On Writing

THE MENTAL PROCESS OF WRITING

Pet Peeves Redux from Robert Cumbow

Writing Persuasive Briefs

PLUS

Exceeding Excellence: WSBA Awards Honorees

NOT ALL DASHES ARE CREATED EQUAL

A Simple Little Case by Mark Johnson
"Relationships are the cornerstone of family law.

Each case is different, but one thing never changes – my continual commitment of service to each client. I work directly with my clients to understand their personal concerns and goals, and my team and I are dedicated to providing each client with exceptional legal service tailored to their individual needs. It is this commitment to service that allows me to build strong relationships with my clients and achieve successful outcomes in their cases."

Juliana Wong
Hall-Conway-Jackson, Inc. has been providing insurance service for over 70 years. We are one of the northwest’s oldest and largest independently owned insurance brokerage firms, doing business in 50 states.

For over 40 years our Professional Liability Department has provided attorneys and accountants with insurance services to protect their firms.

Our dedicated staff are able to offer a full range of coverages through a variety of carriers:

- Lawyers Professional Liability for full-time firms
- Part-time and Moonlighting Practices
- Intellectual Property and Class Action Practices
- Employment Practices Liability
- Directors and Officers Liability
- Guardians Liability
- Business Owners: Property-Liability and Automobile
- Personal Lines: Homeowners-Auto-Boat and Specialty Coverages
- Surety and Bonding Services
- Employee Benefits: Health - Disability and Life Insurance

For a quote or to learn more, contact:

Scott Andrews (425) 368-1262 (Direct)
sandrews@hallcj.com
21540 30th Drive S.E. (425) 368-1200 (Main)
Suite 140 (800) 877-8024
Bothell, WA 98021
If a case is important to you, it’s important to us.

JAMS has a national reputation, regional focus and local solutions to all your ADR needs, including Special Masters, Mediators and Arbitrators.

Call for more information or to schedule a matter.
800.626.5267

200 Full-Time Neutrals
Resolution Centers
Nationwide
www.jamsadr.com
Washington State Bar News
THE OFFICIAL PUBLICATION OF THE WASHINGTON STATE BAR

FEATURES

11 WSBA Board of Governors Endorses Same-Sex Marriage Legislation
   by Mark Johnson and Salvador A. Mungia

14 How to Write, Edit, and Review Persuasive Briefs
   by Judge Stephen J. Dwyer, Leonard J. Feldman, and Ryan P. McBride

25 Using the Flowers Paradigm to Write More Efficiently
   by Bryan A. Garner

30 Pet Peeves Redux
   by Robert C. Cumbow

35 Writing Tips for More Effective Briefing and Motion Practice
   by Shelley Szambelan

40 Exceeding Excellence
   by Stephanie Perry

43 A Call to Action: Awards Dinner Keynote Speech
   by Judge Richard A. Jones

44 Not All Dashes Are Created Equal
   by Todd W. Timmcke

COLUMNS

9 President’s Corner
   A Simple Little Case
   by Mark Johnson

64 The Bar Beat
   The Bar Beat Guide to Surviving the Recession
   by Michael Heatherly

DEPARTMENTS

7 Letters to the Editor

45 Reading Around
   Brush Up on Your Washington Constitutional Law

46 Lawyers’ Fund for Client Protection
   by Robert Welden

49 FYI

55 Disciplinary Notices

LISTINGS

54 Announcements

57 Professionals

60 CLE Calendar

62 Classifieds
We emphasize defense of persons charged with driving under the influence and other serious traffic offenses.

Stephen Hayne

Aaron Wolff
B.A., Emory University, Atlanta, Georgia; J.D. (cum laude), Seattle University School of Law; Former prosecutor for the cities of Kirkland and Tukwila, where he successfully prosecuted hundreds of DUI cases; Graduate, National College for DUI Defense; NHTSA Qualified Standardized Field Sobriety Test Administrator; Graduate, National Patent Analytical Systems BAC Datamaster training program; Graduate, Drug Recognition Evaluation Overview Course; Member, Washington Association Criminal Defense Lawyers, Washington State Trial Lawyers Association; Executive Board Member, Citizens for Judicial Excellence; Executive Committee Member of the Washington State Bar Association Criminal Law Section and named “Who’s Who” in DUI/DWI Defense for 2008 by Washington Law and Politics Magazine.
JUDICIAL DISPUTE RESOLUTION

ALTERNATIVE DISPUTE RESOLUTION SOLUTIONS

- Mediation, arbitration, hearing officer, special master and litigation consultation services.
- 14 comfortable mediation/arbitration rooms and a large formal arbitration/trial room.
- All panelists are former judicial officers.
- Talented staff coordinates scheduling and other support.

JUDICIAL DISPUTE RESOLUTION
1411 FOURTH AVENUE
SUITE 200
SEATTLE, WA 98101
PHONE: (206) 223-1669
FAX: (206) 223-0450
WWW.JDRLLC.COM
**Letters to the Editor**

**Bar News** welcomes letters from readers. We do not run letters that have been printed in, or are pending before, other legal publications with overlapping readership. Letters should be no more than 250 words in length, and e-mailed to letters_to_the_editor@wsba.org or mailed to: WSBA, Attn. Letters to the Editor, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539. Bar News reserves the right to edit letters. Bar News does not print anonymous letters, or more than one submission per month from the same contributor.

**Australian legal system less costly**

As a WSBA member who has been practicing in Sydney, Australia, since 1995, I noted Mr. Bastian’s comments [September 2008 Bar News, President’s Corner] regarding the cost of civil litigation and the discovery process. I spent several years practicing in Spokane and I am well aware of the discovery process, namely, depositions, interrogatories, etc.

In Sydney, I commenced work in a law firm specializing in personal injury and was amazed to learn interrogatories are not permitted in personal injury matters. I now practice in the field of private insurance disputes and claims against trustees of retirement funds, and I still have not had to engage in the use of interrogatories.

There is no such tool as depositions in the Australian legal system. The actual discovery process, which again is not permitted in personal injury claims, involves solely requesting a list of documents pertaining to various categories if ordered by the courts or by consent, and the party who receives the request must provide a list of these documents and whether any objection is taken to the production of said documents. In personal injury matters, all that is required is that the defendants request answers to particulars which are questions of fact and the plaintiff to provide answers. One of the questions might be the names and addresses of the plaintiff’s treating doctors. The defendants would then issue subpoenas on these doctors to produce these records. This is the totality of the discovery process in Australia in regards to personal injury.

All in all, the Australian legal system works quite well and is not bogged down with depositions, interrogatories, and general discovery motions. I don’t see why Washington, as well as other American courts, finds a need for this very expensive process, whereas many other Common Law countries do not share the same need. Maybe it is time that the Washington courts consider doing away with these procedures unless there are exceptional circumstances.

Carl J. Mickels, Sydney, Australia
Board decision at odds with religious beliefs

The Board of Governors’ ill-reasoned decision to unanimously adopt a resolution [to] support same gender marriage in the State of Washington is discriminatory against its members, who for religious beliefs, oppose laws adopting same gender marriages. Lest the Board of Governors has forgotten, the bar association is a mandatory association; those who wish to practice law in this state must be members of the WSBA. A Keller deduction does absolutely nothing to mitigate the effect of a resolution that will be perceived as being a statement by all of the members regardless of the deeply held religious beliefs of some of its members. In light of this vote, perhaps it is time to make membership in the bar association voluntary and turn attorney oversight over to a state board like every other profession in the state.

Raymond V. Gessel, Kent

Discipline decision is wrong

Washington State Disciplinary Board:
I strongly protest the Disciplinary decision to only suspend J. Burgess [September 2008 Bar News, Disciplinary Notices]. This action is both an insult to our profession and to the children he victimized. It matters not in the least that he pleaded guilty to these offenses. What matters is that the Bar Association, by its decision, has demonstrated, again, to the public why some lawyers are held in such contempt.

This person should be disbarred. The Disciplinary Board wastes no time disbarring Bar members who mismanage their trust accounts, and rightly so. Yet, you have allowed a REGISTERED SEX OFFENDER to retain the right to resume a legal practice in a mere three years.

He followed and stalked young children. He exposed himself and he blocked children’s paths. Not to mention the emotional distress he caused each of them. Talk about moral turpitude? What he did will haunt each and every one of those little girls throughout their lives, and not just for three years.

How dare this organization fail to take appropriate action according to the Rules that I, as an attorney, must abide by. And by the way, you might want to examine his billing and time ledgers and see which of his clients he billed for all the time he took stalking his victims. You might find he in fact did fiddle his trust account, then maybe you might consider disbar- ing him for that!

I am disgusted and disheartened, as a parent and an attorney, by the decision of the Board.

Mimi S. Buescher, Coupeville
How, in 1803, a case decided on 58 words ensured the role of an independent, empowered judiciary

The facts and the issue in the case before the court could not have been simpler: A man appointed to a job in government by the prior administration sued the current administration for refusing to complete his appointment. In addition, the law most germane to the court’s decision had been on the books only 15 years and the portion of that law which proved dispositive to the court’s ruling consisted of only 58 words.

The court, in an apparent reflection of the simplicity of the case, issued its opinion a mere 13 days after argument. Without the decision in the case, however, we would not have the rule of law or administration sued the current administration for refusing to complete his appointment. In addition, the law most germane to the court’s decision had been on the books only 15 years and the portion of that law which proved dispositive to the court’s ruling consisted of only 58 words. The court, in an apparent reflection of the simplicity of the case, issued its opinion a mere 13 days after argument. Without the decision in the case, however, we would not have the rule of law or an independent, empowered judiciary. In fact, until the ruling in this simple little case, democracy in the United States did not truly exist because, although the United States Constitution was adopted in 1787 (ratified by the required ninth state in 1788), it was not until 1803 and the decision of the United States Supreme Court in *Marbury v. Madison* (1 Cranch 137, 5 U.S. 137, 2 L.Ed. 60 (1803)), that the power of the judiciary was confirmed to be co-equal to that of the legislative and executive branches, thus ensuring an independent protection of our constitutional liberties against arbitrary abuses of power.

At issue was whether William Marbury, appointed to the position of justice of the District of Columbia by President John Adams shortly before the expiration of Adams’s term, was entitled to his commission — a commission that was being withheld by Thomas Jefferson’s secretary of state, James Madison, on Jefferson’s instructions.

The Court, Chief Justice John Marshall writing, found that the grant to the Supreme Court of original jurisdiction in *mandamus* petitions contained in the Judiciary Act of 1789 and on which Marbury had relied as the jurisdictional basis for his petition, was unconstitutional insofar as it purported to enlarge the original jurisdiction of the court set out in the 58 words comprising Article III, Section 2, paragraph 2 of the United States Constitution.

While the doctrine of judicial review had been discussed by others, perhaps most notably by Alexander Hamilton in Federalist No. 78, *Marbury v. Madison* was the first decision in which the Supreme Court clearly articulated that the courts held the power to interpret the law and that acts by the legislative and executive branches which were “repugnant” to the Constitution were void.

Marshall expressed the power of judicial review in clear and unmistakable language: “It is emphatically the province and the duty of the judicial department to say what the law is. To those who apply the rule to particular cases, must of necessity expound and interpret that rule.” *(Id., 5 U.S. at 177)*. The Court was equally demonstrable in its articulation of the supremacy of the Constitution over conflicting legislative enactments: “It is a proposition too plain to be contested, that the constitution controls any legislative act repugnant to it; or, that the legislature may alter the constitution by an ordinary legislative act.” *(Id., 5 U.S. at 177)*.

The opinion was a masterstroke of politics and democratic political theory; while it clearly articulated the power of the courts to declare acts of the other two branches of government unconstitutional, and the Constitution to be the supreme law of the land, it did so in a decision which had the effect of reducing its own jurisdiction.

Two hundred and five years after *Marbury*, the doctrine of judicial review which Marshall, Hamilton, and others recognized as a necessary limit on the power of the legislative and executive branches is under attack; our judges and justices are commonly criticized as being “activist” and not “strict constructionist” for doing precisely what they are constitutionally mandated to do. Since the United States Constitution does not expressly grant to the federal courts the power of judicial review, Marshall and the *Marbury* court were, apparently, the ultimate activist judges.

Disempowerment of the courts (ironically in the name of democracy) would have resulted in unchecked power in the two partisan branches of government. Fortunately for us, a simple little case stops it from happening.

WSBA President Mark Johnson can be reached at 206-386-5566 or mark@johnsonflora.com.

WSBA President Mark Johnson
125,000 lawyers are expert witnesses to our reputation.

CNA understands the potential risks lawyers face every day. Since 1961, our Lawyers Professional Liability Program has helped firms manage risk with a full range of insurance products, programs and services, and vigorous legal defense when it’s needed. As part of an insurance organization with over $60 billion in assets and an "A" rating from A.M. Best, we have the financial strength you can count on.

See how we can protect your firm by contacting John Chandler at 800-767-0650.

As part of the USI family, only Kibble & Prentice can offer you the benefits of WSBA-sponsored professional liability insurance. We are dedicated to handling the professional insurance needs of Washington State lawyers.

www.lawyersinsurance.com
The Resolution and Some Background

BY WSBA PRESIDENT MARK JOHNSON

At its meeting in Seattle on September 19, 2008, the Washington State Bar Association Board of Governors, by a vote of 12–0, passed the following resolution:

Whereas, as officers of the court and stewards of our system of justice, lawyers are charged with protecting and promoting the rights of our clients within the framework of the law;

Whereas, promoting and protecting the right of persons to have access to and rely upon the legal rights and obligations of civil marriage serves the administration of justice and the practice of law; and

Whereas, predictability and fairness in the laws that protect property rights, parental rights and access to the justice system are necessary if lawyers are to fulfill their duties to their clients and serve the interests of justice;

Whereas, achievement of those goals requires that all persons be treated equally regardless of sexual orientation or gender identity;

NOW THEREFORE, the Board of Governors of the Washington State Bar Association resolves to support equal access for same-sex couples to civil marriage and its attendant legal rights and obligations.

The Board's resolution reflects its belief that secular marriage is an important civil right over which the state has exclusive control, its conviction that a significant minority of our citizens are being arbitrarily denied access to that right, and its recognition that the denial of the right to marry concomitantly denies access to an enormous number of property rights and other legal rights.

The decision also reflects the Board's determination that the domestic partnership acts enacted by the 2007 and 2008 Washington State Legislatures (SSB 5336 and HB 3104, effective on July 22, 2007, and June 12, 2008, respectively), which do not extend to same-sex couples benefits equal to those granted to married heterosexuals, are segregative and discriminatory.

Finally, the resolution reflects the Board's recognition of the need to eliminate the cumbersome obstacles Washington's lawyers now face when representing same-sex couples in adoptions, assisted reproductive births, real estate purchases and sales, litigation, estate planning and probate, and other legal matters. Navigating two newly enacted pieces of domestic-partnership legislation, coupled with the inability to rely with confidence on the precedential value of the mountains of decisional authority pertaining to civil marriage, increases the cost of representing same-sex couples, diminishes the certainty with which those clients can be advised, and raises the risk of litigation — both between the clients, and against their lawyer.

The resolution is the culmination of years of support by WSBA boards for the rights of gay men and lesbians. In February 1993, the Board passed a resolution endorsing the prohibition of discrimination against individuals based upon their sexual orientation. In March 1993, the Board passed a motion supporting then-pending legislation which would have prohibited discrimination in housing and employment based upon marital status and sexual orientation. In June 1994, the Board passed a resolution opposing Initiatives 608 and 610. In 1997, the Board endorsed Initiative 677, which was intended to prohibit discrimination in employment based upon sexual orientation. Finally, in July 2005, the Board unanimously passed a resolution supporting the addition of sexual orientation to Washington's Law Against Discrimination.

Pursuant to GR 12, the WSBA may take a position on an issue if it is found to "relate to or affect the practice of law or the administration of justice." See GR 12(c)(2). There will undoubtedly be WSBA members who will be distressed at the passage of this resolution, contending that the issue is social and/or political and, therefore, not a matter for the WSBA to address. GR 12 does not, however, require that an issue be devoid of social or political controversy or impact or require that the Board weigh the social and political impact against the finding that the issue relates or affects the practice of law or the administration of justice. It is not realistic to expect that legislation affecting an institution as fundamental as marriage will not have social or political ramifications, nor is it persuasive to argue that the civil marriage statute, affecting as it does hundreds of rights and, literally, every conceivable area of law, does not relate to or affect the practice of law or the administration of justice.

According to statistics published in Same-Sex Couples Raising Children in Washington State — Data from Census 2000, published in January 2005 by the Williams Project on Sexual Orientation Law and Public Policy at the UCLA School of Law, same-sex couples in Washington state are currently raising more than 7,400 children. It is, therefore, an undeniable reality that same-sex couples in Washington state spend their lives together, raise their families together, and contribute greatly to our state's welfare, businesses, and economy; yet they and their children are faced daily with confronting the psychological impact and social stigmatization resulting from domestic and familial segregation.

I am extremely gratified that the Washington State Bar Association has endorsed same-sex civil marriage and I am proud of Immediate Past President Stan Bastian's leadership on the issue and the Board of Governors' decision to support equal rights and stability and certainty in the law for all.

Why I Voted in Favor of the Resolution

BY WSBA PRESIDENT-ELECT SALVADOR A. MUNGIA

The following are remarks I made before casting my vote in favor of the same-sex marriage resolution.

I could easily support this resolution on the basis that this is a practice of law issue — because it is. Our members who counsel same-sex couples to safeguard their rights are navigating a minefield of hazards and uncertainties. There are no clear answers to the issues same-sex couples face trying to obtain the protections that are afforded married heterosexual couples. I do not find that the rights afforded to married heterosexual couples can be obtained by same-sex couples through legal agreements. Moreover, even attempting to do so imposes a substantial financial burden on same-sex couples that heterosexual couples do not bear.

However, the practice of law basis is not deterministic for me. Instead, I believe that
We have been practicing Washington State Workers’ Compensation law for more than 75 years and clearly understand the needs of our clients. Each of our dedicated trial attorneys has years of experience in Workers’ Compensation and Social Security disability law. Whether a worker has suffered an industrial injury or is disabled as a result of an occupational disease, we know what to expect and what needs to be done, every step of the way. If your clients or friends need legal assistance or advice regarding a Workers’ Compensation or Social Security disability matter, we can help.

Walthew, Thompson, Kindred, Costello, & Winemiller, P.S.

phone 206.623.5311 • toll free 1.866.925.8439 • www.walthew.com

Workers’ Compensation • Social Security Disability

We welcome and appreciate your referrals
we, as lawyers, have the duty to ensure that the law treats all people equally — that no group be treated differently only because it is currently disfavored. Our Association's Rules of Professional Conduct remind us that we are guardians of the law — that justice is based upon the rule of law grounded in respect for the dignity of the individual. Unfortunately, our Association has not always fulfilled our roles as guardians. In 1942, when President Roosevelt issued Executive Order 9066, more than 100,000 U.S. citizens of Japanese descent were sent to internment camps. Looking back now, no one will dispute that Executive Order 9066 was a horrible injustice. Yet we, as a legal profession, were mute. We had a duty to speak in defense of the rule of law. We failed. We were poor guardians.

I recognize that there are some who say that this is a divisive political/moral issue. Whether same-sex marriage is moral or immoral is not for our Association to answer. What our Association is duty-bound to answer is the call to defend the rule of law and the fundamental value of equality. While our Association never faced the following issue, it could have. In my lifetime many states had laws criminalizing a white person marrying a non-white person, as challenged in Loving v. Virginia. These so-called racial purity laws were based on what the majority believed morality required. We need to ask ourselves if our Association was faced with this issue in the 1960s, would we have stayed mute or would we have fulfilled our roles of guardians of the law and spoke out against this injustice?

There are some who say that the WSBA should not speak for them on this issue, as it goes against their personal views of what is moral. Once again, that same argument could be used in the Loving situation. Moreover, by adopting this resolution, our Association is not making a statement as to what our members believe is moral or immoral, but instead is upholding its duty of protecting the rule of law and equality. Our Association, through the RPCs, prohibits our members from discriminating against others based upon sexual orientation. Finally, our Association does not require that 100 percent of our members agree before our Association can take a position. If that were the standard, then even a single member would effectively hold a veto.

People are saying that now is the time for the WSBA to take a position. I disagree. We are late. We are guardians of the law: we should be in the vanguard, not rear-guard, of battles to defend the law, to defend justice.

I urge my fellow governors to vote in favor of this resolution. I urge my fellow attorneys to stand behind it. 🌈

Defending DUIs with Passion and Integrity since 1969

Clockwise: Douglas Cowan William Kirk Eric Gaston Matthew Knauss

Refer with Confidence

Defending DUIs ♦ 425.822.1220 ♦ Cowanlawfirm.com
The ability to write a clear and persuasive brief is one of the most important weapons in a lawyer’s armory; this is especially true for appellate practitioners. Although oral advocacy skills are important, a litigant’s briefs are reviewed long before oral argument, when judicial law clerks are drafting their bench memoranda and judges are deciding how to approach oral argument and decide a case. Briefs are often reviewed a second (or third, fourth, or fifth) time after oral argument — when judges and their clerks are crafting the court’s decision and revisiting the issues that the court must decide. For these reasons, a clear and persuasive brief often has a greater impact than even the most inspired oral argument. Moreover, it is becoming increasingly common for courts to decide cases without oral argument. In those instances, a compelling brief is critical to a litigant’s success, and the only way to make an impact on the court.

The ability to write and recognize a persuasive brief is important to lawyers throughout their careers. Junior attorneys are often responsible for initially writing a brief. Senior attorneys often review those briefs and either rewrite or edit them (as circumstances require). In-house counsel may then review the briefs once more, providing additional edits and comments and addressing concerns. Wherever you
One of the most important guidelines for writing a persuasive brief is to start by telling your story. Do not wait until you reach the argument section of your brief to begin arguing your case. A persuasive brief begins with a compelling recitation of the relevant facts; that is true even if the case is to be decided on purely legal grounds.

The problems with this version are almost too many to count (although at least you can tell who the author represents); it uses loaded, legally significant terms (offer, counteroffer, cover); it omits key facts (such as the price and when DEF sent ABC the widgets); and, worst of all, it is purposely misleading (implying that DEF had no choice but to contract with XYZ because DEF's widgets or terms were unacceptable).

The following example avoids these pitfalls. Here, the author carefully shapes the facts without distorting them:

ABC Co. needed 100 more widgets to satisfy customer demand. At the time, DEF could not fill the order. But rather than inform ABC of that fact, on January 7th, DEF simply went ahead and put 50 widgets in the mail to ABC. More than that, DEF included an invoice with the incomplete shipment that included certain terms that were different than those on ABC's PO (although the price term was the same). Meanwhile, and not having heard from DEF regarding its order, ABC placed a separate order with XYZ for 100 widgets at a better price, which XYZ promptly filled. When ABC finally received the 50 widgets from DEF on January 9th, it had no need for them given its contract with XYZ, and they were immediately returned to DEF.

All of the facts are here. More importantly, after reading this version, not only will the reader know who the author represents, he or she will know ABC's theme of the case. Crafting a facts section in this manner takes time, but it is time well-spent. In short, when you approach the facts section, view yourself as a careful story-teller, not just a neutral historian, and certainly not a fiction writer either.

2. Acknowledge the Applicable Legal Standard and Use It to Your Benefit

Once you get past the facts, you can and should remove the cloak of even-handedness and get straight into serious advocacy. Yet most lawyers blow right through what is typically the very first argument section of the brief — the applicable legal standard — without employing any advocacy what-
The controlling legal standard not only tells the court how your arguments must be evaluated, it is also the first step in convincing the court why you should win. That is especially important on appeal, where the rules typically require attorneys to include a section describing the applicable standard of review. As Judge Harry Pregerson notes in his article, “The Seven Sins of Appellate Brief Writing and Other Transgressions,” “[t]he standard of review is the keystone of appellate decision making.” It is not enough to show that your client is right through persuasive argument; you need to show the court that it can rule in your favor because you have satisfied the applicable legal standard (or that your opponent has failed to do so).

The first step in that process is to acknowledge and accurately state the applicable legal standard. In the trial court, the correct standard turns on the relief sought and the procedural posture of the case. On appeal, the correct standard (usually called the standard of review) depends on the type of lower court decision or judgment that has been appealed. In many cases, there will be different standards of review applied to different aspects of the appeal, and you should carefully identify for the court all that apply. In most cases, this can be accomplished by using an online research tool and a simple query such as “standard of review” in the same paragraph as “summary judgment.”

Most lawyers have no problem identifying the correct standard of review and setting it out for the court, but that is where they stop. In some cases, the standard of review is copied from a recent case. In other cases, it is copied from a previous brief. There is a good reason why the standard of review section of a brief often looks as if it has been cut-and-pasted from another source; it probably was. But to be persuasive, a brief should also explain how the standard works to your client’s advantage. If the standard is de novo, emphasize to the court that it is not bound by the trial court’s adverse findings and conclusions. If the standard is abuse of discretion, on the other hand, emphasize that the court should not substitute its judgment for that of the trial court. You may even want to provide a few citations to appellate decisions where the court reached the conclusion you want your court to reach. For example, a brief challenging the sufficiency of the evidence would state: “The court of appeals has, on numerous occasions, overturned a jury’s verdict where, as here, there was insufficient evidence to support the verdict.” In the end, the standard of review section of the brief should not appear in a vacuum; treat it as part and parcel of your argument.

After you have stated the proper standard of review and explained why it matters in your case, you should reiterate it and tie it to the substantive arguments you make throughout the substantive sections of your brief. For example, if you represent the respondent who successfully won a jury verdict in the trial court, do not just explain why the jury’s verdict was correct; emphasize that the verdict was supported by substantial evidence. Do not conclude by simply stating that the court should affirm the judgment below; remind the court of the heavy burden the standard of review places on the appellant. In responding to the appellant’s sufficiency of the evidence argument, you might state: “Appellant has not demonstrated that there was insufficient evidence for a rational, fair-minded person to come to the conclusion that the jury did in this case.” Again, whether you are writing or reviewing a brief, make sure that you not only correctly state the applicable legal standard, but also remember to use it to your advantage.
CLARITY, CONFIDENCE, CONCLUSIONS™
How Are Your Negotiations Going? Have You Even Tried?

Aubin Barthold

Negotiation, Planning, Facilitation, Mediation, Arbitration

Misperceptions between and among clients and counsel, adversaries and their advocates, almost always benefit from a neutral reality check.*

Why not try to put an end to your dispute anxiety, confusion, and costs?

Aubin’s dispute negotiation and resolution experience runs the gamut from an antitrust case ultimately decided by the United States Supreme Court, an arbitration before the Iran-United States Claims Tribunal, specialized National and International Insurance policy disputes and commutations, complex banking, bankruptcy, and real estate disputes and work-outs, including extensive representation of the Resolution Trust Corporation, all conceivable construction cases from alleged nuclear power plant design defects to typical condominium defect-HOA disputes, personal injury, wrongful death litigation, through complex high-stakes contract, commercial, personal and professional disagreements.

Aubin has extensive and comprehensive training in Mediation and Arbitration, including the San Francisco Bar’s Advanced Mediator Practitioner course, successful completions of one of Pepperdine University’s prestigious Strauss Institute for Dispute Resolution Programs and the first CR 39.1 Mediator-Arbitrator certification program by the United States District Court for the Western District of Washington. Upon request, Aubin has references from some of Seattle’s and the Nation’s most highly regarded Neutrals.

*What were your perceptions of the relative positions of the parties in the cartoon? Did you know?

An ostrich is the second fastest animal in the world, the fastest two-legged animal, and can maintain a speed of 45 m.p.h. (70 k.p.h.) for at least thirty minutes (See, ostrich.com)

An elephant can maintain a speed of 24 m.p.h. (39 k.p.h.) only for short distances. (See, indianchild.com)

Cartoon: ©The New Yorker Collection 2008 Jason Patterson from cartoonbank.com All Rights Reserved

For Aubin’s complete bio go to: www.staffordfrey.com/a_barthold.htm

©Aubin Barthold—All Rights Reserved
whenever possible.

3. Carefully Pick Your Strongest Arguments

A persuasive brief should include persuasive arguments and only persuasive arguments. More is definitely not better in written advocacy, especially when crafting persuasive legal briefs. Judges (and their clerks) have a very limited amount of time in which to read and evaluate your brief. If you force them to trudge through a host of unpersuasive arguments, you lose credibility and they lose interest. Perhaps more importantly, strong arguments lose their edge and persuasive force when surrounded by less persuasive arguments. Judge Alex Kozinski of the Ninth Circuit notes in his article that an extremely effective way to lose on appeal is to “bury your winning argument among nine or ten losers.” The key to effective written advocacy, therefore, is selectivity, not fertility. A lesser brief includes every conceivable argument. A good brief is focused, concise, and persuasive. In practical terms, this may mean abandoning or de-emphasizing arguments that you may have made to the trial court. If you tend to fall in love with your own arguments and ideas, that kind of decision can be excruciating, but it is essential.

4. Present Your Arguments Logically

After you have identified the most persuasive arguments and dropped the rest, it is equally important to present your arguments in a logical manner. If this is done correctly, one point flows from another, arguments build on facts, and the arguments (hopefully) compel the result you want. This sense of flow should be evident within each paragraph, within each section of the brief, and within the brief as a whole. One easy way to begin this process is to structure your brief so that the issues and your main points are contained in discrete sections and subsections. You can test whether you have done this effectively by reading the table of contents as if it is the only thing the court will consider. Ask yourself “does the table of contents tell the court what kind of relief I am seeking, accurately describe my main (or alternative) arguments, and tell (or at least outline) my story?” In the end, your table of contents should look something like a summary of the argument. Here is a simple example:

I. THE TRIAL COURT’S GRANT OF SUMMARY JUDGMENT IS SUBJECT TO DE NOVO REVIEW.

II. THE TRIAL COURT PROPERLY GRANTED SUMMARY JUDGMENT IN DEFENDANT’S FAVOR BECAUSE THERE IS NO GENUINE ISSUE OF MATERIAL FACT THAT PLAIN-TIFF’S COMPLAINT IS BARRED BY THE APPLICABLE STATUTE OF LIMITATIONS.

A. Plaintiff’s complaint is subject to the two-year statute of limitations for assault and battery claims set forth in RCW 4.16.100(1), not the three-year statute of limitations for ordinary negligence.

1. In determining which statute of limitations applies, this court must evaluate the essence of plaintiff’s allegations rather than the way plaintiff characterized his claims in the pleadings.

2. The essence of plaintiff’s allegations, as well as his own deposition testimony, demonstrates that plaintiff’s claim is based on defendant’s alleged intentional conduct.

3. In any event, defendant owed
plaintiff no legal duty and, therefore, plaintiff cannot bring a claim for negligence as a matter of law.

B. Defendant is not equitably estopped from asserting a statute of limitations defense because nothing defendant said or did prevented or dissuaded plaintiff from filing his complaint within the relevant limitations period.

III. THE TRIAL COURT’S SUMMARY JUDGMENT RULING CAN BE AFFIRMED ON THE ALTERNATIVE GROUND THAT PLAINTIFF FAILED TO SET FORTH SPECIFIC FACTS IN RESPONSE TO DEFENDANT’S MOTION FOR SUMMARY JUDGMENT ON THE ISSUE OF SELF-DEFENSE.

Bottom line, if the table of contents does not make sense or is hard to follow, chances are that the brief is disorganized as well.

Another very useful way to present your arguments logically is to first tell the court how to get to the right answer, and only then tell the court why the other side (or the trial court) is wrong. All too often, lawyers devote too much of their argument to explaining why someone else is wrong. In an opening brief, the appellant may feel compelled to provide a litany of reasons why the trial court erred. In a responsive brief, the respondent may provide an equally comprehensive list of why the appellant’s arguments are flawed. While that kind of analysis is important, court opinions typically start by explaining the right answer, and persuasive briefs should as well. Having provided that analysis, you can then turn to the other side’s arguments (or the trial court’s analysis) and explain why that approach is incorrect.

Obviously, determining the amount of space to devote to each portion of the brief can be a difficult judgment call and will necessarily vary from brief to brief. It often requires a good deal of text to properly develop a legal argument — to explain the right answer — and you should devote appropriate attention to that analysis. That, after all, is the strength of your case. Once you have done so, there will likely be a number of arguments that you have not yet addressed. But if you have properly developed your affirmative argument, it should be much easier to address those remaining issues. Moreover, the court will be much more likely to agree with you that the other side (or trial court judge) is wrong if you have already convinced the court that you are right.

The above advice applies to any brief, but it is especially important if you are the respondent or the appellee on appeal. Available statistics show that most respondents win on appeal. When you can, use that subtle, cultural prejudice to your advantage. As the respondent, do not simply accept your adversary’s phrasing of the issues or order of presentation. Do not hesitate to rephrase issues if it can be done fairly and to your advantage. Most of all, do not be afraid to address the issues presented in a different order than the order in which they appear in your adversary’s brief. Reordering the presentation of the issues can work to your advantage, especially in a case presenting multiple issues of approximately the same importance.

Another effective way to determine the most logical manner in which to present your arguments is to spend some time thinking about how the opinion would look if you were to prevail on every issue. In other words, ask yourself: “If I were tasked with writing an opinion on this matter, how would I do it?” After you determine the answer to that question, you should make sure that the brief you are writing (or reviewing) includes everything the court
SEX OFFENSES REQUIRE A DEDICATED DEFENSE

The Best Defense. Always.

Refer with Confidence.

THE LAW OFFICES OF
James Newton, PLLC

THE LAW OFFICES OF JAMES NEWTON IS A FULL SERVICE, CRIMINAL DEFENSE FIRM.

JimNewtonLaw.com

Call Us.
S King County 253-859-4600
Seattle 206-264-1200
Tacoma 253-383-1300
needs to know, in the order it needs to know it. Often, this lends itself to a chronological presentation of the issues based on how the issues arose during the trial, not as the underlying facts actually unfolded. This presents an easy approach to brief-writing and may have the dual benefit of (1) persuading the judge's law clerk to "work from" your brief instead of the appellant's brief in drafting internal memoranda to the judges, while (2) de-emphasizing a possibly vexing issue that arose late in the trial. By restructuring the issue statements and the order in which the issues are addressed in the briefing, a skilled writer can send the implicit message that the case is really just a routine affirmation. When used in conjunction with sound arguments regarding the standard of review, such a presentation builds a silent momentum toward affirmation.

5. Present Your Arguments Simply and Concisely

A persuasive brief also expresses arguments in a simple and concise manner. Addressing this issue, Judge Kozinski notes that "simple arguments are winning arguments; convoluted arguments are sleeping pills on paper." Obviously, this is not an easy task where the legal issues on appeal are complex or the subject matter is highly technical or specialized. But, in general, use plain language if possible, avoid jargon and legalese, and look for ways to eliminate any text that is not essential to your discussion of the facts or argument. There are dozens of books and articles on style, usage, and effective legal writing to help you accomplish this.4 So we pause only long enough to give you three tips that we feel are particularly useful. One, ask one of your colleagues (or even a non-lawyer) to read your brief; if they cannot understand it, a judge may not be able to either. Two, once you finish your first full draft, strive to cut your brief down by at least one-third; you might not be able to do it, but the exercise is extremely useful. And three, as you near completion of your final draft, take a break from the brief for a day or two (time permitting) before you give it one last fresh and objective read.

6. Be Accurate, Fair, and Even-Handed

A persuasive brief is also even-handed in its presentation of relevant facts and controlling legal principles. A caustic tone or needlessly antagonistic rhetoric, on the other hand, detracts from a brief's persuasiveness. If you have a truly compelling argument, there is no need to disparage your opponent or your opponent's arguments in order to prevail. Those arguments may be "without merit" or "unprecedented"; if so, you should not be shy about using these kinds of phrases. But very little is added by using terms like "preposterous," "absurd," or "silly." In fact, when litigants use such terms, judges may start to wonder whether the attack is an attempt to hide a weakness in the party's position. Eliminate those words from your briefs, both in the drafting process and in the review process. Remember, a good brief leads the court to conclude that the opponent's arguments are absurd without actually saying so.

The same sense of even-handedness and restraint should inform your factual and legal presentation. As noted above, a good brief presents the facts in a favorable light, but does not overstate those facts or wholly ignore countervailing considerations. A good brief is equally fair in characterizing case law, without mischaracterizing the holding of a case or ignoring controlling authority. If you are confronted with bad, but not controlling, case law, you can choose to deal with it fairly and head-on. Or, in appropriate circumstances (such as where the adverse case law is not directly on point), you might decide to ignore an adverse decision. But one of the worst things you can do is to put a misleading spin on a case. The judge (or your opponent) will certainly call you on it, and the result could be far worse than the case law itself would require. As Judge Pregerson notes: "If, under the guise of aggressive advocacy, you misuse a case or fail to discuss an unfavorable holding, you lose credibility."5 In other words, if part of your brief is misleading or evasive, the court may conclude that the rest is equally suspect.

7. Follow the Court's Rules and Sweat the Details

When courts issue rules relating to the submission of briefs, they expect those rules to be followed. A court's insistence on a particular format, font size, page limitation, or word limitation may appear arbitrary, but it is not. The rules exist because judges have concluded that they can more effectively decide cases if briefs are in the correct format and include the required analysis. Failure to follow the rules will, at best, leave a judge annoyed and irritated. At worst, your brief could be stricken or your credibility destroyed. Imagine what your client would think if the court refused to consider a particularly important argument, such as entitlement to attorney fees, simply because your brief exceeds the court's page limits or otherwise fails to follow the court's rules.

This is not a theoretical concern. On November 29, 2007, the Ninth Circuit issued an opinion striking a brief in its entirety and dismissing the appeal because the brief was seriously deficient.6 The court noted that the brief failed to provide the applicable standard of review, made almost no legal arguments, and lacked a table of contents, of authorities, citations to authority, and accurate citations to the record.7 Addressing the significance of its rules, the court explained:

Federal Rule of Appellate Procedure 28 and our corresponding Circuit Rules 28-1 to -4 clearly outline the mandatory components of a brief on appeal. These rules exist for good reason. In order to give fair consideration to those who call upon us for justice, we must insist that parties not clog the system by presenting us with a slubby mass of words rather than a true brief.8

Judge Kozinski takes an equally harsh stance with lawyers who play games (smaller fonts, smaller margins, and the like) to circumvent the court's rules, stating: "It tells the judges that the lawyer is the type of sleaze ball who is willing to cheat on a small procedural rule and therefore probably will lie about the record or forget to cite controlling authority."9

It is equally important to consider other relevant sources of advice regarding effective briefs. In Washington, for example, appellate practitioners can find a very useful document, "Brief Writing — Best Practices," on the website for Division One of the Court of Appeals.10 A number of federal judges have published similar advice, some of which we have cited in this article, including Judge Pregerson's "The Seven Sins of Appellate Brief Writing and Other Transgressions,"11 Judge Kozinski's "The Wrong Stuff,"12 and Third Circuit Judge Ruggero J. Aldisert's book, Winning on Appeal: Better Briefs and Oral Argument.13 These "guidelines" also stress the importance of avoiding spelling, grammatical, and citation errors. These kinds of mistakes, while not necessarily germane to the argument, demonstrate a lack of attention to detail and can distract the judge from the merits of your argument.

November 2008 | Washington State Bar News 21
Bluebook citation errors can also be harmful to your argument. Citation form is like the handshake of a secret society: it conveys important information while simultaneously announcing membership. A brief with correctly formatted citations not only provides information (i.e., the holding, the case, the court, the year) but also conveys a sense of completeness and thoroughness. Conversely, a brief marred by incorrectly formatted citations raises hackles and invites suspicion; it is the lawyer-author’s tacit admission that “I really don’t belong here.” If you send the message that it is not important to you, you identify yourself as a careless outsider. That cannot possibly help your client’s cause. In short, whether you are the author or reviewer, it is important to ensure that the brief not only complies with all applicable requirements, but also is accurate in substance and professional in appearance. Always:

- proofread, proofread, proofread;
- support all factual assertions with citations to the record;
- ensure that case citations and quotations are accurate;
- keep string-cites and footnotes to a minimum;
- avoid massive block quotes; and
- delete excessive adverbs such as “clearly,” “specifically,” and “simply.”

Although some of these suggestions may seem self-evident, it is important to sweat the details (even the obvious ones). Otherwise, a winning brief can quickly become a losing one.

**Conclusion**

Whether you are writing, editing, or simply paying for a legal brief, you want that brief to be as persuasive as it can possibly be. Judges expect no less. They read hundreds of briefs each year, and they enjoy reading briefs that are easy to follow, logical, and persuasive. Knowing how to satisfy that desire is an important step on the road to success in court. This article presented seven general guidelines — from one judge and two lawyers — regarding how to write, edit, and review persuasive briefs. Although writing a persuasive brief is more art than science, the guidelines that are described in this article can help lawyers craft briefs that will have a more significant impact on judges and their clerks — something that anyone reading a brief (or paying for it) will truly appreciate.
Stephen Dwyer was elected to the Washington State Court of Appeals, Division One, in November 2005. Prior to that, in February 2004, Judge Dwyer was appointed to the Snohomish County Superior Court after serving for nine years as a Snohomish County District Court judge. Leonard Feldman is an attorney at Heller Ehrman LLP, where his practice emphasizes appeals before the Ninth Circuit and Washington appellate courts. Ryan McBride is a member of the Litigation Practice Group and the Appellate Practice Group at Lane Powell PC, where his practice focuses on complex commercial litigation and appeals.

NOTES
2. Id. at 437.
4. E.g, Bureau of Justice Statistics, Compendium of Federal Justice Statistics 2004 at 82 (Dec. 2006) ("In most (80 percent) of the appeals terminated on the merits, the district court ruling was affirmed; in another four percent it was partially affirmed"); Console, Dale E., “Understanding the Appellate Process,” 211 N.J. Law. 8, 9 (2003) (New Jersey statistics: “Appellate Division affirms 74 percent of the civil appeals that go to the panel. The affirmance rate in criminal appeals is 84 percent.”); Derrick, John, Appeals Statistics (2006), www.californiaappeals.com/appeals_statistics.html (reporting reversal rates of approximately 20 percent in California).
5. Kozinski, supra note 3, at 326.
7. Pregerson, supra note 1, at 436.
8. Sekiya v. Gates, 508 F.3d 1198 (9th Cir. 2007).
9. Id. at 1200.
10. Id. (internal quotations omitted).
11. Kozinski, supra note 3, at 326.
13. Pregerson, supra note 1, at 436.
16. The Bluebook: A Uniform System of Citation (Columbia Law Review Ass’n et al. eds., 18th ed. 2005).

MICHAEL B. KING and GREGORY M. MILLER
join
James E. Lobenz and Kenneth S. Kagan
at CARNEY BADLEY SPELLMAN, P.S.
to form a group of appellate attorneys in the Pacific Northwest with unexcelled breadth and depth of experience.

More than 50 oral arguments before the Washington Supreme Court

From the left:
James E. Lobenz: Over the past three decades Mr. Lobenz has briefed and argued more than 100 appeals in the state and federal appellate courts. His practice focuses on constitutional law, criminal law, civil rights and personal injury law. He has handled cases involving the rights of authors, movie makers, taxpayers, political campaign contributors, military officers, jurors, horse racers, Indian tribal members, real estate developers, disabled students, disc jockeys, and persons sentenced to death for capital crimes.

Gregory M. Miller: Mr. Miller has argued over 60 cases before the Washington appellate courts and the Ninth Circuit in civil, family, constitutional and criminal law. His 24 years of practice, including 10 years operating his own sole practice, give him deep experience in health law, general litigation, municipal, and labor and employment law and negotiations representing cities, schools, companies, management, labor, physicians, lawyers, and individuals.

Kenneth S. Kagan: Mr. Kagan has extensive trial and appellate experience in state and federal courts, as well as in administrative agencies. His experience includes civil and criminal litigation, administrative agency procedures, legal ethics, professional responsibility, and representation of licensed professionals, such as lawyers and health care providers (including physicians, mental health providers, dentists, etc.).

Michael B. King: Mr. King has successfully represented clients on a wide variety of matters before the Alaska, California and Washington Supreme Courts, all divisions of the Washington Court of Appeals, and the United States Courts of Appeals for the Ninth and Eleventh Circuits. He is a past president of the Washington Appellate Lawyer Association, and is a fellow of the American Academy of Appellate Lawyers.
The ideas, commitment, and energy necessary to grow and run your law firm are enormous, as is the inherent risk. Insurance is one of the strategies you should use to manage that risk.

Daniels-Head is committed to crafting customized insurance solutions for law firms. Call us today, we can help you determine which coverage best suits your needs.

Lawyers Professional Liability

Malpractice coverage that goes the distance: that's Lawyers Direct, an insurance program created for lawyers, by lawyers. Lawyers Direct is backed by a highly rated, financially strong insurance company that has an established record of providing coverage for law firms throughout the country. Small firms (one to ten attorneys) seeking dependable coverage should call 800.558.6688 or visit www.LawyersDirect.com.

Lawyers Direct

Lawyers Direct is underwritten by Professionals Direct Insurance Company, a member of The Hanover Insurance Group, Inc., and is rated A- (Excellent) by the A.M. Best Company.
Most writing advice focuses on the end product. But we shouldn’t neglect the process by which we produce our words. In important ways, the process affects the product.

Now, I can’t tell you what type of pen to use or what to sip on while you’re working. No one can teach the physical aspects of writing. But I’ve learned that it’s quite possible to teach the mental aspects of writing.

Before we get to that, though, think of the ways in which legal writers so frequently get mired:

• By starting to write in earnest before they fully understand what they’re writing about — and then treating that draft as something sacrosanct.
• By sidestepping the creative stage altogether, so that the final product isn’t nearly as imaginative as it could be.
• By writing and sharpening sentences before knowing what the overall structure will be — and thereby wasting valuable time. When structural changes later emerge, as they inevitably will, much of this early work will have to be either scrapped or modified.
• By allowing their critical side to interrupt throughout the process.

How can you avoid these pitfalls?

The Flowers Paradigm: Madman — Architect — Carpenter — Judge

Several years ago, Dr. Betty S. Flowers, a LawProse instructor who teaches in the University of Texas English Department, devised a shrewd new way of dramatizing the writing process. Her approach helps minimize common problems and maximize both efficiency and effectiveness.

It breaks down the writing process into four sequential steps — each one based on a “character” or personality that we all have within us: Madman, Architect, Carpenter, and Judge.1

The Madman "is full of ideas, writes crazily and perhaps rather sloppily, gets carried away by enthusiasm and desire, and if really let loose, could turn out 10 pages an hour."2 Typically, the legal writer doesn’t really “write” at all during this stage, but instead takes copious notes, jotting down ideas and possible approaches to a problem.

The Madman’s nemesis is the Judge — one’s skeptical, hypercritical self, who must be reined in until the final step. But many of us have an out-of-control Judge, who is easily recognizable. As Flowers describes the Judge:

He’s been educated and knows a sentence fragment when he sees one. He peers over your shoulder and says, “That’s trash!” with such authority that the Madman loses his crazy confidence and shrivels up. You know the Judge is right; after all, he speaks with the voice of an English teacher. But for all his sharpness of eye, he can’t create anything.3

The key to defusing this battle between Madman and Judge is to keep the Judge at bay until the end of the writing process. Otherwise, the Judge will stifle...
Congratulations to our colleague
Román D. Hernández
on his recent election as Hispanic National Bar Association’s President-elect.

Mr. Hernández, a shareholder, focuses his practice in the areas of employment law and business litigation. He can be reached at 503-796-2935 or rhernandez@schwabe.com.

The HNBA is a nonprofit, national association representing the interests of over 100,000 Hispanic American attorneys, judges, law professors, law graduates, law students, legal administrators, and legal assistants in the United States and Puerto Rico. www.hnba.com.

Legal advisors for the future of your business*

Seattle, WA | Vancouver, WA | Portland, OR | Bend, OR | Salem, OR | Washington, DC

The Madman altogether.

But what about the other two steps?

Once the Madman has generated lots of ideas, the Architect takes them, makes connections between them, and starts planning their structure. Initially, the Architect’s work is nonlinear, but it will end up as an outline, possessing an arrangement that seems obvious to most people today but was a great insight when Aristotle devised it: a beginning, a middle, and an end. And if the Architect functions satisfactorily, you’ll know each intermediate point — step by step — while writing the middle parts of the piece. In fact, the more explicit the architecture, the better.

Then comes the Carpenter, who starts actually building the draft. Here, the writing begins in earnest. And because the draft has a logical plan, the Carpenter’s work is greatly eased: it’s like filling in the blanks. You simplify the process of building when you have the Architect’s specifications laid out before you.

Charles Alan Wright, the eminent legal scholar and outstanding writer, made this very point in a Scribes Journal essay in which he described his writing process:

For my kind of nonfiction it is necessary first to have a complete grasp of whatever subject it is I am going to be writing about. This we can take for granted, though the research is often long and tedious. The next stage, and to me the hardest of all, is organization. I never sit down to the keyboard — in the old days it was a typewriter, then an electronic typewriter, and in recent years it has been a computer — until I am clear in my mind how I am going to organize whatever it is that I am doing.4

That’s why, earlier in his essay, Wright said that writing is easy — it’s the preparation that’s difficult.

The most important thing about the Carpenter stage is to write freely, simply filling in the details according to the architectural specs. If you stop to edit, you open the door for the Judge, and this is just the type of interference your Carpenter doesn’t need. But suppose you get stuck in a certain part. Just move on to the next section: you may have to leave a little hole here and there.

Understand that the carpenter has some discretion — deciding how to finish off a corner, how to build the passage from one room to the next. Some architectural...
Child Abuse Cases

I work on them every day.

Child abuse litigation is tough. But it’s a little less tough if you do it daily.

For twelve years I have been committed to providing superior representation in child abuse cases.

David S. Marshall
206.826.1400

The most important thing about the Carpenter stage is to write freely, simply filling in the details according to the architectural specs. If you stop to edit, you open the door for the Judge, and this is just the type of interference your Carpenter doesn’t need.

Two Qualms Answered

Is it possible, in the hurly-burly of a busy law practice, to go through these four steps with every writing project? Perhaps not with every one. But surely in the space of an hour-long writing project, you can spend 10 minutes on Madman, five on Architect, 25 on Carpenter, and 10 on Judge. The rest of the time you need for short breaks in between, both to step back from the project and to put yourself in the mind of another character.

But isn’t it true that we all approach problems differently? Isn’t that the lesson of Myers-Briggs and other personality tests? Yes, and Flowers designed the paradigm with this in mind. You see, everyone is most comfortable working in a particular compartment of the brain. The Flowers approach ensures that you benefit from all that your brain has to offer, not just from the mental realm you’re most comfortable with.

I, for example, spent years neglecting the Architect. I wrote highly polished sentences and paragraphs, and people who read my stuff generally thought of me as a good details, in other words, are left to the Carpenter.

Once your Carpenter has built a draft, you can call in your Judge, who will look for problems as well as ways to refine the draft. The Judge will check for many things: whether there are transitions between paragraphs, whether the verbs need strengthening, and so on. And the Judge will check many grammatical points, too — everything from comma splices to misplaced modifiers to subject–verb agreement problems. The Judge is an inspector for quality control.

Each of these four characters needs time alone on the stage. If you shortchange any of them, your writing will suffer.
writer. But as I now look at what I wrote in those days, it seems a highly polished mish-mash. The organization was unpredictable. Now that has changed — and writing has become relatively painless for me, and much quicker. I do what Professor Wright mentioned: I plan every writing project.

**The Advantages of the Flowers Paradigm**

Flowers mentioned eight advantages to using her paradigm. Let me paraphrase them:

1. It’s easy to remember.
2. It stresses the sequential nature of the writing process — that you’re likely to get better results if you work through the Madman stage first rather than returning to it after you’ve spent three hours crafting sentences.
3. It dramatizes the need for rewriting — the Judge stage — and gives a sense of individual purpose to every draft.
4. It separates the writing task into manageable steps and lets you enjoy each stage, since you can focus on it alone.
5. It defuses the conflict that often arises when you try to write for an authority figure. When writing cautiously, we’ll often produce dry, technically correct prose that is devoid of creativity, natural-ness, and flow.
6. It offers a way to deal with self-image problems that sometimes interfere with the writing process. If, for example, you see yourself as a creator, you might be impatient with the polishing and careful proofing that the Judge can supply — and that every draft needs. Similarly, if you see yourself as a consummate critic, you may have a highly “repressed” style characterized by dry but technically correct prose.
7. It gives everyone a new language for critiquing drafts, one that doesn’t shove the editor exclusively into the role of Judge. Now an editor can look at a colleague’s brief and say, “Try playing the Madman more with this section,” rather than just picking up a red pen and marking away.
8. It clarifies what you can and can’t teach about writing. The Madman stage is personal and subjective, a private area left almost exclusively to the writer. The Judge can be taught from good writing texts. But in the Architect and Carpenter stages — where many writers are least experienced and usually least well trained — a teacher can be very helpful.

Many writers need more help with their writing process than with anything else. For them, the Flowers paradigm can be invaluable.

---

**What Is Your Client’s Business Worth?**

**Support for the answer is critical.**

**Sale, Succession, Merger and Acquisition, Buy-Sell agreements, Divorce Settlement, Estate, Gifting, Economic Damages, etc.**

**A thorough, qualified valuation can withstand challenges.**

**Chinese Valuator Available**

**Multilingual staff: Chinese, Cantonese, Bosnian, Tagalog, Japanese**

---


**NOTES**

2. **Id.** at 7.
3. **Id.**
5. Flowers, supra note 1, at 9.
It’s hard to imagine that I’ve been writing these columns for more than five years now. What got me started was the recognition that third-year law students, among the best-educated people in the world, were turning in papers rife with not only grammatical errors but fundamental grammatical errors the like of which should not be made by anyone past sixth grade. It didn’t take me long to discover that the same sorts of mistakes were being made, with distressing regularity, by practicing lawyers and sitting judges. And so this column was born.

Well, it’s five years later, and the bad news from the front is that little has changed. One of the concerns I expressed in my first column was the abundance of instances of the so-called “grocer’s apostrophe”—the use of an apostrophe-s to designate a simple plural. It’s called that in Britain because of its prevalence in public market signage: “Fresh Beet’s,” “Pea’s and Carrot’s” ... you get the idea. It’s more excusable in that context, as many of those who so labeled their wares with crayon on brown paper were—especially in earlier days when the epithet arose—unlikely to have had the benefit of much education. One expects more of someone who has had $8 + 4 + 4 + 3$ years of education, most of it spent reading and writing the English language.

Yet on the most recent round of exam papers I graded, even the highest-scoring papers contained grocer’s apostrophes. This is nothing short of astonishing, and it makes one wonder what is being taught in elementary and high school English and college comp classes, let alone our ever more aggressive legal writing programs. Or perhaps I should say not “what is being taught,” because I believe all of these programs emphasize basic grammar and usage; but rather “what is being learned.” Even the brightest students, capable of the sophisticated legal
analysis required to get an A in my trademark law class, apparently think the plural of "rule" is "rules" — or at least that it's okay to sometimes use the apostrophe for a simple plural and sometimes not, depending on little more than whim, as if punctuation were an optional form of decoration instead of an essential part of the spelling of a word.

It wasn't just the grocer's apostrophe. There were instances of "mislead" when the word intended was "misled"; "pleaded" instead of "pleaded" or "pled"; and, most amazingly, "enjoin," used in response to a question that involved whether a trademark owner would be able to enjoin a particular use of its mark. I believe these students were not unaware of the word "injunction"; but I also believe that several of them had no notion of its connection to the word "enjoin." The sense that the verb "enjoin" must of necessity involve an "enjoinment" is, I suspect, symptomatic of an increasingly blunt-minded approach to our language, as more and more educated speakers, readers, and writers of English emerge with no awareness of our language's Latin and Greek roots.

Okay, so I understood what they meant; there was no failure of communication. But language choices not only communicate, they also make an impression. They say something about the speaker or writer who chose those particular words (or non-words). Of course, if the folks who are reading these new graduates' job application letters are no more sensitive to the rules and nuances of language than the letter-writers themselves, then I suppose the battle is already lost. But some folks out there are still fighting the good fight, because I get letters and e-mail from readers' own concerns.

Just in the past month three different people have complained to me about the increasing use of qualifiers with the word "unique." The word "unique," they say, means "one of a kind," it's an absolute, nothing can be "very unique" or "most unique," From the standpoint of strict English, I heartily agree. People who say or write "This is a very unique situation" don't understand the word "unique." Of course, not understanding a word has never kept people from using it anyway, if they think it will make them sound smart, though such usage often has the opposite effect.

Nevertheless, there are circumstances in which even an absolute term may be given a qualifier, if the intent is humorous. References to being "slightly pregnant" are a permissible jocularity. And I am reminded with pleasure of the moment in Quentin Tarantino's Jackie Brown when drug lord Ordell Robbie (Samuel L. Jackson) learns that his minion Louis Gara (Robert DeNiro) has bungled a caper and managed to shoot Ordell's girlfriend into the bargain. "Is she dead?" asks the exasperated Ordell. "Pretty much," replies the hapless Louis.

Another reader is annoyed by the redundancy that results from people's declining understanding of the precise meanings of words. This is nothing short of astonishing, and it makes one wonder what is being said. It isn't planning. Planning is always done "ahead," otherwise the result is writing that is less effective than it ought to be; writing that, even if only momentarily, distracts the reader rather than

Yet on the most recent round of exam papers I graded, even the highest-scoring papers contained grocer's apostrophes. This is nothing short of astonishing, and it makes one wonder what is being taught in elementary and high school English and college comp classes, let alone our ever more aggressive legal writing programs.

Day of the Peeves
One of the earliest in this series of columns was a round-up of some of my personal pet peeves of language usage — or misusage — the things that send me round the bend. Educated people using the grocer's apostrophe is one of them; people who say "URL" when they mean "domain name" and news stories that report domain name challenges as demands to take down websites are others. But by virtue of writing these columns I seem to have become a sounding board for the pet peeves of others, so in this installment I'd like to give equal time to some readers' own concerns.

Another reader is annoyed by the redundancy that results from people's declining understanding of the precise meanings of words. A second example of a triple redundancy, the same reader added, is the phrase "still remains the same," from the Otis Redding song "Sitting on the Dock of the Bay."

I had to smile at that, since that song contains another of my favorite lines: "This loneliness won't leave me alone" — a line so memorable that it was reused verbatim in the reggae tune "Many Rivers to Cross," sung by Jimmy Cliff in the film The Harder They Come. That usage, though, is excusable — in fact, admirable — as a witty play on two different meanings of the term "alone."

Not to disturb the spirit of Mr. Redding too much longer, I nevertheless need also to point out that the song's title and opening line perpetuate the widespread misunderstanding of what a "dock" is. Mr. Redding was undoubtedly sitting on a pier, not a dock.

The dangling participle is one reader's pet peeve, and this is another example of a breach of a rule that an increasing number of writers of English seem unaware of. I recently read a book that was, for the most part, very well-written, a riveting account of a historical episode and the great Romantic painting that memorialized it; but the book contained dangling participles on nearly every page, and it was clear that the writer didn't know there was anything wrong with that. Of course, a careful and thoughtful reader will take a moment to consider what his words mean, and whether that was the meaning he intended to convey to his readers.

The rule is simple enough: If you start a sentence with a qualifying phrase, follow it immediately with the word or phrase that identifies the thing being qualified. I like to think that most people can instantly see what is wrong with a construction such as "As a freshman in high school, his mother left him at home for a month while she went to Paris." But many people don't. It's not so important that a rule has been broken; what's important is that, rule or no rule, the sentence is awkward. It makes the reader pause, if only for an instant, to note that the freshman in high school was the person who was left alone, not the mother who left. The result is writing that is less effective than it ought to be; writing that, even if only momentarily, distracts the reader rather than
compelling her attention.

Newspapers are hotbeds of dangling participles these days, as a generation of less educated and less fastidious editors seeks to save space by revising two sentences into one, often with disastrous results. One such, reported in Nancy Friedman’s superb “Fritinancy” blog (which I enthusiastically commend to anyone who is interested in language), was this San Francisco Chronicle gem: “Originally used by the now-defunct Koret company, one [of] California’s largest apparel-manufacturers, Pinsky says she believes it may be the only one left. “ This is a double dangler, because the phrase beginning “originally used” and the phrase beginning “one of” refer to two different things, neither of them Ms. Pinsky.

And Now This
The uneducated or simply careless choice of the wrong word (often a “sound-alike” for the intended word) is another reader’s pet peeve. This common blunder nearly always leads to risible results, as in the recent local news release that referred to an exhibit as a “repri-sal of last year’s hit show”; or the guidelines that earnestly recommended applying “the Adopt-Adapt-Reject tenant”; or the collection letter warning a customer that “your account is substantially in our ears.”

To be fair, the last one resulted from dictation. A humorous result that occurs when people write what they think they heard rather than what was spoken is called a Mondegren, from the phrase “Lady Mondegren,” a widespread mis-hearing of the line “and laid him on the green” from an old English ballad. The American equivalent is the old hymn “Gladly the Cross-Eyed Bear.” But that is a subject for a future installment.

With no peeve to report at all, another reader wrote me about a recent Tacoma Municipal Court ruling that turned on the distinctions among “pig,” “hog,” and “swine.” Yes, they are different — and while the difference may not be as crucial as the difference between “which” and “that,” which is at the heart of an increasing body of judicial opinions involving statutory construction, it made a big difference to one local man who, it turned out, was not barred by law from keeping a pet pot-bellied pig within the city limits. Never doubt the importance of fine distinctions.

I Stand Corrected
Last time I referred in passing to words that “are not ambiguous or ambivalent at all.” A reader reminded me that “ambiguous” means “capable of multiple meaning,” but “ambivalent” means “uncertain as between two possibilities,” such that words can be ambiguous but only people can be ambiva-lent. Well, even Homer nods, and I fer sher ain’t no Homer. The truth of the matter is that, even if I may seem to preach from time to time, I’m always learning.

In my previous column I asked: “Why do people (and certain software programs) abbreviate ‘out of office’ as ‘OOF’?” I am grateful to the reader who, more schooled in tech talk than I am, explained that it is an abbreviation for “Out Of Facility,” used as a command in Microsoft’s Xenix mail system to identify a user as unavailable. The same reader also advised me of the terms “little r” and “big R” that also arose from the early days of e-mail — useful terms for what we today express as “reply to me only” and “reply all.” The distinction is recognized in Outlook, for those who prefer keystroke commands to mouse-click commands: CTRL+R = reply to sender only; CTRL+Shift+R = reply all.

Robert C. Cumbow is a shareholder at the Seattle firm of Graham & Dunn PC. He teaches at Seattle University School of Law and writes on law, language, and movies. For parts of this column, he acknowledges debts to Chris Eagan, Joe Quaintance, Estera Gordon, Patrick Murray, and the enigmatic and all-knowing “Southie.”
We realize that taking even a brief recess from your busy schedule can be quite a task.

Our goal is to save you time and money so you can focus on more important things.

Sterling Private Banking tailors products to your specific needs and has a variety of banking solutions designed for legal professionals.

You won’t find a bank that treats you better. Case closed.

Back row: Kay Frank, Andrea Brenneke, Joe Shaeffer, Jay Brown, Ken MacDonald
Front row: David Whedbee, Tim Ford, Mel Crawford, Jesse Wing, Katie Chamberlain

Sterling can save
Seattle
206-781-7992
Bellevue
425-454-9809
Tacoma
253-472-9360
Lynden
360-318-1014
Spokane
509-458-2881
Tri-Cities
509-783-3362

THE VERDICT IS IN.
STERLING CAN SAVE YOU PRECIOUS TIME.

- Interest on lawyer trust accounts
- Business and personal accounts
- Business operating lines of credit
- Practice buy-in/buy-out loans
- 1031 exchange

Lawyers for the little guy. And for the lawyer for the little guy.

MHB litigators have represented lots of regular people in disputes with big institutions. We have also been privileged to advise and represent many other lawyers in legal difficulties arising from their work for clients. You probably haven’t heard about them. We’ll keep it that way.

Back row: Kay Frank, Andrea Brenneke, Joe Shaeffer, Jay Brown, Ken MacDonald
Front row: David Whedbee, Tim Ford, Mel Crawford, Jesse Wing, Katie Chamberlain

Sterling Private Banking tailors products to your specific needs and has a variety of banking solutions designed for legal professionals.

You won’t find a bank that treats you better. Case closed.

STERLING SAVINGS BANK
Private Banking

SEATTLE 206-781-7992
BELLEVUE 425-454-9809
TACOMA 253-472-9360
LYNDEN 360-318-1014
SPOKANE 509-458-2881
TRI-CITIES 509-783-3362

www.mhb.com
When will you find out how good your malpractice insurance really is?

Not all malpractice plans are created equal. If a claim is ever filed against you, you want to be confident you have coverage that adequately protects you and your practice.

Our team of lawyers professional liability specialists will work to provide a comprehensive policy at a competitive price with Liberty Insurance Underwriters, Inc., a member company of Liberty Mutual Group. Liberty is rated A (Excellent), Financial Size Category XV ($2 billion or greater) by A.M. Best Company.

Call or visit our Web site for a quote or for more information on this quality coverage.

1-877-613-2200
Sylvia Chu, Ext. 43154
Deborah Wade, Ext. 43022
Jennifer Warren, Ext. 43018
www.proliability.com
Writing Tips for More Effective Briefing and Motion Practice

Making your briefs relevant and more concise

by Shelley Szambelan

Our job as attorneys requires that we argue our client’s position persuasively. In order to do that job well, it goes without saying that one should effectively convey the facts, law, and desired result upon which that position is based. Generally, we do it in two ways — oral presentation and the written word. What we say and how we say it directly affects how well we convey our message and whether it ultimately persuade the decision-maker. This article focuses on how lawyers may more effectively convey their respective positions through the written word.

Although these general tips originated from a presentation to improve successful prosecutions through the written word, these fundamental concepts should be helpful to attorneys in any practice area.

Know your audience — and be kind to him or her

Unlike when one uses the spoken word to convey a message — which may be directed to the venire panel, a testifying witness, or the jury — the primary recipient of the written word will be the judicial officer hearing the prosecution. And they are busy people.

Dockets are big and keep getting bigger. Knowing that each case is one of many is a compelling reason to keep one’s briefing concise and relevant. Obviously, one needs to give the judge the facts and the law, but it need not be a tome that rivals the weight of War and Peace. Reportedly, scriveners used to get paid by the word, which explains a lot of the “Henceforth, the party of the first part does hereby have and hold for the party of the second part.” This, however, is no longer the case. Judges already have a lot to read, and a persuasive brief avoids verbosity and leaves the legal archaisms to the first-year law students who mistakenly think that’s how lawyers are supposed to write.

Although they won’t break bones, words can hurt you

Recognizing that the judge may well be the ultimate recipient should also affect how an attorney drafts correspondence. A hastily written e-mail to opposing counsel in the heat of anger does little to effectively advance one’s position, especially when it is appended as an exhibit to a motion. I endeavor to write every piece of correspondence (even e-mails) as if I were writing to a judge, and with the thought that it will be appended to some pleading somewhere at some point in time. Aside from the intrinsic value in always striving to be professional and courteous — even in the face of vitriol from opposing counsel — this practice helps me in a subsequent motion to compel or strike. And I mitigate the possibility that a nasty-gram written in a fit of anger will hurt my case or credibility later.

Identify the $64,000 question and cut to the chase

A persuasive brief will: tell the judge what you want (i.e., the relief sought), why you want it (i.e., the supporting facts and legal authority), and remove the obstacles that stand in the way of your getting it (i.e., distinguish and diffuse the opposition’s materials). Anything else is extraneous and takes away from the message; in other words, it is less persuasive. Your written words should educate and persuade, not be used as a sleep aid or increase the likelihood that your argument will be glossed over by a busy judge.

Credibility is king/queen

Briefs — and attorneys who write them — lacking in credibility likewise lack persuasive-
Your brief is supposed to help the busy judge — generally citing a 35-page opinion doesn’t help the court. Most trial court judges don’t have the time or a law clerk to pore through a lengthy opinion. And if the judge makes the time, the opinion darn well better say somewhere in those 35 pages what you say the court said. Better yet, save the busy judge some time and just provide a page cite; it shows attention to detail, improves credibility, and is more persuasive.

Accuracy in citing facts and law enhances credibility. Even when it’s not an appellate brief, I try to clearly cite every factual statement to its source:

A blue Ford Explorer, with Washington license plate ABC-123, driving eastbound on Main Street, struck an ice-cream truck parked where Main intersects Elm Street. Dec. of John Q. Citizen, p. 2, ¶ 6. When Officer Friendly arrived at the collision scene, Dan Defendant was trapped behind the steering wheel of that Explorer. Dec. of Officer Friendly, p. 1, ¶ 3.

Particularly in the more routine motions, the facts usually ultimately control how the court resolves the legal issues (e.g., was the officer’s initial contact justified?). Providing proof that can be readily confirmed not only helps to support your client’s position, but also protects the appellate record in case of review. When you give the court reason to believe what you say, your words have more effect.

Word choice is important — little things can mean a lot
Chosen words not only convey an express meaning, but also implied connotations. For instance, in the ice-cream truck example, I intentionally chose “collision” instead of “accident”; the former implies reckless behavior, while the latter suggests fortuity. When you are prosecuting Dan Defendant for DUI or Reckless Driving, word choice suggesting that Dan merely had bad luck doesn’t help your position.

I used to rely on the implied-notation rationale for referencing defendants (i.e., the proverbial “bad-guy”) as such instead using their names. But now I rely more on the names. The Rules of Appellate Procedure encourage using the parties’ actual names:

References to parties by such designations as “appellant” and “respondent” should be kept to a minimum. It promotes clarity to use the designations used in the lower court, the actual names of the parties, or descriptive terms such as “the employee,” “the injured person,” and “the taxpayer.”

I agree that it adds clarity to use the actual name, and that any bang-for-your-buck connotation implied by the term “Defendant” isn’t compelling.

Don’t hide your argument behind string-cites
Although it is rather controversial in legal writing circles, I agree with noted legal scholar Bryan Garner’s [see article on page 25] approach to putting reporter volume and page numbers in an easily identifiable footnote; it strengthens briefing of a legal position. It forces the argument out into the open so that flaws that might otherwise remain buried can be fixed and a tighter written argument follows. The author still cites the authority, but in a footnote rather than in the body of the text. The judge can locate the cited material if necessary or desired, but is not distracted with a clutter of numbers in the middle of a paragraph. Compare, for instance, the following illustration, which is used with Mr. Garner’s permission:

Under California law, an action for relief on the ground of fraud must be commenced within three years after the aggrieved party discovered the alleged wrongdoing. April Enters., Inc. v. KTTV, 147 Cal. App. 3d 805, 826 (1983); Winn V. McCalloch Corp., 69 Cal. App. 3d 663, 672 (1976). Because California courts have determined that negligent misrepresentation is a form of fraud, Gold v. Los Angeles Democratic League, 49 Cal. App. 3d 365, 373 (1975), they have held that the applicable statute of limitations is the same as for causes of action based on fraud, Lukesch v. Latham, 675 F. Supp. 1198, 1204 n. 10 (N.D. Cal. 1987); see also Bowden v. Robinson, 67 Cal. App. 3d 705, 715–17 (1977).


Under California law, intentional infliction of emotional distress, as an injury to the person, is governed by the one-year statute of limitations contained in California Code of Civil Procedure Section 340(3). Cantu v. Resolution Trust Corp., 4 Cal. App. 4th 877, 889 (1992). Under Section 340(3), claimants must commence their action within one year after the cause of action accrued. Cal. Code Civ. P. § 340(3). This statute period begins to run once the claimant suffers severe emotional distress as a result of outrageous conduct. Id. (holding that, where filing of complaint was the outrageous conduct, cause of action accrued at the
setting the stage

An introductory section concisely telling the busy judge what you want and why you should get it sets the stage to prosecute your case through the written word. A preliminary statement is your argument’s one shot at a first impression, and can shape how the judge views the case. It is important to keep it direct:

PRELIMINARY STATEMENT

In Washington, police officers must have both clean hands and a pure heart when stopping a vehicle. While working traffic patrol, Officer Friendly clocked Mr. Doe’s car speeding at twice

legal malpractice:

A Two-Tiered Chess Game

Proving the “case within a case” is required in every legal malpractice action, and the underlying case may be more complex than the professional negligence claim itself. We have the experience, resources and ability to make the right moves. These are some of our legal malpractice results:

- $3.9 million, underlying back surgery medical malpractice;
- $3 million, underlying obstetrical medical malpractice;
- $3 million, underlying business transaction;
- $1.25 million, underlying personal injury;
- $1.2 million, underlying real estate transaction.

We would appreciate the opportunity to work with you to help your client.
the posted limit. The officer had an objective reason for the stop and his subjective intent was to enforce the traffic code. When asked for a driver’s license, Mr. Doe said that he didn’t have one, but provided his name. A records check reflected that Mr. Doe had a suspended driver’s license, as well as an outstanding warrant for his arrest. The scope of the initial detention expanded and provided probable cause to arrest. A search incident to Mr. Doe’s arrest disclosed a loaded gun. This Court should deny Mr. Doe’s motion to suppress because it was not a pretext stop.

I have encountered one attorney who objected to using this format in appellate briefs as unsupported argument. However, RAP 10.3(a)(3) allows one to use an introductory format without citations to the appellate record or legal authority.

The “bathroom brief”
This tip came from a busy trial judge when advising new attorneys as to the care and feeding of judges. If there is a critical document or case, consider appending it to your brief. This doesn’t mean staple Miranda v. Arizona to every motion to dismiss in order for your brief to be considered weighty — from sheer measurement value. If there is something that would be helpful to the judge, who may not be reading the brief in chambers with law books or someplace where Westlaw™ is readily available, attach it to the brief.

Call it what it is: Don’t let the opposition’s characterization shape the controversy
I clerked for a terrific appellate judge who had been a very successful and well-regarded trial attorney. Judge Toci gave me an abundance of good counsel; I always remember his advice against letting the opponent set the parameters. Similarly, I would caution against trying to jam a round peg in a square hole just because the moving party labels the issue as something that it’s not. Use it as an opportunity to enhance your credibility by acknowledging that while the moving party argues that a circle should fit in a square, round pegs don’t fit in square holes.

Protect the record
The most important part of trial practice is to protect the appellate record. On appeal, your client lives and dies by what’s in “the record,” which is composed of the pleadings, testimony, and exhibits presented to the trial court. In motion practice, make sure that you marshal your evidence to support your position. You need to protect the appellate record at the trial court level — you have only got one bite at the apple. It’s extremely difficult to supplement the record on appeal. Protecting the record necessarily demands briefing. Fundamental fairness means that the parties — and the court — have the opportunity to review the facts and case law upon which a motion is based.

Conclusion
Advocating your client’s position through the written word may not seem very glamorous, but it’s important. Even if it doesn’t persuade the trial judge, well-written and supported briefing will educate the court and preserve your client’s position on appeal. It is worth doing right and it is worth doing well.

Shelley Szambelan is an assistant attorney for the City of Spokane, and focuses her work on briefing and appellate issues. She is co-chair of the WSBA Editorial Advisory Committee. She may be contacted at sszambelan@spokanecity.org.

NOTES
1. RAP 10.3(5) requires a reference to the appellate record for each factual statement.
2. RAP 10.4(e).
SPEEDING TICKET? 
TRAFFIC INFRACTION? 
CRIMINAL MISDEMEANOR?

JEANNIE P. MUCKLESTONE, PS
615 2nd Avenue, Penthouse Suite 720
Seattle, Washington 98104
206-623-3343 (direct line and pager)
mucklestone@msn.com
www.mucklestone.com

- Successful results
- Extensive experience
- Former pro tem judge
- Vogue magazine 2003 Top Lawyer for Women in Washington

EXPERT FIDUCIARY SERVICES
RECEIVER • CLAIMS AGENT • TRUSTEE 
DISBURSING AGENT • CONSULTANT

At Grassmueck Group we commit the talent and resources of our entire firm to deliver responsive, effective fiduciary services to bankruptcy and receivership estates. We are available for consultation for your upcoming cases with no cost or obligation.

We look forward to serving you!

GRASSMUECK GROUP

PHONE 866-674-6791
WWW.GRASSMUECKGROUP.COM

Grassmueck Group is a wholly owned subsidiary of Michael A. Grassmueck, Inc.

SUSSMAN SHANK LLP
ATTORNEYS AT LAW

We are pleased to announce our newest partners

Elizabeth A. Semler

Elizabeth is the firm’s Employment Practice Area Chair. Her practice focuses on representing employers and individuals in employment related litigation. She also drafts manuals and policies, advises employers on employment issues, and non-competition agreements. Elizabeth is also in our Litigation Practice Group where she represents individuals and entities in a wide range of business disputes.

Heather Kmetz

Heather is a tax lawyer who advises on matters of estate planning and administration; business acquisition, sale, and succession planning; profit & nonprofit entity formation and operation; and tax-deferred exchanges. Licensed in Oregon and Washington, she also counsels clients on a variety of business and real property transactional matters.

Business, Estate & Trust Administration/ 
Dispute Resolution, Estate & Wealth Preservation Planning, and Tax

www.sussmanshank.com

(503) 227-1111
1000 SW Broadway, Suite 1400, Portland, OR 97205
Throughout his career, Jon Ostlund has contributed to his community through his involvement with many organizations. He was a board member of the Washington Defenders Association and the Washington Association of Criminal Defense Lawyers, and was a member of the Washington State Sentencing Guidelines Commission, the Whatcom County Law and Justice Commission, and the Whatcom County Commission Against Domestic Violence. He also served on the WSBA Board of Governors from 2001–2004. Ostlund devoted many hours to the Blue Ribbon Panel on Public Defense and as co-chair of the WSBA Committee on Public Defense.

"Jon Ostlund is exemplary in his commitment as an attorney who understands basic human needs, the failures which confront those in desperate circumstances, and the importance of a just system of justice," wrote Assistant Attorney General Wendy Bohlke.

Marcine Anderson has been an active participant on many WSBA boards and committees. She has served on the Committee of Bar Examiners, and while on the Board of Governors from 2004–2007, she served on the Board of Governors Committee for Diversity, the Budget and Audit Committee, the Legislative Committee, and the Long-Range Planning and Technology Steering Committees. She currently serves as a board member of the WSBA Leadership Institute, and as a trustee and treasurer for the Washington State Bar Foundation. Anderson has also served on the banquet committee of the Japanese American Citizens’ League, and has volunteered at the International District Legal Clinic.

"[Anderson] has made a significant contribution to diversity in the legal profession by supporting and encouraging minority attorneys to reach for positions of leadership that provide the foundation for success as an attorney," wrote Brenda Williams, current member of the WSBA Board of Governors and supervising attorney at the Tribal Court Public Defense Clinic at the UW School of Law. "She provides a tangible example of majority bar leadership for members of the minority bars to emulate."

Marcine Anderson
Marcine Anderson has been an active participant on many WSBA boards and committees. She has served on the Committee of Bar Examiners, and while on the Board of Governors from 2004–2007, she served on the Board of Governors Committee for Diversity, the Budget and Audit Committee, the Legislative Committee, and the Long-Range Planning and Technology Steering Committees. She currently serves as a board member of the WSBA Leadership Institute, and as a trustee and treasurer for the Washington State Bar Foundation. Anderson has also served on the banquet committee of the Japanese American Citizens’ League, and has volunteered at the International District Legal Clinic.

"[Anderson] has made a significant contribution to diversity in the legal profession by supporting and encouraging minority attorneys to reach for positions of leadership that provide the foundation for success as an attorney," wrote Brenda Williams, current member of the WSBA Board of Governors and supervising attorney at the Tribal Court Public Defense Clinic at the UW School of Law. "She provides a tangible example of majority bar leadership for members of the minority bars to emulate."

The following individuals were honored for their extraordinary service, accomplishments, and actions at the WSBA Annual Awards Dinner on September 18, 2008.

**Professionalism Award** — awarded to a WSBA member who exemplifies the spirit of professionalism. "Professionalism" is defined as the pursuit of a learned profession in the spirit of service to the public and in the sharing of values with other members of the profession.

**The Honorable Ronald M. Gould**
Judge Ronald Gould is a past WSBA president, a former professor at the University of Washington School of Law, a board member of the Ninth Judicial Circuit Historical Society, and a member of the Supreme Court Historical Society. His currently serves on the executive board of the Chief Seattle Council of Boy Scouts of America. He formerly served on the Community Relations Council of the Jewish Federation of Greater Seattle, on the board of the Economic Development Council of King County, and as a trustee of Bellevue Community College.

"[Judge Gould] is recognized by all as a jurist who is unfailingly courteous, fair, thoroughly prepared on both the facts and the law, and whose adherence to the rule of law broaches no exception by either side in litigation," wrote Judge Richard C. Tallman. "His personal courage, perseverance, and dedication to duty are truly inspiring."

** Angelo R. Petruss Award for Lawyers in Public Service** — given to a lawyer in government service who has made a significant contribution to the legal profession, the justice system, and the public.

**Jon E. Ostlund**
Throughout his career, Jon Ostlund has contributed to his community through his involvement with many organizations. He was a board member of the Washington Defenders Association and the Washington Association of Criminal Defense Lawyers, and was a member of the Washington State Sentencing Guidelines Commission, the Whatcom County Law and Justice Commission, and the Whatcom County Commission Against Domestic Violence. He also served on the WSBA Board of Governors from 2001–2004. Ostlund devoted many hours to the Blue Ribbon Panel on Public Defense and as co-chair of the WSBA Committee on Public Defense.

"Jon Ostlund is exemplary in his commitment as an attorney who understands basic human needs, the failures which confront those in desperate circumstances, and the importance of a just system of justice," wrote Assistant Attorney General Wendy Bohlke.

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

**Marcine Anderson**
Marcine Anderson has been an active participant on many WSBA boards and committees. She has served on the Committee of Bar Examiners, and while on the Board of Governors from 2004–2007, she served on the Board of Governors Committee for Diversity, the Budget and Audit Committee, the Legislative Committee, and the Long-Range Planning and Technology Steering Committees. She currently serves as a board member of the WSBA Leadership Institute, and as a trustee and treasurer for the Washington State Bar Foundation. Anderson has also served on the banquet committee of the Japanese American Citizens’ League, and has volunteered at the International District Legal Clinic.

"[Anderson] has made a significant contribution to diversity in the legal profession by supporting and encouraging minority attorneys to reach for positions of leadership that provide the foundation for success as an attorney," wrote Brenda Williams, current member of the WSBA Board of Governors and supervising attorney at the Tribal Court Public Defense Clinic at the UW School of Law. "She provides a tangible example of majority bar leadership for members of the minority bars to emulate."

**Excellence in Legal Journalism Award** — given to a journalist and his/her organization that has set the standard for relevance, clarity, accuracy, and understanding in reporting.

**Jack Hamann**
Jack Hamann, along with his wife, Leslie, as a researcher, wrote On American Soil: How Justice Became a Casualty of World War II, an investigation into details surrounding a 1944 riot and lynching at the U.S. Army’s Fort Lawton, located in Seattle. The incident received widespread attention at the time, and resulted in 43 African-American soldiers charged with various crimes and 28 soldiers sent to prison. The book uncovered deep flaws during the court-martial proceedings, prompting Congress to order the U.S. Army to reopen the case more than 60 years after its initial conclusion. Following its investigation, the U.S. Army Board for Correction of Military Records overturned the verdicts, and in July 2008, formally apologized to the soldiers’ families.

**Outstanding Judge Award** — for outstanding service to the bench and for special contribution to the legal profession at any level of the court.
The Honorable Larry E. McKeeman
Judge Larry McKeeman is serving his third term as presiding judge of Snohomish County Superior Court. He has also served on the Children's Justice Interdisciplinary Task Force, the Statewide Leadership Council on Adolescent Treatment, the Board for Judicial Administration, and currently serves on the Bench-Bar-Press Committee of Washington. He was chair of and is a member of the court’s Drug Treatment Court Committee. He is currently a member of the County Law and Justice Council and on the Best Practices Committee of the Superior Court Judges’ Association.

Judge McKeeman initiated Snohomish County’s At Risk Youth Drug Treatment Court (ARYDTC), and presided over that court from 2001–2006. He credits much of the success of ARYDTC to his wife, Cynthia, and their two children, for their patience and support in allowing him the opportunity to pursue the creation and implementation of the program.

“Judge McKeeman goes the extra mile on and off the bench,” wrote Seattle attorney Lisa Moore in her nomination letter. “After 17 years on the bench, he continues to maintain the highest of judicial standards that benefit not only the citizens of the State of Washington, but all bar members and the issues they bring before him.”

Community Service Award — this award recognizes exceptional non-law-related volunteer work and community service.

Lori K. Rath
Lori Rath is an active and dedicated supporter of CASA Latina, a nonprofit organization that provides employment and educational opportunities to immigrants in Seattle. She has been a member of the CASA Latina Board of Directors for six years, and is currently vice president of the board. She is chair of the board’s Human Resources and Fundraising committees, and a member of their Capital Campaign Steering Committee. She also serves as a volunteer attorney for the King County Bar Association’s Elder Law Clinic and the University of Washington School of Law’s Immigrant Families Advocacy Project.

“Perhaps [Rath’s] greatest contribution to CASA Latina has been how her commitment to the organization inspires other board members to commit to the organization more deeply,” wrote Gloria Coronado, president of the CASA Latina Board of Directors. “Her commitment, time, and patience have benefited CASA Latina tremendously and have helped it to grow into an organization that Latino immigrants can count on to help them in their transition into their adopted community.”

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

The Honorable Gerry L. Alexander
Chief Justice Gerry Alexander was first elected to the Washington State Supreme Court in 1994, having previously served as a judge of the superior court for Thurston and Mason counties from 1973–1984, and as a judge of the Court of Appeals, Division Two, from 1985–1994. In 2001, he was elected as chief justice, and was re-elected in 2004. Justice Alexander has the distinction of being the longest-serving chief justice in the state’s history.

Justice Alexander has been involved with numerous committees, associations, and boards throughout his career. He has served as chair of the Bench-Bar-Press Committee, the Board for Judicial Administration, the Capital Furnishings Preservation Committee, and the Marine Employment Commission. He has served as president and member of the Bigelow House Preservation Association, the Capital High School Sports Booster Club, the Olympia Area YMCA, the Olympia Lions Club, the Puget Sound Inn of Court, the State Capitol Historical Society, and United Way of Thurston County. He has also served on the Junior League of Olympia Community Advisory Board, the Olympia Area Chamber of Commerce, the Olympia Historical Society, the Olympia Rotary Club, and the Statute Law Committee.

“The Award of Merit recognizes a significant career of service to both the Bar Association and the legal profession,” said WSBA President Stan Bastian. “Chief Justice Alexander deserves this recognition by his professional colleagues, and I am honored to present it to him.”

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

Ronald R. Ward
The oldest of 10 children raised in a San Francisco-area housing project, Ron Ward was inspired to practice law by the example of his mother, who worked as a domestic, and who he saw as an inspiring example of preparation for the next generation. Ward earned his law degree from the University of California, Hastings College of the Law. He served as a Washington state assistant attorney general before entering private practice. He is currently a partner in the Seattle firm Jones & Ward PLLC, where his practice focuses on serious auto, maritime, and construction-site personal injuries, and wrongful death.

Ward was elected and served as the first African-American WSBA president in 2004–2005. He is the first person of color in the organization’s history to receive the Award of Merit. Ward is the founder of the WSBA Leadership Institute (WLI) for diverse young lawyers. The WLI was program winner of the national 2005 American Bar Association Partnership Award and sole recipient of the 2006 LexisNexis Martindale-Hubbell Legal Fellowship.

“Ron Ward has been a tireless advocate for the improvement of the practice of law, diversity and inclusion within the profession, and the furtherance of access to justice for all Washingtonians,” wrote Karen Falkingham, director of the LAW Fund. “Ron Ward has been [a] unifying voice in our state who has worked hard to make our communities fairer places to live.” WSBA President-elect Mark A. Johnson wrote: “I was on the WSBA Board of Governors when Ron was president and I
was amazed at his tireless, unrelenting efforts on behalf of the Bar, diversity, and access to justice ... he set an unparalleled standard of excellence.”

Ward’s motto is, “I want to make a difference.”

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

The Honorable Eugene C. Anderson
Judge Eugene Anderson was elected as a part-time district court judge for Skagit County in 1959. In 1983, when the courts of Anacortes, Mount Vernon, and Sedro-Woolley combined into one county court, he became a full-time judge. He retired in 1994 as the longest-serving district court judge in the state. Judge Anderson served on the District and Municipal Court Judges’ Association Education Committee and its Civil Benchbook Committee and as a member of the Washington State Judicial Ethics Advisory Board. He has lectured at the Washington State Judicial Training Conference and the Washington State Court Administrators’ Conference. In addition, he was involved for 41 years with the WSBA Committee of Bar Examiners, and created the “Ten Commandments of Grading,” which have been a fixture of bar examiner training sessions for over 20 years.

“Judge Anderson has continued to provide the same high level of energy, integrity, enthusiasm, and leadership through the years,” wrote Joseph Nappi Jr., chair of the Committee of Bar Examiners. “All of us on the Executive Committee are impressed by Judge Anderson’s...ability to see both the big picture and many smaller details. He consistently urges us to higher levels.”

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

Thomas A. Waite
Thomas Waite has been active with many WSBA committees. In 2007–2008, he chaired the WSBA Rules of Professional Conduct (RPC) Committee. It is particularly for his leadership this year on the RPC Committee that he is being honored with the President’s Award. In addition to his service on the RPC Committee, he has also served on the WSBA Continuing Legal Education Committee, and as WSBA adjunct investigative counsel. In addition, Waite has been involved for many years with Leadership Tomorrow, an organization dedicated to developing effective community leaders who work to strengthen the Puget Sound region; he has served on its board of directors, selection committee, curriculum committee, and is a graduate of the program.

Waite works as counsel to the Environmental, Health and Safety Practice Group; Boeing Commercial Airplanes; and Shared Services Group for the Boeing Company.

**Pro Bono Award — presented to a lawyer, non-lawyer, law firm, or local bar association for outstanding efforts in providing pro bono services.**

Gail R. Smith
Throughout his career, Gail Smith has been a strong proponent of access to justice and pro bono services. He was president of the Skagit County Bar Association from 2000–2001; has served as co-chair and volunteer attorney with the Skagit County Volunteer Lawyer Program Steering Committee since 1987; and has been involved with the Skagit Valley College Paralegal Advisory Committee since 1989. His activities with the Washington State Bar Association include serving on the Legal Aid Committee, the Legislative Committee, and the Pro Bono and Legal Aid Committee. In addition to his work and pro bono efforts, Smith has been an active and dedicated member of his community. He served as the Padilla Bay Foundation Board of Directors president, and as a youth basketball coach.

“[Smith] is truly an asset to the legal aid community,” wrote Skagit County Community Action Agency Program Manager Catherine Brown in her nomination letter. “His support and dedication to delivery of legal assistance and pro bono services continues to expand access to justice for those who need it most.”

**Norm Maleng Leadership Award — given jointly by the WSBA and the Access to Justice Board in honor of Norm Maleng’s legacy as a leader. This award recognizes those who embody Maleng’s qualities and values: innovative and optimistic leadership; commitment to justice, access to justice, diversity, and mentorship; and love of the law.**

M. Wayne Blair
Wayne Blair served on the WSBA Board of Governors from 1991 to 1994; as president from 1998 to 1999; and as a member of the Washington State Bar Foundation from 2001 to 2006. Blair was a member of the committee that founded the Alternative Dispute Resolution Section, as well as its first chair-elect. He has also served on the Task Force on WSBA Governance, the WSBA Facilities Committee, and the Joint Task Force on Lawyer Discipline.

He has served on the Board of Directors of Evergreen Legal Services; as chair of the Equal Justice Coalition; and as president of the King County Bar Association. He also serves on the Access to Justice Board.

“Throughout my association with [Blair] over many years, I’ve been impressed by [his] unwavering commitment to open, accessible, fair, and effective justice for all who come to our courts,” wrote Washington State Supreme Court Chief Justice Gerry L. Alexander in his nomination letter. “Like Norm, [Blair] ably transcends partisan political considerations and other barriers that would prove daunting to many. Like Norm, [Blair] engages in the work of providing leadership on difficult issues with thoughtfulness, dignity, civility, fairness, sensitivity, and humility.”

Blair remarked: “Norm Maleng was a special person in my life. We served together as advisers in the residence halls at the University of Washington in 1965. He was my boss and we became good friends. Whether he intended to or not, Norm influenced me in leaving the electrical engineering profession and deciding to attend law school. I am truly honored and touched to be named the first recipient of an award in his name.”

Blair currently works for JAMS, The Resolution Experts, providing arbitration and mediation services.

Stephanie Perry is the WSBA communications specialist/website editor and can be reached at stephaniep@wsba.org.
Providing service and a call to action themes at Awards Dinner

The following is excerpted from the Honorable Richard A. Jones’s Awards Dinner keynote speech.

The reason for our special connection is because I too served as a volunteer lawyer for many years and I’ve seen the need increase steadfastly for the past 14 years as a judge. Let me put things in context how and why I became a volunteer attorney. I grew up in Seattle’s Central District. At the time it was considered one of Seattle’s poorer neighborhoods. In 1973 I had completed one year of law school. My legal skills, knowledge of the law, and legal experience were limited and to a large extent non-existent. I suspect and legal experience were limited and to a large extent non-existent. I suspect

... 

So let’s fast forward to 2008. Fast forward to Randolph Carter Center at 23rd and Yesler located just a few blocks from my childhood home. Volunteer students from Seattle University and lawyers work long hours there on housing and consumer issues through the Legal Action Center. The problems range from writing simple letters to landlords, to complex housing challenges. While 35 years have passed since I was in law school trying to help the people in my community address their legal challenges, the problems the volunteers face today are the same, only with higher numbers and greater complexity. The bottom line — poor people seeking legal assistance with few if any alternatives.

... 

I'll bet if you ask any one of the people...
Not All Dashes Are Created Equal

Knowing the difference between hyphens, en dashes, and em dashes — and using them right

by Todd W. Timmcke

You have seen it many times — two hyphens masquerading as an en dash or an awkwardly spaced tiny hyphen trying desperately to create a dramatic pause in a sentence. Now that most of us use word processing programs and computers to do our writing, we have only ourselves to blame for not using punctuation and punctuation marks properly. Of all the punctuation marks, the different types of dashes can be rather problematic. Not too long ago, typesetters used to take care of choosing the correct dash for us. Now with computers and word processors, it is our duty to choose the appropriate dash and corresponding punctuation symbol in order to create clarity in our writing. This isn’t really difficult at all, and with a little practice, making a dash of the correct length can be easy and even fun. The following is a quick guide to help you choose and use the right dash every time. If you are self-publishing your own book or writing a brief, learning the difference among dashes and spaces can be easy and even fun. The following is a quick guide to help you choose and use the right dash every time. If you are self-publishing your own book or writing a brief, learning the difference among dashes and spaces can be easy and even fun.

Hyphen, En Dash, Em Dash — There’s a Difference?

Hyphen. The hyphen (-) is the shortest of the dashes and is used for hyphenating or breaking words in two to fit from one line to the next in a paragraph. In justified copy, hyphens help to create a tailored look with more even spaces between words. The hyphen is also used to create compound adjectives such as “full-time employment” or “domestic-partnership agreement.” Finally, hyphens are used in non-inclusive numbers, such as telephone or Social Security numbers.

En Dash. The en dash (–) is a little longer than the hyphen but not as long as an em dash. It is roughly the width of the letter “n” within a typeface. En dashes are primarily used to express a range with numbers or dates. It can also be used to express a distance or for scores. Think of the word “through” or “to” when using en dashes. For example: “Children ages 10–14 will be charged a five-dollar entrance fee.” Or: “The Cubs lost to the Dodgers 4–0.” Additionally: “The flight attendant’s favorite route was Seattle-Paris.”

Em Dash. The em dash (—) is twice the size of the en dash, roughly the size of an “m” within a typeface. This is the dash that most people think of when they think of a dash. Em dashes are used to create a strong break or pause within a sentence. Em dashes are also used in pairs to set a part of a sentence off from the rest, much as you might use parentheses. For example: “We planned on traveling extensively throughout Europe — but only in those countries where we found bargain hotels — until our money ran out.” Em dashes are useful for long sentences that contain many phrases or clauses. Using em dashes can make your sentence easier to read and easier to understand.

Now That I Know What They Are, How Do I Create Them?

As often as we use dashes, it would be great if there were a keyboard key devoted to each type of dash. The only one you will find on most modern keyboards is the hyphen, which is in the top row to the right of the “0” and to the left of the “–.” The line above the hyphen is for underlining and is not a dash.

En dash. To create an en dash on a PC keyboard, hold down the “Alt” key and type 0150 on the numeric keypad. This may seem a lot of bother to create a line that is just a wee bit longer than a hyphen, but with continued use it will come quickly. On an Apple Macintosh keyboard, you can create an en dash by holding down the “option” key and typing a hyphen.

Em dash. To create an em dash on a PC keyboard, hold down the “Alt” key and type 0151 on the numeric keypad. On the Apple Macintosh keyboard, hold down the “option” and “shift” keys and then type a hyphen.

Spaces? The general rule is not to use spaces on either side of hyphens, en dashes, or em dashes. Some style guides (such as the one used for Bar News) permit spaces before and after em dashes in order to create more convenient line breaks within a sentence. The other exception to the rule is the hanging hyphen. You see this in phrases such as “full- or part-time” or “two- and four-hour seminars.”

Dash Away

Your writing will be clearer and easier to read if you choose the correct dash. Selecting the correct dash symbol will make your briefs and summaries more professional — once you have mastered the keystrokes, never again will you allow a couple of hyphens to weakly impersonate an em dash!

Test Yourself! What’s Wrong with These Examples?

The board meeting will take place March 5–March 7.

You will find additional resources listed on pages 42–46.

Mildred did all she could — including taking depositions from the two witnesses — to carefully prepare the case.

People age 65–70 are now eligible for additional retirement benefits.

The defendant’s case was not a strong one — there were no witnesses to testify.

Answers

The board meeting will take place March 5–March 7. (Use an en dash without spaces between dates.)

You will find additional resources listed on pages 42–46. (Use an en dash without spaces to express a range of numbers.)

Mildred did all she could — including taking depositions from the two witnesses — to carefully prepare the case. (Use em dashes, not hyphens, to set off part of a sentence.)

People age 65–70 are now eligible for additional retirement benefits. (Use an en dash to indicate an age range.)

The defendant’s case was not a strong one — there were no witnesses to testify. (Use an em dash to set off a part of a sentence.)

Todd W. Timmcke is managing editor/graphic designer of Washington State Bar News. He can be reached at toddt@wsba.org.
Brush Up on Your Washington Constitutional Law

To Protect and Maintain Individual Rights — A Citizen’s Guide to the Washington Constitution, Article 1

Authors: Jonathan Bechtle and Michael Reitz

Foreword by Associate Chief Justice Charles W. Johnson

Published by Evergreen Freedom Foundation, 2008; Paperback; 116 pages; ISBN: 978-0-615-21232-6; $9.95

According to a recent survey, two-thirds of Americans can name at least one of the judges on American Idol, but fewer than 10 percent can name the chief justice of the U.S. Supreme Court. Another survey found that only 25 percent of Americans could name more than one of the rights guaranteed by the First Amendment, yet more than half could name at least two characters from The Simpsons.

Such ignorance of the law bothers Olympia lawyer Michael Reitz, who has co-authored a book meant to inform Washington citizens of their basic legal rights. To Protect and Maintain Individual Rights — A Citizen’s Guide to the Washington Constitution, Article 1, written by Reitz and colleague Jonathan Bechtle, was recently released by the nonprofit Evergreen Freedom Foundation, where the authors work. The foundation is a public-policy research organization whose stated mission is "to advance individual liberty, free enterprise, and limited and accountable government.”

“The general apathy about our civic foundations should greatly concern us as members of the Bar,” Reitz says. "Fundamental liberties cannot be long preserved when large numbers of citizens lose sight of them.”

The 116-page paperback is a section-by-section reference guide to the state’s Declaration of Rights. Priced at $9.95, it can be purchased online at www.govguide.effwa.org. Reitz notes that book publishing is a new venture for Evergreen Freedom Foundation, which is distributing the book in-house and trying to get the word out through local bar associations, law libraries, local libraries, grassroots community groups, and legal commentators. "We haven’t advertised outside of our member newsletter, which goes out to about 4,500 folks monthly,” Reitz says.

The book is divided into brief segments, each of which begins with the language of a constitutional section, followed by an objectively presented two- or three-page summary of case law interpreting the section, as well as a brief list of citations to leading cases and other sources. Despite the legal references, the book is written in language easily accessible to non-lawyers. It would appear to be a natural fit as a supplementary text for high-school or college courses on law and government, as well as a handy reference for lawyers who don’t normally practice constitutional law but occasionally need a quick guide to the subject.


Reitz explains that he and Bechtle put the book together by examining the sources of the Washington Constitution, the 1889 Constitutional Convention debates, and significant cases that have interpreted the Declaration of Rights. "We drew the book’s title from the opening section of the Washington Constitution, which says governments are ‘established to protect and maintain individual rights,” Reitz says. "This basic truth is especially relevant for practitioners, as Washington has experienced a renaissance of state constitutional jurisprudence over the last 20 years. State constitutions were originally intended to be the first line of defense for the protection of individual liberty, with the federal constitution acting as a secondary safeguard. Few Washingtonians realize the state constitution often provides greater protection of individual rights.”

In 1986, the Washington State Supreme Court issued the watershed opinion in State v. Gunwall,1 which examined whether it is appropriate to resort to independent state constitutional grounds to decide a case, rather than deferring to equivalent provisions of the U.S. Constitution. Guided in part by a law review article by Justice Robert F. Utter,2 the Supreme Court held that independent review of the state constitution is indeed appropriate, as its text may "provide greater protection for individual rights . . . .”3 The court then listed criteria for independently analyzing the Washington Constitution.

Reitz notes that over time, especially since the Gunwall decision, Washington courts have recognized greater protections in the state Constitution in areas such as free speech, property rights, freedom from search and seizure, the right to trial by jury, and the right to keep and bear arms.

NOTES
3. Gunwall, supra note 1, at 59.
The Lawyers’ Fund for Client Protection Committee meets quarterly to review applications for gifts from the Fund. The Committee is authorized to make gifts less than $25,000 to eligible applicants. On applications for $25,000 or more, the committee makes recommendations to the Board of Governors, who are the Fund’s trustees. At their meeting on August 15, 2008, the Committee conducted the following business.

Courtenay D. Babcock — WSBA No. 22674, of Blaine, suspended for non-payment of dues 6/12/06, disbarred 3/31/08.

Application A. The applicant hired Mr. Babcock for representation on a personal injury claim on a one-third contingent-fee basis. The fee agreement included a power-of-attorney provision authorizing Mr. Babcock to settle the suit and to endorse any check on the applicant’s behalf. Mr. Babcock repeatedly told the applicant he was working on her case. The applicant moved out of state and when she tried to reach Mr. Babcock by phone, many times his voicemail box was full. She then learned that Mr. Babcock’s office was closed.

Finally, Mr. Babcock contacted the applicant and said that he had been in California dealing with custody of his children, and that he was working out of his home. She contacted the WSBA, and one of the consumer affairs specialists talked to Mr. Babcock, who said that he was planning on settling the applicant’s case in December. Mr. Babcock was suspended from practice at this time. Then the applicant learned that the case had been settled for $13,900 and that a check in that amount, made out to Mr. Babcock and the applicant, had been sent to Mr. Babcock and that it had been cashed.

When the applicant learned this, she filed a report with the police. When Mr. Babcock was contacted by the police, he paid the applicant $4,500. He said he was retaining the balance in trust to pay medical and insurance claims. He never paid her any additional money and never accounted for the balance of her funds. The Committee approved payment to the applicant of $4,767.


Applications A, B, and C. Mr. Marshall represented 15 longshoremen in a workplace racial discrimination case, including these applicants. For additional facts, see In re Discipline of Marshall, 160 Wn. 2d 317 (2007).

In 1995, several longshoremen contacted Wayne Perryman, who did business as Consultants Confidential. Mr. Perryman is not a lawyer, but he and the longshoremen signed an agreement that he would prepare a racial discrimination lawsuit for $5,000. They also agreed that Mr. Perryman would act as their representative throughout the case and that they would pay him and his company 10 percent of any settlement. Mr. Perryman contacted Mr. Marshall’s law office and Mr. Marshall became the lead attorney in the case. The parties agreed to mediation, and 14 of the 15 plaintiffs agreed to a settlement of $800,000.
The Supreme Court opinion states that Mr. Marshall retained slightly less than 30 percent for attorney fees, and charged the plaintiffs over $100,000 in costs. It says that Mr. Perryman initially asked for Mr. Marshall to pay him $80,000, or 10 percent of the settlement, but at Mr. Marshall's urging, he reduced his fee to $70,000 plus costs of $1,459. The Court found that Mr. Marshall had subtracted $108,122.91 from the settlement proceeds for costs. This included $9,473.75 that Mr. Marshall paid to other attorneys for work on the lawsuit. However, the fee agreement provided that any lawyer associated with the lawsuit would be associated without additional expense to the plaintiffs. Therefore, this sum should not have been taken as costs.

In addition, the Court found that Mr. Marshall admitted inflating the costs by $41,000 because of an “accounting mistake.” During the litigation, the plaintiffs had collectively advanced $41,000 to cover costs, with some plaintiffs paying more than others. When the case settled, Mr. Marshall returned to each plaintiff the amount they had paid him for costs. When he obtained the settlement, he paid the costs, but he also considered the return of the $41,000 as an additional cost.

The Court ordered restitution of the $41,000 he overcharged for costs and the $3,473.75 he charged in excess of his agreed fee, totaling $44,473.75. Mr. Marshall has paid no restitution. The Committee determined that each client is entitled to one-fourteenth of $44,473.75, or $3,176.70, and approved payment of that amount to each applicant. The Fund previously approved three similar applications in the same amount.

Thomas P. Sughrua — WSBA No. 14117, of Seattle, interim suspension 12/12/07, disbarred 2/20/08.

Application A. The applicant hired Mr. Sughrua on a one-third contingent-fee basis for representation on a claim arising from a car accident in which she was injured. Mr. Sughrua filed suit in the name of the applicant and her husband. The parties agreed to settle for $40,000. Mr. Sughrua did not give the applicant any accounting for how the proceeds were distributed. He paid himself his fee (one-third of $40,000 equaling $13,333) plus costs (amount unknown except for a filing fee of $110). He paid the applicant $10,000 and paid her (by then) former husband $5,000. Mr. Sughrua was to retain the balance to pay medical fees.

The applicant tried to contact Mr. Sughrua periodically to confirm that the medical fees had been paid, and he would tell her that he was trying to get more on her claim. Subsequently, the applicant was contacted by a collection agency to collect the unpaid medical bills. This was the first time she knew that Mr. Sughrua had not paid the bills. Based on the documentation provided by the applicant, the Committee approved payment of $11,557.


Application A. The applicants were formerly husband and wife. The husband hired Mr. Wetsel for representation in a marriage dissolution proceeding. The applicants’ house was sold and they disagreed on the disposition of
the proceeds. By court order, they each received $150,000, and the balance of $243,371.19 was deposited to Mr. Wetsel’s trust account. The applicants agreed to submit the dispute to mediation, but the husband was unable to reach Mr. Wetsel. He then hired a new lawyer, who was also unable to reach Mr. Wetsel.

A pre-trial settlement conference was held where the applicants agreed to an equal division of the remaining proceeds from the house sale. The husband again tried to reach Mr. Wetsel, who responded with promises to return the file and the funds. He never did. He agreed to meet with the husband, but about 30 minutes before the scheduled meeting, he telephoned saying that he had been in a car accident and was hospitalized. The husband could not reach him after that. He never paid or accounted for the applicants’ funds. The Committee recommended and the trustees approved payment of $42,185.60 to each applicant.

Other Business
The Committee reviewed 42 additional applications that were denied for lack of evidence of dishonest conduct, as fee disputes or claims for malpractice, because restitution was made, for unjust enrichment, or were deferred for further investigation. The trustees deferred action on the 36 Hammer recommendations pending completion of review of all Hammer applications by the Committee.

Restitution
Before payment is made, the applicant must sign a subrogation agreement with the Fund, and the Fund seeks restitution from the lawyers. Because in most cases those lawyers have no assets, the chief avenue of restitution is through court-ordered restitution in criminal cases. Prosecuting attorneys cooperate with the Fund in getting the Fund listed in restitution orders. As of September 1, 2008, seven lawyers were making regular restitution payments to the Fund. The total amount received for fiscal year 2007–2008 is $25,100. This includes $15,260 deposited into the Fund pursuant to a Supreme Court order from abandoned and unidentifiable funds in the trust account of former attorney Barry A. Hammer.

Kraft Palmer Davies has over 100 years of combined experience in maritime law. Which means we’re experts at sailing through the complexities of maritime injury cases to achieve exceptional outcomes for our clients.

Referrals and associations are welcome.

- Fishermen and Processors
- Tug and Barge Workers
- Cruise Line Passengers
- Blue Water Seamen
- Ferry Workers

The Committee chair for 2007–2008 was Kennewick attorney Christopher J. Mertens. WSBA General Counsel Robert Welden is staff liaison to the Committee.
WSBA Chief Hearing Officer

**Application deadline: January 15, 2009**

The WSBA Board of Governors invites applications from members interested in serving as chief hearing officer (CHO) pursuant to Rule 2.5(f) of the Rules for Enforcement of Lawyer Conduct. The CHO, with support from the Office of General Counsel, is responsible for assigning hearing officers to cases, monitoring and evaluating the performance of hearing officers, and recommending hearing officer training. The three-year term will commence upon appointment and run through December 31, 2011. A written expression of interest, signed Authorization to Release Reference, and résumé are also required in accordance with rules adopted by the Office of Financial Management.

Please submit a letter of interest and résumé to: Office of General Counsel, WSBA, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539; or e-mail barleaders@wsba.org.

Northwest Justice Project Board of Directors

**Application deadline: November 3, 2008**

The Northwest Justice Project is a statewide not-for-profit law firm funded by the State of Washington and the federal Legal Services Corporation to provide free civil legal services to low-income people throughout Washington. The Northwest Justice Project needs to fill at least two positions on its Board of Directors. Board terms commence on January 1, 2008, and are usually for three years, although one or more appointments may fill a Board position with less than a full term. Incumbents are eligible for reappointment. Board members play an active role in setting program policy and assuring adequate oversight of program operations and must have a demonstrated interest in, and knowledge of, the delivery of high-quality civil legal services to the poor. For more information, e-mail cesart@nwjustice.org or lisag@nwjustice.org. Please submit a letter of interest and résumé to: Bar Leaders Division, WSBA, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539; or e-mail barleaders@wsba.org.

Law Clerk Committee

**Application deadline: November 3, 2008**

The Law Clerk Committee 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. A member in the Seattle area is sought to serve the remainder of a six-year term on the Committee. The term will commence upon appointment and is effective through September 30, 2009. The appointed member may then reapply for a full six-year term which begins October 1, 2009. The Committee is composed of both law-school graduates and those who completed the Law Clerk Program; a balance of experience is sought.

Each Committee 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 Committee 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.

Interestsed members should review APR 6 and the Regulations for the Law Clerk Program at www.wsba.org/lawyers/licensing/apr6rulesandregulations.pdf. General infor-

Opportunities for Service
mation about the Law Clerk Program can be found at www.wsba.org/lawyers/licensing/faq-rule6.htm. To apply for appointment, submit a letter of application and résumé to: Bar Leaders Division, WSBA, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539; or e-mail barleaders@wsba.org.

Washington State Access to Justice Board

Applications accepted until position is filled

The Washington State Access to Justice Board (ATJ Board) announces two vacancies: one for an existing term starting immediately upon appointment and ending May 2010; the other for a regular term beginning May 2009. At least one of these positions must be filled by a non-lawyer. Details about the positions and the work of the ATJ Board can be found online at www.wsba.org/atj.

The Washington State Supreme Court established the Access to Justice Board in 1994 to assure equal access to the civil justice system for those facing economic and other significant barriers. The ATJ Board works to achieve this mission through the oversight of its State Plan for Delivery of Civil Legal Aid; coordinating and implementing statewide initiatives for improving access for unrepre- sented and underrepresented populations in Washington state; and building leadership, funding, and other support for equal access to the civil justice system.

The ATJ Board consists of nine members, including up to two lay members, selected on the basis of a demonstrated commitment to, and familiarity with, access to justice issues. Board members may serve up to two three-year terms. The ATJ Board has approximately seven full-day meetings throughout the year in Seattle. Additionally, the Board has an annual retreat and meets at the annual Access to Justice Conference. Travel expenses are reimbursed.

Responsibilities of ATJ Board members include attending Board meetings and the annual planning sessions; serving as liaison to at least one Board committee; and actively participating in Board initiatives. A demonstrated commitment to equal justice principles and an enthusiastic commitment to serve in equal justice community leadership are required, as are strong communication skills and an ability to see the “big picture.” Courage, compassion, consideration, patience, humility, passion, and humor are all valuable traits in ATJ Board members. The ATJ Board strives to have a membership that reflects inclusion, diversity (including geographic diversity), and cross-cultural competence. Please submit a letter of interest and résumé, including a summary of qualifications, to: Bar Leaders Division, WSBA, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539; or e-mail barleaders@wsba.org. For more information about the Access to Justice Board or this position, contact WSBA Justice Programs Manager Joan Fairbanks at 206-727-8282 or joanf@wsba.org, or visit www.wsba.org/atj.

Seeking Questionnaires from Candidates for Judicial Appointments


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

2009 Licensing Information and Changes

Verify your address in the online lawyer directory (http://pro.wsba.org) to ensure that you will receive the 2009 licensing forms. You are required to keep your contact information current; see Admission to Practice Rule 13.

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

WSBA Bylaw Section I.E.1.b. on Armed Forces Fee Exemption provides for a license fee exemption for eligible members of the Armed Forces whose WSBA membership status is active. The WSBA will accept fee exemption requests from December 1, 2008, until March 2, 2009, for the 2009 licensing year.

MCLE Certification for Group 2 (2006-2008)

If you are an active WSBA member in MCLE Reporting Group 2 (2006–2008), you will receive your Continuing Legal Education Certification (C2/C3) forms in the license packet that you should receive the first week of December. The deadline for returning the C2/C3 form to the WSBA is February 2, 2009. Any C2/C3 forms delivered to the WSBA or postmarked after March 2, 2009, will be
assessed a late fee.

Members in Group 2 include active members who were admitted to the WSBA in 1976–1983, 1992, 1995, 1998, 2001, or 2004. Members admitted in 2007 are also in Group 2 but are not due to report until the end of 2011. Their first reporting period will be 2009–2011; however, any credits earned on or after the day of admittance to the WSBA may be counted for compliance.

The Continuing Legal Education Certification (C2/C3) form that you receive in your license packet is a declaration that lists all the MCLE Board-approved courses that were in your MCLE online profile for the 2006–2008 reporting period as of mid-October 2008. If you took other courses after mid-October, you can add these to the back of the C2/C3 form when you receive it. As an alternative, you may print out your online roster and attach it to the C2/C3 form; indicate that it is a correct listing of the courses you took for compliance.

The C2/C3 form, not your online profile, is the official record of MCLE compliance. The original copy of the C2/C3 form must be returned to the WSBA to meet compliance requirements.

All courses that you list on your C2/C3 form must be Washington MCLE-Board approved and have an Activity ID number. This number is listed in your online MCLE profile and is assigned at the time that the Form 1 for each course is input to the MCLE system. A “Certificate of Attendance” or other sponsor-provided certification will not be sufficient to receive course credit.

If you have taken courses not yet approved by the MCLE Board, submit Form 1s for these courses immediately to ensure that they are approved before your C2/C3 is due. Each Form 1 application must include a full agenda for the course in order to receive credit. The agenda must have the start and end times for each session and each break. Because of high volumes from October through February, Form 1s submitted electronically (at http://pro.wsba.org) could take up to four weeks or more to process. Paper Form 1s may take up to six weeks or more to process. If you submit a paper Form 1, you will be notified by mail of its Activity ID number.

If you are not able to meet the credit requirement by December 31, 2008, and need more time to complete your credits, you must submit a petition to the MCLE Board to request more time. There is no longer an automatic extension until May 1. You must give a complete explanation on the petition of the reason that you need an extension.

A late fee will be assessed if you take any courses after December 31 that are needed for compliance or if your C2/C3 form is submitted late. If this is the first reporting period in which you will not meet MCLE compliance requirements, the late fee will be $150. The late fee increases by $300 for each consecutive reporting period you are late in meeting MCLE requirements.

If you have questions about the Form 1 process or MCLE compliance, please contact the WSBA Service Center at 800-945-WSBA (9722) or 206-443-WSBA (9722), or e-mail questions@wsba.org.

**CLE Bookstore Open at WSBA Offices in December**

The annual WSBA-CLE Bookstore will be open at the WSBA offices from December 15 through December 31 (excluding December 25 and 26). For sale at the bookstore will be a limited supply of selected recorded seminars with coursebooks, approved for MCLE A/V credit. (You may claim up to 15 total A/V credits for the current reporting period. All six ethics credits can be acquired using approved A/V self-study.) Watch your mail for a postcard in early December with hours of operation and other details, plus a 10 percent discount offer on your bookstore order.
Nominations Sought for Public Education Award

The Council on Public Legal Education (CPLE) is accepting nominations for its Flame of Democracy Award, given to an individual, organization, or program in Washington state that has made a significant contribution to increasing the public’s understanding of law, the justice system, or government. The mission of the CPLE, a committee of the WSBA, is to promote public understanding of the law and civic rights and responsibilities.

First presented in 2002 to the late journalist Richard Larsen, the award was established to highlight the important educational work being done by teachers, lawyers, judges, the media, and a variety of advocacy and community organizations and individuals. Other recipients have been the Yakima County Prosecuting Attorney’s Office for its school outreach program; the Northwest Justice Project for its self-help website; and the League of Women Voters of Washington Education Fund, for its numerous efforts to strengthen citizen knowledge of and participation in government.

Nominations, which are due December 1, 2008, should be made in the form of a letter (maximum 500 words) describing the nominee’s work and how it addresses the mission of the CPLE. The letter also should include the name of a reference who can provide additional information about the nominee. Supporting materials may be submitted; please limit print materials to 10 pages and audio-visual materials to 30 minutes. Self-nominations are encouraged. All nominations will be kept confidential. Nominations should be addressed to: Pam Inglesby, WSBA, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539. E-mail submissions are acceptable, and may be sent to pami@wsba.org. Further information about the CPLE may be found at www.wsba.org/ple.

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. November 11 and December 9 are the next scheduled meeting dates. Walk-ins are welcome! The roundtable is held at the WSBA office.

LOMAP and Ethics Traveling Seminar

Join us for the LOMAP and Ethics Traveling Seminar November 4 in Oak Harbor and November 5 in Bellingham. The seminar includes these topics: safeguarding client property, required trust account records, minding your matters, and winding down: the golf course beckons. To register, contact Julie Salmon at 206-733-5914, 800-945-9722, ext. 5914, or juliesa@wsba.org.

LAP Solution of the Month: Procrastination

Do you keep putting off certain tasks? Do you worry about work you’re not doing? Procrastination can be hazardous to your professional and personal health. Try dividing the task up into small bites, then attack the first logical piece. If you’d like help breaking the procrastination habit, call the Lawyers Assistance Program at 206-727-8268 or 800-945-9722, ext. 8268 to schedule a free, confidential consultation.

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 November 10 clinic will be held from 10:00 a.m. to noon at the WSBA office and will focus on using Casemaker and other online research resources. For more information or to RSVP, contact Julie Salmon at 206-733-5914, 800-945-9722, ext. 5914, or juliesa@wsba.org.

Job Seekers Discussion Group

Looking for a job or making a transition? Join us at the Job Seekers Discussion Group the second Wednesday of each month from noon to 1:30 p.m. The next meeting is November 12 at the WSBA office. The group discusses where to look for jobs, how to grow your network of contacts, strategies for résumés and cover letters, and how to keep yourself organized and motivated. Exchange information and ideas with other lawyers looking to make a change. Come as you are — no need to RSVP. Bring your business cards and practice networking skills. For more information, call 206-727-8269, 800-945-9722, ext. 8269, or e-mail rebeccan@wsba.org.

Accounts Receivable Collection

Financial Services

“Collection Services for the Legal Professional”

- Skip Tracing
- Asset Searches
- Enforcement of Judgments
- Credit Bureau Reporting
- Settlement Negotiations

Assisting Northwest Law Firms Since 1985

1402 Third Avenue, #619 • Seattle, WA 98101 • (206) 340-0883
professional. Either party to a dispute may initiate fee arbitration or mediation. Both programs are non-disciplinary, voluntary, and confidential. For more information, visit the WSBA website at www.wsba.org/lawyers/services/adr.htm or call the ADR coordinator at 206-733-5923 or 800-945-9722, ext. 5923.

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

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.

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.

Upcoming Board of Governors Meetings
December 5–6, Bellingham • January 22–23, 2009, Olympia • March 6–7, 2009, 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 October 2008 was 1.122 percent. Therefore, the maximum allowable usury rate for November is 12 percent. Information from January 1987 to date is on the WSBA website at www.wsba.org/media/publications/barnews/usury.htm.

A Trusted Voice for Victims of Negligence

Medical Negligence Cases
…can be difficult and expensive to handle
With over 25 years of experience, Gene Moen has the skills, knowledge, and resources to take on the toughest and most complex medical negligence cases.

We work with attorneys throughout Washington State and welcome your referral or association.

Gene Moen
Top 40 Plaintiff’s Personal Injury and Super Lawyers attorney
Washington Law & Politics Recipient ~ WSTLA and WSBA Professionalism Awards

Chemnick | Moen | Greenstreet
206.443.8600 | www.cmglaw.com

Pacific Galleries
SINCE 1972
CONSIGNING NOW for
SPECIALTY & ESTATE AUCTIONS
CONTE NT IAL ART & FURNISHINGS
SEPTEMBER 9TH
MODERN ART & FURNISHINGS
OCTOBER 7TH
ASIAN & ETHNOGRAPHIC
NOVEMBER 11TH
206.441.9990 • 241 SOUTH LANDER STREET, SEATTLE • WWW.PACGAL.COM

November 2008 | Washington State Bar News 53
Landerholm, Memovich, Lansverk & Whitesides, P.S.
is pleased to announce that
Delaney L. Miller
Carrie M. Wood
Roy D. Pyatt
have joined the firm as associates.
Mr. Miller’s practice will emphasize litigation
Ms. Wood’s practice will emphasize corporate/business
Mr. Pyatt’s practice will emphasize real estate/business
805 Broadway Street, Suite 1000
Vancouver, WA 98660
360-696-3312

Kimberlee L. Gunning
is proud to announce the opening of
Law Office of Kimberlee L. Gunning, PLLC
Ms. Gunning’s practice will focus on appellate, employment, and consumer law.
Law Office of Kimberlee L. Gunning, PLLC
3300 East Union Street
Seattle, WA 98122
Tel: 206-860-5688 • Fax: 206-299-3818
kgunning@gunninglegal.com
www.gunninglegal.com

Legros Buchanan & Paul
Wishes to Congratulate
Thomas Frank Paul
On the Occasion of 50 Years with the Firm
Still in active practice, Tom joined what is now known as LeGros Buchanan & Paul on October 31, 1958. An accomplished litigator, Tom has handled matters of virtually every description in the admiralty and maritime fields. He is a past Board Advisor for the University of San Francisco Law Journal, a past Chairman of the American Bar Association’s Committee on Admiralty and Maritime Litigation, and is a member of the Maritime Law Association of the United States. His maritime expertise is recognized throughout the United States and international maritime communities.
Congratulations, Tom.
Legros Buchanan & Paul
701 Fifth Avenue, Suite 2500
Seattle, WA 98104
206-623-4990
www.legros.com

Curran Law Firm p.s.
Formed in 1948, we are pleased to announce our 60th anniversary of service to our clients and the community.
We provide legal services to municipalities, businesses, homeowner and condominium associations, and individuals in the areas of estate planning, family law, real estate, and personal injury.
Curran Law Firm p.s.
555 West Smith Street
P.O. Box 140
Kent, WA 98035-0140
Telephone: 253-852 2345
Facsimile: 253-852 2030
Curranfirm.com
THE AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON

is pleased to announce the promotion of

Alison Holcomb

to the position of Drug Policy Director.

Alison joined the ACLU staff two years ago after more than a decade of private criminal defense practice focused on drug offense, civil asset forfeiture, and police misconduct litigation. She has served as a vice-president of the Washington Association of Criminal Defense Lawyers, a section chair of the King County Bar Association’s Drug Policy Project, and a member of the Seattle City Council’s Marijuana Policy Review Panel. Raised in Oklahoma, Alison received her B.A. from Stanford University and her J.D. from the University of Washington School of Law.

She succeeds Andy Ko, who has moved from the ACLU of Washington to join the national ACLU Drug Law Reform Project as State Strategies Counsel.

The ACLU of Washington is also pleased to announce that

Mark Cooke

has joined the organization as Policy Advocate.

Mark received his combined J.D./M.S.W. degree from Washington University in 2007. His experience includes policy research and advising on a range of issues, including rural substance abuse and needle exchange programs. His work for the ACLU of Washington will focus on outreach around the state to build coalitions supporting marijuana law reform.

705 Second Ave., 3rd Fl.
Seattle, WA 98104
206-624-2184
www.aclu-wa.org

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

Tolan S. Furusho (WSBA No. 25055, admitted 1995), of Bellevue, was disbarred, effective August 22, 2008, by order of the Washington State Supreme Court following approval of a stipulation. This discipline is based on conduct involving the commission of a criminal act, making false statements to third persons, and engaging in conduct involving deceit or misrepresentation.

Mr. Furusho was the registered agent for a corporation which owned the majority of outstanding shares of stock of another corporation (Corporation E). Corporation E was a publicly traded Washington corporation based in Salt Lake City, Utah, purporting to be a developmental stage company that was in the business of developing coal mining properties in Wyoming. During all material times, Mr. Furusho’s legal practice focused in part on securities law. As part of his practice, Mr. Furusho was familiar with securities laws governing restricted stock, exemptions from registration, freely tradable stock, restrictive legends, and opinion letters regarding exemptions from registration requirements. Mr. Furusho agreed to provide an attorney opinion letter to a co-conspirator (Ms. K) for Corporation E stating that the stock of Corporation E complied with an exemption from federal securities registration requirement. On May 9, 2006, Mr. Furusho signed an opinion letter drafted by Ms. K and sent it interstate via facsimile to Corporation E’s transfer agent. Mr. Furusho knew the transfer agent would rely on the representations in his opinion letter to re-issue restricted shares of Corporation E’s stock as freely tradable stock. The opinion letter falsely stated that:

• The transfer agent could remove the restrictive legends on the shares of Corporation E stock that had been issued to co-conspirators because the stock met an exemption from registration.

• Mr. Furusho had been furnished with, and had examined, “all such records of the Company, agreements and other instruments, certificates of officers and representatives of the Company, certificates of public officials, and other documents...deemed...necessary...as a basis for the opinions.”

• Mr. Furusho had reviewed “documents and representation letters provided by the Shareholder and the broker involved in this transaction.”

Mr. Furusho knew at the time he signed the letter that the statements were false.

On or about May 9, 2006, Mr. Furusho and other co-conspirators, pursuant to Mr. Furusho’s opinion letter, caused Corporation E’s transfer agent to issue 17,390,000 freely tradable shares of Corporation E stock. Between June 7, 2006, and June 8, 2006, Mr. Furusho, by virtue of having issued his opinion letter, and other co-conspirators caused 487,000 freely tradable shares of Corporation E stock to be sold for a total of approximately $88,326. Respondent’s actions as described above violated Title 15 United States Code Section 78j(b) (15 U.S.C. § 78j(b)), 15 U.S.C. § 78ff(a), and Title 17 Code of Federal Regulations...
Section 240.10(b)-5 (17 CFR § 240.10(b)-5), and 18 U.S.C. § 371.

During the 2004 tax year, Mr. Furusho received gross income of approximately $146,000. During the 2005 tax year, Mr. Furusho received gross income of approximately $37,000. Mr. Furusho’s income during the tax years 2004 and 2005 was substantially in excess of the minimum filing requirements and required Mr. Furusho by law to file an income tax return. Mr. Furusho failed to file income tax returns for the tax years 2004 and 2005 in violation of 26 U.S.C. § 7203, which resulted in tax liability in the amount of $36,600. On November 28, 2007, Mr. Furusho pleaded guilty in U.S. District Court to violating of 15 U.S.C. § 78j(b), 15 U.S.C. § 78ff(a), 17 CFR 240.10(b)-5, 18 U.S.C. § 371, and 26 U.S.C. § 7203. On December 13, 2007, U.S. District Court entered an acceptance of Plea of Guilty, Adjudication of Guilt and Notice of Sentencing accepting Mr. Furusho’s plea of guilty.

Mr. Furusho’s conduct violated RPC 4.1(a), prohibiting a lawyer in the course of representing a client from knowingly making a false statement of material fact or law to a third person; RPC 8.4(b), prohibiting a lawyer from committing a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects; RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and RPC 8.4(i), prohibiting a lawyer from committing any act involving moral turpitude, or another act which reflects disregard for the rule of law.

Jonathan H. Burke represented the Bar Association. Mr. Furusho represented himself.

Suspended

Jeffrey R. Bivens (WSBA No. 34100, admitted 2003), of Vancouver, Washington, was suspended for 18 months, effective August 21, 2008, by order of the Washington State Supreme Court following approval of a stipulation. This discipline is based on conduct in two matters involving charging unreasonable fees, conflicts of interest, failure to preserve the identity of clients’ property, and dishonest conduct.

Matter No. 1: Mr. Bivens was hired by a client on April 28, 2004, to evict a woman from the client’s estranged husband’s house after the husband committed suicide. At the time, Mr. Bivens worked full-time as an associate for a law firm (the firm). The client paid the firm two advance fee deposits that totaled $1,550. The firm deposited the client’s advance fee deposits in its trust account and debited against the funds for fees and costs until the funds were exhausted. Because the house was the separate property of the client’s husband, the husband’s estate needed to be admitted to probate and the client appointed personal administrator before she had the power to evict the tenant. Mr. Bivens filed a petition to have letters of administration of the husband’s estate issued to the client, which petition was granted on May 11, 2004. Mr. Bivens filed an eviction action on July 15, 2004. The husband’s house was vacated three days later and the client assumed control of it. Mr. Bivens used the firm’s resources to prepare and file the probate and eviction actions.

When Mr. Bivens was retained, the firearm used by the client’s husband to commit suicide was being retained in the Clark County Sheriff’s Office evidence room. Mr. Bivens offered to purchase the firearm and credit the value of it to the client’s account at the firm in lieu of fees. The client agreed and gave Mr. Bivens a release that allowed him to take possession of the firearm from the Sheriff’s Office. Mr. Bivens kept the firearm and attempted, unsuccessfully, to sell it. Mr. Bivens did not credit the value of the firearm to the client’s account at the firm and did not pay the client or the firm for the firearm. Mr. Bivens did not arrange for the client to receive any refund of the monies she had already paid the firm.

Matter No. 2: A husband and wife (clients) hired the firm to represent them in pursuing a bankruptcy. Mr. Bivens was assigned to handle the case and represented the clients until he left the firm in June 2005. The clients paid the firm a $900 advance fee deposit on March 14, 2005. The firm deposited this amount in its trust account and debited against it for fees and costs until it was exhausted. The clients did not pay any additional money to the firm and were not billed by the firm for any work in excess of that covered by the $900 advance fee deposit. The clients’ home was mortgaged. After their bankruptcy action was filed, the mortgage company moved for relief from the automatic stay. Mr. Bivens replied to this motion on behalf of the clients. He told the clients they owed the firm the $209 filing fee in addition to the $900 they had already paid, and that responding to the motion for relief from stay cost $600 more. Mr. Bivens did not bill the $800 in additional fees to the clients through the firm. The clients told him they were unable to pay the additional fees and, in lieu of the $800, suggested they provide Mr. Bivens items from a pawn shop they owned. Mr. Bivens agreed. On June 7 and 9, 2005, Mr. Bivens took possession of the following items from the pawn shop, with a value totaling $807: a Winchester 1300 12-gauge pump-action shotgun; a Ruger .22 caliber semi-automatic rifle; a block of .22 caliber ammunition; a used gun bag; a DeWalt reciprocal saw; and a fly rod. Bivens did not turn these items over to or pay the firm the value of the items, and he did not credit $807 to the clients’ trust ledger.

In both matters, under firm policy, Mr. Bivens was required to turn property that he accepted in lieu of the firm’s fees over to the firm or pay the firm the value of the property so it could be credited to the client’s account. The firm did not agree that Mr. Bivens could keep the items and not pay the value of them to the firm.

Mr. Bivens’s conduct violated RPC 1.5(a), requiring that a lawyer’s fee be reasonable; RPC 1.8(a), prohibiting a lawyer who is representing a client in a matter from entering into a business transaction with a client or knowingly acquiring an ownership, possessory, security, or other pecuniary interest adverse to a client unless the transaction and terms on which the lawyer acquired the interest are fair and reasonable, the client is given a reasonable opportunity to seek the advice of independent counsel, and the client consents; RPC 1.14(b), requiring a lawyer to maintain complete records of all funds, securities, or other properties in the possession of the lawyer and render appropriate accounts to his or her client regarding them; and RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

M. Craig Bray represented the Bar Association. Timothy D. Blue represented Mr. Bivens.

Suspended

Rodney R. Moody (WSBA No. 17416, admitted 1987), of Kirkland, was suspended for 18 months followed by two years’ probation, effective August 15, 2008, by order of the Washington State Supreme Court following a stipulated withdrawal of an appeal. This discipline resulted from conduct involving failure to communicate, failure to abide by a client’s decisions, and trust account violations.

Matter No. 1: A Bar Association audit of Mr. Moody’s trust account for the period of January 1, 2003, to February 29, 2004, and a second audit for the period from March 1, 2004, through August 31, 2006, disclosed a number of problems related to Mr. Moody’s handling of his trust account:

- Failure to maintain complete records of all funds in trust;
- Failure to maintain individual client records;
- Actual deposits into Mr. Moody’s trust account did not track the purported deposits into trust identified in his "Funds with Running Balances Reports";
- Funds were withdrawn from Mr. Moody’s client trust account without substantiating or identifying his entitlement to the funds; and
• Mr. Moody did not reconcile his trust account bank statements with his check register.

**Matter No. 2:** In June 2002, Mr. Moody agreed to represent a client in a dissolution matter. The client had been arrested and incarcerated following an argument with his wife, and remained incarcerated during the entire dissolution proceeding. While representing the client, Mr. Moody engaged in the following conduct:

• Following a sale of the client’s family home, Mr. Moody deposited all or a portion of the client’s home sale proceeds into his general business account when the funds had not all been earned.
• Mr. Moody failed to abide by the client’s decision to reject the proposed property settlement and go to trial, and instead entered into the final property settlement in the client’s dissolution without the client’s authorization.

Mr. Moody’s conduct violated RPC 1.2(a), requiring a lawyer to abide by a client’s decisions concerning the objectives of representation and consult with a client as to the means by which they are to be pursued; 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 about the representation; former RPC 1.14(a), requiring all funds of clients paid to a lawyer or law firm be deposited into one or more identifiable interest-bearing trust accounts maintained as set forth by the rules and no funds of the lawyer be deposited therein; and former RPC 1.14(b)(3), requiring a lawyer to maintain complete records of all funds, securities, and other properties of a client coming into the possession of a lawyer and render appropriate accounts to his or her client regarding them.

Leslie C. Allen and Debra J. Slater represented the Bar Association. Randy V. Beitel represented the Bar Association on appeal. Mr. Moody represented himself. Mary H. Wechsler was the hearing officer.

**Non-Disciplinary Notice**

**Suspended Pending the Outcome of Disciplinary Proceedings**

James K. Naito (WSBA No. 33636, admitted 2003), of Clallam Bay, was suspended pending the outcome of disciplinary proceedings, pursuant to ELC 7.1, effective September 12, 2008, by order of the Washington State Supreme Court. This is not a disciplinary action.

**MEDIATION**

We focus on helping parties arrive at the mediation table in the best position to advance settlement.

We co-mediate our cases and use pre-mediation sessions.

Highly charged, difficult cases will get a warm welcome.

**ALHADEFF & FORBES MEDIATION SERVICES**

1100 Olive Way, Suite 1800
Seattle, WA 98101
206-281-9950

www.mediationservices.net
Info@mediationservices.net

**OLYMPIA ATTORNEYS**

Focused on advising and representing governmental entities, businesses, and individuals in tort, civil rights, employment, land use, insurance coverage, insurance defense, risk management, legislative, and public records matters.

**LAW, LYMAN, DANIEL, KAMERRU & BOGDANOVC, P.S.**

Donald L. Law • Jocelyn J. Lyman
Don G. Daniel • W. Dale Kamerrer
Guy Bogdanovich • Jeffrey S. Myers
Elizabeth A. McIntyre • John E. Justice

Practicing Statewide Since 1981

2674 RW Johnson Blvd.
Tumwater, WA 98512
Tel: 360-754-3480
www.lldkb.com

**APPEALS**

**Margaret K. Dore**

Former Law Clerk to the Washington State Supreme Court and the Washington State Court of Appeals

www.margaretdore.com

1001 Fourth Ave., 44th Floor
Seattle, WA 98154
206-389-1754

**APPEALS**

Philip A. Talmadge,
Former Justice, Washington State Supreme Court; Fellow, American Academy of Appellate Lawyers

Emmelyn Hart-Biberfeld,
Former Law Clerk, Washington State Supreme Court; Invited Member, The Order of Barristers

Sidney Charlotte Tribe
Former Law Clerk, Washington Court of Appeals; Invited Member, The Order of Barristers

Peter Lohnes
Former Law Clerk, Washington Court of Appeals

Available for consultation or referral on state and federal briefs and arguments.

**TALMADGE/FITZPATRICK**

18010 Southcenter Parkway
Tukwila, WA 98188-4630
206-574-6661
Fax: 206-575-1397
E-mail: christine@talmadgelg.com
www.talmadgelg.com
INSURANCE BAD FAITH

For when they insure it is sweet to them to take the money; but when disaster comes it is otherwise and each man draws his rump back and strives not to pay.

— Francesco di Marco Datini — Florentine businessman, letter to his wife, 14th century.

SOME THINGS DON’T CHANGE

The excuses are endless. The bottom line is the same — insurance companies gladly accept your premiums but all too often resist paying your valid claims.

William C. Smart, trial attorney with over 25 years of experience, is available for consultation, referral, or association on failure to defend, failure to settle, excess judgment, negligent claims handling or other insurance bad faith claims, including disability insurance.

THOMAS M. FITZPATRICK
PROFESSIONAL RESPONSIBILITY

30 years of practice; 17 years’ bar review professional responsibility lecturer; former member ABA Ethics and Discipline committees; member ABA Commission — drafting new judicial code; fellow, ABA Center for Professional Responsibility

Available for consultation or referral on matters involving professional responsibility, lawyer and judicial discipline, forensic witness services, consultations regarding legal professional liability.

TALMADGE/FITZPATRICK
18010 Southcenter Parkway
Tukwila, WA 98188-4630
Tel: 206-574-6661
Fax: 206-575-1397
E-mail: tom@taldmgedg.com
www.taldmgedg.com

LEGAL MALPRACTICE and
ACCOUNTING MALPRACTICE

Roger K. Anderson

is available for referral, association, or consultation in cases involving legal or accounting malpractice. Mr. Anderson has represented both plaintiffs and defendants in substantial and complex malpractice litigation for over 20 years.

2101 Fourth Avenue, Suite 2100
Seattle, WA 98121-2359
206-448-2100
rkaesq@msn.com

LEGAL MALPRACTICE and DISCIPLINARY ISSUES

“37 Years’ Experience”

Joseph J. Ganz

is available for consultation, referral, and association in cases of legal malpractice (both plaintiff and defense), as well as defense of lawyer disciplinary and/or grievance issues.

2101 Fourth Ave., Ste. 2100
Seattle, WA 98121
206-448-2100
E-mail: jganzesq@aol.com

LEGAL MALPRACTICE and ACCOUNTING MALPRACTICE

WILLIAM C. SMART
KELLER ROHRBACK L.L.P.
1201 Third Avenue, #3200
Seattle, WA 98101
206-623-1900
E-mail: wsmart@kellerrohrback.com

APPEALS
Elizabeth Adams
is available for association or referral of appellate cases.

LAW OFFICES OF ELIZABETH ADAMS, PLLC
253-272-5547
elizabeth@elizabethadamslaw.com

CONTRACT ATTORNEY FOR COURT APPEARANCES

• All types of motions, supplemental debtor exams, orders to disburse, and arbitrations
• All western Washington courts
• Handled high-volume case loads with court appearances, three per week — King, Pierce, Snohomish county courts
• High success rates with bringing and defending motions

Available for association or contract basis, legal research and writing.
References available.
Catherine M. Kelley, PLLC
425-392-1023
catherine@cmkattorney.com
ETHICS AND LAWYER DISCIPLINARY INVESTIGATION AND PROCEEDINGS

**Patrick C. Sheldon**, former member of the Washington State Bar Association Disciplinary Board, is now accepting referrals for attorney disciplinary investigations and proceedings in Washington, Idaho, Hawaii, and Guam.

**FAIN SHELDON ANDERSON & VANDERHOEF PLLC**
877 Main Street • Suite 1000
Boise, Idaho 83701
208-344-6000
ssmi@hteh.com
www.hawleytroxell.com

INVESTOR CLAIMS

Former NASD Series 7, 66 and life/annuity insurance licensed broker/investment advisor. Available for consultation, referral, or expert evaluation/testimony in claims involving broker/advisor error, and investment suitability.

**Courtland Shafer**
**SATTERBERG HEALY ECKHOUDT**
9832 15th Ave. SW
Seattle, WA 98106
206-763-1510
Courtland@seattlejustice.com

RUSSIAN LAW

**Elena V. Yushkina** is available for referral, association, or consultation on matters involving Russian and International Russian law

Russian Attorney-at-Law
WSBA Foreign Law Consultant
206-619-0365
Elena@russianlawconsulting.com

DISCIPLINARY INVESTIGATION and PROCEEDINGS

**Stephen C. Smith**, former Chairman of the Washington State Bar Association Disciplinary Board, is now accepting referrals for attorney disciplinary investigations and proceedings in Washington, Idaho, Hawaii, and Guam.

**HAWLEY TROXELL ENNIS & HAWLEY, LLP**
877 Main Street • Suite 1000
Boise, Idaho 83701
208-344-6000
ssmi@hteh.com
www.hawleytroxell.com

IMMIGRATION

**David R. Chappel** and
**Xiaoqiu Wang**
Serving you and your clients in a complex practice area.

**CHAPPELWANG PLLC**
1111 Third Avenue, Suite #3400
Seattle, WA 98101-3299
206-254-5620
www.chappelwang.com

APPEALS

**Anne Watson**, former law clerk to the Washington State Supreme Court, welcomes consultation, association, or referral of appellate cases.

**LAW OFFICE OF ANNE WATSON, PLLC**
360-943-7614
anne@awatsonlaw.com

ATTORNEYS’ FEE DISPUTES

**Michael Caryl**
• Attorney-Client
• Attorney-Attorney
• Attorney Liens
• Fee-Related Ethics and Discipline
• Expert Testimony (lodestar/fee division/quantum meruit)
• Arbitration, Mediation
• Consultation, Representation
206-378-4125
E-mail: michaelc@michaelcaryl.com

**HAWLEY TROXELL ENNIS & HAWLEY, LLP**
877 Main Street • Suite 1000
Boise, Idaho 83701
208-344-6000
ssmi@hteh.com
www.hawleytroxell.com

**WIGGINS & MASTERS PLLC**
241 Madison Avenue North
Bainbridge Island, WA 98110
206-780-5033
www.appeal-law.com
CLE Calendar

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

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

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

Antitrust Law

25th Annual Antitrust and Consumer Protection Seminar
November 6 — Seattle. 6 CLE credits pending. By the WSBA Antitrust Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Business Law

Ethics Tips for In-House Counsel and Business Lawyers: A Road Map for Steering Clear of Ethical Traps for the Busy Lawyer
November 14 — Spokane. 3 ethics credits. By the WSBA Corporate Counsel Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Ethics for Business Law
December 9 — Tele-CLE. 1.5 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Working with and Advising High-Tech Companies
December 22 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Creditor-Debtor Law

Liens on Real Estate and on Personal Property: How to perfect. How to enforce.
December 2 — Seattle. 6.75 CLE credits pending. By the WSBA Creditor-Debtor Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Liens on Real Estate and on Personal Property: How to perfect. How to enforce.
December 9 — Spokane. 6.75 CLE credits pending. By the WSBA Creditor-Debtor Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Estate Planning

53rd Annual Estate Planning Seminar
November 3 and 4 — Seattle. 14.5 CLE credits, including 1 ethics. By the Estate Planning Council of Seattle and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Ethics for Estate Planners
November 19 — Tele-CLE. 1.5 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Ethics

Ethics for General Practitioners
November 10 — Tele-CLE. 1.5 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Ethics and Modern Technology
November 12 — Tele-CLE. 1.5 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Ethics Tips for In-House Counsel and Business Lawyers: A Road Map for Steering Clear of Ethical Traps for the Busy Lawyer
November 14 — Spokane. 3 ethics credits. By the WSBA Corporate Counsel Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Ethical Dilemmas — Seattle
November 17 — Seattle. 4 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Negotiation Ethics — Winning Without Selling Your Soul, with Martin E. Latz
November 18 — Tele-CLE. 1.5 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Ethics for Estate Planners
November 19 — Tele-CLE. 1.5 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Ethics for Employment Lawyers
December 1 — Tele-CLE. 1.5 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Legal Ethics and Literature
December 3 — Seattle. 3.25 ethics credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Ethics for Business Law
December 9 — Tele-CLE. 1.5 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

WSTLA Ethics

Family Law

Adoption Practice, Pitfalls and Procedures: 10 Essential Lessons
November 7 — Seattle. 6.25 CLE credits, including .75 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Discovery in Family Law
December 8 — Seattle. 6 CLE credits, including .5 ethics credit. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Legal Ethics and Literature
December 3 — Seattle. 3.25 ethics credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Sidebar with the Bench: Improving Your Advocacy Skills — Practice Tips from Judges
December 4 — Seattle. 6 CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Best of CLE — Spokane
December 5 — Spokane. 6 CLE credits, including .75 ethics credit. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Best of CLE — Seattle
December 10 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Super Lawyers
December 10 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.
December 5 — Seattle. 6.75 CLE credits pending. By WSBA-CLE; www.wsbacle.org.

8th Annual Labor and Employment Law Conference
November 12 — Seattle. 6 CLE credits, including 1 ethics credit. By the WSBA Labor and Employment Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Ethics for Employment Lawyers
December 1 — Tele-CLE. 1.5 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

LOMAP and Ethics on the Road: The 2008 Traveling Seminar
November 4 — Oak Harbor; November 5 — Bellingham; December 2 — Aberdeen; December 3 — Port Orchard. 4 ethics credits.

Law Office Management
LOMAP and Ethics on the Road: The 2008 Traveling Seminar
November 4 — Oak Harbor; November 5 — Bellingham; December 2 — Aberdeen; December 3 — Port Orchard. 4 ethics credits.

By the WSBA Law Office Management Assistance Program. Julie Salmon, 206-733-5914 or juliesa@wsba.org.

Litigation

Creating a Winning Trial Story

Negotiation Ethics — Winning Without Selling Your Soul, with Martin E. Latz
November 18 — Tele-CLE. 1.5 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Medicine for Lawyers. Part III

Sidebar with the Bench: Improving Your Advocacy Skills — Practice Tips from Judges
December 4 — Seattle. 6 CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Trial Stars

Deposition Techniques with David Markowitz
December 16 — Seattle. 6 CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Movie Magic with Steven O. Rosen
December 19 — Seattle. 6 CLE credits, including 2 ethics credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Ethics for General Practitioners
November 10 — Tele-CLE. 1.5 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Ethics and Modern Technology
November 12 — Tele-CLE. 1.5 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Negotiation Ethics — Winning Without Selling Your Soul, with Martin E. Latz
November 18 — Tele-CLE. 1.5 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Liens on Real Estate and on Personal Property: How to perfect. How to enforce.
December 2 — Seattle. 6.75 CLE credits pending. By the WSBA Creditor-Debtor Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

15th Annual Fall Real Estate Conference: Real Estate in the Current Economy
December 5 — Seattle. 6 CLE credits pending. By the WSBA Real Property, Probate and Trust Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Liens on Real Estate and on Personal Property: How to perfect. How to enforce.
December 9 — Spokane. 6.75 CLE credits pending. By the WSBA Creditor-Debtor Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Ethics for Business Law
December 9 — Tele-CLE. 1.5 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Real Property, Probate and Trust

Liens on Real Estate and on Personal Property: How to perfect. How to enforce.
December 2 — Seattle. 6.75 CLE credits pending. By the WSBA Creditor-Debtor Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

15th Annual Fall Real Estate Conference: Real Estate in the Current Economy
December 5 — Seattle. 6 CLE credits pending. By the WSBA Real Property, Probate and Trust Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Liens on Real Estate and on Personal Property: How to perfect. How to enforce.
December 9 — Spokane. 6.75 CLE credits pending. By the WSBA Creditor-Debtor Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.
real estate, estate/trust, and business litigation matters. Applicants should have at least three years of civil litigation practice. Please send résumé with cover letter to Wade Gano, PO. Box 1410, Yakima, WA 98907, or e-mail to wegg@tkglawfirm.com.

Workers’ comp opportunity. Workers’ comp claimant attorneys — solo and small firms. Increase revenue $50,000–150,000-plus with minimal investment of time and money. Handle federal workers’ compensation with our national organization from your office. We market, train, mentor, and provide call support. Call Federal Employees Advocates; 877-655-2667 or www.FEAlaw.com/For_Attorneys.aspx.

Minzel and Associates, Inc. is a temporary-and permanent-placement agency for lawyers and paralegals. We provide highly qualified attorneys and paralegals on a contract and/or permanent basis to law firms, corporations, solo practitioners, and government agencies. For more information, please call us at 206-328-5100 or e-mail mail@minzel.com.

Contract attorney. Experienced litigator available for all aspects of litigation, including court appearances, motions practice, research, and appeals. Former name partner in boutique litigation firm. 17-plus years’ experience. Have conducted numerous jury trials and arbitrations. Reasonable rates. Peter Fabish, 206-545-4818, pfab99@gmail.com.


Insurance claim handling consulting including R-67. Seasoned claim professional with 30-plus years’ actual claim experience, all levels. Objective, authoritative, responsive. Policyholder or insurer. 206-498-9097; inforeq@profclaim.com.

Oregon accident? Unable to settle the case? Associate an experienced Oregon trial attorney to litigate the case and share the fee (proportionate to services). OTLA member, references available, see Martindale, AV-rated. Zach Zabinsky, 503-223-8517.


Deposition Digest provides excellent...


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


Space Available

Attorney office available. Space is available for one attorney in a suite of four private offices in the Banner Bank Building, in the prime business area of Edmonds close to Highway 99 and convenient to I-5. Amenities include a receptionist to answer your phones and greet your clients, copier and high-speed fax, networked DSL, and billing service if needed. Parking is generous and conveniently accessible to clients, with a bank just a few steps away and another directly across the street. Join a congenial group with economical cost-sharing and some potential for referrals. Call Ralph at 425-774-6027, or e-mail ralph@ralphfreese.com.

Three neighboring offices in penthouse overlooking Puget Sound, or alternative sizable end space available. Steps from the Seattle ferry terminal, post office, courthouse, waterfront, and downtown. Includes reception, office support/equipment, kitchen area, and conference room. E-mail susan@randtlaw.com. $2,750.

Kent office space: Large, fully furnished office in elegant newly constructed small law building. Possible referrals and space for services. All amenities included. Gated entrance with own parking lot. Highly visible location close to RJC. 206-227-8831.


Downtown Seattle view office: 6th and Lenora; $750/mo. Includes DSL, conference room, kitchen, copier/fax, janitorial. Office share with immigration/business attorney. 206-949-3611 or e_junoo@yahoo.com.

Congenial downtown Seattle law firm (business, I.P., tax). Spacious offices, staff areas for sublease. Rent includes receptionist, conference rooms, law library, kitchen. Copiers, fax, DSL Internet also available. 206-382-2600.

South Lake Union, Seattle. New executive offices in prime location; off-street parking, near Denny Park, awesome street signage, conference rooms, kitchen, copiers, library, receptionist, shower. Sven or Jason, 425-454-4000.

Individual or suite of offices available in downtown Seattle law firm. Offices have city views and are located across the street from the Federal Courthouse. Includes: telephone system, mail delivery, coffee, and conference rooms. Reception services and secretarial space also available. Please contact Julie Livengood at 206-667-0239.

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

Mill Creek office space for lease — professional, upscale office space available: conference room, broadband Internet, data ports, ample parking. Call Mark W. Garka at 425-422-5818.

Downtown Puyallup office space. Terms negotiable. Space located in older downtown building. Includes reception, conference rooms, office, secretarial space. Contact Toni Froehling 253-208-8494 or toni@froehlinglaw.com.

To Place a Classified Ad

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

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

Qualifying experience for positions available: State and federal law allow minimum, but prohibit maximum, qualifying experience. No ranges (e.g., “5-10 years”). If you have questions, please call 206-727-8213 or e-mail classifieds@wsba.org.

Will Search

Seeking last will of Walter E. King, longtime resident of Bothell, Washington. Contact Kyle Karinen at 206-583-0155 with any information.

Seeking will of Lucinda June Maserati Martella: D.O.B. 06-16-1963, Clark County, Washington; D.O.D. 06-27-2008, Bothell, Washington. Please contact Laura Hazen at 360-834-7957 or Laura@camaslaw.com.

Seeking trust or other estate planning documents of Nina Opal Gosselin: D.O.B. 10/10/1908; D.O.D. 5/02/2005; and LizBeth Ann Reynolds: D.O.B. 07/19/1938; D.O.D. 07/06/2005. Contact Rodney Reynolds at 541-276-2682 or reynoldsroscoe@yahoo.com with any information.
The Bar Beat Guide to Surviving the Recession

In a recent Bar Beat, I satirically described how our profession might suffer should the economy continue to falter (“Will Litigate for Food,” July 2008 Bar News). In my scenario, once-successful attorneys resorted to living in refrigerator boxes, etc. I meant to exaggerate the worrisome but presumably manageable cracks appearing in the economy. As it turns out, the column might have been unduly optimistic.

We have now seen: the biggest bank failure ever (our own WaMu); the biggest Dow Jones Industrial Average point loss ever; the collapse of Fannie Mae, Freddie Mac, AIG, and Lehman Brothers; and a $700 billion bailout of Wall Street by the federal government. Things are so dire that momentous stories such as Clay Aiken's coming-out and Heather Locklear's DUI are relegated to the entertainment pages.

For the past several evenings I have huddled over my hotplate, sipping my Campbell's soup, pondering how to negotiate the new recession. By the dim but economical glow of my wind-up radio/flashlight, I compiled the following guide.

The Bar Beat Guide to Surviving the Recession

1. Seriously, you must get one of these wind-up radio/flashlights. It’s like you’re camping all the time. You’ll have to crank it three or four times to get through a whole football game or read a book at night, but think of it as exercise you’re getting without buying a Soloflex.

2. When your clothes get dirty, turn them inside-out and wear them a few more days before laundering. If anyone asks why your clothes are inside-out, reply that they’re not inside-out, it is the new style for 2009, and it’s too bad some people can’t afford to be stylish anymore.

3. Take up home winemaking. Of course, it's going to taste like rancid prune juice, but after the first few glasses, you won't care. After a few more glasses, you won't even care that your 401(k) is down to $6.89, which happens to be the value of your home as well.

4. Save up your spare change for a few months and treat the family to dinner at an all-you-can-eat buffet. Have everyone wear their loosest-fitting clothes and stash as much grub as possible to take home. For safety's sake, keep a few bucks in reserve for hepatitis shots. Bonus tip: Line at least one pocket with plastic wrap to hold soup.

5. When your home goes into foreclosure and you've used up the last tank of gas you can afford, put the family in the car and say you're going to play a new game where you see how far you can coast. When you eventually stop rolling, pull over and say, “Welcome to our new home!” When the laughter dies down, say, “No, really, we're going to be living here a while. Dibs on the back seat.”

6. “Re-purpose” obsolete household items for new uses. For example, a flat-screen TV of 50 inches or larger makes a decent ping-pong table when Comcast cuts you off for not paying the cable bill. Also, a hot tub makes an excellent crockpot. Have fun with it! Invite the neighbors for a “tub o' ramen” party.

7. Reassess your goals. If you used to dream of owning a sailboat, consider an inflatable raft instead. They both float and you don't need moorage or a trailer for the raft. If you longed for a trip to the Mediterranean next spring, how about watching National Lampoon's European Vacation while eating takeout from Olive Garden instead? Oh, who am I trying to fool? We're all ruined! We're all going to live like hobos, eating cat food under a bridge the rest of our miserable lives. WAAAAAAAAWHAAAAHHAAAAA!

Bar News Editor Michael Heatherly practices in Bellingham. He can be reached at 360-312-5156 or barnewseditor@wsba.org.
We focus on one area of the law: DUI defense.

From our long-time base near Seattle, we’ve successfully handled many cases both east and west of the mountains. And with the addition of our new Bellingham office, we’ve expanded our group of trial lawyers into the northern part of the state. Our team has more than 100 years of DUI litigation experience. Put your clients in the best of hands. Ours. To learn more, visit foxbowmanduarte.com.

Fox > Bowman > Duarte

The nation’s toughest DUI laws demand the toughest DUI lawyers.

Think you can enjoy a drink out with dinner and not be in danger of a DUI arrest on your way home? Not anymore. Increasingly, DUI cases are filed based on very low test results—some as low as .03 for adults. Prosecutors rely on field sobriety tests and the officer’s observations of the odor of alcohol, bloodshot eyes, slurred speech and poor coordination to justify the charges. However, field sobriety tests were never validated to detect impairment, nor to accurately estimate the BAC, and the obligatory observations are often explained by innocent factors such as fatigue, or health conditions such as allergies, diabetes, or injuries.

In this increasingly hostile environment to innocent conduct, your clients, friends and family members may need a lawyer. You can confidently refer them to Callahan Law. Trained by the DataMaster manufacturer and certified by a NHTSA trained instructor to administer field sobriety tests, Ms. Callahan is a frequent speaker at DUI CLEs. Thomson-West selected her to author a new treatise on DUI, The Washington DUI Practice Manual, and to write a chapter on DUI Scientific Evidence for their treatise, Inside the Minds. Ms. Callahan’s book for laypersons, The DUI Book, Washington Edition will be released this year.

Ms. Callahan receives overwhelmingly favorable reviews from clients on the firm’s website. She is ranked 10 out of 10 on Avvo.com, and has been endorsed by the most respected criminal defense attorneys in the state and the nation—earning national recognition for her efforts in defense of those who drive. Ted Vosk, of counsel to the firm, has also received national accolades for exposing numerous irregularities and unethical conduct at the Washington State Patrol Toxicology Lab. His efforts are resulting in widespread suppression of breath tests by judges across the state offended by the alleged perjured oaths of government witnesses and the failure to adhere to scientific principles that ensure accurate and reliable breath tests.

Callahan Law brings more than basics to the bar; they bring innovation, creativity and talent combined with aggressive advocacy. They are inspired to render the most important service clients require: full confidence in the lawyer’s skill, experience and diligence. Everyone at Callahan Law is absolutely devoted to providing extraordinary service and focused on seeking winning strategies for every case. Entrust your family, friends and clients to Callahan Law, we are here for them 24/7/365.

.08?
Another Government Lie

C A L L A H A N L A W

DRIVEN... IN DEFENSE OF THOSE WHO DRIVE

877.384.2679 | dui-defender.net | lawyer@dui-defender.net