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President Haynes remains. Angry. Arrogant. Dogmatic. Righteous. In this month’s column [“It’s Not Them. It’s You,” by Robin Haynes, APR/MAY NWLawyer], she reminds us we need to attend re-education camp to rid ourselves of our “implicit biases” which reside “deep in the subconscious.” She scolds us for being... us. What happened to the “Proud To Be a Lawyer” and enhancing professionalism campaigns of a few years ago?

Oh, and if you don’t do a “deep dive” to enhance your diversity efforts and your “cultural competence” (no, that does not mean you know your Shakespeare or your Beethoven or your history of Western civilization), you are not doing your part for diversity. She sternly recommends you examine your staffing, your court reporters, even your coffee supplier and the people you buy your toner from to make sure they have her idea of the correct numbers and ratios among their employees, or something. And for you lawyers in the hinterlands, have you addressed this problem: “Is every face on your firm website white and male?”

My grandfather, James Dillard, was president of the WSBA in 1943—he would be, as a number of us are who have given many volunteer hours of time over the years to serve the association, saddened to see the bar association’s leadership constantly hectoring its members with what amounts to demands for conformity of thought and ideology.

Are we certain we’re getting our money’s worth from our mandatory dues? And if you question that should you “be left behind” as our current president suggests?

David Dillard Cullen, Olympia

RESPONSE FROM PRESIDENT FURLONG:

After reading David Cullen’s response to President Haynes’ April/May column, I wanted to add a few thoughts.

The discrimination affecting women, people of color, members of the LGBT community, and persons from other marginalized groups is real and much more pervasive than any of us would like to think. The biases are institutional, long-standing, and, in part, are manifested by those of us with privilege, many times without any intention to act other than appropriately. I have always been proud to be a lawyer; I will be even more proud of my profession as those of us with privilege, on our own volition, peer into our hearts and discover ways to relate to all of our peers in ways that are inclusive and promote equity.

Bradford E. Furlong,
President,
Washington State Bar Association

I keep finding President Haynes’ articles refreshingly blunt and energetic and decided it was time to let you know how much I enjoy them. Also, they give me hope that WSBA will become more and more current and relevant!!

Thank you and keep it up.
Kimberly J. Cox, Lakewood

I would hope that you have been inundated with letters condemning the appalling views of Heath Parker, a lawyer in Auburn, whose letter in the June issue of NWLawyer takes the position that “There is nothing wrong with a free market that favors certain characteristics over others as more marketable, and, therefore, preferable in that market.” Those “certain characteristics,” in the mind of Mr. Parker, include gender. Presumably they would also include race, age, sexual orientation, or any number of other “characteristics” over which individuals have no control.

Contrary to the views of Mr. Parker, the “free market” is not the epitome of all that is good. Many people have literally risked or lost their lives to eradicate the bigotry and discrimination that Mr. Parker insists is an acceptable and even “preferable” result of a “free market.”

Lastly, I share Ms. Haynes’ disappointment that some of our Bar leaders believe that we do not need more diversity training in the legal profession. Mr. Parker’s letter stands as a shining example to the contrary.

Dan M. Albertson, Ruston

IMMIGRATION ENFORCEMENT AND THE COURTS

Could it be that ICE agents conduct immigration enforcement at courthouses because so many local governments refuse to cooperate with efforts to enforce immigration law? [“Immigration Enforcement and the Courts, JUNE NWLawyer.”] At issue is the rule of law. Everyone needs to feel safe going to court proceedings. At the same time, immigration laws need to be enforced. If local officials were more cooperative with ICE, then perhaps there would be less need for ICE agents to show up in courtrooms.

Philip T. Mattern, Seattle

LAW FIRM HYGIENE

Jennifer T. LaCoste, a supervising attorney, shared the article by Mark J. Fucile on “Law Firm Hygiene” [JUNE NWLawyer] with the paralegals in our office. Suddenly, our collective mindset for “chores” like calendaring transformed from a “must do” to a “want to,” keeping our firm, in the words of Outkast, “so fresh and so clean clean.”

Mark Von Weber, Seattle
A year ago the Board of Governors selected me as WSBA President-elect. Since then I have been planning my life to assume the presidency on September 29 of this year. That plan instantly changed when I received Robin Haynes’ resignation as WSBA president. I want to briefly introduce myself to the members of the WSBA and describe my commitment to strive toward our mission “to serve the public and the members of the Bar, to ensure the integrity of the legal profession, and to champion justice.”

I am a 34-year member of the Bar and a partner with my wife, Eileen Butler, in what is literally a mom and pop, small-town practice in Mount Vernon. I principally work with local government in health care, economic development, mental health, and real estate while maintaining a general practice for private clients. Eileen principally acts as a Title 26 and Title 11 Guardian ad Litem, as a certified parenting evaluator, and also handles adoptions. We have three grown children. If you find me out of the office, I usually will be on a bike (mountain and road), under a backpack, or on a pair of skis, all hopefully along with a family member.

I served three years on the Board of Governors prior to my selection as President-elect. My immediate goal is to focus the WSBA’s attention on the needs of our profession and the justice system in general. I want to set a constructive, respectful tone that emphasizes member engagement.

I will promote dialogue that maximizes shared interests rather than positional polemics. When it comes to the future of the legal system, diversity, inclusion, and access to justice, listening to each other and finding common ground is crucial.

My substantive priorities are to keep the WSBA an engaged partner in statewide efforts to increase access to justice. WSBA must remain a leader helping our members prepare for the future practice of law. I will focus on member engagement. I will promote member input and principled decision-making based on our mission.

Although the WSBA has a new president, the legacy of inequity for marginalized communities lives on and must be addressed. I hope that by telling my story of coming to grips with my own privilege and learning to be an ally, others will open their hearts to a similar journey. I assure you, although not always an easy path, such a journey is a step along the route to meaningful change.

I will accomplish nothing on my own. I absolutely need the support of all our members. Only we, not I, can accomplish our mission. I ask that each of you join with me, the Board of Governors, and our staff. Please become and stay engaged; and if you can’t lend a hand, at least lend your goodwill and support to the WSBA. Thank you.
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The WSBA is currently developing its FY18 budget. We’re often asked about the process and what it entails. Here is some background information and an overview of the draft FY18 budget, which I hope you find helpful.

**Fiscal Context for FY18 Budget Development**

The WSBA budget is a policy document and management tool that allocates funds to fulfill our regulatory responsibilities, serve and protect the public, and support nearly 40,000 members in maintaining success in their practices. Each year, we work to build a fiscally responsible budget designed to meet the needs of our members in a diverse, rapidly changing profession. We set budget parameters based on current and multi-year projections of revenues, expenses, and reserves.

Following the 2012 Referendum cutting license fees from $450 to $325 (the 2001-2002 level), we worked very closely with the Board to deliver value to the WSBA membership and maintain a high level of regulatory effectiveness. We covered the shortfall caused by a 28 percent reduction in our main source of revenue by increasing operational efficiencies and intentionally drawing on WSBA reserves.

Among other measures, we reduced staff, expenses, and Board costs. We achieved additional work and space efficiencies by investing in technology, which enabled us to consolidate all operations in one location, reduce our overall footprint by 7,700 square feet, and negotiate our lease through 2026 on extremely favorable terms (calculated to save over $3 million over the life of the lease compared to our next best alternative).

At the Board’s direction, we also introduced, expanded and enhanced needed programs, including: financial accommodations through the WSBA Hardship Option and Payment Plan; employment tools (such as Job Seekers Group); no-cost benefits, including the Legal Lunchbox CLE series, expanded CaseMaker benefits (free legal research for all members), and WSBA Connects (a member assistance program that provides free access to financial services, counseling, and other services and resources for members); new lawyer education and support (free and low-cost seminars and resources); Public Service programs (Moderate Means and Call to Duty); and webcast educational programs and forums, connecting members statewide. Throughout this process, we partnered with the Board to keep close track of reserves.

Last year, after considering the level of resources that would adequately support needed programming, setting policy that WSBA General Fund reserves should not fall below $2 million, and comparing the cost to practice in Washington to that in other jurisdictions in the western United States, the Board raised license fees to $449 in 2018.

### Overview of FY18 General Fund Draft Budget

The WSBA General Fund is supported by license fees and non-license fees, and supports the majority of our work, including regulatory functions and most services to members and the public. As presented to the Budget & Audit Committee of the Board of Governors on June 29, the Initial Draft General Fund FY18 Budget assumes expenses of $19,528,210 supported by $18,913,199 in revenues (3,840,074 is non-license fee revenue), and 141.15 FTEs (the 2008-2009 level). As planned, we are projecting a net loss/use of reserves of $615,011. Consistent with WSBA fiscal policy, based on efficiencies and savings seen at the end of FY16 and projected through FY17, and the budget presented, General Fund reserves will not fall below $2 million at the end of FY18.

The chart that follows is meant to give you a general idea about the cost of WSBA programs and operations—without reflecting offsetting non-license fee revenue. Detailed draft budget materials may be found at http://bit.ly/2tc5mhQ.

As you read through FY18 budget details, I hope you will see that WSBA has worked hard to hone its programming to be relevant to both our members and the public. As depicted on the following page, the budget continues to support all aspects of the discipline system; licensing services; communications and outreach; and WSBA operations. It enables us to provide you with member benefits and professional development opportunities such as the Ethics Line, Ethics School, practice management assistance, Lawyer Assistance Program, Mentorship Program, new and young member training and leadership, member benefits included as part of your license (such as no-cost CLEs and legal research tools); and staff support to 850 WSBA volunteers. It supports WSBA’s efforts to advance diversity and inclusion in the legal profession. The budget also supports the Access to Justice Board and the WSBA’s public service programs, including the Moderate Means program, the Call to Duty program, and other pro and low bono initiatives.

### Next Steps and Opportunities for Input

The Board of Governors will take up the FY18 budget for initial consideration in July and action in September. We welcome your input and will continue to keep you informed about our deliberations. NWL

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**JILL KARMD** was elected to the Board of Governors in September 2014. She is the managing member of Karmy Law Office, PLLC, in Clark County. She can be reached at jillkarmy@karmylaw.com.
**FY18 GENERAL FUND EXPENSE BUDGET**

**DISCIPLINE**: Costs to handle consumer inquiries; to investigate, prosecute, and adjudicate written grievances about lawyers, LPOs, and LLLTs through disposition (e.g., costs associated with disciplinary counsel, hearing officers, and the Supreme Court mandated Disciplinary Board, which adjudicates grievances); to administer the WSBA audit program; and to educate members and law students about legal ethics, trust account compliance, and the discipline system.

**LICENSING & ADMISSIONS SERVICES**: Costs to administer admissions and annual licensing processes for nearly 40,000 WSBA members, including lawyers, LPOs, and LLLTs; to maintain and respond to questions about members and their public information; and to support the Supreme Court mandated MCLE Board, which sets policy and adjudicates issues involving continuing legal education requirements.

**GENERAL COUNSEL**: Legal representation and support to the WSBA, the Board of Governors, and other boards, task forces, and committees; records requests and litigation management; and oversight, interpretation, and analysis of WSBA Bylaws and other legal issues.

**SUPREME COURT MANDATED BOARDS & PROGRAMS**: Costs to support 4 of 6 boards and programs mandated by the Supreme Court: (1) the Access to Justice Board, (2) Limited License Legal Technician Board, (3) Limited Practice Officer Board, and (4) Practice of Law Board. Costs associated with the Disciplinary Board, which adjudicates grievances, and the MCLE Board, which sets policy and adjudicates issues involving continuing CLE requirements, are included in the Discipline and Licensing & Admissions categories, respectively.

**MANAGEMENT & OPERATIONS**: Includes costs associated with the WSBA Board of Governors, leadership, management, and internal support (finance, administration, and human resources).

**OUTREACH & ENGAGEMENT**: Supports WSBA outreach to the public, legal professionals, bar associations, policymakers, and other stakeholders; in order to enhance volunteer recruitment, raise awareness and understanding of WSBA programs and priorities, and create a sustainable stakeholder network.

**LEGISLATIVE & LAW IMPROVEMENT**: Supports work with WSBA leadership and sections to formulate positions on legislation, track relevant legislation during session, and provide technical advice on bills and existing statutes to the Legislature.

**PUBLIC SERVICE, DIVERSITY & WASHINGTON STATE BAR FOUNDATION SUPPORT**: Costs to support: (1) WSBA public service programs (including Moderate Means Program, Call to Duty, and other pro bono initiatives); (2) work to advance diversity and inclusion in the legal profession; and (3) administrative costs of the Washington State Bar Foundation, which provides grant funding for these activities.

**MEMBER BENEFITS**: Includes costs of programs benefiting WSBA’s membership as a part of their annual license fee: (1) legal research tool (CaseMaker); (2) monthly CLE programs (Legal Lunch Box Series); (3) the Professional Responsibility Program, including the Ethics Line; (4) the Lawyer Assistance Program; and (4) a confidential 24/7 member assistance program (WSBAConnects).

**PUBLICATIONS (INCLUDING NWLawyer)**: This category includes costs to develop, design, produce, and distribute WSBA print media and publications, including NWLawyer, WSBA’s official publication.

**CONFERENCE & BROADCAST SERVICES**: Includes costs to support the WSBA Service Center; meeting and conference facilities; mail and print services; WSBA webcasting, webinars, and recorded products; and all other services on WSBA’s public floor. Last year, WSBA supported over 1,500 onsite meetings and events, and the Service Center handled over 50,000 communications with members and the public.

**NEW MEMBER & MENTORSHIP PROGRAMS**: Includes costs of outreach, education, training, and support to newly admitted WSBA members. Also includes funding for WSBA’s mentorship programming.

**SECTIONS ADMINISTRATION**: Includes staffing and administrative costs to support WSBA’s 28 practice sections, and to help sections develop “Mini-CLEs”, that are not offset by per-member charge revenues.
With the revolution in both law firm technology and economics over the past generation, many lawyers have increasingly moved to a “virtual office” model. Some virtual office practitioners are solos and others are firms that practice in whole or in part “virtually.” Although individual practices vary, most include cloud-based file storage and email and a physical location that is not a traditional “brick and mortar” office. While opening new opportunities for lawyers, this developing way of practicing also poses new challenges for law firm risk management. In this column, we’ll look at three of the most common: marketing, confidentiality, and supervision.

MARKETING

One of the central features of a virtual office is, as the name implies, a physical location that differs from traditional law firm space. In some instances, virtual office practitioners work out of their homes. In others, they practice in shared office suites or other
“co-working” spaces. In still others, they have no static physical location at all. By contrast, virtual offices often have a significant electronic marketing presence through websites and social media.

Washington Rule of Professional Conduct (RPC) 7.2(c) requires that any advertising “include the name and office address of at least one lawyer or law firm responsible for its content.” Many virtual offices, however, use a post office box (or the private equivalent) to receive “old fashioned” surface mail. Last year, the Washington State Bar Association (WSBA) Committee on Professional Ethics clarified in Advisory Opinion 201601 that the “office address” requirement in RPC 7.2(c) can be met by listing “a post office box, private mail box, or a business service center as an office address in advertisements.” Advisory Opinion 201601 reaches this same conclusion regarding “office address” reporting requirements in the WSBA bylaws.

At the same time, Advisory Opinion 201601 cautions that virtual offices are still bound by the same baseline requirement of RPC 7.1 that all law firm marketing communications be truthful and offers an example that may not meet that standard—an out-of-state lawyer lists a Seattle address in advertising when the lawyer is not actually available to meet in Seattle. Similarly, a lawyer using a spare bedroom on the second floor of the lawyer’s home should not list the address as “100 Main Street, Suite 200” to make it appear that the lawyer has a traditional office if, in fact, there is no separate “Suite 200.”

CONFIDENTIALITY
Confidentiality is a bedrock duty regardless of physical location. The confidentiality rule (RPC 1.6) and the attorney-client privilege (RCW 5.60.060(2)(a)) apply with equal measure to both traditional and virtual practices. Further, through amendments to Washington’s Rules of Professional Conduct adopted last year following their American Bar Association (ABA) Model Rule counterparts, Washington lawyers now have an express duty under RPC 1.6(c) to “make reasonable efforts to prevent inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.”

On a very basic level, this means that virtual practitioners may need some physical space where they can meet confidentially with clients. Depending on the sensitivity of the information concerned, this may suggest having a rented conference suite available for occasional meetings, traveling to clients’ offices, or using some other location where conversations will not be overheard.

Many, if not most, virtual offices today, however, are built around cloud-based communications and file storage. The WSBA in 2012 issued Advisory Opinion 2215 that discusses cloud-based platforms for both traditional and virtual offices. Advisory Opinion 2215 counsels that law firms may use cloud-based systems as long as the system chosen meets the duty of reasonable care in protecting client confidentiality. It is important to underscore that the comments to the RPCs frame our responsibility in this regard under the duties of both confidentiality (Comments 18-19 to RPC 1.6) and competence (Comment 8 to RPC 1.1). The title to Comments 18 and 19 to RPC 1.6 reflects these interconnected duties succinctly: “Acting Competently to Preserve Confidentiality.” As Advisory Opinion 2215 notes on this point, lawyers must undertake sufficient “due diligence,” either directly or with competent technical assistance, to have reasonable assurance that any electronic systems selected—both at the time chosen and continuing over time—will meet these standards.

SUPERVISION
RPC 5.1 and 5.3 generally require that

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While opening new opportunities for lawyers, this developing way of practicing also poses new challenges for law firm risk management.

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law firm management have in place appropriate “infrastructure” so that the firm as a whole can meet its ethical obligations. This can range from conflict-checking systems to procedures for securing confidential client information. The specifics will depend on the size and scope of the firm involved. On conflicts in particular, Washington defines the term “firm” broadly under RPC 1.0A(c) to include “a lawyer, lawyers, an LLLT, LLLTs, or any combination thereof in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law[.]” Whether in a virtual or traditional form, therefore, lawyers who are considered a “firm” will share each other’s conflicts under the so-called “firm unit rule,” RPC 1.10(a).

RPC 5.1 and 5.3 also address direct supervision of, respectively, subordinate lawyers and non lawyers. The duty of supervision involves both employees and independent contractors who assist lawyers in delivering legal services to their clients. The Washington Supreme Court has emphasized that lawyers may be disciplined under these provisions if they did not exercise adequate supervision. In In re Trejo, 163 Wn.2d 701, 727, 185 P.3d 1160 (2008), for example, a lawyer was disciplined for failing to supervise his assistant, who had used the lawyer’s trust account for a check-kiting scheme. The Supreme Court in Trejo drew a distinction between the underlying theft by the assistant and the failure to supervise by the lawyer: “[A]lthough he did not know about or participate in . . . [the assistant’s] . . . check floating and misappropriation, . . . [the lawyer] . . . knew he had completely abdicated all responsibility for complying with the ethical requirements of trust accounting to a nonlawyer assistant.”

In a traditional law firm setting, supervision often means interacting with someone just down the hall. With virtual offices, however, supervision may mean being responsible for someone who is across town—or perhaps across the country or beyond—and who may be an independent contractor rather than an employee. ABA Formal Opinion 08-451, which was released in 2008 and is available on the ABA Center for Professional Responsibility’s website, does a good job of cataloging risk management considerations when outsourcing both legal and nonlegal support services. It also usefully incorporates earlier ABA opinions on contract lawyers and related services. The opinion addresses issues ranging from conflicts to confidentiality in the particular setting of “remote” supervision. It emphasizes that although lawyers can outsource the services that assist them in representing clients,
lawyers can’t outsource the fundamental responsibility to their clients to supervise the tasks involved.

BEYOND WASHINGTON
Because virtual offices are not tethered to a specific location, they can also lend themselves to practicing relatively seamlessly across geographic boundaries. Virtual practitioners who wish to practice in another jurisdiction in which they are licensed, however, should carefully consult the rules and other authorities in those jurisdictions for nuances specific to virtual offices (in addition to any general rules or standards that may vary from Washington). Regionally, California has an ethics opinion—2012-184—that addresses virtual office practice. Although Alaska and Oregon do not have virtual office opinions, both have ethics opinions discussing cloud computing (Alaska Bar Ethics Opinion 2014-3; Oregon State Bar Formal Opinion 2011-188) and electronic files (Alaska Bar Ethics Opinion 2008-1; Oregon State Bar Formal Opinion 2016-191). Idaho does not currently issue ethics opinions, but the comments to its RPCs are similar to the Washington comments discussed earlier. Finally, although a web-based practice may allow virtual office lawyers to extend their electronic reach, they need to remain sensitive to the unauthorized and related multijurisdictional practice rules in any jurisdiction in which they are not licensed.

SUMMING UP
Technology has made it possible for both individual lawyers and even entire firms to practice as virtual offices. Although this emerging model can provide real benefits to the lawyers (and their clients) involved, virtual offices are subject to the same rules governing their traditional counterparts. Meeting those obligations, however, can present unique challenges when the lawyers involved do not occupy or share the same “brick and mortar” space.

Mark J. Fucile
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A common definition of justice is “the administration of law.” What then is law? “A rule of conduct or action prescribed or formally recognized as binding or enforced by a controlling authority.” So justice is simply enforcement of the norms agreed upon to further civilized society. It’s simple, right?

But who decides which conduct or actions should bind society? This is where philosophy comes in, defined as: “An analysis of the grounds of and concepts expressing fundamental beliefs.” This analysis is necessary to ensure our laws are both fair and beneficial to the largest number of people possible. This brings us to the philosophy of law, also known as jurisprudence—a sub discipline that aims to define what law is, at its essence. Is law “a unique social-political phenomenon, with more or less universal characteristics that can be discerned through philosophical analysis?”

The answer to this question depends on which philosophy you subscribe to: legal positivism (the idea that law is merely a social construction), natural law (the theory that law comes from divine revelation and is discovered by reason), or something else entirely. I will not delve into the differences among the theories. Rather, my focus here is on semantics: why justice, law, and philosophy cannot be defined independently of one another, and why it is significant that the concepts cannot stand alone.

Have you ever lain awake at night wondering why speeding used to be criminalized in our state? I concede that the answer is probably “no.” But someone, somewhere, once, must have. Every time you wonder if a jury verdict is fair, every time you question a new Medicare law, and every time you cringe thinking about our deadlocked Congress, you are philosophizing…about the law.

Ask yourself, “Where do my beliefs about law and justice come from?” Was I taught right from wrong by my parents? Was I taught to follow the law without questioning it? Did I rebel once, or several times, blatantly disregarding the law? Do I think the law is necessary, or would I rather society plunge into the chaos of anarchy? Most people, even legal professionals, go about their busy lives never thinking about these things. However, I believe most people would say these issues are important.

Let’s revisit and expand on our earlier definitions of law, justice, and philosophy. There is more to justice than simply administration of law. Justice is also the quality of fairness and the application of rights given to us by law or equity. What is just is synonymous with what is righteous: in accordance with moral and/or divine law. We can debate ad nauseam the origin of the rights that justice protects (divine or secular), but for now let’s assume they exist.
Justice is important. Without it, there is no point in law enforcement. If society did not value fairness, equity, and the like, then public policy would not be furthered by tasking our law enforcement agencies with upholding the law. Uniformed officers aren’t risking their lives every day for causes that no one believes in.

Law is simply a means to justice, is it not? There is no point in prohibiting a certain conduct if the conduct does not slap justice in the face. Shoplifting is illegal because it is not fair (read just) to the shop owner who bears the loss. If it were not for justice, no one would care that someone shoplifted crackers because he was hungry. Last I checked, being hungry is not a crime, so the act of stealing food from a store is not in and of itself unjust. It becomes so because society considers the one-sided transaction inequitable.

Philosophy, as a stand-alone discipline, studies broad concepts including truth, knowledge, religion, logic, and more. As an academic field, philosophy tries to answer questions about the origin of life, the subjective nature of beauty, what constitutes truth and knowledge, and so on.

As a sub discipline, philosophy of law questions our fundamental beliefs about ethics, justice, and equality, which together are the bases of public policy. Questioning such fundamental beliefs is necessary to ensure that law and justice evolve with society. What if we took a snapshot from any point in history and said “this is the law” and “this is justice” and never shall they change? I cringe to think of where our society might be. Perhaps women would not be able to vote. Perhaps it would still be legal to hold another human being as personal property. Perhaps stealing land from native peoples would still be considered acceptable. But none of these things is acceptable, which is why our concept of justice, and subsequently our laws, can and should continue to evolve with society for the betterment of all people.

**THE NEXUS OF LAW, JUSTICE, AND PHILOSOPHY IS IMPORTANT**

Humans are inquisitive by nature, so it’s no surprise that philosophy is an ancient discipline, and the ideas of law and justice also span the centuries. As humans evolved, and civilization developed, we set boundaries for our behavior. These boundaries became formal laws. But what is the significance of the relationship among law, justice, and philosophy?

Philosophy may be likened to a vessel that holds liquid. Every ideal our society holds of what is right, or just, or fair, may be likened to a drop of liquid in that vessel. Thus, philosophy allows our concept of justice to become a cohesive mass. When the liquid is boiled off, mineral deposits are left behind; these represent our laws. They are what remain when justice is dissected and then applied to society; when society takes a long, hard look at history and decides upon a more peaceful future for our children.

Why do we want the more peaceful future? Because people have been struggling for millennia to create the best life possible for themselves and their families. It’s human nature. But when the liquid becomes caustic and eats holes in our vessel that is philosophy, the vessel can no longer hold the liquid. We know something has gone awry; an injustice has occurred. It’s time to re-evaluate the philosophy by which we define right from wrong, ethical from unethical. We analyze our concept of justice anew, patch our holes, and out comes something better and, hopefully, more just. Now our vessel is refilled, with the liquid a little bit different than it was before. Neither are the residual deposits the same: our laws must be altered to reflect our most recent idea of justice.

These shifts in our definition of justice are the direct result of societal changes as generations go by and values change. The practice of philosophy is an ongoing process that allows us to examine our lives and our desire
to serve the greater good. Each generation wants to leave its mark and better our society; in the process, we tweak a statute here or an ordinance there, and we have our current set of laws.

Laws only exist by boiling down our concept of justice to its core. Our concept of justice is a mixture of myriad smaller concepts of what is right, just, and fair. This mixture results by philosophy: society has pondered the infinite possibilities of what society accepts as the norm, and arrived at a finite set of standards. The concepts of law, justice, and philosophy simply cannot stand apart from one another.

JUSTICE AS A GOAL
Not every woman desires to emulate Mother Teresa. Not every man wakes up one morning to announce his intent to bring world peace. Little girls don’t always dream of becoming president, and certainly not every little boy wants to be a police officer. But it is up to all of us to contribute what we can to society. This may be a small gesture, like a compliment to a stranger. Maybe it’s something larger, like volunteering for a non profit. Perhaps it’s even larger—you single-handedly manage a soup kitchen. Whatever it is, whatever your motivation, something inspired you. Something made you think, “I can contribute to making the world a better place.” Whether you’re conscious of it or not, you have philosophized about the betterment of society. This goes hand in hand with upholding the law, and the idea that justice is a valid goal to strive for. For legal professionals, this rings especially true. Not everyone who works in the profession deals with the criminal justice system, but we all strive for justice nonetheless.

PARTING THOUGHTS
The foundations of our legal system are necessarily based in philosophy. It is the original discipline by which our predecessors determined right from wrong. We arrive at our laws and public policy by analyzing how we can better our society, using the philosophic principles of ethics and justice as our foundation. The next time someone scoffs at my decision to major in philosophy, I will politely remind him or her that public policy is nothing more than philosophy in disguise.

Finally, it’s important to remember that each of us has a finite time on this planet to uphold fairness, justice, and equality. Before we know it, the generations reading this article will be passing the torch. The baby-boomers are passing on, Gen X is poised to take the helm, and Millennials wait bright-eyed and bushy-tailed in the shadows. The next time you are faced with a decision regarding equity, justice, fairness or the like, choose wisely. Tomorrow our children will be tasked with repairing the holes caused by our justice system of today.

NOTES
1. Both definitions from Merriam-Webster online dictionary: https://www.merriam-webster.com/
After preparing CLE materials on Washington state employment law over the past 25 years, it seemed to me that appellate decisions were increasing in length. To determine if this was in fact the case or if I was merely getting impatient and cranky, I compared recent volumes of the Washington Reporter and Washington Appellate Reports with volumes of the same reporters published in the year I was admitted to practice—1974.
What Accounts For This Increase in Length?

Some possibilities:

• Increasing regulation and legislation displacing the common law;
• Word processing software;
• Judges not having (or taking) enough time to write something short.

The wordiness in Washington appellate decisions is not a phenomenon peculiar to Washington state courts. The United States Supreme Court has decided fewer cases with longer opinions over time. Judge Richard Posner of the Seventh Circuit wrote, “[t]he longer the opinion the more likely it is not to be read carefully.”

Why Should Lawyers Care?

Lawyers should care because we have to make sense of these decisions when we counsel clients and when we advocate for them in court. Judges should care because they have to read and understand these decisions in order to apply them.

And because in Washington we now can cite to unpublished decisions, practitioners and judges have even more words to ponder. See GR 14.1(a) (allowing citation to unpublished Courts of Appeals decisions released after March 1, 2013). This requires more time by lawyers and judicial officers and, therefore, more client money.

Methodology

My methodology was to go to the indices of these reporters, count the number of reported decisions, and calculate length. This is what I found:

• 84 Wn.2d (1974): 103 reported decisions; an average of 9.5 pages per decision.
• 182 Wn.2d (2014-2015): 57 reported decisions; an average of 16.6 pages per decision.
• 11 Wn. App. (1974): 130 reported decisions; an average of 6.02 pages per decision (and 208 unreported decisions).
• 188 Wn. App. (2015): 60 reported decisions; an average of 16.19 pages per decision (and 270 unreported decisions).

Some Modest Proposals:

Impose word limits on briefs. See, e.g., King County Local Civil Rules 7(b)(5) (B)(vi) and 56(c)(3) (imposing word limits for civil motions in King County Superior Court). How many appellate briefs have single-spaced footnotes that seek to defy existing page limits? (And is the term “brief” oxymoronic?)

Reconsider GR 14.1(a). If a Court of Appeals panel deems a decision not worthy of publication, a party or a non-party may move for publication. The process is not difficult. Alternatively, publish all Court of Appeals decisions, which is what the new rule effectively does. We already have the bizarre world of “unpublished” federal decisions published in the Federal Appendix (Humans can have an appendix removed because it is unnecessary and infected—should the Federal Appendix meet the same fate?).

Limit the statement of facts. In decisions dealing with appeal of a CR 56 motion, what are the material facts in dispute? Why are they material, or not? What is the dispute? That should be the focus. It is not necessary to include all the facts.

Use law clerks with care. Relying on law clerks to draft opinions may invite more words than necessary. Terrific law school GPAs may allow for some remarkable legal acumen. But that may not translate into telling the story of an appeal concisely.

Avoid string citations in decisions. And in briefing!

Both poet Robert Browning in 1855 and architect Mies van der Rohe, in 1947 wrote that “less is more.” All writers—judges included—can benefit from that axiom.
NOTES


4. Reference to an unpublished decision requires that “[t]he party must point out that the decision has no precedential value, is not binding on any court and is cited only for such persuasive value as the court deems appropriate. The party should also cite GR 14.1.” Crosswhite v. Wash. State Dep’t of Social & Health Servs., 197 Wn. App. 539, 2017 WL 169089 (2017).
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Sometimes, a single moment can change your life without your realizing it at the time. For me, it happened in 2013, when my phone rang.

It was February, and I was an associate at Littler Mendelson, based in the firm’s Kansas City office. I was told that I had been selected for Littler’s Career Advocacy Program (CAP)—which pairs diverse associates (Protégés) with influential leaders and rainmakers at Littler (Advocates) and with general counsel of major corporations (Champions). The program is designed to provide diverse attorneys with (1) guidance from Littler shareholders who have achieved a great deal of success in their careers and (2) insights from general counsel on how outside counsel can best partner with them. Advocates also help ensure that Protégés are exposed to the right mix of work and clients to develop the skills and visibility needed to progress in their careers, while also providing advice on business development and relationship-building.

Being selected for the program is a big deal, but I didn’t realize at the time how important CAP would be in my life and in my career. Not long after that phone call, my life changed dramatically: my husband got a new job in Seattle (meaning we had to move nearly 2,000 miles from the young practice I’d been building in Kansas City) and I gave birth to my first child.

If there was ever a time that I needed guidance, this was it. I transferred to Littler’s Seattle office, but I knew nearly no one locally, having spent my entire life in the Midwest. It was a nerve-wracking time, but the Advocate with whom I had been paired through CAP—Kate Mrkonich Wilson of the firm’s Minneapolis office—proved invaluable as I worked to get to know Seattle and adjust to being a working mom.

Kate, who co-chairs Litter’s Retail Industry Group, has been with Littler for many years and climbed the ladder while raising her family. In those nervous months before and immediately after our move to Seattle, and before my daughter was born, I regularly wondered whether I could become a shareholder and still spend time with my family. Kate never hesitated to instill confidence in me. Her “we can have it all” mentality was contagious—but she did more than just boost my spirits. She provided specific guidance on how to develop business and position myself to become a shareholder at Littler.

It’s no secret that working parents sometimes struggle to balance family responsibilities and work effectively. I worried about competing with aspiring shareholders who could spend less time at daycare pick-ups and swimming lessons and more time with prospective clients.

But Kate helped me see things differently. Networking, she said, could be done in multiple ways, including with other working parents who are also attending to their kids. In-house
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counsel and HR executives are parents, too, after all.

As a result, I’ve developed some important client relationships that started in those settings over the years. But Kate also showed me that I should embrace my own style when it comes to business development. So as I made the most out of introductions and conversations that arose through activities with my daughter, I also found time to have fun with clients, hosting parties and grabbing the occasional drink after work.

As far as getting to know a new town, Kate connected me with a shareholder in Littler’s Philadelphia office who had worked at Littler offices in three different cities and provided tips about getting established in new settings—both within the firm and in the community. That kind of networking within the firm is a huge part of the CAP program. In addition to Kate, I’ve gotten to know other firm leaders and other Protégés from around the country who have often reached out to me when they needed assistance with a matter in Seattle.

The inclusion of Champion (general counsel) mentors has also been invaluable to my career growth. For instance, I met the general counsel of a large multinational corporation at a CAP event in Orlando and he has since helped me build relationships with Seattle-based companies. That has been incredibly important as I’ve worked to get past the infamous “Seattle Freeze”—i.e., the well-known difficulty in making friends and connections in Seattle, especially for transplants. Out of curiosity, I asked my general counsel mentor why he was helping me and the other Protégés, and I’ll never forget his response: “I didn’t get where I am without someone helping to pull me up,” he said.

My promotion to shareholder in January presented new challenges—as anyone who’s followed a similar track knows. Fortunately, CAP continues to provide guidance and support to new shareholders, with mentoring now
geared toward ensuring success in this new role. There are no other lawyers in my family, and I identify myself closely with my career, so the guidance from my Advocate and Champions, as well as others I’ve met through CAP, has been instrumental to my professional growth.

Littler has been a leader in promoting diversity and inclusion since its inception, but CAP has helped the firm further stand out in the legal profession. The program has been effective in retaining and advancing diverse talent. As just one example of its success, 26 percent of this year’s class of shareholders (including me) were participants in the program. And Littler continues to be widely recognized for its innovative diversity initiatives and inclusive culture by clients, legal associations, and other organizations. Last summer, when Littler received the Minority Corporate Counsel Association’s inaugural national Sager Award during an event at the Kennedy Center keynoted by former Attorney General Eric Holder, CAP was cited as one of the firm’s key distinctions.

CAP has also made Littler stand out to me. As I went through some major life changes, the firm showed me I didn’t have to choose between career advancement and spending time with my family. Now that I’m pregnant with my second child, there is no question in my mind that Littler and CAP will be there to support me.

Kellie Tabor is a shareholder in the Seattle office of Littler Mendelson, the world’s largest employment and labor law firm representing management. She defends and counsels clients in a wide range of employment litigation matters, including discrimination, harassment, retaliation, and wage and hour claims. Tabor can be reached at 206-381-4951 or ktabor@littler.com.
Despite modern society’s unabashed fascination with the macabre (“Walking Dead,” anyone?), the morbid reality of dead bodies is nevertheless an uncomfortable topic for many people. Human remains also occupy an uneasy position in the eyes of the law. When someone dies, the corpse left behind falls into somewhat of a legal purgatory (pun most definitely intended) between the status of “person” and “property.”

Not surprisingly — given the delicate subject matter and often abhorrent fact patterns being litigated—the law of dead bodies is also a rarely discussed (and often misunderstood) niche within the legal profession. After all, dead body cases are probably not your “go-to” topic for cocktail party conversations.

Under English common law, there existed a right to a “decent [i.e. Christian] burial”— the denial of which was a misdemeanor. Under modern common law in the United States, the concept of “decent burial” has been secularized to simply mean the right to an orderly interment in a suitable place, also known as the right of sepulture. The obvious difficulty in exercising one’s own right of sepulture ultimately evolved into a right of recovery by the living arising from tortious interference with the corpse of a deceased.

Washington law recognizes a cause of action for the tortious interference with human remains. “The tort of interference with a dead body allows recovery for mental suffering derived from the willful misuse of a body.” The action is not based on a property interest in the body itself, but rather an interest in the proper treatment of the body. The tort action is available for relatives of the deceased and those who control the right to disposition of the remains. The surviving spouse is generally the person who is deemed to be entitled to the disposition of the deceased person’s body, but if the deceased was unmarried, the next of kin has standing.

To recover emotional damages for interference with human remains, the mental suffering must directly result from a willful wrong — mere mistake is not enough. In other words, to establish liability, the plaintiff must show that the misuse of the body was intentional, rather than negligent. In addition, the misuse must be “in such a manner as to cause the relatives or persons charged with its decent sepulture to naturally suffer mental anguish.” For example, intentionally withholding or delaying the proper burial of a body constitutes willful misuse of a dead body. Performing an unauthorized autopsy, burial in the wrong cemetery, or unlawful disinterment may also constitute willful misuse.

Washington courts first recognized an actionable claim for the tort of improper burial in 1907 when an undertaker was sued for breach of contract by the parents of a deceased child whose corpse had been buried only eight...
Inches below the earth in the same grave with another corpse. The Supreme Court denied liability under a breach of contract theory for failing to bury the child according to the agreement because the plaintiffs based their claim for damages on mental suffering. Nevertheless, the court went on to conclude that “it would shock the sensibilities to hold that there was no remedy for such a wrong,” noting that although the tort of wrongful interference had traditionally been related to the mutilation of a corpse, an improper burial equated to a mutilation for purposes of raising an actionable claim.

Interest in the tort of interference with a dead body was resurrected in 1925 when the Supreme Court upheld a mother’s claim against an undertaker for withholding her son’s corpse as collateral for payment of funeral expenses. While the court noted that a party cannot recover for mental suffering based solely on a claim for negligence, intentionally withholding the body from proper burial constituted a willful misuse of the body. The court reasoned that willful delay in providing a burial was equivalent to improper burial for purposes of the tort of interference—once again focusing on the emotional effect of the mistreatment on others rather than the extent of the misuse itself.

Claims for tortious interference with a dead body have been few, and not much has changed in the case law in Washington over the past century as compared with other states. This is, in part, because the Washington Supreme Court has expressly refused to adopt the Restatement (Second) of Torts §868, which permits recovery of emotional distress damages for negligent interference with a dead body. Therefore, as a matter of law in Washington, a claim for emotional distress cannot be pursued in an action alleging negligent mishandling of human remains.

Ultimately, the parameters of misuse that may give rise to a cause of action for tortious interference with human remains are not well defined. As a practical matter, the easiest way to understand what constitutes tortious interference with human remains is by staying apprised as to current case law clarifying what does not.

### Notes

1. P. Jackson, The Law of Cadavers at 31. Granted, the burial had to be in a churchyard or other consecrated area (ecclesiastical rules permitting) and a church service performed – it was not possible to choose burial but reject the service (or vice versa) – which naturally resulted in great tension between the Established Church and other denominations, ultimately leading to the secularization of cemeteries.


3. Adams, 164 Wn.2d at 658.

4. Id. (citing Herzl Congregation v. Robinson, 142 Wash. 469, 253 P. 654 (1927) (recognizing generally that “there is a right of custody over, and interest in, a dead body, and the disposal of a body”)); Wright v. Beardsley, 46 Wash. 16, 19, 89 P. 172 (1907) (“the action is for a wrong against the feelings of the plaintiffs inflicted by a wrongful and improper burial of their dead; in other words, a tort or injury against the person.”).

5. Adams, 164 Wn.2d at 658.

6. RCW 68.50.160(3) (determining right to control disposition).


8. Id.

9. Wright, 46 Wash. at 20.

10. Adams, 164 Wn.2d at 659.

11. Wright, 46 Wash. at 20.

12. Id. at 17.

13. Id.

14. Id. (recognizing that a cause of action for wrongful mutilation “applies as well to a case such as the one at bar where the wrong consists of the manner of burial”).

15. See e.g. Gadbury, 133 Wash. 134.

16. Id. at 137.

17. Id. at 137-38 (“The misuse in one case may be greater in degree, but nevertheless is a misuse.”)


20. Id.
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PERMITTING FOR ENERGY PROJECTS ON WASHINGTON’S COAST

How the State Supreme Court Affected That Process in 2017

By Ankur Tohan, Ben Mayer, Craig Trueblood, Bart Freedman, and Danny Kelly-Stallings

Earlier this year, the Washington Supreme Court ruled that two oil terminal expansion projects on the Washington coast are subject to review under the Ocean Resources Management Act (ORMA). The case, Quinault Indian Nation v. Imperium Terminal Services, marks the first time Washington’s highest court has addressed the scope and application of ORMA. It breaks new ground and may add to the regulatory approval process for oil and other fossil fuel projects along Washington’s Pacific coast.

The Court’s Decision Applying ORMA

The case involved two oil terminal expansion projects in the Port of Grays Harbor within the city of Hoquiam in Grays Harbor County. Both projects would be situated along the shores of Grays Harbor and the Chehalis River, approximately 160 feet from the river. The first project is a proposed expansion of Westway Terminal Company LLC’s petroleum products storage terminal, including the construction of above-ground storage tanks for storing crude oil, the addition of rail spurs for train loading, and the construction of piping and vapor support systems for loading tanker vessels with crude oil. The second project would expand Imperium Terminal Services LLC’s terminal facility by adding new storage tanks, new rail tracks and an expanded rail yard, and enhanced piping and vapor systems for marine vessel loading.

ORMA requires Washington state and local permitting authorities to consider the economic benefits of development along Washington’s coast together with the state’s interests in protecting its coastal habitats and limiting production of fossil fuels when permitting projects that will adversely impact those habitats. Coastal uses and activities “that will adversely impact renewable resources, marine life, fishing, aquaculture, recreation, navigation, air or water quality, or other existing ocean or coastal uses” must meet or exceed eight criteria laid out in the statute, which substantially overlap with the requirements in other similar federal and state statutes, including the Shorelines Management Act, the Clean Water Act, the State Environmental Policy Act, the National Environmental Policy Act, and the Coastal Zone Management Act, which also play a role in the permitting and approval process for infrastructure projects.
The Quinault court described ORMA as “a balancing tool intended to be used by local governments to weigh the commercial benefits of coastal development against the State’s interest in protecting coastal habitats and conserving fossil fuels.” While noting the important commercial and economic benefits associated with ocean and shoreline development, the court emphasized that the legislature enacted ORMA “to address environmental threats to our coastal waters” and specifically “the threats posed by increased expansion of the fossil fuel industry along the Pacific Coast.” The court found “the projects fit squarely within ORMA’s broad reach” and remanded the case for consideration of the projects under that statute.

What is ORMA?

The Washington legislature passed ORMA in 1989 in response to, among other things, the Nestucca and Exxon Valdez oil spills off the coasts of Washington and Alaska. The statute was written and enacted as the federal government was actively pursuing leasing plans for the exploration, development, and extraction of mineral resources, including oil and gas, off Washington’s coast. At the time, commentators described the statute as “[a]n effort to protect Washington’s coastline from the potential hazards of oil drilling” and “to create a state policy on offshore oil exploration.” With respect to oil drilling and exploration, the statute provides that “[t]here shall be no leasing of Washington’s tidal or submerged lands extending from mean high tide seaward three miles along the Washington coast from Cape Flattery south to Cape Disappointment, nor in Grays Harbor, Willapa Bay, and the Columbia river downstream from the Longview bridge, for purposes of oil or gas exploration, development, or production.”

ORMA is designed to “articulate policies and establish guidelines for the exercise of state and local management authority over Washington’s coastal waters, seabed, and shorelines.” The Washington State Department of Ecology (Ecology) and local permitting authorities are charged with enforcing the statute and its requirements.

ORMA applies to “uses or activities that require federal, state, or local government permits or other approvals and that will adversely impact renewable resources, marine life, fishing, aquaculture, recreation, navigation, air or water quality, or other existing ocean or coastal uses.” But the statute does not define “uses” or “activities.” Ecology defines “ocean uses” as “activities or developments involving renewable and/or nonrenewable resources that occur on
Washington’s coastal waters.” Ecology has interpreted ORMA as covering projects located on Washington’s coastal waters. The Quinault court, however, found that applying ORMA only to projects on or in Washington’s coastal waters would interpret the statute too narrowly. Because ORMA’s mandate “is to carefully review development projects that involve nonrenewable resources and pose a risk of damage to the environment in Washington’s sensitive coastal waters,” projects both in and out of Washington’s coastal waters that could pose a risk of damages to those waters are subject to the statute’s requirements.

The statute defines “coastal waters” as “the waters of the Pacific Ocean seaward from Cape Flattery south to Cape Disappointment.” It covers the “coastal counties” of Clallam, Jefferson, Grays Harbor and Pacific, and identifies the Columbia River, Willapa Bay and Grays Harbor estuaries, and Olympic National Park as requiring special protection. ORMA does not cover Puget Sound.

What the Case Could Mean for the Development of Energy Projects in Washington State

The Quinault court’s application of ORMA to out-of-water projects—at least those with a close nexus to Washington’s coastal waters—and the court’s broad reading of the statute, suggest the decision could be used as a vehicle to apply ORMA beyond fossil fuel projects located on the coastal waters offshore of Clallam, Jefferson, Grays Harbor, and Pacific counties.

Some potential takeaways and implications of the Quinault decision include the following:

- **The development of future energy projects in Washington’s inland waters.** The Quinault decision could incentivize development of and along inland waters not covered by ORMA, such as in the Columbia River or Puget Sound.

- **Broad coverage of other types of energy projects, including renewable projects.** Based on the court’s broad interpretation of the statute, ORMA might be interpreted to apply to uses and activities other than fossil fuel projects on Washington’s coast—for example, offshore wind and tidal energy projects.

- **Policy choices for energy projects on Washington’s coast.** ORMA recognizes the commercial importance of projects along Washington’s coast and does not expressly dictate a particular decision or result, but it favors projects that do not adversely impact renewable resources and that limit the use of fossil fuels.

How ORMA Might be Treated and Applied Moving Forward

It remains to be seen how Ecology will react to the Quinault decision. In the case, Ecology took the position that ORMA applies to in-water activities and uses, such as drilling for oil or minerals in the ocean floor. The Supreme Court disagreed—it interpreted ORMA as applicable to out-of-water fossil fuel projects, and potentially other energy projects along Washington’s Pacific coast that pose a risk to Washington’s coastal waters. Ecology will have to determine how ORMA applies in light of the court’s decision in Quinault and may need to rewrite or amend its regulations to be consistent with the decision. Ecology will also have to consider how ORMA applies in relation to other statutes that the agency plays a role in implementing and that also regulate activities in the state’s coastal zone, such as the Shoreline Management Act and Coastal Zone Management.

The Washington State Legislature could also address the court’s decision, although no legislation was pending at the time this article was written. If the legislature decides the court in Quinault went beyond its original intent in en-

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12 Ecology has interpreted ORMA as covering projects located on Washington’s coastal waters.
13 The Quinault court, however, found that applying ORMA only to projects on or in Washington’s coastal waters would interpret the statute too narrowly.
14 ORMA’s mandate “is to carefully review development projects that involve nonrenewable resources and pose a risk of damage to the environment in Washington’s sensitive coastal waters.”
15 It covers the “coastal counties” of Clallam, Jefferson, Grays Harbor and Pacific, and identifies the Columbia River, Willapa Bay and Grays Harbor estuaries, and Olympic National Park as requiring special protection.
16 ORMA does not cover Puget Sound.
17 The Quinault court’s application of ORMA to out-of-water projects—at least those with a close nexus to Washington’s coastal waters—and the court’s broad reading of the statute, suggest the decision could be used as a vehicle to apply ORMA beyond fossil fuel projects located on the coastal waters offshore of Clallam, Jefferson, Grays Harbor, and Pacific counties.

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acting ORMA, the legislature could consider amending ORMA to specify the statute applies only to in-water projects (e.g., drilling for oil and minerals in the Pacific Ocean off the coast of Washington), repeal it altogether, or clarify how it should be reconciled with substantially similar standards in the Shoreline Management Act, Clean Water Act, State Environmental Policy Act, National Environmental Policy Act, and the Coastal Zone Management Act.

If it is applied in a manner that substantially interferes with interstate commerce or with industries that are comprehensively regulated under federal law, such as interstate rail, maritime, and pipelines, ORMA could also be subject to preemption by federal interests and policies.

In sum, the court's Quinault decision and the court's interpretation of ORMA raise more questions than provide answers. At a minimum, the case signals potential new permitting requirements for energy and other projects along Washington’s coast that impact coastal habitats. It will be up to Ecology, the courts, and future project developers and permittees to more clearly define ORMA's boundaries and requirements.

NOTES
2. RCW 43.143.030(2); WAC 173-26-360(6).
3. Quinault, 187 Wn.2d at 469.
4. Id. at 470.
8. RCW 43.143.010(2) (emphasis added).
9. RCW 43.143.010(1).
10. Ecology’s regulations applying the statute are at WAC 173-26-360.
11. RCW 43.143.010(2).
12. WAC 173-26-360(3).
13. Quinault, 187 Wn.2d at 475-76.
14. Id. at 473.
15. RCW 43.143.020(2).
16. RCW 43.143.020(1).
17. RCW 43.143.030.
18. In Washington, this “coastal zone” is defined to include the following 15 Washington counties: Clallam, Grays Harbor, Island, Jefferson, King, Kitsap, Mason, Pacific, Pierce, San Juan, Skagit, Snohomish, Thurston, Wahkiakum and Whatcom.
Bart J. Freedman is a partner, K&L Gates, where his practice encompasses a broad range of municipal, business and environmental litigation in federal and state courts. This includes eminent domain litigation and advice for several government clients, securities and software litigation, recovery of restitution on behalf of corporate victims of federal crimes, hazardous waste matters, and cost-recovery litigation under CERCLA.

Craig S. Trueblood is a partner at K&L Gates and led its environment, land use, and natural resources practice group from 2004 through 2012. He practices exclusively in environmental, land use, and natural resource law and litigation, focusing on air quality, water quality, Superfund, natural resources restoration, NEPA/SEPA, and siting complex facilities such as incinerators, wastewater treatment plants, landfills, marine terminals, telecommunication facilities, and mixed-use developments.

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Samuels Yoelin Kantor is excited to welcome Leslie Johnson, who has joined the firm as the newest Of Counsel attorney.

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EVEN IN THE FACE OF FEDERAL LAW, IT DOES NOT APPEAR THAT STATES LIKE WASHINGTON WILL FACE SIGNIFICANT RESISTANCE TO THEIR ABILITY TO CONTINUE PERMITTING AND REGULATING MARIJUANA BUSINESSES.

Practitioners working in the areas of insolvency or legalized marijuana are probably aware by now that marijuana businesses in financial trouble cannot take advantage of bankruptcy protections, even if they are compliant with state laws. Bankruptcy courts across the country have consistently dismissed petitions by marijuana businesses, owners of marijuana businesses, creditors of marijuana businesses, and even those providing services or leasing property to marijuana businesses, due to the illegal status of marijuana under federal law. Although more states seem to be legalizing marijuana—whether recreationally or just medically—each year, it seems unlikely that marijuana will become legal under federal law in the near future. President Trump has proposed a budget that would largely maintain funding for the Office of National Drug Control Policy, and he previously explored appointment of Congressman Tom Marino (R-Pa.)—known for his focus on drug control, with a history of voting against progressive marijuana legislation—to head the office as drug czar (Marino later withdrew from the process).

For debtors in the marijuana industry, this means that, at least throughout the remainder of the Trump presidency, federal law will likely continue to deprive them of the use of the U.S. Bankruptcy Code to obtain a stay of proceedings against them and their assets in times of turmoil. For creditors, it means that lending to or investing in the marijuana industry carries the added risk that a federal court will not oversee the administration of assets in the event a borrower ceases making payments. Fortunately, Washington law provides an alternative procedure in the form of one of the nation’s most robust receivership statutes. Under RCW 7.60.010 et seq, Washington courts may appoint a receiver over a marijuana business, which can then liquidate assets and distribute the proceeds to creditors. The statute even provides a 60-day stay, similar to the bankruptcy stay provided by 11 U.S.C. § 362, which can be extended in certain circumstances. RCW 7.60.110.

Even in the face of federal law, it does not appear that states like Washington will face significant resistance to their ability to continue permitting and regulating marijuana businesses. In 2013, under President Obama, Deputy Attorney General James M. Cole issued a memorandum to all United States Attorneys (widely known as the “Cole Memorandum”) that de-prioritized enforcement of federal marijuana laws in states that were actively regulating their local marijuana industries, at least against those individuals and entities acting in compliance with state laws. Although the Trump administration has appeared to take a harder line against marijuana, it has not directly addressed the Cole Memorandum or taken specific action to reverse the enforcement priorities set forth therein.

The marijuana industry thus proceeds (if with caution) in Washington and in more than half of the states in the country, operating under state law and turning exclusively to state law for remedies when problems arise, including those between debtors and creditors. My firm recently sought and obtained Washington’s first-ever marijuana receivership, on behalf of the petitioner: a landlord (“Landlord LLC”) that had rented...
space to a licensed marijuana business (“Tenant Inc”). Landlord LLC had filed an unlawful detainer action against Tenant Inc, and had both a writ of restitution and a judgment for unpaid rent in hand. The problem, of course, was collecting that judgment and dealing with any marijuana product that may be left behind once the writ of restitution was executed.

Collecting a Judgment from a Marijuana Licensee

When the judgment was entered, Landlord LLC had reason to believe that Tenant Inc had only one asset of sufficient value to satisfy it: a license to process marijuana. Tenant Inc also had a small amount of inventory. Under ordinary circumstances, a judgment creditor could take advantage of various state laws to execute on the property of a judgment debtor. See, e.g., Title 6 RCW (Enforcement of Judgments). Landlords also typically acquire liens on personal property in rented locations when there is unpaid rent. See RCW 60.72.010. The creditor of a marijuana business, however, cannot execute on the business’s assets to the extent they are comprised of marijuana product, or a license that cannot be transferred without approval of the Washington State Liquor and Cannabis Board (WSLCB). Moreover, Landlord LLC was a foreign entity, and thus ineligible under Washington law to take possession of Tenant Inc’s inventory and license.

Because our firm is already well versed in receiverships, it was a natural suggestion as a means to collect the judgment. Research into WSLCB’s regulations revealed that the appointment of a receiver over marijuana licensees had been contemplated, at least somewhat; WAC 314-55-142(4) states that a receiver appointed over a licensee “must notify the WSLCB’s licensing and regulation division in the event of the ... receiver-ship ... of any licensee.”

The regulations do not provide further guidance, however, on the process for having a receiver take over a licensed marijuana business. Moreover, WSLCB’s interpretation and application of the regulations remained open questions on many issues, and the appointment of a receiver was uncharted territory when we first began the process. There are hurdles that do not exist in most other receiverships, due to the highly regulated nature of the industry. Succeeding in this receivership hinged on developing a cooperative relationship with WSLCB and ensuring that its requirements were being met at every stage. Anything less would mean risking cancellation of Tenant Inc’s marijuana license—its primary asset.

UNIQUE CHALLENGES FOR A MARIJUANA RECEIVERSHIP

WSLCB Approval of the Receiver

Ordinarily a receiver is appointed and can take control of a business within a day. Under WSLCB regulations, however, the operator of a marijuana business is subject to approval—a process that can take significant time. See WAC 314-55-035; WAC 314-55-020. WSLCB also interprets the regulations to require that a licensed business remain in operation, or risk cancellation of its license due to inactivity. See WAC 314-55-050(16). This places a petitioner seeking the appointment of a receiver in a precarious position, potentially risking the loss of an important asset due to the delay of obtaining approval for an appointed receiver.

In this case, I worked with WSLCB, and its counsel in the Licensing & Administrative Law division of the Office of the Washington Attorney General, to address the issue. The order appointing the receiver contained a provision that allowed the receiver to avoid cancellation of the license during the pendency of an application for WSLCB approval, and the receiver acted quickly to obtain that approval as soon as possible. Ideally, WSLCB should be afforded the opportunity to approve a potential receiver before the creditor petitions for appointment. Otherwise, creditors may be faced with further challenges if their chosen receiver is ultimately not approved by WSLCB. In a recent conversation, WSLCB’s Director of Licensing and Regulation noted that at the very least, receivers seeking WSLCB approval must be sure that they will be able to pass a criminal background check, as well as a check for any past violations of WSLCB rules.

Effect of the Eviction

In addition to obtaining a judgment against Tenant Inc, Landlord LLC’s unlawful detainer action resulted in the issuance of a writ of restitution for the premises. Marijuana licenses, however, are specifically tied to approved
locations, and cannot be moved without WSLCB approval. That the court had determined Tenant Inc was in unlawful detainer could have placed the license in jeopardy, and WSLCB informed me that Tenant Inc could not move from the approved location unless the new location had also been approved.

Landlords and other creditors in this situation should consider how to prevent a tenant from simply moving out of an approved location, effectively relinquishing a valuable asset, before the court makes a determination about appointing a receiver. This might be handled in an order to show cause, as well as through strategic planning of an unlawful detainer action in relation to a receivership petition.

Operation of the Business

It is common for the selection of a receiver to be based, at least in part, on its particular expertise in relation to the subject business. This allows the receiver to continue operating the business, to the extent it can be profitable, to the benefit of its creditors. Because marijuana businesses remain relatively new, at the time we sought appointment of a receiver over Tenant Inc, I was unaware of any receivers in Washington that had experience operating marijuana businesses. In fact, this was one ground upon which Tenant Inc argued that the court should refrain from appointing a receiver.

Although businesses are not always kept in operation during receivership—and some businesses are most valuable on a liquidation basis—petitioners should ensure that their chosen receiver is prepared. The receiver might not possess all the specialized knowledge required to run the business, but a qualified receiver will have a plan for where to find any necessary information and advice. On the other hand, despite the desirability of expertise, creditors should be careful not to choose receivers that have the kinds of financial interests in marijuana businesses that could cause a conflict, potentially jeopardizing approval by WSLCB.

OTHER RECOMMENDATIONS

Assignments for the Benefit of Creditors

Although receiverships are traditionally treated as a creditor remedy, there are situations in which a debtor itself may seek the appointment. Executing an assignment for the benefit of creditors (see RCW 7.08.010 et seq) can give debtors some degree of control over a situation that may otherwise feel out of their hands, and in some instances, even preserve equity for the owners of the business. Debtors can select a receiver, and can take advantage of the automatic stay imposed by RCW 7.60.110 to cease actions by creditors. This option is especially appealing for marijuana licensees, for whom bankruptcy remains unavailable. Debtors considering executing an assignment for the benefit of creditors should seek the advice of a qualified attorney with experience in receiverships, and should carefully choose a receiver that understands their business and can work efficiently to liquidate assets in a manner that will maximize returns for creditors (minimizing the shortfall for which the debtor may remain liable), while remaining fully compliant with applicable regulations.

Consider Receivership Early

The appointment of a receiver can be of tremendous benefit for creditors and debtors alike, but these benefits are maximized when the receivership is initiated before the parties have already engaged in a prolonged dispute. This is especially true for marijuana businesses, where the process of having a receiver appointed and approved by WSLCB can be longer than for most other businesses.

Communicate with WSLCB, Early and Often

When I first started working on the receivership discussed in this article, my

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Arnold v. City of Seattle, 185 Wn.2d 510, 374 P3d 510 (2016) (attorney fees recoverable in administrative proceeding where back pay is awarded)

Coomes v. Edmonds School Dist. No. 15, 816 F.3d 1256 (9th Cir. 2016) (reversed dismissal of employee’s claim of wrongful discharge in violation of public policy)


Bright v. Frank Russell Investments, 191 Wn. App. 73, 361 P3d 245 (2015) (fee recovery in employment discrimination case)

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contact with WSLCB was limited to an enforcement officer assigned to the tenant. Through later communications with WSLCB officials, I learned that some of the information I had initially been given was incorrect. Once I found the right people to speak with, the process of having the receiver appointed became much easier. WSLCB was ultimately cooperative and helpful, and that cooperation was critical to both the successful appointment of the receiver and the operation of the receivership.

Potential New Regulations

In my conversation with WSLCB’s Director of Licensing and Regulation, I learned that WSLCB is currently working on a more comprehensive set of regulations to govern receiverships of marijuana businesses, and is considering training opportunities for receivers. She expressed many of the same concerns that have been addressed in this article about the potential pitfalls for marijuana receivers, and WSLCB is interested in providing even stronger guidelines to ensure success. Watch for these new regulations and opportunities for further education from WSLCB in the future.

CONCLUSION

The receivership of Tenant Inc has ended. The receiver has been discharged, and the proceeds from the sale of the assets of the business have been distributed to the creditors. My client recovered a significant payment on a debt that otherwise would have been essentially uncollectable. I am grateful to have had the opportunity to initiate what WSLCB confirmed was (at the time of writing this article) the first marijuana receivership in Washington. Having monitored the treatment of marijuana businesses in bankruptcy courts for several years, it is encouraging to report that Washington’s receivership statute provides a viable alternative for this state’s marijuana businesses and their creditors. NWL

NOTES


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Visit us at www.wsba.org/foundation to learn more and see the current donor list.
Learn more: September 27 and take office at the close sworn in at the APEX Awards Dinner on September 27-28, 2017, meeting in Seattle. Finalists will be interviewed at the Board's Lawyers Committee in Seattle on Satur-

Election process:

*first was admitted to practice as a lawyer in any state, whichever is later.”

Eligibility: Any active "Young Lawyer" member who has not previously served on the Board of Governors for more than 18 months may be nominated. Per WSBA’s Bylaws, "Active lawyer members of the Bar will be considered Young Lawyers until the last day of December of the year in which the member attains the age of 36 years or until the last day of December of the fifth year after the year in which such member first was admitted to practice as a lawyer in any state, whichever is later.”

Election process: Nominations will be reviewed, and some candidates will be interviewed, by the Washington Young Lawyers Committee in Seattle on Saturday, August 5. The WYLCC will recommend finalists to the WSBA Board of Governors. Finalists will be interviewed at the Board’s September 27-28, 2017, meeting in Seattle. The candidate elected by the Board will be sworn in at the APEX Awards Dinner on September 27 and take office at the close of the Board meeting on September 28.

Learn more: Further information is available at www.wsba.org/elections, including a detailed description of the position’s duties and details of a Q&A webcast with Sean Davis. Questions not answered on our website should be directed to Lynda Foster, New Lawyer Program Specialist, at lyndaf@wsba.org, 206-733-5934.

Northwest Justice Project Board of Directors

Application Deadline: Sept. 8, 2017

The WSBA Board of Governors is accepting letters of interest and résumés from members interested in serving on the Board of Directors of the Northwest Justice Project (NJP). The BOG will appoint up to four attorneys for terms varying from one to three years, commencing January 2018. Presently, three incumbents are eligible for, and may seek, reappointment. The Northwest Justice Project is a 120-attorney, 18-office statewide, not-for-profit law firm providing free legal services to low-income individuals and communities throughout Washington. NJP is funded primarily by the State of Washington Office of Civil Legal Aid and the federal Legal Services Corporation, with additional support from the Legal Foundation of Washington. NJP’s Board-approved 2017 operating budget totals $26 million. Service on NJP’s Board provides an extraordinary opportunity for accomplished individuals who are passionate about NJP’s mission and who have a demonstrated commitment to providing high-quality civil legal services to low-income individuals and communities. NJP’s Board is responsible for setting program policy; assuring adequate oversight of NJP operations and finances; and supporting, partnering with, and overseeing the executive director in his/her leadership role.

NJP’s Board is a working board. Board members are expected to attend quarterly meetings in Seattle, attend an annual board retreat, and serve actively on two standing committees. Committees typically meet monthly via telephone. Board members are expected to participate in and support NJP legal community activities and fundraising efforts. Board-related travel and lodging expenses are reim-
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.

Washington Young Lawyers Committee Meeting
Aug. 5, Seattle
The Washington Young Lawyers Committee is holding its next meeting at the WSBA offices on Aug. 5 from 10 a.m. to 2:30 p.m. New and young lawyers are encouraged to attend to learn about the work of the Committee and upcoming WSBA New Lawyer Programs. For details, contact newlawyers@wsba.org.

ALPS Attorney Match
Attorney Match is a free online networking tool made available through the WSBA-endorsed professional liability insurer, 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.

WSBA Board of Governors Meeting
July 27-28, Union
With the exception of the executive session, Board of Governors meetings are open, and all WSBA members are welcome to attend. RSVPs are appreciated but not required. Contact Margaret Shane at 206-727-8244, 800-945-9722, ext. 8244, or margarets@wsba.org. The complete Board of Governors meeting schedule is available on the WSBA website at www.wsba.org/bog.

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, disbarred, dies, or disappears and no person appears to be protecting the client’s interests. The custodian takes possession of the necessary files and records and takes action to protect the client’s interests. The custodian may act with a team of custodians and much of the work may be performed by supervised staff. If the WSBA is notified of the need for a custodian, the WSBA would affirm the willingness and ability of a potential volunteer and seek his or her appointment as custodian. Costs incurred may be reimbursed. Current WSBA members of all practice areas are welcome to apply. Contact Sandra Schilling at sandras@wsba.org, 206-239-2118 or 800-945-9722, ext. 2118, or Darlene Neumann at darlenen@wsba.org, 206-733-5923 or 800-945-9722, ext. 5923.

Annual Lunch with King County Bar Association
Members of the Board attended an annual lunch meeting with King County Bar Association leadership on May 17 to share and exchange ideas.

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.

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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.

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WSBA Connects provides free counseling in your community. All bar members are eligible for three free sessions on topics as broad as work stress, career challenges, addiction, anxiety, and other issues. By calling 1-800-765-0770, a telephone representative will arrange a referral using a 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. [www.wsba.org/connects](http://www.wsba.org/connects).

**Virtual Job Group**

The Virtual Job Group helps unemployed or dissatisfied attorneys throughout the state to find jobs. Utilizing our Zoom videoconferencing software, attorneys can participate online. The next group begins July 10. The group meets on Monday mornings from 9:30 to 11 a.m., runs for seven weeks, and costs $35. Participation is limited to eight attorneys. If you would like to participate, sign up at [http://tinyurl.com/yamsn83y](http://tinyurl.com/yamsn83y). If you have any questions, contact Dan Crystal at danc@wsba.org.

**Weekly Job Search Group**

The Weekly Job Search Group provides strategy and support to unemployed or dissatisfied attorneys in person at the WSBA. The group runs for seven weeks and is limited to eight attorneys. The next group begins September 18, and meets from 9:30 to 11 a.m. We provide the comprehensive WSBA job search guide, “Getting There: Your Guide to Career Success,” which can also be found online at [www.tinyurl.com/7xheb8b](http://www.tinyurl.com/7xheb8b). If you'd like to participate sign up at [http://tinyurl.com/y8czwd48](http://tinyurl.com/y8czwd48).

**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.

**Mindful Lawyers Group**

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

**The “Unbar” Alcoholics Anonymous Group**

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

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The WSBA LOMAP and LAP Lending Library is a service to WSBA members. We offer the short-term loan of books on health and well-being as well as the business management aspects of your law office. How does it work? You can view available titles at [www.wsba.org/resources-and-services/lomap/lending-library](http://www.wsba.org/resources-and-services/lomap/lending-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, contact lomap@wsba.org or 206-733-5914.

**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](http://www.wsba.org/casemaker). As a WSBA member, you already receive free access to Casemaker. Now, we have enhanced this member benefit by upgrading to add Casemaker+ with CaseCheck+ for you. Just like Shepard’s® 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.

**Learn More About Case-Management Software**

LOMAP maintains a computer for members to review software tools designed to maximize office efficiency. LOMAP staff is available to provide materials, answer questions, and make recommendations. To make an appointment, contact lomap@wsba.org.

**Usury Rate**

The maximum allowable usury rate can be found on the Washington State Treasurer’s website at [www.tre.wa.gov/investments/historicalUsuryRates.shtml](http://www.tre.wa.gov/investments/historicalUsuryRates.shtml).
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Tell us about yourself

Although I was born in Scottsdale, Arizona, most of my childhood and teen years were spent in sunny Southern California. My mother is a professor of education and my father spent his career as a regional manager for a national retail chain. Like my mother, both my older sister and her husband are teachers. I’m also lucky to have two nieces that I adore. I have extended family in Washington, too.

I grew up in a family that believed in being active in our community. My parents exposed me to many different activities, such as Girl Scouts, gymnastics, swimming, dance, soccer, art, and basketball. In my high school and college years, I focused primarily on playing competitively in basketball. I continued my love for basketball by coaching fourth- and fifth-grade girls traveling teams in the Snohomish and Mercer Island areas.

My academic background includes a Bachelor of Arts in studio art from Whittier College in Southern California and a culinary certificate from South
Seattle Community College. A highlight of my undergraduate program was studying abroad. Touring Italy enhanced my studies in art and inspired me to travel and take advantage of numerous cultural events. Outside of work, I enjoy painting, cooking, gardening, outdoor activities, trying new restaurants, and visiting new places. Like many Pacific Northwest residents, I enjoy outdoor activities when the weather permits.

What is a typical day for you?
My time is spent supporting several functions for the Bar. My days vary according to the events scheduled that day or in the future. When I am not coordinating an event like our annual APEX Awards dinner or the 50-year Member Luncheon, I procure sponsorships for CLE events and conferences. I interact daily with businesses that have an interest in sponsoring an event or that want to secure an agreement for sponsorship.

How do you help our members?
I coordinate Board of Governors meetings and communicate logistics to the members. Something I really enjoy is working with the local bars for the Local Hero Award and coordinating a luncheon to honor them several times a year. The 50-year Member Luncheon is another exciting event that I lead. This year’s attendees are from the class of 1967. The largest event I coordinate is the annual Acknowledging Professional Excellence (APEX) Awards, where we honor the achievements of the community’s legal luminaries. Approximately 400 people attend each year.
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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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**Rebecca Gobeille**
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She is a real estate transactional attorney specializing in residential development, real estate finance and affordable housing law. She proudly joins the JBSL loan team, representing lenders across the nation providing Fannie Mae and Freddie Mac insured loans. Rebecca was previously in the Real Estate and Construction group at Stoel Rives LLP.
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**Disbarred**

S. Christopher Easley (WSBA No. 28029, admitted 1998) of Tacoma, was disbarred, effective 5/03/2017, by order of the Washington Supreme Court. The lawyer's conduct violated the following Rules of Professional Conduct: 8.4 (Misconduct). Joanne S. Abelson acted as disciplinary counsel. Brett Andrews Purtzer represented Respondent. Stephen J. Henderson was the hearing officer. The online version of NWLawyer contains links to the following documents: Disciplinary Board Order Approving Stipulation; Stipulation to Disbarment; and Washington Supreme Court Order.

Walter Marland Hackett Jr. (WSBA No. 1055, admitted 1968) of Bremerton, was disbarred, effective 2/20/2017, by order of the Washington Supreme Court. The lawyer's conduct violated the following Rules of Professional Conduct: 1.3 (Diligence), 1.4 (Communication), 1.5 (Fees), 1.15A (Safeguarding Property). Valerie L. Attanasi and M. Craig Bray acted as disciplinary counsel. Walter Marland Hackett Jr. represented himself. James D. Hicks was the hearing officer. The online version of NWLawyer contains links to the following documents: Hearing Officer’s Decision; Disciplinary Board Order Approving 30-Month Suspension; and Washington Supreme Court Order.

**Resigned in Lieu of Discipline**

Amy J. Funchess (WSBA No. 37436, admitted 2006) of Seattle, resigned in lieu of discipline, effective 5/05/2017. The lawyer agrees that she is aware of the alleged misconduct in disciplinary counsel's Statement of Alleged Misconduct and rather than defend against the allegations, she wishes to permanently resign from membership in the Association. The Statement of Alleged Misconduct reflects the following violations of the Rules of Professional Conduct: 1.4 (Communication), 1.5 (Fees), 1.15A (Safeguarding Property), 1.16 (Declining or Terminating Representation), 3.3 (Candor Toward the Tribunal), 8.1 (Bar Admission and Disciplinary Matters). Edward T. LeClaire (WSBA No. 41088, admitted 2009) of Lake Oswego, OR, was suspended for 120 days with all but 30 days stayed pending successful completion of probation, effective 4/27/2017, by order of the Washington Supreme Court imposing reciprocal discipline in accordance with an order of the Supreme Court of the State of Oregon. For more information, see [http://www.osbar.org/members/display.asp?p=042081&amp;s=1](http://www.osbar.org/members/display.asp?p=042081&amp;s=1). Joanne S. Abelson acted as disciplinary counsel. Edward T. LeClaire represented himself/herself. The online version of NWLawyer contains links to the following document: The Washington Supreme Court Order.

**Suspended**

Stephen Kerr Eugster (WSBA No. 2003, admitted 1970) of Spokane, was suspended for 60 days, effective 5/03/2017, by order of the Washington Supreme Court. The lawyer's conduct violated the following Rules of Professional Conduct: 1.7 (Conflict of Interest: Current Clients), 1.8 (Conflict of Interest: Current Clients: Specific Rules). Francesca D’Angelo acted as disciplinary counsel. Stephen Kerr Eugster represented himself. Randolph O. Petgrave was the hearing officer. The online version of NWLawyer contains links to the following documents: Disciplinary Board Order Approving Stipulation; Stipulation to 60-Day Suspension; and Washington Supreme Court Order.

Todd V. Harms (WSBA No. 31104, admitted 2001) of Richland, was suspended for two years, effective 4/28/2017, by order of the Washington Supreme Court. The lawyer's conduct violated the following Rules of Professional Conduct: 1.3 (Diligence), 1.4 (Communication), 1.5 (Fees), 1.15A (Safeguarding Property), 1.16 (Declining or Terminating Representation), 8.4 (Misconduct). Edward T. LeClaire represented himself/herself. The online version of NWLawyer contains links to the following documents: Disciplinary Board Order Approving Stipulation; Stipulation to 30-Month Suspension; and Washington Supreme Court Order.

**Reprimanded**

Eric Valley (WSBA No. 21184, admitted 1991) of Shelton, was reprimanded, effective 1/05/2017, by order of the Chief Hearing Officer. The lawyer's conduct violated the following Rules of Professional Conduct: 1.15A (Safeguarding Property). Kathy Jo Blake acted as disciplinary counsel. Eric Valley represented himself/herself. The online version of NWLawyer contains links to the following documents: Order on Stipulation to Reprimand; Stipulation to Reprimand; and Notice of Reprimand.
Interim Suspension

Erica Nicole Davis (WSBA No. 30035, admitted 2000) of Kennewick, is suspended from the practice of law in the State of Washington pending the outcome of disciplinary proceedings, effective 5/17/2017, by order of the Washington Supreme Court. This is not a disciplinary sanction.

Jeffrey Thomas Parker (WSBA No. 22944, admitted 1993) of Seattle, is suspended from the practice of law in the State of Washington pending the outcome of disciplinary proceedings, effective 4/13/2017, by order of the Washington Supreme Court. This is not a disciplinary sanction.

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Michael J. Bond  
Bar No. #9154  
Law School: Gonzaga University School of Law

- Before law school, I was a philosophy major. For a while, I owned and operated a janitorial business called Michael Bond’s Merry Maintenance.
- My long-term professional goal is to become a federal judge.
- The most rewarding part of my job is helping people.
- The worst part of my job is going down to court to take a verdict.
- A funny story that happened to me while practicing: While cross-examining a plaintiff in an asbestos trial, he described the screening he went through with out-of-state doctors and lawyers at a Wenatchee hotel, and when I asked if he had any idea what they were looking for, he said, “Yes, I think they were looking for lawsuits.”
- Since I graduated from law school, the legal profession has many more women in practice, and that is a welcome improvement.
- During my free time, I read, I write, and I like to play Texas Hold’em poker.
- The most memorable trip I ever took was driving in my 1960 VW Westphalia camper down a hill so steep my front bumper hung up at the bottom of the hill.
- I worry about whether my children will be as lucky as I have been.
- I am happiest when watching our musician son perform.
- This changed my life: joining the U.S. Marine Corps. I wanted to be an investment banking lawyer until I tried my first jury case, a court martial in which my client was acquitted. I knew then I wanted to be a trial lawyer.
- I grew up in many places. My father was a Marine officer: we moved every two years, and we lived in Japan and Turkey in the late 1950s. I went to high school and college in Southern California.
- My fondest childhood memory is of sneaking kisses with the girl who sat next to me in kindergarten.
- Nobody would ever suspect that I voted for George McGovern, Jimmy Carter, Bill Clinton, and Barack Obama before I saw the light.
- Friends would describe me as a conservative. At dinner one night during my campaign for election to the Washington Supreme Court in 2008, I wondered out loud where people got the idea that I’m a right-wing redneck. Our 15-year-old daughter, Anna, who went on to complete a degree in geophysical engineering, replied immediately, “Well, Dad, it might have something to do with the way you talk, act, and look.” Don’t kids say the darnedest things?
- Aside from my career, I am most proud of this: being married to a beautiful and talented woman for over 40 years and raising two great children who have the courage to speak truth to power.
- I give back to my community by picking up litter on my walk home.
- An item I will never throw out is a “Hoss” hat I bought at Knott’s Berry Farm when I was in high school. For those born after 1970, Hoss Cartwright was a character in the 1960s TV show “Bonanza.”
- My all-time favorite movie or TV show is “Lonesome Dove.” My old Hoss hat now resembles the hat Robert Duvall wore as Gus McRae.
- My motto is one I learned in the Marine Corps: every day’s a holiday and every meal’s a feast.
- If I have learned one thing in life, it is don’t look back and, instead, make the best of what you have because life is short, and by bad luck or bad choices, you can lose it all.

My name is MICHAEL J. BOND. I have practiced law in Seattle since 1982. Since 2010, I’ve partnered with John Schedler, also a former Marine, whom I met at Gonzaga. I am a trial lawyer, and while my usual client is an architect or engineer in a construction dispute, I have tried every kind of case. You can reach me at michael@bondschambers.com.

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