HOPE AND HEALING

The state’s first Baby Court Team uses early intervention and support to help infants and young children—and their parents—in dependency cases.

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NWLawyer

The WSBA's Official Members' Magazine

NWLawyer will inform, educate, engage, and inspire by offering a forum for members of the legal community to connect and to enrich their careers.

Published by the

WASHINGTON STATE BAR ASSOCIATION
1325 Fourth Ave., Ste. 600
Seattle, WA 98101-2539

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NWLawyer is published nine times a year (February, March, April/May, June, July/August, September, October, November, and December/January) by the Washington State Bar Association, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539, and mailed periodicals postage paid in Seattle, Washington (ISSN 2327-3399). For inactive, emeritus, and honorary members, a free subscription is available upon request (contact nwlawyer@wsba.org). A portion of each member's license fee goes toward a subscription. For nonmembers, the subscription rate is $36 a year. Washington residents, please add sales tax; see http://dor.wa.gov for sales tax rate.

Postmaster: Send changes of address to:
NWLawyer
WASHINGTON STATE BAR ASSOCIATION
1325 Fourth Avenue, Suite 600
Seattle, WA 98101-2539
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Let us hear from you! We welcome letters to the editor on issues presented in the magazine. Email letters to nwlawyer@wsba.org. NWLawyer reserves the right to select letters for publication and to edit letters for length, clarity, and grammatical accuracy. NWLawyer does not print anonymous letters, or more than one submission per month from the same contributor.

DISBAND THE MANDATORY MALPRACTICE INSURANCE TASK FORCE

Regarding the Mandatory Malpractice Insurance Task Force, how can the WSBA get accurate feedback when it is only considering “potential models for mandatory insurance” [author’s emphasis] and none against? The “first and foremost” model, in my view, is status quo—not making insurance mandatory at all. Who is benefited by forced insurance anyway? Certainly not the 85 percent of the members who already carry professional liability insurance—members, the ones the WSBA is supposed to be serving “first and foremost.” Even if the WSBA arranges for a significant savings, that is still not a reason to make insurance mandatory. I recommend this task force be disbanded to help reduce mission creep at the WSBA. Mission creep—the only reasonable explanation for a 40 percent increase in dues this year—an increase that allowed no voice of dissent ... or assent, for that matter.

Inez Petersen, Enumclaw

NO MANDATORY INSURANCE FOR WSBA

In its interim report to the Board of Governors, the recent Governance Task Force—the one considering imposing mandatory malpractice insurance for attorneys engaged in private practice—is leaning toward recommending this new requirement (although to date only 8 percent of input responses are enthusiastically in favor of this change). At present, only two states in America have elected to adopt such a requirement. Unfortunately, they are our near neighbors, Oregon and Idaho. Now, for fear of being left behind in the jet wash of intervention in private insurance markets,
a task force has been appointed to study the issue. At first glance, it hardly seems significant to mandate what most Washington attorneys already do voluntarily (although the insurance industry feels far more secure when client discretion is curtailed, and premiums no doubt reflect this security). One wonders though why the other 47 states, presumably as ethical and moral as we are, many of which have already considered this issue, have refused to impose this insurance command to the membership. Those that consider the issue of sufficient weight have merely mandated disclosure of non-maintenance to clients, and even this requirement is only demanded by a decided minority of states, as a quick internet search will show.

The real issue here is that when it comes to such policy questions, it is always just who counts as a “self” in the phrase “self-regulating profession.” Clearly this “self” may soon not include the 14 percent of the bar members in private practice who for whatever reasons do not elect to carry such policies. The task force report simply concludes that solo and small firm practice is inherently risky (I suggest that, if true, this is not necessarily because solo practitioners are comparatively incompetent, but perhaps because they take cases that larger firms can afford to decline). To provide a soft pillow of handy insurance cash will hardly improve matters; it may merely be an incentive to unnecessary litigation against solo practitioners. The jaws of insurance companies are not easily pried open once they latch on, but we need not unnecessarily feed them to whet their appetite.

Thomas Mengert, Keyport

WE NEED A NEW APPROACH TO SUBSTANCE ABUSE

I've spent more time in prison than anyone I know (who doesn’t have a felony conviction), having provided legal aid at McNeil Island, San Quentin, and Lompoc during the early years of my practice. I’m probably the only one who brought a real bank robber to my firm’s “Bonnie and Clyde” party. Based on this experience, I couldn’t agree more with Tarra Simmons (“From Prison to the Law,” July 2018) and Chris Meserve (“Finding Character and Fitness: One Volunteer’s Experience on the Board,” July 2018), both of whom observe that substance abuse is prevalent among prisoners and those seeking C&F clearance. If we can solve the problem of substance abuse, we can empty out more than half of our prison populations. In the meantime, I recommend reading The Thin Blue Lifeline: Verbal De-Escalation of Mentally Ill and Emotionally Disturbed People - a Comprehensive Guidebook for Law Enforcement Officers by Ellis Amdur and John Hutchings, which advises law enforcement officers how to deal with addicted and mentally ill people suspected of crime.

Clydia J. Cuykendall, Olympia
A PATH FORWARD: TRUST–RELATIONSHIP–SERVICE

S

EVERAL YEARS AGO, while working in Alaska as a commercial fisherman and deep-sea diver, I came to experience what dark weeks and months feel like, quite literally. As a result, I started a ritual on June 21, the longest day of each year (or thereabouts), where I would stay awake for all 24 hours of that day, because I knew that the summer solstice starts us moving back toward shorter days.

Eventually my wife, kids, and I decided to make a family tradition of celebrating summer solstice by declaring it “Pickett Family Holiday.” For years now, June 21 has been set aside as a day dedicated by our family to spending the time in relationship with each other. Over the years we have included all sorts of fun activities into the day—hiking the Cascades, attending summer events, enjoying the beach, playing games, watching movies (2018 included The Incredibles 2), etc. Regardless of where we are, or what we are doing, the ultimate goal of each Pickett Family Holiday is to spend time in loving relationship together. The time together, with its extended hours of brightness, is an annual reminder to myself to always strive to see clearly, appreciate fully, and hold closely the things that matter most in life: love, relationships, shared experiences, and a growing faith that we are on the right path.

I needed Pickett Family Holiday more than ever in 2018. Honestly, I believe our communities and world need a family holiday now more than ever as well. Bear with me, because you will begin to recognize a familiar theme in my columns over the months ahead, as we explore something that I strongly believe:

We are experiencing a trust crisis that is completely toxic to our ability to form trusting relationships.

The resulting consequence is that as trust disappears, our ability as legal professionals and human beings to effectively serve others is deeply harmed at both the individual and societal level. It’s time for us to change this landscape.

Last month, I wrote about the Edelman public-relations firm’s ongoing “Trust Barometer,” which showed the steepest declines ever in 2018. Our trust in any institution—government, business, NGOs, and each other—is at a rock-bottom level across the U.S. and global stage. Sadly, one of the biggest victims of the trust crisis has been our collective confidence in the truth. While I’m no statistician, this data resonates with my own experiences of turbulence in work and life. We don’t have to look far to find people who are broken, hurting, and mistrustful of everyone.

So let me ask you: How is your own individual trust barometer? Are you more or less trusting than you used to be? Are you more or less trusting of others (especially other lawyers), as you add years to your practice experience? Do you act in a way that gives or takes from the collective trust? If you also believe trust is disappearing, what do you intend to do about it?

My own definition of trust is: “the ability to confidently rely on the integrity, honesty, strength, commitment, and love of others.”

There is a reason why trust is so important to what we do as legal professionals:

Trust is the foundation for functioning relationships. A loss in trust harms relationships, which amounts to a loss in potential to change the world for the better. Said another way, the world in which we live works best (or perhaps works, period) when we operate within relationships founded on deep trust.

WSBA has a unique and significant role in setting the standard for professionalism and supporting members through the global trust crisis. I have been heartened in my first few months as WSBA President. I have met incredible—colleagues
and human beings who are lifting up their communities; these are people like Lisa Lowe and David Nelson in the lower Columbian region of the state, two lawyers I was proud to name as WSBA Local Heroes in July for their outstanding legal and volunteer service. I have learned more about significant, mission-driven initiatives to make the legal profession work for those we are supposed to serve, such as the Practice of Law Board’s collaborative development of a Legal Health Checkup application to educate all Washingtonians. I have spoken to many of the hundreds and hundreds of members who volunteer their time and expertise in some capacity to serve on a WSBA board or committee to make their profession better and thereby enhance our service to the public. These are precisely the kinds of action that create trusting relationships both inside and outside of the legal profession.

I have also seen opportunities and challenges. Our Board of Governors is engaging to do the hard work of uniting as a group of servant-leaders who can passionately disagree about ideas while still respecting and trusting each other as individuals. There are no shortcuts to accomplishing this work. It takes an ongoing commitment to relationship with each other and a desire to act in a way that is honest, reliable, and transparent. I have faith that your Board of Governors is rising to meet the challenges we face as a profession while expanding trust in our organization. Including our governors-elect who will be seated in September, we gathered together for a full-day retreat in July to lay the groundwork for improved communication and operating norms. We had some important and difficult conversations with each other. One of the key takeaways was how important it is to find ways to get to know each other better as colleagues and fellow human beings. Again, the power of trusting relationships is a cornerstone for everything we do in service to others.

Moving forward, I have made a commitment to shift some of my own thinking and behaving in ways that build trust and relationship. With this in mind, I am committed to pick up the phone, meet face-to-face more, and rely on electronic communication less, especially for nuanced communication. I am going to seek to remove the lens of distrust from my own eyes and strive to open to other points of view. I am going to work hard to show up every day, in every interaction, in a way that pours into a bucket of trust and does not drain it. I am also committed to extending some proverbial grace to myself and others should we stumble along the way. In the end, my hope is that we can increase trust as we build relationships that allow us to serve like never before. Our profession, communities, and the world need this.

Please join me in this effort to build and/or repair trusting relationships in every area of our lives.

As I write this I have been privileged to serve as WSBA President for nearly five months. In September, I will be ceremoniously sworn in again during our annual APEX Awards. At this time I will start the term for which I was originally elected to serve as WSBA President. In collaboration with our Board of Governors, I expect to more fully lay out a vision and priorities for the year ahead. As we journey together, my hope is that a pathway will be founded on: trust, relationship, and service.

Peace,
Bill

**We are experiencing a trust crisis that is completely toxic to our ability to form trusting relationships.**

**WSBA President William D. Pickett** is a trial lawyer licensed to practice law in Washington, Alaska, Oregon, and Arizona. He can be reached on his cell phone at 509-952-1450.
works to address the civil legal needs of crime victims in King County, especially those from historically marginalized communities. Project Safety attorneys provide crime victims with legal assistance to resolve civil legal issues that arise as the result of victimization; these services range from brief legal advice to full representation in court to help the victims stabilize their lives and prevent further victimization.

The founding collaborators were the King County Prosecuting Attorney and several civil legal aid organizations: the Eastside Legal Assistance Program (ELAP), the King County Bar Association (KCBA), the Northwest Immigrant Rights Project (NWIRP), the Northwest Justice Project (NJP), and Sexual Violence Legal Services (SVLS). The project is funded with Victim of Crime Act (VOCA) funds managed and overseen by the Office of Civil Legal Aid.

Through Project Safety, people who need legal help most are able to access services like never before. In its first six months, Project Safety reached a total of more than 830 people—many of them children—primarily referred from felony domestic violence and sexual assault prosecutions. A sample of their civil-legal issues include debt, employment, dissolution, protection orders, housing, immigration, and mental health. None of Project Safety’s clients would have otherwise been able to afford their own private lawyer.

Project Safety is this year’s winner of the Legal Innovation Award, to be presented at WSBA’s APEX (Acknowledging Professional Excellence) awards dinner on Sept. 27. I am proud to call the Project Safety attorneys colleagues, and WSBA is thrilled to honor their remarkable work. They transformed a breakdown to a breakthrough in the legal system by bridging the criminal/civil silos in a way that serves the most vulnerable people in our society (and they will soon partner with Harvard Law School to evaluate their efforts to do even more to connect civil legal aid to victims in the criminal justice system). That’s heart-led work. That’s not settling for the status quo. That’s innovation.

One of WSBA’s most important and unique responsibilities as a state regulatory agency is to constantly scan the horizon of the legal profession. The Supreme Court has delegated authority to WSBA because of its paramount interest in championing justice and ensuring the integrity of the legal system. The priority of the bar, then, should always be future-focused: What can we do to lead, connect, allow, and illuminate innovative practices that build a thriving legal community accessible to all Washingtonians?

The APEX Legal Innovation Award is one small (but mighty) way WSBA hopes to change the conventional narrative among the public and our members. What we do daily as legal professionals is girded by precedent, but limitless in how we choose to use new tools, forge new collaborations, and restructure systems. I hope you’ll recognize
that theme throughout the pages of NWLawyer (check out the article on Baby Court on page 16, and look for a new feature soon showcasing legal innovation in action) as well as in WSBA’s support services and outreach efforts.

As we approach a new fiscal year, I want to quickly preview one of our own innovations set to launch this fall to better serve our members and the public. We are creating Washington Legal Link, an enhanced, opt-in directory that will allow members to better market their services and it will allow the public to make a series of selections about their legal problem, location, preferred fee structure, and other criteria to find the right legal professionals who match their needs. We expect to start testing Washington Legal Link with member groups in the fall before launching it for all members (ideally, by licensing season).

Stay tuned for updates and more information in the coming weeks.

Be well and enjoy the final days of summer, and I hope to see you next month at the APEX dinner.

Paula C. Littlewood is the WSBA executive director and can be reached at paulal@wsba.org.
THE WSBA IS CURRENTLY DEVELOPING ITS FY19 BUDGET. WE’RE OFTEN ASKED ABOUT THE PROCESS AND WHAT IT ENTails. HERE IS SOME BACKGROUND INFORMATION AND AN OVERVIEW OF THE FIRST DRAFT OF THE FY19 BUDGET AS REVIEWED BY THE BOARD OF GOVERNORS AT OUR JULY MEETING. I HOPE YOU FIND THIS HELPFUL.

THE WSBA BUDGET IS A POLICY DOCUMENT, as well as a management tool. It allocates funds to fulfill our regulatory responsibilities, to fulfill WSBA’s mission to serve and protect the public, and to support nearly 40,000 members in maintaining success in their practices. Each year, we work to build a fiscally responsible budget designed to meet these goals in a diverse, rapidly changing profession. As a practical matter, we also set annual budget parameters based on current and multi-year projections of revenues, expenses, and reserves.

The FY19 Draft Budget is designed to support WSBA’s members, and to advance and promote: (1) access to the justice system; (2) diversity, equity, and cultural understanding throughout the legal community; (3) the public’s understanding of the rule of law and its confidence in the legal system; (4) a fair and impartial judiciary; and (5) the ethics, civility, professionalism, and competence of all members of the Bar.

FY19 GENERAL FUND DRAFT BUDGET OVERVIEW
The General Fund supports the majority of the WSBA’s work, including regulatory functions and most services to members and the public. The FY19 Draft Budget for the General Fund assumes revenues of $20,222,324 and expenses of $20,232,435, with a budgeted net result of ($10,111); i.e., authorized spending may exceed anticipated revenues by a tiny amount, less than one-twentieth of one percent of anticipated revenues. Several years ago, the board established a policy that General Fund reserves should be at least 2.0 million. Based on efficiencies and savings seen at the end of FY17, and assuming WSBA meets rather than exceeds expectations of both the FY18 budget and the FY19 Draft Budget presented, we are anticipating General Fund reserves will be at least $2.6 million at the end of FY19.

The chart that follows is meant to give you a general idea about the cost of WSBA programs and operations—without reflecting offsetting non-license fee revenue. Detailed draft budget materials, with cost center narratives, may be found at www.wsba.org/about-wsba/finances.

As you read through FY19 Draft Budget details, I hope you will see that WSBA has worked hard to hone its programming to be relevant to both our members and the public. As depicted on the following page, the budget continues to support all aspects of the discipline system, licensing services, communications and outreach, and WSBA operations. It enables us to provide you with member benefits and professional development opportunities, such as the Ethics Line, Ethics School, practice management assistance, Member Wellness Program, new and young member training and leadership, member benefits included as part of your license (such as no-cost CLEs and legal research tools), and staff support to 850 WSBA volunteers. It supports WSBA’s efforts to advance diversity and inclusion in the legal profession. The budget also supports the Access to Justice Board and the WSBA’s public service programs, including the Moderate Means Program, the Call to Duty Program, and other pro and low bono initiatives.

NEXT STEPS AND OPPORTUNITIES FOR INPUT
The Board of Governors reviewed the FY19 Draft Budget for initial consideration at its July meeting, and will take up the final budget for action at its next meeting on Sept. 27-28, 2018. In preparation for that BOG meeting, the Budget and Audit Committee will meet on Sept. 6, 2018, from 10:00 a.m. until noon at WSBA’s offices in Seattle to make a few adjustments that the full Board of Governors decided upon during its most recent meeting on July 27-28, 2018. As always, we welcome your input and encourage you to attend our next Budget and Audit Committee meeting. We will continue to keep you informed about our deliberations.

THE DATA

- INVESTIGATION, PROSECUTION, AND ADJUDICATION OF RPC VIOLATIONS: Costs to handle consumer inquiries; to investigate, prosecute adjudicate written grievances about lawyers, LPOs, and LLLTs through disposition (e.g., costs associated with disciplinary counsel, hearing officer, and the Supreme Court-mandated Disciplinary Board, which adjudicates grievances); to administer the WSBA audit program; and to educate members and law students about legal ethics, trust account compliance, and the discipline system.

- LICENSING AND ADMISSIONS SERVICES: Costs to administer admissions and annual licensing processes for nearly 40,000 WSBA members, including lawyers, LPOs, and LLLTs; to maintain and respond to questions about members and their public information; and to support the Supreme Court-mandated MCLE Board, which adjudicates issues involving continuing legal education requirements.

- GENERAL COUNSEL: Legal representation and support to the WSBA, the Board of Governors, and other boards, task forces, and committees; records requests and litigation management; and oversight, interpretation, and analysis of WSBA Bylaws and other legal issues.
SUPREME COURT-MANDATED BOARDS AND PROGRAMS: Costs to support four of six boards and programs mandated by the Supreme Court: (1) Access to Justice Board, (2) Limited License Legal Technician Board, (3) Limited Practice Officer Board, and (4) Practice of Law Board. Costs associated with the Disciplinary Board and MCLE Board, which adjudicate regulatory issues, are included in the Discipline and Licensing & Admissions categories, respectively.

MANAGEMENT AND OPERATIONS: Includes costs associated with the WSBA Board of Governors, leadership, management, and internal support (finance, administration, and human resources).

OUTREACH AND ENGAGEMENT: Supports WSBA outreach to the public, legal professionals, bar associations, policy-makers, and other stakeholders; in order to enhance volunteer recruitment, raise awareness and understanding of WSBA programs and priorities, and create a sustainable stakeholder network.

LEGISLATIVE AND LAW IMPROVEMENT: Supports work with WSBA leadership and sections to formulate positions on legislation, track relevant legislation during session, and provide technical advice on bills and existing statutes to the Legislature.

PUBLIC SERVICE, DIVERSITY, AND WASHINGTON STATE BAR FOUNDATION SUPPORT: Costs to support: (1) WSBA public service programs (including Moderate Means Program, Call to Duty, and other pro and low bono initiatives); (2) work to advance diversity and inclusion in the legal profession; and (3) administrative costs of the Washington State Bar Foundation, which provides grant funding for these activities.

MEMBER BENEFITS: Includes costs of programs benefiting WSBA’s membership as a part of their annual license fee: (1) legal research tool (CaseMaker); (2) monthly CLE programs (Legal Lunchbox Series); (3) the Professional Responsibility Program; (4) the Member Wellness Program; and (4) a confidential 24/7 member assistance program (WSBAConnects).

PUBLICATIONS (INCLUDING NWLawyer): This category includes costs to develop, design, produce, and distribute WSBA print media and publications, including NWLawyer, WSBA’s official publication.

CONFERENCE AND BROADCAST SERVICES: Includes costs to support the WSBA Service Center; meeting and conference facilities; mail and print services; WSBA webcasting, webinars, and recorded products; and all other services on WSBA’s public floor. Last year, WSBA supported over 1,500 on-site meetings and events, and the Service Center handled over 50,000 communications with members and the public.

MEMBER SERVICES AND ENGAGEMENT: Includes costs of outreach, education, training, and support to newly admitted WSBA members. Also includes funding for WSBA’s mentorship programming.

SECTIONS ADMINISTRATION: Includes staffing and administrative costs to support WSBA’s 29 practice sections, and to help sections develop “Mini-CLEs” that are not offset by per-member charge revenues. NWL
PARIS K. KALLAS
Former King County Superior Court Judge

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Former Appellate and Superior Court Judge

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One of the most significant changes in the legal profession over the past 25 years has been the increasing frequency with which lawyers move from firm to firm in private practice over a career. This increased movement, in turn, has generated recurring issues for the lawyers moving to or starting a new firm, their “old” firms, and their “new” firms. At the same time, neither the Washington Rules of Professional Conduct (RPCs) nor the ABA Model Rules of Professional Conduct include a specific provision addressing this three-cornered scenario. Earlier this year, however, the WSBA Committee on Professional Ethics issued an advisory opinion providing practical guidance for lawyers and their firms from all three perspectives. The new opinion, No. 201801, is available on the WSBA website, www.wsba.org (search: Advisory Opinions). In this column, we’ll survey the three central questions the new advisory opinion discusses:

1. What notice must the departing lawyer and the old firm provide clients and when must that notice be provided?
2. How are file transitions handled in this context?
3. After a lawyer has left the old firm, may the lawyer discuss the possibility of handling work with clients of the old firm?

1. NOTICE
One of the most basic duties that both a departing lawyer and the old firm have is to let affected clients know that the lawyer who has been handling their work is leaving the old firm. This duty, which arises out of the “communication rule”—RPC 1.4—is more nuanced in this setting than the text of the rule might otherwise suggest. The new advisory opinion divides these nuances into three primary categories: (1) the responsibility for notice, (2) the form and content of notice, and (3) the timing of notice.

Before discussing these points, however, Advisory Opinion 201801 includes an important qualifier: it defines the lawyer departures that trigger the duty of notice as those involving a “principal handling attorney.” The opinion defines this term as “a lawyer who is primarily responsible for a particular matter or who is the firm’s primary contact with the client for the client’s work at the firm.” The opinion notes that while the definition would apply to “a partner who has primary contact with a client on a matter,” it would not apply to “a junior associate who worked on occasional legal research projects under the partner’s supervision in the matter involved.” The opinion counsels that this distinction is inherently fact-specific and is ultimately measured against the requirement of RPC 1.4 that a client be kept apprised of material developments in the client’s representation. In crafting this predicate definition, the Washington opinion follows a similar approach to the leading national authority in this area: ABA Formal Opinion 99-414.

Responsibility for Notice. The new Washington Advisory Opinion puts the duty to inform the client on both the departing lawyer and the old firm. Tracking RPC 1.4(a) (3) and its accompanying Comment 3, the opinion reasons that the imminent departure of a principal handling lawyer is a material event in the client’s representation that the client, understandably, needs to know.

Form and Content of Notice. RPC 1.4 does not suggest a particular form for the notice. The new Washington opinion notes that ABA Formal Opinion 99-414 provides “useful guidance” on the form:

“[Notice] can be accomplished by the lawyer herself, the responsible members of the firm, or the lawyer and those members jointly. Because a client has the ultimate right to select counsel of his choice, information that the lawyer is leaving and where she will be practicing will assist the client in determining whether his legal work should remain with the law firm, be transferred with the lawyer to her new firm, or be transferred elsewhere.”

Similarly, the new Washington opinion finds that ABA Formal Opinion 99-414 offers “equally useful guidance” on the content of the notice sent while the departing lawyer is still at the old firm and, consequently, still has fiduciary duties to the old firm:

“Any initial in-person or written notice informing clients of the departing lawyer’s new affiliation that is sent before the lawyer’s resigning from the firm generally should conform to the following:

1. the notice should be limited to clients whose active matters the lawyer has direct professional responsibility for [or] at the time of the notice (i.e., the current clients);
2. the departing lawyer should not urge the client to sever its relationship with the firm, but may indicate the lawyer’s willingness and ability to continue her responsibility for the matters upon which she currently is working;
3. the departing lawyer must make clear that the client has the ultimate right to decide who will complete or continue the matters; and
4. the departing lawyer must not disparage the former firm.
If the client requests further information about the departing lawyer’s new firm, the lawyer should provide whatever is reasonably necessary to assist the client in making an informed decision about future representation, including, for example, billing rates and a description of the resources available at the new firm to handle the client matter.” (footnotes omitted; emphasis in original).

The new opinion finds that if the lawyer has already left the old firm and no longer owes fiduciary duties to the old firm, then the competitive information provided can be broader, as long as it is truthful.

The new Washington opinion notes that ABA Formal Opinion 99-414 suggests that a joint notice from the departing lawyer and the old firm is “preferred,” but recognizes that the personal dynamics of the situation may not make that feasible. Therefore, ABA Formal Opinion 99-414 concludes that joint notice is not required. The Washington opinion takes the same approach.

Timing of Notice. Comment 5 to RPC 1.4 counsels that the timing of communications about material events should generally be reasonable under the circumstances. The Washington opinion agrees with its ABA counterpart that promptly informing the clients affected is “critical” to giving the clients sufficient time to decide on representation moving forward. The new Washington opinion observes that although notice ordinarily will occur before the lawyer departs, it could occur afterward if the lawyer’s departure was immediate through resignation or termination.

The Washington opinion focuses on notice to clients required by the RPCs. Therefore, it does not address the substantive legal question under fiduciary and contract law of whether a departing lawyer must inform the old firm before notifying clients. The new opinion, however, suggests that “[a]s a matter of prudent practice ... a lawyer contemplating leaving a firm should carefully examine any applicable fiduciary and contract considerations as well as the RPCs[].”

2. FILE TRANSITIONS

The new Washington opinion makes three principal points on file transitions in this context. First, the opinion emphasizes that the decision to keep a matter with the old firm, move it with the departing lawyer to the new firm, or move it to an entirely different firm in light of the departure is the client’s alone. Second, it also emphasizes that under RPC 1.16(d) and WSBA Advisory Opinion 181 (which addresses file transition in detail) the firms involved should work cooperatively to avoid harming the client.

Third, the opinion notes that RPC 1.6(b)(7) now provides specific authorization to share client names and limited matter information with a new firm to facilitate conflict checks, unless the identity of a particular client or the nature of a particular matter is itself confidential.

3. CONTACT WITH OLD FIRM CLIENTS

After a lawyer has left an old firm, RPC 7.3(a)(2) generally permits the lawyer to solicit business in-person or through real-time electronic equivalents from clients of the old firm with whom the lawyer had a “prior professional relationship[].” Even absent a prior professional relationship, RPC 7.3 generally permits a lawyer to solicit business from old firm clients in writing or using other non-real-time electronic equivalents. Moreover, amendments to RPC 7.3 that are currently pending before the Washington Supreme Court would broaden a lawyer’s ability to solicit business from old firm clients by permitting personal solicitation generally, as long as it does not amount to harassment. The new opinion, therefore, notes the current state of the law and advises lawyers to monitor potential future developments on this point.

SUMMING UP

Although many lawyer departures are handled amicably, others are not. The new Washington Advisory Opinion 201801 concludes with some wise counsel:

“The personal dynamics of a lawyer departing a firm have the potential to outrun the important professional obligations all concerned have toward the clients involved. Lawyers and their respective Old and New Firms must ensure that client considerations remain paramount despite the often-difficult personal dynamics involved.” NWL
SUMMARY EXECUTION
by Michael Withey, (Wildblue Press 2017)

Reviewed by Michael J. Bond

MOST LAWYERS TOIL IN obscurity, no doubt to the chagrin of our mothers. Some lawyers shamelessly seek attention. And some lawyers deserve attention because they practice the kind of law that should make us proud to be lawyers. These lawyers have the good fortune to undertake clients and cases whose stories transcend the simple facts. They have the skill and drive to bring the power of the law to advance justice and to speak truth to power, all while treating opposing counsel as a respected equal. Michael Withey is such a lawyer and his new book, Summary Execution, is a must read for all those who aspire to these lofty goals. Centered on the true story of the murder of two Filipino cannery workers, Silme Domingo and Gene Viernes, Summary Execution is really about the value of persistence.

Domingo and Viernes were shot and killed while working at their desks at the Cannery Workers Local 37 Union Hall in Seattle on June 1, 1981. What was first thought to be a fight over gambling proceeds that were sent to the union boss eventually unraveled into an international criminal conspiracy complete with foreign-orchestrated contract killings and cover-ups at the highest levels of the U.S. government.

Withey vividly describes his determination to work through a case that, as it expanded, had him fearing for his own safety. Summary Execution reads like a Tom Clancy novel, with fast-paced, day-by-day descriptions of meetings, stakeouts, and the search for evidence to prove that these killings were about more than a local dispute over gambling revenue.

Withey was about to speak to a Seattle social justice nonprofit when he learned that Viernes and Domingo, friends of his, had been gunned down. Viernes was found dead at the scene, but Domingo was able to crawl out to the street, bleeding from four .45-caliber bullet wounds, and identify the shooters to a Seattle fireman before succumbing to his injuries.

What follows is the tale of two hitmen who were convicted in King County Superior Court even after a surprise defense witness testified that the defendants were not the killers.

A third member of the assassin team, Boy Pilay, fled to Maryland. The Seattle Police Department and FBI jointly conducted the criminal investigation, but even when the FBI learned Pilay was back in Seattle, they seemed more intent on letting him know they knew he was in town than in apprehending him, as if they wanted him to flee again. Withey and his team, like gumshoe cops, took a room at the Bush Hotel across the street from where Pilay was spotted to watch for his return. Seeing Pilay, and having already been foiled once by the FBI, Withey called an SPD detective to watch for his return. Seeing Pilay, and having already been foiled once by the FBI, Withey called an SPD detective who made the arrest. Eventually the mastermind of the plot and the getaway driver also were convicted.

As it turned out, the case reached far beyond those convictions. Philippines President Ferdinand Marcos, a brutal dictator as well as a staunch U.S. ally, had ordered the killings. In fact, his agents worked in the U.S. to infiltrate and disrupt the anti-Marcos movement, including the Local 37, with our government’s knowledge.

Withey writes about his warning that Pilay would be a “dead man” if he were released—he turned out to be right. Norm Maleng’s office said they would have to release Pilay pending investigation and, three days later, Pilay was murdered.

The estates of Domingo and Viernes filed suit in federal district court in Seattle against Marcos, his wife Imelda, the Philippines government, National Security Adviser Alexander Haig, Secretary of State George Shultz, and the San Francisco doctor who financed the hit. The stakes could not have been higher. Twice, just to be on the safe side, Withey wore a bullet-proof vest and carried a weapon.

As a head of state with immunity under international law, Marcos was initially dismissed from the case. However, nobody thought to seek a final appealable order. Several years later, after Marcos was removed from office and the Philippines declared he was no longer immune, Withey’s legal team persuaded Judge Barbara Rothstein, of the Federal District Court for the Western District of Washington, to bring Marcos back into the case.

Withey’s account of the trial reads like a movie script, complete with Marcos’ attorney, Tony Savage, tapping his client on the shoulder each time he was supposed to assert his Fifth Amendment right to refuse to answer a question. Withey describes how his partner, Jeffery Robinson, used this against Marcos during his examination, so that the non-answers were even more damning than if he had simply answered the questions.

Like a William Jennings Bryan peroration, Withey’s final argument recited the Old Testament plea, “May justice flow like water and righteousness come down like a mighty stream.” In the end, it did, with the jury asking if they could award more in damages than Withey had requested.

Withey rightly takes credit for obtaining a verdict that stands as the only time a foreign government’s head of state has been held liable for the murders of American citizens on U.S. soil. His concluding advice to young lawyers is to never give up. NWL
HOPE & HEALING

The state’s first Baby Court Team uses early intervention and support to help infants and young children—and their parents—in dependency cases.

By Lisa Mansfield
Very young children entering the foster care system are often born with drug addictions or have witnessed or been victims of domestic violence; most suffer from the ill effects of poverty, homelessness, or both. Normally, children have a high degree of natural resilience and can bounce back from stressful situations. However, when infants and young children experience long periods of high-intensity stress, the notion of “resilience” often does not apply. Their brain development suffers. There are other developmental delays.

A recent study, “The Impact of Early Adversity on Children’s Development,” from Harvard University’s Center on the Developing Child, has shown that relentless stress on infants has a measurable negative impact on brain growth: “When strong, frequent, or prolonged adverse experiences such as extreme poverty or repeated abuse are experienced without adult support, stress becomes toxic, as excessive cortisol disrupts developing brain circuits.”

But with early intervention from caring adults, the harm young children experience can be greatly improved.

In an effort to provide early intervention for young children at risk in the dependency system, Pierce County implemented the first Safe Babies Court Team in Washington state in October 2016. Known locally as “Baby Court,” the program is based on a national early-court-intervention program called the Zero to Three Safe Babies Court Teams Project (ZTT). Baby Court front-loads services to dependent children and their parents with the help of a team of early childhood professionals from the larger community.

In Baby Court, court social workers refer dependent children to services such as Birth to Three’s Early Intervention Program, as well as to infant mental health specialists. These entities support infants in accordance with current best practices. In addition, children in Baby Court are offered developmental assessments—such as speech, vision, hearing, and cognitive screenings—so that potential developmental delays can be detected early, thus increasing the likelihood of mitigation.

While the needs and best interests of the children are most important, the needs of the parents are also addressed in Baby Court. Parents and caregivers are encouraged to express their individual challenges related to parenting and are connected with parenting coaches that provide training in parenting and child development. If parents are experiencing personal challenges, they are also offered support services. In Baby Court there is an expectation that if parents are healthy and supported, the children will be, too.

In addition to this community support, judicial review occurs more frequently in Baby Court cases than in regular dependency cases. Close court supervision is an aspect of Baby Court that provides both more immediate accountability in the dependency process and an opportunity for the court to provide encouragement to parents when things are going well. Review hearings are heard every 60 days, as opposed to once every six months in regular dependency proceedings. The differences in Baby Court go beyond just the frequency of proceedings. Pierce County Superior Court Judge John R. Hickman, the current Baby Court judge, routinely gets down from the bench to speak with parents and their children eye-to-eye. According to Judge Hickman, “Baby Court, because of the small docket, allows a judge time to speak directly to the parents and show that you care. Everyone involved in Baby Court is committed to the idea that infants deserve to be in a loving, trauma-free home sooner rather than later.”

The proceedings in Baby Court are transparent. All parties have been informed that the goal of Baby Court
is to have safe and healthy children bonded with caregivers who preferably will be the parents. But if the parents cannot overcome stated parental deficiencies, then the goal is to ensure the child is placed in a permanent home with appropriate caregivers. This truth serves as a stark reminder to parents, letting them know that their time to be involved in remedial services and to correct parental deficiencies is not unlimited.

While judicial oversight is an important component, a very crucial aspect of Baby Court happens outside of the courtroom. Every month, each Baby Court family meets in round-table discussion with the team of professionals that supports them. Children are welcome at this meeting and the benefits are twofold: it relieves harried parents from having to arrange childcare in order to attend the meeting, and it gives the infant specialists an opportunity to support the parents and caregivers by keeping the infant’s needs at the forefront of the case. Most importantly, the young children can be observed by all the professionals who confer with each other and provide what amounts to peer review. All of this is done in an informal setting.

This monthly meeting, called the Community Advisory Team (CAT), comprises a partnership between court professionals and community partners who have expertise in assessing and meeting the physical and socio-emotional needs of very young children. At CAT meetings, dependency parents and their attorneys meet with a court social worker, a representative from the Court-Appointed Special Advocate program, and professionals from the larger community, such as infant mental health specialists, early learning professionals, and nurse family practitioners. The informality of a CAT team meeting allows for a free exchange of ideas among the participants and promotes an atmosphere where parents in dependency are not shamed or blamed, and children in dependency can be professionally assessed and get the help they need. As Pierce County Juvenile Court Improvement Coordinator Sally Mednansky explains, “The Community Advisory Team meetings create a supportive environment where parents come together with caregivers and professionals to discuss their child’s well-being. Relationships develop, and the group’s focus is ensuring the child’s best interests are at the forefront of the case and that parents are supported on their journey.”

Children in Safe Babies Court teams spend less time in dependency and exit the foster care system faster, nearly one year earlier than children in a matched comparison group, according to very preliminary studies. These children are more likely to reach permanence with a member of their biological family. According to Economics for the Public Good, this translates to an estimated savings of approximately $7,300 per child served. In addition, 99.05 percent of the infants and toddlers served by Safe Babies Court Teams were protected from further maltreatment. There is growing interest in the work of Baby Court. Because of its innovative nature, Baby Court may be considered part of a recent wave of remedial courts—including

Dependency is the legal framework regarding child removal from the home. Briefly, dependencies occur when there is state intervention in the home because of parental deficiencies. Many times, children are removed from the home and put into foster care or, preferably, placed with relatives while remedial services tailored to the particular needs of the parents or guardians are offered. These services may include substance abuse treatment, parenting classes, or counseling. If the parents successfully complete the services, the family is reunified. If parental participation in services is unsuccessful, the state, through the Office of the Attorney General, moves to terminate parental rights. The timeline of a typical dependency varies on a case-by-case basis, but is usually longer than one year, with median months to return home currently at 20.4.

Not every dependency case is appropriate for Baby Court. Cases that are excluded from Baby Court include those that involve serious mental impairment prohibiting meaningful parent participation, any pending criminal charges related to the child’s removal, and sibling groups larger than three.
Family Recovery Court and Mental Health Court—that seek to find effective alternatives to traditional court approaches. This innovative approach is garnering interest around the state, with Reps. Ruth Kagi, D-Seattle, and Laurie Jinkins, D-Tacoma, among its supporters. Kagi and Jinkins recently introduced HB 2798 regarding Baby Court. A small delegation of supporters including Baby Court Judge John Hickman, Court Improvement Coordinator Sally Mednansky, former CASA Coordinator Whitney Miller, and this author testified before the Washington State House of Representatives Early Learning and Human Services Committee in support of the bill. It was not anticipated the bill would pass during the most recent legislative session; however, Jinkins remains in full support of this work and plans to reintroduce the bill next session. She says, “I love Baby Court because it recognizes what brain science tells us. Babies are born connected to their birth parents and early, intense interventions can prevent trauma while helping build a strong family.”

In March 2018, a small delegation from the Safe Babies Court Team was invited to inform the Washington Supreme Court Commission on Children in Foster Care. This Committee, chaired by Washington State Supreme Court Justice Bobbie Bridge (Ret.), was very interested in learning more about the work being done to address earlier permanency of infants and toddlers.

During Baby Court proceedings, it has become nearly routine for stakeholders from other counties to observe and learn what they can do in order to recreate the program’s success in their own jurisdictions. Baby Court came to the attention of the wider child welfare community when it won the Lee Ann Miller Group Award at this year’s Children’s Justice Conference in Spokane, which is awarded to the group or program that has made the greatest impact and/or contribution in furthering the goals of the Children’s Justice Act.

Since the inception of Baby Court in 2016, the program has served 15 infants and toddlers. To date, five cases have been dismissed and the parents were reunified with their children. Two children have been adopted by relatives. All children in the program have been placed with their parents or with a relative, the only exception being one child who is in foster care. These results are in keeping with past results from other Safe Babies Court Teams. While Baby Court’s innovative programming has brought success to 20 families to date, one of its stated goals is to influence a policy shift so that evidence-based, community-supported, and family-centered court programming is not reserved for just a few families that are able to enter Baby Court, but is available to every family with infants from zero to three years old that enters into a dependency.

NOTES
2. Washington Center for Court Research, Interactive Dependency Timeliness Report, updated by author through 7/31/18.

LeeAnn Miller Group Award recipients – Baby Court Contributors: Shella Petersen (Office of Public Defense social worker), Sally Mednansky (Pierce County Juvenile Court Improvement Coordinator), Maureen Sorensen (Executive Director, Amara Pierce County), Judge John R. Hickman, Lisa Mansfield (Parent’s Attorney, Dept. of Assigned Counsel), Deborah McFadden (Parent’s Attorney, Office of Public Defense), Whitney Miller (Mary Bridge Children’s Hospital social worker), April Ashton (Children’s Administration social worker) – Award granted May 8, 2018, Spokane, WA.

Lisa Mansfield is a parent’s attorney in the Dependency Unit of the Department of Assigned Counsel in Tacoma and has been a member of the Baby Court Team since its inception. She can be reached at Lisa.Mansfield@piercecountywa.gov.
IN A CASE OF FIRST impression, the Washington Supreme Court held in Douglass v. Shamrock Paving, Inc., 189 Wn.2d 733, 406 P.3d 1155 (2017), that a party can recover investigative costs under the Washington Model Toxics Control Act (MTCA), Chapter 70.105D RCW, even if it cannot recover cleanup costs for the same release of hazardous substances.

In Shamrock Paving, a paving company trespassed on the Douglass property and released some amount of lube oil, an MTCA hazardous substance, while servicing its equipment for a Washington Department of Transportation paving project. Douglass hired a consultant to investigate the release, and soil test results showed the lube oil either met or was less than the applicable cleanup level of 2,000 parts per million (ppm) for unrestricted land use. In other words, the lube oil sampled did not exceed applicable cleanup levels. Despite these soil sample results, Douglass removed 68 tons of soil and then sued Shamrock Paving for its investigative and cleanup costs under the MTCA. Shamrock Paving, 189 Wn.2d at 736.

The Washington Supreme Court reviewed the trial and Court of Appeals decisions in the case, and held for the first time that investigative activities to determine whether any release of hazardous substances poses a threat or potential threat to human health or the environment. The court applied the plain meaning rule of statutory construction in reaching its decision. Based on this analysis, the court found that the definition of remedial action does not require that the outcome of an investigation be dispositive or exceed an applicable MTCA cleanup level. Stated differently, investigative activities are remedial actions because their purpose is to discern whether there is a threat or potential threat of risk to human health or the environment. Id. at 740-41.

The court denied Douglass its cleanup costs for the removal and disposal of 68 tons of soil because the soil did not exceed the applicable published MTCA cleanup level of 2,000 ppm, and thus there was no threat or potential threat of risk to human health or the environment. Douglass did this cleanup independently, without getting an opinion from Ecology as to whether a cleanup was necessary. The court applied the published cleanup level as a bright line for a potential threat to human health or the environment, a necessary element for cleanup cost recovery under MTCA. The court noted that the outcome might have been different had Douglass obtained a site-specific Ecology opinion that requested or recommended soil removal. Id. at 743-44.

The Shamrock Paving court’s explanation of why the investigative costs, but not the cleanup costs, qualified as remedial action costs under MTCA provides one of the most clear and comprehensive discussions to date of the necessary elements of an MTCA cost-recovery claim. RCW 70.105D.080. These elements have been restated as a checklist in the sidebar on this page.

The court remanded the case to the trial court to apply its equitable assessment to the eligible remedial action costs (RAC) for the Douglass investigation and, if it awarded any RAC to Douglass, to then make a prevailing party attorneys’ fee award. Shamrock Paving, 189 Wn.2d at 745. The term “prevailing party” is not defined in the MTCA at RCW 70.105D.080, but, as the
REQUIRED ELEMENTS OF AN MTCA COST-RECOVERY CLAIM UNDER DOUGLASS v. SHAMROCK PAVING, INC.

- The plaintiff must show that the defendant has contributed to a release of an MTCA hazardous substance that poses a threat or potential threat to human health or the environment (RCW 70.105D.020 (33));
- the plaintiff must show that its claimed remedial action costs (RAC) meet “substantial equivalence,” which defines the eligible RAC for recovery;
- the trial court must apply its equitable assessment or determination using equitable factors to the eligible RAC and award the plaintiff all, some, or none of its eligible RAC; and
- after applying its equitable assessment to the eligible RAC and setting a final award, if the trial court awards at least some RAC to the plaintiff, then the plaintiff is a “prevailing party” that may recover all or some of its attorneys’ fees and costs related to the investigation, cleanup, and litigation arising from the contamination, which the trial court awards within its discretion based on the same equitable factors.

court recognized, a party prevails in two situations: when the plaintiff is awarded some portion of its RAC claim, or when a defendant successfully defends against a claim for RAC. 189 Wn.2d at 745.

SIGNIFICANCE OF THE DECISION
The Shamrock Paving court’s holding that investigative costs alone may be RAC under the MTCA is, in this author’s opinion, the correct judicial interpretation for two primary reasons:

First, the RAC definition lists costs of investigation without conditioning them on performing a subsequent cleanup, as the court recognized in applying its plain meaning rule analysis.

Second, the MTCA is a public health statute and, as stated in its preamble and confirmed through judicial interpretation, it should therefore be interpreted in a broad manner to effect its public-health purpose of cleaning up contaminated property throughout Washington. It would undercut this purpose and create a disincentive to investigate sites if only sites that were cleaned up were eligible to recover RAC for investigation costs.

There are only a few published MTCA decisions that are well reasoned and provide a good roadmap for the practitioner. The Shamrock Paving decision synthesizes key precedent from the existing body of case law and provides a clear discussion of the essential elements of an MTCA cost-recovery claim. The decision removes any doubt that a plaintiff may seek investigative costs under MTCA, even when a subsequent cleanup has not occurred.

PRACTICAL IMPLICATIONS OF THE DECISION
On first reading, Shamrock Paving appears to open the floodgates for MTCA cost-recovery litigation for investigation costs, regardless of the quality or quantity of the release. However, the court telegraphed that there are limits to recovery for investigation costs. The court...
correctly noted that an award of costs is not automatic; rather, the trial court defines RAC after it makes its finding of a potential threat and substantial equivalence. 189 Wn.2d at 743. The court gave a concrete example that a plaintiff would likely not be awarded RAC for an extensive investigation of one drop of oil. Id. Such an investigation would not result in recoverable costs under MTCA because there is no threat or potential threat, and thus Ecology would not initiate or require an investigation under this scenario, so an investigation would not meet the potential threat and substantial equivalence elements for eligible RAC.

As with any MTCA cost-recovery claim, the specific facts of the release of hazardous substances determine whether an investigation is necessary and, if so, its scope. A qualified environmental consultant experienced with MTCA should be engaged before performing an investigation and any subsequent cleanup in order to preserve the ability to seek RAC under MTCA. Further, the decision underscores the value of enrolling in Ecology’s Voluntary Cleanup Program (VCP) for those who intend to recover investigation or cleanup costs under MTCA. Essentially, the VCP provides Ecology approval of an investigation or cleanup, which helps satisfy the elements of an MTCA cost-recovery claim. As the court noted, had Douglass been in the VCP, Ecology would have reviewed the soil sampling results and may have decided that the lube oil contamination posed a threat or potential threat to human health or the environment that required soil removal. Since Ecology was not consulted, the court stated that it was constrained to apply the published cleanup level as the bright-line determinant of a potential threat, because Ecology has determined through published rulemaking that contamination at or under the numeric level is protective of human health and the environment.
Thus, the court reasoned, since that level was not exceeded, there was no threat or potential threat and therefore no cleanup cost recovery. 189 Wn.2d at 744. The court also relied on the fact that all three expert witnesses testified during the trial that the lube oil did not pose a threat or potential threat. Id.

Finally, the Shamrock Paving decision strengthens the use of MTCA cost recovery as a tool to push Potentially Liable Parties (PLPs) to investigate and clean up sites as part of a real estate transaction or property development, because PLPs who perform the investigation will be able to recover their costs, even if a cleanup is not required. The decision may also spur parties to perform a partial or complete investigation and then seek a declaratory judgment for completion of the investigation and any cleanup, if required, since investigation and cleanup costs at many sites can exceed hundreds of thousands or millions of dollars, which many parties cannot afford to front-load themselves. Environmental insurance carriers will welcome this decision as well, since it may increase—or certainly not diminish—the prospects for cost recovery by their insureds.

Douglass v. Shamrock Paving breathes life into statutory language and makes it clear under MTCA that costs incurred to investigate a release of hazardous substances may be considered remedial action costs even if related cleanup costs are not recoverable. NWL

Peter E. Hapke is a Seattle solo attorney whose environmental practice focuses on helping clients navigate through contaminated real estate transactions and property development, MTCA compliance and cost recovery, and federal Superfund sites. He can be reached at 206-714-6444 or peter@hapkelaw.com.
CONGRATULATIONS TO our latest Professionalism in Practice award recipient, Kitsap County Senior Deputy Prosecuting Attorney Kelly Montgomery.

Rarely will you find Kelly Montgomery’s office empty. As the senior deputy prosecuting attorney for the Kitsap County Prosecutor’s Office, Montgomery has a busy case load of her own, but she is also generous with her time to train and coach other attorneys, who are more than happy to avail themselves of her legal expertise.

In a joint nomination for the WSBA Professionalism in Practice (PiP) Award, Kitsap County Chief Deputy Prosecutor Chad Enright and Sr. Deputy Prosecuting Attorney Coreen Schnepf said, “Young, older, inexperienced, and experienced attorneys are constantly in her office seeking her advice on legal and evidentiary issues or advice on charging decisions and trial work.”

Known for her extensive trial experience and “brilliant legal mind,” Montgomery offers frequent trainings for all attorneys in the office, focusing on complicated legal issues and analyses of new case law. She has an extensive background in criminal law, with experience at multiple municipalities and counties. Montgomery supervises the office’s General Adult Felony Unit, which prosecutes violent crimes, property crimes, and financial crimes. She is on call 24 hours a day to provide legal assistance to law enforcement as they investigate crimes, and she prosecutes sex offenses and domestic violence crimes for Kitsap County.

“It always amazes me that she has the time to work with so many other attorneys while keeping up with her own busy case load,” Schnepf said. “She is an exemplary attorney and human being.”

Have you witnessed an act of outstanding professionalism by a WSBA member? Please submit a PiP nomination using the form at www.wsba.org/for-legal-professionals/member-support/professionalism. The WSBA presents these awards continually throughout the year—often in a surprise delivery—in recognition of legal professionals who advance the rule of law through day-to-day acts of integrity, respectfulness, cooperation, and customer service. Email barleaders@wsba.org for more information.
A Two-Tiered Chess Game

The causation requirement in a legal malpractice action requires proving the merit of the underlying matter — the case within the case — which may be more complex than the professional negligence claim itself.

We have the knowledge and the experience to make the right moves and we would appreciate the opportunity to help you and your client.
Beginning as early as 1948, the brutal campaign against the Rohingya of Myanmar has displaced hundreds of thousands of people, who’ve fled to squalid refugee camps in Bangladesh and elsewhere, and killed thousands more.

An Interview with International Criminal Law Attorney Regina Paulose

THE PERSECUTION OF THE ROHINGYA MINORITY IN MYANMAR

By Robin Lindley
MORE THAN 626,000 Rohingya were driven from Myanmar (formerly Burma) by security forces of the country in a series of brutal operations that began in August 2017, which United Nations High Commissioner for Human Rights Zeid Ra’ad Al-Hussein said “deliberately and massively targeted civilians.”

The recent massive exodus of Rohingya, a Muslim ethnic minority in Myanmar, was sparked by increased government violence after Rohingya insurgents reportedly attacked state security posts. According to Amnesty International, Myanmar’s security forces responded with “a systematic, organized and ruthless campaign of violence against the Rohingya population as a whole in northern Rakhine State,” where most Rohingya live in Myanmar.

The Muslim Rohingya have lived in Myanmar for hundreds of years and have suffered cycles of persecution, repression, and displacement. But the toll of the recent campaign is unprecedented. Government forces and civilian vigilantes have burned to the ground dozens of Rohingya villages and massacred thousands of Rohingya men, women, and children. Rape and other atrocities have been widespread. And the hundreds of thousands of Rohingya who have been forced to flee to Bangladesh and elsewhere struggle for survival in squalid refugee camps.

One witness, a woman named Rajuma, described a massacre that she survived. In October 2017 she recounted to New York Times reporter Jeffrey Gettleman that she was beaten by a soldier who then “hurled” her baby into a fire. Gettleman continued: “She was then dragged into a house and gang-raped. By the time the day was over, she was running through a field naked and covered in blood. Alone, she had lost her son, her mother, her two sisters and her younger brother, all wiped out in front of her eyes.”

For insight into this complex humanitarian crisis, Regina Paulose, human rights and international criminal law attorney and WSBA member, responded to questions about the crimes against the Rohingya people in Myanmar, the historical context, and the legal situation, as well as her work bringing justice to the Rohingya.

Statelessness is a tool that can be used by governments to purge or eliminate specific groups.

Paulose earned her J.D. from Seattle University School of Law and her LL.M. in International Crime and Justice from the University of Torino/UNICRI. She was a prosecutor in Washington and Arizona, and interned for a U.N. mission and an active NGO in Geneva, Switzerland.

She is the creator and co-founder of A CONTRARIO ICL, a virtual international community dedicated to discourse on global justice issues. https://acontrarioicl.com/

She has served as the chair of the Steering Committee for the United Kingdom Child Sex Abuse People’s
avenues for the Rohingya. We began working together in 2013.

LINDLEY: What are some things people should know about the Rohingya and the history of Myanmar to explain the government's violent campaign against the Rohingya?

PAULOSE: It is important to underscore that the campaign against the Rohingya has been documented by the United Nations beginning as early as 1948 and then escalated in the 1970s, with the army in Burma brutally forcing 200,000 Rohingya into Bangladesh.

By the 1980s, the Rohingya were rendered stateless by the government of Myanmar. The same brutal behavior of rape, forced labor, and religious persecution occurred again in the 1990s. The events of 2017 and 2018 are just another part of the continued intentional and systematic campaign to eliminate the Rohingya.

The term “stateless” means they are not given citizenship and have no rights. This includes infants and children. International law uses the term “legal ghosts” to describe stateless people. So they are not citizens and, although they have lived in Burma for generations, they are not considered to be Burmese.

Paulose is also the chair-elect of the World Peace Through Law Section of the WSBA.

LINDLEY: How did you become involved with the issue of the persecution of Rohingya Muslims in Myanmar?

PAULOSE: The Arakan Rohingya National Organisation (ARNO) and the Rohingya Intellectual Society of Sydney, Australia, contacted me and asked me to help them raise awareness and get involved in pursuing legal avenues for the Rohingya. We began working together in 2013.

LINDLEY: Can you briefly describe the situation for Rohingya in Myanmar today?

PAULOSE: Two legal criminal terms sum up the situation for the Rohingya today: They are victims of “genocide” and “crimes against humanity.”

Because the Rohingya are stateless and have no access to basic rights, they are not given access to basic medical care, their ability to marry and to bear children is restricted, and they are confined to certain places. A better word to sum up this living situation is apartheid (which is a crime against humanity). Myanmar has even gone as far as to ban the use of the term “Rohingya” and has directed United Nations diplomats not to use the term when they come to Myanmar. Essentially, racism is legal and institutionalized within Myanmar.

In 2014, the Rohingya were excluded from the national census. In December 2017, the U.N. Special Rapporteur for Human Rights in Myanmar was denied entry into the country after she included an assessment of the ongoing violence toward the Rohingya in a U.N. report. Recently, religious groups in Burma pled with Pope Francis during his papal visit not to use the term “Rohingya.” These are just three examples of the lengths Myanmar has taken toward erasing the Rohingya from Burmese history and memory.

LINDLEY: How does the persecution manifest itself?

PAULOSE: A lot of the propaganda that comes out of the

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LINDLEY: How does the persecution manifest itself?

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Left: Rohingya mother and child land in Bangladesh after fleeing Myanmar by boat (Source: International Rescue Committee).
Above: Rohingya refugee camp, Bangladesh, September 2017 (Source: Human Rights Watch).

Military, political leadership, and fundamentalist groups in Burma/Myanmar is that they are concerned that a small group of Muslims will take over the entire country.

Another storyline in the propaganda is that the Rohingya are an ethnic group that is "illegal" and does not belong in Myanmar because they come from Bangladesh. This is not true.

What is sad is that other ethnic and religious minority groups are also targeted by the government’s policy of Burmanization: promotion of the Buddhist philosophy, and requiring that the Burmese language and culture are fully adopted by all. Those who do not adapt will be removed, as the government has shown, by whatever means necessary.

It should be noted that there are Rohingya Hindus who have been victims of the genocide. And, although there is a different dynamic occurring in other parts of Myanmar between the military (Tatmadaw) and rebel groups, reports from June 2018 indicate that Christians have had their religious places of worship desecrated by the Tatmadaw.

LINDLEY: Hundreds of thousands of Rohingya have fled Myanmar in recent months, mostly to Bangladesh. What sparked the recent exodus and how are the refugees from the violence in Myanmar faring?

PAULOSE: The claims are that a group named the Arakan Rohingya Salvation Army (ARSA) attacked military outposts and this then caused civilians in Burma and the military to respond by killing close to 6,500 Rohingya.

Clearly, the military’s response was neither proportional nor appropriate to these attacks. The government has labeled this group a terrorist organization. As recent decades have shown, once a group is labeled a terrorist organization, most human rights protocols are off the table, and governments seem justified in doing...
whatever they want to “stop terrorism,” which in this case has included rape, arson, and mass murder toward all civilians.

LINDLEY: Do you see the crimes suffered by the Rohingya as “ethnic cleansing” or the more severe crime of “genocide”?

PAULOSE: The United Nations leadership has called it ethnic cleansing. Now various parts of the international community are slowly starting to use the word genocide.

I do not see ethnic cleansing as an appropriate term to describe these events, and the term is still the subject of debate among legal scholars. Ethnic cleansing is not an independent crime under international law. The U.N. Commission of Experts defines ethnic cleansing as “a purposeful policy designed by one ethnic or religious group to remove by violent and terror-inspiring means the civilian population of another ethnic or religious group from certain geographic areas.” The International Criminal Court incorporates these elements of ethnic cleansing in genocide, crimes against humanity, and war crimes.

LINDLEY: Why is it important to describe the crimes against the Rohingya in Myanmar as genocide rather than ethnic cleansing?

PAULOSE: Genocide is an internationally recognized crime. Genocide is the appropriate and precise term. Crimes against humanity are also appropriate for the same reason.

LINDLEY: Is there evidence of crimes against the Rohingya that satisfy the definition of genocide under the law? What specific crimes have you learned about?

PAULOSE: There are numerous accounts of rape against women. Rape is a widespread tool used against women in Myanmar. There are many conflicts in which rape is used as a weapon of war, as a crime against humanity, and as genocide.

I do want to emphasize that rape, no matter if it happens to one person or 1,000, is a grotesque violation of human dignity and a person’s security. After the Rwandan genocide, the International Criminal Tribunal for Rwanda, in a seminal case called Akayesu, determined that rape can be carried out to further genocide. Those who commit rape do so to “to destroy a woman from a physical, mental, or social perspective and [to destroy] her capacity to participate in the reproduction and production of the community.”

Children have been targeted by the army and killed. Recently, there was an admission that the Tatmadaw killed people and buried them in mass graves. Of course, they say they killed about 10 people. I am sure there are more mass graves; however, Myanmar has restricted international access to the Rakhine region. As of June 6, the U.N. Security Council has asked Myanmar to allow international investigators into the country.

It should also be noted that the
Reuters journalists investigating the Inn Din massacre [10 Rohingya men were executed at Inn Din on Sept. 2, 2017] were arrested by Myanmar not too long ago.

**LINDLEY:** What could happen if the United Nations found that genocide is occurring in Myanmar? Could sanctions be imposed?

**PAULOSE:** Right now, the move is toward sanctions by individual countries. The United States placed targeted sanctions on certain people within the Burmese military (not on [Myanmar leader] Aung San Suu Kyi). The U.S. government passed legislation, called the “Burma Act of 2017,” that calls upon the government of Myanmar to allow an independent international fact-finding mission to “investigate allegations of ethnic cleansing, crimes against humanity, and genocide.”

If the United Nations found that genocide and crimes against humanity are occurring, then under the “Responsibility to Protect,” it would have to act to stop the genocide and crimes against humanity. It is clear that, despite the reports and the teams from the U.N. Security Council and various diplomats that have gone to Myanmar and confirmed the horrors discussed above, this [obligation] has been ignored completely in this situation.

We will keep looking for ways to address the issue and bring justice to the Rohingya and ethnic minorities of Myanmar.

It is important that the public continues to pressure the U.S. government to step in and take appropriate steps to ensure that the genocide and crimes against humanity stop against any and all ethnic minorities in Myanmar. Myanmar, by its very actions and the response by the international community, has made the term “never again” meaningless and hollow.

**The opinions and positions in this article are those of the author and not those of the WSBA.**
In September 2017, the Board of Governors created a Mandatory Malpractice Insurance Task Force to determine whether to recommend mandatory malpractice insurance for all lawyers in Washington, to develop a model that might work best here, and to prepare draft rules to implement that model. In July, the Task Force provided the Board with an interim report that included a tentative recommendation to mandate malpractice insurance for Washington-licensed lawyers, with certain exceptions.

Join the discussion as a WSBA task force prepares its recommendation

YOUR VOICE MATTERS!

Task Force members want to hear from you now through December as they finalize a recommendation to the Board of Governors.

Read the interim report and learn more at www.wsba.org/insurance-task-force.

Send comments to insurancetaskforce@wsba.org.
PROPOSAL
After accumulating a considerable amount of data, and hearing from other states, from WSBA members and regulators, and from industry professionals, the Task Force reached a consensus that uninsured lawyers pose a distinct risk to their clients and themselves.

At this point, the Task Force favors mandatory malpractice insurance through a free-market model (allowing lawyers to purchase insurance from any provider they wish) as a condition of licensing. Still to be determined are categories of lawyers to be exempt, such as government and in-house private-company lawyers, and non-practicing attorneys who maintain their licenses. Also yet to be determined is the recommended minimum level of coverage to be required.

NEXT STEPS
The Task Force will continue to meet in the coming months to hone in on remaining issues, discuss modeling, and draft its detailed proposal, including proposed court rules, for the board’s consideration. The final report is due to the Board of Governors in January 2019.

TASK FORCE HISTORY AND PROCESS
As specified by the Washington Supreme Court in General Rule 12.1, a key objective in regulating legal services providers is protection of the public. Consistent with this objective, the Washington Supreme Court Admission and Practice Rules currently require lawyers to annually report whether they are covered by professional liability insurance. By contrast, Washington’s two other licenses to practice law (Limited License Legal Technicians and Limited Practice Officers) are obligated to show proof of financial responsibility (which is typically established by certifying malpractice insurance coverage). Recognizing this anomaly, and bearing in mind the responsibility to regulate the profession in the public interest, the Board of Governors in 2016 formed a work group to study Washington’s current and historic approach to malpractice insurance for all license types. The current Task Force was formed to research the topic in greater depth, gather member input, and make a recommendation to the Board.

Since its first meeting in January 2018, the Task Force has focused on information gathering and has reviewed WSBA data on Washington lawyers, mandatory malpractice insurance requirements in other jurisdictions, national research on lawyers who go uninsured, an ABA study of malpractice insurance, data from insurance-industry professionals, and the experience of a legal malpractice plaintiff’s lawyer. The Task Force has also solicited and examined WSBA member comments.

APPROACHES IN WASHINGTON AND OTHER JURISDICTIONS
The vast majority of common-law and civil-law countries outside the U.S. require some form of malpractice insurance for lawyers in private practice. In the U.S., many jurisdictions like Washington require lawyers to report and/or disclose whether they are covered by professional liability insurance. Only two states, however, currently require insurance as a condition of licensing: Idaho (open-market model, minimum limit of $100,000 per occurrence with a $300,000 annual aggregate) and Oregon (bar-created professional liability fund, $3,500 annual per-member assessment, and $300,000/$300,000 coverage). Illinois requires any lawyer who does not carry liability insurance to undergo an online practice assessment that also provides four hours CLE credit. The State Bar of Nevada has submitted a mandatory malpractice insurance rule for consideration by the Nevada Supreme Court, and the State Bar of California is studying whether to require professional liability insurance.
SOME KEY INTERIM REPORT FINDINGS*

WASHINGTON LAWYERS IN PRIVATE PRACTICE MALPRACTICE INSURANCE (2015-2017)
The vast majority of Washington lawyers representing private clients carry malpractice insurance (14 percent report being uninsured).

CLAIMS BY NUMBER OF ATTORNEYS IN FIRM (2015 STUDY)
Among insured lawyers, those who practice in solo or small firms represent a disproportionate share of malpractice claims.

NUMBER OF CLAIMS BY AREA OF LAW (2015 STUDY)
The practice areas of personal injury, real estate, family law, estate planning, certain corporate practices, and collection/bankruptcy have the highest incidence of malpractice claims.

89 percent of malpractice claims nationally are resolved for less than $100,000; 95 percent of claims are resolved for less than $250,000.

Malpractice insurance premiums vary significantly based on many factors, including years in practice, area of practice, size and practice mix of a firm, lawyer history with malpractice claims and disciplinary actions, and state characteristics.

Over the last five years, 11 percent of applications to WSBA’s Client Protection Fund were denied because they described instances of malpractice rather than theft or dishonest conduct.

*For source information and more details, see the complete interim report at www.wsba.org/insurance-task-force.
MEMBER FEEDBACK
Of 69 member comments sent to the Task Force so far, the most (29 percent) express concerns about the cost of malpractice insurance, followed by concerns that retired/semi-retired members will not be able to practice if malpractice insurance is required (22 percent). Other comments recommend exemptions, ask for more information, and express concern for lawyers who might be uninsurable, among other topics.

<table>
<thead>
<tr>
<th>Comments from Members So Far</th>
<th>Percentage</th>
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<tr>
<td>Concerns about Cost</td>
<td>29%</td>
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<tr>
<td>Concerns about Retired/Semi-Retired Members Being Able to Practice</td>
<td>22%</td>
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<tr>
<td>Requests for Exemptions for Lawyers Not in Private Practices</td>
<td>10%</td>
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<tr>
<td>Exemption Recommendations</td>
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<tr>
<td>Issues About Public Protection and/or Impact to Profession’s Reputation</td>
<td>7%</td>
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<td>Requests for More Information</td>
<td>3%</td>
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<td>Un-insurability Concerns</td>
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POSSIBILITIES CONSIDERED
In the Task Force’s view, the WSBA has a duty delegated by the Washington Supreme Court to protect the public and maintain the integrity of the profession. Using this lens, the Task Force members also considered the following approaches:

- Do nothing and maintain the status quo
- Implement a proactive management-based regulation model like Illinois
- Implement a professional liability fund model like Oregon
- Implement more extensive malpractice insurance disclosure requirements
- A combination of some of the above models

Ultimately, the Task Force concluded that, as compared to a market-based approach, these models were impractical, would protect the public less effectively, or both.

YOUR FEEDBACK MATTERS
Especially as the Task Force members work through the details of preparing a draft rule, they want to hear from WSBA members to better understand what minimum level of coverage and which exemptions make sense. The Task Force will continue to reach out to all members and specific groups, such as currently uninsured lawyers, as its proposal takes shape. NWL
UNINSURED LAWYERS AND PROFESSIONAL LIABILITY INSURANCE REQUIREMENTS: WHAT DOES THE RESEARCH TELL US?  By Leslie C. Levin

THE WASHINGTON STATE BAR ASSOCIATION IS POISED TO revisit the issue of whether lawyers in private practice should be required to maintain malpractice insurance. It is not alone. This year, more than 40 years after Oregon first required lawyers in private practice to maintain lawyer professional liability insurance (LPL), Idaho became the second state to do so. The Nevada Supreme Court is currently considering whether to adopt a rule requiring LPL insurance. California and New Jersey are also studying this question.

For many years, the arguments on both sides of the debate were based largely on anecdotes and conjecture. Recently, there have been more systematic efforts to gather empirical evidence about the impact of uninsured lawyers and LPL insurance requirements on the legal profession and the public.¹ There is still much we do not know. Yet the available evidence largely supports arguments for requiring lawyers to carry LPL insurance.

First, we know that an LPL insurance requirement is neither radical nor unworkable. Oregon private practitioners have been required to carry LPL insurance since 1977. They now pay Oregon’s Professional Liability Fund $3,500 annually for $300,000/$300,000 coverage. Canada, Australia, England, and most other European countries also require lawyers in private practice to carry LPL insurance.²

The main argument in favor of an LPL insurance requirement is public protection. Ordinary people are overwhelmingly the ones who are harmed by uninsured lawyers. This is because most individuals hire solo and small firm lawyers for their legal matters. It is predominantly solo and very small-firm lawyers who forgo insurance. In Washington, for example, 28 percent of solo lawyers are uninsured.³

When lawyers who commit malpractice are uninsured, their clients often have no recourse. Lawyer discipline systems will not compensate clients for their losses and clients usually cannot get an experienced LPL lawyer to represent them in a legal malpractice case.⁴ It comes down to economics. Individual clients can rarely afford to pay lawyers on an hourly basis to bring a malpractice case, and contingent fee arrangements rarely compensate LPL lawyers because there is no money available to recover. The reasons are fairly obvious: Lawyers who cannot afford insurance also cannot afford to compensate clients for the harm they cause. Uninsured lawyers who have assets sometimes transfer them to other family members so they are judgment proof. Or, as one plaintiffs’ malpractice lawyer explained why he would not sue an uninsured lawyer, “It does not make sense to chase lawyers for their condos or BMWs. They will file for bankruptcy.”⁵

There are many cases in which uninsured lawyers who were sued for malpractice declared bankruptcy or simply failed to pay malpractice judgments.⁶ I interviewed one plaintiffs’ malpractice lawyer who described a case in which the defendant declared bankruptcy eight days before the trial of a case brought by an elderly couple in which $1 million was at issue. Another told me that in his 17 years of practice he had only recovered once against an uninsured lawyer.

We do not know whether uninsured lawyers are more likely to commit malpractice than other lawyers, but we do know that when they commit malpractice, their clients may be doubly victimized. For example, in Schmidt v. Coogan, 181 Wn.2d 661, 335 P.3d 424 (2014), an uninsured lawyer sued the wrong party, resulting in dismissal of his client’s claim. He then fought tooth and nail through two jury trials, three trips to the Court of Appeals, and two trips to the Washington Supreme Court to avoid paying a claim that an insurance company likely would have settled many years earlier.⁷

We also know that 11 percent of all claims denied by the WSBA Client Protection Fund are from people who have been the victims of lawyer malpractice.⁸ These claims were filed even though the fund clearly states on its application that it does not compensate for legal malpractice.

THE ARGUMENTS AGAINST MANDATORY LPL INSURANCE

The most common argument against requiring LPL insurance is that some lawyers cannot afford it. This argument requires careful scrutiny. In most of the country, the average cost of $100,000/$300,000 of LPL insurance for solo and small firm lawyers is $3,000 or less annually. Lawyers who cannot afford this premium are also unlikely to be able to compensate clients for any harm they cause.

Surveys of uninsured lawyers suggest that when they say they do not buy insurance because of the cost, many do not mean they cannot afford it. Some are retired or mostly retired lawyers who are making less from their occasional legal work than the cost of insurance, but they could afford to purchase insurance...
if required. The actual number of lawyers truly unable to afford LPL insurance has been hard to pinpoint, but appears to be quite small.

Another argument against mandatory insurance is that it will be the insurers—and not the courts—that decide who practices law. This argument has rhetorical resonance, but does not bear up under scrutiny. Lawyers can seek to join law firms that provide insurance if they cannot otherwise afford it. They can also work in other settings (e.g., the government, in-house) if they are denied coverage because of their claims experience. There are at least eight companies that will insure solo and very small firm Washington lawyers. If all of these insurance companies consider a lawyer to be an unacceptable risk, why should the lawyer be permitted to practice law uninsured?

Idaho’s recent experience requiring lawyers to purchase LPL insurance on the open market suggests that imposing such a requirement does not produce dire consequences. Diane Minnich, executive director of the Idaho State Bar (ISB), was responsible for fielding calls from lawyers with questions or comments about Idaho’s requirements. She reports that as far as the ISB knows, every Idaho lawyer who wanted to purchase insurance obtained coverage. Some lawyers who held Idaho licenses but did not practice law in Idaho chose to change to inactive status. Likewise, some older lawyers chose to change to senior status or become emeritus members (enabling them to continue to perform pro bono work). These lawyers can become active again if they wish to resume practice and purchase insurance.

Opponents of mandatory insurance also argue that some lawyers who provide pro bono and low-cost legal services would have to raise their rates or discontinue their pro bono work if insurance were required. This argument also requires...
careful scrutiny. A survey of New Mexico uninsured lawyers revealed that less than 18 percent performed any pro bono work. 2 Oregon, which has mandatory insurance, has relatively high rates of pro bono participation.3 A survey of Nevada uninsured lawyers revealed that none indicated that the fact that they represent clients pro bono was the primary reason they were uninsured.4 The WSBA’s Task Force on Mandatory Malpractice Insurance has tentatively concluded it will exempt from an insurance requirement lawyers providing services through nonprofit entities, including pro bono services.5

The claim that those who do low bono work would have to raise their rates also seems somewhat overstated. Assuming that LPL insurance costs $3,000 annually in Washington—which is a high estimate6—lawyers would be required to charge approximately $10 more per day to pay for their LPL insurance.

Yet another argument against an insurance requirement is that it will make lawyers a “target” of lawsuits. If lawyers mean that they can avoid legitimate suits—because other lawyers will not sue them—this is a cynical reason for opposing an insurance requirement. If they are referring to frivolous suits, this is harder to assess. One does not hear about a problem with frivolous malpractice lawsuits against insured lawyers comparable to the claim in the medical malpractice context. In fact, legal malpractice can be very difficult to prove because of the case-within-a-case issue and other challenges. Experienced plaintiffs’ malpractice lawyers do not like to take cases if causation is not clear.7

At worst, it may be that uninsured lawyers who are required to carry insurance will be sued because it will be possible for their former clients to find representation—but it would not be unfair to lawyers if their clients were better equipped to recover on their claims.

Of course, an LPL insurance requirement does not guarantee full redress for all clients. Minimum insurance requirements may not fully compensate those who are harmed. But the average payment made by LPL insurers for claims against solo and small-firm lawyers appears to be well under $100,000.8 So even relatively low coverage limits would cover most claims.

There are also advantages to carrying LPL insurance that are sometimes overlooked in this debate. The mere process of annually reapplying for coverage reminds lawyers to consider the adequacy of their calendaring, conflicts-checking, and other systems. Insurers offer their insured lawyers free CLE and other risk management materials. They also have hotlines and other means by which lawyers can ask questions in order to avoid malpractice claims.

**WHY CHANGE THE STATUS QUO?**

One might ask why Washington’s insurance disclosure rule is not sufficient to protect the public. That rule requires lawyers to report to the WSBA whether they carry insurance, and that information is posted on the WSBA website. One problem, however, is that the public believes all lawyers are insured.9 Consequently, they do not think to look for information indicating whether a lawyer carries insurance.

Moreover, even if clients find this information, they do not understand the implications. The public generally thinks that lawyers are well-off and can afford to pay judgments against them. The WSBA website on insurance promotes this view; it states that not all lawyers maintain LPL insurance and that some do not because “the lawyer may choose to be financially responsible (self-insured).”10 This statement fails to alert the public that some uninsured lawyers may not be financially responsible. Nor does it explain that they may be unable to find another lawyer to represent them if they wish to bring a malpractice action against an uninsured lawyer.

When debating the issue of an insurance requirement, it is useful to remember that many lawyers decline to purchase insurance because they simply prefer not to. They think they work in low-risk practices. (Sometimes they are mistaken.) They think they are good lawyers. (Don’t we all?) They dislike insurance companies. (Ditto.) At the same time, the empirical evidence cannot rule out the possibility that there may be a few lawyers who genuinely cannot afford LPL insurance if it is required. However, that number appears to be quite small.

Ultimately, the question the WSBA faces comes down to who should bear the risk of loss when a lawyer makes a mistake: the lawyer or the public? It’s time for Washington lawyers to answer that question.

**NOTES**


3. WSBA, _Mandatory Malpractice Insurance Task Force, Interim Report to Board of Governors_, July 10, 2018, at 3-4, available...
We not only prepare and review prenuptial agreements, we also speak regularly on the subject and updated the Washington Practice chapter on Prenuptials. We know the issues and pitfalls. Let Brewe Layman help you draft, review or critique your prenuptial agreement.

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A BETTER UNDERSTANDING

Updated Options in a New WSBA Demographic Form Will Better Reflect and Serve Members

By Robin Nussbaum, Ph.D.

IN A FEW MONTHS, LEGAL PROFESSIONALS practicing in Washington state will have the opportunity to fill out a set of newly designed, confidential demographic questions along with their WSBA license renewals. The updated language is the result of a multiyear collaboration with many groups; we hope members will see themselves more accurately reflected in the options and, equally important, we hope every member will fill out the form (online, on paper, or via an assistant). This is the only statewide data available to help WSBA and other organizations understand and respond to diversity and inclusion efforts in the profession and to build programs, resources, and structures to support members.

BACKGROUND AND RATIONALE

The WSBA began collecting demographic data from the membership in 2005. The questions and their careful wording were developed through a collaboration between the WSBA and minority bar association (MBA) leaders. Initially, members would receive and fill out this voluntary, confidential demographic survey only when they received their first licensing packet—there was no convenient way for members to update their information or to offer it at a later date. And over time, fewer and fewer members voluntarily reported this information.

Thus, we started to look for ways to make demographic reporting more accessible. The first step was to include the four confidential demographic questions—race, gender, sexual orientation, and disability status—on the 2017 relicensing form for all members, not just new members. The response was dramatic, with several thousand more members voluntarily answering the demographics questions. As a result, we now know the gender and race of almost three-quarters of the membership.

But the mere addition of these questions to the relicensing process was not sufficient to address societal changes over the last decade that have affected the language and norms for describing various identities. Our questions needed a refresh, and for the past two years we have been carefully revising and updating them. We reached out to all WSBA members, MBA leadership, and other stakeholders to ask for input, information, and recommendations about what language and categories to include. We also researched best practices and methods of collection used by institutions like the American Bar Association (ABA) and the U.S. Census Bureau. We had several goals in mind as we revised the questions:

1. Obtain reliable, useable, analyzable data.
2. Create questions that mirror our modern-day understanding of identity.
3. Create an inclusive experience for those voluntarily providing their demographic information.

We then put those revised questions out to our membership for feedback, and we made several more rounds of revisions based on the more than 60 thoughtful and helpful responses we received.

Why is gathering this demographic information important in the first place? The WSBA operates under the delegated authority of the Washington Supreme Court, and the Court has made it a priority that the WSBA act to advance diversity, inclusion, and equity in the legal profession. To accomplish this mission, we need to understand the lay of the land: How diverse is our membership? What do we know about the opportunities and challenges of legal professionals from different backgrounds? Are more people from underrepresented groups entering and staying in the profession?
Quantitative demographic data isn’t enough, but it is an important first step in gaining greater understanding of our membership. More in-depth inquiry, like our 2012 membership study, will be needed to learn more about the practice experiences and the barriers faced by members from underrepresented communities, as well as the membership in general. We’ve committed to conducting these more comprehensive studies every 10 years.

Why should demographic data matter to legal professionals in Washington? There is, of course, a personal answer to that question for everyone, but the undeniable fact is that our world continues to grow in diversity. The communities from which our clients and colleagues come is changing, and there is a clear business case for being better able to understand, communicate with, and serve people from all backgrounds.

NEW LANGUAGE AND QUESTIONS
While we made myriad changes, big and small, to the demographic form, here are some of the more significant:

NEW DEMOGRAPHIC QUESTIONS

Which of the following most closely represents your identity? (Please select all that apply.) If you wish to supply a more specific identity, please select “not listed” and fill in the blank. Please also select the most applicable gender from the list provided, if any.

Female
Male
Non-Binary
Transgender
Two-spirit
Not Listed ______

Which of the following most closely represents your identity? (Please select all that apply; selecting more than one will be reported as “multi-racial.”) If you wish to supply a more specific identity, please select “not listed” and fill in the blank. Please also select the most applicable race/ethnicity from the list provided, if any.

American Indian, Native American, or Alaskan Native
Asian—Central Asian
Asian—East Asian
Asian—South Asian
Asian—Southeast Asian
Black, African American, or African Descent
Hispanic/Latinx
Middle Eastern Descent
Pacific Islander or Native Hawaiian
White or European Descent
Multi-Racial or Bi-Racial
Not listed ______

Which of the following most closely represents your identity? (Please select all that apply.) If you wish to supply a more specific identity, please select “not listed” and fill in the blank. Please also select the most applicable sexual orientation from the list provided, if any.

Asexual
Gay, Lesbian, Bisexual, Pansexual, or Queer
Heterosexual
Two-spirit
Not listed ______

Do you identify as having a disability or impairment (visible or invisible)?
No
Yes
After much research, discussion, and feedback, we landed on a heavily redesigned list of racial/ethnic identities.

Under gender, we have added “transgender,” “non-binary,” and “two-spirit” options to better mirror our modern-day concepts of these identities.

The sexual orientation question used to be a yes/no question, but we now provide a range of options to express sexual orientation. A sexual orientation that is being identified more openly is “asexual,” which describes a lack of sexual attraction and/or desire for others.

The term “two-spirit” falls under both the gender and sexual orientation categories. Two-spirit is a Native American concept that has no direct mapping to western notions of gender and sexual orientation. It refers to a person who has both a masculine and a feminine spirit, and is used by some First Nations people to describe their sexual, gender, and/or spiritual identity. Thus, from a Western perspective, two-spirit can be seen as both a gender and a sexual orientation. In order to be as inclusive as possible, we decided to allow members to select two-spirit in either or both places.

For all but the disability status questions, we are allowing members to check more than one box to better capture the identities they hold.

Last, we have clarified the wording on the question regarding disability status. Again, the purpose here is for us to have good useable data, while being as inclusive as possible regarding the ways in which people define themselves.

Although the final wording of the questions will be on the form in your licensing packet, we have also included them in the sidebar to this article.

Thank you to everyone who provided input throughout this revision process. Your participation is deeply appreciated and valued. To all of you who fill out the demographic form this licensing season, please know that your feedback will not be collected or used at an individual level, but it will make a tremendous difference in how we understand and serve the legal profession in Washington as a whole.

Robin Nussbaum, Ph.D., is the Inclusion and Equity Specialist at the Washington State Bar Association. She can be reached at robinn@wsba.org.
THE PREFERRED CHOICE
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The Washington Leadership Institute inspired me to stay in the legal profession and to aspire to take on leadership roles promoting diversity. I found strength and support from not only the fellows, but the advisory board members and the mentors from the program who invested in my success. In a profession where relationships are mainly adversarial, the program promoted connection and collaboration to improve the legal profession and better serve the community.”

—Jean Y. Kang, WLI ‘17 Fellow and Advisory Board Member; Smith Freed & Eerhard; At-Large Governor for Young and New Lawyers, Governor-Elect District 7 South

WLI teaches resilience. Participants meet with leaders in Washington’s legal community and hear firsthand about their personal and professional failures, which is rare in this profession that too often focuses only on successes.”

—Jamila A. Johnson, WLI ’11 Fellow, Southern Poverty Law Center

Washington Leadership Institute:
Practice-changing, profession-changing, life-changing

Applications for Class of 2019 due Sept. 21

Calling all WSBA members who have been practicing between three and 10 years: Are you ready for a leadership opportunity that will connect you with an incredible network of colleagues and mentors, help you realign your work with your mission and values, promote diversity and inclusion in the legal community, and shape the future of the profession?

THEN CONSIDER APPLYING FOR THE WASHINGTON LEADERSHIP INSTITUTE (WLI).

The WLI is a collaborative leadership-development program between the WSBA and the University of Washington School of Law designed to recruit and train traditionally underrepresented lawyers for future leadership positions in the legal community. The program strives to enroll fellows for each class who reflect the full diversity of our state, which includes race, ethnicity, gender, sexual orientation, disability and geographic location. WLI sessions include topics such as the “nuts and bolts” of law practice, leadership styles, the judiciary, and the legislative process.

PROGRAM BENEFITS

The WLI provides the fellows with numerous opportunities to personally interact with legal, judicial, and political leaders. The program offers a unique combination of benefits:

• No tuition fee or cost for program participation
• CLE credits, enough to satisfy approximately three full years of MCLE requirements, at no cost
• Exposure to practice and industry leaders
• Training in the law, courts, and the bar
• One-on-one interaction with judges
• Mentorship from well-known bar leaders

THE DEADLINE FOR APPLICATIONS IS 5 p.m. SEPT. 21, 2018. TO APPLY, YOU MUST BE:

• An active WSBA member
• Admitted to practice law in a U.S. jurisdiction for at least three years and not more than 10 years (for this year, you must have been admitted to the bar by or after Dec. 31, 2015)
• Nominated by your employer, or if self-employed, by a lawyer with at least 10 years of practice experience or a judge

More information and the application form are at www.law.uw.edu/academics/continuing-education/wli.

1. Professional Registered Parliamentarian Ann G. Macfarlane, a former U.S. diplomat, talked to the 2018 Fellows in March about how to run great meetings using a fictitious Jurassic Parliament (but don’t we all feel like we are in a meeting with a tyrannosaurus every once in a while?).

2. Mimi Hunter, Assistant General Counsel at Nike, spoke to the 2018 Fellows in July.
For decades, McKinley Irvin has helped clients navigate through some of life’s most difficult challenges. Our attorneys, like prominent family law attorney Jamie Walker, are known for their relentless pursuit of successful results, whether representing individuals in high-asset divorce litigation or negotiating complex property division. But perhaps our most noted distinction is our steadfast commitment to protecting what our clients value most.
NEWS FROM THE BOARD OF GOVERNORS

OnBoard

SHOULD PUBLIC MEMBERS AND LLLTs/LPOs HAVE DEDICATED SEATS ON THE BOARD OF GOVERNORS?

Board potentially set to take action at September meeting

The Board of Governors created the Addition of New Governors Work Group on April 6, 2018, to evaluate a proposed amendment to WSBA bylaws that would eliminate the addition of three new seats on the board — two seats for public members and one seat for a Limited License Legal Technician (LLLT) or Limited Practice Officer (LPO). The amendment would allow LLLTs and LPOs to run against other members for election in their open congressional district seats.

The work group has met twice, once in July and once in August, first to assign research topics and second to receive interim draft reports on the research.

Topics to be discussed by the work group, either separately or in combination with other topics, include:

- Use of public members on other state-bar boards and on regulatory or oversight boards for other professions;
- The timeline for the adoption of the bylaws that added the three new seats to the board;
- Comments received on those draft bylaw amendments;
- Other proposals considered by the Board of Governors at the time the three seats were added;
- The rationale for adding the three new seats in the current bylaws, and an explanation of the role and qualifications of public members;
- The cost of adding governors to the Board of Governors;
- The role of public members on other WSBA boards;
- How WSBA members receive and process information from the WSBA Board of Governors;
- The optimal size of boards; and
- How LPOs see themselves in relation to WSBA

A third meeting will be held in late August or early September to review the research reports. Information about the reports will be presented to the board at its September meeting, when the board is currently scheduled to review and potentially take action on the proposed bylaw amendment.

The work group welcomes member input and feedback, and its meetings are open for in-person or telephone participation.

To review the background information provided to the work group, see a roster of work group members, learn more about the research topics being examined by the work group, provide input or feedback, or learn about the work group’s next meeting, visit www.wsba.org/governors-workgroup.

COMING SOON: NEW HEALTH INSURANCE OPTION

WSBA is working with a vendor to set up a private health-insurance exchange to provide another option for members across the state. With rising health-care costs and uncertainty about the Affordable Care Act, members have been reaching out to WSBA over the past year asking what we can do to provide health insurance. In response, we’ve explored the insurance landscape and talked to members, other bars, insurance experts and officials, and various providers. Our research indicates the best potential to offer WSBA members another insurance option with competitive rates is through a private exchange; to establish such an exchange,
we will soon partner with Member Benefits, Inc., a company that creates private exchanges for associations such as the State Bar of Texas and the Florida Bar. Be on the lookout via the TakeNote e-newsletter and wsba.org to learn more when the exchange is ready.

**POTENTIALLY COMING SOON: MANDATORY MALPRACTICE INSURANCE**

Members of the Mandatory Malpractice Insurance Task Force told the board in an interim report in July that they are likely to recommend malpractice insurance as a condition of licensing for all active lawyers, with to-be-determined exemptions. The task force’s preference thus far is to mandate a minimum level of coverage, purchased through the open marketplace. Before its final report is due in January, the task force will focus on details (what exemptions? what minimums?) for rule drafting. Members are encouraged to read the interim report at (www.wsba.org/insurance-task-force) and provide comments to insurancetaskforce@wsba.org. (See articles on pages 32-39 for more information.)

**2019 DRAFT BUDGET**

In July, the Budget and Audit Committee presented WSBA’s draft 2019 budget for consideration to the board, which will take action on it in September. The draft budget maintains programs and services to fulfill WSBA’s regulatory responsibilities, serve and protect the public, and support members to be successful in the practice of law. The budget is built on previously set lawyer-license fees of $453. As part of the budget-building process, the board approved: (See Treasurer’s Report on page 10)

- A new Continuing Legal Education (CLE) revenue-sharing model with sections. Section leaders widely expressed support for this new model.
- License fees for Limited Practice Officers (LPOs) and Limited License Legal Technicians (LLLTs): After debate, both active-member fees were set at $453 for 2019 (the Budget and Audit Committee came with a recommendation of $200). The board also recommends that LLLTs and LPOs pay a $30 Client Protection Fund assessment, which would need to be specifically ordered by the Washington Supreme Court. The majority of governors decided that, as WSBA members with full access to benefits and services, LPOs and LLLTs should have the same license fees as lawyers. The Washington Supreme Court will review these fees for reasonableness.
- The Law Clerk program annual fee: After remaining at $1,500 for 20 years, the fee will increase to $2,000 next year.

**NEW TREASURER**

Congratulations to Governor Dan Bridges, whom the board selected as its incoming Treasurer in July. Kudos and appreciation to outgoing Treasurer, Governor Kim Risenmay.

**WSBA RULES!**

Various WSBA entities have recommended amendments and additions to the Rules of Professional Conduct, Superior Court Civil Rules, Criminal Rules for Courts of Limited Jurisdiction, and Superior Court Criminal Rules:

- The Civil Litigation Rules Drafting Task Force was chartered in 2016 to suggest rules necessary to implement the board’s previous task force that recommended various changes to address the escalating cost of civil litigation. The recommended amendments and additions to the Superior Court Civil Rules (CR)—including 1, 3.1, 11, 16, 26, 37, 53.5, and 77—focus on the principle of cooperation and require and/or encourage cost-efficient procedures. The board will take action in September to approve the recommended amendments for submission to the Washington Supreme Court. (The full amendments are in the July board-meeting materials starting on page 215, www.wsba.org/about-wsba/who-we-are/board-of-governors.)

- As recommended by the Committee on Professional Ethics (CPE), the board in July approved for submission to the Washington Supreme Court amendments to comments to the Rules of Professional Conduct (RPC) to continue to allow Washington lawyers to assist those participating in the marijuana industry. These changes were in response to new federal enforcement priorities regarding marijuana; they remove contingency language in Comment [18] to RPC 1.2 regarding federal enforcement priorities and add Comment [8] to RPC 8.4 to clarify that a lawyer’s conduct in counseling a client regarding marijuana law would not establish a basis for disciplinary action under the rule. (The full amendments are in the July board-meeting materials starting on page 166, www.wsba.org/about-wsba/who-we-are/board-of-governors.)

- As part of the Washington Supreme Court’s review cycle to bring rules up to date with current law, the Court Rules and Procedures Committee has proposed amendments to Superior Court Criminal Rules (CrR) 1.3, 3.4, and 4.4; Criminal Rules for Courts of Limited Jurisdiction (CrRLJ) 4.2, 4.4, and 7.3; and Civil Rule (CR) 30. The board will take action in September to approve the recommended amendments for submission to the Washington Supreme Court. (The full amendments are in the July board-meeting materials starting on page 323, www.wsba.org/about-wsba/who-we-are/board-of-governors.)
THE APEX OF THE LEGAL PROFESSION

We’re honoring a fantastic group of legal luminaries in September—get your tickets now for the Sept. 27 annual APEX Awards dinner (www.wsba.org/about-wsba/apex-awards).

You’re sure to be inspired by this year’s winners:

- Angelo Petruss Award for Lawyers in Government Service: Capt. Leslie E. Reardanz III.
- Award of Merit: Spokane Community Court
- Justice Charles Z. Smith Excellence in Diversity Award: Hon. Bonnie Glenn
- Legal Innovation Award: Project Safety
- Lifetime Service Award: Milton G. Rowland
- Norm Maleng Leadership Award: Joan Kleinberg
- Outstanding Judge Award: Hon. Bruce A. Spanner
- Outstanding Young Lawyer Award: Annalise Martucci
- Pro Bono and Public Service Award (Individual): Eduardo “Eddie” Morfin
- Pro Bono and Public Service Award (Group): Law Offices of Carol L. Edward
- Professionalism Award: Mark Johnson

LOCAL HEROES

At the July board meeting, WSBA President Bill Pickett presented Local Hero Awards to Lisa Lowe (nominated by the Clark County Bar Association) and David Nelson (nominated by the Cowlitz-Wahkiakum Bar Association) for their outstanding legal and community service. More information: www.wsba.org/news-events/media-center.

FREE LEGAL RESEARCH TOOL FOR MEMBERS: FAST-CASE-MAKER?

WSBA currently contracts with Casemaker to provide members with a free legal-research platform. WSBA recently launched a request for proposal and has been exploring whether to remain with Casemaker, switch to Fastcase, or offer both. To evaluate member preference, WSBA conducted a member-wide survey with demo links, in-person usability tests, and virtual focus groups. The Board of Governors in July discussed the pros and cons of choosing one platform over another or even offering both. The decision was for WSBA to maintain Casemaker while continuing to explore whether to add Fastcase as an additional member benefit.

MEMBER ENGAGEMENT WORK GROUP:

In July, the board approved the charter and roster for a new work group to explore how to best engage members and facilitate two-way understanding.

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We work as a team on your neurosurgical cases. Medical malpractice; it’s all we do.
WSBA News

Mandatory Malpractice Insurance Task Force
Since January, the Board of Governors’ Mandatory Malpractice Insurance Task Force has been exploring professional liability insurance systems in other jurisdictions (including Oregon and Idaho), gathering data, and considering members’ comments and concerns. The task force will now turn to analyzing the information and preparing potential models for Washington state; these models will be distributed widely to members for feedback. Ultimately, the task force will make a recommendation to the board in January 2019 about whether to require actively licensed WSBA members in private practice to carry malpractice insurance. For more information, including materials and resources, search “Mandatory Malpractice Insurance Task Force” at wsba.org. Comments can be sent to insurancetaskforce@wsba.org. See pages 32-39.

Addition of New Governors Work Group
Under the current bylaws, the Board of Governors is to increase in size by three at-large governors, with two seats for public members and one seat for a Limited License Legal Technician (L.L.T.) or Limited Practice Officer (L.P.O.). The Board of Governors in April formed a work group to review a proposed bylaw amendment to remove these three new seats and instead have L.L.T.s/L.P.O.s run against all other members for election to the board in open congressional district seats. The 21-member work group will gather feedback and information in public meetings and present a report to the board in September 2018. Meeting dates and more information will be posted at wsba.org as they become available. See page 46.

President-Elect Selection Work Group
The Board of Governors in May formed a work group to review and gather feedback about eligibility, outreach, and selection criteria in the bylaws for the WSBA President-Elect office. Under the current bylaws, the President-Elect must come from eastern Washington if no President-Elect in the preceding three years was from the eastern part of the state. The work group will also consider WSBA’s diversity goals for leadership positions and explore how to recruit and encourage more candidates from underrepresented backgrounds to run for President-Elect. Meeting dates and more information will be posted at wsba.org as they become available.

Opportunities for Service

Volunteer Custodians Needed
The WSBA is seeking interested lawyers as potential volunteer custodians under Rule for Enforcement of Lawyer Conduct (ELC) 7.7. 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 or disbarred, or dies or disappears, and no person appears to be protecting the client’s interests. The custodian takes possession of the necessary files and records and takes action to protect the client’s interests. 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 confirm the willingness and ability of a potential volunteer and seek his or her appointment as custodian. Costs incurred may be reimbursed. Current WSBA members of all practice areas are welcome to apply. 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 Budget
WSBA’s draft 2019 budget is available at www.wsba.org/about-wsba/finances. The budget will be on the agenda for action at the Board of Governors September meeting. To learn more about the WSBA FY19 budget, and the programs and services that it supports, visit www.wsba.org/About-WSBA/Financial-Info. See page 10.
Washington Leadership Institute Fellows

The Washington Leadership Institute (WLI) is now accepting applications for the incoming 2018-19 class of Fellows. The WLI is a collaborative leadership program between the Washington State Bar Association and the University of Washington School of Law. Twelve attorneys, in practice for at least three years and not more than 10 years, will be carefully selected for the 15th year of the program. The eight professional development seminars run from January to August 2019. Upon successful completion, Fellows will earn a significant number of CLE credits, and the program is provided at no charge to participants. All required application materials must be received at the University of Washington Law office no later than 5 p.m., Sept. 21. Application materials can be found at www.law.uw.edu/academics/continuing-education/wli. See page 44.

Northwest Justice Project Board of Directors

The WSBA Board of Governors is accepting applications from members interested in serving on the Board of Directors of the Northwest Justice Project (NJP). WSBA will appoint up to four attorneys for terms varying from one to three years, commencing January 2019. Presently, three incumbents are eligible for and may seek reappointment. Service on NJP’s Board provides an extraordinary opportunity for accomplished individuals who are passionate about NJP’s mission and who have a demonstrated commitment to providing high-quality civil legal services to low-income people. To apply, email a letter of interest and résumé on or before Sept. 7 to barleaders@wsba.org. For additional information, see www.wsba.org/wsba-representative.

Public Trust & Confidence Committee

The WSBA Board of Governors is accepting applications from members interested in serving on the Board for Judicial Administration’s Public Trust & Confidence Committee. The WSBA will nominate one member to serve a term through Dec. 31, 2019. The committee brings together the bench and bar, educators, legislators, civic groups, and others to assess and increase the public’s trust in the judicial system. To apply, email a letter of interest and résumé on or before Sept. 7 to barleaders@wsba.org. For additional information, see www.wsba.org/wsba-representative.
**WSBA Community Networking**

**Sept. 20, Seattle**

WSBA Mentorship Programs bring together a diverse mix of experienced and new legal professionals to support each other in the interest of advancing and thriving in the legal profession. Join us for this MentorLink Mixer on Sept. 20 from 12–1:30 p.m. at the WSBA offices as an opportunity for new admittees to gain insight into the legal profession. Visit www.wsba.org/connect-serve/mentorship/mentor-link-mixers for more information.

**Access to Justice Conference**

Save the Date for the 2019 Access to Justice Conference, to be held June 14–16, 2019, at the Spokane Convention Center. Information will be posted to the Alliance for Equal Justice website as it becomes available.

**WSBA CLE Faculty Database**

If you are currently serving as CLE faculty, or are interested in working with the WSBA as a future CLE faculty member, we encourage you to register in our CLE faculty database. Serving as a faculty member provides you with the opportunity to engage with other attorneys across the state, give back to your profession, and advance your professional growth. Whether it’s upcoming changes in the law, emerging hot topics, or substantive content, our goal is to ensure we are engaging with the right faculty at the right time, matching practice expertise and knowledge to our educational programming needs. We hope to capture the information of all those who plan to teach—both current CLE faculty and those interested in future opportunities. Please log on and register in the CLE faculty database today at www.mywsba.org/CleFacultyApplication.aspx.

**Join the WSBA New Lawyers List Serve**

This list serve is a discussion platform for new lawyers of the WSBA. In addition to being the best place to receive news and information relevant to new lawyers, this is a place to ask questions, seek referrals, and make connections with peers. To join, email newlawyers@wsba.org.

**ALPS Attorney Match**

Attorney Match is a free online networking tool made available through the WSBA-endorsed professional liability partner, ALPS. This resource allows attorneys to set up a profile and indicate whether they are looking for, or available to act as, a mentor. Mentorship programs that meet requirements are now eligible

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**Wallace Klor Mann Capener & Bishop, P.C.**

**ATTORNEYS AT LAW**

Smart Defense for Workers’ Compensation Cases (and Related Matters)

We are pleased to welcome two new associates to our team:

Danielle R. Miller  Benjamin Allen

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WKMCBLaw.com
for MCLE credits. The WSBA provides information and links to the ALPS Attorney Match online system as a service to the legal community. For more information, email mentorlink@wsba.org.

Alliance for Equal Justice
Join the Alliance for Equal Justice in closing the justice gap in Washington. The Alliance for Equal Justice is the central communications hub for our state’s network of civil legal aid providers, pro bono providers, and partners. To learn about Alliance events, jobs and internships, and volunteer opportunities, and to find tools and resources to promote access to justice, visit www.allianceforequaljustice.org.

Send Your Nominations for the Isidore Starr Flame of Democracy Award
The Council on Public Legal Education is accepting nominations for individuals, organizations, or programs in Washington state that have made a significant contribution toward increasing the public’s understanding of law, the justice system, or government. Named after Dr. Isidore Starr, the father of law-related education, the Isidore Starr Flame of Democracy Award was established to highlight important educational work. Send nomination letters (500 words max) describing the nominee’s work and how it addresses the mission of the Council on Public Legal Education to Kelly Kunsch, Seattle University School of law, 901 12th Ave., Seattle, WA 98122-1090, or email them to kunsch@seattleu.edu by Sept. 1.

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 Rules of Professional Conduct (RPC). All calls are confidential. Any advice given is intended for the education of the inquirer and does not represent an official position of the WSBA. Every effort is made to return calls within two business days. Call the Ethics Line at 206-727-8284 or 800-945-9722, ext. 8284.

Search WSBA Advisory Opinions Online
WSBA advisory opinions are available online at www.wsba.org/for-legal-professionals/ethics/about-advisory-opinions. You can search opinions by number, year issued, ethical rule, subject matter, or keyword. Advisory opinions are issued by the WSBA to assist members in interpreting their ethical obligations in specific circumstances. The opinions are the result of study and analysis in response to requests from WSBA members. For assistance, call the Ethics Line at 206-727-8284 or 800-945-9722, ext. 8284.

Advertise in NWLawyer’s Announcements or Professionals sections!
Email advertisers@wsba.org.
WSBA Member Wellness Program

WSBA Connects
WSBA Connects provides free counseling in your community. All bar members are eligible for three free sessions on topics including work stress, career challenges, addiction and anxiety, as well as other issues. Upon calling 1-800-765-0770, a telephone representative will arrange a referral using KEPRO’s network of clinicians throughout the state of Washington. There is no need to let problems build up unnecessarily. We hope you make the most of this valuable resource.

Virtual Job Group Begins 9/6
This group meets online and reviews core skills like networking, interviewing, identifying your ideal career, and résumé review. It is limited to 10 attorneys. We meet on six consecutive Monday mornings and the total cost is $30. For more information, go to www.wsba.org/wellness and click on the link for the group where you can learn more and sign up.

Career Consultation
Want someone at WSBA to take a look at your résumé? Or maybe you want to brainstorm approaches to networking. The job search requires a game plan. We are happy to set up a time to speak. Email wellness@wsba.org.

Judicial Assistance Services Program
The purpose of the Judicial Assistance Services Program (JASP) is to prevent or alleviate problems before they jeopardize a judicial officer’s career. JASP provides confidential support and treatment for judges struggling with medical or mental health challenges, addiction, grieving, stress, or isolation. If you are a judge or are concerned about a judge, you are encouraged to contact the Judicial Assistance Services Program at 415-572-3803 or contact clinical consultant Susanna Kanther, Psy.D., at susanna@drkanther.com.

The “Unbar” Alcoholics Anonymous Group
The Unbar is an “open” AA group for attorneys that has been meeting for over 25 years. Meetings are held Wednesdays from noon to 1:30 p.m. at the Skinner Building at 1326 Fifth Avenue, 7th Floor, Seattle. If you are seeking a Peer Advisor to connect with and perhaps walk you to this meeting, the
Member Wellness Program can arrange this; call 206-727-8268.

**WSBA Practice Management Assistance**

The WSBA offers free resources and education on law practice management issues, including financial management, marketing and client retention, and technology. For more information, visit [www.wsba.org/pma](http://www.wsba.org/pma).

**Lending Library**

The WSBA Lending Library is a free service to WSBA members offering the short-term loan of books on health and well-being as well as the business management aspects of your law office. You can view available titles and arrange for a book loan by visiting [www.wsba.org/library](http://www.wsba.org/library). Books may be borrowed by any WSBA member for up to two weeks. 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.

**Get Discounts on New Software and Services**

Looking to build up your practice? Visit the Practice Management Discount Network for discounts on tools to help you improve your legal service delivery—featuring practice management software, credit card processing, and more. Visit [www.wsba.org/discounts](http://www.wsba.org/discounts) to get started.

**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](http://www.wsba.org/casemaker). As a WSBA member, you already receive free access to Casemaker. We have now enhanced this member benefit by upgrading to add Casemaker+ with CaseCheck+ for you. Just like Shepard’s® Citations 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 discuss these features with you. For help using Casemaker, call the WSBA Service Center at 800-945-9722 or 206-443-9722.

**Quick Reference**

**Usury Rate**


**We’re All Ears.**

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- Edward K. Le PLLC
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- Carney Badley Spellman, P.S.
- Patrick Duffy Jr.
- Rodney B. Ray

*With the exception of tangible benefits that you may receive.

For more information, go to: www.wsba.org/apex or e-mail: foundation@wsba.org

WASHINGTON STATE BAR FOUNDATION
These notices of imposition of disciplinary sanctions and actions are published pursuant to Rule 3.5(c) of the Washington Supreme Court Rules for Enforcement of Lawyer Conduct. Active links to directory listings, RPC definitions, and documents related to the disciplinary matter can be found by viewing the online version of NWLawyer at [www.nwlawyer.wsba.org/nwlawyer](http://www.nwlawyer.wsba.org/nwlawyer) or by looking up the respondent in the legal directory on the WSBA website ([www.wsba.org](http://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**

**Evin Garner Dugas** (WSBA No. 21729, admitted 1992) of Lakeway, TX, was disbarred, effective 6/12/2018, by order of the Washington Supreme Court imposing reciprocal discipline in accordance with an order of the Supreme Court of the State of Texas. Joanne S. Abelson acted as disciplinary counsel. Evin Garner Dugas represented himself. The online version of NWLawyer contains a link to the following document: The Washington Supreme Court Order.

**Dennis Xavier Goss** (WSBA No. 33628, admitted 2003) of Port Orchard, was disbarred, effective 6/12/2018, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.7 (Conflict of Interest: Current Clients), 3.3 (Candor Toward the Tribunal), 8.4 (Misconduct). Scott G. Busby, Kathy Jo Blake and Craig Bray acted as disciplinary counsel. Dennis Xavier Goss represented himself. David Condon was the hearing officer. Andrekita Silva was the settlement hearing officer. The online version of NWLawyer contains links to the following documents: Hearing Officer’s Amended Decision; Disciplinary Board Recommendation; and Washington Supreme Court Order.

**Carllene M. Placide** (WSBA No. 28824, admitted 1999) of Seattle, was disbarred, effective 4/19/2018, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.5 (Fees), 1.15A (Safeguarding Property), 1.16 (Declining or Terminating Representation), 8.4 (Misconduct). Scott G. Busby and Craig Bray acted as disciplinary counsel. Kurt M. Bulmer represented Respondent. Carl J. Carlson was the hearing officer. James E. Horne was the settlement hearing officer. The online version of NWLawyer contains links to the following documents: Hearing Officer’s Amended Decision; Disciplinary Board Recommendation; and Washington Supreme Court Order.

**Suspension**

**David E. LaDow** (WSBA No. 7685, admitted 1977) of Bellevue, was suspended for one year, effective 5/17/2018, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.7 (Conflict of Interest: Current Clients), 1.8 (Conflict of Interest: Current Clients: Specific Rules). Marshia Matsumoto acted as disciplinary counsel. David Benjamin Edwards represented Respondent. Seth Aaron Fine was the hearing officer. The online version of NWLawyer contains links to the following documents: Order Approving Stipulation to One-Year Suspension; Stipulation to One-Year Suspension; and Washington Supreme Court Order.

**Cory James Larvik** (WSBA No. 29017, admitted 1999) of La Grande, OR, was suspended for 120 days with all but 30 days of suspension stayed, pending successful completion of a two-year term of probation, effective 5/28/2018, by order of the Washington Supreme Court imposing reciprocal discipline in accordance with an order of the Supreme Court of the State of Oregon. Joanne S. Abelson acted as disciplinary counsel. Cory James Larvik represented himself. The online version of NWLawyer contains a link to the following document: The Washington Supreme Court Order.

**Allen R. Peters** (WSBA No. 24988, admitted 1995) of Portland, OR, was suspended for eight months with all but 30 days of suspension stayed, pending successful completion of two-year probation, effective 5/21/2018, by order of the Washington Supreme Court imposing reciprocal discipline in accordance with an order of the Supreme Court of the State of Oregon. Joanne S. Abelson acted as disciplinary counsel. Christopher Ray Hardman represented Respondent. The online version of NWLawyer contains a link to the following document: The Washington Supreme Court Order.

**Jacob Brian Smith** (WSBA No. 45482, admitted 2012) of Puyallup, was suspended for one year, effective 5/10/2018, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.15A (Safeguarding Property), 1.3 (Diligence), 1.5 (Fees), 1.8 (Conflict of Interest: Current Clients: Specific Rules), 5.3 (Responsibilities Regarding Nonlawyer Assistants), 8.4 (Misconduct). Debra Slater acted as disciplinary counsel. Jacob Brian Smith represented himself. The online version of NWLawyer contains links to the following documents: Order Approving Stipulation to One-Year Suspension; Stipulation to One-Year Suspension; and Washington Supreme Court Order. https://mywsba.org/webfiles/cusdocs/000000045482-0/004.pdf; and Washington Supreme Court Order.
**Reprimanded**

**Queta Romero** (WSBA No. 38986, admitted 2007) of Bellevue, was ordered to receive two reprimands, effective 4/11/2018, by order of the hearing officer. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.3 (Diligence), 1.4 (Communication), 8.1 (Bar Admission and Disciplinary Matters), 8.4 (Misconduct). Francesca D’Angelo acted as disciplinary counsel. Anne I. Seidel represented Respondent. Marshall L. Ferguson was the hearing officer. John A. Bender was the settlement hearing officer. The online version of NWLawyer contains links to the following documents: Order Approving Stipulation to Two Reprimands; Stipulation to Two Reprimands; and Notice of Reprimand.

**Transfer to Disability Inactive Status**

**Joseph Cox Finley** (WSBA No. 927, admitted 1974) of Bellevue, was by stipulation transferred to disability inactive status, effective 5/16/2018. This is not a disciplinary action.

**Aaron James Kandratowicz** (WSBA No. 44304, admitted 2011) of Spokane, is suspended from the practice of law in the State of Washington pending the outcome of disciplinary proceedings, effective 5/16/2018, by order of the Washington Supreme Court. This is not a disciplinary sanction.

**David C. Reed** (WSBA No. 24663, admitted 1995) of Lake Forest Park, is suspended from the practice of law in the State of Washington pending the outcome of disciplinary proceedings, effective 5/18/2018, by order of the Washington Supreme Court. This is not a disciplinary sanction.

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**Discipline**

**September 14, 2018**

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Donald's practice is focused on advising small privately held businesses and individuals in business formation, commercial transactions, merger and acquisitions and technology licensing. He speaks fluent Chinese (Cantonese) and is an active part of the Chinese American community.

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7th Annual WA AFCC Conference: Fractured Families and Fresh Solutions
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Million dollar profit Clark County personal injury practice that has been in business for more than 12 years. The practice has an average net income of over $1,050,000 the last three (3) years, and the owner desires to sell the practice as a turn-key operation. The practice/case breakdown is 100% personal injury cases. The practice is located in a 3,200 SF fully furnished building that is also available for sale! Contact info@privatepracticetransitions.com or call 253-509-9224.

Profitable Pierce County general practice with a focus in estate planning, real estate & civil litigation. With a unique service offering this practice is seeing consistent growth and revenue over the last three years. This is a truly amazing opportunity with a turn-key operation including an option to purchase the office building. Contact info@privatepracticetransitions.com or call 253-509-9224.

Pierce County-based insurance defense practice with longstanding clients and an established transition plan that will set any new owner up for success. With revenues exceeding $900,000 each of the last three years, this is a great opportunity. Contact info@privatepracticetransitions.com or call 253-509-9224.

Extremely profitable Pierce County family law practice that is growing substantially year-over-year with gross receipts of over $1.5M in 2017. The office space is beautiful and the team is tremendous. This is an incredible opportunity you don’t want to miss! Contact info@privatepracticetransitions.com or call 253-509-9224.

Highly Profitable Whatcom County criminal defense & personal injury practice with revenues in excess of $1,000,000. You won’t find a better criminal practice on the market today. The approximate breakdown, by revenue, is 80% criminal law and 20% personal injury and infractions. Contact info@privatepracticetransitions.com or call 253-509-9224.

Successful East King County family law practice that is completely turn-key and poised for growth. The practice/case breakdown is approximately 85% family law, 10% estate planning, and 5% probate & mediation/arbitration. For more details contact info@privatepracticetransitions.com or call 253-509-9224.

Thriving Seattle-based immigration law practice that is truly turn-key and ready for new ownership. The practice brought in over $615,000 in gross receipts in 2017. Don’t miss this opportunity to learn from one of the state’s best immigration lawyers. Contact info@privatepracticetransitions.com or call 253-509-9224.

Highly reputable & well-rounded Pierce County law practice that was established in 1967 which equates to over 50 years of client acquisition and goodwill to be transferred to the new owner! The practice/case breakdown is 39% estate planning/probate/wills, 37% personal injury, 7% corporate/business/real estate/litigation, and 16% other. For more details contact info@privatepracticetransitions.com or call 253-509-9224.

Portland-based family law practice that is completely turn-key and poised for growth. The practice/case break-
Successful Oregon appellate practice that is highly reputable within the community seeks new ownership. The practice/case breakdown is 100% appeals. The current owner, who is a Harvard Law graduate and a top-rated lawyer, is ready to transfer her good will to a new owner. If you’d like to be your own boss and learn from one of the best, this is the opportunity for you! Contact info@privatepracticetransitions.com or call 253-509-9224.

King County personal injury practice with average gross revenues of over $520,000 the last three years (2015-2017). The practice/case breakdown is 98% personal injury, and 2% other. Contact info@privatepracticetransitions.com or call 253-509-9224.

One-of-a-kind transactional law practice serving Washington, Oregon and Idaho. The owner runs the practice out of his home which allows his profit margins to be incredibly high at 88% in 2017. On average the owner works approximately 15-20 hours per week and still manages to bring in average gross revenues of over $185,000 (2015-2017). Contact info@privatepracticetransitions.com or call 253-509-9224.

Successful Kitsap County family law practice with great growth potential and a practice/case breakdown of 80% family law and 20% criminal law. The practice is located in a desirable, fully-furnished office space that is also for sale. Contact info@privatepracticetransitions.com or call 253-509-9224.

Regional and international business law practice with a stellar reputation and average gross revenues over $550,000 the last three years. The practice/case breakdown is 50% business law, 35% estate planning, 10% general legal services, and 5% intellectual property. The practice is located in East King County in a 2,000 SF leased office space. Contact info@privatepracticetransitions.com or call 253-509-9224.

Thriving Kitsap County workers’ compensation practice that was founded in 1965 and has average gross revenues over $900,000 the last three years. The practice/case breakdown is 100% workers’ compensation. The practice is located in a 2,230 SF office building that is also available for sale. Contact info@privatepracticetransitions.com or call 253-509-9224.

Washington guardianship practice that is completely turn-key and looking for new ownership. The practice was established in 2011 and has provided high-quality professional guardianship services to countless clients. Contact info@privatepracticetransitions.com or call 253-509-9224.

Established estate planning, probate & business law practice with offices in King and Kitsap Counties. The practice/case breakdown is 60% estate planning & probate, and 40% real estate, business law & bankruptcy. Call 253-509-9224 or email info@privatepracticetransitions.com for more information.

Profitable Pacific Northwest intellectual property practice that operates locally, nationally and internationally. The practice is mobile and amenable to working out of a home office, with a flexible month-to-month office lease available for assignment to new ownership, if desired. This practice is thriving with owner’s discretionary earnings over $250,000 each of the last three (3) years! Contact info@privatepracticetransitions.com or call 253-509-9224.

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Contract attorney for busy litigators. I now have a solo practice confined to providing contract litigation assistance, including summary judgment motions, appeals, written discovery, depositions, pre-trial motions and court appearances. Twenty-five years’ litigation experience, including 9th Circuit judicial clerkship. Contact Joan Roth at 206-898-6225 or joanrothlaw@comcast.net.

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available as contract lawyer. Summary judgments, basic pleadings, declarations, trial briefs, appeals, research memos, discovery drafting. Excellent references. Reasonable hourly rate. Superb Avvo rating. Lynne Wilson at 206-328-0224 or LynneWilsonAtty@gmail.com.

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VACATION RENTALS

MY NAME IS RYAN NICHOLS and I am an aviation attorney at Aero Law Group PC in Bellevue, a boutique law firm specializing in transactional legal services for owners and operators of aircraft, worldwide. My practice includes representing and advising clients in the purchase, sale, lease, exchange, financing, and operation of business and commercial aircraft, including fractional shares in aircraft. You can reach me at nicholsrd@law.aero or 425-456-1800.

I BECAME A LAWYER BECAUSE I have always been a strong analytical thinker able to process large volumes of complex information, and I desired a career where I could use those skills to help others achieve their goals.

MY GREATEST ACCOMPLISHMENT AS A LAWYER HAS BEEN rapidly transitioning my professional skills from the internet technology sector to the aviation sector.

THE BEST ADVICE I HAVE FOR NEW LAWYERS IS to never forget that so much in life depends on their reputation.

THE MOST REWARDING PART OF MY JOB IS helping clients navigate the complexities of the aviation sector.

I KEEP UP WITH LEGAL NEWS AND DEVELOPMENTS BY reading numerous publications, attending CLEs and conferences, and communicating with those in my network.

I LOOK UP TO my parents—they have given me all of their love, taught me the rights and wrongs in life, and encouraged me in the pursuit of my dreams.

I ABSOLUTELY CAN’T LIVE WITHOUT constantly challenging myself, both intellectually and physically.

MY BEST RECIPE I MAKE AT HOME IS eggplant parmesan.

I CREATE WORK/LIFE BALANCE BY minimizing wasted time in my personal life and maximizing time spent on what is important to me.

MY FITNESS ROUTINE INVOLVES cardio in the morning and lifting weights at night, every single day.

MY FAVORITE PLACE IN THE PACIFIC NORTHWEST IS North Cascades National Park.

THIS IS ON MY BUCKET LIST: Summiting Mt. Rainier.

MY WORST HABIT IS drinking too much coffee.

MY BEST HABIT IS maintaining an active and healthy lifestyle.

AN ITEM I WILL NEVER THROW OUT IS my Black’s Law Dictionary, gifted by my dad on my first day of law school.

MY IDEA OF MISERY IS not living life to the fullest.

MY MOTTO IS “you can have results or excuses, not both.”

YOU’LL FIND ME OUTSIDE IN THE NORTHWEST DOING THIS: exploring new trails and hiking old favorites.

IF I COULD PICK A SUPERPOWER, IT WOULD BE teleportation.

MY FAVORITE VISUAL ARTIST IS Leonardo da Vinci.

MY ALL-TIME FAVORITE MOVIE IS Casino Royale (Daniel Craig as James Bond).

IF I HAVE LEARNED ONE THING IN LIFE, IT IS that if something is worth doing, it is worth doing well.
Mary Anne Vance joins Reed Longyear Malnati and Ahrens and looks forward to continuing her estate planning, probate and trust practice with their Estate Planning Practice Group.
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