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

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

Aaron J. Wolff graduated with honors from the Seattle University School of Law before becoming a DUI prosecutor for the cities of Kirkland and Tukwila. In 2003, Aaron joined the Law Firm of Stephen Hayne where he has limited his practice to defense of DUI’s and other serious traffic offenses. He is a graduate of the National College of DUI Defense, the DRE Drug Evaluation classification overview program and is a NHTSA qualified administrator of the Standardized Field Sobriety Tests. In 2004, Aaron completed the factory training program on the BAC Datamaster breath testing machine.
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To guardian or not to guardian

EDITOR’S NOTE: Following are all the letters received as of April 13 commenting on Margaret Dore’s article “The Time Is Now: Guardians Should Be Licensed Under the Executive Branch, Not the Courts,” which appeared in the March 2007 Bar News. Letters over 250 words have been edited for length.

I am a clinical psychologist and I have evaluated hundreds of involuntary proceedings brought against the elderly (62 and above). Too often the cases are nightmares, and this court-sanctioned abuse continues in every state in America, including Washington State.

Last September, California’s Governor Arnold Schwarzenegger signed the Omnibus Conservatorship and Guardianship Reform Act of 2006 for the purpose of strengthening oversight of professional conservators (called professional guardians in Washington). The most hopeful aspect of this Act is the establishment of a new Professional Fiduciaries Bureau under the executive branch (SB 1550, to take effect July 1, 2008). This step will, hopefully, begin to eliminate numerous problems which currently exist.

Unfortunately, the Act also provides for “increased supervision” by the very judges who appoint conservators. That the day-to-day supervision of professional conservators/guardians has been left to the courts is a disappointment to many experts in the field. Probate judges and their staff members are typically not accountants. They are thus ill-trained and ill-equipped to review complex annual reports. Would we expect a judge who sentences a criminal to prison to also oversee the finances of and care being given that person during his/her years in prison? Hardly. Do our elderly not deserve the layering of protections that shield convicted criminals from harm?

I believe Ms. Dore’s suggestion that guardians in Washington be licensed and regulated under the executive branch rather than the courts is an idea with great merit and worthy of serious evaluation.

Diane G. Armstrong, Santa Barbara, California

I must respectfully disagree with Ms. Dore that The Time Is Now, March 2007. I respect her concern, but question the economics. It is probably true that no matter what we do we cannot ensure that one person will not take advantage of another. No system is perfect and the matters addressed in Ms. Dore’s article are unfortunate and distressing. However, creating another taxpayer supported bureaucracy (an atomic bomb) to address what I think is a minimal, although commendable, problem (an African bee) is not economically justifiable.

Of all the formal guardianships in Washington, much less the alternatives, what percentage are problematic? One in one hundred? One in a thousand? What is the data that supports the creation of such an oversight department which must be legislated, regulated, staffed, and paid. At what cost? And at whose cost?

Is it necessary to create a system that costs a few million to administer to, hopefully, prevent comparative minimal losses. I need more data to support Ms. Dore’s position. Would her proposal only apply to professional guardians? How much would it cost? How would it be financed? Do we surcharge all filing fees? From my experience, quite frankly, although I agree wrongdoers should be dealt with appropriately, we should not assume all guardians are potential wrongdoers.

I applaud Ms. Dore for her dedication to the issues she presents. I’m not sure her solution is truly necessary or economically justifiable.

Craig M. Liebler, Kennewick

I am a self-employed business person whose family came into contact with one of Washington’s Certified Professional Guardians. Please accept this letter from the perspective of the consumer.

The guardianship company in question was appointed personal representative of my uncle’s estate. There were repeated problems for which we called to complain. The company’s response was to blame us. Perhaps most notably, I never saw any reasonable list of values and assets, as might be made by my business clients.

Even the “Final Report” listed assets at $1.00 holding values, as opposed to their actual values. I was also never sure as to the total fees charged. I tried to raise these issues with the court, but was shut down.

The guardian’s attorney, by contrast, was allowed to speak as she wished. It was a horrible, dehumanizing experience. I still don’t know how much the estate was actually worth or whether my mother, who was the
I hope that the situation can be improved so as to prevent other families from having the same or similar experience. Perhaps Ms. Dore’s suggestions are a start.

Doug Holt, Beaverton, Oregon

One need look no further than the consequences of courtroom “monitoring” to see that critical changes are needed. The courts don’t monitor. Probate courts have deferred to their colleagues (court-appointed guardians and their attorneys) and applied the rubberstamp to their requests. This blanket approval has created a subculture of predatory guardians who are exploiting the very people they are required to protect. Guardianships are shaping up to be the organized crime of the 21st century, increasingly referred to as the “Barfia,” by those in the know. A national site, www.stopguardianabuse.org, is replete with horrific tales of guardian abuse.

This has resulted in a profound lack of respect for the “judicial system.” The “rule of law” has morphed into “government by judicial whim or bias.” The author claims that the courts are doing “the best they can” with the huge numbers of cases dumped on them daily. I disagree. You’ll never find surgeons rushing through 20 operations a day. To believe that the rubberstamp is the best our courts can do is to fail to value justice. Monitoring needs to be in the hands of those with the time, the skills, and the desire to do it appropriately. Only then can the guardianship program be what it was intended to be — a protection for our loved ones who are no longer able to protect themselves.

Sharon Denney, Vice President National Association to Stop Guardian Abuse, Seattle

I’d like to comment on the article by Margaret Dore with a clarification of charges stated in the Seattle Times, December 3 article “Your Courts, Their Secrets.” The hearing which determined who was to be my mother’s (Evy Hohner) guardian cost her over $10,000. According to the first annual accounting my mother’s court-appointed guardian charged her $16,000 in attorneys fees which to my understanding is a result of the time he spent answering my various complaints, one of which was the inadequate care she was receiving. A subsequent Guardian ad Litem report substantiated my claim. Along with the charge of attorney fees, my mother’s former guardian alleged that she spent $18,058.18 in “Personal Allowance.” In the final accounting he alleged she spent $8,610 under the heading of “Personal Allowance” which is exactly the amount my mother received from Social Security.

The court apparently did not have the time for a close perusal of the accountings and consequently the former guardian was not cited for allowing my mother to allegedly spend $26,668.18 on nonessentials. When he became my mother’s guardian the amount of spending per year on nonessentials was to have been $1,500.

Is looking for the “outrageous” a purely subjective assessment? Clearly reform is necessary by allowing the over burdened courts more time to peruse accountings and to give guardians more incentive to check the spending of their clients.

Dean Libey

Thank you for the article on the regulation of guardians. I believe that Margaret Dore makes an excellent point that professional guardians should be subject to oversight or an audit requirement to insure that the incapacitated person’s assets are appropriately invested. Regulation by the Depart-
ment of Financial Institutions (DFI) would be efficient and reasonable. The regulators at DFI are conversant with supervising and disciplining entities that manage money for others. In addition, DFI is self-supporting in that its operating revenues are paid by the organizations and individuals it regulates, rather than the State's general tax funds.

From my experience practicing in King County, the Judges and Court Commissioners simply do not have the time to carefully examine the financial details of a particular ward's investments. In addition, very few guardianship estates are large enough to justify an annual independent audit. Ms. Dore's suggestion would allow the benefits of audits to be received by a ward whose assets were managed by professional guardians, while having that cost spread out among all such guardianships.

Again, thank you for bringing this important issue to the attention of the Courts and attorneys of this State.

James W. Minorchio, Seattle

I was pleased to see Margaret Dore's article discussing an issue, which is often ignored: the abuse of wards by their court-appointed guardians (known as conservators in many states). I first became aware of this issue in connection with my own family.

In 2001, I set up my own website as a clearinghouse for guardianship information. Since then I have been contacted by individuals describing abuse against themselves and/or their families. Their oft repeated complaints include: churning; over-billing; over-drugging; and the guardian's demonizing of family members, so that the court will not believe their complaints.

Guardianship was promulgated to GUARD against the person becoming a danger to themselves, and to CONSERVE their assets so that the person would not become a ward of the state. But the way guardianship often works today, is an irony: Instead of preventing financial depletion, the ward's assets are methodically depleted by the guardianship. Often, the wards then become nursing home patients at public expense. The purpose of guardianship is turned on its head. A solution must be found to bring guardianship back to its original meaning to protect — not abuse — the wards and their families. I believe that monitoring should be done by an outside agency.

Margaret Dore's article urging a regulatory paradigm shift for “professional” guardians is endorsed by my family and me. Our keen appreciation for Ms. Dore's call for change began when my mother-in-law was served with a petition for guardianship in 2000.

Our experiences with the guardianship industry are in marked contrast with other industries, including the real estate industry with which I am most familiar. The Department of Licensing (DOL) regulates real estate brokers and conducts periodic unannounced audits. Anyone with a complaint against a licensee can file a complaint with DOL, an arm's length regulator, without costs or legal counsel.

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--J.D. Stahl, co-lead counsel for plaintiffs

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Consequences can include license suspension, revocation and/or criminal charges. This is in contrast to guardian oversight in which the complainant must go to court against the guardian. We have observed that many abuses are not pursued because family members do not have the resources for this undertaking.

The state’s current guardianship structure/practices assure success for the guardians and their attorneys, while abuses suffered by wards and their families (the customers/clients) at hands of “Certified Professional Guardians” (CPG) continue. Industry education for the disarming “CPG” moniker requires only a two-day class. Beauticians, insurance agents, real estate sales people, etc., have exceedingly more difficult licensing requirements yet never achieve the Certified Professional designation.

Thank you Ms. Dore, may your peers support your efforts to improve a broken system typically outside the public’s awareness until it’s too late.

**Larry Ingraham, Lynnwood**

Thank you for publishing Margaret Dore’s article about problems with oversight of guardians. It was a thought provoking article, on a subject which deserves more attention.

**Rosemarie Warren LeMoine, Bellevue**

A court-appointed guardian often has complete control over a person’s finances, medical care, housing, and social activities. One would expect that information regarding the qualifications and complaints against guardians would be readily available. Surprisingly, the experience, credentials, and complaints are often veiled in secrecy. A guardian may have provided poor or even dishonest service to many families but the courts and the new clients have no way of obtaining this information. Short of spending countless hours digging through case files at the court house, families of vulnerable adults have no method to learn about a guardian’s past performance or undisclosed relationships with other industry professionals. My review of court files has shown numerous allegations of misconduct against certain guardians and industry professionals. Even so, the courts have failed to take action against these guardians and continue to appoint them. This state of affairs cries for a regulatory solution. The state government must get involved and force guardians to make all aspects of their dealings with clients known to the court and the clients. All complaints against guardians should be public information.

Margaret Dore’s article proposing guardian licensing and regulating (March 2007) provides potential solutions. A regulatory agency could have the resources and expertise to watch out for the best interests of our state’s most vulnerable. Guardianships are meant to protect our state’s at risk population — let’s work together to make sure that happens.

**Tami M. Thompson, Lynnwood**

Ms. Dore supports her position for professional guardian licensure by citing articles “in the popular press” that allegedly reflect the misdeeds of professional guardians. While these articles are interesting and raise the readers’ ire, they should not be assumed to reflect the practices of the majority of the approximately 250 certified professional guardians available to assist vulnerable adults in the state of Washington. These articles sensationalize isolated incidents with the intention of selling newspapers. The articles appearing in the newspapers do not and cannot offer the in-depth analysis necessary to truly understand the dynamic elements underlying the problems in question. They simply place blame.

While repositioning oversight might make it easier for litigious attorneys to second guess and attack the activities of professional guardians, it does not address the systemic problems within the industry, not the least of which is the paradox inherent in the nature of the venue used to protect vulnerable citizens.

The development of a structure that protects the vulnerable citizens of our state should include input from the legal community, not emanate from it or be completely controlled by it. Otherwise, I am afraid that the legal community’s misplaced efforts to “protect” will only continue to add to the already overabundant litigation in guardianship cases, the systemic exploitation of vulnerable elderly population, and the further alienation of qualified persons who are truly capable of serving the needs of the vulnerable citizens of our State.

**George Marcoe, certified professional guardian**

Perhaps the most controversial aspect of Ms. Dore’s piece is not the need for change, but how that change ought to take place. Ms. Dore is opposed to the judiciary serving as “super” monitor. If I were creating a monitoring system, my initial reaction would not be to turn necessarily to the courts since our courts are fundamentally an adjudicatory institution; not regulatory in nature. Obviously the courts are (and will always be) necessary to “adjudicate” the issue of wrongdoing by a fiduciary, but to also be the body that monitors and investigates fiduciaries? I have my doubts about that. Assume the court investigates and uncovers what it believes to be wrongdoing by a guardian. Now what does the investigator do? Take action to correct the problem? And if he does, to whom does the guardian turn if the guardian wishes to defend herself? How can she turn to the court for a fair adjudication of her actions when it was the court that determined wrongdoing? The “neutral” trier of fact has now become the accuser and the avenger! I well understand that the initial reaction by those wishing to finally see fiduciary oversight is to turn to the courts as the logical choice since they appointed the guardian in the first place. However, such an approach seems more like a knee-jerk reaction to an admittedly troubling issue rather than a thought out approach that makes sense to all involved. I thank Ms. Dore for at least starting the debate.

**Anthony J. Serra, Princeton, New Jersey**

Kudos to Margaret Dore for her article regarding the dark side of guardianships. As a probate practitioner, I have observed instances of financial abuse (over-billing, over-staffing, and incompetence) by certain guardians and their attorneys. The system lacks meaningful oversight. Recourse to the court is often impractical, unproductive or counter-productive. The most vulnerable among us and their families (if they have families) pay the bill.

Ms. Dore hit the nail on the head regarding the problem. I am not, however, sure about the solution. I agree that there should be more discussion. Meanwhile, I can only selfishly hope and pray that no family member of friend of mine ever be the subject of guardianship proceeding under the current system.

**Theresa Schrempp, Bellevue**

**A fine mess**

I am responding to Kevin Curtin’s letter in the April 2007 Bar News. I agree that 20-per-
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A cent is too steep a fine for paying your dues three days late. I paid my dues on time, but I got socked with a surprising late fee anyway. I was one-half credit short of my ethics CLE credits this year. When I tallied it up in December this year, I was surprised to find that I was half an hour short on the mandatory ethics credits. I tried to make up the credit with an online seminar in December, but my computer is apparently too antiquated to be able to handle that. I ended up taking a 6.5 hour class in March that cost $195 (plus lunch and parking), just to get that half-hour ethics credit, and the Bar Association dinged me for $150 for getting the half-hour credit after December 31.

It’s hard enough for sole practitioners just to pay the rent and secretary’s wages every month, let alone keep taking expensive seminars, but when the Bar Association charges outrageous late fees, it makes it that much harder to continue to provide the public service that I do. After almost 20 years of active practice, isn’t there a point where you don’t need to continue to take so many ethics credits to stay active? That $150 just means I’ll take one less pro bono case this month.

Paula McManus, Everett
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From left: William Kirk, Vernon Smith, Douglas Cowan, Eric Gaston

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On Becoming Lawyers

A Dialogue with WSBA President Ellen Dial and Seattle University School of Law Dean Kellye Testy

Ellen Conedera Dial, WSBA President

This month’s President's Corner features a dialogue between Seattle University School of Law Dean Kellye Testy and WSBA President Ellen Dial about the challenges that face lawyers entering the profession.

President Ellen Dial: Dean Testy, can you share some thoughts on the challenges that law students face in entering the legal profession? Perhaps we should start with the task of finding a job!

Dean Kellye Testy: That is certainly students’ focus, especially this time of year as we head toward graduation! I’d be happy to talk about this very important topic. Let me start with Seattle itself and then make a few points more generally. Seattle is a very competitive job market because so many people enjoy living and working in our great city. Thus, an initial challenge is finding a way to stand out from other applicants in this competitive market and gain the entry needed to develop as a lawyer in the student’s area of interest. Students need help getting the practical experience necessary to help them stand out in the market and help them understand the kind of a practice they wish to pursue. They also need help learning networking skills that will enable them to find suitable employment in this competitive market. Because many jobs in this area are found through informal channels rather than through traditional hiring processes, networking skills are vital.

ED: There are so many excellent opportunities for employment outside of the Seattle area. How do students learn about those jobs and make themselves competitive for them?

KT: There are many excellent opportunities outside of Seattle, including in other cities in Washington, throughout the U.S. (and especially in the major legal centers such as Washington, D.C., Los Angeles, New York, Chicago, etc.), and increasingly in major cities in other countries. Like other law schools, we seek to help students locate and appreciate these opportunities in many ways. First, through an active alumni network — we have alums in all of these locations and they are of great help to our graduates who want to pursue employment in the same area. Second, through counseling and assistance from our Center for Professional Development. Third, through externship and internship programs — both domestic and international — that provide the student an outstanding learning experience while also opening future employment doors. These opportunities will naturally take more initiative from the student because most law schools are better known in their own region than in others. One of the key reasons that we, like other leading law schools, work to advance our national and international reputation is in order to assist our students with securing employment outside of our region.

ED: It seems to me that the debt burden for law students is staggering. What are the challenges that face a new lawyer in paying off that debt?

KT: Debt is certainly a burden for many graduates. Sadly, it can often constrain the students’ choices of profession, making public-interest and public-service career choices difficult. We can add to that difficulty the market and other pressures that keep salaries low in public-interest, public-service, and small/solo-firm jobs. There are some programs available to help cushion the debt burden for those students entering public-interest law (such as loan repayment assistance programs (LRAP) that law schools and the WSBA have in place, and scholarship programs, like our Scholars for Justice program and the University of Washington’s Gates’ Scholars programs, that help to reduce the amount of borrowing required to attend law school). Those LRAP and scholarship programs, however, do not yet offer assistance to enough public-interest lawyers, let alone to lawyers in small firms or solo practice who also have low starting salaries.

Beyond the market-specific pressures, students also face the challenge of transitioning from just thinking about the law to actually practicing law. One part of that challenge is trying to determine what kind of career to pursue, and thus students need experienced attorneys as advisors who are willing to take an active interest in young lawyers’ and students’ professional development.

ED: Given the market pressures you note, is it still “worth it” to go to law school?

KT: Yes, absolutely, for a number of reasons. As I like to say, a law degree positions you to do both good and well. First, the finances. One...
of my faculty colleagues, a corporate law professor, has developed an earnings projection model that clearly shows that an investment in law school is a very good investment in future earnings capacity, even considering the debt obligations often required in order to obtain a legal education. Further, for a three-year investment of time, a legal education gives a student one of the broadest and most usable degrees available. There are so many careers that are furthered by having a law degree. Though many of our students go into the traditional practice of law following graduation, a large number use their legal training to pursue careers in business, industry, non-profits, education, and the public sector.

Legal education trains you to be a very good problem solver, and that is a skill that is worth its weight in gold in every arena. And finally, with a law degree you have, as former WSBA President Brooke Taylor often noted, "a license to help people." I strongly believe in the rule of law as a pathway to a just world, and that it is an honor and privilege to be a part of the legal profession.

ED: Are there steps that law schools can take to bridge the gap between law school and law practice, or do you look solely to the profession for this assistance?

KT: Moving from student to lawyer is no easy task, and it needs to be the concern of both the legal academy and the Bar — we need to be partners in this task. Law schools aim to ease that transition in two key ways. We, for instance, have a robust skills-training program as part of our program of legal education. We seek to bridge the gap between law school and law practice by making sure that our students understand not just the theoretical and doctrinal dimensions of law — important as they are — but also have the skills necessary to put that knowledge to work. Our law clinic and other practice-based courses seek to hone the skills of writing, drafting, counseling, mediating, and interviewing, in addition to the more classical trial and appellate skills. Second, almost all law schools have a career services office as a resource for students. Ours is called the Center for Professional Development, and it provides traditional career services counseling as well as training in other professional development skills such as networking, ethics, and leadership. The Center works closely with our Access to Justice Institute to encourage our students to make a commitment to pro bono and other public-service work as part of their professional development, and with our Continuing Legal Education program to encourage students to also make a commitment to lifelong learning.

ED: What can the practicing bar do to assist law students in making a successful professional development journey?

KT: Let me start by noting that there are two pieces to this issue. The first is access and the second is attainment. In other words, students need help in entering the profession and then, as new lawyers, they also need help in attaining success once there. Bar organizations, such as the Young Lawyers Division of the WSBA, are an important part of the latter, as are more experienced lawyers who are willing to serve as mentors to new attorneys, whether in the same firm/organization or otherwise.

To help with both the access and the attainment issue, students need access to lawyers and practical experience. For example, in addition to the benefits of part-time work or externships, students need projects (even short-term, discrete projects) that they can tackle to get practical experience. Our Center for Professional Development is eager to serve as a central clearing house for lawyers who can use this kind of help from students, and it would be vital to our students' develop-
TEAMING WITH TALENT...

PETERTON YOUNG PUTRA IS PLEASED TO ANNOUNCE THE ARRIVAL OF TWO NEW PARTNERS.

Felix Luna, formerly of Heller Ehrman

Anthony Todaro, formerly of DLA Piper

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First, students need to see lawyers in their “natural habitats,” so to speak. They need your time, which we, of course, understand is a precious commodity. This can be done through informational interviews for students and by participating actively in various career development programs that the law schools organize to connect our students to the bench and bar. Because students are often drawn to particular subject areas in law, it would be helpful to have the various WSBA sections more connected to the law schools. For instance, we did a “speed networking” session with the WSBA’s Litigation Section that was hugely successful. Finally, the more we can get small firms to participate in our career programs, the better. Students need to know that there are fulfilling careers outside of big-firm life, and that many jobs are available outside of the traditional on-campus interview process that takes place each fall.

ED: Networks and mentors are important to lawyers throughout their careers, in my experience. You are telling us, though, that they are especially important for lawyers who are just entering their practices. Do women and/or racial minorities face any unique challenges, either in access to the legal profession or in attainment of success within it?

KT: Mentors are always important, but especially for new lawyers, and yes, I do think that women and/or racial minorities have some unique mentoring needs. Let me talk both about women and also about lawyers of color separately, but in doing so acknowledge that some people obviously fit into both of these categories and will experience what is known as “compound bias.” For instance, a black woman experiences compound bias; a gay Asian man would also, though of course not in identical ways. Today, most law schools have student bodies that are roughly equal in terms of gender. Thus, I don’t believe that access to the legal profession for women is the difficult issue that it has been historically. That said, it is notable that men continue to significantly outnumber women in the partnership ranks of law firms as well as in most leadership positions in society. Though complex, I think that one reason for this state of affairs relates to the fact that women in our society still bear a disproportionate responsibility for childcare, elder care, and other responsibilities of home and family. That makes it difficult to succeed in a legal culture that often values billable hours and full-time commitment more than other measures of quality and success. Thus, firms can make a difference in the success of women by doing something that is good for all of us: giving more attention to work-life balance.

As for lawyers of color, this is even more complex, because in my judgment more significant barriers to entry and success still exist as part of the structural racism that is embedded in our culture, including our legal culture. How to make a real difference in racially diversifying the legal profession is a very urgent topic. We seek to make progress on this front by admitting, and supporting academically, a very diverse class of law students who graduate from our rigorous program with outstanding skills. Nonetheless, when the topic of the lack of diversity in firms comes up, we often hear from firms that they try to hire lawyers of color but that the pool is just not available. That does not make sense to me when I know many of our outstanding graduates of color are eager for those jobs. Moreover, though we have had a great deal of success recruiting a diverse student body, that is not true for much of legal education. There are far too few students of color admitted to law schools today, even though there are more seats available and the qualifications of those students are on the rise. This is a topic that needs far more attention than I can give it here — perhaps a future column, President Dial? Also, don’t you have some initiatives in place to work on this issue during your presidency?

ED: Increasing the diversity of the profession, and enhancing recruitment, retention, and advancement of diverse lawyers, is a high priority for the WSBA and for me. In a future issue of Bar News, I will write about the pipeline grant program that the Board of Governors has approved as a complement to the WSBA Leadership Institute and other programs aimed at this important goal.

I have one final question for you, Dean Testy. I remember that my first two years of practice were especially challenging, since every time the telephone rang there was a question I couldn’t answer, and every day it seemed I needed to learn a new lawyering skill. I was very glad to have the help of more experienced lawyers! If every practicing lawyer in this state were to do one thing to help a new lawyer entering practice, what would that be?

KT: What a great question. If every practicing lawyer would do the following, it would make an enormous difference: Pick up the phone and call a new lawyer. Let him or her know three things. First, that you are there for them as a resource. Second, that you, too, were very challenged, even fearful, when you first entered practice and that it is OK to feel that way — that they will be successful. And third, that being a part of the legal profession is a noble calling and that you are pleased they have joined you as a colleague in the important work that lawyers do in the service of justice.

ED: Thank you, Dean Testy, for this conversation. It has been enlightening for me and I know it will be for our readers as well. I hope that we can continue it in the future.

Ellen Conedera Dial can be reached at 206-359-8438 or ecdial@gmail.com. If you would like to write a letter to the editor on this topic, please see the instructions on page 7.

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With great pleasure, I write this column as the eighth executive director to serve the Bar Association in Washington state. When the Bar Association first formed some 120 years ago, it was a voluntary organization with just 35 members — a far cry from the more than 30,000 attorneys we have today in a complex and dynamic mandatory bar!

My own involvement with the WSBA (aside from being a member) commenced when I was an assistant dean at the University of Washington School of Law. I felt strongly that members of the law school community should be involved in the work of the Bar, so I applied to serve on the Editorial Advisory Board for Bar News and on the Legislative Committee. I sat on both committees for three years and found the work both engaging and invaluable to my position at the law school. I also became engaged in the work of the King County Bar Association and the access to justice community through the Access to Justice Board and its various committees.

Yet as involved as I was in the work of WSBA and other entities in the legal community, I was quite surprised when I received a copy of the WSBA’s organizational chart as an applicant for the deputy director position four years ago. My first reaction in reviewing it was, “Who are all these people??!” I think for most of us, our interaction with the Bar centers around the yearly licensing process, the reporting of CLE credits every three years, and perhaps joining one of the sections or serving as a volunteer on a standing committee or special task force. I know I had never thought much beyond these facets of my Bar Association — and I was “involved.”

Having worked in the Bar now for the last several years, I have a much better idea of who “all these people” are — indeed, now they are my valued colleagues — and I have much more of an appreciation for all the many things a mandatory bar must handle in order to serve simultaneously as the regulator of the profession and the voice of the profession. As a self-regulated profession — importantly, the only profession in the state allowed to regulate itself — we must advance the needs of the profession while ensuring it is not done at the expense of the very constituency we represent as our clients and protect as our community. Maintaining this balance and proving every day that we are not simply “the fox guarding the henhouse” takes a dedicated board, a committed staff, and an involved membership. WSBA has all three.

Given the competing demands and wide array of activities in such a complex and diverse organization, many asked me throughout the search process why I wanted to become the Bar’s next executive director. There are two clear reasons for me: one, the opportunity to collaborate with and lead the 140 highly motivated and intellectually engaged members of the WSBA staff; and two, my belief that the WSBA should be forefront in the community by shaping dialogue on the importance of diversity, access to justice, and a fair and impartial judiciary.

These issues, embodied in the WSBA’s strategic goals set by the Board of Governors, constitute the underpinnings of our justice system. However, we have much work to do in these arenas: Despite efforts to diversify our profession, our membership still does not reflect the composition of the community we seek to serve; the Washington State Supreme Court’s 2003 Civil Legal Needs Study concluded that low-income people face more than 85 percent of their legal problems without help from an attorney; and the attack on the judiciary has reached unprecedented levels.

As the chief organization for the 30,000 lawyers in this state, we need to be leading on these issues and creating forums where our membership and the community can convene to elicit and engage the various viewpoints. As a mandatory bar association, the types of issues upon which the WSBA may take advocacy positions is limited. But given the breadth and depth of knowledge of those in our ranks, we certainly can, and must, raise the issues that our membership and society need to be addressing to maintain the health of our democracy.

Importantly, in order to make an impact in these areas, I believe the WSBA must be clear in its focus and must communicate that focus consistently to the varied stakeholders. Organizations as complex and large as the WSBA can easily fall prey to the folly of trying to be all things to all people, a scenario that quickly dissipates resources and leads to ineffectiveness. Working as partners, the staff and Board can ensure the organization carries out these goals in a strategic and relevant manner. Relevancy alone, however, cannot be the goal. Relevancy is born of a focused organization working to accomplish meaningful results for both its membership and the broader community.

Guiding and informing the goals of our organization takes more than a dedicated Board and a committed staff. WSBA’s governance must be infused by the engagement of the membership. While hundreds of volunteers currently dedicate countless hours to the WSBA, to many, the WSBA remains a faceless bureaucracy. Thus, it is imperative
that access points for getting involved are clear. For example, if diversity is a member’s passion, the work of the Committee for Diversity should be visible to all, thereby creating an environment where involvement is open to any. Likewise, with access to justice, the multitude of programs and committees under the WSBA umbrella and Access to Justice Board should be highlighted, so involvement by those who are interested is easy. The preceding examples are just a few of the avenues available for participation; the sections, along with a multitude of other boards, committees, and task forces offer many more opportunities.

I am proud to be a member of the Washington State Bar Association and even more honored to serve as its executive director. I look forward to working together to lead our Association into the next chapter of its story, and I hope you will find avenues for exploring your own passions and becoming more engaged with your Association along the way.

Paula Littlewood is the WSBA executive director and can be reached at paulal@wsba.org.
ome time back, I discussed two cases that turned on the distinction between “which” and “that.” That distinction is all too often ignored, usually with no worse result than the roughening of prose that could have been smoother, but occasionally with more dramatic impact. In the cases I cited in that earlier column, the courts’ analysis of the use of “which” in a corporation’s bylaws and in a criminal sentencing statute led, respectively, to a board member’s failure to retain his position and a felon’s spending a longer time in prison — a sobering reminder that, in our profession, word choices and grammatical usage can have serious consequences.

Attorneys, judges, and legal commentators have begun paying greater attention to this fact, resulting in some interesting linguistic dust storms that have blown up in the last few months. One of these involved our own Ninth Circuit’s decision to “fix” an obvious error. The issue was whether an appeal of a remand order under the 2005 Class Action Fairness Act had been timely filed. The plain language of the Act provides that a federal appellate court may accept an appeal from a remand order “if application is made to the court of appeals not less than seven days after entry of the order."

Now if you breezed through that sentence the way Congress, counsel, and lower-court judges apparently did, you probably assumed it meant that a party has seven days in which to file an appeal from a remand order. However, it actually says the opposite: The appeal is timely only if it is filed “not less than seven days” after the order was issued. Thus, the judges observed, “the statute as written creates a waiting period of seven days before which an appeal is too early, with no upper limit to when an appeal ultimately may be filed."

It is indeed unusual for a law to require seven days’ delay in the filing of an appeal, followed by an open-ended period in which the appeal may be filed at any time, presumably up to and including Doomsday. The 9th Circuit, therefore, decided to correct the obvious error, and interpreted it to mean the opposite of what it says, namely “not more than seven days” rather than “not less than seven days.” Never was the adage “less is more” taken so literally.

To date, not only the 9th but also the 3rd, 10th, and 11th Circuits have held that the statute means the opposite of what it says. The 3rd Circuit opinion by Judge D. Brooks Smith states, “This court does not need to step into a statutory interpretation debate over the role of legislative history and congressional intent to conclude that [the statute] needs common sense revision that accurately reflects the uncontested intent of Congress.” But while the result may be just (particularly in light of the fact that the appeal in question was ultimately found to have been timely filed in any case), the courts’ approach raises serious questions.

The 9th Circuit justified its decision to read “not more” for “not less” by stating that the word “less” was an obvious "typographical error." That does not, in fact, seem likely. Even the worst typist or typesetter would hardly key in l-e-s-s when what he meant was m-o-r-e. More likely, the drafters were thinking “not later than” and wrote “not less than” — after all, both words start with “l” and both connote measurement. The error would more properly have been described as a drafting error than a typo; but the 9th Circuit was evidently unwill-
ing to suggest that Congress can make a stupid mistake just as easily as the rest of us can, and so soft-pedaled the issue by calling it a typo.

But Judge Jay Bybee dissented, raising the issue that is really at the heart of this matter. Judge Bybee observed that the judges’ job was to interpret the law as written, not to substitute its own judgment for that of Congress, no matter how obvious the error. "The only thing we have to enforce our judgments is the power of our words," Bybee wrote. "When those words lose their ordinary meaning — when they become so elastic that they may mean the opposite of what they appear to mean — we cede our right to be taken seriously."

Judge Bybee raises a troubling point. If a court can interpret a law to mean the opposite of what it says in a case where the intended meaning is admittedly obvious, then presumably courts and judges could do so in situations where the error is perhaps not so obvious — and, ultimately, where it is perhaps not an error at all.

So what should the 3rd, 9th, 10th, and 11th Circuits have done when this issue came before them? Not being a litigator myself, I don’t recall civil procedure nor applicable separation-of-powers principles well enough to say. But it seems to me that neither the justice system nor the legislative order of things would have crumbled if one or more of these courts had referred the error to Congress for immediate correction, and suspended the case while emergency action was taken. That would have better preserved the balance of powers and the integrity of the bench.

**Stating the Possessive of the State**

Commentators have also recently buzzed about the possessive "s," in two very public contexts. The state of Arkansas is currently working its way to a formal decision on how to write the possessive form of the state’s name: "Arkansas’s" or "Arkansas’.

This question has been well settled since as early as 1959, when the First Edition of Strunk and White’s *Elements of Style* was published. In Section I, "Elementary Rules of Usage," the very first rule is: "Form the possessive singular of nouns by adding ‘s.’" Under this rule, regardless of the fact that the "s" at the end of the word "Arkansas" is silent, the possessive form is correctly rendered "Arkansas’s." If that leads someone, somewhere to try to pronounce the words as "Arkansases," so be it.

Actually, the silent "s" at the end of "Arkansas" should make this one an easy call. Somewhat tougher is the case of Kansas, whose final "s" is not silent. Under Strunk and White’s Rule #1, the possessive form of "Kansas" should be "Kansas’s." But in last year’s U.S. Supreme Court decision in *Kansas v. Marsh*, the authors of the majority and minority opinions were in sharp disagreement. Justice Clarence Thomas consistently wrote "Kansas’ law" and "Kansas’ statute," while dissenting Justice Antonin Scalia emphatically wrote "Kansas's" throughout his opinion. Connecticut attorney Jonathan M. Starble noticed this, and wrote an illuminating article in *Legal Times*. One of Mr. Starble’s observations was that Justice Thomas himself has a surname that ends in "s," and this may make the issue more personal to him than to Justice Scalia. In any event, Messrs. Strunk, White, Scalia, and Thomas himself has a surname that ends in "s," and this may make the issue more personal to him than to Justice Scalia. In any event, Messrs. Strunk, White, Scalia, and

A missing tilde was the subject of an unsuccessful motion to dismiss a DUI charge on the grounds that the Spanish-speaking defendant’s rights had not been properly read to him.

Starble are unanimous in adhering to Rule #1, whose use, in this case, makes the written form of the possessive reflect the way the word is actually pronounced: We say "Kansases law," not "Kansas law" (though a careful speaker or writer might prefer to avoid the issue by using the phrase "the law of Kansas"). Ironically, in publishing Mr. Starble’s article, the *Legal Times* owned up to its own use of a style guide that advises precisely the opposite.

**The Adventure Continues**

Last summer, an incorrectly placed comma cost Canadian communications giant Rogers Communications Inc. at risk of damages in the low millions. The term and termination clause of a contract that was under dispute provided that the agreement would "continue in force for a period of five years from the date it is made, and thereafter for successive five year terms, unless and until terminated by one year prior notice in writing by either party." The second comma in that phrase, the one following the word "terms," has the effect of enclosing the phrase "and thereafter for successive five year terms” in a grammatical bracket, causing the final phrase (the “unless and until ...” phrase) to refer to both the first clause (“continue in force for five years”) and the second (“and thereafter for successive five year terms”). As a result, the entire provision meant that either party could terminate with one year’s written notice at any time. Had the second comma been left out, the provision would mean instead that the agreement could not terminate until after the first five-year period had expired. The potential consequences were as devastating as those in the previously-noted “which-that” cases.

**And Now This...**

A missing tilde was the subject of an unsuccessful motion to dismiss a DUI charge on the grounds that the Spanish-speaking defendant’s rights had not been properly read to him. In discovery, the defendant’s attorney obtained a copy of the card to which the police in that (unnamed) jurisdiction referred when reading Spanish-speaking arrestees their rights. One of the standard questions was “Are you 21 or older?” which in Spanish is "¿Tiene veintiuno años?"—literally, “Do you have 21 years?” Problem was, the question was printed on the card as "¿Tiene veintiuno años?", and if the arresting officer pronounced the words as spelled on the card, saying "ahnos" rather than "anos," he was asking the arrestee not if he had 21 years but if he had 21 of a body part that everyone else has only one of. Of course, the motion might have succeeded had the defendant scratched his head in bewilderment at the question; instead he replied’”¡Sí!” which the court took as evidence that he had understood the question perfectly well. Nevertheless, the motion was not a frivolous one, since the presence or absence of a diacritical mark changes not only the look but the pronunciation and the meaning of a non-English word.

**In Other News...**

Some time ago I argued in these pages that the phrase “including without limitation” is redundant, because “including” is by definition a word that introduces a series of examples, not an exhaustive catalogue. If I say “the attendees at the event included David, Jane, and Mike,” I don’t have to say “without limitation” to clarify that there were more than three people at the event; the word “including” tells my reader that I
am listing some, not all, of the attendees.

I got back a lot of argument on that point, and have had to concede that, while the plain meaning of the word "include" should eliminate any need to say "without limitation," I suppose it doesn't hurt to add a couple of extra words in this case. That reluctant conclusion came as a result of a reader's educating me on ejusdem generis, a principle of interpretation according to which, if a particular item alleged to be covered by an "including" provision is not actually listed and is not highly similar to those that are listed, it risks being considered to have been excluded.

Suppose a contract says, "Neither party will be liable for failure to perform if performance is made impracticable due to circumstances beyond the parties' reasonable control, including flood, fire, famine, accident, sabotage, or war." The word "including" introduces a string of six examples of circumstances beyond the parties' control, but the phrase does not purport to list all possible such circumstances. If a party later claims that it should not be liable for non-performance due to earthquake, chances are the party will be excused, because an earthquake is enough like a flood, fire, famine, or war to be reasonably held to have been included. If, on the other hand, a party claims its non-performance should be excused because the buses were running late that day, the principle of ejusdem generis is likely to cause a court to hold that such a circumstance was not reasonably intended to be included.

Calamari and Perillo's The Law of Contracts states that "There is some authority that the rule of ejusdem generis may be avoided by using the phrase 'including but not limited to' rather than simply 'including.'" Even so, I don't think adding "without limitation" automatically lets everything else in, any more than using the word "including" alone should automatically leave everything else out. Nevertheless, good contract drafting, in addition to being readable and clear, needs to be as safe as possible for the parties. So to those who were troubled by my attack on "without limitation," I repent — but I still dissent.

Robert C. Cambow is a shareholder at the Seattle firm of Graham & Dunn PC. He gratefully acknowledges the contributions of Aaron Caplan of the ACLU and Dave King of Stokes Lawrence, without which this column would have been much shorter.
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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 Lawyers' Fund for Client Protection (LFCP).

General Fund
The general fund consists of our regulatory functions and most services to members and the public. It is funded by member license fees and revenues from services. For FY 2006, the general fund had revenues in excess of expenses of $903,466. As of September 30, 2006, the general fund balance was $4,823,814, of which $1,200,000 is designated as an operating reserve, $750,000 is designated as a facilities reserve, $500,000 is designated as a capital reserve, $250,000 is designated as a board program reserve, and $1,052,599 is designated as a move reserve for the WSBA's move to Puget Sound Plaza in December 2006. The remaining $1,071,215 is unrestricted.

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 $54,644. Actual results were $369,215, bringing CLE's fund balance as of September 30, 2006, to $1,954,241.

Sections Fund
The WSBA's 26 sections are a voluntary activity for WSBA members and are supported through section dues and fees for section products and services. 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 $151,818 expenses over revenues (in order to use past accumulated reserves to
### Statements of Activities

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<td><strong>Total</strong></td>
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</tr>
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Benefit their members). Actual results for the sections were that revenues exceeded expenses by $98,688. The sections fund balance at September 30, 2006, was $878,817.

**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 $133,637. Actual results were expenses over revenues of $25,514. The LFCP’s fund balance as of September 30, 2006, was $796,155.

**WSBA’s Move to Puget Sound Plaza in December 2006**
The WSBA has a 10-year lease agreement with UNICO Properties, Inc. for approximately 52,000 square feet of space in the Puget Sound Plaza building. The WSBA is currently paying below-market rates for approximately 80 percent of the space, as it was able to lock in rates in 2004 when rent rates were at a low point in the market. The WSBA moved to its new location on December 11, 2006.
The WSBA Leadership Institute: A Continuing Legacy

BY RONALD J. KNOX AND JOSLYN K.N. DONLIN

The essence of the WSBA Leadership Institute lies in the dedication of 12 outstanding young attorneys committing time and effort to learn from senior attorneys and other professionals those leadership skills that will enable them to become better lawyers, advocates, and leaders of the Bar. With the assistance of an extraordinary faculty composed of some of the best attorneys, judges, and legal educators in the state, the Institute has moved the Bar forward by creating a strong legacy of leadership that will form the foundation of the Bar’s continued success. The Leadership Institute’s focus is on inclusiveness and diversity hoping to grow and remain a relevant organization for its members and the various constituencies and communities it serves, it needed to recruit and train “many lawyers, particularly lawyers of color, women, and those from traditionally under-represented groups, for leadership positions and to [have them] be made aware of opportunities for skill development, professional growth, and leadership training that are available through the WSBA.” In conjunction with this belief and the Bar’s strategic goal to “promote diversity, equality, and cultural competence in the courts, legal profession, and the bar,” the WSBA Leadership Institute was created and the inaugural class was begun in February 2005.

Core Curriculum, Program Benefits, and Commitments

The Leadership Institute’s mission is to develop and enhance the leadership skills of attorneys from diverse backgrounds in an experiential, individualized, collaborative, and mentorship learning environment. The Institute’s focus is on lawyers of color, women, and traditionally underrepresented lawyers who have been practicing between three and 10 years. The goal is to prepare these lawyers for leadership positions in the WSBA, other legal organizations, and their communities. Funding for the Leadership Institute comes from the WSBA, grants, and in-kind contributions received from lawyers and law firms throughout the state.

One of the objectives of the Leadership Institute is to institutionalize this experiential and collaborative instruction model of leadership training. The program emphasizes professional training, the development of skills and techniques, curriculum modules, and learning strategies not typically found in law-school classrooms. The Leadership Institute participants, called “fellows,” benefit from the latest trends in professional leadership development; exposure to the legislative and judicial systems; interaction with high-level state and local officials and judges; and opportunities to meet high-profile practicing attorneys from the private and public sectors. There are also opportunities to interact with other newly admitted and diverse attorneys from all over the state. For example, through a grant from the LexisNexis Martindale Hubble, attorneys from Yakima, Bellingham, Spokane, and the Okanogan will be able to interact and learn from each other, as we expand the reach, influence, and benefits of the Bar. We strengthen it and the lawyers that are its core.

The benefits received by the fellows selected for the program come with a two-year commitment to use the skills that they have learned to advance the programs of the state or their local bar associations. Their active involvement in the Bar after graduation from the program is critical to the program’s success and is a fundamental element of the initial concept for the program.

Recruitment, Selection, and Faculty

The Leadership Institute recognizes that
many lawyers — particularly those from diverse backgrounds and other underrepresented groups — have not been traditionally recruited for leadership positions or made aware of opportunities for leadership training and professional development available through the WSBA. To be considered for the program, applicants must: 1) complete an application, with cover letter, résumé, and three references; 2) be an active WSBA member; 3) have practiced law in a U.S. jurisdiction for three to 10 years; 4) be nominated by his/her employer, or if self-employed, by another individual; and 5) provide evidence of interest in community and WSBA activities. Applications for the 2008 WSBA Leadership Institute will be available June 1, 2007, and will be due in September 2007.

Applications received are reviewed by the WSBA Leadership Institute Advisory Board for merit and potential to be successful in the program. The Advisory Board is extremely fortunate to have in its membership WSBA President Ellen Conedera Dial (ex-officio), and an extraordinary array of lawyers, judges, and legal educators reflecting virtually every size and type of practice in the state. The following board members serve a term of one to three years with the Institute:

Marcine Anderson — King County Office of the Prosecuting Attorney; WSBA Board of Governors
Hon. Monica Benton — U.S. Federal Court
Noah C. Davis — In Pacta PLLC; past president, WSBA Young Lawyers Division
Ellen Conedera Dial — Perkins Coie LLP; WSBA president
Lisa Dickinson — Murphy, Bantz & Bury, PS.
Anthony Gipe — Scheer & Zehnder, LLP
Hon. Zulema Hinojos-Fall — U.S. Equal Employment Opportunity Commission
Hon. Richard A. Jones — King County Superior Court
Kenneth H. Kato — Court of Appeals/Division III, Retired
Ronald J. Knox — Garvey Schubert Barer
Elizabeth Li — past president, Whatcom County Bar Association
Hon. Ricardo S. Martinez — United States District Court
Marie Jean E. Moschetto — Moschetto & Koplin, Inc., PS.; past president, Eastside Legal Assistance Program
Hon. Susan J. Owens — Washington State Supreme Court
David W. Savage — Irwin Myklebust Savage & Brown, PS.; past president, WSBA
Ronald Ward — Jones & Ward, PLLC; past president, WSBA
James Williams — Perkins Coie LLP; ABA House of Delegates
Hon. Mary Yu — King County Superior Court

Finally, over the last three years the Leadership Institute has been fortunate to secure attorneys and educators of the highest quality to teach each incoming class the fundamentals and intricacies of leadership. The list of faculty is truly a “who’s who” in the Bar, including Supreme Court Justice Mary Fairhurst, defense attorney Jeffery Robinson, law firm managing partner Sheryl Willert, and U.S. District Court Judge Ricardo Martinez. These faculty and many others give of their time and experiences in order to make the Institute a success. They are passing the baton to the participants of the program to ensure a strong and vibrant future for the legal profession in this state.

Bar members should all be very proud of the Leadership Institute and its mission to grow and develop our leaders of tomorrow — its legacy a stronger Washington State Bar. As a result of two national awards, the 2005 ABA Partnership Award and the 2006 LexisNexis Martindale Hubbell Fellowship Award, the WSBA Leadership Institute has been the model for establishing new leadership institutes in Arizona and New York. Additionally, other states, such as Oregon and Texas, have begun the process of study and development leading to the adoption of similar institutes.

You are encouraged to reach out to diverse and underrepresented attorneys in your firms and organizations and to encourage them to apply for a position in the 2008 WSBA Leadership Institute class. We ask you all to take a hand in forging our future as a strong and inclusive Bar Association.
By Lindsay Thompson

Bellevue, March 2-3, 2007

The Board of Governors moved a lot of work across the big table in eight hours of meetings over two days. First up: the consent calendar, where items not expected to generate any controversy get placed for unanimous consent. If governors want to discuss an item, they can pull it off.

This time the consent calendar made easy sailing. The items cleared included amendments to the bylaws of the Real Property, Probate & Trust Section; revisions to the pro hac vice admission form for out-of-state lawyers; an appointment to the Character and Fitness Board; an appointment to the Civil Rights Committee; and the removal of a member of the Court Rules and Procedures Committee.

Two relatively new items on the program, the Governors’ and Liaisons’ Forums, featured announcements about things that had happened or were about to happen that someone thought every-one should know about.

Gail Stone, WSBA’s eyes and ears in Olympia when the Legislature is in session, updated the BOG on the status of bills they’d voted to support. As of mid-session, all were faring well. Once the session has ended, Bar News will carry a more comprehensive account of legislative action. The trouble with trying to do it on the fly is by the time we get the information out, it has usually changed.

Governor Eron Berg is also WSBA’s treasurer this year. He told the Board WSBA’s auditors had managed to complete their review of the books in less than 60 days, which is something remarkable, and that they had given the Association an unqualified approval, which was expected but can never be counted upon. He urged a collective doffing of hats to WSBA staff and administration for running a tight ship, which everyone agreed was a fine and well-deserved accolade.

Berg then moved on to approval of a charter for the Board’s Budget and Audit Committee and approval of WSBA’s Financial Responsibility Matrix, a means of tracking things WSBA has to keep up with, and making sure the overall financial picture stays within budget and on target. There was some discussion of whether the BOG retains enough authority over spending decisions, and in what circumstances it ought to be able to overrule day-to-day budgetary decisions of the executive director. Governor Anthony Butler raised concerns about the flow of BOG authority to WSBA administration.

It’s a worthy concern. There are those who believe — I among them — that WSBA is evolving into a more cabinet-style governance structure, what with a president, president-elect, immediate past president, and executive director meeting on lots of things, and a proliferation of WSBA department heads at BOG meetings. The Board becomes more a consultative body, approving lots of things determined elsewhere, and focused on working its way through a thick agenda book the administration prepares for each meeting.

Mind, one has to be practical: WSBA is a big operation and there’s lots the BOG can’t effectively handle any more. In the late 1980s, for example, the Board was going over the budget line item by line item, and approving all committee
nominations collectively. It took forever. So things have to be delegated. The important thing is to be mindful of the prerogatives of the institution of the BOG and take the time, now and again, to make sure what’s delegated is what should be, and that things aren’t just drifting into a tractor beam and being pulled in at the other end of the table.

**Paula Boggs ... gave the Board a report on the work of Washington’s delegation to the American Bar Association House of Delegates. It’s one of the most diverse in the United States ... and remarkably active.**

But I digress. Nothing induces MEGO in governors faster than when I get going on governance matters. So let’s move on.

Paula Boggs, whose exceptional career, 24/7/365 brilliance, and excellent sense of humor — among an encyclopedic collection of other excellences — make me brag of being a slight acquaintance, gave the Board a report on the work of Washington’s delegation to the American Bar Association House of Delegates. It’s one of the most diverse in the United States, she said, and remarkably active. Boggs echoed President Dial’s pleasure at the then-pending visit of ABA President Karen Mathis to Washington. She also reported the election of another altogether excellent WSBA member, Kathleen Hopkins, as the delegate of the ABA 18th District. For reasons I cannot explain, Hopkins will represent not only Washington, but our sister states of Maryland and Indiana.

Former WSBA Governor Mark Johnston and WSBA Tax Section rep Bob Mahon told the Board about a nasty bit of Unintended Consequence arising from the Supreme Court’s adoption of a model ABA rule of professional conduct rather than the version WSBA recommended when it sent a comprehensive updating of the RPCs to the Court over a year ago. RPC 1.8(e)(1), which made lawyers liable for costs advanced in contingent-fee cases if they got reimbursed, is being interpreted by the Department of Revenue to make receipt of such reimbursements income for B&O tax purposes.

Some legislative history was laid down — President Dial chaired the RPC revisions — and everyone agreed this wasn’t at all what was intended. Governor Butler and criminal defense bar rep Tom Campbell expressed particular concern about the effect such an interpretation would have on Washington sole practitioners. So the Board voted to ask the Court to act expeditiously and restore the rule to its pre-revision form.

A stream of other excellent WSBA members, all involved in committees and subcommittees of the Committee on Public Defense, reported on progress they are making in working to rationalize and coordinate the provision of legal defense operations in Washington. Particular interest was generated by the subcommittee on the death penalty, which presented a report and asked for BOG endorsement.

Whether we should shoot up, gun
down, gas, fry, or fricassee felons and serve them up on toast points, as Evelyn Waugh once wrote of a cannibal tribe in one of his novels, is, of course, a contentious matter. In 2001, for example, the BOG considered whether to urge the governor of Washington to appoint a study committee to consider the efficacy of the death penalty in light of a growing body of DNA evidence indicating a substantial chance that death penalty defendants could be wrongly convicted, and urging a moratorium while such a study pended.

And since then, the plea deal of Gary Ridgway, in which he confessed to killing 47 people and got life, has ignited an ongoing debate about standards for deciding who gets death and who doesn’t. There has also been press coverage of how one death case can nearly bankrupt any number of Washington’s smaller-population rural counties.

The BOG discussion revolved around whether to adopt some, all, or none of the report’s recommendations. When the BOG gets this sort of tough issue, it usually prefers to take its time and think about it some more. There was a motion to carry the matter over a month; the BOG split 7-7. President Dial broke the tie by voting to carry the matter over, observing she had a sense the extra time might lead to a unanimous action, one way or another, by the Board.

Reconvening on Saturday, the Board heard from former Governor Lish Whitson and President Dial on the BOG’s task force on local court rules.

Local rules have become the kudzu of Washington’s legal system. Washington has a set of rules for district and superior court procedures which have metastasized into a nightmare of 78 more sets of rules — two for each county, applicable only there. In the last 20 years, they have become a whole separate volume of court rules unto themselves, and for over a decade, various lonely voices have been crying for some effort at beheading the hydra.

Whitson, who has an admirable tenacity and patience for tasks like this, told the BOG Justice Charles Johnson has tentatively agreed to co-chair the task force, but at the same time has expressed concern that the venture won’t get much traction unless the superior court judges get on board.

But hope springs eternal, and the Board voted to direct Whitson, the president, the executive director, and Governor Sal Mungia to tweak the task force’s charter and membership roster for further consideration next meeting.

In other appointment matters, the Board named Phillip Ginsburg and Anita Crawford-Willis to the Defender Association Board, and recommended Letitia Camacho for the Interpreter Certification Advisory Commission.

Governor Eric de los Santos proposed a resolution from the Committee for Diversity, affirming the Association’s commitment to addressing issues faced by members with disabilities. It passed. Rick Rasmussen and Lael Echo-Hawk, who co-chair the committee, joined with WSBA Diversity Advocate Joslyn Donlin to give the committee’s annual report. Echo-Hawk made particular note of the strength of ties between WSBA, the committee, and the minority bar associations, and expressed confidence that matters will move ahead equally promisingly.

Additional information about the Board of Governors and minutes of meetings can be found at www.wsba.org/info/bog.
What You Should Know About Grievances Against Lawyers

By Felice P. Congalton

This article intends to give you the basics and to correct misconceptions about the processing of grievances against lawyers in Washington. The Washington State Supreme Court has exclusive responsibility for lawyer discipline. Rule 2.2 of the Rules for Enforcement of Lawyer Conduct (ELC) delegates authority to the Washington State Bar Association (WSBA) for administration of the lawyer discipline system. The WSBA’s Office of Disciplinary Counsel receives and investigates grievances against lawyers to determine whether a lawyer’s conduct should have an impact on his or her license to practice law.

Before a grievance is filed

WSBA Consumer Affairs staff members in the Office of Disciplinary Counsel handle more than 10,000 telephone calls each year. Approximately 4,000 of these calls are inquiries about a lawyer’s public discipline history. Other calls are potential grievances against lawyers by their clients. Many of these potential grievances are resolved when Consumer Affairs staff members suggest alternatives like mediation and fee arbitration and discuss the consequences of filing a grievance.

Consumer Affairs staff members also act as mediators between lawyers and clients when entitlement to a client file is in dispute or when a lawyer fails to communicate with a client. In file disputes, a staff member provides ethical rules and WSBA Formal Opinion 181 to the lawyer who has custody of the file and suggests a resolution. In non-communication matters, a staff member contacts the lawyer to encourage a response to the client’s concerns. Rule 1.4 of the Rules of Professional Conduct requires a lawyer to keep a client reasonably informed about the status of a matter. Last year, more than 300 file disputes and more than 350 non-communication matters were mediated.

Grievances

Approximately 2,000 written grievances are filed against Washington lawyers each year. Under the ELC, anyone can file a grievance against any lawyer. There is no requirement of “standing.” Grievances are most often filed by clients, former clients, and opposing parties. Additionally, the WSBA can open a grievance file in its own name based on public information, including newspaper articles and court decisions. Grievances primarily involve lack of diligence, competence, or communication. There is no time limit for filing a grievance, although timeliness may be considered in evaluation of a grievance. There is no filing fee. A grievance need not be submitted on a grievance form, but grievances are not accepted electronically.

Grievances dismissed without a lawyer’s response

When the WSBA receives a grievance, the goal is to address the matter as soon as possible with fairness to the lawyer and to the grievant. Under the WSBA Board of Governors’ aspirational timelines, a file remains in the screening (intake) phase no more than 60 days. A majority of grievances are dismissed in that phase.

Shortly after a grievance is received, a file is opened and a file number is assigned. Then, disciplinary counsel reviews the grievance. Often, a grievance is dismissed after the first review without disciplinary counsel’s request for a response from the lawyer. For example, grievances that are primarily file disputes and non-communication matters are dismissed with a letter to the grievant indicating that Consumer Affairs will follow up. Grievances with insufficient allegations of misconduct are dismissed after the first review.

Grievances requiring response

If a grievance is not dismissed after the first review, the lawyer receives a copy of a letter addressed to the grievant acknowledging receipt of the grievance. The letter notifies the lawyer that he or she must provide a preliminary written response. ELC 5.3(e) sets out a lawyer’s obligation to respond promptly. In most instances, the lawyer’s response is transmitted to the grievant and the grievant has an opportunity to reply.

Then, disciplinary counsel reviews the grievance, the lawyer’s response, and the grievant’s reply and decides whether the grievance should be dismissed or assigned to investigation. If the grievance is dismissed, the grievant receives a letter, with a copy to the lawyer, outlining the reasons for dismissal and explaining the appeal process.

After the dismissal letter

Within 45 days of dismissal, the grievant can ask a review committee of the Disciplinary Board to review the dismissal. The Disciplinary Board is a volunteer body with lawyers appointed by the WSBA Board of Governors and nonlawyers appointed by the Washington State Supreme Court. The WSBA’s Office of Professional Conduct requires a lawyer to keep a client reasonably informed about the status of a matter. Last year, more than 300 file disputes and more than 350 non-communication matters were mediated.
State Supreme Court. Review committees have two lawyer members and one nonlawyer member. There is no appeal if a review committee dismisses a grievance, but a review committee can, among other things, order more investigation.

**If a grievance is investigated**

If a grievance is assigned to investigation, or a review committee orders more investigation, the lawyer and the grievant are notified of the name of the disciplinary counsel handling the file. Under the WSBA Board of Governors’ aspirational timelines, most files remain in the investigation phase no more than 120 days. Many grievances assigned to investigation are dismissed eventually by disciplinary counsel and may be considered by a review committee as described above. Some grievances involving less serious misconduct result in a lawyer’s referral to diversion from discipline under ELC Title 6. If, after investigation, disciplinary counsel recommends an advisory letter, an admonition, or a hearing, the lawyer receives a letter with disciplinary counsel’s analysis of the ethical violations. A review committee then considers the matter.

**If a lawyer does not respond to a grievance**

If a lawyer does not respond to disciplinary counsel’s request for information, the lawyer receives a letter by certified mail reminding him or her of the requirements of the ELC and cautioning that a deposition may be scheduled for failure to respond. If a deposition is scheduled, the lawyer is liable for the costs of the deposition and attorney fees of $500. Failure to respond is, in itself, grounds for discipline and may also subject a lawyer to interim suspension.

**For more information**

An information sheet on the grievance process is mailed to every grievant and respondent lawyer at the beginning of the grievance process. The information sheet “Lawyer Discipline in Washington” is available on the WSBA website, [www.wsba.org](http://www.wsba.org) or by calling the WSBA at 206-727-8207 or 800-945-9722, ext. 8207.

Felice P. Congalton is WSBA senior disciplinary counsel/intake manager. She has been employed by the WSBA since 1995.
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ABA House of Delegates
Application deadline: May 15, 2007
The WSBA Board of Governors is accepting letters of interest and résumés from members interested in serving on the ABA House of Delegates representing the WSBA. Three positions, one of which is for a member under 35 years of age, will be available in August 2007. A written expression of interest and résumé are required for any incumbents seeking reappointment.

The control and administration of the ABA are vested in the House of Delegates, the policymaking body of the ABA. The House, composed of approximately 550 delegates, elects the ABA officers and board, and meets out of state twice a year. Delegate attendance is required. The WSBA's allowance is $800 per year per delegate. Terms are two years, and members may serve a maximum of three consecutive terms. Those serving on the ABA House of Delegates must be ABA members in good standing throughout their terms. Submit a letter of interest and résumé to WSBA Bar Leaders Division, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539; or e-mail barleaders@wsba.org.

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

WSBA Presidential Search
The WSBA Board of Governors is seeking applicants for the position of WSBA president for 2008-2009. Pursuant to Article IV (A)(2) of the WSBA Bylaws, the primary place of business of candidates for president for 2008-2009 must be King County. The WSBA member selected to be president will have an opportunity to provide a significant contribution to the legal profession.

Applications for 2008-2009 WSBA president will be accepted through May 15, 2007, and should be limited to a current résumé, a concise application letter stating interest and qualifications, and no fewer than five or more than 10 references. The Board of Governors will consider endorsement letters received by May 18, 2007. Applications and endorsement letters should be sent to the WSBA Executive Director, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101.

Direct contact with the Board of Governors is encouraged. All candidates will have an interview with the full Board of Governors in open session at the June 1 meeting. Following the interviews, the Board will select the president.

Although prior experience on the WSBA Board of Governors may be helpful, there is no requirement that one must have been a member of the Board of Governors or had previous experience in Bar activities. The candidate must be willing to devote a substantial number of hours to WSBA affairs and be capable of being a positive representative for the legal profession.

The position is unpaid. Some expenses, such as WSBA-related travel, are reimbursed.

The commitment begins in June 2007 following selection. A one-year term as president-elect will begin at the Annual Business Meeting in September 2007. 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 2008, 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.

Commission on Judicial Conduct
Application deadline: May 15, 2007
The WSBA Board of Governors is seeking applicants interested in serving on the Commission on Judicial Conduct. Two positions are available: one as a member and one as an alternate.

The Commission reviews complaints of ethical misconduct against judicial officers, discusses the progress of investigations, and takes action to resolve complaints. The goal of the Commission is to maintain confidence and integrity in the judicial system by seeking to preserve both judicial independence and public accountability. The public interest requires a fair and reasonable process to address judicial misconduct or disability, separate from the judicial appeals system that allows individual litigants to appeal legal errors.

The Commission consists of 11 members who serve four-year terms — six nonlawyer citizens, three judges, and two lawyers. Each member has an alternate whose term coincides with their corresponding member's term. The lawyers must be admitted to practice in Washington and are appointed by the WSBA. Incumbents are eligible for reappointment, limited to two terms as an alternate member and two terms as a full member. Letters of interest and résumés are also required for incumbents seeking reappointment. The term for this alternate position will commence on June 17, 2007, and expire on June 16, 2011. Please submit a letter of interest and résumé to WSBA Bar Leaders Division, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539; or e-mail barleaders@wsba.org.

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

Board for Court Education
Deadline: June 29, 2007
The WSBA Board of Governors will be nominating one WSBA member who will be appointed by the Supreme Court to serve a three-year term on the Board for Court Education. The three-year term will commence upon appointment and continue through June 30, 2010. A written expression of interest and a résumé are also required in the event that the incumbent elects to seek reappointment.

The purpose of the Board for Court Education is to improve the quality of justice in Washington by fostering excellence in the courts through effective education. The 16-member board meets four times a year. For additional information, visit www.courts.wa.gov/programs_orgs/pos_bce.

Please submit a letter of interest and résumé to WSBA Bar Leaders Division, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539; or barleaders@wsba.org.
2007 Board of Governors Elections
Ballots have been mailed and will be counted on or about May 15. Following are statements from candidates received as of April 12.

2nd District – Unopposed

Governing-elect G. Geoffrey Gibbs
I am an active trial attorney in Snohomish and neighboring counties and a shareholder in the Anderson Hunter firm in Everett. I have served multiple terms on the WSBA Rules of Professional Conduct Committee and as President of the Snohomish County Bar Association (2005), and I am a Trustee on its Board (2001-present). I also serve as their “liaison” to the WSBA Board of Governors. I am a judge pro tem and commissioner pro tem in Superior and District courts. I was awarded the Clerk’s Choice Award (in 2004 and 2006) and Pro Tem Jurist Award (2005).

7th-Central District

Lori S. Haskell
I took a circuitous route to becoming a lawyer first working in television news as a cinematographer, writer, and producer. I graduated from Seattle University School of Law (at the time, UPS) in 1985. I have served on the WSBA’s Bench Bar Press Committee and the Editorial Advisory Board. I am a sole practitioner and my emphasis is plaintiffs trial work. My areas of practice include personal injury, employment discrimination, and civil rights. I have been active in the Washington State Trial Lawyers Association and an area of emphasis there has been expanding diversity, which I would hope to continue on the WSBA Board.

Keith Scully
I love the law and have the utmost respect for the diverse range of practices, personalities, and people in the Washington state legal community. I have a wide range of legal experience, including working in civil litigation for a large law firm, as a criminal deputy prosecuting attorney, as a war crimes prosecutor for the United Nations, and in my current position practicing environmental law as the legal director of a nonprofit organization. My priorities include expanding the WSBA’s access to justice programs, securing funding for the loan repayment assistance program, and continuing the tradition of support to Washington’s lawyers.

9th District

Robert L. Beale
I resided for the past 40 years at Dash Point, in northeast Tacoma. I graduated from the University of Washington Law School in December 1963, was admitted in March 1964, and have been practicing since then with the firm McGavick, Graves in Tacoma. My primary practice areas are real estate and business. My service for the WSBA includes membership on the Board of Bar Examiners for several years and the Disciplinary Board for three years. I am aware of the responsibilities and time requirements connected with membership on the Board of Governors, and believe that I have the time and ability to meet those requirements.

David S. Heller
Born in a very small town you might never have heard of, like Omak, except we milked our cows instead of eating them — dairy country. Small town boy made good — went to MIT, got an engineering degree, then repented of my sins and went to law school.
Passed the bar (first try) in 1982. I’ve done almost everything — wrote wills, filed probates, did divorces, commercial litigation, personal injury cases (plaintiff and defense), and criminal defense. Nowadays, a sole practitioner doing criminal defense and plaintiff personal injury cases. Longtime WACDL and WSTLA member. AV-rated if you care. Office in Burien, 3.5 miles from home.

Tom Kalenius
I am a Tacoma native, practiced law with O.W. Hollowell, Laird Pisto, Jane Rhodes, and Elaine Houghton in South King County from 1982 to 1990 and I am an industrial appeals judge in Olympia. Since 2002, I coordinated a series of CLE programs through the Administrative Law Section and served as section chair in 2005-2006. As a section chair, I was part of the decision to improve our image by developing a deskbook and local courses. In the same way, I am running for the Board of Governors to advocate our continued open access to the business of the Bar.

Harlan C. Stientjes
The Washington State Bar Association is our organization and its purposes must be diligently shepherded, with integrity, for the public good. I have practiced law since 1969. I have served as a prosecutor, public defender, Municipal Court Judge and Assistant Attorney General. I have primarily represented individuals trying to successfully navigate through life and the legal system. While my practice now emphasizes real estate and estate planning, I have practiced in the many areas of law as is typical of a general practitioner. I have served on the board of the Thurston County Bar Association and various community boards over the years.

At-Large
The Board of Governors will elect the at-large governor at their meeting on June 1, 2007, and will consider endorsement letters received by May 18, 2007. Applications have been received from the following individuals: Carrie Copponger Carter, Dennis W. Morgan, Janice L. Smith-Hill, and Brenda Williams.

WSBA Leadership Institute Seeks Fellows for 2008

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

The program is a collaborative, experiential, and individualized curriculum that includes eight professional-development seminars. WSBA Leadership Institute fellows will benefit from the latest trends in professional leadership development; exposure to the legislative and judicial systems; interaction with high-level state and local officials and judges; and opportunities to meet high-profile attorneys from the private and public sectors. The program requires a two-year commitment. Following the completion of the first year, fellows are expected to serve on a WSBA section or committee, or bar-related activity. Fellows will earn a minimum of 30
FYInformation

CLE credits, and the program is no charge to participants.

To be considered for the program, applicants must: (1) complete an application with cover letter, résumé, and three references; (2) be an active WSBA member; (3) have practiced law in a U.S. jurisdiction for three to 10 years, i.e., any attorney who has been admitted in a U.S. jurisdiction between January 1, 1998, to December 31, 2005, meets this criterion; (4) be nominated by his/her employer, or if self-employed, by another individual; and (5) provide evidence of interest in community and WSBA activities. Applications for the 2008 WSBA Leadership Institute will be available June 1, 2007. The deadline for applications for the 2008 Leadership Institute will be early September 2007. Application and nomination forms and instructions will be available on the WSBA website at www.wsba.org/lawyers/leadership_institute.htm. For further information, contact Camille Campbell at camillec@wsba.org or 206-239-2116.

Seeking Questionnaires from Candidates for Judicial Appointments

**Deadline:** 5:00 p.m., May 11, 2007, for June 13, 2007, interview

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

**2007 License Fee, Late Fees, and Suspension Information**

If your payment was postmarked or delivered in person to the WSBA offices after April 2, 2007, a 50 percent late fee penalty has been assessed.

**Presuspension Notice.** A presuspension notice was issued in mid-March to those members who had not paid their 2007 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 206-443-WSBA (9722), 800-945-WSBA (9722) or questions@wsba.org. If after checking your payment, you believe the information is incorrect, please contact the WSBA Service Center.

**Suspension Information.** If any portion of your license fee, late fees or LFPC assessment remains unpaid two months after the WSBA issues a presuspension notice (issued March 16, 2007), the Supreme Court will enter an order suspending you from the practice of law in this state.

If you pay your fees online by May 16, 2007. To pay your fees online, go to our website, www.wsba.org, click on the “For Lawyers” tab, and select “Pay License Fee Online.” Sign in with your WSBA number and password. Prompts lead you through the process to pay your 2007 license fees by MasterCard or Visa. The system allows payments for only the full amount billed, e.g., no Keller deductions or status changes.

**Trust Account Declaration, MCLE Certification, and other forms.** A Trust Account Declaration (one was included in your licensing packet) must be completed by all active

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

**Contact information.** It is always a good idea to check that the WSBA has your correct contact information in its database. APR 13.b states that address updates shall be provided to the WSBA within 10 days after the change.

You can go to the online lawyer directory on the WSBA website at [http://pro.wsba.org](http://pro.wsba.org) to check your listing. If your contact information has changed, please complete and return the Contact Information Change form included in the license packet to the address shown on the form or fax it to 206-727-8319, or e-mail the changes to questions@wsba.org.

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

**Online, On-Demand CLEs from WSBA-CLE**

Want CLE credits without having to stir from your office? WSBA-CLE now offers 200 online courses in 20 practice areas, including ethics. Most are one-hour segments, providing 1.0 CLE A/V credit each, so you can purchase exactly the amount of credits you need. From your computer, you get audio and text from a course originally presented live. Once you purchase a course, you have three months to listen to it. Go to [www.wsbacle.org/ondemand](http://www.wsbacle.org/ondemand) to browse the offerings.

**Use Your MCLE Homepage to Find Approved CLEs**

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

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

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

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

**Update on MCLE Rules and Regulations Revision Project**

The MCLE Board presented proposed

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changes to APR 11 (MCLE rules) and the MCLE regulations to the WSBA Board of Governors at their April 13 meeting. These changes were made with input from a wide range of stakeholders to ensure that the proposed revisions addressed major issues in a balanced, clear manner while supporting the purpose of APR 11. The purpose is to ensure that attorneys continue their legal education throughout the period of their active practice — training that maintains or enhances the competence of lawyers with respect to the practice of law.

One of the ways that the MCLE Board received feedback was through an online survey posted on the WSBA website in February with questions related to MCLE issues. Responses were received from 1,528 people: 1,243 lawyers, 138 CLE sponsors, and 147 lawyer support staff. Summary results of this survey can be viewed on the WSBA website at www.wsba.org/lawyers/groups/mcle/apr11review07.htm.

Input was also received from the MCLE Board discussions with private law firm and corporate legal department representatives, as well as from solicitation of feedback through direct e-mails to interested offices. A general invitation for comment from the WSBA membership was also posted on the WSBA website, where drafts of the proposed MCLE rules and regulations were posted.

For updates on the status of the APR 11 Review Project, see: www.wsba.org/lawyers/groups/mcle/apr11review07.htm.

King County Superior Court Family Law Forms Now in Spanish
King County Superior Court has become the first court in the state to offer family law forms in Spanish, a step that will offer thousands of non-English-speaking King County residents enhanced access to the civil court system. The King County Superior Court has historically provided forms and instructions to these individuals, but this is the first time that bilingual forms have been made available in the area of family law. The forms are available on the court’s website at www.metrokc.gov/kcsc/famlaw/spanish.htm.

Contract Lawyer Meeting
Discuss the issues with other contract lawyers on May 15 from noon to 1:30 at the WSBA office. Bring your lunch — coffee is provided — and network with other contract lawyers. For more information, contact Julie Salmon at 206-733-5914, 800-945-9722, ext. 5914, or juliesa@wsba.org. Please note the WSBA’s new address: 1325 Fourth Ave., Ste. 600, Seattle.

2007 Fee Arbitration Training Seminar
The WSBA ADR Committee is pleased to announce the 2007 Fee Arbitration Training Seminar. The seminar will be held at the WSBA office in Seattle on Thursday, May 24, from 1:00 to 4:00 pm. This year’s program will focus on the WSBA’s Fee Arbitration Program and will include interactive panel discussions of key challenges faced by arbitrators, and solutions from the field. Admission for the seminar is free; however, seating is limited, as some seats will be reserved for WSBA Fee Arbitration and Mediation Panel members. Open registration will be on a first-come, first-served basis. 2.75 CLE credits are approved: 1.75 general, 1 ethics. For more information or to register, contact Natalie Cain, ADR program coordinator, at 206-733-5923, 800-945-9722, ext. 5923, or nataliec@wsba.org.

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

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

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

Computer Clinic
The WSBA offers a hands-on computer clinic for members wanting to learn more about what Microsoft Office programs such as Outlook, PowerPoint, Excel, and Word, as well as Adobe Acrobat, can do for a lawyer. The clinic teaches helpful tips you can use immediately. Computers are provided, and seating is limited to 15 members. There is no charge, and no CLE credits are offered. The next clinic will be held on May 14 from 10 a.m. to noon at the WSBA office. For more information, contact Julie Salmon at 206-733-5914, 800-945-9722, ext. 5914, or juliesa@wsba.org. Please note the WSBA’s new address: 1325 Fourth Ave., Ste. 600, Seattle.

Job Seekers Discussion Group
Looking for a job or making a transition? Join us at the Job Seeker Discussion Group the second Wednesday of each month from noon to 1:30 p.m. The next meeting is May 9 at the WSBA office. The group discusses where to look for jobs, how to use your network of contacts, strategies for résumés and cover letters, and more. Exchange information and ideas with other lawyers looking to make a change. Come as you are — no need to RSVP. For more information, contact Rebecca Nerison, Ph.D., at 206-727-8269, 800-945-9722, ext. 8269, or rebecca@wsba.org.

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


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How to order: Order online at www.kcba.org/WLPM or mail a copy of the order form with your payment to: King County Bar Association, 1200 Fifth Avenue, Suite 600, Seattle, WA 98101.

Price: $550 for the CD version, $725 for the 8-volume Print version, and $850 for both. Annual Updates are $330, $350, and $450, respectively. Individual chapters on CD are $65 each.

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

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

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

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

LOMAP and Ethics on the Road: The 2007 Traveling Seminars
Plan to attend in Vancouver on May 1, Aberdeen on May 2, or Olympia on May 3. In June, plan to attend in Pullman on June 19 or Colville on June 20. Registration is $89, and each seminar has been approved for 4.0 ethics CLE credits. For more information, contact Julie Salmon at 206-733-5914, 800-945-9722, ext. 8244, or juliesa@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 2007 was 5.076 percent. Therefore, the maximum allowable usury rate for May is 12 percent. Information from January 1987 to date is on the WSBA website at www.wsba.org/media/publications/barnews/usury.htm.

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The Legal Foundation of Washington Presents the 21st Annual Goldmark Award; The Washington State Delegation to the ABA House of Delegates Hosts Dinner in Honor of ABA President Karen Mathis

At the Goldmark Award Luncheon: (l. to r.) Washington State Supreme Court Chief Justice Gerry Alexander, Legal Foundation of Washington Executive Director Caitlin Davis Carlson, Goldmark Distinguished Service Award Honoree Patrick McIntyre, Northwest Justice Project Executive Director César Torres, WSBA President Ellen Conedera Dial. Photo by Steve Schneider.

At the Goldmark Award Luncheon: (l. to r.) featured speaker and ABA President-elect William Neukom, Ken MacDonald of MacDonald Hoague and Bayless, Legal Foundation of Washington President Erika Lim, King County Superior Court Judge Michael J. Fox. Photo by Steve Schneider.

Attending the Goldmark Award Luncheon were (l. to r.) former WSBA governor Mark Johnson and former WSBA presidents Dick Manning and Dave Savage. Photo by Steve Schneider.

At a reception for ABA President Karen Mathis (center) are WSBA President Ellen Conedera Dial and Washington State Attorney General Rob McKenna.

Members of the ABA House of Delegates (l. to r.) James Williams, Paula Boggs, and King County District Court Judge Eileen Kato.

This In Memoriam section contains brief obituaries of WSBA members. The list is not complete and contains only those notices that the WSBA has learned of through newspapers, magazine articles, trade publications, and correspondence. Additional notices will appear in subsequent issues of Bar News. Please e-mail notices or personal remembrances to inmemoriam@wsba.org.

H. William Bamman
Born in Missouri, H. William Bamman graduated from the University of Toledo Law School. He was a trial lawyer who focused on defense of high-risk medical malpractice, legal malpractice, professional negligence, product liability, and government liability cases. Bamman was a member of many organizations, including ABLE, and was past president of the Ohio Association of Trial Attorneys. He died on October 21, 2006, at the age of 71.

Russell C. Brooks
Russ Brooks was the principal attorney with the Pacific Legal Foundation. He was known to many as a tireless, unrelenting advocate for citizens who were oppressed by arbitrary government regulations. Brooks also enjoyed wine, classic cars, and singing favorite tunes. Brooks was dedicated to his family and his church. He passed away on February 25, 2007, at age 41.

Patrick Connell Comfort
Patrick Comfort graduated from Bellarmine Prep, Gonzaga University, and NYU. He practiced law in Tacoma for many years. He served as president of the WSBA, and was a member and past president of the Fircrest Golf Club. He served two terms in the Washington State Legislature, and on the Board of Trustees at Bellarmine. He died on December 9, 2006, at the age of 76.

Steve Cox
A Washington native, Cox graduated from Central Washington University, and received his law degree from Willamette University. After serving as a deputy prosecutor in Franklin County, he worked briefly as a prosecutor in King County, then switched careers to join the Sheriff’s Office in 1997, where he felt he could make the biggest impact on fighting crime. Cox received a Community Builder Award from the Seattle Neighborhood Group. In addition to his police work, he spoke in local schools and helped organize community events. He was also elected president of the local council. Cox died from wounds received while on a police call on December 2, 2006, at the age of 46.

Josef Diamond
Josef Diamond, who belonged to the WSBA for over 75 years, died March 3, 2007, three days short of his 100th birthday. Most people in the Northwest knew his name from his after-work job, building Diamond Parking into a real estate empire holding, or operating more than 1,000 parking facilities, as well as 200 commercial office buildings, apartment complexes, u-store-it facilities, and other investments spread across nine states and western Canada. A son of Russian Jewish immigrants, Diamond graduated from the University of Washington in 1928 and its law school in 1931. He worked a month for free at a Seattle firm to convince them they should hire him, and stayed for 53 years. In a 2005 interview, Diamond maintained that practicing law was what he enjoyed most, solving problems for people. “I settled most of my cases,” he recalled. “Instead of going to trial, we’d compromise — give a little bit, and take a little more.” Diamond Parking
remains in the family, run by Diamond’s son and grandson.

**John Galbavy**
Raised in New Jersey, John Galbavy attended Colorado State University, and received a B.A. from the Colorado School of Mines. He was a geophysicist for Arco Oil Company for several years, and received his law degree from Denver University in 1989. He worked for Hecla Mining Company in Coeur d’Alene, Idaho, and Gold Reserve in Spokane. Galbavy enjoyed golfing, skiing, and coaching sports, and was active with his church and community. He passed away on October 27, 2006 at the age of 47.

**James P. Healy**
A native of Montana, Healy moved to Tacoma with his family when he was nine. He attended Gonzaga University and received his law degree from Georgetown University in Washington, D.C., in 1942. After serving in the Navy and with the FBI, he moved back to Tacoma and began practicing law. He joined the Superior Court bench in 1974 and spent 18 years as a judge. Upon his retirement the Pierce County Minority Bar Association honored Healy for his unusual fairness and sensitivity to minorities. He was 90 when he died in March.

**Russell V. Hokanson**
Russell Hokanson loved the law, music, and words. He was born in Bellingham to Swedish immigrants. He graduated from the University School of Law in 1939. He practiced law for more than 60 years, including 50 at one firm. In 1946, he became a founding partner of Todd, Hokanson and White, which after a merger became Helsell, Fetterman, Todd and Hokanson, and which is now known as Helsell Fetterman. Hokanson died March 24 at the age of 93 in Seattle.

**Jeremiah M. Long**
A Boston native, Long earned degrees from Georgetown University’s School of Foreign Service and Boston College School of Law before being drafted to serve in World War II. After service in the Army, he moved into the JAG Corps and was seconded to the Pentagon during the Korean War. Settling in Bellevue, he founded a company to facilitate 1031 real estate exchanges; his book on the subject is considered the bible of the field. Survivors include his wife, three siblings, five children and 14 grandchildren. Long was 77 when he died March 7, 2007.

**Mark C. Paben**
Mark Paben, 51, died March 3, 2007, of heart failure. The Seattle lawyer, a partner with the K&L Gates firm, was a longtime supporter of the arts in Washington and chaired some of the state’s leading arts institutions. A native of Illinois, Paben graduated from the University of Illinois and Syracuse University School of Law. Paben chaired the Seattle Arts Commission from 2004 to 2006 and was a member of its board for years. At his death he was co-chair of Washington FilmWorks, an organization promoting the filming of movies in Washington. At other times he was chair and president of the Museum of History and Industry, and served on the boards of half a dozen music and arts organization boards. *Seattle Times* music critic Melinda Bargreen wrote that Paben’s board presidency of the now-shuttered Northwest Chamber Orchestra was the zenith of the organization’s life in quality and popularity, featuring celebrated performers like Vinson Cole and Carol Vaness.

**Woollin “Pat” Patten**
Woollin Patten attended Mercer University, where he was elected president of the student body association. He graduated from Mercer University School of Law, and after serving in World War II in the Marine Corps, was appointed as an attorney for the newly formed United States Securities and Exchange Commission. He also worked with the Atomic Energy Commission, and was regional counsel for the Internal Revenue Service. Patten passed away on December 24, 2006, at the age of 92.

**Loren D. Prescott**
Born in Seattle, Loren Prescott earned degrees in accounting and law from the University of Washington. He worked for the Internal Revenue Service for three years before establishing his own private practice in 1957. He was a founding member of the Seattle Tax Group and participated in programs on business and tax subjects offered by the WSBA and the Tax Executives Institute. An avid and award-winning skier, Prescott was a ski instructor and served as president of the Pacific Northwest Ski Instructors Association. In 1973, he helped to found the Centrum Foundation, and served as its president for three terms. He died at the age of 77 on November 19, 2006.

**Ramon “Ray” Perry Reid**
A native of Chehalis, Reid attended Seattle University, University of Washington, and Gonzaga University. He officiated as municipal judge for the city of Toppenish for 39 years until his retirement in 2003. He served many terms as justice of the peace for Yakima County and as commissioner and judge pro tem of Yakima County District Court. He was the town attorney for Granger for 48 years and also served as the town attorney for Harrah for eight years. Reid died March 19 at his home in Toppenish. He was 77.

**John N. ”Jack” Riese**
John Riese was born in Duvall, Washington. He graduated from the University of Washington School of Law and was a founding partner of Emery, Howe, Davis, and Riese, which became Davis Wright Tremaine. Riese served during World War II as a lieutenant commander in the U.S. Navy. He was a founding member of the Casey Family Program, a foster care organization, and served as president and trustee for 22 years. He was also a founding member and honorary trustee of the Washington State 4-H Foundation. In his spare time, Riese greatly enjoyed boating, and was a lifetime member of the Meydenbauer Bay Yacht Club. He passed away on December 3, 2006, at the age of 97.

**Joseph Horton Trethewey**
Joseph Trethewey was born in Seattle, served in World War II in Japan, and attended the University of Mexico, Linfield, and the University of Washington, where he received his B.A. in business and became a CPA. In 1952, he received his law degree from the University of Washington School of Law, and later earned his masters in taxation at NYU. Trethewey worked in private practice for many years before becoming the vice president in charge of legal work for CEM Associates, and was executive vice president of the Seattle Steel plant. He enjoyed travel, art, wine, and boating. He died on January 28, 2007, at the age of 80.

**Dennis M. Wallace**
Raised in southern California, Dennis Wallace moved to Spokane, leaving only to attend Emory Law School and then returning to practice law for 30 years. He was dedicated to serving those with limited resources, bringing fairness to his clients, and to helping people. Wallace’s passion was genealogy, and through his research, he discovered that his family’s history in America dated back to 1650. He died on January 29, 2007, at the age of 59.
Calendar

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

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

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

Business Law

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

Construction Law

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

Criminal Law

The Modern Criminal Lawyer
May 18 — Seattle. 6.75 CLE credits. By WSBA-CLE and Criminal Law Section; 800-945-WSBA or 206-443-WSBA.

Dispute Resolution/Mediation

15th Annual Northwest Dispute Resolution Conference
May 4-5 — Seattle. CLE credits pending. By UW School of Law; 206-543-0059 or 800-CLE-UNIV.

Four-Day Intensive Mediator Training Program
May 8-11 — Seattle. 41.5 CLE credits, including 4.5 ethics. By Alhadeff & Forbes Mediation Services; 206-281-9950.

Advanced Skills for Effective Communication
May 15 — Seattle. 5.5 CLE credits. By the Dispute Resolution Center of King County; 206-443-9603, ext. 107, jescatd@kdcr.org, or www.kdcr.org.

Mediation Training
June 21, 22, 26, 27, 29 — Seattle. 36 CLE credits, including 3.25 ethics. By the Dispute Resolution Center of King County; 206-443-9603, ext. 107, jescatd@kdcr.org, or www.kdcr.org.

Education

Special Education Law: What You Need to Know
May 18 — Seattle. 6 CLE credits. By KCBA; 206-267-7004.

Environmental

2007 Environmental and Land Use Law Section Midyear: Earth, Wind, Fire and Water
May 17-19 — Chelan. 13.5 CLE credits. By WSBA-CLE and ELUL Section; 800-945-WSBA or 206-443-WSBA.

Estate Planning

Lawyer’s Toolbox: Estate Planning and Probate Practice
June 5 — Seattle. 3 CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

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

Ethics

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

Family Law

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

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

Indian Law

The 19th Annual Indian Law CLE
May 4 — Seattle. 6.25 CLE credits. By WSBA-CLE and Indian Law Section; 800-945-WSBA or 206-443-WSBA.

Intellectual Property Law

The 2nd Annual IP for the Rest of Us
May 9 — Seattle. 6.25 CLE credits, including .75 ethics. By WSBA-CLE and Intellectual Property Law Section; 800-945-WSBA or 206-443-WSBA.

Litigation

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

Miscellaneous

The 2nd Annual IP for the Rest of Us
May 9 — Seattle. 6.25 CLE credits, including .75 ethics. By WSBA-CLE and Intellectual Property Law Section; 800-945-WSBA or 206-443-WSBA.

Permits

Permitting Strategies
May 10 — Seattle. 6.25 CLE credits. By The Seminar Group; 206-463-4400 or 800-574-4852.

Real Property, Probate and Trust

14th Annual Professional Responsibility Institute
May 12 — Seattle. 6 CLE credits. By UW School of Law; 206-543-0059 or 800-CLE-UNIV.

Real Property, Probate and Trust

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

Workers’ Compensation

ADA, FMLA, Workers’ Compensation & USERRA
May 11 — Seattle. 5.25 CLE credits. By The Seminar Group; 206-463-4400 or 800-574-4852.
**Disciplinary Notices**

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

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

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

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**Disbarred**

**Dennis F. Olsen** (WSBA No. 22519, admitted 1993), formerly of Everett, was disbarred, effective September 19, 2006, by order of the Washington State Supreme Court following a hearing. This discipline was based on his conduct between 2000 and 2004 involving violation of state and federal tax laws, dishonesty, lack of competence, lack of diligence, failure to communicate with a client, failure to expedite litigation, and failure to cooperate with a disciplinary investigation.

**Matter 1:** Commencing in 1999, Mr. Olsen was a principal in a succession of law firms that operated a multi-state, low-cost bankruptcy practice. The firm hired local lawyers to practice within the jurisdictions of their respective bar admissions. In 2001, after suffering financial losses in the bankruptcy venture, Mr. Olsen terminated the employment of a firm lawyer working in Portland, Oregon. The lawyer agreed to handle the firm’s Oregon cases if he had either met or provided representation to a client. When the lawyer refused to take over the representation of a client with whom he had had no contact, an argument ensued. During the argument, Mr. Olsen threatened that he would not pay taxes withheld from the lawyer’s paychecks. As a result, the lawyer filed a grievance with the Bar Association.

The lawyer did not receive a 2001 W-2 within the statutory time limit. After requesting that the firm provide him a W-2 for his 2001 earnings, the lawyer belatedly received a W-2 on which the employer was identified as a defunct predecessor firm and that reflected an invalid employer tax ID number and an incorrect employer address. A second W-2 was later issued for 2001, reflecting all of the tax withholding deductions from the lawyer’s 2001 pay and the correct employer information. During the ensuing disciplinary hearing, Mr. Olsen admitted that he had not paid state or federal tax authorities the taxes withheld from the lawyer’s salary in 2000 or 2001, and that he had not refunded the withheld money to the lawyer. The funds withheld totaled at least $11,398.70. Mr. Olsen also admitted to having filed amended returns that claimed under penalty of perjury that he had paid the lawyer the full amount of his gross wages when, in fact, withholding had occurred. These additional amended returns were filed by Mr. Olsen and submitted to the Bar Association in an attempt to mislead the Bar Association in its investigation.

**Matter 2:** On April 7, 2000, Mr. Olsen met with and agreed to represent a client in an immigration matter for a $1,500 fee. In March 2000, the Board of Immigration Appeals had affirmed an immigration judge’s denial of the client’s asylum application and issued a deportation order. The Northwest Immigrant Rights Project, which had been assisting the client through a volunteer lawyer, explained the client’s options in a letter dated March 30, 2000. The letter advised the client that although a notice of appeal to the Ninth Circuit Court of Appeals had been filed, the volunteer lawyer would no longer be available to assist the client. Other options mentioned in the letter included filing a motion to reopen a previous I-485 application (application to register permanent residence or adjust status), or a motion to reopen the asylum application.

The agreed purpose for the representation was for Mr. Olsen to seek an adjustment of the client’s immigration status and to assist him in obtaining a green card. Mr. Olsen did not prepare a fee agreement or any description of his duties. At the initial meeting, the client paid Mr. Olsen $750 and gave him a copy of his file, which included copies of previously filed pro se petitions and applications, as well as the March 30 letter from the Northwest Immigrant Rights Project.

After undertaking the representation, Mr. Olsen did not take any steps to obtain the client’s INS file, to review the BIA legal files or any other public files, or to discern the action that needed to be undertaken prior to the expiration of the time to bring a motion to reopen. No motion to reopen was ever filed by Mr. Olsen, despite having had almost two months between the date hired and the deadline for filing the motion.

In January 2000, the client paid Mr. Olsen $800. Mr. Olsen completed and filed a second I-485 application and had the client pay a second I-485 penalty fee of $1,000. This second application was a useless act, since the application would not be adjudicated unless and until the client’s immigration application had been reopened by motion, and Mr. Olsen had already allowed the time to bring such a motion to pass. Additionally, the application contained several significant errors, including the incorrect assertions that the client was not married and that the client was not involved in a deportation proceeding. After filing the second I-485 application, Mr. Olsen failed to do any legal work on behalf of the client during the next eight months he represented him, and he had little or no contact with the client. The client was subsequently referred to another immigration lawyer, who accepted the case on a pro bono basis and promptly moved to reopen the asylum issue based on the fact that the client had not received effective assistance of counsel from Mr. Olsen. After reviewing the facts surrounding Mr. Olsen’s representation, INS agreed to a joint motion to reopen the earlier denial of the first I-485 application.

**Matter 3:** During the disciplinary investigations and proceeding arising from the above-described matters, Mr. Olsen engaged in a pattern of knowingly and willfully failing to comply with Bar Association requests for information and documents and the hearing officer’s orders regarding compliance.

Mr. Olsen’s conduct violated RPC 1.1, requiring a lawyer to provide competent representation to a client; 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, promptly comply with reasonable requests for information, and explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; RPC 3.2, requiring a lawyer to make reasonable efforts to expedite litigation consistent with the interest of the client; RPC 8.4(b), prohibiting a lawyer from committing a criminal act (here, violation of federal and Oregon state tax laws, and theft) that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects; RPC 8.4(c), prohibiting a lawyer from...
engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; RPC 8.4(i), prohibiting a lawyer from committing any act involving moral turpitude, or corruption, or any unjustified act of assault or other act which reflects disregard for the rule of law; and RPC 8.4(f), prohibiting a lawyer from violating a duty or sanction imposed by or under the Rules for Enforcement of Lawyer Conduct (here, ELC 1.5; 5.3(e)(4); 5.5(c); 10.11(g); and 10.13(e)).

Marsha A. Matsumoto and Debra J. Slater represented the Bar Association. Michael S. Cullen and Leland G. Ripley represented Mr. Olsen. Donald W. Carter was the hearing officer.

Disbarred

Bernie W. Potter (WSBA No. 23076, admitted 1993), of Seattle, was disbarred, effective November 13, 2006, by order of the Washington State Supreme Court following a default hearing. This discipline was based on his conduct in seven personal-injury matters.

Between 2000 and 2004, Mr. Potter engaged in the following conduct that established grounds for discipline:

- Converting and misappropriating client funds.
- Writing and issuing an insufficient-funds check to a client.
- Failing to maintain on deposit in his trust account the balance of funds due to clients and third parties.
- Failing to notify clients of receipt of funds and failing to pay funds from settlements and arbitration awards to clients and third parties when due.
- Failing to keep adequate and complete records of deposits and disbursements of client funds and failing to render appropriate accounts to clients regarding cost and fee disbursements.
- On disbursement statements, making misrepresentations to clients about amounts owed to them.
- Falsely advising a client of an adverse party’s position regarding the client’s percentage of fault, and making false statements to a client regarding a PIP reimbursement.
- Failing to explain to a client the potential consequences of receiving settlement funds without reimbursing an insurer for PIP payments.
- Making false statement to insurers regarding money held in trust and his intention to pay amounts owed as reimbursement.
- Making false statements to his client, to opposing counsel, and to an arbitrator in order to obtain a continuance of an arbitration hearing.
- Failing to appear at an arbitration hearing, failing to inform his client of the hearing date, and failing to communicate with the client.
- Failing to notify a client of his suspension from the practice of law.
- Failing to respond to requests for information during the course of disciplinary investigations, and failing to appear at a deposition as required by a subpoena issued by disciplinary counsel.

Mr. Potter’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, promptly comply with reasonable requests for information, and explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; RPC 1.14(a), requiring that all funds of clients paid to a lawyer or law firm be deposited into one or more identifiable interest-bearing trust accounts and no funds of the lawyer be deposited therein; RPC 1.14(b)(1), requiring a lawyer to promptly notify a client of the receipt of his or her funds, securities, or other properties; RPC 1.14(b)(3), requiring a lawyer to maintain complete records of all funds, securities, and other properties of a client coming into possession of the lawyer and render appropriate accounts to his or her client regarding them; RPC 1.14(b)(4), requiring a lawyer to promptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive; RPC 3.3(a)(1), prohibiting a lawyer from making a false statement of material fact or law to a tribunal; RPC 4.1(a), prohibiting a lawyer from making a false statement of material fact or law to a third person; RPC 8.4(b), prohibiting a lawyer from committing a criminal act (here, theft and unlawful issuance of a bank check) that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects; RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; RPC 8.4(d), prohibiting a lawyer from engaging in conduct prejudicial to the administration of justice; and RPC 8.4(l), prohibiting a lawyer from violating a duty or sanction imposed by or under the Rules for Enforcement of Lawyer Conduct (here, ELC 1.5, 5.3(e), and 14.1).

M. Craig Bray represented the Bar Association. Mr. Potter did not appear either in person or through counsel. Marc L. Silverman was the hearing officer.

Suspended

Richard H. Corbin (WSBA No. 26665, admitted 1997) of Everett, was suspended for two years, effective January 16, 2007, by order of the Washington State Supreme Court following a stipulation approved by the Disciplinary Board. This discipline was based on his conduct between 2004 and 2005 in three matters involving failure to communicate with clients, trust account irregularities, failure to protect a client’s interests following termination of representation, misrepresentations to clients, conduct prejudicial to the administration of justice, and non-cooperation with a disciplinary investigation.

Matter 1: Mr. Corbin prepared a will for a client. The client died in 2004. The client’s daughter (Child A) provided Mr. Corbin with original documents. She told Mr. Corbin that her brother (Child B) was the estate executor and should be contacted regarding the bill. Mr. Corbin agreed to do so, estimating that the probate would take about six months. Over the next few months, Child A attempted to contact Mr. Corbin. He did not respond until November 2004, when he called to say the probate had not been filed because he had not been paid. During this time, Mr. Corbin never communicated with Child B, except to send him a copy of the will.

In November 2004, Child A gave Mr. Corbin a check for $1,500, which Mr. Corbin cashed. Over the next few months, Child A and Child B left numerous voicemails and e-mail messages for Mr. Corbin, but were never able to speak to him directly. In both January and April 2005, Mr. Corbin left messages on Child A’s voicemail informing her that the probate would be handled care of in a few weeks. In fact, Mr. Corbin had not filed the probate and his representations about the status of the probate were untrue. After Child B filed a grievance with the Bar Association, Mr. Corbin left him a message asking if he or his sister was the executor (something they had told him many times) and for a list of his mother’s creditors (which Child A had previously provided). Child B responded promptly and tried repeatedly to contact Mr. Corbin, but was unable to reach him. Occasionally, Mr. Corbin would leave a
message stating he was working on the case and that things were progressing well. In August 2005, the Supreme Court suspended Mr. Corbin for nonpayment of dues. At that time, Mr. Corbin had still not filed the probate, nor had he refunded any legal fees or returned any original documents to Child A or Child B. Child B hired a new lawyer, who attempted to contact Mr. Corbin. Mr. Corbin failed to respond or turn over the original documents. As a result, the estate incurred additional fees because the new lawyer had to file the probate documents using duplicates attested to by witnesses of the original will. Subsequently, Mr. Corbin's family refunded Child A and Child B the $1,500 in legal fees paid to Mr. Corbin.

**Matter 2:** In 2004, Mr. Corbin was hired to assist a client with estate planning for her parents. In Mr. Corbin's office, the client signed a quitclaim deed as attorney in fact for her mother, who was affected by Alzheimer's disease, but Mr. Corbin did not record it. The client also provided Mr. Corbin with a spousal agreement signed by her parents and a durable power of attorney. In April 2005, the client's father died and she became executor of his estate. The client tried many times to communicate with Mr. Corbin to obtain her original documents. The client subsequently hired a new lawyer, who tried to communicate multiple times with Mr. Corbin. Occasionally, Mr. Corbin would leave voicemail messages indicating that he had received the calls, but he did not return the client's documents. The new lawyer ultimately filed a petition with the superior court seeking an order requiring Mr. Corbin to return the client's original documents. The court issued a citation for Mr. Corbin to appear at a show cause hearing. Mr. Corbin did not appear. The court issued a second citation directing Mr. Corbin to appear at a hearing with the documents and show cause why he should not be required to pay the client's legal fees. Mr. Corbin did not appear. The court found Mr. Corbin in contempt and issued a bench warrant. The client's new lawyer proceeded with the probate based on the available documentation, resulting in additional expense to the client. The Bar Association subsequently obtained the client's file and provided it to her, at which time the bench warrant was quashed. Mr. Corbin entered into a stipulated judgment to pay the client $8,803.15 in restitution. Mr. Corbin satisfied the judgment.

**Matter 3:** In April 2004, clients hired Mr. Corbin to file an offer and compromise with the IRS because they owed back taxes. They paid Mr. Corbin $1,500. Over the next 18 months, the clients repeatedly tried to reach Mr. Corbin by phone, in person, and through letters. Mr. Corbin responded only once, stating he had family problems and would attend to their case promptly. Because Mr. Corbin failed to take any action on the clients' behalf, the IRS began garnishing one of the client's monthly Social Security disability payments. The clients needed original papers in Mr. Corbin's possession in order to address the garnishment issue, but they were unable to retrieve them from him. The clients eventually hired a tax professional, who wrote to Mr. Corbin to request the client file and a refund of the fee. Mr. Corbin did not respond. The Bar Association subsequently obtained the file and provided it to the clients. Mr. Corbin's family refunded the $1,500 fee.

After failing to promptly respond to the grievances that arose out of the above-described matters and failing to appear at a deposition as required by subpoena, Mr. Corbin was suspended by the Supreme Court for failure to cooperate with the disciplinary investigation.

Mr. Corbin'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 1.14(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 1.15(d), requiring a lawyer to take steps to the extent reasonably practicable to protect a client's interests, such as, *inter alia*, surrendering papers and property to which the client is entitled; RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; RPC 8.4(d), prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice; and RPC 8.4(i), prohibiting a lawyer from committing any act involving moral turpitude, or corruption, or any unjustified act of assault or other act which reflects disregard for the rule of law, whether the same be committed in the course of his or her conduct as a lawyer, or otherwise, and whether the same constitutes a felony or misdemeanor or not.

Nancy Bickford Miller represented the Bar Association. Mr. Jurdy did not appear either in person or through counsel. Michael J. Pettit was the hearing officer.

**Suspended**

Richard W. Swanson (WSBA No. 4777, admitted 1972), of Marysville, was suspended for three months, effective January 16, 2007, by order of the Washington State Supreme Court following a stipulation approved by the Disciplinary Board. This discipline was based on his conduct in 2004 and 2005 involving lack of diligence, failure to communicate with a client, and failure to expedite litigation. Richard W. Swanson is to be distinguished from Richard S. Swanson of Des Moines.

Mr. Swanson was hired by a client to represent her in connection with related claims against one party for slander and against another party for sexual harassment. Mr. Swanson agreed to handle both matters
on a contingent-fee basis. In June 2002, Mr. Swanson commenced the lawsuit for slander. He and the lawyer for the opposing party engaged in settlement negotiations. At one point, they believed they had reached a settlement, but the client changed her mind on some of the terms and, consequently, the matter was not settled. Mr. Swanson sought to resolve the matter through arbitration. The dates of the arbitration were continued several times. After the parties failed to effectuate a settlement and the arbitration was continued, Mr. Swanson did not diligently pursue the client’s claim. In March 2004, Mr. Swanson received a notice of dismissal for want of prosecution issued by the court clerk indicating that the case would be dismissed unless action was taken within 30 days. Mr. Swanson prepared an application to continue the matter pending so that the case would not be dismissed, but he neglected to timely file the application within the 30-day deadline. His client’s lawsuit was dismissed. Mr. Swanson was informed about the dismissal, but he took no corrective action or measures to vacate the dismissal or refute the lawsuit. He did not inform his client that her lawsuit was dismissed.

In July 2004, Mr. Swanson commenced a sexual harassment lawsuit on behalf of the same client against a business and its principal owner. Unbeknownst to Mr. Swanson, the business was owned and operated by a limited liability company (LLC). Mr. Swanson failed to diligently ascertain the correct corporate entity to sue when he filed the lawsuit. In October 2004, Mr. Swanson received a “confidential investigation report” identifying the LLC as the business’s owner, but he negligently failed to take action to add the LLC as a party to the lawsuit. After commencing the lawsuit against the business and its principal owner, Mr. Swanson failed to diligently pursue his client’s claim and did not conduct any discovery against the defendants. In December 2004, Mr. Swanson sent the client a copy of a letter from the defendant’s lawyer that included statements referencing the dismissed slander case. The client sent several letters to Mr. Swanson referencing the dismissed slander case. The defendants sent the client a copy of a letter from the LLC commencing the lawsuit against the business and the LLC as a party to the lawsuit. After receiving a “confidential investigation report” identifying the LLC as the business’s owner, Mr. Swanson did not diligently pursue the client’s claim. In March 2004, Mr. Swanson received a notice of dismissal for want of prosecution issued by the court clerk indicating that the case would be dismissed unless action was taken within 30 days. Mr. Swanson prepared an application to continue the matter pending so that the case would not be dismissed, but he neglected to timely file the application within the 30-day deadline. His client’s lawsuit was dismissed. Mr. Swanson was informed about the dismissal, but he took no corrective action or measures to vacate the dismissal or refute the lawsuit. He did not inform his client that her lawsuit was dismissed.

In June 2005, the defendants made an offer to settle the lawsuit for $5,000, which Mr. Swanson forwarded to his client. In July, the defendants filed a summary judgment motion, arguing that (1) the owner did not have personal knowledge of the sexual harassment, and (2) the client did not sue the correct entity by suing the business and could not pierce the corporate veil to establish liability against the owner personally. Mr. Swanson did not timely and diligently respond to the motion. He obtained a continuance, but was required to pay an $850 sanction. Mr. Swanson paid the sanction personally. Mr. Swanson subsequently filed a response to the summary judgment motion, but it was inadequate because it did not include any supporting declarations.

In August 2005, the client sent Mr. Swanson a letter inquiring about settling the case and whether to make a counteroffer. Mr. Swanson received the letter but did not reply to it. In September, the court granted summary judgment and dismissed the client’s lawsuit. A few days later, the client wrote a letter to Mr. Swanson directing him to accept the $5,000 offer from the defendants. The client then contacted Mr. Swanson’s office and spoke to his legal assistant, who informed her about the dismissal of the case.

Mr. Swanson’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; and RPC 3.2, requiring a lawyer to make reasonable efforts to expedite litigation consistent with the interests of the client.

Jonathan H. Burke represented the Bar Association. Mr. Swanson represented himself. Andrekita Silva was the hearing officer.

Suspended

Sandra M. Zupanski (WSBA No. 23508, admitted 1994), of Seattle, was suspended for three years, effective November 14, 2006, by order of the Washington State Supreme Court following a stipulation approved by the Disciplinary Board. This discipline was based on her conduct between 1996 and 2005 involving trust-account irregularities, misrepresentations to clients, false statements in connection with a disciplinary investigation, and failure to cooperate with a disciplinary investigation.

From July 1996 through August 2005, Ms. Zupanski maintained an IOLTA trust account and was solely responsible for maintaining her trust-account records. During this period, Ms. Zupanski used only a handwritten check register to keep track of trust-account funds and did not record all the transactions in the register. Many of the recorded transactions were incomplete, did not indicate a client matter, or were illegible. Ms. Zupanski wrote approximately 230 checks to herself with no client referenced on either the check or the check register. For most of this time period, Ms. Zupanski did not keep a running balance on her check register. She did not maintain client ledgers, did not reconcile her IOLTA checkbook register to the bank statements, and kept only some of the bank statements she received for her trust account. On approximately 46 separate occasions, Ms. Zupanski deposited her own funds into the trust account. She either deposited into the trust account or failed to promptly remove approximately $85,475 in earned fees. For a substantial period of time, Ms. Zupanski did not have any bank accounts other than her trust account. Ms. Zupanski repeatedly used the trust account to pay for personal expenses and arranged for automatic monthly deductions for personal expenses.

Between 1999 and 2005, Ms. Zupanski represented a client in connection with a Labor and Industries (L&I) claim. The agreed-upon fee entitled Ms. Zupanski to 10 percent of each time-loss payment. The remaining 90 percent of each time-loss payment belonged to the client. Ms. Zupanski failed to pay the client his share in a timely fashion and did not pay the client his share of 16 L&I payments, totaling $10,157.01. Between September 2001 and August 2002, Ms. Zupanski indicated on the client’s checks a time-loss period earlier than that of the most recent L&I check she had received. In August 2002, Ms. Zupanski was over two months behind in her payments to the client and, in a letter, made misrepresentations to the client about the status of the funds in her possession.

Between 1998 and 2000, Ms. Zupanski settled personal-injury matters for three cli-
ents. Settlement statements in each matter reflected that funds would be withheld to reimburse third-party creditors. The checks Ms. Zupanski sent to the third parties were for amounts less than what was listed on the settlement statements. Ms. Zupanski did not pay the clients in each of these matters the full difference between the amount reflected in the settlement statements and the amount actually paid to the third party. In a statement submitted to the Bar Association, Ms. Zupanski falsely stated that she had used non-trust-account funds to reimburse one of the clients for the difference between the amount withheld and the amount paid to the third party.

In August 2005, the Bar Association deposed Ms. Zupanski in connection with a trust-account overdraft notice. Ms. Zupanski did not timely provide all the information or documents requested by disciplinary counsel.

Ms. Zupanski’s conduct violated RPC 1.4(b), requiring a lawyer to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; RPC 1.14(a), requiring that all funds of clients paid to a lawyer or law firm, including advances for costs and expenses, be deposited in one or more identifiable interest-bearing trust accounts and that no funds be deposited in one or more identifiable interest-bearing trust accounts and that no funds belonging to the lawyer or law firm be deposited therein; RPC 1.14(b)(1), requiring a lawyer to promptly notify a client of the receipt of his or her funds, securities, or other properties; 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 1.14(b)(4), requiring a lawyer to promptly pay or deliver to the client as requested by a client the funds, securities, or other properties to which the client is entitled to receive a reprimand on September 14, 2006, by the Washington State Supreme Court imposing reciprocal discipline in accordance with an order of the Supreme Court of the State of Colorado. This discipline was based on her 2006 misdemeanor conviction in Colorado of first-degree official misconduct. For more information, see The Colorado Lawyer, Vol. 35, No. 9, Summaries of Disciplinary Opinions (September 2006), available at www.cobar.org/tcl/tcl_articles.cfm?ArticleID=4746.

Ms. Fenili’s conduct violated Colorado RPC 8.4(b), prohibiting a lawyer from committing a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects.

Felice P. Congalton represented the Bar Association. Ms. Fenili was not represented by counsel.

Reprimanded

Joe Wickersham (WSBA No. 18816, admitted 1989), of Renton, was ordered to receive a reprimand on September 21, 2006, following a stipulation approved by a hearing officer. This discipline was based on his conduct in 2005 involving an unreasonable fee and a prohibited division of fee.

In January 2005, Mr. Wickersham agreed to represent a defendant in three criminal cases pending in municipal court. Mr. Wickersham was hired by the defendant’s father, who signed a fee agreement indicating that Mr. Wickersham was to be paid a total of $5,000 for the representation. The defendant’s father paid $1,500 that day. The fee agreement indicated the remaining $3,500 was to be paid within 30 days and included the following relevant paragraphs:

1. The Client hires the Attorney [Law Office of Joe Wickersham] and have [sic] entered into a contract wherein the Client has agreed to pay the attorney $5,000 for Des Moines DV charges – 3. If the case proceeds to Jury/Bench Trial, including the preparation and appearing at court on day of trial, an additional fee of $350.00 per hour will be charged . . .
7. The Client also agrees to allow the attorney to associate with another attorney and delegate any work to another attorney, as the attorney is inclined to do.

Neither Mr. Wickersham, nor anyone who worked in his office, ever met or spoke with the defendant, filed a notice of appearance in the defendant’s case, or did any work on those cases. Mr. Wickersham contacted a sole practitioner working in another office and asked her to appear at the defendant’s next court hearing. This lawyer (hereinafter “surrogate lawyer”) agreed to handle the defendant’s cases. She appeared in court and filed a notice of appearance on the defendant’s behalf. These notices made no mention of Mr. Wickersham. In February 2005, Mr. Wickersham sent the surrogate lawyer a letter that read as follows:

Enclosed is a check in the amount of $500.00 for your representation of [defendant’s] three Des Moines DV matters.

As discussed, this payment represents all fees that will be paid to you by our office for your representation. Per the Fee Agreement, you can bill the client $350.00 per hour for trial and trial preparation.

The surrogate lawyer was unaware of the specifics of the fee agreement between Mr. Wickersham and the defendant’s father. She understood that she was representing the defendant up to trial for $500 and could bill him for additional fees if a case went to trial. Mr. Wickersham never spoke with the defendant and the defendant’s father about this arrangement, did not assume joint responsibility for representation of the defendant, and did not perform any duties on the defendant’s behalf. Nonetheless, Mr. Wickersham kept $1,000 of the original fee payment. Mr. Wickersham’s office sought payment of the remaining $3,500 from the defendant’s father by sending him monthly amount-due notices. Mr. Wickersham was not aware that his staff was sending these bills. The surrogate lawyer continued to represent the defendant until June 2005, when another lawyer substituted for her. Subsequently, a public defender was appointed to represent the defendant.

Mr. Wickersham’s conduct violated RPC 1.5(a), requiring that a lawyer’s fee be reasonable; and RPC 1.5(e)(2), allowing a division of fees between lawyers who are not in the same firm to be made only if the division is in proportion to the services provided by each lawyer or, by written agreement with the client, each lawyer assumes joint responsibility for the representation, the client is advised of and does not object to the participation of all the lawyers involved, and the total fee is reasonable.

M. Craig Bray represented the Bar Association. Mr. Wickersham represented himself. William J. Murphy was the hearing officer.
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Sima F. Sarrafan

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Rachel L. Hong

Sima joins the Firm as a Partner. Sima served for seven-and-one-half years as an Assistant United States Attorney for the District of Columbia. She is a graduate of Harvard Law School and Vassar College.

Rachel is a former law clerk to the Honorable Barbara Rothstein, U.S. District Court Judge for the Western District of Washington, and was an Associate Attorney at Heller Ehrman. She is graduate of University of Michigan Law School and the University of Virginia.

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Major, Lindsey & Africa, attorney-search consultants, was founded in 1982 and now has offices in 15 U.S. cities, Hong Kong, and London. In the only legal recruiters’ national surveys ever conducted, MLA was described as being “in a league apart from other legal headhunting firms” and was voted “Best Legal Search Firm in the U.S.” If you are interested in in-house, partner, or associate opportunities, please contact our Seattle office at 206-218-1010, or e-mail your résumé to seattle@mlaglobal.com.

Shareholder/lateral business transactions attorney: Quid Pro Quo, Attorney Search Consultants, is currently assisting a highly regarded and well-established Northwest law firm with its search for a senior-level lateral hire. We are seeking attorneys to join the firm’s sophisticated and entrepreneurial business transactions practice group. This strategic growth-oriented firm desires top talent attorneys who have predominantly represented private businesses for at least a decade. The ideal candidate will be knowledgeable in an array of corporate issues and business transactions for closely held entities from emerging and start-up ventures/enterprises to mature businesses. Tax experience, although not required, would be a plus. The firm represents privately held companies in all areas of governance, contracting, mergers and acquisitions, supply contracts, and asset acquisition and sale. The practice group has road-based experience with the laws and business practices affecting companies and entrepreneurs in an extensive range of industries — from formations and governance to wind ups and dissolutions. This opportunity to partner with esteemed practice group leaders requires the successful candidate to possess a strong client following and portfolio. Their firm is interested in lateral partners who will work with the firm’s expanding and high-profile client base, while maintaining the development of their own practice and participation in the firm’s marketing interests. Strategic planning for and development of the Seattle office has allowed the law firm to offer the successful candidate a robust platform of expertise and a sound structure to handle a variety of transactions from the small business owner to the Fortune 500 client. This is a unique opportunity to be a leader in this vital practice group. All candidates must be a member of the WSBA and have 10-plus years of relevant experience. For immediate and serious consideration, please contact Marcia McCraw, Esq., Attorney Search Consultant, Quid Pro Quo Attorney Search Consultants at 206-224-8269 or mm@qpqlegal.com. All communications are held in the strictest confidence.

Attorney: Buzzard & Associates, a well-established small firm in Centralia, Lewis County, Washington, is seeking a Washington-licensed associate attorney with two years’ minimum experience preferred. Please send your cover letter and résumé to Buzzard & Associates, PO Box 59, Centralia, WA 98531. For more information, please see our website at www.buzzardlaw.com.


Liquor licensing associate; civil litigation associate; securities associates: House Martin Morris is searching for talented lawyer with three-plus years’ experience in obtaining liquor licenses in multiple states for an excellent Seattle firm, a three-plus year associate to hit the ground running in complex commercial litigation for class, well-managed law firm, and mid-level associates with securities or M & A experience for well-established Seattle clients. We have been recruiting and placing attorneys with Northwest corporations and law firms for two decades. We specialize in attorney searches for corporations and lateral partners/as-
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Partner/shareholder opportunities — Are you seeking a firm with an enhanced platform of expertise? Do you need a law firm that will provide greater support for your practice? Quid Pro Quo, Attorney Search Consultants, has several exceptional opportunities for the discerning partner. We are presently assisting highly regarded law firms in the Seattle area with their search for laterals with expertise in the following business law with a transactional emphasis supporting private or public companies and closely held businesses; employment law with experience in employment litigation and advising/counseling employers; financial institutions law with a practice focused on representation of financial institutions, including banks, credit unions, or securities firms; and high-end real estate and/or land use law, preferably representing developers. Initial inquiries welcome. All inquiries are held in the strictest confidence. We are seeking partners, who are leaders in their field, with over 10 years of experience and a portable book of business ($300,000-500,000-plus). Quid Pro Quo delivers discreet, highly personalized service. You may contact, in confidence, Dyana Veigele, Esq., at dv@qpqlegal.com or Jean Seidler Thompson, Esq., at jt@qpqlegal.com or 206-224-8269.

Seeking one or two associates to join a well-established seven-attorney law firm in Olympia, WA. Experienced candidates in real estate, business, and family law preferred, but all inquiries seriously considered. Please submit a cover letter, résumé, and short writing sample (3-5 pages) to Carter Hick, Connolly Tacon & Meserve, 201 5th Ave. SW, Ste. 301, Olympia, WA 98501. For more information on our firm, visit our website at www.olylaw.com.

Senior patent litigator — Quid Pro Quo, Attorney Search Consultants, is currently entertaining profiles and CVs of top talent and discerning patent litigators for an established intellectual property department in a well-respected Seattle law firm. A portable book of business is required — further details may be discussed in confidence. Out-of-state lateral partner candidates are welcome and encouraged to contact Quid Pro Quo. Quid Pro Quo respects and holds all candidate discussions or information in the strictest confidence. For initial inquiries, please contact Jean Seidler Thompson, Esq., at 206-224-8269 or jt@qpqlegal.com.

Contracts attorney: Geonero Management, Inc, a privately held management company for several home building corporations seeks an in-house attorney to join our Seattle office legal department. Under the direction of our in-house Risk Management Counsel, the successful candidate will be responsible for editing and maintaining a variety of contracts and agreements relating to house sale, land acquisition, vendors and consultants, leases, rental, and listing agreements. Responsibilities will also include developing procedures for compliance with “do not call” and anti-spam laws, contest rules, and other marketing-related activities. The candidate will also be required to perform legal research and produce related memos on an as-needed basis. Interested candidates must have a license to practice law in either WA, OR, CA, CO, or UT; a minimum of two years of practical experience in real estate or contracts law; superb verbal communication; excellent writing skills; and proficiency with all Microsoft Office applications. This position requires occasional car and air travel outside of Washington state. We are seeking a committed, full-time in-house attorney. Send résumé and cover letter in confidence to Geonero Management, Inc., Attn: HR-Attorney, 1300 Dexter Ave. N, Ste. 500, Seattle, WA 98109, or fax to 206-352-3520.

Partner-level — business attorneys: Quid Pro Quo, Attorney Search Consultants, is exclusively representing a mid-sized well-established Northwest law firm with its search for transactional business shareholder-level attorneys. This firm is seeking talented attorneys who have predominantly represented private businesses and closely held companies. This firm provides a unique opportunity for a motivated attorney desiring an attractive platform to enhance and build his or her practice. This outstanding firm is seeking attorneys with over 10 years of experience and a portable book of business. The firm is interested in lateral partners who will work with the firm’s expanding and high-profile client base, while maintaining the development of their own practice. The firm delivers a broad range of professional services in business law, commercial litigation, banking law, and sophisticated real estate and intellectual property and patent transactions. For immediate and serious consideration, contact Jean Seidler Thompson, Esq., Director of Attorney Placement, in confidence at 206-224-8269 or jt@qpqlegal.com at Quid Pro Quo, Attorney Search Consultants. All inquiries are held in the strictest confidence.

Corporate associate: Cairncross & Hempelmann, P.S. is seeking an attorney with one-plus years of corporate transactional experience. Candidates should have superior academic credentials, excellent written and verbal communication skills, and current WSBA membership. Some securities experience preferred. We offer competitive salary, friendly people, and wonderful working environment. Check us out at www.cairncross.com. EOE. Send cover letter, résumé, and law school transcript to: Director of Human Resources, Cairncross & Hempelmann, P.S., 524 Second Ave., Ste. 500, Seattle, WA 98104, slavin@cairncross.com.

Ahlers & Cressman PLLC, a seven-lawyer, construction law firm in downtown Seattle, is seeking an accomplished partner-level attorney with experience in business transactions, corporate, and real estate with a portable book of business. The lawyer should be willing to work with the firm’s existing client base, while maintaining and developing of his or her own practice. Ahlers & Cressman PLLC is a group of motivated, hard-working attorneys. Its lawyers believe that hard work and high-quality work result in satisfied clients and a prosperous firm. The firm is closely knit, with a strong sense of camaraderie. All inquiries will remain confidential. If interested, please send résumé and cover letter to Chris Achman, Administrator, Ahlers & Cressman PLLC, 999 Third Ave., Ste. 3100, Seattle, WA 98104-4088. Fax: 206-287-9902. E-mail: cachman@ac-lawyers.com.

Ahlers & Cressman PLLC, a seven-lawyer, construction law firm in downtown Seattle, is seeking an attorney to perform construction contract review and drafting, as well as additional construction law work. Ahlers & Cressman PLLC is a group of motivated, hard-working attorneys. Its lawyers believe that high-quality work results in satisfied clients and a prosperous firm. The firm is closely knit, with a strong sense of camaraderie. Compensation is negotiable based upon qualifications and experience. All inquiries will remain confidential. If interested, please send résumé and cover letter to Chris Achman, Administrator, Ahlers & Cress-
Would you like to practice business law in a community where there is significant growth and opportunity? Do you want to be part of an established law firm with a reputation for providing high-quality service and expertise? We are seeking the "Best of the Best" to participate in the firm's growth, direction, and leadership. Landerholm, Memovich, Lansverk, & Whitesides, P.S., is a 17-attorney firm that is looking for a highly capable attorney with at least five years' business law experience to join our thriving business practice. Located in Vancouver, Washington, we are the largest law firm in Southwest Washington, which is an area that offers a superior quality of life, excellent schools, affordable housing, and numerous opportunities for community involvement. Vancouver is the fastest-growing city in the state and is part of the fastest-growing county in the Northwest. With that growth, there are excellent opportunities for intellectual, financial, and organizational advancement. Résumés should be sent to rhonda.kates@landerholm.com, or to Director of Operations, Landerholm, Memovich, et al, 805 Broadway St., Ste. 1000, Vancouver, WA 98660.

The state of Washington’s Department of Health, Health Professions Quality Assurance Division, is seeking qualified attorneys to fill new staff attorney positions (Hearings Examiner 3) with its Legal Services Unit based in the Olympia area. Interested members of the Bar should go to the following website: http://www.doh.wa.gov/job_ann.htm and click on Hearings Examiner 3 (staff attorney).

Established Bellingham firm seeking associate, two years' experience in family law matters, $60-100K salary, DOE, plus benefits. Send résumés to Lori at Tario & Associates, P.S., 119 N. Commercial St., #1000, Bellingham, WA 98225, or fax to 360-733-7092, or e-mail to lori_tariolaw@qwest.net.

Bellingham law firm with an established maritime personal injury practice seeks additional lawyer with personal injury litigation experience, to share office in Bellingham overlooking the San Juan Islands. Skillful, personable colleague sought. Please send cover letter and résumé to Barbara Ness, PO Box 1015, Bellingham, WA 98227, or e-mail boatlaw@boatlaw.com.

Contract lawyer position: Well-respected five-attorney litigation firm seeks a lawyer with a minimum of three years' experience to support active civil trial practice. Superb research and writing skills desired. Excellent academic and professional credentials required. Please e-mail cover letter, résumé, and writing sample to info@smithhennessey.com.

Attorney advertisement: Family law attorney needed at our Federal Way location. Highly motivated individual desired. Experience in family law preferred. Salary DOE. E-mail résumés to: attorney.employment@lutzlaw.com.

Attorney I: Ohio Casualty Insurance is hiring for an Attorney I in their Seattle office to perform a variety of legal assignments and projects. Provides advice to claims staff on issues relating to suits and related laws and legal matters. Position requires law degree from an accredited law school, insurance defense experience, and state bar admission in Washington. Please apply online at www.ucas.com. Ohio Casualty is an EOE.

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Our chief moves on

With Executive Director Jan Michels as guide, WSBA successes accrue

Lindsay Thompson

Jan revealed other manifestations of attention to detail along the way. My class of the BOG ended our terms a couple of days after 9/11, in a week of confusion and mourning. Jan went ahead and presented each of us with a framed caricature of our class as a band conducted by our last president, Jan Eric Peterson.

Sixteen months later, I was one of Jan’s nominal employees as Bar News editor. Since the editor is an independent contractor, and since I try to avoid meetings of every sort, I didn’t cross paths much. But there was a lot going on at WSBA. Most notably, Jan ushered the office (which, in the 1990s, got a fax machine, but didn’t like giving out the number lest people fax them things at night) into the technology age with systems to manage CLE credits, membership data, and a comprehensive website. She made the hard call to develop custom software for these tasks rather than continue with bolted-together off-the-shelf stuff ill-suited to the purpose. WSBA’s Service Center was a response to member complaints that they feared they would die on hold; now calls are swiftly shot to the right place. WSBA’s long-moribund Foundation was revived. WSBA’s relations with the courts is strong and productive. Significant initiatives addressed and staffed include coming issues like legal services and diversity. Long-range planning replaced the old “theme of the year” model.

Jan showed particular aplomb dealing with some one-off problems. One was when the building WSBA officed in got sick, and so did WSBA staffers. Soon the afflicted were scattered all over the tower in temp space; the problem took a long time to sort out, but eventually the bug in the air was vanquished.

Which led, in part, to the next big challenge: moving the WSBA to new space. She and her staff managed a huge move over a weekend last December. The new offices in Puget Sound Plaza are well laid-out, and have none of the rats-in-a-maze feel of the old offices.

Doubtless there’s more that Jan accomplished, things I’ve forgotten or didn’t know in the first place. But there’s no denying she has been a highly effective administrator these past nine years. I tip my hat, in addition to the more formal accolades she will receive from others, and wish Jan and Alan well in a retirement I am sure will be replete with travel, biking, and skiing. And, come 2010, I am sure — with their flat at Whistler, smack in the middle of the Winter Olympics — Jan and Alan will be amazed just how many fabulous friends and admirers they really had all this time, all of us eager to drop in for a visit.

Lindsay Thompson reports from Port Angeles and can be reached at barnewseditor@wsba.org.
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