In July, the manager of the WSP Toxicology Lab, Ann Marie Gordon, resigned under allegations that she repeatedly signed statements, under penalty of perjury, that she had personally “examined and tested” alcohol simulator solutions for the DataMaster breath test machine. In fact, someone else did the testing for her. This shocking revelation has thrown the courts, the Department of Licensing, prosecutors and defense attorneys into a state of confusion.

Simulator solutions prepared by the Toxicology Lab are distributed statewide. Their purpose is critical: they provide an internal check that the machine was functioning properly during a person’s breath test. A properly constituted and tested simulator solution is necessary for a valid and reliable breath test.

It is believed that an employee blew the whistle on Gordon, first in March of 2007, with an anonymous call to the State Patrol stating that “simulator solutions are being falsified as far as the certification.” Ironically, Gordon and Ed Formoso, a lab supervisor, teamed up to “investigate” the allegations and submitted a report in April that indicated all was well with the solutions, but ignored the certification falsification issue. Formoso was later interviewed by the author and admitted that he had tested solutions for Gordon. Like foxes in the hen house, Gordon and Formoso were placed in charge of investigating their own deceit on the citizens of this state. On July 11, WSP received another, more specific anonymous call alleging Gordon had falsified solution certification forms.

Her departure from the crime lab under the shadow of impropriety is one of several in the past few years: a chemist who snorted heroin he stole from the evidence he was testing; a senior DNA analyst who lied in order to ensure a rape conviction; another who was fired for helping to wrongfully convict a man of rape—and for sloppy drug analysis work.

Documents from Gordon’s personnel file paint a picture of cold ambition. Rising from lab analyst to lab manager in just two years, she was commended for her “interactions with our clients and customers,” for being “attentive to their needs” and “responsive,” yet her often caustic tendencies created a toxic environment for laboratory staff.

According to WSP documents, she was admonished for being moody, dismissive and demeaning to her staff, creating an environment “verging on hostile.” She allegedly called a member of her staff a “drug addict” on several occasions, and was told that her “inappropriate use of profanity” was unacceptable. The documents indicate she was reprimanded in writing for favoritism of some, while others were “ridiculed,” and the target of “derisive comments.” Reportedly, when angry, she would “invade their personal space” and threaten new employees on probation that “their jobs were in her hands.”

Why should we care about how our state laboratories are being managed? It is elementary—leadership creates the culture in which scientists must operate. When leadership governs with fear and intimidation, protecting one’s job is a daily concern. Perhaps this is why it took so long for someone to report Gordon’s alleged perjury, which may have gone on for several years. In interviews with several lab analysts, none recalled ever seeing Gordon actually test the solution—except one who worked for the lab since 1998 who stated she had not seen Gordon test samples “recently.”

Combine this culture of fear with the overt message to lab employees that it is acceptable to sign, under oath, that you tested something when you didn’t, and a very sinister situation emerges. Be afraid, citizens. Be very afraid.

Some take the position that simply excluding the results of the testing Formoso did for Gordon remedies the problem and renders these cases immune from defense challenges. But doing so merely ratifies her alleged misconduct and creates an environment that permits government deception, as long as it does not affect the accuracy of the results. This “so what” attitude sends a loud message to all government witnesses: you can lie under oath when a conviction is at stake and it won’t affect the outcome.

When government scientists become mere cops in white coats, our justice system is not just flawed, it is broken. Perhaps this is to be expected when the forensic scientists who work in our crime lab are conditioned to see prosecutors as “clients and customers” and are commended for being “attentive to their needs.” Prosecutors are not our labs’ clients and customers. The citizens of the state of Washington are, and as such, they deserve, and should demand, unerring honesty, integrity and professional responsibility from those who serve them.

The Gordon fiasco is a wake-up call we cannot sleep through. To do nothing allows a foul decay to infect our justice system—the idea that the ends justify the means. The integrity of justice is more important than drunk-driving convictions. If we respond with a wink and nod along with a slap on the wrist there will be no deterrence and government witnesses will have a license to lie. Only our courts can send the strongest message: lying under oath is not acceptable. Only if they do, will we recover from this breach of trust.
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Roll on, Columbia

I write to clarify a couple of issues in response to Roger Ley's two-part letter to the editor in your August and September issues regarding amended Civil Rule 23.

Any funds collected under CR 23 would be distributed by the Legal Foundation of Washington, a nonprofit corporation, to over 30 legal aid programs statewide. The Legal Foundation is overseen by the Supreme Court and disburses funds pursuant to guidelines adopted by its board for the purpose of ensuring meaningful access to the justice system for low-income people. Legal Foundation grantees provide legal help to people facing such urgent civil legal problems as domestic violence, wrongful eviction, or improper denial of health benefits. All of the Legal Foundation's grantees accept clients based solely on need — none have any political affiliation.

Columbia Legal Services, one of the Legal Foundation's grantees, represents low-income clients in alternative dispute resolution, in court, and in the legislative arena when warranted by the clients' legal problems. The IRS permits nonprofit organizations to do a limited amount of legislative representation and the Legal Foundation monitors Columbia Legal Services to ensure that they are in compliance with IRS rules.

The Washington Supreme Court properly amended Civil Rule 23 pursuant to its constitutionally vested power to regulate judicial practice and procedure. As required, the Court solicited public input on the amendment during the public comment period. Receiving no objections and considerable support, the Court adopted the amendment, which was endorsed by the Washington State Bar Association, the Superior Court Judges Association, the Washington State Trial Lawyers, and the Washington Defense Trial Lawyers.

Caitlin Davis Carlson, Executive Director, Legal Foundation of Washington, Seattle

Three-part test?

I wish to raise a question concerning the article entitled “The ‘Who Is the Client?’ Question Revisited” [“Ethics and the Law,” August 2007 Bar News].

My question deals with the two-part test for determining whether an attorney-client relationship exists, based on a ruling in Bohn v. Cody, 119 Wn2d 357, 832 P2d 71 (1992), described in that article as “the leading case on that point.”

Neither of the two cited elements required for an attorney-client relationship to exist deals with the issue of whether the services requested and/or performed amount to the practice of law as defined by case law in Washington. The established definition is far from clear and if the services requested and/or performed do not fit clearly within the established definition, there is a legitimate issue as to whether or not the person on the attorney side of the relationship was practicing law. If no law was practiced, how can there be an attorney-client relationship?

If the two elements represented in that article are in fact all that our Supreme Court requires for an attorney-client relationship to exist in Washington, then I submit that the Supreme Court has overlooked its own rulings on the definition of the practice of law, as a necessary third element. I invite comments.

Eric L. Clauson, Edmonds
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Stephen Hayne  
2003 recipient of the Washington Association of Criminal Defense Lawyers’ William O. Douglas Award *For extraordinary courage and dedication to the practice of criminal law*; Named one of Seattle’s Best Lawyers by *Seattle Magazine*; one of Washington’s Ten Best Trial Lawyers by the *Washington Law Journal*; a Super Lawyer multiple times by *Washington Law & Politics*; Past President of the Washington Association of Criminal Defense Lawyers; Past Chair of the Criminal Law Sections of WSBA, WSTLA and KCBA; Trial Practice Instructor at the National Institute of Trial Advocacy, the Trial Masters Program, and the University of Washington and Seattle University Schools of Law; Published in the *Bar News*, *Trial News*, *Defense* and *Overruled* magazines; Featured Speaker at over 80 CLE programs; Founder, National College of DUI Defense; Lead Counsel/of Counsel: State v. Straka, State v. Brayman, State v. Scott, State v. Ford, State v. Franco, Seattle v. Box, Seattle v. Allison.

Aaron Wolff  
B.A., Emory University, Atlanta, Georgia; J.D. (cum laude), Seattle University School of Law; Former prosecutor for the cities of Kirkland and Tukwila, where he successfully prosecuted hundreds of DUI cases; Graduate, National College for DUI Defense; NHTSA Qualified Standardized Field Sobriety Test Administrator; Graduate, National Patent Analytical Systems BAC Datamaster training program; Graduate, Drug Recognition Evaluation Overview Course; Member, Washington Association Criminal Defense Lawyers, Washington State Trial Lawyers Association; Executive Board Member, Citizens for Judicial Excellence.
Secret handshake?

How many of you know of the following? I say these are the best-kept secrets anywhere buried deep in the Bylaws or in the practices of the Bar. 1) All judges of our court system, including administrative judges, municipal court judges, commissioners, magistrates, and tribal judges are exempt from paying Bar membership fees (Bylaw II (A)(b)(3)); 2) All judges are exempt from the application of the Rules of Professional Conduct, not because the RPC’s say so or the ELC’s say so, but because the Bar deems it to be such and, worse, keeps no records of such.

There is no authority for either of the above in statute.

I submit the real reason for both of these is that there is a “sweetheart” relationship existing between the Bar officials and the judges hoping that the judges will rule for the Bar in any matter brought before them where the Bar is a party or personally when an official is a party. Can you imagine what would happen if a golf club exempted a judge from paying fees? Or, a lawyer dipped into his trust account before becoming a judge and exempt from this conduct while serving as a judge? Is this not a form of corruption? Since 1937 only one lawyer facing Bar discipline has been exonerated by the Supreme Court.

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Bar Essentials

New WSBA President Stan Bastian identifies four key elements for his term and stresses the importance of communication

What is the Washington State Bar Association?
What purpose does it serve, and what role does it play in the legal profession?
How is it governed?
How does it make decisions?
What are its core functions and values, and what are its strategic goals?
Should it do more, or should it do less?
How can it achieve its goals more effectively?

When I stood for election to this job almost 15 months ago, I told the Board of Governors that my primary goal as president would be to emphasize effective communications between Bar leadership and members. That remains my goal, and my intent is to use this column as a vehicle to explain to members what the Bar leadership and staff are doing and why they are doing it. I want to help provide answers to the questions listed at the beginning of this column, because I believe all members should understand the mission and goals of this association. However, communication should be a two-way street. Members and readers are invited to respond with letters and e-mails, and your responses may be the foundation of some of my future columns. I am also willing to visit as many county, minority, and specialty bar associations as my schedule permits, both to listen to your ideas and concerns and to explain to you what your Bar Association is doing and the services and programs it offers to its members.

This is a large bar association, and it is involved in many services, activities, and issues. It is both an administrative arm of the Washington State Supreme Court and a professional organization for its members. It is responsible for properly regulating its members and serving as the voice for the legal profession. We have more than 30,000 members and an annual budget of almost $18 million, most of which is generated by member dues (which remain comparatively low). We are professionally served by a staff of approximately 140 dedicated employees. Every year, hundreds of member volunteers serve on 24 standing committees where they study issues, develop policies, and assist in doing the work of the WSBA. Additionally, many thousands of members also participate in the 26 sections officially recognized by the Bar. The WSBA is indeed a dynamic, vital, and evolving organization. One of my duties as president is to help explain all of this to you, and my intent is to demonstrate that this Association provides tremendous value to its members and the legal profession as a whole. Perhaps some of you will be encouraged to become more involved in the Bar Association by joining a section, serving on a committee or task force, or even seeking election to a leadership position.

As president, I am also given the privilege of choosing issues or programs to highlight during my term. I do not intend to start new programs or initiatives, but instead I have decided to emphasize four existing and important issues during the next year: the Justice in Jeopardy Initiative, issues regarding access to justice, the issue of professionalism and civility, and diversity. None of these issues are new, and the Bar Association has been working on all of them for many years. They are part of the specific functions assigned to the Bar by the Supreme Court in General Rule 12, and they are four of the guiding principles identified by the Board of Governors at its recent annual retreat in July. Although not new, they remain critically important to this Bar Association and the legal profession as a whole.

Justice in Jeopardy
The Justice in Jeopardy Initiative is a collaborative effort by the State Bar, the judiciary, and several key legislators to increase the amount of state funding for the judicial branch. It began after the Trial Court Funding Task Force issued its report in 2004, wherein it concluded that chronic under-funding of our trial courts had led to an impending crisis in court operations, civil legal aid, parent representation in dependency cases, and indigent public defense. The Task Force discovered that Washington ranked 50th in the nation in providing state funding for the costs of trial courts, prosecution, and public defense. That’s right, 50th out of 50. Less than three-tenths of one percent of the State’s budget was dedicated to funding the judicial branch of government. Relying on funding from cities and counties creates a serious disparity in the way laws are enforced and the trial courts are operated throughout the state of Washington.

Significant gains were made in the state Legislature over the past three years. State contributions to trial court funding have increased significantly, and this includes more funding for civil legal aid and criminal defense. Additionally, a pilot project has
For over 30 years, John Henry Browne has been aggressively representing criminal defendants and corporations in state and federal court. John Henry has a long history of success representing individuals whose lives and futures are at stake. John Henry's personal and professional life has been controversial at times but he has never lost his passion and ability to change the course of the law and truly make a difference in people's lives. He was most honored by King County Prosecuting Attorney Norm Maleng's comment in the Seattle Times at the conclusion of the Martin Pang saga, stating that Mr. Pang's legal victory was the result of “tenacious and principled advocacy” by John Henry Browne. John Henry is rated AV and a “Most Preeminate Lawyer,” by Martindale-Hubbell (all years) and honored in “The Best Lawyers in America” since 1999. John Henry has never lost a jury trial on sex abuse or rape allegations and he lead the fight to expose the Wenatchee witch hunt (State v. Rodriguez). He has appeared on Dateline and 48 Hours. He has received nine not guilty verdicts in murder cases, including aggravated murder.

If you can find an attorney with a better record, hire them.

Over the past two years, John Henry Browne has obtained the following results. In January 2005, John Henry obtained a Not Guilty verdict in State v. Bowley, where the potential sentence was 20 years in prison. In March 2005, John Henry received a Not Guilty verdict in State v. Rolland, a case that would have resulted in prison for over 20 years. In June 2005, John Henry obtained a Not Guilty verdict in State v. Burke, a case that would have put Mr. Burke in prison for 10 years, at least. In September 2006, John Henry received a Not Guilty verdict in State v. Bowman, two serious felony charges in King County. In December 2006, John Henry obtained a Not Guilty verdict in State v. Baldwin, a conviction would have resulted in a life sentence for Mr. Baldwin. In January 2007, John Henry obtained a judge’s ruling granting his Motion to Dismiss at the conclusion of the State’s case in State v. Vollan. If convicted, Mr. Vollan would have spent 10 years in prison. In April 2007, John Henry received a Not Guilty verdict in State v. Rolland, a case that would have resulted in prison for at least 10 years. Finally, in June of 2007, John Henry received a Not Guilty verdict in State v. Rem, a first degree murder case which carried a mandatory minimum sentence of 25 years in prison. John Henry is most proud of his early and landmark representation of Claudia Thatcher and Ivy Kelly. Ms. Thatcher's case was the first in Washington State to allow the Battered Woman Syndrome to be presented to a jury (Not Guilty verdict in less than 45 minutes). John Henry also secured Not Guilty verdicts for Seattle Seahawks Tyrone Rogers and Duke Ferguson. In the Wah Mee massacre case (15 counts of aggravated murder with death penalty request), John Henry avoided the death penalty; the co-defendant did not. In addition to John Henry's success in the trial courts, his appellate practice has substantially changed the law in this state.

been funded to study the issue of juror pay and whether increased pay will achieve greater juror turnout and greater diversity in our jury pools. We need to build on this success, and this project was originally recognized to be a 10-year effort, at least. This fall, a retreat will be held to plan for future legislative efforts, and the WSBA will be a key participant in the continued effort. I plan to attend that meeting and will report the results to you in a future column.

Access to Justice
Unfortunately, we are increasingly becoming a society of the “haves” and “have-nots.” Those with money have access to the justice system, and those without money increasingly do not. People without significant financial resources simply cannot afford to use the legal system to solve their problems, because they cannot afford to pay lawyers, investigators, and expert witnesses.

The 2003 Civil Legal Needs Study dramatically illustrated the issue. The vast majority of low-income people confront their legal problems without help from an attorney, and these legal problems usually involve issues such as family safety, economic security, and housing. The Alliance for Equal Justice said it best: Civil legal aid means the difference between shelter and homelessness, food on the table and hungry children, economic stability and bankruptcy, productive work and unemployment. We all know that legal representation is a necessity, and the system is simply too complex for pro se litigants.

The solution is not just about more government funding. Recently, our state legislators have demonstrated a commitment to alleviating this problem by substantially increasing the amount of state funding for civil legal aid. Members of the Bar Association must do their part, and thousands of you do, for which you have the gratitude and respect of your Board of Governors. As stewards of the legal profession, we have an obligation to ensure that justice is accessible to all members of our community and not to just those who can afford it. We must continue to find solutions to this growing problem. One way you can help now is by making a financial contribution to the Campaign for Equal Justice.

Professionalism and Civility
General Rule 12 specifically directs the Bar Association to “foster and maintain high standards of competence, professionalism, and ethics among its members.” In fact, this could be the most important duty of
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the Bar Association, because we are the only self-regulated profession in the state of Washington. Every other profession which requires a license is regulated by a state agency, such as the Department of Health or the Department of Labor and Industries. The WSBA has always prided itself on being the only self-regulated profession in the state of Washington, but we will remain that way only if we maintain tough, firm, and transparent standards of professionalism.

Diversity
The foundation of our legal system is trust. The public must trust that justice will be delivered in a fair and impartial manner, but this trust can be easily lost if lawyers and judges do not reflect the public they serve. Diversity is and will continue to be an important issue for both the WSBA and the legal profession. Although we have made great strides in this area over the past few years, we have more work to do. Much more. Diversity is a journey, not a destination. It requires effort, sensitivity, and, most of all, communication. The WSBA Board of Governors has been a leader on this issue, and that effort will continue during my term as president.

Finally, I would like to thank outgoing governors Marcine Anderson (at-large), Eron Berg (2nd District), Lonnie Davis (7th-Central District), and Jim Baker (9th District). I would also like to thank outgoing Immediate Past-President Brooke Taylor (the first person to actually hold that office). This was my class, because we all took office together in 2004. Although we didn’t know each other three years ago, we have now become good friends and I hope that our friendship continues in the future. The Bar Association is a better organization today because of their service and contribution, and I will miss them at the BOG meetings this year.

Stan Bastian can be reached at stanb@jdsa law.com or 509-662-3685.
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WSBA Welcomes New Officers and Governors

by Stephanie Perry

Stan Bastian Sworn In as WSBA President

On September 20, 2007, Stan Bastian was sworn in as the WSBA’s 117th president by Washington State Supreme Court Chief Justice Gerry L. Alexander. The swearing-in took place during the WSBA’s Annual Awards Dinner and Business Meeting, held at the Grand Hyatt Hotel in Seattle, where many prominent members of the legal community gathered to honor their colleagues.

Bastian has contributed many years of service to the WSBA and to the legal community. He was elected to the Board of Governors for the 2004-2006 term representing members in the 4th District. His community involvement includes serving as president of the United Way of Chelan and Douglas County and as president of the Chelan-Douglas County Bar Association. He was a board member for Legal Aid for Washington (LAW) Fund, a nonprofit organization committed to ensuring the promise of equal justice for residents of Washington state regardless of income level.

Born in Beaverton, Oregon, Bastian earned his bachelor’s degree at the University of Oregon, and his law degree from the University of Washington School of Law in 1983, the same year he was admitted to the WSBA.

From 1984-1985, Bastian served as law clerk for The Honorable Ward Williams, Washington State Court of Appeals, Division I. He also served as a public defender with the city of Renton. From 1985-1988, he served as the assistant city attorney for the Seattle City Attorneys’ Office, Criminal Division. Bastian is a shareholder in the Wenatchee firm of Jeffers, Danielson, Sonn & Aylward P.S., which he joined in 1988. His practice focuses on civil litigation, labor and employment law, police liability, and municipal law.

Bastian is married to Chelan County District Court Judge Alicia Nakata. They have two teenaged daughters, Audrey and Elenore.

Mark A. Johnson Named New President-Elect

Seattle attorney Mark A. Johnson has been elected president-elect for 2007-2008. He assumed the office of president-elect at the close of the WSBA Annual Meeting on September 20, 2007 — when 2006-2007 President Ellen Conedera Dial passed the gavel to 2007-2008 President Stan Bastian — and he will assume the WSBA presidency in September 2008 for a one-year term.

As president, Bastian does not intend to introduce any new initiatives, but rather to focus on developing the programs already in place. “My primary goal as president of the WSBA is to continue the process of long-range planning and strategic review,” said Bastian. “The intent is to identify the issues most important to the Bar Association and then tailor Bar programs and efforts to meet those goals. This will help create a more focused, efficient, and effective organization. Issues such as access to justice, diversity, the Justice in Jeopardy Initiative, lawyer services, and professionalism/civility have always been, and will remain, important to the WSBA.”

“Stan and I have worked closely together over the course of the last year, and I know that he will serve the WSBA with vision, insight, a warm heart, and a deep commitment to the membership,” said outgoing President Ellen Conedera Dial.

Bastian previously shared his views on leadership in an article about the WSBA Leadership Institute (August 2007 Bar News): “Individual leaders have their own characteristics and styles, but when those differences are stripped away, these similarities remain. . . . Leaders identify the goal early and stay focused on achieving it. They recognize that adjustments may be necessary along the way, but the end goal is always in sight,” he wrote. “Good lawyers and leaders don’t back down in the face of adversity, but are willing to compromise when necessary. . . . Leaders give proper credit and recognition to others on the team such as partners, associates, paralegals, and secretaries. They help train new lawyers and inspire others with their ideas, vision, and dedication.” As his term begins, Bastian will no doubt be revisiting these themes and applying them to his own presidency.
Johnson, a partner in the Seattle law firm Johnson•Flora, was admitted to practice in Washington state in 1978. He focuses his practice on the representation of plaintiffs in tort claims, primarily medical and legal malpractice claims.

Johnson previously served on the Board of Governors from 2003-2006 and was the WSBA’s treasurer from 2005-2006. He chaired the WSBA Character and Fitness Board, as well as a task force that drafted the first comprehensive set of rules, adopted in 2006, for determining character and fitness of applicants for the Bar and for petitions for reinstatement after disbarment. Johnson also served on the Executive Director Search Committee and is currently the chair of both the Trust Account Responsibilities and Retainers Task Force and the Law of Lawyer Ethics and Risk Management Conference.

Johnson stated: “As president, I will serve by leading the development of a fiscally responsible agenda consistent with the foundational values of our profession and the justice system: inclusion of all, independence of the Bench and Bar from inappropriate influences, equality of access to justice, and professionalism and ethics.”

Gibbs served multiple terms on the WSBA Rules of Professional Conduct Committee. He has served as a Board member of the Snohomish County Bar Association (SCBA) and was its president in 2005-2006. He has also served as the SCBA liaison to the WSBA Board of Governors since 2005. Gibbs has served for many years as a judge pro tem for the Snohomish County Superior Court, Snohomish County District Court, and Everett Municipal Court, and as a Superior Court commissioner pro tem. He actively arbitrates and mediates cases as part of his practice.

G. Geoffrey Gibbs is New 2nd District Governor
G. Geoffrey Gibbs has been elected the new governor representing the 2nd District on the WSBA Board of Governors. As governor of the 2nd District, Gibbs represents Island, San Juan, Skagit, Snohomish, and Whatcom counties.

Gibbs is a shareholder in the Everett law firm of Anderson Hunter. His practice is focused primarily on litigation, with an emphasis on family law, probate, and boundary litigation. Formerly a senior partner in the Seattle firm of Ogden, Murphy & Wallace, Gibbs moved to Snohomish County in 1989 and resides in Everett.

Lori S. Haskell is New 7th-Central District Governor
Lori S. Haskell has been elected as the new governor representing the 7th-Central District. Haskell received her undergraduate degree from the University of Washington. She earned her law degree from Seattle University School of Law while still employed in the news department at KOMO TV. During her 10-year career in television, she was a news cinematographer and editor, as well as a writer, producer, and special topics producer. Since entering private practice, she has concentrated solely in the area of tort litigation, with an emphasis on personal-injury and employment law. Haskell served on the Washington State Trial Lawyers Association (WSTLA) Board of Governors for many years in a variety of capacities, including vice-president for public affairs and judicial relations. She authored the WSTLA Diversity Policy, helped to found the first Diversity Committee, and organized Diversity Round Tables where lawyers could meet and share experiences and ideas. She has also represented the WSBA on the Bench Bar Press Committee of Washington, and has served on the WSBA Editorial Advisory Board.

“I see diversity in law as part of the larger access to justice issues that face our justice system, and if we are going to continue as a free and just society, we must maintain a constant vigilance and strive to be inclusive,” Haskell wrote in her nomination materials.

David S. Heller is New 9th District Governor
Burien attorney David S. Heller has been elected as the new governor representing the 9th District. Heller received his bachelor’s degree in Civil Engineering from the Massachusetts Institute of Technology, and his law degree from the University of Michigan, Ann Arbor. Currently, Heller’s practice emphasizes litigation of personal-injury and insurance cases and criminal defense. He has served on the Access to Justice Task Force, the Washington State Supreme Court’s Commission on the Judiciary, and the Washington State Supreme Court’s Commission on Access to Justice.

Heller is an experienced speaker who has given lectures for Washington State Trial Lawyers Association Continuing Legal Education and WSBA Continuing Legal Education.

Brenda Williams is New At-Large Governor
Brenda Williams has been elected the new governor-at-large. Williams is a public defender in King County Superior Court and Seattle Municipal Court, representing indigent clients in areas including adult felonies, misdemeanors, juveniles, dependencies, and special offender commitments. She also managed the Defender Association’s Legal Intern Program for six months, where she trained law students and guided them through their first criminal trials before juries. She has also served as a part-time instructor for the University of Washington’s paralegal certificate program and pro tem administrative law judge for the Office of Administrative Hearings.

In addition, Williams was a co-founder of the National Latina/o Law Student Conference, now in its 11th year, and she has served as a Latina/o Bar Association’s Legal Intern Program for six months, where she trained law students and guided them through their first criminal trials before juries. She has also served as a part-time instructor for the University of Washington’s paralegal certificate program and pro tem administrative law judge for the Office of Administrative Hearings.

In addition, Williams was a co-founder of the National Latina/o Law Student Conference, now in its 11th year, and she has served as a Latina/o Bar Association of Washington Board member from 2004-2005 and as its president in 2005 and 2006. She served on the WSBA Civil Rights Committee from 2003-2004; served on the WSBA Court Rules and Procedures Committee from 2005-2007; and currently serves on the WSBA Bar Examiners Committee for the 2007-2010 term.
Three Lady Lawyer Legislators Who Showed Us The Way

by George W. Scott
I
n the 21st century, it goes without saying that women are as capable as men of earning advanced degrees, practicing law, and serving as legislators. But this wasn’t always the case; in centuries past, female politicians and legislators faced a long and difficult battle for acceptance and respect. Even today, many people aren’t aware of the fascinating life stories of the trail-blazing women who led the way to equal representation in state government.

Washington women first got the vote in 1883, and tipped the 1884 elections for law and order. Owners of closed saloons and brothels took suffrage to court, and in 1887 and 1888, on the thinnest of technicalities, the Supreme Court revoked their vote. In a false dawn, Republican Frances Axtell, a Bellingham doctor’s wife, and Tacoma’s Nena Croake, a progressive and osteopath, took seats in the 1913 Legislature after the Legislature had granted women the vote a third time, only to have male voters take it away in a 1914 referendum, under the same influences as 30 years before. The political presence of women was not permanent until Amendment XIX to the U.S. Constitution was passed in 1920. Three lawyer-legislators of very different temperaments are exemplars of the evolution of women’s electoral power.

**Senator Reba Hurn: Two Firsts**

Reba Hurn, the first woman admitted to the State Bar and the only woman lawyer or elected official in the city or county of Spokane, became the first female state senator in 1922. The question of whether a woman should be in politics at all still hovered. None of the five women previously elected to the House had survived to a second term. Hurn reasoned that in four years the novelty might wear off. Governor Louis Hart’s Administrative Code of 1921 had sorted and recombined the state’s proliferating agencies, but the economy east of the Cascades was in free fall, and the public mood was “hold the line.” All but three of the 42 senators were Republicans, so fights were more geographic than philosophic.

Hurn wanted to be thought of as a senator, not as a woman. She put up with cigar smoking with politesse, entertained wives, and at least once, hosted the entire Senate for breakfast. Women were saddled with the Public Morals, Libraries, or Education committees until the 1930s. Senator Hurn was the first not made to carry a “female” portfolio, unless it was Prohibition, a residue of the wreckage she had seen in the small town in the Midwest in her childhood. Washington had passed Prohibition in 1916. The need was to sustain a law honored in the breach by most colleagues. In 1923, her Public Morals panel favored a “Temperance Day” in the public schools that was not signed by the governor. Assignment to Education and Parks, and heading the Library Committee and Educational Institutions in her second term, were predictable. Two years later she broke precedent in being on the Judiciary and the Appropriations committees, which had not been considered “women’s work.” She also flourished her conservative colors. Hurn was one of four members (of 13) voting against the UW’s budget, a teachers’ retirement fund, and even against reopening the Women’s Industrial Home, a correctional facility at Medical Lake. Economy took priority over a cause local women had worked on for two years, but buying seeds for drought-stricken farmers and turning idleness into education at the penitentiary was worth it.4

Senator Hurn’s first speech in 1925 was in support of regulating the workplaces of those under 18. Indicative of the times, it was badly defeated, as was a substitute referendum in 1926. She was tactfully neutral in the legislators’ struggle with the incorrigible Governor Roland Hartley, although one of his 59 vetoes in 1927 excised the help for farmers. Hurn was not at odds with the strongest lobbies of the time — business, tax hawks, the farmers, and the “drys” at home — but cast a flinty eye on their mainly “fluid” tactics. Her bill regulating and registering them is the earliest attempt at public disclosure. Senator Hurn’s fall can ironically be ascribed to an effort for efficiency, a 1929 bill to end her county’s superfluous townships, whose paid officials rose up against her in 1930. Reba endured in a man's world for eight years because she fit her times; was talented, demure, feminine, diplomatic, and characterized, a “woman in full.” And “after all, there are no women’s issues” to rile her male peers. She was accepted, but could not avoid what she most feared — being unique, a minority of one.5

**Senator Lady Willie Forbus: Steel Magnolia**

As World War II unfolded, women lost critical mass in the Senate for three decades. Lady Willie Forbus, the fiercest feminine force of her generation, was a burr under the saddles of what became an old boys’ club. Told by the Harvard Law School they did not take women, Forbus went to Michigan, and was the only female in a class of 50, in 1918. She got off a day coach in Seattle with $10 in her pocket, and went to the YWCA. The handicaps of being a female lawyer, brilliant, and extraordinarily ambitious and fired by a desire for a public career, soon made Forbus the most controversial woman in Seattle’s public eye since Anna Louise Strong.6

Two decades later, she advised a woman inquirer: “Some lawyers, like myself, have to go out into the community and create a demand....” She still wanted to believe “[t]he opportunities for women are just exactly the same as men, but business is harder to get...there is still some sex discrimination, and men lawyers...are given to the false notion that they are the chosen people....” “I was a curiosity,” she finally admitted in 1983, “but when I began dealing with them, they discovered I was tough and hard ... so that I had to build my way.” “I was brought up to believe you raised yourself by your bootstraps...with my mother’s insistence and ambition to move out of the class we were in ...” but was not conscious of it.7 In 1922, she convinced a grand jury that a Seattle policeman was murdered with pistols of two different calibers, contrary to the county prosecutor’s perfunctory ruling of suicide. Challenging him brought visibility, a chance for a public career, and a way to prove her credo: “In brains there is no sex, in achievement no private hunting grounds.” Reality drew out vitriol: “The ‘gang’ was with him ... the bank wreckers, ferry grabbers, the bootleggers, the ‘respectable thieves.’”8

She lost to Malcolm Douglas “because of last minute lies,” while running 12,000 votes ahead of the county Democratic ticket. In three years, Forbus had become “one of the best known and most capable attorneys in Seattle,”9 but her combination of courage and corrosiveness recurred in her campaigns for the Superior Court in 1932 and 1934, blunting her political aspirations for a decade.

She kept a pell-mell speaking schedule, testifying for a child-labor amendment at the Legislature (1925), an illegitimacy law, a home for the feeble-minded, teachers’ retirement, and a cabinet-level department of education. If one of 13 marriages ended in divorce in King County, she reasoned, one of 13 judges should be in a special “Family Relations Court.” Forbus applied to Governor Hartley for an opening on the bench. When “The plum...[fell] to a Lithuanian lumberjack-lawyer” (Kazis Kay), she announced: “I believe...the time has come...
when we should have a women’s viewpoint in our judicial system.” On running third in a Bar poll, she excoriated it as “reactionary and prejudiced....Nobody knows better than I how little ability counts in this matter of a lawyer’s choice of a judge.” 13 She lost in the primary.

In 1934, Forbus was down to 14 of the 825 votes in the Bar’s poll, and railing at “the leeches who fasten themselves on dead men’s estates, upon bankrupts, upon receiverships...” and vowing to “expose the lawyer’s recommendation racket.” 14 “Many” women’s organizations had approached her, and though “women may reasonably insist upon greater representation,” she said she “preferred to base my claim ... solely on my ability as a lawyer.” On surviving the primary, her tune changed. “A woman for judge ... [i]t will be pioneering ... for the Bar is opposed ... and ... will do everything in its power to prevent her election.” Women did not turn out in equal numbers, and she lost to an “old line” Democrat.” 15

Known statewide after stumping 40 towns in three weeks as part of the Roosevelt Caravan in 1936, and as chair of the Democratic National Committee’s State Speakers’ Bureau, Forbus was still dogged by controversy. 16 Her main chance lay in a smaller venue, the 44th District State Senate seat (Magnolia Hill and north, in Seattle), where her community work and intense campaigning had maximum impact. Elected in 1942, she got the chair of First Class Cities, on Judiciary and Revenue, all a novice could hope for. One of the “faithful group of 18,” the minority of the “Majority” flailing against a conservative Democrat-Republican operating coalition, Forbus failed to get the 40-mill limit restricted to homes valued under $5,000, or to amend the bills by the Business and Professional Women’s Club and Labor to broaden equal wages to all women. 16

Forbus was intensely partisan. She fought Governor Langlie’s attempt to merge the natural-resource agencies, including forestry, the prized possession of the Democratic commissioner of public lands, whose office would be abolished and his peers threatened. The Governor counted on nine Democrats who Senator Forbus felt “deserted their party,” but was halted by GOP dissenters. Having lost a “split” decision to investigate Langlie’s release of prisoners for 1943 harvests, she begged off an ad-hoc committee to confer with him on the 1944 “soldier vote” bill, then damned his veto of extending polling hours to 10 p.m., and favored a one-time exception to the blanket primary in favor of partisan ballots. 17

Senator Forbus’s greatest impact came when the Governor and the Liquor Board obtained scarce whiskey from Kentucky’s Waterfill and Frasier Distillery. She sensed the “tee-totaler” was vulnerable in rural counties, and stormed through them, asserting Langlie had personally profited. “Effective word-of-mouth lies,” mourned Fred Baker, Langlie’s consultant, after the Governor unexpectedly lost by 26,000
votes. Charlie Hodde, a former Democratic House member from Stevens County then lobbying for the Grange, was blunter: “[Mon] Wallgren beat Langlei on liquor.”

Forbus, at her apex in 1945 as chair of the Judiciary Committee, sided with Governor Wallgren’s liberal-labor administration to dispense all of the $172 million reserve built by the war. The Seattle Municipal League conceded she had a “good legislative Record,” and was a “hard worker.” As president of the Magnolia Community Club, she fought valiantly for 4,000 neighbors irate at the prospect the Seattle School and Park Boards would imperil 60 homes if a new field house was separated from the junior high school, but was unable to overcome the Republican upswing in 1946.

Forbus is a study in chiaroscuro: the driving intellect, the ambition to “rise above one’s class,” the unwillingness to admit to professional limitations, the ongoing frustrations, and the contrasts between traditional marital views and modernist social stances.

Fifteen years later, she drafted the planks for the King County Democratic platform demanding to change, from what had been a men’s club one kind …” If this did not apply to the men she contested, no one could accuse Senator Forbus of not being “a willing soldier in the field.”

Senator Jeannette Hayner: Washington’s “Iron Lady”

Almost a half century after the coming of the New Deal, Republicans in the State Senate overcame their minority status — and mentality.

Jeanette Hayner (House 1973-77; Senate 1977-93), the most skillful leader of her era, returned the Senate to two-party politics. One of two women graduates of the University of Oregon School of Law in 1942, she was denied a job by Portland’s biggest law firms, and took one with the Bonneville Power Administration with characteristic aplomb: “That’s just the way things were then.” Hayner’s entries into politics were like the Wenatchee apple-grower and “old boy.”

His allies dropped out and played golf with business lobbyists as the 1980 campaign got underway. The “team effort” the winners had long called for was just six senators, three of them women. The Caucus’s new “executive chairman,” Spokane’s Bob Lewis, was preoccupied with a losing effort to keep his seat, leaving the GOP with a gain of five, one short of a majority, in November. The 1981 session was a month old when petulant Democratic Senator Peter von Reichbauer, provoked by now Congressman Jim McDermott, switched sides. The “Saint Valentine’s Day massacre” embittered Democrats, none of whom had ever been in the minority in the Senate, and jolted the GOP senators, none of whom had served in the majority. Overnight, the Senate changed, from what had been a men’s club in 1973 to a strident partisan battlefield with a woman in charge. Hayner had to mediate between equivocal Governor John Spellman who had bashed his erstwhile opponent, McDermott, as a taxing “Seattle liberal psychiatrist,” and now swung to new levies as the solution, and Polk, whose “troglobytes” promised no taxes and meant it. Hayner lacked a working majority. Three senators, as confused as conservative, tried to wag the Caucus’s dog. In 1981-83, an economic downturn led to a $1.2 billion deficit, the
worst meltdown since 1933. For five sessions over the next 20 months, Hayner patiently led her caucus through grinding four-hour sittings, finding votes for nine taxes totaling $750 million, matched by cuts, with Spellman fighting one, and the Speaker the other. In January 1983, the GOP “majorities” were gone, and the governor mortally wounded.23

Hayner was alternately minority or majority leader until 1993.24 She sustained one-vote majorities with a special genius for keeping people together. The GOP caucus obeyed her infamous “Rule of 13.” Whatever a majority of her one-vote majorities decided was what was done, an unthinkable discipline in the “old” Senate. She admitted no personal agenda. If a Senate bill could not be “taken hostage” by the House, it was impossible to play the trading game. The Growth Management Act was just one of the laws enacted in the 1990s after meeting Hayner’s conditions, and with her help. She had the competence and confidence of a natural leader: “I was confident I could do [the challenges]; it never occurred to me that I couldn’t…. I treated everyone as individuals, not as male or female.”25 The “glass ceiling” was in shards.

By then, Washington had the highest ratio of female legislators in the nation (43 percent). In 2005, all four leaders of the Democratic majority were female, and five women and four men sat on the Supreme Court. But no former legislators were on the High Bench for the first time in decades, speaking to the decline in professionals, especially lawyers, in state elective office. Until the 1970s, a third of the Legislature was attorneys. In 1975, the Senate Judiciary Committee drafted a housewife, a farmer, a historian, and the author of this article to fill its seven chairs. The chairman rewrote the entire Civil Code for the first time since 1914 — in one session. Lacking precedents, we had only a foggy notion of what we were deciding. The Legislature gives a generalist’s education available nowhere else, but these are tasks for specialists. In 2003, the House Judiciary Committee had 10 members, but just one lawyer, the chair. In 2007, the Bar has 30,000 members, but only eight are among the 147 legislators. Think of it as a civic default."
15. James T. Lawler, a member of the Taxpayers Council, won, 55,317 to 29,443; Lady Willie Forbus to “Dear Friend,” 9/1/34. LWF 259-2, 3-1, “end notes”; It was not for lack of effort. She circulated 100,00 pamphlets asking, “What’s Your Idea of a Good Judge?” and spent $1,471.

16. An offer to C.C. Dill, who was running for governor in 1940, was put off. LWF to C.C. Dill 5/1/40. LWF 259-2.

17. SBs 18, and 173, 1943.


20. Seattle Times, 1/19/49; Lady Willie Forbus 422, Kimball; S.T., 11/9/50.

21. She was also chair of the League of Women Voters’ Welfare Committee (1939), the Florence Critenden Home (1942-46), president of the League of Democratic Women (1944), the Roosevelt Women’s Democratic Club, vice president of the King County Democratic Club, president of the Ballard Business and Professional Women’s Club and toast mistresses, of the Magnolia Community Club, and on the ACLU Board (1958-69). She spoke on everything from “Educational Development in Colonial America” to “Garden Planning,” to an “International bill of Rights.” King County [Democratic] Central Committee Foreign Policy

presiding officer to the Lieutenant Governor), in 1929, over other issues.

5. Arksey, Laura, supra n. 2 at 16.

6. Arksey, Laura, supra n. 2 at 8; Spokane Spokesman-Review, 1/22/29. Hurn retired in 1946, lived in the Middle East for five years translating the Koran into English, and was in “People to People” delegations in the Eisenhower years. She died at age 86 in 1967.

7. Into the 20th century, Mississippi girls named after their fathers had surnames preceded by “Lady.”

8. The outspoken labor and civil rights champion of the 1920s, and later an acolyte of Mao Tse Tung.


14. Lady Willie Forbus, speech script n.d., [1934]. LWF,
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Draft, April, 1960, LWF 259-4.
23. Hayner was minority leader (1979-81, 1983-87), and majority leader (in 1981-83, and 1989-93).
25. Hayner both reflected and deflected her conservative constituents, opposing Governor Booth Gardner’s tax-reform plan, and gay marriage (Daily Olympian, 1/10/88), but also sponsored a new approach to funding public education, defended abortion, and collaborated with Democratic Speaker King (Walla Walla Union Bulletin, 2/23/87; Aberdeen Daily World, 1/14/1990).

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Grandma Was a Lawyer

by Jennifer C. Rydberg

Not many of us have the privilege of having grandmothers who were lawyers. Mine was born on a small tobacco farm in Carlisle, Kentucky, in 1900. While it was a tough existence, her family was better off than most at the time. In 1918, Grandma took two suitcases and a train ride to Washington, D.C., to seek her fortune and build a life. 1928 found her with my two-year-old mother, pregnant, without a husband, broke, and in the beginning of the Depression. She returned to the farm, where my uncle was born.

Grandma, whose husband had developed amnesia and left after suffering a devastating brain injury, was not content to be a farm daughter. Once my uncle was weaned, she left her children on the farm and traveled to Cincinnati, where she found employment as a stenographer in the Veterans’ Administration, and a room in a boarding house across the Ohio River in Covington, Kentucky.

Lawyers were lucky to have any clients during the Depression, especially paying ones. Several Cincinnati lawyers banded together to teach law school classes at the Cincinnati YMCA Night Law School (years later absorbed by the University of Kentucky) as they attempted to provide for their families.

Grandma, an intellectual person, decided to get a law degree there. Grandma was 32 when she started, and worked five-and-a-half days a week as a clerk-typist, attending classes at night. She shared a double bed and a bedroom with another roomer in a widow’s home. After expenses, her meager earnings were sent to her mother to pay for her children’s needs. She financed her law school education by borrowing against a life insurance policy. Friends gave her clothes. Her landlady refused rent while Grandma attended classes, but Grandma still contributed her share to the food kitty that was used to purchase food for all the tenants. My great-grandmother, by then a widow herself raising my mother and uncle and running the tobacco farm alone, wrote her: “I am glad you are taking the law course and in time to come I am sure that you will do something with it.”

Grandma finished law school and graduated on June 18, 1937. My mother, then 11, remembers that she was allowed to pick out a $2.98 dress for the occasion, instead of choosing only from the $1.98 selection in the store, which, for her, was a very rare treat. Grandma’s bar review course book, now in my office, was very similar to the bar review materials I remember studying 30 years ago, as were the practice questions.

On September 18, 1937, Grandma and her family drove a car to Frankfort, where Grandma appeared before the Kentucky Supreme Court to be sworn in. My mother was allowed to sit on the front-row polished bench to watch. Her most striking memory, though, was celebrating the occasion by going to a restaurant, getting chocolate pudding for dessert, and paying for a meal — an unheard-of extravagance at the time. Later that week, Grandma was mailed a letter by the court clerk requesting the $6.50 license fee. She was requested, “in order to expedite the matter,” to send “a post office money order.”

Ruby Wrench as a young woman and her certificate of completion from the Cincinnati YMCA School of Law.
order or certified check for this amount to save the delay in having a personal check cleared through the bank,” something she most certainly did. Her law school diploma and certificate of admission to practice are proudly displayed in my office.

World War I veterans still had Veterans’ Preference Points in 1937, so after earning her law license, Grandma continued to work as a clerk-typist. She accepted that, and did not consider that she was treated differently from a man or subject to any discrimination. Once World War II fully involved our nation, she finally became eligible for a position that utilized her education, and moved to the Adjudication Division of the Veterans’ Administration. She served on administrative review boards that determined the eligibility for exemption from military service of men who had been drafted. The job required a command of medicine as well as law. Because she was a woman, she served as a citizen member of the review board, not an attorney member. Again, she simply accepted without complaint what would today be considered an unacceptable discriminatory slight. She considered herself fortunate to have a job that had allowed her to support her children through the Depression, including sending my mother to a high school academy. To save money, she continued to reside in boarding homes. As a woman, she was given assignments in fairly undesirable geographic areas, away from her family.

When World War II ended, the veterans came home, again with Veterans’ Preference Points, and Grandma was demoted for a year or so from her high-paying $4,520/year authorization officer position to a clerk-typist. She considered herself fortunate, again, that she did not lose her job as many women did throughout the country at the end of the war. She was eventually reinstated to an attorney position. This resulted in moves to Lexington, Louisville, Columbus, Philadelphia, and eventually to Huntington, West Virginia. Huntington, a coal-mining town in the Appalachian Mountains, was considered a hardship location, so Grandma was given a significant raise when she moved there. It was in Huntington that she retired from the Veterans’ Administration in 1966 with what she considered to be a generous pension.

Grandma maintained an active interest in law and politics throughout her retirement years. Experienced in administrative and Constitutional law, she watched every minute of the Watergate hearings, and deplored the deterioration of ethics in law, politics, and business.

It meant a great deal to Grandma when I chose to go to law school myself. We stayed in close communication during those years, although jurisprudence was not often a topic of our conversations. She financed a third of my law school education, which occurred in far more comfortable circumstances than did hers. When I graduated in 1977, she stayed with me for the occasion. I was still studying for final exams when she arrived. I vividly recall her picking up my administrative law textbook, and caressing it as she always did her books. My administrative law professor, a Seattle civil rights attorney, was a remarkable orator who had been a product of Dartmouth and Harvard Law School, and was a contemporary of Joe Kennedy, who died in World War II. I was to quickly find out that Grandma’s mind was as well-honed as his. She simply moved her fingers down the table of contents, which listed topics and U.S. Supreme Court Cases spanning more than two centuries. Grandma, then almost 78, knew those cases like the back of her hand — the subject of debate, the holdings and minority positions, and which justices stood on each side of the decisions in all of the cases — and described each of them eloquently. I simply sat in amazement as I listened to her.

My law school application required that I answer the topic, “Why I wish to go to law school.” I knew my initial answer at the time to be too self-centered and materialistic to be acceptable, so I turned to Grandma for help. My reasons for being a lawyer have long since become more altruistic. While I cannot recall what I submitted, Grandma picked up her red ball-point editing pen, wrote this on her legal pad, and mailed it to me.

It is a universal and never-ending study. From the earliest historical period laws have been enacted enabling people to enjoy certain rights and privileges and requiring them to perform certain duties. Law enters our lives from the hour of our birth and may not leave even with our burial.

History shows man has learned moral and ethical standards from the history of religion and law. Unjust laws or laws wrongfully interpreted can ruin a man’s life or destroy a nation. The study of law requires a search for truth and facts about many other professions, such as medicine, commerce, banking or agriculture. I think I will find law very, very interesting and that I will be better qualified to know what to do to promote the welfare of my country and its citizens as well as myself.

Ruby Flanagan Buchanan Wrench died in 1983, having made the world a little bit better with her commitment to the rule of law, the Constitution, and the role lawyers play in the order of our lives, and in pioneering the places we women have in law today.

Jennifer C. Rydberg is a solo lawyer practicing estate planning, probate, and family law in Kent. She and her husband raised two Eagle Scouts. Her website is www.jcrlaw.com.
Unequal Partners
Why Are Women Partners Less Satisfied with Lateral Moves?

BY KAREN A. ANDERSEN

The evidence continues to mount. Surveys by the National Association of Women Lawyers (NAWL), the American Bar Association, the Women's Bar Association, the MIT Workplace Center, the Boston Bar Association, and Major, Lindsey & Africa (MLA) all come to the same conclusion: Women are not getting the same opportunities, the same salaries, or the sort of support they desire from their law firms.

While evident at the associate level, the differences become even more distinct at the higher echelons. The MLA study, released in the Spring of 2007 and entitled "Women Lawyers and Obstacles to Leadership," revealed that women leave the partnership track in far greater numbers than men. While the study's commentary section and anecdotal information indicates that this is often because they have difficulty juggling work and family responsibilities, this is far from the only reason.

In the summer of 2006, MLA surveyed more than 5,622 lateral partners in 647 law firms to assess their satisfaction with their moves, and to identify the key factors affecting satisfaction; more than 1,000 responses were received.

Numbers Remain Low
Women comprised approximately 17 percent of the original pool of MLA's targeted candidates and 15 percent of the respondents who identified themselves by gender. These percentages are low due to the basic lack of women at the partnership level.

NAWL's "National Survey on Retention and Promotion of Women in Law Firms," released in October 2006, found that women who graduated between 1996 and 2006 (when women represented 44 percent of all law students) constitute just 24 percent of the equity partners in AmLaw 200 firms. Women graduates from the classes of 1990-95 represent 21 percent of equity partners, while 19 percent of the equity partner positions held by graduates of the classes of 1980-89 are women.

The lower percentage of women equity partners is especially disconcerting given that the number of men and women who start out as associates in the larger firms is about the same, and the number of women law school graduates has been roughly equivalent to that of men since the mid-1980s. Today, women represent just 16 percent of equity partners in the nation's largest firms and 45 percent of associates. This dearth means that the current imbalance in opportunities available for women attorneys will continue, since it translates into a lack of diversity-encouraging practices like senior-to-junior mentoring and role modeling.

Women Need More Information
Satisfaction with lateral moves differed significantly between genders. The MLA survey showed that women were far more likely than men to be disappointed in their firm's compensation/structure, strength of management, and culture/reputation. Forty-four percent of the male respondents indicated that compensation was better than expected, compared to just 28 percent of the women. Fifty-two percent of the males thought their new firm's strength of management was better than expected; just 42 percent of the women did. These gender differences held true for the firm's culture and reputation, as well as the personality and style of the firm's partners.

The MLA survey revealed what legal recruiters anecdotally know to be true: Women laterals should spend more time conducting due diligence about the firms they are considering to make sure their needs will be met.

Women Speak Out
The MLA survey also showed that laterals considered compensation/compensation structure as one of the least important factors when choosing their new firm. Despite this, it is still galling when women discover disparities. Several women I interviewed for this article said that they believed they had been brought in at a lower compensation level than male partners with equivalent credentials. Income disparities don't exist just at the beginning; they continue throughout the women's careers. The NAWL survey revealed that among the 200 largest firms in the United States, male equity partners earn an average of $510,000, compared to $429,000 for women.

Another factor uncovered in the MLA survey was that new laterals want to be integrated into their new firm as quickly as possible, to be introduced to key clients, other partners, and the support staff, to feel like part of the team. This was not the experience many women described to me, though. They reported feeling like a "silo" upon joining their new firms. They were concerned about being labeled as "high maintenance" if they asked for support. These two factors combined to leave them feeling uncomfortable about asking for anything, even basic information. Several women also mentioned that they had been assigned associates, paralegals and/or support staff who had been rejected by others in the firm.

The time constraints on women partners with families was also mentioned during my interviews as a factor in how quickly women are able to feel integrated into new firms. This is an especially interesting finding given that, according to the MIT Workplace Center study, senior male lawyers are actually more likely to be married or living with a partner than their female peers (99 percent vs. 84 percent) and to have children (80 percent vs. 68 percent). Still, women tend to be the ones saying no to events held after work on a Friday.

Studies show that women who leave law entirely tend to do so for family reasons, but the majority of women who move laterally do so for the same reasons as men. Career advancement and their previous firm's "poor promotion opportunities" and "unsupportive work environments" are their major concerns. MLA's survey confirmed this, showing that the new firm's "ability to support the lateral's practice and help take it to the next level" was the single most important factor for laterals.

So women lateral partners, like men, are joining new firms to better their practices. Yet, the MLA survey shows that they are less satisfied than their male counterparts after they move. What can firms do to increase the satisfaction of their women partners?

Some Solutions
First, our survey shows a real need for firms — and candidates — to be certain that new partners truly understand the workings of the new firm's compensation system before
an offer is accepted. If it is the candidate's first lateral move, she will have only her old firm's compensation structure for comparison and may not be able to discern important subtleties. Law firm compensation packages have become substantially more complex and can vary significantly from one firm to another. Even firms that use the same “language” may have dramatically different definitions. A detailed conversation between the firm and the candidate should be mandatory.

Secondly, when I asked women partners what could be done to better integrate women laterals, the most resounding response was: “Have a well-thought-out lateral integration program.” This should include a specific plan for introducing laterals to the firm's clients, and the lateral's clients to others in the firm, as well as detailed information on governance mechanisms, billing procedures, and support capabilities. One lateral partner I spoke with mentioned that she went through “orientation” at her new firm with a first-year associate who just happened to be starting on the same day. Obviously, what she needed to know about the firm was very different from what the new associate needed to know.

A good lateral integration program should also help alleviate the feeling that one has been “disconnected” from all the professional support one has come to expect. Many women told me that their new firms did not make it easy for them to figure out the support network or introduce them to the right people — e.g., a friendly person in accounting willing to help them out with bills, a phenomenal junior associate, a really good paralegal, a top-notch assistant who knows when to put calls through and when to defer them, etc. The lack of reliable and top-quality professional support makes producing superior work much more arduous and time-consuming, precisely at the moment a new partner is seeking to establish herself and her reputation at a new firm.

Another woman partner I interviewed suggested “putting women lateral partners on firm committees sooner rather than later — and not just the hiring or summer-associate committees.” Committee assignments are a way for laterals to become informed about and involved in the firm’s processes, to help make important decisions, to form new relationships, to demonstrate their administrative and strategic planning skills, and to get a sense of the firm’s priorities.

In contrast to the above recommendations, which focus primarily on what law firms should do, this next suggestion falls on the shoulders of the women themselves. It is important to make an effort to spend “down” time as well as work time with your professional colleagues. One female lateral partner told me that her firm’s monthly partner meetings and department lunches were an important factor in making her feel integrated, and that she always made sure they were on her calendar.

We know our law-firm clients value their lateral women partners and have often invested significant time and money recruiting them. A little more effort on the front end (i.e., recruiting; interviewing; and explaining the firm’s structure, policies, and practices) and on the actual integration could have profound positive long-term results, for the firms and the women partners.

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Note: This article refers to Major, Lindsey & Africa’s “Lateral Partner Satisfaction Survey.” For a copy of the complete survey, please send an e-mail to lateralsurvey@mlaglobal.com. Please specify PDF or hardcopy.
I don’t hear people say “between the cracks” as much as I used to. For a long time, it was quite common for people to describe something that had been forgotten or overlooked as having fallen between the cracks. But then someone noticed, and politely pointed out, that “between the cracks” is where the floor is. The things that get lost aren’t those that fall between the cracks, onto the floorboards, but those that fall through the cracks. Somehow the word spread, and today one hears “through the cracks” a lot more often than the incorrect “between the cracks.”

On the other hand, it continues to be common to hear “between you and I.” This has been going on for many years, and no one knows how it got started. I suspect that it has to do with the huge number of elementary school kids who were corrected when saying “It’s me” or “me and Julie went to the movies.” They had “it is I” and “Julie and I” drummed into their heads in a way that, I suspect, caused them to believe that the whole thing had nothing to do with grammar, but rather that it was somehow impolite to use the word “me.” So regardless of whether they were in the nominative case or the objective case, they carefully and emphatically adopted the word “I.” It caught on, and it stuck. A great many well-educated people say “between you and I” even though “between” is a preposition and if followed by pronouns, those must be in the objective case. “She stood between him and me,” not between “him and I” or, worse, between “he and I.”

Twixt and Tween

What got me thinking about “between” recently was seeing a whiteboard of instructions for members of the grueling swimming class that, I am happy to say, precedes my somewhat more relaxed morning lap swim. The instruction recommended something like “ten sets of five laps with a short rest between each.” Between each what? Between each set of five laps, supposedly. But how can you take a rest “between” a set of five laps? You can take a rest before the set or after the set, but I can’t quite imagine how you could take a rest between the set. Understanding the problem requires recognizing that the word “each” is singular, referring to an individual component of a group, while “between” is a word that requires two objects in order to have meaning. You can’t do something “between” one thing — even if that one thing is a set of laps — any more than you can stand or walk between one other person or choose between a candy bar.

So what should the sign have said? “Ten sets of five laps with a short rest between each two sets” is correct, but cumbersome. But what would have been wrong with “ten sets of five laps, each followed by a short rest”? I know, it leaves doubt as to what would have to follow the last set of laps — couldn’t you take a long rest then? But that ambiguity is less reasonable and less likely than the illogical, indeed impossible, construct created by “between each.”

It’s common sense that you can’t be “between” only one thing. More controversial, however, is the question of whether you can be between more than two things. The rule — which many people increasingly resist — is that “between” implies no more and no fewer than two things, and if you have more than two things, the preposition you want to use
is “among.” Now a lot of folks don’t see anything wrong with “I had to choose between five candy bars.” But, as I noted above, the presence of exactly two objects is inherent in the meaning of “between.” The phrase “Angela was between Megan and Molly” means something: Megan was on one side of Angela and Molly was on the other. To say that Angela was between Megan, Molly, and Mortimer is meaningless. We have no idea of Angela and Molly was on the other. To say “Angela was between Megan and Molly” means something: she marched between Megan and Molly.

Granted, the confusion created by a phrase such as “just between the three of us” or “the continuing battle between the countries of the Middle East” is not earth-shaking. But part of the wonderful utility of the English language is that we have so many words that enable us, in a single word, to identify something that might otherwise take a much longer phrase (“between me and her” rather than “with me on one side and her on the other”). It behooves us to use such words with precision if they are to retain their usefulness. Already we have to say “on his back” and “on his front” because no one expects the difference between “supine” and “prone” anymore. The issue isn’t schoolmarmish “correctness”; it’s preserving the precision and versatility of our language’s treasure trove of words.

**Foregone Conclusion**

I’ve mentioned in previous columns that, in the law business, some words that most folks never or rarely use are quite common, and can easily get confused with more common similar words; so we in the legal profession have to be especially careful how we use them. One of these is the word “foregoing.” Because we often have to write or quote complex sentences or lists, and don’t want to have to stultify our readers by constantly repeating those constructions, we like to refer back to what has gone before, identifying it as “the foregoing.” The prefix “fore” is a shortened form of “before,” so the word properly means the thing that goes before.

But here’s the lookout: All too frequently, people write “forgoing” instead of “foregoing.” That’s a mistake. “Forgoing” is a different word, with a different meaning. To “forgo” something is to give it up. Since I am on a diet, I decided to forgo dessert. It’s not too hard to keep these terms straight, because “forgo” is almost always used in its present tense form, while “forego” is rarely found that way. When something comes before something else, we don’t often say the one thing “foregoes” the other (though we could). It’s much more common, however, to find “forego” in its gerund form (“notwithstanding the foregoing”) or in its participial form (“it’s a foregone conclusion”). So it’s in those forms that you want to make sure that the word you want is “foregone” (went before) not “forgone” (given up), or “foregoing” (preceding) not “forgoing” (deciding not to).

That “for-fore” prefix can be pretty troublesome. Many people confuse “forward” with the less common and much more limited “foreword.” The term “foreword” refers to introductory comments preceding a longer text. It is common to have a “Foreword” to a book or a report, and if you look at it you can see that it plainly means a “word” that comes “before.” The word “forward,” on the other hand, is an adjective or adverb meaning “ahead,” or a verb meaning to send something on to someone else.

Our “fore” problems don’t end there. A “forebear” is an ancestor, while to “forbear” means to avoid doing something. English ma-
The Trouble with Spell-Checkers

But getting back to problems that arise in legal writing especially, we have particular difficulty when it comes to “therefore” and “therefor.” Part of the problem is that “therefor,” is a word that spell-checking software doesn’t recognize. In fact, even as I write this column, every time I type “therefor” Microsoft Word — which is sure that it is much smarter than I am and knows exactly what I want — dutifully changes it to “therefore.” I had to pause just now to put “therefor” into my dictionary, otherwise I’d have had to be institutionalized before finishing the article.

“Therefor” is akin to “thereto,” “thereafter,” “thereon,” and other such words, all of which use “there” in the sense of “that thing” (usually meaning a foregoing thing). “Plaintiff is in the business of selling computers and parts and accessories therefor” means that plaintiff sells computers and also sells parts and accessories for those computers. “Therefore, by contrast, means “for that reason” (usually the foregoing reason): “Julie was a police officer and therefore commanded respect in her community” means that Julie commanded respect for the reason that she was a police officer. In legal writing, we use “therefore” a lot more than most people do, and we use therefor a whole lot more than most people do, because most people don’t use it at all — which leads is why spell-checkers have never heard of it.

Another legal word that spell-checkers have never heard of is “tortious”, so be very careful when you write your spell-checker over that complaint for tortious interference with contractual relations, or you’ll end up puzzling the court with multiple references to “tortuous” interference — which may be agonizing, but isn’t illegal.

Still, that’s not as bad as the case of the young lawyer who wrote a brief dealing with the question of whether the court was right to have raised and disposed of an issue sua sponte. He accepted the spell-checker’s suggested corrections and filed a brief filled with judge-befuddling references to the humble sea sponge. Spell-checkers are a great tool, but there’s no substitute for proofreading your work.

Misleading Pleading

I read in a government rulemaking notice a government rulemaking notice that may be the cost-effective program. But there’s no substitute for proofreading your work. And above all, proofread your work.

Robert C. Cumbow is a shareholder at the Seattle firm of Graham & Dunn PC. He teaches at Seattle University School of Law and writes on law, language, and movies.
I walked on the ferry heading home to Laurie and the kids. A young woman seated near a window smiled and said “Hi!” Her face was familiar. Clearly she considered us well-acquainted. As I looked at her more, I realized that we had spent many hours together. She was a former client whose face I remembered, whose name I didn’t.

She signaled me over.

I sat down uncomfortably.

“How are you, Jeff?” she asked.

“Fine,” I responded, and, for reasons only a good psychiatrist could answer, Clue, trying to decipher who this client was. I couldn’t let her know I had no idea as to her identity. I had probably made a good fee off her case, and developed a good rapport. Certainly my recollections of her were positive. Her case was, however, months or years ago, and hundreds of clients ago. To my chagrin, her name absolutely escaped me.

I couldn’t let her know that lawyers remember case facts more than client names. That’s one of our profession’s dirty little secrets. If she had said, "2003 Lexus, $3,000 damage, intersection of Kirk and Franz, Officer Crane investigated, care through Dr. Preston," I could have talked about her case the whole ferry ride — though still not knowing her name. She’d never understand, and would believe that I was a here-today, gone-tomorrow sort of lawyer and friend.

All I could do was to feign familiarity and remember how to play Clue.

“It’s been a long time. How are you?” I asked, hoping that she would reveal something about her case.

“Fine,” she said. “My elbow has healed fine.”

“How is your family?”

I struck gold. “Fine,” she answered. “Dad says he saw you at Market Foods a while back; that you and he were both grilling steaks that night.”

My mind began moving at light speed. Whose father? What man had I seen recently at Market Foods? Who did I discuss grilling steaks with? Suddenly
his face flashed in my head. Jim Smith!
This is Jim Smith’s daughter!
“JIM SMITH’S DAUGHTER. ELBOW. PSNS. BAD DRIVER NAMED Mccovey.”

The facts poured into my brain. This client had been struck in a crosswalk at Puget Sound Naval Shipyard by an inattentive elderly woman driver named Elsie Mccovey. My client had hit her elbow in the driver’s door and fractured it. We’d settled the case for $50,000 policy limits. That was more money than my client had ever seen and, as a result, she had referred two good PI cases to me.

“JIM SMITH’S DAUGHTER. HER NAME IS PAM LARSON!” It all flowed back.

“So, Pam, how are you . . .” I asked, and as we chatted like old friends, I could hardly wait to get home. Maybe Chris and Andy would play me a game of Clue. I was warmed up now and ready to go.

Jeff Tolman is a former member of the WBSA Board of Governors and practices in Poulsbo.
Imagine this scenario: You are your firm’s trial lawyer. One of your partners, a business lawyer, assisted one of your firm’s clients two years ago in negotiating and drafting a contract with one of its suppliers. Your partner was present during some of the negotiating sessions, but the president of your firm’s client took the lead in actually working through the contract with the supplier. The contract is now in dispute between the client and the supplier, with the dispute turning on the interpretation of a particular phrase in the contract and what the parties intended with that term. The client’s position in the dispute is consistent with the negotiating history your partner recalls. The client’s president is still with the company and is available to testify about the disputed phrase. Your partner asks you to handle the case. In your first call to opposing counsel, however, the opposing counsel tells you that your firm is disqualified under the lawyer-witness rule because he plans to take your partner’s deposition. Are you out of the case before it has hardly started?

The lawyer-witness rule is sometimes tossed around cavalierly during litigation. In “The tribunal has proper objection when the trier of fact may be confused or misled by a lawyer serving as both advocate and witness. The opposing party has proper objection where the combination of roles may prejudice that party’s rights in the litigation. A witness is required to testify on the basis of personal knowledge, while an advocate is expected to explain and comment on evidence given by others. It may not be clear whether a statement by an advocate-witness should be taken as proof or as an analysis of the proof.”

RPC 3.7 also recognizes four practical exceptions to the lawyer-witness rule.

First, RPC 3.7(a)(1) allows a lawyer to be both an advocate and a witness where the testimony will be on an uncontested matter. In that instance, Comment 3 to our version of the rule notes that “the ambiguities in the dual role are purely theoretical. Presumably, the parties could also address the evidence through a stipulation rather than having the lawyer testify.

Second, RPC 3.7(a)(2) also allows a lawyer to testify concerning the nature and value of legal services provided in the case. In that situation, Comment 3 to our rule observes that “permitting lawyers to testify avoids the need for a second trial with new counsel. . . and . . . in such a situation the judge has firsthand knowledge of the matter . . . and there is less dependence on the adversary process to test the credibility of the testimony.” The simple fact that an attorney-fee claim is included in the remedies sought, therefore, will not generally trigger the lawyer-witness rule.

Third, RPC 3.7(a)(3) creates a “hardship” exception where “disqualification would work a substantial hardship on the client[.]” For example, this exception might be triggered if the trial lawyer’s testimony could not be anticipated and the issue arose in the middle of a trial. Comment 4 to our rule notes that the trial judge is in the best position to make the call on whether this exception should apply. Comment 4 also cautions, however, that reasonable foreseeability is a primary factor in balancing the equities involved.

The Lawyer-Witness Rule: What It Is and What It Isn’t

What It Is
The lawyer-witness rule has been around for a long time. In fact, it was one of the original Canons of Professional Ethics adopted by the American Bar Association in 1908. Over the years, its form has changed and it is now found in RPC 3.7 in both the Washington version and its ABA Model Rule counterpart. Both when the Canons were adopted nearly 100 years ago and today, the rule generally prevents a lawyer from being an advocate before the jury and a witness before it at the same time. Comment 2 to our RPC 3.7 summarizes the rationale for generally prohibiting these dual roles:

The tribunal has proper objection when the trier of fact may be confused or misled by a lawyer serving as both advocate and witness. The opposing party has proper objection where the combination of roles may prejudice that party’s rights in the litigation. A witness is required to testify on the basis of personal knowledge, while an advocate is expected to explain and comment on evidence given by others. It may not be clear whether a statement by an advocate-witness should be taken as proof or as an analysis of the proof.”

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Fourth, RPC 3.7(a)(4) permits trial counsel to remain where the opposing party called the lawyer and the court rules that the lawyer may continue to handle the trial. Comment 8 to RPC 3.7 counsels that the lawyer-witness rule is not intended to be used inappropriately as a strategic litigation tactic and, therefore, vests the trial judge with the authority to allow the lawyer to continue in this circumstance.

RPC 3.7 as amended in 2006 and its accompanying comments are all available on the ethics page of WSBA’s website at www.wsba.org/lawyers/ethics. In addition to the RPCs, potential lawyer-witnesses also need to check the rules of the particular court before which they will be appearing. Both Washington Civil Rule 43(g) and U.S. District Court Local Civil Rule 43(k) in the Western District, for example, generally prohibit trial counsel from being witnesses for their clients “on the merits” without court approval.

What It Isn’t
RPC 3.7 is not a rule of either unqualified or absolute disqualification in three important senses.

First, under the terms of the rule, the lawyer must be a “necessary” witness. Washington’s appellate courts have found that to be a “necessary” witness, a party seeking a lawyer’s disqualification “must show that the attorney will provide material evidence unobtainable elsewhere.” *State v. Schmitt*, 124 Wn. App. 662, 667, 102 P.3d 856 (2004), citing *Pub. Util. Dist. No. 1 v. Int’l Ins. Co.*, 124 Wn.2d 789, 812, 881 P.2d 1020 (1994). In the same vein, simply the possibility of a lawyer being a witness is not sufficient to warrant disqualification. See *Barbee v. The Luong Firm*, 126 Wn. App. 148, 159-60, 107 P.3d 762 (2005).

Second, even if a lawyer is precluded from being trial counsel by the rule, RPC 3.7 does not prohibit the lawyer from assisting on other aspects of the case, such as a summary judgment motion or an appeal. In *In re PPA Products Liability Litigation*, 2006 WL 2473484 (W.D. Wash. Aug. 28, 2006) at *1 (unpublished), for example, the court found that the lawyer-witness rule did not prevent a lawyer from working on a summary judgment motion. Similarly, the Court of Appeals in *Olman v. Holland America Line USA, Inc.*, 136 Wn. App. 110, 117 n.9, 148 P.3d 1050 (2006), noted that routine declarations authenticating uncontested materials in support of motions do not trigger disqualification by the lawyer-witness rule. Rather, RPC 3.7 is focused on the trial, where the lawyer’s dual role as counsel and witness is of particular importance.
roles as advocate and witness intersect in a way that the rule is designed to prevent.

Finally, and in an important change under the 2006 amendments, even if a firm lawyer will be a witness at trial, that does not necessarily disqualify the lawyer’s firm from trying the case through other firm lawyers. RPC 3.7(b) (and accompanying Comments 5-7) now permits a lawyer-witness’s firm to handle a trial (through other lawyers at the firm) as long as the lawyer-witness’s testimony will be consistent with the client’s position (and, therefore, no conflict exists).2 This represents a major shift in Washington’s approach to RPC 3.7, which formerly barred all firm lawyers from trying a case (subject to the exceptions discussed above) if a firm member was going to be a witness at trial.

**Summing Up**

To return to our opening example, the law firm should not be disqualified. The business lawyer’s evidence can be obtained elsewhere, and the testimony is being taken during a discovery deposition rather than a trial. More fundamentally, however, even if the business lawyer will eventually be a trial witness, the business lawyer’s testimony is consistent with the client’s position and the case will be tried by another one of the firm’s lawyers. In short, although the lawyer-witness rule is an important rule of law firm disqualification, the 2006 amendments to RPC 3.7 have narrowed considerably the situations in which it will apply.

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**NOTES**

1. WSBA Formal Ethics Opinion 182 (1989) finds that the lawyer-witness rule does not apply to a lawyer representing himself or herself pro se.

As a child, I frequently heard adults talk about “time flying” and did not have a concept of time moving quickly. The school year seemed to take forever, and summers seemed just as long because I was away from my friends from school. As a third-year governor for the Washington State Bar Association, I witnessed time flying as motions passed, committees reported, and friendships formed.

In June 2004, I was elected to one of three at-large seats on the Board of Governors. These seats were created through the wisdom and foresight of your governors at the turn of this century and are embodied in the Bylaws of the Washington State Bar Association at Section III, paragraph N, in order to bring a voice for those members who have been “historically under-represented in governance” or who “represent some of the diverse elements of the public of the State of Washington.” This section of the Bylaws defines diversity using very inclusive language that reaches across many programs and projects of the Bar.

During the past three years, I have had the distinct pleasure of seeing frequent intentional acts of inclusion and celebrations of diversity throughout the Bar. Many of these events were history-making. We celebrated Ron Ward as the first WSBA president of color in 115 years. We unanimously voted to include Indian law on the bar exam. We launched the award-winning WSBA Leadership Institute and selected fellows for its first class in 2005.

After graduating from the Leadership Institute, three fellows drew on what they learned and formed two new bar associations. Kim Tran was active in the formation of the Vietnamese American Bar Association of Washington, and Michael Heath and Beth Barrett Bloom were instrumental in the formation of the Gay Lesbian Bisexual Transgender Bar Association of Washington (QLaw).

Through the attention and efforts of Governor Lonnie Davis, the Washington Association for Attorneys with Disabilities was activated. In April of this year, the BOG approved a resolution supporting attorneys with disabilities, announcing its position that this dimension of our membership would be “treated with the same regard, courtesies and protection afforded to other protected classes” under the non-discrimination laws of this state, and that lawyers with disabilities would be included in the diversity goals and plans of the Bar.

One of the great joys of my term on the BOG has been the opportunity to get to know the leadership from many of the minority and specialty bar associations across this state. From the Washington Women Lawyers’ president, Joan Tierney, to the forever-active co-chair of the WSBA Committee for Diversity, Lael Echo-Hawk, to the president of the Latina/o Bar Association of Washington, Lorena González, the level of service to the greater community has been nothing short of spectacular. As Ron Ward says, “Lawyers are leaders,” and you only need to observe the leadership of presidents Craig Sims, Loren Miller Bar Association; Alice Wong, Asian Bar Association; Venkat Balasubramani,
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The facts you want for the legal minds you need.

South Asian Bar Association of Washington; Denise Tran, Vietnamese American Bar Association of Washington; Beth Barrett Bloom, QLaw; Naomi Kim, Pierce County Minority Bar Association; John Chung, Korean American Bar Association; and Lisa Atkinson, Northwest Indian Bar Association, to understand what the Bar was lacking before diversity was celebrated.

Presently we have the most diverse BOG in history, with six members representing ethnic and racial (Japanese-American, African-American, Filipino, Latino-Asian), gender, and sexual-orientation diversity. The ABA delegation from the state of Washington is second only to the delegation from the Virgin Islands with respect to diversity. Ellen Dial, the third woman WSBA president, shaped a history-making pipeline project to attract young people from diverse backgrounds to the profession. This is indeed progress from the 1989-92 term, when Lem Howell served as the first person of color on the BOG. Keeping diversity at the forefront of our discussions requires cultivation of new leadership. Brenda Williams was elected by the BOG to assume my at-large seat in September 2007. As the former president of the Latina/o Bar Association of Washington and an active member of the Initiative for Diversity Governing Council, she brings a wealth of leadership experiences to the Bar. She, too, will discover that time flies.

To everyone who added to the strength, texture, and diversity of the Bar during the past three years, thank you for your participation. To the past governors who elected me to be a member of the Board of Governors thank you for opening the doors to a different point of view. To the WSBA staff, thank you for making sure that the visions of the minority and specialty bar leadership and the BOG were transformed into action. And to the presidents and governors I served with — thank you for your willingness to lead a bar association that serves all of its members. 💪

Marcine Anderson practices in the area of technology law with the Civil Division of King County Prosecutor’s Office. She can be reached at marcline.anderson@metrokc.gov or 206-296-0428.

NOTES
1. Eric de los Santos holds one at-large seat and the Young Lawyers Division representative, Jason Vail, holds the third at-large seat on the BOG.
Second Annual Race Judicata 5K at Seward Park in Seattle — October 21, 2007

The UW Student Bar Association and the WSBA Young Lawyers Division will host the Second Annual Race Judicata 5K on October 21, 2007, at 10:00 a.m. at Seward Park in Seattle. Runners and walkers are invited to participate in this event organized for law students, faculty, staff, UW supporters, young lawyers, seasoned lawyers, and judges. The race began in 2006 to raise money to support students doing public-interest legal work. The first 150 participants will receive Jerzees moisture-management shirts. Remaining participants will receive cotton t-shirts. To register online, visit: www.active.com/event_detail.cfm?event_id=1464803. Contact Megan Vogel at megvogel@u.washington.edu with questions.

YMCA Honors Richard A. Jones with 24th Annual YMCA A.K. Guy Award

The YMCA of Greater Seattle will honor Judge Richard A. Jones for his volunteer contributions to the community at the 24th Annual YMCA A.K. Guy Award Luncheon on Friday, November 2. Throughout his career, Judge Jones has been an extremely active volunteer, working on education, social justice, and equal opportunity. Judge Jones’s passion is helping low-income youth of all ages explore and pursue their dreams. He has been a board member of the YMCA of Greater Seattle for 14 years and served as board president from 2000 to 2002. Judge Jones also serves on a number of other boards and committees, including the YMCA of Greater Seattle for 14 years and serves on a number of other boards and committees, including

Seattle University Board of Regents and the University of Washington Law School Advisory Committee. He has been a King County Superior Court judge since 1994 and was recently nominated by the Bush Administration for U.S. District Court judge.

WSBA-CLE’s Second Annual Solo and Small Firm Conference a Hit

Ocean Shores was the site of WSBA-CLE’s Second Annual Solo and Small Firm Conference on July 12-14. There is growing recognition across the country that attorneys practicing alone or in small firms are an important and sometimes invisible section of bar membership. Estimated at close to 60 percent of all practitioners in the state of Washington, solo and small-firm practitioners have distinct needs — primary among them the need to “be everything and do everything.” WSBA-CLE has worked closely with many solo/small-firm practitioners to develop a conference that responds directly to their needs. The conference sold out with over 275 registrants (more than 110 more than last year’s program) — a sign that the conference is meeting the needs of its target audience. This program featured esteemed trial lawyer Paul Luvera, noted evidence authority Karl Tegland, attorney and legal analyst Anne Bremmer, and columnist/court-appointed special master Craig Ball, from Austin. The Third Annual Solo and Small Firm Conference will be held July 17-19, 2008, in Wenatchee. Watch for additional details on www.wsbcle.org.

Spokane County Update

Spokane County Bar Association (SCBA) welcomes its three newest trustees: Matt Andersen, Jane Brown, and Terry Gobel. A warm welcome to Kammi Mencke as the SCBA Young Lawyer Division representative, as well as gratitude to outgoing YLD representative, Kevin O’Rourke. The SCBA officers for the upcoming year are: Ed Carroll, president; John Clark, president-elect; Mary Doran, secretary; and Jim McPhee, treasurer. Many thanks go to the trustees who served the Spokane bar for three years: Rosanna Peterson and Kevin Roberts. The SCBA also presented outgoing President, Art Hayashi, with a GU basketball signed by Bulldog coach, Mark Few, and Art’s own dedicated “team.” Thanks for the years of good service (and GU hoops updates), Art!

The SCBA’s Volunteer Lawyer Program honored pro bono efforts at the bar’s annual luncheon. The recipients all represent the Alliance for Justice’s phrase, “It’s not justice if it’s not equal.” Attorney of the Year: Lisa McBride; Housing Justice Project’s Attorneys of the Year: Rob Rowley, and Art Toreson; Family Law Advice and Consultation Clinic’s Attorney of the Year: Frank Malone; and the Law Firm of the Year: Ewing, Anderson, PS. Well done!

Spokane attorneys have been volunteering to provide free legal advice on Saturday afternoons in Riverfront Park through the Street Law project sponsored by the Center for Justice and SCBA Volunteer Lawyer Program.
Opportunities for Service

Northwest Justice Project Board of Directors

Application deadline: November 15, 2007
The Northwest Justice Project seeks two members to serve three-year terms on its Board of Directors. The terms will commence on January 1, 2008. Incumbents are eligible for reappointment. The Northwest Justice Project is a not-for-profit organization funded by the state of Washington and the federal Legal Services Corporation to provide free civil legal services to low-income people throughout Washington. Board members, who play an active role in setting program policy and assuring adequate oversight of program operations, must have a demonstrated interest in, and knowledge of, the delivery of high-quality civil legal services to the poor. For more information, e-mail cesar@nwjustice.org or lisag@nwjustice.org. Please submit a letter of interest and résumé to: WSBA Bar Leaders Division, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539, or e-mail barleaders@wsba.org.

Statute Law Committee

Application deadline: October 10, 2007
The WSBA Board of Governors is accepting letters of interest and résumés from members interested in serving a two-year term on the Statute Law Committee, commencing upon appointment. This 12-member committee seeks to foster accurate publication of laws and agency rules services in a professional and strictly nonpartisan and cost-effective manner. The primary responsibilities are to periodically codify, index, and publish the Revised Code of Washington; and to revise, correct, and harmonize the statutes of administrative or suggested legislative action as may be appropriate. The committee meets at least twice a year. Please submit a letter of interest and résumé to: WSBA Bar Leaders Division, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101, or e-mail barleaders@wsba.org.

Limited Practice Board

Application deadline: November 15, 2007
The WSBA Board of Governors seeks three candidates for appointment to the Limited Practice Board, which oversees administration of, and compliance with, the Limited Practice Rule (APR 12) authorizing certain lay persons to select, prepare, and complete legal documents pertaining to the closing of real estate and personal-property transactions. The candidates’ names will be submitted to the Washington State Supreme Court for appointment and will serve four-year terms commencing January 1, 2008. In keeping with the member requirements of APR 12, one position must be filled by a representative from the lending industry, one by a representative of the escrow industry, and the other position must be filled by an attorney member of the WSBA. LPOs in the lending and escrow industry are encouraged to apply. The board generally meets every other month. Please submit a letter of interest and résumé to: WSBA Bar Leaders Division, WSBA, 1325 4th Ave., Ste. 600, Seattle, WA 98101-2539, or e-mail barleaders@wsba.org.

Commission on Judicial Conduct

Application deadline: October 10, 2007
The WSBA Board of Governors is seeking applicants interested in serving as a member on the Commission on Judicial Conduct. One member position is available. The Commission reviews complaints of ethical misconduct against judicial officers, discusses the progress of investigations, and takes action to resolve complaints. The goal of the Commission is to maintain confidence and integrity in the judicial system by seeking to preserve both judicial independence and public accountability. The public interest requires a fair and reasonable process to address judicial misconduct or disability, separate from the judicial appeals system that allows individual litigants to appeal legal errors. The Commission consists of 11 members who serve four-year terms — six nonlawyer citizens, three judges, and two lawyers. Each member has an alternate whose term coincides with their corresponding member’s term. The lawyers must be admitted to practice in Washington and are appointed by the WSBA. The term for this member position will commence immediately upon appointment and expire on June 16, 2008.

WSBA Court Rules and Procedures Committee 2007-2008 Agenda

When it reconvenes this month, the WSBA Court Rules and Procedures Committee is scheduled to review the Superior Court Civil Rules (CR), the Mandatory Arbitration Rules (MAR), and the Civil Rules for Courts of Limited Jurisdiction (CRLJ). Suggestions regarding these rules or questions about the committee should be directed to Douglas Ende at 206-733-5917 or e-mail WSBACourtRules@wsba.org. Interested individuals are encouraged to participate in the work of the committee. For more information, see www.wsba.org/lawyers/groups/courtrules/default.htm.

2008 License Fee, Late Fees, and Suspension Information

Address/Contact Information Update.
Changes must be received prior to October 24 for your correct 2008 License Fee Packet mailing in December. APR 13(b) requires all attorneys to update their office addresses and telephone numbers within 10 days of any change. You can check your listing by going to the online lawyer directory at http://pro.wsba.org. If any of your contact information (name, address, phone number, or e-mail address) has changed, please update the information by e-mailing questions@wsba.org, faxing the change to 206-727-8319, or calling us at 800-945-WSBA (9722) or 206-443-WSBA (9722).

New Mandatory Disclosure Regarding

Seeking Questionnaires from Candidates for Judicial Appointments

The WSBA Judicial Recommendation Committee (JRC) is accepting questionnaires from attorneys and judges seeking consideration for appointment to fill potential Washington State Supreme Court and Court of Appeals vacancies. Interested individuals will be interviewed by the Committee on the dates listed above. The JRC’s recommendations are reviewed by the WSBA Board of Governors and referred to Governor Gregoire for consideration when making judicial appointments. Materials must be received at the WSBA office by the deadline listed above. To obtain a questionnaire, visit the WSBA website at www.wsba.org/lawyers/groups/judicial recommendation or contact the WSBA at 206-727-8212 or 800-945-9722, ext. 8212, or barleaders@wsba.org.
Professional Liability Insurance. Pursuant to Rule 26 of the Admission to Practice Rules (APR), this licensing season all active members of the WSBA will be required for the first time to disclose on the annual licensing form whether they maintain professional liability insurance. Effective as of July 1, 2007, new admittees and members returning to active status are required to report this information at the time of admission on forms provided to them with their admission or status change documents. Note: Washington lawyers are not required to have professional liability insurance coverage; APR 26 requires only that active Washington lawyers report to the WSBA whether they have such coverage. Because this is a new requirement and the information will be collected during the upcoming licensing season, the Lawyer Directory information for most lawyers will not reflect whether there is professional liability coverage until at least the end of March 2008. An exception will be lawyers newly admitted or recently returned to active status, who are required to report in connection with becoming active.

For more information on this rule, see http://pro.wsba.org/insurancedisclosure info.asp.

WSBA Bylaw on Armed Forces Fee Exemption. The WSBA will begin processing Armed Forces Exemptions in December for the 2008 Licensing Year. WSBA Bylaw Section II.E.1.b., provides for a fee exemption for eligible members of the Armed Forces. This section of the WSBA Bylaws provides: “An active member of the Association who is activated from reserve duty status to full-time active duty in the Armed Forces of the United States for more than sixty days in any calendar year, or who is deployed or stationed outside the United States for any period of time for full-time active military duty in the Armed Forces of the United States shall be exempt from the payment of membership fees and assessments for the Lawyers’ Fund for Client Protection upon submitting to the Executive Director satisfactory proof that he or she is so activated, deployed or stationed. All requests for exemption must be postmarked or delivered to the Association offices on or before March 1st of the year for which the exemption is requested. Eligible members must apply every year they wish to claim the exemption. Each exemption applies for only the calendar year in which it is granted, and exemptions may be granted for a maximum total of five years for any member.”

WSBA members whose membership status is active and who are otherwise eligible for the Armed Forces exemption as described above can apply for a waiver of WSBA license fees beginning in December. (WSBA members whose WSBA membership status is inactive or emeritus must still pay the annual WSBA license fees for that status.) If you are an active member and you believe you are eligible for the fee exemption, contact the WSBA Service Center at 800-945-WSBA (9722) or 206-443-WSBA (9722), or questions@wsba.org; or contact Kevin McKee at kevinm@wsba.org or 206-727-8243 or 800-945-9722, ext. 8243 for application information beginning in December.

MCLE Certification for Group 1 (2005-2007) If you are an active WSBA member in MCLE Reporting Group 1 (2005-2007), you will receive your Continuing Legal Education Certification (C2/C3) form in the license packet that will be mailed in early December. The deadline for returning the C2/C3 form to the WSBA is February 1. Any C2/C3 forms delivered to the WSBA or postmarked after March 3 will be assessed a late fee.

Members in Group 1 include active members who were admitted to the WSBA through 1975 or in 1991, 1994, 1997, 2000, or 2003. Members admitted in 2006 are also in Group 1 but are not due to report until the end of 2010. Their first reporting period will be 2008-2010; however, any credits earned on or after the day of admittance to the WSBA may be counted for compliance.

The Continuing Legal Education Certification (C2/C3) form that you received in your license packet is a declaration that lists all the MCLE Board-approved courses that were in your MCLE online profile for the 2005-2007 reporting period as of mid-October 2007. If you took other courses after mid-October, you can add these to the back of the C2/C3 form when you receive it. The C2/C3 form, not your online profile, is the official record of MCLE compliance. The original copy of the C2/C3 form must be returned to the WSBA to meet compliance requirements.

All MCLE Board-approved courses that you list on your C2/C3 form must have an Activity ID number. This number is listed in your online MCLE profile and is assigned at the time that the Form 1 for each course is input to the MCLE system. If you have taken courses that have not yet been approved by the MCLE Board, please submit Form 1s for these courses immediately to ensure that
If you have questions about the Form 1 process or MCLE compliance, please contact the WSBA Service Center at 800-945-WSBA (9722) or 206-443-WSBA (9722), or e-mail questions@wsba.org.

MCLE Certification for Active Members

Due Date for MCLE Reporting. WSBA members are divided into three MCLE reporting groups based on year of admission. ( Newly admitted members are exempt. See “ Newly Admitted Members” below.)


<table>
<thead>
<tr>
<th>Reporting Group</th>
<th>Next Reporting Period</th>
<th>Complete Credits by</th>
<th>File C2/C3 Form by</th>
</tr>
</thead>
<tbody>
<tr>
<td>Group 2</td>
<td>2006-2008</td>
<td>December 31, 2008</td>
<td>February 1, 2009</td>
</tr>
<tr>
<td>Group 3</td>
<td>2007-2009</td>
<td>December 31, 2009</td>
<td>February 1, 2010</td>
</tr>
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Credit Requirements. The following credit requirements must be met by December 31 of the last year of an active member’s reporting period:

- At least 45 total credits of MCLE Board-approved CLE activities must be taken, which need to include a minimum of 30 live credits and six ethics credits. The courses must meet the requirements of APR 11, but they do not need to be taken in Washington state. Many courses are offered around the world which meet the requirements of APR 11. “Live” courses include classroom instruction, live webcasts (not pre-recorded webcasts), and teleconferences.

- “Ethics” courses, and segments of larger courses, must meet the requirements of APR 11 Regulation 101(n) or (o) to be considered for ethics credit.

- Pre-recorded self-study (A/V) courses cannot be more than five years old, except MCLE Board-approved “skills-based” courses. Pre-recorded self-study courses include the traditional audio-visual (A/V) media of video tapes and cassette tapes. They also include archived webcasts, DVDs, compact disks, and other media with a sound track of the MCLE Board-approved course presentation. Written materials should be included with these courses and reviewed prior to claiming credit. In addition, written materials must be purchased by each member, where required by the sponsor, prior to claiming credit.

- Six pro bono credits can be earned per year. Two of these credits are for approved annual training, which must be taken prior to being able to earn credit for the pro bono work. Four pro bono credits may be earned each year if at least four hours of pro bono work was provided through a qualified legal services provider.

Carry-over CLE Credits. Carry-over credits from the previous reporting period may be used to meet the requirements of the current reporting period. If your current reporting period credits total exceeds 45, you may carry over a maximum combined total of 15 credits to your next reporting period. Only two ethics credits and five A/V credits may be carried over.

C2/C3 Reporting Requirement. All active members due to report are required to file a Continuing Legal Education Certification (C2/C3) form listing all CLE courses taken for credit compliance. The deadline for filing your C2/C3 form is February 1 of the year following the end of your reporting period. Note:

- Your online roster is not a substitute for filing the C2/C3 form.
• The C2/C3 form is a declaration and must be signed and dated, and the city and state where signed must be identified.
• C2/C3 forms are included in the license packets sent in early December to all members due to report (which will be Group 1 members this year).
• All CLE courses listed on member rosters as of October 2007 will be printed on the back of the C2 form. If you took more CLE courses after October 1, and if they appear on your online roster and you do not want to handwrite them on the back of the C2 form, you may print a copy of your roster and attach it to your C2/C3 form. State on your C2/C3 form that the attached online roster printout is a true and correct statement of the CLE courses taken for credit compliance.
• You must verify that the credit hours listed on the C2/C3 and on your online profile correctly reflect the hours actually attended for each CLE. Online credits may be edited by clicking on the “edit” link next to each course. Credits on the C2/C3 may be corrected manually.
• The C2/C3 form should be filed by February 1 even if all the credits needed for compliance have not been completed.

MCLE Late Fees. All active members who have not completed their credits by December 31 of the last year of their reporting period, or who submit their C2/C3 reporting forms after March 1 of the following year (the end of the grace period after the February 1 deadline), must pay a late fee. The late fee for the first reporting period of noncompliance is $150 and increases by $300 for each consecutive three-year reporting period of noncompliance.

Newly Admitted Members. If you are a newly admitted member, you are exempt from reporting CLE credits for the year of your admission and the following calendar year. If you were admitted in 2006, you will not report for this reporting period (2005-2007) even though you are in Group 1. You will first report at the end of the 2008-2010 reporting period. Members admitted in 2007 will not report until the end of the 2009-2011 reporting period. When you report at the end of your first reporting period, you may claim all CLE credits earned on or after your date of admission to the WSBA.

MCLE Comity. If you are an active member of the WSBA and your primary office for the practice of law is outside of Washington and if you are a member of the Oregon, Idaho, or Utah state bars (comity states), you may meet your Washington mandatory CLE requirements by providing proof of current MCLE compliance from your comity state bar. Only a Certificate of MCLE Compliance from your comity state bar (not a “Certificate of Good Standing”), sent with your WSBA C2/C3 form, will satisfy your MCLE requirements in Washington.

MCLE System — Course Listing and Member Profiles. You can use the online MCLE system to: review courses taken and credits earned; apply for course approval; apply for writing credit, pro bono credit, or prep-time credit; and search for approved courses being offered.

To use the MCLE system, go to the WSBA website at www.wsba.org and click on “MCLE Web Site” in the upper left corner. On the next screen, click on the “Member” tab, then select “Member Login.” The online instructions lead you through the process of creating a confidential password and using the system. Online help is available. If you have questions about using the MCLE system or about the MCLE compliance requirements, see the online FAQs at www.wsba.org/lawyers/licensing/faq-mcle.htm, call the WSBA Service Center at 800-945-WSBA (9722) or 206-443-WSBA (9722), or e-mail nickersonlaw@comcast.net.

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New APR 11 Regulation 104(e) Requirements for In-House CLEs. Starting with the 2005-2007 reporting period, members are limited to a total of 15 credits of private law firm CLEs and 15 credits of corporate legal department CLEs in each reporting period, regardless of who the private legal sponsor was and regardless of whether the course was open or closed. There are no limits on the number of credits you may earn at CLEs sponsored by government agencies. These limitations are the result of amendments to APR 11 Regulation 104(e) adopted by the Supreme Court that went into effect on November 8, 2005. The Supreme Court will not be changing this requirement in 2007.

“Foundations of Freedom” Civics Pamphlet Available
The WSBA has created a consumer-information pamphlet called “Foundations of Freedom” that covers the basics of American government and democracy. The pamphlet describes the rule of law, the separation of powers, checks and balances, and judicial independence. It also includes a short quiz and a list of useful websites. Lawyers and judges are encouraged to bring the pamphlet with them when they speak to students or the public in schools, courthouses, community organizations, and community centers. Teachers may also request the pamphlet for classroom use. The WSBA can provide reasonable numbers of copies at no charge, or the pamphlet may be downloaded from the WSBA website at www.wsba.org/public/consumer. Requests for copies should be directed to Pam Inglesby at pami@wsba.org.

Women in Solo Practice Group
The WSBA Lawyers Assistance Program is offering a group this fall for women who are actively engaged in solo practice. This group will provide a place to meet and talk with others who are dealing with similar challenges as well as opportunities for learning new skills and practical solutions that can help participants feel more connected and energized about their work. The group will meet weekly for eight sessions, from 8:00 to 9:30 am on Wednesdays, starting October 3 and ending on November 14. It will be limited to a maximum of 10 members. The group will be co-facilitated by Rebecca Nerison and Abby Smith. There will be a sliding-fee scale. If you are interested, please call either Rebecca at 206-727-8269 or 800-945-9722, ext. 9269, or Abby at 206-733-5988, or 800-945-9722, ext. 5988, for more information about this group.

LAP Solution of the Month: Career on Track?
Has your career turned out the way you planned? Do you have a clear vision for the next five, 10, or 20 years? If not, what’s getting in your way? If you’d like some help developing your career plan, call the Lawyers Assistance Program at 206-727-8268.

Casemaker Access
Casemaker is a powerful online research library provided free to WSBA members. To access Casemaker, go to the WSBA website at www.wsba.org and click on the Casemaker logo on the right sidebar. Click on the Casemaker button to begin. For help using Casemaker, contact Julie Salmon at 206-733-5914, 800-945-9722, ext.
Job Seekers Discussion Group
Looking for a job or making a transition? Join the Job Seekers Discussion Group the second Wednesday of each month from noon to 1:30 p.m. The next meeting is October 10 at the WSBA office. The group discusses where to look for jobs, how to grow your network of contacts, strategies for résumés and cover letters, and how to keep yourself organized and motivated. Exchange information and ideas with other lawyers looking to make a change. Come as you are — no need to RSVP. Bring your business cards and practice networking skills. For more information call 206-727-8269 or 800-945-9722, ext. 8269, or e-mail rebeccan@wsba.org. Please note the WSBA’s new address: 1325 Fourth Ave., Ste. 600, Seattle.

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

Contract Lawyer Meeting
Discuss the issues with other contract lawyers on October 9 from noon to 1:30 at the WSBA office. Bring your lunch — coffee is provided — and network with other contract lawyers. For more information, contact Julie Salmon at 206-733-5914, 800-945-9722, ext. 5914, or juliesa@wsba.org. Please note the WSBA’s new address: 1325 Fourth Ave., Ste. 600, Seattle.

LOMAP and Ethics on the Road: The 2007 Traveling Seminars
Plan to attend in Walla Walla on October 2, Richland on October 3, or Yakima on October 4. Registration is $89. This seminar has been approved for four CLE ethics credits. For more information and a complete calendar of full seminars, contact Julie Salmon at 206-733-5914, 800-945-9722, ext. 5914, or juliesa@wsba.org, or visit www.lomap.org.

Computer Clinic
The WSBA offers a hands-on computer clinic for members wanting to learn more about what Microsoft Office programs such as Outlook, PowerPoint, Excel, and Word, as well as Adobe Acrobat, can do for a lawyer. Are you a total beginner? No problem. The clinic teaches helpful tips you can use immediately. Computers are provided, and seating is limited to 15 members. There is no charge, and no CLE credits are offered. The clinic on October 8 will focus on Excel and Internet research, and the clinic on October 22 will focus on computer basics: getting started, navigating through Windows, computer features, and security and maintenance. Clinics are held from 10 a.m. to noon at the WSBA office. For more information or to RSVP, contact Julie Salmon at 206-733-5914, 800-945-9722, ext. 5914, or juliesa@wsba.org. Please note the WSBA’s new address: 1325 Fourth Ave., Ste. 600, Seattle.

Problem Getting a Client to Pay?
Dispute with another lawyer or an expert witness? The WSBA offers two programs to aid in the resolution of disputes involving lawyers. These programs serve both

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CHRISTIAN M. OELKE
Raised on the southern Oregon coast in North Bend, Christian began his practice of law in 1998 after graduating with a B.S. from the University of Oregon in 1994; a J.D. (cum laude), from the Willamette University College of Law in 1998; and a LL.M in Taxation, from the University of Washington Law School in 2001.
Christian joined the firm in 2002 and focuses his practice on business and corporate law, estate planning, taxation, and real estate law.

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

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

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

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

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

Upcoming Board of Governors Meetings
October 26-27, Winthrop • December 7-8, Everett • January 17-18, 2008, Olympia
With the exception of the executive session, Board of Governors meetings are open, and all WSBA members are welcome to attend. RSVPs are appreciated but not required. Contact Donna Sato at 206-727-8244, 800-945-9722, ext. 8244, or donnas@wsba.org. The complete Board of Governors meeting schedule is available on the WSBA website at www.wsba.org/info/bog/schedule.htm.

Usury Rate
The average coupon equivalent yield from the first auction of 26-week treasury bills in September 2007 was 4.554 percent. Therefore, the maximum allowable usury rate for October is 12 percent. Information from January 1987 to date is on the WSBA website at www.wsba.org/media/publications/barnews/usury.htm.
Aiken, St. Louis & Siljeg, P.S.

is pleased to announce that

Richard L. Furman, Jr.

and

Corey T. Denevan

have joined the firm.

Mr. Furman, formerly of Hertog & Coster, PLLC, has joined the firm as an Associate. Mr. Furman's practice will continue to focus in the areas of trust and estate administration and litigation, including guardianships, probates, trust matters, powers of attorney, vulnerable adult proceedings, and appeals, and will also include business litigation.

Mr. Denevan, formerly of Hertog & Coster, PLLC and Wells Fargo Bank, N.A., has joined the firm as an Associate. He will continue to practice in the areas of trust and estate administration, litigation, and appeals. Mr. Denevan's practice area has been expanded to include civil and business litigation as well as bankruptcy.

Aiken, St. Louis & Siljeg, P.S.

1200 Norton Building
801 Second Avenue
Seattle, WA 98104-1571
Phone: 206-624-2650
Fax: 206-623-5764

www.aiken.com

Sara Lingafelter,

formerly of Preston Gates & Ellis LLP and Olsen & McFadden Inc., PS,

is pleased to announce the formation of

First Ascent Law PS

Sara's general practice will focus on business and employment law, estate planning, and civil litigation in Kitsap and Jefferson counties.

First Ascent Law PS

PMB 367, 19689 7th Ave. NE
Poulsbo, WA 98370-7531
Phone: 360-598-9777 • Fax: 360-633-4388
sara@firstascentlaw.com
http://www.firstascentlaw.com

Karr Tuttle Campbell

is pleased to announce

Thomas D. Adams
E. Pennock Gheen
Douglas A. Luetjen
Medora A. Marisseau

and

J. Dino Vasquez

have joined the firm as Shareholders, and

Brian K. Keeley

and

Celeste Mountain Monroe

have joined the firm as Associates.

Karr Tuttle Campbell

1201 3rd Avenue, Suite 2900, Seattle, WA 98101
206-223-1313
www.karrtuttle.com
Freimund, Jackson & Tardif, LLP
Announces the opening of its law practice

October 1, 2007

The statewide practice will focus on the defense of governments, corporations and their officers and employees in state and federal courts. The principals have extensive experience with complex trials, appeals and tort issues.

- Civil rights and employment
- Highway design and maintenance
- Law enforcement and correctional liability
- Social and child welfare liability
- Regulatory and administrative liability
- Vehicle, property, and operational liability
- Evaluation of major lawsuits and claims
- Risk management consultation and training
- Legislative drafting and testimony

Jeffrey A.O. Freimund
- 20 years, Washington State Assistant Attorney General
- 17 years Torts Division
- Torts Division Assistant Division Chief
- Trial Team Leader, Department of Social and Health Services

Gregory E. Jackson
- 3 Years Seattle City Attorney
- 7 years King County Deputy and Senior Deputy Prosecuting Attorney
- 6 years, Washington State Assistant Attorney General, Torts Division
- 4 years insurance defense
- 5 years, middle school teacher and coach

Michael E. Tardif
- 33 years, Washington State Assistant Attorney General
- 25 years Torts Division
- 15 years Torts Division Chief
- 23-year member of Transportation Research Board committees and panels

Scruggs Law Offices
is pleased to announce that

Eric Norman

has joined the firm as an Associate.

Mr. Norman received his Bachelor’s of Arts and Bachelor’s of Science degrees from the University of Oregon before graduating cum laude from the Seattle University School of Law. Mr. Norman served as an intern for the King County Prosecutor’s Office and as Deputy Prosecuting Attorney for the Pierce County Prosecutor’s Office.

Scruggs Law Offices
Washington Mutual Center
7900 SE 28th Street, Suite 320
Mercer Island, WA 98040
206-275-1700
www.ScruggsLaw.com

The law firm of
Lee Smart Cook Martin, et al.,
is pleased to announce its name change to

Lee Smart, P.S., Inc.
Pacific Northwest Law Offices

We continue our commitment to providing high quality litigation services to our clients in the Pacific Northwest in the areas of Insurance Defense, Professional Liability, Employment Law, Construction Defect, Products and Toxic Tort Litigation.

Freimund, Jackson & Tardif, LLP
711 Capitol Way South, Suite 602
Olympia, WA 98501
Telephone: 360-534-9960

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Olympia, WA 98501
Telephone: 360-534-9960
The attorneys and staff of **MILLS MEYERS SWARTLING** congratulate our colleague **David D. Swartling** on his election as **Secretary of the Evangelical Lutheran Church in America**

The ELCA has approximately 4.8 million members and 10,500 congregations in the United States. As ELCA Secretary, the highest full-time elected office other than the Presiding Bishop, Mr. Swartling will participate in leadership decisions of the church at the national level. He is the first layperson to hold this position. Mr. Swartling will relocate to the ELCA Churchwide Office in Chicago. Upon undertaking his new responsibilities on November 1, Mr. Swartling will suspend his law practice. The firm will continue its transactional and litigation practices under its current name.

**Velikanje Halverson P.C.**

*Attorneys at Law*

is pleased to announce that **Tyler M. Hinckley** has become an associate of the firm. For the past two years, Tyler has clerked for the Court of Appeals. Tyler will practice in the areas of General Litigation, Land Use, and Real Estate.

509-248-6030
thinckley@vhlegal.com

405 East Lincoln • PO Box 22550
Yakima, WA 98907
Fax: 509-453-6880
www.vhlegal.com

**Gordon, Thomas, Honeywell Malanca, Peterson & Daheim LLP**

is proud to announce **Victor J. Torres** *(Tacoma office)* and **Daniel Fasy** *(Seattle office)* have joined the firm as associates. Mr. Torres and Mr. Fasy are members of the firm’s **Personal Injury Practice Group**

1201 Pacific Avenue, Suite 2100, Tacoma, WA 98401
253-620-6500
600 University Street, Suite 2100, Seattle, WA 98101
206-676-7500
www.gth-law.com
These notices of imposition of disciplinary sanctions and actions are published pursuant to Rule 3.5(a) of the Washington State Supreme Court Rules for Enforcement of Lawyer Conduct, and pursuant to the February 18, 1995, policy statement of the WSBA Board of Governors.

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

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

Suspended

Timothy W. Carpenter (WSBA No. 5882, admitted 1974), of Bellingham, was suspended for two months, effective April 12, 2007, by order of the Washington State Supreme Court following a hearing. This discipline was based on his conduct in 1999 involving conflicts of interest. For additional information, see In re Discipline of Carpenter, 160 Wn.2d 16, 155 P.3d 937 (2007).

In the fall of 1996, Corporation A and the individual who controlled the corporation (hereinafter collectively “Client A”) bought a gas station from a seller. A California corporation (“Corporation B”) was used to facilitate the transaction, with all parties signing a real property exchange agreement. After acquiring the property, Client A stopped making payments on the note, and the seller sued both Client A and Corporation B. Mr. Carpenter represented both Client A and Corporation B in the action brought by the seller.

Corporation B was concerned that Mr. Carpenter represented both clients and that Corporation B had a potential cross claim against Client A that might not be pursued. Corporation B asked for additional assurances of indemnity in the action. Client A signed an additional indemnity statement in April 1999. In May, Mr. Carpenter sent a letter to Client A noting that he was overdue on his legal bill. Client A’s phone had been disconnected and he had not replied to correspondence, likely raising questions about the value of Client A’s indemnity. Corporation B asked to be dismissed from the action on grounds of not being a real party in interest, and requested that this claim be included in the answer. The appropriate language was added to the answer, but Mr. Carpenter decided it was unlikely that Corporation B would be dismissed. Consequently, Mr. Carpenter did not argue that Corporation B should be dismissed in the subsequent response to summary judgment.

In August 1999, judgment was entered against Client A and Corporation B, jointly and severally, for $343,516.11. Corporation B wanted Client A to post a bond to protect Corporation B’s assets from the judgment. Client A told an associate of Mr. Carpenter’s that he was leaning toward appealing the judgment without posting a bond. Meanwhile, Mr. Carpenter attempted to settle with the seller by offering to return the gas station, along with a cash payment of $20,000. This offer was rejected. Client A did not have any other assets that could be readily reached by judgment.

The seller attempted to attach Corporation B’s assets in California to satisfy the judgment. In September 1999, Corporation B filed a separate suit against Client A to enforce the indemnity provisions. In October 1999, Mr. Carpenter withdrew from the representation of Corporation B in the gas-station litigation. He then accepted service and entered a notice of appearance for Client A in the indemnity action. Mr. Carpenter never obtained written consent from Corporation B to represent Client A in the indemnity action.

Corporation B posted its own bond for $460,000 in the gas-station litigation. In January 2000, Corporation B obtained a summary judgment for $343,693.11 against Client A in the indemnity action. This award was then applied toward payment of Corporation B’s obligation in the gas-station litigation.

Mr. Carpenter’s conduct violated RPC 1.7, prohibiting a lawyer from representing a client if the representation will result material limitation by the lawyer’s responsibilities to another client, a third person, or the lawyer’s own interests, unless (1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client, and (2) each client consents in writing after consultation and a full disclosure of the material facts; RPC 1.9, prohibiting a lawyer who has formerly represented a client in a matter from thereafter representing another person in the same or a substantially related matter in which that person’s interests are materially adverse to the interests of the former client unless the former client consents in writing after consultation and full disclosure of the material facts; and former RPC 1.15(a)(1), requiring a lawyer to withdraw from the representation of a client if the representation will result in a violation of the Rules of Professional Conduct or other law.

Nancy Bickford Miller, Special Disciplinary Counsel Loren G. Armstrong, and Special Disciplinary Counsel John H. Ridge represented the Bar Association. Kurt M. Bulmer represented Mr. Carpenter. Lee Grochmal was the hearing officer.

Suspended

Theodore R. Parry (WSBA No. 15203, admitted 1985), of Seattle, was suspended for one year, effective April 5, 2007, by order of the Washington State Supreme Court following a stipulation approved by the Disciplinary Board. This discipline was based on his conduct in several matters involving lack of diligence, failure to communicate with clients, conflict of interest, trust-account irregularities, fee improprieties, failure to supervise a nonlawyer employee, and use of a false firm name.

Between 2001 and 2005, Mr. Parry engaged in the following conduct that established grounds for discipline:

- For eight months, representing on all of his pleading paper, letterhead, business cards, and e-mail communications that he was practicing as a member of a law firm when no such firm existed.
- In two personal-injury matters, collecting fees on the same day settlement checks were deposited in the firm’s trust account and before the settlement checks had cleared the banking system, thereby using funds of other clients until the settlement checks cleared the banking process.
- Paying his firm a fee based on one-third of the gross recovery when the fee agreement provided for one-third of the net recovery and without reviewing the proposed fee disbursement with this client.
- Drafting a fee agreement that did not clearly indicate the manner in which the contingent fee was to be calculated.
- Withdrawing trust-account funds that he was not entitled to collect, and failing to return overpayments to the trust account.
when the overpayments were brought to his attention.

- Failing to promptly pursue resolution of a client’s medical-provider claim in a personal-injury matter.
- In two personal-injury matters, using fee agreements giving him a power of attorney to execute settlement checks and releases on behalf of the clients without first obtaining the clients’ consent in writing after full disclosure.
- Failing to return to the trust account funds collected for cost reimbursement when the client disputed entitlement to those funds.
- Failing to advise a client whether the claims he was pursuing were the property of the client’s bankruptcy estate.
- Failing to supervise his clerk so that the medical records necessary to pursue a client’s claim were obtained in a timely matter.

Mr. Parry’s conduct violated RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; RPC 1.4(b), requiring a lawyer to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; RPC 1.5(a), requiring a lawyer’s fee to be reasonable; RPC 1.5(b), requiring a lawyer, when the lawyer has not regularly represented the client, or if the fee agreement is substantially different than that previously used by the parties, to communicate the rate of the fee or factors involved in determining the charges for legal services, preferably in writing; former RPC 1.5(c)(1), requiring a contingent-fee agreement to be in writing and state the method by which the fee is to be determined; former RPC 1.7(b), prohibiting a lawyer from representing a client if the representation of that client may be materially limited by the lawyer’s responsibilities to another client or to a third person, or by the lawyer’s own interests, unless the lawyer reasonably believes the representation will not be adversely affected and the client consents in writing after consultation and a full disclosure of the material facts; former RPC 1.14(a), requiring that all funds of a client paid to a lawyer be deposited into an identifiable interest-bearing trust account and that no funds belonging to the lawyer be deposited therein; RPC 5.3, requiring a lawyer having direct supervisory authority over a nonlawyer to make reasonable efforts to ensure that the person’s conduct is compatible with the professional obligations of the lawyer; former RPC 7.1(a), prohibiting a lawyer from making a false or misleading communication about the lawyer or the lawyer’s services, including a communication that contains a material misrepresentation of fact; RPC 7.5(a), prohibiting a lawyer from using a firm name, letterhead, or other professional designation that violates RPC 7.1(a); and RPC 7.5(d), providing that lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

Randy V. Beitel represented the Bar Association. Thomas A. Campbell represented Mr. Parry.

Reprimanded

A.E. Bud Bailey (WSBA No. 33917, admitted 2003), of Vancouver, was ordered to receive a reprimand on April 6, 2007, by order of the Washington State Supreme Court imposing reciprocal discipline in accordance with an order of the Supreme Court of the State of Oregon following approval of a stipulation. This discipline was based on his conduct between 1999 and 2002 involving conflicts of interest and entering into a business transaction with a client. For more information, see Oregon State Bar Bulletin, Discipline (May 2007), available at www.osbar.org/publications/bulletin/07may/discipline.html.

Mr. Bailey’s conduct violated former Oregon DR 5-101(A), prohibiting a lawyer from accepting or continuing employment if the exercise of the lawyer’s professional judgment on behalf of the lawyer’s client will be or reasonably may be affected by the lawyer’s own financial business, property, or personal interests, except with the consent of the lawyer’s client after full disclosure; and former Oregon DR 5-104(A), prohibiting a lawyer from entering into a business transaction with a client if they have differing interests therein and if the client expects the lawyer to exercise the lawyer’s professional judgment therein for the protection of the client, unless the client has consented after full disclosure.

Felice P. Congalton represented the Bar Association. Bradley F. Tellam represented Mr. Bailey.

Reprimanded

Jerry J. Davis (WSBA No. 33294, admitted 2002), of Spokane, was ordered to receive a reprimand on September 5, 2006, following a stipulation approved by a hearing officer. This discipline was based on his conduct between 2003 and 2005 involving trust-account irregularities.

On September 4, 2003, Mr. Davis’s bank notified the Bar Association that a check drawn on Mr. Davis’s client trust account had been presented for payment against insufficient funds. On September 18, 2003, Mr. Davis’s bank notified the Bar Association that a second check drawn on his client trust account had been presented for payment against insufficient funds. The Bar Association’s audit manager conducted an audit of Mr. Davis’s client trust account covering the period between June 2003 and March 2005. Mr. Davis cooperated in the audit of his client trust account. The audit revealed a number of deficiencies in the records that Mr. Davis kept of the client funds in his possession. Mr. Davis failed to enter all his account transactions in his check register, failed to include with each account transaction a reference to the client to whom that transaction applied, failed to keep a running balance in his check register, failed to reconcile his check register with his bank statements, and failed to maintain an individual client transaction summary or ledger for each client whose funds were in his possession.

Due to these deficiencies, as well as others, neither Mr. Davis nor the Bar Association’s audit manager could determine the ownership of all of the funds in Mr. Davis’s client trust account. Based on a reconstruction, the audit manager concluded that there was a $532.60 shortage in Mr. Davis’s client trust account and that an additional $827.79 related to client matters that were no longer active. These funds should have been disbursed to clients and/or former clients. The audit manager recommended that, after restoring $532.60 to his client trust account, Mr. Davis disburse the additional $827.79 to his clients and/or former clients after determining the ownership of those funds. Mr. Davis agreed to comply with the recommendations.

Mr. Davis’s conduct violated former RPC 1.14(b)(3), requiring that a lawyer maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his or her client regarding them.

Scott G. Busby represented the Bar Association. Mr. Davis represented himself. Joseph Nappi Jr. was the hearing officer.
James M. Doran (WSBA No. 5104, admitted 1973), of Bellingham, was ordered to receive a reprimand on November 30, 2006, following a stipulation approved by a hearing officer. This discipline was based on his conduct in 2002 involving a conflict of interest and failure to withdraw from representation after the conflict of interest became apparent. (James M. Doran is to be distinguished from James R. Doran of Twisp.)

In early 2000, Mr. Doran was hired to represent a lender/investor in a real estate development matter. In early 2001, the developer asked another partner in Mr. Doran’s firm to take over his legal matters. Conflict-waiver letters were signed by the lawyers and clients providing that if a dispute arose, Mr. Doran’s partner would withdraw from representing the developer while Mr. Doran would continue to represent the lender/investor client. During the fall of 2001, a dispute arose between the two parties over a particular real estate development project. At a meeting in November 2001, the clients were informed that an actual conflict existed, that Mr. Doran’s client could request that Mr. Doran’s partner cease representing the developer, and that both parties could consult independent counsel. Mr. Doran’s client consented to continued representation of the developer by Mr. Doran’s partner.

Between November 2001 and April 2002, each side sought to negotiate a settlement of the dispute, and a draft settlement agreement was prepared by Mr. Doran’s partner. The draft settlement agreement included written disclosure and waiver of any conflict of interest. In February 2002, a specific disagreement arose between the parties regarding disbursement of proceeds from the sale of property in the development project, which the parties endeavored to resolve by oral agreement.

In March 2002, Mr. Doran’s partner wrote a letter to Mr. Doran asserting that Mr. Doran’s clients had reneged on the agreement about the use of sale proceeds and stating that because the “situation created an actual conflict,” an independent lawyer would be advising his client as to the relationship between the parties. In mid-April, the two parties signed a settlement agreement. Though based on earlier drafts prepared by Mr. Doran’s partner, the final document was negotiated and modified by independent counsel or co-counsel for both parties. The April settlement agreement did not contain conflict consent language.

In April and May 2002, Mr. Doran’s client was asked to sign a new conflict waiver regarding the involvement of Mr. Doran’s partner, which the client refused to do. By early April 2002 or sooner, Mr. Doran knew of his client’s concerns about his partner continuing to work for the developer, but Mr. Doran did not take steps to address it. Mr. Doran withdrew from the representation in April or May 2003 and co-counsel took over the representation. Mr. Doran’s conduct violated RPC 1.7(a), prohibiting a lawyer from representing a client if the representation of that client will be directly adverse to another client, unless the lawyer reasonably believes the representation will not adversely affect the relationship with the other client and each client consents in writing after consultation and full disclosure of the material facts; RPC 1.7(b), prohibiting a lawyer from representing a client if the representation of that client may be materially limited by the lawyer’s responsibilities to another client or to a third person, or by the lawyer’s own interests, unless the lawyer reasonably believes the representation will not be adversely affected and the client consents in writing after a full disclosure of material facts; RPC 1.10(a), prohibiting lawyers associated in a firm from knowingly representing a client when any of the lawyers in the firm would be prohibited from the representation if practicing alone; and former RPC 1.15(a)(1), requiring a lawyer to withdraw from representation if the representation will result in a violation of the Rules of Professional Conduct or other law.

Nancy Bickford Miller represented the Bar Association. Leland G. Ripley represented Mr. Doran. Randolph O. Petgrave III was the hearing officer.

Douglas K. Robertson (WSBA No. 16421, admitted 1986), of Bellingham, was ordered to receive a reprimand on December 13, 2006, following a stipulation approved by a hearing officer. This discipline was based on his conduct between 2001 and 2003 involving conflicts of interest and failure to withdraw from representation after a conflict of interest became apparent.

In early 2000, Mr. Robertson began representing a real estate developer. A year earlier, another partner in Mr. Robertson’s firm had been hired to represent a lender/investor in a real estate development matter in which Mr. Robertson’s client was the developer. Conflict waiver letters were signed by the lawyers and clients providing that if a dispute arose, Mr. Robertson would withdraw from representing the developer while his partner would continue to represent the lender/investor client. During the fall of 2001, disputes arose between the two parties over a particular real estate development project. At a meeting in November 2001, the clients were informed that an actual conflict existed, that the lender/investor client had the right to request that Mr. Robertson cease representing the developer, and that both parties could consult independent counsel. The lender/investor client consented to Mr. Robertson’s continued representation of the developer.

Between November 2001 and April 2002, each side sought to negotiate a settlement of the dispute and a draft settlement agreement was prepared by Mr. Robertson. The draft settlement agreement included written disclosure and waiver of any conflict of interest. In February 2002, a specific disagreement arose between the parties regarding the disbursement of proceeds from the sale of property in the development project, which the parties endeavored to resolve by oral agreement.
In March 2002, Mr. Robertson wrote a letter to his law partner asserting that the lender/investors had reneged on an agreement about use of sale proceeds and stating that because the "situation created an actual conflict," an independent lawyer would be advising his client as to the relationship between the parties. Soon after that date (in March 2002), another lawyer took over representation of the developer regarding the settlement agreement. Thereafter, Mr. Robertson was not involved with the negotiation or representation of the developer regarding the settlement agreement. In early April, another lawyer acting as co-counsel for the lender/investor requested that Mr. Robertson withdraw from representing the developer on any projects involving the lender/investor. Mr. Robertson refused to completely withdraw, but subsequently withdrew from representing the developer on some matters related to the lender/investor.

In mid-April, the two parties signed a settlement agreement. Though based on the earlier drafts prepared by Mr. Robertson, the final document was negotiated and modified by independent counsel or co-counsel for both parties. The April settlement agreement did not contain conflict consent language. The lender/investor was then asked to sign a new conflicts waiver regarding the involvement of Mr. Robertson, but refused to do so. Mr. Robertson continued to represent the client on certain projects involving the lender/investor through mid-2003.

Mr. Robertson’s conduct violated RPC 1.7(a), prohibiting a lawyer from representing a client if the representation of that client will be directly adverse to another client, unless the lawyer reasonably believes the representation will not adversely affect the relationship with the other client and each client consents in writing after consultation and full disclosure of the material facts; RPC 1.7(b), prohibiting a lawyer from representing a client if the representation of that client may be materially limited by the lawyer’s responsibilities to another client or to a third person, or by the lawyer’s own interests, unless the lawyer reasonably believes the representation will not be adversely affected and the client consents in writing after a full disclosure of material facts; RPC 1.10(a), prohibiting lawyers associated in a firm from knowingly representing a client when any of the lawyers in the firm would be prohibited from the representation if practicing alone; and former RPC 1.15(a)(1), requiring a lawyer to withdraw from a representation if the representation will result in a violation of the Rules of Professional Conduct or other law.

Nancy Bickford Miller represented the Bar Association. Leland G. Ripley represented Mr. Robertson. Randolph O. Petgrave III was the hearing officer.

**Reprimanded**

J.J. Sandlin (WSBA No. 7392, admitted 1977), of Zillah, was ordered to receive a reprimand on January 29, 2007, following approval of a stipulation by a hearing officer. This discipline was based on his conduct in 2004 involving improper withdrawal from a representation.

In May 2003, Mr. Sandlin was hired by two individuals ("clients") to represent them in various complex litigation matters related to their prior employment at a corporation that developed pharmaceutical products ("corporation"). Mr. Sandlin represented the clients in a lawsuit against the corporation. He was also defending the clients in a lawsuit filed by a company that had taken over the corporation. Meanwhile, an involuntary bankruptcy petition was filed against the corporation by a number of investors, including the clients. Mr. Sandlin was hired by the clients, after the involuntary bankruptcy was filed, to represent their individual interests.

In March 2004, the parties reached a “global settlement” in the bankruptcy court that resolved all the pending and potential litigation matters. Under the terms of the global settlement, any disputes regarding the terms of the settlement would be resolved at arbitration by the bankruptcy judge. Shortly thereafter, disputes arose. The judge set a December 2004 deadline for the submission of arbitration statements and set an arbitration hearing for January 2005. As a result of the order, Mr. Sandlin knew that the judge would not take testimony at the January hearing, but would consider only each party’s written submission.

On December 14, Mr. Sandlin told one of the two clients that he and the other client should put together a draft of the corporation’s history for their arbitration statements. Mr. Sandlin represented that he would review the draft before filing. On December 16, one of the clients e-mailed Mr. Sandlin the draft. After sending the e-mail, the client called Mr. Sandlin, who confirmed his receipt of the e-mail. After reviewing the draft declarations, Mr. Sandlin did not feel that he could submit them to court. All submissions were due by 5:00 p.m. on December 17, 2004.

On December 17, 2004, at 3:42 p.m., less than 90 minutes before the filing deadline, Mr. Sandlin sent the clients an e-mail informing them that he was withdrawing from representing them, effective immediately. At 3:59 p.m., Mr. Sandlin sent another e-mail to the clients advising them to file their arbitration statements directly with the judge. Mr. Sandlin did not telephone the bankruptcy court judge’s law clerk to inform the law clerk that his clients needed an extension of time to file their joint declaration. He did not telephone either of the clients to tell them about his withdrawal. Mr. Sandlin did not file a motion for an extension of the filing deadline on the clients’ behalf. No arbitration statement was filed by Mr. Sandlin, and the two clients were unable to find other counsel to represent them before the January hearing.

Mr. Sandlin’s conduct violated former RPC 1.15(b), permitting a lawyer to withdraw from representing a client if withdrawal can be accomplished without material adverse affect on the interests of the client; and former RPC 1.15(d), requiring a lawyer to take steps to the extent reasonably practicable to protect a client’s interests, such as giving reasonable notice to the client.

Fuchsia Dulan represented the Bar Association. Mr. Sandlin represented himself. Richard B. Price was the hearing officer.

**Admonished**
New Rules for Business Litigators: Keeping Ahead of the Curve
November 13 — Seattle. 6 CLE credits pending, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Working with and Advising High-Tech Companies
November 16 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Construction Law

The Mike M. Johnson Decision — Where Are We Now and What’s Next?
October 23 — Seattle. 3.5 CLE credits pending. By the WSBA Construction Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Construction Law Year-End
November 6 — Spokane. CLE credits pending. By the WSBA Construction Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Elder Law

Ethics with Ease: Ethics for Elder Law
October 23 — Tele-CLE. 1.5 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Handling Alzheimer’s and Other Forms of Dementia
October 26 — Seattle. 6.5 CLE credits pending. By the WSBA Elder Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Estate Planning

52nd Annual Estate Planning Seminar
October 1-2 — Seattle. 14.5 CLE credits, including 1 ethics. By the Estate Planning Council of Seattle and WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Drafting and Using FLPs, LLCs, and PLLCs
November 8 — Seattle. 6.25 CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Ethics with Ease: Ethics for Estate Planning
November 27 — Tele-CLE. 1.5 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Ethics for Real Estate
October 10 — Tele-CLE. 1.5 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Ethical Dilemmas
October 11 — Olympia. 4 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Ethics for Litigators
October 16 — Tele-CLE. 1.5 CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Ethics with Ease: Ethics for Elder Law
October 23 — Tele-CLE. 1.5 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Ethical Dilemmas
October 24 — Vancouver. October 30 — Mount Vernon. November 5 — Seattle. 4 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Ethics with Ease: Ethics for General Practitioners
November 13 — Tele-CLE. 1.5 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Ethics with Ease: Modern Technology and Ethical Dilemmas

November 14 — Tele-CLE. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Ethics with Ease: Ethics for Estate Planning
November 27 — Tele-CLE. 1.5 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Ethics with Ease: Negotiation Ethics: Winning Without Selling Your Soul, featuring Marty Latz
November 28 — Tele-CLE. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Family Law
QDROs and More: Mastering the Division and Assignment of Retirement Benefits in a Marital Dissolution
October 12 — Tacoma. 6.25 CLE credits. By the WSBA Family Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

7th Annual Labor and Employment Law Conference
November 9 — Seattle. 6.25 CLE credits pending. By the WSBA Labor and Employment Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

High-Profile Cases: Litigation Strategies from the Lawyers Who Tried Them
October 16 — Seattle. 6.25 CLE credits including 1.25 ethics pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Ethics for Litigators
October 16 — Tele-CLE. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Current Issues in Toxic Torts and Product Liability
October 18 — Seattle. 6 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

New Rules for Business Litigators
November 13 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Real Property Land Use
Ethics for Real Estate
October 10 — Tele-CLE. 1.5 ethics pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Mold, Mildew, and Moisture
November 15 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

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Services

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