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President’s Corner

“With All Due Respect:” Recognizing the trap of unresolved offense
By Bill Pickett

Civic Duty
When lawyers decide to make the electorate their boss

Fire and the Law
Legal perspectives on wildfires and forest management

A New Angle on Wildfire
Challenging longheld views and coexisting with wildfire in a fire-prone West
By Ralph Bloemers

Washington’s Forest Management Vision
Growing healthier forests
By Kirstin Gruver

Timber in Washington
Seeing the forest through the law
By Rosemary Boelens

Mechanical Thinning
Don’t try this at home!
By Rachel Roberts

Mindfulness Meditation
A tool for a profession in need
By Anna L. Endter

Bar Notes
Onwards and Upwards
By Paula C. Littlewood

ON THE COVER:
Lawyers in Public Service.
Top, L-R: Seattle Mayor Jenny A. Durkan; State Sen. Mike Padden, Legislative Dist. 4
Bottom, L-R: U.S. Rep. Adam Smith, Congressional Dist. 9; State Sen. Sharon Brown, Legislative Dist. 8
DEPARTMENTS

5  Inbox
9  There’s More on the Blog: NW Sidebar
11 BarBuzz
12 Ethics & the Law
   Looking Forward: Proposed Amendments to Lawyer Marketing Rules Under Review
   By Mark J. Fucile
40 Mandatory Malpractice Insurance Task Force Final Report
41 Behind the Scenes: Backup Plan—A glimpse at the WSBA Custodianship Program
50 Start-up Tech Your Law Firm Really Needs: Hardware
   By Destinee Evers
72 Beyond the Bar Number
   Marc Lampson

ESSENTIALS

55 Need to Know
   News and Information of Interest to WSBA Members
59 CLE Calendar
60 Discipline and Other Regulatory Notices
62 Announcements
64 Professionals
68 Classifieds

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This is your magazine, and we want to print your contributions. If you’d like to share your thoughts for features in upcoming issues of NWLawyer, please send us any or all of the following, at nwlawyer@wsba.org:

THE GRASS IS ALWAYS GREENER
NWLawyer will be sharing the unique experiences of lawyers all across Washington! To share what practicing law is like in your county, answer these questions:

• What do you like best about the part of the state in which you practice or work?
• What do you like least?
• Did you plan to practice or work there?
• What has surprised you about the place you practice or work?
• If you could trade places with a lawyer for a day (geographically or by type of law practiced), what would your trade be?

Include your name and your type of practice along with a photo of you and a photo that illustrates the geographic area where you practice (please ensure you have rights to publish the photo). Send in your submission by May 1.

RESTAURANT REVIEWS!
Have you discovered a new take on an old dish, the best comfort food in Washington, a go-to spot for business lunches, or a hidden gem you found while taking a deposition in a far-flung corner of the state? Send in your review of a Washington restaurant, with your name, in 100 words or less, by May 1. Bon appétit!

BOOK REVIEWS!
What’s on your bookshelf that you think everyone needs to read? Send in a 50- to 150-word description of a book you think your colleagues should read (any genre—law-related content not required), by June 1 to be included in the NWLawyer Summer Reading List.

COCKTAIL PARTY CONSULT?
What’s the wackiest request for legal advice you’ve gotten while clearly “off the clock” at a social event, visiting family or friends, or in any other situation when you’ve been cornered to give your expert opinion? Share the ask, the event, and how you handled it, in 250 words or less, by June 1.
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NWLawyer relies on submissions from WSBA members and nonmembers that are of interest to readers. Questions about submissions or want to discuss articles? Email nwlawyer@wsba.org. Articles should not have been submitted to any other publications and become the property of the WSBA. Articles typically run 1,000-2,500 words. Citations should be incorporated into the body of the article and be minimal. Please include a brief author’s biography, with contact info, at the end of the article. High-resolution graphics and photographs are requested. Authors should provide a high-resolution digital photo of themselves with their submission. Send articles to nwlawyer@wsba.org. The editor reserves the right to edit articles as deemed appropriate. The editor may work with the writer, but no additional proofs of articles will be provided. The editor reserves the right to determine when and if to publish an article. For questions or a how-to guide on writing an article for NWLawyer, email nwlawyer@wsba.org. NWLawyer is published nine times a year. The current circulation is approximately 35,000.

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LET’S HEAR FROM YOU!

We welcome letters to the editor on issues presented in the magazine.
Email letters to nwlawyer@wsba.org
A WORTHY ORGANIZATION
In his article, “A Path to Tribal Justice” [December 2018 NWLawyer], Mr. [Dan A.] Kamkoff gives us an appreciation of the intricacies involved in the management of tribal justice programs. If your case has a particular tribal nexus—such as with the Indian Child Welfare Act—especially if you or your client is not familiar with this area of law, you will be well served to seek the capable resources of his organization: the Northwest Intertribal Court System (NICS).

Thank you, Mr. Kamkoff, for this glimpse into the rich history of tribal justice and the creative solution that sprang forth to meet this challenge of tribal peoples in Washington and the Pacific Northwest.

Mark Von Weber, Kennewick (Paralegal)

A STEP IN THE WRONG DIRECTION
I missed the discussion about GR 37, which makes it difficult to use peremptory challenges in jury selection. I always thought the free use of peremptories was the key to a fair trial. I am responding to Salvador Mungia’s article praising this rule [“GR 37 and Bias in Jury Selection: One Step in the Right Direction,” July 2018 NWLawyer].

GR 37 is supposed to eliminate discrimination in jury selection. The court is to consider whether the challenging lawyer addressed more or different questions to the challenged juror. Association with convicted or arrested persons makes a peremptory juror. Association with convicted or different questions to the challenged challenging lawyer addressed more or discrimination in jury selection.

The court is to consider whether the purpose of any trial is to make a fair decision on the facts. It’s not to accommodate anyone’s opinions about racial or “ethnic” prejudice. Prejudice and bias are everywhere and they grow instead of going away if people are punished for talking about them. This rule will cause more hatred in the courtroom because, ironically, lawyers will be helpless to determine possible prejudice on the part of jurors. The rule is complicated and it must be difficult to navigate, which means lawyers will stumble trying to ferret out prejudice without being called out in the courtroom, and [they will] shy away from criminal defense and trial in general.

Lawyers will not be able to argue a fair trial if they cannot challenge jurors. This will cause people to distrust the courts and cause deterioration of our society. The rule should be revoked.

Roger Ley, Svensen, OR

SHE’S EARNED IT
I write to express my agreement with Judge [George] Fearing about the admission of Tarra Simmons to the practice of law in Washington [Letter to the Editor, December 2018 NWLawyer].

By passing the bar exam and the WSBA’s character and fitness checks, and undertaking the oath of attorney, Ms. Simmons is presumptively qualified to give legal advice and begin representing clients. Her past history should not be an insurmountable roadblock, any more than race, ethnicity, gender, sexual preference, health status, or myriad other barriers erected in the past once were to admission to our calling. My understanding of criminal justice is that sentencing should be the beginning of the road to rehabilitation, not the tragic first step to recidivism. If Ms. Simmons has completed the road of rehabilitation, we should welcome her to our association and wish her every success in her professional endeavors.

William R. Kiendl, Port Townsend

WILL SOMEONE PLEASE GIVE THAT EMPEROR SOME CLOTHES?
Is it really the members’ responsibility to provide funding for a “Member Wellness Program”? Namely, a “robust resource offering our members a full range of counseling, legal, personal finances, family care-giving, and convenience services.”

Read the middle column of page 8 of the December NWLawyer (“WSBA Restructure?”) and look for the words “pet sitter” and “travel advice.”

Janus, save us!

But Janus may not be the savior members envision. Notice in the same middle column how this Wellness Program is described as “serving a compelling state interest.” I predict that this is how members will continue to be financial slaves to a bloated and ever-expanding Bar Association in spite of Janus.

Inez Petersen, Renton
“With All Due Respect”
Recognizing the Trap of Unresolved Offense

Let your offense go
(unless you’re Russell Wilson)

I began the February Board of Governors meeting with a question for everyone sitting around the table: What have you done recently to serve others?

Please take a minute or two, just as we did in that meeting, to reflect.

In your professional life and in your personal life, how do you show up in your community and world each day?

My own life changed—grew in joy, curiosity, and kindness—in 2014 when I went on my first service journey to Battambang, Cambodia. The purpose of this trip was to help build a school where children could safely learn and play while gaining skills and hope for a brighter future. By the time this magazine is in print, I will be back in Cambodia again; my relationships there are now solidifying into friendships, and I am excited to expand a global connection as I plan to meet with judicial and legal professionals to learn more about the Cambodian practice of law. You’ll hear more about this journey in the next NWLawyer.

CALLED TO SERVE

What I want to talk about in this column is an impediment to our highest calling. As legal professionals—and human beings—we are unapologetically, unabashedly, and without doubt, called to the service of others.

THE COST OF A REALLY BAD “OFFENSE”

As legal professionals, we all understand that the rule of law and open-access to justice are the foundations of society; of equal importance, we are sworn to uphold those foundational values. That being said, if you are having any difficulty recalling recent service or, worse, your basic motivation to serve others, I want to shine a light on an insidious culprit that has been showing up more and more frequently in the polarizing times in which we are living.

It is the feeling or belief that leads to offense. In light of the great divisiveness that has descended upon many, it is important to speak on this because every second you spend gnashing your teeth or focusing your energy on how to score retaliatory points, you’re wasting precious time. Offense—anger, frustration, apathy, or any other emotion caused by being offended—gets in the way of our service to others and obstructs our true calling.

Look around today and you will see that far too many are living daily in great offense. Granted, with an always-hungry news cycle, omnipresent social media, and normalization of discourteous and sometimes violent rhetoric, we are living in a culture plagued by numerous offenses. As legal professionals, the risk of becoming offended or offending others happens on a daily—if not hourly—basis. Contentious legal proceedings in our adversarial system can drag on for years, with resolution often elusive, if not impossible. Not surprisingly, it can all start to feel very personal.

HEY YOU—THAT’S RIGHT, YOU. EVER FEEL THE STING OF OFFENSE?

Of interest is the fact that it always seems easier to recognize a lingering offense in others than in ourselves. As a trial lawyer, I have considered myself to be pretty thick-skinned. Early in my legal career, however, I could become offended at the drop of a hat. After only a few short years in a litigation
President’s Corner

“We should be too big to take offense and too noble to give it.”
—Abraham Lincoln

When I find myself responding to a person or situation in a way that is rooted in wounded thoughts, rather than rationality, that’s my first clue. When I find myself stuck replaying an interaction and forming a response to satisfy my own ego, that’s another clue. When I find myself focusing on my own pain, rather than on serving others, I know that offense is taking root.

DON’T SPREAD THE PAIN

All too often, once we experience an offense we go on to repeat and spread it to others. We go on and on to anyone who will listen until our emotions are so stirred up that they are boiling over. We become obsessed with being “right” and “proving it.” A person wronged (offended) is more unyielding than a fortified city. If left unchecked, our minds close. Then our hearts grow cold. Left unchecked, we are ultimately unable to be of any service to anyone, which is the quintessential sign that an offense is leaving us unable to function properly in our personal and professional callings.

As legal professionals, we understand how powerful silence can be. With this in mind, I urge you to give yourself a break—a bit of silence—whenever you find yourself wrestling with a feeling of offense. Recognize it and work through it internally before doing anything externally. Ask yourself why offense has been taken and, perhaps, whether there is any truth in what was said or done to trigger the offense. Importantly, acknowledge where you could be interpreting intent incorrectly. Beyond all else, make a decision to extend grace to an offender, if possible, or at least plan to come to peace and move forward positively.

Lastly, I have lost count of the number of times people have taken offense to questions or actions. I suspect this is a common occurrence for lawyers. When this happens, it has been my experience that the road to recovery from an offense almost always involves a constant effort to instill trust and relationship. This best takes place in face-to-face communication that is
“Whenever anyone has offended me, I try to raise my soul so high that the offense cannot reach it.”
— René Descartes

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“Whenever anyone has offended me, I try to raise my soul so high that the offense cannot reach it.”

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

NOTES:
1. Please note that my family has always funded my/our service in Cambodia and this continues to be the case. I mention this only to address the request of a WSBA member who recently demanded that I confirm whether “WSBA was paying for my trip to Cambodia or not.” Rest assured in the knowledge that WSBA does not pay for my service in Cambodia. Any guesses on whether this question caused an “offense”?
Top 10 Most Popular Books in the WSBA Lending Library

Bookworm, bibliophile, or—dare we say—brainiac? Whatever your preferred euphemism, it probably describes just about any legal professional, for whom a voracious appetite for the written word [...] nwsidebar.wsba.org

How to Reduce Stress in the Legal Profession

Practicing law can be stressful. Lawyers are under constant pressure to meet deadlines and client demands, and law-practice environments can be highly competitive [...] nwsidebar.wsba.org

New Marijuana-Related Amendments to RPCs

After voters approved Initiative 502 in November 2012 permitting and regulating “recreational” marijuana, questions immediately arose regarding the extent to which lawyers could [...] nwsidebar.wsba.org

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A Future of Possibility

We may have just ended the year’s shortest month, but February is always one of the busiest here at WSBA. The close of the annual licensing window means we start getting to work reconciling final member data and following up as needed (including with federally employed members affected by the government shutdown; the Washington Supreme Court granted a late-fee waiver for furloughed members not receiving a paycheck, and we are glad to be able to provide some flexibility). We also administer the winter bar exam, recruit and process applications for open board and committee positions, put on the intensive skills-training Trial Advocacy Program (TAP), and close the books on the previous fiscal year by reviewing a thorough outside audit.

In addition to the usual post-licensing season work, February 2019 kicked off some extraordinary firsts. I am so pleased that all active members now have access to Fastcase, which is the second free legal-research tool (alongside Casemaker) WSBA offers as a member benefit. We have heard from many of you that a free legal-research tool is essential to providing pro bono services and successfully serving clients. With two options, we expect you’ll be better able to comprehensively check and crosscheck case law and statutes as well as choose the platform that works best for you. You can access Fastcase and Casemaker via the top tool bar at wsba.org.

We—the collective legal community—will also soon begin the dialogue about how to best shape the Bar for the future. The Washington Supreme Court just completed the roster for its Bar Structure Work Group and will soon set meeting dates (which will be held in the WSBA Conference Center and webcast). We will post all the information at www.wsba.org/bar-structure-work-group. This work group will review and assess WSBA’s structure in light of recent U.S. Supreme Court case law with First Amendment and antitrust implications.

Among all our various viewpoints and actions, we share two fundamental beliefs: first, it is much better to have the Bar-structure conversation sooner rather than later; and second, for every function performed, it’s critical for a bar to ask itself: why are members paying license fees for this?
Several weeks ago, I facilitated a conversation with other executive directors from unified bars across the United States, as well as Canada and the United Kingdom. Unified bars are those that are mandatory for legal professionals and, generally, provide both regulatory and professional-association services. As the Fleck v. Welch case (contesting mandatory bar membership) works its way back through the Eighth Circuit Court of Appeals, the outcome could be significant for unified bars; essentially, we will learn if there is a new standard to determine what functions a mandatory bar can perform (i.e., the balance between the government’s compelling interest in regulating the practice of law versus a member’s First Amendment rights).

The issue of bar structure is front and center for all leaders of unified bars, to say the least. The range of responses runs the gamut. In North Dakota, home of the Fleck lawsuit, it is all-consuming, as you might imagine. At the proactive end, California has already restructured to more narrowly tailor its mandatory-bar functions. Others, like Arizona, have retooled their governance model to create less confusion about the Bar’s mission, authority, and structure (and to reduce potential antitrust problems); there are now more court-appointed governors, fewer elected governors, four public members, and a firm requirement that all governors understand they are assuming a duty of care, loyalty, and obedience to the organization and the public.

By comparison, many unified bar leaders are just beginning to dip their toes into this bar-structure conversation. They are having intense discussions with their boards and courts, compiling historical overviews of their bars, and putting together talking points. Among all our various viewpoints and actions, we share two fundamental beliefs: First, it is much better to have the bar-structure conversation sooner rather than later; and second, for every function performed, it’s critical for a bar to ask itself: Why are members paying license fees for this?

For these reasons, I am proud to say Washington state’s legal community has been a leader in looking forward, well aware of significant case law and trends in legal regulation. I am eager for WSBA to support the Court’s Bar Structure Work Group, both in logistics and with experience. And I am excited to hear from many stakeholders about how the Bar can best carry out its mission and serve members. Like many of my colleagues at various bars, I first approached the structure question in a posture that WSBA has operated for more than 125 years as an integrated bar, and it has consistently and effectively carried out its Court-delegated functions. Why change? But as I hear from more and more legal professionals and members of the public, I realize there are numerous valid points of view. I also recognize—and have experienced—the inherent tension of the integrated bar structure that causes members to interact with WSBA as both a regulator and professional association.

Ultimately, I hope we can all participate in the Supreme Court’s Bar Structure Work Group with open minds and the same objective: a thriving legal profession accessible to all Washingtonians. We may kick the tires on the current structure and recommit to that structure, or we may put all of our needs and wants on the table and come up with some other structure. Either way, I’m sure we will all be better off for an honest and thorough analysis through the Work Group chaired by Chief Justice Mary Fairhurst.

There is a great deal of uncertainty as bar leaders and members strive to read the tea leaves of recent U.S. Supreme Court decisions. Times of disruption can bring stress, but such disruption can also bring great opportunity. As a community, I look forward to exploring these opportunities together!
LOOKING FORWARD:

Proposed Amendments to Lawyer Marketing Rules Under Review

“There is no suggestion that the respondent advertised his services or solicited the appellant or others to become his client. This is not surprising, since such activities are forbidden to attorneys.”

*Lightfoot v. MacDonald, 86 Wn.2d 331, 336 (1976)*

The Washington Supreme Court’s observation in *Lightfoot v. MacDonald* was a succinct summary of the lawyer marketing rules as they existed in the not-too-distant past. One year after *Lightfoot*, however, the United States Supreme Court opened the door to lawyer advertising—as long as it was truthful—in *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977). A year after that, the United States Supreme Court upheld continuing limits on in-person solicitation that amounted to harassment in *Ohralik v. Ohio State Bar Association*, 436 U.S. 447 (1978).

*Bates*, *Ohralik*, and subsequent commercial free speech decisions from the United States Supreme Court and the lower federal courts significantly influenced the evolution of the ABA Model Rules of Professional Conduct on which most jurisdictions, including Washington, pattern their own rules of professional conduct. At the same time, technology has, in many respects, outpaced the existing structure of those rules, while competition from both traditional and nontraditional legal-service models has sharpened the need for almost all firms to market aggressively.

Given those changing dynamics, the Association of Professional Responsibility Lawyers (APRL)—an influential national organization of legal ethics lawyers—issued reports in 2015 and 2016 that suggested a significant simplification of the lawyer marketing rules around the twin concepts reflected in *Bates* and *Ohralik*: (1) lawyer advertising and similar communications should be permitted as long as they are truthful and (2) in-person solicitation should be permitted as long as it does not involve harassment. Here is an abbreviated history of the actions in Washington that have resulted from those APRL reports:

- Three WSBA members were on the APRL committee that developed those proposals. In 2016, the WSBA Board of Governors appointed a work group to review the APRL proposals.

- Following a positive review by the work group, the board tasked the Committee on Professional Ethics (CPE) with adapting the APRL proposals in draft to reflect Washington law and practice.

- Last year, the CPE forwarded a report and specific proposed amendments to the board. The board, in turn, voted to send the proposed amendments to the Supreme Court. In November 2018, the Supreme Court ordered the proposed amendments published for comment on its website, [https://www.courts.wa.gov/court_rules/?fa=court_rules.proposedRuleDisplay&ruleId=2698](https://www.courts.wa.gov/court_rules/?fa=court_rules.proposedRuleDisplay&ruleId=2698). The comment period closes April 30.

- The Supreme Court also published a parallel set of proposed marketing rule amendments applicable to Limited License Legal Technicians (LLLTs), [https://www.courts.wa.gov/court_rules/?fa=court_rules.proposedRuleDisplay&ruleId=2711](https://www.courts.wa.gov/court_rules/?fa=court_rules.proposedRuleDisplay&ruleId=2711). The comment period for those proposals also closes on April 30.

- After the public comment period closes, the Supreme Court will decide whether to adopt the amendments.

Although many RPC amendments originate with the ABA through its Model Rules, that is not always the case. In this instance, the ABA approved its own variant of the APRL proposals in August 2018, but other states have already moved forward with amendments to their marketing rules based on the APRL recommendations.

In this column, we will look at both the “additions” and the “subtractions” to the existing rules that have been proposed to the Supreme Court.
THE ADDITIONS

The amendments reduce the heart of the lawyer marketing rules down to two: RPC 7.1 and 7.3—with RPC 7.6, which deals with political contributions to gain government legal work, remaining the same.

Reflecting the holding in Bates, no change is recommended to the text of RPC 7.1, which governs all communications regarding a lawyer’s services and only prohibits false or misleading communications:

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer’s services.

A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

Instead, the proposed amendments move rules and comments involving fields of specialization and firm names from RPC 7.4 and 7.5 to the RPC 7.1 comments. Comments from RPC 7.2 on advertising generally are also moved into the comments to RPC 7.1.

And reflecting the holding in Ohralik, the changes to the text of RPC 7.3, which governs direct solicitation, are reformulated to permit such contacts unless they amount to harassment (or violate RPC 7.1’s general injunction against false or misleading communications):

(a) A lawyer may solicit professional employment unless:

(1) the solicitation is false or misleading;

(2) the lawyer knows or reasonably should know that the physical, emotional, or mental state of the subject of the solicitation is such that the person could not exercise reasonable judgment in employing a lawyer;

(3) the subject of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or

(4) the solicitation involves coercion, duress, or harassment.

By reducing the remaining restrictions on solicitation to their Constitutional core under Ohralik, the Washington formulation in many respects is both broader and simpler than its ABA Model Rule counterpart.

Beyond these core concepts, the amendments also address two other primary areas with proposed changes to the text of the rules.

First, the referral fee rule is moved with comparatively minor changes from current RPC 7.2(b) to proposed RPC 7.3(b) and would read:

(b) A lawyer shall not compensate, or give or promise anything of value to, a person who is not an employee or lawyer in the same law firm for the purpose of recommending or securing the services of the lawyer or law firm, except that a lawyer may:

(1) pay the reasonable cost of advertisements or communications permitted by Rule 7.1, including online group advertising;

(2) pay the usual charges of a legal service plan or a not-for-profit lawyer referral service;

(3) pay for a law practice in accordance with Rule 1.17; and

(3) the subject of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or

(ii) the client is informed of the existence and nature of the agreement.

(5) give nominal gifts that are neither intended nor reasonably expected to be a form of compensation for recommending a lawyer’s services.

The CPE’s report to the board concluded that referral fees fit more logically with the solicitation rule. The CPE’s report also notes that the proposals retain the existing approach of only allowing payment of referral fees to not-for-profit services—while acknowledging that continuing changes in the legal market may warrant a fresh look at this limitation in the future.

Second, the proposals add a new subparagraph to RPC 5.5 that addresses unauthorized and multijurisdictional practice to make plain that firms may continue to operate offices across state borders. This aspect is a technical adjustment made necessary because RPC 7.5(b), which regulates firm names and implicitly recognizes cross-border offices, is being repealed as a part of the overall simplification of the rules governing marketing communications by folding general marketing comments into RPC 7.1.

THE SUBTRACTIONS

RPC 7.2, 7.4, and 7.5 are proposed for repeal. These deal with, respectively, advertising, specialization, and firm names. Comments from these rules are moved selectively to RPC 7.1 because they address various aspects of lawyer marketing communications that are intended to be the focus of RPC 7.1. As noted earlier, the referral fee rule, which is currently found in RPC 7.2(b), is moved to RPC 7.3.

Of note, as many lawyers increasingly limit their practices to particular niches, current RPC 7.4(d) generally prohibits Washington lawyers from stating that they are specialists. That black letter rule, however, would be repealed. Instead, and consistent with the practice in
many other states, proposed Comment 8 to RPC 7.1 would allow lawyers to describe themselves as specialists as long as that is true: “A lawyer is generally permitted to state that the lawyer is a ‘specialist,’ practices a ‘specialty,’” or ‘specializes in’ particular fields, but such communications are subject to the ‘false and misleading’ standard applied in Rule 7.1 to communications concerning a lawyer’s services.”

**SUMMING UP**

When the ABA adopted the first set of national professional rules for lawyers, the Canons of Professional Ethics, at its annual meeting in Seattle in 1908, the only form of lawyer advertising permitted under Canon 27 was business cards as long as they were “simple.” Clearly, times have changed. By reducing most lawyer marketing regulations to the Constitutional core expressed by *Bates* and *Ohralik* under RPC 7.1 and 7.3, the current proposed amendments attempt to provide a stable framework for law firm marketing regulation that will adapt to the inevitable changes in both technology and the marketplace going forward.

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The government of democracy is favorable to the political power of lawyers,” Alexis de Tocqueville opined more than a century ago, and our fledgling country was certainly molded to a large extent by the legal profession: 25 of the 56 signers of the Declaration of Independence were lawyers, as were 32 of the 55 framers of the Constitution. Today, lawyers hold between 3 and 30 percent of seats in state legislatures, although generally that number is decreasing. The Washington Legislature is somewhere in the middle, with about 12 percent of seats occupied by lawyers. Nationally, “law” is the third most common profession of current Congress members. Locally, untold numbers of legal minds are pointed toward public policy as mayors, school board members, county council members, and auditors.

All that’s to say: There seems to be a symbiotic relationship between legal training and public office. Lawyers spend their days analyzing and breaking down issues, crafting solutions through law and policy, presenting cogent and persuasive arguments, listening to and serving people, and forming a deep understanding of the democratic system and its three branches. So perhaps the pertinent question is not why lawyers make successful elected officials, but why lawyers choose to leave the realm of legal practice for a sometimes more fickle boss: the electorate.

To get an answer, NWLawyer reached out to a sample of WSBA members serving in elected positions, representing different levels (federal, state, city), party affiliation, geography, gender, and political experience. We’d like to thank those who responded, and—most importantly—to thank every one of you who has answered the call to become a public servant. There are many more profiles than can possibly fit on these pages, and the small sample reflected below is just a glimpse of how you all strengthen our democracy and society through your service.

NOTES:
State Sen. Sharon Brown, District 8

How do you feel that your law school training and/or law practice has helped you to be an effective politician?

Law school trains you to research both sides of an issue, which helps me as a legislator to separate good policy from bombastic policy statements. It also helps to not have to rely totally on staff for understanding bill language. Sometimes I am able to catch a small detail in a bill or amendment that my colleagues without legal training might miss. Of course, law school also prepared me well for the long hours of research and debate that we often take part in here in the Senate.

Do you approach political problems/solutions differently than your non-lawyer peers? Can you give an example?

As a trained lawyer, I often approach solving problems differently than my peers. Serving in a citizen legislature is a great benefit because we have members that represent many different subject matter areas and we can utilize all of that expertise. Just as a nurse may approach health-care issues differently, I often find myself turning back to my training to evaluate complex issues and make them relatable to those without formal legal training.

When did you know you wanted to get into politics? Before law school or later?

Later, when I realized that there was a lawsuit I didn’t agree [with] filed against a city. I thought the suit was a disservice to that city. I complained about it until my kids turned to me and said, “Mommy stop complaining about it and do something to change it, because that’s what you tell us!”

Why choose to subject yourself (and potentially your family) to today’s bruising, uncivil political climate in order to campaign for and serve in public office, rather than practicing law?

When I talked to my family (and they were all in agreement that I should go for it), we had no idea of the brutality that would ensue. I wanted to solve problems and make things better, not waste time with petty unfounded accusations. We have since learned to have a duck’s back; let it roll right off of you and focus on what’s important: helping people and fixing problems. Practicing law would certainly be more lucrative and civil.

The United States has a long history of lawyers succeeding in politics. What do you think it is that attracts lawyers to politics and that helps them to be successful?

As lawyers, we are trained to work with diverse parties in an effort to find resolution. In politics, we seek to do the same: bring people together and find solutions.

What, if anything, do you miss about practicing law?

Most importantly, I miss ... being in an environment that is based on precedent and facts. The money wasn’t bad either! But politics has its own rewards. While it sometimes seems that the loudest person in the room wins, at the end of the day it is all about serving the people and making our communities better.

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**SEN. SHARON BROWN** represents Washington’s 8th Legislative District, located in the Tri-Cities. Brown is a state and national leader on energy issues and is the Senate’s leading advocate for nuclear power. She is active on international trade, economic development, and small business issues. She has also been instrumental in crafting and advancing the Legislature’s efforts to address suicide prevention and the state’s mental health system. Brown served as vice president pro tempore (2014-2016) and is currently deputy leader of the Republican Caucus. She practiced for 22 years as a business attorney before being elected to the Kennewick City Council in 2009, then as mayor pro tempore. An active member of the Tri-Cities community, Brown was appointed to the Washington State Senate by the Benton County Commission and assumed office in February 2013. She was elected to serve a full term in November 2014 and re-elected to a second full term in 2018.
How do you feel that your law school training and/or law practice has helped you to be an effective politician?

It helps a lot. I’ve been lucky to know and work with some great people who span the range of life experiences. Those experiences have allowed me to see up close that there isn’t just one way to advance justice. Some of the most impactful lessons I’ve learned have come from bearing witness to people just trying to live their lives.

My experience in law school definitely helped get me here. I met great people that I still work with today. My first courtroom experience was through a criminal defense clinic. The experiences I’ve had were incredibly important because they highlighted the lasting and deep impacts our system of justice can have on individual lives and broader communities.

Do you approach political problems/solutions differently than your non-lawyer peers? Can you give an example?

Yes, my training and experience showed me that you have to both address the crisis in front of you and find long-term, systemic solutions to the challenges our city faces. There are no “quick fixes.” Additionally, Seattle hasn’t seen a woman as mayor since 1928! There is no question that women are still held to different standards and face barriers in the political arena. But we also have developed different talents, tools, and approaches to bridge the gaps.

When did you know you wanted to get into politics? Before law school or later?

Lawyers accomplish a lot of positive change, but I knew I needed to do more in 2017 when President Donald Trump was elected and greatly divisive. I knew that it was going to be up to progressive cities like Seattle to lead; that I had to step up for my kids, my community, and my country. We are an innovative, generous, and determined community that must continue to show the country what it looks like when you put progressive values into action.

Why choose to subject yourself (and potentially your family) to today’s bruising, uncivil political climate to campaign for and serve in public office, rather than practicing law?

After witnessing how institutional actions can either cause widespread injustice or create broad opportunity, you realize how important it is having the right people in charge of the institutions. Elections matter—all across the globe. I was a successful attorney and loved my work, but when reflecting on where I could have the most impact in my community, I knew it was in Seattle as mayor.

The United States has a long history of lawyers succeeding in politics. What do you think it is that attracts lawyers to politics and that helps them to be successful?

Historically, lawyers have always played a key role in developing policy. It can be a natural segue into the role of legislating. But more than that, law and politics are both public service. Much good can come from having a law degree, including work in politics. The amount of time, research, writing, and critical reasoning skills necessary to do the job of an attorney is transferable in many instances to the dedication needed for a successful career in politics.

What, if anything, do you miss about practicing law?

Sometimes I miss the privacy and clear resolutions the courts can bring. Don’t get me wrong, talking with people and solving challenges for communities across Seattle is one of the best benefits of being mayor. But there are significant adjustments you have to make, especially when you have kids. It’s incredibly important to secure time with loved ones and for yourself because there is never enough time in the day to get everything done.

Mayor Jenny A. Durkan is the 56th mayor of Seattle and the first woman to lead the city in nearly a century. She is focused on the housing affordability crisis, helping those experiencing homelessness, creating economic opportunity for all, and providing free college tuition to Seattle’s high school graduates—while also delivering on basic city services. Durkan served as the U.S. Attorney for the Western District of Washington from 2009 to 2014, becoming the first openly gay U.S. Attorney in our country’s history. She has chaired a statewide task force on consumer privacy, served a three-year term on the WSBA Board of Governors, and served on the Merit Selection Committee for the United States District Court for more than 20 years. Durkan graduated from the University of Notre Dame, taught school and coached girls basketball in a Yupik fishing village in Alaska, and then earned her J.D. at the University of Washington School of Law.
State Sen. Mike Padden, District 4

How do you feel that your law school training and/or law practice has helped you to be an effective politician?

Well, obviously the major function in the Legislature is either repeal or pass legislation. The fact that you’ve had some instruction in law during your law school days and your experiences in practice in different areas of the law is very beneficial. Also, when new laws are written and you’re dealing with other attorneys—either on partisan, non-partisan, code reviser’s office attorneys—you’re able to communicate with those folks a little better.

Do you approach political problems/solutions differently than your non-lawyer peers? Can you give an example?

Not necessarily. You may have come across something in your practice, but a non-lawyer may have come across something in their life as well. In addition to being an attorney, I was a district court judge for almost 12 years. I had legislation last year to expand the monetary jurisdiction of small claims court. My experience as a judge significantly impacted that.

When did you know that you wanted to get into politics? Before law school or later?

I always had an interest. ... I worked in the King County Republican Party early on and the Louisiana Republican Party before law school. There was an opportunity when I moved to Spokane Valley to enter politics. I always had an interest in it, but making the decision to run has a lot of different factors. Fortunately, I didn’t know all the consequences or maybe I wouldn’t have run.

Why choose to subject yourself (and potentially your family) to today’s bruising, uncivil political climate in order to campaign for and serve in public office, rather than practicing law?

Of course, the way you describe things now isn’t the way things were when I decided to run for the Legislature in 1980. The whole reason that you normally get in is that you have some views and principles, and you think that you can make a difference and advocate for those principles and your constituents. I think it’s pretty fascinating that way. Unfortunately, the tone has gotten a lot worse. And there’s a lot more money in these races. ...

The United States has a long history of lawyers succeeding in politics. What do you think it is that attracts lawyers to politics and that helps them to be successful?

When I first got in there were very few lawyers in the Legislature. ... The Public Disclosure Commission rules changed to no longer disclose all clients of a law firm. I believe that there is a natural interest in the law; lawyers deal with it every day, and they see the Legislature as a way to correct some things. I always tell attorneys that I run into: “If you see something that seems out of whack, let me know.”

What, if anything do you miss about practicing law?

I miss serving on the bench and my involvement in the therapeutic courts. We started a DUI court when I was on the bench. It was a different aspect than holding people accountable for misdeeds—we held them accountable, but we didn’t incarcerate them. We had them in a highly structured therapeutic court program. The part that was rewarding was seeing people successfully complete the program and helping them deal with addiction and enabling them to turn their lives around. ... The other part of being a judge is that it is pretty isolating due to restrictions. You can talk about public affairs, but you can’t do much about them. The relationships as a judge versus a legislator are very different. I had a good relationship with my bailiff, but that’s about it. The legislative area was overall more interesting to me ... .
How do you feel that your law school training and/or law practice has helped you to be an effective politician?

Law school and the brief period of time I spent practicing helped in my political work in several ways. First, training in the law gives one the basic outline of the rule book for our society: How are disputes settled; what are the basic tenets of all aspects of how we govern ourselves in this country? Second, it helped me learn how to work with people who disagree with one another. Much of law is about conflict and how best to resolve it. Politics, at its best, is about the same thing: solving problems; working with diverse groups of people with wildly different views and figuring out how best to resolve those differences. Third, it helped my communication and debate skills, both of which are crucial in effectively delivering a message during a campaign or trying to win an argument in shaping public policy.

Do you approach political problems/solutions differently than your non-lawyer peers? Can you give an example?

I do, though less so the more time I have spent as an elected official. Lawyers tend to take a more logical, direct approach to problems and issues. This, I have learned, is not always the best approach. It helps to be able to quickly understand complicated legal issues and also quickly see the best solution. But that often does not give sufficient space for other viewpoints or to be sure that the people you are working with are truly having the chance to express their opinions. A politician has to listen and work with a much larger group of people than your average lawyer.

When did you know you wanted to get into politics? Before law school or later?

I was interested in politics long before law school. I got elected to the state Senate the year I graduated and before I took the bar exam. My father was secretary-treasurer of his union local and started taking me to political meetings when I was 12; this got me interested.

Why choose to subject yourself (and potentially your family) to today’s bruising, uncivil political climate in order to campaign for and serve in public office, rather than practicing law?

Billable hours (not entirely kidding on this point). Being a lawyer is very hard work. And for all the challenges of modern-day politics, being a member of Congress still means I get to help the people of the community I have lived in my entire life, every day. That is very satisfying. And I love the challenge. I literally learn something new every day.

The United States has a long history of lawyers succeeding in politics. What do you think is that attracts lawyers to politics and that helps them to be successful?

Much of the answer here is contained in the answer to your first question. Elected officials do many things, but the foundation is legislating, making law. For obvious reasons, all lawyers have a natural interest and skill in this area.

What, if anything, do you miss about practicing law?

I didn’t really practice that much. I worked for a small firm for a year and then prosecuted for the city of Seattle for a little over two years. I do miss the ability to focus on a single issue or case. Politics is a thousand issues all the time. As a prosecutor, I could put all my energy into a focused issue. I did enjoy the clarity contained in that.
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At the beginning of 2018, the town of Paradise, CA, was home to about 27,000 residents—by the end of the year, the inhabited town was all but gone. More than 150,000 acres—roughly enough to cover Seattle, Spokane, Tacoma, and Vancouver, combined—burned, and that was only one of the many fires that tore across the Western U.S. in 2018.

The scenes in California were all too familiar in Washington, with apocalyptic images of smoke-clogged skies in San Francisco eerily replicated from Seattle to Spokane, as summer wildfires in Washington and British Columbia blotted out the sun and shrouded city skylines. As wildfire seasons lengthen and these scenes become more common, residents are asking: Is this the new normal? More so, what can be done to prevent further harm?

Of course, there are no easy answers to these questions. Sharp debate over the causes and extent of human-caused climate change is one response. Some call for more aggressive forest thinning, through controlled burns or mechanical thinning, as a preventative measure, while others argue for building codes that require fire-resistant materials for homes that are increasingly built in the paths of wildfires.

Last August, amid the smoke-filled summer in the Pacific Northwest, Washington State Commissioner of Public Lands Hilary Franz gave her long view of forest management:

“That’s part of what my 20-year forest health plan is. It’s bringing forest health science into our forests and ensuring that we are managing them for the long-term health and resiliency of that forest to fire. That does not mean clearcutting and logging. That means healthy management of forests to ensure they can withstand the fires we’ve seen, they can withstand the drought and the disease that is facing them, and that they can be resilient in the context of long, hot, dry summers.


At NWLawyer, we wondered what perspectives legal professionals could offer. We reached out to the WSBA Environmental Law Section and heard from lawyers eager to share their thoughts and ideas about the public’s sometimes misguided perception of wildfire, the evolution of forest management practices, and how timber law enforces broader polices concerning Washington forests. We even received a first-person account of one lawyer’s hands-on experience with mechanical forest thinning. The following articles represent a glimpse at the insight legal professionals can bring to this increasingly relevant issue.
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The Pioneer Courthouse
The wildfires burning throughout the West in recent summers have captured the public’s attention and heightened the call for solutions. Heat waves in the Pacific Northwest and hurricanes in the Gulf of Mexico and Atlantic Ocean have increased a feeling of vulnerability to natural disasters nationally.

Recent winters in the Pacific Northwest have delivered record amounts of rainfall and severe winter storms, while summers have been marked by the longest recorded periods without significant rainfall, leading to abnormally dry conditions in our forests. The wildfire season in the West has lengthened from an average of five months to seven months, and the number of large fires of over 1,000 acres has nearly doubled. Humans start more than 80 percent of wildfires nationwide, and an estimated 40 million homes are now in harm’s way, resulting in skyrocketing suppression costs.

So it’s understandable that wildfire is a topic of major public concern in the West. People tend to associate fire with death and destruction and often assume that fire consumes every acre of forest in its path, leaving permanently barren earth behind. Media coverage tends to reinforce this picture, often using words like “catastrophic,” “moonscape,” and “destroyed” to describe the effects of fire on a burned forest, even if no harm has come to homes or communities.

Dominant cultural beliefs reinforce the public’s misunderstanding of fire. These immediate reactions are largely a result of being conditioned by popular cultural icons, like Smokey Bear, to think that all fire is bad, that it destroys forests and wildlife, and that it can be and must be put out. According to Roderick Nash, a prominent scholar of American wilderness values, the movie Bambi has done “more to shape American attitudes toward fire in wilderness ecosystems than all the scientific papers ever published on the subject.” Since the 1880s, federal fire management policy has been framed by the war metaphor: “fighting fire.” Smokey Bear was, in fact, created by the War Advertising Council (now the Ad Council) working at the behest of the U.S. Forest Service, which promoted militaristic slogans on fire prevention posters. Since that time, federal agencies have waged a seemingly endless and escalating war against fire in our wild lands. Compounding the bind we find ourselves in today, the West enjoyed an extended wet period of less favorable conditions for fire from the late 1930s to the late 1980s, thus enhancing suppression of “good” fires and creating the perception that we have a greater ability to put out large fires than we in fact do.

Along with a fear of fire, our dominant desire is that our parks, scenic areas, and forested wilderness be preserved as we know and enjoy them now. While we treasure the Columbia River Gorge and Yellowstone National Park for their wilderness and dynamism, the paradox is that we think disturbance, like fire, harms them. If we look carefully in our favorite green old-growth forests, however, we can find countless signs of past fires—standing dead trees, hollowed-out logs, charcoal in the soils, meadows of wildflowers and great views. And when we visit Mt. St. Helens, we find interpretative signs telling us about the prolific recovery of forests after the cataclysmic blast, even though at first people thought all was lost.

The dramatic example of the recovery of forests around Mt. St. Helens supports a very different way of understanding fire. Experts who have studied burned landscapes tell us that fire is a natural and inevitable force on western landscapes. Fires provide opportunities for renewal and new life. Old growth firs and Ponderosa pines have thick bark designed to withstand fires. Wildlife flees or takes cover, and there are many plants and animals that benefit from fire. Fire ecologists, wildlife biologists, and forest...
The cycle continues. The forests around Cascade Locks burned before, emerged gorgeously, and have burned again. Photos courtesy of Jurgen Hess

communities in ways that it did not. Clearly though, fire is threatening our lives, and we must defend our communities. But what is the best way to do that? While some policymakers continue to propose thinning broadly across the landscape far from homes, experts tell us that doing so releases more carbon than fire (the trunks of trees hold the majority of the carbon, and this carbon is released through logging) and that doing so is not likely to reduce the risk from, or incidence of, large fires, which are largely driven by wind and drought. Clearly though, fire is threatening our communities in ways that it did not before the West was settled. We now have millions of homes in the “fire plain,” and we have yet to plan for or limit future development in these fire-prone areas. We don’t have universal building codes requiring that homes be hardened against fire.

We have millions of acres of forestlands, grasslands, and shrublands that may burn, and scientists are telling us to prepare for increased drought. Recent fires force us to reconsider what policies we need and what resources we must deploy to ensure our communities are up to the challenges ahead. As we experience big fires in treasured landscapes like the Columbia River Gorge and the Methow Valley—places that inspire us and bring tourist dollars to the region—we worry about how the forest will emerge from the burn. We wonder whether there is anything we can do to help it recover. And as we suffer from the health impacts of smoke from fires burning across the West and Canada, it becomes harder to accept the benefits of lighting prescribed burns that help clear out fire fuels in other seasons.

Dominant cultural beliefs, financial interests in resource extraction, past mismanagement, and the development of homes in the fire plain have all converged to make moving from emotion to rational solutions for managing fires very challenging.

**MOVING TO SOLUTIONS**

While the science may be hard to hear, we really have no choice but to heed it and learn to coexist. Firefighting and fire suppression resulted in fewer fires during the 20th century, but as we move into a hotter climate, we must be proactive. According to Commissioner of Public Lands Hilary Franz, we must do more prescribed burning in Eastern Washington forests to catch up on the deficit resulting from decades of suppression. Recent scientific studies from top forest experts in the Pacific Northwest measure the costs and benefits of our land management activities on fire, water supplies, and carbon storage. Researchers recently completed and published studies showing that tree plantations burn hotter than natural forests, suggesting that heavily logged and managed private lands pose greater risks than wild forests. Studies have also been published showing decreased water storage capacity and less carbon in intensively managed plantation forests. A large-scale analysis of fire-severity patterns in the West from 1984 to 2014 found that national parks, wilderness, and other restricted areas have the most restrictions on logging tended to burn at lower severity than national forest lands with fewer restrictions on logging.

Despite what the scientists and thoughtful reporting might tell us, people are impatient for forests to come back: we want to speed up recovery to meet human timelines. American narratives and stories of people managing the forests also drive responses based on short-term thinking. Common responses include: “Don’t let it rot and go to waste,” and “salvage-log the dead trees to provide much-needed jobs, replant, and get our forests back quicker.” However, the Pacific Northwest’s most knowledgeable scientists have stated unequivocally that logging forests after a fire sets back forest recovery and increases fire risk.

**EMERGING GORGEOUSLY AFTER THE FIRE**

Since the Eagle Creek fire burned in the Columbia River Gorge late in the summer of 2017, I have spent countless hours visiting and talking with people in the communities directly affected by the fire. I have observed fire-burned areas from the air and visited them on the ground. I have talked at length with forest scientists and reviewed all manner of policy options. Here is what I have witnessed firsthand and learned.
from the experts:

While firefighters fought valiantly to defend homes in Cascade Locks, Hood River, and Corbett from the fire, it was ultimately the weather that drove the fire (drought and wind) and weather again (heavy rain and no wind) that put the fire out. The media described the fire as consuming nearly 50,000 acres of forest, yet experts have surveyed the forests from the air and the ground and determined that only 17 percent (approximately 8,000 acres) burned at high intensity. Even the forests that burned intensely were not destroyed. Instead, these forests now provide a free-for-all environment for young animals and plants to thrive. Nature is constantly moving forward.

Many of our treasured trails have been seriously impacted and remain closed. I have volunteered on trail crews organized by the Washington Trails Association, Pacific Crest Trail Association, and Trailkeepers of Oregon to rebuild the Pacific Crest Trail, the Angel’s Rest Trail, McCord Creek, and others. Although the trails are in need of significant repair, the forests around them are alive and well. We have enjoyed wildflowers and wildlife as we worked, clearing back young vegetation from the trails. We have enjoyed interesting geology not previously visible and new views. The forest is emerging gorgeously.

All the forests we enjoy today have burned at one time or another. I have visited historical museums in Stevenson, Hood River, and Cascade Locks and dug through the archives to find photos to document the extent of fires in the Gorge. I have located photos showing extensive burns throughout the Gorge and in the Gifford Pinchot and Mt. Hood National Forests, places where today we enjoy old-growth green forests. And I have worked with a National Geographic filmmaker to document the prolific and rapid emergence of new plants after the fire through time-lapse cameras set to take a handful of photos every single day since the fire was extinguished.

This year, I was invited to spend time with elementary school kids and science teachers to help them address the trauma of the recent fires on their community and to help the kids develop a sense of agency about the future. The kids told us their evacuation stories, learned about the actual extent of the fire, and viewed early footage from the time-lapse cameras. We spent three hours in the charcoal forest and witnessed first-hand the prolific recovery, which served as a perfect metaphor for the kids’ own resilience and healing.

While Washingtonians face big challenges ahead as snowpack declines, temperatures rise, and the fire season lengthens, we can do a lot to prepare ourselves and to develop a sense of agency to meet the challenges posed by wildfire, for our communities and our children. By vigorously confronting the legacy of fire suppression and following the best available science, we can make smart decisions going forward about how we deploy our resources to build resilience in priority areas.

There are at least three very practical things that we need to do more of to protect communities.

First, we must support the retrofitting of homes in the fire plain to withstand the primary cause of structure loss: wind-driven embers setting homes ablaze. Some local governments in California have made such home retrofitting mandatory and have achieved great success in preventing structure loss.

Second, we must increase community safety by strategically thinning within 100 feet of houses in the wildland urban interface, not logging the backcountry.

Third, we must increase the use of prescribed fire and controlled burns to thin forests without removing the medium- and large-size old trees. And while meeting these challenges, we must not forget to get out and enjoy the forests, whether they are verdant old growth or young forests emerging after a burn.

By reconsidering our relationship with fire and coming to terms with our limited ability to control it, we will be better able to plan for and spend our resources wisely to face the challenge.

Ralph Bloemers is a senior staff attorney at the Crag Law Center and has represented dozens of conservation and community groups throughout the Pacific Northwest in efforts to protect older forests. He has led educational forums in communities affected by fire and spent time with school kids to address the trauma of fire and explore burned forests. He volunteers regularly to rebuild trails in fire-burned areas. He served on the Oregon Federal Forestland Advisory Committee and is a forestland owner in Eastern Washington’s White Salmon River Valley. He can be reached at ralph@crag.org.

NOTES:


6. https://www.youtube.com/ watch?v=vrgmnnM-9w

7. Bradley, C. M. et al., “Does increased forest protection correspond to higher fire severity in frequent-fire forests of the western United States?,” Ecosphere 7(10) (2016): e01492. (They also found that private forestlands with the fewest restrictions on logging were even more likely to burn at the highest severities).


9. Enjoy a film about this special day on Crag Law Center’s YouTube channel, https://www.youtube.com/channel/UC9zzUyGQfHRm-kgWDqG7uyGQ.


The young forest rapidly emerges within just six months after the Eagle Creek fire.

Photos courtesy of the author.
Although forest practices have changed significantly in recent years, many argue that historical forest practices, combined with climate changes, have led to the current reality of unmanageable wildfires and unhealthy forests. The cultural underpinnings of modern fire suppression tactics and the public’s perception of wildfire are discussed in depth in “A New Angle on Wildfire” at page 24. This article will focus on the effects of these countervailing approaches on the health of the forests themselves.

**FIRE SUPPRESSION AS FOREST MANAGEMENT**

In the early 1900s, forest fires were a regular and normal occurrence. Small wildfires occurred “every five or 10 years, mostly—small fires that consumed grass and shrubs and small seedlings, but left the big Ponderosa pine and Douglas fir just fine.” Fire created the conditions that allowed trees that require extreme heat to reproduce to be able to do so. The burning of shrubs and small bushes kept the understory clear, thus reducing the amount of fodder and tinder for a later fire to burn. As a result, there were only a few dozen trees per acre.7

But forest management changed after 1910, which saw some of the largest wildfires in U.S. history. As a result, the U.S. Forest Service instituted a policy of complete fire suppression.8 Despite knowing that many trees, such as the lodgepole pine, require extreme heat to reproduce, the Forest Service and its rangers actively worked to suppress wildfires.9 Total fire suppression was intended to prevent future fires, and suppressing a fire as quickly as possible was the goal.10

Fire suppression has, however, led to overcrowded forests. With a significant share of the Forest Service’s expenditures going toward wildfire suppression alone—about half of the total expenditures in fiscal year 2016 and more than one-fifth in fiscal year 2017—there is little funding left for forest management or restoration.11 Forests are no longer appropriately thinned; instead they are choked with spindly trees, shrubs, and bushes. All of this translates to one thing: fuel for wildfires.12 According to Craig Allen, a fire manager with the Forest Service in New Mexico, forests today average about 900 trees per acre.8 By comparison, historical forests averaged about 40 trees per acre.9

The effects of fire suppression and its associated forest management practices have also decreased forest vitality. Overstocked forests, coupled with increasing droughts, have increased competition among trees for moisture, which means that trees are less resistant to wildfires, insects, and disease.10 As a result, tree mortality rates associated with insects and disease have increased significantly.11

**“LET-BURN” POLICY**

Beginning around the 1970s, the Forest Service implemented a “let-burn” policy.12 Specifically, the Forest Service allows prescribed fires to burn in certain places. These controlled burns are intended to improve overall forest health and mitigate the spread of wildfires by eliminating low shrubs and grasses, which act as tinder for spreading fires. Prescribed burns are also used to limit the ferocity of wildfires in an attempt to mitigate complete destruction of the forest ecosystem.

“The choice is not whether or not these forests burn,” U.S. Forest Service Fire Manager William Armstrong told NPR. “The choice is how they burn. What kind of intensity are we going to see those burn at?”13

Not everyone, however, embraces the “let-burn” policy. Over the past decade, many people have built homes or vacation cabins on or near forest land. Around 20 million people now live within a few miles of a national forest.14 Residents in these areas are concerned that prescribed burns will get out of control and lead to larger fires.15 Additionally, residents complain about the smoke. The countervailing argument is that if forests can be managed in a way that increases space between trees, thereby reducing fuel, then risk to structures near forestland is lessened.

The current reality is that many fires become so large that they cannot be stopped. They jump from tree crown to tree crown, obliterating everything in their path, scarring the land,
and destroying the soil. These fires “convert something that’s like a sponge to Saran Wrap,” Armstrong said in another NPR story on wildfire.16 In the aftermath of such a wildfire, with nothing left to soak up the rain, water surges down the mountain, collecting ash, tree trunks, and other debris, and creates more devastation.17

The challenge today is finding and implementing forest management practices that not only mitigate wildfires, but rehabilitate our forests.

WASHINGTON’S FOREST MANAGEMENT VISION

The Washington State Department of Natural Resources (DNR) estimates that 2.7 million acres of forestland in Eastern Washington need treatment to become more resilient to insects, disease, and wildfire.18 In response to the current state of Washington’s forestland, the DNR introduced the “20-Year Forest Health Strategic Plan.”19 The plan has five goals:

1. “[C]onduct 1.25 million acres of scientifically sound, landscape-scale, cross-boundary management and restoration treatments in priority watersheds to increase forest and watershed resilience by 2037.”20
2. “Reduce risk of uncharacteristic wildfire and other disturbances to help protect lives, communities, property, ecosystems, assets, and working forests.”21
3. “Enhance economic development through implementation of forest restoration and management strategies that maintain and attract private sector investments and employment in rural communities.”22
4. “Plan and implement coordinated, landscape-scale forest restoration and management treatments in a manner that integrates landowner objectives and responsibilities.”23
5. “Develop and implement a forest health resilience monitoring program that establishes criteria, tools and processes to monitor forest and watershed conditions, assess progress and reassess strategies over time.”24

Washington has taken important steps toward implementing forest management practices that can reverse centuries of mismanagement and revitalize Washington forests. It will take time and a significant amount of money, but proactive forest management will benefit Washington state, its communities, and its forests.20


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Fire and the Law: Washington’s Forest Management Vision

The current reality is that many fires become so large that they cannot be stopped.

NOTES

2. Id.
5. U.S. Forest Service Fire Suppression, Forest History Society, supra note 3.
7. U.S. Forest Service Fire Suppression, Forest History Society, supra note 3.
11. Id.
14. Id.
15. Id.
16. “Is it Too Late to Defuse the Danger of Megafires?” supra note 8.
17. Id.
19. Id.
20. Id.
21. Id.
22. Id.
23. Id.
24. Id.
The state of Washington has long been associated with lush forests that are considered invaluable by many stakeholders—all of whom place value on different aspects of this natural resource. As a result, use of our forests is subject to a complex web of legislation, common law, and regulation. This body of law is deep and wide, and we could get lost in the woods (so to speak) if we try to parse all of its nuances. What I find most interesting about timber law, however, and what I want to focus on in this article, is how underlying policy is translated and reflected in the laws or regulations themselves.

Running through this body of law are a number of overarching policies, including (1) ensuring continued health and longevity of our forests; (2) placing a high penalty on unlawful removal of or injury to trees; and (3) maintaining the ability to use forests for recreational purposes. Each of these is translated into an enforceable law or regulation (or both), which is then sometimes interpreted and applied by the courts to clarify the meaning of the language. This article will focus on the three discrete aspects of the large body of timber law listed above, each of which reflects application of an overarching policy.

ENSURING CONTINUED HEALTH AND LONGEVITY OF OUR FORESTS

The responsibility of ensuring the continued health and longevity of our forests is largely delegated to the Forest Practices Board, which adopts and promulgates regulations governing forestry. The Forest Practices Board, established by Chapter 76.09 RCW, adopts rules that are implemented and enforced by the Washington State Department of Natural Resources (DNR). The rules adopted by the Forest Practices Board set the standards for forest practices, which are codified at Title 222 of the Washington Administrative Code (WAC). Some of these rules subject land to continuing forestland obligations for things like reforestation, road
maintenance, harvest strategies, and required mitigation. In other words, there is a long-term obligation that the landowner needs to satisfy in order to be compliant with forest practices standards.

The legislature has placed a great deal of importance on making sure these continuing obligations do not get lost when properties inevitably change hands. Per RCW 76.09.390, in the event that land subject to these continuing obligations is sold or transferred, the seller is required to notify the buyer of the continuing obligations and have the buyer sign a form, which is later submitted to DNR, indicating knowledge and acceptance of the obligation. However, the legislature went beyond requiring execution and delivery of a form. If the seller fails to notify the buyer about the continuing forestland obligations, the seller is then required to pay all of the buyer’s costs related to the continuing obligation, including attorney fees incurred in enforcing the obligation against the seller. RCW 76.09.390(1) (emphasis added).

On its own, the Forest Practices Board can adopt rules and subject property owners to continuing forestland obligations. However, if the land changes hands multiple times and transferees are unaware of the obligations, it becomes more likely that these obligations will not be satisfied, which could result in damage to the health of the forest. The potential cost to a seller for failing to notify a buyer or transferee of a continuing obligation incentivizes sellers to comply. Failure to disclose the obligations could mean steep financial consequences to the seller, not only the payment of all costs relating to the continuing forestland obligation, but also payment of all attorney fees incurred by the buyer or transferee.

Ensuring that these continuing obligations are met by successors in interest to land and timber rights can help ensure long-term health for our forests. This is one example of the intersection between legislation and regulation, demonstrating how they work together to support a policy of promoting the long-term health of our forests.

PLACING A HIGH PENALTY ON UNLAWFUL REMOVAL OF OR INJURY TO TREES

The state of Washington places a high value on trees themselves and imposes large penalties for their injury or removal. Usually, the first thing clients ask when trees have been damaged is: “They have to pay treble damages, right? That’s three times whatever I win, right?” The answer is most often the classic “it depends,” but in general they are right. One who cuts down or injures the trees or timber belonging to another without lawful authority is subject to an action for treble damages. RCW 64.12.030. Timber trespass is statutory, but it has been addressed numerous times by Washington courts.

RCW 64.12.030 provides that “whenever any person shall cut down, girdle, or otherwise injure, or carry off any tree ... on the land of another person ... without lawful authority ... any judgment for the plaintiff shall be for treble the amount of damages claimed or assessed.” For those (like me) who may not know what it means to “girdle” a tree, it involves removal of a ring of bark. Girdling cuts off the down-flow of food to the roots of the tree, and as a result the root dies, causing the tree to die gradually. “Cut down,” “girdle,” and “carry off” are all relatively unambiguous as far as what the legislature intended, but the catchall “otherwise injure” has been the subject of litigation.

One example is a 2012 case in which the Washington Supreme Court addressed this question: “Does a Defendant who negligently causes a fire that spreads onto Plaintiff’s property, and damages or destroys Plaintiff’s trees, ‘otherwise injure’ trees, timber or shrubs for purposes of RCW 64.12.030?” Jongeward v. BNSF R. Co., 174 Wn.2d 586, 590, 278 P.3d 157 (2012). The court in Jongeward found that the legislature used the phrase “otherwise injure” to describe direct trespasses that are comparable to cutting down or carrying off a tree, such as poisoning. Id. at 600. Accordingly, the court held that the timber trespass statute only applies when a defendant commits a direct trespass causing immediate injury to a plaintiff’s trees, and that “a defendant who negligently causes a fire that spreads onto a plaintiff’s property and destroys a plaintiff’s trees does not ‘otherwise injure’ the plaintiff’s trees for the purposes of RCW 64.12.030.” Id. at 604.

So, what does this mean for the era we live in today, where fires run rampant during the summer months? Why would the penalty of treble damages not apply to a party that potentially caused such a valuable resource to be destroyed?

The answer, of course, is complex and depends on a number of factors. The timber trespass statute was enacted to punish intentional offenders and to discourage potential offenders from intentionally removing another person’s merchantable trees “on the gamble that the enterprise will be profitable if actual damages only are incurred.” Laws of Wash. Terr. 1869, ch. XLVIII, § 556, at 143. Based upon the analysis in Jongeward and the language in the statute, it seems likely that if there was an intentional and direct act to start a fire that damaged another person’s trees, the “otherwise injure” provision in the timber
trespass statute would apply. In the case of a negligently caused fire, however, a plaintiff will need to look elsewhere for avenues to potential recovery.

Clearly, there is a high value placed on trees, as evidenced by the steep penalties for injuring or removing trees of another; however, the courts have interpreted and applied the legislative intent to apply the steep penalties of timber trespass only to those who intentionally injure trees.

MAINTAINING THE ABILITY TO USE FORESTS FOR RECREATIONAL PURPOSES

Finally, an overarching theme is the importance of maintaining the recreational opportunities Washington’s forests provide. Washington’s recreational immunity statute encourages landowners to open their land to the public for recreation by limiting the landowner’s liability for persons injured or damaged on the property by unintentional acts that occur thereon. RCW 4.24.210; Lockner v. Pierce County, 190 Wn.2d 526, 531, 415 P.3d 246 (2018). Recreational immunity has been addressed numerous times by Washington courts. While recreational immunity is not specific to the timber world, it certainly plays an important role. Private landowners own hundreds of thousands of acres of forests in this state, and much of those private land holdings can provide recreational opportunities.

As an example, in many areas in the south Puget Sound there are pockets of forestland nestled between more populated areas. While many of those parcels were once owned by one of Washington’s timber giants, they may have since changed hands. There may be trails across the properties that are used for biking or riding ATVs. Often, the surrounding community has used the trails for years, perhaps without much thought about who owns the land.

When those parcels of forestland change hands, the new owners may not approve of recreational use of the property and may block or close the trails for use. Recreational immunity is, of course, not intended to require landowners to open their property for recreational use, but it is intended to incentivize them to do so. The newest Supreme Court ruling on recreational immunity—which makes clear that the immunity applies to properties that are used both for recreation and other uses, rather than sole recreational use—may encourage private landowners even more to allow recreational uses. Lockner, 190 Wn.2d at 531.

To be immune under RCW 4.24.210(1), the landowner must establish that the use (1) was open to the public; (2) for recreational purposes; and (3) no fee was charged. Cregan v. Fourth Memorial Church, 175 Wn.2d 279, 284, 285 P.3d 860 (2012). Although more than incidental recreational use is likely required, sole recreational use is not required for a landowner to enjoy immunity. Lockner, 190 Wn.2d at 529. Additionally, recreational immunity applies to both premises liability actions and negligence actions. Id. at 536-37 (holding that the landowner was immunized from a negligence action brought by a biker who was injured when a nearby lawnmower allegedly expelled a cloud of dust and debris, causing the biker to fall). A landowner would not, however, be immune from liability for injuries sustained to users by reason of a known dangerous artificial latent condition for which warning signs
have not been conspicuously posted.

Recreational immunity has been addressed on a number of occasions by Washington courts, and the policy behind the statute (incentivizing landowners to allow public recreational use of their land) has strongly influenced the body of law that has developed. Allowing the public to use forestland for things like camping, hiking, biking, and hunting is important, and a strong recreational immunity doctrine is one way to uphold that policy.

THE LAW AND THE VALUE OF FORESTS

The world of timber law is vast and nuanced. It intersects with many other areas of the law. At its core, however, the body of timber law that exists today is an expression of the concept that Washington’s forests are valuable in many different ways to many different stakeholders, and the overarching policy goals that are derived from those values are woven throughout the laws and regulations.

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Sawdust and gasoline filled my nose as I positioned my saw for the final cut. After three days of working with the chainsaw, I was finally getting the hang of it. The saw didn’t seem as difficult to maneuver, it was taking less time to bring a tree down, and I was getting a better understanding of how to angle the cuts to get the tree to fall in the right direction.

I took a step closer to the tree and hit the throttle. As the saw cut into the wood, it made a strange whirring noise and then stopped suddenly. I looked down, following a thread from the saw’s teeth to the protective covering on my right leg. I had broken the number one rule of saw crew: don’t cut your chaps.

It was the summer of 2005 and I was working on what was going to be my last “fun” job before graduating from college and entering what I was sure would be a world of office-based drudgery. I had taken a job with the saw crew for the Coconino Rural Environmental Corps, based in Flagstaff, AZ. By the time I joined, half of the crew had been trail-building for three months and was accustomed to carrying heavy tools into the backcountry for days at a time—I was not.

Training consisted of a couple of weeks of learning fun outdoor skills that we would never actually use—like orienteering with a map and compass—as well as classroom-based chainsaw training. Most of what I remember about chainsaw training came in the form of videos with instructions like “never position your saw above your shoulder” and gory photos of what happens to people who don’t follow those instructions, which have stuck with me to this day.

Besides those gory lessons, we also learned a little about forestry. Flagstaff sits in the largest contiguous tract of ponderosa pine forest in the world. When white settlers first started to arrive, the forest was open and sparse, wide enough to drive wagons through. This was due to regular, smaller brush fires, which would burn up smaller growth while the larger trees survived the fire through adaptations such as fire-resistant bark. But a hundred years of fire suppression had led to forests choked with smaller trees and brush. These smaller trees and brush created a ladder into the forest’s crown. Once a fire spread to the crown of one tree in a densely-packed forest, it was easy for it to jump to another, and soon the whole canopy would be engulfed.

Reducing fuel for the fire could be accomplished one of two ways: through prescribed burns, which become essentially

By Rachel Roberts
important during the back cut, when the saw is in close proximity to the inside of your back leg and your femoral artery: a major artery which, if cut, is a sure way to bleed out quickly. When I stepped into the saw, it was that Kevlar that made the chain stop. The chaps changed what could have been a potentially fatal accident into a minor inconvenience. Nonetheless, cutting them was considered very bad form. I’d heard rumors about people being kicked off the crew for cutting their chaps twice. Some of the veterans advised me to avoid being the first person in the crew to cut my chaps, but by day three I had failed to meet that goal.

My supervisor told me I would be off the saw all day and instead would be picking up the pieces of debris—logs, brush, etc.—that littered the forest as we worked. It didn’t do much for fire reduction if we left it all on the ground, after all. He also explained all the things that were wrong with the cut I was attempting, and re-cut the tree to fall in the opposite direction. While my femoral artery was intact, my pride was not.

As I picked up logs, I brooded on my failure. I had always been good at work before. I followed directions and usually anticipated what someone needed on a project. But here, when tasks were accomplished not by manipulating a spreadsheet but by using my hands to manipulate a dangerous object, I was the worst on the team. I considered quitting, but spending the summer at my parents’ house without a job seemed worse.

When we returned to work the following Monday, I was put on a smaller saw, something I could handle a little more easily, without feeling the need to get my leg under it. Although this saw was still a professional, heavy-duty chainsaw, my face reddened when one of my colleagues, a woman about my size, asked “is your saw smaller than mine?” Yes, yes it was.

On our second week on the saws, two people on another team cut their chaps. One of them quit, in a dramatic scene that involved tears and loud swearing. My rather discrete chaps-cutting incident was soon forgotten, at least by the other members of my crew.

My supervisor, who had not forgotten my incident, spent additional time with me going over how to do cuts. My trees stopped leaning quite so far to the left when I cut them, and I started yelling “timber!” with a little more confidence. I started to enjoy the work more. There is, after all, something extremely satisfying about turning a tree into intentional, rather than accidental, firewood. But my confidence only extended so far—when people started bringing empty cans to work to see if they could get their tree to

a planned forest fire; and by removing smaller trees with chainsaws, a process known as “mechanical thinning.” Since people tend to dislike fires near their homes, mechanical thinning was the preferred option in the wildland-urban interface, where we would be working.

I learned during the first week of actual cutting that just because a tree is less than 12 inches in diameter, that doesn’t mean it’s easy to cut down. There are many factors to consider when deciding which direction to fell a tree: the slope, a safe escape route, sufficient space for the tree to fall, and lopsided growth that could make it fall in strangely—and dangerously—unpredictable ways. Although we covered these things in class, they were harder to account for in practice. What if there wasn’t any open space downslope? What if the ground around the tree was rocky? The actual cutting was also harder than I had expected. In particular, I was having trouble keeping the blade on my 15-pound saw straight as I made the precise 45-degree face cut that would determine the direction of the fall.

On the day that my chaps met the business end of my saw, I thought I’d actually gotten the cut right, until I wasn’t able to cut at all. Chaps have multiple layers of Kevlar thread that are designed to get caught in the blade and stop it from turning. This is especially
land precisely on them, I did not join in.

Our work was not limited to thinning pine trees. We spent some time in the high desert clearing juniper along pronghorn antelope migration paths. Decades of fire suppression had also led to the desert becoming too choked with juniper for animals to move freely. Although juniper wood is very hard and dulls chains quickly, it also grows like a low bush and does not require nearly as much precision to fell safely as a pine tree does. For me, that meant it was more fun to cut.

The most satisfying part of the work was walking into a forest that was a tinderbox—full of brush and small trees—and at the end of the week looking back and seeing an open forest. It reminded me of a solo backpacking trip I had taken on the Mogollon Rim. Fire had come through a few years before, and the forest was open, much like the photos of a healthy forest we had seen in training. I’d lost the trail under a bed of pine needles, so I sat down to contemplate the map. As I tried to figure out which way to go, I heard a low rumble, and an entire herd of elk ran past me, maybe 50 yards away. Juveniles, then the cows, and finally the bull at the end, running through the open forest.

RACHEL ROBERTS practices environmental law as an associate at Beveridge & Diamond. She occasionally helps family members with tree-cutting projects, after making fun of the size of their chainsaws and lecturing them about the importance of chaps. She can be reached at rroberts@bdlaw.com.

NOTES:
Becky Roe

Brava!

Congratulations to SGB’s Becky Roe, who was recently honored with WSAJ’s coveted President’s Award.

WSAJ’s outgoing President Darrell Cochran put it best: “Becky is always there for WSAJ with maximum involvement and attention, and our debt of gratitude as an organization is limitless.”


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Mandatory Malpractice Insurance Task Force Final Report

At its March meeting, the WSBA Board of Governors considered, on a first reading, with no action taken, a task-force recommendation that would (if adopted by the Washington Supreme Court) mandate malpractice insurance as a condition of licensing for lawyers, with specified exemptions.

The Mandatory Malpractice Insurance Task Force has met since January 2018 to research the consequences of uninsured lawyers, to examine current mandatory malpractice insurance systems, and to collect and consider feedback from WSBA members (to date, members have sent more than 580 written comments, which you can read at https://www.wsba.org/insurance-task-force). Based on this work, the task force reached the following conclusions, reflected in its final report:

- The Board of Governors should recommend, and the Washington Supreme Court should adopt, a rule mandating continuous, uninterrupted malpractice insurance for actively licensed lawyers engaged in the private practice of law with specific exemptions.
- The required minimum coverage should be $250,000 per occurrence/$500,000 total per year.
- Categories to be exempt: government lawyers; judges; employees of a corporation or business entity, including nonprofits; employees of or independent contractors for nonprofit legal aid or public defense offices that provide insurance; mediators or arbitrators; lawyers providing volunteer pro bono services for qualified legal service providers that provide insurance; and other lawyers not “actively licensed” or “engaged in the private practice of law,” including retired lawyers, judicial clerks, and Rule 9 interns.

The report states:

A license to practice law is a privilege, and no lawyer is immune from mistakes. ... A key goal of this task force is to recommend effective ways to assure that clients are compensated when lawyers make mistakes. Because 14 percent of Washington lawyers in private practice do not carry malpractice insurance, task force members determined that those lawyers pose a significant risk to their clients. Further, when lawyers lack insurance that means, from a practical standpoint, their clients do not have access to the legal system to seek compensation because plaintiffs’ lawyers are generally unwilling to pursue representations when the defendant is uninsured. Lack of insurance is, fundamentally, an access-to-justice issue, and the task force has concluded that it is more than appropriate for lawyers to ensure their own financial accountability.

The final report, recommendation, and proposed rule language are available at https://www.wsba.org/insurance-task-force. Members can provide comments to the Board of Governors via insurancetaskforce@wsba.org.
I n the summer of 2010, a case was forwarded to the Custodianship Program overseen by the Office of General Counsel (OGC) of the Washington State Bar Association (WSBA) which, although no one knew it at the time, would take more than a year to resolve, require more temporary attorney hours than any other similar case in recent history, and impact hundreds of clients who’d been abandoned by their lawyer.

As with any such case, a licensed attorney was brought in to serve as a volunteer “custodian,” which in this case involved a clean-up job for an immigration lawyer who, after being disbarred, had simply disappeared, leaving behind hundreds of deserted clients, many of them with pending immigration cases.

Also left behind in the wake of his disappearance was a storage unit in Everett filled with 300 boxes of case files. Altogether, those boxes held about 3,000 individual client files containing documents such as birth certificates, foreign marriage certificates, and other irreplaceable paperwork that clients had entrusted to him.

It remains one of the most extensive and laborious WSBA custodianship cases in recent memory. Even after bringing three temporary staff to the OGC—two paralegals and one non-legal staff—who could speak Spanish and help contact clients, plus a temporary hire to the Office of Disciplinary Counsel (ODC), and volunteers from the local chapter of the American Immigration Lawyers Association, it still took custodians almost 15 months to review the case files, contact clients who had active cases at the time of the lawyer’s disbarment, and dispose of files where appropriate. (Files that could be disposed of included those that contained a signed acknowledgment of receipt of the file by the client and those that were non-immigration civil and criminal misdemeanor and gross misdemeanor matters that had been resolved, settled, or adjudicated on or before the date of the lawyer’s disbarment.)

“Despite extensive efforts, we were only able to return or dispose of 16% of the files,” according to the motion filed at the end of the custodianship.

Much of the work involved locating the lawyer’s former clients, many of whom did not speak English, many of whom had unresolved immigration status, and many of whom were wary of reclaiming their sensitive documents from government officials.

This particular case was an extreme example of the types of cases handled through the WSBA Custodianship Program, which began internally within the WSBA Office of Disciplinary Counsel and then evolved to recruit WSBA members to serve as volunteer custodians as needed.

The program is authorized by the Washington Rule for Enforcement of Lawyer Conduct (ELC) 7.7, which states:

A custodian may be appointed whenever a lawyer (i) has been transferred to disability inactive status, suspended, or disbarred, and fails to carry out the obligations of title 14 or fails to protect the clients’ interests, or (2) disappears, dies, abandons practice, or is otherwise incapable of meeting the lawyer’s obligations to clients.

Custodians are volunteer lawyers, appointed by the chair of the Washington Supreme Court’s Disciplinary Board (the chief justice of the Washington Supreme Court holds this position). WSBA can compensate volunteer custodians for administrative costs such as support staff wages, mailing, and storage costs. The program is administered under the WSBA OGC, and has maintained the same budget of $2,500 for the past two fiscal years—about one-quarter of 1 percent of OGC’s FY 2019 budget.

Many custodianships begin when WSBA is contacted after an attorney has suddenly died or has simply disappeared—sometimes as the result of an underlying substance abuse or mental health issue. Often, there’s an abandoned storage unit stacked high with old and current case files. And custodians are appointed only in the relatively extreme cases, in which there is absolutely no one left to assume possession of the lawyer’s records and files; they take action as needed to protect the clients’ interests. If the lawyer had surviving family, for example, the burden falls on them to find another lawyer to handle the wind-down of the practice. “Custodianship is for cases when no responsible person is
Behind the Scenes: WSBA Custodianship Program

MANY CUSTODIANSHIPS BEGIN WHEN WSBA IS CONTACTED AFTER AN ATTORNEY HAS SUDDENLY DIED OR HAS SIMPLY DISAPPEARED.

available to protect the clients,” WSBA Ethics/Custodianship Counsel Sandra Schilling explained. And there are few such cases. Between 2014 and 2018, WSBA reviewed 40 potential cases for custodianship, of which 10 resulted in a motion to the Disciplinary Board to appoint a custodian.

Susan Machler, a Seattle-based personal injury attorney, has volunteered to be a custodian not once, but twice. Her first case involved a Tacoma attorney who died from a rapidly progressing illness. That custodianship began as so many do, with a storage unit full of files. It took Machler and her law clerk about three days to go through the files, shuttling between Seattle and Tacoma to gather what had been left in the storage unit. One of the biggest challenges was trying to get inside the lawyer’s head and figure out how he managed his files, which cases had been long closed, and which documents would have to be returned to clients. As it turned out, that attorney had taken a step that made the process easier: His practice was to send a closing letter, a copy of which was included in every closed case file, to his clients after their case was finalized. It was a tip Machler took with her as a way of managing her own cases in the event someone else has to take over.

Unfortunately, the lawyer at the center of Machler’s next custodianship had been far less responsible and much less proactive. One day he vanished, walking away from his practice so suddenly that there was still a cup of coffee sitting on his desk. “He just got up one day and left,” she said.

Bewildered clients started calling and asking Machler for advice about their cases, many of which involved bankruptcy and none of which Machler could advise them on—other than referring them to a bankruptcy lawyer. For the clients that didn’t reach out, Machler sent a letter advising them to collect their files before a deadline, after which the files had to be shredded.

Another of Machler’s takeaways from her service as a custodian is the need for all lawyers, especially solo practitioners, to have a plan for what to do when they’re gone.

A succession plan, particularly a plan that includes a designated backup attorney, can eliminate the need for a custodian, reduce the burden on a lawyer’s family to handle their files, and protect clients should the unthinkable happen. Without such a plan, a lawyer’s clients can be left at the mercy of whoever has physical possession of their files. It’s not uncommon for WSBA to receive calls from storage centers demanding that someone remove boxes of files (containing, no doubt, confidential material) or they’ll be left on the curb. In at least one instance, according to ALPS Risk Manager Mark Bassingthwaighte, the spouse of a deceased attorney took matters into her own hands. “She just threw everything away,” Bassingthwaighte said. “So if a claim comes up or people need their files down the road, we’ve got a problem.”

ALPS is WSBA’s endorsed malpractice carrier. Bassingthwaighte noted that although ALPS does not mandate a succession plan in order to insure a lawyer, “we certainly ask about it; many companies do.” “It’s just malpractice avoidance,” he added. “Making sure that people know what to do after you’re gone.”

Bassingthwaighte, who often speaks with solo practitioners, therefore recommends that lawyers develop a plan and designate a backup attorney who, like a custodian, can handle case files and winding down the practice without taking over the cases themselves. He encourages solo attorneys to consider making a sort of informal pact with another attorney under which they will share the responsibilities for one another should either of them suddenly die or disappear. But just as preparing a will can force people into the disquieting position of facing their own mortality, many of the lawyers Bassingthwaighte has met haven’t thought about and don’t have a succession plan. “A lot of [them] know they probably should,” he said. “It’s almost like they don’t want to have to think about that … it’s an uncomfortable topic, perhaps.”

The need for succession planning will continue to increase as baby boomer solo practitioners near retirement age. WSBA’s most recent membership demographics reflect that approximately 40 percent of active Washington legal professionals are between the ages of 51 and 70.

Yet few state bars, including Washington, require members to have a succession plan or designated backup attorney, according to the most recent data compiled by the ABA. Florida lawyers, on the other hand, must designate an “inventory attorney” to “inventory the files of the subject attorney … and to take such action as seems indicated to protect the interests of clients of the subject attorney.” Florida RULE 1:3.8. And South Carolina bar members “should prepare written, detailed succession plans specifying what steps must be taken in the event of their death or disability from practicing law” and “may arrange for one or more successor lawyers or law firms to assume responsibility for the interests of the lawyer’s clients.” S.C. RULE 1.19. The South Carolina Bar maintains a registry, and the successor lawyers are identified.
on the lawyer’s license fee statement.
Likewise, the American Bar Association (ABA) formal ethics opinion 92-369 states that lawyers should have a plan in place in the event of the lawyer’s death and “[s]uch a plan should, at a minimum, include the designation of another lawyer who would have the authority to review client files and make determinations as to which files need immediate attention, and who would notify the clients of their lawyer’s death.”

Many bars — such as in Washington, Oregon, and Idaho — provide detailed succession planning guides for members. WSBA members have access to “Planning Ahead: A Guide to Protecting Your Clients’ Interests in the Event of Your Disability or Death,” which provides answers to common questions about succession planning, checklists for lawyers to protect client interests and close another attorney’s office, and sample forms.

Succession planning has also been a popular topic in recent years in the Solo and Small Practice Section, which has held several short CLEs on the topic as well as a webinar.

Ann Guinn—a practice management consultant to solo and small law firms for G&P Associates, as well as an adviser member of the WSBA Solo and Small Practice Section Executive Committee since 1994—advises lawyers to take advantage of those resources and develop a plan.

Much of Guinn’s work is focused on helping lawyers build their businesses, but in recent years she’s received more calls from lawyers preparing to transition their practices. Very few of her clients have a plan in place or have identified another attorney to serve as backup in the event of a catastrophic event. The lack of a succession plan or designated backup attorney could result in client funds remaining tied up in trust accounts, she said, adding that she recommends her clients find a backup attorney they can trust, and coordinate with their bank to create a process to transfer client funds as appropriate.

A WSBA custodian can access Interest on Lawyer Trust Accounts (IOLTA) to disperse any remaining funds. However, if the custodian is unable to decode which client is owed what money, any remaining money in the account could ultimately revert as unclaimed funds to the Washington Department of Revenue.

“Protect your clients, protect your family, protect yourself, and face up to this now,” Guinn said. “Now is exactly the time to do this. If you don’t have things in place, make this a priority right now, and then everyone will sleep better at night. Because if something should happen to you, and it could, then your clients are going to be cared for and this will not be the burden for your family that it would have been otherwise.”

**NOTES:**

1. Does your state have a MANDATORY rule requiring an attorney to designate a successor/surrogate/receiver in case of death or disability? https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/mandatory_successor_rule_chart.authcheckdam.pdf.
It’s a new year and a great time to recommit to those resolutions you’ve probably already forgotten—and perhaps even add a few more. Why not make improving your well-being one of your goals for 2019? You might have noticed that “mindfulness” or “mindfulness meditation” is having a moment in our culture and profession—many people are touting its benefits, from improved focus and productivity, to reduced stress levels, to achieving a greater sense of calm and presence at work and in your personal life. We know from recent research that these benefits are possible through a regular mindfulness practice, and it has never been easier to get started on this particular path to well-being.¹ In this article, I’ll explain the potential benefits of adopting a mindfulness meditation practice and provide some suggestions for apps and other resources to try.

THE NEED FOR MINDFULNESS IN THE LAW

Too many lawyers are struggling to balance health and wellness with work and practice obligations. In 2017, the ABA’s National Task Force on Lawyer Well-Being released the report, “Path to Lawyer Well-Being: Practical Recommendations for Positive Change,” which states that “[t]o be a good lawyer, one has to be a healthy lawyer”; however, many lawyers, law students, and judges struggle with chronic stress, mental health disorders, and substance abuse.² This collective suffering impacts the public face of the legal profession and inflicts personal damage, manifesting as incivility, work and social isolation and alienation, job dissatisfaction, and harmful addictions. This is particularly true for younger lawyers in their first 10 years of practice and those working in private firms.³ Law students also report problems with alcohol, depression, and anxiety, no doubt compounded by high levels of student debt and an uncertain job market. The Task Force’s findings “signal an elevated risk in the legal community for mental health and substance use disorders tightly intertwined with an alcohol-based social culture.”⁴

As noted in the Task Force’s Report, mindfulness is one promising tool that can help lawyers learn to be present and gain greater awareness of their own minds and behaviors, potentially leading to stress relief, greater engagement, and more skillful communication.

Mindfulness is not a panacea but many of your colleagues are adopting mindfulness meditation and have benefitted from the practice both personally and professionally.⁵ Indeed, you’ve probably encountered a mindfulness session at a recent CLE, or at a legal conference, or perhaps your workplace has offered meditation sessions and well-being programming.
What Is Mindfulness?

Mindfulness is often described as the practice of training your mind to focus on the present moment without judgment. Mindfulness is a skill that can be learned with practice—think of it as exercise or training for your brain. Although there are a variety of methods to achieve a state of mindfulness—such as mindful yoga, mindful walking, etc.—this article will focus on some of the common methods that show benefits among legal professionals: meditation and, in particular, breath-focused meditation.

By practicing mindfulness, you learn to gain perspective on your thoughts and behaviors by bringing your attention to the present instead of ruminating on past events or dwelling on worries about the future. This perspective affords you the space to choose to respond skillfully to your moment-to-moment experiences, rather than reacting based on emotion. The ABA describes it this way:

Mindfulness creates the opportunity to pause, breathe, and connect with one’s inner thoughts, feelings, and emotions; in other words, to become aware of how we are reacting in a given situation and to provide ourselves with the opportunity to moderate our reaction and respond thoughtfully.

A beginning mindfulness meditation typically goes something like this: You find a quiet and comfortable place to sit (or lie down) and relax your eyes or close them completely. You take in a few rounds of breath and check in with your body to see where you’re holding tension (common areas include the neck, shoulders, and stomach). You then return to your breath for a few more minutes, focusing your attention on the sensations of inhaling and exhaling. You might also notice your thoughts coming and going. When this happens, you gently return your focus to your breathing rather than getting caught up in your thoughts or judgments about them. Often this kind of meditation will include instruction on three-part or diaphragmatic breathing (structured breathing using the diaphragm muscles) to help you focus your breathing and activate your parasympathetic nervous system (what’s commonly called the “rest and digest” system, which handles automatic internal functions when your body is at rest).

Though mindfulness meditation is a relatively simple concept—the benefits of which may be felt upon your first few practices—continued practice and dedication will lead to the best results. There are several popular misconceptions about mindfulness meditation that can make it tempting to resist the practice before you even try it. (These misconceptions include the belief that you are doing it “wrong” if you have thoughts during meditation or that you are, by nature, too distracted and fidgety to meditate.) The truth is that our brains are made for thinking, and banishing our thoughts is not the goal of mindfulness meditation. Rather, the goal is to stop, breathe, and gain perspective on, and space from, your thoughts and emotions. Mindfulness can help us better understand ourselves and our minds and realize that we have the power to choose whether to ruminate or act on the thoughts that we have. With regular practice, and using a technique like re-focusing on your breath when your mind, inevitably begins to wander, you can tap into a space of calm that allows you to respond skillfully and thoughtfully to whatever experience is in front of you.

With practice, mindfulness can help you focus and be fully present with other people, from clients to opposing counsel to family and friends. It takes time and it takes engagement, but it can be very helpful as a means to achieve greater well-being. People report that meditation becomes a place to stop and pause and notice emotions and where one’s attention is focused. This pausing and noticing often leads to a calmer state of mind and a greater ability for deep listening. Imagine how useful this skill could be in a high-stakes negotiation.

In her 2014 NWLawyer article, Professor Rhonda V. Magee introduced the concept of mindfulness and the law and made the case for lawyers learning to manage and recover from chronic stress through the practice of mindfulness. Now, five years later, research tells us that mindfulness has many potential benefits for the busy and stressed lawyer, including improved focus and clarity of thought, greater well-being, and stress management. With the advent of podcasts and free and high-quality meditation apps for your smartphone, it has never been easier to get started with a mindfulness practice.
Mindfulness

It’s tough being a lawyer these days and, as a practitioner myself, I believe that we can all benefit from learning to reorient and calm ourselves before we have a knee-jerk reaction to the latest media report, email from a difficult client, or colleague’s unreasonable demand.

THE MINIMAL TIME COMMITMENT OF MINDFULNESS

If you think practicing mindfulness will require an hour of your time every day spent in silent meditation, your estimate is off the mark about tenfold. Six minutes per day (or .1 billable hours, if you prefer) is enough to get started toward increasing productivity and possibly decreasing stress, anxiety, and depression. You may not love it the first time you try it; take heart in knowing that there is no “failing” at meditation. Sometimes people fall asleep during meditation, and that’s OK. You have permission to rest if you need it. Over time and with practice, you will bring your mindfulness skills to every part of your life, from interacting with clients, to negotiating with opposing counsel, to communicating with your family and friends.

HOW TO GET STARTED

There are many high-quality, science-based resources to help you begin your mindfulness practice through guided meditation. Some resources are free, some require a paid subscription, and some focus specifically on meditation skills for lawyers. I suggest trying a few different apps, podcasts, and books to see what style works best for you. Many workplaces, gyms, and organizations also offer in-person meditation or yoga sessions that are led by trained teachers or facilitators. Whatever gateway you choose, know that each teacher and resource is different and what works for your colleague might not necessarily work for you. My advice is to just try something and be open to other approaches as your needs and practice evolve.

RECOMMENDED APPS

Meditation apps and podcasts are ubiquitous, but here are a few suggestions to help you get going.10

10% Happier: Free trial, then paid subscription. Easy to configure and set up for beginning meditators, offers a variety of guided meditations. https://www.10percenthappier.com/

Calm: Less structured, free trial, then paid subscription. Also very popular, especially the sleep meditations. https://www.calm.com/

Headspace: Wildly popular, easy to use and set up. Requires a paid subscription. Same teacher/voice for all meditations. https://www.headspace.com/

Insight Timer: Free, wide variety of teachers, topics, and approaches. (My favorite meditation app.) https://insighttimer.com/

PODCASTS AND WEBSITES

These resources provide guided meditations and/or reliable information and instruction about mindfulness meditation.


Jeena Cho, Mindful Pause: https://jeenacho.com/mindful-pause/

UCSD Center for Mindfulness Guided Meditations: https://health.ucsd.edu/specialties/mindfulness/programs/mbsr/Pages/audio.aspx

Tara Brach Guided Meditations: https://www.tarabrach.com/guided-meditations/

The Mindful Lawyer: http://themindfullawyer.com/

ABA, Wellness, Mindfulness, Work-life Balance Resources: https://www.americanbar.org/groups/lawyer_assistance/resources/lawyer_wellness/

BOOKS

Jeena Cho & Karen Gifford, The Anxious Lawyer: An 8-Week Guide to a Joyful and Satisfying Law Practice Through Mindfulness and Meditation (2016) (Note: I highly recommend borrowing or purchasing a copy of this book; it’s excellent and written specifically for lawyers.)


Dan Harris, 10% Happier, How I Tamed the Voice in My Head, Reduced Stress Without Losing My Edge, and Found Self-Help That Actually Works (2014).

Tara Brach, Radical Acceptance: Embracing Your Life With the Heart of a Buddha (2004).

GIVE IT A TRY

As 2019 gets underway, consider making your well-being a priority and setting a good example for others, particularly for law students and new lawyers who are looking to you to model a successful and
balanced legal career. My hope is that you will be inspired to give one of these resources—and mindfulness—a try.

**Anna L. Endter** is the head of Research Services at the University of Washington School of Law, Gallagher Law Library. She is a member of the Washington and California state bars and before becoming a law librarian was a litigator and community mediator. Endter is also a certified yoga and meditation instructor. She has experience leading mindfulness meditation classes for law students and moonlights as a private yoga teacher. She can be reached at aendter@uw.edu or annaendter@yahoo.com.

**NOTES:**
3. Id. at 7.
4. Id.
5. Id. at 52-53.
8. For some people, the act of meditation can stir up painful emotions and memories, particularly for unprocessed trauma. If you experience adverse effects from meditation, seek guidance from a trained meditation teacher and/or mental health counselor.
10. Note that you don’t have to rely on an app or podcast to meditate; all it really takes is a body and a quiet place to sit. I am focusing here on tools for guided meditation because most beginners seem to appreciate having some structure.

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Get involved with the Washington State Bar Association

**APPLY TO SERVE ON A WSBA COMMITTEE, BOARD, OR PANEL**

Choose from 25 committees, boards, and panels.
- Get involved with issues you care about.
- Connect with other lawyers around the state.
- Contribute to the legal community and your profession.
- Openings include: Court Rules and Procedures Committee, Disciplinary Board, Judicial Recommendation Committee, and more.

Deadline: March 8 (extended)
Learn more: www.wsba.org/joincommittee

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**RUN FOR THE WSBA BOARD OF GOVERNORS**

2 Positions

Deadline to apply for District 1 seat: March 15*
Deadline to apply for at-large seat: April 22*

*Election is by Board of Governors in May.
Learn more: www.wsba.org/elections

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WASHINGT0N STATE BAR ASSOCIATION
Join us in thanking the volunteer faculty members who contributed their time and exceptional talent to the development of the Washington State Bar Association's continuing legal education programs this past year.

Thanks to their efforts, we delivered 89 programs to over 24,000 attendees. These contributions are invaluable in meeting our mission to serve the public and the members of the Bar, to ensure the integrity of the legal profession, and to champion justice.

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Dale Slack
Debra Slater
Judge Chip Small
Janet Smith
Judge Lori Smith
Kevin Smith
Alan Smith
Nathan G. Smith
Carolyn Smith
Christopher Soelling
Tina Sohaili
Sandip Soli
Michael Sperry
Ariel Speser
Hugh Spitzer
Lynette Splinter
David Spohr
Meghan Spradling
Michael Sprangers
Benjamin Spruch
Katherine Staba
Joseph Stacey
Allyn Stern
Ryan Sternoff
Judge N. Scott Stewart
Chantale Stiller-Anderson
Erin Stines
Michele Storms
Loretta Story
Courtney Story
John Strait
Kirk Strandjord
Alexander Straub
Eric Ström
Courtney Strong
Mark Sullivan
Aimee Sutton
Aravind Swaminathan
Barbara Swatt
Paul Swegle
Karim Swope
Charles Szurszewski
Ken Takahashi
Matthew Talpis
Steven Tapia
Stephanie Taylor
Glen Templeton
Joseph Terrenzio
John Terry
Aeron Teverbaugh
Judge Melanie Dan
(Formers)
Ronald Thompson
Jean Thompson
Suzanne Thompson
Winingor
David Tingstad
Zachary Tomlinson
Josephine Townsend
Athana Tramontanas
Joshua Treybig
Ann Trivett
Rodney Tullett
Karen Turner
John Twichell
Erika Uh
Dayna Underhill
Kripa Upadhyay
James Vander Stoe
John Varga
Diego Vargas
Thomas Vertets
Shashi Vijay
Shona Voelckers
Cynthia Voth
Mark Vovos
Neha Vyas
Pallavi Wahi
Martha Wakenshaw
Joe Walsh
Wendy Walter
David Ward
Commissioner Eric B.
Watness
Roberta Wayne
Jess Webster
Noah Weil
Elizabeth Weinstein
Christopher Wells
Barbara West
Catherine West
Patrick Whalin
Krista Welke
Jamal Whitehead
Cheri Whitlock
Melinda Wieder
Diane Wies
Carla Wiggen
Jamie Lee Williams
Ann T. Wilson
Marjorie Wilson
Jesse Wing
Iain Wingard
Edmund Witter
Mark Wittow
John Wolfe
Gregory Wolk
Denny Wong
Kelly Wood
Roger Wylie
James Yand
George Yannakis
Margaret Yetter
Christopher Yoson
Michelle Yoter
Dan Young
Eilana Zane
Gemma Zanowski
Kevin Zeck
Bill Zook
When you start your own practice, there is a lot to think about—what kind of software services you will use, whether you will rent office space, how you will find clients, etc. The list can feel endless. But you will not be ready to start on day one unless you have the equipment you need to get work done.

Generally, that equipment is referred to as “hardware,” or the physical electronic devices that you use for your practice. This includes basic equipment such as computers and accessories, phone systems, printers, and scanners. But it can also include mobile devices, credit card processing systems, and more.

This article explores the categories of hardware you will need in your new practice and recommendations for choosing equipment that works for you.

**FIRST THINGS FIRST**
Before you start buying, you need to answer these questions:

1. **Will you run a virtual office?**
   Do you plan to use the cloud to store documents and manage your cases? Do you plan to work remotely on a regular basis? If so, you will want hardware that gives you the flexibility to operate a mobile office.

2. **Are you a hard-copy person (by choice or necessity)?**
   Do you work better when you have physical...
files for trial prep or reviewing discovery? Do you expect those files to be voluminous? Are you in a practice area or court system that requires a high volume of physical document production? If so, you will probably need to invest in a traditional printer/copier system.

3. Are you a data hoarder? Will you need more than the typical amount of hard drive space? Using cloud storage can help minimize the amount of data you store on your computer, but if you install a local copy of your cloud-synced files (which you will probably want to do for quick access to active case files or for offline access), you still need space to do that. For most attorneys, this probably will not be a problem. But if you happen to need local access to very large files, you may need to consider a computer system with larger disk space.

Once you have identified your needs, below are the key hardware options that you will want to consider.

**COMPUTER AND ACCESSORIES**

The most basic hardware need for a new law office is the computer system you need to get the work done. If you do not already have a computer that you plan to use, this will be one of your most important purchases.

Before you buy, you should consider what kind of computer setup you want:

1. **Desktop only.** This setup will include the computer tower, one or more monitors, a separate keyboard, and a mouse. You will not have much flexibility for remote work.

2. **Laptop only.** A laptop gives you the option of working wherever you are, but you’re constrained to a smaller screen and keyboard.

3. **Hybrid solution.** You can set up your system so that you have the ease/mobility of a laptop while still utilizing the features of a desktop in your office. This is often accomplished by connecting a laptop to traditional desktop accessories.

My preference is to go for a hybrid solution. Having the option of mobility is important, but you are going to be more effective if you have the option of using full-sized monitors and keyboards when you need to. This will require more investment in accessories, but if you have the budget, it is worth it. If you do not have the budget quite yet, find a laptop that has the features you need and can be a building block for your office setup in the future.

**A note about Apple.** I love Apple products. I use an iPad Pro and MacBook every day. However, as a Mac user, you do not get the same quality of Microsoft Office products as you would in a Window system (for a comparison, see tinyurl.com/yawbbapg). For some people, this is not a big deal. Personally, it drives

**UPDATE: Windows Programs on a Mac**

If you would like to have the benefit of operating native Windows applications on your Mac, Apple actually makes it very easy and you do not need a third-party application to compartmentalize your hard drive. You’ll need to purchase a Windows license and you can use Apple’s BootCamp program to install it. If you have any questions or would like help with this, email the Practice Management program at pma@wsba.org.
Start-up Tech Your Law Firm Really Needs: Hardware

Stacie Evers is a practice management advisor for the Washington State Bar Association. She consults with legal professionals on issues in law office management, including technology, business strategy, and marketing. She also chairs the Washington State Access to Justice Board’s technology committee, focusing on technology initiatives to increase access to justice. She is a student at the Seattle University School of Law.

me crazy. If I was starting my own law office now, I would make sure I had a Windows operating system (or a virtual Windows environment for macOS, such as Parallels, tinyurl.com/y9aszqk4; also see Update sidebar on page 51). But not everyone will mind the differences in the Mac version of the Microsoft Office suite, and there are many lawyers who swear by Apple systems.

A note about Chromebook. Notice that I’m not recommending a Google Chromebook. That’s because with a Chromebook you’re limited to using Google Docs to edit Word documents or using Office Online in a web browser. These options will not give you the editing options or the features you need for an efficient law office. So, you should plan to purchase a computer system that allows you to use the full Microsoft Office suite.

PRINTING AND SCANNING
If you have identified that you are a hard-copy person (meaning that you need to be able to create large copy or print jobs), you should consider leasing a traditional multifunction printer/scanner.

Otherwise, most solo and small law firms can get by with a desktop device. When shopping for a printer/scanner, watch for details such as tray capacity, print speed, and the cost of maintaining toner. Also look for the ability to scan to email easily.

Most folks will also recommend a Fujitsu ScanSnap iX500 Scanner. This is a standalone scanner, but it is recommended if you want to efficiently run a paperless office. It goes for about $400.

PHONE SYSTEM
Some attorneys will not need a traditional phone system in the office at first. You can use services to route your business number to your cell phone, and receive and place calls using the business number (not your personal line). This can be a great low-cost option so long as you reliably get cell phone reception from your office (or wherever you do the majority of the work). An example of such a service is Google Voice (google.com/voice); for other examples, see tinyurl.com/yd5qtqrl.

If you have staff and a need for intra-office communication and routing, or your cell phone service is not reliable, you should invest in a desk phone system for the office.

INCORPORATING YOUR MOBILE PHONE
If your goal is mobility for your practice, you probably already plan to use your smartphone to check email. You should also consider using your mobile device for two-factor authentication and connecting to mobile apps for your business. As discussed below, your phone might also be used to process credit card payments.

CREDIT CARD SWIPER
If you plan to take payments by credit card, and you expect clients to pay in person (e.g., at the conclusion of a consultation), you will most likely want a credit card processing device. Depending on what company you use for your credit card processing, you can typically get a device that plugs into your phone for free and automatically integrates with your software.

Standalone processing devices should also be available to you. Just make sure that whatever option you choose, the data is automatically fed into your accounting or billing system so that you’re not duplicating data entry.

SAY HELLO TO YOUR AI ASSISTANT
This is not included in most standard...
hardware recommendations for new firms, but a new law firm should also consider using an artificial intelligence (AI) assistant such as a Google Home device (store.google.com) or an Amazon Echo device featuring Alexa (amazon.com).

Having a system like this at your desk can help manage tasks and reminders and can also help you keep track of time. For an example of a time-tracking service that integrates with Alexa and other AI assistants, see telltali.com.

**PARTING THOUGHTS**

For any hardware that you purchase, you should follow these steps:

1. **Keep the documentation in one place:** All your warranties, guides, proof of purchases, etc., should be kept in one file location for easy access.

2. **Calendar warranty end dates:** Create calendar items or other ticklers when your warranty will lapse. Make sure you give yourself at least one or two months’ notice.

3. **Register products:** When you have the option, register products for extended warranties and other customer support.

4. **Know how to record it:** If you do not have an accounting background, work with a professional to ensure that you are properly recording these business expenses.

5. **Anticipate replacements:** Ideally, any hardware you purchase will last well beyond the warranty date. Unfortunately, this is not always the case. Be prepared that you may need to refresh hardware at least every five years or so. This should be taken into account in your budget so you are not sidelined when old technology gives out.
EXPERIENCE TENACITY JUDGMENT

DISPUTE RESOLVED

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GOVERNOR ELECTIONS

DISTRICTS 9 AND 10 WILL ELECT NEW GOVERNORS IN MARCH

If you live in Congressional district 9 or 10, please plan to vote for your representative on the WSBA Board of Governors between March 15 and April 1.

CANDIDATES:
District 9
Frank Cornelius
Bryn Peterson
District 10
Wayne Graham
Tom McBride
Vicki Parker

To learn more about the candidates running for the available positions, please visit the Board Elections page at https://www.wsba.org/elections.

Voting: The WSBA uses an electronic voting system, and members will not receive a paper ballot unless they request one. Email ballots will be sent on March 15 and must be received by 5 p.m. PDT, April 1. All active WSBA members are eligible to vote in the district of their residence. All out-of-state active WSBA members are eligible to vote in the district of the address of their agent within Washington for the purpose of receiving service of process as required by APR 13(f) or, if specifically designated to the executive director, within the district of their primary Washington practice.

For further information see www.wsba.org/elections or contact WSBA Bar Services Manager Pam Inglesby at barleaders@wsba.org or 206-727-8226.

INTERESTED IN RUNNING FOR THE BOARD OF GOVERNORS?

District 1: A Board seat is open for an active member of the Bar in District 1 due to the recent resignation of Governor Michael Cherry. The term of office will begin upon appointment and end in late-September, 2021; the governor will not be eligible to run for another term. The application deadline is March 15. The Board of Governors will interview all applicants at a future, public session meeting this spring. The Board will elect the governor at that meeting and the successful candidate will be seated immediately. Application instructions are posted at www.wsba.org/elections.

At-large position: The At-large governor will be elected by the Board of Governors at its May 16-17 meeting. The Board will select from among candidates who have the experience and knowledge of the needs of those lawyers whose membership is or may be historically underrepresented in governance, or who represent some of the diverse elements of residents throughout Washington, to the end that the Board will be a more diverse and representative body than elections based solely on congressional districts may allow. The three-year term of office for the at-large governor, currently held by Athan Papa-iliou, will begin in late-September. The application deadline is April 22. Application instructions are posted at www.wsba.org/elections.

For further information on any of these positions, please contact WSBA Bar Services Manager Pam Inglesby at barleaders@wsba.org or 206-727-8226.

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.
2019 LICENSE RENEWAL AND MCLE
Deadline was Feb. 1. If you have not completed all mandatory portions of your license renewal, including MCLE requirements and certification, if applicable, you are delinquent and your license is at risk of administrative suspension. You may complete licensing requirements, including MCLE certification, either online at www.mywsba.org or by using the License Renewal and Mandatory Continuing Legal Education Certification forms. Visit www.wsba.org/licensing to learn more.

SEND IN YOUR APEX NOMINATIONS
It’s time to acknowledge the best of the best by nominating your fellow legal professionals for the 2019 APEX (Acknowledging Professional Excellence) Awards. Send in your nomination of someone who exemplifies the best in integrity, professionalism, diversity, service, justice, and courage. WSBA will accept nominations until March 15. For information about the awards, including profiles of past APEX winners, and to download a nomination form, visit www.wsba.org/awards. The awards will be presented at the WSBA Annual Awards Dinner in fall 2019.

MANDATORY MALPRACTICE INSURANCE TASK FORCE
The Mandatory Malpractice Insurance Task Force has met since January 2018 to research the consequences of uninsured lawyers, to examine current mandatory malpractice insurance systems, and to collect and consider feedback from WSBA members. At its March meeting, the WSBA Board of Governors will receive for first reading the task force’s final report, which contains a recommendation that would (if adopted by the Washington Supreme Court) mandate malpractice insurance as a condition of licensing for lawyers, with specified exemptions. The final report, recommendation, and proposed rule language are available at https://www.wsba.org/insurance-task-force. Members can provide comments to the Board of Governors via insurancetaskforce@wsba.org.

WSBA BUDGET
WSBA’s fiscal year 2019 budget was approved at the Board of Governors September 2018 meeting before the end of the WSBA fiscal year. The fiscal year 2019 budget, and information about the programs and services that it supports, is available at www.wsba.org/about-wsba/finances.

USURY RATE
The maximum allowable usury rate can be found on the Washington State Treasurer’s website at www.tre.wa.gov/partners/for-state-agencies/investments/historical-usury-rates-archives/.
WSBA CONNECTS

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

CAREER CONSULTATION

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

THE "UNBAR" ALCOHOLICS ANONYMOUS GROUP

The Unbar is an “open” AA group for attorneys that has been meeting for over 25 years. Meetings are held Wednesdays from 12:15 to 1:30 p.m. at the Skinner Building at 1326 Fifth Ave., 7th Floor, Seattle. If you are seeking a peer advisor to connect with and perhaps walk you to this meeting, the WSBA Member Wellness Program can arrange this; call 206-727-8268.

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

LENDING LIBRARY

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

GET DISCOUNTS ON NEW SOFTWARE AND SERVICES

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

FREE LEGAL RESEARCH TOOLS

WSBA offers resources and member benefits to help you with your research. Learn more and get started at www.wsba.org/legalresearch. You can conduct legal research for free using Casemaker, as well as a new second member benefit tool: Fastcase. Fastcase is a next-generation legal research service that provides powerful data visualization to help you understand your research results.

FREE CLES · 1.5 CLE CREDITS · 90 MINUTES

Mark your calendars now! Webcast starts at noon the last Tuesday of every month.

To register and for more information, visit www.wsbacle.org.
JOIN A SECTION IN 2019
A new calendar year is here, and with it comes an opportunity to meet other legal professionals in your practice area, discover new practice areas, and save on CLEs by joining over 10,000 WSBA members who belong to one or more of the 29 sections. The new membership year began Jan. 1. For more information about section member benefits, and to join a section, visit https://www.wsba.org/legal-community/sections/sections.

ACCESS TO JUSTICE CONFERENCE
Save the date for the 2019 Access to Justice Conference, to be held June 14–16 at the Spokane Convention Center. Information will be posted to the Alliance for Equal Justice website, www.allianceforequaljustice.org, as it becomes available.

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

JOIN THE WSBA NEW LAWYERS LIST SERVE
This list serve is a discussion platform for new lawyers of the WSBA. In addition to being the best place to receive news and information relevant to new lawyers, this is a place to ask questions, seek referrals, and make connections with peers. To join, email 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 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.
CLE Calendar

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

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**CIVIL PROCEDURE**

**Civil Procedure: The Rules of the Game or Gaming Rules?**
March 29, Seattle. 6 CLE credits (5.5 Law & Legal Procedure + .5 Ethics). Co-sponsored by KCBA and the King County Superior Court. www.kcba.org

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**ELDER LAW**

**2019 Spring Elder Law CLE: Tools and Tips from Elder Law Collaborative Colleagues**
April 10, Seattle & webcast. 6.5 CLE credits (6 Law & Legal Procedure + .5 Ethics). Presented in partnership with the WSBA Elder Law Section; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org

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**EMPLOYMENT LAW**

**Seattle Labor Standards: Representing Workers and Ensuring Compliance**
April 4, Seattle & webcast. 1.5 Law & Legal Procedure credits. Presented in partnership with the WSBA Labor & Employment Law Section; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org

**Employment Law Practice Primer Track 1: Starting the Employment Relationship**
April 9, 16, 23, Seattle & webcast. 7 CLE credits (5.5 Law & Legal Procedure + .5 Ethics + 1 Other). Presented by the WSBA; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org

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**ENVIRONMENTAL LAW**

**KCBA Environmental & Land Use Section Annual Half-Day CLE**
April 4, Seattle. 4 CLE credits pending. Presented by the King County Bar Association; www.kcba.org

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**FAMILY LAW**

**Family Law Skills Training Institute**
April 19-20, Kennewick. 9.75 CLE credits pending. Presented by WSBA Family Law Section and Benton Franklin Legal Aid. https://www.wsba.org/legal-community/sections/family-law-section

**Complex and High Asset Divorce**
April 25, Seattle & webcast. 6 Law & Legal Procedure credits. The Seminar Group. 800-574-4852 or 206-463-4400; http://www.tsgregistration.net/5938WSB

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**GUARDIAN AD LITEM**

**Title 11 Guardianship GAL Training**
April 25-26, Seattle. 11.75 CLE credits pending. Presented by the King County Bar Association; www.kcba.org

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**INTELLECTUAL PROPERTY**

**The 24th Annual Intellectual Property Institute: A New Day in IP**
April 17, Seattle & webcast. 5.75 CLE credits (4.75 Law & Legal Procedure + 1 Ethics). Presented in partnership with the WSBA Intellectual Property Section; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org

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**INTERNATIONAL LAW**

**Using International Law in Domestic Practice**
April 15, Seattle & webcast. 6.75 CLE credits (5.75 Law & Legal Procedure + 1 Ethics). Presented in partnership with the WSBA World Peace Through Law Section; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org

**Protecting the Press under International Law**
April 29, Webinar. 1.5 Law & Legal Procedure credits. Presented in partnership with the WSBA World Peace Through Law Section; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org

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**LEGAL LUNCHBOX**

**April Legal Lunchbox**
April 30, Webcast. 1.5 CLE credits. Presented by the WSBA; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org

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**LAW OFFICE MANAGEMENT**

**Everyday Office: A Run Through of the Microsoft Office 365 Suite**
April 3, Seattle & webcast. 3.75 Other CLE credits. Presented by the WSBA; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org

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**REAL PROPERTY**

**Annual RPPT Spring CLE: Opportunity Zones, Affordable Housing, Legislative Update and Ethics**
April 11, Seattle & webcast. 6 CLE credits pending. Presented in partnership with the WSBA Real Property, Probate and Trust Section; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org

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**SENIOR LAWYERS**

**2019 Senior Lawyer Section Conference: Challenges at Home and Abroad**
April 26, Seattle & webcast. 7 CLE credits (4.5 Law & Legal Procedure + 1 Ethics + 1.5 Other). Presented in partnership with the WSBA Senior Lawyers Section; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org
Discipline and Other Regulatory Notices

Disbarred
Russell James Jensen Jr (WSBA No. 40475, admitted 2008) of Arden Hills, MN, was disbarred, effective 12/06/2018, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 3.1 (Meritorious Claims and Contentions), 3.3 (Candor Toward the Tribunal), 4.2 (Communication With Person Represented by Counsel), 8.4 (Misconduct). Joanne S. Abelson and Erica Temple acted as disciplinary counsel. Russell James Jensen Jr represented himself/herself. Randolph O. Petgrave, III was the hearing officer. Kelby Fletcher was the settlement hearing officer. The online version of NWLawyer contains links to the following documents: Hearing Officer’s Decision; Disciplinary Board Recommendation; and Washington Supreme Court Order.

Aaron James Kandratowicz (WSBA No. 44304, admitted 2011) of Spokane, WA, was disbarred, effective 12/19/2018, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.15A (Safeguarding Property), 1.15B (Required Trust Account Records), 1.16 (Declining or Terminating Representation), 8.1 (Bar Admission and Disciplinary Matters), 8.4 (Misconduct). Kathy Jo Blake acted as disciplinary counsel. Aaron James Kandratowicz represented himself. Linda D. O’Dell was the hearing officer. The online version of NWLawyer contains links to the following documents: Hearing Officer’s Decision; Disciplinary Board Order Declining Sua Sponte Review and Adopting Hearing Officer’s Decision; and Washington Supreme Court Order.

Brian Malcom Keith (WSBA No. 14404, admitted 2010) of Bellingham, WA, was disbarred, effective 11/08/2018, by order of the Washington Supreme Court imposing reciprocal discipline in accordance with an order of the Supreme Court of the State of Nevada. The online version of NWLawyer contains a link to the following document: The Washington Supreme Court Order.

Robert Joseph La Rocco (WSBA No. 42536, admitted 2010) of Bellingham, WA, was disbarred, effective 12/19/2018, 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), 1.3 (Diligence), 1.4 (Communication), 1.5 (Fees), 1.15A (Safeguarding Property), 1.16 (Declining or Terminating Representation), 8.1 (Bar Admission and Disciplinary Matters), 8.4 (Misconduct). Francesca D’Angelo acted as disciplinary counsel. Robert Joseph La Rocco represented himself. Randolph O. Petgrave, III was the hearing officer. The online version of NWLawyer contains links to the following documents: Hearing Officer’s Decision; Disciplinary Board Order Declining Sua Sponte Review and Adopting Hearing Officer’s Decision; and Washington Supreme Court Order.

Resigned in Lieu of Discipline
Catherine Susan Willmore (WSBA No. 33459, admitted 2003) of Seattle, WA, resigned in lieu of discipline, effective 11/09/2018. The lawyer agrees that she is aware of the alleged misconduct in disciplinary counsel’s Statement of Alleged Misconduct and rather than defend against the allegations, she wishes to permanently resign from membership in the Association. The Statement of Alleged Misconduct reflects the following violations of the Rules of Professional Conduct: 1.1 (Competence), 1.4 (Communication). M Craig Bray acted as disciplinary counsel. Kurt M. Bulmer represented Respondent. The online version of NWLawyer contains a link to the following document: Resignation Form of Catherine Susan Willmore ELC 9.3(b)).

Suspended
Traci E. Mears (WSBA No. 30463, admitted 2000) of Casper, WY, was suspended for nine months, effective 6/15/2018, by order of the Washington Supreme Court imposing
recontact discipline in accordance with an order of the Supreme Court of the State of Wyoming. For more information, see https://www.wyomingbar.org/wyoming-supreme-court-suspends-casper-lawyer/. M Craig Bray acted as disciplinary counsel. Traci E. Mears represented herself. The online version of NWLawyer contains a link to the following document: The Washington Supreme Court Order.

Arturo David Menendez (WSBA No. 43880, admitted 2011) of Seattle, WA, was suspended for three months, effective 12/10/2018, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.15A (Safeguarding Property), Natalia Skvir acted as disciplinary counsel. Joel Evans Wright represented Respondent. Edward F. Shea, Jr. was the hearing officer. Donald W. Carter was the settlement hearing officer. The online version of NWLawyer contains links to the following documents: Order Approving Stipulation; Stipulation to Three Month Suspension; and Washington Supreme Court Order.

David E. Vis (WSBA No. 20599, admitted 1991) of Lynden, WA, was suspended for two years, effective 12/19/2018, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.3 (Diligence), 1.4 (Communication), 1.15A (Safeguarding Property), 1.15B (Required Trust Account Records), 1.16 (Declining or Terminating Representation). Jonathan Burke acted as disciplinary counsel. David E. Vis represented himself. James D. Hicks was the hearing officer. The online version of NWLawyer contains links to the following documents: Hearing Officer’s Decision; Disciplinary Board Order Declining Sua Sponte Review; and Adopting Hearing Officer’s Decision; and Washington Supreme Court Order.

Sandra Wilton (WSBA No. 22891, admitted 1993) of Carlsborg, WA, was suspended for six months, effective 12/19/2018, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 3.4 (Fairness to Opposing Party and Counsel), 8.4 (Misconduct). Benjamin J. Attanasio acted as disciplinary counsel. Kurt M. Bulmer represented Respondent. Evan L. Schwab was the hearing officer. Carl J. Oreskovich was the settlement hearing officer. The online version of NWLawyer contains links to the following documents: Order Approving Stipulation to Six Month Suspension; Stipulation to Six Month Suspension; and Washington Supreme Court Order.

Reprimand

John E. Gross (WSBA No. 41282, admitted 2009) of Seattle, WA, was reprimanded, effective 8/17/2018, by order of the hearing officer. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.3 (Diligence), 1.4 (Communication), 1.15A (Safeguarding Property), 1.16 (Declining or Terminating Representation). Sachia Stonefeld Powell acted as disciplinary counsel. John E. Gross represented himself. Kenneth B. Gorton was the hearing officer. The online version of NWLawyer contains links to the following documents: Order Approving Stipulation to Reprimand; Stipulation to Reprimand; and Notice of Reprimand.

Hester Catherine Mallonee (WSBA No. 11896, admitted 1981) of Federal Way, WA, was reprimanded, effective 9/20/2018, by order of the hearing officer. The lawyer’s conduct violated the following Rules of Professional Conduct: 5.5 (Unauthorized Practice of Law; Multijurisdictional Practice of Law), 5.8 (Misconduct Involving Disbarred, Suspended, Resigned, and Inactive Lawyers). Sachia Stonefeld Powell acted as disciplinary counsel. John E. Gross represented Respondent. Nadine D. Scott was the hearing officer. Diana M. Dearmin was the settlement hearing officer. The online version of NWLawyer contains links to the following documents: Order Approving Stipulation to Reprimand; Stipulation to Reprimand; and Notice of Reprimand.

Interim Suspension

Erik J. Graeff (WSBA No. 48235, admitted 2014) of Portland, OR, is suspended from the practice of law in the State of Washington pending the outcome of disciplinary proceedings, effective 11/08/2018, by order of the Washington Supreme Court. This is not a disciplinary sanction.

Samuel Campbell Marsh (WSBA No. 43756, admitted 2011) of Las Vegas, NV, is suspended from the practice of law in the State of Washington pending the outcome of disciplinary proceedings, effective 11/09/2018, by order of the Washington Supreme Court. This is not a disciplinary sanction.

Admonition

Mark Evans Lindquist (WSBA No. 25076, admitted 1995) of Tacoma, WA, was ordered to receive an admonition on 11/27/2018. The lawyer’s conduct violated the following Rules of Professional Conduct: 3.6 (Trial Publicity), 3.8 (Special Responsibilities of a Prosecutor). Scott G. Busby and Kathy Jo Blake acted as disciplinary counsel. Steven W. Fogg represented respondent. Craig C. Beles was the hearing officer. David B. Condon was the settlement hearing officer. The online version of NWLawyer contains links to the following documents: Order Approving Stipulation to Admonition; Stipulation to Admonition; and Admonition.
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(W.D. Wash. 2010)

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

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

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

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

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MY NAME IS MARC LAMPSON. I work as a review judge for the Board of Appeals in Olympia at the Washington State Department of Social and Health Services. A review judge’s job is to review the decisions of administrative law judges when a party appeals a decision in a wide variety of cases, including cases involving Child Protective Services, Adult Protective Services, the Developmental Disabilities Administration, public benefits cases, and more. My contact information is mrlampson1@gmail.com. You can see some of my photos at https://marcphotos.smugmug.com.

I became a lawyer because I wanted to use my mind for my livelihood and I hoped to “do no harm” with my way of making a living.

Before law school, I worked in various aspects of the book business.

My greatest talent as a lawyer, I hope, is writing.

My greatest accomplishment as a lawyer was directing a nonprofit law firm, the Unemployment Law Project, into, through, and out of the Great Recession.

The best advice I have for new lawyers is to treat everyone with respect, especially those who help you get your work done and, especially, those who are opposing counsel.

During my free time, I slowly teach myself guitar, piano, Afro-Caribbean, Cuban, and Brazilian rhythms applied to the drum set, photo taking, photo editing, website creation, Latin, Ancient Greek, and all about Shakespeare.

The most memorable trip I ever took was my first trip to Europe; a circle route from Dublin to Paris and Rome and back north through Vienna, Berlin, and Amsterdam.

I look up to Christine Blasey Ford.

If I took one day off in the middle of the week, I would drive to Powell’s Books in Portland.

I enjoy reading history, politics, science for non-scientists, social science, economics for non-economists, poetry, and the essays of Montaigne, Didion, Trillin, and more.

My best recipe I make at home is whole wheat bread with molasses and honey — my mom’s recipe.

I create work/life balance by playing in a rock band once a week, meditating in the Soto/Rinzai traditions, taking photographs, and exercising.

My favorite place in the Pacific Northwest is anywhere on the coast, walking along the ocean.

I worry about the planet.

I am happiest when I have a cat on my lap.

This changed my life: 1968: observing the Tet offensive on TV, organizing against the Vietnam War, witnessing the assassinations of Dr. Martin Luther King Jr. and Bobby Kennedy, and watching the viciousness of Mayor Richard J. Daley’s Democratic regime during the Democratic Convention in Chicago that summer.

My fondest childhood memory is camping and fishing on the Methow River outside of Winthrop and roaming the hills playing cowboy, alone above Omak.

Nobody would ever suspect that I have played drums in blues and rock bands for much of my life and spent more than a decade playing in a Japanese taiko ensemble that performed on nearly every stage in Seattle and many venues throughout Washington and Oregon.

I care about the extreme economic inequality in the U.S. that is the logical outcome of an economic system premised on greed.

Friends would describe me as quiet but someone who loves to laugh.

I regret the two-party system.

I have given back to my community by volunteering to teach English to Speakers of Other Languages in several venues and volunteering at the Cherry Street Food Bank once a week for several years.

This is on my bucket list: Kyoto.

I am thankful that I met my wife, Julie, 30 years ago, though we didn’t get married until four years ago.

An item I will never throw out is my passport.

My idea of misery is an economy window seat on a 747 on a 10-hour flight to anywhere.

My favorite band/musical artist is Leonard Cohen.

My favorite visual artists are Gordon Parks and Dorothea Lange.

My first car was a used—and very abused—Ford Thunderbird.

If $100,000 fell into my lap, I would buy stuff.

My all-time favorite movies start with a “C”: Cabaret, Casablanca, Chinatown.

My hero is my mom.

I would like to learn anything and everything.

If I have learned one thing in life, it is that change is the only constant.

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