CHARACTER & FITNESS
Who Should Be Allowed to Take the Bar Exam?

Fit to Practice Law
Examining the Character & Fitness Review Process
By Sara Niegowski

From Prison to the Law
Overcoming Barriers and Fighting for Inclusion
By Tarra Simmons

Any Less a Guessing Game?
In re Simmons, 190 Wn.2d 374, 414 P.3d 1111 (2018)
By Tom Andrews and Rob Aronson
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As a forensic psychiatrist, I read “The Therapist and the Murderer,” commentary on the Volk v. DeMeerleer decision, with interest. “[The Family Died Anyway],” by Jon Berner, M.D., Ph.D., and “Protecting Third Parties from Dangerous Outpatients,” by Patrick J. Preston, Feb 2018 NWLawyer. There are some misleading assertions and intimations that deserve comment. While it is true that “clinicians cannot reliably predict dangerousness in an outpatient setting” (or any other setting, for that matter), it is not true that clinicians cannot conduct accurate assessments of the risk of violence. This is no different than an internist assessing risk of cancer as opposed to predicting who will get cancer. An abundant literature clearly demonstrates that clinicians can reliably assess risk of violence using methods that are not unduly time consuming and need not undermine the therapeutic alliance. In my experience, addressing violence with patients has not undermined the therapeutic alliance. In my experience, using methods that are not unduly time consuming and need not undermine the therapeutic alliance. The article also conveys the sense that clinicians cannot conduct accurate assessments of the risk of violence. This is no different than an internist assessing risk of cancer as opposed to predicting who will get cancer. An abundant literature clearly demonstrates that clinicians can reliably assess risk of violence using methods that are not unduly time consuming and need not undermine the therapeutic alliance. In my experience, addressing violence with patients has not undermined the therapeutic alliance. In my experience, using methods that are not unduly time consuming and need not undermine the therapeutic alliance. The article also conveys the sense that clinicians cannot conduct accurate assessments of the risk of violence. This is no different than an internist assessing risk of cancer as opposed to predicting who will get cancer. An abundant literature clearly demonstrates that clinicians can reliably assess risk of violence using methods that are not unduly time consuming and need not undermine the therapeutic alliance. In my experience, addressing violence with patients has not undermined the therapeutic alliance. In my experience, using methods that are not unduly time consuming and need not undermine the therapeutic alliance.
violence falls in the scope of treatment targets as much as any other type of problem behavior, and it should. Hence, it is incumbent upon clinicians to assess and treat violence. Here, I agree with an important point of the article: the focus for clinicians should be our patients’ welfare more than public protection. It is hardly a good outcome for our patients to perpetrate violence. But there is nothing in this decision that prevents that focus. Clinicians must work to develop and articulate a standard of care; then our patients would get the services needed and clinicians would be protected. While such an approach will certainly not stop patient violence, it will reduce harm, which is, after all, what we all want. Avoidance of the issue and refusal to accept our responsibility to our patients—and, yes, to society as well—are not the answer.

Bruce C. Gage, M.D., Lakewood

LET US SPEAK

I write about the April 25 communication from the WSBA president about our data and contact information. I specifically find the following paragraph offensive because it means we members of the Bar may not use the directory to communicate with each other regarding Bar-related subjects.

We have received inquiries recently about third-party messages to members and whether the senders are accessing and using member-directory information inappropriately. The messages in question include endorsements of Board of Governors candidates and emails sent from Gmail accounts neither authorized nor initiated by WSBA [emphasis added].

I might suggest that the WSBA leadership order some duct tape to more effectively silence us, for no doubt fellow bar members are the “third party” mentioned in this paragraph. How ridiculous to suggest that we attorneys cannot communicate with each other about Bar-related subjects unless our email addresses are “authorized or initiated by the WSBA.”

If we had a voluntary bar association, then we could think and speak freely. Or our current WSBA leadership could lighten up. We can’t vote on huge bar dues increases, and now we can’t use the directory to locate email addresses to communicate with one another. Doesn’t that voluntary bar association sound better with each passing month?

Inez Petersen, Enumclaw

DECENTRALIZATION

I read with great interest the article in the April/May issue of NWLawyer on decentralization [“Perspectives: Decentralization: How a Hidden Provision in the U.S. Constitution Could Remake America,” by Hugh D. Spitzer].
Welcome to the July issue of NWLawyer.

In this issue we explore a process that is critical to those who aspire to become members of the WSBA—the determination of good moral character and fitness to practice law. We are especially pleased to include the perspective of Tarra Simmons, whose application to sit for the bar exam was initially denied by the Character and Fitness Board. On appeal, the Washington Supreme Court reversed the board’s decision and did something it has not done in more than three decades: issue a written opinion in a character and fitness case. In addition to Tarra’s first-person account, you’ll find an in-depth analysis of the Court’s opinion and an examination of the workings of the all-volunteer Character and Fitness Board. You’ll also hear how the WSBA continues to assess the work of all of the boards it facilitates—and to train the volunteers who staff them—to mitigate bias in decision making.

This issue also alerts you to two important new court rules: With General Rule 37, effective April 24, 2018, the Washington Supreme Court became the first in the nation to adopt a court rule aimed at eliminating implicit and intentional bias in jury selection. New Evidence Rule 413, effective Sept. 1, 2018, makes immigration status generally inadmissible in criminal and civil trials.

Another area in which Washington is leading is in reforming legal financial obligations (LFOs) imposed on criminal defendants at sentencing. See the piece on page 21 and the article by Judge Teresa Doyle on page 22.

On page 44 we have a list of must-read books, reviewed by WSBA members and staffers.

On a final note: For an upcoming issue we are planning a piece directed toward new lawyers and aspiring law students featuring “things I wish I had known when I first entered practice.” Send us your best tales from the early, confusing days of law practice. Send your submissions (300 words or less) to nwlawyer@wsba.org. Deadline Aug. 10.

Best,

Emily White is the editor of NWLawyer and can be reached at nwlawyer@wsba.org.

InBox, continued

As attorneys our profession is more than usually familiar with the costs and benefits of our federal system and the interplay of state and national issues. The article points out that even without a Constitutional amendment or a new Constitutional Convention it is possible by consensual means to merge states into larger units or to exchange territory. America is not immune to the fissures that are appearing within nations around the world, and the current winner-take-all attitude between the two major parties allows for little common ground or compromise, with the appointment of justices on the Supreme Court as the final prize. Added to this longstanding fissure is the current pseudo-populism that promises a return to American dominance as conceived in the McKinley/Roosevelt era and a jurisprudence of “adherence to the text” that dissimulates the modern federalist agenda, one that is in reality profoundly political in nature and not truly representative of strict construction of the Constitution at all. The sins that bind Americans together are loosening daily but the article points out that an alternative is available. We can for instance restore popular control to the U.S. Senate by merging states into regional provinces. In the prospect of new governmental structures we may acknowledge that many state boundaries are mere historical accidents and not reflective of our present economy and migration patterns.

The machinery of our present federal system is creaky and outmoded. Our elected government is no longer really representative, and this has led to a profound disenchantment with politics. The era of American expansion (at the cost of Native Americans and of Mexico in the 19th century) is over and so is the era of Imperial America that began with the Spanish-American War that allowed us to annex the Philippines. That era ended with the Iraq War. Our alliances are weak or toppling and a new era of Asian dominance in geopolitics is emerging. The present era represents the apogee of our national power as the states line up year after year for national security contracts drawn from the common purse as the total deficit is approaching 20 trillion dollars. When the inevitable retrenchment comes and no more money is to be had for the asking, the various states will be revealed as two contending blocks, red or blue coalitions with little underlying basis to form a national identity beyond the common desire to consume. Merger may simplify things. Perhaps a beginning will be a mere pairing-off: Washington and Oregon can merge; Idaho and Utah can join hands. Mississippi and Alabama are surely already twins and maybe there need be only one Carolina and one Dakota. This may also be the time to recognize American Indian sovereignty rights. As the national government shrinks to a core of residual common interests, America will evolve toward a loose but workable confederation rather than the present polarized and unhappy union that it now represents; far better is a gentle retreat from world dominance than a sudden and ignominious fall from stature and from grace.

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TRUST AND INNOVATION: A MULTISTATE PERSPECTIVE

BOARD OF GOVERNORS:

Congratulations to our new 2018-19 governors-elect, who will take office in October, and to President-Elect Rajeev Majumdar, who took office upon being sworn in at the May Board of Governors meeting.

District 1: Michael Cherry
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District 7-South: Jean Y. Kang
New and Young Lawyer At-Large: Russell Knight

W ashington has the best bar and the best bar members—of course, we may be a bit biased! We annually test this assumption at the Western States Bar Conference, which brings together leaders from 15 different state bars to discuss cutting-edge issues for the profession and best governance practices. This year’s conference delegation included the WSBA president, governor at-large, and executive director. As your representatives, we returned proud to serve and represent some of the most dedicated, justice-focused, and innovative legal professionals in the nation. We want to share with you some important perspectives and ideas we learned from neighboring bars to put to use here in Washington.

TRUST CRISIS

The theme of this year’s conference was “Restoring Trust In Our Institutions.” One presenter, Harlan Loeb with Edelman, summed up his PR firm’s most recent findings from a global trust and credibility survey: “Trust is in crisis around the world.” In the past 17 years, there have never been larger drops in trust scores across all institutional sectors: government, business, media, and NGOs. Another presenter noted that this trust deficit persists on an individual level: Only one-third of Americans trust the political competence of fellow citizens. And trust in government is at a record low, with less than 20 percent of the population claiming they trust the government (compared to 75 percent during the mid-1960s). Perhaps ironically, strangers—whom society has historically taught us to distrust—have higher levels of trust than ever before as part of sharing-economy platforms like Airbnb and Uber (88 percent of respondents in a recent NYU rideshare survey highly trusted others with a full digital profile).

This global trust crisis is problematic for our democracy and day-to-day well-being. A healthy, functioning society requires citizens who believe that other people are reliable partners in civic life, and that institutions and leaders act in good faith to promote the general
IN THE PAST 17 YEARS, THERE HAVE NEVER BEEN LARGER DROPS IN TRUST SCORES ACROSS ALL INSTITUTIONAL SECTORS: GOVERNMENT, BUSINESS, MEDIA, AND NGOS.

THE RULE OF LAW AND THE IMPORTANCE OF RELATIONSHIPS
So how do we get back to a healthy level of collective trust, and what unique role do we have as WSBA leaders? Despite generally high levels of distrust across the aforementioned sectors, we were heartened to learn that courts remain the most trusted branch of government, according to one presenter from the Institute for the Advancement of the American Legal System (IAALS). This means that society looks to the rule of law as a fair and reliable safeguard. It is a reminder for WSBA that upholding the integrity and ethics of the legal license is more important than ever. And it is a reminder for all of us in the legal profession: The work we do to expand access to justice and to serve clients with honesty, transparency, and professionalism is more than a job; it’s a cornerstone of our democracy.

We also learned that governance systems must put people first to overcome the global trust crisis. As WSBA leaders, we are doubling down on this value. We are putting relationships first and welcoming all voices and perspectives. This approach is not a guarantee that we will agree on everything, but rather a commitment to mutual understanding. To that end, we are setting up listening tours, an engagement work group, outreach events, surveys, feedback opportunities, and more. More fundamentally, we are beginning a conversation about the way we conduct ourselves. We are going to meet you at the individual level and act with respect and restraint. When you have questions, concerns, or ideas, we hope you will reach out and give us the opportunity to engage before making assumptions. On our end, we promise you an open dialogue. Together, our efforts will be so much better and more fruitful.

Lawyer advertising rule: Based on a 2015 report from the Association of Professional Responsibility Lawyers, bars are looking at nationally emerging best practices, aligned with modern technology, for lawyer advertising rules. The WSBA Board of Governors in March approved amendments that simplify Title 7 of Washington’s Rules of Professional Conduct to reflect the national best practices. The amendments are now before the Washington Supreme Court for consideration.

As always, the Western States Bar Conference provided the opportunity to think bigger than the immediate governance issues on our monthly agenda. We believe one of our most important functions as WSBA leaders is to ensure that members are prepared for the future, and that means staying ahead of (or dare we say … leading?) national trends. We have been inspired and we hope to continue the dialogue with the entire Board of Governors and you.

Cutting-edge issues and best governance practices
Beyond the trust crisis, the Western States Bar Conference showcased many innovative ideas. Below are a few things that piqued our interest:

Consumer-facing legal directory: This topic came about last year and carried forward again as bars are revamping their legal directories to better serve members and the public. At WSBA, we are working on an enhanced, opt-in legal directory that will help consumers understand their legal needs, while providing a platform for members to market their resources. Look for more information in the coming months.

Sections structure: Other states are exploring different models to support practice area sections while allowing them the autonomy to do all the things they want to do. For example, this structural change in California has increased section membership. At WSBA, we want to begin a dialogue with our own section leaders to determine what changes, if any, would be beneficial.

Bar structure: Across the nation, unified bars are facing significant tensions between professional association and regulatory functions, some of which are due to federal court cases about antitrust and union dues. At WSBA, we are keeping close tabs on these developments.

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THE TRIPARTITE RELATIONSHIP IN THE 21ST CENTURY

ABSTRACT

The Tripartite Relationship in the 21st Century

The tripartite relationship among defense lawyer, insured, and insurer is a delicate balance of rights and duties. ABA Formal Opinion 01-421 (2001) describes “[t]he tripartite relationship among defense lawyer, insured, and insurer” as “a delicate balance of rights and duties.” The role of insurance defense counsel in Washington has long been defined by Tank v. State Farm Fire & Casualty Co., 105 Wn.2d 381, 715 P.2d 1133 (1986), in which the court addressed the question of who is the client of insurance defense counsel and examined associated conflicts. Similarly, WSBA Advisory Opinion 195, which was originally issued in 1999, spoke to lawyer confidentiality in the insurance defense context.

WHO IS THE CLIENT?

The Tank court clearly defined the client of insurance defense counsel: the insured. The carrier involved was described as a third-party payor only. As the Washington Supreme Court put it: “Both retained defense counsel and the insurer must understand that only the insured is the client.” Tank, 105 Wn.2d at 388 (emphasis in original).

The Washington Supreme Court reaffirmed both points in Stewart Title Guaranty Co. v. Sterling Savings Bank, 178 Wn.2d 561, 311 P.3d 1 (2013)—and then went a step further. Stewart Title involved a legal malpractice claim by a carrier against an insurance defense counsel, alleging that the defense counsel had mishandled a case for the carrier’s insured. The carrier acknowledged that, under Tank, it was not the defense counsel’s client. The carrier instead argued that it nonetheless had standing to pursue a malpractice claim because it was an intended beneficiary of the defense counsel’s work under an exception to the “privity” requirement for malpractice claims articulated in Trask v. Butler, 123 Wn.2d 835, 872 P.2d 1080 (1994). The Washington Supreme Court in Stewart Title squarely rejected that argument—holding that the relationship of third-party payor did not create an independent duty of care. The court reiterated this analysis in SMI Group XIV, LLC v. Chicago Title Insurance Co., 186 Wn.2d 58, 375 P.3d 651 (2016). The Court of Appeals, citing Stewart Title, reached similar conclusions in Clark County Fire Dist. No. 5 v. Bullivant Houser Bailey P.C., 180 Wn. App. 689, 324 P.3d 743 (2014), and Doctors Co. v. Bennett Bigelow & Leedom, P.S., 2015 WL 3385264 (Wn. App. May 26, 2015) (unpublished).

CONFLICTS

Tank clearly answers the “who is the client?” question in most instances; however, conflicts can still lurk. In Arden v. Forsberg & Umlauf, P.S., 189 Wn.2d 315, 402 P.3d 245 (2017), defense counsel had represented an insured under a carrier’s reservation of rights. The carrier eventually funded the settlement of the underlying matter, but the Ardens sued the law firm for breach of fiduciary duty. Although the law firm had advised the Ardens that it was not providing them with coverage advice (and the Ardens had their own coverage counsel), the law firm had not informed the Ardens that it also did other unrelated coverage work for the carrier that had issued the reservation. The Ardens later claimed that the law firm had a conflict under RPC 1.7(a)(2), which governs “material limitation” conflicts, based on its relationship with the carrier.

The Washington Supreme Court unanimously affirmed the dismissal by the lower courts based on the plaintiffs’ lack of damages, since the carrier had funded the settlement and paid for the defense of the underlying case. A five-member majority then went beyond this unremarkable result to suggest that when an insurance defense firm does other coverage work directly for a carrier—which, therefore, is also a client of the firm—the firm may need to disclose that to the insured and obtain a conflict waiver. The majority, however, did not resolve that question on the facts before it because the parties had offered dueling expert opinions on
that point. A four-member concurrence characterized the detour into conflicts as “dicta” and concluded that the lack of damages was dispositive.

Arden injects a degree of uncertainty into the defense of cases under a reservation of rights and, at least as a matter of risk management, counsels that a law firm should consider obtaining a conflict waiver from the insured if the firm represents the carrier directly in other matters or has other significant economic relationships with the carrier.

The Arden majority’s use of the term “dual representation” as the basis of potential conflicts suggests two other nuances.

First, defense firms that also do coverage work need to carefully define the entities that they are representing in the coverage work. Insurance carriers often have multiple affiliates and subsidiaries. For example, in Atlantic Specialty Insurance Co. v. Premera Blue Cross, 2016 WL 1615430 (W.D. Wash. April 22, 2016) (unpublished), a carrier in an Oregon coverage case had defined itself broadly in a set of case-handling guidelines, which were provided to the law firm involved, to include essentially its entire corporate family. The law firm was later disqualified in a Washington coverage case when it appeared representing an adversary of one of the carrier’s affiliates.

Second, Washington lawyers and firms with multistate practices need to remember that not all states share Washington’s “one client” approach to insurance defense. Oregon, for example, generally uses a “two client” approach to insurance defense—with both the insured and the carrier considered to be the lawyer’s clients—under a series of Oregon State Bar ethics opinions (OSB Formal Opinions 2005-30, 2005-77, and 2005-121). Therefore, a Washington firm might trigger a “dual representation” conflict under Arden in Washington if it is handling work in Oregon where the carrier that issued a reservation in the Washington case is also classified as a client.

CONFIDENTIALITY

WSBA Advisory Opinion 195 cautions that because an insurance defense counsel’s only client under Tank is the insured, the lawyer’s duty of confidentiality runs solely to the insured. Similarly, the Washington Supreme Court in Stew- art Title, 178 Wn.2d at 569, noted that although an insurance contract between the insured and the carrier normally includes an authorization permitting defense counsel to keep the carrier informed of case developments, the defense lawyer must do so “within the bounds of the attorney-client privilege and the duty of confidentiality.”

Ordinarily, communications between an insurance defense counsel and the carrier involved are cloaked within the “common interest” doctrine. The Washington Supreme Court described this evidentiary concept generally in Sanders v. State, 169 Wn.2d 827, 853, 240 P.3d 120 (2010): “The ‘common interest’ doctrine provides that when multiple parties share confidential communications pertaining to their common claim or defense, the communications remain privileged as to those outside their group.” Federal courts in Washington have recognized the common interest doctrine in similar terms, with, for example, the federal district court in Seattle noting: “The ‘common interest’ or ‘joint defense’ privilege is an exception to the general rule that the voluntary disclosure of a privileged attorney-client or work-product communication to a third party waives the privilege.” Avocent Redmond Corp. v. Rose Electronics, Inc., 516 F. Supp. 2d 1199, 1202 (W.D. Wash. 2007).

Most communications between insurance defense counsel and a carrier’s claims staff on case developments and strategy fall squarely within the common interest doctrine. WSBA Advisory Opinion 195, however, discusses situations—such as third-party bill audits—where a disclosure may put privilege at risk because it does not go to the defense of the case. In that circumstance, the client would need to provide informed consent for any disclosure; the opinion discusses the considerations involved. ABA Formal Opinion 01-421 (2001) includes a similar discussion from a national perspective. As this issue of NWLawyer goes to press, the WSBA Committee on Professional Ethics is reviewing this area further for a possible advisory opinion in the context of employer-provided insurance coverage—such as a doctor being defended under an insurance policy obtained by the doctor’s hospital employer.

SUMMING UP

Most insurance defense representations are handled without event. The developments over the past decade illustrate, however, that lawyers need to remain attentive to conflict and confidentiality wrinkles that can arise even with long-established arrangements like the tripartite relationship.

Mark J. 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 throughout the Northwest. He also teaches legal ethics as an adjunct for the University of Oregon School of Law at its Portland campus. He can be reached at 503-224-4895 and Mark@frllp.com.
In the wake of the Supreme Court’s first published opinion in three decades on the character and fitness test for admission, we commence our new Behind the Scenes series with a look at the character and fitness process.

By Sara Niegowski

The question in front of the Court was, would this version of Tarra, the responsible citizen Tarra, last? Or would that Tarra be undone by the other Tarra, the one who had demonstrated a clear pattern of criminal behavior? Criminal-behavior Tarra did have a long history of undermining responsible-citizen Tarra. So which would appear in the future, and could you tell by looking at the patterns in her past?


Simmons has proved by clear and convincing evidence that she is currently of good moral character and fit to practice law. We affirm this court’s long history of recognizing that one’s past does not dictate one’s future. We therefore unanimously grant her application to sit for the bar exam.

In re Simmons, 190 Wn.2d 374, 401, 414 P.3d 1111 (2018).

Tarra Simmons applied to sit for the Washington bar exam in 2017 with a stellar academic history. The mother of two graduated magna cum laude from Seattle University School of Law, earning the Dean’s Medal and a prestigious Skadden Fellowship. But Simmons also came with a troubled past. A victim of abuse herself, she battled longtime trauma and substance abuse issues, achieving six years’ sobriety. While her trauma remained meaningfully untreated, she had accumulated multiple felony convictions, bankruptcies, and enforcement action against her nursing license by the state’s nursing regulation board. But she finally received the help she needed in prison and turned her life around.

Faced with the required character and fitness evaluation, Simmons’ application to sit for the bar exam was initially denied by the Character and Fitness Board (C&F Board). On appeal, the extreme and competing factors—as well as the question of what standard of review to apply to C&F decisions—ultimately led the Washington Supreme Court in April to do something it has not done in more than three decades: issue a written opinion in a character and fitness case, In re Simmons, 190 Wn.2d 374, 414 P.3d 1111 (2018).

Because Simmons waived her right to confidentiality in

Continued on page 14.
In recovery from substance use disorder, each person is encouraged to “build a life worth fighting for.” This is what keeps many of us from relapsing. We don’t want to lose the lives we have built, and we understand that we are only one relapse away from losing it all. My story is about how I’ve built that life for myself. It’s a story of poverty, trauma, substance use, prison, and redemption, as I’ve sought a legal career helping people like me to reach their greatest potential.

In 2017, I was honored to become Seattle University’s first-ever Skadden Fellow. This meant that after graduating from Seattle University Law School I would spend two years with the Public Defender Association fulfilling my self-created project goals to help former justice-involved individuals like me find a second chance. Specifically, I sought to provide individual representation to help clients overcome barriers to employment, housing, and legal financial obligations while also educating the community about their legal rights and advocating for systemic reforms to ease the burdens for so many. Earning the Skadden Fellowship was my dream since I began law school, and it required intensive work. During my time in law school, I aimed for perfection in my classes to earn the benchmarks of success for the traditional law student, but most of my time I spent learning from the amazing social justice advocates working in the Seattle area. I was honored to intern with organizations such as Disability Rights Washington, ACLU of Washington, Northwest Justice Project, Public Defender Association, and Columbia Legal Services. In each of these opportunities I learned to use the social justice advocate tools that would help me succeed in my fellowship.

From public service work, I also learned about the kind of advocate I want to be — always bringing the voices of the most marginalized people into my work. To that end, I spent a lot of time organizing with Civil Survival, a Seattle-based nonprofit that teaches formerly incarcerated individuals about their role in civic engagement and participates in a variety of coalitions and councils. I was appointed by Governor Inslee to the newly created Statewide Reentry Council, where I was elected as co-chair alongside King County Prosecutor Dan Satterberg. I found it innovative and transformative that Mr. Satterberg and I were appointed to lead our state on matters of reentry. After all, it wasn’t long ago that I was released from prison, having served time for drug-related crimes I committed while suffering with substance use disorder.

THE SOCIAL BACKGROUND OF SUBSTANCE USE DISORDER

In prison, nearly everyone suffers with substance use disorder. In the women’s prisons where I resided, nearly every woman is a survivor of sexual abuse and violence. It is my firmly held belief that until our society invests in social resources, to address the root causes of crime, we will continue to spend billions of dollars trying to incarcerate the trauma, pain, and addiction out of the individuals who come in contact with the criminal legal system. Our current system in the era of mass incarceration has proved costly and ineffective, and it adds an additional layer of trauma and more barriers for individuals who want a healthy life.

My own social problems started at birth. I was born to two parents who each suffered with substance use disorder. We lived in extreme poverty. My parents divorced before my first birthday, and I spent my early childhood exposed to violence through my father and through my mother’s many boyfriends. In my childhood homes, drugs were sold and violence was a daily occurrence. I never had a nurtur-
the oral argument on appeal and in the Court’s opinion, her case shined a spotlight on what is normally a confidential process governed by court rule. Local and national media were captivated by the crystal-ball-like question of how to predict a person’s future behavior in such a high-stakes decision.

The outcome was ultimately good news. Simmons, a paragon of rehabilitation and hard work throughout law school, won her appeal and sat for (and passed) the winter 2018 bar exam; the legal profession gained a trailblazer and champion for those struggling to overcome troubled pasts; and those who administer the character and fitness process—and applicants whose dream of becoming a lawyer depend upon it—received helpful guidance on application of the factors used to determine good moral character.

For Simmons’ hundreds of official supporters—the ACLU of Washington, along with 48 additional organizations, 34 attorneys, and 20 law-school faculty, filed an amicus brief on her behalf—this was the right decision. But throughout this case, larger questions were raised about the process itself, especially when, it seems, two adjudicative bodies acting in good faith could reach different conclusions. Indeed, the Court made it clear that the original recommendation by its C&F Board to deny Simmons’ bar application was not made arbitrarily:

We do not intend to undermine the authority of the Board or the respect due to the Board and to bar counsel, nor do we mean to suggest that the Board’s recommendation was made in bad faith. We simply disagree with the Board’s recommendation in this particular case. *In re Simmons*, 190 Wn.2d at 401.

And so, after 30 years of silence on the part of the Supreme Court, it is important now to pause and reevaluate based on its opinion in *Simmons*. The opinion is reassuring to aspiring legal professionals with justice-involved pasts that “one’s past does not dictate one’s future.” *Simmons*, 190 Wn.2d at 401. However, they will not find any bright-line standards in the opinion opinion appears at page 18.) As noted by Andrews and Aronson, *Simmons* is remarkable because it is the first published decision in a character and fitness case since 1984, and the first opinion in which the Court applies the Washington Supreme Court Admission and Practice Rules (APRs) as amended in 2006. These amendments more clearly defined the meaning of good moral character and outlined 14 factors, as well as mitigating and aggravating circumstances, for reviewing each bar applicant. The process, by design, is based in

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*Continued on page 50.*
From Prison to the Law, continued from page 13.

However, things changed in 2010 when my father passed away. This was devastating for me. After serving time in prison, he also got clean and sober and lived with me for nearly eight years. Through family reconciliation counseling, he made amends for the harm he caused me as a child and we became very close. He was my best friend and a loving part of my children’s lives. The effects of long-term drug use took a toll on his health and he required skilled nursing care which I could provide as an R.N. But the responsibilities of caring for my family and working full-time took a toll on me. My physician prescribed a mixture of amphetamines, opiates, and other drugs to help me keep up with the demands. As the tolerance grew, and the grief of losing my father set in, I started using illegal substances. Within 10 months of using methamphetamines, I was caught selling drugs and sent to prison for nearly two years. In addition, I was ordered to pay more than $6,000 in legal financial obligations.

LIFE INSIDE PRISON
Experiencing prison is unique for each individual. In my experience, it wasn’t the slamming of metal doors behind me, or the dehumanizing strip searches, or the powerlessness of being subjected to offensive comments that hurt the most. For me, what hurt the most was the guilt I felt for what I had done and the separation from my two sons. I had not only destroyed my own life, but I had abandoned my children, and I was completely powerless to do anything about it.

I missed them terribly and tried at every opportunity to let them know how important they were to me. I picked up new hobbies to make my boys gifts — I learned how to crochet and made them everything from beanies to blankets in an attempt to show my love. Nothing, however, compared to the times I was able to visit with them, wrapping them in my arms and promising that I would be home one day to make things right.

That meant working on myself and learning more about why my family has suffered with oppression, poverty, and substance use disorder for generations. The treatment and connections to volunteer programs I made in prison helped me build a foundation of recovery. Today, I’ve learned to reach out to a support network when I struggle. Because of that, I am free to live without the use of mind-altering substances.

LEGAL BARRIERS TO REENTRY
The American Bar Association has identified more than 44,000 collateral consequences of a conviction. Many of these include access to basic human needs such as housing, employment, and benefits. Without opportunities to earn a living wage and meet basic needs, many people repeat the cycle of poverty-driven crime and end up back in prison. This is why Washington’s recidivism rate is so high, and why we must create reentry programs to meet basic needs, including mental health treatment and housing.

When I was released from prison, I was an educated, able-bodied white woman, but I still faced many obstacles. For example, although the Department of Health allowed me to keep my R.N. license, I was not able to find employment. I had to accept minimum wage employment at Burger King, which did not cover basic living expenses for myself and my two children. In addition, because of my incarceration my home went into foreclosure and I was eventually evicted. It was very difficult to find a landlord willing to give me a chance
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Q & A with Chris Meserve

Finding Character and Fitness: One Volunteer’s Experience on the Board

Since September 2016, Chris Meserve has served on the WSBA Board of Governors, representing the 10th Congressional District in Olympia. She currently also serves as the Board of Governors liaison to the Character and Fitness (C&F) Board and, as a former member of that Board, uniquely understands its role. She says she is proud to work with the C&F Board because it’s integral to WSBA’s mission “to serve the public and the members of the Bar, to ensure the integrity of the legal profession, and to champion justice.”

NWLawyer sat down with Governor Meserve to gain some insight into the role of the C&F Board.

NWLawyer: Why did you decide to serve on the C&F Board?
Meserve: Of all the volunteer opportunities I’ve had at WSBA, I think [serving on the C&F Board] was the most rewarding. I think that we all want our profession to be the best that it can be. The C&F Board provides us with the opportunity to maintain the high standards of our profession in Washington, in order to protect the public, and it allowed me to see when people have progressed from past mistakes and how they sometime overcome the obstacles that caused Bar Counsel to refer their applications to the C&F Board.

NWLawyer: What kind of people did you work with on the C&F Board? What was it like to work with them?
Meserve: My sense is that they were incredibly sensitive and had great insight. They asked great questions. The challenge is that it’s a complicated process, because each applicant has to be assessed individually, and there aren’t hard-and-fast timelines to apply in making a decision—there’s nothing that says you’ve hit the magic three-year mark or six-year mark or whatever. And we didn’t get a lot of guidance from the [Washington Supreme] Court.

I thought it was helpful to have public representation on the board. I found these members less judgmental, less harsh, than the lawyers were. It’s not what I expected from the public representatives. I thought they’d be more critical.

NWLawyer: What about the applicants referred to the C&F Board? What were their situations like?
Meserve: Many were first-time applicants. Some of them had been previously disbarred; some of them came from other states. During my time, we saw people who had been disbarred and wanted to be reinstated. We saw people who had felony convictions.

We had one young man who had just graduated from law school and was applying for a job at a law firm. At his interview they asked him for his transcripts, so he went back to his house, got his transcripts and changed his grades with whiteout or something and then presented them to the firm. I just thought, “What were you thinking?”

NWLawyer: What other kinds of previous issues did applicants attempt to overcome to take the bar?
Meserve: We had applicants who had been bank robbers, drug dealers, couriers, just all kinds of people with all kinds of issues who had turned their lives around in various ways and to varying degrees. But I will say that a very common thread was substance abuse. And several of the people who served on the board with me had gone through recovery themselves, so they had a much better grasp than I did on substance abuse, recovery, and relapse. They brought a great perspective.

Our focus was always what have you done, what are you like now, and how can we be assured that there’s not going to be a problem in the future when you’re practicing?

NWLawyer: What did you like most about your experience with the C&F Board?
Meserve: I liked that it was outside my comfort zone. I was so impressed with the people on the Board. I felt like they made themselves vulnerable, you know, just in terms of how they would ask questions and direct the inquiry. Also, I think the sense of responsibility that you have to help protect the public from persons lacking the requisite good moral character to practice law who could cause the public significant harm. We felt responsible for making sure the profession maintained a high standard in protecting the public.

NWLawyer: What was the most challenging part of it?
Meserve: There was a lot of paperwork, but that wasn’t the most difficult part of it. I think it was that sense of responsibility, particularly when you’re giving the thumbs-up.

NWLawyer: As a member of the Board of Governors, is there anything you might consider changing about the C&F Board or the process?
Meserve: If there is a better system, I don’t know what it is. I wish more people knew about the C&F Board, just as I wish people knew about the Client Protection Fund. It’s astonishing to me to meet members who’ve never heard of these things.

NWLawyer
In re Simmons, 190 Wn.2d 374, 414 P.3d 1111 (2018)

By Tom Andrews and Rob Aronson

The Washington Supreme Court’s published admission decision in the case of Tarra Denelle Simmons is remarkable in a number of ways. It is remarkable in that it is the first published decision in an admissions case since 1984, and one of only four published opinions on the character and fitness test of which we are aware. Second, it is the only published decision to illustrate how the 2006 amendments to the Admission and Practice Rules (APRs) are being applied. Third, the Court rejects the recommendation of a divided (6/3) Character and Fitness Board (“Board”) that the Court deny admission. Fourth, the Court warns against the potential for bias in cases such as this.

We have examined the prior published admissions decisions in The Law of Lawyering in Washington 2-11 to 2-21 (Wash. St. Bar Assoc. 2012), and will not revisit that discussion here beyond what we say about the Wright case below. But it remains disappointing to us that the Court has provided so little guidance to prospective applicants over the years. To be sure, after the comprehensive revision of the Admission and Practice Rules in 2006, the rules now provide detailed definitions of character and fitness and supply 14 factors for assessing character and fitness, another 9 “aggravating and mitigating factors,” and within these, 10 further factors for evaluating “evidence of rehabilitation, recovery, or remission.” APR 20 & 21. This provides guidance to applicants and the Board alike. But until one sees how the Board applies these definitions and factors in actual cases, and how the Court responds to that application, the process remains opaque to would-be applicants. For that reason, the Simmons opinion is a very welcome review in admissions cases. Second, while it notes that the Board’s factual findings are entitled to “considerable weight,” it declines to defer to those findings if supported by “substantial evidence” as is done in disciplinary cases. Third, the Court explains why it disagreed with the Board’s conclusion that Simmons had failed to meet two of the five “essential eligibility requirements” for the practice of law. APR 20(e)(1)&(2). It rejects the Board’s conclusion that Ms. Simmons had not been “in recovery” long enough to show rehabilitation. In the process, the Court embraces “evidence-based practices for evaluative purposes” and having been “presented in this case with current, credible social science research of undisputed validity about the relationship between the duration of a person’s sobriety and positive conduct and the person’s reduced likelihood of relapsing or recidivating,” it concludes (contrary to the Board) that Ms. Simmons “has reached the stage where her new positive behaviors are highly likely (in fact, about as likely as they ever will be) to represent lasting change, rather than the tenuous early stages of recovery.” Id. at 389. The Court also rejects what it characterizes as the Board’s conclusion that she minimized the seriousness of her drug use and evidenced an inappropriate attitude towards the admissions process. Id. at 391.

We welcome the “evidence-based” approach to rehabilitation. We are disappointed, however, that the Court did not accept Ms. Simmons request that it adopt five years “as a guideline” for determining how long a period of rehabilitation would generally be expected, despite its own concession that such a time frame seems to be “evidence based,” at least in the case of substance abuse. Interestingly, in rejecting the five-year period, the Court distinguished disbarment, which prohibits an applicant five years after the date of the offense. APR 25.1(b). In doing so, it signals that the five-year time frame is appropriate in reinstatement cases where there is a record of conduct that shows that applicants have previously failed to meet their responsibilities as lawyers, and where there is an aspect of holding lawyers accountable, both of which are missing in the case of new admission applicants. The differences, according to the court, show that new admittees must be evaluated in an individualized manner. Id. at 388-89. That may be; but it seems to us that the Court lost the chance to suggest a time frame before which it would be unlikely to find that rehabilitation was in evidence.

The Supreme Court’s decision in In re Wright, 102 Wn.2d 855, 690 P.2d 1134 (1984), illustrates just how important
it can be for applicants to have such guidance. Wright had been sentenced to five years in prison for second-degree murder and possession of heroin. After release from prison, Wright had returned to and completed law school, had engaged in no similar criminal conduct, had references extolling his character from supervisors at public interest organizations where he had worked since his release from prison, along with support from over 20 professors at the University of Washington School of Law, and the WSBA Board of Governors had recommended his admission 6/1. Nonetheless, the Court denied Wright admission 5/3. It invited him to “submit an application to the Board of Governors when he desires.” Yet it provided no guidance as to how long he should wait and when his moral character could be shown to have been sufficiently “rehabilitated.” Wright waited several years, reapplied, and was again denied—this time without a written opinion.

It would seem that at least applicants denied admission for lack of moral character should be given a “presumptive minimum” time before their claim of rehabilitation would be considered.

The last remarkable feature of the Simmons case is what appears to be the Court’s concern that gender bias might have been operating behind the scenes in the Board’s decision. First, the Court compares the unanimous recommendation of admission in the case of Shon Hopwood (Ms. Simmons’ co-counsel in this case) with the negative recommendation in the case of Simmons and states that “[a]lthough every bar applicant is unique, we do not believe there is a sufficient basis on which to differentiate between Hopwood’s and Simmons’ respective attitudes toward their prior misconduct and the publicity they have received, except for their gender.” Id. at 398. To this comment, the Court adds a footnote in which it expressly states that it does not hold that the Board acted arbitrarily in this case, but then adds: “Simmons `makes no allegation of bias in this case’. ... We therefore do not explore potential indicators of bias, and note only that it is extremely important for the WSBA and the courts to ensure that they are sufficiently informed to make subjective judgments about applicants with histories of substance abuse, criminal convictions, and financial problems.” Id. at n.13. Hopefully the Court’s admonition will go some way towards reassuring future applicants that bias has no place in the admissions process, as the rules clearly provide. APR 21(c). NWL

NOTES
1. In an early footnote, the Court states: “Over the WSBA’s objections, we granted Simmons’ requests to use her full legal name in court filings, to hold oral argument in open court, and to announce our decision in a published, unredacted opinion.” Id. at 381 n.3. From this cryptic remark, it is impossible to tell why the WSBA was objecting or precisely what it was to which it was objecting. It is fair to surmise, however, that at a minimum the WSBA was concerned about proceeding publicly when the underlying record, itself, was to remain sealed.
2. In Application of Brooks, 57 Wn.2d 66, 355 P.2d 840 (1960), the Court accepted the Board of Governors’ recommendation that Brooks not be admitted; in both In re Wright, 102 Wn.2d 855, 690 P.2d 1134 (1984), and In re Belsher, 102 Wn.2d 844, 689 P.2d 1078 (1984), the Court rejected the Board’s recommendation to admit the applicants.
3. Additional amendments to the APRs relating to character and fitness proceedings were adopted by the Washington Supreme Court in June 2016. These amendments were recommended by the WSBA Board of Governors following a thorough review of the rules by a work group convened in 2014. The work group focused specifically on interpretations of the Americans with Disabilities Act as they relate to bar admissions and on protections afforded under the Washington Law Against Discrimination, RCW 49.60.010. See NWLawyer DEC 2016/JAN 2017 at p. 13.
4. In disciplinary cases, the Court accepts discretionary review only if: (1) the Board’s decision is in conflict with a Supreme Court decision; (2) a significant question of law is involved; (3) there is no substantial evidence in the record to support a material finding of fact on which the Board’s decision is based; or (4) the petition involves an issue of substantial public interest that the Court should determine. Rule for Enforcement of Lawyer Conduct (ELC) 12.4(a).
5. “This research reveals that 86 percent of addicts who maintain their sobriety for at least 5 years will never relapse, but that there is no further substantial decrease in the likelihood of relapse after 10 years have passed.” Simmons, 190 Wn.2d at 389.
6. In its original decision, the Court observed that there was a “punitive” aspect to discipline, but in response to a motion for reconsideration, the Court changed the relevant occurrences of “punitive” and its correlates to language of “accountability,” as in this sentence: “Moreover, in attorney discipline, and particularly in disbarment, there is an aspect of holding an attorney accountable for misconduct, as well as protecting the public.” In the Matter of Simmons, Order Amending Opinion (May 4, 2018).
7. Eight justices apparently participated in the original order denying admission 5/3 (“Dolliver being absent”). Order dated June 19, 1983. In response to Wright’s motion
for reconsideration, “and alternatively for clarification of his status as to future application for admission,” which yielded the published Nov. 1, 1984 opinion denying reconsideration, Dolliver was participating and the Court split 4/4, which meant the original order would stand. (Justice Stafford, one of the original eight, had died, and Justice Rossellini, another, did not participate in the decision on reconsideration.) The primary basis for Wright’s denial—his second-degree murder conviction—as noted by the four justices who would have granted admission, was at least questionable as a basis for lack of moral character. He had asserted self-defense at his trial because he thought the “victim” was reaching in a bag for a gun to make good on his promise to kill Wright, who was in a relationship with the “victim’s” ex-girlfriend. Under self-defense law, the only basis for justifying an act in self-defense is the defendant’s reasonable belief in the necessity for force. On this basis, what was actually in the bag was irrelevant. However, inadmissible at the criminal trial was the fact that the “victim” was in fact reaching for a loaded gun in the bag. As noted by the four “dissenting” justices, that fact should have been highly relevant with respect to Wright’s moral character. During oral argument in the Simmons case, Justice Stevens invited one of Simmons’ attorneys, Shon Hopwood, to say whether he thought the Belsher and Wright cases “wrong.” As a good advocate, counsel argued that the cases were distinguishable, rather than getting into a contentious “side issue.” Wash. Supreme Court oral argument, In re Simmons, No. 201,671-5 (Nov. 16, 2017), https://www.tvw.org/watch/?eventID=2017111036, at 19:16 to 20:16 minutes. Unconstrained by the role of advocate, we are willing to say that we think the Wright case was wrongly decided. But we also doubt that the present court, applying the present admission and practice rules, would reach the same result, especially in light of its decision in the case of Simmons.

8. John Strait was lead counsel for Ms. Simmons with Mr. Hopwood as co-counsel.

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The criminalization of poverty takes many forms in our legal system. One such form is the imposition of court costs and penalties on the backs of those who can least afford it. These legal financial obligations (LFOs)—fines, fees, costs, and restitution regularly imposed on criminal defendants at the time of sentencing (RCW 9.94A.030; 9.94A.760; 7.68.035; 9.94A.550)—often saddle them with a lifetime of debt. With an interest rate of 12 percent, this debt follows people long after their sentences have been served. It’s a financial hardship that can be nearly impossible to overcome, affecting community reentry by hamstringing one’s ability to find housing, jobs, and stability.

Work is underway to reform these practices: The Washington Supreme Court issued State v. Blazina, 182 Wn.2d 827, 344 P.3d 680 (2015), and City of Richland v. Wakefield, 186 Wn.2d 59, 380 P.3d 459 (2016), to provide guidance to lower courts. After several years of advocacy, the Washington Legislature this session passed E2S-HB 1783 to ensure a person’s ability to pay is considered when courts impose fines and fees that people living in poverty have no ability to pay.

In May, WSBA’s Board of Governors continued its support of LFO reform by unanimously voting to sign on to a proposed American Bar Association (ABA) resolution to address court fines and fees. WSBA joins a groundswell of state and national advocates who want to address the fundamental unfairness created when people are subjected to disproportionate sanctions, including imprisonment, simply because they cannot afford to pay LFOs.

The resolution urges federal, state, local, territorial, and tribal legislative and judicial bodies to promulgate law and policy consistent with the proposed Ten Guidelines on Court Fines and Fees (e.g., limits to fines and fees, prohibition against incarceration and other disproportionate sanctions, mandatory ability-to-pay hearings, and elimination of harassing collection practices).

Jaime Hawk, a member of WSBA’s Council on Public Defense and WSBA Delegate to the ABA House of Delegates, helped develop the resolution and guidelines as part of the ABA Working Group on Building Trust in the American Justice System. Hawk and the Working Group plan to present the resolution and guidelines at the ABA House of Delegates meeting this August.

“There’s a growing national movement to tackle the harms caused by LFO practices around the country,” Hawk said. “It truly has become a top criminal law reform issue here in Washington and nationwide. In some states, low-level misdemeanors and infractions can result in thousands of dollars of fines and fees that people living in poverty have no ability to pay.”

The WSBA Board of Governors has discussed the issue of LFOs for the last several years and has supported the Council on Public Defense’s statements and efforts, which have informed and influenced the ABA Working Group as it develops national policy.

“The imposition and enforcement of excessive fines and fees adversely impact millions of Americans and has contributed significantly to negative perceptions of the justice system,” Hawk said. “With this resolution, our hope is that ongoing reform efforts around the country are critical steps forward to building public trust in our legal system.”

In June, the Washington Minority and Justice Commission held its annual Supreme Court Symposium at Seattle University to focus on LFOs: “Beyond Defining the Problem, Advancing Solutions.” Judges, lawyers, law professors, formerly incarcerated people struggling with LFOs, and many others came together to explore solutions and models. The Commission also unveiled a new LFO calculator tool it developed in partnership with Microsoft to guide judges in sentencing.

All of these efforts are moving us in the right direction, although much work remains to dismantle harmful LFO practices, according to Hawk; with such a strong coalition in its legal community, Washington will continue to lead the effort to reform LFO practices nationally.

Read the resolution and the Ten Guidelines on Court Fines and Fees, supported by the WSBA Board of Governors, which will go before the ABA House of Delegates this summer: www.wsba.org/board (May 17-18 Public Session Materials, page 357).

Watch the June 2018 Supreme Court Symposium, “Legal Financial Obligations: Beyond Defining the Problem; Advancing Solutions”: www.tvw.org/watch/?eventID=2018061018.

Check out the new LFO Calculator developed by the Washington State Minority and Justice Commission in partnership with Microsoft: http://beta.lfocalculator.org/.
New State Law Boosts LFO Reform, But Funding May Lag

By Judge Theresa Doyle, King County Superior Court

In the last session, the Washington Legislature passed legal financial obligation (LFO) reform legislation that should end the odious practices of jailing the poor for failing to pay LFOs they cannot afford and local governments using LFOs to fund trial courts—practices for which Ferguson, Missouri, is now (in)famous. But the question remains: Will the state step up and fill the funding gap?

Engrossed Second Substitute House Bill 1783, which becomes effective June 7, does the following:

• Prohibits imposition of costs on indigents, defined as persons receiving certain types of public assistance or with an annual income of 125 percent or less of the federal poverty level or those involuntarily committed to a mental health facility;

• Prohibits incarceration or other enforcement sanctions on the indigent, who are presumed unable to pay, unless the presumption is rebutted;

• Bars sanctioning the homeless and mentally ill for failure to pay;

• Prospectively eliminates interest on non-restitution LFOs and requires waiver of existing non-restitution interest upon motion of the defendant;

• Prioritizes payment of restitution to victims who are not insurance companies;

• Requires payment plans for indigents;

• Authorizes conversion of discretionary costs to community service upon a showing of manifest hardship, and allows for conversion of other LFOs to community service; and

• Prohibits successive imposition of the DNA fee ($100) if the person’s DNA is already in the State’s database.
Retaining their mandatory nature are: restitution in Superior Court, absent extraordinary circumstances; the $500 victim penalty assessment (VPA) in Superior Court; and the $250 VPA in limited jurisdiction courts. Where the defendant is indigent, costs and certain other discretionary LFOs must now be waived.

Historically, some judges defended imposing discretionary LFOs on the poor “for their own good” or “to hold them accountable.” Others say it provides deterrence from committing future crimes by reminding the defendant, in every payment made, of the costs of having offended. This is a “wages of sin” argument. Another explanation offered is that LFOs act as a sort of forced expression of remorse over committing a crime. Some judges simply impose LFOs as additional punishment.

Such moralizing justifications ignore two key factors. First, the deleterious effects of court debt on the poor are substantial and unnecessary obstacles to reentry. High LFO debt that a person can never pay off can ruin credit and hence any ability to secure housing or a job, and lead to jail for failure to pay. Many people dragging this ball and chain just give up; some return to crime.

Second, the reality is that having a conviction means lifetime punishment because of its negative effects on getting a job, housing, credit, government benefits, student loans and more. The conviction itself can consign a person to a permanent underclass, and this is more than adequate punishment in many cases. At a certain point, the person has suffered enough.

As for Ferguson and trial court funding with LFOs, this is the elephant in the room. LFO revenue helps fund many trial courts across the state, to varying degrees. Unsurprisingly, trial judges experience indirect, and sometimes direct, pressure from county and municipal governments to impose and collect LFOs.

It’s not unusual for judges who request additional court funding to be told to collect more in LFOs. This leads to trial courts balancing their budgets on the backs of the poor with LFO revenue. As a retiring District Court judge remarked recently: “During my tenure, I’ve broken even or made money every year.” In response, Judge Scott Ahfl, president of the Washington District and Municipal Court Judges Association, said, “We are not in the business to pay for ourselves, [w]e are here to dispense justice.”

Indeed, many judges across the state supported the recent LFO reform bill. The Superior Court Judges Association (SCJA) made its passage a priority for the organization. Some courts historically do not impose LFOs on indigents and don’t get pressured by local government to do so. King County Superior Court judges, for example, have long followed a de facto policy of imposing only mandatory LFOs unless the defendant has some financial means.

Approximately 90 percent of criminal defendants qualify for appointed counsel. We consider these defendants to be indigent. In King County Superior Court, LFOs are collected through the clerk’s office, and not enforced by jail time unless as a last resort for restitution when the defendant clearly has the ability to pay and the victim needs it.

The loss of revenue from LFOs for many trial courts is likely to be substantial. In Clallam County, according to the court administrator, the new LFO bill and appellate decisions consistent therewith will likely result in the loss of $880,000 through 2019.

That’s a big problem because of woefully inadequate funding from the State for trial courts. Washington ranks near the bottom of the 50 states in state funding for trial court operations. The State sets aside less than 1 percent of its budget to fund courts, prosecution and indigent defense. Counties and cities provide approximately 90 percent of the total funding. This unbalanced equation is traceable to the 1889 Washington Constitution that laid most of the burden on local government. The reason is that, at the time, many city and county governments were more established than the state government.

Tracing the money collected from LFOs and determining the fiscal costs of enforcement are the subjects of an LFO study under way. In 2016, the State, through the Minority and Justice Commission (MJC), received a Department of Justice grant to study all aspects of the LFO system. SCJA is interested particularly in whether courts are effectively self-funding, as well as the collection and enforcement costs associated with the various types of LFOs. The results of the study may help inform any future LFO reform bills that may be introduced in the next legislative session.

The DELETERIOUS EFFECTS OF COURT DEBT ON THE POOR ARE SUBSTANTIAL AND UNNECESSARY OBSTACLES TO REENTRY.
Recently, Richard Mount had what you might call a “woke” moment.

But before you know how Mount’s perception of himself changed, it helps to know a little more about him. Mount, a labor and employment attorney for Witherspoon Kelley in Spokane, has been handling some human resources functions for the firm, one of the largest in Spokane, for about a year and a half. He’s made intentional efforts to increase diversity at the firm and create a workplace that fosters diverse opinions from people of a multitude of backgrounds. He was a member of the Cheney School District Board of Directors when it hired the district’s first female superintendent, who then focused on hiring a more diverse staff. And he recently asked the WSBA to come in and conduct microaggression and implicit bias training for his firm (more on that later). So it surprised him to realize that the way he used to think about the Black Lives Matter movement could be rightly perceived as racist.

When Mount began hearing the phrase “Black Lives Matter,” he would think … well, all lives matter. It wasn’t that he thought black lives didn’t matter, or that other lives mattered more, but he hadn’t previously stepped outside of his own head to put his internal reaction in context. Then in May, Mount was talking with Dr. Jonathan Kanter, a research associate professor and director of the Center of the Science of Social Connection at the University of Washington.

“[Kanter] had brought up something about saying ‘black lives matter,’ and if the response to that is that ‘all lives matter,’ is that a racist comment?” Mount recalled. “And I had never thought of it that way. … For me, I had to stop and think, ‘Can I see that a person of color, especially a black person, would think that my response or my thought, in and of itself, was racist?’ And I had to conclude that, yeah, they would think that because I’m really not understanding what their point of view is.”

Realizations like this are threaded through conversations about diversity and inclusion, where the biases we all hold affect how we interact with other people, who we hire, who gets promoted, and the workplace environments we create. Although terms like “implicit bias” and “microaggression” might sound trifling, hypersensitive, or even ridiculous to some, the effects they have are well documented, potentially harmful, and capable of influencing who enters the practice of law and whether, once in, they are treated equitably.

Mount and Kanter had their illuminating conversation at the 2018 Legal Executives Diversity Summit, which was put on by the Washington Initiative for Diversity. Kanter, one of the featured speakers with his presentation, “The Science Behind Microaggressions: More Damaging than You Think,” argued that microaggressions—a term first coined by a Harvard psychiatrist in the 1970s—and implicit biases are scientifically substantiated and have negative impacts on the physical and mental health of those who are subjected to them.

For example, a 2014 study published in the Journal of Personality and Social Psychology found that white people, when looking at images of other white people, will immediately look at the eyes; however, a white person looking at a non-white person will focus on the racially distinct facial features that are different from their own—what’s referred to as
as “othering.” Biases can affect perceptions whether we’re conscious of them or not, right down to the activity in our brains. Researchers with the University of Southern California Department of Psychology found greater activity by the amygdala, the part of the brain most associated with fear, when white people were shown images of black faces as compared to white faces.

Moreover, Kanter argued in his presentation, just the perception of bias takes a toll. The everyday consequences of microaggressive behavior have been linked to higher rates of smoking, obesity, and substance abuse among racial minorities compared to whites, as well as higher rates of mental health issues like anxiety and depression caused by discrimination, along with corresponding health effects like high blood pressure and heart problems.

Recognizing the impact implicit bias can have, this year the Washington Supreme Court adopted General Rule 37, which aims to reduce implicit bias in jury selection (see “GR 37: One Step in the Right Direction” at page 38 for more on this new rule). It was the Supreme Court, too, that charged the Washington State Bar Association with promoting “diversity and equality in the courts and the legal profession,” as stipulated in General Rule 12.2.

This year marks the five-year anniversary of the WSBA’s Diversity and Inclusion Plan. On June 6, the WSBA commemorated the anniversary during the “WSBA Diversity and Inclusion Celebration, Where We’ve Been, Where We’re Going.”

Throughout the evening—which featured introductory remarks from WSBA staff and stakeholders, followed by a CLE panel featuring representatives from Microsoft, the Washington ACLU, K&L Gates, and the Supreme Court—the common thread was that a diverse legal profession is a better legal profession, and making the legal profession more diverse won’t happen without a concerted, intentional effort aimed at recruiting underrepresented candidates and fostering a more inclusive work environment.

“We’ve changed, but it feels like minuscule change ... we’re getting there, but it has to be better,” Pallavi Wahi, managing partner with K&L Gates and the chair of the firm’s diversity committee, said during her CLE presentation. “We must be intentional. It’s not going to happen just because we’re nice people.”

**MOVING FORWARD WITH INTENTION**

It was an unseasonably warm afternoon in the town of Lakewood and Joy Williams was standing in front of 600 people with her life on display. She talked about her husband, about their work as ministers at one of the largest African American churches in Tacoma. She talked about their six children and displayed a photo of her and her family back before the cancer growing in her husband’s pancreas took his life.

She talked about the bigotry she’s experienced, both explicit and implicit. She talked about the prejudice her children have experienced, like when police held three of her sons on the ground on suspicion that they were adults wanted for robbery—they were in middle school at the time.

She talked about growing up in Philadelphia, a segregated city where she knew where she was supposed to go and where she wasn’t; what was safe and what wasn’t. And she talked about how her mother used to explain to her that, when it comes to being gay, “we don’t do that.”

The “we” meant her family didn’t do that; African Americans didn’t do that. It’s part of what led her to live much of her life as a heterosexual. But after her husband died, she reexamined her life. She decided she was going to be her true self and come out as gay, even if it

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**A Brief History of Diversity Efforts by the WSBA**

**2003**

The WSBA formally establishes diversity as one of its nine strategic goals.

**2006**

The WSBA Board of Governors forms a Diversity Committee to help improve diversity within the elected leadership.

**2007**

The WSBA adopts five guiding principles, one of which focuses on understanding diversity in the legal community and providing tools to members.

**2013**

The WSBA Board of Governors approves the Diversity and Inclusion Plan.

**2016**

The WSBA and the Puget Sound Association of Legal Administrators partner to create a statewide mapping of diversity, equity, and access to justice.
Coming out as gay meant losing almost all of her friends. It meant losing the church. As a black woman, it meant people on the street had new epithets to sling at her for doing nothing more than going for a walk and holding another woman’s hand.

But it meant gaining as well. This year, she celebrated her one-year wedding anniversary with her wife. They have a daughter together, a six-year-old. It all helped lead her to where she is now—she calls it her “journey” and told the crowd that everyone is on their own journey. Williams’ journey led her to help build a more diverse and inclusive world. It led her to that stage, talking to 600 members of the Washington State Attorney General’s Office (AGO) who’d gathered for their staff conference. Williams, the WSBA’s Diversity and Public Service Programs Manager, was standing there with her soul bared because she wanted people to know that it’s safe to do that—to be open. And when it comes to recognizing implicit biases and microaggressions in oneself and in others, it requires no small amount of courage and willingness to be open. It’s challenging work, she said, but the payoff is a more diverse legal profession where justice is more equitable for an increasingly diverse population.

Her presentation that day, “Moving Forward with Intention,” was an introduction to the 19 upcoming half-day CLEs on microaggression and implicit bias she is holding this year with smaller groups of AGO staff across the state. She doesn’t expect everyone to share as much as she does, but she wants them to know that they can safely share that much. Williams wants people to come to her trainings with no shame, no guilt, no judgment.

“All of us need courage,” Williams told the crowd. “You’re going to need to bring it ... but this work is important. It’s only important, though, if you come willing to do that work.”

The 19 half-day CLEs include hands-on training that highlights how to recognize implicit bias and microaggressions in others, as well as yourself; how to interrupt microaggressive behavior and biased language from other people; and how to react when someone else interrupts your microaggressive behavior.

Williams’ work through the WSBA caught the attention of Deputy Attorney General Erika Uhl, who asked Williams to provide the CLE training to hundreds of staff members as part of the office’s ongoing efforts toward ensuring a more diverse and inclusive workplace.

“I think it would be fair to say that, through [Williams], the [Washington State Bar Association] has become a resource on issues of diversity and inclusion,” Uhl said. “And I see Joy as an expert on these types of issues, so I was definitely thrilled when she had a training on microaggressions available and was willing to do it.”

It was much the same reason Mount asked Williams to provide training for Witherspoon Kelley attorneys and staff. For him, the training is part of a broader effort by Witherspoon Kelly to incorporate as many varied perspectives as possible, which ultimately benefits the firm and its clients. He doesn’t see diversity as a liberal or a conservative issue as much as an essential strategy to provide the best possible legal services to clients.

“They [clients] are looking to see if we have a diverse group and they’re looking to promote that diversity,” Mount said, adding that “the more minds you have looking at an issue or project, the better discussion you’re going to have because different people see things from different perspectives.”

Additionally, the WSBA recently shared survey data showing the state of diversity and inclusion efforts throughout the Washington legal profession. The Statewide Diversity and Inclusion Mapping survey, conducted in partnership with the Puget Sound Association of Legal Administrators (PSALA), found that 39 percent of the 59 respondents have a diversity and inclusion plan. Of the respondents, 71 percent said they supported an Inclusion and Equity Think Tank that would focus on developing equity-centered policy and best practices to be utilized by legal professionals throughout the state.

THE STATE OF THE STATE

For Washington Supreme Court Justice Steven González, the word “diverse” is as much about what it’s not as what it is. “You can define it with whatever’s missing,” he said during his presentation at the WSBA Diversity and Inclusion Celebration CLE.

If you look specifically at the Supreme Court, what has been missing are people of color. This dates back to the first and only African American to serve on the Washington Supreme Court, the late Justice Charles Z. Smith, who was appointed in 1988 and served until 2002.

Of the roughly 20 justices who’ve been appointed to the Supreme Court since then, González is one of two people of color. In fact, according to data collected by the American Bar Association, in 2010 in Washington there were 11 African American judges, five Asian Pacific Islander judges, and one Hispanic American judge (based...
on judgeships in Washington for
the general jurisdiction trial courts,
appeal level courts, and court of last
resort). That was a total of 18 minority
judges in the state out of 217, just 8
percent, putting Washington at 25th
based on the percentage of minority
judges, falling behind such states as
Nevada, Utah, Arizona, South Carolina,
and Arkansas.

Looking at all legal professionals in
the state, not much changes. According
to the demographic information vol-
untarily provided by members as part
of their 2018 license renewal,7 WSBA
membership breaks down as:

85.5 percent white
5.1 percent Asian
2.5 percent Spanish/Hispanic/
Latina/o
2.3 percent black
0.9 percent American Indian

Those numbers represent a marked
increase in diversity when compared
to 2010, when the WSBA member-
ship was approximately 90 percent
white. However, it’s still a far cry from
reflecting the growing diversity of
Washington. Even today, the WSBA
membership is less diverse than the
state was in 2010, according to the
2010 Census3 (at the time Washington
was approximately 79.2 percent white,
7 percent Asian, 3.5 percent black or
African American, and 1.5 percent
American Indian; as well as 11.2 per-
cent Hispanic/Latino of any race).

Not much is different across gender
lines, where 42 percent of WSBA mem-
bers are women, yet the state was 50.5
percent female according to the 2016
Census data. However, a larger percent-
age of WSBA members identified as
LGBTQ (5.4 percent) when compared to
a 2015-16 Gallup survey (4.6 percent).4

“We must be intentional. It’s
not going to happen just
because we’re nice people.”

PALLAVI WAHI,
K&L Gates
Managing Partner

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Angela Ballasiotes is the executive director of the Washington Initiative for Diversity and calls the current demographics of Washington’s legal profession a “pipeline issue.” Diversity isn’t just about law firms hiring underrepresented candidates but, in fact, an issue that starts long before law school, when kids might start thinking about a career in law. Law schools have made strides in attracting more students from underrepresented backgrounds, but there’s room to grow. At the University of Washington School of Law, for example, enrollment of black/African American students remained flat from 2014 to 2017, with the highest being 17 students out of a total enrollment of 501 in 2016, according to the school’s ABA-required disclosures. The Gonzaga School of Law reported that 19 percent “ethnically diverse” (non-white) students enrolled in 2017, down from 23 percent in 2013 and a five-year low of 13 percent in 2015. The Seattle University School of Law reported the most diverse enrollment in 2017, among Washington law schools, with 34.8 percent of the school identifying as a racial minority.

Large Washington-based companies are also working toward retaining a diverse pool of employees. Lisa Tanzi, VP and general counsel for Microsoft, who was a featured panelist at the Diversity Summit, said in an email that Microsoft is in its 10th year of the Law Firm Diversity Program, which provides a bonus to law firms the company works with “when they make progress against goals designed to advance diversity in leadership at law firms.”

“Microsoft cares deeply about supporting diversity and inclusion because it is critical to our company mission—to empower every person and organization on the planet to achieve more,” Tanzi said. “To achieve this mission and to best serve our customers, our talent and that of our partners must reflect the diversity of our customers and other stakeholders. We also need to compete for the best talent in the world and we have to look for that talent broadly. And after people join Microsoft, we need to have an inclusive environment where everyone can do their best work.”

Increasingly, diversity is being recognized as more than a feel-good term, but rather as something that results in better work and higher profits. In the 2017 study, “Do Pro-Diversity Policies Improve Corporate Innovation?,” researchers at North Carolina State University concluded that “corporate policies that promote more pro-diversity cultures, specifically treatment of women and minorities, enhance future innovative efficiency ... have greater growth options, have higher cash flow, and have stronger governance.” A co-author of the paper, Richard Warr, noted that “to be clear, we found that there is a causative link—it’s not just a correlation.”

If you ask Fred Rivera, executive vice president and general counsel for the Seattle Mariners, why diversity matters in the legal profession, he’d say that, aside from it being the right thing to do, it’s increasingly necessary in a shifting world. Rivera has been practicing law for 25 years, first at the U.S. Justice Department in D.C. before moving back to Washington state, where he’s spoken repeatedly about diversifying the legal profession, and recently gave opening remarks at the Legal Executives Diversity Summit.

“The reality is, particularly in Seattle, we’re a global economy,” he said. “And if you take a look at somebody like Microsoft, which recognized a number of years ago that their clientele is global, and if they were going to succeed in a global economy they needed to have a global workforce.

“People that don’t have a global workforce are going to fail.” NWL

**NOTES**

1. Williams was also a featured speaker at the Legal Executives Diversity Summit with her presentation, “The Power of Non-Inclusivity.”

2. Based on 28,010 responding members.

3. WSBA only collects data on one reported race, while the Census collects information on people who report one race, two or more races, and other more nuanced demographics. The Census collects data not only on people who self-identify as Hispanic/Latino, but also additional racial breakdowns within that ethnicity.

4. The Census does not collect data on sexual orientation.
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For decades, McKinley Irvin has helped clients navigate through some of life’s most difficult challenges. Our attorneys, like prominent family law attorney Jennifer Payseno, are known for their relentless pursuit of successful results, whether representing individuals in high-asset divorce litigation or negotiating complex property division. But perhaps our most noted distinction is our steadfast commitment to protecting what our clients value most.

**JENNIFER PAYSENO, PARTNER**
Second Vice President, King County Bar Association, 2017-2018
Distinguished as a Washington Super Lawyer, 2010-2017
Treasurer, King County Bar Association, 2013-2015
Chair, King County Judicial Screening Committee, 2009-2010
CARRIE BLACKWOOD (moderator):
I remember in 1991, I just started my first year of community college [Anita Hill testified]. ...This was my first sense that there [were] laws around sexual harassment in the workplace.

And here, this incredibly professional, poised woman got up in front of an all-male judiciary committee to talk about the sexual harassment that she had experienced. ... The takeaway was, if you bring these issues forward in the workplace, you will have an all-male group of people hearing your story. It will not make a difference and you
will be publicly humiliated, no matter how fancy you are, no matter how well dressed, well educated, and poised you are. And I thought, “I could never do what Anita did.” … Sometimes—especially through the media and the conversation that we have been having—there is an impression, given that these are issues that women in tech face, these are issues that high-wage workers face, and that this is an issue of white women in entertainment. But we really also have to recognize that we still continue to see the largest segment of victims to be low-wage workers who have the least ability to bring these issues forward.

CECI LOPEZ:
Eastern Washington has some of the largest farms in the state and the conditions of the workers can sometimes be deplorable. The conditions of work are very controlled by the supervisors. People live in small communities where, if they come forward and speak up, the backlash comes in so many different forms. Women, by telling their truth or their situation, become an object of observation. Suddenly, everybody knows this intimate trauma that the women have suffered.

Their community is aware of this. If they’re married, that carries its own set of circumstances, and shame most of the time. Relatives, sometimes, are also in supervisory positions. So they don’t want to get involved because they don’t want to have repercussions in their own job positions. So they [would] rather not talk about it, not discuss it, not acknowledge it. So the woman’s place, and her testimony, or her claims, sometimes have no external support.

We want to create a hotline so people have a very direct way to communicate their complaints, staffed by a person who is bilingual—Spanish and English to begin with—but we also recognize that there are women from other nationalities and language needs that possibly could be addressed in the future. And as we talk about women, and farm-worker women, I also want to mention that another segment of population that is often overlooked is domestic workers.

Women who work in private homes are very invisible to the rest of society and, unfortunately, there’s a lot of abuse that occurs behind those closed doors. Sometimes it’s [abuse] that we would say, how can that even happen here?

My mom is a domestic worker in Chicago and she has a lot of friends who are undocumented, and the conditions under which they work are horrendous.

My mom [has had] to sneak phones to her friends behind a fence so the women could have contact with the outside world. If the employer says you’re not going anywhere, and they lock the doors, the women have absolutely no way to get the help or the assistance they need. So that’s another segment of the population that we don’t acknowledge, or talk about, but they are incredibly isolated.

My mom tried to join labor unions, and tried to reach out to organizations to get help for some of her friends, and it was incredibly difficult. The language was a barrier.

Farm workers sometimes live in the farms where it’s completely controlled by the employer. The farmer provides the housing, the farmer provides the food, so people are not even allowed to go themselves to the store, but there [are] buses that take them to the store and bring them back. So it’s a very controlled environment.

CARRIE BLACKWOOD:
I’m going to transition into Jamal. I know you’ve also had experience with sex-abuse cases with farm workers, but I also want you to share some of your thoughts around the separate scales of justice, and some of your experiences as a plaintiff [attorney] as well as about what it takes for a woman to come forward.

So a plaintiff’s attorney would, generally (for our community members who are not legal practitioners) would be a lawyer who would be in private practice that you would bring your issue to, and the plaintiff represents the employee. What is it going to take to be a plaintiff?

Also talk about the benefits and negativities of class action. How do we pull communities around the plaintiff?

JAMAL N. WHITEHEAD:
This is a really important issue, and there’s a real public reckoning that’s taking place right now around sexual harassment, in that harassers are being called to account. But it’s not as if sexual harassment or these issues are at all new. We all know that this has been a pervasive issue for a very long time. I look at the Civil Rights Act of 1964, and Title VII, which outlaws discrimination on the basis of sex.

You’ve got Supreme Court cases in the late-70s [and] in the mid-80s, outlawing the creation of a hostile work environment on the basis of sex. So the question then becomes what is it about this moment that things have gained such traction? … I’m thankful that we’ve gotten to a place where people are coming...
forward and asserting their rights.

We’ve got these laws on the books. They’re there for a reason. They’re there to protect people. There’s a metaphorical and, in some cases, a literal contract in the workplace. I go to work. I do my thing. Hopefully, I get along with my coworkers. Maybe I don’t, but I get paid. I go home to my family. So when you’ve got a boss or coworkers that mess with that equation—that put impediments in front of you going to work and doing your thing and earning a living to provide for your family—I’ve got a problem with that, and so does the law, thankfully.

When people come to my office, the first thing that I tell them is I just commend you on the strength that it takes to pick up the phone, or to get on the internet, to make an appointment with the lawyer, come down to my office, and sit across this conference table from me to talk about this horrible treatment that you may have endured.

I was at the EEOC [Equal Employment Opportunity Commission] for four years as a senior trial attorney, and I worked cases in eastern Washington where you’ve got four men that literally rule over little fiefdoms within the orchards. They have absolute power over the workers in their charge. If they choose to call out a young woman, or several young women, and to abuse them horribly, unfortunately, they feel emboldened that they can do something. And it’s sad to me, that in the current climate, that victims of rape would be reluctant to come forward to law enforcement for fear of deportation.

But the good thing about the law, Title VII, and Washington Law Against Discrimination: it doesn’t care whether or not you are documented. The bottom line is if you are abused in the workplace, you’ve got recourse. So we talk about #MeToo, and the movement as if it’s a monolith, and it’s not. You’ve got this issue of intersectionality, in that you’ve got women of color—black and brown women—that are experiencing sexual harassment in a way that, perhaps, their white peers, their white counterparts, aren’t.

It’s, I think, obvious to everyone in the room that as #MeToo began, we were dealing with beautiful white actresses, rich folks, that are coming forward with their stories, but the stories are painfully familiar in a way. But you look at black and brown women that have perhaps similar stories to tell, and for whatever reason, they’re marginalized. We don’t give their stories the same credence.

So as we look at #MeToo, as we look at claims in the workplace, I would hope that we would evaluate and look at the claims on par, without regard to whether or not we are dealing with a Caucasian woman, a black woman, whether you’re rich, whether you’re poor, whether you are a high-powered executive, or an hourly worker, and to listen to these folks as they come forward with their stories, and make things, hopefully, better for everyone.

ELIZABETH VAN MOPPES:
So it is an incredibly difficult thing to make a complaint, and then to meet with somebody you’ve never even heard of before, and tell them an incredibly personal event, or series of events that you’re pretty sure this person is not going to believe, or has already been paid off by the employer to not believe. ... I get that question a lot right off the bat.

“You’re being paid by the employer, by my boss. Why should I even tell you anything?” And I will tell you exactly what I tell them, or what I will tell you if I ever have the chance to meet you if you have a complaint. I am here as an independent investigator. Yes, my time is being paid for by your employer, but your employer has a legal duty to look into your complaint, and they have a legal duty to make sure that that investigation is done as independently and fairly as possible.

My job is to determine the facts. It is not to determine the law. It is to determine whether or not a policy has been violated. Hopefully, there is a policy, there is a handbook. That’s another story entirely. I talked to this person. I will spend anywhere from two hours to, the longest I’ve ever spent with any witness was 18 hours. Getting their story, getting [the names of] their witnesses, and then I will go meet those witnesses. ...

It’s not usually he said, she said. There are usually a lot of other factors that come into play. There’s almost always documentation. There’s almost always a witness to somebody’s demeanor. There’s almost always something in a timeline that doesn’t play out, someone who says this happened during this time frame, but it just isn’t going to work that way. I put it into a report, and I give that report to the employer. Whether or not the employer chooses to share it with the employee is up to them, or up to Jamal, and I have nothing to do with that part either. And then I step back, and I wait for Jamal to call me and put me on the stand.

JAMAL N. WHITEHEAD:
I don’t see anything wrong with some sort of annual, or regular requirement. You’ve got OSHA [Occupational Safety and Health Administration] requirements where it talks about safe handling of heavy equipment, or how to load the boxes on the truck, all of that. So there are regular safety requirements in other contexts that workers have to undergo.
So it makes sense to me that you would also do something along the lines of sexual harassment. The training dovetails with the whole idea of just having paper policies. If every employer of any sort of sophistication has a bunch of EEO [Equal Employment Opportunity] statements about how they value diversity and hate harassment. ... But what does that really mean in terms of the workplace?

You have the folks that are in the C-suite—the executives, the managers—that are attending those trainings, and [are they] taking them seriously? Are you fostering an environment in which that type of behavior is not only unacceptable, but if you’re witnessing it happening, you are going to report it even though you’re not the victim, or the target of the behavior? [They might think], “Everything is fine, we’re just joking, everyone’s laughing at first at work.” And then it escalates, and it’s a touch on the small of your back, and then it’s constant hands on the shoulder, and then the next thing you know you are trapped in a confined space with a predator. So I think training, and getting that conversation, starting that dialogue, whether it’s voluntary or mandatory, is all to the betterment of the workplace.

ELIZABETH VAN MOPPES:
I would add onto that a couple of things that—not just as an investigator, but I also do some advice work afterwards, and even before with employers, and training. Training should not be pushing a button on a computer. OK, A doesn’t work. Oh, I’m supposed to push B then. B doesn’t work. OK, I’ll push C. Nobody’s reading it.

Turning it over to HR is not enough.

There are a lot of things about becoming responsible for this sort of activity that we need to do as a society that shouldn’t stop because we’re in our employer’s domain. I think the policies and the training are just the start, but these things, obviously, haven’t been working, and we need to change them.

Watch the entire one-hour webcast of this conversation at https://www.wsba.org/news-events/decoding-the-law.
Alex Salas can give you 2.6 million reasons why an evidence rule recently adopted in Washington—ER 413—is needed. Mr. Salas was severely injured after he slipped and fell off unsafe scaffolding, resulting in 10 fractured bones and 13 surgeries. His first jury trial ended with a liability verdict, but no damages awarded. Why? Perhaps because the cross-examination of Mr. Salas opened with five immigration-status questions that could prejudice a jury. And indeed, the all-white King County jury found the defendant negligent, but refused to award anything to Mr. Salas and his family for their considerable losses.

After appealing all the way to the Washington Supreme Court, Mr. Salas obtained a second trial in which immigration status was kept out of the proceeding. The result was a $2.6 million verdict for Mr. Salas. Two King County juries, presented with the same material facts, reached markedly different results simply by removing the inflammatory immigration-status evidence.

The Washington Supreme Court adopted ER 413, which strictly limits the use of immigration-status evidence in judicial proceedings, last year. The rule, which takes effect Sept. 1, 2018, will make evidence about a person’s immigration status “generally inadmissible” in both civil and criminal matters, unless limited exceptions are met.

Providing immigrants with access to our courts and a fair trial is essential to justice in Washington. ER 413 will protect both the victim of domestic violence and the wrongfully harmed civil litigant from having immigration-status evidence overwhelm the merits of their cause. To our knowledge, this evidence rule is the first of its kind in the nation.

Had ER 413 been in place for Salas, the immigration evidence could not have been admitted. At most, the issue could have been raised in a post-trial motion after the verdict was rendered. But Mr. Salas would have obtained the funds he needed to pay medical providers and replace lost income years earlier, and our judicial system could have avoided multiple appeals and trials. Indeed, Mr. Salas’s case, where liability was reasonably clear, likely would have settled even earlier.
case, “[i]ssues involving immigration can inspire passionate responses that carry a significant danger with the fact finder’s duty to engage in reasoned deliberation.”

ER 413(a): IMMIGRATION EVIDENCE IN CRIMINAL CASES

Immigration-status evidence is of special concern in the context of criminal cases involving domestic violence, sexual assault, and human trafficking. Immigrant victims and witnesses, a disproportionate number of whom are women and children, routinely face interrogation about their status while they are unfamiliar with or simply confused about their legal rights and the legal system. They are particularly vulnerable because of a variety of factors, including language barriers, separation from their communities, lack of understanding of U.S. laws, fear of deportation, cultural differences, and predatory offenders. Fears of being reported to ICE and possible deportation keep many immigrant victims from seeking the services they need. The result is victims deterred from seeking legal assistance in criminal matters, or even basic social services.

Section (a) of ER 413 protects vulnerable victims by ensuring that immigration status is generally inadmissible, with two exceptions. First, immigration-status evidence may potentially be admitted if it “is an essential fact to prove an element of, or defense to, the criminal offense.” The other potential exemption is “to show bias or prejudice of a witness” for impeachment under ER 607. Unless one of those two limited exceptions is met, immigration-status evidence should not be admitted in criminal cases.

Should a party believe that one of these exceptions applies, the rule requires that party to file a written pretrial motion that includes an offer of proof. ER 413(a)(1)&(2). If the trial court finds that offer “sufficient,” it shall conduct a hearing outside the presence of the jury. ER 413(a)(3). Finally, a court may admit the evidence “to show bias or prejudice” only if the evidence is reliable and relevant, and its probative value “outweighs the prejudicial nature of evidence of immigration status.” ER 413(4).

Subsection (a)(5) clarifies that section (a) shall not be construed to prohibit cross-examination regarding immigration status if doing so would violate a criminal defendant’s constitutional rights. There is a similar provision in Federal Rule of Evidence 412(b)(1)(c).

(a) Criminal Cases; Evidence Generally Inadmissible. In any criminal matter, evidence of a party’s or a witness’s immigration status shall not be admissible unless immigration status is an essential fact to prove an element of, or a defense to, the criminal offense with which the defendant is charged, or to show bias or prejudice of a witness pursuant to ER 607. The following procedure shall apply prior to any such proposed uses of immigration status evidence to show bias or prejudice of a witness:

(1) A written pretrial motion shall be made that includes an offer of proof of the relevancy of the proposed evidence.

(2) The written motion shall be accompanied by an affidavit or affidavits in which the offer of proof shall be stated.

(3) If the court finds that the offer of proof is sufficient, the court shall order a hearing outside the presence of the jury.

(4) The court may admit evidence of immigration status to show bias or prejudice if it finds that the evidence is reliable and relevant, and that its probative value outweighs the prejudicial nature of evidence of immigration status.

(5) Nothing in this section shall be construed to exclude evidence that would result in the violation of a defendant’s constitutional rights.

(b) Civil Cases; Evidence Generally Inadmissible. Except as provided in subsection (b)(1), evidence of a party’s or a witness’s immigration status shall not be admissible unless immigration status is an essential fact to prove an element of a party’s cause of action.

(1) Post trial Proceedings. Evidence of immigration status may be submitted to the court through a post trial motion:

(A) where a party who is subject to a final order of removal in immigration proceedings was awarded damages for future lost earnings; or

(B) where a party was awarded reinstatement to employment.

(2) Procedure to review evidence. Whenever a party seeks to use or introduce immigration status evidence, the court shall conduct an in camera review of such evidence. The motion, related papers, and record of such review may be sealed pursuant to GR 15, and shall remain under seal unless the court orders otherwise. If the court determines that the evidence may be used, the court shall make findings of fact and conclusions of law regarding the permitted use of that evidence.

ER 413(b): IMMIGRATION EVIDENCE IN CIVIL CASES

Immigrants often face unwarranted inquiry into their status in civil cases as well as criminal cases. For example, low-wage immigrant workers must often confront questions about their immigration history before they can pursue the merits of their case. Immigration status has also been raised in personal injury cases and family court matters. These litigation practices chill basic access to justice for these individuals.

Section (b) of ER 413 lays out the general rule that, in civil proceedings,
immigration-status evidence of a party or a witness shall not be admissible, except where immigration status is “an essential fact to prove an element of a party’s cause of action.” The only exceptions arise when a civil plaintiff is awarded future lost wages or reinstatement, both of which may be reviewed only in a post-trial proceeding. In other words, the jury will make its award without regard to a person’s immigration status, which should not be mentioned or discussed with potential jurors during jury selection, opening statement, or closing argument.14

Section (b)(1) sets forth two limited circumstances in which immigration-status evidence may be handled through a Civil Rule 58(h) motion. The rule balances concerns about immigration status prejudice against a defendant’s legitimate need — in limited cases — where reinstatement or future lost wages are awarded.

Under section (b)(1)(A), parties may submit a post-trial motion disclosing immigration-status evidence where a prevailing party who received a future lost-earnings award is subject to a final order of removal in immigration proceedings; a court may review the proffered evidence to determine whether to adjust the future lost-earnings award. Subsection (b)(1)(B) also permits post-trial review where the prevailing party seeks job reinstatement, avoiding a potential conflict with federal law prohibiting the employment of undocumented persons.15

Section (b)(2) is procedural. A party intending to offer such evidence must file a written motion under seal pursuant to GR 15. The court must then check. Victims of domestic violence and other crimes also need protection. ER 413 promotes basic fairness for immigrants and members of racial and ethnic minorities. It also gives attorneys and judges the guidance they need to handle immigration evidence, fostering consistency regarding immigration-status evidence. NWL

CONCLUSION

Immigrants have a basic right to access our justice system. If tort victims and workers go uncompensated, the social safety net will become overtaxed and dangerous conditions will continue unchecked. Victims of domestic violence and other crimes also need protection. ER 413 promotes basic fairness for immigrants and members of racial and ethnic minorities. It also gives attorneys and judges the guidance they need to handle immigration evidence, fostering consistency regarding immigration-status evidence. NWL

NOTES

1. The rule was proposed by a coalition of advocates from Columbia Legal Services, the Washington Association of Prosecuting Attorneys, Northwest Immigrant Rights Project, Legal Voice, and Ken Masters.

2. ER 413 is not to be confused with the court’s 2013 adoption of a formal comment to RPC 4.4(a) prohibiting attorneys in civil cases from inquiring into a person’s immigration status in order to “obstruct that person from participating in a civil matter.” RPC 4.4 comment 4; see also The Unethical Use of Immigration Status in Civil Matters, NWLawyer, March 2014.


6. 5A Wash. Prac., Evidence Law and Practice § 411.1 (West 5th ed.).


8. Id. at §§ 412.3 & 412.5.


IMPACT ON DISCOVERY

ER 413 will also give judges an explicit basis for granting protective orders regarding immigration status. A protective order could be justified where the discovery is not “reasonably calculated to lead to the discovery of admissible evidence.” CR 26(c).16

14. JoE mOrriSon works for Columbia Legal Services in Wenatchee and represents primarily agricultural workers in class actions. He can be reached at joe.morrison@columbialegal.org.

15. Ken MASTERS has been litigating civil appeals for over 25 years. He chairs the Washington State Bar Association Task Force on the Escalating Cost of Civil Litigation. He can be reached at keni@appeal-law.com.

16. DAVID mARTIN is the Chair of the Domestic Violence Unit at the King County Prosecuting Attorney’s Office in Seattle. He can be reached at david.martin@kingcounty.gov.

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12. See generally Catherine Klein & Leslye Orloff, Providing Legal Protection for Battered Women: An Analysis of Statutes and Case Law, 21 Hofstra L. Rev. 804, 1025-26 (1993) (reconfirming that VAWA provides “that all battered immigrant women have full access to protection orders, can report domestic violence crimes, and can have their abusers prosecuted in the same manner as any other battered woman even if they do not have legal immigration status.”)


14. This is like ER 411: although it is directed only to trial testimony, case law requires that counsel avoid references to insurance during opening statements, closing arguments, and the like. See 5A Wash. Prac., Evidence Law and Practice § 411.2.

15. In reinstatement cases, litigants should be aware of a recent decision, Santillan v. United States Waste of Cal., 853 F.3d 1035 (9th Cir. 2017), in which the Ninth Circuit held that the Immigration Reform and Control Act did not require a wrongfully fired employee to re-verify his immigration status in order to return to work.


Immigrant victims and witnesses, a disproportionate number of whom are women and children, routinely face interrogation about their status.
Racial bias in our courts is vile, destructive, and demeaning. Simply put, we should not tolerate it. We should take every reasonable step to, if not eliminate, then at the very least minimize the opportunity for racial bias to take place.

That was the U.S. Supreme Court’s goal in Batson v. Kentucky, 476 U.S. 79 (1986). Prior to Batson, attorneys could exclude a person from serving on a jury simply because of the color of his or her skin. Although Batson was intended to prevent this, the bar was set so low that only the most lumbering of litigants would fail to clear it.

First, Batson established a heavy burden for the challenge to be sustained: The moving party must prove that the nonmoving party had a discriminatory intent in excluding the potential juror. This is known as the racial animus requirement. It isn’t difficult to come up with a nonracial reason for excluding a person of color. Justice Marshall, who concurred in Batson, foresaw that Batson would not work:

Any prosecutor can easily assert facially neutral reasons for striking a juror, and trial courts are ill equipped to second-guess those reasons. How is the court to treat a prosecutor’s statement that he struck a juror because the juror had a son about the same age as defendant ... or seemed ‘uncommunicative’ ... or ‘never cracked a smile’ and, therefore ‘did not possess the sensitivities necessary to realistically look at the issues and decide the facts in this case.’ ... If such easily generated explanations are sufficient to discharge the prosecutor’s obligations to justify his strikes on nonracial grounds, then the protection erected by the Court today may be illusory.

Id. at 106 (citations omitted).

Second, Justice Marshall pointed out that the new rule would not address unconscious bias:

‘[It] is even possible that an attorney may lie to himself in an effort to convince himself that his motives are legal.’ ... A prosecutor’s own conscious or unconscious racism may lead him easily to the conclusion that a prospective black juror is ‘sullen,’ or ‘discontent,’ a characterization that would not have come to his mind if a white juror had acted identically. A judge’s own conscious or unconscious racism may lead him to accept such an explanation as well supported.

Id. (citation omitted).

In 2013 the Washington Supreme Court repeated that Batson wasn’t working:

Twenty-six years after Batson, a growing body of evidence shows that racial discrimination remains rampant in jury selection. In part, this is because Batson recognizes only ‘purposeful discrimination,’ whereas racism is often unintentional, institutional, or unconscious. We conclude that our Batson procedures must change and that we must strengthen Batson to recognize these more prevalent forms of discrimination.


Thirty-two years after Batson, the Washington Supreme Court was the first in the country to take action. On April 5, 2018, the Washington
Supreme Court adopted GR 37, making it more difficult to use a peremptory challenge to exclude a person from serving on a jury because of his or her race or ethnicity.

While GR 37 makes a number of changes, the most significant is that it eliminates the “purposeful discrimination” test. It is difficult for an attorney to accuse an opposing attorney of having the intent to racially discriminate and it is difficult for a judge to determine an attorney’s intent. Doubts will always favor a finding of the lack of a discriminatory intent, but GR 37 eliminates the requirement that a judge determine intent.

Under GR 37 an attorney may object, and the attorney seeking to exclude a potential juror must give his or her reasons for using the peremptory challenge. The trial judge will then decide if an objective person could say that the exclusion was because of race or ethnicity. If yes, then the peremptory challenge will be disallowed.

GR 37 takes into account that by the time attorneys use their peremptory challenges they have had the chance to remove prospective jurors for bias. Accordingly, by definition, those prospective jurors remaining can decide the case fairly.

The Washington Supreme Court has taken a historic step in adopting GR 37. For too many years courts, academics, and practitioners have complained about Batson’s shortcomings. Our court has followed through on the challenge it gave itself in Saintcalle. This is a much-needed step in addressing explicit, implicit, and institutional bias in our justice system.

Salvador A. Mungia
is a past president of the Washington State Bar Association. He served on the ACLU-W committee that proposed GR 37 to the Washington Supreme Court. He can be reached at smungia@gtl-law.com.

NOTES
1. GR 37 became effective April 24, 2018.
2. GR 37(f) defines “objective observer”: “For purposes of this rule, an objective observer is aware that implicit, institutional, and unconscious biases, in addition to purposeful discrimination, have resulted in the unfair exclusion of potential jurors in Washington State.”
ANNUALLY, THE WASHINGTON STATE BAR ASSOCIATION publishes a report on the Washington Supreme Court’s discipline system. This report summarizes the activities of the system’s constituents, including the Office of Disciplinary Counsel (ODC), the WSBA’s Office of General Counsel (OGC), the Disciplinary Board, hearing officers, and the Client Protection Fund. The report also provides statistical information about discipline for those licensed to practice law in Washington for the calendar year. These pages provide an informal overview of the 2017 Discipline System Annual Report, which is now available on the WSBA website at www.wsba.org.

THE WASHINGTON SUPREME COURT has exclusive responsibility and inherent authority over regulation of the practice of law in Washington. This authority includes administering the discipline and disability system. Many of the Court’s disciplinary functions are delegated by court rule to the WSBA, which acts under the supervision and authority of the Court. Consistent with the Supreme Court’s mandate in General Rule 12.2, the WSBA administers an effective system of discipline in order to fulfill its obligations to protect the public and ensure the integrity of the profession. The prosecutorial and investigative functions of the discipline system are discharged by ODC, while the adjudicative functions are handled by the Disciplinary Board and hearing officers, which are administered by OGC.

WSBA Office of Disciplinary Counsel
- Answers public inquiries and informally resolves disputes
- Receives, reviews, and may investigate grievances
- Recommends disciplinary action or dismissal
- Diverts grievances involving less serious misconduct
- Recommends disability proceedings
- Presents cases to discipline-system adjudicators

Hearing Officers (Administered by OGC)
- Conduct evidentiary hearings and other proceedings
- Conduct settlement conferences
- Approve stipulations to admonition and reprimand

Disciplinary Board (Administered by OGC)
- Reviews recommendations for proceedings and disputed dismissals
- Serves as intermediate appellate body
- Reviews hearing records and stipulations

Supreme Court
- Administers the system
- Conducts final appellate review
- Orders sanctions, interim suspensions, and reciprocal discipline

RESOURCEs
Disciplinary Grievances Received 1,894
Disciplinary Grievances Resolved 1,967
NonCommunication Matters Informally Resolved 154
File Disputes Informally Resolved 65
Public Inquiries, Phone Calls, Emails, & Interviews 5,044

In 2017, the majority of grievances against Washington lawyers originated from current and former clients, and opposing clients. Discipline files are also opened in the name of the Office of Disciplinary Counsel when potential ethical misconduct comes to the attention of a disciplinary counsel by means other than the submission of a grievance (e.g. news articles, notices of criminal conviction, trust account overdrafts, etc.) or through confidential sources.

Active Licensed Lawyers 31,919
Grievance Files Opened 1,894
Disciplinary Actions Imposed 88
Public Formal Complaints Filed 44
Disciplinary Hearings 17
Supreme Court Opinions 2

In 2017, the most common grievance allegations against Washington lawyers related to unsatisfactory performance, personal behavior concerns, and interference with the administration of justice.

ODC’s Intake Staff receives all phone inquiries and written grievances and conducts the initial review of every grievance. After initial review, some grievances are dismissed, and others are referred for further investigation by ODC investigation/prosecution staff. Grievances that are not dismissed or diverted after investigation may be referred for disciplinary action. When warranted and authorized by a review committee of the Disciplinary Board, these matters are prosecuted by disciplinary counsel with the assistance of professional investigators and a support staff of paralegals and administrative assistants. In 2017, ODC received more than 1,850 grievances.
PRACTICE AREA OF GRIEVANCES

Most grievances arise from criminal law, family law, and tort matters.

<table>
<thead>
<tr>
<th>Practice Area</th>
<th>Percentage</th>
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<tbody>
<tr>
<td>Criminal Law</td>
<td>29%</td>
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<tr>
<td>Family Law</td>
<td>19%</td>
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<tr>
<td>Torts</td>
<td>10%</td>
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<tr>
<td>Estates/Probates/Wills</td>
<td>6%</td>
</tr>
<tr>
<td>Unknown</td>
<td>5%</td>
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<tr>
<td>Administrative Law</td>
<td>5%</td>
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<tr>
<td>Immigration</td>
<td>4%</td>
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<tr>
<td>Commercial Law</td>
<td>4%</td>
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<tr>
<td>Real Property</td>
<td>4%</td>
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<tr>
<td>Landlord/Tenant</td>
<td>2%</td>
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<tr>
<td>Workers/Unemployment Comp</td>
<td>2%</td>
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<tr>
<td>Bankruptcy</td>
<td>2%</td>
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<tr>
<td>Labor Law</td>
<td>1%</td>
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<tr>
<td>Collections</td>
<td>1%</td>
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<tr>
<td>Guardianships</td>
<td>1%</td>
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<tr>
<td>Foreclosures</td>
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<tr>
<td>Other</td>
<td>1%</td>
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<tr>
<td>Taxation</td>
<td>1%</td>
</tr>
<tr>
<td>Traffic Offenses</td>
<td>1%</td>
</tr>
<tr>
<td>Contracts/Consumer Law</td>
<td>1%</td>
</tr>
</tbody>
</table>

DISCIPLINARY ACTIONS INCLUDE BOTH public disciplinary sanctions and admonitions. Disciplinary sanctions are, in order of increasing severity, reprimands, suspensions, and disbarments. In Washington, admonitions are also a form of public discipline. Review committees of the Disciplinary Board also have authority to issue advisory letters cautioning a lawyer. An advisory letter is neither a sanction nor a disciplinary action and is not public information. For less serious misconduct, ODC may divert a grievance from discipline if a lawyer agrees to a diversion contract, which if successfully completed results in dismissal of the grievance. In 2017, 11 matters were referred to diversion.

In 2017, 88 lawyers were disciplined. The chart below tracks the number of disciplinary actions imposed over the last five reporting years.
LIMITED PRACTICE OFFICERS (LPOs) and limited license legal technicians (LLLTs) are authorized to practice law in Washington by the Washington Supreme Court. A Washington Supreme Court-mandated regulatory board oversees each limited license. Each licensee is subject to license-specific rules of professional conduct and disciplinary procedural rules. The WSBA administers a discipline system for each of these licenses under delegated authority of the Washington Supreme Court. At the end of 2017, there were 792 LPOs and 25 LLLTs actively licensed to practice. In 2017, the WSBA received two disciplinary grievances against LPOs, with one LPO voluntarily cancelling her license in lieu of revocation. In 2017, the WSBA did not receive any grievances against LLLTs.

SPECIAL PROCEDURES APPLY when there is reasonable cause to believe that a lawyer is incapable of properly defending a disciplinary proceeding, or incapable of practicing law, because of mental or physical incapacity. Such matters are handled under a distinct set of procedural rules. In some cases, the lawyer must have counsel appointed at the WSBA’s expense. In disability cases, a determination that the lawyer does not have the capacity to practice law results in a transfer to disability inactive status. In 2017, three lawyers were transferred to disability inactive status based on an incapacity to practice law.

In late 2015, the WSBA Executive Management Team and the WSBA Board of Governors (Board) initiated discussions about coordinating all regulatory and disciplinary systems for all licenses to practice law (lawyer, limited practice officer, limited license legal technician) authorized by the Court and administered by the WSBA. Among the motivations for coordinating the systems was the realization that administering three separate systems for three license types was neither an efficient nor an effective use of license fees. Subsequently, workgroups of WSBA staff from ODC, OGC, and the Regulatory Services Department (RSD) convened to develop recommendations for a coordinated discipline system.

In June 2017, after seeking and incorporating input from various stakeholders, WSBA staff prepared and submitted for the Court’s initial consideration a proposed model for a coordinated disciplinary and regulatory proceedings system. In addition to coordination of the three systems, a core concept of the initiative is the creation of a professionalized adjudicative system for all disciplinary and regulatory hearings. In July 2017, the Court approved in concept the proposed coordinated discipline system.

After Court approval of the concept, WSBA staff began the process of drafting the coordinated disciplinary proceeding rules. In addition, those admission and licensing processes that involve adjudicative proceedings are also part of this undertaking. When the draft rules are finalized, WSBA staff will seek additional stakeholder feedback in advance of review by the Board and eventual submission of a set of suggested coordinated-system rules to the Supreme Court under General Rule 9.
I always tell my writing students, “You need to read at least twice as much as you write.” Sometimes I wonder if reading is becoming a lost art. In that spirit, I asked WSBA members and staffers to write about some of their favorite books. These are not books about the law; instead they are works that create fictional and non-fictional worlds we sometimes forget to visit as we go about our hectic lives.

Emily White, NWLawyer Editor

**Summer Reading**

_Do I Make Myself Clear_?
Harold Evans

Sir Harold Evans, preeminent editor and author, shares his lifetime of superlative writing experience in his latest book, _Do I Make Myself Clear?_ Evans posits that much of modern writing, especially in the business and political arenas, is verbose and intentionally vague and sloppy. As he puts it, “the oppressive opaqueness of the way much of English is written is one cause for a retreat from reason to assertion.” Through a variety of entertaining formats, Evans shows how to pare flabby writing and convey points with precision. He analyzes a wide range of writing, including speeches, a warranty, insurance provisions, and sections of the Social Security Act. He dissects the White House report about the underwear bomber. His witty delivery, highly useful comparisons, handy lists, and examples of writing he admires, make this book a must-read.

Renee McFarland, WSBA #23054

_End of Night: Searching for Natural Darkness in an Age of Artificial Light_
Paul Bogard

The first time I really saw the night sky was in the Australian Outback. With an unobstructed view, the Milky Way stretched across the sky like a rainbow, so bright it cast shadows.

Sadly, there are not many places left in the developed world to deeply view the night sky. In this book, author Paul Bogard laments the loss of the night sky, and the effect that light pollution has on humans, animals, and birds. Each chapter focuses on an issue related to light pollution, such as how light affects sleep patterns, or its effect on migratory bird flights.

I found the issues presented to be disheartening, but not hopeless. Many cities have taken steps to install “dark sky friendly” street lighting, and homeowners can do the same. Some of the wildest places in the West—Death Valley and Joshua Tree National Parks, for example—have been designated international dark-sky parks, where thousands of stars illuminate the sky. Last year the Central Idaho Dark Sky Reserve was also established as such a park.

In our 24-hour, non-stop society, it is essential that we take the time to see the stars, think of simpler times, and notice the beauty of the natural world as our ancestors would have experienced it.

Sue Strachan, Legal Community Outreach Specialist, WSBA

Defending Gary: Unraveling the Mind of the Green River Killer
Mark Prothero

If there is a prototypical serial murderer, the Gary Ridgway painted by his defense attorney, Mark Prothero, is most definitely not that. Yet Ridgway remains one of the most prolific serial murders of modern times. Presented with an utterly ordinary client—yet still the man who killed so many women even he can’t remember all of them—Prothero describes his own slow realization of the extent of Ridgway’s crimes and details the struggle to save his client from the death penalty amid an arduous hunt for bodies.

Colin Rigley, Communications Specialist, WSBA
If you read this book a long time ago, you should read it again. If you have never read this book, you should now. It is a very personal story about the bravery of one woman speaking the truth and how she was treated when she did.

From Amazon: “Twenty-six years before the #MeToo movement, Anita Hill sparked a national conversation about sexual harassment in the workplace. “After her astonishing testimony in the Clarence Thomas hearings, Anita Hill ceased to be a private citizen and became a public figure at the white-hot center of an intense national debate on how men and women relate to each other in the workplace.”

Linda A. Sullivan-Colglazier, WSBA #22191

The author’s ancestors were some of the largest slave owners in the South. He writes: “Between 1698 and 1865 ... close to four thousand black people were born to the Balls or bought by them.” In this book (it won the National Book Award), Ball searches out and interviews the descendants of his family’s slaves. His family did not approve of his search, but he persisted. Slaves in the Family is a combination of rigorous reporting and memoir. Ultimately it’s an act of reparation.

Emily White, NWLawyer Editor

Set in the gritty, poor neighborhoods of Dublin, this novel follows an undercover cop, Frank Mackey, as the discovery of a dead girl in the basement of an abandoned building thrusts him back into his childhood home, his estranged family, an upbringing he escaped at the age of 19, and a teenage romance that was cut short. Author Tana French uses the decades-cold murder investigation to pull Mackey back in with a family he had successfully hid from for over 20 years. Slowly, she peels back layers to reveal why Mackey left in the first place and the consequences of his absence. With acerbic language that captures a distinct Irish dialect, French weaves together a murder mystery with a family drama that is both intimate and suspenseful.

Colin Rigley, Communications Specialist, WSBA

Muriel Barbery is an eloquent writer, and her novel The Elegance of the Hedgehog is a playground in which she spins her prose. Set in an upscale Parisian apartment, the book follows two protagonists: Renée Michel, the apartment’s frumpy concierge with a secret alter ego; and Paloma Josse, a wickedly smart and precocious girl who plans to commit suicide on her 13th birthday. How they come to meet and help one another is beautifully told through Barbery’s poetic and lyrical words.

Colin Rigley, Communications Specialist, WSBA
Steve Coll’s *Ghost Wars* won the Pulitzer Prize in 2005 and quickly became the definitive history of CIA missteps leading up to 9/11. Now, with *Directorate S: The C.I.A. and America’s Secret Wars in Afghanistan and Pakistan*, Coll picks up where he left off, explaining the past 16 years in the seemingly bottomless vortex known as the war on terrorism. His slow-motion account of the war(s) in Afghanistan, which left more than 100,000 Afghans dead with the Taliban and now the Islamic State locked in place, reads like a farce at times, given the astounding lack of planning and insight from the initial invasion, which carried through the endless suicide bombings that followed. The book is a chronological analysis of astonishing mistakes and repeated failures to answer basic questions, such as: Who is the enemy? Why are we there? How will we know when the war is over?

Noel Brady, Online Communications Specialist, WSBA
Written by the former *The Daily Show* contributor, who you may also remember as the PC from those early 2000s Apple commercials, John Hodgman’s *Vacationland* is delightfully dry and witty, from its opening lines, “I apologize for my beard. Not only because it is terrible—thin, patchy, and asymmetrical—but also because it is inexplicable.” As funny as Hodgman is, he’s also capable of stop-you-dead-in-your-tracks poignancy like, “The cemetery was mostly empty, aboveground at least. But below, it was full to bursting. They don’t bury many bodies anymore: they are almost out of room. So the ground was heaving with the dead, and nature feasted on it.”

Colin Rigley, Communications Specialist, WSBA

*The Particle at the End of the Universe*
Sean Carroll

Remember that thing about that “god particle” that was big news back in 2012 and that gigantic particle accelerator buried underground and spanning across the France-Switzerland border? In *The Particle at the End of the Universe*, Sean Carroll does his best to explain the significance of the Higgs boson—one of the most important discoveries in modern physics—by breaking down the underlying theories for the layperson and, in doing so, revealing the strangeness of our universe: What is space, what is so important about the Higgs boson, and what does The Insane Clown Posse not understand about field theory? Carroll answers all of these questions and more.

Colin Rigley, Communications Specialist, WSBA

*The Girl Who Loved Tom Gordon*
Stephen King

Horrors! Just when you think you left Stephen King behind in your adolescence, along comes *The Girl Who Loved Tom Gordon*. If you like survivalist adventures, this one’s for you. And there’s no lack of woman power in this gripping story. The hero, a 9-year-old girl lost in the rugged Maine wilderness and hunted by a mysterious force, draws on her baseball hero, Tom Gordon, for strength. You don’t have to like baseball or scary woods to love this tale.

Patricia Michl, WSBA #17058

*Storytelling with Data: A Data Visualization Guide for Business Professionals*
Cole Nussbaumer Knaflic

Attorneys often present data in various formats in many areas of law, from damages calculations, to disparate impact analysis, to pattern and practice visualizations. But many attorney visualizations fall short of their intended impact. Knaflic’s book is extremely accessible to people new to the concepts of data-visualization design. It’s full of immediately applicable advice to help you tell your story with data. Beware: once you read it, you will scoff at an over-labeled axis, cringe at improper use of color, and nearly swoon at poorly considered bolding.

David Andrews, WSBA #41134
2018 Winter Bar Exam Pass List

Of the 317 candidates who took the Winter 2018 bar exam, 156 candidates passed. Congratulations! The full pass list is below.

A
Abbasi, Justin Omid, Bellevue
Abbott, Davis, Seattle
Adams, Cedric, Olympia, CA
Ahmed, Anum, Renton
Alpert, Amanda Belle, Mill Creek
Alsbury, Donald Lavern, Mercer Island
Aquino, Terese Ray Anne Obial, Redmond

B
Bailey, John Patrick, Seattle
Barajas, Olga Elizabeth, Seattle
Bedient, Lindsay Nicole, Sammamish
Bess, Jeff Harley, Ozark, MO
Broderson, Diane Renee, Spokane
Bruce, Joyce Mesrak, Seattle

C
Campelo Garcia, Cristina Candelaria, Miami, FL
Carr, Shawn Carlton, Spokane Valley
Casey, Ryan Michael, Seattle
Catunao, Cheerful, Olympia

D
Daheim, Adam Zedikiah, Tacoma
Davis, Cynthia, Auburn
Decarlow, Andrew Steven, Seattle
Dodd, My-Lan, Seattle
Dore, Frederick Hudson, Silverdale

E
Elizondo, Lisa Marie Calderon, Seattle
Emeric, Kacie Brooke, Seattle

F
Feng, Wendy Mengwen, Seattle

G
Gagley, Elizabeth Rose, Cle Elum
Gaigalaite, Ausra, Lynnwood
Garcia, Elisa Victoria, Ephrata
Gassikia, Ganiyou Oladimedji, Chicago, IL
Gibb, Rohan William, Seattle
Gibbs-Ruby, Kristina Marie, Seattle
Goddard, Lincoln James, Seattle
Grewe, Joshua Paul, Spokane

H
Hamamlow, Eidon, Santee, CA
Hamilton, Jeff Steven, Seattle
Hayes, James Darrell, Seattle
Hayes, Joseph Fitzgerald, Bellingham
Haythorn, Lindsey Fay, Seattle
Hill, Whitney Fowler, Seattle
Himes, Courtney Ann, Vancouver
Hine, Richard R., Renton
Hinton, Darrah N., Bremerton
Hopkins, Natalie Claire, Seattle
Horn, Heywood, Spokane
Hughes, Inesa, Seattle
Hunsucker, Sarah, Bellevue
Hutchins, Marie Kimberly, Seattle

I
Ilyes, Imre Koppany, Seattle
Ingram, Cassandra Renee, Seattle

J
Jepson, Nathan Lewis, Newcastle
Jiang, Yuxin, Pittsburgh, PA
Johal, Kira Jesica, Seattle
Jouravleva, Maria, Tacoma
Juettner, Mary Ellen, Maple Falls
Jun, Anne Y., Bellevue
Jurisch, Alexander Arthur, Mill Creek

K
Kauffman, Cameron Blair Royle, Vancouver
Kautz-Holbrook, Elise Madeleine, Selah
Kilpatrick, John Wesley, Seattle
Kostas, William Anthony, New York, NY
Koven, Noah Adam Isreal, Seattle
Kumar, Hari, Federal Way

L
Landeen, Eric John, Indianola
Larsen, Jessica Aurelia, Bremerton
Larson, Michelle Clara, Seattle
Lawton, Kelly Anne, Seattle
Lee, Hyun-Ji Alexandra, Mukilteo
Lei, Mimi, Seattle
Lemons, Rebecca Jean, Kennewick
Li, Gaoyan, Everett
Li, Zhoulang, Seattle
Lin, Yining, Seattle
Lindeman, Julia Momoka, Bellevue
Lucas, Shaun Patrick, Las Vegas, NV

M
Mallory, Jake, Burien
Martinez, Johanna D., Renton
Martinez, Zak, Rockwall, TX
Maxey, Morgan C., Spokane
McAloon, Stephanie, Renton

N
Nance, Michelle Renee, Kirkland
Newman, Virginia Susan, Seattle
Novaes Procopio De Araujo, Cristina, Seattle

O
Oberste, Mae, Kirkland
Ollero, Danielle Marie, Seattle

P
Parekh, Jaimini, Seattle
Patel, Kushal, Ely, NV
Peetros, Samantha Ann, Seattle
Pestarino, Cameron Taylor, Olympia
Peterson, Jeremy Scott, Puyallup
Poland, Waylon Lee, Seattle
Pridegon, Trina L., Kent

R
Racek, Emmilee J., Silver Spring, MD
Rice, Angela Joyleen, Bellevue
Rodela, Teresa Raquel, Bellevue

S
Sadler, Katelin Anne, Spokane
Saling, Ian Donnelly, Seattle
Schibret Murdock, Jamie, Arcata, CA
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T
Tang, Roger Fan, Seattle
Tarbutton, Jeffrey Paul, Spanaway
Taylor, Amy Phan, Seattle
Torrence, Brittany Rose, Marysville

V
Valencia, Erika, Yakima
Vassallo, Virginia Marie, Portland, OR

W
Walker, Alexandra Anne, Los Angeles, CA
Warack, Nicholas Joseph, Bremerton
Watkins, Austin Michael, Fairfax, VA
Wei, Wendy W, Shoreline
Whaley, Elaine Lucinda, Seattle
Williams, Catherine Robinson, Seattle
Wolff, Kelsey Rio, Seattle
Wyckoff, Michael Ian, Seattle

Z
Zahilay, Girmay, Seattle
Zappala, Mark Matthew, Redmond
2018 marks five years since the Washington State Bar Association Board of Governors adopted the WSBA’s Diversity and Inclusion Plan, and we are proud of the progress that has been made. Since that time we have reached thousands of people across Washington through these events:

- **33** Community Networking Events
- **6** Receptions for incoming law students from the Seattle University ARC program
- **3** Experience Exchange mentorship events
- **57** Diversity Trainings for legal professionals held throughout the state
- **3** Beyond the Dialogue panel discussions on current events relating to diversity
- **14** CLEs, including 6 Legal Lunchbox CLEs focusing on issues surrounding diversity

Thanks to **K&L Gates** and the **Costco Wholesale Executive Matching Program** for their sponsorship of the five-year diversity celebration.

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FACTORS CONSIDERED WHEN DETERMINING CHARACTER AND FITNESS

(a) Factors Considered. The following factors shall be considered when determining an applicant’s good moral character and fitness to practice law:

1. unlawful conduct;
2. academic misconduct;
3. making of false statements or omitting material information in connection with an application for limited admission to practice law, to take an examination required for admission, or otherwise for a license or admission to practice law;
4. misconduct in employment;
5. acts involving dishonesty, making false statements, fraud, deceit, or misrepresentation;
6. abuse of legal process;
7. neglect of financial responsibilities;
8. disregard of professional obligations;
9. violation of a court order;
10. conduct demonstrating an inability to meet one or more essential eligibility requirements for the practice of law;
11. denial of admission to the bar in this or another jurisdiction on character and fitness grounds;
12. disciplinary action by any professional licensing or disciplinary agency of any jurisdiction;
13. conduct that physically threatens or harms another person; and
14. any other conduct that reflects adversely on moral character or fitness of the applicant to practice law;

(b) Aggravating and Mitigating Factors. The following factors shall be considered in mitigation or aggravation when determining an Applicant’s good moral character or fitness to practice law:

1. applicant’s age at the time of the conduct;
2. recency of the conduct;
3. reliability of the information concerning the conduct;
4. seriousness of the conduct;
5. factors or circumstances underlying the conduct;
6. cumulative nature of the conduct;
7. candor in the admissions process and before the Character and Fitness Board;
8. materiality of any omissions or misrepresentations; and
9. evidence of rehabilitation, recovery, or remission, which may include but is not limited to the following, no single one of which is determinative;
   (i) absence of recent misconduct
   (ii) compliance with any disciplinary, judicial, or administrative order arising out of the misconduct;
   (iii) sufficiency of punishment;
   (iv) restitution of funds or property, where applicable;
   (v) applicant’s attitude toward the misconduct, including without limitation acceptance of responsibility and remorse;
   (vi) personal assurances, supported by corroborating evidence, of a desire and intent to engage in exemplary conduct in the future;
   (vii) constructive activities and accomplishments since the conduct in question;
   (viii) the applicant’s understanding and acceptance of the factors leading to the misconduct and how similar misconduct may be avoided in the future;
   (ix) length of time in which the applicant has been in recovery, or remission, where applicable, and if it is less than two years, expert opinion that the period of treatment, recovery, or remission is adequate for the Applicant to meet the essential eligibility requirements for the practice of law; and
   (x) compliance with any recommended or prescribed treatment plans.

Fit to Practice Law, continued from page 14. to Bar Counsel, APR 22.1(b), who “review[s] the material evidence in the light most favorable to the Bar’s obligation to recommend the licensure or admission to the practice of law of only those persons who possess good moral character and fitness to practice law.” APR 21(d). If Bar Counsel sends the applicant to the C&F Board for a hearing, using a memo to present the basic facts, it is almost always without any recommendation, as was the case in Simmons. At the hearing, the applicant, who can be represented by counsel, presents testimony and may present witnesses, and has the burden of proving, “by clear and convincing evidence that he or she is of good moral character and possesses the requisite fitness to practice law.” APR 24.1(c).

The C&F Board is made up of at least three community members who are not licensed to practice law, appointed by the Court, and at least one WSBA member from each congressional district, appointed by the WSBA Board of Governors. APR 23(a). In its review, the C&F Board considers the 14 APR 21(a) factors—including unlawful conduct, academic misconduct, abuse of the legal system, and lying or omitting information in the Bar application—in light of enumerated aggravating and mitigating factors such as recency and cumulative nature of the improper conduct and candor in the admissions process. APR 21(b).

Simmons affirms that the APRs do not categorically exclude an applicant with a criminal record or history of substance abuse, which is a marked contrast to admission rules in states such as Kansas, Mississippi, and Texas, where felony convictions are considered automatic grounds for denial.\(^5\)

At the conclusion of the hearing, the C&F Board deliberates and arrives at a recommendation to the Court about whether the Court should admit the applicant. The decision is delivered orally to the applicant that same day and generally immediately after the deliberation is concluded. The C&F Board
prepares written findings, conclusions, and a recommendation, which are sent directly to the Court. The Court reviews each written recommendation and, generally within a short period of time, enters a written order either approving or denying the application. In unusual cases, the Court hears appeals from the C&F Board’s recommendation. At that stage, Bar Counsel, who serves as counsel to the C&F Board, responds to the Court’s procedural inquiries. The Simmons Court underscored the challenges these volunteers face in performing a necessary service in a self-regulating profession:

The inquiry involved in evaluating a person’s moral character is easier said than done. It involves weighing a variety of factual circumstances involving extremely personal considerations, with an eye toward protecting the public while upholding a consistent, bias-free, and evenhanded application of general guidelines. Nevertheless, it is a decision that must be made on a regular basis in our self-governing profession. We do not discount the difficulty of the Board’s duty in this regard. Simmons, 190 Wn.2d at 400.

In her article in this issue, Simmons similarly acknowledges the challenges the C&F Board faces.

INSIDE OUT—IDENTIFYING AND MINIMIZING BIASES IN SUBJECTIVE DECISIONS

In a typical year, WSBA receives about 2,500 admission applications. About 1 percent of those—between 12 and 20 cases—go before the C&F Board for a hearing. For each, the goal of the admissions process is well articulated by the Washington Supreme Court: “protecting the public while upholding a consistent, bias-free, and evenhanded application of general rules.” Simmons, 190 Wn.2d at 400 (emphasis added). On the rare occasion such as Simmons when the Court clarifies application of its rules, the regulatory boards performing these
Larger questions were raised about the process itself, especially when two adjudicatory bodies acting in good faith could apply the same factors and reasonably reach different conclusions.

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functions for the Court have the responsibility to listen carefully and learn.

One substantive point of disagreement between the Court and the C&F Board was whether Simmons’ attitude toward her prior conduct was appropriate. “The majority of the Board thought that ‘[s]ome of the attitudes she expressed in the record and at the hearing signal that her acquired fame has nurtured not integrity and honesty, but a sense of entitlement to privileges and recognition beyond the reach of others.’” Simmons, 190 Wn.2d at 386.

To the contrary, the Court concluded that the C&F Board “did not give sufficient weight to the level of personal insight Simmons has demonstrated, and ... the Board erred in viewing Simmons’ publicity and the pride she rightly takes in her accomplishments as negative factors.” Id. at 399.

The Court compared Simmons’ circumstances with those of a 2014 bar applicant with prior felony convictions who had served a 10-year prison term. In his case, the C&F Board unanimously recommended his application to sit for the bar be granted. The Court did not believe there was “a sufficient basis on which to differentiate between [their] respective attitudes toward their prior misconduct and the publicity they have received, except for their gender.” Simmons, 190 Wn.2d at 398. Although the Court disagreed with the C&F Board’s recommendation in Simmons’ case, it emphasized that “we do not hold that it acted arbitrarily,” id. at n.13, and further noted that “Simmons ‘makes no allegation of bias in this case.’” Id. The Court therefore did not “explore potential indicators of bias,” id., noting “only that it is extremely important for the WSBA and the courts to ensure that they are sufficiently informed to make subjective judgments about applicants with histories of substance abuse, criminal convictions, and financial problems.” Id.

“We whole-heartedly agree,” said WSBA President Bill Pickett. “A more diverse and inclusive legal profession
is at the core of our mission and values, and we begin with an ‘inside-out’ philosophy—WSBA has to be the model internally, it’s the spirit of ‘practice what you preach.’ When it comes to unconscious biases and structural racism in our own entities and processes, we are on the journey, but we’re never finished. This commitment is not simple or easy. As leaders, we need to evaluate cases like Tarra Simmons’ that take us through the entire range of review and continue to learn and improve.”

WSBA facilitates many boards that assess members’ (and potential members’) conduct and make decisions that profoundly affect their professions and lives. As with any legal process resolved by a decision maker, these determinations are necessarily subjective, according to Joy Williams, WSBA’s Diversity and Public Services Programs Manager, who works with the legal community external to the WSBA on diversity matters: “It’s a matter of how you weigh the factors, but how you weigh the factors is influenced by biases in ways you don’t even realize.” Without systematically calling out and accounting for such biases, a subjective decision-making process is a “wide open door,” through which bias can enter, Williams added.

In practice, combatting structural bias starts with evaluating the decision-making rules themselves. For example, a WSBA work group—with representatives from state and national Attorneys with Disabilities associations—convened in 2014 to thoroughly review the Washington Supreme Court’s APR character-and-fitness factors and WSBA admissions procedures. (See NWLawyer DEC 2016/JAN 2017 at p. 13.) The focus was on new interpretations of the Americans with Disabilities Act and protections afforded under the Washington Law Against Discrimination, including protections in cases involving the presence of a mental disability. Based on the committee’s recommendation, the Supreme Court amended the relevant portions of the

The Washington Supreme Court has the ultimate authority, in every case, to decide whether an applicant’s application to take the bar exam is approved or denied.

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In a typical year, WSBA receives about 2,500 admission applications. About 1 percent of those—between 12 and 20 cases—go before the C&F Board.

APRs, changing the definition of “fitness” from one based on whether the applicant has a mental impairment that could affect his/her ability to practice law to one based on whether the applicant’s conduct and behavior meet essential eligibility requirements. All questions about mental health were eliminated from WSBA’s admissions forms.

A plan to review and offer additional support and training to WSBA’s decision-making entities is already underway, according to WSBA Executive Director Paula C. Littlewood. The WSBA Diversity Team is looking more holistically at the committee and board process from top to bottom—Robin Nussbaum, Inclusion and Equity Specialist who works with WSBA staff and volunteers, notes that the focus of the analysis includes recruiting and screening procedures for appointing committee members (who’s represented and who’s not); an initial assessment to determine committee members’ readiness to begin training; and ongoing, mandatory training using tools like Harvard’s Implicit Bias Association Test. The team will also look at WSBA’s evaluation requirement for all entities, which has them annually report on inclusion and equity efforts aimed at increasing awareness, developing competency, and mitigating bias in decision making.

While the C&F Board, Judicial Review Committee, and Disciplinary Board are top priorities for such a review this summer, other entities are undertaking similar work. The WSBA Board of Governors has created a work group to look at diversity in the President-Elect position, including what (if any) intentional set-asides are needed for diversity. At the same time, WSBA and its Diversity Committee and partners just celebrated the fifth anniversary of the WSBA Diversity and Inclusion Plan. See “One Step at a Time: How the WSBA and Washington legal profession are moving forward on a path of diversity and inclusion,” at page 24. The goal is an inclusive community that promotes historically underrepresented groups to enter, remain, thrive, and lead in the profession of law. Williams’ team has reached thousands of legal professionals across the state through trainings, panel discussions, CLEs, mentorships, and networking events since the plan’s adoption. Williams is currently leading training on microaggressions and implicit bias for the Washington Attorney General’s staff, among others. Nussbaum has focused on training WSBA committees and boards, section leadership, and WSBA leadership and employees on topics including implicit bias, allyship, microaggressions, and accessibility and accommodations. In addition, she has led numerous conversation groups on diversity and inclusion topics.

“At the end of the day, it’s our volunteer members who graciously give their time, expertise, and best intentions to do this work,” said Littlewood. “It’s up to WSBA to make sure the framework sets them up to be successful. To be inclusive, we need to welcome and encourage all different perspectives, ideas, and experiences.” NWL

NOTES:
2. Every licensed legal professional in Washington—including lawyers, Limited Practice Officers and Limited License Legal Technicians—goes through the same character and fitness process.
3. Although Simmons chose to make some aspects of her life and history public, the volunteers on the C&F Board remain under an obligation of strict confidentiality with respect to all information presented during its review of Simmons’ application. For that reason none of these C&F Board members may comment on what was presented at that hearing.
4. Bar Counsel in this context means Regulatory Counsel, not Disciplinary Counsel. Admissions is not a disciplinary process, but rather a regulatory process.
6. Prior C&F Board decisions are entirely confidential, even to current board members. This requirement of complete confidentiality means that the C&F Board that reviewed Simmons’ application would have had no way of knowing about the C&F Board’s decision-making process with respect to the 2014 bar applicant discussed in the Court’s opinion. As Simmons notes on page 56, the C&F Board “did not necessarily know the case details of my mentors who were recommended for admission.”
in light of my criminal record. For a short period of time, I was essentially homeless. However, I refused to accept that this was the end of my ability to become a productive member of society, and I remembered the promises I made to my children in those prison visiting rooms. I knew returning to selling drugs or the underground economy was simply not an option. This determination to rise above my circumstances was the fuel that led to my law school application.

**OVERCOMING BARRIERS**

Throughout law school I came to better understand the role that civil legal aid lawyers can play in overcoming barriers to reentry. For example, legal financial obligations (LFOs) are very problematic for people with a criminal record living in poverty. Disparities in how LFOs are imposed by county have left many former justice-involved individuals with thousands of dollars of debt. Under Washington law, LFOs accrued 12 percent interest from the date of sentencing. This meant that while individuals are serving their time in prison, their LFO debt is increasing even while they lack the ability to earn money and make payments. People routinely come out of prison owing thousands more than they owed when they went in. Because of my experiences, and a desire to remove this barrier for others, I started advocating to reform the LFO system during my first year in law school. After four years of advocacy by many groups, the legislature passed HB 1783 in the 2018 legislative session and prospectively removed interest on non-restitution LFOs. However, there is still more work to do. (See page 21.)

Currently, there is no uniformity in enforcement. In some counties, the collection practices include assignment of debt to aggressive third-party agencies, garnishments, and even incarceration. These practices perpetuate harm on the most vulnerable and lead to poor reentry outcomes, which can reduce public safety and increase recidivism. Civil legal aid has an important role to play in balancing the scales of justice and helping individuals overcome barriers such as LFOs. In addition, lawyers can assist individuals to find opportunities for employment, housing, family reunification, consumer debt relief, and many other civil legal needs. In some instances, civil legal aid lawyers can also provide the support and encouragement necessary to turn a former prisoner into a Skadden Fellow. I simply would not have accomplished my dream without the civil legal aid lawyers who played instrumental roles in my journey.

**A LIFE WORTH FIGHTING FOR**

I still face barriers in my personal and professional life, but I will not let the hardships of my past define my future. I have been blessed with many mentors and supporters who have helped me to realize my dreams and to make a difference in the lives of others. I am proud to be a part of the Skadden Fellowship program, and I am committed to using my legal education to help others who are facing similar challenges. I believe that every individual deserves a fair chance to live a fulfilling life, and I will continue to fight for their rights and dignity.
professional life. For example, I’ve learned that I can never volunteer in my children’s school. This means that I am not able to fully participate in field trips or volunteer in the classroom, or fulfill that need for my children. In the scheme of things, my family will overcome because we have access to many resources. However, at a systemic level, this means there are thousands of children who may not fully appreciate the reasons for their parent’s lack of engagement. For families who are also trying to break the generational cycles of poverty, trauma, and incarceration, parent engagement in education is particularly important. In addition, I’ve been denied law school externships due to my criminal record, and renting a home is always difficult.

However, the most devastating barrier I’ve faced to date was the recommendation by the WSBA Character and Fitness Board that the Supreme Court deny my application to sit for the bar exam with my graduating class. That entire process added another layer of trauma, which I’m still recovering from. On the night of my rejection, immediately following the conclusion of the hearing, I simply did not want to live. My attorney, Professor John Strait, had spent half of his life representing individuals in these type of cases. He said he had never seen anybody provide a record of rehabilitation like mine. I was literally shocked to my core. No matter how much compassion Professor Strait attempted to offer, we both knew that getting the Supreme Court to reject the recommendation of the C&F Board in my case would be difficult because it had been over 30 years since the Court issued a published opinion and the process to gain a full review with a hearing was foreign. Some may wonder how, with my record of misconduct, I believed others would find me worthy of redemption. However, I had seen others with similar backgrounds become lawyers. My good friend, Shon Hopwood (who later joined John Strait as co-counsel in my case), had served nearly 12 years in federal prison for armed bank robbery, and one of my lawyer-mentors had been indicted on over 60 federal charges for organized crime and racketeering. In the end, I’ve learned how difficult the process is for both the applicant and the volunteer lawyers on the Character and Fitness Board, who did not necessarily know the case details of my mentors who were recommended for admission.

In addition, I was misunderstood by decision-makers in regards to my demeanor, and doubted as to whether I had sufficiently proven my rehabilitation. My reasonable sense of accomplishment earned through hard work and perseverance was unfairly seen as a sense of “entitlement”—trust me, after what I’ve been through, I don’t feel enti-
tled! During the seven months between the denial and the Supreme Court’s unanimous holding in my favor, I battled overwhelming fear and anxiety. However, I also found peace by utilizing the spiritual principles of my recovery program, and from the encouragement of an overwhelming cross-section of the legal, judicial, legislative, recovery, and faith communities.

Through a lot of guidance and mentorship, I learned the power of my own story to inspire others and how we can organize together to educate the profession and make necessary changes that allow space for healing, justice, redemption, and second chances. I am pleased to hear about WSBA’s commitment to an “inside-out” approach to diversity and inclusion, which will encompass implicit bias training with staff and volunteers on committees and boards, including the Character and Fitness Board, and continued work towards a diverse and inclusive profession. The willingness of the WSBA to recognize there is still progress to be made takes great humility and courage. For me, if my pain can make this process better for others coming up behind me, then it was all worth it.

Because of the uncertainty surrounding my licensure, I had to change the content of my Skadden Fellowship. I’ve attacked the barriers to reentry through more systemic policy reform and legislative advocacy. I was honored to work with many stakeholders as we changed laws in Washington state this year to provide fair chances in employment and higher education, in addition to progress toward LFO reform. This is real change for the better. But I’m very excited that I have now received my license because I will have the opportunity to start representing others who are also in need of a second chance.

I also hope to continue the efforts to make the legal profession a viable option for people who have experienced incarceration and have since transformed their lives. There is value in having a profession that is representative of the community it serves. Often times, clients I’ve assisted have shared with me how they trust me more because they feel understood and believe I can empathize through a shared experience. In addition, if a formerly incarcerated lawyer practices criminal defense, they will be uniquely qualified to prepare clients for incarceration, and may also have deeper insight into the many ways collateral consequences can be avoided.

**A CALL TO POSITIVE CHANGE**

The court rules governing admission need to be flexible and are therefore open to subjective interpretation—and subjectivity is subject to bias, however unconscious. It will take hard work and commitment to build an inclusive bar.
Some things I’d like to see would include creating a task force where bar counsel, advocates, law school admission deans, and people who’ve experienced character and fitness hearings come together to analyze current practices and brainstorm how to ensure fair and bias-free treatment of all applicants. Recently, I was invited to such a convening held at Stanford Law School.

In addition, there is work being done on the national level because many states have recognized the admissions process is imperfect. These problems are compounded due to lack of transparency and no collection of data. In my case, there was concern about the treatment of me (as a woman) compared to the treatment of men in the unpublished cases provided to the Court. However, no matter what sex the applicant is, there is always a common fear regarding the gamble one must take to finance and finish law school, and only then face the anxiety of the unknown admissions process. Having a conditional process where applicants could seek pre-qualification prior to taking on the cost and time of law school could be worth exploring for a bar association committed to building an inclusive profession. Perhaps then, people won’t have to experience the humiliating denial I did based on something so subjective as my hard-fought self-worth and pride in building a life worth fighting for, and the achievements I earned.

With every barrier I face, I’ve also considered it a test of my faith, and an opportunity to bring awareness about the policies that continue to harm thousands of others throughout our state and nation. I recognize that I have privileges that others do not. I have had opportunities for education that are inaccessible to most who have been to prison, and support from a very diverse network that has become like a family. I also have doubt that I would be where I am today if I were a person of color. Therefore, I humbly accept the opportunities I’ve received while simultaneously recognizing the great responsibility I have to be a bridge between the different sides of the law.

In everything I do, I will never lose sight of where I come from, and I am committed to continuing to pay back the society I once harmed. It is always an honor to help others reach their potential. At times that means I am giving a speech at a judicial conference, and the next day spending time with the women still fighting to find hope in prison. Through these experiences, along with the lawyer-mentors and recovery family I have found along the way, my life has been transformed. I want nothing more in life than to carry my life experiences and my legal skills to liberate others who are hurting or simply in need of a helping hand. That is the work I will continue to do in my professional and personal settings because that is my calling in life—a life worth fighting for! NWL.

TARRA SIMMONS is an attorney and Skadden Fellow at the Public Defender Association in Seattle. She is also the Executive Director of Civil Survival, an advocacy organization led by former justice-involved individuals advocating for systemic policy reform in the criminal justice system. Simmons was recently named the 2018 Washington Association of Criminal Defense Lawyers Champion of Justice. She can be contacted at tarra.simmons@defender.org.

NOTES:
2. https://www.tvw.org/watch?eventID=201711036
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Proposed Consumer, Money, and Debt Law LLLT Practice Area

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<th>Scope</th>
<th>Proposed Permitted Actions &amp; Proposed Limitations</th>
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| **Legal Financial Obligations (LFOs)**     | **Proposed Permitted Actions:**  
  Assistance filling out forms (e.g., Motion for Order Waiving or Reducing Interest on LFO, Order to Waive or Reduce Interest on LFO)** |
| **Small Claims**                           | **Proposed Permitted Actions:**  
  Assistance preparing the Notice of Small Claim, Certificate of Service, Response to Small Claim, Small Claims Orders, Small Claims Judgment, and counterclaims  
  Preparation for mediation and trial  
  Obtaining and organizing exhibits** |
| **Student Loans**                          | **Proposed Permitted Actions:**  
  Negotiation of debt or payment plans  
  Modifications, loan forgiveness and debt relief  
  Discharge** |
| **Debt Collection Defense and Assistance** | **Proposed Permitted Actions:**  
  Negotiation of debt  
  Assistance filling out Complaints, Answers and Counterclaims  
  Affirmative Defenses including statute of limitations defenses  
  Reporting Fair Debt Collection Act violations, including statute of limitations and state collection agency statute violations  
  Reporting to regulatory agencies**  
  **Proposed Limitations:**  
  LLLTs can assist only with debts valued at less than the jurisdictional limits set by the District Court ($100,000)** |
| **Garnishment**                            | **Proposed Permitted Actions:**  
  Negotiation  
  Voluntary Wage Assignments  
  Exemption Claims, including assistance at court hearings** |

Garnishment continues on next page
### Garnishment, continued

**Proposed Limitations:**
- LLLTs can assist only with debts valued at less than the jurisdictional limits set by the District Court (usually $100,000).
- LLLTs may render legal services for debt collection only when there is a direct relationship with the original creditor and may not act as or render legal services for collection agencies or debt buyers as defined under RCW 19.16.
- No prejudgment attachments
- No executions on judgments

### Identity Theft

**Proposed Permitted Actions:**
- Advise regarding identity theft
- Best practices for protecting information
- Contacting credit bureaus
- Reporting to law enforcement and other agencies such as Federal Trade Commission

### Wage Complaints and Defenses

**Proposed Permitted Actions:**
- Representation in negotiations or hearings with Labor and Industries
- Accompany and assist in court
- Advice and reporting regarding Minimum Wage Act
- Advice and reporting regarding Fair Labor Standards Act
- Actions permitted under RCW 49.48 (Wages-Payment-Collection)
- Actions permitted under RCW 49.52 (Wages-Deductions-Contributions-Rebates)

**Proposed Limitations:**
- LLLTs may not represent clients in wage claims which exceed the jurisdictional limit set by the District Court ($100,000).

### Loan Modification & Foreclosure Defense and Assistance

**Proposed Permitted Actions:**
- Accompany and advise in mandatory mediation process
- Assist with non-judicial foreclosure actions and defenses under RCW 61.24.040
- Advise regarding power of sale clauses and the Notice of Sale Right of Redemption

**Proposed Limitations:**
- LLLTs would be prohibited from assisting with non-judicial foreclosures if the LLLT does not meet the requirements of RCW 61.24.010.
- No judicial foreclosures

### Protection Orders

**Proposed Actions:**
- Selecting and completing pleadings for Protection Orders for domestic violence, stalking, sexual assault, extreme risk, adult protection, harassment, and no contact orders in criminal cases

### Bankruptcy Awareness and Advice

**Proposed Actions:**
- Explain the options, alternatives, and procedures as well as advantages and disadvantages
- Refer to budget & counseling agency
- Refer to bankruptcy attorney

**Proposed Limitation:**
- No assistance with bankruptcy filing in court

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Financial obligations, small claims, student loans, debt-collection defense and assistance, garnishment, identify theft, wage complaints and defenses, loan modifications and foreclosure defense and assistance, protection orders, and bankruptcy awareness and advice (see table above). The draft of the new practice area and more information is at [www.wsba.org](http://www.wsba.org) (search LLLT Board). Submit comments and questions to LLLT@wsba.org.

**Addition of New Governors Work Group**

Under the current bylaws, the Board of Governors is to increase in size by three at-large governors, with two seats for public members and one seat for a Limited License Technician (LLLT) or Limited Practice Officer (LPO). The Board of Governors in April formed a work group to review a proposed bylaw amendment to remove these three new seats and instead have LLLTs/LPOs run against all other members for election to the board in open Congressional district seats. The 21-member work group will gather feedback and information in public meetings.
to make a recommendation to the board in September 2018 about whether to remove or alter these seats on the board. The work group held its first meeting in July. Meeting dates, minutes, and more information is at www.wsba.org/governors-work-group.

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

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

WSBA Call to Duty-Day of Service
WSBA Call to Duty is designed to inform, inspire, and involve volunteer attorneys in meeting the legal needs of veterans and their families. We strive to provide legal professionals with the tools and training to put their legal skills to work. WSBA has partnered with Kitsap Legal Services and Clallam Jefferson County Pro Bono Lawyers to provide an opportunity to serve veterans in landlord tenant matters. Gain knowledge at a free CLE where attendees will learn the basics of landlord tenant law, understand the perspective of the bench and get up to date on recent changes in the law. The CLE will be held July 28 at 9:30 a.m. at Kitsap Legal Services, 920 Park Ave, Bremerton. After completing the CLE, attendees will spend an afternoon putting their knowledge to practical use as they assist veterans with eviction matters and other residential landlord-tenant issues. Participants can also attend an additional Jefferson Legal Clinic in Port Townsend on Aug. 11. For registration and more information please email publicservice@wsba.org.

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

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

WSBA Budget
To learn more about the WSBA FY18 budget, and the programs and services that it supports, visit www.wsba.org/About-WSBA/Financial-Info.

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

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

ALPS Attorney Match
Attorney Match is a free online networking tool made available through the WSBA-endorsed professional liability partner, ALPS. This resource allows attorneys to set up a profile and indicate whether they are looking for, or available to act as, a mentor. Mentorship programs that meet requirements are now eligible for MCLE credits. The WSBA provides information and links to the ALPS Attorney Match online system as a service to the legal community. For more information, email mentorlink@wsba.org.
Alliance for Equal Justice
Join the Alliance for Equal Justice in closing the justice gap in Washington. The Alliance for Equal Justice is the central communications hub for our state's network of civil legal aid providers, pro bono providers, and partners. To learn about Alliance events, jobs and internships, and volunteer opportunities, and to find tools and resources to promote access to justice, visit www.allianceforequaljustice.org.

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

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

WSBA Member Wellness Program

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

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

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

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

WSBA Practice Management Assistance
The WSBA offers free resources and education on law practice management issues, including financial management, marketing and client retention, and technology. For more information, visit www.wsba.org/pma.

Lending Library
The WSBA Lending Library is a free service to WSBA members offering the short-term loan of books on health and well-being as well as the business management aspects of your law office. You can view available titles at www.wsba.org/library. Books may be borrowed by any WSBA member for up to two weeks. If you live outside of the Seattle area, books can be mailed to you; you will be responsible for return postage. For walk-in members, we recommend calling first to check availability of requested titles. To arrange for a book loan or to check availability, visit www.wsba.org/library.
Need to Know

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

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

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

Dishing up free CLEs! Legal Lunchbox Series
The WSBA invites you to lunch and learn while earning 1.5 CLE credits. And the tab is on us! The WSBA hosts a 90-minute, live webcast CLE at noon on the last Tuesday of the month.

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

Professionalism in Practice
Attorney William White
Nominated by Mark Arend

To understand the extent of William “Bill” White’s professionalism, ethics, and civility, you should know that the person who nominated him for a WSBA Professionalism in Practice (PiP) award was his opposing counsel.

This was following a civil anti-harassment case in which it was clear that both parties were incapable of any form of communication about resolution. It seemed destined for court with little hope for mediation. Then Bill stepped in.

First, he called opposing counsel to introduce himself and, respectfully, to discuss options for immediate resolution. It became clear that Bill had some creative solutions that were good for both parties; the hard part was working with his own client to move past emotion and show the value of setting aside differences to end the case.

“Bill proceeded to encourage his client to resolve the matter,” said Mark Arend, the opposing counsel who nominated Bill. “He did so in a manner by which it was clear that he respected his client above all, advised his client extremely well under the law and in practicality, and had worked hard to earn his client’s deep and unwavering respect.”

The solution was good for both parties and, with his client on board, Bill brought the solution to the court, which was quite receptive as well.

“Bill’s respect for the court was exemplary,” Arend recalls. “Even [the opposing] client was complimentary of Bill’s demeanor and approach to the case. In the end, everyone was satisfied and I gained a friend in Bill. Bill’s professionalism in practice is truly the standard by which to measure attorneys and is worthy of recognition.” NWL
Disciplinary Notices

These notices of imposition of disciplinary sanctions and actions are published pursuant to Rule 3.5(c) of the Washington Supreme Court Rules for Enforcement of Lawyer Conduct. Active links to directory listings, RPC definitions, and documents related to the disciplinary matter can be found by viewing the online version of NWLawyer at http://nwlawyer.wsba.org or by looking up the respondent in the legal directory on the WSBA website (www.wsba.org) and then scrolling down to “Discipline History.” As some WSBA members share the same or similar names, please read all disciplinary notices carefully for names, cities, and bar numbers.

Disbarment

Lorn Walberg (WSBA No. 32730, admitted 2002) of Meridian, ID, was disbarred, effective 4/06/2018, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.3 (Diligence), 1.4 (Communication), 1.5 (Fees), 1.7 (Conflict of Interest: Current Clients), 1.15A (Safeguarding Property), 1.16 (Declining or Terminating Representation), 8.1 (Bar Admission and Disciplinary Matters), 8.4 (Misconduct). Schia Stonefeld Powell acted as disciplinary counsel. Lorn Walberg represented himself. Patrick A. Espana was the hearing officer. The online version of NWLawyer contains links to the following documents: Order Approving Stipulation to Disbarment; Stipulation to Disbarment; and Washington Supreme Court Order.

Resignation in Lieu of Discipline

Jeffrey Thomas Parker (WSBA No. 22944, admitted 1993) of Seattle, resigned in lieu of discipline, effective 4/11/2018. The lawyer agrees that he is aware of the alleged misconduct in disciplinary counsel’s Statement of Alleged Misconduct and rather than defend against the allegations, he wishes to permanently resign from membership in the Association. The Statement of Alleged Misconduct reflects the following violations of the Rules of Professional Conduct: 1.3 (Diligence), 1.4 (Communication), 1.5 (Fees), 1.15A (Safeguarding Property), 3.2 (Expediting Litigation), 8.1 (Bar Admission and Disciplinary Matters), 8.4 (Misconduct). Marsha Matsumoto acted as disciplinary counsel. Leland G. Ripley represented Respondent. Christopher C. Pence was the hearing officer. The online version of NWLawyer contains a link to the following document: Resignation Form of Jeffrey Thomas Parker (ELC 9.3(b)).

Suspension

Lyle Bradley Bosket (WSBA No. 35707, admitted 2004) of Salem, OR, was suspended for 30 days, effective 2/01/2018, with all of that suspension stayed pending the successful completion of the one-year term of probation imposed by the State of Oregon, by order of the Washington Supreme Court imposing reciprocal discipline in accordance with an order of the Oregon Supreme Court. Joanne S. Abelson acted as disciplinary counsel. Mark J. Fucile represented Respondent. The online version of NWLawyer contains a link to the following document: The Washington Supreme Court Order.

William Robert Brendgard (WSBA No. 21254, admitted 1991) of Vancouver, WA, was suspended for 30 months, effective 2/21/2018, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.4 (Communication), 1.5 (Fees), 1.16 (Declining or Terminating Representation), 8.1 (Bar Admission and Disciplinary Matters), 8.4 (Misconduct). Natalea Skvir acted as disciplinary counsel. William Robert Brendgard represented himself. Evan L. Schwab was the settlement hearing officer. Linda D. O’Dell was the settlement hearing officer. The online version of NWLawyer contains links to the following documents: Order Approving Stipulation to 30 Month Suspension; Stipulation to Suspension Following Settlement Conference Conducted Under ELC 12.12(b); and Washington Supreme Court Order.

Erica Nicole Davis (WSBA No. 30035, admitted 2000) of Kennewick, was suspended for two years, effective 4/06/2018, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.3 (Diligence), 1.4 (Communication), 1.5 (Fees), 1.16 (Declining or Terminating Representation), 3.2 (Expediting Litigation), 8.1 (Bar Admission and Disciplinary Matters), 8.4 (Misconduct). Craig Bray acted as disciplinary counsel. Erica Nicole Davis represented herself. Randolph O. Petgrave, III was the hearing officer. The online version of NWLawyer contains links to the following documents: Hearing Officer’s Decision; Disciplinary Board Order Declining Sua Sponte Review and Adopting Hearing Officer’s Decision; and Washington Supreme Court Order.

Reprimand

Matthew Ian Cooper (WSBA No. 13100, admitted 1983) of Bellevue, was reprimanded, effective 1/16/2018, by order of the hearing officer. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.15A (Safeguarding Property), 1.15B (Required Trust Account Records). Francesca D’Angelo acted as disciplinary counsel. Stephen Christopher Smith represented Respondent. Rebecca L. Stewart was the hearing officer. Chris Pence was the settlement hearing officer. The online version of NWLawyer contains links to the following documents: Notice of Reprimand.

Krista L. White (WSBA No. 8612, admitted 1978) of Sammamish, was reprimanded, effective 1/11/2018, by order of the hearing officer. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.15A (Safeguarding Property), 1.15B (Required Trust Account Records). Francesca D’Angelo acted as disciplinary counsel. Kurt M. Bulmer represented Respondent. Karen A. Clark was the hearing officer. Stephen J. Henderson was the settlement hearing officer. The online version of NWLawyer contains links to the following documents: Notice of Reprimand.

Walter O. Peale III (WSBA No. 7889, admitted 1977) of Shoreline, was reprimanded, effective 12/12/2017, by order of the hearing officer. The lawyer’s conduct violated the
Discipline and Other Regulatory Notices

following Rules of Professional Conduct: 1.15A (Safeguarding Property), 1.15B (Required Trust Account Records). Jonathan Burke acted as disciplinary counsel. Walter O. Peale III represented himself. Lisa J. Dickinson was the hearing officer. The online version of NWLawyer contains links to the following documents: Notice of Reprimand.

Interim Suspension

David Hunter Bjornson (WSBA No. 15228, admitted 1985) of Missoula, MT, is suspended from the practice of law in the State of Washington pending the outcome of disciplinary proceedings, effective 4/06/2018, by order of the Washington Supreme Court. This is not a disciplinary sanction.

Robert Joseph La Rocco (WSBA No. 42536, admitted 2010), of Bellingham, is suspended from the practice of law in the State of Washington pending the outcome of disciplinary proceedings, effective 2/12/2018, by order of the Washington Supreme Court. This is not a disciplinary sanction.

Transfer to Disability Inactive Status

Scott Alexander Candoo (WSBA No. 7815, admitted 1977) of University Place, was by stipulation transferred to disability inactive status, effective 3/16/2018. This is not a disciplinary action.

Pamela Ann Paudler (WSBA No. 22310, admitted 1992) of Lynnwood, was by stipulation transferred to disability inactive status, effective 1/19/2018. This is not a disciplinary action.
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(See, e.g.):

Yates v. Fithian,
2010 WL 3788272
(W.D. Wash. 2010)

City of Seattle v. Menotti,
409 F.3d 1113 (9th Cir. 2005)

State v. Letourneau,
100 Wn. App. 424 (2000)

Fordyce v. Seattle,
55 F.3d 436 (9th Cir. 1995)

LIMIT v. Maleng,
874 F. Supp. 1138 (W.D. Wash. 1994)

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**MEDIATION**
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Mac has over 25 years of experience mediating cases. He has mediated over 2,000 cases including maritime, personal injury, construction, wrongful death, employment and commercial litigation.

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**NEW Advertiser Guidelines**

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Questions?

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Bridget attended Arizona State University for her BS, Western Michigan University, for her JD and University of Denver, for her LL.M in taxation. Bridget joined WSBA in 1998 and State Bar of Arizona in 2000.

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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.

## BUSINESS LAW

**WSBA Practice Primer: Business Law Track — Turning Points**
August 15, 22, 29, Seattle and webcast. 7 CLE credits (5.5 Law & Legal Procedure + .5 Ethics). Presented by the WSBA; 800-945-WSBA or 206-443-WSBA. [www.wsbacle.org](http://www.wsbacle.org)

**Washington Law and Practice Refresher Day 1: Legal Research and Ethics**
August 30, Webcast. 8 CLE credits (4.5 Ethics + 3 Law & Legal Procedure + .5 Other). Presented by the WSBA; 800-945-WSBA or 206-443-WSBA. [www.wsbacle.org](http://www.wsbacle.org)

## COLLABORATIVE LAW

**Collaborative Law: A Foundation**
August 21, Seattle and webcast. 3.5 CLE credits (2.5 Law & Legal Procedure + 1 Other). Presented by the WSBA; 800-945-WSBA or 206-443-WSBA. [www.wsbacle.org](http://www.wsbacle.org)

**Washington Law and Practice Refresher Day 2: Black Letter Law**
August 31, Webcast. 7 CLE credits (1.25 Ethics + 5.75 Law & Legal Procedure). Presented by the WSBA; 800-945-WSBA or 206-443-WSBA. [www.wsbacle.org](http://www.wsbacle.org)

## CONSTRUCTION LAW

**Washington Construction Law**
September 13-14, Seattle. 12.25 CLE credits (11.25 Law & Legal Procedure + 1 Ethics). Presented by The Seminar Group; 800-574-4852 or 206-463-4400; [http://www.tsgregistration.net/5853WSB](http://www.tsgregistration.net/5853WSB)

## DATA SECURITY

**Keeping it Under Your Hat: Trends in Privacy and Data Security**
August 14, Seattle and webcast. 3.25 CLE credits (2.75 Law & Legal Procedure + .5 Other). Presented by the WSBA; 800-945-WSBA or 206-443-WSBA. [www.wsbacle.org](http://www.wsbacle.org)

## GENERAL

**Self-Care and Stress Management**
August 7, Webinar. 1 Ethic CLE credit. Presented in partnership with the WSBA Solo and Small Practice Section; 800-945-WSBA or 206-443-WSBA. [www.wsbacle.org](http://www.wsbacle.org)

**Space Law: Pursuing Peace Instead of War**
August 27, Webinar. 1.5 Law & Legal Procedure CLE credits. Presented in partnership with the WSBA World Peace Through Law Section; 800-945-WSBA or 206-443-WSBA. [www.wsbacle.org](http://www.wsbacle.org)

**Examining the Evidence: Winning Strategies for Success**
August 10, Seattle & webcast. 6 CLE credits (5.25 Law & Legal Procedure + .75 Ethics). Presented in partnership with the WSBA Litigation Section. 800-945-WSBA or 206-443-WSBA. [www.wsbacle.org](http://www.wsbacle.org)

## LABOR & EMPLOYMENT LAW

**Labor & Employment Law**
August 23-24, Seattle & webcast. 11.25 CLE credits. Presented by The Seminar Group; 800-574-4852 or 206-463-4400; [http://www.tsgregistration.net/5851WSB](http://www.tsgregistration.net/5851WSB)

**Limited Practice Officer Refresher**
August 23, Seattle and webcast. 7 CLE credits (4.5 Law & Legal Procedure + 2.5 Ethics). Presented by the WSBA; 800-945-WSBA or 206-443-WSBA. [www.wsbacle.org](http://www.wsbacle.org)

## LIMITED PRACTICE OFFICER

**Legal Lunchbox**
August 28, webcast. 1.5 CLE credits. Presented by the WSBA; 800-945-WSBA or 206-443-WSBA. [www.wsbacle.org](http://www.wsbacle.org)

## LITIGATION

**Examining the Evidence: Winning Strategies for Success**
August 10, Seattle & webcast. 6 CLE credits (5.25 Law & Legal Procedure + .75 Ethics). Presented in partnership with the WSBA Litigation Section. 800-945-WSBA or 206-443-WSBA. [www.wsbacle.org](http://www.wsbacle.org)

## NEW MEMBER

**Financial Focus**
August 22, Seattle & webcast. 2 Other CLE credits. Presented by the WSBA; 800-945-WSBA or 206-443-WSBA. [www.wsbacle.org](http://www.wsbacle.org)

## PRO TEM TRAINING

**Attorney Training for Service as Pro Tem Judge in District and Municipal Court**
August 24-25, Seattle & webcast. 9 CLE credits (2.5 Ethics + 1.25 Law & Legal Procedure + .25 Other). Presented in partnership with the District and Municipal Court Judges Association (DMCJA); 800-945-WSBA or 206-443-WSBA. [www.wsbacle.org](http://www.wsbacle.org)

## REAL PROPERTY

**Developing Contaminated and Blighted Properties**
August 16, Seattle. 6 Law & Legal Procedure CLE credits. Presented by The Seminar Group; 800-574-4852 or 206-463-4400; [http://www.tsgregistration.net/5906WSB](http://www.tsgregistration.net/5906WSB)

**Hot Topics in Residential Landlord-Tenant Law**
August 27, Webinar. .75 Law & Legal Procedure CLE credit. Presented in partnership with the WSBA Real Property, Probate & Trust Section; 800-945-WSBA or 206-443-WSBA. [www.wsbacle.org](http://www.wsbacle.org)

## WATER LAW

**Water Law in Central Washington**
August 16-17, Ellensburg & webcast. 11.5 CLE credits. Presented by The Seminar Group; 800-574-4852 or 206-463-4400; [http://www.tsgregistration.net/5799WSB](http://www.tsgregistration.net/5799WSB)
Positions Available Ads

Job Seekers and Job Posters, positions available ads can be found online at the WSBA Career Center. To view these ads or to place a position available ad, go to http://jobs.wsba.org.

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

For Sale

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

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

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

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

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

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

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

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

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

Portland-based family law practice that is completely turnkey and poised for growth. The practice/case breakdown is 100% family law. In 2017, the practice’s gross revenue was over $400,000. The owner, who is a top-rated lawyer in Oregon, is ready to transfer her goodwill and provide mentorship to the new owner as desired. For more details contact info@privatepracticetransitions.com or call 253-509-9224.

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

Incredible South King County family law practice that is highly profitable with an amazing reputation. The firm handles divorce, child custody and visitation, relocation, non-parental/grandparent custody, and military family-related matters, with average billings per client exceeding $10,000! Contact info@privatepracticetransitions.com or call 253-509-9224.

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

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

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

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

**Growing Tri-Cities general law practice** that has seen 22%, 36%, and 25% growth over the last three years. Offering a variety of services, including family law, criminal law, and estate planning, this business is truly a “one stop shop” for its clients. Contact info@privatepracticetransitions.com or call 253-509-9224.

**East King County real estate & estate planning practice** that has been operating for more than 40 years! A true staple in the community, the practice offers a variety of services, focusing on estate planning (35%) and real estate (25%). Contact info@privatepracticetransitions.com or call 253-509-9224.

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

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

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

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

**Thinking about buying or selling a practice?** If you are, we can help you! Guaranteed. Private Practice Transitions, Inc. is the preeminent provider of specialized brokerage services in the Northwest, catered specifically to the owners of professional services businesses – like you! We have countless buyers and sellers waiting for the right opportunity. Take control of your tomorrow by calling us today at 253-509-9224 or checkout our website at www.privatepracticetransitions.com.

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SPACE AVAILABLE

Two furnished office spaces available one block from the Pierce County Superior Court building. Can be rented separately or as a unit with or without a furnished secretarial space. All you need is your laptop and copy machine. Rent includes use of fax, library, 2 conference rooms, receptionist services and a collegial environment. Use of telephone system also included as well as ample parking for you and your clients. Contact Terry McCarthy or Julie @ 253-272-2206

Downtown Vancouver, WA Class A type space – at 1610 C Street, 1 or 2 large offices and secretarial space available in collegial legal office. Access to conference room, kitchen, work area and copy/scanner. Very reasonable rates. Contact Karey at 360-750-0673 or Juliet at 360-693-1630.

Small Seattle office space in remodeled building on 14th and Yesler. Perfect for 1-2 attorneys and a staffer. Secure building, exposed brick walls, small kitchen plus three rooms and two parking spaces. Furnished or unfurnished. One-year sublease with option to negotiate an additional lease. $1,950. Contact Lizanne Padula 425-883-2883.

Downtown Seattle offices for sublease on 32nd floor, available July 31 but possibly earlier. Unobstructed view to the west and north, over the Ferris wheel, 10 x 14. Sweeping unobstructed view west and north, 20 x 14. Inside office, no view. 9.6 x 15. Reception, mail service, shared conference room 26 x 14 with high definition video, kitchen, high speed copier/scanner, and option to participate in IP telephone system and high speed internet is available. Please call Laurie @ 206-621-0600 or lcolman@thorntonmostullaw.com.

Western view partner office in downtown Seattle (1 or 2 available) professional and collegial environment. Receptionist services, conference rooms included. Workstation also available. Cross referrals possible/encouraged, particularly for practices emphasizing employment, family law or general litigation. Per Office $1,555, Workstation $440, lock in rates before increase due September 2019. Optional Parking Space(s) $350 ea/mo. One year lease required, flexible thereafter. Contact audra@amicuslawgroup.com or 206-624-9410.

25th Floor, Wells Fargo Center, Third & Madison, Seattle. Share space with business, IP, and tax/estates firm, and PI, bankruptcy, litigation, and family law attorneys. Includes receptionist, telephone answering, conference rooms, library, kitchen, fitness center. Fiber Internet, new phones, copier, scanner, fax, furnishings available. $1,325/mo. Nearby assistant space $400/mo. 206-382-2600.

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

VACATION RENTALS

Paris apartment at Notre Dame. Vacation rental. Elegant two-bedroom, 1.5-bathroom apartment in the heart of Paris, owned by WSBA member. 202-285-1201 or angpolin@aim.com.

FOR SALE

Cherrywood desk for sale. Retired attorney has solid cherrywood gentlemen’s desk for sale. The 25-year-old, 7-drawer desk is in very good condition. The Bob Timberlake designed desk manufactured by Lexington Furniture Industries is 6’ long, 38” wide, and 30.5” tall. $1200 obo. 206-661-7976

WILL SEARCH

If you have any information regarding a Will prepared for Theodore Oliver Braida, please contact B. David Thomas at 425-822-5454; david@davidthomaslaw.com
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Patrick Schultheis
Bar No. 28723
Law School: University of Chicago

My name is PATRICK J. SCHULTHEIS and I am a corporate lawyer at Wilson Sonsini Goodrich & Rosati, P.C. I have been practicing law for 29 years, all of them at the same firm. In 1998, I moved from Palo Alto, CA (WSGR’s headquarters), to Washington in order to open the firm’s first branch office. Since that time, the Seattle office has grown from four attorneys to more than 65 attorneys. I represent technology and life sciences companies on all corporate law and securities law matters, from raw startups to multibillion dollar companies. In 2017, I was named chair of the firm’s Corporate Department, which consists of 400 lawyers around the world.

You wrote a contract governing the game. What are the most important rules in the contract? Three main rules: February only, no touch-backs, and the rule of honesty (if another participant asks “are you IT?” you must answer truthfully or promptly).

What are some of the most memorable tags that have occurred? There have been some amazing tags. I got tagged at my dad’s funeral in Spokane. It was a great, classic tag—my dad would have loved it.

To what lengths do Tag Brothers go to avoid being tagged? I once anticipated a tag on Feb. 27, as I was returning home to SeaTac from a business trip to Arizona. I evaded the “Bruiser” (Rick Bruya), who was IT at the time and waiting to tag me at baggage claim, by having my secretary hire a town car driver to wait for me at baggage claim with a sign that said “Schultheis.” My car was parked at the airport, so I stayed inside security, went to another concourse, and made it safely to my car. Meanwhile, the Bruiser was waiting in vain right by the town car driver.

You'd like to learn about you!
Email nwlawyer@wsba.org to request a questionnaire.

Patrick Schultheis and his friends have been playing a game of tag for nearly 30 years and their story has now been made into a movie called Tag. You can find our full Q&A with Schultheis about the game online at NWSidebar.

► I became a lawyer because my father was a long-time judge in Spokane, so I was familiar with the profession and I thought it would be a good way to employ my analytical skills in a way that was interesting.
► My greatest accomplishment as a lawyer is starting the Seattle office of Wilson Sonsini Goodrich & Rosati.
► Technology has changed the practice of law by enabling lawyers to practice anywhere they happen to be.
► I enjoy reading spy novels. They take my mind off work before I go to sleep.
► Nobody would ever suspect that I am a great cook.
► My best recipe I make at home is Yemen’s lamb stew.
► My favorite place in the Pacific Northwest is the first tee at Aldarra Golf Club.
► My fondest childhood memory is exploring the woods behind my parents’ home on Five Mile Prairie, north of Spokane.
► This is on my bucket list: Watching Stanford play in, and win, the college football national championship game.
► This makes me smile: Seeing young lawyers really dig into a complicated issue and come up with a creative solution.
► You’ll find me outside in the Northwest doing this: Playing golf.

► My favorite band/musical artist is Drive-By Truckers.
► My first car was a 1965 Chevy pickup.
► If I could get free tickets to any event, I would go to The Masters.
► My hero is William F. Buckley, Jr.
► I would like to learn Arabic. I love to travel in the Middle East, but have not yet found the time to learn the language.
► During my free time I play golf, smoke cigars, cook, and play tag (but only in February). In 1990, a group of my friends from Gonzaga Prep and I started playing tag (yes, the childhood game) during the month of February as a way of staying in touch after we had graduated from college and law school (in my case) and started our careers. ... We have been playing the game ever since. A reporter from the Wall Street Journal found out about our game, and the Journal published a story about us in January 2013. ... We did multiple print, radio, and television interviews. New Line Cinema bought the movie rights to our story, and Tag was released in June 2018.

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“You helped me through the worst time of my life. You touched me with your kindness, integrity, and honesty. I felt safe, respected, and cared for as your client.” – M. Endale, Seattle, WA