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Making the Case for Mindfulness and the Law
by Rhonda V. Magee

Meeting the Challenge
An Interview with University of Washington School of Law Dean Kellye Testy interviewed by Claire Been

WSBA’s Call to Duty
Readying Our Corps to Serve Washington Veterans by Ana Selvidge

Help JAGs Help Servicemembers
by Captain Kevin Boden

Dancin’ in the Moonlight
Pros and Cons of Second Jobs for Lawyers by Natalya Maze

Lessons Learned from My First Jury Trial
by Joel Matteson

Tips for Successful Nonprofit Board Service
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Guided by Wayfind — Ethical Fashion Is Changing Lives
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**Submission Guidelines**

*NWL*Lawyer relies on submissions from WSBA members and nonmembers that are of interest to readers. Please contact the editor if you have questions about your submission or to discuss a topic for an article. Send articles to nwlawyer@wsba.org. Articles should not have been submitted to any other publications and become the property of the WSBA. Articles typically run 1,500 words. Citations should be incorporated into the body of the article and kept to a minimum. Please include a brief author’s biography, including contact information, at the end of the article. High-resolution graphics and photographs are requested. Authors should provide a high-resolution digital photo of themselves with their submission. The editor reserves the right to edit articles as deemed appropriate. The editor may work with the writer, but no additional proofs of articles will be provided. The editor reserves the right to determine when and if to publish an article. *NWL*Lawyer is published nine times a year (FEB, MAR, APR/MAY, JUN, JUL/AUG, SEP, OCT, NOV, DEC/JAN) on or about the first of the month. The current circulation is approximately 31,000.

**We hear you**

It is extremely gratifying to read the article by Jerry Paulukonis concerning the looping of the WSBA Conference Center for people such as myself who are hard of hearing [MAR 2014 *NWL*Lawyer]. I have resorted to my own personal looping system which is portable and I carry with me to court every time as well as taking it to conferences, so that I can ensure whether I hear the speaker referencing an “employer” or a “lawyer” — as I lose the consonants every time without the system.

This acquisition by the Bar Association should lay, in part, to rest any claims that the association is not responsive to its members where the bar fees go.

*Mark T. Patterson II, Everett*

**Reporting clients’ crimes**

The article “The Unethical Use of Immigration Status in Civil Matters” in the MAR 2014 issue properly highlights the serious ethical concerns raised when possible illegal immigration status is used to threaten or harass an opposing party in civil litigation. However, there is a competing ethical concern: in general, known or suspected lawbreakers should be reported to the authorities. What if we discover that an opposing party is, for example, illegally discriminating and seems to be getting away with it since the victims are too intimidating and seems to be getting away with it? Perhaps the ethical line to be drawn is this: if the opposing party — or anyone else — is violating the law, don’t threaten to report it, don’t use it in your litigation, just simply report it.

*Philip T. Mattern, Seattle*
For the past six years, I have gotten away with writing whatever tumbled into my mind each month and publishing it on the back page of this magazine. Although I named the column “Bar Beat,” it usually had little to do with the Bar Association or the practice of law. Instead, I have documented things like the slow death of a beloved family dog and revisiting the county fair to find the rickety roller coaster my kids used to ride. I’ve regaled you with true-life adventures from my younger days, such as quitting college to play music in Seattle dive bars and arguing with Bill Gates in front of the King County Courthouse. And I’ve made stuff up, like the rival lawyer who was using steroids to get an edge in the courtroom, and the conversion of UW’s Condon Hall to a state prison after the law school moved. I’ve admitted to knocking over a row of brand new BMW motorcycles, locking myself in a borrowed car on the way to speak at a graduation, dating (in college, please note) an exotic dancer who lived with 30 cats, and being a jerk while a pet goat died in my then-wife’s arms. I’ve recounted tragedies both small (my childhood tonsillectomy) and large (the Christmastime murder of a neighbor a few years ago). All the while, I’ve been waiting for someone to pull the plug, noticing that a whole page of every issue is about nothing but some irrelevant thing and feelings provoked by topics other than the usual bar publication fare.

But after 70 or so installments of Bar Beat, I’ve decided it’s time to pull the plug myself. Over the past couple of years, the WSBA communications staff, the Editorial Advisory Committee, and I have put a lot of effort into improving the publication, which includes better planning and improved focus on subjects we believe are of interest to our readers. I remain as editor and will continue to write a monthly column. However, my new offering will be at the front of the magazine and oriented toward the topics our other authors are covering. I’ll also continue to contribute other content to NWLawyer as well as NWSidebar, the WSBA blog. Although the format will be different, I’ll continue to employ humor, anecdotes, and off-the-cuff philosophizing to make my points.

In this issue, I especially recommend you check out the President’s Corner by Patrick Palace on page 7 and “Making the Case for Mindfulness and the Law,” by Rhonda V. Magee, Professor of Law and Dean’s Circle Research Scholar at the University of San Francisco, on page 16. Both consider the topic of mindfulness in the legal profession. Yeah, I know, “mindfulness” conjures up images of beaded curtains, incense, and Yanni albums. But President Palace and Professor Magee aren’t just talking about ways to bring greater meaning to our work and lives, they’re also describing mental skills we and coming generations of lawyers will need to keep our minds from imploding under the pressure generated by revolutionary changes in our profession and society in general.

Also this month, you’ll find the last of our interviews with the deans of Washington’s three law schools, this being a fascinating Q&A with the UW Law School’s Kellye Testy. We also have the introduction of Call to Duty, the WSBA’s new public service program for veterans, as well as a piece by an Air Force JAG regarding the legal needs of active duty military personnel. You’ll also find an article by Judge Laura Middaugh on plain-language legal forms, a prime example of the Access to Justice Board’s impact as it celebrates its 20th anniversary, two Washington Young Lawyers Committee pieces on lessons learned from a member’s first trial and moonlighting at attorney's, and a handy top-10 list of Washington legal research resources.

So say farewell to Bar Beat and enjoy a mindful April and May. In June, we’ll be back with more articles and stories written for you and exclusively for your NWLawyer. NWL
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Focusing on the Present

In 2011, the Seattle Seahawks began their journey to becoming Super Bowl Champions when they hired Dr. Michael Gervais to lead team meditation sessions. At one session, Dr. Gervais began guided meditation for the team with these words: “Quiet your minds,” “Focus your attention inwardly,” and “Visualize success.” They did. It worked, and they brought home the rings to prove it.

Dr. Gervais, a high-performance sports psychologist, “works in the trenches of high-stakes environments, where there is no luxury for mistakes, hesitation, or failure to respond.” According to Dr. Gervais, he has “created a performance model that allows people to achieve their maximum potential, whether on or off the field.”

Russell Wilson schedules individual weekly sessions with Dr. Gervais. Seahawks player Russell Okung says of meditation that it “is as important as lifting weights and being out here on the field for practice.”

The Seahawks, however, are not the first team to reap the rewards of mindfulness meditation. George Mumford is a sports psychologist and meditation teacher. Mumford worked with Phil Jackson’s Chicago Bulls and Los Angeles Lakers who, combined, won six NBA World Championships (Chicago Bulls 1996–98 and the Los Angeles Lakers 2000–2002). According to Mumford, the key is focus: “It is a lot harder to conquer yourself than it is to conquer others. This is the hardest thing we have to do, but it is also the most beneficial.”

Mumford says, “It all happens in the present moment. This moment is all we’ve got. It is only in the present moment that we can make changes. And you are not just making these changes for yourself; you are doing it for everyone. Everyone will benefit.”

Dr. Gervais agrees. “We can learn something here from some of the best athletes in the world,” he says. “What they do can be used outside of football. It’s relevant to any type of performance whether it’s on the football field, the boardroom, or the living room.” (And, I would add, the courtroom and dinner table.)

The success of mindful leadership flows from a practice focused on the present. What does that look like? Russell Wilson exhibits mindful leadership when he completes the third-down pass or makes the first-down run as the opposing defense crushes in around him. Where does he find his calm in the moment? How can he think so clearly with the clock ticking, the game on the line, and 11 opposing players trying to take him apart? The answer is simple: He and Dr. Gervais train for it. Wilson says, “We talk about being in the moment and increasing chaos throughout practice, so when I go into the game, everything is relaxed.”

In everyday life, we as lawyers also swim in chaos. Athletes don’t own all the challenges. For example, a lawyer’s day is measured in six-minute increments and often into seconds; seconds to scan our electronic devices continuously, make choices to read, respond, ignore, share, or read more. We are attached 24/7 to a vast array of energy-sapping, anxiety-producing, screened devices that overwhelm, overload, and, ironically, disconnect and isolate us. The sheer volume of information that bombards us by the minute deafens us with electronic white noise and forces us into screen-based incarcera-
In 1994, 800,000 people were slaughtered in 100 days in Rwanda. Twelve years later, the United Nations was still sorting out the legal issues involved in this genocide. I was privileged with a clerkship at that tribunal. My involvement at the UN confirmed my Passion to Fight Injustice. But injustice isn’t always massive, and it can happen anywhere. I recently defended someone falsely accused of domestic violence. At trial, the complaining witness took the stand. My rigorous cross-examination proved the entire story was a lie. The judge called a recess. The prosecution dismissed the case. After months of hardship, my client got justice.

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- Demetri Heliotis
Attorney at Law

We can’t do two things at once. When we try, we make bad choices, give indecisive decisions, make half-considered guesses, and we physically and verbally fumble, which can lead to dangerous and unforeseen outcomes.

Don’t believe me? Try this: Count to...
seven as fast as you can. Easy, right? Now recite your ABCs from A to G as fast as you can. I know, you are on fire. Nicely done. Now, applying all your multitasking skills and superhuman speed, do both together: 1-A, 2-B, etc. Come on, faster, as fast as you did 1-7 or A-G. What’s slowing you down?

Here is the reality: multitasking is the equivalent of trying to drive while being impaired by alcohol. Check out the highway safety stats for people texting and driving... I mean multitasking. Why would you place your life at risk in your car? But here is the better question: Why would you treat your job, your reputation, your partners, and family and friends like that? Why give them the impaired you when you could be “in the zone?”

Here is another way to look at it. There are times when leaders make bad choices, but it’s not likely because of a low IQ (despite how poor the choice may appear). I would suggest that, most of the time, it’s because that person was living an over-taxed, hard-charging, white-noise-filled and time-pressed existence. That person allowed their life to be lived on autopilot, never taking time to break free to be present. Living like this leads to reactive decision-making that is seen as careless, dumb, or without insight or understanding.

Even worse, maintaining a life like this often leads to a laundry list of adaptive behaviors as a method of “self-medicating” or escaping. Because lawyers often live this rapid-fire, quick-decision, time-pressed lifestyle, they have some of the highest incidences of alcohol abuse, illicit and prescription drug abuse (overuse of sleeping pills, over-reliance on anti-depressive and anti-anxiety medications), stress-induced insomnia, depression, eating disorders, and more.

**Finding Space**
We know from studies that our mind, our brain, craves space. People are five times more likely to make the right choice if they have time to think about it. We need to make space in order to be creative, to see the bigger picture, to find answers, and to break the chains of a dulled, multitasking, treadmill existence. We need space and relief first, and then perhaps the need for harmful behaviors can dissipate. We need space first, before we can feel like ourselves again and let our brilliance shine through once more.

You know how this works. How many times have you left on vacation and just as you finally remove your mind from work, all of a sudden the answer hits you right out of thin air? You weren’t even thinking about it and BAM! — there it was.

The power of giving our brain some space is unequaled as a tool for success as a leader, a lawyer, a spouse, and a parent. It returns our focus, helps us see our true priorities, invigorates creativity, gives clarity and it leads to well-made decisions, both big and small.

However, “making space” doesn’t necessarily require a vacation. The same benefits can be found by being present, even for a moment. “Meditation” is a scary word for some. (I know, and I have...)

We are truly saddened at the passing of our friend, partner and mentor.

Wayne’s guidance, humor, kindness and leadership through many years will be greatly missed.
heard it. It sounds like this: Meditation is some New Age, psycho-babble, hippie-hugging fad that sedentary long-haired, pot-smoking dropouts embrace because they don’t have a job.) But the benefits of meditation come from being able to pause and notice the present. Estimate how much time your mind plans for the future, rethinks and reanalyzes the past, and how little you visit this very moment, right here, right now.

The last time you drove your commute, how much time did you spend in the present? Are there times you don’t even know how you got home? Do you remember becoming aware only as you drove into your driveway? How often are you making mental lists, checking off todos, thinking of another time or another place? Ask yourself this: Where do you live your life: more here, or more there? I promise you this: Russell Wilson knows where he was every minute of the game. His mind was not making shopping lists, planning the post-game party, or diverting its attention and focus on anyone or anything that was not right there in front of him.

**The Pause**

The key to great leadership, being in the zone and making good decisions, is all in the ability to pause, even for a moment and notice, just notice. Don’t react. Let the world whirl; you have the key to the Matrix. Observe your feelings, the lump in your throat, your anxiety, fear, happiness, fatigue, or excitement. Notice it, and watch it like a television screen. You have the remote. You can stop and change the channel. You are in control. You can reset and begin again, but only if you can pause first and find the calm.

No pause means that you probably didn’t notice that you’re getting angry, or scared, or that you are feeling out of control. No pause means you just got your buttons pushed and you are about to act in a way that you will not be proud of later. No pause and you get sacked. No pause and you don’t know what to do in a clutch situation. No pause and you can’t find the calm to handle the challenge. No pause: no zone.

But with the pause comes the calm, the separation from the reactive decision you would have made. With the pause, you have focus, you have time, and you enter the zone where you make

**While mindfulness isn’t new to other professions, it is new for many lawyers. It may not revolutionize your life, but it may help you find your zone, your calm, and your vacationed mind.**
your best decisions.

Once during a week of trial in federal court, the judge required the plaintiff's attorney to produce his next witness and threatened that if he did not, he would dismiss the case. The final witness of the day had testified and 10 minutes were left in the day. The attorney had no witness to produce until the next day, when he had scheduled a doctor to testify. The judge demanded the next witness. As his gavel rose to dismiss the case, the attorney didn't panic, but found his pause and his calm. In that space, he had time to see all his options and to make a reasoned decision. Before the gavel struck, he asked the judge for an offer of proof. When the clock struck four, court was adjourned, with the case scheduled to continue the next day. Mindfulness prevailed.

On page 16 of this issue of NWLawyer, Professor Rhonda Magee explores the history and the supportive neuroscience behind mindfulness meditation. She writes as a practitioner, a researcher, a teacher, a lawyer, and a human. Please read it. We are lucky to have her in NWLawyer. The next time you are in court and have to make a critical decision under pressure, you may find yourself thanking Professor Magee.

The Bottom Line
The bottom line is that the world is changing around us and we must find tools to not only survive, but to thrive. While mindfulness isn’t new to other professions, it is new for many lawyers. It may not revolutionize your life, but it may help you find your zone, your calm, and your vacationed mind. So I won’t tell you that it is “the answer,” but it is a tool that will give you answers.

If you approach mindfulness with an open and curious mind, you may find that a young quarterback’s wisdom leads beyond the Super Bowl. So take a moment and pause, and follow the words of Dr. Gervais: “Quiet your mind,” “Focus your attention inwardly,” and “Visualize success.” It might, just might, be the beginning of something big for you, too.

WSBA President PATRICK A. PALACE practices in Tacoma. He can be reached at patrick@palacelaw.com or 253-627-3883. Follow him on Twitter: @palacelaw.
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What’s Behind the Numbers?

On the following pages (pp. 16 and 17), you will find a report by WSBA Governor and Treasurer Brian Kelly outlining the Fiscal Year 2014 budget and how license fees are distributed across WSBA programming. As you will see, license fees are used for regulatory requirements, mandatory functions, and other programming consistent with the WSBA’s mission and General Rule 12.1.

Over the past five years or more, the WSBA has been working to reduce its spending and to more closely align all programming with its core role of serving members in furtherance of our regulatory mission to serve and protect the public. The WSBA has also increased revenue through the Bar Foundation and other non-license-fee sources in an effort to reduce the pressure on license fees and keep them as modest as possible.

As you read through the details of the budget on the following pages, keep in mind that leadership at the WSBA has been keeping its eyes on the trends impacting the profession and has been implementing responsive programming. Two of those trends arise from our members transitioning out of and into the practice of law. On one hand, a large portion of our membership is transitioning out of the practice as the baby boomers reach retirement age; meanwhile, new lawyers entering the profession need more assistance with practice skills and the training to set up efficient and ethical practices. The expanding unmet civil legal needs of low- and moderate-income clients has also heightened in the wake of the Great Recession, and the WSBA has implemented programming both to help the public access needed legal services and to assist our members in accessing these clients.

It is no secret that technology is rapidly changing our profession, and the WSBA has worked not only to use technology to keep the costs of running the Bar low, but also to bring greater access to services and information to our members statewide and indeed even nationwide. Many of these latter enhancements can be found in our online licensing, admissions, and MCLE tracking, as well as through increased access to top-notch CLE programming through our website. We hope that you know about and are already taking advantage of the free WSBA CLE offerings once a month through our Legal Lunchbox series!

In my column last month, I outlined many new WSBA programs and services that bring more value to your license fees while ensuring we are meeting our regulatory responsibilities to the public. As you read through the Fiscal Year 2014 budget information, I hope you will realize that the WSBA has worked hard to hone its programming to be relevant to both our members and the public.

We often get questions about why so much of our budget is spent on discipline (which includes both our prosecutorial and adjudicative functions). First and foremost, the WSBA is a regulatory body charged with credibly and effectively regulating the profession consistent with the standards set by our Supreme Court in both the Rules of Professional Conduct and other court rules. The annual fee you pay to the WSBA is a license fee, similar to the fee you pay to the DMV for the privilege to drive your car. As such, much of our budget is analogous to the budget of many regulatory agencies operating to serve those who provide the regulated services and those who must access those services. Yet I often also describe the discipline function of the WSBA as a member service: The WSBA ensures the integrity of your license by holding Washington lawyers...
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Scott Andrews, CPCU
scott.andrews@hubinternational.com
425.368.1262

Teri Murphy
teri.murphy@hubinternational.com
425.368.1230

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Scott Andrews, CPCU
scott.andrews@hubinternational.com
425.368.1262

Teri Murphy
teri.murphy@hubinternational.com
425.368.1230

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Paula Littlewood is the WSBA executive director and can be reached at paulal@wsba.org.

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Left to right: Kathleen Keenan Kindred, Robert H. Thompson and Thomas A. Thompson
Top: Robert J. Heller and Patrick C. Cook
Bottom: Jonathan K. Winemiller and Michael J. Costello
The Washington State Bar Association (WSBA) serves the public and nearly 36,000 lawyers, ensuring the integrity of the legal profession and championing justice. Here is an overview of WSBA programs and activities, showing how they are funded in FY14, and detailing how we spend each dollar of your license fee.

1 **GENERAL FUND:** The General Fund supports our regulatory functions and most services to members and the public. Historically, license fees have supported about 75% of this work; the balance has been supported by non-license fee revenue (such as investment and interest income; donations from the Washington State Bar Foundation; fees related to mandatory CLE, regulatory, and member services; advertising and sponsorships; recovery of discipline costs; and reimbursement from sections).

In FY14, we held license fees at $325 (the 2001–02 level) for the second year in a row. This means that license fee revenue will only cover 64% of General Fund programs and operations. We are continuing efforts to expand non-license fee revenue sources and increase operational efficiencies; however, we may use up to $2 million in reserves to support this work. The companion chart on the next page provides more detail about General Fund activities supported by license fees in FY14.

2 **LAWYERS’ FUND FOR CLIENT PROTECTION (LFCP):** The LFCP Fund exists to make gifts to compensate those financially victimized by lawyer dishonesty or failure to account for client funds or property. It is funded exclusively by an annual assessment on all active members and pro hac vice admissions as required by the Washington Supreme Court. The assessment has been $30 since 2010. No license fees are used.

3 **SECTIONS FUND:** Over 10,000 members currently belong to one or more of the WSBA’s 28 practice sections, which provide an avenue for lawyers to increase their knowledge, pursue their interests, and develop professional networks among peers with similar practice interests. The Sections Fund consists of collective net income or loss of all sections carried over from year to year. Sections Fund dues and Section Fund reserves will be used in FY14 to cover costs. No license fees are used.

4 **CONTINUING LEGAL EDUCATION (CLE) FUND:** For more than 30 years, WSBA has provided high-quality continuing legal education programs and products that promote learning, enhance skills, and inspire high standards of practice. CLE activities are intended to be self-supporting. The CLE Fund consists of net income from CLE activities, which is carried over from year to year to cover net loss and extraordinary costs of CLE activities. CLE Fund reserves will be used in FY14 to cover costs. No license fees are used.
Brian J. Kelly is a WSBA governor and the WSBA treasurer. Both a lawyer and a certified public accountant, Kelly is a principal in the Chehalis law firm Hillier Scheibmeir Vey & Kelly P.S., where his practice focuses on business, tax, real property, probate, and municipal law, with an emphasis on business succession and estate planning. He can be reached at bkelly@localaccess.com.

DISCIPLINE & DISABILITY SYSTEMS: Includes costs to handle consumer inquiries and written grievances through disposition (including disciplinary counsel, hearing officer, and disciplinary board costs) and to administer the WSBA audit program. Last year, the WSBA handled 9,503 Consumer Affairs inquiries; reviewed 2,228 written grievances; dismissed 1,839 grievances; concluded disciplinary proceedings with 94 actions imposed (32 disbarments, 30 suspensions, 26 reprimands, and 6 admonitions); concluded 10 disability matters with transfers to disability inactive status; and diverted from discipline 30 less serious grievances. The WSBA Audit Program reviewed 131 trust account overdraft notices and conducted in-depth audits of 16 trust account overdraft files. In addition, WSBA disciplinary counsel and auditors spoke at 36 programs around the state, educating 2,500+ members, law students, and legal professionals about legal ethics, trust account compliance, and the lawyer discipline system.

LICENSING SERVICES: This category includes costs to process forms, license and respond to inquiries for nearly 36,000 members, and to maintain and respond to questions about members and their public membership information. Admission expenses are intended to be self-supporting; however, a fraction of the costs in this category supported expenses associated with the WSBA’s transition to the Uniform Bar Exam.

GENERAL COUNSEL: Services include legal representation to the WSBA, Board of Governors, and other boards, task forces, and committees; records request and litigation management; oversight, interpretation, and analysis of WSBA Bylaws and other legal issues; and investigation of unauthorized practice of law complaints.

OTHER LEGAL PROFESSIONALS: This category includes development costs for the Supreme Court mandated Limited License Legal Technician (LLLT) program. Once implemented, the LLLT program is intended to be self-supporting; revenues generated will be credited back to cover these development costs.

MEMBER BENEFITS & PROFESSIONAL DEVELOPMENT: Includes costs for Ethics Line (around 3,000 calls per year), Ethics School, Law Office Management Assistance Program, Lawyers Assistance Program; as well as WSBA-sponsored benefits, including free legal research (accessed by 22,000+ members last year) and our new member assistance program through Wellspring. This category also supports new and young lawyer education, training and leadership, and staff support to nearly 900 WSBA volunteers.

PUBLIC SERVICE & DIVERSITY: Supports the Access to Justice Board and WSBA’s public service programs, including the Moderate Means Program, and other pro and low bono initiatives that served 4,600+ members of the public last year. Additionally includes WSBA’s efforts to advance diversity and equality in the legal profession, as guided by the 2013 Diversity and Inclusion Plan. These activities are supported in part by a grant from the Washington State Bar Foundation.

COMMUNICATIONS & OUTREACH: Includes member support through the Service Center (63,000+ contacts last year); dedicated staff outreach to local, county, and specialty bars; member communications through WSBA’s NWLawyer magazine; WSBA’s blog, NWSidebar; WSBA’s website, wsba.org (1.68+ million visits in FY13); and the WSBA Career Center (185,000+ visits to job postings in FY13). Also includes legislative support provided to WSBA leadership and sections.

MANAGEMENT & OPERATIONS: WSBA Board of Governors, leadership, management, and internal support.

This chart reflects WSBA activities supported in any way by member license fees. It does not include income-generating services or programs that cover — or more than cover — their own costs (i.e., Mandatory CLE services, the Limited Practice Officer program, etc.).
By now, you’ve probably heard that mindfulness meditation may be beneficial to your health and well-being. With a new magazine, Mindful, devoted to it, and a cover story in Time, mindfulness is likely to continue to feature in prescriptions for living well and working effectively.

Few would argue that if the purported benefits of mindfulness prove accurate, no profession is in greater need of the benefits than the legal profession. The good news is that lawyers are beginning to discover these benefits. More and more, law schools, lawyers, and judges are examining the case for mindfulness meditation. They are reviewing the growing mountain of research detailing benefits from stress reduction to lower blood pressure, from increased empathy to improved performance on exams. And they are bringing these practices to bear to help lawyers support their own well-being and to improve their capacity to work more effectively.

As one of a small group of lawyers, law professors, and judges who have been working together for more than a decade to bring about these changes, I admit to being more than a little encouraged by these developments. While the research is not yet entirely conclusive, it provides ample ground for innovation in legal education and the training of lawyers bringing the benefits of mindfulness to the profession.

What is Mindfulness and Why Should Lawyers Practice It?

Mindfulness is one of a number of practices that assist people in becoming more aware of thoughts, emotions, and physical states, and thus more capable of concentrating and developing the capacity to approach each moment with fresh presence. The practices assist people in being more deeply present and capable of choosing their responses to stimuli in their environments. Combined with recent research confirming the capacity for changes in our brain’s functioning that may be supported by mindfulness, the case for including mindfulness among the trainings that lawyers undertake to support them in being their best over the course of their careers seems stronger by the day.

“Mindfulness” or “mindfulness meditation” is a form of contemplative practice, and is perhaps the most widely adopted and studied, to date. The term “mindfulness” may also be used to refer to the state of awareness and presence that commonly results from the practice of mindfulness meditation. It has been studied and introduced through a variety of religious or philosophical traditions, mostly Eastern in origin, and has become the focus of research within the fields of neuroscience and psychology. Researchers describe mindfulness as paying attention, in a particular way, with an attitude of nonjudgment, and with the intention of increasing one’s capacity for awareness in the present moment. It’s a universal practice that can improve the experience of any activity. As UCLA’s Dr. Daniel Seigel explains it, “Mindful awareness techniques help people move towards well-being by training the mind to fo-
...focusing our attention in this way is a biological process that promotes health — a form of brain hygiene — not a religion.\textsuperscript{12}

Indeed, neuroscientists have elaborated on the concept of mindfulness as a universal human capacity which enhances focus on subtle aspects of one’s experience of both the external and the inner world. But while mindfulness is a capacity inherent in everyone, the full flowering of benefits from the practices takes regular practice.

Contemplative practices that have been embraced by the legal community in various workshops, retreats, and CLE/CJE programs include sitting meditation, yoga, tai chi, qi gong, and contemplative journaling, contemplative dialogue, contemplative walking, focus on developing compassion and empathy, and mindful attention to communicating by telephone.

While lawyers and judges are often drawn to contemplative practices in search of stress management techniques, the practices provide a bridge to deep reconsideration of how more meaningfully, ethically, and effectively to practice law in service to clients and community, and, if desired, to broader spirituality. Recent criticisms of lawyers and legal education highlight the need for greater attention to increasing lawyers’ capacities for self-awareness and ethical civic engagement. Contemplative practices that increase these capacities for self- and relational-awareness and ethical leadership among lawyers provide an avenue open to anyone willing to practice.

The Brief for “Law and Mindfulness”: An Overnight Success 15-plus Years in the Making

The first systematic effort to introduce mindfulness into the legal profession occurred in 1989, when Jon Kabat-Zinn, director of the Center for Mindfulness in Medicine, Health Care and Society in Boston, offered a program on his signature Mindfulness-Based Stress Reduction to judges. Subsequently, mindfulness was introduced into the legal profession through sessions on mindfulness for mediators and mindfulness meditation training at the 400-lawyer home office of the Boston-based law firm Hale and Dorr. In 1999, the American Bar Association published Steven Keeva’s Transforming Joy and Satisfaction to the Legal Life, which contributed to the identification of efforts among lawyers to change the practice and training of lawyers — often including contemplative or mindfulness practices.

Nevertheless, legal historians will likely mark 2002 as the seminal year in the development of the contemplative lawyering movement. In that year, the Harvard Negotiation Law Review hosted a forum to discuss the implications of mindfulness meditation for legal practice and alternative dispute resolution, in conjunction with its publication of a symposium around an article by Professor Leonard L. Riskin on that topic. Professor Riskin outlined the ways that meditation assists in the development of the skills needed for more sustained, effective lawyering by enhancing law students and lawyers’ capacity to think in ways not typically valued within the “Lawyer’s Standard Philosophical Map,” including ways that assist lawyers in better connecting with, assessing, and meeting the needs of their clients.

As the first decade of the 21st century progressed, efforts to introduce contemplative practice to lawyers, law students, and judges continued to increase, with independent meditating lawyers groups forming across the country. More than a dozen for-credit courses have been offered by a small but growing list of law schools, including the University of California, Berkeley School of Law, and the University of San Francisco. The courses are among the first to introduce contemplative approaches to lawyering into the traditional law school curriculum, either as stand-alone courses or as components of courses on alternative dispute resolution or other skills. They join other in-school offerings that expose students to mindfulness training in the law school environment, either directly or through the resources of the larger university.

Practicing lawyers and mediators are also benefiting from the increasing offerings of meditation training among CLE programs for credit towards the requirements of their state bar associations. Contemplative lawyering groups have formed within the bar associations of New York and Washington, D.C., and formally or informally in other major cities across the country. In Seattle, Washington Contemplative Lawyers, formed in 2010, now has over 100 members. And mindfulness training for judges, while still relatively uncommon, is also taking place in experiments in Washington and across the country.

The movement reached an important turning point in 2007 with the publication of the first law review article on mindful lawyering to appear in a top-ten law review, setting forth an approach to contemplative law that embodies high aspirations for its contributions to positive social change. In “From ‘The Art of War’ to ‘Being Peace’:
Mindfulness and Community Lawyering in a Neoliberal Age,” Angela Harris, Margaretta Lin, and Jeff Selbin draw together the economic and community-justice work of a particular community lawyering organization with mindfulness, as an “approach . . . toward reconciling personal and professional roles.” Moving beyond stress reduction, the authors set out a distinctly different, more complex, and more ambitious conceptualization of the connection between mindfulness and lawyering: that of aiding the lawyer in accomplishing the “collective work of peacemaking” in diverse communities and on behalf of “subordinated and disenfranchised” people. Professor Harris and her co-authors see mindful lawyering as providing “a framework for thinking about how individual action is tied to group process, how group process connects to institutionalized relations of power, and thus how transformational change at the interpersonal level is linked to transformational change at the regional, national, and global levels.” In Washington and California, the links between mindfulness and the management of implicit bias has been explored in CLE programs. In short, mindfulness can also be a transformative tool in support of the elimination of bias and the achievement of social justice.

The work of exploring the full range of benefits of contemplative practice for law and lawyers continues. In 2010, the University of Nevada, Las Vegas, published a symposium edition dedicated to meditation and law. The lead article, by Leonard Riskin, focused on the role of mindfulness meditation as a means of handling the complex emotional context that attends most negotiations, and the symposium generated eight responses — each helpfully challenging and elaborating Riskin’s thesis. And the first national conference on meditation and law, which took place in October 2010 at the University of California, Berkeley School of Law, brought together a cross-section of lawyers, law professors, and judges looking at the intersections from a variety of angles. A follow-up conference for law professors last June, sponsored by the Berkeley Initiative for Mindfulness and Law, drew more than 50 law professors and law school support staff from over 30 law schools.

As law schools begin to incorporate these practices, lawmakers are taking notice: in his new book, A Mindful Nation, Ohio Congressman Tim Ryan prescribes research and initiatives in mindfulness to assist lawmakers and citizens alike in resolving tough problems at every level, and improving our communities.

The 2010 Berkeley conference was also important for the current development of contemplative practices within the Washington State Bar. Sevilla Rhoads, a labor and employment lawyer at Seattle’s Garvey, Schubert and Barer, met Sherry Williams, a long-time public defender for Pierce County (now retired), at the conference. They returned to the Seattle area with a commitment to expand opportunities for the development of contemplative practices and law in Washington. They joined with others and established the Washington Contemplative Lawyers (WCL), which holds weekly group meditation sessions at the Bar office. Through the groundbreaking contributions of Rhoads, Williams, and others, WCL has since offered numerous programs on mindfulness and law for WSBA members, including presentations for the statewide Washington Attorney General offices and Washington Women Lawyers.

In 2012, WCL collaborated with Seattle University to hold a symposium on mindfulness and law, where speakers and lawyers described how these practices provide support. The sold-out, day-long event offered CLE credit and I had the honor of leading the audience in an exploration of the personal, interpersonal, and inter-systemic benefits of mindfulness. In a brief meeting, then-President-elect Patrick Palace and I discussed his visionary commitment to work toward continued infusion of contemplative practices into lawyer education, in support of both lawyer well-being and effective client service. As a follow-up, Palace and WSBA leadership planned an innovative exploration of contemplative practices for lawyer well-being and effectiveness in a session co-led by Sherry Williams. Under President Palace, the Washington State Bar has emerged as a leader in integrating opportunities for lawyers to how these practices might assist in making the most of their practices, for the benefit of themselves, their clients, and the broader communities they serve.

Test the Case: An Eight-Week Challenge

In short: the slow but sure expansion of law school course offerings, CLE workshops, retreats for the bench and bar, as well as cutting-edge scholarship, confirms that interest in mindfulness and law has grown steadily within the profession over the past decade and that, across a variety of practice settings and objectives, it works.

So, has the case for exploring mind-
For your really tough case on appeal—CALL US.
We have a track record of success:

(ends completion/acceptance doctrine)

(strict liability is retroactive)

Little Mountain Estates Tenants v. Little Mountain Estates MHC, LLC,  
169 Wn.2d 265, 236 P.3d 193 (2010)  
(mobile home landlord tenant act)

Phoenix Development v. City of Woodinville, 171 Wn.2d 820, 256 P.3d 1150 (2011)  
(city’s denial of rezone)

Whatcom County Fire District No. 21 v. Whatcom County, 171 Wn.2d 421, 256 P.3d 295 (2011)  
(authority of fire district)

(adverse possession of dedicated alley)

(tribes not indispensable parties to litigation)

(application of estate tax to qualified terminable interest trusts)

(city liability in service of anti-harassment order)

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Stress Less: Mindfulness 101
June 18, 2014, noon–1:30  
WSBA Conference Center and Webcast  
CLE credits pending.

This program is designed to provide attorneys with tools they can use to cope more effectively with stressful lives and demanding professions. Mindfulness as a practice and as a lifestyle challenges the belief that we can productively multitask, instead suggesting that one can both improve productivity and decrease stress by learning to focus awareness on the present moment.

Presenters: Patrick Palace, WSBA President, and Sherry Williams, former Pierce County public defender and cofounder of Washington Contemplative Lawyers

To learn more: http://bit.ly/workandwellness

Rhonda V. Magee is professor of law and Dean’s Circle Research Scholar at the University of San Francisco, where she teaches torts, race and law, and contemplative lawyering. She serves as president of the board of the Center for Contemplative Mind in Society. She has it on good authority that Washington Contemplative Lawyers meets every non-holiday Monday at the Washington State Bar Association offices for both a facilitated mindfulness exercise and how to implement mindfulness into law practice. Sign up early for WCL’s programs: they regularly fill up.

Rhonda V. Magee

1. The group grew out of the Center for Contemplative Mind in Society’s Law Program as the San Francisco Bay Area-based Working Group for Lawyers History, Center for Contemplative Mind in Society, www.contemplativemind.org/about/history.html (last visited Feb. 17, 2011). While the law program ceased to exist as a program of the Center for Contemplative Mind in Society in January 2012, the center continues to support the development of academic programs for law students.

Meeting the Challenge
An Interview with University of Washington School of Law Dean Kellye Testy

n this final installment in a series of interviews with the deans of the three law schools in our state, Seattle attorney Claire Been sat down and talked with Dean Kellye Y. Testy of the University of the Washington School of Law. In 2009, Dean Testy became the 14th permanent and first female dean of UW Law. Dean Testy is known throughout academic and legal communities for her dedication to the rule of law and its commitment to justice and equality. She served as chair of the UW Presidential Search Committee in 2010-11 and was elected chair of the Board of Deans and Chancellors. Dean Testy is also on the Executive Committee of the Association of American Law Schools. Prior to UW Law, she was dean at Seattle University School of Law.

CLAIRE BEEN: How did you come to be the dean of the University of Washington School of Law?

DEAN KELLYE TESTY: Let me start by giving a little background. I am a first-generation college graduate who grew up in southern Indiana. I believe that education is a privilege and that broad and affordable access to education is critical. Public higher education is especially important to me because public institutions have always been the “great equalizers” in our society.

I was eager to go to college because of my interest in playing college basketball, and even though I soon found my love of academics trumped my love of basketball, I have always been grateful for that encouragement into higher education. After graduating, I worked in marketing for several years in Northern California. After that, I returned to Indiana to attend law school — the only law school to which I applied. I loved it. During law school, I worked for Kirkland & Ellis in Chicago and after I graduated, I clerked for the Seventh Circuit Court of Appeals.

I transitioned into academia after my clerkship ended. David Skover, a University of Puget Sound professor, taught as a visiting professor at Indiana and encouraged me to apply there to teach law. I started teaching in 1992 and in 1993, Seattle University bought the school.

Though I continued teaching, I became involved in administration early in my career as I tried to help the school integrate into Seattle University. Over the transition period, I played a strong role in forming the identity of the new school.

When the school was looking for a new dean, my colleagues looked to me to step into that role.

I was at Seattle University for a total of 17 years, around five as dean, and I began to perceive that it was time to provide space for new leaders in the law school. Sometimes the strongest way to grow new leaders is to step out of the way and give them room to lead. I was eager to remain part of Washington’s legal community, so I was excited when the provost of the University of Washington called me about their dean search. It was a good time for leadership transitions at both schools and I became the dean of UW in 2009.

Is there anything that surprised you about being a dean?

When you first become a dean, it is surprising how little you know about much of the school and the university, even when you have been at that school. There are many parts of operations that faculty just don’t see. Also, it surprised me how much I miss my students. As dean, it is harder to really get to know students when you are not in the classroom consistently. At UW, I try to get to know them through having lunch with each class periodically, going to events, teaching as a guest in my colleagues’ courses, and just being in the halls to interact with the students.

What do you like most about being dean of the University of Washington School of Law?

What I like the very most about being a dean is that I get to help faculty, staff, and students achieve what they want to do, helping them knock down barriers to their goals. I love trying to make the whole more than a sum of its parts. At UW in particular, I love how we have been able to balance having a very ambitious school with also having a collegial school. Sometimes those two things don’t go together, but here they do. I also love the global scope of the school and the interdisciplinary collaborations we have with the rest of the University. Also, the alumni at this school are really amazing. Our graduates do such diverse things with law, and seeing the diverse things that people do with a law degree is very rewarding.

What has been different about being the dean of Seattle University versus University of Washington?

The schools are very different because their universities are very different. Also, the age of the schools makes a big difference. UW Law is almost 115 years old whereas SU moved to Seattle in 1999 — changing cities and institutional affiliations when it did so.

The primary difference is that UW is a major public research university. The law school is just one part of an amazing enterprise that is central to the economy of Washington state. There is a strong global and interdisciplinary atmosphere that being part of a public research institution brings. And today the law school is in partnership with many of the other schools and colleges here as we develop more strength in areas such as the environment, health/global health, business/entrepreneurship, and IP/technology. For instance, we have a major Arctic Initiative with the College of the Environment and a new Tech Policy Lab, which is a coordinated effort of the law school, the information school, and the computer science and engineering department. It is the first in the country of its kind, and
it recognizes the critical intersection law has with other disciplines.

What do you see for the future of legal education?

I think there will be a contraction in the number of law schools. There is a “flight to quality” happening that is healthy. Students are becoming more careful about where they invest their time and tuition dollars. I think there will also be more diversification among law schools as each seeks to thrive in a more competitive environment — perhaps greater market segmentation that will, I hope, be beneficial for access to justice. Mission focus is critical.

Some schools are talking about dropping the third year of law school, and I think some will do that. I’m not a big fan of that approach — whether it means actually shortening law school or compressing the existing format (which all schools are doing right now). In my opinion, making the very best use of the three years is better than collapsing legal education into a shorter time period. We need to have better-advised and sequenced progression of education, where skills are integrated across the curriculum. We have a Curricular Innovation Committee that is conducting faculty workshops and gathering steam in making changes to the curriculum. We are also broadening what we mean by skills — adding important ones such as financial and technological literacy, project management, leadership, and cross-cultural competency to more traditional legal skills.

How would you respond to charges that some people are leveling at law schools about not being transparent with job and hiring rates for graduates?

We are careful about this. Actually, I think most schools are. It is not as simple as it appears because graduates do many things with a law degree — many exactly what they had hoped to be doing. For example, if one of my graduates goes to work for the Gates Foundation as a program officer in global health, which is what she came to law school to gain skills for, is that full-time “legal” employment? We need to be honest and transparent, of course, but we also need to leave room for schools whose grads enter a wider variety of careers than the traditional practice of law.

Overall, I think the conversation that has come out of this is good. Students
are coming in, as a whole, more sophisticated about the investment they are making. That is a good thing.

Currently, this is the first time that the deans of all three Washington law schools are women. Do you think this reflects an overall improvement of the position of women in the legal profession?

I am of two minds about this, the optimistic view and the cynical view. My optimistic view is that it represents overall progress for women in the legal profession. As there have been more women faculty and professors moving up the ranks, there are more qualified women available to become deans. Women have had more leadership positions along the way, which has translated to more women being qualified to serve as dean.

The cynical view relates to the “interest convergence” principle talked about by the late and wonderful Professor Derrick Bell. Bell believed that the majority will only make changes for the benefit of the minority when it benefits the majority — that is, when their interests converge. This time in legal education is a very challenging one to be a dean. As I recently told one mentee who was considering whether to become a dean, don’t expect to be a “builder” as a dean today; it may be in this economic climate that the best you can do for your school is to just “keep the wheels from coming off the bus!” So, one might wonder whether there is an interest convergence happening here as more women are encouraged to be deans in these difficult times.

That said, I still believe it’s the best job in the world, and I’m very pleased to be serving at the same time as Annette and Jane (at SU and GU). They are both terrific and we try to collaborate as much as possible. NWL.

Claire Been is an associate in the Seattle office of Schwabe, Williamson & Wyatt. She can be reached at cbeen@schwabe.com.
As we express our gratitude, we must never forget that the highest appreciation is not to utter words, but to live by them.
— JOHN FITZGERALD KENNEDY

The pledge reads:

I pledge to serve veterans this year in one or more of the following ways:

• Use my legal skills to advise a nonprofit organization that serves veterans.
• Mentor those who take pro bono cases that serve a veteran.
• Teach at a CLE on veterans’ legal issues.
• Volunteer for one of Call to Duty’s Days of Service or with the Washington Will Clinics.
• Take a low-fee veteran’s case through the WSBA Moderate Means Program.
• Take a pro bono case from an organization that services veterans.
• Become certified to take a Veterans Administration benefits case.

As part of the pledge, the WSBA supports members by providing resources both legal and non-legal to serve veterans, education, CLEs, and the opportunity to answer various calls to duty.

Pledges are automatically added to our “Call to Duty Pledge” list serve, which also notes announcements and volunteer opportunities. A feature of this pledge includes monthly Lunch and Learns, which highlight various organizations that serve veterans and how members can get involved. Three of these have been recorded and are

WSBA’s Call to Duty

Readying Our Corps to Serve Washington Veterans

BY ANA SELVIDGE

There are over half a million veterans in our state and an estimated 6,000 active duty members transition to veteran status every year. Roughly 13 percent are active members of our Bar. Veterans live all across our state — the top five counties with the highest percentage of veterans are Spokane, Snohomish, Pierce, Kitsap, and King.

Since 9/11 our state has deployed 112,104 active duty members to serve our country. Many veterans, especially those returning from Iraq and Afghanistan, are facing distinct barriers to successful reintegration into civilian life. Unemployment is higher for veterans. For post 9/11 veterans, unemployment is at 12.3 percent — the national average is 8. At least 20 percent of Iraq and Afghanistan veterans have PTSD and/or depression and recent statistical studies show that rates of veteran suicide are much higher than previously thought.

Not surprisingly, these issues are compounded by various legal issues. Veterans face a higher need in family, employment, housing, and life planning. Cases concerning benefits are an all-consuming and complicated process to navigate, and many times, veterans suffer needlessly because they cannot access the healthcare they need.

How Can I Help?
The WSBA Call to Duty initiative is designed to inform, inspire, and involve volunteer attorneys in meeting the legal needs of veterans and their families. The initiative aims to provide information and resources to equip our members to serve. Whether it’s through one of our new Days of Service opportunities or through one of the many great local or national volunteer opportunities, members take the 2014 WSBA Call to Duty Pledge and commit to serving Washington veterans.

As part of the pledge, the WSBA supports members by providing resources both legal and non-legal to serve veterans, education, CLEs, and the opportunity to answer various calls to duty.
available. They cover Army One Source, Northwest Justice Project Veterans Project, and the WSBA Legal Assistance to Military Personnel Section. All Call to Duty Lunch and Learns are recorded and archived on our Call to Duty webpage (www.wsba.org/calltoduty) and accessible throughout the year.

The initiative includes two Days of Service in 2014. The model for the Days of Service is based on learning through service. Each day of service includes a free CLE, a hands-on legal clinic experience, and an introduction to local volunteer opportunities. The days will be held in partnership with volunteer lawyer programs, including the one at the Tacoma-Pierce County Bar Association.

Members who fulfill the pledge will receive a pin, be distinguished in NWLawyer, and invited to a WSBA Call to Duty awards ceremony in January to celebrate the work accomplished by the hundreds of volunteers who have committed to serve.

The WSBA Call to Duty provides ways to become aware of veterans’ needs and to get involved. WSBA’s public service programs can help you find an opportunity to serve that is right for you. Check out the Call to Duty page and take the pledge!

For more information visit www.wsba.org/calltoduty or email publicservice@wsba.org, NWL.

ANA SELVIDGE is the WSBA public service programs manager. These programs include the WSBA Moderate Means Program, Call to Duty, and other initiatives to engage more attorneys in providing public and pro bono services. She can be reached at anas@wsba.org.
Help JAGs Help Servicemembers

by Captain Kevin Boden

I listened intently as a dependent spouse of an active duty Air Force member told me her situation, explained her legal problems, and asked me for guidance. The legal issues were complex, spanned multiple jurisdictions — none of which I was bar-licensed in — and were fairly urgent. She wanted to file for divorce, but she and her husband are residents of different states, were currently physically present in Germany, were married in a different state altogether, and had their first child about seven months ago on a military base, also in Germany. “Where should I file for divorce?” she asked. “Will I need to fly home a lot? Because I don’t have money for that. Will I get custody of our son? Does it matter where we were married?” As she asked these and many other questions, my mind raced between thinking of personal and subject matter jurisdiction, the UCCJEA, the Hague Convention and a whole host of other issues. I calmly continued to listen and did what I could to alleviate her fears and respond to her questions. She wanted answers and the legal issues were more complex than she realized.

For military lawyers, or Judge Advocates (JAGs), this type of situation is common, especially in overseas locations. While we are not expected to be come experts on every legal issue that we are presented, for active duty and their dependents, we are the experts and we may be all they have. They expect us, and rightly so, to get the answers and help them as much as we can. In short, we must become the experts quickly.

All military branches provide some form of legal assistance to active duty personnel and their qualified dependents. While the various branches differ in how these services are provided, the legal issues are typically limited to personal civil matters. In 2013, the Air Force alone provided legal services to 221,975 clients. The top three legal issues Air Force JAGs faced in 2013 were last wills and testaments (44,749 cases), domestic relations (16,994 cases), and landlord-tenant (5,112 cases).

Fortunately, becoming experts and providing sound legal advice to clients is possible with the many resources we have available through a variety of programs. One such program I have found particularly helpful is Operation Stand-By, an ABA-launched program which allows JAGs to directly contact civilian attorneys for guidance on specific legal issues. In a nutshell, the program allows JAGs to reach out to civilian attorneys who have volunteered to be contacted as a reference in a particular area of the law. For example, JAGs can log onto the Operation Stand-By website, look for an attorney who practices family law in Washington, and email or call the attorney directly with particular questions. The JAG might ask the civilian family law attorney if there are any specific physical presence requirements. Can the spouse still file in the state if located in Germany? Are there exemptions for active duty personnel such that that active duty member could file, but not the spouse? Will the local court have jurisdiction over just the divorce or the child custody matter as well? What if a spouse wants to seek modification of child-custody arrangement, but for the past few years, the child hasn’t lived in the state where the original order was made? These are just some of the possible questions JAGs may face.

Some of you may be thinking, “Just do a quick research of the law and find the answer. After all, attorneys are trained in legal research, right?” This is a reasonable question and I offer three points in response. First, JAGs face the same problem that constrains most attorneys: lack of time. There is simply not enough time in the day to research every legal issue in detail from jurisdictions all over the United States. Like most attorneys, we’re extremely busy. Second, complexity of jurisdictions. JAGs are presented legal issues from multiple jurisdictions, the vast majority of which we’ve not dealt with before. Imagine the following scenario: Your first client, from small-town Texas, has a family law issue, and the next client is from Minnesota. Your third client, from New York, has a landlord-tenant issue from a home they rent out because they couldn’t sell it before they had to move. Your final client has a question about the will of their now-deceased mother, who, by the way, lived in Louisiana when she passed away. (Just in case you didn’t know, Louisiana has some estate laws that seem to date back to the times of...
Napoleon). You’ve got 20 minutes with each client. Ready, set, go. Feel prepared, overwhelmed, or anxious? Finally, the lack of ability for JAGs to concentrate on certain practice areas creates challenges. While most attorneys focus on a particular practice area, JAGs don’t have that luxury or ability. We need to be knowledgeable in many different areas.

Initiatives such as Operation Stand-By, the Military Pro Bono Project, AILA Military Assistance Program, and the new WSBA Call to Duty Program are vital in helping JAGs and our clients get the answers they need. We are privileged to serve and help the best clients in the world. I have personally utilized the ABA referral programs and contacted civilian attorneys on behalf of clients with great success. The single biggest obstacle is finding attorneys willing to be contacted. For example, of the 412 cases referred to the Military Pro Bono Project in 2013, only about 50 percent were placed with an attorney. For the 53 Air Force referrals, this yielded over $300K in savings for clients. The more resources and civilian attorneys willing to volunteer their time, energy, and legal expertise, the better JAGs can be at helping our clients.

To you, it may simply mean 10 minutes of your valuable time. To our clients, it may mean the world. Thank you to the many of you who have already volunteered your time and energy. To the rest of you, I join the WSBA in calling you to duty. The men and women in uniform depend on you. NWL

CAPTAIN KEVIN BODEN currently serves on active duty in the Air Force. He is currently the area defense counsel at Eielson Air Force Base, Alaska. The views expressed in this article are solely that of the author and do not necessarily represent the views of the Department of Defense or its components. Captain Boden can be reached at kmboden@gmail.com.
An associate attorney, let’s call her Karen, frantically types the final paragraphs of a legal motion — due on her boss’s desk in less than one hour — when her cell phone vibrates. She promised herself that she would not allow any distractions today. It’s Andrew Walker, the owner of a thriving downtown café. Last week Karen sent him a complimentary batch of her most popular cupcakes, hoping his café would be interested in adding them to its pastry selection. This call couldn’t have come at a worse time, but she has to take it. This could be a huge deal for Karen’s Cakes, a side pastry business that she has been running out of her home for the past year.

Karen tip-toes out of the office and makes a mad dash to the ladies’ room. Karen is thrilled: Mr. Walker is interested in selling her tiramisu cupcakes, but he needs to meet with her today to finalize his decision. “I’ll shift around a few work meetings this afternoon and make it happen,” Karen responds. “Karen’s Cakes will not disappoint!”

Karen can barely contain her excitement. But Karen’s excitement disappears just as quickly as it came, the moment she realizes that her boss was in the restroom for the duration of her phone call. “Your tiramisu cupcakes sound delicious, Karen. Why don’t we have a chat in my office?”

Perhaps, like Karen, you’re a moonlighting attorney: drafting contracts by day and baking wedding cakes by night. Perhaps you are considering the possibility of taking on a second job to supplement your income or for a creative outlet. Whatever the reason may be, think long and hard about the decision, as it may involve challenges and risks that you never anticipated. While moonlighting can be done, unforeseen practical and ethical challenges come with the territory, such as those presented in the cases of these four attorneys.

By Natalya Maze
ALEX BEZU: The Solo Practitioner and Language Interpreter

While trying to develop his solo law practice in a difficult legal market, Alex Bezu had mounting bills that he needed to pay. To supplement his income, Bezu became certified as a Russian and Ukrainian language interpreter. “At first I was getting more calls for interpreter work than for legal work, so I was interpreting full-time,” says Bezu. As his law practice grew, and with the addition of a new baby, Bezu has taken fewer requests for interpreter work, but he says he just can’t seem to quit his second job.

Currently, Bezu devotes two to three days per week to his legal practice, focusing on tax law, collections defense, and representing clients before state and federal agencies. But Bezu doesn’t plan on hanging up his interpreter hat anytime soon. “Interpreting is no longer about money or a means to an end for me, it is about providing a service to the community. I feel a strong sense of validation as an interpreter — I can give people a voice who don’t feel like they have one.”

But moonlighting as an interpreter would be impossible if he was not his own boss, says Bezu. Washington’s RPC 1.3 requires that lawyers act with reasonable diligence and promptness when representing a client, an obligation that is harder to satisfy when an attorney works two jobs. Even if he ultimately turns down a request for interpretation services, he still answers his interpreter line at random times during the day — something that a government attorney or an associate in a private firm could not ethically or practically do.

SUNNY DIWAN: The Managing Partner and Real Estate Developer

Suneet (Sunny) Diwan, managing partner at Dimension Law Group, shares Bezu’s sentiment about juggling a second job while practicing law. “No matter what you do, if you choose to pursue a career in addition to law, you’ll end up getting calls during the day and you’ll need to do some sort of business development,” says Diwan. “Unless you are your own boss or you have a boss who is fully aware of your second job and extremely flexible about how you manage your time, taking on a job outside of your legal practice will be near impossible.”

Diwan works close to 70 hours per week, but only devotes about 10 hours to the law firm, which focuses on real estate issues and business/corporate law. He spends the rest of his time acquiring distressed properties, managing rental properties, and developing new residential and commercial properties through his real estate investment company, Dimension Real Estate.

Dimension Law Group has offices in Renton and Seattle, where three full-time attorneys and several full-time assistants handle the majority of the legal matters while Diwan markets the law firm and develops the real estate company. “I actually bring in more business for the law firm when I’m out of the office than when I’m there,” he says, recalling a specific instance when he and another prospective real estate investor happened to drop by a foreclosed property that they were both interested in buying. “We both happened to be looking at the house and started talking. I mentioned that I was an attorney and a few days later, he called my office with some legal questions. Our firm now handles the majority of his legal and business needs.”

But Diwan has a few words of caution for those attorneys who are working in a second line of work closely related to their law practice: beware of real and potential conflicts of interest and avoid them at all costs. “It’s not worth the headache or your license,” he says.

KEN HARER: The Litigator and Reserve Study Consultant

And it is for this very reason — potential conflicts of interest — that Ken Harer, owner of Condominium Law Group, plans on giving up moonlighting entirely. RPC 17 and 1.8 specifically address circumstances under which attorneys must decline, or withdraw from, representation in the face of a potential or a real conflict of interest. Harer has managed to avoid conflicts of interest, but only because he divides his time between the law firm,
which is solely devoted to the legal needs of condominium and homeowner associations, and his second business, Reserve Consultants, an architectural and engineering firm specializing in condominium reserve studies and construction consulting services.

Harer founded Reserve Consultants five years before his admission to law school and continued consulting for the duration of his legal education. “I came out of law school thinking I’d have a career change, but finding a law job proved to be more challenging than I thought,” says Harer. “I took on some legal work for a few condo association clients and a year later opened up my own firm.” Today, Harer spends 90 percent of his time managing the law firm and 10 percent managing the consulting company. “My goal is to eventually get out of the consulting company,” says Harer. “The only reason I’m still involved with Reserve Consultants is because my partner, who’s been with me for over 20 years, doesn’t want to run the company alone. If it were just me, I would have gotten out a long time ago,” he adds.

Even though Harer spends only 10 percent of his time doing consulting work, the more legal cases he takes on, the greater the risk that he will be faced with real or potential conflicts of interest. “If one of my condo or homeowner association clients at the law firm needs a reserve study, I cannot refer them to my consulting company,” says Harer. But even if he follows every rule of professional conduct, there’s still a potential for the appearance of impropriety when one company attempts to collect unpaid special assessment fees, while the other assists condo associations in determining how much in fees to assess.

DREW MILLER: The Trivia Master

But it’s not all bad. A second job can add fun to an attorney’s office environment. At least that seems to be the case for attorney Drew Miller of Garden City Group.

When he’s not providing legal administration services for class action, mass tort, and bankruptcy cases, Miller gets paid to write trivia questions and co-host weekly trivia nights at local pubs. He also writes trivia for private events such as rehearsal dinners, alumni association gatherings, and corporate parties.

Participants answer questions in categories such as “Musical Ladies of the 1980s” and “Traditional Jewish Food.” The single most requested category? “Buffy the Vampire Slayer, hands down,” says Miller. “I’ve had to watch a few seasons, for ‘research purposes only’.”

Miller’s second job has actually increased cohesion at the office. His boss and co-workers fully support him and even participate on occasion. He’s even
been asked to write trivia questions for office events, admitting that the maritime law questions he prepared required “some light reading.”

“Trivia is a great way to get to know your colleagues outside of the work box that you see them in every day,” says Miller. “As surprised as you’ll be about your boss’s knowledge of Buffy the Vampire Slayer, you’ll be even more surprised about your own knowledge of Sesame Street.”

But even with a supportive boss and co-workers, there are still limits, says Miller. Many employers, law firms included, have policies against the use of company resources for personal activities. “A side job has to be totally segregated from the primary one — at least when you’re working for a private company instead of for yourself. I don’t work on trivia during my regular work day, do not use any of the office resources, and when my time is split between finishing a legal assignment or working on a new trivia topic, I finish the assignment first.”

At the end of the day, Miller’s trivia gig isn’t paying for his kids’ college fund or a new car. “It’s fun money, and fun is something lawyers have forgotten how to do.”

Extra Work: Is It for You?

You may be thinking: Unless I brush up on my trivia writing skills, moonlighting will be impossible for me. Although not impossible, for the average legal practitioner, moonlighting will prove challenging. Juggling a second job — especially if you choose to do it without your primary employer’s knowledge — can lead to disciplinary consequences both internally, for misuse of employer resources, and externally, for violations of professional rules of conduct. Unless your second job can be completely segregated from the first, and unless you are upfront about it, taking on a second job may end up hurting both jobs in the long run and place you in a worse position than when you started.

The bottom line: if you’re taking phone orders for 20 dozen cupcakes in the law firm’s restroom stall, you may have a bigger dilemma than facing your boss on the other side. Although it was a big investment, a legal career may not be the right career for you. Reassess what truly makes you happy and give that thing your all. As the old saying goes: “Do what you love and the money will follow.”

**Natalya Maze** is a third-year associate at Green & Yalowitz, PLLC. Her primary practice involves complex commercial litigation. She provides legal counsel to architects, engineers, contractors, developers, owners and other members of the construction community. When she’s not lawyering, Maze enjoys working on home remodel projects, interior decorating, baking cheesecake, and spending quality time with her husband and their Yorkshire terrier, Toby. She can be reached at npm@gyseattle.com.

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201 First Avenue West, Ste 407, Seattle, WA 98119 • 206.378.1123 • michaelc@michaelcaryl.com
Until last year, I had second-chaired a few trials and had taken several cases to arbitration in my brief legal career. But I had never been lead counsel in a jury trial until last fall. I learned some valuable lessons.

Don’t Underestimate Voir Dire
If I had to say what the two most important factors are in close-call jury trials, it wouldn’t be the lawyers, the judge, the law, or the evidence. Instead, it would be the client and the jury. (Obviously, if the evidence is stacked a mile high against your client and you have no defenses, personality won’t carry the day, but in that instance, you might ask yourself what you’re doing in trial anyway.)

The key to understanding jury selection is accepting that jurors aren’t going to shed a lifetime of biases at the courthouse door. Because jurors aren’t going to change, your goal during voir dire is not to convince but to identify. Ask questions that encourage bad (biased) answers. After all, how can you eliminate problematic jurors until you know they’re problematic?

During jury selection, it’s not good enough to ask questions that have only one right-sounding answer because jurors are self-conscious about their biases. They want to avoid looking unfair or unreasonable. So your questions have to be more sophisticated than, “Who here doesn’t think he can be fair to my client?” Instead, phrase your questions so that there are no obvious wrong answers. Even better, phrase your questions so that the wrong answer appears acceptable.

Your Client Is Everything
We all know that the likability and credibility of your client at trial is important. However, your client can be more crucial than the evidence, the judge, the law or, believe it or not, your own brilliant lawyering. Jurors aren’t steely-eyed logicians. They don’t set aside their prejudices as much as we—or they—would like to believe.

Instead, in deciding close cases, jurors “go with their gut,” just as George W. Bush famously said about his decision-making process. They view you, your client, and the evidence through the prism of their experiences, their biases, and their worldview. Even if you are fortunate enough to have the winning ar-
You're New Lawyers Argument, it's often not enough if your client doesn't resonate with the jury, especially in close-call cases. On the other hand, a wonderful client covers a multitude of deficiencies and can tip the scales in your favor.

Therefore, long before trial begins, honestly appraise your client. What are his or her personal strengths and weaknesses? Build your case around these factors. In my trial, my client had volunteered much of her time to worthy causes, so I made sure we talked about this at trial. In retrospect, however, I would have spent even more time having her share her background with the jury. This discussion may not be pertinent to show why she is entitled to prevail under the law, but it is important in terms of developing a connection. If the jury doesn't relate to your client on a personal level, they will be far less inclined to interpret the law and facts in your client's favor.

Preparation Is Inseparable from Competence

Winning in the courtroom is, according to Gerry Spence, author of Win Your Case, not so much a reflection of the genius of the lawyer but of that lawyer's preparation. Spence's advice is sound: Good preparation is essential to a successful trial because it is impossible to separate competence from preparation. And by preparation, I'm not talking about that frantic whirlwind of activity that occurs in the weeks leading up to trial. I'm talking about starting early and focusing from the beginning on what really matters.

To sharpen your focus, draft a tentative set of jury instructions before filing your lawsuit or answer. Many lawyers wait until the last moment to draft jury instructions. I've even heard of lawyers doing jury instructions after trial begins! This is backwards. Starting with jury instructions makes more sense because having a clear idea of what you need to prove helps you know what you need to accomplish during discovery.

With trial months away and the jury nowhere in sight, some lawyers go through the motions when it comes to discovery. For instance, depositions bore some lawyers. I never understood this. The jury will eventually become acquainted with what happened in discovery. That's why I take discovery as seriously as if it was happening in front of the jury. And that's why I told my client that the trial actually started during her deposition.

Appreciate Your Staff

The vast majority of lawyers do not do all of their own legal work. They have help from staff, including paralegals. Appreciate your staff. If you take your staff for granted, either they will eventually leave or you will fail to get the most out of them.

A good paralegal can be the difference between a bearable and unbearable work life. Good paralegals support their attorneys in navigating the logistical obstacle course that is litigation. They have valuable insights, make a great sounding board, help you avoid mistakes, and communicate with your clients, often more effectively than you do.

In my first trial, I was fortunate to have the assistance of a very competent and experienced paralegal, Pam. Pam had been around the block and she helped make my first trial experience smoother. Besides coordinating the witness schedule (and I had approximately a dozen witnesses), she provided valuable feedback, both during discovery and at trial. I geared my in-trial presentation to Pam. If it didn't work with her, how could I be justified in thinking it would work with the jury? Sometimes I lost objectivity. Pam helped me get it back. Your paralegal can do the same, so regularly demonstrate your appreciation.

Trial practice, civil procedure, and evidence courses in law school are all about the intellectual side of trial. My first jury trial, however, taught me just how important the human element is. It's a lesson I won't forget.
Top 10 Washington Legal Research Resources

1. Washington Legal Research, 2d ed.
   by Julie A. Heintz-Cho, Tom Cobb, and Mary A. Hotchkiss
   Carolina Academic Press publishes a research guide for 28 states, as well as one for federal research. These research guides are comprehensive and include both primary authority and secondary authority research. The research guide for Washington is in its second edition. Two of the authors, Mary Hotchkiss and Tom Cobb, are from the University of Washington School of Law, and Julie Heintz-Cho is an attorney in Washington.

   King County Bar Association
   www.kcba.org/wlpm; Print — $650; CD-ROM — $725; Print & CD-ROM — $850; Individual Chapters, CD-ROM — $65
   The Washington Lawyers Practice Manual is a multi-volume set that is published by the Young Lawyers Division of the King County Bar Association. It is available in both print and electronic format (CD-ROM) and is updated annually. This comprehensive secondary source covers 25 different areas of Washington law and includes in-depth subject analysis of the law, checklists, practice pointers, and forms. The CD-ROM version includes the substantive discussions in PDF and the forms in Word. It covers Washington subjects such as administrative law, consumer law, criminal procedure, domestic relations, evidence, land use and environmental law, real property, and tax practice.

3. Washington State Bar Association Continuing Legal Education Deskbooks
   www.mywsba.org/onlinestore
   The Washington State Bar Association Continuing Legal Education (WSBA-CLE) currently publishes 15 different deskbooks covering various Washington-specific subjects such as appellate practice, civil procedure, community property, legal ethics, partnerships and limited liability companies, real property, public records, and motor vehicle accidents. A list of deskbooks published by the WSBA-CLE can be found on its website along with the table of contents for each. Deskbooks range in price from $175 to $560 and supplements range in price from $60 to $175.

4. West’s Washington Practice Series
   www.legalsolutions.thomsonreuters.com
   The Washington Practice Series is a multi-volume set published by Thomson West. It has over 34 volumes covering topics such as business law, civil and criminal jury instructions, construction law, contracts, DUI practice, environmental law, summary judgments, and tort law. It includes in-depth subject analysis of the law, checklists, practice pointers, and forms. Each volume is updated annually. The entire set can be purchased for approximately $8,000. Individual volumes range in price from $96 to $356. Each volume is updated annually, and over time, those costs can be significant. The Washington Practice Series can also be found on Westlaw.

5. Municipal Research and Services Center of Washington
   www.mrsc.org
   The Municipal Research and Services Center of Washington is a private nonprofit agency that provides local governments with research, information, and advice on subjects of local concern including municipal law, budgeting, public works, urban planning, and finance. Its website includes a comprehensive list of Washington municipal codes and ordinances that is available to the public for at no cost.

6. Casemaker
   www.mywsba.org
The Washington state Legislature website is a free resource that contains a vast amount of legislative materials with an impressive scope of coverage going back to the mid-1980s. It contains the Revised Code of Washington (archived to 2002), Washington Session Laws (archived to the territorial laws of 1854), and Washington legislative materials (archived to 1985). It is the best resource to compile a legislative history for a Washington statute. Unlike many state legislative websites, it also contains Washington agency rules and regulations, including the Washington Administrative Code (archived to 2004) and the Washington State Register (archived to 2005).

Specialized Legal Research is edited by Penny Hazelton and now published by the Gallagher Law Library at the University of Washington School of Law. It was formerly published by Aspen Law Publishing, but the Gallagher Law Library took over in 2013. It covers 13 different subjects including securities regulation, Uniform Commercial Code, federal income taxation, copyright law, federal labor and employment law, environmental law and land use planning, admiralty and maritime law, immigration law, military and veterans law, banking law, federal patent and trademark law, federal government contracts, and customs law. Each subject discusses the print and electronic resources (subscription databases and free databases), which contain both primary authority and secondary authority for those subjects. It is updated annually and supplements are $195 per year.


Jury Verdicts Northwest is the leading publisher of verdict and settlement information for Oregon, Alaska, Idaho, and Washington. Washington cases are published in two separate monthly publications, the Northwest Personal Injury Litigation Reports and the Washington Arbitration Reports. The Northwest Personal Injury Litigation Reports contains personal injury trials and settlements from Washington and Alaska state and federal courts. The Washington Arbitration Reports contains arbitration cases from Washington. Cases reported include the type of case, docket number, facts of the case, type of injury, judge’s name, expert information, and award or settlement amount. Jury Verdicts Northwest publications are also available on Westlaw and Lexis.
Tips for Successful Nonprofit Board Service

by Judith Andrews and Peter J. Smith

As an attorney, it is very likely that you’ve been asked to serve on a nonprofit corporation’s board of directors. For the nonprofit, your analytical mind, community connections, and legal knowledge make you a strong addition to the boardroom. For you, board service can be a fulfilling way to meet interesting people, work for a mission for which you have some passion, and give back to your community. Yet many are hesitant to serve as a director; the ethical questions raised by service as a lawyer-director seem too thorny. Yes, there are ethical dilemmas and grey areas, but these situations can be identified and managed. This article is meant to highlight the ethical questions facing the lawyer who wants to serve on a nonprofit board and to offer a few tips for successful service.

Can I Serve as a Lawyer-Director? Yes!

According to WSBA advisory opinion No. 1686, a lawyer may act as a director and corporate counsel to a nonprofit corporation. Unfortunately, the opinion is only useful as inspiration that the dual role is possible. The opinion explains that acting as a lawyer-director is acceptable so long as “the lawyer otherwise complies with the requirements of RPC 1.7 regarding conflicts of interest.” In other words, the dual role is acceptable so long as you follow your ethical duties… which is really the question, isn’t it?

Duties as a Director — Heightened Duty for the Lawyer-Director?

In understanding your duties, it helps to start by isolating your duties as a director. A nonprofit director owes two primary fiduciary duties: the duty of loyalty and the duty of care. The duty of loyalty requires a director to act in the best interests of the corporation, rather than the director’s personal interests or those of a family member. The duty of care requires a director to act with “such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.”

For a skilled professional like a lawyer, however, there is likely an increased standard of care for you to bring your skills to bear on issues facing the board, the standard being that of the reasonably prudent attorney in a like position. In the for-profit context, the influential Delaware chancery court has concluded that director-professionals are held to a higher standard for actions within their expertise. And yes, Washington courts have identified Delaware jurisprudence — at least in the for-profit context — as persuasive authority.

Although there isn’t case law authority for application in the nonprofit context, extending the heightened standard to the nonprofit boardroom makes sense. Indeed, RCW 24.03.127(2) explains that, when gathering information to discharge her duties, a nonprofit board member can rely on the opinion or expertise of counsel. Think of how your fellow board members will react to your deliberations and conclusions on legal matters; they will rely on you as an authority — right or wrong — on matters such as reviewing a lease, revising articles or bylaws, or whether to terminate an employee. After all, that is probably why you were asked to serve as a board member in the first place.

Despite an “increased standard,” the duty is not meant to be impossible to fulfill. The best way to meet the standard is to make sure you gather the information and get the questions answered that you need to make informed decisions, seek and rely on outside advisors and experts when necessary, and most importantly, make sure that you set aside the necessary time and mind share for informed decision-making and the exercise of independent judgment.

Conflicts of Interest

As advisory opinion 1686 explains, conflicts of interest are the key ethical consideration for dual service. RPC 1.7 provides that a lawyer may not represent a client if the representation involves a concurrent conflict of interest. Some conflicts are easily identified; for example, it would be a conflict of interest for you or your firm to represent a party adverse to the nonprofit corporation. But there are some less obvious situations that could arise as well. As Comment 35 to RPC 1.7 warns, the lawyer-director should especially avoid situations where the lawyer risks losing her independence.

Independence — the ability to offer frank, honest, and disinterested advice — is a hallmark of good counsel. A lawyer’s independence is jeopardized whenever she is asked to review the risks associated with a board decision in which she
Independence — the ability to offer frank, honest, and disinterested advice — is a hallmark of good counsel. A lawyer’s independence is jeopardized whenever she is asked to review the risks associated with a board decision in which she participated. Imagine a situation where you are asked to advise the board about an action it has taken that, when the board was deliberating on the issue, you strongly opposed. In hindsight, it would be difficult for you, in the role of the lawyer, to now objectively review and defend the position. Accordingly, Comment 35 explains that “if there is material risk that the dual role will compromise the lawyer’s independence of professional judgment, the lawyer should not serve as a director or should cease to act as the corporation’s lawyer when conflicts of interest arise.”

Having a robust conflict-of-interest policy or using independent, outside counsel will alleviate most of the obvious conflict of interest situations. If, for example, the nonprofit is deliberating on whether to sue another client of the lawyer’s firm — or, heaven forbid, her own firm — the lawyer should be disqualified from voting on the matter or participating in the board deliberation. So too in instances of hiring counsel that would include the lawyer’s law firm. The less obvious situations should be met on a case-by-case basis, and for these situations, as Comment 35 to RPC 1.7 explains, “consideration should be given to the frequency with which such situations may arise, the potential intensity of the conflict, the effect of the lawyer’s resignation from the board and the possibility of the corporation’s obtaining legal advice from another lawyer in such situations.” There may, in certain situations, also be a recognition that similar steps should be taken to avoid the appearance of a conflict of interest.

**Attorney-Client Privilege**

The lawyer-director should take care to protect privileged communications, and to make clear to her director colleagues when information is not privileged. Comment 35 to RPC 1.7 advises the lawyer to explain that not all communications at a board meeting will be protected by the attorney-client privilege, and, in some instances, the privilege otherwise gained by communicating with counsel alone will be lost.

The cornerstone of privileged communications is that the lawyer is receiv-
ing or transmitting information for the purposes of giving legal, and not business, advice. Many for-profit cases have found that business advice is not protected by the privilege. Accordingly, if legal advice is necessary, the communication itself should make clear that the advice being offered is legal advice and that the lawyer is acting as legal counsel. Minutes, for example, might reflect that legal advice is being given, but then should not record the actual advice given (at least, not within the otherwise reviewable regular meeting minutes, but instead perhaps in a confidential memorandum).

**Lawyer-Client Relationship**

What if you don’t want to serve as the organization’s attorney? This is possible, of course, and may even be a best practice, but you’ll need to work hard to make sure the lawyer-client relationship is not formed. Remember that whether the relationship is formed is based on the client’s reasonable expectations. It would be reasonable for the nonprofit board to assume that you are acting as an attorney in any “legal” matter; therefore, you should expect that the relationship attaches by default. This is especially true where there is not outside, independent counsel. Accordingly, if you don’t want the lawyer-client relationship with the nonprofit to attach, you should remind the board that you are not acting as counsel whenever reviewing or discussing a “legal” decision or matter.

**Practical Tips**

First, do you want to take on the dual role? If you don’t want to serve as counsel, be deliberate. Go out of your way to make your role clear. Write a letter to the board explaining your limited role. When something requiring legal skill comes up (e.g., reviewing a lease), have the minutes reflect that your view on the lease does not constitute legal advice. Finally, engage outside counsel for serious matters.

If you are dispensing legal advice, make it clear that when you are acting as an attorney, you only represent the nonprofit corporation and not the board or individual directors or officers.

If you are dispensing legal advice, be sure to protect the communication. Have the minutes reflect that you’re providing advice on a specific issue (but don’t record the actual advice in the regular minutes). Remind the other directors of their obligation to protect the confidentiality of the communication.

Reserve adequate time for your role. Lawyer-directors likely have a heightened standard of care, but adhering to this standard isn’t impossible. The key is to gather information and make informed decisions in which you exercise independent judgment. Say “no” if you can’t make time to meet the standard.

Make sure the organization has or obtains directors and officers insurance and read the policy. Professional malpractice may be specifically excluded under such a policy, so be sure to read your own professional malpractice policy (or call your broker) to see if there are any exclusions, limitations, or additional requirements.
for coverage regarding board service.

Add the nonprofit you are serving on to your firm’s conflict-of-interest database. Remember, the RPCs apply to the lawyer and her firm.

Volunteer. Washington has implemented its own version of the Volunteer Protection Act, RCW 4.24.670. This statute may protect you from personal liability as a director so long as the other requirements of that statute are met (and yes, you should read and understand that statute). See RCW 4.24.264 for additional liability limitations.

Enjoy!
Nonprofit board service can be a fulfilling way to give back to your community and build your practice. While there are ethical limitations associated with service, these situations can be identified and managed. Be deliberate, own your role, and enjoy the experience! NWL

Peter J. Smith is a partner at the Apex Law Group, LLP, where he has a diverse general business law practice advising nonprofit and for-profit organizations on corporate governance, finance, and risk management. Smith’s goal is to help companies incorporate, maintain regulatory compliance, avoid costly litigation, and ultimately become successful and sustainable. He can be reached at peter@apexlg.com. Judith Andrews is of counsel at the Apex Law Group, LLP. Her practice focuses on nonprofit corporation law and tax-exempt organizations. She represents nonprofit organizations on corporate and tax exemption issues including incorporation and determination of tax-exempt status, legal obligations of directors, organizational structure and roles of board and staff, conversion, merger and affiliation issues, and federal tax-exemption issues. She is chair of the WSBA Nonprofit Corporations Committee and an adjunct professor at Seattle University School of Law. She can be reached at judy@apexlg.com.

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NOTES
1. RCW 24.03.127.
4. See, e.g., In re Grand Jury, 974 F.2d 1068 (9th Cir. 1992) at FN 2 (listing elements).
by Joanna Plichta Boisen

Editor’s Note: Washington Attorneys Assisting Community Organizations or “WAACO” has changed its name and is now “Wayfind.” You can find the new name and more at the redesigned website, www.wayfindlegal.org.

Nava was a design professional from Iran who immigrated to the United States seeking sexual orientation-based asylum. She was prepared for the language and cultural barriers, for the financial hardship, and even for the initial loneliness inherent in immigration. But what she did not anticipate was that none of her professional certifications would transfer to the United States. Nava never found employment in design, and instead began cleaning homes and doing odd jobs to earn a living. A year turned into five years, and five into 10. Looking back, if there had been an organization that helped her earn a living doing what she loved, it would have changed the trajectory of her life forever. But Nava’s options were very limited back then.

Today, organizations exist that are dedicated to helping refugee and immigrant women have better, more fulfilling lives in the United States. One of those programs is Seattle-based Muses, a nonprofit that promotes responsible manufacturing, fosters fair-paid job opportunities, and provides training for low-income immigrants and refugees. Muses came to life thanks to the help it received from Wayfind, a nonprofit organization that provides pro bono legal services to nonprofit and microenterprise businesses that strengthen and transform communities.

When Muses came to Wayfind, they needed help navigating the nonprofit legal world, executing their incorporation papers with the state of Washington, and filing an application to get their 501(c)(3) tax-exempt status. Wayfind helped Muses find a pro bono attorney who believed in their mission and was excited to assist. Had Muses not had access to an organization like Wayfind, it would have had to find additional funding or divert the funds it would use for training and education for refugees to afford legal assistance.

After Muses’s Wayfind-appointed attorney successfully helped secure their 501(c)(3) status, Muses needed assistance drafting contracts for their low-volume production, cutting, and sewing jobs. Again, Wayfind found a business lawyer with the right background and expertise to assist. With Muses’s legal needs taken care of by Wayfind volunteer attorneys, the nonprofit was able to focus on their mission. Only in operation for a couple of months, Muses has already successfully launched a pilot training program, trained five refugee women, and signed contracts with two designers including Green Eileen, a recycled clothing initiative of Eileen Fisher, and BYDEFAULT, a socially conscious local designer. “Wayfind is helping nonprofits strengthen their communities and we couldn’t do it without our volunteers and supporters,” says Muses co-founder Sandrine Espie.
Muses is only one of many organizations Wayfind has formed, organized, assisted, and brought to life. Since its inception in 2004, Wayfind has served 400 nonprofits, providing $2.7 million worth of legal services and over 7,700 attorney hours free of charge. Intellectual property attorneys have helped organizations register their trademarks and logos, copyright educational material, and understand patent law. Real estate attorneys have assisted in drafting and negotiating leases. Employment attorneys have revised manuals and handbooks. Business lawyers have assisted organizations in revising bylaws, reviewing contracts, and advising on potential risks and liabilities. “Except for the limited capacity of law school clinical programs, Wayfind is the only organization in the state that provides full pro bono representation to nonprofits. We help to improve the quality of life in our communities by getting grassroots organizations and nonprofits the legal help they need to pursue their mission and make a difference in their communities,” says Jodi Nishioka, program manager for Wayfind.

Even though Wayfind has a strong and dedicated volunteer base, currently only one percent of Washington’s over 35,000 lawyers volunteer for Wayfind. With more volunteers, Wayfind could make a greater impact for women like Nava because Wayfind creates organizations that make a difference. “Attorneys supporting communities is what Wayfind is about. We make it easy for attorneys to help nonprofits and microentrepreneurs. We provide a list of screened, discreet business transactional opportunities for our volunteers to choose from. Our volunteers just pick a nonprofit matter that is interesting to them and off they go,” says Jodi.

Who knows how Nava’s life would be different if she had had the opportunity 10 years ago to participate in a program that equips low-income immigrant and refugee women with job opportunities and skills that are in high demand? Undoubtedly, she would have been more competitive in the workplace, and most likely had a more fulfilling career. And this is what makes Wayfind uniquely special — Wayfind volunteers empower nonprofits to do needed and impactful work in the community. Attorneys have unique skills and Wayfind offers us the ability to use our particular skills to transform communities and their vulnerable constituents.

In Greek mythology, the muses were the nine goddesses who inspired artists, musicians, and poets. In the world of pro bono, Wayfind is the muse that inspires lawyers to give back their time and talent and helps people with incredible ideas make their visions a reality, transforming not only communities, but lives like Nava’s.

To volunteer with Wayfind, or find out more information, call Wayfind at 866-288-9695, email contact@wayfindlegal.org, or check out www.wayfindlegal.org. NWL

JOANNA PLICHTA BOISEN has been on the Wayfind board of directors for four years. She is pro bono counsel for Foster Pepper PLLC. Her practice is concentrated in litigation with a focus on providing pro bono legal representation to persons of indigent means. She is also the chair of the firm’s new Nonprofit Industry Group. She can be contacted at boisj@foster.com.
Bill Viall was elected to the WSBA Board of Governors in September 2011. From 1997–2013, he served as chief operations officer and counsel at Williams Kastner in Seattle. His practice experience includes jury and bench trials in district and superior courts, practice in U.S. district and bankruptcy courts, and appeals to the Washington Court of Appeals and Washington Supreme Court. For more than 20 years, he served as the city attorney for Normandy Park. Gov. Viall was also a Washington state senate candidate in addition to serving as a King County District Court pro tem judge. He received his bachelor’s degree and law degree from the University of Washington. This is his third and final year serving on the Board of Governors.

1 Why did you want to serve on the WSBA Board of Governors?

Throughout the course of my career, I had served in public and community service positions such as the Highline School Board and the Normandy Park Community Club, but I had never done any community service for the Bar Association. A letter showed up in the mail one day asking me if I would consider running for the Board of Governors. In a Russell Wilson moment, I thought, “Why not you, Bill?” and so I decided to run. Having practiced for nearly 40 years, I thought it was a good time to do my part and give back to the profession that has treated me well for all that time.

2 What is the most important lesson you have learned about WSBA members since you’ve been on the Board?

On a daily basis, I think most lawyers are very busy with client matters in what is clearly a deadline-driven, intense, and somewhat difficult profession. They have a right to rely on their elected Bar representatives to keep a pulse on the needs and views of the members, as well as to rely on their independent exercise of judgment in voting on matters that come before the Board of Governors for decision. But, from time to time, I think that the Board of Governors has gotten bogged down in what I would call “political matters” that are only tangential to the administration of justice, failing to recognize that a wide diversity of views by all the individual members would mitigate against supporting any single view under such circumstances. In the recent past, Bar members held a referendum, which rolled back license fees. However, the underlying message for me was that the Board was out of step with the majority of members. Members expect that governors will keep in mind the service aspect of their duties, rather than using the position as a bully pulpit.

3 What decision or accomplishment are you the most proud of from your service on the Board?

My view is that the core function of the Bar is to regulate and protect the practice and rule of law and to provide service to members. In the face of the referendum rolling back license fees, we needed to re-evaluate how we were spending money. I was happy to be a part of streamlining and revamping the organization to achieve those reductions. However, in order to be able to provide service to members, we need to have an efficient and motivated staff. My proudest moment was to get the Board to reconsider and approve staff raises, over a committee recommendation that no raises be given. In a downsized Bar, providing competitive salaries is critical to our core function.

4 What has been the most difficult decision you had to make as a governor, and why?

Opposing a motion that the Board of Governors endorse Referendum 74 in the recent general election. The matter came before the Board of Governors for consideration by oral motion at a meeting with no written notice to the public or Bar members. While the Board is within the scope of its powers to provide advice to elected officials on matters relating to the administration of justice, the constitutional right of the people to referendum hardly falls within that limited purview. The Board should not be trying to influence the outcome of an election by the general public, any more than members of the Supreme Court should do so.

5 Can you share one thing we may not know about you?

I have four adult children who are my best contribution to the world. Three are married, each to a person of diverse ethnicity. NWL

WSBA Gov. Bill Viall (fourth from the left) and his family celebrate the marriage of his son and daughter-in-law in Kanda Shrine, Tokyo, in April 2012.
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Ethics Issues in the Life Cycle of a Business

BY MARK J. FUCILE

Businesses can present challenging ethics and risk management issues for lawyers throughout their “life cycle.” In this column, we’ll look at some representative areas that can develop at the beginning, along the way and at the end of a business. The topics included are intended to be illustrative rather than encyclopedic, but touch on some of the most common.

AT THE BEGINNING

The start-up phase can present two key issues: defining the client and properly documenting fee agreements that include taking stock in lieu of fees.

Defining the Client

RPC 1.13(a), which governs entity representation, states the baseline position that “[a] lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.” But what about when an entity is being formed? Approaches vary. Some lawyers represent the entity to be formed. Others represent a lead investor with the other investors either separately represented or unrepresented. Still others attempt to represent the investors jointly, provided their individual interests are completely aligned.

Regardless of the avenue chosen, it is critical that the lawyer document (preferably in writing) precisely who the lawyer is — and is not — representing.

The test for determining whether an attorney-client relationship exists is two-fold under the Washington Supreme Court’s leading decision on the subject, Bohn v. Cody, 119 Wn.2d 357, 363, 832 P.2d 71 (1992). The first is subjective: Does the client subjectively believe that the lawyer is representing the client? The second is objective: Is the client’s subjective belief objectively reasonable under the circumstances? Lacking careful documentation, the lawyer is left open to the assertion later by a non-client that the lawyer was supposedly representing that person, too, and failed to protect that person’s interests. Conflicts in this area can lead to both discipline (see, e.g., In re Egger, 152 Wn.2d 393, 98 P.3d 477 (2004)) and civil damage claims (see, e.g., Eriks v. Denver, 118 Wn.2d 451, 824 P.2d 1207 (1992)).

Taking Stock

Lawyers are allowed under RPC 1.8(a), the business transaction rule, to take their fees (in whole or in part) in stock and ABA Formal Ethics Opinion 00-418 discusses the mechanics in detail. Given the sensitivity of lawyer-client business transactions, however, RPC 1.8(a) imposes very high disclosure obligations on the lawyer to meet the requirement of “informed consent” by the client. The Court of Appeals in In re Corporate Dissolution of Ocean Shores Park, Inc. v. Rawson-Sweet, 132 Wn. App. 903, 911–12, 134 P.3d 1188 (2006), summarized multiple appellate decisions on this point and described these duties in unsparing terms: “To justify a transaction between an attorney and his client, the attorney has the burden to prove: (1) there was no undue influence, (2) he gave the client exactly the same information or advice as would have been given by a disinterested attorney, and (3) the client would have received no greater benefit had he dealt with a stranger.”

RPC 1.8(a) and RPC 1.5(a), which addresses fees generally, also require that the resulting fee remain reasonable for the duration of the agreement. In Holmes v. Loveless, 122 Wn. App. 470, 94 P.3d 338 (2004), for example, the Court of Appeals refused further enforcement of a lawyer-client business transaction when an original discount of $8,000 in fees to a new venture had returned over $380,000 to the lawyers during the next 30 years.

Lawyer-client business transactions that do not meet the high bar imposed by RPC 1.8(a) may result in regulatory discipline (see, e.g., In re McCallen, 127 Wn.2d 150, 896 P.2d 1281 (1995)), civil damage claims for breach of fiduciary duty (see, e.g., Cotton v. Kronenberg, 111 Wn. App. 258, 44 P.3d 878 (2002)) and put enforceability of the business deal itself at risk (see, e.g., In re Corporate Dissolution of Ocean Shores Park, Inc. v. Rawson-Sweet, 132 Wn. App. 903).

ALONG THE WAY

As businesses mature, two particular problem areas can develop: conflicts with corporate affiliates and internal disputes.

Affiliate Conflicts

A particularly difficult issue in the corporate setting is whether representation of one corporate affiliate will be deemed representation of an entire “corporate family.” Comment 34 to RPC 1.7, the current client conflict rule, notes that “[a] lawyer who represents a corporation or other organization does not, by virtue of that representation, necessarily represent any constituent or affiliated organization, such as a parent or subsidiary.” Rather, the answer is usually fact-specific and turns on a number of factors, including the extent to which affiliates share common ownership and control and whether the lawyer has specifically
limited the representation to a particular entity through a carefully tailored engagement agreement. ABA Formal Ethics Opinion 95-390 doesn’t provide all of the answers but does include a useful set of criteria focusing on overlapping ownership and control that offers a framework for analysis. “Guessing wrong” in this context can lead to disqualification — with Avocent Redmond Corp. v. Rose Electronics, 491 F. Supp. 2d 1000 (W.D. Wash. 2007), and Jones v. Rabanco, Ltd., 2006 WL 2237708 (W.D. Wash. Aug. 3, 2006) (unpublished), providing comparatively recent examples of firms that were disqualified based on corporate family conflicts.

Internal Disputes
Internal disputes can come in many flavors when representing a corporation, ranging from shareholder battles for control to derivative suits. Although RPC 1.13(g) allows a lawyer for a corporation to also represent a corporate “constituent” such as a shareholder, it warns that any dual representation is subject to the multiple client conflict rule — RPC 1.7. Similarly, Comment 14 to RPC 1.13 notes any potential dual representation of the corporation and corporate officials in a derivative suit is also subject to RPC 1.7. This is another fact-driven area. In Hicks v. Edwards, 75 Wn. App. 156, 876 P.2d 953 (1994), for example, well-qualified experts could not agree on whether a conflict arose under the particular circumstances of a derivative case. Nonetheless, lawyers who are corporate counsel should be very wary about being drawn into an intramural dispute among shareholders.

AT THE END
The end of a corporate representation can present its own risks. We’ll look at two: conflicts in business dissolutions and documenting the end of a representation.

Business Dissolutions
Business dissolutions can quickly create conflicts if assets are insufficient to satisfy competing claimants or the dissolution will affect jointly represented clients in disparate and adverse ways. In In re McGrath, 178 Wn.2d 280, 288, 308 P.3d 615 (2013), for example, the Washington Supreme Court noted that the lawyer involved had been disquali-

fied in the bankruptcy proceeding that formed the backdrop of the subsequent disciplinary case for multiple conflicts stemming (among others) from the lawyer’s dual roles as a corporate “insider” (as defined by bankruptcy law) and a secured creditor. Bertelsen v. Harris, 459 F. Supp. 2d 1055 (E.D. Wash. 2006), in turn, involved joint representation of debtors and guarantors in a failing business. Although the court in Bertelsen ultimately concluded that the conflict involved was both waiveable and that the lawyer had obtained a sufficient waiver, many such conflicts are nonwaiveable because they pit jointly represented clients directly adverse to each other in the same matter.

Documenting the End
Even if a lawyer and a client part company more mundanely than through a dissolution or bankruptcy, it can be important to document that a representation has concluded. The reasons are twofold. First, you want to make sure that you won’t be blamed for something “bad” that occurs later that was “not on your watch.” Second, if at some point you or your firm want to take on an unrelated matter adverse to your old client, you will need to be able to show that the client is indeed a “former client” as that term is defined by RPC 1.9. The Court of Appeals in Hipple v. McFadden, 161 Wn. App. 550, 559, 255 P.3d 730 (2011), adopted a “reasonable expectations” test for determining when an attorney-client relationship ends that is similar to the standard articulated by Bohn for when it begins. A polite, professional letter to a business letting it know that you have completed your work and are “closing your file” can be critical to documenting the end of the relationship and allowing your firm to take on new matters against the business provided that they otherwise meet the standard of RPC 1.9. NWL

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ATJ Board Celebrates 20 Years of Accomplishments

In Plain Language

The Washington State Access to Justice (ATJ) Board was established by Washington Supreme Court Order in 1994. Through its justice system partners and standing committees, it works to achieve equal access to the civil justice system for those facing economic and other significant barriers. This May, the Access to Justice Board celebrates its 20th anniversary. One of the Board’s singular achievements over the past 20 years was the creation of the Plain Language Project.

In 1978, the Washington Supreme Court enacted Order No. 25700_B-188 entitled IN THE MATTER OF THE ESTABLISHMENT OF A FORMS COMMITTEE. This Order acknowledged the usefulness of standardized forms, recognized that there was considerable divergence in the use of forms throughout the state, and created the Pattern Forms Committee imbued with the obligation and authority to draft and implement the adoption of a compendium of standard forms. The Legislature has enacted legislation that made the use of forms mandatory for designated areas of the law. The Pattern Forms Committee is composed of representatives from a wide variety of stakeholders. Since its inception, the Pattern Forms Committee has drafted a plethora of forms to address areas of needs and to create consistency. It meets every year to modify forms as necessitated by legislative changes and judicial pronouncements.

In 2009, a subcommittee of the Access to Justice Board commenced a project called the Plain Language Project, whose goal was to rewrite the existing forms so that they were accessible and fathomable to all system users.

Or, in plain language:

In 1978, the Washington Supreme Court noticed that a lot of forms were used in courts. The Supreme Court believed that it was a good idea to have forms, but thought it would be a better idea if the forms used around the state were the same everywhere. So the Supreme Court created the Pattern Forms Committee. The Committee’s job was to create forms and update the forms as the law changed. The Legislature passed laws that said that in certain types of cases a person filing documents in the court had to use the forms the Committee had prepared. The Pattern Forms Committee includes members from various groups who work in and with the courts. The Committee has drafted many forms over the years and has changed the forms as necessary.

In 2009, the Access to Justice Board started a project to make the forms easier to understand and use. It’s called the Plain Language Project.

A growing percentage of litigants do not have lawyers. They must be able to understand court forms, not only to use them, but also to understand the legal obligations they are under when they receive them. In 2010, the Department of Justice wrote a letter to all state Supreme Court chief justices, stating that all litigants should have court interpreters in any kind of case without barriers. Plain language forms help reduce the cost of interpreters and make the interpretations go better. In 2012, the Washington Supreme Court also wrote a letter specifically supporting the Pro Se Project and the development of plain language family law court forms. Besides aiding mediators and translators, plain language forms enable lawyers to reach middle- and low-income clients they might otherwise not be able to represent by making it much easier to employ limited scope representation (also known as unbundling).

The first task that the Plain Language Project undertook was to “translate” the dozens of domestic relations pattern forms. Every week, volunteers review the proposed new plain language forms. Each group consists of an attorney, a court clerk, a judicial officer, a family law facilitator, and a leader trained in plain language. Special acknowledgment goes to Laurie Garber, on loan to the Plain Language Project from the Northwest Justice Project, and to Merrie Gough, on loan from the Administrative Office of the Courts, both of whom put in an astounding number of hours on the project. Each week, the group analyzes the forms to make sure that the new plain language forms reflect the correct state of the law.

The work of the Plain Language Project has been presented throughout the state. The plain language forms have been posted for public comment (accessible at www.courts.wa.gov/forms), and have been tested on a wide variety of groups. After comments are received, the forms are again reviewed and sometimes changed.

This year, after hundreds of hours of work by mostly volunteers, the Plain Language Project will complete the transformation of all the domestic relations court forms. By 2015, the forms will be adopted and posted as the only domestic relations forms to be used throughout the state. One of the goals of the Access to Justice Board states that “the delivery of justice must be prompt, understandable, and affordable, without sacrificing quality.” The Plain Language Project is such an example.

Hon. Laura Middaugh has served as a King County Superior Court judge since her election in 2000. She can be reached at middaugh.court@kingcounty.gov.
ATJ BOARD MILESTONES

1994 Supreme Court signs the ATJ BOARD ORDER — the first board of its kind in the U.S.

1995 The ATJ Board adopts a vision and a unified statement of values — THE HALLMARKS OF AN EFFECTIVE LEGAL SERVICES DELIVERY SYSTEM — in which all of its initiatives are grounded.

1995 In response to devastating federal funding cuts and disabling restrictions on services, the ATJ Board adopts its PLAN FOR THE DELIVERY OF CIVIL LEGAL AID TO LOW-INCOME PEOPLE in Washington.

1996 The first of 17 annual ACCESS TO JUSTICE CONFERENCES is held in Chelan in conjunction with the Washington State Bar Leaders Conference, providing an opportunity for networking and the sharing of information and expertise, and for building community.

1998 The ATJ Board helps to launch the COUNCIL ON PUBLIC LEGAL EDUCATION for the purpose of established public legal education as a core access to justice principle.

2000 The GAAP PILOT PROJECT (Greater Access and Assistance Program) is launched.

2001 The Supreme Court adopts the ATJ Board’s proposed UNIFORM COURTHOUSE FACILITATOR RULE (GR 27), defining the role and duties of courthouse facilitators in Washington.

2002 The Supreme Court adopts the ATJ Board’s proposed UNBUNDLED LEGAL SERVICES RULES (Limited Task Representation), which increases low-income clients’ access to legal representation by providing that lawyers can ethically limit their services to discrete tasks.

2003 The Supreme Court’s Task Force on Civil Equal Justice Funding, established at the request of the ATJ Board and staffed in large measure by the ATJ Board, produces this state’s first comprehensive CIVIL LEGAL NEEDS STUDY.

2004 After years of work to unify private legal aid fundraising efforts under a single umbrella, the CAMPAIGN FOR EQUAL JUSTICE is launched, and its efforts are successfully being implemented by Legal Aid for Washington (LAW Fund).

2004 The Supreme Court adopts the ATJ Board’s proposed ACCESS TO JUSTICE TECHNOLOGY PRINCIPLES.


2007 The Supreme Court adopts the ATJ Board’s proposed GR 33, REQUEST FOR ACCOMMODATION BY PERSONS WITH DISABILITIES, which sets forth state court procedures for handling these requests.

2009 In collaboration with the Administrative Office of the Courts, the Office of Administration Hearings, and other stakeholders, the ATJ Board launches the WASHINGTON STATE PLAN FOR INTEGRATED PRO SE ASSISTANCE SERVICES for institutionalizing support for those unable to obtain counsel in state court or before administrative agencies. Part I of the Plan, which is the translation of mandatory family law forms into PLAIN LANGUAGE format, will be completed in 2015.

2010 The ATJ Board adopts its PERFORMANCE STANDARDS FOR LEGAL AID IN THE STATE OF WASHINGTON to serve as guidelines for the operation and performance of civil legal aid organizations.

2013 In partnership with Seattle University School of Law, OCLA, and the Sargent Shriver National Center on Poverty Law, the ATJ Board inaugurates the EQUAL JUSTICE COMMUNITY LEADERSHIP ACADEMY to create a broader, more diverse, skilled and effective equal justice community of leaders.

2014 In recognition of its 20th Anniversary, the ATJ Board will be launching its LIVING HISTORY PROJECT, a comprehensive searchable online story of Washington state’s Access to Justice movement.
EnvironmenTal and land use law secTion

Rethinking Washington’s State Environmental Policy Act

by Jay Derr and Tadas Kisielius

Since its adoption over 40 years ago, the State Environmental Policy Act (SEPA), chapter 43.21C RCW, has been a cornerstone in the practice of land use and environmental law. SEPA’s reach extends beyond those specific practice areas, however, and applies to most actions of any state or local government agency. It ensures that agencies identify and consider the potential environmental consequences or “impacts” of any proposed action. It also provides agencies the authority to mitigate identified impacts or even deny proposed actions on the basis of any identified significant adverse impacts. SEPA has been prominent in the land use and environmental arena for much of its history, but it now stands at a crossroads. A dense and complex environmental regulatory framework has evolved over SEPA’s history, causing many practitioners and stakeholders to complain that the SEPA process is unnecessarily duplicative such that it should be streamlined and scaled back. Simultaneously, others continue to use SEPA review as a gap-filling mechanism to advance policy objectives and pursue more rigorous environmental protections where they argue, existing regulations are insufficient to provide necessary protection. Any lawyer advising a client with a proposed action subject to environmental review under SEPA needs to be aware of the ever-evolving role of the statute and its application to their client’s proposal.

SEPA requires state and local governmental agencies to review “actions” which broadly include “activities . . . entirely or partly financed, assisted, conducted, regulated, licensed, or approved by agencies.” WAC 197-11-704. In the land use and environmental context, this includes almost every permit issued for a project, as well as land use planning documents and adoption of regulations. The agency issues a threshold determination for each action. A “determination of non-significance” or “DNS” means that the action is not likely to have probable, significant adverse environmental impacts and may proceed without further SEPA analysis. Alternatively, an agency can issue a “Determination of Significance” or “DS,” which indicates that an action is likely to result in probable, significant adverse environmental impacts. An impact is “significant” when it is more than likely that the proposed project will have a “reasonable likelihood of more than a moderate adverse impact” on the environment. WAC 197-11-794. A DS prompts a more thorough review of a proposed action through a lengthy (and often expensive) environmental impact statement (EIS) that investi- 

Requiring SEPA review of project impacts that are now addressed by new and evolved federal, state, and local regulatory schemes creates a potentially duplicative regulatory framework that has prompted many to rethink SEPA and its role.

SEPA was patterned after the National Environmental Policy Act (NEPA), a federal statute that requires federal agencies substantive authority in contrast to that of SEPA. NEPA imposes a process for agency consideration of impacts before taking a federal action, but does not require any particular substantive outcome, nor does it authorize decisions or denials not otherwise authorized by federal statute or regulation. By contrast, SEPA obligates agencies to use their substantive authority to condition or even deny an action if they identify significant adverse environmental impacts. This requirement provides interested parties the ability to challenge an agency’s action based on the potential environmental impacts of a proposed action.

While SEPA was one of the primary tools for environmental protection when it was adopted, over the past 40 years, other local, state, and federal environmental laws and regulations have become more complex and stringent, commensurate with a better scientific understanding of what is required to protect the environment. For example, storm water regulations and associated best management practices have changed dramatically and impose significant requirements for storm water quantity and quality management as a condition of development approval. Additionally, the Washington State Legislature has adopted new laws that
require local governments and state agencies to directly address many of the environmental issues that they had previously relied on SEPA to resolve. In the land use arena, one of the biggest changes was the adoption in 1990 of the Growth Management Act (GMA), chapter 36.70A RCW, which requires local governments to adopt deregulations that designate and protect “critical areas.” The resulting GMA regulations are, in essence, localized environmental laws that protect sensitive areas such as streams, rivers, wetlands, fish and wildlife conservation areas, aquifer recharge areas, geologic hazard areas, and more.

Requiring SEPA review of project impacts that are now addressed by new and evolved federal, state, and local regulatory schemes creates a potentially duplicative regulatory framework that has prompted many to rethink SEPA and its role. Even though SEPA’s implementing regulations expressly allow agencies to rely on existing environmental regulations to discharge their obligations under SEPA, some advocates nonetheless rely on SEPA to push for mitigation or even denial of proposed actions beyond what those existing environmental regulations require. In response, other practitioners and stakeholders have been pushing to eliminate or streamline SEPA and reduce duplication more explicitly. For example, the Legislature in 2012 adopted Chapter 1, Laws of 2012 (2ESSB 6406), directing the State Department of Ecology to consider changes to SEPA’s implementing regulations in chapter 197-11 WAC. Ecology addressed these changes in two rounds. The first was completed in 2012 and was narrowly focused on increasing the range of projects that local governments may exempt from SEPA review as “minor new construction” and revising the process by which local governments set flexible thresholds for exemptions. The second round has extended into 2014. The proposal includes updating exemption thresholds for other actions as well as mechanisms to better integrate SEPA review with the GMA, to reduce duplication. Ecology expects to adopt the second round of rule changes by the end of the first quarter of 2014. While these are an important step, some practitioners and stakeholders were pushing for a broader reform in the interest of streamlining and modernizing environmental review.

Even as Ecology considers changes to SEPA’s implementing regulations (primarily to exemption levels), many agencies and advocates still use SEPA as a powerful “gap-filling” mechanism to...
advance environmental review of issues where they claim existing laws are insufficient to address potential impacts. This is especially true in areas of law where policy choices regarding the need for protections against environmental concerns of the day are heavily debated, but not yet established. Examples are wide-ranging, but typically involve emerging environmental issues where there is either no federal or state statute addressing the issue of concern, or where advocates argue existing statutes are insufficient to protect the environment.

A recent high-profile example of SEPA’s reach into issues not fully addressed by other environmental regulations involves agency review of greenhouse gas emissions. Because greenhouse gas emissions are not addressed in any other regulatory scheme, Ecology has adopted guidance on using SEPA to evaluate greenhouse gas emissions impacts. In the case of coal exports, the scope of SEPA review for greenhouse gas emissions has been expanded to include “cradle to grave” evaluation of impacts from extraction, transportation, and combustion of coal for energy generation in Asia. This expanded review requires the SEPA lead agencies on proposed marine export terminals to evaluate and consider mitigation not only for the potential environmental impacts of constructing and operating the marine terminals in Washington, but also for coal mining in Wyoming, rail transportation of coal from mines to the terminals, and coal combustion in Asia. This particular expansion and application of SEPA’s “gap-filling” substantive authority raises especially difficult challenges regarding implementation, jurisdiction, and authority for the state and local agencies involved.

Another example where SEPA continues to play an important, but often loosely-defined, gap-filling role involves review of development projects for potential impacts on cultural resources. While laws exist to protect cultural resources that are discovered during construction of a project, such as chapter 27.53 RCW, many argue that the law is too reactive because it only addresses protection of resources once they are disturbed. Accordingly, advocates and agencies have increasingly relied on SEPA review to require pre-project analysis and site study prior to project construction, an approach that Ecology has considered in its SEPA rulemaking.

The challenge for SEPA today lies in finding the appropriate balance between two goals. On the one hand, SEPA must continue to recognize that the state’s natural environment is one of its most valuable resources that needs careful consideration and protection to achieve sustainable prosperity. On the other hand, there is benefit to reducing regulatory red tape, duplication, and uncertainty when trying to implement important economic development objectives for the state. SEPA once was the only tool for this consideration. Today, SEPA continues to serve as an appropriate supplement to other laws and regulations that have been adopted to make specific policy choices and address specific impact issues. Where one draws those lines between what is adequately addressed by existing regulations and what has not will be the subject of ongoing debate regarding SEPA reform, not just in 2014, but likely for years to come.

Jay Derr is the managing partner of Van Ness Feldman’s Seattle office. He has practiced real estate, land use, and environmental law for over 30 years. He can be reached at jpd@vnf.com. Tadas Kisielius is a partner at Van Ness Feldman, where he counsels public and private clients on land use, water resources, and environmental law matters. He can be reached at tak@vnf.com.

We are pleased to announce that Amber Penn-Roco has joined Galanda Broadman.

Amber is a former K+L Gates associate and member of the Chehalis Tribe.

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*New lawyers who have been admitted for fewer than four years.
At its meeting on March 7–8, 2014, in Seattle, the WSBA Board of Governors elected a new governor to serve District 9, heard proposed amendments to standards for indigent defense, and considered an extension of the Escalating Cost of Civil Litigation Task Force charter. The Board also added a new Section, reviewed recommendations to terminate the Member Health Plan, and listened to updates from the LLLT program and the Legislative Committee.

Election of District 9 Governor Elijah Forde
The Board elected Elijah Forde to serve as District 9 governor, a position that was vacated by the resignation of Gov. James Andrus. Forde is managing attorney and owner of Atlas Law, PS, which focuses on providing services to workers injured in Washington. He is the current president of the Loren Miller Bar Association. Forde received his undergraduate degree from the University of California-Berkeley and law degree from Howard University School of Law.

Proposed Amendments to Standards for Indigent Defense
The Board listened to a proposal by WSBA’s Council on Public Defense to approve amendments to Standard 3 of the 2011 WSBA Standards for Indigent Defense Services, and for resolution regarding amended Standard 3 for adoption by the Supreme Court pursuant to CrR 3.1 (Right to and Assignment of Lawyer), CrRLJ 3.1 (Right to and Assignment of Lawyer) and JuCR 9.2 (Additional Right to Representation by Lawyer).

In April 2013, the Washington Supreme Court issued an Order directing the Washington State Office of Public Defense to: 1) conduct a statewide attorney time study to include, among other information, time records of public defense attorneys from various jurisdictions who wished to participate on a volunteer basis; and 2) develop a model misdemeanor caseweighting policy consistent with CrRLJ 3.1 and the Standards for Indigent Defense adopted by the Court.

The Washington State Office of Public Defense, as part of the time study and model misdemeanor case weight-
directed to “seek input from affected lawyers, judges, and other entities while developing any recommenda-
tions.” In October 2013, the Task Force conducted a survey of selected WSBA Practice Sections, Minority Bar Asso-
ciations, the Washington Association for Justice, and Washington Defense Trial Lawyers.

The ECCL Task Force Subcommittees on alternative dispute resolution; discovery; pleadings and motion practice; and trial procedures are currently integrating the data collected from the survey into their analysis and recommendations. The Task Force is expected to take several additional months to complete the final report to the Board of Governors.

Legislative Update
Vern Harkins, WSBA Board of Gov-
ers Legislative Committee chair, and WSBA Legislative Liaison Kath-
rlynn Leathers provided an update on the two WSBA-sponsored bills for the 2014 Legislative session. The corpo-
rate conversion bill passed the Senate and House with no amendments. This bill would streamline existing conver-
sion procedures for corporations and limited liability companies. The new provisions would allow such transac-
tions to occur directly through a single filing with the Secretary of State, consistent with provisions adopted in 28 other states, including Delaware.


New Low Bono Section Added
The Board approved the creation of the Low Bono Section, whose membership will include lawyers and other profes-
sionals whose practices are targeted to individuals of moderate incomes. The new section is planning a slate of ac-
tivities and resources that support low bono practitioners.

Termination of WSBA Member Health Plan
The Board voted to terminate the WSBA Member Health plan. WSBA has part-

ered with Kibble & Prentice to offer medical and dental insurance to mem-
bers through Group Health and Wash-
ington Dental Service since 2002. Kibble & Prentice reported that over the last eight years, enrollment in the WSBA plan has steadily declined since its peak of 150 subscribers in 2005, as subscribers have found other suitable options and the plan demographics have changed. Those still enrolled in the WSBA plan have higher prescription drug and medical expenses, which has increased plan costs.

In addition, the implementation of the Affordable Care Act has dramatically changed the landscape, not only in regulation, but in removing the pre-
existing conditions bar to getting health insurance and changing the process of accessing coverage. In turn, subscrib-
ers have left the plan as costs have in-
creased and the market has shifted. The plan currently has 51 subscribers and is set to end May 31, 2014. Members have 60 days after termination (until July 31, 2014) to find other coverage. The WSBA has begun implementing a transition plan to ensure that remaining subscribers are timely notified, well in-
formed about their options, and receive personal assistance in their search for comparable alternate coverage.

Limited License Legal Technician (LLLT) Program
Steve Crossland, LLLT Board chair and past president of the WSBA, and Thea Jennings, LLLT program lead, provided an update on the LLLT program. The first class of 17 students is currently underway at the University of Washington School of Law. The LLLT Board is planning to hold the first LLLT bar exam in March 2015 and the first LLLT licenses could be obtained as early as April 2015.

For more information on the Board of Governors and Board meetings, see www.wsba.org/bog.
In Remembrance

This In Remembrance section contains brief obituaries of WSBA members. The list is not complete and contains only those notices that the WSBA has learned of through newspapers, magazine articles, trade publications, and correspondence. More recent notices will appear in subsequent issues of NWLawyer. Please email notices or personal remembrances to nwlawyer@wsba.org.

John S. Adcock
Born in Nevada, long-time Snohomish County Deputy Prosecutor John Adcock attended the University of Washington and received his law degree from Willamette University. His first passion was music, and he spent his youth playing gigs in casinos on guitar. He was the first deputy prosecutor assigned to the Snohomish Regional Drug Task Force. He retired from the law in 2011 because of health issues, and spent time on road trips visiting aircraft and train museums. As an adult, he was a member of the band Station House Blues, playing small venues and charity events.


Kenneth R. Ahlf
Kenneth Ahlf was born in Reardon, attended Washington State University, and earned his law degree at the University of Washington. He started his law career as a law clerk for the attorney general’s office before going into private practice. He was a devoted member of the community, serving on the North Thurston School Board, coaching Little League, and as a member of the Lacey Rotary. He was a supporter of the Safi School Foundation, which helped schools and students in Tanzania. He enjoyed skiing and was a lifelong Seahawks fan.

Kenneth R. Ahlf died Jan. 6, 2014, at the age of 72.

Gordon B. Anderson Jr.
Gordon Anderson was born in Seattle, attended Washington State University, and received his law degree from Lewis and Clark Law School. He practiced in criminal defense and personal injury for 35 years. He was an avid historian with a passion for American history and had an extensive collection of books on the topic. He loved to play jazz clarinet. He endured a seven-year battle with multiple myeloma, showing courage and strength.


David L. Ashbaugh
David Ashbaugh was born in Tacoma, attended the University of Washington, and earned his law degree at the University of Idaho. He was the senior founding partner of the Seattle law firm Ashbaugh Beal.

David L. Ashbaugh died Feb. 20, 2014, at the age of 73.

Edward H. Becker III
A native of New Jersey, Edward Becker moved to Oregon and attended Lewis and Clark Law School, where he earned his law degree. He began his career as an attorney in Seattle. The Pacific Northwest satisfied his desire to live somewhere surrounded by nature. He enjoyed the outdoors through gardening, hiking, snow-shoeing, camping, and long-distance running.


Marna J. Bierlein
Marna Bierlein enjoyed modern art and design, traveling to exotic locations, and her four-legged pal, Spike. She worked as a private attorney and interior design consultant.

Marna J. Bierlein died Nov. 22, 2013, at the age of 46.

Craig G. Campbell
Craig Campbell was born in Portland and grew up in Walla Walla. He attended Colorado College and received his J.D. from Gonzaga University and a tax law degree from Boston University. After working in private practice, Campbell focused his career on public service and worked with the Washington State Court of Appeals, Division I. Upon retiring, he traveled internationally with family and friends. He was an avid game player, and enjoyed bridge. Campbell was a longtime member of The Seattle Men’s Chorus and served on several committees at Seattle’s Intiman Theater.

Craig G. Campbell died Feb. 16, 2014, at the age of 62.

Steven H. Chestnut
Steven Chestnut was born and raised in New York. After graduating from New York and Columbia University with degrees in engineering, he moved to Seattle to work for Boeing. Chestnut earned his law degree from the University of Washington School of Law and became deeply involved in Indian law. Throughout his career, he wrote federal and tribal legislation on behalf of numerous tribes.

Steven H. Chestnut died Nov. 22, 2013, at the age of 46.
Steven H. Chestnut died Dec. 16, 2013, at the age of 73.

John W. Cobb
John Cobb was born in Abilene, Texas. As the son of an Air Force pilot, Cobb’s family moved frequently before settling in Elko, Nevada. Cobb moved to Bainbridge Island and worked in public service for 28 years. He retired from the King County Prosecutor’s Office in September 2012. He enjoyed skiing the mountains of Nevada, Washington, and Canada and coaching his kids’ sports teams.
John W. Cobb died Dec. 26, 2013, at the age of 55.

Jeffrey S. Dean
Jeffrey Dean was born and raised in Rochester, New York. After graduating from the University of Rochester with a degree in economics, he joined the Navy and was stationed on the West Coast, deploying to Vietnam and the Pacific theater. He taught at the Merchant Marine Academy. While teaching, Dean pursued his M.B.A. at New York University. He returned to Seattle, where he worked at a mortgage company. He began night school at the University of Puget Sound Law School, where he earned his law degree. Dean worked as in house counsel, and entered private practice in 1992. He will be remembered for his sense of humor and his pink flamingo collection.
Jeffrey S. Dean died Dec. 16, 2013, at the age of 64.

Rodney G. Franzen
Rodney G. Franzen grew up in the Seattle area. He received his B.A. and J.D. from the University of Washington. He began his career as a Thurston County deputy prosecuting attorney and remained a prosecutor for 13 years. Franzen started his own practice in 1994 and worked as a public defender for some years in the areas of family law and personal injury.

D. Wayne Gittinger
D. Wayne Gittinger was born in Idaho and attended the University of Washington, where he was the pitcher for the Husky baseball team. He earned his law degree at the University of Washington School of Law. He returned to Seattle, where he joined the law firm of Lane Powell. He practiced corporate law for more than 50 years. Gittinger served on several boards, including the Seattle Sports Commission and the Seattle Police Foundation. He was a Husky supporter and established an endowed professorship at the law school with his wife. They also endowed two scholarships, and the Dean’s Suite at the University of Washington School of Law is named in honor of Gittinger and his wife.
D. Wayne Gittinger died March 6, 2014, at the age of 81.

H. Donald Gouge
H. Donald Gouge was born and raised in Montana. He joined the Army in 1942, becoming a B-24 Bomber pilot based in England. After discharge, he attended the University of Washington and attained his bachelor’s degree in engineering, where he also earned his law degree.

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In Remembrance

He opened a law office in Renton, where he practiced for almost 40 years. Upon retirement, Gouge and his wife seasonally lived in West Yellowstone, where they enjoyed the outdoors for over 20 years. His greatest honor was being feared by a large rainbow trout.

H. Donald Gouge died Jan. 23, 2014, at the age of 90.

George I. Hamano
George Hamano was born and raised in Hawaii. Hamano graduated from the University of Hawaii with a degree in civil engineering. He received his J.D. from Gonzaga University School of Law. He began his career as a civil engineer for the City and County of Los Angeles. After moving back to the Seattle area, Hamano became a litigator for the National Labor Relations Board in Seattle. Hamano had a passion for people, animals, the Cleveland Browns, and bargain shopping.

George I. Hamano died July 19, 2013, at the age of 71.

Joseph Delaney Holmes Jr.
Joseph Holmes Jr. was born and raised in Seattle and received both his undergraduate degree and law degree from the University of Washington. After serving in the Air Force, he started his career as an attorney with the Internal Revenue Service in San Francisco. He returned to his hometown and enjoyed a long career practicing tax and real estate law at the firm Karr Tuttle Campbell, where he was a partner until retiring in 1997. Holmes enjoyed reading, sports, investing, and the arts.


James E. Kennedy
James Kennedy was born in Cleveland, Ohio. He served in the United States Marine Corps, rising to the rank of a corporal. He attended the University of Washington, where he completed his undergraduate and law degrees. After working for one year as a law clerk, he was hired by King County Prosecutor Charles O. Carroll as a deputy prosecutor. He became the chief civil deputy at the Prosecutor’s Office, in charge of all cases and functions apart from criminal cases. In 1970, Kennedy opened a private law practice along with Charles O. Carroll and two other attorneys. He enjoyed the practice of law and steadfastly maintained that he would never retire. At the age of 87, he became too ill to attend the required continuing education courses and he declared that he would have to “hang it up.” He was a storyteller and a master of witty one-liners, e.g., his comment on the complexities of a case involving accounting disputes was, “Figures don’t lie but liars can figure.”


Judge Douglas D. McBroom
Judge Douglas McBroom grew up in Spokane. He received his undergraduate and law degrees from the University of Chicago, and a master’s in criminal law from Northwestern University. McBroom began his legal career as one of the nation’s first police legal advisors, teaching officers in Pittsburgh to comply with the new civil rights laws. He worked at the U.S. Attorney’s Office in the Western District...
of Washington, investigating government corruption and organized crime. He later became the chief criminal prosecutor for Pierce County before switching to private practice at the firm of Schroeter, Goldmark and Bender. In 2000, he was elected to King County Superior Court, where he served until his retirement in 2009. In retirement, McBroom enjoyed skiing, travel, and dinner parties with friends and family.

Judge Douglas D. McBroom died Nov. 16, 2013, at the age of 73.

Jack McDonald
Jack McDonald was born in British Columbia, but his family moved to Seattle when he was three. He received his undergraduate and law degrees from the University of Washington. After three years of Army service in the South Pacific, he returned to the practice of law for a 30-year career with the Veterans Administration in Seattle.

Self-described as “eccentric,” he lived frugally and clipped coupons while donating generously to many charitable causes. Upon his death, McDonald bequeathed a $188 million charitable trust to benefit Seattle Children’s Hospital, the University of Washington School of Law, and the Salvation Army — the largest charitable gift in the history of Seattle Children’s and of the law school. McDonald chose Seattle Children’s Hospital in honor of his mother, a long-time hospital volunteer; the law school in appreciation of his education; and the Salvation Army in honor of his father’s generosity to people in need.

“Our family has lived with the ‘secret’ of Jack’s generous fortune for more than 40 years, all while being amazed at his frugal lifestyle and modest demeanor,” said his stepdaughter, Regen Dennis. “He was quirky and eccentric in many ways, and always stayed true to himself by acting on his convictions to do the most good with his wealth.”

Jack McDonald died Sept. 23, 2013, at the age of 98.

Robert K. McIntosh
Robert McIntosh was born in Pittsburgh, Pennsylvania. He practiced law from 1981 to 2013 in Washington and Maryland. He was a member of the Genesis House in Seattle, the Assateague Coastal Trust, and the Berlin, Maryland, Historic Commission. In his free time, he enjoyed hiking, boating, kayaking, and reading.

Robert K. McIntosh died Oct. 29, 2013, at the age of 57.

Judge Brian H. Miller
Judge Brian Miller was born in Spokane and grew up in Ritzville. He received his undergraduate degree from the Univer-
Gregory A. Nielson

Gregory Nielson was born in Alberta, Canada. He received his undergraduate degree from Brigham Young University and his law degree from Lewis and Clark College of Law. Nielson spent several years working in his father’s machine shop and was an insurance salesman, stockbroker, and financial planner before returning to his first love of practicing law. He enjoyed rugby, basketball, weight lifting, and cycling; his favorite mode of transportation was his Harley, and he was an amateur photographer.

Gregory A. Nielson died Nov. 11, 2013, at the age of 66.

Carl Pruzan

Carl Pruzan was born in Seattle and received his undergraduate degree from the University of Washington. He served in the Navy, as an officer in the South Pacific. Returning home from the war, he studied law and founded the firm of Casey and Pruzan, practicing until the age of 90. An avid collector of musical recordings, he was a regular attendee at the Seattle Symphony and chamber music performances. Pruzan loved literature, travel, fishing, photography, and gardening in the Japanese style.


Lyle R. Schneider

Lyle Schneider was born in Minnesota and moved to Seattle as a young man. He received his undergraduate degree from the University of Washington; while he was at its law school, World War II was declared, and Schneider joined the Navy, serving at Pearl Harbor, the South Pacific, and on a merchant ship. After the war, he finished law school and joined his father-in-law’s firm, where he practiced for over 50 years until his retirement in 2005. After retirement, he moved to the family ranch in the Wenas Valley, farming hay and raising cattle. Schneider served three terms as Auburn city attorney and was also city attorney for the town of Pacific. He was the director of three banks, helped draft the new King County Charter, and was active in the Association of Washington Cities. Schneider was known for being a good listener, a dispenser of wise advice, and an excellent storyteller.

Lyle R. Schneider died Feb. 23, 2013, at the age of 95.

James A. Vander Stoep

Vander Stoep practiced law for five decades; he was a past president of the Lewis County Bar Association and a governor and past president of the Washington State Bar Association. He was a past president of Chehalis Rotary Club, a co-founder of Chehalis Little League, and a chair of the Lewis County Republican Club. An active community member, Vander Stoep supported Chehalis schools and youth programs, community orchestras, and public libraries.

He enjoyed fishing in Alaska, clamming in the Queen Charlotte Islands, hunting pheasants, and annual family vacations to Orcas Island.


Gail N. Wahrenberger

Gail Wahrenberger was born in New York. She saw the world as a United Airlines flight attendant before receiving her undergraduate degree at Oregon State University and her law degree from the University of Oregon. She practiced family law in Seattle for nearly 30 years, mainly at the firm of Stokes Lawrence. Wahrenberger volunteered at a Seattle legal clinic for over 25 years, providing legal counsel to those who could not afford a lawyer. She loved to travel with family and friends, visiting France, Italy, Tahiti, and the Caribbean. She enjoyed gardening, cooking, and entertaining family and friends at her homes on Bainbridge Island and in Palm Springs.

Gail N. Wahrenberger died on Jan. 23, 2014, at the age of 66.

Robert E. Welch

Robert Welch was born in Spokane and grew up in Clarkston. He received his undergraduate and law degrees from Gonzaga University. Welch practiced law in Marysville until ill health forced him to retire. He enjoyed working in his vegetable garden, hunting, fishing, and camping.

Robert E. Welch died Nov. 13, 2013, at the age of 71.
To the friends of the 2013 Campaign:

Because of you, children have found safe homes.

Because of you, veterans have accessed care.

Because of you, rights have been defended,

justice established,

lives transformed.

Our world is a better place
Because of you.

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Opportunities for Service

Board of Governors Elections Ends April 15

All active WSBA members in the 3rd, 6th, and 7th-North Board of Governors districts are encouraged to vote in the Board of Governors elections that began March 14 and end April 15. If you received an email or paper ballot with voting instructions in it, please follow the instructions to vote. If you did not receive an email or paper ballot, contact the WSBA Service Center at questions@wsba.org or 800-945-WSBA. More information about the election can be found on page 63 or online at www.wsba.org/elections.

Call for Applications for WSBA Board of Governors At-Large Position

Application deadline: April 18, 2014, 5 p.m.

One of the three at-large positions on the WSBA Board of Governors is up for election. Under WSBA’s Bylaws, the purpose of this position is to increase diversity and representation on the Board, and the position is to be filled by a WSBA member who has “the experience and knowledge of the needs of those lawyers whose membership is or may be historically under-represented in governance, or who represents some of the diverse elements of the public of the State of Washington.”

The Board of Governors will elect the at-large governor at their meeting on June 6, and the governor’s three-year term will start at the end of the Sept. 18–19 BOG meeting. For more information about the position and how to apply, see wsba.org/elections. The WSBA Bylaws are posted at www.bit.ly/bylawswsba. Applications will be accepted until 5 p.m. on April 18, 2014. Letters of endorsement will be accepted through May 16, 2014. If you have questions, please contact WSBA Diversity Program Manager Joy Eckwood at joye@wsba.org or 206-733-5952 or 800-945-9722, ext. 5952.

WSBA Presidential Search

Application Deadline: May 1, 2014

The WSBA Board of Governors is seeking applicants for the position of WSBA president for 2015–16, who will serve as president-elect in 2014–15. Pursuant to Article VI(D)(2) of the WSBA Bylaws, candidates for WSBA president for 2015–16 must be individuals whose primary place of business is located in eastern Washington. The WSBA member selected will have an opportunity to provide a significant contribution to the legal profession.

Applications for 2015–16 WSBA president will be accepted through May 1, 2014, and should be limited to a current résumé, a concise application letter stating interest and qualifications, and no fewer than five or more than 10 references. The Board of Governors will consider endorsement letters received by May 16, 2014. Applications and endorsement letters should be sent to: WSBA Executive Director, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101 or emailed to pami@wsba.org.

Direct contact with the Board of Governors is encouraged. All candidates will have an interview with the full Board of Governors in open session at the June 6, 2014, Board of Governors meeting in Seattle. Following the interviews, the Board will select the president. Although prior experience on the WSBA Board of Governors may be helpful, there is no requirement that one must have been a member of the Board of Governors or had previous experience in Bar activities. The candidate must be willing to devote a substantial number of hours to WSBA affairs and be capable of being a positive representative for the legal profession. The position is unpaid. Some expenses, such as WSBA-related travel, are reimbursed.

The commitment begins in June 2014, following selection. A one-year term as president-elect will begin at the Annual Awards Dinner on Sept. 18, 2014. The president-elect is expected to attend the two-day board meetings held approximately every six to eight weeks, as well as numerous subcommittee, section, regional, national, and local meetings. In September 2015, at the WSBA Annual Awards Dinner, the president-elect will assume the position of president. During his or her service, the president-elect and president will also be required to meet with members of the Bar, the courts, the media, and public and legal interest groups, as well as be involved in the Bar’s legislative activities. Appropriate time will need to be devoted to communication by letter, email, and telephone in connection with these responsibilities.

The duties and responsibilities of the president are set forth in the WSBA Bylaws. The Bylaws can be found at www.bit.ly/bylawswsba. For further information, contact Pam Inglesby at pami@wsba.org or 206-727-8226 or 800-945-9722, ext. 8226.

American Bar Association House of Delegates

Application deadline: May 9, 2014

The WSBA Board of Governors is accepting letters of interest and résumés from members interested in serving on the American Bar Association (ABA) House of Delegates representing the WSBA. Four positions are available for two-year terms beginning in August 2014. The control and administration of the ABA are vested in the House of Delegates, the policymaking body of the ABA. The House, composed of approximately 550 delegates, elects the ABA officers and board, and meets out of state twice a year. Delegate attendance is required (to ensure full voting capacity exists at all times, an alternate will attend if one of the delegates is unable to attend a meeting). The WSBA provides an allowance of $800 per year per delegate. Members may serve a maximum of three consecutive terms. Those serving on the ABA House of Delegates must be WSBA members in good standing throughout their terms. Please submit letters of interest and résumés to the WSBA Communications Department, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539; or email barLeaders@wsba.org.

Washington Pattern Jury Instructions Committee

Application deadline: May 9, 2014

The WSBA Board of Governors is accepting letters of interest and résumés from members interested in serving a four-year term on the Washington Pattern Jury Instructions Committee. One position is available. The four-year term will commence upon appointment and expire on July 15, 2018. Washington Pattern Jury Instructions Committee members review, discuss, and vote on civil and criminal instructions as drafted by subcommittees or staff. The committee meets monthly in Seattle on Saturday for three or four hours (except July and August), and requires a considerable time commitment. It is a large committee with more than 30 members, including judges and lawyers, and two WSBA representatives. For additional information, please contact Lynne Alfasso at 360-357-2125 or lynne.alfasso@courts.wa.gov. Submit letters of interest and résumés to: WSBA Communications Department, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539; or email barLeaders@wsba.org.
Vote Now for Your Next WSBA Governor!

If you are an active WSBA member in District 3, 6, or 7N, vote now for one of the candidates running from your district. Visit www.wsba.org/elections for more information and to find a link to the Meet the Candidates page, which features video from the Candidates Forum (photos below) and other information about the candidates. You should have received an electronic ballot by email or a paper ballot. If you didn’t receive one, contact the WSBA Service Center at 206-443-9722 or 800-945-9722, or email barleaders@wsba.org.

*Candidate Andrew Bergh did not participate in the Candidate Forum.

VOTING CLOSES APRIL 15 • VOTE NOW!
Board of Governor Elections • www.wsba.org/elections
Volunteer Custodians Needed

The WSBA is seeking interested lawyers as potential ELC 7.7 volunteer custodians. An appointed custodian is authorized to act as counsel for the limited purpose of protecting a client’s interests whenever a lawyer has been transferred to disability inactive status, suspended, disbarred, dies, or disappears and no person appears to be protecting the clients’ interests. The custodian takes possession of the necessary files and records and takes action to protect clients’ interests. The duty usually is centered on contacting clients and assisting them in retrieving their files and finding new counsel. The custodian may act with a team of custodians and much of the work may be performed by supervised staff. If the WSBA is notified of the need for a custodian, the WSBA would affirm the willingness and ability of a potential volunteer and seek their appointment as custodian. Costs incurred may be reimbursed. Current WSBA members of all practice areas are welcome to apply. If interested, please contact Sandra Schilling at sandras@wsba.org. 206-239-2118 or 800-945-9722, ext. 2118 or Darlene Neumann at darlenen@wsba.org. 206-733-5923 or 800-945-9722, ext. 5923.

WSBA News

Who Inspires You? Honoring the Luminaries of the Legal Community

Nominations are now open for the 2014 WSBA Annual Awards, which honor exemplary individuals from the legal community. The awards are presented at the annual Awards Dinner in September to those who have made noteworthy contributions and achievements in public service, government service, professionalism, pro bono work, diversity and other areas. Both lawyers and non-lawyers are eligible to make nominations and receive awards. The deadline for nominations is April 30. To learn more about the award categories and nomination requirements, visit wsba.org/awards.

WSBA Board of Governors Meetings

April 25–26, Moses Lake; June 6, Seattle

With the exception of the executive session, Board of Governors meetings are open, and all WSBA members are welcome to attend. RSVPs are appreciated but not required. Contact Pamela Wuest at 206-239-2125, 800-945-9722, ext. 2125, or pamelaw@wsba.org. The complete Board of Governors meeting schedule is available on the WSBA website at www.wsba.org/bog.

MCLE and Licensing

2014 Licensing and MCLE Information

Licensing Suspensions. If any portion of your license fee, LFCP assessment, or late fee remains unpaid, or if required forms have not been filed after two months’ written notice of your delinquency, a recommendation for suspension will be submitted to the Supreme Court.

MCLE Suspensions. If you were due to complete MCLE requirements for 2011–13 (Group 1) and have not done so after two months’ written notice of your delinquency, a recommendation for suspension will be submitted to the Supreme Court.

S25 MCLE Comity Certificate Fee Information

There is a $25 fee for ordering or submitting MCLE comity certificates. Ordering comity certificates can be done online or via mail. See wsba.org/mcle for more information.

Judicial Member Licensing

Deadline was Feb. 3, 2014. If you are still eligible for judicial membership and you have not filed your renewal within 60 days of the date of the written notice, your eligibility to transfer to another membership class upon leaving service as a judicial officer will not be preserved. If you are no longer eligible for judicial membership, you must notify the Bar within 10 days and, if you want to continue your affiliation with the WSBA, you must change to another membership class within the Bar.

Legal Community

Judicial Campaign Forum

On Monday, April 21, from 5:30–7:30 p.m., at the SeaTac Office center, the WSBA Ethics Advisory Committee will sponsor a Judicial Campaign Forum with past and present committee members and a representative of the Washington State Bar Association. There will be a review of the Code of Judicial Conduct and a Q&A session. There is no charge, and two CLE ethics credits have been approved for this forum. This forum will be videotaped and posted for viewing and credit at www.courts.wa.gov. For more information or to register, contact Caroline Tawes at 360-705-5307 or caroline.tawes@courts.wa.gov.

Judge Betty Binns Fletcher Room Dedicated at Seattle’s The Rainier Club

On February 28, The Rainier Club, celebrating its 125th year, dedicated the Judge Betty Binns Fletcher Room in honor of the late distinguished jurist. In 1978, The Rainier Club admitted Betty Fletcher, then a partner at Preston, Thorgrimson, Ellis, Holman & Fletcher (now K&L Gates), as its first woman member. Before Betty Fletcher’s admission to the club, women entered the clubhouse
through a side door on hilly Marion Street and climbed the back stairs to the club’s drawing room — now the Judge Betty Binns Fletcher Room. The front door was closed to women.

Speakers at The Rainier Club’s dedication ceremony, including daughter Susan Fletcher French, William Gates, Sr., and Rainier Club President Robin Pasquaarella, described how Betty Fletcher, by her own inspirational example, had figuratively opened the front door for others denied admission to the legal profession and mainstream institutions.

French recalled that in 1967, although she had graduated first in her UW Law School class like Judge Fletcher, employment prospects for aspiring women lawyers had not progressed much since Preston Thorgrimson took a chance on Fletcher in 1956. She remembered using that side door on Marion Street with her mother, and said that it is fitting that a room at that end of the club house be named for her.

Membership in The Rainier Club, as in the legal profession, is visibly more diverse than it was in 1978 when Betty Fletcher first crossed the threshold of the club’s front door. The Rainier Club’s recognition in 2014 of Judge Betty Fletcher serves as an enduring appeal to be aware of closed doors — and vigilant to open them.

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**WSBA Lawyers Assistance Program (LAP)**

**Work + Wellness Webcast Series**

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**Life After Meth**

On Wednesday, April 16, from noon to 1:30 p.m., this WSBA Lawyers Assistance Program’s Work + Wellness Webcast Series presentation will feature career coach and attorney Karen Summerville. Karen returns to share her unique approach to the job search through the rubric of the “Treasure Hunt.” Topics to be discussed include networking strategies, approaches to the interview, and useful self-assessment questions to identify what job will be a good fit. The presentation is free; however, registration for either live attendance or webcast is required. Learn more at www.wsba.org/lap.

**Seeking Peer Advisors**

Would you like to provide support to another lawyer in your community addressing topics such as mental health and self-care, alcoholism and addiction, or guidance in one’s practice? Lawyers are often uniquely able to be resources to one another in these areas. The WSBA Lawyer Assistance Program is launching a new initiative to reconstitute its peer advisor network. The goal is to build a robust network throughout the state. Skills trainings are being developed and planned. To participate or learn more, see http://bit.ly/104fpwN, contact lap@wsba.org, or 206-727-8268 or 800-945-9722, ext. 8268.

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Need to Know

The Weekly Job Search Group provides strategy and support to unemployed attorneys. The group runs for seven weeks and is limited to seven attorneys. We provide the comprehensive WSBA job search guide, “Getting There: Your Guide to Career Success,” which can also be found online at www.wsba.org. If you would like to participate or to schedule a career consultation, contact Dan Crystal at dancrystal@wsba.org, 206-727-8267, or 800-945-9722, ext. 8267.

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**Mindful Lawyers Group**

A growing number of legal professionals across the nation are applying mindfulness-based skills and training to lawyering. The Washington Contemplative Lawyers group meets on Mondays at the WSBA Lawyers Assistance Program office from noon to 1 p.m. For more information, contact Sevilla Rhoads at srhoads@gsblaw.com or go to http://wacontemplativelaw.blogspot.com

**Help for Judges**

Judicial Assistance Services (JAS) was created in 2004 by a committee of Washington state judges exploring how to get judicial officers confidential help and intervention when they need it. Because of their unique positions and responsibilities, judges often find themselves with limited avenues for help. JAS is modeled after and affiliated with WSBA’s Lawyers Assistance Program, and offers help from trained peer counselors at no cost for this presentation, and 1.5 ethics credits will be offered. Attend in-person at the WSBA Conference Center or via live webcast; registration is required. Learn more at www.wsba.org/lap.

**Individual Consultation**

The WSBA Lawyers Assistance Program provides individual consultation services for those struggling with depression, work stress, addiction, life transition, and other topics. The first three appointments are offered at no charge; up to three more sessions can be offered on a sliding scale based on your financial situation. Consultations are an opportunity for assessment of any problems you may be facing, identifying useful tools you may utilize to address these issues, and referrals to provide the right resources for you. We also provide consultations around job seeking and can offer informational and referral resources on a range of topics. Call 206-727-8268 or toll-free 855-857-9722, email lap@wsba.org, or go to www.wsba.org/lap.
Need to Know

cost and referral to confidential professional help. Telephone or in-person sessions are available on a sliding-scale basis. For more information, call the JAS program coordinator at 206-727-8268 or 800-945-9722, ext. 8268.

WSBA Law Office Management Assistance Program (LOMAP)

Casemaker Online Research
Casemaker is a powerful online research library provided free to WSBA members. Read about this legal research tool on the WSBA website at www.wsba.org/casemaker. As a WSBA member, you already receive free access to Casemaker. Now, we have enhanced this member benefit by upgrading to add Casemaker+ with CaseCheck+ for you. Just like Shepard’s and KeyCite, CaseCheck+ tells you instantly whether your case is good law. If you want more information, you can find it on the Casemaker website, or call 877-659-0801 and a Casemaker representative can talk with you about these features. For help using Casemaker, call the WSBA Service Center at 800-945-WSBA or 206-443-WSBA.

Learn More about Case-Management Software
The WSBA Law Office Management Assistance Program maintains a computer for members to review software tools designed to maximize office efficiency. LOMAP staff is available to provide materials, answer questions, and make recommendations. To make an appointment, contact lomap@wsba.org.

LOMAP Lending Library
The WSBA Law Office Management Assistance Program Lending Library is a service to WSBA members. We offer the short-term loan of books on the business management aspects of your law office. How does it work? You can view available titles at www.wsba.org/resources-and-services/lomap/lending-library. Books may be borrowed by any WSBA member for up to two weeks. LOMAP requires your WSBA ID and a valid Visa or MasterCard number to guarantee the book’s return to the program. If you live outside of the Seattle area, books can be mailed to you; you will be responsible for return postage. For walk-in members, we recommend calling first to check availability of requested titles. To arrange for a book loan or to check availability, lomap@wsba.org.

Usury Rate
The average coupon equivalent yield from the first auction of 26-week treasury bills in March 2014 was 0.081 percent. Therefore, the maximum allowable usury rate for April is 12 percent.

Ethics

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

Nominations are now open for the 2014 WSBA Awards. To make a nomination and for more info: wsba.org/awards.
Disciplinary Notices

These notices of imposition of disciplinary sanctions and actions are published pursuant to Rule 3.5(d) of the Washington Supreme Court Rules for Enforcement of Lawyer Conduct. Links to relevant documents can be found by viewing the online version of NWLawyer at http://nwlawyer.wsba.org or by looking up the respondent in the lawyer 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.

Disbarred

George J. Atwater III (WSBA No. 17824, admitted 1988), of Mill Creek, was disbarred, effective 2/12/2014, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 8.4 (Misconduct). Scott G. Busby acted as disciplinary counsel. George J. Atwater III represented himself. Lish Whitson was the hearing officer. The online version of NWLawyer contains links to the following documents: Order Approving Stipulation; Stipulation to Disbarment; and Washington Supreme Court Order.

Resigned in Lieu of Discipline

Jeffrey Thornton Haley (WSBA No. 9526, admitted 1979), of Bellevue, resigned in lieu of discipline, effective 1/06/2014. The lawyer agrees that he is aware of the alleged misconduct in disciplinary counsel’s Statement of Alleged Misconduct and rather than defend against the allegations, he wishes to permanently resign from membership in the Association. The Statement of Alleged Misconduct reflects the following violations of the Rules of Professional Conduct: 8.4 (Misconduct). Scott G. Busby acted as disciplinary counsel. Jeffrey Thornton Haley represented himself. Douglas Warren Vanscoy was the hearing officer. The online version of NWLawyer contains links to the following documents: Order Approving Stipulation; Stipulation to Disbarment; and Washington Supreme Court Order.

Resigned in Lieu of Discipline

Larry Lee Whyte (WSBA No. 35282, admitted 2004), of Bainbridge Island, resigned in lieu of discipline, effective 1/06/2014. The lawyer agrees that he is aware of the alleged misconduct in disciplinary counsel’s Statement of Alleged Misconduct and rather than defend against the allegations, he wishes to permanently resign from membership in the Association. The Statement of Alleged Misconduct reflects the following violations of the Rules of Professional Conduct: 1.3 (Diligence), 1.4 (Communication), 1.5 (Fees), 1.15A (Safeguarding Property), 3.2 (Expediting Litigation), 8.4 (Misconduct). Debra Slater acted as disciplinary counsel. Robert Joseph Penfield represented himself. Scott M. Ellerby was the hearing officer. The online version of NWLawyer contains a link to the following document: Affidavit of Robert Joseph Penfield Resigning from Membership in Washington State Bar Association (ELC 9.3(b)).

Resigned in Lieu of Discipline

Robert Joseph Penfield (WSBA No. 25081, admitted 1995), of Bellevue, resigned in lieu of discipline, effective 1/14/2014. The lawyer agrees that he is aware of the alleged misconduct in disciplinary counsel’s Statement of Alleged Misconduct and rather than defend against the allegations, he wishes to permanently resign from membership in the Association. The Statement of Alleged Misconduct reflects the following violations of the Rules of Professional Conduct: 1.3 (Diligence), 1.4 (Communication), 1.7 (Conflict of Interest: Current Clients), 1.15A (Safeguarding Property), 5.3 (Responsibilities Regarding Nonlawyer Assistants), 5.4 (Professional Independence of a Lawyer). Debra Slater acted as disciplinary counsel. William Cameron and Sam Breazeale Franklin represented Respondent. Timothy James Parker was the hearing officer. The online version of NWLawyer contains links to the following documents: Order Approving Stipulation; Stipulation to Three Year Suspension; and Washington Supreme Court Order.

Resigned in Lieu of Discipline

Lacey Adell Young (WSBA No. 35189, admitted 2004), of West Richland, resigned in lieu of discipline, effective 1/02/2014. The lawyer agrees that she is aware of the alleged misconduct in disciplinary counsel’s Statement of Alleged Misconduct and rather than defend against the allegations, she wishes to permanently resign from membership in the Association. The Statement of Alleged Misconduct reflects the following violations of the Rules of Professional Conduct: 1.3 (Diligence), 3.2 (Expediting Litigation), 8.4 (Misconduct). Jonathan Burke acted as disciplinary counsel. Stephen Christopher Smith represented Respondent. John H. Loeffler was the hearing officer. The online version of NWLawyer contains a link to the following document: Affidavit of Lacey Adell Young Resigning from Membership in Washington State Bar Association.

Suspended

Raymond G. Sandoval (WSBA No. 33792, admitted 2003), of Rio Rancho, NM, was suspended for three years, effective 2/13/2014, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.3 (Diligence), 1.4 (Communication), 1.7 (Conflict of Interest: Current Clients), 1.15A (Safeguarding Property), 5.3 (Responsibilities Regarding Nonlawyer Assistants), 5.4 (Professional Independence of a Lawyer). Debra Slater acted as disciplinary counsel. William Cameron and Sam Breazeale Franklin represented Respondent. Timothy James Parker was the hearing officer. The online version of NWLawyer contains links to the following documents: Order Approving Stipulation; Stipulation to Three Year Suspension; and Washington Supreme Court Order.

Reprimanded

Charles Nelson Berry III (WSBA No. 8851, admitted 1979), of Seattle, was reprimanded, effective 12/13/2013, by order of the hearing officer. The lawyer’s conduct violated the following Rules of Professional Conduct: 4.4 (Respect for Rights of Third Person), 8.4 (Misconduct). Francesca D’Angelo and Joanne S. Abelson acted as disciplinary counsel. Kenneth Scott Kagan represented Respondent. The online version of NWLawyer contains links to the following documents: Findings of Fact,
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Reprimanded

Lori J. Guevara (WSBA No. 28732, admitted 1998), of Tulsa, OK, was reprimanded, effective 2/07/2014, by order of the chief hearing officer. The lawyer’s conduct violated the following Rules of Professional Conduct: 8.4 (Misconduct). Joanne S. Abelson acted as disciplinary counsel. Lori J. Guevara represented herself. The online version of NWLawyer contains links to the following documents: Order on Stipulation to Reprimand; Stipulation to Reprimand; and Notice of Reprimand.

Reprimanded

Molly M. McPherson (WSBA No. 23027, admitted 1993), of Coupeville, was reprimanded, effective 12/17/2013, by order of the chief hearing officer. The lawyer’s conduct violated the following Rules of Professional Conduct: 3.3 (Candor Toward the Tribunal), 5.3 (Responsibilities Regarding Nonlawyer Assistants), 8.4 (Misconduct). Joanne S. Abelson acted as disciplinary counsel. Kurt M. Bulmer represented Respondent. The online version of NWLawyer contains links to the following documents: Order on Stipulation to Reprimand; Stipulation to Reprimand; and Notice of Reprimand.

Admonished

Gerald Francis Robison (WSBA No. 23118, admitted 1993), of Burien, was ordered to receive an admonition, effective 1/30/2014, by the hearing officer. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.6 (Confidentiality of Information). Sachia Stonefeld Powell acted as disciplinary counsel. Gerald Francis Robison represented himself. Rebecca L. Stewart was the hearing officer. The online version of NWLawyer contains links to the following documents: Order on Stipulation to Admonition; Stipulation to Admonition; and Admonition.
Gary N. Gosanko and Mark W.D. O’Halloran are pleased to announce the formation of their new law firm:

**GOSANKO & O’HALLORAN, PLLC**

Attorneys Gosanko & O’Halloran are joined by associate Nicholas J. Lepore. The firm continues to litigate and resolve serious-injury cases for plaintiffs in Washington State.

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**BOYD F. BUCKINGHAM, INC.**

is pleased to announce that

**Christy LaGrandeur**

has become a partner of the firm. Christy has been practicing family law exclusively since her admission to the Bar in 1997, after graduating from Seattle University School of Law that same year. In addition to the practice of family law, the firm will continue their active practice advocating for injured persons. Boyd Buckingham also serves as a mediator and arbitrator. Christy LaGrandeur’s practice continues to be focused on family law cases.

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**MALONE & ASSOCIATES, P.S.**

*Attorneys at Law*

is pleased to announce that

**Eric Stoll**

has been promoted to Shareholder.

Mr. Stoll’s practice includes business and corporate law; real estate; estate planning, probate, and trust and estate litigation; and federal tax.

We are also pleased to announce that

**David Petteys**

has joined the firm as a Senior Attorney.

Mr. Petteys’ practice includes state and local tax planning and litigation; business and corporate law; real estate; and trust and estate litigation.

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**Betsy Gillaspy & Liz Rhode**

are pleased to announce the formation of

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Announcements

**Reinisch Wilson Weier pc**

is pleased to announce that

**Kelly J. Niemeyer**

has become a shareholder of the firm.

**Portland office**
10260 SW Greenburg Road, Suite 1250
Portland, OR 97223
Tel: 503-245-1846 • Fax: 503-452-8066

**Seattle office**
159 South Jackson Street, Suite 300
Seattle, WA 98104
Tel: 206-622-7940 • Fax: 206-622-5902

[www.rwwcomplaw.com](http://www.rwwcomplaw.com)

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**Song Mondress PLLC**

is pleased to announce that

**Emily A. McClory**

has joined the firm as an Associate.

Ms. McClory will practice in ERISA and employee benefits law, representing retirement and health plan sponsors, fiduciaries, and institutional service providers in the private and public sectors.

Ms. McClory graduated from the Seattle University School of Law, *cum laude*. She served as judicial law clerk to Chief Justice Barbara Madsen of the Washington State Supreme Court in 2012–2013.

Her undergraduate degree is from the University of Arizona, *cum laude*.

**Song Mondress PLLC**
720 Third Avenue, Suite 1500, Seattle, WA 98104
Tel: 206-398-1500 • Fax: 206-398-1501
emcclor@songmondress.com

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**Song Mondress PLLC**

is pleased to announce that

**Rhiannon E. Lockwood**

has become a Member of the firm.

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720 Third Avenue, Suite 1500, Seattle, WA 98104
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rlockwood@songmondress.com

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**Stacey L. Romberg**

*Attorney at Law*

is pleased to announce that

**Sherry Bosse Lueders**

has joined her firm in an Of Counsel capacity.

Ms. Lueders will represent clients in the firm’s practice areas of estate planning, probate and business law.

206-784-5305 • sherry@staceyromberg.com

**Stacey L. Romberg**

*Attorney at Law*
10115 Greenwood Ave. N., PMB #275
Seattle, WA 98133
[www.staceyromberg.com](http://www.staceyromberg.com)

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**Stacey L. Romberg**

*Attorney at Law*

is pleased to announce that

**Rhiannon E. Lockwood**

has become a Member of the firm.

Ms. Lockwood will continue her ERISA and employee benefits law practice, representing retirement and health plan sponsors, fiduciaries and institutional service providers on a wide range of issues, including ERISA and Internal Revenue Code compliance, fiduciary standards, governmental ruling requests, litigation, service provider contracts, HIPAA privacy and security policies, and strategies for plan design and management.

Ms. Lockwood graduated from the University of Washington School of Law. Her undergraduate degree is from Dartmouth College, *cum laude*, with Departmental High Honors Distinction.

**Song Mondress PLLC**
720 Third Avenue, Suite 1500, Seattle, WA 98104
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rlockwood@songmondress.com

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**Stacey L. Romberg**

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Mac has over 20 years of experience mediating cases in Washington, Oregon, and Alaska. He has mediated over 1,500 cases in the areas of maritime, personal injury, construction, wrongful death, employment, and commercial litigation.
Mac has a reputation as not only being highly prepared for every mediation, but also for providing as much follow-up as is necessary to settle a case.
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Seattle, WA 98109
anne@anneseidel.com
www.anneseidel.com

MEDIATION
Mac Archibald
Mac has been a trial lawyer in Seattle for over 40 years. He has tried a wide range of cases including maritime, personal injury, construction, products liability, consumer protection, insurance coverage, and antitrust law.
Mac has over 20 years of experience mediating cases in Washington, Oregon, and Alaska. He has mediated over 1,500 cases in the areas of maritime, personal injury, construction, wrongful death, employment, and commercial litigation.
Mac has a reputation as not only being highly prepared for every mediation, but also for providing as much follow-up as is necessary to settle a case.
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University of Puget Sound Law School (now Seattle University), Assistant Professor – Alternate Dispute Resolution 1982–1989

J. THOMAS RICHARDSON
Cairncross & Hempelmann
524 Second Avenue, Suite 500
Seattle, WA 98104-2323
Direct phone: 206-254-4455
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(See, e.g.):
Yates v. Fithian,
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City of Seattle v. Menotti,
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State v. Letourneau,
100 Wn. App. 424 (2005)
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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