Greetings from America

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Life lessons
David Tift’s gift to the legal community of lessons learned from coping with his wife’s death was touching and powerful beyond words [“Coping with the Death of a Spouse,” DEC15/JAN16 NWLawyer]. The focus of the article was on providing fellow lawyers resources, “to soften the devastating impact.” What is unspoken but just as present is David’s love and appreciation for the courage and compassion that Gail provided David through conversations that many of us might avoid thinking about, let alone discussing. David, your lessons learned are also a beautiful and moving tribute to your bride Gail; a testament to the strength of your partnership; and public appreciation for your friends, law firm and family who guided and supported you. Thank you for your courage in sharing your journey with us.

Michael B. Goldenkranz, Seattle

A deposition solution?
Regarding your article on “Rising Cost of Litigation…” [President’s Corner, DEC15/JAN16 NWLawyer] there is a simple solution to the excessive cost of depositions. Allow the lawyer taking the deposition to swear in the witness, and record it however he likes (voice recognition software, tape recorder, etc.). Have the person transcribing it affirm it is accurate. Have the lawyer do the same (subject to law license revocation). Voilà — a $1,000 deposition now costs $200, plus the cost of opening hate mail from court reporters.

Phil Brennan, Seattle

What’s in a name?
An attorney-friend passed me a copy of the DEC/JAN issue of NWLawyer because of my interest in the maritime history of the Pacific Northwest. I view the recent decisions of the various place-name boards cited in Anna L. Endter’s
article on “The Naming of the Salish Sea” with equanimity.

First, as Endter notes, the Salish Sea designation, contrary to popular perception, is an overarching name for several separate bodies of water. None of the underlying historic names have been supplanted. Indeed, one of the salutary side effects from common adoption of the Salish Sea nomenclature is that it creates the potential for the proper re-application of the now traditional names George Vancouver first laid across his charts.

For example, the term “Puget Sound” (as the map accompanying Endter’s article exemplifies) is now seen as representing all of the waters south of Whidbey Island, including Hood Canal. In fact, the original “Puget’s Sound” on Vancouver’s maps, consistent with the geographic usage of that time, was limited to the aggregation of small inlets (Budd, Hammer-sley, Eld, Carr, etc.) at the southernmost extent of the inland sea surveyed by one of his lieutenants, Peter Puget.

Analogously, Prince William Sound in Alaska, named by Vancouver’s mentor James Cook, is akin to a hand with several fingers extended from the palm, much like the waters south and west of Nisqually Reach; a correct application of the toponym “sound.” Conversely, the northerly expansion of the Puget Sound terminology has all but eliminated from public usage such terms as Admiralty Inlet (which Vancouver considered extending from the narrows between the Olympic Peninsula and Whidbey Island to the northern tip of Vashon Island) and Elliott Bay.

Finally, the Salish Sea designation helps us understand that these many straits, inlets, bays and sounds, though divided by an international border, actually constitute one great inland extension of the Pacific Ocean.

David L. Nicandri, Tumwater — Former director, Washington State Historical Society

Meet NWLawyer’s New Editor Linda Jenkins!

LINDA JENKINS joins the NWLawyer staff as its new editor. She is a 2008 graduate of Seattle University School of Law and earned her B.A. in Journalism from the University of Southern California Annenberg School for Communication. She is a former newspaper reporter and advertising professional. She brings her experience as a practicing attorney in Snohomish County and her current work as a freelance magazine writer and book author to her new role as NWLawyer’s editor. Learn more about Linda in our upcoming issues and on the NWSidebar blog. Welcome, Linda!

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In Memoriam
Michael H. Runyan
1947 † 2015

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

Mike’s guidance, integrity, kindness and leadership through many years will be greatly missed.

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What Are Your Personal “Legal” Resolutions for the New Year?

It’s February. Never too late to make a New Year’s resolution! Better to make them today than to wait even further into the New Year. While you may have made a few personal resolutions on New Year’s Day that you’ve already broken, consider adopting a few “legal” resolutions for your law practice and your profession. After all, it is never too late to resolve to do better or to do more for others!

Need some ideas? Here are a few for your consideration.

1 Give some of your time to your profession.

Whether at the local, state, or federal bar levels, your work on behalf of our profession can only increase the respect your clients and the public have for the justice system. We all lead by example. When we give our time, we do so with the message that it is important to our system of justice. If people respect you, they’ll most likely respect the justice institutions in which you are involved.

The opportunities for service through the WSBA are huge. The Bar has 31 different committees, boards, and panels, and 28 different sections, each that need your talents. Take a look at www.wsba.org/legal-community/committees-boards-and-other-groups, and apply by March 13, 2016. Announcements for vacant positions on various boards and panels are posted throughout the year. You and I are the WSBA. Let’s each make sure it is the best it can be.

Whether it is through the WSBA, your county bar association, independent legal organizations, or one of the minority bar associations (MBAs), the opportunities abound. You can help make a difference.

2 Give some of your time to help others who need legal representation.

We know that the need is huge. And again, the opportunities to give of ourselves in the aid of others are numerous. The 2015 Civil Legal Needs Update Study tells us that the number of citizens in need of legal representation who cannot afford an attorney continues to grow. In 2003 when the first study was conducted, the average unrepresented person unable to pay for counsel had approximately two to three legal problems a year. That figure is increasing. Today, the 2015 Study says that the average is as much as nine problems a year. Every time someone goes unrepresented, their respect for the legal system diminishes.

In addition, take a look at the WSBA Moderate Means and Call to Duty programs which help others who may have more income, but still cannot afford counsel when needed.

Can the attorneys licensed in this state eliminate this problem with the time they are able to give? Probably not. However, each of us can give a reasonable amount of time for those in need and the public that our profession serves. Call your local volunteer lawyers program. Volunteer to help with a legal clinic or to help an individual in need.

3 Give some of your time to help a fellow practitioner.

When I started practicing law 35 years ago, I quickly learned that law school teaches you a lot about the law, about how to think and analyze legal issues and problems like a lawyer, but not much about how to practice law and not much about the day-to-day skills that can make your practice effective. Law school education and clinical skill building have changed greatly over the years to improve on this, but we all know, and the schools would all acknowledge, that the law school environment can’t do it all.
HAVE YOU SIGNED UP FOR A WSBA SECTION WHERE YOU CAN LEARN FROM OTHERS AND EXPAND YOUR ABILITY TO HELP YOUR CLIENTS?

Mentoring by an experienced practitioner can often make a huge difference. Each of our law schools have mentoring programs where you or I can be connected with a law student to give that student the opportunity to ask practical questions and gain practical advice. Sometimes, it is just a cup of coffee, and sometimes the student/mentor relationship may be more. In the end, it is all good in terms of the benefit to the student.

Once a new attorney joins the profession, there are a multitude of “how to’s” to learn and the contact with a mentor is worth its weight in gold. Have you called your law school mentor program to volunteer? Have you volunteered a little time through your local bar’s mentor program? The WSBA MentorLink program and ALPS attorney match are additional resources.

Recall some of the questions you asked when you first got started. By offering yourself to others, you can make a huge difference in someone else’s practice success and enjoyment. We all owe a duty to one another in the legal profession. Mentoring others is just one way of fulfilling that duty.

Another idea to consider: Have you signed up for a WSBA section where you can learn from others and expand your ability to help your clients? Some of the larger county bar associations have sections of their own. Each has its own specialized programming, seminars and CLEs, activities, and networking. Many sections have list serves where members can share ideas, expertise, and experience. As part of a law firm, if I have a question about a new field, a new issue, or a new legal problem, I have the luxury of visiting with a partner and fellow attorney for ideas and brainstorming. Many of our fellow attorneys don’t have that luxury.

As president of the WSBA, the staff has added me to each of the WSBA section list serves, and I’ve received a huge education on what some members can do to help one another. Every day, members are asking questions of one another and fellow attorneys are offering suggestions. How do I find a form for…? Can someone recommend a good accountant for me to call? Who do I call for a client with a special need?

Practitioners helping one another. It’s excellent. Consider how you might join in and give of your own wisdom and expertise to a fellow attorney.

4 Give financial assistance.

Do you donate annually to the Washington State Bar Foundation and to the Legal Foundation of Washington? In both cases, your funds will help others. The Legal Foundation of Washington (www.legalfoundation.org) and the Campaign for Equal Justice (www.c4ej.org) need your help in order that they may help others. It is as simple as that. The Legal Foundation raises funds and distributes grants for much needed legal aid programs across the state.

The Washington State Bar Foundation is dependent upon you and me to help fund WSBA’s Call to Duty Program, helping veterans and their families with legal needs, and the Moderate Means Program, connecting those in the 200% to 400% of the federal poverty level with legal help. The Foundation helps fund WSBA’s critical commitment to sustaining diversity within our profession.

These are just two of the ways that your donated funds can be invested to strengthen what we as a profession can do for others. By donating, you are helping others who would not otherwise have access to our courts or to our justice system. Again, with each of us participating, we can make a difference.

5 Give to our state’s law schools.

The challenges of new attorneys are different than when I went to law school many years ago. Many of today’s law students graduate with more debt than ever before and oftentimes with an uncertain job market. How can you and I help? That’s easy, as like every other suggestion discussed here, it comes down to your contributing some of your time, talent, and funds.

Each of our state’s law schools, Gonzaga University, Seattle University, and the University of Washington, welcomes your financial gifts. Each has scholarship and special need programs for its law students. You and I have a role in ensuring that the best graduate, take the bar exam here, and pursue a fulfilling career of helping the public with their legal issues.

Our law schools welcomes opportunities for practicing attorneys to help mentor law students. Consider what you can do to help a law student become the best graduate they can be.

Five Simple Ideas

These are just five ideas. There are hundreds of good ideas and ways for each one of us to both give to and strengthen our legal profession. There are equally as many ways that you and I can contribute to the legal well-being of others.

What are your suggestions? How do you, as a legal practitioner licensed in the state of Washington, give for the benefit of others? What are your recommendations to your fellow attorneys?

Whether you adopt several of these as your “legal” resolutions for the 2016 New Year or you pick other opportunities, the important thing is that you act now to give of your time, talents, and funds to provide an opportunity for others. We are not responsible for all the problems or ills of society. However, we can and do stand up in order to champion justice for all. There are many ways to do that.

I urge you to act now in order to ensure that your 2016 ends with the fulfillment of giving for the benefit of others and with the knowledge that you have made a difference. NWL

BILL HYSLOP is the WSBA president and can be reached at whyslp@lukins.com.
At the end of each year, the WSBA engages an independent certified public accounting firm to audit our financial statements. In addition to verifying financial statement accuracy and compliance with general accounting standards, the auditors review, analyze, and test internal controls over reporting, management oversight, and various systems related to the WSBA’s finances and overall operations of the organization.

The Budget and Audit Committee reviewed the Fiscal Year 2015 year-end financial results at its January meeting. As in prior years, the WSBA received an “unmodified opinion” for the fiscal year ended Sept. 30, 2015. No adjustments were made, no material weaknesses were noted, and no management letter was issued. The results of this very positive audit indicate that the WSBA’s finances are well managed and accurate in all material aspects. Our independent auditors wholeheartedly complimented our outstanding staff for their professionalism and excellence. For more information, the audit report and audited financial statements can be viewed at www.wsba.org/about-wsba/financial-info.

Notably, the 2015 audited financials show that the WSBA used $446,337 fewer reserves than expected (we budgeted to a net loss of $3,146,873 for the General Fund; the actual loss was $2,700,536). This result reflects higher than anticipated revenues, as well as direct cost savings and fiscally responsible decision making to ensure our continued financial stability. Beginning in fiscal year 2013 and continuing through 2016, in response to the reduced license fees the WSBA has budgeted to a net loss each year in an effort to spend down reserve funds. This savings is very helpful as we continue to look into the future and consider budgeting needs for 2017 and beyond.

As you can see from the above audit and budget results, we have outstanding staff support at the Washington State Bar. Under the leadership of Executive Director Littlewood and Chief Operations Officer Ann Holmes, and with outstanding support from our Controller, Tiffany Lynch, and the rest of our staff, the Bar has made fiscally responsible decisions to ensure our continued financial stability.

In the coming months, in addition to sustaining member-focused, Board-directed programs, we will continue to look closely at expenses, revenue and reserves, and keep you informed as we continue to plan for and maintain our long-term sustainability. I look forward to any questions or feedback that you may have. NWL
I practiced law for 20 years, but last year I made a change. Not a new-haircut, or new-bedroom-wall-color kind of change. In three months’ time I quit my job, sold my house, liquidated my worldly possessions, and moved into a motor home. There have been years when it took me longer than that to take down the holiday decorations!

Why the change and why now? I have been ruminating for years about traveling through North America and writing. The favorable Seattle real estate seller’s market and my declining health were the major reasons I pulled the trigger last year. After all that time, I decided I could afford to be selfish (my career has always come first, as there’s no spouse or children to consider). Full-time RV-ing is also more budget-friendly than my prior lifestyle.

I have been living in the RV full-time since last year. Here are some observations I have made on the road, although I think they apply equally anywhere.

**You need a hobby**

Whether you retire from the law tomorrow or 40 years from now, there will be a void. Your sense of self-esteem and self-worth may also take a serious header. When I was working, being an attorney was in the top 10 ways I described myself, but it was not in the top five. I was an aunt, a daughter, an artist, a traveler, a pop culture connoisseur, and myriad other things. This proved crucial when I left the practice. Along with a new lifestyle and the steep learning curve of the motor home, I have other hobbies and interests to fall back on, to stimulate me and to bestow a sense of purpose and place in the world.

**Stress is more toxic than we admit**

We live in a society where it is considered virtuous to “handle stress,” when in fact we should eschew it. I have Crohn’s disease. I was first diagnosed in 1997, shortly after I began practicing law. When friends and family members asked if stress played a role in my flares and symptoms, I refused to admit there was any correlation. Crohn’s disease is an autoimmune problem, after all. When I left the firm, my symptoms were more severe than they had ever been. 60 days later, before any new medications kicked in, my symptoms were cut in half.

We can’t all say “chuck it” and bug out in an escape-mobile, but you might feel better if you can acknowledge the stress that is present in your life, at the office or otherwise, and do your best to minimize it. Take up yoga, attend a WSBA seminar on mindfulness, walk in the woods with your kids — whatever works for you.

**People are inherently kind and decent**

As a civil litigation attorney, I was witness to both the best and the worst in people. I saw my fair share of fraudulent cases and fabrications, and dealt with more than a handful of offensive personalities. I often viewed the world with a jaundiced eye. Embarking upon this journey has restored my faith in people. Perfect strangers all over the country have invited me to park in driveways and on acreage or along curbs for a meal, a party, or a good long talk. Passing motorists see the blog graphics on the RV and wave and smile. The world did not change, but by opening myself up to new experiences and possibilities, my perception did.

**You need a lot less than you think**

I admit it: I was a rampant consumer. It was humbling and shocking, to say the least, when all my worldly possessions were brought out of closets and cabinets and nooks and crannies and put on folding tables for the estate sale. I was a vintage and mid-century modern collector, and shopping was a form of recreation, often to reduce stress. Now that I live in a 320-square-foot space, down from my 2,700 square-foot home, I realize that none of those possessions actually mattered, and I don’t miss them.

**There will never be a “perfect time”**

I hatched this scheme over five years ago, and it has taken me that long to finally commit. I waited until I tried that big case, until I saved more money, until the home repairs were completed. Of course prudence and planning play big roles in making a major life change, but take it from me: don’t wait until the timing is perfect to get married or start a family or change jobs or buy a house or sell everything and move into an RV, because you might spend your whole life waiting.
You can do it alone
This one goes out to all you beautiful, capable, single people. If you are considering a course of action, whether that be going to dinner or traveling around the world, have faith that you can go it alone.

I have been chronically single most of my life. I am used to the fact that if I want to do something, I’m going to have to do it myself. In school I dreamed of the day that I would buy a home, assuming I would wait until I was married and in a two-income family. The marriage never materialized, so I purchased a house on my own. I often take solo vacations and I enjoy going out by myself. Out on the road, people are surprised that I am traveling alone. The wives of couples I encounter marvel that I do all the things normally reserved for their husbands, like driving the RV or hooking up the towed vehicle. Would it be easier with a significant other? In some ways, yes, but in some ways, no. In any event, I will not delay joy because I am single, and neither should you.

You can be happy
I don’t want to get too “woo-woo” on you, but I have discovered that my state of mind dictates my state of being. It really is as simple as that. No drastic life change necessary.

Roger Miller was best known for his song, “King of the Road,” which is near and dear to my heart nowadays. I’ve been listening to a lot of Roger lately, and I recently re-discovered another of his songs, “You Can’t Roller Skate in a Buffalo Herd.” It’s good advice.

You can’t roller skate in a buffalo herd
You can’t roller skate in a buffalo herd
You can’t roller skate in a buffalo herd
But you can be happy if you’ve a mind to

You can’t ride around with a tiger in your car
You can’t ride around with a tiger in your car
You can’t ride around with a tiger in your car
But you can be happy if you’ve a mind to

All you gotta do is put your mind to it
Knuckle down, buckle down, do it, do it.

Tammy Williams is a Gonzaga University School of Law graduate. After clerking in Snohomish County for two years, she was a trial lawyer defending civil cases in general liability and medical malpractice until 2015. She is traveling through North America in her RV, “Nellie,” with her cat, Boss Tweed, and her dog, Olive. You can follow her exploits at www.theladyisatramp.net.
I love gadgets and toys. I have spent a good deal of my life justifying purchases of all kinds of computer hardware and software just so I can play with them. I first got into personal computers the moment they became commercially available in the late 1970s. One of my first thrills was to have a disk drive the size of a shoebox that ran this huge thing called a floppy disk that could hold a whopping 16,000 bytes.

I was always looking for ways to work computers into my law practice. I had a chance to do so when there were so many documents in a mass tort case, the 1981 MGM hotel fire in Las Vegas, that my firm had to hire a librarian to catalog and keep track of them all. So I figured I would create a database of those files that were in electronic format, such as the text of deposition transcripts, and be my own librarian. I had great fun putting that together and showing it off.

In those days, I had a “portable” computer the size of a small suitcase called an Osborne 1 that I carried around with me to depositions around the country. The thing barely made it into an overhead bin on an airplane. It had a screen about three inches wide, with small green text against a black background, and was barely readable. But it did the job; it very quickly found relevant snippets of other witnesses’ depositions with which I could challenge the current deponent.
But perhaps the best effect this little dinosaur ever had on a witness was when I told him the computer monitored voice stress levels to detect whether a person was lying. He didn’t catch the humor of what I said and at critical moments in his deposition, he glanced uncomfortably from time to time at my computer. That taught me a valuable lesson: in the ways of the law, theater will trump technology every time.

Since those days, of course, all kinds of technology advances have been made in the fields of litigation support and electronic discovery, starting simply with being able to search text with the “find” feature in word processing and email applications. Then things moved quickly to more sophisticated software with complex and fancy-sounding search algorithms: “Boolean searches,” “proximity searches,” “fuzzy logic.” Needles were expected to come flying out of haystacks!

Litigation technologies get serious

Then came a more rarefied era with such companies as DolphinSearch, Attenex, and others, where the buzzwords were “semantic profiling,” all very complex, based on Bayesian probability mathematics and other arcana. The idea, essentially, was that you teach a computer the kinds of information the humans are interested in, and the computer uses artificial intelligence to develop an evolving mathematical profile for the kinds of words and sentence structures associated with the content of the “seed” text. After building up enough of a core of such relevant seed documents, that entire set becomes “the search term” to be applied to masses of other documents, and magically through this huge filter, only likely relevant documents are supposed to appear.

The vendors of this technology had great demos to show how this stuff worked, and of course I had to play with it and see for myself. I never could get these products/systems to work well, and so I gave up on them, as apparently many others in the legal profession have.

Today, the big shiny new buzzwords in e-discovery are “predictive coding,” which, as far as I can tell, is just another spin on the whole semantic profiling fad.
If predictive coding were truly a success, most lawyers would not still be stuck negotiating what search terms they should use in a case, or search terms would no longer be the subject of so many model e-discovery orders and local rules. As I understand it, the evangelists for predictive coding say search terms are generally passé, as the artificial intelligence behind predictive coding is so much better at finding the relevant evidence.

To which I say, “Oh, yeah? Show me the case where any technology and not human effort came up with the smoking gun.” Because — and here I finally get to the point — there is something vastly superior to artificial intelligence: real intelligence, of the human kind.

The best computer is still the one between your ears

Think about it: How do lawyers win cases when there is so much information out there in ever exponentially expanding ways that it cannot possibly be digested by any one human, group of humans, or even a computer? The answer is stunningly simple and obvious: because lawyers have brains.

So much of what your brain does occurs beneath consciousness. The brain is constantly evaluating our ever-changing environments, quickly sifting out what is unimportant and putting focus on what is. It does so without our conscious involvement. While we are busying ourselves with something, the brain keeps evaluating and processing objects and data in all sizes and shapes, quickly comparing all that to similar objects and data from past experience, and it tees up decisions for us long before we become consciously aware we need to make them.

And that’s what lawyers do with lawsuits. Information enters their brains and gets stored for later processing. No lawyer gets a case with just a bunch of amorphous piles of data and an otherwise blank slate, as so many e-discovery solution vendors seem to think. Important pieces of information are...
present right there at the beginning of a new matter, waiting to be eventually given meaning.

For example, the client is going to tell the lawyer a whole lot about the case and what he or she thinks are going to be the key documents to prove or disprove the allegations in the claim or complaint. The lawyer will bring to that conversation all of her life experiences, training, and professional experience to know what to focus on and what to leave alone — at least for now — and which issues are key and which ones are of lesser priority. Both lawyer and client will have a fairly clear idea where the most obvious place to start looking for evidence is; indeed, there is probably plenty of evidence against the case already, assuming it is not frivolous.

So while I am innately predisposed to beat the drums for technology, based on trying cases myself and sharing war stories with other litigators, I have to admit to an essential phenomenon: the mysterious workings of our incredibly complex brains are what take us to real moments of truth. You throw yourself at a case in a seemingly random way, you talk to as many witnesses as you can, you read as many documents as you can (most of them probably worthless), you prepare and prepare, and then suddenly things just congeal out of the mist, and you know your case. You just know it. And the other side knows you know it, too.

Here is a maxim that derives from that observation: Rare is the case that turns on more than a few dozen documents, if that. All of which you will know by heart by the time of trial. Modern science still does not fully understand how the brain works with its 100 billion cells and vast networks of neurons, but we have all had at one time or another that moment when suddenly everything neatly fits a pattern and a consistent story. The pieces come together as if by themselves. We tend not to acknowledge properly the sublime magic of the “Aha!”

That is not to say that electronic discovery and the tools that can be used to find and organize digital information are not valuable, but the legal profession and the public it serves could probably benefit much by our spending less time and resources on text-searching technologies and more on old-fashioned hard work. 

Larry G. Johnson is a lawyer in Newcastle, and has been a member of the WSBA since 1974. He recently served on the E-Discovery Subcommittee of the WSBA Escalating Cost of Civil Litigation Task Force. Besides being a litigator, for the past 20 years he has served as a consultant and expert witness in e-discovery matters. He does business as Electronic Data Evidence (www.e-dataevidence.com).
Procrustes, a minor villain from Theseus’ rogues’ gallery, practiced banditry along the road from Athens to Eleusis. He’d lure travellers to his stronghold and lay them upon an iron bed. If they didn’t fit — too tall or too short — they’d be chopped or stretched until they did.

District and municipal courts are certainly as busy as the highway Procrustes patrolled. Seven out of every eight cases filed in a Washington state court, more than two million a year, are brought in these courts of limited jurisdiction. Misdemeanor and criminal traffic prosecutions, many brought by city attorneys or municipal prosecutors, account for most of the tally. The interaction of state and municipal law presents these municipal prosecutions with a Procrustean challenge.

The crux of the matter is that, unlike their counterparts in county prosecuting attorney’s offices, city attorneys cannot directly prosecute state law offenses. Instead, municipalities only wield executive authority to prosecute offenses expressly adopted by ordinance, or incorporated by reference to a state statute. But either of these methods of defining a municipal offense — express ordinance or adoption by reference — can fail when measured against the iron bed of state law.

**Too Tall! State Law Preemption Cuts Off Municipal Ordinances that Go Too Far**

An express ordinance seems the most straightforward way for a municipality to define a prosecutable offense. Much as the State Legislature would add an offense to the RCWs, a municipality need only decide on an unwanted behavior, define it in a law, and attach a penalty. Voilà! It’s now a misdemeanor, for example, to operate a circus on Mercer Island (see Mercer Island, Wash. Code § 9.30.120 (1991)).

But Article XI, Section 11 of the Washington State Constitution, which authorizes municipalities to pass their own laws, also limits how far such laws may go:

> Any county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws. (Emphasis added.)

A municipality cannot permit what state law prohibits, or prohibit what is expressly permitted by the State. Two cases show how conflict between state and municipal law can occur.

In *Seattle v. Williams* (128 Wn.2d 341, 908 P.2d 359 (1995)), the Supreme Court invalidated the city’s DUI ordinance. Under that ordinance, a person would be guilty of driving while intoxicated if he or she had blood alcohol content of 0.08 or more (Seattle, Wash. Code § 11.56.020(A) (l) (1993)). State law at the time was essentially identical, but instead made it unlawful to have blood alcohol content of 0.10 or more (RCW 46.61.502(a) (1993)).

A panel of municipal judges held that this difference was an unconstitutional conflict. The Supreme Court affirmed on statutory rather than constitutional grounds, based on Title 46 RCW’s provision that motor vehicle regulations be “uniform” throughout the state.

In *Chan v. City of Seattle* (164 Wn.
In 1994, 800,000 people were slaughtered in 100 days in Rwanda. Twelve years later, the United Nations was still sorting out the legal issues involved in this genocide. I was privileged with a clerkship at that tribunal. My involvement at the UN confirmed my Passion to Fight Injustice. But injustice isn’t always massive, and it can happen anywhere. I recently defended someone falsely accused of domestic violence. At trial, the complaining witness took the stand. My rigorous cross-examination proved the entire story was a lie. The judge called a recess. The prosecution dismissed the case. After months of hardship, my client got justice.

DEMETRI HELIOTIS
Attorney at Law

App. 549, 265 P.3d 169 (2011), rev. denied 173 Wn.2d 1025 (2012), the Court of Appeals struck down a City of Seattle Department of Parks and Recreation rule prohibiting firearms on city property. The rule did not carry a direct criminal penalty, but withdrew permission to remain in city parks, beaches, playgrounds, and the like from anyone carrying a gun. The armed individual, if they did not leave, could then be prosecuted for criminal trespass. The court held all of this ran squarely athwart RCW 9.41.290, by which the State “fully occupies and preempts the entire field of firearms regulation,” permitting municipal regulation only as authorized.

In Williams, there was a specific mismatch between what state and municipal law permitted. In Chan, the city rule stumbled into territory entirely preempted by the State. In both cases, overreach was fatal to the municipal law. This is the headboard of the iron bed.

Too Short! Municipalities Relying on State Laws Adopted by Reference May Be Left With Nothing Beneath Their Feet

Since municipalities can run into trouble drafting their own laws, how about borrowing state law wholesale? Just include a section in the municipal code title something along the lines of “Revised Code of Washington Statutes Adopted by Reference,” and list the desired RCWs. Surely nothing could go wrong?

Well, first of all, there can still be conflict with state law, as happened in Republic v. Brown (97 Wn.2d 915, 652 P.2d 955 (1982)). In 1969, the Town of Republic adopted the State’s brand new DUI statute, RCW 46.61.506 (1969). The statute, and hence Republic’s ordinance, created a presumption that a blood alcohol content of 0.10 or more constituted intoxication, and provided for a discretionary jail sentence. But in 1979, the State Legislature amended the RCW, making a driver with 0.10 blood alcohol content conclusively guilty and requiring a mandatory jail sentence. The general rule is that an ordinance adopting a statute by reference takes the statute as it exists at the time of adoption. Republic failed to update its ordinance, and so fell into conflict with the new RCW. The conviction was overturned.

A municipality can address this problem by adopting a statute and further providing that amendments to the statute will also amend the municipal code. However, even this isn’t foolproof.

In Jenkins v. Bellingham Municipal Court (95 Wn.2d 574, 627 P.2d 1316 (1981)), the Supreme Court invalidated DUI charges formerly defined in RCW 46.61.506(1). Bellingham and Everett had adopted that statute by reference, as had the Model Traffic Ordinance, Chapter 46.90 RCW. The State Legislature subsequently deleted the DUI offense from RCW 46.61.506, and embodied it in a new section.

The Model Traffic Ordinance adopted by both municipalities provided at RCW 46.90.010 (1975):

The addition of any new section to, or amendment or repeal of any section in, this chapter by the legislature shall be deemed to amend any city, town, or country ordinance which has adopted by reference this
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This comprehensive language had the unfortunate effect of amending the version of .506 adopted by the two cities — deleting the DUI offense — while failing to add the new section, which appeared in a different RCW title. Though the Legislature belatedly fixed this situation, at the time of arrest, there was no ordinance in the cities of Everett and Bellingham “making it unlawful to drive while under the influence of intoxicants.” (Jenkins, 95 Wn.2d at 581).

Finally, and more prosaically, a municipality can simply neglect to adopt all the RCWs it needs to prosecute an offense — as happened in City of Auburn v. Gauntt (174 Wn.2d 321, 249 P.3d 657 (2012)). Auburn had adopted prohibitions on marijuana and drug paraphernalia, and charged the defendant under those laws. However, it had failed to adopt the RCW defining a penalty for marijuana or paraphernalia possession. “Since there was no penalty attached, these city ordinances did not criminalize possession under Washington law.” (Id. at 324).

Again, state law forms the iron bed’s frame. In the preemption cases, municipal law exceeded its bounds. But in these failed attempts to adopt state law, municipalities thought they stood on firm ground, only to realize their feet didn’t reach the foot of the bed.

The lesson, beyond “the law can go awry in many, many ways,” depends on the reader. City attorneys may want to check that the laws they enforce align with the State’s. They may also want to keep an eye on new and pending legislation, so their municipality can stay abreast of changes to criminal law. No doubt this is a great deal of work, but otherwise there is a risk defendants could be convicted based on defective laws, or that the municipality could find itself unable to prosecute despite a strong factual basis. Neither is desirable.

For defense attorneys with clients facing municipal prosecution, the lesson is simpler. Even if a complaint or citation lists an RCW, the actual charge is based on a municipal ordinance. Those ordinances may be vulnerable. It may be worth taking a few minutes, at the beginning of the case, to lay that ordinance on top of corresponding state law — and see how well it fits.
The Erosion of Justice for All

JOHN McKay Reflects on His Pro Bono Service, the Justice Gap, and the Promise Built into the Constitution

I was fortunate to go to a law firm right out of law school that valued pro bono work. There wasn’t a lot of preaching about it. I understood I could go down to the legal aid office and meet with clients, something all of the lawyers I admired in the firm did regularly.

I did and I was hooked. At my firm, I represented big corporations. While that could be exciting, it was not as rewarding as stopping an eviction that was going to occur at 9 a.m. the next morning. To this day, I believe volunteering for legal aid work connects many lawyers to the reason we went to law school in the first place: we want to help people.

If anything, my commitment to legal aid grows stronger, even though my role has changed over time. I still like the idea of representing real clients, especially helping people who face some pretty awful injustices in their lives. In the nearly 35 years since I started volunteering at Evergreen Legal Services, I’ve shifted more of my time to being an advocate for legal aid funding because it was obvious that the resources are never adequate.

That’s why the recently released 2015 Washington Civil Legal Needs Study Update (available at ocla.wa.gov) is so depressing. We are only reaching a fraction of the Washingtonians who need our help, and the needs are growing exponentially.

We learn from the study that the average number of civil legal problems low-income Washingtonians face in a year has nearly tripled from 3.3 in 2003 to 9.3 today. We get a glimpse of how complex and interrelated civil legal problems often are — and that they can carry long-term consequences.

An eviction is rarely a clear-cut landlord/tenant dispute. Some families can’t make the rent because their child has an insurmountable medical problem that has taken them away from their job too many days and cost them a paycheck. Others are caught in abusive, violent relationships and discover they’ve been served an eviction notice from a landlord who has seen the police on his property too many times.

The 2015 Washington Civil Legal Needs Study Update confirms that, despite our best efforts, we have a wide and growing justice gap in our state. In fact, more than three in four of low-income Washingtonians face significant civil legal problems and get no help at all.

People often know what’s happening to them is wrong. They may even know it’s against the law. Still, they are powerless because they don’t have anyone to advocate for them.

In essence, this study judges the justice system in Washington state and it gives it an extremely low grade — very near failure, in my opinion. There is also an irony within this study: the system is not a failure for those who are able to get help. In fact, 17% of the low-income Washingtonians who got help with their legal problems said their problem was fully resolved.

People are seeing change in their lives. We just don’t have enough of it.

So what can we do? I think it begins with awareness. Let’s not fool ourselves into thinking there’s equal justice for all under the law — because there isn’t. Injustice in our state takes many forms, including racial discrimination and economic discrimination. The doors to the courthouse are closed to the poor and the powerless. We have to admit it and confront it.

Government at all levels — local, state and national — has to respond. Washington has just one state-funded civil legal aid attorney for every 10,783 low-income residents. That’s less than half the nationally recognized minimum service level of one civil legal aid attorney for every 5,000 eligible residents.

The public and private sectors need to work together to generate much-needed dollars. Financial support for legal aid doesn’t pay just for attorneys; it keeps the lights on and makes it possible for staff to screen eligible clients, so more of us can volunteer our time.

And yes, lawyers have to volunteer more to help those cast adrift in our complex world. I personally know the satisfaction that comes when I’ve been able to help someone to overcome seemingly unsolvable problems. When you are able to help a young mother stay in her home, escape a violent spouse or get the medical attention her child so desperately
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Finally, we have to reach people who aren’t lawyers and encourage them to speak up and say, “Not in my name. The justice gap in Washington state is unacceptable.”

Whether you believe in small government or expansion of government, you believe in having a justice system that’s open and fair for everyone. That’s a bedrock American principle. Not a political principle. It’s what everyone — from the Constitution’s framers to Ronald Reagan — believed in. And yet, today we’re witnessing the erosion of the proud American principle of justice for all.

Our court system must ensure that people are being treated fairly and in accordance with the law. That is a promise built into the Constitution and a promise that must extend to all, no matter who they are or what resources they have. Not to deliver on that promise is a colossal failure.

Let’s roll up our sleeves and get to work. We can do better.
In 2016, women and children are still being forced into dark corners due to domestic violence. As a child survivor of domestic violence, I am all too familiar with the feeling that a certain violent incident was so bad that it can never get worse, and then a few days later, it does. I was frightened by the social stigma, wondering, “What will everybody think if my parents divorced?” Equally frightening was the knowledge that my father kept a hunting rifle in his closet and he had never been hunting.

After 25 years of marriage, my mother made the brave decision to separate from my father and break the cycle of violence that ruled our lives. It was certainly a cultural taboo in our South Asian community, but she stood tall and was transparent as to the abuse, my father’s constant philandering, and his relentless intimidation of women he identified as “weak,” including his own mother-in-law and other members of our family.

We were fortunate that we are U.S. citizens and my mother was a working physician. Thus, our immigration status was not at stake nor did we require financial assistance from my father after the separation and subsequent divorce.

Unfortunately, many non-immigrant women remain in abusive relationships because they are vulnerable as to their immigration status and fear financial dependence on their abusers. Additionally, they may also fear law enforcement agencies, thinking that if they complain, they will be deported. These women often feel that they have no options available to escape their abuser. As a U.S. immigration lawyer, I tell those non-immigrant women that they do have options.

I recently provided counsel to three non-immigrant women, each of whom communicated severe physical and emotional distress at the hands of their abusive spouses. Each of them shared with me their unfortunate circumstances: one was pushed down a flight of stairs, another choked in front of her children, and the third raped day after day. One client, a young South Asian woman, has not reported the abuse, as she fears losing her non-immigrant status in addition to backlash from her family, who forced her into the marriage in the first place. The other two recently cooperated with police when their neighbors reported domestic disturbances and arrested their spouses for DV assault.

Congress has enacted U Nonimmigrant Status (U Visa) to provide immigration protection to individuals like my three clients, survivors of domestic violence. The purpose of the U Visa is to aid law enforcement in the investigation and prosecution of crimes of violence by providing immigration relief to non-immigrants who assist in the investigation or prosecution. In fact, domestic violence is just one of a list of crimes that qualify for U Visa...
protection. Other crimes include rape, torture, trafficking, sexual assault, and kidnapping. The benefits of having a U Visa include employment authorization, protection from deportation, and eligibility for lawful permanent residency (green card).

In order to be eligible for a U Visa, the non-immigrant survivor (1) must suffer “substantial physical or mental abuse” as a victim of a qualifying crime; (2) must possess information about the criminal activity; (3) must help with the investigation or prosecution of the crime; and (4) must be a victim of criminal activity that occurred in the U.S. or violated a U.S. law. Non-immigrant survivors may also obtain derivative status for their parents, spouses, children, and siblings.

Many non-immigrants are fearful that reporting domestic violence will result in removal from the U.S. or other negative repercussions. The U Visa program is available to protect non-immigrants from violence and encourage them to call law enforcement when necessary. If you or a loved one is facing this challenge, you can contact a U.S. immigration lawyer.

NOTES
1. “Non-immigrant” refers to those individuals without an immigrant visa, lawful permanent residency (green card), or those without any status, including but not limited to refugees, those who overstayed after a visa expired, or entered the country without inspection.

2. The requirements as I’ve listed are available on USCIS website at http://1.usa.gov/1O984oz.
Join the conversation

NWSidebar
the blog for Washington's legal community

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Membership in more than one bar association can be complicated and taxing. You have CLE credits to worry about (and keeping track of the many ways to earn them), different reporting deadlines for those credits, varying fees to pay, and different reporting requirements for pro bono service. Actively practicing law in two different states is even more of a challenge. The rules of civil procedure vary, there are innumerable nuanced local rules, and states impose modified rules of professional conduct.

One of the great benefits of practicing law is the ability to become a member of any state bar. Luckily, I was in the first group of Washington State Bar admittees to take the Uniform Bar Exam (UBE). As a recent bar admittee with a passing UBE score, I was able to become a member of the Idaho State Bar without taking another bar exam.

As of November 2015, 19 states have adopted the UBE. States that administer the UBE, such as Washington and Idaho, typically allow attorneys to transfer their UBE score for admission within a limited time after receiving their score. But attorneys transferring their scores must apply for admission in the new state, and pass that state’s character and fitness examination, together with any other state-specific bar admittance requirements.

Now that multi-state practice is becoming more attainable nationwide, when actively practicing in more than one state, it is important to keep the following practice pointers in mind. As a civil litigator with many cases in state courts, these issues inevitably arise as each state — and more specifically, each county — operate using different rules and methods of practice.

Civil Rules
In most instances, during the first year of law school aspiring attorneys are taught the Federal Rules of Civil Procedure. However, state rules of civil procedure vary, often dramatically, from the federal rules. As an attorney living and working in Spokane, with its close proximity to the Idaho state line, I actively practice in both Washington and Idaho. I quickly learned that there are important subtleties between the two states’ rules of civil procedure.

For example, in Idaho, if you file an answer by Whitny Norton of appearance before filing a motion to dismiss based upon lack of personal jurisdiction, insufficiency of process, or insufficiency of service of process, you waive these affirmative defenses (IRCP 12(g)(1)). Whereas in Washington, the filing of a notice of appearance alone (required in Spokane County under LCR 7(a)) does not waive a defendant’s right to challenge lack of jurisdiction over the person, insufficiency of process, or insufficiency of service of process under CR 12(b), so long as the right to make those challenges is reserved (CR 12).

Discovery procedures also differ between jurisdictions. Unlike Washington, Idaho requires a party to file a notice of service with the court confirming service of discovery requests and responses, such as interrogatories, interrogatory answers, and requests for production of documents (IRCP 33(a)(5) & 34(d)). Idaho also allows, but does not require, a party to file notice of service after responding to requests for production (IRCP 34(d)). Washington does not have a similar requirement. Rather, in Washington discovery mostly occurs only between the parties and largely without notice to the court.

There are also material differences between states’ pleading standards. In Idaho, a jury demand may be included in a complaint and must be served not later than 14 days after service of the last pleading directed to such issue (IRCP 38(b)). Failure to timely file and serve a jury demand is a waiver of the right to a jury (IRCP 38(d)). The state rules do not call for the payment of a jury demand fee (IRCP 38). In contrast, in Washington, a jury demand must be filed and served, and a jury fee must be paid, before the case is set for trial (CR 38).

Further, unlike Washington, Idaho’s civil rules provide for a scheduling conference, scheduling order, and pretrial process (IRCP 16). Washington’s version of Rule 16 provides that the court may direct the attorneys to appear for a pretrial conference (CR 16). However, counties in Washington often provide for specific pretrial requirement via local rule.

For a litigator, these nuances are of the utmost importance. Failure to recognize them can have a severe negative impact on your client’s legal rights.

Local Rules
The variations among the local rules of Washington and Idaho
are too numerous to list here. While multi-state litigators practicing in state courts should always check a specific court’s local rules, there are a few notable variations between Washington and Idaho to keep in mind:

- Indexing sheets
- County court websites (county-specific forms are often available online)
- Page limits
- Filing requirements (e-filing, facsimile filing, etc.)
- Time limits for oral argument
- Service deadlines for specific motions
- Format of motions and other documents (e.g., one document vs. separate motion and memorandum)
- Judge’s copies (electronic, U.S. Mail, or hand delivery)
- Proposed orders (file with motion, present at hearing, or present at a later date)
- Trial procedure

Local Bar Associations and Professional Decorum

Practicing in various counties throughout different states exposes you to many diverse communities and practices. I am a member of my local county bar, the Spokane County Bar Association, which is a vibrant and active bar association. I’ve had the pleasure of practicing in numerous counties including both Ada County, Idaho, the most populous county in the state of Idaho, and Shoshone County, Idaho, the sparsely populated county that is home to the Silver Valley and a number of inactive metal mines. The culture and atmosphere of these two counties are immensely different.

But appearing in each county teaches unique lessons. In Ada County, maneuvering through the large, highly-functioning courthouse is a momentary challenge. In Shoshone County, the legal community is tight-knit, and local attorneys are usually well-acquainted with each judge and the necessary manner of conducting motion practice and trial.

Despite their differences, I am particularly impressed by the collegiality of the local attorneys in each county, and by the professionalism, preparedness, and obvious dedication of the judges. Local bar associations vary widely and learning to navigate and adapt is crucial when actively practicing law in more than one state.

Mandatory Continuing Legal Education

Washington requires a total of 45 credits every three years, six of which must be ethics credits, whereas Idaho requires a total of 30 credits every three years, three of which must be ethics credits. In Washington, there are a number of ways to earn Mandatory Continuing Legal Education (MCLE) credits. For example, in addition to attending CLE courses, attorneys licensed in Washington can earn MCLE credits by publishing legal works, teaching law school courses, preparing to present at a CLE, judging law school competitions, providing pro bono services, or by mentoring in an MCLE-approved mentoring program. In contrast, in Idaho, only 15 MCLE credits may be self-study credits and a maximum of six credits may be obtained for publishing legal writings.

Active members of the WSBA with their primary practice of law outside of Washington, who are also members of a comity state bar (Oregon, Idaho, or Utah) need not duplicate their MCLE efforts. Those attorneys can satisfy their Washington MCLE requirements by fulfilling the MCLE requirements of a comity state. A Comity Certificate of MCLE Compliance, which confirms the attorney’s satisfaction of the comity state’s continuing education requirements, must also be filed with the WSBA.

Likewise, an attorney licensed in Idaho whose primary practice of law is outside that state may comply with the Idaho MCLE requirements by filing a Certificate of Compliance. Unlike Washington, Idaho accepts Certificates of Compliance from all state bars except Alaska and Hawaii.

Ethical Rules and Disciplinary Bodies

Last, but certainly not least, is the matter of rules of professional conduct. Each state has its own rules of professional conduct and each state has its own disciplinary body. When joining a state bar, it is imperative that you know the specific ethical rules of that state. It also doesn’t hurt to familiarize yourself with the disciplinary process in that state.

Challenging but Fun

Practicing in more than one state can be a fulfilling challenge. It’s a constant reminder of the importance of keeping up to date on local rules and state-specific rules of civil procedure. It also provides the opportunity to appear before a number of different judges.

In addition, it brings an appreciation of the differences in county bar associations, methods and styles of practice, and the opportunity to meet and work with a number of multifaceted attorneys. Last but not least, actively practicing in more than one state bar provides great travel opportunities and many new experiences.

After all, we can’t work 24/7 and it is important to take time to enjoy your surroundings when traveling for work. As a self-proclaimed gastronome, I’ve thoroughly enjoyed my work-related travels: I make a point of checking out a local restaurant or two during my travels. And when I have time, I also enjoy exploring a local running trail or other outdoor activity. With careful attention to detail, multi-state practice can be an engaging and rewarding experience. NWL
CONGRATULATIONS! You landed the interview for the position you truly want! Now what?

You don’t just want to interview well, you want to stand out! Before you can start “living the dream,” here are a few tips to help you have your best interview ever.

1 **Make yourself “leap” off the résumé.**

Remember that the résumé, while it is a great summary of your work history, is ultimately a tool designed to get you the interview. You feel strongly that any organization would be foolish not to hire you. So how do you show that? One way is to highlight your skills by using the language of competencies. This is taking your work experience and translating it into action words that help to create an image in the mind of the employer of you as an employee. Use words such as “enhanced,” “organized,” and “demonstrated” to show your accomplishments and competencies.

2 **Be your authentic self … to a point.**

Be your authentic self, professional yet real. Engage in true conversation with your interviewer, resting on the preparation you did prior to coming to the meeting. Remember that this is a conversation (not an interrogation!). Conduct several trial runs with another person simulating the interview before it actually occurs.

3 **Present yourself as a solution to the problem.**

Make everything about them. Research their problems. While it’s hard to do this if you don’t know the hiring manager, do your due Internet research diligence. Have they been in the news lately? Are they growing? Dig deep and see if you can find something specific. Or start asking around, connecting with current employees.

4 **Remember one interesting fact about everyone you meet.**

Typically, the interview process will involve more than one visit to their office. While it is impressive to state all that you know about the company, you can become more memorable when you connect with the interviewers in a way that values their relative position in the company. It shows you are paying attention.

5 **Be aware of their behavioral presentation.**

Be prepared to match the general mood of the interviewer; if they are professional and staid, this is probably not the best time to tell a few jokes. Take note of the general mood of the organization as well.

6 **Perform the job in the interview.**

Thoroughly research the job and understand how it fits into the organization. When giving answers to interview questions, think about the job duties, skills, and responsibilities that the job calls for. Use key words from the job description to articulate your answers to interview questions. When describing your previous accomplishments, explain them in a way that demonstrates your ability to perform the responsibilities for the current position.

7 **Remember that it is not just about your experience.**

You are extremely qualified, have terrific application materials, and a great targeted résumé. What else do you need? Be mindful of your soft skills and remember you are being evaluated just as much for your likability as you are for your capability. Also known in the industry as “cultural fit,” these soft skills relate to a person’s ability to interact ef-
fectively with coworkers and customers and are broadly applicable both in and outside the workplace. You can demonstrate these soft skills during the interview by highlighting strengths such as:

- Your work ethic
- Positive attitude
- Communication skills
- Time management
- Self-assuredness

**8 Don’t forget the attire.** Hiring managers need to be able to visualize you in the position they are trying to fill. There is significant research indicating that first impressions are usually formed within the first 30 seconds. Appearance, therefore, not only affects hiring decisions but can play a major role. Dress to impress. While many office environments have shifted to business casual attire, a professional look is still important. Suits are still the standard and should be worn for the interview. Be well groomed, lay off the perfume or cologne, and polish your shoes. Everything counts!

**9 Practice, practice, practice.** Don’t wing it or rely solely on your professional skill set. Enlist someone to play the role of interviewer. Work with them to fine-tune your approach and make adjustments as you identify areas of improvement. Also, remember these tips:

- Learn all you can about the organization in advance.
- Watch people being interviewed on television — take note of what works.
- Create one intriguing statement about yourself in order to answer the quintessential “tell us about yourself” question.
- Memorize a few short quotes and have them ready. They can help you respond articulately to virtually any question.
- Research tough interview questions and provide them to your interview helper.

**10 When the interview concludes ...** Say thank you. Say it right after the interview concludes and follow up with an email or thank you note to those involved in the interview process. Make sure you are aware of the next steps. Ask for clarification if needed. Don’t hesitate to restate why you are the perfect candidate for the job. Take note of any difficult questions asked during the interview. They may come up again in one form or another as you (hopefully) advance through the interview process. Don’t stop looking. Apply for other positions and go to interviews while you are waiting for a reply. NWL

**FELIX NEALS** is the WSBA senior HR specialist. He can be reached at felixn@wsba.org.

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If you don’t know where you’re going, you’ll probably end up somewhere else.

Motivational speaker Zig Ziglar was fond of saying this to his audiences and it is equally applicable to jury selection. Before starting, we need to know what our goal is. The ultimate goal for jury selection should be to create open, frank, and non-judgmental discussion which reveals information about the juror. The objective is to learn jurors’ deeply believed values, their significant past life experiences, and their attitudes about the relevant issues in the case. These are the things that determine how people make decisions. You want to end up with a bonded group without significant bias.

In jury selection, and throughout the trial, be yourself, not your idea of what somebody thinks you should be.

To be great trial lawyers, we need to learn to be fearlessly authentic. Jurors search for someone they can trust and who can lead them honestly through the process. Authenticity requires vulnerability, transparency, and integrity. We all have the ability to sense someone who is not authentic, someone who is guarded, and someone who is pretending to be something they are not. We know that first impressions make lasting impressions. Jury selection is the first time trial lawyers involve themselves directly with the jury. The impression we make is likely the impression the jurors will have for the entire trial.

It is not fair to ask of others what you are not willing to do yourself.

Those words of Eleanor Roosevelt apply to jury selection. The well-known principle of psychology called reciprocity provides that we feel obligated to give something in return when we are given something as a favor. In jury selection, reciprocity means if we want jurors to be motivated to share with us,
we should first share with them.

Our sharing might be something as simple as truthfully saying to the jurors: “As many times as I have talked to jurors at the start of a trial, I still feel nervous. I’m wondering whether any of you might be feeling nervous, too.” Try acknowledging your own feelings before asking jurors to share theirs.

4 Three things cannot be hidden: The sun, the moon, and the truth.

Buddha said this about honesty. As advocates, we should be truthful and honest with jurors not only because it is ethically right, but because it creates a favorable impression about our honesty and trustworthiness. Jurors are looking for someone they can trust. When we truthfully share “the good, the bad, and the ugly” about the issues in our case we promote an attitude of trust on the part of the jurors.

It also benefits us regarding the principle of deconditioning. The more we are exposed to negative information about a subject, the weaker reaction to it becomes. Certainly, we need to frame the information in the best possible light, but honesty, in this regard, carries its own rewards.

5 Finding good players is easy. Getting them to play as a team is another story.

Manager Casey Stengel said this about baseball and it applies to jury selection as well. You are not dealing with individuals who will act independently. We are creating a small group that will function together. The dynamics of the group will be determined by the characteristics of the people involved. We cannot ignore group dynamics and the impact it has on the final outcome. No juror reaches a verdict alone. Be aware of how the group is being created in jury selection. While we can’t rely on stereotypes, there are some general personality types to be alert for:

Leaders. Leaders are capable of taking over a small group and controlling it. There is no way of knowing what leaders will do once the jury room door closes for deliberations.

Pro-authoritarians. These are people who are deferential to authority. They are likely to be deferential to police officers, physicians, and other people they feel should be obeyed. Their attitude is part of their value system no matter how much assurance they give about being able to be objective.

People with a personal agenda. These are jurors with strong, inflexible views. They sometimes can be “stealth” jurors who misrepresent or remain silent about their attitudes because they want to be on the jury to enforce their views. They may not always be objective.

Neutrals. These are people who have no strong value bias or life experiences that would influence their view of your specific case. They are generally
objective thinkers and are generally safe jurors.

**Followers.** These are people who do not like confrontation and tend to always go along with the majority’s will. They are generally safe jurors.

6 One of the most sincere forms of respect is actually listening to what another has to say.

The most important rule of jury selection is to really listen to what the juror says. We communicate that by our body language and eye contact with the speaker. When we do respond, we should acknowledge what was said. Looking down at notes or away from the juror, even to make notes, signals you really aren’t listening. Try not to take notes during jury selection. Let someone else take notes for you. There are excellent software programs for this. You should be fully involved with the jury.

The most important step in preparing for jury selection is to analyze your case for key issues. These red flag issues should include both positive and negative aspects of the case. Next, arrange them in order of importance because you may not have time to talk about all of them in detail. Have a one-sheet outline of the issues, good and bad, about your case ranked by priority of importance. Follow your outline to try to cover the main issues.

7 You can make more friends in two months by becoming interested in other people than you can in two years by trying to get other people interested in you.

When Dale Carnegie wrote those words in 1936, he was not talking about jury selection, but he could have been. Remember, jury selection is not a cross-examination, nor persuading the juror you are right, nor an interrogation, but rather a process encouraging discussion to learn about the jurors.

We encourage discussion by stressing there are no right and wrong answers. Assure jurors that they will not be judged adversely for speaking truthfully. Try to get everyone to talk about themselves or their views. Use open-ended general questions, such as, “Please tell us about that experience,” or, “How do you feel about (subject)?” or, “What are your thoughts about (subject)?” Involve the others by asking, “How many of you agree?” followed by, “Why?” Repeat the process for those who disagree. Be nonjudgmental. Accept their views.

8 What you do speaks so loud that I cannot hear what you say.

Ralph Waldo Emerson was right. Our nonverbal communication speaks louder than words. We subconsciously react to nonverbal cues and behavior including posture, facial expression, eye, gesturing, and tone of voice. How we stand, where we stand, and where we hold our hands while talking to the jury communicate a great deal. Our stance should be open, our arms uncrossed, and our gestures congruent with what we are saying. We need to honor the juror’s personal space by not getting too close. The juror’s impression of us will be affected by how loudly we speak, our tone, and the pace of our speech. We tend to be-
lieve self-confident and assured speakers but reject arrogance in word and appearance. Be conscious of all nonverbal impressions.

9 Embrace your client even when he’s unlovable.

Advertisers understand that there is a “halo” effect involved when they use a celebrity to promote their products. That is, the favorable opinion about the celebrity tends to extend to what that person is promoting. In the same way, whatever favorable impression the jury has about us extends to our client. We can enhance a favorable impression of our client by how we treat and involve our client in the presence of the jury.

10 Apply basic principles of human nature.

Keep in mind the basic characteristics of human nature during jury selection. For example, we know that once people have taken a public stand on an issue they are very slow to change it. This fact of human nature can be useful in obtaining sincere verbal assurances without labeling them “promises or commitments.”

In jury selection, we should frame our case in basic themes and commonly accepted principles of conduct. We know people look for rules when they are trying to accomplish something or solve problems. Our first question about a new game is, “What are the rules?” This is why the jury instructions are important to them.

Create the best possible impression of your case and yourself. We know trials can be struggles of impression instead of logic. Human beings make the majority of their decisions at a subconscious level and then give rational, conscious reasons for their decision. What influences our subconscious are the impressions we form and those are largely influenced by our strong values, our significant past life experiences, and our primitive brain’s drive for survival. Think impression and not logic when framing your voir dire.

When in doubt, remember these six words of Franklin D. Roosevelt: “Be sincere, be brief, be seated.” NWL

Paul N. Luvera is the founder of the Luvera Law Firm. In 2010, Luvera was inducted into the National Trial Lawyers Hall of Fame and is the only member from Washington state. His awards include 1985 Trial Lawyer of the Year; 2009 President’s Award; 2014 Pillar of Justice Award from the Washington State Association of Justice; and the 2008 Gonzaga University Distinguished Alumni Award. He is a fellow of the American College of Trial Lawyers, the International Academy of Trial Lawyers, and the American Board of Trial Advocates. He can be reached at paul@luvera.org.

Congratulations and Gratitude to Rick!

Best wishes to our beloved friend and colleague Rick Rasmussen on his retirement.

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Probing for Sense Beneath a Senseless Seattle Crime

While the City Slept: A Love Lost to Violence and a Young Man’s Descent into Darkness
by Eli Sanders
2016; Viking Press; 336 pp.; hardcover; $28

Reviewed by William L. Downing

Many of the Puget Sound region’s most distinctive and dramatic geologic features are closely observed by Eli Sanders in his new book, While the City Slept. Their appearance in these pages is neither to serve as fill dirt nor solely to provide a welcome oasis in the midst of the sad tale being told.

Sanders captured a Pulitzer Prize in 2012 for his series in The Stranger about a horrific crime against two women in Seattle’s South Park neighborhood a few years earlier. Lengthy court proceedings culminated in Isaiah Kalebu being convicted of the rape and murder of Teresa Butz and the rape and attempted murder of her fiancée Jennifer Hopper. From those background facts flows this book, but the book is very much more than that suggests.

The winding Duwamish River of South Park was carved by its currents. Long-ago glaciers shaped the drumlins of West Seattle, and the hulking mass of Mount Rainier, overlooking all, was born of volcanic forces. Even the fault line hidden beneath the city is no accident, but rather a product of plate tectonics.

Those mini-lessons in earth science, sprinkled throughout the book, give us the comfort of something eminently knowable. They serve as a poignant counterpoint to the twin themes of the book, matters that maddeningly, saddeningly, defy explanation: how one human could come to so savagely attack two total strangers and what, if anything, could have prevented it.

Sanders traces two life trajectories, one trending up and the other down. As young people should, Teresa and Jennifer bounce around a bit before finding themselves and each other and settling into a cozy red house in South Park. Meanwhile, Isaiah is a young man descending ever deeper into a mental health crisis that turns his previously supportive family against him — and him against the world. Into a window of that little red house, he would crawl to work his nightmarish mayhem.

Sanders writes with an uncommon empathy for everyone who had a part to play in this tragedy — not just Teresa and Jennifer and Isaiah, but each neighbor, relative, police officer, and judge involved. He recognizes that none had an easy row to hoe and treats each of them with fairness and sensitivity.

Of course, Teresa and Jennifer become the realest of the real and no reader could fail to identify as they are depicted facing their personal challenges and dreams. In particular, Sanders masterfully presents the voice of Jennifer, the voice of all victims, and indeed, all humanity, when she demands the affirmation that is her due. Like Coleridge’s Ancient Mariner and wedding guest, Jennifer and we have no options. As Sanders puts it, “This happened. You must listen.” As writing, this section of the book is brilliant; it is compelling and it is true. The iron resolve and ultimate transcendence are Jennifer’s, but Sanders has given her voice power.

Digging for sense beneath the senseless is not a fool’s errand, especially in Sanders’ hands. At the tricky intersection of mental health and public safety, this book raises the right questions and the author is wise enough not to presume to know any easy answers. Our society cherishes individual freedom and would never tolerate a government that shipped individuals off to camps for “re-education.” At the same time, our culture treasures the sanctity of each individual human life and professes a desire to protect them.

Finding the balancing point between these principles is like trying to tune in a radio station on a late-night cross-country drive. What matters is that we keep trying, that we do not abandon our commitment to finding the right tune, elusive though it may remain. This is precisely why this book is important. Putting such a human, even familial, face on the people whose lives are at stake helps everyone — glacial legislators, volcanic judges, meandering lawyers, and strata of voters — to remember the bedrock that underlies our ideals.

On both a human level and a policy level, While the City Slept makes a vital contribution and deserves a wide and receptive readership.

UP AND COMING

Negotiator
by Philip J. Bigger
(available March 1); Hesperus Press; 320 pp.; paperback; $19

This biography of attorney James B. Donovan, who was recruited by the
CIA to broker near-impossible Cold War negotiations, was the basis for Steven Spielberg’s forthcoming film, Bridge of Spies. Donovan joined the U.S. Navy during WWII and at the end of the war was charged with collecting and recording evidence of Nazi atrocities, which transitioned into his role as a prosecutor at the Nuremburg trials. After returning to private practice in the U.S., Donovan defended the captured Russian spy Rudolph Abel, and then became involved in international politics as he attempted to secure the release of captured American U-2 pilot Francis Gary Powers with the CIA’s behind-the-scenes approval. Later, he negotiated directly with Fidel Castro over the treatment of prisoners from the Bay of Pigs. Donovan also ran for the Senate and became president of the Pratt Institute art school in New York. A larger-than-life figure in his day, Donovan has been mostly overlooked by history — though that’s likely to change when the movie comes out.

Lawyers, Liars, and the Art of Storytelling: Using Stories to Advocate, Influence, and Persuade by Jonathan Shapiro (available Feb. 7); American Bar Association; 300 pp.; paperback; $20

Attorneys know the importance of creating a compelling narrative to make their case. Jonathan Shapiro — a former federal prosecutor and law professor turned award-winning TV writer, producer, and author — shows you how to use stories to get your message across. Part writing guide and part memoir, the book blends storytelling lessons with juicy anecdotes from Shapiro’s years in trial practice and television writing for shows like The Blacklist, Boston Legal, and The Practice.

Explicit and Authentic Acts: Amending the U.S. Constitution 1776–2015 by David E. Kyvig (available Feb. 28); University Press of Kansas; 624 pp.; paperback; $35

This award-winning landmark study of the process of amending the U.S. Constitution is being re-released with a new afterword in honor of the 225th anniversary of the Bill of Rights. This comprehensive survey covers the Constitutional amendments of the past two centuries and their significant impact on U.S. history. More than 10,000 amendments have been proposed, but only 33 received the re-
acquired two-thirds approval from both houses of Congress, and only 27 have been ratified into law by the states. Kyvig analyzes the periods of greatest amendment activity during the 1790s, 1860s, 1910s, and 1960s; and the historical consequences of failed amendments on slavery, alcohol prohibition, child labor, New Deal programs, school prayer, equal rights for women, abortion, balanced budgets, term limits, and flag desecration. NWL

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Danger Zone

Business Deals with Clients

by Mark J. Fucile

The Rules of Professional Conduct do not prohibit lawyer-client business transactions outright. At the same time, the applicable rule — RPC 1.8(a) — sets very high standards for the lawyer or firm involved. Courts have also long closely scrutinized lawyer-client business transactions — with the Washington Supreme Court describing them on more than one occasion as “prima facie fraudulent” (see, e.g., In re McGlothlen, 99 Wn.2d 515, 525, 663 P.2d 1330 (1983)). Despite their inherent risks, lawyer-client business transactions occur in both good times and bad. When the economy is hot, lawyers may take stock in lieu of fees from promising start-up clients. When it’s not, lawyers may be forced to take additional security from clients struggling with fees long overdue.

In this column, we’ll look at three facets of lawyer-client business transactions. First, we’ll survey the parameters of the rule. Second, we’ll discuss the standards that lawyers must meet when engaging in a lawyer-client business transaction. Finally, we’ll outline the consequences that lawyers face if they don’t meet the standards involved.

Parameters of the Rule

RPC 1.8(a) includes two broad categories of lawyer-client business dealings: “business transactions” and the acquisition of “ownership, possessory, or security interests adverse to a client[.]” They are framed in the disjunctive and, therefore, both do not need to be present for the rule to be triggered.

Business transactions cover a wide spectrum of lawyer-client deals, ranging from loans from the client to the lawyer (see, e.g., In re McMullen, 127 Wn.2d 150, 896 P.2d 1281 (1995)) to purchasing a house out of the estate of a probate client (see, e.g., In re McGlothlen, 99 Wn.2d 515). The rule also applies under RPC 5.7 to transactions involving a law firm affiliate selling ancillary services to a client. Standard commercial transactions, however, are generally exempted by Comment 1 to RPC 1.8. Examples of this exclusion include having a checking account at a bank client or buying electric power from a utility client.

Ownership, possessory, or security interests cover an equally wide spectrum of lawyer-client arrangements, ranging from a law firm’s investment in a client’s business (see, e.g., Holmes v. Loveless, 122 Wn. App. 470, 94 P.3d 338 (2004)) to a joint venture between a lawyer and the client (see, e.g., In re Corporate Dissolution of Ocean Shores Park, Inc., 132 Wn. App. 903, 134 P.3d 1188 (2006)).

Comment 1 to RPC 1.8 notes that the rule “does not apply to ordinary fee arrangements between client and lawyer[.]” That said, three important qualifications are in order. First, Comment 1 goes on to apply the rule when “the lawyer accepts an interest in the client’s business or other nonmonetary property as payment of all or part of a fee.” Second, Comment 16 to RPC 1.8 applies the rule when a lawyer acquires “by contract a security interest in property other than that recovered through the lawyer’s efforts in . . . litigation[.]” Third, a modification of a fee agreement that brings it with security for fees already owed invokes the rule (see Valley/50th Avenue, L.L.C. v. Stewart, 159 Wn.2d 736, 153 P.3d 186 (2007)).

For the rule to apply, generally there must be a current attorney-client relationship. In Rafel Law Group PLLC v. Defoor, 176 Wn. App. 210, 308 P.3d 767 (2013), and DKS Ventures, LLC v. Kalch, 2011 WL 4829724 (E.D. Wash. Oct. 12, 2011) (unpublished), for example, the courts involved concluded that no attorney-client relationships existed and, therefore, RPC 1.8(a) did not apply. But the rule applies even with prospective clients under Comment 1 to RPC 1.8 when the lawyer or firm is taking stock or other nonmonetary property in lieu of fees. The concurring opinion in Rafel notes that the Washington Supreme Court has not yet addressed whether RPC 1.8(a) applies when a lawyer is negotiating with a prospective client over security for fees not yet incurred. WSBA Advisory Opinion 2209 (2012) makes the same point and recommends meeting the requirements of the rule in this circumstance as a “best practice.”

Standards

RPC 1.8(a) sets out the three basic standards that must be met for a lawyer-client business transaction to pass muster:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of an independent lawyer on the transaction; and

(3) the client gives informed consent, in a writing signed by the client to the essential terms of the transaction and the lawyer’s role in the transaction, including whether the lawyer is representing the client in the transaction.
Whether a transaction is “fair” will be assessed over the life of the deal. In *Holmes v. Loveless*, 122 Wn. App. 470, for example, the Court of Appeals refused further enforcement of a business deal that had generated roughly $380,000 for the lawyers involved over 30 years for an original $8,000 discount in their fees. The Supreme Court has also added that the sophistication of the client does not excuse the disclosures required (see, e.g., *In re Miller*, 149 Wn.2d 262, 280, 66 P.3d 1069 (2003); *Valley/50th Ave., L.L.C. v. Stewart*, 159 Wn.2d at 745-46). When the lawyer is also providing legal advice on the matter involved, Comment 3 to RPC 1.8 emphasizes that the lawyer’s disclosure must also include “the risks associated with the lawyer’s dual role as both legal adviser and participant in the transaction[.]”

For lawyers and their firms thinking about doing a business transaction with a client, ABA Formal Ethics Opinion 00-418 should be on their reading list. The opinion, which was issued when investing in clients was becoming more prominent during the “dot-com bubble,” focuses on taking stock in lieu of fees. While not a “cookbook,” it contains sound practical advice both for complying with the professional rules and lessening (but not eliminating) the risks involved.

**Consequences**

With any conduct that the Supreme Court has labeled “prima facie fraudulent,” it should not be surprising that regulatory discipline is a common sanction for lawyers who do not meet the high bar for lawyer-client business transactions. Discipline, however, is not the sole remedy available. Because the conflict rules involved reflect the underlying fiduciary duty of loyalty, the clients affected may also have a breach of fiduciary duty claim against the lawyer — with both damages and fee disgorgement possible (see, e.g., *Cotton v. Kronenberg*, 111 Wn. App. 258, 44 P.3d 878 (2002)).

In *LK Operating, LLC v. Collection Group, LLC*, 181 Wn.2d 48, 331 P.3d 1147 (2014), the Supreme Court offered a powerful reminder of another potential consequence: the business deal involved may not be enforceable. Although that remedy is neither new nor novel, the Supreme Court in *LKO* explained it in detail. The Supreme Court noted (at 85) that it had “previously and repeatedly held that violations of the RPCs or the former Code of Professional Responsibility in the formation of a contract may render that contract unenforceable as violative of public policy.” The Supreme Court stressed that because the requirements of RPC 1.8(a) and the formation of the contract concerned are essentially woven together, a lawyer-client business transaction that does not meet the standards of the rule is “presumptively” unenforceable. Although declining to set a precise gauge for overcoming the presumption, the Supreme Court stressed (at 89) that a lawyer seeking enforcement would need to demonstrate that the resulting contract does not violate public policy:

“To justify a transaction with a client, the attorney has the burden of showing: (1) there was no undue influence; (2) he or she gave the client exactly the same information or advice as would have been given by a disinterested attorney; and (3) the client would have received no greater benefit had he or she dealt with a stranger.” (Citations omitted.)

If the lawyer cannot overcome the presumption, the Supreme Court in *LKO* found that rescission is an appropriate remedy.

**Summing Up**

Both the professional rules and the courts view lawyer-client business transactions with a sufficiently skeptical eye that lawyers should think long and hard about whether to do a deal with a client. If they do, it is critical that they meet the very high standards imposed by both the rules and reviewing courts. NWL

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**Mark Fucile**, of Fucile & Reising LLP, handles professional responsibility, regulatory, and attorney-client privilege matters and law-firm-related litigation for lawyers, law firms, and legal departments. He is chair of the WSBA Committee on Professional Ethics, a past member of the Oregon State Bar’s Legal Ethics Committee, and a member of the Idaho State Bar Professionalism & Ethics Section. He can be reached at 503-224-4895 and mark@frllp.com.
At its Nov. 13, 2015, meeting in Seattle, the WSBA Board of Governors approved its 2016 Legislative Agenda, set a timeline for review and discussion of the recommendations produced by the Escalating Cost of Civil Litigation Task Force, and passed a resolution in recognition and support for the 2015 Civil Legal Needs Study Update that points to a growing need for increased civil legal services for low-income Washingtonians.

WSBA 2016 Legislative Agenda and Sponsored Legislation

The 2016 Washington Legislative Session is a 60-day session and stakeholders are in agreement that the Legislature has many issues to deal with, most notably the ongoing debate on how to fully fund public K–12 education in light of the McCleary decision.

In early November, the WSBA hosted a Legislative Stakeholders Roundtable, where it shared its legislative priorities, consisting of two items: relationship building and overall education of the Legislature as to the WSBA’s mission.

By focusing on these two points, the WSBA will position itself well for the next biennium.

There is one bill, proposed by the Business Law Section, that the WSBA will work to pass in 2016 — Proposed Corporate Act Revisions Antitakeover Statute. This item is viewed as a “technical language cleanup” bill, and will assist corporations that are formed with dual-class stock structures. This type of formation is common with tech companies, and the bill seeks to clarify language around definitions of “beneficial ownership” and “acquiring person.”

It should be noted that all four WSBA-sponsored bills passed in the 2015 session.

Escalating Cost of Civil Litigation (ECCL) Task Force Report

The Board addressed how it will review the ECCL Task Force’s recommendations. After discussion, it was agreed that the Board would review the recommendations over a series of meetings to ensure that membership and the legal community have ample opportunity to comment on the report. The schedule for review is as follows:

Jan. 28–29, 2016, in Seattle
- Initial Case Schedule
- Judicial Assignment
- Two-Tier Litigation
- Mandatory Discovery Conference
- Mandatory Disclosures
- Proportionality and Cooperation

March 10, 2016, in Olympia
- Presumptive Discovery Limits
- E-discovery
- Motions Practice

April 15–16, 2016, in Bremerton
- Pretrial Conference
- District Court

June 3, 2016, in Seattle
- First reading of Board Response

July 22–23, 2016, in Walla Walla
- Final Action on Board Response

Law Clerk Program

Two issues related to the Law Clerk Program were addressed. The Law Clerk Program, established pursuant to Admission to Practice Rule (APR) 6, is a four-year program designed to provide theoretical, scholastic, and clinical experience through a combination of work and study with an experienced lawyer or judge in lieu of attending law school. Students who complete the program and meet certain other requirements may qualify to take the Washington State Bar examination under APR 3.

Under previous direction from the Board of Governors, stemming from a denied appeal it issued to a law clerk...
candidate who sought to participate remotely, the Law Clerk Board presented two proposed policy changes, one addressing virtual office/distant employment and a second addressing the Rule 6 employment waiver.

After many questions and much discussion, WSBA President Hyslop appointed a sub-committee to work with the Law Clerk Board to further discuss the issues and needs, and return with recommendations supported by the Law Clerk Board and the subcommittee of the Board.

Resolution on 2015 Washington State Civil Legal Needs Study
The WSBA Board of Governors unanimously approved a resolution in support of the recent Washington State Civil Legal Needs Study compiled by the Office of Civil Legal Aid. The resolution stated in part:

NOW, THEREFORE, BE IT HEREBY RESOLVED: That the Washington State Bar Association is committed to increasing access to the justice system for all persons in Washington State, and that it supports and appreciates the work of the Civil Legal Needs Update Committee in its efforts to identify and focus on the unmet civil legal needs of low income Washingtonians; and

BE IT FURTHER RESOLVED: That the Washington State Bar Association recognizes the time, dedication and hard work that went into preparing the Updated Civil Legal Needs Study and expresses its support and appreciation for these efforts and the excellent quality of the updated report.

Washington Leadership Institute (WLI) Community Service Project
The 2015 fellows of the WLI presented their community service project during lunch — a Bench Book and Resource Guide for Special Immigrant Juvenile Status (SIJS), a federal immigration classification that puts certain undocumented youth on a path to become lawful permanent residents. The fellows noted that recent increases in unaccompanied minors attempting to cross the U.S. border has led to increased awareness of the need to assist these youth. The Bench Book and Guide is a resource for the court who may be handling these cases for the first time. The guide includes sample findings and orders, resources for serving notice on parents residing abroad, and additional resources.

Susan Strachan is the WSBA legal community outreach specialist and can be reached at susanst@wsba.org. For more on the WSBA Board of Governors, see www.wsba.org/board.

Run for the WSBA Board of Governors!

Nominations/applications are now being accepted for five positions on the Board. The open positions are for District 2, District 9, District 10, and At-large. Deadline is Feb. 16, 2016. See p. 52 for more information.

www.wsba.org/board
**Disbarred**

**Karl Wesley Kime** (WSBA No. 41668, admitted 2009), of Coeur d’Alene, ID, was disbarred, effective 4/09/2015, by order of the Washington Supreme Court imposing reciprocal discipline in accordance with an order of the Supreme Court of the State of Oregon. Joanne S. Abelson acted as disciplinary counsel. Karl Wesley Kime represented himself. The online version of NWLawyer contains a link to the following document: The Washington Supreme Court Order.

**Disbarred**

**Kent Gregory Kok** (WSBA No. 29650, admitted 1999), of Bellingham, was disbarred, effective 10/30/2015, 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), 1.16 (Declining or Terminating Representation), 5.3 (Responsibilities Regarding Nonlawyer Assistants). Erica Temple acted as disciplinary counsel. Kent Gregory Kok represented himself. Donald W. Carter was the hearing officer. The online version of NWLawyer contains links to the following documents: Disciplinary Board Order; Stipulation to Disbarment; and Washington Supreme Court Order.

**Disbarred**

**Khanh Cong Tran** (WSBA No. 30538, admitted 2000), of Las Vegas, NV, was disbarred, effective 10/30/2015, 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), 1.4 (Communication), 8.4(c) Dishonesty, Fraud, Deceit or Misrepresentation. Francesca D’Angelo acted as disciplinary counsel. Khanh Cong Tran represented himself. Julian C. Dewell was the hearing officer. Timothy J. Parker was the settlement hearing officer. The online version of NWLawyer contains links to the following documents: Disciplinary Board Order; Stipulation to Disbarment; and Washington Supreme Court Order.

**Resigned in Lieu of Discipline**

**Metrey Keo** (WSBA No. 35172, admitted 2004), of Lynnwood, resigned in lieu of discipline, effective 10/02/2015. The lawyer agrees that he is aware of the alleged misconduct in disciplinary counsel’s Statement of Alleged Misconduct and rather than defend against the allegations, he wishes to permanently resign from membership in the Association. The Statement of Alleged Misconduct reflects the following violations of the Rules of Professional Conduct: 8.4(c) Dishonesty, Fraud, Deceit or Misrepresentation. Joanne S. Abelson acted as disciplinary counsel. Metrey Keo represented himself. The online version of NWLawyer contains a link to the following document: Resignation Form of Metrey Keo (ELC 9.3(b)).

**Resigned in Lieu of Discipline**

**Kenneth K. Watts** (WSBA No. 6435, admitted 1975), of Spokane, resigned in lieu of discipline, effective 10/13/2015. The lawyer agrees that he is aware of the alleged misconduct in disciplinary counsel’s Statement of Alleged Misconduct and rather than defend against the allegations, he wishes to permanently resign from membership in the Association. The Statement of Alleged Misconduct reflects the following violations of the Rules of Professional Conduct: 8.4(b) Criminal Act and 8.4(i) Moral Turpitude, Corruption or Disregard. Sachia Stonefeld Powell acted as disciplinary counsel. Kari Bulmer represented the respondent. Joseph Nappi Jr. was the hearing officer. The online version of NWLawyer contains links to the following documents: Disciplinary Board Order; Stipulation to Three-year Suspension; and Washington Supreme Court Order.

**Suspended**

**Kathleen Greene Kilcullen** (WSBA No. 16490, admitted 1986), of Ephrata, was suspended for three months, effective 10/30/2015, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.3 (Diligence), 1.4 (Communication), 8.4(b) Criminal Act, 8.4(c) Dishonesty, Fraud, Deceit or Misrepresentation, 8.4(i) Moral Turpitude, Corruption or Disregard. Sachia Stonefeld Powell acted as disciplinary counsel. Karl Wesley Kime represented himself. The online version of NWLawyer contains a link to the following document: The Washington Supreme Court Order.

**Suspended**

**Mark Gene Obert** (WSBA No. 27299, admitted 1997), of Salem, OR, was suspended for nine months, effective 10/30/2015, by order of the Washington Supreme Court imposing reciprocal discipline in accordance with an order of the Supreme Court of the State of Oregon. For more information, see www.osbar.org/publications/bulletin/15oct/discipline.html. Joanne S. Abelson acted as disciplinary counsel. Mark Gene Obert represented himself. The online version of NWLawyer contains a link to the following document: The Washington Supreme Court Order.

**Suspended**

**Robert N. Windes** (WSBA No. 18216, admitted 1988), of Ocean Springs, MS, was suspended for three months, effective 10/30/2015, by order of the Washington Su-
Reprimanded

David Ray Ambrose (WSBA No. 13379, admitted 1983), of Portland, OR, was reprimanded, effective 10/23/2015, by order of the Washington Supreme Court imposing reciprocal discipline in accordance with an order of the Supreme Court of the State of Oregon. For more information, see www.osbar.org/publications/bulletin/15augsep/discipline.html. Joanne S. Abelson acted as disciplinary counsel. David Ray Ambrose represented himself. The online version of NWLawyer contains a link to the following document: The Washington Supreme Court Order.

Reprimanded

Aaron Lee Lowe (WSBA No. 15120, admitted 1985), of Spokane, was reprimanded, effective 9/28/2015, by order of the hearing officer. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.2 (Scope of Representation and Allocation of Authority Between Client and Lawyer), 1.3 (Diligence), 1.4 (Communication), and 3.2 (Expediting Litigation). Natalea Skvir acted as disciplinary counsel. Aaron Lee Lowe represented himself. Linda D. O’Dell was the hearing officer. James M. Danielson was the settlement hearing officer. The online version of NWLawyer contains links to the following documents: Order on Stipulation to Reprimand and Probation; Stipulation to Discipline; and Notice of Reprimand.

Reprimanded

John C. Moore (WSBA No. 21880, admitted 1992), of Lake Oswego, OR, was reprimanded, effective 9/17/2015, by order of the Washington Supreme Court imposing reciprocal discipline in accordance with an order of the Supreme Court of the State of Oregon. For more information, see www.osbar.org/publications/bulletin/15augsep/discipline.html. Joanne S. Abelson acted as disciplinary counsel. John C. Moore represented himself. The online version of NWLawyer contains a link to the following document: The Washington Supreme Court Order.

Transferred to Disability Inactive Status

N. Antonio Hill (WSBA No. 17669, admitted 1988), of Federal Way, was by stipulation transferred to disability inactive status, effective 11/09/2015. This is not a disciplinary action.
**Theresa A. Allman**
Theresa Allman was born in Washington, D.C., and grew up in northern Virginia. She received her undergraduate degree from the University of Washington and her law degree from Seattle University School of Law. After interning at The Defender Association during her senior year of college, Allman joined them as legal intern supervisor and spent her entire career of over 20 years there. In 2009, she was named Outstanding Mentor by the King County Bar Association Young Lawyers Division, and in 2012, she was named Outstanding Lawyer by the King County Bar Association.

Theresa Allman died July 16, 2015, at the age of 48.

**Brian P. Barndt**
Brian Barndt was born in Santa Rosa, CA. He received his undergraduate degree from Santa Clara University and his law degree from Gonzaga University School of Law after serving in the U.S. Army during the Vietnam War. He was a patent attorney with Texas Instruments for over 25 years. He enjoyed playing golf, traveling, history, and music, particularly because of the people he met through these activities.

Brian Barndt died April 27, 2015, at the age of 69.

**Duncan A. Bayne**
Duncan Bayne was born in Northampton, MA, and lived in New York City as a child before moving with his family to Seattle. He served for two years in the U.S. Navy before returning to the University of Washington for his undergraduate and law degrees. He clerked for a year at the Washington Supreme Court, and in 1969, he joined the firm now known as Davis, Wright, Tremaine. After retiring in 1989, he served as a trustee for the Casey Family Programs, a Seattle-based national operating foundation focused on foster care and child welfare. He was a featured baritone with the Seattle Gilbert & Sullivan Society, volunteered with the Washington Talking Book and Braille Library and Habitat for Humanity, and loved model trains and military history.

Duncan Bayne died Sept. 28, 2015, at the age of 76.

**Judge Robert C. Bibb**
A Seattle native, Robert Bibb studied pre-law at the University of Washington until WWII. He joined the U.S. Army and served for three years, receiving a Purple Heart and Bronze Star before being discharged as a captain. He received his law degree from the University of Washington School of Law and soon afterward moved to Arlington to open the law firm Bibb & Bailey. He was a city attorney and a part-time judge for the Cascades District Court, a volunteer firefighter, and chair of the Arlington School Board and Snohomish County Bar Association. In 1974, he was appointed to the Snohomish County Superior Court and was re-elected for five terms; he was also the court’s first administrative judge. In the 1990s, he was part of a group of judges allowed into Cuba to study the country’s judicial system. In 2000, he helped create the Snohomish County Guardianship Monitoring Program, a volunteer organization that keeps track of non-professional guardians and their wards. In his free time, he enjoyed hiking in the Cascades or sailing on his boat, *Decision*.

Judge Robert Bibb died July 1, 2015, at the age of 92.

**William G. Boland**
William Boland received his undergraduate degree from Seattle University and his law degree from the University of Washington School of Law. He practiced at the Washington Attorney General’s Office, representing the Washington State Department of Transportation, where his career spanned several decades and the terms of four attorneys general. Nationally recognized for his work in construction law, he was a leader in developing the use of alternative dispute resolution procedures for highway construction claims, most notably in the settlement regarding the sinking of the I-90 bridge in 1990. He loved animals, especially his cats, and enjoyed reading, fishing, and golf.

William Boland died April 23, 2015, at the age of 82.

**Catherine S. Burnham**
Catherine Burnham was a member of the Washington State and King County bars. She earned a B.S. from Brigham Young University in 1981 and graduated from Seton Hall Law School in New Jersey in 1992. While in law school, she worked at the juvenile justice clinic in Newark, NJ, representing troubled teenage youth. She clerked for a New Jersey judge for one year before coming to Washington in 1993. She practiced part-time in Redmond and Kirkland in private practices, mainly focusing on juvenile law, guardianships, wills and estates, and civil litigation. She was a full-time mother to four children, working while the children were in school and late at night. Catherine worked tirelessly and anonymously as a pro bono advocate for children, at-risk teens, and young adults, as well as for less fortunate senior clients.

Catherine Burnham died Dec. 3, 2015, at the age of 56.

**Frank R. Chastek**
Frank “Dick” Chastek grew up in Spokane and attended St. Augustine’s parochial school and Gonzaga Prep. He earned his J.D. from Gonzaga University School of Law. He practiced as a tax attorney in Washington, D.C., and in Spokane. He later owned and operated Spokane Airways FBO on the campus of Spokane International Airport. He was a founding member of the Big Brothers organization in Spokane and a member of the Gonzaga Glee Club. Chastek loved fishing, hunting, traveling, and especially flying. He was a pilot of the Civil Air Patrol.

Frank Chastek died Nov. 14, 2015, at the age of 82.

**Michael Ditchik**
Michael Ditchik attended the Wharton School at the University of Pennsylvania, received a B.A. from SUNY-Binghamton, and earned his J.D. from Boston University School of Law. His practice focused on family law with an emphasis on collaborative dispute resolution. He was a strong advocate for the citizens of Normandy Park and served as the legislative chair of the Marvista PTSA. He loved cycling, ski-
ing, tennis, paint ball wars, reading, sunflowers, practical jokes, and playing Call of Duty.

Michael Ditchik died Nov. 24, 2015, at the age of 53.

**Nathan L. Fudge**

Nathan Fudge was born in Seattle and graduated from Liberty High School. He earned his undergraduate degree at Gonzaga University, his law degree from Fordham University School of Law, and an LL.M. in international business law at the University of Leiden in the Netherlands. Most recently, he joined AIRTEST, where he revolutionized the provision of information throughout the organization—a counsel, he provided guidance on contract, HR, and insurance issues. As a fervent reader and avid traveler, Fudge was an exemplary travel companion, having explored over 30 countries through the lenses of history, food, and adventure.

Nathan Fudge died Oct. 15, 2015, at the age of 31.

**Don Isham Jr.**

Don Isham Jr. was born in Seattle and graduated from Seattle Prep. He attended the University of Washington and earned a B.A. in political science, working summers at a Ballard lumber mill and as a seaman in the Merchant Marines. He was a carrier fighter pilot in the U.S. Navy and served in the U.S. Marine Corps. He was a carrier fighter pilot, and a competitor. He served as a pilot during World War II attaining the rank of colonel. He earned his J.D. at the University of Washington following the war. He practiced in Tacoma as city attorney for the Public Utility Department and eventually was appointed director of Public Utilities. He enjoyed jogging, UW football, gymnastics, swimming in the Elks Club pool, coaching basketball, and listening to classical music.

Don Isham Jr. died Sept. 3, 2015, at the age of 94.

**Stephen L. Nourse**

Born in Salem, Stephen Nourse grew up around his father's construction projects in Venezuela, Guam, Hawaii, Alaska, Idaho, and Canada. His education was interrupted by his service in the U.S. Marine Corps, where he served as executive officer on the USS Intrepid, a tank commander, and a competitor. He attended the University of Washington School of Law, taking special interest in construction law. He was a solo practitioner until 1987, when he decided to merge with Carney Badley Spellman. The greatest joys of Nourse's adult life were with his family, backpacking the mountains with his dogs, and windsurfing in Maui.

Stephen Nourse died April 27, 2015, at the age of 65.

**Edward B. O’Connor**

Edward O’Connor was born in Shelton. He attended the University of Washington School of Law. Throughout his career, he lived a life of service. His path took him to Bellingham and then Seattle, where he worked as an advocate for Alcoholics Anonymous. This work was his passion, actively involved with the community for over 30 years, mentoring other members and attending national conventions. Those closest to O’Connor remember him as a “one of a kind” character who will be greatly missed.

Edward O’Connor died Oct. 22, 2015, at the age of 84.

**Paul M. Poliak**

Paul Poliak was born in Monaca, PA. He served as a pilot during World War II and as an ensign in the U.S. Navy Re-
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Intellectual Property Institute
Washington State Convention Center • Seattle

MAY 5-7, 2016
Environmental and Land Use Law Section Midyear Conference
Suncadia Resort • Cle Elum

MAY 6, 2016
Senior Lawyers Section Annual Conference
Seattle Airport Marriott • SeaTac

JUNE 17-19, 2016
Real Property, Probate and Trust Section Midyear Conference
Suncadia Resort • Cle Elum

JUNE 24-26, 2016
Family Law Section Midyear Conference
Vancouver Hilton • Vancouver, WA

JULY 22-23
Solo and Small Firm Conference
Washington State Bar Association Conference Center • Seattle
serve. He attended the U.S. Merchant Marine Academy, studied at the University of California–Berkeley, and earned his law degree at the University of California–Hastings School of Law. He had a 50-year career as a maritime attorney in Seattle, becoming a founding partner of Madden, Poliak, MacDougall and Williamson. He enjoyed travel and theater and was a season ticket holder for the Seattle Mariners and the Seahawks.

Paul Poliak died Sept. 11, 2015, at the age of 95.

James L. Reese III
James “Jim” Reese III was born in Seattle. He graduated from Bainbridge Island High School and attended the University of Washington, earning his law degree at the University of Vermont. He was a U.S. Marine and a former teacher in Port Orchard. He practiced in Kitsap County for 37 years, serving as a public defender and maintaining a private practice. He enjoyed wooden sailboats, Civil War history, and razor clam digging.

James Reese III died Sept. 9, 2015, at the age of 73.

Gregory G. Rockwell
Gregory Rockwell was born in Bremerton. He attended Seattle Preparatory School, Stanford University, Willamette University College of Law, and the University of Washington School of Business. He practiced business, estate planning, medical licensing, and medical malpractice law in Seattle. He was active in his Catholic faith, loved reading, and was a member of the Seattle Yacht Club.

Gregory Rockwell died Oct. 25, 2015, at the age of 70.

Leonard A. Sawyer
Leonard Sawyer was born in Puyallup. He attended the University of Washington, the College of Puget Sound in Tacoma, and earned his law degree at the University of Washington School of Law. He was an ensign in the U.S. Navy during World War II. He practiced law in Pierce County for over 50 years. He served 22 years in the State Legislature, including two terms as speaker of the house. He enjoyed golf and in retirement he spent his winter months in Palm Desert, CA.

Leonard Sawyer died Aug. 19, 2015, at the age of 90.

Patricia B. Urquhart
Patricia Urquhart was born in Portland, OR. She grew up in Portland’s Parkrose neighborhood and studied philosophy at Portland State University. She earned her law degree at Lewis & Clark Law School. She practiced criminal defense, employment, and civil rights law in northern California, Idaho, Washington, and Oregon, where she served as a senior assistant attorney general. Urquhart enjoyed travel, history, and literature. She was a member of the World Affairs Council, the Portland Committee on Foreign Relations, and the Shakespeare Oxford Society.

Patricia Urquhart died Sept. 18, 2015, at the age of 69.

The WSBA and NWLawyer have also learned of the deaths of Douglas G. Anderson on Aug. 28, 2015, Bennett Cheuk-Yan Tse on April 5, 2015, Marilyn R. Gunther on June 4, 2015, and Emma J. Paulsen in July 2015. NWL
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Large office space to be available for sublet in a beautiful, 22nd-floor suite at 1111 Third Avenue, in Downtown Seattle. Reception is included, with paralegal support available on a contract, as-needed basis. This 188.5 sq. ft. interior office space includes use of a large exterior conference room, newly remodeled common areas (including on-site gym and locker room and bicycle storage), and a warm, collegial group of experienced criminal defense lawyers. Contact ian@gordonsaunderslaw.com or robert@gordonsaunderslaw.com for more details.

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CLE Calendar

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

Annual Animal Law Seminar
March 25, Seattle and webcast. CLE credits pending. Presented by WSBA in partnership with the WSBA Animal Law Section; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

Elder Law

Elder Law
March 4, Seattle and webcast. CLE credits pending. Presented by WSBA in partnership with the WSBA Elder Law Section; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

Introductory Collaborative Law 2-Day Training (Spring 2016)

INTELLECTUAL PROPERTY

Intellectual Property Institute
March 11, Seattle. CLE credits pending. Presented by WSBA in partnership with the WSBA Intellectual Property Section; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

LEGAL LUNCHBOX SERIES

February Legal Lunchbox: Project Management
Feb. 23, webcast. 1.5 CLE credits. Presented by WSBA; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

March Legal Lunchbox: Cross-Cultural Lawyering
March 29, webcast. 1.5 CLE credits. Presented by WSBA; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

NEW LAWYER EDUCATION

Mediation and Arbitration
Jan. 19, Seattle and webcast. 6 CLE credits, including .25 ethics. Presented by WSBA in partnership with the WSBA Alternate Dispute Resolution Section; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

Buying and Selling Real Estate — Part I
Feb. 2, webcast. 2 CLE credits. Presented by WSBA in partnership with the WSBA Real Property, Probate and Trust Section; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

Buying and Selling Real Estate — Part II
Feb. 9, webcast. 2 CLE credits. Presented by WSBA in partnership with the WSBA Real Property, Probate and Trust Section; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

Buying and Selling Real Estate — Part III
Feb. 16, webcast. 2 CLE credits, including .25 ethics. Presented by WSBA in partnership with the WSBA Real Property, Probate & Trust Section; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

Business Law Boot Camp
March 22, Seattle and webcast. CLE credits pending. Presented by WSBA; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

The WSBA Readmission/Refresher Course: Law and Legal Procedure in Washington
March 17–18, Seattle and webcast. 15 CLE credits. Presented by WSBA; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.
Garvey Schubert Barer

is pleased to announce that

Andy I. Aley
became an owner in the firm’s Seattle office. Andy advises established and emerging companies on mergers and acquisitions, corporate finance, entity structuring and general corporate matters. He is also co-chair of the firm’s Cannabis Industry Group and helps clients structure their business organization, transactions and relationships to comply with Washington’s complex regulatory framework governing marijuana businesses.

Michelle E. DeLappe
became an owner in the firm’s Seattle office. Michelle’s practice focuses on state and local tax in the Pacific Northwest. She advises on tax planning and business transactions, tax refund claims, tax appeals and litigation. Michelle has co-authored amicus curiae briefs in tax cases before the Washington Supreme Court and is now launching a new bimonthly column, “Skookum Tax News,” in State Tax Notes.

Jennifer M. Bragar
became an owner in the firm’s Portland office. Jennifer’s practice focuses on land use, real estate, municipal and environmental law. Jennifer has been involved in several significant cases throughout Oregon, including hazardous waste cleanup actions and land use advocacy on behalf of private landowners. She regularly assists as special counsel and general counsel to multiple cities across the state.

Davies Pearson, P.C.

is pleased to announce that

Susan L. Caulkins
has been elected to the firm’s Board of Directors.

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is pleased to announce that

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Lamont C. Loo, Brian M. King, Benjamin R. Sligar, and Susan L. Caulkins have also been elected to the firm’s Board of Directors.

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is pleased to announce that

Larry J. Brant

has been admitted as a Fellow in the American College of Tax Counsel.

Mr. Brant's leadership in tax law and tax policy led to his nomination and appointment to join this exclusive group of America's best tax lawyers. His practice focuses on tax law, tax controversy and transactions. Mr. Brant has been a member of the Oregon State Bar Association since 1984 and the Washington State Bar Association since 1985. He is a member of the Board of Directors of the Portland Tax Forum and an Editor of Thomson Reuters Checkpoint Catalyst. Mr. Brant has served as Chair of the Oregon State Bar Taxation Section and as the long-term Chair of the Oregon Tax Institute. He is a frequent speaker at national, regional and local tax conferences, and the author of numerous tax articles published in accounting and legal journals. In 2015, the Oregon State Bar Association bestowed upon him the Tax Section's Award of Merit.

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congratulates

Linda E. Frischmeyer

on her recent retirement and is pleased to announce

James P. Sikora

has joined the firm as an Associate.

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Keating, Bucklin & McCormack, Inc., P.S.

is pleased to announce that

Derek C. Chen

has become an Associate in the firm.

Derek graduated from the University of Washington School of Law. He recently wrote an amicus brief to the Washington Supreme Court on municipal liability in road design cases and looks forward to expanding his practice in municipal trial defense.

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Opportunities for Service

Interested in Running for the Board of Governors?

**Application Deadline: Feb. 16, 2016**

Four positions on the WSBA Board of Governors are up for election in 2016. The open positions represent the following congressional districts: District 2, District 9, District 10, and at-large. The three-year term of office begins Oct. 1, 2016. These positions are currently held by Brad Furlong (District 2), Elijah Forde (District 9), Phil Brady (District 10), and Karen Denise Wilson (at-large position).

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

To run for the Board of Governors or to nominate another WSBA member, you must file a statement of interest and a biographical statement of 100 words or less. The required form is available on the WSBA website at www.wsba.org/elections or by contacting Sue Strachan at susanst@wsba.org or 206-733-5903. The WSBA executive director must receive the forms for district races by 5 p.m. PST on Feb. 16, 2016. Note: Biographical statements of nominated candidates will be published in the April/May issue of NWLawyer. The deadline to run for the at-large position is 5 p.m. PST on April 15, 2016.

The three district-based positions are elected by their peers. Generally, a member is entitled to vote in the congressional district in which they reside. All out-of-state active WSBA members are eligible to vote in the district of the address of their agent within Washington for the purpose of receiving service of process as required by APR 5(f), or, if specifically designated to the executive director, within the district of their primary Washington practice. The WSBA will use an electronic voting system, and members will not receive a paper ballot unless they request one. Email ballots will be sent on March 15 and must be received by 5 p.m. PDT on April 1. The at-large governor will be elected by the Board of Governors at its June 3 meeting.

A candidate forum is scheduled for March 1, 2016. All candidates for the three district 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. The forum will also be webcast and accessible statewide for live viewing.

Apply for a WSBA Committee, Board, or Panel

**Application deadline: March 1, 2016**

Applications are now being accepted through www.mywsba.org from members interested in serving on WSBA’s committees, boards, and panels. Committee service gives you an opportunity to contribute to the legal community and your profession, a chance to get involved with issues you care about, and a way to connect with other lawyers around the state. There are openings on 23 different committees, boards, and panels, including the Court Rules and Procedures Committee, the Judicial Recommendation Committee, the Editorial Advisory Committee, the Disciplinary Board, and the Hearing Officer Panel. Most positions begin Oct. 1. For more information, see the Committees application in myWSBA, email barleaders@wsba.org, or call Pam Inglesby, WSBA communications services operations manager, at 206-727-8226 or 800-945-9722, ext. 8226.

WSBA News

**Notice of Hearing on Petition for Reinstatement of Diane E. Lander, Formerly Known as Diane L. Vanderbeek**

A petition for reinstatement after disbarment has been filed by Diane E. Lander, formerly known as Diane L. Vanderbeek, WSBA No. 11884, who was admitted in 1981 and disbarred in 2004. At the time of her disbarment, Ms. Lander, then known as Diane L. Vanderbeek, practiced in King County, Washington. A hearing on Ms. Lander’s petition will be conducted before the Character and Fitness Board on Friday, Feb. 19, 2016. Not later than 5 p.m. Friday, Feb. 12, 2016, anyone wishing to do so may file with the Character and Fitness Board a written statement for or against reinstatement, setting forth factual matters showing that the petitioner does or does not meet the requirements of Admission and Practice Rule (APR) 25.5(a). Except by the Character and Fitness Board’s leave, no person other than the petitioner or petitioner’s counsel shall be heard orally by the Board. Communications to the Character and Fitness Board should be sent to Kevin Bank, Counsel to the Character and Fitness Board, Washington State Bar Association, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539, or to kevinb@wsba.org. This notice is published pursuant to APR 25.4(a).

**2016 License Renewal and MCLE Information**

**Deadline was Feb. 1, 2016.**

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.

**Celebrate the Best: Nominations Now Being Accepted for WSBA’s Annual Awards**

**Nomination deadline: April 15, 2016**

Help WSBA celebrate the best. The WSBA is seeking nominations for its annual awards program, which celebrates the best in integrity, professionalism, diversity, service, justice, and courage. Do you know someone who is making a positive difference in the legal community or the legal profession? Please consider nominating him or her for a 2016 WSBA Award. You’ll find the list of awards and the nomination form on the WSBA website at www.wsba.org/awards. Winners will be selected at the June 3 Board of Governors meeting and notified shortly thereafter. The awards will be presented at the WSBA Annual Awards Dinner in Seattle on Sept. 29. Help us recognize the best in the profession and legal community — submit your nomination today.

**Washington Young Lawyers Committee Meeting**

The Washington Young Lawyers Committee will be meeting on Sat., Feb. 20, at Green Hill School in Chehalis. For more information or to attend, email newlawyers@wsba.org.

**ALPS Attorney Match**

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

New MCLE Rule Takes Effect in 2016
The new MCLE rule which took effect on Jan. 1, 2016, gives lawyers the opportunity to customize their continuing education to best meet their needs. Lawyers will be able to take advantage of new MCLE approved course subjects and activities to address important topics like lawyer-client issues, office management, personal and professional development, and stress management. The increased flexibility is designed to create more meaningful learning opportunities to support excellent lawyer-client relationships and office practices, improving work-life balance, job satisfaction, and career stability.

At least 6 credits must be in ethics and professional responsibility. At least 15 credits must be from attending approved courses in the subject of law and legal procedure. The remaining 24 credits can be earned in the above categories, as well as in new subject areas and activities that include professional development, personal development and mental health, office management, improving the legal system, or participating in a structured mentoring program approved by the MCLE Board. There is no live credit requirement. The new rule can be found at www.wsba.org/licensing-and-lawyer-conduct/mcle/apr-11-rules-and-regulations.

WSBA Board of Governors Meetings
March 10, 2016, Olympia; April 15–16, Bremerton
With the exception of the executive session, Board of Governors meetings are open, and all WSBA members are welcome to attend. RSVPs are appreciated but not required. Contact Margaret Shane at 206-727-8244, 800-945-9722, ext. 8244, or margarets@wsba.org. The complete Board of Governors meeting schedule is available on the WSBA website at www.wsba.org/bog.

Legal Community
Lawyers Helping Hungry Children Fundraisers a Success
In November, Lawyers Helping Hungry Children, a nonprofit dedicated to ending childhood hunger in Washington, held joint fundraisers in Seattle and Tacoma. The Seattle event was the nonprofit’s 24th annual fundraiser at the Grand Hyatt in Seattle. The luncheon raised over $20,000 to assist beneficiary organizations, including the City of Seattle Summer Food Program, Northwest Harvest, the Emergency Feeding Program, and CARE. In addition, the Pierce County Chapter of Lawyers Helping Hungry Children held its seventh annual breakfast fundraiser in November. Hosted by Pierce County Superior Court Judge Susan Serko, the event took place at Bates Technical College. Over 200 Tacoma attorneys and members of the judiciary attended, and the breakfast raised over $32,000 for emergency food programs in Pierce County – more than twice the amount raised last year. You can learn more about Lawyers Helping Hungry Children at www.lhhcwa.org or by contacting Julie Schisel at julie@lsand.com. For information about the Pierce County Chapter, contact ArleneJoe at arlenejoe@harbornet.com.

Dorsey & Whitney LLP Hosts “First Comes Love: Portraits of Enduring LGBTQ Relationships”
In November, Dorsey & Whitney LLP partnered with longtime client D.A. Davidson to host an event featuring Barbara Proud (B. Proud), photographer and author of First Comes Love: Portraits of Enduring LGBTQ Relationships. Proud shared her story of the project’s conception and evolution, weaving in the personal stories of her subjects.

Washington Supreme Court Justice Mary Yu opened the program by speaking about her experience as the first LGBTQ Washington Supreme Court justice, Washington’s marriage equality fight, and her experience performing the first same-sex marriage in the state. Justice Yu told a compelling story...
of why events celebrating diversity are important for the community. In attendance were Emily and Sara Cofer, the first same-sex couple married by Justice Yu at 12:01 a.m. on Dec. 9, 2012. Justice Yu said, “The work of Barbara Proud captures the essence of love and longevity in relationships. The display of her photographs and the reception became a wonderful celebration of marriage and equality, thanks to Dorsey and Whitney for the courage to host it. It took me right back to that exciting moment on Dec. 9, 2012, when we were authorized by the people of Washington to legally perform same-sex marriages here.”

30th Annual Goldmark Award Luncheon
The Legal Foundation of Washington’s 30th Annual Goldmark Award Luncheon will be held Feb. 26, 2016, at the Sheraton Seattle Hotel. The event includes a Pro Bono Council meeting, ATJ Forum, Rainier and Baker Cup presentations, leadership celebration, and more. The Charles A. Goldmark Distinguished Service Award is named in honor of Charles A. Goldmark, a prominent Seattle attorney who played a singularly important role in the creation of the interest on lawyers’ (and LPOs’) trust account (IOLTA) program. See www.legalfoundation.org or the inside front cover of this issue for more information.

Ethics

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

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

WSBA Lawyers Assistance Program (LAP)

WSBA Connects Offers Free Counseling
WSBA Connects provides free counseling in your community. All Bar members are eligible for three free sessions on topics as broad as work stress, career challenges, addiction, anxiety, and other issues. By calling 800-765-0770, a telephone representative will arrange a referral using APS’s network of clinicians throughout the state of Washington. We encourage you to make the most of this valuable resource.

Drop-In Job Search Group
Join our weekly job group held every Monday at the WSBA offices. It’s a chance to network with other attorneys and learn job search skills. We cover methods of looking for work online, networking, elevator pitches, cover letters and résumés, and ways to identify the best path for oneself within the law. Whether you are new to practice, making a mid-career transition, or are thinking about leaving the law, you are welcome to participate. Email Dan Crystal at danc@wsba.org. RSVP is required.

Mindful Lawyers Group
A growing number of legal professionals across the nation are applying mindfulness-based skills and training to law- yering. The Washington Contemplative Lawyers group meets on Mondays on the 6th floor of the WSBA offices in the LAP group room from noon to 12:45. For more information, contact Greg Wolk at greg@rekhiwolk.com.

Maintain Good Boundaries
Do you have trouble saying no when you should? Are you struggling with cases your gut told you to avoid? If so, you may have trouble setting and maintaining good boundaries. Figure out what your limits are, then practice saying no. If you’d like help, call WSBA Connects at 800-765-0770 to schedule a confidential consultation.

USURY RATE

The average coupon equivalent yield from the first auction of 26-week treasury bills in January 2016 was 0.510%. Therefore, the maximum allowable usury rate for February is 12%.

WSBA Law Office Management Program (LOMAP)

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

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

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

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State v. Stegall,
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I am NICK PONTAROLO. I practice in Spokane with the law firm of Delay, Curran, Thompson, Pontarolo, and Walker P.S. My primary practice areas are workers’ compensation, probate, personal injury, and real estate. When not practicing, I find my way to the closest patch of snow, having recently completed 24 consecutive months of skiing.

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