigant’s ability to secure access to judicial relief.” The rule also sets forth criteria for indigency, including establishing a presumption of indigency if the applicant has been found financially eligible for legal aid services, receives means-tested public assistance or meets certain federal poverty guidelines. A pattern form for use across the state is being developed by the Administrative Office of the Courts with input from stakeholders in the justice, pro bono, and legal aid communities.


Andrea Axel is the 2010–2011 chair of the WSBA Pro Bono and Legal Aid Committee. She is also the grants manager at the Legal Foundation of Washington, which funds programs and supports policies and initiatives that enable the poor and the most vulnerable to overcome barriers in the civil justice system.
He Washington legal community has had ample opportunity to celebrate the role of women in the law over the past year. In November 2010, our state marked the 100th anniversary of women permanently securing the right to vote. Washington Women Lawyers, the statewide organization seeking to further the full integration of women in the legal profession, is celebrating its 40th anniversary this year.

This month, we recognize Women’s History Month, which provides us with the opportunity to honor the legacy of Washington’s pioneering women. There are countless individuals who have made significant contributions to the advancement of women in the Washington bar over the past century or so. The following Washington women lawyers are just three examples of these pioneers, who helped blaze the trails we continue to widen.

**Lelia J. Robinson**

One of Washington Territory’s first female lawyers

Although she began her legal career as the first woman lawyer to practice law in Massachusetts, Lelia J. Robinson moved to Washington Territory in 1884 because it had passed a law that allowed women to vote, serve on juries, and practice law. Robinson was the first woman lawyer in Washington Territory to present her case to a jury and the first woman attorney to argue in front of a mixed jury of men and women.

In addition to being a pioneering Washington Territory lawyer, Robinson was also an early chronicler of women’s legal history. In 1890, women were less than one-half of one percent of the legal profession (208 women, according to the U.S. Census), but Robinson sought to contact those women lawyers and compile information about their personal and professional lives. She published the results of her efforts in the legal publication *The Green Bag*, thereby creating her own women’s legal history that endures to this day.

**The Honorable Reah Mary Whitehead**

Washington’s first female judge

After working for several years as a stenographer, Reah Mary Whitehead graduated from law school at the University of Washington and passed the Washington State Bar exam in May 1905. In 1909, after several years of working as a clerk and struggling to find employment as a lawyer, she was appointed as the first woman prosecutor in Washington. In October 1914, she became Washington’s first female judge when she succeeded in running for justice of the peace of the precinct of Seattle (much like our small claims courts of today), a position she held for nearly 27 years.

During one of her many re-election campaigns, Judge Whitehead clearly set forth her position on women’s ability to serve as effective judges, stating: “There is no sex in brains. I didn’t originate that statement, I simply adopted it in setting forth my belief that a woman is just as mentally capable as a man and that the State of Washington and King County in particular should have a woman superior court judge to even up matters.” Judge Whitehead was a true pioneer: it would be more than 55 years before Nancy Ann Holman was appointed to the King County Superior Court, making her the first woman to preside over a Washington state superior court.

**Reba Hurn**

The first woman admitted to the Washington State Bar Association

Before studying law, Rebecca Jane “Reba” Hurn first worked as a teacher and then went to study in Heidelberg, Germany, where she met Nathan Straus, who was working to promote his milk pasteurization charity. Reba took up the cause and spent the next few years working with internationally renowned scientists and leaders in public health. She returned to Spokane in 1910 to pursue a law degree, and in 1913, she became the first woman admitted to the Washington State Bar Association.

In 1922, Hurn became the first woman elected to the Washington State Senate. A few women legislators previously had served in the House, but Hurn said she preferred the Senate because “[b]y the close of the first session they [men in
Some VERY important things may still get overlooked
Help clients plan for their pets. Ask for a Friends Forever™ packet.

Gary Kish: 503.416.2988 • garyk@oregonhumane.org

Jessica A. Skelton is the 2010–2011 president of Washington Women Lawyers. She practices in the governmental, constitutional, and appellate litigation practice group at K&L Gates LLP in Seattle and can be reached at 206-623-750 or jessica.skelton@klgates.com.

NOTES
4. Id. at 131.
5. Id. at 135.
WSBA’s new website debuts soon. <reimagined and redesigned with you in mind>
The WSBA Board of Governors invites applications for appointments to WSBA committees, boards, and panels. Appointments are limited, and only active WSBA members may be appointed. However, most committee meetings are open to the public and may be attended by any member. More information is on the WSBA website at www.wsba.org/lawyers/groups/committees.htm. Brief descriptions of the committees, boards, and panels can be found on page 43. Please note that the WSBA will send appointment letters by September 2011.

**Deadline:** Completed applications and materials must be received at the WSBA office by **March 11, 2011.**

You may submit your application online by logging on to *myWSBA*: www.mywsba.org.

1) Please provide your name, WSBA number, and indicate up to three committee(s), board(s), and/or panel(s) for which you are applying. See page 43 for available committees, boards, and panels.
2) Tell us why you would like to serve, and describe all relevant skills or experience.
3) Attach a résumé or C.V. (strongly encouraged but not required, except for the Hearing Officer Panel and Conflicts Review Officer). Also, you may, but are not required to, submit up to three letters of recommendation to support your application.
4) Complete the demographic information. Please note that this section is required. If you prefer not to provide this information, please check “Choose not to respond” next to the applicable question.
5) Sign the waiver. Your application will not be processed without your signature.

**Materials must be received by March 11, 2011, to be considered for appointment.**

---

**Step 1:** Provide your name, WSBA number, and committee(s), board(s), and/or panel(s) choices.

**Your Name** (print) __________________________________________  **WSBA number** __________

Indicate which committee(s), board(s), and/or panel(s) you are applying for:

1st choice

☐ Check here if you have served on this committee previously.  Approximate years of service: __________

2nd choice

☐ Check here if you have served on this committee previously.  Approximate years of service: __________

3rd choice

☐ Check here if you have served on this committee previously.  Approximate years of service: __________

**Step 2:** Describe why you would like to serve, and any relevant skill(s) you may possess.

*Why would you like to serve on a particular committee, board, or panel?*

_________________________________________________________________________________________________
_________________________________________________________________________________________________
_________________________________________________________________________________________________
_________________________________________________________________________________________________

*Describe your relevant skills or experience.*

_________________________________________________________________________________________________
_________________________________________________________________________________________________
_________________________________________________________________________________________________
_________________________________________________________________________________________________
Step 3: Attach a résumé or C.V. and/or letters of recommendation (optional).

Note: This is optional except for applicants for the Hearing Officer Panel and Conflicts Review Officer, who are required to submit a résumé or C.V. and a letter of interest.

Step 4: Provide demographic information (required).

The WSBA promotes diversity, equality, and cultural competence in the courts, legal profession, and the bar. In so doing, the WSBA is committed to ensuring that its committees, boards, and panels reflect the diversity of its membership. Please check all boxes that apply.

Ethnicity: □ American Indian/Native American/Alaskan Native □ Asian
□ Black/African descent □ Caucasian/White
□ Pacific Islander □ Spanish/Hispanic/Latina/o
□ Multi-racial □ Other ______________
□ Choose not to respond

Gender: □ Male □ Female □ Choose not to respond

Disability: □ Yes □ No □ Choose not to respond

Sexual orientation: Do you openly identify as a sexual minority, to include the following: gay, lesbian, bisexual, or transgender?
□ Yes □ No □ Choose not to respond

Number of years in practice: ____________ □ Choose not to respond

Employer: ________________________________________________________________ □ Choose not to respond

Area(s) of practice: _____________________________________________________ □ Choose not to respond

Number of lawyers in law firm: □ solo □ 2–5 □ 6–10 □ 11–20 □ 21–35
□ 36–50 □ 51–100 □ 101+ □ Choose not to respond

Step 5: Sign the waiver.

I understand and agree that as part of the application process, the WSBA routinely checks the grievance and discipline files for any records related to applicants. Thus, I waive confidentiality of these materials to WSBA staff and the Board of Governors.

Signature ____________________________________________ Print name ________________________________

E-mail ________________________________ Daytime phone ________________________________

Please mail, fax, or e-mail (PDF or Word document) to:

Washington State Bar Association
Communications Department
1325 Fourth Ave., Ste. 600
Seattle, WA 98101
Fax: 206-727-8319
E-mail: barleaders@wsba.org

Application Deadline: March 11, 2011

Log on to myWSBA.org to apply online. Thank you for your interest in serving!
Overview of Standing Committees, Regulatory Boards, and Panels for 2011–12

STANDING COMMITTEES

Amicus Curiae Brief Committee
Reviews all requests for amicus curiae participation by the WSBA, and provides a recommendation to the Board of Governors pursuant to the WSBA Amicus Curiae Brief Policy. Appointment is for a two-year term.

Continuing Legal Education (CLE) Committee
Provides policy guidance for the WSBA Education and Outreach Department in fulfilling its mission of serving the ongoing education needs of Washington lawyers. The WSBA-CLE and its efforts have to be fiscally self-sustaining, which requires a business focus in the Committee. Standing subcommittees are quality control, technology, section/external relations, and a fourth “as needed” programming subcommittee to support the Department in achieving its traditional "The Impactor in Continuing Legal Education." Appointment is for a three-year term.

Court Rules and Procedures Committee
Studies and develops suggested amendments to designated sets of court rules on a regular cycle of review. Performs the rules study function outlined in GR 9 and reports its recommendations to the WSBA Board of Governors. The Civil Rules (CR), Mandatory Arbitration Rules (MAR), and Civil Rules for Courts of Limited Jurisdiction (CRLJ) will be reviewed in 2011–2012. Lawyers with experience or interest in these areas are encouraged to apply. Appointment is for a two-year term.

Committee for Diversity
Works to increase diversity within the membership and leadership of the WSBA; promote opportunities for appointment or election of diverse applicants to the Board of Governors; and support and encourage opportunities for minority attorneys; aggressively pursue employment opportunities for minorities; and raise awareness of the benefits of diversity. Appointment is for a two-year term.

Editorial Advisory Committee
Acts mainly in an advisory capacity, supervising the publication of Bar News, including the recommendation of finalists for the editor position for selection by the WSBA Board of Governors, and the establishment of guidelines for format, content, and editorial policy. Appointment is for a two-year term.

Judicial Recommendation Committee
Screens and interviews candidates for state Court of Appeals and Supreme Court positions. Recommendations are reviewed by the WSBA Board of Governors and referred to the governor for consideration when making judicial appointments. Appointment is for a three-year term.

Legislative Committee
Reviews proposals from WSBA sections for state legislation that relate to the practice of law and the administration of justice, and makes recommendations to the Board of Governors for a position thereon. Appointment is for a two-year term.

Pro Bono and Legal Aid Committee
Deals with questions in the fields of pro bono and legal aid with respect to: (1) supporting activities that assist volunteer attorney legal services programs and organizations, and encouraging pro bono participation to meet the aspirational goals in RPC 6.1, Pro Bono Publico Service; (2) addressing the need for representation of indigent persons; and (3) cooperating with other agencies interested in these objectives. Both active and emeritus members may serve. Appointment is for a two-year term.

Professionalism Committee
Recommends programs to increase professionalism by assisting attorneys in fostering better client relations; improving communication among attorneys; and encouraging continuing legal education. Appointment is for a two-year term.

Rules of Professional Conduct Committee
Considers and responds to inquiries arising under the Rules of Professional Conduct (RPC) and may, upon request, express its opinion to the Board of Governors concerning proper professional conduct. Appointment is for a two-year term.

REGULATORY BOARDS

Board of Bar Examiners
Prepares the questions and grades the papers for the bar examinations under the direction of the WSBA Board of Governors, in accordance with the Admission to Practice rules as approved by the Supreme Court. Appointment is for a four-year term.

Character and Fitness Board
Deals with matters of character and fitness bearing on the practice of law. Appointment is for a three-year term.

Disciplinary Board
Carries out the functions and duties assigned to it according to the Rules for Enforcement of Lawyer Conduct adopted by the Washington State Supreme Court. The full board meets at least six times a year, reviewing hearing officer decisions and stipulations. Three-member review committees meet at least an additional three times a year and review disciplinary investigations and referrals. Considerable reading and meeting preparation are required. Appointment is for a three-year term. Prerequisite: Members must have been an active member of the WSBA for at least seven years, two positions are available; one that must be filled by a member from District 2, and one by a member from District 8.

Law Clerk Board
Supervises the Law Clerk Program in accordance with Rule 6 of the Admission to Practice Rules; considers applications for enrollment in the program; interviews and evaluates law clerks and tutors during the course of study; and certifies that law clerks have successfully completed the educational requirement for the Washington state bar exam. The board meets four times a year. Appointment is for a three-year term. Members are appointed with consideration for the geographic distribution of the law clerks in the program. One position is available. This position will serve primarily the Bellevue area. Preference will be given to applicants from Districts 1, 6, 7, and 8.

Lawyers' Fund for Client Protection Board
Pursuant to APR 15, reviews claims for reimbursement of financial loss sustained by reason of an attorney’s dishonest conduct. Appointment is for a four-year term. The Board meets four times a year. Appointment is for a three-year term. Members are appointed with consideration for the geographic distribution of the law clerks in the program. One position is available. This position will serve primarily the Bellevue area. Preference will be given to applicants from Districts 1, 6, 7, and 8.

Mandatory Continuing Legal Education Board
Approves courses and educational programs that satisfy the educational requirements of the mandatory CLE rule and considers MCLE policy issues, as well as reporting and exception situations. The Board meets five to six times a year. Appointment is for a three-year term.

PANELS

Adjunct Investigative Counsel (AIC) Panel
Panel members assist the Office of Disciplinary Counsel as needed pursuant to Rule for Enforcement of Lawyer Conduct 2.9. AIC volunteers may be asked to investigate a grievance against a lawyer; assist staff disciplinary counsel with a portion of an investigation; serve as special disciplinary counsel and represent the Association in the prosecution of a disciplinary case; provide staff disciplinary counsel with an outside opinion on an area of law; serve as a probation monitor following imposition of a disciplinary sanction; serve as a file custodian when a lawyer dies, disappears, or otherwise becomes incapable of protecting clients’ interests; or serve as a limited guardian or guardian ad litem for an incapacitated lawyer. Appointment is for a five-year term. Prerequisite: Members must have been an active or judicial member of the WSBA for at least seven years with no record of disciplinary misconduct.

Hearing Officer Panel
Panel members serve as hearing officers for lawyer discipline matters and are expected to make evidentiary rulings, rule on motions, and prepare written findings of fact, conclusions of law, and (as necessary) sanction recommendations according to strict deadlines. Attendance at annual training is required. Hearing officers may not serve as expert witnesses on professional conduct issues, represent respondents in disciplinary matters, or serve as special disciplinary counsel or adjunct investigative counsel. The Hearing Officer Selection Panel reviews applications and makes recommendations to the Board of Governors for appointments to the panel. In addition to the application for a position on the panel, applicants are required to submit a letter of interest (highlighting relevant skills and experience) and a résumé to the Hearing Officer Selection Panel, WSBA, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539 or elizabeth@wsba.org. Selection for the panel is for a three-year term. Prerequisite: Hearing officer candidates must have experience as a disciplinary counsel or an administrative law judge.

Conflicts Review Officer
The Conflicts Review Officer (CRO) is appointed pursuant to Rule 2.7 of the Rules for Enforcement of Lawyer Conduct. The CRO, with support from the Office of General Counsel, is a lawyer outside the discipline system who reviews and makes initial determinations for grievances filed against disciplinary counsel and other lawyers employed by the Association, hearing officers, and members of the WSBA. The CRO serves the WSBA Board of Governors, and the Washington State Supreme Court. The CRO may dismiss the grievance, defer the investigation, refer the attorney for diversion evaluation, or have the grievance assigned to special disciplinary counsel for further investigation. The CRO acts independently of disciplinary counsel and the Association. To maintain the staggered terms required under the ELCs, one CRO will be appointed to a full three-year term and a second CRO will be appointed to a two-year term. The Supreme Court makes the appointments based on recommendations from the WSBA Board of Governors. The CRO must have prior experience as a Disciplinary Board member, disciplinary counsel, or special disciplinary counsel, and have no other role in the disciplinary system while serving as CRO. If you are interested in the position, please submit a letter of interest, references, and résumé along with the completed committee application form. Please review Rules for Enforcement of Lawyer Conduct, particularly ELC 2.7, prior to applying.

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### WSBA Presidential Search

**Application Deadline: May 2, 2011**

The WSBA Board of Governors is seeking applicants for the position of WSBA president for 2012–2013. Pursuant to Article VI (D)(2)(b) of the WSBA Bylaws, the primary place of business of candidates for president for 2012–2013 must be King County. The WSBA member selected to be president will have an opportunity to provide a significant contribution to the legal profession.

Applications for 2012–2013 WSBA president will be accepted through May 2, 2011, and should be limited to a current résumé, a concise application letter stating interest and qualifications, and no fewer than five or more than 10 references. The Board of Governors will consider endorsement letters received by May 16, 2011. Applications and endorsement letters should be sent to the WSBA Executive Director, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101.

Direct contact with the Board of Governors is encouraged. All candidates will have an interview with the full Board of Governors in open session at the June 3, 2011, Board of Governors meeting in Kennewick. Following the interviews, the Board will select the president.

Although prior experience on the WSBA’s Board of Governors may be helpful, there is no requirement that one must have been a member of the Board of Governors or had previous experience in Bar activities. The candidate must be willing to devote a substantial number of hours to WSBA affairs and be capable of being a positive representative for the legal profession. The position is unpaid. Some expenses, such as WSBA-related travel, are reimbursed.

The commitment begins in June 2011, following selection. A one-year term as president-elect will begin at the Annual Business Meeting on September 22, 2011. The president-elect is expected to attend the two-day Board meetings held approximately every five to six weeks, as well as numerous subcommittee, section, regional, national, and local meetings. In September 2012, at the WSBA Annual Business Meeting, the president-elect will assume the position of president. During his or her service, the president-elect and president will also be required to meet with members of the Bar, the courts, the media, and public and legal interest groups, as well as be involved in the Bar’s legislative activities. Appropriate time will need to be devoted to communication by letter, e-mail, and telephone in connection with these responsibilities.

The duties and responsibilities of the president are set forth in the WSBA Bylaws. The Bylaws can be found at www.wsba.org/info/bylaws.

### Call for Applications for WSBA Board of Governors At-Large Position

**Application deadline: April 20, 2011**

To increase member representation on the Board of Governors, the WSBA Bylaws provide for three at-large positions. The full text of the Bylaws can be reviewed at www.wsba.org/bylaws. One of these positions is up for election to a three-year term commencing at the close of the annual meeting in September 2011.

The Board of Governors carries out the mission of the Bar and furthers the WSBA’s Guiding Principles, all within the mandate of General Rule 12. Pursuant to Article IV (A) of the WSBA Bylaws, as a representative, each governor is expected to communicate with members about Board actions and issues, convey member viewpoints to the Board, and fulfill liaison duties as assigned. This year’s elected governors shall take office at the close of the final Board meeting of the fiscal year, scheduled for September 22–23, 2011. Governors are elected to a three-year term and are expected to complete their full term.

Persons interested in filling an at-large position should submit a letter of application and résumé. The Board of Governors will elect the at-large governor at their meeting on June 3, 2011. The application should include a statement addressing how the applicant believes he or she meets the intent specified in Article VI, Section D of the Bylaws. There is no intent that these positions are dedicated or rotationally filled by any one element of diversity or group of members.

### The Board for Judicial Administration Best Practices Committee

**Application deadline: April 5, 2011**

The WSBA Board of Governors is accepting letters of interest and résumés from members interested in serving on the Board for Judicial Administration Best Practices Committee. The WSBA will be nominating one member who is appointed by the Supreme Court to serve a two-year term, which will commence on June 1, 2011. The committee’s activity is narrowly focused on creating, testing, and evaluating court performance audit measures. Each measure is designed to evaluate a...
The WSBA Board of Governors is seeking applicants interested in serving on the Commission on Judicial Conduct. Two positions are available: one as a member and one as an alternate.

The Commission reviews complaints of ethical misconduct and disability against judicial officers, discusses the progress of investigations, and takes action to resolve complaints. The goal of the Commission is to maintain confidence and integrity in the judicial system by seeking to preserve both judicial independence and public accountability.

Please submit a letter of interest and résumé to WSBA Communications Department, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539; or e-mail barleaders@wsba.org. A letters of interest and résumé are also required if the incumbent seeks reappointment.

Further information about the Statute Law Committee can be found online at www.leg.wa.gov/codereviser/pages/statute_law_committee.aspx, or by contacting them at 360-786-6777.

The public interest requires a fair and reasonable process to address judicial misconduct or disability, separate from the judicial appeals system that allows individual litigants to appeal legal errors.

The Commission consists of 11 members who serve four-year terms — six non-lawyer citizens, three judges, and two lawyers. Each member has an alternate whose term coincides with their corresponding member’s term. The lawyers must be admitted to practice in Washington and are

Never needed more... 
...Never more in need.

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

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

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

LAW Fund & the Campaign for Equal Justice | 1325 4th Ave., Ste. 1335, Seattle, WA 98101 | 206.623.5261
appointed by the WSBA. Incumbents are eligible for reappointment, limited to two terms as an alternate member and two terms as a full member. Letters of interest and résumés are also required for incumbents seeking reappointment. The term for these positions will commence on June 17, 2011, and expire on June 16, 2015. Please submit a letter of interest and résumé to WSBA Communications Department, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539; or e-mail barleaders@wsba.org.

The Commission on Judicial Conduct has asked the WSBA to conduct discipline checks on all applicants. Upon receipt of a letter of interest and résumé, applicants will be sent a form to authorize the WSBA to release to the WSBA Communications Department representative all information contained in the member's disciplinary record. This information will be made available to the Board of Governors.

Further information about the Commission can be found online at www.cjc.state.wa.us, or by contacting them at 360-753-4585.

Seeking Questionnaires from Candidates for Judicial Appointments
May 6, 2011, for June 17, 2011, interview
The WSBA Judicial Recommendation Committee (JRC) is accepting questionnaires from attorneys and judges seeking consideration for appointment to fill potential Washington State Supreme Court and Court of Appeals vacancies. Interested individuals will be interviewed by the Committee on the dates listed above. The JRC’s recommendations are reviewed by the WSBA Board of Governors and referred to Governor Gregoire for consideration when making judicial appointments. Materials must be received at the WSBA office by the deadline listed above. To obtain a questionnaire, visit the WSBA website at www.wsba.org/lawyers/groups/judicialrecommendation or contact the WSBA at 206-727-8212 or 800-945-9722, ext. 8212; or e-mail judithb@wsba.org.

Board of Governors Elections Begin March 15
On March 15, all WSBA active members in the 3rd, 6th, 7th-East, and 8th Board of Governors districts will have the opportunity to once again help determine the WSBA’s future direction and leadership. For the third year, voting members will have the opportunity to cast their votes online, rather than through the traditional paper ballot process. Electronic voting is secure, confidential, and convenient. Members with valid e-mail addresses on file with the WSBA will not receive a paper ballot. All electronic voting will begin on March 15 and must be completed by 5:00 p.m. PDT on April 15. While the WSBA is encouraging members with e-mails on file with WSBA to cast votes online, paper ballots can be requested.

The WSBA will send eligible members without e-mail addresses on file the traditional paper ballots. The ballots will include instructions on how to access the online voting system, so those members can vote online if they prefer. Members submitting paper ballots must also make certain to print and sign their name, including their address and Bar number on the return envelope, and deliver it to the WSBA offices by 5:00 p.m. PDT on April 15.

Members may cast votes either online or by paper ballot, but they may only vote once. The WSBA has implemented safeguards to prevent a member from casting multiple votes.

The WSBA hopes members will find online, or electronic, voting more convenient than filling out and returning paper ballots. Please contact Pamela Wuest at pamela@wsba.org or 206-239-2125 if you have any questions, or to request a paper ballot.

2011 WSBA Awards Nominations Sought
Each year, WSBA members are asked to identify those who deserve the legal profession’s recognition and appreciation. Nominations are sought for the following awards:

Award of Merit. First given in 1957, this is the WSBA’s highest honor. The Award of Merit is most often given for long-term service to the Bar and/or the public, although it has also been presented in recognition of a single, extraordinary contribution or project. It is awarded to individuals only — both lawyers and non-lawyers.

Professionalism Award. This honor is awarded to a WSBA member who exemplifies the spirit of professionalism in the practice of law. “Professionalism” is defined as the pursuit of a learned profession in the spirit of service to the public and in
the sharing of values with other members of the profession.

Angelo Petrucci Award for Lawyers in Public Service. Named in honor of Angelo R. Petrucci, a senior assistant attorney general who passed away during his term of service on the WSBA Board of Governors, this award is given to a lawyer in government service who has made a significant contribution to the legal profession, the justice system, and the public.

Outstanding Judge Award. This award is presented for outstanding service to the bench and for special contribution to the legal profession at any level of the court.

Pro Bono Award. This award is presented to a lawyer, non-lawyer, law firm, or bar association for outstanding efforts in providing pro bono services. This award is based on cumulative efforts, as opposed to a lawyer’s or group’s pro bono hours or financial contribution.

Courageous Award. This award is presented to a lawyer who has displayed exceptional courage in the face of adversity, thus bringing credit to the legal profession.

Excellence in Diversity Award. This award is made to a lawyer, law firm, or law-related group that has made a significant contribution to diversity in the legal profession’s employment of ethnic minorities, women, persons with disabilities, and other persons of diversity.

Outstanding Elected Official Award. This award is presented to an elected official for outstanding service, with special contributions to the legal profession. It is awarded to an individual who has demonstrated a commitment to justice beyond the usual call of duty.

Excellence in Legal Journalism Award. This award recognizes that describing the context, facts, and players involved in the legal system with fairness and sensitivity requires intelligence, knowledge, dedication, and skill. This award is given to the journalist and his/her organization that has set the standard for relevance, clarity, accuracy, and understanding in reporting.

Lifetime Service Award. This is a special award given for a lifetime of service to the WSBA and the public. It is given only when there is someone especially deserving of this recognition.

President’s Award. The President’s Award is given annually in recognition of special accomplishment or service to the WSBA during the term of the current president.

Community Service Award. Lawyers are known for giving generously of their time and talents in service to their communities. This award recognizes exceptional non-law-related volunteer work and community service.

Norm Maleng Leadership Award. This award is given jointly by the WSBA and the Access to Justice Board, in honor of Norm Maleng’s legacy as a leader. He was an innovative and optimistic leader committed to justice and access to justice in both civil and criminal settings. Within the profession, his leadership was characterized by his love of the law and commitment to diversity and mentorship. This award recognizes those who embody these qualities.

Award presentation. It is important to note that presentation of any WSBA award is made only when there is a truly deserving recipient. Some years, no award is given in some categories. Awards are limited to one recipient per category, except when a group of individuals earned the award together.

Nomination submissions. If you know an individual who fits the criteria set forth above, please go to www.wsba.org/2011wsbaawardsinfo.htm for more information and to download a nomination form. Self-nominations will not be accepted. Please note that the completed nomination form must accompany all nominations in order to be considered.

Each nomination will be considered by a committee of the Board of Governors. The awards detailed above may or may not be presented every year. The deadline for the Pro Bono Award and Norm Maleng Leadership Award nominations is March 31, 2011. The deadline for all other nominations is April 29, 2011. Please send nominations to: WSBA, Attn: Annual Awards, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101; fax: 206-727-8310; e-mail: pamelaw@wsba.org. Please contact Events Coordinator Pamela Wuest at 206-239-2125 for more information.

The awards will be presented at the WSBA Annual Awards Dinner in Seattle on September 22, 2011, with the following exceptions: the Pro Bono and Norm Maleng Leadership awards will be presented at the Access to Justice/Bar Leaders Conference in Kennewick, June 3–5, 2011.


Available in spiral-bound print format or on CD, this concise guide covers the A to Z of international business law in Washington — from entity creation to bankruptcy and creditor protection; from clean energy technology to industrial insurance and workplace safety; and from the Uniform Commercial Code to commercial litigation.
and alternative dispute resolution. Washington attorneys will want this resource for themselves and their clients — and for potential clients. The cost is $75 (plus tax and shipping and handling) for the print or the CD version, with volume discounts available for larger orders. For full table of contents, or to order, go to www.wsbacle.org, click “Deskbooks” and sort by business law as the practice area, or enter the title in the search box. Questions? Call WSBA-CLE Order Fulfillment at 206-733-5918 or e-mail orders@wsba.org.

**2011 Licensing and MCLE Information**

*Licensing deadline was February 1, 2011.*  
If any portion of your license fee or late fee remains unpaid, or if required forms have not been filed, after two months’ written notice of your delinquency, a recommendation for suspension will be submitted to the Supreme Court. You may complete licensing requirements either online at www.mywsba.org or on the A1 License Renewal form. For detailed instructions, go to www.mywsba.org.

If you were due to complete MCLE requirements for 2008–2010 (Group 1) and have not done so after two months’ written notice of your delinquency, a recommendation for suspension will be submitted to the Supreme Court. If you are credit-compliant, you may certify online at www.mywsba.org or file the Continuing Legal Education Certification (C2) form. If a late fee is due, that may also be paid online or sent with the paper C2 form. For detailed instructions, go to www.mywsba.org.

**Weekly and Monthly Job Search Groups**

Join us Wednesday, March 9, from noon to 1:30 p.m. at the WSBA office. Dan Crystal, Psy.D., from the Lawyers Assistance Program, will host a roundtable conversation dedicated to the job search. The roundtable environment generally provides more individualized attention to one’s efforts to find work. We will discuss informational interviewing and networking venues for your practice area, among other topics. This is a drop-in group and you are welcome to bring your lunch. Contact Dan Crystal at 206-727-8267, 800-945-9722, ext. 8267, or danc@wsba.org. To access additional job search resources, visit www.wsba.org/lawyers/services/jobsearchresources.htm.

**Sign up for the Lawyers Assistance Program Statewide Conference**

The Lawyers Assistance Program’s 14th annual conference will be held April 15–17, 2011, at Campbell’s Resort, Chelan. The conference’s theme, “A Thriving Practice, A Healthy Life: Finding the Ideal Balance,” features tools to make your practice more efficient and profitable as well as skills to take care of yourself in the process. WSBA President-elect Steve Crossland will deliver the keynote speech. The cost is $99 for seven CLE credits, including meals. Contact Peggy Harkrader at peggyh@wsba.org to register.

**Facing an Ethical Dilemma?**

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

**Search WSBA Ethics Opinions Online**

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

Speakers Available
The WSBA Lawyers Assistance Program offers speakers for engagements at county, minority, and specialty bar associations, and other law-related organizations. Topics include stress management, life/work balance, and recognizing and handling problem-personality clients. Contact Peggy Harkrader, lawyer services coordinator, at 206-727-8268, 800-945-9722, ext. 8268, or peggyh@wsba.org.

Get More out of Your Software
The WSBA offers hands-on computer clinics for members wanting to learn more about what office software, such as Microsoft Outlook and Word and Adobe Acrobat, can do for a lawyer. We also cover online legal research such as Casemaker and other resources. Are you a total beginner? No problem. The clinic teaches helpful tips you can use immediately. Computers are provided, or bring your laptop. Seating is limited to 15 members. The March 7 clinic will meet from 10:00 a.m. to noon at the WSBA office and will focus on Microsoft Word in the law office. The March 10 clinic will meet from 2:00 to 4:00 p.m. and will focus on using Outlook and practice management software. There is no charge and no CLE credits. To reserve your place, contact Julie Salmon at 206-733-5914, 800-945-9722, ext. 5914, or juliesa@wsba.org.

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

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

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

Tip of the Month: Stress Reduction
Sometimes it’s tempting to reduce stress by over-doing alcohol, prescription drugs, food, sex, gambling — even work. These methods usually provide short-term relief and long-term pain, effectively giving you another problem to cope with down the road. Learn to reduce your stress without self-harm. If you need a hand, call the Lawyers Assistance Program at 206-727-8268.

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

Upcoming Board of Governors Meetings
March 18–19, Spokane • April 29–30, Bellevue • June 3, Kennewick
With the exception of the executive session, Board of Governors meetings are open, and all WSBA members are welcome to attend. RSVPs are appreciated but not required. Contact Margaret Shane at 206-727-8244, 800-945-9722, ext. 8244, or margarets@wsba.org. The complete Board of Governors meeting schedule is available on the WSBA website at www.wsba.org/info/bogdefault.htm.

Usury Rate
The average coupon equivalent yield from the first auction of 26-week treasury bills in February 2011 was 0.178 percent. Therefore, the maximum allowable usury rate for March is 12 percent. Information from January 1987 to date is on the WSBA website at www.wsba.org/media/publications/barnews/usury.htm.
Disciplinary Notices

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

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

Resigned in Lieu of Disbarment

Komron Michael Allahyari (WSBA No. 19804, admitted 1990), of Seattle, resigned in lieu of disbarment, effective January 10, 2011. Mr. Allahyari affirmatively admitted that the WSBA could prove by a clear preponderance of the evidence the alleged violations of the Rules of Professional Conduct, and that proof of such violations would suffice to result in disbarment, but did not affirmatively admit the facts and misconduct herein. This resignation is based on conduct involving dishonesty, and failure to maintain trust account records and individual client ledgers.

The Statement of Misconduct reads as follows:

In December 1997, Mr. Allahyari entered into a written agreement to represent Clients in a personal injury action on a contingent fee basis. Since Clients had been injured during the commission of a crime, their substantial medical costs were paid by the Washington State Crime Victims Compensation Program (CVCP). The CVCP timely and periodically sent to Mr. Allahyari notices of its increasing lien for the Clients’ medical expenses.

In February 2003, the Clients agreed to settle their claims in return for $125,000 from the defendants’ commercial general liability insurer and assignment of the defendants’ claims against a liability insurer and against Lawyer B. On February 5, 2003, pursuant to the terms of the settlement, the liability insurer wired $125,000 into Mr. Allahyari’s trust account. Pending resolution of the CVCP lien, Mr. Allahyari withheld $26,000 from the settlement.

To pay the substantial costs of their case, the Clients had borrowed $80,000 from a relative in return for a promissory note at 12% interest to repay the loan out of the proceeds of their claims. On February 18, 2004, the Clients settled the assigned claims against the liquor liability insurer for $672,500. Mr. Allahyari deposited the $672,500 settlement check into his trust account. In February 2004, the CVCP had liens of at least $100,406.64 on the Clients’ settlement.

On February 24, 2004, Clients agreed to pay their relative $125,000 in full satisfaction of the promissory note and accrued interest. On March 4, 2004, Mr. Allahyari met with Clients to go over the Settlement Statement, and then commenced disbursement of the settlement. According to the Settlement Statement, Mr. Allahyari should have withheld $100,406.04 from the disbursements for use in resolving the CVCP lien. Mr. Allahyari disbursed $80,000 in repayment of the loan from the relative, $187,899.52 to Clients, $9,191.30 to his firm for reimbursement of costs, an additional $15,000 to one of the Clients, and $2,115 to another individual. Mr. Allahyari subsequently made withdrawals of the remaining funds from the trust account for his personal and business use, reducing the balance to zero by May 31, 2005.

On July 26, 2004, the CVCP had issued Distribution Orders reducing its lien to $50,242.52. To settle this lien, Mr. Allahyari negotiated a compromise whereby the CVCP accepted $35,088.83 in full payment of its lien, which recognized an additional claim by Mr. Allahyari of $3,011.41 in costs. Because Mr. Allahyari had already removed all of the Clients’ funds from his trust account, he funded the $35,088.33 payment from his own funds.

Mr. Allahyari did not maintain an individual Client ledger for the funds he received in trust for his Clients. He removed funds he should have withheld from disbursement to pay the CVCP lien, and used the funds for his personal use. Mr. Allahyari failed to maintain other clients’ trust funds in trust, using them for his personal use before distributing them to the appropriate parties.

Mr. Allahyari’s conduct violated RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; former RPC 1.14(a), requiring that all funds paid to a lawyer or law firm be deposited in one or more identifiable interest-bearing trust accounts and that no funds belonging to the lawyer or law firm be deposited therein; current RPC 1.15A(b), prohibiting a lawyer from using, converting, borrowing, or pledging client or third-person property for the lawyer’s own use; and RPC 1.15B(a), requiring a lawyer to maintain current trust account records and listing the minimum requirements of what the records must include.

Leslie C. Allen represented the Bar Association. Joseph J. Ganz represented Mr. Allahyari.

Resigned in Lieu of Disbarment

Jeffrey Randall Bivens (WSBA No. 34100, admitted 2003), of Washougal, resigned in lieu of disbarment, effective January 6, 2011. This resignation was based on conduct involving false statements and the commission of a felony.

In 2006, Mr. Bivens represented a client in connection with the sale of his business. The client employed Mr. K as a commercial broker and appraiser. Mr. K established a value of the business at about $7.4 million. Mr. Bivens and others represented to the lender in the transaction (bank) and to the U.S. Small Business Administration (SBA), which guaranteed the loan, that the purchase price of the business would be $4 million. This amount was consistent with an independent appraisal performed by the bank. Based upon that $4 million purchase price and financial review of the business by the bank, the bank agreed to loan approximately $2 million, and the SBA agreed to guarantee 75 percent of the loan. That loan closed and funding occurred on or about May 23, 2007. Almost immediately thereafter, problems with the business surfaced and the loan went into default. In connection with those problems and in a separate criminal action, Mr.
Bivens's client was convicted of wire fraud, bank fraud, and money laundering. Mr. K was convicted of making material false statements relating to the sale and loan transaction.

In connection with the bank’s SBA loan for about $2 million, Mr. Bivens, in his capacity as counsel for the client, knowingly made a series of false representations during the underwriting and funding process. Mr. Bivens claimed the purchase price was $4 million, when in truth it was about $7.4 million. Mr. Bivens claimed that apart from the purchaser owing $2 million to the bank and SBA in connection with the loan, the purchaser’s only direct debt to the seller was set forth in two promissory notes in the total amount of $1.8 million. In truth, however, there was a third secret promissory note from the buyer to the client in the amount of $1 million. Mr. Bivens also represented, pursuant to bank and SBA requirements, that a continued employment contract for the client was limited to one year, when in fact it was a much longer time period. Through the SBA guarantee process and procedure, those misrepresentations, made by Mr. Bivens and others, were communicated to the SBA. If the SBA had learned of any of those misrepresentations, its guarantee of the loan would have been denied and the bank’s loan would also have been denied.

In conversations and in e-mails between Mr. Bivens and others working on the sale transactions, there were explicit communications about the falsity of the representations and the need to keep the true terms of the sale secret from the bank and SBA. To accomplish the loan but still maintain the true sales agreement between Mr. Bivens’s client and the buyer, the sale closing was structured by Mr. Bivens and others to occur in two separate closings. The repartition of the two closings was for the purpose of deceiving the bank and the SBA.

On October 20, 2010, Mr. Bivens entered a guilty plea to the charge of false statement and perjury in violation of Title 18 U.S.C.§1001, a felony. Mr. Bivens signed a plea agreement admitting to the facts above.

Mr. Bivens's conduct violated RPC 8.4(b), prohibiting a lawyer from committing a criminal act (here, false statements) that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects; and RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

Erica W. Temple represented the Bar Association. Mr. Bivens represented himself. Donald W. Carter was the hearing officer.

**Disbarred**

**James J. Conlin** (WSBA No. 20931, admitted 1991), of Tacoma, was disbarred, effective November 17, 2010, by order of the Washington State Supreme Court following a default hearing. This discipline is based on conduct involving conversion of funds, the commission of crimes, misrepresentation, conduct prejudicial to the administration of justice, and violations of the Rules for Enforcement of Lawyer Conduct.

In 2008, Mr. Conlin acted as the escrow agent in the sale of a business. On October 1, 2008, after the closing took place, Mr. Conlin received a check for $52,370 from the buyer, which he deposited into his trust account. From those funds, Mr. Conlin was obligated to make various disbursements in accordance with the escrow instructions and the closing statements he prepared. Mr. Conlin failed to pay off the amount owing on a line of credit of approximately $13,870 secured by a lien against the business’s property (bank lien). Between October 2008 and March 2009, Mr. Conlin appropriated those funds to his own use. In late October 2008, when the seller asked for an explanation of why he had not paid off the bank lien, Mr. Conlin told him that the funds had been misdirected due to a miscommunication. Mr. Conlin subsequently made payments on the bank lien, but never completely paid off the outstanding balance.

The seller’s agent filed a grievance against Mr. Conlin for not having paid the bank lien. Mr. Conlin submitted a one-page response in which he stated that he had “inadvertently misdirected” the money that was to have been used to pay the debt. The response was false and misleading. In May 2009, disciplinary counsel served Mr. Conlin with a subpoena commanding him to testify and produce documents related to the business transaction. The deposition was continued twice at Mr. Conlin’s request. At his deposition, Mr. Conlin testified under oath that he had not produced any of the requested documents because his bank statements had been mistakenly mailed by the bank to an “improper address.” He also testified that in early October 2008 he had made a wire transfer of slightly less than $14,000 from his IOLTA account by which he intended to pay off the bank lien. He testified that the funds were mistakenly transferred to the account of one “Jason Martinez” instead of to the bank which held the lien. Mr. Conlin testified that “Martinez” sent him a check for $13,000 in November or December 2008, which he deposited in his trust account, and that “Martinez” stopped payment on the check before it could clear. Mr. Conlin testified that “Martinez” then disappeared. Mr. Conlin’s testimony was false and misleading.

After his deposition, Mr. Conlin sent disciplinary counsel a one-page document entitled “Transactions Report” that purported to show that a payment was made from Mr. Conlin’s trust account on October 3, 2008, to pay off the lien and, in later entries, that a bad check was deposited and then returned for insufficient funds. The “Transaction Report” was false. Mr. Conlin also sent disciplinary counsel a fax in which he stated that he or his bank would produce other documents described in the subpoena, but failed to do so. Mr. Conlin failed to respond to a subsequent request for information.

Mr. Conlin’s conduct violated RPC 1.15A(b), prohibiting a lawyer from using, converting, borrowing, or pledging client or third-person property for the lawyer’s own use; RPC 1.15A(f), requiring a lawyer to promptly pay or deliver to the client or third person the property which the client or third person is entitled to receive; RPC 8.4(b), prohibiting a lawyer from committing a criminal act (here, theft, false swearing, and perjury) that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects; RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and RPC 8.4(d), prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice; and RPC 8.4(l), prohibiting a lawyer from under the Rules for Enforcement of Lawyer Conduct in connection with a
disciplinary matter.

Scott G. Bushy represented the Bar Association. Mr. Conlin did not appear either in person or through counsel. Gregory A. Dahl was the hearing officer.

Disbarred

Charles L. Smith (WSBA No. 5357, admitted 1973), of Bellevue, was disbarred, effective September 17, 2010, by order of the Washington State Supreme Court.

This discipline was based on conduct involving failure to act diligently in representing a client, failure to communicate, trust account irregularities, failure to properly supervise non-lawyer staff, fee splitting, the unauthorized practice of law, misrepresentations to clients, violations of the Rules of Professional Conduct, and dishonest conduct. Charles L. Smith is to be distinguished from Charles L. Smith, of Issaquah; Charles E. Smith, of Seattle; and Charles Z. Smith, of Olympia.

From about mid-October 2006 through March 2007, Mr. Smith was employed as a contract attorney for a business that was in fact owned by two non-lawyers. In 2006, Mr. Smith assisted the two non-lawyers in establishing a new limited liability entity whose purpose was to provide legal services. Mr. Smith assisted in transferring the legal work being done by the former business to the new entity, and established himself as the supervisory lawyer of the new entity. Mr. Smith was aware the two non-lawyers, who were neither registered immigration specialists nor limited practice officers, were using this entity to provide legal services to clients, who were mostly recent immigrants from the former Soviet Union. During this time, Mr. Smith engaged in the following conduct:

- Allowed non-lawyer staff to have signature authority over the IOLTA account.
- Failed to make reasonable efforts to ensure that the entity that Mr. Smith appeared to supervise had in effect measures to ensure that the non-lawyer staff’s conduct was compatible with the professional obligations of the lawyer.
- Shared fees with non-lawyers and allowed them to control a business whose purpose was to provide legal services.
- Aided and abetted in the unauthorized practice of law by allowing non-lawyers to provide legal services without supervision. This included allowing non-lawyers to complete and file immigration forms, provide legal advice, complete and file false pro se dissolutions, and work on personal injury cases with little or no supervision.
- Allowed his name and likeness to be used in advertising publications describing the two non-lawyers as an “immigration specialist” and “auto accident specialist,” and allowed advertising that led clients to believe they were hiring Mr. Smith to represent them when in fact non-lawyers largely controlled the practice.
- Failed to communicate with clients, did not communicate about fees, and failed to diligently pursue three clients’ matters.

Mr. Smith’s conduct violated RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; RPC 1.4, requiring a lawyer to promptly inform the client of any decision of circumstance with respect to which the client’s informed consent is required by the Rules, reasonably consult with the client about the means by which the client’s objectives are to be accomplished, keep the client reasonably informed about the status of the matter, promptly comply with reasonable requests for information, consult with the client about any relevant limitation on the lawyer’s conduct, and explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; RPC 1.5(b), requiring the scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible to be communicated to the client, preferably in writing, before or within a reasonable time after commencement of the representation; RPC 1.15A(h)(9), stating that only a lawyer admitted to practice law may be an authorized signatory an IOLTA trust account; RPC 5.3, requiring a lawyer with managerial authority in a law firm to make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that a non-lawyer employee’s conduct is compatible with the professional obligations of the lawyer, and to be responsible for the conduct of such a person; RPC 5.4, prohibiting a lawyer or law firm from sharing legal fees with a non-lawyer or from forming a partnership if any of the activities of the partnership consist of the practice of law; RPC 5.5(a), prohibiting a lawyer from practicing law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assisting another in doing so; RPC 7.1, prohibiting a lawyer from making a false or misleading communication about the lawyer or the lawyer’s services; RPC 7.4(d), prohibiting a lawyer from stating or implying that a lawyer is a specialist in a particular field of law, except upon issuance of an identifying certificate, award, or recognition by a group, organization, or association; RPC 8.4(a), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and RPC 8.4(i), prohibiting a lawyer from practicing law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assisting another in doing so; RPC 8.4(b), prohibiting a lawyer from committing a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects; RPC 8.4(c), prohibiting a lawyer from representing an entity whose activities are in violation of the regulation of the legal profession in that jurisdiction, or assisting another in doing so; RPC 8.4(d), prohibiting a lawyer from representing an entity whose activities consist of the practice of law, except upon authorization by a group, organization, or association.

Michael J. Wynne (WSBA No. 6534, admitted 1976), of Vancouver, was disbarred, effective December 27, 2010, by order of the Washington State Supreme Court following approval of a stipulation. This discipline is based on conduct in four different matters involving theft of funds.

Matter No. 1: Mr. Wynne represented clients in the sale of a large piece of real estate. In November 2003, after soliciting the clients to invest the proceeds of the sale in a real estate development project he was involved in, the clients gave Mr. Wynne a cashier’s check in the amount of $350,000. Instead of investing the funds on behalf of the clients, Mr. Wynne appropriated the funds for his own use.
Over the next couple of years, Mr. Wynne told the clients that the development project was progressing and that everything was fine with their investment. These representations were false.

Matters Nos. 2 and 3: Mr. Wynne was hired by two different clients to assist them in purchasing real estate. In one matter, the client gave Mr. Wynne $78,000 to execute the sale of a piece of real property. After the lender was paid, $13,793 was due to the seller of the property. Mr. Wynne failed to pay the proceeds to the seller, instead appropriating the funds for his own use. In the second matter, the client gave Mr. Wynne $100,000 to cover the purchase of a building. Mr. Wynne took at least $37,431.46 of this money and appropriated it for his own use.

Matter No. 4: In 2005, Mr. Wynne handled an estate matter. The sole heir of the estate designated Mr. Wynne as an attorney-in-fact and as personal representative for the estate. Mr. Wynne appropriated approximately $325,000 from the estate for his own use. Over the next several years, Mr. Wynne assured the estate’s heir that the probate was proceeding appropriately, which was in fact false.

Mr. Wynne was charged with four counts of first-degree theft based on his conduct in these matters. On September 3, 2010, Mr. Wynne pled guilty to each of the four counts and was sentenced to 60 months in prison.

Mr. Wynne’s conduct violated RPC 8.4(b), prohibiting a lawyer from committing a criminal act (here, theft) that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects; RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and RPC 8.4(i), prohibiting a lawyer from committing any act involving moral turpitude, or corruption, or any other act which reflects disregard for the rule of law.

Francesca D’Angelo represented the Bar Association. Joel R. Yoseph represented Mr. Wynne.

Admonished

Heidi L. Hunt (WSBA No. 33499, admitted 2003), of Everett, was ordered to receive an admonition on May 17, 2010, by order of a hearing officer. This discipline is based on conduct involving conflicts of interest.

Ms. Hunt primarily provides defense for clients who have received traffic tickets. As of March 10, 2009, Ms. Hunt’s website stated, “We will pay your court fines if the ticket does not get dismissed.” Ms. Hunt typically charged her clients a flat fee and, if the court assessed a fine, Ms. Hunt would pay the client’s fine. This fine is not a court cost. Ms. Hunt then prepared an invoice to the client for the fine, but did not send the invoice to the client or seek reimbursement from the client in any other fashion. Because she did not seek reimbursement of the fine, the client did not remain ultimately liable for the fine.

Ms. Hunt’s conduct violated RPC 1.8(e), prohibiting a lawyer from advancing or guaranteeing financial assistance to a client while representing that client in connection with contemplated or pending litigation, except that a lawyer may advance or guarantee the expenses of litigation provided the client remains ultimately liable for such expenses.

Stevan D. Phillips represented the Bar Association. Cassandra Lopez De Arriaga represented Ms. Hunt. Erik S. Bakke Sr. was the hearing officer.

Barokas Martin & Tomlinson is pleased to announce that Joseph W. Creed has joined the firm as an associate.

Joseph is licensed to practice in Washington, California, and Virginia with an emphasis on business and real estate litigation, wrongful foreclosure, transactional matters, consumer and corporate bankruptcy and reorganizations, and intellectual property law including patents and trademarks.

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Ken Masters, Shelby Lemmel, and everyone at Masters Law Group P.L.L.C. are pleased to welcome Paul M. Crisalli as our new Associate.

Mr. Crisalli served as a Judicial Extern for the Honorable Paul J. De Muniz of the Oregon State Supreme Court for three years prior to attending law school. He graduated from the University of Oregon School of Law in 2008. He then served as Judicial Clerk to the Honorable Mary E. Fairhurst of the Washington State Supreme Court. He has enjoyed private practice since then, including appellate litigation.

He will assist us in handling all types of civil appeals in state and federal courts.

Mr. Crisalli can be reached at 207-780-5033, or by e-mail at Paul@appeal-law.com.
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MEDIATION
Mac Archibald
Mac has been a trial lawyer in Seattle for over 40 years. He has tried a wide range of cases including maritime, personal injury, construction, products liability, consumer protection, insurance coverage, and antitrust law.

Mac has over 15 years of mediation experience. He has mediated over 1,000 cases in the areas of maritime, personal injury, construction, wrongful death, employment, and commercial litigation.

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Seattle, WA 98101-2539
Fax: 206-727-8319
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Information must be received by the first day of the month for placement in the following month’s calendar.

**Alternative Dispute Resolution**

18th Annual Dispute Resolution Conference

**Animal Law**

Ethics, Animals, and the Law: Interdisciplinary Approaches to Standards of Care
April 15 — Seattle. CLE credits pending. By University of Washington School of Law and Student Animal Legal Defense Fund — UW Chapter; 206-543-0059 or 800-253-8648; www.law.washington.edu/CLE.

**Business Law**

An Overview of Business Valuation
April 13 — Seattle. 1 CLE credit. By McKinley Irvin. For free registration, send your name, state bar number, and e-mail address to cle@mckinleyirvin.com.

**Construction Law**

Competitive Public Construction Bidding in 2011
March 24 — Seattle. 3.5 CLE credits. By The Seminar Group; 206-463-4400; www.theseminargroup.net/seminar.lasso?seminar=11.bidwa.

**Creditor Debtor**

Basic Bankruptcy
March 31 — Seattle. 5.75 CLE credits pending, including .75 ethics. By KCBA-CLE; 206-267-7057 or cle@kcba.org; www.kcba.org/cle.

**Criminal Law**

Oh, the Things Defendants Say: Challenging the Use of Confessions and Statements

Suppressing Evidence

Evidence: Getting Yours In, Keeping Theirs Out

**Elder Law**

Advanced Elder Law: So You Think You’re a Fiduciary?
March 18 — Seattle. 5.75 CLE credits pending, including .75 ethics. By KCBA-CLE; 206-267-7057 or cle@kcba.org; www.kcba.org/cle.

**Environmental Law**

Electricity’s Current Challenges: Capital Investments, Renewables, Energy Efficiency, “Modern” IRP, and Transmission

Water Law in the Inland Northwest

2011 Environmental and Land Use Law Section Midyear Meeting
April 28–30 — Union, WA. CLE credits pending. By the WSBA Environmental and Land Use Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Family Law**

Anticipating Issues and Drafting an Effective Parenting Plan for Your Client
March 11 — Seattle. 1 CLE credit. By McKinley Irvin. For free registration, send your name, state bar number, and e-mail address to cle@mckinleyirvin.com.

Community Property
April 15 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Family Law Skills Training (New Lawyer Education Program)
April 15–16 — Gig Harbor. CLE credits pending. By the WSBA Family Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Parenting Plans
April 29 — Seattle. 6 CLE credits pending. By KCBA-CLE; 206-267-7057 or cle@kcba.org; www.kcba.org/cle.

**General**

Promise of Civility — Part 2
March 4 — Seattle. 6 CLE credits. By Seattle University School of Law; www.law.seattleu.edu/continuing_legal_education.xml.

Bridging the Gap
March 11 — Seattle. 7.5 CLE credits pending, including 1 ethics. By KCBA-CLE;
206-267-7057 or cle@kcba.org; www.kcba.org/cle.

Judicial Activism from Marbury vs. Madison to Citizens United
March 10 — Tele-CLE. 1.5 CLE credits, including .5 ethics, pending. By Rubric CLE; 206-714-3178; www.rubriccle.com.

Iqbal-Twombly vs. McCurry: What Do You Need to Plead?

Dr. Causation and the DME Terminator

Are You Ready for the Media? Will It Be Your Big Break?
March 23 — Seattle and webcast. 3.75 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

New Trends, Tools, and Tips: Keeping Your Practice Current
March 24 — Seattle and webcast. 6.5 CLE credits, including 2.5 ethics. By the WSBA Intellectual Property Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Promise of Civility — Part 3
April 1 — Seattle. 6 CLE credits. By Seattle University School of Law; www.law.seattleu.edu/continuing_legal_education.xml.

Managing Negotiations and Working with Clients

Auto Cases

18th Annual Employment Law Institute
April 29 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Indian Law
Tribal Business Law Institute: Taxation
March 18 — Seattle. 3 CLE credits. By Seattle University School of Law; www.regonline.com/indianlaw6.

Tribal Business Law Institute: Ethics, Sarbanes Oxley, and Criminal Sanctions
April 15 — Seattle and webcast. 3 CLE credits. By Seattle University School of Law; www.regonline.com/indianlaw7.

Intellectual Property
16th Annual Intellectual Property Institute
March 4 — Seattle. 6 CLE credits, including 1.5 ethics credits. By the WSBA Intellectual Property Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Litigation
8th Annual Trust and Estate Litigation Seminar
March 11 — Seattle and webcast. 6.5 CLE credits, including 1 ethics. By the WSBA Real Property, Probate and Trust Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Are You Ready for the Media? Will It Be Your Big Break?
March 23 — Seattle and webcast. 3.75 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

New Trends, Tools, and Tips: Keeping Your Practice Current
March 24 — Seattle and webcast. 6.5 CLE credits, including 2.5 ethics. By the WSBA Solo and Small Practice Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Community Property
April 15 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Auto Cases

2011 Annual Ethics in Civil Litigation Institute: Ethical Advocacy
April 20 — Seattle and webcast. 6.25 ethics credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Real Property, Probate, and Trust
8th Annual Trust and Estate Litigation Seminar
March 11 — Seattle and webcast. 6.5 CLE credits, including 1 ethics. By the WSBA Real Property, Probate and Trust Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Annual Real Property, Probate and Trust Section Real Estate Seminar
April 21 — Seattle and webcast. CLE credits pending. By the WSBA Real Property, Probate and Trust Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

18th Annual Employment Law Institute
April 29 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.
TrueBlue has an opening for corporate counsel in Tacoma, WA. The corporate counsel (employment law) is an associate level attorney responsible for assisting and supporting the director of employment law on a broad range of labor and employment matters. The successful candidate will have a minimum of two years’ legal experience, J.D., and membership in good standing in one state bar. They will have experience with investigating discrimination and other employment-related claims and responding to the EEOC discrimination charges. Please see full job description and submit your résumé by visiting: https://jobs-trueblue.icims.com/jobs/4536/job.

Client relations manager — Serengeti Law (“Serengeti”) (a Thomson Reuters business), the legal industry’s highest-rated and most widely used e-billing and matter management system, is seeking individuals with a minimum of two years of client-facing experience advising and managing corporate law departments. The client relations manager is responsible for: managing client implementations: kickoff, system configuration, training, and sign-off; designing and managing client projects (schedules, deliverables, issue-tracking); establishing, maintaining, and growing customer relationships; serving as customer’s corporate legal operations advisor (fulfill support requirements and grow utilization of Serengeti products and services); participating in strategic planning sessions with Serengeti and customer stakeholders; client satisfaction; advocating for client goals and interests to Serengeti stakeholders; and some travel to client sites. Qualifications: law degree required; minimum of two years’ experience in a corporate legal department or law firm; understanding of legal department operations; ability to effectively communicate to multiple levels of a client’s organization; service-oriented with ability to establish, strengthen, and nurture client relationships; initiative with ability to plan and implement projects with minimal direction and in a team environment; technical competence; effectively handle stressful situations and deadlines; consultative and problem-solving skills; and ability to up-sell Serengeti’s product and services. Thomson Reuters is the leading source of intelligent information for the world’s businesses and professionals, providing customers with competitive advantage. Contact: Vickie.wilson@thomsonreuters.com; 651-848-8223.

Bankruptcy judgeship opportunity — U.S. Courts, 9th Circuit, District of Oregon. $160,080/year. Full announcement and application at www.ce9.uscourts.gov or contact personnel@ce9.uscourts.gov. Applications due by 5:00 p.m., March 17, 2011. EOE.

Established Bellingham/Mount Vernon firm seeks experienced family law associate attorney. Should have at least three years’ recent Washington experience. No applications considered without some family law experience. Salary $60 to 85K, DOE plus benefits.

In-house sole counsel position: Fun retail company based in Seattle has exclusively retained Kamisar Legal Search, Inc. to conduct a search for its first in-house corporate counsel. The position will report to the general counsel of its parent company based in a different U.S. city. Candidate must be a generalist transactional attorney with strong interpersonal skills and a minimum of eight years of experience, including some time spent at a top law firm or well-known company. Previous in-house experience strongly preferred. Strong preference for local candidates but will consider out-of-town candidates who are able to relocate themselves. Ideal candidate will have some retail and brand experience including domestic and international licensing of trademarks. Please direct all confidential inquiries to: Gordon A. Kamisar, Esq., President, Kamisar Legal Search, Inc.; gkamisar@seattlesearch.com; 425-392-1969; www.seattlesearch.com.


The Seattle office of K&L Gates LLP seeks an associate with a minimum of three years’ experience to join its corporate business practice. The successful candidate must have experience with corporate governance, mergers and acquisitions, private and public offerings, and securities law. We require outstanding academic credentials, excellent oral and written communication skills, and a commitment to providing the highest quality client service. Demonstrated ability to work independently and as part of a team; will work closely with experienced lawyers who will provide active mentoring and opportunities to assume increasing levels of responsibility and client contact. Prior experience in a sophisticated law firm practice preferred.

Litigation attorney — Small downtown Seattle litigation firm seeks litigation attorney with three or more years’ experience and strong record of academic and professional excellence to handle mix of sophisticated business and intellectual property litigation. Full benefits and competitive salary. E-mail to kn9755@gmail.com.

Williams Kastner is seeking an attorney with at least four (preferably more)
years of medical malpractice defense experience for its Seattle office. Applicants should be motivated, hard-working individuals with a strong academic background. Applicants should also have excellent communication and organizational skills. Applicants must be very familiar with discovery and other aspects of the litigation process and expect to be given major client and case responsibility as soon as possible. Experience in medical malpractice defense litigation is required. Qualified applicants should send their résumé, writing sample, and a copy of a law school transcript to Patti Christiansen, Recruiting Manager, Williams Kastner, 601 Union St., #4100, Seattle, WA 98101 or pchristiansen@williamskastner.com.

Litigation associate — Seattle office of an 80-plus attorney West Coast firm seeks associate with at least two years’ litigation experience. Practice areas include maritime, environmental, securities, financial services, and employment law. Competitive salary DOE. Send résumé, dispositive motion writing sample, law school transcript, and references to Hiring Coordinator, Keesal, Young, & Logan, 1301 5th Avenue, Suite 1515, Seattle, WA 98101. No telephone calls, please.

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Experienced contract attorney: 18 years’ experience in civil/criminal litigation, including jury trials, arbitrations, mediations, and appeals. Former shareholder in boutique litigation firm. Can do anything litigation-related. Excellent research and writing skills, reasonable rates. Peter Fabish, pfab99@gmail.com, 206-545-4818.

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broker; not a limited-service broker. My services include, but are not limited to, market price opinions, qualifying buyers and negotiating terms, multiple listing service, open houses, and advertising. Same rebates apply for commercial properties. Honest, reliable, and experienced. Satisfaction guaranteed in writing. J.P. Real Estate, Inc., since 1973. Call or e-mail with any question. Clancy Tipton. 206-947-7514; catipton1@msn.com.


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Experienced contract attorney and WSBA member drafts trial and appellate briefs, motions and memoranda for other attorneys. I enjoy complex research. Resources include LEXIS Internet libraries and University of Washington Law Library. Tell me about your case! Elizabeth Dash Bottman, attorney, 206-526-5777, bjelizabeth@qwest.net.

Mediations services available — Dispute Resolution Center provides professional mediation services (interest-based, facilitative, co-mediators) on a sliding scale throughout Snohomish/ Skagit/Island counties. Evening and weekend sessions available and in Spanish. More information: www.voawww.org/drc or call 800-280-4770.

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Downtown Seattle executive office space: Full- and part-time offices available on the 32nd floor of the 1001 Fourth Avenue Plaza Building. Beautiful views of mountains and the Sound! Close to courts and library. Short- and long-term leases. Conference rooms, reception, kitchen, telephone answering, mail handling, legal messenger, copier, fax, and much more. $175 and up. Serving the greater Seattle area for over 30 years. Please contact Business Service Center at 206-624-9188 or www.bsc-seattle.com for more information.

Turn-key — new offices available for immediate occupancy and use in downtown Seattle, expansive view from 47th floor of the Columbia Center. Office facilities included in rent (reception, kitchen, and conference rooms). Other administrative support available if needed. DSL/VPN access, collegial environment. Please call Amy, Badgley Mullins Law Group, 206-621-6566.

Bellevue office space: Two offices available for sublease in downtown Bellevue. Rent includes shared use of conference rooms, small law library, and kitchen. Options include use of copier and covered parking. Please contact asakai@jgslaw.com.

Belltown (Seattle) law firm offering turn-key sublease. Corner lot building with large windows and beautiful cherry wood interiors. Two professional offices (18’ x 16’ and 14’ x 11’), plus one paralegal office, and one staff workstation. The office facilities include furnished reception room with working fireplace, built-in reception desk, furnished conference rooms, library, kitchen, working file room with high-speed copier/fax/scanner, and large basement file storage. Administrative support of high-speed Internet, cable, and VoiceIP is available. Contact accounting@aiken-lawgroup.com.

Downtown Everett: Class-A Everett office — Located on the third floor of the Frontier Bank building: 14’ x 14’, $800 per month. Staff workstations available with potential staff share, full kitchen, new high-speed copier/fax/scanner, conference room with 50” flat screen and digital cable, high-speed Internet. Plenty of parking and close to courthouse. Potential client referrals. View photos at http://photos.frontier302.info. Lease terms negotiable. Contact Mark Olson at 425-388-5516 or Mark@mgolsonlaw.com or John Williams at 425-252-8547 or John@WilliamsLawPLL.com.

Federal Way office available in newly remodeled building in the heart of Federal Way’s professional district. Rent includes use of shared conference room, kitchen, DSL, copier, fax, and parking. Secretary station also available. Lease terms negotiable. Call 206-399-2046.

Columbia Center (Seattle) furnished executive offices, two blocks from the courthouse. Individual private offices or small suites, perfect for solo practitioner attorney or small law firms. Receptionist service included, plus access to conference rooms, printer/copier services and much more. Four months’ free rent on any new 12-month lease. Call Greg for details, 206-652-3274.

Two Union Square (Seattle) furnished offices for lease on 42nd floor. Flexible lease terms. Rates start as low as $650/mo. Offices can accommodate 1–8 users. Receptionist and other amenities available. Free rent discounts apply for leases of six months or greater. Call Greg for details, 206-652-3274.

South Lake Union office space (Seattle). Perfect for attorneys looking for a professional class “A” office space with all the amenities. Street or garage parking available. Locker rooms with showers on-site and close walking distance to nearby restaurants. Great option for start-up law firm or solo practitioners. Rates start as low as $695 for furnished office. Call Greg, 206-652-3274.

Downtown Seattle — Exterior and interior office space available for immediate occupancy and use in large Two Union Square suite. Enjoy sweeping views of Mount Rainier, Lake Washington, and Capitol Hill from this convenient downtown location. Amenities include use

**Congenial downtown Seattle law firm** — (business, I.P. tax). One office and adjacent staff space available. Rent includes receptionist, conference rooms, law library, kitchen. Copiers, fax, DSL. Internet also available. 206-382-2600.

**Beautiful office with secretary station** — University of Washington area (Seattle). Includes two large conference rooms, copier, fax, kitchen, and shower. Phone system in and network ready. Air-conditioned. Share paralegal. 206-522-7633.


**Executive office at Millennium Tower (Seattle) — 630 square feet of Class A office space is available for sublease for $1,300 month. The unfurnished office space has its own private entrance and an adjacent conference room/office. Great location for easy court and library access. Potential for office services (scanner, copier, mail handling, and messenger services) available. Please contact Heather Stephen, Barker Martin, at 206-381-9806, ext 132 or heather stephen@barkermartin.com.**

**Downtown Tacoma waterfront office space** — located on Ruston Way, directly on the water. Includes shared conference room, kitchenette, reception space, large private office with a spectacular waterfront view, ample parking. 1,758 square feet. Call Kirk at 206-264-4521 or kimgonzalez771@msn.com.

**Executive office at Millennium Tower (Seattle) — 630 square feet of Class A office space is available for sublease for $1,300 month. The unfurnished office space has its own private entrance and an adjacent conference room/office. Great location for easy court and library access. Potential for office services (scanner, copier, mail handling, and messenger services) available. Please contact Heather Stephen, Barker Martin, at 206-381-9806, ext 132 or heather stephen@barkermartin.com.**

**Downtown Tacoma waterfront office space** — located on Ruston Way, directly on the water. Includes shared conference room, kitchenette, reception space, large private office with a spectacular waterfront view, ample parking. 1,758 square feet. Call Kirk at 206-264-4521 or kimgonzalez771@msn.com.

**Search for the will of Charles W. Masterman.** Looking for the lost will or trust of Pierce County resident Charles W. Masterman, who died in 1984. He was an executive with Weyerhaeuser. If you have any information about Mr. Masterman’s will or estate plan, please call Mark Harbaugh at 253-759-4744 or e-mail mharbaugh@qwestoffice.net.

**Search for the will of Vernon Edward Melton.** Date of birth: June 22, 1932. Date of death: May 8, 2009. Address: 15402 12th Ave. E., Tacoma, WA 98445 (Pierce County). 253-301-0388; kimgonzalez771@msn.com.

**For Sale**

**Gorgeous 1880s 34-drawer oak roll-top desk** and accompanying vintage table and chairs. $3,000 or best offer. Pictures available. rcnlaw@msn.com; 206-817-4598.

**Vacation Rental**

**Tuscany — six-bedroom farmhouse** and farmhouse with four apartments, near Florence. 500 to 2,100 euros per week, depending on season and number in party. Contact kenlawson@lawofficeofkenlawson.com.
I became a lawyer because my family immigrated from Poland when I was six years old and my childhood was filled with financial and legal hardships. My eyes were opened to the importance of social justice and inspired me to be an advocate for those less fortunate.

One of the greatest challenges in law today is balancing billable hours with meaningful pro bono work.

If I were not practicing law, I would be a veterinarian at a nonprofit animal shelter.

If I could change one thing about the law, it would be that everyone would have access to justice, not just those who can afford it.

Traits I admire in other attorneys: Humor, intelligence, and humility.

This is the best advice I have been given: Talk less, listen more.

I would give this advice to a first-year law student: Be smart about what you post on Facebook, Twitter, or any other social-networking site.

People living or from the past I would like to invite to a dinner party and why. From the past: Pope John Paul II — because of his courage, convictions, and integrity; John Lennon — because of his musical genius and unique perspective on world issues. People living: Melinda French Gates, co-chair of the Bill & Melinda Gates Foundation — because I find her inspirational, intriguing, and innovative; Maria Eitel, CEO and president of the Nike Foundation — because I heard her give a speech at an RDI luncheon and was moved by the Nike Foundation’s dedication to investing in “the girl effect,” which is when girls have adequate resources, they invest them in their families and enrich their communities.

I am most proud of this: Starting a formal pro bono program at Foster Pepper PLLC and creating my position as pro bono counsel in 2005.

I am most happy when I’m with my husband, Matt, and our daughter, Zoë.

My favorite hobby/interest: Journalism.

My favorite vacation place: Ucisko and Gdansk, Poland.

Best stress reliever: Eating copious amounts of chocolate.

What keeps me awake at night: My baby girl, Zoë.

Technology is today what yesterday we thought impossible.

Currently playing on my iPod/CD player/record player: The Temper Trap; Muse; Mumford & Sons; Pearl Jam; Adele; Lily Allen; and old school Aerosmith.

If I could live anywhere, I would continue to live in Washington on Mercer Island.

I can’t live without my family.

This is the hardest part of my job: Leaving at a decent hour and not having enough time in the day to help everyone who needs pro bono representation.

This is the best part of my job: Working for a firm that unconditionally supports me and the pro bono program I manage.

I would like to add this: My hero is my dad, who came to the United States with only his wife and three young children, and who worked extraordinarily hard and achieved so much, becoming a successful entrepreneur.

My name is Joanna Plichta Boisen, and I am pro bono counsel at Foster Pepper PLLC. My practice is concentrated in litigation and dispute resolution with a focus on providing pro bono legal representation to persons of indigent means and 501(c)(3) nonprofit entities. I direct and manage Foster Pepper’s wide-ranging pro bono cases and projects, advise the firm on pro bono policy, serve as a liaison to local public-interest organizations, and author the firm’s pro bono annual reports. I also oversee the allocation of pro bono resources and the development of firm pro bono projects and priorities. Please contact me at boisj@foster.com.

To learn more about “Briefly About Me” and to submit your own, go to www.wsba.org/lawyers/brieflyaboutme.doc.
A Day at the Cat House

Everyone gather around! Uncle Bar Beat is going to tell you about the time many years ago when he had a date with an — um, uh — “exotic dancer.” Did I mention this was many years ago, like 30? Now, depending on your predilection for such things, you will be either relieved or disappointed that no lewd behavior is described below, because none took place. Rather, this is an ultimately sad, albeit titillating, tale. And if you’re someone who giggles at bawdy puns, you might as well get it out of your system, because those you just read are all you’re getting.

Never mind how I happened to meet an “exotic dancer.” Suffice it to say that an attractive, slightly older woman professionally trained at removing her clothing granted my request for her phone number and it was one of the finest moments of my young life. Within a few days, I was headed from my University District apartment to her home in Madison Park. Rolling in my white 1968 Mustang fastback, I felt like the Big Man Off Campus. I don’t actually remember how the weather was, but I like to think it was all blue sky and sunshine. If I wasn’t smoking a cigar, I should have been.

As I cruised toward Lake Washington on East Madison, past Broadmoor Golf Club and the posh surrounding estates, I considered that I might be meeting not only an “exotic dancer” but my future sugar mama. Life, I thought, is getting sweeter by the block.

But as I continued toward the cross street I’d been given, the outlook soured. In those days, the level of home maintenance declined visibly as one passed beyond Broadmoor and turned off East Madison, as I had been directed to do. I located my date’s residence, an imposing but aging Victorian. I rang the doorbell and Misty (not her real name, not even her stage name) answered. I then stepped directly from the first paragraph of a Letter to Penthouse into that house behind the Bates Motel in Psycho where Norman lives with his “mother.”

At one time, say 1940, the interior of this house would have been grand. The furniture, curtains, carpets, and wallpaper would have been exquisite. I knew that because they were still there. Unfortunately, they had not been restored or repaired — or cleaned much — in the intervening 40 years. As astonishing a tableau as this was, it’s not what got my attention. Because occupying nearly every square foot of Misty’s place were — cats. Felines were strewn everywhere, heaped on each couch and chair, lining the dining-room table and kitchen counters. There was nowhere I could focus without detecting furry movement throughout my field of vision. Please note: I love cats. I’ve lived with four at a time. But my hoped-for dancing sugar mama had serious cats.

Misty had probably been through a lot of men. I mean, because of the cats. She didn’t waste time trying to keep me in the house. Instead she took me onto the porch, where she explained that the house belonged to her mother, whose cat collection had reached something like 35 at last count. Because of inbreeding, many had a mutation that deformed their faces and made them breathe with a snoring sound, which I had an opportunity to experience as they swarmed out of the house and surrounded us.

Probably reacting to a look of revulsion on my face, Misty suggested we walk to a café down the street for lunch. Before we left, she went upstairs to advise her mother. I could hear them communicating amiably and never saw each other again.

I’ve told this story for years as an example of how naïve a young guy can be when using his hormones as GPS. You know — something about how things that seem too good to be true usually are. But now I realize that what has been a funny anecdote for me was part of someone’s everyday life. Misty had a real name and that was her real home and mother. She grew up in that house, where nothing ever changed, with an ill mother and 35 cats. I doubt she hosted any slumber parties or had high-school boyfriends over to watch TV. I’m no shrink, but I can imagine how someone living with that ugliness at home might compensate by taking a job where she displayed her own beauty for strangers.

So, Misty, I hope you managed to get out of that house, put the painful part of your life behind you, and find happiness, although I’m sure it wasn’t easy. If I ever tell this story again, I’ll remember to dedicate it to you. And you can keep your shirt on. ☹️

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