

Washington State Bar  
Association

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# NWLawyer



JUNE 2019  
VOL. 73, NO. 5

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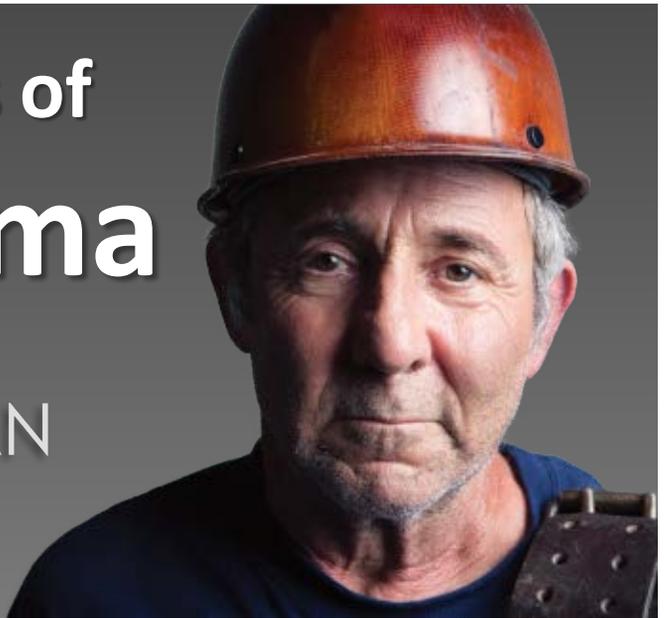
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# NWLawyer

The WSBA's Official Members' Magazine

NWLawyer will inform, educate, engage, and inspire by offering a forum for members of the legal community to connect and to enrich their careers.

Published by the  
**WASHINGTON STATE  
BAR ASSOCIATION**  
1325 Fourth Ave., Ste. 600  
Seattle, WA 98101-2539

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## THE BAR BUZZ

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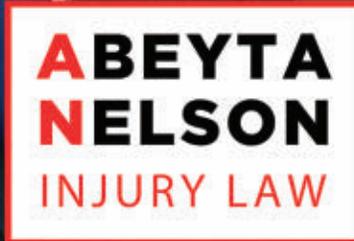


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## Welcome, Brett Goodman!



Abeyta Nelson Injury Law is pleased to welcome attorney Brett Goodman to our law firm. Brett was born and raised in the Yakima Valley. He graduated from Western Washington University and the University of Idaho School of Law. Welcome, Brett!  
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NWLawyer is published nine times a year by the Washington State Bar Association, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539, and mailed periodicals postage paid in Seattle, Washington (ISSN 2327-3399). For inactive, emeritus, and honorary members, a free subscription is available upon request (contact nwlawyer@wsba.org). A portion of each member's license fee goes toward a subscription. For nonmembers, the subscription rate is \$36 a year. Washington residents, please add sales tax; see http://dor.wa.gov for sales tax rate.

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RPCs COVER ALL

While Janus raises significant issues about the WSBA's future structure, Ms. Michl's proposal [See letter to the editor, April 2019 NWLawyer] suffers from a significant flaw. In regulating Washington's legal profession, the Washington State Supreme Court requires all who wish to become Washington lawyers to take the Oath of Attorney. APR 5.

APR 5(g) sets out that oath, including paragraph 3: "I will abide by the Rules of Professional Conduct approved by the Supreme Court of the State of Washington." I am confident that, whatever happens with the WSBA's structure, this part of the Oath of Attorney will not change.

There will never be a Washington lawyer who is exempt from an obligation to follow the Rules of Professional Conduct.

Leland G. Ripley, Duvall

MOST AMERICAN WOMEN 'DOING JUST FINE'

Despite KJ Williams' attestations to the contrary, the majority of American women are doing just fine in the 21st century ["Silent No More," April 2019 NWLawyer]. [WSBA] Diversity Programs Manager KJ Williams bemoans American women's suffering, claiming that men have dominated positions of power and denied "rights, access, and opportunities" to women that women must fight for. Perhaps because Ms. Williams is still a law student, she has not yet been to court. Female judges are prevalent on the bench in this state. Washington's two U.S. senators are women. Two former governors of Washington are women. A former

Let us hear from you! We welcome letters to the editor on issues presented in the magazine. Email letters to [nwlawyer@wsba.org](mailto:nwlawyer@wsba.org).

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Washington attorney general is a woman. As a group, women are the majority in this country. They live longer than men. They attend college in droves, in both undergraduate and graduate programs. And they are well-represented in the halls of power, both corporate and government. Our WSBA diversity programs manager should get out of the 19th century and realize the truth about American women in the 21st century.

However, as Ms. Williams does accurately point out, all is not well for women in some other parts of the world. She states, "It defies logic and boggles the mind that female human beings have to lobby governments and organizations for the right to exist without violence freely enacted upon them, their bodies, and their minds." Unfortunately we have a situation just like this in Detroit, Michigan, where young girls have been subjected to the barbaric practice of female genital mutilation. This is a religiously inspired practice that is performed in some Muslim countries. It violates both the customs and laws of our country. This appalling violence against women appears to be infiltrating into our own country. This mutilation of females must be stopped. And I hope that Ms. Williams would agree.

*Patricia Michl, Ellensburg*

### **AUTHOR'S RESPONSE**

Women do continue to make gains in "management and professional-level jobs," yet those numbers do not translate into the type of actual social, political, and financial power that men hold. The Center

for American Progress's Women's Leadership Gap clearly outlines the increase of female representation across industries *and* the lack of women in leadership positions:<sup>1</sup>

- In the legal profession, they are 45 percent of associates **but only 22.7 percent of partners and 19 percent of equity partners.**
- In medicine, they represent 40 percent of all physicians and surgeons **but only 16 percent of permanent medical school deans.**
- In academia, they have earned the majority of doctorates for eight consecutive years but are **only 32 percent of full professors and 30 percent of college presidents.**
- In the financial services industry, they constitute 61 percent of accountants and auditors, 53 percent of financial managers, and 37 percent of financial analysts. **But they are only 12.5 percent of chief financial officers in Fortune 500 companies.**

While Washington state has made many advancements in the pursuit of gender equity and has one of the smallest political representation gaps in the nation, disparate representation (and its consequences) is still an issue. It took the state 75 years to sign a bill into law that would force gender pay equity. (Washington state passed the Equal Pay Act in 1943; Gov. Jay Inslee signed the Equal Pay Opportunity Act into law in March 2018.)

In my opinion, all of this underscores the reality that many, if not most women have to fight

for equality, equity, and access to opportunities in ways that men simply do not. A racialized and gender-stereotyped society has impeded the progress of women collectively and informed the increased barriers and exclusion of women of color. This experience is not limited to the U.S. but is represented by the dominant representation of men in political, social, religious, and corporate spheres across the globe.

*KJ Williams, WSBA diversity programs manager*

NOTES:

1. <https://www.americanprogress.org/issues/women/reports/2018/11/20/461273/womens-leadership-gap-2/> (citations omitted; emphasis added).

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## **WASHINGTON STATE BAR ASSOCIATION**

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**Family Law Midyear Meeting and Conference**

*Davenport Hotel, Spokane*

SEPTEMBER 13-15, 2019

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**Elder Law Conference**

*The Conference Center at Seattle-Tacoma International Airport*

OCTOBER 3-4, 2019

**Criminal Justice Institute**

*The Conference Center at Seattle-Tacoma International Airport*

# All About Agriculture



ON THE COVER:  
Staff illustration using source illustrations ©Getty / grivina

If you live in the city like I do, the greenery you encounter on a daily basis might be limited to several small lawns, a patch of rogue wildflowers, and a park or two. In such an urban environment, it can be easy to overlook Washington's massive agriculture industry, which according to the state's Department of Commerce, is 37,249 farms and 140,000 employees strong.

Unsurprisingly, Washington produces about 70 percent of the apples grown in the U.S. Other top products include wheat, milk, and potatoes. But did you know that the state is also a leading producer of hops, spearmint oil, concord grapes, and wrinkled seed peas? The food and agriculture industry as a whole is worth approximately \$49 billion and generates income and jobs in every county in the state.

In this issue of *NWLawyer*, we wanted to pay special attention to that industry and highlight the many ways in which it intersects with the law. We introduce you to Bill Marler, the nationally recognized expert in litigating foodborne-illness cases who took on Jack in the Box in the '90s and

continues to represent clients who have been harmed by something they ate. Lawyer-scientist Julie Smith explains new labeling requirements for bioengineered foods, which include a new non-browning apple and a type of salmon that could help relieve pressure on its wild Pacific relative. Next, we visit the world of agritourism with travel and tourism business and regulatory attorney Mona McPhee, who explains how Washington's Agritourism Immunity Act applies to operators of petting zoos, U-pick orchards, wine tasting venues, and more.

For lawyers advising clients on the buying or selling of a farm, K&L Gates attorneys Kari Larson, Marisa Bocci, and Leslie Berkseth discuss the complex and wide-ranging due diligence activities involved in such a transaction. Stoel Rives attorneys Susan Johnson, Stephanie Meier, Anne Glazer, and Maren Norton illustrate the issues currently facing clients in the alcohol beverage industry, which include e-commerce, trademarks, and more. And last but not least, attorney Karrin Klotz interviews Paul Beveridge, an environmental lawyer who started a winery in his garage more than three decades ago and eventually grew the business to include a distillery, a vineyard, and an orchard.

Also in this issue: an ethics column about the risks of investing in clients' businesses, a legal writing article about the use of the passive voice, and a handful of restaurant reviews sent in by WSBA members.

I welcome your story ideas, comments, questions, and critiques.

**KIRSTEN ABEL** is the *NWLawyer* editor and can be reached at [kirstena@wsba.org](mailto:kirstena@wsba.org).

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# The Legal Profession Must Do What It Does Best: Lead During Times of Turbulence



**Bill  
Pickett**  
WSBA  
President

I had a conversation earlier this year with a young lawyer from southwest Washington who was skeptical about getting involved in the WSBA's many volunteer opportunities. He said when he asked several bar leaders why they decided to serve, many responded: "It's a good feather in your cap." This sentiment was disappointing and discouraging to the young lawyer, and rightfully so; it was not what he wanted to hear, and—considering what precious little free time he has outside of work and family—he chooses to remain unengaged.

I suspect many of you are likewise unconvinced of why or how to get active with the WSBA, perhaps for similar or completely different reasons. So I'm going to relay some of the ensuing sentiments shared between the young lawyer and me, because we both came away more hopeful and committed to our shared profession than when we started. My hope is that you will feel the same.

Hopefully you already know that our organizational touchstones during my volunteer

term as WSBA President are trust, relationship, and service. Therefore, I believe it's not only extremely important for you to get active in the Bar, but I also believe—I know—that you will be a perfect and much-needed bar leader if your instinct is to drive toward service opportunities that promote people-building rather than résumé-building. Over the past year, my assessment of the true leaders of this organization is that they serve from the heart for all the right reasons: They reach out and extend a hand to others in order to lift them up in a positive way that is life-changing!

The people who show up change the world. My never-ending hope is that the change we drive for is always aimed at making this world a better place for all. With this in mind, please know that people are showing up in a big way during a critical time for the WSBA. I believe this may well be one of the most exciting times in our profession for Washington state in more than a hundred years. Specifically, the Washington Supreme Court's Bar Structure Work Group is closing in on the last of its scheduled meetings. The work group will soon send recommendations to the court that could potentially shape the structure of the WSBA far into the future. Work group members have not only examined potential federal First Amendment and antitrust implications for integrated bars, they have also talked about the ideal structure to serve both the public and legal professionals. They have asked what things are appropriate for members to pay for via their mandatory licensing fee to maintain the integrity of the legal profession and serve Washingtonians. Diversity and inclusion programs, access to justice efforts, legal-support services, and Sections are all in the mix during discussions.

The decisions made by this body will likely live well beyond any of us practicing now. With this in mind, we should all know that there are great representatives from the membership, Sections, court-appointed boards, and the public who have stepped up to service during this time. While nobody wants to issue a forecast about where the work group and court will eventually land, I will step out on a limb and say this: We will come through this time of uncertainty, and the organizational structure of our profession *will be better*. The reason I can say this with absolute certainty is that we have a long history as a profession of being *leaders* in tumultuous, uncertain, and difficult times. More importantly, we have a long history of staying the course during such times until we succeed in making our society and communities better. It's a historical fact, in matters big and small—from the founding of this country to the forming of

**Chief Justice Mary Fairhurst, who is heading the Washington Supreme Court's Bar Structure Work Group, is hands-down an amazing collaborator and she is quite sincere when she says she wants to hear from you.**

contracts—*lawyers have always been there to lead toward a better future.*

I have no doubt this will be the case with the Bar Structure Work Group, and here's my request: Let's see this for what it is—a *massive opportunity to make our profession better and strengthen how we serve members and the public.* Get excited, stay connected, and be involved. Chief Justice Mary Fairhurst, who is heading the work group, is hands-down an amazing collaborator, and she is quite sincere when she says she wants to hear from *you.* If you are not able to attend the meetings, get online and watch the webcasts after the fact at [www.wsba.org/bar-structure-work-group](http://www.wsba.org/bar-structure-work-group). Email in your comments to [structureworkgroup@wsba.org](mailto:structureworkgroup@wsba.org) and/or talk to one of the board representatives and make sure they carry your viewpoint to the group if you cannot be present in person. The more voices that are part of the process, the more we will ensure an end result that is good for legal professionals and the public we are sworn to serve.

You have to show up to change the world; now's the time. Legal professionals must do what we do best—lead during times of turbulence, serve during times of change. I'm optimistic that my young lawyer friend from southwest Washington will answer the call, and I'm betting on you, too.

Two more points in closing:

First, there was a bit of a dustup this legislative session over ESHB 1788, which, if it had passed concurrence in the House, would have repealed the majority of the State Bar Act and recognized the plenary authority of the Washington Supreme Court to regulate the practice of law. Essentially, this bill would have paved the way for the court to implement its bar-structure decision without legislative interference.

The WSBA Board of Governors officially took a stand of opposition, arguing the best time for such a bill is after the Bar Structure Work Group when any potential changes to the Bar Act can be narrowly tailored. I understand that reasoning, and I don't think it contradicts my strong support of any effort to clarify and separate powers between the legislative and judicial branches. I will always be in favor of legal professionals, including judges, overseeing the practice of law and administration of justice—especially when legislators put pen to paper to collaborate with full faith to recognize the plenary authority of the Washington Supreme Court. I will say it again: In times of turbulence and change, legal professionals consistently lead the charge; and I think it's prudent to accept any and all authority granted to us to lead in shaping our bar's future.



## RESTAURANT REVIEWS

# THE RULE OF LUNCH

In keeping with the theme of this issue, the esteemed duo of the Pickett Law Firm—WSBA President Bill Pickett and Legal Assistant Sarah Matheny (an aspiring, soon-to-be member of the Bar)—recommend a stop at Miner's Drive-In the next time you're in Yakima, whether for business or pleasure. A review by Ms. Matheny:

“Definitely Miner's”—that's the response a Yakima native gives when asked where to stop for a great burger in town. Not only is Miner's a Yakima institution, they serve up dinner-plate-sized beef hamburgers with local, fresh ingredients on a daily basis to patrons from all over the U.S.—and don't forget to order one of their famous thick and delicious milkshakes to go with it. Miner's Drive-In celebrated its 70th anniversary in April 2018. Burgers were 25 cents when it opened, compared to today's \$6.15 for the Big Miner, and four generations of the Miner family have proudly worked behind the counter. You know the saying about not eating at a restaurant with an empty parking lot? Well, that is *never* an issue at Miner's! Year-round, the parking lot is packed full of students in buses making regular stops, Yakima locals grabbing a bite to eat, and travelers ensuring they get their “Miner's fix” before getting back on the road. The only question left is: “When do we get to go back?”

FIND MORE REVIEWS ON [PAGE 48 >](#)

Finally, I want to reassure you that the WSBA is unflinchingly doing good work to support you. WSBA staff are the backbone of the organization who do the heavy lifting day in and day out. Please know that our staff consistently uphold the highest levels of service, even as we have seen what appears to be chaotic volunteer leadership. As such, know that the day-to-day operations of the WSBA are, and will remain, in good hands.

Peace.

**WSBA PRESIDENT BILL PICKETT** is a trial lawyer licensed to practice law in Washington, Alaska, Oregon, and Arizona. He can be reached on his cell phone at 509-952-1450.

## Here Comes the Sun



**Terra Nevitt**  
WSBA  
Interim  
Executive  
Director

Rather than focusing in on one area, we aspire to reach every region in the state on the Listening Tour.

**S**ummer is here and not a moment too soon. With the dark days of winter behind us, all things feel possible. I look forward all year to warmer weather, more time with my kids, and increased opportunities for enjoying ice cream. Of course, our work at WSBA—like yours—continues full steam ahead whatever the season!

In July we will host the summer bar and licensing exam for all license types at the Tacoma Convention Center. Our admissions crew's goal is "boring"—that is, a smooth and uneventful event—and yet they report some pretty interesting exam trends. We have been administering the Uniform Bar Exam (UBE) for lawyers since July 2013, and the portability and flexibility of that multijurisdiction exam continues to appeal to recent law-school grads. We have also updated our Admission by Motion rules to be more consistent with generally accepted UBE-score-transfer protocols around the country. As a result, there has been a small but consistent drop in exam takers here over the last several years, while we have seen an increase in the number of lawyers admitted by UBE score transfer and Admission by Motion. In fact, total admissions by those methods now top the number of admissions by those who take our state bar exam.

For our Education Programs Team and many of our Sections, summer is midyear conference season. These conferences have historically been a valued space for high-quality education, networking, and fun. This summer's lineup includes the Real Property, Probate, and Trust Section Midyear Meeting & Conference on June 7-9 in Spokane, and the Family Law Section Midyear Meeting & Conference on June 21-23 in Spokane. In the fall we will support the Solo and Small Firm Conference on Sept. 13-15 in Suquamish, the Elder Law Conference on Sept. 20 in SeaTac, and the 26th Annual Criminal Justice Institute on Oct. 3-4 in SeaTac. This year our Education Programs Team is also working with the Access to Justice Board to deliver the 20th Access to Justice Conference, June 14-16 in Spokane. To register and learn more about these events go to our WSBA CLE Store at [www.wsba.org](http://www.wsba.org). And if you're after a high-quality, on-demand CLE that

you can enjoy from your desk (or the beach), visit our WSBA CLE Store and browse on-demand seminars from the left navigation pane. Check out our on-demand seminar selection during our Summer Sale taking place July 16-31 to receive a 40 percent discount on most of our on-demand programs.

The Bar Structure Work Group continues, with meetings scheduled through June and possibly into July. This Supreme Court entity, led by Chief Justice Mary Fairhurst, is charged with making a recommendation to the Supreme Court as to the future structure of the WSBA in light of recent case law with First Amendment and antitrust implications for all mandatory bar associations. The question before the group isn't whether the work of the WSBA has value, but whether the integrated way we conduct that work is constitutional. It's a question that mandatory bars across the country are grappling with and, like them, we must decide whether to be proactive or take a "wait and see" approach. Thank you to those of you who contributed during the May meetings. If you have something to say, and haven't yet said it, it's not too late. Participate in the meeting in person or telephonically, or you can email your comments to [structureworkgroup@wsba.org](mailto:structureworkgroup@wsba.org).

For me, this summer is all about the WSBA Listening Tour. The president and executive director, often joined by local governors, have been taking part in this annual event since 2012. It did not occur the last two summers due to unexpected leadership transitions, but this year it is back. For me, the point of the Listening Tour is to meet you where you are, to be accountable to your concerns, to give you information about our work, to engage in dialogue about the policy issues the board is grappling with, and to hopefully build relationships that can ultimately lead to greater trust in the WSBA. With all that we've been through this year and all that we face ahead, I think the Listening Tour is more critical now than ever. With that in mind, rather than focusing on one area in particular, we aspire to reach every region in the state. In May we kicked off the tour with stops in the Tri-Cities and Yakima. In June we will be visiting Kent, Bellevue, Tacoma, Chehalis, Vancouver, Spokane, and Newport and are working to schedule additional stops in Skamania County, Pacific County, and the Moses Lake area. Later this summer we intend to get out to north-central Washington and in the fall to northwestern Washington. For the full list of dates and locations, go to [www.wsba.org](http://www.wsba.org) and search "2019 WSBA Listening Tour."

I hope you have a lot to look forward to this summer and that you can squeeze in the Listening Tour when we come to your region. I am looking forward to meeting you. 🍷

---

**TERRA NEVITT** is the WSBA interim executive director and can be reached at [terran@wsba.org](mailto:terran@wsba.org).



# NW Sidebar

The Voices of Washington's Legal Community



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# TAKING STOCK

## NAVIGATING RISK WHEN INVESTING IN CLIENTS



BY MARK J.  
FUCILE

Lawyer investments in clients are nothing new. In fact, the seminal American Bar Association ethics opinion on the subject was issued in 2000, near the height of the dot-com bubble.<sup>1</sup> At the same time, the mix of client businesses in which lawyers are investing has broadened. While technology startups remain popular,

emerging areas such as cannabis businesses have also drawn lawyer investments.

Although lawyer investments in client businesses are permitted, the risks can be significant and

warrant careful evaluation by law firms. In this column, we'll look at four risk management aspects of investing in clients. First, we'll outline the basic conflict considerations that must be addressed. Second, we'll survey the consequences that can occur if a firm fails to deal with these inherent conflicts. Third, we'll touch on the potential impact that investments in firm clients may have on malpractice coverage. Finally, we'll discuss potential internal controls available to firms to manage these risks.

Before we do, however, a caveat is in order. The lawyer investments discussed do not include standard commercial transactions made by individual lawyers or their firms in publicly traded companies using publicly available information—such as a lawyer at a firm that represents Microsoft buying 100 shares through a broker after reading a positive review of the company's prospects in *The Wall Street Journal*. Standard commercial transactions of this kind are generally excluded from the conflict considerations addressed in the Rules of Professional Conduct (RPCs) because the lawyers are not leveraging their relationships with the clients concerned. Rather, the common scenarios discussed here include law firms taking stock in lieu of fees or firm lawyers investing in clients through avenues not available to the general public.

## CONFLICTS

The principal conflict rule governing lawyer investments in clients is RPC 1.8(a). It imposes exacting standards and merits quoting verbatim:

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

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

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

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

Comment 1 to RPC 1.8 explains both the nature of the conflict and the corresponding high bar to informed consent imposed by the rule:

A lawyer's legal skill and training, together with the relationship of trust and confidence between lawyer and client, create the possibility of overreaching when the lawyer participates in a business, property or financial transaction with a client, for example, a loan or sales transaction or a lawyer investment on behalf of a client.

It is important to note, however, that RPC 1.8(a) is not the only conflict rule that may come into play from lawyer investments. A particularly dangerous conflict might arise, for example, if a law firm lawyer was handling a lawsuit for a client against a company in which the lawyer had a significant undisclosed investment that might reasonably be harmed if the client prevailed. This scenario raises a conflict under RPC 1.7(a)(2), which governs "material limitation" conflicts. It is triggered in our example by a lawyer

investment in an adversary rather than a client. The risk to the firm if the litigation does not go well and the lawyer investment is only discovered later is that the client may claim that the lawyer pulled their punches in handling the matter to protect the lawyer's own financial interest. As will be addressed later, it can be critical to have any such investments included in the firm's conflict system.

## CONSEQUENCES

Although lawyer investments that do not meet the standards in RPC 1.8(a) expose the lawyers involved to regulatory discipline, in many instances there are two other practical consequences that loom equally large: enforceability and civil damage risks.

The Washington Supreme Court in *LK Operating, LLC v. The Collection Group, LLC*, 181 Wn.2d 48, 331 P.3d 1147 (2014), highlighted enforceability risk. *LK Operating* involved an investment by two lawyers through a family corporation with a firm client in a debt-collection business and a subsequent falling out between the lawyers and the firm client. The business had been structured as a joint venture; in the later litigation over their respective ownership interests, the (by then former) client argued that the lawyers' claimed interest could not be enforced because they had not complied with RPC 1.8(a). The Supreme Court concluded that the lawyers' failure to comply with RPC 1.8(a) had rendered the joint venture agreement unenforceable and affirmed rescission of the deal.

Civil damage risk flowing from lawyer investments is often a blend of claims for legal malpractice and breach of the fiduciary duty of loyalty. These blended theories are usually framed around the core contention that the law firm shaded its advice to the law firm's benefit and the client's detriment. Arguments with this tenor most often follow if the business has failed; there is subsequent finger-pointing; and, for example, a receiver or bankruptcy trustee is appointed to recover any available assets. Other instances are closer to the earlier illustration of a firm handling a matter against a company in which a firm lawyer has an undisclosed investment.

## COVERAGE

Lawyers considering an investment in a firm client should closely review the firm's malpractice insurance policy. Many policies exclude or limit coverage for claims arising out of investments in, or transactions with, firm clients.

Civil damage risk flowing from lawyer investments is often a blend of claims for legal malpractice and breach of the fiduciary duty of loyalty.

Such restrictions are neither new nor novel. A commentator 15 years ago observed pointedly:

Lawyers should recognize that entrepreneurial activities with clients may leave them and their clients with no insurance coverage. While it is generally imprudent to do business with a client, it is positively foolhardy to do so if the policy's business pursuits exclusion eliminates coverage for all claims relating to the business enterprise.<sup>2</sup>

The fact that sophisticated insurance carriers include exclusions or limitations based on claims experience implies that any anticipated economic return on an investment should exceed the corresponding financial risk of a potentially uncovered claim.

### CONTROLS

The inherent risks that come with investing in law firm clients suggest that firms should have clearly articulated internal controls in place before any such investments are made. Although the particular controls implemented will vary by firm size, culture, and practice, several warrant careful consideration:

- Form a management group within the firm charged with ensuring that investments in non-public firm clients are both vetted and, if approved, are done with appropriate documentation. Although input from the firm lawyer with the principal relationship with the client involved will no doubt be central to a firm's evaluation of the potential investment, consider recusing that lawyer from the actual decision so as to enhance the independence of the process.
- A conflict waiver meeting the exacting standards of RPC 1.8(a) should be central to the overall process of approving a particular investment. Although using a template makes sense to ensure relative uniformity, waivers should be detailed and customized to the specific circumstances. The client-executed waiver for each investment should be adequately safeguarded with other relevant transaction documents.

- Require that investments in firm clients be made in the name of the firm rather than individual lawyers. The risk otherwise is that individual lawyers will hold the potential upside financial benefit of an investment while the firm is left with the downside risk of a claim.
- Require that other lawyer investments in non-publicly traded companies be reported to the firm so that they can be entered in the firm's conflict system. Again, it will be the firm that will bear the risk—both financial and reputational—if an undisclosed investment by a firm lawyer in an adversary leads to a claim by a firm client.
- If the law firm is taking stock in lieu of fees, carefully evaluate whether the resulting return can be justified as a reasonable fee under RPC 1.5(a). In *Holmes v. Loveless*, 122 Wn. App. 470, 94 P.3d 338 (2004), for example, the Court of Appeals refused to further enforce a lawyer investment in a firm client where over time an \$8,000 discount in fees had returned over \$380,000 to the lawyers involved.
- Keep any given investment relatively small and in line with the terms available to other professional advisors who are receiving a similar opportunity. The greater the investment, the more difficult it will be to credibly contend that the law firm's professional judgment in rendering its services had not been affected.<sup>3</sup> Similarly, structuring a law firm investment so that it is on the same terms as other professional service firms will lessen (but not completely eliminate) the risk that the law firm will be accused of preferential treatment later. 

### NOTES:

1. ABA Formal Opinion 00-418 (2000). Despite its age, this opinion remains one of the best resources for law firms in this area. It is available on the ABA website.
2. Susan Saab Fortney, *Legal Malpractice Insurance: Surviving the Perfect Storm*, 28 J. Legal Prof. 41, 51 (2004).
3. This may be compounded if the firm lawyer who shepherded the firm's investment is also serving as director of the client concerned. Lawyer-director conflicts are discussed at length in ABA Formal Opinion 98-410 (1998). It, too, is available on the ABA website.

**MARK J. FUCILE** of Fucile & Reising LLP handles professional responsibility, regulatory, and attorney-client privilege matters and law-firm-related litigation for lawyers, law firms, and legal departments throughout the Northwest. He is a former chair of the WSBA Committee on Professional Ethics and is a past member of the Oregon State Bar Legal Ethics Committee. He is a co-editor of the *WSBA Law of Lawyering in Washington*, the *WSBA Legal Ethics Deskbook*, and the *OSB Ethical Oregon Lawyer*. He also teaches legal ethics as an adjunct for the University of Oregon School of Law at its Portland campus. He can be reached at 503-224-4895 and mark@frllp.com.





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FAMILY LAW

# Activate Your Prose by Using the Passive Voice

When the passive voice is the friend of lawyers, and when it's not

BY BENJAMIN  
S. HALASZ

Many times in my career, I've been told: "Use the active voice!" Or put more negatively, "Get rid of the passive voice!" But then I read legal opinions that I find easy to understand, and I have no trouble finding the passive voice. For

example, the Washington Supreme Court recently started *State v. Sassen Van Elsloo* with, "Adrian Sassen Van Elsloo appeals the midtrial dismissal of an impeached juror *who was excused* because she had a minor connection to an important defense witness."<sup>1</sup> And when the United States Supreme Court recently held in *Carpenter v. United States* that the Fourth Amendment applies to cellphone searches, it stated that "[a]lthough no single rubric definitively resolves which expectations of privacy *are entitled* to protection, the analysis *is informed* by historical

understandings 'of what *was deemed* an unreasonable search and seizure when [the Fourth Amendment] *was adopted*.'"<sup>2</sup>

Four uses of the passive voice! In a Chief Justice Roberts opinion no less! So what gives?

Really, "use the active" and "avoid the passive" are two different concepts. And while I agree that legal writers should often use the active voice, the advice to get rid of the passive is just wrong. The passive voice is better than the active voice in several situations, ones that reflect why it exists. The passive helps us when we don't know who did something; it helps when we don't care who did something. And it helps us move words around so our sentences flow smoothly—a flow appreciated by our readers.

First, a matter of definition. To locate the passive, I advise my students to watch for a sentence involving (1) a form of the verb "to be" and (2) another verb (3) that could be followed by the expression "by" and a person. To confirm the sentence has the passive voice,

students should be able to flip it around to put it in the active voice, with the do-er (subject) followed by the action (verb). For instance, "This article was written by me" is passive.

The thing done—the writing—is followed by the do-er, "me." I can flip it to active: "I wrote this article." All of the examples at the start of this article match this definition. You can find a much more technical and comprehensive definition in guides such as Bryan Garner's *Redbook*, but mine gets the gist.

It's understandable that I would regularly be told to get rid of the passive, for that advice is regularly repeated by legal-writing books. And while many books also briefly note some exceptions, the essence of the advice remains the same: Don't do it! Bryan Garner titles a section in the *Redbook*, "Minimize the passive voice." In *The Elements of Legal Style*, he states instead: "Use the active voice." The section describes the passive as sometimes leading not "merely to vagueness" but also "to obfuscation," and, even worse, resulting "more often from lazy thinking than from deception." The textbook I use for first-year students has a section titled, "Whenever Possible, use Active Rather than Passive Voice." Sigh.

Look, is this necessarily bad advice for first-year students struggling with very abstract concepts? Well ... no. But more experienced authors following that advice will find their writing stilted and choppy. Instead, I suggest following the advice from such books as *Style: Lessons in Clarity and Grace*<sup>3</sup> that explain the numerous instances when the passive voice is superior to the active. For now, I'll briefly highlight three.

First, sometimes the actor in a



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If you have a question or a pet peeve about legal writing that you'd like to see addressed in a future "Write to Counsel" column by UW Law writing faculty, please submit it to [nwlawyer@wsba.org](mailto:nwlawyer@wsba.org), with the subject line "Write to Counsel."

sentence—who did something—is unknown. For instance, Chief Justice Roberts writes in another line in *Carpenter*: “Although cell sites *are* usually *mounted* on a tower, they *can also be found* on light posts, flagpoles, church steeples, or the sides of buildings.” Who mounts them, and who finds them? If forced to switch this to the active, I could make something up, I suppose. But for purposes of the current audience, we don’t know, and we don’t really care. Switching this sentence to the active would just make it sound odd.

Second, sometimes the actor in a sentence is immaterial, or at least less important than the object of the sentence. The Washington Supreme Court wrote in *Sassen Van Elsloo* that “[t]hree months later, Leake stopped a 1990 Lincoln Town Car *driven by* Sassen Van Elsloo. Sassen Van Elsloo *was charged* with nine felony counts relating to the earlier encounter.” In that second sentence, we can assume Sassen Van Elsloo was charged by a prosecutor, but that’s a detail immaterial to the sentence—the focus is on the defendant and the charges. Switching to active would add unnecessary information, bogging our readers down. (I’m leaving to a future article the tricky but interesting issue of when, if ever, to use the passive to persuasively downplay a person’s role.)

The third instance is most often neglected, but it is often also the best reason to use the passive voice: to make sentences flow smoothly. The passive voice allows you to restructure sentences in ways you couldn’t with the active voice. For instance, it’s often easiest for readers to follow your writing if you keep familiar information near the front of sentences and you introduce new, unfamiliar concepts at the end. The passive voice facilitates that structure. The

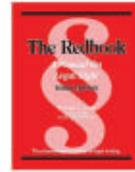
two sentences above from *Sassen Van Elsloo* illustrate this well: The first sentence ends with the new, important information that the car was driven by Sassen Van Elsloo, and the second picks right up by starting with his name and then moving to the charges. If instead the second had started with “The prosecutor brought,” we’d not only bog down our readers with unnecessary information, we’d also interrupt their reading with choppy sentences.

These same principles explain the quote from *Carpenter* at the beginning of this article. To see this, it’s helpful to have some context. Just before the language I quoted earlier, Chief Justice Roberts describes multiple approaches the Court has used for the Fourth Amendment search doctrine over the years. My quote picks up that same thought about the different approaches, which is now familiar information. The sentence’s second half then starts with the information from the first half of the sentence, which has also become familiar. To show this, I’ve bolded old information, italicized new information, and underlined the passive voice:

“Although **no single rubric** definitely resolves which **expectations of privacy** are entitled to protection, **the analysis** is informed by *historical understandings of what was deemed an unreasonable search and seizure when the Fourth Amendment was adopted.*”

Because the passive voice allows Chief Justice Roberts to flip the sentence structure, it facilitates this familiar-to-unfamiliar construction. It also minimizes extraneous information, and it keeps the subject and verb helpfully close together in the second clause. It also allows

## STYLE BOOKS



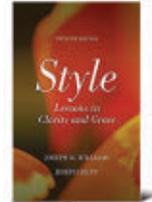
### The Redbook: A Manual on Legal Style 3rd Edition

By Bryan A. Garner



### The Elements of Legal Style 2nd Edition

By Bryan A. Garner



### Style: Lessons in Clarity and Grace 12th Edition

By Joseph M. Williams, Joseph Bizup

Chief Justice Roberts to keep the reader’s attention focused on the doctrines—not the Supreme Court and its role. How does this same sentence look in the active voice? Choppy, with more emphasis on the Court. Notice, too, how far apart the simple subject (understandings) and the verb (inform) are in the second half of the sentence.

Although **no single rubric** definitely resolves which **expectations of privacy** we will protect, *our historical understandings about what we deemed an unreasonable search and seizure when the Fourth Amendment inform the analysis.*

I’m not saying legal writers should suddenly load up their briefs with passive voice. So what is my advice? Don’t shun it. To make your writing flow smoothly, the passive voice will sometimes be needed. 

**BENJAMIN S. HALASZ** is a lecturer and faculty clerkship director at the University of Washington School of Law, where he teaches legal writing courses.



#### NOTES:

- 191 Wn.2d 798, 425 P.3d 807 (2018) (emphasis added).
- 585 U.S. \_\_\_, 138 S. Ct. 2206, 201 L. Ed. 2d 507 (2018) (emphasis added).
- Joseph M. Williams and Joseph Bizup, *Style: Lessons in Clarity and Grace* (12th ed. 2016).



## Perspectives

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# 10 Critical Reforms Local Prosecutors Should Embrace

BY CHRISTOPHER BLACK,  
CHRISTIE HEDMAN,  
AND ANITA KHANDELWAL

**P**rosecutors exert incredible power. They decide whom to charge, what plea offer to make, and what sentence to seek. These decisions profoundly affect people’s lives. Being charged with a crime can make someone who had a job unemployable, separate a parent from a child, or pull someone out of community-based services and incarcerate them far from their community.

With this in mind, we believe that local prosecutors across the state should immediately and publicly embrace the set of 10 principles listed. These evidence-based reforms are gaining traction in other parts of the country. If implemented in local jurisdictions in Washington, they will go far toward shifting our criminal justice system to one that upholds values of fairness, equity, and access to justice.

### REFORM UNJUST BAIL PRACTICES



Prosecutors should act to end money bail, a wealth-based practice that causes poor individuals to be locked up and pressures them to plead guilty, while those with resources are able to buy freedom and fight their case while out of custody. Bail should be considered only for violent offenses and must be based on an individual’s ability to pay. Bail should never be used as a mechanism of detention, intentionally set so high as to prevent any possibility of release.

### END THE WAR ON DRUGS



The war on drugs is a failed war that has disproportionately harmed people of color and the poor. Prosecutors should stop charging people for possessing small amounts of drugs and work to vacate past drug-possession convictions. Possession of larger amounts should not be charged as a felony, and these individuals should never be imprisoned. Prosecutors should learn to pursue treatment rather than prison, and should divert nonviolent offenders to community-based programs.

### TREAT KIDS LIKE KIDS



Young people’s brains continue to develop up until age 25. For that reason, young people have an incredible ability to transform their lives and find pathways to success. Prosecutors should never charge youth in adult court and should divert all but the most serious offenders from the court system. Local prosecutors should pursue reforms to make juveniles’ criminal records confidential and allow young people to stay out of the adult court system until they are over the age of 25.

### END COERCIVE PLEA BARGAINING



Prosecutors routinely threaten accused persons with more serious charges, aggravating circumstances, and longer sentence recommendations when they set their case for trial. This coercive practice leads to unjust results and runs counter to our constitutional embrace of due process and statewide standards for prosecuting attorneys.

### STOP CRIMINALIZING THOSE WITH MENTAL ILLNESS



Jails throughout the state have become warehouses for people with mental illness. Prosecutors should not criminalize mental illness and should never charge hospitalized individuals for actions outside of their control. In addition, charges for all nonviolent offenses or charges for crimes in which nobody was seriously hurt should immediately be dismissed when it becomes clear that the individual cannot understand the court process. Those who present a danger to themselves or others due to mental illness should be brought to a hospital, not a jail.

### REFORM CHILD SUPPORT DEBT-COLLECTION PRACTICES



Prosecutors should not seek to jail parents who can't pay child support debts, especially debts owed to the state rather than to another parent, or debts for support of children who have reached adulthood. Furthermore, prosecutors should not seek to have a driver's license revoked due to someone's failure to pay child support. Such a move limits a parent's ability to obtain and maintain employment, perpetuates poverty, and makes it harder for the parent to pay outstanding debts.

### END DISCRETIONARY FINES AND FEES



The imposition of fines and fees punishes the poorest among us, and those who can't pay them quickly are often reported to credit bureaus. Prosecutors should take into account the accused person's financial status and should never request fines or fees when an individual's income is below the living wage.

### REJECT THE THREE-STRIKES APPROACH



Washington's three-strikes law places people behind bars for life, with no chance for parole. The law flies in the face of a criminal justice system premised in any part on rehabilitation, and contributes to an aging prison population. Studies have repeatedly demonstrated this population to be at an extremely low risk of re-offending, and their incarceration comes at an enormous cost to taxpayers. The three-strikes law also undermines judicial discretion, preventing a judge from taking even the most significant of mitigating circumstances into consideration and imposing an exceptional sentence. Although legislative action is needed to repeal this law, prosecutors have enormous discretion in how they charge and resolve cases, and they can ensure that no person receives a mandatory life sentence for a third strike.

### DIVERT MOST MISDEMEANOR OFFENSES



Throughout the country, prosecutors are embracing diversion programs and restorative justice practices that recognize the criminal legal system can be harmful and costly. Prosecutors should devise a list of crimes, including most nonviolent misdemeanors, that should only be charged in extraordinary cases. Examples include shoplifting, trespassing, resisting arrest, minor driving offenses, threats (excluding domestic violence), and drug offenses.

### PROMOTE TRANSPARENCY AND ACCOUNTABILITY



Information is power. Communities have a right to the demographic information—such as the race, gender, and age—of those who are arrested, booked, charged, and convicted. Prosecutors should not only track and publish this information but also meet with community groups to discuss the data and find solutions to racial disparities and other troubling trends.

### OUR PLEA

Prosecutors have the power to fill our jails. At a time of waning judicial discretion, they also have the power to help dismantle an unfair system. We urge prosecutors to embrace the reforms listed above. By doing so, they will provide residents across our state with a pathway out of poverty, marginalization, and incarceration. 



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IN DEPTH

## FOOD FOR THOUGHT

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# GROWTH INDUSTRY

Washington's agriculture economy is fertile ground for legal issues

A farmhouse in the Palouse seen from Steptoe Butte State Park.

Photo ©Getty / Justinreznick

BILL MARLER TALKS  
ABOUT THE STATE  
OF OUR FOOD,  
MICROBIOLOGICAL  
INVESTIGATION, AND  
JACK IN THE BOX



# GUT REACTION

**BY COLIN  
RIGLEY**

It helps to think of Bill Marler's area of law—plaintiffs' litigation for foodborne illness injuries—as less *Law and Order*, more *CSI* .... plus stool cultures.

For Marler, a raspy-voiced, avuncular Seattle lawyer and a founding partner of Marler Clark LLP PS, most of his firm's work happens before the lawsuit is filed. By the time the firm approaches the defendant, he says, it's hard for a food manufacturer to argue the case because Marler Clark has already built a genetic fingerprint linking the plaintiff, the contaminated food source, and the party at fault. It's a uniquely heuristic

practice area where a team of legal and biological experts spend much of their time chasing microscopic pathogens back in time to figure out how they got into the stuff we eat.

On a Tuesday afternoon when I arrive at Marler Clark, Marler is sitting at a nondescript desk at the far end of the firm's fifth-floor offices. The walls are adorned with news clippings and media highlighting the firm's and Marler's biggest foodborne illness cases. He has a U.S. map posted next to his desk that's pimped with markers to track the latest *E. coli* outbreak, which the Food and Drug Administration (FDA) has narrowed to Yuma, Arizona, but stopped short of identifying where in Yuma and how it spread—that's where Marler Clark steps in.

Nationally recognized as an expert in foodborne illnesses—with appearances in outlets like the *Washington Post*, *The Atlantic*, CNBC, and more—Marler is neither an epidemiologist nor an FDA

*Content Warning: This article deals with death, childhood illness, and some graphic descriptions of medical situations.*



**As an expert on foodborne illness plaintiff's litigation, Marler Clark LLP PS Partner Bill Marler has handled decades of high-profile cases involving outbreaks.**

Jack in the Box, later joined Marler to sue Odwalla in 1996 and became another founding partner in Marler Clark.

It was the Jack in the Box case that propelled Marler from a relatively unknown associate in Seattle to partner at a relatively new firm to founder of his own firm that has become the go-to for people who've been injured by something they ate and seek redress.

The Jack in the Box case also unraveled and reshaped the beef industry as a whole. Hundreds of children were admitted to hospitals with moderate to severe symptoms, ranging from diarrhea to Hemolytic Uremic Syndrome (HUS) and corresponding multi-organ failure. E. coli-tainted hamburger meat prematurely took the lives of four children: three from Washington state, and one from California—a six-year-old from San Diego who suffered irreparable brain damage and died in the hospital in the arms of her mother, who sang a final lullaby before doctors removed life support.<sup>1</sup>

Washington native Brianne Kiner, one of the lucky survivors, turned 35 this year, an astonishing fact given what happened when she was 11 and ate a hamburger that put her into a six-week coma. Kiner's doctors removed her large intestine and kept her alive with a tangle of machinery and an open, gauze-covered incision running from collarbone to waist because her organs were too swollen for her to be sutured shut after surgery<sup>2</sup>—even still, her heart stopped once before she awoke.

If there's a positive to be taken from these tragedies, it is that the fallout has led to expansive industry-wide reforms and improvements in the quality of beef.

The collected data on E. coli outbreaks—as the bug has evolved and new technologies emerge to track it—show a downward trend in E. coli from beef between 1993 and 2018, according to records from the Centers for Disease Control and Prevention (CDC)

agent; he's a liberal arts major and Seattle University Law-School-educated lawyer who, through a blend of tenacity (translation: stubbornness) and some luck, ended up at the center of seminal cases against food manufacturers responsible for the Jack in the Box and Odwalla E. coli outbreaks of the '90s.

"There are 48 million Americans that get a foodborne illness every year, 125,000 of them hospitalized, and 3,000 dead," Marler tells me. "So you would think with those statistics that I'd have the largest firm in Seattle, but I don't. We've got six lawyers and we are truly the only law firm in the country that solely does this for work."

The founding partners of Marler Clark first met through that Jack in the Box outbreak, which began as a suspiciously high incidence of kidney issues in young children in 1993. Bruce Clark represented Jack in the Box when Marler was suing the fast-food giant's parent company. Denis Sterns, who also represented

Staff photo by Connor Smith



**GUT REACTION: Q&A WITH BILL MARLER**

National Outbreak Reporting System (NORS), as well as additional data from Patti Waller, an epidemiologist with Marler Clark. It's difficult to plot out a trend before Marler filed the first lawsuit in the Jack in the Box case in 1993, however, because the CDC outbreak data only goes back as far as 1998. For the rest of the story, we need to look to Marler.

•••

**MARLER:** From the Jack in the Box case until like 2000, probably 95 percent of our firm revenue was [from] E. coli cases in hamburger, and now it's frankly zero. It's not like somebody else is doing the work, it's just that the cases aren't there. It was a combination of government action and industry action and consumer action. It's actually a positive thing. Meat's kind of safer nowadays, at least



**Why are we still having problems? It's a function of, in part, industrialized agriculture and the assumption that if it's in a bag and it's triple-washed, it's gotta be safe."**

beef. But the real big problem now is, in fact, leafy greens. Uncooked fresh fruits and vegetables is where the real big problem is.

**Q: Is that just because of the interaction with cattle fields?**

**A:** The spinach outbreak that

happened in 2006 ... there were 205 people sick, five dead. It was all eventually linked to a 20-acre in-transition organic spinach farm that harvested all of the spinach in that 20 acres in one day. All of it was cut simultaneously, put in bins, and then went straight into an industrialized processing facility. And what had happened was there had been some wild pig intrusion into those fields. But if you had taken that 20 acres, 25 acres of spinach and processed it to the way we used to buy spinach—which was in bunches in our grocery store, and then we would take it home and wash it—would there have been a couple of people sick? Maybe, but it certainly wouldn't have been 205 people ... . Why are we still having problems? It's a function of, in part, industrialized agriculture and the assumption that if it's in a bag and it's triple-washed, it's gotta be safe.

**Q: Yeah, you hear that a lot. I have a lot of conversations with people where we don't really think about where our food comes from anymore.**

**A:** Right. You know I'm not going to suggest at all that you couldn't get sick at a farmer's market or you couldn't get sick if you raise your own cows or you raise your own food, it's just that the risk profile's different. It's just the ability, especially now that bugs like E. coli are so ubiquitous in our environment that all kinds of things can happen. ...

On my desk—I'm a visual person—I've got this map because we've got 100 romaine lettuce E. coli cases and the FDA trace said the lettuce came from Yuma, Arizona. But never said it came from farm X or Y or Z. But we've got 100 people all across the country ... and we're trying to—because the FDA didn't—tie the

person's consumption back to where the contamination was. ... I'm working back upstream.

**Q: So why does the FDA stop at just the city [level]? It seems like it would be in their best interest to find out the exact farm.**

**A:** It's actually in the best interest of everybody to find this out. But it's really a manpower problem for them. What happens is you're a farmer, Walmart wants seven loads of romaine lettuce? I've got six and a half. I call you up and go, "Hey buddy, can you give me half a load of romaine?" And you might say, "I can get you a quarter of it and I can get you another quarter from Joe Blow down the street." The stuff gets comingled. So when the FDA's doing their trace-back, all of a sudden you could hit like six different suppliers, and all of a sudden it's, "Who was contaminated?"

**Q: So the steps are: First of all, you have to find out: is there an outbreak of something? And then you're figuring out: is there a group of people sick? Then you have to figure out what did they eat, what was in whatever they ate? How long would a process like that take on average, to track it down to a source?**

**A:** So, not to sound like a lawyer, but it does depend a lot on an enormous number of factors. For example, we probably turn away about 90 percent of the calls or emails we get because they're one person or maybe a family who got sick and they're convinced that it was the thing they ate yesterday. And they may well have had a foodborne illness, and they may have gone to a doctor, but the doctor never did a stool test. Why a stool test or a blood test is important is that each bacterium

[has] an incubation period. For example, listeria has an incubation period from three to 60 days. What did you eat 60 days ago? What did you eat three days ago? ... Unless you have a stool culture, it's really difficult. ...

One of the reasons why these stool cultures are so important is that when they pull that E. coli out of your stool, or listeria out of your bloodstream, they do genetic fingerprinting on it, and then they upload that information to a nationwide database called PulseNet. So PulseNet is run by the CDC. State labs upload these genetic fingerprints, which look like a bar code, and they can compare barcodes across multiple states, multiple countries, and they start to see a pattern. ...

So genetic fingerprinting becomes incredibly important. Sometimes we get it, sometimes we don't ... . And that's why these outbreaks become super difficult to link them all back upstream. But we're pretty good at it. ...

**Q: Can you talk about anything you've learned back from [the] late '90s to now?**

**A:** We're much better at more quickly figuring out whether or not it's a case we can prove. So we know all the right questions to ask the client right out of the box, where to go for information, and how to see if we can link someone's illness up to other people who got sick and [link those] other people to a food product and work it that way. ... But technology has changed, too. It used to be there was this process called PFGE (Pulse Field Gel Electrophoresis) and that's sort of the genetic fingerprinting we were talking about. But now we're using whole genome sequencing (WGS) and that's looking at 3 million lines on a genome as

opposed to PFGE, [which] might be looking at 2 [million]. So everything else being equal, if you and I are a PFGE match and we both ate at "Restaurant A" on one day and ate the same thing, that's an outbreak, and there's no question about that. But if 500 people have the same PFGE and half of them didn't eat at that restaurant, how do you tie the other half of the people to anything? ... So the technology's gotten better but it still can be a long slog.

**Q: You'd earlier mentioned a romaine E. coli and listeria class action; is this in South Africa?**

**A:** Two of the associates who work here are in South Africa right now because there were 1,000 people sickened in an outbreak of listeria, 200 people died, and it was linked to this product called polony.<sup>3</sup> ... [In early 2018] I had been asked to speak in South Africa at a food safety conference and I intended not to go—and the conference was about a listeria outbreak that had been perking for four or five months but nobody knew the details. I got an email from the person who had invited me to speak saying that the health department was going to make an announcement. So I watched it live on my laptop and it was like, it's the polony. And I'm like, oh my gosh, I have to go to South Africa. So I call my travel agent. ...

When I got down there and I'm speaking at this conference—by then the conference was standing-room only—people were freaked out. ... It was absolutely like living 25 years ago in the Jack in the Box case. ... So I met with [South African attorney] Richard Spoor and his law firm and said I can help you guys help these people. So obviously I can't practice law in South Africa, but essentially there's never been

a food class action [there], there's never been any food litigation, and I'm basically helping them build from the ground up a law firm down there that's focused and dedicated to taking care of these people. ...

**Q: How big of an issue is choice of law when litigating these cases given the realities of food moving in interstate commerce and parent companies headquartered in a state far from the domicile of the injured victim?**



**Damages can fluctuate really broadly across the country ... . But if you're a retired 65-year-old guy in Kansas and you die, your damages are capped at \$150,000 by an act of the legislature. But if you're in California, Washington, Montana, same thing happened, there's no cap."**

**A:** For the most part you're going to get stuck in the jurisdiction where the person lived, and at the product level—at least as it relates to how damages are going to be determined. Damages can fluctuate really broadly across the country ... . But if you're a retired 65-year-old guy in Kansas and you die, your damages are capped at \$150,000 by an act of the legislature. But if you're in California, Washington, Montana, same thing happened, there's no cap. ... Liability is the one area ... we have to decide whether to file the lawsuit where the person lives or where the principal place of business is. And we sometimes have to make those calls and sometimes the law varies enough, but for the most part you're dealing with strict product liability. ...



## GUT REACTION: Q&A WITH BILL MARLER

**Q:** Over the course of your career, what steps have you seen going in the right direction in terms of food safety?

**A:** From about '93 to 2002, almost all the revenue that I was getting in food cases [was from] E. coli cases linked to hamburger. In 1994, the FDA deemed E. coli O157, which is the nasty bug that was in Jack in the Box [meat], deemed it an adulterant, which meant that if you found it in your food product—and they required that you test it—you had to recall it or you couldn't ship it. In 1993, if you tested and found E. coli O157, you could ship it and basically put the onus of protecting the public on a burger flipper at McDonald's or Jack in the Box ... That changed the dynamic of everything, and the industry went absolutely nuts. They sued the U.S. government; eventually the government won. Eventually industry and the government worked together to create processes that helped drive E. coli O157 cases down. I haven't had an E. coli case linked to hamburger in my office for two years. ...

So meat has gotten better. Beef is safer. The problems that still exist are ready-to-eat foods. E. coli-tainted leafy greens. E. coli has become an environmental pathogen, so the approaches that we have to take against it are much more holistic. You can't be growing lettuce near a concentrated feed lot. You've got to do a lot more testing, you've got to use potable water.

There's things that have moved

along. [Congress] passed the [FDA] Food Safety Modernization Act [in 2011], and that is starting to move the rest of the food industry into doing more testing, creating more systems to make food safer. But it's a constant problem. ...

**Q:** Where do you see your role as lawyer, confidant, sort of advocate and champion?

**A:** I remember being in Atlanta, Georgia, one time and this kid had E. coli from being at a water park ... . And the family asked me to stay in the room when they unplugged their kid from life support.

This was 1998, and this kid whose plug was being pulled was two. And I'd never seen anybody die before. I'd never seen a human being stop breathing, especially a little kid. And they unplugged the kid in the mother's arms and within like 10 minutes the kid was gray, lifeless. It was the most stunning thing I'd ever seen in my entire life ... .

I've had clients die. I've had clients who become friends and then they die. I guess that's just sort of, that's part of what I do. I don't compartmentalize it at all. I don't know if that makes me a better or worse lawyer, but it's just sort of how I am ... . It's not like I don't feel it, because I do; it's just part of my job ... . I feel like now I can go do something. I took care of that family. I represented this gal who ate Nestle Tollhouse cookie dough and was hospitalized for two years. And \$6 million in medical bills. She was on dialysis; she had a brain injury. She was a 50-year-old woman, she had six kids, her husband was there by her side the entire time ... . And I spoke at her funeral ... I had been that close with the family. I just kind of look at this as how honored I get to be to do

that. I can't say that it's not hard sometimes, but I don't internalize it, I go and do something about it.

**Q:** If you're interacting with lawyers in other practice areas, or just people who aren't really familiar with foodborne illness, are there any misconceptions that they have or things they might want to know about?

**A:** This is a practice area that's way more science-based than I think most people realize; that most lawyers don't fully understand strict product liability. Once you prove causation, which is a lot of the science here, who's at fault becomes not really a discussion anymore. You know who's at fault: it's the entity that manufactured the food product that caused the illness. So once you're able to do the science, the liability becomes very clear.

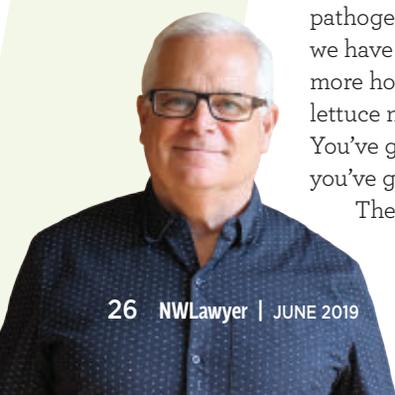
**Q:** There was an allusion in the book [*Poisoned*, by Jeff Benedict: a non-fiction narrative chronicling the events of the 1993 Jack in the Box E. coli outbreak] basically saying that this strain of E. coli ... it was a transition from whatever cattle were eating beforehand and then moving into corn.

**A:** The real reason that Shiga toxin-producing E. coli has exploded in the environment is because part of the gene was acid-resistant, and when you started feeding cows grain, that increased the acidity in the cows' stomachs. The E. coli that didn't like acid disappeared and the E. coli that liked acid stayed. Shiga toxin-producing E. coli—E. coli O157 being one of them—started populating the environment. ...

Same thing with listeria, listeria monocytogenes is an environmental pathogen that existed for hundreds of thousands, if not millions of years, but it's

### ONLINE

Additional portions of this interview that were cut for length can be found online on NWSidebar at [www.nwsidebar.wsba.org](http://www.nwsidebar.wsba.org).



one of the only bacteria that grows really well at refrigerator temperatures ... .

And so it gets in your refrigerator, especially on cheese, fresh fruits, and vegetables that you store in the back of your refrigerator—the hummus that goes in the back of your refrigerator for a month and a half, two months. If some listeria had gotten in there, it's now been populating, and so when you eat it, you're done, you're sick. That's a function of this bug evolving along with us and refrigeration.

It's kind of like dogs and cows and cats evolving alongside of us. Listeria is doing the same thing; E. coli does the same thing.

**Q: You didn't have a science background ... . How did you pick this stuff up?**

**A:** I approach the practice of law a lot like probably how I approach life: I always assume that I'm the person who doesn't know what's going on and in order for me to make sure that I sort of break even or get a little bit ahead, I work harder than most people. I've been practicing law for 30 years, I'm a partner in a law firm, I have more than enough to keep me happy, but I've worked 30 days in a row. I have not taken a day off from work because we just have so much stuff to do and so many clients to deal with and it's some of the critical stuff that we're doing on this romaine case ... .

**COLIN RIGLEY** is a communications specialist for the Washington State Bar Association. Prior to joining the Bar, his previous experience included journalism and content strategy in California and Washington. He can be reached at [colinr@wsba.org](mailto:colinr@wsba.org).



But to obtusely answer your question, I just work my ass off. That's how I've done it ... . I'm not a know-it-all, but there's one area of the law, there's one area of science I understand forwards and backwards, and it's this. 

NOTES:

1. As described in the non-fiction narrative retelling of the Jack in the Box E. coli outbreak in *Poisoned*, by Jeff Benedict (February Books 2011), copies of which Marler provided to *NWLawyer* prior to his interview.
2. *Id.*
3. Sliced, ground-meat sausage popular in other parts of the world, most akin to bologna in the U.S.

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# APPLES, SALMON & BIOTECH

WHAT YOU NEED TO KNOW AS A  
LAWYER AND A CONSUMER ABOUT  
THE NATIONAL BIOENGINEERED  
FOOD DISCLOSURE STANDARD



**BY JULIE  
K. SMITH**

In the fall of 2017, a unique kind of apple, one that does not turn brown after being sliced or bruised, was first commercialized out of Eastern Washington's orchards. In March of this year, the FDA lifted the last regulatory hurdle to commercialization of a salmon that grows rapidly in land-based tanks and will help relieve pressure on wild Pacific salmon.

Though seemingly unrelated, the Arctic apple and the AquAdvantage salmon have

something in common: they are both bioengineered foods.

The National Bioengineered Food Disclosure Standard (NBFDS)<sup>1</sup> will soon require specialized labeling on Arctic apples, AquAdvantage salmon, and many other bioengineered foods to inform consumers that the foods were developed using biotechnology. Considering our state's rich traditions in farming, fishing, and biotechnology, Washington lawyers as well as

Washington consumers need to understand this new labeling rule.<sup>2</sup>

## **WHAT IS A BIOENGINEERED FOOD?**

Foods developed using biotechnology have sometimes been called Genetically Modified Organisms, or GMOs, but this terminology is imprecise; other processes like traditional breeding and evolution also produce genetically modified organisms. The term "bioengineered," on the other hand, better denotes a food

## Foods developed using biotechnology have sometimes been called Genetically Modified Organisms, or GMOs, but this terminology is imprecise ...

that has been developed using the tools of modern biotechnology, particularly recombinant DNA techniques.<sup>3</sup>

Under the NBFDS implementing regulations,<sup>4</sup> a bioengineered food is one intended for human consumption “that contains genetic material that has been modified through in vitro recombinant deoxyribonucleic acid (rDNA) techniques and for which the modification could not otherwise be obtained through conventional breeding or found in nature.” The definition specifically excludes refined foods, such as oils and sugars, that do not contain detectable genetic material (DNA) and certain incidental additives present at insignificant levels.

The USDA maintains a list of foods for which bioengineered versions have been developed, which includes alfalfa, apple, canola, corn, cotton, eggplant, papaya, pineapple, potato, salmon, soybean, squash, and sugar beet. Over 90 percent of the soybeans, cotton, and corn grown in the U.S. are bioengineered to express traits that enhance farming practice, such as herbicide tolerance or insect resistance. Newer bioengineered foods, such as the Arctic apple and AquAdvantage salmon, are designed to appeal directly to consumers. Outside the U.S., Bangladesh is close to commercializing Golden Rice, bioengineered rice cultivars that

address the vitamin A deficiency that causes blindness and death in children.<sup>5</sup> The future of bioengineered foods is seemingly unlimited, with ongoing research into tomatoes with better flavor and increased antioxidants to ward off chronic disease, cereals that fix their own nitrogen and reduce the need to use greenhouse-gas-producing nitrogen fertilizers, and drought-tolerant crops that help mitigate the effects of climate change.

### A BRIEF HISTORY OF BIOENGINEERED FOOD LABELING

In 2013, Washington voters narrowly rejected state ballot Initiative 522, which would have required the labeling of bioengineered foods. Between 2012 and 2014, Oregon, California, and Colorado voters similarly rejected bioengineered food labeling initiatives. In contrast, during that same period, eastern states including Vermont, Connecticut, and Maine passed bioengineered food labeling mandates.

Congress recognized that a majority of consumers favored the labeling of bioengineered foods,<sup>6</sup> but it was concerned about the emerging patchwork of state laws. So in July 2016, just as the Vermont law became effective, Congress scrambled to surmount a long-simmering divide between those favoring voluntary versus mandatory labeling and passed a compromise federal labeling statute (NBFDS).

The NBFDS was signed into law by President Barack Obama on July 29, 2016. The statute provided for mandatory labeling of bioengineered foods, immediately preempted state labeling laws, and charged the USDA to develop and implement detailed disclosure regulations within two years.

The USDA did not meet its two-year deadline due, in part, to changed administrative priorities after the 2016 election. But after considering over 112,000 responses to a list of 30 disclosure questions and over 14,000 comments submitted during notice and comment rulemaking, the USDA’s Agricultural Marketing Service (AMS) promulgated regulations to implement the NBFDS on Dec. 21, 2018. The final rule became effective on Feb. 19, with a stated purpose and intent to provide uniform information about bioengineered foods to consumers while minimizing implementation and compliance costs for the food industry—costs that might be passed on to consumers. The NBFDS is characterized as a marketing, rather than a health or safety, standard: “Nothing in the disclosure requirements set out in this final rule conveys information about the health, safety, or environmental attributes of BE [bioengineered] food as compared to non-BE counterparts.”

### LABELING—THE NEW RULE

The final rule requires that labels for bioengineered food must bear a disclosure, but provides several significant exemptions, including for: (a) food served in a restaurant or similar retail establishment; (b) very small food manufacturers (having annual receipts of less than \$2,500,000); (c) food that does not intentionally contain bioengineered ingredients, with



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## APPLES, SALMON & BIOTECHNOLOGY

an allowance of up to 5 percent for inadvertent or unavoidable presence; (d) food derived from an animal, like milk, that is not considered bioengineered merely because the animal consumed bioengineered feed; and (e) certified organic foods.

The disclosure rule is effective now and some manufacturers have already begun to label their bioengineered foods. Compliance is voluntary until Dec. 31, 2021, and mandatory beginning Jan. 1, 2022. Manufacturers, importers, and some retailers are responsible for labeling.

### Future varieties of bioengineered foods promise to address the ravages of malnutrition and climate change.

The required label disclosure must be of sufficient size and clarity so that it will likely be read and understood by consumers under ordinary shopping conditions. Disclosure can be in one of four authorized forms: a text disclosure, a symbol disclosure using one of several approved “bioengineered” symbols, an electronic or digital link disclosure, or a text message disclosure.

In addition to mandatory disclosure, the rule permits two types of voluntary disclosure. The first is disclosure by exempt entities such as very small food manufacturers and restaurants.

The second is disclosure regarding foods that are derived from an item on the USDA’s List of Bioengineered Foods,<sup>7</sup> but do not themselves meet the definition of bioengineered. These foods may be disclosed as “derived from bioengineering” using one of the authorized text, symbol, electronic or digital link, or text message options. Such voluntary disclosure would be appropriate for foods such as oil refined from bioengineered soybeans, or sugar refined from bioengineered sugar beets. The oil or sugar is not bioengineered itself because it does not contain DNA, but it may be voluntarily labeled since it was derived from bioengineered soybeans or sugar beets.

Specialized disclosure provisions apply to small food manufacturers (\$2.5 million to \$10 million in annual receipts); to small- and very-small packages; to food sold in bulk containers; and to meat, poultry, eggs, and alcohol.

Food manufacturers, importers, and retailers that are responsible for making bioengineered food disclosures must maintain records demonstrating compliance for at least two years beyond the date that the food is sold or distributed for retail sale. Those entities must, upon request, provide the records to AMS, which is authorized to enforce compliance with the NBFDS through investigations, records audits or examinations, and hearings. The AMS will make public its summary of final results, which constitutes final agency action for purposes of judicial review. It is not authorized to

impose civil penalties or require product recalls.

The limited enforcement options under the NBFDS provide an opportunity for Washington state legislators to add teeth to the labeling requirements. Because state remedies are excluded from the statute’s federal preemption provisions, Washington can now pass a state bioengineered food labeling statute that is identical to the federal one but imposes damages or injunctive relief in case of violations.

### WHAT IT MEANS FOR YOU

Bioengineered foods, which have been developed using the tools of modern biotechnology, include commodity crops with traits that enhance farming practice as well as products, such as apples and salmon, aimed directly at consumers. Future varieties of bioengineered foods promise to address the ravages of malnutrition and climate change.

But those technological leaps will require lawyers to remain informed and vigilant as the NBFDS will soon require specific types of labeling on many bioengineered foods. Washington lawyers need to understand the new federal statute and its implementing rules in order to counsel their manufacturing, farming, retail, restaurant, and other clients, as

Bioengineered Arctic apples in Eastern Washington orchard.



NOTES:

1. National Bioengineered Food Disclosure Standard, 7 U.S.C. §§ 1639, 1639a-c, 1639i-j, 6524 (2018).
2. Background material for this article has been adapted from a law review article by the author, Julie K. Smith, *The National Bioengineered Food Disclosure Standard: a statute in need of a do-over*, 27 Kan. J. L. & Pub. Pol'y 1 (2017).
3. Recombinant DNA techniques are a toolbox of laboratory methods for cutting and recombining DNA from different sources, and can be used to change the genetic makeup of an organism.
4. National Bioengineered Food Disclosure Standard, 83 Fed. Reg. 65814 (Dec. 21, 2018) (to be codified at 7 C.F.R. pt. 66).
5. Golden Rice Project, <http://www.goldenrice.org> (last visited Mar. 24, 2019).
6. E.g., Brandon R. McFadden & Jason L. Lusk, *What consumers don't know about genetically modified food, and how that affects beliefs*, 30 FASEB J. 3091 (2016).
7. <https://www.ams.usda.gov/rules-regulations/be/bioengineered-foods-list>.

well as understanding the new “bioengineered” and “derived from bioengineering” disclosures that they will soon begin seeing at the grocery store. 

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\_\_\_ P.3d \_\_\_, 2019 WL 1567437 (2019)  
(recognizing liability of Port as premises owner)

**Ingenco Holdings v. ACE American Ins. Co.,**  
\_\_\_ F.3d \_\_\_, 2019 WL 1591729 (2019) (reversal of district court summary judgment in insurer’s favor as to all risk policy coverage)

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437 P.3d 690 (2019) (reversal of judgment based on voluntary intoxication defense)

**Brunson v. Lambert Firm and Bechtel National,**  
\_\_\_ Fed. Appx. \_\_\_, WL 6620079 (9<sup>th</sup> Cir. 2018) (Court upholds district court confidentiality rulings in qui tam action)

**Chan Healthcare Group v. Liberty Mutual Fire Insurance Co.,**  
192 Wn.2d 516, 431 P.3d 484 (2018) (court dismissing new class action based on Full Faith & Credit)

**H.B.H.; S.A.H.; & Hamrick v. State of WA,**  
192 Wn.2d 154, 429 P.3d 484 (2018) (recognizing a duty owed to children negligently placed in foster care)

**Arp v. Riley,**  
6 Wn. App. 2d 1003, WL 5806605 (2018)  
(application of judicial estoppel)

**Kenco Constr. v. Porter Bros. Constr.,**  
4 Wn. App. 2d 1008, WL 2966785 (2018) (affirming judgment for subcontractor in constr. project)

**Easterly v. Clark County,**  
2 Wn. App. 2d 1066 (2018) (reversing fee decision; trial court failed to address hourly rate and a multiplier)

**Huynh v. Aker Biomarine Antarctic,**  
199 Wn. App. 1005, cert. denied, 139 S. Ct. 64 (2018)  
(complex jurisdictional issue)

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# NAVIGATING THE COMPLEX MAZE OF RULES RELATED TO AGRITOURISM

**THE AGRITOURISM IMMUNITY ACT AND WHAT IT MEANS FOR REPRESENTING CLIENTS IN A GROWING TOURISM INDUSTRY**

**BY MONA  
McPHEE**

In 2017, the Washington Legislature created a new statutory immunity from tortious liability for claims arising out of the activities of agricultural tourism, or “agritourism”: The Agritourism Immunity Act expanded pre-existing liability immunity to agritourism operations that charge a fee. The exceptions to this immunity will pose interesting legal challenges if and when liability claims arise.

Agritourism occurs when a farm or ranch offers activities outside those traditionally involved in farming or ranching in order to attract visitors and bring in additional revenue. These activities—educational tours, special event venues, U-Pick fruit orchards, pumpkin patches, homestays, wine-tasting, fishing, camping, petting zoos, and others<sup>1</sup>—are usually offered to diversify the farm’s or ranch’s revenue sources and provide education to the community about their products and way of life.

## **THE AGRITOURISM INDUSTRY IN WASHINGTON**

Tourism is the fourth largest industry in Washington in terms of jobs, taxes, and revenue creation,<sup>2</sup> and agritourism activities play a substantial role in that industry. The state’s current tourism marketing plan includes a particular focus on activities and venues in rural, tribal, and underserved communities throughout the state.<sup>3</sup>

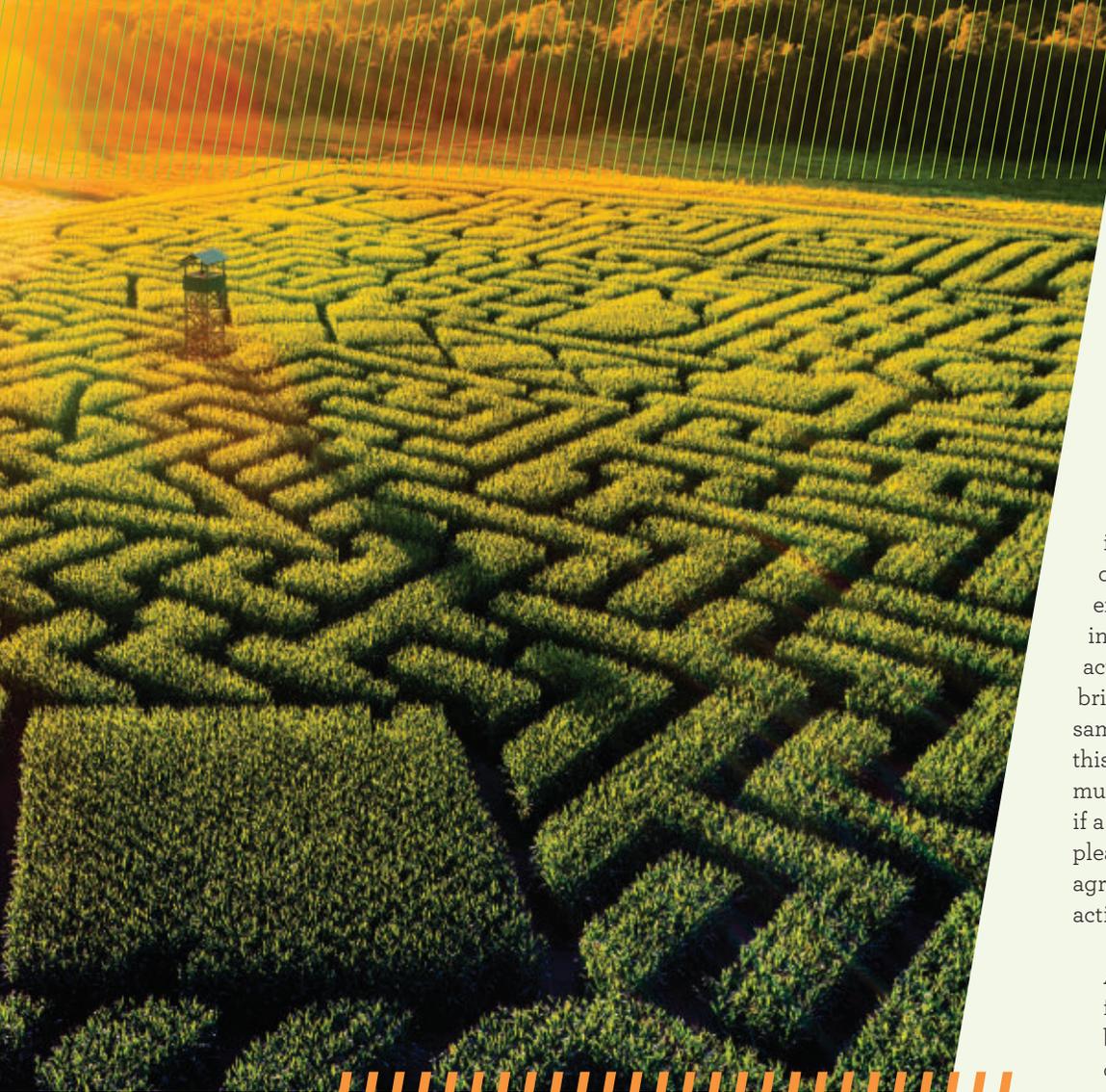
A 2011 Washington State University Report identified at least 322 active agritourism operations in 2007 while noting that these numbers were likely underreported. In Kittitas County alone, 15 to 20 new agritourism businesses have begun operations within the past few years, according to a county

commissioner.<sup>4</sup> Chelan, Jefferson, Snohomish, Skagit, Walla Walla, and Yakima counties, among others, also have reputations for offering agritourism activities.

## **RISKS ASSOCIATED WITH AGRITOURISM**

Agritourism creates additional risks that are different from those associated with traditional farm and ranch activities. As a result, agritourism operators report dramatically increasing liability insurance premiums and find that they must purchase multiple liability insurance products (e.g., general liability and special events liability insurance).<sup>5</sup> It is for this reason that leaders in the industry sought statutory immunity from liability.

A review of Washington case



the Agritourism Immunity Act was adopted and enacted as RCW 4.24.830 through 4.24.835.

The Act provides that an “agritourism professional” is immune from liability “for injury, loss, damage, or death of a participant resulting exclusively from any of the inherent risks of agritourism activities,” and prohibits the bringing of a lawsuit under the same terms.<sup>8</sup> To take advantage of this immunity, the farm or ranch must post mandatory signage and, if a claim is made, affirmatively plead “assumption of the risk of agritourism activity.”<sup>9</sup> Agritourism activity is defined as:

Any activity carried out on a farm or ranch whose primary business activity is agriculture or ranching and that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities including, but not limited to: Farming; ranching; historic, cultural, and on-site educational programs; recreational farming programs that may include on-site hospitality services; guided and self-guided tours; petting zoos; farm festivals; corn mazes; harvest-your-own operations; hayrides; barn parties; horseback riding; fishing; and camping[.]<sup>10</sup>

The inherent risks of these activities, according to the Act, include “those dangers or conditions that are an integral part of an agritourism activity including certain hazards, such as surface and subsurface conditions, natural conditions

law shows no reported decisions involving negligence claims based on agritourism activities.<sup>6</sup> During legislative hearings on the proposed Agritourism Immunity Act, there were repeated questions about the numbers or risks of lawsuits, with only a handful of anecdotal claims identified. Testimony at the hearings focused on risks associated with weather and uneven ground, including the particular risk of a slip-and-fall. The testimony also revealed both frustration and concern over participants making poor decisions despite signage prohibiting risky activities. Examples included participants jumping off hay bales stacked at a clearly dangerous height and children engaging in dangerous behavior either because

**During legislative hearings on the proposed Agritourism Immunity Act, there were repeated questions about the numbers or risks of lawsuits, with only a handful of anecdotal claims identified.**

they were improperly supervised or they were actually encouraged by their parents.<sup>7</sup>

**THE AGRITOURISM IMMUNITY ACT**

In 2017, in order to minimize the legal risks of operating an agritourism business and presumably to help these businesses better afford and manage their insurance portfolios,



## NAVIGATING THE COMPLEX MAZE OF RULES RELATED TO AGRITOURISM

of land, vegetation, waters, the behavior of wild or domestic animals, and ordinary dangers of structures or equipment ordinarily used in farming and ranching operations.”<sup>11</sup>

Additionally, it is an inherent risk of agritourism activities that a participant may act negligently, including by failing to follow instructions or to exercise reasonable caution “unless the participant acting in a negligent manner is a minor or is under the influence of alcohol or drugs.”<sup>12</sup>

As the definition of inherent risk foreshadows, the defense of immunity is not available if an agritourism professional:

- Is grossly negligent, or willfully or wantonly disregards the safety of a participant, and that act or omission proximately causes injury.

- Has actual knowledge or reasonably should have known of an existing dangerous condition on the land, facilities, or equipment used, or of the dangerous propensity of a particular animal, does not make the danger known, and the danger proximately causes injury.
- “Permits minor participants to use facilities or engage in agritourism activities that are not reasonably appropriate for their age.” This provision does not relieve parents of their duty to reasonably supervise the minor’s participation, including the duty to assess whether the activity is age-appropriate for the minor.
- “Knowingly permits participants to use facilities or engage in agritourism activities while under the influence of alcohol or drugs.”
- Fails to post and maintain the required warning signage set forth in RCW 4.24.835.<sup>13</sup>

The Act’s exceptions both capture preexisting exemptions to

tort liability immunity (i.e., gross negligence, actual knowledge) and create new exceptions for liability relating to minors and participants who are under the influence of drugs or alcohol at the time of injury. It is likely that these new exceptions will be problematic in practice.

For example, the drug and alcohol exception eliminates immunity if the agritourism professional “knowingly permits participants to use facilities or engage in agritourism activities while under the influence of alcohol or drugs.”<sup>14</sup> Because there is no particular reason for agritourism operators and their employees to be trained or qualified to assess whether someone is under the influence of drugs or alcohol, the question of knowledge will be challenging to prove. Moreover, educational tastings of wine or beer at a vineyard or hop farm likely qualify as an activity covered by the Agritourism Immunity Act. Special events held at the facilities of a farm or ranch may include consumption of alcohol. These activities are licensed or permitted by the state’s Liquor and Cannabis Board, whose laws and regulations may give rise to a conflict with this exception. In addition, there is no guidance at this time as to who bears the burden of proof that the injured party was under the influence of drugs or alcohol, and that the agritourism professional had knowledge of the same. It is likely that plaintiffs will have the burden to prove that they were under the influence of alcohol or drugs. This situation, therefore, raises the issue of contributory negligence and creates a strategic conflict that plaintiffs’ counsel (and, ultimately, the courts) will need to unravel.

**Washington tort law permits the anticipatory waiver of liability by adults and reliance on the assumption of risk defense. These legal theories would permit agritourism operations to avoid liability on specific facts.**



## OTHER LIABILITY PROTECTIONS

Prior to enactment of the Agritourism Immunity Act, Washington law already provided immunity from liability for many agritourism activities. For example, the Recreational Use Immunity Act (RCW 4.24.200-.210), the Equine Activities Act (4.24.530-.540), and the Bovine Handling Facilities Act (4.24.740) each provide statutory immunity from potential claims in specific circumstances, any of which may also satisfy the definition of agritourism activities.

In addition, Washington tort law permits the anticipatory waiver of liability by adults and reliance on the assumption of risk defense. These legal theories would permit agritourism operations to avoid liability on specific facts.

A written, executed waiver of liability can eliminate liability for negligent conduct. Washington law supports the right of parties to expressly agree in advance that an activity operator (1) has no duty of care toward a participant and (2) will avoid liability for negligence arising from the activity or the circumstances of the land, tools and implements, and/or animals involved.<sup>15</sup> However, to be enforceable, a waiver of liability (a) must be conspicuous; (b) cannot attempt to waive liability for intentional or grossly negligent behavior, or behavior that demonstrates a willful or wanton disregard for safety; and (c) cannot violate public policy.<sup>16</sup>

Under Washington's existing tort law, participants in agritourism activities may also expressly and/or impliedly assume the inherent risks of the activity. Risks that are specifically assumed by a participant cannot give rise to a

claim of liability. Even risks that are described generally may not result in liability when the participant has read and signed a waiver informing a participant of the general nature of the risk. Moreover, as a general rule, those who participate in recreational activities, even if organized by a third party, assume the inherent risks of the activity which are known or obvious to the participant.<sup>17</sup> Claims of negligence arising from these assumed risks will be barred.<sup>18</sup>

The Agritourism Immunity Act applies to a discrete set of circumstances and will primarily benefit farms and ranches in purchasing and managing their insurance portfolios. Agritourism professionals should be counseled to manage their liability risks by implementing appropriate signage, waivers, and other notices that inform participants of risks. In the event that claims are filed in court, defense counsel should be prepared to affirmatively plead immunity as a defense and to navigate the immunity exceptions stated in the Act. 

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## NOTES:

1. Agritourism in Washington state: an industry profile, Washington State University Extension (Oct. 2011).
2. Choose Washington State, Washington Dept. of Commerce, <http://choosewashingtonstate.com/why-washington/our-key-sectors/tourism/> (last visited Apr. 15, 2019).
3. *Id.*
4. Public Hearing on ESSB 5808 before the House Judiciary Committee, 65th Legislature, March 22, 2017 (testimony of Paul Jewell) (*available at* <https://www.tvw.org/watch/?eventID=2017031256>).
5. Public Hearing on SB 5808 before the Senate Agriculture, Water, Trade and Economic Development Committee, 65th Legislature, Feb. 16, 2017 (*available at* <https://www.tvw.org/watch/?eventID=2017021275>); Public Hearing on ESSB 5808 before the House Judiciary Committee, 65th Legislature, March 22, 2017 (*available at* <https://www.tvw.org/watch/?eventID=2017031256>).
6. A Westlaw search conducted in March 2019 for negligence claims against farms or ranches arising from agritourism-type activities yielded no relevant results within Washington case law.
7. Public Hearing on SB 5808 before the Senate Agriculture, Water, Trade and Economic Development Committee, 65th Legislature, Feb. 16, 2017 (*available at* <https://www.tvw.org/watch/?eventID=2017021275>).
8. RCW 4.24.832(1)(a),(b); RCW 4.24.835 (mandates language and placement of signage).
9. RCW 4.24.832(1)(c).
10. RCW 4.24.830(1).
11. RCW 4.24.830(3).
12. *Id.*
13. This paragraph both summarizes and quotes the exceptions stated in RCW 4.24.830(2).
14. RCW 4.24.832(2)(d).
15. See *Chauvlier v. Booth Creek Ski Holdings, Inc.*, 109 Wn. App. 334, 339, 35 P.3d 383, 385 (2001).
16. See *id.* at 339-42.
17. Wash. Prac., Wash. Pattern Jury Instr. Civ. WPI 13.03 (6th ed.).
18. See *Scott v. Pacific West Mountain Resort*, 119 Wn.2d 484, 497 (1992); *Boyce v. West*, 71 Wn. App. 657 (1993); *Pellham v. Let's Go Tubing*, 199 Wn. App. 399 (2017).



THE BUSINESS OF AG

*BUYING THE FARM*

*A DUE DILIGENCE PRIMER WHEN BUYING OR SELLING  
FARMING OPERATIONS AND OTHER AGRIBUSINESSES*

**BY MARISA  
BOCCI,  
KARI LARSON,  
AND LESLIE  
BERKSETH**

The sale of an agribusiness (a portmanteau of “agriculture” and “business” that includes a wide variety of commercial farming; processing; packing; manufacturing; and other livestock, dairy, or agricultural-focused operations) is more than a hybrid commercial real estate and corporate transaction. When negotiating the sale of an agribusiness, counsel for both the buyer and the seller must be prepared to grapple with issues that cross multiple practice areas including environmental, labor, tax, real estate, intellectual property, and corporate concerns. Each agribusiness transaction is as unique as the business itself, which can make for a fun, and sometimes challenging, experience for a deal lawyer. This article details a few key considerations to keep in mind when preparing for, and navigating through, the diligence for an acquisition or sale of an agribusiness, including: (1) important threshold considerations for the parties; (2) key terms and provisions in a purchase and sale agreement; and (3) the breadth of diligence work that may be required for a buyer in an agribusiness transaction.

## IDENTIFYING THE THRESHOLD CONSIDERATIONS

### What is at stake?



Before a buyer and seller execute a purchase and sale agreement, both parties should be clear as to the nature and scope of the agribusiness included in the transaction.

Agribusinesses are multi-faceted enterprises, with various, often interrelated components.

Is the seller disposing of the business in its entirety, or will it retain certain operations? How will such a partition affect the functionality and profitability of the agribusiness as a whole? If the seller retains its grain elevator, for example, but offloads its farming and trucking operations, how will this affect both the buyer's and seller's ability to transport or store grain? Does either party contemplate a business relationship post-closing that would complement their operations? Will the seller continue certain operations in a way that could compete with the buyer's business that the buyer may want to address by negotiating a non-compete agreement? All of these items will affect the business terms, and therefore greatly impact the scope, timeline, process, and degree of due diligence activities.

### How will the parties exchange information?



Depending on the size and complexity of the operation, the purchase or sale of an agribusiness may involve the seller's disclosure (and the buyer's review) of a significant amount of materials. Determining exactly how information will be shared between the parties is essential to a smooth transaction. For larger or more complex transactions, the parties may consider establishing an online data room to transfer diligence materials. The buyer may also need access to various documents from government or quasi-government agencies during the diligence period. Due to privacy rules or agency regulations, many of those materials are accessible only by the seller. A letter of authority from the seller permitting the buyer access to the seller's files for an enumerated period of time is generally accepted by the United States Department of Agriculture Farm Service Agency (FSA) regional offices, thereby allowing the buyer access to FSA records as part of its diligence activities.<sup>1</sup>

## NEGOTIATING THE PURCHASE AND SALE AGREEMENT



The purchase and sale agreement details the timing, essential terms and conditions, and the property and consideration that will change hands; further, it will describe the buyer's due diligence inspection rights.

The parties will need to determine the scope of the buyer's inspection activities, timeline, and treatment of information discovered during the inspection period. A well-written purchase and sale agreement strikes the balance between specificity and flexibility needed to accommodate the expectations of both parties, and sets the stage for the diligence work to be completed.

Depending on the nature and complexity of the agribusiness, a long diligence period may be needed to accommodate the considerable diligence work required for more complex transactions. Conversely, the parties may try to time due diligence and closing based on the cultivation and harvest cycle of a given crop. Further, existing contracts, permits, or leases may dictate when the parties are able to conduct onsite diligence work, run inventory, or close the transaction.

The unique features of an agribusiness may present challenges to the tidy proration of costs and revenue at closing. For example, in farmland transactions, a seller and buyer will likely need to address whether the seller will receive a reimbursement for "cultural costs" (e.g., the costs for crop inputs and other cultivation efforts of the seller expended prior to closing that are necessary to prepare the crop for harvest). Further, unlike typical commercial rental agreements, farmland leases generally contemplate payment of base rent once or twice a year and not on a monthly cycle and may also include flex or hybrid rent payments (e.g., the property is leased to an operator and the landlord is entitled to "bonus" or "percentage" rent based on the yields returned from crop sales). Likewise, there may be a cost associated with yearly water rights that the buyer will need to confirm as part of its post-closing operating cost assumptions. Accordingly, a buyer will want to include these financial concerns as part of its due diligence review. Not only will this information be needed at closing, it is also relevant to the buyer's valuation of the asset.

## BUYING THE FARM: A DUE DILIGENCE PRIMER

### CONDUCTING DUE DILIGENCE

The diligence process required for any agribusiness transaction will necessarily depend on the nature of the business itself. However, the following areas of review are likely to impact an agribusiness transaction.

#### Real Property



Real estate due diligence review in the agribusiness context requires more than a title search and survey review. The purchase price for farmland may be calculated using a “per acre” figure based on the number of net, gross, tillable, irrigated, or dryland acres (or a combination thereof). Accordingly, the real property due diligence directly impacts the value of the property being conveyed.

Further, a real estate portfolio transaction may include numerous parcels (some owned, others leased) with various improvements—ranging from barns, silos, warehouses, and processing plants to greenhouses, irrigation systems, and even residential structures—all of which may be accompanied by permits, certificates of occupancy, and related documents. For agribusiness operations that own an assemblage of real property that was acquired over many years, or for longstanding family farms, it is possible that a title policy was never obtained when the seller initially acquired the property. Accordingly, a seller of such properties should consider ordering title prior to going to market to deal with any surprise title encumbrances or ownership issues in advance.

In addition to the typical examination of property tax records, security instruments, leases, title and zoning reports, and surveys and maps, special attention should be paid to water rights, ancillary uses of the property, and environmental issues.

If the agribusiness requires reliable access to uncontaminated water for crop irrigation, this will require examination of the water rights attached to the property, including:

- Groundwater and/or surface water permits;
- Water rights/sharing agreements and certificates;
- Water district records; and
- Maps of wells, pipelines, and other irrigation infrastructure.

If the transaction involves acquiring a processing facility, it is wise to assess the associated wastewater discharges and determine if the appropriate permits are in place. Depending on the location of the target property to the water source, a buyer may also need to review easements and/or licenses across adjacent land not owned by the seller. Also, it is not uncommon for large irrigation pivots to “walk” onto a neighbor’s property, necessitating an easement or installation of pivot-stop technology; these items are typically discovered during the due diligence period since they require a survey or overhead aerial map to identify the encroachment.

Further, agricultural land often accommodates multiple simultaneous (and at times competing) uses, the rights to which may be held by unrelated third parties and may affect the buyer’s future use of the property. These include:

- Mineral, oil, and gas leases;
- Fishing, hunting, and other recreational licenses; and
- Wind and solar energy agreements.

Accordingly, although these uses may not be central to the agribusiness operations, it is important for a buyer to confirm that ancillary uses (and the third-party user’s rights associated therewith) align with the buyer’s plans for the property.

Many agricultural properties include a shop, garage, fueling area, dump, or other area likely to have potential contamination, raising environmental issues. Because of the potential liabilities associated with environmental contamination and remediation, and to comply with “all appropriate inquiry” requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA),<sup>2</sup> due diligence of such property should, at a minimum, include review of a Phase I environmental site assessment report dated within six months of close. These reports may also indicate whether the current occupant is properly storing fuel, fertilizer, pesticides, and other potentially hazardous substances. Similarly, given the potential for endangered species and wetland concerns relative to farming operations, a buyer should consider whether to obtain specialized review of these matters.

#### Personal Property



Agribusinesses are highly equipment-dependent, and this equipment may or may not be included in the transaction. So that both parties know exactly which items will be included in the sale, personal property diligence should involve:

- An examination of equipment lists, with one list of equipment to be excluded from the sale, and one list of included equipment (with a deemed “catch-all” for non-material equipment). This eliminates any confusion as to whether a valuable piece of equipment was inadvertently left out of the agreement or went missing prior to closing. Careful consideration should be paid to irrigation equipment, which may include movable components; these portions of the system may be personal property owned by a tenant or other third party (and therefore not part of the conveyance transaction). The list of equipment to be included in the sale should contain serial and/or VIN numbers, makes, models, and other details that will enable the buyer to accurately assess the value of the equipment. Because many farm operations lease equipment, it is important to confirm whether the buyer can assume those contracts or if lender consent is required.
- An inventory of other property related to the business—including crops, fertilizer, livestock, feed, and other incidental items—the quantities of which are not static and will inevitably change in the time period between diligence work and closing. To account for inventory fluctuations, the purchase and sale agreement should provide for an inventory “true-up” either immediately before or after closing, with an adjustment of the purchase price (based on the per-unit price contemplated under the agreement) if necessary. Also, consideration should be given to obsolete or tainted inventory: How will these items be identified, and who will take responsibility for disposal?
- If the transaction involves any commercial hauling activities, then the buyer should consider a specialized review of the applicable trucking regulations, as securing the necessary licenses and permits with respect to such operations may be a lead time item.

### Intellectual Property



In addition to the general review of trademarks, copyrights, and patents of the agribusiness, there may be third-party agreements with respect to patented crops, seeds, or permanent plantings. Both sellers and buyers should be mindful of the terms and provisions of any third-party

agreement and its impact on post-closing operations. Many third-party agreements with patent holders contain broad access rights (including the right to remove any existing plantings or crops), as well as the right of the third-party patent holder to obtain confidential information with respect to the property or the agribusiness. Finally, there may be assignment restrictions that affect the transfer of the seller’s interest in a license to the buyer; consent can be a long lead item.

### Production History



Depending on the type of crop (permanent or annual) and the time of year (pre- or post-harvest), the parties will need to confirm whether to include or exclude the current season crops as part of the transaction. Separately, a tenant or other third party may have rights to the growing crops. Regardless of the ownership of the crops, a buyer’s due diligence should include review of crop health, soil conditions, disease and blight conditions, and other factors relevant to the production history of the property. Closely related is a review of pump tests and other water quantity factors (separate and apart from the water rights due diligence mentioned above).

### Contracts, Permits, and Licenses



The type and quantity of the existing contracts, permits, and licenses required for the normal operation of the agribusiness will vary considerably based on the nature of the enterprise. It is essential to examine all contracts, permits, and licenses as soon as possible in the diligence process, as the reissuance or transfer of permits (especially by government agencies) may take some time. Contracts and licenses may contain limits on their transfer or assignment to new entities, so the parties should plan accordingly by applying or seeking approval for such transfers as early as possible. In the event that all permits needed for the continued



**BUYING THE FARM: A DUE DILIGENCE PRIMER**

operation of the agribusiness will not be available by closing, the buyer should consider contracting for the seller to continue operations under its existing permits and licenses until the necessary permits are obtained by the buyer. Because the availability of required permits and licenses can significantly impact the viability of the business, the buyer may make approval of such permits a condition to closing.

Further, if the agribusiness has any supply-chain contracts, it is important to carefully review and assess the relative risk arising out of these contracts. Are there broad, sweeping indemnities that could negatively affect the valuation of the agribusiness? Are there appropriate records to verify the seller's compliance with applicable law including food safety, trucking, and transportation issues? Depending on the underlying operations at issue, a buyer may want to review the seller's product recall procedures and prior recall history.

**Labor and Employment**



Agribusinesses are labor-intensive operations, and the success or failure of a business may depend, in part, on securing the right employees. Depending on the nature of the company, the buyer may wish to ensure that certain key managers or operators remain on for a designated period of time after the closing; further, the buyer may desire to hire all of the seller's current workforce. This will require communication between the buyer, seller, and employees prior to closing, and the parties will want to jointly agree on timing and messaging to the affected employees.

*Note: This article does not attempt to address all matters that may need to be addressed in a sale of a farming operation or other agribusiness company. This article does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer.*

If the seller will be retaining a portion of the business post-closing, the buyer may want assurances that the seller will not solicit key employees for hire. Accordingly, the buyer may ask the seller to sign a non-solicitation agreement. Alternatively, if the seller happens to be one of the key employees, the parties may negotiate an employment agreement with respect to post-closing operations. If the transaction is to occur during harvest, consider how the parties will handle a transition of seasonal labor. Additional employment diligence includes the review of documents regarding:

- Employees' salaries and benefits;
- Human resources policies and handbooks, as well as ongoing and/or potential employee disputes, claims, or litigation;
- Employment verification practices including immigration status, visas/work permits, and background checks;
- Agreements with farm labor contractors, unions, and other organizations; and
- Housing arrangements for seasonal farm laborers.

**Compliance and Other Regulatory Oversight**



Certain agriculture-focused federal statutes may be implicated in an agribusiness transaction. For example, if the buyer or seller of the real property is not a U.S. citizen, certain filing requirements under the Agricultural Foreign Investment Disclosure Act may apply.<sup>3</sup> Similarly, the applicable agribusiness may have rights or liabilities arising under the Perishable Agricultural Commodities Act<sup>4</sup> or compliance obligations under the Food Safety Modernization Act.<sup>5</sup> Often, states have analogous laws that likewise could affect the parties or the subject business. Finally, organic and other specialty crops have their own regulatory regime; the parties need to be aware of fees, timing, and filing obligations required for applicable regulations.

**AGRIBUSINESS: A LEGAL CORNUCOPIA**

Agribusiness transactions differ widely depending on the sophistication of the parties, the location of the real property involved, and the type of operation at hand. The transaction will need to address certain industry-specific due diligence matters affecting the rights and obligations of both the buyer and the seller. In the end, there is no one-size-fits-all answer, but one thing is certain: legal work in this sector requires skills and expertise from a variety of practice areas. 

## NOTES:

1. Certain Farm Service Agency offices will only share information if the seller signs a Form-2004; other Farm Service Agency offices will accept a simple letter of direction from the seller.
2. 42 U.S.C. § 9601 et seq. (2018).
3. 7 U.S.C. § 3501 et seq. (1978). See also, Bocci, Larson & Wu, *Acquisition and Dispositions of U.S. Agricultural Land by Foreign Investors: Federal and State Legislative Restrictions, Limitations, and Disclosure Requirements*, Drake Journal of Agricultural Law, Volume 23.1.
4. 7 U.S.C. § 499a et seq. (1995). See also Sargent & Larson, PACA and Real Property: Follow the Fruit, New Developments in Real Property (WSBA CLE August 2018).
5. Food Safety Modernization Act of 2011, Pub. L. No. 111-353, 124 Stat. 3885 (2011).

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# LEGAL COCKTAIL

## WHAT ATTORNEYS NEED TO KNOW TO ADVISE CLIENTS IN THE RAPIDLY CHANGING ALCOHOL BEVERAGE INDUSTRY

BY SUSAN JOHNSON, STEPHANIE MEIER, ANNE GLAZER, AND MAREN NORTON

Highly regulated and rapidly evolving industries such as the alcohol beverage sector require an exceptional amount of crossover and coordination by a legal team advising on the wide range of issues affecting alcohol manufacturers and retailers.

Sometimes a single issue might have litigation, trademark, and regulatory compliance implications. It therefore becomes critical for attorneys with specialized practices to work together toward the common goal of developing mutually successful strategic partnerships with clients based upon trust, advocacy, efficiency, and most importantly, deep industry knowledge.

### ALCOHOL BEVERAGE INDUSTRY CLIENTS

Attorneys working in the alcohol beverage industry routinely focus on advising beer, wine, and spirits producers and retailers, and a variety of hospitality industry clients, on the complex web of state and federal alcohol regulatory laws that impact their business operations, as well as matters as diverse as taxation, advertising, environmental, and M&A.

Clients may include alcohol-producing companies ranging from Northwest-based wineries, cideries, breweries, and distilleries to national and global beverage conglomerates. On the hospitality and retail sides, clients may include regional and national hotel and restaurant chains; concert and professional sports venues; grocery, department store, and big box retailers; and unique concepts that incorporate alcohol sales or service into their business models.

## LEGAL COCKTAIL: THE ALCOHOL BEVERAGE INDUSTRY

While currently prohibited in Washington, alcohol beverage producers in a few other states, including Oregon, are already seeking to produce and market alcohol products that contain THC.

The issues presented by alcohol industry clients vary widely and require attorneys in multiple practice areas to develop industry-specific knowledge.

### REGULATORY ISSUES REQUIRE AN ACTION PLAN FOR RESPONSE

One situation that alcohol-serving businesses commonly face is an Administrative Violation Notice (AVN), issued by the Washington Liquor and Cannabis Board (WSLCB) after a violation, such as a bartender serving an underage patron or a violation of trade practice laws.

An alcohol-serving business that is faced with an AVN has 20 days to address the notice. If there is no action plan in place and a local manager simply decides to pay the fine without notifying anyone else at the company, the business becomes at risk for a license suspension in the event of a second violation. Moreover, if no one else at the company is informed of the problem, the underlying cause of the violation is never addressed with training. Left unchecked, a faulty internal reporting system for AVNs can easily aggregate and lead to revocation of the business's license to sell alcohol.

The bottom line is that a customer-facing enterprise, especially one as highly regulated and supervised as a drinking establishment, must have an action plan with a chain of command to handle violation notices. Counsel should work with the enterprise to establish one.

### INTELLECTUAL PROPERTY ISSUES IN A CROWDED MARKET

Alcohol and beverage companies often deal with trade dress and trademark issues when branding, marketing, and selling their products. Their lawyers need to be able to navigate these issues to help clients select good trademarks, clear them for use, and register and enforce them.

"In the wine industry, producers give unique names not only to their wineries, but often to individual products and to their vineyards as well," Stoel Rives

partner Anne Glazer explains. "This results in a huge proliferation of names. Also, the U.S. Patent and Trademark Office and courts generally consider all alcohol beverages to be 'related' for purposes of deciding trademark conflicts. This means that if a brewery or distillery is using a particular brand name, it may be unavailable for a winery to use."

Because of the volume of product names, attorneys may have to search through a large number of potential marks before finding one that will work, and then address the related cease-and-desist actions. Some of this is dictated by unique industry customs and practice. For example, in the alcohol beverage industry, more often than in other industries, a party may voluntarily allow another party to use and register a mark that would otherwise be deemed conflicting, even though there is no clear benefit to the party holding the trademark.

"The USPTO will generally honor a written consent from a registered mark owner, if it states that an applicant's mark is not likely to cause marketplace confusion," Glazer notes. "This is usually enough to overcome an examiner's citation of the prior mark. We see these consents often in the beverage industry, just because people realize that the shoe may be on the other foot the next time."

## INDUSTRY TRENDS AND OPPORTUNITIES

### E-commerce

In addition to the more traditional practice areas, a very important trend is the intersection of e-commerce and alcohol sales.

Washington wineries are currently permitted to offer wines for sale via e-commerce *platforms* and ship directly to consumers in 43 states and the District of Columbia, subject to meeting the permitting and tax-collection requirements of each state. However, specialty wine shops and online-only or brick-and-mortar wine *retailers* can only legally ship to e-commerce consumers in 14 states and the District of Columbia. That landscape may expand in the near future based on the U.S. Supreme Court's upcoming decision in *Tennessee v. Blaire*, Docket No. 18-96, which presents the question of whether the 21st Amendment empowers states, consistent with the dormant Commerce Clause, to regulate liquor sales by granting retail or wholesale licenses only to individuals or entities that have resided in-state for a specified time.

Currently, breweries and distilleries, as well as beer

and spirits retailers, face a fairly hostile collection of state law restrictions impacting their ability to build direct-to-consumer e-commerce initiatives. Social pressure for legislative changes and litigation arising from *Tennessee* and other cases is likely to continue to ease restrictions significantly in the next few years. Already, there is a growing realm of alcohol-purchasing apps and delivery services that regulators will need to catch up with; it will be an exciting area of practice to vet these emerging business models.

### New Venue Concepts

Alcohol service is also being introduced in new venues. Alcohol is now available in many theaters, and other, less traditional venues are also branching out. For example, a Washington-headquartered national clothing retailer has incorporated a bar concept into several of its outlets throughout the U.S. And in Seattle, an ax-throwing bar and an urban basecamp concept are getting into alcohol service as well.

### Hemp and CBD

The current proliferation of the use of non-psychoactive hemp-based CBD in food and beverage products will likely evolve to include alcoholic beverages. Prior to the passage of the 2018 Federal Farm Bill, county health departments in Washington had been advising restaurants that they were prohibited from serving lattes and other non-alcoholic beverages that incorporated hemp-based CBD oil because CBD was not an FDA-approved food additive. This prohibition may soon lift now that the Farm Bill has legalized the production of hemp as an agricultural commodity and removed it from the federal list of controlled substances.

Washington's Senate Bill 5276, which was recently passed and signed into law, creates a new scheme for licensing agricultural hemp producers, allowing hemp to be produced into food, subject to the Food Safety and Security Act and the Washington Food Processing Act. However, action will still have to be taken by WSLCB before hemp-based CBD derivatives can be incorporated into beer or other alcoholic beverages in Washington.

Incorporation of THC, the psychoactive compound found in cannabis, into alcoholic beverages is another area where boundaries are going to be pushed, driving new legislative enactments and regulatory schemes. While currently prohibited in Washington,

alcohol beverage producers in a few other states, including Oregon, are already seeking to produce and market alcohol products that contain THC. There is a very large gray area, however, at the intersection of state and federal law that is ripe for legislative action and agency-level regulation.

### THE MANY INTERSECTIONS OF A CHANGING INDUSTRY

The alcohol beverage industry in Washington is undergoing rapid and profound change as products become available through a widening range of retail and e-commerce possibilities. Public demand has resulted in new legislation that has opened new doors in the industry and created new revenue possibilities for clients.

All this rapid change has also increased the need for attorneys to work collaboratively to maximize knowledge and deliver sophisticated services and value to clients. Because of the many possible pitfalls, challenges, and opportunities for clients in the alcohol beverage industry, it is more important than ever for practitioners in multiple practice areas to present a united, coordinated front in handling these matters. 

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**PAUL BEVERIDGE: ENVIRONMENTAL  
LAWYER TURNED WINEMAKER,  
RESTAURATEUR, AND DISTILLER**



oldest winery operating in Seattle according to Beveridge. In the house above the garage where the wines are made, Beveridge and his then-wife, Lysle Wilhelmi, opened a restaurant called the Madrona Bistro. The joint operation, Beveridge says, became the first winery-restaurant in the state after Prohibition ended.

Wilhelmi started the restaurant after leaving a medical career to become a chef (she worked with acclaimed chef Tom Douglas) and later, a restaurateur. The restaurant specialized in Mediterranean foods with a distinct French twist, and eventually the couple decided to make wines as well, using French grapes. When they closed the Madrona Bistro in 1995, the building was lifted to excavate and expand the garage/cellar space to 1,500 square feet, large enough to house new Italian vintnering equipment.

Beveridge tells me that

**BY KARRIN  
KLOTZ**

With a name like Paul Beveridge, it seems almost preordained that the man would, at some point in his career, get into the wine business—and he did, with a slight detour as a lawyer.

In the late 1980s, in line with the true Seattle entrepreneurial spirit, Beveridge formed Wilridge Vineyard, Winery & Distillery in his garage. With its roots in Seattle’s historic Madrona neighborhood, the winery—now also a brandy distillery—still operates out of that garage, which is where I interviewed Beveridge,

surrounded by ancient French oak barrels and gleaming metal equipment.

Beveridge speaks with the enthusiasm you’d expect from someone who started a winery in his garage. In between occasional interruptions when the door opened and staff members came in to talk to him, he recounted the history of the winery and distillery: a small, award-winning family craft business run in the European tradition, now consisting of a vineyard, orchard, winery, and distillery. Founded in 1988, it is the

**TURNING  
LAWYER  
INTO WINE**



winemaking goes back to the beginnings of human history. Some of the oldest archeological relics had wine in them. And while there's a debate between beer brewers and vintners about which beverage came first, Beveridge is confident it was wine. Grapes are the only fruit that will ferment into a stable product by themselves and not turn to vinegar, he says, adding, "We all know about birds and deer getting drunk off grapes."

"[There's] a pretty serious theory that the reason for civilization was that we [engaged in] agriculture because we could make alcohol," Beveridge says.

### THE PARTNER, THE VINTNER

Beveridge started the winery while he was working as a partner full-time at the Heller Ehrman law firm in Seattle.

He worked at Heller Ehrman for 22 years before leaving 10 years ago to start his own firm, Beveridge Law (still viable, and through which he still advises clients). While at Heller, he worked on the winery over the weekends and only took off three or four weekdays for winery-related business during his two decades with the firm.

**In 2007 Beveridge used his partner buyout from Heller Ehrman to purchase 80 acres and establish his own vineyard in the Naches Heights area near Yakima.**

His passion for making alcohol began when he was living in Seattle before attending law school at Columbia University. At that time, a few local microbreweries were just getting started, and he fell in

love with them. When he moved to New York City for law school, he encountered what he thought of as "a beer desert."

"All they had was the basic Genesee, maybe Bass, or you might get a Guinness and that was as weird as it got," Beveridge says.

So he started homebrewing, and kept it up when he moved back to Seattle. Then he realized that Seattle was near wine country. "[I decided I] should have some wine under my house," he says.

His first boss at Heller Ehrman, Ralph Palumbo, came from an Italian family and had a three-barrel winery in his garage. Beveridge thought to himself, "If you can become a high-powered senior partner at Heller and still make wine on the side, there's no reason I shouldn't be able to do that as well." And so he did.

The winery's name, "Wilridge," is an amalgamation of his last name and his former wife's last name. He now regrets picking that name, for alphabetical reasons.

"There's a downside to having a 'W' as the first letter in your business name," he explains. "At wine festivals, you're always in the back corner."

Since the beginning, Beveridge's goal has been to find the best vineyard sites in Washington and to bring out the unique characteristics of each vineyard's grapes. He began as a "garagiste"—not because of the garage, but because that's the French name for one who makes wine but doesn't grow the grapes. Beveridge started purchasing French-origin grapes from Eastern Washington vineyards. He then had an opportunity to buy some Italian Nebbiolo from Red Mountain, the second-oldest planting of such grapes in the state, which got him started with

Italian wines. More recently, he completed the first planting of Sagrantino in the Pacific Northwest, because he "fell in love with that grape" during a trip to Italy.

"It's from Umbria, Perugia—which is the sister city of Seattle, believe it or not," he says. "It's a big, strong, powerful wine."

Beveridge now has 14 acres in grapes and about six acres in pears and apples that were inherited with the property. As he says, "making the wine is the easy part. Great wine is made in the vineyard."

The winery now produces more Italian wines than any other winery in Washington, plus French, Portuguese, Spanish, and Austrian—over 20 different wines in total. The winery has increased from originally producing about two barrels each of Cabernet Sauvignon and Merlot to now about 40 total barrels in Seattle, with another 200 at a new location in Yakima.

Back when Beveridge was splitting his time between Heller and the winery, Wilridge produced about 1,500 cases in the original garage/cellar space—but not having a forklift meant everything was done by hand. With the help of volunteers, they would unload grapes from a trailer into lugs, bring the grapes into the cellar, and process them right there. In the spring, they would bring in a bottling line on a semi-truck, park it out front, and bottle an entire production in one day—making for a big neighborhood spectacle and celebration.

Ever the creative entrepreneur, in 2007 Beveridge used his partner buyout from Heller to purchase 80 acres and establish his own vineyard in the Naches Heights area near Yakima (where he now grows one-third of his grapes),

## TURNING LAWYER INTO WINE

followed by a second winery there in 2012, which involved repurposing an old wooden apple warehouse. It's since become a recreational stop-off with the winery, tasting room, and outdoor activities in the nearby nature preserve.

Wilridge is also the beneficiary of Beveridge's legal experience.

"It's a very sad commentary on the state of the wine industry in Washington state that my legal education was so important to the success of my winery," he tells me.

Beveridge focused on environmental law in law school and in his legal practice, but later expanded to alcohol and beverages, representing several clients in the Washington wine industry. In 1988, he battled with the Washington State Liquor Control Board (now the Liquor and Cannabis Board) to obtain a license to operate a restaurant and winery together in the same building, as an exception to the Tied-house laws—unique laws for alcohol distribution in the U.S. that require the use of a middleman (a distributor) in order to sell wine. Beveridge argues this has allowed distributors to dominate state legislatures in the U.S. and increased the price-per-bottle of wine by about 25-30 percent for consumers. At the time he waged this battle, Oregon's Brewpub Law, which had been passed a few years earlier, allowed beer manufacturers to own pubs as a completely vertical integration. Washington

passed a similar law in 1987, and after three years of lobbying, Beveridge was able to include wine under those laws<sup>1</sup> as well.

He butted heads with alcohol regulators again when he wanted to have a tasting room in an area that was not on the winery premises, which took another three years to get approved; he now has four of them, as well as a smattering of licenses, wineries, and distilleries around the state.

He then spent 15 years battling to have a distillery operation at his winery, similar to the earlier issue of whether a winery can operate a restaurant.

Beveridge also helped end the prohibition against wineries, breweries, and distilleries selling in farmers markets. Wilridge now offers its products at more than a dozen neighborhood farmers markets throughout the Puget Sound area. However, distributors successfully argued to limit markets to just three alcohol vendors; if a market were to sell products from a brewery, a distillery, and a kombucha maker (which contains approximately 0.5 percent alcohol), no other alcohol vendors would be allowed to serve samples. Beveridge finds it ironic that retail stores, as well as bars, sell thousands of corporate brands, but he can only give farmers market customers a small taste. In short, he's done all he can over the years to try to make it easier for local wineries to sell, in the face of corporate alcohol and its dominance in the industry.

In order for customers to buy products from local winemakers and distillery operators, the businesses must have their own tasting rooms. And despite the popularity of craft wineries and distilleries in Washington,

It's a very sad commentary on the state of the wine industry in Washington state that my legal education was so important to the success of my winery."

Paul Beveridge at work at his Wilridge vineyard.

Beveridge still thinks they are an endangered species.

"People really need to start supporting the craft producers and craft growers if they want to have a vibrant craft industry," he says. "And it's going to take people getting that European idea that 'I want to buy local stuff, I don't want to buy the corporate swill, and I'm willing to travel and find it.'"

Beveridge's legal background has come into play in yet other ways. His environmental law passion helped Wilridge's vineyard become one of the first certified Organic and Biodynamic Estate Vineyards in Washington, receiving the highest level of certification possible in 2007. Anything his business can do to be "nice for the environment," it does. This includes using local refillable bottles, which they obtained the authority to do after another three-year legislative battle. The winery is solar powered and organic, and also composts its grape skins.

Beveridge continues to fight legal battles for small wineries and distilleries, as the president of Family Wineries of Washington State. He and the organization have 10 defined goals, of which they've accomplished seven, including helping to pass such laws as the wine section of the Costco Initiative, and the Tied-house reforms.



When I ask Beveridge what he is most proud of, he says the winery being certified biodynamic because “the best wines in the world are being grown in biodynamic vineyards.” Biodynamic agriculture—similar to organic agriculture but with a spiritual twist—is an ecologically holistic approach to farming. The practice makes use of special compost and other natural sprays; encourages biodiversity; and takes into account the cycles of the Earth, sun, moon, and stars.<sup>2</sup>

“[This is] healing the Earth through agriculture,” he tells me. “The farm is a complete organism; everything is there in one place; the farmer is part of the process. In fact, European wine snobs will come to Wilridge just because it’s biodynamic.”

For Beveridge, the future is going to be about marketing the distillery and getting his grape, apple, and pear brandies distributed to bars. He thinks it sets him apart from other craft distilleries, which focus on whiskey or gin or vodka; plus, Wilridge grows its own apples and pears.

“The creative aspects are the best part,” he says. “And for me, the greatest pleasure in life is a good meal with a good bottle of wine—seeing something you’ve made turn out to be delicious and you get people enjoying it. Tasting is the fun part.”

I’ll drink to that! 🍷

#### NOTES:

1. Washington’s alcoholic beverage statutes are found in Chapter 66 RCW, and the controlling state regulations are codified in WAC 314.
2. <https://www.biodynamics.com/biodynamic-principles-and-practices>.



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RESTAURANT  
REVIEWS

# MOTION TO DINE

All the talk in this issue about food and agriculture got us thinking: Where do lawyers like to eat? We asked WSBA members to write in about their favorite restaurants around the state. The following reviews include tasty courthouse lunch spots, award-winning tamales, delicious Korean hot pot, and more mouthwatering fare.

FIND MORE RESTAURANT  
REVIEWS ON [PAGE 50](#) >

## VANCOUVER

### Little Conejo

By Jill Karmy (*Bar No. 34132*)

If you find yourself in Clark County for a case, or just for fun, I recommend you check out the upscale-food-with-a-casual-atmosphere taco bar, Little Conejo, in downtown Vancouver. They grind organic Mexican corn daily to produce their own masa. My husband swears by the al pastor, while I recommend the oyster mushroom tacos. If you go after work, check out their large selection of mezcals and handmade cocktail syrups.

## FEDERAL WAY

### Topoki Pocha

By Stephanie Messplay  
(*Bar No. 47017*)

Located inside New World Korean Market in Federal Way, this place offers spicy Korean hot pot with whatever you want to throw in it: beef, sausage, ramen, spaghetti, eggs, cabbage, carrots, cheese—you name it. They'll even make fried rice with any sauce you have leftover (on the off-chance you're still hungry!). Even better, one hot pot feeds two people for less than \$20.

## SEATTLE

### Long Provincial Vietnamese Restaurant

By Cynthia Sullivan-Brown  
(*Bar No. 46514*)

The Seattle area has many Vietnamese restaurants, many of which are mainly limited to pho, a noodle soup; bun, a type of rice noodle salad; and rice plates. Long Provincial Vietnamese Restaurant—located in downtown Seattle near the Moore Theater and Macy's and not too far from

Pike Place Market—is a little bit different and one of my favorites. It is classy, but not rigidly so, and reasonably priced. While Long does serve the usual dishes, it also has a larger menu with crepes, duck, snapper, squid, lotus root salad, and more! Plus, it's open late and has great happy hours.

## LONGVIEW

### Hop-N-Grape

By Ted DeBray (Bar No. 26055)

Hop-N-Grape on 15th Ave. in Longview is well worth a visit for those needing a bite between Portland and Seattle, or for those heading out to Astoria. It is a combination of a high-end wine and beer bar (and home vintner/brew supply) and a restaurant that serves phenomenal barbecue, including the best chili in the area. The beer and cider selection is curated to bring in lots of good and often limited offerings.

## YAKIMA

### Kabob House

By Debra Lefing (Bar No. 53344)

Lunch at the Kabob House in Yakima was a delicious, unforgettable meal. Tucked away in a busy shopping plaza, the Kabob House greets you with smells of sizzling gyros and baked pita bread alongside sounds of happy diners. When I visited, the lentil soup started my meal off with a savory blend of lentils and vegetables. The lamb souvlaki was tender and juicy, matching well with the creamy tzatziki that accompanied it. The restaurant also offers over 10 salads brimming with fresh vegetables and Greek flavors. The Kabob House is the perfect spot for fast, delicious homemade Greek food and well worth traveling over the pass!

## SEATTLE

### Il Terrazzo Carmine

By Michele Carney (Bar No. 21551)

I love Il Terrazzo Carmine. It is located in the lovely Pioneer Square neighborhood and offers delicious Italian food as well as fresh seafood. The Grand Central Bakery bread served before lunch is wonderful. It is an intimate, beautiful gem. Stay for dessert, or wander over to the new Lady Yum French macaron spot for a treat.

## PASCO

### Vinny's Bakery and Café

By Kristina Larry (Bar No. 41852)

If you are in the Pasco area, Vinny's Bakery and Café is a must. They make a fantastic Cuban sandwich with well-seasoned and extremely tender pork. There is the perfect amount of cheese, ham, and pickles all tied together in a nice, toasted bread package. It comes with a side of chipotle sauce that adds just the right amount of heat. If you are looking for something on the sweeter side, they have over two dozen different kinds of Mexican pastries, cookies, apple fritters, and doughnuts. Pair all that together with great service, and you are in for a treat.

## VANCOUVER

### Thai Orchid

By Todd Pascoe (Bar No. 28887)

When the wind is blowing right, one can smell the ocean a block away from Thai Orchid, easy walking distance from the Clark County Superior Courthouse. The irresistible pad prik with firm tofu (or meat) fried to perfection accenting chili, onion, bell peppers, water chestnut, and

## UNION GAP

### Los Hernandez Tamales

By Raquel M. Acosta (Bar No. 47465)

I recently had the opportunity to sit down with Felipe Hernandez, owner and founder of Los Hernandez Tamales, which was awarded the James Beard's Foundation American Classic award in 2018.

Hernandez started by helping his sister, who made tamales for sale at home. He eventually made it his full-time job after leaving Montgomery Ward, where he serviced large refrigerators. (Hernandez's technical side comes out when he talks about storage methods, moisture, porous surfaces, and the importance of fresh ingredients and quick service.)

So what makes the tamale special? If you ask Hernandez, he will tell you that it is all about the masa. This mix of corn, water, lard (or shortening), and spices defines the tamale's shape, the cooking method, and the taste—it's every cook's signature. You could wrap nearly anything in that masa, a corn husk, and call it a tamale. Over the years, Hernandez has journeyed far beyond the traditional fillings of chicken, pork, or cheese; he experiments with different fillings and combinations on a regular basis.

Of course, Los Hernandez Tamales is known for its classic asparagus and pepper jack tamale, one of Hernandez's inventions. If you stopped by Los Hernandez in late April through early June, you would see lines that go down the block. Business can pick up nearly fivefold during this busy season, and for good reason: This tamale is absolutely delicious.

I am astonished by the work ethic it takes to make this all happen day after day. A typical family laboring in the yearly tradition of Christmas tamales might make 120 per day; Los Hernandez Tamales will put out 1,200 on a slow day. Tamale-making is serious business here and Hernandez has perfected the art of hand-making them in a matter of seconds.

The restaurant world is full of fiddly food that takes forever to assemble and is a let-down to eat. Los Hernandez's tamales are just the opposite: they are hearty and meant to be eaten and enjoyed.

sweet basil leaves is available as a lunch special for under \$10. It's the most taste-bud-satisfying Thai dish I've ever had. The venerable restaurant recently relocated into a chic warehouse space providing a busy buzz that still allows for comfortable conversation with many tables for two and booth-seating available.



From left: Raquel M. Acosta, Felipe Hernandez, and David Morales.

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**WASHINGTON STATE**  
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## MOTION TO DINE: Restaurant Reviews

### FEDERAL WAY East India Grill

By Kristina Larry (*Bar No. 41852*)

If you ever find yourself on the south end of Seattle and crave Indian food, East India Grill is the place. The weekend buffet is where you will get the most for your money. It's loaded with both vegetarian and non-vegetarian options including goat curry, tandoori chicken, naan, palak paneer, chicken tikka masala, pakoras, and much more. Don't get too full; you will want to save room for dessert. The warm cashew halwa is magical (I'm not even a fan of cashews, but would eat this daily). Try it with their delicious mango soft serve; you will not be disappointed.

### LYNNWOOD Romano's Macaroni Grill

By Cynthia Hodges  
(*Bar No. 42608*)

I have been meeting with a regular discussion group at Romano's Macaroni Grill at Alderwood Mall for almost seven years now. The atmosphere is warm and cozy, the servers are always friendly, and the food is to die for.

### VANCOUVER The Mighty Bowl

By Todd Pascoe (*Bar No. 28887*)

The Mighty Bowl originated as a food cart (occasionally parked at the northeast corner of the Clark County Superior Courthouse). Now it's a full-fledged restaurant

### BELLEVUE

#### Cloud 9 Burgers

By Kristina Larry (*Bar No. 41852*)

Three words: Giant. Delicious. Burgers. If you are just looking for a good burger without all the fuss of a pretentious burger place, Cloud 9 is perfect. My favorite is the Sweet Rain Burger, with bacon, avocado, and fig jam; it will satisfy your burger craving. Sides include fries, onion rings, and fried mushrooms, plus an extensive ice cream menu for milkshakes. The restaurant has ample seating and is kid-friendly. My burger connoisseur 4- and 7-year-old nephews think they are "the best burgers ever."

in downtown Vancouver. Their signature dish consists of brown rice, beans, olives, cilantro, sour cream, and shredded cheese topped with your choice of sauces like cilantro lime, the original Mighty, or the spicier Kiggins. Their avocado toast is served attractively on whole wheat, where'd-you-get-your-bread bread. A very healthy and fresh option for lunch with smoothies available. It's rare to go there and not see other members of our legal community.

### SEATTLE

#### Red Bowls Restaurant

By Crystal Pardue (*Bar No. 54371*)

Seafood lovers need look no farther than 812 Third Ave. in downtown Seattle for a quick and tasty workday lunch. Red Bowls Restaurant serves up delicious fresh fish bowls, made with steamed rice, crunchy vegetables, and a generous serving of poke-style fish. The "Alaska bowl" is a fan favorite, topped with salmon and two types of crab meat. If raw eats aren't your thing, this spot has plenty of vegetarian and cooked-meat bowls. Fair warning: be prepared for a line during peak lunch hours! But don't worry, it moves fast. 



# EXPERIENCE TENACITY JUDGMENT DISPUTE RESOLVED

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# Snapshot of the WSBA Discipline System Annual Report

Annually, the Washington State Bar Association publishes a report on Washington's discipline system. This report summarizes the activities of the system's constituents, including the Office of Disciplinary Counsel (ODC), the WSBA's Office of General Counsel (OGC), the Disciplinary Board, hearing officers, and the Client Protection Fund. The report also provides statistical information about discipline for those licensed to practice law in Washington for the calendar year. These pages provide an informal overview of the 2018 Discipline System Annual Report, which is now available on the WSBA website at [www.wsba.org](http://www.wsba.org).

## HOW IT WORKS

### Structure of the Lawyer Discipline and Disability System



## BY THE NUMBERS

32,297



ACTIVELY LICENSED LAWYERS

1,965



GRIEVANCE FILES OPENED

72



DISCIPLINARY ACTIONS IMPOSED

39



PUBLIC FORMAL COMPLAINTS FILED

11



DISCIPLINARY HEARINGS

4



SUPREME COURT OPINIONS

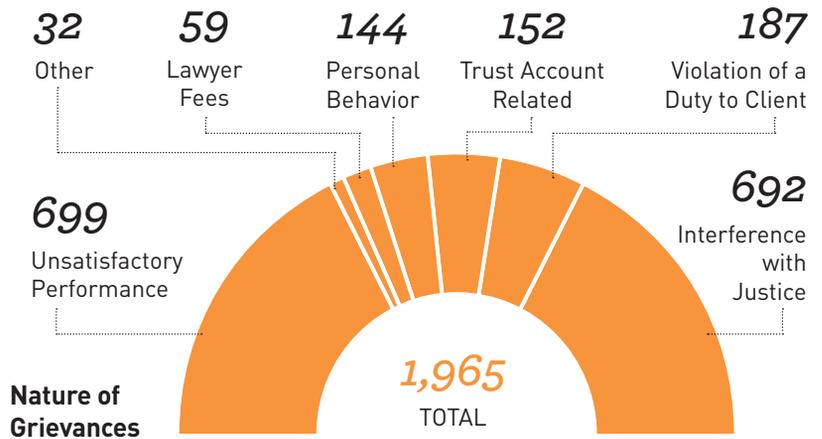
# Number and Nature of Grievances

ODC's intake staff receives all phone inquiries and written grievances and conducts the initial review of every grievance. After initial review, some grievances are dismissed, and others are referred for further investigation by ODC investigation/prosecution staff. Grievances that are not dismissed or diverted after investigation may be referred for disciplinary action. When warranted and authorized by a review committee of the Disciplinary Board, these matters are prosecuted by disciplinary counsel with the assistance of professional investigators and a support staff of paralegals and administrative assistants.

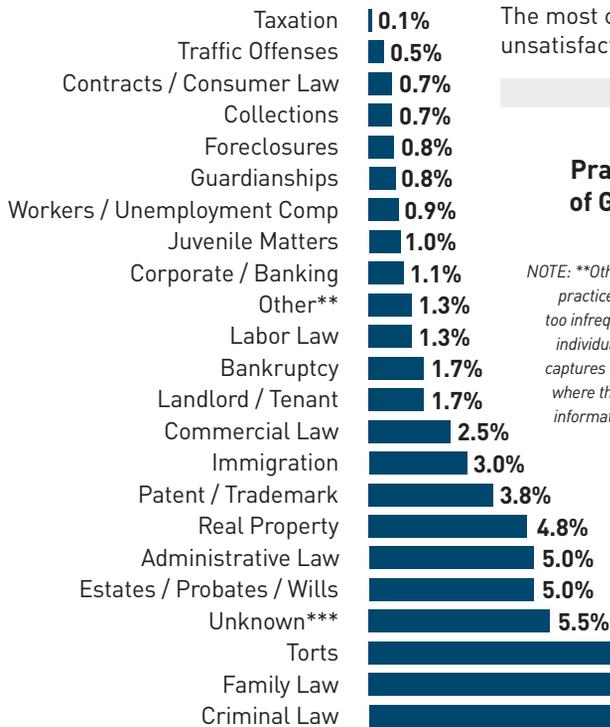
## Disciplinary Grievances, Informally Resolved Matters, and Public Inquiries in 2018



NOTE: \*Includes all grievances that closed during the calendar year, including, but not limited to, grievances that were dismissed in intake or after investigation and those for which disciplinary action was imposed.



The most common grievance allegations against Washington lawyers related to unsatisfactory performance and interference with the administration of justice.

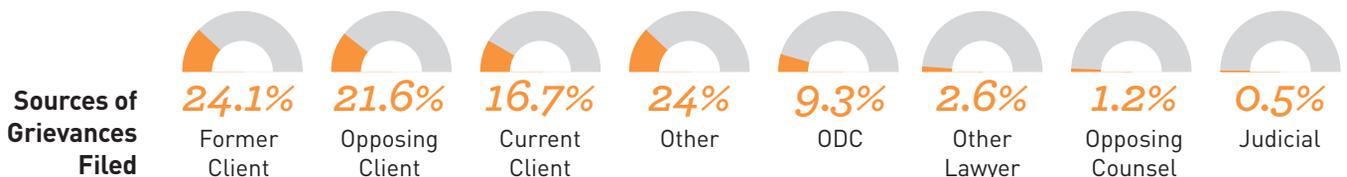


### Practice Area of Grievances Received

NOTE: \*\*Other reflects those practice areas that arise too infrequently to capture individually. \*\*\*Unknown captures those grievances where there was too little information to determine a practice area.

## Grievance Filings in Detail

In 2018, most of the grievances arose from criminal law, family law, and tort matters. The majority of grievances against Washington lawyers originated from current and former clients and opposing clients. Discipline files are opened in the name of the Office of Disciplinary Counsel when potential ethical misconduct comes to the attention of disciplinary counsel by means other than the submission of a grievance (e.g., news articles, notices of criminal conviction, trust account overdrafts, etc.) or through confidential sources.





## Lawyer Disability Matters

Special procedures apply when there is reasonable cause to believe that a lawyer is incapable of properly defending a disciplinary proceeding, or incapable of practicing law, because of mental or physical incapacity. Such matters are handled under a distinct set of procedural rules. In some cases, the lawyer must have counsel appointed at the WSBA's expense. In disability cases, a determination that the lawyer does not have the capacity to practice law results in a transfer to disability inactive status. In 2018, eight lawyers were transferred to disability inactive status on an incapacity to practice law.

## Other Licensed Professionals and the Discipline System

Limited Practice Officers (LPOs) and Limited License Legal Technicians (LLLTs) are also authorized to practice law in Washington, through regulatory systems administered by the WSBA. A Washington Supreme Court-mandated regulatory board oversees each limited license. Each licensee is subject to license-specific rules of professional conduct and disciplinary procedural rules. The WSBA administers a discipline system for each of these licenses. At the end of 2018, there were 814 LPOs and 35 LLLTs actively licensed to practice. In 2018, the WSBA received three disciplinary grievances against LPOs, with one LPO voluntarily canceling her license in lieu of revocation. In 2018, the WSBA received three disciplinary grievances against LLLTs. <sup>(1)</sup>

### RESOURCES

For more information on the discipline system, go to [www.wsba.org](http://www.wsba.org).

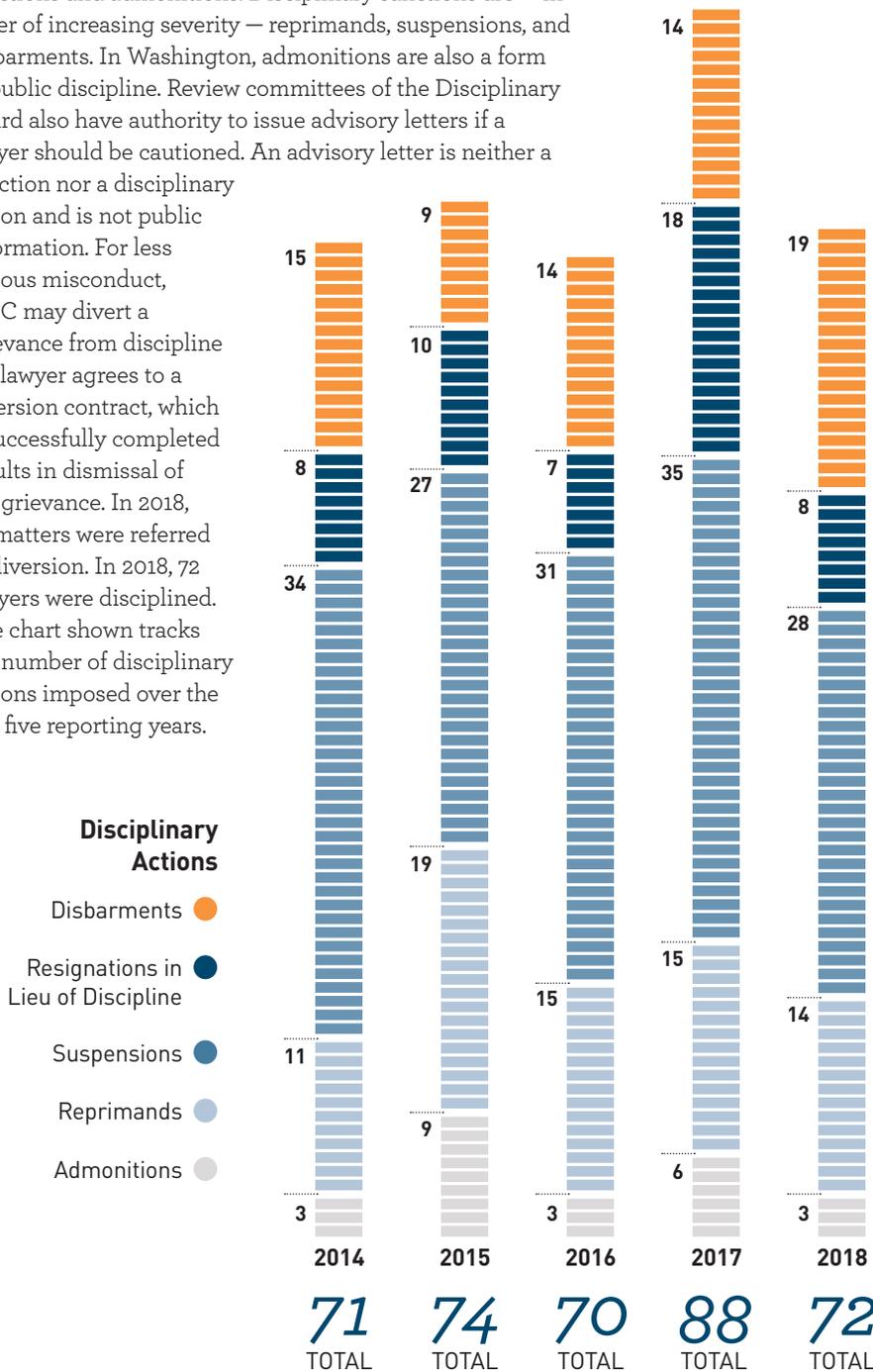
### A CLOSER LOOK

## Disciplinary Actions Taken

Disciplinary “actions” include both public disciplinary sanctions and admonitions. Disciplinary sanctions are — in order of increasing severity — reprimands, suspensions, and disbarments. In Washington, admonitions are also a form of public discipline. Review committees of the Disciplinary Board also have authority to issue advisory letters if a lawyer should be cautioned. An advisory letter is neither a sanction nor a disciplinary action and is not public information. For less serious misconduct, ODC may divert a grievance from discipline if a lawyer agrees to a diversion contract, which if successfully completed results in dismissal of the grievance. In 2018, 26 matters were referred to diversion. In 2018, 72 lawyers were disciplined. The chart shown tracks the number of disciplinary actions imposed over the last five reporting years.



To view the full 2018 Discipline System Annual Report, go to <http://bit.ly/2018-Discipline>



## Discipline and Other Regulatory Notices

### **THESE NOTICES OF THE IMPOSITION OF DISCIPLINARY SANCTIONS AND ACTIONS**

are published pursuant to Rule 3.5(c) of the Washington Supreme Court Rules for Enforcement of Lawyer Conduct. Active links to directory listings, RPC definitions, and documents related to the disciplinary matter can be found by viewing the online version of *NWLawyer* at [nwlawyer.wsba.org](http://nwlawyer.wsba.org) or by looking up the respondent in the legal directory on the WSBA website ([www.wsba.org](http://www.wsba.org)) and then scrolling down to "Discipline History."

As some WSBA members share the same or similar names, please read all disciplinary notices carefully for names, cities, and bar numbers.

### **Disbarred**

**Kendra Nicole Allen-Grant** (WSBA No. 44080, admitted 2011) of Spokane, WA, was disbarred, effective 5/07/2019, by order of the Washington Supreme Court. The lawyer's conduct violated the following Rules of Professional Conduct: 8.4 (Misconduct). Kathy Jo Blake acted as disciplinary counsel. Kendra Nicole Allen-Grant represented herself. Randolph Petgrave, III was the hearing officer. The online version of *NWLawyer* contains links to the following documents: Hearing Officer's Decision; Disciplinary Board Order Declining Sua Sponte Review and Adopting Hearing Officer's Decision; and Washington Supreme Court Order.

**David J. McAuliff** (WSBA No. 40687, admitted 2008) of Melbourne, FL, was disbarred, effective 5/07/2019, by order of the Washington Supreme Court. The lawyer's conduct violated the following Rules of Professional Conduct: 1.4 (Communication), 5.5 (Unauthorized Practice of Law; Multijurisdictional Practice of Law), 5.8 (Misconduct Involving Disbarred, Suspended, Resigned, and Inactive Lawyers), 8.1 (Bar Admission and Disciplinary Matters), 8.4 (Misconduct). Benjamin J. Attanasio acted as disciplinary counsel. David J. McAuliff represented himself. Randolph Petgrave, III was the hearing officer. The online version of *NWLawyer* contains links to the following documents: Hearing Officer's Decision; Disciplinary Board Order Declining Sua Sponte Review and Adopting Hearing Officer's Decision; and Washington Supreme Court Order.

### **Resignation in Lieu of Discipline**

**Karla Elizabeth Rood** (WSBA No. 42091, admitted 2009) of Puyallup, WA, resigned in lieu of discipline, effective 5/08/2019. The lawyer agrees that she is aware of the alleged misconduct in disciplinary counsel's Statement of Alleged Misconduct and rather than defend against the allegations, she wishes to permanently resign from membership in the Association. The Statement of Alleged Misconduct reflects the following violations of the Rules of Professional Conduct: 1.3 (Diligence), 1.4 (Communication), 1.5 (Fees), 1.15A (Safeguarding Property), 1.15B (Required Trust Account Records), 1.16 (Declining or Terminating Representation), 3.4 (Fairness to Opposing Party and Counsel), 8.4 (Misconduct). Emily Krueger and Natalea Skvir acted as disciplinary counsel. Karla Elizabeth Rood represented herself. The online version of *NWLawyer* contains a link to the following document: Resignation Form of Karla Elizabeth Rood (ELC 9.3(b)).

### **ONLINE**

See full details of disciplinary and other regulatory notices by accessing the links in the online version: [www.wsba.org/news-events/nwlawyer](http://www.wsba.org/news-events/nwlawyer).

## **FREE CLES - 1.5 CLE CREDITS - 90 MINUTES**

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To register and for more information, visit [www.wsba.org](http://www.wsba.org).

**Legal Lunchbox™ Series**



## Need to Know

News and information of interest to WSBA members.

Email [nwlawyer@wsba.org](mailto:nwlawyer@wsba.org) if you have an item you would like to share.

## WSBA NEWS

### WSBA BUDGET AND AUDIT COMMITTEE'S STATEMENT ON FISCAL INTEGRITY



The Budget and Audit Committee expresses a high degree of confidence in WSBA's financial integrity following another clean yearly audit opinion for Fiscal Year 2018. Committee members reviewed

the independent auditor's report in January that certified that WSBA finances are well managed and accurate in all material respects. WSBA has received similar clean "unmodified opinions" (no adjustments made, no material weaknesses, no management letter issued) from independent audit firms for at least the past 30 years. The positive opinion indicates that WSBA has strong internal financial controls.

The Board of Governors sets operational priorities and approves WSBA's annual budget, and the Budget and Audit Committee meets monthly to oversee financial matters. Committee members are committed to being accountable to members and the public through a high level of transparency and active examination of fiscal operations. As such, the WSBA will continue to work with independent auditors to ensure robust and appropriate audits into the future.

Most financial information, including detailed financial statements, the current Fiscal Year 2019 budget with revenues and expenditures by line item, Treasurer Reports, and audit reports, is available at [www.wsba.org/about-wsba/finances](http://www.wsba.org/about-wsba/finances).

### CHECK ONLINE

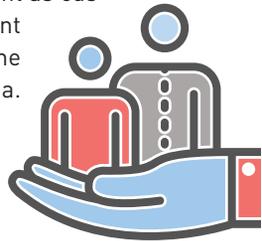
#### FIND CLEs AND LEGAL EVENTS

For the latest information about CLEs and legal events, go to [www.wsba.org/news-events/events-calendar](http://www.wsba.org/news-events/events-calendar).

## VOLUNTEER

### CUSTODIANS NEEDED

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



## ETHICS

### FACING AN ETHICAL DILEMMA?

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

### SEARCH WSBA ADVISORY OPINIONS ONLINE

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



## WSBA COMMUNITY NETWORKING



### ACCESS TO JUSTICE CONFERENCE

The 2019 Access to Justice Conference is just around the corner: June 14-16 at the Spokane Convention Center. You can find information on the Alliance for Equal Justice website, [www.allianceforequaljustice.org](http://www.allianceforequaljustice.org).

### WSBA CLE FACULTY DATABASE

If you are currently serving as CLE faculty, or are interested in working with the WSBA as a future CLE faculty member, we encourage you to register in our CLE faculty database. Serving as a faculty member provides you with the opportunity to engage with other attorneys across the state, give back to your profession, and advance your professional growth. Whether it's upcoming changes in the law, emerging hot topics, or substantive content, our goal is to ensure we are engaging with the right faculty at the right time, matching practice expertise and knowledge to our educational programming needs. We hope to capture the information of all those who plan to teach—both current CLE faculty and those interested in future opportunities. To register, please log in to your myWSBA account, go to "My WSBA Profile" and select "CLE Faculty Database Registration."

### 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 [newmembers@wsba.org](mailto:newmembers@wsba.org).

### ALPS ATTORNEY MATCH

Attorney Match is a free online networking tool made available through the WSBA-endorsed professional liability partner, ALPS. This resource allows attorneys to set up a profile and indicate whether they are looking for, or available to act as, a mentor. Mentorship programs that meet requirements are 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](mailto:mentorlink@wsba.org).

## WSBA PRACTICE MANAGEMENT ASSISTANCE

The WSBA offers free resources and education on practice management issues, including financial management, marketing and client retention, and technology. For more information, visit [www.wsba.org/pma](http://www.wsba.org/pma).

### FREE PRACTICE-MANAGEMENT CONSULTATIONS

Schedule a free phone consultation with a WSBA practice-management advisor to find answers to your questions about the business of law-firm ownership. Common inquiries we can help with include technology adoption, opening or closing a law office, and client relationship management. Visit [www.wsba.org/consult](http://www.wsba.org/consult) to get started.



### LENDING LIBRARY

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

### GET DISCOUNTS ON NEW SOFTWARE AND SERVICES

Looking to build up your practice? Visit the Practice Management Discount Network for discounts on tools to help you improve your legal service delivery—featuring practice management software, credit card processing, and more. Visit [www.wsba.org/discounts](http://www.wsba.org/discounts) to get started.

### FREE LEGAL RESEARCH TOOLS

WSBA offers resources and member benefits to help you with your research. Learn more and get started at [www.wsba.org/legalresearch](http://www.wsba.org/legalresearch). You can conduct legal research for free using Casemaker and Fastcase.

## QUICK REFERENCE



### USURY RATE

The maximum allowable usury rate can be found on the Washington State Treasurer's website at [www.tre.wa.gov/partners/for-state-agencies/investments/historical-usury-rates-archives/](http://www.tre.wa.gov/partners/for-state-agencies/investments/historical-usury-rates-archives/).

## WSBA MEMBER WELLNESS PROGRAM



### WSBA CONNECTS

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

### CAREER CONSULTATION

Want someone at WSBA to take a look at your résumé? Or maybe you want to brainstorm approaches to networking. The job search requires a game plan. We are happy to set up a time to speak. Email [wellness@wsba.org](mailto:wellness@wsba.org).

### 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 12:15 to 1:30 p.m. at the Skinner Building at 1326 Fifth Ave., 7th Floor, Seattle. If you are seeking a peer advisor to connect with and perhaps walk you to this meeting, the WSBA Member Wellness Program can arrange this; call 206-727-8268. 

When you need advice on attorney fees, an evaluation of fees, a declaration on fees, or testimony on fees—CALL US.

### Our latest law review article on attorney fees in Washington is:

*The Lodestar Method for Calculating a Reasonable Attorney Fee in Washington*,  
52 Gonz. L. Rev. 1 (2017)

### We have a track record of success in fee cases:

- Estate of Hunter (\$2.8 million fee award in arbitration)
- Easterly v. Clark County, 2 Wn. App. 2d 1066 (2018)
- Arnold v. City of Seattle, 185 Wn.2d 510, 374 P.3d 111 (2016)
- Bright v. Frank Russell Investments, 191 Wn. App. 73, 361 P.3d 245 (2015)
- Tupas v. Washington State Dept. of Ecology, 191 Wn. App. 1036 (2015)

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*Harris v. Griffith*, 2 Wn. App. 2d 638, 413 P.3d 51, rev. denied, 191 Wn.2d 1012 (2018); *Gosney v. Fireman's Fund Ins. Co.*, 2 Wn. App. 2d 838, 447 P.3d 447, rev. denied, 191 Wn.2d 1012 (2018); *Residential Investments, LLC*, \_\_\_ Wn. App. 2d \_\_\_, 437 P.3d 696 (2019); *Prichett v. Picnic Point Homeowners Assoc.*, 2 Wn. App. 2d 872, 413 P.3d 604, rev. denied, 191 Wn.2d 1008 (2018); *Everi Payments, Inc. v. Washington State Department of Revenue*, 6 Wn. App. 2d 838, 447 P.3d 447 (2018); *Marriage of Snider and Stroud*, 6 Wn. App. 2d 310, 430 P.3d 726 (2018); *City of Puyallup v. Pierce Cty.*, \_\_\_ Wn. App. 2d \_\_\_, \_\_\_ P.3d \_\_\_, 2019 WL 1474279 (Apr. 3, 2019); *Federal Home Loan Bank of Seattle v. RBS Securities*, 3 Wn. App. 2d 642, 418 P.3d 168 (2018); *Marriage of Kaplan*, 4 Wn. App. 2d 466, 421 P.3d 1046, rev. denied, 191 Wn.2d 1025 (2018); *Modaval Inc. v. Xtali Corp.*, Wn. App. 2d 810, 425 P.3d 871 (2018); *Marriage of Kaurds*, 4 Wn. App. 2d 801, 423 P.3d 895 (2018); *Rouke v. Delman*, 189 Wn.2d 775, 408 P.3d 658

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WASHINGTON STATE BAR  
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# News from the Board of Governors

*The WSBA Board of Governors determines the Bar's general policies and approves its annual budget. Agendas, materials, and notes from each public meeting are available at [www.wsba.org](http://www.wsba.org). The next regular meeting is July 26-27 in Richland (following the annual board retreat on July 25).*

## Mandatory Malpractice Insurance

For more than a year, a task force examined whether malpractice insurance for lawyers should be required as a licensing requirement. In March, the task force presented its final report and recommendation—to require malpractice insurance with certain exemptions—to the board. The board held a special meeting in April to hear directly from members and the public. At its May meeting, the board voted down the task force's recommendation and discussed the possibility of exploring other alternatives and models to strengthen protection for the public. More information about the task force is available at [www.wsba.org/insurance-task-force](http://www.wsba.org/insurance-task-force).

## What shape will the Bar take in the future?

In September, the Washington Supreme Court announced it would undertake a “comprehensive review of the structure of the Bar” in light of recent case law with First Amendment and antitrust implications for bar associations. In November, the court chartered a 10-member work group to review the WSBA's structure. The work group has been meeting since March and will soon make a recommendation about

**The 10-member work group has been meeting since March and will soon make a recommendation about whether the Bar's structure should change.**

whether the Bar's integrated structure should change. The work group is soliciting feedback from members and the public with the message: *Please get involved because this work will affect the shape of the Bar for decades to come.* All work-group materials as well as videos of each meeting are available at [www.wsba.org/bar-structure-work-group](http://www.wsba.org/bar-structure-work-group).

## Congratulations to our new WSBA leaders

Whether by election or appointment, our incoming group of board leaders has been selected. Congratulations to President-Elect Kyle Sciuchetti and to our newest governors, who will be seated in September: Hunter Abell (At-Large), Carla J. Higginson (District 2; seated in May 2018 to fill a vacancy), Bryn Peterson (District 9), and Thomas A. McBride (District 10). The board also appointed Sunitha Anjilvel to fill the District 1 vacancy at its May meeting, and Yakima County Superior Court Judge David Elofson immediately swore her in.

## Listening Tour: See you around!

The WSBA President and the Interim Executive Director—joined by local governors—have hit the road! This year's Listening Tour kicked off in May with stops in Kennewick and Yakima. Thank you to all who participated. Stops are scheduled in June in Kent, Bellevue, Vancouver, Spokane, and Newport, and new events are being added throughout the summer and fall. Check [www.wsba.org](http://www.wsba.org) for the full schedule. The Listening Tour is an opportunity for members to ask questions, share ideas, and offer comments about the WSBA and the legal profession.

## Statement regarding the WSBA's fiscal integrity

Governors on the Budget and Audit Committee—who review, recommend, and take action on WSBA financial matters—want members to be confident in and engage with the budgetary process. They recently released a statement:

The Budget and Audit Committee expresses a high degree of confidence in the WSBA's financial integrity following another clean yearly audit opinion for Fiscal Year 2018. Committee members reviewed the independent auditor's report in January that certified that WSBA finances are well managed and accurate in all material respects. The WSBA has received similar clean “unmodified opinions” (no adjustments made, no material weaknesses, no management letter issued) from independent



WSBA board and staff members and guests joined together after the May board meeting to help at Yakima's Northwest Harvest distribution warehouse. They packed 5,610 pounds of canned goods, equivalent to 4,135 meals! President Bill Pickett led the charge as another way to foster service, trust, and relationships. Pictured (from left, top row then kneeling): Governor Dan Clark, Governor and incoming President-Elect Kyle Sciuchetti, President-Elect Rajeev Majumdar, WSBA Chief Communications and Outreach Officer Sara Niegowski, Treasurer Dan Bridges, NW Harvest Operations Volunteer Assistant Alex Hernandez, WSBA Legal Community Outreach Specialist Sue Strachan, Governor Russell Knight, President Bill Pickett, Laura Pickett, Sarah Matheny, WSBA Communication Strategies Manager Jennifer Olegario, WSBA Interim Director of Advancement Kevin Plachy, WSBA Chief Regulatory Services Counsel Jean McElroy, Daniel Hoang, and WSBA Interim Executive Director Terra Nevitt.

audit firms for at least the past 30 years. The positive opinion indicates that the WSBA has strong internal financial controls.

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Most financial information, including detailed financial statements, the current budget with revenues and expenditures by line item, treasurer reports, and audit reports, are on the WSBA Finance page, [www.wsba.org/about-wsba/finances](http://www.wsba.org/about-wsba/finances).

### Legislative recap

Substitute House Bill 1788—which would have repealed the majority of the State Bar Act and recognized the court's plenary authority to regulate the practice of law—did not pass. The WSBA opposed the bill, mainly because of the timing and potential unknown consequences, and governors testified before the Senate Law and Justice Committee and actively lobbied against the bill in both the House and Senate. While the bill passed both chambers with amendments, it ultimately did not receive a concurrence vote in the House. Therefore, no bill related to the State Bar Act passed the Legislature this session.

The WSBA's request legislation from the Business Law Section, SB 5003 (better aligning the Washington Business Corporation Act with the Model Business Corporation Act), was signed into law by Gov. Jay Inslee on April 26. This marks the seventh straight year in which a Business Law Section

legislative proposal has become law. In all this session, the WSBA Legislative Affairs Team referred 1,098 bills to sections, continuously tracked 460 bills, monitored 52 committee hearings, participated in more than 30 meetings with legislators, and provided/coordinated testimony in three hearings.

**Solidarity with minority and specialty bars against white nationalism**

The board, supported by the WSBA Diversity Committee, recently adopted a statement of solidarity with the Oregon Specialty Bar Associations against white nationalism and the normalization of violence. It reads in part (available in its entirety at [www.wsba.org/news-events/media-center/media-releases](http://www.wsba.org/news-events/media-center/media-releases)):

In the April 2018 issue of the *Oregon State Bar Bulletin*, a statement was published denouncing white nationalism and the normalization of violence and racism. ... Shortly thereafter, the bar leaders who signed the statement received backlash in the form of threats of physical violence,

intimidation, and harassment from members of the public and surprisingly, even from some fellow members of the Oregon State Bar. ...

We ... stand with our sister minority bar associations and diversity representatives in Oregon and commend their bravery in publicly rejecting white supremacy and white nationalism. ... Our organizations are deeply committed to ensuring that the legal profession maintain integrity and vigilance against the normalization of racism. The legal profession as a whole benefits when we intentionally include more voices, experiences, and backgrounds. As attorneys, it is our professional responsibility to combat injustices, advocate on behalf of marginalized groups, and disavow threats of violence and retaliation. As leaders, we have a duty to respond; leadership requires speaking up, even when it is mischaracterized as divisive. We will continue to stand up for our communities and for other groups that have been systematically oppressed. ...

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The next regular Board of Governors meeting is July 26-27 in Richland.

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*Yates v. Fithian*,  
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(W.D. Wash. 2010)

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

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

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

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

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# Beyond the Bar Number

## ADA WONG

Bar No. 45936

Law School: University of  
Washington School of Law

Photo courtesy of the author

I am the owner of AKW Law, with offices in Washington and California. My practice focuses on employment law, civil rights, personal injury, and simple estate planning. I was an adjunct professor at Seattle University School of Law. I am the associate editor of the Washington State Association for Justice's *Trial News*, an editorial board member of the American Inns of Court's *The Bench*, a former president of the Vietnamese American Bar Association of Washington, and the public relations chair of the William L. Dwyer American Inns of Court. I also serve as an arbitrator in Snohomish and King Counties.

**WE'D LIKE TO LEARN ABOUT YOU!** Email [nwlawyer@wsba.org](mailto:nwlawyer@wsba.org) to request a questionnaire.

- Before law school, I worked at Heller Ehrman's San Francisco office; and yes, I was there when this international firm with 15 offices dissolved in 2008.
- In my practice, I work on improving my patience—especially with certain opposing counsel.
- My career has surprised me by taking a turn of starting my own law firm in 2015, which was something I

never considered during law school or even the first few years of my practice.

→ **The best advice I have for new lawyers is** to write and say everything as if a judge will see or hear it one day.

→ **My long-term professional goal is** to be a top trial lawyer ... with a work-life balance.

→ **The most rewarding part of my job is** seeing the smiles on my clients' faces many years after their cases have resolved and hearing about how their lives took a positive turn because of my representation.

→ **The worst part of my job is** facing deadlines while I'm trying to enjoy a rare vacation.

→ **I wish that more lawyers would consider opening their own firms.** Who doesn't want autonomy, independence, control, and flexibility?

→ **Successful attorneys are** always hustling. There is no shortcut.

→ **In 10 years, I see myself** running a firm of 5-10 attorneys—and hopefully from a nice beach with my husband and two kids by my side.

→ **During my free time, I** enjoy playing coed flag football and coed volleyball; working out; eating sushi with my husband, Kurtis; and playing with our three cats: Kylo, Soba, and Matcha.

→ **I create work/life balance by**

making sure I go to the gym or play sports two to three times a week and by hanging out with my husband and my friends.

→ **If I could do something over, it would be** starting my own law firm earlier.

→ **My favorite place in the Pacific Northwest is** home. There's no place sweeter than home after a long work week, and specifically a comfy bed with all three of my cats surrounding me.

→ **Nobody would ever suspect that I** named my puppy "Dinner."

→ **Friends would describe me as** a fast-talker, foodie, gym rat, and always on the go.

→ **This is on my bucket list:** eat all the good food in Asia.

→ **This makes me roll my eyes:** when clients tell me there's a lawyer who will represent him or her for \$50 an hour and I should discount my fees.

→ **My greatest fear is** wearing mismatched shoes in trial or having pen marks on my face (because it does happen)!

→ **My dream trip would be** a place with amazing food, sunny skies, sandy beaches, and not a lot of tourists.

→ **My hero is** my mother. I attribute all of my positive characteristics to her, as well as my stubbornness.

→ **If I have learned one thing in life, it is** that all great things come to those who hustle.

→ **I would like to learn** to delegate more and trust others to complete the tasks at hand.

→ **I have been telling others not to miss out on** enjoying life and spending time with their loved ones. We are all busy and we can't take any of it when we leave.



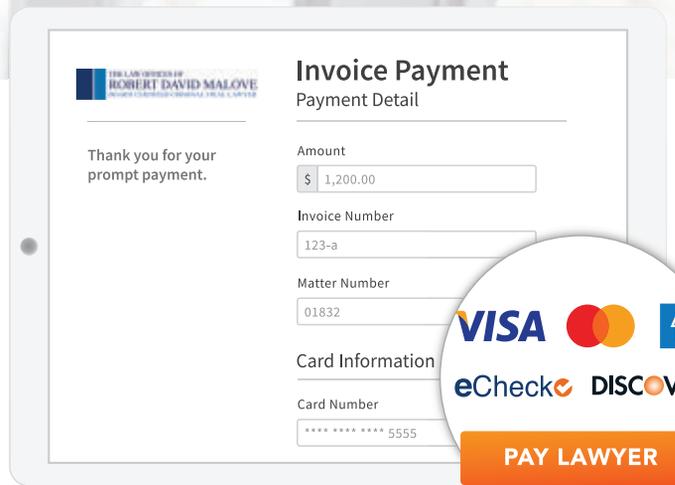
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