SERVING THOSE WHO SERVE

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Two recently created organizations—the WSVBA and the OMVLA—assist veterans with legal needs / p. 40

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VOTE IN DECEMBER: The WSBA’s first membership-wide election for at-large diversity governor / p. 28

Ethics & the Law: A lawyer’s duties when changing law firms—beyond the RPCs / p. 18
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For Veterans in Washington, Service Can Be a Calling—and a Need
Two recently created organizations fill crucial roles in assisting veterans with legal needs

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Serving Those Who Serve

Veterans Day—initially called Armistice Day¹—was established as a national holiday by President Woodrow Wilson in 1919, a year after the armistice that ended World War I took effect on Nov. 11, 1918.² The holiday was originally celebrated with parades and other public events, as well as a two-minute suspension of business starting at 11 a.m.³

In honor of Veterans Day, and in honor of all those who serve or have served in the U.S. armed forces, this issue highlights a few of the ways in which legal professionals can learn more about the legal needs of military veterans, current service members, and their families living across the state, as well as opportunities to assist.⁴

On page 36, hear from lawyer and 30-year military veteran Laura Kesler, the very first applicant under Washington’s Military Spouse Admission by Motion rule that went into effect last year. The rule (APR 3(c)(2)) allows lawyers who are military spouses and who are already licensed to practice law in another state to apply for admission by motion to the WSBA.

On page 40, learn about Washington’s newest specialty bar association, the Washington State Veterans Bar Association (WSVBA), and the recently created Attorney General’s Office of Military & Veteran Legal Assistance (OMVLA). These two organizations have helped to expand veterans’ access to legal resources and services in the state. And on page 42, hear from the WSBA’s Legal Assistance to Military Personnel (LAMP) Section on how to build a successful practice in the area of military law, plus information about the unique legal needs of veterans and service members, and the benefits of joining the Section.

Also in this issue: a look at King County’s groundbreaking new youth rights ordinance (page 34); a fresh roundup of significant Washington Supreme Court decisions (page 22); coverage of this year’s winners of the Washington Young Lawyers Committee’s Public Leadership & Service Awards (page 26); and more. EN

NOTE
1. www.va.gov/opa/vetsday/vetdayhistory.asp
2. Also on this date, in 1889, Washington officially became a state. See www.loc.gov/item/today-in-history/november-11/.
3. www.history.com/topics/holidays/history-of-veterans-day.
4. For more opportunities, visit www.wsba.org/connect-serve/volunteer-opportunities/serve-veterans.
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In Defense of the Bar Exam

[Jordan] Couch’s article “Grading the Test” in the September 2020 issue of Bar News argues for permanently ending the bar examination in favor of diploma privilege. Perhaps COVID-19 merits some temporary adjustments in the test-taking environment. However, the idea of using mere possession of a law school diploma instead of requiring a neutral bar examination to gain admission into the law profession would set back the profession.

Contrary to the implications of the article, the peak of diploma privilege came not in the 1950s but decades earlier in 1917. Thomas W. Goldman, “Use of the Diploma Privilege in the United States,” 10 Tulsa L.J. 36, 41-42 (1974). Why? As one commentator back in 1955 said: “[I]t is well recognized that unless [a state’s] law graduates are put to an impartial test of their legal learning, the tendency of law schools is to relax in their instruction and to graduate some men at least whom they would never risk to take an impartial bar examination.” Homer D. Crotty, “Standards for Bar Examiners: The Time Has Come For Substantial Reform,” 41 A.B.A.J. 117, 117-18 (1955).

In other words, under a diploma privilege regime the gatekeeping function to the legal profession does not go away, it simply devolves to the admissions office and professo-riate of the local law school. It is easy to see, though, that law schools wanting to look good to potential students would have an enormous and perverse incentive to resort to grade inflation and graduate marginal students—who would then be directly admitted into law practice. Paradoxically, Couch argues that neutral bar examinations are worthless because “almost everyone [eventually] passes the bar.” In light of the above-quoted comments from those who actually experienced or studied diploma privilege closer in time to when it was widespread, I would take Couch’s observation and argue that the fact most law graduates today eventually pass a neutral bar examination proves that a neutral bar examination keeps law schools honest.

Of course, bar examinations would never go away anyway because the legislature in State A would give diploma privilege only to graduates of the law schools situated in State A. Graduates of law schools in State B would still be required to take a bar examination in State A. In other words, rather than facilitating today’s trend toward recognition of multi-state law practices (as represented by the enormous growth of the Uniform Bar Examination in recent years), resurrecting the diploma privilege would eventually funnel lawyers back into the single-state practices of yesteryear.

Barry Sullivan
Burbank, CA

Eliminating the Bar Exam Doesn’t Hold Water

I would like to comment on the article about why the bar exam should be eliminated ["Grading the Test," September 2020 Bar News]. The article posed two issues: First, the bar exam had a disparate impact on minorities. Second, it was the belief that there was no relationship between passing the bar and competence.

The issue of the need for the bar exam and whether or not it has a disparate impact are separate and distinct issues. While disparate impacts should be eliminated, I am not well versed enough on the subject to comment.

As to the need for the bar exam, I strongly disagree that it...
This raises another subject and that is what happened this year. The Bar News has presented very little information about what happened. If the Bar Association truly represented the interests of its members, there should have been a full account of what occurred.

From what I know, the idea to not have the exam and to admit graduates was proposed and rejected by the Supreme Court. A letter was written by one of our law school deans, which was opposed by the Board of Governors. The Supreme Court then did an about face. The discussion then died a natural death.

This may not be the whole story. What does seem clear to me is that if there was a concern relating to the COVID-19 virus, the solution was very simple, and that was to allow for a provisional license until 2021, subject to a bar exam being passed.

Stephen Whitehouse
Shelton

Why The Silence?

I have read Bar News in recent months hoping to see someone address the issues of systemic racism within the legal profession and more accurately, the judiciary. I fear Bar News believes that Washington attorneys and judges are immune from the issues surrounding the criminal justice system and how they should be eliminated, and most lawyers I know feel the same.

While the article poses some statistics which suggest the bar examination does not assure competence, what is cited really does not prove that assertion. It is also true that a degree from an accredited law school is also not an assurance of competence, yet the article suggests we should allow law schools to make that determination.

Going to law school and taking the bar exam are not just about learning the law. Any person who thinks graduation from a law school equips you to actually practice law is quickly disabused of that delusion. Law school gives you some of the tools to practice law but there is a big learning curve after that. I have been practicing for 44 years and am still learning.

One of the things law school and the bar exam does is put you through a rigorous challenge. This is intentional and designed to weed out people who are unable to perform under pressure. If you cannot perform under that type of pressure, then you are likely not [going] to be able to perform under the pressures of practicing law. In this respect, the bar exam provides a valid challenge. It also provides a check and a balance on law schools.

The issue is not about us. It is about the people we are licensed to serve.

It is [the Washington] Supreme Court’s obligation to regulate the practice of law and that obligation should not be abdicated to law schools.

CONTINUED >
Systemic Racism Exists; Now Dismantle It

It’s hard to know exactly where to begin in responding to Michael J. Bond’s letter [in the] September 2020 [issue of Bar News] that flatly denies the existence of systemic racism. The letter insists that racism is confined to overtly racist behavior by individuals, maintains that the use of institutions to perpetuate such racism has been effectively outlawed, and considers actual racists to be “few and far between.”

Responding to each of these points would require more space than is suitable for a letter to the editor, but it is perhaps the first claim that is the most consequential and establishes the foundation for the other two. The writer is certainly not alone in equating the word “racist” with the malignancy of hooded klansmen and segregationist sheriffs. But doing so excludes all other manifestations of bias toward people of color who exist along the spectrum. Conscious and unconscious bias are well-researched, well-documented phenomena, and both clearly influence any number of potentially life-altering decisions, including how employers respond to job applicants, how supervisors evaluate employees, and how real estate agents treat prospective clients. Not surprisingly, police officers, prosecutors, and judges are not immune from these same cultural forces, which can work in combination to devastating effect.

Debating the precise degree of animus within someone’s heart required for them to qualify as a racist is a pointless distraction. Our country undeniably still suffers from the legacy effects of slavery, racism, and xenophobia, and many of our existing institutions (educational, legal, governmental) reflect and reinforce those inequities. Insisting that we have already “eliminated” institutional racism and should instead simply “ignore and shun” any remaining racists is not just naïve but deeply misguided. As recognized by sociologist Tressie McMillan Cottom, “perpetuating the inequalities resulting from intergenerational cumulative disadvantage doesn’t require intent.” In fact, she observes, racism works best of all “when intent is not a prerequisite.”

It is long past time for our country to reconfigure its institutions, like those of our legal system, that fall short in delivering just and equitable results. The earlier letter is absolutely correct in one key respect: If “the system is the problem then the system must be dismantled and redesigned.” The WSBA and members of the Bar should play an active role in advocating for such change.

Ending the Stigma of Seeking Help


As we celebrate International Mental Health Day in October, I completely agree that we all need to work together to end the stigma of seeking help in the profession. We start to teach these lessons to the future generation of lawyers in law school. Eliminating intrusive questions in the character and fitness evaluation process is a critical step in sending signals to law students that it is not only OK, but indeed essential, that they seek help for substance use and mental health issues. Washington state currently uses the NCBE questions to substantiate claims of mental illness, both during and after the admission process. This distracts from the true intent—neither the NCBE nor the bar association can overstep and make assumptions regarding an individual’s mental health.

The WSBA responds: In 2016, the Washington Supreme Court adopted amendments to the Admission and Practice Rules (APR) that eliminated questions about history of substance use or mental-health conditions, or treatment for either, from the application for licensure. See “Changes to the Character and Fitness Rules: Amendments for a New Era,” in the Dec./Jan. 2017 issue of NWLawyer.

NOTES
1. Majumdar’s article “Working to Combat the Stigma Around Seeking Help” https://scholarship.law.uw.edu/cgi/viewcontent.cgi?article=1691&context=scholarship
2. https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1691&context=facpub
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Attorneys at Law | Family Law
7 Virtual Networking Tips for Legal Professionals

The digital transformation of the legal industry went into overdrive the last few months. With in-person meetings and large gatherings canceled for the foreseeable future, networking virtually has become the norm. While networking virtually has made it easier than ever to reach out to a stranger and connect, virtual interactions can still feel awkward and [...] nwsidebar.wsba.org

Risk Management by the Numbers: New ABA Study on Malpractice Claims

Approximately every four years since 1985, the American Bar Association has published a “Profile of Legal Malpractice Claims.” Plaintiffs’ personal injury and family law are the most frequent source of claims, according to the latest profile. [...] nwsidebar.wsba.org

Tracy Chapman v. Nicki Minaj: Commercial Purposes Can be Fair Use, but Minaj May be ‘Sorry’

Tracy Chapman recently sued Nicki Minaj for copyright infringement, after Minaj sampled part of a Chapman song. Minaj won a partial summary judgment motion on fair use grounds. A win for Nicki Minaj? Not so fast... [...] nwsidebar.wsba.org

TRENDING ON WSBA SOCIAL MEDIA

Jump into this and other conversations by liking the WSBA Facebook page and following us on Twitter.

QUESTION:
What advice do you have for someone beginning a legal career in Washington state?

ANSWERS:
“Honor work-life balance.”
Gemma Zanowski, #43259, Tacoma

“Don’t provide a simple ‘no, you can’t do that’ to a client; be creative in finding alternatives and work-arounds to give the client what they need instead of what they want, which requires you to LISTEN carefully and ask a lot of questions BEFORE speaking your advice.”
Kimberley Lane, #30492, Cle Elum

“Skills and knowledge are use-it-or-lose-it. If you don’t land a job immediately, volunteer at local legal clinics. You will shadow experienced attorneys, get to network, get some CLEs, and maybe find the courage to hang a shingle if job opportunities are slim.”
Mark Elliott, #54007, Tacoma

“Take cases and think creatively.”
Mirta Contreras, #21721, Granger

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A NOTE FROM THE WSBA EXECUTIVE DIRECTOR

Racism and Divisions in the Legal Community: Listening Harder

I haven’t written many columns since stepping into this role in April 2019. In part because I have had my hands plenty full otherwise and in part because I wasn’t sure anyone needed to hear from me when I was just keeping the seat warm as the interim executive director, but—if I’m being honest—mostly because I have been wrestling with a much harder message—one that is at the very center of our nation’s collective conscience, one that permeates our state Bar’s mission and all the work we do. I am talking about racism.

Right about now I can imagine many of you are about to stop reading, but I ask you to please hang in with me for a moment. When Past-President Bill Pickett and I went out on the WSBA Listening Tour in 2019, I heard from folks who were frustrated about the WSBA’s articles, blog posts, and CLEs about diversity. Some felt that they were being lectured or talked down to. Others communicated that they felt like we were wading into “social” or “political” issues and that wasn’t our role. I listened. As a supporter of our diversity, equity, and inclusion portfolio, I didn’t like what I was hearing, and so I listened harder and what I heard is that we are all incredibly hurt, angry, tired, and, ultimately, divided.

I know, not a groundbreaking insight. So what can I possibly offer to this dialogue? I am not an expert in diversity. I’m no role model either. I’ve made mistakes and I’ve hurt people. As a white woman, I can’t assume I understand the experiences of people of color. Too often these thoughts keep me frozen, afraid my voice isn’t relevant or that I will say the wrong thing.

Here’s the tie-in to what I learned on the listening tour and the reason I’m writing this article: We have to normalize conversations about racism and the many other forms of inequity (e.g., sexism, ableism) that persist in our hearts, minds, and communities.

We have to normalize conversations about racism and the many other forms of inequity (e.g., sexism, ableism) that persist in our hearts, minds, and communities.
they are exhausted of having to point out racism and inequity over and over and over again and still not really be heard or seen. I hear people saying they are tired of the perpetual violence against Black, Indigenous, and people of color. It’s hard to hear these things. It makes me feel shame and guilt and often that gives rise to defensiveness. These conversations are uncomfortable on a good day and emotionally devastating on a bad one—for everyone. But ultimately, it costs little to listen, and we have everything to gain.

Of course, listening is just the start. So here are a few of the ways that we will be answering the call of our state Supreme Court and minority bar associations:

• In June, the Board chartered the Equity & Disparity Work Group. Chaired by former governor Alec Stephens and inclusive of representatives from Washington’s minority bar associations as well as the WSBA’s Civil Rights Section, Committee on Professional Ethics, Court Rules and Procedures Committee, the Access to Justice Board, and the Practice of Law Board, this group will spend the next two years reviewing court rules and laws related to the practice of law and administration of justice and proposing changes to those that have served to perpetuate injustice.

• This year we are investing in comprehensive anti-oppression training for the Board and WSBA employees. I intend to request support for this training annually.

• We are also working to operationalize the Washington Race Equity & Justice Initiative Acknowledgements and Commitments, which the Board endorsed in March 2018.

Additionally, the Board of Governors is looking at strategic goals for the first time in many years, and I know they will want to hear from you. (Check out President Sciuchetti’s column on page 14.) Based on the Board’s initial brainstorming session, there is some energy around the big themes of providing excellent resources to members, promoting public confidence in the legal profession, managing the Bar in a prudent and cost-effective way, and promoting diversity, equity, and inclusion throughout the legal system.

My commitment moving forward: operationalize these goals in a way that is actionable and accountable, and then regularly report to you about how we are—or are not—meeting these goals.

I want to hear from you too, even if—perhaps especially if—you don’t like what I’ve shared here. I will listen. One of the other reasons I’ve been hesitant to share my perspective is that I don’t see it as my job to make the WSBA into what I think it should be. I see myself as a facilitator and a steward of our policies and values, those we’ve set for ourselves and those set by the court.

Thank you for reading this far and for listening to my perspective on how we might approach one another to discuss an issue as deep and complex and absolutely imperative as racism. We are all carrying too much extra these days—racism and the movement against it, very real health concerns, quarantine fatigue, children at home learning remotely, business closures, wildfires and smoke—and my sincere hope is that we can come together as an association of colleagues to solve the very real challenges ahead of us.

NOTES
1. GR 12.1(j) provides that diversity and inclusion among legal services providers and freedom from discrimination for those receiving legal services and in the justice system is one of the WSBA’s objectives in regulating the practice of law. GR 12.2(6) identifies promoting diversity and equality in the courts and the legal profession as one of the WSBA’s purposes.
2. See www.courts.wa.gov/content/publicUpload/Supreme%20Court%20News/Judiciary%20Legal%20Community%20SIGNED%20060420.pdf.
4. The June 4 letter from the Washington Supreme Court is available online here: www.courts.wa.gov/content/publicUpload/Supreme%20Court%20News/Judiciary%20Legal%20Community%20SIGNED%20060420.pdf.
It’s Time for Our State to Once Again Lead in Support of Member Well-Being

The onset of winter in the Pacific Northwest dwindles daylight hours to a scant few, hangs a persistent gray cloud cover, and ushers in a season of high expectations for holiday festivities that are often unachievable. It can be a tough season, even in the best of years—and 2020 is far from the best of years. We are simultaneously facing a pandemic, a fractious election, and a powerful national discussion about race and inequality.

As I begin my term as WSBA president, I believe one of the most important conversations we can have together as an Association—in light of all of the increased pressures and uncertainties in our lives—is to revisit how the WSBA can and should support member well-being.

First, some background context. Studies for many years have urgently declared the seriousness of mental health and substance use issues in our profession and, importantly, recommended best practices for bar associations. One of the first studies to specifically look at the legal profession (and locally, too) was in 1990 when the Journal of Law and Psychiatry published a study of 801 Washington state lawyers that measured the prevalence of substance abuse or mental health crises. The results showed that attorneys reported depression, alcohol use, and cocaine use at far higher rates than the general adult population. In fact, 19 percent of the Washington lawyers suffered from statistically significant elevated levels of depression compared to 3 to 9 percent of the general adult population in Western industrialized countries. Overall, lawyers—when compared to other professionals—were near the very top of the list of occupations with environments conducive to depression, according to a 1990 study in the Journal of Occupational Medicine. As for the dangers of substance abuse, another study released at about the same time showed that 50 to 70 percent of all lawyer discipline cases in New York and California involved alcohol.

These studies laid the groundwork for bar associations across the country to establish lawyer assistance programs providing support, counseling, and other tools to assist attorneys, judges, and law students during difficult times. These programs were modeled on and created in collaboration with the ABA Commission on Lawyer Assistance Programs (which at the time of its formation in 1987 was known as the ABA Commission on Impaired Attorneys). The WSBA was among them. Beginning in the early 1990s, the WSBA was on the cutting edge of research and delivery of mental-health support services to lawyers. At its height, Washington’s nationally recognized program provided a full complement of services to support a healthy legal community and included several full-time therapists available for counseling and interventions.

Over time, however, the WSBA grappled with how best to deliver these services, especially given the cost of in-house therapists and their limited reach across the statewide membership. Eventually, over several years, the WSBA transitioned to the Member Wellness Program we have now: a half-time psychologist who provides association-wide education resources, serves as the discipline-system diversion administrator, and schedules individual consultations in order to direct members to outside resources, including WSBA Connects (which is like an employee assistance program, offering each member a certain number of free, in-network counseling sessions).

Our program is a good one, but I think it could be better. As a baseline, a remarkable study—heralded by the legal community as the new gold standard—was conducted in 2016 by the ABA Commission on Lawyer Assistance Programs. It was a landmark survey with far-reaching, national data (12,825 attorneys across 15 bar associations). The results—published in the Journal of Addiction Medicine and available online at www.lawyerwellbeing.net—are compelling. Of the responding attorneys, here are the rates of those experiencing symptoms of crises: 20.6 percent experienced problematic drinking (compared to about 6 percent in the general population); 28 percent experienced depression (compared to about 7 percent in the general population); 19 percent experienced anxiety (similar to about 19.1 percent in the general population); and 11.5 percent experienced suicidal thoughts (compared to 3.9 percent in the general population). These percentages were markedly higher for attorneys beginning their careers. “As
a profession that influences all aspects of society, economy, and government, levels of impairment among attorneys are of great importance and should therefore be closely evaluated,” the authors concluded.

This study was a big deal. It was a turning point because of its credibility and sample size. A grassroots movement was born, supported by the formation of the ABA’s National Task Force on Lawyer Well-Being. In 2017, this task force issued a report with concrete recommendations for bar associations, stating: “[B]ar associations are organized in a variety of ways, but all share common goals of promoting members’ professional growth, quality of life, and quality of the profession by encouraging continuing education, professionalism (which encompasses lawyer competence, ethical conduct, eliminating bias, and enhancing diversity), pro bono and public service.” Among its suggestions for bar associations: (1) encourage education on well-being topics in coordination and in association with lawyer assistance programs; (2) conduct annual member surveys that may lead to additional research on lawyer well-being and awareness of resources; and (3) consider forming lawyer well-being committees that would supplement and complement lawyer assistance programs. Of significance, the report recommends specialized treatment services and profession-specific resources for recovery that are designed specifically for legal professionals.

I will say again: the WSBA’s current Member Wellness Program offers many educational resources and opportunities for members to connect with outside counseling. However, we have not yet taken the opportunity to assess all of the new, cutting-edge data and attorney-specific recommendations available to us. Other states have moved ahead, spurred by their Supreme Courts and bar associations. Many jurisdictions, in fact, place their lawyer assistance programs squarely in a regulatory department in their organization. They consider mental wellness that important in protecting the public.

So where do we go from here? Earlier this year, the WSBA Board of Governors embarked on a process to formulate long-range plans for what the state bar should look like in the next five, 10, 20, and 30 years. It’s an aggressive goal, but an exciting one. Based on all of the research cited in this column, I believe that this planning should include a major focus on how to best support legal professionals experiencing substance use disorders, mental-health issues, stress, and transitions in employment. Just talking openly about the subject will go a long way toward one of the biggest barriers in the legal community: overcoming the stigma of acknowledging a mental-health crisis and asking for help.

I want to start a conversation with you, my colleagues in the Bar. My own vision for a robust WSBA member-wellness program includes financial assistance through grants and loans to pay for comprehensive treatment options for people seeking support. I believe we should have a standing member well-being committee to ensure we regularly hear from members and keep up to date with best practices. I could foresee confidential, free counseling assistance specifically for legal professionals; expanded support groups, workshops, and CLEs; and support for legal professionals in transition.

The payoff, I hope, will be in lives saved, as we face even more extraordinary challenges and stresses in the year ahead. The payoff, I hope, will be a profession with greater integrity and better service to our clients. The payoff, I hope, will be better protection for the public, preventing unintended harm caused by an attorney no longer able to competently provide the highest level of legal advice and counsel.

Please send me your feedback, and expect to hear more about my goal to systemically prioritize member well-being throughout my term as president and beyond.

In the meantime, be well. And if you find yourself in a place of crisis, call WSBA Connects at 800-765-0770 any time, day or night.

NOTES
More Member Benefits, Transparency, and Efficiencies Launch Us Into New Fiscal Year

Entering my second term as WSBA treasurer, one of my continued main goals is to help members understand and shape the WSBA’s budget. You are going to hear some consistent messages from me throughout the year in this magazine, on the WSBA website, in email newsletters, and in Board of Governors meetings.

As we launch into the 2021 fiscal year, which started Oct. 1, 2020, and runs through Sept. 30, 2021, I want to recap again three priority areas where we have made significant progress and where we will continue to focus in the coming months: increased member benefits, financial transparency, and improving efficiencies and processes. As always, I am also going to include a breakdown of our financial numbers. Thank you for your ongoing interest and attention. Our Association is a better one when we are all informed.

INCREASED MEMBER BENEFITS AND SUPPORT

During the past year, the Washington Supreme Court approved, by way of the WSBA Board of Governors’ recommendations:

• An ongoing $5 reduction to the Client Protection Fund annual assessment.
• An additional $15 reduction to the Client Protection Fund assessment for the 2021 licensing year to help members negatively impacted by COVID-19.
• A no-increase license fee for 2021 for all lawyers and limited practice officers.
• An expansion of the hardship exemption so that members can now waive their annual license fee twice—as opposed to once—per lifetime due to financial hardship. (Note: the exemption may be expanded again depending on results from the initial expansion.)
• An extension of the 2020 license-suspension deadline (from Feb. 1 to June 30) for unpaid fees to support members negatively impacted by COVID-19.
• An Armed Forces Military Spouses License Fee exemption.
• A waiver of the annual license fee for emeritus members who complete at least 30 hours of pro bono service with a qualified legal services provider in the prior year.

The Board of Governors also approved:

• A three-year contract expanding free legal research tools—both Casemaker and Fastcase—for all members.

• Budget adjustments to include three free CLE ethics credits for all members in the areas of diversity, inclusion, and mitigation of bias; safeguarding client data and technology updates; and wellness for legal professionals.
• An expansion of free CLEs for 2020 and 2021.
• An increased Keller deduction amount of $3.85 for 2021 (Note: this is based on a thorough review of annual activities conducted by the WSBA).
• A lower section per-member charge ($18.11) for 2021.

FINANCIAL TRANSPARENCY

During the past year, as your treasurer I have worked with the Budget and Audit Committee and WSBA Chief Financial Officer Jorge Perez to:

• Include in every issue of Bar News a Treasurer’s Report with updates and a running account of financial numbers.
• Provide frequent written updates in Board of Governors materials and in monthly updates to WSBA governors and officers, pursuant to WSBA Bylaws.
• Post information about WSBA salaries and benefits on the website, as promoted especially by Governor Carla J. Higginson and me. (Note: that information is now available at www.wsba.org/career-center/work-at-the-wsba.)
• Track WSBA employees’ division of work to ensure proper accounting of salaries in various cost centers for future budgeting; this helps the WSBA ensure compliance with GR 25(b)(2)(E) in the innovative licensing department.
• Establish a COVID-19 cost center to track pandemic-related supports and activities.

IMPROVED EFFICIENCIES AND PROCESSES TO ENSURE ADEQUATE INTERNAL CONTROLS

During the past year, the WSBA completed (with oversight from the Budget and Audit Committee and Board of Governors):

• A “deep dive” audit by Clark Nuber. This was the first such audit in the WSBA’s history. Unlike the typical annual independent audit, this process looked at the WSBA’s adherence to financial policies and execution of these policies. The audit...
concluded with no significant findings.

- The typical annual financial audit by Clark Nuber, with no material findings.
- An FY 2020 budget reforecast, which aligned the initial budget’s forecast with actual revenues and expenditures halfway through the fiscal year. The overall efficiencies included the elimination (through attrition) of three staff positions and reduction of expenditures for the future.
- Adoption and implementation of new financial software to improve accuracy and complexity in forecasting and accounting procedures (and to eliminate the need for a staff position in finance).
- Annual expanded professional lobbying support to help the WSBA and its sections during the legislative session; and a modification of its national travel policy for governors to include additional training opportunities.

LATEST FINANCIAL NUMBERS
As this magazine went to press, the WSBA’s books were reconciled through August 2020, representing 92 percent of expenditures and revenues for FY 2020. (The report for the complete fiscal year will be available by my next column). Some highlights:

- Overall, the WSBA is operating at a **$1,014,981 net gain**. This is even more significant when you consider we originally had budgeted a deficit of $594,000 for FY 2020 (which would have caused us to dip into reserves). That means we outperformed our original budget by about **$1.6 million** in revenues/savings.
- Start of the FY 2020 (October 2019) unrestricted general fund balance: **$2,686,537**.
- Current (as of August 2020) unrestricted general fund balance: **$3,701,518**.
- Current (as of August 2020) restricted fund balance: **$1.5 million** (the restricted fund was established by prior boards for emergencies and also includes a $550,000 facilities capital fund).
- Bottom Line: Total WSBA general fund balance (includes unrestricted and restricted funds): **$5,751,518**.

NOTES
1. Due to COVID-19, members of the WSBA Board of Governors are not currently engaging in any national travel.
Exploring 3 Keys to an Ethical Exit

A closer look at a lawyer’s duties when changing law firms — beyond the RPCs

BY MARK J. FUCILE

Two years ago, the Committee on Professional Ethics issued a comprehensive advisory opinion, WSBA Advisory Opinion 201801, on the ethical responsibilities arising when lawyers change firms. (I followed with a column discussing the opinion. Both are available on the WSBA website.) In addition to the professional rules involved when lawyers change firms, however, other areas of the broader “law of lawyering” can come into play. In this column, we’ll look at three.

First, lawyers owe fiduciary duties to their old firms even while they are planning and making their exit.

Second, contractual duties frequently define the advance notice a departing lawyer must provide to the old firm and often govern the division of assets and liabilities resulting from a lawyer departure or a firm dissolution.

Third, statutory duties may also apply to the division of assets and liabilities in the event of dissolution and address an old firm’s lien rights over matters that follow a departing lawyer to a new firm.

Two qualifiers are in order before proceeding. First, although the accent here will be on duties beyond the RPCs, these other duties often remain tethered in varying degrees to the professional rules, and we’ll incorporate that interplay. Second, the focus here will be on surveying the other duties involved rather than attempting to provide “one size fits all” solutions to situations that are inherently fact-specific.

FIDUCIARY DUTIES

As long as a lawyer remains at an “old” firm, the lawyer continues to have fiduciary duties to that firm. When a lawyer is transitioning from one firm to another, fiduciary duties typically arise in three principal contexts.

First, when planning a departure, lawyers
When departing, lawyers cannot lie to conceal their plans or ‘preemptively’ solicit their clients before telling their own firm.

are not generally required to disclose their intentions—such as speaking with another firm or looking for office space—until they are ready to move. To state the obvious, however, lawyers cannot lie to conceal their plans or “preemptively” solicit their clients before telling their own firm. In an Oregon case cited in WSBA Advisory Opinion 201801, for example, a law firm associate was disciplined for secretly diverting clients to his new firm before he told his old firm that he was leaving. Although disciplined under the then-current version of Oregon’s “dishonesty rule,” the Oregon Supreme Court noted that honesty is “implicit” in a lawyer’s fiduciary duty of loyalty to a current firm.

Second, even lawyers who have announced their departure still owe fiduciary duties to their old firm while they remain on the payroll. As the leading ABA ethics opinion on the subject put it: “[T]he departing lawyer must not disparage the lawyer’s former firm.” The same ABA opinion permits a departing lawyer, however, to supply detailed competitive information about a new firm, such as rates and resources, if a client asks. WSBA Advisory Opinion 201801 echoes both points.

This awkward period of having “one foot in and one foot out” supports the wisdom of making the transition from announcement to exit as short as reasonably possible. WSBA Advisory Opinion 201801 notes that once a lawyer has left an old firm and is no longer bound by fiduciary duties in this regard, the lawyer is generally free to provide more detailed competitive information to clients—as long as it is truthful.

Third, if a firm is dissolving, partners and shareholders generally owe fiduciary duties of candor and good faith in winding up a firm. Bovy v. Graham, Cohen & Wampold, 17 Wn. App. 567, 564 P.2d 1175 (1977), for example, involved the dissolution of a law firm. The Court of Appeals found that a partner who withheld material information about the number and value of his cases from his fellow partners during the firm’s dissolution had breached these fiduciary duties.

CONTRACTUAL DUTIES

Contractual duties typically apply in two key areas during law firm departures: advance notice provisions for departing partners and shareholders, and partner or shareholder agreements that address the division of firm assets and liabilities upon departure or dissolution.

Many firms have provisions in their partner or shareholder agreements that require a fixed period of advance notice before a partner or shareholder leaves a firm. The often-stated reason is to foster an orderly transition of client work if a principal handling attorney leaves the firm. Some required periods of advance notice, however, are either inordinately long or include financial penalties if not followed. RPC 5.6(a) prohibits partnership, shareholder, or other agreements that restrict “the rights of a lawyer or an LLLT to practice after termination of the relationship.” WSBA Advisory Opinion 201801 describes this tension: “[A]ny contractual notice requirement cannot be so lengthy as to amount to a prohibited restriction on the Lawyer’s right to practice under RPC 5.6(a).” The ABA made a similar observation in an opinion last year: “Although “reasonable” notice provisions may be justified to ensure clients are
protected when firm lawyers depart, what is “reasonable” in any given circumstances can turn on whether it is truly the client’s interest that is being protected or simply a thinly disguised restriction on the right to practice in violation of RPC 5.6(a).”

The practical import of a notice provision or an associated financial penalty that crosses the line into a violation of RPC 5.6(a) is that a court may decline to enforce it on public policy grounds. The Washington Supreme Court spoke to enforceability generally in LK Operating, LLC v. Collection Group, LLC, 181 Wn.2d 48, 85, 331 P.3d 1147 (2014): “We have previously and repeatedly held that violations of the RPCs or the former Code of Professional Responsibility in the formation of a contract may render that contract unenforceable as violative of public policy.” Washington has long held that when a law firm dissolves or members otherwise go their separate ways, compensation for work in progress is determined primarily by looking to the partnership or shareholder agreement involved or any separate dissolution or withdrawal agreement. The court in Bovv, discussed in the preceding section, for example, focused on a written agreement concerning the division of cases and associated revenues at dissolution. WSBA Advisory Opinion 201801 summarized on this point: “Issues regarding accrued compensation, return of capital and entitlement to accounts receivable or other anticipated future fee income are matters of substantive contract and statutory law beyond the scope of the RPCs.”

3 STATUTORY DUTIES

In the absence of controlling agreements, courts also look to relevant statutory law in valuing a departing partner’s or shareholder’s interest in a former firm and accounting for work in progress. In Dixon v. Crawford, McGilliard, Peterson & Yelish, 163 Wn. App. 912, 918, 262 P.3d 108 (2011), for example, the Court of Appeals looked to statutory law in calculating the “buyout price” of a departing partner’s interest in a law firm created by an oral partnership agreement. Statutory attorney liens under Chapter 60.40 RCW may also create rights over unpaid hourly or contingent fees when a departing lawyer leaves and a client maintains a client-lawyer relationship with the departing lawyer. Depending on the circumstances, other areas of statutory law—such as bankruptcy and trade secrets—can also be involved.

SUMMING UP

The RPCs appropriately focus on the ethical duties to clients when lawyers are in transition. At the same time, fiduciary, contractual, and statutory duties can come into equally sharp focus when lawyers and their firms are parting ways.

NOTES

5. Id. at 452.
7. Id. at 6.
9. Id. at 2 n.6.
10. See RCW 25.05.305 (winning-up partnership); RCW 25.15.297 (same for PLLC); see generally Northgate Ventures LLC v. Geoffrey H. Garrett PLLC, 10 Wn. App. 2d 850, 450 P.3d 1210 (2019) (discussing law firm dissolution and successor liability).
11. In theory, these same issues can arise with non-partner/shareholder lawyers. In practice, however, they are more common with partners and shareholders because they are typically governed by written agreements.
12. WSBA Advisory Op. 201801, supra n.2, at 3 n.9. See also WSBA Advisory Op. 2118 (2006) (discussing RPC 5.6(a) as applied to contractual non-compete provisions).
16. RPC 5.6(a) would, nonetheless, apply if such agreements included an impermissible restriction on a lawyer’s future right to practice. See ABA Formal Op. 94-381, supra n.14, at 2-3.
17. See generally RCW 25.05.500, et seq. (LLP); Ch. 18.100 RCW (PC and PSC); RCW 25.15.046, et seq. (PLLC).
19. See In re Williams, Love, O’Leary & Powers, P.C., 2012 WL 5900762 (D. Or. Nov. 21, 2012) (unpublished); aff’d, 588 Fed. Appx. 559 (9th Cir. 2014) (attorney lien for work in progress at the time of lawyer’s departure held by firm because firm provided legal services under fee agreement involved); see also RCW 60.40.010(1)(d)-(e) (addressing “charging liens” over, respectively, actions and judgments that create funds to which a lawyer’s service contributed).
No one should suffer in an abusive environment.

No one should suffer in an abusive environment.

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FROM THE SPINDLE

Recent significant cases decided by the Washington Supreme Court

BY BRYAN HARNETIAUX

Inmate Challenge to Lack of Coronavirus Safeguards

In Colvin et al. v. Inslee, ___ Wn.2d ___ (slip op., #98317-8, decided July 23, 2020), five inmates incarcerated in Washington Department of Corrections (DOC) facilities sought a writ of mandamus in the Washington Supreme Court to obtain relief due to the extraordinary dangers they faced as a result of the COVID-19 pandemic. In particular, the petitioners asked the court to compel Gov. Jay Inslee and the DOC to reduce the prison population by ordering the immediate release of three categories of prisoners: those with preexisting medical conditions complicated by COVID-19, those over age 50, and those with prison release dates pending within the next 18 months. See id., slip op. at 2, 4-5. Overall, the petitioners contended that due to overcrowded conditions at state prisons—despite executive branch efforts during the pandemic to create a safe environment consistent with health care guidelines—they faced an unreasonable risk of contracting COVID-19. See id. at 6.

The case came before the Supreme Court on an agreed record, which was supplemented on several occasions during the course of the proceedings.3 Prior to oral argument, the petitioners sought leave to amend their pleadings to include a personal restraint petition, urging that, due to the substantial risk involving COVID-19, their imprisonment constituted cruel and unusual punishment in violation of the Eighth Amendment to the U.S. Constitution. See id. at 2, 21-23. Following oral argument, a divided Supreme Court entered an order summarily dismissing the petition for the writ of mandamus and denying the petitioners’ request to seek similar relief via a personal restraint petition.

The majority concluded that there was a sufficient basis in precedent for the court to retain the case and order additional fact-finding:

Without a showing an official in the executive branch has failed to perform a mandatory nondiscretionary duty, courts have no authority under law to issue a writ of mandamus—no matter how dire the emergency.

We are not indifferent to the serious dangers faced by petitioners and other inmates at heightened risk of contracting COVID-19 in Washington’s correctional facilities, but how the governor and secretary [of DOC] address these dangers and also protect the public necessarily involves the exercise of discretionary authority that we cannot direct.

Id., Colvin slip op. at 2, 25 (emphasis in original). The majority also denied the motion to amend the complaint to seek relief by way of a personal restraint petition, concluding that the petitioners “have not shown that the respondents have acted with deliberate indifference to the extreme risk that COVID-19 creates for the incarcerated.” Id. at 2. The majority noted that “[t]oday’s decision resolves these claims on the facts before us and does not excuse the governor and secretary from their continuing obligations toward these petitioners and other inmates.” Id. at 25.

Four justices dissented, urging that there was a sufficient basis in precedent for the court to retain the case and order additional fact-finding:

If the petitioners show unconstitutional acts or omissions by public officials that amount to a clear manifest abuse of discretion, we may issue a writ of mandamus. Under those circumstances, a writ could direct relief that does not interfere with the discretion of the executive branch but mandates that discretion be exercised within constitutional limits. Washington law also authorizes us to grant relief for unconstitutional conditions of confinement via a personal restraint petition.

See id. dissent at 5 (Gonzales, J., dissenting). In the subsequent opinion explaining the basis for the order, a five-justice majority held:

SIDEBAR
What is a ‘Spindle’?

To this day, in the Temple of Justice hallway between the clerk’s office and the courtroom, there’s a spindle on top of a wooden lectern where on any Thursday the Supreme Court’s newly issued opinions are placed for public viewing. This is the paper version of the “slip opinion” of the court. In the “old days,” before the internet, the press and media, or members of the public, would have to check the spindle to quickly access the latest decisions from the court. Although we now all have near-instant access to the court’s decisions via cyberspace, for reasons that seem more ceremonial than practical, the spindle remains—a small relic and enduring symbol of the open administration of justice.

Caveat: This column is based on slip opinions of the court, which are not necessarily the court’s final decisions and are subject to change; the official opinions of the court are those published in the Washington Reports.
Validity of Damages Action by Association on Behalf of Members

In *Washington State Nurses Association v. Community Health Systems, Inc.*, ___ Wn.2d ___ (slip op. #97532-9, decided Aug. 13, 2020), the court was asked to decide whether an association could seek damages for loss of employee benefits suffered by some of its members. In this action, the Washington State Nurses Association (WSNA) sued Yakima HNA LLC (Yakima Regional), which operated a home-care agency that included both home health and hospice programs. WSNA sought damages against Yakima Regional on behalf of 28 home-health and hospice nurses under the Washington Minimum Wage Act (Ch. 49.46 RCW), and the Industrial Welfare Act (Ch. 49.12 RCW), for unpaid working hours, overtime hours, and missed meal periods. See WSNA slip op. at 3-4. Following Yakima Regional’s unsuccessful summary judgment motion for dismissal on the grounds that WSNA lacked “associational standing” to bring its claim, *Id.* at 4, the superior court conducted a bench trial resulting in a judgment for the association of approximately $1.5 million in damages, plus costs and attorney fees. *See id.* at 6. The trial court concluded that upon the evidence WSNA had associational standing to bring the claim. *See id.* at 5. In resolving the case, the court considered, among other things, a damages calculation chart by a WSNA expert, which required the court to weigh the testimony of the nine nurses who testified, and make factual determinations regarding the average hours of overtime all nurses worked and the percentage of meal periods they missed. *See id.* at 4-6.

On review, a five-justice majority of the Supreme Court determined that the trial court erred in finding associational standing, vacated the judgment, and dismissed the WSNA claim. *See id.* at 6-7, 21. While noting that the underlying claims “are not without merit,” the court nonetheless held:

> WSNA chose to bring these claims using associational standing, which has limitations under our case law. Associational standing requires that damages be certain, easily ascertainable, and within the knowledge of the defendant. We conclude that WSNA’s claim cannot survive this test for damages. We decline to make an exception to this test in order to allow representative testimony to establish damages in wage and hour claims.

*Id.* at 6-7.

Four justices dissented, contending that the majority’s holding “takes an overly restrictive view of associational standing that is not required by our precedent and that contravenes the purposes of judicially imposed limits on associational standing.” *See id.*, dissent slip op. at 2 (Yu J., dissenting). The dissent concluded that associational standing existed and that a number of other related trial court determinations were correct, but would have remanded for further proceedings because of a lack of specificity in the trial court findings and the absence of a “clear description of the method and basis for its damage calculations.” *Id.* at 17.

Arbitrability of Employee Claim for Wrongful Discharge

In *Burnett v. Pagliacci Pizza, Inc.*, ___ Wn.2d ___ (slip op. #97429-2, decided Aug. 20, 2020), Burnett filed a putative class action complaint against Pagliacci, alleging various wage-related claims, after he was terminated as an employee. Pagliacci moved to compel arbitration under the employment agreement. *See id.*, slip op. at 1-4. Burnett argued that the agreement to arbitrate was unenforceable, as the arbitration provision was both procedurally and substantively unconscionable. *See id.* at 4. The superior court denied Pagliacci’s motion to compel arbitration, finding that arbitration had not been agreed upon between the parties; it did not rule upon the claims of procedural and substantive unconscionability. *See id.* at 4-5. The Court of Appeals affirmed on other grounds, concluding that there was an agreement to arbitrate, but that any agreement to arbitrate was procedurally and substantively unconscionable. *See id.* at 5.

The Supreme Court granted review, and in a unanimous opinion also affirmed denial of the motion to compel arbitration. In resolving the case, the court invoked the parties’ choice of law provision and applied the Washington Arbitration Act, Chapter 7.04A RCW. *See id.* at 6 & n.1. The court held that, as Burnett argued, the arbitration provision did not apply because he had never assented to it, agreeing with Burnett that “[t]his alone is a basis for affirming the trial court.” Resp’t’s Suppl. Br. at 9.” *Id.* at 6. After an extended and fact-based analysis, the court found that Burnett never agreed to arbitrate and that this “speaks primarily to the issue of contract formation rather than to unconscionability of an existing arbitration contract.” *Id.* at 17. Notwithstanding this outcome-determinative holding, the court went on in *dicta* to conclude that even if a valid arbitration agreement was formed it was both procedurally and substantively unconscionable. *See id.* at 14-18 (regarding procedural unconscionability), & 14, 18-21 (regarding substantive unconscionability).
The small number of applicants for the Washington summer lawyer 2020 bar exam is due to the fact that 571 registered applicants opted for diploma privilege as permitted by the Washington Supreme Court’s Order of June 12, 2020. Seventy-one applicants opted for the July 2020 lawyer bar exam and 37 applicants opted for the September 2020 lawyer bar exam. Of the 71 applicants who took the July exam, 61 passed. Of the 37 applicants who took the September exam, 14 passed. Congratulations! The full pass list for both exams is printed below.

JULY LAWYER BAR EXAM

Barr, Bridget D. • Cie Elum
Barrett, Callan Elizabeth • Eugene, OR
Beverue, Austin John • Spokane
Birnel, Erik Matthew • Spokane Valley
Bobek, Cory Lynn • Washougal
Bowlby, Jeffrey John • Bellevue
Brigham, Jake Lawrence • Bainbridge Island
Brooks, Timothy Allen • Tacoma
Calderwood, Cayla Connor • Clinton
Carnell, Katherine Mackenzie • Spokane
Cash, Jordan Micah • Eugene, OR
Che, Meng Yu • Renton
Cho, Marcia Hyunjin • Seattle
Comley, Christopher • Tumwater
Covert, Darcy Catherine • San Francisco, CA
Damron, Neil • San Francisco, CA
De Palma, Lolita • Seattle
Dizdarevic-Miller, Samir • Meridian, ID
Dou, Xidan • San Francisco, CA
Eldridge, Lauren Avery • Spokane
Endeshaw, Tesfahun Melese • Seattle
Filak, Andrew Thomas • Spokane
Fuhr, Johanna Rose • Liberty Lake
Gabel, Constance • Tacoma
Gage, Laura Elizabeth • Seattle
George, Emily Elizabeth • Medical Lake
Henson, Tiffany Lynn • Washougal
Higgins, Holli L. • Spokane
Hoffman, Kyle • East Wenatchee
Johnson, Alexander Charles • Houston, TX
Kang, Siyan • Seattle
Kelso, Christian Thomas • New Orleans, LA
King, Lindsay • Spokane
Lawless, Courtney Seaman • Eugene, OR
Lawless, Morgan Seaman • Eugene, OR
Layton, Keenan Vardar • Seattle
Loomis, Kaitlin • Spokane
Lovell, Alexandra Morgan • Spokane
Luna, Myrna L. • Bellevue
Mangone, Robert • Asheville, NC
Mergaert, Myell Jordan • San Francisco, CA
Mort, Tanner • Post Falls, ID
Morton, Nicholas Mitchell • Boston, MA
Mozingo, William Thomas • Seattle
Mucha, Bree Johnna • Spokane
Murray, Devin Eric • Deer Park
Nasir, Mishal • Seattle
Nevalu, Alyssa Rosanne • Seattle
O’Neil, Mariah Ann • Seattle
Peterson, Carl Helmar • Seattle
Plovanic, Jacob Thomas • Seattle
Rife, Summer Marie • Spokane
Sachau, Chelsea Jordan • Blaine
Salameh, Shaza Eed • Bothell
Sawyer, David James • Tacoma
Shaw, Rynie Diego • Spokane Valley
Stevens, Rory Lawrence • Seattle
Stonecipher, Dylan • Austin, TX
Vranizan, Frederick William • Shoreline
Wilhelm, Lucy Blair • Seattle
Yerigan, Alexandra Katherine • Stanwood

JULY LPO BAR EXAM

Of the 29 candidates who took the summer 2020 LPO Exam, 14 candidates passed the exam.

Anderson, W. Kaitlyn
Baumgarten, Melissa
Casellini, Amber
Cha, Heather
Chapman, Amanda
Collyer, Catherine
Fenrich, Raemy
Loken, Blake
McGee, Shari
Steinher, Keith
Sulijic, Kemal
Tarin, Alexandria
Tibbits, Aimee
Wickler, Nancy

NOTES

1. The WSBA publishes the names of applicants who pass licensure examinations as permitted under APR 4 and required by Board of Governors policy. Court rules and court orders establish the criteria for admission to practice law in Washington. Passing a licensure examination does not provide authorization to practice law and is not the exclusive method of meeting the court’s criteria.
James K. Doane Wins 2020 President’s Award

BY WSBA STAFF

The WSBA has named James K. Doane as the 2020 recipient of the President’s Award, in recognition of his servant leadership, community impact, and commitment to diversity and inclusion. 2019-2020 WSBA President Rajeev D. Majumdar bestowed the award at the September Board of Governors meeting, when this annual award is traditionally announced and awarded to a Board member who has been particularly supportive and inspirational during his or her term.

“James Doane epitomizes servant leadership,” said then-President Majumdar. “He stood out as a pillar of how I want to lead my professional and personal life, as a model of selfless leadership, and, ultimately, as the person who made my term as president possible.”

Doane has served on the WSBA Board of Governors, as chair of the Executive Committee of the WSBA’s Corporate Counsel Section, and as the WSBA’s liaison to the Asian Bar Association of Washington. He regularly contributes to legal community programs and initiatives such as the Washington State Bar Foundation, the Eastside Legal Assistance Program, the Northwest Immigrant Rights Project, the Legal Foundation of Washington, the King County Bar Foundation, and the Legal Executives Diversity Summit.

Doane is committed to diversity and inclusion, especially as it pertains to his Japanese roots, history, and community. His earliest recollections are of the 1950s in Seattle’s International District, where his mother raised four children while working at Bush Garden, in what was then known as Chinatown. To this day, Doane advocates for and supports the International District community. He regularly sponsors community cultural events and scholarships, including recently serving as a judge for a mural contest to help the International District respond with art after buildings were vandalized.

“I was happy to support this peaceful show of solidarity,” said Doane.

Remarking on Doane’s more than 40 years as a corporate lawyer involved in global ethics and compliance, intellectual property, and mergers and acquisitions, Majumdar noted, “James is an all-star in his field, having served in big firms and in big businesses, in the U.S. and in Japan. His education pedigree is just as impressive, layering his University of Pennsylvania Law School degree on top of a Harvard degree in East Asian studies and Rockefeller Fund Fellowship for Japanese language study.”

Doane has served as president of the Japan-America Society of the State of Washington, as chair of the International Service Committee of the Seattle 4 Rotary Club, and as a trustee at the Rainier Club. He and his wife, Yumi, also support local nonprofits advancing education, such as the Bellevue College Foundation and Rainier Scholars.
2020 Public Service and Leadership Award Recipients

The Washington Young Lawyers Committee honors four local leaders

BY EMILY ANN ALBRECHT

The Washington State Bar Association’s (WSBA) Washington Young Lawyers Committee (WYLC) recently asked the legal community to nominate new and young lawyers who are dedicated to serving their communities for the annual Public Service and Leadership Award. The WYLC carefully considered each nominee’s long-term service and contributions to his or her community, and selected award recipients who have histories of exemplary leadership and commitment to public service.

Among the factors weighed by the WYLC were each nominee’s: (1) leadership and service in the local community or within a bar association; (2) WSBA, American Bar Association (ABA), or local bar association activities; (3) volunteer work with pro bono or public service programs; and (4) contributions for publication in NWSidebar and/or Washington State Bar News. The WYLC carefully balanced these factors in light of the award’s ultimate goal of highlighting the exceptional work of new and young lawyers around Washington, while promoting a culture of public service throughout the Washington Bar. Within this framework—and after deliberating over many qualified candidates—the WYLC selected four new or young lawyers to receive 2020 Public Service and Leadership Awards. Notwithstanding the uniqueness of each nominee, these award recipients share many attributes that quickly elevated them to the top of the committee’s pile. Among these commonalities were a profound public service ethic and a track record of putting the needs of others ahead of their own. The WSBA is fortunate to have such dedicated new and young members and looks forward to many more years of service from them.

LEARN MORE

For additional information about the WYLC Public Service and Leadership Award, or to learn about ways to volunteer with a pro bono or public service program, please visit https://www.wsba.org/for-legal-professionals/new-members/public-service-and-leadership-award or www.wsba.org/connect-serve/volunteer-opportunities/psp.

Danielle Rogowski

Rogowski was nominated by several of her colleagues at the Washington Air National Guard for her exceptional leadership and service. Her background is truly remarkable, having served on active duty in the Air Force at Joint Base Lewis-McChord (JBLM) while also attending law school. After graduating with honors, she went on to serve as a law clerk for Washington Supreme Court Justice (now Chief Justice) Debra L. Stevens and joined the Washington Air National Guard, where she was selected to be a judge advocate in the Air Force JAG Corps. When the COVID-19 pandemic unfolded and Gov. Jay Inslee activated hundreds of service members in the National Guard, she helped distribute millions of pounds of food to local families in need and also served in a leadership role in operations involving the protests for social and racial justice. Rogowski is now a deputy prosecuting attorney at the Kitsap County Prosecutor’s Office and the deputy staff judge advocate at the Western Air Defense Sector at JBLM.

NOTES
1. The WYLC defines a new or young lawyer as one who has been in practice for fewer than five years or is under the age of 36.
Ingrid Zerpa

Described by her nominator as a dedicated public servant who has contributed significantly as a volunteer in a variety of settings and communities, Zerpa has demonstrated a commitment to pro bono work ever since she was in law school. In 2015, Zerpa received the prestigious Legal Foundation of Washington’s Goldmark Legal Internship, a highly competitive opportunity granted to only one law student per year. She served her internship at the Successful Transition and Reentry Project (STAR). Since then, she has done volunteer work in many different capacities, including pro bono work for Northwest Justice Project; serving as a Spanish specialist at the Legal Action Center with clients who suffer from severe mental illness, helping them with creditor-debtor and landlord-tenant issues; and volunteering at El Centro de la Raza, a legal clinic in Seattle for clients with limited English proficiency. She is currently on the Board of Directors for Thurston County Volunteer Legal Services and is active in her community as both a volunteer and attorney mentor. Zerpa is currently an assistant attorney general at the Washington Attorney General’s Office, where she is assigned to the Aging and Long-Term Support Administration of the Department of Social and Health Services.

Ariel Speser

Described by her nominator as an “eminent advocate for public service,” Speser has a long history of volunteering with local pro bono organizations and giving back to her community. She began her legal career with a fellowship with AmeriCorps Equal Justice—a highly selective, nationally renowned program. She went on to work tirelessly to mitigate the effects of the foreclosure crisis on low- to moderate-income homeowners in the aftermath of the 2008 recession, working with the Foreclosure Prevention Unit of Northwest Justice Project in Seattle, Washington’s largest civil legal aid provider, with which she continued to work for many years. Speser currently serves as an elected member of the Port Townsend City Council, is a board member of Clallam-Jefferson County Pro Bono Lawyers, and volunteers at several legal clinics. Now an assistant attorney general at the Washington Attorney General’s Office, she continues to fiercely advocate for those in need through her involvement in high-stakes litigation impacting the rights of LGBT youth and her dedication to protecting children facing poverty, abuse, and neglect.

Emily Ann Albrecht

is an associate with Gardner Trabolsi & Associates, PLLC, in Seattle, where she focuses her practice on mortuary litigation and insurance defense, including product liability and professional liability. She can be reached at ealbrecht@gandtlawfirm.com.

Courtney Whitten

Whitten was applauded by her nominator for showing remarkable dedication to serving her community through pro bono service and involvement with the local bar. A true appreciation of the responsibility that attorneys have to contribute pro bono service is evident through her work volunteering with legal clinics, supporting direct representation clients for the Spokane County Bar Association Volunteer Lawyers Program, and supporting the Cheney Youth Court. A former vice president of the Washington State Association of Youth Courts, Whitten was involved with the creation and passage of SB 5640. This bill, which she worked on for two years, reformed the ways that courts approach youth cases by allowing sentences to reflect scientific understanding of the brain and broadening the scope of Youth Court jurisdiction. She now serves as a trustee for the Spokane County Bar Association’s Young Lawyers Division. Whitten is currently a partner/member at Gerl & Whitten PLLC in Spokane, where she focuses her practice on criminal defense, contract-based criminal law, family law, and landlord-tenant law.

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December 1999, a meeting was convened between the WSBA Committee on Diversity and the Board of Governors as part of an effort toward “improving communications between the Board of Governors and minorities,” as then-District 2 Governor James E. Deno wrote in a summary for the Board.

“During this meeting we came to understand that there is a perception that the Bar Association Governors, committees, and perhaps even sections, are perceived as ‘insiders,’ and access is perceived as closed to minorities …,” Deno wrote. “We are told that minority members of the Bar feel that there is an unwritten system of rules and regulations that would operate to exclude them from meaningful participation in the governance process and that there is concern that even this effort may well only represent lip service, as opposed to a sincere effort to draw in and obtain true representation for the interests of minorities.”

A review of past Board materials indicates that the December 1999 meeting; Governor Deno’s summary of what was discussed; and, significantly, perspectives from historically underrepresented Bar members were part of the genesis for reshaping the WSBA’s governing body and adding governor positions now colloquially referred to as the at-large diversity seats.

Not long after, in May 2000, Loren Miller Bar Association (LMBA) President Sherri L. Jefferson wrote to the Board in support of a “minority seat,” saying: “LMBA supports the BOG taking such extraordinary measures in order to ensure inclusion of those who have traditionally been underrepresented, namely lawyers of color.”

These documents illuminate the origins of the at-large diversity seats. The specific language of the bylaws subsequently drafted by the Board and approved by the Washington Supreme Court to create these seats was deliberated, debated, and modified; however, the motivation behind creating these seats in the first instance was clear and largely aimed at increasing racial diversity on the Board.

The Board deliberated through at least early 2001. Governors at the time were in agreement about the necessity of “having a representative of the views of racial diversity,” but they wrestled with questions over how to increase representation for underrepresented WSBA members, and how, eventually, the seats might further diversify WSBA governance beyond race.

Though race was at the heart of early discussions, the WSBA Bylaws, as adopted, state that the at-large seats are intended to give voice to historically underrepresented members based on “age, race, gender, sexual orientation, disability, geography, areas and types of practice, and years of membership, provided that no single factor will be determinative.”

Since 2001, 14 governors have served in the at-large diversity seats, about two-thirds of whom have been people of color. Of the 21 people of color who have had a seat on the Board during that time, 43 percent first served in the at-large diversity seats.

Without the dedicated diversity seats, the Board’s overall representation from non-white members would drop from
about 20 percent to about 9 percent.

Similarly, 22 percent of the Board’s female governors first served in the at-large diversity seats. Without those governors in those seats, the Board’s gender diversity since 2001 would drop from about 26 percent women to about 20 percent. Five of the nine women of color first served in the diversity seats.

Nearly two decades after the seats were created, the question is not so much whether the at-large seats successfully diversified WSBA governance but rather what we mean when we talk about diversity and how to ensure that application of the WSBA Bylaws is consistent with that meaning.

Recently, the Board of Governors, responding to policy proposals from the WSBA Diversity Committee, attempted to answer the current question by recalibrating the at-large governor selection process.

Historically, at-large diversity candidates submitted their applications directly to, and were selected directly by, the Board. (Governors in other seats are elected by members in their congressional districts.) In January 2020, based on a proposal put forward by the WSBA Diversity Committee to open up the seats to membership-wide election, the Board voted to revise the WSBA Bylaws so that the full pool of at-large diversity candidates will initially be reviewed by the Diversity Committee, which will then nominate at least three candidates to the Board. The Board will then place those candidates on the ballot for a vote by the full WSBA membership.

As was the case when the seats were created in 2001, the conversations around these seats almost 20 years later focused on both intent and definition. The Diversity Committee took up the issue at its November 2019 meeting where, according to the minutes, “There are concerns that the language of the definition does dilute the intention of creating more space for people who have historically been underrepresented in the governance of the WSBA.”

Following the Board of Governor’s first reading of the proposed policy update, the Diversity Committee again took up the topic in January: “Questions were raised about the screening process and the general election process both adding hurdles for candidates. There were also questions about switching to a general election model, particularly when the definition of ‘diversity’ for this position remains broad and vague.”

Diversity Committee Co-Chair Andrea Jarmon (who also served as District 8 governor from 2014-2017) told Bar News that the change in election...
Diversity at the Seat of Governance

CONTINUED >

process is part of a commitment to an inside-out approach to diversity that goes beyond saying the words, but intentionally includes people on the Board who through systemic failures have been absent.

“The conversation about making sure that the intended spirit of the meaning of diversity was actualized in that seat arose from basically a disagreement about the very concept of diversity,” Jarmon said. “Over time it seemed to be getting more and more expansive. You can’t make it so expansive that it is actually rendered meaningless.”

The outgoing at-large governor, Alec Stephens, also raised such concerns. Stephens is a civil rights lawyer admitted to the Bar in 1981, a member of the WSBA Diversity Committee, and a two-time chair of the WSBA Civil Rights Law Section. As the only Black member of the Board during his term, Stephens on multiple occasions raised the issue of diverse representation—and underrepresentation—among the Bar’s governing bodies.

On June 27, the Board was tasked to select an at-large diversity governor under the old appointment process before the new bylaws went into effect, choosing from a pool of 14 applicants. (The selected candidate was later unable to serve and a new election process is underway, as you will see below.) At that June Board meeting, Stephens said that in trying to be more inclusive and avoid exclusionary language in defining diversity “it soon becomes language that dilutes especially the initial historic purpose [of the position].”

In his final message as an at-large governor, Stephens on Sept. 29 wrote in his Board of Governors meeting update:

I have had situations where great candidates of color were overlooked, and the shield of justification around not increasing diversity is to lean on the altar of color-blindness, even though the lack of people of color is evident. This also overlooks the years when we have not been at the table. As it relates to the At-Large Governor positions, race and other areas of underrepresentation matter. They are important and need to be factored-in, not willfully overlooked.

A late and unexpected shuffle in the at-large governor position has now ushered in, sooner than planned, the first use of the new at-large selection and election process. At their June meeting, Board members made what was supposed to have been the last direct selection of an at-large diversity representative under the old rules, appointing Lisa Mansfield, a parent’s attorney in Tacoma, president of the Pierce County Minority Bar Association, and community outreach vice president for Washington Women Lawyers. Mansfield subsequently was appointed to serve as a municipal court judge and withdrew before being sworn in as an at-large governor, once again creating an opening in one of the at-large seats. The unexpected opening has become an opportunity to fill an at-large diversity seat for the first time under a new process that will put more power over the makeup of the Board in the hands of the Diversity Committee and the full WSBA membership. The Board has expedited the election process, with the initial pool of candidates to be finalized by the end of October and the member-wide election planned for December.

As of this writing, six people had submitted an application for the seat. The Diversity Committee is scheduled to hold an interview and candidate-selection meeting on Nov. 7, followed by a Board of Governors candidate forum, with the election scheduled to run from Dec. 1-15 and a swearing-in ceremony scheduled for the newly elected governor at the Board’s January 2021 meeting. (Learn more about the at-large candidates by visiting the Board Elections page at www.wsba.org/about-wsba/who-we-are/board-elections.)

According to Jarmon, the Diversity Committee will interview every candidate who applies for the position. It’s part of the committee’s commitment to model what it means to be more inclusive, which among other things includes recognizing the barriers that exist for people and communities who have been marginalized, and providing them with a path to meaningfully participate and have their identities and values reflected in the organization.

“We want to make sure the door is wide open …,” Jarmon said. “If we are flooded with applicants, I think that’s going to be a beautiful thing for us.”

NOTES

1. The Washington Race Equity & Justice Initiative (REJI)—of which the WSBA is a partner—Organizational Race Equity Toolkit defines racial equity as: “The condition that would be achieved if one’s racial identity no longer predicted, in a statistical sense, how one fares.” https://justleadwa.org/learn/rejitookit/.
2. These numbers are based on review of available materials in past Board agendas and meeting minutes, as well as previous issues of Bar News.
3. There is an additional at-large seat for a new and young lawyer, which is defined separately from the two at-large diversity seats.
5. The bylaws further state, “If the Diversity Committee forwards less than three candidates the BOG may, at its option, select additional qualifying candidates on its own or place only those candidates forwarded by the Diversity Committee on the ballot to be elected by all eligible voting members.”
7. www.wsba.org/docs/default-source/legal-community/committees/wsba-diversity-committee-final-january-minutes.pdf?sfvrsn=dc8bee0f_f0
8. As explained in the WSBA’s 2013 Diversity and Inclusion Plan, “inside-out” diversity “rests on a fundamental assumption that “WSBA’s commitment to its own culture of inclusion and cultural competence provides the best foundation for meaningful progress.” www.wsba.org/docs/default-source/about-wsba/diversity/7-wsba-diversity-and-inclusion-plan-with-cover-page.pdf?sfvrsn=85be38f1_1

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BE CAREFUL WHAT YOU ASK FOR

Will the sunlight shed on constituent communications to legislators under Associated Press v. Washington State Legislature ultimately cause a chill?

__BY RAMSEY RAMERMAN__

The trial court ruled largely in favor of the media entities, and the Legislature sought direct review by the Supreme Court. A divided Supreme Court affirmed the trial court in a 4-3-2 decision.

Although a majority of seven justices concurred that the institutional legislative bodies (the state House of Representatives and the Senate) were largely excused from complying with the PRA, the media plaintiffs prevailed because a different majority of six justices ruled that each of the state’s 147 individual legislative offices qualified as a separate “agency” that was required to comply with the PRA. And because these legislators are provided with access to investigative reports when they or their staff are accused of sexual harassment, those reports will qualify as public records of those legislative offices.

Those reports, are not, however, the only records that will now qualify as public records. Under the Associated Press decision, emails that constituents send to their elected representatives will now also have to be turned over to anyone who makes a PRA request.

Such compelled disclosure can infringe on the First Amendment rights of a legislator’s constituents, who may wish to keep their correspondence private. As the U.S. Supreme Court has recognized, “involvement in partisan politics is closely protected by the First Amendment, and … compelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment.” Nixon v. Administrator of General Services, 433 U.S. 426, 467 (1977). Therefore, laws that require disclosure of political information are subject to heightened (but not strict) First Amendment scrutiny. California Democratic Party v. Jones, 530 U.S. 567, 581 (2000). Under this standard of review, courts must consider the strength of the government interest in disclosure and whether the disclosure obligation is narrowly tailored to serve that interest. __Id.__

At least two benefits can be identified as flowing from the Associated Press decision and the additional “sunshine” it sheds on constituent correspondence. First, it will expose—and help dispel public concerns about—any quid-pro-quo corruption reflected in these communications; it will also discourage persons from using email to solicit such corrupt arrangements. The U.S. Supreme Court has held that the states have significant interests in using disclosure laws to pursue these goals. __Doe v. Reed__, 561 U.S. 186, 197 (2010) (upholding the PRA’s requirement that the secretary of state produce signed petitions to fight fraud and the perception of fraud). Second, the disclosure of constituent communications will allow citizens to see how other citizens are trying to influence their elected officials, which is another legitimate interest recognized by the Court. __Id.__ at 197 (recognizing interest).

However, it could be argued that in the current social-media-dominated political environment, the disinfecting effect of exposing constituent communications through the PRA will feel more like bleach, because many voters may choose not to share their
candid views with their elected representatives so as to avoid becoming a target on social media. Because the communications are between elected representatives and their constituents, the protection of that speech is “at the heart of the First Amendment.” Nevada Comm’n on Ethics v. Carrigan, 564 U.S. 117, 131 (2011) (Kennedy, J., concurring). In a representative democracy such as ours, “to a very large extent, the whole concept of representation depends upon the ability of the people to make their wishes known to their representatives.” E.R.R. Presidents Conference v. Noerr Motor Freight, Inc., 365 U.S. 127, 137 (1961).

Thus, the unintended consequence of the Associated Press decision subjecting constituent communications to disclosure under the PRA may be that it serves significant governmental (and public) interests, but it also threatens significant, core First Amendment interests. The issue therefore becomes whether the disclosure obligation is properly tailored to serve these important governmental and public interests without unduly chilling First Amendment rights.

One way to address the “narrowly tailored” requirement is to consider whether a narrower disclosure obligation would provide comparable governmental and public benefits without infringing the same First Amendment harms. Although governments defending disclosure laws are not required to prove that the law is the least restrictive option, the fact that there are alternatives that provide comparable benefits without infringing similar First Amendment harms can show that the law is not sufficiently tailored to survive First Amendment scrutiny.

Since the Associated Press lawsuit was filed, the Washington Legislature has considered numerous legislative responses and even passed one bill that would have created an alternate version of the PRA. This alternative PRA applied only to the Legislature and protected constituent communications from disclosure, but lacked the PRA’s strong enforcement tools like mandatory daily penalties and attorney fee awards. The public reaction to this watered-down version of the PRA was so strongly critical, however, that when the governor vetoed it, he did so in part at the urging of several sponsors of the law.

Another alternative approach that has been raised would keep the offices of the legislators subject to the PRA, but enact a new legislative privilege that is both limited and qualified to prevent its abuse. To limit its scope, such a privilege would be drafted to protect only the substance of the constituent communication from disclosure but to require that the fact of the communication be disclosed. By default, the PRA would already require the sender, recipient, and date of communication to be disclosed in an exemption log. But a new privilege could be further limited by requiring legislators to also disclose the general subject of the email—similar to what is already required for lobbyist communications—and affirmatively disclose these basic details about these communications on a website. This would allow the public to know who is trying to influence their legislators, and what topics those persons are addressing, without making public the actual text of the communications themselves.

A legislative privilege could also be “qualified” by requiring legislators to retain copies of the constituent communications for a fixed period of time, and by creating a mechanism to allow for a court order requiring the legislator to disclose those communications upon a sufficient showing of possible corruption or other justification.

Proponents of such a qualified privilege contend that it could provide most of the same anti-corruption benefits, and much of the same informational benefits, as full disclosure. The only “information” that someone could not learn would be the actual opinions expressed in the communications.

Satisfying the “narrowly tailored” standard requires asking whether the public’s interest in knowing exactly what other citizens are saying to their elected representatives in their emails is worth the risk of making it less likely that citizens will be willing to share their candid opinions in the first place.

When the people of this state first voted for Initiative 276 in 1972 to enact the Public Disclosure Act, that initiative started with 11 policy statements and ended with this caution: “That, mindful of the right of individuals to privacy and of the desirability of the efficient administration of government, full access to information concerning the conduct of government on every level must be assured as a fundamental and necessary precondition to the sound governance of a free society.” Initiative 276, §1(11), now codified at RCW 42.17A.001(11).

The Associated Press decision can be read as promoting the promise of Initiative 276 by ensuring that citizens can use the PRA to expose corruption and malfeasance. But access to information is not the end goal of the PRA—rather, disclosure is merely a tool to help the people “maintain[] control over the instruments that they have created.” RCW 42.56.030. One of the ways citizens can try to maintain this control is by sharing their opinions with their elected representatives, who “are expected to be appropriately responsive to the preferences of their supporters. Indeed, such responsiveness is key to the very concept of self-governance through elected officials.” Williams-Yulee v. Florida Bar, 575 U.S. 433, 446 (2015).

If application of the Associated Press decision makes the public less willing to communicate with their elected representatives, it could undo much of the good flowing from the additional information that will be disclosed through PRA requests. As discussed above, one proposal to preserve those benefits is for the Legislature to enact a limited, qualified legislative privilege. Other options might work as well. But if nothing is done and fewer constituents are willing to share their candid opinions with their elected officials, the benefits of increased accountability flowing from the Associated Press decision could be undermined by its chilling effect.

NOTE


Ramsey Ramerman is a deputy city attorney with the City of Everett, where he works on open government issues, advises the police department on records issues, and works on general municipal law issues. He also does a limited amount of legal consulting and open government training through his firm, Ramerman Law Office PLLC. He has litigated numerous PRA cases, including several in the Washington Supreme Court, and regularly submits amicus briefs in PRA cases. He served as the attorney for Steve Vermillion in Vermillion v. City of Puyallup, where he raised many of the First Amendment issues addressed in this article, but the merits of those arguments were not addressed by the appellate courts. He can be reached at RRamerman@everettwa.gov.
JUVENILE JUSTICE IN KING COUNTY

MiChance Dunlap-Gittens’ youth rights ordinance designed to protect vulnerable youth from coercive police tactics

BY ANITA KHANDELWAL AND NIKKITA OLIVER

Over the years, we’ve heard young people describe their feelings of fear and intimidation when confronted by the police. We’ve seen the aftermath of these encounters, from bruises and K-9 dog bites to deep and abiding trauma. And we know that because of this, many young people—especially Black, brown, and Native youth who live in communities that are overpoliced—feel a profound power imbalance when confronted by an officer. As one teen told us, “The police are really scary.”

The result is that youth often do not feel comfortable asserting their rights when confronted by police. Frequently, they don’t even know and understand their rights. And because of systemic racism, Black, brown, and Native youth are far more vulnerable to coercive police tactics, including ruses, to elicit information.

The MiChance Dunlap-Gittens’ Youth Rights Ordinance, which the city of Seattle and King County Councils passed into law in August, ensures young people will now have meaningful help when confronted by police. The ordinance—named in honor of MiChance Dunlap-Gittens, who at age 17 was shot and killed by police officers in Des Moines—requires that youth under 18 consult with a lawyer before police can interrogate them or ask to search them or their belongings.

The need for such legislation stems from what we know about the socio-emotional and cognitive capacities of the adolescent brain. Research shows that young people—whose brains are still developing—don’t fully understand the consequences of certain actions, such as waiving their rights regarding police interrogations and searches. Comprehension is further eroded by the stress of the situation and the inherently coercive nature of law enforcement interrogations. As a result, juveniles frequently waive their Miranda rights—according to some studies, as often as 90 percent of the time. It is because of these findings that the American Academy of Child & Adolescent Psychiatry recommended that juveniles “have an attorney present during questioning by police.”

The need is even greater for youth of color, who carry with them the trauma of systemic racism and the disproportionate use of force against people of color by law enforcement. Instead of their rights, it is the names of those who have been killed by police that are most familiar to children who are overpoliced: Damarius Butts, Giovonn Joseph-McDade, MiChance Dunlap-Gittens, Tommy Le, Jesse Sarey, and Malik Williams (people ranging in age from 17 to 26 who have been killed by local law enforcement over the past three years). Even the Washington Supreme Court, in an extraordinary letter to the legal community, recognized that systemic racism in law
enforcement is not a relic of the past. “We continue to see racialized policing and the overrepresentation of [B]lack Americans in every stage of our criminal and juvenile justice systems,” the court wrote.

The fact that it is more difficult for children of color to assert their rights when pressed by police to consent to searches or interrogations is borne out in statistics. On average last year in King County, 86 percent of the youth jailed each day and 72 percent of those prosecuted were Black, Indigenous, or people of color.

This new law attempts to protect vulnerable youth. It requires law enforcement to connect a youth to a public defender after the youth has been read their Miranda rights but before the youth waives their constitutional right to remain silent or talk to an attorney. Law enforcement must also connect a youth to a public defender when asking them to allow their person, car, home, or any other property to be searched.

An exception allows officers to interrogate youth without connecting them to a public defender if they reasonably believe the information sought is necessary to protect some-one’s life from an imminent threat and the questioning is limited to that purpose.

The ordinance applies only when law enforcement asks a young person to waive constitutional rights; it does not apply to Terry stops (stop and frisk) or other interactions (e.g., welfare checks) between law enforcement and youth. Modeled after a similar law in San Francisco (the “Jeff Adachi Youth Rights” ordinance, which expanded on the 2018 California law Senate Bill 395), it is the only such ordinance in Washington state and possibly the strongest local youth rights ordinance in the country.

The King County Department of Public Defense and Creative Justice worked with other advocates in the community—including Community Passageways and CHOOSE 180—to encourage local lawmakers to support this ordinance. Dozens of people spoke in favor of the legislation during public testimony before the Seattle City Council and King County Council, including community members, parents, teachers, and pediatricians. In a remarkable show of support, both the county and city councils passed the legislation unanimously—the city on Aug. 17; the county on Aug. 18.

MiChance wanted to become a lawyer. He was bright and full of life before he was tragically killed by King County sheriff’s deputies in 2017 in a botched sting operation as he ran from the police. This new law honors him by upholding the rights of young people in our communities. Those who opposed the ordinance argued that it would erode trust between law enforcement and youth. But as several community members said during public testimony, you can’t erode what isn’t there. Those who supported this ordinance believe it will do just the opposite: It will counter the fear and distrust such bad-decisions.

NOTES
11. www.wsba.org/docs/default-source/about-wsba/governance/judiciary-legal-community-signed-6-4-20-(002).pdf?sfvrsn=697b09f1_0.
15. https://choose180.org/
‘Not Just the Service Member Who Serves’

Washington’s legal community welcomes military-spouse attorneys with licensing accommodation

BY BRITTANY N. DOWD

This month, the U.S. celebrates Veterans Day to honor those who serve and have served in the armed forces. Often overlooked, however, are the sacrifices and challenges of military spouses who stand beside those veterans.

One of the most significant challenges military spouses face is staggering unemployment (24 percent)¹ and underemployment (31 percent)²—and that was even before the COVID-19 pandemic. The military lifestyle of frequent relocations, deployments, and unpredictable schedules is often at odds with many military spouses’ aspirations of finding and holding a job or career that matches their education and qualifications. This lifestyle is especially challenging for spouses whose vocation requires state-specific licensure—like members of the legal profession. Moves every two to three years and steep relicensing costs may prevent military-spouse attorneys from working for a significant portion of each tour of duty.

OBSTACLES, NOT OPTIONS

From 1987 to 2017, Laura Kesler served in the U.S. Army in a variety of statuses (active duty, reserve, and individual ready reserve); specialties (Judge Advocate General (JAG) Corps, Military Police Corps, and Signal Corps); ranks (officer and enlisted); and locations (Germany, Korea, several countries in the Middle East, and bases throughout the U.S.). During this time, she also went to college and law school and was admitted to the New York Bar in 2002. She served as an assistant district attorney in the Bronx for several years while also serving in the Army Reserve. In 2007, she returned to active duty status as an Army JAG attorney and married her active-duty spouse, who is currently a lieutenant colonel in the U.S. Army. Kesler retired from the Army Reserve in 2017 with the rank of major.

When Kesler and her family moved to Joint Base Lewis-McChord in the summer of 2017, she joined the almost one-quarter of military spouses who are unemployed. On top of that, she found that the only options for full bar licensure in Washington at that time were taking the bar exam,³ applying for reciprocity,⁴ or transferring Uniform Bar Examination (UBE) scores.⁵ Even though she had been licensed to practice law in New York since 2002 and had experience as a county prosecutor and an Army JAG attorney, the only licensure option available to her was taking the Washington bar exam because she had taken five years off from the practice of law, to focus on her family, from 2012 to 2017.⁶ During those five years, Kesler moved with her active-duty spouse from Korea to Virginia, Virginia to North Carolina, and North Carolina to Washington.

“What I hope people realize is that it’s not just the service member who serves,” Kesler said in an interview with Bar News. “For a spouse who has invested years and tens to hundreds of thousands of dollars for their law degree, and who has the experience to serve their local community as a lawyer but cannot do so because they move every two to three years, it can be very frustrating.”

While dealing with the frustration and getting settled into her new home in Washington, Kesler came across a nonprofit organization called the Military Spouse J.D. Network (MSJDN) that would end up changing everything.

ADVOCACY EFFORTS AROUND THE COUNTRY

MSJDN has been working since 2011 to reduce licensing barriers for military-spouse attorneys. In 2014, the organization advocated for legislation that would allow military spouses to license to practice law in Washington and other states. In 2015, the Washington State Legislature passed the Military Spouse Professional Licensure Reciprocity Act (Ch. 112, SL2015), which permits military spouses to receive a temporary license based on reciprocal agreements with other states.

Continued >
Laura Kesler, U.S. Army veteran and military-spouse attorney, signs the Oath of Attorney before Thurston County Superior Court Judge Carol Murphy on Nov. 15, 2019, in Olympia. Kesler was the first applicant under the new Military Spouse Admission by Motion provision at APR 3(c)(2).
attorneys across the country. Because of MSJDN’s efforts, the American Bar Association House of Delegates passed Resolution 108 in February 2012, encouraging state bar authorities to adopt rules to accommodate military-spouse attorneys.8 In April 2012, Idaho became the first state in the nation to adopt a licensing accommodation to allow qualified military spouses to practice law without the time and expense of additional examination.

When Kesler found a map of the U.S. on MSJDN’s website indicating the states that had implemented licensing accommodations for military spouses (color coded in green), as well as states in which MSJDN had lobbying efforts underway (color coded in yellow), it was 2017 and Washington was still a yellow state.9

MSJDN had started pursuing a licensing accommodation in Washington with the help of other community stakeholders in 2014, recognizing the state’s particular need for such an accommodation. Washington is sixth in the nation in the number of active-duty military, with 69,125 military personnel and another 90,246 dependents and 19,474 reservists.10 In the fall of 2018, MSJDN proposed an amendment to Admission and Practice Rule (APR) 3 to the Washington Supreme Court.11

On June 6, 2019, the court issued an order amending APR 3 to add a provision for Military Spouse Admission by Motion, making Washington the 38th jurisdiction to implement a military-spouse attorney licensing accommodation. Washington Supreme Court Associate Chief Justice Charles W. Johnson said in an email interview that he hopes that in addition to military-spouse attorneys, the rule benefits “the military personnel and other citizens who benefit from legal representation” and “promotes the goal of improving access to justice to all persons, especially those of limited means.”

WASHINGTON’S NEW LICENSING ACCOMMODATION

Washington’s licensing provision for military spouses—found at APR 3(c)(2)—became effective Sept. 1, 2019, and is available for attorneys already licensed in another U.S. state, territory, or the District of Columbia who reside or will reside in Washington within six months of filing the application as a spouse of a member of the United States Uniformed Services. Applicants are eligible for this option only if they do not qualify for other methods of admission by motion under APR 3, including reciprocity admission under APR 3(c)(1) or UBE score transfer under APR 3(d). Unlike some states, there is no time limit under Washington’s rule; military-spouse attorneys are admitted to the WSBA with full rights and privileges. The rule does not require applicants to submit a National Conference of Bar Examiners (NCBE) Character and Fitness report, which on average takes four to six months to complete.

Elizabeth Jamison, past-president of MSJDN and an attorney with the U.S. Department of Veterans Affairs, led MSJDN’s efforts to secure a military-spouse attorney licensing accommodation in Washington. “Though Washington had the standard paths that any lawyers had (UBE and reciprocity based on time in practice), these created barriers specific to military spouses,” Jamison said in an interview with Bar News. “Military spouses already have such an uphill climb on the employment side, that any other barriers are too much. We’re stigmatized in so many other ways, so we’re not asking for special treatment—we’re asking to level the playing field.”

THE FIRST APPLICANT

In early spring 2018, with no other option for licensing accommodation available to her, Kesler applied to take the July 2018 Washington State Bar Exam. But in April of that year, she applied for and was eventually offered a federal position as an attorney-advisor with the Social Security Administration Office of Hearings Operations in Tacoma that would not require bar licensure in Washington. Though not a permanent position, it was expected to last four years. Her new plan was to take the job, gain as much experience as possible, and hopefully qualify for admission under the reciprocity rule detailed in APR 3(c)(1). After all, her husband planned on retiring in Washington, and they intended to make the state their permanent home.

Then, one night in June 2019, when Kesler was a quarter of the way through her temporary position with the federal government, she started thinking again about MSJDN’s licensing efforts. When she checked the organization’s licensing map, she was surprised to see that Washington was now a green state, indicating it had a licensing accommodation in place. In fact, only a week before, the Washington Supreme Court had adopted the Military Spouse Admission by Motion provision at APR 3(c)(2). Kesler submitted her application in September 2019, the first month applicants were permitted to apply. She became licensed on Dec. 3, 2019.

Since APR 3(c)(2) went into effect a little over a year ago, seven attorneys have become licensed in Washington under the rule, according to WSBA Regulatory Analyst Danielle Olliver. Kesler was the first applicant under the rule.

“I’m really grateful that states are starting to see this issue and are making it possible for us to continue our careers,” Kesler said. “I’m especially grateful [to] Wash-

Brittany N. Dowd is of counsel to a civil litigation firm in Oklahoma, where she is stationed with her active-duty husband, daughter, and pup. Previously, she lived in Spokane, where she served as a law clerk at Division III of the Washington Court of Appeals. She is licensed to practice law in Washington and Oklahoma. She can be reached at brittanyndowd@gmail.com.
NOTES
3. APR 3(b).
4. APR 3(c)(1).
5. APR 3(d).
6. APR 3(c)(1) permits admission by motion for lawyers admitted to practice law and in good standing in other states or territories of the United States or the District of Columbia only if they can “present satisfactory proof of active legal experience for at least three of the five years immediately preceding the filing of the application.”
7. For more information about MSJDN and the work that they are doing on behalf of military-spouse attorneys, visit www.msjdnon.org.
9. For the current version of MSJDN’s state licensing map, see State Licensing Efforts, MSJDN, www.msjdnon.org/rule-change.
11. According to Associate Chief Justice Charles W. Johnson, when the court received MSJDN’s rule proposal, it underwent the same review process as other proposed rules, meaning that (1) the court’s Rules Committee initially received, discussed, and acted upon it; (2) the full court approved the Rules Committee’s recommendation to publish for comment; and (3) after receiving and considering many supportive comments along with suggested revisions from the WSBA, which MSJDN agreed with, the revised rule was then recommended by the Rules Committee for adoption and the full court agreed.
For Veterans in Washington, Service Can Be a Calling—and a Need

Two recently created organizations—the WSVBA and the OMVLA—fill crucial roles in assisting veterans with legal needs

BY CAESAR KALINOWSKI IV

Like many of the approximately 100,000 other active-duty and reserve service members in Washington today, I moved here from across the country to train for the wars in Iraq and Afghanistan in 2005. Coming from a very different community—industrial Chicago—Washington's striking scenic views could not have been more dissimilar. But when I left active duty for law school after a decade in the Marine Corps, I happily joined the more than half a million veterans who call Washington home.

As with many other veterans and first-generation college graduates, I still felt a strange sense of “otherness” based on my humble roots, time spent overseas at war, and the decidedly new academic surroundings. Among the young, bright minds at the University of Washington School of Law, I noticed few Polish-Mexican former infantry grunts from poor neighborhoods with family members still in prison. Little did I know, however, that my worries about finding a community would be completely assuaged when I was introduced to my mentor, Hon. Ronald E. Cox.
Fresh from active duty in the U.S. Army in the fall of 1970, Cox arrived at the University of Washington School of Law amid turbulent times. Recently back from a harrowing combat tour in Vietnam, he faced no less turmoil on American soil, despite the three Bronze Stars on his chest. For a nation still recovering from Dr. Martin Luther King Jr.’s assassination, regular student protests against those involved in Southeast Asia provided an educational backdrop not unlike today’s.

Unsurprisingly, the highly decorated West Point graduate and new father stood out from his fellow 1Ls in their early 20s. Originally from Hawaii, Cox was the son of an immigrant carpenter from the West Indies and one of only three Black cadets in his entire undergraduate class. While at UW Law, Cox once again excelled in creating and serving a community that did not always understand or value his unique experiences. An adept litigator and consummate servant-leader, Cox later volunteered as president of the King County Bar Foundation and made history as the first Black partner at Preston Gates & Ellis LLP (now K&L Gates LLP).

Answering the call to return to public service full time, Judge Cox then sat on the Washington Court of Appeals (Div. I) for 23 years and helped guide the Washington Supreme Court’s Minority and Justice Commission. As a veteran, Judge Cox also continued to devote time to mentoring aspiring and junior lawyers like myself. In 2019 he was presented with the University of Washington’s Distinguished Alumnus Veteran Award. Although he regularly dismisses any praise, his dedication stands as a reminder of selfless devotion to duty and a stark reflection of the enduring need among those less fortunate in our connected community.

Directly and indirectly, Judge Cox’s dedication to mentoring and serving the veteran community also led to the creation of the state’s newest minority bar, the Washington State Veterans Bar Association (WSVBA). Formed in 2014 with the assistance of fellow veteran and Gonzaga General Counsel Mike Casey, the WSVBA serves as a legal society for attorneys, law school graduates, legal professionals, and law students interested in issues affecting Washington’s veteran and military communities. In addition to providing a forum for members to meet and exchange ideas and information, Washington’s veteran attorneys created a nonpartisan organization focused exclusively on veteran issues and volunteer work, furthering the professional development of its members, educating the public, lawyers, and the judiciary about veteran issues, and improving veterans’ access to legal services.

Unfortunately for many veterans in Washington, the need for low-cost legal assistance is very real. A few counties, like King, have regional veterans courts that strive to provide support services and diversion programs for veterans suffering from post-traumatic stress disorder or substance abuse issues. And in Spokane, the Veterans Forum “provides mentoring, educational, therapeutic, and life enhancing services to military veterans” after they’ve been referred by that region’s veterans court.

Testimony in state congressional proceedings in 2016 underscored how Washington’s veterans experience increased occurrences of homelessness, addiction, incarceration, mental health issues, and other health issues when compared to civilian citizens. In recognition of those veterans’ service and in response to the great need, Washington’s Legislature passed a new law in 2017 to “promote[e] and facilitate[e] civil legal assistance programs, pro bono services, and self-help services for military service members, veterans, and their family members domiciled or stationed in Washington state” by creating the Attorney General’s Office of Military & Veteran Legal Assistance (OMVLA).

Through the OMVLA—and the efforts of Judge Cox, the WSVBA, and other members of the OMVLA’s veteran-led Advisory Board—Washington’s veterans now have access to significantly expanded legal resources and services. Moreover, Washington attorneys and legal professionals interested in pro bono service, relevant training, and assistance on veterans’ issues now have a central repository for learning and volunteering their time though the Military Engagement and Directed Advocacy by Lawyers (MEDAL) program. In fact, given the increased legal needs sparked by COVID-19 and Washington’s designation of November “as a time for people of this state to celebrate the contributions to the state by veterans,” there is no better time to get involved than now.

For more information on WSVBA membership, activities, or upcoming opportunities, please visit www.wsvba.org. For more information about the OMVLA, visit www.atg.wa.gov/veteranmilitaryresources.aspx.

Photos courtesy of Ron Ronald E. Cox

NOTES
4. See RCW 43.10.290(1).
7. See RCW 73.04.160(2).
SECTION SPOTLIGHT:
Legal Assistance to Military Personnel (LAMP)

BY ERIC MCDONALD AND STEPHEN CARPENTER JR.

Q. What is the most valuable benefit members get from joining your Section that they can’t get anywhere else?
A. Access to legal contacts and resources related to the most cutting-edge issues affecting our military communities.

Q. What is a recent Section accomplishment or current project that you are excited about?
A. LAMP actively aided the development of the Washington State Attorney General’s Office of Military and Veterans Legal Assistance, (OMVLA), created for the purposes of promoting and facilitating civil legal assistance programs, pro bono services, and self-help services for military service members, veterans, and their families. LAMP attends OMVLA monthly advisory board meetings focused on assisting volunteer attorneys and reaching out to veterans with legal needs. [For more information about OMVLA, see page 40 and go online to www.atg.wa.gov/legal-assistance-veterans-military-personnel.]

Q. What opportunities does your Section provide for members who are looking for a mentor or for somebody to mentor?
A. LAMP has a young lawyer liaison who assists attorneys inexperienced in the field
of military benefits. Our members regularly exchange ideas on how to best identify, assess, and resolve the legal challenges service members and their families most commonly encounter.

Q. What advice do you have for building a successful practice in the area of law related to your Section and how does membership in your Section help do that?

A. To develop a robust practice in military law, whether in military criminal justice, family law, or other related fields, lawyers should seek out opportunities to become knowledgeable about the unique legal needs of military communities. The best way to achieve this critical exposure is to become a member of LAMP.

Other opportunities for exposure to legal issues affecting military communities include:

- CLEs put on by the Section in partnership with the WSBA and other CLE providers, such as the Practicing Law Institute: www.pli.edu/programs/advocating-for-veterans.

- War College Long-Distance Learning. The Naval War College in Newport, Rhode Island, and the Naval Post-Graduate School in Monterey, California, allow off-campus studies toward a Master of Arts in National Security and Strategic Studies.

- The Veteran's Administration and the ABA. These organizations also offer training, qualifications, CLEs, and VA accreditation. Visit www.americanbar.org/groups/legal_services/milvets/for more information.

- Local Veterans of Foreign Wars (VFW) chapters. This organization is a good place to meet veterans who may need legal assistance. Visit www.vfw.org/ for more information.

The unique nature of military life creates a whole different world of legal needs for veterans and active-duty service members. Just one example of the unique legal needs of service members is the need to appear and properly defend themselves in civil litigation. The Servicemembers Civil Relief Act (SCRA) helps to address this need. Under the SCRA, a service member who is unable to appear in court because of his or her military duties may ask for a stay in the proceedings. The SCRA also protects the service member from being evicted (unless the rent is higher than $3,991.90 per month for 2020; this amount changes every year), stops foreclosures without a court order, and prohibits the service member's vehicle from being repossessed without a court order if the service member has made a deposit or at least one payment before joining or being called into active duty.

Another area of need for some service members involves the “characterization of service” given to them after their release (upon retirement or completion of enlistment or tour). This characterization of service can either be “Honorable” (highest characterization), “General Under Honorable Conditions,” and “Other Than Honorable” (lowest characterization). This characterization plays an important role in determining what, if any, services the former service member is eligible for from the U.S. government, and in certain circumstances, may be upgraded. There are numerous rules and regulations that dictate how, when, and why a former service member can request an upgrade in his or her characterization of service determination.

Q. In addition to membership in your Section, what are the best ways to stay up on the developing law in this practice area?

A. Registering for CLEs that focus on the recent—and monumental—changes in the military criminal system, as well the laws applicable to family law, military benefits, and employment law.

Eric McDonald hails from Puerto Rico and is a graduate of the InterAmerican Law School, San Juan Puerto Rico, magna cum laude.. He honorably served 21 years in the U.S. Navy and retired in 2014 from the Navy Judge Advocate General Corps. He is the immediate past chair of the WSBA Legal Assistance to Military Personnel (LAMP) Section. McDonald is an associate attorney with Compass Legal Services, P.S. in Silverdale.

Stephen Carpenter Jr. formerly served in the U.S. Army JAG Corps. Prior to military service, Carpenter attended the University of Virginia where he earned a B.A. in Foreign Affairs. The University of Oregon awarded him a J.D. in 1995. Carpenter founded his own law firm in 2008. Court & Carpenter, PC, which is an international law firm specializing in defending active-duty service members facing general courts-martial, involuntary separation for misconduct, and other adverse actions. His hobbies include snow skiing, scuba diving, and spending time with his daughters flying drones. He currently splits his professional and personal life between Seattle and Germany.
IN REMEMBRANCE

This In Remembrance section lists WSBA members by Bar number and date of death. The list is not complete and contains only those notices of which the WSBA has learned through correspondence from members.

Please email notices to wabarnews@wsba.org.

1986-87 WSBA PRESIDENT

William Gates Sr.
#12, 9/14/2020


Gates was born in Bremerton and served in the U.S. Army during World War II. He earned his law degree from the University of Washington and in 1964, he co-founded the firm Shidler McBroom & Gates—later known as Preston Gates & Ellis. He served as president of the WSBA from 1986–87 and retired from the practice of law in 1998.

In 1994, Gates helped his son form the William H. Gates Foundation, which became the Bill & Melinda Gates Foundation in 2000 and is now one of the largest private foundations in the world.

“My dad’s wisdom, generosity, empathy, and humility had a huge influence on people around the world,” Bill Gates Jr. wrote in a statement following his father’s death. “People used to ask my dad if he was the real Bill Gates. The truth is, he was everything I try to be. I will miss him every day.”

Gates had three children with his first wife, Mary Maxwell—Kristianne, Bill, and Libby. Mary Maxwell died in 1994. Gates is survived by his second wife, Mimi Gardner, his three children, and eight grandchildren.

David B. Adler, #16585, 7/17/2020
Thomas Neal Albers, #37820, 9/3/2020
Nyle Graydon Barnes, #4337, 8/23/2020
Donald Aubrey Cable, #182, 4/10/2020
Rock E. Caley, #2469, 9/25/2020
Kern W. Cleven, #13455, 8/19/2020
Jeanette Marie Coleman, #15248, 8/3/2020
Gordon Gene Conger, #366, 7/25/2020
Dwayne E. Copple, #362, 1/28/2020
Anne Bradley Counts, #7150, 9/11/2020
Gary Allen Cunningham, #1050, 8/9/2020
Joseph Jerome Farris, #628, 7/23/2020
Carol A. Fuller, #1443, 10/17/2020
Richard W. Hively Jr., #25813, 9/11/2020
Lawrence J. Kuznetz, #8697, 9/22/2020
Sarah Leyrer, #38311, 8/29/2020
Thomas A. Mackin, #21062, 7/7/2020
James P.F. McLaughlin, #27349, 4/25/2018
Albert Morrow, #5880, 11/2/2019
James Martin Niblack, #11135, 9/10/2020
Darren John Nienaber, 30764, 3/18/2020
Gregory M. O’Leary, #11921, 9/11/2020
Dudley Panchot, #2270, 8/23/2020
George F. Potter Jr., #3087, 8/26/2020
Rush Nytar Riese, #8180, 8/18/2020
James P. Richmond, #15865, 8/6/2020
Dominic T. Santiago, #8560, 6/13/2020
John T. Slater, #835, 7/30/2020
Malcolm S. Spence, #3497, 9/2/2020
James P. “Casey” Thompson, #837, 4/22/2020
Christine Wyatt, #6389, 4/23/2020

Photo © Getty / Neosiam
Invest in EQUITY & JUSTICE

Donate on your license renewal!

✓ YOUR GIFT to the Washington State Bar Foundation supports the Washington State Bar Association’s Moderate Means Program, and the new Powerful Communities Project, which provides grants to support legal services statewide for our most vulnerable communities. We also proudly support WSBA’s important Diversity, Equity & Inclusion work.

✓ YOUR DONATION to the Campaign for Equal Justice funds 30+ legal aid programs like Northwest Immigrant Rights Project, King County Bar Pro Bono Program, Columbia Legal Services, and TeamChild to advance civil justice for youth and people of color, immigrants, and all who suffer the injustices of poverty and systemic racism.

Renew your license, renew your commitment to equity and justice for all.

The Washington State Bar Foundation and Legal Foundation of Washington (Campaign for Equal Justice) are public charities. Your donations are tax-deductible to the full extent of the law.
Legal Lunchbox

Healthy Selves, Healthy Workplaces. On Nov. 24, learn from a naturopathic doctor and an environmental design expert on taking care of your body and creating an energizing work space during the COVID-19 pandemic. Kristen Allott, N.D., will present on “The Physiology of Decision-Making: Optimizing the Brain and Preventing Burnout,” followed by Nicole DeNamur, J.D., speaking on “Research-Backed Strategies to Support Health and Wellness While Working From Home.”

IMPORTANT DATE

- Feb. 1, 2021: Deadline for requesting the License Fee Hardship Exemption. Also, license renewal and payment must be completed online or postmarked.

RESOURCES

New Practice Guides Available

Information for Job Seekers and Employers
Visit the WSBA Career Center to view or post job openings at https://jobs.wsba.org. The special discounted rate for nonprofit and small-firm employers, to prevent pricing from becoming a barrier as the legal community continues to navigate the effects of the COVID-19 crisis, has been extended through Dec. 31, 2020. Contact Michael Reynolds at 612-968-3431 or michael.reynolds@communitybrands.com for more information.

Free Consultations and Practice-Management Assistance
The WSBA offers free resources and education on practice management issues. For more information, visit www.wsba.org/pma. You can also schedule a free phone consultation with a WSBA practice-management advisor to find answers to your questions about the business of law firm ownership. Visit www.wsba.org/consult to get started.

Lending Library
Due to the COVID-19-related closure of the WSBA office, the WSBA Lending Library is closed, but you can continue placing holds online. Visit www.wsba.org/library for more information.

Free Legal Research Tools
The WSBA offers resources and member benefits to help you with your research. Visit www.wsba.org/legalresearch to learn more and to access Casemaker and Fastcase for free.

Ethics Line
Members facing ethical dilemmas can talk with WSBA professional responsibility counsel for informal guidance. Learn more at www.wsba.org/for-legal-professionals/ethics/ethics-line or call the Ethics Line at 206-727-8284 or 800-945-9722, ext. 8284.
WSBA Advisory Opinions Available

WSBA advisory opinions are available online at www.wsba.org/for-legal-professionals/ethics/about-advisory-opinions. For assistance, call the Ethics Line at 206-727-8284 or 800-945-9722, ext. 8284.

VOLUNTEER

Custodians Needed

The WSBA is seeking interested lawyers as potential volunteer custodians of files and records to protect clients’ interests. Visit www.wsba.org/connect-serve/volunteer-opportunities/act-as-custodian, or contact Sandra Schilling: sandras@wsba.org, 206-239-2118, 800-945-9722, ext. 2118; or Darlene Neumann: darlenen@wsba.org, 206-733-5923, 800-945-9722, ext. 5923.

WSBA MEMBER WELLNESS

WSBA Connects

WSBA Connects provides all WSBA members with free counseling on topics including work stress, career challenges, addiction, and anxiety. Visit www.wsba.org/for-legal-professionals/member-support/wellness/wsba-connects or call 800-765-0770.

Career Consultation

Get help with your résumé, networking tips, and more—www.wsba.org/for-legal-professionals/member-support/wellness/consultation—or email wellness@wsba.org.

The ‘Unbar’ Alcoholics Anonymous Group

The Unbar is an “open” AA group for attorneys that has been meeting weekly for over 25 years. Due to COVID-19, the group is holding virtual meetings via Zoom; contact them at unbarseattle@gmail.com. You can also find more details at www.wsba.org/for-legal-professionals/member-support/wellness/addiction-resources.

WSBA COMMUNITY NETWORKING

Diversity-Stakeholders List Serve

The WSBA Diversity-Stakeholders list serve is for sharing information about diversity, inclusion, and equity issues affecting the legal community. You do not need to be a member of the WSBA to join the list. Please email diversity@wsba.org to join. Recent past newsletters are posted here: www.wsba.org/about-wsba/equity-and-inclusion/achieving-inclusion.

New Lawyers List Serve

This list serve is a discussion platform for new lawyers of the WSBA. To join, email newmembers@wsba.org.

ALPS Attorney Match

Attorney Match is a free online networking tool made available through the WSBA-endorsed professional liability partner, ALPS. Learn more at www.wsba.org/connect-serve/mentorship/find-your-mentor, or email mentorlink@wsba.org.

QUICK REFERENCE

Nov. 2020 Usury

The usury rate for Nov. 2020 is 12.00%. The auction yield of the Oct. 5, 2020 six-month Treasury Bill was 0.112%. The interest rate required by RCW 4.56.110(3)(a) and 4.56.115 for Nov. 2020 is 2.112%. The interest rate required by RCW 4.56.110(3)(b) and 4.56.111 for Nov. 2020 is 5.25%.

WSBA COVID-19 Resource Web Page

All WSBA resources, including member support, law firm management, free CLEs and webinars, information about Washington courts, opportunities to help, and resources for the public, can be found here: www.wsba.org/COVID-19.

Court Emergency Operations and Closures


Law Office Reopening Guide

The WSBA Coronavirus Response Task Force compiled recommendations for how to safely reopen a law office in Washington. To find the full guide, go to www.wsba.org and search “Reopening Guide.”
Resigned in Lieu of Discipline

Jason L. Woehler (WSBA No. 27658, admitted 1997) of Redmond, resigned in lieu of discipline, effective 9/01/2020. Woehler agrees that he is aware of the alleged misconduct in disciplinary counsel’s Statement of Alleged Misconduct and rather than defend against the allegations, he wishes to permanently resign from membership in the Association. The Statement of Alleged Misconduct reflects the following violations of the Rules of Professional Conduct: 1.4 (Communication), 1.15A (Safeguarding Property), 1.15B (Required Trust Account Records), 1.16 (Declining or Terminating Representation), 3.3 (Candor Toward the Tribunal), 8.4 (Misconduct).

Woehler’s alleged misconduct, as stated in disciplinary counsel’s Statement of Alleged Misconduct, related primarily to his representation of client A in a guardianship matter, and client B in a collections matter. His alleged misconduct includes: 1) using and/or converting client A’s ward’s funds; 2) failing to maintain client A’s ward’s funds in a trust account; 3) filing one or more false Reports and Accountings, signed under penalty of perjury, with the court and/or by presenting orders to the court approving the Reports and Accountings even though the reports contained false information; 4) failing to provide client A with a written accounting after distributing funds from his trust account and/or by failing to provide client B with a written accounting upon request and/or failing to keep client B informed regarding the status of his funds; 5) failing to promptly pay and/or deliver funds that client B was entitled to receive.

Marsha Matsumoto acted as disciplinary counsel. Jason L. Woehler represented himself. James Smith was the hearing officer. Seth A. Fine was the settlement hearing officer. The online version of Washington State Bar News contains a link to the following document: Resignation Form of Jason L. Woehler (ELC 9.3(b)).

Reprimanded

David A. Jakeman (WSBA No. 39332, admitted 2007) of Kennewick, received two reprimands, effective 8/24/2020, by order of the Chief Hearing Officer. Jakeman’s conduct violated the following Rules of Professional Conduct: 1.16 (Declining or Terminating Representation), 1.5 (Fees), 8.4 (Misconduct).

In relation to his representation of a client in an immigration matter, Jakeman stipulated to two reprimands for: 1) making an agreement for, charging, and collecting a nonrefundable “retainer fee” where the fee was not a true retainer and was not otherwise earned, and by failing to refund unearned fees after he was terminated, and 2) offering to pay his client $500 if she did not file a Bar grievance.

Henry Cruz acted as disciplinary counsel. David A. Jakeman represented himself. The online version of Washington State Bar News contains links to the following documents: Order on Stipulation to Reprimand; Stipulation to Reprimand; and Amended Notice of Reprimand.

Roger B. Madison Jr. (WSBA No. 15338, admitted 2007) of Kennewick, received two reprimands, effective 8/21/2020, by order of the Chief Hearing Officer. Madison’s conduct violated the following Rules of Professional Conduct: 1.9 (Duties to Former Clients).

In relation to his representation of two clients in separate matters, and his subsequent responses to negative online reviews after the conclusion of representation, Madison stipulated to a reprimand for disclosing client A’s name and other information relating to representing client A, and by disclosing information that could reasonably lead to the identity of client B and revealing other information related to the representation of client B.

Henry Cruz acted as disciplinary counsel. Kenneth Scott Kagan represented Re-
Notice of Hearing on Petition for Reinstatement of Dean Dinh Nguyen

A petition for reinstatement after disbarment has been filed by Dean Dinh Nguyen (WSBA No. 30148), who was admitted in 2000 and disbarred in 2012. The December 4, 2020 hearing on Nguyen’s petition before the Character and Fitness Board has been rescheduled to take place on April 9, 2021.

Anyone wishing to do so may file with the Character and Fitness Board a written statement for or against reinstatement, setting forth factual matters showing that the petition does or does not meet the requirements of Washington State Supreme Court Admission and Practice Rule (APR) 25.5(a). Except by the Character and Fitness Board’s leave, no person other than the petitioner or petitioner’s counsel shall be heard orally by the Board.

Communications to the Character and Fitness Board should be sent to Renata Garcia, Counsel to the Character and Fitness Board, Washington State Bar Association, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539, or to renatag@wsba.org. This notice is published pursuant to APR 25.4(a).
ETTER, MCMAHON, LAMBERSON, VAN WERT & ORESKOVICH, P.C.

is pleased to announce that

ALEXANDRA M. LOVELL

has joined the firm as an associate attorney. Alex previously worked for the firm as a Rule 9 Licensed Legal Intern during law school.

Alex earned her undergraduate degree from Northwest Nazarene University and graduated magna cum laude from Gonzaga University School of Law in May 2020. She took the Washington State Bar in July 2020 and has joined the firm concentrating her practice on Municipal, Employment, and Medical Malpractice defense.

Etter, McMahon, Lamberson, Van Wert & Oreskovich, P.C.
618 W. Riverside Ave., Ste. 210, Spokane, WA 99201
Ph: 509.747.9100  Fax: 509.623.1439
www.ettermcmahon.com

RYAN, SWANSON & CLEVELAND, PLLC

is pleased to announce that

ZACHARY A. COOPER

has joined the firm as an associate in the firm’s growing Corporate Bankruptcy, Restructuring & Finance practice group.

Zach recently served two years as the law clerk for the Honorable Marc Barreca, Chief Judge of the United States Bankruptcy Court for the Western District of Washington. He will join Ryan Swanson’s 10-lawyer bank and creditor focused practice group helping Northwest businesses successfully restructure and resolve financial difficulties in the current pandemic.

Ryan, Swanson & Cleveland, PLLC
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206.654.2288 | zcooper@ryanlaw.com
www.ryanswansonlaw.com

UPDATE YOUR WSBA DESKBOOK LIBRARY with four new 2020 releases!

1. Estate Planning, Probate, and Trust Administration In Washington (2020)
   - 2 loose-leaf volumes ........................................... $499
   - 1,258 pages + 47 digital forms
   - Editors-in-Chief: Heidi L.G. Orr, Lane Powell PC; Thomas M. Culbertson, Lukins & Annis

2. Washington Legal Ethics Deskbook (2d ed. 2020)
   - 1 loose-leaf volume ........................................... $225
   - 646 pages + 14 digital forms
   - Editor-in-Chief: Mark J. Fucile, Fucile & Reising LLP
   - Reviewed by members of the WSBA Office of Disciplinary Counsel, a practical and accessible guide through the ethics and law firm risk management issues arising in daily practice.

   - 1 loose-leaf volume ........................................... $250
   - 754 pages + 10 digital forms
   - In-depth treatment of the substantive law governing LLCs, LLPs, general partnerships, and limited partnerships, plus practice tips, sample agreements, and “Tax Comments.”

   - 302 pages .......................................................... $100
   - Editors-in-Chief: Ramsey Ramerman, deputy city attorney, City of Everett; Eric M. Stahl, Davis Wright Tremaine LLP
   - Updated treatment of the law applicable to making, responding to, and litigating PRA requests; and application of the Open Public Meetings Act.

To review full tables of content and authors, or to order, go to www.wsbacle.org.
Professionals

DUNLAP MEDIATION SERVICES

Debbie Dunlap is located in downtown Seattle and Moses Lake for availability to successfully mediate cases in Western and Eastern Washington locations at her office or offices of counsel for the parties.

Debbie has mediation training and experience. She has litigated insurance defense and plaintiff’s personal injury cases for over 30 years in most counties in Washington, focused on minor to major catastrophic injuries and wrongful death, as well as brain and psychological injuries, sexual torts, abuse and harassment, and insurance bad faith, consumer protection, and subrogation.

Debbie is also experienced in: landowner disputes such as boundary line, adverse possession, tree cutting, waste and nuisance; and product and school district liability.

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(W.D. Wash. 2010)

City of Seattle v. Menotti,
409 F.3d 1113 (9th Cir. 2005)

State v. Letourneau,
100 Wn. App. 424 (2000)

Fordyce v. Seattle,
55 F.3d 436 (9th Cir. 1995)

LIMIT v. Maleng,
874 F. Supp. 1138 (W.D. Wash. 1994)

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David Swartling

BAR NUMBER: 6972
LAW SCHOOL: University of Washington

I am a twice-retired litigation lawyer who is living proof that God has a sense of humor. Following law school, I became a trial lawyer in Seattle for more than 30 years, and then was elected secretary of the Evangelical Lutheran Church in America. After a six-year term at denominational headquarters in Chicago, I returned to Seattle and managed Mills Meyers Swartling until my second retirement in 2017. Since then, besides extensive travel, I have served on a number of nonprofit boards, as a consultant to various church-related organizations, and as a community volunteer. I can be reached at DavidSwartling@comcast.net.

Before law school, I attended undergraduate school at Princeton University on a Navy scholarship, then served aboard the USS Harder (SS-568), including a tour as an engineering officer.

My greatest accomplishments as a lawyer were induction into the American College of Trial Lawyers and receipt of the President’s Award from the WSBA; on a collective level, it was having Mills Meyers Swartling receive the [WSBA] APEX Award for Pro Bono and Public Service in 2017.

The best advice I have for new lawyers is to devote a portion of your time and your legal skills to improving the legal profession and to serving your community. Understand that “vocation” is more multi-dimensional than a job.

A funny story that happened to me while practicing: In a serious police misconduct case involving horseplay with a firearm, I attended court on a preliminary matter. In his opening comments, my adversary explained to the superior court judge that the subject weapon involved in the shooting was a Walther PPK pistol: in fact James Bond’s personal small-arms favorite. The judge looked up, excused himself, went into chambers, and returned a few minutes later. When he sat down on the bench, still in his robe, he pulled out a handgun, held it up for all to see, and explained that he, too, owned a Walther PPK. Everyone ducked! When he realized what he had done, the judge assured everyone that the gun was not loaded, apologized, and returned the gun to his chambers. I don’t remember anything else about our court appearance after that!

During my free time, I enjoy reading historical and political non-fiction (and the occasional thriller), making regular visits to the gym, and going on long walks with my beloved spouse of 50 years. (We celebrate our 50th anniversary on Nov. 28!)

The most memorable trip I ever took was accompanying my high school Russian teacher and a cadre of his former students on a river cruise from Moscow to St. Petersburg, 40 years after graduation.

I absolutely can’t live without good coffee in the morning and excellent wine with dinner.

My favorite places in the Pacific Northwest are (1) at home on Bainbridge Island and (2) at Lake Chelan, either in a lakeside chair or at the tasting room of a local winery with a view and a glass of a hearty red.

This changed my life: While serving on a submarine I learned three indispensable life lessons: (1) you have to learn to get along with people; (2) simplify, simplify, simplify; and (3) a job isn’t over until the paperwork is done!

Nobody would ever suspect that I have a collection of penguin paraphernalia, including dozens of ceramic ones, more than a few stuffed ones, and a framed version of “Life Lessons from Penguins” (including “dive into life” and “keep your cool”).

Aside from my career, I am most proud of this: Serving as a founding member of “Students for Women at Princeton” and as one of three student advisory members of the task force that recommended that women be admitted to the university (which occurred the year after I graduated!).

My best habit is remembering to say “thank you” often.

My motto is “good process facilitates wise decision-making.” (Is this any surprise from the longtime editor-in-chief of the WSBA Civil Procedure Deskbook and former chairperson of the Court Rules and Procedures Committee?)

My first car was a 1967 Rover TC 2000. (It was fun to drive, but way too expensive to maintain.)

My all-time favorite movies are North by Northwest and March of the Penguins.
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