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I enjoyed the article on court service dogs. I have enjoyed the companionship of our four legged family members my whole life. While my Obi Wan Abbott (German Shepherd/Whippet mix) see attached...
pic) is WAY too puppy rambunctious for such a role, I have witnessed first-hand how dogs of all sizes and shapes can positively impact our lives. Thus, I am not surprised that courthouse service dogs provide such a useful conduit for victims as described in your articles. Thanks for sharing and I am glad my home county allows them in the courtroom. I grew up in Arlington and still hold my WSBA license even with my practice based in Nevada. I will have to see if our state court has a similar program, and if it does not, to take steps to correct that problem.

Steven Abbott, Las Vegas, NV

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Joe was most recently in-house counsel for the Yakama Nation.
Scott is general counsel for the Spokane Tribe of Indians and a member of the Choctaw Nation.

From left to right: Anthony Broadman, Ryan Dreveskracht, Joe Sexton, Scott Wheat, Gabe Galanda

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After passing the Bar exam, a mentor with a stellar reputation gave me this business advice: “Always give your clients some money back.” A short time later, another very successful older lawyer gave me this advice: “Never be scared to charge everyone your full fee.” I could not reconcile both pieces of advice, and after some thought, I was more comfortable with the idea of “giving back,” rather than “taking all.”

So, when I had the first opportunity, I gave a client back a portion of her retainer at the end of her case. She was shocked, but very happy to see that I didn’t spend all her money when I clearly could have.

As my practice changed into mostly contingency work, the concept of “giving back” evolved. I began voluntarily waiving some portion of my fees and putting it back into the hands of my client. They usually needed the money more than I did, and it gave me the opportunity to chip away at the old, tired stereotype of the “greedy” lawyer.

As time passed, I began to see the advice more broadly to mean that I must give clients “more for less.” So I looked for ways to decrease the costs of litigation, ways to be more economical with my time without losing quality, and ways to standardize and systematize my practice to be more efficient so it would be easier to give money back. Increased efficiencies made it easier to waive fees, do better work, and still run a profitable firm.

As I have searched to improve my business model, I have revisited the advice of the two older successful lawyers. It led me to this question: “Is it better to ask, ‘How can I charge less,’ or, ‘How can I charge more?’”

Historically lawyers have had a monopoly on legal services, so they could always charge more. How else could the concept of the billable hour have evolved? (Can you imagine engaging the services of a home builder who charged by the hour to build your house?) But today, our monopoly is changing and the legal services industry is being taken over by large corporations like LegalZoom and Rocket Lawyer that offer all types of legal documents for free or at a fraction of the price of a lawyer.

In 2011, LegalZoom boasted that its customers placed 490,000 orders. Its revenue was growing: $156 million in 2011, up from $121 million in 2010 and $103 million in 2009. In 2011, LegalZoom’s net income reached $12.1 million. At the same time, Rocket Lawyer boasted 70,000 users visiting its site each day, and as a result had doubled its revenue for four consecutive years. In 2011, its annual revenue reached $20 million.

Both companies have continued to grow. Clearly, the big online legal providers have entered the market asking, “How can we charge less?” and their business model is working. But that has not been the model for most U.S. law firms. Not surprisingly, our law firms have not been able to match the growth and meteoric rise in income that online legal service companies have come to expect every year.

In Washington, our market, like many other states, is primed to significantly grow the success of online legal providers. Rocket Lawyer, LegalZoom, and dozens of other Internet legal service companies are emerging with new services, new apps, and new ways to give more for less. Here’s why I think their business model is working better.

First, consider that in 2003 a civil legal needs study showed that greater than three of four low-income Washingtonians needed legal services. In fact, 87 percent faced at least one civil legal problem each year, and, on the average, faced 3.3 civil legal problems per year. These same people faced 88 percent of their legal problems without an attorney.

In 2011, LegalZoom boasted that its customers placed 490,000 orders. Its revenue was growing: $156 million in 2011, up from $121 million in 2010 and $103 million in 2009. In 2011, LegalZoom’s net income reached $12.1 million.
2-1-1 crisis clinic hotline program saw employment issues increased 43 percent; housing issues increased 54 percent; and a 31 percent rise across the board for all legal services.

Third, the census statistics for 2008–12 shows the average household in Washington contains 2.52 people and the median income per household in Washington is $59,374.

Fourth, moderate means and low-income households cannot afford to pay the full fees of a lawyer and thus often don’t retain lawyers. What that means in real numbers is that a family of four that earns less than $92,000 and a household of three people that earns less than $78,120 are by definition moderate means. Thus, according to the census, the average-sized household and those living at the median income level are low-income or moderate means — there are nearly seven million people in Washington today.

Therefore, in 2013 we seem to have priced ourselves out of the largest portion of the existing legal market in Washington. As a result, more people are forgoing lawyers and/or turning to online legal service providers, despite the fact that lawyers can provide a significantly higher quality of service. The truth is that price, not quality of work, drives the legal service market. Lawyers represent quality, but legal service providers like LegalZoom and Rocket Lawyer represent accessibility and a bang for those with limited bucks.

So where does this leave us? Some have made predictions about what will happen to lawyers in 2014 with the sea change in the legal services market. Jordan Furlong, principal of Edge International, predicts:

Firms are now standing face-to-face with the hard truth they’ve been trying their best to avoid: their business practices have rendered them uncompetitive . . . Law firms need new business practices better adapted to a highly competitive, increasingly sophisticated legal market heavily infiltrated by process and technology. Re-engineering the business practices . . . is an extraordinarily difficult task . . . 2014 is the year we start finding out which firms have leaders who can rise to this massive challenge — by counting the increasingly rapid downward spirals of those that don’t.

Others have a less dramatic view. Jeffrey Brandt, editor, Pinhawk Law Technology Digest, predicts:

Firms will invest in some newer social-enterprise tools, but the primary focus will be on recrafting/reengineering the business processes and procedures to maximize efficiency and getting more out of the tools they already have.

So in 2014, is it better to ask yourself, “How can I charge less,” or, “How can I charge more?” If you are following the trends of the online legal services market, then profitability means retooling your law firm’s practices to find efficiencies, standardizing and systematizing work flow, embracing and fully leveraging new technology, investing in computer and networking metrics and analytics, and effectively reaching out to help more people by charging less.

On the other hand, firms that continue to highly customize each case, create letters and pleadings from scratch, and bill or charge by output and not outcome may not be able to offer lower rates, and will not be able to effectively capture any of Washington’s vast unmet legal services market. These are the firms that look to charge more. For boutique firms with high-end clients, this strategy may continue to work, for now. But for most lawyers, the new economy is forcing us to change our methods.

While the ensuing debate over whether lawyers are “better” than online providers is a topic for another article, for now it is clear that people are overwhelmingly choosing non-lawyer legal assistance alternatives where lawyers have priced themselves out of the market.

What strategy will you choose? For those of you who choose to begin retooling, the WSBA will be there to offer a wide array of services including improved and focused CLEs on topics like technology, marketing, and office management. The WSBA will be expanding and re-targeting services from the Law Office Management Assistance Program to better meet the needs of solo and small-firm practitioners. Sections like the Solo and Small Firm Section and the soon-to-be-created new Low Bono Section will be working to create a better business model and improving access to justice. Committees like the Pro Bono Legal Aid Committee and Young Lawyers Committee will also be engaged in improving access and integrating new and existing technology.

Additionally, by the time this article is published, the Board will have considered creation of a new committee. The “future” committee will be comprised of CEOs of tech companies, members of the ATJ and low bono communities, young lawyers, high-level WSBA staff, and Board leadership. It will act as a think tank to assist the WSBA staff to create, educate and implement cutting edge ideas, technology, and methods of practice that will keep our profession relevant, accessible and competitive.

Allen Kay, an American computer scientist, once said, “The best way to predict the future is to invent it.” If that’s true, then this is our chance to invent a better future . . . while it’s still predictable. NWL

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How Privileged Is Communication with Your Firm’s In-House Counsel?

by Blake Marks-Dias

Consider the following hypothetical: Your firm represents a client who two years ago entered into a series of licensing agreements that settled an ongoing dispute between the parties. Each agreement contained an arbitration provision that limited the parties’ rights to assert claims arising under those licensing agreements. Under some arbitration provisions, the time limit was two years from accrual of the claim; for others, it was three. When calendaring reminders regarding the various claims deadlines, you inadvertently mix up some dates, resulting in missing a deadline to file an arbitration demand for a claim you knew your client had. You immediately seek the advice of your firm’s in-house lawyer or ethics officer regarding your ethical obligations and the client’s possible malpractice claim.

Like any other confidential communication seeking legal advice from counsel, your communications with the firm’s in-house lawyer or ethics officer regarding your ethical obligations and the client’s possible malpractice claim.

In Washington, the Communication May Not Be Privileged Because the Lawyer’s Duties to the Client Trump the Privilege

The attorney-client privilege in Washington is codified at RCW 5.60.060(2)(a): “An attorney or counselor shall not, without the consent of his or her client, be examined as to any communication made by the client to him or her, or his or her advice given thereon in the course of professional employment.” Under the statute’s plain language, the privilege appears to attach to the hypothetical communication above, in which you confidentially seek legal advice from your firm’s in-house counsel. But according to one Washington appellate court’s reasoning, the privilege analysis is different in the context of a firm’s in-house lawyer’s advice regarding a client’s potential malpractice claim.

In Versuslaw, Inc. v. Stoel Rives, LLP, Washington’s Division I Court of Appeals held on somewhat similar facts to the hypothetical above that the attorney-client privilege may not attach. 127 Wn. App. 309, 333–34 (2005). Although it recognized that the attorney-client privilege generally protects communications among lawyers in the same firm, the court held that the privilege may not protect communications when a lawyer seeks advice from the firm’s in-house counsel about a client’s possible malpractice claim.

Why wouldn’t the standard attorney-client privilege analysis apply to protect the communications? According to Division I, because of the lawyer’s obligations to the client: Whether the privilege attached to a lawyer’s communication with a firm’s in-house counsel about a client’s possible malpractice claim depends on whether there was a conflict between the lawyer’s interests and the lawyer’s fiduciary duties to the client when the communication was made. See id. Timing and the surrounding circumstances are critical to the analysis, and include whether the attorney-client relationship between the lawyer and the client was terminated (and if so, when) and when the lawyer knew of the client’s possible malpractice claim. See id.

Under this approach, the lawyer’s fiduciary duty to the client — what Division I called “the highest duty” there is — prevents the lawyer in a malpractice action from using the attorney-client privilege as a shield against the beneficiary of the fiduciary relationship, the client. To highlight this clash with the client’s interests, the Versuslaw court also reasoned that the Washington Rules of Professional Conduct prohibit a lawyer from representing a client if the lawyer’s own interests — here, defending from malpractice liability — materially limit the representation of the client.

No other division of the Washington Court of Appeals has addressed this issue. And although it denied review in Versuslaw, Washington’s Supreme Court has not addressed the issue either, possibly making the Versuslaw approach open for review and reconsideration.

A Recent Trend in Other Jurisdictions Away from Washington’s Approach

Two decisions handed down last year by the Georgia and Massachusetts supreme courts represent a possible movement away from Washington’s approach and towards protecting the types of communications depicted in our hypothetical. In both cases, the courts rejected the fidu-

In rejecting the fiduciary-duty and conflict-of-interest rationales, these courts reasoned that a lawyer’s fiduciary and ethical duties to the client are irrelevant and collateral to any analysis of the existence of the legal privilege. See St. Simons Waterfront, 746 S.E.2d at 106–08; RFF Family P’ship, 465 Mass. at 715, 720–21. Rules of professional conduct should not abrogate the legal privilege, and lawyers’ fiduciary duties to clients apply with equal force to the relationship between the lawyer and the firm’s in-house counsel. This stands in stark contrast to the Versuslaw fiduciary-duty-trumps-privilege reasoning, which logically could also be used to compel disclosure of communications with the outside counsel a law firm retains regarding a potential malpractice claim.

The courts reasoned that the existence of the privilege would not protect the underlying facts of the client’s malpractice claim from disclosure; indeed, “[a] fact is one thing and a communication concerning that fact is an entirely different thing.” See, e.g., Upjohn Co. v. United States, 449 U.S. 383, 395 (1981). Nor would the privilege alter the lawyer’s duty to disclose the potential malpractice claim and request the client’s informed written consent before proceeding with the representation. (See Washington’s RPC 1.7.) In other words, the client’s interests and ability to bring a potential malpractice claim really is not prejudiced by the privilege protecting a lawyer’s communication with the firm’s in-house counsel.

Under both cases, the privilege analysis would be substantially similar to the run-of-the-mill attorney-client privilege analysis that lawyers confront in their day-to-day practices: 1) whether there was an attorney-client relationship between the lawyer and the in-house counsel, 2) whether the communication sought legal advice, 3) whether the communication was maintained in confidence, and 4) whether any exceptions to the privilege apply. See St. Simons Waterfront, 746 S.E.2d at 108; RFF Family P’ship, 465 Mass. at 703.

The first element — whether an attorney-client relationship existed between the lawyer and the firm’s in-house counsel — is the most likely grey area that could give rise to disputes. The more closely the relationship resembles a traditional lawyer-client relationship, the better. This could include the files for the possible malpractice claim being held and maintained separate from the files for the underlying matter, as well as the firm’s in-house counsel billing the firm instead of the client, not having worked on the underlying client matter, and/or having an exclusive role as the firm’s counsel to the exclusion of other client work. See St. Simons Waterfront, 746 S.E.2d at 104–08; RFF Family P’ship, 465 Mass. at 703.

Practical Considerations Favor Protecting These Communications

Under the Versuslaw rule, which might not protect communications with a firm’s in-house counsel if the firm still repre-
sents the client, it appears that the only ways that a firm can seek shelter from the disclosure of the legal advice it receives regarding a client’s potential malpractice claim are to a) terminate or withdraw from the representation before seeking the advice of in-house counsel, or b) retain outside counsel. Both options are the exact opposite of what the legal community and bar, both of whom strive to protect and preserve the integrity of the profession and serve the best interests of clients, should want — dedicated in-house counsel and/or ethics officers who can immediately, and with the requisite institutional knowledge and subject matter expertise, advise a lawyer about his or her legal and ethical obligations.

Lawyers today need frank advice regarding their compliance with legal and ethical obligations. We must navigate a dizzying array of malpractice laws and ethical regulations, many of which vary among states, at the national level, and internationally as our world becomes more and more connected. Protecting a lawyer’s communication with in-house counsel encourages firms to appoint in-house counsel and ethics officers to help firms and lawyers navigate and comply with these laws and regulations.

Broad protection via the attorney-client privilege also encourages lawyers facing possible malpractice and ethics issues to immediately seek advice once a possible problem arises, rather than doing so only after the firm jumps through the hoops of terminating or withdrawing from the representation or seeking out and retaining outside counsel. And as alluded to above, in-house counsel or ethics officers also have the institutional knowledge about the firm, its client relationships, its culture, and its internal processes that outside counsel simply cannot have, and would need to spend time coming up to speed on — time the lawyer and the client might not have.

Promptly seeking full and frank advice regarding a client’s potential malpractice claim and the lawyer’s obligations ultimately results in the client, lawyer, and firm being fully informed. Lawyers and a firm’s in-house ethics counsel should therefore be encouraged to engage in such communications, not discouraged. This is less likely to occur when these communications might be subject to disclosure later. Most importantly, protecting these communications would not alter the lawyer’s obligation to inform the client of the possible claim and receive informed consent to proceed, nor would it shield the facts underlying that claim from discovery — a good result for everyone.

Blake Marks-Dias is a principal at Riddell Williams P.S. in Seattle. He focuses his practice on litigation matters, including legal malpractice defense, complex commercial litigation, trade secrets, and non-compete

Blake Marks-Dias is a principal at Riddell Williams P.S. in Seattle. He focuses his practice on litigation matters, including legal malpractice defense, complex commercial litigation, trade secrets, and non-compete. He is also a member of the ABA Lawyers’ Professional Liability Consortium. He can be reached at bmarksdiags@riddellwilliams.com or 206-389-1575. Special thanks to Travis Dailey, an associate at Riddell Williams, for his assistance with this article.

Cairncross & Hempelmann Welcomes Ed Skone!

Ed Skone (at right) joins Charles Newton in Cairncross & Hempelmann’s expanding Family Law practice.

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Meet Dean Jane Korn

Interviewed by Collette Leland

In this first in a series of interviews with the deans of the three law schools in our state, Spokane attorney Collette Leland spoke with the dean of Gonzaga University School of Law. Prior to coming to Gonzaga in July 2011, Dean Korn was vice dean and John D. Lyons professor at the University of Arizona James E. Rogers College of Law. Dean Korn has written extensively on employment discrimination, focusing on disability law. Since coming to Gonzaga, Dean Korn has overseen the 100th anniversary of Gonzaga Law School, continued the implementation of Gonzaga’s experiential learning program, and become an enthusiast of Gonzaga basketball.

Collette Leland: What made you want to be dean of a law school?

Dean Jane Korn: I became an associate dean about 10 years ago at the University of Arizona. Because the other associate dean was going on sabbatical and they asked if I would fill in for her, and I thought, “How hard could it be?” Boy, was I surprised! But I really liked it. And then even after she came back, we both stayed on as associate deans. We worked very seamlessly together, and when we got a new dean at Arizona, my title changed to vice dean. People kept asking me, “Do I want to be a dean?” and my answer was always, “No, I do not.” Then once I woke up and kind of realized, I had something to offer and wanted to be a dean. So I put my hat into the dean searches and Gonzaga was my first choice. I liked what I saw here. I liked the people and to me, the quality of the school was a partnership with the quality of life in Spokane. I didn’t view a deanship as a stepping stone to anything. I wanted a place where I could live and settle and that would be my home. It wasn’t going to be a pass-through on the way to something else. Gonzaga is a very innovative place. The faculty truly care about the students here. And so it was my first choice. When President McCullough called me, I sort of blabbered around and finally said, “I’m too excited. Can I call you back tomorrow?” And he was very gracious.

Tell me about your transition from assistant dean in Arizona to being in charge of Gonzaga’s law school in Spokane.

I can’t imagine becoming a dean without having been an associate dean or a vice dean first, because without that you have really no clue what the dean does. So it was fairly easy to transition here. People are very welcoming, very friendly.

What do you like best about this job?

Surprisingly, the best part is meeting all the alums. And I was surprised at that because the fundraising part of the job was the one, I think, that scares new deans the most. But meeting with alums, whether I’m raising money or not, is the best part of the job, because they live such interesting lives, they all have different stories, and it’s just fun to get to meet them and talk to them both about their experiences at Gonzaga, whether that was five years ago or 50 years ago, or what paths their lives have taken since law school.

Was there anything that surprised you about the job?

How busy it is. It’s constant pretty much all the time.

Kind of like being a mom. You don’t get to stop being the dean.

That’s right. You do not get to stop being dean.

That’s interesting. At all three law schools now, we have female deans.

Yes, we do.

And I remember when we first met, you said, “While people talk about me being the first female dean at Gonzaga, they forget I am their first Jewish dean.” I just wanted to know what you think that says about the changing culture of law schools in general and what it means for Gonzaga.

Well, for the fact that we have three female deans in Washington now, I think that’s pretty unique and I don’t think that means that we can be complacent about women in leadership positions. Women are now only about 27 percent of the deans in ABA-approved law schools. And it should be closer to 50 percent.

It should.

And it’s not. Being the first Jewish dean, I think that it surprises some people. It doesn’t surprise others. I’m not sure — I’ve never been at a Jesuit school before, so I can’t say it reflects some change, because quite frankly I don’t know. Though I know David Yellen, the dean at Loyola Chicago, is also Jewish, and it has not been an issue at all. Because it seems to me that what people care about a lot at Gonzaga are somebody’s values. And whether they’re Jewish values or Catholic values or Methodist values or Baptist values — someone of faith has the same values, regardless of what the faith is. So, it just has not been an issue. Now, when I showed up at places where people did not know there was a woman dean, they have been a little surprised.

Have you seen any change in the culture of legal education that you think has led to women taking at least 27 percent of the leadership positions?

I think we’ve all seen the movie The Paper Chase and what law school was like there. I’d like to think that having more women involved in legal education, both as students and faculty and as deans, has changed that sort of culture. Would it have happened without women being in the profession? Well, I guess we’ll never know, but I’d like to think that women did bring a gentler approach to legal education — and I’m not trying to suggest at all that women do this in a less rigorous way than men do. But I see now that there is less intimidation in the classroom, less putting somebody down, and I think that’s a positive change. It’s very hard to think when you’re terrified.

Do you think that is flowing over into the practice of law?
I would like to think so... I speak to women who think that things have certainly gotten better in legal education since I was in practice. But are we all the way there yet? Certainly not.

**What steps do you think we need to take to get there?**

It’s like all the rules for how we deal with women in the workplace were kind of made up when there weren’t many women in the workplace. So I think it’s going to take drastic changes in how we think about accommodating families in the workplace. We’re starting to see that, but I know, for example, that while many firms and companies offer paternity leave for men when they have a new child, very few men actually take advantage of that for more than a week or two. And women continue to [take advantage of the full time] because they basically have to recover from pregnancy and childbirth. And then if they want an extended leave, then what does that do to their competitive advantage? Does it put them at a competitive disadvantage in the workplace? And as far as I can tell, in many places it still does.

**What do you tell students who are choosing law schools? What do you tell them about Gonzaga?**

I ask... what are they looking for in a law school, because Gonzaga is a small law school. It is not for everyone. If you want the kind of a law school where nobody knows who you are and you can sort of pass through anonymously, this would not be a good fit for you. If you are so competitive that you’d be the kind of person who would take things out of the library so other students wouldn’t have access to it, this would not be a good place for you. And if you are afraid of getting your feet wet, well, maybe this would be the place for you, because we have required experiential learning and that differentiates us from every other law school in the United States. You either have to do an externship or work in the clinic. For some people, learning from a book and in the classroom is great. For other people, that experiential learning is life-changing. Students who are afraid of speaking might shy away from experiential learning, but they’re the ones who absolutely should do it. And here, we don’t give them a choice. They’ve got to do it in one form or another.

**Do you think that other law schools will follow Gonzaga’s lead on this?**

They already are. One of the things I found out when I started interviewing for deanships was that Gonzaga changed its curriculum and started requiring experiential learning in 2009, way before anybody else started even thinking about it. The sad thing is nobody really knew about it... we needed to do a better job of telling our story. And we are now. I think that other schools already are following our lead.

**Now, you’re also going to adopt a two-year program, correct?**

Yes, but calling it a two-year program is a little bit misleading. You will be out in 24 calendar months, but it’s the same education as the three-year program. We’re referring to it as an accelerated program. Students will start in the sum-
mer and finish 24 months later, in time for the July bar.

Are other law schools adopting two-year programs?

A few. It’s still very novel and very new, and we’ve gotten a lot of interest in our applicants. The last time I checked, 37 percent of our applicants were for the two-year program.

Wow. That’s impressive for the first year of the program. What do you think legal education is going to look like 10 years down the road?

More and more experiential. It’s hard to predict because the ABA regulates law schools incredibly. Right now for example, a student is limited and we’re limited in offering a maximum of 12 hours of online education. Now, I do not want to see law schools become an online school, but could we offer more online learning than 12 hours? Currently, there’s a proposal in front of the ABA to increase it to 15 — still not a lot.

Do you think shifting to more Internet availability would reduce the cost?

It could. For example, if we’re teaching a course in employment law, and our employment law person is on sabbatical. Instead of hiring someone, could we join a class at another law school in the area via Skype or some other way? Could law schools offer on a routine basis less specialized classes and let a larger law school offer those specialized classes and allow our students to take them? Or we might have expertise that even a larger law school does not have. So, we have someone here who teaches animal law. If that’s not offered at a larger law school, or any other law school, could they Skype their students here?

A common criticism of legal education is that law schools are producing a faulty product because graduates are leaving law school with staggering debt loads and not practice-ready. How do you respond to that?

Well, if they are talking about Gonzaga, they are absolutely wrong. About the “not practice-ready,” I think there are still many law schools where students graduate having had virtually no experience. I think that’s a problem. And law students do graduate with staggering debt; that’s something that we all need to address. But given the regulations by the ABA about what we can and cannot do, it’s very difficult to reduce the cost of legal education. A lot of people seem to blame the staggering cost of legal education on faculty doing more scholarship and teaching less. The faculty at Gonzaga teach four courses a year, which is the standard around the country . . . and Gonzaga is actually a moderately-priced law school. Our tuition this year was approximately $36,000. If you look at a state school in California, tuition was approximately $44,000 for in-state residents of California. So that puts it into some perspective.

Do you think that the accelerated program will help with the cost? I’ve heard that the tuition you’re paying is the same.

Because it’s the same number of semesters. What we help with is that third year
of lost opportunity cost. You can get out into the market . . . find a job and earn a salary.

Which leads me to the last topic, that it’s been a tough job market for the last few years for a lot of law students. What kind of advice do you give to students, not just when they’re leaving Gonzaga, but when they’re here and choosing courses and doing things to be sure that they’re increasing their odds of getting a good job?

Laurie Powers, who is the director for the Center for Professional Development, gives that advice. So starting in about November of their first year, she starts meeting with them and has them start thinking now about what it is that they want to do when they graduate and what they need to do to get to that point. So, if you think you want to do criminal law, then maybe this summer you should be thinking about an externship in the public defender’s or the prosecutor’s office . . . and it is required now that they meet with the Center for Professional Development to have someone go over their résumé and cover letter. We don’t dictate what it should be. It is still theirs to send, but we want them to have the feedback [that] maybe this isn’t the best idea to have it be on pink stationery with green ink.

You mentioned how much you enjoy interacting with alums. From my experience, Gonzaga does a good job of matching students to alums for career advice. In your contact with alums, is that part of the conversation?

I always ask them [if] they are interested in our mentorship program — no matter where they are. So, we have a 1L mentoring program and that’s basically with more recent grads and talking to our first-year students about surviving their first year of law school. But we also have a 2L and 3L mentoring program that is primarily done by email and then we match people up . . . we have alums in every state, except Arkansas. Now, maybe when this article comes out, someone in Arkansas will contact us and say, “I’m here, I’m here!” But as far as we know, we have no alums practicing in Arkansas. But every place else. We can hook somebody up.

That’s terrific. Was there anything else you wanted to get in?

Just that this is a terrific place and a terrific law school. I’m very happy I’m here. And I feel it’s a real privilege to be the dean at Gonzaga in its 101st year!

Be sure to catch interviews with Dean Annette Clark of Seattle University School of Law and Dean Kellye Testy of the University of Washington School of Law in upcoming issues of NWLawyer.
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If a lawyer missed a court appearance 125 years ago, it was most likely because he was dead. Or caught in a blizzard. Or stranded on a peninsula. In any case, Pacific Northwest lawyers — like other pioneers in the region — were often at the mercy of Mother Nature in a state that, until 1889, was considered a territory. Lawyers practicing in the region would have confronted the “Big Freeze,” which blanketed Seattle in 64 inches of snow — nearly five-and-a-half feet — in eight days during 1880. Or they might have skated to the courthouse on a frozen Lake Union in February 1884, when 18 inches of snow fell over a single day. Or attorneys working in downtown Ellensburg in 1889 might have boasted of using the city’s newly installed telephone to reach a client west of the mountains.

Despite nature’s unforgiving conditions, lawyers adapted and survived to practice another day. As we celebrate the 125th anniversary of Washington statehood, the landscape to which attorneys must adapt is in large part a technological one. Changes in technology dramatically alter how attorneys practice law. For example, 125 years ago, lawyers would be shunted off to the asylum if they uttered a phrase like “e-discovery” or thought to look anywhere other than a book for legal authority. But pioneer lawyers did use some technology — if it can be called that by today’s standards — to combat and assimilate to the conditions of the life of a lawyer in a young state.
A smart lawyer, whose original client files were all made of flammable paper, might have kept on hand the latest technology to combat such raging infernos: wet blankets. In Seattle, wet blankets and gunnysacks were thrown over building roofs and law offices in hopes of curbing the inferno’s speed.

Confronting Fire: Wet Blankets and Tents
In 1889, lawyers throughout the state quickly learned to get along with a whole lot less — that was the year everything burned. The destruction started in Seattle on June 6, 1889, when, in a basement cabinet shop, a pot of glue being heated over a stove suddenly caught fire. Dashing water on the grease-based flames only made the fire spread, igniting wood shavings on the floor, and stoking an inferno that, over the next 12 hours, would consume 30 central city blocks — nearly all of Seattle’s fledgling downtown area.

The next disaster struck in Ellensburg on July 4, 1889, when a devastating fire destroyed not only 10 of the city’s business blocks and 200 Victorian-era homes, but also, according to the City of Ellensburg’s website, obliterated the chances of Ellensburg becoming Washington’s state capital.

The final conflagration hit Spokane (then Spokane Falls) on Aug. 4, 1889, destroying the city’s downtown commercial district. Fueled by high winds and technical problems with a pump station, the fire devoured 32 blocks of Spokane and killed one person before the winds died down and the fire burned out of its own accord.

A smart lawyer, whose original client files were all made of flammable paper, might have kept on hand the latest technology to combat such raging infernos: wet blankets. In Seattle, wet blankets and gunnysacks were thrown over building roofs and law offices in hopes of curbing the inferno’s speed, a measure that saved some structures (Henry Yesler’s mansion on Third Avenue, for example) but not others (Frye’s Opera House). The irony is that arguably both the Seattle and Spokane fires spread so quickly because the other latest technology of the time — pump stations — failed due to human error. Practicing law in the 1880s meant finding a way to continue doing so despite technology’s failings. Indeed, the pioneer lawyer of 1889 continued to find clients and go to court, even as his office sat atop the rubble of still-smoldering cities.

Throughout these catastrophes, Pacific Northwest lawyers would truly have reverted to their pioneer roots. For those living in the affected areas, a lawyer would have practiced his profession — met with clients, prepared briefs, conducted legal research — out of one of the many tents that would come to dot the razed cities. Indeed, so pervasive were the tents in Seattle that on April 11, 1890, the Seattle City Council passed a measure banning tents within the area destroyed by the Great Seattle Fire, as they were concerned that property owners would not build permanent structures unless compelled to do so.

For even in the midst of such chaos, there was still plenty of work to be done. Contracts needed to be negotiated, so that Seattle could be reinvented. Political chores were to be carried out so that building materials could be brought in quickly by rail to Ellensburg instead of laboriously by wagon. Lawsuits had to be filed in the aftermath of Spokane’s failed pumping system. The late 1800s witnessed not only the birth of a new state, but also a rebirth of many of its cities, and it was aided by a cadre of lawyers who experienced firsthand the failure of the latest technology and its subsequent disasters and rebuilding.

Remember Paper?
In today’s Google-powered world of instant information access, it is hard to imagine practicing law in a time when books were a problem. Robert C. Nesbit, in recounting the early lawyering days of a young Thomas Burke (destined to be the Judge Thomas Burke who — depending on the source — “built Seattle”) describes the scarcity of authoritative texts in the frontier legal profession. On one occasion, Burke found it impossible to draft a bankruptcy-related brief, as the only book in the Seattle area on bankruptcy law was owned by a district court judge who had taken it on circuit. However, the shortage ran both ways — Burke often sent books along with his briefing to the Supreme Court at Olympia so that the court could follow his arguments, ostensibly because those books would not otherwise be found in the court’s own library.

A wise lawyer in those early days stinted to accumulate an adequate library, a practice that until the last decade or so was still de rigueur. Books were expensive but necessary. And yet for all the difficulties a pioneer lawyer would have faced in procuring such necessary technology, it might have been easier for him to find the accurate text of a law than in today’s digital age.

A 2009 ABA Journal online article detailed the impossible quest of researchers, armed with laptops and iPhones, to find the authoritative text of the landmark Fugitive Slave Act online. While the researchers had no problem accessing excerpts of the Act, the problem was accuracy — there was no national or international body to ensure those excerpts were accurate or updated with amendments, even when found on government websites, LexisNexis, or Westlaw. Today’s lawyers may suffer from a literal information overload, overwhelmed by a glut of facts and figures from often unreliable sources; frontier lawyers would have had to battle no such static. In those days, less was more, and the founding fathers of our state’s Bar Association would have made use of what they had.

Canoes and Horses
A young lawyer in 1889, fresh sheepskin J.D. clutching in his hand, might have expected to be asked not, “What do you want to practice?” but rather, “Where do you want to practice?” For the pioneer
lawyer, the area of law in which one practiced was not as important as the ability to travel to different areas to serve clients. One attorney’s card in the Daily Intelligencer in 1889 boasted that he would “attend to business in all parts of the territory.” Another Seattle lawyer’s card stated that his practice “extends over the counties of King, Kitsap, Snohomish, Island, Whatcom, San Juan, Jefferson, and Clallam [sic].”

Indeed, as Nesbit describes, in the Seattle area “the pioneer lawyer with his armful of books for citations was a familiar sight on the Sound, as he followed the court by steamer or sometimes even by Indian canoe.” In Eastern Washington, it is just as easy to imagine the canoe replaced by a horse and a pack mule as a lawyer followed the circuit from mining town to lumber town and back. If the court “rode circuit,” the attorneys would follow.

Transportation technology was limited to whatever the lawyer’s own two legs could carry, as supplemented by the four legs of a faithful steed. As a result, lawyers in the late 1800s had little room for excess and likely boasted far better memories than their contemporary counterparts, committing to memory whole passages from Black’s Law Dictionary (first published in 1891) to keep from carting it along and sinking the canoe.

What is perhaps most remarkable in comparing the practice of law during the 1880s to the practice of law today is not the technological differences between the times, but rather the simple fact that much of the law has stayed the same.

**The Present**

What is perhaps most remarkable in comparing the practice of law during the 1880s to the practice of law today is not the technological differences between the times, but rather the simple fact that much of the law has stayed the same. A state superior court judge still has only 90 days in which he or she must render a decision; a party still has only 20 days to notify the opposing counsel that their attorney has died; the statute of limitations for an action for libel, slander, assault, assault and battery, or false imprisonment is still only two years. Smartphones and tablets may allow attorneys greater access to information and a larger client base, but the actual practice of law has changed little. An attorney must still show up to court on time to zealously represent his or her client, regardless of inclement weather or the availability of resources.

Therein lies the beauty of our legal profession: its simplicity. The practice of law depends not on the technology used by lawyers, but rather on the resourcefulness of the lawyers in practice. Books can be borrowed, documents can be saved, and laws can be accessed. But the bedrock principle of providing competent, tangible legal advice and representation to clients depends upon the lawyer — not on the tools he or she uses — and it exists regardless of the latest advances in technology.

Washington state and its bar association may have been born into a world of change at the end of the nineteenth century, but its resilience has rested not on technology, but rather on the lawyers which it may call members. After all, death still comes for all of us; these days, word just spreads a bit faster. *NWLawyer*

**Katie Ludwick** is a prosecuting attorney with the Island County Prosecuting Attorney’s Office. She graduated from Willamette University College of Law, where she filled her days with the usual song and dance of Law Review, moot court, and three years of being class president, in contrast to her undergraduate days when all she did was play basketball. Ludwick looks forward to being as involved in the WSBA community as she was at Willamette and to using today’s technology in her practice of law. She can be reached at katie.ludwick@gmail.com.
I was in seventh or eighth grade when I decided I wanted to be an attorney. Even at such a young age, I was unabashedly liberal and outspoken on political and social issues. I wanted a career that allowed me to fight for the rights of others and stand up to all of the world’s injustices. Of course, at the time, I was not considering marriage or children, and what sort of impact those decisions might have on all of my lofty career goals.

I graduated from law school in May 2005, and moved to the San Francisco Bay Area. I married in September 2005, and pursued my chosen career path in the law for almost three years. During that time, I worked long hours, learned much, and served on a number of boards and committees. I took pride in my job and the work I was performing on behalf of my clients. But in early 2008, everything changed when I became pregnant with my first son. From the moment I gazed down at that plus sign on the pregnancy test, my focus immediately shifted. I became less concerned about whether that pressing brief on my desk got filed or that demand letter got served. All I wanted and needed was for that baby growing inside of me to be born healthy.

My friend Janelle Hanchett, a writer who has a blog called “Renegade Mothering,” wrote a piece earlier this year entitled, “I became a mother, and died to live.” Her post poignantly describes the “death of self” and subsequent mourning that occurs when a woman has a child. Essentially, the woman she once was no longer exists, and a new woman—a mother—has come to replace her. The post resonated with me both personally and professionally on...
a profound level. Lately, I have realized that when I became pregnant with my first son, the attorney that I once was no longer existed and in her place stood a very different kind of advocate. While pregnant with my first child, I started a job at a small firm in San Francisco with two male partners. During my pregnancy, I was nauseous, suffered severe water retention, and experienced such a deep fatigue that I would often fall asleep at work, sometimes while reading a particularly dry legal opinion mid-sentence. Before and after my pregnancy, I also suffered a new affliction that rendered me forgetful and foggy, often referred to as “pregnancy brain.”

Transitional to a new position while pregnant (and exhausted, nauseous, uncomfortable, and forgetful) was difficult, but I overcame those challenges and performed well. However, when I returned from maternity leave, the job I thought I could once do well was suddenly transformed by my body’s hormonal changes and the fatigue from sleepless nights. I began to make mistakes, and my employer became increasingly nitpicky, irritated, and difficult to work for.

After I received a less-than-stellar review (the first that was not positive in my entire legal career), my employer and I agreed to part ways. Even though I was relieved to be free of that stressful situation, my confidence and self-esteem were shattered. I vacillated daily about whether I had made the right career choice, and whether I even had the skills to be an attorney anymore. Thankfully, a former firm, which had been disappointed when I left to join the new firm, offered me ongoing contract work. They also offered support and faith in my abilities and were instrumental in restoring my confidence.

As my son grew older, I slept better, felt better, and began to excel again as an attorney. After a few months, my husband and I decided to return to Seattle, where I joined a firm that was supportive of me and my family, as well as my second pregnancy and subsequent pregnancy leave. While the experience at my former firm was upsetting and challenging, and it took a long time to restore my confidence, having children has positively changed me personally and professionally in a number of ways.

Before having children, the law consumed my life. I had less perspective and took myself far too seriously. Since having children, I laugh more, and have more fun in my job because I realize that I can, and should, take my job seriously, but not take myself too seriously in the process.

Before having children, the law consumed my life. I had less perspective and took myself far too seriously. Since having children, I laugh more, and have more fun in my job because I realize that I can, and should, take my job seriously, but not take myself too seriously in the process.
exist. I still wonder whether the judge heard him. Afterwards, I laughed and laughed . . . and bought Elliot a not-inexpensive Lego fire truck. Children provide a welcome levity to an otherwise stressful job.

Having (and loving) children has also made me more open and forgiving of myself, and in turn, others. I more fully understand that we, as human beings, have all gone through difficult life experiences, whether it be having children, losing a loved one, or suffering with addiction or mental health issues, all while trying to maintain a legal practice and build a career. In July 2013, I lost my beloved five-and-a-half-year-old German shepherd mix to cancer. The week after I had to put him down, I had discovery responses due and client meetings, but I was an emotional mess. Instead of keeping this devastating loss private, I was honest with my clients about my loss when I had to cancel meetings, and with opposing counsel when I requested an extension. Opposing counsel was kind and empathetic; he also shared his own experience in recently losing a beloved family pet. My honesty with opposing counsel created a closer bond, and allowed us to communicate about our case more openly, which ultimately benefited my client when the case settled.

I have no regrets about choosing a career in the law and motherhood. Occasionally, I do miss that old attorney, the one who could easily work 12-hour days and single-mindedly focus on one case or legal issue, who never had to rush home to dinner, who got to go to the bathroom alone, and who never had to negotiate away her savings in Legos for silence. But most of the time, I am so grateful for my children in not only making me a happier person, but a different kind of attorney.
I met Tom Chambers in 1966 when we entered UW School of Law together. While some of us were organizing protests and the University District Movement, Tom was quietly taking care of the business at hand, living in Holly Park low-income housing and yet volunteering to help those even poorer. That’s the kind of guy he was.

Early in our struggling young lawyer careers, we somehow ended up on opposite sides of a divorce case that was anything but high-stakes. Tom served us with about 50 pages of written interrogatories, so, in response, I just changed the signature blocks and firm address, photocopied them, and served them back on him. Darned if he didn’t painstakingly answer each and every one. The lesson learned: you can’t outdo Tom Chambers. That’s the kind of lawyer he was.

Our practices evolved to mostly plain-tiff personal injury work. We were active together in the trial lawyers organizations and I learned that Tom tried more jury cases than any of our contemporaries. So when I got a record-setting verdict, I walked back to our office with the verdict form in hand and the first person I called was Tom to ask him to come over and share the moment, because I knew he appreciated how hard it was. Of course he did. That’s the kind of guy he was.

In 1985, he was very busy trying cases and assuming the leadership of WSTLA as president-elect. When my father died, a memorial was held in the Franklin County Courthouse in Pasco and Tom was there. That’s the kind of friend he was.

In 1986, the Legislature ran roughshod over the legal rights of injured persons and Tom felt devastated that it happened on his watch as WSTLA president (through no fault of his, I might add), so he devoted years to creating the Eagle program to finance future legislative advocacy and expanding the Amicus Committee to fight back in the appellate courts. He took responsibility. That’s the kind of guy he was.

Meanwhile, he produced Tom Chambers’ Trial Notebook, videos for clients on topics like how to prepare for your deposition, how to prepare for your defense medical exam, and many other seminar materials, always helping his professional colleagues. Despite his success and the terrific verdicts he obtained for his clients, he was forever humble. He would say the secret to trial success was simply prepare, prepare, prepare and KISS (keep it simple, stupid). Sharing and generous. That’s the kind of lawyer he was.

Once on a trip to Sardinia with a trial lawyer group we both belong to, he saluted my birthday (one of those significant ones that ends in a zero) by performing a trick I had first seen back in law school: drinking an entire beer while standing on his head! That’s the kind of fun guy he was.

by Jan Peterson

Justice Tom Chambers receives the WSBA Lifetime Service Award in Sept. 2012.

That’s the Kind of Guy He Was

Remembering Justice Tom Chambers

Justice Tom Chambers receives the WSBA Lifetime Service Award in Sept. 2012.
He had a passion for speed since his youthful jalopy racing days at Yakima Speedway. His email address started with “speed4tom.” He claimed to have the fastest boat on Lake Sammamish, he piloted an airplane, he rode a motorcycle and raced dirt bikes, he jumped out of airplanes, he deep-sea dived. I once accepted a ride with him behind the wheel of a Viper—the scariest ride of my life. He took risks. That’s the kind of guy he was.

It was Tom and Paul Stritmatter who asked me to run for the WSBA Board of Governors. There I got to see Tom’s leadership up close again. True to his values, we have Tom Chambers to thank for the Access to Justice Board, for example. Through his great success as a trial lawyer, he never forgot his roots and also served his community, such as the years he spent on the board of the Seattle Housing Authority. That’s the kind of heart he had.

Upon his election to the Washington Supreme Court, I was honored to be asked by Tom to present him to the Court for his swearing-in. I think I told the Court they were getting the trial lawyers’ trial lawyer with more courtroom experience than the rest of us put together, and that they could expect hard work and leadership. I think his fellow jurists will confirm that is exactly what they got and his opinions reflected his commitment to fair and equal justice. That is the kind of justice he was.

The breadth and depth of Tom Chambers’s legal career is astounding. He has served as president of nearly every legal organization a trial lawyer could aspire to, including the WSBA, representing all lawyers in our state. He received the highest honors each of them can bestow: Outstanding Judge of the Year by King County Washington Women Lawyers, Lifetime Service Award by the WSBA, Outstanding Trial Lawyer of the Year Award (which is now named for him) by WSTLA, Outstanding Trial Lawyer of the Year and Lifetime Achievement awards by ABOTA, etc. His election to the Supreme Court was the culmination of his career, of which he was justly proud.

All the while, he was married 46 years to Judy and father to three great kids. He and Judy traveled the world (you can hardly name a country they have not explored). That’s the kind of curious and committed man he was.

Tom Chambers was a great lawyer, a great jurist, a great father, and a great friend. That’s the kind of guy he was.
Members of the Solo and Small Practice Section recently invited employee benefits consultant and health insurance expert Chris Free to discuss the implications of the Affordable Care Act (ACA) on solo and small practitioners. Below, Chris expands on his presentation with further detail and updates to the ACA.

What’s in Your Cart?
Health Care Reform for Solo Practitioners and Small Businesses

by Chris Free

The Affordable Care Act (ACA) has proven to be very flexible legislation. It is fair to assume that something has changed between the time this article was written and the time you are reading it. With that said, let’s dig into some of the major concerns that are upon us.

Likely the farthest-reaching piece of the ACA is the individual mandate. The goal is to ensure as many people have insurance as possible by taxing people who don’t purchase insurance, or obtain it from an employer or another source. There are some exemptions for very low-income people, Native Americans, people enrolled on TRICARE, Medicare, or with VA benefits, and a few other scenarios. There are also subsidies for people who don’t have access to affordable coverage and are under 400 percent of the Federal Poverty Line ($45,960 for single, $94,200 for a family of four).

Insurance companies will be required to report Social Security numbers which have coverage to the IRS, so they know whether or not to assess these new taxes for people who do not have coverage. In 2014, the taxes max out at 1 percent of an individual’s income for the year. In 2015, it’s 2 percent. And in 2016, it’s up to 2.5 percent, with indexing beyond that. Either way, the penalty will be unlikely to encourage the young, invincible members of our society to enroll in the new insurance market.

Exchanges
The new subsidies are available to individuals through a marketplace called the exchange, or www.WAHealthPlanFinder.org. Even better, there are no longer any health risk questionnaires or pre-existing condition limitations for individuals. No one is denied coverage.

Washington state has had the most successful exchange rollout, when measured by enrollment as a percent of the population. That’s not to say it hasn’t been bumpy, for many have been caught up in technological limbo, even while holding a cancelation letter from their insurance carrier. For better or worse, though, the exchange will be open to new enrollments until March 31, so there is still time for the bumps to be smoothed over and get people enrolled.

There was also an intention within the ACA to help small employers through a Small Business Health Options Program (SHOP) exchange. Just like the individual exchange, the SHOP was intended to deliver an insurance-purchasing experience and deliver subsidies for those who need them. Unfortunately, Washington state’s SHOP exchange was unable to attract more than one carrier — Kaiser Foundation Health Plan of the Northwest — to participate.

The Washington exchange reached out to the federal government to figure out a workaround that would deliver the subsidies to employers who purchase coverage outside of the SHOP, but who otherwise qualify. Unfortunately, the federal government took a significant amount of time to figure this out for Washington businesses.

Just after submitting this article to NWLawyer, the law changed around SHOP subsidies in Washington state. Now, if your business is in Clark or Cowlitz county, you can access SHOP subsidies by buying coverage through the SHOP. However, the federal government has offered us some reprieve. They are now allowing employers who do not have access to the SHOP to still access SHOP subsidies.

Employer Mandate
In addition to the subsidies for small employers, the delay in the employer mandate and shared responsibility payments (penalties) is a welcome reprieve for larger companies. The mandate and penalties have been pushed back to 2015, but that doesn’t mean employers can wait to start planning.

The employer mandate applies to employers with more than 50 full-time equivalent employees. For these purposes, the federal government is defining “full-time” as employees working 130 hours per month (a refinement of the 30 hours per week definition that was originally used). If these penalties apply to your or your clients’ businesses, 2014 is the time to start doing time-tracking for employees classified as part-time, seasonal, or temporary.

In addition to the 130-hour eligibility requirement, employers of all sizes are required to limit benefits waiting periods to 90 days from the date of hire. (It’s important to note that many employers have a waiting period of “first of the month following 90 days.” This would invariably require new employees to wait 90 days and then wait additional days until the first of the month. For this reason, many
Employers and insurance carriers are reducing benefits eligibility waiting periods down to “first of the month from date of hire” in order to avoid this problem.

Under the employer mandate, employers must provide benefits to people the business determines to be full-time and to employees who are determined to be full-time through the aforementioned complex measurement and stability process. This process needs to be set in 2014, and tracked through 2014, so that it can be applied in 2015. This process is complicated enough to require its own article. Essentially, it works out to averaging hours over a pre-determined period of time to determine benefits eligibility for a pre-determined period of time in the future.

Penalties
The employer mandate includes two different penalties that might be assessed. Both penalties require that at least one employee receive a subsidy from the exchange.

The most obvious penalty is assessed for not offering coverage. This penalty is to be paid by employers who do not offer coverage at all, as well as employers who offer coverage that does not meet the ACA’s Ten Essential Health Benefits (EHB) and Actuarial Value (AV) requirements. The EHB and AV requirements will almost certainly be taken into account by insurance companies or brokers when insurance plans are created, and most employers will not need to take these into consideration directly.

For employers not offering qualified coverage, the penalty is $2,000 per full-time employee minus 30 employees. For example: 100 full-time employees minus 30 equals 70; 70 times $2,000 is $140,000. The penalty for this employer to not offer coverage would be $140,000 per year. (The penalty is pro-rated monthly for employees who may not work the entire year.)

The other penalty is for employers who offer coverage that is deemed to be “unaffordable.” There are multiple definitions of “affordable” throughout the Affordable Care Act, and this one has changed since it was originally authored. For the purpose of this penalty, “affordable coverage” is defined as costing less than 9.5 percent of the employee’s income to participate as a single employee on the employer’s health plan. Dependent premiums are not a part of this calculation. (If the employee’s coverage is deemed affordable in this calculation, the entire family becomes ineligible for a subsidy, no matter how expensive dependent premiums are or low-income the family is.)

This penalty applies based on the number of full-time employees whose coverage is deemed to be unaffordable. For each full-time employee who receives a subsidy because coverage is deemed unaffordable, the employer will be assessed a $3,000 penalty. The maximum penalty for unaffordable coverage is the penalty calculation for not offering coverage.

There is another very important aspect of these penalties: they are not a business expense that can be written off of the company profit and loss report. For owners of disregarded entities, such as partnerships, LLCs, and S-Corps, these penalties will pass through as phantom income to the owners, and the owners will be taxed on the penalties as if they had actually received the income. For C-corps, the penalty will appear as corporate profits and then be taxed at the appropriate level. It is imperative when calculating the impact of accepting the penalties associated with the ACA that this significant tax impact be included.

For smaller employers who are not concerned with penalty implications, many are asking themselves if they should send employees to the exchanges. We hear this often. For some companies, it is a viable option. For others, especially when there are low-income families who would benefit greatly by having access to subsidies, it is a great option.

Employer/Employee Relationships
There are some things to consider when sending employees to the exchanges.
We have seen employees push back because they believe health benefits are a part of their compensation. Employees bring up that their friends who work for competitors are not having the coverage canceled out from under them. Even in groups where the subsidies would pick up most, or all, of the premiums, and save the employees money, the employee’s pride is hurt when it is implied they need “government assistance” after a long day’s work for their employer. And, maybe most of all, employees see it as a cut in compensation.

In the past, there may have been enough grey area in the law for employers to pay or reimburse individual health insurance premiums for employees on a tax-free/pre-tax basis. In 2014, there is no longer any grey space. IRS Notice 2013-54 made crystal clear that employers will no longer be able to pay or reimburse for premiums on a tax-free/pre-tax basis. It doesn’t say you can’t reimburse for individual health premiums, but it will need to be done with a W-2 taxable wage increase.

We would also encourage employers who do decide to send employees to the exchange to engage the services of a certified exchange broker (may be called a producer or agent). There are other representatives of the exchange called navigators or in-person assisters.

Brokers and Navigators
There are two enormous differentiations between brokers and navigators. The first is in access to insurance markets. Exchange brokers can access all of the plans and subsidies in the exchange, as well as access the markets available outside the exchange. In contrast, a navigator can only access plans within the exchange. This would mean consumers who purchase insurance with the assistance of a navigator will not be able to be certain they have the best coverage for the best price, having ignored the entire private market.

The second differentiation is in consumer protections. The Department of Health and Human Services, at the federal level, has banned states from requiring navigators to carry an insurance license or errors and omissions professional liability insurance. It is unlikely that I have to outline to a group of attorneys the concerns around having representatives working in the insurance market without licensure or liability insurance. I would simply say that, if an employer is going to assist employees in accessing the exchange plans, they should bring in a broker who does have the liability insurance that the employer and their employees can rely on, should there be an honest error or omission in the process.

It is terrifying to think about the massive liability resting on the non-profits that employ navigators, the public health departments who are leading the navigator programs regionally, the exchange itself, the state of Washington, and the federal government, should navigators make mistakes in setting up insurance plans. There are myriad good reasons to require heavy regulation and consumer protections in the insurance market, and the ACA has shirked all of them as it relates to navigators and in-person assisters.

In addition to these, and many other, regulations comes a long list of new taxes. Some of the taxes are built into medical services, devices, and drugs which are raising the cost of care — and, thereby, insurance. Some of the taxes are on insurance premiums directly, further increasing the cost of insurance. Some of the taxes are directly on income. Individuals should definitely be in touch with their accountant to ensure incomes are structured appropriately.

It can be hard to see the value of the Affordable Care Act as it relates to employers and their responsibilities. For that reason, I would like to leave you with some items that may benefit us in the long run. Electronic medical records are a big part of the ACA, and should lower medical errors, the prescription of contra-indicated drugs, and duplicitous lab and imaging work. The ACA lowers the barrier to access to preventive care, which could lead to catching early Stage 1 cancer instead of waiting until it’s at Stage 3 — saving more than $100,000 on treatment. We may even have a more health-conscious society that takes better care of itself, eats better, exercises, and listens to doctors’ advice.

Improving a system as large as the United States healthcare system cannot happen overnight, and cannot happen without significant investment. The ACA is just the beginning.

Chris Free

Chris Free is a principal and co-founder of Rapport Benefits Group. He serves on the Washington State Insurance Commissioner’s Advisory Committee, works on health insurance legislative affairs as the immediate past president of the Washington Association of Health Underwriters, is the chair of the health committee at the Washington Business Alliance, and serves on the board of directors for HopeSparks. He can be reached at chris@rapportbenefits.com.
A Side of Sidebar

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

Navigating the Affordable Care Act Series
This ongoing series from the WSBA Law Office Management Assistance Program helps solo and small practitioners understand the Affordable Care Act and how it affects them. Catch up on what’s been posted and look for new posts each week.

Friday 5: Tips for Negotiating
http://bit.ly/Friday5Negotiate
New to the negotiation game or looking to brush up your skills? These five tips from NWLawyer editor Michael Heatherly can help you reach a favorable outcome.

Social Media at Work
Can you ask an employee for her Facebook password or to show you her content? Attorney Martin Sims has the answers in this breakdown of RCW 49.44.

A Guide to Creative Cursing at Work
Is cursing at work a surefire way to never get a promotion, or does blowing off steam create camaraderie? WSBA Practice Management Advisor Charity Anastasio offers her personal take.

Saying Goodbye to Justice Tom Chambers
This post honors Ret. Supreme Court Justice Tom Chambers, who passed away on Dec. 11, 2013. Share your memories, thoughts, and appreciation in the comments.

Bloggers Wanted!
Add your voice to NWSidebar! Whether you maintain your own legal blog or have never written a blog post, we welcome submissions from all members of the legal community.
Tim Blue: Trial Lawyer Turned Winemaker

BY LINDA JENKINS

On a picturesque property in the Hollywood Hill area of Woodinville Wine Country, Seattle attorney and winery owner Tim Blue is crafting acclaimed cabernet sauvignon and cabernet blends in a refurbished barn next to his home. A newly-constructed tasting room greets visitors to Adams Bench Winery, named for a school bench in Blue’s Indiana hometown where errant children sat and waited when called to see the principal. Now the bench sits in Blue’s tasting room as if to say to visitors, “Come, enjoy a glass of wine and smile at where life may take you.”

Blue, a successful trial lawyer and Super Lawyer in 2003–06 and 2008–10, now practices of counsel at Williams Kastner in Seattle. His wife and winery co-owner, physician Erica Blue, is medical director of The Everett Clinic.

The Blues’ hard work and passion for wine drive them to find a balance between their professional lives and the rigors and joys of winemaking. They make frequent trips to the vineyards of Eastern Washington, where they source and select perfectly-ripe fruit for their sought-after reds. All of the work is done by hand and the entire family pitches in at bottling time. Adams Bench wines are among the most highly-rated in Washington, despite Blue himself being a bit of a latecomer to wine appreciation.

A student athlete, Blue studied economics and business at Manchester College and earned his law degree from Indiana University School of Law in 1979. A self-titled “farm kid,” Blue began his legal career in his hometown of Warsaw, Indiana, before venturing west. He joined the Seattle law firm of Williams Kastner in 1982, where his practice includes product liability and medical malpractice. He was a partner at Williams Kastner from 1989 to 2010. “I don’t know if he ever lost a trial. He tried a lot of cases,” law partner Randy Allment says. “Tim is a terrific trial lawyer. He’s gifted with the ability to speak.”

In 1997, Blue was encouraged by his oenophile father-in-law when he took a two-month sabbatical to tour the vineyards and wineries of Northern California. Since then, he’s toured hundreds of wineries in California, Oregon, Washington, and Europe. On another sabbatical in 2004, Blue took a winemaking course and that year decided to make home wine. The next year Adams Bench Winery became licensed and bonded.

What quickly followed was acclaim and high ratings by a number of wine authorities like Robert Parker’s The Wine Advocate and Wine Spectator. Today, Adams Bench Winery produces some 1,500 cases a year and many of its wines are sold out as soon as they’re made available. Blue is gratified at the success of the winery and his work as a winemaker. “Wine tastes good, smells good, and makes you relax. It’s a nice life,” he says. “I worked really hard at my law practice for a long time. Before, my life was all law practice, no winery. Then it was mostly the law practice, and a little winery. Now, it’s mostly the winery and a little of the law practice. It’s all about balancing — how can you do your best job, whatever that is? There are only so many hours in the day and if you have a lot of energy for things that are important to you, you make the time.”

He sees the value of a legal education and law practice in many aspects of winemaking — from navigating the complexity of wine industry regulations to the hard work and authenticity needed to create and brand a successful wine.

“My job as a trial lawyer was to create a brand for my case and then go in and execute it,” he says. As a winemaker, Blue said he also uses his lawyering skills to connect with winery clients and maintain credibility. “As a trial lawyer, I was just authentic. I was just myself. I didn’t try to act like any other lawyer.”

To hear Blue speak about wine is to be drawn in as a witness to someone who’s found a great passion in life. Touring the cool, meticulously organized barrel cellar with Blue is an experience. His respect for the process shines when he explains the diligence and years of patience required to make exceptional wine. Blue adds, “Patience used to be a virtue. It does seem as if patience is
not as much a virtue as it used to be. Patience is still a virtue in winemaking and has always been a strength in law practice. The lawyers’ skills of thinking clearly, professionalism, discipline, always being a student — these are skills that are so translatable. We are all so fortunate to have had the privilege of a legal education.”

As Adams Bench Winery grows, Blue’s legal colleagues enjoy seeing his success and appreciating his wine, too. “He’s just living the dream. We’re all so very proud of him,” law partner Aliment says. Blue jokes that other lawyers support his winemaking because “we make wine and they like wine.” He also believes that colleagues appreciate what a hard worker he is. “Life is of a certain duration. Might it not be a great thing in life to pursue some other interest that you’ve got in terms of making a living? The world is wide open.” NWL

Clockwise from top left: Adams Bench Winery in Woodinville (photo by Hannah Lewis); Tim Blue inspects the barrels (photo by Jon Anderson); the Adams Bench label; Tim and Erica Blue (photos by Hannah Lewis).

Adams Bench Winery is located at 14360 160th Place NE, Woodinville; 425-408-1969; tim@adamsbench.com; www.adamsbench.com. The winery is open most Saturdays by appointment and for winery club releases.
What Ifs about Prenuptial Agreements

by Douglas Pierce

Not too many years ago, I was talking to my good friend Paul Leoni, who is a proud member of the state bars of Washington, Oregon, Montana, Connecticut, and the Commonwealth of Massachusetts, about love and marriage. Good old Paulie was thinking about tying the knot and I said, “Get a prenup, because marriage is like playing mixed doubles against divorce and the Grim Reaper.” And he said something along the lines of, “mumble, mumble, mumble … coming from the guy who has been married for 20 years … mumble, mumble, mumble.” Paul did get married, and I don’t know if he and his wife did a prenuptial (he is my friend, not my client), but it did make me wonder about lawyers and prenups.

All marriages end, and they can legally end in one of two ways: death or divorce. But, just as all marriages end, they also have a beginning. The amount of time from the decision to marry and the time of the ceremony and signing the license varies. Think about the often-used Hollywood plot of “met her in Vegas and before you know it, BOOM, we’re married” versus a multi-year “Father of the Bride” type engagement. But in most cases, there is a time when some planning (hopefully more than just choosing the Cher or Elvis impersonator to officiate) takes place. This is when it is time to consider the prenuptial or premarital agreement. Following are the Top Ten “what ifs” about prenuptial agreements.

1. What if … we talked about how we would split things up if the marriage is splitsville, but didn’t ink anything? Simply put, the answer is there is NO prenuptial. A valid prenuptial agreement must be in writing. There are no exceptions to this rule.

2. What if … we are both lawyers, so we don’t need no stinkin’ lawyers? The vast majority of states demand that each party have their own lawyer. Some states do allow a third-party mediator, but to be safe, because you don’t always know in what state the marriage will end and even though you both have a bar number, you should drop the bucks and each hire your own attorney. Also, in the vast majority of states there must be a clause that makes it explicit that both parties had time to consider the agreement.

3. What if … we talked about it before, didn’t get around to it, but now the mother-in-law says she’s gonna write the spouse out of the will if the couple doesn’t get a break-up-plan sooner rather than later? If you took the solemn vows and now want to ink the old “just in case,” a post-nuptial agreement can work just as well.

4. What if … we have no kids but don’t expect it to stay that way? The presence of children in the family always complicates the end of a marriage, either due to death or divorce. If you expect to have kids, or have them already, do a prenuptial and hash out at least some agreed facts that can be used to build a parenting plan. It is often better to fight about the prenuptial than when, as Don Henley put it in 1989, “Happily ever after fails / And we’ve been poisoned by these fairy tales / The lawyers dwell on small details.” Further complicating the matter is the fact that one parent (usually the father) ends up paying money to the mother each month in the form of child support. Currently, about 7.8 million Americans pay billions of dollars in child support each year. To assist in simplifying the matter, if some issues can be decided in the prenuptial (e.g. 50/50 time split, never living more than 15 minutes apart, etc.), then both parties will know a little more of what to expect.

5. What if … we have kids from another person? It is often the deciding factor to have a prenuptial agreement when there are kids involved, especially modern “mixed families.” The movie Yours, Mine and Ours broke ground in 1968 featuring widow/widower parents. A year later in The Brady Bunch, we met Mike and Carol who were single parents because their first spouses were deceased. Today, mixed families are the norm, with step-, half-, and full-siblings creating opportunities for all sorts of familial make-ups. Further, with 65-75 percent chance of second marriages ending in divorce, and about the same for third marriages, you should have a plan when the depth of the gene pool is eclectic.
What if … only one of you will be working? The three states in the Pacific Northwest, where NWLawyer hits most, are all strong community property states. If you are the sole wage earner, then your hard-earned salary is half your spouse’s, and their zero income is half yours. There is a myriad of legitimate reasons why you may not want this to be the financial method of splitting up if the end of your marriage comes with the knock of the gavel and not the call of the coroner. A well-drafted prenuptial can provide hard numbers in the case of divorce, numbers that you went into the marriage not only knowing, but agreeing on as well.

What if … that “cheating heart” got the best of . . . well, whoever? It is in the prenuptial that you can bring back a good old fault-type divorce. All 50 states are now “no-fault” divorces, meaning you don’t need to prove adultery, abuse, or neglect to convince the judge to sign. Further, it is often the case that “Hey, the marriage just didn’t work out,” so let’s go our separate ways. So-called “punishment clauses” have been held valid in most states. For example, if both parties were faithful, then the house will be sold and the equity split 50/50. If one spouse violated the punishment clause, then the non-violating spouse gets the house free and clear.

What if … it is the Grim Reaper who beats us at that mixed doubles game? More and more common is to put in the prenuptial what has become referred to as a “sunset clause” — a clause that says after “x” amount of years, the prenuptial is terminated and the state laws kick in. The Darwinian evolution of the sunset clause makes sense in that 150 years ago, marriages (of the kind that had enough assets to worry about) were more for joining together powerful families. Fifty years ago, when marriages became less political, prenups were more used to keep the family assets in the family. Now, it makes sense even for middle-class families to have a prenuptial, especially when one person enters the marriage with substantially more worth than the other. However, after a certain number of years, it also makes sense to say, “We have made it, mine is ours, and yours is ours.”

What if … one spouse gains a substantial asset during the marriage? There are ways to keep separate assets . . . well, separate. However, the presumption is that assets that come into the marriage are mixed. A prenuptial can help make it clear that when Uncle Bob leaves your honey 10,000 shares of Pepsi-Co, those shares remain your honey’s.

What if … you have a professional corporation, such as a law practice? Be sure to have your practice referenced, and what exactly will happen to it. If you are both lawyers, and the intent is to practice together, spell out the working relationship and dissolution plan in the prenuptial. This can be done by putting the elements in the prenuptial or perhaps making reference and incorporating the office plan. But in any event, say what the plan is in detail.

Anyone who has been married more than six months will tell you it is not easy. Further, asking a judge who doesn’t know you to base the ending of the marriage on rules that legislators wrote based on trial and error, is a recipe for . . . well, we have all seen the nightmare that ending a marriage can be. The idea that prenups are only for the rich and super-rich has gone by the way of the aristocracy. Although they may be lacking in romance, prenups make sense, and when done right and handled properly, they will be the answer to your prayers.
Disruption, Dysfunction, and Disaster

by Paul A. Swegle

Fixing and Preventing Problems in the Boardroom

When a board of directors fails in its mission, impacts to shareholder value can be catastrophic. The financial press has a field day when a public company like Kodak or Research in Motion practically evaporates, but private company boards experience many of the same struggles — strategic missteps, regulatory problems, miscalculated mergers, and so on. Less frequently discussed, though, are the challenges that boards of all stripes sometimes face from within — challenges caused by “dysfunctional directors.”

Providing strategic direction to a company is difficult work under the best of circumstances. And given the power and responsibilities entrusted to each director, a single under-performing or misbehaving individual can sometimes disproportionately impact a board’s ability to function.

Unfortunately for board chairs and CEOs, it’s the shareholders, and not the board, who elect and remove directors under the laws of most states — even if a director has been convicted of a crime. And since shareholders don’t usually attend board meetings, they are often unaware of problems in the boardroom, absent any press coverage.

Does This Sound Familiar?

• Controlling founders often keep underperforming friends and family members on boards well past the point where it is still amusing.
• An investor or other party with a contractual board seat right can usually appoint whomever they wish. Anecdotes and commentary suggest that investor-designee board members pose greater risks for incompetence and conflicted loyalties than directors identified through well-managed searches.
• Many companies have ownership, cultural, or process drivers that keep highly ineffective boards in place. The president of a large-but-failing online social media company recently lamented that nobody on his board uses social media.

What’s a Board to Do? And How Can Counsel Help?

In the spirit of leading with good news, potential problems in the boardroom usually can be prevented or kept to a dull roar through good governance practices. Secondly, even though shareholders are in the driver’s seat, the board isn’t always powerless to deal with problems. And the bad news? Not every boardroom dysfunction can be fixed. Lastly, even in situations where a boardroom problem can be solved by the board itself, the process usually involves some level of difficulty and stress for those involved.
Dysfunctional or Merely Disagreeable?
If a good board member is one who is engaged, prepared, knowledgeable, and professional, what makes someone a bad board member? Certainly not just challenging management and pushing on issues with his or her colleagues. By law, board members are required to exercise independent judgment and to take their fiduciary responsibilities seriously.

While reasonable minds may differ, these are the most commonly cited concerns:

- Significant absenteeism or neglect of duties.
- An unusually difficult or divisive personality.
- An ill-fitting background relative to the company’s business.
- Intellectual limitations that prevent meaningful participation.
- A propensity for getting stuck on or distracted by the wrong issues.
- Integrity or character concerns involving civil, criminal, regulatory, or ethical allegations.

If you search online for “bad,” “terrible,” or “worst” and “board members,” you’ll find colorful stories involving dominators, sleepers, and all types of characters in between. But behind each of these amusing anecdotes is a board that may not be fully meeting its legal obligation to oversee the management of the business in the best interests of the corporation and its shareholders. Since the Sarbanes–Oxley Act was enacted in 2002, expectations for boards and their directors have only increased. When one or more directors is distracting the board or otherwise holding it back, the board might be more at risk for not meeting those expectations.

“Can We Fix This?”
While board dysfunctions are generally problems for the board chair, independent lead director, or CEO to recognize and fix, for better and for worse, these types of problems are rare enough that not every board chair, independent lead director, or CEO has much experience dealing with them.

General counsel and senior outside counsel can help their clients’ boards understand their options for preventing and correcting board dysfunctions. In fact, as an officer, a company’s general counsel

A Radiology Mistake . . . .
When I was 13, I had severe hip and joint pain, and no doctor could figure out what was wrong. They were even telling me to exercise more for a painfully long time. Finally, I found out I had a slipped capital femoral epiphysis in my hip – previously missed by a radiologist.

I could not have had a better experience than with Tyler Goldberg-Hoss. He guided me through every step and never talked down to me or my parents. With the settlement I received, I know my medical needs will be taken care of in the future.

~ Andrew M., Everett, WA

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arguably has both an ethical and a fiduciary obligation to help ensure his or her board is functioning well and in the best interests of shareholders. And while not always as close to such problems, outside counsel are also on safe ethical ground pointing out board dysfunctions to the board chair or CEO and suggesting possible solutions.

Options for Improving or Removing Directors
With the caveat in mind that not every problem is fixable, how should counsel advise a board or CEO on how to rein in or remove a dysfunctional director? There are a few arrows in this quiver.

The quiet conversation. First, as a general rule of thumb, it’s best to counsel caution and moderation in these matters, in order to achieve the desired result with minimum distraction or collateral damage. In this spirit, absent any formally prescribed process, a first step generally should be for the chair or another board member to pull the problem board member aside privately for a diplomatic talk about the offending behavior and the need to correct it. A board member who frequently dominates meetings with ideas not shared by the other members might be confronted with specific examples of the behavior and evidence that the ideas have little or no support among the group as a whole. A member who berates, interrupts or insults individual managers or board peers should be told promptly that such behavior is troublesome and detrimental to the functioning of the board.

Many times, a private talk (or two, or three) is all it takes to fix a problem. A banking CEO recently described requiring several conversations with a board member who would never cast a vote in the boardroom without first very publicly asking the CEO — in front of the rest of the board and management — how he should vote.

Wait out the problem. Assuming the difficult director isn’t a majority shareholder or entitled to a board seat under a stock purchase agreement, merger agreement, or other such document, and assuming the director’s dysfunctions are not completely derailing the board, it may be best to wait for the director’s term to expire and simply not re-nominate him or her. Board terms generally range between one and three years. Depending on the board member’s remaining term, this may be the path of least resistance if efforts to improve performance are unsuccessful.

The less quiet conversation. If a director is truly disrupting the board’s ability to function and/or alienating highly performing executive team members or fellow board members, and continues to do so after coaching, then the board chair, nominating and governance committee chair, independent lead director, CEO, or some combination thereof, should consider confronting the board member about the negative impact he or she is having and asking him or her to resign. Any such conversation should be preceded by a reasonable investigation and should have the backing of other key board members.

Even though these conversations are almost always difficult, they often achieve the desired result.

Board seat “designees.” If the director occupies a board seat on behalf of a venture capital firm or other shareholder, rather than having the resignation conversation with the board member, it may be best to approach another officer or principal of the investor and ask for a new
Whether you go to trial or not, litigation is a tough arena. So when you’re determining the strengths and weaknesses of your case, gut feelings just don’t cut it. Tsongas provides a unique combination of people, experience, and methodologies to help you develop a successful strategy. That’s why attorneys, corporations, and municipalities have been relying on us for over three decades. But don’t just take our word for it, check out Tsongas.com and see what our clients have to say.

The court must also find that the director did not act in good faith regarding the act for which he or she was convicted, and it must remove the director in order to avoid irreparable harm to the corporation.
corporation. For all practical purposes, judicial removal is only a viable option in extreme circumstances.

**Preventative Corporate Governance**
By now it should be clear that, in this area of law, an ounce of prevention is worth a pound of cure. Unfortunately, startups and other small- to medium-sized companies that are potentially most vulnerable to board dysfunctions also tend to have the most lax board structures and processes. When the board consists of two or three friends or founders, it seems like overkill to establish a board member evaluation process or a nominating and governance committee.

Establishing minimum standards up front can create a solid governance platform for growth and may prevent some problems before they start. Counsel play a key role in helping their corporate clients understand the importance and benefits of good corporate governance.

**Run a tight ship.** As we know, nature abhors a vacuum. Well, more accurately, nature loves a vacuum — it loves to fill it. The same can be said for many dysfunctional behaviors — they are often opportunistic:

- Failing to timely and clearly schedule meetings, confirm attendance, and distribute meeting documents will tempt less inspired or more poorly organized directors to miss those meetings or show up unprepared.
- Defining agendas loosely and running meetings poorly are an invitation to easily distracted or highly opinionated directors to take things in unproductive directions.
- Producing sloppy board materials and presentations can ignite tensions and conflict and otherwise latent difficult personalities may surface.

Well-run companies provide all new board members with orientation materials describing the role of a board, the duties of its individual directors, the commitment required, and the company’s expectations for directors both inside and outside the boardroom. These materials should focus on the positive by describing what a highly functioning board looks like, how it works, and what it can achieve. They also should include, however, a short list of potentially damaging director-level shortcomings to be avoided. The CEO must ensure that management always shines when presenting to the board verbally or in writing.

**Board chair effectiveness.** Board chairs need to be knowledgeable about board meeting best practices and should consider training with a coach. A good board chair maximizes board effectiveness by ensuring that meetings run smoothly, generate vibrant focused discussions, and stay on agenda. This requires thoughtful preparation, a command of parliamentary procedure (e.g., Robert’s Rules of Order), and a strong personality. Without being overly confrontational, the chair must use procedure, judgment, and diplomacy to prevent individual directors from hijacking meetings with irrelevant ideas and unimportant minutia.

If a director is stuck on an idea after the board has already moved on from the issue, the chair needs to know when to ask, “Is this a concern for anyone else?”
If the answer is no, the chair should end the discussion and move to the next item. Rather than allowing a chronic naysayer to dominate and prolong a discussion, the chair must know when to solicit other opinions in the room by asking, “Can we hear from anyone who supports the proposal?”

Parliamentary procedure, even when imperfectly employed, can and should be used to timely cut off discussions, take votes, or table items as appropriate. The chair is empowered to run the meeting and must do so, lest others fill the vacuum.

**An HR process for the board.** Stewart Landefeld, partner with the firm Perkins Coie, and chair of the firm’s Business Practice, recently told attendees of the 2013 Corporate Counsel Institute in Seattle that every company needs to establish an HR-like function for its board — a process for establishing criteria for service, setting performance standards, assessing performance against those standards, and providing performance feedback.

The board as a whole, or through a committee, should establish and periodically revisit its criteria for membership — the skills, background, education, training and experience necessary to serve effectively in light of the company’s business model and objectives.

Every board should set performance expectations for its board members and implement a thoughtful annual review process.

Smaller boards struggle with when to, or even whether to, establish board evaluation processes. Boards weighing this issue should consider starting out with a less involved, less scientific approach and improve it over time, focusing mostly on how to optimize board performance rather than punishing or addressing dysfunctions. That way, if problems arise, the board is used to the process and has it in place to serve a slightly different, more corrective function.

**Nominating and governance committee.** Again, with the caveat in mind that not all companies have the luxury of freely choosing all of their directors based on pre-determined criteria, the best way to avoid problems in the boardroom is to carefully vet prospective members.

Since 2002 and the enactment of Sarbanes-Oxley, companies have increasingly relied on nominating and governance committees to monitor and maintain board and committee functions and to manage and control board member recruitment, nomination and evaluation processes.

Establishing a nominating and governance committee often makes sense even for smaller, privately held companies as a bulwark against board dysfunctions before they take root. And having a separate committee charged with designing and implementing an annual review process provides greater legitimacy and persuasiveness.

**A Better Board, a Better Business**

Dealing with board dysfunctions involves a thorny mix of legal, governance, and personal relationship issues. Because of the place boards of directors hold in business and society, this can be intimidating territory for counsel. But given the legal and governance nuances involved, these issues also provide important opportunities — and arguably obligations — for counsel to provide important guidance in the protection of their clients.

**Paul Swegle** is general counsel of Numera, Inc. and the immediate past chair of the WSBA Corporate Counsel Section. He can be reached at pswegle@gmail.com.
While their generosity of service is impressive, the value of their expertise in the work that they do is equally impressive. It is satisfying and humbling to observe so many WSBA members from around the state who step up and generously serve.

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

I've always believed in the value of public service. I think it is important for all of us to give back to organizations that have enabled us to be successful. As WSBA members, as lawyers, we have been provided an opportunity not to just earn a living, but to work in an important profession that is fundamental to our existence as a democratic society. Two years ago, I was at a stage in my career where I could commit the time to serve the WSBA and to support the profession that has allowed me to have a meaningful and fulfilling career.

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

Even though I have been a lawyer for many years and had been involved in some committees and sections through my career, until I became a Board member I didn't fully appreciate the breadth and scope of the work of this association. I have since realized that the WSBA is blessed with dedicated staff and hundreds of generous volunteers who work tirelessly in many different areas providing benefits to our members, our system of justice, and the public in general.
4 What has been the most difficult decision you had to make as a governor, and why?

The most difficult decision that I’ve faced as a governor also deals with the referendum. The obvious result of the referendum was that the WSBA needed to reorient and learn to provide necessary services more efficiently. This led to an institutional reorganization that had the effect of reducing staff. Making decisions that have a negative impact upon people’s jobs and lives is a difficult one that cannot be made lightly. However, the reality of necessary decisions is that some people’s lives have been negatively impacted and these decisions have not been easy.

What surprised me the most about serving on the Board was when I considered running for the Board, I knew that I would be making a significant time commitment if elected. However, once elected and first preparing for a Board meeting, I was stunned at the volume of material provided. As with any new job, one becomes better over time at sorting through and prioritizing the materials provided, learning to focus on those of greatest importance, and how to be efficient in preparing for necessary decision-making at each meeting.

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

I have a loving wife and three wonderful sons. My wife, our youngest son, and I are all graduates of Gonzaga. My two oldest sons are graduates of Notre Dame. In our family, we are rabid Notre Dame football fans and Gonzaga basketball fans. We are always happy when they win and despondent when they lose. Such is the life of sports fans. However, we are always proud of the institutions that nourished us.

**TAKE 5** lets you learn a little more about your Board of Governors. If you have further questions for Gov. Vern Harkins, he can be reached at vharkins@rhhk.com.
Get involved!

By joining a WSBA committee, board, or panel.

Join the Judicial Leadership Committee to volunteer professionalism and diversity!
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Board
VOLUNTEER
Judicial
Leadership
Join
professionalism
DIVERSITY
AMICUS Panel
NETWORK
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legislative

Learn about open positions on the WSBA website: www.tinyurl.com/WSBAvolunteers. Applications will be accepted from Jan. 13 to Feb. 28. Most positions begin Oct. 1.

Meet Zabrina Jenkins, a proud face of philanthropy.

Zabrina is joined by more than 5,100 Washington lawyers who give to the Washington State Bar Foundation. Her contribution, along with yours, helps ensure WSBA has the resources to lead on issues of justice, public service, and diversity.

Join Zabrina in giving back.

There's still time to donate at myWSBA.org.

Learn more & give at www.wsba.org/foundation
for district elections will be mailed on March 15 and must be received by 5 p.m. PDT on April 15. The WSBA will also use an electronic voting system, and members with email addresses on file with the WSBA will not receive a paper ballot unless they request one. Email ballots will also be sent on March 15 and must be received by 5 p.m. PDT on April 15. The at-large governor will be elected by the Board of Governors at its June 6 meeting.

**BOG Candidate Forum:** A candidate forum is scheduled for March 4, 2014. All candidates for any of the open seats are strongly encouraged to participate. The forum will be held at the WSBA Conference Center in Seattle beginning at 5:30 p.m. Members are encouraged to attend and bring questions for the candidates. It will also be webcast and accessible statewide for live viewing.

**Volunteer Evaluators for Legal Services Providers for Indigent Offenders Needed**

The Department of Corrections will be conducting a competitive procurement searching for providers of legal services for indigent offenders at the Washington Corrections Center and the Washington Corrections Center for Women. Three volunteers are needed to evaluate proposals against an evaluation key, which will be provided. The evaluations will need to be completed in the last week of March and the first two weeks of April. Oral presentations, if needed to make final selections, will be held April 21–24, 2014, at a mutually agreeable location. The time required depends on the number of proposals received, but it is estimated that each volunteer would devote approximately 10–35 hours to this project. Volunteers will need to attend (or participate by telephone) one or two meetings. Meetings will be held in Olympia.

If you are interested in assisting the Department of Corrections with this project, please submit a brief letter of interest and resume to WSBA Communications Department, 1325 Fourth Ave, Ste 600, Seattle, WA 98101 or email barleaders@wsba.org no later than Feb. 10, 2014. If you have questions or would like additional information, contact John Nispel, senior contracts attorney, at john.nispel@doc.wa.gov or 360-725-8365.

**Capital Qualifications Committee**

The Washington State Bar Association is accepting letters of interest and resumes from members interested in serving on the Capital Qualifications Committee, a subcommittee of the Washington Supreme Court pursuant to SPRC 2. Four positions are available. The term of each position is three years with a maximum term of six consecutive years, at which time the individual member must have a break in service before seeking reappointment. The terms are from April 1, 2014, through April 1, 2017.

The Capital Qualifications Committee was established by the Supreme Court by order dated Dec. 7, 1997, for the development of attorneys qualified for appointment in death penalty cases. This court, by order dated Dec. 12, 2003, expanded the committee to consist of one active or former superior court judge from the area of each division of the Court of Appeals, two federal public defenders, two attorneys, experienced in criminal defense law who have experience with capital litigation, and one alternate. No member of the panel may currently serve as a prosecutors attorney. The committee meets as a whole an average of three times per year.

More information, contact Lisa Bausch, office/case manager, Washington Supreme Court Clerk’s Office, at lisa.bausch@courts.wa.gov or 360-357-2071.

Letters of interest and resumes should be submitted to: Washington Supreme Court Clerk’s Office, Temple of Justice, PO Box 40929, Olympia, WA 98504-0929 or emailed to supreme@courts.wa.gov no later than Feb. 28, 2014.

**WSBA Committees, Boards, and Panels**

Applications are now being accepted through myWSBA.org from members interested in serving on WSBA’s committees, boards, and panels. Committee service provides you the opportunity to make contributions to the professional community and your profession, offers a chance to get involved with issues you care about, and is a great way to connect with other lawyers from around the state. There are openings on 24 different committees, boards, and panels, including the Character and Fitness Board, the Limited License Legal Technician (LLLT) Board, and the WSBA Diversity Committee. Most appointments are for two years; terms begin October 1 (with some exceptions). For more information, see www.tinyurl.com/WSBAVolunteers, email barleaders@wsba.org, or call Sue Strachan, WSBA community outreach specialist, at 206-733-5903 or 800-945-9722, ext. 5903.
The annual WSBA staff holiday charity auction took place in November, raising a total of $5,570 for Treehouse and the American Red Cross. WSBA employees use their talents to bake, craft, and create items for both live and silent auctions. This year’s highlights included a turkey-shaped chocolate cake, dog obedience school lessons, and martial arts lessons. As usual, there were also plenty of delicious baked goods, gift certificates, and handcrafted items. Governor Paul Bastine was on hand at the silent auction, and President Patrick Palace took home a tray of homemade candy sushi. Thanks to the WSBA staff for their hard work and generosity!

Email Address Required for All Members

Effective Jan. 1, 2014, all WSBA members are required to have an email address on file with the WSBA. See Admission and Practice Rule (APR) 13 and the WSBA Bylaws, both as amended effective Jan. 1, 2014. This email address will be used for important official WSBA email communications. Members may request that their email not be published on the online lawyer directory.

MCLE and Licensing

2014 Licensing and MCLE Information

**Deadline: Feb. 3, 2014.** If you have not completed all mandatory portions of your license renewal, including MCLE requirements, if applicable, you are delinquent and are at risk of suspension. You may complete licensing requirements, including MCLE certification, either online at mywsba.org or by using the License Renewal and Mandatory Continuing Legal Education Certification forms. Visit wsba.org/licensing to learn more.

House Counsel — Admission Required in 2014

Under amendments to the Rules of Professional Conduct (RPC) and the Admission to Practice Rules (APR) effective Jan. 1, 2014, house counsel who are not admitted in Washington will be required to be admitted in Washington to continue practice as house counsel. Amended RPC 5.5(d) and APR 8(f). House counsel in this situation will have three options available without having to sit for the bar exam:

1. **Admission by Motion (amended APR 3(c)).** This is the best option for house counsel admitted in another U.S. jurisdiction. It provides full admission to the practice of law in Washington. There are two primary requirements for admission by motion.
   a) Active legal experience for three out of the last five years; practice as house counsel in Washington (or anywhere) counts as active legal experience.
   b) Passing the Washington Law Component (WLC) test (http://bit.ly/19SSMvy), which is an online, open-book, multiple-choice test that applicants can complete anytime and anywhere they have a computer with an Internet connection. The WLC is meant to be an educational tool so lawyers practicing in Washington are aware of unique or unusual aspects of Washington law. All questions on the test come from the WLC research materials (http://bit.ly/law9nZP).

2. **Limited Admission as House Counsel (amended APR 8(f)).** This is the best option for those who do not have three years of active legal experience and who do not have a Uniform Bar Exam score. Any lawyer admitted anywhere in the world may apply under this rule. (Admission by exam will no longer be a requirement under this rule for foreign house counsel.) House counsel admitted under this rule will have the same application process and fees, and the same licensing requirements (license fees, MCLE, etc.) as a full member of the WSBA. For this reason, we recommend that anyone with at least three years of active practice apply for admission by motion.

3. **Uniform Bar Exam Score Transfer (amended APR 3 and Admission Policies).** This option is for those who have a UBE score of at least 270 and who have been admitted less than 40 months (and have less than three years of active legal experience). House counsel in this situation may apply at our online admissions site (www.admissions.wsba.org/account/logon) at any time.

RPC 5.5(d) currently governs house counsel practice without license and is being amended so that practice under that provision will be temporary only. House counsel applying for admission can use this rule while waiting for the application and admission process to be completed.

Applications for admission by motion will be available online on Jan. 1, 2014. Application for limited admission as house counsel will require submission of a paper application, which will be posted on the House Counsel page (http://bit.ly/housecounsel) after Jan. 1, 2014. No applications can be accepted until after Jan. 1, 2014, when the amendments take effect. There is a $620 application fee and a separate investigation fee that must be paid to the NCBE for all applications. The application/admission process will take up to six months. Please address questions about house counsel to admissions@wsba.org or call 206-727-8209.

Need to Know

WSBA News

**WSBA Staff Raises Over $5,000 in 2013 Charity Auction**

The annual WSBA staff holiday charity auction took place in November, raising a total of $5,570 for Treehouse and the American Red Cross. WSBA employees use their talents to bake, craft, and create items for both live and silent auctions. This year’s highlights included a turkey-shaped chocolate cake, dog obedience school lessons, and martial arts lessons. As usual, there were also plenty of delicious baked goods, gift certificates, and handcrafted items. Governor Paul Bastine was on hand at the silent auction, and President Patrick Palace took home a tray of homemade candy sushi. Thanks to the WSBA staff for their hard work and generosity!

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Judicial Member Licensing
Deadline: Feb. 3, 2014. If you have not filed your renewal within 60 days of the date of the written notice, your eligibility to transfer to another membership class upon leaving service as a judicial officer will not be preserved. You may complete your renewal either online at mywsba.org or on the Judicial Member License Renewal form. Please note that a 30 percent late fee of $15 is assessed on Feb. 4. Visit wsba.org/licensing to learn more.

Important Changes to Rule 9, Effective Jan. 1, 2014
The Supreme Court of Washington has amended Admission to Practice Rule 9. These changes are effective as of Jan. 1, 2014. Both supervising attorneys and licensed legal interns will be significantly affected. Changes include scope of practice, supervising attorney’s responsibilities, terms of the license, and eligibility. Learn more at www.wsba.org/rule9.

S25 MCLE Comity Certificate Fee Information
There is a $25 fee for ordering or submitting MCLE comity certificates. Ordering comity certificates can be done online or via mail. See wsba.org/mcle for more information.

Washington Community Property Deskbook, 4th Edition
Just released from the WSBA, the Washington Community Property Deskbook covers all substantive developments in the area through the June 2013 U.S. Supreme Court decision on Section 3 of the federal Defense of Marriage Act (DOMA). Written by Professors Tom Andrews and Karen Boxx of the University of Washington School of Law and Professor Ann Murphy of Gonzaga University School of Law, this is the indispensable reference on community property law in Washington. For more information or to order, go to www.wsbacle.org or call WSBA order fulfillment at 206-733-5918 or 800-945-WSBA.

Upcoming Events
Goldmark Award Luncheon, Feb. 21, 2014
The Legal Foundation of Washington will present the 2014 Charles A. Goldmark Distinguished Service Award to Washington Supreme Court Justice Steven González, Seattle University School of Law Professor Robert Chang, and Office of Administrative Hearings Judge Nicole Gaines at the 28th Annual Goldmark Award Luncheon. The luncheon will be held Feb. 21, 2014, at the Sheraton Seattle Hotel from noon to 1:30 p.m. The nomination of representatives on the Race & the Criminal Justice System Task Force emphasized the effort to mobilize the community to initiate change concerning racial disparity in the justice system. Visit www.legalfoundation.org for more information.

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We believe in helping people with passion and ingenuity. Our innovative spirit and desire to change lives defines the way we practice law.
WSBA Board of Governors Meetings

March 7–8, Seattle; April 25–26, Moses Lake
With the exception of the executive session, Board of Governors meetings are open, and all WSBA members are welcome to attend.

RSVPs are appreciated but not required. Contact Pamela Wuest at 206-239-2125, 800-945-9722, ext. 2125, or pamelaw@wsba.org. The complete Board of Governors meeting schedule is available on the WSBA website at www.wsba.org/bog.

WSBA Law Office Management Assistance Program

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

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

WSBA Lawyers Assistance Program

Weekly Job Search Group
The Weekly Job Search Group provides strategy and support to unemployed attorneys. The group runs for seven weeks and is limited to seven attorneys. We provide the comprehensive WSBA job search guide, “Getting There: Your Guide to Career Success,” which can also be found online at www.tinyurl.com/7xhebB8. If you would like to participate or to schedule a career consultation, contact Dan Crystal at danc@wsba.org, 206-727-8267, or 800-945-9722, ext. 8267.

New Member Benefit: WSBA Connects
We have expanded our Lawyers Assistance Program to offer statewide access to support with referrals to providers in your local area. Through WSBA Connects, our partnership with wellness provider Wellspring, support is now available across the state with 24/7 phone access whenever you are experiencing emotional or behavioral concerns that may be affecting your practice or the quality of your life. Contact WSBA Connects for issues related to mental health and addiction concerns, career management, family, caregiving, daily living, health and well-being, and more. For additional information, visit www.wsba.org/connects or call toll-free 1-855-857-9722.

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

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

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

Help for Judges
Because of their unique positions and responsibilities, judges often find themselves with limited avenues for help. Judicial Assistance Services (JAS) is modeled after and affiliated with WSBA’s Lawyers Assistance Program, and offers help from trained peer counselors at no cost and referral to confidential professional help. Telephone or in-person sessions are available on a sliding-scale basis. For more information, call the JAS program coordinator at 206-727-8268 or 800-945-9722, ext. 8268.

Legal Lunchbox Series

Dishing up free CLEs!
WSBA invites you to lunch and learn while earning 1.5 CLE credits. And the tab is on us! The Legal Lunchbox Series is at noon on the last Tuesday of each month. WSBA will host a 90-minute, 1.5 credit, live webcast CLE on topics such as e-discovery and ethics in social media.

Mark your calendars now!
To register and for more information, visit www.wsbacle.org.
These notices of imposition of disciplinary sanctions and actions are published pursuant to Rule 3.5(d) of the Washington Supreme Court Rules for Enforcement of Lawyer Conduct. Links to relevant documents can be found by viewing the online version of NWLawyer at http://nwlawyer.wsba.org or by looking up the respondent in the lawyer directory on the WSBA website (www.wsba.org) and then scrolling down to “Discipline History.” As some WSBA members share the same or similar names, please read all disciplinary notices carefully for names, cities, and bar numbers.

**Disbarred**

**Stephen Tadashi Araki** (WSBA No. 6428, admitted 1979), of Bellevue, was disbarred, effective 12/11/2013, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.15A (Safeguarding Property), 1.15B (Required Trust Account Records), 5.3 (Responsibilities Regarding Non-lawyer Assistants), 5.8 (Misconduct Involving Disbarred, Suspended, Resigned, and Inactive Lawyers), and 8.4 (Misconduct). Francesca D’Angelo represented the Bar Association. Kurt Bulmer represented Respondent. David Martin Schoeggl was the hearing officer. The online version of NWLawyer contains links to the following documents: Hearing Officer’s Decision; Disciplinary Board Recommendation; and Washington Supreme Court Order. **Edward J. Callow** is to be distinguished from Edward D. Callow, of Olympia.

**Disbarred**

**Magor Julian Denes** (WSBA No. 37505, admitted 2006), of Mill Creek, was disbarred, effective 12/11/2013, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.2 (Scope of Representation and Allocation of Authority Between Client and Lawyer), 1.15A (Safeguarding Property), 1.15B (Required Trust Account Records), 3.3 (Candor Toward the Tribunal), 4.1 (Truthfulness in Statements to Others), and 8.4 (Misconduct). Erica Temple represented the Bar Association. Magor Julian Denes represented himself. The online version of NWLawyer contains links to the following documents: Order Approving Stipulation; Stipulation to Disbarment; and Washington Supreme Court Order.

**Disbarred**

**Dennis Keith Pflug** (WSBA No. 11930, admitted 1981), of Seattle, was disbarred, effective 12/02/2013, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.4 (Communication), 1.5 (Fees), 5.3 (Responsibilities Regarding Non-lawyer Assistants), and 8.4 (Misconduct). Kevin Bank represented the Bar Association. Dennis Keith Pflug represented himself. Anthony Angelo Russo was the hearing officer. The online version of NWLawyer contains links to the following documents: Hearing Officer’s Decision; Disciplinary Board Recommendation; and Washington Supreme Court Order.

**Disbarred**

**Shaunna H. Touchi** (WSBA No. 36609, admitted 2005) of Seattle, resigned in lieu of disbarment, effective 11/01/2013. The lawyer’s conduct violated the following Rules of Professional Conduct: 5.4 (Professional Independence of a Lawyer), 7.1 (Communications Concerning a Lawyer’s Services), and 8.4 (Misconduct). Erica Temple represented the Bar Association. Sharron H. Touchi represented herself. The online version of NWLawyer contains a link to the following document: Affidavit of Shaunna Touchi Resigning from Membership in Washington State Bar Association.

**Suspended**

**J. Craig Barrile** (WSBA No. 22198, admitted 1992) of Deer Park, was suspended for 24 months, effective 10/21/2013, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.4 (Communication), 1.5 (Fees), 2.1 (Advisor), 5.4 (Professional Independence of a Lawyer), 5.5 (Unauthorized Practice of Law; Multijurisdictional Practice of Law), and 8.4 (Misconduct). Debra Slater represented the Bar Association. J. Donald Curran represented Respondent. The online version of NWLawyer contains links to the following documents: Disciplinary Board Order Conditionally Approving Stipulation; Stipulation to Suspension; and Washington Supreme Court Order.

**Suspended**

**Diane Beall** (WSBA No. 41091, admitted 2009) of Escondido, CA, was suspended for one year, effective 12/02/2013, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.15A (Safeguarding Property), and 8.4 (Misconduct). Scott G. Busby represented the Bar Association. Diane Beall represented herself. Amanda Elizabeth Lee was the hearing officer. The online version of NWLawyer contains links to the following documents: Hearing Officer’s Decision; Disciplinary Board Recommendation; and Washington Supreme Court Order.

**Suspended**

**Shari Ann Brown** (WSBA No. 32935, admitted 2002) of Seattle, was suspended for three years, effective 12/02/2013, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.15A (Safeguarding Property) and 1.15B (Required Trust Account Records). Randy Beitel represented the Bar Association. Kurt M. Bulmer represented Respondent. Dana C. Laverty was the hearing officer. The online version of NWLawyer contains links to the following documents: Order Approving Stipulation; Stipulation to Suspension; and Washington Supreme Court Order.
Disciplinary Notices

Suspended
Marianne Meeker (WSBA No. 29674, admitted 1999), of Federal Way, was suspended, effective 12/11/2013, 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), 1.16 (Declining or Terminating Representation), 8.1 (Bar Admission and Disciplinary Matters), and 8.4 (Misconduct). Kevin Bank represented the Bar Association. Marianne Meeker represented herself. Andrekita Silva was the hearing officer. The online version of NWLawyer contains links to the following documents: Hearing Officer’s Decision; Disciplinary Board Recommendation; and Washington Supreme Court Order.

Suspended
Joe Wickersham (WSBA No. 18816, admitted 1989) of Sedro Woolley, was suspended for three years, effective 10/17/2013, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.1 (Competence), 1.3 (Diligence), 1.4 (Communication), 1.16 (Declining or Terminating Representation), and 8.4 (Misconduct). Erica Temple and Joanne S. Abelson represented the Bar Association. Jai H. Rho represented Respondent. Lish Whitson was the hearing officer. The online version of NWLawyer contains links to the following documents: Hearing Officer’s Decision; Disciplinary Board Recommendation; and Washington Supreme Court Order.

Reprimanded
Tamara Marie Chin (WSBA No. 23062, admitted 1993), of Lynnwood, was reprimanded and received a one-year probation, effective 5/30/2013, by order of the hearing officer. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.6 (Confidentiality of Information), 1.15A (Safeguarding Property), and 1.15B (Required Trust Account Records). Natalea Skvir represented the Bar Association. Stephen Christopher Smith represented Respondent. The online version of NWLawyer contains links to the following documents: Hearing Officer’s Decision and Reprimand.

Reprimanded
William David McCool (WSBA No. 9605, admitted 1979), of Walla Walla, was reprimanded, effective 9/19/2013, by order of the Disciplinary Board. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.15A (Safeguarding Property) and 1.15B (Required Trust Account Records). Randy V. Beitel represented the Bar Association. Janelle Carman represented Respondent. The online version of NWLawyer contains links to the following documents: Order Approving Stipulation; Stipulation to Reprimand and Probation; and Reprimand.

Reprimanded
Kevin R. Richardson (WSBA No. 21125, admitted 1991), of Issaquah, was reprimanded, effective 11/15/2013, by order of the Hearing Officer. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.3 (Diligence), 1.4 (Communication), and 1.15A (Safeguarding Property). Natalea Skvir represented the Bar Association. Randolph O. Petgrave III was the hearing officer. The online version of NWLawyer contains links to the following documents: Order Approving Stipulation; Stipulation to Reprimand and Reprimand.

Learn what brain science research reveals about legal decision making.

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Mr. Oates graduated from Seattle University School of Law, cum laude, in 2013. He received his B.A. in Business and Leadership from the University of Puget Sound, cum laude, in 2010.

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<td><strong>The Art of Negotiating Environmental and Land Use Agreements: Tools and Tips for Effective Dispute Resolution</strong>&lt;br&gt;Feb. 24 — Seattle and webcast. 6.25 CLE credits, including 1 ethics. Presented in partnership with the WSBA Alternative Dispute Resolution and Environmental and Land Use Law Sections; 800-945-WSBA or 206-443-WSBA; <a href="http://www.wsbacle.org">www.wsbacle.org</a>.</td>
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<td><strong>11th Annual Trust and Estate Litigation Seminar</strong>&lt;br&gt;March 11 — Seattle and webcast. CLE credits pending. Presented in partnership with the WSBA Real Property, Probate and Trust Section; 800-945-WSBA or 206-443-WSBA; <a href="http://www.wsbacle.org">www.wsbacle.org</a>.</td>
<td><strong>Elder Law Updates</strong>&lt;br&gt;March 28 — Seattle and webcast. CLE credits pending. Presented in partnership with the WSBA Elder Law Section; 800-945-WSBA or 206-443-WSBA; <a href="http://www.wsbacle.org">www.wsbacle.org</a>.</td>
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<td><strong>Applying the Neuroscience of Decision Making to the Practice of Law</strong>&lt;br&gt;Feb. 7 — Seattle and webcast. 6 CLE ethics credits. By WSBA; 800-945-WSBA or 206-443-WSBA; <a href="http://www.wsbacle.org">www.wsbacle.org</a>.</td>
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<td><strong>IP Advanced Licensing: State of the Art</strong>&lt;br&gt;Feb. 4 — Seattle and webcast. 6 CLE credits, including 1 ethics. Presented in partnership with the WSBA Intellectual Property Section; 800-945-WSBA or 206-443-WSBA; <a href="http://www.wsbacle.org">www.wsbacle.org</a>.</td>
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<td><strong>The 21st Century Law Practice — Tools and Efficiencies</strong>&lt;br&gt;March 25 — Webcast only. 1.5 CLE credits. By WSBA; 800-945-WSBA or 206-443-WSBA; <a href="http://www.wsbacle.org">www.wsbacle.org</a>.</td>
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A Personal History of Personal Relationships
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I became a lawyer because I wanted to apply my science background as a Ph.D. biochemist to patent law or environmental law. Before law school, I was a research scientist at the Jackson Laboratory in Bar Harbor, Maine.

My greatest accomplishment as a lawyer is surprisingly unrelated to my career in patent law, although it drew on my experience of critically analyzing scientific publications. Instead, it was researching and writing an extensive analysis of the legal and medical aspects of Multiple Chemical Sensitivity (MCS) for my own workers’ comp case, resulting in Washington court recognition of MCS as a medical condition, instead of dismissing it as a cultural or psychological phenomenon. With an estimated 15 percent of the population suffering from MCS or heightened sensitivity to chemicals in the environment, more recognition is needed.

My career has surprised me by taking a detour requiring me to set up as a sole practitioner and work from home.

The most rewarding part of my job is helping clients understand and negotiate the complex maze of obtaining a patent.

The worst part of my job is the accounting side.

During my free time, I travel and hike.

The most memorable trip I ever took: This is a tie between a week-long sailing trip to find elusive spirit bears in the islands north of Vancouver Island and visiting the Hermitage Museum in St. Petersburg.

My favorite place in the Pacific Northwest is Glass Beach near Port Townsend for beach-combing with friends.

This is on my bucket list: Completing the 117-mile Fife Coastal Path in eastern Scotland.

This makes me smile: Finding a treasure while beach-combing.

My worst habit is chocolate.

My best habit is vegetarianism. Science keeps finding more evidence that it’s healthy.

I am thankful that I have regained my capacity to hike.

If I had a time machine, I would travel back in time to see Nijinsky dancing.

If $100,000 fell into my lap, I would use half and donate half to charity.

If I could get free tickets to any event, I would attend The Royal Ballet performing Swan Lake.

If I have learned one thing in life, it is that regaining one’s health is a worthwhile effort — never give up.

I would like to learn to play piano (again).

My name is Jane Potter. My bio is not one about a continued rise in the legal field; instead, it’s about fighting to regain so much that was suddenly lost, and helping others who have been similarly affected. I was a partner at a firm in Seattle, practicing biotech patent law, when I became severely ill in 2007 from off-gassed chemicals in an office remodel. I spent over five years battling for workers’ compensation and during that process, I was shocked to discover that everything is stacked against the chemically injured worker. I now work from home as a patent attorney and I help people with similar injuries.

We’d like to learn about you! Go to www.bit.ly/nwlbeyondthebar to fill out your own Beyond the Bar submission.
Happy 125th, WSBA, a Year Early

Feeling old? Well, at least you’re not 125 years old (or if you are, please contact me), because that would be some story. But you know what is 125 years old this year? The state of Washington. And you know what turns 125 the year after? The Washington State Bar Association, which doesn’t look a day over 100, if you ask me.

Starting in the fall, the WSBA will celebrate its formation in 1890 with a year-long commemoration, including NWL coverage. Although the festivities are down the line, I wanted to whet your historical appetite with a sneak peek at some of the things in store for our quasquicentennial bash.

1895 Deskbook Reissue — The WSBA will republish, in its original format, the first Bar deskbook: Modern Techniques for the Prosecution and Defense of Cattle Rustlin’, Claim Jumpin’, and Hell Raisin’. This leather-bound, 300-page volume covers all aspects of prosecution (e.g., “How to Toss Them Dad-Gum Varmints What Stoled the Cattle Into Jail and Throw Away the Key”) and defense (“This Man Ain’t Stole No Cattle, on Accounta He Was Down in O-ree-gon All Month Courtin’ That Lady Friend of His’n”).

Condon Hall Visits — As graduates of a certain age will recall, Condon Hall was home for the University of Washington School of Law from 1974 to 2003. The concrete monolith was then re-purposed as a maximum security prison. Although the building already met prison requirements for impenetrability and lifelessness, the state upgraded Condon’s aesthetics and ergonomics in response to protests from the 250 felons transferred there from the relatively plush State Penitentiary in Walla Walla. Retired UW law professors will lead daily tours of the facility.

Disciplinary System Historical Tour — Long and deeply buried, literally and figuratively, is a rarely visited part of old Seattle that bears a link to the darker days of WSBA’s lawyer disciplinary system. Before the post-World War II advent of the modern, more humanitarian (some would say lenient) system we know today, lawyer discipline was meted out in the WSBA Chamber of Conduct Adjustment, housed in a cavernous space near what is now the Comedy Underground. Rather than having their licenses suspended, lawyers caught tampering with client trust funds would be suspended from the stone ceiling, from which position they would feel the wrath of the WSBA cat o’ nine tails. Failure to pay one’s annual license fee on time would result not in a late fee but a turn on the rack or the “wheel of justice.” On Friday evenings throughout 2015, WSBA staff will conduct free tours of the facility and answer questions from seasoned history buffs eager to learn more about this slice of WSBA history.

Article Reprints — Throughout 2015, we will republish popular articles from WSBA publications dating back through Bar News and its various predecessors spanning the years. Some highlights:

- “How The Horseless Carriage is Ruining Respect for the Law” — May 1905
- “Should the Left-Handed Be Allowed to Practice Law? (What About Catholics?)” — Dec. 1912
- “It Turns Out They Have Lawyers There, Too” (travel log of WSBA president’s trip to Idaho, with photographs) — July 1918
- “Ensuring Security of Private Client Information in the Age of the Ditto Machine” — April 1925
- “Will the Electric Typewriter Make Office Staff Obsolete?” — Oct. 1931
- “Bummer, Man: How to Get Your Necktie Out of the Fax Machine” — June 1966
- “Now’s the Time to Plan Your Firm’s Branch Office on the Moon” — Sept. 1969

The First Case: A Reenactment — Current members and justices will reenact the oral arguments from the first-ever Washington Supreme Court case, Lilienthal v. Wright, 1 Wash. 1 (1890), an eight-sentence opinion in a case involving alleged breach of a contract to sell hops. Holding that the order of the lower court that was on appeal had not been a final order and hence was not appealable, the Supreme Court dismissed the appeal. The reenactment will take place at the WSBA offices in mid-2015 and is expected to last approximately 24 seconds.

Minutes from the First Meeting of the WSBA Board of Governors — On display at the WSBA offices will be the original handwritten minutes of the very first BOG meeting. Entries include the following:

- “Governors commence discussion on how to solicit candidates for next year’s Board of Governors. Discussion terminated when governors realize that all current members of Bar are already on the Board of Governors.”
- “Discussion held as to whether emptying of board room spittoon should be added to Bar president’s duties. President declines to submit issue to vote.”
- “Motion to amend rules of practice so as to allow bar members to also pull teeth, give haircuts, and deliver babies. Motion passed on voice vote.”

But seriously, WSBA is planning a celebration for next year and NWLawyer will be publishing a series of articles regarding the 125-year history of the Bar. If you’d like to suggest a topic or write a piece, please let us know.

NWL

NWL Lawyer Editor MICHAEL HEATHERLY practices in Bellingham. He can be reached at 360-312-5156 and nwlawyer@wsba.org. Read more of his work at nwsidebar.wsba.org.
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