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On the Referendum

I think the bottom line about the referendum is this: the movers and shakers in the legal profession (the people who have practiced a long time) have had time to recoup the initial costs in their investment in becoming an attorney. Those who are seeking to enter the profession haven’t had that time, plus they have had the misfortune to enter the profession during a time of significant recession. A flat fee depending on whether a person is “active” vs. “inactive” isn’t enough. There should be a fee set for those who have been in the profession for five or less years, for example. The Board should also consider a sliding scale as a method to best compute a fee, allowing the of’ pros who have made a living in the trade pay more than someone who hasn’t. In addition, the onetime hardship fee waiver should be available for both “active,” which is now the case AND “inactive” members. It seems to me that the Bar members most likely to vote “no” are going to be the people who have been movers and shakers for awhile — those who have made the profession what it is, both good and bad and have had time to amass wealth. For them, it is easy to argue a $450 flat fee is both modest and reasonable. However, there is a reality for everybody else and not everything deserves a shared sacrifice. Many generational priorities end with a particular generation. Other issues involving the profession like work to life balance and outsourcing legal research and writing deserve to be discussed and challenged. I am glad that the fee referendum has started this process.

Helen Nowlin, Vancouver

Since you are the editor of the Bar News, I believe that you owe the WSBA membership an explanation (if not an apology) for the shameless use of the February Bar News to defeat the upcoming license-fee referendum. The cover of the issue (“Save Our Bar!”), the “President’s column,” and the “Executive’s Report” are all explicit or implicit attempts to defeat the fee referendum (not to mention the full-page paid advertisement). While you may have no control over the content of the President’s column, or the Executive Director’s page, don’t you feel a small, tiny duty to provide some balance to the issue? I do not have a position on the referendum, but I will remember this complete misuse of WSBA resources when I make up my mind.

Stephen L Jones, Olympia

We are writing to encourage you to vote no on the referendum to reduce our license fee from $450 to $325 per year. The WSBA provides members with important and useful services which could be cut or eliminated if the license fee is reduced by such a drastic amount. For example, the WSBA provides administrative and financial support for the Washington First Responder Will Clinic which in turn provides pro bono basic estate-planning documents — wills, powers of attorney, and healthcare directives — for Washington first responders and their spouses/state registered domestic partners. A strong and healthy profession requires a strong and healthy professional organization. Please support the WSBA and its important programs by voting no on the referendum.

Ford Clary and Jenni Frere Volk

You [Steve Crossland and Paula Littlewood] are both correct in noting the benefits associated with maintaining our Bar dues at the current rate. In fact, as the current secretary of the WSBA’s Civil Rights Section, I do acknowledge that the WSBA is a wonderful organization, which contributes immensely to our overall advancement as professionals. However, we also have to acknowledge the enormous burden the current licensing fee (totaling over $500 for most people) imposes on several of us in the public sector. For instance, unlike some of our colleagues in the private sector, those of us in federal employment do not have the benefit of having our employer settle our dues (we even pay out of pocket for CLEs). Moreover, contrary to certain recent reports in the media, public sector attorney salaries pale in comparison to the private sector.

In 2007 or 2008, I wrote to the Bar to request it to implement a system that will significantly lessen the financial impact on those of us in the public sector by spreading our dues payments over several months through monthly deductions. Alternatively, I also requested that the WSBA consider reducing the fees for public servants whose fees are not settled by their respective employers. I received no response. I also remembered speaking by phone with a gentleman at the WSBA who handled licensing related phone calls, and he curtly informed me that my suggestions were impractical. Essentially, the take home message was: pay your dues and stop complaining.

To some, $500 is insignificant, considering the return — Bar licensing. To a significant group of us, mostly in the public sector, $500 is agonizing and significant, despite the return. I urge the WSBA to consider these two proposals: 1) Establish an optional system of monthly deductions for WSBA members (even if we have to pay a small administrative fee, it’ll be worth it), or 2) Reduce the payment for public sector employees whose employers do not pay their Bar dues.

Kwame Amoateng, Seattle

WSBA Chief Financial Officer Julie Mass Responds: The WSBA has looked at monthly payment plans for the annual license fee, which is $450 plus a $30 LFCH assessment.
Because the fee is for a license, and failure to pay results in suspension from the practice of law, there are many administrative issues with offering a payment plan. We are considering offering a payment plan for 2013 which would allow members to pay over 4 months (October through January), so long as the license fee is paid by February 1st as required by the State Bar Act. Because we are a regulatory body, we are not able to offer a 12-month plan owing to the fact that we would have to start collecting a year ahead of time and tracking all this would require additional accounting staff.

The WSBA has also considered the issue of fees and concluded that, because the fees are for a license to practice law and not a type of membership in the association, it would not be fair to charge different amounts for the same license to practice based on types of employers. Additionally, verifying employment and monitoring where attorneys are employed would require additional staff, which would ultimately increase the overall license fee.

I note in the February edition of Bar News that five pages of the publication are dedicated to the effort by some members to defeat the referendum dealing with member dues. While I applaud the efforts of those who feel this way, the publication is paid for by all members of the bar, not just a few. The promoters of the referendum should have been given equal time in the February publication to state their reasons for supporting the other side of the story. I, for one, would appreciate an objective overview of both sides of the issue. Let’s be fair about the approach to this in the future.

William T. Hillier, Chehalis

Please be advised the Spokane County Bar Association Board of Trustees voted unanimously to oppose the Referendum to roll back the WSBA license fees from $450 per year to $325 per year. The Spokane County Bar Association is aware of the impact a license fee roll back will have on many programs and will be urging our members to vote on this measure.

Scott A. Morris, Spokane

This may be precisely the time to force the bar as a whole to consider whether it is fair to treat a license to practice law as a privilege of equal meaning and value to all members on a per-capita basis. It may be possible to vote for the reduction and then to look at the basis of bar dues and the assumptions on which they are based on a value-added scale and then to adjust bar dues rates accordingly so as to reflect the reality of the practice of law in today’s economy:

- Can it really be asserted that we are self-regulating when legal ethics shows a disproportionate complexity, a complexity which makes the practice of law increasingly one of relative risk assessment and client screening in an increasingly competitive commercial environment?
- Are costs allocated according to benefits received by what is assumed to be a universal privilege to practice law? Is the solo lawyer really equal to the big firm attorney in any real business sense?
- Do we really act as a trade association serving our members’ best interests and on an equal basis? If so then why does the WSBA maintain elaborate offices in high-rent Seattle rather than more modest offices in Olympia, Spokane, or Yakima?
- Should inactive members pay such high dues?
- Should the WSBA consider itself as a beneficiary of a public trust or simply as an organization to secure basic competence in a competitive market for legal services which often in recent years have been outsourced to other professional groups, a practice that makes solo practice increasingly difficult to maintain?
- Does it make sense to continue to presume that we have the public trust when we share with the public a legal environment of special privileges at the highest levels of government as witnessed by protests of the recent Occupy Movement? May not a reduction in dues be a timely effort to occupy the WSBA?
- Could a temporary reduction in bar dues lead us to re-consider some of the most intractable issues in the rule and practice of law and even legal education while evaluating whether many of our most cherished assumptions are in fact true?

Thomas Mengert, Keyport

When we took the oath of attorney, we assumed responsibility beyond those to our family. We assumed the responsibilities to our clients, fellow attorneys, and to the public. For many of us, the responsibilities beyond our family and clients have been assumed by the Washington State Bar Association. We are not governed by the legislature but overseen by the Supreme Court, and with this position comes an even deeper and more important responsibility to discipline our fellow lawyers and meet our civic duties.

I am proud to be a lawyer. I’m proud to be a member of the Washington State Bar Association. This Association, on more than one occasion, has been nationally recognized in its professional leadership.

We are now being asked to place the reputation of the WSBA in harm’s way for the sum of 35 cents a day. It is suggested that the amicus, the continuing legal education, court rules and procedures, judicial recommendation, pro bono legal aid, and rules of professional conduct committees be either curtailed or eliminated. Our duties to discipline, character and fitness, client protection, and mandatory legal education will be placed in jeopardy. LOMAP, lawyers’ assistance programs, Casemaker, and all programs necessary to meet our responsibilities unmet by each of us individually will be placed in harm’s way.

I recommend and urge the attorneys of this state to maintain its Association’s position as a superior to other bar associations and fulfill their responsibilities by voting against the referendum.

Michael J. Pontarolo, Spokane

On Cuba

With regard to the flattering articles about Cuba in the January Bar News, Cuba is a totalitarian communist state in which the people do not have the most basic freedoms the rest of the world takes for granted. There is no free press. There is no opportunity to advocate a different government. The citizens do not have the right to vote on national leaders or on anything at all with regard to domestic or foreign policy. Everyone is desperately poor because the Communist party has destroyed the economy.

One of the writers suggests that Cuba has not changed since 1959. At that time Cuba was a dictatorship with a capitalist economy and some prosperity, as indicated by cars and jobs. There was hope. Cuba is still a dictatorship, but today there are no cars and no real economic opportunities, and there is no hope.

Protesters called the “women in white”
have demonstrated modestly against imprisonment of their families for political crimes. The Castro police of course roughed [up and] injured the protesters and stopped them. I doubt very deeply whether the lawyers boasted about in the article have the right to help the women in white in any meaningful way. Cuba cruelly and violently forbids its citizens the most basic right, the right to leave Cuba, just as Soviet Russia and Nazi Germany used to do.

The WSBA is a regulatory agency and should not use its press to support a totalitarian regime.

Roger B. Ley, Astoria, Oregon

That a touring delegation of Bar officials and members enjoyed lots of warm Cuban hospitality is no surprise. But I am disappointed, but not surprised, that the accounts of the trip in the January Bar News gloss over the fact that the Cuban regime continues to suppress dissent under the guise of its so-called legal system.

As recently as June 2011, Human Rights Watch reported on the sentencing of six Cuban citizens to prison terms of two to five years for doing no more than what we would consider exercising basic rights: “Cuba’s laws empower the state to criminalize virtually all forms of dissent, and grant officials extraordinary authority to penalize people who try to exercise their basic rights. The Cuban Criminal Code penalizes anyone who ‘threatens, libels or slanders, defames, affronts or in any other way insults or offends, with the spoken word or in writing, the dignity or decorum of an authority, public functionary, or his agents or auxiliaries.’ The violations are punishable by one to three years in prison, if directed at high ranking officials. Such laws violate the right to freedom of expression recognized in article 19 of the International Covenant on Civil and Political Rights — signed by Cuba in 2008.”

The right of dissent is one we enjoy in the U.S., no matter our political persuasion, because of the Constitution and the rule of law. I would have thought that bearing witness to those values would be more important for a delegation of American lawyers than an officially sanctioned goodwill tour. As enjoyable as it sounds like it was, it belied the ugly underlying reality of decades of political oppression just 90 miles off our shores.

Larry R. Schreiter, Seattle

Appalling is the word best used to describe “On Law and Life in Cuba,” a propaganda piece that reads as if written by the Cuban Ministry of Information and Hubris, and the accompanying glowing reviews of the virtues of Cuban living. Extolling the virtues of the Caribbean workers’ paradise — have a cappuccino, comrade? — and painting a picture of an independent and “feisty” legal system, the article barely paid lip service to totalitarian realities of the Cuban dictatorship.

Consider this opening paragraph from the U.S. State Department’s 2010 Human Rights Report: Cuba, which was released this past April yet unmentioned — ignored? — in the article: “The government denied citizens the right to change their government. In addition, the following human rights abuses were reported: harassment, beatings, and threats against political opponents by government-organized mobs and state security officials acting with impunity; harsh and life-threatening prison conditions, including selective denial of medical care; arbitrary detention of human rights advocates and members of independent organizations; and selective prosecution and denial of fair trial. Authorities interfered with privacy and engaged in pervasive monitoring of private communications. The government also placed severe limitations on freedom of speech and press, constrained the right of peaceful assembly and association, restricted freedom of movement, and limited freedom of religion. The government refused to recognize independent human rights groups or permit them to function legally. In addition, the government continued to place severe restrictions on worker rights, including the right to form independent unions.”

Scott St. Clair, Upper Montclair, New Jersey

I read with interest the articles about the WSBA delegation’s recent sojourn to Cuba in the January 2012 issue of the Washington State Bar News. Quite frankly, the WSBA should be ashamed of having participated in such a farce. Let me preface this by saying that I have never been to Cuba. But my father has been there three times in the last 12 years, my mother traveled there with him once. All three times he went with unofficial Christian outreach groups. Unofficial, since open evangelism is illegal in Cuba. A big difference in my father’s trips to Cuba compared to the WSBA’s is that they weren’t shepherded around by official government guides. They were, however, followed around by Cuban secret police. They were always aware of when these agents were around because the conversations they were having with ordinary Cubans would immediately stop, the people well able to identify the secret police.

Patrick Palace raved about Havana in his article and marveled that there was simply no crime in Havana. The place must have changed since my father was there because he saw more open prostitution taking place in Havana than in any city he’d ever been to in his life. As far as his delegation could tell, one of the main industries of Cuba is sex tourism and were told as much by some of the Cubans they spoke to, people desperate to get hard currency, U.S. and Canadian dollars or euros and catering to clientele who would fly in from such countries.

Great health care in Cuba? My father’s delegation brought with them a substantial amount of medical supplies but had to immediately turn over half of their supplies to the government when they entered the country. They were allowed to distribute the rest as they wished and it was lucky for the Cuban people that they did. Some of the villages they were in had no medical services or pharmaceutical supplies whatsoever.

Alan J. Tindell, Richland

On Diversity

As I read the articles on the various award winners in the November 2011 issue, I was left wondering what the terms “communities of color” and “persons of color” really mean. I could not help but notice the photos: Judge González and Judge Yu have skin very similar in “color” to Margaret Fisher, Tim Connor, and David Keenan, the latter all of which are good Euro-American names. It is indeed bizarre that in this day and age of inclusion, we still distinguish certain ethnicities as people of “color” by using a word which was used in past times to separate African Americans and mixed race South Africans into an inferior status. Perhaps we should discard the old stereotypes and bring true inclusiveness into the 21st century, one people, who all as individuals are given the same opportunities to compete as persons of every other ethnicity, never mind the political posturing which takes advantage of such a suspect term as “people of color.”

William R. Clarke, Richland
I Really Mean It. Please Vote No.

I have found being a member of the WSBA is an immeasurably valuable part of my career and life.

As timing goes, this column will find you on the eve of voting on the Referendum to reduce the WSBA license fees. Since my last column, I have heard from many of you on this subject. To be quite honest, the “against” have outnum-

bered the “for.” This may be a case of “likes attract,” but I hope that there is not a swell among the members who believe reducing our license fees is right or necessary. I am going to be uncharacteristic-

ally brief as I think the point can be best made with brevity.

I think that for those in favor of the referendum, it is simply a matter of money, which is something I understand well in these lean economic times. I am not insensitive to the plight of running a law office. Remember, I am a small-town sole practitioner and have been for most of my professional life. I am not wealthy by any means. I have to mind my expenses, nurture my income, and market constantly to maintain a full “pipeline” of clients.

At stake in this election is not “dues” to a voluntary organization, but a “li-

cense fee” to belong to a professional organization. WSBA not only regulates our profession for our benefit but also for the benefit of the public at large.

We are the only self-regulated profession in our country. That is a privilege for which I proudly accept the responsibility. Along with providing the fundamental regulation of our profession, the WSBA provides servic-

es that help us all as lawyers become better lawyers (e.g., the Law Office Management Assistance Program (LOMAP), the Lawyers Assistance Program (LAP), Casemaker, sections support, and much more).

I have personally benefited greatly from these services. In the instance of Casemaker, I have saved thousands of dollars a year. When I last used a commer-
cial vendor for online legal research, my monthly charge was nearly equivalent to my current annual WSBA license fee.

I am a member of several sections and have been for decades. These rela-
tionships have allowed me to become more informed about the substantive areas in which I practice, and develop a network of lawyer/friends who are invaluable for support in practice area questions or other aspects of my law practice.

These relationships have allowed me to become more informed about the substantive areas in which I practice, and develop a network of lawyer/friends who are invaluable for support in practice area questions or other aspects of my law practice.

First and fore-
most, I urge all of you to vote. Secondly, I passionately urge you to vote NO on the referendum!

WSBA President Steve Crossland can be reached at steve@crosslandlaw.net or 509-782-4418.
What Does Your License Fee Support?

Fiscal Year 2012 General Fund Budget Summary

Mandatory Programs

71%

Other Member Service and Public Outreach Programs

26%

$9,700,580

$3,496,474

$402,947

Mandatory Functions Include

- Admissions/bar exam
- Access to Justice Board
- Audits
- Board of Governors
- Discipline
- Licensing and membership records
- Limited practice officers
- Mandatory CLE administration
- New Lawyer Education
- Office of General Counsel
- Office of General Counsel Disciplinary Board
- Practice of Law Board
- Regulatory services (Rule 9 interns, Law Clerk Program, special admissions)
- Fixed overhead (would not be eliminated if all member service and public outreach programs in the list on the right were eliminated)

Other Member Service and Public Outreach Programs Include

- Ethics Line
- Casemaker
- WSBA website
- Law Office Management Assistance Program
  - Computer clinics
  - Lending library
  - Statewide conference
- Administrative support of WSBA’s 27 sections
- Support for committees and boards
- Bar News
- Home Foreclosure Legal Aid Project
- Moderate Means Program
- WSBA Leadership Institute
- Diversity initiatives
- Washington State Bar Foundation
- Lawyers Assistance Program
  - Counseling for lawyers, judges, law students
  - Job seekers groups
  - Resource lending library
- Legislative Program
- Young Lawyers Division (WYLD)
  - Administrative support
  - Washington First Responder Will Clinics
- De Novo online publication
- WSBA Service Center
- Consumer information and civics education publications
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- Mediation, arbitration, hearing officer, special master and litigation consultation services.
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- All panelists are former Washington State Superior Court Judges or Court of Appeals Commissioners.
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We’re here to SOLVE PROBLEMS!
Our is a democracy based on the rule of law, not the whim of man. The cornerstone of such a system requires that the judiciary be fair and impartial and free from undue influence by the other branches of government — and a fair and impartial judiciary relies on an independent legal profession free of similar pressures from outside influences in order to preserve its independence. Among many functions, lawyers are called upon to dispute governmental actions, challenge the validity of statutes and regulations, defend persons that the state charges with crimes, and, in general, to guard against the over-reaching and under-reaching of the government vis-à-vis the individual. As such, lawyers have been given two important things: regulation independent of the legislative and executive branches and an attorney-client privilege that protects the individual’s right to be represented by counsel.

In the United States, as in similar democratic systems around the world, lawyers are self-regulated, or regulated through the judicial branch, in order to safeguard this system based on the rule of law. As a part of self-regulation, the profession sets and enforces its own standards of conduct and is responsible for enforcing those standards governing, for example, admission to practice and discipline of lawyers who violate rules of ethics. One of the hallmarks of this regulatory system is that volunteers are deeply involved in the work of the profession. Volunteers for the WSBA contribute thousands of hours each year and at any given time there are upwards of 1,100 volunteers involved with the work of the bar.

Many of us have served on boards and performed other voluntary work in our communities, but mostly these volunteer roles find us in an advisory capacity. By comparison, the volunteers for the WSBA serve many different functions: some advisory, but many that are actually performing the work of the Association.

Whether it is those helping with the regulatory work we are required to do as a mandatory bar — like serving as hearing officers for lawyer discipline or sitting on one of our regulatory boards, such as the Disciplinary Board, Character and Fitness Board, or Board of Bar Examiners — or those who give their time and expertise toward our numerous committees working to better our profession and community, such as the Legislative Committee, the Court Rules and Procedures Committee, the Pro Bono and Legal Aid Committee, or the various entities we have working to ensure access to our justice system and the diversity of our profession — every minute and hour of volunteer time strengthens our profession.

Society has placed its trust in us to be self-regulated and this privilege cannot be taken for granted. In common law jurisdictions around the world, lawyers are losing self-regulation as regulation is taken over by non-lawyers and moved into, or substantially controlled by, other branches of the government. This erosion has occurred in the United Kingdom and Australia, and Ireland is currently battling an attempt to move regulation of the practice into the executive branch.

The fear in these jurisdictions is that once the profession loses its independence, the next safeguard to the rule of law to fall will be the independence of the judiciary. The significance of the delegation by the government and society to our profession to protect the public interest cannot be overstated. As the only profession whose members are responsible for a whole branch of government
As a part of self-regulation, the profession sets and enforces its own standards of conduct and is responsible for enforcing those standards... One of the hallmarks of this regulatory system is that volunteers are deeply involved in the work of the profession.

in the United States, this delegation of responsibility to our profession should be highlighted and always in the forefront of our professional consciousness.

The volunteers who give tirelessly of their time and expertise to the WSBA remind me that, at the core of our profession, is an ethic to give back. Lawyers give to their families, their communities, and they give significantly to this profession to ensure it remains a stable cornerstone of our democracy. Volunteers have made the WSBA what it is today. So to our past and present volunteers, thank you. And to all WSBA members, please consider the many opportunities to participate in our work. Your contribution of time, knowledge, and experience are an invaluable addition to the long tradition of professional self-regulation among lawyers and judges in Washington state.

Paula Littlewood is the WSBA executive director and can be reached at paula@wsba.org.

CORRECTION: In the February 2012 Executive’s Report, WSBA license fees were compared to those of other professions. Two of the fees were stated incorrectly as annual fees — the fee for physicians and surgeons is for every two years. The amount listed for auto dealers is an initial fee.
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When I recently returned to the active practice of law after a 10-year “retirement” and excursion into the world of academia, I gave a lot of thought to how to effectively shape my practice to meet my individual needs. Having had the “big-firm” experience early in my legal career, I did not wish to return to the structure and overhead of a large firm. At the same time, I wanted to be associated with a group of experienced lawyers to look to for assistance and backup on matters I was working on. This led me to consider a “virtual” law firm, which I participated in creating.

The virtual law firm is no longer the figment of a techie lawyer’s imagination. It exists today in many forms, large and small, throughout the country, indeed, throughout the world. Being virtual is definitely here to stay and is already influencing the way that law firms are structured and legal services delivered. Visit some of the sites listed at the end of this article to learn the extent that the virtual model has developed.

A virtual law firm (VLF) could be defined as an organized business entity (PLLC, or the like) which primarily or exclusively does not utilize a central office to house attorneys and permanent staff.
stead, it relies on technology to provide much client contact and the interaction between members of the firm. Without substantial office space and permanent staff, an impressive amount of overhead is eliminated. Contract personnel can be available for support and large projects and their expense charged to the project or to the individual attorney utilizing the support to leverage her time. A VLF may or may not provide virtual legal services (VLS), which are services that are partly or entirely delivered to the client via technology. Many bankruptcy attorneys and family law attorneys are utilizing VLS to interface with their clients.

Cloud computing as it relates to legal services can mean keeping all (or some) of a lawyer’s files on a remote server on the Internet, with good security and backup. Most law firms of any size already have a local server upon which all firm files are kept. Cloud filing is more reliable, arguably more secure, probably cheaper and more readily accessible, and can offer special secure portals for restricted client access.

**Solo Practice**

The majority of American lawyers practice alone. This choice gives the lawyer the maximum amount of freedom and absolute control over the lawyer’s cost and mode of delivering services to clients. Income-sharing is not a problem. Many lawyers in solo practice share offices with other lawyers as tenants or quasi-partners (of counsel and the like). Many utilize technology and principally practice out of a home office, and use a rented location to interact face-to-face with clients and others. In a sense, many solos do have a kind of “virtual” practice. However, they often lack resources to take on matters outside their fields of expertise, the collegiality of group practice, and the ability to reduce the cost of doing business by sharing the cost of support staff, electronic research, marketing, etc. Succession is also a problem.

**Traditional BMLF Law Firms**

These take many forms, but for the purposes of this article, it means a group of lawyers officing together in a firm pursuant to an agreement that provides for the sharing of overhead and the division of firm income. BMLFs may have multiple locations and some, no doubt, may have “virtual” partners, who do not have a physical office at a firm location and even could be charged less than a pro-rata share of the entire firm overhead. It is believed, however, that most BMLFs divide overhead costs more or less equally among partners (and, indirectly, to lawyer employees, as well). The advantages of the BMLF model are that, traditionally, it offers the ability to be a “full-service” resource for regular (often large) consumers of legal services by having available lawyers with different fields of expertise and the depth of legal staff to undertake large and complex legal matters for their clients. Many BMLF firms recognize client “origination” and “fees generated” in their income-distribution formulas. The principal drawback to the BMLF is the substantial overhead incurred by the necessity to have a large central physical location to house the firm and its large and general-
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ly permanent support staff. Depending on the firm and the location, the overhead can exceed 50 percent of revenue, requiring the imposition of high hourly rates on clients. Also, the BMLF tends to require full-time practice (to support the overhead) from its members. This may be a problem for a lawyer desiring a part-time practice (partial retirement, health, personal choice, etc.).

For a BMLF, having a long-term fixed lease for facilities for their lawyers can represent problems if the firm needs to expand or contract. The lease can become a major issue should the firm decide to dissolve. The BMLF business model greatly restricts the choices available to individual members and requires the firm to charge high hourly rates to support the significant overhead.

The Virtual Law Firm (VLF)

While a virtual law firm could physically have a central office, the “virtual” aspect of the firm is that the lawyers can deliver many of their services from remote locations and have to use the central office only occasionally. The law “firm” aspect of the VLF is that the lawyers are bound together in a legal organization — a professional corporation, professional limited liability company, or a partnership. They have a common set of books and internal arrangements for the sharing of income and expenses. Their marketing efforts are largely toward the marketing of the VLF instead of the individual lawyers.

The principal advantage of the VLF is the elimination or substantial reduction of the expense of office space and salaried staff associated with an office to house all or substantially all of the lawyers (and staff). Paralegal support can be supplied to the VLF by independent contractors, themselves working virtually from remote locations and charging for the job instead of being on full-time staff. Indeed, there are already firms of virtual paralegals located in Washington. The overhead savings can be impressive and meaningful in increasing the profit for the members and reduction in rates for the firm’s clients. The VLF can pool members’ resources to create effective firm marketing efforts, including an impressive presence on the web.

Dealing with the acquisition and sustaining of thousands of square feet of physical office space (often in expensive central city locations) is a costly and constraining proposition. Five- and ten-year leases, often requiring personal guaranties, are common. These leases place restraints on growth (and contraction) and can, in and of themselves, be major factors in influencing business decisions. Often these affect the “senior” lawyers and attorney compensation. Personal liability on the lease can also affect the flexibility of individual lawyers in making career decisions that might be important to them. In short, in some circumstances, it can be the lease (or ownership of the firm location) that is driving business decisions of the firm. In a VLF, there may be no lease at all and each individual member can decide what kind of office obligation (if any) to arrange to suit his practice. Mail can come individually to each lawyer and a central phone-answering system can handle calls. Central mail collection and electronic distribution (and filing) is also an option.

Clients can continue to deal with individual lawyers in the VLF much as they do in the BMLFs. The VLF can have conference rooms available on an hourly basis for members to use if they do not have offices suitable for client meetings and conferences. However, most communication between attorneys and clients is done by phone and email these days. Electronic filing has greatly reduced the necessity of lawyers being physically located near the courthouse.

VLF members can easily be located in different parts of the state, country, or, in some cases, the world. Working vacations are facilitated. The VLF structure facilitates partial retirement and a vehicle for full retirement while remaining in the firm legal structure. It allows for a much smoother entry of new lawyers and exit of members who, for whatever reason, find that the VLF law firm model (or law practice itself) is not for them.

The legal and economic relationship between members of a VLF can vary significantly, just as it does in the BMLFs. They can be hierarchical, even to the extent of being a sole proprietorship, with several junior lawyers working on a contract or salaried basis. A VLF can also be a firm of many lawyers who are equal members and share income according to a formula using income, individual member expenses, and client origination as factors in determining each member’s share of the profits. Such larger firms can offer clients a wide range of ser-

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vices at competitive prices and may well have the capacity to attract experienced lawyers with existing books of business. No longer does physical space become a major consideration in the adding of additional talent — or contracting if an existing lawyer does not fit well into the practice model of the firm.

Using the VLF model, a solo practitioner or an existing small (two to five members) law firm with limited lease liability could consider expanding as a VLF without much financial risk. The absolute indispensable prerequisites are a web-based time and billing system (Bill4Time is a good one) and a competent and enthusiastic bookkeeper (who prefers working remotely). Keeping the billing, receipts, and finances straight is crucial. A legal business vehicle (PLLC, partnership, PC, proprietorship with contracts, etc.) needs to exist with a rational and attractive income distribution scheme. If a goal is to attract competent, experienced, client-savvy lawyers to the firm, you need an agreement that can be understood, treats them fairly, is workable, and meets their needs.

Welcome to Advocates Law Group. In our model, all members are equal as to management, but income is distributed according to performance and client origination. Our model is apparently not the case in some other virtual firms, although it is difficult to ascertain their inside financial arrangements. At this point, we are not requiring a “buy in” but do require a modest deposit in the new member’s capital account and that each member keep a minimum of two months’ overhead in their capital account. All members are required to have malpractice insurance which is contracted for by the firm and paid for as an item of individual expense. Members share firm bookkeeping expense equally, but members who send out more bills pay additional charges than members who send out few bills. Members pay their own personal “office” expenses (including any personal staff) and, thus, are free to have an office outside their home. Three of our members currently have such offices.

Collegiality can be fostered by frequent firm meetings (usually over breakfast or lunch) and member participation in management decisions. At each firm meeting, we feature one member who discusses his practice. As in BMLFs, we “go down the hall” (by phone) to

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ask opinions from our partners. At the present time, each lawyer does his own, mostly electronic, filing, but we are looking into having a firm-wide “cloud” filing system. The bookkeeper does a conflict check on file opening and we discuss possible conflicts at regular firm meetings. The managing member does not receive compensation, but there are contract “assistants” who are paid hourly fees for working on projects for the managing member (such as determining the phone answering options, cloud filing, tech support, etc.). The managing member is elected annually by a meeting of all members. An annual budget of the firm is presented prior to the beginning of the year and approved by a majority of the members. Twice each month, the bookkeeper presents a “draw report” indicating the status of each member’s draw account — the specific expenses the member has incurred and the amount available for draw. At the member’s request, the draw is electronically deposited in the member’s personal account. At the end of the year, each member receives a K-1 indicating their taxable income for the year.

We have a policy of recruiting lawyers with more than 10 years of practice and a book of business. We have a long-term marketing strategy and specific growth goals. We are seeking to appeal to new and growing businesses that have a limited budget for attorneys’ fees and seek experienced counsel. Most of our members have served as house counsel at some point in their career. Our recruiting has consisted of an occasional ad in Bar News and principally by word of mouth. New members are approved by all members.

VLFs are beginning to emerge in the United States in many forms. Axiom has more than 200 lawyers located in major cities nationally and internationally. VLP in California has about 30 attorneys. Their websites are below. The VLF has clearly arrived, and it should only be a matter of time before the sophisticated consumers of legal services begin to search out full-service VLFs to supply or supplement their need for effective, experienced legal counsel at reasonable prices.

George Tamblyn was admitted in Oregon in 1964, and Washington in 1985. He has practiced with large and small firms and been involved in several business
Carney Badley Spellman’s Appellate Practice Group congratulates James E. Lobsenz on his election as a Fellow of the American Academy of Appellate Lawyers, the nation’s premier group of appellate advocates.

References

- virtuallawpractice.org

Some Virtual Law Firms — United States

- www.axiomlaw.com/index.php/homepage/home (national)
- www.rimonlaw.com
- www.kimbrolaw.com (North Carolina)
- www.vplawgroup.com/default.aspx (California)
- www.directlaw.com
- www.virtuallawpractice.org
- www.lanternlegal.com
- www.d-and-g.com
- www.bpblegal.com
- www.fsblegal.com
- www.batemanseidel.com/index.html (Portland, Pittsburg)

Some Virtual Law Firms — Washington

- www.advocateslg.com/ (9 lawyers; author’s firm)
- www.calbonschwab.com/ (3-plus lawyers)
- www.nwventurelaw.com (3 lawyers)
- www.kingstonlawpartners.com (2 lawyers)
- www.bundylawfirm.com (1 lawyer)
- www.ryanvelo-simpson.com/ (1 lawyer)
- www.cornerstonelawgroup.net/home_page.php (1 lawyer)
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In both criminal and immigration proceedings, clients can seek to reopen or vacate prior court or administrative decisions based on a claim of ineffective assistance of counsel. To succeed on the claim, the client needs to make a showing that counsel acted so incompetently that the client was deprived of due process. Depending on the circumstances, a lawyer who is the subject of an ineffective assistance of counsel claim may be ordered by the court to respond to the allegations, may choose to do so of his own accord, or may decide not to respond at all. If filing a response, a lawyer must balance the requirements of the Rules of Professional Conduct (RPC) to maintain client confidences with the lawyer’s understandable interest in defending his conduct.

The dilemma is particularly apparent in immigration proceedings, where motions to reopen based on allegations of ineffective assistance of counsel are a frequent occurrence. This article focuses specifically on ethical considerations in responding in the immigration context.

In 1988, to address the rising number of ineffective assistance of counsel motions where “essential information” was lacking to evaluate the claim, the Board of Immigration Appeals (BIA), which hears appeals from decisions of immigration judges around the country, established specific standards for ineffective assistance motions. Lozada held that: 1) the motion should be supported by an affidavit attesting to the relevant facts and include a statement that sets forth the agreement with former counsel and what counsel did or did not represent to the client; 2) counsel who is the subject of the complaint must be informed of the allegations and allowed the opportunity to respond. The former counsel’s response, if any, should be submitted with the motion; and 3) the motion should reflect whether a complaint has been filed with appropriate disciplinary authorities, and if not, why not.

Although the Ninth Circuit has allowed for some flexibility in applying the Lozada factors, the essential requirements remain the same. As a result, immigration lawyers can often find themselves in a situation where they are the subject of both a disciplinary complaint and a motion before the immigration court or the BIA, both alleging lack of competence and/or diligence. Should a lawyer respond to the motion if not ordered to? Are there ethical considerations to what a lawyer can include in the response? How should the lawyer handle the disciplinary grievance?

An exception to RPC 1.6 permits a lawyer to reveal confidential information when responding to allegations made by the client concerning the lawyer’s representation, although it does not require her to do so. RPC 1.6 states:

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).
(b) A lawyer to the extent the lawyer reasonably believes necessary:

(5) may reveal information relating to the representation of a client to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a de-
fense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer’s representation of the client.

Although RPC 1.6(b) does not mandate any kind of response, ignoring allegations of misconduct in immigration matters carries its own risks. For instance, the BIA or the immigration judge could make a finding of ineffective assistance of counsel without the lawyer's input. Such a finding could result in disciplinary charges from the Executive Office for Immigration Review, which has authority to impose disciplinary sanctions (including expulsion, suspension, and public or private censure) on lawyers who practice before the BIA and the immigration courts. One ground for such discipline is if a lawyer engages in conduct that constitutes ineffective assistance of counsel, as previously determined in a finding by the Board or an immigration judge in an immigration proceeding.

Furthermore, if a client files a bar grievance against his former lawyer as occurs in most cases brought under Lozada, the Rules for Enforcement of Lawyer Conduct (ELC) require that the lawyer file a response to the grievance, or face consequences for failing to cooperate. (ELC 5.3(e); ELC 7.2(a) (3).) Under the ELC, a lawyer must file a "full and complete response" to the grievance. (ELC 5.3(e).) However, as discussed below, the ELC are a unique set of rules that apply only to disciplinary proceedings. They provide the lawyer with far more leeway to provide information protected by RPC 1.6(a) than in other contexts.

The Lawyer Must Limit and Protect Client Information Filed with the Court or Administrative Tribunal

As interpreted by the courts and the comments to the RPC, the exception in RPC 1.6(b) covering lawyer-client disputes is limited. It does not provide the lawyer with a license to disclose any and all information about the client that the lawyer becomes privy to during the representation. Disclosure adverse to the client's interests should be no greater than the lawyer believes reasonably necessary to accomplish the purpose of responding to the allegations. (RPC 1.6(b), Comment 14.) In other words, a controversy with the client does not give a lawyer a blanket pass to reveal everything about the representation.

1. Don't Threaten or Misstate the Law

The exceptions to RPC 1.6(a) "should not be carelessly invoked." In the Boelter case, a lawyer was hired by a client to represent him in a tax dispute with the IRS. During their initial consultation, the client revealed information that led Boelter to conclude that the client had concealed assets from the IRS. After the representation had concluded, Boelter claimed that the client still owed him $1,800 in fees. Boelter wrote a letter to the client that stated:

If we are not paid in full by October 15, 1991, we will file suit for the fees. You should understand that if we are forced to file suit, you forgo the attorney-client privilege and I would be forced to reveal that you lied on your statements to the IRS and to the bank as to your financial condition, this would entail disclosure of the tapes of our conversations about your hidden assets... The choice is yours.

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responding exception of the release of information necessary to conduct the investigation). Thus, a lawyer may decide to file a more detailed response to the Bar Association’s grievance, and a more limited response to the immigration court or the BIA. Simply copying the lawyer’s Bar grievance response to the immigration court could violate RPC 1.6 if the response includes confidential information obtained during the representation that is not reasonably necessary to respond to the client’s allegations. It may be necessary to file separate responses in those situations to protect client confidences revealed in the response, and to seek a protective order.

In summary, in responding to the immigration court or the BIA to motions alleging ineffective assistance of counsel under Lozada, lawyers are permitted to reveal information related to the representation that would otherwise be protected under RPC 1.6(a), but only to the extent that is necessary to address the client’s allegations. If the information released would otherwise be confidential, the lawyer should move to protect the information.

Kevin Bank is a senior disciplinary counsel at the WSBA. He has worked at the WSBA since 1999, and prior to that was a consumer protection attorney with the Federal Trade Commission in Washington, D.C., an associate in a general practice law firm, and a clerk for the District of Columbia Court of Appeals. He has written several articles for the Bar News Ethics and the Law column. He is a graduate of Columbia College and the New York University School of Law. Francesca D’Angelo is a WSBA disciplinary counsel. She practiced criminal, family, and employment law in Spokane from 1993–2002, and was a solo practitioner in Seattle from 2003 until joining the WSBA Office of Disciplinary Counsel in 2006. She is a graduate of Villanova University and Gonzaga University Law School. The opinions and views expressed and set forth in this article are those of the authors and do not necessarily represent those of the WSBA.

NOTES
2. Id. at 639–40.
3. See, e.g., Castillo-Perez v. INS, 212 F.3d 518, 526 (9th Cir. 2000) (while requirements of Lozada are generally reasonable, they need not be rigidly enforced where the record of the proceedings themselves is adequate to show that the ineffectiveness complaint is legitimate and substantial).
4. 8 C F R 1003.101.
5. See 8 C F R §1003.102(k).
7. Id. at 85.
8. Id. at 86.
9. Id. at 93.
10. Id. at 91.
11. Id. In an Oregon case involving improper disclosure, a lawyer was disciplined for making unnecessary disclosures of confidential information. In re Conduct of Huffman, 983 P.2d
534 (OR 1999). In Huffman, the lawyer had obtained default judgments against a client for his unpaid fees. The client sought to set aside the judgments based on the fact that the debts had been discharged in bankruptcy. The lawyer wrote to the client’s subsequent counsel, revealing information about the client’s possible participation in tax fraud, jury tampering, and forgery, and threatening to disclose this information if the client sought to avoid the judgments. The court noted that the exception in Disciplinary Rule 4-101(c)(4) (Oregon’s counterpart to RPC 1.6(b) at that time) was limited by its terms to disclosures that are necessary to establish a claim or defense and that, in this case, the lawyer’s disclosures were little more than a veiled attempt to intimidate the client from challenging the judgments the lawyer had obtained against him. Id. at 543.

15. Id. at 465–466.
16. RPC 1.6, cmts. 14 and 23.
17. See 8 CFR § 1003.27(b); see also Immigration Court Practice Manual § 4.9(a)(iii).
18. 8 CFR § 1003.31(d) (the “service” (i.e., government counsel) can make a request to file documents under seal). It is unclear whether a judge or the BIA would grant a private litigant the same right.
19. The ELC provide that a lawyer may not assert attorney-client privilege or other prohibitions on revealing client confidences and secrets as a basis for refusing to provide information during the course of an investigation, although client confidences or secrets must be kept confidential to the extent possible under the ELC. ELC 5.4(b). In addition, a client filing a grievance “consents to disclosure of the content of the grievance to the respondent lawyer or to any other person contacted during the investigation . . . and also agrees that the respondent lawyer or any other lawyer contacted by the grievant may disclose to disciplinary counsel any information relevant to the investigation, unless a protective order is issued.” (ELC 5.1(b).)
20. In the event that the grievance is ordered to a public hearing and the grievant or respondent wishes to maintain the confidentiality of information relating to the representation, the rules provide that interested parties (including grievants, respondents, and witnesses) may seek a protective order to prohibit the release of certain information to protect a “compelling interest.” (ELC 3.2(e).)
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IRS Form 1099

Almost all of us receive IRS Forms 1099 every year. These little forms report interest, dividends, real estate sales proceeds, consulting income, retirement plan distributions, tax refunds, and many other categories of income. They are a major source of information for the IRS. Copies go to state tax authorities, too, and they are equally useful in collecting state tax revenues.

by Robert W. Wood
In fact, these forms represent the keys to the kingdom, allowing matching of taxpayer identification numbers and dollar amounts. That means there is a stark certainty about them. If you receive a Form 1099 reporting income but fail to put it on your tax return, you will almost certainly receive a tax notice (or worse).

Because Forms 1099 allow computer matching of Social Security numbers and dollar amounts, the forms have a decided impact on tax compliance and collections. IRS statistics prove this. When a taxpayer receives one of these forms, he is much more likely to report the payment on a tax return.

The forms also encourage efficiency in tax collections. IRS collection efforts can be streamlined, even mechanized. It takes no effort for the IRS to spew out a bill to a taxpayer who fails to include a payment reported on a Form 1099.

Forms 1099 should never be ignored and should be opened promptly. There are many more Forms 1099 today than ever before. That means there are also more errors. Many errors can be corrected if you act promptly, so open them upon receipt. Do not wait until you start to do your taxes.

**Kill All the Lawyers?**

Lawyers receive and send more Forms 1099 than most people, in part due to tax laws that single them out. Several decades ago, the IRS initiated a program called “Project Esquire,” which implicitly recognized that lawyers needed particular tax scrutiny.1 This program was long ago suspended. Nevertheless, some at the IRS still believe lawyers deserve special audits. A recent IRS audit guide instructs IRS agents what to look for when auditing lawyers.2

Lawyers make good audit subjects because they often handle client funds. They also tend to have significant income. Independently, the IRS has long had an interest in the tax treatment of litigation settlements, judgments, and attorney fees. These concerns coalesce nicely in reporting issues over attorney fees. For this reason, it should be no surprise that lawyers are singled out for extra Forms 1099.

Following a tradition of naming tax legislation with euphemisms, Congress included a host of tough tax laws in the ironically named “Taxpayer Relief Act of 1997.” One provision that captivated attorneys was a seemingly innocuous reporting rule now enshrined in Section 6045(f) of the tax code. That provision requires companies making payments to attorneys for services to report the payments to the IRS on a Form 1099.

On its face, this may not seem like an important provision in the tax law. After all, regardless of whether they receive Forms 1099, lawyers should report all their fee income. Yet this rule has a significant impact on lawyers as recipients and issuers of Forms 1099.

In fact, these little slips of paper have become ubiquitous in law practice, and their relevance is not confined to once a year at tax time. Even for lawyers who have an accountant or bookkeeper to keep them straight, any lawyer in private practice — whether in a large firm, small firm, or solo practice — should know key facts about them. In-house lawyers who deal with settlements of suits against their company also need to know the basics of Form 1099 rules.

Here are 10 things every lawyer should know:

1. **$600 or More.** The basic reporting rule is that each person engaged in business and making a payment of $600 or more for services must report it on a Form 1099. The rule is cumulative, so while one payment of $500 would not trigger the rule, two payments of $500 to a single payee during the year require a Form 1099 for the full $1,000. Lawyers must issue Forms 1099 to expert witnesses, jury consultants, investigators, and even co-counsel where services are performed and the payment is $600 or more.

A notable exception to the normal $600 rule is payments to corporations. Payments made to a corporation for services are generally exempt, but see rule 2 below.

2. **Incorporated Lawyers.** Although payments to corporations are exempt from 1099 rules, an exception applies to payments for legal services. Put another way, the rule that payments to lawyers must be the subject of a Form 1099 trumps the rule that payments to corporations need not be. Thus, any payment for services of $600 or more to a lawyer or law firm must be the subject of a Form 1099. It does not matter if the law firm is a corporation, LLC, LLP, or general partnership.

It also does not matter how large or small the law firm. This impacts law firms as issuers as well as recipients of Forms 1099. A lawyer or law firm paying fees to co-counsel or a referral fee to a lawyer must issue a Form 1099 regardless of how the lawyer or law firm is organized. Moreover, any client paying a law firm more than $600 in a year as part of the client’s business must issue a Form 1099.

3. **Timing.** IRS Forms 1099 are generally issued in January of the year after payment. They must be dispatched to the taxpayer by the last day of January. The IRS copies are not due at the IRS until the end of February (along with a transmittal form summarizing the data).

For that reason, after sending the forms to payees, most businesses wait a few weeks before sending the required copies to the IRS. In part, this is to allow for corrections. If someone receives a Form 1099 and promptly complains to the issuer, the correction can readily be made without needing to file multiple forms with the IRS to correct the error.

Some businesses and law firms prefer to issue Forms 1099 at the time they issue checks. This practice is perfectly lawful and seems to be growing in popularity.

**Example:** Suits-R-Us, LLP is disbursing $1,500 each to thousands of plaintiffs in a consumer class action. Seeking to economize and prepare only one mailing to class members, the firm issues the checks and Forms 1099 to class members simultaneously. In February of the following year, it will transmit all the Forms 1099 and summary data to the IRS.

4. **Forms 1099 to Clients?** One of the most confusing tax-reporting issues for law firms is whether the law firm should issue Forms 1099 to clients. Practice varies considerably, and many firms issue the forms routinely.3 However, most payments to clients do not require the forms.

**Settlement Checks to Clients?** Many lawyers receive funds which they pass along to their clients. There is rarely a Form 1099 obligation for such payments. Most lawyers receiving a joint settlement check to resolve a client lawsuit are not considered payors. The settling defendant is considered the payor, so it has the obligation to issue the forms, not the lawyer.

**Example 1:** Larry Lawyer earns a contingent fee by helping Cathy Client sue her bank. The settlement check is payable jointly to Larry and Cathy. If the bank doesn’t know the Larry/Cathy split, it must issue two Forms 1099, to both Larry and Cathy.

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1. IRS Form 1099 - General Information Form 1099 - General Information

2. IRS Form 1099 - General Information Form 1099 - General Information

3. IRS Form 1099 - General Information Form 1099 - General Information

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each for the full amount. When Larry cuts Cathy a check for her share, he need not issue a form.

Example 2: Consider the same facts as in Example 1. However, suppose that Larry tells the bank to issue two checks, one to Larry for 40 percent, and the other to Cathy for 60 percent. Here again Larry has no obligation to issue a form, because Cathy is getting paid by the bank. The bank will issue Larry a Form 1099 for his 40 percent. It will issue Cathy a Form 1099 for 100 percent, including the payment to Larry — even though the bank paid Larry directly. Cathy will have to find a way to deduct the legal fee.

Personal Physical Injury Payments. One of the many exceptions to the rules for Forms 1099 applies to payments for personal physical injuries or sickness. Because such payments are tax-free to the injured person, no Form 1099 is required.

Example 1: Hal Hurt is in a car crash and receives a $1 million settlement. Defendant Motors issues a joint check to Hal and his lawyer, Sue Suits. Defendant Motors is not required to issue a Form 1099 to Hal. Defendant Motors must still issue a Form 1099 to Sue for the full $1 million.

Example 2: Same facts, but this time Sue asks for a $60,000 check issued to Hal (no Form 1099) and a $400,000 check issued to her (Form 1099 to Sue for $400,000).

Other Payments to Clients. Refunds of legal fees to clients raise another issue. If the refund is of monies held in the lawyer's trust account, no Form 1099 is required. However, if the law firm was previously paid and is refunding an amount from the law firm's own income, a Form 1099 is needed.

Example: Big Law LLP represents Joe Inventor and is holding $50,000 of Joe's funds in its trust account. Due to a dispute over the quality of Big Law's services, it agrees to refund $30,000 of Joe's deposit. No Form 1099 is required, since this was Joe's money. Big Law also agrees to refund $60,000 of the monies Joe paid for fees over the last three years. Big Law is required to issue a Form 1099 for the $60,000.

5. Oversight and Management? The primary area where lawyers must issue the forms to clients is if the lawyer performs significant oversight and management functions. What if the lawyer is not merely receiving the money and dividing the lawyer's and client's shares? Under IRS regulations, if lawyers take on too large a role and exercise management and oversight of client monies, they become payors. As such, they are required to issue Forms 1099 when they disburse funds.

6. Beware Joint Payees. IRS regulations contain extensive provisions governing joint checks. Most of these rules mean that lawyers will be receiving the forms.

Example: Dastardly Defendant settles a case and issues a joint check to Clyde Client and Alice Attorney. Dastardly normally must issue one Form 1099 to Clyde for the full amount and also one Form 1099 to Alice for the full amount.

This reality may cause Alice to prefer separate checks. That way, she will receive a Form 1099 for her fees only, not also for her client's money.

Example: This time, Dastardly Defendant issues a check for 60 percent of the settlement to Clyde Client and 40 percent to Alice Attorney. Dastardly issues one Form 1099 to Clyde for 100 percent and one Form 1099 to Alice for 40 percent. So that Clyde doesn't pay taxes on the fees paid to Alice for which he received a Form 1099, he will deduct the 40 percent on his tax return.

Seeking to help their clients avoid receiving Forms 1099, some plaintiff lawyers ask the defendant for one check payable to the "Jones Law Firm Trust Account." Treasury regulations treat this just like a joint check, so two Forms 1099, each in the full amount, are required.

7. Err on the Side of Issuing Forms. Requirements to issue Forms 1099 have existed in the tax code and parallel state law for decades. Still, these requirements have become more rigorous in recent years. Penalty enforcement has also gotten tougher. More and more reporting is now required, and lawyers and law firms face not only the basic rules but the special rules targeting legal fees.

Lawyers are not always required to issue Forms 1099, especially to clients. Nevertheless, the IRS is unlikely to criticize anyone for issuing more of the ubiquitous forms. In fact, in the IRS's view, the more Forms 1099 the better. Perhaps for that reason, it is becoming common for law firms to issue Forms 1099 to clients even where they are not strictly necessary.

8. Penalties for Failures. However you practice, it pays to review these rules and be careful. The IRS cares a great deal about these forms. Most penalties for unintentional failures to file are modest — as small as $50 per form you fail to file.

This penalty for failure to file Form 1099 is aimed primarily at large-scale failures, such as where a bank fails to issue thousands of the forms to account holders. However, law firms should be careful about these rules, too. The distribution of the proceeds of a class action, for example, can trigger large-scale issuances of Forms 1099.

In addition to the $50 per failure penalty, the IRS may also try to deny a deduction for the item that should have been reported on a Form 1099. That means if you fail to issue a Form for a $100,000 consulting fee, the IRS could claim it is non-deductible. It is usually possible to defeat this kind of draconian penalty, but the severity of the threat still makes it a potent one.

Another danger is the penalty for intentional violations. A taxpayer who knows that a Form 1099 is required to be issued and nevertheless ignores that obligation is asking for trouble. The IRS can impose a penalty equal to 10 percent of the amount of the payment.

Example: Larry Lawyer makes a $400,000 payment to co-counsel but fails to issue a required Form 1099, even though his CPA told Larry he was required to. In addition to other remedies, the IRS can impose a $40,000 penalty.

9. Independent Contractor vs. Employee? The reach of the Form 1099 rules is surprisingly broad. For example, it can impact the worker status arena.

Example: Alvin Advocate fails to issue Forms 1099 to jury consultants and contract lawyers Alvin paid on an independent-contractor basis. In addition to other remedies, the IRS can use Alvin's failure to issue them Forms 1099 as evidence that they are really Alvin's employees and not independent contractors. This can trigger tax-withholding responsibilities and a host of other penalties and liabilities.

10. Supplying Form W-9. Since Forms 1099 require taxpayer identification numbers, attorneys are commonly asked to supply payors with their own taxpayer
identification numbers and those of their clients. Usually such requests come on IRS Form W-9. If an attorney is requested to provide a taxpayer identification number and fails to provide it to a paying party, he or she is subject to a $50 penalty for each failure to supply that information. The payments to be made to the attorney may also be subject to back-up withholding.

Moreover, as a practical matter, some defendants may simply refuse to pay over the money without the required taxpayer identification numbers or will seek to pay the money into a court.

Conclusion
No one likes receiving Forms 1099. Most people do not particularly like issuing them either. Still, lawyers need to pay special attention to these rules. More than many other business and professional people, lawyers are commonly sending and receiving Forms 1099. The IRS is watching.

Robert W. Wood is a tax lawyer with a nationwide practice (www.woodllp.com). The author of more than 30 books including Taxation of Damage Awards & Settlement Payments (4th Ed. 2009 www.taxinstitute.com), he can be reached at wood@woodllp.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
1. The IRS undertook Project Esquire during the 1990s to identify attorneys who failed to file federal income tax returns. Although most were given the opportunity to pay their taxes, some were criminally indicted. See “Attorney Nonfilers Still Targets in Service’s Project Esquire,” 95 TNT 52-7 (Mar. 16, 1995).
3. See Rule 7 below about when in doubt, issue the forms.
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**Editor’s Note:** In February and again in this issue, *Bar News* has contained articles and advertisements involving the member referendum regarding the WSBA license fee, on which you are being asked to vote this month. Besides in *Bar News*, information about the referendum is available from the WSBA website at www.wsba.org/referendum. We encourage you to review all the materials and vote beginning March 7.

Executive Director Paula Littlewood invited those for and against the referendum to submit material to publish in *Bar News* and provided the same submission guidelines. Following are comments from William Sorcinelli, the WSBA member who submitted the referendum. This was the only article submitted to *Bar News* supporting the referendum. On page 38 is an article from Patrick Palace, who opposes the referendum. Both submissions run in their entirety, without editing of content. The opinions expressed in these articles are entirely those of the authors. Because Mr. Sorcinelli’s article contains specific statements about WSBA finances that had not previously been addressed in coverage of the issue, I gave WSBA Chief Financial Officer Julie Mass the opportunity to reply regarding specific factual questions raised in the article.

Comments from William J. Sorcinelli

The dues rollback referendum was started because mandatory annual fees imposed upon Washington lawyers exceed those charged to lawyers in most other states. In addition, the WSBA is making inefficient use of money and is not being totally open with members about where the money goes.

Per the 2010 American Bar Association Dues Survey (latest available as of *Bar News* deadline), Washington ranks 8th highest in mandatory fees among the states. This is up from 27th place in 1995. The ABA Survey compares “mandatory” fees which must be paid in order to practice law in a given state. It does not pertain to voluntary fees which might optionally be paid to a voluntary bar association, despite opponents’ attempts to introduce confusion on this point. (Copy of survey at www.legalez.com).

It is distressing that the Board increased fees to the current level at a time when the economic crisis was already underway, despite hardships suffered by many members who cannot find full employment, and who are struggling to pay off student loans and underwater mortgages.

In addition, opponents are making debatable statements about how money is being managed. WSBA President Crossland (Feb. *Bar News*, p. 7) claims there have been “cuts in some programs and staff.” However, data provided by the Washington Department of Retirement Systems (viewable at legalez.com), indicates the following numbers for WSBA employees, for the stated months:

- December 2008 — 138 employees
- December 2009 — 143 employees
- December 2010 — 140 employees
- December 2011 — 145 employees

According to Retirement Systems data, there has been an overall increase, not a cut. Moreover, three “help wanted” ads for more WSBA staff appeared in the December *Bar News*.

The WSBA spends too much money on travel, lodging, and meals at various resorts and hotels around the state and elsewhere. This may be OK during good times, but during an economic crisis such expenses for meals, lodging, and travel should be minimized. It makes no sense to tour the entire Board of Governors around the state, paying for hotel bills and meals, when most of them live within commuting distance of the WSBA office in Seattle. The WSBA should cease buying restaurant and catered meals for people who are financially able to buy their own food. In March, President Crossland, Executive Director Littlewood, and members of the Board of Governors traveled to Hawaii and stayed at the Sheraton Hotel on Maui. No officer or employee of the WSBA should be spending our dues money for travel to Hawaii.

Various opponents are promoting the “Preserve the WSBA” theme. According to the opponents’ own figures, the rollback will cost about $3.6M. However, WSBA has “reserve” funds that could pay for the entire rollback with no cuts in any program. According to the WSBAs September 30, 2011, financial report, WSBA increased cash holdings from about $4.6M in 2010 to about $5.4M in 2011, with the bulk of this increasing going into the “Facilities Reserve Fund,” designated for future purchase or rental of a new WSBA headquarters. However, commercial properties in Seattle are now more available than before, due to the economic crisis, so this reserve is unnecessary. And a future office can be in very inexpensive space in the suburbs, if need be. Copies of the WSBA Annual Report showing fund reserves are available at www.legalez.com.

In the February *Bar News* p. 10, Executive Director Littlewood states that physicians are charged annual license fees of $675 “annually,” and that auto dealers are charged $760 annually. However, per WAC 246-919-990, the $675 fee for physicians is for a “two year” renewal. For auto dealers, RCW 46.70.061 states that the annual renewal fee is $250. The $750 figure cited by the Executive Director applies to a one-time initial issuance fee, analogous to a bar exam fee. Opponents of the referendum are providing advocacy more than accurate information.

The WSBA has a poor record for transparency in its finances. The WSBA does not permit the Washington State Auditor to conduct performance audits of WSBA programs, even though normal state agencies permit such audits. Rather, the WSBA uses a private auditor who does not look into program efficiency.

WSBA rules pertaining to public records are more restrictive than the Public Records Act. The WSBA spent over $30,000 as Plaintiff, suing the State of Washington to prevent release of records from the Department of Retirement Systems, on the theory records of money paid to employees is “private,” even with respect to WSBA members. (See letter in April 2011 *Bar News* by Lori Haskell, Former WSBA Governor, also available at legalez.com).

The WSBA also extensively redacted expense records pertaining to the Board Members’ 2011 Hawaii trip (copies of which may be viewed at legalez.com).

For the foregoing reasons, members should vote to roll back WSBA fees to the more reasonable level proposed.

Anyone who has questions or comments may post them on the comment board at legalez.com.

William J. Sorcinelli is the submitter of the referendum and an attorney in Spokane.

**WSBA Chief Financial Officer Julie Mass responds:** The WSBA added three full-time equivalent (FTE) staff (from 141...
How Much Are You Willing to Give up for $125? The Hidden Costs of the Referendum

BY PATRICK A. PALACE

You may have heard that there is a referendum to decrease licensing fees back to the rates we had over a decade ago. Who would not want to save $125? I get it. It is a tough economy. Everyone is trying to find the best use for their money and picking their priorities carefully.

In these times we are all looking for a sale or discounted prices so we can save our money. We want deals and discounts. But what would you think if you paid your money for a sale item, and then after you gave your cash, the store checker didn’t give you the item you paid for? And, what if the checker then actually took things out of your bag you had already paid for? Further, what if the checker started emptying out all the other customers’ shopping bags and taking away their items, because your “discount” cost everyone else their groceries too?

“Palace, what are you talking about? How could that happen?” I know, I can hear you thinking it. I realize this seems crazy, but this is the situation you and I are really in. Here is why, step by step:

First, a $125 discount for licensing fees per person has the aggregate effect of defunding our bar by $3.6 million.

Second, nearly 3/4ths of our license fee is required just to fund the mandatory functions. The $3.6 million is about 26 percent of our licensing fees. Therefore, the loss of $3.6 million dollars would take away the functions of the bar you have already built and paid for, including some mandatory disciplinary functions.

Third, the loss of $3.6 million takes away programs that support your friend next door, that the guy around the corner uses, and services for the other nearly 29,000 active members of our legal community statewide.

Fourth, the loss of $3.6 million would take away the WSBA resources for all of the programs that support non-lawyer citizens of our community who rely on us for help in these tough times, like volunteer civil legal service programs, the Moderate Means program, and the Home Foreclosure Legal Aid Project.

Adding up the Losses

How much do you want to pay to save $125? Here is what defunding our bar would really look like.

We could lose WSBA funding and staff support for each and every section and each and every committee of the WSBA. This could mean we lose our amicus committee, and our court rules and procedures committee, which drafts, modifies and creates our civil and criminal rules. Imagine losing our legislative committee and all of the bills that the WSBA creates to improve the laws that help us in our practice, and the committee that fixes the mistakes and problems that exist in our laws that our legislature didn’t foresee or understand. Gone would be our professionalism committee and our Rules of Professional Conduct committee. We would also likely lose our pro bono committee and our civil legal aid committee, which supports civil legal aid for people in our community. These are just some of the many standing committees with the bar.

The referendum would also have us defund our sections. These sections work to improve each of the various areas of law that we practice in. Imagine losing the business law section, the family law section, the criminal law section, the civil rights law section, our litigation section, the solo and small practice section, the real property probate and trust section, and more. The WSBA provides funding and support to 27 separate sections that represent the diversity of law and practice that we have in our state.

And while perhaps there is no need to say more about what we would lose, unfortunately sections and committees are just the beginning.

Gone would be all of the WSBA funding that supports statewide volunteer legal services. All of the support staff and all of the money that supports pro bono work across the state and supports volunteer legal services statewide would end.

With it, we would also lose important bar programs like LOMAP; the Law Office Management Program, which provides invaluable services to sole and small practitioners and those wishing to begin their practices. Gone would be the Lawyers Assistance Program, a successful program that has supported lawyers in their times of need for years. Gone would be our ethics hotline, the opportunities to speak with the ethics counsel and to seek advice for legal questions. Gone would be our free legal research provided by the bar. Casemaker would end and no more legal research engines or tools would be available through the bar.

There are 17 minority bar associations that would no longer receive any WSBA resources. These minority bars include the Loren Miller Bar Association, the Washington Attorneys with Disabilities Association, Washington Women Lawyers, the GLBT Bar Association, and many others. These bars represent the successes we have had improving diversity within our profession. It has been a long slow road in our bar to
today we have continued to create new and diverse programs such as the WLI (WSBA Leadership Institute). The WLI recruits, trains, and develops minority and traditionally under-represented attorneys for leadership positions throughout the bar, the bench and in the legal community. It is has been a huge success since 2004, but if defunded, it could all end. 

**Loss of Bar Self-Regulation**

Unfortunately, this very real parade of horrors does not end there. For those of you who watch what happens in Olympia and trends across the country you may note that the practice of law is under attack. The tired, old and horribly misquoted statement “First let’s kill all of the lawyers” still seems to be a distant battle-cry in legislatures across the county. Here in Washington, the more modern version is “first let’s kill the bar association.”

The WSBA represents a unified voice of lawyers. It is a powerful voice in Olympia. The WSBA, the members of the WSBA legislative committee, and our lobbyists make a remarkable difference in the way that we practice law because they create and fix the laws we use to practice. Some lawmakers see us as a threat and believe that they can take away our self-regulation, our power and our independence, by eliminating the WSBA.

We belong to a noble profession and enjoy the privilege of regulating ourselves and those within our profession. Through the powers granted our Supreme Court, the WSBA is our regulatory body. But with a defunded WSBA, would we really be able to maintain that privilege? Let me introduce you to Senate Bill 5936 and House Bill 1664. These are both bills that are currently before the legislature. They are essentially the same bill. House Bill 1664 has 22 sponsors. Senate Bill 5936 says that the bill “eliminates statutes establishing the Washington State Bar Association and regulation of members of the bar.”

If we significantly defund the bar, then we lose our voice in the legislature. Without a unified voice, who defends us? Who fixes the laws? Who protects our bar? Who defends our ability to self-regulate in a world where some legislators believe we should be regulated by the state like any other business with a license? Before you consider a vote for the referendum, ask yourself whether the savings of $125 is worth the risk.

**Our Licensing Fees Are in Line With Other Bars**

I think some early supporters of the referendum thought that our bar was overcharging members because the referendum alleged that other bars didn’t pay as much as we do. For example, the referendum statement suggests that some bars like Massachusetts only pay $200 and Illinois only pays $189, so why should we pay $450?

However, some quick fact checking confirms that the statement section of the referendum was not accurate and perhaps misleading. For example, the statement in the referendum states that in Illinois, their members pay $189 for licensing fees. However, this is not true. In Illinois, basic licensing fees are $289, and then on top of that they have to pay up to an additional $320 charge for a total fees payment of $609.

Similarly, the referendum cites a $200 licensing fee in Massachusetts. In reality, Massachusetts requires a base $300 fee, and then members pay an additional $360 to support bar costs. In total, members of the Massachusetts bar pay $660 per year in fees. This structure is true for many bars around the country.

The amount of licensing fees we pay in Washington is reasonable. When comparing our licensing fees to all other mandatory bars nationwide of our size, we pay less for fees than half of the other mandatory bars. However when you weigh into that the fact that our bar is a leader in innovative bar programming and management, and when you consider the cost of other bars in our region and the services our members are provided, our licensing fees are a bargain. Indeed in Alaska, a much smaller bar with fewer member services, members pay $660 per year, $210 more per year than we pay. In Oregon, again a smaller bar, members pay $492; also higher than we pay here in Washington, and with fewer member services.

You can also look at other professions in our state to see that our fees are reasonable. For example, chiropractors pay $607 licensing fees, midwives pay $525 and dentists pay $576.

**Licensing Fees Have Not Increased**

I know that everyone agrees that the cost of doing business is rising. It simply costs more to do the same things that we used to do. Our bar is no different. The costs for benefits and services to bar members are increasing and the cost of supporting our bar staff is increasing. However, despite the change in our economy and the increased costs, your Board of Governors has managed WSBA money prudently and therefore did not see the need to increase licensing fees in 2010 or 2011. In fact, because our bar is so well run, after each year’s independent audit, the auditors haven’t had any criticisms or recommendations for change.

In September 2011, your Board of Governors again voted not to increase licensing fees for 2012 or in 2013, but instead worked to find ways to further reduce costs and increase efficiencies. Your licensing fees have remained and will remain static for four years. We have not put ourselves into a hole for the future, we have not accumulated needless debt, and we are running a prudent and lean budget that is the envy of like-sized nonprofit corporations.

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**2012 Judicial Campaign Forums**

*Of Interest to Judicial Candidates and Campaign Committee Members*

**SeaTac**

Monday, March 19, 2012
5:30–7:30 p.m.
SeaTac Office Center
18000 International Blvd.

**Spokane**

Tuesday, March 27, 2012
5:30–7:30 p.m.
Red Lion River Inn

Forum details are available at www.courts.wa.gov
Everyone Needs to Vote
On March 7, 2012, you will have the opportunity to vote. It is important that you do vote. This referendum will pass or fail depending on the total number of those voting. In other words, if 2 percent of the bar votes and they vote for the referendum, then they will have made the decision for the other 98 percent who did not vote. Your vote is very important.

Many organizations across the state have been urging their members to vote "No." The largest bar in the state, the King County Bar Association, was the first county bar to oppose the referendum and others have followed including the Spokane County Bar Association. Other bars and organizations across the state have also spoken with a singular voice to oppose the referendum, including Attorneys United to Preserve the WSBA, the Washington Association for Justice, the Campaign for Equal Justice/Law Fund, the trustees of the Young Lawyers Division, and King County Young Lawyers, to name a few. Similarly, the executive committees of sections like the Real Property, Probate and Trust Section, the Litigation Section and the Business Law Section have also voted to oppose the referendum.

There have not been any local, specialty, minority, plaintiff, or defense bars or any legal organizations anywhere in the state who have endorsed the referendum. So, in the end, lowering licensing fees is no deal. If this referendum passed, you will still pay $325, but you will lose your member services, and your vote will have taken away the services everyone else was using and relying on. It would also put our ability to be a self-regulating profession at risk, defund volunteer legal services even further, and would dismantle and end years of successful programs and services that were built and paid for by you and made for you.

Defunding our bar to save a couple bucks is a mistake we can’t afford to make. I ask that on March 7, 2012, when your ballot is mailed, that you join me and a diverse coalition of lawyers from across the state and vote "No" on this dangerous and costly referendum.

Patrick Palace practices workers’ compensation law in University Place, is a former WSBA Governor for the Sixth District, was WSBA Treasurer for 2010–2011, and is a LAW Fund board member.
Lighter Side of the Law

Coming Soon to a Theater Near You?

If only my fantasy list of estate-planning-related movie pitches could all earn a production green light.

BY JOHN M. REDENBAUGH

Scary Probate
A gripping, must-see tale of drafting strategies, competing valuations, and family relationships gone awry. A mid-sized firm takes on a time-consuming probate matter and eventually must contend with the intricacies of multiple will challenges, cross-border jurisdictional disputes, conflicting trust provisions, and one cantankerous heir who just won’t let it go. No mercy. No ending. No kidding.

2010: A Tax Act Odyssey
A gripping behind-the-scenes odyssey focusing on the late December enactment of the Tax Relief Act of 2010. A clandestine source within the Senate — known only by his code name “Hal” — provides a provocative narrative for this chilling documentary with scenes certain to shock you and offering an ending sure to inspire countless hours of online discussion and debate about what the future holds for estate taxation.

I Know What You Drafted Last Summer
Four young associates band together for a 12-hour marathon drafting session to complete a set of estate-planning documents demanded by the managing partner at 5:59 p.m. — and required by 6:15 the next morning. They complete the task, but on the way to an extended length 15-minute celebratory lunch the next day, one of them realizes he made a potentially malpractice-worthy drafting error on the last page of the charitable trust agreement they submitted. Rather than immediately notify the managing partner, they opt to remain silent, cross their fingers, hope for the best, and swear each other to secrecy. The following week, one of them receives a text threatening to expose them all and ruin their careers. What follows next provides two full hours of intriguing drama and on-the-edge-of-your-seat terror.

Client Without a Cause
We’ve all seen them: the ones who walk in with the anger-driven “sure fire” case they want you to handle. And, as this story unfolds, the need to teach a firebrand client how the laws actually are applied and what constitutes a viable cause of action becomes more and more apparent paving the way for what promises to become an Oscar-worthy showdown meeting with the client. The gripping story of one estate planner’s quest to educate his new client who hopes to litigation an undue-influence suspicion.

Honey, I Shrunk the Estate
A mild-mannered father of three does his best to keep his carefree spending sprees under wraps and off the radar from his wife as he spends down their holdings. She innocently trusts him and has no clue that his debt-producing ways threaten their long-term financial stability. Eventually, on his deathbed due to a serious car accident, he tangles with his conscience and finally confesses to his soon-to-be widowed wife about the precarious nature of their remaining assets. How she handles the disclosure will keep you glued to your seat.

It’s a Wonderful Career (destined to be a holiday classic!)
The heartwarming story of a small-town practitioner with a heart of gold and a long list of accounts receivable. He is dismayed by the economy and poised one night to give up all he has worked so hard for and close down his solo practice. Then a light knock on the door late in the evening leads to a visit from one of his recent clients, who drops by to thank him in person — with a payment. After his visitor leaves, he falls asleep at his office, enduring a fitful sleep filled with dreams about his many challenging — though satisfying — estate-planning client matters. He wakes with an epiphany and a recommitment to his solo practice.

Surviving Spouse and the Seven Heirs
Following her well-to-do husband’s untimely death within two months of their honeymoon, a newly widowed woman living on a secluded 15-acre wooded estate north of Issaquah arrives at the offices of her late husband’s attorney to review the contents of his estate-planning arrangements. She learns that her husband left his entire estate not solely to her, but rather to her plus his seven nephews and nieces she had never before met or heard mentioned. What follows is a combination of drama and comedy as eight new housemates learn to live with each other while positioning themselves to spend the remaining assets.

Dances with Auditors
Left mainly to his own devices to open a satellite office in Twisp for a large Tacoma law firm hoping to gain a foothold for estate-planning and probate clients in eastern Washington, a young attorney makes cautious progress. Working from a small storefront office, he begins to earn the respect of local citizens. He befriends a road-warrior-type IRS auditor who makes quarterly road trips through the region, only to eventually find himself advocating his first estate tax return controversy against the very same auditor.

Intestate in Seattle
A widower with twin teenage sons living in Seattle’s Belltown neighborhood works long hours during the week, but manages to spend quality time with his sons on weekends. One evening his sons overhear their father’s visiting friend encourage him to make an appointment to finally see an attorney about obtaining at least a will as part of his estate-planning needs. The father complains about not having enough time and the twins — unbeknownst to their father and anticipating continued procrastination — launch a covert plan to find him a quality estate planner.

John Redenbaugh retired in 2011 after 30 years of service as a WSBA employee. He is a member of the steering committee for the seventh Annual WSBA Solo and Small Firm Conference and can be reached at baughj@isomedia.com.

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Dave Martin Was My Friend

BY MICHAEL J. BOND

David L. Martin was my friend. He died on January 11, 2012, at age 69, and he worked hard as the leader of the Lee Smart firm until long after he got sick with kidney cancer in 2011.

I first met Dave in 1982 when I came to Seattle looking for work after getting out of the Marines. Several hundred asbestos cases were going to start trial soon and I think the law firm — then called Lee Smart Cook and Martin — was looking for experienced trial lawyers to handle the trials. Plus, it helped that two of my law school classmates, Joel Wright and John Schedler, worked there.

Dave could make a decision quickly. I interviewed on a Thursday, and he called me the next day to ask me to come to work the following Monday. When he offered me the job, he said something in the nature of a warning or disclaimer; I recall telling him, “That’s OK, Dave, I know how to work for a son of a bitch.”

Well, he wasn’t that way, to me anyway.

Dave was a great lawyer and he seemed to care for me and I am thankful to this day. He taught me most of what I know about how to deal with clients, judges, and colleagues; not by sitting down and teaching these things, but instead by doing them where you could watch and learn. Dave was direct and aggressive, he knew the law, and he was usually right.

We are all, in some ways, the product of where we came from. When my wife, Marianne, and I came to Seattle, we fell right in with Joel and Ron and Phil, and Jake and Lynn because we all loved to ski. A year or so after I started at Lee Smart, I asked Dave if he skied and he looked at me like I was crazy. He said, no, he had spent too many freezing cold mornings trudging through the snow and ice to take care of the dairy herd his dad ran in Quincy to ever believe you could go have fun and play in the snow.

I’ve wondered for many years why we got along, when some others did not. He was in the Army and I served in the military, too. But I was a Marine, and for reasons only a Marine will understand, we are a bit different. Dave used to tell this story about his Army days. He was an enlisted man and many will take pleasure in imagining Dave saying “yes-sir” with respect or having to kiss somebody’s butt to get anywhere. He told us he was stationed at Fort Myers in Virginia toward the end of his service and for a while he was assigned to the military police.

One night he and his military police crew were called out to a bar brawl and when they got there he found that a bunch of Marines were having a go with a bunch of Army guys and, of course, it was all the Marines’ fault. He told me this story many times and the first time it went something like this: “We took care of those Marines.” The story evolved over the years and the second time he told it he said, “We had a real rough time with those Marines.” The third or fourth time I heard him tell the story, it went something like “those Marines did not go peacefully.” And I have a feeling that if we had gotten him to tell the story a few more times, we would learn that those Marines kicked his butt.

Somewhere along the line, Dave completed an LL.M. in labor law, of all things. I always thought that was really cool, and a while ago I went back to law school and got one, too, in international law.

Yes, Dave had his quirks, but don’t we all? Shoot, if you ask my wife, Marianne, about it, she’d say I was just one big quirk. And I would like the record to reflect that is “quirk” and not “jerk.”

Dave had a soft spot for Marianne and when we went up to the hospital to visit him in September, she said to me, “I bet he says it,” I said, “Says what?” And she said, “What he always says to me when he sees me.” Sure enough, about 10 minutes after we got to his hospital room to visit, Dave said to Marianne, “What is a nice girl like you doing with a guy like that?” (pointing at me).

I think Dave had a soft spot for everyone of us. It was easier for him to show it for some than others. So when he threw the softball at Gus Cifelli in the middle of the firm’s annual picnic softball game, it was Dave’s way of saying, “I care about you.” Or when he would stand in the doorway of your office at five o’clock on Fridays and check to make sure the nails were still in the casing by pounding it with his fist, that was his way of saying, “Good to see you, how the heck are ya?”

As I said, I learned a lot from Dave. Whenever we happened to be in the courthouse at the same time, I marveled that the lawyers in the hallway would stop what they were doing and lean in to hear what Dave was saying.

In one case, the plaintiff’s attorney filed a motion to compel discovery against me; in hindsight, I’d handle the matter differently now. But when I got down there to Judge Robert’s court — he was the motions judge that week — I found that Steve Henley, Dave, and I were all there defending motions to compel discovery in three different cases. I thought, man, this looks bad. But Judge Roberts had been around the block more than once; he understood and wasn’t too hard on any of us.

Dave loved his children and he was proud of Andy and Jennie. Whenever I would ask about them, he was pleased to talk about what they were up to in high school, college, and then when they went to work. For several years, I used to go to Las Vegas to see the National Finals Rodeo. One time I had an extra ticket and I asked Dave if he’d like to go. He said no, but Andy probably would like to go and so Andy and I went to the NFR that year. I had a good time and I think Andy did, too, Jennie told us that Dave taught her how to play poker; he was there for her at every step of growing up, he slept at the foot of her bed once when he was worried about her bout with the flu, and it is clear that she returned his love as much as any father could hope for.

Dave’s wife, Jan, was the anchor that moored Dave’s life when he wasn’t thinking of work. In my humble opinion, a happy home life is a sure sign of success and a life well lived. Her time was cut short and that was a bad blow for Dave. He threw himself into his work with even more zeal and came to know Leigh Anne. Somebody upstairs was looking after Dave. Seven years after losing Jan, Dave married Leigh Anne in a ceremony presided over by Court of Appeals Judge Lisa Worswick, who got her start, like so many of us, as an associate at Lee Smart Cook and Martin.

Dave was helpful to me in many ways over the years, even after I left Lee Smart in 1997. Once, early on, I filed a jury demand after the deadline for the jury demand under the case schedule had passed, and the plaintiff’s attorney — some rascal — filed a motion to strike my jury demand. Judge Norm Quinn was the motions judge, and after explaining why I had missed the deadline I said, “And Judge, if I have to go back and tell Dave Martin I blew the jury demand, he is
going to tan my hide!” Judge Quinn said, “Well, I don’t care what Dave Martin thinks, but you’ll get your jury, motion denied.”

When I ran for election to our state Supreme Court in 2008, one of my pitches was that a judge needs to have the courage to speak truth to power. I was invited to make a presentation to the Washington State Association for Justice, which used to be known as WSTLA. There was a room full of about 30 lawyers — I knew most of them, had cases with probably half, and settled a lot of cases with these folks. I made my stump speech and one of them said, “Mike, you talk about speaking truth to power; can you give us some examples of that?” And I said, “Do you know Dave Martin?”

I told Dave he was wrong when I thought so. But I did it in private because, like all of us, he did not like to be challenged in public.

In another case, one morning all counsel were called in for a status conference in Judge Carol Shapira’s court at 7:30. Now, that’s a bit early to show up in court, but the judge is the judge, and nobody was thinking of telephone conferences in those days. When I arrived, the clerk told us that Judge Shapira was unable to make it and he would handle the status conference. Well, this didn’t sit too well with me and at the conclusion of the conference, when the clerk asked us if there was anything we wanted him to tell the judge, I said, “Yes, please tell Judge Shapira that the next time she calls a status conference for 7:30 in the morning, I expect her to be here. And my name is Dave Martin.”

I have two enduring visual memories of Dave. The first unshakable visual memory arose at a Lee Smart sports banquet, where the firm would have dinner, drinks, and fun. For one skit, Dave dressed in pantyhose and garters and a very tight tank top with several other similarly svelte men like Rich Robinson and Gus Cifelli, and they all danced and acted as the backup singers for Robert Palmer’s MTV video hit “Addicted to Love.” It was a sight to behold.

The second visual memory comes from Joe and Mary Ganz’s wedding. They are Catholic, which means communion was served. Dave took communion whenever he could and I recall seeing him come back from the communion rail with his hands folded in prayer and a serene smile on his face. His smile made me think of the expression on the face of Sylvester the Cat right after he swallowed Tweety Bird.

I believe that when Dave gets to the Pearly Gates and St. Peter says, “OK, Dave,

what do you have to say for yourself?” Dave will open his mouth and that yellow canary will fly out and turn and say, “Thanks for the ride, Dave.”

I believe I speak for lawyers all over the state when I say, “Dave, thanks for the ride.”

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Michael Bond is a graduate of Gonzaga Law School and a partner focusing on construction law at the firm of Schedler Bond, PLLC, with offices in Mercer Island. His article, “In Defense of Dithering Nincompoops,” appeared in the September 2010 Bar News. He can be reached at michael@bondschambers.com.
I n the spring of 1942, Gordon Hirabayashi was a 24-year-old senior at the University of Washington when he defied military orders subjecting him and more than 110,000 others of Japanese ancestry to curfew and removal from the West Coast. Gordon resolved that he could not comply with either order. Like two-thirds of those ultimately incarcerated during World War II, he was an American citizen by birth, and he felt, as a matter of principle, that he could not submit to injustice.1 Gordon was convicted of violating the military orders and, in 1943, challenged their constitutionality by appealing to the U.S. Supreme Court. The Court, in a unanimous opinion, upheld the curfew orders as justified by “imminent military necessity.”2 A year and a half later, the Court relied almost wholly on its decision in Gordon’s case when it decided, in Korematsu v. United States, that the orders removing Japanese Americans from the West Coast were similarly justified by military necessity.3

Forty years later, in 1983, Gordon would make legal history. That year, a remarkable team of Seattle attorneys won vacation of his World War II convictions based on evidence that the government, while arguing his case before the Supreme Court during World War II, suppressed, altered, and destroyed material evidence bearing on the issue of military necessity.4

We learned with sadness of Gordon’s passing on January 2 of this year. He was a native son, raised in Auburn. He took a courageous stand during World War II and, years later in reopening his case, aided in vindicating the Japanese-American community. On a broader level, Gordon spoke for all of us in seeking to hold this country to its promise of equality. As he later said, “I never looked at my case as just my own, or just as a Japanese-American case. It is an American case, with principles that affect the fundamental rights of all Americans.”5

As many recalled at a recent conference at Seattle University School of Law marking the 25th anniversary of his coram nobis case, Gordon and the cases he pursued in the 1940s and 1980s have left us many lessons. After his World War II case, Gordon spent most of his career as a sociology professor at the University of Alberta, and it seems appropriate to reflect on what his life’s work has taught us. First and foremost, we can only be inspired by his resolve to act on his principles at such a young age. It is sometimes easy for us, as lawyers, to forget the faces behind the cases we read and argue and how those litigants, just as much as counsel and judges, animate the quest for justice. In 1942, on the day after he was required to submit to military authorities, Gordon went to the Seattle FBI office, accompanied by his lawyer and friend, Arthur Barnett. Gordon handed the agent who met him a four-page statement explaining his refusal to report for incarceration, which included these words:

This order for the mass evacuation of all persons of Japanese descent denies them the right to live. It forces thousands of energetic, law-abiding individuals to exist in a miserable psychological and a horrible physical atmosphere . . . Hope for the future is exterminated. Human personalities are poisoned . . . If I were to register and cooperate under those circumstances, I would be giving helpless consent to the denial of practically all of the things which give me incentive to live. I must maintain my Christian principles. I consider it my duty to maintain democratic standards for which this nation lives. Therefore, I must refuse this order for evacuation.6

That purity of resolve carried Gordon through his loss before the Supreme Court; he knew that the incarceration of Japanese Americans was wrong and never wavered in that belief. Judge Mary Schroeder, who authored the Ninth Circuit opinion later vacating Gordon’s convictions, stated it well: “Gordon Hirabayashi’s legacy is his extraordinary courage to stand up for his beliefs about our nation and its constitution.”7

The Supreme Court’s abdication of its role as a check on excessive government action during World War II provides us other lessons that continue to resonate in today’s post-9/11 environment. In deciding Gordon’s case in 1943, the Supreme Court

What the College Student, Client, and Professor Taught Us about Seeking Justice

BY LORRAINE BANNAI

affirmed the government’s power to curtail civil liberties in the face of perceived military necessity. It upheld the curfew orders issued against Japanese Americans, essentially stating that it had no role in questioning the military judgment. Despite its deference, the Court went on to evaluate what it termed “all the facts and circumstances” to determine whether there was any “substantial basis” for the conclusion that the curfew was justified by military necessity. What the Court deemed “facts,” however, were hardly “facts” at all. Instead, the Court adopted the government’s arguments that the proximity of Japanese Americans to strategic installations and their “racial characteristics” justified the military’s actions against them.

Of particular significance to us in the Bar is what Gordon’s case teaches about lawyers — both lawyers who fail in their ethical duties and lawyers who embody the best in the profession. There were the lawyers who prosecuted his case during World War II. Through his coram nobis case, Gordon and his legal team established that military officials and government lawyers lied to the Supreme Court while arguing his case. For example, Department of Justice (DOJ) attorneys had reports from the FCC, FBI, and the Office of Naval Intelligence (ONI) refuting claims of military necessity. DOJ attorney Edward Ennis warned Solicitor General Charles Fahy that the government’s failure to advise the Court of the existence of the ONI report “might approximate the suppression of evidence,” but the report was never given to the Court.

On the flip side is the story of the lawyers who stood beside Gordon during World War II and in reopening his case in 1983. Most of the members of Gordon’s coram nobis legal team were young and just starting their careers. Many were Japanese Americans whose parents were incarcerated during the war. All took time away from their practices to vindicate Gordon and the principles he stood for on a pro bono basis. This team of talented, dedicated attorneys took Gordon’s case from its filing in 1983, through a full evidentiary hearing and ultimate appeal to the Ninth Circuit, resulting in the 1988 vacation of both of Gordon’s wartime convictions.

In the end, the most important thing that Gordon has taught us is the need for vigilance. He explained, “As fine a document as the Constitution is, it is nothing but a scrap of paper if citizens are not willing to defend it.” Gordon understood the rights and privileges of citizenship, but he also took seriously the obligations of citizenship, and one of those obligations was to speak out against injustice. He knew that the work of ensuring justice continues. Racial stereotypes and profiling of the kind that Gordon fought still exist today, and we further his legacy when we call out injustice when we see it. In 2009, for example, the Korematsu Center, joined by the Asian Bar Association of Washington and the South Asian Bar Association of Washington, submitted an amicus brief to Division III of the Washington State Court of Appeals in the case of Turner v. Stime, arguing that a new trial was warranted when, during deliberations, jurors in a medical-malpractice case made racially derogatory comments in reference to the plaintiff’s Japanese American attorney.

In October 2011, the Center filed, with others, an amicus brief in the appeal of In re Marriage of Katane, arguing against the use of profiles based on national origin in a child custody matter.

These are but two recent examples in which racial prejudice and stereotyping have manifested themselves in our justice system. In speaking out against prejudice wherever it arises, we carry on Gordon’s legacy and learn the lessons he sought to teach.

Lorraine Bannai is a professor of legal skills and director of the Fred T. Korematsu Cen...
ter for Law and Equality at Seattle University School of Law. She served on the legal team that represented Fred Korematsu in successfully vacating his World War II conviction. She would like to thank Korematsu Student Fellow Ethan Kutinsky for his contributions to this column. This column is edited by the WSBA Committee for Diversity.

NOTES
8. Hirabayashi, 320 U.S. at 93.
9. *Id.* at 95.
10. *Id.* at 95–98.
“I realize it’s a tough case Watson, but I know who to call … it’s elementary.”

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The WSBA Needs You
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Get involved with issues you care about.
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We invite you to apply for service on a WSBA committee, board, or panel. Below and opposite this page, you will find many opportunities to serve. Apply online* through myWSBA.org from January 3 until March 12. Most of the positions begin October 1. For more information, see www.tinyurl.com/wsbavolunteeropps.

* If you need a paper application, please see www.tinyurl.com/bsbacommitteetools or contact Sharlene Steele at 206-727-8262 or barleaders@wsba.org.

Committee, Board, Panel, and Other Positions for 2012–2013

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.

Committee for Diversity
Works to increase diversity within the membership and leadership of the WSBA; promotes opportunities for appointment or election of diverse members to the bench; supports and encourages minority attorneys; aggressively pursues employment opportunities for minorities; and raises awareness of the benefits of diversity. 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 CLE Department 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 sub-committee to support the department in achieving its trademark, “The Innovator 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 Board of Governors. The Rules of Appellate Procedure (RAP) and the Rules for Appeal from Decisions of Courts of Limited Jurisdiction (RALJ) are scheduled for review in 2012-2013. Lawyers with experience or interest in these areas are encouraged to apply. 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 Board of Governors, and the establishment of guidelines for format, content, and editorial policy. Appointment is for a two-year term.
Judicial Recommendation Committee
Screen 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 administration of justice as it affects 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 civility among attorneys; and creating and promoting educational opportunities focusing on issues related to professionalism, ethics, and civility. 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.

BOARDS
Character and Fitness Board
Deals with matters of character and fitness bearing on qualifications of applicants for admission to practice law in Washington; conducts hearings on the admission of any applicant; makes recommendations to the Board of Governors and Supreme Court; and considers petitions for reinstatement after disbarment. Appointment is for a three-year term. Prerequisite: Board members must have been an active member of the WSBA for at least seven years at the time of appointment. Four positions are available: applicants must be from District 4, 6, 7, or 9.

Disciplinary Board
Carries out the functions and duties assigned to it according to the Rules for Enforcement of Lawyer Conduct adopted by the 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 investigation reports and dismissals. Considerable reading and meeting preparation are required. Appointment is for a three-year term. Prerequisite: Board members must have been an active member of the WSBA for at least seven years at the time of appointment. Three positions are available: one must be filled by a member from District 8, one by a member from District 9, and one by a member from any district.

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; follows the progress of law clerks assigned to liaison; interviews and evaluates law clerks and tutors during the course of study; and certifies that law clerks have successfully completed the program meeting the educational requirement for the Washington State Bar exam. The board has regular meetings four times a year and may call additional meetings for special topics. Appointment is for a three-year term. Members are appointed with consideration for the geographic distribution of law clerks in the program, a balance of those who completed the law clerk program and law school graduates, and other factors of diversity.

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 actions or failure to account for client funds; decides claims up to $25,000; and makes recommendations to the Board of Governors for greater amounts. The Board meets four times a year. Appointment is for a three-year term.

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.

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 administration of justice as it affects 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.

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 Disciplinary Board, the Board of Governors, and the 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. Three CROs serve staggered terms; each year one CRO will be appointed to a three-year term. The Supreme Court makes the appointments based on recommendations from the WSBA Board of Governors. Prerequisites: 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 separately from (and in addition to) the application form to Elizabeth Turner, WSBA, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539 or elizabetht@wsba.org. Please review the Rules for Enforcement of Lawyer Conduct, particularly ELC 2.5 to 2.6 and ELC Title 10, prior to applying.

Council on Public Defense
The Council on Public Defense was established to implement the recommendations of the WSBA Blue Ribbon Panel on Criminal Defense, which was appointed by the Board of Governors in spring 2012 as a first step in addressing concerns about the quality of indigent defense services in Washington. Appointment is for a one-year term. Prerequisite: Applicants must not be employed by a government entity or government-funded entity.

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Opportunities for Service

WSBA Presidential Search
Application Deadline: May 4, 2012
The WSBA Board of Governors is seeking applicants for the position of WSBA president for 2013–2014. Pursuant to Article VI (D)(2) of the WSBA Bylaws, the 2013–2014 president-elect may be an individual from anywhere within the state. The WSBA member selected to be president will have an opportunity to provide a significant contribution to the legal profession.

Applications for 2013–2014 WSBA president will be accepted through May 4, 2012, 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, 2012. 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 8, 2012, Board of Governors meeting in Yakima. Following the interviews, the Board will select the president. Although prior experience on the WSBA 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 2012, following selection. A one-year term as president-elect will begin at the Annual Awards Dinner on September 20, 2012. 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 2013, at the WSBA Annual Awards Dinner, the president-elect will assume the position as 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 http://bit.ly/xLZbkB.

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

2012 Licensing and MCLE Information
Deadline was February 1, 2012. If you are no longer eligible for judicial membership, you must notify the Bar within 10 days and, if you want to continue your affiliation with the WSBA, you must change to another membership class. Contact Membership Changes at membershipchanges@wsba.org or 206-239-2131 if you need to change your membership. For detailed instructions, go to www.wsba.org.

“Foundations of American Democracy” Civics Pamphlet
The WSBA offers a pamphlet for the public called “Foundations of American Democracy” that describes the basics of American government: the rule of law, the separation of powers, checks and balances, and a fair and impartial judiciary. It also includes a short quiz and a list of useful websites. Lawyers and judges are encouraged to bring the pamphlet with them when they speak to students or the public in schools, courtrooms, and the community. Teachers may also request the pamphlet for classroom use. The WSBA can provide reasonable numbers of copies at no charge, or the pamphlet may be downloaded from the WSBA website at www.wsba.org. Requests for copies should be directed to Pam Inglesby, WSBA outreach programs manager, at pami@wsba.org.

If you are no longer eligible for judicial membership, you must notify the Bar within 10 days and, if you want to continue your affiliation with the WSBA, you must change to another membership class. Contact Membership Changes at membershipchanges@wsba.org or 206-239-2131 if you need to change your membership. For detailed instructions, go to www.wsba.org.

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

Search WSBA Advisory Opinions
Online
WSBA advisory opinions are available online at www.wsba.org/advisoryopinions. You can search opinions by number, year issued, ethical rule, subject matter, or keyword. Advisory opinions are issued by the WSBA to assist members in interpreting their ethical obligations in specific circumstances. The opinions are the result of study and analysis in response to requests for assistance. Advisory opinions are issued, ethical rule, subject matter, or key word, or a combination of any of these. For assistance, call the Ethics Line at 206-727-8284 or 800-945-9722, ext. 8284.

Get More out of Your Software
The WSBA offers hands-on computer clinics for members wanting to learn more about what Microsoft Office Outlook and Word, as well as Adobe Acrobat, can do for a lawyer. We also cover online legal research such as Casemaker and other resources. Are you a total beginner? No problem. The clinic teaches helpful tips you can use immediately. Bring your laptop or use provided computers. Seating is limited to 15 members. The March 12 clinic will meet from 10 a.m. to noon at the WSBA offices and will focus on Microsoft Outlook and Word. On March 15, from 2:00 to 4:00 p.m., we will discuss Microsoft Outlook and Word. There is no charge and no CLE credit. To reserve your seat, contact Peter Roberts at 206-727-8237, 800-945-9722, ext. 8237, or peter@wsba.org.

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

Just Starting a Practice?
Think “out of the box” and consider purchasing “Law Office in a Box.” For $79, you can use immediately. Bring your laptop or use provided computers. Seating is limited to 15 members. The March 12 clinic will meet from 10 a.m. to noon at the WSBA offices and will focus on Microsoft Outlook and Word. On March 15, from 2:00 to 4:00 p.m., we will discuss Microsoft Outlook and Word. There is no charge and no CLE credit. To reserve your seat, contact Peter Roberts at 206-727-8237, 800-945-9722, ext. 8237, or peter@wsba.org.

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www.hinshawlaw.com
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Licensed to practice in Washington State

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receive an hour of consultation time plus everything you see here: http://tinyurl.com/3rn75hj. Questions? Contact Peter Roberts at peter@wsba.org, 206-727-8237, or 800-945-9722, ext. 8237.

**Lawyers Assistance Program**
**15th Annual Statewide Conference: A Thoughtful Approach to Your Practice and Your Career**
The 15th annual Lawyers Assistance Program Statewide Conference will take place April 13–15 at Campbell’s Resort, in Chelan. Join us in examining ways to better communicate with your clients, make goals for your practice, and take care of yourself in the process. WSBA President Steve Crossland will be delivering the keynote for this memorable CLE. For $120, you will receive 7.5 CLE credits (pending) and three meals. Go to tinyurl.com/82oqozz to sign up or call Julie Salm-on at 206-733-5914 or juliesa@wsba.org.

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

**Weekly and Bi-monthly Job Seekers Groups**
The Weekly Job Seekers group provides strategy and support to unemployed attorneys. The group runs for eight weeks and is limited to eight attorneys. We provide the comprehensive WSBA job search guide “Getting There: Your Guide to Career Success,” which can also be found online at tinyurl.com/7xheb8b. The bi-monthly job search group will be held on March 14 from noon to 1:30. It is a drop-in group and will be hosted by LAP psychologist Dan Crystal. For more information about monthly and weekly job group programming or to schedule a career consultation, contact Dan Crystal at danc@wsba.org, 206-727-8267, or 800-945-9722, ext. 8267.

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

**Interested in Mindful Lawyering?**
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- 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.

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LAW Fund & the Campaign for Equal Justice | 1325 4th Ave., Ste. 1335, Seattle, WA 98101 | 206.623.5261
als across the nation are applying mindfulness-based skills and training to lawyer- ing. The Washington Contemplative Lawyers group meets on the last Wednesday of each month (March 28) at the Lawyers Assistance Program office from 8:15–9:00 a.m. The group explores ways in which mindfulness practices may lead to more effective delivery of quality legal services, increased professionalism, and lawyer well-being and health. For more information, contact Sevilla Rhoads at srhoads@gsblaw.com. Learn more about mindful lawyering at www.wacontemplativelaw.blogspot.com.

**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 or 800-945-9722, ext. 8268, to schedule a confidential consultation.

**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 the lawyer services coordinator at 206-727-8268 or 800-945-9722, ext. 8268.

**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.

**Casemaker Online Research**
Casemaker is a powerful online research library provided free to WSBA members that can be accessed from the WSBA website at www.wsba.org/resources-and-services/casemaker-and-legal-research. 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).

**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.

**Upcoming Board of Governors Meetings**
- **March 9–10, Walla Walla**
- **April 27–28, Tulalip**
- **June 8, Yakima**

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/about-wsba/governance/board-of-governors.

**Usury Rate**
The average coupon equivalent yield from the first auction of 26-week treasury bills in February 2012 was 0.102 percent. Therefore, the maximum allowable usury rate for March is 12 percent.

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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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MARCH 2012
WASHINGTON STATE BAR NEWS
**Foster | Staton, P.C.**

is pleased to announce that

**Tara Jayne Reck**

has joined our firm.

Tara has five years of experience representing individuals in workers’ compensation and Social Security disability claims and is joining the firm’s litigation team.

206-682-3436
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**Curran Law Firm, PS**

is pleased to announce that as of January 1, 2012,

**J. David Huhs**

has become a principal of the firm. Dave has practiced with Curran Law Firm since 2006. His practice includes the representation of businesses, landlords, contractors, and homeowner and condominium associations in litigation, business, and transactional matters. He currently serves as a trustee of the King County Bar Association and as the Treasurer for the Board of Directors of Kent Youth and Family Services.

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**Socius Law Group, PLLC**

is delighted to announce that

**Adam R. Asher**

has become a member of the firm and

**Richard A. Moore**

and

**Marni H. Wright**

have joined the firm as members.

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Seattle, WA 98102
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These notices of imposition of disciplinary sanctions and actions are published pursuant to Rule 3.5(d) of the Washington State Supreme Court Rules for Enforcement of Lawyer Conduct, and pursuant to the February 18, 1995, policy statement of the WSBA Board of Governors. For a complete copy of any disciplinary decision, call the Washington State Disciplinary Board at 206-733-5926, leaving the case name, and your name and address.

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

Resigned In Lieu of Disbarment

Carmen K. Bullard (WSBA No. 19839, admitted 1990), of Bainbridge Island, resigned in lieu of disbarment, effective December 21, 2011. While not admitting to the misconduct, Ms. Bullard admitted that the WSBA could prove, by a clear preponderance of the evidence, the violations set forth in the Statement of Alleged Misconduct, and that proof of such violations would suffice to result in her disbarment. These violations included removing funds from trust accounts without entitlement. According to the Statement of Misconduct:

TWT is a Washington corporation formerly in the business of serving as a trustee for approximately 47 individual trusts. Between 2004 and September 28, 2010, Ms. Bullard was president and co-owner of TWT. Between July 27, 2010, and August 30, 2010, Ms. Bullard caused assets from one or more of the 47 individual trusts to be disbursed for her own benefit or the benefit of the company in the following amounts: $5,000 as a down payment for roof work on her personal residence; $8,000 by means of two bank counter checks; and $5,838.28 as final payment for roof work on her personal residence. Ms. Bullard asserts that she and the company intended to repay the funds to the trusts. Ms. Bullard did not have the permission of the trusts to remove or use the money for her own benefit, and knew that she did not have permission. In September 2010, irregularities concerning the handling of trust funds came to the attention of the other owner of TWT. On September 28, 2010, Ms. Bullard resigned as president of TWT. The co-owner of TWT filed a petition for the appointment of a receiver based on alleged mishandling of trust funds by Ms. Bullard, who asserts that the bonding company for TWT has repaid the funds referenced above, in the amount of $17,822.30, and that she has been financially unable to repay the bonding company.

Ms. Bullard’s conduct violated RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

Christine Gray represented the Bar Association. Patrick C. Sheldon represented Ms. Bullard.

Disbarred

Sandeep Baweja (WSBA No. 28936, admitted 1999), of Santa Ana, California, was disbarred, effective October 17, 2011, by order of the Washington State Supreme Court imposing reciprocal discipline following an order of the Supreme Court of the State of California. This discipline is based on conduct involving the federal felonies of wire fraud and obstruction of justice. For more information, see the California Bar Journal (September 2011), available at www.calbarjournal.com/september2011/attorndiscipline/disbarments.aspx.

Mr. Baweja’s conduct violated California’s Business and Professions Code, § 6102(c), which provides that the Supreme Court shall summarily disbar the attorney if the offense is a felony and an element of the offense is the specific intent to deceive, defraud, steal, or make or suborn a false statement, or the offense involved moral turpitude.

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

Disbarred

Kristopher A. Kinkade (WSBA No. 25666, admitted 1996), of Alpine, Utah, was disbarred, effective November 2, 2011 by order of the Washington State Supreme Court following approval of a stipulation. This discipline resulted from criminal conduct and misrepresentation.

Between 2004 and 2007, Mr. Kinkade approached neighbors, friends, and acquaintances concerning a variety of investment opportunities, including real estate ventures, investments in companies, and a movie deal. Mr. Kinkade obtained money from others, ranging from $100,000 to $800,000, as investments in various projects. He also invested between $50,000 to $100,000 of his own funds and three years of time and effort on behalf of the various business opportunities. Mr. Kinkade made false and fraudulent statements to obtain money from investors, and used the money for an enterprise that he controlled and to pay off other investors.

On February 5, 2009, the Utah County Attorney filed an Information charging Mr. Kinkade with 14 felonies resulting from the conduct described above. On September 1, 2009, the Utah County Attorney amended the Information and Mr. Kinkade pleaded guilty to seven felonies: a) one count of violating Utah Code Annotated § 76-10-1603 (pattern of unlawful activity); b) two counts of violating Utah Code Annotated § 76-10-1801 (communications fraud); and c) four counts of violating Utah Code Annotated § 61-1-1 (securities fraud).

In connection with the plea, the prosecutor agreed to recommend no jail time to allow Mr. Kinkade to repay all victims. By the time of sentencing, Mr. Kinkade had repaid all investors except one, to whom he owed $100,000. The sentencing judge agreed with the prosecutor’s recommendation, suspended all prison terms, imposed 36-month probation, allowed GPS monitoring, and required payment of the remaining $100,000 in restitution. When restitution is complete, the court will review Mr. Kinkade’s sentence, and the prosecutor agreed to recommend that the felony convictions be reduced to misdemeanors. Mr. Kinkade is working to earn the remaining restitution and, at the time of the stipulation, had placed $10,000 in the restitution account and was in compliance with all probation terms.

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

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

Non-disciplinary Notices

Suspended Pending the Outcome of Disciplinary Proceedings

Ronald P. Abernethy (WSBA No. 14239, admitted 1984), of Seattle, was suspended pending the outcome of disciplinary proceedings pursuant to ELC 7.2(a)(3), effective January 25, 2012, by order of the Washington State Supreme Court. This is not a disciplinary sanction.

Suspended Pending the Outcome of Disciplinary Proceedings

Robert B. Jackson (WSBA No. 18945, admitted 1989), of Bellevue, was suspended pending the outcome of disciplinary proceedings pursuant to ELC 7.2(a)(2), effective January 25, 2012, by order of the Washington State Supreme Court. This is not a disciplinary sanction.

Transferred to Disability Inactive Status

Rosemary Kamb (WSBA No. 16532, admitted 1986), of Mount Vernon, was by stipulation transferred to disability inactive status, effective January 12, 2012. This is not a disciplinary action.
### CLE Calendar

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

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

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

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<tr>
<th>Alternative Dispute Resolution</th>
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<tr>
<td><strong>Advanced Facilitation Seminar: Beyond Interests</strong></td>
<td>March 7, 14, 21, and 28 (four two-hour classes) — Seattle. 2 CLE credits per session pending. By Seattle Collaborative Law Training Group; 206-249-9145; <a href="http://www.collabtraining.com">www.collabtraining.com</a>.</td>
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<tr>
<td><strong>Tips for a Successful Arbitration</strong></td>
<td>March 9 — Seattle. 1 CLE credit. By McKinley Irvin Family Law Speaker Series; 206-625-9600; <a href="http://www.mckinleyirvin.com/resources/cle">www.mckinleyirvin.com/resources/cle</a>.</td>
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<tr>
<td><strong>Basic Bankruptcy</strong></td>
<td>March 23 — Seattle. 5 CLE credits, including .75 ethics, pending. By KCBA-CLE; 206-267-7057; <a href="http://www.kcba.org/cle">www.kcba.org/cle</a>.</td>
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<th>Business Law</th>
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<tr>
<td><strong>Sixth Annual Best Practices for Owning and Operating a Winery</strong></td>
<td>March 8—9 — Napa, California. 11.25 CLE credits. By The Seminar Group; 800-574-4852 or 206-463-4400; <a href="http://www.theseminargroup.net/seminar.lasso?seminar=12.wineca">www.theseminargroup.net/seminar.lasso?seminar=12.wineca</a>.</td>
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<th>Construction Law</th>
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<tr>
<td><strong>Competitive Public Construction Bidding in 2012</strong></td>
<td>March 15 — Seattle. 3.5 CLE credits. By The Seminar Group; 800-574-4852 or 206-463-4400; <a href="http://www.theseminargroup.net/seminar.lasso?seminar=12.bidwa">www.theseminargroup.net/seminar.lasso?seminar=12.bidwa</a>.</td>
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<td><strong>Ninth Annual Trust and Estate Litigation</strong></td>
<td>March 2 — 6.25 CLE credits, including 1 ethics. Seattle and webcast. WSBA-CLE; 800-945-WSBA or 206-443-WSBA; <a href="http://www.wsbcace.org">www.wsbcace.org</a>.</td>
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<td><strong>Lincoln on Professionalism</strong></td>
<td>April 24 — Seattle and webcast. 2.75 ethics credits. WSBA-CLE; 800-945-WSBA or 206-443-WSBA; <a href="http://www.wsbcace.org">www.wsbcace.org</a>.</td>
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<td><strong>Community Property</strong></td>
<td>April 12 — Seattle and webcast. CLE credits pending. WSBA-CLE; 800-945-WSBA or 206-443-WSBA; <a href="http://www.wsbcace.org">www.wsbcace.org</a>.</td>
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<td><strong>Bridging the Gap</strong></td>
<td>March 9 — Seattle. 6.5 CLE credits, including 1 ethics, pending. By KCBA-CLE; 206-267-7057; <a href="http://www.kcba.org/cle">www.kcba.org/cle</a>.</td>
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<tr>
<td><strong>Peace and Economics in the Changing World Order</strong></td>
<td>March 23 — Spokane. 6.25 CLE credits, including 1 ethics. By Gonzaga University School of Law; 509-313-3920; <a href="http://www.law.gonzaga.edu/career+services/cle_calendar.asp">www.law.gonzaga.edu/career+services/cle_calendar.asp</a>.</td>
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<td><strong>Disability Law</strong></td>
<td>March 12 — Seattle and webcast. CLE credits pending. WSBA-CLE; 800-945-WSBA or 206-443-WSBA; <a href="http://www.wsbcace.org">www.wsbcace.org</a>.</td>
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<td><strong>17th Annual Intellectual Property Institute</strong></td>
<td>March 9 — Seattle and webcast. CLE credits pending. By the WSBA Intellectual Property Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; <a href="http://www.wsbcace.org">www.wsbcace.org</a>.</td>
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<td><strong>Wrongful Death</strong></td>
<td>March 21 — Seattle and webcast. By WSAJ</td>
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10th Annual Ethics in Civil Litigation Institute
April 20 — Seattle and webcast. CLE credits pending. WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Real Estate
Roadmap to the Collaborative Probate and Elder Law Highway
March 21 — Seattle. 4.5 CLE credits, including .5 ethics. By KCBA-CLE; 206-267-7057; www.kcba.org/cle.

Real Property, Probate and Trust Spring Seminar
April 19 — Seattle and webcast. 6.25 CLE credits. WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Trust and Estates
Ninth Annual Trust and Estate Litigation
March 2 — Seattle and webcast. 6.25 CLE credits, including 1 ethics. WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Essential Elder Law and Foundational Practices (rescheduled from January 20)
March 8 — Seattle. 6.5 CLE credits, including .75 ethics. WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

17th Annual Intellectual Property Institute
March 9 — Seattle and webcast. CLE credits pending. By the WSBA Intellectual Property Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Disability Law
March 12 — Seattle and webcast. CLE credits pending. WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Community Property
April 12 — Seattle and webcast. CLE credits pending. WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

32nd Annual Northwest Securities Institute
April 13–14 — Seattle and webcast. 10 CLE credits, including 1.25 ethics. By the WSBA Business Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Advertising and Marketing Law
April 18 — Seattle and webcast. CLE credits pending. WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Real Property, Probate and Trust Spring Seminar
April 19 — Seattle and webcast. 6.25 CLE credits. WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

10th Annual Ethics in Civil Litigation Institute
April 20 — Seattle and webcast. CLE credits pending. WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Lincoln on Professionalism
April 24 — Seattle and webcast. 2.75 ethics credits. WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

19th Annual Employment Law Institute
April 25 — Seattle and webcast. CLE credits pending. WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Powered by donor support, the Washington State Bar Foundation helps sustain WSBA programs that achieve justice and diversity through service and leadership.
Family law associate, Everett (across the street from Snohomish County Superior Court) — Established, reputable boutique law firm seeks attorney with minimum two years’ experience in family law, including extensive courtroom experience (e.g., motions, hearings, trial). Must have exceptional attention to detail, excellent writing and organizational skills, superior communication, client service, and interpersonal skills, and be comfortable with aggressive litigation on behalf of our clients. $70,000—$85,000 starting salary, DOE, medical/dental benefits, generous year-end productivity bonus, employer-funded 401(k), large corner office in self-contained suite with dedicated paralegal in adjacent office, and opportunity for advancement. Interested candidates should submit cover letter, résumé, writing sample, professional references, and law school transcript (if graduated within last five years) to Jack Berner, Berner Law Group PLLC, 3112 Rockefeller Ave., Everett, WA 98201 or jberner@kbolaw.com.

I am leaving in two years. Twenty-two-year-old Snohomish practice with comfortable income. Client base is real estate, tax, and business. Great opportunity for right person to start now and take over practice. Open to several scenarios. Let’s talk. Email Craig at manakai50@gmail.com or call 425-870-9530.

Associate attorney — Pacific Law Recruiters is executing a search for an associate attorney seeking to take his or her command of litigation and employment law to the next level of accomplishment. Our client, a well-established and respected firm with deep ties to the Northwest legal arena, is seeking a mid-level associate to assume a host of duties related to employment law, with an emphasis on litigation and counseling, on behalf of private and public businesses. Prompt consideration will be given to those candidates with a minimum of five years of related experience and Washington State Bar Association accreditation. Equally important are an excellent academic record and proficient writing ability. This position provides a strong platform for practice development, and affords an attractive compensation and benefits package. Interested candidates are requested to submit a résumé and cover letter in strict confidence to Greg Wagner, Principal, at: gww@pacificlawjobs.com. Visit our website at www.pacificlawjobs.com.

Palace Law Offices seeking attorney — Opportunity available for a workers’ compensation attorney. Washington workers’ compensation experience preferred. Ability to positively interact with clients, DLI personnel, Board of Industrial Insurance Appeals, and healthcare providers. Capability to handle a mature caseload. This is a full-time position with benefits. Compensation DOE. Please email cover letter and résumé to patricia@palacelaw.com.

Wood Smith Henning & Berman LLP, a western regional litigation firm, seeks lateral associate for Seattle office. Candidate should have a minimum of four years’ experience in construction defect litigation representing general contractors and developers. Strong academic credentials from an ABA-accredited school required. Please email résumés to cortiz@wsblaw.com.

Ahlers & Cressman PLLC, an 11-lawyer construction law firm in downtown Seattle, is seeking an experienced construction law attorney with at least four years’ experience to perform construction contract review and drafting, litigation, arbitration, and dispute resolution. Ahlers & Cressman PLLC is a group of motivated, hard-working attorneys. Its lawyers believe that high-quality work results in satisfied clients and a prosperous firm. Compensation is negotiable based upon qualifications and experience. All inquiries will remain confidential. If interested, please send résumé and cover letter to: Chris Achman, Administrator, Ahlers & Cressman PLLC, 999 Third Ave., Ste. 3800, Seattle, WA 98104-4088, Fax: 206-287-9902; website: www.ac-lawyers.com; email: cachman@ac-lawyers.com.

Zender Thurston, P.S., an established Bellingham firm, seeks a litigation associate. This associate position is for litigation only, and will include a substantial amount of insurance defense trial work. A minimum of three years of actual trial experience is required. Compensation based on experience. Please send cover letter, résumé, transcripts, and writing samples to info@zenderthurston.com.

Lateral partner: Smith Alling, PS seeks a lateral partner to join the firm’s sophisticated and diverse business, estate planning, real estate, construction, and litigation practice at its office in Tacoma. Successful candidates will have portable business, excellent credentials, at least 10 years’ experience, a good reputation in the legal community, and, most importantly, a willingness to be part of a collegial work environment. Smith Alling, PS is widely recognized throughout the Pacific Northwest for the superior legal work it performs on behalf of its corporate and individual clients. For confidential consideration, send résumé and cover letter to mmc@smithalling.com.

WSBA director of justice and diversity programs — The WSBA is seeking a lawyer to institutionalize and facilitate the WSBA’s commitment to diversity and continuing leadership in access to justice and public-service-related initiatives. The position manages the department’s operations; supervises three program managers; and provides strategic vision, leadership, and community building. For details and how to apply, visit us at www.wsba.org/about-wsba/careers/wsba-jobs.

WSBA diversity program manager — This position manages the strategic development
and programmatic direction of the WSBA's efforts to improve diversity in the legal profession and within the organization. The position works to advance the interests of diversity, both in the WSBA organization and among the external legal community. For details and how to apply, see www.wsba.org/about-wsba/careers/wsba-jobs.

**Services**

**Exclusive private investigator:** Licensed and insured. Specializing in trademark/branding infringements, locating people and their assets, tandem police investigations, and executive-level background checks. www.LionInvestigation.com; 888-571-0811; Info@LionInvestigation.com.

**Forensic document examiner:** Retired from the Eugene Police Department. Trained by the U.S. Secret Service and the U.S. Postal Inspection Service. Court-qualified in state and federal courts. Contact Jim Green at 888-485-0832.

**Eagle Financial Recovery.** Forensic recovery experts. We specialize in locating and recovering hidden assets, pre-litigation investigations, court preparation, and forensic accounting. www.eaglefinancialrecovery.com; 425-557-4352; info@eaglefinancialrecovery.com.

**Virtual Independent Paralegals, LLC** provides comprehensive 24/7/365 litigation support with expertise in: medical record summaries, deposition digests, transcription (court certified) document review and redaction projects. We hit the ground running, providing highest quality results at unbeatable rates. Locally owned, nationally known, virtually everywhere! VIP; we’re here when you need us, just a phone call or email away! 206-842-4613. www.viphelpmc.com.

**Résumé/career consultations for attorneys — 30-minute sessions — $85.** Lynda Jonas, Esq., owner of Legal Ease L.L.C. — Washington's Attorney Placement Specialists since 1996 — works with attorneys only, in Washington state only. She has unparalleled experience counseling and placing attorneys in our state’s best law firms and corporate legal departments. It is her opinion that more than 75 percent of attorney résumés are in immediate, obvious need of improvement. Often these are quick, but major, fixes. Lynda is uniquely qualified to offer résumé assistance and advice/support on best steps to achieve your individual career goals within our local market. She remains personally committed to helping attorneys land the single best position available to them. All sessions are conveniently offered by phone. Please email legalease@legalease.com or call 425-822-1157 to schedule.

**Long-term care specialist — WSBA member, licensed as independent long-term care insurance producer. Can provide insurance solutions for your estate planning, dissolution, and business clients. Individuals, employee benefit plans, sponsored groups. Contact Helen Boyer, 425-557-5372; helen.boyer@ltcfp.net; or visit www.helenboyer.ltcfp.com.**


**Expert witness/insurance bad faith consultant:** Over 30 years' combined experience: former claims adjuster, claims manager, insurance defense counsel, and current plaintiffs’ counsel. Consulted for both sides on over 50 cases. CPCU, ARM, and J.D. w/honors. Contact: dbhus@hotmail.com or office phone 425-776-7386.


**Clinical psychologist — competent forensic evaluation of individuals in personal injury, medical malpractice, and divorce cases. Contact Seattle office of Gary Grenell, Ph.D., 206-328-0262 or mail@garygrenell.com.**

**Experienced, efficient brief and motion writer available as contract lawyer. Extensive litigation experience, including trial preparation and federal appeals. Reasonable rates. Lynne Wilson, 206-328-0224, lynnewilsonatty@gmail.com.**

**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.

**Contract attorney available for research and brief writing for motions and appeals. Top academic credentials, law review, judicial clerkship, complex litigation experience. Joan Roth, 206-898-6225, jlrmcc@yahoo.com.**

**Insurance — lawyers' professional liability, general liability, and bonds. Independent agent, multiple carriers, 17-plus years' experience. Contact Shannon O'Dell, First Choice Insurance Services, 509-638-2558; 1-888-894-1858; www.fcins.biz.**

**Legal marketing and web design:** specializing in legal marketing and offering full-service marketing services. Websites. Advertising. Blogging. Search engine optimization. Social networking. Info@AmendmentM.com; www.AmendmentM.com; 425-998-7257.

**Appraiser of antiques, fine art, and household possessions.** James Kemp-Slaughter ASA, FRSA, with 33 years' experience in Seattle for estates, divorce, insurance, and donations. For details, see http://jameskempslaughter.com; 206-285-5711 or jkempslaughter@aol.com.

**Experienced contract attorney with strong research and writing skills drafts trial and appellate briefs, motions, and research memos for other lawyers. Resources include University of Washington Law Library and LEXIS online. Elizabeth Dash Bottman, WSBA #11791. 206-526-5777; ebottman@gmail.com.**

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**Dispute Resolution Center** works with attorneys to provide certified mediation services; interest-based, facilitative, co-me-
Downtown Seattle executive office space: Full- and part-time offices on the 32nd floor of the 1001 Fourth Avenue Plaza Building with short- and long-term lease options. Close to courts and library. Conference rooms and office support services available. $175 and up. Serving the greater Seattle area for over 30 years. Contact Business Service Center at 206-624-9188 or www.bsce-seattle.com for more information.


Downtown Seattle executive suites — Fantastic location just off I-5 across the street from REI. Easy access for you and your clients! On-site services include mail sorting, conference room, business class Internet/phones, on-site parking, production-quality printer/scanner/copier. Great rates! Call 888-878-2925 or email chloe@inclinemgt.com.

In the heart of Seattle’s business district (4th Ave. and Union) are two generously sized offices. Larger office: $1,075/month; smaller office: $975/month; and paralegal workspace: $300/month. Included are reception (your phone line), shared kitchen, and conference room. Please contact Geoff if interested, 206-284-2932.

Federal Way: Office share with general practice attorney in newly remodeled building in Federal Way professional district. Rent includes use of shared conference room, Internet, fax, copier, utilities, kitchen, and parking. Secretary/work stations also available. Lease terms negotiable. Call 206-399-2046.

Unique space available (Seattle) — Sound view office in Market Place One, to share with established practitioners. North end of the Pike Place Market, adjacent to Victor Steinbrueck Park and the Seattle Athletic Club. Includes a secretarial station, joint use of the receptionist, conference room, and photocopy/scanner machine. Ample parking in the building. Contact Alexandra Fast at 206-728-0996.

One office in Wells Fargo Center with an established Seattle commercial and technology law firm. Rent includes receptionist, reception area signage, conference rooms, library, kitchen/lunchroom, black-and-white/color copiers, scanners, and fax. High-speed LAN and Internet available. 206-382-2600.

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 work station. 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@auken-lawgroup.com.


Renton space available: Join our small group of lawyers in an ideal office space. Included in full service lease is conference room, copier, kitchen, waiting room. Support staff and case referrals a possibility. Centrally located in downtown Renton with free parking. Karen, 425-417-8483.

Federal Way: Office share with general practice attorney in newly remodeled building in Federal Way professional district. Rent includes use of shared conference room, Internet, fax, copier, utilities, kitchen, and parking. Secretary/work stations also available. Lease terms negotiable. Call 206-399-2046.

To Place a Classified Ad

Rates: WSBA members: $40/first 25 words; $0.50 each additional word. Nonmembers: $50/first 25 words; $1 each additional word. Blind-box number service: $12 (responses will be forwarded). Advance payment required; we regret that we are unable to bill for classified ads. Payment may be made by check (payable to WSBA), American Express, MasterCard, or Visa.

Deadline: Text and payment must be received (not postmarked) by the first day of each month for the issue following, e.g., April 1 for the May issue. No cancellations after the deadline. Mail to: WSBA Bar News Classifieds, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539.

Qualifying experience for positions available: State and federal law allow minimum, but prohibit maximum, qualifying experience. No ranges (e.g., “5-10 years”). Ads may be edited for spelling, grammar, and consistency of formatting. If you have questions, please call 206-727-8262 or email classifieds@wsba.org.
I became a lawyer because my parents were small business owners, and I saw how they struggled; every time we sat down to talk about my future they discussed how helpful lawyers had been to them, how the people they admired most in their business dealings were the lawyers who could explain “how things work,” and that they would be so happy to see me become a lawyer.

The future of the practice of law is going to depend largely on how committed we are as a society to global access to technology. I graduated from law school in the mid-1990s; email was so foreign to me that I never once tried to access the account our school had set up for each student. Every brief was drafted after long hours in the law library going through the “key” digest and then following up with pulling the case from the bound volumes further down the aisle. How different the situation is now when lay people can log onto legalwa.org for free and research caselaw and statutes. Global access will likely change the role of the lawyer. Family law forms are online, and juvenile sealing of records, guilty pleas, name change requests, etc. The information is available to everyone now, and kids graduating from high school this year will have the savvy to go find it. The law is no longer tribal knowledge.

One of the greatest challenges in law today is how to stay ethical. Lessons from lawmakers and lawyers are there for the taking. Access to power presents many temptations.

If I were not practicing law, I would be a journalist. I left law 10 years ago and wrote for newspapers and magazines, eventually becoming editor of Spokane Magazine.

If I could change one thing about the law, it would be law school. It should be four years instead of three, as this would allow more time for legal theory courses, and the fourth year could be a mandatory rotation through different legal communities. Three months of criminal law, three months of civil litigation, three months of legal services for the poor, and three months of an administrative and/or governmental setting. This would weed out those who attend law school on a lark, and it would force students to really see all the ways lawyers can function in society.

This is the best advice I have been given: Call your clients back in a timely manner (and continue to read novels whenever you have the chance).

A book I would recommend reading: The Death of Ivan Ilych, by Leo Tolstoy. It’s a quick read, a novella. I read it once every few years to remind me of what matters most.

What keeps me awake at night: Worrying that I am living the life of Ivan Ilych. Living with purpose is easily forgotten amongst the details of bills, kids, clients, colleagues . . . .

People living or from the past I would like to invite to a dinner party: The founding fathers of our country, and I would want to ask them, “What was it really like? How did you get this all done?” How come so many other countries have tried and failed at setting up working democracies?

I am most proud of this: I paid off the last of my student loans this September. I raised my kids through college, law school, and now during my “career,” and those loans seemed to overshadow all the other challenges. What a relief! Seriously.

My favorite vacation place: Washington is about as beautiful as this country gets. The stark cliffs along the Columbia River Gorge, the rolling hills of wheat, the Pacific Coast. When I need a break, I just get in my car with a picnic basket, and drive to wherever the sirens call me.

I would like to add this: Ten years ago, I gave up on the law. I moved here from Tennessee after having been a corporate in-house counsel, pining for something different. Exigencies eventually brought me back to the legal community. Fortunately, I finally found “my people” as a criminal defense lawyer. I would suggest all students and lawyers never stop trying on new hats. This is our one precious life. Don’t be like Ivan Ilych; don’t settle for comfortable. Live!

My name is Paulette Burgess and I am a criminal defense lawyer and writer living in Spokane with my family. I am a proud “Army mother” to my son Lincoln, stationed in Fort Stewart, Georgia. I can be reached through www.pauletterburgess.blogspot.com.
If I were any good at math, I’d be a rocket scientist instead of a lawyer. I’d be working on those private spaceships that Paul Allen and Richard Branson have in the works. Actually, I’m hoping they’ll get those off the ground during my lifetime, so I can at least take a lap around the earth before I leave it for good. But for now, I’m here on the ground practicing law. And you know, it’s all right. Not much math.

But when I heard about the WSBA member referendum under way this month, I resorted to my calculator to figure out if it made sense. The referendum is simple. If a majority of the WSBA members who vote say yes, then the active-member license fee for 2013 will be rolled back from $450 to $325.

If you wanted to get something passed on a ballot, you couldn’t do much better than offering a $125 savings for voting yes. Why anyone turn that down? The math will tell you why someone might. Since there are a lot of us (about 28,900 active WSBA members), that $125 savings for each of us as an individual represents a $3.6 million revenue loss for us as an association. The WSBA budget in recent years has been around $14 million, so the $3.6 million would be about a 26 percent cut. If we pass the referendum, we will voluntarily eliminate 26 percent of our association’s revenue. Since the referendum includes no alternative proposed budget, it would leave it to the Board of Governors and management-level WSBA staff to figure out how to run the association on $3.6 million less.

I have 27 years’ combined experience as a news reporter and lawyer. As a reporter, I covered national, state, and local government affairs. As a lawyer, and a citizen, I have been involved in various organizations, either as an active member or observer. In all that time, I don’t recall seeing any governmental or private organizations voluntarily strip itself of anything near 26 percent of its revenue. And that includes organizations with deep divides among members and controversies over leadership (like the current Congress, for example). Even dysfunctional organizations realize that gouging 26 percent of revenue out of a budget would be catastrophic.

In WSBA’s case, where would the $3.6 million savings come from? We don’t know yet, of course. I claim no inside information, and no decisions have been made so far. But WSBA won’t save $3.6 million by auctioning off surplus paper clips and laser printers. Like any professional organization, the most substantial asset WSBA has by far (aside from some cash reserves) are the minds, hearts, and hands of the employees. I’m sure the governors and managers will do everything possible to preserve jobs. But let’s face facts, and do the math. Regardless of what specific programs are cut, the real savings will come from eliminating jobs. At a given time, the WSBA staff numbers around 150. If, for example, the number of staff were cut by 26 percent, 40 WSBA employees would hit the pavement in a still-brutal economy.

And what would each of us have to show for it? An extra $10.42 in our pockets each month. What can you get these days for $10.42? Three gallons of gas? Dinner at McDonald’s? A download of the latest Lady Gaga album? I realize that plenty of lawyers these days are hurting financially, including young lawyers saddled with debt, solo practitioners, and lawyers in rural communities. Coming up with $450 every January isn’t easy. But personally, putting everything in perspective, I couldn’t look myself in the mirror if I approved the trade-off proposed by this referendum.

It would be different if the WSBA were heading toward insolvency, or funds had been mismanaged, or license fees had skyrocketed in recent years. Desperate times call for desperate measures. But the WSBA budget isn’t in dire straits. To the contrary, despite the economy, the budget is balanced every year, and the association has maintained appropriate reserves for emergencies and anticipated future expenses. The independent auditors who review the budget each year give glowing reports about the fiscal health of the association. The BOG and staff recently completed a project to evaluate every WSBA program for cost-effectiveness, which resulted in revision and elimination of programs that weren’t pulling their weight. Meanwhile, the BOG has kept the license fee at $450 the past three years and voted to keep it there again for 2013. Being as objective as one can be with this type of issue, there isn’t much to complain about regarding how WSBA has managed its budget.

Many WSBA members have legitimate differences of opinion about how the association spends its funds, and they may see this as an opportunity to force change. Call me old school, but I believe that is the type of thing to be addressed directly, by proposing specific alternatives and debating the rationale behind them. Simply slicing $3.6 million out of the budget is more likely to result in panic-driven decisions than meaningful reform.

What I ask is that whatever your initial feeling might be, take a few minutes to study the facts and — yes — do the math. Then, by all means, cast your vote. Whatever the outcome may be, we’ll want it to reflect the will of as many members as possible.

As you can imagine, I’ll be voting no. ☒
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