From Fluoride to Traffic Cameras

The Limited Scope of Local Initiatives

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We make a living by what we get, we make a life by what we give.

- SIR WINSTON CHURCHILL

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Talking about “Pillow Talk”

I read the article on the strict application of RPC 1.6 with interest [“Pillow Talk,” Nov. 2012 Bar News]. I open the paper in the morning and see an article describing the recent verdict I obtained for $1,000,000. I say to my wife “I could tell from the jury’s eyes that they liked my client.” Now I have to be extra nice to my wife for fear of her revealing RPC 1.6 violations in the event of a divorce. Better just to grunt when she says good morning.

— James B. Parsons, Bellevue

“Pillow talk” is the least of our worries with a rule as broad as RPC 1.6. Lawyers “shall not reveal information relating to the representation of a client” without the client’s written consent. Never mind chats with spouses. Let’s consider the many common practices that fall within this “strict liability” rule within our professional lives.

A new potential client asks if I have handled cases similar to his before. May I say I have? Or is that “information relating to representation of a client”? If I may say I have, may I say anything more about the case? The outcome? The consequences for a client? How long it took to resolve? The similarities or distinctions between that case and this one? What I learned from the experience?

On a website, I wish to give examples of my work. May I list published opinions in which I was counsel of record? This traditional method of describing one’s experience means little to a lay client. May I provide a synopsis of the case in everyday language? May I provide a link to the published opinion? A link to the TVW oral argument in the Supreme Court?

The rule does not have an exception for matters of public record. When conferring with a colleague on a legal issue, may I refer her to a public court file with my motions and briefing addressing the issue? When speaking at a CLE on an issue, are we truly limited to “hypothetical” cases? Or may we discuss that recent case and the specific issues and rulings? As we develop a theory of a case for trial, the story we believe a jury will embrace, may we practice the basic facts...
I really enjoyed Jamila Johnson’s article on pillow talk and how RPC 1.6 prevents an attorney from talking about anything learned while representing a client. The examples of unethical discussion were brilliant — especially the cartoon of a couple at a dinner table with the lawyer saying why he could not talk about work. Then, in your Briefly About Me section, Dan Satterberg said he became a lawyer because his father used to fill the dinner table with stories about clients he had helped. Mr. Satterberg’s father lived in a different time under different rules, but one has to wonder under the current rules if it is possible for other young people to be inspired to become lawyers as Mr. Satterberg was by his father. With the lack of law jobs, maybe this is a good thing. On the other hand, maybe it is time to take another look at RPC 1.6 and craft a more reasonable rule.

— Lenell Nussbaum, Seattle

I was astonished by the November 2012 article “Pillow Talk: The Obligations of RPC 1.6,” which requires that I must not “reveal information relating to the representation of a client” without my client’s informed consent. The article asserts that this prohibits telling my spouse the identity of my client, the nature of court testimony in the case, or my effectiveness in a deposition for the case. Since these are matters that are in the public record because they affect the public interest, the rule is being interpreted as barring me from talking about it even when I do not disclose confidential information or otherwise harm the interests of my client. Of course, attorneys who are not involved in the case are free to talk about these public matters, as is my spouse or anyone on her Facebook page. This interpretation is prima facie irrational.

We need look no further than the Bar News itself to see people apparently violating this interpretation of the rule. On page 59, the attorney featured says he became a lawyer “because my father practiced law. . . . He would fill the dinner table conversation with stories about clients he had helped.” On page 25, in an article about gasoline tax agreements between the Governor and Indian tribes, an attorney “who filed several amicus briefs in the case” is quoted.

In the March 2012 issue, an article was authored by a law professor who was on the legal teams that won rulings, that the 1943 Supreme Court cases upholding the World War II Japanese American internment camps were invalid in fact and law. In the June 2012 issue, at page 22 is an article about a special day the author had with his disabled client at a game between the Mariners and the Yankees. In the August 2012 article “Voices of the Bar,” an attorney tells the story of how he talked the police out of arresting a young Bill Murray.

Obviously the editors of the Bar News did not think they were aiding and abetting the violation of RPC 1.6 when they published these articles. Telling these stories is part of the common heritage of the legal profession, and is how we learn to live our profession, not as abstract principles but in the real world of clients and their rights and duties. The broad application of this interpretation of RPC 1.6 would remove half the value from the CLE programs listed in each issue of the Bar News.

Any forum that is called to interpret this rule should remember that the word “reveal” means to remove a veil or covering to make something known that was covered or hidden, and is related to the word “revelation” and the title of the last book of the Bible. “Reveal” means more than “say” or “speak” or “relate” or “describe.” It means the transmission of information that was not freely available before. Giving proper meaning to the word “reveal” should restrict the application of RPC 1.6 to information which the attorney possesses and which is not already in the public domain.

If we do not restrict the application of RPC 1.6 in this way, it will violate a law called the First Amendment to the U.S. Constitution. Requiring prior restraint and censorship of facts that are in the public record and do not come within any specific duty of confidentiality, that do not defame or invade the privacy of anyone, and which can be freely discussed by other citizens, is an offense to our rights of free speech, and is basis enough to invalidate the procurstean application of RPC 1.6 described in the article.

— Raymond Takashi Swenson, Richland

WSBA Chief Disciplinary Counsel Douglas Ende responds: I’d like to clarify the remarks I made that were included in the article “Pillow Talk: The Obligations of RPC 1.6,” by Jamila Johnson. As I understand the author’s idea, it is this: let’s start a dialogue about whether the language of the ABA’s Model Rule 1.6 (and, by extension, our RPC 1.6) may be overbroad as applied to certain “innocuous” disclosures.

When interviewed, I agreed that ABA Model Rule 1.6, was drafted using language that, when read literally, creates an ethical duty of confidentiality for any information a lawyer learns in connection with a client matter, regardless of the source of the information. Read literally, Model Rule 1.6 creates a bright line test barring almost all disclosure and prohibiting the revelation of any such information to anyone, except as is impliedly authorized to carry out the representation or expressly permitted by one of the exceptions built into the rule. Whether the language was meant to be taken literally, and whether it is applied literally in practice, are different questions. This issue has been tidily debated from time to time by commentators, see, e.g., Charles W. Wolfram, Modern Legal Ethics (1986), and the Restatement (Third) of the Law Governing Lawyers does take a more liberal (i.e., non-literal) approach to whether and what types of disclosures are permitted and prohibited.

In the view of the “Pillow Talk” author, professional, personal, and practical realities about how lawyers deal with some kinds of client information are not well reflected in the language of Model Rule 1.6. In her view, the time has perhaps come to take another look at that rule and its language.

The author’s ideas about why it may be appropriate to re-evaluate the language of Model Rule 1.6 are interesting and arguable. They are not, however, supported by evidence that the WSBA prosecutes, seeks to prosecute, or is eager to prosecute minor, innocuous lawyer disclosures. Washington lawyers have not been sanctioned for harmless, private, interpersonal disclosures of information that is public or generally known because such innocuous disclosures, even if they could technically be classified as “violations,” do not frequently generate grievances, and even if they did generate grievances, the situations would not likely merit the deployment of scarce disciplinary resources or public disciplinary action.

I do recommend a cautious, conservative approach when dealing with a client’s information, particularly in this day and age, when information is so elusive, unpredictable, and can be published globally in an instant. And there is something to be said for the view that it should not be up to the lawyer to speculate on whether particular information might be harmful to the client if it is disclosed. Even when the impulse to share an insignificant-seeming tidbit at a cocktail party is tempting, a balancing or cost-benefit analysis is always appropriate. To be sure, a very cautious lawyer might decide never to talk about cases, thereby creating a wide margin for error against the risk of a prohibited disclosure and any possibility of adverse consequence. But that degree of scrupulousness is not identical to what the rule means or how it is interpreted by our courts and regulatory institutions.

What does “Northwest” mean?

I agree with Dennis P. Burns’s letter to the editor [Nov. 2012] re: being opposed to reducing publication to 9 months. I also agree with his suggestion of putting it online if the WSBA is really struggling for money. It would save printing and mailing costs, plus be environmentally friendly. But, most of all, I also oppose the name change from Bar News (meaning Washington State Bar News) to NWLawyer (whatever that means), unless, also to save money, the WSBA is planning on merging with other state bar associations in the NW and publish one magazine for all. How many bar associations would be considered NW?

— Harry M. Reichenberg, Federal Way
A Side of Sidebar

What’s happening online at NWSidebar, Washington legal community’s new blog. [nwsidebar.wsba.org]

Get More Sleep — Without Going to Bed Earlier

Get More Sleep — Without Going to Bed Earlier


Lawyers are sleep deprived. NWSidebar’s top post is Allison Peryea’s “7 Tips to Help You Get More Sleep — Without Going to Bed Earlier.” Free up two hours of time with her handy tips!

WWW.

Is Your Website Working for You?

WSBA Online Communications Specialist Julia Nardelli Gross offers tips for crafting client-friendly websites and for search engine optimization.

Cloud Computing

Cloud computing is a hot topic. Learn what you should consider before subscribing to a cloud service in this post by Jeanne Marie Clavere and Julia Nardelli Gross. For health law practitioners, John Christiansen, of the WSBA Health Law Section, explores cloud computing and the healthcare industry.

Friday 5


Wrap up the workweek with NWSidebar’s Friday 5! Posts offer valuable tips and curated lists. Read posts on 5 great locally-made work bags, 5 Tips for securing non-traditional legal jobs, and 5 great courtroom movie scenes.

Ten (Or More) Reasons I Am Happy to Be a Small-town Sole Practitioner


Immediate Past President Steve Crossland shares 12 reasons. Do you want greater work/life balance? The small-town life might be for you.

Referendum 74

In our most commented-on posts, WSBA Governors Dan Ford and Bill Viall offer their differing opinions about the Board’s decision to endorse the recently approved Referendum 74, which legalizes same-sex marriage.

NWSidebar is a tool for the legal community to engage and interact through sharing thoughts, opinions, and ideas in a less formal format. Have something to say? Submit a post! We invite all members of the legal community to contribute to NWSidebar.
A Changing America, A Changing Profession

Much has been written in the aftermath of the presidential election about the increasing diversity of the American electorate and the need for political parties and candidates to be inclusive. Mitt Romney received less than 10 percent of the African-American vote and less than a third of the Hispanic and Asian-American vote. This might not have made a difference in the outcome of the election if minority voters were small in numbers, but they are increasing rapidly, going from 23 percent of the electorate in 2008 to 28 percent just four years later.

Building Trust
How can we build more trust? Two things come to mind. The first is to include more minorities in our own ranks as attorneys, law enforcement officials, and judges. Faces matter. In the same way that Barack Obama, Marco Rubio, Bobby Jindal, and others show minority voters that they are welcome in the process, minority faces in the legal community attest to its openness.

An example close to home is James Curtis, a Pierce County deputy prosecutor. James was raised in Tacoma’s Hilltop neighborhood about a mile from where he currently works. It was a long mile to travel, beginning with Tacoma Community College before going on to UW for a bachelor’s and law degree. But having traveled that mile, James is now able to help kids from his old neighborhood as a volunteer in schools and youth sports organizations. Then there is Diana Garcia, a staff attorney at the Kennewick office of Columbia Legal Services. Herself the daughter of farm workers, Diana attended UW for undergrad and Gonzaga for law school and now works on employment, housing, and youth issues for farm workers in southeast Washington. Both these young attorneys are capably providing legal services, just like other attorneys, but they are also doing something more. They are the visible proof that our legal system is fair and open.

We need to encourage more young people to follow in the footsteps of James and Diana and go to law school. And once they are in our ranks, we need to encourage them to become bar leaders and judges. James and Diana happen to be recent alums of the Washington Leadership Institute (WLI), a program begun by the WSBA and now housed at UW Law School that is dedicated to creating a leadership pipeline from promising young attorneys. While the Institute is not
solely a diversity program, it has proven to be a valuable way to accelerate the development of minority leaders in our profession.

Reducing Racial Disparities
But including minorities in the ranks of attorneys and judges is not enough. The second way to earn the trust of minorities in the legal system is to reduce the racial disparities in the legal system.

An example is the work being done by groups like TeamChild, the Center for Children and Youth Justice, and the Juvenile Detention Alternatives Initiative. TeamChild, along with pro bono attorneys from Appleseed, the ACLU, and Garvey Schubert, has documented the impact of school expulsions on Washington students. Not surprisingly, higher numbers of expulsions were associated with higher dropout rates, and students of color and those living in poverty were disproportionately impacted.

The Center for Children and Youth Justice focuses on reforming the child welfare and juvenile justice systems. Among its projects is one in Pasco that targets misbehaving and truant youth for referral to mental health and community services instead of sending them into the juvenile justice system.

The Juvenile Detention Alternatives Initiative works with counties to ensure that kids already in the juvenile justice system aren’t put into secure detention unless they really are a threat to community safety. In places like Spokane County, the results appear to reduce racial disproportionality and juvenile crime generally.

None of these programs is a magic bullet, but they are making a difference. And they are merely examples of the many good programs helping to reduce racial disparities in the legal system.

Is This “Diversity”?
“Diversity” means different things to different people, and perhaps it is not the best word to denote all of the different ways to address racial disparity. But in the odd ways of language development, we are probably stuck with it for now. A few of our members dismiss diversity as some form of political correctness. Most seem to recognize that it is a broader concern about making sure the system is fair to all — and is seen as fair to all. This ought to be a fundamental concern to all attorneys because, as this election illustrated, our country is becoming a lot more diverse and it is happening quickly. When Thomas Jefferson wrote in the Declaration of Independence that government derives its powers from the consent of the governed, he didn’t exclude the third branch.

If we fail to embrace diversity, we endanger the grand American experiment. As Fareed Zakaria stated in the Washington Post after the election: “I hesitate to build a grand narrative out of [the election results], but the trend seems to be toward individual freedom, self-expression, and dignity for all. This embrace of diversity — in every sense — is America’s great gift to the world, one at which, since the days of J. Hector St. John de Crèvecoeur and Alexis de Tocqueville, foreigners have marveled.”

WSBA President Michele Radosevich practices in Seattle. She can be reached at michele.radosevich@dwt.com or 206-757-8124. Read more from Michele at the Washington legal community’s new blog, nwsidebar.wsba.org.
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I am indeed very fortunate and so very grateful for your support and superior legal expertise. Your consistent calmness and professionalism was instrumental in helping me through this entire process.

I appreciate so much the time and effort you invested in me in order to help me through this horrible ordeal. I am humbled beyond words.

Thank you!

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Let’s Seize the Moment

The world in which we must deliver legal services is also changing drastically. The gulf between the haves and the have-nots continues to widen (the 2010 census showed that the richest one percent of Americans account for 24 percent of all income) and this gap has only been exacerbated by the recent recession. The overall population is aging as well, and Washington’s elderly population is predicted to double in size between 2005 and 2030. Finally, among other changes, technology has led to increasing global ties such that, for example, an economic meltdown in Greece recently was of serious concern to the United States, whereas even 10 years ago it is hard to imagine that such activity on the other side of the globe would have been so closely tied to our economy.

The business model for how lawyers do their work is changing as well. We have always known that more than half of our members practice as a solo or in a small firm, but these numbers are increasing as new attorneys emerge into the market to find not as many opportunities in the large firms and public sector. We have also seen a trend toward large firms sometimes imploding or merging together to make even larger firms.

In addition, new lawyers are demanding a work-life balance and they are using technology to make this balance more of a reality. When I served as Assistant Dean at the University of Washington School of Law, I had many older alumni comment to me that they wished they had spent more time with their kids while they were growing up. With remote technology and other options to do our work at locations other than a physical desk, I think newer lawyers offer much hope for our profession in showing us that one can attend their son’s or daughter’s — or even their own — soccer game and still get the work done.

And, yes, after decades of hearing that the billable hour is coming to an end, we are actually seeing a major shift toward alternative fee arrangements, that is, value-based billing that provides predictable expenses for the client and a more effective delivery model for lawyers. As one major law firm partner in Chicago commented, “In an [alternative fee arrangement], you are able to do whatever you need to do to win the case. It’s exciting to think about. And

With this tidal wave of change coming, it seems to me we have two choices: we can either paddle out and ride the wave of change, or we can wait for it to crash down over us and we’ll be left picking up the debris that surrounds us after it lands.
that’s why our teams are more senior; it doesn’t cost the client any extra to have that senior person in the room, or to have an associate at a key deposition to learn strategy and technique.”

The billable hour has long been cited as the root cause of lawyer dissatisfaction with the profession and client dissatisfaction with lawyers. Much of this drive to change billing structures is coming from corporate clients, as general counsels are getting pressure from CEOs and CFOs to contain costs and meet legal-fee budgets set for the year. In reaction to the increase in billing rates over the last 10 years, outside counsel use by corporations has also declined.

Our clients are also changing. The consuming public is resorting to a “Home Depot” mentality when it comes to legal services. Lawyers are expensive, and even if someone can afford a lawyer, people want to spend as little as possible. Clients are using technology more, and Legal Zoom boasts some two million satisfied customers. Cyber-settle is settling claims with no lawyers involved at all to the tune of more than $1.8 billion in settlements performed. Google and LexisNexis have invested millions in Rocket Lawyer, and consumers can pay by the minute for lawyers found at ingenio.com. As a profession, we need to embrace and understand the changes that technology is bringing since we know what impact technology brought to other professions such as newspapers, music, and books.

Finally, there has been much in the news the past year or more about legal education and the many issues facing the academy. New lawyers are graduating often with staggering debt loads, with loans exceeding $100,000 for private schools and close to $70,000 for public schools, and these amounts do not include any undergraduate loans students may have accumulated before law school. From 1989 to 2009, when college tuition rose by 71 percent, law school tuition shot up 317 percent. The job market these new lawyers face is difficult and only 65.4 percent of 2011 graduates with known employment had jobs that required bar passage. Finally, the law schools are under pressure to enhance their curriculum with more skills training courses and other studies that will help prepare graduates for the actual practice of law.

We are fortunate in our state to have three law school deans who are taking these issues head on and working to reform legal education and prepare their students for the needs of the 21st century lawyer. The American Bar Association is also addressing the problem through a task force appointed by last year’s president and I have the honor of having been appointed to this task force that is looking at the future of legal education.

Many of you have seen the presentation I give on the future of the profession at CLEs and other venues, and it is about at this point in the presentation where I acknowledge that all of these trends can seem overwhelming — and perhaps even disheartening! — but I think this juncture in our profession offers us great opportunity for seizing the moment and “riding the wave” as I mentioned at the outset of this column. In my next column, I will outline the opportunities and where I think we can go from here. I also encourage you to join UW Law Dean Kellye Testy and me as we discuss these issues at a Town Hall on January 29th at 5:30 p.m. NWL

Paula Littlewood is the WSBA executive director and can be reached at paulal@wsba.org or 206-239-2120.
All political power is inherent in the people, and governments derive their just powers from the consent of the governed."¹ This opening Section of the Washington State Constitution embodies the reasoning behind initiatives — direct legislation by the people. Statewide initiatives are specifically guaranteed by Article II, Section I of the Constitution, which provides: "The first power reserved by the people is the initiative."²

The voters of Washington have exercised their constitutional right to submit statewide initiative petitions with increasing frequency. In 2011, a record 81 initiative petitions were submitted, though only three were ultimately certified for the ballot.³ The subject matter of statewide initiatives that have reached the ballot has ranged from an initiative seeking statewide prohibition on alcohol consumption in 1914 to last year’s initiative to privatize liquor sales.⁴ Statewide initiatives approved by Washington voters have resulted in everything from issuance of bonuses to World War II veterans in 1948 to adoption of Daylight Saving Time in 1960 to approval of medical use of marijuana as of 1998.⁵

With statewide initiatives playing such a prominent role in Washington elections, the initiative power of the voting public may, at first glance, appear limitless. But a critical distinction separates statewide initiatives from their local counterparts. While statewide initiatives are grounded in the State Constitution, local initiatives are purely creatures of statute. Specifically, RCW 35.17.260 provides that "ordinances may be initiated by petition of registered voters of the city ...." Because they do not invoke the same constitutional guarantees, local initiatives are far more limited in scope. These limitations often come as a surprise to initiative petitioners accustomed to the broad grants of the Constitution, and a steady stream of cases challenging the boundaries of the local initiative power has recently occupied the courts.

Limitations on Local Initiatives

The subject matter of local initiative petitions is as varied and interesting as that of statewide initiatives. For example, the City of Seattle has received initiative petitions seeking to criminalize spitting in public, to prohibit the use of public property for construction of a monorail, and to declare "Freedom to Peaceably Assemble Day" and "mayoral dunking."⁶ Of course, not every initiative petition advances to the ballot, and that is particularly so when the petition involves a local initiative.

Two fundamental restrictions narrow the scope of permissible local initiatives. First, a local initiative cannot legislate on administrative issues. Second, a local initiative cannot legislate on matters reserved for the local legislative authority.

With respect to the first restriction, actions that are administrative in nature, rather than legislative, are not subject to the local initiative power.⁷ The Washington Supreme Court has acknowledged that "[d]iscerning whether a proposed initiative is administrative or legislative in nature can be difficult."⁸ Generally, however, a local government action is deemed administrative if it involves pursuit of a plan that the local government itself has adopted or of a plan adopted by some power superior to the local government. For example, a city’s fluoridation of its water supply was deemed an administrative action because it was implemented pursuant to a comprehensive program set out by the State Department of Health and the Board of Health.⁹ An ordinance renam-
ING A CITY STREET INVOLVED AN ADMINISTRATIVE ACTION BECAUSE IT WAS ENACTED PURSUANT TO A FRAMEWORK DETAILED IN AN EXISTING CITY STREET-NAMING ORDINANCE. AND WHERE A COUNTY HAD DECLARED ITS INTENTION TO BUILD A STADIUM AND THEN ENTERED INTO CONTRACTS FOR THAT WORK, AN INITIATIVE ATTEMPTING TO OVERTURN THOSE CONTRACTS WAS HELD TO BE DIRECTED AT ADMINISTRATIVE MATTERS AND THEREFORE BEYOND THE SCOPE OF THE INITIATIVE POWER.  

THE SECOND RESTRICTION ON LOCAL INITIATIVES IS THAT AN INITIATIVE IS PRECLUDED FROM LEGISLATING ON MATTERS RESERVED TO THE LOCAL LEGISLATIVE AUTHORITY. WHEN THE STATE LEGISLATURE GRANTS AUTHORITY TO THE GOVERNING BODY OF A CITY, RATHER THAN TO THE CITY ITSELF, THAT AUTHORITY IS NOT SUBJECT TO REPEAL, AMENDMENT, OR MODIFICATION BY THE PEOPLE THROUGH THE INITIATIVE OR REFERENDUM PROCESS. IN OTHER WORDS, “THE VOTERS OF [A] COUNTY [OR CITY] CANNOT ALTER A GRANT OF AUTHORITY TO, OR THE IMPOSITION OF RESPONSIBILITY ONTO, THE LOCAL GOVERNMENT BY THE STATE LEGISLATURE.” FOR EXAMPLE, THE LOCAL INITIATIVE POWER DOES NOT EXTEND TO REGULATING PUBLIC WATER SYSTEMS BECAUSE THE STATE LEGISLATURE GRANTED CITY LEGISLATIVE BODIES THE POWER TO OPERATE WATER UTILITIES. SIMILARLY, AN INITIATIVE REQUIRING THAT REVENUE BONDS BE SUBJECT TO VOTER RATIFICATION WAS OUTSIDE THE SCOPE OF THE LOCAL INITIATIVE POWER WHERE THE LEGISLATURE UNAMBIGUOUSLY GRANTED THE LEGISLATIVE BODY OF THE CITY THE AUTHORITY TO CREATE A SPECIAL FUND BY ORDINANCE.

WASHINGTON COURTS HAVE REPEATEDLY HELD THAT “INITIATIVES OR REFERENDA THAT ATTEMPT TO GRAFT LIMITS ONTO A GRANT OF POWER BY THE PEOPLE OF THE STATE, OR TO MODIFY OBLIGATIONS IMPOSED ON LOCAL LEGISLATIVE OR EXECUTIVE AUTHORITY BY THE PEOPLE OF THE STATE, ARE INVALID AS IN CONFLICT WITH STATE LAW.” LOCAL INITIATIVE PETITIONS THAT ATTEMPT TO LEGISLATE ON ISSUES RESERVED TO A LOCAL LEGISLATIVE AUTHORITY HAVE BEEN BARRED FROM THE BALLOT BY COURTS ENTERING A FINDING OF INVALIDITY.

TRAFFIC SAFETY CAMERAS: A CASE STUDY ON THE LIMITED SCOPE OF LOCAL INITIATIVES  
A SERIES OF CASES INVOLVING LOCAL INITIATIVE PETITIONS AIMED AT PREVENTING THE INSTALLATION OR USE OF AUTOMATED TRAFFIC SAFETY CAMERAS — PERHAPS BETTER KNOWN AS RED LIGHT CAMERAS — IN VARIOUS CITIES THROUGHOUT WASHINGTON PROVIDE A CASE STUDY ON THE ISSUE OF THE LIMITED SCOPE OF SUCH INITIATIVES.

IN 2005, THE WASHINGTON STATE LEGISLATURE ENACTED RCW 46.63.170, WHICH AUTHORIZED LOCAL LEGISLATIVE BODIES TO ENACT ORDINANCES ALLOWING THE USE OF TRAFFIC SAFETY CAMERAS IN ISSUING CITATIONS. AT THIS TIME, OVER 20 WASHINGTON CITIES USE TRAFFIC SAFETY CAMERAS AT RED LIGHTS OR IN SCHOOL SPEED ZONES. IN 2010, THE CITY OF MUKILTEO ENACTED AN ORDINANCE AUTHORIZING THE USE OF TRAFFIC SAFETY CAMERAS. BEFORE THE CITY OF MUKILTEO HAD TAKEN ACTION TO INSTALL A TRAFFIC SAFETY CAMERA SYSTEM, RESI-
The Washington courts, as they exceed their limited boundaries.

Proposition 1 attempted to expressly restrict the authority of Mukilteo’s legislative body to enact red light cameras by requiring a two-thirds vote of the electorate for approval and by limiting the amount of traffic fines. Because automated traffic safety cameras are not a proper subject for local initiative power, Proposition 1 is invalid because it is beyond the initiative power.

Similarly, Division One overturned the Whatcom County Superior Court’s ruling in ATS’s challenge of Bellingham Initiative 2011-01, holding that the initiative exceeded the scope of the local initiative power:

RCW 46.63.170 specifies that in order to use automatic traffic safety cameras for the issuance of traffic infractions, the “appropriate local legislative authority must first enact an ordinance allowing for their use.” For more than 70 years, Washington courts have consistently construed similar provisions as the grant of authority to the local legislative body.

Initiative No. 2011-01 expressly restricts that authority by conditioning its use on a concurrence by the majority of the voters. The subject matter of the initiative is therefore clearly beyond the scope of the local initiative power.

Several comparable cases have been considered by Washington courts, some of which are still pending. These traffic safety camera cases clearly illustrate that the electorate’s power to overturn local legislation is confined to those issues that are not exclusively within the domain of local legislative bodies.

Application of the Anti-SLAPP Act to Local Initiative Challenges

An interesting side issue that has arisen in several of the traffic camera cases is the question of whether Washington’s Anti Strategic Lawsuits Against Public Participation Act (Anti-SLAPP Act) precludes a challenge to the validity of a local initiative. The Anti-SLAPP Act allows defendants to move to strike claims that are “based on an action involving public participation and petition” unless the responding party can “establish by clear and convincing evidence a probability of prevailing on the claim.”

In the City of Bellingham case discussed above, the defending initiative sponsors argued that ATS’s claims were barred by the Anti-SLAPP Act, as their claims related to an initiative. The Superior Court agreed, granting the initiative sponsors’ special motion to strike. But the Court of Appeals overturned the Superior Court’s ruling and rejected the initiative sponsors’ Anti-SLAPP argument. The Court of Appeals confirmed that the Anti-SLAPP Act does not apply when the plaintiff can demonstrate a likelihood of prevailing on its claim that the underlying initiative is invalid because it exceeds the scope of the local initiative power.

Conclusion

Many voters may be surprised to learn of the limited nature of local initiatives, particularly when compared to the constitutional guarantees associated with statewide initiatives. But the limitations imposed on local initiatives ensure that local legislative bodies can exercise the authority exclusively granted to them by the Washington State Legislature. Until the Legislature extends the authority of the electorate to legislate on local issues, local initiatives will remain subject to challenge when they exceed their limited boundaries.
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NOTES
3. See www.sos.wa.gov/assets/elections/initiatives/yearly20summary20ip.pdf, website of Washington Secretary of State, last visited Sept. 4, 2012. The cited number reflects initiatives to the people, as opposed to initiatives to the Legislature.
4. Id.
5. Id.
7. Ruano v. Spellman, 81 Wn.2d 820, 823, 505 P.2d 447 (1973); City of Port Angeles v. Our Water-Our Choice, 170 Wn.2d 1, 8, 239 P.3d 589 (2010) (“Neither article II, section 1, nor RCW 35A.11.080 encompasses the power to administer the law, and administrative matters, particularly local administrative matters, are not subject to initiative or referendum”).
8. City of Port Angeles, 170 Wn.2d at 10.
9. Id. at 13.
11. Ruano, 81 Wn.2d 820.
13. 1000 Friends of Wash. v. McFarland, 159 Wn.2d 165, 173-74, 149 P.3d 616 (2006); see also City of Port Angeles, 145 Wn. App. at 882 ("[P]eople cannot deprive the City’s legislative authority of the power to do what the constitution and/or a state statute specifically permit it to do.").
15. Malkasian, 157 Wn.2d at 265-66; see also Snohomish County v. Anderson, 123 Wn.2d 151, 156, 868 P.2d 116 (1994); Whatcom County v. Brisbane, 125 Wn.2d 345, 884 P.2d 1326 (1994); 1000 Friends of Wash., 159 Wn.2d at 177.
18. The authors note that Stoel Rives represented parties involved in several cited traffic safety camera cases.
20. Id. at 51-52.
22. See, e.g., City of Longview v. Wallin, Case No. 433851 (currently on appeal to the Division II of the Washington Court of Appeals); City of Monroe v. Seeds of Liberty, Case No. 684736 (currently on appeal to Division I of the Washington Court of Appeals); Eyman v. McGehee, Case No. 679082 (currently on appeal to Division I of the Washington Court of Appeals); City of Wenatchee v. We the People (Chelan County Superior Court Case No. 11-2-00221-1).
23. RCW 4.24.525(4).
24. Am. Traffic Solutions, 163 Wn. App. at 434; see also City of Longview, Cowlitz County Case No. 11-2-00634-5.
Our house in Montlake was a Northwest Mediterranean with a red mission tile hip roof, the kind where the clay shingles alternate concave and convex. Back in the 1980s, a retired couple lived two houses down from us. Her name was Mrs. Johannson. I didn’t know his name, but she called her husband “the Colonel,” and so we did, too.

Mrs. Johannson did not really care much for people. She did like animals, though. All animals. She was one of those people who think raccoons are cute, even though they upset garbage cans, eat pet cats and dogs, and dig up your garden.

Mrs. Johannson fed the raccoons. They gathered around her house every evening, dozens of them, singly and in contented raccoon families, growing very fat on the dog food she fed them. She also fed the squirrels, feral cats, stray dogs, pigeons, rats, voles, and crows.

Crows are very smart birds, even though they appear to be just ominous Edgar Allen Poe-like scavengers that look at us like they wish we were roadkill so they could peck out our eyeballs, like they do with squashed squirrels in the street. But the crows loved Mrs. Johannson.

They would sit on the power lines above the street, thousands of plump, black crows loudly cawing while they waited for their meal. The pigeons sat in their own clan on different electric or telephone lines, while on the Johannson deck, the raccoon families gathered. At feeding time, all the animals would close in on the house at once, and a black thundercloud of crows would descend onto the deck, where...
Mrs. Johannson would spill out bags of unsalted, unshelled peanuts. Wherever Mrs. Johannson went, the crows would follow her. Like a domesticated pack of dogs, the crows would follow Mrs. Johannson whenever she left the house. While she walked down the street, crows by the hundreds would fly along her path, playing and swooping low over her head.

Mrs. Johannson fed the crows unsalted peanuts to keep their cholesterol down and unshelled peanuts because she wanted them to get “exercise” pecking them open. In that way, she reasoned, they wouldn’t get too chubby.

Mrs. Johannson’s, the crows would fly over to the roof of our house, hold the peanuts down, and crack open the shells. This happened right above our bedroom, so we would hear this sharp rapping, tapping noise coming from the roof that was amplified inside. I would open a window and shout, or clap my hands or lean out the window and flick a bath towel toward the roof to scare them away. But they didn’t scare easily. The crows knew that they were outside and I was inside and people don’t normally go up on roofs. It was a nuisance, but we learned to live with it.

Then one November, I was upstairs watching a Seattle Seahawks football game on the television. The game was bad, as were the Seahawks in those days. The weather was bad, too.

Shortly before halftime when I was going to give up and shut off the TV, I felt it: a drip on my nose. And then another. It was raining outside. Now it was raining inside. I looked up at the ceiling: it was sagging slightly, and right in the middle of the sag there was this big drop of water getting ready to fall down. The roof was leaking. Nothing to do on a Sunday afternoon when it is raining and the roof leaks except to get aggravated, worry, and put a bucket under the leak.

It stopped raining the next day, and the day after that we were able to get a roofer out to our house. He climbed up on a ladder, looked around, and came back down.

“Do you know what you’ve got up there?” he asked. “Your roof is covered with peanut shells, your gutters are clogged with them, and half your roof tiles look like they’ve been hacked with an ice pick.”

So more than a thousand dollars later, I called my insurance company. They dealt with small claims like this over the telephone, the adjuster told me, and would I please tell her what had caused the leak in our roof. “Crows,” I told her. “What kind of crows?” the insurance adjuster wanted to know. What kind of crows? Big, black crows, what other kind of crow is there?
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"Are these wild birds, sir?” the insurance adjuster wanted to know.

Of course they were wild birds, I told her, not thinking for the moment that those crows were clearly half-domesticated by Mrs. Johannson. But my moment came and went because the insurance adjuster, with a tone of voice like the game show host who says “I'm sorry, you lost” told me that my homeowners’ policy had a “wild bird” exclusion, so they couldn’t pay my claim.

So I fixed my own roof at my own expense. And soon the crows were back on the new roof tiles pecking at their peanuts. It was time to talk to the Johannsons.

I went over there Thursday morning. Mrs. Johannson was there, and so was her husband, the Colonel. I explained what had happened, the crows on the roof, the peanut shells all over the place, the debris in our gutters, the roof leak and what the fix had cost me. Mrs. Johannson did not get it, though. She could not, or would not understand that her crows had damaged my roof because she had fed them peanuts. I asked her to stop, politely at first, then more insistently. But she would not hear of it because the crows, like all the other wild animals she was feeding, needed her and depended on her, and she just could not stop feeding them because of that.

But her husband, the Colonel, understood the seriousness of the situation. I told him that his wife really had to stop feeding peanuts to the crows and I really did not have any more time to talk about it, because I had to get in to my office. To which the Colonel asked, what exactly do I do for a living? So I told him I was a lawyer and a litigator by profession.

That seemed to register with the Colonel. He said to his wife, “He’s a lawyer, honey, and he’s going to sue us if you keep feeding the crows!” Of course, I hadn’t said that or even thought about it, but the idea seemed to have such a salutary effect on the situation that I said nothing to coun-
Mrs. Johannson did not stop feeding all the wild animals in the neighborhood, let alone the crows. She did, however, change their diet.

Instead of feeding them peanuts in the shell, ballpark style, she bought and fed them shelled peanuts. In order to give the birds some exercise (since they could no longer peck apart the peanut shells in my roof tiles), Mrs. Johannson would walk down to the park four blocks away to feed them. They would fly down there with her, getting their morning exercise, an ominous black cloud that caused a daily eclipse of the sun and changed the weather in Montlake.

The crows did not come back to our house and the roof survived the rain of subsequent seasons. Mrs. Johannson’s husband died a few years later, and a few months after that she moved into a retirement center and sold her home.

No one fed the animals then. Slowly, the raccoons and the feral cats and the stray dogs and the squirrels and pigeons and crows stopped dropping by her former residence looking for handouts. But the crows still sat on the power lines. Only they sat closer to my home.

They looked at me scornfully like some people can sometimes look at lawyers. They looked at me like I was responsible for something only they knew about. They looked at me like I should be roadkill, so they could peck out my eyes.
Calling All Younger and Newer Lawyers

The New WSBA Young Lawyers Committee Is Here for You

by Joel Matteson

If you are a newer or younger attorney (under 36 years of age or within your first five years of practice), I would like to invite you to become involved this year with the Young Lawyers Committee (YLC). The YLC understands that as a newer attorney you are probably wondering about who’s hiring, how to start your own practice, how to keep up with your hectic schedule, recent changes in the law, how to handle difficult clients, how to maintain that all-too-critical work-life balance, where to meet other young attorneys — the list goes on and on. If so, the YLC is for you.

The YLC replaces the Washington Young Lawyers Division (WYLD). Since 1987, the WYLD communicated with young lawyers through its publication, De Novo, which served as the voice of newer and younger attorneys in Washington State. De Novo’s mission — to provide a forum for the exchange of ideas, information, and commentary, and to encourage discussion regarding the broad experience of younger lawyers — remains as important today as ever. Going forward, that mission will be carried on by the new YLC.

Earlier this year, the passage of the license fee referendum required the WSBA to make major reductions to its budget. These budget cuts resulted in the replacement of the WYLD with the newly formed YLC. Despite the name change, the YLC shares the same goals, values, and mission as the WYLD: to encourage the interest and participation of newer and younger lawyers in the activities of the Bar and to facilitate the transition to practice. And so, despite some changes this fall, the YLC will take on the mantle previously carried by the WYLD and De Novo.

What’s new? Well, for one, De Novo’s stand-alone electronic publication is a thing of the past. From now on, NWLawyer will regularly feature articles written by and for younger lawyers. Second, the YLC is now interacting with younger and newer attorneys through NWSidebar, the new blog for Washington’s legal community found at nwsidebar.wsba.org. Let’s face it, in this age of instant-electronic communications, a blog is overdue. So read our young lawyer articles here in NWLawyer, and join the discussion taking place at NWSidebar.

I encourage every newer or younger attorney to become involved with the YLC in the coming year. Participating in the YLC is a great way to connect with other younger attorneys and to tune in to information about young lawyer events, resources, and pro bono opportunities throughout the state. The blog is a great place to express yourself, to share your thoughts, concerns, and ideas about being a younger lawyer, to find answers, and to showcase your writing by submitting articles and blog posts.

Is there a topic relevant to younger lawyers that you would like the YLC to address? If so, email me your ideas. Or, better yet, volunteer to write an article or blog post on a subject that is relevant to younger attorneys. The YLC is no place for spectators — so get involved. If you have any questions about how you can contribute or become involved in the YLC, please email me at jmatteson@tariolaw.com.

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Before a trial, arbitration, or other sort of legal proceeding, I never envision winning. I instead issue a mental injunction against any thoughts of prevailing and prepare for the worst. Why the Debbie Downer attitude — especially when sports psychology advocates a winner’s mentality? There are a few reasons: I want to emotionally prepare myself for a loss; I do not want to overlook anything by assuming success; and I am a generally cynical person (maybe that comes with growing up a Mariners fan). Admittedly, however, the primary motivation is fear of karmic retribution from the Lawsuit Gods, punishing me for having the nerve to believe I can easily sail to victory on the rough, unpredictable Sea of Litigation.

Maybe I am simply being superstitious. But I am not the only lawyer in this state who crosses fingers or touches a lucky rabbit’s foot prior to a trip to the courthouse. In fact, many WSBA members engage in superstitious or ritualistic behavior in an attempt to gain an edge over their adversaries. Some of these behaviors are rooted in logic. Some are just attempts to redo what worked in the past. And some are just . . . ridiculous.

A lot of Washington lawyers swear by a lucky accessory or item of clothing. The item seemingly need not be visible to the viewing public: One (presumably female) attorney sticks with a “red bra or red undies during trial — I heard it gives us power.” Other lawyers tote lucky briefcases to the courtroom. Associate attorney Justin Walsh of Floyd, Pflueger & Ringer, PS, wears the same “tattered” purple tie on day one of every trial. Lucky-charm clothes are apparently a national trend: Trent Latta, of McDougald & Cohen P.S., tried a case recently with a California attorney who wore the same white shirt every day and had it dry cleaned and pressed every night. The extreme laundering efforts apparently paid off: “We won the case, with $1.2 million for our client,” notes Latta.

A popular talisman for bringing good fortune among attorneys is the fountain pen. More than one legal practitioner (none of whom must be fans of electronic signatures) insists on signing documents with a specific pen before filing. “I sign all my briefs with a fancy-[insert expletive here] fountain pen,” says one lawyer. “It’s the only thing I use the pen for, and I do it religiously.” Terry Leahy, a shareholder at my firm, Leahy McLean Fjeldstad in Kirkland, breaks out his “special” fountain pen whenever he needs “to figure out an argument or think through something.” He started using fountain pens his first semester of law school (many, many years ago), when a professor recommended taking tests with a fountain pen. The reasons given: it takes longer to write with a fountain pen, so students would be more mindful in crafting their
answers. Immediately after class, a flock of law students cleaned out the fountain pen supply at the school bookstore. Those who did not fare well on the exam ditched the fountain pens after the test. But Leahy received a high score, and has reached for fountain pens ever since. (And do not ask to borrow his special fountain pen — he is still traumatized from the time a partner borrowed his writing utensil and “ruined the nib” when he was a first-year lawyer.)

Some lawyer rituals seem to be at least partially rooted in common sense. As a new attorney, Hugh Lewis, a solo practitioner whose office is in Bellingham, would go running early in the morning in any kind of weather to get himself “psyched up and ‘alive’ for trial.” Another WSBA member admits to no habitual behavior other than arriving early for hearings (good advice for those of us who habitually get lost on the way to hearings).

Seattle shareholder Chris Howard of Schwabbe, Williamson & Wyatt always gets a haircut before a scheduled trial. Sure, he makes this routine visit to the barber because it is a good idea to look sharp in front of the judge and jury. But he also believes it increases the chances that the matter will settle prior to the first day in court. “It is a joke around the office that a trial will not settle until I get a haircut,” he says. “I need it anyway, and empirically it seems to make a difference.” (Not incidentally, he had time to contribute to this article only because his upcoming trial “went away” shortly after he got a haircut — seriously.)

But you should not apparently go under the scissors once trial is in session, a Los Angeles Times article warns: “It is bad luck for a lawyer to get a haircut until a trial is finished.” (Howard disagrees with that word of caution as a practical matter, noting that during his seven- or eight-week trials, he would “get a little shaggy” without a trim.)

Howard’s devotion to a pre-trial trim highlights a common thread among attorney superstitions: engaging in repetitive behavior that does not add up from an analytical standpoint but that historically produces positive results. And who wants to tempt fate by breaking from an established routine that, for whatever reason, seems to work? Indeed, another of Howard’s habits is to make a point of telling a client in a separate writing, in bold without anything else in the communication, of the scheduled trial date. A failure to do so, he believes, will result in the client having plans to be out of the country. “It happens with experts, too — they always seem to be skiing in Switzerland,” he says. He thinks the routine is not technically a superstition but rather “reinforcing good behavior.” It is a

“Loving, Intuitive, Relentless.
Not necessarily the public’s idea of a criminal defense lawyer. Yet to me these qualities are essential. We’re all human. People make mistakes. My job is to tell the whole story, the human story. The law must be compassionate to be just.

I recently defended a young man. Terminally ill, with extensive criminal history, he’s the sole parent of a toddler. Facing a five year sentence on a four count felony, he likely would have died in prison. I fought for him, asserting that his life is larger than his mistakes. The Judge agreed. He and his family have a second chance.

-Chloe Anderson, Attorney at Law
“statement of pragmatic advice based on empirical evidence that, if I don’t send out the letter, something bad could happen.” Because lawyers are trained to dwell in the logical and rational, the fact that some of us rely on a magic penny for leverage may come as a surprise. But it makes some sense to retrace familiar steps if they have lead to success in the past — even if the steps are not based in logic. Following a routine is a way to cut out variables, which can provide comfort and reduce stress during a litigation process that can sometimes feel as arbitrary as a spin of the roulette wheel. Adhering to past practice by, for instance, stepping out in a red power suit on the first day of trial — as a judge I know used to do when she served as a prosecutor — also provides a dose of confidence (whether by placebo effect or otherwise).

While some lawyers may read this article and laugh at the superstitious antics of the rest of us, I would wager that almost all of us have a funny quirk about the way we practice law. (For purposes of full disclosure, I will confess another couple of somewhat strange habits: I do not make unscheduled telephone calls before 9:30 a.m., because I do not want to ruffle any late risers who may have woken up on the wrong side of the bed. And I usually blast the radio on the way to the courthouse, and pretend to myself that I am just going for a casual drive somewhere and just happen to be wearing a suit for the occasion.) So don’t throw stones until you make sure that one of them isn’t your lucky pet rock.

Some superstitions may, of course, be more pronounced than others. Indeed, the Houston Chronicle reported on a trial attorney who chucks unlucky dress shoes and keeps wearing the same pair — always putting the left one on first and waiting until both are on before tying the laces — until they are worn during an unsuccessful outing. The New York Times described a defense lawyer who goes to the same restaurant and orders the same meal during every day of trial. The Times also
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The Legal Mind

BY JULIE WATTS

Before your first day as a 1L, you probably heard tales of the mythic “legal mind.” From the moment you learned that “per stirpes” doesn’t require antibiotics and words like “stipulate” are unpersuasive to your spouse, you’ve been living the legend of the legal mind. Every attorney hopes to be remembered as “a brilliant legal mind.” That is where glory lies.

But with great power comes great responsibility. In this case, the responsibility of controlling your legal mind in “regular” situations so people don’t think you’re a jerk (more than they already might for unrelated reasons). I know what you’re thinking: “You’ve assumed facts not in evidence — I don’t have a problem. I have hundreds of friends on Facebook!” Perhaps. However, I invite you to examine your social circle. If jokes based on Latin are well-received, they’re probably mostly attorneys . . . in which case, well, res ipsa loquitur.

The first step to solving any problem is to admit you have one. Do the following symptoms sound familiar?

**Symptom 1: The total inability to shut the hell up during Law & Order.**

Attorneys can’t resist the urge to verbally acknowledge violations of legal procedure, inaccurate legal theory, or even unlikely applications of the physical laws of nature. We love to object! We do it for fun! Friends and family might find this adorable at first, but eventually it’s a good way to get clonked with the remote and banned from the TV room (and possibly other parts of the house, as well).

**Symptom 2: The tendency to see a bad moon rising . . . everywhere.**

One hazard of the legal profession is constant exposure to the worst-case scenario. In law school, we studied a case where a woman was decapitated by malfunctioning elevator doors. Compelling! Memorable! Not good fodder for small talk. (Attorneys on that case must have created many uncomfortable moments by responding to, “How was your day?” with, “Well . . . let’s just say, you want to take the stairs from now on.”)

**Symptom 3: The capacity to be unnecessarily stubborn/tenacious/relentless/enthusiastic.**

As with a pit bull, one must never look an attorney directly in the eye. When challenged, attorneys will latch on to an argument and never, ever let go until they have destroyed it or undermined someone’s will to live. The tendency to go down fighting is a quality any paying client appreciates. It’s less appreciated by family members during “discussions” about the proper position of silverware in the dishwasher or whether Pluto was wrongly disrobed of its rightful place in the solar system. (For the record, they also don’t like skeptical demands for substantial evidence, mid-meal objections to neighborhood hearsay, or lengthy explanations as to why your jokes are funny.)

**Symptom 4: A susceptibility to complain about wasted time by calculating how much could have been billed for it.**

Everybody hates this. If you do this, stop. Now.
Symptom 5: The inclination to obsess over imprecise language and faulty logic.

In statutory construction, the difference between “shall” and “may” is crucial; inexplicably, such observations aren’t generally appreciated by friends at the gym. Similarly, concern about the precise meaning of “is” usually comes across as a complication from blunt force trauma to the head rather than a reasonable request for specificity.

As for flaws in logic, if you don’t point out that something “doesn’t make sense” or “isn’t reasonable” at least five times by breakfast, you showed up to the wrong rodeo. Many attorneys also use these phrases as euphemisms for “I don’t like that,” “I don’t want to do that,” and, “I’m hoping you won’t argue if I say this forcefully because I want to go home and fall asleep in front of the TV.”

If your legal mind is running wild, don’t despair! The condition is manageable. Ask for help; no doubt those closest to you have seen the symptoms and already thought of ways to help. (If you’re lucky, you’ll head things off before involuntary commitment becomes a concrete strategy.) Recovery is challenging, but remember, when you make mistakes along the way — it’s okay. Every day begins de novo. NWL

Julie Watts is a graduate of Gonzaga University School of Law, where she was a Thomas More Scholar. She is now an attorney with Wee & Watts, a small firm in Spokane. She can be reached at jwatts@wee-watts.com.
Legislators from around the state head to Olympia each January to draft Washington’s laws. They move into rental homes or prepare their families for the late nights. But long before these lawmakers begin their pilgrimage to the state capitol, Kathryn Leathers is busy at work. Leathers is the lobbyist for the WSBA.

The Bar’s presence in Olympia flies below the radar for many practicing attorneys. Between depositions or closings, following the happenings in Olympia is often not the top priority for lawyers in Washington. But the WSBA’s legislative affairs program impacts the laws being passed in the state and the practice of law for all attorneys. As the lobbyist, Leathers manages relationships, advocates for Washington’s lawyers, and administrates the legislative programs of the Bar.

“It’s about making the law better for everyone in the state,” Leathers said.

It is through Leathers that the legislative affairs program works all year with the 27 practice area “sections” of the Bar to help them develop potential legislation to improve the legal system. She then advocates in Olympia for the legislation that emerged from the membership and was approved by the Board of Governors.

During session, Leathers reviews every bill introduced and sometimes works with sections to respond to bills introduced by others. When asked, Leathers — who formerly worked as nonpartisan counsel for the House of Representatives — also strives to find volunteer attorneys to serve as a resource to legislators and their staff on how their bills might impact the public or other areas of the law.

“Most legislators are not attorneys, let alone attorneys practicing in the areas we deal with,” former Senator Cheryl Pflug said. “I was really pleased when working with the Bar sections.” Pflug, a Republican senator from Maple Valley, recently left the legislature to join the Growth

WSBA Legislative Liaison Kathryn Leathers
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Why is the Bar in Olympia?
The Bar maintains a legislative presence in order to improve upon Washington laws, to inform members of new and proposed laws, and to inform public officials about Bar positions and concerns. It is limited by GR 12.1, which prevents the Bar from taking “positions on political or social issues which do not relate to or affect the practice of law or the administration of justice.”

The voice of nearly 34,000 practicing lawyers is hardly a unified voice and sometimes the waters around what “affects” the practice of law and the administration of justice become murky. But the Bar has a number of policies to strive for balance in the face of inevitable barriers to clarity.

For instance, if a section wants to support a statutory change in Olympia, the section can only stand behind this change with a vote of 75 percent of its governing body, usually the section’s executive committee. Sections seek geographic and practice diversity; for example, the Creditor Debtor Rights Section is truly made of both creditor attorneys and debtor lawyers.

“That is the strength of the Bar. We don’t just have one perspective, and our sections must reach a supermajority agreement on any position before publicly representing it as a section’s position,” Leathers said.

Senator Pflug was the ranking Republican member on the Senate Judiciary Committee for a number of years. “What I like is that they get attorneys practicing on both sides,” Pflug said. “I found them to be really helpful.”

During the legislative session months, most sections’ executive committees set up a system that allows them to be able to respond to the breakneck pace of session, reviewing legislation with nearly impossible short deadlines for responding with any concerns or comments. The Board of Governors also has a subcommittee of the Board that goes to work only during the session, the Board’s Legislative Committee — it meets weekly with Leathers by telephone, reviews any legislation that may be of importance to the entire Bar, and gives any necessary guidance to Leathers. Also, the priorities for the Bar’s legislative agenda are set each year by the Board of Governors.

Lobbying and GR 12.1
But even the most conscious attempts to strike balance and comply with GR 12.1 cannot always protect the Bar from disagreements regarding its role in lawmaking. Take, for instance, the disagreements that publicly arose regarding WSBA’s support of R-74 in fall 2012 — a referendum that sought to approve legislation passed in Olympia regarding marriage equality.
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“The Board found that predictability and fairness in laws that protect property rights, parental rights, and access to the justice system are necessary for lawyers to fulfill their duties to their clients and serve the interests of justice,” WSBA Board of Governors’ Dan Ford explained on the WSBA blog, NWSidebar. But not all the Board of Governors agreed.

“In my opinion, the Board’s recent vote to support R-74 was a step too far,” wrote Bill Viall, who was elected to the Board of Governors in 2011. “The right of Referendum is reserved by our state constitution to the people. In my view, the Bar is not given the power to take a political position on an issue subject to the vote of the people.”

Washington has a mandatory bar — this means that to practice law, an attorney must become a member. This gives pause for those who find the Bar supporting lawmaking efforts that are contrary to their personal views.

“Both as an attorney and as a legislator I am deeply troubled by the Washington State Bar Association continually engaging in highly controversial issues before the Legislature or the people,” said Representative Matt Shea — who is also an attorney in Spokane. “In recent years, the Board of Governors has broadly interpreted the meaning of ‘the practice of law and administration of justice’ as a means of justifying their official endorsement of various provocative and divisive causes.”

Shea, a Republican, fears that the Bar’s position on R-74 has created a perception that the Bar is a left-wing organization. “As a mandatory membership organization, the WSBA must be truly limited in its GR 12 authority and should promote only issues of interest to the Bar in general, or issues of interest to lawyers engaged in specific areas of practice,” he said.

In 2009 and 2011, Shea introduced bills that would transfer all mandatory, regulatory, licensing, and disciplinary functions of WSBA to the Washington State Supreme Court and would make WSBA a voluntary bar. Neither received a hearing.

**Working with WSBA Sections**

The sections and committees决定 the legislation to support are open to all attorneys who seek to put in the time and effort to volunteer for the Bar. One of these volunteers is Rick Bartholomew — a Lacey family law attorney — who sees the benefits of the Bar’s legislative efforts in his practice. Bartholomew is a longtime member of the WSBA Family Law Section and its legislative liaison. He sees the work that he and his section colleagues do as quite balanced.

“We are concerned both with how proposed laws affect the well-being of families as well as the practice of
family law,” Bartholomew said. “And when we testify or take a position on a bill, the Legislature knows that the input of our section represents all sides of an issue from a practice of law perspective. We represent every party in a family law case — the mothers, fathers, grandparents, and children — so what we have to offer to the Legislature that is unique is a well-rounded perspective of whatever issue is under consideration.”

For Senator Pflug, the Bar’s ability to provide input on legislation without favoring plaintiffs or defendants was an asset. She saw the Bar sections as being a refreshing change from the sometimes skewed accounts that are provided by those with a financial interest in one side having leverage over another. For other attorneys who have served in the Legislature, the Bar’s presence in Olympia is vital to the operation of the justice system. Lawyers are the only self-regulated profession in the state. But the justice system is still dependent upon the Washington State Legislature for funds and issues of access to justice.

“I believe that part of the difficulty in funding the court systems comes from legislators’ — and many attorneys’ — misunderstanding the elements of how government provides a civil and ordered society to our citizens,” Representative Deb Eddy said. Last session Eddy was one of 11 lawyers serving in the House of Representatives. She decided not to seek reelection in 2012.

**Advocating Justice**

“The regulatory bar is a vehicle for the delivery of justice, not an advocacy group for one or another method of providing justice,” Eddy said. As such, the Bar has a role that is greater than that of trade organizations. This January — as the new year and legislative session begins — Leathers and many other voices from the Bar will be in Olympia striving to live up to Eddy’s vision and serve as a protector for the justice system.

**Web XTra:** http://www.wsba.org/legal-community/legislative-affairs

Jamila Johnson is a litigator at Schwabe, Williamson & Wyatt and can be reached at 206-407-1555 or jajohnson@schwabe.com. She practices in what she likes to call “government accountability” and primarily represents businesses and individuals to resolve their disputes with government entities.
Public Pretender, Royce Roberts; 362 pp.; $9.99 paperback, $1.99 Kindle

Gavin Young is interning at Seattle's most prestigious law firm, where he plans to practice corporate law, become rich, and make partner. But after making a serious mistake, he gets booted out the golden door. Desperate for work, he accepts a position at a chaotic public defense agency. Will Gavin survive his new job long enough to learn the life lessons his clients can teach him? This legal humor novel, based on author Royce Roberts' own experiences, addresses serious issues such as family, the true definition of success, and the importance of our public defense system. Join Roberts on Dec. 13 at 7:00 p.m. at Third Place Books in Seattle for an author reading and book signing event.

Excerpt from Public Pretender, by Royce Roberts

The door leading to the lobby had a large sign posted in block letters, SEATTLE PUBLIC DEFENDER — NO FIREARMS ALLOWED. I froze before the mouth of legal hell. Was I really desperate? Was I really ready to throw in the towel after a two-month job search? I was about to turn around when I remembered my student loans. I closed my eyes and pushed open the door.

The lobby was bare except for the receptionist, who sat behind her desk . . . I stood before her, marveling that any law firm would let someone with spiked red hair be a receptionist. Preston & Larson insisted that all staff, especially receptionists, be immaculately dressed, with every hair in place.

I finally cleared my throat. “Hi, I’m Gavin Young. I have an interview with Director Schmidt?”

She put down her magazine, looked up, and gave a big smile. “All right, I’ll tell him you’re here. Please make yourself comfortable.”

She picked up her phone as I took a seat on a hard metal chair. The lobby had a peculiar odor — half sweat, half fart, as if it hadn’t been aired in years. It was noisy, too. The yellowing linoleum floor amplified the sounds of ringing phones, clanking carts filled with files, and the conversation of attorneys sauntering down the hallway behind the receptionist. Preston & Larson’s lobby smelled of disinfectant and furniture polish. The only noises were low ringing phones, and the tapping of computer keys. It was so quiet you could have slept there.

Suddenly a door was thrown open down the hall, and a husky-voiced woman shouted, “Plead guilty? Plead guilty, my ass.” A tall lady in nylon leopard shorts, hot pink shirt, and oversized gold chain stomped through the lobby and out the door. The receptionist didn’t move a muscle.

I shook my head slowly. Welcome to Loserville. For two months I had been looking for work in the same blue suit. Every downtown firm had hired for the year, and I was getting threatening letters from the student loan Nazis. I shifted uncomfortably in my hard metal seat.

The receptionist’s phone rang. “The Director will see you now,” she said, pointing down the corridor.

“Good,” I said, mustering my confidence.

She leaned towards me. “Be careful,” she whispered. “He’s in a bad mood today.”

“Really?” I could hear my voice rise. “Oh, don’t worry. I can tell you are just what this firm needs.”

I smiled. “How would you know that?”

“It’s obvious,” she said, batting her eyelashes. “We have a terrible shortage of tall, cute guys with curly black hair and blue eyes. And you have a killer smile.”

I laughed, but felt my checks redden when I realized that her hand was touching mine. I walked down the longest hallway on the planet, with my heart racing.

I stood in front of the closed door with a gold name plate:

HEINRICH SCHMIDT — DIRECTOR

Don’t worry, I said to myself. These guys will be glad to hire me. I’ll be the only one here who graduated in the top 20 percent of their law school class. I’ll pay off some debts, get some trial experience, and six months from now I’ll be at a real law firm. I knocked on the door.

Director Schmidt sat behind his metal desk, holding up my résumé like a restaurant customer examining a suspiciously high check. He was in his late forties, with coffee-dark eyes, black beard and an air of authority. He looked like Rasputin in wire rim glasses.

A portly, balding middle-aged man dressed in polyester brown pants and a blue short-sleeve shirt stood up from his chair in front of Schmidt’s desk and offered his hand. “Pete Monahan,” he said, “Nice to meet you.”

We shook hands and I turned to the mad monk behind the desk. “Gavin Young,” I said, extending my hand.

“I know.” He pointed a finger to the unoccupied metal chair next to Pete. “Sit,” he commanded, like I was his dog.

I sat. My necktie was digging into my neck. I started sweating as Rasputin examined my résumé. A stack of résumés at on the right side of his desk and a binder on the left read, “Terminating the Troublesome Employee.” A full wine rack sat on top of a polished side table. Every bottle had a medallion around its neck listing its grape, year, and province. On the credenza an espresso machine was steaming. The rich smell of coffee filled the room. This guy sure had gourmet tastes for a public defender.

Schmidt got up and poured two espressos. He gave one to Pete Monahan and kept the other. Right about then, I would have killed for an espresso. I waited for some sign that he was going to make a third cup, but instead he sat down, took off his glasses, and forced a smile on his face.

“Mr. Gavin Young,” he said, “you’re twenty-seven years old, just graduated from the University of Washington Law School, where you were ninth in your class, and you’re looking for a job.”

“That’s right, I—”

“And you clerked last summer for Preston & Larson,” Schmidt raised his eyebrows and glanced at Pete. “We don’t often see that around here. Did you ap-
They said it would help, not harm.

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A rivulet of sweat tricked down between my shoulder blades. I thought quickly. “But I’ve always been interested in public interest law.”

Schmidt put down my résumé and looked directly at me. I could feel his eyes boring small holes in my forehead. “How many indigent clients have you represented?”

“A-a client?” I stammered. “You mean, like a real person?”

“Yes, that’s exactly what I mean. Have you worked with poor people in any capacity?”

“Not really,” I admitted.

Schmidt appeared to lose interest and stared out the window. Game over, I thought. I knew I was too good for these guys, but it never occurred to me that they would think they were too good for me. I had always divided people into winners and losers, and now I was one of the losers.

After a minute of dreadful silence, Pete came to my rescue. “You look like a basketball player,” he said affably.

“I played in high school, but my favorite sport is track.”

“I hate running,” Schmidt said. “Track guys aren’t team players.”

“And you’re from Renton?” Pete continued.

“Yes. My dad worked for Boeing in Renton for twenty-five years. I went to Renton High School before the University of Washington.”

He smiled. “I like working with folks from our area.”

Schmidt shrugged. “I favor geographical diversity.”

Pete held up my résumé and nodded. “Number nine in your class at the University of Washington. That’s very impressive in such a competitive school. Takes a lot of hard work.”

Schmidt exhaled loudly.

“And Law Review, too?” Pete asked. “You must have excellent research and writing skills.”

Schmidt shot him a look. “I can read.”

“He turned to me. “Have you ever worked for a nonprofit?”

“Sure. I’ve helped incorporate them.”

He rolled his eyes. “That’s not what I meant. Do you know what foster care cases are?”

I shrugged. “No, but it can’t be as

And desperate for a job.

Schmidt scratched his hairy chin. “Your grades are impressive,” he said, “but frankly I see nothing in your background that indicates an interest in public defense. I’m looking at your classes — antitrust, corporate law, estate planning, tax law for corporations. Oh, yeah, you wrote for law review. Hmmm, ‘New Techniques in Asbestos Litigation.’”

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complicated as a leveraged buyout.”

Schmidt stared at me, his eyes drilling holes in my forehead. “Do you know what we do here?” he asked intensely. “We represent the poorest of the poor, the lowest of the low. We take the clients no one wants, the cases everyone turns down, and we fight for justice. We protect our clients against a legal system that couldn’t care less about their rights and I am very goddamned proud of that.

“We are the scullery maids of the legal profession. We scrub the pots and pans and then we get on our knees and we wash the floor. So what I can offer you, Mr. Gavin Young, ninth in your class, Preston & Larson intern, is low pay, high case loads, and lots of up close and personal contact with the great unwashed.”

He leaned back in his chair. “Does that sound attractive to you?”

I thought quickly about the threatening letters from the student loan Nazis. “Well, yes...” I began.

“Then you’re a fool!” bellowed Schmidt, slamming the desk with his fist. The room was so quiet I could hear own my heart pumping. This guy’s much worse than Maxwell. At least he was sane. Schmidt looked me over with satisfaction and again leaned forward. “Some people would find your credentials impressive, but I don’t want anybody’s leftovers, not even Preston & Larson’s.” He puffed out his chest.

I couldn’t believe it: I was actually being rejected by a lowly public defender’s office. I couldn’t wait to grab my briefcase and get out of there. I glanced at Pete, who winked at me as if he’d seen it all before.

“Now that you know where I stand,” continued Schmidt, “Let me ask you this: are you willing to learn something besides leveraged buyouts?”

“Oh yes,” I lied.

Schmidt turned to Pete. “Do we have any openings in the foster care unit?”

“Always.” Pete grinned, as if possessed of secret intelligence.

“Hmm.” The Director drummed his fingers on his desk for a minute. Then his fingers stopped and he looked at me and cleared his throat. “Mr. Young, I think you’ve got the smarts to do this work, but I’m concerned about your lack of experience with clients. Show up to-

morrow at Juvenile Court and Pete will throw you a few cases. Do good and you’ve got a job.”

I couldn’t believe my ears. Was I really going to get a chance to prove myself? “That’s great,” I said as I rose. “Where’s juvenile court?”

“Look out the window.” He pointed to a gray concrete stump five stories tall covered in grime. Four long bunkers radiated from the stump, surrounded by a fence topped with barbed wire. It looked like a prison; all that was missing were watchtowers and guards with rifles.

Stephanie Perry is the WSBA communications specialist/publications editor. Find her reviews and reading lists at www.readerslane.com.
KUDOS
50-Year Members Celebrate Milestone

On October 12, guests gathered at the Sheraton Hotel in Seattle to pay tribute to 45 attorneys and judges who celebrated 50 years of WSBA membership in 2012. WSBA President Michele Radoshevich welcomed honorees, their families, and guests and proudly expressed heartfelt gratitude to the 50-year members for their decades of dedication to the law. The WSBA class of ’62 has seen many changes — cultural, political, and societal — during their years in the legal profession. Those who have joined the Bar since owe these individuals a debt of gratitude for their inspirational work, achievements, and half-century of serving the public. In appreciation, President Radoshevich and members of the Board of Governors presented 50-year certificates and lapel pins to the members who joined the Bar in 1962.

President Radoshevich reviewed notable events in 1962 worldwide, in Washington, and at the WSBA. Washington State Supreme Court Chief Justice Barbara A. Madsen congratulated the honorees and John G. Bergmann, chair of the WSBA Senior Lawyers Section, encouraged the members to stay involved through the Senior Lawyers Section. The luncheon concluded with the 18 attending honorees gathering for a commemorative group photo.

The Class of 1962
Hon. Robert Burritt Arkell
Thomas McMillin Baker Jr.
Donna Louise Berg
Hon. Terry Vincent Bernard
Gene B. Brandzel
D. Wayne Campbell
Theodore John Collins
Warren J. Daheim
Larrrie Earl Elhart
Diane Dalrymple Engle
Howard E. Engle Jr.
Hereford Graham Fitch
Gary David Gayton
Phillip Ellmore Gladfelter
Gene Godderis
Henry Haas
Nels Michael Hansen
Joan Elizabeth Hansen
Hon. Edward Heavey
Gerald Lee Hulscher
Wiley Gilford Hurst
John Edward Iverson
Hon. Peter Dwight Jarvis
Dale E. Kremer
Hon. James D. Ladley
David Charles Lycette
Edward Buchanan Mackie
Kenneth Bernard Myklebust
Richard C. Nelson
Ralph Eldo Olson
Charles Eugene Peery
Hon. Jack Arthur Richey
Hon. John Arthur Schultheis
Hon. Lawrence Leroy Shafer
John Franklin Sherwood
Charles O. Shoemaker Jr.
Thomas A. Stang
Joseph Lawrence Strabala
Hon. Philip James Thompson
Lee R. Voorhees Jr.
Hon. Thomas Samuel Zilly

In Memoriam
Peter D. Byrnes
Delbert James Barnard
Robert Edgar Corning
David D. Hoff
Lee Alan Larson
James Laigh Magee
David A. Best
The year is 1962. The average salary is $5,556, while unemployment is 6.7 percent. The average house costs $18,200; a postage stamp is 4 cents; a dozen eggs cost 54 cents; and a gallon of gas is just 31 cents.

- **Dr. No**, the first James Bond film, premieres in UK theaters.
- American artist **Andy Warhol** premieres his *Campbell’s Soup Cans* exhibit in Los Angeles.
- The **Rolling Stones** make their debut at London’s Marquee Club.
- Rachel Carson’s book **Silent Spring** is released, giving rise to the modern environmentalist movement.
- **Johnny Carson** takes over as host of NBC’s *Tonight Show*, a post he will hold for 30 years.
- In July, the first **Walmart** store opens for business in Arkansas.
- In June, the U.S. Supreme Court rules in *Engel v. Vitale* that mandatory prayer in public schools is unconstitutional.
- In August, **Marilyn Monroe** is found dead from an overdose of sleeping pills and chloral hydrate.
- In October, the **Cuban Missile Crisis** begins.
- Francis Crick, James D. Watson, and Maurice Wilkins win the Nobel Prize in Physiology or Medicine for their discovery of DNA’s molecular structure.
- **Lawrence of Arabia** wins 7 Academy Awards, including Best Picture and Best Director.
- The Academy Award for Best Actor goes to **Gregory Peck** (*To Kill a Mockingbird*), while Best Actress goes to Anne Bancroft (*The Miracle Worker*).
- In March, **Wilt Chamberlain** scores 100 points in a single NBA basketball game.
- At the **World Series**, the New York Yankees defeat the San Francisco Giants 4–3.
- **The 1962 World’s Fair**, also known as Century 21, puts Seattle on the international map. Many of Seattle’s most iconic structures, including the Space Needle, the monorail, and the Coliseum (now Key Arena), were constructed for the fair. A ride to the top of the brand-new Space Needle cost $1, while a trip on the monorail cost just 50 cents.
- **Wing Luke** is elected to the Seattle City Council, becoming the council’s first non-white member and the first Chinese American elected to a major post in the continental United States.
- Mississippi Governor **Ross Barnett**, a staunch segregationist noted for his clashes with the U.S. Civil Rights Movement, is the keynote speaker at the WSBA’s Annual Banquet. Barnett arranged for the arrest and imprisonment of Freedom Riders and actively opposed efforts to desegregate the University of Mississippi. The controversial choice results in complaints from the membership—the Board of Governors responds that the appearance of a speaker should not be taken to mean that the Association or the Board endorses the speaker’s sentiments.
- 107 people pass the bar exam. Compare that to 2012, when 889 candidates passed the bar exam.
COVERING IT
A Brief History of Bar News

MARCH 1947
Introducing the Washington State Bar News

AUGUST 1958
Washington State Supreme Court

MARCH-MAY 1961
Low Day Awards

JULY 1967
State Supreme Court

SEPTEMBER 1969
Confrontation on Campus

JUNE 1979
Plaintiff Confronts Defendant in Chinese Courtroom

JUNE 1980
Editor Resigns — Mountain Blows Top

JUNE 1981
Managing Client Funds

APRIL 1983
Too Many Lawyers?

NOVEMBER 1985
Arts and the Law

JANUARY 1993
Annual Substance Abuse, Stress, and Dependency Issue

OCTOBER 1994
With a Little Help from My Friends

JULY 1995
Fair and Equal Representation

MAY 1996
Nursing Homes and Long-term Care

NOVEMBER 1997
Drug Courts

DECEMBER 2003
Representing the Most Vulnerable

MAY 2004
Brown v. Board of Education — 50th Anniversary

OCTOBER 2004
Ronald R. Ward — Lawyers Render Service

JANUARY 2006
WYLD

JUNE 2007
Inadvertent Disclosure
Rich in Other Ways

by Jeff Tolman

She sat at her desk, unmoved by the carols she heard through her law office window or the stores closing so the shopkeepers could spend Christmas Eve with their families. To say she was not in the holiday spirit was a great understatement. Her children were spending the holiday with their dad, her parents now both gone. She was alone. And, unless Macy’s and the grocery store started accepting accounts receivable as currency, she was poor, too.

After working so hard, and giving so much of herself to others this year, what did she have to show for it? Unpaid bills. Many clients indebted to her. In this faltering economy which had impoverished most of her honest, hard-working clients, it just didn’t seem worth it anymore. She wondered how someone closes a law office and what steadily-paying jobs she might be qualified for. Her Christmas gift to herself seemed to be a reality check, the acceptance that the office she loved so much couldn’t keep going.

The tears came slowly at first, softly hitting the pad on her desk. This was not how it was supposed to be, she thought.

Suddenly, she heard a muted noise and looked toward her office door. In stepped a client from over a decade ago. This man had come to her for help in a hotly contested custody matter. His wife was taking a scorched-earth approach, giving nothing, fighting everybody. She wanted her children, totally out of his life. Her parents had funded the battle — no, more a war than a battle. At the end of the trial, Teresa’s client had reasonable time with his children, but certainly in hearts and souls and friends.

As she was locking the door, steps rustled behind her. Turning, she saw a client carrying a card. The client’s eyes grew big and she said, “I am so happy I caught you. I just got off work and was afraid I would miss you. This is for you. Please open it when you get home. Happy holidays, Teresa.”

Teresa put the card in her purse and drove home. Her house was dark and cold; she started a fire in the fireplace, took off her shoes, and sat on the old, worn couch waiting for the fire to warm the room. There was no music or holiday cheer present; she did not even turn on the Christmas tree lights. Her thoughts were dominated by the idea of having to close her practice down, and soon. After a few moments she remembered the card, pulled it from her bag, and opened it.

The front of the card simply said, “Christmas is a time for giving.”

When she opened the card, she saw dozens of names and short notes. Short notes from clients surrounded the card’s inside inscription, “Thank you for giving so much.” On the card were words of thanks from the woman she had seen moments before and from other clients old and new. “You have made my life better.” “Thank you for caring so much.” “You believed in me when no one else did.” “I will pay you as soon as I can. Thank you for being so kind, caring, professional, and patient.” “Few people have lawyers like you who care so much and give so much.” “One inscription after the other was written with heartfelt care and concern.

“After so many years practicing law, I have nothing to show for it. I don’t know if I can go on anymore.” Her words rang loudly in her head. But, in reality, she had much to show for it. Not in dollars and cents, perhaps, but certainly in hearts and souls and friends.

“Did you expect?” a voice echoed in the room. It was her late dad. “You knew it wouldn’t be easy. You play for big stakes. Children. Property. Freedom. There are worthy opponents in almost every case. You are not like a boxer who takes a tough fight, then a couple of easy opponents. Your battles are always hard-fought, your opponents always capable. And how have you changed? When did you start measuring success by your bank account? When did you start grading yourself by dollars and cents?”

“I don’t know,” she responded, wiping a tear from her cheek. “There are so many bills that I can barely pay. It’s just hard. Sometimes too hard.”

“But you pay them, don’t you, even if sometimes a bit late. And don’t I remember a young lady dreaming of being a lawyer? Striving. Working. Pushing herself to enter the Bar? I don’t recall the dreams having anything to do with money. I recall dreams of helping others, making a difference in other people’s lives. And it appears you have.”

Then there was silence.

As the sun rose on Christmas Day, while children were waking up their parents and wondering how they had missed the sounds of reindeer on the roof, one lawyer was wide awake, making a written business plan, re-dedicating herself to a profession she loved, to people who gave her the greatest compliment on Earth — asking her to help them through a problem that they, their family, and friends could not otherwise solve; trusting her with profoundly personal issues; asking her to help make their lives better. No, she didn’t have money. She was, she now realized, rich in a different way.

Especially in this difficult economy, we may not be rich in money, but we, as lawyers, are rich in hearts, and souls, and friends.

Happy holidays.

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Jeff Tolman is a former WSBA governor and practices in Poulsbo. He can be reached at tolman@tolmankirklucas.com.
In the last year, the WSBA Rules of Professional Conduct (RPC) Committee has continued to draft Ethics Advisory Opinions to provide guidance to Washington’s licensed attorneys. Frequently, these are answers to questions brought to the Washington State Bar Association by practitioners who are seeking a deeper analysis of the Rules of Professional Conduct, although Advisory Opinions are non-binding. Summaries of the most recent opinions below will serve to alert legal practitioners to ethical issues that arise from thorny fact patterns in an everyday law practice.

Taking Security Interests in Clients’ Real Property

One 2012 Advisory Opinion concerns a lawyer’s ability to take a security interest in the real property of a client in a dissolution proceeding where a prenuptial agreement provides that the property is the client’s separate property. Two scenarios are discussed: 1) where the agreement regarding the security interest is bargained for at the time the initial fee agreement is signed (and the client understands the lawyer does not represent him or her until the fee agreement is signed), and 2) where the security interest is bargained for after the fee agreement is signed, and the fee agreement is silent on the issue. Advisory Opinion 2209 discusses RPC 1.8(i), under which an attorney may accept a contractual security interest in a client’s real property while mindful of RPC 8.1(a), which is implicated when the attorney is involved in a business transaction with a client. The Opinion cautions that in the context of dissolution proceedings, all property, both separate and community, is before the court and the secured property may be awarded to the non-client or subject to a court-ordered encumbrance. Both would render the security interest valueless.

Using Debit Cards for Filing Fees

Increasingly, courts are requiring that filing fees be paid electronically. Advisory Opinion 2210 addresses the issue of a lawyer using a debit card to pay the filing fee from an IOLTA account after the client’s funds have been deposited into the trust account. RPC 1.15A(h)(5) provides that a lawyer may withdraw funds from a trust account only by check or bank transfer and that all withdrawals must be made to a named payee. Although the rules do not define “bank transfer,” use of a debit card to pay a filing fee directly is a bank transfer.

Lawyers who obtain debit cards for their trust accounts should safeguard the card and its PIN number to prevent cash withdrawals. This Advisory Opinion clarifies that debit cards can be used as long as they are protected from theft or abuse, are not used to withdraw cash, are never used to withdraw an amount exceeding the client’s total funds, and are subject to proper records that are maintained pursuant to RPC 1.15B.

Third-Party Insurers

At times lawyers get caught between a client and a third-party insurer who has claims to funds in the lawyer’s possession, often in a contingent fee scenario. For example, after the lawyer receives settlement proceeds, the client may specifically instruct the lawyer not to repay the insurer for PIP benefits paid on the client’s behalf, triggering the lawyer’s safekeeping duties under RPC 1.15A(g). Advisory Opinion 2213 suggests that the lawyer should make a threshold decision as to whether the third-party claim has a valid legal basis and is non-frivolous, but notes that the lawyer is not expected to be the ultimate arbiter of the dispute between the client and claimant. However, the lawyer is required to promptly distribute all undisputed portions of the property, then hold the remaining funds in trust or interplead them to the Court until the underlying dispute is resolved.

Charging for Credit-Card Transactions

Advisory Opinion 2214 addresses whether credit card transaction fees may be charged to the client. When a credit card company charges the lawyer a fee for a transaction, the lawyer is not prohibited under the RPC from charging an additional amount to cover the fee, provided the lawyer notifies the client in advance of the charge and the lawyer does not charge more than a fee that reasonably reflects the cost incurred by the lawyer.

Cloud Computing and Metadata

The RPC Committee tackled two
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cutting-edge issues this past year when they drafted Advisory Opinion 2215 on cloud computing and Advisory Opinion 2216 on metadata. As law practices become more mobile and increasingly high-tech, Internet service providers are offering “cloud computing” data storage systems on remote servers that can be accessed by subscribers from any location over the Internet. Lawyers often find this a cost-efficient and convenient way to store client documents. The opinion discusses the lawyer’s duty to ensure the confidentiality of client data, and the duty to ensure that the documents will not be lost. Examples of “best practices” for a lawyer without advanced technological knowledge to use in conducting a due diligence investigation of the provider and its services are provided in the Advisory Opinion. Although the lawyer’s du-

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ties do not rise to the level of a guarantee that the information is secure from all unauthorized access, the lawyer must take reasonable steps on a periodic basis to update and evaluate the risks involved with the data storage system, and make sure that steps taken to protect the information are up to a reasonable standard of care.

What are the ethical obligations related to the transmission and receipt in the course of legal representation of electronic documents containing metadata? Does an attorney have an obligation to protect metadata when disclosing documents? What is an attorney’s ethical obligation when the attorney receives another party’s documents where metadata has been disclosed? Is it appropriate for an attorney to use special forensic software to recover metadata that is not otherwise readily accessible through standard word processing software?

The metadata opinion notes that a lawyer has an ethical duty to act competently to protect from disclosure the confidential information that may be reflected in a document’s metadata. This is usually done by the lawyer’s reasonable efforts to disclose documents in formats that do not include metadata (hard copy, fax, or PDF) or to “scrub” metadata reflecting confidential information before sending it electronically. If a lawyer receives documents that contain readily accessible metadata that the receiving lawyer knows or reasonably should know was inadvertently disclosed, the receiving lawyer has a duty to notify the sending lawyer.

In the event the receiving lawyer is utilizing special forensic software to recover metadata that is not readily accessible, it is likely that this would violate RPC 4.4(a), which prohibits using methods of obtaining evidence that violate the legal rights of third persons, and RPC 8.4(d) as conduct that is prejudicial to the administration of justice.

Keeping Client Files Confidential

Once again, the issue was raised regarding permitting access to client files without the client’s consent to comply with a demand from the Department of Revenue pursuant to an audit. In Advisory Opinion 2218, the RPC Committee opined that existing Advisory Opinions 194 and 195 were dispositive of the question. RPC 1.6 obligates an attorney to keep confidential client files and unredacted client-related financial records, even if demanded by a third-party agency, if the client has not given express permission.

Supervisory and Managerial Roles

A general counsel asked for clarification regarding supervisory responsibility for an in-house lawyer not licensed in Washington and work-
Advisory Opinion 2220 provides a practical ethics roadmap. After receipt of a properly served writ of garnishment, the first step for the lawyer is to determine whether a dispute exists between the creditor and the client regarding the funds subject to the writ. A dispute between the client and the creditor with respect to a writ of garnishment triggers the lawyer's safekeeping duties under RPC 1.15A(g) because the writ of garnishment is specific to funds in the lawyer's possession and has a valid legal basis; that is, the underlying judgment represents a legal obligation from the client to the creditor. However, the lawyer needs to consider other RPC obligations such as the RPC 1.6 duty to not disclose a client's identity if it violates confidentiality.

If you need assistance in thinking through the difficult issues of an ethical practice in the context of the RPC, call the Ethics Line at 206-727-8284 or 800-945-WSBA, ext. 8284. Jeanne Marie Clavere, WSBA professional responsibility counsel, will help you analyze the ethical issues involved to enable you to make a decision consistent with the requirements of the RPC. Advisory Opinions are on the WSBA website and you can search by opinion number, year issued, RPC, or keyword(s). You can learn more at www.wsba.org/resources-and-services/ethics/advisory-opinions. NWL

Jeanne Marie Clavere is the WSBA professional responsibility counsel and can be reached at jeannec@wsba.org.
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This In Remembrance section contains brief obituaries of WSBA members. The list is not complete and contains only those notices that the WSBA has learned of through newspapers, magazine articles, trade publications, and correspondence. Additional notices will appear in subsequent issues of NWLawyer. Please email notices or personal remembrances to nwlawyer@wsba.org.

Nancy Claire Chapman
Nancy Chapman was born on March 5, 1961, in Portland, Oregon, where she grew up. She received an undergraduate degree in English from the University of Washington in 1983 and her law degree from the University of Puget Sound in 1992. Her career focused on corporate business law, but her most recent job as senior staff attorney for the Fred Hutchinson Cancer Research Center was her favorite. An accomplished athlete, Chapman played for a state championship volleyball team, enjoyed tennis and skiing, and was a camper, staff member, and board member of Camp Nor’wester in the San Juan Islands. Chapman enjoyed cooking for friends and loved classical music, theatre, and comedy shows.


Patrick K. Daly
Patrick Daly was a New Year’s Eve baby, born on Dec. 21, 1948, in Tacoma. He received his undergraduate degree from the University of Puget Sound and his law degree from the University of Puget Sound School of Law (now Seattle University School of Law). An excellent swimmer in his youth, Daly competed at the college level. He began his career as a Pierce County prosecutor and later opened a private practice as a defense attorney, partnering with Keith MacFie. Daly was a talented chef who enjoyed entertaining his family and friends.

Patrick K. Daly died on Aug. 17, 2012, at the age of 63.

Jennings Patrick Felix
Jennings Felix was born on Oct. 12, 1921, in Tacoma. He attended pre-law studies at the University of Puget Sound (now Seattle University) and transferred to the University of Washington. A WWII veteran, he was wounded in Germany in 1945. He received his law degree from the University of Washington School of Law, where he was president of the law review and senior representative to the WSBA, and graduated Order of the Coif in 1948. After serving as a law clerk for the Ninth Circuit Court of Appeals, he was a deputy Pierce County prosecutor and chief counsel of the Washington State Tax Commission before beginning his own private practice. Felix traveled the world, loved to fish and hunt pheasant, played the harmonica, and read avidly.

Judge Betty Binns Fletcher
Betty Binns Fletcher was born in Tacoma in 1923. Her father was a prominent lawyer, and when she was a young girl, he would take her to his office on weekends and sometimes let her skip school to attend his trials; she later recalled that she always knew she would be a lawyer. She received her undergraduate degree from Stanford University at age 19 and her law degree from the University of Washington School of Law, graduating at the top of her class in 1956. She joined the Seattle firm now known as K&L Gates, eventually becoming the first woman to make partner at a major Pacific Northwest law firm. She was known for being tough but fair, and holding others to high standards. She was the first female president of the King County Bar Association. Appointed to the bench by President Jimmy Carter in 1979, Judge Fletcher was the second woman appointed to the 9th Circuit, and was known for rulings upholding affirmative action, allowing claims of workplace discrimination to proceed, overturning death penalty cases, and protecting the environment.

In 1996, Republican Utah Sen. Orrin Hatch insisted that because of an obscure, 19th-century anti-nepotism law, Judge Fletcher needed to take senior, or semi-retired, status before her son could join the court. That would free up Fletcher’s seat to be filled with an appointee acceptable to then Republican U.S. Sen. Slade Gorton, of Washington. Fletcher agreed—but instead of slowing down as a semi-retired judge, she maintained a full caseload, up until the very end.

Judge Betty Binns Fletcher died on Oct. 22, 2012, at the age of 89.

David Daniel Hoff
David Hoff was born and raised in Seattle. He was a proud “Double Husky,” having received both his undergraduate and law degrees from the University of Washington. Hoff’s practice spanned half a century, focusing on securities and complex civil litigation, including class action and environmental litigation. He was a frequent speaker and expert witness on securities law, litigation, ethics, and often served as an arbitrator and mediator. He was a past-president of the Washington State Bar Association, the Western States Bar Conference, and the Seattle Public Defender Association, as well as many boards and commissions. He was a fellow of the American College of Trial Lawyers, tried more than 100 cases, and received numerous professional achievements, but was most proud of the accomplishments of the many lawyers he mentored over the years.

David Daniel Hoff died on Aug. 16, 2012, at the age of 74.

Brenda M. Indyk
Brenda Indyk was born in Burlington, Wisconsin, on June 11, 1970. She received an undergraduate degree in French and literature from the University of Wisconsin—Milwaukee. Indyk served in the U.S. Army from 2002–05 as a lieutenant and was promoted to captain while in the Reserves; her tour of duty included nine months in Iraq. Indyk earned a law degree and a master’s in social work at the University of Kansas in 2010. In March 2012, she moved with her husband, Captain Lawrence Indyk, and their two children to Okinawa, Japan, where he was stationed as an attorney in the Army. In her free time, Indyk enjoyed creative writing, sewing, working out, and spending time with her family.

Brenda M. Indyk died on May 21, 2012, at the age of 41.

Scott A.W. Johnson
Scott Johnson received his undergraduate degree in business administration from the University of Washington, and his law degree magna cum laude from American University Washington College of Law. He began his 26-year career at Perkins Coie, then for almost two decades as a partner at Stokes Lawrence, in Seattle, where his practice focused on trust and estate work, intellectual property, and general commercial litigation. Johnson also served as adjunct faculty in trial advocacy at the University of Washington. He volunteered his time and legal services to several community organizations, including the Northwest Women’s Law Center and the American Civil Liberties Union of Washington. He was also the director of the Washington Coalition for Open Government, a group promoting transparency in state and local government, and served on its legal committee. Johnson had recently run unopposed for Position 20 on the King County Superior Court, and he would have taken office in January. Johnson enjoyed traveling with his family, running in marathons and triathlons, heli-skiiing, and early morning swims in Lake Washington.


Frank Vincent LaSalata
Frank LaSalata was born on March 7, 1952, in Brooklyn, New York. He moved to Washington in 1975, receiving an undergraduate degree in science and a master’s in geology from Washington State University, and was hired to map coal mines near Centralia. In 1992, he received his law degree from the University of Puget Sound Law School. He practiced law for several years in Bellevue and Friday Harbor, filling in as a pro tem judge, before being elected as a King County District Court judge in 2006, where he presided until his death.

Frank Vincent LaSalata died on Sept. 1, 2012, at the age of 60.
Larry Eugene Leggett
Larry Leggett was born on March 7, 1952. He received his undergraduate degree from the University of Arizona and his law degree from the University of Puget Sound. Leggett began his career in the field of forestry at Burlington Northern/Plum Creek and later practiced law with Williams Kastner, focusing on real estate law. He retired in 2011 and enjoyed traveling during his retirement. Leggett will be remembered for his good cooking, fine wines, photography, love of movies, and enthusiasm for chess.
Larry Eugene Leggett died on July 4, 2012, at the age of 60.

David N. Lombard
David Lombard was born on Dec. 6, 1949. He received his undergraduate degree from the University of Washington and his law degree magna cum laude from the University of Puget Sound School of Law (now Seattle University). He clerked for Justice Orris Hamilton of the Washington State Supreme Court, then joined the Seattle law firm of Ferguson & Burdell in 1977, where he became partner in 1985. In 1994, he formed a new firm, Jameson Babbit Stites & Lombard. He was a fellow of the Board of Regents of the American College of Mortgage Attorneys and was a member of the Lenders’ Counsel Group of the American Land Title Association. Lombard volunteered his time with the Woodinville Little League and Woodinville High School sports for many years. In retirement, he enjoyed traveling Europe, playing golf, and going on wine tasting excursions.

Richard S. Lowry
Richard Lowry was born on Oct. 4, 1945, in Olympia. The son of a naval captain, he spent his childhood years in cities around the Pacific coast. Lowry graduated from Stanford Law School in 1971 and practiced law for 38 years. After 30 years with Clark County, he retired as chief civil prosecutor in order to spend time with his family and pursue his passion for woodworking.

William H. “Bill” Mays
Bill Mays was born on Sept. 15, 1932, in Yakima. He received his undergraduate degree from Whitman College in 1954 and his law degree from the University of Washington School of Law in 1957. He began his career with the firm of Gavin, Robinson, Kendrick, Redman, & Mays in Yakima, and later ran the Tacoma office of Williams, Kastner & Gibbs. Devoted to the game of golf, Mays worked diligently on behalf of the Washington State, Pacific Northwest, and Pacific Coast golf associations; he was most proud of his pivotal role in the founding of The Home Course in DuPont, Washington, as the home of the Washington State/Pacific Northwest Golf Associations. In honor of his lifelong passion for golf, attendees at his memorial service were invited to wear their favorite golf shirt or blazer.
William H. Mays died on Aug. 21, 2012, at the age of 79.

Karen Lynn Mitterer
Karen Mitterer was born on Sept. 10, 1972, in Hinsdale, Illinois. She received her undergraduate degree in English from Smith College and her law degree from The Chicago Kent School of Law. Focusing her practice on special education, Mitterer counseled families and acted as an advocate for students in need. Mitterer was diagnosed with juvenile rheumatoid arthritis at 18 months of age, yet was remembered for her tenacious will to survive and thrive.

Patricia Pethick
Patricia Pethick was born on July 22, 1965, in Niles, Michigan. She received her undergraduate degree from the University of Washington and her law degree from the University of Puget Sound Law School. A skilled attorney and avid reader, Pethick enjoyed traveling and loved to cook for family and friends.
Patricia Pethick died on Sept. 30, 2012, at the age of 47.

Louis E. Prediletto
Louis Prediletto was born on April 7, 1930, and when he was 18 months old, his family moved to Vancouver, Washington, where he would grow up. He received his undergraduate degree in economics from Willamette University in 1952, and his law degree from the Willamette University School of Law in 1955. In 1956, Prediletto and his family moved to Yakima, where he joined the Office of the Attorney General for the State of Washington in 1957, and ran the Yakima office of the Department of Labor and Industries. In 1960, he began his own private practice while working part-time as an assistant city attorney; in 1962, he and Norm Nashem created the firm that is known today as Prediletto, Halpin Scharnikow, Nelson. Prediletto was a lifelong golf enthusiast and served as president of the Yakima Country Club Board in 1980. He was a member of Yakima Sundusters, Yakima Footprinters, and Gyro International, and twice served as president of the Yakima Gyro Club.
Louis E. Prediletto died on June 21, 2012, at the age of 82.

Richard Martin Slagle
Richard Slagle was born on Feb. 26, 1949. He practiced for 15 years at his own law firm, where he relished not wearing suits or ties; in honor of this tradition, attendees at his memorial service were requested to wear casual clothing, such as Hawaiian shirts. Slagle was known as an honest, professional, and fair lawyer who understood and respected both the law and his clients. He loved the outdoors, whether climbing mountains, fly fishing, cycling, camping, or enjoying the river view from his cabin. Slagle greatly enjoyed decorating his house for Halloween and Christmas, and was known as “Mr. Christmas” around his neighborhood.

Nancy A. Smith
Nancy Smith was born on May 15, 1957, in Hillsboro, Oregon. While attending St. Mary of the Valley High School, she was introduced to musical theatre, which fostered a lifelong passion for theatre and music. She received an undergraduate degree in fine arts from the University of Portland, where she was a popular singer at an on-campus venue and performed in many campus theatrical productions. She earned her law degree from Lewis and Clark Law School in 1984. Over the course of a 25-year career, Smith singlehandedly built a law firm focused on consumer debt that became a standard-bearer for other consumer debt practices.
Nancy A. Smith died on June 16, 2012, at the age of 55.

William Daniel Symmes
William Symmes was born on Sept. 10, 1938, in Spokane. He received his undergraduate degree cum laude in philosophy and logic from Georgetown University in 1960 and an M.B.A. from Columbia University School of Business in 1962. In 1965, he received his law degree from Stanford University’s School of Law, where he served as president of the Stanford Law Forum; after law school, he practiced in California for several years before returning to Spokane. In 1968, Symmes joined the law firm of Witherpoon, Kelley, Davenport, & Toole in Spokane, where he practiced for 43 years, serving on the board of directors for 33 of those years; he was the managing partner from 1990–2009. He was a fellow of the American College of Trial Lawyers and the American Board of Trial Advocates. In 2012, Symmes was honored with the Michael J. Hemovich Award, in recognition of his dedication to improving the administration of justice and the betterment of the legal profession. He was a co-owner of the AAA Spokane Indians baseball club in the 1970s, and a co-owner of the AAA Las Vegas Stars baseball club in the 1980s. He was a former director of the Spokane Youth Sports Association, longtime member and director of the Greater Spokane Sports Association, and director of Big Brothers, and coached Junior National Foot...
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Learn about open positions on the WSBA website: www.tinyurl.com/volunteeropps. Applications will be accepted from Jan. 2 to March 11. Most positions begin Oct. 1.
The WSBA congratulates the 575 candidates who passed the Bar Exam administered in July 2012! Of the 878 candidates who took the exam, 65.5 percent passed. Administered in two parts over a three-day period, the Bar Exam included a substantive law exam and an exam on the Rules of Professional Conduct. Candidates must successfully pass both parts in order to qualify for admission to the the WSBA.
2013 Notice of Board of Governors Election
Nomination/Application Deadline: March 1, 2013
Four positions on the WSBA Board of Governors will be up for election this year. Three of the positions represent the 2nd, 9th, and 10th congressional districts, and one is an at-large position. The three-year term of office begins Sept. 27, 2013.

These positions are currently held by Philip Buri (2nd District), Susan Machler (9th District), and Tracy Flood (at-large position A). As a result of congressional redistricting, the 7th-Central District position currently held by Judy Massong has been eliminated, and the 10th District position is new.

Eligibility: Any active member except one previously elected to the Board of Governors may be nominated or run for the office of governor from the congressional district in which the member is entitled to vote. Any active member may be nominated or run for the at-large governor position.

Becoming a candidate: To run for the Board of Governors or to nominate another WSBA member, you must file a statement of interest and a biographical statement of 100 words or less. The required forms are available on the WSBA website at www.wsba.org/elections or by contacting Pam Inglesby, member and bar leader relations manager, at pami@wsba.org or 206-727-8226. The WSBA executive director must receive the forms for district races by 5 p.m. PST on March 1, 2013. Note: Biographical statements of nominated candidates will be published in the April/May issue of NWLawyer. The deadline to run for the at-large position is 5 p.m. PST on April 19, 2013.

Voting: The three district-based positions are elected by their peers. Generally, a member is entitled to vote in the congressional district in which he or she resides. All out-of-state active WSBA members are eligible to vote in the district of the address of their agent within Washington for the purpose of receiving service of process as required by APR 5(f), or, if specifically designated to the executive director, within the district of their primary Washington practice. Paper ballots for district elections will be mailed on March 15 and must be received by 5 p.m. PDT on April 15. The WSBA will also use an electronic voting system, and members with email addresses on file with the WSBA will not receive a paper ballot unless they request one. Email ballots will also be sent on March 15 and must be received by 5 p.m. PDT on April 15. The at-large governor will be elected by the Board of Governors at its May 31 meeting.

Superior Court Case Management System Court User Work Group
Application Deadline: Jan. 3, 2013
The WSBA Board of Governors is accepting letters of interest and résumés from WSBA members interested in serving on the Superior Court Case Management System (SC-CMS) Court User Work Group. One WSBA representative position is available. The representative should have knowledge of the superior court functions, business processes, and business rules. The three-year term will begin Feb. 1, 2013, and expire Jan. 31, 2016.

The SC-CMS Court User Work Group was formed in June 2012 to provide essential subject matter expertise to enable the successful deployment of the Superior Court Case Management System. The SC-CMS Court User Work Group will assist the Court Business Office and the SC-CMS Project Team in establishing common court business processes that could be packaged and configured as a model for deploying a new case management system across the state. The SC-CMS Court User Work Group will provide subject matter expertise and decision-making on court business processes, ensuring that processes and requirements are complete and accurate. It will provide insight on potential impacts, opportunities, and constraints associated with the transition to the new system.

The WSBA Board of Governors is accepting letters of interest and résumés from members interested in serving a two-year term on the Statute Law Committee, beginning April 1, 2013, and ending on March 31, 2015. This 12-member committee seeks to foster accurate publication of laws and agency rules and oversees delivery of the other services of the Code Revisor’s Office in a professional and strictly nonpartisan and cost-effective manner. The Code Revisor’s primary responsibilities are to periodically codify, index, and publish the Revised Code of Washington, the Washington State Register, and the Washington Administrative Code and to provide bill drafting services for the legislature. The committee meets at least twice a year. Further information about the Statute Law Committee can be found at its website at www.leg.wa.gov/coderevisor/pages/statute_law_committee.aspx, or by contacting Kyle Thiessen at 360-786-6777. Please submit letters of interest and résumés to WSBA Communications Department, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539; or email barleaders@wsba.org. A letter of interest and résumé are also required if the incumbent seeks reappointment.
WSBA-CLE Publications Releases 2012 Update to the Washington Family Law Deskbook

The 1,422-page 2012 cumulative supplement to the three-volume deskbook completely replaces the blue 2006 supplement pages. In addition to supplemental material, 12 chapters have been revised and replaced in their entirety and new chapters on domestic partnerships, Washington’s Indian Child Welfare Act, and international family law have been added. The 2012 Cumulative Supplement comes with a CD containing over 100 revised and new forms, checklists, and appendices. For more information or to order, please go to www.wsbcle.org and select “Deskbooks” and “Family Law,” call 206-733-5918, or email orders@wsba.org.

New $25 MCLE Comity Certificate Fee Information

As a result of the WSBA Board of Governors’ and staff’s extensive review over the past few months aimed at ensuring the Bar is operating in the most effective and efficient manner, WSBA began charging a handling fee for comity certificates to cover the processing time and resources required for each. There will be a fee assessed for ordering comity certificates and another fee assessed to submit a comity certificate for MCLE compliance. Ordering comity certificates can be done online or via mail. See http://tinyurl.com/comitycert for more information.

Interested In Being Interviewed for Appellate Court Vacancies?

Deadline: Feb. 8, 2013, for March 21, 2013, interviews

On March 21, 2013, the WSBA Judicial Recommendation Committee (JRC) will interview attorneys and judges who are interested in being appointed by the governor to fill potential vacancies on the Washington State Supreme Court and Court of Appeals. The JRC’s recommendations are reviewed by the WSBA Board of Governors and forwarded to the governor for consideration when making judicial appointments. If you would like to be interviewed, please notify Pam Inglesby at pami@wsba.org, then complete and submit the questionnaires posted on the JRC webpage at www.wsba.org/jrc by Feb. 8, 2013. Additional interviews will be held on June 21 and Sept. 19. For further information, visit the JRC webpage or contact the WSBA at 206-727-8226 or 800-945-9722, ext. 8226.

2013 Licensing and MCLE Information

Complete your license renewal and MCLE certification online—it’s easy! Your license renewal packet was mailed in mid-October and online licensing is available. Renewal and payment must be completed by Feb. 1, 2013. WSBA bylaws require a 30 percent late-payment fee if the annual license fee remains unpaid after that date. Visit wsba.org/licensing to learn more.

MCLE Compliance. If you are due to report MCLE compliance for 2010-2012 (Group 9), you would have received your Mandatory Continuing Legal Education Certification (C2) form in the license packet. The deadline for completing credits is Dec. 31, 2012. The certification (C2 form) must be completed online, postmarked, or delivered to the WSBA by Feb. 1, 2013, or a late fee will be assessed. For detailed instructions, go to wsba.org/MCLE.

Judicial Member Licensing. WSBA Bylaws relating to judicial members became effective Jan. 1, 2012 (see WSBA Bylaws Art. III, Sections A.3, B, C.2, C.4, H.1.c, H.2 and H.3). Judicial members are required to complete annual license renewal forms and pay a $50 license fee if they wish to maintain eligibility to transfer to another membership class when their judicial service ends. Please note that a 30 percent late fee of $15 will be assessed on Feb. 2. The Judicial Member License Renewal form was mailed in mid-October and online licensing is available. If you have not received your form, please log in to mywsba.org to complete your renewal. Visit wsba.org/licensing to learn more.

Search WSBA Advisory Opinions Online

WSBA advisory opinions are available online at www.wsba.org/advisoryopinions. 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.

27th Annual Goldmark Award Luncheon Honors Judge Anne Lake Ellington

On Feb. 15, the Legal Foundation of Washington will present the 2013 Charles A. Goldmark Distinguished Service Award to Judge Anne Lake Ellington at the 27th Annual Goldmark Award Luncheon. The Legal Foundation of Washington Board of Trustees joins with the LAW Fund and Endowment for Equal Justice Board of Directors in recognizing Judge Ellington’s commitment to securing equal justice for the weak and powerful alike.

Judge Ellington retired from the Court of Appeals, Division I, in October 2012. The award honors her 40-year law career spanning the Attorney General’s office, tribal court, becoming the first woman selected as a King County Superior Court presiding judge, and appellate court. In particular, she is being recognized for her work on the ATJ Board’s Systems Impediments Committee, which eventually resulted in GR33, enabling people with disabilities to enjoy greater access to the courts while raising awareness on the part of court employees and related agencies to the barriers faced by people with disabilities.

Visit www.legalfoundation.org for more information.

LOMAP Lending Library

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

The WSBA offers webinars for members wanting to learn more about what Microsoft Office Outlook and Word, as well as Adobe Acrobat, can do for a lawyer. We also cover online legal research, such as Casemaker and other resources. Are you a total beginner? No problem. The clinic teaches helpful tips you can use immediately. There is no charge and no CLE credit. Our webinar sessions for December/January are as follows. To reserve your seat and obtain conference call instructions for December webinars, contact Julie Salmon at 206-733-5914 or juliesa@wsba.org. To reserve your seat and obtain conference call instructions for January webinars, contact Peter Roberts at peter@wsba.org.

Jan. 21, 2013; 10:00–11:30 a.m.
Microsoft Office Outlook and Word
Jan. 28, 2013; noon–12:30 p.m.
Time and Billing Applications

Just Starting a Practice?

Think “out of the box” and consider purchasing “Law Office in a Box®.” For $119, you receive an hour of consultation time plus everything you see here: http://tinyurl.com/3rn75bj. Questions? Contact Peter Roberts at peter@wsba.org, 206-727-8237, or 800-945-9722, ext. 8237.

The “Blues” or Depression?

Many lawyers are depressed but don’t realize it. Symptoms include sad mood, loss of pleasure or interest in activities, weight gain or loss, sleep problems, feeling restless or slowed-down, fatigue, trouble thinking or concentrating, and thoughts of death. Un- treated, it can cause serious work dysfunction and more. Talk to your doctor, or call the Lawyers Assistance Program at 206-727-8268 or 800-945-9722, ext. 8268, to schedule a confidential consultation.

Individual Consultation

The Lawyers Assistance Program provides individual consultation services for those struggling with depression, work stress, addiction, and life transition, among other topics. The initial consultation appointment costs $20, and any additional sessions are on a sliding scale based on your financial situation. Consultations are an opportunity for assessment of the problem(s) you may be facing, identifying useful tools you may utilize to address these issues, and referral resources to find the right resources for you. Our licensed counselors can offer up to six consultation sessions. We also provide consultations with job seeking and career services. 

Learn More about Case-Management Software

The WSBA Law Office Management Assistance Program (L OMAP) maintains a computer for members to review software tools designed to maximize office efficiency. L OMAP staff is available to provide materials, answer questions, and make recommendations. To make an appointment, contact Julie Salmon at 206-733-5914, 800-945-9722, ext. 5914, or juliesa@wsba.org.

Facing an Ethical Dilemma?

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

Weekly and Bi-Monthly Job Search Group

On Jan. 9, from noon to 1:30 p.m., the Lawyers Assistance Program is proud to host a panel discussion moderated by leaders of WSBA’s Creditor Debtor Rights, Criminal Law, Family Law, and Solo and Small Practice sections to the Bi-Monthly Job Search Group meeting. Please join us for an interesting and insightful discussion on how to get jobs and clients in specific practice areas, the pros and cons of different practice areas, and current job market trends. This
group meets on the 6th floor of the WSBA offices; no RSVP is required. The Weekly Job Search group provides strategy and support to unemployed attorneys. The group runs for eight weeks and is limited to eight attorneys. We provide the comprehensive WSBA job search guide “Getting There: Your Guide to Career Success,” which can also be found online at www.tinyurl.com/7xheb8b. For more information about monthly and weekly job group programming or to schedule a career consultation, contact Dan Crystal at danc@wsba.org, 206-727-8267, or 800-945-9722, ext. 8267.

Upcoming Board of Governors Meetings
Jan. 17–18, 2013, Olympia; March 8–9, Vancouver; April 26–27, Spokane
With the exception of the executive session, Board of Governors meetings are open, and all WSBA members are welcome to attend. RSVPs are appreciated but not required. Contact Pamela Wuest at 206-239-2125, 800-945-9722, ext. 2125, or pamela@wsba.org. The complete Board of Governors meeting schedule is available on the WSBA website at www.wsba.org/bog.

Usury Rate
The average coupon equivalent yield from the first auction of 26-week treasury bills in November 2012 was 0.152 percent. Therefore, the maximum allowable usury rate for December is 12 percent.

Correction
In the Board’s Work column in the November Bar News, one of the figures in reporting on the budget was incorrect. The correct paragraph should read:

“The Board approved the budget for the next fiscal year, which runs through September 2013. The budget is based on projected general fund expenses of $15,594,088, a reduction of $1,340,655 from the previous year. The budget reflects spending cuts instituted by the Board in response to the license-fee reduction as a result of the referendum. Revenue is projected at $15,037,529 which will result in a net loss of $556,559 if the actual revenue and expense figures match projections. The BOG already has approved tapping into reserve funds to help transition the organization to a reduced revenue model in future years.”

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USURY RATE
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Stephen C. Smith, former Chair of the Washington State Bar Association Disciplinary Board, is now accepting referrals for attorney disciplinary investigations and proceedings in Washington, Idaho, Hawaii, and Guam.

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Christie was Editor-in-Chief of the UW Law Review and Order of the Coif. She clerked for the Hon. Betty B. Fletcher of the Ninth Circuit and Hon. James L. Robart of the Western District of Washington. Her practice focuses on representation of individuals in employment litigation.

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Announcements
Disciplinary Notices

These notices of imposition of disciplinary sanctions and actions are published pursuant to Rule 3.5(d) of the Washington State Supreme Court Rules for Enforcement of Lawyer Conduct, and pursuant to the Feb. 18, 1995, policy statement of the WSBA Board of Governors. For a complete copy of any disciplinary decision, call the Washington State Disciplinary Board at 206-733-5926, leaving the case name, and your name and address.

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

Resigned in Lieu of Disbarment

David Jacquot (WSBA No. 19272, admitted 1989), of Dalton Gardens, Idaho, resigned in lieu of disbarment, effective Sept. 28, 2012. While not admitting to the violations set forth in the Statement of Alleged Misconduct, Mr. Jacquot admitted that the Association could prove by a clear preponderance of the evidence that such violations would support disbarment. This discipline is based on conduct involving a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness, involving dishonesty, fraud, deceit or misrepresentation and conduct involving moral turpitude, or corruption, or any unjustified act of assault or other act which reflect disregard for the rule of law. According to the Statement of Misconduct:

Mr. Jacquot operated his law practice through his corporation, DJPA, of which he was 100 percent owner. From January 2001 to May 2004, Mr. Jacquot was the general counsel for Company, a financial planning company that managed assets for medical professionals. Mr. Jacquot had a written agreement with Company by which DJPA received a monthly salary, management bonuses, and a percentage of the net profits of Company in return for Mr. Jacquot’s legal representation of Company and its related entities.

In 2001, Company paid DJPA in an amount in excess of $469,000. Mr. Jacquot deposited the funds into DJPA’s business account during 2001. On Sept. 15, 2002, Mr. Jacquot signed the DJPA 2001 Corporation Income Tax Return under penalty of perjury. The tax return stated that the gross receipts for DJPA in 2001 were $344,250 and undervalued DJPA’s compensation by at least $125,000. In 2002, Company paid DJPA compensation in an amount in excess of $876,000 and Mr. Jacquot deposited the funds into DJPA's business account during 2002. On September 15, 2003, Mr. Jacquot signed the DJPA 2002 Corporate Income Tax Return under penalty of perjury. The tax return represented that the gross receipts for DJPA in 2002 were $745,578, and undervalued DJPA's compensation by at least $130,000.

On May 10, May 21, and June 26, 2006, Mr. Jacquot traveled in interstate commerce, flying from Washington to California with a minor child, who is more than 48 months younger than Mr. Jacquot. One of Mr. Jacquot’s motives and purposes in traveling in interstate commerce was to engage in illicit sexual conduct with the minor. While in California, Mr. Jacquot engaged in sexual conduct with the minor.

In April 2008, Mr. Jacquot was charged in Federal District Court with two counts of subscribing to a false tax return, in violation of 26 USC §7206(1). In August 2010, Mr. Jacquot was charged in Federal District Court with three counts of Transportation With Intent to Engage in Criminal Sexual Activity, in violation of 18 USC §2423(a). On March 27, 2012, the government filed superseding informations and Mr. Jacquot entered pleas of guilty to Travel with Intent of Engage in Illicit Sexual Activity in violation of 18 USC §2423(b) and 2423(f), and Filing a False Tax Return, in violation of 26 USC §7206(1). These crimes are felonies. On June 22, 2012, Mr. Jacquot was sentenced to time served.

Mr. Jacquot’s conduct violated RPC 8.4(b), prohibiting a lawyer from committing a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness; RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and RPC 8.4(i), prohibiting a lawyer from committing any act involving moral turpitude, or corruption, or any unjustified act of assault or other act which reflects disregard for the rule of law.

Sachia Stonefeld Powell represented the Bar Association. Mr. Jacquot represented himself.

George M. Riecan (WSBA No. 12056, admitted 1991), of Tacoma, resigned in lieu of disbarment, effective Oct. 2, 2012. This discipline is based on failing to maintain client funds in a trust account.

Since Oct. 1981, Mr. Riecan has practiced primarily in the areas of workers’ compensation, personal injury, Social Security disability, and maritime law. Mr. Riecan was the sole shareholder of the Law Firm and made all management decisions for the Firm. Mr. Riecan maintained trust accounts at several financial institutions, was the only authorized signer on all of the trust accounts, and was the only lawyer responsible for the trust account records.

In August 2011, the Association informed Mr. Riecan that an Association auditor would conduct random examination of his trust accounts. At Mr. Riecan’s request, the random examination was delayed until May 2012. Shortly before the May 2012 random examination, Mr. Riecan hired a contract bookkeeper. The bookkeeper reconciled Mr. Riecan’s check register to his bank statements and his check register to the combined total of his client ledgers for the period of January 2011 to August 2012. Between Jan. 31, 2011, and August 15, 2012, Mr. Riecan’s trust accounts were short in client funds in amounts ranging from $538,794.96 to $555,679.50. Mr. Riecan had these and similar shortages of client funds in his trust account(s) for a number of years.

Mr. Riecan’s conduct violated RPC 1.15A(1), requiring a lawyer to deposit and hold client funds in a trust account funds.

Marsha Matsumoto represented the Bar Association. Kenneth S. Kagan represented Mr. Riecan.

Disbarred

Tucker F. Blair (WSBA No. 29567, admitted 1999), of Federal Way, was disbarred, effective Aug. 27, 2012, by order of the Washington State Supreme Court following a default hearing. This discipline is based on conduct involving theft, conversion, dishonest conduct, disregard for the rule of law, failure to safeguard property, failure to comply with trust account regulations regarding settlement proceeds, failure to keep the client reasonably informed, and failure to cooperate with the Association’s investigation. Between 2004 and 2011, Mr. Blair:

• Used funds belonging to one or more clients, as well as funds that he was holding to pay on behalf of one or more of
his clients, to pay his own personal and business expenses, or to make payments on behalf of other clients, with the intent to benefit himself;

• Failed on numerous occasions to deposit or hold in his trust account client funds for one or more of his clients, including funds Mr. Blair was holding to make payments on behalf of those clients. Mr. Blair knew that he was transferring client funds from his trust account into his business and personal account without notifying his clients and knowingly avoided communicating with his clients;

• Failed on numerous occasions to notify and deliver to his clients settlement proceeds which they were entitled to receive. Mr. Blair intentionally did not pay settlement proceeds to one or more clients and third parties because his purpose was to use the funds for his own personal purposes. Mr. Blair’s clients still do not know how their funds were disbursed;

• Failed to cooperate with the Association’s investigation and acted knowingly and intentionally in his noncooperation with the investigation. Mr. Blair’s lack of cooperation was a means to frustrate and delay the Association’s resolution of this matter and an effort to conceal the extent of his trust account and other Rules of Professional Conduct violations;

• Failed to provide Client A with a copy of her settlement check and misled Client A that her subrogation had been paid from the settlement funds Mr. Blair was holding in his trust account, when in fact Mr. Blair had used the money for his own purpose. Client A may still be liable for the subrogation payment;

• Failed to provide Client B with any payment for her portion of the settlement funds, and deposited the check into his business account. Client B has no idea how much she is owed, or the status of any subrogation claims, and believes she has medical liens from the accident that have also not been paid. Mr. Blair intentionally converted Client B’s trust funds for his own use and without entitlement;

• Failed to show Client C the settlement check, never provided any documents for Client C to sign, and deposited the money into his business account. Mr. Blair never provided Client C with a final accounting or any proceeds from the settlement and there are no records indicating that Mr. Blair paid Client C or her providers at any time after he received the settlement. Mr. Blair intentionally converted Client C’s settlement funds for his own use and without entitlement.

Mr. Blair’s conduct violated RPC 1.4(a) (2), requiring a lawyer to consult with the client about the means by which the client’s objectives are to be accomplished; RPC 1.4(a) (3), requiring a lawyer to keep the client reasonably informed about the status of the matter; RPC 1.4(a)(4), requiring a lawyer to promptly comply with reasonable requests for information; RPC 1.5(c)(3), requiring a lawyer, upon conclusion of a contingent fee matter, to provide the client with a written statement stating the outcome of the matter; RPC 1.15A(b), prohibiting a lawyer from using, converting, borrowing or pledging client or third person property for the lawyer’s own use; RPC 1.15A(c)(1), requiring a lawyer to deposit and hold client funds in a trust account; RPC 1.15A(d), requiring a lawyer to promptly notify a client or third person of receipt of the client or third person’s property; RPC 1.15A(e), requiring a lawyer to promptly provide a written accounting to a client or third person after distribution of property or upon request; RPC 1.15A(f), requiring a lawyer to promptly pay or deliver to the client or third person the property which the client or third person is entitled to receive; RPC 1.15A(h)(3), requiring to give reasonable notice to the client of the intent to pay fees or costs through a billing statement or other document; RPC 1.15A(h)(8), requiring that disbursements on behalf of a client or third person may not exceed the funds of that person or deposit, and that the funds of a client or third person must not be used on behalf of anyone else; RPC 8.4(b), prohibiting a lawyer from committing a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness; RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; RPC 8.4(i), prohibiting a lawyer from committing any act involving moral turpitude, or corruption, or any unjustified act of assault or other act which reflects disregard for the rule of law; and RPC 8.4(f), prohibiting a lawyer from violating a duty or sanction imposed by or under the Rules for Enforcement of Lawyer Conduct in connection with a disciplinary matter.

Kevin M. Bank represented the Bar Association. Mr. Blair represented himself. James Danielson was the Hearing Officer.

Suspended

Matthew T. Hale (WSBA No. 28041, admitted 1998), of Seattle, was suspended from the practice of law in the state of Washington for a period of one year, effective Sept. 4, 2012, by order of the Washington State Supreme Court following approval of a stipulation. The suspension will be followed by two years’ probation, effective upon reinstatement. This discipline is based on conduct involving failure to return fees, failure to safeguard property, failure to protect client confidentiality, and failure to properly terminate representation.

Between 2008 and 2011, Mr. Hale:

• Failed to return unearned fees to Client A even though the case resolved before trial. Mr. Hale charged Client A fees in advance of performance of services, and then failed to deposit the fees into an IOLTA account, without including language required by RPC 1.5(a)(2) for a flat fee agreement. In July 2010, Client A filed a grievance with the Association. Mr. Hale subsequently sent two checks to Client A in September 2011, and in February 2012, totaling $10,000;

• Failed to protect client information by disclosing information related to Client B’s representation to Client B’s adult child without Client B’s informed consent, failed to have a signed written fee agreement with Client B, and failed to deposit Client B’s fee into an IOLTA account. On Dec. 28, 2010, Mr. Hale did not appear in court with Client B and did not file a Notice of Appearance. Mr. Hale refunded two checks to Client B in April 2011 and June 2011, totaling $900;

• Failed to have a written fee agreement with Client C and to deposit Client C’s $5,000 representation fee into an IOLTA account. Client C paid Mr. Hale $5,000 for representation relating to allegations of criminal conduct, but was never charged with a crime. Mr. Hale informed Client C that the $5,000 was a flat fee. A few days later, Client C terminated Mr. Hale’s representation and requested a refund. Mr. Hale did not file a Notice of Appearance or make any court appearances on behalf of Client C, and his work for Client C consisted of two or three phone calls and a review of some documents. Mr. Hale agreed to refund Client C a total of $4,500; between February 2010 and September 2011, Mr. Hale refunded five checks totaling $4,500;

• Failed to return the unearned portion of a $5,000 flat fee that Client D paid. Mr. Hale and Client D signed a written fee agreement which stated that: “In the event our relationship is terminated before the agreed-upon legal services have been completed, you may or may not have a right to a refund of a portion of the fee.” Mr.
Disciplinary Notices

Hale did not deposit the fee into an IOLTA account and spent a total of approximately three hours on Client D’s case. On March 1, 2011, Client D requested a refund of the unearned portion of his fee and Mr. Hale agreed to provide a partial refund. In September 2011, Mr. Hale refunded $4,000 to Client D.

Mr. Hale’s conduct violated RPC 1.5(a), prohibiting a lawyer from making an agreement for, charging, or collecting an unreasonable fee or an unreasonable amount for expenses; RPC 1.5(f)(2), requiring a lawyer to write a flat fee agreement in a manner that can easily be understood by the client, including the following: (i) the scope of the services to be provided; (ii) the total amount of the fee and the terms of payment; (iii) that the fee is the lawyer’s property immediately on receipt and will not be placed into a trust account; (iv) that the fee agreement does not alter the client’s right to terminate the client-lawyer relationship; and (v) that the client may be entitled to a refund of a portion of the fee if the agreed-upon legal services have not been completed; RPC 1.5(f)(3), requiring a lawyer to take reasonable and prompt action to resolve retainer or fee disputes; RPC 1.6, prohibiting a lawyer from revealing information relating to the representation of a client unless the client gives informed consent; RPC 1.15A(c)(2), requiring a lawyer to deposit into a trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred; and RPC 1.16(d), requiring a lawyer upon termination of representation to take steps to the extent reasonably practicable to protect a client’s interests, such as giving reasonable notice to the client, allowing time for employment of another counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred.

Erica Temple represented the Bar Association. Leland G. Ripley represented Mr. Hale.

Reprimanded

Richard D. Himberger (WSBA No. 18934, admitted 1989), of Boise, ID, was ordered to receive a reprimand, effective Sept. 6, 2012, by order of the Washington State Supreme Court imposing reciprocal discipline in accordance with an order of the Supreme Court of the State of Idaho. This discipline is based on conduct involving failure to keep complete records of trust accounts, failure to preserve records for the required five years after termination of representation, and failure to respond in full to the Idaho State Bar’s disciplinary investigation.

Mr. Himberger failed to keep complete records of his trust account funds and to preserve those records for a period of five years after termination of representation. Mr. Himberger explained that some computer records relating to the trust account were lost or destroyed by a former employee. Mr. Himberger acknowledged he was not able to conclusively determine or allocate funds held in his trust from January 2010 until very recently, when he hired a CPA to identify the ownership of funds presently held in the trust account and to recommend internal accounting controls. Mr. Himberger acknowledged a lack of records demonstrating that his trust account funds were held totally separate from his own property; however, none of Mr. Himberger’s clients made any complaints to the Idaho State Bar regarding his handling of their trust account funds, and his clients did not request any accountings of their funds held in his trust account.

Mr. Himberger’s conduct violated Idaho’s R.P.C. 1.15(a), requiring a lawyer to hold property of clients or third persons separate from the lawyer’s own property; Idaho’s R.P.C. 8.1(b), requiring a lawyer to respond to Bar Counsel in connection with disciplinary matters; and Idaho’s B.C.R. 505 (failure to cooperate with or respond to a request from Bar Counsel).

Joanne S. Aebison represented the Bar Association. Mr. Himberger represented himself.

Reprimanded

Eric Valley (WSBA No. 21184, admitted 1991), of Shelton, was reprimanded, effective Aug. 7, 2012, pursuant to an Order Approving Stipulation to reprimand. This discipline is based on conduct involving failure to safeguard client property, failure to communicate, and failure to communicate the rate or basis of fees.

On April 8, 2011, Client A paid Mr. Valley $500 to represent him in his dissolution matter. There was no written fee agreement. Mr. Valley failed to deposit the fee into his trust account. On April 11, 2011, Client A paid Mr. Valley an additional $1,500; Mr. Valley again failed to deposit the funds into his trust account. Over the next two months, Mr. Valley periodically asked Client A for additional funds. Mr. Valley never gave Client A a contemporaneous billing statement or explained whether the money would be put in trust for future fees or used for fees already incurred. Client A made three additional payments to Mr. Valley between April 27, 2011, and May 9, 2011. At least part of these funds were unearned when received but Mr. Valley did not deposit any of the funds into his trust account.

In January 2011, Client B hired Mr. Valley to represent her in a custody modification action against Ex-husband. Over the next two months, Mr. Valley met with Client B several times. On April 1, 2011, Client B’s mother (Mother) delivered a check to Mr. Valley for $1,500. On August 1, 2011, Mother delivered an additional $300 to Mr. Valley. Mr. Valley did not provide either Client B or Mother with a receipt for these funds and never provided a billing statement detailing the work that he had done on the case, the amount of fees that he had incurred, and when they had been incurred. On June 20, 2011, Ex-husband filed a petition seeking to relocate to California with the children and served a copy on Mr. Valley, not Client B. Mr. Valley did not provide Client B with a copy of the petition. On Aug. 5, 2011, Ex-husband filed a proposed parenting plan and served it on Mr. Valley; the proposed parenting plan restricted all of Client B’s residential time to the state of California. Mr. Valley did not provide a copy of the proposed parenting plan to Client B.

Mr. Valley’s conduct violated RPC 1.4(a)(3), requiring a lawyer to keep the client reasonably informed about the status of the matter; RPC 1.5(b), requiring a lawyer to communicate to the client, preferably in writing, before or within a reasonable time after commencing the representation except when the lawyer will charge a regularly represented client on the same basis or rate; RPC 1.15A(c)(2), requiring a lawyer to deposit into a trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred; and RPC 1.15A(e), requiring a lawyer to promptly provide a written accounting to the client or third person after distribution of property or upon request and provide at least annually a written accounting to client or third person for whom the lawyer is holding funds.

Francesca D’Angelo represented the Bar Association. Mr. Valley represented himself. J.C. Becker was the Hearing Officer.

Suspension Pursuant to ELC 7.2(a)(3)

Michelle R. Hamel (WSBA No. 31423, admitted 2001), of Seattle, is suspended from the practice of law pending compliance with the request or subpoena, pursuant to ELC 7.2(a)(3), effective September 28, 2012, by order of the Washington State Supreme Court. This is not a disciplinary sanction.
CLE seminars are subject to change. Please check with providers to verify information. To announce a seminar, please send information to: clecalendar@wsba.org. Information must be received by the first day of the month for placement in the following month’s calendar.

### Alternative Dispute Resolution

**Settlement Conference Mediator Training**
Dec. 4 — Tacoma. 2.75 CLE credits, including 1 ethics. By Pierce County Center for Dispute Resolution; www.pccdr.org; 253-572-3657; settlementconference@pccdr.org.

**Professional Mediation Skills Training Program**
Jan. 11-13 and 26-27 — 36 CLE credits, including 2 ethics. By University of Washington School of Law; 800-253-8648 or 206-543-0059; www.law.washington.edu/events.

**40-Hour Professional Mediation Training**
Jan. 28-Feb. 1 — Lacey. 37.5 CLE credits, including 5.25 ethics. By the Dispute Resolution Center of Thurston County; 360-956-1155; onlewis@mediatethurston.org; www.mediatethurston.org.

### Business Law

**Deposition Techniques, Strategies, Tactics and Skills, with David Markowitz**
Dec. 11 — Seattle and webcast. 6 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbaCLE.org.

### Civil Rights Law

**Same-Sex Marriage, Registered Domestic Partnerships, and Committed Intimate Relationships**
Dec. 5 — Seattle and webcast. 6.25 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbaCLE.org.

### Creditor Debtor Law

**Liens: What You Need to Know Today**
Dec. 6 — Seattle and webcast. 6.5 CLE credits. By the WSBA Creditor Debtor Rights Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbaCLE.org.

### Elder Law

**Managing Uncertainty in Changing Times: Probate and Trust**
Dec. 3 — Seattle and webcast. 6.5 CLE credits, including 1 ethics. By the WSBA Real Property, Probate and Trust Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbaCLE.org.

**Retirement Planning with Mike Long and Pat Funk**
Feb. 27 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbaCLE.org.

### Environmental and Land Use Law

**Washington Water Law and the Public Trust**
Dec. 6 — Seattle. 7 CLE credits, including 1 ethics. By Center for Environmental Law & Policy; 206-829-8299; amy@celp.org; brownpapertickets.com/event/288022.

### Ethics

**Washington Ethics Highlights**
Dec. 5 — Teleconference with online PowerPoint. 1.5 ethics credits. By Rubric CLE; 206-714-3178; www.rubricCLE.com.

**Washington Ethics Highlights**

**Legal Marketing Ethics**
Dec. 31 — Teleconference with online PowerPoint. .5 ethics credits. By Rubric CLE; 206-714-3178; www.rubricCLE.com.

### Family Law

**Same-Sex Marriage, Registered Domestic Partnership, and Committed Intimate Relationships**
Dec. 5 — Seattle and webcast. 6.25 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbaCLE.org.

**Practical Aspects of Parenting Plans**
Dec. 18 — Seattle and webcast. 6.25 CLE credits. By the WSBA Family Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbaCLE.org.

**Retirement Planning with Mike Long and Pat Funk**
Feb. 27 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbaCLE.org.

### General

**Trial Stars**
Dec. 7 — Seattle and webcast. 6 CLE credits.

Movie Magic: How the Masters Try Cases
Dec. 12 — Seattle. 6 CLE credits, including 2 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Annual Law of Lawyering: Day One
Dec. 13 — Seattle and webcast. 6 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Annual Law of Lawyering: Day Two
Dec. 14 — Seattle and webcast. 6 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Clearing the Bar: A Brief History of Women in Law
Dec. 14 — Teleconference with online PowerPoint. 5.5 CLE credits, including 5 ethics. By Rubric CLE; 206-714-3178; www.rubriccle.com.

The Intersection of Law and Nursing

Best of CLE 2012 — Encore of Excellence: Day One
Dec. 27 — Seattle and webcast. 6.25 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Best of CLE 2012 — Encore of Excellence: Day Two
Dec. 28 — Webcast only. 6.5 CLE credits, including 3.75 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Making Your Case with a Better Memory, with Paul Mellor
Jan. 10 — Seattle and webcast. 6 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Solo and Small Practice Section Annual Seminar
Jan. 31 — Seattle and webcast. 6.25 CLE credits, including 1 ethics. By the WSBA Solo and Small Practice Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Insurance Law
Insurance Law 301: Intermediate and Advanced Insights and Updates
Dec. 17 — Seattle and webcast. 6.5 CLE credits, including 1 ethics. By WSBA-CLE;
800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Washington State Association for Justice Annual Insurance Law Seminar

Washington State Association for Justice Annual Insurance Law Seminar

Intellectual Property
Art Law Institute

Litigation
Trial Stars

Deposition Techniques, Strategies, Tactics and Skills, with David Markowitz
Dec. 11 — Seattle and webcast. 6 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Persuasive Oral Argument

The Other Court: Bankruptcy Litigation Skills and Techniques
Feb. 5 — Seattle and webcast. CLE credits pending. By the WSBA Creditor Debtor Rights Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Winning with Evidence: Part 2 of the “So You Want to Be a Winning Trial Lawyer” Series

Nonprofit Law
Nonprofits and Representation
Jan. 15 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Real Estate Law
Managing Uncertainty in Changing Times: Probate and Trust
Dec. 3 — Seattle and webcast. 6.5 CLE credits, including 1 ethics. By the WSBA Real Property, Probate and Trust Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Insurance Law
Liens: What You Need to Know Today
Dec. 6 — Seattle and webcast. 6.5 CLE credits. By the WSBA Creditor Debtor Rights Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

19th Annual Fall Real Estate Conference
Dec. 7 — Seattle and webcast. 6.25 CLE credits, including 1 ethics. By the WSBA Real Property, Probate and Trust Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Foreclosure Fairness in Washington

Taxation
Timely Topics in Taxation
Dec. 10 — Seattle and webcast. 3 CLE credits. By the WSBA Taxation Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Trusts and Estates
Managing Uncertainty in Changing Times: Probate and Trust
Dec. 3 — Seattle and webcast. 6.5 CLE credits, including 1 ethics. By the WSBA Real Property, Probate and Trust Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Webcast Seminars
Managing Uncertainty in Changing Times: Probate and Trust
Dec. 3 — Seattle and webcast. 6.5 CLE credits, including 1 ethics. By the WSBA Real Property, Probate and Trust Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Same-Sex Marriage, Registered Domestic Partnerships, and Committed Intimate Relationships
Dec. 5 — Seattle and webcast. 6.25 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.
Lisa Worthington-Brown was born Sept. 17, 1977, in Yakima, where she grew up. She received her undergraduate degree summa cum laude from Northwest Nazarene College, where she met her husband Michael, in 1998. She received her law degree with honors from the University of North Carolina at Chapel Hill in 2003; during law school, she provided pro bono assistance to various groups, including the Civil Legal Assistance Clinic and the Guardian Ad Litem and Innocence Project. In 2003, Worthington-Brown and her husband moved to Seattle, where she clerked for the Honorable H. Joseph Coleman of the Washington State Court of Appeals. In 2005, she joined the firm of Dianne & Ronick in Seattle, then Geirsbach & Kraft in Bonney Lake. During her husband’s struggle with cystic fibrosis and her own later battle with breast cancer, Worthington-Brown became involved in the cystic fibrosis community, blogging about her experiences and traveling the country to meet and support other patients.

Lisa Worthington-Brown died on Aug. 1, 2012, at the age of 34.

Barry Edward Wolf
Barry Wolf received his undergraduate degree from the University of Washington and his law degree from the University of Washington School of Law, where he was editor-in-chief of the Law Review. He practiced law in the state of Washington for more than 40 years. Barry Edward Wolf died on Sept. 19, 2012, at the age of 66.

Charles E. Tulin
Charles Tulin was born on Dec. 31, 1929, in Seattle, and grew up in rural Agnew, Washington. He received his undergraduate degree from the University of Washington and his law degree from the University of Washington School of Law. After law school, Tulin joined the U.S. Air Force, serving in the Judge Advocate General’s office of the Air War College at Maxwell Air Force Base, in Alabama, before transferring to Alaska. In 1958, Tulin opened his private law practice. A lawyer since Alaska’s territorial days, he played a pioneering role in the state’s nascent judicial system. He was also a 50-year member of the WSBA. An expert aviator, he loved to take family and friends on adventures in his Piper PA 12 and Cessna float planes, exploring the Alaskan wilderness.

Charles E. Tulin died on Aug. 6, 2012, at the age of 82.
The WSBA is pleased to offer its Career Center on the WSBA website — explore this valuable new resource at http://jobs.wsba.org. Employers with positions available who are interested in posting the job online (or who would like to post the job online and also publish it in NWLawyer), please go to http://jobs.wsba.org.

Lateral partner: Smith Alling, P.S. seeks a lateral partner to join the firm’s sophisticated and diverse business, estate planning, real estate, construction, and litigation practice at its office in Tacoma. Successful candidates will have portable business, excellent credentials, at least 10 years’ experience, a good reputation in the legal community, and, most importantly, a willingness to be part of a collegial work environment. Smith Alling, P.S. is widely recognized throughout the Pacific Northwest for the superior legal work it performs on behalf of its corporate clients and individuals. For confidential consideration, send résumé and cover letter to mmc@smithalling.com.

Practice management advisor, LOMAP: The Washington State Bar Association’s Law Office Management Assistance Program (LOMAP) is staffing a position that serves as an advisor, consultant, and educator specializing in law practice management, most particularly for the solo and small-firm practitioner. For more details and to apply, visit www.wsba.org/jobs.

Kalispell, Montana, litigation firm seeks litigation associate with at least one year of litigation experience. Moore, Cockrell, Goicoechea & Axelberg, P.C., a seven-attorney civil defense litigation firm in Kalispell, Montana is accepting applications for a litigation associate position. A minimum of one year experience is required. Salary/benefits depend on experience, but are very competitive. Please submit a cover letter, résumé, transcript, and research/writing sample to Moore, Cockrell, Goicoechea & Axelberg, attn: Sean Goicoechea, P.O. Box 7370, Kalispell, MT 59904.

Gordon & Rees LLP, a national law firm of 500+ attorneys in 26 offices, seeks to expand the litigation group in its growing Seattle office. We are looking for a litigation associate with a minimum of three years of experience. Experience with asbestos litigation is a plus, as is admission to the Oregon Bar. Friendly business environment with competitive salary and benefits package. Please email résumé and cover letter to searecruiting@gordonrees.com.

Wood Smith Henning & Berman LLP, a western regional litigation firm seeks lateral associate for Seattle office. Candidate should have a minimum of two years’ handling general liability and/or construction defect defense work. Strong academic credentials from an ABA-accredited school required. Please email résumés to rfaulds@wshblaw.com.

The Seattle office of Perkins Coie LLP seeks an attorney to join our Employee Benefits and Executive Compensation practice group. We represent many publicly-traded and private clients in a wide range of industries. Candidates must have a minimum of two years’ handling general liability and/or construction defect defense work. Strong academic credentials from an ABA-accredited school required. Please email résumés to jmccollum@perkcoie.com.

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Taking the Plunge

ike many Northwest-erners, I have embraced some of the outdoor sports for which our region is renowned. In the process, I have experienced two sort-of-near-death experiences that I still reflect on from time to time. The first involved swimming across the Blackfoot River in Montana on a rafting trip in law school. In that case, perhaps I had enjoyed a greater volume of adult beverages than was advisable, considering the formidable rapid that was just downstream. A few years later, while I was entirely dry inside and out, something else happened.

When I graduated from law school, I took up rock climbing. After three years of brain-crushing tedium, a hobby that carried the possibility of literal brain-crushing disaster was perversely refreshing. Early in my rock-climbing days, I traveled with friends to Icicle Creek near Leavenworth to try some “top roping.” This is a relatively safe technique in which a rope tied to the climber passes through a fixed anchor at the top of the route and then down to the climber’s partner, the “belay,” who can apply friction to the rope with a metal device if the climber falls. The climber will fall no more than a foot or two before being caught by the rope.

Or that’s how it’s supposed to work. But while you’re climbing, directing every iota of physical and mental energy upward, you’re never sure what your belayer is doing below. Ideally, she is watching closely, ready to secure the rope instantly if you lose hold of the rock. Equally important, she should be constantly drawing the rope through the belay device as you ascend, keeping it nearly taut to catch you if necessary.

I made it to the top of the 60-foot vertical route without incident. My belayer was then supposed to lower me by gradually allowing the rope to slip through the belay device. I signaled that I was ready to be lowered, which she acknowledged. I then let go of the rock, expecting to glide comfortably to the ground suspended in my harness. Instead, I simply dropped like the proverbial ton of bricks. My belayer had lost concentration and allowed several feet of slack to develop in the rope. Suddenly I had tunnel vision, and the only thing I could see was the part of the rope between the anchor and my belayer, which was zipping furiously upward right in front of me. Instinctively I grabbed at it. That made no sense, since nowhere outside of a Hollywood movie could a climber arrest a sheer fall by simply grabbing the rope. But apparently the primordial brain is highly averse to falling 60 feet onto a canyon floor. Sadly, all I had to show for my effort was a groove in my palm like a grill mark on a hot dog.

Tradition says that when you are about to die your life flashes before your eyes. That probably depends on how much life you have lived and how much time you have to think about it. My plunge into the abyss was too brief for a full retrospective. But I remember having two fragmentary thoughts: 1) I hope I die as soon as I hit the ground, and 2) somebody is going to have to tell my mom that her only child just died while goofing around.

Then, before I could get any more melodramatic — SPROINGGGGGGG! The rope jerked taut, leaving me dangling like a spider. Other than a wrenched pelvis, though, I felt nothing but relief that my belayer had recovered from her mistake and caught me well before I hit the ground.

My sporting close calls pale alongside the experiences of people who have survived life-threatening injuries or illnesses. Mine were just a few seconds of fearing my number might be up. But while I can’t say those moments changed my life, they’ve convinced me there are certain things I will not be thinking when my time really comes:

• I wish I had spent less time with my kids while they lived at home, because there was plenty of time to make up for it later.
• If I had just kept the money I donated to charity over the years, I could have bought more stuff for myself and enjoyed life on a higher level.
• I should have yelled more at my wife.
• I wish I had spent more time indoors, watching an even bigger TV.
• I’m glad I permanently alienated myself from that old friend after we had a big argument over who was the worse driver.

Well, you get the idea. If you ever find yourself falling from a rock or swimming frantically to avoid a rapid, you’ll have a leisurely second or two to start your own list.
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