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Moving Forward: An Interview with Seattle University School of Law Dean Annette Clark
interviewed by Kurt Kruckeberg

Attorney Super-Commuters
Covering Long Distances from Home to Work
by Gemma Zanowski

Washington Supreme Court Cases
Winter Term Preview
by Paul Graves

The Unethical Use of Immigration Status in Civil Matters
by M. Lorena González and Daniel Ford

Mar 2014 on the docket
Submission Guidelines

NWLawyer relies on submissions from WSBA members and nonmembers that are of interest to readers. Please contact the editor if you have questions about your submission or to discuss a topic for an article. Send articles to nwlawyer@wsba.org. Articles should not have been submitted to any other publications and become the property of the WSBA. Articles typically run 1,500 words. Citations should be incorporated into the body of the article and kept to a minimum. Please include a brief author’s biography, including contact information, at the end of the article. High-resolution graphics and photographs are requested. Authors should provide a high-resolution digital photo of themselves with their submission. The editor reserves the right to edit articles as deemed appropriate. The editor may work with the writer, but no additional proofs of articles will be provided. The editor reserves the right to determine when and if to publish an article. NWLawyer is published nine times a year (FEB, MAR, APR/MAY, JUN, JUL/AUG, SEP, OCT, NOV, DEC/JAN) on or about the first of the month. The current circulation is approximately 31,000.

CORRECTION: In the February 2014 issue of NWLawyer, the Top Ten incorrectly identified the three Pacific Northwest states as community property states. Only Washington and Idaho are community property states; Oregon is not.

Inbox

Let us hear from you! We welcome letters to the editor on issues presented in the magazine. Email letters to nwlawyer@wsba.org. NWLawyer reserves the right to edit letters for clarity and space. NWLawyer does not print anonymous letters, or more than one submission per month from the same contributor.

Applauding Dean Korn

Was so nice to read your interview with Dean Korn, my long-ago contracts professor at the University of Arizona. She was a great mentor, always willing to give freely of her time and to share from her personal experience. I was going through a challenging divorce back then and she took the time to speak with me in a way that was extremely helpful.

I appreciate her comments on what women bring to the legal profession. As a collaborative attorney and mediator, I believe we very much need women’s perspectives, energy and insights as we seek to transform the culture from one that is adversarial (and essentially violent) to one that creates space for emotional needs to be addressed and helps clients to make wise choices.

Dean Korn is a wonderful person. I know she’ll be a superb dean. Gonzaga is very lucky to have her.

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What If?

As president of the WSBA, I have a full view of the Bar’s size and complexity, and its many moving parts. Most people don’t realize that our bar is over 36,000 members strong. And with the size and scope of our profession comes massive productivity and influence. We are part of a $300 billion national legal industry market.

With facts like these, it’s hard not to see our potential. Think of the mountains that are moved by just one lawyer and by one firm. Individually, we make justice, we rebalance playing fields, we hold “big” accountable to “small,” we defend and protect the state and the indigent and we solve the problems of a family in crisis. “Can do” is wired into our legal DNA.

So what keeps us from using this power together to create a better future for our profession? George Burns once famously noted that “I look to the future because that’s where I’m going to spend the rest of my life.” If that’s where we are all going (and we are), then why don’t we harness our skills, our knowledge, our libraries and resources, our networks and connections?

I understand that grand ideals like these are benign without a method to make them real. But if you have been reading my columns, then you know I don’t mind taking this space to share attainable strategies for real change.

So here are some of my “what ifs” that have been on my mind that aren’t mere ideals, but that do tap into the power of those in the profession willing to work together for a better future. I want to be clear that these are my “what ifs,” some of which might be feasible by the Bar, some by others. Either way, I believe they are worth discussing.

**What if** the WSBA was able to retool its lawyer directory to serve a greater purpose? Imagine typing in your name and seeing your page; a page where you could add content or link to another page where you could add content. What if you could highlight your accomplishments, your articles, your blog, your website, your appellate decisions, your philosophy, your mission, your education, your firm information, your picture, your social media connections, and whatever else would be of value to people trying to find you and to find out about you?

If the Lawyer Directory had more information about you, then everyone else could find you and see what you bring to the table. We could all find you, talk to you, share ideas, refer clients, or just check you out. If potential clients could find you with greater ease, what would that mean for your business? And what if it improved your visibility in a Google search? What would that be worth?

**What if** there was a way to make pro bono feasible for all lawyers and truly accessible to all those in need? What if citizens could get answers to their questions online through a WSBA-created site? If there was a site that invited questions from citizens on any and all legal matters for you to answer, it might serve a number of necessary purposes. First, as a profession, we would be providing citizens free answers from a body of 36,000 lawyers, and free access and free resources on any and all legal topics. Second, we would create opportunities for lawyers to be seen, to exhibit their expertise, and to actively participate in pro bono work that only required a few minutes’ effort. Everyone wins. Everyone benefits. That’s the power of unity.

**What if** CLEs offered members education on all aspects of a lawyer’s life, and not just those portions currently allowed for credit? The real question is this: do you take classes only to keep your license OR do you take classes because you want to be a better lawyer, run a financially successful firm, and live a happier life? Imagine choos-
ing classes on black letter law AND classes on blogging, branding, work-life balance, mindfulness, marketing, marketing analytics, technology, cloud management, virtual lawyering, tech tools and apps, social media, low bono business models, case management, stress management, debt management, website enhancement, financial analysis for small firms, health and exercise, professional and health insurance, and other like topics focused on issues that lawyers face in today’s economy.

Would you access these classes if they were offered live and online, and on video and podcast formats? It would follow that they would be made accessible 24/7 and available whenever you are. What if you paid a monthly or yearly flat “tuition” that gave you unlimited access to classes? Are these the type of services that you want?

My “what ifs” are a place to begin the conversation about what you need and what role the WSBA and others in the legal community play. If access to programs like these is important to you, then share your thoughts. If you have new and innovative ideas, then share them. I will be posting these ideas and others this month on our WSBA blog, NWSidebar. Consider this your invitation to join the “what if” conversation.

I will also be opening up online chats to discuss the future of the profession. William Jennings Bryan, a lawyer and U.S. presidential candidate, once said, “Destiny is no matter of chance. It is a matter of choice. It is not a thing to be waited for, it is a thing to be achieved.” So let’s talk. Let’s achieve together. Join me as part of the collective voice of our profession and let’s grow and shape the WSBA in a way that redefines and redirects the future of the profession. I look forward to hearing from you. Namaste. NWL

WSBA President PATRICK A. PALACE
practices in Tacoma. He can be reached at patrick@palacelaw.com or 253-627-3883. Follow him on Twitter: @palacelaw.
Welcome John W. Jones!

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Defining Value in Meaningful Ways

As I’ve traveled around the state the last several years, the input and feedback received from WSBA members is invaluable. One thing that is fairly consistent is that WSBA members aren’t clear on what license fees pay for, or the value members receive from paying those fees. While I believe value is defined differently by each individual, I felt it was important to address some of the many changes and adjustments the WSBA has made as a result of what we’ve heard about how you, our members, define value.

First, the themes I’ve gleaned are fairly consistent among members. You want help in maintaining a successful practice, you want support to keep up with the changing needs of the profession and your clients, and overall you want your membership to be more meaningful.

Let me start by talking about some of the transitions that have occurred that involve the CLEs WSBA delivers. We went through a fairly significant organizational realignment last year, with one of the goals being to bring CLE offerings into a clearer focus, better tied to our mission-focus areas and strategic priorities. As a result, WSBA is focusing on what we are uniquely positioned to provide, which are seminars on substantive areas of law in partnership with our sections, skills for practice in the 21st century, and professional ethics.

At the same time, the work of the board-appointed MCLE Task Force is well under way. This group is examining the “M” in MCLE. Should CLEs remain mandatory? If so, should credit only be available for black-letter law courses? Or should CLEs be expanded to include other areas that impact your practice and your lives, like stress management, work life balance and leadership? In light of the changing needs of the profession, should revisions be made to the MCLE rules and regulations? This group is projected to complete their recommendations for the board and Court by the end of 2014. It is clear whatever recommendations they come up with, though, the Task Force is striving to insure that the “M” in MCLE will stand for “Meaningful.”

Another change in the CLE offerings is the development of WSBA’s Legal Lunchbox Series. This monthly series is offered free to members. On the last Tuesday of every month, members can earn 1.5 CLE credits by joining a 90-minute webcast. All Legal Lunchbox topics are focused around 21st-century practice skills. The response to this series has been overwhelming, and if you haven’t taken advantage of this free member benefit yet, I encourage you to register for the next Legal Lunchbox CLE on March 25. The topic is “The 21st-Century Law Practice: Tools and Efficiencies.”

If you’re an individual who takes CLEs at WSBA’s Conference Center in Seattle, we’ve made an enhancement there that’s worth noting. For those struggling to hear at CLEs in the past, that issue has now been addressed. In fact, I encourage you to read Jerry Paulukonis’s story on page 46. He’s a true testament to the value of this recent change.

Other changes have occurred in our Law Office Management Assistance Program. We’ve gone from one to two full-time practice management advisors available to work with members. They offer phone consultations, in-person meetings at the WSBA office, and in-person meetings at your office. Whether it’s support with technology, marketing guidance, practice transition counsel, financial management, or other needs, WSBA staff is here to help you achieve and maintain a successful practice. LOMAP also has a growing Lending Library that offers short-term loan of books on the business management aspects of your law office. Peruse the library in-person at the WSBA office or review the list online and we’ll have the books shipped to you.

As we announced in January, we’ve also added recent enhancements to Casemaker, a powerful research tool free to WSBA members. You can now access CaseCheck®, a case citator that determines if there has been any negative treatment on a case. Additionally, you have free access to CiteCheck, which allows you to upload documents and have the case citations auto-
matically checked to determine if they are still good law. These two additions were previously paid services, but are now free to all WSBA members.

Also announced in January, WSBAConnects is a new, free service for members, as a part of our Lawyer Assistance Program (LAP). It offers statewide access to support for lawyers needing help for issues related to mental health and addiction concerns, career management, family, care-giving, daily living, health and well-being, and more. It’s confidential and available 24 hours a day by accessing this toll-free number: 1-855-857-9722.

Very recently, we’ve launched a new public service initiative, WSBA Call to Duty, that is designed to inform, inspire, and involve volunteer attorneys in meeting the legal needs of veterans and their families. You’ll see more information coming your way and how you can take the WSBA Call to Duty pledge and participate in fulfilling the legal needs of more than 600,000 veterans in our state.

Finally, if you’ve read my columns over the past couple of years, you know that I have been focused on the future of our profession and the trends impacting how we deliver legal services in a changed global context. I believe strongly in the bar embracing and responding to the changes happening in the profession and those expected to happen, so we are positioning ourselves to best serve WSBA members and the public in the future.

WSBA’s president, Patrick Palace, has also dedicated most of his columns to discussing the future and seeking to engage with WSBA members in a dialogue about new models of practice, alternative fee arrangements, technology, and tools — all aimed at helping members remain relevant and ready for changing client needs and the shifting legal landscape. He’s recently convened a Future of the Profession work group comprised of WSBA members, corporate leaders serving the legal space, law school representatives, and WSBA staff. I’m sure you’ll hear more from Patrick in his upcoming columns about the work of this group and what you can expect from them. It’s exciting and forward-thinking work that I believe will bring meaningful value to the membership.

As you’ve read, WSBA is not standing still. We are leaning in, operating within a rapidly changing environment where your needs are changing, your clients’ needs are changing, and the overall profession is undergoing a retooling process. The value of your membership is important to you, and equally important to WSBA. We will continue to deliver on our value promise in many different ways and on many different levels.

If you have questions or would like to discuss any of what I’ve talked about above or have other ideas you’d like to share, I welcome your input. NWL

PAULA LITTLEWOOD is the WSBA executive director and can be reached at paulal@wsba.org.

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Moving Forward
In this second in a series of interviews with the deans of the three law schools in our state, Seattle attorney Kurt Kruckeberg talked with Dean Annette Clark of Seattle University School of Law. Before receiving her J.D. from Seattle University School of Law, Dean Clark received her M.D. from the University of Washington School of Medicine. With a background in both law and medicine, Dean Clark is a frequent regional and national lecturer on health care, law, and health policy, with a particular emphasis on end-of-life issues. Dean Clark was the interim dean of the Seattle University School of Law in 2009–10 and was dean of the Saint Louis University School of Law from 2011–12. Dean Clark assumed the deanship at the Seattle University School of Law in 2013.

Kurt Kruckeberg: When you were a student at Seattle U, did you ever think that you would become dean of the law school?

Dean Annette Clark: I wish I could say I dreamed that big, but I didn’t. When I came to law school, I didn’t know precisely what I would do with my law degree, but I assumed that I would end up in practice and then figure out where to go from there. During my second year of law school, three of my professors started a conversation with me about whether I was interested in teaching, and that was very validating. It opened up my eyes to the possibility of being an academic. But no, I never thought I would be the dean. It’s thrilling for me now, but it wasn’t on my horizon.

You were interim dean at Seattle U, then you were dean at St. Louis University, and now you’re back. Can you tell me a little about your journey to the deanship at Seattle U?

The interim dean year was my year of epiphany. I viewed that time as a period of service to the law school — an institution of which I am an alumna and that has given me so much. I agreed to be interim dean because I thought I was the person best situated to do it, and because the provost and president had asked me to do it. At that point, I truly thought that I didn’t want to be the dean. I had been an associate dean for academic affairs for three different deans — Dean Jim Bond,
Dean Rudy Hasl, and Dean Kellye Testy. I loved working with each dean, although it was different each time. So I had been close enough to the dean position that I had pretty much decided I liked being the number-two person. But I stepped into the interim dean role, and it is such a good example of what we encourage our students to do — that “leap of faith.” You may feel like you’re not ready for something, that you don’t know what you’re doing, and you just step out and do it. What I discovered quickly in my interim dean year is that I was ready, I just hadn’t known it.

I had a year sabbatical after my year as interim dean, and I was a visiting scholar at GW. That time away gave me the opportunity to think about what I wanted the next phase of my career to be. I kept being drawn to how much I loved being dean that interim year, so that’s what caused me to pursue opportunities to become a dean. I went to Saint Louis University School of Law as dean for a year. It turned out not to be the right place for me. And I am absolutely thrilled to be able to come back home.

It’s very gratifying to be a graduate of the institution where you are dean — there just aren’t that many people who get to have that experience. There’s a depth of feeling for the school that comes from having had the benefit of being educated here, having known the professors from years back, and then having been a faculty member here. I also appreciate that as I’m working on some challenging issues to move the law school forward, I know I’m going to be here to be able to experience what comes of it all. That makes each decision I make a little more interesting and gratifying.

What are some of those challenging issues you mentioned, and how are you tackling them?

They’re endemic to legal education right now. One reassuring thing as I talk to dean colleagues across the country is that we are all managing during difficult times. The good thing is that I knew that coming in. There are folks who have been deans seven, eight, or nine years for whom these challenges are even more difficult because they were deans when law schools were flourishing. I came of age as a dean during a time of economic downturn. I knew when I took this deanship that legal education was facing challenges. The number of applications nationwide continues to drop. Finding legal employment is still difficult. Legal education has become more expensive and students graduate with high debt loads. And there’s been a media firestorm for the past two years questioning the value of legal education. Many of the claims made are inaccurate or exaggerated, but there is some truth to what has been said.

At Seattle U, we’re actively and rapidly downsizing to respond to both the admissions and employment markets. Because we are a private, tuition-driven institution, our budget is made up primarily of tuition dollars. So as we get smaller, it impacts our budget, which means that I need to lead a process of some difficult decision-making. At the same time, the challenge is to keep the law school moving forward, because the last thing we want to do is retreat. The decisions we make need to be intelligent; they need to be made not in a panic, but as a measured response. In some sense, we are a business, and we have an obligation to operate within our means. So we’re working to put ourselves in a position to be able to do that, and at the same time pressing forward on programs, endeavors, events, and activities with the idea that — at some point — legal education will come out the other side of this.

And what are some of those programs and endeavors?

Among many things, we’re working to develop additional experiential opportunities for our students through our already-expansive clinical and externship programs so that our reputation for producing graduates who are prepared for practice continues. We’re placing a premium on efficiency, innovation, and entrepreneurialism, and we look to take advantage of opportunities for new programs and initiatives that are resource-friendly and advance our dual mission of academic excellence and education for justice.

I am very enthusiastic about expanding our Summer in D.C. Program and thrilled about our proposal to the ABA to create a satellite campus in Alaska, which would allow Alaska students the opportunity to earn their J.D.s without spending three years out of state. I’m proud of our new Solo and Low Bono Initiative, particularly the recent launch of our Low-Bono Incubator Program, which is supporting four recent graduates in their efforts to open solo practices while serving individuals of moderate means.

Our alumni are helping create a robust 3L mentoring program and assisting our students in numerous ways. We also will offer members of the Bar great opportunities to earn certificates through the Summer Practice Academy that will launch this year. As I hope is apparent, despite the current challenges, I remain very optimistic about the future of legal education at Seattle U.

You mentioned that legal education is going through some major changes. What will it look like, both at Seattle U and more broadly, on the other side?

There are many of us trying to figure out the answer to that question. If I had the answer, I’d be a rich woman.

Well, take a guess.

Law schools will be smaller. They will be more efficient. There will be more emphasis on how to use technology in ways that enhance, streamline, and add capacity to legal education. We will move toward increased skills education, but the idea of legal education as an integrated enterprise will continue. Certainly it will at Seattle U. We want our faculty to retool so that each course is a blended course — so that we’re blending doctrine and skills...
education over those three years. Starting out in the first year, it will be heavier on the doctrinal, but we will add skills education so that by the time you get to the third year, that should be flipped.

The history of legal education has been more of a smorgasbord model: Here are your required courses, and here are a bunch of other courses — now take some. Because there is so much more pressure on graduates to be practice-ready, that means we have an obligation to do more to help advise our students on how to position themselves. That’s where a lot of the work is going to be. Frankly, it’s work that should be happening. It should have happened a long time ago.

You talked about pressure for graduates to be practice-ready. Are you getting that pressure from employers in the market, or does that come from the potential that new graduates are becoming sole practitioners? NWLawyer ran an article recently that said Seattle U has students graduating into solo practice more often than other area law schools.

Yes, I think that’s right. That’s one of the reasons we have developed our new Solo and Low-Bono Initiative, which provides training and mentoring to our graduates and other attorneys who want assistance in setting up a solo practice. The practice-ready push is absolutely coming from employers. It’s coming from the media. It’s coming from prospective students who are asking, “What will you do for me while I’m in law school that will make me attractive to potential employers?” And the push is coming from current students. And they’re not wrong to suggest that one of the goals of professional legal education should be to help graduates be ready to practice law! We’re doing this right now through a strategic planning and a curriculum process. Everything is on the table. The first year is on the table again — we just redid the first-year curriculum and we’re going back to review it.

It’s the third rail — twice.

It’s the third rail, twice. And I can tell you, people are saying, “Why?” But the answer is, “Because we need to make sure we’re getting it right.” That’s our obligation to our students. It’s so important, particularly right now. We’re also looking at this notion of the third year as a bridge to practice — have we created that? We’re examining the patterns of what our students are taking during their third year, and then we’re looking at the second year, and how it becomes a bridge to the third year. We’re asking, “Are we creating an iterative, spiral curriculum?”

I’m also talking to employers, asking what they are seeing, especially those who regularly hire our graduates. Are graduates coming in as ready as they can be without having had the chance to actually be a lawyer? Do they have the writing skills? Do they understand the notion of law as business? Do they present themselves as professionals? Are they service-minded? Are they the kind of people you want to spend time with? The professional side is big, especially as we bring in millennials, and they’re going into what is
still a relatively traditional profession. Have we brought them along in terms of some of the formalities of the profession?

We are absolutely a work in progress, but the reality is we always will be. And if you’re not — if you’ve stopped looking at your curriculum, and your teaching, and your skills opportunities, and that notion of a professionalizing process, and whether you are inculcating leadership — then you’re not doing your job.

You’ve mentioned the third year a few times. In some media reports discussing the problems with legal education, there’s a simple solution that’s often floated: kill the third year. This obviously doesn’t seem like something you’re considering.

No, it’s not. There are a couple different possibilities when they’re talking about that third year. One of them is a compressed curriculum, or an “accelerated curriculum,” as Gonzaga refers to it. That takes three years of credits and moves them into two years of time. My view of that is it’s a challenge. The students will have the material coming at them faster, more furious, more credits, with fewer opportunities to work in the summer. I understand the attraction of that option. But it’s almost as expensive because you’re still paying for all of the credits. For a lot of students, it’s probably not the right choice. The time — immersion over three years — is really beneficial.

I believe in three years of legal education. But I do think we have an obligation to make it more coherent, comprehensive, and integrated, so that at the end of the day I can sit across from someone and justify the third year — to say that it’s critically important and, by the way, we’re doing something different in that year from the second and the first.

This is a historic time. With Dean Korn being the first woman dean at Gonzaga, the three deanships of law schools in the state of Washington are now held by women.

And a majority of women on the Washington Supreme Court.

Right. So has the glass ceiling been shattered? Are there no problems left?

Oh, I wish I could say that.

Where do you think we are at with the status of women in the legal profession?

There are really interesting conversations going on. The glass ceiling has not been shattered, particularly in the most traditional practice of law. We still see, in firm settings, while there are more women coming in, the retention issues are there — and I think that’s true for women and for persons of color. The advancement opportunities are not the same. Certainly the compensation isn’t equal. And positions of power are not held at the rate that you would expect, given the number of years that we’ve been equal in terms of percentages of women and men coming into and graduating from law school. It’s getting better, but there is a lot of work left to be done.

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to have women in leadership positions, but not just symbolically important. It is real. When women, and when persons of color occupy positions of leadership, it sends such an important message. It sends a message to the young people coming up that they can aspire, they can dream, they can do this too. It sends messages to everyone. I did a presentation a number of years ago where I talked about how I viewed my role as a woman leader. I have two sons, and I said, “Here’s the deal — yes, I do this for women. But I do it just as much for men. I want my boys to come of age in a world where they understand that they will work alongside and with women, and they will work for women, and there is nothing unusual about that.” So I don’t view myself or Kellye or Jane as just role models for other women. We are also there to send the message to men — and I don’t mean that in a negative way — that this is a world where it is natural and expected for people with skill and aptitude and drive and hard work to rise to those levels. We just need to keep working on it. We’re not there yet. But I am proud that this is the state of affairs in this state.

What would you like the readers of NWLawyer to know?

This is an exciting time in legal education. With all of the press that’s out there, and a lot of challenges, we’re sometimes wringing our hands at all the rest of it. But we are in a position to say everything is on the table: To be a part of an enterprise where you know that, five or ten years down the road, it’s going to look incredibly different. To be working with people and having the power to shape legal education for good, because we know how important the legal profession and lawyers are in this country and society. To be a part of the legal education enterprise is still a very optimistic thing.

So I invite people to join us in our endeavor. While prospective students need to make informed decisions, we’re asking people to be vocally pro-legal education to counter some of the messages that are out there — not if they don’t believe it. But many of us do. We have had these experiences. I know I found my career — I found my voice — in law school, one that I didn’t find in medical education. So if you’re talking to someone who is thinking about going to law school, talk about the benefits and the values to counter some of that negativity. Be vocal about what’s good about legal education.
DEMANDING JUSTICE.
Proven trial attorneys.
Call us today. Let’s work together.
ATTORNEY SUPER-COMMUTERS

Covering Long Distances from Home to Work
spoke to a lawyer friend of mine recently about super-commuters and he remarked, “Anyone commuting 2–3 hours should have his head examined!” And that’s pretty much what I set out to do. I sat down with four successful and motivated practitioners — Joan, Joe, Danny, and Terry — who have chosen to work a great distance from where they have chosen to live. What I discovered was that I’d completed an informal study on the passions, values, and struggles of the modern lawyer. I also unearthed two fundamental motivations common to us all: The pursuit of work-life balance and the pursuit of meaningful connections that enrich our lives. In the end, it is this common theme that unites us all, no matter how far-reaching our practices or how scattered we may be.

**The Rise of the Super-Commuter**

The Rudin Center for Transportation Management (Rudin Center) defines a “super-commuter” as “a person who works in the central county of a given metropolitan area, but lives beyond the boundaries of that metropolitan area, commuting long distances by air, rail, car, bus, or a combination of modes.”¹

More narrowly, a “mega-commuter” is a person who travels 90 or more minutes and 50 or more miles to work, one-way.² Mega-commuters are more likely to be male, older, married, make a higher salary, and have a spouse who does not work,³ although the Rudin Center reports that super-commuters tend to be younger and middle-income.⁴ Super-commuting of all types is on the rise.⁵

**Why Super-Commute?**

There are a number of potential benefits to super-commuting. Super-commuters are able to take advantage of higher salaries available in their work region while also taking advantage of lower living costs in their residential region. For example, the average salary for an attorney in the Seattle area is $126,120, while the average salary for an attorney in Yakima, where Joe lives, is $83,830.⁶ As of Jan. 16, 2014, the average listing price of a home in Seattle was $728,907, while the average listing price of a home in Yakima was $237,517.⁷

Super-commuting may allow an attorney to take a “dream job” without physically uprooting his or her family in the process. Super-commuting positions often include telecommuting opportunities, which give an employee more time at home while increasing his or her possible work hours. And for some attorneys, particularly younger ones, a super-commute is something of a prerequisite to securing any suitable, gainful employment in this economy.
### MEET THE LONG-DISTANCE LAWYERS

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<td>1</td>
<td>ROBERT “JOE” SEXTON was admitted to the WSBA in November 2006. He lives in Yakima and has been in a long-distance relationship with his current employer, Seattle-based Galanda Broadman, PLLC, since 2013. <strong>Commute distance</strong> 142 miles <strong>Commute duration</strong> 2 hours</td>
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<td>DANIEL “DANNY” LUTZ was admitted to the WSBA in January 2013. Previously, his fiancée, Casey Wallace (pictured), accepted a job in Tacoma, and on the journey from New York westward, Danny received an offer he couldn’t refuse: a fellowship with the Animal Legal Defense Fund (ALDF) in Portland, Oregon. <strong>Commute distance</strong> 143 miles <strong>Commute duration</strong> 2 hours</td>
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<td>JOAN STEWARD FLASCHEN started her legal career as a judicial law clerk at the Kitsap County Superior Court in Port Orchard. In 2013, she transitioned to a Supreme Court clerkship for Justice Mary Fairhurst, in Olympia. She resides in West Seattle. <strong>Commute distance</strong> To Port Orchard: 18 miles by ferry, 60 miles by car; To Olympia: 60 miles. <strong>Commute duration</strong> To Port Orchard: 50–90 minutes by ferry, 70–90 minutes by car; To Olympia: 70–90 minutes by car.</td>
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<td>TERRENCE “TERRY” LEAHY is a partner at Leahy McLean Fjelstad, a Kirkland-based law firm. He has been commuting from Seabrook to Kirkland since 2012. <strong>Commute distance</strong> 146 miles <strong>Commute duration</strong> 2.5 hours</td>
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Graduating into a harsh job market necessitated sacrifices for Joan, who was willing to endure a super-commute from Seattle to Port Orchard for a paycheck and the beneficial experience of working in a judicial clerkship position. Because her wife worked and attended school in Seattle, it was impractical to move, especially for a two-year, self-terminating position. Having survived two years of super-commuting, Joan opted to take on another year so she could clerk for Supreme Court Justice Mary Fairhurst in Olympia.

Terry, an established attorney, moved away from his office, a decision he described as an ongoing experiment. “I love where I live and where I work,” said Terry. “I love the sense of community that’s palpably present in our law firm and where I live. And I love the challenge of exporting that sense of community to those communities our firm serves.”

Joe considered two factors as central to his decision to super-commute: time with his family and acquisition of his dream job. “I just had my first child,” said Joe, “and my working from home provides flexibility in helping my wife care for our newborn.” The arrangement also enables him to work for Seattle-based firm Galanda Broadman, which he describes as “one of the leading Indian law firms.” He also appreciates the extra breathing room and sunshine that his eastern Washington residence affords him.

Danny’s primary motivation was professional advancement. Because he was willing to commute, he now does the job he loves, every day. Fresh out of law school, he’s been able to develop a huge breadth of experiences unavailable in many other legal settings — he’s arguing in federal court; negotiating settlements; and interacting with large, corporate clients. “The commute means accessibility to those experiential advantages, which has been amazing,” he said.

**Surviving a Super-Commute**

“Before I took the leap, I worried that the long weekly commute would be my undoing,” said Terry. But the roughly five hours he spends traveling weekly...
between Seabrook and Kirkland equates to about the same commute time as that of a Seattle attorney living locally. He spends those five hours enjoying audiobooks he otherwise would not have time to read. “The commute hasn’t presented the challenge I’d feared,” he said.

Because of the distance from Yakima to Seattle, Joe does the majority of his work from home, and joked that he handles his daily commute pretty well since “walking down the hallway with my mug of coffee to my home office is an easy trek when my dogs don’t get in the way.” Despite technological advances, and a workspace equipped with furry support staff, Joe still identified his biggest professional challenge as the time required to travel for work. But for him, this is a challenge far outweighed by the other benefits of his position.

Joan’s daily commute to Port Orchard took her about an hour and a half by ferry, time she used to perform her morning routine: eating breakfast, brushing her teeth, and drying her hair. She now drives to work, and uses that time to sing along to the radio, listen to the news, or decompress. “Either way, I try not to think about work,” she said.

Danny, who takes the train from Tacoma to Portland when possible, uses his time to multitask as well, but unlike Joan’s approach, he takes advantage of the train’s Internet connection to put in extra hours of legal work. When driving, he listens to NPR, which he’s discovered is an efficient way to learn about potential cases for the Animal Legal Defense Fund (ALDF) to take on. His trips are geared toward productivity and making the most of relatively distraction-free time.

As these three recognized, you need to make the most of a super-commute. Work tasks and personal obligations that can be accomplished during a commute should be accomplished during a commute; otherwise, they cut into valuable free time.

### Maintaining Colleague, Client, and Community Relationships

Maintaining what I am terming the “three C’s” is critical to the success of many attorneys, and for attorneys with long-distance practices, these C’s are often spread far and wide, raising some challenges but also presenting some benefits.

#### Relationships with Colleagues

Joe’s firm is pretty high-tech. The five attorneys maintain near-constant contact via video chat and instant message. They also text and email. “Actually, I’m more in contact with my colleagues than I’ve ever been in my career,” Joe observed.

Terry stays in touch with his colleagues in similar ways, but observed that “staying connected and feeling connected aren’t the same thing.” He also made an interesting prediction: “I realize that my undoing will be a gradual withering of relationships between my ‘partners’ and me that will gradually and naturally occur unless we each recognize this risk of atrophy and we each invest ourselves in whatever relationship-building it takes to fortify our union against that risk.”

Terry was not the only super-commuter who recognized a shift in the nature of his relationships with colleagues. The ALDF office in Portland is often empty, as the attorneys travel nationwide to connect with their clients, base, so it is outside his office that Danny makes his most meaningful peer connections. That said, he identifies a disparity between his professional connections in Portland and his professional connections in the Tacoma/Seattle area. Portland is his place of work; Tacoma is his place of play. Maintaining work-life balance has resulted in an accumulation of professional contacts in Oregon only — an interesting situation, given that Danny is licensed in Washington but not Oregon. Recognizing the disparity, Danny joined the WSBA Animal Law Section, which has helped connect him with attorneys in Washington.

Danny reflected that although commuting has limited the breadth of his interpersonal connections, it has improved the depth of those connections. When traveling for work, he often stays with the attorneys with whom he is associating, developing close relationships across the country.

Near or far, forming and nourishing relationships with colleagues takes effort. While feeling united while physically divided is not easy, as Terry observed, even colleagues who share an office wall must thoughtfully cultivate professional relationships. The difference, it seems, is in degrees.

#### Relationships with Clients

Because it often is impracticable to meet clients in person, Joe strives to be as responsive as possible, maintaining accessibility by phone or video-conference, and by travel when necessary. “Critically, the willingness to go to clients when called for or required ensures clients stay satisfied,” he said. “I aim for my legal work to speak for itself and thereby maintain a professional base, so it is outside his office that Danny makes his most meaningful peer connections. That said, he identifies a disparity between his professional connections in Portland and his professional connections in the Tacoma/Seattle area. Portland is his place of work; Tacoma is his place of play. Maintaining work-life balance has resulted in an accumulation of professional contacts in Oregon only — an interesting situation, given that Danny is licensed in Washington but not Oregon. Recognizing the disparity, Danny joined the WSBA Animal Law Section, which has helped connect him with attorneys in Washington.

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#### Relationships with Clients

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Danny’s clients consist mainly of nonprofit organizations around the country, so working far from his office has little impact on his proximity to his clients. Danny’s case is somewhat unique because his clients expect a long-distance relationship with their attorney. Frequent phone check-ins are a part of Danny’s professional repertoire and he makes an effort to communicate outside of email.

Relationships with the Residential Community

Danny reflected that he’d like to do more community service in Tacoma. “Commuting can be an easy excuse not to,” he said. He sometimes feels torn between Portland and Tacoma — a little bit less of a community member of each locale. Joe said that, despite his busy practice, he makes an effort to take time from his professional networking pursuits to spend time in his community. Taking an active, rather than passive, role in their residential communities is an important measure.

Preserving Personal Relationships

A twist on the old adage, super-commuters work hard and commute hard, which begs the question: Is there room to then play hard? Long commutes can take a toll on marriages and relationships. According to a study by Erika Sandow, couples who commute more than 45 minutes each day may have a 40 percent higher chance of separating. This figure makes sense, given that a long commute leaves less time generally, as well as less opportunity for quality time. Joan observed that she sometimes feels the strain on her relationship when she and her wife come home in bad moods and “each of us thinks her bad mood is more justifiable than the other’s.” Joan said she opts to make up for her lack of time by scheduling fewer after-work engagements. This gives her time to unwind at home every day, but unfortunately diminishes her networking opportunities.

Danny observed that, despite some strain on his relationship, his super-commute is a good fit for him now. But he also recognizes it will not be a fit later down the road. “Other priorities eventually will take precedence,” he said. He’s strategically made the decision currently to spend three days a week away from his fiancée, with the understanding that it will benefit his career, and, in the end, their life together. “My ultimate goal is to have a family,” he said, “and this is my opportunity to develop my career with fewer distractions and motivations to be off task.” But he wants to be physically present in his relationship, so that tension is ever-present. “There’s a quote that says, ‘My office is my shoes,’” said Danny. “I’ve had to figure out how to step out of my shoes and put on my Mr. Rogers slippers.”

Joe has found that working remotely from his firm has actually strengthened his personal relationships. He reflected that most attorneys have to put effort into maintaining a balance between their work and personal lives. “It’s a constant work in progress,” he observed, but “I think my love for what I do and for the clients I serve also helps me feel balanced and fulfilled in my personal relationships.”

Reflecting on the Journey

Committing to a super-commute takes a bit of courage and a definite willingness to adapt. It requires both recognition of the sometimes unique challenges of the situation and an investment in meeting those challenges. Still, Terry voiced no regrets, although he’s adjusted his philosophy going forward. “Leap and the net will appear’ is no longer my mantra,” he said. “In its place is this: Leap and the net will need tending.’”

Joe said he would recommend any attorney who can make a long-distance practice work — at least in the way he is doing it — should try to make it work. Would he make the decision again? “Definitely. Without a doubt.”

Danny echoed Joe’s sentiments. “My flexibility now and the experiences I have gained because of it will give me more flexibility later, when I need it . . . [I]t has been a fantastic experience.”

NOTES

3. Id. at 3.
4. Moss & Qing, supra n. 1 at 1.
5. Id.
7. The median sale price of a home in Seattle is $411,000 while the median sale price of a home in Yakima, where Joe lives, is $157,280. See generally Trulia, Real Estate, Homes for Sale, Apartments for Rent, Local Data, www.trulia.com (last visited Jan. 16, 2014).
The Washington Supreme Court’s January term is in full swing. On the docket are cases that may affect in profound ways several areas of the law, including criminal law and procedure, contract interpretations, attorney malpractice, family law, and employee pay. Here are some of the cases worth keeping an eye on.

**Criminal Law and Procedure**

*State v. Crumpton, No. 88336-0.*

RCW 10.73.170 provides an avenue for convicted felons to obtain DNA testing when attempting to prove their innocence. Among its requirements is that one seeking DNA testing must explain how the evidence is “material to the identity of the perpetrator.” The Washington Supreme Court has interpreted that provision to require a trial court to decide whether new DNA evidence would raise the likelihood that the person is innocent, considering all the evidence at trial and any newly discovered evidence.

That provision will receive further interpretation in a lawsuit filed by Lindsey Crompton. Twenty years ago, he was convicted of raping a 75-year-old woman in her home. The perpetrator covered the victim’s head during the attack, so no witness identification was possible. But the circumstantial evidence against Crompton was strong. He was found running a half-mile from the victim’s house in the middle of...
the night and had items from her house in his pockets. Crompton nonetheless argued that a favorable DNA test would meet the requirement of the DNA statute because rape by a single assailant can often be proved (or disproved) by DNA evidence alone. Division Two of the Court of Appeals, in a 2-1 decision, rejected Crompton’s arguments. In particular, it held that a trial court is not required to presume a DNA test would be favorable for the convicted. That question — whether, in deciding to order DNA testing, the trial court must presume favorability — will now be decided by the Washington Supreme Court.

State v. Bauer, No 88559-1.
Can a person be convicted of third-degree assault when one of his guns is taken, without his knowledge, by his girlfriend’s child and discharged at the child’s school? That’s the central question presented in State v. Bauer. Douglas Bauer made a number of arguments before the trial court and Division Two for why the answer should be “no.” He argued that the criminal law requires a fundamental concept in criminal law.

Family Law

Chandola v. Chandola, No. 89093-5.
In a divorce where children are involved, trial courts have the authority to impose restrictions on the parents’ visitation and interaction with the children for a number of statutorily listed reasons, including the catch-all “[s]uch other factors or conduct as the court expressly finds adverse to the best interests of the child.”

Relying on that provision — which the Washington Supreme Court has not yet addressed — the King County Superior Court entered restrictions in a custody order during divorce proceedings between the Chandolas. The wife made hotly disputed allegations that her husband acted inappropriately with their daughter and relied too heavily on his parents when watching her. The order allowed the father increasing periods of visitation if he observed a regular bedtime with his daughter, had her sleep in her own room, and excluded his parents during his visits with her. Division One of the Court of Appeals affirmed, largely deferring to the trial court’s findings and discretion. The Washington Supreme Court now has the opportunity to address a fact pattern that thankfully may not arise frequently, but which involves several of the most fundamental concepts in criminal law.

Attorney Malpractice

Schmidt v. Coogan, No. 88460-9.
This case began with a slip-and-fall but now centers on the requirements to recover damages in attorney malpractice cases. Teresa Schmidt fell at a grocery store in Tacoma and hired an attorney to handle her personal injury claim. The attorney failed to file suit within the statute of limitations, and Schmidt sued him for malpractice. The case went to trial and the jury awarded Schmidt over $200,000. In post-trial motions, and eventually on appeal to Division Two of the Court of Appeals, the attorney argued that Schmidt failed to prove collectability — that if he had timely filed and won a jury verdict, the store had assets from which Schmidt could have recovered. Citing an earlier Division Two decision and reasoning that Schmidt should not be able to recover from her attorney more than she could have recovered from the grocery store, the Court of Appeals held that collectability is an element of damages and Schmidt failed to prove it. The Washington Supreme Court granted review on the issue and now will decide whether collectability is in fact an element of damages in legal malpractice lawsuits.

Contracts

The faculty handbook at the University of Washington contains a provision — included as a result of an order from the University’s president — that faculty members whose performance is deemed meritorious are entitled to a two-percent annual raise. It also contains a cautionary section explaining that the salary policy is dependent on appropriations from the Legislature. In March 2009, facing a 12 percent reduction in state funding, the University’s president issued another order suspending the raises. The University’s Board of Regents adopted the order and
immediately incorporated it into the faculty handbook. A professor sued for breach of contract and sought to represent the class of all affected professors. The professors conceded that the cautionary language gave the university the authority to suspend raises, but argued that it could only do so prospectively. By instituting the suspension immediately, the professors argued, the university breached a unilateral contract. Both the King County Superior Court and Division One of the Court of Appeals rejected the professors’ arguments. The case now gives the Washington Supreme Court the chance to wade into the area of contingent promises for future salary increases.

Unemployment

Campbell v. State Department of Employment Security, No. 88772-1. Robert Campbell left his job as a public school teacher in the city of University Place when his wife was awarded a Fulbright Scholarship that would allow her to study in Finland for four months. He sought a temporary leave from the school district, but was rebuffed. Not wanting to quit in the middle of the school year, he resigned his job at the end of the preceding school year, seven months before the couple was set to leave the country. He sought unemployment benefits under Washington’s “quit to follow” statute. That statute, enacted in 2009, requires that one quitting a job to follow his spouse must, to receive unemployment benefits, “remain employed as long as [is] reasonable prior to the move.” The Thurston County Superior Court concluded that, under the circumstances, Campbell complied with the statute and so was entitled to unemployment benefits. Division Two of the Court of Appeals reversed, holding that quitting rules like those at issue are valid and that, in any event, LaCoursiere willingly chose the arrangement. The Washington Supreme Court granted review to decide whether and under what circumstances bonuses structured as capital contributions may constitute forbidden wage rebates. NWL

Employee Pay

LaCoursiere v. CamWest Development, Inc., No. 88298-3. In the late 1930s, the Washington Legislature, concerned that employers looking to circumvent collective bargaining agreements would demand rebates from the wages of their employees, enacted the Wage Rebate Act. It makes illegal any collection of a rebate on an employee’s wages. One area that has bedeviled Washington courts is how to treat discretionary bonuses under the Act. LaCoursiere offers the Washington Supreme Court another opportunity to visit the issue.

Shaun LaCoursiere was a project manager for CamWest, a home builder. Part of his compensation involved a yearly bonus, paid in part as capital into the company. The capital bonus was subject to a five-year, evenly proportioned vesting period. Three years after his first capital bonus, LaCoursiere was fired. The company, in accordance with the vesting rules, paid him 60 percent of the bonus amount. He sued, claiming that by paying anything less than 100 percent of the bonus, CamWest wrongly took a rebate from his wages. Division One of the Court of Appeals disagreed, holding that vesting rules like those at issue are valid and that, in any event, LaCoursiere willingly chose the arrangement. The Washington Supreme Court granted review to decide whether and under what circumstances bonuses structured as capital contributions may constitute forbidden wage rebates.

Paul Graves is an attorney at Perkins Coie. A Washington native, he graduated from Western Washington University with degrees in philosophy and political science. After receiving both his law degree and a master’s degree in philosophy at Duke University, he returned to Washington and spent a year serving as a law clerk for Washington Supreme Court Justice James Johnson. Graves joined Perkins Coie in 2008. His practice focuses on appeals, product liability (particularly in the aviation context), and civil fraud. He is a member of the WSBA Amicus Curiae Brief Committee. He can be reached at pgraves@perkinscoie.com.
The Unethical Use of Immigration Status in Civil Matters

by M. Lorena González and Daniel Ford

In 2007, the Latina/o Bar Association of Washington’s (LBAW) Board of Directors began receiving alarming reports from its members. Somehow, federal agents of Immigration & Customs Enforcement (ICE) knew that certain clients were undocumented and knew exactly where and when to pick the clients up — on the doorsteps of various county courthouses immediately after or before a hearing. What was happening? Could these reports really be coincidences?

It soon became clear that the reported ICE pick-ups at courthouses were part of a systemic problem: immigration retaliation. Immigration retaliation occurs when an attorney (or client) harasses, coerces, or intimidates another person using that person’s actual or perceived immigration status.

The Path to the New RPC 4.4(a) Comment

In response, LBAW created an ad hoc subcommittee in October 2007 to determine if immigration retaliation was a type of conduct in which Washington state lawyers were engaged and, if so, what could be done to deter it. The subcommittee consisted of a broad coalition of minority bar associations, immigrant rights groups, and civil legal aid, including Columbia Legal Services, Northwest Immigrant Rights Project, Northwest Justice Project, and many others.

The subcommittee reached out to lawyers across the state asking about examples of instances in which a lawyer harassed, coerced, or intimidated their clients with inquiries about their immigration status. We received stories of immigration retaliation within just a few days. And, sadly, a majority of the reports involved victims of domestic violence, who, unlike their abusers, did not have legal status. Some stories also involved widows of U.S. citizens thrown into estate battles with the surviving relatives of the deceased spouse — all claiming a fraudulent, invalid marriage. In one case, a party followed through with a threat to report an immigrant party to ICE. ICE detained the immigrant party, and those involved later discovered that the detained individual was documented. In several of the stories, it was evident that opposing counsel had either openly threatened the person by stating that a report to ICE would be made or counseled the client to do so. The ultimate consequence for the undocumented party, of course, is detention and eventual deportation. On the other hand, the reporting party enjoyed the benefit of having the civil suit go away. This situation posed an unacceptable threat to the fair administration of justice in Washington.

Over the course of three months, members of the subcommittee reviewed and analyzed the Rules of Professional Conduct (RPC), the American Bar Association’s formal opinions, and the ethics rules and opinions of other state bar associations.

In the course of this review, the subcommittee discovered that at one point in time, the WSBA had a formal ethics opinion (Opinion 167) that, under the Code of Professional Responsibility, prohibited lawyers from threatening “to report a person to the Immigration & Naturalization Service in order to gain an advantage in a civil matter.” Opinion 167 found its authority in Disciplinary Rule (DR) 7-105(A), which prohibited lawyers from threatening “criminal charges solely to obtain an advantage in a civil matter.” However, when Washington state moved from the Code of Professional Responsibility to the Rules of Professional Conduct, (DR) 7-105(A) was not retained as part of the current RPC, and thus Opinion 167 was withdrawn. The provisions of Opinion 167 were never expressly reenacted.

One would hope that all lawyers would interpret the RPC as the members of the LBAW subcommittee did, without the need of a formal ethics opinion or an explicit rule that would prohibit these abusive litigation tactics. The reality, however, is that given the reports that these tactics were — and continue to be — used, it is evident that not all lawyers have the same interpretation of the ethics rules. This perceived ambiguity in the rules created a significant need to provide guidance to lawyers regarding this issue.

In December 2007, the subcommittee made a presentation to the WSBA Board of Governors. We asked the Board to act to clarify the existing RPC and make clear that a lawyer was prohibited from utilizing a person’s immigration status to harass, intimidate, or coerce a person in civil litigation. The Board unanimously agreed with the request for action.
We asked the Board to act to clarify the existing RPC and make clear that a lawyer was prohibited from utilizing a person’s immigration status to harass, intimidate, or coerce a person in civil litigation.

Immigration Retaliation Is Now Expressly Prohibited

Almost six years later, on July 10, 2013, the Washington Supreme Court unanimously adopted a formal Comment to RPC 4.4(a) to provide guidance on the use of immigration status in civil matters. The comment became effective on Sept. 1, 2013.

The comment notes that “[i]ssues involving immigration status carry a significant danger of interfering with the proper functioning of the justice system.” Immigrants participating in the civil justice system are vulnerable to efforts to take advantage of their actual or perceived immigration status. When immigrants fear that they, their family members, or friends may be deported, their ability to bring meritorious claims is diminished. Using or threatening to use immigration status to intimidate, coerce, or obstruct a participant in a civil matter undermines the justice system.

The new comment addresses the application of RPC 4.4(a) to the use of actual or perceived immigration status in a civil matter. Rule 4.4(a) states: “In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person . . . .” The new comment clarifies that RPC 4.4(a) prohibits “a lawyer’s assertion or inquiry about a third person’s immigration status when the lawyer’s purpose is to intimidate, coerce, or obstruct that person from participating in a civil matter.” The comment recognizes that immigration-related abuse can take place both through assertions (e.g., ”I could call immigration”) and through inquiries (e.g., “Do you really want to expose your illegal status by testifying in this case?”). The new comment also states that a lawyer may violate the rule by an implied assertion that is effectively the same as an express assertion.

In addition to RPC 4.4(a), the Comment references several other rules that may be relevant to intimidation, coercion, or obstruction in connection with immigration status. The Comment references RPC 8.4(d), which prohibits conduct prejudicial to the administration of justice. A 2009 North Carolina State Bar opinion relied on Rule 8.4(d) in finding that reporting a party to immigration authorities is unethical unless it is required by law.

The new comment also references Rule 8.4(h), which prohibits conduct that is prejudicial to the administration of justice toward other parties and witnesses and that a reasonable person would interpret as manifesting prejudice or bias on the basis of race or national origin. Although there is no authority directly applying RPC 8.4(h) to immigration abuse, there are analogies arising from civil litigation. In a case involving the admissibility of statements related to immigration status, the Texas Supreme Court condemned numerous disparaging references to a witness’ status, concluding that “[s]uch appeals to racial and ethnic prejudices . . . cannot be tolerated because they undermine the very basis of our judicial process.” Thus references to immigration status may manifest prejudice based on national origin or race and undermine the administration of justice.

Finally, the new comment cites RPC 8.4(b), which prohibits criminal acts that reflect adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer. Threatening to report a party or witness to immigration authorities may constitute the crime of extortion under Rule 8.4(b) if the lawyer’s purpose is to knowingly deprive the opposing party of something of value and the elements of extortion are otherwise present. Extortionate threats are likely to adversely reflect on the trustworthiness or fitness of the lawyer making the threats.

Under Washington’s Rules of Professional Conduct, lawyers may not use or threaten to use immigration status to intimidate, coerce, or obstruct a person from participating in a civil matter. References to immigration status are likely to cross ethical bounds unless status is relevant to the claims in the case. Even if immigration status may be relevant, lawyers may not use immigration status in order to interfere with a person’s access to the justice system.

An Example of Misconduct

The most common question when speaking of the new comment to RPC 4.4(a) is: under what circumstances would my conduct violate the rule? There are likely a numerous variety of circumstances in which the prohibitions of RPC 4.4(a) could be triggered.

In finding that this conduct violated RPC 4.4(a) and 8.4(g), the Indiana Supreme Court rejected the offending attorney’s argument that the mother’s alleged violation of immigration laws was justifiably injected
RESPPECT FOR RIGHTS OF THIRD PERSON

(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person. (b) A lawyer who receives a document relating to the representation of the lawyer’s client and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender.

Comment

[1] Responsibility to a client requires a lawyer to subordinate the interests of others to those of the client, but that responsibility does not imply that a lawyer may disregard the rights of third persons. It is impractical to catalogue all such rights, but they include legal restrictions on methods of obtaining evidence from third persons and unwarranted intrusions into privileged relationships, such as the client-lawyer relationship.

[2] Paragraph (b) recognizes that lawyers sometimes receive documents that were mistakenly sent or produced by opposing parties or their lawyers. If a lawyer knows or reasonably should know that such a document was sent inadvertently, then this Rule requires the lawyer to promptly notify the sender in order to permit that person to take protective measures. Whether the lawyer is required to take additional steps, such as returning the original document, is a matter of law beyond the scope of these Rules, as is the question of whether the privileged status of a document has been waived. Similarly, this Rule does not address the legal duties of a lawyer who receives a document that the lawyer knows or reasonably should know may have been wrongfully obtained by the sending person. For purposes of this Rule, “document” includes e-mail or other electronic modes of transmission subject to being read or put into readable form.

[3] Some lawyers may choose to return a document unread, for example, when the lawyer learns before receiving the document that it was inadvertently sent to the wrong address. Where a lawyer is not required by applicable law to do so, the decision to voluntarily return such a document is a matter of professional judgment ordinarily reserved to the lawyer. See Rules 1.2 and 1.4.

[4] The duty imposed by paragraph (a) of this Rule includes a lawyer’s assertion or inquiry about a third person’s immigration status when the lawyer’s purpose is to intimidate, coerce, or obstruct that person from participating in a civil matter. Issues involving immigration status carry a significant danger of interfering with the proper functioning of the justice system. See Salas v. Hi-Tech Erectors, 168 Wn.2d 664, 230 P.3d 583 (2010). When a lawyer is representing a client in a civil matter, a lawyer’s communication to a party or a witness that the lawyer will report that person to immigration authorities, or a lawyer’s report of that person to immigration authorities, furthers no substantial purpose of the civil adjudicative system if the lawyer’s purpose is to intimidate, coerce, or obstruct that person. A communication in violation of this Rule can also occur by an implied assertion that is the equivalent of an express assertion prohibited by paragraph (a). See also Rules 8.4(b) (prohibiting criminal acts that reflect adversely on a lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects), 8.4(d) (prohibiting conduct prejudicial to the administration of justice), and 8.4(h) (prohibiting conduct that is prejudicial to the administration of justice toward judges, other parties and/or their counsel, witnesses and/or their counsel, jurors, or court personnel or officers, that a reasonable person would interpret as manifesting prejudice or bias on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status).

[Amended effective September 1, 2006; September 1, 2013.]

The Indiana Supreme Court aptly found that the offending attorney’s conduct was not legitimate advocacy and served “no substantial purpose other than to embarrass or burden Mother.” The offending attorney was suspended, even though he lacked disciplinary history and, in doing so, the Indiana Supreme Court considered the offending attorney’s substantial legal experience, his lack of insight into his misconduct, and his failure to apologize to the mother.

While no disciplinary cases are factually identical, the Indiana Supreme Court’s discipline order may be instructive under Washington’s RPC 4.4(a) and 8.4(g).

Best Serving Our Clients

As advocates, we have a responsibility — a duty — to advocate for our client’s best interests. However, our duty to respect the rights of third parties, whether documented or undocumented, is no less important. Our justice system and our clients are best served when we exercise caution in balancing these ethical duties. More importantly, as lawyers we must never forget that the person sitting across the table from us is not inferior by virtue of not having been born in this country. If our justice system works as it should, it is accessible to all who are aggrieved. In considering what is and what is not legitimate advocacy, a lawyer should think twice about the validity of bringing a person’s alleged immigration status into a case.
NOTES

1. From 1962–72, the ethical duties of Washington lawyers were governed by the former Code of Professional Responsibility, which was based on the American Bar Association Model Code of Professional Responsibility.

2. WSBA Formal Opinion 167 (withdrawn).

3. Id.


5. Id. at 1064.


7. RPC 4.4 cmt [4].

8. Id.

9. Id. See also CNCSB Op. 5 (2009) (citing comment [4] to Rule 8.4(d) stating that the rule should be “read broadly to proscribe a wide variety of conduct”). Cf. In re Disciplinary Proceeding against Curran, 115 Wash. 2d 747, 764–65 (1990) (noting that conduct deemed prejudicial to the administration of justice has generally been conduct of an attorney in his official or advocatory role or conduct which might physically interfere with enforcing the law or clear violations of accepted practice norms).

10. CNCSB Op. 5 (2009). See also CNCSB Op. 3 (2005) (introducing into civil negotiations an unrelated criminal issue solely to gain leverage in settling a civil claim “further no legitimate interest of the justice system, and tends to prejudice its administration”) (quoting ABA Comm. on Ethics & Prof’l Responsibility, Formal Op. 92-363 (1992) and citing Rule 8.4(d)). The ABA opinion found that a threat to bring criminal charges to advance a civil claim would violate the rules if (1) the criminal matter were unrelated to the civil claim, (2) the lawyer has a does not have well-founded belief that both the civil claim and the criminal charges are warranted by the law and the facts, or (3) if the threat constituted an attempts to exert or suggest improper influence over the criminal process. CNCSB Op. 92-363.

11. The ABA Model Rules of Professional Conduct do not include a counterpart to RPC 8.4(h).

12. TXI Transportation Co. v. Hughes, 306 S.W.3d 230, 245 (Tex. 2010) (plaintiff made over 40 references to the status of the witness, including referring to his status as an “illegal immigrant,” his prior deportation, his use of a “falsified” Social Security number, and his use of a driver’s license that was characterized as “invalid” or “fraudulently obtained”). See also Perez-Farias v. Global Horizons, Inc., No. CV-05-3061-RHW, 2009 WL 1011180, at *19 (E.D. Wash. Apr. 15, 2009) (court expressed concern that “immigration status was an issue in this case only as a result of an unspoken perception that persons with Hispanic last names are not eligible for work.”); State v. Avendano-Lopez, 904 P.2d 324, 331 (Wash. Ct. App. 1995) (references to immigration status were “designed to appeal to the trier of fact’s passion and prejudice”); In Re Disciplinary Proceedings Against McGrath, 280 P.3d 1091, 1102 (Wash. 2012) (attempting to persuade the judge by sending ex parte communications making references to the national origin of the opposing party violated RPC 8.4(h)).

13. See RCW 9A.56.110 (defining extortion to include knowingly obtaining or attempting to obtain by threat the property or services of the owner); David P. Weber, “(Unfair) Advantage: Damocles’ Sword and the Coercive Use of Immigration Status in A Civil Society,” 94 Marq. Law Review, 613, 637–39 (2010) (analyzing immigration-related threats under the Model Penal Code and New York law). In ABA Formal Op. 92-363, it is noted that a lawyer’s use of threats of prosecution in connection with a civil matter may violate Model Rule 8.4(b) if the lawyer’s conduct is extortionate or compounds a crime under the criminal law of the jurisdiction. The ABA Standing Committee on Ethics and Professional Responsibility considered it beyond the scope of its jurisdiction to define extortionate conduct further than by referencing the definition contained in the Model Penal Code. Id.


15. Id.
Passive-Aggressive Phrases

used in communicating with opposing counsel

by Allison Peryea

Though our first instinct may be to communicate with flaming arrows and war chants, our professional responsibility requires us to correspond with opposing counsel in a polite and courteous manner. Accordingly, some attorneys have spent careers honing their skills in the fine art of passive-aggressive communication, which I like to think of as “being mean in a nice way.” Below are 10 of the most popular passive-aggressive phrases I have seen used (and, admittedly, have on occasion used myself) in correspondence between attorneys — translated for those new to the craft.

1. “Thank you for your letter.”
   Translation: “Your three pages of text, sprinkled with a few legal citations, do not change my client’s position. If they did, I would have picked up the phone instead of responding in writing.”

2. “In my _____ years of practicing law...”
   Translation: “I have more experience than you and I am hoping that intimidates you.”

3. “It is beyond dispute that...”
   Translation: “You would have to be an idiot to disagree with me on this one. And you aren’t an idiot, are you?”

4. “I am not aware of any legal authority supporting your position. If you have any such authority, please forward it to me.”
   Translation: “I am calling your bluff. Also, I am too lazy to do the legal research myself to find out whether your position is correct.”

5. “You make an interesting/creative/thoughtful argument.”
   Translation: “No judge would buy that argument and we both know it.”

6. “Please let me know if I understand your position correctly.”
   Translation: “By paraphrasing your position, I am putting words in your mouth that I plan to use against you later. This is my attempt to nail you down on those words.”
   Alternate translation: “I am a smart lawyer who deals with complicated issues every day, and your argument is so convoluted that even I need help making sense of it.”

7. “Thank you in advance for your anticipated cooperation.”
   Translation: “I know I am being presumptuous, but if you do what I tell you to do, life will be easier for both of us.”

8. “You may recall that...”
   Translation: “I already addressed this issue with you. Please review your past correspondence with me, which will reveal to you that you can’t seem to remember anything I have already told you.”

9. “Unfortunately, you have left me no choice but to...”
   Translation: “I am going to do something you don’t like and I am going to try to make it look like it was your fault.”

10. “I look forward to working with you on this matter.”
    Translation: “Let’s try to keep expenses down by pretending to get along until this thing is resolved.”

Allison Peryea is a community association attorney with Leahy McLean Fjelstad in Kirkland. She is the chair of the WSBA Editorial Advisory Committee. She can be reached at allison.peryea@leahyps.com.
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Politics of Place

*After the Grizzly: Endangered Species and the Politics of Place in California,* Peter S. Alagona


reviewed by Renée McFarland

Dec. 28, 2013, marked the 40th anniversary of the Endangered Species Act (ESA). A recent book skillfully examines the history and evolution of endangered species protection in California, with a special emphasis on five important species: the iconic California grizzly bear, the California condor, the Mojave desert tortoise, the San Joaquin kit fox, and the delta smelt. In *After the Grizzly: Endangered Species and the Politics of Place in California,* Professor Peter S. Alagona (a historian at the University of California, Santa Barbara) argues that endangered species protection should move beyond the dominant approach of “protected areas” and conservationists should rethink the meaning of habitat. He describes wildlife conservation debates as the “politics of place,” meaning “ongoing cultural conversations about who should have access to and control over lands and natural resources.”

California has played a leading role in the conservation movement, was the first state to adopt endangered species legislation, and currently has the highest number of endangered or threatened species under the ESA. The first half of the book is a detailed historical account of early California conservationists and the philosophies, policies and laws that led up to the enactment of the ESA. Alagona first paints a picture of William Randolph Hearst’s plan to display a live California grizzly bear in 1889, followed by a thorough examination of the history and decline of the species. He describes the life and career of Joseph Grinnell, and the work of “the Berkeley circle” in developing environmental ethics in addition to conservation science techniques. He traces the progression of the use of habitat as a critical concept in science and management, and explores the tension between wildlife management and wilderness protection. The final chapter in the first half of the book describes the ESA and subsequent amendments, and explains why it became such a powerful and controversial tool. Alagona analyzes the expansion of the concept of habitat under the ESA, including “habitat conservation plans,” and discusses several key cases.

The remainder of the book examines endangered species conflicts by focusing on four different species. Alagona details the historical and political context of each animal, offering fascinating portraits of the changing landscapes in which they live. He follows the fate of Igor, the last condor in the wild, from capture in 1987 (requiring a wily biologist’s many attempts) to his 2002 release, concluding that Igor, at 32, currently “remains the only free-flying bird born outside captivity before 1987.” He delves into the historical debate between leaving the remaining condors in the wild, or breeding them in captivity, and explores the public relations campaign to portray condors as part of “primeval nature.”

Alagona’s profile of the Mojave desert tortoise examines the evolution of the management of the Mojave Desert itself. When the U.S. Fish and Wildlife Service listed the tortoise under its emergency authority in 1989, the listing followed Washington’s northern spotted owl by just two months. Indeed, a Nature Conservancy biologist predicted “another spotted owl-type train wreck.” Alagona recounts the strong impact of the tortoise’s popularity as a pet. He describes great numbers of tourists in the Mojave during the 1950s and 1960s, driving away with tortoises in their car trunks. The plight of the desert tortoise spawned the California Desert Protection Act, an act which helped to create the region in the continental United States with the greatest concentration of parks and wilderness areas. Alagona concludes that despite the vast expense creating habitat management on such a scale, the future of the desert tortoise is tenuous.

Next, Alagona considers the San Joaquin kit fox, a species at home both in the wild (albeit a “privatized, industrial landscape”) and in urban settings. This flexibility raised many questions about how to protect it, as did consideration of the substantial agricultural and petroleum industries in the area. Finally, Alagona profiles the delta smelt, a small baitfish at the center of a huge battle in 2007 over water rights and the best way to manage the California Bay Delta. The delta smelt serves as a reminder that “uncharismatic species now shape debates about land use and natural resource management.” Alagona discusses the effect of the pumping restrictions imposed by Natural Resources Defense Council et al. v. Kempthorne et al., and the resultant “economic and political crisis.” He concludes that the delta smelt controversy illustrates the central argument of the book that simply providing more habitat is insufficient to ensure a species’ survival.

This detailed, meticulously researched study of endangered species conservation should interest environmental lawyers, natural history buffs, and others interested in the plight of endangered species.
Little White Lies

*Lying, Sam Harris*

reviewed by Trent Latta

Bad things happen when attorneys lie. An attorney who violates Washington’s Rule of Professional Conduct 3.3, which requires attorneys to not lie to the court, and Rule 4.1, which requires candor toward third parties, can be reprimanded, can be suspended from practice, and can even be disbarred. But added negative effects that are not the result of an ethical violation also happen when attorneys lie: lies undermine an attorney’s credibility with judges, co-workers, and even clients; lies create the stress of added mental accounting (lies are harder to keep track of than the truth); and lies harm a lawyer’s personal integrity and the public’s opinion of a profession that is already disfavored.

In his new book *Lying*, it is these later outcomes that the neuroscientist Sam Harris argues we can avoid by simply telling the truth in situations where people often lie. The book is a pocket-sized one at 108 short pages — not much bigger than a stack of note cards — and contains three parts: the first is a brief essay written by Harris; the second is a published exchange between Harris and Ronald A. Howard, the director of the Department of Decisions and Ethics Center at Stanford; and the third contains edited questions and comments between Harris and readers of the book’s original e-book edition.

Harris doesn’t propose anything philosophically salient or unique concerning the morality of lying of the kind he attempted in his prior work, *The Moral Landscape* — his work remains an anecdotal explanation of the practical benefits of avoiding lies — though he does allow some space to address more philosophically ambiguous situations in which lying might be justified. (Take, for example, the question of whether it’s permissible to lie when Nazis come to your door in search...
of Anne Frank, who is hiding in your attic.) The main target of Harris’ book is what most people call “white lies” — a lie that is considered harmless and told to avoid an uncomfortable situation or to save a person’s feelings. Harris argues that lies, even those told with good intentions, undermine friendships, needlessly complicate a person’s life, and prevent families from growing closer.

A personal example Harris uses in his book is when his friend, while sitting by the pool, asked if he looked overweight. One assumes that reassuring the person the he looks good is the right course. But Harris argues the opposite. In his example, Harris’s friend really was overweight; telling a white lie of the sort meant to spare his friend’s feelings would have been a failure of friendship in a moment when honest guidance was needed. But Harris also doesn’t insist that, in situations such as this one, people should be brutally honest. Rather, a practiced form of “skillful truth-telling” is needed. Harris chose to tell his friend this: “No one would ever call you ‘fat,’ but if I were you, I’d want to lose 25 pounds.” As a result, his friend lost 15 pounds and is happier because of it.

For attorneys, it’s immediately clear that lying can bring grave results: dishonesty, according to the most recent available data, is the second most common basis for attorney discipline in Washington. (The most common basis for attorney discipline is, in a way, a form of deceit: theft.) But perhaps more toxic and farther-reaching are the more subtle and less immediately apparent ways that not being entirely honest hurts attorneys and the legal profession. And put conversely, being entirely honest boosts an attorney’s credibility and reputation, reduces personal stress, and adds veracity to the legal profession at large.

For example, it is better that an attorney state directly and honestly a prospective client’s legal position without attempting to sugarcoat or overstate the situation. It may not be what the client wants to hear, and it may be harder from the attorney’s perspective, but it’s better for the client with only a tenuous legal claim to understand that she is not poised for a slam-dunk win. A client who is not given the benefit of an entirely honest legal analysis may file an expensive lawsuit based on shaky facts and end up
several years later worse off than before.

But the client whose feelings are not spared the blunt reality of her legal position is more likely saved from possibly expensive legal bills and little prospects for a return. In my experience, clients respect that type of honesty and I imagine they are more likely to feel that “my attorney has my back,” and that the judicial branch does more good than harm. And that client who’s afforded an honest opinion, without sugarcoating, is also more likely to use her attorney again in the future, and likely to recommend the attorney to business colleagues, friends, and family members.

When contemplating honesty and its paramount role in the legal profession, lawyers are apt to recall words written by Albert Einstein in an unfinished speech marking Israel’s Independence Day. Commenting on the conflict between Israel and Egypt, Einstein wrote: “In matters of truth and justice there can be no distinction between big problems and small . . . Whoever is careless with the truth in small matters cannot be trusted in important affairs . . .” We are apt to conclude that in our profession no legal matter is too small for the truth, and those attorneys who are most honest are the same attorneys who can be most trusted in important affairs. NWL.
James Armstrong was elected to the WSBA Board of Governors in September 2011 and represents constituents across the state as an at-large governor. He has his own firm, Armstrong Law Offices, in Kent, where he focuses his practice on workers’ compensation and Social Security disability. Gov. Armstrong served for four years in the U.S. Marine Corps, received his bachelor’s degree from Western Washington University, and earned his law degree from Seattle University School of Law. This is his third and final year serving on the Board of Governors.

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

I wanted to serve because there were opportunities to make an impact on the future of the legal profession. When I ran, there were active issues in front of the Bar that were ripe for involvement: the referendum that resulted in the lowering of license fees, the imminence of the Limited License Legal Technician Rule, and, looming around the corner, marijuana legalization. Prior to serving on the WSBA Board of Governors, I had been active in the Loren Miller Bar Association, the oldest minority bar association in the state. I served for six years on LMBA’s Executive Board, including a term as president. I wanted to bring my experience on the leadership level to WSBA’s Board, as well as provide perspectives as a solo practitioner and as a person of color.

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

Our members are quite passionate about the issues that affect how they practice law. You can see this passion by the number of members who submit materials for the Board to consider, and it’s also seen through their presence at our Board meetings. There are many opportunities for members to have their voices heard, and we encourage members to provide input on issues that affect them.

3 What decision or accomplishment are you the most proud of from your service on the board?

By far, I’m most proud of the work I’ve done to advance diversity and inclusion at the WSBA. I serve as chair of the WSBA Diversity Committee, and together with many other volunteers and stakeholders, we developed the Diversity and Inclusion Plan that was approved by the Board of Governors in 2013. The plan rests on the fundamental assumption that WSBA’s commitment to its own culture of inclusion and cultural competence provides the best foundation for meaningful progress.

4 What has been the most difficult decision you had to make as a governor, and why?

It was really tough to be a part of the decision to reduce staff at the WSBA, which came as a consequence of the referendum. We lost good, hard-working professionals who provided service to our 35,000 members. These types of decisions are always difficult, since they affect people’s livelihoods. However, it had to be done for the good of the order. It was difficult nonetheless.

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

I love a good adrenaline rush. I bungee jumped in Nanaimo, B.C., and jumped off the Stratosphere in Las Vegas. And I’d do it all over again, oorah! NWL
Protecting Innovation

by George R. Nethercutt Jr.

Intellectual property (IP) has become an increasingly valuable asset as innovative companies located in Washington have come to understand and appreciate the value of an idea and the importance of its protection in the world of commerce. Protected ideas are what have made the American economy one of the strongest in the world, led by intellectual property as its own asset class. Our founders agreed and included Article I, Section 8 (8) in the U.S. Constitution to promote the progress of science and the arts, constitutionally protecting the rights of authors and inventors.

My partner at Lee & Hayes, Brett Nelson, and I testified recently before the Washington State Senate’s Law & Justice Committee on how critical it is for legislators to promote policies that foster the state’s most innovative companies. To be clear, our testimony represented our own personal opinions and was not made on behalf of the Bar Association.

Between 1998 and 2011, Washington state led the nation in patent activity, boasting the most patents in America and the highest number of patents per capita. They’re statistics to be proud of because they signal that Washington is a good place for technology, innovation, and business activity to thrive. Research and development represented about five percent of Washington’s GDP in recent years; we’re just behind Maryland, and Massachusetts is just behind us. Between Boeing, Microsoft, and Amazon, 4,087 patents were issued last year representing $18.262 billion in research and development.

When innovation and business intersect, IP flourishes. Ninety percent of all S&P 500 companies’ assets are now IP assets, not hard assets (i.e., plants, inventory, and equipment) as they were 40 years ago. IP has attracted the attention of business leaders and policymakers alike. Companies with IP, particularly technology companies, create jobs, move our economy forward, and shed a bright light on the future.

Our suggestions for how the Legislature can help included renewing Washington’s research and development tax credit, which expires in 2015, and taking steps to increase the laboratory space available for companies to complete research in a secure atmosphere and a welcoming environment. Materials science and other technological developments, including corrosion prevention and control, represent a bright future for Washington companies.

While some legislators have a good understanding of IP developments, IP should be understandable to all legislators so that they can help Washington state companies thrive in an atmosphere that encourages science and technology education and research and development, creating jobs and supporting communities in the process. When Washington state legislators and the business community advocate strongly for IP development, we believe that jobs and commerce will follow.

IP is the most dynamic area of law today. We must embrace and be prepared to respond to ever-changing and ever-evolving intellectual property developments. Washington depends on it.

George R. Nethercutt Jr. practiced law in Spokane for 18 years. From 1995–2005, he was the 5th District’s congressional representative serving on the House Appropriations and Science committees. He now heads Lee & Hayes’ Government Relations Practice Group out of its recently opened Washington, D.C., area office.
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Washington State Bar Association
The WSBA plays an important role in our legislative process by ensuring that the views of our legal community are adequately represented in the Legislature. The WSBA Business Law Section is particularly active in this regard. As one of the WSBA’s largest and most diverse sections, the Business Law Section represents a wide variety of lawyers with wide-ranging practices and participates in the legislative process primarily both by assisting in introducing new legislation and by providing its views on proposed legislation.

Proposing New Legislation
The Business Law Section (BLS) has been very active in assisting the WSBA in proposing legislation on behalf of our membership, and has submitted a proposed bill every year for the last four years, all of which have been enacted. These bills typically originate in one of the Business Law Section’s many committees — most notably, our Corporate Act Revisions Committee (CARC). After identifying a need for new legislation or an amendment to current laws, CARC works to draft the proposed legislation and submits the proposal to the Business Law Section Executive Committee. The Executive Committee votes on the proposed legislation; if over 75 percent of the Executive Committee approves the proposal, it is then submitted to the WSBA Legislative Committee, whose primary duty is to make sure that the bill is thoroughly vetted both internally and externally. If the Legislative Committee approves the proposal, it goes to the WSBA Board of Governors for formal approval to be introduced in the upcoming legislative session.

Some of the bills that the BLS has proposed have been intended to clarify ambiguities in current legislation that have been identified by practitioners. For example, in 2011, the CARC proposed and the Legislature enacted HB 1052, Corporate Act Updates, which clarified three sections of the Washington Business Corporation Act that deal with the proper subjects for bylaw provisions, the allocation of authority to amend bylaws as between the directors and the shareholders, and the extent of the exclusive authority of directors to manage the corporation’s business. Similarly, the BLS proposed and the Legislature enacted HB 1148, Dissenter’s Rights, in 2013. This bill clarified the procedural provisions regarding the exercise of dissenter’s rights in connection with certain corporate actions, such as short-form mergers, that do not require shareholder approval.

The BLS has also proposed new legislation designed to address new issues identified by our membership. For example, in recent years, other states have enacted laws that allow for the creation
of a new type of entity that would allow a company to dedicate itself to pursuing a social mission as well as maximizing shareholder value. Recognizing the need for legislation regarding this type of entity in Washington, the CARC proposed and the Legislature enacted SHB 2239, Social Purpose Corporations, in 2012. The law authorizes the creation of a new type of business corporation in Washington, the “social purpose corporation,” to facilitate the organization of companies in Washington with greater flexibility for combining profitability with a broader social or environmental purpose.

One of the BLS’s current undertakings involves a comprehensive review of the Washington Limited Liability Company Act. In 2006, the National Conference of Commissioners on Uniform State Laws recommended the adoption of a Revised Uniform Limited Liability Company Act, which a limited number of states first started to adopt in 2008. The LLC Committee of the BLS, which includes some of the leading Washington practitioners in this area of the law, has and continues to devote significant time and resources in conducting their detailed review and formulating proposed legislation to ensure that proposed changes to the LLC Act represent the interests of Washington’s legal community.

Commenting on Proposed Legislation
The BLS has also been active in commenting on proposed legislation. As bills are introduced in the Legislature, those that might be of interest to WSBA Sections are referred to them for a more thorough review. The Sections first determine whether those bills satisfy the WSBA’s General Rule 12.1 and “relate to or affect the practice of law or administration of justice.” If the executive committee of a Section determines by a vote of at least 75 percent that the bill falls within the scope of GR 12.1, then upon a vote of over 75 percent of the executive committee, the Section can take one of a number of positions on the bill, such as supporting, expressing concerns, opposing or opposing the bill as drafted.

Because the BLS covers such a wide range of subject matters, it is heavily involved in commenting on proposed legislation. During the 2013 legislative
One of the BLS’s current undertakings involves a comprehensive review of the Washington Limited Liability Company Act… The LLC Committee of the BLS, which includes some of the leading Washington practitioners in this area of the law, has and continues to devote significant time and resources in conducting their detailed review and formulating proposed legislation…

session, for example, the BLS was referred 37 pieces of legislation, reviewed 15 bills, and commented on 8 bills. The extremely fast pace of the legislative process makes it challenging to review and comment on bills in a very short time frame, particularly where the BLS has concerns about bills and then works with legislators to propose changes to address those concerns. In some cases where the BLS has particularly strong opinions on a bill, a representative will attend legislative hearings on the bills to testify and voice our views.

In addition to reviewing and commenting on proposed legislation, the BLS will provide commentary from time to time on proposed regulations affecting our members. For example, in 2013, the Securities Law Committee of the BLS reviewed a proposal by the Securities Division of the Washington State Department of Financial Institutions to its rules governing investment advisors and, with the approval of the BLS Executive Committee, provided detailed commentary and suggestions regarding those proposed rules.

Charles Ha is the current chair of the Business Law Section and of counsel at Orrick, Herrington & Sutcliffe in Seattle. He received his undergraduate degree from Georgetown University and his law degree from Columbia Law School. He is a former law clerk to the Honorable Maxine M. Chesney of the U.S. District Court for the Northern District of California. Ha’s practice focuses on securities and corporate governance. He can be reached at charlesha@orrick.com.

The State and City blamed each other for the dangerous bridge. SKWC has helped make it safer for all.
I am an attorney with a severe hearing loss. Obtaining my required continuing legal education credits has been an ongoing challenge. Hearing at live seminars is difficult at best, especially in larger venues. Webinars and other online presentations are usually not accessible to me because they are rarely captioned, and CD recordings are useless because there are no captions or lips to read. And, as for all attorneys, there are no “read-only” options for logging CLE hours. In part due to these obstacles, I was strongly considering letting my Bar membership lapse at the end of 2013.

But early last year, I mentioned these challenges to a friend who works at the WSBA. He asked me to write a letter to the WSBA and make some suggestions. I wrote that letter, and my primary suggestion was that the WSBA install an audio induction loop in its conference center, where many CLE seminars are held. The project was funded and the installation was completed in October 2013.

How Looping Works
A loop system is a specialized cable installed in a room, often around its perimeter. Sounds from microphones in the room create a magnetic field within the cable, and the cable then sends an audio signal directly and wirelessly to hearing aids and cochlear implants that are set to their telecoil mode. (Most hearing aids and all cochlear implants have telecoils.)

Normally, a hearing aid is just a microphone that amplifies all sounds in a room. Using the telecoil mode, however, the transmission of sound works differently. A telecoil is a tiny copper wire that acts as an antenna. When the telecoil mode is on, an electric current in the coil is triggered by the magnetic field in the loop. The hearing aid receives a clear, wireless signal from the magnetic field, and it is this signal that is then amplified directly to the listener. Because the audio signal is transmitted directly through the magnetic field, rather than from an exterior amplified microphone, the sounds that come via the telecoil are clear and precise.

Usually, a variety of acoustic distortions can make words spoken from a microphone in a large room very difficult or impossible to discriminate. The very amplification of sound distorts it and decreases its clarity. In addition, distance from the speaker, reverberation, bad acoustics, and background noise can all contribute to the unintelligibility of what is being spoken. A loop system eliminates virtually all of these distortions, and provides a quality of sound that traditional amplification cannot begin to match.

The Sound of Success
I attended my first post-looping CLE seminar at the end of October 2013, and wow! The speaker’s voice was as clear as if he were standing directly in front of me, instead of on the dais some distance away. The entire day, I heard speech with crystalline clarity. Questions both from people within the room and from webinar participants off-site were also within the loop and were clear. This was the first professional group setting where I had been able to easily hear nearly everything that was being said. It was elating! Suffice it to say, there was an emotional jolt — a very nice one.

The first seminar was a single speaker who spoke distinctly the entire day. I have now attended several additional seminars at the WSBA Conference Center with multiple speakers under various circumstances. Two of them featured 10–14 individual speakers throughout the day, and another included a panel discussion with five people on the dais. Regardless of my particular location in the room or the differences in the speakers’ voices, the loop has always worked like a charm.

So, in my opinion, the looping has been a huge success!

A Good Investment
The looping installation at the WSBA Conference Center cost about $13,500. I am admittedly biased, but I believe this is a good investment for several reasons. First, it is a one-time, permanent installation with a 20-year life expectancy. Providing temporary audio assistance for a single seminar can cost hundreds of dollars, so this outlay strikes me as a steal. The benefit from the looping will be available for any and all seminars held at the conference cen-
ter for many years to come.

Second, the loop system promises to be inexpensive to maintain and requires little in staff training. It also requires no special attention or set-up for each use.

Third, it is extremely easy for people to take advantage of. Most people will have to do nothing other than turn on the telecoil switch of their hearing aid or cochlear implant. There are no additional assistive listening devices to bring along and no portable equipment to borrow. For those whose hearing aids don’t have telecoils, headsets are available from the center’s audio booth. The headsets can also be used by those who don’t wear hearing aids or cochlear implants.

The looping of the conference center is a good investment for another important reason. Over time, it is likely that an increasing number of attorneys will benefit from the loop system. I have no idea how many Seattle-area attorneys have a hearing loss; however, the WSBA has previously published information about the aging membership of the organization, and statistics detail a sobering correlation between age and incidence of hearing loss. Also, with the ever-increasing noise pollution within our society, more attorneys who are younger will be dealing with their own hearing loss.

Of course, the loop system will prove its value only if people use it. For Washington attorneys who are hard of hearing, I cannot encourage you enough to attend a seminar at the WSBA Conference Center. If you have never before experienced a looped listening environment, you are in for a revelation. And if you do take advantage of it, please let the WSBA staff there know; they are interested in getting your feedback.

Kudos to All
I am humbled by, and enormously grateful for, the WSBA’s quick responsiveness to my suggestion to install a loop system in the conference center. Its willingness to make this accommodation for attorneys with hearing loss is consistent with its long history of active service supporting attorneys in the state.

A growing number of churches, offices, and meeting rooms in Washington are now looped. (See www.loopseattle.org/loops-in-seattle-3 for a listing of looped locations.) I am delighted and proud that the WSBA has joined them.

In addition to thanking the WSBA staff for the installation — especially Mike Jorgensen, the CLE webcast production manager — I want to acknowledge with great thanks Cheri Perazolli of Let’s Loop Seattle (http://loopseattle.org) for her strong advocacy of looping in the Seattle area and for introducing me to it. A special shout-out is also due to P. Spencer Norby of HearingLoop NW, who installed the loop system.

And yes, I’m continuing my Bar membership. NWL
A
t its meeting on Jan. 23, 2014, in Olympia, the WSBA Board of Governors approved proposed new commentary to the Rules of Professional Conduct that would apply to lawyers representing clients involved in marijuana-related activities. The Board also considered the creation of a “low bono” practice section, established a work group to address the future of the legal profession, learned of the resignation of a governor, and debuted a new report format that will keep them apprised of the WSBA’s activities and finances.

Ethical Rules Regarding Marijuana
The Board approved a proposal from the Committee on Professional Ethics developed after Washington voters passed Initiative 502 legalizing recreational marijuana production, sale, and use. The proposal would add official commentary to the RPCs stating that a lawyer’s representation of a client engaged in marijuana-related activity that is legal under Washington law is permissible under the RPCs, so long as the U.S. government continues its announced policy of not prosecuting such activity under federal law. The approach also would apply to a lawyer’s personal use of marijuana. The proposal, which must be approved by the Washington Supreme Court, would include a reference to a corresponding WSBA ethics advisory opinion as well. The proposal stops short of amending the RPCs themselves, as has been urged by the King County Bar Association.

At the direction of the Board, the ethics committee had reviewed the options for handling lawyers’ ethical responsibilities in light of Initiative 502’s passage in fall 2012. The committee ultimately rejected the King County Bar Association’s preferred approach, which would amend the RPCs to provide a blanket exemption from regulatory consequences for lawyers involved in marijuana-related activity. The committee cited several reasons for recommending against that approach, including the fact that all marijuana activity remains a crime under federal statute and that recent appellate cases have upheld that the U.S. government’s authority over that area of law supersedes that of the states under the Supremacy Clause of the U.S. Constitution.

The rules primarily affected by the proposal are RPCs 1.2(d) and 8.4(b). RPC 1.2(d) permits a lawyer to “discuss the legal consequences of any proposed course of conduct with a client” but prohibits the lawyer from “assist[ing] a client, in conduct that the lawyer knows is criminal.” RPC 8.4(b) prohibits a lawyer from “commit[ting] a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects.” In addition, RPC 8.4(h) prohibits commission of any act which reflects disregard for the rule of law, and RPC 8.4(k) specifies that violation of the oath of attorney is professional misconduct.

“I believe this is a real rubber-hits-the-road issue,” said Gov. Jerry Moberg, adding that the proposal recommended by the ethics committee appeared to be the only realistic approach.

Describing the federal government’s policy on marijuana as a “foundation of quicksand,” Gov. Bill Viall expressed concern that WSBA’s attempt to provide guidance to its members on the issue might be “an impossible task.” He also cautioned that the Board might be “weighing in on another political hot button.”

But WSBA Past-president Michele Radosevich responded that the political controversy already exists and the WSBA was simply trying to find a way for lawyers to handle the ethical implications for their profession. The Supreme Court was eager to hear the WSBA’s perspective on the issue, she said.

Gov. Brad Furlong remarked that it was the Board’s responsibility to give WSBA members as much guidance as possible on ethical issues, although he also noted how easy it would be for the federal government to change its policy regarding marijuana enforcement.

Doug Ende, director of the WSBA Office of Disciplinary Counsel, said the proposal was not inconsistent with the office’s general enforcement approach. To date, no WSBA member has been disciplined for involvement in medical marijuana activity, which was legalized by Washington voters in 1998 but remains illegal under federal statute.

Request to Create Low Bono Section
The Board had its first debate on a proposal to create a WSBA Low Bono Section. The Section would comprise WSBA members whose practices include providing “low bono” services, broadly defined as legal services offered for below-standard fees to people with moderate incomes who do not qualify for pro bono services.

WSBA has organized and helped support low bono services in recent years, including the Moderate Means and Home Foreclosure programs. The Bar also has encouraged its members to offer low bono representation on their own in other areas of law to help counteract the trend of middle-income households being unable to afford essential legal services.

The effort to create the Low Bono Section is being spearheaded by Port Angeles attorney Mark Baumann, who presented a petition with 104 signatures from WSBA members supporting the proposed section and answered questions from Board members at the Jan. 23, 2014, meeting. A petition with at least 100 signatures is required by the WSBA Bylaws before the Board can consider adding a practice section. Also required are a proposed set of section bylaws and a projected two-year budget, which Baumann presented. The annual dues for section members would be $17.75 under the proposed budget.

Some Board members expressed support for the proposed section, and Gov. Ken Masters moved to waive a second reading of the proposal and vote on approval immediately. However, the Board voted down that motion after other governors, as well as other meeting attendees, argued that the proposal should undergo additional discussion, including feedback from members of other sections that might be affected by creation of the new entity.
**Future of the Profession Work Group**

The Board approved the creation of a WSBA time-limited work group to help prepare for the future of the legal profession given the state of technology, economics, and societal factors affecting lawyers now and in the coming years. The group will bring issues to the attention of the Board and WSBA membership at the conclusion of its work, but will not be a formal committee or section.

The group was proposed by WSBA President Patrick Palace, whose written request included the following description of the group’s purpose:

As part of the charge of this work group, it will introduce members to new business models, new communication tools, marketing methods, and social media tools, as well as showcase the owners of profitable firms that utilize these tools. It will introduce profitable low bono firms and share the tools and methods that make them work. It will aspire to breathe fresh life and possibility into aging and archaic practices.

The work group will have a roster of approximately 20, including members of the Board and WSBA executive-level staff as well as representatives of the Access to Justice Board, law school faculty, the WSBA Young Lawyer Committee, tech companies, the Solo and Small Practice Section, the Pro Bono Legal Aid Committee, the proposed Low Bono Section, and up to five at-large members.

**Resignation of Gov. Andrus**

The Board learned that Gov. James Andrus, elected to the District 9 position in September 2013, would be resigning the post to relocate to California, where he has new employment. As required by the WSBA Bylaws, the vacancy will be filled by the Board at its March 7–8 meeting in Seattle. All candidates will be interviewed in person at the meeting. The successful candidate will serve a term starting immediately and ending in September 2016.

**Management Report**

The WSBA Executive Management Team unveiled for the Board its first Management Report, a new quarterly document that summarizes both financial and operational data in a comprehensive graphical format meant to streamline analysis of WSBA activities. The document will be updated and presented quarterly to the Board.

The report includes a chart breaking down 10 years’ worth of data, including membership size and demographics, admissions, disciplinary actions, number of CLE seminars presented, staff size and turnover, budget revenue and expenses, fund balances, and organizational milestones. It also includes a chart of current WSBA operational priorities and the status of projects meant to implement them.

Michael Heatherly is the editor of NWLawyer and can be reached at nwlawyer@wsba.org or 360-312-5156. For more information on the Board of Governors and Board meetings, see www.wsba.org/bog.
The Board of Governors reviewed FY2013 financial results at its January meeting. At the end of each fiscal year, the WSBA engages an independent certified public accounting firm to audit our financial statements, which includes a concomitant analysis of controls, management, and systems. As in prior years, the WSBA received an “unmodified opinion” (previously called “unqualified opinion”) for the fiscal year ended Sept. 30, 2013. No adjustments were made, no material weaknesses were noted, and no management letter was issued. This means that the WSBA’s finances are well managed and that financial statements are accurate in all material respects. For more information, the audit report and audited financial statements may be reviewed at http://bit.ly/1lWZXT4.

In the next issue of NWLawyer, my article will focus on how your license fee supports WSBA programs and operations. NWL
Nominations are now open for the 2014 WSBA Awards. To make a nomination and for more info: wsba.org/awards.

INSPIRED!

Who inspires you?

PHILLIP GINSBERG
2013 PROFESSIONALISM AWARD

2014 WSBA AWARDS

Just released by WSBA-CLE Publications:

Washington Community Property Deskbook (4th ed. 2014) 1 looseleaf volume • 720 pages • $175

This one-volume, comprehensive new edition covers all substantive developments in Washington community property law — including registered domestic partnerships, same-sex marriage, and the law of committed intimate relationships — through the U.S. Supreme Court’s June 2013 decision on Section 3 of the federal Defense of Marriage Act (DOMA).

Written by:
Professor Tom Andrews, University of Washington School of Law
Professor Karen Boxx, University of Washington School of Law
Professor Ann Murphy, Gonzaga University School of Law

Order your copy of this indispensable reference on community property law in Washington now! Go to www.wsbacle.org and enter D14992 in the search field. Or contact Order Fulfillment at 206-733-5918, 800-945-WSBA, or orders@wsba.org.
Opportunities for Service

Board of Governors Elections Begin March 14

On March 14, all WSBA active members in the 3rd, 6th, and 7th-North Board of Governors districts will have the opportunity to once again help determine the WSBA’s future direction and leadership by electing four new governors. Information about the candidates will be posted at www.wsba.org/elections. Voters are also encouraged to attend the Board Candidate Forum, to be held March 4 at 5:30 p.m. at the WSBA Conference Center and viewable via webcast.

As in recent years, members in these districts will be asked to cast their votes online, rather than through the traditional paper ballot process. This online voting, which is secure, confidential and convenient, will begin on March 14 and must be completed by 5 p.m. PDT on April 15. Because the WSBA encourages members to vote online, those with valid email addresses on file with the WSBA will not receive a paper ballot, although they will be given the option to request one.

The WSBA will send eligible members without email addresses on file the traditional paper ballots. The ballots will include instructions on how to access the online voting system, so those members can vote online if they prefer. Members submitting paper ballots must make certain to print and sign their name, including their address and Bar number on the return envelope, and deliver it to the WSBA offices by 5 p.m. PDT on April 15.

Members may cast votes either online or by paper ballot, but they may only vote once. The WSBA’s secure voting process prevents a member from casting multiple votes. Please contact Pam Inglesby at pam@wsba.org or 206-727-8226 if you have any questions.

Call for Applications for WSBA Board of Governors At-Large Position

Application deadline: April 18, 2014, 5 p.m.

One of the three at-large positions on the WSBA Board of Governors is up for election. Under WSBA’s Bylaws, the purpose of this position is to increase diversity and representation on the Board, and the position is to be filled by a WSBA member who has “the experience and knowledge of the needs of those lawyers whose membership is or may be historically under-represented in governance, or who represents some of the diverse elements of the public of the State of Washington.”

The Board of Governors will elect the at-large governor at their meeting on June 6, and the governor’s three-year term will start at the end of the Sept. 18–19 Board meeting. For more information about the position and how to apply, see www.wsba.org/elections. The WSBA Bylaws are posted at www.bit.ly/bylawswsba. Applications will be accepted until 5 p.m. on April 18, 2014. Letters of endorsement will be accepted through May 16, 2014. If you have questions, please contact WSBA Diversity Program Manager Joy Eckwood at joye@wsba.org or 206-733-5952.

WSBA Presidential Search

Application Deadline: May 1, 2014

The WSBA Board of Governors is seeking applicants for the position of WSBA president for 2015–16, who will serve as president-elect in 2014–15. Pursuant to Article VII(D)(2) of the WSBA Bylaws, candidates for president for 2015–16 must be individuals whose primary place of business is located in eastern Washington. The WSBA member selected will have an opportunity to provide a significant contribution to the legal profession.

Applications for 2015–16 WSBA president will be accepted through May 1, 2014, and should be limited to a current résumé, a concise application letter stating interest and qualifications, and no fewer than 5 or more than 10 references. The Board of Governors will consider endorsement letters received by May 16, 2014. Applications and endorsement letters should be sent to the WSBA Executive Director, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101.

Direct contact with the Board of Governors is encouraged. All candidates will have an interview with the full Board of Governors in open session at the June 6, 2014, Board of Governors meeting in Seattle. Following the interviews, the Board will select the president. Although prior experience on the WSBA Board of Governors may be helpful, there is no requirement that one must have been a member of the Board of Governors or had previous experience in Bar activities. The candidate must be willing to devote a substantial number of hours to WSBA affairs and be capable of being a positive representative for the legal profession. The position is unpaid. Some expenses, such as WSBA-related travel, are reimbursed.

The commitment begins in June 2014, following selection. A one-year term as president-elect will begin at the Annual Awards Dinner on Sept. 18, 2014. The president-elect is expected to attend the two-day board meetings held approximately every six to eight weeks, as well as numerous subcommittee, section, regional, national, and local meetings. In September 2015, at the WSBA Annual Awards Dinner, the president-elect will assume the position as president. During his or her service, the president-elect and president will also be required to meet with members of the Bar, the courts, the media, and public and legal interest groups, as well as be involved in the Bar’s legislative activities. Appropriate time will need to be devoted to communication by letter, email, and telephone in connection with these responsibilities.

Non-lawyer Community Volunteers Needed

Application deadline: March 21, 2014

The WSBA is seeking members of the public to serve on six boards and one council for terms beginning Oct. 1, 2014. Serving on a WSBA board or council is an excellent opportunity to get an insider’s view on how the practice of law is regulated in Washington State. Current openings include:

- Character and Fitness Board
- Council on Public Defense
- Disciplinary Board (two openings)
- Lawyers’ Fund for Client Protection Board
- Limited License Legal Technician Board
- Limited Practice Board (term begins Jan. 1, 2015)
- Practice of Law Board

Applications are also being accepted for other boards that may have openings during the coming year. For additional information, visit http://bit.ly/LFdOwx. Applications must be received at the WSBA offices by Friday, March 21, 2014. If you have questions, email barleaders@wsba.org.
WSBA News

Who Inspires You? Honor the Luminaries of the Legal Community

Nominations are now open for the 2014 WSBA Annual Awards, which honor exemplary individuals from the legal community. The awards are presented at the annual Awards Dinner in September to those who have made noteworthy contributions and achievements in public service, government service, professionalism, pro bono work, diversity, and other areas. Both lawyers and non-lawyers are eligible to make nominations and receive awards. To learn more information about the award categories and nomination requirements, visit the WSBA website at www.wsba.org/awards.

WSBA Board of Governors Meetings

March 7–8, Seattle; April 25–26, Moses Lake

With the exception of the executive session, Board of Governors meetings are open, and all WSBA members are welcome to attend. RSVPs are appreciated but not required. Contact Pamela Wuest at 206-239-2125, 800-945-9722, ext. 2125, or pamrelaw@wsba.org. The complete Board of Governors meeting schedule is available on the WSBA website at www.wsba.org/bog.

Nominations Sought — Sally P. Savage Leadership in Philanthropy Award

Nomination deadline: April 15, 2014

The Washington State Bar Foundation will accept nominations for the Sally P. Savage Leadership in Philanthropy Award, to be awarded at the WSBA Annual Awards dinner in September 2014.

Sally Savage led the Bar Foundation’s renaissance and was a catalyst for its focused mission to sustain the WSBA’s effort to advance justice and diversity. Her clarity, expertise, and vision helped establish a path for enduring support of a strong bar association that provides statewide leadership on matters of profound importance to the profession and the citizenry. Sally’s spirit of generosity and leadership continue to inspire all who recognize the transformative potential of philanthropy. Philanthropy means “love of humanity” and focuses on private initiatives for the public good, emphasizing quality of life. Sally Savage emulated this spirit of philanthropy in her life, and it is in her memory that we continue to honor donors, volunteers, and friends of the Washington State Bar Foundation who embody Sally’s spirit.

Please submit a letter of nomination no more than two pages in length describing the nominee’s specific outstanding accomplishments and contributions meriting this award via email to foundation@wsba.org or by mail to Megan McNally, WSBA, 1325 4th Ave. Ste. 600, Seattle, WA 98101. Please include contact information for the nominator(s), including email and phone number.

MCLE and Licensing

2014 Licensing and MCLE Information

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

Judicial Member Licensing

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

Important Changes to Rule 9, Effective Jan. 1, 2014

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

$25 MCLE Comity Certificate Fee Information

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

Legal Community

Lawyers Helping Hungry Children Fundraisers Raise $38,000

Lawyers Helping Hungry Children, a nonprofit dedicated to ending childhood hunger in Washington, held joint fundraisers in Seattle and Tacoma in November 2013. The King County Chapter of Lawyers Helping Hungry Children held its 22nd annual fundraiser at Seattle’s Grand Hyatt. The luncheon was encecd by Ian Lindsay, and featured a keynote address by Hunger Warrior award winner Chef John Howie, Bellevue restaurant and owner of John Howie Steak, Seastar, and Sport Restaurants. The Hawthorne Elementary School Choir entertained the biggest crowd to date, and attendees also had the opportunity to bid on gift certificates donated by Chef Howie, with all proceeds benefitting hungry children in King County and beyond. The event raised over $28,000 to assist beneficiary organizations, including Northwest Harvest, the City of Seattle Summer Food Program, the Emergency Feeding Program, WithinReach, CARE, and the Children’s Alliance.

The Pierce County Chapter of Lawyers Helping Hungry Children also held its fifth annual breakfast fundraiser, attended by over 60 Tacoma attorneys and judges. The event raised over $10,000 for emergency food programs in Pierce County. The Pierce County chapter raised an additional $2,700 for hunger relief programs from members of the Inns of Court. Learn more about Lawyers Helping Hungry Children at www.lawyershelpinghungrychildren.org.

Legal Foundation of Washington Announces 2014 Officers

In November 2013, the Legal Foundation of Washington Board of Trustees elected Elizabeth Thomas, of K&L Gates, the Foundation’s 2014 president. Loren S. Etengoff, of the Law Offices of Loren S. Etengoff in Vancouver, was elected vice president; Laurie Flynn Connelly, of Eastern Washington University in...
Meet Zabrina Jenkins, a proud face of philanthropy.

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

Join Zabrina in giving back.

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

Learn more & give at www.wsba.org/foundation

Who inspires you?

Nominations are now open for the 2014 WSBA Awards. To make a nomination and for more info: wsba.org/awards.

INSPIRED!

2014 WSBA AWARDS
American Bar Foundation Delegation to Cuba — RSVP Now

The American Bar Foundation is organizing a delegation to visit Cuba for the purpose of researching the country’s legal system. This delegation will convene in Miami, Florida, on May 25, 2014, and will return on May 30, 2014. The estimated cost per delegation member is U.S. $4,295. This cost includes roundtrip international air arrangements between Miami and Havana; group transportation, meetings, accommodations in double-occupancy rooms, most meals, and essentially all other costs associated with participation, as outlined in the final schedule of activities. The delegation will undertake a comprehensive study of the Cuban legal system, from the teaching of law, to the criminal justice and judicial systems; civil and family code; business and commercial rights; and resolving domestic and international commercial conflicts. Travel to Cuba is restricted by the Office of Foreign Assets Control of the United States Treasury Department. This delegation will be travelling under OFAC regulation 31 CFR §515.564 general license for professional research. This license supports our access to the highest-level professionals in Cuba. For additional program details, to RSVP, or to recommend a colleague to be invited, please call 877-298-9677 or visit www.professionalsabroad.org.

Volunteer Attorneys Needed for 2014 YMCA High School Mock Trial State Championships

The 2014 YMCA High School Mock Trial State Championships are March 28–30. Student participants take on the roles of attorneys and witnesses in a courtroom trial in front of a real judge! Volunteer attorneys are needed to rate student performances in the courtroom and comment on their skill, poise, and knowledge of court procedures. For more information, contact YMCA Youth & Government at 360-357-3475, email eschmidt@seattleymca.org, or visit us online at www.youthandgovernment.org.

Ethics

Facing an Ethical Dilemma?

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

Search WSBA Advisory Opinions Online

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

WSBA Lawyers Assistance Program (LAP)

New Member Benefit: WSBA Connects

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

Individual Consultation

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

Seeking Peer Advisors

Would you like to provide support to another lawyer in your community addressing topics such as mental health and self-care, alcoholism and addiction, or guidance in one’s practice? Lawyers are often uniquely able to be resources to one another in these areas. The WSBA Lawyer Assistance Program is launching a new initiative to reconstitute its peer advisor network. The goal is to build a robust network throughout the state. Skills trainings are being developed and planned. To participate or learn more, see http://bit.ly/104fpwN, contact lap@wsba.org, or 206-727-8268 or 800-945-9722, ext. 8286.
Mills Meyers Swartling is pleased to announce that
David D. Swartling has returned as Counsel to the firm.
His practice will include Tort and Products Liability, Aviation Law, Business and Commercial Litigation, and Municipal Law.

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Higginson Beyer, p.s.
is pleased to announce that
James P. Grifo has joined the firm as an associate. Mr. Grifo will focus his practice on land use and litigation. Mr. Beyer will continue his focus on international taxation, structuring for business development in the U.S. and abroad, and complex domestic and multi-national estate planning and company transactions. Ms. Higginson will continue her practice in civil litigation, criminal defense, family law, small business entity formation, real estate, land use, estate planning, probate, and guardianships.

Higginson Beyer, p.s.
Friday Harbor office
175 Second St. N
Friday Harbor, WA 98250
Tel: 360-378-2185
jamie@higginsonbeyer.com

Seattle office
701 Fifth Ave., Ste. 5500
Seattle, WA 98104
Tel: 206-623-8888
carla@higginsonbeyer.com • garrett@higginsonbeyer.com

Bi-Monthly Career Management Series (formerly the Bi-Monthly Job Seeker Group)

The Lawyers Assistance Program is proud to announce an exciting and first-time panel presentation for the upcoming Bi-Monthly Career Management Series on Wednesday, March 19, from noon to 1:30 at the WSBA Conference Center. This presentation, available to all members to attend either in person or via webcast, will focus on issues of racial diversity in a job-seeking context. Panelists will explore how racial identity has impacted their job search journey and career choices, as well as the social, opportunity, and advancement barriers present in today’s job market and how they might be overcome. The presentation is free of charge; however, registration for either live attendance or webcast is required. Learn more at www.wsba.org/lap.

Weekly Job Search Group
The Weekly Job Search Group provides strategy and support to unemployed attorneys. The group runs for seven weeks and is limited to seven attorneys. We provide the comprehensive WSBA job search guide, “Getting There: Your Guide to Career Success,” which can also be found online at www.tinyurl.com/7xheb8b. If you would like to participate or to schedule a career consultation, contact Dan Crystal at danc@wsba.org, 206-727-8267, or 800-945-9722, ext. 8267.

WSBA Law Office Management Assistance Program (LOMAP)

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

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

Usury Rate
The average coupon equivalent yield from the first auction of 26-week treasury bills in February 2014 was 0.061 percent. Therefore, the maximum allowable usury rate for March is 12 percent.
**Landerholm, P.S.**

is pleased to announce that

**Richard G. Matson**

has joined the firm as Of Counsel

and

**Erin C. Lambley**

has joined the firm as an Associate.

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**Eisenhower Carlson, PLLC**

is pleased to announce that

**Darren R. Krattli**

has become a Member of the firm. Darren’s practice focuses on commercial litigation, particularly in the areas of creditors’ rights and banking transactions.

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**Troutman Sanders**

is pleased to announce that

**Scott M. Rickard**

has been elected partner.

Scott concentrates his practice on mergers and acquisitions, project finance and corporate finance, with a particular emphasis on representation of utilities, financial institutions, and project developers and their sponsors in the financing, purchase, sale, and development of thermal and renewable energy generation assets and transmission facilities. He is based in the firm’s Portland, Oregon office.

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**Smith & Hennessey PLLC**

is very pleased to announce that

**Whitney I. Furman**

has become a member of the firm. Whitney’s practice focuses primarily on complex civil litigation, including commercial disputes, contract, employment, and business tort claims.

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

**Disbarred**

Kevin Michael Healy (WSBA No. 21797, admitted 1992), of Santa Rosa, CA, was disbarred, effective 12/11/2013, by order of the Washington Supreme Court imposing reciprocal discipline in accordance with an order of the Supreme Court of the State of California. For more information, see http://members.calbar.ca.gov/courtdocs/05-0-02869-3.pdf. Craig Bray acted as disciplinary counsel. Kevin Michael Healy represented himself. The online version of NWLawyer contains a link to the following document: The Washington Supreme Court Order.

**Suspended**

Alexander William Gambrel (WSBA No. 24018, admitted 1994), of Belgrade, MT, was suspended for one year, effective 12/11/2013, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.8 (Conflict of Interest: Current Clients: Specific Rules). Debra Slater acted as disciplinary counsel. Alexander William Gambrel represented himself. Julian Correll Dewell was the hearing officer. The online version of NWLawyer contains links to the following documents: Order Approving Stipulation; Stipulation to One Year Suspension; and Washington Supreme Court Order.

**Suspended**

Marion Ellen Morgenstern (WSBA No. 22466, admitted 1993), of Kent, was suspended for two years, effective 12/20/2013, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.4 (Communication), 1.15A (Safeguarding Property), 1.15B (Required Trust Account Records), 1.16 (Declining or Terminating Representation), 8.1 (Bar Admission and Disciplinary Matters), and 8.4 (Misconduct). Scott G. Busby acted as disciplinary counsel. Marion Ellen Morgenstern represented herself. Jane Brenner Risley was the hearing officer. The online version of NWLawyer contains links to the following documents: Findings of Fact, Conclusions of Law and Hearing Officer’s Recommendation; Disciplinary Board Order Adopting Hearing Officer’s Decision; and Washington Supreme Court Order.

**Reprimanded**

Mark Kellogg Plunkett (WSBA No. 16834, admitted 1987), of Seattle, was reprimanded, effective 10/23/2013, by order of the hearing officer. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.4 (Communication) and 1.7 (Conflict of Interest: Current Clients). Linda B. Eide acted as disciplinary counsel. Philip Mahoney represented respondent. William Edward Fitzharris, Jr. was the hearing officer. The online version of NWLawyer contains links to the following documents: Findings of Fact, Conclusions of Law and Hearing Officer’s Recommendation; Amended Findings of Fact, Conclusions of Law and Hearing Officer’s Recommendation; Reprimand (1); and Reprimand (2).
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State v. Sutherby,
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State v. Stein,
144 Wn.2d 236 (2001)
State v. Stegall,
124 Wn.2d 719 (1994)

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University of Puget Sound Law School (now Seattle University), Assistant Professor – Alternate Dispute Resolution 1982–1989

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Mac has over 20 years of experience mediating cases in Washington, Idaho, Hawaii, and Guam.

MEDIATION

Mac Archibald

Mac has been a trial lawyer in Seattle for over 40 years. He has tried a wide range of cases including maritime, personal injury, construction, products liability, consumer protection, insurance coverage, and antitrust law.

Mac has over 20 years of experience mediating cases in Washington, Oregon, and Alaska. He has mediated over 1,500 cases in the areas of maritime, personal injury, construction, wrongful death, employment, and commercial litigation.

Mac has a reputation as not only being highly prepared for every mediation, but also for providing as much follow-up as is necessary to settle a case.

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CLE Calendar

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

Creditor Debtor

27th Annual Northwest Bankruptcy Institute
April 25–26 — Seattle. CLE credits pending. Cosponsored by the WSBA Creditor Debtor Rights Section and the Oregon State Bar Association Debtor-Creditor Section; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Criminal Law

New Lawyer Criminal Law Series – Part 1 of 3
April 22 – Webcast only. 2 CLE credits pending. By WSBA; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Discrimination Law

Recent Developments in Discrimination Law: 2012–2013
April 8 – Seattle. 1 CLE credit. Presented in partnership with the WSBA Corporate Counsel Section; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Elder Law

Elder Law Updates
March 28 – Seattle and webcast. 6.25 CLE credits, including 1 ethics. By WSBA; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Ethics

The Civility Promise: The Ethics of Civility
March 7 – Seattle University School of Law. 5.75 ethics credits. Presented by Seattle University School of Law and Robert’s Fund; 206-398-4140; www.law.seattleu.edu/continuing-legal-education.

Ethics in Civil Litigation
April 18 – Seattle and webcast. CLE credits pending. By WSBA; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Intellectual Property

Intellectual Property Institute
March 21 – Seattle and webcast. CLE credits pending. Presented in partnership with the WSBA Intellectual Property Section; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Law Office Management

What are Limited License Legal Technicians, What Do They Do, and How Can They Help You Meet Your Clients’ Needs?
March 12 – Webinar only. 1.25 CLE credits, including 5 ethics. Presented in partnership with the WSBA Solo and Small Practice Section; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Law Office Management Assistance Program Road Show
March 14 – Bellingham. CLE credits pending. By WSBA; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Business Development 101: Tools and Techniques to Build a Successful Law Practice

Legal Lunchbox Series

Legal Lunchbox Series: The 21st Century Law Practice — Tools and Efficiencies
March 25 – Webcast only. CLE credits pending. By WSBA; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Legal Lunchbox Series: Getting Your Practice Known: Ethical Practices
April 29 – Webcast only. CLE credits pending. By WSBA; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

New Lawyer Education

New Lawyer Criminal Law Series — Part 1 of 3
April 22 – Webcast only. 2.0 CLE credits pending. By WSBA; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Public Defense

The Defender Initiative’s 4th Annual Conference on Public Defense
March 7 – Seattle University School of Law Sullivan Hall and webcast. 7.25 CLE credits pending. Presented by Seattle University School of Law; 206-398-4283; www.law.seattleu.edu/continuing-legal-education.

Real Estate

Annual Spring Real Estate Seminar
April 17 – Seattle and webcast. CLE credits pending. Presented in partnership with the WSBA Real Property, Probate and Trust Section; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Work and Wellness

Lawyer’s Assistance Program: Work and Wellness — Addiction
April 16 – Seattle and webcast. By WSBA; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Legal Lunchbox Series

Legal Lunchbox Series: The 21st Century Law Practice — Tools and Efficiencies
March 25 – Webcast only. CLE credits pending. By WSBA; 806-443-WSBA or 206-443-WSBA; www.wsbacle.org.

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Will Search: Searching for the last Will of Robert M. Cordova, resident of Pacific County, WA, who died on 9/11/2013. If you have any information about his Will or estate plan, please contact Shelley Buckholtz of Garvey Schubert Barer, 1191 2nd Ave., Ste. 191, Seattle, WA 98101, phone 206-816-1454 or fax 206-464-0125.

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Scott A. Gingras
WSBA No. 43886

I became a lawyer because I liked the idea of being able to argue for a living.

My greatest talent as a lawyer is my ability to read people.

My greatest accomplishment as a lawyer is obtaining wages and employment benefits for people in need.

In my practice, I work on improving writing shorter and more concise briefs.

My career has surprised me by the amount of writing involved in my practice.

The best advice I have for new lawyers is to arrive at the office with a positive attitude and the desire to do the best you can for your clients every day.

The most rewarding part of my job is obtaining successful results for my clients that truly make a difference in their lives.

I wish that more lawyers would first pick up the phone and call opposing counsel.

Successful attorneys show up to work every day, are goal-driven, and care about the work they are doing.

During my free time, I enjoy spending time with my wife and three kids, golfing, skiing, and fishing.

The most memorable trip I ever took was my honeymoon to Maui.

I absolutely can’t live without coffee.

If I took one day off in the middle of the week, I would spend it on the river fly-fishing.

I enjoy reading the diverse picks of Dave, Ryan, Sean, Sam, and Bryan from my book club.

I create work/life balance by working hard and efficiently during my time in the office.

My favorite place in the Pacific Northwest is the Blackfoot River.

In my life, I work on improving seeing the best in people.

I worry about everything.

I am happiest when playing sports with my three boys.

Nobody would ever suspect that I enjoy dancing.

I care about the people I work with, and the people I work for.

I regret losing touch with old friends.

This is my favorite dinner party story: the crazy and dangerous things I would do as a kid growing up in Montana, which usually involved explosives or bows and arrows. There is no doubt I am lucky to be alive.

My greatest fear is cats — you cannot trust them.

My worst habit is picking at my thumbs when I am nervous.

My first car was a grey Oldsmobile Cutlass Sierra Supreme called the Silver Bullet (it did not survive my high-school years).

If $100,000 fell into my lap, I would pay off my student loans.

If I could get free tickets to any event, I would take my three boys to a Green Bay Packers game at Lambeau Field.

You should give this a try: my wife’s turkey chili.

If I have learned one thing in life, it is that it is good to have an end to journey towards, but it is the journey that matters in the end — Hemingway.

My name is Scott Gingras. I am a principal at the law firm of Winston & Cashatt, Lawyers, located in Spokane and Coeur d’ Alene. I received a B.A. from the University of Montana and my J.D. from the Gonzaga University School of Law. My practice involves civil litigation with a primary focuses on employment and labor law. I can be reached at sag@winstoncashatt.com.
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