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I just wanted to let you know that I had utilized your Moderate Means Program for some family law issues that I had. I am a soldier stationed in Colorado and Vincent Humphrey was the attorney assigned to help me. I just wanted to let you know that he was professional and very good at his job. Many times when he said he would call me, he did and on time. I work in an environment that does not allow me cell phones, texts, and sometimes email, and he stayed flexible and accommodating to my situation at all times. The program that you offer helped me be able to afford an attorney when I needed it most and did so with someone that would be worth much more than I was able to pay him. Your program not only works logistically and financially, but emotionally too. Thank you for all that you offer!

Sgt. Ryan C. Peterson

I want to thank Robin Lindley for his timely article and interview of Dr. Kathryn Sikkink on human rights prosecutions [The Literary Lawyer, Oct. 2012 Bar News]. In our everyday practice of law, it is easy to forget that the law can be used to promote world peace. A significant change in international legal responsibility can vastly improve the quality of life for people oppressed by their leaders. Thanks as well to the Bar News for publishing Mr. Lindley's article.

Croil Anderson, Seattle

EDITOR’S NOTE

It will be worth the wait

Last month I told you about changes you could expect in this publication, starting with this issue. Most notably, I announced we would be retiring the Bar News name in favor of NWLawyer. Indeed, the name change and a concentrated focus on better aligning the content with the needs and wants of our readers is coming, but it will take a month longer than we anticipated. You can expect the name change and an enhanced focus on enriched content in our December/January combined issue.

As a part of our planning process, we also decided to adopt a mission statement for the publication, given our revised focus on delivering a content-rich, readable magazine that is relevant to as broad a range of members and readers as possible. It’s this mission statement that will drive the content and ultimately elevate NWLawyer to the top of your must-read stack of publications. The mission statement is this:

NWLawyer will inform, educate, engage, and inspire by offering a forum for members of the legal community to connect and to enrich their careers.

Come December, you’ll see and read the changes, and we’ll look forward to your feedback.

In the meantime, I hope you’ve visited NWSidebar, WSBA’s new blog that can be found at nwsidebar.wsba.org. The blog features a variety of posts and authors, and I will contribute as well. So, if you like my Bar Beat column in Bar News, join me over at nwsidebar.wsba.org. And, if you’d like to contribute to NWSidebar, please email blog@wsba.org.

Of course, we’re always looking for contributors for this magazine as well, and I’m open to talking with anyone about ideas they might have. Call 360-312-5156 or email barnewseditor@wsba.org.

— Michael Heatherly

LETTERS TO THE EDITOR

Please, let us hear from you! We welcome letters to the editor on issues presented in the magazine. Email letters to letterstotheeditor@wsba.org or mail to: WSBA, Attn. Letters to the Editor, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539. Bar News reserves the right to edit letters for clarity and space. Bar News does not print anonymous letters, or more than one submission per month from the same contributor.

Many thanks to Michael Heatherly for the here and now with events that helped words and musical references to overlay me to another, fascinating place, using powerful and evocative. He transported Sept. 2012.

Many thanks to Michael Heatherly for seeing the reasoning for the name change. I am opposed to the name change for the Bar News is not what I expect from the WSBA. I am opposed to reducing the monthly issues of the Bar News to nine issues. As you know, persons who submit articles of interest must either email or provide . . . a hard copy. Therefore, I would suggest that the Bar News be put on line on a monthly basis. Waiting for two months three times a year for issues of the Bar News is not what I expect from the WSBA. I am opposed to the name change for the Bar News to NWLawyer. I do not consider myself a Northwest lawyer — I consider myself a Washington State lawyer. I do not see the reasoning for the name change.

Dennis P. Burns, Tacoma

Mark Adams, Gig Harbor

It will be worth the wait

I am opposed to the name change for the Bar News to NWLawyer. Indeed, the name change and a concentrated focus on better aligning the content with the needs and wants of our readers is coming, but it will take a month longer than we anticipated. You can expect the name change and an enhanced focus on enriched content in our December/January combined issue.

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In the meantime, I hope you’ve visited NWSidebar, WSBA’s new blog that can be found at nwsidebar.wsba.org. The blog features a variety of posts and authors, and I will contribute as well. So, if you like my Bar Beat column in Bar News, join me over at nwsidebar.wsba.org. And, if you’d like to contribute to NWSidebar, please email blog@wsba.org.

Of course, we’re always looking for contributors for this magazine as well, and I’m open to talking with anyone about ideas they might have. Call 360-312-5156 or email barnewseditor@wsba.org.

— Michael Heatherly
Pitching In by Checking Off

There is something new and noteworthy on your WSBA membership renewal form this year. In addition to the checkoff for Law Fund’s Campaign for Equal Justice, there is another checkoff for the Washington State Bar Foundation. The Foundation has been around for some years, and efforts were in the works last year to revitalize it. Then came the license fee rollback, which has given the Foundation a jumpstart.

The Bar Foundation supports the Bar Association in its access to justice and diversity work. Two programs are up and running. WSBA's Moderate Means Program is bringing together underemployed attorneys with the underserved public. The program is a classic win-win by providing low-cost legal services to those who are just beyond the income guidelines for traditional legal service providers while giving newer attorneys the opportunity to do meaningful work for real clients. The state’s law schools participate by organizing students to do intake. More experienced attorneys also participate as mentors. The program helps lawyers build profitable practices at the same time it is serving the approximately 30 percent of Washington citizens living in moderate-income households.

The Foundation also supports First Responder Will Clinics around the state. I had the opportunity to watch one of these clinics in action in South Seattle. Seattle Deputy Police Chief Nick Metz and I greeted the volunteers from the Young Lawyer Division (now Committee) of the Bar before they fanned out to different conference rooms to meet with police and firefighter families. Also on hand were representatives from a local TV station that ran a story on the clinic that evening. Again, it was a win-win situation. Young lawyers got good experience, first responders got estate-planning services, and attorneys got positive publicity.

These programs were started by the WSBA and the WYLD respectively, but the Foundation allows the work to go on without using the same amount of license fee revenue. And, after the license fee rollback, that is critically important. These are the kind of programs that might not fit in an “austerity” budget, but they generate enormous goodwill for the profession, as well as fulfilling important public needs.

Right after the referendum, a number of attorneys suggested to me that they were willing to continue to pay $450 rather than $325 in order to support these kinds of programs. Now is your chance to put your money where your mouth is. After filling in your basic $325 on your renewal form, please consider adding another $125 for the Washington State Bar Foundation. If we build a strong Foundation, we can continue to support these two programs and develop additional ones aimed at promoting access to justice and diversity—all without relying on license fees. And because the $125 is something of a windfall, your support of the Bar Foundation does not have to impact your support for the Campaign for Equal Justice.

Thanksgiving is around the corner and most of us have a lot to be thankful for—great families and interesting work that pays reasonably well. But some of our neighbors are still hurting badly from the economic downturn, out of work and out of luck. Others are limping along, but without money to pay for a divorce, a domestic violence restraining order, or a will. The Bar Foundation and the Campaign for Equal Justice offer ways to address these needs. Please give generously.

WSBA President Michele Radosevich practices in Seattle. She can be reached at micheleradosevich@dwt.com or 206-757-8124.

Michele Radosevich
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A man sits in a bar association conference room. It is a Friday afternoon and he is surrounded by model rule books, disciplinary reports, and a thick red textbook sprinkled with wide green Post-its. He unearths a small rectangular piece of paper pressed between the textbook pages, places it on the table and, with three fingers, pushes it forward. On the paper is a black-and-white cartoon of a couple at the dinner table. The cartoon man explains that while he would like to tell his wife about his day, doing so violates law firm policy. The wife looks appalled.

Talking about one’s day does more than potentially violate “law firm policy,” it violates the code of professional ethics. Back in 2010, Doug Ende, WSBA chief disciplinary counsel, taught professional responsibility at the University of Washington School of Law and used this cartoon with his class to discuss the principles of confidentiality at the heart of the legal profession. In a time and culture where open communication between significant others is praised, Washington lawyers may need a refresher on the confidentiality obligations that accompany licensure. It may also be time to talk about whether these obligations are reasonable.

**Thou Shall Not . . .**

The sources of lawyer confidentiality are varied. There is the obvious source — the attorney-client privilege — that prevents a lawyer from disclosing statements made by a client. There are principles of confidentiality that emerge from agency or fiduciary duties that arise depending on the type of work the lawyer is conducting. But frequently misunderstood by attorneys, and the people with the sometimes unfortunate pleasure of loving them, are the ethical duties of silence that accompany RPC 1.6.

RPC 1.6 provides: “A lawyer shall not reveal information relating to the representation of a client unless the client
Pillow Talk — Ask the Chief

I’ve asked WSBA Chief Disciplinary Counsel Doug Ende to weigh in on your potential responses to this question: You get home one evening after working quite late. You open the bedroom door and slip into bed. Your significant other

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<th>ENDE’S TAKE</th>
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<td>“Good news. I landed Acme as a client. The Coyote v. Acme trial will really help me make partner.”</td>
<td>Probably a violation of RPC 1.6.</td>
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<td>“We were in trial again. Coyote testified today that he broke both legs using the rocket pack. You should have seen it. The courtroom was packed with people watching us.”</td>
<td>Probably a violation of RPC 1.6.</td>
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<tr>
<td>“I took a deposition where I really nailed the coffin shut on the plaintiff’s case.”</td>
<td>Probably a violation of RPC 1.6.</td>
</tr>
<tr>
<td>“It was just a busy day at work. Go back to sleep.”</td>
<td>No violation. This conservative approach might have adverse personal or social consequences, but it would tend to ensure compliance with the literal language of RPC 1.6.</td>
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most lawyers will never find themselves with an RPC 1.6 exception. It is also not a stretch to say that almost all attorneys will find themselves returning home and crawling into bed with someone who will ask, “What were you working on that kept you at the office so late?” Or even more commonly, “Hi, honey. How was work?”

A lawyer committed to following the rules of professional ethics is immediately put in an isolating position. Any information relating to the representation of a client is a disclosure forbidden by RPC 1.6. How can lawyers ever get off their chests the weights of the day with the people in their lives when there are no RPC 1.6 exceptions that allow attorneys to provide a sufficient answer to either question?

“Does the information relate to the representation? That is the only test the rules provide,” Ende explains. It is a strict liability standard, and cautious attorneys should be mindful of the broad reach of these obligations.

But why does it seem like lawyers are committing violations everywhere from cocktail parties to between the sheets?

A History Lesson

The professional restrictions upon lawyers were not always so strict on limiting what a lawyer could talk about with the people in his or her life. Starting in 1917, lawyers in Washington were governed by the ABA Model Canons of Professional Ethics, which described confidentiality as follows: “It is the duty of a lawyer to preserve his client’s confidences. This duty outlasts the lawyer’s employment, and extends as well to his employees; and neither of them should accept employment which involves or may involve the disclosure or use of these confidences, either for the private advantage of the lawyer or his employees or to the disadvantage of the client, without his knowledge and consent, and even though there are other available sources of such information.”

The Canon had no definition for client confidence back then. “So a lawyer might reasonably conclude that some social sharing of information was not prohibited,” Ende says. At dinner parties, these attorneys may have been more able to discuss their victories.

In 1972, Washington adopted the ABA Model Code of Professional Responsibility. Canon 4 of the Code stated, “A Lawyer should preserve the confidence and secrets of a client.” The disciplinary rule defined “confidence” as “information protected by the attorney-client privilege under applicable law.” It defined “secret” as “other information gained in the professional relationship that the client has requested be held in violation or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.”

“Under the Code, in a social situation a lawyer might conclude she could make a disclosure if the information was not subject to the attorney-client privilege, the client had not requested nondisclosure, and the lawyer concluded that the disclosure would not be ‘embarrassing’ or ‘likely detrimental’ to the client. Thus, a lawyer could believe she had a measure of discretion in making non-privileged disclosures,” Ende says.

In 1983, the ABA promulgated the ABA Model Rules of Professional Conduct and used the phrase “information relating to the representation” for the first time. Two years later, in 1985, when Washington went to adopt these rules, it rejected the “information relating to the representation” language and kept the confidence/secret regime.

It was not until 2006 that Washington adopted the broader model rule language that exists today. Comment 19 confirms what is evident — RPC 1.6 is much broader than “confidences” and “secrets.” Most lawyers practicing law today did not learn this RPC 1.6 in law school and in preparation for the bar exam. That may be why there are so many misconceptions.

Four Common Misconceptions

There appears to be no shortage of attorneys who routinely tell their significant others and/or children more about what they do than permitted by the Rules of Professional Conduct. Here are some common misconceptions attorneys have about their duty:

1. “I don’t tell my wife anything that isn’t available in court records or other public sources.”

This is not a valid justification. Just because the information you disclose is otherwise available in court records does not mean that you can talk about it. If it is information that you know...
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because of your representation of a client, it is information that the Rules of Professional Conduct prevent you from discussing with the people in your life.

2. “He is my husband. He couldn’t testify about it in court.”

While it is great that you have an open relationship with your husband, thinking about your disclosures in this way is inconsistent with the Rules of Professional Conduct. The prohibition of disclosures goes beyond concerns of what may one day be testified to in court. RPC 1.6 centers on something broader — the idea that attorneys should not be discussing any information that is learned through representation. Vio-

lation occurs regardless of whether the information can show up in court. With astronomical divorce rates, consider how easy it might be for your spouse to abuse the trust that you have placed with him/her.

3. “I only talk about my successes: what harm can come from that?”

Behind the former “secrets” language was an understanding that some harm must come from the disclosure. The broader language does not require such harm — it almost implies that the very act of an attorney talking about the work he does is harm in itself. While this may factor into the level of discipline that occurs if a complaint is made to the bar, it is not a defense to a finding that you violated the Rules of Professional Conduct.

4. “I don’t say who the client is.”

The comments to the rules are meant to guide attorneys. Comment 4 to RPC 1.6 provides that an attorney can talk in hypothetical scenarios as long as there is no way to reasonably decipher who the client is. This may be helpful to an attorney who enjoys posing hypothetical scenarios to his wife over lima beans and macaroni, but most spouses will not long stand for “hypothetical” these days. By their very nature, hypothetical scenarios are “what-if” scenarios and cannot answer the question, “What did you do today?” or “How was work?”

Does RPC 1.6 Expect Too Much?
G. Andrew Benjamin, J.D., Ph.D., ABPP,
is quite familiar with lawyers and law students. After he received his law degree, he set out to explore the psychology of the profession. He completed several empirically-based studies on law students and lawyers, and has spent a large part of his career looking at Washington lawyers and their mental health. His research, which has collected data from hundreds of lawyers, leads him to feel very concerned about the impact of the language of RPC 1.6.

“Lawyers are within a profession that suffers greatest from alcoholism and depression when compared with other professions. One-third of actively practicing lawyers suffer from one or both,” he explains. While it is not immediately clear what causes the increased problems, there is little doubt that these problems are greater in lawyers than for other professional fields.

“We know being able to express yourself is part of the solution to a very real problem. Talking about your day is a recommended treatment for stress prevention. It is the way to stay close to your husband or wife, partner, and kids. It is unreasonable to expect lawyers not to talk, and if lawyers strictly adhered to the RPC, it would lead to greater psychopathology,” Benjamin says.

Benjamin believes that depression and addiction in lawyers has a substantial impact on how the justice system functions. The change from a more permissive RPC 1.6 to the very restrictive RPC 1.6 standard that we have today does more than prevent discussions about one’s day. If truly followed, it has the potential to exacerbate what he sees as a serious problem impacting the justice system.

Is This Academic?
It is somewhat difficult to talk about the extreme restrictions on the private lives of attorneys that RPC 1.6 creates without talking about discipline. In some ways, it seems like a speed limit on Interstate 90: people routinely exceed speed limits, but if you do, you accept the risk that a police officer has the right to issue you a ticket. The only difference here is that there is practically no patrol. “The disciplinary process is primarily complaint-driven,” Ende explains.

Between 2009 and 2011, there have been only four public disciplinary actions where the central allegation was an RPC 1.6 violation. No lawyer has received greater than a reprimand during this time. For perspective, the Bar imposed discipline in 229 instances during this time period. Therefore, RPC 1.6 violations make up a little under .02 percent of Bar disciplinary actions. In Ende’s time as chief disciplinary counsel, he is unaware of any Washington RPC 1.6 complaint that came from disclosing RPC 1.6 information to a romantic interest or social circle. But that does not mean it will not happen. It happened in Indiana.

In 2010, the Indiana Supreme Court heard In re Anonymous, 932 N.E.2d 671. In that case, an attorney challenged the bar association’s attempt to impose a private reprimand. The attorney had disclosed information learned from an organizational client’s employee about that employee’s marriage to the employee’s friend. The attorney meant well — the disclosure was to a mutual friend for the purposes of getting her support during the divorce. Unbeknownst to the attorney, the employee had already reconciled with her spouse. The employee filed a bar complaint. The attorney did not disclose anything that was not in public records. Indiana Supreme Court affirmed the private reprimand finding “information relating to representation” to be so broad as to prohibit the disclosure. The Court pointed out that the lawyer may have disclosed information that was not in public records, but the court held that it didn’t matter because even disclosure of information in a public record violated RPC 1.6.

While this situation rarely plays out in the back pages of the Bar publication, there is certainly risk that accompanies RPC 1.6 violations. But there are also relationship and mental health risks with the isolation that accompanies upholding RPC 1.6. For the more than 40 percent of Washington attorneys who are solo practitioners, there is ethnically no one to talk to. For those in firms, the conversation still must cease on your way out the door.

Jamila Johnson is a litigator in the Seattle office of Schwabe, Williamson & Wyatt, a regional law firm. This article does not represent the official position of the Washington State Bar Association. She is the chair of the WSBA Editorial Advisory Committee. She can be reached at jajohnson@schwabe.com.
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desses usually are structured as entities to insulate the individuals involved from personal liability. People commonly understand that a business entity such as a corporation will be responsible for its obligations and liabilities, but that the individuals involved in the entity will not. People are also generally familiar with the idea of piercing the corporate veil to assign individual liability to corporate owners or officers who disregard the corporate form for illicit advantage. In addition, individuals may face tort liability if they act intentionally and wrongfully while pursuing business purposes. But it may be news to many corporate officers that they could be held personally liable for non-intentional conduct, such as some violations of the Consumer Protection Act (CPA) connected to their business. This article examines Washington cases addressing the “responsible corporate officer doctrine,” the contours of the doctrine, and ways this doctrine may affect your clients.

The responsible corporate officer doctrine purports to impose liability on individuals acting on behalf of a business entity when their conduct “justifies” personal liability. An early case to hold officers of a corporation personally liable for intentional torts of the corporation was *Johnson v. Harrigan-Peach Land Development Co.* (79 Wn.2d 745, 489 P.2d 923 (1971)). In this case, a land development company sold numerous parcels of vacant land based on false representations and warranties. The trial court found that, in addition to the corporation’s own liability, its officers were personally liable for the misrepresentations because the officers had instructed the sales agents on the false representations to be made and approved the sales literature containing the falsehoods. The reviewing Washington State Supreme Court af-
firmed the judgments, remarking that a corporate officer's “immunity” from liability based on the acts of the corporation "vanishes if such corporate officer knowingly participated in, cooperated in the doing of, or directed the acts be done." (79 Wn.2d at 753.) Where the officers' participation in the wrongful conduct was supported by substantial evidence, the Court held that personal liability was well-founded. The Supreme Court noted that the officers "participated in and directed the doing of acts which the Court held to be fraudulent and deceitful" (id.), justifying personal liability. The holding in Johnson is distinct from the notion of piercing the corporate veil; corporate officers may be held liable for their own complicity in wrongful acts regardless of whether they respect the corporate form.

Later in the 1970s, the rule announced in Johnson was extended to liability under the Consumer Protection Act in State v. Ralph Williams' N.W. Chrysler Plymouth, Inc. (87 Wn.2d 298, 317–18, 553 P.2d 423 (1976)). This case again concerned false statements in sales practices, but this time the CPA was pled. Where an owner/manager of a car dealership formulated and supervised the false sales information, the court held personal CPA liability was appropriate. The falsities concerned blatant lies about selling cars at prices lower than other area dealers, why they could sell cars at lower prices, the existence and value of certain warranties, that the business operated a "huge factory-type reconditioning plant" when it did not, credit terms, the existence of defects in cars, and whether advertised cars were available. (Id. at 305–306.) In sum, the evidence at trial demonstrated that the entire sales program was designed to deceive customers based on known falsehoods and classic bait-and-switch tactics. Under these egregious facts, the trial court ruled that the business "flagrantly and intentionally engaged in" these deceptions and wrongful practices. (Id. at 309.)

The Supreme Court held that substantial evidence supported the findings. (Id.) Regarding the owner/manager's personal liability, the Supreme Court relied on Johnson to impose joint and several liability on Ralph Williams personally. The Supreme Court remarked that "participating" or "approving" the wrongful conduct justified individual liability. (Id. at 322.) While
relying on *Johnson*, a case that did not concern the CPA, the Supreme Court expanded the responsible corporate officer doctrine to include liability under the CPA without directly addressing this expansion.

This development suggests two concerns for individuals. First, non-intentional conduct can lead to liability. Given the egregious and intentional acts at issue in *Johnson*, the expansion of liability to the CPA appeared a natural fit. While in *Ralph Williams* there were intentional and actual misrepresentations, the CPA requires “neither intent nor actual deception.” (See *State v. Kaiser*, 161 Wn. App. 705, 719, 254 P.3d 850 (2011).)

Second, an act that alone is not deceptive may lead to liability when the conduct of other actors is also considered. Deceptive acts or practices under the CPA is not always comprised of distinct conduct, but can be a series of actions that examined together are capable of deceiving the public. In those instances, the “participation” standard may not be clearly applied to actors participating in some, but not all, of the conduct that establishes a deceptive act.

Subsequently, in *Grayson v. Nordic Constr. Co.* (92 Wn.2d 548, 554, 599 P.2d 1271 (1979)), where an advertising brochure was found unfair and deceptive under the CPA, the business’s president, manager, director, and majority stockholder who had authored the brochure and directed its mailing was found personally liable under the CPA. The brochure represented that financing was available when it was not. Here, personal liability under the CPA for these direct lies was imposed. And, as with *Johnson* and *Ralph Williams*, the theory of liability was distinct from a piercing of the corporate veil.

The jurisprudence to date concerns corporate officers. There is little reason to believe the doctrine would not apply equally to members of a limited liability company.

Some Washington cases ostensibly applying the responsible corporate officer doctrine impose statutory liability under regulatory schemes where “owners,” “operators,” or “any person” have been designated by the Legislature as persons subject to liability. In *State Dept. of Ecology v. Lundgren* (94 Wn. App. 236, 791 P.2d 948 (1999)), for example, a business owner was held liable for violating Washington’s water pollution control act (RCW 90.48), when his sewage treatment plant spilled. The statutory definition of “persons” liable under the act specifically included “individuals,” which the court held to evidence a legislative intent to hold individuals responsible. In *Lundgren*, the court traced the responsible corporate officer doctrine to the United States Supreme Court decision, *United States v. Dotterweich* (320 U.S. 277, 64 S. Ct. 134, 88 L. Ed. 48 (1943)), which is somewhat odd since *Dotterweich* dealt with criminal liability and Washington case law had never before cited *Dotterweich* in the context of its own responsible corporate officer doctrine.

The *Lundgren* Court then outlined...
application of personal liability for violations of federal regulations before concluding that violations of Washington’s water pollution control act warranted personal liability. Based on the owner’s “hands-on control of the facility’s activities” and control of corporate conduct, the court held he “could be deemed an active participant” in the conduct. (94 Wn. App. at 245.) The court also relied on the owner’s knowledge of the violations while they were occurring. (Id.) The body of case law where liability is imposed under regulatory schemes, however, often turns on statutory definitions of “owner,” “operator,” or “person.”

Some confusion may exist regarding the intersection of the responsible corporate officer doctrine, a common law invention, and statutory liability as defined by a legislature in specific statutory schemes. At the least, it is unclear that the corporate responsibility doctrine is necessary where the legislature has already determined that personal liability of individuals will lie for violations of specific statutes.

The jurisprudence to date concerns corporate officers. There is little reason to believe the doctrine would not apply equally to members of a limited liability company. When the Washington State Legislature adopted the Limited Liability Company Act in 1994, it contained a provision providing that LLC members are personally liable for acts of the LLC “to the extent that shareholders of a Washington business corporation would be liable in analogous circumstances.” (RCW 25.15.060; 1994 c 211 § 112 (Second Substitute House Bill 1235, Chapter 211, Laws of 1994).) While this section is entitled “Piercing the veil,” the language within the provision appears broad enough to cover additional theories of individual liability beyond piercing the corporate veil — i.e., member wrongdoing. (See State v. Ralph Williams’ N. W. Chrysler Plymouth, Inc., 87 Wn.2d at 321–22 (“alter ego theory” is not the “only one” to impose personal liability); Grayson (same).)

A recent unpublished Division I case affirmed personal CPA liability against LLC members without discussion of the issue. Plumb Serve, LLC v. Scoby (2012 Wash. App. LEXIS 1847 (2012)). While a future case might expressly resolve whether the responsible corporate officer doctrine applies to LLC members, the body of case law should be considered when LLC members are involved.

The responsible corporate officer doctrine is different from imposing liability based on piercing the corporate veil. It simply depends on evidence of the personal acts of the individuals involved. When the corporate veil is pierced, the individuals are liable for the acts of the corporation as an alter ego of the corporation where the corporation has been used to violate or evade a duty to another. (Meisel v. M&N Modern Hydraulic Press Co., 97 Wn.2d 403, 409–10, 645 P.2d 689 (1982).) Under the responsible corporate officer doctrine, the individual is liable for that individual’s acts, which includes actions approving or directing the actions of others. (Johnson, 79 Wn.2d at 753.) Said another way, when a corporate officer commits a wrongful act, the officer will not be shielded from personal liability simply because of the corporate form. This is the case even though the officer was acting in furtherance of the corporation’s interests and even where the high standard for piercing the corporate veil could not be reached.

Some contours of the responsible corporate officer doctrine remain to be defined. For example, tension exists in the case law where the underlying wrongful conduct is not intentional or egregious.

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Some contours of the responsible corporate officer doctrine remain to be defined. For example, tension exists in the case law where the underlying wrongful conduct is not intentional or egregious.
We have already seen in Ralph Williams that the Supreme Court expanded the doctrine to include CPA liability, but only in a case where the underlying conduct was intentional and “flagrant.” A 2002 Court of Appeals decision rejected imposition of liability for statutory violations, stating that the conduct involved was not sufficiently wrongful or deceptive to “justify imposing personal liability on the corporation’s sole corporate officer” under the doctrine. (One Pac. Towers Homeowners’ Ass’n v. HAL Real Estate Invs., Inc., 108 Wn. App. 330, 347–48, 30 P3d 504 (2001), aff’d in part and rev’d in part, 148 Wn.2d 319, 613 P.3d 1094 (2002).) In One Pac, Towers, the plaintiff attempted to hold a corporate officer personally liable for approving of and participating in the corporation’s violations of the Condominium Act, which essentially alleged failure “to comply with certain statutory duties imposed by that statute.” (Id. at 347–48.) The court found this not actionable under the responsible corporate officer doctrine. The court stated that “[t]he actions by the OPT entities do not rise to the level of those condemned by the court in Ralph Williams.” The court noted that no misrepresentations or fraud were alleged. The court concluded that “we cannot say that either the OPT entities or Manheim engaged in conduct so wrongful or deceptive that it would justify imposing personal liability...” (Id. at 348.)

This distinction recognizes that the bridge between a corporate officer’s liability for intentional, egregious acts and for blander, technical violations or non-intentional conduct is not solid. It illustrates the principle behind the development of the doctrine that the conduct must be wrongful or egregious. The scope of the limitation recognized by the One Pac. Towers court is inexact. It appears to leave a court free to judge whether the wrongful conduct is of a sufficient “level” to “justify” imposition of personal liability. If failure to provide a statutory disclosure pursuant to the Condominium Act is not actionable, and egregious sales lies are, what about conduct that falls in the middle? This area appears ripe for additional development.

The Washington Supreme Court in October 2012 rejected a tort claim against officers of a bank based on reasoning similar to that of the One Pac. Towers court. In Annechino v. Worthy, No. 86220-6 (Oct. 18, 2012), the Supreme Court characterized the body of case law establishing the responsible corporate officer doctrine as applying to officers “who either knowingly committed wrongful acts or directed others to do so knowing the wrongful nature of the requested acts.” It concluded that “honest mistakes” are not actionable. The analysis focused on the existence of a duty, which was not explored in the prior cases. This new decision, which did not involve a CPA claim, may be on a collision course with the cases where a CPA claim was at issue. It is unclear how the Court would reconcile its emphasis on state of mind in the Annechino case with the elements of a CPA claim. Perhaps where a CPA claim is at issue, a plaintiff still would have to show knowing wrongful acts to establish personal liability, even where that would not be required against the corporate entity.

Another issue left open from the decisions to date is how much involvement and participation by any one individual is necessary to warrant liability. Issues regarding who knew what when, the chain of command, actual knowledge versus “should have known,” and reporting or oversight responsibilities suggest that future cases are likely to present shades of grey in application of the
doctrine. Where the individual actors are not sympathetic or are working in a small business where their day-to-day control is apparent, a court is likely to impose liability. This happened in the unpublished Plumb Serve case, where one principal of the plumbing business saw the underlying paperwork containing the scope of work and the billing that the court characterized as “predatory,” and also filed the lien paperwork when the business attempted to collect on the outstanding invoice. The second principal oversaw the first, and his disclaimer of knowledge was found not credible by the trial court during the bench trial.

At the other end of the spectrum, the more attenuated the individual’s connection to the conduct at issue, the better the chance to avoid liability. An individual responsible for oversight may need to show that the conduct at issue was concealed from him. These distinctions suggest that the officer of a small business is at greater risk than the corporate officer of a larger corporation, who may be more insulated from day-to-day decisions or operations more likely to run afoul of the CPA.

The responsible corporate officer doctrine is an additional theory of liability that adds another arrow to the plaintiffs’ attorney’s quiver. It is a theory that any tort or CPA plaintiff suing an entity should consider. Attorneys who represent officers, owners, and employees of entities should take care to counsel their clients on this potential for personal liability. Such a presentation could go hand-in-hand with a client refresher on the CPA or any other statutory schemes applicable to your client’s business. Prevention is the best way to avoid future litigation, and knowing that the business’s individuals are personally on the line could provide great motivation for changing and vetting business practices. Defense attorneys also should consider conflict-of-interest issues concerning entities and the human actors involved, or at least another dimension to defense of tort or CPA claims.

Attorneys also should be aware of the potential for a plaintiff to first obtain a judgment or arbitration award against an entity and then raise the same claim against the individuals involved based on res judicata. Whether to include an arbitration agreement or other dispute resolution procedures in a business’s contracts has implications for the individuals as well, and thought should be given to that aspect of the entity’s standard documents. The scope of any arbitration agreement should be considered.

Because there are many aspects of the responsible corporate officer doctrine that remain untested, parties involved in future disputes may find themselves aggressively litigating the issues and making new law.

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NOTE
1. This portion of the Court of Appeals decision was not reviewed by the Supreme Court in One Pac. Towers Homeowners’ Ass’n v. Hal Real Estate Invs., 148 Wn.2d 319, 61 P.3d 1094 (2002).
The Washington State Supreme Court decided a case earlier this year that raises issues over fundamental principles of government. The case concerns open government, autonomous self-governance, and perhaps most importantly, the decision pits the strength of the judiciary against the governor’s office.

The Court’s Decision and Tax Compacts
In its Aug. 30, 2012, decision, Automotive United Trades Organization v. State of Washington, P.3d, (Wash. 2012), the Washington State Supreme Court ruled that a lawsuit challenging the constitutionality of several state-tribal gas tax compacts may proceed even though the tribes, which enjoy sovereign immunity, could not be joined in the action.

A 2005 federal court decision found that a tribe’s sovereignty prohibited the state from levying fuel taxes at tribal gas stations. In response to that decision, the state Legislature authorized the governor to execute agreements with any of Washington’s federally recognized tribes regarding the state’s motor vehicle gas tax imposed on fuel delivered to retail stations on tribal land.

As a result, the governor signed fuel tax compacts with 22 Washington tribes. Each agreement is different, but they all share common attributes. Under most agreements, tribes agreed to collect state taxes from consumers who purchased gas at tribal stations. In exchange, the state agreed to refund 75 percent of the revenue, provided the tribes, among other things, use the proceeds for highway-related purposes.

In an action filed last year, the Automotive United Trades Organization (AUTO) — a nonprofit trade association that represents about 300 non-
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At first glance, the Court’s opinion is an uneventful procedural inquiry: it examines a trial court’s decision to dismiss an amended complaint for the plaintiff’s failure to join an indispensable party under CR 19. But under the surface, the decision is a weighty discourse about governmental transparency, separation of powers, and sovereignty.

— are indispensable parties that cannot be joined because they are immune from suit. The trial court agreed that the matter could not proceed without the tribes and dismissed the case.

But, writing for a divided 5–4 majority, Justice Debra L. Stephens overturned the lower court’s dismissal. Justice Stephens found the tribes were necessary parties and that their joinder was not feasible because sovereign immunity applied. The Court
then analyzed the four-factor test listed in Civil Rule 19(b) and asked finally whether, “in equity and good conscience,” the case could proceed without the tribes. Three of the four factors (prejudice, the ability to fashion adequate relief, and the adequacy of judgment) clearly supported dismissal. But the final factor tipped the scales at last in AUTO’s favor: if dismissed, AUTO would lack an alternative forum in which to seek a remedy.

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**Governmental Transparency**

If the Court upheld the lower court’s dismissal, then the state’s conduct would effectively be immunized from judicial scrutiny. Phil Talmadge, former state senator, former Washington State Supreme Court justice, and AUTO’s current counsel, believes the decision affords transparency and accountability to the governor’s tax-compact practice. Never in his career has Talmadge seen money withdrawn from the state’s treasury without legislative appropriation. “The tax compacts are a straw in our state’s treasury. Under the compacts, money is withdrawn from the state’s motor vehicle fund without legislative approval,” Talmadge said.

In that regard, Talmadge has a friend in Van Collins, an attorney who filed several amicus briefs in the matter. Collins agrees that holding the state accountable for the refunds it provides tribes is paramount. Collins adds that holding the governor constitutionally accountable for the funds released through these compacts will build confidence with Washington’s electorate in our state’s ability to fund public needs.

John Sledd, who represents four tribes with compacts — the Squaxin Island, Suquamish, Port Gamble S’Klallam Tribes, and the Swinomish Indian Tribal Community — delivers an alternate view. Sledd points out that the compacts require tribes to...
conduct a third-party audit to ensure refunded gas money is obligated for transportation services. But there is good reason to question the independent nature of these audits: the tribes not only select the auditor, but under RCW 82.36.450 the final written audits are also "exempt from public inspection and copying."

From all this, it is clear these tax compacts involve three different types of governmental oversight: electorate review, private third-party audit review, and judicial review. But in reaching its conclusion, the Court demoted the first two options in favor of the third; the Court allowed the case to proceed in the trial court, even without the tribes as parties, because the Court — in its own eyes — affords a superior form of governmental supervision. This is expected: the Court naturally chose judicial review over the other options because that selection is supportive of its own power. And is it that preferential treatment that implicates issues of separation of powers.

Separation of Powers
Rene Tomisser, the associate attorney general handling the matter for the state, views the Court’s decision as an affront to the governor’s decision-making authority. Notably, according to Tomisser, AUTO did not challenge the governor’s authority to execute tax compacts, but rather it challenges how the money is spent. In light of that, the decision is, to Tomisser, an example of “the Court issuing a mandamus instructing to governor to act in a particular way.”

But Tomisser’s view discounts the importance the judiciary’s oversight powers play in state governance. The Court hit the mark when it made clear in its decision that the “notion that potentially unconstitutional government conduct” could escape judicial scrutiny violates a bedrock principle established at our nation’s earliest founding.

Channeling John Marshall to buttress this point, the Court quoted Marbury v. Madison for the proposition that it is “emphatically the province and the duty of the judicial department to say what the law is.” In doing so, the Court placed its sword of judicial inquiry at the Executive’s neck in a stark reminder that governmental action is rarely shielded from judicial mandate.

Along these lines, Justice Mary E. Fairhurst’s dissent can be turned on its head. Justice Fairhurst urged dismissal, stating that even though dismissal “may seem harsh,” according to the dissent, “it should not seem surprising; courts have long understood that the doctrine of sovereign immunity shields certain controversies from judicial review.” But in the same way, it can be said that tribal sovereignty is simply a casualty, even though harsh, of the tribes’ decision to strike an accord with a state government whose conduct cannot escape judicial scrutiny.

Sovereign Immunity
The recognition that Indian tribes are sovereign nations — and therefore enjoy sovereign immunity — predates even our country’s founding. And since then, Congress has consistently recognized tribal immunity in order to promote Indian self-government, self-sufficiency, and economic development. Still, tribes and states across the country spent much of the latter half of the 20th century in court — at substantial cost — litigating territorial taxation disputes.
But in 1991, the U.S. Supreme Court, in *Oklahoma Tax Comm’n v. Potawatomi Tribe*, 498 U.S. 505, announced that tribal sovereign immunity bars lawsuits to enforce most state taxation claims against tribes and its members on tribal land. Instead of direct taxation, states were encouraged by the U.S. Supreme Court to “enter into mutually satisfactory agreements with tribes for the collection of taxes.” Resolving tax disputes by mutual intergovernmental agreement helped soften the historical position that state-tribal relationships are contentious ones — states are sometimes considered tribes’ “deadliest enemies” — and promoted a more industrious practice of resolving differences through mutual negotiation.

The Court’s decision, according to Gabriel Galanda, an enrolled member of the Round Valley Indian Tribes of Mendocino County, California and Seattle Indian law attorney, spells fallout for burgeoning state-tribal relations. “Currently, there are over 200 state-tribal tax agreements in effect nationwide, resolving *ex ante* a variety of potential tax disputes. And Washington state and its tribes are just starting to smooth out the edges of their tax disputes using compacts,” said Galanda. “But now,” he explains, “the Court’s decision permits suits against tribes, essentially, *in absentia*.”

If the Court’s decision was lacking proper deference for tribal immunity, then it might cast doubt on the judiciary’s respect for tribal sovereignty. But the Court made clear that its decision was not reached because AUTO’s litigious interests trumped its reverence for tribal sovereignty. Rather, for the Court, it was the judiciary’s interest in deciding “constitutional questions about government conduct” that overrode the tribes’ lesser contractual interests. When the issue is framed this way — constitutional review of state action vs. tribal contract rights — the result seems obvious: the case can proceed in good conscience even without tribal participation and without undue disregard for tribal sovereignty.

**Final Observations**

A few final observations: first, the tribe is not without recourse; it can decide to waive its immunity, join the action, and defend its contractual interests. Also, the Court’s decision might foretell a pro-judicial agenda with significant consequences for future decisions, including the Court’s pending review of Judge Bruce Heller’s May 30, 2012, ruling that the Legislature’s supermajority requirement to raise taxes is unconstitutional.

Lastly, bringing these tax compacts within the judiciary’s domain might support the Court’s possibly hidden position that our State’s Constitution is, at least in part, an economic document. The state’s 20-year transportation budget is projected to fall short by $175–200 billion. And yet these tax compacts divest the state of needed income: in 2010 alone the state refunded about $28 million under its compacts — up significantly from prior years. The Court, in reaching its decision, might have recognized an opportunity for the Constitution to serve as a tool for economic recovery as much as anything else.

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The 2012 WSBA Awards
Honoring WSBA’s Best

Tonight is a special night, a night in which we honor those for their exemplary spirits, unparalleled achievements, commendable professionalism, courageous acts, and selfless contributions to our profession, our communities, and the greater society in which we serve . . .

Tonight, you will see and hear about individuals that embody what our profession is all about. I invite you to join me in commending and congratulating each of them. While their paths and stories may differ, their drive to do what is right and just is much the same.

Thank you for joining us for this wonderful evening, and thank you for the opportunity to serve as your president. It’s a proud night for all.

— 2011–12 WSBA President Stephen Crossland’s President’s Message, Awards Dinner Program

J. Harold Anderson
(awarded posthumously)

“J. Harold Anderson served as an inspiration to me to become a lawyer from a very early age and continues to be a shining example of professionalism and contribution to one’s community,” said WSBA President Stephen Crossland.

J. Harold Anderson received his law degree from the University of Washington School of Law and moved to Cashmere in 1929 to open his law practice. During World War II, Anderson closed the practice for two years to join the U.S. Army Counter Intelligence Corps, where he served as security on the atomic bomb project at Trinity. Returning to his practice after the war, Anderson was a sole practitioner until two young lawyers approached him in the early 1970s. He mentored and became partners with Terrence M. McCauley and Stephen R. Crossland, a relationship that continued until Anderson’s retirement in 1980. Anderson was nationally recognized as an expert in estate planning and probate law.

Anderson was a pillar of the community during his more than 50 years in the practice of law, acting as city attorney, past chair of the Board of Directors of Cashmere Valley Bank, one of the founders of the Cashmere Rotary Club, and chair of the Board of Trustees for Eastern Washington State College (now EWU).

Lifetime Service Award
Given for a lifetime of service to the WSBA and the public.

Hon. Tom Chambers

“I can think of no one more deserving of the Lifetime Achievement Award than Justice Tom Chambers, who has been a president of the WSBA, a Supreme Court justice, and a long-time advocate for making the justice system more accessible to people without money,” said WSBA President Michele Radosevich.

Justice Tom Chambers was raised in Wapato, attended Yakima Valley Community College and Washington State University, and received his law degree from the University of Washington School of Law. Justice Chambers was elected to the Washington State Supreme Court in 2000 and re-elected in 2006. Prior to joining the court, he enjoyed a distinguished legal career as a preeminent trial lawyer. Justice Chambers has served as president of four statewide lawyer organizations, including the WSBA. Justice Chambers has published more than 100 articles, authored a two-volume book, and has written and produced two instructional videos. He regularly speaks to high schools and community groups around the state about the law and the judiciary.

Justice Chambers and his wife, Judy, received the Good Neighbor Award in 1999 for 20 years of commitment and service to the residents of Seattle Public Housing. Justice Chambers serves as an honorary member of the Rise n’ Shine Foundation Board (a foundation dedicated to the
1. David Anderson, son of the late J. Harold Anderson, accepts the President's Award from Steve Crossland.

2. Hon. Tom Chambers accepts the Lifetime Service Award from Chief Justice Barbara Madsen.

3. Community Service Award Honoree James Douglas.

4. Excellence in Diversity Award Honoree Chach Duarte White.

5. 2012–13 WSBA President Michele Radosevich addresses guests.

6. Angelo Petruss Public Service Award Honoree David Huey.

7. Award of Merit Honoree William Dussault.

8. Norm Maleng Leadership Award Honoree Bruce Neas with ATJ Board Chair Kirsten Barron.

9. Pro Bono Award Honoree Kathleen Field.

10. David Edwards accepts the Courageous Award from Steve Crossland.


12. WYLD Outstanding Young Lawyer Award Honoree Robin Lynn Haynes.

13. Professionalism Award Honoree Steven Sackmann.

14. President-elect Patrick Palace is sworn in by Chief Justice Madsen.

15. New governors are sworn in.
children of parents who have contracted HIV/AIDS). Justice Chambers received the Distinguished Alumnus Awards from the University of Washington School of Law and from Yakima Valley Community College.

Community Service Award
Honoring a lawyer for exceptional non-law-related volunteer work and community service.

James A. Douglas

James Douglas is being recognized for his career-long dedication to serving the community, both through his work and through his commitment to volunteering. Douglas leads volunteer teams for Habitat for Humanity’s Global Village program, where he recruits volunteers and helps build homes for displaced and homeless communities around the world. He volunteers each week tutoring children at a local kindergarten and, with his wife, actively supports the Rainier Scholars program, which helps to mentor minority children from challenging circumstances. Douglas also oversaw the revival of the Rainier Valley Little League program, giving disadvantaged youth the opportunity to play alongside positive role models; he continues to serve as an umpire and plays in an adult softball league.

Douglas received his undergraduate degree from Stanford and served with the Peace Corps in Somalia before earning his law degree from Yale. He began his legal career with NW Washington Legal Services and was an attorney for Organizaciones Unidas, a community organization in San Benito, Texas.

Honoring a lawyer, non-lawyer, law firm, or bar association for outstanding efforts in providing pro bono services.

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.

Chach M. Duarte White

“Chach has worked tirelessly to make a significant contribution to diversity in the legal profession’s employment of ethnic minorities, women, persons with disabilities, and other persons of diversity,” said Professor Paula Lustbader, director of the Seattle University School of Law’s Academic Resource Center.

Chach Duarte White received her law degree from Seattle University School of Law. Her legal career began as a staff attorney with the Northwest Justice Project, where she provided civil legal advice primarily to monolingual Spanish-speaking clients through the CLEAR line, Washington’s centralized intake, advice, and referral service for low-income people with civil legal problems seeking free legal assistance. Since 2005, she has maintained a solo practice, Duarte White Law, LLC, where she has provided Title 26 guardian ad litem services to monolingual Spanish-speaking clients. She later worked as an associate director of Seattle University School of Law’s Academic Resource Center, where she taught as an adjunct professor for its Legal Writing ARC program, and taught criminal law study strategies. From 2008–12, she was the WSBA diversity program manager, tasked with advancing and promoting diversity, equality, and cultural understanding throughout the legal community. This year, she played an integral role in the creation and execution of the inaugural Judicial Institute, a collaborative program developed to encourage and assist minority attorneys to run for judicial office in Washington state.

Award of Merit
Given for long-term service to the Bar and/or the public, or in recognition of a single, extraordinary contribution or project.

William L.E. Dussault

William Dussault was a co-author of Washington State’s Mandatory “Education for All” Law requiring free, appropriate public education for all children with disabilities; the nation’s first special education law, it became the model for federal legislation. He was also an originator of the “special needs trust,” now a standard in the field of disability law, and helped to write the federal law on special needs trusts.

Dussault has served on the WSBA Rules of Professional Conduct Committee and was vice-chair of the ABA Family Law Committee on Mental Disability. He is a member of the Professional Advisory Board of the Autism Society of America and is the founding president of the Washington Chapter of the National Association of Elder Law Attorneys. He has served as a legal advisor or board committee chair for the National ARC, the Epilepsy Foundation of America, and numerous state advocacy organizations, including those representing seniors with Alzheimer’s and Parkinson’s disease.

Courageous Award
Presented to a lawyer who has displayed exceptional courage in the face of adversity.

Hon. David L. Edwards

Judge Edwards is being recognized for his courage during an incident in March 2012, in which he risked his life to stop an armed assailant who was attacking a deputy sheriff in the Grays Harbor County Courthouse, in Montesano.

Judge Edwards served in the Grays Harbor Prosecuting Attorney’s Office where he was the chief criminal deputy prosecutor for two years. He has been a partner at the law firm of Edwards & Hagen, PS., for 13 years. He was appointed to the Superior Court bench by Gov. Gregoire in 2009. He received his law degree from the University of Illinois in 1974 and a Bachelor of Science degree from Illinois State University in 1970.

Award of Merit
Given for long-term service to the Bar and/or the public, or in recognition of a single, extraordinary contribution or project.

Kathleen C. Field

This award recognizes Field’s work in creating and operating a free family law clinic at Pathways for Women/YWCA and her long history of working with nonprofits. Since 2002, she has worked with Pathways for Women/YWCA, creating and staffing their family law clinic for low-income individuals, which is co-sponsored by Snohomish County Legal Services.
By joining forces with Hall-Conway-Jackson, HUB Northwest has enhanced its niche practice for Lawyers Professional Liability insurance. With no standard policy form for Lawyers Professional Liability, we take a proactive role as client advocate and consultant. As such, we design, negotiate and deliver comprehensive, cost-effective coverage tailored to meet the specific strategic needs of your firm.

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- Provides objective counsel on your current coverage

For a no obligation coverage review, please contact our Professional Liability Department.

Scott Andrews, CPCU
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Field began her legal career as a deputy prosecutor with the Snohomish County Prosecutor’s Office. She was the founder of A Better Way Mediation Services. She has also served as a judge pro tem with the Snohomish County Superior Court, a WSBA special investigator, and a WSBA hearing officer for disciplinary proceedings.

Field received her undergraduate degree from the College of Idaho and her law degree from the University of Washington School of Law; she also holds a master’s degree in political science from the University of Washington and is a certified mediator.

**Washington Young Lawyers Division — Outstanding Young Lawyer Award**

*Given to a new or young lawyer who has greatly enhanced the profession through noble and honorable practice of law.*

**Robin Lynn Haynes**

Haynes’s involvement in the legal community started shortly after her graduation from law school, when she began serving regularly as a volunteer judge for moot court and student competitions at Gonzaga. Since 2009, she has served as a mentor for first-year law students. She helped to organize an interview skills networking event in April 2012 for Gonzaga law students with the Spokane County Young Lawyers Division (SYLD) and the WYLD. Since 2008, she has served on the SYLD Board, as a trustee, secretary, president-elect, and president. Haynes served on the Spokane County Bar Association Board of Trustees and Strategic Planning Committee, as well as the Volunteer Lawyers Program’s Board of Directors. In 2010, she became the Greater Spokane District trustee to the WYLD Board of Trustees, also serving as its liaison to the Membership Outreach Committee. In June, Haynes was elected to the At-large (WYLD) position of the WSBA Board of Governors.

Robin Haynes received her law degree from Gonzaga University School of Law. She joined the firm of Reed & Giesa, P.S., in 2005 as a law clerk and, in 2011, became its first female partner.

**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.*

**David W. Huey**

This award recognizes David Huey’s career-long commitment to protecting vulnerable consumers and promoting ethical business practices. Huey is senior counsel for the Washington Attorney General’s Office. Huey was a chief negotiator for the Attorney General’s multistate working group and the joint federal state task force engaged in forming a historic $26-billion-dollar national settlement involving federal financial regulators, attorneys general from all 50 states, and leading financial service institutions. These cases have generated over $9 billion in consumer relief nationally, including hundreds of millions of dollars in relief directed to Washington consumers. Huey’s work on the Bank of America and Wells Fargo financial services matters resulted in $1.9 million of settlement recoveries being made available to the Washington State Housing Finance Commission to fund HUD-certified counselors and to the WSBA for its Home Foreclosure Legal Aid Project for homeowners facing foreclosure.

**Web XTra:** [http://tinyurl.com/davidhuey](http://tinyurl.com/davidhuey)

**Norm Maleng Leadership Award**

Maleng served as King County prosecuting attorney for many years — an innovative and optimistic leader committed to justice and access to justice in both civil and criminal settings. Presented jointly by the WSBA and ATJ, this award recognizes an individual who embodies Maleng’s love of the law and commitment to diversity and mentorship.

**Bruce D. Neas**

“Bruce has been a leader in the legal aid community for many years, but his leadership with respect to Washington state’s response to the foreclosure crisis over the past four years demonstrates his unwavering dedication to our client community,” said Threesa Milligan, director of King County Bar Association Pro Bono Services. “Bruce’s leadership has also been crucial in limiting the impact of the budget crisis on the legal aid community.”

Bruce Neas was involved in the drafting and negotiation of landmark legislation, including the Foreclosure Fairness Act, the Manufactured Housing Dispute Resolution Program, the Wage Payment Act, the Domestic Violence Leave Act, and the Tenant Relocation Act. He was chosen by the Washington Attorney General to serve on the Washington Consumer Foreclosure Remedies Fund Committee to make recommendations on the distribution of the $44 million available under the national mortgage settlement fund.

Bruce Neas has dedicated his career to legal services since his graduation from the University of Missouri–Kansas City School of Law in 1980. He was a managing attorney for Legal Aid of Western Missouri until 1984, when he became an attorney with Puget Sound Legal Assistance Foundation. From 1986 to 1996, he was the managing attorney of the Olympia office of Puget Sound Legal Assistance Foundation. Since 1996, Neas has been an attorney at Columbia Legal Services, where he has represented clients primarily in areas of housing, consumer, and education law.

**Outstanding Elected Official Award**

*Presented to an elected official for outstanding service, with special contributions to the legal profession.*

**Sen. Debbie Regala**

Sen. Debbie Regala is being recognized for her career-long commitment to championing individual rights, access to criminal defense and civil legal aid, fair and equal application of the law, and state funding to support all levels of the courts.

Regala serves the 27th Legislative District, which includes several areas of Tacoma. In 2005, Regala was an early supporter of the “Justice in Jeopardy” initiative, which infused new funding to all levels of courts, civil legal aid, criminal public defense, and parents’ representation in dependency cases. In 2007, she began a multi-year effort to address the state’s lack of rehabilitation services for prison inmates, co-chairing a statewide task force focused on problems faced by offenders coming out of prison and co-sponsoring legislation to improve released offenders’ opportunities to succeed in society.
In 2008, she shepherded passage of the bill that reauthorized the state Office of Public Defense, allowing Washington’s public defense improvement programs to continue uninterrupted. In 2011, she sponsored legislation to allow juvenile sex offenders who maintain a clean record to seal their records, allowing them to move beyond a juvenile conviction and create productive adult lives. In 2012, she co-sponsored and worked passionately for the passage of the Marriage Equality Act.

Web XTra: http://tinyurl.com/debbieregala

Professionalism Award
Honoring a WSBA member who exemplifies the spirit of professionalism — 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.

Steven H. Sackmann

“Steve has always demonstrated ... a practical and knowledgeable approach,” said Seattle attorney Gregory S. McElroy. “He epitomizes the small-town, regional lawyer who knows everyone and is trusted widely.... [He has] a willingness to train and mentor other lawyers, especially younger lawyers in the area; an approach to law that makes it a profession, not just a business; courtesy to other lawyers; and a willingness to help connect the people he sees with other members of the profession.”

Steven Sackmann, an Eastern Washington native born and raised in Odessa, received his undergraduate degree from Washington State University and his law degree from the University of Washington School of Law. His legal career has spanned four decades in private practice, focusing on farm Chapter 11 and 12 reorganizations, commercial and farm leases, real estate, business law, general practice, and litigation. Currently, Sackmann serves as attorney for the Port of Othello. He is also the president of the Adams County Bar Association.

Web XTra: http://tinyurl.com/stevensackmann

Stephanie Perry is the WSBA publications editor and communications specialist. She can be reached at stephaniep@wsba.org.
Electronic Update

New WSBA Advisory Opinions on Metadata and Cloud Computing

BY MARK J. FUCILE

Earlier this year, the WSBA Rules of Professional Conduct Committee issued a pair of advisory opinions providing practical guidance on two emerging areas of “electronic ethics”: metadata and cloud computing. The metadata opinion, 2216, examines our duties from the perspective of both the sender and the receiver when exchanging documents in electronic form with opposing counsel. The cloud computing opinion, 2215, focuses on our responsibilities when using off-site electronic file storage managed by independent vendors. Both opinions are available on the WSBA website at www.wsba.org.

Core Duties

The metadata and cloud computing opinions revolve around two core duties: competency and confidentiality. RPC 1.1 defines the former and RPC 1.6 the latter.

In the electronic context, the subtitle for Comments 16 and 17 to RPC 1.6 says it all: “Acting Competently to Preserve Confidentiality.” We are expected to competently choose methods of electronic file sharing and storage that protect client confidentiality.

Comments 16 and 17 elaborate on both duties:

[16] A lawyer must act competently to safeguard information relating to the representation of a client against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer’s supervision. See Rules 1.1, 5.1 and 5.3 [the latter two address supervisory responsibilities].

Opinion 2216 looks at metadata from the perspective of both the sender and the receiver. (In doing so, it examines our duties outside the context of formal discovery. Under RPC 3.4, our duties within the context of formal discovery are largely governed by the procedural rules of the forum in terms of what must be produced and what may be withheld.)

From the sender’s perspective, Opinion 2216 weaves together the twin duties noted earlier by explaining that we need to sufficiently understand the technology we are using to ensure that we protect confidential material such as attorney-client communications and work product. Opinion 2216 notes that the particular method chosen can vary with the circumstances and will likely change as technology evolves. The options currently available, however, range from transmitting documents in hard copy (or its equivalent, such as fax or mechanically scanned documents) to “scrubbing” software that removes sensitive metadata.

Metadata

Lawyers increasingly share documents in electronic form with their opponents in both transactional and litigation contexts. A ready example from transactional practice is a draft contract. An equally ready example from litigation practice is a draft settlement agreement. With electronic file sharing, the concern is on the “metadata” embedded within the document. The Supreme Court in O’Neill v. City of Shoreline, 170 Wn.2d 138, 145, 240 P.3d 1149 (2010), aptly defined metadata as “data about data.” Metadata can often reveal, for example, when changes to a document were made, who made them, or editors’ comments. The electronic comments in particular may contain attorney-client communications.

[17] When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. This duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the lawyer’s expectation of confidentiality include the sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality agreement. A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this Rule.

From the receiver’s perspective, Opinion 2216 counsels that a lawyer is not prohibited in the first instance from looking at metadata in a document that the
lawyer receives from the other side. In many situations, the metadata may be irrelevant because it does not reveal anything of practical value or simply mirrors what the sender intended the receiver to see—such as a “redlined” document. If, however, the metadata contains what appears to be inadvertently produced privileged information, then RPC 4.4(b) directs that the lawyer notify his or her counterpart on the other side. At that point, RPC 4.4(b) leaves to evidence law the question of whether privilege has been waived through inadvertent production and leaves to procedural law the method for litigating potential privilege waiver. These last two points are addressed, respectively, by ER 502 and CR 26(b)(6). Finally, Opinion 2216 generally disapproves specialized “data mining” software that attempts to extract attorney-client communications or work product even if the sender has taken reasonable steps to protect the document involved.

Cloud Computing
Lawyers have used off-site storage for a long time. Traditionally, “off-site storage” meant a physical location (ranging from professionally managed facilities to individual storage units) where lawyers stored their closed files. More recently, “off-site storage” has evolved into “cloud computing,” where documents are stored electronically on remote servers managed by independent vendors and accessed via the Web. Some firms use electronic storage as backup, some as a primary means of accessing documents, and some do both.

The core duties of competence and confidentiality apply with equal measure to electronic storage. The federal district court in Seattle in In re U.S. Application for a Search Warrant to Seize and Search Electronic Devices from Edward Cunnias, 770 F. Supp. 2d 1138, 1144 n.5 (W.D. Wash. 2011), recently emphasized the role independent vendors play in “cloud computing”: “An external cloud platform is storage or software that is essentially rented from (or outsourced to) a remote public cloud service provider[]” The central involvement of a third party invokes our duty to supervise non-lawyers who as-
sist us under RPC 5.3(a), which requires lawyers and firms to make “reasonable efforts” to make sure that an outside vendor in this circumstance “has in effect measures giving reasonable assurance that the person’s conduct is compatible with the professional obligations of the lawyer.” In short, a law firm can “contract out” the storage function but not the responsibility for properly acquainting the vendor with a lawyer’s duty of confidentiality and receiving reasonable assurance that the vendor has safeguards in place that are consistent with that duty.

Opinion 2215 notes that although lawyers do not need to become computer geeks, they at least need to sufficiently understand the technology and safeguards that a vendor uses to make a reasonably informed choice that is in keeping with our duty of confidentiality. The opinion also stresses that these duties are not static: “Because the technology changes rapidly, and the security threats evolve equally rapidly, a lawyer using online data storage must not only perform initial due diligence when selecting a provider and entering into an agreement, but must also monitor and regularly review the security measures of the provider.”

Prudent “due diligence” should also include a review of your firm’s insurance coverage for data loss. Oregon’s mandatory malpractice carrier (the Oregon State Bar Professional Liability Fund), for example, issued a blanket exclusion for data loss earlier this year. If your firm is not covered, then you will need to balance the utility of off-site storage with the corresponding risk. Depending on the type of information stored, statutory law (see, e.g., RCW 19.255.010) may impose requirements for client notification if security is compromised. Imagining yourself writing your clients to inform them about how you lost their sensitive personal information should also be a strong practical motivator for doing “due diligence” on electronic storage providers.

**Summing Up**

Over the past generation, technology has transformed the practice of law. Electronic file sharing and storage are two prominent examples. The evolution in technology, however, has also produced new challenges for law firm risk management. As the new WSBA advisory opinions highlight, wherever technology may take law practice, it won’t change our bedrock duties to our clients of competence and confidentiality.

Mark Fucile, of Fucile & Reising LLP, handles professional responsibility, regulatory, and attorney-client privilege matters and law-firm-related litigation for lawyers, law firms, and legal departments throughout the Northwest. He is a co-editor of the WSBA Legal Ethics Deskbook and the OSB Ethical Oregon Lawyer. He can be reached at 503-224-4895 and mark@frllp.com.

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Mark Fucile, of Fucile & Reising LLP, handles professional responsibility, regulatory, and attorney-client privilege matters and law-firm-related litigation for lawyers, law firms, and legal departments throughout the Northwest. He is a co-editor of the WSBA Legal Ethics Deskbook and the OSB Ethical Oregon Lawyer. He can be reached at 503-224-4895 and mark@frllp.com.
Admission to Practice Rules Revamped

The BOG approved a set of recommendations drafted by the Admission to Practice Rules Review Task Force after lengthy study and solicitation of comment from WSBA members. The recommendations included revisions to the APRs as well as postponement of action on the most controversial proposal, which would have instituted mandatory malpractice insurance for WSBA members. That proposal will undergo further study before being taken up by the BOG.

Of the proposals approved by the BOG, those drawing the most comment from WSBA members and debate among governors involved general admission to practice and reciprocity. Regarding admission to practice, the revised rules will allow graduates from non-ABA-approved U.S. law schools, and from law schools outside the U.S., to take the Washington Bar Examination if they have completed an LLM. for the practice of law from an ABA-approved law school. The revised rules also will retain a provision allowing the examination to be taken by applicants already admitted to practice in any common law jurisdiction, and having three years of practice experience within the preceding five years. But that revision will drop the current requirement that such applicants have been admitted by examination in the other jurisdiction. The Task Force noted that very few common law jurisdictions outside the U.S. require bar examination for admission.

The approved revisions also would change the rules regarding reciprocal admission between Washington and other states. Currently, Washington uses a “mirror” rule, in which a lawyer admitted to practice in another state is eligible for admission in Washington, without taking the Washington Bar Examination, on the same terms as the other state’s bar would allow admission to a Washington lawyer. The Task Force noted that this rule requires the WSBA to constantly monitor the admission requirements of the 38 jurisdictions that observe reciprocity with Washington. Under the new rule, any lawyer admitted and in good standing in any state or territory of the U.S., and having three years of practice experience, would be eligible for admission in Washington without taking the Bar Examination. The Board was reminded that with the adoption of the UBE effective July 1, 2013, everyone seeking admission in Washington on the basis of the UBE or by reciprocal admission will be required to take the Washington Law Component online education and exam to ensure that they have some knowledge and exposure to Washington law before they are admitted to practice, which is not the case currently.

The entire APR package of approved rule amendments will be sent to the Court for review and consideration.

2012–13 Budget and 2014 License Fee

The BOG approved the budget for the next fiscal year, which runs through September 2013. The budget is based on projected general fund expenses of $15,594,088, a reduction of $1,340,655 from the previous year. The budget reflects spending cuts instituted by the Board in response to the license-fee reduction approved through the member referendum this year. Revenue is projected at $15,594,088, which will result in a net loss of $556,559 if the actual revenue and expense figures match projections. The BOG already has approved tapping into reserve funds to reduce the amount of spending cuts needed for the year and to help balance the budget.

The BOG also voted to maintain the license fee for active WSBA members at $325 for 2014, the level called for in the referendum for 2013.

In debate before voting on the budget, BOG members differed on whether the cost cuts in the budget will be sufficient to avoid even more painful reductions by the Board in coming years. Gov. Roger Leishman, whose three-year term expired as of the September meeting, argued that WSBA is heading toward another “fiscal cliff” that will leave future BOG members with even tougher choices to make.

As an example, he and Gov. Judy Mas-
song pointed to a 1.5 percent salary pool the Board had already voted to include in the budget. The pool totals $142,523, which would be available to grant staff pay increases. Massong argued that even a small increase in salaries now will result in a larger overall payroll that the BOG will need to deal with in the future.

Gov. Bill Viall countered that the salary pool is only a small fraction of the budget and was instituted because research showed that overall WSBA staff salaries are below the market average. He and other Board members noted the extent to which the BOG relies on the staff to accomplish its mission and urged their colleagues not to endanger that relationship by unduly restricting salaries.

Gov. Marc Silverman, also completing his three-year term, said he believed the lowered license fee isn’t necessarily permanent and that a “nickel and dime” approach to cutting the budget sends the wrong message to the organization.

**Changes to CLE Requirements**

The BOG approved some suggested amendments to the Mandatory Continuing Legal Education rules and regulations proposed by the MCLE Board, except that the Board of Governors voted to amend the MCLE Board’s proposal for new rules and regulations in a manner that would allow significantly more CLE credits for pro bono service and not allow credit for a proposed new category of “professional development” courses.

The most hotly debated issue involved CLE credits for pro bono service and training. The existing rule has allowed lawyers to earn up to six CLE credits per year for education and service in pro bono activities. Proponents of pro bono service — including the law schools, the Washington Statewide Pro Bono Service Coordinator, and the Pro Bono and Legal Aid Committee — favored increasing the number of allowed pro bono CLE credits to 30 per three-year reporting period, of which three credits would be for training. On the other hand, individual WSBA members who submitted comments to the MCLE Board all disapproved of allowing any CLE credit for pro bono service.

The MCLE Board’s recommendation to the BOG represented a compromise, allowing up to 12 credits for pro bono service anytime during the reporting period as long as the lawyer also had six hours of related education credits to accompany the service.

At the meeting, however, the Board passed an amendment by Gov. Dan Ford allowing up to 27 credits for pro bono service and up to three credits for related training. Gov. Bill Viall spoke against the amendment, echoing concerns expressed by the MCLE Board and some WSBA members that allowing so many credits for pro bono service leaves little remaining requirement for conventional continuing legal education, i.e., that related to developments in one’s area of practice.

Meanwhile, the BOG rejected the MCLE Board’s recommendation to create
a new category of CLE credits for courses involving “professional development.” Under the proposal, lawyers could earn CLE credits for education in non-academic areas such as work/life balance, stress reduction, career development, leadership training, how to increase profits, and communication skills. Some BOG members expressed concerns that the combination of increased allowable pro bono credits plus the provision for development credits would leave hardly any requirement for credits in conventional CLE topics. The BOG asked the MCLE Board to look at the issue further and wants to reconsider this issue at its November meeting.

The rules approved by the BOG must still be submitted to and approved by the Washington Supreme Court. The Board wants to consider professional development credits again at the November 16–17 meeting in Seattle. However, even if the Board approves the professional development credit recommendation, any rules to that effect would not be able to be submitted to the Supreme Court by Oct. 15, the deadline for its current rule-making cycle.

Volunteer Travel Policy
The BOG approved a cost-saving measure that will eliminate travel-expense reimbursement for WSBA members who serve on Bar committees, boards, and task forces — but only for non-chair members, and only for short commutes or short meetings.

As part of the effort to reduce costs following the license fee referendum, the BOG had previously considered eliminating travel expense reimbursement for WSBA members who volunteer to serve on the association’s many committees and similar bodies. However, BOG members expressed concern that doing so would alienate the members, particularly those who are constrained by economics or geography in their ability to participate.

At the September meeting, the BOG approved a proposal that will eliminate reimbursement only where the meeting at issue is scheduled to last less than three hours or requires travel only from within a 50-mile radius of the member’s location. At the same time, the WSBA will encourage more meeting participation by video conference to reduce volunteers’ costs and consequent reimbursement expenses.

Bar News Changes
The BOG approved recommendations to reduce the number of Bar News issues in FY2013 from 12 to nine and consider a further reduction in 2014, with a likely gradual shift of content from print to online. The Board also approved changing the publication’s name to NWLawyer.

The reduction from 12 to nine issues, together with a change in the printing method, is projected to result in a net savings of $152,000 compared to 2012, after factoring in an expected reduction in advertising revenue. For 2013, advertising revenue is projected at $494,000, which is $64,000 above the total of projected di-

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rect printing costs and mailing expenses needed to produce the publication.

Over the coming year, the WSBA will conduct member research to help determine whether to further reduce the number of print issues for 2014. Meanwhile, the online version of the publication will be enhanced, and additional news and information features are being added to the WSBA website to enhance overall communication with members.

The name change was recommended after discussion and input from BOG members, the Editorial Advisory Committee, and WSBA Communications staff. NWLawyer was chosen from among several possible new names. Among the perceived strengths of the new name were that it carries a less formal tone, comes across as more "friendly," is more inclusive by encompassing the significant number of Oregon and Idaho lawyers who are WSBA members, addresses lawyers’ whole lives rather than just their professional lives, and better reflects the magazine’s content and intended audience.

Position on Referendum 74

The BOG approved a proposal allowing the WSBA to be listed as an endorser of this month’s Referendum 74 to uphold the same-sex marriage bill passed by the Legislature. The BOG has twice before passed resolutions of its own supporting legislation to allow same-sex marriage. Those votes caused controversy among WSBA membership, some of whom felt the BOG should not take a stand on a politically charged issue.

A similar debate ensued at the September BOG meeting. Govs. Bill Viall, Lee Kerr, and Brian Kelly voted against the proposal, saying they did not feel they had the authority of their constituents to commit the WSBA to a position on the issue. Other BOG members pointed out that the action was simply consistent with the position the Board had taken twice in the past.

Editor Michael Heatherly can be reached at barnewseditor@wsba.org or 360-312-5156. For more information on the Board of Governors, see www.wsba.org/bog or NewsFlash at www.wsba.org/newsflash.
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Opportunity for Service

Washington State Access to Justice Board

Application Deadline: Nov. 30, 2012

Recognizing that access to the civil justice system is a fundamental right, the Access to Justice Board works to achieve equal access for those facing economic and other significant barriers. One non-attorney position is opening up on the Access to Justice Board (ATJ Board) — the term starts in May 2013. If you have a demonstrated commitment to equal justice principles, please join us. Appointments are made by the Washington Supreme Court upon nomination of the WSBA Board of Governors.

ATJ Board member responsibilities include: attending 7–10 Board regular meetings (most in Seattle), participating in an annual day-long retreat (usually in Seattle), attending the annual Access to Justice Conference (location varies), serving as liaison to at least one Board committee, and active participation in Board initiatives. ATJ Board members are reimbursed for eligible travel and mileage expenses.

Please send a résumé and letter of interest addressing your commitment to access to justice, and your commitment, experience, and any contribution you feel you can make relative to diversity in all of its forms and implications, to Allison Durazzi, staff liaison to the ATJ Board Nominating Committee, at allisond@wsba.org or to WSBA, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539. Find more information about the ATJ Board, including meeting schedules and minutes, online at www.wsba.org/atj. Please contact WSBA Justice Programs Coordinator Allison Durazzi at 206-733-5942 or allisond@wsba.org with additional questions.

New $25 MCLE Comity Certificate Fee Information

As a result of the Board of Governors’ (BOG) and staff’s extensive review over the past few months aimed at ensuring the Bar is operating in the most effective and efficient manner, WSBA began charging a handling fee for comity certificates to cover the processing time and resources required for each. The decision was made at the BOG’s July 14 meeting. There will be a fee assessed for ordering comity certificates and another fee assessed to submit a comity certificate for MCLE compliance. Ordering comity certificates can be done online or via mail. See www.wsba.org/licensing-and-lawyer-conduct/mcle/members/comity-certificate-of-compliance for more information.

International Pro Bono Opportunity in Rwanda: Legal Capacity Building Program

Since the 100-day genocide in 1994, Rwanda has made significant progress in its recovery and in promoting peaceful social and economic development, largely due to the government’s emphasis on national unity, anti-corruption efforts, and effective use of foreign aid to build local capacity. The main challenge facing Rwanda’s legal system today is a widespread lack of human capacity. In many cases, there are long delays; judges are now required to have at least a university law degree, and do not receive any specific training for the new legislation. Capacity and skill-building for both official and private institutions are key needs, especially when it comes to developing and implementing new elements of the common law system.

The Rwanda Ministry of Justice has teamed with Eos Visions, an organization experienced in facilitating educational and training programs in Rwanda, to coordinate a pilot project to bring experienced lawyers to Rwanda to provide workshops to assist Rwandan lawyers in providing legal advice. Priority topics include transactional contracts and negotiations, alternative dispute resolution, civil litigation, and transactional drafting.

Proposed dates are May 26–June 1, 2013 (does not include travel time and optional extended travel). For additional information, contact Professor Cheryl Beckett, Gonzaga University School of Law, at cbeckett@lawschool.gonzaga.edu or 509-313-3721. See a presentation from Professor Beckett’s time in Rwanda in 2011 as a Rule of Law delegate at bit.ly/SmcZZH.

Seeking Questionnaires from Candidates for Judicial Appointments

Nov. 12, 2012, deadline for Dec. 11, 2012, interview

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 date 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. Additional interviews will be held in 2013. To obtain a questionnaire or learn about future interview dates, visit the WSBA website at www.wsba.org/jrc or contact the WSBA at 206-727-8226 or 800-945-9722, ext. 8226; or email pami@wsba.org.
Seeking Input on Receivability Statute

Due to the increased use of Assignments for Benefit of Creditors (RCW 7.08) and Receivabilities (RCW 7.60), the WSBA Creditor Debtor Rights Section has established a task force to accept comments and ideas from members of the Bar, including the judiciary or other interested persons, on issues, problems, or suggestions on these statutes. The task force will be collecting these comments through the end of 2012. Please send written comments to John Rizzardi, Section chair, at jrizzardi@cairncross.com or fax them to his attention at 206-587-2308.

WSBA Young Lawyers Committee Trial Advocacy Program

The WSBA Young Lawyers Committee presents its hallmark Trial Advocacy Program on Oct. 27–28 and Nov. 10, to build your experience and skills for trial. Previous participants have called this “entertaining, real-world skills development” and “tremendous insight with the facts and the bare-bones strategy.” Train and practice with support from litigation experts and judges while increasing your knowledge and performance of the fundamental stages of trial. There may still be opportunities for volunteers in the mock trial. For more information or to sign up (RSVP by Nov. 5), contact WSBA NLE Program Development Specialist Mikaron Fortier at mikaronf@wsba.org or 206-727-8271.

Third-Party Liability Information

If your client is involved in a personal injury case and has received, is receiving, or will be receiving medical assistance (Medicaid) payments for their medical care, you are required to contact the Health Care Authority (HCA), Casualty Unit, RCW 41.05A.070 places a lien against any settlement or judgment your client receives from a third party who is responsible for your client’s injuries in order to reimburse the medical bills that have been paid by Medicaid. Before settling your client’s claim with the third party and/or their insurance company, please contact the Casualty Unit of HCA at 1-800-562-3022, ext. 15462, or HCA/Casualty Unit, PO Box 45561, Olympia, WA 98504-5561 regarding how to supply the information that HCA requires. Failure to pay any lien imposed by the department on any settlement or judgment obtained by your client may subject you to personal liability for any funds improperly distributed. (41.05A.080).

2013 Licensing and MCLE Information

Complete your license renewal and MCLE certification online — it’s easy! Your license renewal packet was mailed in mid-October and online licensing is available. Renewal and payment must be completed by Feb. 1, 2013. Payment plan option now available. If you are experiencing financial challenges, you may qualify for our new payment plan option or a one-time hardship exemption. Visit wsba.org/licensing to learn how we’re making it easier for you.

Join or renew your Section membership. The Section membership year is Oct. 1, 2012, through Sept. 30, 2013. Join or renew now to receive the full benefit of section membership.

MCLE compliance. If you are due to report MCLE compliance for 2010–12 (Group 3), you would have received your Mandatory Continuing Legal Education Certification (C2) form in the license packet. All credits must be completed by Dec. 31, 2012, and certification (C2 form) must be completed online, post-marked, or delivered to the WSBA by February 1, 2013. For detailed instructions, go to wsba.org/MCLE.

Important deadlines. • Dec. 3, 2012: Payment Plan enrollment deadline.

• Dec. 31, 2012: Group 3 members must complete required MCLE credits.

• Feb. 1, 2013: Hardship Exemption request deadline.

• Feb. 1, 2013: License renewal, payment, and Group 3 MCLE C2 certification must be postmarked or delivered to WSBA.

Judicial member licensing. WSBA Bylaws relating to judicial members became effective Jan. 1, 2012 (see WSBA Bylaws Art. III, Sections A.3, B, C.2, C.4, H.1.c, H.2 and H.3). Judicial members are required to complete annual license renewal forms and pay a $50 license fee if they wish to maintain eligibility to transfer to another membership class when their judicial service ends. The Judicial Member License Renewal form was mailed in mid-October and online licensing is now available. If you have not received your form, please log in to my-wsba.org to complete your renewal. Visit wsba.org/licensing to learn more.

“Foundations of American Democracy” Civics Pamphlet

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

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

Struggling with Alcohol or Drugs?
The Lawyers Assistance Program is closely connected to addictions communities, AA and otherwise, across the state. For instance, there is an “Unbar” AA group for attorneys that meets every Wednesday in downtown Seattle. If you would like someone to walk you to a meeting, or simply need a referral, don’t hesitate to contact us confidentially at 206-727-8268 or lap@wsba.org.

Just Starting a Practice?
Think “out of the box” and consider purchasing “Law Office in a Box.” For $119, you receive an hour of consultation time plus everything you see here: http://tinyurl.com/3m75j5. Questions? Contact Peter Roberts at peter@wsba.org, 206-727-8237, or 800-945-9722, ext. 8237.

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

Individual Consultation
The Lawyers Assistance Program provides treatment for those struggling with depression, work stress, addiction, and life transition, among other topics. Consultations are an opportunity for assessment of the problems you may be facing, identifying useful tools you may utilize to address these issues, and referrals to find the right resources for you. Our licensed counselors can offer up to three sessions on a sliding scale. The first appointment is $20. We also provide consultations on job seeking and can offer informational and referral resources on a range of topics. Contact us at 206-727-8268, 800-945-9722, ext. 8268, lap@wsba.org or go to www.wsba.org/lap.

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Mindful Lawyers Monthly Group
A growing number of legal professionals across the nation are applying mindfulness-based skills and training to lawyering. The Washington Contemplative Lawyers group meets on the last Wednesday of each month (Nov. 28) at the Lawyers Assistance Program office from 8:15–9:00 a.m. For more information, contact Sevilla Rhoads at srhoads@gsblaw.com or go to www.wacontemplativelaw.blogspot.com. On Nov. 10, Sevilla Rhoads and Greg Wolk will be leading “Mindful Meditation for Lawyers.” The Practice, “a one-day retreat-style workshop suitable for both beginners and those seeking to reconnect to an existing practice. For more information, go to www.presenthealthandwellness.com.

Job Satisfaction
Do you look forward to going to work? If not, why not? If you’re unhappy doing your current job but don’t know what to do about it, call the Lawyers Assistance Program at 206-727-8268 or 800-945-9722, ext. 8268, to schedule a confidential consultation. Life is short — why not enjoy it?

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

Weekly and Bi-Monthly Job Search Group
On Nov. 14, from noon to 1:30 p.m., the Lawyers Assistance Program is proud to welcome Dyana Veigele, general counsel and CEO of Quid Pro Quo/Law Dawgs, to the Bi-Monthly Job Search Group meeting. Please join us for an opportunity to learn more about this important resource and find out whether working with a recruitment firm may be right for you. This group meets on the 6th floor of the WSBA offices; no RSVP is required. The Weekly Job Search group provides strategy and support to unemployed attorneys. The group runs for eight weeks and is limited to eight attorneys. We provide the comprehensive WSBA job search guide “Getting There: Your Guide to Career Success,” which can also be found online at www.tinyurl.com/7xhe88b. For more information about monthly and weekly job group programming or to schedule a career consultation, contact Dan Crystal at dancr@wsba.org, 206-727-8267, or 800-945-9722, ext. 8267.

Casemaker Online Research
Casemaker is a powerful online research library provided free to WSBA members that can be accessed from the WSBA website at www.wsba.org/resources-and-services/casemaker-and-legal-research. As a WSBA member, you already receive free access to Casemaker. Now, you can enhance that member benefit by upgrading to Casemaker+ with CaseCheck+. Just like Shepard’s and KeyCite, CaseCheck+ tells you instantly whether your case is good law. You can find information about this service on the Casemaker website, or call 877-659-0801 and a Casemaker representative can talk with you about the benefits of switching to their premium product. For help using Casemaker, contact Julie Salmon at 206-733-5914, 800-945-9722, ext. 5914, juliesa@wsba.org, or call the WSBA Service Center at 800-945-WSBA (9722) or 206-443-WSBA (9722).

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

Upcoming Board of Governors Meetings
Nov. 16–17, Seattle
Jan. 17–18, 2013, Olympia
March 8–9, Vancouver
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 Pamela Wuest at 206-239-2125, 800-945-9722, ext. 2125, or pamelaw@wsba.org. The complete Board of Governors meeting schedule is available on the WSBA website at www.wsba.org/about-wsba/governance/board-of-governors.

Usury Rate
The average coupon equivalent yield from the first auction of 26-week treasury bills in Oct. 2012 was 0.137 percent. Therefore, the maximum allowable usury rate for November is 12 percent.
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is pleased to announce

Joseph N. Pew, V

has joined the firm as an associate.

Mr. Pew graduated from University of Minnesota Law School in 2008. He received his Bachelor of Arts degree from Williams College in 1995.

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The law firm of

SMITH ALLING, P.S.

is pleased to announce that

Emily R. Gonzalez

has joined the firm as an associate

Ms. Gonzalez earned her J.D. from Seattle University School of Law in 2010. She became a member of the Washington State Bar Association in 2010, and a member of the State Bar of California in 2011. After graduation, Ms. Gonzalez practiced in the areas of business, family law, and litigation. She is experienced in representing clients in corporate, employment, administrative, and family litigation. In addition to her legal practice, Ms. Gonzalez currently serves as the President-Elect of the Latina/o Bar Association of Washington.

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DAVIES PEARSON, P.C.
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is pleased to announce that

Trevor D. Osborne

has become an associate of the firm practicing in labor and employment law, general business, and business litigation.

Mr. Osborne graduated from Seattle University School of Law, magna cum laude, in 2009. He received his Bachelor of Arts in Business Administration from Whitworth University, magna cum laude, in 2006.

Prior to joining the firm, Mr. Osborne worked as an Assistant Attorney General at the Washington State Attorney General’s Office and, before that, was a law clerk for the Honorable Larry E. McKeeman, Judge, Snohomish County Superior Court.

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JASON T. PISKEL, RYAN D. YAHNE AND NICHOLAS D. KOVARIK

are pleased to announce the formation of the law firm

PISKEL YAHNE KOVARIK, PLLC

PYK looks forward to serving its clients with construction, real estate, and other commercial litigation matters. The firm is located in the Fidelity Building at:
522 W. Riverside Avenue, Suite 410 • Spokane, WA 99201
Tel: 509-321-5930 • Fax: 509-321-5935

JASON PISKEL will continue his focus on construction litigation and real estate development, eminent domain, and closely-held business disputes. His email is jason@pyklawyers.com.

RYAN YAHNE is a certified LEED AP and will continue his practice focus in the areas of construction, green building law, real estate, and business litigation. Ryan’s email is ryan@pyklawyers.com.

NICK KOVARIK will continue his practice of commercial litigation, employment work, and other trial work. He can be reached at nick@pyklawyers.com.

www.pyklawyers.com

SMARF LAW FIRM, PLLC

Davies Pearson, P.C.
Attorneys at Law

is pleased to announce that

Trevor D. Osborne

has become an associate of the firm practicing in labor and employment law, general business, and business litigation.

Mr. Osborne graduated from Seattle University School of Law, magna cum laude, in 2009. He received his Bachelor of Arts in Business Administration from Whitworth University, magna cum laude, in 2006.

Prior to joining the firm, Mr. Osborne worked as an Assistant Attorney General at the Washington State Attorney General’s Office and, before that, was a law clerk for the Honorable Larry E. McKeeman, Judge, Snohomish County Superior Court.

253-238-5146 • tosborne@dpearson.com
920 Fawcett Ave / PO Box 1657 • Tacoma, WA 98401
Tel: 253-620-1500 • Fax: 253-572-3052
www.dpearson.com
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 Feb. 18, 1995, policy statement of the WSBA Board of Governors. For a complete copy of any disciplinary decision, call the Washington State Disciplinary Board at 206-733-5926, leaving the case name, and your name and address.

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

Disbarred

Robert H. Grundstein (WSBA No. 20389, admitted 1991), of Morrisville, Vermont, was disbarred, effective June 25, 2012, by order of the Washington State Supreme Court. This discipline was based on conduct involving falsification of court records, conviction of a criminal offense that seriously adversely reflects on his fitness to practice law, engaging in conduct prejudicial to the administration of justice, and making false statements.

Mr. Grundstein is a resident of Vermont and at the time of his hearing on September 26, 2011, had been on inactive status for approximately 10 years. Between October 2005 and December 2009, Mr. Grundstein:

- Falsified a document in connection with obtaining a gun permit and falsified records of criminal convictions;
- Filed frivolous lawsuits and pleadings related to or stemming from his criminal convictions in Ohio;
- Filed frivolous lawsuits and pleadings related to or stemming from his extradition from Vermont to Ohio in state and/or federal court;
- Filed motions, claims, appeals, and/or writs without foundation in connection with one or more civil cases;
- Disregarded court orders in one or more civil cases;
- Filed frivolous pleadings and/or appeals in one or more civil cases;
- Made false statements to the court and/or asserted frivolous claims or arguments in one or more civil cases; and
- Repeatedly violated court orders or rules and/or repeatedly filed meritless pleadings, motions, and appeals and filed the same motions multiple times in one or more civil cases.

Mr. Grundstein testified at his disciplinary hearing that he will continue to file lawsuits and to disobey court orders if he believes they are unconstitutional, and will continue to file lawsuits until he believes his claims have been heard.

Mr. Grundstein’s conduct violated RPC 3.1, prohibiting a lawyer from bringing or defending a proceeding unless there is a basis in law and fact for doing so that is not frivolous; RPC 3.2, requiring a lawyer to make reasonable efforts to expedite litigation consistent with the interest of the client; RPC 3.3(a), prohibiting a lawyer from making false statement of fact or law to a tribunal or failing to correct a false statement of material fact or law previously made to the tribunal by the lawyer; RPC 3.4(a), prohibiting a lawyer from unlawfully obstructing another party’s access to evidence or unlawfully altering, destroying, or concealing a document or other material having potential evidentiary value; RPC 3.4(b), prohibiting a lawyer from falsifying evidence or counseling or assisting a witness to testify falsely, or offering an inducement to a witness that is prohibited by law; RPC 3.4(c), prohibiting a lawyer from knowingly disobeying an obligation under the rules of a tribunal; RPC 4.4(a), prohibiting a lawyer from using means that have no substantial purpose other than to embarrass, delay, or burden a third person, or using methods of obtaining evidence that violate the legal rights of such persons; 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; RPC 8.4(d), prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice; RPC 8.4(j), prohibiting a lawyer from committing any act involving moral turpitude or corruption, or any unjustified act of assault or other act which reflects disregard for the rule of law; RPC 8.4(j), prohibiting a lawyer from willfully disobeying or violating a court order directing him or her to do or to cease doing an act which he or she ought in good faith to do or forbear; and RPC 8.4(m), prohibiting a lawyer from engaging in conduct demonstrating unfitness to practice law.

Linda B. Eide represented the Bar Association. Mr. Grundstein represented himself. Lisa Marie Hammel was the hearing officer.

Suspended

Marsha M. Morasch (WSBA No. 20130, admitted 1990), of Portland, Oregon, was suspended from the practice of law in the state of Washington for a period of six months, effective August 27, 2012, by order of the Washington State Supreme Court imposing reciprocal discipline in accordance with an order of the Supreme Court of the State of Oregon. For more information, see the Oregon State Bar Bulletin, available at www.osbar.org/publications/bulletin/11may/baractions.html#disc.

Ms. Morasch’s conduct violated Oregon’s RPC 8.1(a)(2), knowingly failing to respond to a lawful demand for information from a disciplinary authority; and Oregon’s RPC 8.1(c), failure to cooperate with the State Lawyers Assistance Committee (SLAC).

Joanne S. Abelson represented the Bar Association. Ms. Morasch represented herself.

Suspended

Marsha M. Morasch (WSBA No. 20130, admitted 1990), of Portland, Oregon, was suspended from the practice of law in the state of Washington for a period of two years, effective August 27, 2012, by order of the Washington State Supreme Court imposing reciprocal discipline in accordance with an order of the Supreme Court of the State of Oregon. For more information, see the Oregon State Bar Bulletin, available at www.osbar.org/publications/bulletin/12jul/baractions.html#disc.

Ms. Morasch’s conduct violated Oregon’s RPC 1.3, prohibiting a lawyer from neglecting a legal matter entrusted to the lawyer; Oregon’s RPC 1.4(a), requiring a lawyer to keep a client reasonably informed about the status of a matter; Oregon’s RPC 1.4(b), requiring a lawyer to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; Oregon’s RPC 1.5(a), prohibiting a lawyer from making an agreement for, charging or collecting an unreasonable fee; Oregon’s RPC 1.5-1(a), requiring a lawyer to hold property of clients or third persons that is in the lawyer’s possession separate from the lawyer’s own property; Oregon’s RPC 1.15-1(c), requiring a lawyer to deposit legal fees and expenses that have been paid in advance into a lawyer trust account; Oregon’s RPC 3.4(a), prohibiting a lawyer from using means that have no substantial purpose other than to embarrass, delay, or burden a third person, or using methods of obtaining evidence that violate the legal rights of such persons; Oregon’s RPC 8.1(a)(2), knowingly failing to respond to a lawful demand for information from a disciplinary authority; and Oregon’s RPC 8.1(c), failure to cooperate with the State Lawyers Assistance Committee (SLAC).
account; Oregon's RPC 1.15-1(d), requiring a lawyer to promptly deliver funds or property or render an accounting to the client or third person; Oregon's RPC 1.16(a)(2), prohibiting a lawyer from representing a client due to physical or mental condition; Oregon's RPC 1.16(d), requiring a lawyer upon termination to take steps to the extent reasonably practicable to protect a client's interest; Oregon's RPC 8.1(a)(2), requiring a lawyer to respond to a lawful demand for information from an admissions or disciplinary authority; Oregon's RPC 8.4(a)(3), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and Oregon's RPC 8.4(a)(4), prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice.

Joanne S. Abelson represented the Bar Association. Ms. Morasch represented herself.

**Suspended**

Shely J. M. Secrest (WSBA No. 36054, admitted 2005), of Shaker Heights, Ohio, was suspended from the practice of law in the state of Washington for a period of 60 days, effective July 17, 2012, by order of the Washington State Supreme Court following approval of a stipulation. This discipline is based on conduct involving failure to act diligently, failure to respond to requests for information, failure to disclose suspension status, and failure to withdraw from representation.

In fall 2008, Ms. Secrest moved to Ohio but continued to maintain her practice in Tacoma, Washington, as a public defender. Between fall 2009 and May 2010, Ms. Secrest was flying between Washington and Ohio monthly, staying approximately two weeks in each state.

In May 2009, Client A hired Ms. Secrest to represent him in a child custody matter and paid her $3,500. In August 2009, Ms. Secrest filed a motion for a temporary restraining order (to prevent the mother’s impending move) and a proposed parenting plan. On October 22, 2009, Mother filed a motion to modify the parenting plan; however, she did not perfect service until December 10, 2009, when Ms. Secrest waived service in court. On December 9, 2009, Ms. Secrest attended a hearing on the motion for temporary restraining order: the trial on the motion was set for June 21, 2010. On December 10, 2009, Ms. Secrest attended a hearing on Mother’s motion to modify the parenting plan.

From May 2010 through September 2010, Ms. Secrest did not travel to Washington. Ms. Secrest maintained her mailing address in Tacoma, since she continued to have cases there, but she only got her mail when she came to Tacoma. This resulted in Ms. Secrest not receiving some of the correspondence which was sent to her Tacoma address. In early 2010, Ms. Secrest’s telephone number and the email address she had listed with the Association became inactive. Client A was never informed that Ms. Secrest had a new phone number and that her old email address was no longer active. When Client A was unable to reach Ms. Secrest, Client A contacted a lawyer who was a mutual friend. That lawyer contacted Ms. Secrest and asked her to be in contact with Client A. Client A reached Ms. Secrest through a different email on January 21, 2010; Ms. Secrest replied to Client A’s email on January 22, 2010, and gave him her new phone number and apologized. Ms. Secrest did not appear at five hearings held in fall 2009 and winter 2010 on Client A’s matter, but sent another lawyer in her place on three occasions (October 2, 2009, February 11, 2010, and March 15, 2010). No one appeared on Client A’s behalf on October 19, 2009, and October 23, 2009, but Client A was present at the October 23, 2009, hearing. At the February 11, 2010, hearing, the Court ordered that there would be no further continuances in the matter. On March 5, 2010, the Court ordered the parties to set up a settlement conference and threatened sanctions due to the parties’ failure to comply with the case schedule regarding the settlement conference. The settlement conference was rescheduled for the week of May 27, 2010. On March 15, 2010, Mother’s motion for modification was dismissed without prejudice. Neither party confirmed the settlement conference to be held the week of May 27, 2010, and it was stricken.

On May 11, 2010, Ms. Secrest was administratively suspended for failure to comply with her mandatory continuing legal education (MCLE) requirements under Admission to Practice Rule (APR) 11. Ms. Secrest learned of the suspension on May 27, 2010, but did not notify Client A of the suspension at that time or withdraw from the representation of Client A. Ms. Secrest agrees that she did not communicate with Client A until she sent him an email on June 19, 2010, two days before Client A’s trial, and informed him of her suspension. In that email, Ms. Secrest informed Client A that she had discussed the case with one of the lawyers (Lawyer) who had previously assisted on the case and that Client A should request a continuance of his trial. Client A believed that Lawyer had agreed to take the case; however, Lawyer testified that although in March 2010 Lawyer had offered to help Ms. Secrest with the trial, when contacted by Ms. Secrest in June, Lawyer advised her that she could not cover the trial on short notice but might be willing to discuss the possibility if Client A got a significant continuance. No attorney appeared on behalf of Client A at the June 21, 2010, trial, and the Court refused to grant Client A a continuance, so he presented his case pro se. Although Client A had physical custody of his son for approximately nine months at the trial on June 21, 2010, the Court ordered that Mother would regain physical custody of Client A’s son and allowed Mother to relocate.

Ms. Secrest’s conduct violated RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; RPC 1.4, requiring a lawyer to communicate with the client; RPC 1.16(a)(1), prohibiting a lawyer from representing a client if it will result in violation of the Rules of Professional Conduct; and RPC 8.4(l), prohibiting a lawyer from violating a duty or sanction imposed by or under the Rules for Enforcement of Lawyer Conduct in connection with a disciplinary matter (here, ELC 1.5 and ELC 14.1(c)). Sachia Stonefeld Powell represented the Bar Association. Kurt M. Bulmer represented Ms. Secrest.

**Reprimanded**

Tracy S. Collins (WSBA No. 20839, admitted 2005), of Spokane, was ordered to receive a reprimand following approval of a stipulation by the chief hearing officer on July 3, 2012. This discipline was based on conduct involving dishonesty, fraud, deceit, or misrepresentation.

Mr. Collins represented Client A. In July 2011, while visiting Client A at the Spokane County Jail, Mr. Collins knowingly misrepresented Client A’s fiancée (Fiancée) as his “paralegal” to a jail employee in order to provide Fiancée access to Client A in the attorney visitation booth. Although Fiancée had worked in Mr. Collins’ office in the past, on that date she was not employed by Mr. Collins and was not his legal assistant or paralegal. Jail staff determined that Fiancée could not visit Client A and Mr. Collins went into the jail by himself. Mr. Collins’ actions could have caused a significant security breach at the jail.

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

Erica Temple represented the Bar Association. Mr. Collins represented himself. Joseph Nappi Jr. is the chief hearing officer.
CLE SEMINARS are subject to change. Please check with providers to verify information. To announce a seminar, please send information to:

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

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

CLE CALENDAR

20-Hour Family Mediation Training
November 8–10 — Olympia. 17.75 CLE credits, including 3 ethics. 40-Hour Basic Mediation Training is prerequisite. By the Dispute Resolution Center of Thurston County; www.mediatethurston.org; onlewis@mediatethurston.org; 360-956-1155.

The Art of Arbitration
November 19 — Seattle and webcast. 6 CLE credits. By the WSBA Alternative Dispute Resolution Section, the WSBA Labor and Employment Law Section, and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Settlement Conference Mediator Training
December 4 — Tacoma. 2.75 CLE credits, including 1 ethics. By Pierce County Center for Dispute Resolution; www.pccdr.org; 253-572-3657; settlementconference@pccdr.org.

Antitrust and Consumer Protection

The 29th Annual Antitrust, Consumer Protection and Unfair Business Practices Seminar and Annual Meeting
November 8 — Seattle and webcast. 6 CLE credits, including 1 ethics. By the Antitrust, Consumer Protection and Unfair Business Practices Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Business Law

Ethics in the House: Professional Conduct in the Corporation
November 16 — Seattle and webcast. 3.5 ethics credits. By the WSBA Corporate Counsel Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Deposition Techniques, Strategies, Tactics and Skills, with David Markowitz
December 11 — Seattle and webcast. 6 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Creditor Debtor Law

Liens: What You Need to Know Today
December 6 — Seattle and webcast. 6.5 CLE credits. By the WSBA Creditor Debtor Rights Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Elder Law

Drafting and Using the Special Needs Trust
November 27 — Seattle and webcast. 6.75 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Estate Planning

57th Annual Estate Planning Seminar
November 1–2 — Seattle. 14.75 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.

Drafting and Using the Special Needs Trust
November 27 — Seattle and webcast. 6.75 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Managing Uncertainty in Changing Times: Probate and Trust
December 3 — Seattle and webcast. 6.5 CLE credits, including 1 ethics. By the WSBA Real Property, Probate and Trust Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Annual Ethics Conversation with Professors John Strait and Dave Boerner

Ethical Dilemmas for the Practicing Lawyer
November 7 — Spokane. 4 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Ethical Dilemmas for the Practicing Lawyer
November 9 — Seattle and webcast. 4 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Ethics, Professionalism, and Civility: The Hard Questions — Video Replay
November 13 — Friday Harbor. 6 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Ethics in the House: Professional Conduct in the Corporation
November 16 — Seattle and webcast. 3.5 CLE ethics credits. By the WSBA Corporate Counsel Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Annual Law of Lawyering: Day One
December 13 — Seattle and webcast. 6 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.
ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Annual Law of Lawyering: Day Two**
December 14 — Seattle and webcast. 6 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Ethics CLE**

**Family Law**

**Drafting and Using the Special Needs Trust**
November 27 — Seattle and webcast. 6.75 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Domestic Violence and Its Impact on Your Practice, Your Clients, and Your Ethical Obligations**
November 28 — Seattle and webcast. 6.5 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Same-Sex Marriage, Registered Domestic Partnerships and Committed Intimate Relationships**
December 5 — Seattle and webcast. 6.25 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Practical Aspects of Parenting Plans**
December 18 — Seattle and webcast. 6.25 CLE credits. By the WSBA Family Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**General**

**Judgments: You’ve Won! Now What?**
November 1 — Seattle. 6.75 CLE credits, including .75 ethics. By KCBA CLE Department; 206-267-7057; https://www.kcba.org/secure/cleregistration.aspx.

**Ethical Dilemmas for the Practicing Lawyer**
November 7 — Spokane. 4 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Ethical Dilemmas for the Practicing Lawyer**
November 9 — Seattle and webcast. 4 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Ethics, Professionalism, and Civility: The Hard Questions — Video Replay**
November 13 — Friday Harbor. 6 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Effective Writing for Lawyers, with Frank Sanitate**
November 14 — Seattle and webcast. 6.5 CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Time Mastery for Lawyers, with Frank Sanitate**
November 15 — Seattle and webcast. 6.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Trial Revolution: Making the Seismic Shift**

**Trial Stars**

**Movie Magic: How the Masters Try Cases**
December 12 — Seattle. 6 CLE credits, including 2 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Annual Law of Lawyering: Day One**
December 13 — Seattle and webcast. 6 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Annual Law of Lawyering: Day Two**
December 14 — Seattle and webcast. 6 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Best of CLE 2012 — Encore of Excellence: Day One**
December 27 — Seattle and webcast. 6.25 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Best of CLE 2012 — Encore of Excellence: Day Two**
December 28 — webcast only. 6.5 CLE credits, including 3.75 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Insurance Law**

**Insurance Law 301: Intermediate and Advanced Insights and Updates**
December 17 — Seattle and webcast. 6.5 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Labor and Employment**

**The Art of Arbitration**
November 19 — Seattle and webcast. 6 CLE credits. By the WSBA Alternative Dispute Resolution Section, the WSBA Labor and Employment Law Section, and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Annual Labor and Employment Law Conference**
November 30 — Seattle and webcast. 6 CLE credits, including 1 ethics. By the WSBA Labor and Employment Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Litigation**

**Trial Revolution: Making the Seismic Shift**

**Ethics in the House: Professional Conduct in the Corporation**
November 16 — Seattle and webcast. 3.5 ethics credits. By the WSBA Corporate Counsel Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.
Managing Uncertainty in Changing Times: Probate and Trust
December 3 — Seattle and webcast. 6.5 CLE credits, including 1 ethics. By the WSBA Real Property, Probate and Trust Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbcacle.org.

The 57th Annual Estate Planning Seminar
November 1–2 — Seattle. 14.75 CLE credits, including 1 ethics. By the Estate Planning Council of Seattle and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbcacle.org.

Managing Uncertainty in Changing Times: Probate and Trust
December 3 — Seattle and webcast. 6.5 CLE credits, including 1 ethics. By the WSBA Real Property, Probate and Trust Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbcacle.org.

The Webcast Seminars

The 29th Annual Antitrust, Consumer Protection and Unfair Business Practices Seminar and Annual Meeting
November 8 — Seattle and webcast. 6 CLE credits, including 1 ethics. By the Anti-trust, Consumer Protection and Unfair Business Practices Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbcacle.org.

Ethical Dilemmas for the Practicing Lawyer
November 9 — Seattle and webcast. 4 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbcacle.org.

Effective Writing for Lawyers, with Frank Sanitate
November 14 — Seattle and webcast. 6.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbcacle.org.

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Trial Revolution: Making the Seismic Shift

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November 19 — Seattle and webcast. 6 CLE credits. By the WSBA Alternative Dispute Resolution Section, the WSBA Labor and Employment Law Section, and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbcacle.org.

Drafting and Using the Special Needs Trust
November 27 — Seattle and webcast. 6.75 CLE credits, including 1 ethics pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbcacle.org.

Domestic Violence and Its Impact on Your Practice, Your Clients, and Your Ethics
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Annual Labor and Employment Law Conference
November 30 — Seattle and webcast. 6 CLE credits, including 1 ethics. By the WSBA Real Property, Probate and Trust Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbcacle.org.

Managing Uncertainty in Changing Times: Probate and Trust
December 3 — Seattle and webcast. 6.5 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbcacle.org.

Same-Sex Marriage, Registered Domestic Partnerships and Committed Intimate Relationships
December 5 — Seattle and webcast. 6.25 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbcacle.org.

Liens: What You Need to Know Today
December 6 — Seattle and webcast. 6.25 CLE credits. By the WSBA Creditor Debtor Rights Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbcacle.org.

Domestic Partnerships and Committed Intimate Relationships
December 6 — Seattle and webcast. 6.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbcacle.org.

Liens: What You Need to Know Today
December 6 — Seattle and webcast. 6.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbcacle.org.

Trial Stars
December 7 — Seattle and webcast. 6 CLE credits. By Washington State Association for Justice Legal Educational Seminars;
Timely Topics in Taxation
December 10 — Seattle and webcast. 3 CLE credits. By the WSBA Taxation Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Deposition Techniques, Strategies, Tactics and Skills, with David Markowitz
December 11 — Seattle and webcast. 6 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Annual Law of Lawyering: Day One
December 13 — Seattle and webcast. 6 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Annual Law of Lawyering: Day Two
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Ethics CLE and Webcast

Insurance Law 301: Intermediate and Advanced Insights and Updates
December 17 — Seattle and webcast. 6.5 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Practical Aspects of Parenting Plans
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Best of CLE 2012 — Encore of Excellence: Day One
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Best of CLE 2012 — Encore of Excellence: Day Two
December 28 — webcast only. 6.5 CLE credits, including 3.75 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Positions Available
Lateral partner: Smith Alling, P.S.
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Effective brief writer with 20+ years of civil litigation experience and excellent references available as contract lawyer. Summary judgments, discovery motions, trial preparation, research memos, appeals. State or federal court. Lynne Wilson; lynnewilsonatty@gmail.com or 206-328-0224.

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

Experienced contract attorney: 18 years’ experience in civil/criminal litigation, including jury trials, arbitrations, mediations, and appeals. Former shareholder in boutique litigation firm. Can do anything litigation-related. Excellent research and writing skills, reasonable rates. Peter Fabish, pfab99@gmail.com, 206-545-4818.


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

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Columbia and Walla Walla counties legal notices: The Times, a 135-year-old weekly newspaper based in Waitsburg, WA, was recently adjudicated as a newspaper of record in the county of Columbia and offers affordable insertion rates for legal notices there. It has also long served Walla Walla County and offers competitive rates for notices to creditors, trustees’ sales, and more. Please contact 509-337-6631 or email advertising@waitsburgtimes.com.

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Dan Satterberg  
WSBA No. 15400

I became a lawyer because my father practiced law in White Center for more than 35 years. He would fill dinner table conversation with stories about clients he had helped. He took me to the King County Courthouse when I was a child, and somehow I knew that this was where I wanted to work.

The future of the practice of law must be toward increasing access to justice available for all, regardless of income and status. The law will lose its civic authority if it becomes a system only for the affluent.

One of the greatest challenges in law today is building confidence in the criminal justice system in the communities most impacted by it.

I would share this with new lawyers: Your reputation for integrity is your most important asset and is never worth sacrificing for any cause or client.

If I were not practicing law, I would be an unemployed journalist, playing bass in a bar band.

If I could change one thing about the law, it would be to accelerate the evolution toward using the law to help people with chemical dependency and mental illness problems, instead of punishing them for afflictions beyond their control.

This is the best advice I have been given: Norm Maleng shared plenty, but I remember this advice: “The best politics is to do the right thing.”

Traits I admire in other attorneys: Integrity, humor, passion.

I would give this advice to a first-year law student: Find the courthouse near you and watch as many trials as you can.

People living or from the past I would like to invite to a dinner party: John Cleese, Eric Idle, Michael Palin, Graham Chapman, Terry Gilliam, Terry Jones. Also, Tom Douglas to cook and do the dishes.

I am most proud of this: The culture of the King County Prosecutor’s Office as an institution dedicated to serving the cause of justice in each and every case.

I am most happy when I am unplugged and hiking the scenic mountain trails of the Northwest.

Best stress reliever: I love rock and roll.

I am currently reading new books by Paul Theroux, Dave Eggers, and anything by David Foster Wallace.

What keeps me awake at night: Nothing. Sleep is a blessing.

Technology is eliminating our opportunities for quiet reflection and solitude.

Currently playing on my Zune: Always on shuffle, interspersing classic rock, bebop jazz, classical music, and reggae. It all fits together in the random mode.

If I could live anywhere, I love Seattle, but a month in Maui every winter sounds pretty good.

This is the best part of my job: Watching young deputy prosecutors grow in their skills, confidence, and passion for our work.

From l. to r.: Daughter Katie Satterberg, Dan Satterberg, wife Linda Norman, and son James Satterberg.
Every Day I’m Shuffling

For this column a couple of years ago, I put my iPod on shuffle and wrote a mini-review of the first 10 songs that popped up. Nobody liked it, so I’m doing it again. For a different kind of randomness, this time I simply had the pod play the first 10 songs in my library, in alphabetical order by song title.

Disclaimer: While I don’t think any of these tracks would be considered objectionable by most people, some may contain lyrics you wouldn’t consider safe for work or impressionable ears. Listen at your own risk.

1. “All the Rowboats” — Regina Spektor, *What We Saw From the Cheap Seats* (2012): This Russian-born, New York-based singer/songwriter/pianist is one of my favorite artists of recent years. Her songs are funny, whimsical, quirky, and endearing. This one is representative of her work, although not her greatest effort.

2. “All the Things That Go to Make Heaven and Earth” — The New Pornographers, *Challengers* (2007): Any time I put my iPod on shuffle, it spits out a New Pornographers song pretty quickly, because I’ve downloaded every song they’ve recorded. Such is my devotion to this brilliant, one-of-a-kind Vancouver, B.C.-based indie-rock outfit.

3. “All These Things That I’ve Done” — The Killers, *Hot Fuss* (2004): I’m not much for arena-rock anthems. But this is a solid entry in the canon, from the excellent debut album by this glittery Vegas combo.

4. “All Your Kayfabe Friends” — Los Campesinos!, *We Are Beautiful, We Are Doomed* (2008): Los Campesinos! is a marvelously off-kilter indie pop band from Cardiff, Wales. Their name translates roughly to “The Peasants” or “The Hicks.” That’s presumably meant ironically, as they’re neither Spanish nor rustic. Led by hyperkinetic front man Gareth David, LC is extraordinarily entertaining, though. “Kayfabe” is a term from professional wrestling, referring to that industry’s use of fictional reality — i.e., the faux competition and side-stories used to hook the audience. LC’s lyrics remind me of T.S. Eliot’s poetry, by which I mean I don’t really understand them. But if they’re likening the superficiality of dating rituals to the artificiality of professional wrestling, that’s pretty cool.

5. “Allure” — DJ Danger Mouse (Brian Joseph Burton), *The Grey Album* (2004): The Grey Album’s back story is one of the more fascinating tales of the digital-era music industry. The album is a delightfully improbable mash-up of a *cappella* vocal tracks from rapper Jay-Z’s *The Black Album* and samples of instrumental tracks from the Beatles’ *The Beatles* album, better known as *The White Album*. Danger Mouse (then little-known, but now a highly successful composer and producer) didn’t get copyright clearance to use the tracks, although neither Jay-Z nor Paul McCartney (the sole surviving composer of most of the Beatles’ songs) objected. EMI, which held the copyrights on the *White Album* recordings, tried to stop distribution of the album, but the effort failed because once the story got out, the album spread like wildfire through underground channels. This track has Jay-Z rapping his composition “Allure” over the Beatles’ “Dear Prudence.”

6. “Always Look on the Bright Side of Life” — Monty Python’s *Spamalot* (2005 original Broadway cast): My son and I are Monty Python geeks and one of the best things we ever did was go to New York and see *Spamalot* when it first opened on Broadway. Although the show is based mainly on the 1975 film *Monty Python and the Holy Grail*, this tune comes from 1979’s *Life of Brian*. The Pythons were smart enough to know that when you go to Broadway you need to bring your best material, and this tongue-in-cheek paean to positive thinking is a classic.


8. “Amazon” — M.I.A., *Arular* (2005): M.I.A. is Mathangi “Maya” Arulpragasam, an English multimedia artist of Sri Lankan Tamil descent. She’s extraordinarily talented, politically active, and sometimes controversial. What’s not in question is her ability to lay down a groove. This track is from her eye-opening debut album.

9. “America” — Marcy Playground, *Shapeshifter* (1999): I had long thought that our national anthem should be “America the Beautiful,” which has a cleaner melody and more comprehensible lyrics than “The Star-Spangled Banner” and is way easier to sing. But since 1999, I’ve believed that this track by New York’s Marcy Playground should be the national anthem. It takes you on a lyrical ride from Mt. Rainier to a satellite, from which you can really see the land where the buffalo roam. It’s a gorgeously simple, heartfelt tribute that sounds as if it were recorded by a few guys sitting around in their basement who were suddenly struck with a great idea for a song.

10. “American Gigolo” — Weezer, *Maladroit* (2002): Don’t tell anyone, but back when I rode a motorcycle, I used to tuck earbuds under my helmet and rock out with a portable CD player stuffed in my riding suit. I recall cruising Highway 20 over the North Cascades one magnificent summer afternoon with this album blasting in my ears. On a later album, Weezer would sing that we are all on drugs. But I was high enough on *Maladroit* that I needed no chemical assistance to have a psychadelically good time.

Bar News Editor Michael Heatherly practices in Bellingham. He can be reached at 360-312-5156 or barnewseditor@wsba.org.
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