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Welcome to the March issue of *NWLawyer*. This month we’re shining light on the work of in-house counsel. Alaska Air Group Vice President and General Counsel Kyle Levine talks with NWL about the excitement of working on the inside of the merger deal between Alaska Airlines and Virgin America. On page 36, Paul Swegle describes the role of in-house counsel as gatekeeper and offers six best practices for proceeding “in the best interest of the organization” under the Rules of Professional Conduct.

Turn to page 44 for Mark Davis’ feature on handling sexual harassment complaints. His advice is, of course, timely. Women’s History Month is upon us, and tradition has it we should be thinking about gender bias—sort of like we are supposed to think about “giving” during the holidays. Thanks to the #MeToo and Time’s Up movements, though, lately every month has become women’s history month. It’s clear the kind of outrage manifesting itself in these movements is something lawyers will be reckoning with for a long time, and it will be something we continue to cover in these pages. If you have relevant stories you’d like to share with *NWLawyer*, please email nwlawyer@wsba.org. Also, don’t miss our next Decoding the Law panel, March 21, on the topic of sexual harassment. These panels are free and open to the public, and can also be streamed live. More information can be found on our website.

Happy reading,

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

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MEN JOINING WOMEN WHO PERSIST

The following article, although written in observance of Women’s History Month, is aimed at men. As used in this piece, the term “we” refers to those of us with male privilege—those men who were unwittingly acculturated into using our privilege in ways that institutionalize disparate, sometimes vulgar, treatment of women. Not all men perpetuate these patterns. For those who don’t, this column is meant to encourage allyship to support other men finding their way and to support women who are working to overcome personal and institutional barriers to equity.

In 1987 Congress passed Public Law 100-9, which designated the month of March as Women’s History Month. Since 1988, U.S. presidents have continued to issue annual proclamations designating March as Women’s History Month. The congressional action to designate a month in honor of women’s history was inspired, in large part, by a petition from the National Women’s History Project (NWHP).

This year’s theme for national Women’s History Month is “NEVERTHELESS SHE PERSISTED, Women Who Fight All Forms of Discrimination Against Women.” It stems from a phrase born of a classic example of a powerful man silencing a female colleague (“man-silencing”) on the floor of the U.S. Senate. (The NWHP website describes 15 amazing, brave, effective, groundbreaking, and persistent women who have worked tirelessly to advance women’s equity. http://www.nwhp.org/2018-theme-honorees/. This webpage is very much worth the read.) Besides using the month of March to celebrate the incredible, persistent bravery of women who stand up against, and call out, powerful men, let’s use this celebration to jump start our own commitment, as men, to the equitable treatment of women by changing our behavior and by standing up as allies for women.

We recently witnessed brave women, through the #MeToo movement and Time’s Up Legal Defense Fund, expose blatant exploitation. The list of powerful men felled by these disclosures is remarkable. Writing in The Daily Beast, Lizzie Crocker stated, “Women and their male allies need to put more energy into affecting permanent change through activism and legislation.” In addition to this institutional activism, men as allies of women can pursue at least one additional way forward: changing male attitudes and behavior. Can we look at ourselves, along with the opportunities to change, and make the effort to confront our upbringing and change the way we treat women? Yes, if we also persist.

Many men of my generation were raised to become powerful, dominant, competitive and, at least for heterosexual men, sexually successful. Many boys like me did not learn to express our intimate feelings, nurture others, express compassion, or engage in relationships with women built on equity and respect. The heroes I knew growing up were strong, white, heterosexual men: athletes, political leaders, and dominating actors like the cowboy John Wayne, who was pictured spanking Maureen O’Hara over his lap in the promotional posters for the movie “McLintock”; the womanizer Sean Connery, seducing Pussy Galore as James Bond; or the family sage and bread-winner Robert Young, running the Anderson family in “Father Knows Best.” There are many more examples (although my formative years were not during the 70s, 80s, or 90s, those years saw the same male stereotypes embodied in new characters). Meanwhile, I was taught to objectify women—based largely on physical attributes advertised as desirable and exploited in all sorts of popular culture—and to see them as less-than-equal partners in all types of relationships.

I have asked myself, “What does it mean to be a man?” I grew up with an image of manhood based on cowboys wielding six-shooters and abusing women; men (who were always depicted as heterosexual and most often white) either suavely conquering women in sexual relationships with no emotional connection (like 007) or being the bread-winner and “head of the family” like Jim Anderson. I had little control over how I was acculturated as an impressionable boy, but I, like all men, eventually grew up, matured, and learned I could control my actions and attitudes. Men need to acknowledge that although the way we were raised may be a reason for our behavior, it is not an excuse. Having recognized that our upbringing does not justify behavior, we can take the important step of understanding the effects of our upbringing on our relationships with women.
As used in this piece, the term "we" refers to those of us with male privilege.

It’s our actions, it’s how we treat women in one-to-one and institutional situations, that ultimately matter. If we accept in our hearts that female human beings deserve full equity (something women have been fighting for since the suffragists), that they are entitled to society’s unmitigated respect and should be treated with dignity—and our actions reflect these fundamental truths—we will have begun to overcome the learned stereotypes of traditional manhood. As we go about our daily lives as legal professionals, should we continue to interrupt women to explain concepts or recite facts (“mansplain”) or act out other microaggressions born of dominance? No. (I, for one, constantly must guard against my habit of mansplaining.) Should male legal professionals continue to deny women credit for their accomplishments, limit their interactions with important clients, and withhold significant work through which their professional abilities will be developed and shine? No. I have heard female lawyers describe how male colleagues talk over them, ignore them, and take credit for their hard work. It’s these situations that drive women from our profession. For women in the profession with intersectional identities (e.g., lesbians and/or women of color), the problems and career hurdles they face are multiplied.

Of course, expressions of power, if not hostility, forced on women through unwanted sexual advances, insulting and terrifying gropes, fondles, and even rape simply must end. But men should look closely at more subtle behaviors and recognize that what we may think is a cute, innuendo-laden joke is unacceptable to a woman. Rather than interrupt a woman speaker, I need to hear her out and not impose my thoughts. We men must learn that overlooking a woman in a meeting or taking credit for her accomplishments are forms of marginalization. These behaviors stem from culturally imposed notions of male dominance and importance that have no place in our profession and lead to a professional culture that is oppressive to women. We can shed these behaviors only if we are willing to recognize them in ourselves and understand that they have no place in our professional (or personal) lives.

We men can internalize respect for our female colleagues in the workplace, in social settings, in our families… in short, everywhere. We can create and assure equitable conditions for women’s career opportunities. Moreover, men can—and should—talk to each other about these issues and

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Not all men perpetuate these patterns.

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help each other come to grips with what popular culture has taught us to be. Believe me, we can talk about this stuff. We also can talk to women in a nondefensive manner. In short, men of power and privilege can define themselves based on attributes we think matter and not those sold to us by media appealing to outmoded stereotypes.

Finally, we can become allies for women. Where we see or hear powerful men in our profession demeaning women or where we see women deprived of equitable opportunities, we need to support our female colleagues, directly question the perpetrator to help him see how unacceptable his behavior is, and advocate for equity and inclusion. Unfortunately, there have been many recent examples of men in high leadership roles making sexist remarks or engaging in sexual assaults that have been excused, giving apparent permission to some to continue these disgusting pathologies of male aggressiveness. This makes it all the more important that other men—you and I—step up and show that we embrace respect, equity, dignity, rectitude, and humility.

By adopting and advancing these attributes in the legal profession, and by openly talking about our feelings, we impart a valuable model of behavior to our colleagues and, most importantly, to our sons and daughters. If we join with “persistent women” in these efforts, we and the next generation of men will honor the women recognized by the National Women’s History Project this month ... and the persistence of many, many other women over the months to come. NWL

WSBA President Brad Furlong is a partner at Furlong-Butler Attorneys in Mount Vernon. He can be reached at brad.wsba@furlongbutler.com.
Practice, Practice, Practice

WSBA's Learning Tracks

By Ana LaNasa-Selvidge

In 1960, Edgar Dale theorized that humans retain more information by what they “do” than by what they hear or observe. His work led to what is now called the Cone of Learning (see chart on page 10). Today this learning-by-doing approach is also known as service learning or experiential learning. Last fall WSBA’s new member programs piloted an educational series with this concept in mind.

The WSBA Practice Primer takes a substantive area of law and develops three learning tracks split into nine two-hour sessions, each building upon the last. The same fact pattern is used throughout all nine sessions; homework is assigned and reviewed at each class, and participants go through all nine sessions over the span of three months. Completion of all nine sessions provides attendees with an educational foundation and a primer to practice. The first Primer focused on estate planning basics. The following are interviews with faculty and attendees.

A New Way of Teaching

Johanna Coolbaugh is a partner at the Seattle firm of Karr Tuttle Campbell practicing in estate planning, probate, and wills. She was one of six faculty chairs who helped design the entire Primer series and she developed and presented for Track Two: Trusts and Taxes. For her it all began with saying yes to a rather unusual volunteer request:

It took me a minute to process what [the WSBA was] asking for because it was so unusual and it was a lot of work, because it isn’t preparing for your two-hour session; it’s really contributing to a more holistic process. It was also really exciting for me because I was able to work with brilliant attorneys and work on a product that would be so helpful for new lawyers. I remember as a new lawyer not really knowing where to go on the most basic of things like, where do I go to file things at the courthouse?

In creating each track of the Primer, development teams paired a seasoned attorney with a newer attorney. The pairings were imperative in designing curriculum that balanced the need for difficult concept construction with the fundamental starting level of the attendees. Coolbaugh was the Subject Matter Expert Chair; she was paired with Nicholas Pleasants, the New Member Chair. She described how helpful it was to have that type of pairing in the development phase. “I think he learned a lot through preparing the materials, and I learned a lot in reviewing Nick’s materials because there were information gaps. It made me think, Oh newer attorneys wouldn’t think of this, so we need to draw attention to this issue.”

The Primer used a specific fact pattern involving two fictional clients, Martha and George, for all nine sessions. See sidebar. Homework was another unique feature of the Primer in that participants could claim CLE credit for it. Coolbaugh had never assigned homework before, so that was an interesting task for her.

We gave people an irrevocable trust agreement exercise and said, Here is your fact pattern, here’s your form, now draft Martha and George’s form. At the beginning of the next session we went through a model answer and discussed drafting choices. If people don’t have a mentor in their office, it’s really hard to get that type of feedback and redline.

Roughly 80 percent of attendees signed up for all three tracks over the course of a three-month period. By the time they started Track Two, Coolbaugh observed that people had really started bonding. “People weren’t hesitant to ask questions and they asked really good questions and they were really engaged with the material,” she said. “It was a totally different vibe than any CLE I’ve been to. That is not always the case at a lot of CLEs. People have their laptops up and they are typing away. As a presenter I don’t know if people are actually paying attention, but these attendees were really engaged.”
Whether you are a new attorney, new to a practice area, or making some type of transition in your career, the Practice Primers are designed to support learners who seek to deliberately put new knowledge into practice. There will be another Primer series this summer focused on business law. Find more information at www.wsbacle.org.

What I Didn’t Take in Law School
Brenna Willott is a new attorney, a Seattle University School of Law alum. She talked about her reasons for taking the Practice Primer:

I wish I had taken estate planning in law school. It was a little bit of a hole in my knowledge that I needed to fill. I was deciding whether or not to go back and audit an estate planning class, but it wasn’t working out with my schedule. I saw the Practice Primer series and it was perfect. I knew this was going to be an area good for me to know, regardless of what I am practicing. A lot of CLEs have people who have been practicing for a while, so it teaches at that level, which can be difficult for someone like me since I have some background but not quite enough. The Primer really met me where I was at.

Being able to attend in person was really tremendous. I think the class format where you can say, ‘I will see you next week,’ was a way to form connections, and that is such a tremendous thing. Coming in person, you get to see another side of the Bar and you get to see the Bar is there to further your growth and to help you succeed in this profession.

Relaunching a Practice
Deborah Signer Hill calls herself a “trailing spouse.” She went to law school in Oregon and practiced at the Attorney General’s Office for a few years. Then she stepped out of practice to focus on her family. A few years ago, after moving to Washington, she took the Washington bar exam and relaunched her practice. Hill’s interest is public interest law. She is driven by a sense of mission.

I began doing project work in elder law, because you are helping vulnerable people and there is a big service aspect to it. I started networking and doing a little contract work and I was lucky enough to connect with Roger Khan, who was deciding to expand his practice and take on staff. He was in a place of having to turn cases away, which he didn’t like to do. So he took me on with the goal of saying yes to more cases. I began assisting his practice around the same time the Primer started.

Similar to attendee Brenna Willott (see next profile), Hill had never practiced in estate planning. Why had she decided to take the Primer, given that it’s a completely different education format and the program required a more intense commitment?

Well, first it is my reporting year, but it did catch my attention. There was a lot about the Primer that really stood out. It seemed to be speaking to someone exactly in my position, who was looking to move into this area of law but didn’t have any practical experience yet, and it had a broad survey of the field.

We remember based on our level of involvement

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<tr>
<th>Cone of Learning</th>
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A Practice Primer Sample

WSBA NLE WILL FACT PATTERNS: 1.0 SIMPLE WILL

George and Martha have been married 30 years. They have four children together, Joe, 29, Ann, 27, and Ellen, 25. Robert was the youngest but passed away a few years ago at the age of 21. None of their children is married nor do any of them have children.

They own personal and real property acquired over their marriage. Specifically, they have a home worth $400,000 and they still owe $100,000 on the mortgage.

Martha has an $80,000 IRA and a $100,000 term life insurance policy. George has a $150,000 IRA, a vacation home in Arizona that he inherited from his parents worth $200,000 and a $150,000 whole life insurance policy with a $30,000 cash value. He also has a sizable Boeing pension with the surviving spouse as beneficiary. They both have a stock portfolio worth $300,000.

Their personal property includes a 2014 Outback Subaru worth $20,000 and a 2016 Honda Accord worth $32,000. Their total personal property holdings—including furniture, artwork, antiques and jewelry—is about $200,000.

They would like to have all of their property pass to one another and alternatively to their children. They would also like to have each other appointed as personal representative and Joe as alternate personal representative.

Martha would like her wedding ring to pass to Ann and her china set to Ellen. George would like his golf clubs to pass to Joe.

ASSIGNMENT: Based on the will template, seminar lecture, and resource materials, prepare a will for George and Martha based on the above. Also, if necessary, please list any other information that will be assumed by your drafted will document.

Continued on p. 12
The complete Fall 2017 Practice Primer is available in recorded form:

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Ana LaNasa-Selvidge is the Member Services and Engagement Manager at the Washington State Bar Association. She can be reached at anas@wsba.org.

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American Academy of Estate Planning Attorneys
Since 1993
The “No Contact” Rule Revisited

The “no contact” rule has been around a long time. In fact, it was one of the original canons adopted by the American Bar Association (ABA) in 1908. The rule continues to be relevant today because it is one of the Rules of Professional Conduct (RPCs) that all lawyers encounter frequently. Although the form of the rule has evolved from the original ABA canon to today’s RPC 4.2, the prohibition on communicating with a person represented in the matter to which the communication relates remains at its core. Since I last examined the rule in this space, however, there have been a number of significant developments in the comments to the rule, case law interpreting the rule, and advisory opinions addressing the rule from both the ABA and the WSBA.

In this column, I’ll look first at those developments within the context of the elements of the rule and its exceptions. I’ll then turn to the related topic of how the rule plays out in the entity setting.

ELEMENTS OF THE RULE

The “no contact” rule is simple on its face, but can be difficult in application. It is only a single sentence long: “In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.” In understanding the rule, it is useful to break it down into its component parts: (1) a lawyer; (2) a communication; (3) about the subject of the representation; and (4) with a person the lawyer knows to be represented.

A lawyer. The lawyer making the contact is, in many respects, the easiest part of the rule. But, even here, there are important nuances. For example, the Washington Supreme Court in In re Haley, 156 Wn.2d 324, 126 P.3d 1262 (2006), concluded that the prohibition extended to lawyers who are representing themselves. By contrast, the Supreme Court is currently reviewing a proposed comment that would exclude lawyers who are represented in a matter (and who have not otherwise joined in that representation as co-counsel) from the prohibition—essentially putting them on the client side of the rule rather than the lawyer side. In-house lawyers also straddle the lawyer and client divide. ABA Formal Opinion 06-443 (2006) concluded that in-house lawyers who are acting in a representational capacity fall on the lawyer side (and, therefore, may be contacted directly) while lawyers who are filling management positions are generally on the client side (and, therefore, may not be contacted directly).

RPC 8.4(a) prohibits a lawyer from violating the RPCs “through the acts of another[].” Accordingly, a lawyer cannot use the lawyer’s paralegal, assistant, or investigator to make an otherwise prohibited contact. Clients, in turn, present a more difficult question. On one hand, clients are generally free to contact each other directly during the course of litigation and, in many circumstances, need to do so as a matter of ongoing business operations.
In fact, Comment 4 to RPC 4.2 notes: “Parties to a matter may communicate directly with each other, and a lawyer is not prohibited from advising a client concerning a communication that the client is legally entitled to make.” On the other hand, there is some ambiguity as to the extent to which a lawyer can coach a client in this scenario. ABA Formal Opinion 11-461 (2011) takes the position that such assistance is generally permissible. But that is not a uniform view nationally, see generally San Francisco Unified School District ex. rel. Contreras v. First Student, Inc., 153 Cal. Rptr. 3d 583, 601-03 (Cal. App. 2013) (compiling authorities), and the Washington Supreme Court has not addressed it squarely. Pending clarification in Washington, therefore, lawyers would be wise to treat this area gingerly.

**Communication.** “Communicate” is not defined specifically in the rule. The safest course, though, is to read this term broadly to include communications that are either oral—both in-person and telephone—or written—both paper and electronic. Washington has not yet addressed the definition of “communicate” in the web or social media context. The general consensus nationally, however, is that simply looking at (or clicking through) static web or social media pages of a represented person or entity does not fall within the term “communicate.” By contrast, the general consensus is that interactive communication—such as a Facebook “friend” request or the equivalent—does meet the definition. Regionally, Oregon has two very useful ethics opinions—Nos. 2005-164 and 2013-189—discussing this distinction.

**Subject matter of the representation.** RPC 4.2 does not prohibit all communications with the other side. Rather, it prohibits communications “about the subject of the representation” when the person contacted is represented in the matter. In a litigation setting, the subject of the representation typically mirrors the issues in the lawsuit as reflected in the pleadings or positions that the parties have otherwise staked out. For example, asking an opposing party in an automobile accident case during a break in a deposition whether the light was green or red will likely run afoul of the rule. By contrast, exchanging common social pleasantries with an opposing party during a break in a deposition should not.

**Person the lawyer knows to be represented.** RPC 4.2 is framed in terms of actual knowledge that the person contacted is represented. Actual knowledge, however, can be inferred from the circumstances under RPC 1.0A(f). The Supreme Court put it this way in In re Carmick, 146 Wn.2d 582, 598, 48 P.3d 311 (2002): “Where there is a reasonable basis for an attorney to believe a party may be represented, the attorney’s duty is to determine whether the party is in fact represented.” Of note, Comment 12 was added to RPC 4.2 when the rules were amended to incorporate Limited License Legal Technicians (LLLT) to clarify that an LLLT is not representing a person for purposes of RPC 4.2. As the role of LLLTs evolves, lawyers should monitor further developments on this point.

**THE EXCEPTIONS**

There are two principal exceptions to the no contact rule: permission by the lawyer representing the contacted person and communications that are authorized by law or court order.

**Permission.** Because the rule is designed to protect clients from overreaching by adverse counsel, permission for direct contact must come from the person’s lawyer rather than from the represented person. The rule does not require permission to be in writing. A quick note or email back to the lawyer who has granted permission, however, will protect the contacting lawyer if there are any misunderstandings or disputes later.

**Authorized by law.** Contacts that are permitted by law or court order do not violate the rule. WSBA Advisory Opinion 201502 (2015) gives the example of service of a summons. At the same time, Advisory Opinion 201502 cautions that the exception is narrow and does not extend beyond contacts necessary to accomplish service or similar process. The safest course in many circumstances, therefore, is to rely on permission or to seek a clarifying court order.

**THE CORPORATE CONTEXT**

A key question in applying the no contact rule in the corporate or other organizational context is: Who is a
represented person? Or, stated alternatively, if the corporation is represented does that representation extend to its current and former officers and employees?

The leading case in Washington on this point is Wright v. Group Health Hospital, 103 Wn.2d 192, 691 P.2d 564 (1984). Wright was decided under Washington’s former DR 7-104(A) (1). Comment 10 to RPC 4.2, however, notes that “[w]ether and how lawyers may communicate with employees of an adverse party is governed by Wright v. Group Health Hospital, 103 Wn.2d 192, 691 P.2d 564 (1984).” In Wright, the Washington Supreme Court drew a relatively narrow circle of corporate constituents who fall within entity counsel’s representation:

103 Wn.2d at 200-01 (emphasis in original).

In other words, directors, officers and senior managers are typically off limits if they are “speaking agents” for the corporation. Line-level employees who would not ordinarily qualify as speaking agents may nonetheless be off limits if they are separately represented—as is often the case if they are named as additional defendants or are central to holding the entity vicariously liable. The Supreme Court in Wright concluded that former employees of all stripes are fair game (again, unless they are separately represented) because they cannot bind their former corporate employer in an evidentiary sense. The Supreme Court recently reiterated this aspect of Wright in Newman v. Highland School District No. 203, 186 Wn.2d 769, 381 P.3d 1188 (2016), holding that corporate counsel’s postemployment communications with former employees are not shielded by the corporation’s attorney-client privilege.

SUMMING UP

Potential sanctions for unauthorized contact can include suppression of the evidence obtained, disqualification, and regulatory discipline. Given these possible sanctions, this is definitely an area where “discretion is the better part of valor.” NWL
Dan Tarabochia, career ended by cerebrospinal fluid leak caused by car crash.

“Fishing is what I have done since the day I was born. But the doctor made it real clear: stay out of the boat.”

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WASHINGTON STATE BAR ASSOCIATION
On September 28, 2017, the U.S. District Court for the Eastern District of Washington unveiled a series of historical display exhibits, permanently located in the lobbies of federal courthouses throughout the district. The exhibits follow the theme of “You Are Here,” and explore key events, decisions and judicial officers that led to the establishment and growth of the Eastern District’s federal judiciary.

Educational panels in each of the exhibits take visitors through the different types of cases heard by the district and bankruptcy courts, which include civil, criminal and bankruptcy proceedings, as well as key roles and players in federal litigation and ceremonial proceedings over which the judicial officers preside. The Spokane exhibit also contains an interactive touchscreen display that provides a timeline tour of critical cases heard by the federal judges assigned to the Eastern District.

Exhibits are open to the public during normal business hours (8 a.m. to 5 p.m.) at the following courthouse locations:

<table>
<thead>
<tr>
<th>Location</th>
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<tr>
<td>Thomas S. Foley</td>
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<td>920 W. Riverside Ave.</td>
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<td>Spokane, WA</td>
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<tr>
<td>William O. Douglas</td>
<td>United States Courthouse</td>
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<td>25 S. 3rd Street</td>
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<td>Yakima, WA</td>
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<td>Richland U.S. Courthouse &amp; Federal Building</td>
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A reminder: All adult visitors to the U.S. Courthouse must present a federal, state, or tribal government-issued picture identification, a Canadian picture driver’s license, or a United States or foreign picture passport to gain access to the facilities. Visitors will be screened by court security officers upon entry.

For more information about the Eastern District of Washington, visit the district court’s website at www.waed.uscourts.gov. A timeline featuring key events and a chart containing landmark cases and judge profiles can be found on the district court’s website at http://www.waed.uscourts.gov/timelines.
NWLawyer: As a starting point for this conversation, can you tell us a little bit about the Eastern District of Washington itself?

McAvoy: The Eastern District of Washington covers the 20 counties east of the summit of the Cascade Mountains. The U.S. District Court for the Eastern District of Washington comprises 10 Article III (district) judges and two full-time magistrate judges. Additionally, the U.S. Bankruptcy Court for the Eastern District of Washington is comprised of three bankruptcy judges. The Eastern District has staffed courthouses in three locations: Spokane, Yakima, and Richland, and its district judges travel among and preside over cases in each of the three locations.

NWLawyer: What was the impetus for the historical display exhibits? When did this project begin?

McAvoy: The judges and court unit executives for the Eastern District of Washington maintain a continuing dedication to civics education and public awareness of the judicial history of the district. The court conducts ongoing public outreach through scheduled presentations, classroom visits, mock trials, and multiday institutes. These outreach events target students in middle school and high school, as well as high school government/civics teachers. In an effort to supplement its already strong public outreach, the court approved the concept of a historical exhibit installation in each of its court locations in late July 2014. The intent of these displays was to strengthen the understanding of the history of the federal courts in the Eastern District of Washington for all who visit its federal courthouses. A committee formed in August 2014, consisting of district and bankruptcy judges, court unit executives, the Ninth Circuit Librarian, facilities managers from the General Services Administration (GSA), and the GSA historian. In September 2014, the court released to the public its Request for Qualifications, a solicitation that invited design firms from across the country with experience and expertise in designing, building, and facilitating creative and interactive exhibits to respond. The Historical Exhibit Committee selected the exhibit design firm, approved the design and content, and verified accuracy of written text.
NWLawyer: Does any person deserve special recognition for their involvement?

McAvoy: GSA should be recognized for allowing the installation of the exhibits in its public lobbies. The Federal Bar for the Eastern District of Washington should also be recognized, as it is through the payment of their attorney admission fees that these displays were possible.

NWLawyer: How were the exhibits financed?

McAvoy: No appropriated funds were used for the design or installation of these historical exhibits. Rather, the Eastern District turned to its attorney admission fund, comprised of pro hac vice and standing attorney admission fees. The attorney admission fund may only be used for purposes that benefit the members of the bench and the bar in the administration of justice, and clearly judicial and historical education of the citizens (and potential future lawyers and litigants) in this district advances that purpose.

NWLawyer: Could you explain the process by which the subjects of the exhibits were chosen?

McAvoy: Working in partnership with the exhibit design firm, Sea Reach Ltd. of Sheridan, Oregon, the Historical Exhibit Committee identified a “places, cases, and faces” approach to historical education for the displays. With that as a starting point, the committee and firm researched and integrated the formation of the district, its U.S. courthouse locations, the judges who have served since formation, and those cases having significant impact on both the district and federal law. Additionally, the exhibits explore the different roles included in the federal judicial process, ranging from bankruptcy case administrators to U.S. probation officers.

NWLawyer: Of the cases you profiled, which do you find the most interesting?

McAvoy: Alvarez et al. v. IBP (1999). As a part of their skilled and dangerous
job, workers at a Pasco slaughterhouse and meat-packing plant were required to wear extensive protective gear, such as chain mail aprons and Plexiglas arm sleeves, during their shifts. The workers, who were unionized, tried to negotiate pay for time spent donning and doffing this gear through collective bargaining, but they were unable to come to an agreement with their employer. The resulting lawsuit spanned several years and several appeals.

Also, I was very interested in In re Washington State Apple Advertising Commission (2003). In 1937, the Washington State Legislature created a commission to promote the state’s apple harvest. For every box of Washington apples sold, the commission’s members (apple farmers and distributors) paid a fee. The commission used those funds to create ad campaigns promoting the state’s apple crop, building the “Washington apple” into a powerful brand. Between 1937 and 2003, the proportion of the nation’s apples grown in Washington rose from 15 to 70 percent.

Washington’s Apple Commission was one of many state-created advertising organizations that turned their products into household names. But in the 1990s and early 2000s, some members of those organizations filed lawsuits in federal courts, claiming that by requiring them to pay the fees, the organizations were effectively forcing them to advertise for their competitors—thus infringing on their free speech rights.

NWLawyer: Which cases profiled do you think have had the greatest impact on Eastern Washington residents?

McAvoy: In re Hanford Nuclear Reservation (1991). In the late 1980s, in response to citizen requests, the government released previously classified information, including the fact that during the 1940s and early 1950s the stacks of the Hanford reactors had emitted Iodine-131, a radioactive chemical, into the air.


NWLawyer: How do you plan to update the exhibits over time?

McAvoy: In the near future, we plan to add interactive exhibits to the displays in Yakima and Richland. While the content of the static panels will remain in perpetuity, the interactive timelines will be updated with new judicial officers, pertinent legislation, and cases of historical significance decided by the court. The court now owns the rights to the coding for the interactive timeline and will maintain its content as current. NWL

THE INTENT OF THESE DISPLAYS WAS TO STRENGTHEN THE UNDERSTANDING OF THE HISTORY OF THE FEDERAL COURTS.

Renee McFarland lives in Mountlake Terrace and is the current chair of the Editorial Advisory Committee to NWLawyer. She can be contacted at reenemcf93@hotmail.com.
Your gift to the Washington State Bar Foundation supports the Washington State Bar Association programs that create opportunities for Public Service, including the Moderate Means Program—ensuring that everyone gets the legal assistance they need.

Catherine Case
Moderate Means Program attorney

“As a single mother of five, I put myself through law school, and have done public service work my entire career. Yet, I worried about the additional time spent working, away from my kids. Then one day, I heard my little 7-year-old daughter say, ‘I want to be just like my mom. She helps everybody—you know, like Superman.’ Hearing that made me realize that I was already the example I was hoping to become before law school.”

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At the start of my legal career, I didn’t consider myself to be particularly nontraditional. Although I attended law school in my 40s, I didn’t see myself as any different than the men and women who attended night school with me. As a paralegal, I had met a few women who went back to school and became lawyers later in life, so I didn’t think I was that unusual.

I come from a family with a long tradition of lawyers, doctors, and politicians. One family story involves a great uncle who was the subject of a targeted killing, presumably related to his role as an ombudsman in Chicago in the ‘40s and ‘50s. For most of my life, I just assumed that I would continue the privileged, affluent life that I always had.

Then, about a year-and-a-half after starting my practice, I suffered a devastating health insult. Over the course of a week, I became progressively weaker and sicker and was diagnosed with an epidural abscess. I spent over two months in the hospital and was left temporarily quadriplegic. Suddenly, I identified as being disabled and had to learn how to make my life and my practice work with physical limitations.

Let me say this: Being sick is not fun. It can be painful, inconvenient, and humiliating. I endured all sorts of indignities from needing someone to care for me in the most intimate ways to having my hair completely fall out (I was never able to get a good reason for why this happened from any of my providers. My mother thought that one of my providers told her a drug that I was given to fight the infection was also a chemotherapy drug, but I have also read that any major surgery can induce hair loss.)

My first outing while I was still in the hospital was a trip to a grocery store to see if I would be able to shop for myself. People alternately stared at me as I rode the shopping scooter or tried to ignore
I WAS LEFT TEMPORARILY QUADRIPLEGIC.
I WAS EITHER A FREAK OR INVISIBLE.
— Allison Ross

me. I was either a freak or invisible. It was eye-opening.

Identifying as disabled has profoundly changed my practice. I am far more patient and sympathetic. I understand first-hand what it’s like for my clients to try to heal and put their lives back together while dealing with financial difficulties from not being able to work. I understand viscerally that healing is not always an upward trajectory. If you’re lucky it’s a wave of gains and losses with a gradual upward path.

Just recently, one of my neurological symptoms returned, one that I thought was resolved. It can be discouraging. But now I really see my clients. I see how marginalized they can be. Many of the clients I work with are applying for Social Security Disability and have struggled to maintain their households (sometimes unsuccessfully, as I have some homeless clients) and I understand how hard it is to navigate the reorganizing, healing, planning, and hoping to get better that they go through. I am one of them. I share my story with each of my clients, not only to explain any questions that they might have about my physical unsteadiness and obvious pain, but also to let them know that I will advocate for them the same as I would advocate for myself. I want them to know that I understand the effort that it takes them to get through their day.

I have struggled to regain the level of energy and precision that I had before my infection. Prior to getting sick, I would walk about an hour a day about five days a week for exercise. Now, I struggle to get a good 20 minutes.

When I first returned to working, I accepted a job pretty soon after being discharged from the hospital and really hadn’t gauged how difficult it would be for me. The managing partner at my firm chastised me for not being able to work as much as the other associates by telling me that when I didn’t make my required hours I took food out of his disabled child’s mouth. At the time, I was unsure where I would end up physically. I eventually lost that position because I was not able to perform at the same physical level as my coworkers. This was less than a year after I learned how to walk again. It was definitely a lesson that, despite the Americans with Disabilities Act (ADA), workplaces are not always friendly to the needs of disabled workers. Due to the size of the firm, the ADA regulations didn’t apply, and I was unable to make a complaint, even though I felt that the treatment was a clear violation of the Act. Friends advised me not to discuss my disability when applying or interviewing for jobs for fear of giving an employer a reason not to hire me, because employers wouldn’t want to deal with ADA regulations and my disability might suggest I wouldn’t be able to work reliably.

I am really fortunate that my illness was not permanent. I have learned to walk again, and many of the neurological symptoms have reduced significantly or I’ve learned how to manage them to the point that on a good day most people would not immediately recognize that I am disabled. But I have struggled to figure out where I will fit into my new life. There are moments when I feel like a superhero for having come so far.
I am a nontraditional attorney in almost every sense. I come from a family of nonlawyers. I was 35 years old when I first considered going to law school—sitting as a juror on a DUI trial piqued my interest in law school in the first place. This was a second career for me. I was perfectly happy as a mental health therapist and I had already completed a master’s degree. The thought of even more education hadn’t crossed my mind. Also, I’m a gay woman.

Developing a community for myself was important to me and helped me to be successful in school, to graduate, and pass the bar exam.

The need for community has helped me as an attorney. For example, the local chapter of Washington Women Lawyers hosts many social events and seminars, providing opportunities to network and meet other female attorneys. QLaw, the Washington association of lesbian, gay, bisexual and transgender (LGBT) legal professionals and their allies, offers mentorship to law students and attorneys in their first few years of practice. I found that seeking opportunities to develop leadership skills through the Washington State Leadership Institute and the WSBA Diversity Committee provided a sense of community for which I am so grateful.

The reason I chose to get into law was precisely the reason I chose to go into the mental health field. That is, I wanted to make a difference in my clients’ lives. As a mental health professional and, more specifically, as an evaluator for involuntary psychiatric commitments, I often saw my clients on one of, if not the, worst day(s) of their lives. Bringing compassion, understanding, and hope to my clients drew me to mental health work and kept me there for a decade.

Similarly, as attorneys we assist clients who are generally not at their best. Their situation requires legal intervention. By definition, that poses challenges. As a “nontraditional” attorney, I find having support from others is essential to staying focused and content in a field so challenging on its face. With support from my community, I am able to extend assistance to my clients when they most need it.

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For a variety of social and political reasons, over the last decade the question of diversity and the law has taken on a heightened focus. I get very concerned with how divisive the discussion has become. Some attorneys like to point to me as an example of diversity in the bar based on the color of my skin, my long hair, and my name. These are obvious characteristics that deviate from the majority of the practitioners I work with. I think, however, that these are poor indicators of diversity.

By virtue of being the only “attorney of color” (a strange phrase which I dislike immensely) practicing in Blaine, Washington, and for 30 miles around,
I get asked to comment on or speak about diversity in our profession on a fairly regular basis. Since being elected to represent Congressional District 2 on the WSBA’s Board of Governors last March, the topic has come to dominate my life with people asking for my perspective on, or to lobby on their behalf regarding, diversity policy issues. I spend a lot of time trying to deepen the conversation away from mere physical characteristics.

Even the WSBA is not immune: When I was assigned to the Diversity Committee of the WSBA I realized that literally all of the darkest-skinned members of the Board of Governors were the governors assigned by WSBA leadership to the Diversity Committee… regardless of the wide range of ages, disabilities, sexual orientations, and other perspectives that those lighter-skinned governors could have offered.

True diversity goes far beyond any single factor—the wisdom of a group requires a broad range of voices and backgrounds.

I REALIZED BEING AN OUTSIDER COULD BE A MARKETING STRENGTH.
— Rajeev Majumdar

Take my background for example. Very few people describe me as that “Irish-Italian Hindu Eagle Scout from Idaho, with a couple of master’s degrees in his back pocket.” I would posit that these details actually add a lot more to the diversity I contribute to our profession than my obvious physical characteristics. I was raised in eastern Idaho, a land renowned for its lack of diversity and which is largely homogenous in terms of racial and religious demographics. Idaho is a somewhat incongruous place to find the child of an immigrant from India. I appeared as a definitive outsider to society, but the experience of growing up in that environment forced me to become fluent in multiple cultural “languages” and to learn how to bridge those differences in understanding.

When I arrived in 2008 as an Idaho-raised Irish-Italian-Bengali, I started as a definitive outsider here in Whatcom County, so I built a business strategy around the idea that being an outsider could be a marketing strength. As Blaine is on the Canadian border, it hosts a great deal of diverse cross-border traffic.
and also allows me to easily meet with Canadians on their side of the border. I can market my business to those who do not want to travel all the way to Bellingham, where 98 percent of all attorneys in Whatcom County practice. Even in Bellingham, however, there are very few attorneys of color and no others in Whatcom County with a wide general practice. This allowed me to very quickly build a strong and loyal referring-client base that was previously underrepresented, primarily Native Americans, Panjabi-Americans, Persian-Americans, Hispanic Americans, Chinese-Americans and foreign nationals, mostly from Canada. I do not belong to any of those groups of people, but I can build rapport with them based on common experiences of otherness. NWL

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THE MECHANICS OF A MERGER

Alaska Air Group General Counsel Kyle Levine talks with NWLawyer about Alaska’s acquisition of Virgin America

By Ralph Flick
On April 4, 2016, Alaska Air Group, the parent company of Alaska Airlines, announced an agreement to purchase San Francisco-based Virgin America in a $4 billion deal after a public bidding war with JetBlue Airways. The transaction closed on Dec. 14, 2016; Alaska Airlines and Virgin America received a single operating certificate (SOC) from the Federal Aviation Administration just 13 months later, in mid-January 2018. Alaska Airlines now operates a combined fleet of almost 300 aircraft with approximately 1,200 daily departures.

In-house legal departments play significant roles in merger transactions. For some insight and perspective from inside the legal department during one of the most significant recent mergers in the Northwest region, NWLawyer spoke with Alaska Air Group Vice President and General Counsel Kyle Levine, who was just four months into his tenure as general counsel—his first general counsel job—when the merger was announced.

The interview was conducted in December 2017, before the SOC was issued by the FAA. The questions and answers have been edited for clarity and space considerations.
**NWLawyer:** Tell us about your background. How did you come to Alaska Air Group?

**KL:** My dad is a retired pilot and my mom was a flight attendant, so I suppose I was naturally drawn to the airline business. I considered becoming a professional pilot, but my “plan B” was to go to law school. I went to Stanford as an undergrad and to law school at Southern Methodist University in Dallas, which interested me because it’s one of few law schools with an aviation law program.

I worked in the American Airlines legal department while I was in law school. Afterwards, I took a job in the aviation practice of a law firm in Los Angeles. A few years later, I moved to the aviation products liability litigation team at Nixon Peabody’s San Francisco office. I started traveling to Seattle frequently and was introduced to Alaska’s former general counsel, Keith Loveless, who eventually hired me as a transactional lawyer. I didn’t have a transactional background, but Keith set me up with a terrific mentor (Susan Barley, formerly with Perkins Coie) who helped me immensely.

As the years went by I kept my transactional work, but drifted back to my roots and started managing the regulatory and litigation practice areas. I eventually picked up corporate law duties and, after 10 years with the company, became the GC—just on the brink of the Virgin America acquisition.

**NWLawyer:** For the legal department, is working on a merger kind of like having two jobs—the merger and then your regular work?

**KL:** Surprisingly, I don’t hear that concern from my team. I think people are energized to be working on such a transformative deal for Alaska and can balance other “regular” work by putting in extra hours or reprioritizing. Also, in the midst of the negotiations with Virgin America and the ensuing regulatory review, the team had plenty of support from our fantastic partners at O’Melveny & Myers and Davis Wright Tremaine. Some fatigue did set in after all the exhilaration that led up to the merger closing. We realized how much more work had to be done and how complicated it is to integrate two airlines.

The merger-related work comes now in peaks and valleys. The labor and employment team has been on point for a while now, whereas the transactional and regulatory lawyers were front and center in the pre-closing period. I’m really fortunate to have a team of talented people, most of whom had never been through a merger before, with the skills, resourcefulness, and drive to do whatever work is at hand.

**NWLawyer:** What’s happening to the Virgin America brand?

**KL:** We’re slowly phasing out the Virgin America name and brand. We studied the issue hard and decided that a single Alaska brand made the most sense for our business. The Airbus jets operated by Virgin America will eventually be painted in Alaska liveries, but we’re keeping some of the modern, fun airport and on-board experiences that people enjoyed with Virgin America.

**NWLawyer:** JetBlue was competing with Alaska to buy Virgin America.
How did that impact the negotiations?

KL: Yes, Virgin America very cleverly set up a bidding war between Alaska and JetBlue. Both carriers had good reasons for their interest in Virgin America. Alaska believed it needed to cement its presence on the West Coast and gain access to Virgin America’s portfolio of gates and slots at SFO, LAX, JFK, and elsewhere (which we referred to as “expensive beachfront property”).

NWLawyer: Besides the bigger presence in California, what other benefits did the transaction provide to Alaska?

KL: The merger gave us additional assurance that we can remain independent. Given the consolidation that’s already happened in the airline industry, our larger national footprint, and low-fare business model, U.S. competition regulators are probably less likely to allow Alaska to be acquired by a much larger airline.

NWLawyer: How did the process of getting to a final deal actually work?

KL: Virgin America informed us that we were in competition with another bidder and told us that they’d consider bids from each one at the end of a six-week due diligence review period. Virgin America simultaneously negotiated merger agreement terms with each bidder. After a few rounds of bidding, Alaska agreed to buy Virgin America for $57 per share. We publicly announced the deal a few days later after carefully crafting a communications strategy for investors, employees, and the public.

NWLawyer: What was the most significant legal challenge facing the merger?

KL: The biggest challenge, I would say and my colleagues might disagree with me, was the antitrust approval process under Hart-Scott-Rodino [Antitrust

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Some fatigue did set in after all the exhilaration that led to the merger closing.

Improvements Act of 1976]. We got way more than we bargained for in that process. If you look at this deal objectively, it’s the combination of two small carriers. You were taking what was the sixth largest carrier in the country and asking to merge it with the ninth or tenth largest carrier. By putting Alaska and Virgin America together, you still only had the distant-fifth largest airline in the country and their route maps were more complementary than overlapping. The next bigger carrier is Southwest Airlines, which is three or four times bigger than the new Alaska. Going on this logic, we thought that the Department of Justice would quickly and easily approve our merger. We learned pretty quickly that the regulators had a different view. They were concerned about Virgin America’s disposition of federally controlled slots at airports like Ronald Reagan Washington National Airport, New York-LaGuardia, and gates at Dallas-Love Field. They wanted to make sure that those assets stayed in the hands of a carrier that would keep competitive pressure on the so-called legacy carriers like United, Delta, and American. I think we did a good job of convincing the Justice Department that we were a natural for this task. We were able to show that we generally bring lower fares in markets where we’re up against the legacy carriers. We’ve always considered low fares and high-value to be our core business proposition, but the folks reviewing the merger had little exposure to Alaska Airlines.

NWLawyer: What has been the most personally challenging part of the merger process for you as GC?

KL: The regulatory approval process took much longer than expected—nearly nine months—and the pace frustrated us all. But looking back it was an awesome experience to be responsible for delivering this critical piece of the merger puzzle rather than playing our more customary supporting role.
**NWLawyer:** What part of the business is remaining in California and what part is going to be consolidated in Seattle?

**KL:** Since Alaska and Virgin America became one carrier in the FAA’s eyes in mid-January, we’re locating operational control functions for both airlines in Seattle. Virgin America’s operational control center was in Burlingame, California, just south of SFO airport. We’ll keep multiple California crew bases and a regional headquarters for some back-office functions in Burlingame.

**NWLawyer:** Where do think you are in the process?

**KL:** Probably 75 percent of the way. We’ve reached a number of key milestones—deal closing, labor deals, SOC—but still have some of the technical and cultural heavy lifting to do. We’re heavily focused on getting Alaska and Virgin America on the same reservations and passenger service IT platforms in Q2, and are also eager to have the airlines’ separate labor groups fully integrated as soon as possible. 

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**Ralph Flick** is an assistant professor of management and business law at Pacific Lutheran University and formerly was in-house counsel for public companies. He can be reached at flickrw@plu.edu.

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Unfortunately, headlines remind us that workplace pressures and old-fashioned greed produce seemingly endless instances of unfair business practices, corner-cutting, financial fudging, lying and cheating.

Perhaps the most brazen recent example was Volkswagen. The company paid $4.3 billion in criminal and civil penalties, and six employees were indicted for conspiring to cheat U.S. emissions tests.

In-house counsel are on the front lines of preventing corporate misconduct and they are sometimes forced to take the extreme steps of withdrawing from the representation or reporting criminal misconduct to outside authorities.

This article is not about those complete breakdowns of the attorney-client relationship, but rather everyday strategies in-house counsel can use to prevent and discourage misconduct at earlier stages.
Few aspects of in-house practice are more daunting than playing “gatekeeper”—preventing colleagues from violating laws, regulations, or the rights of others. If you delay a product launch to resolve safety or regulatory concerns, you’ll almost certainly be unpopular with some of your colleagues who are kept waiting to receive their full year-end bonuses as a result of your gatekeeping. In some organizations, you might even see a ding in your year-end evaluation—and your bonus. These opaque digs might read like “needs to show greater business judgment,” or “needs to be less dogmatic.”

But let the product launch go forward with unresolved concerns and the consequences could be much worse for you and the organization, as Volkswagen learned.

Gatekeeping challenges arise in every environment, including public agencies and nonprofit organizations. Counsel must be prepared to respond effectively.

A significant source in terms of in-house responsibility is Washington’s version of ABA Model Rule of Professional Conduct 1.13(b):

**RPC 1.13 ORGANIZATION AS CLIENT**

(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances, to the highest authority that can act on behalf of the organization as determined by applicable law.

A wide range of statutes and regulations also create criminal and regulatory enforcement exposure for in-house counsel viewed as having failed as gatekeepers. The regulations promulgated by the Securities and Exchange Commission (SEC) under Section 307 of Sarbanes-Oxley, for example, impose “reporting up” obligations on in-house counsel at publicly traded companies, 15 U.S.C. § 7245; 17 C.F.R. Part 205.

Prosecutors and regulators alike have targeted numerous in-house counsel in recent years, alleging both “aiding and abetting” and even direct involvement in criminal or regulatory violations.

Shareholders and other civil litigants, including former client organizations, may also sue in-house attorneys for poor gatekeeping, often alleging malpractice (professional negligence) and fiduciary violations.

All in-house counsel are subject to potential malpractice claims for failing to prevent harm to the organization. And general counsel, as company officers, have heightened fiduciary duties under corporate law to protect company assets by preventing harmful misconduct.

Before taking any in-house position, candidates should consider gatekeeping risk factors. Risks can be more frequent and more serious, for example, in highly regulated industries or where the products or services offered pose greater risks to consumers or the public. Where there are more rules and regulations to follow, there are also inherently more temptations to break those rules for cost reasons or for competitive advantage. Risky products and services increase both the likelihood and potential severity of alleged gatekeeping failures, since complaints to regulators are more likely.

But the most significant organizational factors may be more subjective. The highest risk levels are probably found in organizations with poor ethical leadership at the top and hence weak internal ethics standards throughout. If rumor has it that the CEO is a narcissistic bully, consider applying elsewhere.

Even highly ethical but siloed organizations can pose challenges if the segregation or dispersion of duties and authority allow projects or initiatives to get far along without adequate legal or regulatory input. It is always harder to effectively guide or alter a project once substantial resources have been committed.
In-house counsel at all levels of an organization can play a role in establishing an environment where misconduct is less likely.

Every general counsel should ensure that his or her organization has a top-down, ethics-driven culture where doing the right thing is the paramount priority.

Every general counsel should insist on having routine meetings with the board and key board committees. A general counsel’s high degree of authority and visible channels of communication up the chain send a powerful deterrent message throughout an organization that malfeasance has no place to hide.

Be wary of general counsel roles that report to the chief financial officer and have only limited (and possibly highly choreographed) access to the CEO and board. That structure may communicate to the entire organization (and you) that the general counsel is a second-tier functionary with limited influence over business ethics.

No. 1

**Build Strong Cultural and Structural Foundations**

In-house counsel at all levels should aspire to be so competent, trusted, and admired that colleagues at all levels naturally accept and follow their lead.

To earn this trust, colleagues must know that you understand and embrace the organization’s goals. Quietly and effectively demonstrate that you understand where the organization is headed and that you are passionately committed to pushing initiatives forward, efficiently addressing legal and regulatory challenges, and solving problems. Resist the urge to make yourself feel useful by simply finding fault with what others in the organization are trying to do without offering solutions first.

Being business savvy and demonstrating excellent business judgment are key to earning a level of trust and respect that will help ensure colleagues include you early in projects and take your concerns seriously.

No. 2

**Learn the Business and Earn Your Colleagues’ Confidence**

In-house counsel at all levels should aspire to be so competent, trusted, and admired that colleagues at all levels naturally accept and follow their lead.

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Being business savvy and demonstrating excellent business judgment are key to earning a level of trust and respect that will help ensure colleagues include you early in projects and take your concerns seriously.

**IT IS ALWAYS HARDER TO EFFECTIVELY GUIDE OR ALTER A PROJECT ONCE SUBSTANTIAL RESOURCES HAVE BEEN COMMITTED.**
**Don’t Confuse Judgment Calls with Gatekeeping**

Sometimes in the course of thinking creatively about organizational goals, colleagues will come up with ideas that seem misguided, wasteful, or just plain stupid.

There is nothing wrong with in-house counsel engaging in those discussions and diplomatically expressing personal opinions. But there is a fine line between something that is illegal or improper and just stupid. Blocking stupid projects or initiatives is usually somebody else’s job. In-house counsel should avoid burning goodwill on matters outside their responsibility or authority.

More challenging yet, team members in highly entrepreneurial organizations often want to push legal and regulatory boundaries and operate in slightly grey areas. Inexperienced counsel often rush to judgment in such circumstances and take unnecessarily rigid positions.

Resist drawing lines where none exist—“uncertain” doesn’t always equal “illegal.” Be willing to accept appropriate risks if superiors up the chain are willing to do so also. Strive to be a creative thought leader in grey areas, not a timid follower of the status quo. The “easy answer” is not always the correct answer.

Demonstrating this level of risk tolerance and creativity will lead your colleagues to accept your judgment when legal or regulatory difficulties can’t be avoided.

**Don’t Just Say “No”—Look for a Better Solution**

Even where proposed conduct would be illegal or otherwise improper, avoid the temptation to immediately say “no” and walk away.

Always assume that there is some other way to do something another team member wants to do and explore those possibilities with your colleague until and beyond the point at which he or she concedes that there is no better solution.

In such instances, in-house counsel must have the humility and insight to realize that their non-attorney colleagues probably know best how to achieve the organization’s objectives and that the job of in-house counsel is to guide their colleagues through creative problem-solving to tease out the very best solutions to legal and regulatory challenges.
Use Emotional Intelligence and Psychology 101

Even after you go through something like the process discussed in No. 4 above, a team member may still become agitated and even angry if he or she perceives you as unreasonably blocking or slowing down a potentially valuable course of action.

Gatekeeping can be a stressful and high-risk activity, especially early in a career. Keeping your cool is often hard, but it’s almost always helpful.

Anticipate gatekeeping stresses and how to respond. Be ready to suppress the desire to angrily correct a colleague. Focus on trying to understand and appreciate his or her perspective. Listening and asking questions is the best formula for preventing conflict. Colleagues will often talk themselves into agreement with your position when the facts and law are on your side.

And don’t be afraid to try a little psychology. Most of us understand cognitive dissonance theory—the idea that a person trying to hold onto and reconcile two inconsistent ideas will seek to resolve that internal conflict.

Consider asking questions that lead your colleague to the conclusion that breaking the law, triggering a violation, or causing some other legal trouble conflicts with his or her self-image as a smart, honest, law-abiding person.

“Would this be worth risking the company’s reputation or yours?”

“Can you imagine explaining a regulatory violation to future potential employers?”

Leverage the "Good Cop, Bad Cop" Role of Outside Counsel

Another tool for killing bad ideas early is to suggest a call with outside counsel, especially when gatekeeping risks to the organization and to in-house counsel are high. Hopefully your colleague(s) will be too embarrassed or ashamed to describe and defend a highly questionable idea to a sophisticated stranger. And if you have the call and it goes as expected, the added support for your position will serve as yet another deterrent.

Calling counsel may seem wasteful when you already know the answer. But minimizing harm to your internal relationships is important for continued effectiveness, so allowing outside counsel to play “bad cop” once in a while is a wise use of resources.

The best outside counsel will frequently suggest completely different solutions to tricky problems, and you should push them to do so in every call. Outside counsel might even take a completely different view of the matter. If that happens, strongly consider letting outside counsel’s opinion rule the day, demonstrating your flexibility and reasonable risk tolerance.
In-house counsel are frequently advised to document the advice they give in difficult situations for their own protection. Confidential memos to the file are fine, and any “reporting up” probably also warrants a memo, but the temptation to route stern memos or emails to colleagues should probably be resisted where possible.

Conversations are generally less off-putting to colleagues. Memos are intended to draw a line and that line may inadvertently extend beyond the issue in question to counsel’s ongoing relationship with one or more colleagues. Also consider carefully any risks to attorney-client privilege or similar unnecessary risks to the organization that a memo might create.

Gatekeeping is a hazardous duty that calls on in-house counsel’s best judgment, discretion, and communication skills. The risks to organization and self can never be completely eliminated, but by choosing one’s environment carefully, helping to shape that environment, picking battles wisely, and communicating timely and thoughtfully, gatekeeping can actually be one of in-house counsel’s most important and professionally rewarding roles. NWL
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The path to justice is seldom straight and narrow

By Mark Davis

#MeToo and Time’s Up have come together as a movement focusing the country’s attention on the continuing inequalities in the workplace. The sound of so many victims’ voices has underscored the many challenges our society faces when it comes to issues like disparate pay and sexual harassment.

But even with all of the momentum behind this movement there remain many practical and legal barriers to reporting sexual misconduct in the workplace. Obviously, many victims fear their harassers. Others worry about broader reprisals like being fired or suffering permanent damage to their careers.

In a recent federal lawsuit, a former library security guard in Seattle alleged that a supervisor failed to investigate her allegation that she was bent over and spanked by a coworker. Instead, the lawsuit states, the supervisor joked that plaintiff’s coworker just gave her a few “birthday spankings.” The City of Seattle settled with her and a co-plaintiff for $220,000.

In another case, a Tesla engineer filed a complaint in February 2016 alleging the company had a “predator zone,” where men catcalled and whistled at women. Tesla fired the engineer three months later, claiming she “chose to pursue a miscarriage of justice by suing Tesla and falsely attacking our company in the press,” according to a National Public Radio report.

These cases illustrate that for those who have the grit to
The path to justice is seldom straight and narrow. For a hostile work environment claim to have merit, the company or manager must be responsible for the harassment. Ideally, both should have the same goal—to stop offensive behavior and harassment in the workplace.

ON NOTICE

The first issue an attorney may face is determining whether an employer was placed on notice of the perceived misconduct. For a hostile work environment claim to have merit, the harassment must be imputable to the employer; that is, the company or manager must be responsible for it. Typically, this is not an issue if the harassment comes directly from an individual owner or manager, since they are aware of their actions. See Glasgow v. Georgia-Pac. Corp., 103 Wn.2d 401, 406-07, 693 P.2d 708 (1985).

For larger companies, where this line may not be clear, or in situations where the harassment is from a peer, imputation needs to be established through more formal channels, such as a written complaint to human resources or management. If an employee never puts his or her employer on notice that there may be harassment, there is no opportunity to stop discriminatory conduct. It is also possible that an employer didn’t perceive the conduct to be offensive. There is a substantial body of case law holding that Title VII as well as Washington’s law against discrimination (RCW 49.60 et seq.) is not a “general civility code.” See, e.g., Adams v. Able Building Supply, Inc., 114 Wn. App. 291, 297, 57 P.3d 280 (2002). To this point, the U.S. Supreme Court has stated:

[The] standards for judging hostility are sufficiently demanding to ensure that Title VII does not become a ‘general civility code.’ Properly applied, they will filter out complaints attacking ‘the ordinary tribulations of the workplace, such as the sporadic use of abusive language, gender-related jokes, and occasional teasing.’ …We have made it clear that conduct must be extreme to amount to a change in the terms and conditions of employment. Faragher v. City of Boca Raton, 524 U.S. 775, 788 (1998).

This can be true even in cases where physical touching is involved. A recent Ninth Circuit decision exemplifies this tension and indicates reasonable minds may disagree on the distinction between ordinary workplace tribulations and unlawful harassment. In Zetwick v. County of Yolo, 850 F.3d 436 (9th Cir. 2017), a female county corrections officer in California said the county sheriff subjected her to “more than a hundred” unwanted hugs and one “kiss on the cheek” over the course of 13 years. The district court granted summary judgment in favor of the county, finding that hugs or a kiss on the cheek were not sufficiently severe and pervasive to constitute sexual harassment. The Ninth Circuit reversed, noting that the district court applied the wrong standard, (severe or pervasive) but also pointed out that a court must examine the “totality of the circumstances.” Thus, context is relevant and in Zetwick it included the frequency of the touching, the seniority of the alleged harasser, and whether he acted similarly towards men.

That means it is important for an employee to know that: (1) if she or he fails to report the harassment, she or he may not be able to pursue a claim, and (2) even if she or he does, there must be evidence that the conduct was so severe or pervasive it impacted the terms and conditions of employment.
This underscores the need to thoroughly report misconduct, to include details like dates, times, and witnesses, in addition to context, such as previous instances and how others are treated by comparison. It is also vital that both employees and employers understand that once notice is provided employers have an obligation to take reasonably prompt and adequate remedial action that is effective and “reasonably calculated to prevent further harassment.”


When an employer receives a complaint or otherwise learns of alleged sexual harassment in the workplace, the employer should investigate promptly and thoroughly. The employer should take immediate and appropriate corrective action by doing whatever is necessary to end the harassment... Disciplinary action against the offending supervisor or employee, ranging from reprimand to discharge, may be necessary. Generally, the corrective action should reflect the severity of the conduct.

Employees experiencing harassment may not know their employer has an obligation to help them once they report misconduct. This could be an important consideration in deciding whether to report. This could also be true where an employer does not initially take the appropriate steps in response to a complaint—such as characterizing inappropriate touching as “birthday spankings.” Armed with the correct information, an employee can request better protections in the workplace, such as removing the perpetrator to a different shift or location. Hopefully, this will prompt an employer to better protect its employees and put an end to harassment. Unfortunately, there is anecdotal evidence that this is not always the result at the local level.

**GROUND FOR OPTIMISM**

The City of Seattle recently launched an extensive review of its harassment and discrimination policies. Ostensibly, employers may prefer arbitration. Many believe arbitration reduces costs and promotes more expedient resolutions. But arbitrations also pre-empt the right to a jury trial, limit a party’s right to appeal and, most importantly, remain confidential under most circumstances. That means any allegations of harassment or findings that abuse occurred will not become public information during or after arbitration.

While confidentiality restrictions apply equally to employees and employers, there is an argument to be made that they allow hostile work environments to fester even when claims are substantiated. Indeed, there has been recent press attention demanding Congress eliminate arbitration clauses in employment agreements for these reasons. Courts in California hold such clauses are per se procedurally unconscionable if required as a condition of employment.

Ironically, some employee plaintiffs prefer confidentiality, concerned that initiating legal action will ruin their professional reputation—i.e., Google their name and “Jane Doe v. XYZ Corp.” is the first link to appear.

It may be true that a company will eliminate candidates because they previously took action against discrimination; however it is important for people with these concerns (as well as employers making hiring decisions) to know that the Washington Supreme Court has taken a clear position on the matter, holding that a job applicant has a cause of action if a “prospective employer refused to hire them in retaliation for prior opposition to discrimination.” Zhu v North Central Educational Service District – ESD 171, 189 Wn.2d 607, 404 P.3d 504 (2017). Thus, if a prospective employer engages in this form of retaliation, injured candidates now have a clear right to pursue legal action. This standard appears to be a logical extension of Washington’s statutory prohibition against retaliation, which
WASHINGTON IS A TWO-PARTY CONSENT STATE, MEANING ALL PARTIES MUST PROVIDE CONSENT IN ADVANCE OF A RECORDING.

provides any employee who opposes discrimination in the workplace. RCW 49.60.210.

TWO-WAY STREET
Misconduct is a two-way street. Employees need to understand that their conduct may come under scrutiny even if they have been harassed or discriminated against. For instance, an employee who believes there is a gender-based pay disparity may seek to copy payroll records or documents to prove it. However, even if her suspicions are proven true, her actions could significantly impair any legal action she might prosecute. This was the general fact pattern in O’Day v. McDonnell Douglas Helicopter Co., 79 F.3d 756, 758 (9th Cir. 1996), in which the plaintiff was overlooked for a promotion and subsequently searched his supervisor’s office, where he came across promotion recommendations and a “totem list.” The plaintiff copied the records and distributed them to other employees, even though the papers were marked sensitive and kept in a closed drawer.

Under these circumstances, the O’Day court stated, an employer “can avoid back pay” if it can prove “it would have fired the employee for that misconduct.” In this way, a plaintiff’s ability to recoup economic damages can be significantly impaired, perhaps even barred. This after-acquired evidence defense typically limits any award of back pay from the date of discharge until the date the evidence of misconduct was discovered. The defense can also preclude other remedies, such as reinstatement and/or front pay. Depending on the timeline, there could be little or no economic damages available to the plaintiff even if the trier of fact is convinced the plaintiff was subjected to discrimination.

CAN’T BREAK THE LAW TO PROVE A LAW BROKEN
Take another example: An employee who believes he is being harassed may attempt to surreptitiously record meetings with the offender or others. However, Washington is a two-party consent state.

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state, meaning all parties must provide consent in advance of a recording. That means failure to request or secure consent could constitute a criminal act. If an employer learns of this conduct later on, it would be wise to invoke the after-acquired evidence defense. This is true even if the employee is well intentioned. As the Ninth Circuit explained in O’Day, “we are loathe to provide employees an incentive to rifle through confidential files looking for evidence that might come in handy in later litigation.”

Bottom line, there is no easy or simple answer for someone facing harassment, and there are many intricacies that can complicate the situation. Many courts have noted that cases are context-driven and decisions will be based on the totality of the circumstances. Perhaps the biggest takeaway is the importance of communication. The only way for employees to trigger legal protections against discrimination and retaliation is to give employers a chance to do the right thing by investigating harassment and taking prompt remedial action where it is found. If an employer fails to fulfill these obligations, it is again detailed reporting that will best serve and protect an aggrieved employee should legal action become necessary. NWL

Notes
2. www.theguardian.com/technology/2017/jul/05/tesla-sexual-harassment-discrimination-engineer-fired

Mark Davis is a partner at Dethlefs Sparwasser Reich Dickerson, PLLC. His practice focuses on employment disputes, securities fraud, personal injury, insurance coverage, and real estate matters. He can be reached at mark@detsparlaw.com.
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WSBA Presidential Search
Application deadline: April 10, 2018, 5 p.m.

The WSBA Board of Governors is seeking applicants for the position of WSBA president for 2019–20, who will serve as president-elect in 2018–19. The WSBA member selected will have an opportunity to provide a significant contribution to the legal profession.

Eligibility: The Board of Governors at its March 2018 meeting changed the geographic bylaw provision requiring the 2018–19 President-Elect to conduct business primarily in eastern Washington. As such, any active WSBA member is now eligible to apply. (Please note: The amended bylaws now require the President-Elect to come from eastern Washington any time three consecutive years pass with President-Elects from western Washington; previously the eastern-Washington requirement was for every fourth year, regardless of whether eastern Washington had been represented in the President-Elect position in previous years.)

To apply: Applications for 2019–20 WSBA president will be accepted until 5 p.m. on April 10, 2018, and should be limited to a current résumé, a concise application letter stating interest and qualifications, and no fewer than five or more than 10 references. The Board of Governors will consider endorsement letters received by May 1, 2018. Applications and endorsement letters should be emailed to barleaders@wsba.org.

Direct contact with the Board of Governors is encouraged. All candidates will have an interview with the full Board of Governors in open session scheduled for the May 17–18, 2018 Board of Governors meeting in Seattle. The session will be webcast. 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 May 2018, following selection. A one-year term as president-elect will begin at the APEX Awards Dinner on Sept. 27, 2018. The president-elect is expected to attend two-day board meetings held approximately every six to eight weeks, as well as numerous subcommittee, section, regional, national, and local meetings. In September 2019, at the WSBA APEX Awards Dinner, the president-elect will assume the office of 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, e-mail, and telephone in connection with these responsibilities.

The duties and responsibilities of the president are set forth in the WSBA Bylaws. The Bylaws can be found at www.wsba.org/wsba-bylaws. For further information, email barleaders@wsba.org or contact Margaret Shane at 206-727-8244.

Call for Applications for WSBA Board of Governors At-Large Positions
Application deadline: April 20, 2018, 5 p.m.

PST. The New and Young Lawyer at-large position on the WSBA Board of Governors is up for election in 2018. Candidates for this seat must qualify as a “young lawyer” as defined by WSBA’s Bylaws as of Oct. 1, 2018. Candidates will be evaluated by the Washington Young Lawyer Committee (WYLC) which will nominate at least two candidates to be interviewed for election by the Board of Governors at its May 17–18 meeting. That meeting will be webcast. The three-year term begins Oct. 1, 2018.

To apply: Complete the nomination form posted at www.wsba.org/elections, sign it, scan it, and email it along with the required attachments to barleaders@wsba.org by 5 p.m. PST on April 20, 2018. A WSBA member may nominate another member by completing the appropriate nomination form. Any member who has previously served on the Board of Governors for less than 18 months is eligible to run for a second term.

For more information, see www.wsba.org/elections, or contact Pam Inglesby at pami@wsba.org, 206-727-8226.

Additional at-large positions will also be up for election in 2018. The Washington Supreme Court in January passed an order to codify the Board of Governors’ decision to add two community at-large seats and one Limited License Legal Technician/Limited Practice Officer at-large seat to the board. Governors are currently considering how to bring on these new positions. For updates, see www.wsba.org/elections.

Volunteer Custodians Needed

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

**WSBA Board of Governors Meetings**
May 17-18, 2018, in Seattle.

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

**MentorLink Mixer: Women in Leadership**
March 29, 2018, Spokane

WSBA MentorLink is coming to Spokane for the first time – join us for a casual lunch at the Historic Davenport, 10 South Post Street, Spokane, and connect with women leaders in the legal profession. In partnership with the Spokane Chapter of Washington Women Lawyers and the Young Lawyers Division of the Spokane County Bar Association, learn how to navigate your career and how you can become a leader in the legal profession. RSVP at https://goo.gl/forms/pHzL1JzTloUW4mX2.

**WSBA Budget**
At its September meeting, the Board of Governors approved the WSBA FY18 budget. To learn more about the budget, and the programs and services that it supports, visit www.wsba.org/About-WSBA/Financial-Info.

**Legal Directory Launched**
The online lawyer directory has been renamed the Legal Directory and now includes limited license legal technicians and limited practice officers, as well as lawyers. There are also additional search fields to help you and the public locate licensed legal professionals. Check out the Legal Directory at mywsba.org/legaldirectory.

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

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

**2018 License Renewal and MCLE Information**

**Presuspension Notices mailed**. If you have not completed all mandatory portions of your license renewal, including MCLE requirements and certification, 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 www.wsba.org/for-legal-professionals/license-renewal to learn more.

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

**Ethics**

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

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

**WSBA Member Wellness Program**

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

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

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

**WSBA Practice Management Assistance**
The WSBA offers free resources and education on law practice management issues, including financial management, marketing and client retention, and technology. For more information, visit [www.wsba.org](https://www.wsba.org) for legal professionals/member-support/practice-management.

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

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

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

**Usury Rate**
The maximum allowable usury rate can be found on the Washington State Treasurer’s website at [https://tre.wa.gov/partners/state-agencies/investments/historical-usury-rates/](https://tre.wa.gov/partners/state-agencies/investments/historical-usury-rates/).
Honor those individuals or groups making a positive difference in the legal profession by nominating them for a 2018 APEX Award. You’ll find more information and the nomination form at: www.wsba.org/awards

Angel Petrozz Award for Lawyers in Government Service for a significant contribution to the legal profession, the justice system, and the public

Award of Merit for a recent, singular achievement

Justice Charles Z. Smith Excellence in Diversity Award for a significant contribution to diversity in the legal profession

Legal Innovation Award for programs, processes, or technology that advances or streamlines delivery of legal services

Lifetime Service Award for a lifetime of service to the legal community and the public

Norm Maleng Leadership Award (presented jointly with the Access to Justice Board) for leadership characterized by love of the law and commitment to access to justice

Outstanding Judge Award for outstanding service to the bench and for special contribution to the legal profession at any level of the court

Outstanding Young Lawyer Award for significant contributions to the professional community, especially the community of young lawyers, within their initial years of practice

Pro Bono and Public Service Awards (Individual & Group) for outstanding cumulative efforts in providing pro bono services or for giving back in meaningful ways to others, to the community, or to the profession

Professionalism Award for professionalism in the practice of law, as defined in the WSBA’s Creed of Professionalism

Now Accepting Nominations

2018 APEX AWARDS

SAVE THE DATE!
Award recipients will be celebrated at the annual APEX Awards dinner in Seattle on Thursday, September 27, 2018.
See you there!

DEADLINE FOR NOMINATIONS: MARCH 31, 2018
These notices of imposition of disciplinary sanctions and actions are published pursuant to Rule 3.5(c) of the Washington Supreme Court Rules for Enforcement of Lawyer Conduct. Active links to directory listings, RPC definitions, and documents related to the disciplinary matter can be found by viewing the online version of NWLawyer at http://nwlawyer.wsba.org or by looking up the respondent in the legal directory on the WSBA website (www.wsba.org) and then scrolling down to “Discipline History.” As some WSBA members share the same or similar names, please read all disciplinary notices carefully for names, cities, and bar numbers.

Disbarred

Jason Christopher Hawes (WSBA No. 31256, admitted 2001) of Lake Oswego, OR, was disbarred, effective 1/11/2018, by order of the Washington Supreme Court imposing reciprocal discipline in accordance with an order of the Supreme Court of the State of Oregon. Jason Christopher Hawes represented himself. The online version of NWLawyer contains a link to the following document: The Washington Supreme Court Order.

Resignation in Lieu of Discipline

Roy Elbert Huhs Jr. (WSBA No. 6058, admitted 1975) of Issaquah, resigned in lieu of discipline, effective 1/10/2018. The lawyer agrees that he is aware of the alleged misconduct in disciplinary counsel’s Statement of Alleged Misconduct and rather than defend against the allegations, he wishes to permanently resign from membership in the Association. The Statement of Alleged Misconduct reflects the following violations of the Rules of Professional Conduct: 1.8 (Conflict of Interest: Current Clients: Specific Rules), 1.15A (Safeguarding Property), 8.4 (Misconduct). Debra Slater acted as disciplinary counsel. Roy Elbert Huhs Jr. represented himself. The online version of NWLawyer contains a link to the following document: Resignation Form of Roy Elbert Huhs Jr. (ELC 9.3(b)).

Suspended

Noel James Pittner (WSBA No. 36158, admitted 2005) of Spokane, was suspended for two years, with all but nine months withheld, effective 1/17/2018, by order of the Washington Supreme Court imposing reciprocal discipline in accordance with an order of the Supreme Court of the State of Idaho. Joanne S. Abelson acted as disciplinary counsel. Noel James Pittner represented himself. The online version of NWLawyer contains a link to the following document: The Washington Supreme Court Order.

Jerome Chilwell Scowcroft (WSBA No. 15877, admitted 1986) of Seattle, was suspended for one year, effective 12/27/2017, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.2 (Scope of Representation and Allocation of Authority Between Client and Lawyer), 1.4 (Communication), 1.5 (Fees), 1.6 (Confidentiality of Information), Natalea Skvir acted as disciplinary counsel. Jerome Chilwell Scowcroft represented himself. James E. Horne was the hearing officer. The online version of NWLawyer contains links to the following documents: Hearing Officer’s Decision; Disciplinary Board Order Declining Sua Sponte Review; and Washington Supreme Court Order.

Reprimand

Tracy Scott Collins (WSBA No. 20839, admitted 1991) of Spokane, was reprimanded, effective 12/05/2017, by order of the hearing officer. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.15A (Safeguarding Property), 1.15B (Required Trust Account Records). Debra Slater acted as disciplinary counsel. Tracy Scott Collins represented himself. The online version of NWLawyer contains links to the following documents: Order on Stipulation to Reprimand; Stipulation to Reprimand; and Notice of Reprimand.

Mark Evan Didrickson (WSBA No. 20349, admitted 1991) of Vancouver, was reprimanded, effective 12/07/2017, by order of the Chief Hearing Officer. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.5 (Fees), 1.8 (Conflict of Interest: Current Clients: Specific Rules). Craig Bray acted as disciplinary counsel. Mark Evan Didrickson represented himself. The online version of NWLawyer contains links to the following documents: Order on Stipulation to Reprimand; Stipulation to Reprimand; and Notice of Reprimand.

Richard Bryan Geissler (WSBA No. 12027, admitted 1981) of Spokane Valley, was reprimanded, effective 10/30/2017, by order of the Chief Hearing Officer. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.8 (Conflict of Interest: Current Clients: Specific Rules), 1.15A (Safeguarding Property). Marsha Matsumoto acted as disciplinary counsel. J. Donald Curran represented Respondent. The online version of NWLawyer contains links to the following documents: Order on Stipulation to Reprimand; Stipulation to Reprimand; and Notice of Reprimand.

Steven W. Kim (WSBA No. 31051, admitted 2001) of Seattle, was reprimanded, effective 11/01/2017, by order of the Chief Hearing Officer. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.6 (Confidentiality of Information), 1.9 (Duties to Former Clients), 3.6 (Trial Publicity). Debra Slater acted as disciplinary counsel. Thomas M. Fitzpatrick represented Respondent. The online version of NWLawyer contains links to the following documents: Order on Stipulation to Reprimand; Stipulation to Reprimand; and Notice of Reprimand.

Leanne Lucas (WSBA No. 37414, admitted 2006) of Seattle, was reprimanded, effective 11/13/2017, by order of the Chief Hearing Officer. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.5 (Fees), 1.8 (Conflict of Interest: Current Clients: Specific Rules). Thomas M. Fitzpatrick represented Respondent. The online version of NWLawyer contains links to the following documents: Order on Stipulation to Reprimand; Stipulation to Reprimand; and Notice of Reprimand.
sional Conduct: 1.4 (Communication), 1.15A (Safeguarding Property), 1.15B (Required Trust Account Records). Marsha Matsumoto acted as disciplinary counsel. Leanne Lucas represented herself. The online version of NWLawyer contains links to the following documents: Order on Stipulation to Reprimand; Stipulation to Reprimand; and Notice of Reprimand.

Admonition

Clifford F. Cordes (WSBA No. 5582, admitted 1974) of Olympia, was admonished, effective 11/20/2017, by order of the hearing officer. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.15A (Safeguarding Property), 1.16 (Declining or Terminating Representation). Jonathan Burke acted as disciplinary counsel. Clifford F. Cordes represented himself. The online version of NWLawyer contains links to the following documents: Order on Stipulation to Admonition; Stipulation to Admonition; and Admonition.

Thomas Edward Gates (WSBA No. 34010, admitted 2003) of Federal Way, was admonished, effective 12/01/2017, by order of the Chief Hearing Officer. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.1 (Competence), 1.3 (Diligence). Craig Bray acted as disciplinary counsel. Thomas Edward Gates represented himself. The online version of NWLawyer contains links to the following documents: Order on Stipulation to Admonition; Stipulation to Admonition; and Admonition.

Julio Medina Zapata (WSBA No. 28185, admitted 1998) of Chandler, was admonished, effective 8/24/2017, by order of the Chief Hearing Officer. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.8 (Conflict of Interest: Current Clients: Specific Rules). Craig Bray acted as disciplinary counsel. Julio Medina Zapata represented himself. The online version of NWLawyer contains links to the following documents: Order on Stipulation to Admonition; Stipulation to Admonition; and Admonition.

Transfer to Disability Inactive Status

Janice Ann Potter (WSBA No. 8972, admitted 1979) of Bellevue, was by stipulation transferred to disability inactive status, effective 1/19/2018. This is not a disciplinary action.

Interim Suspension

Stacy Kinzer (WSBA No. 31268, admitted 2001) of Seattle, is suspended from the practice of law in the State of Washington pending the outcome of supplemental proceedings, effective 1/10/2018, by order of the Washington Supreme Court. This is not a disciplinary sanction.
**Criminal Appeals**
(See, e.g., reversed and remanded for new trial):

- State v. Sutherby, 165 Wn.2d 870 (2009)
- State v. Stein, 144 Wn.2d 236 (2001)
- State v. Stegall, 124 Wn.2d 719 (1994)

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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.
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ETHICS and LAWYER DISCIPLINARY INVESTIGATION and PROCEEDINGS
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FLOYD, PFLUEGER & RINGER, P.S. is pleased to announce that

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has rejoined as an equity partner at the firm and

ETHAN T. MORRIS

and

BRITTANY A. MADDERRA

have joined the firm as associates.

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THE DONCHEZ LAW FIRM is pleased to announce that

FIORE J. PIGNATARO

has become of counsel to the law firm.
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ADAMS & DUNCAN, INC., P.S. is pleased to announce that

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Announcements

Davies Pearson, P.C.
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is pleased to announce that

Trevor D. Osborne

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

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Bergman Draper Oslund, PLLC

is pleased to welcome

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as partner with the firm.

Chandler joined Bergman Draper Oslund in 2011. He has extensive trial experience and has successfully litigated numerous asbestos products liability cases in both state and federal courts.

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JOB SEEKERS AND JOB POSTERS, positions available ads can be found online at the WSBA Career Center. To view these ads or to place a position available ad, go to http://jobs.wsba.org.

TO PLACE A PRINT CLASSIFIED AD

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Growing Edmonds based estate planning practice with revenue tied to approximately 60% estate planning, 30% probate & trust administration, and 10% business and real estate. Revenues have been growing 25%, or more, each of the last three (3) years. Contact info@privatepracticetransitions.com or call 253-509-9224.

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Downtown Tacoma personal injury practice that is highly profitable and continues to grow. With net income in the principal’s pocket of more than $430,000 each of the last (3) years, you won’t find a better personal injury practice in Tacoma. Contact info@privatepracticetransitions.com or call 253-509-9224.

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

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VOTING CLOSES APRIL 2

DISTRICT 1
Hunter M. Abell
Peter H. Arkison
Michael Cherry

DISTRICT 4
The only candidate is Daniel D. Clark, who has been declared the winner of the election.

DISTRICT 5
Rea Culwell
David K. DeWolf
Peter J. “PJ” Grabicki
C. Olivia Irwin

DISTRICT 7S
Bruce Butcher
Jean Y. Kang
George S. Lundin
Jennifer Ann Mackley
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CLE seminars are subject to change. Please check with providers to verify information. To announce a @wsba.org. Information must be received by the first day of the month for placement in the following issue’s calendar.

**CIVIL RIGHTS**

**Civil Rights Spring CLE**
Mar. 23, Seattle & webcast. CLE credits pending. Presented in partnership with the WSBA Civil Rights Law Section. 800-945-WSBA or 206-443-WSBA. www.wsbacle.org

**LEGAL LUNCHBOX**

**March Legal Lunchbox**
Mar. 27, webcast. 1.5 CLE credits. Presented by the WSBA. 800-945-WSBA or 206-443-WSBA. www.wsbacle.org

**LGBTQ**

**Navigating the Landscape of LGBTQ Issues in the 21st Century**
Mar 22, Seattle & webcast. 4 CLE credits pending (3 Law & Legal Procedure + 1 Other). Presented in partnership with the WSBA LGBT Section. 800-945-WSBA or 206-443-WSBA. www.wsbacle.org

**PUBLIC RECORDS**

**Public Records Act Essentials Plus**

**Public Records Act Essentials Plus**

**Public Records Act Essentials Plus**

**Public Records Act Essentials Plus**
Apr. 4, Lacey. 5 CLE credits. Presented by Municipal Research and Services Center (MRSC). http://mrsc.org/Home/Training.aspx

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My name is ADAM GLANT and I am President, General Counsel, and Co-Creative Director of Glant Textiles. Prior to my transition to Glant Textiles, I worked as a corporate attorney at Perkins Coie in Seattle, where my work focused on mergers and acquisitions, corporate governance, and international business transactions.

I became a lawyer because of a high school mock trial. I was fascinated with the idea of shaping a dialogue in your favor or based on your perspective. This fascination with the law was solidified when I took a class during undergrad at Penn in the legal studies department focusing on practices around the world—studying whether they were legal in certain cultures/countries, and whether they were ethical. And if they were ethical, were they legal?

The best advice I have for new lawyers is to feel emboldened by your education and your ability to think critically. No matter what career you ultimately have, these tools you possess as a lawyer are invaluable.

The most rewarding part of my job is the design process, which is probably a strange response for most lawyers, but maybe not. The process of creating something that stems from a kernel in your mind and becomes something beautiful is a profound experience, and I relish the creative discussion and dialogue that surrounds that process.

I wish that more lawyers would talk about what they do with more passion. I find many lawyers apologize for being a lawyer, and I think there is NEVER a need to do so. Lawyers, as a general rule, no matter what their job, tend to have a positive impact in almost all areas of life.

The most humbling experience I have had as a lawyer was helping a pro bono client achieve asylum status. To have helped someone find stability and safety in their life is a life-altering experience and you learn to appreciate so many things you take for granted, both personally and professionally.

During my free time, I love to travel, cook (it relaxes me), eat from any number of different cuisines, and spend time (and laugh) with family and friends.

I look up to my parents. They taught me by example to be a good, conscientious, compassionate, and capable person.

I absolutely can’t live without my passport. True story. And Aburi style seared salmon nigiri – it’s the closest thing I’ve found to nirvana.

I enjoy reading fiction and cookbooks.

My best recipe I make at home is either veal scaloppini, spaghetti Bolognese, or Japanese tori nabe.

In my life, I work on improving myself constantly. If we can’t recognize we can do better, we’ve failed.

I am happiest when spending time with my friends and family; and especially if over food and wine!

I grew up mostly in Seattle, but also in northern Italy every year ranging from a few weeks to the full year there. With a family business split between Seattle and Italy, I have come to view both as a sort of home, and although I always miss “home” it’s given me a wonderful perspective on life.

This is on my bucket list: hiking in the Atlas Mountains and taking in all the sights, sounds, and colors.

This makes me roll my eyes: when people say “well, you know me…”

This makes me smile: Seeing someone help a stranger.

My greatest fear is a world of intolerance.

If I could pick a superpower, it would be either flight or teleportation.

My favorite visual artist is Mark Rothko, Paul Horiuchi, or Dan Flavin.

My first car was a collection of Micromachines. They were (and are!) amazing!

You should give this a try: baked Lays potato chips and cottage cheese. You’re welcome.

My hero is Ruth Bader Ginsberg.

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