YOU ANSWER TO YOUR CLIENTS. SO DO WE.

When you refer your clients to Washington Trust Bank, you’re giving them a direct line to their trust and investment advisor. No call centers, no runarounds.

As the Northwest’s oldest and largest privately owned full-service bank, our clients come first, not stockholders. That means, whenever your clients call, they’ll get exactly what they expect—their financial expert on the other end of the line.

Let us make you and your clients our priority—call our hotline today.

Seattle (206) 667-8989 • Bellevue (425) 709-5500

Washington Trust Bank

Commercial Banking • Private Banking • Wealth Management
Trust Administration • Investment Management • Estate Settlement • Retirement Planning

www.watrust.com
HALL-CONWAY-JACKSON, Inc.
INSURANCE BROKERS

Serving the Washington Legal Community for over 40 years

Our Professional Liability Program is underwritten by a highly rated insurer who has insured lawyers for over 30 years. As a full-service Broker, Hall-Conway-Jackson offers a variety of programs including:

- Lawyers Professional Liability for full-time firms
- Part-time and Moonlighting Practices
- Intellectual Property and Class Action Practices
- Employment Practices Liability
- Director's and Officers Liability
- Employee Benefits: Health, Disability, and Life Insurance
- Business Owners: Building and Offices
- Surety and Bonding Services
- Personal Lines: Homeowner's, Auto, Boat, and Specialty Coverages

We Welcome Broker Inquiries.
For a Quote or to Learn More, Contact:

Scott Andrews
sandrews@hallcj.com
21540 30th Drive S.E.
Suite 140
Bothell, WA 98021
(425) 368-1262 (Direct)
(425) 368-1200 (Main)
(800) 877-8024
Give your small business a big advantage

“Need a competitive advantage? Try a broadband service that’s five times faster.”
- Cheryl Vezetinski, Owner LaFarge & Egge, Lynnwood

Comcast offers advanced Internet and TV solutions to help small businesses achieve big goals.

When it comes to efficiency, nothing works like Comcast Workplace. That’s because we supply your business with blazing Internet speeds, a fiber-rich network, top-rated McAfee® security and 24/7 dedicated support. Call today for a free consultation on how we can help your business grow.

Call 1-888-824-8231
www.comcast.com/wa-business

Not all features are available in all packages. Monthly service prices and speeds vary, dependent on level of service. Actual speeds vary and are not guaranteed. Many factors affect upload and download speeds. Service not available in all areas. Service is subject to terms and conditions of the Comcast Online Subscriber Agreement. For restrictions, minimum requirements, and complete details about service and prices, call 1-888-824-8231, ©2007 Comcast. All Rights Reserved.
Marriage & the Law

17 The Role of the State in Washington Marriage: Same Sex, Different Rights
by Jill Mullins and Hugh Spitzer

23 Domestic Partnership and the Law
by Jason Holloway

29 Equal Marriage in My Lifetime? Whoa!
by Eric C. de los Santos

30 The Right to Marry: Should There Be Equality?
by Klaus O. Snyder

34 Marriage Equality: Why Gay and Lesbian Couples Shouldn’t Be Excluded
by Patricia Novotny

41 Wrongful Death Law and Same-Sex Couples
by James E. Baker

44 The WSBA Appropriately May, and Should, Support Marriage-Equality Legislation
by Mark A. Johnson and Tereza Simonyan

The mission of the Washington State Bar Association is to promote justice and serve its members and the public.
125,000 lawyers are expert witnesses to our reputation.

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

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

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

www.lawyersinsurance.com

CNA is a service mark registered with the United States Patent and Trademark Office. Copyright © 2007 CNA. All rights reserved.
LET OUR EXPERIENCED PANELISTS HELP RESOLVE YOUR DISPUTE
1411 FOURTH AVENUE • SUITE 200 • SEATTLE WA 98101 • PH. 206.223.1669 • FAX. 206.223.0450 • WWW.JDRLLC.COM

Charles S. Burdell Jr.
Former King County Superior Court Judge

Joanne l. tompkins
Former Washington Court of Appeals Commissioner

terrence a. Carroll
Former King County Superior Court Judge

Steve scott
Former King County Superior Court Judge

george finkle
Former King County Superior Court Judge

Joanne L. Tompkins
Former Washington Court of Appeals Commissioner

Larry a. jordan
Former King County Superior Court Judge

Terrence A. Carroll
Former King County Superior Court Judge

Steve Scott
Former King County Superior Court Judge

Rosselle pekelis
Former King County Court of Appeals & Supreme Court Judge

- Seven former Judge and Commissioner panelists
- Large formal trial/arbitration room
- 14 comfortably-appointed mediation rooms
- JDR Arbitration Rules
- Confidential and timely arbitration and mediation solutions
- Other services including special master, hearing officer, mock trial, and appellate consultation
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 250 words in length or less, and e-mailed to letterstotheeditor@wsba.org or mailed to WSBA, Attn: Letters to the Editor, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539. Bar News reserves the right to edit letters. Bar News does not print anonymous letters, or more than one submission per month from the same contributor.

Dammimg the Columbia

The new court rule which would give “left-over” money from class actions to a foundation which gives the money to Columbia Legal services is unconstitutional (“Unclaimed Class-Action Funds Offer Hope for Equal Justice,” July 2007 Bar News). The Supreme Court cannot enact a rule to give money to Columbia because only a legislature may appropriate money. The function of the legislature is to apportion tax money among competing demands. A court cannot do that. The doctrine of cy pres, offered as a rationale for this rule, means construing a document as nearly as possible in accordance with its author’s intentions. It is unlikely that the victim of a class action intends to give more money to lawyers. The money should go back to the defendants. It is a very dangerous for a court to parlay large amounts of money among lawyers and interest groups. The court would be biased in favor of the plaintiffs from the start because the rule promises to give some of the largesse to causes and groups that the Supreme Court favors! It might be difficult for the Supreme Court to dismiss a class action if they believed some of the money from that class action was destined for Columbia Legal Services and similar agencies which promote political causes favored by the court.

Many quasi-legislative rules of court are unconstitutional. There is no way to challenge this rule except by going to the same court that enacted it. Legislature and court have coalesced into one. This is unconstitutional because every branch of government must be accountable in some way to the other branches. There is an irreconcilable conflict of interest because the court that enacts legislation and favors Columbia cannot fairly hear challenges to its own legislation or to its own protégé, Columbia. The same defects apply to the Rules of Professional Conduct. The Supreme Court should decide cases instead of policy.

Roger Ley, Seattle

Collegial collages

I cannot endorse the suggestion (“Letters to the Editor,” August 2007 Bar News) that Bar News showed bias against George W. Bush in not giving his collage photo prominence equal to that of Lyndon Johnson. Although Bush’s administration may be compared to LBJ’s, this leads to a line of thought not helpful to Bush’s supporters. More importantly, nations in which lawyer organizations feel the need prominently to display the picture of Dear Leader on a regular basis tend not to be happy ones. Instead, I urge Bar News to display more pictures of Washington lawyers on its cover. I am embarrassed to know on sight only a tiny fraction of my bar colleagues; I may not be alone in this. The “Around the State” photos are delightful, but not enough. Topical collages, e.g. “The Barristers of Madison County,” could be educational, attractive and fun.

Randy Winn, Mercer Island

APRopriate definition

When we became lawyers, we swore that we would “abstain from all offensive personalities.” APR 5(e). I doubt that many lawyers know what this means. “Personality” is a term from parliamentary law. Black’s Law Dictionary defines it as “an improper reference to a member by name or in his or her personal capacity.” The concept was explained by Thomas Jefferson in his Manual of Parliamentary Practice: “The consequences of a measure may be reprobated in strong terms, but to arraign the motives of those who propose or advocate it, is a personality, and against order.” So this provision of our oath means: “I will not engage in personal attacks against opposing counsel.”

Seth Fine, Everett

Washington’s Attorney Placement Specialists

Contract & Permanent

The Best Candidates, Rates and Service

Lynda J. Jonas, Esq. — Placement Director
615 Market Street, Suite B • Kirkland, Washington 98033
Ph: 425-822-1157 • Fax: 425-889-2775
E-mail: legalease@legalease.com
See positions available at www.legalease.com
Stephen Hayne is proud to announce that he has formed a partnership with Aaron J. Wolff.
The name of the new firm is

HAYNE & WOLFF
LAW FIRM

The firm will continue to emphasize defense of persons charged with driving under the influence and other serious traffic offenses.

Aaron J. Wolff

After graduating with honors from the Seattle University School of Law Mr. Wolff became a DUI prosecutor for the cities of Kirkland and Tukwila. During his tenure as a prosecutor, Mr. Wolff successfully prosecuted hundreds of DUI cases. In 2003, Mr. Wolff joined the Law Firm of Stephen Hayne, where he has limited his practice to defense of DUI’s and other serious traffic offenses. He is a graduate of the National College of DUI Defense, the DRE Drug Evaluation classification overview program and is a NHTSA qualified administrator of the Standardized Field Sobriety Tests. Washington State utilizes the BAC Datamaster breath testing device manufactured by National Patent Analytical Systems in all DUI prosecutions. In 2004, Mr. Wolff completed the BAC Datamaster training program at National Patent’s Datamaster manufacturing facility in Mansfield, Ohio.

Mr. Wolff is a member of the National College for DUI Defense, the Washington Association of Criminal Defense Lawyers and the Washington State Trial Lawyers Association. He also serves on WACDL’s legislative affairs committee and is a board member of Citizens for Judicial Excellence.

Visit our website: theDUIfirm.com 425.450.6800
Leaders of the Future

Please consider service to the profession as part of your future as a lawyer

In just a few weeks, Stan Bastian of Wenatchee will take the oath of office as president of the WSBA. I will hand the president’s gavel to him, and will congratulate him on the start of his term. Stan and I have worked closely together over the course of the last year, and I know that he will serve the WSBA with vision, insight, a warm heart, and a deep commitment to the membership. I look forward to Stan’s leadership — and to reading his columns! In fact, you will find a column that has been co-authored by Stan (together with WSBA Executive Director Paula Littlewood) in this edition of Bar News.

Unlike me, Stan came to the presidency by serving as a member of the Board of Governors, having represented the Fourth District with distinction before his election to the office of president-elect. Stan’s path is the better-traveled path to the office of president. Of the 116 presidents, all but three have also been governors. That is not the only path, however. In my own case, service in sections and on committees, and working closely with the Board of Governors on the Ethics 2003 Task Force, established my knowledge of the workings of Bar governance and led to my decision to run for the office.

Just as there is more than one path to serving as president, there are also many paths to serving on the Board of Governors. Eleven of the governors are elected by the lawyers residing in their congressional districts. (King County’s 7th Congressional District is divided into three for this purpose because of the large number of lawyers who live and work in King County.) The remaining three seats are filled by the Board. Two of those seats, the at-large seats, are filled by lawyers who will help assure that a broad diversity of thought and experience will be voiced on the Board. The holder of the third of these seats is selected from a group nominated by the Young Lawyers Division to represent the interests of young lawyers.

This column, my last, is a direct request that you consider service to the profession as a part of your future as a lawyer. There are, of course, many ways to serve the profession, and participating in the governance of the WSBA is one of them — but it is a good one if your interests lie in this direction. As I hope I have conveyed in my columns this past year, the work of the Board, and of the president, is fascinating and stimulating. It offers opportunities to gain a deeper understanding of the issues that face our members and to make a real difference in how those issues are addressed. It provides opportunities to get to know lawyers and judges across the state, to collaborate with them on important projects, and to hone leadership skills. Service on the Board or as WSBA president is a way to engage in a dialogue with the courts and the legislature on some of the most important challenges facing our justice system, such as access to the courts, the independence of the judiciary, development of sound laws, and the future of the practice of law. It is also a way you can have a direct effect on the services that are provided to the WSBA membership.

“But,” you say, “it takes too much time away from my law practice.” Serving on the Board is a serious and significant commitment. Like many volunteer commitments, it can occupy whatever time you decide to devote to it. Service on the Board, however, can be consistent with maintaining a full-time law practice. You must just expect to be very busy while you are also serving on the Board. Serving as president requires a greater commitment of time, but is also consistent with maintaining a law practice. You will notice that I didn’t say “full-time law practice.” Presidents must expect to cut back significantly on their time in the office. But it is possible to maintain a practice during one’s year as president, even if it is reduced in scope.

Diversity of thought, opinion, and experience on the Board of Governors itself is supported by the representative constitution of the Board and by the three Board-elected seats. The Board has never been more diverse or more talented, and the strength of that diversity and talent shows in the work that the Board does. In the case of the presidency, the Bylaws require that the office rotate among the different parts of the state. For this office, however, diversity of thought, background, and experience depends entirely on who decides to run. The future strength, vitality, and leadership of the Board will depend on sustained interest by WSBA members in serving — the willingness of members like you to take the risk of running for office, and to devote the time and energy needed to do the job well.

As only the third woman president, I am keenly aware that we need to do better in attracting diverse candidates to run for this office. Running for office, especially when there are others in the same race, is a risk. For those of you who are qualified, who are committed to service to the profession, and who are interested in Bar governance, I hope that you will take that risk. The future of the Bar depends on the willingness of lawyers to do the work of governance.

There are many people who have my thanks for supporting and challenging me this past, exciting year. It has been an experience that I would commend to anyone who loves the law and the practice of law, and who believes in the important role the profession plays in protecting our freedoms as citizens. It has been a privilege to serve as your representative, and I will be a better lawyer and a better citizen for it. Thank you for the opportunity.

Ellen Conedera Dial can be reached at 206-359-8438 or ecdial@gmail.com.
If a case is important to you, it’s important to us.

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

Call for more information or to schedule a matter. 800.626.5267

RESOLUTION CENTERS NATIONWIDE

JAMS

THE RESOLUTION EXPERTS

www.jamsadr.com
AFFORDABLE PROFESSIONAL LIABILITY INSURANCE IS JUST ONE CALL AWAY.

Mainstreet® is the Nation’s Small Firm Expert. Solo Practitioners and Small Law Firms deserve special attention and get it from Mainstreet®, Most small firms are actually lower in risk than larger firms and should be paying lower premiums. Now you can make one call to compare service, policy features and price. We immediately qualify your firm and provide quotes. No long delays.

800-817-6333 ext. #502
MAINSTREET INSURANCE PURCHASING GROUP
400 Mercer Street, Suite 406 Seattle, WA 98109
www.EZlawquote.com
Workers’ Compensation ♦ Social Security Disability
We welcome and appreciate your referrals

We have been practicing Washington State Workers’ Compensation law for more than 75 years and clearly understand the needs of our clients. Each of our dedicated trial attorneys has years of experience in Workers’ Compensation and Social Security disability law. Whether a worker has suffered an industrial injury or is disabled as a result of an occupational disease, we know what to expect and what needs to be done, every step of the way. If your clients or friends need legal assistance or advice regarding a Workers’ Compensation or Social Security disability matter, we can help.

Walthew, Thompson, Kindred, Costello, & Winemiller, P.S.
phone 206.623.5311 ♦ toll free 1.866.925.8439 ♦ www.walthew.com

CAR … OR PERFORMANCE VEHICLE?
The Distinction is Value.

GCG – class action settlement administration services that are peerless in every way:
- More than 20 former practicing attorneys on staff
- Routine mailings of over 60 million notices
- Resources to satisfy challenging deadlines
- Millions in claims and billions in settlements

Choose GCG. The recognized leader in legal administration services.

Partner with performance.™
gardencitygroup.com | 1-800-327-3664

CALIFORNIA | FLORIDA | GEORGIA | ILLINOIS | NEW YORK | OHIO | OREGON | VIRGINIA | WASHINGTON
Marriage and the Law

This month’s Bar News looks at the topic of marriage-equality legislation

This edition of Bar News is dedicated to a single subject — marriage and the law — an issue that will no doubt highlight some differing views among the membership of our association. The Washington State Legislature is expected to consider this issue during its next session, and there are strong and passionate advocates on both sides of the issue.

Our intent in publishing the essays in this edition is not to advocate one side over the other. Rather, our intent is to educate, debate, inform, advise, and stimulate your thoughts on this important issue. Indeed, providing a forum to discuss important and developing issues is one of the most valuable services the Washington State Bar Association can offer to its members. We may not be able to reach consensus on such a complex issue, but as lawyers we should be involved in the development of sound public policy.

Marriage-equality legislation was first introduced during the 2007 legislative session in both the Senate and the House, but the sponsors did not request a hearing on either bill. Instead, they focused on legislation creating a domestic-partnership registry, available to same-sex couples and other couples where at least one partner is 62 years of age or older. This legislation provides certain rights regarding healthcare and probate decisions to registered domestic partners. The proposed Marriage Equality Act addresses issues beyond these discrete rights and would make it legally possible for same-sex couples to marry in the state of Washington and thereby receive the same legal protections granted to other married couples.

Currently, there are over 400 state statutes that confer rights, benefits, or obligations based upon marital status, nearly all of which are currently unavailable to same-sex couples. These include the right to bring a wrongful-death action, the right to inherit property when there is no will, the right to invoke the evidentiary privilege, the right to certain employment and pension benefits, and the right to transfer property between spouses without paying the real estate excise tax. The intent of the Marriage Equality Act is to extend these rights and benefits to same-sex couples.

General Rule 12 governs the operation of the Bar Association. It regulates what the Bar can and cannot do with regard to engaging in political or social issues, and the Bar’s leadership and staff members always work hard to stay within the appropriate boundaries. GR 12 states that the WSBA can take a position on such matters so long as they relate to or affect the practice of law or the administration of justice. Unfortunately, equality legislation because they believe it to be too political and too divisive.

However, many believe that the WSBA should support the Marriage Equality Act and that such a position is authorized by GR 12. They argue that the proposed legislation directly relates to and affects the administration of justice because it promotes both an accessible and effective legal system as well as diversity and equality in the courts. All of these principles are important and core values to this bar association and the legal profession as a whole.

As you read through the articles in this month’s issue, we hope you will find the analysis and viewpoints presented to be both thought-provoking and illuminating on a topic very much in the forefront of society’s dialogue today.

As you read through the articles in this month’s issue, we hope you will find the analysis and viewpoints presented to be both thought-provoking and illuminating on a topic very much in the forefront of society’s dialogue today. So, read on! And we look forward to hearing your thoughts on this important topic as well.

Paula Littlewood is the WSBA executive director and can be reached at paulal@wsba.org. Stan Bastian is a former public defender for the City of Renton and prosecutor for the City of Seattle, and is a shareholder in the Wenatchee and Moses Lake firm of Jeffers, Danielson, Sonn & Aylward, P.S. His practice focuses on civil litigation, employment law, labor negotiations, and insurance defense. He was elected to the office of WSBA governor for District 4 in 2004. He presently serves as WSBA president-elect, and will assume the office of WSBA president in October.
When will you find out how good your malpractice insurance really is?

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

Our plan is competitively priced and offers several key policy benefits and services that can really make a difference…

- Unlimited claims expense in addition to the liability limit
- Prior acts coverage including full individual career coverage
- 50% reduction in deductible for early claims reporting
- Automatic coverage for independent contractors
- More extended reporting period options (tail coverage) – 12, 24, 36, and 60 month, or unlimited duration
- Take advantage of premium financing options to make payments more affordable
- Quick and easy to get a quote

Find out how good ours is –
Turn to the team of professionals who know the industry and will recommend the right coverage for you.

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

1-877-613-2200
www.proliability.com/29367
Experienced BUI Defense

With over 75 years of experience our commitment extends from the roadways to the waterways.

Cowan
Smith
Kirk
Gaston

Refer with Confidence

Vernon Smith  Douglas Cowan  Eric Gaston  William Kirk

Defending DUIS  ♦  425.822.1220  ♦  Cowanlawfirm.com
The Official

2007 Revised Code
of
Washington Supplement

Don’t have the 2006 RCW? No Problem.
Order it now and we will include the supplement free!

Call us today toll-free: 1-866-650-6369
We’ll gladly take your Visa/Mastercard order
over the phone...or fax this form to:
360-357-7219

If you prefer to pay by check, mail your order to:
Office of the Code Reviser
PO Box 40552
Olympia WA 98504
360-352-5769

Method of Payment:
[ ] Check for total amount enclosed.
[ ] Visa [ ] Master Card
[ ] Card number
[ ] Month [ ] Year

Signature (required for all charge orders)

First Name

Last

Company

Firm/Department

Address

Bldg/Apt

City

St

Zip

Phone

Fax:

$40.00
[plus 8.4% sales tax and
shipping and handling]
PREPAYMENT IS REQUIRED

2006 RCW Reprint @ $210.00 w/ free 2007 supplement or
2007 RCW Supplement @ $40.00

Shipping and Handling $5.00

Subtotal

8.4% sales tax

Total Amt Due

TAX & SHIPPING INFORMATION:

TIN: 91-6001909
State Agencies please use 8780 007721-01 for
electronic payment AND fax a copy of order to:
360-357-7219

You are not required to pay sales tax if:
1. Your order is being sent out of state, or
2. You are a state or federal agency
(local governments are not considered state agencies)

Br6707
The Role of the State in Washington Marriage: Same Sex, Different Rights

BY JILL MULLINS AND HUGH SPITZER

There are three partners to every civil marriage: two willing spouses and an approving State.1 One of the interesting aspects of the marriage-equality issue is the light it sheds on the large role the state plays in granting certain rights and burdens to married couples.

The states, including Washington, have passed hundreds of laws regarding the details of family life — presumably with the purpose of ensuring family stability and clarity of law. In an effort to identify the statutes at issue in Washington, a number of people have analyzed the breadth and content of statutes that grant rights or impose obligations dependent upon marital status — one study, by K&L Gates lawyer (and Washington State Representative) Jamie Pedersen, identified 423 marriage rights and obligations under Washington law.2 The recent domestic-partnership bill3 extended a few of these rights to domestic partners, primarily rights associated with death and dying. That legislation is discussed in Jason Holloway’s article on page 23. This article explores the remaining rights and obligations encompassed in the status of marriage in Washington state.

When one reviews the list of marriage rights not currently available to same-sex couples, trends emerge as to the type of statutes that relate to marital status. The general areas affected by marital status include: licenses; family support obligations, including maintenance, child support, and community property laws; adoption; child custody; criminal law, including defining what is considered criminal behavior (i.e., marriage as a defense to rape); creditor rights; public assistance; and property. In addition to the laws that affect all married couples, almost 100 of the statutes regulate the status of marriage for government employees.

Family Law

The state establishes who can marry, with every state passing laws governing the age, mental capacity, level of consanguinity (i.e., which relatives one cannot marry), and which sex combinations can marry (e.g., only opposite-sex couples). However, the state’s involvement does not end at “I do.” The state is involved in structuring the family and in the dissolving of family life.

There are also several statutes that assist with the process of dissolution.4 These statutes apply, inter alia, the use of a mediator, a court to order one party to pay attorneys’ fees to the other party, and govern the overall procedure for finality of dissolution decree. Although same-sex relationships likely have the same issues as opposite-sex couples in the dissolution process, the only provision in the new legislation is SSB 5336’s Section 6,5 which provides that dissolution of a domestic partnership requires only a filing with the state, or marriage to a member of the opposite sex. This leaves uncharted custody and child-support issues, property distribution, and many other issues.

Parenting

There are also statutes meant to provide stability for families with children. For example, one important statute is the “presumed father statute,”6 which assumes that the husband of a woman giving birth is the father of the child. There is also a law that addresses the parental status of a child conceived via assisted reproduction, providing a general presumption that the father may not challenge paternity except under limited circumstances.7 The Vermont Civil Unions Act extends this presumption of parenthood to the partner (male or female) of the woman giving birth. This presumption eliminates the need for co-parent adoption for lesbian parents who employ alternative means to get pregnant.

Washington statutory law also provides that stepparents, a status that can be achieved only by a legal marriage, have obligations of support of their stepchildren. Under RCW 26.15.205, the expenses of the family and the education of the children, including stepchildren, are chargeable upon the property of both husband and wife, or either of them, and they may be sued jointly or separately. It is questionable whether this obligation would extend to same-sex partners, as the Washington State Supreme Court distinguished the obligation of a stepparent from that of the partner in a meretricious relationship.8 In Smith, the Court held that it was reasonable that someone who entered into a marital relationship with a person with children has agreed to enter into the serious commitment and can therefore be assumed that his or her earnings will be available to meet the needs of the children.9 The Court held that the presumption would not necessarily be justified in a meretricious relationship.10

If domestic partnership is equated more with a meretricious relationship than with marriage, the same-sex partner of a parent may have no obligation to ensure the necessities and educational needs of the child are met. If a domestic partnership is considered to be closer to marriage and a “serious commitment,” a court may find that the domestic partner assumed that his or her earnings would be available to meet the needs of the children.

This also touches on the role the law plays in providing guidance in the event of a dissolution of spouses with children. Chapters 9 and 19 of Title 26 RCW contain most of the provisions in Washington statutes for creating a parenting plan and determining custody, visitation, and support upon dissolution of marriage with children.

These statutory structures are not in place for same-sex households, and this can make dissolution and custody issues somewhat more complicated. One example of the potential complications is evidenced by the case of Carvin v. Britain.11 The Carvin case involved a lesbian couple who had a child.

One of the interesting aspects of the marriage-equality issue is the light it sheds on the large role the state plays in granting certain rights and burdens to married couples.
together, inseminated by a male friend. When the child was six years old, the couple split up and a custody battle ensued. Then Britain, the biological mother, married the sperm donor and asserted that Carvin had no standing to claim custody or visitation because she was not the biological or adoptive mother. The Court disagreed, applying a “de facto parent” approach and outlining criteria for determining who has standing as a de facto parent. The Court adopted the four criteria earlier outlined by the Wisconsin Supreme Court: (1) the natural or legal parent consented to and fostered the parent-like relationship; (2) the petitioner and the child lived together in the same household; (3) the petitioner assumed obligations of parenthood without expectation of financial compensation; and (4) the petitioner has been in a parental role for a length of time sufficient to have established with the child a bonded, dependent relationship, parental in nature. The Supreme Court also clarified that the de facto parent is “limited to those adults who have fully and completely undertaken a permanent, unequivocal, committed, and responsible parental role in the child’s life.” Id. at 701.

The Carvin court noted that the Legislature has been “conspicuously silent” about families like the Carvin/Britain family. The adoption statute does not specifically state that second/co-parent adoptions may or may not be undertaken. To the extent the law allows a same-sex couple to do a co-parent adoption, it likely will cost them more than opposite-sex married couples, because the status of marriage has a statutorily defined fee waiver, which provides that the couple is charged, not each individual in the couple.

Property
Property is another area where the status of marriage has a large effect within the couple and with respect to their parties. Many statutes governing property provide structure for property distribution at death or dissolution. For example, statutes allow for the transfer of a license or franchise to the surviving partner at death. This is true for liquor licenses, commercial fishing licenses, and other rights connected with fishing. This is also true for insurance, including receipt of benefits or requirement for conversion policies to be offered to spouse.

One of the most important concepts addressing the property distribution at divorce or death is Washington’s community-property system. As a preliminary matter, it is important to note that the community-property system applies only to a valid marriage, which is limited to opposite-sex couples. Community property allows for each spouse to have an undivided one-half interest in all property acquired during the course of a marriage, except property obtained by gift, devise, or inheritance. Separate property remains separate and, generally speaking, all income, rents, and profits from separate property remain separate. However, in a dissolution, the distribution of property must be just and equitable, and a court can consider separate property in its determination of the allocation of property. The community-property system also limits one spouse’s ability to convey or encumber the homestead without the consent of the other spouse.

Washington common law has extended some of the protections of the community-property system to putative and meretricious spouses. In Connell v. Francisco, the Washington State Supreme Court held that in order to make an equitable distribution of property of unmarried cohabitants, the court must first find that the relationship qualifies as a “meretricious relationship.” In a meretricious or putative spouse relationship, only property that would be considered community property had the couple been legally married is on the table for distribution.

It is unclear whether or not the meretricious-relationship doctrine will be extended to same-sex couples. The closest case on point

A Trusted Voice for Victims of Negligence

In Gratitude

In 30 years of practicing law in Seattle, I have received many referrals of medical negligence cases from attorneys throughout the state. Currently, I am associated with other attorneys in about half the cases in my practice. At CMG, we have the experience and resources to handle the largest and most complex medical negligence cases. Sample cases and referral arrangements can be found on our website: www.cmglaw.com.

If you have a potential medical negligence case and would like to discuss a referral or association, please contact me directly. Thank you!

206.443.8600  www.cmglaw.com

Gene Moen

Chemnick | Moen | Greenstreet

206.443.8600 | www.cmglaw.com
is Vasquez v. Hawthorne. Vasquez’s partner, Schwerzler, died, and Vasquez filed a claim against the estate asserting that he and Schwerzler had formed an economic community and that Vasquez was therefore entitled to an equitable share of the property. The trial court had granted the Vasquez estate’s motion for partial summary judgment under the meretricious-relationship doctrine. The Court of Appeals reversed. The Washington State Supreme Court overturned the appellate court, holding that the meretricious-relationship doctrine is an equitable one, and “[e]quitable claims are not dependent on the ‘legality’ of the relationship between the parties, nor are they limited by the gender or sexual orientation of the parties.” Community-property experts caution against reading too much into Vasquez, as the Court stopped short of holding that property they acquired qualified for equitable division under the Connell case.

Creditors

Another area where the law has provided guidance is with regard to a spouse’s interaction with a third-party creditor. Washington statutes make it clear that neither spouse is liable for the prenuptial or separate debts of the other. Under Washington state law, one spouse’s property is exempt from execution, attachment, or garnishment from a judgment against another spouse. Since same-sex couples cannot become married, there is no legal relationship between them that would allow creditors to assume that they have access to the property and assets of the entire community.

Spouses are allowed a higher exemption from garnishment if supporting a partner. Spouses are allowed to transfer money freely between each other without worrying about certain tax consequences.

The separate versus community-property distinction in relation to creditors could be problematic in an instance where one partner takes a larger role in supporting the community. If one partner is sued for committing what would be considered a separate property tort, and a judgment is entered against him or her, under the community-property system, the damages would be collectable first from the tortfeasor-spouse separate property (including wages). If that is not enough, then damages can be collected from the tortfeasor’s one-half interest in community personal property. If that still does not cover the debt, then a tortfeasor is entitled to the tortfeasor’s one-half interest in the community’s real property.

Given that these are governed by statutes that discuss the status of marriage, it is unclear what kind of expectations a partner may be exposed to based on the domestic partnership. It is possible that if none of the property is in the tortfeasor’s name, the victim of the tort will have a limited ability to recover damages. Alternatively, if all of the property is in the tortfeasor’s name, the domestic partner of the tortfeasor could lose all the property that would otherwise be protected.

Conflict of Interest

Certain statutes attempt to guard against a conflict of interest that may arise due to marital status. Individuals campaigning for public office must disclose contributions made to spouses. Employers of lobbyists must report gifts to spouses of public officials. Witnesses to healthcare powers may not be related by blood or marriage. There are also several statutes which exclude spouses from being “public members” on the boards. In addition, spouses of public officials are prohibited from sitting on state commissions determining salaries of spouse, or from engaging in some contracts.

Criminal Law

In criminal law, marital status not only affects the rights and responsibilities of spouses, but...
it also provides a defense against certain crimes. Some of the benefits include: the ability to notice of the release of sex offenders or violent offender, or having community property be exempt from seizure of property. The other area where the marital status comes into play is in the definition of crimes and the defenses allowed. For example, Rendering Criminal Assistance is ordinarily a class-C felony, but when committed by a relative it is only a gross misdemeanor. Marriage is also considered a defense to Rape and Child Rape, and Sexual Misconduct with a Minor. Because these defenses are linked to the status of marriage, these defenses do not exist for same-sex couples. In fact, current domestic-partnership law requires that both parties be at least 18, with no exceptions.

Whether the status of marriage should be considered a defense for all of these crimes may be debatable, but it is clear that this is another area where the domestic-partnership status is not equal to the marriage status.

Public Employees
Almost a fourth of the benefits/responsibilities identified in the RCW project are statutorily defined benefits for public employees, specifically judges, firefighters, school employees, and police officers. Pensions of public employees, police officers, firefighters, teachers, and judges are governed by statute. For example, a police officer’s spouse is entitled to his or her spouse’s pension on death in line of duty. Based on the statutorily defined benefits and responsibilities as tied to marital status, it appears that if one is the partner of a public employee, he or she has fewer rights to benefits and pensions than many of those in the private sector whose employers voluntarily accord these benefits to same-sex partners.

Full Faith and Credit
It is also important to note that in addition to the distinctions within Washington state’s laws between domestic partnership and marriage, much is beyond the scope of any single state. A couple in Washington who register as domestic partners cannot expect that any other state will honor their status under the full faith and credit clause of the Constitution. The federal “Defense of Marriage Act,” which has not reached the Supreme Court, grants the federal government an extraordinary power to intervene in what is otherwise considered a state institution. There is a serious question as to whether the Article IV, Section 1’s “Full Faith and Credit” clause allows Congress to grant states the power to ignore contracts lawfully entered into in other jurisdictions. There are hundreds of other privileges and entitlements encompassed in federal statutes that are guided by the marital status.

Regardless of the federal context, there are, within Washington, a broad range of legal rights and obligations that appear beyond the reach of same-sex couples unless and until the Legislature amends the remaining 400-plus laws that provide benefits or obligations based on marital status in order to clarify that these benefits and obligations extend to domestic partners.

Jill Mullins is a 2008 J.D. candidate at the University of Washington School of Law. Hugh Spitzer is an affiliate professor of law at the University of Washington and practices with Foster Pepper PLLC in Seattle.

NOTES
2. Mr. Pederson’s list was prepared for Legal Marriage Alliance of Washington, available at http://lmaw.

Lawyers Professional Liability

The ideas, commitment, and energy necessary to grow and run your law firm are enormous, as is the inherent risk. Insurance is one of the strategies you should use to manage that risk.

Daniels-Head is committed to crafting customized insurance solutions for law firms. Call us today, we can help you determine which coverage best suits your needs.
1. With 35 years' experience in complex commercial and tort litigation, you can count on knowledgeable, fair conflict resolution.

Nick Verwolf

EXPERIENCE COUNTS IN LITIGATION... AND MEDIATION

With 35 years' experience in complex commercial and tort litigation, you can count on knowledgeable, fair conflict resolution.

Fellow of the American College of Trial Lawyers

Serious Personal Injury

Maritime Back and Head Injury

$1,250,000
Big Enough to Meet Your Needs.
Small Enough to Actually Meet You.

You’ve seen it all before. Trust companies getting bought by even larger trust companies. Profits for their stockholders—inferior service for you. We are different. No home office three time zones away, no layers of voicemail, and no representatives who can’t remember your name.

BECU Trust Company is local… staffed by local people. You will appreciate our personal service and hands-on support, whether you have one-half million or twenty-five million in assets. We work with an experienced team of professionals to provide a personalized service tailored to your needs.

So let’s get acquainted. Come in and see us at BECU Trust Company, where you are an important person regardless of how large or small your holdings. Contact us today at 206-812-5176 or 1-800-233-2328 ext. 5176.
Domestic Partnership and the Law

BY JASON HOLLOWAY

As the definition of family grows to accommodate our diverse population, laws concerning the establishment, maintenance, and termination of families are developing to accommodate the changing landscape.

Washington’s new domestic-partnership registry was signed into law on April 21, 2007. The registry itself, and the marital-like protections it provides to Washington families, have generated much attention and debate in the legal community.

While the new legislation is a welcome step toward recognizing the changing face of families in Washington, it does little to alter the landscape of family law in the state. It is fairly narrow in scope and in application, as it does not apply to most unmarried heterosexual couples, grants few rights that are not otherwise available through private contract, and does not address many contentious issues that unmarried couples face, such as child custody and property division. If anything, by creating a process by which unmarried couples are able to officially register their relationship but by failing to address many real-life issues that may affect registered couples during and at the end of the partnership, the registry may result in an increase in litigation to dissolve domestic-partnership issues. Registered partners may come to expect a formal “solution” when the relationship ends, and, absent pre-planning, may have to litigate parenting and financial issues which are not addressed by the registry.

The domestic-partnership registry amends 22 existing state statutes, adds new sections to three statutes, and adds a new chapter to Title 26. These changes will provide same-sex couples, and couples where one party is at least 62 years old, with many rights previously applicable only to married couples.

The domestic-partnership registry amends 22 existing state statutes, adds new sections to three statutes, and adds a new chapter to Title 26. These changes will provide same-sex couples, and couples where one party is at least 62 years old, with many rights previously applicable only to married couples.

Meretricious Relationship

A meretricious relationship is characterized as a “stable, marital-like relationship where two parties cohabit with knowledge that a lawful marriage between them does not exist.” Meretricious relationships can be formed by heterosexual and same-sex couples.

In order for the laws of meretricious relationships to apply, legal action must be initiated and a determination must be made by the court that such a relationship exists. There are five key factors for establishing whether a relationship will be considered meretricious:

1. Continuous cohabitation. Continuous cohabitation is the length of time a couple resides together continuously in a shared residence during the relationship. Such cohabitation would be interrupted by periods of separation, separate residences, etc.

2. Duration of the relationship. The period of time in which the parties are in an exclusive relationship. (This factor is often more easily satisfied than others, but does not alone support a claim by either party for an equitable division of assets upon dissolution of the relationship.) The fact that one of the parties is married to or separated from another individual during the period of time the parties exclusively dated may not limit the duration of the relationship, but may belie the intent of the parties to form a meretricious relationship during that period of time.

3. Purpose of the relationship. Did the
parties cohabitate in a marital-like relationship as opposed to living together for non-romantic purposes, such as living as roommates? This factor may be satisfied by evidence supporting the prior two factors, as well as testimony of the parties supporting their intent to form a “stable, marital-like relationship.” State registry of the partnership will provide evidence of the purpose of the relationship.

(4) **Intent of the parties.** The intent of the parties would be demonstrated by evidence that the parties knew they were not married, but functioned as one would expect a married couple to function and held themselves out as “spouses” or a marital-like couple. The fact that one of the parties is married to another during the relationship may indicate intent not to form a meretricious relationship. Registering a domestic partnership with the state will evidence intent to form a marital-like relationship, thus satisfying this factor.

(5) **Pooling of resources.** This factor is met by a showing of significant pooling of resources and services for joint benefit. This can be demonstrated by the constant or continuous payments of joint expenses, substantial investments of time and effort into specific assets, and the joint ownership of property. Simply sharing a joint bank account may not support this factor. The touchstone is whether the parties made such investments of time, resources, or funds to justify an equitable division of assets.

The factors are neither exclusive nor hyper-technical, and no one factor is weighed more heavily than another. The factors and evidence are taken and evaluated as a whole to justify either party’s claim for an equitable division of property acquired during the relationship.\(^6\)

The court has established a three-pronged analysis for disposition of property when a meretricious relationship ends.\(^7\) First, the court must establish that a meretricious relationship existed; if such a finding is made, the court then moves to the second prong. Under the second prong, the court must evaluate the interest each party has in the property acquired during the relationship, such as joint purchases and incurred debt. Under the third prong, the court makes a just and equitable distribution of such property.

In dividing the property, the court utilizes family-law community-property laws for guidance. Although these laws do not directly apply to meretricious relationships,
the court can refer to community-property laws to make a just and equitable division of any “community-like” property that the parties acquired during their relationship. The court is not empowered to divide any separate property of the parties when a meretricious relationship ends. Case law has provided no basis for awarding “spousal” maintenance to unmarried parties in meretricious relationships. Attorneys’ fees are similarly unavailable for court allocation between the parties.

Unmarried cohabitating couples should always execute a living-together or cohabitation agreement that defines their rights and responsibilities with regard to assets and debts acquired during the relationship. Absent such agreements, if the relationship ends, the parties may be surprised to find that their rights to assets and responsibilities for debts are not as clear as they believed. To resolve any disputes, they may have to resort to the sometimes uncertain laws of meretricious relationships. How a court will divide assets and liabilities at the close of a meretricious relationship is not always clear, and more importantly, may not accurately reflect either partner’s unilateral expectation with respect to his or her own rights or obligations.

Private Agreements
Private agreements allow the parties to avoid the laws of meretricious relationship altogether. By executing living-together, cohabitation, and property-ownership agreements, unmarried couples can creatively address and resolve potential issues before such issues become litigious problems.

In addition to the most basic matters that should be addressed in such agreements, such as “who gets asset A” and “who pays debt B,” the parties can also address the payment of maintenance and the tax implications inherent in some transfers, and can balance inequities that may exist with respect to separate property and/or assets that are not eligible for transfer between unmarried parties. For instance, if a partner intends to acquire an interest in the other’s IRA benefits, the transfer will be treated as a taxable distribution to the named owner of the account. Also, real estate transfers made when the relationship ends are not exempted from excise tax (such transfers are exempt in marital dissolutions), and gift transfers made between unmarried partners would likely be taxable events (Internal Revenue Code 2516 provides exemptions only for married parties). Social Security benefits are not available to an unmarried partner of a benefit recipient. Similarly, unmarried couples are unable to use qualified domestic relations orders to divide retirement benefits of qualified plans.

Many of these issues can be addressed and resolved by the parties at the forefront of their relationship via private agreements. By using these tools, the parties may allocate assets to compensate for unavailable transfers or tax consequences. In the absence of such agreements, creative arguments may be made in court to address tax consequences and to attempt an equitable division of assets. However, because the court cannot invade a partner’s separate property interests, such arguments may be challenging. Private agreements are always suggested to provide the parties with the maximum control over this process.

Such agreements are akin to prenuptial agreements and should follow the same general formative guidelines of prenuptial contracts. Each party should be represented by independent counsel; the agreement should be entered into freely and without duress; and all assets, liabilities, income information, and other relevant facts and circumstances should be disclosed in the agreement.

In the absence of an omnibus relation-
ship agreement, unmarried partners who obtain significant assets or debts during the relationship, either jointly or unilaterally, should always enter into an agreement that spells out the parties’ ownership interests of each asset or obligation, and that addresses the disposition of the asset or debt should the relationship end. This benefit of private agreements for unmarried couples cannot be overstated. These private contracts would be enforced and interpreted under contract law across state lines.

Unmarried Couples with Children
Unmarried couples raising children together will want to take steps to ensure that the rights and responsibilities of the non-biological parent in the relationship are clearly defined up front. For unmarried parents who are the legal or biological parents of a child, the Parentage Act will apply\(^\text{10}\) and can establish the legal parentage of a child, set child support, and provide for a parenting plan/residential schedule. However, if one of the partners is not the legal or biological parent of the child, that parent may be in a very unfortunate position at the end of the relationship; absent court action, he may find that he has no legal right to care for or even see the child he has been raising.

The most comprehensive means of solidifying a non-biological parent’s parental rights is through second-parent adoption. Because parties are unable to contract with respect to parental rights, in the absence of adoption, a non-biological parent of a child may have to rely on the doctrine of de facto parentage\(^\text{11}\) or on third-party custody law.

Second-Parent Adoption
Second-parent adoption allows a non-biological parent to adopt his or her partner’s biological or adopted child without terminating the latter’s parental status.\(^\text{12}\) This option is not available if another individual or the other biological parent has custody of the child, unless that person is willing to waive his or her parental rights. Second-parent adoptions should be distinguished from joint adoptions, which allow both same-sex parents to adopt a child with no pre-existing biological or adoptive relationship to either party.

Second-parent adoptions provide children being raised in unmarried families with financial and legal protections that may not otherwise be afforded to them. The child is able to receive healthcare insurance coverage from a second parent’s employer, may receive workers’ compensation benefits arising from a second parent’s
work-related injury, and can receive Social Security disability benefits. If the parents separate, residential time between the child and second parent may be ordered, and the child may be entitled to child support from the second parent.

Second-parent adoptions also protect the child and the family if the child’s biological parent dies or becomes incapacitated. Absent adoption, the child may be removed from the non-biological parent’s care and placed with relatives or in foster care. This may be true even if the non-biological parent is designated as the child’s guardian, as such designations can be challenged in court.

Moreover, second-parent adoptions are critical should the child become seriously ill. A second parent is entitled to parental leave under the Family and Medical Leave Act, can consent to emergency medical treatment for the child, and is entitled to visit the child in a hospital or medical facility.

**De Facto Parentage and Third-Party Custody**

In the absence of adoption, a non-biological parent raising a child with his or her partner has other, less favorable options with respect to parenting if the relationship ends. A parent may petition the court under the court-created *de facto* parent doctrine established in *In re the Parentage of L.B.* or may attempt to gain custodial rights through a petition for third-party custody.

To qualify as a *de facto* parent, a non-biological/non-adoptive partner must first show that he or she had a parent-like relationship with the child and that his or her “parent-like” rights have been impinged. Following this threshold showing, the non-biological parent bears the burden of proving that: (1) the natural or legal parent consented to and fostered a parent-like relationship between the child and the non-biological parent; (2) the non-biological parent and the child lived together in the same household; (3) the non-biological parent assumed obligations of parenthood without expectation of financial compensation; and (4) the non-biological parent has been in a parental role for a length of time sufficient to have established a bonded, dependent, parent-like relationship with the child.

The court has held that “recognition of a de facto parent is limited to those adults who have fully and completely undertaken a permanent, unequivocal, committed, and responsible parental role in the child’s life.” As such, recognition of a person as a child’s *de facto* parent necessarily “authorizes [a] court to consider an award of parental rights and responsibilities . . . based on its determination of the best interest of the child.”

A *de facto* parent is not entitled to any parental privileges as a matter of right, but only as determined to be in the best interests of the child at the center of any such dispute.

This area of law surrounding *de facto* parentage is still developing and, although the language utilized by the court is strong, there is no guarantee that a non-biological parent will succeed in establishing parental rights. Even if a non-biological parent is successful, it will only be after a belabored and expensive court action. Moreover, *de facto* parentage may be very difficult to apply to very young children for whom long-term contact between partner and child cannot have been established, and may be impossible to establish for unborn children despite a partner’s involvement with conception or prenatal issues.

**Private Instruments and Directives**

Private instruments, much like the private agreements discussed above, are “must haves” for unmarried couples. With private instruments, couples can address, up front, the rights each partner has with respect to parenting if the relationship

---

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

**Support for the answer is critical.**

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

A thorough, qualified valuation can withstand challenges.

**Chinese Valuator Available**

**Multilingual staff:** Chinese, Cantonese, Bosnian, Romanian

**Expert Witnesses**

Certified Public Accountants • Valuation Analysts

**Member: National Association of Certified Valuation Analysts**

1411 Fourth Avenue • Suite 410 • Seattle, Washington 98101
(206) 623-3200 • Fax (206) 623-3222

www.hanlinmoss.com
financial, healthcare, and other decision-making issues should one partner die or become incapacitated.

Financial durable powers of attorney\(^7\) may be used to allow an unmarried partner to make gifts; transfer property to trust; affect wills, beneficiary designations, and agreements; acquire and dispose of property; file and pay taxes; deposit funds into and withdraw funds from bank accounts; defend or bring lawsuits; and hire and fire counsel and employees.

An executed healthcare power of attorney\(^8\) may be used to allow an unmarried partner to make all healthcare decisions for his or her partner; to provide consent for his or her partner to make all healthcare decisions; to provide authorization to make healthcare decisions for minor children, to nominate a guardian of the person or estate of a minor, to provide informed consent for healthcare, and to make anatomical gifts.

Washington’s domestic-partnership registry will amend RCW 11.04.015 to allow for intestate succession by domestic partners. However, domestic partners, and unmarried couples who do not qualify for the registry, should execute a will in order to control the disposition of their assets and liabilities at death and to avoid the statutory rules of succession.

Washington law has continued to adapt to the changing faces of “family.” The recent domestic-partnership registry is the latest state effort to address inequities facing unmarried families. However, the registry is significantly limited in scope and application, and most unmarried couples, even those who register their partnership, will still need to take proactive steps to address and protect their rights and obligations. Domestic partners raising children will want to utilize adoption law and be conscious of the developing law of de facto parentage and third-party custody. Partners acquiring assets or debts will want to execute private agreements to deal with ownership and disposition issues. By failing to address these and other issues privately and in advance, unmarried couples may find themselves at the mercy of the court system to obtain remedies that may not adequately address the desires or needs of the parties or their children.

Jason Holloway is an attorney with family law firm McKinley Irvin. He can be reached at jason@mckinleyirvin.com or at 206-625-9600.

**NOTES**

1. RCW 4.20.020, 4.20.060, 7.70.065, 11.04.015, 11.07.010, 11.28.120, 11.94.010, 11.94.080, 41.05.065, 68.32.020, 68.32.030, 68.32.040, 68.32.060, 68.32.110, 68.32.130, 68.50.100, 68.50.101, 68.50.105, 68.50.160, 68.50.200, 68.50.550, and 70.02.050.
2. RCW 43.07, 43.48.005, and 70.58.
5. See Pennington, supra at n.3.
6. Id.
7. Id.
8. Id.
10. RCW 26.26
12. Washington does not specifically authorize second parent adoptions by statute, although they are frequently granted by the trial courts.
13. See Parentage of L.B., supra at n.11.
14. Id.
15. Id.
16. Id.
17. See RCW 11.94.030.
18. See RCW 11.94.010.
BY ERIC C. DE LOS SANTOS

MARRIAGE & THE LAW

Equal Marriage in My Lifetime? Whoa!

By Eric C. de los Santos

Marriage Equality. It could happen. Now, say it with me just like Joey Lawrence would. "Whoa."

Up until a few years ago, the notion that two men could legally marry was something my partner, Chad, and I thought would never happen, at least not in our lifetime. The prospect of this becoming a reality is still too difficult to comprehend, especially in light of the fact that I have spent the past 20 years knowing that, should I be blessed to find someone to share this life with, our relationship would never be viewed as equal to a marriage between a man and a woman. I am overwhelmed thinking of the possibilities of participating in an institution so full of traditions and rituals that are exclusively the domain of heterosexual couples.

The issue of marriage equality is likely to come before the WSBA Board of Governors in the form of a resolution requesting the Board’s support as the bill is introduced in Olympia. The Board is no stranger to the broader issue of discrimination, as it adopted a formal resolution in 2005 to support legislation adding “sexual orientation” to RCW 49.60, Washington’s Law Against Discrimination (WLAD). However, this particular situation feels different, in part, because the result, should the bill pass, is much more palpable and far-reaching.

Undoubtedly, the Board’s first consideration will be to even take a position on the marriage-equality bill. For those who view this strictly as a measure to end ongoing discrimination, the Board’s directive is clear: Yes, it is a matter for proper deliberation; and yes, the Board should vote to support marriage equality, simply because it is the right thing to do. For those who believe that marriage equality reaches far beyond the issue of discrimination and into issues of religious or moral beliefs, a discussion must follow regarding the Bar Association’s duty to its membership, the public, and the profession as a whole.

The debate as to whether the WSBA should weigh in on the marriage-equality bill should be as passionate, compelling, and equally interesting as the discussion surrounding the ultimate deliberation. The structure that will govern the initial discussion is GR 12.

According to GR 12(c), the WSBA will not take positions on political or social issues which do not relate to or affect the practice of law or the administration of justice. Does marriage equality affect the practice of law? From a historical perspective, this is not a typical “practice of law” issue. In the past, “practice of law” has been construed to be limited to issues regarding bar admissions, the bar exam, and disciplinary measures. However, I would venture to guess that one would be hard-pressed to find a self-identified lesbian, gay, transgender, and/or bisexual attorney who would deny that their ability to practice law would be unaffected by passage of the marriage-equality bill.

I, for one, can attest to the fact that my experiences in law school, taking the bar examination, and my early years practicing law would have been very different had I not been plagued with issues concerning my sexual orientation. Many moments in both my personal and professional life have been devoted to worrying, second-guessing, and questioning the effect my sexual orientation would have on my relationships with fellow students, colleagues, co-workers, clients, and jurors. I refer to this pining as my battle with the little voices of self-doubt. I continue to be beleaguered with these little voices, as my work as a corporate counsel involves multi-state interactions with individuals from places where the concept of equal rights for gay individuals is not a subject for contemplation. The amendment to WLAD and, more recently, the passage of the domestic-partnership bill have helped to silence the little voices; the passage of the marriage-equality bill in Washington state would go further to quell them.

From an organizational perspective, the Board must be mindful of the impact that taking a position on the bill would have on the relationships we have so carefully fostered in the House and Senate. The credibility of the WSBA in Olympia would be at stake. It is one thing to convince our membership that this is a matter of significant legal import; it’s quite another to persuade legislators that this is a matter requiring input from the legal community. Additional consideration must be given to the existence of other groups, legal in nature, that may be more adept and adept in the championing the cause. What more can the Bar add to the debate?

I have no read on how the Board will decide these issues. I do know, however, that the ensuing debate will be spirited, healthy, and above all, civil. These qualities are the hallmark of our profession. The decision will be a difficult one, and I don’t know what the outcome will be. But I am excited about the debate. Whoa. 🌟

Eric C. de los Santos is a WSBA governor-at-large. He is corporate counsel at Labor Ready, Inc. He lives in Columbia City in Seattle with his partner, Chad. He can be contacted via e-mail at edelossantos@laborready.com.
The Right to Marry: Should There Be Equality?

BY KLAUS O. SNYDER

Do you remember when you were in high school, when all the students lined up in the gym and the instructor had a particularly undesirable or challenging task that she wanted to be done? She then asked those assembled: “If anyone would like to volunteer, please take one step forward.” I feel like the guy who was the only one who failed to take one step backward, and now stand before you having volunteered (I think) for this challenging task. The task I was asked to take on was to present some of the legal arguments in opposition to the establishment of “gay marriage,” or, in the new nomenclature, the establishment of “marriage equality” in Washington state.

The issue of marriage equality or “gay marriage,” as it is commonly known, is quite controversial. It is not the purpose of this article to reiterate the arguments for, nor to present all of the legal arguments against, the concept of changing the way we define “marriage” under our laws or in American society and culture. Instead, the purpose of this brief research article is to discuss the legal history of, and some of the ramifications which may arise from, the decision that has been made by our Washington State Legislature when it passed Senate Bill (SB) 5336 “Domestic Partnerships” this last legislative session.1 SB 5336 was a legislative response to our State Supreme Court’s 2006 decision in Anderson v. King County, which upheld the limitation of marriage to opposite-sex couples.2

Marriage is defined in the Merriam Webster Dictionary as:

[T]he state of being united to a person of the opposite sex as husband or wife in a consensual and contractual relationship recognized by law.3

Interestingly enough, Merriam Webster also contains the following definition of marriage:

[T]he state of being united to a person of the same sex in relationship like that of traditional marriage [same-sex marriage].4

The Columbia Electronic Encyclopedia defines marriage as follows:

Marriage, socially sanctioned union that reproduces the family.5

The origins of marriage take us back thousands of years. Those of you of faith might consider the first married couple to have been Adam and Eve, which is a good place to start, considering that, like most young couples, they start off in the Garden of Eden, but sometimes it doesn’t turn out to be paradise: He doesn’t remember to put away his fig leaves and she keeps rearranging the place. Actually, from a solely legal perspective, Adam and Eve may have been the first couple, but they were not married as societies and cultures have come to use that term over the last few thousand years. What we consider marriage, at least from what we can determine from written history, likely began with the ancient Egyptians and/or possibly with the ancient Hebrews.6

Many of these rules and laws establishing which member of a class or classes one could marry and those within a class or clan that one could not marry have foundation in biblical provisions and prohibitions which have significantly influenced our western marriage customs and legislation.

Continuing Legal Education Seminar
Tenants-In-Common & §1031 Exchanges
3 CLE Credits

Tuesday, September 25, 2007
8:00 a.m. - 11:00 a.m.
Washington Athletic Club
Registration (866) 557-1031 or seminars@cvwm.com

The §1031 Exchange into Tenants-in-Common is one of the fastest growing segments in the commercial real estate market. Transaction structure, regulatory and compliance issues and resolutions are essential knowledge for your clients owning investment and rental income properties.

Presented by,
ClearView Wealth Management, LLC
Argus Realty, LP
Asset Preservation, Inc.

Securities offered through Pacific West Securities, Inc., Member FINRA/SIPC. Investment Advisory Services offered through Pacific West Financial Consultants, Inc., a Registered Investment Advisor.
husband and the bride's father to properly account for property rights of the wife and the children. Later on, the contract became one between husband and wife. There actually were contracts that were written out and agreed to, including provisions to provide for the well-being of the wife in the event that the husband failed to give the husband a son, which might also be grounds for divorce. The contract might also contain provisions allowing the husband to take a concubine and have children with that woman, and then have his wife adopt these children as her own.

In the ancient Hebrew world, marriage was a social organization. Regulations and arrangements for such marriages as are accounted for in the Old Testament of the Bible are significant in that they provide the basis for social orders by which were later attempted the building of moral systems based upon biblical models. These social structures had a very distinct purpose, and the moral systems the ancient Hebrews were trying to establish were designed to continue the species. There were certain incest taboos which were quite formidable and which required very close attention to the choice of one's marriage partner.

The various rules or laws established by different societies and cultures were generally guided by rules of exogamy (the obligation to marry outside a group), while some societies have rules of endogamy (the obligation to marry within a group). As mentioned above, many of the rules dealt with the concept of procreation and the concerns within societies for the problems with procreation resulting from incestuous relationships, hence the well-known incest taboo that applies and is present in virtually all societal groups.

Many of these rules and laws establishing which member of a class or classes one could marry and those within a class or clan that one could not marry have foundation in biblical provisions and prohibitions which have significantly influenced our western marriage customs and legislation. I discovered through research that the Catholic Church formerly had a rule preventing the marriage of cousins any closer than the sixth degree (which rule was later modified to the first degree).

From an anthropological prospective, the idea that a man and a woman would have a long-term arrangement or relationship helps to create a solid community. If this arrangement is called marriage, it has the implication that the husband and wife have claims over their partners, including material claims, and it results in the children born from the couple as being legitimate heirs to both parents.

Though legally, marriage in most societies has been intended as a long-term or “permanent arrangement” between a man and a woman, divorce is allowed and recognized in most modern societies. Civil unions are also now recognized in many western countries; however, in the western world for nearly 1,000 years, marriage was a religious contract. As a religious contract, the Christian church began to attempt to supervise marriage in the ninth century, when newly wed couples began coming to the church door to have their union blessed by the priest. This eventually led to the church regulating marriage through Canon Law.7

So as one researches the legal aspects of marriage, you find that really it was established as a way to help societies form communities and tribes and structures to allow for the perpetuation of their culture and society. Natural law basically establishes that in order for a species to continue, members of the opposite sex of the same species must come together in order to procreate and carry on the lineage of not only those two members but for the continuation of the whole ancestral lineage of the species. The laws and restrictions against certain types of relations (based on the concerns over the unhealthy results from incestuous relations or relations between creatures of different species) also resulted from the desire of individuals within...
a society or culture to preserve and protect their ways of life, to carry on beyond their own years, for the benefit of future generations. Our current laws about marriage reflect the values of the majority of our society.

In today’s day and age, the concept of legal marriage has found new proponents in those individuals who wish to establish rights of nontraditional unions and to try to equate those rights, within our current societal structure, with existing formal unions (traditional marriage between a man and a woman) in order to provide the same type of economic and societal benefits that married couples have enjoyed in western societies for hundreds of years. Whether a society (or if we look at American society as made up of different communities, i.e., states, with populations within each of those states) that wishes to establish nontraditional unions or try to confer rights that have traditionally been extended and provided only for unions between a man and a woman, we can see that the resulting variations within each individual state (community) will result in a virtual hodge-podge of nonuniform and inconsistent laws.

Since most laws on marriage are governed by individual state laws, that is where we look to find out the individual nuances that may occur in each state’s laws in defining and regulating the concept of marriage. As a result of the pressures of the actions of different states to change the definition of marriage, many states in the United States have passed amendments to their state constitutions to attempt to “legally define and protect” the traditional concept of marriage.8 Federal statutes also deal with marital status and determine federal rights and benefits, and thus the definition of marriage is important under federal law as well. As a result of the pressures resulting from varying state laws creating the expected hodge-podge of definitions of marriage, Congress, in 1996, passed the Federal Defense of Marriage Act (DOMA), which provided that “the word ‘marriage’ means only a legal union between one man and one woman as husband and wife, and the word ‘spouse’ refers only to a person of the opposite sex who is a husband or a wife.” Pub. L. 104-199, Sec. 1, 100 Stat. 2419 (Sep. 21, 1996), codified as 1 U.S.C. Section 7 (1997).

The U.S. Congress and the President, in an attempt to preserve the culture and the structure of our American society (to continue to thrive and prosper well after those who read this article are still alive), took the steps that were consistent with those taken by the leaders of ancient Egyptian and Hebrew societies. Just as Moses came down from the mountain carrying tablets bearing the Ten Commandments9 which provided important rules for the preservation and structure of early Hebrew society, so are the laws with regards to unions between individuals likewise laws that were important for the initial establishment of sustainable societies and communities. Hence, as much of the legal basis and foundation for our civil laws today can be traced back to the Ten Commandments and the laws in ancient Hebrew society, so too can the laws of establishing traditional marriage, between a man and a woman, likewise be traced back to these ancient societies. In ancient times, groups of people established rules and laws pertaining to the contract of marriage between a man and a woman in order to provide structures to form the foundations for a sustainable society and culture. So, too, in today’s American society, is the concept advanced that, in order to continue to preserve and protect the community and the society as a whole, the protection and solemnization of the traditional marriage, between one man and one woman, is imperative. This concept has a sound practical and legal basis: to continue on the species … and hence, to preserve the societal and cultural structure of America. 9

Summer attorney Klaus O. Snyder has practiced law for 21 years. He is in his second year of
Child abuse litigation is tough. But it’s a little less tough if you do it daily.

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

NOTES

1. See the full legislation at http://apps.leg.wa.gov/billinfo/summary.aspx?bill=5336&year=2007, which went into effect on July 22, 2007 (a few days after the submittal of this article to Bar News for publication in this September 2007 issue).


4. Id.


7. Canon law, in the Roman Catholic Church, is the body of law based on the legislation of the councils (both ecumenical and local) and the popes, as well as the bishops (for diocesan matters). It is the law of the church courts and is formally distinguished from other parts of ecclesiastical law, such as liturgical law. However, when liturgical law overlaps with canon law, canon law normally prevails.” Columbia Electronic Encyclopedia. Columbia University Press. 03 Jul. 2007. Reference.com. www.reference.com/browse/columbia/canonlaw.


9. As those who accept the Bible understand, the Ten Commandments were laws that came from God.
Marriage Equality: Why Gay and Lesbian Couples Shouldn’t Be Excluded

BY PATRICIA NOVOTNY

Beth Reis and Barb Steele, on the threshold of life’s final journey, would like to marry one another. After three decades together, rearing children, caring for one another and their parents, and working hard to meet their many obligations, they would like, at last, to enjoy the myriad forms of support for their family their married friends enjoy. Michelle Esguerra and Boo Torres de Esguerra, young and newly coupled, likewise want some of the “instant” security that marriage brings, as well as the recognition of the commitment they have publicly proclaimed to their families and friends. Peter Ilgenfritz and David Shull, Protestant ministers, married in the eyes of their own church and authorized by the state to marry others, also want the tangible good of civil marriage. So do the Serkin-Poolees, David and Michael, as much for the sake of their three children as for the sake of their mutual love. For the other 30 plaintiffs in Andersen v. King County and Castle v. State, the story is the same: No matter their ages or the age of their relationships, their financial circumstances, their religions and races, they each have made a lifelong commitment to one another and they each want to be married in the eyes of the law.

In Washington, as in other states, these same-sex couples challenged their exclusion from civil marriage on state constitutional grounds. In particular, the plaintiffs claim deprivations of the fundamental right to marry, the privileges and immunities clause, and the equal rights amendment. Each of these claims, outlined below, necessarily interrogates the nature of civil marriage.

One misleading feature of the current debate is the positioning of marriage as “traditional,” meaning a static bedrock, one under attack by same-sex couples and other societal forces. This positioning of marriage as an immutable “thing” obscures the reality that the civil institution of marriage is in fact a “place.” It is a place where private life takes on public meaning, where the state, with its many regulations of person and property, and the family meet. And this place is always under construction. Just as private configurations of family have always been and remain in flux, the state’s use of the family has been similarly adaptive.

As a private commitment or religious sacrament, marriage is “older than the Bill of Rights.” In these forms, it is also extremely variable across time, culture, and religions. For example, until recently, marriage was a permanent bond, and remains so in certain cultures and religions. Many religions prohibit interfaith marriage. Some cultures permit husbands to take multiple wives. Some arrange marriages. Not that long ago, it was common practice for 16-year-old females to marry (usually older males), and it remains common in many cultures and subcultures. In the Western tradition, romantic love between spouses was anomalous until relatively recently. Likewise, wives were subordinated to their husbands, their own rights sharply curtailed, including the right to refuse sex. Some religions and individuals still adhere to the view that wives must submit to their husbands. With respect to marriage between same-sex couples, religious practice varies, with some religions permitting it and others not. In short, the practice of marriage is, and always has been, varied and dynamic.

Civil marriage must be distinguished from these cultural and religious practices. Though sometimes public and private forms overlap, civil or legal marriage is distinct, insofar as it accomplishes state purposes. For example, just as people may privately hold religious and moral views on proper sexual conduct, whether and to what extent the law may regulate sexual activity necessarily requires a legal analysis.

Specifically, any analysis of who may enter into civil marriage must begin with an inquiry into the state’s purpose in regulating this area at all. It is one thing for the state not to interfere with marriage practices and another thing for the state to promote a form of marriage. We recall that one revolutionary aspect of America from its inception is the notion of limited government. The state cannot involve itself in our lives arbitrarily, but, rather, must always act within the confines of the power granted it by the people. In other words, it must have a constitutionally satisfactory purpose.

In particular, when the state confers upon some, and not others, a particular status from which flows benefits, burdens, or both, the question of who gets into this “club” leads first to the question of what purpose the club serves. Why is there civil marriage at all? The Washington State Supreme Court answered this question by reducing marriage to a regulation of sexual activity, specifically, sexual activity with procreative potential, and to child-rearing by these theoretical biological progenitors. In other words, civil marriage exists because heterosexual intercourse between a fertile male and a fertile female may result in children, and children are best reared by their biological mother and father. In fact, no one, not even the Legislature, let alone the public at large, views marriage in such narrow terms (or has ever viewed marriage in such narrow terms), nor do the state’s laws implement this alleged purpose.

Viewed historically and presently, the simplest explanation for what the state does through marriage is to help family members care for one another, thus stabilizing society and minimizing the demands on it from dependent citizens. By enhancing private caretaking, the state enhances public welfare. Spouses care for one another, for their children if they have children, for their parents as they age, for their siblings and extended family members. They benefit in these endeavors from commitment to one another, maximizing economies and efficiencies, and they benefit from the support provided them by the state. People do these activities without marriage, to be sure, but marriage helps them to do them more effectively. In short, the public good of marriage is the private good it accomplishes.

One misleading feature of the current debate is the positioning of marriage as “traditional,” meaning a static bedrock, one under attack by same-sex couples and other societal forces.
Marriage is not the only means to this end. In Canada, for example, the state distributes benefits and obligations through many mechanisms unrelated to marital status, thus expanding the reach of its “social security” network beyond the privatized model exemplified by the marriage-centric practice in the United States. Many argue that greater precision in benefit distribution can be achieved by focusing on the caregiver-dependent relationship, regardless of marital status. An adult child caring for a dependent parent might qualify for an array of benefits, just as unmarried cohabitants might be obligated to provide mutual support as part of an educational benefit calculation. In the United States, tentative movements toward this kind of “à la carte” benefits scheme are apparent in the Family Medical Leave Act (allowing leave for caretaking of a parent) and in Washington’s recently enacted Domestic Partnership Act (permitting senior different-sex couples access to a handful of benefits without having to marry). Arguments against the almost complete reliance on marriage as a distributive system for benefits and obligations are beyond the scope of this article. However, such arguments certainly merit our attention, given the widespread proliferation of extramarital, nonmarital, and postmarital interdependent relationships.

The point, here, is to emphasize that civil marriage must serve a civil purpose, and that purpose must in turn be served by the definition of who may marry. Since the purpose of civil marriage is accomplished through the marriage of same-sex couples, who, like their different-sex counterparts, have made a lifelong commitment to one another, and there being no justification for exclusion, Washington’s Constitution mandates such couples be allowed to marry. In short, if there is to be civil marriage, then it must be available on equal terms to all who fulfill the purpose of the state’s involvement in this area.

Liberty: The Fundamental Right to Marry
In Washington, the fundamental right to marry resides in our constitutional guarantees of liberty, privacy, and intimate association. Const. art. I, § 3 (“No person shall be deprived of life, liberty, or property, without due process of law”); Const. art. I § 7 (“No person shall be disturbed in his private affairs . . . without authority of law”). This claim poses a philosophical question as well as a legal one. It asks us what marriage means. And it asks how that definition affects who may enter into civil marriage. As discussed above, the meaning of civil marriage is, necessarily, broader than any cultural or religious practice, since we are a pluralistic nation. The state does not restrict interfaith marriages, nor, any longer, interracial ones. Plaintiffs argue further that the meaning of marriage changes over time, just as marriage itself does. Indeed, the state does not purport to define what marriage means to those who marry. It does not make marriage permanent. It does not require you to love one another, or to be sexually intimate, or to procreate, or to adhere to or embrace any other belief about marriage. Rather, people who marry are free to create their own meaning. The state’s sanction arises only because, by marrying, people undertake a commitment to mutual caregiving, which the state uses, supports, and enforces. Thus, the right to marry means the right to choose whom you declare “next of kin.” Unless a countervailing interest exists, such as age (affecting the capacity to make the choice) or consanguinity (undermining the family’s stability), the state may not interfere with the exercise of this right. Thus, the plaintiffs urge a characterization of the right that excludes only for a compelling reason.

By contrast, the Court held that the right extends only to marrying a person of the “opposite” sex, since that is the “tradition” of marriage, meaning the plaintiffs cannot marry because they could not marry before. Thus, the Court frames the question as whether there is a fundamental right to “same-sex marriage.” Not only does this cramped construction entomb...
the fundamental-rights analysis, dooming us merely to repeat the past rather than create the future, it echoes the similarly misguided analysis of *Bowers v. Hardwick*, where the U.S. Supreme Court in 1986 narrowly rejected a claim that the right to privacy protected consensual adult sexual activity from state criminalization. The majority in *Bowers* recast the question as whether there was a fundamental right to homosexual sodomy. In 2003, in *Lawrence v. Texas*, the Court repudiated this approach, agreeing with the dissent in *Bowers* that the claimed interest was broader, a right to be let alone in making personal choices, in making meaning of one’s own life. Just as Michael Hardwick wanted a right to privacy, not a right to homosexual sodomy, the *Andersen/Castle* plaintiffs want marriage, not “same-sex marriage.”

However, the Washington State Supreme Court took the narrow view of the inquiry, despite that, as Oliver Wendell Holmes observed: “It is revolting to have no better reason for a rule of law than that it was laid down in the time of Henry IV.” Thus, the court committed the same error as in *Bowers*, “fail[ing] to appreciate the extent of the liberty at stake.” An inquiry more like that articulated in *Lawrence*, which recognizes “tradition is a living thing,” and encompasses not only the past but the present and future, would grant these couples the right to marry the person they love.

**Sex Equality**

Another fundamental right, enshrined in Washington’s Equal Rights Amendment, is the right to sex equality. Since 1972, our Constitution has flatly declared that “equality of rights and responsibilities under the law shall not be denied or abridged on account of sex.” Const. art. XXXI, § 1. Washington’s Defense of Marriage Act (DOMA) violates the ERA. It permits or prohibits individuals to marry based upon their sex. DOMA provides that “[m]arriage is a civil contract between a male and a female,” “and prohibits marriage [w]hen the parties are persons other than a male and a female.” Thus, the statute plainly restricts the right to marry based on the sex of an individual. If Beth Reis were a man, she could marry Barb, her beloved partner of 27 years, but because she is a woman, she may not. The sole reason for this prohibition is Beth’s sex.

The State conceded that DOMA classifies by sex but argued that it does not discriminate by sex because the restriction applies equally to males and to females. But this reasoning was rejected decades ago by the U.S. Supreme Court when it struck down a law restricting the right to marry on the basis of race, though the law treated the races equally. Though
Virginia prohibited both Richard Loving, who was white, and Mildred Loving, who was black, from marrying each other, the Supreme Court recognized that predating the right to marry on “distinctions drawn according to race” denied both Mildred and Richard the equality guaranteed to them by the equal-protection clause. In the same way, DOMA is unconstitutional because it limits the right to marry based on distinctions drawn according to sex.

The State tried to distinguish *Loving* by arguing that race discrimination is invidious, while sex discrimination is not. Washington’s citizenry believe otherwise, or there would be no ERA, no need to constitutionally mandate sex equality. Certainly, each individual plaintiff in the case experiences the sex discrimination of DOMA as invidious, and it is each individual’s right that is at stake. Being deprived of a civil right is not remedied just because someone else also is deprived, as the U.S. Supreme Court found when it rejected an “equal application” argument in support of restrictive covenants. It was “no answer” to the black petitioners that whites might also be denied rights of ownership and occupancy. Likewise, it is “no answer” to Beth Reis that David Serkin-Poole is also denied the right to marry his beloved. Each is denied the right to marry on account of sex, and that violates the ERA.

**Privileges and Immunities**

The plaintiffs also challenged their exclusion from civil marriage under art. I, § 12 of the Washington Constitution, which forbids the “granting to any citizen [or] class of citizens … privileges or immunities which upon the same terms shall not equally belong to all citizens.” The *Andersen/Castle* plaintiffs argued they deserved equality in marriage, i.e., marriage as a “bundle” of “privileges and immunities.” However, Judge William Downing, in King County Superior Court, observed that the remedy for the constitutional violation might be a form of marriage equivalency, or the “sticks” that comprise civil marriage (i.e., the 423 laws in Washington that benefit and obligate individuals based on marital status). Indeed, the Vermont Supreme Court fashioned its own remedy (civil union), as courts often do, despite that the plaintiffs there likewise sought marriage. By contrast, the Washington State Supreme Court declared itself constrained to the remedy sought by the plaintiffs, and did not reach the question of whether denying same-sex couples the “sticks” of marriage violates the privileges and immunities clause.

Thus, bundled or not, DOMA denies the “privileges” of marriage to individuals in same-sex couples. The plaintiffs urged the court to review that denial with heightened...
Who benefits from this deprivation? Marriage is not, after all, a finite resource. It seemed obvious that the only purpose accomplished by DOMA is the singling out of committed same-sex couples for disadvantageous treatment. In upholding DOMA, the court did not rely on this improper purpose, nor did it even try to identify the proper governmental purpose achieved by the exclusion. Rather, the plurality and concurring opinions analyzed the relationship between the classification and marriage, rather than between the classification and DOMA, as the constitutional test requires. This analysis is misplaced, since marriage is not the legislative act being challenged, and is not a single “act” at all, but a “bundle” of 423 separate legislative acts. To approach the challenge in this way, the Court would have needed to review the relationship between the exclusion of same-sex couples and every one of the 423 legislative acts that comprise the benefits and obligations of marriage. For this reason, the proper analysis was undertaken by Justice Fairhurst in her dissenting opinion. In short, the question before the Court was the exclusion from not, the existence of, civil marriage itself. This question was left unanswered by the Court.

Rather, the Court explained that marriage is for different-sex couples only because they (or some of them) can procreate without third-party assistance and because biological progenitors make better parents. Besides not answering the question, the Court boiled all the myriad functions of civil marriage to the bearing and rearing of children, and then designated a particular kind of family unit as preferred. Thus, the Court’s procreation argument “singles out the one unbridgeable difference between same-sex and opposite-sex couples, and transforms that difference into the essence of legal marriage.” However, it is clear from Washington law that encouraging procreation and parenting by biological progenitors is not the essential purpose of civil marriage, since, for example, “the sterile and the elderly are allowed to marry.” Marriage eligibility is not determined by an ability or intention to have children, or by whether children in marriage are the biological offspring of the spouses. Indeed, people who have never had sexual relations in their marriage, and never plan to, may be married and may stay married. What these marriages have in common is not children, or biologically related children, but the mutual commitment of the spouses, which is the sine qua non of marriage.

Even if marriage encouraged procreation and parenting, denying marriage to same-sex couples does not, and this is the Achilles’s heel of the Court’s analysis. There is no evidence that people marry and procreate because same-sex couples cannot marry and procreate (without third-party assistance), meaning there is no link between DOMA and any legitimate state purpose. In fact, offering to the plaintiffs’ children the benefits enjoyed by their peers, to be raised with the greater security and stability marriage affords to families, advances the state’s interest in children without in any way — not in any single respect — diminishing the value of marriage to children of different-sex couples. Certainly, it is not rational for the state to declare on one hand an equal interest in the well-being of all children, and then on the other hand to treat some of these same children as “outliers.” Indeed, for the state to pick and choose which children it will protect, especially since it establishes no barriers to parenting, sets the clock back to an era when eugenics-based arguments and the designation of some children as “illegitimate” held sway, an era properly left to the dustbin. As the Court acknowledged, “many day-to-day decisions that are routine for married couples are more complex, more agonizing, and more costly for same-sex couples.” Thus, DOMA actually harms some children.

By this means, the state regresses from the modern view of protecting all parent-child relationships — regardless of the sex of the parent, and regardless of whether the
parent-child relationship exists due to sexual intercourse, medically assisted reproduction, de facto parentage, or formal adoption. In this century, our law makes no distinction between children whether their parents marry, whether their parents are genetically related, whether their parents conceive them through sexual intercourse, or conceive them at all. Our law declares all children to be equally deserving of the state’s solicitude, with one exception, and that exception is at issue here.

And that is DOMA’s problem and the problem with the Court’s failure to justify the exclusion of same-sex couples from marriage. Just as privileging different-sex couples simply because that has been done historically, preferring them as parents just because they are different-sex couples merely restates the discrimination wrought by DOMA, it does not justify it. As the U.S. Supreme Court observed, a state’s purpose for distinguishing among persons must not only be “legitimate,” but it also must be “independent” of the classification itself. By requiring that the classification bear a rational relationship to an independent and legitimate legislative end, we ensure classifications are not drawn for the purpose of disadvantaging the group burdened by the law.

Rather than representing a proper government purpose, a legislative classification that merely endorses one family configuration over all others is an improper “classification undertaken for its own sake” without any independent basis.

In short, DOMA excludes for the sake of excluding. It accomplishes no legitimate state purpose. It declares a class of citizens inferior and makes life for their families harder without, in any way, shape, or form, making life better for anyone else. It remains a stain on our public conscience. With all due respect to the Court, it is unconstitutional.

Patricia Novotny earned her B.A. from Reed College and her J.D. from the University of Washington. A Seattle attorney, she practices appellate law, emphasizing family law. Ms. Novotny also teaches Women and Law at the University of Washington in the Women Studies Department and a course on gender, sex, and sexuality at the university’s law school. She is a long-time volunteer attorney with the Northwest Women’s Law Center and was co-counsel in the King County marriage litigation, Andersen et al v. Sims, and argued on behalf of those plaintiffs before the Washington State Supreme Court.

NOTES
1. The author acknowledges that portions of this article likely bear some resemblance to various of the briefs filed in the Andersen case and, accord-

Families are complicated. And so is the law. Which is why at McKinley Irvin, family law is all we do. Our attorneys offer decades of experience, state-of-the-art technology, and an unwavering drive to achieve success for our clients. McKinley Irvin: Talent + Tools + Tenacity.
ing shares authorship credit with the many fine and dedicated attorneys who collaborated on those briefs. Any failure to impart accurately the arguments made in those briefs are my own.


5. Prominent among advocates of a greater focus on the caregiver-dependent relationship is Martha Albertson Fineman, professor at Emory University Law School, whose many works examine the impact of law and policy on families.
11. RCW § 26.04.010(1) and RCW § 26.040.020(1)(c).
13. *Shelley v. Kraemer*, 334 U. S. 1, 22, 68 S. Ct. 836, 846, 92 L. Ed. 1161, 1183 (1948) (equality rights are “guaranteed to the individual. The rights established are personal rights.”).
15. *Goodridge v. Department of Health*, 440 Mass. at 332, 798 N.E.2d at 961 (“While it is certainly true that many, perhaps most, married couples have children together (assisted or unassisted by technology or adoption), it is the exclusive and permanent commitment of the marriage partners to one another, not the begetting of children, that is the sine qua non of civil marriage.”).
17. The assertion that married biological progenitors make the best parents is not supported by any credible science. The “studies” cited in support of this position compare married parents to divorced parents (i.e., apples to oranges). They provide no support for the proposition that married biological progenitors are superior to any other kind of parenting couple. Obviously, the assertion insults not only lesbian and gay parents, but adoptive parents, presumed parents, and parents by ART (assisted reproductive technologies). Moreover, this clarification does not suggest that single parents are inferior parents.
21. Compare Goodridge, 440 Mass. at 332, 798 N.E.2d at 961 (“Excluding same-sex couples from civil marriage will not make children of opposite-sex marriages more secure, but it does prevent children of same-sex couples from enjoying the immeasurable advantages that flow from the assurance of a stable family structure in which children will be reared, educated, and socialized.”) *Baker v. Vermont,* 170 Vt. at 219, 744 A.2d at 882 (“If anything, the exclusion of same-sex couples from the legal protections incident to marriage exposes their children to the precise risks that the State argues the marriage laws are designed to secure against.”).
22. *Goodridge*, 440 Mass. at 335, 798 N.E.2d at 964 (“Excluding same-sex couples from civil marriage will not make children of opposite-sex marriages more secure, but it does prevent children of same-sex couples from enjoying the immeasurable advantages that flow from the assurance of a stable family structure in which children will be reared, educated, and socialized.”) *Baker v. Vermont,* 170 Vt. at 219, 744 A.2d at 882 (“If anything, the exclusion of same-sex couples from the legal protections incident to marriage exposes their children to the precise risks that the State argues the marriage laws are designed to secure against.”).
23. *Goodridge*, 440 Mass. at 335, 798 N.E.2d at 964 (“The task of child rearing for same-sex couples is made infinitely harder by their status as outliers to the marriage laws.”).
Wrongful Death Law and Same-Sex Couples

by James E. Baker

A bicentennial event is coming up. Next year, it will be the 200th anniversary of Baker v. Bolton, an 1808 decision by an English judge, Lord Ellenborough, which stated that “in a civil court, the death of a human being could not be complained of as an injury.” Lord Ellenborough, sitting at nisi prius did not cite authority, or give supporting reasoning.

The United States Supreme Court stated:

The most likely reason that the English rule [of Baker v. Bolton] was adopted in this country without much question is simply that it had the blessing of age. . . . The American courts never made inquiry whether this particular English rule, bitterly criticized in England, “was applicable to their situation,” and it is difficult to imagine on what basis they might have concluded that it was.

To mitigate the harsh consequences of the common law, in 1846 England adopted a law known as Lord Campbell’s Act, “which granted recovery to the families of persons killed by tortuous conduct . . . .”

State legislatures enacted wrongful-death statutes to allow recovery in circumstances as set forth by statute. More than 35 years ago, the United States Supreme Court held that there was a common-law cause of action for wrongful death in maritime cases.

Wrongful-death statutes continue to cause what can only be considered to be unfair results even in situations involving traditional family members. For example, in the state of Washington, if a husband and wife had two children, ages 17 and 18, who were killed in a common accident by a drunk driver who crossed the center line, Washington’s wrongful-death statutes would allow the parents to recover for their loss of consortium with their 17-year-old child but would bar the parents from loss of consortium damages for the death of their 18-year-old child.

It is expressly stated under Washington law that “causes of action for wrongful death are strictly a matter of legislative grace and are not recognized at common law.” (Emphasis added.)

Case law from the state of Washington provides no support for the surviving member of a same-sex couple to recover damages for the wrongful death of his or her partner.

Beginning on July 22, 2007, the state of Washington, as a matter of legislative grace, gave same-sex domestic partners the right to recover for wrongful death provided that the same-sex partners file certain documents with the State Domestic Partnership Registry maintained by the Secretary of State’s Office. Section 30 of the domestic partnership law amends RCW 4.20.060 to provide:

No action for a personal injury to any person occasioning death shall abate . . . if such person has a surviving spouse, state registered domestic partner, or child living, including stepchildren . . . .

(Emphasis added.) See also Section 29 of the law which states: “Every such action shall be for the benefit of the wife, husband, state registered domestic partner, child or children, including stepchildren, of the person whose death shall have been so caused.”

Other states have also passed civil-union or domestic-partner laws which allow recovery for wrongful death which otherwise would not have been allowed. Two appellate decisions upheld California’s wrongful-death laws for same-sex couples.

The Commonwealth of Massachusetts does not need a state-registered domestic-partner law to allow one member of a same-sex couple to recover for wrongful death. Such a law is unnecessary under an opinion of the Massachusetts Supreme Court, which held that the state constitution is violated by denying gay and lesbian couples the right to marry.

In 2004, the Massachusetts Supreme Court ruled that offering civil unions instead of civil marriage did not meet the requirements of its original order.

Momentum for passing California’s registered-domestic-partners law came from the widely reported death of Diane Whipple, a San Francisco lacrosse coach who, during January 2001, was mauled to death by two large Presa Canario/mastiff dogs in the hallway outside the apartment that she shared with her partner, Sharon Smith. Ms. Smith and Ms. Whipple lived together for seven years. They had a private wedding ceremony, vowed to stay together the rest of their lives, planned to have children together, and held themselves out as a married couple. Ms. Smith brought a wrongful-death lawsuit against the owners of the dog and the owners of the apartment house. A motion to dismiss was filed on the ground that same-sex couples do not have rights under the state’s wrongful-death statutes. In July 2001, a superior court judge ruled that Ms. Smith had a state constitutional right to maintain her wrongful-death action. However, there is not an appellate decision on the trial court’s ruling.

Another nationally publicized same-sex wrongful-death case involved the death of Neil Conrad Spicehandler in the state of New York. Mr. Spicehandler and his partner, John Langan, were in their mid-20s when they started living together in 1987. Although they were residents of New York, they went to Vermont in 2000 and had a civil union ceremony. They bought a house together in Long Island and planned to adopt children. Within hours after the closing on the couple’s new house, Mr. Spicehandler and more than a dozen other persons were struck by a reckless motorist in Manhattan. Mr. Spicehandler suffered a broken leg and underwent two surgeries at a New York Hospital. Unfortunately, Mr. Spicehandler died in the hospital from a pulmonary embolus. Mr. Langan brought a lawsuit against the motorist and the hospital. The trial court held that Mr. Langan, as the surviving spouse from a same-sex civil union under Vermont law, was entitled to bring a wrongful-death action. The case was reversed on appeal. The court concluded its opinion by stating: “Any contrary decision, no matter how circumscribed, will be taken as judicial imprimatur of same-sex marriages and would constitute a usurpation of powers expressly reserved by our Constitution to the Legislature.” In a dissent, the dissenting judge stated:

[Just as the Supreme Court could find no conceivable rational relationship between any governmental purpose promoted by a wrongful death law and a classification of wrongful death plaintiffs or victims according to their legitimacy, neither can I identify any reasonably conceivable rational basis for classifying]
similarly-situated wrongful death plaintiffs on the basis of their sexual orientation.

The majority’s rejection of the equal protection claim does not include any hint or suggestion of how preventing the plaintiff from asserting a wrongful death claim promotes the State’s interest in fostering the institution of marriage. Indeed, the only real effect of the majority’s position is to provide a windfall to a potential tortfeasor.

Before the appeal was dismissed, the lawyer for Mr. Langan was quoted by the Associated Press as stating that if the decision was not reversed, then persons “will be denied protections for no reason other than the fact they are gay.”

The Langan cases illustrate that there is no guarantee that a domestic partner in the state of Washington will be able to maintain a wrongful-death action if his or her partner is killed outside of the state of Washington.

There has been extensive litigation as to the application of wrongful-death statutes to traditional family members. It is likely that substantial legal issues that will also arise over Washington’s registered-domestic-partner law in wrongful-death cases.

NOTES
2. The rule is quoted in numerous cases including Michigan Central Railroad Co. v. Vreeland, 227 U.S. 59, 227 U.S. 69, 33 S.Ct. 192, 57 L.Ed. 417 (1917) and Philby v. Northern Pacific Railway Co., 46 Wash. 173, 175, 89 P. 468 (1907).
3. nisi prius is Latin for “unless before then,” Black’s Law Dictionary (8th ed. 2004). “A civil trial court in which, unlike an appellate court, issues are tried before a jury.” Id.
4. Moragne, supra at 383. Decisions by Lord Ellenborough have been cited by the U.S. Supreme Court more than 160 times beginning with King v. The Delaware Ins. Co., 6 Cranch 71, 10 U.S. 71, 3 L.Ed. 135 (1810) (case involving insurance on the freight of a sailing ship) and continuing through Torres v. Mullins, 540 U.S. 1035, 124 S.Ct. 562, 157 L.Ed.2d 454 (2005) (Breyer, J., dissenting in a case denying certiorari of an appeal by a Mexican national who was convicted of murder in the state of Oklahoma and sentenced to death). Lord Ellenborough (Nov. 16, 1750–Dec. 13, 1818), whose real name was Edward Law, was a Member of Parliament before succeeding Lord Kenyon as Lord Chief Justice of the King’s Bench. For a biography on Lord Ellenborough, see Imiath, Albert H., Lord Ellenborough: A Biography of Edward Law, Earl of Ellenborough, Governor-General of India (Harvard Univ. Press 1939). Some credit Lord Ellenborough with the old maxim of criminal libel law: “The greater the truth, the greater the libel.” GIGA Quotes (accessed at www.giga-usa.com/quotes/authors/edward_law_a001.htm); Answers.com (accessed at answers.com/topic/ellenborough-lord).
6. Some credit Lord Ellenborough with the old maxim of criminal libel law: “The greater the truth, the greater the libel.” GIGA Quotes (accessed at www.giga-usa.com/quotes/authors/edward_law_a001.htm); Answers.com (accessed at answers.com/topic/ellenborough-lord).
8. The rule is quoted in numerous cases including Michigan Central Railroad Co. v. Vreeland, 227 U.S. 59, 227 U.S. 69, 33 S.Ct. 192, 57 L.Ed. 417 (1917) and Philby v. Northern Pacific Railway Co., 46 Wash. 173, 175, 89 P. 468 (1907).
9. nisi prius is Latin for “unless before then,” Black’s Law Dictionary (8th ed. 2004). “A civil trial court in which, unlike an appellate court, issues are tried before a jury.” Id.
10. Id. at 389. Lord Campbell’s Act was codified at 9 & 10 Vict., c. 93 (1846).
13. Id. at 389. Lord Campbell’s Act was codified at 9 & 10 Vict., c. 93 (1846).
16. See, e.g., Philippides v. Bernard, 151 Wash. 2d 376, 88 P.3d 939 (2004) (parents barred from recovering loss of consortium damages in connection with the death of their 22-year-old unmarried son unless the parents could prove that they were dependent upon their child for financial support, not just dependent on their child’s love).

James “Jim” E. Baker represents school districts, cities, and counties in tort and employment lawsuits throughout the state of Washington. Before joining the Ephraita law firm of Jerry Moberg & Associates in 2005, he practiced plaintiffs’ personal injury and wrongful death law for 25 years in Yakima, Port Townsend, and Seattle. He can be reached at jameseyrn@aol.com.

22. Goodridge v. Dept. of Public Health, 440 Mass. 309, 798 N.E.2d 941 (2003), which held that the state constitution is violated by denying gay and lesbian couples the right to marry. In a 5-4 opinion, the Washington State Supreme Court held that the legislature in this state is not constitutionally prohibited from defining marriage as a civil union between a man and a woman to the exclusion of same-sex couples. Anderson v. King County, 158 Wn.2d 1, 138 P.3d 963 (2006).

Nickerson & Associates

Economic and Statistical Consulting

• Economic Analysis and Damages Calculation
• Statistical Testing and Inference
• Wage and Hour Analysis
• Database Development and Compilation of Computerized Business Records
• Mediation Preparation and Settlement Administration

Peter H. Nickerson, Ph.D.

Phone: 206-332-0270
Fax: 206-332-0252
520 Pike Street, Suite 1200
Seattle, WA 98101

Commercial Litigation

Hall Zanzig Zulauf
Claflin McEachern

Trial Lawyers

Spencer Hall • Scott Zanzig • Jay Zulauf • Art Claflin • Janet McEachern
1200 Fifth Avenue, Seattle, Washington 98101 Tel 206.292.5900
The WSBA Appropriately May, and Should, Support Marriage-Equality Legislation

BY MARK A. JOHNSON AND TEREZA SIMONYAN

On July 22, 2007, Senate Substitute Bill 5336, Washington’s Domestic Partnership Act (DPA), took effect. The DPA permits heterosexual couples, if one partner is age 62 or older, and same-sex couples, where each partner is age 18 or older, to enter into a State Registered Domestic Partnership (SRDP) if they share a common residence, each is capable of consenting to the relationship, neither is in another marriage or domestic partnership, and they are outside of a specified degree of consanguinity to each other. The DPA grants to the registered parties some, but not all, of the rights available to married couples. Some of these rights are: the right to healthcare facility visitations, the right to give informed consent to healthcare procedures on behalf of a partner incapable of giving consent, and the right to receive information from a healthcare provider regarding a partner’s condition and treatment (Sections 8, 11, and 12); the right to authorize an autopsy of a deceased partner, the right to receive a copy of the autopsy report, the right to control a deceased partner’s remains, and the right to make a donation of a deceased partner’s organs and remains (Sections 21-26); the right to burial together and the right to recognition on a partner’s death certificate (Sections 15-20 and 32); the right to administer a partner’s estate (Section 28); the right to inheritance if a partner dies intestate (Section 27); the right to be a beneficiary of a wrongful death and survival action (Sections 29 and 30); and, the right of state employees only, to receive health insurance benefits (Sections 9 and 10).

Section 1 of the DPA, Senate Substitute Bill 5336, sets out the public-policy justifications for the legislation:

Many Washingtonians are in intimate, committed, and exclusive relationships with another person to whom they are not legally married. These relationships are important to the individuals involved and their families; they also benefit the public by providing a private source of mutual support for the financial, physical, and emotional health of those individuals and their families. The public has an interest in providing a legal framework for such mutually supportive relationships, whether the partners are of the same or different sexes, and irrespective of their sexual orientation.

The legislature finds that same-sex couples, because they cannot marry in this state, do not automatically have the same access that married couples have to certain rights and benefits, such as those associated with hospital visitation, health care decision-making, organ donation decisions, and other issues related to illness, incapacity, and death. Although many of these rights and benefits may be secured by private agreement, doing so often is costly and complex.

The rights granted to state registered domestic partners in this act will further Washington’s interest in promoting family relationships and protecting family members during life crises. This act does not affect marriage or any other ways in which legal rights and responsibilities between two adults may be created, recognized, or given effect in Washington. S.B. 5336, 60th Leg., Reg. Sess. (Wn. 2007).

Among the findings in *Same-Sex Couples Raising Children In Washington State — Data From Census 2000*, published in January 2005 by The Williams Project on Sexual Orientation Law and Public Policy at the UCLA School of Law, were:

- There are an estimated 127,000 individuals who self-identify as gay men or lesbians, and about 16,000 householders identifying themselves as living with a same-sex partner in Washington.
- Individuals in same-sex couples contribute to the Washington economy: 78 percent of members of same-sex couples in Washington are employed, compared with 66 percent of members of married couples.
- Same-sex couples in Washington are currently raising more than 7,400 children. Approximately 24 percent of same-sex couples in Washington are raising children under the age of 18.
- Compared to married couples with children, same-sex couples with children have fewer economic resources to raise their children. On average, same-sex parents have lower household incomes, lower home-ownership rates, and a lower level of education than do married couples.
- The median household income for same-sex parents in Washington is $9,000 lower than the median household income for married couples with children; the average household income is $10,000 lower. In addition, the home-ownership rate for same-sex parents is 18 percent lower than the rate for married parents. Id., at 1-2.

Although the DPA recognizes the reality of, and the public interest in, committed relationships between same-sex couples, it does not extend rights to domestic partners comparable in any degree to those granted to parties to a civil marriage. One need only do an electronic legal search of the Washington statutes with a single term — “spouse” — and its derivatives, to gain an immediate appreciation that the rights and responsibilities provided by the DPA do not come close to approximating those granted to couples who may marry. There are more than 400 statutes, statutory subsections, and court rules (not including local court rules) which contain the word “spouse,” or a permutation thereof, which confer, or relate to, hundreds of marriage-dependant rights and responsibilities. For example, the DPA does not extend to domestic partners:

- access to family court and the dissolution statutes in the event the relationship ends (RCW Chapter 26.09 — dissolution of marriage);
- the marital privilege (RCW 5.60.060 — evidence);
- immunity from contributory fault in an action for personal injuries brought by the other partner or their minor child (RCW 4.22.020 — torts);
- the right to consent to the other partner’s assignment of wages (RCW 49.48.100 — labor regulations);
- the right to continue an election to defer property taxes made by a deceased partner (RCW 84.38.150 — property taxes).
• the right to an "omitted spouse's" share of inheritance when not named in the deceased partner's will (RCW 11.12.095 — probate); and
• status as a "dependant" under the industrial insurance laws, thereby entitling a surviving domestic partner to workers' compensation benefits payable after a partner's death (RCW 51.08.050 — industrial insurance).

For a complete list of all of the RCWs in which the word "spouse" or a variation is used, see www.wsba.org/media/publications/barnews/johnsonmarriagesep07.pdf.

It is undeniable that the DPA, while simultaneously recognizing the reality of, and public interest in, same-sex relationships, has created a separate, unequal, and truncated menu of benefits for same-sex couples.

Apart from the vast disparity in benefits available to the parties in an SRDP versus a civil marriage, the sheer number of statutes referencing civil marriage illuminates the difficulties that a parallel-track, gradual approach to same-sex marriage equality will create for clients, lawyers, and the courts. If our Legislature continues to mete out, in degrees, marriage rights for gay men and lesbians, lawyers representing them will need preoccupation, luck, and a good malpractice insurance carrier to do so adequately and with peace of mind.

Why It Is Appropriate for the WSBA to Support Marriage Equality Legislation

GR 12(b)(17), adopted by the Supreme Court, authorizes the WSBA to "maintain a legislative presence to inform members of new and proposed laws and to inform public officials about bar positions and concerns." The WSBA, through its Board of Governors, frequently takes positions in support of, or against, legislation and initiatives. The WSBA has a full-time legislative liaison, and the Board of Governors has a Legislative Committee that meets weekly when the Legislature is in session. The Board of Governors also supports or opposes, when requested, legislation brought to its attention by the WSBA Legislative Committee and any of the WSBA's 26 sections.

The WSBA is a mandatory bar; no one may hold a license to practice law in Washington state without being a member of the WSBA. The constitutionality of mandatory bar associations was upheld in Lathrop v. Donohue, 367 U.S. 820, 81 S.Ct. 1826 (1961), and reaffirmed in Keller v. State Bar of California, 496 U.S. 1, 110 S.Ct. 2228 (1990).

Given that the WSBA is a mandatory bar association that is authorized to, and actively does, participate in the legislative process, it is a certainty that some members will object to the WSBA's participation in that process. In this regard, the WSBA has two protections in place for its members: the "Keller deduction" and General Rule 12(c)(2).

In Keller, supra, a number of California lawyers challenged, on First Amendment free-speech grounds, the State Bar of California's use of compulsory bar dues to finance what the plaintiffs contended were political and ideological activities. The Keller court acknowledged both the reality that most legislation has social and political implications and the difficulty in determining the demarcation between appropriate and inappropriate bar expenditures: "Precisely where the line falls between those State Bar activities in which the officials and members of the Bar are acting essentially as professional advisers to those ultimately charged with the regulation of the legal profession, on the one hand, and those activities having political or ideological coloration which are not reasonably related to the advancement of such goals, on the other, will not always be easy to discern." Id., at 15. As examples of the "extreme ends of the spectrum," the Keller court identified the inappropriate expenditure by a bar association of dues to "endorse or advance a gun control or nuclear weapons freeze initiative," and the permissible expenditure of "activities connected with disciplining Bar members or proposing the profession's ethical codes." Id., at 16. As a result of the Keller decision, the WSBA and other mandatory state bars instituted a procedure known as the "Keller deduction," whereby the bar identifies the portion of license fees spent on legislative activities and allows members who object to deduct that sum from their annual dues. See, "Keller Compliance Options for the Year 2007: Notice to WSBA Members" (2007), available at www.wsba.org/lawyers/licensing/faq-keller.htm.

GR 12(c)(2) provides: "[T]he application of legal principles and judgment with regard to the circumstances or objectives of another entity or person(s) which require the knowledge and skill of a person trained in the law. This includes but is not limited to:

(1) Giving advice or counsel to others as to their legal rights or the legal rights or responsibilities of others for fees or other consideration.
(2) Selection, drafting, or completion of legal documents or agreements which affect the legal rights of an entity or person(s).
(3) Representation of another entity or person(s) in a court, or in a formal administrative adjudicative proceeding or other formal dispute resolution process or in an administrative adjudicative proceeding in which legal pleadings are filed or a record is established as the basis for judicial review.
(4) Negotiation of legal rights or responsibilities on behalf of another entity or person(s).

There is scant decisional authority on the meaning of "administration of justice." In the judicial discipline case In re the Matter of Honorable Fred R. Staples, 105 Wn.2d 905 (1986), the Supreme Court criticized, as too narrow, the Commission on Judicial Conduct's interpretation of the phrase as set forth in Canon 7 of the Code of Judicial Conduct. The Supreme Court held: "This interpretation would require a very narrow reading of 'administration of justice' to include only matters directly relating to the actual administration of the law (i.e., court rules, procedure) and not measures such as this, which would have a significant effect on the way in which justice is administered." Id., at 561. The Staples court added that if persons with necessary expertise in the matters of improving the law were forced to remain silent, "then beneficial legal reform would be seriously impaired." Id., at 561.

On five separate occasions, the WSBA has supported or opposed legislation or initiatives pertaining to the rights of gay men and lesbians based on a finding by the Board of Governors that the issue was within the purview of GR 12.

• At its February 1993 meeting, the Board of Governors unanimously passed a resolution which provided that: "The Washington.

September 2007 | Washington State Bar News 45
State Bar Association endorses the prohibition of discrimination against individuals on the basis of their sexual orientation. See, Board of Governors Meeting Minutes, February 12 and 13, 1993.

- At its March 1993 meeting, the Board of Governors unanimously passed a motion to support HB 1443, legislation which would have prohibited discrimination in housing and employment based on marital status and sexual orientation. See, Board of Governors Meeting Minutes, March 26 and 27, 1993.

- At its June 1994 meeting, the Board of Governors unanimously passed a resolution in opposition to two pending initiatives, 608 and 610, which the BOG found, if passed, would have “encourage[d] conduct that is discriminatory and prejudicial to the administration of justice as prohibited by the Rules of Professional Conduct at sections 8.4(d) and 8.4(g).” See, Board of Governors Meeting Minutes, June 17 and 18, 1994.

- In September 1997, the Board of Governors endorsed Initiative 677, which was intended to prohibit employment discrimination based on sexual orientation. See Board of Governors Meeting Minutes, September 1997.

- In July 2005, the Board of Governors unanimously passed a resolution in support of legislation adding sexual orientation to Washington’s Law Against Discrimination. See Board of Governors Meeting Minutes, July 2005.

Civil marriage in Washington is created by statute, controlled by the state, and defined as “a civil contract between a male and a female, who have attained the age of eighteen years, and who are otherwise capable.” See RCW 26.04.010. The state also has created, and controls access to, the process of marriage dissolution. See, RCW Chapter 29.09. The civil contract of marriage, and the rights and responsibilities attendant thereto, is intimately integrated into Washington statutory and decisional authority. It is doubtful that there is any other legal status which factors more frequently into the advice we give our clients. It is doubtful that there is any other single state-controlled contract right on which a greater number of other rights depend. If the Washington State Legislature was considering legislation which would affect the law of dissolution of marriage, community property, evidence, civil procedure, probate, personal injury, contract, workers’ compensation, civil procedure, real estate, torts, and tax, there would not be a rationally debatable question whether such an action relates to the practice of law or to the administration of justice — and there is not with respect to marriage-equality legislation. The only question is: What should be the position?

**Why the WSBA Should Take a Position in Support of Marriage-Equality Legislation**

Section 1 of the Domestic Partnership Act is an acknowledgement by the Legislature of the reality of same-sex couples and their families, and the public interest in those families. In addition, Section 1 of the DPA recognizes that while private agreements may be used by same-sex couples to secure some of the rights extended to married couples, doing so is expensive and cumbersome (i.e., increased legal fees), fees which same-sex parents raising children are, according to the published data, less capable of affording.

Same-sex couples live together in Washington in committed relationships. They use assistive reproductive technology to conceive children, adopt children, and raise those children together as a family. They pay taxes, buy and sell property together, sue and are sued, and, like heterosexual couples, end their relationships. Each day, WSBA lawyers, some of whom are gay men and lesbians, work as officers of the justice system but are relegated to an undeniably inferior legal status. Every day, WSBA members represent, and bill, gay men and lesbians, and their families who are relegated to the same status. There are literally hundreds of important rights and responsibilities which depend on the ability to enter into the “civil contract” that is marriage, a contract on which the state has a monopoly from inception to dissolution. It is undeniable that the DPA, while simultaneously recognizing the reality of, and public interest in, same-sex relationships, has created a separate, unequal, and truncated menu of benefits for same-sex couples. It is undeniable that, while more rights will be added, a piecemeal, dual-schema approach to marriage equality will necessitate amending hundreds of statutes, a process that will be difficult to execute flawlessly, dangerous for lawyers, cumbersome for the courts required to interpret the results, expensive for the litigants, and will result in a product that is segregative and discriminatory.

No one should purport to tell a religious organization who it may marry, but as lawyers we should view the issue of secular marriage equality through the lens of civil, not ecclesiastical, law, and as a legal, not a moral, issue. Washington is a secular democratic state which has monopolistic control over civil marriage and concomitant authority over a myriad of important rights. Lawyers should be leaders in the law, and leadership on this issue requires that we support civil marriage equality.

Mark A. Johnson practices plaintiffs’ professional liability and personal-injury law at the law firm of Johnson-Flora, PLLC in Seattle. He served on the WSBA Board of Governors from 2003-2006. He will take office as WSBA president-elect in September 2007 and as WSBA president in September 2008. Tereza Simonyan is a second-year law student at Seattle University School of Law and a law clerk with Johnson-Flora.
Since 1905,

**STAFFORD FREY COOPER**

has been providing quality legal services to our clients. Our practice covers business and commercial litigation, civil litigation, personal injury and wrongful death, employment law, construction law, toxic tort, and insurance.

We are pleased to announce that

Krista S. Mirhoseini

and

Jennifer A. Tran

have resumed their practices with our firm.

We are also proud to welcome

John K. Chung

Moses F. Garcia

Peter J. Mullenix

Angela G. Reynvaan

and

Kate N. Sadlon

as Associate Attorneys to the firm.

The Shareholders of

**STAFFORD FREY COOPER**

are pleased to announce that

Katherine M. Steele

has been elected as

Managing Shareholder of their firm.

3100 Two Union Square

601 Union Street

Seattle, WA 98101

Phone: 206-623-9900 • Fax: 206-624-6885

www.staffordfrey.com

HENDRICKS & LEWIS

is pleased to announce that

Lori A. Benavides

has joined the firm as an associate.

Ms. Benavides’ practice includes civil litigation, appeals and intellectual property law.

901 Fifth Avenue, Suite 4100

Seattle, WA 98164

Telephone: 206-624-1933

Fax: 206-583-2716

www.hllaw.com
Harper | Hayes PLLC

is pleased to announce three new team members.

Attorneys

Michael Crisera

and

Charles Davis

have joined the firm, as has paralegal

Jesica Gardner.

Mr. Crisera previously practiced with Short Cressman & Burgess in Seattle. Mr. Crisera’s practice will focus on insurance coverage litigation on behalf of policyholders and general litigation.

Mr. Davis is a 2006 summa cum laude graduate from Seattle University School of Law. Mr. Davis’ practice will focus on insurance coverage litigation on behalf of policyholders.

Ms. Gardner’s emphasis will be in discovery analysis and complex document management related to insurance coverage litigation.

The attorneys and staff of

Mills Meyers Swartling

congratulate our colleague

Lawrence R. Mills

on his election as

2007-2008 Chair of the American Bar Association Section of Dispute Resolution

Mills Meyers Swartling

1000 Second Avenue, 30th Floor Seattle, WA 98104
Tel: 206-382-1000 • Fax: 206-386-7343
E-mail: info@mms-seattle.com
www.mms-seattle.com

Eisenhower & Carlson, PLLC

congratulates

John R. Ruhl

— Member in the firm’s Seattle office and 2006-2007 President of the King County Bar Association —

upon his receipt, on behalf of the KCBA, of the American Bar Association’s

Silver Gavel Award

for his leadership in developing the on-line judicial voter guide

www.votingforjudges.org

helping the people of Washington to maintain a fair and impartial judiciary

Eisenhower & Carlson, PLLC

One Union Square
600 University Street, Suite 2420
Seattle, WA 98101
Tel: 206-340-8010
Fax: 206-260-2852
www.harperhayes.com
Ellis, Li & McKinstry PLLC

is pleased to announce that

Keith A. Kemper

has become the managing partner

and that

Andrew S. Mathers

has joined the firm as an associate.

Two Union Square
601 Union Street, Suite 4900
Seattle, WA 98101-3906
Tel: 206-682-0565 • Fax: 206-625-1052
www.elmlaw.com

Benedict Garratt Pond & Pierce, PLLC

Ms. Pierce served as the first Solicitor General of the State of Washington, from 1993 to 2005. Her practice focuses on civil appeals and government regulatory law.

Benedict Garratt Pond & Pierce, PLLC

has moved its Olympia office to:

711 Capitol Way S., Suite 605
Olympia, WA 98501
Kathleen D. Benedict: 360-236-9858
Narda Pierce: 360-357-6850

The Seattle office remains at:

1000 Second Ave., 30th Floor
Seattle, WA 98104
Sally Gustafson Garratt: 206-652-8983
Ralph C. Pond: 206-447-5755

The Firm’s areas of practice are:

Government Regulatory & Enforcement Law
Consumer Protection Law
Labor & Employment Law
Civil Appeals

www.benedictlaw.com

Milton C. Smith

and his son

Mark E. Smith

are pleased to announce the formation of a new law partnership to be known as

Smith Law Partnership LLP

1191 Second Ave, Suite 1800
Second and Seneca Building
Seattle, WA 98101
Phone: 206-625-3009 • Fax: 206-464-0125
milts@smithpartlaw.com • marks@smithpartlaw.com

John Huston will be Of Counsel to the law partnership.

Their practice will focus on estate planning and probate, collections, business law and planning, and personal injury claims.
Opportunities for Service

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

Commission on Judicial Conduct
Application deadline: October 10, 2007
The WSBA Board of Governors is seeking applicants interested in serving as a member on the Commission on Judicial Conduct. One member position is available. The Commission reviews complaints of ethical misconduct against judicial officers, discusses the progress of investigations, and takes action to resolve complaints. The goal of the Commission is to maintain confidence and integrity in the judicial system by seeking to preserve both judicial independence and public accountability. The public interest requires a fair and reasonable process to address judicial misconduct or disability, separate from the judicial appeals system that allows individual litigants to appeal legal errors.

The Commission consists of 11 members who serve four-year terms — six nonlawyer citizens, three judges, and two lawyers. Each member has an alternate whose term coincides with their corresponding member’s term. The lawyers must be admitted to practice in Washington and are appointed by the WSBA. The term for this member position will commence immediately upon appointment and expire on June 16, 2008.

Please submit a letter of interest and résumé to WSBA Bar Leaders Division, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539, or e-mail barleaders@wsba.org. Further information on the Commission can be found at their website, www.cjc.state.wa.us, or by contacting them at 360-753-4585.

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 date 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 by the deadline listed above at the WSBA office. To obtain a questionnaire, visit the WSBA website at www.wsba.org/lawyers/groups/judicialrecommendation or contact the WSBA at 206-727-8212 or 800-945-9722, ext. 8212, or barleaders@wsba.org.

WSBA Court Rules and Procedures Committee 2007-2008 Agenda
When it reconvenes in October, the WSBA Court Rules and Procedures Committee is scheduled to review the Superior Court Civil Rules (CR), the Mandatory Arbitration Rules (MAR), and the Civil Rules for Courts of Limited Jurisdiction (CRLJ). Suggestions regarding these rules or questions about the committee should be directed to Douglas Ende at 206-733-5917 or e-mail WSBCourtRules@wsba.org. Interested individuals are encouraged to participate in the work of the committee. For more information, see www.wsba.org/lawyers/groups/courtrules/default.htm.

Legal Foundation of Washington Notice of Public Meeting
The trustees of the Legal Foundation of Washington will meet on September 20, 2007, at the Legal Foundation of Washington offices in Seattle. The public may appear in order to comment on the Foundation’s activities between 9:00-9:30 a.m. This opportunity is made pursuant to Article I, Section 1.7 of the Bylaws of the Legal Foundation of Washington. For information, contact Caitlin Davis Carlson, executive director, at 206-624-2536 or caitlindc@legalfoundation.org.

Trust Account Responsibilities and Retainers Task Force Submits Final Report
The Trust Account Responsibilities and Retainers Task Force was formed by the WSBA Board of Governors in December 2005 after the Board withdrew Formal Ethics Opinion No. 186, which addressed the issue of whether and when fees paid to a lawyer in advance must be deposited into a trust account. The Task Force was convened to review the issue and make recommendations to the Board with respect to the handling of various types of advance fee arrangements. The final report of the Task Force, which recommends adoption of amendments to RPC 1.5 and RPC 1.15, was presented to the Board of Governors for a first reading on July 28, 2007, at the Board’s meeting in Quincy. The Board of Governors is expected to take action on the Task Force recommendation at its meeting in Seattle on September 20-21. The report and recommendation of the Task Force can be found at www.wsba.org/lawyers/groups/trustaccounttaskforce/default.htm.

WSBA Leadership Institute Seeks Fellows for 2008
Application deadline: September 15, 2007
The WSBA seeks applicants for the 2008 WSBA Leadership Institute. The Leadership Institute recognizes that many lawyers, especially those from diverse backgrounds and other underrepresented groups, have not been traditionally recruited for leadership positions or made aware of opportunities for leadership training, skill development, and professional growth available through the WSBA. Ten to 12 attorneys in practice for three to 10 years will be carefully selected for the fourth year of the program. The program will take place January to August 2008.

Application and nomination forms and instructions are available on the WSBA website at www.wsba.org/lawyers/leadership_institute.htm. For further information, contact Camille Campbell at camillec@wsba.org, 206-727-8213 or 800-945-9722 ext. 8213.

2008 License Fee, Late Fees, and Suspension Information
Address/Contact Information Update. Now is the ideal time to check that the WSBA has all of your correct contact information in its database for the 2008 license fee renewal
packets scheduled to be mailed in early December. APR 13(b) requires all attorneys to update their office addresses and telephone numbers within 10 days of any change. You can check your listing by going to the online lawyer directory at http://pro.wsba.org. If any of your contact information (name, address, phone number or e-mail address) has changed, please update the information by e-mailing questions@wsba.org, faxing the change to 206-727-8319, or calling the WSBA Service Center at 800-945-WSBA (9722) or 206-443-WSBA (9722).

New Mandatory Disclosure Regarding Professional Liability Insurance. Pursuant to Rule 26 of the Admission to Practice Rules (APR), this licensing season all active WSBA members will be required for the first time to disclose on the annual licensing form whether they maintain professional liability insurance. Effective as of July 1, 2007, new admits and members returning to active status are required to report this information at the time of admission on forms provided to them with their admission or status change documents. Note: Washington lawyers are not required to have professional liability insurance coverage: APR 26 requires only that active Washington lawyers report to the WSBA whether they have such coverage. Because this is a new requirement and the information will be collected during the upcoming licensing season, the Lawyer Directory information for most lawyers will not reflect whether there is professional liability coverage until at least the end of March 2008. As stated above, an exception will be lawyers newly admitted or recently returned to active status, who are required to report in connection with becoming active. For more information on this rule, see http://pro.wsba.org/insurance disclosureinfo.asp.

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

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

MCLE Certification for Active Members

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


Credit Requirements. The following credit requirements must be met by December 31 of the last year of an active member’s reporting period:

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

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

  • Pre-recorded self-study (A/V) courses cannot be more than five years old, except MCLE Board-approved “skills-based” courses. Pre-recorded

The Washington State Bar Association’s Annual Awards Dinner and Business Meeting

will take place Thursday, September 20, 2007, at the Grand Hyatt Hotel in Seattle. A reception starts at 5:30 p.m. with a no-host bar, and the dinner/program begins at 6:30 p.m. Please join us for an evening of inspiration as we celebrate the accomplishments of the 2007 WSBA award recipients. All members of the legal community are invited to attend. For a registration form, please see page 46 of the August issue of Bar News, or download the form from wsba.org/annualawardsregistrationform.pdf, or contact the WSBA Service Center at 800-945-WSBA (9722) or 206-443-WSBA (9722) or questions@wsba.org to request a copy.

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

will take place Wednesday, October 17, 2007, at the Renaissance Seattle Hotel. Registration and a reception start at 11:00 a.m. with a no-host bar, and the luncheon/program begins at noon. Please join us as we celebrate the accomplishments of the 2007 WSBA 50-year members. All members of the legal community are invited. For a registration form, please see page 47 of the August issue of Bar News, or download the form from wsba.org/50yearluncheonregistrationform.pdf, or contact the WSBA Service Center at 800-945-WSBA (9722) or 206-443-WSBA (9722) or questions@wsba.org to request a copy.
self-study courses include the traditional audio-visual (A/V) media of video tapes and cassette tapes. They also include archived web casts, DVDs, compact disks, and other media with a sound track of the MCLE Board-approved course presentation. Written materials should be included with these courses and reviewed prior to claiming credit. In addition, written materials must be purchased by each member, where required by the sponsor, prior to claiming credit.

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

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

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

Two ethics credits and five A/V credits may be 15 credits to your next reporting period. Only may carry over a maximum combined total of reporting period credits total exceeds 45, you credits from the previous reporting period services provider.

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

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

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

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

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

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

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

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

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

RPCs Amended
On July 11, 2007, the Washington State
Supreme Court entered an order adopting a
WSBA-proposed amendment to RPC
1.15A(e). The amendment, which becomes
effective on September 1, 2007, changes the
language of that section so that the annual
written reporting requirement applicable to
all client property held by a lawyer will apply
to funds only. For the text of the amended
rule, please see the Washington Courts
website at http://www.courts.wa.gov/
court_rules/adopted/RPC1.15A.doc.

Women in Solo Practice Group
The WSBA Lawyers Assistance Program (LAP)
is offering a group this fall for women who are
actively engaged in solo practice. The group
will meet weekly for eight sessions, from 8:00
to 9:30 am on Wednesdays, starting October 3
and ending on November 14. It will be limited
to a maximum of 10 members. There will be
a sliding fee scale. For more information, call
either Rebecca at 206-727-8269 or 800-945-
9722, ext. 9269, or Abby at 206-733-5988, or
800-945-9722, ext. 5988.

LAP Solution of the Month:
Addicted?
Have you tried to slow down or stop drink-
ing, drug use, gambling, or an addiction to
pornography, and found it was overwhel-
ing to stick with that decision? LAP has an
experienced addiction specialist on staff to
help with counseling and referrals. Call Abby
Smith, MA, LMHC, CDP, at 206-733-5988 or
800-945-9722, ext. 5988.

Computer Clinic
The WSBA offers a hands-on computer
clinic for members wanting to learn more
about what Microsoft Office programs such
as Outlook, PowerPoint, Excel, and Word, as
well as Adobe Acrobat, can do for a lawyer.
Are you a total beginner? No problem. The
clinic teaches helpful tips you can use imme-
diately. Computers are provided, and seating
is limited to 15 members. There is no charge,
and no CLE credits are offered. The clinic
on September 10 will focus on Outlook and
case-management software, and the clinic on
September 24 will focus on computer basics:
getting started; navigating through Windows;
computer features; and security and mainte-
nance. Clinics are held from 10 a.m. to noon
at the WSBA office. For more information or
to RSVP, contact Julie Salmon at 206-733-5914,
800-945-9722, ext. 5914, or juliesa@wsba.org.
Please note the WSBA's new address: 1325
Fourth Ave., Ste. 600, Seattle.

LOMAP and Ethics on the Road: The
2007 Traveling Seminars
Plan to attend in Port Angeles on September
18, Port Townsend on September 19, Port
Orchard on September 20, or Friday Harbor
on September 25. Registration is $89. This
seminar has been approved for four CLE
ethics credits. For more information and a
complete calendar of fall seminars, contact
Julie Salmon at 206-733-5914, or 800-945-9722,
ext. 5914, or juliesa@wsba.org, or visit www.
lomap.org.

Contract Lawyer Meeting
Discuss the issues with other contract law-
yers on September 11 from noon to 1:30 at
the WSBA office. Bring your lunch — coffee
is provided — and network with other con-
tact lawyers. For more information, contact
Julie Salmon at 206-733-5914, or 800-945-9722,
ext. 5914, or juliesa@wsba.org.

Job Seekers Discussion Group
Looking for a job or making a transition? Join
us the second Wednesday of each month
from noon to 1:30 p.m. The next meeting is
September 12 at the WSBA office. On October
10, the topic will be “Working the Net: What
Makes a Good Attorney Webpage?” There will
be opportunities to network, and exchange
information and ideas with other lawyers
looking to make a change. No need to RSVP.
For more information contact Jennifer L.
Favell, Ph.D. at 206-727-8267, or 800-945-9722,
ext. 8267, or jenniferf@wsba.org. Please note
the WSBA’s new address: 1325 Fourth Ave.,
Ste. 600, Seattle.

Upcoming Board of Governors
Meetings
September 20-21, Seattle • October 26-27,
Winthrop • December 7-8, Everett
With the exception of the executive session,
Board of Governors meetings are open, and
all WSBA members are welcome to attend.
RSVPs are appreciated but not required.
Contact Donna Sato at 206-727-8244, 800-
945-9722, ext. 8244, or donnas@wsba.org.
The complete Board of Governors meeting
schedule is available on the WSBA website
at www.wsba.org/info/bog/schedule.htm.

Usury Rate
The average coupon equivalent yield from
the first auction of 26-week treasury bills in
August 2007 was 4.927 percent. Therefore,
the maximum allowable usury rate for September
is 12 percent. Information from January 1987
to date can be found at www.wsba.org/media/
publications/barnews/usury.htm.

Let Us Complement You.

Built to complement your role as primary
counsel, Coopersmith Health Law Group
concentrates its practice exclusively on
healthcare compliance, claims disputes,
carrier contract negotiations, and
fully capturing revenue earned.

Jeff Coopersmith formed Coopersmith Health
Law Group after serving as Chief Counsel and
Director of Enforcement at the Washington
State Office of the Insurance Commissioner.
Our team includes former regulators, a
physician, an investigator, and
a certified coding specialist.

The firm is known for its industry
knowledge; collaborative relationships
with regulators and health insurance
companies; and track record of positive,
cost-effective results for our colleagues
and their clients.

Contact: Jeff Coopersmith
Phone: (206) 343-1000
Fax: (206) 343-1001
jeff@coopersmithlaw.com
www.coopersmithlaw.com

coopersmith health law group
WYLD Board of Trustees' first at-large trustee. Wallace is a deputy prosecuting attorney in the Juvenile Division of the Kitsap County Prosecuting Attorney’s Office.

**Washington Women Lawyers**

On September 28, 2007, Washington Women Lawyers will have their Annual Leadership Symposium and Awards Dinner at the Bell Harbor Conference Center in Seattle. The theme will be “Equal Access to Client and Career Development.” Awards will be presented honoring Justice **Bobbe Bridge**, WSBA President **Ellen Conedera Dial**, Seattle University Dean **Kellye Testy**, State Board Member **Carla Lee**, and the late King County Prosecutor **Norm Maleng**. Contact **Joan Tierney**, WWL president, at tierney@seattleu.edu or 206-398-4103 or visit www.wwl.org.

**MAMAS and KCWWL Events**

On September 18, 2007, Mother Attorneys Mentoring Association (MAMAS — www.mamas.seattle.org) and King County Washington Women Lawyers (KCWWL — www.kcwwl.org) will host a brown bag lunch on “Saving for Education.” It will be held at 925 Fourth Avenue, Seattle. Contact tbritt@gsblaw.com.

KCWWL will also be hosting a wine-tasting and silent charity auction September 19, 2007, at Post Alley in Seattle. See www.kcwwl.org for more information.

**WSTLA Honors Attorneys, Elects New President and President-Elect**

The Washington State Trial Lawyers Association (WSTLA) honored attorneys for their efforts to preserve the civil justice system and protect the public. The President’s Award was presented to Everett attorney **Brad Fulton** to honor his championing the cause of those who deserve redress for injury to person, property, and civil rights. The Trial Lawyer of the Year Award was presented to Seattle attorney **Vicki Vreeland**, whose career in public service and private practice has blazed trails for women lawyers. The Professionalism Award was presented to Bainbridge attorney **Bill McGonagle** for his leadership and commitment to promoting dignity, civility, courtesy, and honor within the legal profession and his community. The Carl Maxey Award was presented to Seattle attorney **Lori Haskell** for demonstrating sustained commitment to diversity in the legal profession.

The Pillar of Justice Award was presented to Spokane attorney **Bryan Harnetiaux** for his 25 years of service as coordinator of the WSTLA Amicus Program.

Seattle attorney **Karen Koehler** has become the 54th WSTLA president. Koehler is a Seattle civil justice attorney and first woman of color to lead the organization since its inception in 1953. **John Budlong**, an attorney in Edmonds, has been named president-elect. He is a member of the American Association for Justice, and the WSTLA’s Board of Governors.

**Deputy Attorney General Wins Award For Leadership And Management**

The Conference of Western Attorneys General has selected Deputy Attorney General **Shirley Battan** to receive the Nelson Kempsky Award for outstanding leadership and management. Battan supervises four legal divisions and is responsible for the legal work of several hundred lawyers and professional staff in those divisions. “Shirley is an excellent leader and a role model for this office,” State Attorney General Bob McKenna said. “I am very proud of the work that Shirley does for the office, and this award is a symbol of her efforts.”

---

**SPEEDING TICKET?**

**TRAFFIC INFRACTION?**

**CRIMINAL MISDEMEANOR?**

**JEANNE P. MUCKLESTONE, PS**

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

- Successful results
- Extensive experience
- Former pro tem judge
- *Vogue* magazine 2003 Top Lawyer for Women in Washington
These notices of imposition of disciplinary sanctions and actions are published pursuant to Rule 3.5(d) of the Washington State Supreme Court Rules for Enforcement of Lawyer Conduct, and pursuant to the February 18, 1995, policy statement of the WSBA Board of Governors.

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

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

Disbarred

James E. Freeley (WSBA No. 11251, admitted 1980), of Olympia, was disbarred effective May 3, 2007, by order of the Washington State Supreme Court following a default hearing. This discipline was based on his conduct in 2004 in several matters involving termination of representation without notice.

In approximately October 2004, Mr. Freeley ceased practicing law without notice to clients, courts, or opposing counsel.

In January 2004, Mr. Freeley had appeared as counsel of record in two domestic-violence matters. Throughout 2004, Mr. Freeley failed to appear at multiple hearings. By October or November 2004, other lawyers appeared for the clients. By that time, the prosecutor could no longer locate the victim in the first matter and was unable to serve the victim in the second matter. The prosecutor was obliged to dismiss both cases.

In April 2002, Mr. Freeley was appointed “standby” counsel in an attempted murder case. In late 2004, Mr. Freeley began showing up late for court. In October 2004, he was removed as standby counsel after failing to appear for a pretrial hearing. It took several weeks for the Office of Assigned Counsel to find and appoint another standby counsel.

In April 2004, Mr. Freeley was hired to represent the defendant in a probation violation matter related to a narcotics offense. In late 2004, the defendant ceased being able to reach Mr. Freeley. Mr. Freeley missed several court appearances in the matter. The defendant eventually resolved the matter pro se.

As a result of Mr. Freeley’s failure to appear in court on behalf of his clients, a grievance was filed with the Bar Association in November 2004. Mr. Freeley failed to respond to the Bar Association’s requests for information during the disciplinary investigation.

Mr. Freeley’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 keep a client reasonably informed about the status of a matter, to promptly comply with reasonable requests for information, and to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; former RPC 1.15, governing the circumstances in which a lawyer may withdraw from representation and imposing duties on termination of representation; RPC 8.4(d), prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice; and RPC 8.4(l), prohibiting a lawyer from violating a duty or sanction imposed by or under the Rules for Enforcement of Lawyer Conduct in connection with a disciplinary matter.

Joanne S. Abelson represented the Bar Association. Mr. Freeley did not appear either in person or through counsel. Nancy K. McCoid was the hearing officer.

Disbarred

Mark T. McCrumb (WSBA No. 23860, admitted 1994), of Auburn, was disbarred, effective February 6, 2007, by order of the Washington State Supreme Court following a hearing. This discipline was based on his conduct involving submission of a false statement to a tribunal, providing false information during a disciplinary investigation, and trust account irregularities.

Between 2002 and 2004, Mr. McCrumb engaged in the following conduct, which established grounds for discipline:

- In a dissolution matter, Mr. McCrumb presented one or more written orders to the court containing significant discrepancies from the court’s oral ruling.
- During the Bar Association’s disciplinary investigation, Mr. McCrumb intentionally prepared a letter with a false date in an attempt to establish compliance with RPC 1.8, provided false information to a Bar Association investigator about the letter, and testified falsely in a deposition regarding the circumstances of the letter’s creation.
- As established by a Bar Association audit of his trust account addressing a period between November 2002 and December 2003, Mr. McCrumb failed to maintain complete records regarding client funds in his possession, failed to deposit client funds to his trust account, disbursed funds of one client on behalf of another client without authorization, on one or more occasions removed client funds from his trust account for his own benefit without establishing entitlement to those funds, commingled his own funds with client funds in his trust account, and failed to render appropriate accounts to his clients regarding funds held in his trust account.

Mr. McCrumb’s conduct violated former RPC 1.14(a), requiring that all funds of clients paid to a lawyer or law firm be deposited into one or more identifiable interest-bearing trust accounts and that no funds belonging to the lawyer or law firm be deposited therein; former RPC 1.14(b)(3), requiring a lawyer to maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his or her client regarding them; RPC 3.3(a), prohibiting a lawyer from knowingly making a false statement of material fact or law to a tribunal; RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; RPC 8.4(d), prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice; and RPC 8.4(l), prohibiting a lawyer from violating a duty or sanction imposed by or under the Rules for Enforcement of Lawyer Conduct in connection with a disciplinary matter.

Sachia Stonefeld Powell represented the Bar Association. Leland G. Riplei represented Mr. McCrumb. David W. Wiley was the hearing officer.

Disbarred

E. Armstrong Williams (WSBA No. 30361, admitted 2000), of Spokane, was disbarred, effective March 14, 2007, by order of the Washington State Supreme Court following a default hearing. This discipline was based on his conduct between 2004 and 2005 in multiple matters involving failure to comply with duties on suspension, lack of diligence, failure to communicate with clients, failure to protect client interests on termination of representation, and noncooperation with disciplinary investigations.

In July 2004, Mr. Williams was suspended
from practicing law for failure to pay license fees. He did not notify his clients, opposing counsel, or the courts of his suspension. In September 2004, Mr. Williams abandoned his law practice without making any arrangements for a lawyer to take over his active cases, which resulted in the following misconduct:

**Matter 1:** In June 2004, a client hired Mr. Williams to defend him against possession of marijuana charges. The client paid to Mr. Williams $1,500. At arraignment on June 14, the court set a preliminary hearing for July 2004. Neither the client nor Mr. Williams appeared at the hearing. Following the June 2004 arraignment, Mr. Williams did not respond to any of the client’s letters or telephone messages. Mr. Williams did not return the client’s file to him, do any further legal work, or refund any unearned fees.

**Matter 2:** In April 2004, Mr. Williams was hired by a client to assist her in a marriage dissolution proceeding. The client paid Mr. Williams $500 and gave him all of her original documents, including insurance papers, retirement papers, and an original stock certificate. The client did not keep copies of her documents. Mr. Williams reassured the client that he would send copies of the documents to her, which he did not do. Mr. Williams filed a notice of appearance and response to the petition on April 9. A status conference was held on May 27, and the next day, the court entered a case schedule with a November 2004 trial date. Mr. Williams took no further action in the case, did not respond to the client’s many attempts to contact him, and did not arrange for substitution of counsel.

**Matter 3:** In January 2004, a client hired Mr. Williams to obtain an order for post-secondary education child support while the client’s daughter (then 16 years old) attended college. Mr. Williams encouraged the client to seek increased child support for both her daughters. The client paid Mr. Williams $1,000. In February 2004, Mr. Williams filed a motion and order for show cause, which was opposed. The hearing was continued until May, at which time Mr. Williams filed a summons and petition for modification of support, which was opposed. Mr. Williams took no further action on behalf of his client, and he did not respond to any of the client’s telephone calls, e-mails, or correspondence after August 2004.

**Matter 4:** In August 2003, a client hired Mr. Williams to handle problems with a parenting plan. The client gave Mr. Williams some original documents. At the time, Mr. Williams was an associate at a law firm. In October 2003, Mr. Williams left the law firm to form his own firm and took the client’s file with him. Between August 2003 and June 2004, the client made installment payments on Mr. Williams’s flat fee of $2,000. After June 2004, Mr. Williams did not respond to any of the client’s telephone calls, e-mails, or correspondence. The client was unable to obtain any of his original documents or his client file from Mr. Williams.

In the above-described matters, Mr. Williams failed to cooperate with the Bar Association by not providing requested information and documents, by not responding to requests for responses to grievances, by not appearing at a scheduled deposition, and by not producing documents as required by subpoena.

Mr. Williams’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 keep a client reasonably informed about the status of a matter, to promptly comply with reasonable requests for information, and to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; RPC 1.5(a), requiring a lawyer’s fee to be reasonable; former RPC 1.15(d), requiring a lawyer to take steps to the extent reasonably practicable to protect a client’s interests upon termination of representation, including 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; and RPC 8.4(l), prohibiting a lawyer from violating a duty or sanction imposed by or under the Rules for Enforcement of Lawyer Conduct in connection with a disciplinary matter [here, ELC 1.5, ELC 5.8(e) and (f), and ELC 14.1(c)].

Leslie C. Allen represented the Bar Association. Mr. Williams did not appear either in person or through counsel, John H. Loeffler was the hearing officer.

**Non-Disciplinary Notice**

Suspended Pending the Outcome of Disciplinary Proceedings

Robert M. Storwick (WSBA No. 17328, admitted 1987), of Mercer Island, was suspended pending the outcome of disciplinary proceedings, pursuant to ELC 7.2(a)(3), effective June 28, 2007, by order of the Washington State Supreme Court. This is not a disciplinary action.
APPEALS
Philip A. Talmadge,
Former Justice,
Washington State Supreme Court;
Fellow, American Academy of
Appellate Lawyers

Michael B. King
Formerly of Lane Powell;
Past President, Washington Appellate
Lawyers Association; Past Chair,
KCBA Section on Appellate Practice;
ABA Council of Appellate Lawyers;
Washington Appellate “Super
Lawyer”; Best Lawyers in America,
for Appellate Law, Washington

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

Sidney Charlotte Tribe
Former Law Clerk, Washington Court
of Appeals; Former Trial Attorney,
Law Office of James J. Rigos;
Invited Member, The Order of
Barristers

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

TALMADGE LAW GROUP PLLC
18010 Southcenter Parkway
Tukwila, WA 98188-4630
206-574-6661
Fax: 206-575-1397
E-mail: christine@talmadgelg.com
www.talmadgelg.com

JAPANESE LAW
Toshimitsu Takaesu, LL.M.
• Consultation
• Referral
• Representation in Japanese court
JFBA Attorney-at-Law
WSBA Foreign Law Consultant
206-284-5121
ttakaesu@gmail.com

Mediation Services and
Consultation and Association on the
Technical Aspects of Aviation and
Engineering Matters and
Governmental Regulation

Tom Fender,
formerly Vice Chair of the Intercity Transit
Authority, has 35 years of active bar
participation in Washington and Oregon.
He has served as a public official, municipal
manager, naval aviator, government relations
director, tax administrator, assistant professor,
and counsel to the Washington Senate Judiciary
Committee. Mr. Fender’s formal education
includes naval aviation, industrial processes,
science, and engineering.

FENDER LAW GROUP PLLC
360-539-4698 • 206-274-8345
866-553-8083
tom@fenderlaw.com
www.fenderlaw.com

APPEALS IN
WASHINGTON, CALIFORNIA, AND
FEDERAL COURTS

Focusing on tort and
civil rights cases.

RANDY BAKER
www.bakerappeals.com

JIMMY LAW
354-220

BAR NEWS
is pleased to offer advertising
services in the
PROFESSIONALS
SECTION.
For more information, please call
Jack Young at 206-727-8260
or e-mail jacky@wsba.org.

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

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

INSURANCE AND CLAIMS
HANDLING
Consultations or testimony in cases
involving insurance or
bad faith issues.
Adjunct Professor Insurance Law.
25 years’ experience as attorney
in cases for and against insurance
companies.
Developed claims procedures for
major insurance carriers.

IRVING “BUDDY” PAUL
221 N. Wall St., #500
Spokane, WA 99201
509-838-4261
bpaul@ewinganderson.com

INSURANCE AND CLAIMS
HANDLING
Consultations or testimony in cases
involving insurance or
bad faith issues.
Adjunct Professor Insurance Law.
25 years’ experience as attorney
in cases for and against insurance
companies.
Developed claims procedures for
major insurance carriers.

IRVING “BUDDY” PAUL
221 N. Wall St., #500
Spokane, WA 99201
509-838-4261
bpaul@ewinganderson.com

BAR NEWS
is pleased to offer advertising
services in the
PROFESSIONALS
SECTION.
For more information, please call
Jack Young at 206-727-8260
or e-mail jacky@wsba.org.

APPEALS IN
WASHINGTON, CALIFORNIA, AND
FEDERAL COURTS

Focusing on tort and
civil rights cases.

RANDY BAKER
www.bakerappeals.com

JIMMY LAW
354-220

BAR NEWS
is pleased to offer advertising
services in the
PROFESSIONALS
SECTION.
For more information, please call
Jack Young at 206-727-8260
or e-mail jacky@wsba.org.

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

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

INSURANCE AND CLAIMS
HANDLING
Consultations or testimony in cases
involving insurance or
bad faith issues.
Adjunct Professor Insurance Law.
25 years’ experience as attorney
in cases for and against insurance
companies.
Developed claims procedures for
major insurance carriers.

IRVING “BUDDY” PAUL
221 N. Wall St., #500
Spokane, WA 99201
509-838-4261
bpaul@ewinganderson.com

INSURANCE AND CLAIMS
HANDLING
Consultations or testimony in cases
involving insurance or
bad faith issues.
Adjunct Professor Insurance Law.
25 years’ experience as attorney
in cases for and against insurance
companies.
Developed claims procedures for
major insurance carriers.

IRVING “BUDDY” PAUL
221 N. Wall St., #500
Spokane, WA 99201
509-838-4261
bpaul@ewinganderson.com

BAR NEWS
is pleased to offer advertising
services in the
PROFESSIONALS
SECTION.
For more information, please call
Jack Young at 206-727-8260
or e-mail jacky@wsba.org.

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

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

INSURANCE AND CLAIMS
HANDLING
Consultations or testimony in cases
involving insurance or
bad faith issues.
Adjunct Professor Insurance Law.
25 years’ experience as attorney
in cases for and against insurance
companies.
Developed claims procedures for
major insurance carriers.

IRVING “BUDDY” PAUL
221 N. Wall St., #500
Spokane, WA 99201
509-838-4261
bpaul@ewinganderson.com

BAR NEWS
is pleased to offer advertising
services in the
PROFESSIONALS
SECTION.
For more information, please call
Jack Young at 206-727-8260
or e-mail jacky@wsba.org.

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

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

INSURANCE AND CLAIMS
HANDLING
Consultations or testimony in cases
involving insurance or
bad faith issues.
Adjunct Professor Insurance Law.
25 years’ experience as attorney
in cases for and against insurance
companies.
Developed claims procedures for
major insurance carriers.

IRVING “BUDDY” PAUL
221 N. Wall St., #500
Spokane, WA 99201
509-838-4261
bpaul@ewinganderson.com

BAR NEWS
is pleased to offer advertising
services in the
PROFESSIONALS
SECTION.
For more information, please call
Jack Young at 206-727-8260
or e-mail jacky@wsba.org.

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

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

INSURANCE AND CLAIMS
HANDLING
Consultations or testimony in cases
involving insurance or
bad faith issues.
Adjunct Professor Insurance Law.
25 years’ experience as attorney
in cases for and against insurance
companies.
Developed claims procedures for
major insurance carriers.

IRVING “BUDDY” PAUL
221 N. Wall St., #500
Spokane, WA 99201
509-838-4261
bpaul@ewinganderson.com

BAR NEWS
is pleased to offer advertising
services in the
PROFESSIONALS
SECTION.
For more information, please call
Jack Young at 206-727-8260
or e-mail jacky@wsba.org.
INVESTOR CLAIMS
Former NASD Series 7, 66 and life/annuity insurance licensed broker/investment advisor. Available for consultation, referral, or expert evaluation/testimony in claims involving broker/advisor error, and investment suitability.

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

CONSTRUCTION SITE INJURIES
Bradley K. Crosta
Counsel for plaintiff in State v. PBMC, Inc., 114 Wn.2d 454 (1990) (General contractor has primary responsibility for the safety of all workers.)
Is available for consultation, association, or referrals.

CROSTA AND BATEMAN
999 Third Avenue, Suite 2525
Seattle, WA 98104-4089
206-224-0900
bcrosta@aol.com

APPEALS
Margaret K. Dore
Former Law Clerk to the Washington State Supreme Court and the Washington State Court of Appeals
www.margaretdore.com
1001 Fourth Ave., 44th Floor
Seattle, WA 98154
206-389-1754

APPEALS
Charles K. Wiggins and Kenneth W. Masters
We handle or assist on all types of civil appeals in state and federal courts, from consulting with trial counsel to post-mandate proceedings.

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

INSURANCE BAD FAITH
For when they insure it is sweet to them to take the money; but when disaster comes it is otherwise and each man draws his rump back and strives not to pay.
— Francesco di Marco Datini — Florentine businessman, letter to his wife, 14th century.

SOME THINGS DON’T CHANGE
The excuses are endless. The bottom line is the same — insurance companies gladly accept your premiums but all too often resist paying your valid claims.

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

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

DISCIPLINARY INVESTIGATION and PROCEEDINGS
Patrick C. Sheldon, former member of the Washington State Bar Association Disciplinary Board, is now accepting referrals for attorney disciplinary investigations and proceedings.

FAIN SHELDON ANDERSON & VANDERHOEF PLLC
Bank of America Tower
701 Fifth Avenue, Suite 4650
Seattle, WA 98104
206-749-2371
E-mail: patrick@fsav.com

ETHICS and LAWYER DISCIPLINE
30+ Years’ Experience
Leland G. Ripley, former WSBA chief disciplinary counsel (1987-94), represents and advises lawyers in all aspects of legal ethics and lawyer discipline.
425-377-8737
E-mail: leland.ripley@comcast.net

ATTORNEYS’ FEE DISPUTES
Michael Caryl
• Attorney-Client
• Attorney-Attorney
• Attorney Liens
• Fee-Related Ethics and Discipline
• Expert Testimony (lodestar/fee division/quantum meruit)
• Arbitration, Mediation
• Consultation, Representation
206-378-4125
E-mail: michaelc@michaelcaryl.com
Roger K. Anderson is available for referral, association, or consultation in cases involving legal or accounting malpractice. Mr. Anderson has represented both plaintiffs and defendants in substantial and complex malpractice litigation for over 20 years.

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

LEGAL MALPRACTICE and ACCOUNTING MALPRACTICE

Roger K. Anderson

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

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

ARIZONA LAWSUITS?

William Rinaudo Phillips available as 25-year experienced trial lawyer licensed in Washington (#12200) and Arizona (#19949).

602-271-7700
wrp@bowlaw.com

APPEALS

Isaac Ruiz

Former Law Clerk, United States Court of Appeals for the Tenth Circuit.

Available for referral or association in federal and state briefs and arguments.

206-407-3520
www.ruizlawoffice.com

CALENDAR

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

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

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

Administrative/Regulatory

Public Records Act — 2007 and Beyond
September 11 — Seattle. 6.25 CLE credits. By WSBA Administrative Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Business Law

Communication in the Courtroom
September 11 — Seattle. 7.5 CLE credits. By CLE Services; 206-364-5289.

Gain the Edge® Negotiation Strategies for Lawyers
September 27 — SeaTac. 6.5 CLE credits, including 1.5 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Business Essentials
October 4 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Corporate Counsel Institute
October 17 — Seattle. CLE credits pending. By WSBA Corporate Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Construction Law

The Mike M. Johnson Decision — Where Are We Now and What’s Next?
October 23 — Seattle. 3.5 CLE credits pending.

By WSBA Construction Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Criminal Law

Criminal Justice Institute
September 6-7 — Tacoma. 15 CLE credits, including 2 ethics. By WSBA Criminal Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Dispute Resolution

New Frontiers in Conflict Management:
Dispute Resolution in Corporate, Governmental, and Private Sectors
September 21 — Seattle. CLE credits pending. By WSBA Dispute Resolution Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Gain The Edge® Negotiation Strategies for Lawyers
September 27 — SeaTac. 6.5 CLE credits, including 1.5 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Professional Mediation Skills Training
October 5-7 and 20-21 — Seattle. 34 CLE credits, including 2 ethics. By University of Washington CLE. For more information, call 206-543-0059 or 800-CLE-UNIV.

Elder Law

Elder Law Essentials: Annual Fall Elder Law Conference
September 7 — SeaTac. 6 CLE credits, including 1.25 ethics. By WSBA Elder Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

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

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

Estate Planning

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

Ethics

Ethical Dilemmas
September 18 — Yakima. 4 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Ethics, Professionalism and Civility
September 18 — Seattle. 3 ethics credits. By...
WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Rules of Professional Conduct — A Year Later
September 24 — Seattle. 6 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Ethical Dilemmas
October 9 — Spokane. 4 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

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

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

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

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

Ethical Dilemmas
October 24 — Vancouver. 4 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Ethical Dilemmas
October 25 — Tele-CLE. 1.5 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

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

Indian Law Symposium
September 6-7 — Seattle. 12.25 CLE credits, including 1 ethics. By University of Washington CLE. For more information, call 206-543-0059 or 800-CLE-UNIV.

Licensing Essentials for Business and Technology Lawyers
September 20 — Seattle. 6 CLE credits, including .75 ethics. By WSBA Intellectual Property Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Land Use/Environmental Law
Annual Water Law Conference

September 25 — Seattle. 6.75 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Navigating the Maze: A Checklist Approach to Land Use and Environmental Law
October 19 — Seattle. 6 CLE credits, including .75 ethics pending. By WSBA Environmental and Land Use Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Communication in the Courtroom
September 11 — Seattle. 7.5 CLE credits. By CLE Services. For more information, contact 206-364-5289.

New Frontiers in Conflict Management: Dispute Resolution in Corporate, Governmental, and Private Sectors
September 21 — Seattle. CLE credits pending. By WSBA Dispute Resolution Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

High-Profile Cases: Litigation Strategies from Lawyers Who Tried Them
October 16 — Seattle. 6.25 CLE credits, including 1 ethics pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

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

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

Ethical Dilemmas
October 17 — Tele-CLE. CLE credits pending. By WSBA Senior Lawyers Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Complex Issues in Commercial Real Estate Transactions
September 26 — Seattle. 6 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

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

Senior Lawyers
Senior Lawyers CLE
October 17 — Seattle. CLE credits pending. By WSBA Senior Lawyers Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Technology
Technology in the Courtroom — The Judges’ Perspective
September 25 — Tele-CLE. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Classifieds

For Sale

Retiring? Washington attorney seeking to negotiate the purchase of existing solo practices. General practice sought, but more specialized areas considered. All inquiries held in strict confidence. Call 206-724-7165 or e-mail washlawyer@gmail.com.

Space Available

Laurelhurst (University) area of Seattle — Office suite available. Share admin, assistant, library, and conference rooms with attorneys and CPAs. Great location, nice environment. Possible joint marketing and referrals. For information, call 206-523-6470.

University Place executive office sharing and/or sublease opportunity: Full-time offices available on the ground floor of a tasteful office on 40th Street in University Place. Come to the more relaxed climate of University Place! Only minutes from the Pierce County Court. Even closer to the new Chambers Bay Golf Course. Short- and long-term leases. Three professional offices with plenty of space for support staff. Shared conference rooms, reception area, kitchen, telephone

WSBA Bar News

WSBA Bar News Blind Box # ______ Bar News Classifieds
1325 Fourth Ave., Ste. 600
Seattle, WA 98101-2539

Positions available are also posted online at www.wsba.org/jobs.
answer, mail handling, legal messenger, copier, fax, and much more. Please call 253-307-8500 for more information.

**Downtown Des Moines office suite.** Excellent location. Minutes from the airport, I-5, the Regional Justice Center, and the Federal Detention Center. Two private offices, view of Puget Sound from the private deck, open reception/work area, shared conference room/kitchen, ample storage and parking. Contact Lisa at 206-878-4100 or lisaparalegal@yahoo.com.

### Positions

**Employee benefits attorney**, prefer L.L.M. and two or more years of experience, for growing, varied, and challenging practice in Oregon’s Willamette Valley. We are a 25-attorney AV-rated Eugene business law firm with four attorneys in our employee benefits department. Enjoy our emphasis on quality of life, client service, and high standards. Eugene provides the attractions of a university town (University of Oregon) and is close to winter skiing, summer hiking, fishing and other river sports, and the scenic Oregon coast. Contact Craig Smith at Hershner Hunter, LLP, 541-686-8511 or csmith@hershnerhunter.com.

**The Department of Financial Institutions (DFI)** is currently recruiting for a financial legal examiner supervisor. This position is responsible for supervising and directing the work of professional-level staff who perform advanced regulatory work involving financial institutions. Salary: $69,457-$82,752, depending on qualifications. Includes a full benefits package. Location: Tumwater, Washington. Application review will begin immediately. To ensure consideration for this position, interested applicants should submit all application materials as soon as possible. For more information about this position and the application process, please visit the careers page of DFI’s website: http://dfi.wa.gov/about/careerlisting.htm. E-mail DFI’s Recruitment Team at RecruitmentTeam@dfi.wa.gov with any questions.

**Industrial insurance appeals hearings judge:** The Board of Industrial Insurance Appeals (BIIA) is offering a challenging and rewarding opportunity for the right individual to make a difference by joining our diverse, progressive environment. The BIIA is a Washington state agency that hears and decides appeals from decisions made by the Department of Labor and Industries. IIAs conduct preliminary conferences and hearings and issue proposed decisions as part of the dispute-resolution process. Minimum qualifications for the IIA: active or judicial membership in the WSBA. To apply online or for further information, please visit our website at www.biia.wa.gov.

**Deputy prosecuting attorney:** The Clark County Prosecuting Attorney’s Office has an opening for a criminal division deputy prosecuting attorney, salary $43,464 to $70,584, depending on experience. A minimum of two years’ felony trial experience is required. Applicants must be a member of the WSBA. Please send résumé and cover letter to Shari Jensen, Clark County Prosecuting Attorney’s Office, PO Box 5000, Vancouver, WA 98666. Position will be open until filled. Clark County is an equal opportunity employer.

**Construction attorney.** Ahlers & Cressman PLLC, an eight-lawyer construction law firm in downtown Seattle, is seeking an attorney with a minimum of four years of experience with strong academic credentials and writing skills to perform construction contract review and drafting, as well as additional construction law work. Ahlers & Cressman PLLC is a group of motivated, hard-working attorneys and is committed to both the professional and personal development of all our attorneys and staff. Its lawyers believe that high-quality work results in satisfied clients and a prosperous firm. Compensation is negotiable based upon qualifications and experience. All inquiries will remain confidential. If interested, please send résumé and cover letter to Chris Achman, Administrator, Ahlers & Cressman PLLC, 999 Third Ave., Ste. 3100, Seattle, WA 98104-4088. Fax: 206-287-9902. E-mail: cachman@ac-lawyers.com.

**Corporate and securities attorney.** The Spokane office of Witherspoon, Kelley, Davenport & Toole is seeking an attorney to join its corporate and securities practice group and enjoy a sophisticated practice representing public and private companies, including several technology companies, in a growing market. The ideal candidate will have at least one year of experience in mergers and acquisitions, SEC reporting requirements, corporate governance matters, and corporate finance transactions, including venture capital financings. Candidates should possess strong academic credentials, excellent drafting skills, and some experience in corporate transactions. Interested candidates should submit a cover letter and résumé to Hiring Partner, 422 W. Riverside Avenue, Suite 1100, Spokane, WA 99201, or e-mail jmr@wkdltlaw.com.

**Tax attorney.** The Spokane office of Witherspoon, Kelley, Davenport & Toole is seeking an attorney to join its tax practice group and enjoy a sophisticated practice in a growing market. The ideal candidate will have special interest in ERISA, employee benefits, and executive compensation, as well as other areas of taxation, including estate planning, business formation, mergers and acquisitions, and other transactions for both public and private companies. Candidates should possess strong academic credentials and excellent drafting skills. Interested candidates should submit a cover letter, résumé, and transcript to Hiring Partner, 422 W. Riverside Avenue, Suite 1100, Spokane, WA 99201; or fax to 509-458-2717 or e-mail jmr@wkdltlaw.com.

**Family law attorney** needed at our Federal Way location. Family law and billing experience preferred. E-mail résumés to: attorney.employment@lutzlaw.com.

**Idaho’s largest firm seeks associates** for its Boise office with an interest in a transactional and/or real estate practice. At least one year of private or corporate experience in either area preferred. Strong law school academic record required. All replies confidential. Contact Eugene A. Ritti at Hawley Troxell Ennis & Hawley, PO Box 1617, Boise, ID 83701, ear@htheh.com.

**The law office of Felicia A. Malsby, P.S.** is a well-established and growing firm located in Gig Harbor, Washington, focusing on all aspects of family law. We have an immediate opening for an experienced associate attorney practicing in the area of family law, minimum of two years in practice preferred. Candidate must be able to work independently and possess sound judgment, have a strong work ethic and be well-organized, and possess excellent verbal and written communication skills. Additionally, the successful candidate must be resolution-oriented, empathetic, respectful, and pleasant to work with. Preference given to applicants with at least a partial caseload who want to expand their practice in a professional, congenial, and supportive environment. WSBA membership required. Salary and benefits DOE. Interested candidates should submit cover letter, résumé with references, and writing sample to 5262 Olympic Drive,
Contract lawyer with many years of criminal defense experience. Variable work load, five-to-twelve hours weekly. Mostly sex cases, often seeking SSOSA. Contact David Marshall, 206-826-1400, dmarshall@DavidSMarshall.com.

Fury Bailey (www.furybailey.com), a Seattle plaintiff/personal injury firm located on Capitol Hill, seeks an associate. Applicant must have at least two years of deposition and/or trial experience and strong research and writing skills. The work will include timely and effective support of the other lawyers in the firm in trial preparation. The position also requires the ability and desire to take the initiative to work independently and build a law practice. Salary depends on experience. Apply (with résumé and writing sample) via e-mail only to felicia.malsby@malsbylaw.com.

Lead senior counsel — in-house commercial transactions: Interested in moving in-house to a well-respected, cutting-edge company? A national and international leading high-tech manufacturer seeks a bright, vibrant senior counsel to join its exciting company. The senior counsel will be based in the Seattle area of Washington state and will report to the general counsel in Asia. The primary role for this new lead counsel position is to provide general legal support for the U.S. office as well as to work closely with the executive team and provide strategic advice. Primary responsibilities include: drafting, negotiating, and reviewing legal documents, including international contracts; working with worldwide functional departments to evaluate contracts and preparing for negotiations together with account managers to improve contract terms and conditions; providing analysis and counsel on legal issues; and providing professional leadership and guidance to junior counsels. Basic requirements include: JD degree and at least five years of relevant experience in a recognized law firm or in an in-house counsel capacity; experience in presenting complex legal issues to corporate executives and working with international departments; and excellent interpersonal, organizational, oral, and written communication skills. For immediate and confidential consideration, please contact Jean Seidler Thompson, Esq., Director of Attorney and Executive Placement at Quid Pro Quo, Attorney Search Consultants, at 206-224-8270 or JT@QPQLegal.com. All communications are held in the strictest confidence.

Todd Trierweiler and Associates, a consumer bankruptcy law firm, is looking to fill two associate attorney positions in our Portland and Vancouver offices. Litigation associate: No previous bankruptcy experience necessary but helpful. One year litigation experience preferred. Position will be handling a small litigation caseload in bankruptcy court. Cases are settled most of the time with only one to two cases going to trial per year. Duties also entail working in our general bankruptcy department including, but not limited to, client intake, attending meeting of creditors, correction of bankruptcy petitions, and creditor contact. General bankruptcy associate: Associate would work in our bankruptcy department. Previous bankruptcy experience a plus but not necessary. Position would handle all aspects of consumer bankruptcy practices. Competitive salary and benefits. Both candidates must have a strong work ethic and the ability to multitask and handle numerous matters in a fast-paced office. Extensive client and creditor contact. Licensed in either Oregon or Washington a plus. Mail or e-mail résumé to Todd Trierweiler and Associates at diannes@bankruptcylawctr.com or mail to: Diane Seag, Office Manager, 4721 NE 102nd, Portland, OR 97220. Todd Trierweiler and Associates is the largest consumer bankruptcy firm in Oregon and Southwest Washington. Our firm offers the opportunity to be mentored in the area of bankruptcy law with the extensive opportunity to lecture and write articles/books for the Oregon State Bar as well as other organizations.

Tax associate: Kantor Taylor McCarthy P.C., a real estate transactional firm of 10 attorneys in Seattle, Washington, seeks an associate to join our growing practice. We enjoy a sophisticated practice in the finance and development of residential real estate, affordable housing, and community-based facilities while maintaining a collegial, fun environment. We seek intelligent entrepreneurial attorneys who are motivated to master complex problems for socially responsible clients. The successful candidate will have strong analytical skills, excellent writing ability, sound business judgment, and at least four years of experience in partnership and corporate tax. We offer competitive compensation and benefits and the opportunity for advancement to partnership. Please submit a résumé, writing sample, and transcript via e-mail to swilliams@housinglaw.com or mail to Susan Williams, Kantor Taylor McCarthy P.C., 1501 4th Avenue, Suite 1610, Seattle, WA 98101-1662.

Smyth & Mason, PLLC, an established downtown Seattle commercial law firm, is seeking an associate with a minimum of five years’ continuous commercial litigation experience in Washington state. Candidates should possess an excellent academic background, competent legal writing skills, and a strong desire to grow professionally in a highly varied legal practice. Please submit résumés to lindap@smythlaw.com.

Real Estate Transactions Associate: Kantor Taylor McCarthy P.C., a real estate transactional firm of 10 attorneys in Seattle, Washington, seeks an associate to join our growing practice. We enjoy a sophisticated practice in the finance and development of residential real estate, affordable housing, and community-based facilities while maintaining a collegial, fun environment. We seek intel-
ligent entrepreneurial attorneys who are motivated to master complex problems for socially responsible clients. The successful candidate will have strong analytical skills, excellent writing ability, sound business judgment, and at least four years of experience in real estate transactions. Experience with condominiums and mixed-use developments is desired. We offer competitive compensation and benefits and the opportunity for advancement to partnership. Please submit a résumé, writing sample, and transcript via e-mail to swilliams@housinglaw.com or mail to Susan Williams, Kantor Taylor McCarthy P.C., 1501 4th Avenue, Suite 1610, Seattle, WA 98101-1662.

The Northwest Justice Project (NJP), a not-for-profit corporation established to provide civil legal services to low-income persons in Washington presently has two openings in North Central Washington: one in its Wenatchee office and one in its Omak office. A significant percentage of the low-income people served by these offices are Spanish-speaking farm workers. In the Omak office, a significant percentage is Native American. Both offices serve clients in a broad range of areas including housing, public benefits, family law, and issues pertaining to agricultural workers and Native Americans. Qualifications include: Spanish-language proficiency preferred; legal experience preferred, but enthusiasm, intelligence, and ability to relate to client community also highly valued; commitment to providing civil legal services to the poor; ability to collaborate effectively with other advocates and client groups; member of the WSBA or of a state bar to which Washington could grant reciprocity, or willingness to take the next bar exam. Starting date is flexible. Salary is dependent on experience. An attractive benefits package, including medical and disability coverage, is available. A law school loan-forgiveness program is also offered for eligible employees. Send or e-mail (preferable) a cover letter; résumé; references, and writing sample to: Susan Encherman, Hiring Coordinator, Northwest Justice Project, Re: Wenatchee or Omak (please specify either or both), 401 2nd Ave. S., Suite 407, Seattle, WA 98104, or suee@nwjustice.org.

The University of Montana School of Law invites applications for a tenure-track position teaching in the area of land use planning/environmental law, to commence in the fall of 2008. More information, including a full position description and the hiring criteria, is available on our website: www.umt.edu/law. Application materials should be submitted by October 15, 2007. The University of Montana is an EEO/AA/ADA employer.

Attorneys. Quid Pro Quo is the leading provider of quality attorney recruitment for direct hire and contract attorney placement in the Puget Sound, including lateral hires. For over 11 years, Quid Pro Quo, the attorney placement division of Law Dawgs, Inc., has specialized in engagements with Puget Sound’s premier law firms, boutique practices, corporate legal departments, and governmental agencies. Interested attorney candidates, please contact Quid Pro Quo in confidence at 206-224-8269 or JT@QPQLegal.com; www.QPQLegal.com.

Partner/shareholder opportunities — Do you need a law firm that will provide greater support for your practice? Are you seeking a firm with an enhanced platform of expertise? Quid Pro Quo, Attorney Search Consultants, has multiple exceptional opportunities for the discerning partner. We are presently assisting highly regarded law firms in the Seattle area with their search for laterals with expertise in the following: (1) business law with a transactional emphasis supporting private or public companies and closely held businesses; (2) patent litigators; (3) employment law with experience in employment litigation and advising/counseling employers; (4) real estate and/or land use law, preferably representing developers; (5) financial institutions law with a practice focused on representation of financial institutions, including banks, credit unions, or securities firms. Initial inquiries welcome. All inquiries are held in the strictest confidence. Diversity candidates are encouraged to apply. All candidates will receive equal consideration. We are seeking partners who are leaders in their field, with over 10 years of experience and a portable book of business. Quid Pro Quo delivers discreet, highly personalized service. You may contact, in confidence, Jean Seidler Thompson, Esq. at JT@QPQLegal.com or 206-224-8270.

Associate patent litigator — A well-respected law firm in Seattle with a thriving patent group is seeking a patent associate with at least two years of patent litigation experience. A degree in electrical engineering or computer science and membership with the Patent Bar are preferred but not required. This is an exciting opportunity in an established and growing national
Corporate associate — Are you a corporate transactional associate looking for a new opportunity outside a traditional law firm? Quid Pro Quo is currently seeking a corporate transactional associate for a well-respected Washington state law firm. The ideal candidate will have at least 2 years of corporate transactional experience. Experience in mergers and acquisitions is preferred. You should have excellent communication skills and writing skills. This is an outstanding opportunity to grow and excel in a supportive firm with the opportunity to develop relationships directly with clients. For initial inquiries, please contact Marcia McCraw, Esq., at Quid Pro Quo, at 206-224-8269 or MM@QPQLegal.com. Please visit our website at www.QPQLegal.com.

Attorneys with notary licenses are needed to witness-only mortgage document signings in your area at the borrowers’ location. Potential for long-term business. Please e-mail Catherine at catherine.hegarty@pacdocsign.com with your information including your name and how many miles you are willing to travel from your location. Catherine will contact you ASAP. Or you can fax your information to 800-732-4494. www.pacdocsign.com.

In-house senior investment compliance attorney — Quid Pro Quo, Attorney Search Consultants, is seeking a senior investment regulatory and compliance lawyer for a private asset manager in Washington. This is a new position that will help be responsible for researching and knowing the rules and regulations necessary for compliance across a wide range of sectors related to the investment activities of a multi-billion dollar private asset manager. A J.D. degree with seven-plus years’ experience in the securities industry is required and SEC experience is preferred. For initial inquiries, please contact Marcia McCraw, Esq., at Quid Pro Quo, at 206-224-8269 or MM@QPQLegal.com. Please visit our website at www.QPQLegal.com.

Employment law — of counsel or partner level attorney: A highly regarded downtown Seattle law firm seeks to add an of counsel or partner-level employment law attorney to its practice. Candidates must have at least 10 years’ combined experience in: (a) advising and counseling employers and (b) employment litigation. A portable book of business is not required. The successful candidate will have the ability to handle additional work-flow from other partners, to assume primary case management responsibility, and to mentor associates. For immediate and serious consideration, contact Jean Seidler Thompson, Esq., Director of Attorney and Executive Placement, in confidence, at 206-224-8270 or JT@QPQLegal.com at Quid Pro Quo, Attorney Search Consultants. All inquiries are held in the strictest confidence.

Associate attorney: Medium-sized general practice firm in Vancouver is seeking a Washington licensed family law attorney with a minimum two years’ experience. Practice experience should be in family law, or must have a strong desire to practice family law. Candidate will also be expected to practice in multiple other areas of law. Competitive benefits and compensation package. For more information on Marsh, Higgins, Beaty & Hatch, see our website at www.marsh-higgins.com. Please send cover letter and résumé to: Marsh, Higgins, Beaty & Hatch, PO Box 54, Vancouver, WA 98666, or cassie_gorrell@marsh-higgins.com.

Services

Knowledgeable contract attorney seeks to support your work in plaintiff personal injury, family law, bankruptcy, and estate planning areas. Reasonable rates. Write to PO Box 110791, Tacoma, WA 98411.

Contract attorney available for research, brief writing, and court appearances for motions and appeals. Top academic credentials, law review, judicial clerkship, and 15 years’ experience. Joan Roth McCabe, 206-784-1016, jlrmcc@yahoo.com.

Contract attorney loves legal research and writing. WSBA member with 26 years of experience drafts trial briefs, motions, and memoranda, using UW Law Library and LEXIS online resources. Elizabeth Dash Bottman, 206-526-5777, bjelizabeth@qwest.net.

What is your client’s art worth? Find a thorough and qualified valuation through multilingual fine art appraiser with European background. Appraisal services for donation, estate and probate, equitable distribution, insurance. Please contact Annette Splieth-Locher, M.A., Accredited Member International Society of Appraisers, USPAP, phone: 206-979-2437, e-mail: as@locherer.net; www.spliethappraisal.com.


Vacation Rentals

Florence: Four-bedroom villa, air-conditioned, 2,000 to 2,500 euros, weekly. Elegant, one-bedroom apartment in Venice (Cannaregio), air-conditioned, 1,400 to 2,400 euros, weekly. www.lawofficeofkenlawson.com.

Will Search

Seeking the original will and other personal and/or estate planning documents of Dolores J. Hathaway, Lake Forest Park, Seattle, WA. DOB July 7, 1927. DOD 1/6/2007. Please contact attorney Claudia Gowan, 206-624-6271.
For solid DUI defense, you just have to push the right buttons.

We have the right connections.

Washington's strict DUI laws can have a devastating effect on lives, even for first-time offenders. That's why anyone accused of a DUI needs the most tenacious and innovative defense lawyer around. At Fox Bowman Duarte, we've successfully defended thousands of DUI cases. And our eight lawyers have accumulated more than 100 years of DUI litigation experience. Fox Bowman Duarte. Just a phone call away. Visit foxbowmanduarte.com to find out more.

FOX BOWMAN DUARTE
The nation's toughest DUI laws demand the toughest DUI lawyers.

We’re NOT
Your Father’s
Law Firm

When your valued clients need our help, we bring more than just basics to the bar. Add innovation, creativity, and fresh approaches to talent and you have the aggressive advocacy upon which your clients can depend.

Voted “Super Lawyer Rising Star” by her peers, Ms. Callahan’s experience extends from the county courthouse to the United States Supreme Court. Ms. Callahan trains other lawyers in *DUI Defense*. She learned the science and mechanics of breath testing at the hands of the DataMaster manufacturer, field sobriety testing through NHTSA instructors, and advocacy through the National Association of Criminal Defense Lawyers and the *National College for DUI Defense at Harvard Law School*.

Callahan Law is inspired to give our clients the peace of mind and confidence that only experience, skill, and knowledge can ensure. We offer accomplished trial and appellate lawyers, an in-house investigator, and client specialists dedicated to extraordinary service. We are focused. We seek the winning strategies necessary for every client’s case.

**CALLAHAN LAW**

**DRIVEN... IN DEFENSE OF THOSE WHO DRIVE**

800-384-3482 • dui-defender.net • lawyer@dui-defender.net