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

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

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

In addition to the customary right-wing screeds in the letters section attacking his views, I saw that the September issue also marked outgoing Bar President Mungia’s last magazine column. Perhaps this is a minority stance, but I found that his columns offered a refreshing change of perspective from the usual professional journal fare. Lawyers have many fine qualities, but emotional openness and honesty on Mr. Mungia’s level are rarely encountered in this line of work. The capacity for logical argument and verbal cleverness, which are essential tools of our trade, also have their downside: they too often allow us to bury our feelings beneath a thick armor of rhetoric and, worse yet, to delude ourselves into believing that our biases and prejudices are rationally based.

I suppose I too would have to say that I didn’t agree with all of Mr. Mungia’s opinions. But I respected his willingness to be totally guileless in expressing his views, as well as the compassion and humanity that obviously inform his philosophy. And most of all I admired his courage in laying it all out on the line — knowing with utter certainty that, every month without fail, he would be pummeled for his audacity. Even so, he never pulled his punches or threw up anticipatory defenses. It takes a pretty special kind of person to be able to do that.

In short, the fact that a person of Salvador Mungia’s quality became president of the Washington State Bar Association made me proud to be a member. Happy trails to you, Mr. Mungia.

Stafford L. Smith, Poulsbo

Mr. Mungia’s response to letters to the editor [Letters to the Editor, September 2010 Bar News] failed to acknowledge the merits and sincere concerns that the “President’s Corner” should be used more wisely and his particular view could be aired through a better venue. He blamed those who criticized him as reading his article wrong, as if no other reading is possible other than his own opinion and those who supported him. Such response/ attitude sets an unfortunate precedent for our prestigious organization. If he considers that his article was consistent of court funding, then he could have given us a rundown of the situation that led to the Arizona law and different views of the law. Not all bar members were familiar with the law and they deserved better. That was why the main concern of his article was not about his political/legal view, but whether he used the venue wisely. If there is a proper way, otherwise, he should change the venue, as the ABA president has done.

Li Wei, Portland, Oregon

Letters to the Editor

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

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ABA president’s article was published in the website of ABA’s Division for Media and Communication Services. Bar News can clarify the purpose of such “President’s Corner” so we know for sure whether our president is presenting his own particular view, political or legal, or commenting on some well-laid issues — or some will no longer read anything in the Corner. Why should everyone be bothered and charged for such airing of such a particular political/legal view? Nobody should be shy of airing his legal or political views, but don’t we have better venues?
When it comes to representing individuals with debilitating injuries and illnesses—and pursuing cases that benefit the public at large—few law firms match the commitment, passion and capabilities of Seattle’s Nelson Langer Engle, PLLC.

Founding Partner Mike Nelson, a veteran attorney with 35 years’ experience and a brain injury survivor, along with Managing Partner Fred Langer, a lawyer and registered nurse, and newest Partner Aaron Engle, combine their unique experiences to inform their practice while providing invaluable insight into the life-changing problems facing their injured clients.

With a lengthy record of achievement, NLE continues to fight for redress across a number of fronts. These include: brain injury, sports concussions, other disabling injuries, disability insurance denial, insurance bad faith (and fraud committed by insurance companies), subrogation fairness, government negligence and other abuses that lead to intense suffering and death for some and intolerable risk for all.

Seven Recent Major Accomplishments in Public Advocacy

• Zackery Lystedt Football Case Resolution—At age 13, Zackery Lystedt suffered permanent brain damage after being returned to play football despite obvious signs of concussion. This precedent-setting case grabbed the nation’s attention, bringing to the forefront the dangers of returning to play with a head injury. The $15 million case resolution underscored the need to take sports-related concussions seriously.

• Zackery Lystedt Law—The lessons of the Lystedt case became the basis for the Zackery Lystedt Law. The Washington state legislature unanimously adopted the new law, which mandates return-to-play rules for youth athletes after a player has sustained a concussion. This first-of-its-kind statute defines concussions and outlines the dangers of return-to-play and requires institutional education.

• Insurance Bad Faith Victory in Federal Court—Jane Doe’s accidental life insurance claim for her husband’s death was denied for dubious reasons. NLE advocated that insurance companies should be held accountable for their wrongful denial of claims. A federal judge agreed, ruling that Mrs. Doe was entitled to policy benefits and finding the insurance company to have acted in bad faith.

• Leveling the Playing Field for the Disabled in Washington State—NLE successfully argued, both in court and to the Washington state insurance commissioner, that current disability and health policies denied deserving insureds the benefit of their insurance contract. The firm advocated for new regulations eliminating discretionary clauses that deprive insureds of rigorous judicial review. The state insurance commissioner agreed and banned discretionary clauses in medical and disability insurance contracts.

• Federal Court Victories in Disability Law—In numerous cases involving brain injury, cancer, multiple sclerosis, lupus, fibromyalgia, chronic fatigue syndrome, and other debilitating conditions, insurance companies refused to pay benefits owed their insureds. In each instance, NLE successfully held disability insurance carriers responsible, ensuring that they fulfilled their promises to their insureds.

• ERISA Subrogation Fairness—Commenced the fight and continues the legal battle for a full and fair definition of ERISA subrogation.

• The Cable Barrier Cases: Saving Lives—In the Knapp and Jones cases, NLE sued over lives lost and catastrophic injuries suffered due to the inadequate barrier systems on the state’s highways. The firm pointed to a history of preventable fatal collisions, arguing that safety was ignored in favor of imagined cost savings. The offending cable barriers were largely replaced.
I’m coming into the home stretch of a journey that began 17 years ago. It was 1993, when I was sworn in as the WSBA governor for the 8th congressional district. I served my three years on the Board of Governors from 1993 through 1996 and then, after a few years’ absence, began attending BOG meetings as a liaison and continued to do so until last year. At that time, I was elected president-elect of the WSBA and served in that capacity this past year. Having just been sworn in as president of the Washington State Bar Association, I’m ready to summit at last.

I have learned much in my 62 years and particularly in these last 17. When I started on the BOG, there were 11 governors and no year-long president-elect position. The Access to Justice Board had just been created and in my first year on the BOG, we also added the BOG Diversity Committee, which I chaired. It seems quaint in retrospect, but our idea of diversity on the BOG back then was striving to have two or three women governors. There were discussions about increasing the size of the BOG by adding a Washington Young Lawyers Division (WYLD) seat and a diversity seat. These suggestions were rejected, largely by governors insisting that each governor had to have a constituency defined by a legislative district or, in the case of King County, by a county, not by an “affiliation group.”

By 2000, the discussion about adding diversity and WYLD seats was rekindled, and this time, those arguments prevailed. Thus we now have 14 governors on the WSBA Board of Governors, with one at-large seat being reserved for a WYLD representative and two at-large seats being reserved for members who are from constituencies of the Bar that are traditionally under-represented. Generally, this has come to be thought of as two diversity seats.

I was a liaison to the BOG when the WYLD and diversity seats were first created. It came at a time when several governors had left the Board early to become president-elect. Thus, we had 14 governors and, for a couple years or so, about half of them were new to the BOG and inexperienced with regard to the workings of the Board and the Association. As a result, the more senior leadership on the Board was missing. However, things have now settled down. With two exceptions over the last seven years, the governors have all completed their three-year term and we have the intended blend of experience that by design comes with renewing one-third of the Board every year. Our 14 energetic and dedicated governors all bring a lot to the table and are committed to the business of working hard and making tough policy decisions for the WSBA. This is the Board that I will have the privilege of presiding over during the 2010–2011 fiscal year. It is an honor without parallel, and I will work tirelessly over the next 12 months to justify the trust which has been placed in me.

I have been told that I can use this column to write on virtually anything I want. Specifically, I was told, “Your column can be on any topic — a presidential theme, current legal issues, personal stories, interactions with WSBA members, BOG news, interviews with interesting people — the possibilities are endless.” I appreciate that in any given month, circumstances may develop that dictate the topic for my column. Now, it is my intention to share my journey with you and, in the course of doing so, hopefully impart some of the lessons I am learning.

Experience has taught me that there are basically two kinds of people in this world — Givers and Takers. Perhaps this is a bit simplistic, but in general I find it to be true. In my world, Givers are those people who think of others first, last, and always. A Giver appreciates what he or she has and is willing to share it with others. Givers come from their soul whenever they act. Givers not only “talk the talk,” but they “walk the walk.” We may not know why we are attracted to Givers, but we are. They have positive energy others like to be around. We absorb their positive
energy and feel better about ourselves. We are inspired by Givers to think of others first and do good deeds.

We are all aware of many such Givers in history. Well-known examples include Mother Teresa, Mahatma Gandhi, and Rev. Martin Luther King Jr. We all know many other Givers in our own lives, though their impact may not be quite so global. Nevertheless, they are no less Givers, and I personally hold them in high esteem and strive to emulate their actions.

Takers, on the other hand, are those people who do not automatically think of other people first. They are focused on their own lives and self-absorbed with their own problems and their own daily and long-term stresses and difficulties. As they focus inwardly, they don’t exude that positive energy so natural to the Giver. They attract people with their sheer will of power and expect that things will be done for them. Any value judgments to be drawn from this dichotomy would be shallow and half-accurate. The truth is that most of us are both Takers and Givers. The challenge is to maximize those times when we are a Giver and learn from those occasions when we slip into being a Taker.

Probably we can agree that the three historical figures I mentioned were outstanding examples of being a Giver. I also mentioned that we all personally know people who are Givers. One such local person with whom I know you are all familiar is the immediate past-president of the Washington State Bar Association, Salvador Mungia. I doubt that Sal thinks of himself as a Giver. That is what’s ironic about true Givers; they don’t see it in themselves. They don’t make conscious decisions on a daily basis as to “should I be a Giver today or am I going to be a Taker?” They just live their lives focused on those around them and always strive to be in service and assist in whatever way they can.

To Givers, being in service to others is not an act of kindness or thoughtfulness... it is a state of being. It is so ingrained in these people that it becomes part of their essence or soul. We saw this repeatedly in Sal during his year as president. He made himself available to anyone who asked, any time they asked. He sacrificed his law practice and his personal family time to be in service to this Association, its members, and the public. He, like Givers generally, is inspiring without necessarily realizing it. He “walks the walk.”

I am fortunate to have another Giver in my life —my wife, Christie. She routinely thinks of others first and will alter her own plans and wishes to help a friend in trouble. Whether it be middle-of-the-night emergency counseling or support for a friend in need, shopping and running errands for another friend who temporarily can’t drive, or cooking and delivering meals to a shelter for homeless teenagers, Christie is there... no questions asked.

I consider myself so fortunate to have people like Sal and Christie in my life. They serve as a constant reminder to me of how important it is to not only be in service to others, but to make that willingness to give come from my soul and not just be an occasional act of kindness. Living a life in service to others is the only way that we can really have an impact in this world. We may never have the global impact of a Mother Teresa, Gandhi, or Dr. King, but we can have a local impact. This doesn’t mean that we have to give up our practices and ignore our families so that we can devote our lives to serving others. We can be Givers within the context of our existing lives and businesses.

The WSBA Board of Governors has recently been having discussions about developing a “culture of service” throughout our Association and among our members. WSBA Executive Director Paula Littlewood made this the focus of her “Executive’s Report” in the August 2010 edition of Bar News. You will hear more about this as the year progresses. For now, just appreciate that each of us can impact our bar association, the legal community, our individual communities, and our neighbors, friends, co-workers, and families. It’s never too late to emphasize giving in our lives. Start with your immediate family, the people in your office, and your colleagues. Say “yes” when someone asks you for help, and drop what you are doing to help them, rather than making them wait for when it is most convenient for you. Participate in a volunteer legal clinic in your community. Take on a pro bono case. Contribute one hour’s fee to LAW Fund. Mentor a young lawyer. Serve on a Bar committee. Help serve a meal at a homeless shelter. The ways in which you can serve are endless.

Learn from Sal and my wife, like I am. Think of others first and come from your heart. Start with a kind act and work toward developing a culture of service... one in which giving becomes second nature to you. Not only will you benefit those around you, you will feel good about yourself. This is what I call Serving with Soul.

WSBA President Steven G. Toole can be reached at steve-wsba@sgtoolelaw.com or 425-455-1570.
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Bellevue attorney Steven G. Toole was sworn in as 2010–2011 WSBA president at the WSBA Annual Meeting and Awards Dinner on September 23. Washington State Supreme Court Chief Justice Barbara A. Madsen presided, and the gavel was passed from outgoing President Salvador A. Mungia.

Toole received his bachelor's degree from The Ohio State University in 1971 and his law degree from the University of San Diego School of Law in 1975. He was admitted to the Washington State Bar in 1976, and currently has a solo practice, where he focuses on personal injury litigation; since 2000, he has also practiced in the areas of arbitration and mediation.

Toole’s service to the WSBA began more than 15 years ago, when he was elected to the Board of Governors representing the Eighth Congressional District. Since 2003, he has served as the WSTLA (WSAJ) liaison to the Board of Governors. He also was elected to the Board of Trustees of the Washington State Bar Foundation in 2008.

During the 1980s, Toole became active with the King County Bar Association, primarily with their judicial screening committee; he was the first chair of the District and Municipal Court Judicial Screening Committee. He also served on the Board of Trustees and as president of the East King County Bar Association. In 1991, Toole was elected to the Board of Governors of the Washington State Trial Lawyers Association (WSTLA — now Washington State Association for Justice/WSAJ), and served on its board for 16 years. He was president of that organization from 2002–2003.

Toole’s community involvement includes volunteering at the Eastside Legal Assistance Program and the King County Bar Association Eastside Legal Clinic and serving on the Lake Washington Technical College Legal Secretary Advisory Committee, both as a member and as chair. In 2001, he was honored with the WSTLA President’s Award, for his extraordinary commitment to protecting the rights of citizens, improving the state courts, and leadership in judicial and legislative arenas. In 2005, WSTLA presented him with its Alvin Anderson Award for his work in helping the organization to promote and preserve the civil justice system.

During his presidency, Toole will emphasize issues such as improving the WSBA members’ level of satisfaction with their lives and the practice of law, enhancing the culture of service within the WSBA membership, providing pro bono and moderate-means legal services, supporting efforts to increase diversity in Bar leadership, and promoting public legal education. “Our current economic crisis isn’t going to go away any time soon,” says Toole. “It impacts all aspects of the practice of law and the delivery of legal services. It will be imperative for us to work with our members, the judiciary, and other stakeholders in the justice system to be creative and do whatever it takes to make certain we secure sufficient funding...to assure that the courthouse doors will remain open and accessible to all.”

Bar News Editor Michael Heatherly asked President Toole 10 questions on topics such as his presidential goals, the Board of Governors, court funding, and the bar exam.
1. What motivated you to run for WSBA president?

The short answer is — I was asked. For the longer answer, I must look at what motivates and challenges me. Although I receive great satisfaction from working with and helping my clients, at the end of the day this is not enough. I’ve always believed it’s a privilege to be able to get a legal education, be a lawyer, and practice law. An obligation that goes along with that privilege is to give back, to leave the world and people with whom I’ve interacted better off than they were before I entered their lives. As a sole practitioner representing individuals and families in personal matters, I don’t have a lot of opportunity to impact great numbers of people or my community or profession. Largely for that reason (and also because I was, again, asked) I decided over 20 years ago to become active in the leadership of local, county, and specialty bar associations in our state, as well as the WSBA. During that time, I learned that serving in bar leadership is something that suits me and at which I’m good. Additionally, I have always relished a challenge, and I knew as a sole practitioner being president of WSBA would be one of the greatest challenges of my career.

2. At this year’s Access to Justice Conference, the dramatic loss of court services caused by state and local government budget deficits was a major topic among bar members, the judiciary, and political leaders. What role, if any, do you believe the WSBA should play in attempting to maintain court services at the highest level possible statewide?

This is a critical role for the WSBA. We are the statewide voice of the profession and our citizens when it comes to access to justice. We must at all times remember that justice is only justice if it’s available to everyone. History in our state has shown that our bar leaders are extremely creative and willing to push the envelope, if necessary, to protect our legal system and the rule of law. We demonstrated this last year in the face of the budding civil legal aid crisis with a one-time grant of $1.5 million to the LAW Fund. We showed further creativity and leadership by establishing the Home Foreclosure Legal Aid Project. The WSBA needs to continue to play a leading role in keeping the courthouse doors open and maintaining access to justice for everyone. We need to not only lobby our legislators to maintain sufficient levels of funding, but we have to be able to creatively come up with viable suggestions as to how this might be done.

3. What is the most important lesson you have learned as a lawyer that they didn’t teach you in law school?

After practicing law for 34 years, it is hard to find one lesson that stands out. One of the most important lessons I’ve learned since law school is that my clients are not just clients, they’re people. Not only that, they’re people who are in trouble or pain, whether it be physical, emotional, or both. They may or may not be thinking rationally. They may not know what they want or need; they just know they need help and guidance and they’re coming to me in their time of need. To best represent them, both professionally and as a human being, it’s not for me to judge them or make them feel as if they’re wrong. Rather, it’s to accept them as they are and do the best I can to provide them the support and guidance they’re looking for.

4. Some WSBA members oppose the WSBA president or Board of Governors taking positions on what are seen as politically or morally controversial subjects. Past issues have included same-sex marriage and the WSBA funding of outside civil legal aid programs. In 2010, a resolution protesting the Arizona immigration bill was in the spotlight. How do you resolve the conflict between the president or BOG’s desire to take positions on behalf of the Bar and the fact that many members of our mandatory Bar may hold dissenting views?

For me, this is an ongoing struggle. The WSBA has close to 34,000 members all around Washington and outside the state. There are very few issues on which we could expect to have a significant majority of our membership agree. This definitely makes our decisions to take positions on politically or morally controversial issues difficult, but not impossible. GR 12.1 gives us absolute guidance as to those matters on which we can and should take positions. We have an obligation to take positions, no matter how difficult or controversial, on issues that impact the administration of justice. Admittedly, this can be a broad standard. However, at the end of the day, after allowing for due process that includes thorough vetting among our membership and stakeholder groups and in some cases, public hearings, the BOG makes that often difficult decision on whether to take a position on a controversial issue and what position to take. I always take great pride in the courage of the governors when they take such a vote, particularly since it is a public discussion and a public vote.

5. Do you have one goal that is your highest priority for your presidency? If so, what is it and how do you plan to achieve it?

A bar association such as ours, which is both creative and progressive, always has an abundance of great, worthy ideas for programs and projects that are laudatory and fall within our Mission Statement and our Guiding Principles. However, we just don’t have the money to adequately develop service all these wonderful projects. Thus, many have said that the WSBA is “a mile wide and an inch deep” and, to some extent, I believe this is true. In discussions with WSBA Executive Director Paula Littlewood and others in WSBA leadership, I am determined not to continue to expand our bandwidth, starting projects that we cannot afford and taking the focus away from programs instituted under past presidents, such that those programs are not completed or are put on hold or slowed down. I want to make certain we have the financial and human resources to finish what we start. We may do fewer things, but we will do them extremely well.

With this in mind, my highest priority, and a goal that I believe is within our budgetary capability and will not jeopardize existing and ongoing projects, is to use our resources and existing programs to improve our members’ level of satisfaction with their lives and with the practice of law. Our Strategic Planning Committee has been studying this and has come up with several sub-goals, such as enhancing a culture of service within the WSBA membership, providing more assistance to lawyers with the business side of the practice of law, and providing more assistance to lawyers in avoiding or dealing with the stresses of the practice of law. These are not one-year projects. Two particular priorities in this area on which I am able to currently focus are the Moderate Means Program and...
a Contract Attorney Panel. The Moderate Means Program has been reported on numerous times in the Bar News and is a work in progress.

The Contract Attorney Panel is just in the planning stage, but can readily be implemented during my presidency. The concept is to give Washington law firms an alternative to outsourcing legal work overseas. By using the WSBA website, there would be an online exchange where lawyers looking for extra work could announce their availability and where law firms looking for a contract attorney could find one. The members seeking contract work could indicate their fields of expertise and could indicate whether they would be willing to work for a discounted fee. This program can be implemented using our existing infrastructure.

6. Over many months, the BOG debated the possibility of switching from Washington’s unique essay-only bar examination to a format based at least partly on a uniform multiple-choice exam such as the new Uniform Bar Examination (UBE) being considered by many states. The BOG ultimately chose to indefinitely defer making any change until more information can be gained regarding the UBE. What is your personal view on Washington’s existing exam versus the proposed alternatives?

This has proven to be an intriguing issue this past year. We started out with the belief that our current bar exam system was a better system and more fair to minority applicants taking our exam. However, over the past couple years, our Supreme Court had expressed concerns about the increasing costs for taking the bar exam in our state and inquired as to whether the WSBA had considered switching to the Multistate Bar Exam (MBE). At this same time, nationally, the idea of a bar exam whose results would be portable across the nation (the newly developed UBE) was gaining more attention. As a result, we started to wonder if our current testing instrument was the best and decided to study the issue. This is a very complex issue and one on which we should be in no hurry to decide. Once we dismantle our existing system and implement a new one, it would be extremely difficult to reverse fields and return to the way it was. My personal view is that we retain our current system and let other states be the first to experiment with the UBE. We should then give it a few years and bring the UBE back to the table for further consideration.

7. When you have time away from practicing law and your role with WSBA, what personal activities do you enjoy?

When I’m away from practicing law and working with WSBA, my favorite pastime is spending quality time with my best friend, who is my wife of 28 years, and my children. Whether it’s listening to my son play piano (with him now living and pursuing his career in New York, I must settle for listening to him on recordings), watching television together (which in our family means having the television on in the background while discussing the events of the day, upcoming activities, etc.), or just having a meal, running errands, or going to the mall with my wife and/or daughter, I’m happiest and most relaxed when I am with my family.

8. Compared to some states, the bar and judiciary in Washington are considered to have a collegial relationship. That was tested twice this year. In separate actions, groups representing administrative law judges and superior court judges adamantly spoke out against WSBA Bylaw amendments that would impose WSBA license fees
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on their members. In both cases, the judges seemed to feel they had been slighted in WSBA’s proposal process. The Bar is addressing the judges’ concerns, but do you believe the tensions created will carry over and strain bench-bar relations in the future?

The tensions may carry over, but I doubt that bench-bar relations will be seriously strained in the future. At the end of the day, we are all lawyers, and as such we have mutual interests and obligations to see that justice is accessible to everyone in our society, from the wealthy to the impoverished, from large corporations to individuals. It’s essential that we work together to educate and lobby the Legislature for adequate funding to maintain the integrity and fairness of the justice system and to create efficiencies in the courtroom and legal proceedings that can help to make justice more affordable for the citizens who rely on our legal system and the rule of law. I’m confident we will be able to resolve our differences, and I anticipate that by the time this interview is published, this will no longer be an issue.

9. Other than what we have already discussed, what do you see as the three or four biggest issues that will face the WSBA and the BOG during your term as president?

Significant issues with which we’ll be faced this year are related to public legal education (PLE), court funding, governance of WSBA, and licensing fees. Regarding PLE, former U.S. Supreme Court Justice Sandra Day O’Connor has been very visible over the last couple years advocating for civics education in the schools. She has pointed out how more students can name the judges on “American Idol” than can name the justices on the Supreme Court. The rule of law is not understood by a huge majority of our population, and we had best sit up and be concerned about this. The citizens of this country need to understand the three branches of government and how they interact. The best place to address this is in our schools. Justice O’Connor has an online website that is geared for middle school students. The WSBA and its members will have an opportunity this year to get involved in a program that is being promoted through that website. The Board of Governors will have to decide what resources we should devote to this project and other projects that are before us related to educating the public as to the rule of law.

As for court funding, our current economic crisis isn’t going to go away any time soon. It will be imperative for us to work with the judiciary and other stakeholders in the justice system to be creative and do whatever it takes to make certain we get sufficient funding from the Legislature or other sources to assure that the courthouse doors will remain open and accessible to all.

As for WSBA governance, we have created a Governance Committee that will study and consider issues such as the current geographic rotation system we use to elect the president of the WSBA, allowing repeat or multiple terms for governors on the BOG, allowing a sitting governor to leave office early to run for WSBA president, and creating a position on the BOG for a non-lawyer. Whether to increase our members’ licensing fees will be a huge issue for us. The BOG is cognizant of the difficult financial times all people face, including WSBA members. However, even in a difficult economy, WSBA’s cost of doing business increases. If we keep fees at current levels, maintain everything else the way it is now, don’t increase staff, and have only a modest cost of living increase of staff salaries that is competitive with the marketplace, we’ll likely be facing a budget deficit of approximately $450,000 in 2011–2012 and approximately $850,000 in 2012–2013. Something has to give, and this will be the subject of much creative thinking, discussion, and debate this fall.

10. What would you say to persuade more WSBA members to become actively involved in the organization — by joining sections or committees, volunteering in pro bono programs, running for office, etc.?

There’s great satisfaction that comes from knowing you are making a difference in the practice of law and the justice system, and the WSBA is a great arena in which to make that difference. Having said this, forcing or pressuring a member to become active in the Association is not the be-all and end-all. Everyone does not share my viewpoints about the value of being active in the WSBA or, alternatively, county, specialty, or minority bar associations. I am all about wanting people to give back. I want you to put your own personal agenda aside and contribute to the profession or your community. Start small if you prefer. If you aren’t able or ready to actively participate in a WSBA section or committee or get involved in bar leadership, just give a couple hours of your time at a pro bono Neighborhood clinic or at a homeless shelter. Mentor a young lawyer. Contribute to LAW Fund. The list of things you can do is endless. If you want to give of yourself and can’t think of what to do or how to do it, then contact me directly. I will be happy to brainstorm with you and provide you suggestions. I am pretty creative when it comes to these things. ☺

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Stephen R. Crossland  
President-elect

A Cashmere native, Steve Crossland received his undergraduate degree in political science from Stanford University, and his law degree from the Northwestern School of Law at Lewis and Clark University, in Oregon. He served as Chelan County deputy prosecuting attorney from 1974–75, and has worked in private practice since then; he has had his own practice, Crossland Law Office, since 2001.

Crossland is well known for his exceptionally dedicated and long-term service to the Bar. In 2002, he received the WSBA Award of Merit, the Association’s highest honor, which is presented in recognition of long-term service to the Bar and/or the public.

Crossland’s Bar service began in 1986, when he joined the Executive Committee of the Real Property, Probate and Trust Section, where he also served as 2006–07 chair. He served for many years on the Unauthorized Practice of Law Committee and chaired the Committee to Define the Practice of Law. He has also served on the Executive Committee, and as chair, of the General Practice Section; on the Solo and Small Practice Section’s Executive Committee from 2006 to the present; and on the Alternative Dispute Resolution Section’s Executive Committee from 2007 to the present, including a 2007–2008 term as chair. He served on the WSBA Board of Governors from 1995–1998, representing the 4th District.

Throughout his career, Crossland has also been active in Washington’s broader legal community. He served on the Legal Aid for Washington Fund (LAW Fund) Board of Directors from 2005–07 and has served on the Northwest Justice Project’s Board of Directors since 2009. A frequent speaker, he has presented at seminars and conferences in Washington and Oregon. In 2008, he chaired the Succession Planning Handbook effort, and was the editor for the *Real Property, Probate and Trust Deskbook*. He served as chair of the Practice of Law Board during the Board’s inaugural years.

Additionally, Crossland is dedicated to serving his community through volunteer work. He has served with the Cashmere Rotary Club since 1973, and was its president in 1982. He served on the Cashmere School Board for many years; has served on the Cashmere Community Foundation since 1982; and has served as the Cashmere Tree Committee chair since 1975. He also works with the Wenatchee Valley College Foundation Board and the Cashmere Schools Foundation.

“I have known Steve Crossland for over 20 years and have always been impressed with his knowledge, professionalism, civility, and leadership,” wrote WSBA Past-President Stanley A. Bastian. “Crossland has served this bar association and the legal profession in many different capacities . . . . He knows how this Association works and he is familiar with the current issues, unfinished projects, and future challenges.”

“As president, Steve will be thoughtful, insightful, compassionate, and extremely well-informed about the Bar Association and the profession as a whole,” wrote WSBA Past-President Ellen Conedera Dial. “Steve has devoted much of his professional life to the pursuit of justice for people in this state and to the betterment of the justice system and the profession.”

Philip J. Buri  
District 2 Governor

Philip Buri received his undergraduate degree from Princeton University and his law degree from Harvard Law School. He served as a law clerk in the United States District Court from 1987–1989 and in the Washington State Supreme Court from 1993–1995. He is a partner with Buri Funston Mumford PLLC, in Bellingham, where his practice emphasizes appellate and civil litigation, community associations, and land use.

Buri is a founding member and past president of the Washington Appellate Lawyers Association. He was also a contributing author to the *Washington Appellate Practice Deskbook* (Third Edition, 2005).

Buri’s community involvement includes his service as past chair of the Whatcom County Law and Justice Council, and serving on the Board of Directors and as past chair of the Bellingham Community Food Co-op. He is a 2006 graduate of the Leadership Whatcom program, which trains community leaders in leadership skills and educates them about...
Whatcom County issues.

“I am gratified that my fellow attorneys elected me to this position,” said Buri. “My aim during the next three years is to improve the working lives of attorneys while making sure our profession serves the public. This is a wonderful honor.”

“My goals, personally and professionally, are to play a vital role in bringing diversity and inclusion in the WSBA and our communities in Washington state,” said Flood of her role as governor. “As a woman of color, veteran, resident of Kitsap County, and single mom, I believe my diverse background will bring a constructive view that will assist the Board in its commitment to diversity.”

Susan Machler
District 9 Governor
Born and raised in Montana, Susan Machler has resided in the Seattle area for 23 years. She received her law degree magna cum laude from the University of Puget Sound School of Law (now Seattle University), where she was on the editorial staff of the Law Review and a regional competitor in the Saul Lefkowitz Moot Court Competition. She received her bachelor’s degree from the University of Idaho.

Machler has devoted her legal career to personal injury and civil litigation. She is frequently called upon to be a speaker and instructor in the area of trial preparation and practice. Machler has extensive experience in appellate cases, having both written for and argued cases in court and assisted attorneys in the development of other cases.

Machler is admitted to practice in Washington state and federal district courts, as well as Montana state courts. In addition to the WSBA, she is a member of the Washington State Association for Justice (formerly known as the Washington State Trial Lawyers Association), King County Bar Association, State Bar of Montana, and Montana Trial Lawyers Association.

Machler provides pro bono legal services for persons with disabilities and their families. She has also worked with women and men in child support and custody matters. She is active in her community, including serving on the editorial staff of the Law Review (now Seattle University), where she was on the editorial staff of the Law Review and a regional competitor in the Saul Lefkowitz Moot Court Competition. She received her bachelor’s degree from the University of Idaho.

“Machler has extensive experience in appellate cases, having both written for and argued cases in court and assisted attorneys in the development of other cases.”

Judy I. Massong
7th-Central District Governor
Born in eastern Washington, Judy Massong attended nursing school at the University of Washington, graduating magna cum laude in 1973. She went on to obtain her masters in nursing at the University of California at San Francisco. After practicing as a nurse and teaching nursing at the University of San Francisco, she attended law school at Golden Gate University, graduating in 1980.

After moving back to Seattle, Massong became active in the Washington State Trial Lawyers Association (now known as the Washington State Association for Justice) and served as its president from 2003–2004; this past year, she was the association’s WSBA liaison. She has also served as chair and board member of the WSBA Litigation Section, has served on the WSBA Legislative Committee, and has also been special disciplinary counsel. She is a past chair of the WSBA Lawyers’ Fund for Client Protection Board.

“I believe that my diverse professional experience and nursing skills and education allow me to bring a unique perspective and depth to my practice of law and professional endeavors,” said Massong. “These are difficult economic times that present special challenges to attorneys in meeting their professional demands. I recognize these challenges and am particularly interested in working to find new and effective ways to help attorneys meet them.”

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

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Diversity Matters in Washington State

The Current Facts and Future Needs for the Legal Profession

by Sarah E. Redfield, John Sklut, and Chach Duarte White

Diversity is a critical issue for the legal profession, an issue that garners increasing attention as the diversity of the nation increases. As the nation’s population trends to 50 percent minority, law school enrollment hovers around 20 percent minority. At a national level, the profession, at almost 90 percent white, and the pathways to the profession are not in line with the country’s current and changing demographics. See Figure 1.

The demographics of the Washington State Bar Association mirror the national picture. When comparing the diversity of Washington state to the composition of the WSBA, the reported percentage of minority members shows a parallel difference. Racial and ethnic minorities make up 15.6 percent of the population in Washington, but only 12 percent of attorneys in the surveyed Washington law firms. See Figure 2.

This article provides a synopsis of the data from the Washington state education “pipeline,” and an overview of work of the profession in the state along the educational pathway from preschool to the profession—that is, along the educational pipeline to close achievement gaps and increase the pool of students qualified for and interested in admission to law school.

THE WASHINGTON EDUCATION PIPELINE/DIVERSITY PICTURE

According to the 2005 Census, the Hispanic student population in Washington nearly doubled between 1995 and 2005. Black and Asian populations showed more modest but steady increases of 29 percent during the same period. As the state’s population becomes less white, its high school graduates remain static. In Washington, the high school completion rate exceeds the national averages. Asian students finish high school and college in greater percentages than any other racial denomination. By the end of high school, including extended graduation time, 86.4 percent of Asian students remain, compared to 68.2 percent of black, 69.5 percent of Hispanic, and 79.5 percent of white students. The average graduation rate for Washington’s public high schools is 77 percent, placing Asian students far above average, black and Hispanic students far below, and white students on the margin. When more than 30 percent of black and Hispanic students drop out of high school, it is unsurprising that the law profession at large would remain predominantly white.

The numbers remain similar when considering postsecondary education in Washington. Asian students comprise 6.8 percent of the state’s population, but 10 percent of two-year college enrollment, and 12.7 percent of four-year enrollment. White students comprise 76.8 percent of the population and maintain similar numbers averaged across both two- and four-year colleges, whereas black and Hispanic students see sharp decreases from two-year to four-year college enrollment. By the time colleges award degrees, 67 percent go to white students, 9 percent to Asian, 5 percent to Hispanic, 3 percent to black, and 1 percent to Native American students (numbers approximate, non-resident and race-unknown degrees omitted). Compared to overall student population in 2005, Asians were the only group to increase their representation, while the other racial and ethnic groups saw moderate to sharp decreases in degree representation. More specifically, Hispanic students, representing 13 percent of student population in 2005, shrank to 5 percent of
college graduates.\textsuperscript{20}

Washington's law schools reveal percentages similar to its colleges. As of the 2008–2009 school year, there were 2,126 law students enrolled in the three Washington law schools (Gonzaga, Seattle University, and the University of Washington).\textsuperscript{21} Whites outnumbered their minority classmates, representing 76.2 percent of the total enrolled law school students. Blacks made up 2.6 percent of students, American Indians 1.4 percent, Asians 11.3 percent, and Hispanics 3.8 percent. Overall minorities made up 19.2 percent of law school enrollment.\textsuperscript{22}

Working the Pipeline to Change the Picture

With so many students dropping out of the education pipeline well before law school, changing the diversity face of the bar demands that attention be paid to the achievement gaps and leaks in the pipeline well before law school. In order to change this picture, the law community must acknowledge the numbers and walk (not just talk about) the focus on pipeline issues that affect our young people in a strategic, systemic way.

Research shows that potential for success in improving the persistence and success of diverse students along the educational pipeline lies in a focus on what the Gates Foundation has called the “new 3Rs” — rigor, relevance, and relationships.\textsuperscript{23} Not now accessible to all students, in significant part, the missing 3Rs underlie the achievement gap and the narrowing of the educational pipeline well before the law school gates. At the same time, these 3Rs are areas where the law community has proven experience and expertise, areas where the law community is particularly well suited for work that can significantly repair and widen the educational pipeline, thus expanding the number of qualified diverse students seeking admission to law school.

In general terms, change requires:

- that we keep focused on diversity, particularly the business case for diversity, and have diversity-oriented missions;
- that we understand the reality of the educational system today and acknowledge that the current pipeline is so seriously damaged that we cannot achieve a sufficiently diverse pool approaching the law school gates without focusing attention on its repair;
- that we acknowledge that national and local efforts to date have been insufficient and a new focus of attention and resources on a systemic, systematic, intense, sustained approach is needed;
- that we mind the new 3Rs — rigor, relevance, and relationships \textsuperscript{24} — as what we should be talking and walking; and
- that we work on approaches and programs that are documented, and where work can be formed and re-informed based on documented measures of success.\textsuperscript{25}

**WASHINGTON PIPELINE INITIATIVES**\textsuperscript{26}

The Washington bench, bar, and law schools throughout the state are working to provide pipeline programs designed to educate and empower juveniles. These are summarized below.\textsuperscript{27}

**WASHINGTON STATE YOUNG LAWYERS DIVISION**

The Washington State Young Lawyers Division is involved in these programs:

**Youth and Law Forum**

The WYLD assists with planning for the annual Seattle Youth and Law Forum, which provides students of all ages the opportunity...
Pre-Law Student Leadership Conference
This program was designed for, and targeted toward, at-risk youth and minority students. Students who attend the conference are encouraged to pursue a legal career and take active leadership roles in their communities and student governments. This program emphasizes the importance of staying in school and being an active member of society. At the Yakima conference, students participate in interactive workshops where they discuss case studies relating to criminal and family law issues. Students also discuss issues that affect youth, and they work together to develop an action plan they can implement on their own. The Washington Young Lawyers Division also partners with the Latino/a Bar Association of Washington to present this program, and Seattle University School of Law also participates.

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LAW SCHOOLS
Involvement of Washington's law schools along the educational pipeline for diversity includes:

Color of Justice
In the fall, Gonzaga School of Law hosts high school students participating in the "Color of Justice" event. The program was designed by the National Association of Women Judges and is a model used across the country for pipeline events. Partners in this event include the GEAR UP college preparatory program, the Washington Gender and Justice Commission, the Washington Minority and Justice Commission, and the law firm of Perkins Coie. In addition, in cooperation with the Gender and Justice Commission of Washington, Seattle University School of Law presented the "Color of Justice Program" to more than 60 students from the Chief Leschi Tribal School in Puyallup, the African American Academy, the Urban League Student Scholars Program, and St. Therese Catholic School. During the summer, Seattle University School of Law presents, along with the Alaska Association of Women Judges, "The Color of Justice Program," targeted to native Alaskans.

Street Law
The law schools at Seattle University and the University of Washington offer Street Law courses that provide law students with the opportunity to teach high school students about their legal responsibilities and rights. The Seattle University program began in 1982, and the University of Washington program in 1997. Together, these programs now serve more than 700 students each year in 14 Seattle-area high schools. Gonzaga University School of Law also offers a Street Law program in partnership with Rogers High School in Spokane. Additionally, the WSBA runs a statewide Street Law program that uses volunteer.
judges in place of law students, with funding from the Washington Judges Foundation.

Indian Law
The Federal Indian Law Program at Gonzaga University School of Law provides students with the opportunity to learn about "economic and other policy issues targeted toward building sustainable systems in Indian country and Alaska." Similarly, the Center for Indian Law and Policy and a summer internship program through Seattle University School of Law provide students with the opportunity to help Indian people make decisions in regards to their property.

Alcanzar Justice
Each spring the Gonzaga Hispanic Law Caucus (GHLC) partners with GEAR UP (a national college preparatory program for low-income students) to host a pipeline program entitled Alcanzar Justice ("Alcanzar" is Spanish for "to achieve"). Throughout the day, students participate in activities designed to encourage them to pursue a legal education. The students tour the school and hear from practicing attorneys. At lunch, current GU Law students share their personal paths to law school and afterward help their guests prepare for the afternoon's mock trial. Alcanzar Justice works with minority students who would be the first in their families to attend college. Although focused on the legal field, the program's broader aim is to empower students to achieve their educational goals. The GHLC collaborates with the Latino/a Bar Association of Washington to sponsor the event.

Just the Beginning Foundation’s Summer Legal Institute
Seattle University School of Law hosted and helped coordinate the Just the Beginning Foundation’s Summer Legal Institute (SLI). SLI is a five-day program designed to introduce high school students of color to the legal system, expose them to careers in law, and provide practical tools for achieving their educational goals. Students work with judges, lawyers, and law students on legal reasoning, case analysis, writing, negotiation, and oral argument exercises. In addition, students and their parents/guardians/mentors receive college preparatory advice.

Native American Pipeline
Seattle University School of Law and Gonzaga University School of Law are involved in an ongoing working relationship with Graduate Horizons, a program aimed at assisting Native American students in the admissions process to graduate school. In addition, Seattle University School of Law has hired a law student as an admissions fellow to be responsible for outreach to local tribes and cultivation of prospective Indian law students. The fellow participated in the Canoe Journey in Suquamish, attended by representatives of more than 60 tribes, and is working on developing relationships with Native studies programs and Indian cultural centers. Each year Gonzaga University School of Law hires a recent graduate for a one-year term as an admission ambassador to serve a similar function.

In February, representatives from Seattle University School of Law participated on a panel at the Conference on Pathways for Native American Students. The conference was organized and hosted by the Evergreen State College under grants from the Bill and Melinda Gates Foundation and the Lumina Foundation for Education. More than 200 participants from colleges and universities around the nation attended the conference.

Seattle University School of Law has also partnered with Heritage University to present a program to educate and develop local students as community leaders in the Yakima Valley. Approximately two-thirds of the students involved in the initiative are
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from low-income Latino/Latina families, and one-third are from low-income Native American families.

**Access Admission and Academic Resource Center**
Seattle University School of Law’s Access Admission Program allows a number of promising students who don’t meet traditional admission requirements to be admitted to the Law School. It also contributes to a more diverse legal profession. Students admitted through the program are supported throughout law school by the Academic Resource Center (ARC). ARC’s primary purpose is to help diverse and non-traditional students adjust, succeed, and excel in law school. The program teaches the skills necessary to enable students to compete successfully in law school and enter the practice of law with confidence.33

**COMBINED/OTHER**
As in other parts of the country, pipeline work is often the effort of collaborative partnerships. In Washington, these include:

**Youth and Justice Forum**
The Youth and Justice Forum is a program for 8th–12th graders held at the Columbia Basin Community College in Pasco. This is a collaborative event hosted by the local school district in partnership with the Washington State Minority and Justice Commission, Columbia Basin College Office of Diversity, Benton/Franklin Substance Abuse Coalition, the Latina/o Bar Association of Washington, Gonzaga University School of Law, Seattle University School of Law, and the University of Washington School of Law. Students have the opportunity to learn about the justice system and career opportunities in the legal profession directly from practicing professionals and law students. The program is now seven years old, and each year more than 200 students participate.

**Future of the Law Institute**
The vision of the King County Bar Association’s Future of the Law Institute is to “develop the next generation of legal professionals to reflect our community’s rich diversity” by encouraging “high school students of diverse backgrounds to pursue higher education in the law by: providing access to legal professionals as role models through workshops, mentoring and internships; improving post-secondary enrollment through scholarships, higher education planning for families, and financial aid workshops; increasing law school enrollment by providing scholarships and access to college/university partners.” The Future of the Law Institute has a variety of collaborating partners, including the King County Bar Association, Microsoft, Walmart, the Loren Miller Bar Association, Seattle University School of Law, and the University of Washington School of Law. Judges, lawyers, and law students mentor disadvantaged high school students and provide a variety of opportunities, including a two-day FLI institute program and other activities throughout the year including internship and scholarship opportunities. Since 2002, the program has served nearly 500 students with the help of more than 200 volunteers.

**Aspiring Youth Program**
The Aspiring Youth Program was created to reach out to at-risk middle school students during the “latch key” hours. A committee of Spokane young lawyers initiated this after-school curriculum as a pilot program, combining education, sports, and inspirational speakers. This program has been a great success and will continue to be expanded to schools in other areas in an effort to promote leadership and make a difference in our communities.

**CONCLUSION**
To accomplish the goal of increased diversity
in the legal profession in Washington and across the nation, it is essential that we stay focused on fair, quality delivery of the new 3Rs all along the pipeline in programs that are intense and sustained, on a select, documented, coordinated set of pipeline programs, and on student outcomes over a long timeline. Washington has made a strong start in this direction. For more information on existing programs and networking opportunities, please contact Professor Redfield at sarah.redfield@gmail.com, Dean Sklut at sklut@lawschool.gonzaga.edu or WSBA Diversity Program Manager Chach Duarte White at chachdw@wsba.org.

Sarah Redfield is a member of the Maine Bar and professor of law at the University of New Hampshire School of Law in Concord, New Hampshire. Her expertise is in education law and in diversity, particularly as it relates to diverse students and educational pipeline. She is the author of Diversity Realized: Putting the Walk with the Talk for Diversity in the Legal Profession (2009), which discusses topics in this article at greater length. John Sklut is assistant dean of students at Gonzaga University School of Law. Chach Duarte White is the WSBA diversity program manager.

Much of this article was prepared for the Spokane meeting of the American Bar Association’s Presidential Advisory Council on Diversity and the Washington Color of Justice Program, both hosted by Gonzaga University School of Law in October 2009. Professor Redfield and Dean Sklut thank the University of New Hampshire School of Law and Gonzaga University School of Law for their support of this work. They also thank Professor Redfield’s research assistants, Ryan Fields, Hanna Watson, and Josh Weiss, without whom this article would not have been possible.

NOTES

1. America.gov, “U.S. Minorities Will Be the Majority by 2042,” Census Bureau Says,” www.america.gov/st/peopleplace-english/2008/August/200815.html (finding that by 2042, “minorities, collectively, are projected to make up more than 50 percent of the U.S. population”).

2. See ABA, Legal Education Statistics, Enrollment and Degrees Awarded for various groups available through www.abanet.org/legaled/statistics/stats.html (hereinafter ABA Data).


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6. Id.


8. Id.

9. The actual numbers are somewhat unclear since 56 percent were unknown. See Ireland, Lisa, Office of Superintendent of Public Instruction, Graduation and Dropout Statistics for Washington in 2007-08, at 35 (2009), available at www.k12.wa.us/dataadmin/default.aspx.

10. Id.

11. Id.

12. Id.

13. This is the national picture as well. See Redfield, Sarah E., Diversity Realized: Putting the Walk with the Talk for Diversity in the Legal Profession (2009) Chapters 1 and 2.


15. Id.

16. Id.


18. Compare OSPI, supra note 8, with NCES, supra note 18.

19. See OSPI, supra note 8.

20. See NCES, supra note 18.


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22. Id.
23. An important 4th R is “results”; to succeed in working along the education pipeline requires close attention to results and to replication of those programs that can show change.
25. How many students in the program? Did they stay in the program? Did they stay in school? Did they graduate from high school? Were they interested in college? That is, at a minimum, success needs to be measured in persistence of students, acceptable to have small measures but need to measure what is working and focus on and replicate that.
26. The Law School Admissions Council and the ABA have published a directory of pipeline programs. See American Bar Association: Division for Public Education, National Directory of Law-Related Programs, http://publiced.abanet.org/ire/#search. For a selected list, see Redfield, supra at note 14 at Chapter 7 and Appendix B (listing selected pipeline programs).
27. Data for this section were collected primarily by John Sklut and Chach Duarte White, but the authors recognize that there might well be other pipeline programs that were not included and invite sponsors or participants to contact the authors at the addresses given at the end of the article.
30. Supra note 28.
35. Loren Miller Bar Association, www.lmba.net/committees.aspx. LMBA also sponsors the Philip L. Burton Scholarship, which provides law students funding for costs of taking the bar.
ardly anybody (aside from accountants) really likes accounting. Outside the accounting department, it seems to be a bunch of jargon, rules, and requirements that take all the fun out of practicing law. Attorneys have to post their time, staff members have to get their payroll timesheets in, check requests and expense reports have to be submitted, and every month everybody has to “close.” What’s it all about? Why is there so much time and attention paid to accounting? Who cares?

Inside the firm, we need to know if the firm is profitable and what can be done to make it better. Can we hire more people or do we need to do a layoff? Should we buy new computers or lease them? Do we have enough cash to make a distribution to the partners? Outside the firm, there are a bunch of other guys who want to know how the firm is doing. The federal government wants to collect income taxes and the tax return has to be prepared. The city and the state want their excise taxes. The bank wants to know if the loan can be repaid. Vendors want to know if they will be paid. And then there are the auditors from the Department of Licensing, the Department of Labor, or the WSBA looking at a trust account. The accounting has to be right — for all of these compelling reasons.

What Is Accounting?
Where to begin? Accounting is a language, a way for people to communicate about money. It’s a way to compile and summarize information about what has already happened — a system that records, reviews, analyzes, and interprets information. But in the accounting department, we don’t just speak accounting — we also have to do accounting. Policies and procedures are necessary for consistency in reporting and for preventing fraud. All those outside authorities impose standards and reporting requirements, such as filing dates and specific account titles. It’s complicated. So we’ll keep this discussion limited to some basic accounting terms and reports, and why they are important.

Cash Basis or Accrual Basis?
In the legal industry, reporting is done usually on the cash basis, which means that what has been purchased, borrowed, earned, or spent is defined by what happens in the checking account. Income doesn’t count until the money is in the bank. Expenses aren’t included on reports until the check has been cut. Equipment purchases aren’t recorded until the price has been paid. There are a few significant exceptions, but that’s the main idea.

Large firms report on the accrual basis. Income is recorded when it is earned; when the work has been performed, the timesheets have been posted to the billing system, and the client has been billed, including the fee in accounts receivable. Expenses are reported when an invoice has been received and posted to accounts payable. Equipment is recorded at its price, regardless of whether the bill has been paid.

Some firms — but not many, due to the need for sophisticated systems — report internally on both the cash and the accrual basis. Both methods are correct, but generally the accrual basis results in earlier recognition of income, and therefore taxes must be paid sooner. Because taxes are paid with cash, firms prefer to report on the cash basis. The tax reporting method is determined by IRS regulations.

Basic Financial Statements
There are four basic financial statements:
- balance sheet,
- income statement,
- statement of cash flows, and
- statement of changes in owners’ equity.

All four statements can be prepared under both the cash basis and the accrual basis.

Assets = Liabilities + Owners’ Equity

Balance Sheet
The balance sheet is a list of the assets, liabilities, and owners’ equity of a firm. The balance sheet is always as of a certain date, such as “As of December 31, 2009.” Assets include cash, investments, furniture and equipment, artwork, and buildings or leasehold improvements. They are the things that the firm owns and uses to operate. Liabilities are things like employee payroll taxes that have been withheld but not yet deposited with the IRS; or debts, usually bank loans or notes from partners — what the firm owes. The difference between what is owned and what is owed is equity. It’s like a home mortgage; the difference between the value of your home and the balance you owe on your mortgage is your equity.

It is not a coincidence that the balance sheet balances. It’s a definition; Assets = Liabilities + Owners’ Equity. For example, when $5,000 is borrowed from the bank to buy new computers, both assets (computers) and liabilities (loans payable) increase by $5,000.
Except for the cash account, many law firm owners and managers have a limited interest in the balance sheet. Most are more interested in the “bottom line” found on the income statement (also called the “P&L,” short for “profit and loss”). Statements are prepared for each month and for year-to-date accumulations. Some reports may compare this year to last year or to budget. Income in a law firm is primarily from professional fees generated by lawyers and paralegals. There may also be income from cost recoveries and interest, rent from subtenants, or other sources.

On the expense side, the biggest line items are wages, taxes, and benefits. You’ll also see items like office supplies, rent, library and online research, taxes, employee education, and computer lease payments. Subtract the expenses from the income, and you get the bottom line — net income or net loss. It’s an important number that, over time, determines the continued existence of the firm. The income statement is always for a period of time, for example, “For the 12 months ending December 31, 2009.”

**The Statement of Cash Flows**

Another report that gets a lot of attention is the statement of cash flows. By monitoring the sources and uses of cash, managers can better understand how the change in the cash balance reflects the results of the operations of the firm, as opposed to its investing or financing activities. If the cash balance increased, was it because the firm was profitable or because the firm borrowed money from the bank? Did new partners buy in? If the cash balance decreased, was it because the partners got a distribution? Was new equipment purchased? Did a loan balance go down? These are clearly very important distinctions. Like the income statement, the statement of cash flows is dated for a specific period of time: “For the month ending December 31, 2009” or “For the 12 months ending December 31, 2009.”

**The Statement of Changes in Owners’ Equity**

The statement of changes in owners’ equity is the place to look for distributions to partners, contributions of capital from owners or shareholders, member capital accounts, or retained earnings. The account descriptions in this statement depend on the form of ownership of the firm. Is it an LLC, a partnership, a corporation, or a sole proprietorship? Forms of entity are a topic for another discussion.

**Timekeeper Production Reports**

That covers the basic financial statements. Other reports of great importance in the law firm are related to attorney and paralegal production — time and money. How many hours did each timekeeper work? Who billed for what amounts? Who collected, and how much? What remains in accounts receivable (A/R) or work in progress (WIP)? How old — and likely to be collected — are the A/R balances, and who is accumulating work in the WIP? Every attorney studies these reports — certainly their own numbers. They are at least as important as the financial statements, and like the bottom line, are indicators of the continued success of the firm.

**Attorney Trust Accounts**

Trust accounting is another critical activity of the law firm accounting department. Trust accounts are composed of funds held by a lawyer on behalf of a client or third person in connection with a representation. Such funds must be held separate from a lawyer’s own property in an interest-bearing trust account as specified in the Rules of Professional Conduct (RPC). The Bar has authority to randomly examine a lawyer’s trust account and to audit a trust account in connection with a disciplinary investigation. Because trust account mismanagement is a frequent
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basis for imposition of disciplinary sanctions, all lawyers should be thoroughly familiar with their obligations under RPC 1.15A (Safeguarding Property) and RPC 1.15B (Required Trust Account Records) and ensure that non-lawyer subordinates with accounting responsibilities are acting in accordance with the lawyer’s professional obligations. Helpful information about trust accounting can be found in the WSBA publication Managing Client Trust Accounts: Rules, Regulations, and Common Sense, available at www.wsba.org/media/publications/pamphlets/managing.htm.

Profitability Reports
One hotly debated topic in the legal world is the calculation of overhead. Income and expense can be divided up and spread out among timekeepers or departments to calculate profitability, based on various methods of allocation. Some law firms perform this calculation monthly; some never do it at all. A common practice is to do it annually as part of the attorney compensation analysis. Some firms include depreciation expense or equipment purchases in the calculation, some don’t. Some take into account associate bonuses or partner buy-outs, some don’t. What is the right way? There isn’t one. This is not a standardized report. It’s an internal report that is defined by the firm, but reports for taxing authorities, tax return preparers, lenders, and regulatory agencies must follow accepted formats.

Conclusion
Internal reports can be defined by the firm, but reports for taxing authorities, tax return preparers, lenders, and regulatory agencies must follow accepted formats. We defined some terms, looked at the four basic financial statements, and discussed some topics that are important to law firms and their accounting departments. It seems a lot of people care about accounting. They all want it to be timely, relevant, and accurate — and in terms that meet their specific needs. Accounting is not an end unto itself, but it’s a great tool for business management, and a necessary component of the practice of law.

Barbara Schafer, CPA, CLM, has been a member of the Association of Legal Administrators for several years, and has served as the Puget Sound Chapter treasurer. Previously, she was the executive director at Ogden Murphy Wallace and the firm administrator at Bennett Bigelow & Leedom. She is now a consultant and sole proprietor of her CPA firm. She can be reached at consulting@barbaraschafer.com.
BY MARK J. FUCILE

Most cases settle. Although that’s been true for a long time, the dynamics of settlement have changed significantly in recent years. These changes include the increasing “organization” of negotiations through court-annexed and private mediation, an attendant effort to find “new” ways to resolve cases, and, especially in the mass tort context, “group” or other multiple case settlements. In this column, we’ll look at three facets of settlement ethics. First, we’ll discuss the sometimes not-so-bright line between opinions and material misstatements during negotiations. Second, we’ll examine whether a litigation opponent can be prevented from handling future cases against a defendant as part of a current settlement. Third, we’ll survey the rule governing aggregate settlements. Failure to follow the RPCs in these areas can result in court-imposed sanctions, bar discipline, and potentially undoing the very settlements the parties involved were trying to achieve.

Opinions vs. Misstatements

RPC 4.1 sets the marker for our dealings with opponents during negotiations:

In the course of representing a client a lawyer shall not knowingly:
(a) make a false statement of material fact or law to a third person; or
(b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6 [the confidentiality rule].

As a general matter, the Model Rules of Professional Conduct . . . do not require a lawyer to disclose weaknesses in her client’s case to an opposing party, in the context of settlement negotiations or otherwise. Indeed, the lawyer who volunteers such information without her client’s consent would likely be violating her ethical obligation to represent her client diligently, and possibly her obligation to keep client confidences.

It is also important to stress that hard bargaining that includes expressions of opinion is not prohibited either. Comment 2 to RPC 4.1 attempts to delineate the sometimes imperfect line between opinions and misstatements:

This Rule refers to statements of fact. Whether a particular statement should be regarded as one of fact subject of a transaction and a party’s intentions as to an acceptable settlement of a claim are ordinarily in this category, and so is the existence of an undisclosed principal except where nondisclosure of the principal would constitute fraud. Lawyers should be mindful of their obligations under applicable law to avoid criminal and tortuous misrepresentation.

What is prohibited are outright misrepresentations of material facts, through either knowing misstatement or nondisclosure. ABA Formal Ethics Opinion 95-397 (1995) offers a very real example that can come up when negotiating resolution of mass torts or other serious personal injury claims: the claimant dies. Because this failure would be material in almost all circumstances, it would violate RPC 4.1 (subjecting the lawyers involved to court-imposed sanctions and bar discipline).
discipline) and might also open the door
to rescission of any settlement reached
under that mistaken assumption.

Restrictions on Future
Representation
RPC 5.6(b) states the black-letter rule
that a lawyer can neither offer nor accept
a direct restriction on a lawyer’s right to
handle adverse claims as a condition of
the settlement of a current case:

A lawyer shall not participate in of-
fering or making:

(b) an agreement in which a restric-
tion on the lawyer’s right to practice
is part of the settlement of a client
controversy.

Black can fade to gray, however, when
the restriction is indirect. In re Brandt/
Griffin, 10 P.3d 906 (Or. 2000), Florida
Bar v. St. Louis, 967 So.2d 108 (Fla. 2007),
and Florida Bar v. Rodriguez, 959 So.2d
150 (Fla. 2007), for example, all involved
claimants’ lawyers disciplined for violat-
ing versions of RPC 5.6(b) by accepting
offers of future retention by party op-
ponents that “conflicted them out” of
future adverse claims while negotiating
mass torts settlements. WSBA Informal
Ethics Opinion 1850 (1999) reaches the
same conclusion under our rule. Along
the same lines, the ABA in Formal Ethics
Opinion 93-371 (1993) concluded that a
global settlement of mass tort litigation
with a law firm’s clients that created a
predetermined settlement rate for future
claims while prohibiting the law firm
from representing clients who “opted out”
violated ABA Model Rule 5.6(b) (upon
which our rule is patterned). Similarly,
the ABA in Formal Opinion 00-417 (2000)
found that a settlement agreement that
prevented a claimant’s counsel from
using the information learned during
the case being settled in any future case
violated Model Rule 5.6(b).

Finally, from the defense side, RPC
5.6(b) is not just a “problem” for claim-
ants’ counsel. The rule is framed to
prohibit offering such restrictions as well
as accepting them. In Adams v. Bellsouth
Telecommunications, Inc., No. 96-2473-CIV,
(unpublished), for example, the defense
lawyers were sanctioned for offering a
“consulting” arrangement to claimants’
counsel reminiscent of those just noted.
Depending on the relationship of a pro-
hibition of this kind to the overall deal
struck, provisions violating RPC 5.6(b)
could also put a settlement itself at risk as
unenforceable on public-policy grounds.

Aggregate Settlements
Aggregate settlements of multiple claim-
ant litigation are usually framed as: “My
client will pay ‘x’ dollars to resolve all of
these cases, but the offer is contingent
on all of your clients agreeing to settle.”
Aggregate settlements are permitted
under RPC 1.8(g) within specified limits,
and accompanying Comment 13 and
discuss them comprehensively. (Under
Comment 13, class actions are governed
by their own procedural rules.)

RPC 1.8(g) specifies that the claimants
affected must be told “the existence and
nature of all the claims . . . involved and the participation of each person in the settlement.” ABA Formal Ethics Opinion 06-438 (examining the ABA Model Rule upon which ours is based) counsels that the disclosure should also include:

- The total amount of the aggregate settlement or the result of the aggregated agreement. (Including whether the proposal is ‘all or nothing.’)
- The existence and nature of all of the claims, defenses . . . involved in the aggregated settlement.[1]
- The details of every other client’s participation in the aggregate settlement . . . whether it be their settlement contributions, their settlement receipts . . . or any other contribution or receipt of something of value as a result of the aggregate resolution. For example, if one client is favored over the other(s) by receiving non-monetary remuneration, that fact must be disclosed to the other client(s).
- The total fees and costs to be paid to the lawyer as a result of the aggregate settlement, if the lawyer’s fees and/or costs will be paid, in whole or in part, from the proceeds of the settlement or by an opposing party or parties.
- The method by which costs (including costs already paid by the lawyer as well as costs to be paid out of the settlement proceeds) are to be apportioned among them.” (Id. at 5; footnote omitted.)

ABA Formal Ethics Opinion 06-438 also notes that the disclosure “must be made in the context of a specific offer or demand . . . [and according to the informed consent required by the rule generally cannot be obtained in advance of the formulation of such an offer or demand.” (Id. at 6; footnote omitted.) Due to the significant potential for conflicts, RPC 1.8(g) requires that the claimants’ consent be confirmed in writing.

From the defense side, aggregate settlements are “easy” in the sense that they are expressly permitted and often provide significant practical benefits to clients facing multiple claimants represented by the same law firm that are all based on the same basic facts. From the plaintiffs’ side, aggregate settlements can offer significant practical benefits as well but they also place equally significant disclosure obligations on plaintiffs’ counsel. For both sides, the ethical obligations need to be addressed to preclude opening a door to possible rescission of the settlement based on state substantive contract law.

Mark Fucile, of Fucile & Reising LLP, handles professional responsibility, regulatory and attorney-client privilege matters, and law firm-related litigation for lawyers, law firms, and legal departments throughout the Northwest. He is a past chair and a current member of the WSBA Rules of Professional Conduct Committee, a past member of the Oregon State Bar’s Legal Ethics Committee, and a current member of the Idaho State Bar Professionalism and Ethics Section. He is a co-editor of the WSBA Legal Ethics Deskbook and the OSB’s Ethical Oregon Lawyer. He can be reached at 503-224-4895 and mark@frllp.com.

Congratulations to M. Lorena González, civil rights advocate

WE are proud to announce that SGB attorney M. Lorena González was recently presented with the Distinguished Service Award by the WSBA Civil Rights Law section “in recognition of exceptional leadership and devoted service to Civil Rights Law.”

“Exceptional” is the perfect word to describe Lorena. Since joining SGB in 2007, she has devoted her practice to advocating for victims of police misconduct, survivors of sexual abuse as well as defending the rights of workers. Lorena is a past president of the Latina/o Bar Association, the recipient of the section’s Civic Leader Award and an organization SGB has partnered with to provide pro bono legal counsel to hundreds of people at free legal clinics. We are dedicated to civil rights in all of its forms and thank Lorena for her contributions to our efforts. We’re fortunate to count Lorena as a mentor, colleague and friend.
WSBA Board of Governors Meeting
July 23–24, 2010
Leavenworth

BY MICHAEL HEATHERLY

After nearly a year of debate, the Board of Governors voted to indefinitely postpone a decision on the proposed overhaul of Washington’s bar examination. At its July 23–24 meeting in Leavenworth, the Board chose to defer action on the proposal while creating a task force to further study issues that had arisen in the debate. Also at the meeting, the BOG voted to hear additional comment regarding proposed WSBA Bylaw amendments affecting judicial members and to request a position paper from the Civil Rights Law Section before voting on a resolution regarding the controversial new Arizona immigration statute.

Regarding the bar examination, the Board began debate in October 2009 concerning a possible change from Washington’s all-essay, state-specific test to one incorporating standardized, multistate components, perhaps based on the Uniform Bar Examination (UBE) developed by the National Conference of Bar Examiners (NCBE). Supporters of uniform examinations argue that they are more reliable in measuring competency in particular areas of law and less costly to administer than an all-essay examination. In addition, the UBE is designed to be “portable,” meaning that in the bar admissions process states can choose to accept scores from examinations taken in other states. This allows examinees to pursue admission and employment in multiple states while having to take only one examination.

However, at previous meetings, BOG members and others raised questions about the uniform tests, including concerns that they unfairly discriminate against female and minority applicants. Statistics from the commonly used Multistate Bar Examination over several years showed that members of racial and ethnic minorities consistently scored lower than Caucasian examinees. The issue was further complicated for the BOG, however, when analysis of past Washington bar examinations showed similar but even more pronounced racial and ethnic disparities.

At the July meeting, Governor Loren Etengoff proposed adoption of an examination that would combine the main components of the UBE with elements covering areas of law specific to Washington. Governor Roger Leishman proposed a variation on Etengoff’s plan, which would have added the multistate professional responsibility examination as well as an essay component on Washington law to be administered by the existing state Board of Bar Examiners. Some governors spoke in favor of going ahead with a change, particularly citing the benefit of portability.

However, other Board members again raised their concerns over the uniform test elements and questioned why Washington should be in a hurry to adopt the UBE. As of the date of the meeting, only two states had officially adopted the UBE. While many other states are considering adopting it, it is uncertain how many will do so or how soon, raising the question of how portable UBE scores actually will be. Governor David Heller referred to the fledgling UBE as a “pig in a poke.” He urged his fellow Board members to wait a year or two to see how many other states adopt the UBE and whether the NCBE takes action to correct the ethnic and racial discrepancies seen in
its predecessors.

Governor Brenda Williams, who has criticized the discriminatory nature of the uniform examinations and questioned the portability claims, moved to table the issue indefinitely. The motion was approved 8-4, with Board members commenting that the decision does not mean the issue cannot be revived at some point. The BOG then unanimously approved a motion to appoint a task force of Board members and Jean McElroy, WSBA director of regulatory services, to further study the questions raised in the debate. The task force was to report back to the board at the October 29-30, 2010, meeting with a recommendation as to what WSBA staff should do next to address the Board’s ongoing concerns.

Also at the July meeting, the BOG voted to postpone action on a proposed Bylaw amendment that would impose a $200 WSBA license fee on judicial members, equal to that paid by inactive WSBA members. Judicial members have not been charged a fee in the past. The revision also would explicitly require judges to provide their registry information to the WSBA at least annually and to pay into the Lawyers’ Fund for Client Protection if the latter is required by the state Supreme Court. Judicial members have not been subject to the LFCP in the past.

The proposal was part of a long-term project by the WSBA Bylaws Review Committee, which has led a comprehensive revision of the Bar’s entire set of Bylaws. At a June 22, 2010, meeting with the committee, representatives of the Superior Court Judges’ Association (SCJA) and U.S. District Court judiciary spoke in adamant opposition to the proposed changes in the judicial membership Bylaw. The District and Municipal Court Judges’ Association and two Superior Court judges who spoke in their individual capacities supported the proposed changes.

At the BOG meeting, King County Superior Court Judge Andrea Darvas, representing the SCJA, told the Board she felt the judges had not been given sufficient opportunity for input as the proposal was taking shape. She noted that judges are prohibited from practicing law and not subject to regulation by the WSBA, Judge Darvas further maintained that by paying a fee to the WSBA, which gets involved in political issues, judges would be breaching their ethical obligation to refrain from taking positions on such issues. She acknowledged that unlike many states, the Washington bench and bar have traditionally enjoyed a collegial relationship. However, al-

luding to a BOG member’s remark that judges and lawyers are part of the same professional family, Judge Darvas said, “This is not the way to treat your family…this is the way you treat your children.”

In contrast, King County Superior Court Judge Steven González, speaking in his personal capacity, told the Board he will always consider himself a lawyer. He said he felt that judges’ WSBA memberships had been subsidized for years by the paying members and that he had no objection to paying the proposed license fee.

BOG members were apologetic toward the judges and expressed dismay that many felt insulted by the proposal and not having more opportunity to express their views in the process. Governor Lori Haskell said she believed irreparable damage between the WSBA and the judges would be done if the proposed Bylaw were passed immediately. Ultimately, the Board voted to submit the proposal to all judicial organizations for further consideration and to give them an opportunity to address the issue at the September 23-24, 2010, BOG meeting.

In other business at the July meeting, the BOG voted to request a position paper from

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the WSBA Civil Rights Law Section regarding the constitutionality of statutes such as the Arizona immigration bill. The Section is to submit the paper for review by the Board at the September BOG meeting. At the June BOG meeting, the Board had debated but deferred action on a resolution opposing Arizona’s Senate Bill 1070, which requires state law enforcement officials to confirm individuals’ immigration status when making a traffic stop and finding reasonable suspicion to believe someone is present unlawfully in the United States. (On July 28, a federal district court judge granted a preliminary injunction blocking the most controversial portions of SB 1070. That decision is on appeal to the Ninth Circuit.) At the July meeting, Governor Heller said he had heard that some city or county governments in Washington were considering enacting similar laws, in which case the Board might want to submit a position paper to any such government body regarding the constitutionality of the law.

Also at the July meeting, the BOG:

- Approved model residential construction contracts drafted by the WSBA Construction Law Section. The Section will distribute the contracts — separate versions for cost-plus and lump-sum construction projects — to consumers, contractors, and lawyers. Proponents had told the Board that legal disputes over residential construction work, including new structures as well as remodeling, often arise because a written contract is absent, poorly drafted, or biased in favor of the contractor. As requested by the BOG, the contracts are accompanied by disclaimers pointing out that they do not constitute legal advice, do not create an attorney/client relationship between WSBA and the user, and are not guaranteed by the WSBA to be current with applicable law.
- Approved a resolution supporting ratification of the Convention on the Rights of the Child, as proposed by the WSBA World Peace Through Law Section. The Convention affects the practice of law where children and families are involved and the administration of justice for children. The Convention went into effect in 1990 and has been ratified by all of the U.N. member states except the United States and Somalia. The United States signed the Convention in 1995, but has not yet ratified it. More information about the convention and links to the text of the documents involved are at www.wsba.org/media/releases/convention0810.htm.
- Appointed District 6 Governor Patrick Palace to serve as WSBA treasurer for the 2010–2011 fiscal year. Palace is a second-year Board member who practices in Tacoma.
- Approved a proposal to increase the pro hac vice fee from $250 to $450 per case; the recommendation requires approval by the Supreme Court. The change is estimated to raise an additional $100,000 to $125,000 in revenue per year. In fiscal year 2009, the Bar received $144,750 in pro hac vice fees, from 579 applications.

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

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The Washington State Bar Association’s 50-Year Member Tribute Luncheon

Please join us as we honor the 2010 WSBA 50-year members. All members of the legal community are invited.

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Registration is $45 per person (table of 10 = $450). To make your reservation, please return this form (or a photocopy) with your credit-card information or check payable to WSBA. Space is limited, so please make your reservations early. Reservations and payment must be received by November 3, 2010 (refunds cannot be made after November 9).

- [ ] MasterCard  [ ] Visa  No. ____________________________ Exp. date ____________
- Name as it appears on card__________________________________________________
- Signature  _______________________________________________________________
- _____ (no. of persons) X $ _____ (price per person) = $ ____________ TOTAL

Please list the names of all attendees and indicate meal choices. Be sure to include yourself.

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50-Year Member Tribute Luncheon
1325 Fourth Avenue, Suite 600
Seattle, WA 98101-2539
Phone: 800-945-WSBA or 206-443-WSBA • Fax: 206-727-8310

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Civil legal aid programs currently are experiencing a flood of clients facing homelessness due to foreclosures, a skyrocketing need for bankruptcy assistance, and other serious legal problems as a result of the economic downturn.

Please join us in donating the equivalent of at least one billable hour to the legal community’s annual Campaign for Equal Justice. Your charitable contribution to the Campaign gives our state’s 26 legal aid programs the ability to address critical survival needs of Washington’s most vulnerable.


Opportunity for Service

Bench-Bar-Press Committee of Washington
Application Deadline: November 8, 2010

The WSBA Board of Governors is accepting letters of interest and résumés from members interested in serving on the Bench-Bar-Press Committee of Washington. Three positions are available. A written expression of interest and a résumé are also required for any incumbent seeking reappointment. All three incumbents are eligible for reappointment. The term will begin January 1, 2011, and expire December 31, 2013. The Bench-Bar-Press Committee was formed in 1963 to foster better understanding and working relationships among judges, lawyers, and journalists. Its mission is to seek to accommodate, as much as possible, the tension between the constitutional values of free press and fair trial through educational events and relationship building. The committee is chaired by the Chief Justice of the Washington State Supreme Court and includes representatives from the legal profession, judiciary, law enforcement, and news media. The committee meets as a whole once or twice each year. Subcommittees of volunteers are organized on an ad hoc basis to plan and execute events. Please submit letters of interest and résumés to: WSBA Bar Leaders Division, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539 or e-mail barleaders@wsba.org.

Thank You to Our Volunteers!
Thank you to all of our volunteers who have helped more than 500 homeowners in Washington through the Home Foreclosure Legal Aid Project!
Stay tuned for more information on a new program that will provide additional opportunities for service. The WSBA Moderate Means Program, a partnership with the three Washington law schools, will serve moderate-income families in Washington through lawyers representing these individuals for a reduced fee. Information about training opportunities and how to sign up will be forthcoming this month via e-mail. For more information, please contact Aline Carton at alinec@wsba.org, 206-727-8204, or 800-945-9722, ext. 8204.

Thank You to Our Volunteers!
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 e-mail judithb@wsba.org.

Construction Law Section Develops Model Residential Construction Contracts

As a public service to the construction industry and its residential consumers, the WSBA Construction Law Section has developed two Model Residential Construction Contracts: the Lump Sum Contract (also known as a Fixed Price Contract) and the Cost Plus Contract. The contracts are available for free download on the WSBA website at www.wsba.org/lawyers/groups/constructionlaw.

2011 Licensing and MCLE Information

Have you used mywsba? Last year, almost half of WSBA members completed their license renewal entirely online at www.mywsba.org. License renewal forms and the Section Membership form will be mailed together in mid-October, and online licensing will be available at that time. Remember, there is no longer a “grace period” for the month of February, so renewal and payment must be completed by February 1, 2011. However, as the section membership year is October 1, 2010, through September 30, 2011, we encourage you to join or renew sections in October to receive the full benefit of the membership. For detailed instructions, go to www.wsba.org.

WSBA Bylaw Section III(G)(1)(a)(2) on Armed Forces Fee Exemption provides for a membership fee exemption for eligible members of the Armed Forces whose WSBA membership is active. The WSBA will accept fee exemption requests from October 14, 2010, until February 1, 2011, for the 2011 licensing year.

If you are due to report MCLE compliance for 2008–2010 (Group 1), you will receive your Continuing Legal Education Certification (C2) form in the license packet that will be mailed in mid-October. Lawyers in Group 1 include active members who were admitted through 1975, and in 1991, 1994, 1997, 2000, 2003, and 2006. (Members admitted in 2009 are also in Group 1, but are not due to report until the end of 2013.) All credits must be completed by December 31, 2010, and certification (C2 form) must be completed online or be postmarked or delivered to the WSBA by February 1, 2011. Last year, 58 percent of

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Our tax attorneys focus their practice exclusively on tax controversies and tax issues for clients in Washington and throughout the U.S. Clients need experienced representation before the IRS or Department of Revenue in the event of an audit or investigation. Our tax controversy attorneys understand the procedural nuances and complexities in dealing with the IRS and state revenue departments and work to not only minimize taxes, but to vigorously defend clients before the federal and state taxing authorities.

Gary Stirbis, JD, LLM-Tax leads our tax controversy practice. Gary previously was with Moss Adams LLP and the Office of Chief Counsel of the IRS. He brings a wealth of knowledge and expertise to address your tax problems. You can contact Gary at 253-572-4500 or gstirbis@eisenhowerlaw.com

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“Foundations of American Democracy” Civics Pamphlet

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

Lawyer Services Solution of the Month: Procrastination

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

LOMAP and Ethics Traveling Seminar

WSBA comes to you! Join us on October 19 in the Colfax/Pullman area, in Walla Walla on October 20, in Richland on October 21, or in Marysville/Tulalip on October 26. Four ethics credits are available. Cost is $99 for lawyers and $29 for non-lawyer staff. To register, call or e-mail Julie Salmon at 206-733-5914, 800-945-9722, ext. 5914, or juliesa@wsba.org.

Get More Out of Your Software

The WSBA offers hands-on computer clinics for members wanting to learn more about Microsoft Office programs — Outlook and Word, as well as Adobe Acrobat — can do for a lawyer. We also cover online legal research such as Casemaker and other resources. Are you a total beginner? No problem. The clinic teaches helpful tips you can use immediately. Computers are provided, or bring your laptop. Seating is limited to 15 members. The October 11 clinic will meet from 10:00 a.m. to noon at the WSBA office and will focus on Outlook and practice management software. The October 14 clinic will meet from 2:00 to 4:00 p.m. and will focus on Adobe Acrobat Professional Version 9 (not the Reader). There is no charge and no CLE credits. To reserve your place, contact Julie Salmon at 206-733-5914, 800-945-9722, ext. 5914, or juliesa@wsba.org.

Facing an Ethical Dilemma?

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

Search WSBA Ethics Opinions Online

Formal and informal WSBA ethics opinions are available online at http://mcle.mywsba.org/io, 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.

Weekly and Monthly Job Search Groups

Join us Wednesday, October 13, from noon to 1:30 p.m. at the WSBA office to hear Betsy Gutting speak. Betsy is a career coach, and attorney. She will be speaking about empowering attorneys to identify the ideal career for them, and will offer ways to manage the stress of career transition. The Weekly Job Search Group meets Mondays...
at 10:30 a.m. Contact Dan Crystal at 206-727-8267, 800-945-9722, ext. 8267, or danc@wsba.org. To access additional job search resources, visit www.wsba.org/lawyers/services/jobsearchresources.htm.

**Speakers Available**
The WSBA Lawyers Assistance Program offers speakers for engagements at county, minority, and specialty bar associations, and other law-related organizations. Topics include stress management, life/work balance, and recognizing and handling problem-personality clients. Contact Peggy Harkrader, lawyer services coordinator, at 206-727-8268, 800-945-9722, ext. 8268, or peggyh@wsba.org.

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

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

**Casemaker Online Research**
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 or go to www.mywsba.org and click on Access Casemaker in the left sidebar. Click on the Casemaker button to begin. For help using Casemaker, contact Julie Salmon at 206-733-5914, 800-945-9722, ext. 5914, juliesa@wsba.org, or call the WSBA Service Center at 800-945-WSBA (9722) or 206-443-WSBA (9722). The LOMAP staff is available to provide materials, answer questions, and make recommendations. To make an appointment, contact Julie Salmon at 206-733-5914, 800-945-9722, ext. 5914, or juliesa@wsba.org.

**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. Contact Margaret Shane at 206-727-8244, 800-945-9722, ext. 8244, or margarets@wsba.org. The complete Board of Governors meeting schedule is available on the WSBA website at www.wsba.org/info/bog/2009_2010meetingschedule.htm.

**Usury Rate**
The average coupon equivalent yield from the first auction of 26-week treasury bills in September 2010 was 0.183 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.

The LOMAP staff is available to provide materials, answer questions, and make recommendations. To make an appointment, contact Julie Salmon at 206-733-5914, 800-945-9722, ext. 5914, or juliesa@wsba.org.

**Upcoming Board of Governors Meetings**
- **October 29–30, Vancouver, WA**
- **December 10–11, La Conner**
- **January 27–28, 2011, 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.

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**Lawyers Helping Hungry Children Annual Luncheon • October 13th**

Save the date! On October 13, 2010, Lawyers Helping Hungry Children will hold its annual luncheon to support hungry children in our state and beyond. Former Supreme Court Justice Bobbe Bridge and Washington State Attorney General Rob McKenna will offer the keynote addresses, which will be held at the Grand Hyatt in downtown Seattle. This event is sure to fill up fast. To purchase a table or seat for the luncheon, or to learn more about Lawyers Helping Hungry Children, please contact Neal Philip at nphilip@fultonphilip.com or 206-652-3260.

Lawyers Helping Hungry Children is a nonprofit organization composed primarily of members of the legal profession dedicated to ending childhood hunger in Washington. Lawyers Helping Hungry Children also raises money for beneficiary organizations that provide food to children of low-income families. These beneficiary organizations include: WithinReach, CARE, Children’s Alliance, City of Seattle Summer Food Program, Northwest Harvest, and Emergency Feeding Program.

The Tacoma Chapter of Lawyers Helping Hungry Children will also hold a fundraiser October 13th. Please contact Todd Carlisle at toddc@nwjustice.org for more information on the Tacoma event.
Announcements

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

is pleased to announce that

**Carla Calogero**

has joined the firm as an Associate.

Ms. Calogero’s practice will focus on elder and disability law and assisting clients in administration matters and litigation in those areas. In addition, Ms. Calogero will support all areas of the firm’s practice, including: guardianships, trusts, probates, estate planning, business planning, commercial litigation, maritime law, insurance defense, and employment law.

Ms. Calogero graduated from Seattle University School of Law, *cum laude*, in 2009. She also holds Master’s degrees in Bioethics and in Education.

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Seattle, WA 98104-1571

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announces the opening of his law practice in Seattle, Washington, focusing on complex litigation consulting, mediation, and arbitration.

Mr. Van Cleve has more than thirty years of federal government and private practice experience. In Washington, D.C., his complex litigation firm represented domestic and foreign clients in a broad range of high-stakes matters, including patent licensing, environmental, insurance, corporate, civil rights class action, and antitrust. As Deputy Assistant Attorney General, Department of Justice, he supervised the litigation of several hundred civil enforcement cases by a staff of 150 prosecutors. He managed the day-to-day litigation of the Exxon Valdez oil spill case. He served as court-appointed mediator for the U.S. District Court, District of Columbia, and as Member, Attorney-Client Arbitration Board, District of Columbia Bar Association. He also served as Special Counsel to the Secretary of Defense.

He offers a strong emphasis on creative, efficient solutions closely tailored to clients’ needs at reasonable rates, J.D., *cum laude*, Harvard Law School, 1977. Member of the bar: State of Washington; District of Columbia.

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Tel.: 206-432-2218; Fax: 206-525-0618

[gwvanclave@gmail.com](mailto:gwvanclave@gmail.com)

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**Higginson Law Offices** is pleased to announce that **Garrett J. Beyer** has joined **Carla J. Higginson** as a partner and that the firm name has changed to 

**Higginson Beyer**

*A Professional Services Corporation*

The firm has offices in Friday Harbor and Seattle. Mr. Beyer, who has been practicing in Seattle since 1994, will continue to focus on international taxation, structuring for business development in the U.S. and abroad, and complex domestic and multi-national estate planning. Ms. Higginson, who has been practicing in Friday Harbor since 1980, will continue her practice in civil litigation, criminal defense, family law, small business entity formation, real estate, land use, estate planning, probate, and guardianships.

**Friday Harbor office:**

175 Second St. N.

Friday Harbor, WA 98250

Tel: 360-378-2185

[carla@higginsonbeyer.com](mailto:carla@higginsonbeyer.com) • [garrett@higginsonbeyer.com](mailto:garrett@higginsonbeyer.com)


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**The Washington State Bar Association**

is pleased to offer advertising services in the Announcements section of *Bar News*.

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Mac has been a trial lawyer in Seattle for almost 40 years. He has tried a wide range of cases including maritime, personal injury, construction, products liability, consumer protection, insurance coverage, and antitrust law.

Mac has 15 years of mediation experience. He has mediated over 1,000 cases in the areas of maritime, personal injury, construction, and commercial litigation.

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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 wherever 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.

Resigned in Lieu of Disbarment


In April 2006, Ms. Malkin was hired by a Washington State nonprofit corporation to serve as its executive director. In connection with her duties as executive director, Ms. Malkin had access to the corporation's funds, checking accounts, credit cards, and debit cards. On multiple occasions while serving as executive director and without the knowledge or approval of the nonprofit's Board of Directors, Ms. Malkin used the corporation's funds, checking account, credit cards, and debit cards for her personal use, totaling at least $20,000. Ms. Malkin had no entitlement to use the funds for her personal use. In May 2008, upon discovering the alleged conduct, the nonprofit fired Ms. Malkin.

Ms. Malkin's conduct violated RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

Joanne S. Abelson represented the Bar Association. Ms. Malkin was represented by Kenneth S. Kagan.

Disbarred

Paul H. King (WSBA No. 7370, admitted 1977), of La Union, Philippines, formerly of Seattle, was disbarred, effective June 10, 2010, by order of the Washington State Supreme Court following an appeal. This discipline was based on conduct involving representation of a client while suspended from the practice of law and failure to cooperate with disciplinary proceedings. For more information, see In re Disciplinary Proceeding Against King, 168 Wn.2d 888, 232 P.3d 1095 (2010).

Mr. King was suspended from the practice of law from March 9, 2005, until June 7, 2005. In September 2004, Mr. King was retained by Client R to represent him in potential litigation against his employer. Mr. King retained a local Virginia attorney to assist in filing the lawsuit in Virginia state court. The case was later removed to U.S. District Court for the Eastern District of Virginia. Mr. King was the lead lawyer in the litigation but did not apply for pro hac vice admission.

On March 9, 2005, Mr. King notified attorneys for the opposing side, via e-mail, that he was “taking a leave” and that all pleadings should be sent to another lawyer at the same address. Mr. King did not inform Client R or his Virginia co-counsel that he was “taking a leave.” Despite this e-mail, Mr. King continued to act as the lead lawyer in the litigation and never advised Client R to seek other counsel due to Mr. King’s suspension. On March 25, 2005, Mr. King submitted a declaration to the Association stating that he had concluded his affairs and closed his practice by March 9, 2005, and that he had no active clients. On May 26, 2005, Mr. King’s co-counsel discovered that Mr. King was suspended and informed Client R, who fired Mr. King on May 31, 2005, and simultaneously filed a grievance against him.

Disciplinary counsel sent Mr. King a request to respond to Client R’s grievance. Mr. King prepared a summons and complaint designating himself as plaintiff and Client R as defendant and attempted service on Client R between July 18 and July 26, 2005. The complaint listed a fake case number and asserted claims and damages arising from Client R’s termination of Mr. King, as well as several false statements, including that Mr. King was “licensed to practice law at all times relevant to this lawsuit” and that Client R fired Mr. King on March 9, 2005. Mr. King sent disciplinary counsel notice of the lawsuit on July 22, 2005, and asked that the grievance investigation be deferred. The request was denied by disciplinary counsel. Mr. King later filed a one-page response to Client R’s grievance 83 days after he initially indicated he would respond. On October 12 and November 2, 2005, disciplinary counsel issued subpoenas daces tecum commanding Mr. King to appear and produce documents. While the Association was still investigating Client R’s claims, disciplinary counsel deposed Witness M regarding Mr. King’s actions; however, the testimony was never offered in any proceeding.

On November 21, 2005, Mr. King filed a motion for protective order with the Association, arguing that the Association lacked jurisdiction over Client R’s grievance because the case was pending in Virginia, and that testimony from Witness M needed to be suppressed because Mr. King had not received notice of the deposition. The next day, Mr. King failed to show up for his deposition. The Disciplinary Board chair denied his motion for protective order on June 6, 2006, and Mr. King was sent notice of the rescheduled deposition.

On July 20, 2006, Mr. King filed a motion to terminate the deposition and did not appear at the deposition or produce documents required by the subpoena. His motion was later denied, and Mr. King was notified that the deposition would resume on September 5, 2006. His assistant sent a fax to disciplinary counsel on September 1, 2006, indicating Mr. King was out of town for the holiday and not expected back until after September 5. Mr. King did not appear or produce documents at the September 5 deposition.

On January 5, 2007, a Disciplinary Board Review Committee ordered a hearing on Client R’s grievance. Mr. King filed a motion to vacate the order, which the Disciplinary Board Chair denied. Subsequently, Mr. King filed a motion to vacate the chair’s second denial and a separate notice of unavailability on March 12, 2007, stating he would be unavailable until June 19, 2007. Disciplinary counsel filed and served a formal complaint on Mr. King on May 8, 2007, without ever taking his deposition. A hearing officer was appointed in July 2007. After the hearing officer was appointed, Mr. King amended a petition for writ of mandamus to include the hearing officer’s name and filed a witness list that included the hearing officer, disciplinary counsel, the 13 Disciplinary Board members, and five other employees of the Office of Disciplinary Counsel. The hearing officer found that Mr. King did not have a good-faith intention to call these witnesses and struck the disciplinary counsel, the Board members, and himself from the list. A month before his hearing, Mr. King filed a motion asking the hearing officer to excuse himself because he was a named party on the mandamus action. The motion was denied.

Mr. King’s hearing began April 28, 2008, and concluded May 12, 2008. Among other findings, the hearing officer found that from the start, Mr. King continuously treated disciplinary proceedings as a “cat-and-mouse game” by failing to comply with orders, cooperate in
post-complaint discovery, and “repeatedly waiting until the last minute to raise objections that could have been raised months earlier.”

Mr. King made 17 separate efforts (including appeals) to halt or delay the hearing, most of which were frivolous.

In his appeal of the hearing officer’s disbarment recommendation, Mr. King did not dispute the hearing officer’s reasoning and conclusions that Mr. King’s actions violated multiple ethical rules or that a number of those violations independently warranted disbarment. Mr. King never challenged the hearing officer’s findings of fact, but rather alleged violations of due process and appearance of fairness. The Supreme Court found Mr. King’s due process rights had not been violated and that his claims of fundamental unfairness were unfounded, and ordered Mr. King disbarred.

Mr. King’s conduct violated RPC 3.1, prohibiting a lawyer from bringing or defending a proceeding, or asserting or controverting an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law; RPC 5.8(e), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; RPC 8.4(f), prohibiting a lawyer from deliberately disobeying or violating a court order directing him or her to do or cease doing an act which he or she ought in good faith to do or forbear; and RPC 8.4(j), prohibiting a lawyer from willfully disobeying or violating a duty or sanction imposed by or under the Rules for Enforcement of Lawyer Conduct in connection with a disciplinary matter.

Scott G. Busby and Linda B. Eide represented the Bar Association. Mr. King represented himself. David M. Schoeggl was the hearing officer.

Disbarred

Shane O. Nees (WSBA No. 29944, admitted 2000), of Fairfield, was disbarred, effective June 3, 2010, by order of the Washington State Supreme Court, following a default hearing. This discipline is based on conduct involving failure to act diligently, failure to communicate, failure to withdraw from representation, making false representations to a tribunal, failure to expedite litigation, failure to return client property, the commission of an illegal act, and failure to cooperate with investigation proceedings.

**Matter No. 1:** In April 2006, Client B hired Mr. Nees to represent her in a personal injury matter that arose out of an auto accident. Later that month, Mr. Nees forwarded a settlement offer from the other party’s insurance company to Client B and told her the insurance company was claiming she was 50 percent at fault for the accident. Client B disagreed and declined the offer. In June 2006, the insurance company issued a check to Client B for 50 percent of the damages to her vehicle. She kept the check but did not cash it. Mr. Nees left the firm in March 2007 and, with Client B’s agreement, took her case with him. He never informed Client B of his new address and did not change his address of record with the Association until May 22, 2008. The insurance company attempted to contact Mr. Nees regarding Client B’s matter, but Mr. Nees did not respond. In April 2007, the insurance company contacted Client B directly to inquire why she had not cashed the check and to advise her that it was “stale-dated.” Client B called Mr. Nees, who assured her that he would call the insurance company, but he never did and took no further action. Client B tried many times thereafter to contact Mr. Nees for information on her case, but Mr. Nees did not respond. Sometime after March 2008, Client B discovered Mr. Nees’s phone had been disconnected. When Client B attempted to deal with the insurance company herself, she was told they could not speak to her since she was represented. Mr. Nees never withdrew from Client B’s representation. On May 19, 2008, Client B filed a grievance against Mr. Nees. On June 17, 2008, Mr. Nees was suspended from the practice of law for nonpayment of licensing fees.

**Matter No. 2:** In April 2006, Mr. Nees filed a personal injury lawsuit on behalf of a husband and wife (Client W) as a result of an automobile accident. When Mr. Nees left his firm in March 2007, he took Client W’s case with him. He did not notify the Association of his change of address until May 2008. He never notified Client W of his new address. In July 2007, the defendants in the case prevailed in a mandatory arbitration. Mr. Nees filed for trial de novo, which was set for October 8, 2007, and he informed Client W of the date. Two days before trial, Mr. Nees told Client W that the trial was going to be continued because the docket was too full. After telling Client W that, Mr. Nees appeared in court on October 8, 2007, while Client W, believing the trial would be continued, did not appear. It would not have been necessary to continue the trial if Client W had appeared and Mr. Nees had been prepared for trial. Mr. Nees’s statement about the continuance was false. On Mr. Nees’s motion, the court continued the trial date to February 2008 and ordered terms of $447.80 to be paid to defendants by November 26, 2007, because Client W failed to appear. Mr. Nees did not advise Client W of the February 2008 date or the order requiring payment of terms. Neither Mr. Nees nor Client W paid the terms. Later, Client W wrote twice to Mr. Nees seeking information about his case, but Mr. Nees did not respond. Client W then left the state for the winter without knowing about the upcoming trial date. On February 1, 2008, Mr. Nees did not appear for a court-appointed pretrial conference, and the court struck the trial date because of his failure to appear. Subsequently, the defendants filed a motion to dismiss. In response, Mr. Nees filed a motion to continue the trial. In his declaration accompanying the motion, Mr. Nees falsely stated that he advised Client W of the February 2008 trial date, but that Client W said that he could not drive back due to inclement weather.

On March 14, 2008, the court dismissed Client W’s action with prejudice, finding that plaintiffs and plaintiffs’ attorney had willfully disregarded the court’s orders, failed to pay the $447.80 in terms, and failed to appear at the October 2007 trial date. The court awarded the defendants attorney fees and costs of $4,094.67. Client W returned to Washington in March 2008 and left phone messages for Mr. Nees requesting an update of his matter. Mr. Nees did not respond, and on May 12, 2008, Client W filed a grievance.

**Matter No. 3:** On April 2007, Client M hired Mr. Nees to pursue a personal injury matter. Prior to leaving the country for three weeks in August 2007, Client M tried to contact Mr. Nees for an update on his matter, but Mr. Nees did not respond. When Client M returned, he left several voice messages and sent e-mails to Mr. Nees, who again did not respond. Only after Client M threatened to terminate Mr. Nees on October 9, 2007, did Mr. Nees respond to Client M’s request for information. At the end of November 2007, Client M sent Mr. Nees a medical report and asked Mr. Nees to keep him updated on any progress made in the matter. Mr. Nees informed Client M in December 2007 and January 2008 that progress was being made in negotiations and that he was working on a settlement package to present to the other party. Client M tried to contact Mr. Nees after January 2008 to obtain status of the matter, but Mr. Nees did not respond. Mr. Nees never completed or forwarded the settlement package to the other party. On March 11, 2008, Client M terminated Mr. Nees’s representation by e-mail and requested his client file. Mr. Nees did not respond to Client M’s e-mail or return his file. Client M then contacted the Association for help in obtaining his file. Mr. Nees did not respond to the Association’s requests and
did not return Client M’s file. On April 21, 2008, Client M filed a grievance against Mr. Nees. **Matter No. 4:** In October 2007, Client D hired Mr. Nees to pursue a personal injury claim on her behalf and provided Mr. Nees with documents related to the accident. Mr. Nees advised Client D to call him on February 27, 2008, after seeing her doctor, to discuss strategy for settlement. On that day, Client D left Mr. Nees messages, but Mr. Nees did not respond. He also did not respond to multiple subsequent calls from Client D. When it was clear that Mr. Nees took no action to settle the matter or pursue it in court, Client D hired another attorney. Client D called Mr. Nees and left messages informing him that she was terminating his representation and asked him to return her client file and paperwork. Mr. Nees did not respond to Client D’s calls, or return her file or the documents she had given him. On April 3, 2008, Client D filed a grievance against Mr. Nees. On May 20, 2008, Mr. Nees filed an untimely response to Client D’s grievance. He never returned Client D’s file.

**Matter No. 5:** Mr. Nees was hired by Client J’s company to collect on two debts. In the first case, Mr. Nees obtained a judgment and order directing the debtor’s employer to garnish the debtor’s wages and pay $386.60 to Client J. The employer paid the funds on June 4, 2008, via check made payable to Mr. Nees. In the second case, Mr. Nees obtained a default judgment against the debtor. Shortly thereafter, Mr. Nees was terminated by Client J’s company, who hired a new lawyer. The new lawyer sought to collect the judgment by garnishing the debtor’s employer. The employer paid the funds to the clerk of the court in September and October 2008. The clerk forwarded the two payment checks, totaling $1,812.35, to Mr. Nees instead of to Client J’s new lawyer. In both cases, Mr. Nees endorsed the checks and negotiated them without notifying Client J of the receipt of the checks or tendering payment of the funds to Client J. Mr. Nees was not entitled to any offsets for fees or costs. Client J found out about the payments when it contacted the employer and the garnishee defendant and was given copies of the cancelled checks. In the second case, Mr. Nees negotiated the checks after he was suspended from the practice of law. Client J filed a grievance against Mr. Nees on September 19, 2008.

**Failure to Cooperate:** In all but one of the foregoing matters, Mr. Nees failed to respond to the Association’s requests for his response to client grievances. In Matter No. 4, Mr. Nees’s response was untimely. The Association had to subpoena Mr. Nees for a non-cooperation deposition, to be held on September 23, 2008. Mr. Nees did not appear at the deposition. On October 17, 2008, the Association filed a petition with the Supreme Court for an interim suspension based on Mr. Nees’s failure to cooperate with the grievance investigations. The Court ordered Mr. Nees to appear on November 18, 2008, to show cause why the petition should not be granted. Mr. Nees contacted the Association after the order was issued and said that he would provide written responses to the grievances by November 10, 2008, but failed to do so. Mr. Nees did not appear at the show cause hearing or file a response to the petition for interim suspension. On November 19, 2008, the Court granted the Association’s petition and suspended Mr. Nees from the practice of law. On June 3, 2010, Mr. Nees was disbarred.

Mr. Nees’s conduct violated RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; RPC 1.4, requiring a lawyer to promptly communicate with a client and explain a matter to the client to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; RPC 1.16(d), requiring that, upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client’s interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee that has not been earned or incurred; RPC 3.2, requiring a lawyer to make reasonable efforts to expedite litigation consistent with the interests of the client; RPC 3.3(a)(1), prohibiting a lawyer from knowingly making a false statement of material fact or law to a tribunal; RPC 8.4(b), prohibiting a lawyer from committing a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer; and RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; RPC 8.4(i), prohibiting a lawyer from committing any act of moral turpitude, corruption, or other act reflecting the disregard for the rule of law; and RPC 8.4(l), prohibiting a lawyer from violating a duty or sanction imposed by or under the Rules for Enforcement of Lawyer Conduct.

M. Craig Bray represented the Bar Association. Mr. Nees did not appear. John H. Loeffler was the hearing officer.

**Disbarred**

**Ann Whitlow-Clark** (WSBA No. 14579, admitted 1984), of Dallas, Texas, was disbarred, effective July 2, 2010, by order of the Washington State Supreme Court, following approval of a stipulation. This discipline is based on conduct that resulted in a felony conviction. In stipulating to disbarment, Ms. Whitlow-Clark does not affirmatively admit the misconduct set forth below but acknowledges that, under ELC 10.14(c), the court record of the conviction would be conclusive evidence of her guilt at a disciplinary hearing and that there is a substantial likelihood the Association would be able to prove, by a clear preponderance of the evidence, the misconduct.

On July 9, 2000, Ms. Whitlow-Clark shot and killed a former boyfriend in Dallas, Texas. On December 21, 2000, Ms. Whitlow-Clark was indicted under V.T.C.A., Penal Code § 19.02 for first degree murder for intentionally and knowingly causing the death of her former boyfriend by shooting him with a firearm. *State of Texas v. Whitlow-Clark*, Dallas County Court, 265th Judicial District, No. F00-22003-PR. This crime is a felony. On February 6, 2003, a jury found Ms. Whitlow-Clark guilty of first degree murder.

Ms. Whitlow-Clark’s conduct violated RPC 8.4(b), prohibiting a lawyer from committing a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer; and RPC 8.4(i), prohibiting a lawyer from committing any act of moral turpitude, corruption, or any unjustified act of assault or other act which reflects disregard for the rule of law, whether the same be committed in the course of his or her conduct as a lawyer, or otherwise, and whether the same constitutes a felony or misdemeanor or not.

Joanne S. Abelson represented the Bar Association. Ms. Whitlow-Clark represented herself.

**Reprimanded**

**Colleen A. Hartl** (WSBA No. 18051, admitted 1988), of Federal Way, was ordered to receive a reprimand on June 2, 2010, following approval of a stipulation by the Disciplinary Board. This discipline was based on conduct involving misrepresentation of facts in a disciplinary proceeding and attempting to influence witness testimony.

Ms. Hartl was a municipal court judge from May 14, 2007, until December 18, 2007. On December 14, 2007, Ms. Hartl hosted a holiday party at her home, which was attended by several municipal court employees. During the course of the party, Ms. Hartl revealed to a group of court employees that she had a sexual encounter with one of the contract public defenders who frequently appeared before her in court. On December 17, 2007, Ms. Hartl contacted the Commission on Judicial Conduct
(Commission) and reported that, at her holiday party for court staff on the preceding Friday, she told some members of her court staff that she had “gone out for drinks one time” with one of the public defenders and that “some flirtation” had occurred. Ms. Hartl assured the Commission that that was the extent of her disclosure to court employees at her party. Upon further questioning, Ms. Hartl assured the Commission that her relationship with the public defender involved only drinks, flirtation, and some discussion about “getting together for a date” in the future. Ms. Hartl unequivocally stated that no further inappropriate activity with the public defender had occurred, and that she had not told staff at the party that anything more than verbal flirtation had taken place.

Later in the day on December 17, 2007, Ms. Hartl left a voice message for the municipal court administrator, who was present at the party. In her voice message, Ms. Hartl advised the administrator that she had just contacted the Commission and told them that she and the public defender had gone out for drinks, flirted, talked about dating, and text messages. Ms. Hartl asked the administrator to pass that information along to the other clerks who were present at her party and to let her know if she should “add to that or if they would support that version.”

On December 18, 2007, Ms. Hartl resigned her position as municipal court judge. The Commission investigated Ms. Hartl’s self-reported complaint and, subsequently, served her with a Statement of Allegations on February 8, 2008. It alleged that her submission of facts and details during her telephone call to the Commission was evasive and misleading, and that her message to the former court administrator appeared to be an attempt to influence the statements and testimony of witnesses in Commission proceedings. On March 14, 2008, Ms. Hartl answered the Statement of Allegations and acknowledged that she had sexual contact with a public defender, but denied attempting to induce anyone to be dishonest with the Commission. On August 1, 2008, Ms. Hartl entered into a Stipulation, Agreement and Order of Censure with the Commission. Ms. Hartl was required to appear in person before the Commission, which found that her conduct violated the Code of Judicial Conduct in a manner that detrimentally affects the integrity of the judiciary and undermines public confidence in the administration of justice. A censure is the most severe disciplinary action the Commission can issue without Supreme Court action. There was no evidence that Ms. Hartl’s contacts with the public defender resulted in a more favorable outcome to him or his clients.

Ms. Hartl’s conduct violated RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and RPC 8.4(d), prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice.

Debra J. Slater represented the Bar Association. Ms. Hartl represented herself.

Reprimanded

Young Suk Oh (WSBA No. 29692, admitted 1999), of Lynnwood, was ordered to receive a reprimand on December 29, 2009, following a hearing. This discipline was based on conduct involving trust account irregularities.

In October 2006, the Bar Association received a trust account overdraft notice from Bank A when a check of $21,750 was presented for payment at the time the balance on the trust account was $5,877.39. The Association began an audit of Mr. Oh’s trust account records from May 2006 to September 2006.

In 2005, Mr. Oh was the mutual escrow agent for the buyer and seller in the sale of a business transaction. The funds from the sale were deposited into Mr. Oh’s IOLTA account at Bank A. In October 2005, the parties agreed that Mr. Oh would “hold back” $24,600 of the funds until they agreed on the disbursement. The funds remained in Mr. Oh’s IOLTA account into early 2006. Several times, Mr. Oh was instructed to write a check from the funds and then was instructed to cancel the check. Around May 2006, Mr. Oh asked another attorney to draft an interpleader action to deposit the funds into court. Mr. Oh issued a check for $21,745 to the county clerk. Before the action could be filed, Mr. Oh was instructed to wait because the parties were negotiating. Mr. Oh placed the $21,745 check in the file but did not mark “void” on it. In the client ledger, he cancelled the $21,745 check to show the correct balance held for the client.

In early 2006, Mr. Oh opened a new IOLTA account with Bank B and began to phase out the Bank A IOLTA account. Near the end of May 2006, Mr. Oh stopped writing checks from the Bank A account; by then most of the funds had been transferred to the new IOLTA account at Bank B. In September 2006, Mr. Oh arranged to file the interpleader action prepared in May 2006 and sent the $21,745 check issued under the old account at Bank A along with the complaint to the county clerk. At the time, there was only $5,877.39 left in the Bank A trust account. This caused an overdraft.

During the audit period, the Association identified four payments from Mr. Oh’s trust account that were made with other client funds. During this time period, Mr. Oh made payments on behalf of clients before the funds were deposited in the trust account, notwithstanding that he had been notified in September 2005 that this practice violated the RPCs. Disbursements were made on behalf of clients when there were insufficient funds on deposit, thereby placing other client funds at risk.

Mr. Oh’s conduct violated former RPC 1.14 and/or RPC 1.15A(h)(7), prohibiting a lawyer from disbursing funds from a trust account until deposits have cleared the banking process and been collected, unless the lawyer and bank have a written agreement by which the lawyer personally guarantees all disbursements from the account without recourse to the trust account; and former RPC 1.14 and/or RPC 1.15A(h)(8), prohibiting disbursements on behalf of a client or third person from exceeding the funds of that person on deposit and prohibiting the funds of a client or third person from being used on behalf of anyone else.

Kevin M. Bank represented the Bar Association. Mr. Oh was represented by Jeffrey C. Grant. John J. Tollefson was the hearing officer.

Amonished

Richard Bryan Geissler (WSBA No. 12027, admitted 1981), of Spokane, was ordered to receive an admonition by the Disciplinary Board, effective June 17, 2010, following a stipulation. This discipline is based on conduct involving failure to return third-person property.

In August 2006, Mr. Geissler represented Client V in a marital dissolution. During the couple’s dissolution, there were disputes that required Mr. Geissler to review tax and other accounting information from their accountant, who provided tax accounting services to the couple and their business. On March 20, 2008, Mr. Geissler received three boxes of original client files from the accountant. Mr. Geissler signed an agreement that he could copy the documents, but not remove or retain any of the documents, and agreed to return the files to the accountant when he was finished. In June 2008, after the marriage dissolution concluded, Mr. Geissler did not return the accountant’s files. In late April 2009, Mr. Geissler received a letter from the accountant requesting the return of his files. Mr. Geissler did not respond to the letter or return the files. In early June 2009, Mr. Geissler received another letter from the accountant requesting the return of his files. Again, Mr. Geissler did not respond or return the files. Instead, Mr. Geissler provided the files to Client V, who gave them to his new accountant. In December 2009, Mr. Geissler was informed that under RCW 18.04.390(1), the accountant’s client files are the property of the accountant, but still failed to promptly return the files.

Mr. Geissler’s conduct violated RPC
1.15A(f), requiring a lawyer to promptly pay or deliver to the client or third person the property which the client or third person is entitled to receive; and RPC 1.15A(g), requiring that if a lawyer possesses property in which two or more persons (one of which may be the lawyer) claim interests, the lawyer must maintain the property in trust until the dispute is resolved, promptly distribute all undisputed portions of property, and take reasonable action to resolve the dispute.

Jonathan H. Burke represented the Bar Association. Mr. Geisler represented himself. Kelby D. Fletcher was the hearing officer.

Admonished

Michael Lucien Jacob (WSBA No. 11622, admitted 1981), of Bainbridge Island, was ordered to receive an admonition on April 23, 2010, by a Review Committee of the Disciplinary Board. This discipline was based on conduct involving lack of diligence and failure to communicate. Michael Lucien Jacob is to be distinguished from Michael L. Jacobs of Seattle and Michael P. Jacobs of Lynnwood.

In 2009, Jacob represented a client in an immigration removal matter. In June 2009, Mr. Jacob received a notice of a July hearing, but did not enter the date on his calendar or notify the client of the date. Mr. Jacob and his client failed to appear at the July hearing. After trying unsuccessfully to reach Mr. Jacob by phone, the judge entered a removal order in absentia. Mr. Jacob later filed a motion to reopen; the judge conditioned approval of the motion on Mr. Jacob’s self-reporting of his conduct to the Office of Disciplinary Counsel. Mr. Jacob did so and the case was re-opened.

Mr. Jacob’s conduct violated RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; and RPC 1.4(a)(3), requiring a lawyer to keep a client reasonably informed about the status of a matter.

Natalea Skvir represented the Bar Association. Michael Jacob represented himself.

Admonished

Cesar O. Velasquez (WSBA No. 22760, admitted 1993), of Bellevue, was ordered to receive an admonition on June 3, 2010, following approval of a stipulation by order of the Disciplinary Board. This discipline was based on conduct involving the disbursement of disputed funds.

In April 2007, Mr. Velasquez was hired to represent a client in the closing of a condominium owned by the client and his wife. The wife had previously filed for legal separation in November 2006. In February 2007, the client’s wife signed a written document that gave the husband half the sale of their property, less the fees for the sale and other expenses. In order to facilitate the sale, on or about April 23, 2007, the client executed a power of attorney designating Mr. Velasquez to act on his behalf. That same day, the wife’s attorney obtained a default judgment against Mr. Velasquez’s client and a Decree of Legal Separation that awarded the condominium solely to the wife. Mr. Velasquez was notified by letter that the decree had been entered and the wife had been awarded the condominium in its entirety. The letter also informed Mr. Velasquez that his client had no right to the proceeds from the sale of the property. A copy of the decree was enclosed.

Since his client was incarcerated, Mr. Velasquez arranged for another lawyer to represent his client in the dissolution proceedings. On April 25, 2007, the client’s dissolution lawyer filed his appearance and a motion to set aside the default judgment.

On April 28, 2007, the sale of the condominium closed. On May 1, 2007, half of the sale proceeds, $29,992.89, were wired to Mr. Velasquez’s trust account. During May 2007, Mr. Velasquez disbursed $15,250 to his client, $1,500 to himself for legal fees, and $1,500 to his client’s dissolution lawyer for legal fees.

Mr. Velasquez received letters dated July 10 and August 10, 2007, from his client’s wife’s lawyer advising him that the funds from the sale of the condominium were the subject of litigation. The letters also advised Mr. Velasquez that the wife had been awarded all of the equity from the sale and that the decree was still in effect. By August 2007, Mr. Velasquez had disbursed all of the funds from the sale of the condominium, including $1,000 in additional attorney’s fees to himself and $1,000 in additional attorney’s fees to his client’s dissolution lawyer.

Mr. Velasquez’s conduct violated RPC 1.15A(g), requiring a lawyer to maintain property in trust in which two or more persons (one of which may be the lawyer) claim interests in the funds until the dispute is resolved. Debra J. Slater represented the Bar Association. Mr. Velasquez represented himself.

Non-Disciplinary Notice

Suspended Pending the Outcome of Disciplinary Proceedings

Charmaine L. Clark (WSBA No. 28000, admitted 1998), of Silverdale, was suspended pending the outcome of disciplinary proceedings, pursuant to ELC 7.2(a)(3), effective June 25, 2010, by order of the Washington State Supreme Court. This is not a disciplinary sanction.

Animal Law

November 16 — Seattle and webcast. CLE credit pending. By the WSBA Animal Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Business Law

The Art of the Graceful Exit: Valuation and Succession Planning for the Closely Held Business

October 22 — Seattle and webcast. 6.5 CLE credits, including .75 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

27th Annual Antitrust and Consumer Protection Seminar

November 4 — Seattle and webcast. CLE credits pending. By the WSBA Antitrust, Consumer Protection and Unfair Business Practices Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Corporate Counsel Institute

November 19 — Seattle and webcast. 4 ethics credits. By the WSBA Corporate Counsel Institute.
Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Construction Law**

**Construction Contracts and Lien Law**


**Insurance in the Construction Industry**

**Elder Law**

**Nursing Home/Elder Law**
October 8 — Seattle and webcast. 2.75 CLE credits. By WSAJ; www.washingtonjustice.org; 206-464-1011.

The 13th Annual Fall Elder Law Conference: Recognizing and Resolving Conflicts in Elder Law
October 15 — Seattle. 6.25 CLE credits, including 1 ethics. By the WSBA Elder Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Employment Law**

10th Annual Labor and Employment Law Conference
November 12 — Seattle and webcast. 6.25 CLE credits, including 1 ethics. By the WSBA Labor and Employment Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Ethics**

New Developments in Discovery-Related Ethics Issues
October 6 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Ethical Dilemmas for the Practicing Attorney
October 13 — Spokane. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Ethics with Ease: General Practice
October 27 — Seattle and webcast. 2 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Ethical Dilemmas for the Practicing Attorney
October 20 — Mount Vernon. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

New Developments in Discovery-Related Ethics Issues
October 27 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Ethics with Ease: Modern Technology and Ethical Dilemmas
November 8 — Tele-CLE. 1.5 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Ethics and the Professions in the New Economy: Are There “New Rules” for Conducting Ourselves in the “New Economy”? 
November 12 — Pullman. 8 CLE credits, including 1 ethics pending. By Washington State University; fball@wsu.edu

Negotiation Ethics: Winning Without Selling Your Soul — Featuring Martin E. Latz
November 30 — Tele-CLE. 1.5 ethics credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Estate Planning**

55th Annual Estate Planning Seminar
November 1–2 — Seattle. 14.5 CLE credits, including 2 ethics credits. By the Estate Planning Council of Seattle and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Estate Planning for the Small- to Medium-Sized Estate (video replay)
November 8 — Friday Harbor. 6.5 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Family Law**

Practice Tips from the Bench
October 6 — Seattle. 1 CLE credit. Part of the 2010 Family Law Speaker Series by McKinley Irvin; cle@mckinleyirvin.com; 206-625-9600; www.mckinleyirvin.com.

Basic Collaborative Law Training
October 7–8 — Seattle. 12.25 CLE credits pending. By Seattle Collaborative Law Training Group; www.collabtraining.com; Contact Rachel Felbeck, 425-822-0283; rachel@felbecklaw.com.

Adoption Essentials
October 19 — Seattle and webcast. 6.25 CLE credits, including .75 ethics. By the WSBA Family Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Introduction to Collaborative and Cooperative Law
November 4 — Seattle. 1 CLE credit. Part of the 2010 Family Law Speaker Series by McKinley Irvin; cle@mckinleyirvin.com; 206-625-9600; www.mckinleyirvin.com.

**General**

Dissolution from A–Z
October 1 — Seattle. 5 CLE credits, including .5 ethics. By King County Bar Association CLE; www.kcba.org/cle; 206-267-7057.

Finding Our Future: Practicing Law in the 21st Century
October 8 — Seattle. CLE credits pending. By the University of Washington School of Law and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Nursing Home/Elder Law
October 8 — Seattle and webcast. 2.75 CLE credits. By WSAJ; www.washingtonjustice.org; 206-464-1011.
Medical Negligence
October 8 — Seattle and webcast. 3.25 CLE credits. By WSAJ; www.washingtonjustice.org; 206-464-1011.

What Every Attorney Should Know About
October 8 — Seattle. 5.5 CLE credits, including .75 ethics. By King County Bar Association CLE; www.kcba.org/cle; 206-267-7057.

Internet Investigative Research Strategies for Legal Professionals
October 12 — Bellevue. 6 CLE credits. By King County Bar Association CLE; www.kcba.org/cle; 206-267-7004.

Democracy Under Citizens United
October 14 — Seattle. 4 CLE credits. By Rubric CLE; www.rubriccle.com; 206-714-3178.

Digital Forensics vs. eDiscovery
October 15 — Pullman. 4 CLE credits. By Red Handed Forensics of Clallam County; 360-775-8687; info@redhandedforensics.com; www.redhandedforensics.com.

Best Practices in Addressing Domestic Violence and Sexual Assault — A Coordinated Response
October 15 — Tumwater. By Thurston County Domestic Violence and Sexual Assault Task Force; 360-786-5540, ext. 6978; LVsafe@co.thurston.wa.us; www.thurstondvastaskforce.com.

Digital Forensics vs. eDiscovery
October 16 — Seattle. 6.5 CLE credits pending. By UW School of Law; www.law.washington.edu/cle; 206-543-0059; uwcle@uw.edu.

Subrogation
October 20 — Seattle. 6 CLE credits, including .5 ethics. By WSAJ; www.washingtonjustice.org; 206-464-1011.

Flat-Fee Agreements and the RPCs
October 21 — Teleconference with online PowerPoint. 1 ethics credit pending. By Rubric CLE; www.rubriccle.com; 206-714-3178.

Challenging Bad Science: Putting the NAS Report to Work

Federal Practice Boot Camp
October 26 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Washington State’s 7th Annual Vulnerable Adult Abuse Conference: “Overcoming Barriers”
October 28—29 — Burien. CLE credits pending. By King County Prosecutor’s Office; 206-296-8797; kyndee.cavanagh@kingcounty.gov.

High-Impact Presentation Skills: Fast Track Coaching for Busy Attorneys

Whose Right?: Corporations, People, and the First Amendment
October 29 — Seattle. 3 CLE credits. By UW School of Law, Seattle National Lawyers Guild, and American Constitution Society; www.nlgseattle.org.

Mobile Payments: Global Markets, Empowered Consumers, and New Rules?
October 29 — Seattle. 6.5 CLE credits pending. By UW School of Law; www.law.washington.edu/cle; 206-543-0059; uwcle@uw.edu.

Toil and Trouble: Witch Hunts and the Law
October 29 — Seattle. Teleconference with online PowerPoint. 1.5 credits pending. By Rubric CLE; www.rubriccle.com; 206-714-3178.

Legal Writing

8th Annual WSBA Conference on the Law of Lawyering
November 9—10 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Our Courts, Our Constitution
November 12 — Seattle. CLE credits pending. By UW School of Law; www.law.washington.edu/cle; 206-543-0059; uwcle@uw.edu.

Time Mastery for Lawyers: Over 100 Ways to Maximize Your Productivity and Satisfaction
November 17 — Seattle and webcast. 6 CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Psychological Injuries

Appellate Strategies and Essentials
November 22 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Immigration Law
Immigration Options for Immigrant Survivors of Domestic Violence: U-Visa under the Victims of Trafficking and Violence Protection Act
November 5 — Seattle. 4.25 CLE credits, including .75 ethics. By the Immigrant Families Advocacy Project (IFAP), Northwest Immigrant Rights Project (NWIRP), and UW School of Law; www.uwcle.org; linda12@uw.edu.

Indian Law
23rd Annual University of Washington Indian Law Symposium
September 9–10 — Seattle. By UW School of Law; www.law.washington.edu/cle; 206-543-0059; uwcle@u.washington.edu.

Intellectual Property
The Third Annual Inland Empire Intellectual Property Institute
October 1–2 — Spokane. 8 CLE credits, including 1 ethics credit pending. By the WSBA Intellectual Property Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Mediation

Professional Mediation Skills Training Program
October 8–10 and 23–24 — Seattle. 36 CLE credits, including 2 ethics. By UW School of Law; www.law.washington.edu/cle; 206-543-0059; uwcle@uwashington.edu.

40-Hour Professional Mediation Training
October 14–16 and 21–23 — Olympia. 37.5 credits, including 5.25 ethics. By the Dispute Resolution Center of Thurston County (DRC); 360-956-1155; onlewis@mediatethurston.org; www.mediatethurston.org.

Real Property, Probate, and Trust

Beyond Boot Camp: Real Estate (video replay)
October 5 — Friday Harbor. 6 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Neighborhood Warfare — Dealing with Warring Neighbors
October 5 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Advanced Real Estate Strategies and Solutions

Impacts of FEMA Floodplain Mapping: Regulatory Changes and Implications for Local Jurisdictions and Property Owners


Federal Practice Boot Camp
October 26 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

27th Annual Antitrust and Consumer Protection Seminar
November 4 — Seattle and webcast. CLE credits pending. By the WSBA Antitrust, Consumer Protection and Unfair Business Practices Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Webcast Seminars

Neighborhood Warfare — Dealing with Warring Neighbors
October 5 — Seattle and webcast. 6 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

New Developments in Discovery-Related Ethics Issues
October 6 — Seattle and webcast. 3 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Nursing Home/Elder Law
October 8 — Seattle and webcast. 3 CLE credits pending. By WSAJ; www.washingtonjustice.org; 206-464-1011.

Medical Negligence
October 8 — Seattle and webcast. 3 CLE credits pending. By WSAJ; www.washingtonjustice.org; 206-464-1011.

Adoption Essentials
October 19 — Seattle and webcast. 6.25 CLE credits, including .75 ethics. By the WSBA Family Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

The Art of the Graceful Exit: Valuation and Succession Planning for the Closely Held Business
October 22 — Seattle and webcast. 6 CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Ethical Dilemmas
November 15 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Time Mastery for Lawyers: Over 100 Ways to Maximize Your Productivity and Satisfaction
November 17 — Seattle and webcast. 6 CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Appellate Strategies and Essentials
November 22 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Corporate Counsel Institute
November 19 — Seattle and webcast. CLE credits pending. By the WSBA Corporate Counsel Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Appellate Strategies and Essentials
November 22 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.
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Legal secretary/word processor. Seattle office of west coast law firm seeks secretary/word processor with at least two years of litigation experience. Tasks include word processing, filing with court, calendaring, and maintaining files. Must know Word, Excel, and Outlook thoroughly and be able to type at least 60 wpm. Paralegal certificate preferred. Competitive salary with good (and fun) benefits. Please mail, fax, or e-mail cover letter, résumé, and references to Hiring Coordinator, Keesal, Young, & Logan, 1301 5th Ave., Ste. 1515, Seattle, WA 98101. No telephone calls, please.

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**Experienced contract attorney** and WSBA member drafts trial and appellate briefs, motions, and memos for other attorneys; I enjoy complex research. Resources include LEXIS Internet libraries and UW Law Library. Tell me about your case! Elizabeth Dash Bottman, Attorney, 206-526-5777. [ejelizabeth@qwest.net](mailto:ejelizabeth@qwest.net).

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

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

**Legal research and writing by attorney** in Spokane, WA. Gonzaga University graduate, associate editor of law review, excellent skills, and very reasonable rates. Pamela Rohr, 509-928-4100.

**Contact attorney available for research and brief writing for motions and appeals.** Top academic credentials, law review, judicial clerkship, complex litigation experience. Joan Roth, 206-898-6225, [jlr mcc@yahoo.com](mailto:jlr mcc@yahoo.com).


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**Contract motions and appeals:** Attorney, excellent brief writer in published decisions (King v. King, 162 Wn.2d 378; Rusch v. Rusch, 124 Wn. App. 229, et al.) available for contract work. Law Office of Ken Christensen, 206-622-7330; [chrisenlaw@aol.com](mailto:chrisenlaw@aol.com).

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**Downtown Seattle executive office space:** Full- and part-time offices available on the 32nd floor of the 1001 Fourth Avenue Plaza Building. Beautiful views of mountains and the Sound! Close to courts and library. Short- and long-term leases. Conference rooms, reception, kitchen, telephone answering, mail handling, legal messenger, copier, fax, and much more. $175 and up. Serving the greater Seattle
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**Pioneer Square (Seattle) firm offering sublease** for two professional offices and one staff office. For details, see Craigslist ad titled "3 Offices Available (Pioneer Square)." Contact Griff Flaherty at 206-682-2616.

**Bellevue office space:** Two offices available for sublease in downtown Bellevue. Rent includes shared use of conference rooms, small law library, and kitchen. Options include use of copier and covered parking. Please contact asakai@gslaw.com.

**Bellevue (Seattle) law firm offering turn-key sublease.** Corner lot building with large windows and beautiful cherry wood interiors. Two professional offices (18’ x 16’ and 14’ x 11’), plus one paralegal office, and two staff work stations. Office share available with use of one of the professional offices and one paralegal office. Possible third professional office and additional paralegal office availability. If shared, the office facilities include furnished reception room with working fireplace, built-in reception desk, furnished conference rooms, library, kitchen, working file room with high-speed copier/fax/scanner, and large basement file storage. Administrative support of high-speed Internet, cable, and VoiceIP is available. Contact accounting@aikenbrownlaw.com.

**Pioneer Square (Seattle).** Congenial, full-service offices available (Maynard Building). Walking distance to courthouse. Includes receptionist, conference room, messenger service, library, DSL, fax, copier with e-mail scanner, kitchenette. Steve, 206-447-1560.

**Class-A Everett offices** — located on the third floor of the Frontier Bank building. Two suites available, 14’ x 14’ and 16’ x 12’. Staff workstations available with potential staff share, full kitchen, new high-speed copier/fax/scaner, conference room with 50’ flat screen and digital cable, high-speed Internet. Plenty of parking and close to courthouse. Potential client referrals. View photos at http://photos.frontier302.info. Lease terms negotiable. Contact Mark Olson at 425-388-5516 or mark@mgolsonlaw.com.

**Issaquah office space.** Two offices available for sublease in Issaquah law firm. Office — $1,050; with assistant station — $1,225. Rent includes reception, copier, fax, and conference room. Possible referrals. Contact Christina at 425-391-7427, or christinaforte@obrienlawfirm.net.

**Seattle office space (Class A):** Up to three professional offices and two staff offices on 38th floor of Bank of America Plaza (5th and Columbia) available for sublease by small construction law firm. Includes use of conference room, reception, kitchen, telephone service. Bookkeeping, garage parking, Westlaw, copier, fax services available. Lots of flexibility with your size needs and duration of lease. Larry, 206-442-1560.

**Downtown Bellevue beautiful office space available** — Seeks new tenant to share space, one private office, plus space for secretary, storage, completely equipped with T1, share conference room, telephone, copier, fax, scanner, etc. Please call Winston at 425-213-0553.

**Beautiful office with secretarial station.** University of Washington area. Includes two large conference rooms, copier, fax, kitchen, shower. Phone system in and network ready. Air-conditioned. Share paralegal. 206-522-7633.

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

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**Wanted: established firm.** Interested in retiring/selling your law practice? Ambitious attorney at national firm seeking to leave the large law firm life to work as a small practitioner. Seeking established firm with emphasis on business/transactional law and may include trusts/estates/real estate. E-mail legal@northboundconsulting.com.

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**Will Search**

Clydia J. Cuykendall  
WSBA No. 6116

- I became a lawyer (UW, J.D. 1974) because it was easier than Stanford math (B.S. 1971).
- The future of the practice of law is headed toward more international governance.
- This is the best advice I have been given: “Know thyself,” and “moderation in all things.”
- I would share this with new lawyers: Study new laws to level the playing field with experienced lawyers.
- Traits I admire in other attorneys: Civility and responsiveness.
- I would give this advice to a first-year law student: Join a study group.
- People living or from the past I would like to invite to a dinner party: The first king of Saudi Arabia and Peter O’Toole.
- I am most proud of this: Building a corporate law department from scratch for the Aramco-Texaco petroleum refining and marketing joint venture (1989).
- I am the most happy when I’m outdoors.
- My favorite non-job activity: Being outdoors.
- On television, I try not to miss “World Focus.”
- Best stress reliever: Dancing.
- What I had for lunch: Salad.
- I would never eat liver.
- My favorite vacation place: Anywhere with powder snow.
- One of the greatest challenges in law today is globalization.
- If I were not practicing law, I would be traveling.
- Technology is empowering, but I need to turn it off periodically.
- Currently playing on my iPod/CD player/record player: Classical music.
- If I could live anywhere, I would continue to live in Olympia, after visiting 105 countries and living in the Netherlands and Saudi Arabia.
- I can’t live without pets.
- What keeps me awake at night are thoughts of war casualties.
- If I could change one thing about the law, it would be less litigious.
- This is the best part of my job: My clients.

I am Clydia J. Cuykendall, a contract attorney taking a sabbatical from practice in 2010. I am a former big-law-firm associate (Pillsbury, Madison and Sutro), oil company lawyer (Aramco and affiliates), department store lawyer (JCPenney), and of counsel to a small law firm (Cushman Law Offices). I can be reached at cjcyken@aol.com.

To learn more about “Briefly About Me” and to submit your own, go to www.wsba.org/lawyers/brieflyaboutme.doc.
Fuzzy Logic

Throughout my legal career, my clientele has been hundreds of ordinary people from various walks of life. I have always been fascinated to see how those unencumbered by a law-school education view the legal system. Generally, they trust my knowledge and judgment when it comes to dealing with the law and employing the best strategy in handling their cases. The vast majority realize I have their best interests at heart, even if the law or my recommended approach doesn’t entirely make sense to them. Then there are the exceptions, which can be epic.

Years ago, I met with a prospective client in an auto collision case. She was slowing for traffic ahead of her on a busy road. In her mirror she saw that the driver behind her wasn’t slowing. As she described it (rough quote from my memory): “He was one of those older guys who wears a tank top and drives a convertible. He was gawking at a college girl on the sidewalk. There was nothing I could do.” The driver’s insurance carrier didn’t dispute liability. The physical impact was moderate, and my client had the soft-tissue spinal injuries typical in that type of collision. I interviewed her, went over the fee agreement, and answered her questions. She retained me, so I ordered her records and made an appointment to follow up with her in a couple of weeks.

By the time she returned, I had reviewed the police report and found that my client had been cited for having no driver’s license or proof of insurance. This was disconcerting, but I wasn’t too worried. Her lack of a license and insurance was legally immaterial to our claims. At least, it was immaterial unless she made an issue of it herself, which is exactly what she wanted to do.

My client acknowledged she had been driving for months with an expired license and lapsed insurance. In fact, she considered that to be one of the strengths of her case. Her argument went like this: 1) she had been driving for quite some time without getting pulled over by the police because she drove lawfully (except for the draconian license and insurance statutes, of course); 2) a negligent driver ran into her, with the foreseeable consequence that someone called the police; 3) while investigating the collision, the police inevitably discovered she had no license or insurance; 4) as a result of having no license or insurance she had to pay a fine of several hundred dollars; and therefore 5) in addition to her other damages, she should be reimbursed by the at-fault driver for the fine she had to pay.

In terms of strict but-for causation, I could hardly fault her logic. If that tank-topped old girl-watcher hadn’t run into her, she wouldn’t have gotten the citations — not right then, anyway. And who knows, maybe she could have driven the rest of her life without getting caught, in which case the at-fault driver’s inattentiveness indeed would have ultimately cost her not only the several hundred dollars she paid for the fine but hundreds or thousands more in interest she would have earned, had she been able to invest that money rather than paying it to the municipal court.

I admitted to my client that I had never researched the precise issue of whether a plaintiff in a motor vehicle case can claim damages for reimbursement of her own fine for having no license or insurance. But I told her I suspected we would have a tough time getting that past a judge (I could imagine problems with assumption of risk, proximate cause, etc.). More to the point, I advised her that making such a claim — whether in negotiations with the insurance carrier or at trial — would be just about the worst thing we could do strategically.

I gently pointed out that it was her own fault she was driving without a license and insurance, even if it was the other driver’s fault she got caught. Driving without a license and insurance is generally considered irresponsible, I suggested, and it would not likely elicit sympathy from either a claims adjuster or jurors. Moreover, few things in litigation offend people more than overreaching, and raising the issue at all would call into question her integrity and credibility regarding the whole case, I said.

My client looked at me as if I had told her the case would be tried on Mars with a jury of wombats, and Genghis Khan presiding. Nevertheless, my analysis had an effect on her. Whereas at the start of the conversation she had demanded reimbursement for her fines immediately, after hearing my remarks she softened her position and said it could wait until we dealt with her injury claim.

We ended our meeting with the issue unresolved. Unsurprisingly, a week or so later my legal assistant advised me the client had called to inform us she had retained another attorney. I waived my fees and costs and it would not likely elicit sympathy from either a claims adjuster or jurors. Moreover, few things in litigation offend people more than overreaching, and raising the issue at all would call into question her integrity and credibility regarding the whole case, I said.

We ended our meeting with the issue unresolved. Unsurprisingly, a week or so later my legal assistant advised me the client had called to inform us she had retained another attorney. I waived my fees and costs and heard nothing of the case again. If there was indeed a trial in which she asked the jury to award damages to compensate her for having been caught driving without a license or insurance, I regret having missed it. I’ve never had a chance to see wombats rolling their eyes.

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