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Steve Hayne has practiced criminal law for over 30 years and for over 20 years has limited his practice to defense of DUIs and serious traffic offenses. He offers personal attention, sincere compassion, and extraordinary experience to clients facing the devastating impact of a DUI charge.

In 2003, Mr. Hayne was awarded the highest honor accorded by the Washington Association of Criminal Defense Lawyers; The William O. Douglas Award “For extraordinary courage and dedication to the practice of criminal law.” He has been named one of “Seattle’s Best Lawyers” by Seattle Magazine, one of the state’s “Ten Best Trial Lawyers” by the Washington Law Journal, and a “Super Lawyer” every year since inception by Washington Law & Politics. His cases of significance include lead counsel/of counsel in State v. Straka, State v. Brayman, State v. Scott, State v. Ford, State v. Franco, Seattle v. Box and Seattle v. Allison.

Mr. Hayne is a past President of WACDL and has chaired the Criminal Law Sections of the WSBA, WSTLA and KCBA. He has taught trial practice at the University of Washington and Seattle University Schools of Law, the National Institute of Trial Advocacy and the Trial Masters Program. He has been a featured speaker at over 80 CLE programs in the U.S. and Canada and has published articles in the Bar News, Trial News, Defense and Overruled magazines. Mr. Hayne is also a founding member of the Washington Association of Criminal Defense Lawyers, the National College for DUI Defense, and the Washington Foundation for Criminal Justice.
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Weighing in on the President’s proposal

Every once in a while we can be proud of the President of the Washington State Bar Association [“Justice Seasoned with Mercy” — President’s Corner, April 2009 Bar News]. This is such a time. Mark has demonstrated a shining example of what a leader does. He leads. He saw a desperate need. He called it to our attention. He suggested a practical solution to ameliorate the crisis. We should all support the proposal to increase dues a mere $5.84 per month so that we can provide critically needed civil justice to those in need.

Lembhard G. Howell, Seattle

I am writing to express my grave concerns about [President Johnson’s] proposal....

While few among us are opposed to assisting the less fortunate with basic legal services, there are many other considerations, and many other voices that should be heard on this issue.

The first concern is the fact that several of the agencies who are recipients of civil indigent legal services grants engage in lobbying and political activity. According to the Public Disclosure Commission, there are currently 14 employees of Columbia Legal Services who are registered as lobbyists. I work as a lobbyist for farmers and ranchers in our state, and in that capacity I have had the opportunity to work with several CLS lobbyists. Although I find them to be passionate advocates for their clients, we are often on other sides of issues, and I don’t think I should be forced to pay their salaries. And there are several other advocacy groups who receive legal services grants. Unless you plan to structure the increased dues payment as a voluntary contribution, I believe that your proposal runs directly counter to the holding in Keller v. State Bar of California, 496 U.S. 1 (1990).

Another concern is [the] characterization of the fiscal state of the program. Washington currently expends in excess of $25 million each year in state and federal contributions for our indigent legal services program (not including private contributions). Over the past ten years, from 1999 to 2009, the state general fund contribution has increased from $3.4 million per year to $11.8 million per year, an increase of 247 percent, or 24.7 percent per year, over the ten year period, a statistic you failed to mention. The question, ultimately, is what is the correct level of taxpayer support for this program?

In order to answer this question, it is helpful to look at other states. The federal government provides funding for legal services programs based on the number of people in poverty in each state, and therefore we can make a per capita comparison. My understanding is that, on a per capita basis, Washington is the leader among the states in support of civil indigent legal services.

I have several other questions and concerns. For example, why are we funding two competing legal services agencies, Northwest Justice Project and Columbia Legal Services? And some more fundamental questions: Why aren’t clients charged for legal services on a sliding scale based on income? And what happens when both parties need legal assistance, but only one gets it? As an example, I am currently assisting a farmer who cannot afford a private attorney in an unemployment insurance hearing against a former employee who is a law school graduate and was earning at an annual rate of approximately $70,000 per year when he quit the job. He received a $10,000 severance payment after six months of work, filed for unemployment, and is being represented the Unemployment Law Project, an agency that receives funding from the indigent legal services program. Why does this person qualify for a free attorney when the farmer does not?

Dan Fazio, Lacey

While I tend to agree with the objections to using WSBA reserves and instituting a dues increase/tax however temporary to pay for legal services that the public at large ought to be paying for all citizens to be afforded equal justice, the sad truth is that the voters and the Legislature don’t care and the huge cuts are real. We as lawyers have a special interest in and duty to “justice for all” and have to step into the gap temporarily in hard times. It is not right that only 20 percent of lawyers do so by voluntary contributions when that fails to get the job done. I think that 20 percent will continue to contribute beyond their increased bar dues because that is the kind of people we are. Equal justice is certainly within the purview of
the bars purposes, if not at the top of the list. I commend President Johnson for his proposal and his courage.

Jan Eric Peterson, Seattle

A few decimal places off

The April Bar News article about the Washington Death with Dignity Act (WDDA) mistakenly claims that 60 suicides out of 31,000 total Oregon deaths “amounts to only 0.002 percent of the total.” It should read “.2 percent” not “.002 percent”. That’s an error of two decimal points; wrong by 100 to 1.

The author lawyer/ex-nurse either made the error or didn’t catch the error of others. The secondary fail-safe review of the Bar News editor didn’t see the math mistake. The third-level redundant fail-safe review of everyone else who read it before publication didn’t work either. Thousands of lawyers reading the article didn’t catch the error. In an article assuring us of the many safeguards in our law to end human lives early, an error in the magnitude of 100 to 1 slipped through the cracks unnoticed.

John Panesko, Chehalis

Editor Michael Heatherly replies: Mr. Panesko is correct that 60 out of 31,000 is approximately .2 percent, which can be expressed as .002 but is not “.002 percent.” This is a common type of error in stating percentages and we failed to catch it. We will be on the lookout for such errors in the future.

Further on the WDDA

I could not help but notice that Pamela Hanlon didn’t mention the mechanics of the new “Death with Dignity” Act until late in her article and then ignored the very real potential for abuse of the elderly and ill. Practitioners, particularly those who work with vulnerable clients, should note the following:

The statute specifically allows one of the witnesses to the patient’s request for the lethal dose to be an heir or family member. (RCW 70.245.030 & 70.245.220.) By contrast, the probate code provides that a Will witnessed by an interested party is presumed to be procured by “duress, menace, fraud, or undue influence.” (RCW 11.12.160.) The new Act provides the patient with fewer safeguards for prematurely ending his/her life than the probate codes provides for gifting of assets.

No witness is required at the death, so a patient who requests the lethal dose on a “just in case” basis, has no protection against being administered the dose unwillingly or unknowingly. Even if the patient resisted, who would know?

The Act requires that the death certificate state the cause of death as the underlying illness, not as physician assisted suicide. (RCW 79.245.040 (2).) Relatives or friends of the decedent who harbor legitimate suspicions regarding the death will be thwarted in their attempt to learn the truth.

Theresa Schrempp, Bellevue

Rules made to be broken?

I enjoyed Bob Cumbow’s Pet Peeves and the Peeves Beget Peeves followup. I must, however, take issue with one of the peeves in the followup: While I completely agree on “Agreement,” in the abstract, the use of
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“their” to form the possessive of a singular pronoun where the subject of the pronoun is unknown is a useful means to avoid the even clumsier construction, “his or her” (“Someone left their briefcase” versus “Someone left his or her briefcase.”)

Unless, that is, you’re courageous enough to use “his” as the neuter pronoun in all cases and face the wrath of the Sex Police (or Gender Police, if you prefer — and I don’t even want to get into the use of “gender” where the word “sex” is meant.)

Mark B. Moburg, Bellevue

And more on Smitty

Hon. Shelley Szambelan’s article in the April 2009 Bar News [“Smitty Myers: A Spokane Icon”] briefly adverts to what Smitty Myers termed his “most memorable case.” One reason, perhaps, that case resonates with Smitty is that he gave the most brilliant closing argument I have seen in 40 years of trial practice.

Just out of UW Law School and passing the bar, I was law clerk to Judge Charles L. Powell, Chief Judge of the Eastern District of Washington, before whom that case was tried, and I was in court every minute of the trial. (My deal with Judge Powell was that I would be in court whenever he was, doing research at my corner courtroom desk when I could and the rest of my research and memoranda writing late into the night.)

The seven defendants were Minutemen, of the armed wing of the John Birch Society. (Their weapons cache, to my chagrin, was hidden under Emmanuel Episcopal Church on Mercer Island, my church.) Their plan was to blow up the Redmond power substation and, in the dark confusion, rob several Redmond banks in order to finance the anticipated counter-revolution. The defendants were arrested at a pre-robbery staging area by an army of FBI agents flown in from Washington, D.C., enough to surround the (rather small then) town of Redmond. The defendants’ automobiles were packed with explosives (subsequently blown up at Fort Lewis [producing] wonderful photographic exhibits), grenades, tie ropes, masks, shotguns and semi-automatic weapons, and handguns.

The defense was [that] this was only a training exercise. The defendants had no thought of robbing banks. They were simply practicing — a dry run — for the patriotic ordeal they would courageously brave following the Communist take over.

The trial was long. There were a number of counts and lengthy (not-objected-to) instructions. Smitty gave a thorough, dispassionate closing. Then lawyers for each of the seven defendants, some very capable defense counsel, argued at length. There was a tired jury.

Then Smitty’s peroration.

Smitty and his assistant U.S. Attorney co-counsel slid a counsel table right up to the face of the jury box. Wordlessly they piled that table high with photographs of explosives (blowing up) and real grenades, tie ropes, face masks, shotguns, semi-automatic weapons, and handguns. Smitty’s co-counsel retired. Then, over the piled-high exhibit table, Smitty said softly to the jury: “You have heard the defense; this was a dry run. Now ... I ask you to picture these defendants, bursting into Redmond First City Bank, wearing these masks, carrying these weapons, and announcing “Stick ‘em up! This is a training exercise.” And he sat down.


Tom Ferguson, Seattle
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I would like to discuss a diabolically, devilishly difficult case. As is the custom with our profession, let’s start with the facts:

Our client’s name is Jabez Stone and he lives in New Hampshire. If you were to ask Jabez what he did for a living, he would tell you that he is a farmer. If you were to ask Jabez’s neighbors what he did for a living, they would qualify his description somewhat by telling you that, although he works very hard at being a farmer, maybe he is just unlucky, maybe he isn’t a good farmer but, undeniably, he is not a successful farmer.

For example, when the winter snows of New Hampshire melt and the ground thaws and Jabez hitches his plow to his horse and heads to his field to turn the soil, invariably, inevitably, his plow will strike a rock and break a blade. When his crops need rain, they get scorching sun, and when they need sun, there will be a deluge.

One day, as he was standing in his field looking down at another year’s decimated crop, the years of frustration and failure finally overwhelmed Jabez Stone and he muttered under his breath, so quietly that he almost could not hear the words himself: “I would sell my soul to the devil for a few years of good harvests.”

No sooner had those words tumbled from the mouth of Jabez Stone than he sensed that he was no longer alone in his failed field. And he was not, because seemingly as though he had materialized up from the ground, a tall, rail-thin man now stood next to Jabez.

And although the man was impecably, expensively dressed all in black, his clothes carried with them the distinct smell of burning sulfur. The man didn’t introduce himself to Jabez — he didn’t need to — Jabez knew who he was and why he was there; and the man knew that Jabez knew.

In a few minutes, the deal was done. Jabez Stone had sold his soul to the devil for seven years of good harvests. And the devil kept his word; Jabez’s crops flourished and his family became wealthy. But the years went by quickly, much too quickly for Jabez, and one day Jabez again sensed the man’s presence and, when he turned to face him, Jabez noticed that the devil carried with him a small black box — a box in which the prince of darkness would capture, carry to the underworld, and keep for eternity, the immortal soul of Jabez Stone.

When Jabez saw the devil and his box, he knew he was in the tightest spot imaginable.

Jabez knew what he needed and he knew who he needed, so he took off running to the home of attorney Daniel Webster, the greatest lawyer of his day. By now, it is probably apparent that the facts of the case do not come from a case book or a bound volume of reported decisions; they come to us, instead, from a short story written in 1937 by the American author Stephen Vincent Benét.

As the story goes, counselor Webster took the case and argued it to a jury chosen by the devil himself — a jury of the damned — but when that jury came back with its verdict in the case of The Devil v. Jabez Stone, it found in favor of farmer Stone and against the Ultimate Injustice.

The Devil and Daniel Webster was intended to be a tribute to the legal and oratorical abilities of Daniel Webster. Webster was, of course, a real lawyer and was considered to be the greatest lawyer and orator of his day. He also served in the U.S. Senate, the House of Representatives, and as Secretary of State. Benét’s story places a real lawyer in a fictional setting in opposition to the devil — a wonderful metaphor for injustice.

The Devil and Daniel Webster is not the only example of lawyers being lionized in literature. In Harper Lee’s To Kill a Mockingbird, the hero was lawyer Atticus Finch, a fictional character, but the story — the prosecution of a black man falsely accused of assaulting a white woman in a small town in Alabama during the Depression — is said to be based on true events.

So we have a real lawyer in a fictional story and a fictional lawyer in a true story. And then we have the third type — the craziest of all — a story which proves that sometimes authors of fiction don’t know when to quit.

In this story, the central character is
“I have spent the better part of 40 years earning my reputation so you don’t have to worry about yours. Refer with confidence.”
Doug Cowan

The point is that, although lawyers take more than our fair share of criticism, and a great deal of unfair criticism, it’s a fact, not fiction, that our democracy would not exist without an effective justice system and our justice system would not exist without lawyers, on the bench and at the bar, who are the bedrock of that system ...

the descendant of slaves. As a child, when he misbehaved, his father punished him by making him read the U.S. Constitution, and because of that, he takes a interest in the law and goes to law school — but not to his first choice of schools — he is denied admission to his state school because of the color of his skin.

Ultimately, he becomes a lawyer and argues 32 cases before the U.S. Supreme Court, winning 29 of them. Along the way, he sues the school that denied him admission on behalf of another young black man who wanted to attend law school and he wins that case. Finally, he becomes the first African-American to serve on the U.S. Supreme Court ... I’m sorry ... I got confused — that’s not fiction, that’s fact — he’s Thurgood Marshall.

The point is that, although lawyers take more than our fair share of criticism, and a great deal of unfair criticism, it’s a fact, not fiction, that our democracy would not exist without an effective justice system and our justice system would not exist without lawyers, on the bench and at the bar, who are the bedrock of that system; and it’s a fact, not fiction, that lawyers on the bench and at the bar practice daily by the principle that, while the law may be our trade, we know that justice is our profession.

WSBA President Mark Johnson can be reached at 206-386-5566 or mark@johnsonflora.com.
William Caper* is a former public works director and city administrator who serves as a volunteer consultant for the Mossyrock water district. In 1999, Caper attempted to register to vote after moving to Lewis County. When his voter registration didn’t arrive in the mail, he went to the Superior Court. A court clerk informed him that he was ineligible to vote because of a felony conviction two years before. Caper then began the process of restoring his right to vote. Only after he sought help from an attorney did Caper discover that his voting rights had been restored in 1998 and that for eight years he had been erroneously denied the right to vote. (*Note: William Caper is not his real name — the names of individuals in this article have been changed to protect their privacy.)

William Caper’s story is not unusual. The system by which the state of Washington restores the right to vote to people coming out of the criminal justice system is so confusing that even officials aren’t sure who is eligible to vote.

Few rights are more cherished in this country than the freedom to vote. After all, voting underlies our ability to elect officials who can help protect all our other rights. Voting is not only a right bestowed upon us by the Constitution, but a civic responsibility as well.

Under Washington law, the right to vote is taken away from people who are convicted of felonies. When they’ve completed their sentences, the law entitles them to regain that right, but the process to do so is cumbersome and confusing. It differs based on when and where the people were sentenced. It practically requires them to hire an attorney to navigate the hurdles and hoops. As William Caper found out, it depends on courts and elections officials giving out accurate and consistent information.

Before such individuals can register to vote, the Department of Corrections, the sentencing court, and the county clerk typically all have to issue records that must be verified. In addition, people convicted of felonies are charged 12 percent interest on the legal financial obligations (LFOs) associated with their sentences, and they can’t get their voting rights back until the LFOs are paid in full. Only when they have met all the conditions — financial and otherwise — are they given a certificate of discharge, which qualifies them to vote.

The part of the law requiring all LFOs to be paid before restoration of the right to vote hits people of modest means especially hard.

Before her conviction, Bette Woods, a mother and grandmother from Chattaroy, was a regular voter. She’s a former park ranger and security officer, but since 2001, hasn’t been able to work due to chronic pain and nerve damage from a spinal-cord injury she suffered after a car accident. Because she has to live on a very limited fixed monthly income, Woods can afford to make payments of only $10 per month toward her legal financial obligations. She still owes over $1,000 in fines, more than $700 of which is interest. At her rate of payment, Woods will be in her late sixties by the time she can vote again.

The result is that people with money get to vote, and people with low incomes often lose the right to vote for the rest of their lives.

Because of this system, more than 167,000 Washington citizens — disproportionately people of color and poor people — are disenfranchised. This is particularly unfortunate because taking part in the democratic process is important for people who have come out of the criminal justice system. A big part of rehabilitation is reconnecting people with their communities and discouraging them from re-offending. Research indicates that people who vote after being released are 50 percent less likely to be re-arrested than those who don’t vote. So wouldn’t a policy that makes it easier for people to vote make more sense than one that makes it more difficult?

The American Civil Liberties Union of Washington has learned of these difficulties firsthand: The ACLU-WA has been contacted by more than 600 people needing
help to negotiate the labyrinthine system to regain their voting rights. With help, 170 have regained the franchise so far. These are typically Washington state citizens who have been released from prison, who have met all their obligations under their sentences, but who have not performed the administrative tasks necessary to reclaim their right to vote. In 2008, attorneys and paralegals from the Starbucks Coffee Company’s Law and Corporate Affairs Department joined in that effort by volunteering their time and skills.

The quest to restore an individual’s right to vote often resembles a detective case. People must be located, leads followed up, files acquired, and signatures gathered. The ACLU and Starbucks helped Candy Cutchins in such a quest.

Candy Cutchins is a mother of four from Des Moines who completed her sentence in 1995 and paid off all her fines in 2002. After her petition to King County Superior Court to restore her voting rights was denied, she contacted the ACLU-WA for help in October 2007.

The legal team looking into the case learned that an agency where Cutchins had received drug/alcohol treatment had gone out of business and many of the records destroyed. By contacting numerous officials at the Washington Depart-

The cases of William Caper, Bette Woods, and Candy Cutchins illustrate what has become the norm — citizens who should be allowed to vote are denied because of an inefficient system, a system that penalizes poor people.

We need a law that automatically restores citizens’ right to vote as they complete their sentences and their non-financial obligations. They would still have to pay off their debts, but their debts wouldn’t determine their right to vote. The process would be streamlined, saving time and taxpayer money. Such a law has already been enacted in 13 other states, in the District of Columbia, and in virtually all other democratic countries.

Such a law should be passed in Washington before thousands more people are denied the right to vote in the next election.

William Caper reminds us of the importance of reforming our system for restoring voting rights. Having regained his vote, he says: “I am once again a full citizen of the United States with a voice that counts — at the ballot box. I will leave no greater influence on the future of the world than when I vote.”

Jennifer Shaw is deputy director of the American Civil Liberties Union of Washington. Prior to joining the ACLU staff in 2004, she spent eight years as a trial attorney with Aoki and Sakamoto in Seattle and before that worked for seven years as a public defender.
Using QDROs to Collect Child-Support Payments

A tool to ensure debt collection and timely payments

BY KIM SCHNUELLE AND LISA DUFOUR

Even a cursory glance at the morning paper provides a clear image of the mounting financial crisis in this country. As the economy has worsened, many people are finding it more and more difficult to pay their debts. When such financial hardships result in a failure or unwillingness to meet maintenance and child-support obligations, the result can be devastating to children. In these circumstances, employment retirement funds or pensions can be a good source for collection of overdue child-support and maintenance obligations.

Through the use of a Qualified Domestic Relations Order (QDRO), a spouse, former spouse, child, or other dependent of an employee or former employee who is a participant in an employee-benefit plan may be able to collect up to 100 percent of all debt owed. In addition, via ordered distribution of an obligor’s monthly paid benefits, a QDRO can assure timely and consistent support payments until all minor children emancipate. Although there is a common perception that QDROs are difficult to put in place, in reality the procedure is fairly simple and straightforward. In fact, QDROs can be a useful tool for collection of child support from large employers such as the NBA, the NFL, Boeing, and numerous professional unions. In this article, we will provide both a general overview of what QDROs can and cannot do as a collection tool, as well as practical tips to streamline the process for the busy family law practitioner.

Qualified Domestic Relations Orders are governed by two separate federal statutes: Section 414(p) of the Internal Revenue Code and Section 206(d) of ERISA. Although broad in scope, QDROs have several significant limitations. Prior to using one, a practitioner should analyze whether it would be an effective collection tool. For example, QDROs are available only for privately sponsored employee-benefit plans. Thus, a QDRO is ineffective against a government- or church-sponsored retirement plan. In addition, a QDRO can obtain funds only in a time and manner which the plan participant/obligor could obtain them.

Plan benefits may be paid to the plan participant at the beginning of the participant’s “earliest retirement age,” defined as the earlier of 1) the date when the participant is entitled to distribution under the individual plan; or 2) the later of either the date the participant turns 50 or the earliest date the participant could have obtained benefits if he or she left employment. A QDRO cannot force a participant to take early retirement but can seize any pre-retirement benefits to which the obligor is entitled. Also, a QDRO is limited by the specific types of distribution options authorized in the debtor’s plan. The QDRO cannot require payment via an option not allowed under the plan. Finally, if benefit rights have been assigned in a prior QDRO that is legally valid, they cannot be reassigned by a subsequent QDRO.

After considering these limitations, a QDRO may still be an attractive option to collect outstanding support and maintenance debts and/or ensure monthly support payments. A QDRO may be beneficial even if the obligor/plan participant is some years from earliest distribution, because the entry of a QDRO would effectively prevent the participant from either cashing in the benefits through early retirement or assigning them to another individual. A QDRO can also segregate or freeze benefits. This gives the alternate payee some control over the benefits, even if the funds cannot be distributed until a later date.

In deciding to pursue a QDRO, the family law practitioner must first obtain all necessary plan information prior to drafting the motion and proposed order. If the obligee knows the name of the employer, it is often possible to simply telephone the employer or the plan administrator and find out the specific benefit plan name. One can also frequently obtain this information through an active Internet search. One should then ask the plan administrator to mail a copy of the plan guidelines. These guidelines usually prove very helpful in aligning a proposed QDRO to the exact specifications of the individual plan.

In addition, larger employers such as Boeing often have approved model QDROs which they will provide upon request. If such a model order is available, the family law practitioner can then input the facts of their specific case into the standard form for simple approval by the plan. However, it is important to note that employers often provide several different benefit plans. To avoid further litigation, an
effective QDRO should include the specific name of the plan(s) in which the participant/obligor has an interest.

Once the specific name of the plan or plans is ascertained, the family law practitioner should determine the type of retirement/pension plan used by the employer. Retirement/pension plans come in two basic forms: defined benefit plans and defined contribution plans. Under a defined benefit plan, a specific retirement benefit is established and the employer makes an annual contribution to the plan. In such a plan, the amount of a participant’s accrued benefits is usually listed in terms of a monthly or annual benefit (e.g., $1,500 per month, $35,000 per year, etc.). Such plans are typically found with larger employers, with the most common type being the traditional pension plan. In dealing with a defined benefit plan, a QDRO should order a monthly benefit payout and not a lump-sum payment.

Under a defined contribution plan, the employer pays a fixed or determinable amount to the plan each year, paid into individual accounts established for each employee. The plan does not guarantee a specific benefit to any employee. In such a plan, the amount of a participant’s benefits is listed in terms of a total lump-sum balance (e.g., $100,000). Another name for a defined contribution plan is an individual account plan. Specific examples of such plans include 401(k) plans and profit-sharing plans.

Every QDRO must contain several specific provisions mandated under ERISA and the Internal Revenue Code in order to be approved by the plan administrator. First, the QDRO must be an order, judgment, or decree entered pursuant to a domestic-relations or community-property action. Although the QDRO is usually prepared as a separate document for clarity purposes, this is not a requirement under the statutes. Second, the QDRO must concern the division of marital property and maintenance or child support owed to a spouse, former spouse, child, child’s legal guardian, or a legal dependent of the plan participant. Third, the order must list and recognize the right of the obligee/alternate payee to receive either all plan funds due to the participant or a defined portion of the participant’s owed plan benefits. Fourth, the QDRO must clearly set forth the following information: a) the full name and mailing address of the participant; b) the full name and mailing address of each alternate payee; c) a clear listing of the amount or percentage of the participant’s benefits to be paid under the plan to each alternate payee; d) the number of payments or period to which the order applies; and e) the full and correct plan name or names.

In drafting a QDRO, the practitioner must consider the income-tax liability for the benefits. If funds contributed to the plan directly from the employee were taxed before contribution, they are not taxable upon distribution. Funds contributed by employers are taxable upon distribution in the same manner as other general income. Under federal law, child-support payments are not taxable to the payee parent. However, if the alternate payee in the QDRO order is a spouse or former spouse, the benefits paid are included as taxable gross income of the alternate payee. The alternate payee spouse or former spouse may be able to defer this immediate tax penalty if they roll over a lump-sum payment to an IRA or other qualified retirement fund. In a paternity case, the child or dependent must be listed as the alternate payee, as there is no spouse, and tax liability will be assessed against the obligor. The QDRO should recognize the tax liability of the recipient and credit only the portion of the funds that remain after taxes are paid as payment received.

As previously mentioned, it is the plan administrator who determines whether a

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QDRO is a valid order. Thus, a QDRO entered by a court which does not fully meet the plan specifications as determined by the individual plan administrator will not qualify, and no funds will be disbursed. In such a case, the practitioner will have to draft a new motion and proposed order. If the plan does not have a model QDRO order, the family law practitioner should request a copy of the plan’s QDRO guidelines and tailor the proposed order accordingly. It is prudent to send the plan administrator a copy of your proposed order well in advance of the court date with a cover letter asking, in the opinion of the plan administrator, if the proposed order will meet all qualifications. Through this advance planning and communication with the plan administrator, you will significantly increase the chances of your final QDRO order being approved by the plan administrator.

Once the final QDRO order is signed by the court, the plan administrator has a reasonable period to determine whether the QDRO complies with ERISA and the individual plan requirements. Although the term “reasonable period” is not statutorily defined, many employer plans have adopted procedures governing determination timelines. Federal statutes require plan administrators to segregate and separately account for any funds payable to an alternate payee for an 18-month period. This period begins on the date of the first benefit payment required under the QDRO, following receipt of the certified QDRO by the plan administrator. In practice, the time needed to have a QDRO approved by the plan administrator depends upon the size of the employer, the type and complexity of the employer plan itself, and the clarity of language in the QDRO order.

Although QDROs are not available in all situations, where they are available, they are an invaluable collection tool. In any case involving unpaid maintenance and support, it is worth investigating whether the obligor has any available retirement or pension benefits. If so, filing a QDRO may be the best method available to assure the financial stability of the client’s family. If the client has assigned his support collection rights to the Department of Social and Health Services through the Washington State Support Registry (WSSR), state attorneys may, depending upon the circumstances of the individual case, file a QDRO action as part of a support collection action. If a client has an open case with DSHS, the family law practitioner may want to explore the option of a state-filed QDRO to reduce costs. However, a state-filed QDRO may take longer to complete than a privately filed case. Therefore, if time is of the essence,
it is often preferable to file a private action immediately. In either scenario, however, a QDRO may be the quickest, simplest, and most effective method to ensure both full payment of outstanding support and maintenance debt, and secure timely distribution of monthly child-support obligations.

Kim Schnuelle is a senior deputy prosecuting attorney in the King County Prosecutor’s Office Family Support Division. Currently, she is assigned to the paternity establishment unit of the Seattle office. She can be reached at kim.schnuelle@kingcounty.gov. Lisa Dufour is a senior deputy prosecuting attorney in the King County Prosecutor’s Office Family Support Division. Currently, she is head of the Special Collections Unit. She can be reached at lisa.dufour@kingcounty.gov.

NOTES
2. Although QDROs are frequently used as a tool in dissolution property division, the issue of valuation of retirement benefits for property settlement purposes is beyond the scope of this article.
5. Id. However, collection under a governmental or church plan may be done via a contempt action. See RCW 26.18.050.
8. 26 U.S.C.A. 414(p)(4)(E), 29 U.S.C.A. 1056(d)(3). Some courts have held that a QDRO may be used to obtain employee welfare plan benefits in addition to employee pension or retirement benefits. See Metro Life Ins. Co. v. Price, 501 F.3d 271, 275 n.2 (3d Cir. 2007). The Third Circuit recently observed that every federal appellate court that has considered this question has come to this same conclusion. Id. See also: Carland v. Metropolitan Life Ins. Co., 935 F.2d 1114, 119-20 (10th Cir. 1991); Metro Life Ins. Co. v. Bigelow, 283 F.3d 436, 440 (2d Cir. 2002); Metro. Life Ins. Co. v. Pettit, 164 F.3d 857, 863 n.5 (4th Cir. 1998); Life Insur. Co. v. Marsh, 119 F.3d 415, 421 (6th Cir. 1997); Metro. Life Ins. Co. v. Wheaton, 42 F.3d 1080, 1083-84 (7th Cir. 1994). In following this trend, the Ninth Circuit District Court recently allowed the state to collect child support through a QDRO from dis-
14. QDROs are not available for partner support or division of property in meretricious relationships. See Rhone v. Butcher 140 Wn.App. 600, 166 P.3d 1230 (2007).
16. 26 U.S.C.A. 414(p)(1)(B)(i), 29 U.S.C.A. 1056(d)(3)(B)(i)(i). If the obligee/alternate payee has an active case with the Washington State Support Registry (WSSR), one should use the WSSR address for payment of benefits. WSSR, PO Box 45868, Olympia, WA 98504. This assures an accurate record of receipt of funds and is a prudent practice if there are any suspiscions of domestic violence between the parties.
19. Id.
Celebrating State Constitutional Law:
The Gunwall Poetry Slam

by the Honorable Debra L. Stephens

Over the past decade Gonzaga University School of Law has offered a course in State Constitutional Law, taught by Bryan Harnetiaux and me as adjunct professors. Like similar courses at Seattle University and the University of Washington, this course focuses on the study of state constitutionalism in general and the Washington State Constitution in particular.

One unique feature of the Gonzaga course is the (somewhat) annual “Gunwall Poetry Slam,” named for the landmark case of State v. Gunwall, 106 Wn.2d 54 (1986), which identified six non-exclusive criteria for analyzing state constitutional provisions.

Over the years, submissions to the poetry slam have reflected the diverse talents of law students. There have been poems ranging from ambitious epics to pithy haikus, musical numbers, performance art, and even one “scratch and sniff” submission. For readers familiar with Gunwall, these poems may suggest new opportunities for briefing — why include a lengthy block quote from a case when a line of verse might suffice? And so, we offer a sampling of Gunwall poetry for your reading pleasure.

Poe — Take One

Once upon a midnight dreary
While I pondered weak and weary
Over many a quaint and curious volume
I thought to myself there must be a way to avoid the devolution
Of Federalism altogether and for the States to assert some adequate and independent grounds from the Federal actors
It was at this point, of course, that I came across Washington v. Gunwall and its list of six non-exclusive factors.
Now I’m not gonna go into it here, but needless to say they’re broad enough to always be explored. Sometimes, even when the briefs haven’t brought them to the fore. But the question I had while reading was: “Will our state constitution forever be ignored?”
Quoteth the Justices: “Nevermore!”

Brandon Roché

Poe — Take Two

Once upon a weekend dreary, while I studied weak and bleary,
Over many a forgotten case of state constitutional law,
While I nodded, nearly napping, suddenly there came a tapping,
As of some thought gently rapping, rapping at my frontal lobe.
“It’s some old case,” I muttered, “tapping at my frontal lobe — Only this, and nothing more.”

Ah, distinctly I remember it was in the bleak September,
And each prosecutor and cop wrought their ghosts upon the wall.
Eagerly they had sought to uncover — without warrant to discover
From phone records evidence of dealing — dealing by Laura Gunwall —
By the bold drug dealing maiden whom the informant named Gunwall
Famous here, forever more.

And the constant, insistent filing of each motion and each order
Thrilled her — filled her with fantastic terrors never felt before;
So that to still the beating of her heart, she stood repeating
Independent state constitutional grounds will save me —
Article I, Section 7 was violated —
This it was, and nothing more.

Presently her soul grew stronger; hesitating then no longer,
At the Temple of Justice, exclusion, exclusion she implored;
Can’t you see that Smith v. Maryland is not controlling?
Washington’s right to privacy cannot be ignored.
There must be some factors in which the court may find accord
To decide on state grounds, and nothing more.
While she sat engaged in guessing, but no syllable expressing
To the justices whose thoughts now turned
to the constitution's very core
Some principles they were divining, in their conferences deciding
On six factors they were alighting that the majority pondered o'er
And on six factors petitioners would ponder o'er
In their briefs, forever more.

And the factors, never flitting, still are sitting, still are sitting
On the pallid bust of Justice just above the Temple door;
And petitioners who seek remanding, State v. Chenoweth not withstanding
List the factors in their briefing one thru six per legal lore
And their souls from out that shadow that lies floating by the shore
Shall be lifted — nevermore!

Collette Leland

The Gunwall Factors Chant
The Washington Supreme Court can't listen to you rant
About your rights so dear
Though violated (it's not clear)
Unless you go recant
The Gunwall Factors Chant.

Begin, of course you should,
With the language of the text.
Then a look at parallels
Is what you should do next.
State con law history and common law
Would never be a flaw,
If followed by a real close look
At pre-existing state law.
Differences in structure between the fed and the state
Will give the Court a healthy bite
Of juicy legal bait.
To avoid appeal
You end your spiel
With something quite oblique —
Convince the Court
As best you can
Of why we are unique.

Now you're done
Put away your gun
And let the Court just think.
You've done your math
To defray all wrath

Though your argument may stink.
The Gunwall Chant you surely hope
Has come to save the day
Ain't it grand
To take the stand
When you really don't know what to say!

Mark Johnson


Gunwall Beat Poem
A snitch ratted me out
Pigs brought me down with the help of Ma Bell
Ain't a sister got no rights?
Didn't Mr. Warren protect me from the man?
Hell no, not once Mr. Burger took over!
But in this Washington, we don't just live on the floor
My Supreme Court said we got adequate grounds to go beyond the floor
My phone is private
Get a warrant, man

Kim Kremer

Gunwall Limerick
The Constitution gave us rights in 1889,
I got in trouble and thought that I was fine,
The court said no,
To the slammer I go,
Apparently my rights are of the federal kind.

Kevin Anderson

Gunwall Slam
The Gunwall decision keeps Washington law in first place.
Although it factors in federal law, at least on its face.
When it's Fed law vs. State law, the U.S. loses the race.
But was Gunwall decided to have Supreme Court review erased?

Are they avoiding federal review, is that why they made it?
Is that what Gunwall is, our high court trying to evade it?
These judges are wise and respected, no way they're so jaded.

I could be quite wrong, though, this poem's not graded.

On the debate of ego or independence, these 6 factors straddle the fence.
Applying contrary decisions from other states could make things quite tense.
But, does living on a legal island make any sense?
Sure, just remember as the 42nd state, don't ignore jurisprudence.

Adam Teal

Gunwall: The Poetic Decision
With Apologies to Elizabeth Barrett Browning
State Constitution, how do I assess thee?
Let me count the ways . . .
The textual language of the state constitution,
And differences in text make their own contribution.
Consider common law and constitutional history,
Preexisting state law also helps clear the mystery.
Those differing structures, both federal and state,
And particular state interests help end the debate.

Reid Hay

Gunwall Haiku
Gunwall for Primacy
Gunwall for Dual Sovereignty,
Six non-exclusive factors
The door, not the key.

Upon a mountain,
Factors floating freely
Our rights are secure
The laughing crane.

David Turplesmith

The Honorable Debra L. Stephens was appointed to the Washington State Supreme Court on December 4, 2007, and took office January 1, 2008. She previously served as a judge for Division Three of the Court of Appeals, having been appointed and later elected unopposed in 2007. Justice Stephens is a native of Spokane, where she practiced law until taking the bench.
his article is intended to be helpful to my fellow attorneys who may find themselves in the position of representing my people in personal-injury or wrongful-death cases. I also hope that the information here is helpful to my fellow tribal members in Washington state who may find themselves the victim of a tort or who have experienced personal injuries or a wrongful death in the family.

Here in the Pacific Northwest, my people live quietly among you in large numbers. Therefore, it is not unlikely that at some point in your legal career you will have the opportunity to represent them. This has been implicitly recognized since 2005, when the Board of Governors of the Washington State Bar Association made testing on the topic of federal Indian law part of the curriculum of the Washington State Bar examination. According to the Washington State Governor’s Office of Indian Affairs, there are no fewer than 29 federally recognized tribes in Washington. According to the 2000 U.S. Census, 164,481 residents of the state of Washington identify themselves as Native American or Alaskan Native.

I realize that it can raise uncomfortable issues such as discrimination or stereotyping by generalizing about my people. By the same token, I shall undoubtedly receive some opprobrium for sharing information regarding certain cultural beliefs with those outside the tribe. On the whole, however, I have come down on the side that it is important to the welfare of my people that I try to convey the important considerations which you should take into account when calculating damages in cases involving tribal clients, because they are easily overlooked.

First of all, you should be aware that many of my people (including me) are very big on compliance with the Creator’s will. Oftentimes, for example, a feeling comes to me such that I cannot explain why I must drop everything I am doing in order to attend to an unexpected task. I try to explain to my wife that something is telling me that I must do this thing. I don’t know why; I am just supposed to do it. It is the Creator’s will.

When one of my people dies, usually that, too, is often considered to be the result of the Creator’s will. That is that. The period of mourning is held, and after that, the rest of their family gets on with their lives. Even if the injury or death was another’s fault or happened during the course of employment, no insurance or administrative tort claim is made and no lawsuit gets filed. Sadly, in my 25 years as a member of the Washington State Bar Association, I have found this to be the general rule.

Although the establishment of tribal gaming, with its resultant jobs and revenues, has given a boost to historically bleak tribal economies, as a general rule, most of my people have been too poor for most of their lives to have much of a handle on the concept of insurance. They were happy just to have an automobile that ran half or more of the time. Insurance was a luxury. Consequently, my people leave a lot of money on the table because between the concept of the Creator’s will and the
foreign concept of insurance, the thought of filing an insurance claim, a federal tort claim, or suing the party at fault is not part of the culture they grew up with.

So the starting place sometimes must be to explain to my people that, by pursuing a claim against another party, they are not doing anything to harm anyone, nor are they going against the Creator’s will. One thing you can do is tell them that restitution is part of their culture. For example, my great-great-grandfather paid much restitution to my great-great-great-grandfather for the privilege of being allowed to marry his daughter. Similarly, I once saw an 1878 entry in the U.S. Indian Agent’s diary for the Yakama Reservation informing the Justice Department that the Agent did not plan on requesting the United States to prosecute one of my people for murder who had killed another, because, as a leader, I believe that it is to their benefit that their losses be considered rather than for them to be not known.

Following the death of a family or extended family member among the native Plateau people of Central and Eastern Washington and among some tribes in Western Washington, there is a period of mourning lasting, at a minimum, for a year or until a memorial is held, whatever takes longer. During this period, the surviving immediate- and extended-family members do not dance or attend celebrations or ceremonial events. During this period, they may not go to the mountains, go hunting or fishing, or gather roots. They are restricted in their diet to eating their natural traditional tribal foods but cannot gather or harvest them for themselves. From the time of death until the memorial, all photographs of the deceased are removed from display. No one may speak the name of the deceased. Usually, the furniture at the home where the deceased lived at the time of death is removed and all different furniture brought in. These practices are mandatory and involve thousands of dollars in expenses to the deceased’s survivors. (To understand how firmly imbedded these customs are, you can read Helen H. Schuster’s 1975 University of Washington doctoral dissertation, Yakima (sic) Indian (sic) Traditionalism; a Study in Continuity and Change.)

The question this raises is whether a party at fault should bear any liability for causing a victim’s survivors to experience these costs and hardships.

The death of one of my people also involves the loss of much of the deceased’s personal property, which is required to be given away to persons outside the family. During the mourning, my people must combine their resources, obtain a loan, or otherwise incur debt to save up for holding a memorial. Until the memorial is held, there is no closure of the death of a loved one. The memorial is expensive. It can cost from $20,000 to $50,000.

In connection with the memorial, there is a “stone-setting,” meaning that a headstone is purchased for the deceased’s grave and set in place. At the memorial, the deceased’s hereditary tribal name is given...
family must hold a “give-away” at which each and every person attending receives something. Following the memorial, the decedent’s loved ones must feed everyone at a banquet. In connection with this feast, they must not only provide the food, but pay the cooks and the hunters and fishermen. The cost can be tremendous. This is an expense directly flowing from and caused by a death but which, again, is not generally included among what is traditionally thought of as compensable damages. Similarly, in calculating the “economic loss” to a family resulting from the death of a loved one, you must consider more than their job salary at the time of his or her death. Many tribal members receive a periodic dividend from their tribe, called a “per capita” dividend, which represents that person’s pro rata share of income received by their tribe. This ceases upon death. Additionally, apart from whatever job they held, many tribal members throughout their life exercised their treaty right to harvest salmon and other fish both for their family’s subsistence and to be sold commercially. Because treaty fishing income and resources are exempt income according to IRS regulations (26 U.S.C. 7872), the loss of a fisherman who generated food and money for his or her family is not reflected in a W-2 or Form 1099. This can be a loss to the deceased’s family of another $10,000 to $100,000 annually, which was caused by the death.

My goal is to make sure that those of you who find yourself representing my people in personal-injury or wrongful-death cases are aware of these special losses or “damages” which can flow from a death and which can cost a surviving family thousands of dollars. These practices in the culture of my people should not be dismissed as merely the incurring of a “voluntary” expense that goes uncompensated. Within the culture, they are mandatory. ☮

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Princess Knows Best

A young lawyer learns about practicing law from an unlikely source

BY ALLISON PEREYEA

They say it is important for a new lawyer to have a mentor. Mine is named Princess. She is a five-year-old cat that I adopted from the animal shelter a couple of months ago. She has white fur and whiskers and is about the size of a minivan. When I took her to the vet for her post-adoption checkup, I learned that her previous owner had blessed her with a full name — Princess Useless. But Princess is far from useless. In fact, she has taught me countless lessons that are directly applicable to my litigation practice.

1. Don’t take everything personally: some people may just be allergic to you.

Princess loves everyone who is not a dog or a vacuum. But some people cannot even stand to be in the same room as her. They may think she’s cute and love her winning personality, but they are simply allergic to cats. Princess, however, could care less about whether she makes people sneeze and gasp for air. She actually seems intent on winning these people over, crawling onto their laps as they try to swat her away while frantically reaching for their inhalers.

Princess’s tenacity in the face of outright rejection can be a lesson to young lawyers who have to deal with hostile opposing attorneys. In my experience, the layer of politeness blanketing initial interactions with opposing counsel is frequently worn off to expose a core of irritation. I have dealt with raised voices, dodged calls, angry letters soaked with indignation, and outrage. Initially it was difficult for me not to take such hostility personally; it’s hard to ignore the arrows when you are the target. Eventually, however, I realized that the threatening letters and outraged voice-mails are not directed at me personally, but rather at my efforts to represent my clients. Opposing attorneys act angry and annoyed to intimidate young lawyers. They also act that way when you hit a weak spot in their case. The best way to respond is by taking a cue from Princess: disregard their irritation and keep doing your job, which in her case involves a lot of sitting and staring. I do not, however, recommend crawling into any laps.

2. Sometimes you have to show up early, stay up late, or vomit cat food to get the job done.
Like a teenaged couple with uptight parents, Princess and I do not spend as much time together as we would want. I usually have to wake up early to make it to the office before the coffee shop downstairs runs out of cinnamon rolls. And I typically don’t get home until late, having to hit the gym after work to combat other kinds of rolls. Fortunately, Princess “makes time” to get attention from me. This involves keeping me up at night or waking me up in the morning. She knows that exactly 30 minutes before the alarm is set to go off is “Smother Allison Time.” Her efforts are extremely effective: it is hard to ignore an 11.5-pound marshmallow wrapped around my neck, purring like a jackhammer.

Similarly, to succeed in a legal practice a lawyer has to “make time” to get things done — even though it often seems that our lives are already booked solid. Though a regular working schedule would be nice, it is about as realistic as fat-free cheese that doesn’t taste like a Barbie doll’s leg. Deadlines do not care that the phone keeps ringing or your response to a motion took more drafts to polish than you have years of life. This means working at night if you are a night person, or working very early in the morning if you are insane.

3. The reward for dealing with crap is usually more crap.

A litter box is an unpleasant but necessary member of a house cat’s entourage. And, like a Hollywood socialite, it requires constant attention. It seems the minute after I clean it, Princess is making another “royal visit.”

Legal work is very much like cleaning Princess’s throne. The minute you take care of one mess, another one needs to be cleaned up. There is not a lot of time to celebrate a favorable settlement or successful motion to compel, because focusing a lot of time on one case just means work on other cases has, um, piled up. The reward for a job well done is often simply the opportunity to get to work on cases that have been shelved due to a busy schedule. And those projects probably won’t smell any better than the one you just finished.

4. Own your territory, including windowsills and the space under beds.

I live in Princess’s apartment as her in-house support staff. The fact that I pay the rent and all the bills is completely irrelevant, as is the tiny detail that she is a house pet and I am a human being. Once she got her paw in the door, she took over and got down to the
serious task of shedding white fur on every square inch of the place, with an emphasis on anything black.

Princess's transition to the head of the household was far smoother than my transition from a student to a professional, though mine involved fewer lint brushes. When I first started working as a lawyer I often felt like a soccer rookie in a baseball league — new and completely out of place. I was painfully aware of the fact that quite literally everyone had more experience than I did. But after a few motions and oral arguments, I learned that what really matters in the end are the facts you are given, the law that applies to them, and the amount of work you put in. As Princess aptly demonstrated, it doesn't matter how long you have had a license — pet or legal — as long as you put it to good use.

5. Love all dozen or so pounds of yourself, but stay open to suggestions for improvement. Princess does not care about self-improvement. The only exercise she does each day is blinking. But Princess is willing to enter-
tain suggestions about how to be a better pet. For example, she stopped clawing the dining-room rug — a favorite extracurricular activity of hers — after I bought her a cardboard scratching pad, sprinkled catnip on it, and mimed a very bad "Cat Scratching Cardboard" impression.

Princess's willingness to change for the better should be an example to young lawyers. It is difficult during the beginning of a legal career to listen to suggestions for improvement without getting defensive — we are an argumentative bunch, after all. But any advice will, in the end, make us better attorneys. This is especially important if you are like me and do not have a promising mime career ahead of you.

6. You may eat the same thing for every meal, but at least you are getting fed. Princess eats the same thing for every meal on every day of her life: dry cat food and water, rarely but sometimes from the toilet. Once I tried to change up her nutritional habits by going organic during a short but haunting period now known as the Thanksgiving Week Regret. Princess has never complained about her repetitive diet, organic or otherwise. In fact, it appears to be the center of her universe.

Practicing law can sometimes seem as monotonous as Princess’s meal plan. After working for a while, you start encountering the same legal issues, the same client questions, and the same forms. But this is not necessarily a bad thing. It gives us an opportunity to become more efficient as we develop expertise in dealing with similar cases. Also, in this economic climate, there is something to be said about being fortunate to have any type of job where we are privileged to practice law.

Despite her wealth of practice-related knowledge, Princess is currently unavailable for speaking engagements, as cats are physically incapable of speaking. She is, however, scheduled to spend the rest of her life crouched on her scratching pad, molting fur, and staring blankly into space. Registration to attend this event is now open; attendance is limited to those who would describe themselves as neither a dog nor a vacuum. ©

Allison Peryea is a second-year litigation associate at Rand L. Koler & Associates, P.S. She can be reached at 206-621-6440 or allison@ kolerlaw.com.
Founding a Professional Networking Group

BY ETAN BASERI

We all know the benefits of networking: Learn of opportunities, gain insights on your profession, and market yourself to others. Networking among attorneys is all well and good, but moving “outside the bar” can have added benefits. It gives us the chance to learn more about other professions, meet potential clients, and better our communities. Among young professionals who are all in the same boat as rookies, these opportunities are all the more exciting. How, then, is a young lawyer supposed to network with non-lawyers?

I faced this same question in 2007 when I returned to Seattle after finishing law school at the University of California, Davis. I was involved with nonprofits and community organizations but did not find the forum I wanted for networking with fellow young professionals. To be sure, getting started in a profession is intense, and sometimes all a person wants to do after a long day at the office is vent over a drink. Could that energy be channeled into something more productive? After all, young professionals — lawyers, doctors, engineers, to name a few — often face similar challenges (long hours, high responsibility, difficult clients) and enjoy similar benefits (high-impact work, intellectually stimulating projects, war stories about difficult clients).

As an active member in the Seattle Jewish community, I liked the idea of having a worthwhile forum for young Jewish professionals. With that in mind, I formed a group on Facebook, called “J-Pro: Young Jewish Professionals of the Greater Seattle Area.” I invited young Jewish professionals with whom I had attended the University of Washington as an undergrad and convinced a few friends to do the same in their own circles. Thanks to the viral effect of online social networking, the group had more than 100 members within three months.

With a critical mass established, the next step was to formally establish a mission and recruit leadership. A mission would guide the programming and leadership personnel would innovate and execute those programs. In the case of J-Pro, I was lucky to meet motivated
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individuals early on who stepped forward to take on leadership roles. Their input and past experience helped shape our mission: To build strong relationships among young Jewish professionals in the Greater Seattle area; to create opportunities for learning and growth in their fields; to foster mentorship in their respective industries; and to create a culture of collegiality that encourages business referrals and philanthropy. On a personal level, I liked that our organization drew on traditional Jewish values in caring for the well-being of the Jewish community as well as the Seattle-area community at large.

Should you start your own networking group? First, identify your constituency based on locale, ethnicity, and common interests. Second, determine your mission. At the risk of sounding unoriginal, you could incorporate “advancing members’ careers while providing a benefit to the greater community.” Third, actively market the group. Facebook works really well for getting the word out on a new group. Finally, recruit leadership (even ad hoc volunteers) as early as possible and delegate the workload. J-Pro would not be what it is today if not for the hard work of everyone on its Board of Directors.

Programming is an anchor for your group: It keeps the sense of community strong and gives people an opportunity to meet in person. Depending on the character of your group, there are a number of program models that can work well. J-Pro events tend to always have a “meet-and-greet” component where members can chat and exchange business cards. The content of the program can focus on professional development, work-life balance, or a topic specifically relevant to your constituency. A good habit is to step back and ask, “Will this event give members an opportunity to learn something that is of value to them?”

There are also a couple points of caution worth noting: First, when forming a mission, I recommend against making overtly political affiliations. Such strong designations can be detrimental to building a broad membership base. Second, maintain focus on the goals you set out by not trying to achieve too much. There exist a number of young professional groups that try to serve every need of the demographic; if you spread yourself too thin trying to do everything, you may end up doing nothing well.

To summarize, starting a professional networking group requires at least three things: Focus, delegation, and follow-up.

1. Focus by defining a formal mission.
2. Delegate the workload by recruiting leadership through ad hoc volunteers, eventually through a board of directors.
3. Follow up by communicating with members for feedback and input on their needs and preferences.

A possible fourth element is creating a nifty acronym, but after having strayed from that with “J-Pro” (more of an abbreviation, really), I have omitted it. Best of luck to you.

Etan Basseri is the current chair of J-Pro’s Board of Directors. He is an associate at the Law Office of Evan L. Loeffler, where he focuses on real estate litigation and landlord-tenant relations. He can be reached at 206-443-8678 or ebasseri@loefflerlegal.com.
Keep Your Ethical Muscles in Shape

BY COLIN FOLAWN

Young lawyers are confronted with several challenges early in their careers. Many of these involve legal ethics. To navigate these challenges, young lawyers should adopt an ethical exercise regimen to be fit, limber, and prepared for when those dilemmas come. The following tips may help you to develop your personal ethics regimen.

Know the rules. You cannot make ethical decisions if you don’t know the rules. You may have learned a great deal about professional responsibility in law school. If you are licensed to practice, you learned enough about Washington’s rules to pass the bar exam. But if you do not use this knowledge, odds are that you’ll lose it quickly. Every attorney has an independent obligation to make decisions that are ethical and professional. See RPC 5.1, 5.2. So how can you stay apprised of the rules, notwithstanding your busy schedule and many professional demands?

Read one rule a day. Set aside 10 minutes every day to read a different ethics rule or comment. Consider it your ethical workout for the day. My mentor recommends that trial lawyers review a civil rule a day. This is good advice for those of us in litigation. If you can’t get through a rule or section on one day, read two the next day.

Write in your rules book. During your daily ethics regimen, mark them up. Write in the margins, use post-it notes, and underline portions as you go. This will keep you more engaged during your review, and you may recall your prior review more readily.

Don’t forget about the comments. Washington adopted model comments in 2006, along with some state-specific ones. Although the comments are not the rules themselves, they provide important guidance and perspective. See RPC Preamble and Scope, cmt. 21. Some cite to case law. See, e.g., RPC 1.10, cmt. 11. Whenever you review an ethics rule, read its accompanying comments thoroughly. Be on the lookout for comments in other rules that relate to your particular rule.

Own your practice. As a young lawyer, you may be working mostly or exclusively on another attorney’s files. This doesn’t mean that the ethical decisions in the matter are not your concern. Each of us has an independent obligation to make ethical decisions in our practice. See RPC 5.2.

Moreover, even young lawyers are responsible for the non-lawyers whom they supervise. It’s no excuse to commit an unethical act simply because a partner so directs. See RPC 5.3, 5.2. When we rely on others to take actions required of us by the ethics rules, we assume the risk that that action wasn’t taken or wasn’t properly taken. See, e.g., RPC 1.0, cmt. 6 (stating that “a lawyer who does not personally inform the client or other person assumes the risk that the client or other person is inadequately informed and the consent is invalid”).

Be curious. If you work in a firm, ask questions of your colleagues. Take advantage of open-door policies, practice-group meetings, or supervision and mentoring. Don’t pretend that you have all the answers in the

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Engage in positive discourse with the goal of getting to the right result. If you don’t work in a firm, attend CLEs as frequently as possible, and ask questions. Make a habit of asking other lawyers what they think (without divulging confidential client information). One of the best sources is the WSBA’s ethics line: 206-727-8284.

React promptly. When you face an ethical crisis, you should address, and thoroughly analyze, it as promptly as possible. Some ethics questions can be resolved or corrected if you act promptly enough. In fact, sometimes taking the proper time to analyze a problem will reveal that there was no problem in the first place.

Start by reading the rules (and comments). As obvious as it sounds, attorneys sometimes have lengthy conversations about ethics issues, and their personal experiences or insight, long before re-reading the rules.

If you are fortunate to work at a firm that has general counsel or loss prevention/ethics counsel, ask him or her your questions. Keep in mind the privilege limitations that may be imposed by Washington case law and their capacity in representing your firm. See VersusLaw, Inc. v. Stoel Rives, LLP, 127 Wn. App. 309, 111 P.3d 866 (2005); see also ABA Formal Opinion 08-453.

If you don’t have general counsel available, talk with other attorneys in your firm. Consider calling the WSBA’s ethics line as soon as possible to permit them sufficient time to get back to you.

Once you’re ready to make a decision about your problem and take action, document what you do. Memorializing letters can be good reminders to clients of your conversations with them, and memoranda to your file can remind you (and your counsel) of what you did or did not do if a Bar complaint is later filed.

Get in the habit of flexing your ethical muscles and exercising your ability to make decisions in accordance with the rules of professional conduct. The more you do, the more ready you’ll be to make the countless ethical decisions that you’ll have to make in the practice of law.

Colin Folawn is a trial and appellate lawyer with the law firm of Schwabe, Williamson & Wyatt in Seattle. He is a member of Schwabe’s Ethics Committee and co-founded “The Ethics Hour,” a free monthly ethics seminar for Washington lawyers. He can be contacted at cfolawn@schwabe.com or 206-407-1500.
Navigating Apologies with Clients

BY JAMILA JOHNSON

Emma O’Shea sits in a small office at a local public elementary school. Around her are crayon stick figures on 8½” x 11” paper taped to the walls. A shelf of old textbooks lines the north partition. O’Shea is a Seattle Public Schools psychologist. She, along with educators and parents, teaches children social skills, such as the art of a good apology. Ask any third-grader about apologies and they will tell you that it is good to say, “I’m sorry.” But O’Shea strives to take apologies one step further. She asks for children to understand and express why they are saying that they are sorry — and, in the apology, take ownership of their actions.

“They sometimes think just saying you are sorry makes everything better,” she says. O’Shea explains that just saying you are sorry is almost an unconscious reaction to certain situations, but making a true apology requires a bit more. In our society, the phrase “I am sorry” only goes so far, and a partial apology does not mean much to someone who has been injured.

This wisdom, imparted to children on the playground, is also being imparted to adults facing the possibility of a lawsuit. Last year, the New York Times published an article about medical centers across the country adopting the policy of disclosing error and apologizing. The result: fewer lawsuits, smaller settlement awards, and lower malpractice insurance. But just as O’Shea observes on the playground, there is also a difference in the adult world between a full apology and just saying, “I’m sorry.”

In 2002, Jennifer Robbennolt, then a professor of law at Missouri University, conducted a study with interesting results for attorneys. This study revealed that when no apology was given, 52 percent would accept settlement instead of filing a lawsuit, compared to the 73 percent of the respondents who would accept the offer with a full apology. But interestingly, when a partial apology was given, only 35 percent would accept.

Washington law has some evidentiary protections for apologies. Washington Evidence Rule 408 makes inadmissible statements of compromise for the purposes of establishing or disproving liability or damages. In 2002, the Washington State Legislature enacted RCW 5.66.010, which states: “The portion of statements, writings, or benevolent gestures expressing sympathy or a general sense of benevolence relating to the pain, suffering, or death of a person involved in an accident, and made to that person or to the family of that person, shall be inadmissible as evidence in a civil action.” But the statute also says that “[a] statement of fault, however, which is part of, or in addition to, any of the above shall not be made inadmissible.” This is problematic, since studies suggest that partial apologies (those that do not include any statement of fault) do not deter litigation in the same way. In fact, under Robbennolt’s study, a partial apology may be worse than no apology at all.

In 2006, the Legislature enacted RCW 5.64.010. The statute provided that an apology provided by a healthcare provider to an
injured person (or that person’s guardian), if made within 30 days of an act/omission that is the basis for alleged professional negligence action, is not admissible in a civil action, arbitration, or mediation. Unlike RCW 5.66.010, RCW 5.64.010 covers “any statement, affirmation, gesture, or conduct expressing apology, fault, sympathy, commiseration, condolence, compassion, or a general sense of benevolence.” (Emphasis added.)

Regardless of whether an attorney represents plaintiffs or defendants, there are some dos and don’ts that attorneys should remember when it comes to apologies. Do ask detailed questions. Attorneys should be prepared to ask their clients a variety of questions about any statements made after an incident when litigation is a possibility. Attorneys should not provide blanket instructions to their clients to not apologize and instead remain silent. It is better to explain to clients what the pros and cons of an apology can be before an incident occurs—especially when it comes to professional healthcare providers.

In non-healthcare situations, attorneys should always ask whether any apologies included a statement of fault. Don’t assume that a statement is excluded under ER 408 or RCW 5.66.010. Also, attorneys should evaluate the value of the case early. An apology admitting fault may be helpful to settling a case early when attached to a reasonable settlement amount. If an early settlement is in the best interests of the clients, the sooner the apology occurs, the sooner settlement may be possible.

Just as it takes a bit of practice to learn how to apologize, lawyers may have just as many issues adapting to the philosophy that early apologies are good for a client. Litigators are often focused on winning. Somehow, “winning” has been seen as diametrically opposed to expressions of sympathy and fault. But as more studies emerge regarding the success of apologies, this impression is quickly changing. Being prepared to offer advice on the power of an apology is a must-have skill for attorneys in the twenty-first century.

Jamila Johnson is a litigator with Schwabe Williamson & Wyatt and is the associate editor of DeNovo. She is also the mother of a third-grader learning the value of apologies. She can be reached at 206-407-1555 or jajohnson@schwabe.com.
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Billing Ethics

by Mark J. Fucile

In law school, billing gets little attention. In private practice, however, billing is a mundane, but central, part of firm management. Done right, billing provides the client with a timely and accurate report of the services rendered that is consistent with the fee agreement involved. Done wrong, billing can be a flashpoint between the client and the lawyer. Billing "ethics" broadly encompasses understandable fee agreements at the outset, accurate time and expense tracking along the way, and reports at the end of the billing cycle reflecting the agreed services performed. In this column, we’ll look at all three. Before we do, though, it is important to note that billing ethics is not simply a concern from the perspective of avoiding regulatory discipline. Billing "done wrong" can lead to both problems with enforcing fee agreements and risks of civil liability.

Fee Agreements
RPC 1.5 generally controls whether a fee agreement must be in writing. RPC 1.5(b) strongly suggests, but does not mandate, that hourly fee agreements be in writing. RPC 1.5(c), in turn, requires that contingent fee agreements both be in writing and signed by the client. RPC 1.5(f), which was adopted last year, also requires that "flat fees" paid in advance be in writing and signed by the client if they are considered a lawyer’s property immediately. Finally, fee agreements involving business transactions with a client (such as taking stock in lieu of fees) are also governed by RPC 1.8(a) and must be in writing and signed by the client. Illustrating the practical import of the writing requirement, the Supreme Court, in Barr v. Day, 124 Wn.2d 318, 330-31, 879 P2d 912 (1994), held that where a written fee agreement is required and none exists, the lawyer is (at most) entitled to quantum meruit recovery.

Each form of fee arrangement has additional specific requirements, and both the rules and the accompanying comments involved warrant careful review. RPC 1.5(a)(9) governs the level of detail required in a fee agreement and, because it is one of the factors that goes to the baseline issue of whether the resulting fee is reasonable, applies to all fee agreements. RPC 1.5(a)(9) focuses on "whether the resulting fee is reasonable, applied to all fee agreements. RPC 1.5(a)(9) focuses on "whether the fee agreement or confirming writing demonstrates that the client had received a reasonable and fair disclosure of material elements of the fee agreement and of the lawyer’s billing practices." What is "reasonable and fair disclosure" will vary with the circumstances. Failure to meet this standard, however, can both lead to discipline (see, e.g., In re Vanderbeek, 153 Wn.2d 64, 85, 101 P3d 88 (2004) (finding a collection provision unclear)) and put enforceability at risk (see, e.g., Simburg, Ketter, Sheppard & Purdy, L.L.P. v. Olshan, 109 Wn. App. 436, 988 P2d 467 (1999), amended, 109 Wn. App. 436, 33 P3d 742 (2000) (fact issue whether hourly rates were described sufficiently)).

One of the key reasons for having a thorough fee agreement at the outset is that it can be difficult to change it later. Although lawyers can generally bargain at arm’s length before an attorney-client relationship is formed, once a lawyer’s fiduciary duties attach with the creation of an attorney-client relationship, modifying a fee agreement in the lawyer’s favor is generally permitted only with client consent and additional consideration (see Perez v. Pappas, 98 Wn.2d 835, 841, 659 P2d 475 (1983), and Ward v. Richards & Rossano, Inc., P.S., 51 Wn. App. 423, 432, 754 P2d 120 (1988)). Further, the Supreme Court held in Valley/50th Avenue, L.L.C. v. Stewart, 159 Wn.2d 736, 744-45, 153 P3d 186 (2007), that taking new security for payment of past fees, which it viewed as the functional equivalent of security for a past debt rather than for future performance, invokes the heightened disclosure and consent requirements governing lawyer-client business transactions under RPC 1.8(a).

Timekeeping and Expenses
Simply put, in hourly based billing, it is critical that time be tracked and reported accurately. Again, failure to do so can both lead to discipline (see, e.g., In re Dunn, 136 Wn.2d 67, 960 P.2d 416 (1998) (initials switched on billings from lower- to higher-rate lawyer)) and bar recovery (see, e.g., In re Columbia Plastics, Inc., 251 B.R. 580 (Bkrtcy. W.D. Wash. 2000) (word processors shown as paralegals on billings)). So, too, with reimbursable expenses, regardless of the billing system (see, e.g., In re Haskell, 136 Wn.2d 300, 307-08, 962 P.2d 813 (1998) (first-class airfare reported as coach)). On expenses in particular, Comment 1 to RPC 1.5 notes that “[a] lawyer may seek reimbursement for the cost of services performed in-house, such as telephone charges, either by charging a reasonable amount to which the client has agreed in advance or by charging an amount that reasonably reflects the cost incurred by the lawyer.” WSBA Informal Ethics Opinion 2120 (2006) cautions, however, that “[t]o avoid misunderstandings, clients should be provided with advance disclosure of specific, foreseeable categories of expenses for which they will be charged, such as online research.”

Billing Forms
Whether providing the client with a monthly bill or a concluding contingent fee summary, only items within the scope of the fee agreement can be included (see, e.g., In re Marshall, 160 Wn.2d 317, 332-33, 157 P3d 859 (2007) (contract lawyer time improperly included when not within agreement)) and should be clear enough so that the client can make that determination (see RPC 1.5(b); see, e.g., Simburg, Ketter, Sheppard & Purdy, L.L.P. v. Olshan). The need for scrupulous accuracy, of course, applies with equal measure to the billing statements the client

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receives (see, e.g., In re Dann, In re Haskell). In instances where a third party will be paying the bill, care also needs to be taken not to disclose confidential information in the billing entries (see WSBA Formal Ethics Op. 195 (1999)).

Comment 10 to RPC 1.5 notes that the requirement that fees and expenses be “reasonable” and the accompanying factors outlined in RPC 1.5(a) apply to “[e]very fee agreed to, charged, or collected,” regardless of the compensation agreement used. The nine factors listed in RPC 1.5(a) range from the difficulty of the project, to the skill of the lawyer, to the terms of the fee agreement. Comment 1 to RPC 1.5 counsels both that the nine factors listed are not exclusive and that not all of the factors will apply in any given instance.

As with the other aspects of billing discussed, the risks involved with an unreasonable fee include (see, e.g., In re DeRuiz, 152 Wn.2d 558, 575, 99 P.3d 881 (2004) (“flat fee” unreasonable when unearned)), but are not limited to, regulatory discipline. In Holmes v. Loveless, 122 Wn. App. 470, 94 P.3d 338 (2004), for example, the Court of Appeals held that the “reasonableness” requirement extends over the life of a fee agreement and can even outlive the services performed when, as was the case in Holmes, continuing payment obligations from an investment in lieu of cash fees eventually became unenforceable as unreasonable. Further, when a fee agreement is voided on policy grounds for violation of the RPCs, the lawyer or firm may, but need not, receive quantum meruit recovery instead. The Supreme Court, in Ross v. Scannel, 97 Wn.2d 598, 610, 647 P.2d 1004 (1982), found that the trial court has discretion to award nothing, and in Eriks v. Denver, 118 Wn.2d 451, 462-63, 824 P.2d 1207 (1992), held that a trial court also had discretion to require disgorgement of fees already paid. Similarly, in Cotton v. Kronenberg, 111 Wn. App. 258, 269-272, 44 P.3d 878 (2002), the Court of Appeals found that a lawyer had breached his fiduciary duty to a client for charging a fee that was unreasonable in several respects. Eriks and Cotton also noted that the Supreme Court held in Short v. Demopolis, 103 Wn.2d 52, 61, 691 P.2d 163 (1984), that the Consumer Protection Act (with its treble damages and attorney fee remedies) applies to the business aspects of law practice, including billing: “how the price of legal services is determined, billed and collected[.]”

**Summing Up**

For lawyers in private practice, billing is an essential part of the business side of running a firm. Billing is also an area where disputes can arise with clients and, if they do, lawyers are subject to close scrutiny flowing from the fiduciary duties that apply along with their purely contractual obligations. It pays, therefore, in both a monetary and a practical sense, to devote the same care to billing that lawyers bring to their legal work itself.

Mark Fucile, of Fucile & Reising LLP, handles professional responsibility, regulatory, and attorney-client privilege matters and law-firm-related litigation for lawyers, law firms, and legal departments throughout the Northwest. He is a past chair and a current member of the WSBA Rules of Professional Conduct Committee, a past member of the Oregon State Bar’s Legal Ethics Committee, and a member of the Idaho State Bar Professionalism and Ethics Section. He is a co-editor of the WSBA’s Legal Ethics Deskbook and the OSB’s Ethical Oregon Lawyer. He can be reached at 503-224-4895 and mark@frllp.com.
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2. You are a federal agency, federal governments are not considered state agencies!
At its regular meeting on March 6–7, 2009, in Seattle, the WSBA Board of Governors voted down a proposal to institute mandatory arbitration of fee disputes. As the BOG had previously dissolved its voluntary fee arbitration program and its mediation program, fee disputes now will lie entirely in the realm of private dispute-resolution efforts and the courts.

While some BOG members expressed personal support of a fee-dispute-resolution program in concept, most reported strong opposition among their constituents to a mandatory program. The proposal for a mandatory program originated with a non-binding 2006 review of the WSBA disciplinary system conducted by the ABA. The ABA recommended a “client-option” arbitration system in which an attorney would be required to participate in arbitration if a client submitted a fee dispute to the program.

Several BOG members said they had been contacted by WSBA members concerned that some clients might abuse the system by forcing attorneys to arbitrate baseless disputes. They noted that because the Rules of Professional Conduct require lawyers to keep disputed fees in trust, fees could be tied up for months pending arbitration, even if the fees were ultimately found to have been properly earned by the lawyer. Solo and small-firm WSBA members who work on a contingent-fee basis would be especially vulnerable to having their fees held up, noted Governor Lori Haskell.

Governor Loren Etengoff said he supported the concept of fee arbitration but acknowledged that significant opposition to a mandatory system exists among WSBA members. Pursuing the proposal further would be a waste of WSBA resources if most members didn’t support it.

The Board voted unanimously to abandon the proposal, with Governor Anthony Gipe abstaining. He had suggested table the measure and allowing time to consider whether more thorough explanation of the proposed program to membership might temper opposition.

In a separate matter, the BOG voted to reject a WSBA member’s request to be provided with the individual salary amounts of all WSBA employees. The WSBA had provided a list of all WSBA employees’ names and job titles as well as documents showing the salary ranges for WSBA job titles. However, the member insisted on a list that would explicitly show each individual employee’s salary. WSBA staff denied that request and the member appealed the decision to the BOG.

Although the WSBA has been held as exempt from the Public Disclosure Act, the member argued that the organization is, in effect, an arm of the judicial branch of government and should recognize an ethical obligation to disclose any financial information requested, as a government entity would be required to do.

He did not disclose what purpose he had in mind for the requested information. Instead, he based his request on the general proposition that WSBA members would have greater confidence in the organization if such information were available. BOG members responded that any information regarding WSBA’s budget could be gleaned from data already provided. The remaining information — showing the exact salary for each WSBA employee — would do nothing but invade employees’ privacy, they suggested.

Peterson Young Putra welcomes Ann Rosato as a partner.

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The BOG voted to uphold the denial of the request, with Governor Catherine Moore dissenting and Governors Lori Haskell and Carla Lee abstaining.

Meanwhile, the Board watched a presentation from WSBA Diversity Program Manager Chach Duarte White regarding demographic information from the WSBA and the State of Washington from which she hopes to track ethnic and gender trends in the legal profession. Duarte White cautioned that it is difficult to draw sound conclusions from WSBA membership information to date, because WSBA relies entirely on voluntary self-reporting of data. A significant proportion of WSBA members decline to respond to the demographic questions.

Generally speaking, it appears that the percentage of ethnic minority members among total WSBA membership is highest among lawyers in practice for no more than 10 years (10.18 percent). The percentage is progressively lower among those in practice 11 to 20 years (7.99 percent) and 21 years and over (3.66 percent). However, 41.68 percent of WSBA members in the 10-years-and-under category did not report their ethnicity, leaving the conclusion and the percentages in serious doubt. Regarding gender, the percentage of female bar members is highest among those in practice 11 to 20 years (36.17 percent of all members), as compared to 32.09 percent for those in practice no more than 10 years and 19.92 percent for those in practice 21 years or more. As with ethnicity, however, the picture is clouded by a high number of non-responses (36.45 percent among members in practice no more than 10 years, for example).

Although limited in utility by the non-responses and other factors, the current numbers at least provide a baseline from which future trends can be identified, Duarte White said. In a related matter, the BOG will consider an updated mission statement for the BOG Diversity Committee at the April 24–25 meeting in Richland.

In other business, the BOG:

• Approved a slate of procedural revisions to the lawyer discipline system as part of a year-long project stemming from recommendations by the American Bar Association and WSBA Discipline Review Committee.
• Heard from WSBA Leadership Institute Co-chairs Judge Mary Yu and James Williams regarding operational latitude for the continued smooth functioning of the Leadership Institute. The WSBA Leadership Institute, now in its fifth year, is a nationally recognized and award-winning program.
• Voted to continue Bar News, Resources (annual membership directory), and Casemaker (open access legal research service) in their present forms. The action was part of an ongoing review of all WSBA programs.
• Heard the annual report from the Council on Public Legal Education by Co-Chair Judge Marlin Appelwick. The council promotes public understanding of the law and civil rights and responsibilities.
• Endorsed a number of proposed revisions to the Rules of Appellate Procedure. The Board’s endorsements will be forwarded to the Court of Appeals Rules Committee, which will take the WSBA’s input into account before sending a final proposal on the rules to the Supreme Court.
• Passed a resolution in honor of Joseph H. Gordon Sr., celebrating his 100th birthday. Gordon, admitted to the bar in 1935, co-founded what is now known as Gordon
Thomas Honeywell Malanca Peterson & Daheim, one of the 10 largest law firms in Washington. Among numerous other accomplishments, he formerly served as a governor for the WSBA and for the American Bar Association.

• Heard a quarterly report from the WSBA Young Lawyers Division, presented by WYLD President Jaime Hawk. Recent and upcoming public-service projects sponsored by WYLD include the YMCA Youth and Government Mock Trial Competition in Olympia, the Youth and Law Forum in Seattle, and the Pre-Law Student Leadership Conference in Yakima.

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Michael Heatherly is the Bar News editor and can be reached at barnewseditor@wsba.org or 360-312-5156. For more information on the Board of Governors and Board meetings, see www.wsba.org/info/bog. For more information on issues addressed by the Board, visit the WSBA website at www.wsba.org and click on “News Flash” under “WSBA News and Information.”

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Law Clerk Board
Application deadline: June 30, 2009
The Law Clerk Board is a regulatory board composed of seven lawyers who are appointed for six-year terms. Members are appointed with consideration for the geographic distribution of the law clerks in the program. There are two positions available starting October 1, 2009; one position will serve primarily the Seattle area, and one the Bellingham/Northwestern Washington area. Preference will be given to applicants in these areas of the state. The Board is composed of both law school graduates and those who completed the Law Clerk Program; a balance of experience is sought.

Each Board member acts as liaison for an average of six law clerks enrolled in the program. Liaisons receive monthly exams and certificates to review and assess the law clerks’ progress. At quarterly meetings, liaisons make recommendations to the Board on petitions of enrolled law clerks and on the admission of new law clerks and tutors to the program, as well as other issues. Screened applicants to the program are required to meet in person with a liaison, so liaisons must be willing to host meetings in their offices or travel to the potential tutors’ offices. The time commitment is generally four to eight hours per month in addition to the quarterly six-hour meetings and possible special meetings and projects.


American Bar Association (ABA) House of Delegates
Application deadline: May 11, 2009
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 delegate positions and one alternate position will be available in August 2009. A written expression of interest and résumé are required for incumbents seeking reappointment.

The control and administration of the ABA are vested in the House of Delegates, the policy-making body of the ABA. The House, composed of 555 delegates, elects the ABA officers and board, and meets out of state twice a year. Delegate attendance is required. The alternate would participate in the House of Delegates if one of the WSBA delegates were unable to attend a meeting, so full voting capacity can exist at all times. Preferably, the alternate should be someone who usually attends the ABA midyear and annual meetings, since the substitution may need to be made on fairly short notice.

The WSBA’s allowance is $800 per year per delegate. Terms for both the member and alternate positions 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. 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.

2009 Board of Governors Elections
Ballots have been mailed and will be counted on or about May 15. Following are brief biographical statements received from candidates.

1ST DISTRICT

Edward V. Hiskes
Edward Hiskes developed and currently operates the freecle.com website, which provides free CLE programs as a pro bono service. As a Board member, Edward will urge the WSBA to also distribute free CLE programs as a standard member benefit.

The Board of Governors awarded Edward the WSBA Courageous Award in 1992 for his advocacy of free public access to the RCW, WAC, and Washington Reports databases held by state agencies. These databases form the basis for free legal research on the WSBA Casemaker system, currently available at www.wsba.org.

Marc L. Silverman
Mostly a solo practitioner since 1982, my service includes: Board of Governors of Washington State Association for Justice (formerly WSTLA); WSJA’s Legislative and Court Rules Committees (Chair the last three years); WSBA Disciplinary Hearing Officer (five years); WSBA Court Rules Committee (three years); member of King County Bar’s Court Rules subcommittee, which drafted pattern civil discovery; and currently on WSBA’s Local Rules Task Force.

My practice emphasizes personal injury, insurance, and professional liability litigation. I passionately believe in access to justice and that it is every lawyer’s job to vigilantly maintain the independence and essential health of Washington’s judiciary.

4TH DISTRICT — UNOPPOSED

Leland B. Kerr
I have practiced in Eastern Washington since 1974 serving private individuals, businesses, and cities. I have been a one-man office, as well as a part of a large prestigious firm, and enjoyed them both. I have been past bi-county bar president (2000), and served on various local and State Bar committees.

I am also very active in civic events, including election committees for schools, hospitals, and even judicial candidates. I seek to maintain the high integrity of our profession, contribute common sense, and express the high values embraced by the majority of our bar.

5TH DISTRICT

Paul A. Bastine
Since I was a youngster, I wanted to be a lawyer. Please see my acceptance speech for the Goldmark Award at www.legalfoundation.org.

I like lawyers — I like being a lawyer. I have served on more legal-related boards, committees, and task forces than can be listed, including the WSBA Disciplinary Board, President — Spokane Bar, presiding judge — Superior Court and on the Board of Advisors — Gonzaga Law School.

I will commit the time and effort to report on matters before the BOG, as well as meet with groups and members of the
bar on matters of interest to you.

Nancy L. Isserlis
These are challenging times, even for lawyers. My 28 years practicing law in Spokane (currently with Winston Cashatt) emphasizing a bankruptcy and commercial practice and my service to the community give me the background and experience needed on the BOG.

I have served on the board of the Legal Foundation of Washington, which administers IOLTA funds, and as past president of the Spokane County Bar Association. These volunteer endeavors, along with many others, are an important part of my personal and professional obligation.

I look forward to making our voice heard on important issues for lawyers practicing in eastern Washington.

7TH DISTRICT WEST

Roger A. Leishman
My diverse legal and community experience includes 13 years at large and small firms in Seattle. I have been of counsel with Davis Wright Tremaine LLP since 2003. I also spent five years as a full-time civil rights attorney, and have worked with a wide variety of legal and nonprofit organizations in attorney, staff, board, officer, committee, and volunteer capacities. Currently, I serve as vice president of Q-Law and on the Initiative for Diversity Governing Council. I am particularly interested in promoting access to justice and in recognizing the challenges that attorneys face in juggling professional and personal demands.

George Wallace McLean Jr.
I graduated from the Lewis and Clark Northwestern School of Law in 1973 and am licensed to practice in Washington, California, and Oregon. Since moving to Washington in 1984, I have practiced in the fields of insurance defense and civil litigation.

I am the managing attorney for the State Farm Insurance Claim Litigation Counsel Office in Seattle. I have previously served on the WSBA Rules of Professional Responsibility Committee. If elected, I will diligently work to maintain the professionalism of the Bar via strict enforcement of ethical and professional standards.

Elizabeth M. “Lisa” Carney
I earned two Bachelor degrees at UW: Economics and International Studies. In 2006, I graduated from Seattle University School of Law, and currently am a member of the KCBA, the WSBA, WSAJ, and the WYLD Public Service Committee. Before law school, I worked in package distribution, sales, childcare, an Internet newsroom, public relations, and software development.

During law school, I was involved in a civil suit, acquiring firsthand knowledge of the horrific costs of litigation. The life lessons learned are that there is a time to listen, and a time to speak. Allow me to do both on your behalf.

WSBA-CLE’s 2009 Washington Real Property Deskbook, Vols. 1 and 2: Real Estate Essentials Available for Sale
The first two volumes in the new Washington Real Property Deskbook series (4th edition) are now available for sale. This two-volume set, Real Estate Essentials, contains 26 chapters, comes with more than 100 forms on CD, and sells for $350 (plus shipping and handling and applicable sales tax). Additional, stand-alone volumes in this series (which replaces the 1997 third edition with 2000–2002 supplements) will be released later in 2009 and in 2010. Also new this spring: the 2009 Supplement to the Washington Legal Ethics Deskbook ($100 plus shipping and handling and applicable sales tax), and the 2009 Supplement to the Washington Motor Vehicle Accident Insurance Deskbook ($75 plus shipping and handling and applicable sales tax). Go to www.wsbacle.org and click “deskbooks” to review the full table of contents of these new releases and to order — or use the order form in the 2009 WSBA-CLE Publications Catalog, mailed to all WSBA members in April, which lists all of our WSBA-CLE deskbook titles.

2009 Licensing Information and Changes
Licensing suspensions. If any portion of your license fee or late fee remains unpaid, or if you are on Active status and haven’t paid your Lawyers’ Fund for Client Protection assessment or filed your A1 Licensing Form after two months’ written notice of your delinquency, a recommendation for suspension will be submitted to the Supreme Court.

Licensing forms changes. In an effort to control costs and simplify renewal, the 2009 licensing forms were condensed into one double-sided form or two forms for those reporting MCLE credits this year. One change to note: The form(s) were mailed the first week of December in a standard-size envelope.

Verify your address in the online lawyer directory (http://pro.wsba.org). You are required to keep your contact information current; see Admission to Practice Rule 13.

If you have not received the 2009 licensing forms, you may print them online at www.wsba.org/licensing or call the WSBA Service Center at 800-945 WSBA (9722) or 206-443-WSBA (9722).

Deadline Approaching for WSBA’s “Justice for All” Video Contest
Washington residents have six more weeks to enter the WSBA’s new video contest. Filmmakers of all ages and ability levels are invited to create a short video that captures their vision of “justice for all” and post it to the YouTube website. Students are especially encouraged to enter, either individually or as a class project. Two prizes of $1,000 each will be awarded to the best contest entries — one selected by a panel of judges, and one selected by popular vote. The judges include state Supreme Court Chief Justice Gerry Alexander, musician and media columnist Krist Novoselic, Yakima Herald-Republic Managing Editor Barbara Serrano, and Northwest Film Forum Director of Children’s Programming Elizabeth Shepherd. Deadline for entries is June 15. For further information, see www.wsba.org/justiceforall.htm.

Youth Court Start-up Conference Open to All
Communities and individuals interested in starting a youth court are invited to attend a one-day conference on May 16, 2009, at Seattle University School of Law. The purpose of this event is to increase understanding of youth courts (also known as teen courts, peer courts, and student courts), and how to create one. In youth courts, young people sentence their peers, using peer pressure to correct youth offenses and other problem behavior. In Washington, youth courts address juvenile offenses and truancy cases diverted from juvenile court, traffic and other infractions diverted from municipal and district courts, and school rule violations diverted from school administrators. Washington residents may attend the conference at no charge, and lunch will be provided. The conference is co-sponsored by the Administrative Office of the Courts, the Washington Judges Foundation, and the Washington State Bar Association’s Council on Public Legal Education. Registration forms are available online at www.wsba.org/ple. For more information, please contact...
**Gifted High School Interns Available to Law-Related Organizations**

Are you the right person to guide a highly capable, motivated, passionate student exploring a career in law or a related field? Bellevue School District is seeking eight-hour-per-week, one-semester internship situations for seniors in the Gifted High School Program at Interlake for the 2009–2010 school year. These students think critically, embrace responsibility and challenge, work independently (with moderate supervision/direction), and thrive on learning. If you can provide a window to life in the real world that includes specific assignments in your work environment, please contact Arlene Scott at scottar@bsd405.org. The internship may be in a law firm, court, or other law-related organization, located in the greater Seattle area.

**“Foundations of American Democracy” Civics Pamphlet Available**

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

**Computer Clinic**

The WSBA offers a hands-on computer clinic for members. Learn what programs such as Outlook, PowerPoint, Excel, Word, and Adobe Acrobat can do for a lawyer. Are you a total beginner? No problem. 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 May 11 clinic will be held from 10:00 a.m. to noon at the WSBA office and will focus on using Outlook and practice management software. The May 14 clinic will meet from 2:00 to 4:00 p.m. and will focus on using Adobe Acrobat Professional (not the Reader). For more information or to RSVP, contact Julie Salmon at 206-733-5914, 800-945-9722, ext. 5914, or juliesa@wsba.org.

**Monthly Lawyer Discussion Roundtable**

Hosted by the WSBA Law Office Management Assistance Program (LOMAP), this roundtable is useful for meeting other members and WSBA Lawyer Services Department staff who will answer questions on ethics, practice, and substantive law. We meet the second Tuesday of the month from noon to 1:30 p.m. May 12 is the next scheduled meeting date. Walk-ins are welcome! The roundtable is held at the WSBA office.

**Job Seekers Monthly Discussion Group**

Looking for a job or making a transition? Join us at this informational group that meets the second Wednesday of each month from noon to 1:30 p.m. The next meeting is May 13 at the WSBA office. John Clynnch will be sharing best practices around informational interviewing.

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**LOMAP and Ethics Traveling Seminars**

Join us in Colville on May 5, Spokane on May 6, Marysville/Tulalip on June 10, Wenatchee on June 23, or Yakima on June 24. The cost is $99. Four credits are available, including some ethics credits. To register, call or e-mail Julie Salmon at 206-733-5914, 800-945-9722, ext. 5914, or juliesa@wsba.org.

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

Losses of all kinds trigger grief reactions. While these reactions are usually normal and predictable, they can easily overwhelm when you’re already feeling stressed or anxious. Whether you’ve lost a case, a job, a pet, a loved one, or an aspect of your health, you’ll probably experience grief to some degree. If you’d like a supportive ear, call the Lawyers Assistance Program at 206-727-8268, or 800-945-9722, ext. 8268.

**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.

**Learn More About Case-Management Software**

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

**Weekly Job Finders Strategy and Support Group**

Unemployed? Discouraged — or trying not to be? We’re taking names of lawyers interested in being on the wait list for a weekly meeting of lawyers looking for work. The focus of this group is on setting goals, accountability, and maintaining motivation. This is an opportunity to trade job-search advice and offer each other support in this difficult process. The group meets on Monday or Tuesday mornings from 10:30 to 11:45. Contact Dan Crystal, Psy.D., at 206-727-8267, 800-945-9722, ext. 8267, or danc@wsba.org if you are interested in this group or in other groups forming for lawyers looking for work. The focus of this group is on setting goals, accountability, and maintaining motivation. This is an opportunity to trade job-search advice and offer each other support in this difficult process. The group meets on Monday or Tuesday mornings from 10:30 to 11:45. Contact Dan Crystal, Psy.D., at 206-727-8267, 800-945-9722, ext. 8267, or danc@wsba.org if you are interested in this group or in other groups forming for lawyers looking for work.

**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 two business days. 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.

**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.

**Assistance for Law Students**

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

**Upcoming Board of Governors Meetings**

May 29, Yakima • July 24–25, Tulalip • September 24–25, Seattle

With the exception of the executive session, Board of Governors meetings are open, and all WSBA members are welcome to attend. RSVPs are appreciated but not required. Contact Margaret Shane at 206-727-8244, 800-945-9722, ext. 8244, or margarets@wsba.org. The complete Board of Governors meeting schedule is available on the WSBA website at www.wsba.org/info/bog/schedule.htm.

**Usury Rate**

The average coupon equivalent yield from the first auction of 26-week treasury bills in April 2009 was 0.427 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.

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.

Disbarred

Darrell W. Marshall (WSBA No. 21600, admitted 1992), of SeaTac, was disbarred, effective November 12, 2008, by order of the Washington State Supreme Court following a default hearing by the Disciplinary Board. This discipline is based on conduct involving repeated violations of criminal laws, failure to act with reasonable diligence, failure to communicate, charging unreasonable fees, failure to refund unearned fees, and failure to cooperate in a disciplinary investigation.

Criminal-Law-Related Conduct: From the period of June 2002 to December 2006, Mr. Marshall was repeatedly involved in criminal proceedings in various district and municipal courts. In June 2002, he was charged with driving under the influence, hit-and-run with property damage, and assault in violation of the Seattle Municipal Code. Mr. Marshall was found guilty on all three counts. The court sentenced him to a 60-day suspended sentence and placed Mr. Marshall on probation, the conditions of which required that he maintain law-abiding behavior and that he have no alcohol- or drug-related violations. Mr. Marshall was twice sentenced to serve jail time for violating these terms. In July 2003, he was charged with violations of RCW 46.61.502 (driving under the influence) and RCW 46.20.342 (driving with a suspended license). In April 2004, Mr. Marshall pleaded guilty and was sentenced to 365 days in jail with 331 days suspended, the conditions of which required that he maintain law-abiding behavior and that he have no alcohol- or drug-related violations.

During the next two years, Mr. Marshall failed to comply with the probation conditions, and the court issued at least four bench warrants for failure to comply and/or appear. In October 2005, Mr. Marshall was charged with violating the Seattle Municipal Code by giving false information to a police officer who had stopped him for suspicion of possessing an open container of alcohol. The charge was later amended to obstructing an officer. Mr. Marshall pleaded guilty and was sentenced to a 24-month suspended sentence and four days in jail with credit for time served. The conditions of the suspension required that he maintain law-abiding behavior and that he have no alcohol- or drug-related violations. In April 2006, Mr. Marshall failed to appear for a review hearing, and a warrant was issued for his arrest. On April 10, 2006, the court revoked three days of the suspended sentence and sentenced him to jail, with credit for time served. In December 2005, Mr. Marshall was charged with violating the Seattle Municipal Code for theft, attempted assault, and false reporting in connection with an incident in which he attempted to shoplift three bottles of wine. Mr. Marshall pleaded guilty to false reporting, and the other charges were dismissed. The court sentenced him to a 24-month suspended sentence and 185 days in jail to run concurrent with any other holds and with credit for time served. In June 2006, Mr. Marshall was charged with violating RCW 9A.88.010 based on an incident in which he removed his clothes in a public park. Mr. Marshall represented himself in this proceeding. He failed to appear for trial on December 5, 2006, as ordered by the court on October 17, 2006. The court issued a warrant for Mr. Marshall’s arrest, which is outstanding.

Failure to Cooperate in Disciplinary Investigation: The Association opened a grievance against Mr. Marshall on September 20, 2006. Disciplinary counsel sent a letter to Mr. Marshall’s address on file with the Association requesting a response to the grievance. The letter was returned as undeliverable. The Association sent a second letter on October 25, 2006, to a new address on file with the Association. This letter was not returned. Mr. Marshall did not respond to the letter. On November 28, 2006, disciplinary counsel sent a 10-day letter by certified mail, seeking a response by December 11, 2006. The letter was returned with a notation that Mr. Marshall had moved and left no forwarding address. Mr. Marshall did not respond to the grievance. The Association’s investigator attempted to make personal contact with Mr. Marshall by seeking him at several addresses on file with the Association and by contacting members of Mr. Marshall’s family. Each attempted contact was unsuccessful. The Association filed a Formal Complaint and Notice to Answer on November 30, 2007. As of the date of the Formal Complaint, all efforts to locate Mr. Marshall had failed.

Mr. Marshall’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; former RPC 8.4(i), prohibiting a lawyer from committing any act which reflects disregard for the rule of law; former RPC 8.4(j), prohibiting a lawyer from willfully disobeying or violating a court order directing him or her to do or cease doing an act which he or she ought in good faith to do or forbear; RPC 8.4(l), prohibiting a lawyer from violating a duty imposed by or under the Rules for Enforcement of Lawyer Conduct (here, ELC 5.3(e)) in connection with a disciplinary matter; RPC 1.16(d), requiring a lawyer, upon termination of representation, to take steps to the extent reasonably practicable to protect a client’s interests, such as refunding any advance payment of fee or expense that has not been earned or incurred.

Joanne S. Abelson represented the Bar Association. Mr. Marshall did not appear either in person or through counsel. Bertha B. Fitzner was the hearing officer.

Suspended

Noel Lerner (WSBA No. 29978, admitted 2000), of Enumclaw, was suspended for six months, effective May 23, 2008, by order of the Washington State Supreme Court. This discipline is based on conduct in two matters involving lack of competent representation, failure to communicate, failure to act with reasonable diligence and make reasonable efforts to expedite litigation, false statements to a tribunal, trust-account irregularities, failure to take steps reasonably necessary to protect clients’ interests, and violations of a court order.

Matter No. 1: Ms. W and her first husband were married in Washington and had four children before dissolving their marriage in another state. Although the children lived with Ms. W at first, she later remarried and lived out of state while the children eventually returned to Washington with her ex-husband. He obtained a default judgment against Ms. W in a Washington court, requiring her to pay a substantial amount of child support and establishing a cumbersome visitation plan.

In December 2003, Ms. W found Ms. Lerner on the Internet and hired her from outside the state to try to modify the Washington support order and visitation. They executed a fee agreement that specified Ms. Lerner would provide itemized bills on a regular basis. Ms. Lerner’s approach was to challenge jurisdiction and nul-

Matter No. 2: Mr. Y was the subject of an administrative action to collect child support based on his having signed an affidavit acknowledging paternity of a child. The child’s mother received financial assistance from the state of Washington, which then instituted proceedings against Mr. Y to recover the amount of that assistance. However, the child’s mother later submitted an affidavit stating that another man, not Mr. Y, was actually the child’s father and was supporting the child.

Mr. Y hired Ms. Lerner to take action to relieve him of the support obligation. When she appeared in the administrative support proceedings on Mr. Y’s behalf, Ms. Lerner was informed that it was not within the jurisdiction of the administrative judge to grant the relief she sought. Ms. Lerner was told that she would first need to petition the Superior Court in order to disestablish Mr. Y’s paternity, and the administrative proceedings were continued to afford Ms. Lerner the opportunity to do so.

For nearly two years, Ms. Lerner obtained numerous continuances based on her false representations to opposing counsel and the administrative court that she was seeking relief in superior court. In the meantime, her client was obligated to continue paying the state installments on the balance it was due. The administrative judge finally ordered Ms. Lerner to provide a declaration as evidence that she had taken action in superior court, but Ms. Lerner failed to comply. By the time she moved to initiate action in superior court, her client had finished paying the Division of Child Support more than the amount it originally sought and the administrative proceedings were closed.

Ms. Lerner’s conduct violated RPC 1.1, requiring a lawyer to provide competent representation to a client; former RPC 1.2(a), requiring a lawyer to abide by a client’s decisions concerning the objectives of representation and to consult with the client as to the means by which they are to be pursued; RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; RPC 3.2, requiring a lawyer to make reasonable efforts to expedite litigation consistent with the interests of the client; RPC 3.3(a)(1), prohibiting a lawyer from making a false statement of material fact or law to a tribunal; 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(b)(3), requiring a lawyer to take steps to the extent reasonably practicable to protect a client’s interests, such as giving reasonable notice to the client; and RPC 8.4(j), prohibiting a lawyer from willfully disobeying or violating a court order directing him or her to do or cease doing an act which he or she ought to do or cease doing in good faith.

Natalea Skvir represented the Bar Association. Kurt M. Balmer represented Ms. Lerner. Stephen D. Funderburk was the hearing officer.

Suspended

Stephen J. Oelrich (WSBA No. 29263, admitted 1999), of Tacoma, was suspended for three years, effective February 9, 2009, by order of the Washington State Supreme Court. This discipline is based on conduct in six matters involving failure to provide competent representation, failure to abide by clients’ objectives, lack of diligence, failure to communicate, failure to return unearned funds, and conduct involving misrepresentation.

Matter No. 1: In March 2005, Mr. B paid Mr. Oelrich $2,000 to represent him in a child-support modification, to obtain a restraining order against his ex-wife, and to defend him in a contempt action for his alleged failure to pay child support and uninsured medical expenses. Mr. B was in the United States Army stationed in Virginia; he communicated with Mr. Oelrich by e-mail and relied on him to handle matters.

One of Mr. B’s objectives was to obtain a restraining order against his ex-wife to keep her from harassing him at work. Mr. Oelrich drafted a petition and Mr. B signed it. Mr. Oelrich never filed the petition. As a result, when Mr. B’s ex-wife harassed him at work, Mr. B had no recourse. Mr. B’s contempt hearing was originally scheduled for April 2005, but was rescheduled several times and ultimately re-set for June 2005. Mr. Oelrich requested a continuance because he had not completed the necessary paperwork. The court granted the continuance, but ordered a $250 sanction against Mr. B for the delay. Because Mr. B had questions about his case and had spoken to Mr. Oelrich directly on only one occasion, he called Mr. Oelrich’s office almost every day between June 2, 2005, and June 20, 2005. Mr. Oelrich never returned the calls. Mr. Oelrich...
In September 2003, Mr. and Mrs. Oelrich filed a personal injury case against Clark County for his overpayment of healthcare expenses. The court rejected Mr. Oelrich's arguments, and Mr. Oelrich's appeals were unsuccessful.

In September 2005, Mr. B received a letter from the Division of Child Support (DCS) stating that his paycheck would be garnished for current and past-due support obligations. Mr. Oelrich took no action on behalf of Mr. B with DCS or in superior court to prevent the garnishment. Mr. Oelrich did not respond to the court's attempts to contact him.

Matter No. 2: Mr. H hired Mr. Oelrich to pursue a personal injury case against Clark County on a contingency fee basis for an injury he received while incarcerated. The statute of limitations for this injury was three years and expired on October 30, 2003. Mr. H called Mr. Oelrich numerous times, urging him to file his claim. Mr. Oelrich did not return Mr. H's calls. Mr. Oelrich filed a suit against Clark County on June 17, 2004. The suit was filed in Thurston County, which was the wrong venue, according to statute. In addition, the statute of limitations had already expired on the date of filing and Mr. Oelrich did not serve any of the defendants within 90 days of filing his complaint. The defendants brought a motion to dismiss. Mr. Oelrich stated that his failure to serve defendants within 90 days was excusable neglect, due to "a simple act of oversight." The court rejected Mr. Oelrich's arguments, and Mr. H's case was dismissed with prejudice.

Matter No. 3: Mr. F hired Mr. Oelrich to represent him in a child-support-modification action in early June 2005. Mr. F was in the Armed Forces and deployed in Iraq. Mr. F's main concern was that his child support would increase based on extra pay that he was receiving due to his deployment. Mr. F's extra pay was scheduled to end in November 2005, when he returned from Iraq. Mr. F wanted to ensure that his child support would not be based on this pay after November 2005. Mr. F and Mr. Oelrich agreed that contact between them would be by e-mail and telephone. Mr. F paid Mr. Oelrich $1,000. The fee agreement provided for an hourly billing rate. The modification hearing was scheduled for June 24, 2005. On that day, Mr. Oelrich e-mailed Mr. F requesting "basic information." Mr. F responded with the answers and requested that he be notified of the outcome of the hearing. Mr. Oelrich sent Mr. F an e-mail a few days later explaining that the hearing was stricken because "we needed to have more time to respond." This was the last communication Mr. F had from Mr. Oelrich. The hearing was reset for July 22, 2005. Mr. Oelrich received notice of the new hearing date on June 27, 2005. Mr. Oelrich did not attend the July 22, 2005, hearing or inform Mr. F of the new date. A modification order was entered by default and was mailed to Mr. F by the prosecutor. This order increased Mr. F's child-support obligation based on his deployment pay. Mr. F tried repeatedly to contact the respondent, without success. Mr. Oelrich did little, if anything, to earn his fee on this matter, yet he did not return any of Mr. F's e-mails. In August 2005, Mr. F sent additional e-mails and a letter to the respondent requesting information on his case and an accounting of his fees. Mr. Oelrich did not send Mr. F a statement for his services or otherwise account for the $1,000 that Mr. F paid him.

Matter No. 4: Ms. S hired Mr. Oelrich in 2003 to represent her in an employment discrimination lawsuit filed against her former employer and her labor union. On March 3, 2004, the court dismissed Ms. S's claims following defendants' motion for summary judgment. On March 26, 2004, Mr. Oelrich filed a Notice of Appeal in the Ninth Circuit. The Court set a briefing schedule that required Mr. Oelrich to file the opening brief by May 18, 2004, and mailed a copy of the order to him. On April 22, 2004, the court issued an order setting an appeal conference for May 21, 2004. Mr. Oelrich received a copy on April 23, 2004. On May 21, 2004, the court entered an order rescheduling the settlement assessment conference to June 22, 2004. Mr. Oelrich received a copy of this order as well. Mr. Oelrich did not attend the conference and did not return telephone messages left by court staff on his answering machine and with his staff.

On June 29, 2004, the court issued an order requiring Mr. Oelrich to file a notice within seven days indicating dates and times he would make himself available for a continuation of the settlement assessment conference. The order warned that failure to comply could result in dismissal of the appeal or sanctions. On July 16, 2004, Ms. S's appeal was dismissed for failure to prosecute. Mr. Oelrich's offices received this order on July 19, 2004. Ms. S tried unsuccessfully to reach Mr. Oelrich numerous times. She failed to return her calls. After months of failed attempts, Ms. S finally met with Mr. Oelrich. In his answer to the Bar Association's complaint, Mr. Oelrich admitted that he told Ms. S that he missed the appeal deadline for her matter because he never received the court's scheduling order, but stated that this was not a misrepresentation. Ms. S hired Attorney B to review her case. Attorney B determined that, given the court's attempts to contact Mr. Oelrich, there was little or no chance that they would reinstate Ms. S's appeal.

Matter No. 5: In September 2003, Mr. and Mrs. N paid Mr. Oelrich $2,000 to represent them in a child-custody-modification action against Mr. N's ex-wife. After the modification action was filed, Mr. N decided that he wanted to transfer legal custody of his son to his ex-wife. He asked Mr. Oelrich to accomplish this. In December 2003, the ex-wife's attorney (Lawyer C) set a hearing for December 30, 2003, to enter a final parenting plan. On that day, Mr. Oelrich signed a parenting plan drafted by Lawyer C without discussing it with Mr. N. This plan, while changing the residential time, did not change the designation of custodian to the mother. Mr. Oelrich did not provide Mr. or Mrs. N with a copy of the plan, despite repeated requests. In February 2004, Lawyer C wrote to Mr. Oelrich and informed him that Mr. N had claimed his son as an exemption on his 2003 tax return, in violation of a court order. Lawyer C requested a written assurance that Mr. N would file an amended return or she would bring a contempt action against Mr. N. Mr. Oelrich did not answer Lawyer C's letter or inform Mr. and Mrs. N of the letter. Had they been informed of Lawyer C's letters, Mr. and Mrs. N would have filed an amended return to avoid a contempt action. On February 20, 2004, Lawyer C filed a contempt motion. The hearing was set for March 9, 2004. In support of her motion, Mr. N's ex-wife described Lawyer C's attempts to contact Mr. Oelrich. Mr. N was served with an Order to Show Cause a few days before the contempt hearing. Mrs. N called Mr. Oelrich several times, but he did not return her calls. On March 5, 2004, Mr. Oelrich's assistant told Mrs. N that Mr. Oelrich could not attend the hearing. Mrs. N requested that Mr. Oelrich call her. Mr. Oelrich did not return her call or ask the court to continue the hearing. Mr. N attended the March 9, 2004, hearing and represented himself. At the hearing, Mr. N was held in contempt and ordered to pay attorney's fees and costs of $195. After failing to obtain a copy of the final parenting plan from Mr. Oelrich, Mrs. N obtained one from Superior Court. It was only then that Mr. and Mrs. N realized that the final plan designated Mr. N as custodian of his son, contrary to his objec-
tives. Mrs. N wrote Mr. Oelrich a letter detailing her complaints. Mr. Oelrich met Mrs. N at a restaurant to give her Mr. N’s file. Mr. Oelrich apologized profusely and blamed Lawyer C for the errors. He promised to remedy the parenting plan. Mrs. N contacted Mr. Oelrich on numerous occasions after that meeting, but Mr. Oelrich failed to return her calls. Mr. and Mrs. N eventually paid another attorney $2,500 to amend the final parenting plan.

Matter No. 6: Mrs. X contacted Mr. Oelrich in 2003 because her mother was preparing to sue her over a loan that Mrs. X’s mother had made to her. Mrs. X asked Mr. Oelrich to assist her in settling the matter. Mr. Oelrich told Mrs. X that he had written a letter and sent it to her mother’s attorney twice, but Mrs. X never received a copy of the letter, despite repeated requests. On July 13, 2003, Mrs. X gave Mr. Oelrich a cashier’s check to send to her mother’s attorney, but Mr. Oelrich never forwarded the check.

On March 2, 2005, Mrs. X’s mother sued Mrs. X and her husband in Pierce County Superior Court. The trial was scheduled for September 14, 2005. Mr. and Mrs. X took leave from work and appeared at the courthouse, but were informed when they arrived that the trial had been cancelled. Mrs. X e-mailed Mr. Oelrich requesting information, but did not receive a response. On September 23, 2005, Mr. Oelrich e-mailed a member of his staff and told her to call Mr. and Mrs. X that day to explain to them that the case had been reset because the opposing attorney had not perfected the case for trial. Mr. Oelrich stated in the e-mail that his office had identified a problem with the e-mail system and this would be explained in a letter he would write to Mr. and Mrs. X. Mr. Oelrich did not send a letter to them. The case against Mr. and Mrs. X was calendared again in the spring of 2006. In an e-mail dated March 1, 2006, Mrs. X specifically asked Mr. Oelrich if he could settle the case without going to trial. Mr. Oelrich did not pursue a settlement.

Between March and June 2006, Mr. Oelrich did not respond to Mrs. X’s frequent calls to his office for updates on the case. The court set a settlement conference for June 8, 2006, but it was re-scheduled at Mrs. X’s request. She met with Mr. Oelrich and asked him again to settle the case. On June 9, 2006, Mr. Oelrich wrote a letter to Mr. and Mrs. X stating that he intended to withdraw. After Mr. Oelrich withdrew, Mrs. X hired another attorney to represent her at the settlement conference. The case settled at the conference after about an hour. Mrs. X has repeatedly requested a copy of her file from Mr. Oelrich, who has not responded.

Mr. Oelrich’s conduct in these six matters violated RPC 1.1, requiring a lawyer to provide competent representation to a client; former RPC 1.2(a), requiring a lawyer to abide by a client’s decisions concerning the objectives of representation and to consult with the client as to the means by which they are to be pursued; RPC 1.3, requiring a lawyer to act with reason-able diligence and promptness in representing a client; former 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; former RPC 1.14(b), requiring a lawyer to maintain complete records of client funds and property, and to promptly pay the funds to the client upon request; former RPC 1.15(d), requiring a lawyer to take steps to the extent reasonably practicable to protect a client’s interests, such as surrendering paper and property to which the client is entitled and returning any advance payment of fee that has not been earned; and RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

Francesca D’Angelo represented the Bar Association. Stephen J. Oelrich represented himself, but did not appear for the hearing. William J. Murphy was the hearing officer.

Suspended

Jeffery A. Richard (WSBA No. 28219, admitted 1998), of Seattle, was suspended for one year, effective upon the termination of his current suspension for failure to comply with continuing education requirements of APR 11, by order of the Washington State Supreme Court following a default hearing. This discipline is based on conduct involving practicing law while suspended. Jeffery A. Richard is to be distinguished from Jeffrey A. Richards of Bellevue.

On December 7, 2006, Mr. Richard was suspended from the practice of law for failure to comply with his 2003–2005 MCLE requirements. Notice of this suspension was sent to Mr. Richard via certified mail to the address on file with the Bar Association on November 30, 2006. Mr. Richard has remained in suspended status since December 7, 2006, and has never served an affidavit of compliance as required by the rules (ELC 14.3). On February 2, 2007, Mr. Richard filed a Petition to Appeal Ballot Title filed in Thurston County Superior Court. In support of the petition, Mr. Richard prepared declarations for one of the petitioners and a witness. These declarations had the name and address of Jeffrey A. Richard and Associates printed on them. Mr. Richard presented the petitioner and the witness with the declarations for their signature on or about April 6, 2007. Mr. Richard did not inform them that he was no longer an active lawyer.

Mr. Richard’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 8.4(b), prohibiting a lawyer from committing a criminal act (here, RCW 2.48.180, unlawful practice of law) that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects, 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 5.3(e) and ELC 14.2) in connection with a disciplinary matter.

Francesca D’Angelo represented the Bar Association. Mr. Richard represented himself.

Reprimanded

James V. O’Conner (WSBA No. 2826, admitted 1959), of Seattle, was ordered to receive a reprimand on February 9, 2009, following approval of a stipulation by a hearing officer. This discipline was based on conduct involving dishonesty, fraud, deceit, or misrepresentation. James V. O’Conner is to be distinguished from James N. O’Conner of Bainbridge Island and James P. O’Conner of Portland, Oregon.

Mr. O’Conner was a principal of a limited liability mortgage company (Mortgage LLC). During all material times, Mr. O’Conner was not active in managing Mortgage LLC. On December 21, 2006, Mr. O’Conner knowingly notarized the signature of Mr. W on loan documents processed by a Mortgage LLC mortgage processor (Ms. H) without Mr. W being present and without personal knowledge whether Mr. W actually executed the loan documents. One loan document notarized by Mr. O’Conner inaccurately acknowledged that Mr. W “personally appeared before me” on December 21, 2006, and that the document was executed “as their free and voluntary act and deed.” Four other loan documents notarized by Mr. O’Conner inaccurately reflected that the documents were “sworn to and subscribed before” Mr. O’Conner. Although Ms. H was a licensed notary at the time, she did not notarize Mr. W’s signature on the loan documents, because the lender had a policy against having the employee of the mortgage broker acting as the signing agent and notary. Mr. O’Conner agreed to notarize the signatures of Mr. W on the loan documents to prevent the lender from knowing that Ms. H processed the loan and acted as the signing agent. Mr. O’Conner agreed to notarize the loan documents without personal knowledge that Mr. W actually signed them based...
on Ms. H’s assurance that Mr. W actually signed the documents. Although Mr. W actually signed the loan documents, he subsequently sued Mr. O’Conner, Mortgage LLC, and other parties claiming, among other things, that he was coerced into signing the loan documents. At the time Mr. O’Conner notarized Mr. W’s signature on the loan documents, Mr. O’Conner had no reason to believe that Mr. W was pressured to execute the loan documents. Mr. O’Conner and Mortgage LLC settled the lawsuit and Mr. O’Conner paid Mr. W a substantial monetary settlement.

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

Jonathan Burke represented the Bar Association. Mr. O’Conner represented himself. Dennis Smith was the hearing officer.

Admonished

Michael J. Cranston (WSBA No. 16122, admitted 1986), of Seattle, was ordered to receive two admonitions on October 17, 2008, by order of a review committee of the Disciplinary Board. This discipline is based on conduct involving trust account irregularities and the unauthorized practice of law.

During January and February 2007, the Bar Association received overdraft notices of Mr. Cranston's trust account. Also during this time, Mr. Cranston deposited earned fees and non-client funds into his trust account and wrote checks for personal expenses from this account. Mr. Cranston did not keep complete transaction records for his trust account.

On August 20, 2007, the Washington State Supreme Court suspended Mr. Cranston's license to practice law for failure to comply with the 2004–2006 CLE requirements. Mr. Cranston continued to represent a client in an insurance matter while his license was suspended. During his suspension, he continued to negotiate a settlement between the insurance company and his former client; he sent an e-mail to the insurance company referring to his client, he sent a letter on his law-office letterhead, and he eventually deposited and disbursed the settlement funds from his trust account. Mr. Cranston did not notify the insurance company of his suspension.

Mr. Cranston’s conduct violated RPC 1.15A(h)(1), prohibiting funds belonging to a lawyer to be deposited or retained in a trust account, except funds to pay bank charges, funds belonging in part to a client or third person and in part presently or potentially to the lawyer, or funds necessary to restore appropriate balances; RPC 1.15A(h)(2), requiring a lawyer to keep complete trust account records as required by the rules; RPC 1.15A(h)(5), requiring that all trust account withdrawals be made only to a named payee and not to cash; RPC 1.15B, requiring a lawyer to maintain current trust-account records and listing, at minimum, what the records must include; RPC 5.5, prohibiting a lawyer from practicing law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction; RPC 5.8(a), prohibiting a lawyer from engaging in the practice of law while on inactive status, or while suspended from the practice of law for any cause, and RPC 8.5(l), prohibiting a lawyer from violating a duty or sanction imposed by or under the Rules for Enforcement of Lawyer Conduct in connection with a disciplinary matter (here, ELC 14.2).

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

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proudly announces:

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Ms. Laird will continue her family law practice with a focus on parenting issues, representing survivors of domestic violence, and assisting GLBT individuals with their family law needs.
Ms. Laird continues to be ably assisted by paralegal Amy Bolstad.

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

**Business Law**

**Business Law Midyear**
June 5 — Seattle. 7.5 CLE credits pending, including 1 ethics. By the WSBA Business Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Bankruptcy Boot Camp**
June 24 — Seattle. 6 CLE credits pending, including 5 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Criminal Law**

**Criminal Law Bootcamp**
May 1 — Seattle. 6.25 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Criminal Law Bootcamp**
May 27 — Olympia. 6.25 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Construction Law**

**Construction Law Midyear**
June 19 — Seattle. 6.5 CLE credits pending. By the WSBA Construction Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Environmental Law**

**Fisheries and Hatcheries — Legal and Regulatory Frameworks**
May 14 — Seattle. 6 CLE credits. By The Seminar Group; 206-463-4400; www.theseminargroup.net/seminar.lasso?seminar=09.daowa.

**Three Degrees: A Conference Examining the Law of Climate Change and Human Rights**

**Ethics**

**Legal Ethics Deskbook Live: New Rules, New Resources**
May 13 — Seattle/live webcast. 3 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Chains of Law: Women Without Rights**
May 15 — Olympia. 3.5 CLE credits, including 0.5 ethics. By Rubric CLE; 206-714-3178; www.rubriccle.com.

**Lincoln on Professionalism**
May 19 — Vancouver. 2.75 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**The New Rules of Professional Conduct Revisited: Ethics for Governmental Lawyers and Outside Counsel for Governmental Entities**
June 3 — Tele-CLE. 1.5 CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Family Law**

**2009 Family Law Midyear**
June 26–28 — Wenatchee. CLE credits pending. By the WSBA Family Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**General**

**Truth or Consequences: The Bush Administration and the Rule of Law**

**University of Washington School of Law’s Spring 1L Appellate Advocacy Competition**
May 2–7 — Seattle. 1 CLE credit per hour of judging. By UW School of Law; questions@uwmbch.com.

**Trial by Fire: Infamous Cases that Define America, Part I**
May 21 — Seattle. 3.5 CLE credits, including 0.5 ethics. By Rubric CLE; 206-714-3178; www.rubriccle.com.

**Defending the Auto Case**

**Trial by Fire: Infamous Cases that Define America, Part II**
May 29 — Seattle. 3.5 CLE credits, including 0.5 ethics. By Rubric CLE; 206-714-3178; www.rubriccle.com.

**Health Law**

**Health Law**
June 3 — Seattle. 7 CLE credits, including 1 ethics credit pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Alzheimer’s Disease and Other Forms of Dementia**
June 19 — Seattle/live webcast. 6 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Immigration Law**

**Immigration Institute: Immigration-Related Issues for the Non-Immigration Attorney**
May 21 — Seattle/live webcast. 6 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Indian Law**

**21st Annual Indian Law Conference**
May 8 — Seattle. 6 CLE credits pending, including .75 ethics. By the WSBA Indian Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Labor and Employment Law**

**Chains of Law: Slavery and Jim Crow**
May 8 — Olympia. 5 CLE credits, including 0.5 ethics. By Rubric CLE; 206-714-3178; www.rubriccle.com.

**The Liability of the Corporate Executive**
Workers’ Compensation
May 15 — Seattle. 6 CLE credits, including .75 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Introducing WSJA’s New Workers’ Comp Handbook

Final Friday Brown-Bag Lunch Series: Basic Requirements of Federal and State Wage and Hour Laws, Featuring Karen Pool-Norby
June 26 — Tele-CLE. 1 CLE credit pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Law Practice Management

Final Friday Brown-Bag Lunch Series: How to Get Paid: A Primer on Effective Client Communications, Featuring Thomas A. Lerner
May 29 — Tele-CLE. 1 CLE credit pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Hot Motions: Introducing WSJA’s New Pleadings and Motions CD Handbook

Litigation

Advanced E-Discovery Conference
May 7 — Seattle/live webcast. 7.25 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Soft Skills

Early Years of Litigation Practice

Mediation

16th Annual Northwest Dispute Resolution Conference
May 1–2 — Seattle. 9.5 CLE credits, including 1.75 ethics. By UW School of Law; 206-543-0059; www.uwcle.org.

Four-Day Intensive Mediator Training Program
May 5–8 — Seattle. 37 CLE credits, including 7.5 ethics. By Alhadeff & Forbes Mediation Services; 206-281-9950; www.mediationservices.net.

Real Property, Probate, and Trust

2009 Real Property, Probate and Trust Section Midyear
June 12–14 — Spokane. 11.5 CLE credits, including 3 ethics. By the WSBA Real Property, Probate and Trust Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Senior Lawyers

2009 Annual Senior Lawyers Conference: The Past, Present, and Future of Law
May 8 — Seattle. 6 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

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Qualified candidates will have a B.A. in public relations, communications, business administration, or related field, with 5 to 10 years of executive-level management experience. Well-qualified candidates will have a J.D. or other advanced degree and experience in the justice system or bar associations. This position requires a demonstrated ability to build relationships with and among various interest groups, and calls for excellent written, spoken, and interpersonal communication skills; exceptional organization and project-management skills; innovative problem-solving skills; experience formulating and implementing strategic plans that develop a strong relationship with the community and media; significant supervision and management skills; and proficiency in MS Office. Travel is required. For more information, see www.wsba.org/jobs/wsba.htm. To apply, e-mail a cover letter and résumé to hr@wsba.org.

Auditor — Washington State Bar Association. The WSBA is seeking an experienced professional who will perform audits of attorney trust accounts (IOLTA — Interest on Lawyers Trust Accounts). The auditor will be an exceptionally diplomatic, well-organized professional with effective communication, analytical, and problem-solving skills. The position randomly audits lawyer trust accounts and explains ethical rules and their meaning, violations noted, ideas for improvement, and ways to implement changes. The auditor prepares working papers and audit reports detailing specific findings. Additionally, the auditor contributes to education of lawyers and prevention of ethics violations by responding to inquiries, speaking at seminars, and conducting training. This position has frequent contact with lawyers, their staff, banks, and others outside the WSBA. This position requires the auditor to coach and explain complex ideas to others or relay information that may be unfavorable. The ability to be discreet when dealing with confidential attorney information is crucial. A bachelor’s degree in accounting, business administration, finance, or a related field is required. Experience with small-business accounting, bookkeeping, and double-entry recordkeeping systems is also required. The auditor must know basic accounting and recordkeeping systems for a law office or small business. The auditor must have good time-management and organization skills in order to plan and conduct audits. Successful candidates must have strong problem-solving skills to anticipate and recognize complex or ambiguous situations. The auditor must provide his/her own transportation, and overnight travel throughout the state is required. Interested, qualified candidates should submit cover letter and résumé to hr@wsba.org.

Family law attorneys. Morris-Sockle PLLC, doing business as Divorce Lawyers for Men, is seeking to associate with an attorney or law firm in the areas of Bellevue, North Seattle, Kent, and Puyallup to jointly represent family law clients in each area. The attorneys must be aggressive litigators, experienced and skilled in providing full-service representation to family law clients. Contact Frank Morris at 877-866-7393 or e-mail Frank@MorrisSockle.com.

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Ball Janik LLP is seeking an experienced litigation associate for its Portland, Oregon, office. Qualified applicants should be capable of managing complex multi-million dollar commercial and construction litigation disputes. Outstanding writing and oral advocacy skills are required, as well as strong academic credentials and admission in the Oregon State Bar. Admission to the Washington State Bar is preferred. Qualified applicants should submit a résumé, cover letter (referencing Job #1248), and writing sample, in confidence, to Linda Jordan, Recruiting Coordinator, Ball Janik LLP, 101 SW Main St., Ste. 1100, Portland, OR 97204. Applications are also accepted electronically at ljordan@balljanik.com. Equal Opportunity Employer.

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Will search for Kristen Theresa Cassidy, resident of Spokane and King counties, who died 05/01/2008. Contact Christopher Fast at 206-624-6271, or cfast@rlmalaw.com.
In recent weeks, three large trials across the United States were disrupted because jurors used their mobile phones to research the cases or post messages about them on the Facebook and Twitter social networking sites. One case was declared a mistrial, wasting eight weeks of work. The others went to verdict, but lawyers for the losing parties are seeking to overturn them because of the jurors’ actions. Unless courts find a way to prohibit improper phone use by jurors, typical deliberations may soon go like this:

**Juror 1:** I’m surprised this even went to trial. The cops caught the guy with the gun and the bag of money two blocks from the bank. It’s a no-brainer.

**Juror 5:** You know, I’m not feeling all that sorry for the banks these days. Didn’t that bank get a bailout?

**Juror 8:** [pointing to iPhone on table] Yup. I Googled ’em. They got $14 billion of our tax dollars as a reward for wasting money on bad investments. I can hardly blame this guy for trying to get a little back.

**Juror 1:** Hey, wait. Judge Gruffenstern said we can’t do our own research. We have to stick to the evidence admitted in court.

**Juror 6:** [staring intently at the screen of his Blackberry] Did you guys know Judge Gruffenstern used to own a porno shop? At least that’s what it says here on www.gruffensternisacrook.com.

**Juror 2:** I don’t know about that, but the deputy prosecutor is a babe. Look at these MySpace pics. I’m sending a friend request right now.

**Juror 1:** Shouldn’t we be taking this more seriously?

**Juror 8:** I’m taking it seriously. I just don’t think it’s right we have to limit ourselves to what they give us in court. It seems like there wasn’t enough physical evidence. Don’t you watch CSI? If this guy really was at the bank, they should have found his DNA or something. They didn’t even have a decent 3-D computer reenactment, just some lame black-and-white security camera photo.

**Juror 10:** Almost all my Twitter followers think he’s guilty, but that’s mostly because of the dorky moustache. Hey, look! They finally got the TV news piece about the trial on YouTube.

**Juror 4:** Wow, that makes it look like he really is guilty. See how his lawyer put his coat over the guy’s head when they walked him out of the courthouse? They always do that when the guy’s guilty.

**Juror 7:** According to Wikileaks, that defense attorney contributed to Ron Paul’s campaign. He’s probably one of those nutjobs who wants to go back to the gold standard. Whoa, maybe he was in on the robbery himself — you know, kind of a political protest thing. I’m totally posting this to my blog.

**Juror 5:** Hey, I voted for Ron Paul. Does that make me a bank robber, too? The gold standard isn’t looking like such a bad idea these days, dude.

**Juror 1:** OK, let’s calm down. How about if we take a first vote to see where everyone stands?

**Juror 12:** Oh yeah, let’s do an online poll! I’ve always wanted to do one of those.

**Juror 1:** No. I mean the 12 of us will just vote “guilty” or “not guilty” right here. We can raise our hands or do blind ballots.

[The other 11 jurors stare blankly.]

**Juror 10:** Ballots? You mean, like, write something on paper? Manually?

**Juror 4:** [her thumbs working feverishly on her phone’s miniature keyboard] This is a big decision. I really think I need input from my Facebook group.

[There is a knock at the door and the bailiff peeks in.]

**Bailiff:** Judge Gruffenstern wants to make sure you’re making progress in here.

**Juror 1:** Uh, yes, of course. We’re doing fine. Bailiff: The judge needs to know as soon as you’ve reached a verdict.

**Juror 1:** Sure. Just give us his number and we’ll text him.

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