HATE SPEECH, GUNS, AND THE FIRST AMENDMENT
As you discover what strength you can draw from your community in this world from which it stands apart, look outward as well as inward.

BUILD BRIDGES INSTEAD OF WALLS.

- SONIA SOTOMAYOR

Thanks to our amazing staff and the superb volunteers who gave their time in 2017 to SGB’s monthly free legal clinic at El Centro de la Raza. Because of your dedication, the legal clinic was, once again, a resounding success.
BECAUSE...

YOUR FIRM DESERVES THE BEST PROTECTION FOR THE GREATEST VALUE.
MORE STATE BARS ENDORSE ALPS THAN ANY OTHER CARRIER, INCLUDING YOURS.
IF YOU GET A CLAIM, YOUR CLAIM WILL BE HANDLED BY LICENSED ATTORNEYS.

BECAUSE BAD THINGS CAN HAPPEN TO GOOD LAWYERS

Find out more about your WSBA-endorsed carrier at:
www.alpsnet.com/nwlawyer

ALPS
THE NATION’S LARGEST DIRECT WRITER OF LAWYERS’ MALPRACTICE INSURANCE.

(800) 367-2577 • www.alpsnet.com • learnmore@alpsnet.com
10 Hate Speech, Guns, and the First Amendment
Protecting the freedom to express “the thought that we hate.”
by Judy Endejan

21 Fortune Favors the Insured
The wide-reaching impact of Xia v. ProBuilders
by Thomas M. Williams

29 Breaking Up Is Hard To Do
Compensation rights of predecessor counsel
by Julia Doyle

36 2017 WSBA APEX Awards
Acknowledging Professional Excellence

42 Celebrating Our 50-Year Members

On the cover: Charlottesville, VA, Aug. 12, 2017. White nationalists, neo-Nazis and members of the ‘alt-right’ exchange insults with counter-protesters as they attempt to guard the entrance to Emancipation Park during the ‘Unite the Right’ rally. After clashes with anti-fascist protesters and police, the rally was declared an unlawful gathering and people were forced out of Emancipation Park, where a statue of Confederate General Robert E. Lee is slated to be removed. Photo by Chip Somodevilla/Getty Images.
COLUMNS

8 President’s Corner
A fork in the road . . . pick a path, follow it, see where it leads, and be open to adaptations
by Brad Furlong

DEPARTMENTS

5 Inbox

9 BarBuzz
Member Benefits

48 OnBoard
Nov. 15-16 Board of Governors meeting, Seattle

64 Beyond the Bar No.
Jean Y. Kang

ESSENTIALS

50 Need to Know
News and Information of Interest to WSBA Members

53 CLE Calendar

54 Discipline and Other Regulatory Notices

56 Announcements

58 Professionals

61 Classifieds
The current circulation is approximately 35,000.

For questions or a how-to guide on writing an article for NWLawyer, email nwlawyer@wsba.org. If you have an article of interest to Washington lawyers or a topic in mind, we'd love to hear from you. Need a topic? We have a list of subjects we'd like to cover.

NWLawyer relies almost entirely on the generous contribution of articles from WSBA members and others.

Questions? Contact nwlawyer@wsba.org.
RE-BALANCING BABIES AND BILLABLES?

Prior to becoming an attorney, I played competitive junior tennis. I learned many lessons through tennis. One key lesson is that you, and you alone, are solely responsible for everything that happens on the court, including the ultimate win-lose result. A second lesson is that tennis is about tennis.

With that in mind, I read with interest the article in the October NW Lawyer, “Balancing Babies and Billables – What Gives?” by Bridget Schuster and Megan C. Clark. I strongly agree with the authors that law firm billable minimums can conflict with modern family structure, and that more flexibility should be accorded to parents. In fact, as the founder of a small Seattle law firm, my firm has two Of Counsel attorneys who are both parents, work flexible reduced schedules, and are talented attorneys who offer much to our clients and my firm.

However, I take issue with the notion that an attorney is somehow being treated unfairly if he or she works less because of parenting responsibilities and, as a result, does not achieve similar partnership or financial rewards as other attorneys who produce more. The authors compare two parent-associates, Joan and Steve, with a third associate, Barry, who is not a parent. They state, “While Joan and Steve fail to make their hours because of their new children, Barry will make his hours and likely get a bonus. Barry may also become a partner much sooner than Steve or Joan because of his exemplary performance in billing hours that same year.” I agree; that’s likely true. And what’s wrong with that? You, and you alone, are solely responsible for your own results. As a junior tennis player, I practiced up to five hours a day. Was I a better player than, say, someone who practiced an hour a day? Generally, yes. If I was willing to work harder, why shouldn’t I be entitled to the trophies and higher rankings that resulted from my hard work? Similarly, if one attorney works harder than another attorney, achieving greater mastery of skills and earning more money for the law firm, why shouldn’t that attorney be rewarded for those achievements and financial earnings? And, just like tennis is about tennis, business is about business. A law firm is a business. I could lose a match because I had other, compelling personal obligations and was not able to practice as much as needed. I couldn’t walk over to the umpire and say, “Would you mind spotting me a few games here due to my personal obligations outside of tennis?” How would that be fair to the other player? Tennis doesn’t work that way, and neither should business.

I passionately agree with the authors that many law firms do not allow attorney-parents enough flexibility to be successful at both practicing law and fulfilling their family obligations. Just like the authors, I’d like to see that old-school system changed so that the valuable contributions of parent-attorneys are fully recognized and respected, and those attorneys are also fairly compensated for their work. But at the same time, parent-attorneys who are contributing less to a law firm cannot reasonably expect to achieve the same partnership or financial rewards as other attorneys who pour more time and energy into their careers, just like the tennis player who practices one hour a day cannot reasonably expect to beat the player who practices five. Rather than having a one-size-fits-all system, wouldn’t it be great if law firms created more flexible and fair systems of compensation and recognition to address the wide-ranging needs of modern lawyers?

Stacey Romberg, Seattle

PSEUDONYMITY AT WILL?

I enjoyed reading Isham Reavis’s well-written article on pseudonymous litigation (“Comes Now the Plaintiff, John Doe,” by Isham Reavis, Nov. NWLawyer). His article correctly describes the existing state of the law, except for the last sentence, where he says that “would-be John and Jane Does, as they step into the courtroom, may don the mask at will” (my italics).

That’s not quite right. In Doe G v. Department of Corrections—a case in which I, along with the ACLU of Washington, represented the pseudonymous plaintiffs—the Court of Appeals did not allow pseudonymous litigation “at will.” To the contrary: it allowed the plaintiffs to proceed pseudonymously because (1) proceeding in their own names “would eviscerate their ability to seek relief”; (2) they had “demonstrated a significant risk of harm if their identities [were] disclosed”; (3) their names “have little bearing” on the public’s interest in the case; (4) pseudonymity did not prejudice the other litigants; (5) the “plaintiffs’ interests in anonymity outweighed the public’s interest in knowing their names”; and (6) there were “no reasonably viable alternatives” to pseudonymity. Doe G v. Dept’ of Corr., 197 Wn. App. 609, 628, 391 P.3d 496 (2017) (internal quotation marks omitted). To satisfy these rigorous conditions for pseudonymity is hardly to “don the mask at will.”

Now maybe Reavis means that anyone can begin an action using a pseudonym. That’s true, but as Reavis himself points out, how would pre-filing restrictions on pseudonymity “even work, if [a] suit has not yet been filed?” And, in any event, even if one can easily begin an action pseudonymously, remaining pseudonymous is far more difficult.

Benjamin Gould, Seattle

RESPONSE FROM THE AUTHOR:

Mr. Gould is entirely right. The closing line meant to refer to initiating
Inbox

an action pseudonymously, but, as he points out, that’s weak tea. I appreciate the comment and accept my deduction for not sticking the landing.

WHERE ARE THE DETAILS?

In years gone by, attorney disciplinary notices contained enough factual detail to permit the reader to understand how an attorney had gotten into difficulty. Wisdom and experience could be gained from learning about another’s misfortune. Very similar to reading an aircraft accident report.

Now that disciplinary information has been sanitized, it is of little value to anyone and might as well go unpublished.

If privacy is the concern, then I would recommend deleting the offending attorney’s name and just publishing the facts of the misconduct with some detail. We learn from our mistakes and the mistakes of others. Sharing this information will perhaps preclude another attorney from stumbling.

Carleton B. Waldrop, Pullman

RESPONSE FROM NWLAWYER:

The change made to the format of the disciplinary notices in NWLawyer in 2013 was not related to privacy concerns. Rather, the goals were to increase transparency, eliminate subjectivity in the notices, be more timely, and reduce the extensive amount of staff resources required to prepare a summary of the facts of each case. The online version of NWLawyer (nwlawyer.wsba.org) provides links to the actual decisions and orders in each case, allowing members to read and compare decisions from the hearing officer, the Disciplinary Board, and the Washington Supreme Court’s final order. You can also look up the respondent in the legal directory on the WSBA website (wsba.org) and scroll down to “Disciplinary History.”

In short: different detail on the pages of NWLawyer and significantly more information available online.
Judge Robinson is available to provide mediation, arbitration, special master and related services.
A few years ago I was on a panel comprised of mid- to late-career women and men who were addressing career choices for third- and fourth-year students at one of my daughters’ liberal arts colleges. One bit of advice I had for these bright, young, and eager undergrads was to be decisive—to follow their passions and to not be overly wedded to a long-term career outcome, especially if the direction was based on their parents’ expectations, and not their own desires, talents, and means. I encouraged them to pick a career that they found on their own, to remain open to other paths, and to not fear a fork in the road. Forks in the road (as well as roadblocks) can come out of nowhere, and charting a new course is fine. In other words, finding your way through life can properly include some level of trial and error. Nothing is a mistake if you learn from it. The essence of life itself is the ability to successfully change and adapt.

Many of us in the legal profession are nearing the end of our careers. Our paths may be nearing their ends or we may feel like they are no longer leading forward. Some of us may be tired, some of us may be facing physical or mental health issues, and some have experienced changes in our families. In my case, I had a pair of discoveries: first, a feeling that I had explored my own path long enough and second, recognition that now, in my mid-60s, my time to follow any other path was finite and its duration unknowable. I realized life could hold other rich experiences and opportunities, and if I didn’t act to explore them soon, I might not get a chance. But could I change?

Being a practicing lawyer is, for many of us, an all-encompassing avocation. By training and instinct we strive to serve our clients’ needs. Lawyering is not a profession easily left at the office and the mental process of legal analysis, drilled into us in law school and indispensable in our practices, can be a pervasive presence. For small-firm practitioners like me, the daily task of owning and operating a small business is layered on top of the professional responsibilities. I suspect (but have not experienced this directly) that the responsibilities of working in a larger firm are equally demanding of our hearts and our time. So, even if we feel ready for change, see its potential advantages, and recognize that it’s due to occur, actually making the change is very hard. Walking away from a career-imposed lifestyle to which our identity and self-worth is tied, is tough.

And then there is money... giving up the income from a practice is risky and, as Jim Morrison reminds us, “the future’s uncertain.” What is my budget? How will my needs or my spouse’s needs change? How do I want to live out my years? How long will I live? Answering these questions with the precision we have come to expect of ourselves is difficult, so our inherently conservative nature makes it hard to feel we are financially ready.

All these questions have swirled around my wife/law partner and me for years. We’ve talked about our future and what to do with our practice—bring in a young associate/heir, form a larger partnership with local lawyers, form an alliance and integrate with lawyers from outside the community, simply close the doors and refer all the clients out? All the options had perceived drawbacks and it was easy to be too busy to figure it out. As the fact of mortality became
more real, what finally won out was the advice I gave the undergrads: pick a path, follow it, see where it leads, and be open to adaptations. Ironically, during the same week that I inherited the WSBA presidency last summer, I decided to start bringing my career as a practicing lawyer to an end.

At year-end, my days as a private practitioner in a small-town small practice will end. I will cut back to half-time as in-house counsel for one of my clients, and the balance of my practice will be absorbed into a firm expanding into Skagit County. In a few years, I will finish working.

Some have asked with disbelief, “Do you really want to give up your practice you worked so hard to build? Do you think you’ll be happy working half-time? In a few years, will you want to leave the legal career that’s defined the last 38 years of your life?” The short answer is a resounding “yes!” At least one, new and exciting opportunity—to be a part of team—is before me and others will likely arise. My course through the law has followed different paths, but now another fork has revealed itself, as the end of this trail comes into sight. Don’t get me wrong, I have loved being a lawyer; I’m proud to be a lawyer and proud of our profession. My career has been rewarding in so many ways. I’m just ready to see what other rewards might be out there . . . and I’ll only get one chance to find out. Although a bit uncertain, my new path is inviting and holds the promise of a full life. I am truly excited to see where this route (and others to come) will lead.

When I look at the demographics of our members, I know I am not alone in these circumstances. Having just hosted the celebration of members who have served our profession for 50 years—since 1967—I applaud and respect immensely those who devote so much to our profession. Each of us must choose her or his route.

For each of you, our members, whether you decide to alter or steady your course, I wish you a safe and satisfying journey. May we all choose wisely and, as Gene Roddenberry might urge, “boldly go where no one has gone before,” down a path of our own choosing. 

---

**WSBA President Brad Furlong** is a partner at Furlong-Butler Attorneys in Mount Vernon. He can be reached at brad.wsba@furlongbutler.com.
Protecting the freedom to express “the thought that we hate:”

Hate Speech, Guns, and the First Amendment

by Judy Endejan

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.
Political protests are not new. What is new is the message of the protesters—and the guns they carry when protesting. An example of this new type of protest occurred in Charlottesville, Virginia, on August 12, 2017, when a group of heavily armed white nationalists and supremacists held a planned “Unite the Right” rally, chanting their message of “Blood and soil” and “Jews will not replace us.” The group held a permit for this rally. A large group of student counter-protesters clashed violently with the group. One woman was killed when a rally-goer drove his vehicle into a crowd of pedestrians.

The First Amendment to the U.S. Constitution protected the hate speech of the white supremacists. “Hate speech” is abusive or threatening speech or writing that expresses prejudice against a particular group, especially on the basis of race, religion, or sexual orientation. But should the First Amendment have protected the rally organizers when they carried guns—and even semi-automatic weapons? Does the combination of toxic hate speech and a visible arsenal create an exception to First Amendment protection because it causes an incitement to reasonably foreseeable, imminent lawless action?

Two distinct constitutional interests were involved in the Charlottesville scenario: the First Amendment right to free speech and the Second Amendment right to bear arms in an “open carry” state like Virginia. At least one pundit noted that the exercise of Second Amendment rights by the white supremacists in Charlottesville indirectly led to the suppression of free speech rights of those who protested their hate speech, due to the presence of guns. Although Washington is not an “open carry” state, guns have been present at protests involving hate speech here.
PROTESTS CLOSE TO HOME

In January 2017, Milo Yiannopoulos, a controversial figure and then-editor for far-right Breitbart News, spoke at the University of Washington. This provoked an angry confrontation between his supporters and protesters that resulted in the shooting of a man present at the event. The Seattle Times reported on one interaction that illustrates current hate speech discourse:

“White power!” one side shouted.
“Nazi scum!” the other side replied.

Intolerance of speech that goes against the mainstream views of a community seems to be the flavor of the day. In 2017, Evergreen State College Professor Bret Weinstein was called a racist and was the subject of threats and student protests after he criticized changes to Evergreen’s annual “Day of Absence” in which, traditionally, students of color leave campus for the day to demonstrate their contributions, while white students have discussions about diversity. The proposed change? White students who chose to participate were asked to go off campus to talk about race issues, and students of color would stay on campus for diversity events. Weinstein said he felt that was an “act of oppression.” The ensuing protests and allegations of racism and intolerance closed the campus for three days in June 2017, and graduation was moved to Cheney Stadium in Tacoma. Weinstein and his wife, Heather Heying, resigned from their faculty positions and in July 2017 filed a $3.85 million tort claim alleging the college failed to “protect employees from repeated provocative and corrosive verbal and written hostility based on race, as well as threats of physical violence.” Evergreen State College subsequently agreed to pay the couple $450,000 in damages and $50,000 toward their attorney fees.

LAWYERS’ ROLE IN EDUCATING ABOUT FIRST AMENDMENT PROTECTIONS

Most Americans assume that the First Amendment will protect their speech from government intervention. But when it comes to the speech of someone else that is distasteful or repugnant to them (i.e., pro-Nazism), many think that such speech should be suppressed!

A recent Brookings Institution survey shows that 44 percent of students who responded said that the First Amendment does not protect “hate” speech; 51 percent said it was okay to shout down a speaker for “offensive and hurtful statements”; and 19 percent said violence against controversial speakers would be acceptable.

Hate speech pushes buttons in different ways, and there is no government “solution” for dealing with it. Some argue that an individual’s right to engage in hate speech should be limited for only the most compelling reasons. Others claim that the community’s well-being is society’s most important goal and that hate speech should be regulated in the interest of community harmony, particularly when there are high economic costs to enforcing free speech rights for speech of marginal value to society. The first approach—requiring a compelling governmental interest for limiting hate speech—is most consistent with First Amendment values and precedent, which do provide room for preventing another Charlottesville. Further, upholding these First Amendment values might best promote society’s well-being in the long run.

Clearly, it’s time for some serious discussion and education about hate speech and the First Amendment. For many lawyers, the First Amendment was an interesting topic in constitutional law in law school, with little relevance to daily life. Now, however, free speech tensions are reported regular-
ly in the news. Lawyers need to understand how critical the First Amendment is to the fabric of American society and constitutional democracy. They are in the best position to explain and uphold this critical constitutional right, even in the face of hate speech.

Children, spouses, parents, and friends may ask you to explain why we need to tolerate people with morally offensive positions expressed in speech. First, we don’t get to choose—because the protections of the First Amendment may extend to really odious people who say offensive things. Second, the First Amendment does not protect all speech: some hate speech may be limited under the First Amendment. This article will discuss both possibilities and—it is hoped—will provide a refresher to assist you in explaining the reasons why, or why not, the law tolerates speech that may make their skin crawl or blood boil.

Only 45 words in length, the First Amendment stands alone in the world as an unparalleled protector of individual liberty:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

The language of the First Amendment is deliberatively negative (“Congress shall make no law . . .”) to expressly keep government out of regulating free speech. This differs from the language of other countries’ constitutions that simply guarantee citizens “freedom of speech, of the press, of assembly, demonstrations and association.” (See, e.g., Constitution of Eritrea, Art. 19). Such broad guarantees promise no actual protection from government action, whereas the First Amendment specifically directs government (federal and state) to not impair free speech, unless other public interests compel it.

Many Americans either do not realize, or forget, that the First Amendment bars only governmental, not private, suppression of speech. Governmental suppression can take several forms, including prior restraint; post-speech punishment; enactment of content-based laws; or imposition of unreasonable restrictions on assembly in public places.

Government prohibitions on speech generally target its content and are usually found to be unconstitutional under the First Amendment because they cannot survive the harsh “strict scrutiny” test applied by courts. This test requires that all content-based government speech restrictions be necessary, and impose the least restrictive means possible, in order to advance a compelling government interest.

FIRST AMENDMENT JURISPRUDENCE IN THE 20TH CENTURY

Twentieth-century First Amendment jurisprudence arguably had a liberal flavor, protecting the free speech rights of the powerless, ranging from students wearing armbands to a priest making anti-Semitic and pro-Fascist comments. This has changed recently, as the U.S. Supreme Court has seemed to reverse the pattern by protecting more powerful and conservative voices. From this shift the seeds of the conservative free speech movement were spread. Currently the most strenuous voices arguing for free speech come from the conservative right, rather than the liberal left.

As a legal principle, speech viewpoint (conservative versus liberal) must not matter, because the First Amendment should be agnostic, or viewpoint-neutral, in its application. Justice William Brennan best explained why in the flag-burning case of Texas v. Johnson, 491 U.S. 397, 414 (1989): “If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression...
Most Americans assume that the First Amendment will protect their speech from government intervention. But when it comes to the speech of someone else that is distasteful or repugnant to them, many think that such speech should be suppressed.

This principle means that hate speech, per se, is protected by the First Amendment. This was made clear last summer in *Matal v. Tam*, 137 S. Ct. 1744 (2017), in which the Supreme Court clarified that the First Amendment protects not just outright prohibition of speech but even lesser restrictions, such as the government’s refusal to let The Slants (a band) trademark its name. This refusal was based on the Copyright Office’s claim that this name might be seen as demeaning to Asian-Americans. Hence, offensive speech—even involving alleged racially offensive views—must be tolerated under the First Amendment. Writing for the majority, Justice Alito rejected the idea advanced by an amicus that the government has an interest in preventing speech expressing ideas that offend, stating:

[T]hat idea strikes at the heart of the First Amendment. Speech that demeans on the basis of race, ethnicity, gender, religion, age, disability, or any other similar ground is hateful; but the proudest boast of our free speech jurisprudence is that we protect the freedom to express ‘the thought that we hate.’

*Id.* at 1764 (citation omitted).
Justice Kennedy’s concurrence noted:

A law that can be directed against speech found offensive to some portion of the public can be turned against minority and dissenting views to the detriment of all. The First Amendment does not entrust that power to the government’s benevolence. Instead, our reliance must be on the substantial safeguards of free and open discussion in a democratic society.

*Id.* at 1769.

Prior hate speech cases reflect the themes reiterated in *Matal v. Tam.* In *Terminiello v. Chicago*, 337 U.S. 1 (1949), the Supreme Court overturned the conviction of a priest who gave a raging anti-Semitic and rightwing speech in Chicago that prompted protesters to riot. The Court said:

> [F]reedom of speech, though not absolute ... is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest. ... There is no room under our Constitution for a more restrictive view.

*Id.* at 4 (citations omitted).

In *Brandenburg v. Ohio*, 395 U.S. 444 (1969), the Supreme Court reversed the conviction of a Ku Klux Klan member under a statute that punished certain “advocacy” to accomplish political reform. Punishment for mere advocacy violates the First Amendment “except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.” *Id.* at 447.

In 1977, the Supreme Court upheld the right of Nazis to march in Skokie, Illinois, home to a great number of Holocaust survivors. The decision in *National Socialist Party of America v. Village of Skokie*, 432 U.S. 43 (1977), was issued per curiam, decided on procedural grounds, and it directed the case back to the Illinois Supreme Court, which then allowed the Nazis to march in Skokie. The Nazis chose instead to march in Chicago. Given the procedural posture of this case, it is not clear how the U.S. Supreme Court would apply the First Amendment to provocative and intimidating hate speech expressing fascist and/or racist ideas.

In 1992, the Supreme Court, in a cross-burning case, struck down an ordinance that prohibited symbols that aroused anger or alarm based on race, color, creed, or gender. The ordinance violated the First Amendment because it was overbroad, the court held in *R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992). *R.A.V.* was modified a bit in *Virginia v. Black*, 538 U.S. 343 (2003), in which the Supreme Court upheld unconstitutional a Virginia statute that treated any cross burning as prima facie evidence of intent to intimidate, even though the state could choose to prohibit only those forms of intimidation “most likely to inspire fear of bodily harm.”

In *Snyder v. Phelps*, 131 S. Ct. 1207 (2011), the Court, on First Amendment grounds, set aside a jury verdict finding Snyder, the founder of a conservative church, liable for intentional infliction of emotional distress. Snyder and his family picketed on public land near the funeral of a Marine corporal killed in Iraq in the line of duty. Their signs carried such offensive language as “Thank God for Dead Soldiers” and “God Hates Fags.” The Supreme Court found the picketing was at a public place on a matter of public concern and entitled to First Amendment protection. “The point of all speech protection... is to shield just those choices of content that in someone’s eyes are misguided, or even hurtful.” *Id.* at 1219.

All of the foregoing cases dealt with messages repugnant to general society because they promoted fascism, anti-Semitism, racism, and hatred. These are emotional issues that could lead to violence between the speaker and listeners. Yet the Supreme Court has ruled again and again that this possibility does not justify government suppression of speech.
LOCATING THE BOUNDARY BETWEEN PROTECTED AND UNPROTECTED SPEECH

What does it take, then, for speech to lose First Amendment protection? There are well-settled exemptions to First Amendment protection: obscenity, child pornography, defamation, speech crimes (i.e., perjury, blackmail, solicitation to commit a crime), fighting words, and incitement to imminent lawless action.17 Supreme Court Justice Oliver Wendell Holmes best described speech not worthy of First Amendment protection in United States v. Schenk, 249 U.S. 47, 52 (1919): “The most stringent protection of free speech would not protect a man from falsely shouting fire in a theatre and causing a panic.” The theory behind the foregoing speech restrictions is that certain statements are “of such slight social value . . . that any benefit that may be derived from them is clearly outweighed by the societal interest in order and morality.”18

Today’s highly charged environment may well test when hate speech crosses a boundary between protected and unprotected. If an alt-right protester outside a full synagogue shouts “kill the Jews,” while armed with a semi-automatic rifle, does this constitute fighting words or incitement to imminent lawless action? Arguably, this statement may constitute “fighting words” under Chaplinsky v. New Hampshire, 315 U.S. 568, 572 (1942), in which the Court said that the state may punish those words “which by their very utterance inflict injury or tend to incite an immediate breach of the peace.” Fighting words are “those personally abusive epithets which, when addressed to the ordinary citizen, are, as a matter of common knowledge, inherently likely to provoke violent reaction.” Cohen v. California, 402 U.S. 15, 20 (1971).

Under Brandenburg v. Ohio, 395 U.S. 444 (1969), fighting words usually lead to incitement to imminent lawless action. Could the alt-right’s speaker’s speech produce such action? Does it constitute an impermissible “true threat”? True threats include statements by which the speaker means to communicate a serious expression of intent to commit an act of unlawful violence to a particular individual or group of individuals. Watts v. United States, 394 U.S. 705, 709 (1969) (“political hyperbole” is not a true threat). A true threat must be a threat to a person or group of persons with the intent of placing the victim(s) in fear of bodily harm or death. Anyone worshipping at the synagogue in the example above may well fear for his
or her life when confronted with a clear threat and a rifle from the alt-right speaker.

On the other hand, if “kill the Jews” was uttered by an unarmed speaker from a podium to an audience of students, the statement would probably be protectable hate speech. In this circumstance, an imminent threat to life appears more of a possibility than a probability. Taking the hypothetical a step further, could the alt-right speaker get a permit to protest on the street or sidewalk outside the synagogue? The First Amendment protects the right of the people “to peaceably assemble.” Under the First Amendment the government may impose reasonable restrictions on the time, place, or manner of protected speech, provided that the restrictions “are justified without reference to the content of the regulated speech, . . . are narrowly tailored to serve a significant governmental interest, and . . . leave open alternative channels for communication of the information.” Ward v. Rock Against Racism, 491 U.S. 781, 791 (1989)(citation omitted).

Arguably, the judge who allowed the “Unite the Right” rally in Charlottesville in a public park might have reached a different decision if he was fully apprised of the presence of guns and a private militia for the white supremacists. The presence or absence of firearms at a protest must be a critical factor in determining whether to allow marches in the streets or parks,
because there is a significant governmental interest in protecting all citizens from gun violence that is reasonably foreseeable when a controversial group applies to march to disseminate known hate speech. The alt-right speaker urging “Kill the Jews” while holding a rifle probably would not get a permit, or would be violating a condition of a permit, and could be arrested for legitimate reasons that would have nothing to do with his speech.

This illustration shows that, as in so many other areas of the law, application of the First Amendment is extremely fact-dependent, because so many variables affect the outcome. The only seemingly new variable of major concern that should affect First Amendment analysis is the presence of guns accompanying hate speech, because America is more and more an armed society.

In the absence of guns, the First Amendment should continue to protect hate speech or we risk becoming a hypocritical society, with a double standard that allows the First Amendment to be applied selectively. As a practical matter, the First Amendment must protect non-violent hate speech so that it may also apply to protect speech that reacts to it.

The First Amendment rests upon a belief that freedom of speech is essential to individual natural liberty, essential to what it means to be human. Without freedom of speech citizens cannot have freedom of thought. As Justice Kennedy explained, “First Amendment freedoms are most in danger when the government seeks to control thought or to justify its laws for that impermissible end. The right to think is the beginning of freedom, and speech must be protected from the government because speech is the beginning of thought.”

Without the First Amendment, the very system of government advocated by many who espouse hate speech could be possible. Fascism, Nazism, or any type of authoritarian government depends upon silencing opposition and controlling thought. The First Amendment, enforced by federal courts, erects a barrier against this possibility. The price Americans pay for this protection must be tolerance for the expression of viewpoints that offend, disgust, or spew propaganda—or we will be no better than those we want to silence.

One way to dilute, or even silence, hate speech might be to ignore it, giving it no publicity or public attention. This approach seems both unlikely, and unlikely to be successful, because many Americans feel the need to openly and actively refute speech they believe to be false, wrong, dangerous, or contrary to strongly held values. Therefore, the antidote to hate speech must be countering speech that corrects it or persuades an audience to reject it.

Justice Louis Brandeis, in his concurring opinion in Whitney v. California, 274 U.S. 357, 377 (1927), said “If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the process of education, the remedy to be applied is more speech, not enforced silence.” (Emphasis added.)

So start speaking—but do not carry a gun.
NOTES
1. Historically, protesters seeking First Amendment protection were more leftist or liberal in nature and tended to protest against the government, such as during the Vietnam War era. See, e.g., Cohen v. California, 403 U.S. 15 (1971). 2017 saw the rise of alt-right protesters with hate speech messages.
9. In September, the University of California – Berkeley spent about $600,000 to erect concrete barriers and pay for the massive police presence required to keep violence down at a speech given by conservative columnist/speaker Ben Shapiro, where the “antifa” (short for anti-fascists) protested. See n. 7. Unfortunately, the antifa, in its goal of combatting white supremacists, has embraced the same destructive, violent tactics as those they oppose in combating the far-right message.
10. Floyd Abrams, one of the preeminent First Amendment attorneys in the U.S., explains in his recently released book, The Soul of the First Amendment (Yale University Press 2017), how and why the First Amendment provides the most rigorous free speech protection in the world.
11. The U.S. Supreme Court, in Gitlow v. New York, 268 U.S. 652 (1925), first applied the First Amendment to the states.
12. Thus, the First Amendment does not
For decades, McKinley Irvin has helped clients navigate through some of life’s most difficult challenges. Our attorneys, like prominent family law attorney Jennifer Payseno, are known for their relentless pursuit of successful results, whether representing individuals in high-asset divorce litigation or negotiating complex property division. But perhaps our most noted distinction is our steadfast commitment to protecting what our clients value most.

**JENNIFER PAYSENO, PARTNER**
Second Vice President, King County Bar Association, 2017-2018
Distinguished as a Washington Super Lawyer, 2010-2017
Treasurer, King County Bar Association, 2013-2015
Chair, King County Judicial Screening Committee, 2009-2010
On April 27, 2017, the Washington Supreme Court issued its opinion in *Xia v. ProBuilders Specialty Insurance Co.*, 188 Wn.2d 171, 393 P.3d 748 (2017), a seemingly minor environmental insurance coverage and bad faith lawsuit relating to a policy’s pollution exclusion. But in its ruling the court drastically expanded the application of an insurance doctrine known as the efficient proximate cause (EPC) rule. While admittedly the “EPC rule” sounds about as exciting as the infamous “rule against perpetuities,” it’s worth understanding. The *Xia* decision, and its expansion of the EPC rule, is not only poised to launch a sea change in Washington insurance law, it could resonate throughout the entire legal community. Post-*Xia*, policyholders now have a much greater chance of establishing coverage, or a wrongful denial of coverage, in liability insurance disputes. Moreover, if properly understood and utilized, *Xia* can and should change the practices of plaintiffs’ and defense attorneys.
UNDERSTANDING THE EPC RULE
Notwithstanding the dauntingly technical tone to the phrase “efficient proximate cause,” the concept is relatively simple: under the EPC rule if the policyholder’s injury or damage results from both a cause that is excluded under the policy and a cause that is covered under the policy, and the covered cause is the “EPC”—i.e., the predominant cause of the injury or damage—then the injury or damage will be covered notwithstanding the fact that an excluded cause was a contributing factor.

As an example, let’s say a massive rainstorm rolls in and the interior of your home is damaged when the rainwater overwhelms your roof’s drainage system. Your property insurance policy provides coverage for storm and water damage, but excludes faulty maintenance. You have not properly maintained your roof’s drains. Under the EPC rule, the damage to your home may still be covered—notwithstanding your failure to maintain the roof—if the storm is found to be the predominant cause of your loss.

XIA AND EXPANSION OF THE EPC RULE
Xia suffered injuries from the release of carbon monoxide because the contractor who built her home negligently installed an exhaust vent attached to the hot water heater. Xia sued the contractor, which tendered the claim to its commercial general liability (CGL) insurer, ProBuilders. ProBuilders denied coverage, citing the policy’s pollution exclusion. As part of the settlement in the underlying lawsuit, the contractor assigned Xia all of its rights and claims against ProBuilders. Xia then filed a coverage lawsuit against ProBuilders (as the contractor’s assignee), alleging wrongful denial of coverage and bad faith.

The Washington Supreme Court found that the pollution exclusion in the ProBuilder’s policy applied to Xia’s injuries caused by the release of carbon monoxide. But the court ultimately held—as a result of its decision to apply the EPC rule to a CGL insurance policy for the first time—that it was “clear that the ProBuilders policy provided coverage for the [e] loss.” The court explained that although the policy excluded damage caused by the release of carbon monoxide, the policy did not exclude, and therefore covered, “negligent installation.” Because the release of carbon monoxide only occurred as a result of the negligent installation of the exhaust vent, the court found that the negligent installation was the EPC, that the policy therefore covered Xia’s claim against ProBuilders, and that ProBuilders wrongfully denied coverage.

WHAT DOES IT ALL MEAN?
Xia’s impact on the pollution exclusion and environmental loss claims
The insurance industry has long relied upon the pollution exclusion to deny coverage for losses or injuries arising from most pollution events. When coupled with the strict liability imposed by most environmental statutes, current and former owners of polluted properties are routinely left bearing the full cost of the environmental cleanup without any insurance coverage. Further, a property owner’s liability exposure can span decades: the three-year statute of limitations to bring a private action under Washington’s Model Toxics Control Act does not begin to run until after an environmental cleanup is completed, regardless of when the pollution event occurred. RCW 70.105D.080.
Before Xia there were limited circumstances in which a creative...
policyholder or attorney could argue for coverage notwithstanding the pollution exclusion. For example, a recent client of my firm sought coverage to pay for the cleanup of diesel and gasoline that had slowly been released into the ground starting as early as the 1960s. Through extensive digging (through paper, not soil), we were able to locate ancient insurance policies that were issued to our client pre-1986, and therefore pre-pollution exclusion. But what if the company facing the cleanup or liability exposure has not been around that long? Or what if the company no longer has records of its pre-1986 insurance policies? Before Xia the answer was simply that the company would be left holding the bag.

Xia, however, changes everything. In a post-Xia world, a loss arising from the release of a pollutant could still be covered under a CGL policy—even in the face of a pollution exclusion—as long as the policyholder can show that the predominant cause of the loss, i.e., the EPC, was a covered negligent act. But, unless the insured is a nefarious intentional polluter, isn’t a negligent act the predominant cause of every pollution event? The predominant cause of the Exxon Valdez spill was arguably Exxon’s negligent failure to maintain the ship’s radar system and the crew’s negligent operation of the ship. The Deepwater Horizon oil spill? Negligent concrete work and negligent failure to install an adequate safety system. On a smaller scale, many pollution events occur as a result of leaks in underground storage tanks (USTs). The contents of USTs are often the product sold by its owner, so it must be the exceptionally rare case in which the predominant cause of a UST leak would be anything other than negligent installation, manufacture, maintenance, or some other negligent act. In other words, Xia all but completely invalidates the pollution exclusion.

“In the area of medical malpractice, Gene Moen and his firm set the standard.”

Chemnick | Moen | Greenstreet

“When my best friend died due to medical care, Gene agreed to take the case even though there were very serious challenges. I am a demanding attorney with a nearly 30 year career, and I know what excellent work looks like. Gene and his team exceeded expectations and outperformed across every measure. Gene and his team are -- plain and simple -- the best in the business.”

- Spencer Nathan Thal, Attorney

Poulsbo, Washington
Interestingly, ProBuilders made this same argument in *Xia*—i.e., that expanding the EPC rule to pollution exclusions would render the exclusion meaningless. The court disagreed, claiming that the EPC rule would only negate the pollution exclusion when the covered negligent act is the “initial peril” that led to the pollution event. But Washington courts, including the Supreme Court, have long held that the EPC is the predominant cause, not necessarily the initial cause. See, e.g., *Vision One, LLC v. Philadelphia Indem. Ins. Co.*, 174 Wn.2d 501, 519, 276 P.3d 300 (2012). Indeed, the *Xia* court itself quoted *Vision One* in an earlier part of its decision to explain that the EPC rule applies only “when two or more perils combine in sequence to cause a loss and a covered peril is the predominant or efficient cause of the loss.” See also *Kish v. Insurance Co. of North America*, 125 Wn.2d 164, 169, 883 P.2d 308 (1994) (jury instructed that “[t]he efficient proximate cause of a loss, where there may be multiple causes, is the predominant cause”); *Sunbreaker Condo. Ass’n v. Travelers Ins. Co.*, 79 Wn. App. 368, 378-79, 901 P.2d 1079, as amended on denial of reconsideration (1995) (describing causation as a net, as opposed to a chain with an initiating cause). Thus, pollution exclusions should not bar coverage if a non-excluded negligent act is the predominant cause. And because pollution rarely occurs without a negligent act, the pollution exclusion should rarely preclude coverage.

**The Potential Scope of *Xia***

Before *Xia*, Washington courts generally applied the EPC rule only to property insurance policies. *Xia* not only applied the EPC rule to a CGL policy—arguably for the first time—it also left the door open for future expansion of the EPC rule to other exclusions and other types of policies:

We have never before suggested that the rule of efficient proximate cause is limited to any one particular type of insurance policy. Instead, the rule has broad application whenever a covered occurrence under the policy—whatever that may be—is determined to be the efficient proximate cause of the loss. . . . Like any other covered peril under a general liability insurance policy, an act of negligence may be the efficient proximate cause of a particular loss. Having received valuable premiums for protection against harm caused by negligence, an insurer may not avoid liability merely because an excluded peril resulted from the initial covered peril.

*Xia*, 188 Wn.2d at 183 (citations omitted).

Each new expansion of the EPC rule will still be in the court’s discretion; however, this language provides a strong argument that there should be no limit to the rule’s application. For example, most CGL policies have exclusions barring coverage for losses caused by mold. But as in pollution events, mold is rarely the sole cause of a loss. Rather, mold is almost always the result of negligent construction, design, or maintenance, and thus a covered negligent act is arguably the EPC of any mold-related injury or damage. The same argument can be made for asbestos exclusions, earth movement exclusions—and really any other exclusion.

Moreover, as noted in *Xia*, the Washington Supreme Court “has repeatedly rejected attempts by insurers to draft language into . . . exclusion[s] that expressly circumvent” the EPC rule. *Id.* at 184. An exclusion cannot be drafted to “eviscerate a covered occurrence merely because an uncovered peril appeared later in the causal chain. The efficient proximate cause rule exists to avoid just such a result.” *Id.* at 185. The only recourse offered by the court is that an insurer can include a separate exclusion for each type of negligent act it wants to exclude:

If ProBuilders sought to avoid liability for damages resulting from particular acts of negligence, it certainly could have written specific exclusions to that effect—for instance, an exclusion for acts of negligence relating to the

In a post-*Xia* world, a loss arising from the release of a pollutant could still be covered under a CGL policy—even in the face of a pollution exclusion—as long as the policyholder can show that the predominant cause of the loss, i.e., the EPC, was a covered negligent act.
installation of home fixtures generally or hot water heaters specifically. *Id.* at 189.

Most policies do not include specific exclusions like that, further demonstrating the difficulties insurers will have denying coverage in a post-Xia world.

Finally, the Xia court found that ProBuilder’s denial of coverage—which failed to consider the EPC rule—was bad faith as a matter of law. *Id.* This is significant because under Washington’s Insurance Fair Conduct Act (IFCA), RCW 48.30.015, an insurer that unreasonably denies coverage may be subject to treble damages. A policyholder is also entitled to an award of its attorney fees under IFCA, as well as *Olympic Steamship Co., Inc. v. Centennial Insurance Co.*, 117
Wn.2d 37, 811 P.2d 673 (1991) (providing a right to attorney fees where a policyholder is compelled to assume the burden of legal action to obtain the benefit of his or her insurance contract). Thus, a policyholder who is denied coverage where a negligent act is arguably the EPC of the loss has a strong incentive to pursue legal action against his or her insurer.

**WHY WASHINGTON LITIGATORS SHOULD CARE**

All Washington litigators, regardless of whether they practice coverage law, should be aware of the massive and perhaps unintended scope of *Xia*. Under the so-called “eight corners” rule, an insurer can only consider the insurance policy and the complaint against the policyholder in determining whether the insurer has a duty to defend. Thus, plaintiffs’ attorneys should (where possible) draft complaints to allege that the pollution, mold, etc., at issue in the lawsuit resulted from the defendant’s negligent act. Doing so should trigger an EPC analysis by the defendant’s insurer, making it more likely that the defendant will have coverage and therefore greater financial resources for settlement purposes or to satisfy a judgment.

Similarly, defense attorneys should tender such claims to the insurer even if an exclusion appears to preclude coverage. The potential that the apparently excluded damage resulted from non-excluded “negligence” may trigger a duty to defend. If coverage is denied, it is always a good idea to have a coverage attorney review the denial to determine whether the insurer violated the EPC rule in light of *Xia*, or if the insurer wrongfully denied coverage for some other reason. If the insurer did wrongfully deny coverage without conducting a proper EPC analysis, under *Xia* the insurer has committed bad faith and could be on the hook for treble damages and attorney fees.

In short, counsel for plaintiffs and defendants should err on the side of seeking coverage. In the post-*Xia* world, even a seemingly excluded lawsuit may trigger coverage.

**NOTES**

1. This part of the court’s discussion in *Xia* is not entirely accurate. A CGL policy does not provide coverage for specific types of acts, but rather provides coverage for amounts the policyholder is liable to pay as damages because of unintentional acts, as long as those acts are not business risks or otherwise excluded under the policy. By finding that the policy in *Xia* provided coverage for “negligent installation,” the court appears to hold that the policy potentially covers liability for “negligent installation” because “negligent installation” is not a business risk and is not excluded.

**THOM WILLIAMS**

is an attorney with the Seattle-based law firm Harper | Hayes PLLC. With an emphasis on policyholder coverage and bad faith litigation, Mr. Williams assists contractors, developers, HOAs, businesses, homeowners, and other commercial policyholders in establishing and obtaining coverage and navigating the complexities of coverage disputes. He also represents HOAs, contractors, and other businesses in complex commercial litigation, including construction defect, environmental, and business disputes. He can be reached at (206) 340-8010 and twilliams@harperhayes.com. The opinions and viewpoints expressed in this article are those of the author and do not necessarily represent the opinions or positions of the author’s law firm or its clients.
Merry Christmas,
Happy Hanukkah, Seasons Greetings!

Wishing you all the joys of the season and the best in the new year.

TRUTH | JUSTICE | ACCOUNTABILITY | EQUAL ACCESS
Courage
('Kər-ij) noun
Strength in the face of pain or grief.

See also Spike Kane.

Spike Kane was a marine carpenter and an avid sailor, surfer, and outdoorsman when he suffered a thoracic level spinal cord injury in a motorcycle vs. SUV collision. Spike has never let the injury stop him from enjoying a full and physical life.

The best part of our practice is that we are in the company of courage every day. We would appreciate the opportunity to help you help your client.
TO PARAPHRASE TOLSTOY, happy relationships are all alike; once relationships sour, each is unhappy in its own way. This maxim also applies to attorney-client relationships. When things are going well, everyone is content. When a client decides to end the relationship, the news often comes as a surprise to the attorney, who must then rapidly assess his or her rights and obligations. Frequently, the attorney’s claims to monetary compensation take center stage. Although the attorney’s compensation rights typically are set out in a fee agreement, not all fee agreements contemplate a midstream change in representation. Compensation issues in connection with contingency matters can be particularly thorny, given the uncertainties inherent in a contingent representation and the need to avoid prejudice to the rights and interests of the client. This article will discuss the right of a Washington attorney or law firm to compensation for its work in a contingency case when the client has transferred representation to successor counsel prior to recovery.
ALLOCATION MECHANISMS

Washington’s Rules of Professional Conduct (RPCs) govern and limit the fees Washington lawyers can charge their clients. RPC 1.5(a) requires attorney fees to be reasonable and sets forth nine nonexclusive factors courts consider in determining the reasonableness of a fee. Among these factors is “whether the fee is fixed or contingent.” RPC 1.5(a)(8).

RPC 1.5(e)(1)(i) further states that, in the absence of an express agreement, attorney fees shared by lawyers who are not in the same firm may be made only if the division is “in proportion to the services provided by each lawyer . . . ”

Generally, a Washington attorney who is discharged prior to full performance on a contingency fee contract is entitled to receive not the contingent fee agreed upon, but rather reasonable compensation for the services actually rendered. Ramey v. Graves, 112 Wash. 88, 91, 191 P. 801 (1920). Courts often refer to this measure of compensation as quantum meruit, which means simply “reasonable compensation for services rendered.”

However, Washington courts allow an exception for an attorney discharged after substantially performing the duties owed to a client. Goncharuk v. Barrong, 132 Wn. App. 745, 749, 133 P.3d 510 (2006). This exception applies where “minor and relatively unimportant deviations” remain to accomplish full contractual performance. Id. In the context of settlement of a contingent fee case, “an attorney substantially performs when his efforts make settlement ‘practically certain,’ even if settlement occurs after the attorney is discharged.” Id.

With respect to cases that are not relatively near resolution at the time of transfer, absent an agreement to the contrary, the discharged attorney is entitled to compensation in quantum meruit for the reasonable value of services rendered to the client. Kimball v. Pub. Util. Dist. No. 1, 64 Wn.2d 252, 257, 391 P.2d 205 (1964). Occasionally, attorneys have claimed that quantum meruit compensation is restricted to the hourly value of predecessor counsel’s time, and
that the analysis regarding the reasonableness of such fees should mirror what might be done on a motion for recovery of attorney fees in a fee-shifting case, i.e., the “lodestar” approach. Although Washington’s jurisprudence is not well developed in this regard, the Washington Supreme Court has held that “such factors as the time and labor required, difficulty and complexity of the problems encountered, the amount, size and benefits to accrue from the controversy, the experience of the lawyers, and the customary charges of the bar for similar services – together with other considerations … – all are strong, though not controlling guides in ascertaining the true value of professional services.” Id. (emphasis added).


These jurisdictions reject the lodestar approach in fee allocation disputes between predecessor and successor counsel, because “the conventional lodestar approach … does not allow for consideration of ‘the totality of the circumstances surrounding the professional relationship’ … to ensure that the award is fair to both the attorney and client.” Poletz, 652 So. 2d at 369 (internal citations omitted). Rather, the lodestar approach is “intended to result in a uniform objective basis for the award of attorney’s fees in situations where the payor has no part of the fee arrangement. It was never intended to control in cases where the disputed fee will be paid by the client or other contracting party.” Id. at 368; accord Restatement (Third) of the Law Governing Lawyers § 39 cmt. a (2000) (“The ‘fair value’ fee recoverable [in quantum meruit] is not measured by the standards applied when a party recovers a reasonable attorney fee from an opposing party under a fee-award statute or doctrine.”).

Thus, in most circumstances, the more holistic “totality of the circumstances” rather than pure “hourly fee value” approach is a more appropriate yardstick for measuring predecessor counsel’s entitlement. Consistent with RPC 1.5(e), such an analysis does not preclude, and frequently results in, compensation to predecessor counsel in the form of a percentage of the total amount recovered by the client. That percentage often is determined, at least in part, by reference to the number of hours recorded in the matter by predecessor and successor counsel.

If, on the other hand, an agreement exists between successor counsel and predecessor counsel, or between predecessor counsel and the client, which specifies how fees will be allocated after separation, such an agreement likely will be upheld provided it complies with the requirements of RPC 1.5. The value and importance of such an agreement is difficult to overstate, particularly given the uncertainty involved in determining what is a reasonable fee in light of the “totality of the circumstances” of each case.

ACCOUNTING ISSUES
Upon the termination of an attorney-client relationship or separation of an attorney from a firm, it is critical to ensure that all of the attorney’s time entries for work performed during his or her tenure are properly documented. This documentation will be
inherent in forensically reconstructing time entries in the future.

**PRESERVATION OF FUNDS**

In contingency fee allocation disputes, the preservation of funds is often a pressing concern. Successor counsel could be tempted to disburse the funds to fund the operations of her new firm or to issue a distribution. Lawyers who have joined an existing firm might have incentive to prematurely disburse the funds to demonstrate their revenue-generating abilities to their new partners. Under these circumstances, predecessor counsel would do well to secure his or her interest in the contingent fee. At the same time, counsel must take great care to avoid prejudice to the interests of his or her former client.

RCW 60.40.010 is Washington’s statute governing the attorney fee lien rights of predecessor counsel. The statute provides for several types of attorney fee liens, including: (1) a lien on funds in possession of the attorney claiming the lien; (2) a lien on funds in the hands of the opposing party; (3) a lien on the proceeds of an action in which the claiming attorney performed work; and (4) a lien on a judgment rendered in an action in which the claiming attorney performed work. RCW 60.40.010(1)(b)-(e).

Of these, the most flexible and, arguably, the most useful is the lien on the proceeds of an action. RCW 60.40.010(1)(d). This type of lien arises by operation of law at the time the attorney begins to provide services to the client in connection with an action, which is defined to include arbitration or mediation, as well as a lawsuit. No affirmative steps are necessary to create the lien—it simply springs into life at the outset of the representation.
No particular statutory notice requirement exists with respect to this type of lien. Nonetheless, it is good practice for predecessor counsel to file and serve a notice of lien at the time of discharge. The notice apprises all interested parties, including the client, successor counsel, and the opposing party, of predecessor counsel’s claim, and can serve as a deterrent to attorneys who otherwise would consider disbursing the funds at issue.

By contrast, other types of liens do have notice requirements. For example, a lien under RCW 60.40.010(1)(e) attaches upon a judgment from the time of filing of the lien notice and the entry in the execution docket showing the name of the claimant, the amount claimed, and the date of filing the notice.

Notably, Washington’s lien statute addresses fees, but does not expressly reference advanced but unreimbursed costs. Washington law remains somewhat unclear on this issue; however, the Oregon Supreme Court has interpreted similar statutory language to include a lien right to recover advanced costs. Potter v. Schlesser Co., 335 Or. 209, 213, 63 P.3d 1172 (2003). Washington courts may follow suit.

A lien for both fees and costs also can arise from a contractual provision. It is good practice for all attorneys to include a provision setting out their lien rights in every client fee agreement.

RPC 1.15A, entitled “Safeguarding Property,” also affords predecessor counsel some protection. RPC 1.15A prohibits a lawyer from using, converting, borrowing or pledging the property of clients or third persons for the lawyer’s own use, and requires the lawyer to hold such property separate from the lawyer’s own property. Notably, in addition to protecting clients, the rule applies to the property of non-clients in a lawyer’s possession in connection with a representation. RPC 1.15A(g) provides that “If a lawyer possesses property in which two or more persons (one of which may be the lawyer) claim interests, the lawyer must
maintain the property in trust until the dispute is resolved. ... The lawyer must take reasonable action to resolve the dispute, including, when appropriate, interpleading the disputed funds.” RPC 1.15A(g) (emphasis added). In addition, RPC 1.15A(e) requires a lawyer to promptly provide a written accounting to a client or the third person upon request. Thus, predecessor counsel is afforded some protection against a successor who refuses to maintain the disputed funds in trust or account for their disposition. Failure to comply could result in disgorgement of attorney fees, which is within the authority of the Washington superior courts. Eriks v. Denver, 118 Wn.2d 451, 462-63, 824 P.2d 1207 (1992). In addition, under certain circumstances Washington courts may permit prejudgment attachment of attorney fees claimed by predecessor counsel.

In any event, swift action to ensure the funds at issue are preserved—by way of a demand letter, a lien, or a motion to the court—is the best way to guard against dissipation and head off potential collection issues in the future.

Other issues relating to fee allocation include procedural considerations attendant to counsel’s attorney lien rights, and whether the client is a necessary party to the action. Generally, the rights and interests of the client are prioritized over the fee interests of counsel and must be carefully considered in advance of any action.

There is no question that counsel and their clients will benefit from a thorough, thoughtful agreement relative to fee allocation, lien rights, and preservation of funds issues at the outset of the attorney-client relationship. Such an agreement is the single most useful instrument in resolving or avoiding the train wreck of a contentious, protracted, and costly dispute. NWL

NOTES:
1. The remainder of RPC 1.5(e)(1)(i) states “or each lawyer assumes joint responsibility for the representation,” the analysis under this clause is different and beyond the scope of this article. See Cmt. 7 to RPC 1.5: “Joint responsibility for the representation entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership.”
Subscribe to WSBA-CLE Deskbooks Online

Get The Online Deskbook Experience!

**Save Money**
Annual subscription options include new lawyer, solo practitioner, and group rates and also offer significant savings over print prices. Updates added during subscription at no additional cost.

**Increase Your Research Capabilities**
Run word-search queries across primary law and deskbooks simultaneously.

**Drill Down Deeper**
All cited cases, statutes, and administrative codes are hyperlinked. Click the link and read the full text!

**Access WSBA Seminar Coursebooks**
Selected current coursebooks and an archive of hundreds more not available electronically anywhere else are included in specified libraries.

WSBA DESKBOOKS ONLINE SUPPORT:
Questions: washington.casemakerlibra.com | Email: THunt@casemakerlegal.com | Phone: 844-838-0790
Professional integrity, leadership, and a commitment to serve and protect the most vulnerable among us: Those are just a few of the traits that characterize the legal professionals celebrated on Sept. 28 at the annual WSBA APEX Awards Dinner.

This year’s award recipients stand out in the legal community as champions of equality in justice, public service, and courage in the face adversity—the sort of attributes that for more than 125 years have elevated members of the legal community in Washington state to among the top—or APEX—of the profession.

WSBA President Brad Furlong welcomed more than 300 attendees to the dinner in Seattle. Before presenting the awards, Furlong thanked outgoing governors Keith Black, Mario Cava, Ann Danieli, Andrea Jarmon, and Jill Karmy for their dedicated work on the Board of Governors. He then introduced Washington Supreme Court Chief Justice Mary Fairhurst for the swearing in of the Bar’s new governors – Daniel Clark, Kim Hunter, Kyle Sciuchetti, Alec Stephens, Paul Swegle, Hon. Brian Tollefson (ret.), and Jean Kang. Fairhurst then swore in Furlong for his first full year as president and William Pickett as president-elect.

After delivering his heartfelt remarks on the professional and personal values that the APEX Award recipients represent, Furlong welcomed them to the stage. He later introduced a series of short videos in which the recipients explained their journeys in their own words. Their stories include that of pioneering a low bono incubator program, decades of legal scholarship and public service, years of mentorship, civic and legal education outreach, and much more.

Watch the recipients’ videos online at www.wsba.org/News-and-Events/Awards.
PRO BONO AND PUBLIC SERVICE AWARD

Individual

This award is presented to an individual, a lawyer, or other legal professional for outstanding cumulative efforts in providing pro bono services or for giving back in meaningful ways to the public, the community, or the legal profession.

Grifan Cayce

Grifan Cayce is an associate at Cayce & Grove Law Offices in Maple Valley. She is recognized for her civic engagement and education activities. Cayce has worked hard to support Tahoma High School’s “We the People” program (through the Center on Civic Education). She volunteers more than 150 hours annually, mentoring and coaching students during class time and at evening meetings, as well as reviewing and editing student essays for content and delivery and lecturing on various constitutional topics. She traveled to Washington, D.C., to serve as a judge in the national “We the People” finals competition. Her work supports the program, which is dedicated to teaching civics and critical thinking skills and developing competent community members capable of engaging in civic discourse.

Cayce also serves on the Washington State Council on Public Legal Education, an organization dedicated to promoting public understanding of the law and civic rights and responsibilities. She serves on the Board of the Tahoma Schools Foundation, helping to fund the gap in education funding for local students, and on the Board of Directors for her local Chamber of Commerce, and she has lobbied in Olympia for her community on matters of education, transportation, and business. She was a contributing writer to NWLawyer.

Group

This award is presented to a law firm or other legal entity for outstanding cumulative efforts in providing pro bono services or giving back in meaningful ways to the public, the community, or the legal profession.

Mills Meyers Swartling

The law firm of Mills Meyer Swartling is the recipient of the Pro Bono and Public Service - Group Award for their outstanding commitment to maintaining the integrity of the legal profession. Recognizing the importance of self-regulation within the legal profession, Mills Meyers Swartling lawyers are active in volunteer roles throughout the WSBA. Their lawyers have held prominent positions on the Disciplinary Board, the Hearing Officer Panel, and the Adjunct Disciplinary Counsel Panel, and have been appointed Special Disciplinary Counsel in particular cases.

In addition, Mills Meyers Swartling lawyers have served on WSBA committees, in section leadership, and as parts of other WSBA panels and task forces. Their lawyers have served as chairs of the WSBA Litigation Section Executive Committee, the Court Rules and Procedures Committee, and the Judicial Recommendation Committee.

Beyond support of the WSBA and the legal profession, Mills Meyers Swartling attorneys have given back to their community and the public in other ways. They serve on numerous nonprofit boards, act as mentors, and serve their communities and the public as volunteers and pro bono attorneys.

PROFESSIONALISM AWARD

This honor is awarded to a WSBA member who exemplifies the spirit of professionalism in the practice of law, as defined in the WSBA’s Creed of Professionalism.

J. Donald Curran

J. Donald Curran has made professionalism a lifetime endeavor. He has underwritten an endowed chair position at Gonzaga University School of Law dedicated to promoting ethics and civility in the practice. For years, he has dedicated his time through hospice care for those at risk of dying without a will. He works with individuals to ensure their wishes go where intended. He is able to provide some peace in the knowledge that they have a proper and secure will.
J. Donald Curran

Curran has served as a member of the WSBA Disciplinary Board, as a hearing officer in disciplinary cases, on the Judicial Recommendation Committee, and as a frequent speaker on ethics. He is a former member of the WSBA Professionalism Committee, a past chair of the WSBA Rules of Professional Conduct Committee, and 2017 Chair of the WSBA Committee on Professional Ethics.

He has received significant awards during his career, including the Washington Young Lawyers Division Professionalism Award (1992), Professionalism Award of the Washington State Trial Lawyers Association (1994), Gonzaga University Distinguished Alumni Award (1994), Smithmoore P. Meyers Professionalism Award (1995), WSBA Lifetime Service Award (1996), and the WSBA President’s Award (2009).

EXCELLENCE IN DIVERSITY AWARD

This award is made to a lawyer, law firm, or law-related group that has made a significant contribution to diversity in the legal profession.

Lionel Greaves IV

Lionel Greaves IV has been working at the Attorney General’s Office (AGO) since 2010. Since he began he has shown outstanding commitment and support for diversity both inside and outside of work. At the AGO he is the Division Chief of Labor and Industries, has served as an attorney recruiter, and is a member of the AGO Diversity Advisory Committee. In 2013, he was recognized by Attorney General Bob Ferguson with the AGO William V. Tanner Award for being an exceptional attorney and an ambassador for the office.

Outside of work, Greaves is also an active member-at-large of the Loren Miller Bar Association.

Greaves has shown a persistent commitment to diversity through his work on WSBA’s Diversity Committee, on which he has served since 2013 and co-chaired in 2016. There, he has participated in numerous programs, including the Experience Exchange and 1L Diversity Fellowship, mentored new attorneys and law students, recruited and trained volunteer attorneys, organized panels and mock interview sessions, and more. He has been a featured speaker at WSBA-sponsored CLEs.

His WSBA Diversity Committee peers describe him as proactive, engaged, inexhaustible, selfless, inspirational, approachable, and relatable. He has dedicated his work to the institutional and personal advancement of those in the legal profession who historically have been underrepresented.

SALLY P. SAVAGE LEADERSHIP IN PHILANTHROPY AWARD

This award is presented jointly by the Washington State Bar Foundation and the Washington State Bar Association. Sally Savage led the Bar Foundation’s renaissance and was a catalyst for its refocused mission to sustain the WSBA’s efforts to advance justice and diversity. Sally’s spirit of generosity and leadership continues to inspire all who recognize the transformative potential of philanthropy. Sally Savage emulated the spirit of philanthropy in her life, and it is in her memory that we honor donors, volunteers, and friends of the Washington State Bar Foundation who embody Sally’s spirit.

Teruyuki Olsen

Teruyuki Olsen is a Member at Ryan, Swanson & Cleveland and he is a dedicated supporter of the Washington State Bar Foundation. He served on the Board of Trustees for the Foundation from 2009 to 2016, including a year of service as vice president. Additionally, Olsen oversaw the Donor Engagement Committee, which strengthened the relationship between the Foundation’s trustees and its donors.

In 2016 and 2017, Olsen played an instrumental role in securing generous gifts from his firm for the Foundation’s GiveBIG Community Day of Giving efforts. He has been a committed personal supporter of the Foundation.
ANGEL PETRUSS AWARD FOR LAWYERS IN GOVERNMENT SERVICE

Named in honor of Angelo R. Petruss, a senior assistant attorney general who passed away during his term of service on the WSBA Board of Governors, this award is given to a lawyer in government service who has made a significant contribution to the legal profession, the justice system, and the public.

Renee Morioka

Renee Morioka began work at the Attorney General’s Office (AGO) a few months after graduating from Seattle University School of Law in 1995. In her role as an Assistant Attorney General for the Department of Social and Health Services (DSHS) in Pierce County, she skillfully represents DSHS in dependency cases. She is an active member of the Office’s statewide Juvenile Litigation Training Committee, the in-house specialist on Special Immigrant Juvenile Status proceedings and the BECCA Bill, and authored the Family Reconciliation Act and BECCA Bill chapters of the CITA Juvenile Non-Offender Benchbook. She has served and continues to serve on committees and workgroups that have led the Pierce County Dependency Court to be a statewide leader and model of efficiency in meeting statutory timelines, and of new, innovative, and collaborative interagency projects including Family Recovery Court (formerly Family Drug Court), the Pierce County Paternity Protocol, the Extended Foster Care workgroup, and the BECCA Bill workgroup.

She regularly goes above and beyond to ensure that the needs of dependent children are being met. Among her colleagues she is noted for being hardworking, honest, straightforward, and a pleasure to work with.

OUTSTANDING YOUNG LAWYER AWARD

This award recognizes an attorney who has made significant contributions to the professional community, especially the community of young lawyers, within his or her initial years of practice. Recipients must be active WSBA members within five years of admission to any bar association or under 36 years of age.

Emily Arneson

Emily Arneson is the community ombudsman and accessibility officer at Spokane Transit Authority, where she works to ensure that transit services are accessible and inclusive. Previously, Arneson practiced in the areas of elder law, employment discrimination, and open government.

Arneson has been steadily involved in the Spokane Young Lawyers Division (SYLD) for several years, most recently as its president. During her tenure with SYLD, she oversaw the development of a new committee structure which resulted in increased volunteer opportunities, an avenue for public recognition of member achievements, enhanced professional training, and a renewed focus on mentorship as critical to the advancement of the legal profession.

As SYLD President, Arneson guided the development of several CLEs for new and young lawyers. The SYLD also awarded its first scholarship to a Gonzaga University School of Law graduate to assist with costs related to traveling to sit for the bar exam.

In 2016 Arneson received the Public Service and Leadership Award from the Washington Young Lawyers Committee (WYLC) and was named Member of the Year for the Spokane Chapter of Washington Women Lawyers. Earlier this month, she was named one of Spokane’s “Top 20 under 40” by Inland Business Catalyst magazine.

OUTSTANDING JUDGE AWARD

This award is presented for outstanding service to the bench and for special contribution to the legal profession at any level of the court.

Hon. Ronald Kessler (ret.)

Judge Ronald Kessler served on the bench for the people of Seattle and King County for more than 30 years. In 1985 he began his service with the
Seattle Municipal Court before moving to the King County Superior Court. Prior to taking the bench, he worked as a public defender for 10 years, where he handled a full spectrum of cases from misdemeanors to serious crimes, and served both as a felony and misdemeanor supervisor.

His experience as a public defender served him well on the bench. Over his career he mentored many young attorneys and trained lawyers in trial skills and advocacy. His lectures on court rules and criminal law, as well as his *Criminal Caselaw Notebook*, have been invaluable resources for all new Washington judges.

**LEGAL INNOVATION AWARD**

This new award recognizes legal professionals, law firms, courts, law schools, individuals, or organizations who demonstrate leadership in promoting innovation in the practice of law. Innovation may be defined as programs, processes, or technology that advance or streamline the future of the profession and accessibility/delivery of legal services.

**Dean Standish Perkins**

In 2013, the Seattle University School of Law Access to Justice Institute saw a chance to match clients of moderate means with new and young lawyers through an incubator program. Dean Standish “Stan” Perkins helped create the Low Bono Incubator Program, and he has been the driving force behind its success, providing funding and guidance to nearly 20 recent SU Law graduates.

The program began with four incubatees four years ago. This year there were 11 participants who met regularly with Perkins, attended seminars, and benefited from his successful practice and significant experience in personal injury law. Perkins’ work has not only provided exceptional mentorship and support to new attorneys (with some going so far as to say that they wouldn’t be practicing law were it not for Perkins’ support) but also made it possible for individuals of moderate means to access legal services otherwise out of their reach.

It’s clear from the words of his colleagues, and those that have been fortunate to participate in the incubator program, that Perkins is a force unto himself. His admirers, or “Stan fans,” describe him as having an “infectious smile, generous heart, and drive to bring everyone along” and as being “a cheerleader, a source of new ideas, a shoulder to cry on, and a steadfast friend.”

Perkins is receiving this award for his commitment to improving access to justice, pioneering an innovative low bono incubator, and enriching the legal profession and those who work within it.

**LIFETIME SERVICE AWARD**

This award is a special award given for a lifetime of service to the legal community and the public.

**Karl B. Tegland**

Karl Tegland has been a member of the WSBA for nearly 45 years. He is the author or co-author of 16 volumes of *Washington Practice*, including the *Courtroom Handbook on Washington Evidence* and the *Washington Handbook on Civil Procedure*. He has served more than 37 years as an author for Thomson Reuters Westlaw. He served on the University of Washington School of Law faculty and was awarded the 1994 Shefelmann Distinguished Lecturer on Evidence. He received the Outstanding Achievement Award from the *Washington Law Review* in 1993. He is one of the most frequently cited legal commentators in Washington state (1980-present), having been cited in more than 1,400 opinions by the Washington Supreme Court and Court of Appeals. He is considered a definitive authority on civil procedure and evidence.

Tegland began speaking at CLE programs in the 1970s and didn’t stop until retirement. In the last few years before retirement, Tegland gave 15 to 20 CLE lectures per year, most of them fundraisers for low-income legal clinics throughout the state of Washington.
2018 APEX AWARDS

Now Accepting Nominations

Honor those individuals or groups making a positive difference in the legal profession by nominating them for a 2018 APEX Award. You'll find more information and the nomination form at: www.wsba.org/awards

Deadline for nominations: March 15, 2018

SAVE THE DATE!

Award recipients will be celebrated at the annual APEX Awards dinner in Seattle on Thursday, September 27, 2018. See you there!

WASHTONG STATE BAR ASSOCIATION

- Angelo Petruss Award for Lawyers in Government Service for a significant contribution to the legal profession, the justice system, and the public
- Award of Merit for a recent, singular achievement
- Excellence in Diversity Award for a significant contribution to diversity in the legal profession
- Legal Innovation Award for programs, processes, or technology that advances or streamlines delivery of legal services
- Lifetime Service Award for a lifetime of service to the legal community and the public
- Norm Maleng Leadership Award (presented jointly with the Access to Justice Board) for leadership characterized by love of the law and commitment to access to justice
- Outstanding Judge Award for outstanding service to the bench and for special contribution to the legal profession at any level of the court
- Outstanding Young Lawyer Award for significant contributions to the professional community, especially the community of young lawyers, within their initial years of practice
- Pro Bono and Public Service Awards (Individual & Group) for outstanding cumulative efforts in providing pro bono services or for giving back in meaningful ways to others, to the community, or to the profession
- Professionalism Award for professionalism in the practice of law, as defined in the WSBA's Creed of Professionalism
- Sally P. Savage Leadership Award in Philanthropy (presented jointly with the Washington State Bar Foundation) for donors, volunteers and supporters who focus on advancing justice and diversity

Nominations for this award are due February 15th
On Nov. 3, guests gathered at the Sheraton Hotel in downtown Seattle to pay tribute to those 70 attorneys and judges celebrating 50 years of WSBA membership. WSBA President Brad Furlong welcomed the honorees, their families, and guests, and expressed gratitude for their half-century of service to the profession, their communities, and the Bar.

Joined by the Board of Governors, Furlong presented certificates and lapel pins to the 50-year members. He spoke of the changes in the legal profession and thanked them for a combined 3,500 years of service.

“While I’ve been practicing law for only 35 years,” Furlong said, “the one thing I think we all know is that change is a constant, in our society and in our profession. But one thing that I believe hasn’t changed is our commitment to maintaining a noble profession—one founded on serving others—a profession we can remain proud of for many anniversaries to come.”

Washington Supreme Court Chief Justice Mary Fairhurst was on hand to personally deliver her congratulations to the honorees. Brian Comstock, chair of the WSBA Senior Lawyers Section, applauded them as well before inviting them to join the section.

The WSBA class of ’67 has seen and shaped many changes—social, political, and historical—during their five decades in the legal profession. We thank each of them for their dedication to the law, their pioneering achievements, and a half-century of public service. NWL.
Row 1, L-R: Robert Schuck / Bruce Cross & guests / Hon. Mary Fairhurst, James McBride / Joe Falk, John Rossmeissl
Row 2, L-R: Edward Irwin, Philip Borst / George Martin, Jack Borland / Jacqueline & Stanley Byrd / George Martin, Robert Mussehl
Row 3, L-R: Sam Franklin, Paul Whelan / Jack Borland, Stanley Byrd / James Grutz, Roger Leed, Jerry Landeen / Laurence Mosler, Philip Borst
Row 4, L-R: Jack Borland & guest / Laurence Mosler / Jeff Morris, Joe Falk / Robert Felker, David Johnson
Row 5, L-R: Fred Fancher, Ed Irwin / Sidney Wurzburg, Brian Comstock / Jeff Morris, Laurence Mosler / Sidney Wurzburg, Joe Falk
1967: A Moment in Time

1967 was a year of spiraling change in our culture and politics, as well as in the law. Here are some memorable events from that year that shaped the course of history.

IN THE NEWS

- Solicitor General Thurgood Marshall is confirmed and sworn in as the first African-American justice of the U.S. Supreme Court.

- The Supreme Court declares all state laws prohibiting interracial marriage unconstitutional.

- The presence of U.S. troops in Vietnam jumps to 475,000, stoking increasing peace rallies and protestors.

- Muhammad Ali is stripped of his boxing world championship for refusing to be inducted into the U.S. Army.

IN ARTS AND CULTURE

- The hippy movement takes hold with the Summer of Love in San Francisco, where starry-eyed teenagers smoke some pot and groove to the music of The Grateful Dead, Jefferson Airplane, and The Byrds.

- The Beatles’ “Michelle” is the song of the year at the Grammies.

- The movie industry embraces the counterculture with gritty movies for youthful audiences like “The Graduate,” “Bonnie and Clyde,” and “Cool Hand Luke,” while “In the Heat of the Night” takes Best Picture at the Oscars.

- On TV, we watch “The Fugitive” and, in color, “The Monkees.”
IN SCIENCE AND TECHNOLOGY

• The first Boeing 737 takes its maiden flight.
• The first handheld calculator hits store shelves.
• Across the pond, London is home to the world’s first ATM.
• Surveyor 6 soft lands on the moon.

IN WASHINGTON STATE

• Interstate 5 is completed from Everett to Tacoma.
• Seattle wins one of the two American League expansion franchise teams, which would become the Seattle Pilots, and later the Mariners.
• The SuperSonics, Seattle’s fledgling NBA franchise, play their first regular season game against the San Francisco Warriors in San Francisco.
• The Grateful Dead perform at Golden Gardens Park in Seattle.

AT THE BAR

• In July 1967, 200 people take the bar exam and 133 pass. By comparison, in July 2017, 765 candidates took the exam and 553 passed.
• WSBA holds an open house to allow members to inspect the new WSBA headquarters at 5th and Madison in Seattle.
• The Board of Governors appoints Joyce M. Thomas to the newly created position of administrator for Continuing Legal Education as “part of plans to emphasize and further develop the C.L.E. program.”
Visit the WSBA Career Center!

**JOB SEEKERS:** access job postings, manage your job search, post an anonymous résumé

**EMPLOYERS:** post openings, manage recruiting, search résumés, reach targeted candidates

[http://jobs.wsba.org](http://jobs.wsba.org)

---

**PETERSON WAMPOLD ROSATO FELDMAN LUNA**

WE CELEBRATE OUR DIFFERENCES—
from bald to beautiful, young to old, from trial through appeal.

---

**PWRFL**

Appellate Practice / Construction Accidents / Insurance Bad Faith / Medical Malpractice / Personal Injury

[PH 206.624.6800 / INFO@PWRFL-LAW.COM](http://www.pwrfl-law.com)

1501 4TH AVE, SUITE 2800, SEATTLE, WA 98101-3677

---

**Legal Lunchbox Series**

Dishing Up Free CLEs!

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

Mark your calendars now!

[To register and for more information, visit www.wsbacle.org](http://www.wsbacle.org)
Live CLE credits are no longer required.

WSBA recorded seminars are more valuable than ever!

Washington lawyers may now earn ALL their required CLE credits from recorded seminars. Browse our catalog of hundreds of recorded seminars. See at a glance how they satisfy the new credit requirements for: • Law & Legal Procedure • Ethics • Other

WSBA RECORDED SEMINARS ARE:

- **High Quality**
  Focused on Washington law and taught by Washington practitioners.

- **Current**
  Available within a month of the seminar.

- **Immediately Accessible**
  Purchase, download and stream your recorded seminar right away. Access good for 3 years.

- **Mobile & Convenient**
  Watch or listen when and where you want.

Did you recently move and want to be sure you’re getting NWLawyer?

Make sure your public mailing address is up-to-date by going to www.mywsba.org.

The Law Offices of James S. Rogers

Congratulations to James S. Rogers on being named Best Lawyers® 2018 Product Liability Litigation - Plaintiffs “Lawyer of the Year” in Seattle

Product Liability // Vehicle Crashworthiness
Serious Injury // Wrongful Death

1500 4th Ave, Suite 500 | Seattle, WA | 98101
jsrogerslaw.com | (206) 621-8525

GO TO WSBACLE.ORG FOR MORE INFO

WASHINGON STATE BAR ASSOCIATION

WSBA BOARD OF GOVERNORS MEETING

NOVEMBER 15-16, 2017, SEATTLE

**Wednesday, November 15**

**Access to Justice (ATJ) Board Orientation**
ATJ leaders provided an overview of their board’s structure and a recently completed plan to guide their work through 2020. The Washington Supreme Court established the ATJ Board at the behest of the WSBA Board of Governors to coordinate statewide access to the civil legal-aid services for those facing economic and other barriers. “The promise of justice is not just for the rich in this state,” ATJ member Francis Adewale told the governors. “It’s for everybody.”

**Washington State Bar Foundation Annual Report**
Leaders of the Washington State Bar Foundation presented a history of the organization as well as a recap of last year’s accomplishments. The Foundation’s sole and unique purpose is to raise funds to support WSBA programs that promote diversity within the legal profession and enhance the public’s access to and understanding of the justice system. In October, the Foundation gifted $200,000 to support WSBA public-service and diversity programs. This past year it also served as the fiscal sponsor for section scholarships ($9,000) and the Access to Justice Conference ($9,785). “[The Foundation] takes pressure off of the license fee for those programs the Governors deem mission-critical but aren’t mandatory,” said Terra Nevitt, WSBA Director of Advancement/Chief Development Officer. Members can easily support the Foundation when they renew their license by checking a box on the online or paper form.

**Entity Regulation**
Board members discussed the meaning, history, and pros and cons of entity regulation, an approach to the regulation of the practice of law where the regulatory framework applies to organizational entities—such as law firms—not just individually licensed professionals. “It’s a partnership between the regulator and the regulated to work proactively to prevent any problems,” explained Executive Director Paula Littlewood about a form of entity regulation called proactive management-based regulation (PMBR). Board members will create ample education and input opportunities for members before any action is considered on this topic.

**Liaison and Ambassador Responsibilities**
Board members discussed their roles and responsibilities as liaisons to WSBA sections, boards, and committees as well as ambassadors to the legal community in general. As ambassadors, WSBA Governors and staff want to meet with members across the state to understand their priorities, collect their input, and share Bar updates and information. Please contact Legal Community Outreach Specialist Sanjay Walvekar, sanjayw@wsba.org, if you have a member event that you’d like a board member to attend.

**Thursday, November 16**

**Washington Leadership Institute Project**
Current fellows in the Washington Leadership Institute (WLI) presented their recently completed service project, an educational campaign to address anti-Islamic rhetoric and misperceptions. WLI—a partnership between the University of Washington School of Law and WSBA—recruits, trains, and develops minority and traditionally underrepresented attorneys for future leadership positions in the legal community.

Action Roundup
The Board approved:

- Formation of a new Cannabis Law Section; for more information or to join, contact Paris Eriksen at parise@wsba.org.
- The 2018 WSBA Legislative Priorities: Support member-requested bills approved by the Board; support legislative proposals aligned with
WSBA’s mission; and monitor and take action on legislative proposals that would impact the practice of law and administration of justice.

- The only member-requested bill for the 2018 legislative session: An amendment to the Washington Business Corporation Act that would allow Washington corporations to hold virtual shareholders’ meetings (submitted by the Corporate Act Revision Committee of the WSBA Business Law Section).

- A recommendation to the Supreme Court that it adds Performance Guidelines for Juvenile Offense Representation to its Standards for Indigent Defense. The WSBA Council on Public Defense refined these guidelines for more than two years, and member feedback has been positive since the Board’s first reading of the guidelines in September 2017.

- The roster for the Mandatory Malpractice Insurance Task Force (please submit your questions and feedback to insurancetaskforce@wsba.org).

- The addition of two members to the Civil Litigation Rules Drafting Task Force roster.

- Amendments to the Indian Law Section bylaws to make them consistent with WSBA’s bylaws.

More information

The agenda and materials from this Board of Governors meeting, as well as past meetings, are online at www.wsba.org. You can also watch these meetings via webcast live or later. Please do not hesitate to contact the Governors with any questions or concerns you may have.

The next Board of Governors Meeting is Jan. 18-19 at the Bellwether Hotel in Bellingham.
License renewal must be if you to learn more. The complete License renewal, pay if you late-payment fee will apply if the annual fee is not paid by Feb. 1, 2018. A late fee will apply if either deadline is missed. Visit wsba.org/MCLE to learn more.

Opportunity for Service

Interested in running for Board of Governors? Application deadline for district positions is Feb. 15, 2018

Five positions on the WSBA Board of Governors are up for election in 2018. The open positions represent the following congressional districts as well as one at-large seat:

- District 1
- District 4
- District 5
- District 7-South
- At-large position: Young lawyer

The three-year term of office begins Oct. 1, 2018. These positions are currently held by Kim Risenmay (District 1), Daniel Clark (District 4), Angela Hayes (District 5), James Doane (District 7S), and Jean Kang (At-large: Young lawyer). Mr. Clark is eligible to seek another term as he is filling out the term of a position that was vacated mid-term. Ms. Kang is not eligible to seek another term as she will no longer have young lawyer status.

Eligibility:

Any active lawyer member of the Bar may run for the office of governor from the congressional district in which the member is entitled to vote. Any active lawyer member of the Bar who qualifies as a young lawyer as of September 28, 2018, may run for the At-large Young lawyer position. Exception: For all positions, any Bar member who has previously served on the Board of Governors for more than 18 months is ineligible to run.

Becoming a candidate:

To run for the Board of Governors, you must complete the application form that will be posted on the WSBA website on January 1 at www.wsba.org/elections. The WSBA must receive the forms for district races by 5 p.m. PST on Feb. 15, 2018. The deadline to run for the At-large position will be in April; the exact date will be announced in early 2018. Candidates for the At-large position will be evaluated by the Washington Young Lawyers Committee (WYLC). The WYLC will nominate at least two candidates to be interviewed for election by the Board of Governors. For all positions, a WSBA member may nominate another member by completing the form above. For more information, contact Pam Inglesby at pami@wsba.org, 206-727-8226.

Voting:

The four 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 13(f) or, if specifically designated to the executive director, within the district of their primary Washington practice. The WSBA will use an electronic voting system, and members will not receive a paper ballot unless they request one. Email ballots will be sent on March 15 and must be received by 5 p.m. PDT on April 2. The At-large governor will be elected by the Board of Governors at its May 17-18 meeting.

WSBA News

2018 License Renewal and MCLE

Renew your license, join sections, and certify MCLE compliance on mywsba.org—it’s easy. License renewal must be completed by Feb. 1, 2018. A 30 percent late-payment fee will apply if the annual license fee remains unpaid after that date.

Certify MCLE Compliance. If you are an active lawyer in the 2015–2017 reporting period, then you are due to report CLE credits and certify MCLE compliance. The deadline for completing credits is Dec. 31, 2017. The certification must be completed online, postmarked, or delivered to the WSBA by Feb. 1, 2018. A late fee will apply if either deadline is missed. Visit wsba.org/MCLE to learn more.

Judicial Status. Please note that you are required to inform the Bar within 10 days of your retirement or your ineligibility for Judicial status (and you must apply to change to another status or to resign). Visit wsba.org/licensing to learn more.

Important Dates

- Dec. 31, 2017: Active lawyers in the 2015-2017 reporting period must complete required MCLE credits.
- Feb. 1, 2018: Deadline for requesting the one-time Hardship Exemption.
- Feb. 1, 2018: License renewal, payment(s), and MCLE certification, if applicable, must be completed online, postmarked, or delivered to WSBA.

WSBA Board of Governors Meetings

Jan. 18-19, 2018, at the Hotel Bellwether, Bellingham.

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 Margaret Shane at 206-727-8244, 800-945-9722, ext. 8244, or margarets@wsba.org. The complete Board of Governors meeting schedule is available on the WSBA website at www.wsba.org/bog.

WSBA Budget

At its September meeting, the Board of Governors approved the WSBA FY18 budget. To learn more about the budget, and the programs and services that it supports, visit wsba.org/About-WSBA/Financial-Info.

Open Sections Night – Seattle

WSBA Conference Center
Jan. 24, 2018, 5 – 7 p.m.

Mark your calendar and don’t miss out on your opportunity to connect with experienced practitioners and join a communi-
ty of legal professionals advancing their skills. Various sections offer a plethora of member benefits including but not limited to: list serve communities, newsletters, free and discounted CLEs, publications, opportunities to comment on legislation, and more. Come learn about WSBA’s 28 sections, enter to win a door prize, mingle with new and experienced members, and enjoy light appetizers. To learn more or if you have any questions email NewMembers@wsba.org.

**MentorLink Mixer – Seattle**
**WSBA Conference Center**
**Jan. 25, 2018, 12 – 1:30 p.m.**
These are unique, free-to-attend events that bring together potential mentees and mentors with similar interests in the legal profession. The theme for January’s mixer will focus on Bar leadership. Come speak with the committees, boards, councils, and panels of the WSBA and learn about their work, leadership, and opportunities to get involved. To learn more or if you have any questions email MentorLink@wsba.org.

**Legal Directory Launched**
The online lawyer directory has been renamed the Legal Directory and now includes limited license legal technicians and limited practice officers as well as lawyers. There are also additional search fields to help you and the public locate licensed legal professionals. Check out the Legal Directory at mywsba.org/legaldirectory.

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

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

**ALPS Attorney Match**
Attorney Match is a free online networking tool made available through the WSBA-endorsed professional liability partner, ALPS. This resource allows attorneys to set up a profile and indicate whether they are looking for, or available to act as, a mentor. Mentorship programs that meet requirements are now eligible for MCLE credits. The WSBA provides information and links to the ALPS Attorney Match online system as a service to the legal community. For more information, email mentorlink@wsba.org.

**Volunteer Custodians Needed**
The WSBA is seeking interested lawyers as potential volunteer custodians under Rule for Enforcement of Lawyer Conduct (ELC) 7.7. An appointed custodian is authorized to act as counsel for the limited purpose of protecting a client’s interests whenever a lawyer has been transferred to disability inactive status, suspended, or disbarred, or dies or disappears, and no person appears to be protecting the client’s interests. The custodian takes possession of the necessary files and records and takes action to protect the client’s interests. The custodian may act with a team of custodians and much of the work may be performed by supervised staff. If the WSBA is notified of the need for a custodian, the WSBA would affirm the willingness and ability of a potential volunteer and seek his or her appointment as custodian. Costs incurred may be reimbursed. Current WSBA members of all practice areas are welcome to apply. Contact Sandra Schilling at sandras@wsba.org, 206-239-2118 or 800-945-9722, ext. 2118, or Darlene Neumann at darlenen@wsba.org, 206-733-5923 or 800-945-9722, ext. 5923.

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

**Search WSBA Advisory Opinions Online**
WSBA advisory opinions are available online at 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.

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

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

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

WSBA Practice Management Assistance

Lending Library
The WSBA Lending Library is a service to WSBA members. We offer the short-term loan of books on health and well-being as well as the business management aspects of your law office. How does it work? You can view available titles at wsba.org/resourc-es-and-services/lomap/lending-library.

Get Discounts on New Software and Services
Looking to build up your practice? Visit the Practice Management Discount Network for discounts on tools to help you improve your legal service delivery. Featuring practice management software, credit card processing, and more. Visit www.wsba.org/discounts to get started.

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

Usury Rate
The maximum allowable usury rate can be found on the Washington State Treasurer’s website at https://tre.wa.gov/partners/for-state-agencies/investments/historical-usury-rates/.

Advertise in NWLawyer’s Announcements or Professionals sections!
Email advertisers@wsba.org.
CLE seminars are subject to change. Please check with providers to verify information. To announce a seminar, send information to clecalendar@wsba.org. Information must be received by the first day of the month for placement in the following issue’s calendar.

**ETHICS**

**ENCORE PRESENTATION: KEEPING ETHICAL IN A TECHNICAL WORLD**
Dec. 14, moderated webcast replay. 3.75 CLE credits (2.75 Ethics + 1 Other). Presented by the WSBA; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org

**HITS FROM LAW OF LAWYERING 2016**
Dec. 14, moderated webcast replay. CLE credits pending. Presented by the WSBA; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org

**THE 15TH ANNUAL LAW OF LAWYERING**
Dec. 15, Seattle & webcast. 6.25 Ethics credits. Presented by the WSBA; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org

**FAMILY LAW**

**OFTEN OVERLOOKED — FAMILY LAW ISSUES**
Dec. 13, Seattle & webcast. 6 CLE credits (5 Law & Legal Procedure + 1 Ethics). Presented by the WSBA in partnership with the WSBA Family Law Section;

**LEGAL LUNCHBOX**

**DECEMBER LEGAL LUNCHBOX**
Free recorded seminar available for download during the month of December starting Dec. 1. 1.5 CLE credits. Presented by WSBA; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org

**JANUARY LEGAL LUNCHBOX**
Jan. 30, webcast. 1.5 CLE credits. Presented by the WSBA; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org

---

**LEGAL LAUGHS**

by Jonny Hawkins

“Life is unfair. Next case.”
Resignation in Lieu of Discipline

Nicole B. Chafetz (WSBA No. 20761, admitted 1991) of Kent, resigned in lieu of discipline, effective 10/17/2017. The lawyer agrees that she is aware of the alleged misconduct in disciplinary counsel’s Statement of Alleged Misconduct and rather than defend against the allegations, she wishes to permanently resign from membership in the Association. The Statement of Alleged Misconduct reflects the following violations of the Rules of Professional Conduct: 1.3 (Diligence), 1.4 (Communication), 1.6 (Declining or Terminating Representation), 8.4 (Misconduct). Jonathan Burke acted as disciplinary counsel. Nicole B. Chafetz represented herself. The online version of NWLawyer contains a link to the following document: Resignation Form of Nicole B. Charetz (ELC 9.3(b)).

Kenneth Mitchell-Phillips Sr. (WSBA No. 47720, admitted 2014), of Portland, resigned in lieu of discipline, effective 10/24/2017. The lawyer agrees that he is aware of the alleged misconduct in disciplinary counsel’s Statement of Alleged Misconduct and rather than defend against the allegations, he wishes to permanently resign from membership in the Association. The Statement of Alleged Misconduct reflects the following violations of the Rules of Professional Conduct: 1.3 (Diligence), 1.4 (Communication), 1.15A (Safeguarding Property), 1.15B (Required Trust Account Records), 8.4 (Misconduct). Jonathan Burke acted as disciplinary counsel. Nicole B. Chafetz represented herself. The online version of NWLawyer contains a link to the following document: Resignation Form of Kenneth Mitchell-Phillips, Sr. (ELC 9.3(b)).

Suspended

A. Spencer Bergstedt (WSBA No. 19825, admitted 1990) of Mill Creek, was suspended for 21 months, effective 10/04/2017, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.3 (Diligence), 1.4 (Communication), 1.5 (Fees), 1.15A (Safeguarding Property), 8.4 (Misconduct). Kathy Jo Blake acted as disciplinary counsel. A. Spencer Bergstedt represented himself. Randolph O. Petgrave, Ill was the hearing officer. Evan L. Schwab was the settlement hearing officer. The online version of NWLawyer contains links to the following documents: Order Approving Stipulation to 21-Month Suspension; Stipulation to Suspension; and Washington Supreme Court Order.

Derron C. Calvin (WSBA No. 27704, admitted 1997) of Renton, was suspended for one year, effective 10/12/2017, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.1 (Competence), 1.3 (Candor Toward the Tribunal), 8.4 (Misconduct). Sachia Stonefeld Powell acted as disciplinary counsel. Derron C. Calvin represented himself. Sidney S. Royer was the hearing officer. The online version of NWLawyer contains links to the following documents: Order Approving Stipulation to 21-Month Suspension; Stipulation to Suspension; and Washington Supreme Court Order.

James K. Gazori (WSBA No. 19900, admitted 1990) of Shelton, was suspended for two years, effective 10/27/2017, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rule of Professional Conduct: 8.4 (Misconduct). Erica Temple acted as disciplinary counsel. Brett Andrews Purtzer represented Respondent. Stephen John Henderson was the hearing officer. Linda D. O’Dell was the settlement hearing officer. The online version of NWLawyer contains links to the following documents: Order Approving Stipulation to Two-Year Suspension; Stipulation to Suspension; and Washington Supreme Court Order.

Denise C. George (WSBA No. 10749, admitted 1980) of Honolulu, HI, was suspended for six months, effective 10/27/2017, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.3 (Diligence), 1.4 (Communication). Benjamin J. Attanasio acted as disciplinary counsel. Denise C. George represented herself. The online version of NWLawyer contains links to the following documents: Order Approving Stipulation to Six-Month Suspension; Stipulation to Suspension; and Washington Supreme Court Order.

Michele Avalon Michalek (WSBA No. 19461, admitted 1990) of Gearhart, was suspended for six months, effective 6/20/2017, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 8.4 (Misconduct). Joanne S. Abelson acted as disciplinary counsel. Anne I. Seidel represented Respondent. Nadine D. Scott was the hearing officer. The online version of NWLawyer contains links to the following documents: Order Approving Six-Month Suspension; Stipulation to Six-Month Suspension; and Washington Supreme Court Order.

Robert Jeffery Wade (WSBA No. 33679, admitted 2003) of Seattle, was suspended for three months, effective 10/27/2017, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.3 (Diligence), 1.4 (Communication), 3.4 (Fairness to Opposing Party and Counsel), 8.4 (Misconduct). Craig Bray and Joanne S. Abelson acted as disciplinary counsel. Leland G. Ripley represented Respondent. David Donald Swartling was the hearing officer. The online version of NWLawyer contains links to the following documents: Order Approving Three-Month Suspension; Stipulation to Three-Month Suspension; and Washington Supreme Court Order.
Conrad Erhardt Yunker (WSBA No. 17765, admitted 1988) of Salem, OR, was suspended for 60 days, effective 6/30/2017, by order of the Washington Supreme Court imposing reciprocal discipline in accordance with an order of the Supreme Court of the State of Oregon. For more information, see https://www.osbar.org/publications/bulletin/11jun/baractions.html. Joanne S. Abelson acted as disciplinary counsel. Conrad Erhardt Yunker represented himself. The online version of NWLawyer contains a link to the following document: The Washington Supreme Court Order.

Interim Suspension

Joseph Cox Finley (WSBA No. 927, admitted 1974) of Bellevue, is suspended from the practice of law in the State of Washington pending the outcome of supplemental proceedings, effective 10/24/2017, by order of the Washington Supreme Court. This is not a disciplinary sanction.

Robert Joseph La Rocco (WSBA No. 42536, admitted 2010) of Bellingham, is suspended from the practice of law in the State of Washington pending the outcome of supplemental proceedings, effective 10/24/2017, by order of the Washington Supreme Court. This is not a disciplinary sanction.

William N. Holmes — CPA / CFE

Forensic Accounting ● Economic Damages ● Business Valuations
Commercial Litigation ● Full Service Public Accounting
Accounting and Tax Malpractice Litigation (Plaintiff / Defense)
Board of Accountancy Investigations

7128 SW Gonzaga Street, Suite 100 ● Portland, OR 97223
503.270.5400 ● www.pdxcpas.com

Get published!
See your name in lights (well, in ink, anyway) in NWLawyer! If you have an article of interest to Washington lawyers or have been meaning to write one, see page 4 for article submission guidelines. NWLawyer relies almost entirely on the generous contribution of articles from WSBA members and others.

Questions?
Contact nwlawyer@wsba.org.
**Announcements**

**LANDERHOLM, P.S.**

is pleased to announce that

**Adam P. Murray**

has joined the firm as an Associate.

805 Broadway St., Ste. 1000, Vancouver, WA 98660
Tel 360-696-3312
Fax 360-696-2122
clientservices@landerholm.com
www.landerholm.com

---

**ADAMS & DUNCAN, INC., P.S.**

is pleased to announce that

**Erica W. Temple**

has joined our firm.

Erica’s practice will focus on Attorney Discipline Defense. She is now accepting new clients and referrals for Bar Complaints • Grievance Process • Ethics Matters Trust Account Issues • Fee Agreements

For private consultations, contact Ms. Temple directly at Tel 425-740-3308 or Erica.Temple@AdamsLawyers.com

---

**LANDERHOLM, P.S.**

is pleased to announce that

**Gregory J. Hall**

has joined the firm as an Associate.

805 Broadway St., Ste. 1000, Vancouver, WA 98660
Tel 360-696-3312
Fax 360-696-2122
clientservices@landerholm.com
www.landerholm.com

---

**Adams & Duncan, Inc., P.S.**

is pleased to announce that

**Adam P. Murray**

has joined the firm as an Associate.

805 Broadway St., Ste. 1000, Vancouver, WA 98660
Tel 360-696-3312
Fax 360-696-2122
clientservices@landerholm.com
www.landerholm.com

---

**New partner or associate at your firm?**

Have a legal service to offer?

---

Advertise in *NWLawyer’s Announcements* or Professionals section!

Placing an ad is easy. Contact advertisers@wsba.org or call 206-498-9860.
Keller Rohrback L.L.P. is pleased to announce that

Rachel Morowitz has joined our firm as an associate. Rachel is a 2013 graduate of the University of California, Davis. She received her Juris Doctor from The George Washington University Law School in 2016. She will focus on cases involving ERISA.

and

Laura Zanzig-Wong has joined our firm as an associate. Laura is a 2009 graduate of the University of Washington. She received her Juris Doctor degree from the University of Washington School of Law in 2013. She will focus on consumer protection and employee benefits class actions.
ETHICS and LAWYER DISCIPLINARY INVESTIGATION and PROCEEDINGS

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.

HAWLEY TROXELL ENNIS & HAWLEY LLP
877 Main Street
Suite 1000
Boise, ID 83702
Tel: 208-344-6000
scsmith@hawleytroxell.com

INVESTOR CLAIMS

Former NASD Series 7, 66 and life/annuity insurance licensed broker/investment advisor. Available for consultation and referrals in claims involving broker/dealer error, fraud, and investment suitability.

COURTLAND SHAFER
John G. Llewellyn, PLLC
4847 California Ave. SW, Ste. 100
Seattle, WA 98116
Tel: 206-923-2889
courtland@llllaw.net

FAIRVIEW LAW GROUP, PS

LAW FIRM BREAK-UPS PARTNER DEPARTURES AND EXPULSIONS

Discreet consultation and litigation of partner withdrawals or expulsions.

SMYTH & MASON, PLLC
have years of experience successfully representing departing partners, expelled partners, and law firms. Operating agreements, divisions of profits, receivables, case files and clients; redistribution of debt and costs.

Don’t go it alone.

SMYTH & MASON, PLLC
71st Floor, Columbia Center
701 Fifth Avenue, Seattle, WA 98104
Tel: 206-621-7100 • Fax: 206-682-3203
www.smythlaw.com

CIVIL APPEALS

Jason W. Anderson
Successful results in personal injury, insurance, family law, commercial, and more.
Tel: 206-622-8020
anderson@carneylaw.com

CIVIL APPEALS

Jason W. Anderson
Successful results in personal injury, insurance, family law, commercial, and more.
Tel: 206-622-8020
anderson@carneylaw.com

FREEDOM OF SPEECH

(See, e.g.):
Ground Zero v. U.S. Dept. of the Navy, 860 F.3d 1244, (9th Cir. 2017)
City of Seattle v. Menotti, 409 F.3d 1113 (9th Cir. 2005)
Fordyce v. Seattle, 55 F.3d 436 (9th Cir. 1995)

McGAVICK GRAVES, P.S.
Mediation and Arbitration Group
Hon. Rosanne Buckner, Ret.
Barbara Jo Sylvester
Henry Haas
William P. Bergsten
Robert Beale
Cameron J. Fleury
Combined experience of over 250 years. Our team is ready to help resolve your complex matters.
Please visit our website for additional information.

McGAVICK GRAVES, P.S.
1102 Broadway, Suite 500
Tacoma, WA 98402
Local: 253-254-5900
Toll Free: 800-709-7015
www.mcgavickgraves.com

SELF-DIRECTED IRA

Warren L. Baker
is a national authority on the legal and tax complexities related to investing retirement assets (IRA, 401k) into “nontraditional” assets (e.g., real estate, private equity, etc.). Don’t risk: account invalidation, UBTI tax, and/or estate planning problems.

FAIRVIEW LAW GROUP, PS
Tel: 206-753-0305
warren@fairviewlawgroup.com

Did you recently move and want to be sure you’re getting NWLawyer?

Make sure your public mailing address is up-to-date by going to www.mywsba.org.

McGAVICK GRAVES, P.S.

Mediation and Arbitration Group
Hon. Rosanne Buckner, Ret.
Barbara Jo Sylvester
Henry Haas
William P. Bergsten
Robert Beale
Cameron J. Fleury
Combined experience of over 250 years. Our team is ready to help resolve your complex matters.
Please visit our website for additional information.

McGAVICK GRAVES, P.S.
1102 Broadway, Suite 500
Tacoma, WA 98402
Local: 253-254-5900
Toll Free: 800-709-7015
www.mcgavickgraves.com
MEDIATION
Mac Archibald
Mac has been a trial lawyer in Seattle for over 40 years. He has tried a wide range of cases including maritime, personal injury, construction, products liability, consumer protection, insurance coverage, and antitrust law.
Mac has over 20 years of experience mediating cases in Washington, Oregon, and Alaska. He has mediated over 1,500 cases in the areas of maritime, personal injury, construction, wrongful death, employment, and commercial litigation.
Mac has a reputation as not only being highly prepared for every mediation, but also for providing as much follow-up as is necessary to settle a case.

LAW OFFICES OF EDWARD M. ARCHIBALD
Mediation Services
601 Union Street, Suite 4200
Seattle, WA 98101
Tel: 206-903-8355 • Fax: 206-903-8358
Email: mac@archibald-law.com
www.archibald-law.com

FORENSIC ACCOUNTING
Robert Loe, CFE, CPA
- Certified fraud examiner
- Forensic accounting
- Litigation support
- Expert witness testimony
- Experienced peer reviewer
- Investigator for state board of accountancy
- Licensed in WA, AK, HI, & DC
221 First Avenue West, Suite 400
Seattle, WA 98119
Tel: 206-292-1747
www.loecpa.com
robert@loecpa.com

TRADEMARK COPYRIGHT & PATENT SEARCHES
Experienced Washington office for attorneys worldwide

FEDERAL SERVICES & RESEARCH
Attorney-directed projects at all federal agencies in Washington, D.C., including USDA, TTB, EPA, Customs, FDA, INS, FCC, ICC, SEC, USPTO, and many others.
Face-to-face meetings with Gov’t officials, Freedom of Information Act requests, copyright deposits, document legalization at State Dept. and embassies, complete trademark copyright patent and TTAB files.

COMPREHENSIVE
U.S. Federal, State, Common Law, and Design searches.

INTERNATIONAL SEARCHING EXPERTS
Our professionals average over 25 years experience each.

FAST
Normal 2-day turnaround with 24-hour and 4-hour service available.

GOVERNMENT LIAISON SERVICES, INC.
200 N. Glebe Rd., Ste. 321
Arlington, VA 22203
Tel: 703-524-8200
Fax: 703-525-8451
Toll Free: 1-800-642-6564
Minutes from USPTO and Washington, D.C.
info@governmentliaison.com
www.governmentliaison.com

COMPUTER FORENSIC
- analysis
- incident response
- investigations
- testimony

DR. GORDON MITCHELL
The eSleuth
Ph.D. UW Electrical Engineering
CFP, CISSP, SANS GSEC & GCIH
fellow of ISSA and SPIE
legal.enquiries17@eSleuth.com
888-375-3884 • Future Focus, Inc
WA PI 1844
https://eSleuth.com

HOLMES & COMPANY, LLP
Fraud and Forensic Accounting
Economic Damages
Business Valuation
Commercial Litigation
Accounting and Tax Malpractice
White Collar Financial Crime
Expert Testimony
Full Service Public Accountants
Plaintiff and Defense

WILLIAM N. HOLMES, CPA, CFE
7128 SW Gonzaga Street, Suite 100
Portland, OR 97223
Tel: 503-270-5400
Fax: 503-270-5401
whholmes@pdxcpas.com
www.pdxcpas.com

LAWYER DISCIPLINE AND LEGAL ETHICS
Former Chief Disciplinary Counsel
Anne I. Seidel
is available for representation in lawyer discipline matters and advice on legal ethics issues.
206-284-2282
1817 Queen Anne Ave. N., Ste. 311
Seattle, WA 98109
anne@anneseidel.com
www.anneseidel.com

HOLMES & COMPANY, LLP
Fraud and Forensic Accounting
Economic Damages
Business Valuation
Commercial Litigation
Accounting and Tax Malpractice
White Collar Financial Crime
Expert Testimony
Full Service Public Accountants
Plaintiff and Defense

WILLIAM N. HOLMES, CPA, CFE
7128 SW Gonzaga Street, Suite 100
Portland, OR 97223
Tel: 503-270-5400
Fax: 503-270-5401
whholmes@pdxcpas.com
www.pdxcpas.com

LAWYER DISCIPLINE AND LEGAL ETHICS
Former Chief Disciplinary Counsel
Anne I. Seidel
is available for representation in lawyer discipline matters and advice on legal ethics issues.
206-284-2282
1817 Queen Anne Ave. N., Ste. 311
Seattle, WA 98109
anne@anneseidel.com
www.anneseidel.com

COMPUTER FORENSIC
- analysis
- incident response
- investigations
- testimony

DR. GORDON MITCHELL
The eSleuth
Ph.D. UW Electrical Engineering
CFP, CISSP, SANS GSEC & GCIH
fellow of ISSA and SPIE
legal.enquiries17@eSleuth.com
888-375-3884 • Future Focus, Inc
WA PI 1844
https://eSleuth.com

HOLMES & COMPANY, LLP
Fraud and Forensic Accounting
Economic Damages
Business Valuation
Commercial Litigation
Accounting and Tax Malpractice
White Collar Financial Crime
Expert Testimony
Full Service Public Accountants
Plaintiff and Defense

WILLIAM N. HOLMES, CPA, CFE
7128 SW Gonzaga Street, Suite 100
Portland, OR 97223
Tel: 503-270-5400
Fax: 503-270-5401
whholmes@pdxcpas.com
www.pdxcpas.com
Opt For Justice

When you renew your license, renew your commitment to justice for all. Opt to donate!

Your gift to the Washington State Bar Foundation supports programs like Moderate Means, helping vulnerable people receive legal assistance, and Call to Duty, providing legal help to veterans and military families.

Your donation to the Campaign for Equal Justice funds 23 legal aid programs that provide critical legal aid to children, families, seniors, veterans, and the disabled to break cycles of poverty.

Give generously when you renew your license.
Classifieds

POSITIONS AVAILABLE ADS ARE ONLINE

JOB SEEKERS AND JOB POSTERS, positions available ads can be found online at the WSBA Career Center. To view these ads or to place a position available ad, go to http://jobs.wsba.org.

TO PLACE A PRINT CLASSIFIED AD

RATES, DEADLINE, AND PAYMENT: WSBA members: $50/first 50 words; $1 each additional word. Non-members: $60/first 50 words; $1 each additional word. Email text to classifieds@wsba.org by the first day of each month for the following issue (e.g., Jan. 1 for the Feb. issue.) Advance payment required. For payment information, see http://bit.ly/NWLawyerAds. For questions, email classifieds@wsba.org.

FOR SALE

Growing Edmonds-based Estate Planning Practice with revenue tied to approximately 60% estate planning, 30% probate & trust administration, and 10% business and real estate. Revenues have been growing 25% or more each of the last three (3) years. Contact justin@privatepracticetransitions.com or call 253-509-9224 today.

Kitsap County Estate Planning & Real Property Practice that is poised for growth. With over 1,600 estate planning clients in the firm’s database and great brand recognition, growth over the next several years is nearly a sure thing! Contact justin@privatepracticetransitions.com or call 253-509-9224.

Established Tacoma Estate Planning & Personal Injury Practice with revenue of approximately 60% from estate planning and probate and approximately 40% from personal injury practice Law. The practice was established in 1956 and a new owner can also buy the building! Contact justin@privatepracticetransitions.com or call 253-509-9224 today.

Downtown Tacoma Personal Injury Practice that is highly profitable and continues to grow. With net income in the principal’s pocket of more than $430,000 each of the last three (3) years, you won’t find a better personal injury practice in Tacoma. Contact justin@privatepracticetransitions.com or call 253-509-9224 today.

Extremely Profitable Family Law Practice that is growing substantially year-over-year. Office space is beautiful and the team is tremendous. Couple that with an opportunity to offer estate planning, probate, and real estate services to clients, this is an incredible opportunity! Contact justin@privatepracticetransitions.com or call 253-509-9224 today.

Growing Seattle-based Estate Planning Practice that is simply one-of-a-kind! With revenues in excess of $700,000 and growing, you won’t want to miss this once-in-a-career opportunity to jump-start your own practice by marketing to more than 3,000 clients! Contact justin@privatepracticetransitions.com or call 253-509-9224 today.

Highly Profitable Criminal Defense & Personal Injury Practice with revenues in excess of $1,000,000. You won’t find a better criminal practice on the market today. The approximate breakdown, by revenue, is 80% criminal law and 20% personal injury and infractions. Contact justin@privatepracticetransitions.com or call 253-509-9224 to learn more.

Highly Profitable Clark County Practice that is experiencing steady growth year over year! Case breakdown is approximately 33% probate, 33% real estate, and 33% business (transactional and litigation). This is a fantastic opportunity to build upon an incredibly profitable practice! Contact justin@privatepracticetransitions.com or call 253-509-9224 to learn more.

Highly Profitable East King County Practice that is approximately 30% business (transactional and litigation), 45% real estate, and 20% construction-related matters. This is a fantastic opportunity to build upon a profitable eastside practice! Contact justin@privatepracticetransitions.com or call 253-509-9224 to learn more.

Incredible Family Law Practice that is highly profitable with an amazing reputation. The firm handles divorce, child custody and visitation, relocation, non-parenthood/parent/custody, and military family-related matters, with average billings per client exceeding $10,000! Contact justin@privatepracticetransitions.com or call 253-509-9224 to learn more.

Fantastic King County Estate Planning Practice with extremely low overhead (~30%) and SBA financing ready! The case breakdown is approximately 85% estate planning, and 15% probate and guardianship. This is an excellent opportunity to take over a profitable practice! Contact justin@privatepracticetransitions.com or call 253-509-9224 to learn more.

Thriving Eastern Washington Practice that includes a piece of history and excellent revenues. Case breakdown is approximately 40% criminal law, 25% plaintiff’s personal injury, 20% workers’ comp, 10% bankruptcy, and 5% estate planning and real estate work. Don’t let this one get away. Contact justin@privatepracticetransitions.com or call 253-509-9224 to learn more.

Thinking about buying or selling a practice? If you are, we can help you! Guaranteed. We have countless buyers and sellers waiting for the right opportunity. Take control of your tomorrow by calling us today.
SERVICES

Yoga for Body, Mind, and Spirit. Mondays at 11:30 a.m., noon, & 6 p.m. at East-West Book Shop, 65th & Roosevelt, Seattle; 206-523-3726. Class is 75 minutes; you will have time to meditate upon completion of class. Free parking and no charge for first class.

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

Legal research and writing attorney. Confidential legal research, drafting of pleadings, formatting, and citation checking for trial- and appellate-level attorneys. Professional, fast, and easy to work with. Call Erin Sperger at 206-504-2655. Sign up for free case law updates at www.LegalWellspring.com; erin@legalwellspring.com.

Brief and motion writer with extensive state/federal litigation experience available as contract lawyer. Summary judgments, basic pleadings, declarations, trial briefs, appeals, research memos, discovery drafting. Excellent references. Reasonable hourly rate. Superb Avvo rating. Lynne Wilson at 206-328-0224 or LynneWilsonAtty@gmail.com.

Contract attorney, experienced in research and writing, drafts trial and appellate briefs, motions and research memos. Summary judgment motions and responses, interrogatories, trial briefs, editing and cite-checking. Prompt turnaround times, excellent references. Elizabeth Dash Bottman, WSBA #11791, 206-526-5776, ebotman@gmail.com.

NW Mobile Techs—Specializing in Apple-related support (Mac, iPhone, iPad) and law solutions (Daylite, PIP). Also proficient in supporting Windows environments and networks. Have you considered going paperless in your office? Have you had a security audit recently? Consult with us: 206-683-6975; info@nwmobiletechs.com; www.nwmobiletechs.com.

Appraiser of antiques, fine art, and household possessions. James Kemp-Slaughter ASA, FRSA, with 33 years’ experience in Seattle for estates, divorce, insurance, and donations. For details, see jameskempslaughter.com; 425-943-7964; or Comptonhouse65@gmail.com.

Nationwide corporate filings and registered agent service. Headquartered in Washington state. Online account to easily manage 1–1,000 of your clients’ needs. www.northwestregisteredagent.com; sales@northwestregisteredagent.com; 509-768-2249.


Make your web copy shine! Freelance writer, and attorney of 15+ years, ready to perfect your: web content, blog posts, newsletters, marketing materials, white pages, eBooks, etc. 100% professional and reliable. Almost a decade of professional writing/marketing experience. Dustin Reichard; dustin@dustinreichard.com or 206-451-4660. Please visit www.dustinreichard.com for more information.

Gun rights restored! Your client lost gun rights when convicted of a felony or DV misdemeanor, but in most cases can
Justice for Victims of Mesothelioma

THE NORTHWEST'S LEADING ASBESTOS LITIGATION FIRM
At Bergman Draper Oslund, we have just one practice area; we represent families struggling with mesothelioma and other asbestos related cancers and diseases.

We are the largest plaintiff asbestos firm in the Northwest with over $700 million in recoveries for Washington and Oregon clients.

821 2nd Avenue, Suite 2100
Seattle, WA 98104
(206) 957-9510

900 SW 5th Avenue, Suite 2000
Portland, OR 97204
(503) 548-6345

www.bergmanlegal.com  (888) 647-6007

Emerald City Attorney Network. Top contract attorneys and paralegals. Want increased revenue and free lunch? Let us turn your excess work into billable hours. Increase profit. Satisfy waiting clients. Let us take you to lunch or bring lunch for your office and discuss how we can help. 206-388-7808. www.emeraldcityattorneynetwork.com. andy@emeraldcityattorneynetwork.com.

Two beautiful class “A” offices in the 1000 2nd Ave. Building. Sweeping panoramic 180-degree views of Elliott Bay, downtown Seattle, and beyond. The 300-square-foot office faces northwest, features a dramatic curved window. The adjacent smaller, 224-square-foot, office has a north-facing view and is appointed with a full wall dark wood credenza with ample shelving, mini-fridge, and cabinet space. Both offices rent together for $4,600 which includes new phones, Skype for Business with Microsoft cloud PBX., internet, and unlimited long-distance calling.


Executive and virtual office suites available now! Downtown Seattle, Safeco Plaza Building, 32nd Floor. Join our network of attorneys! Includes fiber internet, receptionist, conference rooms, kitchen facilities, notary services, fitness center. Support services such as telephone answering, copier, fax also available. Starting at $60/month. 206-624-9188 or adm@bscofficespace.com.

SPACE AVAILABLE

VACATION RENTALS


Emerald City Lawyer

DEC 2017/JAN 2018  |  NWLawyer  63
Jean Y. Kang

Bar No. 42074
Law School:
Seattle University School of Law

I became a lawyer because I watched my immigrant parents struggle through language, cultural, and socioeconomic barriers, racism, and isolation, and wanted to be able to protect my parents and also to provide access to resources for disadvantaged communities.

The best advice I have for new lawyers is to seek mentorship/sponsorship, ask questions, and be professional and courteous to others (opposing counsel, staff, judges, etc.).

The most rewarding part of my job is helping individuals go through a stressful time in their lives. Dealing with a lawsuit is a frightening experience, and clients are grateful to have someone help them through the process.

If I could have tried one famous case, it would be the O.J. Simpson trial!

The most memorable trip I ever took was a cross-Europe trip that landed me at London’s Heathrow Airport. I was walking through the terminal when I ran into Michael Jackson and his bodyguards. Michael and I made eye contact, and I’m sure it was as memorable for him as it was for me.

I absolutely can’t live without coffee.

My fitness routine is running and boxing.

My favorite place in the Pacific Northwest is Sunset Avenue in Edmonds.

I was born in Seoul, South Korea, and moved to Bothell, Washington, at the age of 6.

I give back to my community by reaching out to acknowledge their presence, to hear their stories, and to form genuine connections based on shared experiences and common interests.

My worst habit is my coffee addiction.

My greatest fear is: See below under “My idea of misery…”

My idea of misery is driving in Seattle traffic on a rainy weekday, before a Seahawks game, during a presidential visit.

If I could get free tickets to any event, I would be going to the Super Bowl.

My all-time favorite movie or TV show is “The Godfather” (I and II only) and “The Wire.”

If I have learned one thing in life, it is that the only person you have control over is yourself.

My name is Jean Y. Kang and I am a civil litigator at Smith Freed Eberhard in downtown Seattle, where I handle insurance defense matters. Prior to civil work, I was a criminal deputy prosecuting attorney at several counties, including King County, handling felonies and misdemeanors. I currently serve as a Governor At-Large for New and Young Lawyers on the Board of Governors of the Washington State Bar Association.

We’d like to learn about you!

Email nwlawyer@wsba.org to request a questionnaire.
THE EXPERTS IN LEGAL PAYMENTS

The proven payment solution for lawyers.

Managing payments and growing revenue for over 45,000 lawyers in the United States, LawPay is the only payment solution offered through the ABA Advantage program. Developed specifically for law firms, LawPay guarantees complete separation of earned and unearned fees, giving you the confidence and peace of mind that your credit card transactions are handled the right way.

LawPay.com/WSBA | 866-645-4758
Helping the Naughty List,
Since 1993.

Every mistake has a solution.

Trust us with your DUI and Criminal Defense referrals. With more than two decades of experience handling these cases, we’ve seen just about everything. We know mistakes happen, and we know how to solve them.

“You refused to let one mistake define me, and you made me believe in myself again. I am very thankful for that. You guys are true advocates.” - David B., Tacoma, WA

BJAttorneys.com • Seattle Everett Tacoma Bellevue • 1-800-DUI-AWAY