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Plenty of reasons to oppose legal technicians

Last year, many attorneys understandably strongly opposed the proposal to have nonlawyer “technicians” represent clients and give them legal advice. When opposing the rule last year, the Tacoma Pierce County Bar Family Law Section cited one of many reasons to oppose the proposal: “We believe that the WSBA’s proposed rule moves in the wrong direction and will cause more harm than good. Law, like medicine, is a profession. The needy deserve the professional services of a lawyer. While the proposed rule will hold the legal technician to the standard of care of a lawyer, the legal technician is not a lawyer. It is a standard that would be impossible to meet.”

Using an analogy, Washington state residents certainly need greater access to medical and dental care. Yet, dental hygienists are barred from filling cavities or even performing routine dental care. The regulatory scheme is designed to protect patients from harm and to have dentists be responsible for the care of the patient.

The Washington State Trial Lawyer Rule Committee expressed this concern as well: “Under the proposed version, it appears possible for legal technicians to represent persons in pre-litigation matters such as negotiations with insurance companies. We fear that under many circumstances, these more sophisticated entities will take unfair and inequitable advantage of persons that are only represented by legal technicians.” No doubt the criminal, real estate, and other practice sections would have similar concerns.

By permitting the nonlawyers to select the forms for the client to use, such as a final property settlement document in a divorce, a release of liability form in a personal injury case, or a quit claim deed, the nonlawyers necessarily would have to give legal advice to clients. Yet, the nonlawyer technicians are not competent to recommend any of the dispositive documents.

The purported purpose of permitting nonlawyer technicians to practice law is to give “access to justice” for those who could not afford an attorney. A worthy goal. Yet the proposal makes no effort to focus or restrict the legal technicians to low income clients or to limit them to simple cases. Consequently, the nonlawyer technicians will have no incentive to try to represent low income clients whatsoever.

Furthermore, many clients who would have normally hired an attorney and received competent legal advice would be deceived into hiring a relatively unskilled nonlawyer who has never attended law school, taken the bar exam and likely never completed even an undergraduate degree.

Finally, the rule is not necessary. A great many nonlawyers already assist

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attorneys in the preparation of cases and assisting clients. Clients are charged the reasonable rate for the attorney in the office which is substantially lower than the attorney’s hourly rate. Having the nonlawyers work unsupervised greatly lowers the competence of the work with no guarantee that the cost will be any lower to the client. Washington attorneys regularly represent low income clients and volunteer thousands of hours each year in providing competent and meaningful access to justice. Certainly there are ways to continue to increase this commitment. However, placing clients at risk by asking them to rely on the advice given by a nonlawyer technician is as reckless as having cavities drilled out by a “dental technician” who had never been to dental school.

Erik Bjornson, Tacoma

Hayne article a keeper

The article by Stephen Hayne “Demystifying Jury Selection” in your March issue was a most thoughtful discussion of voir dire and the jury selection process which should be of considerable benefit to all practitioners who try jury cases.

As a trial judge, all too often it appears to me that the voir dire process is used primarily as a preemptive tool to try some factual issue that the lawyers expect will prove troubling during presentation of their case. In other words, instead of being used to receive information from potential jurors, voir dire is used instead as a tool to impart information or to “educate” the panel about some factual issue. And since both sides use the process for the same purpose, objections are relatively infrequent. While I recognize that there certainly are times when the lawyers genuinely do need to evaluate the reaction of potential jurors to some particular aspect of their case, I must question whether this should be the primary focus of the jury selection process.

Perhaps all of us involved should try to think “outside the box” of our established methods in picking juries. It seems to me the typical jury selection process today is also hampered by our practice of not providing instructions on the law until the end of the case. As a litigant or a lawyer, I can think of few things of greater significance than how a juror reacts to the principles of law applicable to my case. And as a juror, I would certainly like to know what I will be deciding before I hear the evidence in order to assist me in knowing what to listen for. In a criminal case, defense attorneys understandably may want to explore how a potential juror will react if their client chooses not to testify. But in my experience, it may confuse the issue if the juror is asked if he or she will hold it against the non-testifying defendant unless they are also instructed on the Fifth Amendment right against self-incrimination. The question is not whether the juror logically thinks that the defendant should testify; the real question is whether the juror will follow the court’s instruction that they cannot use the exercise of the defendant’s Fifth Amendment right to infer guilt. In civil cases that I hear as bench trials, I cannot imagine how much more difficult it would be for me to decide the case if I was not made aware of the legal principles until
“On the Road Again” was beautiful and President Brooke Taylor’s March column ("On the Road Again") was beautiful and moving. If he ever gives up his day job, he could write a great sequel to Travels with Charley. His unadorned writing captured the best of what we as lawyers bring to each other: our common interests, whether geographic (our county bars), or with a minority bar association (he mentioned the Latino/a Bar Association of Washington and the new Disabilities Bar Association), or with an area of practice.

His column reminded me that every year when I fill out the bar dues forms, I think that WSBA should ask for more demographic information. For the 2005 dues, I scribbled questions on the form, but no one responded. Here are some potential areas that are of interest to me (and perhaps all of us, as well as the public). The questions could be asked on a separate form and scored anonymously.

Ethnicity; Gross Income and Net income (include ranges that start realistically low, e.g., less than $30,000; 30,001 to 50,000; 50,001-75,000; etc.); Marital status (single, single but in significant relationship; married and living together; married and not living together; divorced, widowed); Disability: Do you have a disability? Does a close family member (spouse, partner, parent, child or step-child of any age, or other person for whom you provide emotional or financial support) have a disability?; What is your native language (if other than English)?; What language(s) other than English are you sufficiently proficient in that you have used it to communicate with clients (orally or in writing), with or without an interpreter?; What is the size of your law firm?; If you have malpractice insurance?; Do you engage in the private practice of law, do you have a disability?; What is your native language (if other than English)?; What language(s) other than English are you sufficiently proficient in that you have used it to communicate with clients (orally or in writing), with or without an interpreter?; What is the size of your law firm?; If you engage in the private practice of law, do you have malpractice insurance?; Do you think WSBA should prorate bar dues according to income?; Does your firm pay your bar dues?

I’m sure there are plenty of other questions lurking out there. The more that we as lawyers can do to let the public know that we are human beings, the better.

Carole Grayson, Seattle

Does Bar News have any standards?

Do you publish any letter that any member sends in? You must because I can think of no other reason that you would print the derogatory musings of Christopher Hodgkin.

In an age where the public image of lawyers is at an all-time low according to our own Bar President, what good can come from ill-conceived public flagellation?

Now dissent is a good thing. And people should be encouraged to share divergent viewpoints. But the ramblings of Mr. Hodgkin have no purpose other than to demean the plaintiff’s bar. The pre-amble to our RPCs states: “The continued existence of a free and democratic society depends upon recognition of the concept that justice is based upon the rule of law grounded in respect for the dignity of the individual and the capacity through reason for enlightened self-government.”

Mean spirited fantasies like “1-800-suetherbastards today” and the “1863 case of Mediocre v. Stupid” do not advance any of the precepts contained in our governing rules. Erroneous fictions — such as suing for “bungled” prosecutions — may whip the populace into the desired frenzy. But as Mr. Hodgkin must surely know, prosecutors are immune from suit even under his pretend scenario.

Mr. Hodgkin has his right to free speech. But when Bar News agrees to print a letter to the editor, it should first make sure that it conforms to our own standards of professionalism.

Karen Koehler, Seattle

Editor’s response: Bar News’s policy has been to print all letters as space allows. We don’t run anonymous ones, but that’s about it. Some folks do write in more than others, but I’m not ready yet to start regulating that.

Things are improving

The University of Washington Moot Court Honor Board (MCHB) commends the University of Washington School of Law Gender Study Committee for examining any challenges women may face in legal education. The current MCHB membership wishes to respond to the gender study’s analysis that a sexist environment may have pervaded MCHB from 2000 to 2003. Because none of the current MCHB

Judge Bruce W. Hilyer, King County Superior Court, Seattle

More things it would be good to know

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members participated in the student organization during the time period in question, we reserve any comments about the perceived gender bias that may have occurred during that time. We are, however, pleased to announce that at the present time 20 out of the 35 MCHB members are women, 5 out of the 8 MCHB officers are women, and both the current MCHB President and the MCHB faculty advisor are women. In addition, every regional and national team MCHB has funded this year has included female competitors. We are confident that the balance these women have added to the teams has led to this year’s success in regional and national competitions. The University of Washington MCHB team consisting of three female members received the Best Brief award at the Pepperdine Entertainment Law Competition. This year we also placed 2nd in the Northwest region and ranked as one of the top 8 teams in the country in the New York Bar Association Appellate Advocacy competition. The University of Washington MCHB team also placed 1st in the Southwest region in the Phillip C. Jessup International Law Competition, with its members receiving the 1st and 2nd place speaker awards and the Best Memorial (Brief) award. The team competed in Washington, D.C. for the Jessup World Cup and was awarded the 9th place team brief and the 4th place applicant brief. In addition, two of our members received the 1st and 6th place speaker awards. We are proud of all of our members for their successes this year and we invite the Gender Study Committee to continue to re-evaluate its results in light of the increased female membership on MCHB.

*The University of Washington hosted this year’s Phillip C. Jessup International Law Competition for the Northwest region. The host team in this competition is not permitted to compete at its own school and has the option to compete in any other region in the country. The University of Washington competitors chose to compete at the University of Texas at Austin.

Megan Crowhurst, president, University of Washington Moot Court Honor Board
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The President’s Essay Contest

Putting It into Words: The Judicial Branch and the Four Corners of Freedom

S. Brooke Taylor, WSBA President

This year’s presidential initiative involves the development of a multi-faceted WSBA program of outreach and education to raise the level of understanding about the critical role of the judicial branch in our democracy, and the “four corners of freedom”: the rule of law, separation of powers, the doctrine of checks and balances, and judicial independence. I have attempted to engage future lawyers in this discourse by inviting students at our three law schools to submit an essay on this theme, using my October 2005 “President’s Corner” column as a starting point. The law schools screened their own entries and passed on the top three for my review.

The winning essay, by Seattle University School of Law third-year student Joanna Plichta, appears below in lieu of my usual monthly offering. Congratulations to Joanna for her winning effort in the first-ever WSBA President’s Essay Contest!

Restoring Faith in the Independent Judiciary Through Judge Greer’s Story

BY JOANNA Plichta

As Terri Schiavo lay in the hospital, sustained only by artificial nutrition and hydration, a group of people gathered outside her window. They came to pray, sing hymns, and carry signs berating presiding Circuit Judge George Greer, who ordered Schiavo’s feeding tube removed the preceding day. Some of the messages read: “Hey Judge, Who Made You God?” and “Judge Greer Makes Murder Legal in America” while other messages, also aimed at cutting down Greer’s judicial integrity and disqualifying his ability to competently sit on the bench, were even more tasteless. The public was not alone in their outrage; various politicians also aligned themselves against Greer.

Although the court of appeals consistently found Greer’s decisions to be “exceptionally thorough,” their exaltation of his ability to function as a reliable judge was overshadowed by the scrutiny voiced by the public, politicians, and executives. The case history alone is a testament to the attempts at intrusion into judicial independence. By March 2005, the Schiavo case history consisted of 14 appeals, dozens of motions and petitions, and five suits brought in Federal District Court. The varying levels of legislative and executive interference included a subpoena by a congressional committee in an attempt to qualify Schiavo for the “witness protection” program and the passage of federal legislation known as the “Palm Sunday Compromise.” Tirelessly, politicians and executives interfered with Greer’s court orders and publicly announced their disappointment in his decisions — when they were not challenging his decisions through the appeals process, they were busy drafting legislation that countered the effect of his final opinions.

This encroachment on the independence of the judiciary is alarmingly unconstitutional, primarily because the notion of judicial independence is rooted in the “separation of powers” principle. The separation of powers is the division of governmental authority into three branches of government: legislative, executive, and judicial. Each of these branches has specific duties on which neither of the other branches can encroach, except to impose certain checks on the powers of each individual branch.

A clear example of a violation of the separation of powers principle in the Schiavo case involved the Florida Legislature...
and Florida Governor Jeb Bush. While the Legislature was busy enacting and implementing a multitude of legislations that defied Greer’s orders, the governor was actively interfering with Greer’s final judicial determination by ordering that Schiavo’s feeding tube be reinserted, despite the fact that Greer had ordered it removed. This resulted in an executive order that effectively reversed a properly rendered final judgment, and thereby constituted an unconstitutional encroachment on power that is reserved for the independent judiciary. Legislatures and executives are constitutionally prohibited from interfering with final judicial determinations, because the rule of law implies that government authority may only be exercised in accordance with written laws that were adopted through an established procedure. In other words, objective laws govern our society, not subjective people.

This is not to imply that tension between the executive, legislative, and judicial branches is unnatural; in fact, it is very normal — the idea behind the theory of checks and balances is that each of the three branches of government has the ability to counter the actions of any other branch so that no single branch can control the entire government. But the possibility that any one body can control the others is completely eliminated — just as the possibility that public opinion can be a controlling or a determinative factor in a judicial decision is eliminated.

Under the United States Constitution, the judge’s role is to interpret the law and produce reasoned and unbiased legal opinions, not fear that failure to appease the public will result in mass scrutiny of his or her ability to serve on the bench. The Constitution purposely shields judges from public criticism to assure that they do not have to answer to citizens, politicians, or even the President when their holdings are constitutionally substantiated and based in law and fact. And yet, despite the fact that Judge Greer’s holdings met this stringent threshold, he was still constantly pressured to consider personal sentiments of the electorate. When he disagreed with the general public’s vision of the right-to-die and right-to-live debate, his intelligence and ability to serve as a judge was publicly questioned and legislation was drafted to counter his rulings, whether those decisions were final or not. The disrespectful
treatment Judge Greer endured throughout the Schiavo case must be strongly shunned if the independent judiciary is to maintain its credibility.

Lawyers and judges alike should have a legitimate concern for the future of public faith in the independent judiciary. To begin alleviating this concern and curing constitutional impediments, lawyers and judges must reinforce to the public the effectiveness of the judiciary and its role as a key branch of government by speaking at schools, public forums, and community centers. They must tell Judge Greer’s story and educate citizens about the importance of maintaining an autonomous judicial branch so that the public understands how the principles of separation of powers, rule of law, and checks and balances function.

By mobilizing, lawyers and judges can begin to help restore public faith in the independent judiciary and thereby ensure that constitutional intent prevails in courtrooms — so that judges’ rulings on politically sensitive issues are not automatically undermined, citizens understand the process well enough to support it, and the public adheres to the notion that every judicial voice, including Judge Greer’s, must be respected in its appropriate forum if the foundational elements of our democracy are to survive.

Joanna Plichta is the public service director and future public service counsel at Foster Pepper PLLC, where she heads the firm’s community and pro bono legal service programs. Ms. Plichta is currently a third-year law student at Seattle University School of Law and graduates in May. She is the executive editor for the Seattle Journal for Social Justice and an active liaison to the Access to Justice Institute. She is passionate about public-interest law and is dedicated to becoming a public-service leader. Her family emigrated to the United States in 1985 from Gdansk, Poland. She can be reached at plcj@foster.com.

Brooke Taylor may be reached at 360-457-3327 or sbtaylor@plattirwintaylor.com. If you would like to write a letter to the editor on this topic, please e-mail it to letterstotheeditor@wsba.org or mail it to WSBA Bar News, Attn: Letters to the Editor, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330.
Avoiding Liability for Securities Fraud: The Legal Significance of Integration (and Non-Reliance) Clauses Under State and Federal Law

BY LEONARD J. FELDMAN AND CHARLES HA

The Washington State Court of Appeals recently issued an important opinion regarding liability and the corresponding scope of relief under the Washington Securities Act (WSA). With regard to the scope of relief, the court held that the WSA authorizes an award of rescissionary relief (and not damages) where the stock at issue can be recovered by the buyer. See Helenius v. Send.com, Inc., 120 P.3d 954, 960 (Wash. Ct. App. 2005). With regard to liability, the court’s opinion provides important guidance regarding the circumstances in which a party may immunize itself against misrepresentation claims under state or federal law by including a “non-reliance clause” in the underlying stock purchase agreement. This article discusses the court’s opinion in Helenius, including its discussion of analogous federal law, and offers practical advice for parties who engage in such transactions.

To establish liability for securities fraud under the WSA, as under the federal securities statutes upon which the WSA was patterned, a plaintiff must establish that the defendant made a material misrepresentation and that the plaintiff reasonably relied on that misrepresentation in agreeing to enter into the securities transaction in question. See, e.g., Hines v. Data Line Sys., Inc., 114 Wn.2d 127, 134 (1990). Contracts for the sale of securities typically provide that the contract itself contain the entire understanding of the parties (what is commonly referred to as an “integration clause”) and/or that the parties did not rely on any representations other than those contained in the contract in entering into the transaction (a “non-reliance” clause). The stock purchase agreement in Helenius included a provision that is both an integration clause (the first half of the sentence below) and a non-reliance clause (the second half):

This Agreement . . . sets forth the entire understanding of the parties hereto with respect to the matters provided for herein and supersedes all prior agreements, covenants, arrangements, understandings, communications, undertakings, representations or warranties, whether oral or written, by any officer, representative shareholder, agent or employee of any party.

Based on this provision, a group of defendants in Helenius argued that they could not be liable under the WSA for any misrepresentation that allegedly occurred prior to the effective date of the parties’ agreement.

Most federal courts that have faced this issue under analogous federal securities statutes have held that a plaintiff cannot establish a claim under federal securities laws based on an alleged misrepresentation that is not set forth in the stock purchase agreement if that agreement includes an integration clause, a non-reliance clause, or some combination of the two. In Emergent Capital Inv. Management, LLC v. Stonepath Group, Inc., 343 F.3d 189 (2d Cir. 2003), for example, the parties’ agreement expressly stated that the agreement, together with accompanying documents, “contain[ed] the entire understanding and agreement among the parties . . . and supersed[ed] any prior understandings or agreements between or among any of them.” Id. at 191. The court held that this clause was sufficient to preclude recovery under the federal securities act. Other courts have echoed that holding. See, e.g., Rissman v. Rissman, 213 F.3d 381 (7th Cir. 2000); Harson Corp. v. Seguin, 91 F.3d 337 (2d Cir. 1996); One-O-One Enterprises, Inc v. Caruso, 848 F.2d 1283 (D.C. Cir. 1988).

In Helenius, however, the Washington Court of Appeals rejected this argument. This decision is significant because it runs counter to both Washington law — which enforced a similar provision to preclude liability in Stewart v. Estate of George Steiner, 122 Wn. App. 258 (2004) — and the majority of federal cases addressing this issue (as discussed above). The opinion also threatens to undermine the protection that such clauses provide to parties who enter into a stock purchase agreement and wish to avoid liability for statements that are not expressly set forth (often in the form of express representations) in the agreement itself.

Although the court’s description of the facts in the Helenius appeal is lengthy and complex, its holding regarding the parties’ agreement is relatively simple and straightforward. The court characterized the above-quoted provision in the parties’ agreement as an integration clause and then distinguished its prior opinion in Stewart, which involved a clause that expressly stated that the parties had not relied on representations other than those contained in the contract. The court then held that various other considerations are
also relevant to this analysis, including the sophistication of the plaintiff, the nature of the parties’ relationship (business, personal, or fiduciary), access to relevant information and concealment of the fraud, whether the plaintiff initiated the stock transaction or sought to expedite the transaction, and the generality or specificity of the misrepresentations at issue. Helenius, 120 P.3d at 965-66 (citing Jackvony v. RIHT Financial Corp., 873 F.2d 411, 416 (1st Cir. 1989)). Based on these additional considerations, the court concluded that the parties’ agreement did not preclude liability under the WSA.

While the Helenius decision raises questions with respect to the effectiveness of integration clauses and non-reliance clauses under the WSA, a number of important lessons can be gleaned from the court’s opinion. First, the Court of Appeals clearly distinguished between integration

\[\ldots\text{parties who execute a stock purchase agreement should consider including non-reliance clauses in addition to the integration clauses commonly found in such agreements.}\]

clauses and non-reliance clauses, such as the clause at issue in Stewart, and implicitly held that non-reliance clauses are more effective than integration clauses in avoiding liability for statements that predate the parties’ agreement. As such, parties who enter into such agreements should include an integration clause as well as a non-reliance clause. A good example of the latter can be found in Stewart: “The undersigned . . . has relied solely on the information contained in the [offering memorandum] . . . [and] has not relied on any oral representation, warranty or information in connection with the offering of the Shares by the Company, or any officer, employee, agent, affiliate or subsidiary of the Company . . . .” 122 Wn. App. At 266.

Second, even in the context of non-reliance clauses, the Court of Appeals in Helenius also looked to the specificity of the parties’ agreement, the sophistication of the parties, and the like. It cited with approval in this regard the Seventh Circuit’s opinion in Rissman, where the stock purchase agreement in question included two separate non-reliance clauses. The first was a straightforward non-reliance clause that stated: “The parties further declare that they have not relied upon any representation of any party hereby released or of their attorneys, agents, or other representatives . . . .” Rissman, 213 F.3d at 383. The second was even more explicit and contained numerous representations regarding the plaintiff’s non-reliance on representations not contained in the agreement itself, as well as representations regarding his capacity and understanding of the terms of the agreement itself:

(a) no promise or inducement for this Agreement has been made to him except as set forth herein; (b) this Agreement is executed by [the plaintiff] freely and voluntarily, and without reliance on any statement or representation by Purchaser, the Company, any of the Affiliates or . . . any of their attorneys or agents except as set forth herein; (c) he has read and fully understands this Agreement and the meaning of its provisions; (d) he is legally competent to enter into this Agreement and to accept full responsibility therefore; and (e) he has been advised to consult with counsel before entering into this Agreement and has had the opportunity to do so.

Based in large part on these provisions, the Seventh Circuit held that the district court had properly granted summary judgment in favor of the defendants and explained that “[s]ecurities law does not permit a party to a stock transaction to disavow such representations — to say, in effect, ‘I lied when I told you I wasn’t relying on your prior statements’ and then to seek damages for their contents.” Id. In so holding, the court agreed with the First Circuit in Jackvony and the D.C. Circuit in One-O-One in concluding that “a written anti-reliance clause precludes any claim of deceit by prior representations.” Id. at 383-84.

In summary, parties who execute a stock purchase agreement should consider including non-reliance clauses in addition to the integration clauses commonly found in such agreements. Moreover, the more specific these representations are, the more likely it is that a court will uphold these clauses and find that plaintiffs, as a matter of law, are precluded from relying on extraneous representations in support of their claims for securities fraud.

Leonard J. Feldman and Charles Ha are attorneys in the Seattle office of Heller Ehrman LLP, whose practices focus on commercial litigation, including securities matters. Mr. Feldman was also counsel of record for several defendants in Helenius v. Send. com, Inc., which is discussed in detail in this article. The views expressed in this article are solely those of the authors.

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The witness stand is hardly a place that promotes calm, collected, and complete testimony. More often it is a place of anxiety, fear, and confrontation. Nonetheless, it is through the process of direct- and cross-examination that the witness speaks and from which the jury must find the truth.

In cross-examination, the deck is truly stacked against the witness. She is questioned by one who feels much more at home in the courtroom. The attorney has questioned many witnesses before her, and he will question many after. He has been trained in law school for this very task, in addition to the advice and tips he has received from his colleagues and mentors. The witness, on the other hand, has in many cases never entered a courtroom, much less been examined adversely by a professional. She has never tried to tell her story in a courtroom, under the scrutiny of the judge and jury. Even if the witness knows exactly what she wants to convey, feelings of dread and a lack of confidence inhibit her ability to have the jury accurately perceive her meaning and intentions. Alternatively, some witnesses may be overconfident coming into their examination only to find the task harder than they thought. Either mindset can lead to devastating consequences for the attorney and the case.

It goes without saying that cases can be won or lost on the performance of key witnesses. No attorney would ever dream of putting an important witness on the stand without some form of practice or preparation. However, skepticism remains over the extent of an attorney’s preparation and the ability to alter the witness’s original memory, despite the ethical guidelines of the American Bar Association’s Model Rules of Professional Conduct. This skepticism is furthered because witness preparation is generally protected by the attorney-client or work-product privilege, allowing attorneys to conduct it in private without the risk of discovery by the other side.

The benefits of a prepared witness clearly outweigh the risks. Lawyers need to work with witnesses in advance for a number of reasons as part of their duty to produce relevant and reliable testimony. Witness preparation not only provides the attorney with an opportunity to assess the witness’s credibility, certainty, and accuracy of recollection, it provides the witness with the opportunity to learn how to communicate more effectively.

**Trial Consultants: Aggravating or Mitigating (the) Circumstances?**

Witness preparation with the aid of trial consultants has become increasingly common in cases both large and small. Its prevalence has brought with it increased scrutiny and controversy in the legal community. The most ardent opponents of witness preparation by trial consultants are likely to perceive the practice as a means to fabricate, exaggerate, or restrain aspects of testimony. Some professionals in the legal community have questioned whether trial consultants are properly trained to participate in witness preparation, particularly if they do not have legal training. A related concern is that trial consultants are not required to earn a license and are not necessarily regulated by ethical guidelines. Although the American Society of Trial Consultants (ASTC) has established a Code of Professional Standards and a formal grievance procedure, membership in the organization is not required to practice trial consulting. In contrast, attorneys risk suspension or loss of their license if they do not adhere to the ABA’s guidelines — a severe detriment to their career.

Notwithstanding these criticisms, the use of trial consultants in preparing witnesses to testify remains commonplace. Attorneys, who are trained to focus on case-relevant law and evidence, rely on the content of testimony to support their client’s case. Trial consultants typically focus their efforts outside of the pure content to critical factors impacting credibility such as the witness’s body language, speaking style, and varied paralinguistic cues.

**The New Assault**

A new assault on witness preparation by trial consultants has been mounted in Washington as well as other states. Those behind the latest challenge have asserted that witness preparation by nonlawyers is not protected under the attorney-client privilege and thus should be discoverable. The central argument of these individuals is that the jury is entitled to judge witness credibility based on a “natural” presentation of the witness, and witness preparation may camouflage that. For example, part of this argument includes an evaluation of “the manner of the witness while testifying” and “any other factors that affect [jurors’] evaluation or belief of a witness or [jurors’] evaluation of his or her testimony.” These “other factors” can include aspects such as the witness’s overall demeanor, appearance, posture, and vocal inflection. The bottom line for these opponents is that, if trial consultants change or help an attorney change these aspects of a witness, the jury should know about it. However, this argument has two fundamental flaws.

First and foremost, it assumes the attorney cross-examining the witness is an unbiased truth-seeker, as opposed to an advocate. The adverse attorney is a zealous advocate for the client, and the goal is often to muddy the waters, confuse the jury, or attack the credibility of the witness. The cross-examining attorney prefers witnesses who are more susceptible to tactics that can accomplish these goals, and a practiced and prepared witness is more resilient to these attacks.

A second flaw in this argument is that it assumes trial consultants have special powers to change a witness’s demeanor and presentation in ways an attorney cannot. While attorneys are bound by codes of ethical conduct, these codes in no way prohibit the attorney to advise a witness on manner of dress, nonverbal cues, or other factors contributing to credibility. If properly trained in communication, attorneys could offer witnesses the same advice as trial consultants, and the adver-
sary would have no recourse.

So what is the bottom line? In our adversarial legal system, the role of a trial consultant is to provide services that are used to facilitate clear communication and assist witnesses in telling their story. They do not wave a magic wand and "change" a witness's testimony in mysterious ways, nor advise the witness to say anything less than truthful. The reality is that attorneys place a great deal of value on witness preparation and as an advocate for their client should have access to all the tools available to them as long as they are within the ethical guidelines proscribed by the ABA. Ultimately, it is the attorney's decision to choose whether to use trial consultants at all and the strategies or advice they provide.

How Do Trial Consultants Help With Witness Preparation?

Witnesses will often say practice is unnecessary: "I'm just going to get up and tell the truth." It is useful to ask such a witness two questions: "Have you ever been misunderstood?" and "Have you ever had someone deliberately try to twist your words?" In all likelihood, opposing counsel wants both of these events to occur in court. There are many ways to tell the truth, and at trial the truth needs to be told clearly and concisely in order for the fact-finders to do their job effectively. Attorneys have found trial consultants particularly resourceful for helping the witness to communicate information accurately and efficiently, improving the witness's composure on the stand, and ensuring that the witness's testimony remains more salient than judgments based on juror biases.

Accuracy

Accurate communication by the witness is keenly important to the jury as well. Accuracy means more than telling the truth. It also means choosing the right words and phrases to convey accurately your meaning to the jury. In a classic study, psychologists illustrated how one simple word can affect the impact of a message by manipulating the verb ("hit" versus "smashed") to describe the collision of two cars. When people were asked to estimate how fast a vehicle was traveling when it "smashed" into another vehicle, they provided significantly higher speed estimates than when the same question was presented using
the word "hit." Trial consultants work with the witness and attorney to ensure that the proper words are used so that the message will be understood as it was intended.

**Efficiency**

Another area where trial consultants help is with the efficiency of the witness's communication. Jurors must sift through a great deal of sometimes complex information to find the truth — a challenging task that becomes even more difficult when witnesses are not concise or prone to digressions. Such testimony can impede the jury's understanding of how the pieces of trial evidence fit together. To the extent trial consultants can help a witness communicate his message more succinctly, the jury's job is made easier.

**Composure**

One of the commonsense cues jurors use to identify deception in witnesses is nervousness. In mock trials and in post-trial interviews with jurors, trial consultants frequently hear comments such as: “Did you see that witness? Boy he looked nervous; he must be lying.” Testifying produces anxiety, and one goal of the trial consultant is to decrease the level of nervousness the witness feels when he takes the stand, and to give the witness coping strategies.

**Appearance**

Often, jurors are influenced knowingly or unknowingly by inaccurate and unfair biases such as stereotyping, which may detract from their understanding or validation of the witness's testimony. For example, people may perceive a middle-aged man with long hair as an irresponsible person of low character. A trial consultant can recognize the potential influence of such debased judgments on the jury and can advise the attorney accordingly (e.g., making a suggestion regarding the witness's grooming) to eliminate this extraneous variable from the jurors' evaluation of the witness's testimony.

**Conclusion**

Do jurors take a dim view on the practice of witness preparation? Do they share the same skepticism as some attorneys or legal scholars? The answer seems to be no. A research project conducted by members of the ASTC involving more than 500 jury-eligible citizens throughout the United States found 73 percent of respondents believe preparing witnesses to testify is a good idea. Another 66 percent agree that it is appropriate for a witness to practice before testifying. Less than 15 percent of respondents believe that witnesses who practice their testimony have something to hide.

The criticisms and attacks on the practice of witness preparation by trial consultants appear to be a tactic by some attorneys to scare others away from leveling the playing field. In 2003, the U.S. Court of Appeals for the Third Circuit found that witness preparation by nonlawyers (i.e., a trial consultant) was protected under the work product privilege, based on their interpretation of Rule 26(b)(3) of the Federal Rules of Civil Procedure. This very strong opinion finds witness preparation by consultants to be “core” work product and therefore deserving of the highest level of protection. The lack of activity in the other circuits suggest that few believe the basis for a credible attack on the process exists. While the matter cannot be called settled, it would require a dramatic shift in prevailing thought for the status quo to change.
Craig C. New, Ph.D., is director of research for Tsongas Litigation Consulting, Inc., a Northwest trial-consulting firm with offices in Seattle and Portland, serving clients in 40 states. Samantha L. Schwartz is a doctoral candidate in the Law/Psychology Program at the University of Nebraska-Lincoln and a member of the research committee for the American Society of Trial Consultants. Gary R. Giewat, Ph.D., is a trial consultant and chairperson of the Research Committee for the American Society of Trial Consultants.

NOTES
Discovery Ethics: Playing Fair While Playing Hard

by Mark J. Fucile

Discovery in civil litigation brings together two competing professional norms: playing fair while playing hard. On the one hand, the professional and civil rules require fair play. On the other, we are advocates who play to win. The Washington State Supreme Court captured this tension in Washington State Physicians Ins. Exch. & Ass’n v. Fisons Corp., 122 Wn.2d 299, 354-55, 858 P.2d 1054 (1993): “The lawyer’s duty to place his client’s interests ahead of all others presupposes that the lawyer will live with the rules that govern the system. Unlike the polemician haranguing the public from his soapbox in the park, the lawyer enjoys the privilege of a professional license that entitles him to entry into the justice system to represent his client, and in doing so, to pursue his profession and earn his living. He is subject to the correlative obligation to comply with the rule and to conduct himself in a manner consistent with the proper functioning of that system.”

Broadly put, the ethics rules governing discovery cover two areas and share a common bond with their civil rule counterparts. First, they prohibit obtaining information that you’re not supposed to have. Second, they prohibit obstructing access to information that you’re supposed to produce. In this column, we’ll look at both.

Obtaining Information You’re Not Supposed to Have

“Information you’re not supposed to have” equates with an opponent’s privilege or work product. It is rooted in both RPC 3.4(c), which requires lawyers to abide by court rules, and CR 26(b) (and its federal counterpart), which governs the general scope of discovery. It applies to both witnesses and documents. Washington case law offers telling examples of each. In re Firestorm 1991, 129 Wn.2d 130, 916 P.2d 411 (1996), illustrates the former, and Richards v. Jain, 168 F.Supp.2d 1195 (W.D. Wash. 2001), the latter.

Firestorm 1991 involved just such a case. “Information you’re not supposed to have” equates with an opponent’s privilege or work product. It is rooted in both RPC 3.4(c), which requires lawyers to abide by court rules, and CR 26(b) (and its federal counterpart), which governs the general scope of discovery. It applies to both witnesses and documents. Washington case law offers telling examples of each. In re Firestorm 1991, 129 Wn.2d 130, 916 P.2d 411 (1996), illustrates the former, and Richards v. Jain, 168 F.Supp.2d 1195 (W.D. Wash. 2001), the latter.

Firestorm 1991 involved a large series of wildfires that took place near Spokane. Shortly after the fires, several local utilities signed a joint defense agreement and sent teams of investigators into the burned areas to assess whether their electric lines had caused the fires. The teams were being coordinated by a law firm and generally included a mix of lawyers, consulting experts retained by the law firm, and utility company employees. One of the experts concluded that at least one of the fires had been started by an electric line. When litigation was brought later against the utilities, the expert contacted the plaintiffs’ lawyers because he thought his concerns might not surface during discovery. Although the plaintiffs’ lawyers knew that the expert had been retained by the utilities’ law firm, they conducted a recorded interview with him that included his observations and opinions. The plaintiffs’ lawyers provided a transcript to the utilities’ law firm. That firm, in turn, filed a motion to disqualify the plaintiffs’ lawyers for improper ex parte contact with their expert. The trial court agreed and disqualified the lawyers. On review, the Supreme Court held that CR 26(b)(5) specifies the exclusive means for discovery of an opponent’s experts, and that violation of the rule warranted sanctions. In a split decision, the majority concluded that the particular information elicited did not reach either privilege or work product and, therefore, a sanction less severe than disqualification should be imposed. At the same time, even the majority made plain that improper access to, and use of, an opponent’s privileged information would warrant disqualification.

Richards involved just such a case. With Richards, the privileged information came in the form of documents rather than a witness. The plaintiff in Richards had been a senior executive with a high-tech company in Seattle for five years before he left in the wake of a dispute over stock options. When he left and notwithstanding a nondisclosure agreement, the plaintiff downloaded onto a disk all the
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- Developed his arguing skills on George Washington University’s debate team, then attended law school on a full scholarship while working at a performing arts center.
- From a prestigious law clerkship chose a small Seattle firm, where he met Gene Moen. Drawn to personal injury cases and repelled by timesheets, they set up shop near Seattle’s Pike Place Market.
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e-mails he had sent or received during his tenure at the company and gave the disk to his lawyers for their use in pursuing his claim against the company. The e-mails totaled over 100,000 and, by the court’s later calculation, included 972 privileged communications with both inside and outside counsel. The plaintiff’s lawyers used the privileged communications in formulating their legal strategy and their initial pleadings. When the plaintiff was deposed, he revealed that he had taken the e-mails. The company’s lawyers moved for both the return of the disk and to disqualify the plaintiff’s lawyers. Relying on *Firestorm* and an ABA ethics opinion on handling inadvertently produced documents, the court agreed and disqualified the lawyers because there was no other effective way to “unring the bell” once they had unauthorized access to their opponent’s privileged information. Both *Firestorm* and *Richards* counseled that issues of privilege waiver need to be decided by the court rather than the lawyers unilaterally.

**Obstructing Access to Information You’re Supposed to Produce**

“Information you’re supposed to produce” equates with evidence that fairly falls within CR 26(b) and the other side’s requests. It is rooted in both RPC 3.4(a) and (d), which prohibit lawyers from obstructing access to evidence and require lawyers to make reasonable efforts to comply with discovery requests, and CR 26(g) (and its federal counterpart), which imposes similar requirements. It, too, applies to both witnesses and documents. Again, Washington case law offers telling examples of each. *Johnson v. Mermis*, 91 Wn. App.127, 955 P.2d 826 (1998), illustrates the former, and *Washington State Physicians Ins. Exch. & Ass’n. v. Fisons Corp.*, 122 Wn.2d 299, 858 P.2d 1054 (1993), the latter.

*Johnson* involved a replevin action seeking the return of a car the defendant hadn’t paid for. The plaintiff’s lawyer noticed the defendant’s deposition and requested other discovery. The defendant’s lawyer cancelled two deposition settings on short notice, and the plaintiff then moved to compel. The trial court ordered the deposition and production of the requested documents. At the deposition, the defendant refused to answer background questions or reveal the car’s location. The defendant’s lawyer specifically instructed the defendant to refuse to answer many other questions, claiming they were irrelevant. The defendant produced virtually none of the documents requested (and ordered). The court both struck part of the defendant’s pleadings and imposed monetary sanctions on both the defendant’s lawyer and his client. The Court of Appeals affirmed (and then sanctioned the defendant’s lawyer for filing a frivolous appeal). The Court of Appeals emphasized that if a party believes the other side is exceeding the scope of permissible inquiry, the remedy is to seek a protective order from the court rather than simply “stonewalling.”

*Fisons* involved a lawsuit by a doctor against a drug manufacturer claiming that the drug company had failed to warn him about a particular drug and, as a result, he had prescribed it with adverse effect on a young patient who later sued
him for malpractice. The Supreme Court found that the drug company and its lawyers had avoided timely producing relevant documents and other information in response to requests for production and interrogatories by reading and responding to them so narrowly that the responses were misleading, particularly as it related to two “smoking gun” documents that showed that the drug company was aware of the precise health risks involved and had failed to warn physicians generally to those risks. The Supreme Court found that sanctions should be imposed and remanded to the trial court to fashion a specific remedy. *Fisons* relied on the wording of CR 26 in outlining a lawyer’s duty to make reasonable inquiry in responding to a discovery request and emphasized that the lawyer’s conduct is measured against an objective standard.

**Summing Up**

The law firm sanctioned in *Fisons* argued that it was “just doing its job.” That led to the Supreme Court’s forceful rejoinder quoted at the beginning of this column. Although improper discovery conduct is subject to bar discipline, it more often results in direct practical consequences: disqualification, attorney fees, exclusion of evidence, striking pleadings, adverse inference instructions, and, on occasion, even default. And, if the conduct was the lawyer’s doing rather than the client’s, it raises the specter of civil liability of the lawyer to the client, depending on the harm to the client. From both the professional considerations the *Fisons* court underscored to very practical risk-management reasons, lawyers need to “play fair while playing hard.”

**NOTES**

2. Pleading-related rules and sanctions, in turn, are found at RPC 3.1, CR 11 and FRCP 11.
3. The Richards court relied on ABA Formal Ethics Opinion 94-382. With the ABA’s subsequent adoption of a specific model rule governing inadvertent production, ABA Model Rule 4.4(b), the ABA issued a new ethics opinion on inadvertent production, Formal Ethics Opinion 05-437. Proposed amendments to the Washington RPCs are pending as I write this and would include a new RPC 4.4(b) on inadvertent production. The pending amendments would not affect RPC 3.4 substantively.
4. See also CR 37 and FRCP 37.
Reciprocity Admission in Oregon: Easier Than You Think

BY TOM BREEN

If you have ever been curious about obtaining Oregon Bar membership via reciprocity but never really looked into it, look no further. The Washington Young Lawyers Division (WYLD) CLE Committee has come up with a weekend CLE program designed to save you time, money, and the hassle of attending various CLEs so that you can quickly be on your way to becoming an active member of the Oregon Bar.

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...changes to Oregon’s admission rules allow Washington lawyers to be admitted to the Oregon Bar without having to take a bar exam.

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- 5th year calls and beyond - commensurate with experience. In addition, associate lawyers are paid an annual bonus based on firm and individual performance.

This is an ideal opportunity for a bright and motivated lawyer, who is interested in relocating to Vancouver, British Columbia, while continuing to utilize his or her U.S. experience. If you are interested in learning more, please forward your CV to the contact listed below, quoting reference number BN-4349.

Siobhan Rea
Tel: (604) 681-0706
Toll Free: 1-877-681-0706
E-mail: srea@zsa.ca

zsa.ca
How to become a member of the Oregon Bar

There are three simple steps toward obtaining Oregon Bar membership. First, you must determine if you are eligible to apply. You are eligible only if you have active membership in Washington, Idaho, or Utah and have actively practiced law for three of the last four years. Second, you must apply to the Oregon Bar and pay your fee to the Oregon Bar before you take any CLE credits. Third, you need a combination of 15 specific CLE credits from Oregon. Rather than figure out which CLEs you need, you can satisfy all of your CLE requirements in one weekend.

The Reciprocity Weekend

When? September 9-10, 2006. Where? Vancouver, Washington. What? The WYLD CLE Committee has coordinated with the Oregon Bar and will have video sessions that will cover all your Oregon CLE reciprocity requirements. You don’t need to figure out which CLEs to attend in Oregon or which videos to request — they will all be provided to you. The total cost to view the videos will be less than $300, a significant reduction from what you’d have to pay if you did this on your own. The weekend will include a social gathering between Washington and Oregon attorneys. More details will be available by early summer. In the meantime, if you have any questions contact Allison Williams, co-chair of the WYLD CLE Committee, at 206-749-9460.

For now, if you are interested in gaining admission to Oregon, mark off the weekend of September 9-10 on your calendar. This is a fabulous opportunity that you won’t want to miss.

Reminder: It is your responsibility to apply to the Oregon Bar for reciprocity admission well in advance of the Reciprocity Weekend. The WYLD is not able to do this on your behalf. The WYLD is only able to provide you with the CLE portion of the admission process.

Tom Breen is a King County deputy prosecuting attorney and a member of the WYLD CLE Committee. He can be reached at 206-205-6643 or at tom.breen@metrokc.gov.
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- Vogue magazine 2003 Top Lawyer for Women in Washington

Kenneth E. Brewe has mediated/arbitrated hundreds of complex family, business and meretricious relationship disputes - both as attorney participant and mediator - over the course of 25 years in private practice.

- A.V. Rated Martindale Hubbell
- Fellow - American Academy of Matrimonial Lawyers
- Super Lawyer 2001-2005 (Law and Politics Magazine)
Financial Highlights for Fiscal 2005

Strategic Financial Goal
The WSBA’s strategic financial goal is to be fiscally responsible — to operate a well-managed and financially sound association, to be accountable to our members and the public, and to use our resources wisely in ways that accomplish our mission.

Fund Categories
The WSBA accounts for revenues and expenses in four categories: general fund, continuing legal education (CLE), sections, and the Lawyers’ Fund for Client Protection (LFCP).

• General Fund
The general fund consists of regulatory functions and most services to members and the public. It is funded by member license fees and revenues from services. For FY 2005, the general fund had revenues in excess of expenses of $1,148,279. As of September 30, 2005, the general fund balance was $3,920,348, of which $1,052,599 is designated as an operating reserve and $1,052,599 is designated as a reserve for the WSBA’s planned move to the Puget Sound Plaza building at the end of calendar year 2006. The remaining $1,815,150 is considered an unrestricted surplus.

• Continuing Legal Education (CLE) Fund
CLE programs and products are entirely self-funded by seminar registration fees and sales of deskbooks and other publications. The CLE fund budgeted for revenues over expenses of $134,011. Actual results were $148,884, bringing CLE’s fund balance as of September 30, 2005, to $1,585,026.

• Sections Fund
The WSBA’s 24 sections are a voluntary activity for WSBA members and are fully self-supporting through section dues and fees for section products and services. No member license fees are used for section activities, and all net income from sections is carried forward in each section’s net assets for use by that section in future years. The sections budgeted for $93,714 expenses over revenues (in order to use past accumulated reserves to benefit their members). Actual results for the
sections were that expenses exceeded revenues by $4,931. The sections fund balance at September 30, 2005, was $780,129.

**Lawyers’ Fund for Client Protection (LFCP)**

The LFCP may be used for relieving a loss sustained by a person due to the dishonesty of, or failure to account for money entrusted to, a member of the WSBA in connection with the member’s practice of law. It is funded by an annual assessment on all active WSBA members. The LFCP fund budgeted for revenues over expenses of $133,067. Actual results were $189,192. The LFCP’s fund balance as of September 30, 2005, was $821,669.

The WSBA’s Move to the Puget Sound Plaza Building in December 2006

In May 2004, the WSBA entered into a lease agreement with UNICO Properties, Inc. for 41,204 square feet of space in the Puget Sound Plaza building. The WSBA was able to lock in rates when they were at a low point in the market, due to good planning by the Board of Governors. In conducting detailed programming exercises with architects Burgess Weaver, it has been determined that the amount of space needed is more than was estimated in 2003 during the lease negotiations. Fortunately, the WSBA has approximately 80 percent of its future rent locked in at very low rates compared to the current market. The WSBA has negotiated with UNICO for additional space at reasonable market rates, taking into account the WSBA’s needs over the next 10 years so the next 10 years of rent expenses will be predictable and affordable.

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**Statements of Activities**

<table>
<thead>
<tr>
<th>Year ended September 30, 2005</th>
<th>Year ended September 30, 2004</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>2005</strong></td>
<td><strong>Actual</strong></td>
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<tr>
<td>Access to Justice (includes TBOR income)</td>
<td>26,913</td>
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<tr>
<td>Administration</td>
<td>228,849</td>
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<td>Alternate Dispute Resolution</td>
<td>4,775</td>
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<td>Attorney Licensing Fees</td>
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<td>Audits</td>
<td>1,375</td>
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<td>Bar Examination and admissions</td>
<td>1,229,391</td>
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<tr>
<td>Bar News</td>
<td>592,588</td>
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<tr>
<td>Board of Governors &amp; Office of the Executive Director</td>
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<tr>
<td>Communications</td>
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<td>Discipline</td>
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<td>Diversion</td>
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<td>Human Resources</td>
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<td>Resources Directory</td>
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<td>Sections Administration</td>
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<td>Young Lawyers Division</td>
<td>10,445</td>
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<tr>
<td>Other</td>
<td>177,324</td>
</tr>
<tr>
<td><strong>Total Unrestricted - General</strong></td>
<td>13,216,236</td>
</tr>
</tbody>
</table>

**Unrestricted - Continuing Legal Education**

- CLE Products: 609,041 | 525,371 | 83,670 | 672,940 | 525,635 | 237,305 |
- CLE Seminars: 2,022,662 | 1,957,447 | 65,215 | 2,265,265 | 2,094,231 | 171,036 |

**Total Unrestricted - CLE**

- 2,631,703 | 2,482,818 | 148,885 | 3,028,207 | 2,619,666 | 408,341 |

**Unrestricted - Sections Operations**

- 483,387 | 488,318 | -4,931 | 484,704 | 436,145 | 48,558 |

**Restricted - Lawyers’ Fund for Client Protection**

- 358,466 | 199,274 | 189,192 | 350,297 | 341,182 | 9,115 |

**Total**

- 16,691,792 | 15,210,367 | 1,481,425 | 15,905,977 | 14,449,089 | 4,457,888 |
The WSBA Mourns the Loss of Two Dedicated Employees

The WSBA mourns the loss of colleagues and friends Joy McLean and Katherine Johnson, who were killed in a traffic accident on Highway 12 near Missoula, Montana, on March 4. A spring snowstorm had swept into the area, and the icy conditions caused Katherine to lose control of the car and swerve into the oncoming lane of traffic, where the vehicle was broadsided.

Joy, 48, served as director of the Office of Disciplinary Counsel (ODC), and Katherine, 54, was an investigator with the ODC and the Practice of Law Board.

Joy and Katherine were highly respected attorneys who worked diligently to uphold the highest standards of the legal profession by investigating complaints of unethical behavior or misconduct filed against lawyers. Their work with the ODC helped strengthen the public’s trust in the legal profession and, by extension, the justice system itself.

“It’s important that the public has confidence that lawyers who don’t practice responsibly will be dealt with,” said Chief Justice Gerry Alexander of the state Supreme Court, which oversees lawyer discipline.

“We thought Joy was terrific and did a great job,” said Chief Justice Gerry Alexander of the state Supreme Court, which oversees lawyer discipline.

“The combined loss is an incredible loss for the legal community,” said Alexander.

Katherine, a Seattle native and graduate of the University of Puget Sound School of Law, was an investigator in a Grant County case that led to the disbarment of two attorneys for soliciting money from clients who were supposed to be represented for free. Her work ultimately helped change the way the county runs its public defender program.

“The combined loss is an incredible loss for the legal community,” said Alexander.
intellectual loss, as well as a personal loss for us,” noted WSBA Executive Director Jan Michels. “Both Joy and Katherine epitomized the work the Bar is doing to elevate the practice of law. Both were individuals of great integrity, dedicated to the legal profession, and firmly committed to protecting the public and serving the citizens of Washington. They will be greatly missed.”

Joy and Katherine, who were longtime domestic partners, enjoyed traveling, hiking, and home-improvement projects at their Seattle home and at their Idaho ranch. Joy is survived by three brothers, Douglas McLean, Mel McLean, and Cliff McLean. Katherine is survived by her mother, Kay Hayashi, and her daughter, Lauren Johnson.

The WSBA will remember Joy and Katherine for their dedication to the legal profession, keen intellect, integrity, hard work, wit, and good humor. They will be greatly missed by the WSBA staff, the Board of Governors, and the many volunteer bar leaders who worked with them.

Donations in Joy McLean’s name may be made to the Crisis Clinic, where she volunteered. Send donations to 1515 Dexter Ave. N, Ste. 300, Seattle, WA, 98109; 206-461-3210; or visit the website donation page at www.crisisclinic.org/donations.html. Donations in Katherine Johnson’s name may be made to Chicken Soup Brigade, where she had been a volunteer, by calling Mark Hand at 206-957-1642, or sending donations payable to Lifelong AIDS Alliance to 1002 E. Seneca St., Seattle, WA, 98122. Indicate that the donation should go to Chicken Soup Brigade.

**Correction**

In the “In Memoriam” notice for Joseph S. Montecucco that appeared on p. 40 of the April Bar News, it was incorrectly reported that Mr. Montecucco was in private practice in Bellevue from 1982 to 1992, when in fact he practiced in Spokane at Turner, Stoeve, Gagliardi, and Gross during that time. We regret the error.

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**JOB DISCRIMINATION? Employees working in or seeking a job within the City of Tacoma:**

Discrimination based on race, color, national origin or ancestry, sex, age, religion, disability, marital status, familial status, sexual orientation, or gender identity is illegal! If you believe you have discriminated against or want to know more about Tacoma’s anti-discrimination law, call Tacoma Human Rights: 253-591-5151

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Shirley Naccarato: Ten Thousand Chocolate Days

BY ALFREDO TRYFERIS

On February 28, Shirley Naccarato retired from the WSBA after 30 years of service. Although “budget and financial analyst” was her official title, she was known around the office as the Rock of Gibraltar, having weathered 30 WSBA presidents, four executive directors, and three different WSBA offices, all while exhibiting a charm and aplomb that was both comforting and inspiring.

Shirley’s three decades at the WSBA gave her a long memory, and her seemingly limitless font of institutional knowledge was legendary. “Shirley was a huge source of information about Bar policies and history,” says Trina Doty, an audit manager with the WSBA. “I received a call from someone who asked me if I knew the name of an auditor who’d worked here more than 10 years ago. Shirley knew the auditor’s name right down to the correct spelling. She is truly a tough act to follow.”

And it wasn’t just her knowledge and good cheer that she doled out freely: there was always a tray of homemade cookies and treats outside her office door. “She’s famous for her love of everything chocolate,” says Toni Wilde, a WSBA accounts payable bookkeeper. “I’ll miss her customary e-mail closing telling me to ‘have a chocolate day.’”

Born and raised in Longview, Shirley moved to Seattle in 1974 after attending Lower Columbia Community College and went to work for the WSBA two years later. She started as a typist in the Legal Department (now the Office of Disciplinary Counsel), but after six months discovered that typing was “not my forte.” When the bookkeeper left to go to law school, Shirley jumped at the opportunity and, after taking some bookkeeping and accounting courses at North Seattle Community College, was soon promoted.

With only 20 employees back then (there are about 130 now), Shirley not only worked in the Accounting Department, she was the Accounting Department. “The auditors had a field day,” she says. “Because I counted the money coming in, I deposited the money, I reconciled the bank statements, I did the financials, I wrote the checks. But we didn’t have any choice!”

When you talk to Shirley about her first years at the Bar, the word “manual” comes up often. “There were no computers when I first started; it was all done by hand. I did manual checkbooks, posted manually, did manual financial reports, reconciled the bank statements manually. The books weren’t computerized until the mid-’80s. Before that we had typewriters with carbon paper — kind of scary!” she says laughing.

Shirley and Rick, her husband of 14 years, sold their home in Seattle and will be moving to Boise, Idaho, in July, where they plan to build their dream house. “It hasn’t really sunk in yet,” she says about leaving the WSBA after 30 years. “It’s like I’m going on a long vacation.”

A well-deserved vacation, and with her will go a big piece of the Bar Association, and our hearts. May she have many chocolate days.

Alfredo Tryferis is a communications specialist in the WSBA Member and Community Relations Department.
WSBA Presidential Search
Application Deadline: May 15, 2006

The WSBA Board of Governors is seeking applicants for the position of WSBA president for 2007-2008. Pursuant to Article IV (A)(2) of the WSBA Bylaws, the primary place of business of candidates for president for 2007-2008 must be in the area east of the Cascade mountain range. The WSBA member selected to be president will have an opportunity to provide a significant contribution to the legal profession.

Applications for 2007-2008 WSBA president will be accepted through May 15, 2006, and should be limited to a current résumé, a concise application letter stating interest and qualifications, and no less than five or more than 10 references. The Presidential Search Committee and the Board of Governors will consider endorsement letters received by May 26, 2006. Applications and endorsement letters should be sent to the WSBA Executive Director, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330.

Confidential interviews with the Presidential Search Committee may be conducted. Direct contact with the governors is also encouraged. All candidates will have an interview with the full Board of Governors in open session at the June 9, 2006, meeting. Following the interviews, the Board will select the president.

Although prior experience on the WSBA’s Board of Governors may be helpful, there is no requirement that one must have been a member of the Board of Governors or had previous experience in Bar activities. The candidate must be willing to devote a substantial number of hours to WSBA affairs and be 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 2006 following selection. A one-year term as president-elect will begin at the Annual Business Meeting in September 2006. 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 2007, at the WSBA Annual Business Meeting, 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.

Judicial Information Systems Committee Member Sought
Application Deadline: May 15, 2006

The WSBA Board of Governors is seeking a member interested in being nominated to represent the WSBA on the Washington State Supreme Court’s Judicial Information System Committee (JISC) for a three-year term. The JISC is the policy-level steering committee for the Court’s automation system. The committee is composed of four members from the appellate court level; four members from the superior court level; four members from the courts of limited jurisdiction level; and three at-large members, one each from the WSBA, the Washington Association of Sheriffs and Police Chiefs, and the Washington Association of Prosecuting Attorneys. Submit a letter of interest and résumé by May 15 to Bar Leaders Division, WSBA, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330, or e-mail barleaders@wsba.org.

2006 Board of Governors Elections

On April 17, ballots were mailed to all active WSBA members eligible to vote for the 1st District governor. Returned ballots must be postmarked by May 15 in order to be counted. Board of Governors nomination forms for the 1st, 5th, and 7th-West congressional districts have been received from Russell M. Aoki, James S. Fitzgerald, Gail B. Nunn (1st District); Peter J. Karademos (5th District, unopposed); and Anthony Butler (7th-West District, unopposed).

The governors-elect and candidates have provided the following biographical statements:

1st District
Russell M. Aoki, candidate/1st District, states: I have been a lawyer in both the public and private sector for 20 years. My current practice at Aoki Sakamoto Grant LLP involves civil litigation and criminal defense. I am a past ABAW president, KCBA trustee, U.S. District Court Technology Working Group member, and Federal Magistrate Judge Merit Selection Panel member. I also served as the Criminal Justice Act Panel representative for our district’s federal court-appointed criminal defense lawyers. I am currently the board president of Northwest Defenders Association, and our Supreme Court’s appointee to the State Office of Public Defense Advisory Committee.
James S. Fitzgerald, candidate/1st District, states: Serving on the Board would provide a platform to further my keen interest in improving the professionalism of, and respect between, practitioners, and retaining and encouraging the best and brightest attorneys to serve in the judiciary, which would include securing adequate court funding and competitive judicial salaries. BA-Business UW 1975 (Phi Beta Kappa); UW Law 1978. Member: Livengood, Fitzgerald & Alskog, practicing primarily in healthcare, real estate, business transactions, and litigation. Admitted to practice: Washington, Oregon, U.S. Tax Court, USDC, 9th Circuit, U.S. Supreme Court. Member: ABA, KCBA, EKCBA, AHLA, WSSHA, WSTLA, Advisory Board-Network of Leading Law Firms. Past member: American Judicature Society.

Gail B. Nunn, candidate/1st District, states: I practice in Everett, as a member of O’Loane, Nunn & Guthrie. I received a Bachelor of Science with High Honor from Michigan State University in 1975 and a Juris Doctor Degree, cum laude, from the University of Puget Sound School of Law in 1986. I am very active in a variety of bar association activities, including Washington Women Lawyers, the Snohomish County Bar Association and Snohomish County Legal Services, where I am currently president of the board. I also serve on the Family Law Executive Committee of the Washington State Bar Association.

5th District
Peter J. Karademos, governor-elect/5th District, states: I look forward to receiving the support of my constituency in fulfilling the responsibilities of governor representing the 5th District. I have attended BOG meetings for approximately eight years; currently chair the WSBA Legislative Committee and Family Law Section; and am the liaison to the BOG for the Family Law Section. I oppose the legal-technician rule. I favor a new rule to allow attorneys to contract for reasonable fees, and I support the position that litigants be compensated for their personal injuries without artificial limits. The Board of Governors’ main priority should be to their constituency.

7th–West District
Anthony Butler, governor-elect/7th-West
District, states: I am a 1983 graduate of the University of Washington School of Law. I have served on the WSBA Legal Aid Committee, Diversity Committee, Civil Rights Committee, and the Court Rules and Procedures Committee. I am a past president of the Loren Miller Bar Association and a member of the ABA Standing Committee on Professional Discipline. I am a solo practitioner in the areas of legal ethics and plaintiffs' personal injury litigation. A hard worker, I look forward to serving on the Board of Governors to help improve the legal profession for the benefit of all members of our association.

**WYLD At-large Position**

Pursuant to WSBA Bylaws, Article III, "Nominations and Elections of Governors," Section M, "Election of At-large Governors," the Board of Governors will elect an at-large governor from nominations made by the Young Lawyers Division Board of Trustees on June 9, 2006.

Excerpt of Article III, in pertinent part: "In addition, the Board of Governors shall elect one at-large Governor from nominations made by the Young Lawyers Division Board of Trustees. Election may be by a secret written ballot. Except for the first election of a member nominated by the Young Lawyers Division Board of Trustees, the Trustees shall nominate two or more members who will be members of the Young Lawyers Division at the time of the election."

The following biographical statements were submitted by the WYLD nominees:

**Jason T. Vail:** I will bring to the Board a public-interest lawyer's perspective, which comes from my practice as an attorney with Northwest Justice Project. This perspective motivates my volunteer activities, including work with the Kitsap Volunteer Attorney Service, the Learning for Life Program, and on the Wonderland Birth-to-Three Developmental Center's Board of Directors. I also serve on the WSBA's Amicus Brief and Pro Bono committees, and as editor of the WYLD's De Novo publication. I hope to continue my service to the WYLD on the BOG, sharing my perspective and working to support and expand programs benefiting young lawyers.

**Allison Williams:** I've been a Seattle resident since 1994, a graduate of Seattle

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University School of Law since May 2002, and a member of the WSBA since November 2002. The Young Lawyers Division and I became acquainted soon after I became a WSBA member when I took up the co-chair position of the YLD CLE Committee, which I have now held for three years. I also served on the PDIC subcommittee in 2004-2005. I strongly believe in encouraging the continuing education of attorneys and enjoy spending my time to make such education accessible and affordable. My practice experience consists of over three years as an associate with a small firm in Seattle practicing in the areas of real estate, corporate transactions, estate planning, and commercial litigation.

WSBA President-elect (2006-2007)
The WSBA Board of Governors is seeking applicants for the position of WSBA president for 2007-2008. Pursuant to Article IV (A)(2) of the WSBA Bylaws, the primary place of business of candidates for president for 2007-2008 must be the area east of the Cascade mountain range generally known as eastern Washington. The WSBA member selected to be president will have an opportunity to provide a significant contribution to the legal profession.

Applications for 2007-2008 WSBA president will be accepted through May 15, 2006, and should be limited to a current résumé, a concise application letter stating interest and qualifications, and no less than five or more than 10 references.

Application(s) received to date (April 1, 2006): Stanley A. Bastian, 2600 Chester Kimm Road, Wenatchee, WA 98801; stanb@jdsalaw.com; 509-662-3685.

Fee Arbitration and Mediation Training Seminar
Have you wondered how the WSBA’s Fee Arbitration or Mediation programs work? Are you a Fee Arbitration Panel or Mediation Panel member? Are you interested in becoming an arbitrator or mediator? Just curious? Join us on Thursday, May 18 from 1 to 4 p.m. at the WSBA office for the 2006 Alternative Dispute Resolution (ADR) Committee training seminar. WSBA Professional Responsibility Counsel Chris Sutton will discuss the ethical considerations of ADR. Stephanie Bell, mediator and assistant program manager for the King County Alternative Dispute Resolution Program, will speak on facilitating a successful mediation. This year’s program also includes a mock mediation. Admission is free, and CLE credits are pending. For more information or to register, contact Natalie Cain, ADR program coordinator, at 206-733-5923 or nataliec@wsba.org.

Mandatory New Lawyer Orientation
On October 12, 2005, the Washington State Supreme Court adopted amendments to Admission to Practice Rule 5 and 18, mandating that, prior to admission, bar applicants must complete a minimum of four hours of approved preadmission education. The new rule becomes effective June 1, 2006, and requires that the preadmission course be free to the applicant.

J. Richard “Dick” Manning, who served as president of the WSBA from 2002-2003, made new lawyer training a primary initiative of his term of office, and it is through his efforts that these amendments were approved. In an interview with Bar News, Mr. Manning noted: “Professional development involves a lot of things. We’re the only country in the western world that doesn’t give new lawyers or law students some sort of apprenticeship. As many hiring partners will tell you, lawyers come out of law school equipped with smarts, but they’re ill prepared in most instances to do what lawyers are expected to do once they’re admitted to practice. What they lack, I believe, are the skills of knowing how to communicate with clients, how to organize a practice, how to manage an office . . . and orient to the aspects of law practice that create a lot of stress for people. I think a lot of that stress also leads to what some judges complain about, and that is a lack of civility. All of this points to the need to address professionalism in many different ways.”

In preparation for the June 1 implementation date, WSBA-CLE is developing the four-hour mandatory orientation program, working with local bar associations, the Washington Young Lawyers Division, and other interested groups. The goal is for WSBA-CLE to provide support and assistance to ensure that applicants in
locations where the local bar already provides an orientation program receive standardized information and materials. Where there is not already a program in place, WSBA-CLE will work to support local bar associations and superior courts in staging an orientation program prior to the swearing-in ceremony. In collaborating with local jurisdictions, WSBA-CLE will work to ensure there is no negative fiscal burden to providing the new program.

For more information on the WSBA-CLE orientation program, contact Yvonne K. Chapman, CLE orientation program developer, or Mark Sideman, director of the WSBA-CLE department.

ABA President to Speak at Access to Justice and Bar Leaders Conferences

American Bar Association President Michael Greco will present the keynote speech at the June 10 luncheon of the 2006 Access to Justice and WSBA Bar Leaders joint conference in Yakima. The theme of Greco’s presidency is “The Renaissance of Idealism in the Legal Profession,” which encourages lawyers to commit time to pro bono and community service. The conferences’ joint plenary session, “Crafting a Vision for the Civil Right to Counsel in Washington State,” which will take place immediately before the luncheon, relates to another of Greco’s initiatives, the ABA Task Force on Access to Civil Justice. These events are only a portion of the two-day joint conference held annually in Washington state for members and supporters of the Alliance for Equal Justice, and the leaders of bar associations and WSBA sections and committees. Registration information for the Access to Justice Conference can be found at http://www.wsba.org/atj/, and for the Bar Leaders Conference at http://www.wsba.org/barleadershomepage.htm. CLE credit is pending for both conferences.

2006 License Fee Penalties and Suspension Information

2006 License Fee Penalties. If your 2006 license fee payment was postmarked or delivered in person to the WSBA office after April 3, there will be a 50 percent late-fee penalty assessed.

Presuspension Notice. A presuspension notice was issued in mid-March to those members who had not paid their 2006 license fees. If you received a presuspension notice and have paid your license fees, you can confirm receipt by the WSBA 10 days after you sent your payment by checking online at http://pro.wsba.org or contacting the WSBA Service Center at 800-945-WSBA (9722) or 206-443-WSBA, or questions@wsba.org.

Suspension Information. If any portion of the license fee, penalty, or assessment remains unpaid two months after WSBA issues a presuspension notice (issued March 17, 2006), the Supreme Court will enter an order suspending you from the practice of law in Washington state.

If Fees Are Paid Online by May 17. To pay your fees online, visit the WSBA website at www.wsba.org, click on the “For Lawyers” tab, and select “Pay License Fee Online.” Sign in with your WSBA bar number and password to pay your license fees by MasterCard or Visa. The system allows payments only for the full amount billed, e.g., no Keller deductions or status changes.

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Account Declaration (one was included in your licensing packet) must be completed by all active members regardless of whether they actually have a trust account. Failure to file this form can result in disciplinary action. Group 2 active members were required to complete a MCLE Certification. There may have been other forms included in your licensing packet that you may want to complete and return, such as updating your contact information or reporting pro bono hours.

**More Information.** Full explanations of license fees, forms, policies, and deadlines are on the WSBA website at [http://www.wsba.org/lawyers/licensing/annuallicensing.htm](http://www.wsba.org/lawyers/licensing/annuallicensing.htm), or contact the WSBA Service Center.

### Computer Clinic

Are you a total beginner? No problem. The WSBA offers a hands-on computer clinic for members wanting to learn more about what Microsoft Office programs such as Outlook, PowerPoint, Excel, and Word, as well as Adobe Acrobat, can do for a lawyer. The clinic teaches helpful tips you can use immediately. Computers are provided, and seating is limited to 15 members. There is no charge, and no CLE credits are offered. Clinics are held every second Monday of the month. The next clinic will be held on May 8 from 10 a.m. to noon at the WSBA office. For more information, contact Pete Roberts at 206-727-8237 or e-mail peter@wsba.org.

### LOMAP & Ethics Traveling Seminars

Plan to attend in Vancouver, Washington, on May 9; Montesano on May 10; or Olympia on May 11. Or come to Walla Walla on June 13, Richland on June 14, or Yakima on June 15. Registration is $84, and each seminar has been approved for four CLE credits, including two ethics credits. For more information, contact Julie Salmon at 206-733-5914 or juliesa@wsba.org.

### WSBA Arbitration Program

The WSBA offers arbitration of lawyer-client fee disputes and mediation services to help resolve disputes between lawyers, a lawyer and client, or a lawyer and other professionals. The programs are voluntary and confidential. For more information, visit the WSBA website at [www.wsba.org/lawyers/services/adr.htm](http://www.wsba.org/lawyers/services/adr.htm) or call 206-733-5923.

### LAP Solution of the Month: Loss and Grief

A loss of any kind can trigger grief. While usually normal and predictable, grief can easily overwhelm you if you’re already feeling stressed or anxious. Whether you’ve lost a loved one, a job, a case, a pet, or your health, you’ll likely experience some grief. If you’d like a supportive ear, call the Lawyers’ Assistance Program at 206-727-8268.

### 2006 WSBA Award Nominations Sought

Each year, members of the Washington State Bar Association are asked to identify those who deserve the legal profession’s recognition and appreciation. Nominations are sought for the following awards:

- **Award of Merit.** First given in 1957, this is the Washington State Bar Association’s highest honor. The Award of Merit
FYI
Information

is most often given for long-term service to the Bar and/or the public, although it has also been presented in recognition of a single, extraordinary contribution or project. It is awarded to individuals only — both lawyers and nonlawyers.

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

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

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

**Pro Bono Award.** The deadline has passed for nominations.

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

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

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

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

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

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

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

**Nomination submissions:** If you know an individual who fits the criteria set forth above, please visit www.wsba.org/barleadershomepage.htm, and complete and submit the nomination form. Self-nominations will not be accepted. Please note that the completed nomination form must accompany each nomination in order to be considered. The deadline for all nominations is May 8 except for the Pro Bono Award, which

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was March 31. Please send nominations to: Washington State Bar Association, Attn: Annual Awards, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330, fax: 206-727-8319, e-mail: denec@wsba.org

The awards will be presented at the WSBA Annual Awards Dinner in Seattle on September 14, 2006, with the following exceptions: The Pro Bono Award will be presented at the Access to Justice Conference in Yakima on June 10, and the Outstanding Judge Award will be presented at the Fall Judicial Conference.

Statewide Diversity Conference to Be Held in June
Washington state’s first diversity conference for the legal community will be held June 1-2. Entitled “Getting Ahead and Giving Back,” the conference will begin Thursday evening with a reception and feature a variety of sessions all day Friday. Col. William Gunn (Ret.), president and CEO of the Boys and Girls Club of Greater Washington, D.C., will be the featured speaker at the luncheon on Friday. The conference will be held at Seattle University School of Law.

The conference is sponsored by the Asian Bar Association of Washington, Korean American Bar Association of Washington, Latina/o Bar Association of Washington, Loren Miller Bar Association, Northwest Indian Bar Association, Pierce County Minority Bar Association, QLaw: the GLBT Bar Association of Washington, South Asian Bar Association, and Vietnamese American Bar Association, in cooperation with the King County Bar Association, Seattle University School of Law, and Washington State Bar Association.

For more information, contact Conference Co-chair Kim Tran at 206-623-9900 or ktran@staffordfrey.com, Conference Co-chair Mike Heath at 206-587-0700 or mheath@cairmcross.com, or WSBA Diversity Advocate Joslyn Donlin at 206-727-8216 or joslynd@wsba.org.

Notice of Intent to Form Juvenile Law Section
Petitions are now being circulated to form a new WSBA Juvenile Law Section pursuant to Section IX of the WSBA Bylaws. There is no current section or other WSBA entity whose primary focus is juvenile law, which falls within the purposes of the WSBA as outlined in General Rule 12. Both the Washington Juvenile Justice Assessment Project Report and the WSBA Blue Ribbon Panel on Criminal Defense have recommended that a juvenile-oriented WSBA entity be established. A study group chaired by Justice Bobbe Bridge — and including Kim Ambrose, Liza Burke, Lisa Kelly, Anne Lee, Mary Li, Casey Trupin, Page Ulrey, and George Yeannakis — recommends the new section. After the required six-month waiting period, the Board of Governors will consider whether to form a Juvenile Law Section at their June 2006 meeting.

Contemplated Jurisdiction. The creation of a Juvenile Law Section is proposed to address concerns with juvenile law and policy, including dependency, offender, status offenses (Child in Need of Services, Youth at Risk and Truancy), and the civil legal needs of children and youth.

Section Purpose. The Juvenile Law Section will provide a forum for juvenile-law issues and improve the law and practice related to civil and criminal matters involving children and youth in Washington. The section will welcome advocates from all disciplines and fields of law, including juvenile justice, child welfare, and those who represent youth in civil legal practice. For more information, contact Kim Ambrose at kambrose@u.washington.edu.

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

Assistance for Law Students
The WSBA Lawyers’ Assistance Program (LAP) offers long- and short-term psychotherapy to third-year law students attending the University of Washington and Seattle University. Treatment is offered for depression, addiction, family and relationship issues, health issues, and other mental and emotional problems. The fee is based on a sliding scale ranging from no-cost to $30 and is determined by a student’s ability to pay. For more information about the LAP, call 206-727-8268 or visit www.wsba.org/lawyers/services/lap.htm.

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

Job Seekers Discussion Group
Looking for a job or making a transition? Join us at the Job Seekers Discussion Group — no need to RSVP. For more information contact Rebecca Nerison, Ph.D. at 206-727-8269 or rebeccan@wsba.org.

Upcoming Board of Governors Meetings
June 9, Yakima • July 21-22, Port Angeles • September 14-15, Seattle
With the exception of a one-hour executive session the morning of the first day, Board of Governors meetings are open, and all WSBA members are welcome to attend. RSVPs are appreciated but not required. Please contact Donna Sato at 206-727-8244 or donnas@wsba.org. The complete Board of Governors meeting schedule is available on the WSBA website at www.wsba.org/info/bog/schedule.htm.

Usury Rate
The average coupon equivalent yield from the first auction of 26-week treasury bills in April 2006 was 4.849 percent. Therefore, the maximum allowable usury rate for May is 12 percent. Information from January 1987 to date is on the WSBA website at http://www.wsba.org/media/publications/barnews/usury.htm.
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Dear Colleague:

In January, I announced my intention to seek re-election to the position on the Washington Supreme Court that I have held since 1995. Needless to say, it has been a privilege for me to serve the citizens of this state on three levels of our state’s courts and to be selected twice by my peers on the Court to serve a four-year term as Chief Justice.

Although I am extremely proud of the many accomplishments of the Supreme Court, there is always room for improvement. One issue that concerns me is the impact of large campaign contributions to judicial races on the public’s perception of fairness in court proceedings. To address this concern, I have instructed my campaign to enforce a contribution limit equivalent to the statutory campaign contribution limits applicable to executive branch candidates. I also publicly supported legislation to create such limits and am pleased the Washington Legislature passed the legislation in its recent session, although it will not be in effect until later this year.

I am proud that during my tenure as Chief Justice, we have successfully obtained increases in state funding for the operation of Washington’s trial courts and for legal assistance to indigent persons in criminal and civil cases. The court has consistently taken a lead in making its proceedings more accessible by televising all of the hearings at our court and by conducting hearings in many locations around the state, including the state’s three law schools. In an effort to observe the admonition in our state constitution that justice is to be administered “openly,” the court has enacted rules providing that all court records are open and accessible to the public. In addition, we recently adopted rules limiting the sealing of court files.

The right to trial by jury is fundamental to our justice system. Since becoming Chief Justice, I have committed myself to encouraging the legislature to increase the daily fee paid to jurors. I am pleased the legislature followed recommendations I made in my annual state of the judiciary message and appropriated funds allowing us to increase the daily attendance fee for jurors in three pilot jurisdictions, starting this year. Hopefully, this will enable us to demonstrate to the legislature that fairer juror compensation will improve juror satisfaction and response to jury summons.

As I seek re-election to the court, I hope that our paths will cross. Should you wish additional information on any matter relating to the election, don’t hesitate to contact me.

Sincerely,

Gerry Alexander

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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 discipline reports should be read carefully for names, cities, and bar numbers.

### Suspended

**Christopher P. Eichhorn** (WSBA No. 7427, admitted 1977), of Tacoma, was suspended for two years, effective November 7, 2005, by order of the Washington State Supreme Court following a stipulation approved by the Disciplinary Board. This discipline was based on his conduct between 1998 and 2001 involving failure to communicate with and diligently represent a client, charging an unreasonable fee, failure to expedite litigation, failure to deposit client funds into a trust account, and failure to comply with duties on suspension.

**Matter 1:** In July 1998, Mr. Eichhorn commenced representing a client in a dissolution of marriage matter. The client agreed to pay Mr. Eichhorn an hourly fee to be deducted from all payments received. This fee agreement was not put in writing. The client paid Mr. Eichhorn $650. Even though the fee was not fully earned, Mr. Eichhorn deposited it into his general business account.

In October 1998, a temporary order was entered prohibiting the client’s husband from withdrawing approximately $30,000 in funds acquired by refinancing the family home. In mid-1999, Mr. Eichhorn and his client became aware that the husband was planning to move to Korea and that his lawyer planned to withdraw by June 1999. Mr. Eichhorn advised his client to seek a contempt order for the husband’s failure to preserve the $30,000, and to do so while the husband was still represented. The client agreed and instructed Mr. Eichhorn to proceed before June 1999. Mr. Eichhorn did not file the motion until July 1999. The court ruled that the client’s husband had failed to comply with the temporary order and directed the husband to deposit $30,000 into the court registry. The husband failed to account for the funds or deposit them into the court registry. The client called Mr. Eichhorn every few months. Mr. Eichhorn occasionally returned the calls and told her they should start working on her case again.

The dissolution trial was held in October 2000. After the trial, Mr. Eichhorn told the client that he would file the final dissolution paperwork by Thanksgiving 2000. When that did not happen, he told her he would finalize the dissolution by Christmas 2000. When that did not happen, the client reminded Mr. Eichhorn that she planned to remarry in April 2001; Mr. Eichhorn assured her that he would finalize her dissolution by then. The client continued to leave Mr. Eichhorn telephone messages, to which he did not respond. The client and her future husband went to Mr. Eichhorn’s office in February 2001 owing to concern about the delay. In March 2001, Mr. Eichhorn filed the final paperwork with the court.

After the dissolution was final, the client, who had paid Mr. Eichhorn $4,650, requested an itemized bill. Mr. Eichhorn told her the bill was around $3,000 and agreed to send it to her in writing. Mr. Eichhorn had not maintained contemporaneous time records while working on her case, and he never sent a written bill, an itemized statement, or any refund.

**Matter 2:** Effective November 10, 1998, Mr. Eichhorn was suspended from the practice of law for 45 days following a stipulation to discipline in another matter. In December 1998, as required by the former Rules for Lawyer Discipline, Mr. Eichhorn submitted to the Bar Association an affidavit of compliance with his duties on suspension, listing clients and opposing counsel who had been notified of his suspension. Neither the above-mentioned client nor the husband’s lawyer appeared on the list. Neither individual had been informed of the suspension or knew that Mr. Eichhorn was prohibited from practicing law during the 45-day period.

Mr. Eichhorn’s conduct violated RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; RPC 1.4(a), requiring a lawyer to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information; RPC 1.4(b), requiring a lawyer to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; RPC 1.5(a), requiring a lawyer’s fee to be reasonable; RPC 1.5(b), requiring a lawyer who has not regularly represented a client to communicate to the client the basis or rate of the fee or factors involved in determining the charges for services and the lawyer’s billing practices; RPC 3.2, requiring a lawyer to make reasonable efforts to expedite litigation consistent with the interests of the client; RPC 1.14(a), requiring all funds of clients paid to a lawyer be deposited into an interest-bearing trust account; RPC 1.14(b), requiring a lawyer to maintain complete records of client funds and properties and render appropriate accounts regarding them, and to promptly pay or deliver upon request funds or properties belonging to the client; and former Rule for Lawyer Discipline 8.1(c), delineating a lawyer’s duties on suspension, including the duty to notify all clients involved in litigation and the lawyer for each adverse party of the suspension and the reason therefore, and of the lawyer’s consequent inability to act after the effective date of the suspension.

Marsha A. Matsumoto represented the Bar Association. Mr. Eichhorn represented himself.

### Suspended

**Alexander J. Higgins** (WSBA No. 20868, admitted 1991), of Seattle, was suspended for two years, effective February 15, 2006, by order of the Washington State Supreme Court following a stipulation approved by the Disciplinary Board. This discipline was based on his conduct in 2002 and 2003 involving the deposit of funds belonging to his law firm into his personal bank account.
Mr. Higgins was a partner in a Seattle law firm. On 16 occasions during 2002 and 2003 Mr. Higgins received payments directly from clients for work he had performed as a firm lawyer. Instead of routing the checks into one of the firm’s bank accounts, Mr. Higgins deposited the funds into a personal, individual checking account. The total amount of fees belonging to the firm that Mr. Higgins retained for himself was $4,937. In late 2003, by happenstance, a member of the firm learned about the conduct with respect to funds paid by a particular client. Mr. Higgins cooperated with the firm’s ensuing investigation of the matter. The firm later accepted Mr. Higgins’s resignation, effective December 31, 2003. Mr. Higgins and the firm agreed on the total amount owed and also agreed to deduct that amount from Mr. Higgins’s profit share, which was adequate to cover the loss.

Mr. Higgins’s conduct violated RPC 8.4(c), prohibiting lawyers from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

Eugene I. Annis represented the Bar Association. Kurt M. Bulmer represented Mr. Higgins.

**Suspended**

Paul H. King (WSBA No. 7370, admitted 1977), of Seattle, was reciprocity suspended for three years, based on an August 15, 2002, order of the U.S. District Court for the Western District of Washington suspending Mr. King from April 25, 2002, through April 25, 2005. The Washington State Supreme Court’s order of reciprocal discipline, entered March 9, 2005, imposed the suspension in Washington retroactive to April 25, 2002, in accordance with the dates in the District Court’s order. (Owing to a clerical error in the March 9, 2005, order, the suspension did not expire until entry of corrective order on June 7, 2005.) This discipline was based on Mr. King’s conduct between 1999 and 2001 in multiple pending federal matters.

**Matter 1:** Mr. King filed an action on behalf of a client in 1998. In December 1999, Mr. King withdrew from representing the client in the midst of settlement negotiations. At the time, Mr. King’s file reflected that he had failed to respond to discovery requests, failed to assert several claims that should have been asserted, and alleged a disability claim even though plaintiff appeared not to be disabled. Mr. King did not provide his file to substituting counsel for several weeks, and not until after the client had filed a grievance with the Bar Association. Mr. King subsequently filed a motion seeking imposition of an attorney’s lien in the amount of $4,581.02, even though his contingency fee agreement with the client provided that if he withdrew from representation he waived any right to fees in the matter. In denying the motion, the court found that in December 1999, Mr. King had improperly attempted to change his contingency fee arrangement with the client to an hourly fee arrangement.

**Matter 2:** Mr. King represented a purported plaintiff with claims against a municipality under the First, Fourth, and Fourteenth amendments to the U.S. Constitution. In denying the motion for class certification, the court found that Mr. King had failed to make any attempt to meet the class certification requirements of Fed. R. Civ. P. 23.

**Matter 3:** Mr. King represented a plaintiff on a claim for damage to a truck. The court imposed a $500 sanction on Mr. King on grounds that he had made improper use of profanity in a brief and urged the court to grant relief on improper grounds. At trial in the matter, Mr. King improperly advised the jury in opening argument of settlement efforts, failed to refrain from and failed to prevent his Rule 9 intern from engaging in behavior that disrupted the courtroom, and during closing argument improperly advised the jury that he strongly disagreed with the court’s jury instructions.

**Matter 4:** Mr. King represented a plaintiff in an action for violation of state and federal wage-and-hour laws. In July 1999, Mr. King participated in settlement conference with a magistrate judge. During a break in the conference, Mr. King was informed that the assigned judge had dismissed the case. Mr. King proceeded with the settlement conference and discussed the matter as if it were still pending, without promptly advising opposing counsel and the magistrate judge of the dismissal.

**Matter 5:** Mr. King represented two plaintiffs in an action under the Fair Labor Standards Act. In September 1999, Mr. King filed an amended complaint adding new claims and joining a new plaintiff, but he neither sought leave of court to file the complaint nor served the complaint on opposing counsel within 120 days of filing as required by Fed. R. Civ. P. 4. In March 2000, Mr. King filed a motion and declaration for permission to file a third amended complaint, adding new claims and joining additional plaintiffs. However, he failed to serve opposing counsel as required by Fed. R. Civ. P. 5(d). In March 2000, after expiration of the deadline for amending pleadings, Mr. King again filed a motion for permission to file an amended pleading but failed to file proof of service of the motion. In April 2000, Mr. King filed a certificate of service of the proposed amended complaint, but failed to indicate whether he had served the motion to amend, in violation of Fed. R. Civ. P. 5(d); Mr. King also submitted a proposed, unsigned order in violation of Fed. R. Civ. P. 11. In July 2000, Mr. King filed a motion of entry of judgment without noting the motion as required by Fed. R. Civ. P. 7. Mr. King also filed a motion for entry of judgment in favor of several plaintiffs who had purportedly joined in complaints that had never been served. In September 2000, Mr. King filed a summary judgment motion after the cut-off date for the filing of dispositive motions.

**Matter 6:** Mr. King failed to appear for a March 1999 status conference in a pending matter. In response to a show cause order, he explained that the date was not listed on his calendar. The court imposed a $250 sanction.

**Matter 7:** After being sanctioned in Matter 6, Mr. King engaged in attempts to manipulate the District Court’s case-assignment procedures in order to avoid having cases assigned to the judge who had imposed the sanction. In five matters, Mr. King voluntarily dismissed the cases and promptly refiled them. In one of the matters, when the case was reassigned to the same judge, Mr. King again voluntarily dismissed and refiled it, even though Fed. R. Civ. P. 41(a)(1) provides that a second voluntary dismissal is a dismissal with prejudice. The judge ordered a hearing to show cause why the case should not be dismissed with prejudice. In the other cases, the assigned judges reassigned the cases to the original judge, who set a status
conference in each for the same date as the
show cause hearing. Mr. King failed to at-
tend the status conferences and the show
cause hearing; instead, he sent an attorney
from another law office to attend on his
behalf, who indicated that Mr. King had
been called away on a family emergency.
The judge imposed a sanction on Mr. King
of $100 in each case, with the proviso that
the sanction would be vacated if Mr. King
provided an affidavit from a physician
stating that the medical condition was an
emergency that could not have safely been
addressed until after the status conferences
were concluded.

Matter 8: Mr. King submitted a declara-
tion of a third party in support of a motion
for an award of attorney fees. As a result of
its own investigation, the court discovered
that Mr. King had signed the declarant’s
name on the declaration without advising
the court of this fact. There was no indica-
tion on the document that Mr. King was
signing for the declarant. During oral argu-
ment on an order to show cause, Mr. King
acknowledged that he was not familiar
with 28 U.S.C. § 1746, permitting the filing
of a declaration in lieu of an affidavit, and
he claimed he believed it was appropriate
to execute and submit a declaration on
another’s behalf without disclosing the fact
that the true declarant had not signed. In
July 2000, the court imposed a $1,000 sanc-
tion on Mr. King.

Matter 9: Three days after a discovery
cut-off had passed in a pending matter,
having conducted no discovery, Mr. King
filed a motion to extend the discovery
deadline. In denying the motion, the
court additionally noted that Mr. King
had failed to conduct a mediation by the
court-ordered deadline. Three weeks after
the mediation deadline, Mr. King filed a
motion to appoint a mediator, which was
denied. On the day of the deadline for
filing dispositive motions, Mr. King filed
a summary judgment motion without a
supporting memorandum. Several weeks
later, Mr. King filed a memorandum in
support of the motion and intermittently
filed supporting declarations. In May 2000,
the court denied the motion, noting that
Mr. King had violated the court’s local
rules. Two and one half weeks before trial,
Mr. King attended a pretrial conference
at which he agreed to waive his client’s
jury demand. During the conference, Mr.
King appeared unfamiliar with the case
and could not provide an estimate of the
potential value of the case. As a result, the
court, on its own motion, rescheduled the
trial and extended the deadline for media-
tion and dispositive motions.

Matter 10: Mr. King commenced an
action on behalf of a client in May 1999.
In March 2000, the judge ordered plaintiff
to pay $1,600 as partial compensation for
defendant’s attorney fees incurred as a
result of plaintiff’s prolonged, unexcused,
and unjustified failure to make discovery.
The plaintiff was subsequently found in
contempt for failing to pay the sanctions,
and the judge ordered Mr. King to pay an
additional $3,095 to defendant.

Mr. King’s conduct violated RPC 1.1,
requiring that a lawyer provide compe-
tent representation to a client; RPC 1.3,
requiring that a lawyer act with reasonable
diligence and promptness; RPC 3.1, prohib-
iting a lawyer from bringing or defending
a proceeding, or asserting or controverting
an issue therein, unless there is a good
faith basis for doing so that is not frivolous;
RPC 3.2, requiring that a lawyer make
reasonable efforts to expedite litigation
consistent with the interests of the client;
RPC 3.4(d), requiring a lawyer to make a
reasonably diligent effort to comply with
a properly legal discovery request; RPC 3.4(e),
prohibiting a lawyer from alluding to any
matter that the lawyer does not reason-
ablely believe is relevant or that will not be
supported by admissible evidence, or from
asserting personal knowledge of facts in
issue; RPC 3.4(f), prohibiting a lawyer from
stating a personal opinion regarding the
justness of a cause in trial; RPC 3.5(c), pro-
hibiting a lawyer from engaging in conduct
intended to disrupt a tribunal; RPC 8.4(c),
prohibiting conduct involving dishonesty,
deceit, fraud, or misrepresentation; and
RPC 8.4(d), prohibiting conduct prejudicial
to the administration of justice.

Leslie Ching Allen represented the Bar
Association. John R. Scannell represented
Mr. King.

**Suspended**

Richard F. Lancefield (WSBA No. 2796,
admitted 1969), of Portland, Oregon, was
suspended for 60 days, effective Novem-
ber 23, 2005, by order of the Washington
State Supreme Court imposing reciprocal
discipline in accordance with an order of
the Supreme Court of Oregon following a
stipulation. This discipline was based on
his conduct in 2004 involving trust-account
irregularities.

Prior to July 2004, Mr. Lancefield estab-
ished a lawyer trust account in Oregon.
Mr. Lancefield deposited client funds into
the trust account. Mr. Lancefield used the
trust account to pay personal, business,
and client obligations. Mr. Lancefield did
not make or maintain records reflecting
deposits, withdrawals, or disbursements
of client funds in his trust account, nor did
he keep track of his time for purposes of
charging or accounting to clients except as
it may have been reflected in his client files.
Accordingly, Mr. Lancefield did not know
with any precision when he had earned
funds in the trust account or how much
he had earned.

On July 27, 2004, Mr. Lancefield issued
a check from the trust account when there
were insufficient funds in the account. The
bank honored the check, thereby drawing
on the funds of one or more of Mr. Lance-
field’s clients without authorization. After
the overdraft, the account had a negative
balance of $10.23, which Mr. Lancefield
rectified following notification. There was
no assertion in the Oregon disciplinary
proceeding that Mr. Lancefield’s conduct
resulted in actual injury to a client.

Mr. Lancefield’s conduct violated Or-
egon DR 9-101(A), requiring that all funds
of clients paid to a lawyer or law firm be
deposited and maintained in one or more
identifiable trust accounts and that no
funds belonging to the lawyer be deposited
therein; and DR 9-101(C)(3) requiring that
a lawyer maintain complete records of all
funds, securities, and other properties of
a client coming into the possession of the
lawyer and render appropriate accounts to
the lawyer’s client regarding them.

Felice P. Congalton represented the Bar
Association. Mr. Lancefield represented
himself.

**Suspended**

Roger B. Madison Jr. (WSBA No. 15338,
admitted 1985), of Issaquah, was sus-
pended for six months, effective January
30, 2006, by order of the Washington State Supreme Court following a stipulation approved by the Disciplinary Board. This discipline was based on Mr. Madison’s conduct involving the use of illegal means to aid in discovery in his civil case against a former girlfriend.

Mr. Madison sued a former girlfriend to recover an expensive ring. In an attempt to discover what happened to the ring, Mr. Madison deciphered the former girlfriend’s computer password, accessed her e-mail account, read and deleted e-mails sent to her, and copied her e-mail address book. Mr. Madison was charged with computer trespass in the second degree, but prosecutors agreed to dismiss the charge after Mr. Madison and his former girlfriend reached a civil misdemeanor compromise and Mr. Madison agreed to cooperate in the investigation of and prosecution of, another crime allegedly committed by Mr. Madison’s paralegal, in which Mr. Madison was not implicated.

Mr. Madison’s conduct violated RPC 8.4(d), prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice.

M. Craig Bray and Linda B. Eide represented the Bar Association. Mr. Madison represented himself.

Suspended

Ralph L. Perkins (WSBA No. 11666, admitted 1981), formerly of Okanogan, was suspended from the practice of law for two years, effective September 16, 2005, by order of the Washington State Supreme Court following a stipulation approved by the Disciplinary Board. This discipline was based on his conduct in 2001 involving failure to provide an accurate accounting to a client regarding distribution of funds and misrepresentations in the preparation and backdating of an invoice. For additional information, please see In re Discipline of Perkins, 156 Wn.2d 196, 125 P.3d 954 (2006).

Starting in 1999, Mr. Poole represented a client with a claim against a corporation for failure to pay for services performed. Following a trial, the superior court ruled in the client’s favor. The defendant subsequently paid the judgment balance to Mr. Poole’s law firm, which applied the funds in part towards unpaid legal fees and disbursed the remainder to the client. Mr. Poole’s office failed to credit the client’s account with a $27,675.35 fee payment, instead crediting the account with only a $20,000 payment. Consequently, from February 2001 onward, invoices sent to the client reflected an amount owing of approximately $16,000, which was $7,675.35 in excess of the actual balance. To satisfy the outstanding legal fees, Mr. Poole and the client agreed that the client would work off the remaining balance by performing trench work on a parcel of real property owned by Mr. Poole’s limited liability company. Mr. Poole believed that the project would cost no more than $4,500, but he never conveyed that belief to the client.

In May 2001, after the client completed the trench work, he faxed Mr. Poole an invoice for $26,547.98. Deducting the $16,094.43, which the client believed to be the outstanding balance owing, and $500 that Mr. Poole had paid for costs, the client alleged that Mr. Poole owed him $9,953.55 for the completed work. The client also alleged that Mr. Poole was wrongfully withholding a portion of the client’s judgment award in his trust account. Unable to resolve the dispute with Mr. Poole, the client recorded a mechanic’s lien against Mr. Poole’s property for failure to pay for services performed. Mr. Poole filed a motion for order to show cause to declare the mechanic’s lien frivolous, asserting that the client had been paid in full when Mr. Poole wrote off the balance owing. The client hired a lawyer to respond to the motion. According to Mr. Poole, at this point he discovered the accounting errors, which he attributed to his bookkeeper. Mr. Poole faxed the lawyer several documents, including an invoice dated May 28, 2001, indicating that a credit had been applied on that date to the client’s outstanding balance and that, accordingly, the balance owing was zero. In fact, Mr. Poole had created and then backdated an invoice in October 2001 to appear to be an invoice created in May 2001. Mr. Poole and the client’s new lawyer subsequently negotiated a settlement agreement in which Mr. Poole agreed that his firm would pay the client $7,675.35 plus interest, attorney fees, and costs in exchange for the client’s release of the lien against the property and a mutual release of all other claims. When Mr. Poole failed to pay in accordance with the settlement agreement, the client commenced a lawsuit. Ultimately, Mr. Poole’s firm paid the client $7,675.35 plus interest and between $25,000 and $29,000 for attorney fees and costs.

Mr. Poole’s conduct violated RPC 1.14(b)(3), requiring a lawyer to maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his or her client regarding them; RPC 3.4(b), prohibiting a lawyer from falsifying evidence; and RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

Michael D. Hunsinger and Christine Gray represented the Bar Association. Kurt M. Bulmer represented Mr. Poole. Mary H. Wechsler was the hearing officer.

Reprimanded

Timothy P. Coogan (WSBA No. 16508, admitted 1986), of Tacoma, was ordered
to receive a reprimand on September 29, 2005, following a stipulation approved by a hearing officer. This discipline was based on his conduct involving lack of diligence, failure to communicate with a client, and failure to refund an unearned fee.

Mr. Coogan represented a client in a reckless-driving case. The client paid Mr. Coogan a $1,000 fee, which was described in the fee agreement as “fully earned non-refundable.” During this time period, Mr. Coogan suffered from health problems and was briefly hospitalized. Because his condition was incorrectly diagnosed, Mr. Coogan believed he would recover shortly and be able to represent the client. However, he failed to explain this to the client. At three pre-trial hearings in the client’s case, Mr. Coogan arranged for contract lawyers to appear and request continuances. During the representation, the client called and left messages, but he was unable to reach Mr. Coogan, who did not personally return the client’s phone calls. After four months, the client hired other counsel and requested a refund of the $1,000 fee paid to Mr. Coogan. Mr. Coogan refunded $250 at that time. Approximately six months after a grievance was filed against him by the client, and over a year after the representation ended, Mr. Coogan refunded the remaining $750.

Mr. Coogan’s conduct violated RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; RPC 1.4, requiring a lawyer to keep a client reasonably informed about the status of a matter, to promptly comply with reasonable requests for information, and to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; RPC 1.5(a), requiring a lawyer’s fee to be reasonable; and RPC 1.15(d), requiring a lawyer to take steps to the extent reasonably practicable to protect a client’s interests upon termination of the representation, including refunding any advance fee payment that has not been earned.

Anne I. Seidel represented the Bar Association. Mr. Coogan represented himself. David B. Condon was the hearing officer.

Reprimanded

L. Eugene Hanson (WSBA No. 3418, admitted 1968), of Goldendale, was ordered to receive a reprimand on October 18, 2005, following a stipulation approved by a hearing officer. This discipline was based on his conduct between 1997 and 2005 involving lack of diligence, failure to communicate with a client, and trust-account irregularities.

In 1996, Mr. Hanson was hired to handle a real estate matter involving a client seeking assistance with a parcel of property located in White Salmon. At the time, Mr. Hanson maintained offices in both White Salmon and Goldendale. He agreed to take the necessary probate action to establish clear title to the property. Between 1996 and 1997, Mr. Hanson actively worked on the matter, but activity was interrupted in early 1997 when out-of-state witnesses failed to sign and return necessary affidavits.

Later in 1997, Mr. Hanson closed his White Salmon office, consolidating it into the Goldendale office. At that time, the client’s file was misplaced with closed files from the White Salmon office. Mr. Hanson took no further action in the case until after the client filed a disciplinary grievance in November 2002. In the interim, the client repeatedly called Mr. Hanson to inquire about the status of the matter. Although Mr. Hanson spoke to the client on some of these occasions, he did not locate the file, take further action on the matter, or properly advise the client as to the status of the matter. After the disciplinary grievance was filed, Mr. Hanson made a thorough search for the missing file and eventually located it. He filed a probate action in March 2003, and concluded the estate in October 2005 by establishing his client’s ownership of the property.

Prior to the closure of Mr. Hanson’s White Salmon office, $970 of the client’s funds were being held in Mr. Hanson’s White Salmon trust account. In September 1997, Mr. Hanson transferred the balance of the White Salmon trust account into his Goldendale trust account, including the client’s $970. Although Mr. Hanson closed out the client’s White Salmon ledger, he failed to open a new client ledger for her in the records of his Goldendale trust account. He has never provided the client with a final accounting of the balance of her trust account funds.

Mr. Hanson subsequently became aware that his combined trust account had an excess of funds. He consulted with his former bookkeeper to determine the reason for the discrepancy. They were unable to ascertain the reason for the excess but suspected that it was related to accounts acquired when Mr. Hanson had assumed the practice of a retiring lawyer. Mr. Hanson drew down the balance of the account so that the bank balance corresponded with what he believed were the client balances. As part of the investigation into the client’s grievance, Mr. Hanson agreed to cooperate with an examination of his trust accounts. The WSBA auditor found that the reconciled bank balance exceeded the check register balance by $121.26 (reflecting a series of addition errors), that the client ledger accounts exceeded the reconciled bank balance by $1,793, that there were 20 client ledger accounts (totaling $1,965.93) that appeared to be inactive, and that failing to reconcile the client accounts with the reconciled bank balance had contributed to the account discrepancies. The auditor recommended, among other things, that Mr. Hanson restore the $1,793 to his trust account and seek to locate the clients to whom the $1,965.93 belong. Mr. Hanson agreed to comply with the auditor’s recommendations.

Mr. Hanson’s conduct violated RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; RPC 1.4(a), requiring a lawyer to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information; RPC 1.14(a), requiring a lawyer to deposit all client funds into one or more identifiable interest-bearing trust accounts; and RPC 1.14(b)(3), requiring a lawyer to maintain complete records of all funds, securities, and other properties of a client coming into the lawyer’s possession and render appropriate accounts to the client regarding them.

Randy V. Beitel represented the Bar Association. Mr. Hanson represented himself. David A. Thorner was the hearing officer.

Reprimanded

Margaret A. Milnes (WSBA No. 15200,
admitted 1985), of Talent, Oregon, was ordered to receive a reprimand on October 11, 2005, following a hearing. This discipline was based on her conduct in 2003 and 2004 involving lack of diligence and failure to adequately communicate with a client.

Ms. Milnes was hired by a guardian to represent a client in a discrimination case under a contingent fee arrangement. In July 2003, the case settled for $1,500, plus $750 for appointment of a guardian *ad litem* to approve the settlement. Ms. Milnes then moved to Oregon, but did not advise the client’s guardian of the move or provide the adverse party’s lawyer with her Oregon mailing address. In October 2003, Ms. Milnes sent the client’s guardian an e-mail saying that she was behind on approving the settlement stipulation and that a guardian *ad litem* needed to be appointed. A guardian *ad litem* was appointed in late October 2003, but the guardian *ad litem* had trouble reaching Ms. Milnes, as did the lawyer for the adverse party. Ms. Milnes subsequently telephoned the client’s guardian to tell her that another lawyer would complete the settlement, but she provided no contact information for this other lawyer or for herself, nor did she arrange for other counsel to represent the client. In February 2004, the client’s guardian attempted to visit Ms. Milnes at her Washington office but discovered that it was closed with no forwarding address. The client’s settlement was not finalized until March 2005.

Ms. Milnes’s conduct violated RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; and RPC 1.4(a), requiring a lawyer to keep a client reasonably informed about the status of a matter and to promptly comply with reasonable requests for information.

Nancy B. Miller represented the Bar Association. Ms. Milnes represented herself. Robert Hardy was the hearing officer.

**Admonished**

Matthew J. Rusnak (WSBA No. 28671, admitted 1998), of Vaughn, was admonished by a review committee of the Disciplinary Board. The admonition was based on his conduct in 2004 involving failure to communicate with a client.

Mr. Rusnak represented a client who was sentenced in a criminal matter in May 2004. Mr. Rusnak failed to send to the client a copy of the judgment and sentence until January 2005, after a grievance was filed.

Mr. Rusnak’s conduct violated RPC 1.4(a), requiring a lawyer to keep a client reasonably informed about the status of a matter.

Fuchsia C. Dulan represented the Bar Association. Leland G. Ripley represented Mr. Rusnak.

**Non-Disciplinary Notice**

Suspended Pending Outcome of Disciplinary Proceedings

F. Dale Jurdy (WSBA No. 16030, admitted 1986), of Spokane, was suspended pending the outcome of disciplinary proceedings, pursuant to ELC 7.1, effective March 16, 2006, by an order of the Washington State Supreme Court. This is not a disciplinary action. ☢
**TALMADGE LAW GROUP PLLC**

announces the association of

**Thomas M. Fitzpatrick**

as counsel to the firm.

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**EISENHOWER & CARLSON, PLLC**

is pleased to announce that

**Bruce P. Kriegman**

has become a member of the firm in our Seattle office.

Mr Kriegman's practice continues to emphasize creditor-debtor rights, insolvency, commercial law and litigation.

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www.eisenhowerlaw.com

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**REED McCLURE**

is pleased to announce that

**Dan J. Keefe**

has been elected a shareholder in the firm. Dan will continue his representation of health care providers in medical malpractice cases.

We also announce the recent addition of

**Miry Kim** and **Megan Kirk**

and the new hiring of

**Michael Howard** and **Michael Budelsky**

all as associates in the firm.

**REED McCLURE**

Two Union Square, 601 Union Street, Suite 1500
Seattle, WA 98101
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**OGDEN MURPHY WALLACE, P.L.L.C.**

is pleased to announce that

**Donald W. Black**

has been elected Managing Member of the firm.

Seattle Office
2100 Westlake Center Tower
1601 Fifth Avenue
Seattle, WA 98101-1686
206-447-7000

Wenatchee Office
1 Fifth Street, Suite 200
P.O. Box 1606
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As we enter our second century, we are pleased to announce that

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has become a Shareholder of the firm.

We are also proud to welcome

**Tom Larkin**

as an Associate Attorney to the firm.

3100 Two Union Square, 601 Union Street
Seattle, WA  98101
Phone: 206-623-9900 • Fax: 206-624-6885

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Ogden Murphy Wallace, P.L.L.C.

is pleased to announce the following individuals in our Seattle office have been elected as Members

**Jessica B. Jensen • J. Zachary Lell**

and the following attorneys have been added as Associates in the Seattle office

**Raymond J. Dearie Jr. • E. Ross Farr**

**Emily Harris Gant • Lee W. Kuo**

**Wade M. Moller • Bio F. Park**

Seattle Office
2100 Westlake Center Tower
1601 Fifth Avenue
Seattle, WA 98101-1686
206-447-7000

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is pleased to announce that

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whose practice emphasizes domestic relations and landlord-tenant matters has become a shareholder of the firm

and

**Heather Christenson**

whose practice emphasizes healthcare, real property, and commercial transactions has joined the firm, Of Counsel.

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Attorneys at Law
324 West Bay Drive NW, Suite 201
Olympia, WA 98502
Telephone: 360-352-8311 • Facsimile: 360-352-8501

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Please check with providers to verify approved CLE credits. To announce a seminar, please send information to: WSBA Bar News Calendar 2101 Fourth Ave., Ste. 400 Seattle, WA 98121-2330 Fax: 206-727-8319 E-mail: comm@wsba.org Information must be received by the first day of the month for placement in the following month’s calendar.

**Appellate**

**Essentials of Appellate Practice**
May 11 — Seattle. 6.25 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

**Elder Law**

**Medicaid and Medicare Update**
May 18 — Tele-CLE. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

**Nursing Home Litigation (1/2 day)**
— **Elder Law (1/2 day)**
June 14 — Seattle. CLE credits pending. By WSTLA; 206-464-1011.

**Business**

**Business Law Midyear**
June 2 — Seattle. 6.5 CLE credits, including .75 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

**Construction Law**

**Construction Law Midyear**
June 16 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

**DUI Law**

**Selected Topics in DUI Law**
June 22 — Webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

**Election Law**

**Election Law Seminar**
June 21 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

**Employment Law**

**Essentials of Drafting Series: Employment Law and HR**
June 29 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

**Environmental/Land Use**

**Environmental and Land Use Law Section Midyear**
May 4-6 — Ocean Shores. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

**Model Toxics Control Act**
May 24 — Seattle. 7 CLE credits. By Law Seminars International; 800-854-8009 or 206-567-4490.

**Family Law**

**Lawyers’ Toolbox: Family Law**
June 7 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

**Family Law Midyear**
June 23 — Walla Walla. 13.5 CLE credits, including 2.25 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

**Government Law**

**Practical Tips on Claims Against the Government**

**Intellectual Property/Arts**

**Intellectual Property for the Rest of Us**
May 9 — Seattle. 6 CLE credits, including .75 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

**Pacific Northwest Arts Symposium**
May 11 — Vancouver, WA. 7.25 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

**Litigation**

**Advanced Trial Tactics**
May 12 — Seattle. By WDTL; 206-749-0319 or info@wdtl.org.

**Spanish for Lawyers: Tools and Application**
May 25 — Seattle. 6 CLE credits. By
trying a case in skagit county
June 8 — Mount Vernon. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

litigation section midyear
June 16 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Law Practice Management

WSBA Solo and Small Firm Conference Featuring Jay Foonberg
May 4-6 — Chelan. 15.25 CLE credits, including 2 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Miscellaneous

Eastern Washington Judicial Reception
May 5 — Spokane. By WDTL; 206-749-0319 or kristin@wdtl.org.

Pozner & Dodd: Advanced Cross Exam
May 3 — Seattle. By WSTLA; 206-464-1011.

Subrogation
May 18 — Seattle. By WSTLA; 206-464-1011.

Real Property

2006 Real Property, Probate and Trust Section Midyear Meeting and Seminar
June 9-11 — Skamania. 11.5 CLE credits, including 3 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Lawyers’ Toolbox: Residential Real Estate
June 20 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.


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Associate attorney wanted. O’Brien, Barton, Wieck and Joe, PLLP, Issaquah firm, seeks insurance defense attorney. We are a growing, 11-member, general practice firm with strong ties to the Issaquah community. Applicant should have three-plus years’ civil or criminal litigation experience, including motions, depositions, arbitrations, and jury trials. Send résumé to johnlobrien@obrienlawfirm.net, or fax 425-391-7489.

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Experienced civil litigator wanted by AV-rated Seattle law firm focusing on construction-defect claims. Strong academic record and good people skills required. Reply with your CV and salary requirements to Richard Levin via e-mail at RLevin@condodefects.com.

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Established AV-rated firm in Puyallup looking for an associate to do general practice/family law. Two years’ minimum experience. Must have personality plus with some courtroom experience. Fax résumé to Jacobs and Jacobs at 253-845-9060.

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E-mail: walt.berhalter@hawaiimoves.com. Web: www.hawaiimoves.com. Direct: 808-240-2496; fax: 808-742-9293; cell: 808-651-9732.

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Mr. Potato Head’s revenge

by Lindsay Thompson

SBA President Brooke Taylor’s initiative to bring back civics education isn’t just a sensible idea, but one he seems to have floated at just the right time.

In a seemingly sex-obsessed session, the Legislature passed a civics-education bill this year. In addition, under Taylor’s leadership, the WSBA and several of our sections have sponsored a monthly public-affairs TV show, The Docket, on TVW, Washington’s answer to C-SPAN.

The Docket rolled out in January. It’s a half-hour long, and is hosted by UW Law Dean Joe Knight. Knight is a good choice. He comes across as a cool guy, segueing between segments and conducting interesting interviews.

The program includes bits on important recent court cases, drawing on TVW’s excellent Supreme Court coverage. There are practical segments on things like why one needs a will, and what to do about it. There’s an interview with someone interesting in the legal field as well. Early interviewees have tended toward the Usual Suspects in bar and bench leadership. All have done admirably, mind you, but that sort of hierarchical booking suggests a level of cautiousness that shouldn’t be necessary in such a well-produced program.

But the show is a good start on what one hopes will be a long run. It reaches out to the motivated viewers: Washingtonians who care about public affairs. These people lead the opinions of others, and speak up for themselves in legislative and civic matters.

Inventive approaches make topics like civics interesting in a way that the old-school model of “three branches of government, how a law is passed, and what the courts do” struggled with in the old days.

Take Toni Miller’s ninth-grade class at Kirkland Junior High. Three years ago she thought, why not teach her students about how laws get made by getting them to submit one. The kids thought about it and decided to ask the Legislature to make the Walla Walla sweet onion the state vegetable. It’s unique to Washington, after all, they observed.

The project started three years ago and didn’t make much headway till this year’s short session. It passed in the House, 95–1, and moved to the other house, where Senator Bill Finkbeiner championed his young constituents’ idea.

You wouldn’t think this would be hard. We already have a state bird, the willow goldfinch. The steelhead trout is our state fish. Our state flower is the western rhododendron. Washington’s official tree is the western hemlock. The apple, of course, is our state fruit. And, God help us, our state gem is — petrified wood.

Enter the Washington Potato Commission! The next legislative session will be here before you know it.

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*When I first heard about the fuss on the radio, half-awake one morning, I found myself daydreaming about a number of contenders for state vegetable, but in the shower — more clear-headed — it came to me they were all, technically, people. Oh well.
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