Examining Washington’s Regulatory Takings Doctrine After *Yim v. Seattle* / p. 42
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THE NATION’S LARGEST DIRECT WRITER OF LAWYERS’ MALPRACTICE INSURANCE
A Review of Yim I and Yim II
Has the Washington Supreme Court finally settled on a definitive regulatory takings doctrine?

BY ADAM G. HAYNIE AND MATTHEW S. HITCHCOCK

Meet Your EAC
The Editorial Advisory Committee (EAC) works with WSBA Bar News staff to establish guidelines and editorial policy, write articles, and more.

ALSO > By the numbers: article and content data in the magazine

Working to Combat the Stigma Around Seeking Help
Q&A > WSBA President Rajeev D. Majumdar discusses his mental health journey

Talking 1099s
Answers to eight questions attorneys should ask about the IRS form

BY ROBERT W. WOOD

Rules of the Tech Trade
What Washington businesses, and the lawyers who represent them, need to know about China's cybersecurity law

BY MARCEL A. GREEN

ESSENTIALS

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Behind the Scenes: Building Bar News

This month, we are pulling back the curtain, so to speak, to share how Bar News comes together. You may not know that a group of WSBA member-volunteers—our Editorial Advisory Committee—provides input and guidance on just about every aspect of the magazine, brainstorming story ideas, writing articles, recruiting authors and members featured in Beyond the Bar Number, developing policy, and more. You may not know how many articles printed on these pages come from unsolicited submissions by members, or the percentage of articles that focus on technical or practice-oriented content. And you may be curious about how many letters to the editor we receive, how many of those we publish, and why.

You can find all of that information and learn a bit about each current member of the Editorial Advisory Committee on page 32.

This issue contains another unveiling of sorts—a new semi-regular column making its debut. “From the Spindle,” written by longtime WSBA member and appellate attorney Bryan Harnetiaux, covers recent significant cases decided by the Washington Supreme Court. (If you're envisioning some kind of sewing apparatus when you read the word “spindle,” see page 28 for a visual and a brief lesson in court history.)

This issue’s cover story explores what the Washington Supreme Court’s decision in Yim v. Seattle means for the state’s regulatory takings doctrine (page 42). You can also read an ethics column about how to tell a client when you make a mistake (page 20), ideas for innovating the bar exam (page 24), an interview with WSBA President Rajeev D. Majumdar about his mental health journey (page 38), an article about what Washington businesses and their lawyers need to know about China’s cybersecurity law (page 48), and more.

This month, we are pulling back the curtain, so to speak, to share how Bar News comes together.
As the largest and most experienced trust services firm based in the Pacific Northwest, it’s our privilege to partner with attorneys and professional advisors to help high net-worth families, individuals and business owners utilize trusts as part of an integrated wealth strategy.

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**Sunrise/Sunset — Swiftly Goes the LLLT License**

Many attorneys strive to close the access-to-justice gap. For many years, I worked with an attorney who would sometimes take just a $100-$200 advance fee. He simply said, “They need an attorney and can’t pay any more than that.” This was not an unusual occurrence. However … the gap still exists and has widened.

The [sunsetting of the Limited License Legal Technician (LLLT) license] is reminiscent of the repeal of Obamacare. There is no plan to replace the license with something better. The LLLT license is in its infancy and details could be improved, but the WSBA and the Supreme Court have chosen to simply scrap the license altogether, throwing the baby out with the bath water. A wiser approach would be to wait for the results of the research currently being done by the National Center for State Courts; seek input from clients of LLLTs, court personnel including the judiciary, and other stakeholders; and then review the LLLT license’s viability.

The court cites lack of interest in the license as a reason for its decision, while failing to ask community colleges, current students, and paralegals what roadblocks might exist within the program. One example is cost. Though low in comparison to law school, at [about] $15,000, many find it out of reach. Financial aid is available for the core classes at community colleges, but not for the practice-area classes. Efforts to raise scholarships were thwarted by the WSBA. Also, the pandemic hamstrings LLLT candidates’ ability to acquire the required 3,000 hours of substantive legal work.

Shame on the WSBA, the Board, and the Supreme Court for this decision, made secretly with no thought to the community in need.

Jeanne Barrans
Everett

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**Reactions to Court’s Letter**

I read the letter from the Washington Supreme Court justices about race [reprinted in the July/August Bar News]. The letter takes controversial positions on race and criticizes police specifically. This is not the function of the Supreme Court or any court. The function of the courts is to decide cases in accordance with the Constitution and the laws of the land. Judges must be blind to any “moral imperative” they espouse or view on society that they may have. That is why justice is blind; that way she doesn’t favor her friends or her ideology she has when she isn’t wearing the robe. Justice holds the scales because she weighs only the weight of the cases, not the thumb on the scale of someone who wants them to favor this friend or that political organization. That’s the best I can say it.

If the judges don’t abide by this, they verge into the function of the legislature, which is unconstitutional because we have one branch of government to make laws and another to interpret them. Legislatures are well constituted to make laws because they are lobbied by all sides, not by two lawyers, and they can and do and must openly consider racial prejudice and every other issue the people bring to their attention. The legislature is here to represent the will of the people. On the other hand, power can afflict government officials badly and the court is the best institution for stopping acts of the legislature unbounded by our constitutions.

Think of a foreign corporation entering the Temple of Justice to defend a vast racial
discrimination case. They must imagine the court a very cold place. Think of a police officer in defense either personally or ideologically against a Black claim of prejudice, either criminal or civil. The police must think the Supreme Court an unwelcoming place, too, even though the courts are supposed to administer justice equally to all.

I know judges and lawyers are human and are swayed by many factors. This does not stop us from working toward an idealistic justice system which is unbiased toward all who come to it.

Roger B. Ley
Portland

While I recognize this train may have left the station, I want to express my dissent from the orthodoxy that has taken hold of our court, Bar Association, and this journal.

Contrary to the uniform chants of our leaders, there is no such thing as systemic racism. It is a myth used to advance an agenda that remains non-transparent with an unclear goal.

A racist is someone who engages in racist behavior. We don’t have thought crimes in this country, not yet anyway, although the implicit bias discourse comes close. “Systems” don’t engage in racist behavior, people do. In fact, by legislation, regulation, and court decisions we have eliminated the opportunities when people might use our institutional systems to engage in racist behavior, and we’ve imposed sanctions against those who continue. To be sure, people may be racist, but in my view in our community they are few and far between. The remedy is not to dismantle the “system,” which is a meaningless term in any event, but instead to ignore and shun racist people.

Systemic racism are code words for one explanation for alleged disparate results. But rather than investigate the factors that might help us understand why the result was achieved, our leaders prefer statistical correlation and skip right over the facts of the case to conclude that something about the system must have caused the result. As the argument goes, if the system is the problem then the system must be dismantled and redesigned. The attack on the police, looting of stores, and burning buildings in our cities today are predictable demonstrations of this logic.

I dissent from the premise of the logic.

Michael J. Bond
Mercer Island

CORRECTION: Due to designer error, the notes in the July/August Bar News cover story introduction and the last three words of the final sentence in the Creative Counsel Q&A of Troy Osaki were omitted. The sentence should have read: In addition, revolutionary movements fighting for a new world move me to create art as a way to participate in the liberation of all people. A corrected version can be found online at www.wsba.org/news-events/Bar-News.
When the Feds Came to Town: An Interview with Former Oregon Federal Public Defender Steve Wax

Steve Wax, legal director for the Oregon Innocence Project and Oregon federal public defender from 1983 to 2014, has called for convening a grand jury [...] nwsidebar.wsba.org

The Green Hats at the Protests: National Lawyers Guild Legal Observers

Perhaps you’ve seen us at a march or rally, or wandering around the former Capitol Hill Occupied Protest (CHOP). You can’t miss the green hats; they’re the [...] nwsidebar.wsba.org

Delayed Justice: The Attorney Behind the Fight Against State v. Towessnute

The 1916 Washington Supreme Court decision in State v. Towessnute opens with the words, “The prior occupancy of American soil by the Indian tribes did not [...] nwsidebar.wsba.org

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President’s Corner

State of the Bar: A Look Back on the Year From a Grateful WSBA President

“Real change, enduring change, happens one step at a time.”
- U.S. Supreme Court Justice Ruth Bader Ginsburg

I nteracting with members near and far over this last year has confirmed for me the vital role each of you has in making our state, our nation, and our world a better one. I thank you all again for your service to the public and the role you play in our collective duty as officers of the court to advance the rule of law and bring accord to society when there is strife. I thank, in particular, the more than 1,500 volunteers who make the Bar’s work possible—those members are the real leaders of our profession, and it has been an honor to facilitate the execution of their work.

This is my final President’s Corner column and my penultimate duty as president of our Bar, which is to report to you on the state of the Washington State Bar Association and its accomplishments. Here is the brief version: The state of our Bar is good and on course to grow better every day through the tireless work of our volunteers and dedicated staff. That being said, there is always more work to do to make our Bar more robust in its ability to respond to the needs of our members, to facilitate access to the justice system, and to transparently and inclusively make decisions.

One of my goals this year has been to highlight and share my soapbox with groups of lawyers doing good work, often with underrepresented segments of society; hopefully you have been reading the guest-authored columns in the magazine over the past 12 months to learn more about why these groups of lawyers exist and what they do, especially the minority bar associations. I was not able to highlight every amazing group out there, but as my final month happens to be National Hispanic Heritage Month, I am proud to use my sunset to shine some light on the Latina/o Bar Association of Washington (see page 15).

After four years involved in Bar governance, I am pleased at the direction the Bar has moved, especially during this last year. I have been most impressed at the Bar’s ability to pivot and respond to the coronavirus and harness resources to provide members with information, resources, advocacy, and education. This was done despite complete physical disruption to our normal work processes and was made possible by a dedicated and hardworking professional staff who have proven beyond a doubt that they are more than capable of taking a pandemic-level disaster in stride. In the remainder of this column I summarize some of our major accomplishments this year.

My final comment as I sign off is a thank you for all the trust and support I have received from you, the members, and from the Washington Supreme Court, the WSBA staff, and the Board of Governors during this year of service. It was a humbling experience for which I am eternally grateful.

CORONAVIRUS: WSBA OPERATIONS, MEMBER SUPPORT, BAR EXAMS, AND HARDSHIP EXEMPTIONS

Without any significant disruptions to service we were able to transition the WSBA to a remote workforce. Most importantly, the WSBA Coronavirus Response Task Force—internal and external groups formed with a wide range of representation to rapidly respond to members’ needs for information, resources, and advocacy—continues to collaboratively and quickly tackle pandemic-related issues as they arise. Go to www.wsba.org/covid-19 to view the many ongoing resources related to the coronavirus we have produced, including a guide for Washington law offices to reopen safely. Part of the Bar’s response included free live and on-demand Continuing Legal Education (CLE) programs designed to assist members throughout the pandemic. In total, members registered for 18,433 free on-demand CLE products (24,765.5 CLE credits) from April 3 through June 30, which represents a total value for members of $1,492,320 in products. Additionally, more than 1,300 individuals, on average, tuned in for each of the five sessions of the live webinar series “Practicing During a Pandemic.”

The pandemic also had a significant impact on one of the WSBA’s most important regulatory events: the summer bar exam. I am pleased to report that, by all accounts, the administration of the July bar exam went seamlessly according to plan, which
is a testament to the abundance of preparation by all involved. While it was definitely a challenge to administer the exam in the midst of a global pandemic—with exacting safety directives from the court and the state health department—WSBA employees were able to provide a calm and productive testing environment in locations on both sides of the state. As WSBA leaders have continued to try to understand and mitigate the many ways the coronavirus has affected members’ lives and practices, we have forwarded to the Supreme Court a proposal to expand, beyond the once-in-a-lifetime use, the hardship exemption from paying the annual license fee. The hardship exemption was used by 43 members this licensing season, while 74 members used the payment plan option.

OVERHAUL OF JUDICIAL AND EMERITUS PRO BONO LICENSE CLASSES TO MEET MEMBER NEEDS

The Washington Supreme Court approved our recommendation to remove several barriers—such as fees for background investigations and a reinstatement course—to make it easier for members to transition into service per year, and eliminate the word “emeritus” from the license status to better include lawyers at all stages of their careers. If approved by the court, these changes will help keep lawyers engaged in pro bono work in their communities even if they choose not to maintain active status due to health, family, or other commitments.

TACKLING INEQUITY AND DISPARITY IN OUR PROFESSION

The WSBA is dedicated to confronting the ongoing tragedy in our country concerning racism and the resultant unequal application of the laws to different members of our society, and to engaging our members to address these issues as well. The Washington Supreme Court has specifically charged the WSBA through its General Rule 12.2 with “promoting an effective legal system, accessible to all,” and “promoting diversity and equality in the courts and the legal profession.” This applies not only to our work with the public but also to the nature of our profession.

The Board of Governors in June unanimously passed a resolution that commits the WSBA to supporting its members in making it easier for members to transition into and out of judicial status. Judicial members now have the option to transfer to a number of other membership statuses, aside from active, and vice-versa. Our overall goal is to keep people engaged in the Bar and the legal community—at the level that matches their ability and interest—even as they transfer in and out of the judiciary.

Additionally, the Board of Governors was proud to support a several-year effort by the Pro Bono and Public Service Committee’s Rules Workgroup to draft rule changes to the emeritus pro bono license status. The proposed changes eliminate the rule that requires active practice for five out of the last 10 years, waive the annual license fee for lawyers who complete enough pro bono service per year, and eliminate the word “emeritus” from the license status to better include lawyers at all stages of their careers. If approved by the court, these changes will help keep lawyers engaged in pro bono work in their communities even if they choose not to maintain active status due to health, family, or other commitments.

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3. Allowing members to serve more than one term on the Board of Governors while still prohibiting more than two consecutive terms.

4. Reversing procedurally flawed changes made to the composition of the Board of Governors that would have added positions for specific license types and members of the public.

5. Making all Board seats subject to election by the membership and opening every seat (except the seat reserved for new lawyers) to every member license type.

OUR BAR MAGAZINE
By popular demand, Washington State Bar News returned to its former name, and the content of discipline notices was expanded to include an explanation of the practice area and brief summary of the misconduct to help better educate members. At the Board’s direction, the magazine staff created a comprehensive plan to seamlessly change (back) the publication’s name in early 2020, which involved working with advertisers and registering with the Library of Congress. Guided by members on the Editorial Advisory Committee, the magazine continues to aim for content that balances hands-on practice advice and guidance, features that are relevant to the many diverse WSBA members across the state, and WSBA-related news and updates.

I also want to announce some exciting news: Our magazine recently won a prestigious award from the Public Relations Society of America’s Puget Sound chapter. Bar News was the sole recipient of a Totem Award in the category of external publications (magazines), which means an independent panel of public relations professionals gave it the highest marks—specifically for the updated, modern content and design.

WSBA INSURANCE MARKETPLACE—EXPANDED OFFERINGS
The WSBA Insurance Marketplace launched on Nov. 1, 2018, and is administered by Member Benefits, Inc. This year, we saw a noteworthy increase in enrollment and benefits, including an additional insurance coverage option (private and/or public) in all 39 counties in Washington. In addition, Member Benefits, Inc. continues to work toward adding and increasing marketplace opportunities and benefits. Over the last 12 months we have added the following new products to our Marketplace offerings:

- Dental/vision (added to Marketplace in December 2019).
- Term life (added to Marketplace in December 2019).
- Telemedicine (added to Marketplace in March 2020; offered as a complimentary benefit from March-June).

RURAL PRACTICE PROJECT
Several members of the Board of Governors, WSBA staff, the Washington Young Lawyers Committee (WYLC), and Washington state law schools have been working together to explore how the WSBA might be more supportive of rural practices. The project is currently in the research phase, focused on gathering data to inform next steps. So far, the project team has sent surveys to rural practitioners and followed up with outreach calls to members practicing in Adams, Benton, Chelan, Clark, Columbia, Douglas, Ferry, Franklin, Garfield, Grays Harbor, Grant, Klickitat, Lincoln, Pacific, San Juan, Skamania, Wahkiakum, and Whitman counties. The next step is to brainstorm potential solutions to the problems identified from the research data and present them to the WSBA Board of Governors for consideration.

CIVIL LITIGATION RULES REVISION WORK GROUP
A work group has been meeting over the past year to review previously recommended amendments drafted by WSBA’s Civil Litigation Rules Drafting Task Force. The work group has been outreaching directly with litigation stakeholders to hear and respond to their input. The work group is expected to submit its final report in the fall, after which the Board of Governors anticipates making proposals to the court aimed at decreasing the cost of litigation and increasing access to justice for the citizens of Washington.

MORE ONLINE
My space here is limited, so for a more complete report, please visit www.wsba.org/about-wsba/who-we-are/board-of-governors.

NOTE
1. As an additional unexpected regulatory hurdle the WSBA had to react rapidly to, on June 12, 2020, the Washington Supreme Court issued an order granting an exemption to the Uniform Bar Exam (UBE) portion of our bar exam requirements (“diploma privilege”) to applicants with a J.D. from an ABA-accredited law school who were registered for the Washington July or September 2020 UBE. Many applicants opted for diploma privilege, although some applicants eligible for diploma privilege still opted to take the exam, along with all of those who were not eligible.
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2020 cases include:
• 7-figure settlement (All available insurance policy limits) for the widow of a bike commuter killed during his morning commute.
• Favorable arbitration award for cyclist injured in bike vs. bike crash on bike path; comparative fault defense rejected in favor of Corrie’s client.

Check out our website to view more!

Corrie has successfully represented bike messengers, bike commuters, bike racers, and recreational cyclists — and their families — in personal injury or wrongful death cases.
Expanding Justice for the Latina/o Community and Beyond

BY VANESSA ARNO MARTINEZ

Formerly the Hispanic Bar of Washington, the Latina/o Bar Association of Washington (LBAW) was founded over 30 years ago. The aim of LBAW is to represent the concerns and goals of Latina/o attorneys and Latina/o communities throughout the state of Washington.

Recent efforts have expanded LBAW’s reach beyond the Puget Sound area. Legal professionals from across the state have served on our Board of Directors and we have dedicated two board positions to represent the concerns and interests of our communities in Eastern Washington. Additionally, both I (the current president), and our president-elect, Andrés Muñoz, live and work in Eastern Washington.

This year has presented unique challenges due to the COVID-19 pandemic. We were unable to host our annual gala or other in-person events. We have nonetheless adjusted to a virtual platform and continue to do our important work. We also continue to work in partnership with other minority bar associations (MBAs) and local nonprofits and companies to improve conditions within our communities. A recent example is our mobilization with the law firm of Schroeter Goldmark & Bender, El Centro de la Raza, and King County Bar Association Neighborhood Clinics to host a free monthly legal clinic at El Centro de la Raza in Beacon Hill. During consultations, volunteer attorneys provide vital “Know Your Rights” information while screening for potential legal relief. Immigration and family law are our most popular legal areas of concern for clinic attendees, but we also see personal injury, consumer law, landlord/tenant, and workers’ rights claims, among other types of legal issues.

Because of the COVID-19 pandemic, the monthly legal clinic at El Centro de la Raza switched, as of June 2020, to a virtual platform using phone consultations. LBAW recruits volunteer attorneys and interpreters and pairs them with clients for these consultations.

Statewide, LBAW partners with organizations in different cities and counties to host legal clinics and increase access to justice. Clinics provide an important service to the community, especially in remote locations where legal services may be limited. Our remote clinics have sometimes been held in counties that have no volunteer attorney organizations and stretched nonprofit resources. For example, LBAW has hosted clinics in Omak, providing legal consultations for Latina/o farmworkers without requiring them to drive several hours to seek services. Other clinics have been held in Spokane, Mt. Vernon, Granger, Vancouver, Forks, and Pasco.

LBAW is proud to be a recognized WSBA Qualified Legal Service Provider, which means our attorney volunteers can earn up to 24 CLE credits during their reporting period for any clinic.

JUDICIAL EVALUATIONS

Another service LBAW provides to the community is our evaluations of judicial candidates. Candidates seek ratings for all levels of the bench, from local municipal courts to the Washington Supreme Court. The Judicial Evaluations Committee (JEC) is co-chaired by two members of the LBAW Board of Directors who each serve two-year terms. The JEC is a volunteer group comprised of members of the LBAW board and the general LBAW membership. JEC volunteers are committed to conducting a fair and equitable review process to fulfill
this purpose. We achieve this by reviewing application materials, calling references, and conducting interviews of each judicial candidate. At the end of the process, we issue a rating for each candidate and publish our ratings on our website. Judicial elections in Washington are nonpartisan. Judicial evaluation ratings are not endorsements and are educational in nature. Judicial candidates should contact us directly to receive JEC review.

SCHOLARSHIPS
Every year, LBAW has offered scholarships to outstanding law students who represent and/or serve the Latina/o community. We recognize the financial and systemic barriers facing law students of color and hope to encourage them throughout their academic careers by providing scholarships and mentorship.

Statewide, LBAW partners with organizations in different cities and counties to host legal clinics and increase access to justice.

Traditionally, we celebrate our scholarship recipients at our annual gala, where we also raise funds for the following cohort of scholarship recipients. We are disappointed that we had to cancel our 2020 annual awards gala in light of the COVID-19 pandemic, but we are committed to moving forward and adapting in order to continue providing scholarships and the important services our organization undertakes.

FARMWORKER FELLOWSHIP
This year, LBAW is happy to announce that we are co-sponsoring a year-long fellowship in conjunction with the Unemployment Law Project, Washington State Labor Council, and Seattle University School of Law. The fellow will work with Spanish-speaking farmworkers throughout the state, especially in Eastern Washington. These essential workers are often subjected to unsafe working conditions and/or displaced without compensation. The focus will be on helping workers to navigate the system and fight for unemployment benefits and on connecting them with other legal resources.

As part of our work to serve the interests of Latina/o attorneys and communities, racial equity is vitally important to our mission. We stand in solidarity with Black communities throughout Washington and the United States, and demand justice for the systemic ills that buttress police brutality.

We recognize there are many ways to take action to address systemic racism, including financial support and self-education. We encourage donations to MBA scholarship funds, as well as other people-of-color-led organizations focused on equity and justice for communities of color. We encourage members of the Bar to use your unique positions of power, privilege, and education to enact meaningful changes in the judicial, legislative, and executive branches.

NOTES
1. The Latina/o Bar Association of Washington (LBAW) appreciates WSBA President Rajeev Majumdar’s invitation to introduce ourselves and provide a glimpse into the work we do.
2. The legal clinics are always in need of volunteers, attorneys, and Spanish-English interpreters. If you are interested in learning more about the legal clinics or volunteering, please contact LBAW’s co-directors of clinics, Stephanie Chavez and Yessenia Medrano, at clinics@lbaw.org.
3. Please see www.lbaw.org/resources/jec/.
4. Candidates should email jec@lbaw.org for information.
Congratulations to the McKinley Irvin Attorneys Listed in 2020 Super Lawyers & Rising Stars

Mark Arend
WA Super Lawyers

Brent Bohan
WA Rising Stars

Faye BreitReed
WA Rising Stars

Lindsay D. Camandona
WA Rising Stars

Jack G. Dekovich
OR Rising Stars

Cameron Fleury
WA Super Lawyers

Janet A. George
WA Super Lawyers

Elizabeth A. Hoffman
WA Rising Stars

Elizabeth Michelson
WA Super Lawyers

Lindsay Noel
WA Rising Stars

Jennifer Payseno
WA Super Lawyers

Hillary Roberts
WA Rising Stars

Casey Sanders
WA Rising Stars

Kim Schnuelle
WA Super Lawyers

Laura Sell
WA Super Lawyers

David Starks
WA Super Lawyers

Jamie R. Walker
WA Rising Stars

Lisa M. Ward
WA Rising Stars

Gordon W. Wilcox
WA Super Lawyers
Fiscal Year 2021: Lower Client Protection Fund Fees, Another Term as Treasurer

Even though COVID-19 has meant this summer is not the typical season of big get-togethers and traveling, I hope you have been able to at least get outside and soak up some sun. As for the WSBA, this is the critical time when we finalize next fiscal year’s budget, which means I have several important updates.

First, I’m extremely excited to announce that I will serve another year as WSBA treasurer. The Board of Governors unanimously elected me at our July meeting. I am humbled by their trust in me, and my pledge to members for the coming fiscal year is the same as it has always been: I am committed to providing increased communication and transparency regarding the WSBA budget and financial issues, and I am committed to finding increased efficiencies in WSBA operations while continuing to provide outstanding services to members and the public. I believe I am the first treasurer to serve two terms (consecutively, at that), and I am extremely honored and dedicated to serving our Association with integrity and transparency. I am also excited to continue to serve as the District 4 Governor, which I’ve done since July 27, 2017.

LOWERING THE LICENSE FEE NEXT YEAR

We are certainly living through unprecedented and uncertain times. While it’s always a top priority to ensure that the WSBA is both operating efficiently and offering many resources for members, it’s especially important now to find ways to provide members with support and flexibility. The Board of Governors last year set the FY 2021 license fees to remain steady (no increase), but we have made two recent decisions that will actually lower the license fee—and help mitigate some of the COVID-19 impact on your practice—if approved by the Washington Supreme Court:

- We have recommended that the license-fee hardship exemption be extended from once during the lifetime of a member to twice. This exemption allows members to waive payment of their entire license fee, which is significant for those who may be struggling financially.
- As I have previously reported, we have also recommended a one-time reduction of $15 to the Client Protection Fund (CPF) assessment for the 2021 licensing year, on top of the permanent $5 reduction made last year (so a $20 total reduction from the original assessment). While not huge, this reduction shows the Board of Governors is considering every possible way to respect members’ pocketbooks.

WSBA SALARY TRANSPARENCY

The Board of Governors agreed at its July meeting that the WSBA will, as a general practice, post employee compensation information online. That information will include WSBA compensation policies, salary ranges, and job classifications. The goal is to increase transparency for members and the public. Look for the new salary information this fall on the WSBA website.

WSBA 2021 BUDGET

As I mentioned, the Budget and Audit Committee continues to work on the FY 2021 budget. The Board of Governors reviewed a first version at its July 24 meeting. Overall, we have several unknowns due to impacts from COVID-19, but—even with very conservative budgeting—we are in good financial shape next year because of the many efficiencies and savings we identified this year that will carry over. We expect the Board of Governors to approve the final budget at its September meeting; that meeting, and all the Budget and Audit Committee meetings leading up to it, are open to the public.

Summary of WSBA Financials—General Fund (as of July 2020, at 83.33% of FY 2020)

<table>
<thead>
<tr>
<th>Actual Revenues (YTD)</th>
<th>Budgeted Revenues (full year)</th>
<th>Actual Indirect Expenses (YTD)</th>
<th>Budgeted Indirect Expenses (full year)</th>
<th>Actual Direct Expenses (YTD)</th>
<th>Budgeted Direct Expenses (full year)</th>
<th>Actual Total Expenses (YTD)</th>
<th>Budgeted Total Expenses (full year)</th>
<th>Actual Net revenue (YTD)</th>
</tr>
</thead>
<tbody>
<tr>
<td>$17,694,468</td>
<td>$21,078,344</td>
<td>$15,390,679</td>
<td>$18,303,143</td>
<td>$1,593,439</td>
<td>$2,688,641</td>
<td>$16,984,119</td>
<td>$20,991,783</td>
<td>$980,350</td>
</tr>
</tbody>
</table>

NOTE: The WSBA’s fiscal year runs from October through September.
At this point in the budget process, I want to update you about various matters in the current year’s budget and how those may impact next year’s fiscal outlook.

The chart at left represents the most current FY 2020 financial data available at the time of writing this report. Some items to note: the WSBA’s FY 2020 General Fund actual net balance decreased from $1,186,669 to $1,173,126 from May to June 2020, which is a monthly loss of $20,756. During the month of July, these numbers continued to decline, with an ending balance of $980,350. However, through July, the total net income for the Bar, which includes revenue from sections, the Client Protection Fund, and the General Fund, was $2,055,786. What’s more remarkable, as I have reported here before, is the fact that the WSBA’s original FY 2020 budget anticipated a negative balance of $591,915; so to be in the black is quite a feat, let alone by $2,647,701 more than anticipated at the beginning of the fiscal year, or by $1,572,265 in the General Fund 10 months through the current fiscal year.

Looking ahead, we can certainly predict increased costs and significant reductions in revenue given operational changes and requirements to respond to COVID-19. What those budget impacts may total, given an uncertain future with this “new normal” of operations, is yet to be determined. As previously stated, WSBA Chief Financial Officer Jorge Perez, the Budget and Audit Committee, and I are actively tracking these unknown factors.

LICENSE FEES IN 2022 AND 2023
Since June, the Budget and Audit Committee has been discussing proposed recommendations for the 2022 and 2023 license fees. We should be setting at least the 2022 fees at the September Board meeting. Again, please attend these important meetings as well as the Board of Governors meetings to take part in the discussion.
It’s every lawyer’s nightmare: a serious mistake occurs in handling a case or other work for a client. Although many questions flow from this uncomfortable scenario, two of the most common are:

(1) What and when do you need to tell the client?
(2) Can you proceed at all, and, if so, do you need a written conflict waiver?

In this column, we’ll look at both aspects of these difficult conversations. Before we do, two preliminary comments are in order.

First, we’ll focus on “material” errors—those that are reasonably likely to affect the outcome of the matter concerned or the client’s confidence in us. For example, a typo discovered in a brief after filing usually will not rise to that standard. By contrast, allowing the statute of limitation to run on the primary claim in a case will likely trigger the materiality standard. It is important to stress, however, that the dividing line between “material” and “nonmaterial” errors can be difficult to determine. The American Bar Association (ABA) put it this way in Formal Opinion 481 (2018):

Even the best lawyers may err in the course of clients’ representations. If a lawyer errs and the error is material, the lawyer must inform a current client of the error. Recognizing that errors
occur along a continuum, an error is material if a
disinterested lawyer would conclude that it is (a)
reasonably likely to harm or prejudice a client;
or (b) of such a nature that it would reason-
ably cause a client to consider terminating the
representation even in the absence of harm or
prejudice.³

Second, we’ll focus on errors in ongoing matters for
current clients. ABA Formal Opinion 481 found that al-
though “[g]ood business and risk management reasons
may exist for lawyers to inform former clients of their
material errors when they can do so in time to avoid or
mitigate any potential harm or prejudice to the former
client[,]” the ABA Model Rules do not impose an abso-
lute requirement if the error is discovered after an at-
torney-client relationship has concluded.³

TALKING WITH THE CLIENT
RPC 1.4 defines our regulatory duty of communication,
and, in doing so, also reflects our underlying fiduciary
duty⁴:

(a) A lawyer shall:

(1) promptly inform the client of any decision
or circumstance with respect to which the
client’s informed consent, as defined in Rule
1.0A(e), is required by these Rules;

(2) reasonably consult with the client about
the means by which the client’s objectives are
to be accomplished;

(3) keep the client reasonably informed about
the status of the matter;

(b) A lawyer shall explain a matter to the extent
reasonably necessary to permit the client to
make informed decisions regarding the repre-
sentation.

Because each situation turns on its own facts, nei-
ther the rule nor ABA Formal Opinion 481 specify pre-
cisely what a lawyer must tell a client if an error hap-
pens. At the same time, both suggest that the lawyer or
law firm involved needs to tell the client what occurred
and its potential impact on the client in language that
the client can understand.⁵ Ordinarily, this includes the
fact that the error created a possible claim against the
lawyer—without necessarily conceding the claim.⁶

ABA Formal Opinion 481 also speaks to when a cli-
ent should be informed:

A lawyer must notify a current client of a ma-
terial error promptly under the circumstances.
Whether notification is prompt will be a case-
and fact-specific inquiry. Greater urgency is
required where the client could be harmed by
any delay in notification. The lawyer may con-
sult with his or her law firm’s general counsel,
another lawyer, or the lawyer’s professional
liability insurer before informing the client of
the material error. Such consultation should also
be prompt. When it is reasonable to do so, the
lawyer may attempt to correct the error before
informing the client. Whether it is reasonable
for the lawyer to attempt to correct the error
before informing the client will depend on the
facts and should take into account the time
needed to correct the error and the lawyer’s ob-
ligation to keep the client reasonably informed
about the status of the matter.⁷

Shoemake is an extreme example. Nonetheless,
it effectively makes the point that bad news rarely
improves with age.

The risk of either an incomplete or an unreasonably
delayed explanation is not simply regulatory discipline.
In Shoemake ex rel Guardian v. Ferrer, 168 Wn.2d 193,
196, 225 P.3d 990 (2010), for example, a lawyer who
negligently allowed a case to be dismissed and then
waited several years before informing his clients was
sued for—and admitted—both legal malpractice and
breach of fiduciary duty.⁸
CONFLICTS AND CONFLICT WAIVERS

Material errors trigger conflicts between the law firm and the client. Under RPC 1.7(a)(2), a conflict arises, in relevant part, when “there is a significant risk that the representation of one or more clients will be materially limited by ... a personal interest of the lawyer.” With a potential legal malpractice claim, the conflict is typically between the firm’s interest in minimizing the error—and the firm’s resulting financial exposure—and the client’s interest in being made whole if the error results in damages.

Conflicts under RPC 1.7(a)(2) are generally waivable under RPC 1.7(b)—but an effective waiver is predicated on the client’s informed consent. The latter, in turn, is a defined term under RPC 1.0A(e):

“Informed consent” denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

RPC 1.7(b)(4) requires that the client’s informed consent be “confirmed in writing.[]” Malpractice carriers typically have preferred template waivers that (a) acknowledge and explain the potential error but do not admit malpractice, (b) do not ask the client to waive the potential claim, and (c) seek the client’s informed consent to continue if the law firm is to remain on the matter concerned. Lawyers in this always-difficult situation should seek available advice within their law firms, such as from their firm’s general counsel, and the claims management staff at their carrier, to help them navigate how to approach the client; whether it makes sense for the firm to remain; and, if so, to draft an appropriate waiver.

In some instances, such as when a law firm is deep into a case, the client may want the firm to continue notwithstanding the potential claim. In others, the client may have lost confidence in the law firm and decline to grant a waiver, instead hiring replacement counsel. In that event, RPC 1.16(a)(1) and (3) generally require withdrawal (subject to any court approval if required by the rules of the forum) and WSBA Advisory Opinion 201701 (2017) discusses the mechanics of withdrawal in the litigation context at length. In still others, the nature of the situation may be sufficiently uncomfortable that the law firm may wish to simply withdraw in favor of replacement counsel.

SUMMING UP

Dealing with potential mistakes is never easy—whether the conversation is with your client, your partners, or your carrier. As difficult as those conversations may be, however, they are conversations that need to take place.

NOTES

3. Id. at 2. As of this writing, Washington has not yet addressed this point by way of either a controlling appellate decision or a WSBA advisory opinion.
5. ABA Formal Opinion 483 (2018) addresses similar considerations in the context of data breaches.
10. RPC 1.18(h)(2) places strict limitations on potential malpractice settlements unless the client involved is represented by independent counsel.
12. If the client affected is still a current client of the firm, conversations with the firm’s general counsel may not be shielded from discovery in subsequent malpractice litigation. See Versuslaw, Inc. v. Stoel Rives, LLP, 127 Wn. App. 309, 111 P.3d 866 (2005); see also ABA Formal Op. 08-453 (2008).
14. RPC 1.16(a)(1) requires withdrawal when continuing would result in violating the RPCs (in this instance, an unwaived conflict) and RPC 1.16(a)(3) requires withdrawal when discharged.

Mark J. Fucile of Fucile & Reising LLP handles professional responsibility, regulatory, and attorney-client privilege matters, and law-firm-related litigation for lawyers, law firms, and legal departments throughout the Northwest. He is a former chair of the WSBA Committee on Professional Ethics and is a member of the Oregon State Bar Legal Ethics Committee. He is the editor-in-chief of the WSBA Legal Ethics Deskbook and a co-editor of the WSBA Law of Lawyering in Washington and the OSB Ethical Oregon Lawyer. He also teaches legal ethics as an adjunct for the University of Oregon School of Law at its Portland campus. He can be reached at 503-224-4895 and mark@frlplp.com.
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It’s hard to imagine a situation less suitable to a pandemic than my experience with the bar exam in 2015. There were hundreds of us in one room, two to a table for two days straight, eight hours a day, drinking out of communal water, grabbing ear plugs off a communal table, and unable to wear a hoodie—let alone a mask. Clearly, this environment would not have worked for law school graduates sitting for the exam in July 2020, and so the Washington Supreme Court waived the exam and granted diploma privilege.

In the interest of full disclosure, I supported the students’ request for diploma privilege for the summer 2020 bar exam and used what voice I had to advocate on their behalf. That said, as I researched the bar exam, one question kept popping out at me: What evidence do we have that the bar exam is effective at predicting and ensuring effective lawyers?

We know that it is a mental and financial burden on examinees. We know that it blocks a disproportionate number of people of color from the legal profession. But what we don’t know is if it has any value. So I put out an open question to the legal community: Does anyone have any evidence they can share that shows the bar exam to be any more effective at ensuring quality lawyers than, say, a swimming competition?

To date I’ve had no response in support of the bar exam. What I have found is a history shrouded in problems and a host of relevant data indicating that the bar exam is ineffective at best. In the face of that data, I was left with just one conclusion: It’s time to innovate the bar exam, and with the data I’ve seen, I have an idea for how we can do it.

But first, a quick look at the exam as currently administered in Washington, an overview of the history of diploma privilege nationally, and the race-based prejudice behind the development of bar exams. We’ll then look at what the data shows about the correlation between the bar exam and effective lawyering.

THE BAR EXAM: PRESENT AND PAST
Most Washington attorneys who have been practicing for a while may not know what the bar exam currently entails, let alone...
its history. They took a bar exam that was essay based—and, after studying for a couple months, they could work their way to a good enough answer to most of those “issue-spotting” questions. Today’s bar exam has an entire day dedicated to multiple-choice questions; test-takers must select the “best” answer from among four possible responses. In addition to the bar exam, individuals are required to pass a character and fitness evaluation, take a separate test on Washington-specific law, pass the MPRE (ethics) test, and sit through a four-hour Preadmission Online Education Program.3

South Carolina offered diploma privilege until 1950. When the first class of African Americans was set to graduate from law school, a bill was proposed in the South Carolina General Assembly to require bar passage for the purpose of blocking “negroes and some undesirable whites” from entering the profession.5 This was not unique. The creation of the bar exam coincides with the first Civil Rights Act in 1875. After three Black lawyers were unintentionally granted membership in the ABA in 1914, their membership was revoked and a meeting was convened to discuss keeping the profession “pure.”6 That’s when the

As I researched the bar exam, one question kept popping out at me: What evidence do we have that the bar exam is effective at predicting and ensuring effective lawyers?

As to its history, bar exams began as oral examinations of legal apprentices. Apprentices who had practiced long enough under a mentor could seek to be examined for admission. These oral examinations were often very informal, with President Abraham Lincoln supposedly conducting one from his bathtub.3 In the mid-1800s, long before the first modern law school, Massachusetts became the first state to have a written bar exam. In the early 1900s, the American Bar Association began pushing states to require lawyers to both attend law school and pass a written bar exam. Initially, many states saw the requirements of law school and the bar exam as duplicative. As many as 32 states offered diploma privilege at some point in their history, allowing law school graduates to practice without taking the bar exam.4 I have been unable to find concrete evidence as to if and when diploma privilege was ever offered in Washington prior to this year. As late as 1977, five states still had diploma privilege. And I would argue that diploma privilege might have continued unabated had it not been for the creation of African American law schools in the late 1940s and, beginning shortly thereafter, the civil rights movement.

THE BAR EXAM AND EFFECTIVE LAWYERING: WHAT DOES THE DATA SHOW?

We assume that the bar exam ensures effective lawyers because every year people fail it, and those people must therefore not be qualified to practice law. But the failure rate fails to prove that, unless the bar exam is effective at measuring a lawyer’s abilities. So let’s take a look at the data, specifically four numbers around malpractice, ethics, bar passage, and exam effectiveness.

- 11.3 percent of malpractice claims are related to substantive law.11 The bar exam tests only for knowledge of substantive law. If malpractice claims are a valid indicator of lack of competence, then only a small percentage of such claims are related to knowledge of substantive law—the sole area tested by the bar exam. This weakens the argument that requiring passage of an exam on substantive law ensures effective lawyers.

- 1 percent of ethics violations relate to competence.12 For the past three years in Washington, almost 60 percent of the ethics complaints against attorneys relate to professional misconduct, communication, diligence, safeguarding property, and termination. The bar exam does not test for knowledge of any of these professional requirements. “Competence” is the only ethical rule (RPC 1.1) for which the bar exam can be

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said to test and only about 1 percent of ethics complaints annually allege lack of competence.12

• 94.8 percent of test takers eventually pass the bar exam.14 89.5 percent pass within two years of graduation.15 It may take a few tries, but almost everyone passes the bar. Sometimes it just takes a lot of money and time. For graduates of ABA-accredited law schools, about 80 percent pass the first time and another 50 percent of the remaining pass on round two.16 Little is known about the remaining few who never pass and give up;17 but for the substantial majority of test-takers, the bar exam does not prevent them from practicing law, it just delays them.

• Zero: correlation between test results and success as a lawyer. Although there is no direct comparison possible between bar exam results and success as an attorney (because only those who pass get to practice), relevant testing comparisons indicate that the bar exam has little correlation with success as an attorney. Numerous studies have shown a strong correlation among LSAT scores, law school GPA, and bar exam results.18 In 2008, LSAC commissioned a study analyzing the effectiveness of the LSAT and GPA as predictors of effective lawyering along 26 “effectiveness factors” in eight categories: (1) intellectual and cognitive; (2) research and information gathering; (3) communications; (4) planning and organizing; (5) conflict resolution; (6) client and business relations—entrepreneurship; (7) working with others; and (8) character.20 The study found no meaningful correlation between LSAT scores or GPA and effective lawyering. It did, however, confirm that LSAT scores and GPA as predictors do disproportionately harm women and people of color.

SO HOW DO WE INNOVATE THE BAR EXAM?

There is talk about making diploma privilege permanent for some class of students or changing the bar exam to be more reflective of the practice of law.21 But the same LSAC study that showed us how ineffective tests are also gave us a better answer. The researchers had participants take a series of eight personality assessments that measured things like emotional stability, self-control, conscientiousness, and ambition. Unlike test scores, the results of these assessments were highly predictive of who would become an effective lawyer. For instance, individuals who scored high on the Hogan Personality Inventory scales for adjustment, ambition, interpersonal sensitivity, learning approach, and prudence were also likely to score high in all 26 of the 26 lawyer effectiveness factors.22 Better yet, these personality assessments also address the common underlying causes of ethics and malpractice concerns like communication, stress management, and learning. Best of all, they showed “no practical differences among race or gender subgroups.”

If the goal and purpose of the bar exam is to protect the public and ensure effective lawyers by excluding those who aren’t effective, then it is, in my opinion, a failure. Alternatively, I propose that we achieve that purpose by helping new lawyers identify their strengths and growth areas. Let’s make all prospective admittees take these personality assessments, not so that we can exclude them, but so they and the mentors they choose to share the results with will have valuable insight on how to become a better lawyer.

If this proposal seems absurdly simple, that’s because it is. For decades we have been trying to strengthen the legal profession by kicking out or delaying entry to those we assume are our weakest links and it hasn’t worked. How about instead we try to strengthen the legal profession not through exclusion, but by investing in building stronger lawyers?

How about instead we try to strengthen the legal profession not through exclusion, but by investing in building stronger lawyers?

NOTES

1. LSAC National Longitudinal Bar Passage Study (1998), www.lawschooltransparency.com/reform/projects/investigations/2015/documents/NLBPS.pdf. Though this study is old, every time a state has reported bar passage rates by race they have found similar results. See also https://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=1310&context=rrgc.
4. Id.
7. Id.
10. Carl Brigham, the creator of the SAT and a member of the advisory council of the American Eugenics Society, designed and used intelligence tests to argue that “[t]he decline of American intelligence will be more rapid than the decline of the intelligence of European national groups, owing to the presence here of the negro ... The deterioration of American intelligence will be more rapid than the decline of the intelligence of European national groups, owing to the presence here of the negro ... The deterioration of American intelligence is not inevitable, however, if public action can be aroused to prevent it.” As Wayne Au of the University of Washington put it, “the assumption of an objective test is not what we should be making. It is only one test, and it is not about the poor, immigrants, women, and nonwhites in the U.S. as mentally inferior, and to justify educational systems that merely reproduce existing socioeconomic inequalities.” See also Mariana Viera, “The History of the SAT Is Mired in Racism and Elitism,” https://www.teenvogue.com/story/the-history-of-the-sat-is-mired-in-racism-and-elitism.
11. ABA Profile of Legal Malpractice Claims 2015. The other top reasons malpractice claims are brought include conflicts of interest (5.3 percent), inadequate discovery (8.8 percent), and missing deadlines (22.1 percent).


13. In the interest of fairness, I want to acknowledge that there have been studies correlating the bar exam with future disciplinary issues beyond simply competence, indicating that the bar exam has some correlation to lawyer discipline. What is notable about these studies however, is that (1) there was evidence that being forced to retake and pass the bar exam doesn’t decrease a lawyer’s chance of future disciplinary issues and (2) having no bar exam requirement increased the amount of lawyer discipline by only one percent over 25 years (with no increase in discipline for the first decade).


20. To come up with those 26 factors the researchers conducted hundreds of individual and group interviews with lawyers, judges, law faculty, clients, and law students asking a number of questions to determine what interviewees believed made an effective lawyer.


22. The factors are based on “715 behavioral examples of performance [in their careers] that illustrate poor to excellent performance on each of the 26 factors.”
FROM THE SPINDLE

Recent significant cases decided by the Washington Supreme Court

BY BRYAN HARNETIAUX

This new column, which will appear regularly, is intended to focus on recent opinions of the Washington Supreme Court of broad interest to members of the Bar, particularly those engaged in civil practice. Cases discussed may involve substantive or procedural issues decided within the last few months, fresh from the “spindle.” The goal is to synopsize briefly each opinion and describe the nature and extent of the court’s holding(s).

MORE ONLINE

The COVID-19 pandemic continues to have a profound effect on daily operation of the state judicial system. Consequently, the Washington Supreme Court has exercised its supervisory powers through an ongoing series of emergency orders altering the way the court system administers justice during this crisis. To view these orders, visit www.courts.wa.gov/newsinfo/index.cfm?fa=newsinfo.COVID19.

Timeliness of Appeals from Summary Judgments

In Denney v. City of Richland, ___ Wn.2d ___, 462 P.3d 842 (May 7, 2020), the Washington Supreme Court addressed the issue of the timeliness of an appeal from a summary judgment order that disposed of the merits of the case but did not resolve the issue of costs. The underlying claim by Denney against the City of Richland involved an alleged violation of the Public Records Act, 42.56 RCW. On cross-motions for summary judgment, the Superior Court granted the city’s motion and denied Denney’s motion, finding the records were exempt as attorney work product. An order was entered Feb. 12, 2019, dismissing Denney’s claims with prejudice and designating the city as the prevailing party entitled to “present judgment accordingly.” Id. 462 P.3d at 843. The city promptly filed a notice of presentation, apparently pursuant to CR 54. An order and judgment, which included an award of taxable costs to the city, was entered on March 14, 2019.

Denney filed a notice of appeal on April 1, 2019, more than 30 days after the first order, but within 30 days of the second one. The Court of Appeals Commissioner determined that Denney’s appeal was untimely, rejecting both Denney’s argument that the appeal period ran from the second order and his alternate argument for an extension of time because the first order was misleading. On a motion to modify, the Court of Appeals upheld the dismissal on the merits, but held that the appeal was timely as to the cost award.

The Supreme Court granted discretionary review. In a unanimous opinion, the court held that the Feb. 12 summary judgment order of dismissal was subject to appeal under RAP 2.2(a)(1), as a final judgment. See Denney, 462 P.3d at 844-46. It did not matter that such an order left unresolved an issue of costs, or attorney fees. See id. at 845, 847. Denney’s appeal on the merits was untimely under RAP 2.2(a)(1). However, the court further found that the interplay between CR 54 and RAP 2.2 created confusion that reasonably led Denney to believe that the March 14 order governed in determining when to initiate an appeal on the merits. It concluded that this confusion constituted extraordinary circumstances under RAP.

SIDEBAR

What is a ‘Spindle?’

To this day, in the Temple of Justice hallway between the clerk’s office and the courtroom, there’s a spindle on top of a wooden lectern where on any Thursday the Supreme Court’s newly issued opinions are placed for public viewing. This is the paper version of the “slip opinion” of the court. In the “old days,” before the internet, the press and media, or members of the public, would have to check the spindle to quickly access the latest decisions from the court. Although we now all have near-instant access to the court’s decisions via cyberspace, for reasons that seem moreceremonial than practical, the spindle remains a small relic and enduring symbol of the open administration of justice. Caveat: A slip opinion of the court is not necessarily its final decision and is subject to change; the official opinion of the court is that published in the Washington Reports.
basis on the record for disqualification under RPC 1.9(a). See Plein, 463 P.3d at 728-30. The court framed the issue as whether the Plein matter was “substantially related” to any matter on which the lawyers previously represented the insurer. Id. at 731.

In an extended analysis, the Supreme Court explained that resolution of the conflict claim under RPC 1.9(a) involved factual inquiries grounded in Comments 2 and 3 to the rule. It noted that Comment 2 does not preclude representation in a matter that is factually distinct from the prior representation, and that Comment 3 looks at whether the subsequent representation involves the same transaction or legal dispute, or otherwise poses a substantial risk that confidential factual information that normally would have been obtained in the prior representation would materially advance the client’s position in the subsequent matter. See id. at 733-34. In so doing, the court rejected broader interpretations of RPC 1.9(a), based upon the “playbook approach” or a “duty of loyalty” theory. Id. at 736-37. The court concluded that the insurer failed to meet its burden of proving a conflict under either Comment 2 or Comment 3, emphasizing that disqualifying confidential information must be factually tied to the current representation. See id. at 733-34, 736.²

Employer Strict Liability in WLAD Public Accommodation Cases

In W.H. et al. v. Olympia School District, et al., __Wn.2d ___, 465 P.3d 322 (June 18, 2020), involving a federal certification of state law questions, the court answered two questions regarding proper interpretation of the Washington Law Against Discrimination (WLAD), Ch. 49.60 RCW. The underlying claim involved alleged sexual discrimination in a place of public accommodation. The United States District Court for the Western District of Washington certified the following questions:

“May a school district be subject to strict liability for discrimination by its employees in violation of the WLAD?” … [and] “[i]f a school district may be strictly liable for its employees’ discrimination under the WLAD, does ‘discrimination’ for the purposes of this cause of action encompass intentional sexual misconduct[,] including physical abuse and assault?”

W.H., 465 P.3d at 324 (quoting certification order).

In a unanimous opinion the court held:

We answer yes to both questions. First, we hold that a school district may be subject to strict liability for discrimination in places of public accommodation by its employees in violation of the WLAD. Second, we hold that under the WLAD, discrimination can encompass intentional sexual misconduct, including physical abuse and assault.

Id.

In reaching this result, the court principally relied upon its recent opinion in Floeting v. Grp. Health Coop., 192 Wn.2d 848, 851 (2019), interpreting the WLAD in a private-sector employer context. See W.H., 465 P.3d at 325-27. It concluded that the public accommodations statute in question, RCW 49.60.215, applies to all employers, including school districts. See id. at 327. The court distinguished cases grounded in negligence principles, noting that none of the cases relied upon by the school district involved a WLAD public accommodation claim. See id. at 327 & nn.2,3.

NOTES


2. For related coverage of Plein, visit https://nwsidebars.wsba.org/?s=plein&submit=

Bryan Harnetiaux is a 1973 graduate of Gonzaga School of Law and practices in Spokane. He is also a playwright. He can be reached at bryanpharnetiauxwsba@gmail.com.
With the very notion of objective truth under attack these days, it is particularly troubling to find one of its primary safeguards hobbed. Early Virginians Madison and Jefferson knew well that under our governance structure and economic system, it would often be essential to look to a vigorous independent press to protect the public’s interest by getting at the truth and getting it out. Today, in the age of lobbyists and dissembling politicians, this is truer than ever.

And so, a reading of *Death in Mud Lick* by Eric Eyre brings both a warm glow and a measure of gloom. Eyre, a Pulitzer Prize-winning West Virginia journalist, has been at the frontlines of two simultaneous battles. One is the legal and journalistic efforts to expose the forces unleashing the opioid epidemic that took hold in rural Appalachia. The other battle is that of a local investigative reporter hanging on as the world of journalism shrinks around him through mergers, acquisitions, and consequent layoffs.

The opioid story that Eyre bird-dogged for years, and that he has told in the pages of the *Charleston Gazette-Mail* and of this book, is outrageous and maddening. A silent cabal of pharmaceutical companies, powerful distributors, greedy doctors and pharmacists, and a lax enforcement network wrought havoc in his community and across the nation. Spreadsheets being the bread and butter of investigative journalism, Eyre presents many head-spinning numbers, such as the four million pain pills annually moving through one pharmacy in the coal town of Kermit, West Virginia, population 382.

Rich as this vein of the story is, it is the story’s substrata that caught this reviewer’s eye. Lawyers and journalists looking for the truth had to get around a conflicted state attorney general (married to a lobbyist for big pharma!) and the unfortunately common procedural obstacles to access. Among these is the too-familiar problem of agreed protective orders that serve private litigants while subverting the public interest.

With the struggling Charleston paper’s legal budget an empty drawer, it is gratifying to read about the pro bono lawyers who stepped up to help get litigation records unsealed and to overcome obstructionist responses to Freedom of Information Act requests. These attorneys demonstrated Eyre-level dedication.

It has been said that “the truth will out” but it sometimes takes admirable legal and journalistic work to coax it into emerging.

Eyre’s newspaper once had an informal motto of “Sustained Outrage” and, in this instance, it was sustained just long enough to publicize a stunning transgression and shame the exploitative transgressors. With his ink-stained colleagues getting laid off, Eyre took an early retirement for health reasons.

Unsurprisingly, Eyre is most adept working in the “third-person omniscient” style—that is, conveying an inside view from the perspectives of the victims, lawyers, and journalists who were directly involved. With his old-school training, he is least comfortable in putting his personal life onstage. And yet, his stoic handling of his incipient Parkinson’s symptoms is inevitably a compelling part of this story, and every reader will certainly wish him well.

The same should go for his profession. Eyre’s work represents journalism at its best: principled, tireless, and leading to meaningful reforms. It is no overstatement to say that his efforts saved lives. For the sake of the health of our nation, any reader should also hope that a way will be found to sustain the vital role of a free and independent local press.
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Performed calculation of value of 5 construction related entities for collaborative marital dissolution purposes. Analyzed financial data for potential fraud and pro-forma adjustments to valuation. Prepared schedules for mediation settlement purposes, and attended related conferences.

William N. Holmes, CPA / ABV / CVA / CFE

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BEHIND THE SCENES

MEET YOUR EAC

The Editorial Advisory Committee (EAC), which currently consists of 12 members, works with WSBA Bar News staff to establish guidelines and editorial policy, maintain an editorial calendar, write articles, recruit authors, identify topics and issues relevant and of interest to members, review articles, and advise on issues related to content.

CHAIR

Ralph Flick

Flick is currently an assistant professor at Pacific Lutheran University in the School of Business where he teaches business law and human resources. He is licensed to practice in California and Washington and, prior to his teaching career, was a corporate lawyer—at various times in-house, in law firm practice, and as a solo practitioner. He still has a small, part-time business law practice in Gig Harbor.

Q. What do you hope to accomplish in your time on the EAC? I am entering my final year on the EAC (the second year of my second term) so my remaining time is short. I hope to continue to provide leadership on the committee and to find and transition to a new chair at the end of my last committee year. I hope that we will be able to encourage a diverse range of candidates to apply.

Q. Why do you think the WSBA members’ magazine is an important outreach tool/forum for discussion? I think the role of publications like ours has changed over time. Given electronic delivery of information, printed magazines are less a source of breaking news and more of an opportunity to provide quality content that is less common in the social media distribution of information. I think it is important for an organization like the WSBA to have a method of communicating with, and providing a forum for, its members that is thoughtful, of high quality, and that provides value to its members.

Q. How do you feel you’ve been able to represent the members in developing Bar News content that is interesting and helpful to their practices? Our members have a diversity of backgrounds, practices, and experience, and there is a range of interests in content from the members. I think it is important to balance these interests and provide a variety of information that is relevant to as wide a range of our members as possible. We have, as a committee, worked hard to identify relevant content, find willing authors, and provide a publication that will appeal to a broad audience of our members.

Q. Why did you volunteer to be chair of the EAC? I made a late-career transition to academics in 2016 after over 20 years of private practice. My academic position encourages (and, in some cases requires) service to our community and profession. In addition, the rank-and-tenure requirements require research and publication. I felt that service on the EAC would align best with my new professional direction.

Q. As chair of the EAC, how have you been able to help shape the WSBA members’ magazine? I do not feel that my role as chair has any more, or less, of a role in shaping the magazine than any other member of the committee. However, I did work with the staff to expand the committee to include more voices and to identify a balance of content to include in the magazine.

LIAISON

Sunitha Anjilvel

Anjilvel is entering her 30th year of practice as an attorney, having been licensed first in Canada, then in California and Washington state. She currently owns and manages Anjilvel Law Group, with a practice that is primarily focused on family law and estate planning. She is an active member of the WSBA Diversity Committee as well as the WSBA Governor representing Congressional District 1.

Q. Can you explain your role as the liaison between the Board of Governors and the...
EAC? In my role as the liaison between the Board and the EAC, I have been privileged to attend regular meetings and to witness how the magazine operates—from the incubation of story ideas to the completion of high-quality journalistic articles. I see my liaison role as acting as facilitator in maintaining a strong connection between the Board of Governors and the staff and volunteers who are responsible for the publication of Bar News.

Q. What do you see as the role of Bar News in keeping members informed about the WSBA and providing a forum for member feedback? And how successful do you think Bar News is in filling these roles? Bar News carries out a mission to inform WSBA members about relevant and often cutting-edge issues that affect the legal profession in Washington state. Bar News also is extremely responsive to member feedback; most articles are member-driven, and the staff and contributors are very mindful of member needs, using surveys and other tools to gauge what the readership wants.

**MEMBERS**

Zachary Ashby

Ashby was born in Wenatchee and returned to Washington in 2015 following law school at BYU. He is a partner at Pacific Northwest Family Law, father of five, and husband of one. After completing a Ph.D. in Iberian and Latin American Cultures at Stanford University, he decided to practice law instead.

Q. What do you hope to accomplish in your time on the EAC? I’d like to contribute directly to Bar News as a useful and beneficial publication to help attorneys stay engaged with ongoing events and issues in the state. I’d also like to see a turn to helping attorneys develop better business-management skills in addition to practicing law.

Q. Why do you think the WSBA members’ magazine is an important outreach tool/forum for discussion? I believe the magazine is a particularly important tool for those WSBA members living in more remote areas of the state or even out of state like I do. It helps those members feel connected to the legal community and stay “in the know.”

Q. How do you feel you’ve been able to represent the members in developing Bar News content that is interesting and helpful to their practices? My background as a military spouse who has practiced in other jurisdictions has given me a unique perspective that I bring to every committee meeting. I use that unique perspective when brainstorming content ideas for Bar News with my fellow EAC members. We know that each article is not going to interest every member, but we hope that every member finds content of interest in each issue.

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**Brittany Dowd**

Dowd is of counsel to a civil litigation firm in Oklahoma, where she is stationed with her active-duty husband, daughter, and pup. Previously, she lived in Spokane, where she served as a law clerk at Division III of the Washington Court of Appeals. She is licensed to practice law in Washington and Oklahoma.

Q. What do you hope to accomplish in your time on the EAC? I hope to continue using my voice to advise the wonderful Bar News editor and staff on issues related to content and editorial policy. I also hope to encourage other WSBA members to use their own voices to write interesting articles for publication in the magazine.

Q. Why do you think the WSBA members’ magazine is an important outreach tool/forum for discussion? I believe the magazine is an important outreach tool for those WSBA members living in more remote areas of the state or even out of state like I do. It helps those members feel connected to the legal community and stay “in the know.”

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**Benjamin Gould**

After law school, Gould returned to his hometown of Seattle, where he is a partner in Keller Rohrback LLP’s complex litigation group. Outside of work, he tries to spend as much time as possible with his wife, two young daughters, and extended family.

Q. What do you hope to accomplish in your time on the EAC? Maybe the best way that I can answer this question is to describe the kind of writing I value in a bar publication. I value writing that provides a useful primer on an unfamiliar topic, that updates readers on significant legal developments, or that throws new light on a well-known issue. Extra points if the writing espouses an unpopular view without falling into factitious contrarianism.

Q. Why do you think the WSBA members’ magazine is an important outreach tool/
Meet Your EAC

Maris Jager Grigalunas

Maris Jager Grigalunas is of counsel at Whitt Sturtevant LLP. She advises clients in natural gas, water, and electric regulatory proceedings, including rate litigation, cost and revenue reconciliations, system acquisitions, rate design investigations, and energy-efficiency programs. She is active in several bar associations, including the WSBA and the ABA’s Section of Environment, Energy, and Resources.

Q. What do you hope to accomplish in your time on the EAC? I hope to use my time on the EAC to immerse myself in issues relevant to all Bar members, while engaging in the robust editorial process that takes place behind each issue. By the end of my tenure on the EAC, I hope to have provided a unique perspective on topics that are of interest to WSBA members, to have highlighted other practitioners with meaningful accomplishments, and to leave an impact on the Washington Bar.

Q. Why do you think the WSBA members’ magazine is an important outreach tool/forum for discussion? The magazine offers members updates on Bar activities, the opportunity to consider different legal perspectives on hot topics and current events, and introduces individual members and their unique backgrounds. The magazine offers a diverse look at the WSBA and its members, and is essential for fostering growth and connections across the state.

Q. How do you feel you’ve been able to represent the members in developing Bar News content that is interesting and helpful to their practices? I’ve tried to recruit voices from within the Bar that for any reason might not be inclined to speak. At least that has been my goal. There is always more work to be done.

Karrin Klotz

Klotz is an attorney who has practiced business law, intellectual property law, antitrust law, international law, and employment law with international law firms and high-tech companies in the San Francisco Bay Area, Silicon Valley, and Washington. She has been a professor at the University of Washington, UW Bothell, and Seattle University School of Law. Klotz clerked for the Hon. Gabrielle K. McDonald of the U.S. District Court for the Southern District of Texas.

Q. What do you hope to accomplish in your time on the EAC? I want to address key legal issues and generate discussions of interest to attorneys and judges throughout the state.

Marc Lampson

Lampson is a review judge for the Board of Appeals at the Department of Social and Health Services in Olympia, and has previously practiced mostly appellate law. He has published a book on local legal history and a recent book on legal research. He also has a master’s degree in library and information science, with a specialization in law librarianship, and has taught legal writing and research in many different academic settings.

Q. What do you hope to accomplish in your time on the EAC? In U.S. history, lawyers have created and used the law to do great evil and to do some good. In my time on the EAC, I’d like to find ways to shine a light on a few examples of each so we are better able to prevent evil and promote good.

Q. Why do you think the WSBA members’ magazine is an important outreach tool/forum for discussion? Lawyers are likely
to know others who are practicing in the same specialty and, if they want, how to contact them. Lawyers are less likely to be in touch with practitioners and issues far afield from their specialty, but still vital to being a professional. I think the magazine should provide this breadth of knowledge for all members of the WSBA.

Q. How do you feel you've been able to represent the members in developing Bar News content that is interesting and helpful to their practices? I am relatively new to the EAC, so I can only aspire to develop interesting and helpful content.

Debra Lefing

Lefing is currently an assistant attorney general in the Torts Division of the Washington State Attorney General’s Office and previously served as legal counsel for the state land authority on the island of Palau. Lefing loves trail running in the Pacific Northwest and discovering its local ciders.

Q. What do you hope to accomplish in your time on the EAC? To help the magazine continue to publish interesting and important articles for WSBA members.

Q. Why do you think the WSBA members’ magazine is an important outreach tool/forum for discussion? I feel that the magazine provides a platform for all members, no matter where they are located. For some members, the magazine may be the only or primary way they receive information and learn about new things going on in the legal world. Plus, it’s easy for members to engage in discussion on topics by writing an article about something that interests them or writing a letter to the editor.

Q. How do you feel you've been able to represent the members in developing Bar News content that is interesting and helpful to their practices? I stay on top of legal developments, in and out of Washington, and ask Bar members what stories they would like showcased in the magazine.

Shanna Lisberg

Lisberg is the internal discovery manager at Perkins Coie. A member of the Professional Standards Department, she provides support to the legal hold counsel on preservation and internal discovery efforts. Lisberg moved to Seattle in 2011 and is still constantly amazed at the city’s greenery.

Q. What do you hope to accomplish in your time on the EAC? My goal of joining the EAC is to collaborate with contributors to Bar News, to help come up with ideas for articles, and to help manage the content. I think the magazine does a great job in producing content and I want it to continue to grow and to represent all of our members.

Q. Why do you think the WSBA members’ magazine is an important outreach tool/forum for discussion? I feel that the magazine provides a platform for all members, no matter where they are located. For some members, the magazine may be the only or primary way they receive information and learn about new things going on in the legal world. Plus, it’s easy for members to engage in discussion on topics by writing an article about something that interests them or writing a letter to the editor.

Q. How do you feel you've been able to represent the members in developing Bar News content that is interesting and helpful to their practices? Many of the articles published in Bar News are unsolicited, so I think the members are doing an excellent job of telling the EAC what they think is interesting. On the other hand, I feel that the EAC puts a lot of effort into creating content that is relevant and compelling.

CONTINUED >
Andrew Pollom

Pollom has worked for the Lummi Nation for over three years. He started as a child welfare attorney, then became a prosecutor, and now works in education and housing for the Tribe. When he is not at work, he can be found in his garden. When not in quarantine, he likes to travel with his partner, Shayna.

Q. What do you hope to accomplish in your time on the EAC? I hope to build on the magazine’s award-winning work in bringing relevant, interesting, and inspiring news and stories to our members. The magazine is an opportunity for our members to see what other groups are doing and how that work can touch on their own.

Q. Why do you think the WSBA members’ magazine is an important outreach tool/forum for discussion? The magazine allows attorneys to find and learn from other attorneys. As an attorney for a government organization, I recognize the importance of the intersection of the different areas of the law. Learning from other attorneys who focus on different areas of law is important to help me better serve my clients.

Q. How do you feel you’ve been able to represent the members in developing Bar News content that is interesting and helpful to their practices? As a member, I have always enjoyed the articles that not only give me relevant updates in the law, but also share the stories of other members’ triumphs in the law. I feel that my advocacy for a balanced approach—one that allows both the updates and the stories that mean something to our members’ practices—has been my greatest contribution.

Heidi Urness

Recently named a “Top 30 Powerful Cannabis Attorney,” Urness provides the full spectrum of corporate, transactional, advertising and marketing, and litigation services to clients in the cannabis and other emerging industries. Urness is also a leading speaker and author on CBD, hemp, and marijuana law.

Q. What do you hope to accomplish in your time on the EAC? To contribute to meaningful discussions regarding issues that matter to our diverse membership, and to utilize insights garnered from those discussions to research and publish engaging content that educates, inspires, and empowers legal professionals throughout the state.

Q. Why do you think the WSBA members’ magazine is an important outreach tool/forum for discussion? The magazine reflects what is truly an ongoing discussion between the membership and the EAC. The committee sincerely listens to input, including criticism, from our membership, and we vigorously debate many issues in our meetings. The content that is ultimately selected for publication, as well as the framing of issues in the magazine, results from passionate advocacy for a wide variety of issues and commitment to collaboration.

Q. How do you feel you’ve been able to represent the members in developing Bar News content that is interesting and helpful to their practices? I hope I have done an effective job supporting our committee’s goal of maintaining the values the magazine has represented since its inception, while also providing a fresh perspective and supporting efforts to meaningfully update the magazine, making it more engaging and approachable to readers throughout the state.

Michelle Young

After working for the Utah Attorney General’s Office for 13 years, Young moved to Washington in 2017. She has a J.D. from BYU and a B.A. in psychology from the University of Utah. In addition to practicing law, Young teaches graduate-level constitutional law and criminal justice courses for American Military University. She and her husband, Ron, have seven children.

Q. What do you hope to accomplish in your time on the EAC? I am a very practical, what-value-is-this-going-to-bring-to-my-practice sort of person. When I open Bar News, I want to find something that will make me a better, more up-to-date Washington lawyer. So my goal as an EAC member is to bring a sense of practicality while maintaining the high quality and editorial standards already in place.

Q. Why do you think the WSBA members’ magazine is an important outreach tool/forum for discussion? To me, a bar journal is a “gathering” place. It should go beyond the essentials—such as licensing deadlines—but it should be more than a law review. It should generate a sense of community, while providing interesting and practical information.

Q. How do you feel you’ve been able to represent the members in developing Bar News content that is interesting and helpful to their practices? The Bar News should be a resource that provides value to every member of the WSBA, regardless of culture, background, practice area, or political viewpoint. I take that goal into every meeting of the EAC.
WE ARE ENTERING A LEGAL AID CRISIS as our state emerges from the COVID-19 lockdown. Housing, family law, unemployment and immigration cases will flood the legal system, leaving many of Washington's most vulnerable residents to navigate it alone.

Please donate to these Washington State Bar Association programs:

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- **MODERATE MEANS PROGRAM**, which matches moderate-income clients with legal professionals willing to work for a reduced fee, ensuring that everyone's voice is heard.

Support these important programs with a tax-deductible gift today!

[wsba.org/foundation](http://wsba.org/foundation)
When WSBA President Rajeev D. Majumdar first started going to therapy, “it felt like the very bottom of my life,” he explained during an interview on “Beyond the A.” And the first therapy appointment felt to him, initially, like the first step down a path toward failure. “I am an intellectual, I don’t need assistance; I can think through any problem,” he recalled thinking. “I don’t need any outside help; that would be too weak.”

Such thinking is not uncommon in the legal profession, where lawyers can take on their clients’ stresses and anxieties and work absurdly long hours while also becoming trapped in the mindset that “therapy equals weakness equals the end of my career.” For Majumdar, that cycle began to change in 2007, when he first sought help for anxiety and depression that had grown beyond his ability to tackle on his own.

“Since then, I’ve put an effort in trying to talk about these things because I want other people not to have to be in that position for as long as I was,” he said. “And that’s the problem: I waited so long. I was unnecessarily suffering and I was unnecessarily not serving my clients or my friends or my family or the people around me. I wasn’t able to do my job to the best of my ability; because if you are riddled with suffering, you’re not going to be doing your best work.”

But for a disproportionate number of lawyers, anxiety, depression, and substance use disorder go untreated. “Too often, lawyers, judges, and law students find themselves wrestling privately with frustration and despair as an addiction or mental health problem dominates their life and threatens their career,” the American Bar Association wrote as part of its mental health anti-stigma campaign.

Asked what advice he wishes he could have given to himself at the beginning of his legal career, Majumdar told “Beyond the A”: “You aren’t going to believe what’s going to happen because you can’t contemplate it. It is outside of the scope of your imagination. There are going to be really awful times, but in the end it’s going to be fantastic!”

Recently, Majumdar spoke with Bar News about his mental health journey and what he hopes sharing it will do for others in the legal profession. Following up on one of the points he made on the podcast, that lawyers tend to conflate receiving help with weakness, we asked how he overcame his own reservations in order to seek therapy. In addition to the support he received from Seattle University School of Law, which provides students with free access to a therapist, Majumdar said the support he received from friends and family gave him the nudge he needed.

Rajeev D. Majumdar: I had two things already playing in my favor … I had a family that was supportive of these issues, and I had an academic environment that had the resources to provide me these opportunities … So when I think about that, I think about: How does the WSBA get to this problem about conflating [seeking] help with weakness, and overcoming feelings of weakness? Because … so much of being a lawyer is not representing a weak position, it’s trying to put your client in the best and strongest position ….

Another problem with lawyers is we delve deep into things. And we’ve become experts in all kinds of things—beyond just the processes of law—but it tends to make us think that we can solve all of the problems or become experts in all our problems. And this is kind of an issue where you need to be able to let go and step back and get some distance ... I think cultivating an awareness that everyone deals with mental-health issues is important. And I think realizing that part of being a fantastic lawyer, part of being a strong lawyer, is dealing with those issues.

And just like my law school provided me the support I needed to be [my] best, I think about the fact that if we want our members to be their best, the WSBA needs to triple or quadruple down on wellness resources ... if society isn’t going to address the problem in general.
We are all human beings and we all have frailties; it is important lawyers recognize this in themselves and that we support each other with this understanding.

— Rajeev D. Majumdar
Stigma Around Seeking Help

Working to Combat the Stigma Around Seeking Help

BN: How has your experience as a person of color, and also being a South Asian, how does that intersect? How has that shaped your views on mental health?

Majumdar: This is such a third-rail question because there’s actually no way to answer it correctly without offending some person or accidentally stereotyping someone, but let me try my best here. I have a master’s degree in South Asian studies and I’ve testified as an expert witness on South Asian cultural matters, but South Asia is a huge and broad collection of civilizations. And generally in South Asia today, as in most of the world, mental health is something that’s usually hidden away when possible or euphemized … . Seeking treatment by oneself or on behalf of a family member is not the traditional response. That being said, I have a niece in India who is a mental health counselor, and I wouldn’t want to stereotype the country or population.

The social and economic development of the world tends to dictate our opportunities. My experiences in the U.S. are completely different—in many circles having a therapist is normative or even seen as a sign of privilege (cue New Yorker magazine cartoons and Frasier reruns). I have, however, seen in the immigrant community—both as a community member, and as someone who represents South Asians—the population struggles with seeking help. This is interesting because, statistically speaking, South Asians are one of the most privileged demographics in America, but culturally the acceptance is not there.

And the flat-out answer to that is I don’t feel my experiences are reflected, but it’s not due to being a person of color or a South Asian. My experiences aren’t reflected because we don’t have any broader conversation about mental health. The conversation about mental health in this country goes this far: “We need public funding.” We all understand that means or why that is … .

I think probably everyone might know someone who has a mental-health disorder, but we don’t talk about root causes and solutions in depth. What are the causes of this? What leads to these issues? Why do they affect some people and not other people? What are the root causes in our society we need to tackle? I don’t think there’s any discussion about that altogether. I think as a profession, the WSBA has acknowledged the issue; we’ve committed to providing every single member with free wellness and mental health resources … .

WSBA Connects®, our member-assistance program, is something all lawyers have access to. And it’s a way to collectively use our resources to do something that’s going to help all lawyers and help the public, because lawyers do not do good work when they are not well and mental health is an incredibly important part of being an effective lawyer … .

BN: What do you think that lawyers, law firms, and even the Bar can do to end—or to at least lessen—the stigma that is surrounding mental illness, and also substance use, which has its own different set of stigmas attached to it?

Majumdar: There’s a fear of the unknown in our profession. Our profession is a relatively conservative one. It doesn’t adapt to change easily. And if we look at the unknown, we might not like what we see. We might find something weak. There’s a subconscious fear that you don’t match up, that you don’t meet the expectations set on you and you don’t want to be seen as weak … . But while the WSBA is here to regulate and discipline the profession as an integrated bar, we are also here to support our members so they can have fulfilling professional lives and also avoid getting into situations that require discipline. And that protects the public; lawyers that are functional and not making bad choices are serving the public.

What we have to remember is that the someone sitting across from you, opposing counsel or client, it’s a real human being and that human being is stressed, they’re anxious … . Most people who end up resorting [to] coming to a law office are people who are at the end of their wits, and are in trauma … . The very nature of our job is one that’s dealing with conflict. And I think that can have a long-lasting toll on the quality of a person’s life and mental well-being. If we aren’t cognizant of these stresses and actively addressing them, it can lead to very poor mental health. We need to be talking about it as normative and that seeking help to support oneself through the practice of law is normative. I hope this interview and the “Beyond the A” interview is part of an increasingly public dialogue, which is the best thing the WSBA can legitimize and foster, in addition to providing our members with free access to the support and services that our society does not.

RESOURCES

WSBA Connects®

WSBA Connects® offers up to three free counseling sessions for WSBA members and their dependents. Speak with a professional counselor by phone and the Member Wellness Program will refer you to a local counselor at no cost for issues including anxiety and stress, depression, grief, drug or alcohol abuse, transition and change, and relationships.

PHONE: 206-727-8268
EMAIL: wellness@wsba.org

> If you are having thoughts of suicide or experiencing a mental health crisis call WSBA Connects at 800-765-0770. This hotline is staffed 24/7.

NOTES


2. www.americanbar.org/groups/lawyer_assistance/profession-wide-anti-stigma_campaign/
Open for Business…

Like a lot of you, we at Brewe Layman are handling matters a bit differently these days. Telephonic client meetings and court hearings. Mediations, depositions and arbitrations via Zoom. We are open for business working with existing and new clients as we always have — diligently, adeptly and tenaciously — albeit remotely or from a safe and secure office setting.

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B R E W E   L A Y M A N   P. S.
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A Review of Yim I and Yim II

Has the Washington Supreme Court finally settled on a definitive regulatory takings doctrine?

BY ADAM G. HAYNIE AND MATTHEW S. HITCHCOCK
On Nov. 14, 2019, the Washington Supreme Court issued two landmark property rights decisions, *Yim v. City of Seattle*¹ (“Yim I”) and *Yim v. City of Seattle*² (“Yim II”). The court presented the decisions as clarifications of its longstanding efforts to align Washington’s regulatory takings and substantive due process jurisprudence with federal law. Property rights advocates have criticized *Yim I* and *Yim II*, however, as victories for state and local governments seeking to encroach upon individual property rights.

In *Yim I*, plaintiffs challenged Seattle’s “First-In-Time” rule (FIT), which requires landlords to provide prospective tenants with notice of their rental criteria, to screen completed applications in chronological order, and, with a few exceptions, to offer tenancy to the first qualified applicant. *Yim* and other landlords challenged the ordinance, arguing that it facially violated their state constitutional rights as a per se regulatory taking for private use and an infringement on their substantive due process rights.

In *Yim II*, plaintiffs challenged Seattle’s Fair Chance Housing Ordinance (FCHO), which restricts a landlord’s ability to select and screen tenants, prohibiting landlords from conducting criminal background checks or questioning an applicant’s criminal history. Plaintiffs asserted that the FCHO facially violated their substantive due process rights. On certified questions from the Federal District Court for the Western District of Washington, the Washington Supreme Court clarified the proper standard to analyze substantive due process claims under the Washington Constitution, both for land use regulations generally and under the FCHO.³

Issuing simultaneous opinions for *Yim I* and *Yim II*, the Washington Supreme Court made clear that Washington’s constitutional property rights jurisprudence is inextricably intertwined with federal law and clarified that the standard of review for substantive due process claims involving land use regulations is the deferential “rational basis” standard. In doing so, the court swept away decades of Washington’s independent facial takings jurisprudence and adopted a two-part federal standard of review that means landowners who challenge government regulations face an uphill battle.

A version of this article first appeared in the spring 2020 edition of the WSBA Real Property, Probate and Trust Section newsletter.

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**WASHINGTON LAW BEFORE YIM I AND II: TETHERED TO FEDERAL LAW?**

The takings clause of the Fifth Amendment to the U.S. Constitution provides: “[N]or shall private property be taken for a public use without just compensation.”⁴ The operative Washington Constitution takings counterpart provides, in pertinent part: “No private property shall be taken or damaged for public or private use without just compensation having first been made.”⁵ These clauses constitute the foundation for eminent domain and regulatory takings law, which place limits on the government’s power to expropriate private property: the government may take private property, but only for public use and only upon payment of just compensation.

By contrast, the Due Process Clause of the 14th Amendment provides: “[N]or shall any State deprive any person of life, liberty, or property, without due process of law.”⁶ Washington’s due process clause provides: “No person shall be deprived of life, liberty or property, without due process of law.”⁷ These clauses generally provide that governmental action is invalid if it infringes upon personal rights without providing due process, and the offending regulation is deemed unconstitutional and unenforceable.

Over the last half century, the Washington Supreme Court adopted the U.S. Supreme Court’s takings and substantive due process jurisprudence. The Washington Supreme Court “traditionally has practiced great restraint in expanding state due
A Review of Yim I and Yim II
CONTINUED

process beyond federal perimeters,\(^8\) has afforded great weight to federal due process decisions,\(^9\) and has interpreted the federal and state takings clauses to provide the same right.\(^10\) The U.S. Supreme Court, however, engaged in a perplexing journey to develop a coherent regulatory takings doctrine, and its decisions frequently blurred the line between regulatory takings and substantive due process. Consequently, and not surprisingly, Washington courts failed to maintain a clear and cohesive regulatory takings doctrine consistent with federal law.

In 1987, however, the Washington Supreme Court undertook an ambitious effort to overhaul and clarify its regulatory takings law in Orion Corp. v. State of Washington.\(^11\) The court in Orion grappled with three landmark regulatory decisions from the U.S. Supreme Court that purported to clarify the federal doctrine when analyzing whether regulations that precluded the plaintiff from building homes on the tidelands of Padilla Bay in Skagit County constituted a regulatory taking. The Orion court explained how Washington's takings doctrine had diverged from the confusing federal doctrine, concluding that Washington had “successfully harmonized Pennsylvania Coal's ‘too far’ balancing approach with Mugler’s insulation of police power actions.”\(^12\) The court suggested its ideal policy would allow compensation to landowners only if the regulation went beyond preventing harm and enhanced a public right in land.\(^13\) This delineation between substantive due process and regulatory takings accounted for the individual burden on landowners but stopped short of intimidating legislative bodies in fear of strict financial liability whenever a regulation constituted a compensable taking.\(^14\) However, the court did not apply this policy, but instead followed the federal approach to “avoid exacerbating the confusion surrounding the regulatory takings doctrine.”\(^15\)

Three years later, in Presbytery of Seattle v. King County,\(^16\) the Washington Supreme Court effectively disregarded Orion. Rather than applying federal takings law, the court asserted that Orion combined U.S. Supreme Court authority, Washington case law, and scholarly commentary “to devise a comprehensive formula for use in determining the constitutionality of land use regulations.”\(^17\) The court cited both federal and Washington case law as it crafted a three-part test for substantive due process and a six-part test for regulatory takings.\(^18\) This “comprehensive formula” for regulatory takings, however, was abandoned in Manufactured Housing Communities of Washington v. State, where the Washington Supreme Court again modified its interpretation and held that a regulation that “destroys one or more fundamental attributes of ownership (the right to possess, exclude others and dispose of property)” is subject to a categorical face challenge.\(^19\) Consequently, while the court purported to coordinate state and federal regulatory takings jurisprudence, it seemingly added a third category to the two well-recognized federal categories (requiring a physical occupation or a taking of all economically viable use of one's property), which allowed Washington landowners to challenge a regulation as a categorical and facial taking if it destroyed a fundamental attribute of ownership (the right to possess, to exclude others, and to dispose of property).\(^20\)

In addition to facial takings challenges, the court adopted a Washington-specific analysis for substantive due process claims. In some instances, Washington courts applied the “unduly oppressive” test, which asks (1) whether the regulation aims to achieve a legitimate public purpose, (2) whether the means used are reasonably necessary to achieve that purpose, and (3) whether it is unduly oppressive on the landowner.\(^21\) Other times, the court applied the “substantial relation” test, asking whether police power regulations bear a “real or substantial relation” (as opposed to a merely rational relation) to legitimate government purposes.\(^22\) While the court never expressly stated the applicable standard of review under either test, because both tests diverged from federal law and appeared to require heightened scrutiny, plaintiffs often asserted these tests required an intermediate level of scrutiny, higher than rational basis but lower than strict scrutiny.

In each case, Washington law appeared to diverge from federal law while simultaneously failing to identify or adopt a consistent approach. As a result, landowners challenging regulations often threw the “kitchen sink” at the courts to satisfy whatever test the court might apply, resulting in a hodgepodge of inconsistent holdings. This may be what prompted the court to issue the parallel opinions in Yim I and Yim II, clarifying and functionally limiting the scope of applicable rules for regulatory takings and substantive due process claims.

WASHINGON LAW AFTER YIM I AND II: INEXTRICABLY INTERTWINED WITH FEDERAL LAW

Although Yim I and Yim II challenged different Seattle ordinances in different courts based on different legal theories, the Washington Supreme Court acknowledged both decisions would have “consequences far beyond the particular claims at issue.”\(^23\) Both opinions flowed from the court’s recognition that “the federal legal underpinnings of [the court’s] precedent have disappeared” and that the prior tests were based on overruled and outdated federal law that was no longer applicable. In one fell swoop, the court utilized Yim I and Yim II to clarify and align Washington law with federal law, putting to bed any notion that Washington has state-specific independent law regarding property rights.\(^24\)

For substantive due process claims, the court in Yim I and Yim II noted that Washington’s “unduly oppressive” and “substan-
tial relation” tests conflicted with federal law and made clear that under both tests, the applicable standard of review is rational basis without heightened scrutiny. Because the rational basis standard is deferential to government regulation and requires only that the challenged law be rationally related to a legitimate state interest, arguments that a law has no rational relationship to the legitimate state interest are uniformly rejected. Yim I and Yim II make it clear, therefore, that Washington landowners challenging regulations under substantive due process claims must prove the regulation fails under rational basis review—the likely result being that all but the most egregious regulations will be upheld.

For regulatory takings claims, the Yim I court upended the precedential value of its prior regulatory takings holdings, including Presbytery and Manufactured Housing, reasoning that these holdings were reliant entirely on outdated federal law. Because Washington never independently adopted heightened protections of regulatory takings, the court concluded its prior holdings lacked the underpinnings for validity and expressly rejected the notion that Washington adopted any regulatory takings doctrines separate from federal law. In doing so, the court eliminated perhaps the most property-owner-friendly facial regulatory takings argument: that the regulation “destroyed a fundamental attribute of property ownership.” Yim I makes clear that without this basis for a challenge, the only remaining avenues to assert a regulation is facially invalid, and therefore a taking, require either a physical occupation or the denial of all economic viability of a particular property—neither of which protect against regulations that significantly restrict property rights but do not completely eliminate them.

**THE RENEWED IMPORTANCE OF THE PENN CENTRAL FACTORS**

While Yim I and Yim II significantly impair landowners’ abilities to succeed on facial challenges against regulatory overreach, neither restricted individual landowners from asserting individualized damages claims against particular regulations. Consequently, the U.S. Supreme Court’s takings analysis in Penn Central Transp. Co. v. City of New York will likely become increasingly prevalent as governmental regulation pushes the line of permissible private property rights abrogation.

Under the Penn Central factors, courts analyze an alleged regulatory taking by considering: (1) the economic impact on the owner, (2) the extent of interference with the owner’s investment-backed expectations, and (3) the character of the government action. This test is intended to establish a rough measure of harm by determining the burden imposed on landowners, such as loss of income and economic use, the owner’s reasonable expectations considering the legal and regulatory climate when they purchased the property, and the extent, if any, that the burdensome regulation benefits another specific property or group less than the public as a whole.

Going forward, the Penn Central factors will become increasingly important to plaintiffs challenging government regulation, as the court in both Yim I and Yim II expressly reserved landowners’ ability to raise individualized takings claims, and the Penn Central factors offer landowners a flexible, individualized standard to measure the impact of particular regulations. While this approach remains open, successful individualized challenges cannot invalidate specific regulations; they can only provide compensation for damages suffered by individual landowners affected by the regulations. After Yim I and Yim II, therefore, landowners across Washington now face the difficult decision whether to bring an individualized taking claim under the Penn Central test and demonstrate specific and individualized damages; file a facial challenge and fight an expensive, uphill legal battle under a standard of review that is deferential to government regulation; or take the fight to the Legislature. For Seattle landowners, Yim I and Yim II make clear that the restrictions imposed by the FIT rule and the FCHO are not facially unconstitutional, and any future challenger to either rule will need to assess whether to do so as individualized takings claims under Penn Central. [29]

**NOTES**

1. 194 Wn.2d 651, 451 P.3d 675 (2019).
4. U.S. Const. amend. V.
5. Wash. Const. art. 1, §16.
7. Wash. Const. art. 1, §3.
9. Id.
12. Id. at 644-51.
13. Id. at 656.
14. Id. at 656-57.
15. Id. at 657-58.
17. Id. at 328.
18. Id. at 329-37.
20. Id.
29. Ark. Game & Fish Comm’n v. United States, 756 F.3d 1364, 1370 (Fed. Cir. 2013) (noting water releases from a dam were intended to benefit the singular interests of agriculture).
Talking 1099s

Answers to eight questions attorneys should ask about the IRS form

BY ROBERT W. WOOD

IRS Form 1099 allows computer matching of Social Security numbers and dollar amounts, so IRS collection efforts are streamlined and mechanized. Most people pay attention to these forms at tax time, but lawyers and clients alike should pay attention to them the rest of the year, too. Failing to include income on a 1099 Form, or at least explain it on your tax return, is guaranteed to get you an IRS tax notice to pay up. Lawyers also make good audit subjects because they handle client funds, and the IRS has a keen interest in the tax treatment of litigation settlements, judgments, and attorney fees.

1 Who is required to issue 1099 Forms?
Each person engaged in business and making a payment of $600 or more for services must report it on a 1099 Form. The rule is cumulative, so while one payment of $500 would not trigger the rule, two payments of $500 to a single payee during the year require a 1099 Form for the full $1,000. Lawyers must issue 1099 Forms to expert witnesses, jury consultants, investigators, and even co-counsel where services are performed and the payment is $600 or more.

Payments to corporations for services are generally exempt from the requirement of issuing a 1099 Form. A notable exception applies to payments for legal services: any payment for services of $600 or more to a lawyer or law firm must be the subject of a 1099 Form, regardless of whether the law firm is a corporation, LLC, LLP, or general partnership.

Finally, a client paying a law firm more than $600 in a year as part of the client’s business must also issue a 1099 Form.

2 What is the deadline to issue 1099 Forms?
1099 Forms are usually issued in January of the year after payment. In general, they must be dispatched to the taxpayer and the IRS by the last day of January.

3 Are lawyers required to issue 1099 Forms to clients?
Although some firms issue the forms routinely, most payments to clients do not actually require it. Of course, many lawyers receive funds that they pass along to their clients. That means law firms often cut checks to clients for a share of settlement proceeds. Even so, there is rarely a Form 1099 obligation for such payments. Most lawyers receiving a joint settlement check to resolve a client lawsuit are not considered payors. But see No. 6. In the majority of personal injury cases, the settling defendant is considered the payor, not the law firm. Thus, the defendant generally has the obligation to issue the 1099 Form, not the lawyer.

4 Are 1099 Forms required in personal injury cases?
One important exception to the rules for 1099 Forms applies to payments for personal physical injuries or physical sickness. Because such payments for compensatory damages are generally tax-free to the injured person, lawyers are not generally required to issue 1099 Forms.

However, lawyers will often be receiving 1099 Forms when their names are on settlement checks. IRS regulations contain extensive provisions governing joint checks and how 1099 Forms should be issued in such cases.

Example: Defendant settles a case and issues a joint check to Client and Attorney. Defendant normally must issue one 1099 Form to Client for the full amount and one 1099 Form to Attorney, also for the full amount.1
Is a 1099 Form required for client refunds?

If the refund is of monies held in the lawyer’s trust account, no 1099 Form is required. However, if the law firm was previously paid and is refunding an amount from the law firm’s own income, a 1099 Form is needed.

When must a lawyer issue a 1099 Form to a client?

Under IRS regulations, if lawyers perform management functions and oversight of client monies, they become “payors.” As such, they are required to issue 1099 Forms when they disburse funds.

The tax regulations are not terribly clear about exactly what these management and oversight functions are; however, just being a plaintiff’s lawyer and handling the settlement monies is not enough.

What are the penalties for failure to issue a 1099 Form?

As noted above, lawyers are not always required to issue 1099 Forms, especially to clients. Where they are required, however, enforcement of penalties for failure to file has gotten tougher. More and more reporting is now required, and lawyers and law firms face not only the basic rules but the special rules targeting legal fees.

Most penalties for non-intentional failures to file are, however, modest—as small as $270 per form not filed. In addition to the $270-per-failure penalty, the IRS also may try to deny a deduction for the item that should have been reported on a 1099 Form. That means if you fail to issue a form for a $100,000 consulting fee, the IRS could claim it is non-deductible. It is usually possible to defeat this kind of draconian penalty, but the severity of the threat still makes it a potent one.

An often-cited technical danger (but generally not a serious risk) is the penalty for intentional violations. A taxpayer who knows that a 1099 Form is required to be issued and nevertheless ignores that obligation is asking for trouble. The IRS can impose a penalty equal to 10 percent of the amount of the payment.

What about IRS Form W-9?

Because a 1099 Form requires taxpayer identification numbers, attorneys are commonly asked to supply payors with their own taxpayer identification numbers and those of their clients. Usually such requests come on IRS Form W-9. If an attorney is requested to provide a taxpayer identification number and fails to provide it to a paying party, he or she is subject to a $50 penalty for each failure to supply that information.

NOTE: This discussion is not intended as legal advice.

Features

Since then, China has promulgated no fewer than three laws, eight regulations, hundreds of standards, and numerous rules, interpretations, and guidelines concerning cybersecurity. In addition, China has submitted several draft laws on cybersecurity for consideration by the National People's Congress (NPC), its national legislature. The most recent of these is the Draft Data Security Law, submitted to the NPC in June 2020. Clearly China's regulation of cybersecurity is, and will continue to be, a work in progress.

So why bother learning the law now, if it might change in a few months or years? Because the basic framework for cyberspace regulation has already been set; subsequent changes are not likely to reduce or eliminate it but rather will bolster, expand, and strengthen it. Accordingly, failure to understand the law as it currently exists exposes businesses to the risk of current as well as future violations.

Moreover, in a modern information society, understanding cybersecurity is no longer a voluntary endeavor. Use of cyberspace is all but universal in business and communication, and China's cyberspace regulations not only affect Washington companies physically doing business there, or with Chinese partners, but also Washington companies operating wholly from the U.S. who have customers in China. Accordingly, it is imperative that Washington businesses operating in China or serving customers there understand China's cybersecurity regulatory regime and how to comply with it.

China's Cyberspace Regulatory Scheme

China's approach to cybersecurity regulation is unique. Rather than having one overarching regulation such as the European Union's General Data Protection Regulation, China has enacted a network of interlaced laws, regulations, rules, and guidelines that, taken together, establish a general regulatory framework. This framework continues to be updated through promulgation of interpretations, guidelines, and protocols by stakeholders that include general legal institutions such as the Supreme People's Court and the Ministry of Public Security and more specialized state organizations such as the Ministry of Industry and Information Technology and the Cyberspace Administration.

Currently, the three main pillars of regulation are the Cybersecurity Law; the Encryption/Cryptography Law (effective January 2020); and the aforementioned draft Data Security Law (submitted to the NPC in June 2020). Explaining China's complete cyberspace governance regime is beyond the scope of this article, which will therefore focus on the Cybersecurity Law (CSL)—the foundational law that sets out the basic requirements covered parties must meet, and the law that a Washington business is most likely to encounter initially.
WHO IS A COVERED PARTY UNDER THE CSL?

Under the CSL, “covered parties” include only “network operators” and operators of “critical information infrastructure” (CII). At first glance, these terms would seem to exclude most businesses. However, the law defines these two terms so broadly that only companies with little or no online presence will fall outside its ambit.

A “network operator” is any individual or organization that owns or manages a network or provides network services.³ Practically speaking, any business that runs or operates its computer network or that uses a computer network to conduct business will likely fall under this definition. In other words, a network operator is not just an internet service provider or a telecom company, but could include a sole proprietor based in Washington that uses any computer network to conduct business in China.

The law defines an operator of CII as any enterprise that is involved in a critical sector. A critical sector under the law includes those involved in “public communication and information services, energy, transportation, water conservancy, finances, and public services or e-government affairs.”⁴ A company engaged in one of these areas, such as a Washington-based environmental conservancy organization with an office in China, will likely be found by a Chinese court to be a covered party under the CSL.

**Recommendation:** The first step for any Washington individual, company, or organization that is engaged in trade with China is to determine whether it falls within one of these definitions. Consult one of the relevant interpretations or comments to the CSL, such as the “Requirements for Critical Information Infrastructure,” or the “Draft Regulation on the Protection of Critical Information Infrastructure,” for further explanations and guidance as to application of the CSL.

WHAT ARE THE KEY REQUIREMENTS OF THE CSL?

If you satisfy the definition of a network operator or a CII, you will be under the jurisdiction of the law and required to comply with it. It is important to note, however, that network operators and operators of CII do not have the same status under the law. The quantity and intensity of the law’s requirements depend on whether you are a network operator or an operator of CII. Generally, an operator of CII is subject to more rigorous requirements and stricter government scrutiny.

**Personal Information**

Under the law, all covered parties that use “private information” and/or “important data” have specific obligations to collect and safeguard such data in a manner that complies with the law.⁵ The CSL defines private information as any information that has been recorded by electronic or other means that can be used alone or in combination with other information to identify a person.⁶ Interestingly, a covered party cannot avoid collecting personal information, because the law also requires covered parties to “implement a real-name registration plan” for their customers.⁷ “Important data” is not defined specifically in the CSL. However, a subsequent guideline on the law defines it as any data that “can influence or harm the government, state, military, economy, culture, society, technology, information, and other security matters.”⁸

Common obligations for a covered party include, but are not limited to, ensuring that any private information and important data that is collected is protected from unauthorized access.

**Recommendation:** These requirements should not be new to most Washington businesses. They are very similar to cybersecurity and privacy requirements that Washington businesses encounter under HIPAA or in the data-privacy efforts in California, the European Union, and Washington itself. The protections that already exist or are in use should be extended to any elements of your business that involve China operations.

**Data Collection and Data Localization**

If a covered party obtains and disseminates personal information and/or important data, it is required to store in China the information collected on the customers, users, and clients it has in China. Moreover, before an operator of CII can transfer this information abroad, such as to a headquarters in the U.S., it must first get approval from the appropriate Chinese regulatory authority. In essence, covered parties must locally store any personal information and important data they collect on their Chinese users.

**Recommendation:**

Washington businesses have two options. They can either buy, connect, operate, and maintain their own data-storage servers in China or outsource their data-storage operations to a local vendor. Each option has benefits and drawbacks: Maintaining a server offers maximum control over data, but the expense of building and maintaining a China-based data-storage facility may be prohibitive. Allowing a local vendor to handle storage duties might be cheaper, but it also means loss of some level of control over the data. When using a local vendor, encryption is one way of maintaining that data control; however, China’s new Encryption/Cryptography Law might limit the extent to which data may be encrypted.

**State Access and Assistance**

The CSL requires covered parties to “assist” local law enforcement in their duties to fight
crime and protect national security. While law enforcement officials in the U.S. also request such assistance, it largely is up to the discretion of the organization. Under the CSL, the extent to which the government can force or require access is unclear. The scope of government access will likely be clarified through ongoing promulgation of rules, guidelines, and interpretations.

Recommendation: The vagueness and uncertainty of the provision will likely be interpreted by Chinese courts in favor of local authorities and customs. In other words, expect government access to be more, rather than less, intrusive, and prepare accordingly.

CONSEQUENCES

With many new laws, the biggest unknown can be what will happen if a covered party fails to comply with its specified requirements and standards. The CSL, however, is clear as to the consequences of violation: fines ranging between $1,000 and $100,000; cancellation of business operations; loss of business licenses and permits; shuttering of websites; and, in extreme cases, arrest and detention. This makes an understanding of the CSL and knowledgeable legal advice on compliance essential for Washington entities doing business in China.

NOTES

2. Cybersecurity Law [网络安全法]. www.amchamchina.org/uploads/media/default/0001/05/b7f6272b2b147c09bb845b66b5f1fcb8299ea50f.pdf.
3. Cybersecurity Law, supra n.2, art. 76.
5. Id. art. 40.
6. Id. Chapter VII, Supplementary Provisions.
7. Id. art. 24.
9. Cybersecurity Law, supra n.2, art. 28.
The WSBA Board of Governors determines the Bar’s general policies and approves its annual budget.

TOP 7 MEETING TAKEAWAYS

1 FY2021 budget. The bottom line for member license fees: It will cost slightly less to practice law next year because of a proposed one-time reduction to the Client Protection Fund (lowering the assessment by $15 to a total contribution of $10 per member for 2021; this proposal will now go to the Supreme Court for review). Based on an initial draft of next year’s budget, the Board concluded that the WSBA is in solid overall financial shape—even as it tries to account for currently unknown repercussions due to COVID-19—because of the cost-saving and efficiency-making measures taken this year.

2 WSBA mission statement. At its June meeting, the Board of Governors asked for feedback about a proposal to change the Bar’s mission statement. Based on member and staff input received, the Board of Governors voted to table the conversation indefinitely with the recommendation that any future process to evaluate the mission statement should involve a wide outreach plan.

3 WSBA leadership. The Board of Governors unanimously selected current District 4 Governor Dan Clark to continue as WSBA treasurer for a second year. The Board also wished District 8 Governor Kim Hunter well in light of her announcement that she has resigned her seat immediately due to health reasons.

4 Diversity, equity, and inclusion. WSBA President Rajeev D. Majumdar began the meeting by honoring the legacy of civil-rights leader Rep. John Lewis as part of an affirmation of the WSBA’s values and goals in full support of diversity, equity, and inclusion in the legal community. He also outlined the response underway to complaints about comments about minority bar associations made at the board table in June, including his intent for the Board to meet, learn from, and work with minority bar associations and others. Also, a Washington Supreme Court-created ombudsman process is underway in regards to those comments, and the Board of Governors has begun some facilitated training about oppression and trauma and is planning a comprehensive training schedule for this fall and throughout the coming year.

5 Removing barriers to emeritus pro bono status. The Board of Governors voted to recommend changes to certain qualifications under the Admission and Practice Rules (APR) and the WSBA Bylaws for members seeking to be or currently in emeritus pro bono membership status. These APR amendments and Bylaw changes—such as removing an experience qualification and waiving the license fee for those who volunteer 30 hours in the previous year with a Qualified Legal Service Provider—were recommended by the Pro Bono and Public Service Committee to encourage more members who resign active licenses or go to inactive status to continue to perform pro bono services via emeritus pro bono status. These recommended APR amendments and the corresponding WSBA Bylaw change will now go before the Washington Supreme Court for review.

6 Salary transparency. The Board of Governors voted to post WSBA compensation information on its website including the WSBA Compensation Philosophy, employee pay classification bands (with beginning, midpoint, and top salaries) and generic job titles within those bands, a copy of the WSBA Employee Handbook, and a summary of employee benefits.

7 Doing good in the community. Kudos to Court Commissioner Jeff Baker, our newest Local Hero, nominated by the Klickitat-Skamania Counties Bar Association. Read more here: www.wsba.org/news-events/media-center/media-releases.
WSBA NEWS

License Fee Payment Plan Option
If you are experiencing financial challenges, please note that a payment plan option is available to all licensed legal professionals for the 2021 license fee. Payments may be made in up to five installments, with the balance required to be paid in full by Feb. 1, 2021. To take full advantage of the plan, sign up and pay the first installment in October 2020. Also, a license fee hardship exemption is available for active licensed legal professionals who qualify. Visit www.wsba.org/licensing to learn more.

VOLUNTEER

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

ETHICS

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

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

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

Court Emergency Operations and Closures
The Washington Supreme Court has published a COVID-19 response page, which is a compilation of its emergency orders and court modifications: www.courts.wa.gov/newsinfo/index.cfm?fa=newsinfo.COVID19.

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

COVID-19-RELATED NEWS

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

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

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

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

WSBA MEMBER WELLNESS

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

Need to Know
NEWS & INFORMATION OF INTEREST TO WSBA MEMBERS
Career Consultation
Get help with your résumé, networking tips, and more—www.wsba.org/for-legal-professionals/member-support/wellness/consultation—or email wellness@wsba.org.

WSBA COMMUNITY NETWORKING

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

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

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

QUICK REFERENCE
Sept. 2020 Usury
The usury rate for Sept. 2020 is 12.00%. The auction yield on Aug. 3, 2020 of the six-month Treasury Bill was 0.107%. The interest rate required by RCW 4.56.110(3)(a) and 4.56.115 is 2.107%. The interest rate required by RCW 4.56.110(3)(b) and 4.56.111 is 5.25%.

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Nelson v. Thurston County, 2020 WL 2838668 (2020) (denying qualified immunity to a police officer who shot a citizen in the back)

Messenger v. Whitemarsh, 462 P.3d 861 (2020)(recognizing that a doctor who has sex with a patient the doctor treats for mental health issues can be sued for malpractice)


Coogan v. NAPA, 12 Wn. App. 2d 1021 (2020) (overturning $81.5 million judgment)


Hendrickson v. Hempzen Enterprises; Sotebeer; Davenport; Ware, et al., 11 Wn. App. 2d 1047 (2016) (vacating default judgment entered against commercial tenants)


Adamson v. Port of Bellingham, 192 Wn.2d 178, 438 P.3d 527 (2019); 823 P.3d 728 (2019) (recognizing liability of Port as premises owner)

Kimberly Gerlach v. The Cove Apts., 437 P.3d 690 (2019) (reversal of judgment based on voluntary intoxication defense)

Ingenco Holdings v. ACE American Insurance Company, 927 F.3d 803 (9th Cir. 2019) (reversal of district court summary judgment in insurer’s favor as to all risk policy coverage)

Focus Groups: Important Tools for Quality Trial Preparation

“Jeff Boyd is an experienced and extremely qualified trial lawyer. Combining his in-court experience and qualifications with his consulting and analytical skills provides a unique opportunity for trial lawyers to begin effective case framing. Once the factual information was provided to Jeff and his team, the process was easy. His approach allowed me to simply observe, focus, take notes, and analyze. In addition to his honesty and candor, Jeff is hard-working, insightful and thorough. I encourage and fully endorse Jeff and his team and believe his services are an important tool for quality trial preparation.”

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HAVE SOMETHING NEWSWORTHY TO SHARE?
Email wabarnews@wsba.org if you have an item you would like to place in Need to Know.
Suspected

Alex S. Chun (WSBA No. 26910, admitted 1997) of Edmonds, was suspended for six months, effective 5/20/2020, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.15A (Safeguarding Property), 1.15B (Required Trust Account Records), 5.3 (Responsibilities Regarding Nonlawyer Assistants).

In relation to managing his law firm, Chun stipulated to a six-month suspension for the following: 1) failing to maintain current, accurate trust account records; 2) failing to properly and timely reconcile his trust account records; 3) failing to promptly pay funds held in trust to those entitled to receive them; 4) retaining funds belonging to him in trust for an unreasonable amount of time; and 5) failing to make reasonable efforts to ensure that his non-lawyer office manager properly accounted for and disbursed trust funds to those entitled to receive them, including to himself, and failing to ensure that this office manager did not improperly convert funds from trust.

M. Craig Bray acted as disciplinary counsel. Kenneth Scott Kagan represented respondent. The online version of Washington State Bar News contains links to the following documents: Order on Stipulation to Six Month Suspension; Stipulation to Six Month Suspension; and Washington Supreme Court Order.

Ligia Isela Hernandez (WSBA No. 26835, admitted 1997) of Seattle, was suspended for one year, with a minimum of 60 days of actual suspension and the remainder stayed pending successful completion of probation, effective 7/07/2020, by order of the Washington Supreme Court imposing reciprocal discipline in accordance with an order of the Supreme Court of the State of California. For more information, http://www.statebarcourt.ca.gov. M. Craig Bray acted as disciplinary counsel. Kevin M. Bank represented respondent. The online version of Washington State Bar News contains a link to the following document: The Washington Supreme Court Order.

Reprimanded

Tracy Scott Collins (WSBA No. 20839, admitted 1991) of Spokane, was reprimanded, effective 6/18/2020, by order of the Chief Hearing Officer. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.16 (Declining or Terminating Representation), 1.18 (Duties to Prospective Client), 8.4 (Misconduct).

In relation to his representation of a criminal defendant, Collins stipulated to a reprimand for: 1) negligently revealing information to the client that he received from a prospective client; and 2) failing to return unearned fees to the client upon termination of the representation.

Jonathan Burke acted as disciplinary counsel. Tracy Scott Collins represented himself. The online version of Washington State Bar News contains links to the following documents: Order on Stipulation to Reprimand; Stipulation to Reprimand; and Notice of Reprimand.

Donna Marie Gibson (WSBA No. 33583, admitted 2003) of Mount Vernon, was reprimanded, effective 5/07/2020, by order of the Chief Hearing Officer. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.3 (Diligence).

In relation to her representation of a client in various employment law matters, Gibson stipulated to a reprimand for failing to timely file appeals.

Debra Slater acted as disciplinary counsel. Jeffrey T. Kestle represented respondent. The online version of Washington State Bar News contains links to the following documents: Order on Stipulation to Reprimand; Stipulation to Reprimand; and Notice of Reprimand.

Cynthia Ellen McMullen (WSBA No. 9027, admitted 1979) of Spokane Valley, was reprimanded, effective 5/12/2020, by order of the Chief Hearing Officer. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.3 (Diligence), 1.4 (Communication), 1.7 (Conflict of Interest: Current Clients).

In relation to her representation of a city client in a property nuisance matter, McMullen stipulated to a reprimand for the following: 1) failing to act with reasonable diligence in ascertaining the potential heirs of an estate and failing to provide notice to potential heirs; 2) failing to provide the city with prompt and timely information regarding the estate’s probates and a proposal to sell the property to the city; and 3) by simultaneously representing the city and acting as the administrator of the estate’s probates without obtaining informed consent from the city.

Jonathan Burke acted as disciplinary counsel. Cynthia Ellen McMullen rep-

THESE NOTICES OF THE IMPOSITION OF DISCIPLINARY SANCTIONS AND ACTIONS are published pursuant to Rule 3.5(c) of the Washington Supreme Court Rules for Enforcement of Lawyer Conduct. Active links to directory listings, RPC definitions, and documents related to the disciplinary matter can be found by viewing the online version of Washington State Bar News at www.wsba.org/news-events/Bar-News or by looking up the respondent in the legal directory on the WSBA website (www.wsba.org) and then scrolling down to “Discipline History.”

As some WSBA members share the same or similar names, please read all disciplinary notices carefully for names, cities, and bar numbers.
Notice of Hearing on Petition For Reinstatement of James Lloyd White

A petition for reinstatement after disbarment has been filed by James Lloyd White (WSBA No. 14132), who was admitted in 1984, suspended in 2005, and disbarred in 2006. A hearing on White’s petition will be conducted before the Character and Fitness Board on Friday, Sept. 25, 2020, by remote video teleconference. Except by the Character and Fitness Board’s leave, no person other than the petitioner or petitioner’s counsel shall be heard orally by the Board. Any communications to the Character and Fitness Board should be sent to Renata Garcia, Interim Counsel to the Character and Fitness Board, Washington State Bar Association, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539, or to renatag@wsba.org. This notice is published pursuant to APR 25.4(a).

Transfer to Disability Inactive Status

A.E. McLaughlin (WSBA No. 38130, admitted 2006) of Moscow, Idaho, was by stipulation transferred to disability inactive status, effective 6/15/2020. This is not a disciplinary action.

Bloggers Wanted!

Write for the WSBA’s award-winning blog — NWSidebar [nwsidebar.wsba.org]. Connect with the legal community! For more information, contact blog@wsba.org.

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**Announcements**

The WSBA invites you to lunch and learn while earning 1.5 CLE credits. And the tab is on us! The WSBA hosts a 90-minute, live webinar CLE at noon on the last Tuesday of each month.

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2010 WL 3788272
(W.D. Wash. 2010)

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

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

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

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

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Profitable Northwest Oregon law practice located in Marion County. The practice was established in 1991 and has a practice/case breakdown by revenue of 34% probate and trust administration, 30% estate planning, 20% real estate transactions, and 10% business law and contracts. The practice is completely turnkey and has a strong client base. If you are interested in exploring this opportunity, would like the freedom to be your own boss, and/or increase your current book of business substantially, then this is perfect for you! Email info@privatepracticetransitions.com or call 253-509-9224.

Washington medical malpractice law firm with average gross revenue of over $1,600,000 the last three years (2017-2019), and weighted Seller’s Discretionary Earnings (SDE) of over $1,200,000. This successful firm is completely turnkey and employs five staff, including the owner. The firm’s processes are very well documented, and the practice uses Google Suite allowing for easy remote access. If you are interested in exploring this opportunity, would like the freedom to be your own boss, and/or increase your current book of business substantially, then this is perfect for you! Email info@privatepracticetransitions.com or call 253-509-9224.

Thriving Grants Pass, Oregon, family law practice with cases in Josephine and Jackson Counties. The owner has built a firm with a stellar reputation and desires to sell the business as a turnkey operation in order to retire. The average gross revenue for the past two years is over $530,000, and the 2019 Seller’s Discretionary Earnings (SDE) was over $350,000! The practice/case breakdown is 100% family law. The practice was established in 1975 and is located in a desirable, fully furnished office. The practice employs three staff, including the owner. Email info@privatepracticetransitions.com or call 253-509-9224.

Real estate legal practice with two locations is headquartered in the fastest growing metro area in the fastest growing state (Idaho). This real property law firm has two locations (Spokane and Coeur d’Alene), two attorneys, three support staff, and average gross revenue over $625,000 the last three years (2017-2019). For more information on this turnkey practice, contact info@privatepracticetransitions.com or call 253-509-9224.

Established Pierce County insurance defense practice that was established in 1998 and has approximately 125 active clients as of June 2020. The average gross revenue the last three years was over $1,017,000. The practice/case breakdown by revenue is 50% bodily injury, 10% property damage, 10% product liability, 10% professional liability, 10% plaintiff work, and 10% other. Contact info@privatepracticetransitions.com or call 253-509-9224.

Established Seattle estate planning practice that has a practice/case breakdown by revenue of approximately 45% estate & trust administration, 40% estate planning, and 15% other (collateral matters, estate tax preparation, real property issues, etc.). The practice is located in the heart of downtown Seattle, has average gross revenue of over $259,000 the last three years (2017-2019), and is poised for growth under new ownership. Contact info@privatepracticetransitions.com or call 253-509-9224.

Extremely profitable Seattle immigration law practice that has average gross revenue of over $1,600,000 the last three years (2017-2019). Even more, in 2019 the gross revenue was over $1,800,000! This successful firm has substantial advance fees in trust. The practice employs two attorneys in addition to the partners, seven paralegals, three full-time administrative staff, and one part-time support staff. If you are interested in exploring this opportunity, would like the freedom to be your own boss, and/or increase your current book of business substantially, then this is perfect for you. Contact info@privatepracticetransitions.com or call 253-509-9224.

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FOR SALE

King County practice specializing in cannabis law with a stellar reputation within the community. In 2019, the practice brought in over $940,000 in gross receipts. The practice/case breakdown by revenue is 85% cannabis business counsel and 15% personal injury. The practice is located in a modern and thoughtfully designed, fully furnished 3,000 SF office space that the practice leases. The practice employs seven employees: four attorneys including one licensed patent agent, two legal professionals, and one front desk person. If you are interested in exploring this opportunity, call or email us to set up a viewing or to learn more about this practice. Email “King County Practice Specializing in Cannabis Law” to info@privatepracticetransitions.com or call 253-509-9224.

Profitable Northwest Oregon law practice located in Marion County. The practice was established in 1991 and has a practice/case breakdown by revenue of 34% probate and trust administration, 30% estate planning, 20% real estate transactions, and 10% business law and contracts. The practice is completely turnkey and has a strong client base. If you are interested in exploring this opportunity, would like the freedom to be your own boss, and/or increase your current book of business substantially, then this is perfect for you! Email info@privatepracticetransitions.com or call 253-509-9224.

Washington medical malpractice law firm with average gross revenue of over $1,600,000 the last three years (2017-2019), and weighted Seller’s Discretionary Earnings (SDE) of over $1,200,000. This successful firm is completely turnkey and employs five staff, including the owner. The firm’s processes are very well documented, and the practice uses Google Suite allowing for easy remote access. If you are interested in exploring this opportunity, would like the freedom to be your own boss, and/or increase your current book of business substantially, then this is perfect for you! Email info@privatepracticetransitions.com or call 253-509-9224.

Thriving Grants Pass, Oregon, family law practice with cases in Josephine and Jackson Counties. The owner has built a firm with a stellar reputation and desires to sell the business as a turnkey operation in order to retire. The average gross revenue for the past two years is over $530,000, and the 2019 Seller’s Discretionary Earnings (SDE) was over $350,000! The practice/case breakdown is 100% family law. The practice was established in 1975 and is located in a desirable, fully furnished office. The practice employs three staff, including the owner. Email info@privatepracticetransitions.com or call 253-509-9224.

Real estate legal practice with two locations is headquartered in the fastest growing metro area in the fastest growing state (Idaho). This real property law firm has two locations (Spokane and Coeur d’Alene), two attorneys, three support staff, and average gross revenue over $625,000 the last three years (2017-2019). For more information on this turnkey practice, contact info@privatepracticetransitions.com or call 253-509-9224.

Established Pierce County insurance defense practice that was established in 1998 and has approximately 125 active clients as of June 2020. The average gross revenue the last three years was over $1,017,000. The practice/case breakdown by revenue is 50% bodily injury, 10% property damage, 10% product liability, 10% professional liability, 10% plaintiff work, and 10% other. Contact info@privatepracticetransitions.com or call 253-509-9224.

Established Seattle estate planning practice that has a practice/case breakdown by revenue of approximately 45% estate & trust administration, 40% estate planning, and 15% other (collateral matters, estate tax preparation, real property issues, etc.). The practice is located in the heart of downtown Seattle, has average gross revenue of over $259,000 the last three years (2017-2019), and is poised for growth under new ownership. Contact info@privatepracticetransitions.com or call 253-509-9224.

Extremely profitable Seattle immigration law practice that has average gross revenue of over $1,600,000 the last three years (2017-2019). Even more, in 2019 the gross revenue was over $1,800,000! This successful firm has substantial advance fees in trust. The practice employs two attorneys in addition to the partners, seven paralegals, three full-time administrative staff, and one part-time support staff. If you are interested in exploring this opportunity, would like the freedom to be your own boss, and/or increase your current book of business substantially, then this is perfect for you. Contact info@privatepracticetransitions.com or call 253-509-9224.

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Available for sublease from law ﬁrm in Class A space up to six ofﬁces and three cubicles on 38th ﬂoor of Bank of America Plaza at 800 Fifth Ave., Seattle, 98104; three blocks from King County Courthouse, shared conference room and kitchen. $1,200 p/office, $400 p/cubiclite. Call David at 206-805-0135.

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WILL SEARCH

Searching for the last will and testament of David J. Rausch of Spokane, who passed away on March 27, 2020. If you have any information, please contact his daughter, Monica Blum, at 206-300-0220 or monica@octheater.com.

LOST WILLS!!! Attorneys, did you draft two wills for Carol Cepa in approximately 2014-2015? If so, please contact paralegal Christine Haselden at chaselden@helsell.com, or call 206-292-1144.
We’d Like to Learn About You!

Email wabarnews@wsba.org to request a questionnaire.

Andrés Muñoz

BAR NUMBER: 50224

LAW SCHOOL: Seattle University School of Law

I currently serve as a criminal defense attorney in Yakima. I am also a board member of the Latina/o Bar Association of Washington and the Unemployment Law Project. I can be reached at andres.munoz@co.yakima.wa.us.

Before law school, I was a college student and active in the Chicana/o activist group, MEChA.

My greatest accomplishment as a lawyer is winning a grant of withholding of deportation for a woman and her teenage son seeking asylum while fleeing gang violence in El Salvador.

The best advice I have for new lawyers is: Stay true to your values. Seek experience in legal writing and oral advocacy.

My long-term professional goal is to contribute to significant changes in legislation or judicial decisions that will improve the lives of marginalized people.

I wish that more lawyers would not shy away from speaking up against injustice.

If I could have tried one famous case, it would be Gideon v. Wainwright, the SCOTUS case that required states to provide an attorney to people in criminal cases who could not afford one. Though, Mr. Gideon did quite well on his own.

The most humbling experience I have had as a lawyer was losing a case at the Court of Appeals.

During my free time, I play electric guitar and watch history documentaries.

The most memorable trip I ever took was to southern Mexico, specifically Oaxaca and Chiapas.

If I took one day off in the middle of the week, I would write a Johnny Cash-style Western song.

My best recipe I make at home is pozole.

My fitness routine is weightlifting, bouldering, and running.

My favorite place in the Pacific Northwest is the Wonderland Trail, Mt. Rainier National Park.

This changed my life: having a baby girl.

I grew up in Beacon Hill, Seattle.

My fondest childhood memory is visiting family in El Paso, Texas, and Chicago, Illinois.

I worry about racial injustice and climate change. Aside from my career, I am most proud of this: being an Eagle Scout.

This is on my bucket list: singing in a heavy metal band.

This makes me roll my eyes: people who don’t understand the point of the Black Lives Matter movement.

My favorite restaurant is Cowiche Canyon in Yakima.

My dream trip would be a tour of South America by motorcycle with stops in the Atacama Desert, Salar de Uyuni, Machu Picchu, and the Amazon.

I would like to learn to play the banjo.

My favorite band/musical artist is Metallica.

My favorite visual artist is Diego Rivera.

If $100,000 fell into my lap, I would travel through the Eurasian Steppe.

If I could get free tickets to any event, I would go to Woodstock, August 1969.

My all-time favorite TV show is Black Mirror.

My hero is Emiliano Zapata, a leader in the Mexican Revolution.

I became a lawyer to fight for those whose voices are often ignored and to apply the law in a just and meaningful way.

Muñoz and his daughter, Ayelech, and his partner, Adanech.
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