Anthony David Gipe
2014–2015 WSBA President
EXPERIENCE
TENACITY
JUDGMENT

DISPUTE
RESOLVED

ADR Solutions

• All panelists are former Washington State Superior Court judges
• Mediation, arbitration, hearing officer, special master and litigation consultation
• Talented and responsive staff
• Comfortable mediation conference rooms
• Well-appointed arbitration courtroom with upgraded audio/visual technology and party breakout rooms

Joshua Green Building · 1425 Fourth Avenue · Suite 300
Seattle, Washington 98101 · 206.223.1669 · jdrllc.com
Welcome Teresa Daggett

We are pleased to announce that Teresa Daggett has joined the firm’s Business & Employment Group as a Partner.

Teresa brings many years of experience in corporate and securities law and she is passionate about helping both technology-based and traditional businesses achieve their goals. Her practice focuses on business formation, growth and operations, mergers and acquisitions, private equity and venture capital investments, contracts and licensing agreements, and complex financing issues.

Please join us in welcoming Teresa to Gordon Thomas Honeywell.
A Chat with the President
A Q&A with New WSBA President Anthony David Gipe
interviewed by Michael Heatherly

WSBA Welcomes New President-elect and Class of 2017 Governors

A Mosaic of Fee-Shifting Law and Issues
What’s Behind Awarding Attorney Fees 10 Times Greater Than the Jury Verdict?
by Michael Caryl and Lee Raaen

Surviving the Apocalypse and Other Fun Advice
by Garrett Oppenheim

Social Impact Bonds: The Lawyer’s Role
Financing Arrangements Help Increase Money for Preventive Services
by Marjorie Singer

Sunset to Sunrise: A New Dawn in Professionalism
Expanding the Reach of Professionalism to All Members
by Sims Weymuller

Secret Settlement Agreements
A Significant Threat to the Administration of Justice and a Proposed Solution
by Leonard J. Feldman and Michael P. Lynch

ON THE COVER: WSBA President Anthony David Gipe is photographed at Seattle’s Olympic Sculpture Park. In June 2014, the Seattle Art Museum unveiled a new aluminum sculptural bench by Ginny Ruffner that honors the life and legacy of the late Mary Shirley, a Seattle arts patron and longtime supporter of the museum. The aluminum bench is functional and offers impressive views of the sculpture garden and Puget Sound. The Olympic Sculpture Park is open to the public 365 days a year and is free of charge.

Photo by Terry Kinjo; see more of his work at www.ampersandc.com.
COLUMNS

7 Editor’s Note
WSBA at 125 — still making music
by Michael Heatherly

9 President’s Corner
Diversity, Multicultural Competence, and the Future of the Profession
by Anthony David Gipe

DEPARTMENTS

4 Inbox

20 Treasurer’s Report
by Brian J. Kelly

38 Celebrate Pro Bono

43 Top 10 Legal Cases That Will Spook You
by Douglas Pierce

52 Section Spotlight
WSBA REAL PROPERTY, PROBATE AND TRUST SECTION
Digital Assets and Estate Planning: The Internet Has Changed the Way We Plan Clients’ Estates
by Rochelle L. Haller

54 In Remembrance

72 Beyond the Bar Number
Shreya Ley

ESSENTIALS

60 2014 WSBA 50-Year Member Tribute Luncheon Registration Form

61 Disciplinary Notices

62 Announcements

63 Need to Know News and Information for WSBA Members

66 CLE Calendar

68 Professionals

70 Classifieds

NWLawyer
The WSBA’s Official Members’ Magazine

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

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

Paula Littlewood
Executive Director
206-239-2120, paulal@wsba.org

Michael Heatherly
Editor
360-312-5156, nwlawyer@wsba.org

Debra Carnes
Chief Communications Officer
206-733-5950, debrac@wsba.org

Jennifer Olegario
Communications Manager
206-727-8212, jennifer@wsba.org

Todd W. Timmcke
Managing Editor/Graphic Designer
206-727-8214, toddt@wsba.org

Stephanie Perry
Communications Specialist/Writer/Editor
206-733-5952, stephaniep@wsba.org

Paul Wood
Advertising Sales–Media Enterprise Group, Inc.
206-498-9860, paulw@wsba.org


All editorial material, including editorial comment, appearing herein represents the views of the respective authors and does not necessarily carry the endorsement of the WSBA or its Board of Governors. Likewise, the publication of any advertisement is not to be construed as an endorsement of the product or service offered unless it is specifically stated in the ad that there is such approval or endorsement.

NWLawyer is published nine times a year (February, March, April/May, June, July/August, September, October, November, and December/January) by the Washington State Bar Association, 1225 Fourth Ave., Ste. 600, Seattle, WA 98101-2539, and mailed periodicals postage paid in Seattle, Washington (ISSN 2327-3399). For inactive, emeritus, and honorary members, a free subscription is available upon request (contact nwlawyer@wsba.org).

A portion of each member’s license fee goes toward a subscription. For nonmembers, the subscription rate is $36 a year. Washington residents, please add sales tax; see http:// dor.wa.gov for sales tax rate.

Postmaster: Send changes of address to:
NWLawyer
WASHINGTON STATE BAR ASSOCIATION
1325 Fourth Avenue, Suite 600
Seattle, WA 98101-2539

OCT 2014 | NWLawyer
Cheese has company

I write regarding “The Cheese Stands Alone” in the JUL/AUG 2014 NWLawyer Tech Issue. It made me wonder how it can be that Washington is currently a center and leader of tech and e-commerce, when the article’s premise is that WA cannot succeed absent adoption of the Uniform Electronic Transactions Act (UETA).

Being the co-author of a treatise that focuses on e-commerce, including the federal Electronic Signatures in Global and National Commerce Act (ESIGN) and UETA, and having helped clients wrestle with both, my personal view is that WA is lucky not to have adopted UETA. UETA is a siren’s song, i.e., its alluring promise of “uniformity” is not reality (check out CA’s myriad exceptions from scope and CA’s substantive amendments) and it is perpetually frozen in time to 1999 (ESIGN preempts any other version). Some courts in states with UETA do not even base their decisions on it (e.g., recently, a Florida court inexplicably used a non-UETA statute to allow the remainder of NY law with NY and that is pretty good company. NY rejected UETA, adopting a minimalist statute to allow the remainder of NY law ally does not stand alone. It at least stands i.e., ESIGN largely controls (subject to preempts any other version). Some courts perpetually frozen in time to 1999 ( ESIGN does not cover “intrastate” transactions, “governmental affairs” and it clearly esign doesn’t cov because WA did not adopt UETA. UETA is but the latter are almost ephemeral in the computer age, and the “governmental affairs” debate is based on flawed logic (the logic for viewing governmental affairs as federal Electronic Signatures in Global and National Commerce Act (ESIGN) and National Commerce Act (ESIGN) and Uniform Electronic Transactions Act (UETA) because WA did not adopt UETA. There is a debate that ESIGN doesn’t cover “governmental affairs” and it clearly does not cover “intrastate” transactions, but the latter are almost ephemeral in the computer age, and the “governmental affairs” debate is based on flawed logic (the logic for viewing governmental affairs as excluded from ESIGN would mean that consumers transactions are excluded from UETA). Neither argument is persuasive and any gaps can be solved without adoption of UETA (language to that effect was discussed at a legislative work session a year or so ago).

None of this is to say there are no problems in e-commerce. There are. But they are not created by WA’s failure to adopt UETA and will not be uniformly solved by adopting it. And the Washington Electronic Authentication Act (WEAA)? The article is correct that it is
problematic and always has been. Even so, I disagree that the WEAA disables e-commerce in WA. If it really does crush WA e-commerce, the simpler fix is to repeal it. WA and Utah were the first states to adopt such statutes and Utah long ago repealed its version.

Holly K. Towle, Seattle

Other diversity measures

I read with interest Tsiring Kheyap’s article “Judicial Diversity Matters” (JUL/AUG 2014 NWLawyer). Justice Stephen Gonzalez and newly appointed Justice Mary Yu can provide important perspectives based on their personal backgrounds and life experiences as well as their distinguished careers. At the same time, let us remember that retired Justice James Johnson, whom Justice Yu replaced, contributed to diversity by being a voice for a conservative point of view that is not always heard with strength in our state.

Philip T. Mattern, Des Moines

Practice of Law Board a necessity

This letter is in response to the articles of WSBA President Patrick A. Palace and AVVO CEO Mark Britton that appeared in the JUL/AUG 2014 issue of NWLawyer. I am interested in the issues concerning unauthorized practice of law because I believe that consumers of legal services must be protected from unscrupulous parties and that the best interest of the public must be served under current or future law, regulations and rules affecting the legal profession.

I also believe that the Practice of Law Board (POLB) is a vital body in our legal system. This board must continue its mission and activities. It must also consider adding more exceptions to the law to make legal services truly available, accessible and affordable. Thus, certain acts, which may be considered practice of law, may be allowed or permitted to be done by non-lawyers.

Mr. Britton’s concluding statement in his article [UPL Restrictions], i.e., “[W]e are not just lawyers; we also run businesses. Let’s start acting like it.” is an inevitable challenge to practicing lawyers, the Washington State Bar Association, and the POLB. I believe that the role of the POLB could be enhanced if it is able to recommend appropriate standards and rules for the participation of non-lawyers in the legal environment. Therefore, the POLB must continue to assist the legal profession, expand confidence in the administration of justice, and safeguard the interest of the general public.

Sesinando N. Cantor, Renton

In WSBA President Patrick Palace’s July/August column, he suggests that the activities of our Practice of Law Board, whose creation the Supreme Court authorized some years ago, are wasteful and wrong-headed. I disagree.

There is no reason why the public interest cannot be well-served by that board both protecting the public from abuse by non-lawyers who mislead or otherwise victimize Washington citizens and promoting broader access to justice through responsible and sensible roles for non-attorneys. That the board has “diligently and thoroughly” investigated hundreds of unauthorized practice of law complaints without numerous criminal prosecutions ultimately resulting does not make the board’s existence and efforts unnecessary. There are various ways other than prosecutions that the board protects the public from non-lawyers who hurt people through law-related activities they shouldn’t be engaging in, through effective “cease and desist” letters to name just one example.

There is no question that the inability of so many people to afford, and therefore to obtain, good help with their legal problems is a major challenge to our profession and our society. But criticizing or undermining the Practice of Law Board’s efforts to protect the public from victimization surely is not the best way for the WSBA to promote access to justice. The board’s enforcement activities should co-exist with both it and the WSBA also thoughtfully exploring, supporting, and facilitating efforts to pursue reasonable opportunities for non-lawyers to provide appropriate (and appropriately regulated) law-related services.

Michael Pierson, Seattle

J.R. Robinson is an ex-con who persuades current King County jail inmates to fire their “public pretenders” so that they’ll buy his Crime Dog Cite Book and hire him to draft pleadings. He didn’t realize his calls with his prospective jailhouse clients were routinely recorded. Bradley Marshall was disbarred in 2009 for myriad unethical conduct (In re Disciplinary Proceeding Against Marshall, 167 Wn.2d 51, 217 P.3d 291 (2009)). He moved to South Carolina where he continues to practice law. He’s being prosecuted for engaging in the unauthorized practice of law in South Carolina. The European Community Center is one of several outfits that negotiate insurance settlements for people injured in automobile accidents. Kevin Johnson trolls the King County Law Library in search of confused potential clients. Spencer Barclay signs the pleadings he prepares, “Private Attorney.” Steven Maloney prepared false immigration pleadings. He was convicted and sentenced to 18 months in prison for conspiracy to commit immigration fraud. He’ll have plenty of time to read J.R. Robinson’s Crime Dog Cite Book.

These folks have several things in common. None of them are lawyers. They prey on poor and vulnerable people who cannot afford a lawyer. They are just a few of the hundreds of scoundrels the Supreme Court’s Practice of Law Board has investigated and taken action against. While licensed or regulated paraprofessionals play an important role in providing legal and law-related services, the charlatans and scam artists need to be stopped. They are hurting the public. For good reason — and not purely trade protectionism as cynics might argue — the WSBA Board of Governors partnered with the Access to Justice Board to successfully persuade the Supreme Court to create the Practice of Law Board in 2002 (see General Rule 25).

In his column in the JUL/AUG 2014 NWLawyer, President Palace recommends revisiting RPC 5.4 which prohibits non-lawyer ownership interests in law firms (commonly known as Multidisciplinary Practice or MDP). Citing the success of Legal Zoom and Rocket Lawyer, he notes that the business world is eager to jump into the legal market. At the same time, he calls for the elimination of the Practice of Law Board’s UPL enforcement.

While it may be time for the bar to thoughtfully reconsider the pros and cons of MDPs as President Palace suggests, it simply does not follow that the Practice of Law Board should abandon its core mission of protecting the public by vigorously enforcing the prohibitions against UPL. The public interest issues and public harms implicated in MDPs and in UPL have little in common. Consideration of MDPs does not — and should not — require abandonment of the Practice of Law Board’s efforts to prevent bad actors from victimizing the public when they practice law without a license.

Scott A. Smith, POLB chair, Seattle
Since our company’s inception in 1980, **NAEGELI Deposition and Trial** has offered the highest level of litigation support services to the legal community. We utilize only the most qualified professionals to assist you and your client at every stage of the legal discovery process.
As the WSBA welcomes a new president and enters its 125th year in 2015, I am reminded of the Starr upright piano that stood throughout my life along the back wall of my grandma’s tiny house on Canyon Avenue in Wallace, Idaho. We always lived at least a few hundred miles away and didn’t visit that often, but the piano was a fixture to which I gravitated whenever we were there. Although I didn’t play piano, I marveled at its tonal range, from the floor-rattling bass of the leftmost key to the almost inaudibly thin tink at the other end.

I never thought of that piano as a musical instrument so much as a magnificently weighty piece of furniture that I assumed had been there since the dawn of time, holding up the chiming clock and family photos atop it. Then, on one visit, when I was middle-school-aged or so, my mom did something that astonished me. She walked to the piano bench and lifted the seat like a car hood. I had no idea the bench bore a secret compartment. Inside was a treasure trove of written music: a piano textbook along with charts of hit songs from the 1930s and 1940s.

It had never before occurred to me that someone actually used to play that piano. But something was about to boggle my mind even more. Inside the textbook was Grandma’s maiden name neatly handwritten on the title page. You could have knocked me over with a sheet music holder and proceeded to pound out a rendition of — well, if I knew at the time what song it was, I certainly don’t remember now. But the term “boogie-woogie” comes to mind. At any rate, for a couple of glorious minutes Grandma had tossed aside her cookie-baking apron and was stone-cold laying it down. At that point, if Ray Charles had shown up at the door and asked to sit in, I wouldn’t have been any more flabbergasted.

Because much communication today is reduced to 140-character tweets and six-second videos, we often complain about the lack of “context” being transmitted along with the factual nuts and bolts of our conversation. Well, here’s some context: Your grandma was a rock star, your grandpa rode a Harley, and while they’re old, slow, or departed today, they were once as cool as anyone has ever been.

Oh, wait. This is supposed to have something to do with the WSBA. Well, like the piano in Grandma’s house, we’re all aware of the WSBA’s existence and that it has vaguely something to do with the history and structure of our profession. But for the most part, we take it for granted. We think of it like a leather-bound early volume of the Washington reporter that we rarely had to open, even back when we read books on paper.

But once in a while — when a new president is sworn in, or the Annual Awards are handed out to WSBA members who went beyond the call of duty — we’re reminded that the Bar is still functioning and relevant, and it depends on people breathing new life into it from time to time.

In that regard, I’d encourage you to read our Q&A with new President Anthony Gipe, on page 12. He addresses several key topics facing the Bar, including proposed changes in WSBA governance, low bono service, member license fees, and the effects of technology on the practice of law.

NWLawyer Editor Michael Heatherly practices in Bellingham. He can be reached at 360-312-5156 and nwlawyer@wsba.org. Read more of his work at nwsidebar.wsba.org.

Brewe Layman, one of Washington State’s preeminent family law firms for matters involving significant or complex estates and business/professional practice issues, prenuptial agreements and the litigation/resolution of marital and living together predicaments.

425.252.5167 p brewelaw.com

Locations in Seattle, Everett, and Mount Vernon

Justice for Victims of Asbestos Diseases

Mesothelioma • Asbestos • Lung Cancer

The Northwest’s Leading Asbestos Litigation Firm
At Bergman Draper Ladenburg Hart, we have just one practice area; we represent families struggling with mesothelioma and other asbestos related cancers and diseases.

We are the largest plaintiff asbestos firm in the Northwest with over $500 million in recoveries for Washington and Oregon clients.

614 First Avenue, Fourth Floor
Seattle, WA 98104
(206) 957-9510

803 SW Broadway, Suite 2540
Portland, OR 97205
(503) 548-6345

www.bergmanlegal.com (888) 647-6007
Diversity, Multicultural Competence, and the Future of the Profession

I am delighted to serve as the new WSBA president, and there are a lot of projects at the WSBA to keep us busy this year. However, I wanted to start my conversation with you by talking about the state of our diversity efforts in Washington. This article is not to call into question our past efforts or our commitment to an inclusive profession and justice system — because, as I mention later, the WSBA is a national leader in this area. Instead, think of this article as a call to action to raise our efforts to the next level and to describe a challenge to how our profession views and talks about race, gender, sexual orientation, or other physical or cultural differences. The title of this article is simultaneously a pet peeve, an aspiration, and a set of challenges facing our profession now and for the foreseeable future.

The legal profession in Washington has made great strides, with leadership from inside and outside of the WSBA, to change what the Bar looks like and how the justice system interacts with our minority communities. We have training programs for young minority lawyers for leadership and judicial training. We have changed our Board to improve access to underrepresented members. We have proposed (and the Supreme Court adopted) rules that enforce fair treatment in the administration of justice. One of our strategic goals for the WSBA is to “promote equitable conditions for members from historically underrepresented backgrounds to enter, stay and thrive in the profession,” and we take action every year toward that goal. The WSBA conducted a comprehensive study to assess the changes in our membership and to assess how our profession is struggling with change in how we work and what we look like. We are now preparing to start Phase II of that project. The WSBA has a Diversity and Inclusion Plan, and current efforts are underway to expand mentorship opportunities around the state. There is a definite feeling that our state is a leader in the profession nationally, and I receive that feeling from the comments I receive from my peers around the country. We, as a profession in Washington state, are approaching a critical mass where more fundamental change is possible.

WSBA’s Diverse Board
The new Board of Governors of the WSBA reflects the progress we have achieved. As an introduction to the Board that I have the privilege of serving over the next year, here are some facts you may not know.

- There are six women on the Board.
- Four people of color, including three African-Americans, and a Filipino-American are represented.
- There are four members of the LGBT community.

While the ages of the board members are well distributed and range from their 30s into their 70s, the time in practice as attorneys is quite different. Nine members have been in practice 15 years or less, two members have practiced 20–30 years, and the remaining members all have 30-plus years of practice. This is a reflection of the number of board members who
have entered law as a second career. Some of our past professions include interpreter, banker, businessperson, and chef.

The number of new and young lawyers on the Board is also the highest ever. Five members of the board have practiced less than 10 years, and three members are by definition young lawyers.

Eight of our members live outside of the Tacoma—Seattle—Everett corridor: four live in northwest or southwest Washington and four live in eastern Washington.

Competence is measurable in a way that diversity is not. It counts skills, not bodies.

To appreciate these metrics, it is important to understand how unusual this board is. At the retreat for the Board of Governors in July, we retained an expert to facilitate who has a Ph.D. with nearly 30 years’ experience with association and nonprofit board management. When he saw our board, one of his first comments to me was that this board was one of the most diverse he has seen in his career. In my personal survey of other associations, there are only one or two other statewide boards that come close to this level of diversity, and only Washington D.C.’s bar exceeded our diversity — as they have a specific policy in place to ensure fully representational diversity.

The Dynamics of Speech
However, as I thought about the state of diversity and inclusion in our profession in Washington, I was reminded of a recent article by journalist Adam Gopnik. Gopnik was not writing about diversity or multiculturalism, but he was writing about an affliction of language in our national dialogue that seems most pervasive when we talk about our most significant problems. In short, euphemism and cliché dominate our dialogue rather than direct language. A rough paraphrase of Gopnik’s point can be summarized as: Difficult subjects attract a lot of distortions. Eliminating euphemism and cliché from our debate is important because removing them from our language is an act of courage that helps us get just a little closer to the truth. Cracking open slogans, clichés, and euphemisms almost always points to responsibility, and to reveal that slogans masquerading as plain speech are mere rhetoric and their factual underpinnings are absurd. Using plain speech and avoiding cliché is often hard, but it yields rewards.

This concept is not new and I am sure no lawyer would miss the point Gopnik is making. However, it merits repetition, as the dynamics of speech control how we frame debate. That is one reason why the term “diversity” is my pet peeve. The “diversity” dialogue in our profession and in our nation has been energized for many decades, but we rarely get beyond the surface presentations of diversity, its obvious problems, and its politics of identity. We fall into general discussions about the topic, without defining what diversity means day to day, on the ground, for everyone — whether they are “diverse” or not. We fail to acknowledge that diversity is not hegemonic and means different things to different constituents. We ignore that diversity is a scapegoat word, we avoid diversity as a limiting effect on debate, and we use diversity as a convenient pigeonhole to avoid discussing the root causes of advantage, difference, access, barriers, and bias.

The Diversity Routine
Even after the 25 years that I have been involved in the diversity debate, it often defaults to a “check the box” approach that is largely unsatisfying to the goals of cultural understanding and participation. Historically, this check-the-box concept was the beginning and the end of diversity programs, and in some places it remains the key measure. Yet this metric of diversity does little to tell us what diversity is beyond counting people. The term “diversity” has become so broad and overused that it has essentially become meaningless as a generic placeholder for global inclusion.

In addition, I would suggest that the mere use of the term “diversity” maintains within it an inherent bias toward the check-the-box mentality. It naturally conjures the idea that there are discrete groups that must be identified and included. By spreading an ever-broader net of diversification, we run the risk of diluting resources and reducing all efforts to a collective minimum. In short, it has a homogenizing effect on the efforts that are supposed to be bringing distinct people and viewpoints into the profession. This doesn’t mean we should jettison the word from our vocabulary, but as we continue to use it, we have to understand its limitations.

Multicultural Competence
I have always preferred to view “diversity” as shorthand for “multicultural competence.” Competence connotes education of differing ideas rather than the assimilation of differences. Competence is measurable in a way that diversity is not. It counts skills, not bodies. Skills can be taught regardless of identity and membership. It emphasizes that bringing different people into the profession is a method to promote opportunity, to do more than bring other people into our institutions and systems, but to make sure that those systems can accommodate the different cultural and social needs of new members, new constituents, and new clients. Rather than telling minority communities how to succeed within the pre-existing model(s), it promotes skills for everyone to allow minority communities to succeed on their terms and to change how the majority accommodates new people, new models, and new client bases.

Having a Diversity Discussion
Over the course of my year as president, I hope that we can unpack some of these ideas and have a discussion as to why we deal with these challenging issues the way we do and what the alternatives are, and talk about where we are going as an organization and
as a profession both locally and statewide. Let us acknowledge our progress and challenge our weaknesses.

It would be foolish to think we can solve these problems in the next year, but the opportunity to get started is now. The profession is going through a fundamental change, and the data for this is about more than just “diversity” and “retention” efforts. However, the coming change is an opportunity to realign the profession to meet the future reality, where our membership and the public are going to be different. If we do not take these opportunities now to make diversity/multicultural components part of every aspect of that change, then our Bar and our profession will become increasingly irrelevant to and disconnected from that future. If that happens, we will not have the trust of the public, or the moral authority to protect and promote the justice system.

Our new Board of Governors is more reflective of that coming change. They are more diverse than ever before, and with a larger contingent of members who are not traditional lawyers and/or are transplants to the profession. The Board is also deeply concerned with the future of the profession and what is happening to younger lawyers, who are increasingly women, people of color, and LGBT attorneys. But this board cannot do it all alone.

Our other partners in these changes are obvious: our members, the law schools, the minority bar associations, community groups, the courts, and local and specialty bar associations. In their specific areas (subject matter and geographically), these partners are carrying their share of the work and usually doing it with fewer resources. (Hat tip to Dean Korn of Gonzaga Law School, who properly reminded me of this point last February).

Who Will Lead?

If the WSBA does not lead on the issues of diversity and multicultural competence, then who will? Who will be the statewide actor that can facilitate these changes, improve retention, increase access, and build the new tools necessary to advance this mission? To do this, we need our members, our board, and WSBA staff to support this aspect of our mission. We all need to identify what the goal is statewide, what the WSBA can do on that larger front to promote these local initiatives to the broader audience of WSBA membership.

No single group is going to be able to offer the solutions to all the difficult issues. Some of the obstacles are obvious, but resources to meet the challenges are sparse. Even the WSBA — which dedicates respectable resources to diversity in the profession — has a gap between its mission and its money. One of the WSBA’s four fundamental strategic goals is diversity and inclusion, yet we spend a small fraction of our resources attacking the problems. Even if we take into account all money spent directly or indirectly for some aspect of diversity in the WSBA, the total dedicated to this strategic goal would still only amount to around four percent of the annual budget.

Also, as a profession, we do not incentivize training and education on diversity, inclusion, and multicultural competency skills. We should be able to offer MCLE credit for training and education that is not purely black letter law — but which certainly benefits the members. Education in diversity, inclusion, and multicultural competency can have a net positive effect on the practice of law, the profession, and the public by making our attorneys more agile, more responsive, and more marketable in the changing demographics of our society. Competence can only increase public confidence in the profession and confidence increases access. And while we have started to dedicate resources to training, we could be doing more.

The WSBA as Actor

Even if the WSBA is not the best able to create programming, it is the best-placed actor in the profession to coordinate, facilitate, and educate. The WSBA is uniquely placed to promote the efforts of the local and minority bar associations, who are generally better at generating specific targeted content. The WSBA is also better positioned to dedicate grants and funding to accomplish programming and to ensure access to programming through its distribution systems.

At its core, this discussion is going to have to answer some fundamental questions about the culture of the profession and the goals of diversity programming. In a recent meeting to discuss this issue with some people I respect, we discussed questions like: How do we move multicultural/inclusion/diversity out to a statewide footprint? What is the goal to a statewide diversity effort?; and Who is the target audience for this work? There is no consensus answer to these questions, but I believe that the WSBA is well placed (maybe uniquely placed) to move that discussion forward.

That is the optimism and the challenge. It is my hope that statewide leadership can help craft a comprehensive team of partner organizations that can take the collective work and turn it into a network for change to the culture of our profession. Coordination may be our greatest challenge, but it is also one of the things the WSBA could do well. However, with all the other problems facing the Bar and the profession, if we do not put conscious attention to incorporate this debate into all aspect of our work (such as governance, license fees, and the escalating costs of civil litigation), then that opportunity for action may be lost.

As part of my contribution, I am giving dedicated space in NWLawyer’s President’s Corner or on the web to guest writers on these topics. As we collectively digest these viewpoints, we can ask ourselves: What kind of change are we looking for? What has to happen to promote change? How can we best organize ourselves to efficiently and systematically attack these issues? What can the WSBA do to effect that change? What is the WSBA best able to contribute? What can our members do? And perhaps most importantly, where are we failing?

For myself, I look forward to serving you all, and I hope you will all join us in serving and participating in this discussion. NWL

WSBA President Anthony David Gipe practices of counsel at Shatz Law Group in Seattle, focusing on civil rights, injury claims, family law, and select business litigation. He can be reached at adgipewsba@gmail.com.
A Chat with the President

interviewed by Michael Heatherly

This is an interesting question because it seems to be asking a few different questions on different levels. One is, “Why volunteer, why serve?” Another is, “Why commit to another three-year term so soon after serving three years on the Board of Governors?” Or, “Aren’t you exhausted?” Finally, it seems to also ask, “Why now?”

A short answer to what motivates me is simply that I believe in a culture of service. Serving others in my work or volunteer life is one of my core values. For me, that is more than just a truism or a trite saying. There are also some projects that I started as a governor that are entering a new phase of work, and I want to continue working on them. Finally, the practice of law and the WSBA are facing a changing landscape for the future. The Board is going to have an amazing level of input and impact in how that future of the profession looks, and we have a very talented and diverse board taking on those challenges. I wanted to be of service to this board and I think I have some skills that will contribute to success, by serving them.

On a more practical level, I went through a six-month self-evaluation before I decided to run for election. Most of that process was talking with family, friends, and colleagues about the challenges ahead, and also evaluating my work-life balance. The process — in its simplest form — consists of asking myself: why should I serve? Does the service meet my personal values? Can I add value to the organization or project? Do I have skills that could help meet the challenges? Do I have the time, the energy, the support? What am I sacrificing to take on this new role?

Answering these questions involved talking with a lot of people, including many of the current and past leaders in the WSBA, and with key staff at the WSBA to get up to speed on the current issues. I also talked a lot with my fiancé, my stepkids, my friends, and my work colleagues to determine if my service could be accommodated without undue disruption to my family and my business associates, considering the significant time the president must dedicate to the WSBA. I specifically gave my fiancé, and our kids, a veto on whether I would run for election or not. If they thought it would be too much of an impact to serve, I would not have run. I am grateful and humbled by the amount of support and confidence my family and my colleagues have for my continued service.

“Why now?” was more a matter of the stages of my practice, my financial ability to serve, and my future goals for my career and my family. I have been fortunate in my practice to be financially ready and I have taken the last year to put my practice in a place where I can fully serve as president and am financially able to absorb that loss to my practice. I looked into the future beyond 2016 and decided that if I didn’t run this year, I would be unlikely to have the opportunity to serve again for many years. In 2017, our son graduates high school and my fiancé and I have some plans to downsize our home and to travel. With my other professional goals, I decided that the best time to serve was now; I think it is timely and will have a real impact on the profession because of the challenges this board and the next few boards will have to tackle.

You previously served a three-year term on the Board of Governors. What motivated you to run for WSBA president, which effectively commits you to three more years of service (including the past year as president-elect and a year as immediate past president)?

A Board-appointed Governance Task Force has issued a report to the Board and state Supreme Court proposing numerous changes to the way the WSBA is governed, including substantial alterations in the selection and composition of the Board. Although implementation
of any major proposals likely won’t take place during your term as president, do you foresee the structure of WSBA governance being significantly transformed in the coming years?

The WSBA and the profession are in a period of transition and I see that continuing over the next 5–10 years. There are many good ideas in the Governance Task Force report that are in the best interest of the profession. However, any significant structural changes to the WSBA will take three-sided project teamwork. The Board of Governors, the Supreme Court, and the Legislature all have some part in any significant restructuring of the Bar, and that level of change would require some unprecedented cooperation among the three entities to accomplish a positive structural change.

However, that kind of broad structural change may not be necessary for immediate and concrete changes that would benefit the members and the profession. There are some changes that the WSBA can implement that would enhance how the WSBA works and would not require fundamental restructuring of the Bar. Changes can be made to how the Board works, and how the Board interacts with the Supreme Court, that can have immediate and positive changes for the WSBA, for the practice of law, and for the public.

As the Board works on this next year, we can make a good start on constructive changes, and if we perform well at those, then any action on the larger structural recommendations will certainly be easier to implement if all the stakeholders can agree on a direction.

One theme that runs through the Governance Task Force proposal and has prompted much discussion among the Board is an explicit acknowledgement that Board members’ duty is to protect the Bar as an institution, the justice system, and the public, and that while supporting WSBA members’ interests in some ways is permissible, it is clearly secondary. Although you may not be directly involved in this issue as WSBA president, what are your thoughts on whether WSBA members should expect the organization to look out for their interests, too?

I believe that even framing the question as primary and secondary duties is setting up a false dichotomy. I do not believe that a duty to the profession and the public is really any different than serving the interest of members or constituents, and the two are certainly not hierarchical or exclusive priorities.

Serving our members, educating our members, and preparing our members to serve their clients are all to the better, for the practice, for the legal system, and for the public. Likewise, educating and protecting the public, as well as supporting an efficient and independent judicial system, will only enhance the ability of our members to serve their clients by fostering mutual trust in their legal relationships and the legal system.

Probably the ultimate issue regarding WSBA governance is the question of whether the Bar will remain a mandatory, or “unified,” bar or whether regulatory functions might one day be transferred to the Supreme Court or another entity, in which case any “trade association” aspects would be carried out solely by one or more voluntary bar associations. Legislation to that effect has been proposed from time to time. Although it hasn’t gained traction so far, do you believe the mandatory bar concept will survive long-term in Washington?

Unified, mandatory bar associations have historically demonstrated that they are the best situated to handle the challenges of managing and regulating the profession. I would defer to our executive staff for the statistics, but in reviewing the ability of bar associations to perform with divided voluntary/mandatory functions, the loss in efficiency and coordination provided by the unified mandatory model has generally not been a positive recipe for long-term health of the profession, protection of the public, or service to its members. These models also make it harder to unify a message for the profession and for the independence of practice and the judiciary. If our board and Supreme Court keep the quality of the profession in mind in making decisions about unified versus divided governance systems, then I do not see them choosing a divided system, because the problems it solves are outweighed by the benefits of a unified bar.

Who has had the biggest overall positive influence on you, in your legal career or otherwise?

It seems like a cop-out answer, but the list is too numerous to be fair to all the people who have had a positive influence on me. I have had two professions as an adult, and a wide-ranging education, making the number of people who have had formative roles in my development truly uncountable. I would feel ashamed to think I missed someone and I can easily say I could never choose any single person. As an alternative, I offer some quotations which have had a positive meaning to me, reflect my leadership style, and are “go to” motivations to serve.

On the topic of why I serve others:

“It is clear that something is seriously lacking in the way we humans are going about things. But what is it that we lack? The fundamental problem, I believe, is that at every level we are giving too much attention to the external, material aspects of life while neglecting moral ethics and inner values. By inner values, I mean the qualities that we all appreciate in others, and toward which we all have a natural instinct, bequeathed by our biological nature as animals that survive and thrive only in an environment of concern, af-
A Radiology Mistake . . .

When I was 13, I had severe hip and joint pain, and no doctor could figure out what was wrong. They were even telling me to exercise more for a painfully long time. Finally, I found out I had a slipped capital femoral epiphysis in my hip – previously missed by a radiologist.

I could not have had a better experience than with Tyler Goldberg-Hoss. He guided me through every step and never talked down to me or my parents. With the settlement I received, I know my medical needs will be taken care of in the future.

~ Andrew M., Everett, WA

Tyler Goldberg-Hoss
Partner

Medical Malpractice. It's All We Do.
155 NE 100th St., Ste. 400, Seattle, WA 98125
206-443-8600  www.cmglaw.com

fection, and warmheartedness — or in a single word, compassion. The essence of compassion is a desire to alleviate the suffering of others and to promote their well-being. This is the spiritual principle from which all other positive inner values emerge.” — Dalai Lama

On success and failure:

“Success is stumbling from failure to failure with no loss of enthusiasm.” — Winston Churchill

“One person can make a difference, and everyone should try.” — J.F.K.

About authenticity and leadership:

“True leadership is only possible when character is more important than authority.” — Joseph Marshall, Lakota Sioux

“If you are going to carry the skin of conformity over you, you are going to suppress the beautiful prince or princess within you.” — Harry Hay

If anyone wants to know why I like these quotes, they could be a topic for a whole other article.

Since the license fee referendum of 2012, the Board of Governors has voted to voluntarily maintain member fees at the level set by the referendum ($325 annually for active members) for three years until 2015. However, financial projections have shown that if costs remain at their current levels, the WSBA's reserves could be exhausted in the near future. The Board Budget and Audit Committee has recommended that, for fiscal 2016, the fee be raised to $385. How do you foresee the Board handling fee-level proposals in the following years?

It is clear that the referendum forced us to subsidize the license fee by spending reserves. Every member was subsidized up to $70–80 per year in their license fees by spending reserves to maintain the lower fee. This was a short-term fix only, and if we are going to meet our ongoing mission of service to the members and the public, we must raise the license fee or we will have to fundamentally change what the WSBA
is at its core and its mission. [Ed. Note: The Board voted to approve increasing license fees to $385 for 2016 and 2017 at the September meeting.]

The Board recently created a WSBA section to deal with the issue of “low bono,” the provision of legal services at reduced rates, aimed at people who do not qualify for pro bono services but cannot afford the full fees for needed legal help. Do you envision that lawyers and clients will eventually embrace the low bono concept to the point that it will become a viable part of lawyers’ practices and appreciably improve the public’s access to justice?

Low bono legal services are a remedy for a symptom in our legal system. The symptom is the inability of the vast majority of people to afford legal representation when they need it. This is a symptom of the problems faced in our profession in how it bundles legal services, the costs of litigation, and the barriers to court access. This includes many issues that are not exclusive to legal practice, but are societal: how we fund courts, private-public resource dichotomy, and social inequality. The low bono attorney business models are going to be more prevalent because I do not see the root causes of this tension going away, and because these currently untapped clients represent a business opportunity for entrepreneurial attorneys. The early stages are going to work out models for these services that make business sense for attorneys and will serve their communities. Once a sustainable model emerges and can be replicated, low bono will be here to stay until we can eliminate the larger barriers to representation.

What is the most important lesson you have learned as a lawyer that nobody taught you in law school?

Understanding your client’s goals is as important (or more important) than understanding the technical aspects of their legal problem. Understanding the latter may give you legal victory, but understanding the former will give you success.

For the July/August issue of NWLawyer, we published a special edition dedicated to the topic of technology and the practice of law. The authors raised numerous issues regarding the benefits and pitfalls of technology in modern legal practice. Overall, do you believe clients will be better served because technology makes lawyers more efficient, or will technology create an additional interpersonal barrier between us and our clients?

My view is that the various technical changes to practice are not the issue. Instead, the problem is how we use technology. As human beings we can use any specific technical advancement, like any other tool, to either erect or remove barriers to communication, productivity, etc. Emails have increased the speed of communication, but the instantaneous need to respond may sacrifice deliberation, professionalism, and ethical practice. Likewise, the ability to prepare and revise documents without re-typing has not led to concise writing habits, and the ability to scan documents electronically has not led to judicious use of exhibits or eased the burden of discovery practice. To debate the issue from the perspective of the technical advancement is to miss the point that the tools do not make the excuses — we do.

Other than those we’ve already discussed, what do you see as the one or two biggest issues likely to face the WSBA and Board during your term?

Well, you hit the big ones: governance, license fees, and the WSBA’s relationship with the Supreme Court and with the members. I think we will also be continuing the ongoing work around diversity in the profession, the changing face of the profession, and mentoring young lawyers — individually and in combination with the broader discussions on how the profession is changing. I see no shortage of significant topics to keep the Board occupied.
Please join JAMS for concurrent CLE presentations followed by a client reception and open house.

Tuesday, October 14, 2014 | JAMS Seattle | 600 University St. | Suite 1910 | Seattle, WA 98101

**CLE Session 1** | 4:00 - 5:00 PM | Free of charge
**Ethical Dilemmas in ADR**
Presented by Hon. Eric B. Watness (Ret.) 1.0 Ethics CLE Credit pending

**CLE Session 2** | 4:00 - 5:00 PM | Free of charge
**Effective Use of ADR in Employment Disputes**
Presented by Judge Thomas McPhee (Ret.) and Judge Terry Lukens (Ret.) 1.0 General CLE Credit pending

5:00 - 6:30 PM **Client Reception & Open House**

Celebrate our newly renovated office space and the retirement of three esteemed Seattle panelists: Hon. Robert Peterson (Ret.), Hon. Robert Doran (Ret.) and Hon. Gerard Shellan (Ret.).

RSVP at https://seattle mediation week.eventbrite.com. For more information, contact Michelle Nemeth at mnemeth@jamsadr.com or 206.292.0441.

---

**We know workers’ comp.**

**Workers’ Compensation and Social Security Disability**

Now with offices in Seattle and Everett

Toll Free: 866-925-8439
Phone: 206-623-5311

www.walthew.com

---

**We welcome and appreciate every referral.**

Left to right: Kathleen Keenan Kindred, Robert H. Thompson and Thomas A. Thompson
Top: Robert J. Heller and Patrick C. Cook  Bottom: Jonathan K. Winemiller and Michael J. Costello
The WSBA Welcomes New President-elect and Class of 2017 Governors

1. **William D. Hyslop**  
   **WSBA President-elect**  
   William Hyslop practices in civil litigation and dispute resolution for Lukins & Annis, P.S., in Spokane, where he is a principal. He has practiced for the firm since 1980, except for 1991–93, when he served as U.S. attorney for the Eastern District of Washington.

   "We must be ever mindful of the changes continuing to affect our profession and the services we provide to the public," says Hyslop. "Our members need to know that their WSBA provides real value for their license fees and is responsible with the use of their funds . . . We must also have continual meaningful contact with the courts, support the maintenance of the independence of the judiciary, and collaborate in setting the WSBA's future."

   An active member of Washington's legal community, Hyslop has been involved in many WSBA activities and served on the Board of Governors in 2000–03. In 2006, he was awarded the WSBA President’s Award in recognition of his work in the Spokane community and service to the legal profession. Hyslop is president of the Federal Bar Association of the Eastern District of Washington and a co-chair of the WSBA Committee on Public Defense. He is a past president of the Spokane County Bar Association and of the Washington State University Alumni Association. Hyslop serves on the board of the Morning Star Boys’ Ranch and is the president and founding board member of its foundation. He is a member and former director of the Rotary Club of Spokane and has been active in many community efforts.

   Hyslop earned his law degree from Gonzaga University School of Law, a master’s in public administration from the University of Washington, and his undergraduate degree from Washington State University.

2. **Keith M. Black**  
   **WSBA Governor, District 6**  
   Keith Black received his law degree from Gonzaga University School of Law, where he was associate and senior editor of its law review. A former law clerk for the Washington State Court of Appeals Division II, he was an associate at the Tacoma law firm of Gordon Thomas Honeywell LLP; served under five elected prosecuting attorneys for Pierce County; and was appointed chief civil deputy, serving for 20 years in that position.

   Black is active with the Tacoma-Pierce County Bar Association, having served as its president, on its board of trustees, and on its editorial board. He currently serves as a pro tem hearing examiner in land use and environmental matters. Black is also active on community and civic boards, and has served as past chair and on the board of directors of Bellarmine Preparatory School.

   "I am eager to support the collaborative effort of the Board of Governors, focusing on excellence in service to clients within our diverse communities, in an atmosphere of integrity and mutual respect," says Black. "I will listen closely, communicate effectively, and support all the attorneys that shape the 6th District."

---

The image contains a collage of photos and text, with no additional relevant information beyond what is already included in the text above.
3. Mario M. Cava  
***WSBA Governor-at-large***  
Cava is a senior litigation auditor/in-house counsel with Enterprise Legal Services at Liberty Mutual Insurance Group. Previously, he was field counsel with the Law Offices of Sweeney, Heit & Dietzler, and was a trial attorney at Associated Counsel for the Accused. He served on the WSBA Editorial Advisory Committee and was a member of the 2012 class of the Washington Leadership Institute.

“As an out-of-the-closet professional, visibility is more than just being an active member of the community; it is about offering hope and inspiring others,” Cava says. “Leadership means demonstrating the service-oriented framework that comprises the organization as a whole, while also inspiring active participation by other members . . . I am forever humbled by the spirit of volunteerism, the countless hours of commitment, and the vital services being offered.”

Cava received his law degree from American University Washington College of Law and his undergraduate degree in psychology and politics from Whitman College. He enjoys singing and is a longtime member of the Seattle Men’s Chorus.

4. Ann M. Danieli  
***WSBA Governor, District 7-North***  
Ann Danieli has been an attorney for over 30 years in King County. She has served the public as a prosecutor, a public defender, and a judge pro tem. She is a member of the American Bar Association and the Florida Bar Association.

“I first became interested in running for the Board of Governors after the license fee referendum,” says Danieli. “I want to make sure that our mandatory organization stays true to its mission statement: ‘to serve the public and the members of the Bar, ensure the integrity of the legal profession, and to champion justice.’ We need to accomplish these goals in a fiscally responsible way.”

Danieli received her law degree from Seattle University School of Law and her undergraduate degree from the University of California at Santa Cruz.

5. Elijah Forde  
***WSBA Governor, District 9***  
Elijah Forde replaced James Andrus as District 9 governor in March 2014. Forde is the managing attorney and owner of Atlas Law, PS, representing injured workers, their dependents, and survivors before the Board of Industrial Insurance Appeals and in superior court. Previously, Forde was an associate at Lane Powell PC and an assistant attorney general at the Washington State Office of the Attorney General, where he represented the Department of Labor and Industries in workers’ compensation and building trades appeals.

“I have a passion and commitment to serve,” says Forde. “This passion and commitment is fueled by my belief that it is not acceptable to identify a problem without also attempting to solve it…. I will bring my diligence, humor, and diplomacy to bear to help the Board address the varying concerns of the legal community.”

Forde enjoys giving back to the community. He is currently the president of the Loren Miller Bar Association and an EAGLE member of the Washington State Association for Justice. He has worked with National Guard soldiers on a variety of legal issues relating to their deployments and successfully coached Seattle Prep’s Mock Trial team to five consecutive state championships.

When he is not working or volunteering, Forde enjoys spending time with his wife and daughter.

Forde received his law degree from Howard University School of Law in Washington, D.C., and his undergraduate degree from the University of California-Berkeley.

6. Andrea S. Jarmom  
***WSBA Governor, District 8***  
Andrea Jarmom was elected in April 2014 as the new governor from the 8th District, which includes eastern King and Pierce counties, replacing outgoing Governor Bill Viall. Jarmom is a tenure-track faculty member in the paralegal program at Tacoma Community College. She has previously served as an assistant attorney general for the Washington State Attorney General’s Office, an assistant city attorney for the Seattle City Attorney’s Office, and city prosecutor for the Auburn City Attorney’s Office.

“My own story of poverty and homelessness is what led me to pursue my legal career,” says Jarmom. “Honoring this path requires that I commit myself to service of my community and legal profession in a meaningful way.”

Jarmom received her law degree from the University of Washington School of Law, a master’s degree in law and justice from Central Washington University, and her undergraduate degree from the University of Washington. She is a member of the Loren Miller Bar Association and the American Association for Paralegal Education.

7. Jill A. Karmy  
***WSBA Governor, District 3***  
Jill Karmy is a partner with Parham, Hall & Karmy. Her practice consists of representing injured workers before the Department of Labor and Industries, Board of Industrial Insurance Appeals, and superior and appellate courts. She seeks to add a perspective to the Board of Governors as a mother, lawyer, and litigator.

“I truly believe my experiences in life can assist the WSBA in furthering the strategic goals it has recently implemented,” Karmy says. “As a partner in a small firm, I can relate to the issues that face attorneys in this district. As a parent and litigator, I understand the unique balance of caring for your children and clients at the same time. As a younger lawyer, I remember the early years of paying my license fees. With older lawyers, I have assisted them in winding down their practices with an eye towards retirement. All of these issues that the WSBA wishes to address in the coming years.”

Karmy has been an EAGLE member of the Washington State Association for Justice since 2006 and previously served on the WSBA Board of Bar Examiners. Outside of work, she enjoys time with her family, traveling, and cooking.

She received her law degree from Lewis & Clark Law School and undergraduate degree from Pacific Union College in California.
‘m grateful for the opportunity to have served as the WSBA Treasurer during the just-completed fiscal year. My thanks to fellow Board members for their confidence in electing me. It’s been a pleasure to serve as Treasurer. I commend the Board and the staff for their extensive work in making reductions and adjustments to better align the budget to meet the needs of the membership while fulfilling our fiduciary responsibility to the organization.

The WSBA budget is a policy document and management tool that allocates funds to fulfill our regulatory responsibilities to protect the public and also help members succeed in the practice of law. Each year, we work to build a fiscally responsible budget designed to maintain a high level of regulatory effectiveness and deliver value to our members in a diverse, changing profession. At the September meeting, the Board of Governors approved the FY15 budget and set license fees for 2016 and 2017 at $385.

Recapping Reductions and Changes to the Budget
Following the 2012 license fee referendum, which arbitrarily reduced license fees to the 2001–02 level without regard to the actual cost of programs and services, we made a number of cuts and other changes to increase our effectiveness. Even as the costs of doing business continued to rise, efficiencies and prudent use of reserves enabled us to keep fees at $325 for three years through 2015. In addition, we strengthened our capacity to perform regulatory functions through the use of technology and introduced or expanded needed programs such as financial accommodations through the WSBA Hardship Option and Payment Plan; employment tools (Job Target website and Job Seekers Group); free benefits, including Legal Lunchbox CLE series, Casemaker (legal research), and WSBA Connects (member assistance program); new lawyer education and support (free and low cost seminars and resources); public service programs (Home Foreclosure Legal Aid Project (now transitioned to the Northwest Justice Project), Moderate Means, and Call to Duty; and webcast educational programs and forums, connecting members statewide.

In developing the FY15 budget, we looked closely at current and multi-year projections of revenues, expenses, and reserves, as well as programs, operations, and resources, to see what is working and what is not. In doing so, it became clear that some programs have been understaffed, there are still significant technology gaps, and members need enhanced programming to navigate a rapidly changing legal landscape. The FY15 budget addresses these issues. It assumes expenses of $17,904,053, supported by $14,757,180 in revenues, and $3.1 million in reserves. Revenues include license fee and non-license fee revenue (such as interest income; Washington State Bar Foundation donations; fees from mandatory CLE, regulatory, and member services; advertising and sponsorships; recovery of discipline costs; and section reimbursements).

Establishing the 2016 and 2017 License Fees
While license fee revenue historically supported 75 percent of WSBA programs and operations, it only covers 60 percent in FY15. As the Bar’s fiduciaries, the Board must set license fees at a level that enables us to continue to meet our regulatory obligations, advance our mission, and provide value to you at reasonable cost — while maintaining a prudent level of reserves. In order to continue to support our obligations to the public, to you, and to the profession, the Board voted to increase license fees to $385 for 2016 and 2017. This fee level is equivalent to WSBA license fees charged in 2005–06, and remains appreciably lower than the cost to practice in most other Western state mandatory bar associations.

The Bar continues to be well-managed and financially sound, providing significant value and services to its members. We are in capable hands with new governors, officers, and dedicated employees.

Each year, we work to build a fiscally responsible budget designed to maintain a high level of regulatory effectiveness and deliver value to our members in a diverse, changing profession.

Brian J. Kelly is a WSBA governor and the WSBA treasurer. Both a lawyer and a certified public accountant, Kelly is a principal in the Chehalis law firm Hillier Scheibmeir Vey & Kelly P.S., where his practice focuses on business, tax, real property, probate, and municipal law, with an emphasis on business succession and estate planning. He can be reached at bkelly@localaccess.com.
How $1 of License Fee Revenue Supports WSBA Programs and Operations in FY2015

**DISCIPLINE & DISABILITY SYSTEMS**: Costs to handle consumer inquiries and written grievances through disposition (including disciplinary counsel, hearing officer, and disciplinary board costs); to administer the WSBA audit program; and to educate members, law students, and legal professionals about legal ethics, trust account compliance, and the lawyer discipline system.

**LICENSING SERVICES**: Costs to process forms and licenses, and respond to inquiries for over 36,000 members, and to maintain and respond to questions about members and their public membership information.

**GENERAL COUNSEL**: Legal representation to the WSBA, Board of Governors, and other boards, task forces, and committees; records request and litigation management; oversight, interpretation, and analysis of WSBA Bylaws and other legal issues; and investigation of unauthorized practice of law complaints.

**OTHER LEGAL PROFESSIONALS**: Development costs for the Supreme Court-mandated Limited License Legal Technician (LLLT) and Limited Practice Officer programs. Once implemented, the LLLT program is intended to be self-supporting; revenues generated will be credited back to cover these costs.

**MEMBER BENEFITS & PROFESSIONAL DEVELOPMENT**: Costs for the Ethics Line, Ethics School, Law Office Management Assistance Program, Lawyers Assistance Program, and Mentorship Program, as well as WSBA-sponsored benefits, including free legal research and the member assistance program through Wellspring. This category also supports new and young lawyer education, training, and leadership and staff support to nearly 900 WSBA volunteers.

**PUBLIC SERVICE & DIVERSITY**: Supports the Access to Justice Board and WSBA’s public service programs, including the Moderate Means and Call to Duty programs, and other pro and low bono initiatives. Additionally includes WSBA’s efforts to advance diversity and equality in the legal profession, as guided by the 2013 Diversity & Inclusion Plan. These activities are supported in part by a grant from the Washington State Bar Foundation.

**ENGAGEMENT & OUTREACH**: Member support through the Service Center; dedicated staff outreach to local, county, and specialty bars; member communications through the WSBA’s official publication *NWLawyer*, the NWSidebar blog, wsba.org, and the WSBA Career Center; legislative support provided to WSBA leadership and sections.

**MANAGEMENT & OPERATIONS**: WSBA leadership, management, and internal support functions.

---

1 This chart reflects WSBA activities supported in any way by member license fees. It does not include income-generating services or programs that cover — or more than cover — their own costs (e.g., Mandatory CLE services, Admissions/Bar Exam, etc.).
A Mosaic of Fee-Shifting Law and Issues

By Michael Caryl and Lee Raaen

Last November, Division I of the Court of Appeals handed down its published opinion in Berryman v. Metcalf, 177 Wn. App. 644, 312 P.3d 745 (2013). For serious students of Washington’s jurisprudence of attorney’s fees, the Berryman opinion serves up analysis and opinions on a medley of critical issues relating to the awarding of fee-shifting attorney’s fees via the lodestar method. The court went to enormous lengths to support its wholesale rejection of the trial court’s fee award. Berryman, perhaps one of the more important cases on attorney’s fees to be decided in the last decade, may well have a substantial impact for the foreseeable future. Unless we hear from the Supreme Court, lawyers will be applying, distinguishing, and arguing Berryman for years.

Berryman — an Uncomplicated Motor Vehicle Tort Case

Berryman involves a simple automobile tort scenario — the plaintiff stopped and was waiting to make a left turn into a driveway when she was rear-ended by two separate uninsured drivers, with two separate impacts. With strain/sprain injuries to her neck and back, Berryman sued the uninsured drivers. Her own insurer intervened to assert defenses available to the drivers. Berryman moved the case into MAR arbitration, certifying her damages did not exceed $50,000. The MAR arbitrator awarded $35,724. The insurer requested a trial de novo. Berryman made an offer of compromise of $30,000, which Farmers rejected. The case went to trial and the jury rendered a verdict of $36,542, entitling Berryman to an award of fee-shifting attorney’s fees and costs under RCW 7.06.060 and MAR 7.3. The trial court awarded Berryman lodestar attorney’s fees of $140,000 and a Bowers multiplier of two, for a total award of fees of $291,950. Farmers appealed to Division I.

Division I Reverses the Berryman Fee Award in Blunt Terms

Appellate courts typically pay deference to trial judges’ decisions in published opinions. The Berryman opinion is unusually blunt and critical of the trial court. In only the third sentence of the opinion, Division I concluded, “Under the circumstances of this unexceptional case, the fee award of nearly $292,000 was
an abuse of discretion. We reverse the award of attorney fees and remand for meaningful consideration of what constitutes a reasonable fee” (emphasis added). The court criticized the inadequacy of the trial court’s findings and conclusions in uncompromising fashion. The court criticized the trial court’s failure to properly utilize the Bowers lodestar method, criticized Berryman’s counsel’s “failure to use billing judgment,” the trial court’s failure to adequately police the large number of hours spent by Berryman’s two lawyers, the trial court’s failure to discount for unproductive time, the use of “block billing” by Berryman’s two counsel, and criticized imposing a 2.0 multiplier based on the facts as outlined by the court, concluding, “Nothing in the record of the present case justifies a multiplier.”

This Berryman opinion is perhaps the most critical appellate court review of a trial court’s fee-shifting award we can recall in a published Washington case since the Supreme Court’s opinion in Scott Fetzer Co. v. Weeks (122 Wn.2d 141, 859 P.2d 1210 (1993)). The apparent reason seems to be the aggressive fee-shifting award sought by plaintiff’s counsel and the uncritical acceptance of the full fee award sought and blanket approval of the proposed findings and conclusions by the trial court. The rejection by the court of the fee-shifting award in its entirety undoubtedly resulted from these three factors and accounts for the court’s tough approach. This opinion will likely hamper contingency fee counsel seeking fee awards on both MAR de novo cases and other fee-shifting cases in the future, and will afford those parties liable to pay such awards with new tools to defeat or reduce such awards.

Inadequate Findings and Conclusions
Division I initially confronted Judge Barnett’s uncritical adoption of Berryman’s counsels’ proposed findings and conclusions, emphasizing that the trial court signed Berryman’s proposed Findings and Conclusions while making no changes, other than filling in the multiplier of 2.0. Early in the opinion, citing Mahler v. Szucs, 135 Wn.2d 398, 434–35, 957 P.2d 632 (1998), the court emphasized, “Courts must take an active role in assessing the reasonableness of fee awards, rather than treating cost decisions as a litigation afterthought. Courts should not simply accept unquestioningly fee affidavits from counsel.” The court specifically addressed the trial court’s failing:

While the trial court did enter findings and conclusions in the present case, they are conclusory. There is no indication that the trial judge actively and independently confronted the question of what was a reasonable fee. We do not know if the trial court considered any of Farmers’ objections to the hourly rate, the number of hours billed, or the multiplier. The court simply accepted, unquestioningly, the fee affidavits from counsel. (Berryman, 177 Wn. App. at 658)

The court concluded:

Here, the finding that the hours and rates charged were reasonable cannot by itself support the lodestar of $140,000, particularly in view of Farmers’ very specific objections that certain blocks of time billed were duplicative or unnecessary. A trial court’s failure to address such concerns is reversible error.

The court remanded to the trial court (a new judge, given the retirement of Judge Barnett) to exercise its discretion, and will afford those parties liable to pay such awards with new tools to defeat or reduce such awards.

Unless we hear from the Supreme Court, lawyers will be applying, distinguishing, and arguing Berryman for years.

The lodestar is only the starting point, and the fee thus calculated is not necessarily a “reasonable” fee. (Fetzer, 122 Wn.2d at 151). In assessing the reasonableness of a fee request, a “vital” consideration is the size of the amount in dispute in relation to the fees requested. (Fetzer, 122 Wn.2d at 150.)

The court injected its view that proportionality of the ultimate fee award to the amount in controversy was critical to a reasonable fee. But see the recent Division III opinion in Target National Bank v. Higgins, No. 30575-4-III (March 20, 2014), a soon-to-be published opinion, where the court pointed out many cases where trial courts awarded fees that were far disproportionate to the amount in controversy and were upheld on appeal, including Division I cases. In fact, the Target Bank court acknowledged Berryman’s reliance on the amount in controversy but did not follow it.

Division I did the proportionality analysis math, and noted that “the lodestar of $140,000 as determined by the trial court was almost four times as much as the jury’s valuation of the case” (Berryman, 177 Wn. App. at 661). The court concluded:

A lodestar figure that “grossly exceeds” the amount in controversy “should suggest a downward adjustment” even where other subjective factors in the case might tend to imply an upward adjustment. (Fetzer, 122 Wn.2d at 150.)

The Berryman court concluded:

The value of the case in terms of compensatory damages was between $30,000 and $40,000, as
evidenced by the arbitrator’s award of $35,724, Berryman’s settlement offer of $30,000, and the jury verdict of $36,542. It was a manifest abuse of discretion for the trial court to accept 468.55 hours as reasonable for this case. (Id. at 661)

**Failure to Account for Duplicative and Unproductive Time**

The lodestar process requires trial courts to analyze and weigh the hours spent to assure that only reasonable time spent is awarded. This involves the process of weeding out duplicative or unproductive time, and time spent in excess of what was necessary and appropriate. Here the lawyers “double-chaired” a relatively routine and uncomplicated case. The court pointed out that both lawyers prepared for and attended the same depositions and both tried the entire case for four days. The court focused on the two lawyers together spending 80 hours seeking to exclude the controversial biomechanist expert Alan Tencer, and over 130 hours on trial and witness preparation. Plain-tiff’s counsel used questionable judgment in seeking an award of lodestar fees for both counsel for all trial preparation and time spent in trial. Farmer’s attorneys did a workmanlike job summarizing the hours spent by Berryman’s counsel on various tasks. Clearly, there was “double-chairing” and excessive time spent.

**Addressing Block Billing**

Berryman’s counsel, like many (and probably most) Washington lawyers, used block billing, in which multiple legal tasks in a given day are not apportioned by time spent per task. Berryman is only the second published Washington appellate court decision to even address block billing. The court was critical of block billing here:

The block billing entries tend to be obscure. For example, on November 3, 2011, Kang billed 11.7 hours for meeting with Berryman about trial preparation and also for drafting a reply brief in support of plaintiff’s motions in limine. How many hours were devoted to meeting with Berryman’s counsel on various tasks. Clearly, there was “double-chairing” and excessive time spent.

**Little Mountain Estates Tenants v. Little Mountain Estates,**

**Phoenix Development v. City of Woodinville,**
171 Wn.2d 820, 256 P.3d 1150 (2011) (city’s denial of rezone)

**Whatcom County Fire District No. 21 v. Whatcom County,**
171 Wn.2d 421, 256 P.3d 295 (2011) (authority of fire district)

**Kiely v. Graves,**

**AUTO v. State,**
175 Wn.2d 214, 285 P.3d 52 (2012) (tribes not indispensable parties to litigation)

**Clemency v. State,**
175 Wn.2d 549, 290 P.3d 99 (2012) (application of estate tax to qualified terminable interest trusts)

**Washburn v. City of Federal Way,**
178 Wn.2d 732, 310 P.3d 1275 (2013) (city liability in service of anti-harassment order)
Epstein billed 2.5 hours on the same day for witness preparation of Berryman and her fiancé.\textsuperscript{13} (\textit{Id.} at 663–64.)

One fact fatal to the lodestar claim of Berryman and her attorneys was that the defense went out of its way to point out the specific details of excessive time, which the trial court ignored:

In short, the trial court’s decision to include all the hours claimed in the lodestar does not rest on tenable grounds. The billing appears grossly inflated and it does not appear that the trial court gave any meaningful review to the concerns raised by Farmers’ well-documented objections. (\textit{Id.} at 664–65)

Had the trial court reduced the lodestar and supported it by some tailored findings, the Berryman court might have been willing to grudgingly respect the trial court’s discretion. The trial court signed formula findings proposed by the prevailing party in \textit{Berryman} without a single change. The strong \textit{Berryman} opinion here is not a surprising result.

\textbf{\textit{Berryman} Reverses the Multiplier As Well}

Division I devoted about a third of its opinion to its determination to reject using a multiplier here as an abuse of discretion. The court opened this aspect with a discussion of the leading Washington cases addressing multipliers,\textsuperscript{13} and the observation that “multipliers are reserved for rare occasions.” The court then stated, “To judge by published opinions, our trial courts grant multipliers sparingly” (\textit{Id.} at 666). While this may be true if limited only to published decisions, it is inaccurate that trial courts rarely grant multipliers: they are relatively common.\textsuperscript{14} The court attempted to distinguish this case from cases brought under “remedial statutes with fee-shifting provisions designed to further statutory purposes.” The court contrasted these with MAR de novo cases like \textit{Berryman} and concluded that “the published decisions do not provide clear guidance for a case like this one.”\textsuperscript{15}

\textit{Berryman}’s counsel presented evidence from three very successful and prominent tort trial lawyers that multi-

\textbf{When DUI means CPS}

The law now requires an officer making a DUI arrest to notify Child Protective Services if a child is in the car. We can help you and your clients defend against CPS – by referral, association, or consultation.

\textbf{Law Offices of David S. Marshall}

\textbf{206.826.1400 • www.ChildAbuseDefense.pro}
pliers are essential to ensure access to justice in smaller tort cases like Berryman, given the scorched-earth litigation tactics of large nationwide tort insurers like Allstate and Farmers, “whose claim practices seek to discourage claims and punish claimants.” This is unquestionably true in our experience. We have often successfully advanced such arguments in multiplier cases, both as counsel and as an expert. Yet the Berryman court brushed off this testimony entirely, stating that Berryman’s counsel “asks this court to assume many things that are documented in the record only by boilerplate declarations,” even though it appears there was no testimony to the contrary. The appellate court disregarded entirely the only apparent evidence on the subject to support its decision to reject the multiplier.

The court further concluded, on rather sketchy evidence, that the $300 hourly rates of Berryman’s counsel already “comprehends an allowance for the contingent nature of the availability of fees.” The court came to this conclusion, apparently based on testimony by insurance defense counsel that “defense attorneys who charge by the hour would typically charge $150 to $200 for handling this type of case.” Nonetheless, the appellate court determined as a matter of law that a $300 hourly rate “already accounts for the risks inherent in taking the Berryman case.” In the next paragraph, the court concluded, “nothing in the record of the present case justifies a multiplier.”

One common rationale for allowing lawyers to charge a contingency fee that exceeds what would be a reasonable hourly fee is the risk of entirely losing some cases (with no fee at all) and getting poor results in others, resulting in fees that do not remotely approach a reasonable hourly rate. That is why contingent fees that often result in very high effective hourly rates are permitted — the successful cases make up for the losers and for taking the risks of working for little or no pay. This rationale does not work effectively in small tort cases that fall within the MAR jurisdiction, where insurers frequently require the plaintiff’s claim be tried twice, irrespective of the cost. Where an insurer is routinely willing to buy expensive expert testimony and spend more than a claim is worth in defending tort cases, access to justice with competent counsel for claimants like Berryman is limited if multipliers are routinely rejected. That was the entire point of the Blair, Moore, and Fulton declarations rejected by the Berryman court.

What Does It Mean?

How did a small-stakes personal injury case like this with a meritorious fee-shifting entitlement result in such a strongly worded published opinion attacking in broadside fashion every aspect of the fee award? In our view, the initial responsibility lies in the overly aggressive lodestar fee sought. Two experienced lawyers worked up and tried this relatively simple case together for four days. The problem with two lawyers in trial lies not in working the case up and trying it together — the problem was in asking the court to award 100 percent of the hourly lodestar time for both lawyers for all of their time. In cases like this, 469 hours seems hard
to justify. The second aggressive aspect of the fee application here was seeking a multiplier of 2.0, or 100 percent. In our experience with many multipliers over the past 30 years, the high end of multipliers typically awarded is 1.5 — anything more than this comes across as excessive. The combination of the two may have been toxic to the plaintiff’s fee-shifting request.

The other clear contributor to this published opinion is that the trial court failed to adequately document its efforts in the reasonableness determination based on the principles of the lodestar process in Washington. As we read the Berryman opinion, the insurer Farmers performed a detailed analysis of the hourly time entries of Berryman’s counsel and pointed out its objections to the trial court. The Berryman court observed:

There is no indication that the trial judge actively and independently confronted the question of what was a reasonable fee. We do not know if the trial court considered any of Farmers’ objections to the hourly rate, the number of hours billed, or the multiplier. The court simply accepted, unquestioningly, the fee affidavits from counsel.

The court found that the trial court’s failing to even address these objections is reversible error. Based on the facts as set forth in the opinion, the Berryman court’s rejection of the lodestar of 468-plus hours is appropriate.

The Berryman court, however, stretches to reject the multiplier as a matter of law. Multipliers are not rare in all cases based on contingent risk, but in fact they are relatively common. The court ignored what was apparently the only evidence that supported granting a multiplier as essential to afford access to justice, and the court appears to have done so as a matter of law. The court unpersuasively distinguishes so-called remedial statutes from the MAR statute for the appropriateness of multipliers and acknowledges that the published case law in MAR cases does not demonstrate a trend. The court seems to have found as a matter of law with virtually no evidence that the $300 hourly rates of Berryman’s counsel already “comprehends an allowance for the contingent nature of the availability of fees.”

This assertion is apparently based solely on some unnamed insurance lawyer’s opinions that insurance defense counsel would defend these cases for $150–200/hr. The court remanded the case to the trial court to determine the lodestar from scratch, but withheld from the new trial court the discretion the Berryman court acknowledges resides in the trial judge.

Berryman’s large lodestar fee and 2.0 multiplier fee-shifting request, coupled with the trial court’s failure to document its reasonableness determination with detailed findings, created a perfect storm which has resulted in this published Berryman opinion. The portion of the opinion addressing the excessive lodestar fees is a wake-up call to lawyers across the state to use “billing judgment” and not to overreach in either hours or hourly rates in fee requests. It is yet another non-subtle reminder to trial judges that “courts must take an active role in assessing the reasonableness of fee awards, Smith Goodfriend, P.S.

Family law is not an oxymoron.

Parentage of M.F., 168 Wn.2d 528 (2010).

contact Catherine Smith or Valerie Villacin
Washington’s Appellate Law Firm
www.washingtonappeals.com  206-624-0974
 noting rather than treating cost decisions as a litigation afterthought.” These wake-up calls are beneficial to obtaining fair and just fee-shifting awards. The mention of “block billing” in only the second published Washington opinion is helpful, although the court could have done more with it.

Unfortunately, the Berryman opinion’s tone and its effort to rein in the use of multipliers where otherwise appropriate are likely to encourage mischief by parties seeking to avoid responsibility for reasonable fee-shifting fees. At the outset, it is likely to affect the Washington jurisprudence of fee-shifting fees, perhaps in unanticipated ways. Given the Berryman court’s apparent willingness to go beyond just remanding for adequate findings as often done in other cases, to analyzing the reasonableness of attorneys’ time, hourly rates and the difficulties of the case, more appeals of fee awards are likely. NWL

### Alcohol and Driving Don’t Mix

**When your client faces a DUI charge, they need a fast, effective drug and alcohol treatment program.**

**We can help them ... in only 10 days**

Schick Shadel offers:

- The nation’s #1 success rate for drug and alcohol rehabilitation*
- A 10-day program based on a powerful medical model
- Highly experienced counseling staff
- Over 65,000 patients treated in almost 80 years
- Family counseling
- Customized sober-support and continuing care program
- State DBHR certified
- Patient access to cellphone, laptop and visitors

Call to talk to a counselor and get your client started on the path to recovery.

1-844-SCHICK1

---

* Based on results of a verified, independent survey of former Seattle patients (success measured as total abstinence for one year and assessed by self-evaluation), against published success rates from verified, comparable studies of other medical institutions.

---

NOTES

1. Review was denied by the Supreme Court on March 5, 2014. 179 Wn.2d 1026; 2014 Wash. LEXIS 214.
3. The court’s opinion exceeds 23 pages, all dedicated to a small, uncomplicated soft tissue personal injury claim whose importance is minimized in the opinion. In rejecting the trial judge’s approval of the lodestar fee, the court goes into fine detail in rejecting the multiplier awarded, discussing a total of 13 cases, including a U.S. Supreme Court opinion and four prominent Washington Supreme Court cases involving multipliers, and identifying and discussing by result, what may be every published decision in Washington where a multiplier was requested.
5. Farmers appealed the exclusion of trial testimony of the biomechanical expert witness, Alan Tencer, and certain photographs of the
vehicles. Judge Barnet’s exclusion of that evidence was affirmed. The plaintiff’s bar may take some comfort in the Court of Appeal’s assessment that excluding Tencer’s expert testimony is so routine as to not require great time and effort justifying large fees to do so.


7. Even so, Division I in a very recent decision approved a multiplier of 1.5 in a tort case. Miller v. Kenny, 135 Wn.2d 93, 95 P.3d 347 (2004). Judge Judge was the author of both Berryman and Kenny. Kenny was a wholly different case from Berryman, with much more at stake in damages. The case was highly litigated (by superb, high-profile lawyers) for a prolonged period of time. The trial court appears to have done an excellent job responding to the kind of defense arguments unsuccesfully advanced and apparently ignored by the trial court in Berryman. Kenny suggests that when the contingency fee risks are adequately documented by the prevailing party, the lodestar fees are clearly reasonable and the trial court squarely addresses the arguments challenging the fee-shifting efforts of the prevailing party, multipliers in Division I are not an endangered species.

8. The court even cited in a footnote examples of what they saw as exemplary findings and conclusions in support of a fee award and multiplier.

9. Where the court was headed became very clear in the next paragraph: “It is true that the court will not overturn a large attorney fee award in civil litigation merely because the amount at stake in the case is small.” Mahler, 135 Wn.2d at 433. This cautionary observation should not, however, become a talisman for justifying an otherwise excessive award.


11. The court cited Fetzer for this conclusion, but did not acknowledge that the fees in Fetzer were based on the Long Arm Statute, where the only fees allowable in fee shifting were those fees that represented the enhanced cost of having to defend a case far from home.

12. No Washington state appellate courts have shown any serious inclination to call lawyers to task on the rampant use of block billing submitted to their clients, despite the fact that it is conclusively established that block billing enables lawyers to bill their clients excessively. Hopefully this Berryman opinion will cause more Washington trial and appellate courts to exact consequences for blanket use of block billing by lawyers in the future.


14. In my own experience with multipliers since 1986 when the multiplier was adopted in Bowers, multipliers are routinely granted by Washington trial courts in contingency fee cases, particularly in King County, where the Berryman case originated. In my own practice as a contingency fee lawyer and over the past 15 years while serving as an expert witness in fee-shifting cases, multipliers are not rare at all but relatively common.

15. 177 Wn.App. at 668.

16. Earlier in our careers, the majority of our practices involved plaintiff’s personal injury cases, many of which were modest cases like this Berryman case. In 1994, Allstate Insurance Co. adopted entirely new claims practices which consisted of very low offers, followed by hard-nosed litigation tactics. Most other insurers followed suit and the ability of claimants like Berryman to obtain reasonable settlements without extensive litigation became a thing of the past in the late 1990s. It was this situation which resulted in the successful effort to get the “offer of settlement” provisions added legislatively to the MAR statute.

17. 177 Wn.App. at 675.

18. See also Talmadge and Jordan, Attorney’ Fees in Washington, (Lodestar Publ. 2007) at p. 149, where former Justice Talmadge writes, “In Washington cases where a multiplier was awarded, 1.5 seems to be the ceiling for multipliers.”

19. 177 Wn.App. at 658.

20. Scott Fetzer Co. v. Weeks (Fetzer), 122 Wn.2d 156.

Fascination with the apocalypse is nothing new. From the Fall of Troy to the Rapture, our ancient ancestors had a morbid curiosity about the end of civilization. Even a cursory glance at popular culture today shows our curiosity has never diminished. Whether it’s incurable plagues, climate change, invading aliens, nuclear war, wayward asteroids, hordes of brain-hungry zombies, or radioactive lizards the size of skyscrapers, name the apocalyptic cause and there’s at least one popular show on TV about it right now.

Everywhere one looks, the end is nigh. And it’s not just Hollywood screenwriters titillating us with tales of the End of Days. A recent project by the National Socio-Environmental Synthesis Center, using models created with a grant from NASA, warns that due to unsustainable resource exploitation and unequal wealth distribution, global industrial civilization could truly be on the verge of collapse within the next two decades. Other recent studies in the United Kingdom suggest that a “perfect storm” of crises — including lack of food, water, and energy — could bring society down by 2030. I did the math: that’s just 16 years from now.

From our 21st-century, first-world perspective, societal collapse outside of the big screen might seem far-fetched, but no Roman citizen in the middle of the fifth century thought that a barbarian tribesman would soon be his emperor, either. Civilizations have collapsed into apocalyptic conditions time and again in human history. The mysterious Sea Peoples wiped out the ancient kingdoms of the Near East. The Khans left mountains of dead across the high-water mark civilizations of China and the Middle East. The Black Plague swept through Europe. Ideas of democracy and communism infected the people of France and Russia, convulsing great civilizations into revolution and causing havoc for common folk. Nazi stormtroopers marched across Europe, leaving

---

**SURVIVING THE APOCALYPSE**

And Other Fun Advice

**BY GARRETT OPPENHEIM**

---

— 6 Revelations 12:13, 15
devastation in their wake.

We may, in our lifetimes, once again witness the thin veneer of civilization disappear under the stress of apocalyptic circumstances, so the question is: What qualities do lawyers share that might prove useful to survival in such dark times? Before you answer “none,” let’s take a close look.

To be fair, lawyers come in as many different flavors as has an Italian gelateria, so the answer to that question is probably that we don’t all share the same helpful qualities. But again, across the centuries of history, humanity has faced more than one apocalypse and we can look to our forebears, lawyers from the distant and not-so-distant past, whose displays of their own characteristics — good, bad, and morally neutral — can show us what it might take to survive a future societal breakdown.

**Courage**

When civilization as we know it ends and death lurks around every corner, it’s no place for a coward. Heck, surviving in even a functioning civilization requires a fair amount of courage; our species would quickly disappear if teenaged boys lacked the courage to survive dinner at Olive Garden with their homecoming date. But when societal bonds are broken, no one is going to last long without deep reserves of it.

Seventy years from the end of World War II, the Shoah continues to loom large as the worst event in modern human history. As war raged across the planet, millions of non-combatants were herded up, shipped to concentration camps, and butchered. The tools of the Industrial Revolution were put to a grievous task in the name of bigotry and hatred. It was nothing short of apocalypse for its victims, a terrifying experience for anyone unfortunate enough to have been born the wrong religion.

Simon Gronowski was a frightened 11-year-old boy in 1943 when the Nazis put him and his mother on a train to the notorious death camp Auschwitz. But that train happened to be the only one during the entire war that was stopped on its way to its destination when three Belgian Resistance fighters somehow managed to trick the Nazis into hitting the brakes. Though the train was quickly on the move again, the doors had been busted open, and Simon’s mother was able to lower him down, allowing him to jump to freedom.

A child now on his own, his natural instinct was to return to his mother’s side aboard the train, but Nazi soldiers were coming down the tracks for him. He showed immense courage, racing away into the woods. Though he had escaped the train, his journey was far from over. The first person he encountered in the nearest village betrayed him to the police, but the benevolent officer did not give Simon back to the Nazis, instead sending him home to a reunion with his father.

Years later, with civilization restored, he paid his way through college and became a lawyer with a purpose. As he says, the Nazis had tried to “dispossess and demean him” and the law was “the best way of countering that.”

**Pragmatism**

Perhaps the most famous lawyer who has ever lived, Marcus Tullius Cicero witnessed firsthand the destruction of the ancient civic structure of Rome, the republic, and the subjugation of the Roman state to a single man, the populist dictator Gaius Julius Caesar. As the Republic split down the middle, elites like Cicero had to choose sides, and he, a traditionalist member of the Optimate party, supported Pompey and the Senate — though, as Pompey declared, his only contributions to the war effort came in the form of “defeatist witticisms.” Despite siding with the Pompeians, Cicero hesitated to join them as they fled Italy, and desiring above all the restoration of the Republic, he communicated with Caesar even during the darkest days of the Civil War, attempting to reconcile the two warlords.

When the war ended after four years, Cicero had chosen the wrong side. The Pompeian legions were thoroughly smashed and Caesar assumed singular authority over the expansive Roman world. Having opposed him, albeit never fully supporting Pompey or his party, Cicero feared for his life, but upon meeting Caesar post-bellum, he received a pardon from the magnanimous victor and continued to serve in the Senate during Caesar’s ensuing dictatorship.

Though he successfully survived the civil war between Caesar and Pompey, Cicero would have done well to have followed the example he set for himself in that conflict during the apocalyptic conditions that followed Caesar’s assassination in 45 BCE. Instead, he so virulently opposed the rule of Caesar’s chief lieutenant Marcus Antonius that he found himself on the proscription list created by Antony and Caesar’s heir Octavian, and was murdered at his villa a mere five years after Caesar had pardoned him.

**Determination**

Because of the devastating toll it took on humanity and its relative proximity to us in time, it should come as no surprise that the Holocaust is the background for the story of a second apocalyptic survivor.

Israel Ipson (born Israel Ipp) graduated from law school in Lithuania in 1933 and was living there with his family when the Nazis invaded and occupied in 1941. Forced to live in the ghetto, and only able to find work constructing a new landing strip at the airport under the watchful eye of Nazi guards, he lost two fingers to a jig-
saw on the job after a guard hit him in the head with the butt of his rifle.\textsuperscript{8}

One day when the Nazis gathered white-collar workers for a mass execution, Israel got away by lying and saying he was a mechanic instead of a lawyer. Some time later, he organized an escape from the ghetto with his wife and eight-year-old son into the custody of a friendly farmer outside of town. Knowing that as long as the family stayed in the farmer’s home, he was putting them in great danger, Israel sought permission to build a hiding place in the farmer’s potato field in the woods — despite having recently lost two of his fingers in a gruesome accident. Working only at night with his bare hands and a stick, he built an underground shelter that protected his family for six months until the Russians liberated Lithuania.\textsuperscript{9}

Ruthlessness

If \textit{The Walking Dead} has taught us anything about surviving the apocalypse in style, it’s that sometimes you’ve gotta be the bad guy. In the graphic novel and television series of the same name, the governor ruled over Woodbury with an iron fist and in the process was able to provide the townspeople with something resembling civilization. In revolutionary France, the ruthless lawyer who presided over the apocalyptic scene was none other than the notorious Maximilien de Robespierre.

In pre-revolutionary France, Robespierre was a young progressive lawyer, inspired by the Enlightenment and so opposed to capital punishment that his sister claimed the reason he resigned his position as a criminal judge and took to representing primarily poor clients was his abhorrence of the practice.\textsuperscript{10}

And yet, as a leader of the Revolution government, he passionately argued that Louis XVI had no right to trial and must be executed forthwith, for if the king stood trial “he might be found innocent . . . if Louis is acquitted, where then is the Revolution?” In his view, the king must be killed immediately “to nourish in the spirit of tyrants a salutary terror of the justice of the people.”\textsuperscript{11}

Terror indeed became the driving force of Robespierre’s vision of revolutionary France. As de facto chief of the committee of public safety, he oversaw the Reign of Terror, declaring terror “the order of the day.”\textsuperscript{12} His belief that only through terror could he create a moral and virtuous French republic led him to pass a law making death the punishment for any crime that might thwart the Revolution while simultaneously requiring little more than accusations and denying legal advocates to the alleged enemies of the people.\textsuperscript{13}

A total of 16,594 formal death sentences were issued during the Reign of Terror, though estimates for the total number killed are over 40,000.\textsuperscript{14}

Robespierre had done well for himself during the most troubled time in France’s history, rising to become the most prominent politician in a nation torn by revolution. But in an apocalypse, even those who succeed are unlikely to survive long, and his draconian vision of France went too far for his frères révolutionnaires. In the end, Robespierre himself fell victim without trial to the same device of terror he had so enthusiastically used to put thousands of his countrymen to death, losing his head to the guillotine at the age of 36.\textsuperscript{15}

Luck

There may actually in fact be one characteristic that all lawyers do share, and it is indeed a vital one to surviving any “chaotic turmoil of a deadly emergency,” including an apocalypse: luck.\textsuperscript{16} While hard work is definitely a factor to get into the profession, every lawyer is blessed with the natural gifts of intelligence and a propensity to go above and beyond the call of duty that the legal profession requires. If someone is to survive the collapse of civilization and thrive in a post-apocalyptic world, he or she is going to need luck on their side just to make it through whatever world-altering event brought on the apocalypse — and then a lot more of it to maintain through the long haul.

One historical lawyer living in apocalyptic times upon whom fortune shone greatly was Tribonian. Born a few years after the Roman world was thrown into turmoil when the last em-
peror in the West submitted his crown to the barbarian chieftain Odoacer, Tribonian had the good luck to grow up in the Eastern Roman Empire where he was able to go to law school and become an influential lawyer. His work was so noteworthy that the Byzantine Emperor Justinian I called on him to prepare a new legal code for what was left of civilization.17 Before his death at nearly 60, he wrote the first-year textbook for the law students of the day.18 His impact on the future European civilization that arose from the ashes of ancient Rome is still felt as the law code he drafted remains the foundation for the laws of all the civil law nations of Western Europe to this day.19

The Human Spirit
There is no one characteristic we can point to, whether in lawyers or the general public, that foretells a propensity to survive a cataclysmic event. But if we recognize that human civilization is a fragile construction that has toppled in the past, we can investigate the qualities of our ancestors who sur-vived then. If we can find those traits in ourselves, there is hope we can pull through and help to rebuild society.

If there is one thing I have learned from examining the apocalypses of our past, it is that the human spirit does find a way to overcome and to move forward toward a brighter future. NWL

NOTE
6. Id. at 451, 477.
7. Supra n. 4 at 346, 350.
11. Id. at 244–245.
12. Id. at 284.
13. Id. at 328.
15. Supra n. 10 at 357–358.

Garrett Oppenheim
is an attorney with passions for international human rights law, cinema, and especially his beloved Stanley Cup champion Los Angeles Kings. He just started a new job in Olympia and hopes to have his first novel published by the turn of the century. He can be reached at garretttoppenheim@gmail.com.
When I was appointed MDRC’s general counsel in the summer of 2006, I was aware that transactional work would constitute a significant portion of my responsibilities. At that time, MDRC, a New York-based firm that designs and evaluates programs which aim to alleviate poverty, funneled more than half of its $80 million budget to collaborators. This meant I would create and negotiate agreements with partners ranging from large academic institutions to community-based service providers.

While many of these transactions were complex, incorporating federal requirements and reflecting the apportionment of risk, performance metrics and accountability, over time I was able to develop baseline templates for a variety of contractual relationships. By 2012, the counsel’s office, consisting of 1.5 full-time-equivalent lawyers and a contracts paralegal, was writing and negotiating about 400 contracts each year.

Even though I participated in many challenging transactions involving MDRC, one stands out for both its complexity and its potential: the Social Impact Bond (SIB). Recently, the Washington State Legislature considered action to investigate the potential for SIBs as a financial tool for state government. Any such investigation should pay due consideration to the SIB’s complexity, including the lawyer’s role in bringing order to the many transactions that combine to make a SIB.

An Introduction to the Social Impact Bond

In the spring of 2012, MDRC’s president informed senior staff that the Mayor’s Office of the City of New York had requested MDRC to serve as intermediary in a groundbreaking deal known as a “social impact bond.”

SIBs are innovative financing arrangements
that aim to increase the pool of money available for preventive services. In a SIB, investors provide financing to operate federal, state, or local-run programs that aim to achieve predetermined outcomes. Generally, these outcomes are expected to save government money, for example, by reducing the need for beds in prisons or homeless shelters. The government entity agrees in advance that, if the program meets its goals, it will use the savings to pay back the original investment, plus a return. Usually, an intermediary organization puts the pieces together — identifying appropriate interventions and service providers, making a match between government agencies and investors, helping to structure the financial deal, and monitoring the program as it operates.

The SIB would be a part of Mayor Michael Bloomberg’s Young Men’s Initiative, which aimed to reverse disparities faced by young men of color. The SIB would focus on the needs of young men detained at Rikers Island, New York City’s jail. Each year, hundreds of adolescent men ages 16–18 are held at Rikers, unable to post bond and awaiting disposition of their pending charges. Most of these detainees are poor, underprivileged, and black or Latino. Once exposed to the detention experience, they are likely to re-cidivate. Department of Correction data show that nearly half of the adolescents incarcerated at Rikers will return within one year of being discharged.

The first request from the Mayor’s Office was for MDRC to identify an intervention that might reduce recidivism among these young men, thereby saving costs that the City would have to expend if the detainees returned to jail. The SIB would finance the implementation and evaluation of the intervention and would provide for the City to take over the intervention upon a finding that recidivism was decreased.

This collaboration between the public and private sectors is, of course, not new. MDRC has for years received contracts from government agencies to design and evaluate interventions that aim to reduce poverty. If the intervention demonstrates positive impacts, as determined principally through a random assignment research design, government would regard the intervention as a wise use of public funds and continue to fund it.

This SIB, however, would be different. It would require private financing of a program with the expectation that the government would assume the costs and pay back the investor upon a demonstration that the intervention is effective. The demonstration of that success would rest upon statistical evidence that the program saves government costs which must otherwise be expended in the absence of the intervention, namely saving the expenditures required to re-incarcerate those who recidivate. Thus the financial risk would rest with the private investor until such time as the program demonstrated positive impacts. 

Notwithstanding the uniqueness of the arrangement, the SIB would reflect the values of both government and private philanthropy to focus investments on services and interventions that show promise for addressing society’s most intractable and pressing problems. And the SIB would calculate effectiveness by determining whether the promising program actually results in a quantifiable benefit to the individual and to society.

The Rikers SIB Transaction

As the intermediary, MDRC was tasked with orchestrating the creation, implementation, and operation of the SIB. As indicated, MDRC first needed to identify a program that might reduce recidivism among inmates. After extensive review of the research, MDRC chose a form of cognitive behavioral therapy (CBT) that has shown promising results in correctional settings. When provided to young inmates, CBT might succeed at changing the young men’s assessment of risk and consequences, resulting in a reduction of recidivism.

Once the intervention had been identified, the transactional work began. Months of intense negotiation followed. MDRC acted as the relationship manager and transaction developer. In addition to MDRC, the principals included the New York City’s Mayor’s Office; New York City’s Department of Correction; New York City Office of Management and Budget; Bloomberg Family Philanthropies; Correctional Counseling, Inc.; the CBT curriculum provider; service providers Osborne Association and Friends of Island Academy; evaluator Vera Institute of Justice; and investor Goldman Sachs Bank.

MDRC formed a SIB team, consisting of program managers, researchers, cost-benefit analysts, the chief financial officer, and general counsel. The results of the negotiations, which took place over the summer of 2012, were documented in contracts between MDRC and all parties to the transaction.

Difficult issues threatened to thwart the deal. Negotiating the term sheet and loan agreement with Goldman Sachs was particularly arduous, requiring the services of an outside lawyer from the finance group of a major law firm. Without the forceful political will and commensurate influence of the Mayor’s Office, the deal might have come apart before negotiations were completed.

The Lawyer’s Crucial Role in SIB Creation

Like all complex transactions, the SIB reflects the interplay among various parties, each with singular interests. Lawyers were involved in all stages of the Rikers
Island SIB's development, representing each party but with attention to the *sine qua non* of the financial transaction. The conditions of the funder/lender, requirements pertaining to contracting with the City of New York, and the operational challenges facing implementation of a service at Rikers all had to be addressed and the results documented in the SIB contracts.

Certain issues were particularly nettlesome: the minimum conditions for planning, implementing, and evaluating CBT; the interests of the respective parties in controlling risk and ensuring indemnification; concerns about the risks to participants subject to the intervention; the prospect that political will might change over the period of time needed for implementation and evaluation; and concerns about how to tell the SIB story; and the ownership of information regarding the SIB’s various components.

Lawyers who are involved with the creation of a SIB must be versed in the complexity of the overall transaction, as well as the respective interests of the various parties. Before the many features of the transaction are documented, the parties must agree on the metrics for success and their measurements. All issues pertaining to program design, due diligence monitoring, and participant involvement must be vetted and resolved. And the parties must all subscribe to and document terms and conditions pertaining to financing the intervention.

Given the time needed to produce results, it is likely the parties will have to return to the negotiating table to address unanticipated events. As an example, the decrease in arrests of young men, possibly due to changes in stop-and-frisk policies in New York, means that the number of detainees participating in CBT has decreased, threatening the evaluation with an insufficient sample group. As a result, MDRC has had to work with the City to adjust the underlying numbers for the experiment. And changes in detention policy have affected the program at Rikers Island; an example is the new policy of the Department of Correction to separate young men of certain ages, thereby making it more difficult to deliver the intervention.

As an innovative instrument in the world of contracting, the SIB presents the risk of the unknown. Accordingly, to get the various parties comfortable with this complex transaction — and notwithstanding the intermediary’s responsibility for uniting the segments of the SIB — each party should be independently represented by counsel. This ensures that the negotiations identify and resolve all issues that ought to be considered, thereby increasing the likelihood that this and future SIBs will achieve their goal of instituting cost-effective improvements in human services. Thus, while SIBs have the potential to be a tool for impactful programs and meaningful social change, their creation and success as a viable tool will require creative lawyering.

The Prospect for SIBs
Since the implementation of the Rikers Island SIB in 2012, federal, state, and local governments have demonstrated an interest in this financing mechanism. In 2013–14, the House Early Learning
and Human Services Committee of the Washington State Legislature considered House Bill 2337, an attempt to create a “social investment steering committee” to research and potentially fund a pilot SIB with the state government. The bill was passed out of the Early Learning and Human Services Committee, but did not make it to a full floor vote during this year’s short session in Olympia. Nevertheless, this legislative activity demonstrates an interest among state leaders about the possibilities of innovative pay-for-success public-private financing.

Other governmental entities have issued requests for proposals that are designed to implement SIB arrangements in their jurisdictions. While it is too early to know whether the Rikers Island SIB will be successful, it is clear that the SIB has generated interest as a mechanism to address difficult social problems. And it is equally clear that there is a role for lawyers in the transactions that combine to create a SIB. NWL

NOTE
1. The SIB is an inapt term for the arrangement because it is not strictly a bond. It is sometimes called a “pay-for-success” arrangement.
In October of each year, our profession celebrates giving back, so it’s fitting that we acknowledge National Pro Bono Celebration by putting together an honor roll to formally and publicly recognize your efforts. Look for your name at www.wsba.org/ProBonoHonorRoll. Look for your partners and associates, your mentors, and mentees. Look to see who inspires you and commit to seeing your name again next year — or added for the first time.

280,176 Hours Reported
More than 4,370 Washington lawyers voluntarily reported that they delivered 50 or more pro bono hours in 2013. That’s more than 280,000 hours of legal help to those who otherwise might find the doors to justice closed. The real number is, of course, much higher. Many lawyers underreport or choose not to report altogether.

Giving Back
RPC 6.1 encourages you to use your legal skills to help those who do not have access to the justice system and to advance the legal profession. WSBA’s strategic effort to enhance the culture within the profession gave you new opportunities for getting involved. Across the state, through local bars and nonprofits, through your alma maters and your places of worship, at community centers and venerable institutions, you have been giving back. Thank you!

www.wsba.org/ProBonoHonorRoll
You went to law school to practice law, not run a business.

But running a business is exactly what you will need to do as a solo practitioner!

The WSBA Law Office Management Assistance Program (LOMAP) is here to assist you with laying the foundation for your new practice — setting goals, obtaining business licenses, obtaining services, obtaining technology resources, learning software, and setting up workflow systems.

LOMAP is a resource for all WSBA members, offering low-cost and confidential professional assistance.

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

We wrote the book on attorney fees in Washington:

**Attorneys Fees in Washington**
(Lodestar Press)

**The Award of Attorneys’ Fees in Civil Litigation in Washington**
16 Gonz. L. Rev. 57 (1980)

**When Counsel Screws Up: The Imposition and Calculation of Attorney Fees as Sanctions**
Last year, the WSBA Board of Governors voted to sunset the WSBA Professionalism Committee. Did the Board decide that professionalism was no longer important to the Bar and its members? No, the most recent amendment to the goals and mission statement lauded professionalism. Was the Committee draining the already-stressed WSBA coffers? No, the Committee’s annual expenses were minimal. Was the Committee a hollow shell that failed to accomplish its goals? No, in the past few years the Committee has expanded its reach and brought its message to the law schools, local bar associations, and beyond.

So what gives?

Counterintuitive though it may seem at first glance, the decision to sunset the Professionalism Committee underscores the Board’s renewed commitment to the issues of professionalism. The Board of Governors decided that a committee alone, despite its good works, was not enough to advance the cause. The work of encouraging and improving professionalism, it decided, should not be limited to those few who join the Committee and the population it was able to reach. Instead, the tenets of professionalism should be consciously infused into all functions of the Bar, woven into the very fabric of the organization.

A beautiful, simple concept — and then the work begins . . .

The Board created a Professionalism Work Group to figure out how to weave just such a tapestry. Assembled from thought leaders on professionalism and civility, the Work Group met four times from November 2013 to May 2014 to examine how to most effectively incorporate existing Professionalism Committee activities into the WSBA and how to systematically incorporate professionalism elements into the organization at large.

The goal of the team was to develop concrete, achievable goals, leverage the Bar’s resources, and build in an accountability mechanism to ensure that the goals were met. One main concern was that, without a standing committee to regularly assess professionalism issues and work to find solutions, the “incubator” of new ideas would be lost. Another concern was accountability. That is, how can we assess whether the WSBA’s efforts to improve professionalism are working? Solving the accountability issue was outside the purview of the Work Group, but raising the question and assigning this duty became a central piece of the ultimate proposal.

The Work Group developed a three-part plan that was approved by the Board at its July meeting: 1) raise awareness and promote professionalism among WSBA members; 2) promote and advance professionalism by recruiting a cadre of WSBA member volunteers to carry out a variety of outreach and recognition activities; and 3) integrate professionalism into the WSBA’s ongoing programs and activities. The Work Group fleshed out the plan with concrete steps for each; some of these steps follow.

1. Raising awareness and promoting professionalism among WSBA members.

To kick off the implementation, and bring these issues to the attention of our members, a professionalism series is scheduled to run in NWLawyer beginning this year. Look for these articles in coming issues and please, dear reader, respond with comments, letters, and action. That action may be supported by a “Professionalism Toolkit” that will offer resources for outreach including presentations, discussions, CLEs and the like — all on a webpage where members and volunteers can access it. The Bar will also continue successful ongoing projects like the WSBA’s Professionalism Award and the Professionalism in Practice member recognition program, though it will further clarify the criteria for these programs. Finally, the Bar will maintain its partnership with Robert’s Fund (www.robertsfund.org) — a strong voice for civility in our profession and beyond — to conduct a professionalism survey of WSBA members to assess the current environment and use findings to raise awareness about the importance of professional behavior and how it is best demonstrated.
2. Recruiting WSBA member volunteers to carry out a variety of outreach and recognition activities.

Recognizing the many years of intense volunteer support of professionalism by WSBA member attorneys, the Work Group aims to build a cadre of existing and new volunteers to take the message to the “streets” of the profession. First, the cadre will continue the successful law school speaker program, in which WSBA members and staff visit all professional responsibility classes once a term to engage students in discussions about professionalism. Experienced speakers will train new speakers, who must apply to be accepted into the program, ensuring a measure of quality and consistency.

To encourage local bars and other non-WSBA CLE providers to include professionalism content in their CLEs and mission statements, the Bar will also create a member outreach program in which volunteers will be recruited to develop and facilitate discussions of professionalism at local, specialty, and minority bar association meetings and events. Other volunteers will review and revise the Creed of Professionalism and develop professionalism-themed content for NWLawyer and NWSidebar. Using concrete examples, the resulting articles will demonstrate both positive and unprofessional conduct to illustrate the cost of such behavior to both the attorney and the client.

3. Integrating professionalism into WSBA’s ongoing programs and activities.

Professionalism is a WSBA Guiding Principle and is one of the WSBA’s mission focus areas. So, from top to bottom, the WSBA will review its own content and activities to include more professionalism content, especially interactive and participatory content, with particular emphasis on WSBA CLEs and the readmission program. These efforts will include devoting at least one Legal Lunchbox CLE to professionalism each year, exploring adding a professionalism section to the Washington Law Component required during the admission process, and continuing inclusion of a professionalism module in the mandatory Preadmission Education Program.

To weave in professionalism at the point of inception, the Board will include a question on professionalism in the Board Candidate Election Forum, the candidate questionnaire proposed in the Governance Task Force recommendations, and in the WSBA Annual Awards nomination form. The Bar will explicitly include discussion of professionalism in the annual WSBA committee and board chairs meeting, and in meetings of WSBA section leaders. It will likewise require all WSBA committees and boards to explore incorporating professionalism into their activities and to include a discussion in their annual reports to the Board of any concrete steps taken to improve professionalism.

Legal Malpractice:
A Two-Tiered Chess Game

Proving the “case within a case” is required in every legal malpractice action, and the underlying case may be more complex than the professional negligence claim itself. We have the experience, resources and ability to make the right moves. These are some of our legal malpractice results:

- $3.9 million, underlying back surgery medical malpractice;
- $3 million, underlying obstetrical medical malpractice;
- $3 million, underlying business transaction;
- $1.25 million, underlying personal injury;
- $1.7 million, underlying real estate transaction.

We would appreciate the opportunity to work with you to help your client.

JOHNSON | FLORA PLLC

Mark Johnson  Donovan Flora

2505 2nd Avenue, Suite 500  Seattle, WA 98121  www.johnsonflora.com  206.386.5566
Accountability and reporting
Measuring the success of this initiative will be no small task. So the Work Group suggested, and the Board agreed, to task one key figure with that duty: the immediate past president on the Board of Governors. The past president’s duties will be expanded to include, with the assistance of staff, monitoring all professionalism activity of the WSBA, reporting on it annually to the Board of Governors, and making recommendations on how it should redirect volunteer and staff efforts to ensure the WSBA’s commitment to professionalism is maintained. The immediate past president will also serve as a professionalism liaison to the Board, soliciting and passing along ideas for new initiatives or improvements to existing ones — the incubator for future ideas.

To gauge the effect the WSBA’s efforts is having on member behavior, the WSBA will, among other assessment activities, look to partner with the Administrative Office of the Courts and Robert’s Fund to conduct an annual survey of the judiciary and court staff on attorney civility and professionalism. Objective measures of professionalism are hard to come by, but a consistent, clear survey is a sound option.

To the forefront
Our Bar prides itself as a national leader, on the cutting edge of new and progressive approaches to licensing and improving the practice of law. Folks around the country may, at first glance, scratch their heads wondering why the WSBA eliminated the Professionalism Committee. But, upon further examination, they will see that the Bar has engaged in a grand experiment to bring the professionalism issues facing our practice to the forefront and has demonstrated a renewed commitment — from the ground-level volunteer to the very top of the organization — to solving these problems. NWL

SGB: LEADERS IN ASBESTOS LITIGATION.
40 YEARS OF EXPERIENCE ADVOCATING FOR ASBESTOS VICTIMS IN WASHINGTON STATE.

We give each client personal attention, heartfelt compassion, and hand-crafted representation. If you have a client who has received a diagnosis of mesothelioma or another asbestos-related disease contact Thomas Breen, Kristin Houser or Bill Rutzick.

Sims Weymuller is an attorney at Schroeter, Goldmark and Bender, where he litigates professional negligence, product liability, and catastrophic injury cases in both state and federal courts. With a particular interest in birth injury and legal malpractice matters, he frequently writes and lectures on trial practice and legal ethics in civil litigation. Sims is an adjunct trial advocacy professor at the University of Washington School of Law. He is the 2014–15 chair of the WSBA Character and Fitness Board. Reach him at sims@sgb-law.com.
Legal Cases that Will Spook You

With October come thoughts of changing leaves, cooler, maybe even frosty nights, and the end-of-the-month celebration of all things spooky, scary, and sometimes simply sophomoric. This month’s “Top Ten” is a quick look at some cases (provided by the World Wide Web) that will give you chills, or possibly just leave you scratching your head.

1. Rice v. Utah Department of Corrections (2001). A Utah prisoner named Robert Rice filed for extraordinary relief, claiming the prison acted in violation of his right to practice his religion by failing to provide a “vampire” diet.

2. Durmon v. Billings (2004). In Louisiana, a customer who visited a haunted corn maze sued the owner and owner’s insurer after she fell and broke her leg when an actor with a chainsaw approached her.

3. Grant v. Grant (2012). A potential criminal and tort case from Pennsylvania where, at a family Halloween bonfire, Janet Grant spotted a skunk and told her son Thomas to fetch a shotgun and shoot it. When he returned, Janet Grant shined a flashlight on the animal while her son shot it. It was only then that they discovered that little Tommie had just shot his eight-year-old cousin in her black-and-white Halloween costume. Fortunately, his cousin survived with only a wound to her shoulder and abdomen.

4. Strombovsky v. Ackley (1991). For 12 years, the Ackleys reported that their house was haunted to local news outlets and Reader’s Digest. When they put the house up for sale, they did not disclose this to potential buyers. Strombovsky put in an offer and down payment of the house. When he learned about the home’s ghoulish reputation, he bought an action to rescind the offer and for damages, claiming fraudulent misrepresentation. While the court dismissed the claim of fraudulent misrepresentation, the court opted against a strict interpretation of caveat emptor and allowed the contract to be rescinded because even “the most meticulous inspection and the search would not reveal the presence of poltergeists at the premises or unearth the property’s ghoulish reputation in the community.”

5. Rabindranath v. Wallace (2010). Peter Wallace, 24, was returning on a train with fellow Hibernian soccer fans in England — many dressed in costume. One man was dressed as a sheep and Wallace thought it was funny to constantly flick his lighter near the cotton balls covering the sheep guy — until he burst into flames. Friends then made the matter worse, trying to light the sheep story: “Plaintiffs Susan and Frank Ferlito, husband and wife, attended a Halloween party in 1993 dressed as Mary (Mrs. Ferlito) and her little lamb (Mr. Ferlito). Mrs. Ferlito had constructed a lamb costume for her husband by gluing cotton batting manufactured by defendant Johnson & Johnson Products (JJP) to a suit of long underwear. She had also used defendant’s product to fashion a headpiece, complete with ears. The costume covered Mr. Ferlito from his head to his ankles, except for his face and hands, which were blackened with Halloween paint. At the party Mr. Ferlito attempted to light his cigarette by using a butane lighter. The flame passed close to his left arm, and the cotton batting on his left sleeve ignited. Plaintiffs sued defendant for injuries they suffered from burns which covered approximately one-third of Mr. Ferlito’s body.” NWL

6. Dickson v. Hustonville Haunted House and Greg Walker (2009). Glenda Dickson, 51, fell out of a second-story window left open at the Hustonville Haunted House, owned by Greg Walker. Dickson was in a room called “The Crying Lady in the Bed” when one of the actors came up behind the group and started screaming. Everyone jumped in fright and Dickson jumped back through an open window that was covered with a sheet. She landed on a fire escape and then fell down some stairs, breaking four vertebrae.

7. Maryland v. Janik (2009). Sgt. Eric Janik, 37, went to a haunted house called the House of Screams with friends and when confronted by a character dressed as Leatherface with a chainsaw (sans the chain, of course), Janik pulled out his service weapon and pointed it at the man, who immediately dropped character, dropped the chainsaw, and ran like a bat out of Halloween Hell.

8. Kentucky v. Watkins (2008). As a Halloween prank, restaurant manager Joe Watkins of the Chicken Ranch in Paris, Kentucky, thought it was funny to lie in a pool of blood on the floor. After seeing Watkins on the floor, a patron went screaming from the restaurant to report the murder. Watkins said that the prank was for another employee and that he tried to call the woman back on her cellphone. Under Kentucky law, a person can be charged with a false police report, even if he is not the one who filed it. The police charged Watkins for causing the woman to file the report.

9. Kansas City Light & Power Company v. Trimble (1926). From the opinion: “A shapely pole to which, twenty-two feet from the ground is attached a non-insulated electric wire. On the shapely pole were standard steps eight inches apart; about seventeen feet from the ground were telephone wires, and five feet above them was a non-insulated electric light wire. On Halloween, about nine o’clock, a bright fourteen-year-old boy and two companions met close to the pole, and some girls dressed as clowns came down the street. As they came near, the boy, saying, ‘Who dares me to walk the wire?’ began climbing the pole, using the steps, and ascended to the telephone cables, and thereafter his companions warned him about the live wire and told him to come down. He crawled upon the telephone cables to a distance of about 10 feet from the pole, and when he reached that point a companion again warned him of the live wire over his head, and threatened to throw a rock at him and knock him off if he did not come down. Whereupon he turned about and crawled back to the pole, and there raised himself to a standing position, and then his foot slipped, and involuntarily he threw up his arm, his hand clutched the live wire, and he was shocked to death.”

10. Ferlito v. Johnson & Johnson (1993). Yet another flaming sheep story: “Plaintiffs Susan and Frank Ferlito, husband and wife, attended a Halloween party in 1984 dressed as Mary (Mrs. Ferlito) and her little lamb (Mr. Ferlito). Mrs. Ferlito had constructed a lamb costume for her husband by gluing cotton batting manufactured by defendant Johnson & Johnson Products (JJP) to a suit of long underwear. She had also used defendant’s product to fashion a headpiece, complete with ears. The costume covered Mr. Ferlito from his head to his ankles, except for his face and hands, which were blackened with Halloween paint. At the party Mr. Ferlito attempted to light his cigarette by using a butane lighter. The flame passed close to his left arm, and the cotton batting on his left sleeve ignited. Plaintiffs sued defendant for injuries they suffered from burns which covered approximately one-third of Mr. Ferlito’s body.” NWL

Douglas Pierce practices in Coeur d’Alene, Idaho, and is a member of the law firm of James, Vernon & Weeks. He is a member of the WSBA Editorial Advisory Committee. He can be reached at dpierce@jvwlaw.net.
In cases with multiple parties, alliances are key. If you represent one of two plaintiffs suing a single defendant, you want that other plaintiff to testify, consistent with your client’s testimony, that the defendant is at fault and your client did nothing wrong. Conversely, if you represent one of two defendants being sued by a single plaintiff, you want that other defendant to testify, consistent with your client’s testimony, that the plaintiff was at fault and your client did nothing wrong. Fortunately, there are typically economic incentives that make these alliances work: defendants avoid liability by assigning fault to plaintiffs and vice versa.

But what happens when the opposing party settles with your ally? At that point, the economic incentives can and often do change, because there is no longer any financial incentive to sustain the previous alliance. Worse, what happens if another party is financially incentivized to turn against your client? Clearly, that is something that you, the trial court, and the jury need to know in order to litigate and resolve the parties’ claims and defenses. Unfortunately, unless timely disclosure is mandated by Washington courts or, barring that, by the Washington Legislature, you may not learn about such an arrangement until it is too late (if at all).

These sorts of agreements — incentivizing “tailored testimony” — are often referred to as “Mary Carter agreements,” so named after the seminal case *Booth v. Mary Carter Paint Co.* A Mary Carter agreement is one in which a settling party retains an interest in the litigation — causing that party to testify (seemingly) in ways that are not consistent with the party’s apparent economic interest. The principal concern regarding such agreements is obvious: the jury cannot properly evaluate the credibility of witnesses unless it knows the true relationship of the parties.

This article uses two recent Washington cases where there was no disclosure to illustrate how secret settlement agreements can distort the adjudicative process. Building on those illustrations, the article advocates for a rule of disclosure in all cases and admissibility in most cases. And where that rule is
not followed, the advocacy is that the consequences should be clear and automatic: a strong presumption that there be a new trial and significant sanctions. Otherwise, there may not be sufficient incentive to ensure compliance.

ILLUSTRATIVE CASES

Barton v. Washington State Department of Transportation

The Barton lawsuit arose from a collision that occurred when 19-year-old Korrine Linvog pulled away from a stop sign at night in front of a motorcycle driven by plaintiff Jared Barton. Ms. Linvog was driving her parents' car. In addition to suing Ms. Linvog and her parents, Mr. Barton sued the Department of Transportation alleging negligent placement of the stop sign. Nearly eight months before trial, counsel for Mr. Barton and counsel for the Linvogs entered into an agreement that, in exchange for payment of $20,000, Mr. Barton would not execute on any judgment he obtained against the Linvogs in excess of their $100,000 insurance policy limits. The agreement was not disclosed to the State or the court.

In their opening statements, counsel for the plaintiff argued “[the Linvog parents are on the hook.” Counsel for the Linvogs likewise argued that the Linvog parents are “going to be responsible for” their daughter’s actions. Because the covenant not to execute had not been disclosed, the State did not know that these statements were inaccurate and accordingly did not object. Similarly, the State did not object when the plaintiff proposed a family-car jury instruction, which told the jury that the Linvog parents were responsible for the acts of their daughter because they had provided a motor vehicle for her use. At the conclusion of the three-week trial, the jury returned a verdict of $3.6 million and apportioned 5 percent of the fault of the accident to the Linvogs ($180,000) and 95 percent of the fault to the State ($3.24 million).

When the secret covenant not to execute was inadvertently disclosed to the State several years later, the State promptly filed a motion to vacate the judgment because the jury had been misinformed through opening statements and in the family-car doctrine instruction that the Linvog parents would be responsible for the judgment even though their liability was limited to their $100,000 insurance policy. The trial court imposed a sanction against Mr. Barton and his counsel by not requiring the State to pay $146,000 in post-judgment interest but otherwise denied the State’s motion. The Washington Supreme Court, on appeal, held that the trial court did not abuse its discretion by imposing that “significant sanction” because “failure to disclose the [settlement document] was not willful or deliberate and the State’s ability to prepare for trial was not substantially prejudiced.”

Collings v. City First Mortgage Services, LLC

In Collings, plaintiffs Donald and Beth Collings sued Andrew and Malinda Mullen, City First Mortgage Services, and Robert Loveless for conspiracy, vicarious liability, and violation of Washington’s Credit Services Organization Act and Equity Skimming Act arising out of an alleged foreclosure rescue scheme. Shortly before trial, plaintiffs scheduled the deposition of Mr. Mullen. In the days leading up to the deposition, trial counsel drafted a covenant not to execute that would resolve plaintiffs’ claims against Mr. Mullen but preserve their claims against City First. In a post-trial declaration, Mr. Mullen explained: “I received the final version of that document from Plaintiffs’ counsel on July 26, 2010 — the morning of my deposition — and was informed that Plaintiffs would only execute the covenant if my deposition testimony was acceptable. The covenant was fully executed after my deposition.” None of this was disclosed at the time to City First or the trial court.

Consistent with the above incentive, Mr. Mullen provided testimony at his deposition that was unfavorable to City First. When Mr. Mullen did not appear for trial, the parties read Mr. Mullen’s deposition transcript to the jury and offered it into evidence. The jury instructions and closing arguments then directed the jury to decide whether City First could be liable for Mr. Mullen’s acts even though the Mullens were no longer even potentially liable to plaintiffs. But because City First and the trial court were still in the dark, neither had any reason to object to or strike the improper testimony, jury instructions, and closing argument. It was not until plaintiffs requested prevailing party attorney fees that City First learned of the covenant. In support of their fee petition, plaintiffs submitted a 33-page ledger that contained three references to a “settlement” and “covenant not to execute.” After City First requested and finally obtained a copy of that agreement, it requested a new trial and, barring such relief, that plaintiffs’ trial counsel recovered no or substantially reduced attorney fees. The trial court rejected those arguments, and City First appealed.

The Court of Appeals affirmed in a divided opinion. The panel majority concluded that “a concrete showing of actual prejudice is necessary and City First has not made such a showing.” Judge Ann Schindler, in dissent, stated that she “would reverse and remand for a new trial” because “[t]he undisclosed agreement distorted the interests and alignment of the parties and created a sham of adversary that is contrary to Washington law, the right to a fair trial, the integrity of the adversary system, candor to the tribunal, and the administration of justice.” Judge Schindler also urged the Washington Supreme . . . what happens when the opposing party settles with your ally? At that point, the economic incentives can and often do change, because there is no longer any financial incentive to sustain the previous alliance.
Court to accept review: “Consistent with the requirements of the tort reform act of 1986, chapter 4.22 RCW, the Supreme Court should adopt a rule requiring the timely disclosure of an agreement between a plaintiff and a codefendant to enter into a covenant not to sue and release.” But the case never got that far because City First was not financially able to increase the amount of its supersedeas deposit when ordered to do so by the trial court. It therefore relinquished its deposit in order to settle the matter and withdrew its petition for review in the Washington Supreme Court.

The Harm to Justice
All three divisions of the Court of Appeals have appropriately recognized that undisclosed settlement documents pose a significant threat to the administration of justice:

• Division One: Undisclosed settlement agreements “foist a fictitious controversy on the courts, fail to identify the true parties litigant or unfairly conceal from the trier of the fact the true battle lines and interests of the parties litigant.”

• Division Two: “The existence of an undisclosed agreement between outwardly adversarial parties at trial can prejudice the proceedings by misleading the trier of fact.”

• Division Three: “[N]either equity nor public policy favors [plaintiffs’] attempt to manipulate the system in an effort to obtain payment from the [co-defendant] State for [co-defendant] Timothy’s fault.”

A leading commentator has similarly recognized that such agreements “distort the trial process, mislead the jury, encourage unethical collusion among opposing parties, and promote further litigation.”

The facts and circumstances in Barton and Collings illustrate these concerns. First, these cases show how secret settlement agreements can distort the adjudicative process by incentivizing a witness to give tailored testimony. In Barton, for example, the plaintiff’s agreement to limit the liability of the Linvog parents provided additional motivation for Ms. Linvog to testify that she stopped at the one location where trees blocked her view to the left and that she did not pull forward and look again to her left before pulling out into the intersection. Similarly, in Collings, Judge Schindler recognized “the incentive of Mullen to cast City First in an unfavorable light” and recounted Mr. Mullen’s deposition testimony doing exactly that.

Second, Barton and Collings illustrate the difficulty of attempting to establish prejudice based on a record that has already closed. In Barton, the State was put in the position of trying to prove a hypothetical negative: that if the jury had known the Linvog parents’ liability to the plaintiff was limited to their $100,000 insurance policy limits or if the parents had been dismissed, the jury would not have found the State to be liable or would not have allocated

I became a lawyer because my grandparents were enslaved in the WWII internment camps, locked away without a voice. It is my mission to make sure people are heard and their rights are protected. To me, Advocacy and Results matter. Recently in court I argued that a client’s arrest was without sufficient cause. Although it was her second DUI in seven years, it was clear to me that her rights were violated. After my argument the judge dismissed the case. In my heart I know everyone deserves a voice.

— LAUREN GOTCHY
Attorney at Law

I-800-DUI-AWAY • Seattle Everett Tacoma
95 percent of the fault to the State because the jury would have known that its verdict would not bankrupt these two innocent defendants. Likewise, the panel majority in Collings observed that “[w]hile the potential for tailored testimony certainly exists in these circumstances, City First does not show that any specific statement Mullen made was false or misleading.” But as Judge Schindler noted in her dissent, “it is difficult, if not impossible, to determine whether Mullen’s testimony would have been different absent the secret settlement.”

Lastly, Barton and Collings also show that a jury cannot properly evaluate evidence and the credibility of witnesses unless it knows the true relationship of the parties. In Barton, for example, the existence of an agreement that took the Linvog parents “off the hook” for Ms. Linvog’s negligence may have made her more likely to cooperate with the plaintiff’s theory of liability against the State. But because the agreement was kept secret, the jury never found out about this additional incentive for her testimony. Similarly, the jury in Collings would logically find Mr. Mullen’s testimony especially credible because he seemingly testified against his financial interest even though, in reality, his testimony was consistent with his financial interest because he had been told that he could avoid potential financial ruin if and only if his deposition testimony “was acceptable” to plaintiffs. Judge Schindler recognized this point in her dissent as well, noting that the undisclosed settlement agreement “distorted the true position of the parties” and “resulted in misleading City First and the jury.”

A Proposed Solution
Fortunately, the Washington Supreme Court in Barton took the necessary first step in addressing these issues. The court there squarely held that the plaintiff’s failure to disclose a settlement document “violated RCW 4.22.060(1) and CR 26(e)(2).” But although the court mandated disclosure, it did not identify the circumstances in which a new trial is required, it did not decide whether the same disclosure obligation exists in cases that are not governed by the Washington Tort Reform Act and where no discovery request seeks disclosure, and it did not decide whether trial courts should advise the jury of such agreements so that jurors can consider the true relationship between the parties in evaluating evidence and the credibility of witnesses.

So what can be done at this point? First, as Judge Schindler advocated in Collings, “the Supreme Court should adopt a rule requiring the timely disclosure of an agreement between a plaintiff and a codefendant to enter into a covenant not to sue and release.” Although the Supreme Court did not have the opportunity to do so in Collings, it can do so through an appropriate amendment to the civil rules. That rule should require parties to a settlement agreement between some, but not all, parties to immediately disclose the agreement.
to nonsettling parties and the court. That rule, moreover, should apply in all cases — whether governed by the Washington Tort Reform Act or not.

In the absence of a judicial solution, the Washington Legislature should address this issue. The Legislature has, in appropriate circumstances, enacted statutes that govern the disclosure and admissibility of evidence, including settlement agreements. For example, as noted previously, RCW 4.22.060(1) includes a clear and unequivocal disclosure requirement: “A party prior to entering into a release, covenant not to sue, covenant not to enforce judgment, or similar agreement with a claimant shall give five days’ written notice of such intent to all other parties and the court.” The Legislature clearly has the ability to address the disclosure and admissibility of settlement information if the courts fail to do so (and even if they do).

In addition to any judicial or legislative solution, litigants should routinely request settlement documents in discovery so that, as Barton holds, a duty to supplement is triggered under CR 26(e)(2). But with or without such a request, counsel should recognize that there is an ethical obligation to disclose to the nonsettling parties and the court a settlement agreement between some but less than all parties. The court cogently addressed that issue as it pertains to secret settlement agreements in Daniel v. Penrod Drilling Co. as follows:

While lawyers owe a duty to their clients, they owe a primary duty to the administration of justice. They profess to be, and they are, officers of the court. If it is their duty to their clients to wage a vigorous struggle, it is their duty also not to dissimulate.

The Washington Supreme Court has likewise emphasized this duty of candor. Any agreement affecting liability or damages in multi-party litigation should therefore be disclosed to all parties and the court.

Second, given the above discussion, there should also be a rule mandating that a settlement agreement between some but less than all parties be disclosed to the jury. The Kansas Supreme Court carefully considered this issue in Ratterree v. Bartlett and crafted the following disclosure rule:

When a settlement agreement is entered into between the plaintiff and one or more, but not all, alleged defendant tortfeasors, the parties entering into such agreement shall promptly inform the court in which the action is pending and the other parties to the action of the existence of the agreement and its terms. If the action is tried to a jury and a defendant who is a party to the agreement is a witness, the court shall, upon motion of a party, disclose the existence and content of the agreement to the jury unless the court finds in its discretion such disclosure to the jury will create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury.

The disclosure of the settlement agreement to the jury herein required shall be no more than the
court deems necessary to apprise the jury of the essential nature of the agreement and the possibility the agreement may bias the testimony of the parties who entered into the agreement. In no instance shall the amount of the settlement or any specific contingencies be disclosed to the jury, except the jury shall be apprised in general terms of the financial interest in the outcome of the case of any defendant who is a party to such an agreement.[31]

In McCluskey, the Washington Court of Appeals acknowledged strong support for such a rule “so that jurors can consider the relationship in evaluating evidence and the credibility of witnesses.”[32] Washington should adopt a similar disclosure rule.

Finally, for such rules to be effective, they must have teeth. In Barton, the sanction against Mr. Barton and his counsel was less than five percent of the judgment amount, and counsel for the Linvosgs did not receive any sanction. In Collings, the trial court denied City First’s request for a new trial and did not impose any monetary sanction, and the Court of Appeals affirmed in a divided opinion.[33] Given the judicial interests at stake and the difficulty of establishing prejudice based on a record that has long since closed, there should be a presumptive rule requiring a new trial and significant sanctions unless the party that failed to disclose the settlement agreement can prove that there was no prejudice.[34] Otherwise, as Barton and Collings illustrate, there may not be sufficient incentive to disclose such agreements.

Conclusion
Undisclosed settlement agreements are a serious and recurring issue. Other states have appropriately addressed this issue by prohibiting Mary Carter agreements or requiring parties to any agreement that impacts liability to immediately disclose that agreement to all parties and the court. Any other result, as Judge Schindler noted in her dissent in Collings, “is contrary to Washington law, the right to a fair trial, the integrity of the adversary system, candor to the tribunal, and the administration of justice.”[35] NWL

NOTES
3. When the Barton case was tried, case law interpreted a covenant not to execute to be a “release” that negated joint and contribution liability. See Maguire v. Teuber, 120 Wn. App. 393, 396 (2004), overruled by Barton v. State Dep’t of Transp., 178 Wn.2d 193, 204–08 (2013).
5. 178 Wn.2d at 216.
7. Id. at 945 (Schindler, J., dissenting).
8. Id.
9. Id. at 948.
10. Id. at 944.
11. Id. at 921 (majority opinion), 944-45 (Schindler, J., dissenting).
12. Id. at 945 (Schindler, J., dissenting).
13. Id. at 923 (majority opinion).
14. Id. at 948, 940 (Schindler, J., dissenting).
15. Id. at 940.
19. Amy Edwards Wood, Note, In re the Exxon...

20. 177 Wn. App. at 947, 948–49 (Schindler, J., dissenting).
21. Id. at 922 (majority opinion).
22. Id. at 947–48 (Schindler, J., dissenting).

23. Id. at 948.
24. 178 Wn.2d at 215.
25. 177 Wn. App. at 940 (Schindler, J., dissenting).
27. RCW 4.22.060(1) (emphasis added).
28. 178 Wn.2d at 215.
30. In re Healy, 43 Wn.2d 266, 270 (1953) (“It was [counsel’s] duty, as an officer of the court, to fully divulge what had transpired that morning at the office of the title company, in order that the judge might have all of the facts before him”).
32. 68 Wn. App. at 104 (citing cases).
33. 177 Wn. App. at 917–32 (majority opinion).
34. See Magaña v. Hyundai Motor Am., 167 Wn.2d 570, 590 (2009) (sanction should ensure wrongdoer does not profit from the wrong); Cox v. Spangler, 141 Wn.2d 431, 444 (2000) (burden of proof should be assigned to party who has caused harm rather than innocent party).
35. 177 Wn. App. at 940 (Schindler, J., dissenting).

---

Dishing up free CLEs!

The WSBA invites you to lunch and learn while earning 1.5 CLE credits. And the tab is on us! The WSBA will host a 90-minute, 1.5 credit, live webcast CLE at noon on the last Tuesday of each month.

Mark your calendars now!

To register and for more information, visit www.wsbacle.org.
Join the conversation.

at NWSidebar
The blog for Washington’s legal community

nwsidebar.wsba.org

WSBA  Washington State Bar Association
Digital Assets and Estate Planning

The Internet Has Changed the Way We Plan Clients’ Estates

BY ROCHELLE L. HALLER

Ye ars ago, the death of a client would prompt the estate planning attorney to sort through paper files at the decedent’s home and office and to collect the mail as it was delivered in an effort to create a list of bills to pay, services to cancel, assets to custody, and creditors to notify. However, in today’s digital age, there may be no paper trail, as the important information regarding bank and brokerage accounts, recurring expenses, insurance, and debts are now stored digitally on the client’s computer, smartphone, or email account. If the data cannot be accessed promptly, important bills may go unpaid, valuable assets overlooked, and the estate administration process delayed.

While lack of access to a client’s data is a significant problem, it is not the only one digital assets present. Not only are digital assets the key to important information concerning assets such as bank accounts and insurance, but in many instances the digital assets themselves have significant financial or sentimental value. If steps are not taken during estate planning to preserve and protect them in case of death or disability, the estate may suffer financial loss and precious memories of the decedent’s life may vanish.

Financial Value of Digital Assets

While some digital assets have little or no financial value, some have significant value or can be the key to unlocking other valuable assets. For example, a domain name often has little or no value to third parties, but it can have significant value if tied to a popular Internet search term, words or phrases used for selling goods or services, or a brand name. Likewise, personal blogs tend to have little financial value, but some generate significant revenue through the sale of advertisements or subscriptions.

Non-Financial Value of Digital Assets

In addition to potentially significant financial value, some digital assets have great sentimental value to the family and friends of a decedent. Long gone are the days when special photographs, diaries, and letters were kept in a shoebox or albums stored on a bookshelf. Instead, for many people these items are now stored solely in a computer. Photographs are stored in online accounts or social media sites. A decedent’s correspondence may consist of only emails or text messages instead of handwritten letters. Blogs have replaced diaries, while Twitter and Facebook posts share a person’s daily thoughts and activities. If heirs and loved ones are unable to find and access these digital assets, the decedent’s life story could be lost.

Proper planning for digital assets can also help to prevent identity theft. Upon death or disability, the risk of identity theft increases because the deceased or incapacitated person is unable to monitor his or her online accounts, enabling criminals to hack the accounts to obtain personal information needed to assume an identity.

Addressing Digital Assets in the Estate Planning Process

Timely planning for the disposition and transfer of digital assets upon death or disability may be the only adequate method of preserving the value of the assets. Even in the absence of planning, it may be possible for the client’s fiduciary, working with a data forensics expert, to recover some
digital assets upon the client’s death or disability. But the delay and cost is substantial and may be easily avoided with appropriate planning.

Digital Asset Inventory
The first step to preserving and protecting a client’s digital assets is to create a comprehensive inventory. Few estate planning attorneys would forgo having a new client inventory key assets such as bank and retirement accounts. Today, a comparable inventory of digital assets is just as necessary. The importance of cataloging digital assets and passwords cannot be overstated, given that it is difficult or impossible for heirs, fiduciaries, and family members to discover digital assets without specific knowledge of the asset and where it exists.

To be secure, the inventory should be an electronic file, encrypted with a complex password. Normal password protections of an Microsoft Word or other Microsoft Office document are easily circumvented, so best practices are to use a software package designed to store confidential documents and passwords. The encrypted electronic inventory file can then be stored on a home computer, smartphone, or USB drive, or uploaded to the cloud. The password to access the electronic list may be written on a piece of paper stored with original estate planning documents or in a safe-deposit box. It is critical that this password be kept up to date, because if a user changes the password and fails to replace the written (now outdated) password, the person designated to access the list will be unable to do so.

Transfer Ownership of Digital Assets to Entity
The next step is to devise a method for transferring the value associated with digital assets to the client’s beneficiaries. Transferring ownership of digital assets to an LLC, corporation, or trust is probably the most effective way to preserve the value and accessibility of the client’s digital assets upon his or her death or disability, although such a transfer is not always possible.

Online Storage Accounts
It is essential to provide a means by which fiduciaries will be able to identify and access the client’s digital assets upon death or disability. Online storage accounts allow users to store digital assets and information about them for a monthly or yearly fee. Many allow designated persons to access the owner’s digital assets in the event of death or disability, and most will store copies of important documents and frequently used data.

Accessing the Digital Assets of a Deceased or Disabled Client
Even in the best-case scenario — where the decedent had inventoried all digital assets, user names, and passwords for the fiduciary — the administration of a deceased or disabled person’s digital assets can be extremely complicated. Before attempting to access any digital assets, the fiduciary should carefully review the terms and conditions of use of all digital assets. Federal and state laws criminalize certain types of unauthorized access to computers or data. If the fiduciary is not authorized to access digital assets under the digital asset provider’s terms of service, then accessing the assets may be a crime, even if the fiduciary is expressly authorized access by the estate planning documents.

All 50 states have criminal laws prohibiting unauthorized access to electronic data. Federal law, specifically the Computer Fraud and Abuse Act, criminalizes intentional access of a computer without authorization or by exceeding authorization. The U.S. Department of Justice has stated that violating a term of service on Facebook or Match.com is a federal crime under CFAA, although the DOJ has said it doesn’t intend to prosecute minor violations.

Accordingly, state legislatures are increasingly providing statutory authority for fiduciaries to access certain digital assets of decedents. Eight states (Connecticut, Oklahoma, Idaho, Rhode Island, Nevada, Virginia, Indiana, and Delaware) have statutes giving personal representatives or executors limited access to certain digital assets, and four additional states (Nebraska, Oregon, Massachusetts, and New York) are considering similar legislation. While state laws are well-intentioned, they conflict with CFAA, making their validity unclear.

Working with the American Bar Association and American College of Trust and Estate Counsel, the Uniform Law Commissioners approved the Uniform Fiduciary Access to Digital Assets Act on July 16, 2014. This Act will likely be an important influence for other states to adopt similar legislation. NWL
In Remembrance

This In Remembrance section contains brief obituaries of WSBA members. The list is not complete and contains only those notices that the WSBA has learned of through newspapers, magazine articles, trade publications, and correspondence. Additional notices will appear in subsequent issues of NWLawyer. Please email notices or personal remembrances to nwlawyer@wsba.org.

John R. Allen
John Allen was born in Seattle and graduated from Broadway High School. He attended Washington State College and served in the U.S. Air Force. He received his law degree from the University of Washington School of Law. He practiced for 40 years before retiring in 1997. He was an avid boater and loved cruising the Gulf Islands, Desolation Sound, and around Vancouver Island.

John R. Allen died on Feb. 27, 2014, at the age of 84.

Kenneth A. Berger
Ken Berger was born in California. As a young man, he rode his bicycle across the country. Sports, hiking, and flying would play a central part in his life. After working for years running a printing business, Berger earned his law degree at Nova Southeastern University in Fort Lauderdale, Florida, at the age of 41. He served on the Monroe City Council and the Snohomish County Board of Health, and was active in the Monroe Lions Club. He summited Mount Rainier 29 times. He was a private pilot and loved to fly and build planes.

Kenneth Berger died May 24, 2014, at the age of 60.

Merle D. Cohn
Longtime Mercer Island resident Merle Cohn earned his law degree at the University of Washington and practiced for over 50 years. He will be remembered for his sharp legal mind as well as his philanthropic leadership in B’nai Brith, the Stroum Jewish Community Center, and the Anti-Defamation League. He served in the U.S. Air Force during World War II and loved traveling, sailing, and collecting indigenous art.

Merle Cohn died Aug. 16, 2014, at the age of 95.

Charles Peter Curran
Pete Curran was born in Spokane. He served in the U.S. Army and attended the University of Washington, where he earned a degree in history and his law degree. He practiced law in Kent for over 53 years. He was active in the civic development of Kent, serving at churches, charities, and arts organizations. He loved nicknames, mole hunting, cooking, Prairie Home Companion, and music festivals.

Pete Curran died May 11, 2014, at the age of 81.

Roger L. Decker
Roger Decker was raised in Michigan. He served in the Korean War as a construction surveyor in the U.S. Army. He received his law degree from Duke University School of Law. He moved to Seattle and joined the law firm of Helsell Fetterman and then eventually started his own firm called Boyd & Decker. He enjoyed golfing and outdoor activities during his retirement in Wenatchee.

Roger Decker died on March 24, 2014, at the age of 78.

Frank W. Draper
Frank Draper grew up in Seattle’s Laurelhurst neighborhood. He attended the University of Washington, where he earned his law degree. He was a member of the U.S. Army’s Counter Intelligence Corps, which took his family to Texas. Upon returning to Washington, he joined Lane Powell and then formed his own law firm of Detels, Draper, and Marinkovich, where he focused on maritime law. He was a fellow of the American College of Trial Lawyers. He enjoyed golfing and painting.

Frank Draper died on May 26, 2014, at the age of 84.

James D. Dubuar
Born and raised in Seattle, James Dubuar served in World War II and the Korean War. He attended the University of Washington School of Law and was admitted to the WSBA in 1950. He practiced for over 60 years. He was active with the Boy Scouts, the Mountaineers, and maritime organizations.

James Dubuar died on July 4, 2014, at the age of 93.

Donald K. Fleck
Donald Fleck was born in Spokane. He served during World War II with the U.S. Army. He earned his law degree from the University of Washington School of Law in 1948. He practiced in the areas of business development, aviation, real estate, and estate planning law. He left law for nine years to start a company that developed wheelchair lifts for buses which are still being used today. He sang in musical theater productions and as a soloist. He loved boating, flying, and tennis.

Donald Fleck died on June 29, 2014.

Richard M. Foreman
Richard Foreman attended the University of Washington. His law studies were interrupted when he was drafted to serve in the Korean War as a judge advocate general. After completing his service and his degree, he served as a deputy prosecuting attorney for the City of Seattle. He started private practice in Bellevue, where he served on the planning commission, the city council, and as mayor for three terms. He was appointed attorney of counsel of the Supreme Court of Washington in 1993. He loved boating, political discussions, and the Huskies.

Richard Foreman died on Aug. 13, 2014, at the age of 81.

Lloyd G. Hammel Jr.
Lloyd Hammel served as an artillery forward observer in World War II and received the Air Medal. He earned his J.D. at the University of Michigan School of Law and then moved to Salem, Oregon, where he was assistant to the Oregon Attorney General and active in Salem civic affairs. He also served as an attorney with Pacific Northwest Bell Telephone, a position that brought him to Seattle after the phone company break-up, where his practice focused on antitrust, public utility, and administrative law. After retiring from the law, he took a position as an adjunct professor at the University of Washington School of Business. He served on the Clyde Hill City Council. He loved running and ran for over 75 years in more than 25 countries. He also enjoyed backpacking, racquetball, and camping.

Lloyd Hammel Jr. died on March 29, 2014, at the age of 91.

Stephen K. Harpold
Born in Indiana, Stephen Harpold enlisted in the U.S. Army and served in Vietnam as an artillery forward observer with the 11th Armored Calvary Regiment. He received the Purple Heart Medal. After his service, he returned to law school and received his J.D. from Indiana University. Upon graduating, he packed up his car and drove to Washington, where he founded his own firm representing clients injured in accidents. He retired in 2012 to his home on Vashon Island.

Stephen Harpold died on Aug. 5, 2014, at the age of 69.

Helen “Dee” Hokum
Dee Hokum grew up on a small farm near Kuna, Idaho. She worked as a substitute teacher before completing law school at
Sher S. Kung
Sher Kung received her bachelor’s degree from Brown University and her law degree from the University of California, Hastings College of Law. As an associate with Perkins Coie’s litigation group, she focused on intellectual property litigation. In 2010, Kung was a member of the ACLU team that challenged the military’s “Don’t Ask, Don’t Tell” policy. She helped represent U.S. Air Force Major Margaret Witt in a case that set a precedent that the military would need to prove sexual orientation had a negative impact on morale in order to dismiss a serviceperson. She was committed to pro bono work and to equal rights for everyone.
Sher Kung died on Aug. 29, 2014, at the age of 31.

Arthur T. Lane
Arthur Lane grew up in Seattle’s Capitol Hill neighborhood. He attended Seattle University and the University of Washington School of Law, serving for two years as a U.S. Marine officer in the Western Pacific between college and law school. Lane worked for 30 years for the City of Seattle Law Department as director of the utilities division. In 1978, he received the Outstanding Public Employee Award from the Municipal League of Seattle and King County. Lane was a board member and past president of the Seattle Metropolitan Credit Union. He was a founding member of the Highland Poetry Society, was renowned for his bread-baking and pancakes, and loved books and history.
Arthur T. Lane died on Aug. 24, 2014, at the age of 84.

Shelley M. Kerslake
Shelley Kerslake was born in Seattle and raised in Tacoma. She earned her law degree from the University of Puget Sound School of Law. She began her legal career as an assistant city attorney for the City of Tacoma. She then worked for the Kenyon Disend law firm focusing on municipal law and, in that capacity, served as the city attorney for the City of Tukwila.
Shelley Kerslake died on July 13, 2014, at the age of 47.

Michael D. Kinkley
Michael Kinkley grew up in Columbus, Ohio. A graduate of the Ohio State University and Gonzaga School of Law, he practiced in Spokane as a trial and appellate lawyer for more than 31 years. He was enthusiastic about the outdoors and was an avid boater, skier, hiker, fisher, and scuba diver. He was a member of the National Association of Consumer Advocates and served as chair of the Consumer Protections Section of the Washington Association of Justice.
Michael Kinkley died on May 13, 2014, at the age of 58.

Richard D. McWilliams
Richard McWilliams was born in Spokane and received his undergraduate degree from Gonzaga University. After two years in reserve service, he served on active duty with the U.S. Navy before returning to Gonzaga University School of Law. McWilliams began his career as a prosecutor for Spokane County, then joined the firm of Paine, Lowe, Coffin, Herman & O’Kelly (now Paine Hamblen LLP). McWilliams served on the Gonzaga University Board of Regents and the Gonzaga University Law Council, and was a past president of the Spokane County Bar Association. With his son Rob, he initiated the local Juvenile Diabetes Research Foundation fundraiser in honor of his late son James McWilliams; the annual golf tournament has raised over $1.3 million for the cause. He was a driver for many years for Meals on Wheels, and enjoyed fishing, golfing, and duck hunting.
Richard D. McWilliams died on Aug. 8, 2014, at the age of 84.

John S. Moore
John Moore was born in Sunnyside. He attended the University of Washington before waiving his 4-F status and enlisting in the U.S. Signal Corps, where his duties included the creation and analysis of cryptographic codes in the U.S. and the Aleutian Islands. After three years of service, he then received his law degree from the University of Washington School of Law. He joined the firm of Velikanje & Velikanje, and later started a firm with Fred Velikanje, which ultimately became Velikanje, Moore

Robert V. Boeshaar
ATTORNEY AT LAW | LL.M., PLLC
I help individuals and businesses find the best resolution to their disputes with the IRS.

Masters of Laws (LL.M.) in Taxation
Over 14 years experience with the IRS Office of Chief Counsel
206.623.0063 | boeshaarlaw.com
1000 Second Avenue, Suite 3000 | Seattle, WA 98104

Shelley M. Kerslake died on April 7, 2014, at the age of 65.

Mark Mays received his undergraduate degree from Austin College, a doctorate of psychology from the University of Texas–Austin, and his law degree from Gonzaga University School of Law. He served on the Eastern Washington University board of trustees for six years, including terms as chair and vice-chair. He served for many years on the board of directors of the Spokane Community Mental Health Center, including a term as president. Mays was an adjunct faculty member of the University of Washington School of Medicine’s Department of Psychiatry. The Dr. Mark Mays Endowed Scholarship was established to honor and continue his legacy in higher education.
Roy Mark Mays Jr. died on March 22, 2014, at the age of 65.

John S. Moore
John S. Moore
Helen “Dee” Hokum died on April 7, 2014, at the age of 65.

Peter Velikanje
Peter Velikanje
Richard D. McWilliams died on Aug. 8, 2014, at the age of 84.

Sher S. Kung
Richard D. McWilliams

Richard D. McWilliams died on Aug. 8, 2014, at the age of 84.

Michael D. Kinkley
Shelley Kerslake

Shelley M. Kerslake died on July 13, 2014, at the age of 60.

Helen “Dee” Hokum died on April 7, 2014, at the age of 65.

Arthur T. Lane

Michael D. Kinkley died on May 13, 2014, at the age of 47.

Shelley M. Kerslake

Richard D. McWilliams

Robert V. Boeshaar
Voting for Judges.org
An information resource for Washington voters

Voting for Judges is a nonpartisan, impartial source of information about judicial elections in the state of Washington. The site was established in 2006 to provide information to voters in connection with the appellate judicial contests that year, and it has expanded to cover all judicial elections throughout the state. All of Washington’s 2014 elections will be reported.

Please let your colleagues, friends, and families know about this helpful website before they vote in the November election!

Linda K. Navarro
Linda Navarro was the daughter of legendary jazz trumpeter Theodore “Fats” Navarro. She received her undergraduate degree from the University of Washington and her law degree from the University of Washington School of Law while raising her son. Navarro clerked for Judge Charles Z. Smith and was a public defense attorney for the Associated Counsel for the Accused in Seattle. She became a bailiff for King County Superior Court Judge Michael J. Fox in 1991 and worked with him until her retirement in 2010. Navarro is especially remembered as a lifelong friend and advocate of the LGBT community.

Linda K. Navarro died on Aug. 12, 2014, at the age of 65.

Ellen M. O’Hara
Ellen O’Hara was born in Virginia. She earned her undergraduate degree from the University of California–Berkeley and her law degree from Case Western Reserve School of Law. O’Hara practiced for 12 years as a deputy district attorney in the Tulare County (CA) District Attorney’s Office, helping to establish and supervise the office’s Family Protection Division, responsible for domestic violence, sexual assault, and child molestation cases. In 1996, she was recognized as Tulare County’s Prosecutor of the Year. O’Hara went briefly into private practice and served with the Monterey County District Attorney’s Office before moving to Spokane in 2001 as assistant city attorney. In 2012, O’Hara became City Prosecutor for the City of Spokane. She was an instrumental member of the working group that recently established Spokane’s community court.

Ellen M. O’Hara died on March 15, 2014, at the age of 56.

Hon. Richard G. Patrick
Richard Patrick was born and raised in Sandpoint, Idaho. He served in the U.S. Navy before attending the University of Idaho, and received his law degree from the University of Michigan Law School. Patrick moved to Pasco, where he was in private practice for 17 years before being appointed by then-Governor Evans to the Superior Court bench. Patrick served as a judge for 17 years before his retirement. He was a past president of the Benton-Franklin County Bar Association and the Washington State Superior Court Judges’ Association. After retirement, Patrick worked as a private mediator and pro tem judge. An active member of the Tri-Cities community, he belonged to the Rotary and Elks clubs and volunteered with his church. He enjoyed local drama productions, gardening, and supporting the Boy Scouts.

Richard G. Patrick died on June 18, 2014, at the age of 90.

Mark W. Prothero
Mark Prothero received his law degree from the University of San Diego School of Law. A former champion swimmer, he swam for the Huskies for four years and swam on the U.S. national team; in later years, he coached his own children and many Kentwood High School students, was an announcer at national swim meets, and served as the chair of the Pacific Northwest Swimming Board of Review. Prothero was perhaps best known as one of the lead defense attorneys who rep-
represented serial killer Gary Ridgway, the Green River Killer; he brokered a plea deal that spared Ridgway the death penalty in exchange for Ridgway’s confession to 49 counts of aggravated murder. In 2006, he published a book, Defending Gary, detailing the experience.

Mark W. Prothero died on April 19, 2014, at the age of 57.

**Hon. Christine J. Quinn-Brintnall**
Christine Quinn-Brintnall was born in Portland. She received her undergraduate degree from Evergreen State College and her law degree from the University of Puget Sound. She worked as a deputy prosecuting attorney for King County and clerked for Judge James A. Andersen at the Court of Appeals. In 1983, Quinn-Brintnall became chief criminal deputy for the Pierce County Prosecuting Attorney's Office, and later became a senior criminal prosecutor and head of the appeals unit. In 2000, she was elected to the Washington State Court of Appeals, and in 2012, she was elected its presiding chief judge. In her free time, she judged mock trial competitions for the YMCA and law schools and served on the boards of the Emergency Food Network, Werlin Reading Teams, and Tacoma Youth Symphony. She was a volunteer reading tutor in Tacoma public schools, and enjoyed playing the flute and piano.

Christine J. Quinn-Brintnall died on May 19, 2014, at the age of 62.

**Alan N. Rasmussen**
Alan Rasmussen was born in Tacoma and was a lifelong resident of the Tacoma and Lakewood area. He received his undergraduate degree from the University of Washington and his law degree from the University of Washington School of Law. After law school, Rasmussen served a tour of duty in Vietnam with the U.S. Army, and was awarded a Bronze Star for meritorious service. Returning home, he joined a law firm in Fife before starting his own solo practice in Spanaway, which he maintained for 43 years. Rasmussen was known for being compassionate and generous with his time, frequently assisting those in need of legal services who could not afford to pay. He strongly believed that legal services should be available and affordable to all.

Alan N. Rasmussen died on June 21, 2014, at the age of 71.

**Ann M. Ryan**
Ann Ryan was born in Minnesota and grew up in Bellevue. She received her undergraduate degree from Western Washington University and her law degree from the University of Puget Sound. She worked for the Pierce County Department of Assigned Counsel, the Associated Counsel for the Accused, the Commissioner to the Washington Supreme Court, and was an assistant attorney general at the Washington Office of the Attorney General.

Ann M. Ryan died on April 2, 2014, at the age of 55.

**Albert J. Schauble**
Albert Schauble was born in North Dakota and grew up in St. John, Washington. He received his undergraduate degree from Gonzaga University and his law degree from Gonzaga University School of Law. He served a 16-month tour of duty in Korea as a lieutenant in the U.S. Army. After law school, Schauble moved to Pullman and joined the firm of Hugh Aitken and Marshall Neill, where he practiced for the rest of his life. He was a past president of the Pullman Chamber of Commerce and the Whitman County Bar Association and was a fellow of the American College
of Trust and Estate Counsel, Schauble delighted in following his children’s and grandchildren’s sporting events; he loved college basketball and was a dedicated fan of Gonzaga and Washington State University. He enjoyed travel and visited many destinations throughout the U.S. and around the world.

Albert J. Schauble died on March 14, 2014, at the age of 81.

Paul E.S. Schell
Former Seattle Mayor Paul Schell was born and raised in Iowa. He received his undergraduate degree from the University of Iowa and his law degree from Columbia University. Schell moved to Seattle to join the Perkins Coie law firm and left a few years later to form his own law partnership: Hillis, Schell, Phillips, Cairncross, Clark and Martin. After supporting Mayor Wes Uhlman’s re-election bid, Schell was hired as Uhlman’s director of community development, where he was known for pushing to get neighborhood redevelopment projects off the ground. In 1977, he ran unsuccessfully for mayor, and after his defeat became a developer of downtown buildings and interim dean of the University of Washington College of Architecture and Urban Planning. In 1989, Schell was elected as a Port of Seattle commissioner and contributed to the port’s major waterfront redevelopments.

Schell was elected mayor of Seattle in 1998 and served until 2002. His term was marked by public safety and political crises, including the 1999 World Trade Center attacks, and human rights causes. A leader in Washington’s access to justice movement, he continued to be active in a variety of constitutional, civil rights, and human rights causes. A leader in Washington’s access to justice movement, Schell was instrumental in the formation of the Alliance for Equal Justice.

Leonard W. Schroeter
Leonard Schroeter was born in Chicago and grew up in Indiana. He received his undergraduate degree from Indiana University, interrupting college in 1943 to serve in the U.S. Army Allied Area. After the war, he returned to school, earning a master’s degree in international relations from the University of Chicago. Schroeter received his law degree from Harvard University Law School and joined the legal staff of the NAACP’s Legal Defense and Education Fund, headed by Justice Thurgood Marshall. In 1952, he moved to Seattle to become the Northwest director of the Anti-Defamation League of B’nai B’rith. He was a board member and past president of the ACLU of Washington, and in 1964 became the first national board member from the Pacific Northwest. A frequent speaker, he published many articles on constitutional law and access to justice. In the early 1970s, Schroeter lived in Jerusalem and served as principal legal assistant to the Attorney General of Israel, where he worked on the issue of human rights and the emigration of Jews from the Soviet Union. He is the author of The Last Exodus, a study of the Soviet Jewry movement. He retired in 1989 and continued to be active in a variety of constitutional, civil rights, and human rights causes. A leader in Washington’s access to justice movement, Schroeter was instrumental in the formation of the Alliance for Equal Justice.

Leonard W. Schroeter died on April 28, 2014, at the age of 90.

William D. Stites
William Stites was born and raised in Kansas. He received his undergraduate degree and law degree from the University of Kansas. He served in the U.S. Army Reserves during the Vietnam War and was honorably discharged in 1971. He moved to Seattle in 1972 and joined the firm of Ferguson & Burdell, eventually leading the firm’s real estate transactions practice. In 1994, he co-founded the firm of Jameson Babbit Stites & Lombard, where he was recognized as a prominent real estate lawyer in the Puget Sound area. Stites was known for his wit, love of learning, and devotion to family and friends, and many will remember that his home was always open to those in need.

William D. Stites died on April 20, 2014, at the age of 71.

Paul M. Stocker
Paul Stocker was born in Oregon City. He received his undergraduate degree from the University of Washington and interrupted his studies to enlist in the U.S. Navy after the bombing of Pearl Harbor, serving as an aerial gunner for several years. After the war, Stocker received his law degree from Willamette University School of Law. He was elected to the Washington State Legislature and served eight years as the 38th District representative. In 1961, Stocker was appointed to the Seattle World’s Fair Commission, and helped to produce successful shows for Seattle and New York’s World Fairs. In 1964, Stocker moved to Australia to purchase, develop, and sell oceanfront land. He also spent time on Wuvulu Island in Papua New Guinea, where the Sumalae Foundation brought medicine and doctors to the islands in Stocker’s 72-foot schooner, for which he was commended by the government of Papua New Guinea. Stocker en-
joyed swimming, dancing, and all kinds of music. He was a lifetime member of the American Legion, Veterans of Foreign Wars, and FRA Club 170.

Paul M. Stocker died on Aug. 17, 2014, at the age of 90.

**Theodore O. Torve**

Theodore Torve was born and raised in Everett. He served in the U.S. Navy during the Korean War, and upon discharge, he attended Everett Community College and received his law degree from the University of Washington School of Law. Torve served as a law clerk for the Washington Supreme Court and then joined the Attorney General’s Office as an assistant attorney general representing the Department of Highways. He later served for many years as the division chief for the Natural Resources Division and then for the Transportation and Public Construction Division before retiring in 1998. As a division chief, Torve was a leader and a valued mentor to the many attorneys who worked with him over the years. He was passionate about his work, was known for his sense of humor, and was respected by his colleagues.

Theodore O. Torve died on July 29, 2014, at the age of 83.

**Alan P. Vandevert**

Alan Vandevert was born in Bend, Oregon, and grew up in California. He received his undergraduate degree from Stanford University and served for two years in the U.S. Army Infantry before receiving his law degree from Columbia University Law School. Vandevert joined Weyerhauser in 1962, serving as corporate secretary and assistant general counsel, and retired after 31 years of service. He was chair of the Board of Trustees of Tacoma Community College, chair of the Corporate Practices Committee of the American Society of Corporate Secretaries, and volunteered for many years at Harborview and University of Washington Medical Centers. Vandevert enjoyed hiking, skiing, gardening, and traveling the world. He loved cooking and was an avid reader of news and current events.

Alan P. Vandevert died on July 1, 2014, at the age of 85.

**David E. Wagoner**

David Wagoner was born in Pennsylvania. He received his undergraduate degree from Yale University and his law degree from the University of Pennsylvania Law School. After law school, Wagoner clerked for U.S. Supreme Court Justice Harold Burton. Wagoner served as a lieutenant in the U.S. Army and was stationed at Walter Reed Hospital. Moving to Seattle, Wagoner joined the firm of Perkins Coie, where he practiced law until his retirement. He served on the Seattle Public Schools Board of Directors for eight years, including two terms as president, and served for 12 years as a governor of the Evergreen State College, including a term as chair. After retirement, Wagoner began a second career as an international arbitrator and mediator. He taught courses on international arbitration and mediation at American University and served as a coach for students at the University of Washington School of Law in international arbitration competitions in Vienna and Hong Kong. Wagoner enjoyed sports, art, and travel, and discovered a talent for painting colorful desert landscapes in later years.

David E. Wagoner died on July 5, 2014, at the age of 86.
You are invited to attend the

WSBA 50-Year Member Tribute Luncheon

Please join us on Friday, Oct. 24, 2014, at the Renaissance Seattle Hotel for a luncheon honoring the careers of WSBA members who have been members for 50 years. All members of the legal community and guests are invited to attend.

RECEPTION AND REGISTRATION: 11 a.m. (no-host bar) • Lunch/Program: NOON
RENAISSANCE SEATTLE HOTEL, 515 Madison St., Seattle

Name _______________________________________________  WSBA No. __________________________
Address _______________________________________________________________________________________
Phone _______________________________ Email ______________________________________________________
Affiliation/Organization ________________________________________________________________

Registration is $45 per person (table of 10 = $450). To make your reservation, please return this form (or a photo-copy) with your credit-card information or check payable to WSBA. Reservations and payment must be received no later than Oct. 15, 2014 (refunds cannot be made after Oct. 16). 50-year members and one guest are complimentary.

☐ MasterCard  ☐ Visa  No. _______________________  Exp. date _________
Name as it appears on card ________________________________________________
Signature ________________________________  (no. of persons)  X  $45 (price per person) = $ ________ TOTAL

Please list the names of all attendees and indicate meal choices. Be sure to include yourself.

______ (chicken)  ______ (salmon)  ______ (vegetarian)
______ (chicken)  ______ (salmon)  ______ (vegetarian)
______ (chicken)  ______ (salmon)  ______ (vegetarian)
______ (chicken)  ______ (salmon)  ______ (vegetarian)
______ (chicken)  ______ (salmon)  ______ (vegetarian)
______ (chicken)  ______ (salmon)  ______ (vegetarian)
______ (chicken)  ______ (salmon)  ______ (vegetarian)
______ (chicken)  ______ (salmon)  ______ (vegetarian)
______ (chicken)  ______ (salmon)  ______ (vegetarian)
______ (chicken)  ______ (salmon)  ______ (vegetarian)
______ (chicken)  ______ (salmon)  ______ (vegetarian)
______ (chicken)  ______ (salmon)  ______ (vegetarian)
______ (chicken)  ______ (salmon)  ______ (vegetarian)
______ (chicken)  ______ (salmon)  ______ (vegetarian)
______ (chicken)  ______ (salmon)  ______ (vegetarian)
______ (chicken)  ______ (salmon)  ______ (vegetarian)

☐ If you need special accommodations, please check here and explain below.

SEND TO:
WSBA 50-YEAR TRIBUTE LUNCHEON
1325 Fourth Ave., Ste. 600
Seattle, WA 98101-2539
Tel: 206-239-2125 • 800-945-9722, ext. 2125 • Fax: 206-727-8310 • WSBAevents@wsba.org

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

**Disbarred**

**Eric A. Jones** (WSBA No. 31048, admitted 2001), of Seattle, was disbarred, effective 7/14/2014, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.3 (Diligence), 1.5 (Fees), 1.15A (Safeguarding Property), 1.16 (Declining or Terminating Representation), 8.1 (Bar Admission and Disciplinary Matters), 8.4 (Misconduct). Jonathan Burke acted as disciplinary counsel. Eric A. Jones represented himself. Daniel Andrew Brown was the hearing officer. The online version of NWLawyer contains links to the following documents: Order Approving Stipulation; Stipulation to Disbarment; and Washington Supreme Court Order.

**Alice Eunah Kim** (WSBA No. 36896, admitted 2005) of Lynnwood, was suspended for one year, effective 7/14/2014, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.5 (Fees), 1.8 (Conflict of Interest: Current Clients; Specific Rules), 115B (Required Trust Account Records). Francesca D’Angelo acted as disciplinary counsel. Alice Eunah Kim represented herself. The online version of NWLawyer contains links to the following documents: Order Approving Stipulation; Stipulation to A One-Year Suspension; and Washington Supreme Court Order.

**Suspended**

**Kelly Marie Beissel** (WSBA No. 29239, admitted 1999) of Seattle, was suspended for six months, effective 8/13/2014, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.4 (Communication), 8.4 (Misconduct). Linda B. Eide acted as disciplinary counsel. Kurt M. Bulmer represented Respondent. Andrekita Silva was the hearing officer. The online version of NWLawyer contains links to the following documents: Order Approving Stipulation; Stipulation to Six Month Suspension; and Washington Supreme Court Order.

**Tamara Marie Chin** (WSBA No. 23062, admitted 1993) of Lynnwood, was suspended for 45 days, effective 7/14/2014, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.4 (Communication), 1.5 (Fees), 1.15A (Safeguarding Property). Nataliea Skvir acted as disciplinary counsel. Stephen Christopher Smith represented Respondent. David Bruce Condon was the settlement officer. Renee Walls was the hearing officer. The online version of NWLawyer contains links to the following documents: Order Approving Stipulation; Stipulation to Six Month Suspension; and Washington Supreme Court Order.

**Reprimanded**

**William Guyton Simmons** (WSBA No. 19071, admitted 1989), of Bellevue, was reprimanded, effective 4/29/2014, by order of the hearing officer. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.3 (Diligence), 3.2 (Expedient Litigation), 3.4 (Fairness to Opposing Party and Counsel). Francesca D’Angelo acted as disciplinary counsel. William Guyton Simmons represented himself. William Fitzharris 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. William Guyton Simmons is to be distinguished from William W. Simmons of Seattle.

**Charles Williamson Talbot** (WSBA No. 7448, admitted 1977), of Tacoma, was reprimanded, effective 1/09/2014, by order of the hearing officer. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.3 (Diligence), 1.4 (Communication), 5.3 (Responsibilities Regarding Nonlawyer Assistants). Kevin Bank acted as disciplinary counsel. Charles Williamson Talbot represented himself. Donald Carter was the hearing officer. The online version of NWLawyer contains links to the following documents: Order on Stipulation to Reprimand and Probation; Stipulation to Reprimand and Probation; and Notice of Reprimand.

**Admonished**

**James Dewitt McBride II** (WSBA No. 1603, admitted 1967) of Redmond, was ordered to receive an admonition, effective 6/30/2014, by a Review Committee of the Disciplinary Board. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.7 (Conflict of Interest: Current Clients), 8.4 (Misconduct). Debra Slater acted as disciplinary counsel. James Dewitt McBride II represented himself. The online version of NWLawyer contains links to the following documents: Admonition.

**Wanted**

Do you know someone who should be practicing law?

Did you recently move and want to be sure you’re getting NWLawyer?

Make sure your address is up-to-date by going to www.mywsba.org.

**SPEEDING TICKET? TRAFFIC INFRACTION? CRIMINAL MISDemeanor?**

Keep it off your record, Keep insurance costs down

JEANIE P. MUCKLESTONE, PS.
PO BOX 565
Medina, Washington 98039
(206) 623-3343
jeannie@mucklestone.com
www.mucklestone.com

• Successful Results
• Extensive experience
• Former Judge Pro Tem in King County
• Featured in Vogue magazine May ’03 as a top lawyer for women in Washington
• Front page of Seattle Times “Drivers fighting tickets and winning” June 1, 2006
• Visa/Mastercard accepted
**Smith Alling, p.s.**

is pleased to announce the relocation of its office to:

1515 Dock Street, Suite 3
Tacoma, WA 98402

Tel: 253-627-1091 • Fax: 253-627-0123

Smith Alling is a full service civil litigation firm representing businesses and individuals in the areas of Commercial and Employment Law; Real Property; Estate, Probate & Elder Law; Family Law; and Personal Injury.

**Masters Law Group, PLLC**

is very pleased to announce that

**Kara R. Masters**

has joined the firm as Of Counsel.

Kara's practice will continue to focus on insurance coverage, commercial risk management, employment law, and civil appeals.

**Masters Law Group PLLC**

Kenneth W. Masters / Shelby Frost Lemmel / Kara R. Masters

ken@appeal-law.com
shelby@appeal-law.com
kara@appeal-law.com

241 Madison Avenue North
Bainbridge Island, WA 98110
Tel: 206-780-5033
www.appeal-law.com

**Fitzer, Leighton & Fitzer**

is pleased to announce that

**Brittany M. Mahugh**

has joined the firm as an associate. Ms. Mahugh was an honors graduate in nursing from Seattle University and an Order of the Coif graduate from the University of Oregon School of Law. She recently served as a judicial clerk for the Honorable Joel Penoyar (Ret.) and the Honorable Richard Melnick. Her practice will include the representation of healthcare providers in medical liability and licensing matters.

**Fitzer, Leighton & Fitzer, p.s.**

1102 Broadway, Suite 401
Tacoma WA 98402
253-572-5324
www.flfps.com

**Congratulations Eva Luchini**

Pabst Holland & Reynolds, PLLC proudly celebrates the one-year anniversary of the addition of attorney Eva Luchini to the firm.

*She earned her law degree from the Columbia University School of Law in 1996, served as a law clerk to the Honorable William J. Rea of the United States District Court, Central District of California, and started her career in the litigation department of O’Melveny & Myers, LLP. With the heart of a litigator but the soul of an estate planner, Eva concentrates her current practice in the areas of wills, trusts, planning for minor children, trust administration, and probate.*

**Pabst Holland & Reynolds, PLLC**

900 Washington Street, Suite 820
Vancouver, WA 98642
360-693-1910
www.phr-law.com
Opportunity for Service
Bellevue Youth Court Seeks Attorney Mentors
Bellevue Youth Court (BYC) is seeking attorney mentors in the Greater Seattle Area to offer guidance to youth advocates at juvenile diversion hearings. First- or second-time youth offenders who have pleaded guilty to a misdemeanor can choose BYC as an alternative to traditional juvenile court. Youth respondents are sentenced by a youth judge under the supervision of a youth judge and court officers. Youth advocates represent the respondent and the state at the hearing and help the jury reach a sentence that fulfills the principles of restorative justice. Attorney mentors provide advice and guidance to defense and prosecution advocates as they craft their statements of the case and sentencing recommendations. Mentors meet with youth once or twice in preparation for court and attend the hearing if possible. Defense mentors also attend the initial client meeting along with the advocate. Attorney mentors can choose which months to assist and the time commitment is highly flexible. There will be a training for new mentors in October, but applications will continue to be accepted on a rolling basis. For more information or to volunteer, contact Helena Stephens at 425-452-2834 or hstephens@bellevuewa.gov.

WSBA News
LLLTT Rules of Professional Conduct Update
In August, the LLLT Board submitted to the Supreme Court suggested LLLT Rules of Professional Conduct (LLLT RPC). In addition, the LLLT Board submitted to the WSBA Board of Governors related suggested amendments to the lawyer RPC. The Board will consider the suggested lawyer RPC amendments at its September and November meetings. For more information on the LLLT RPC, visit www.wsba.org/LLL. Go to www.courts.wa.gov/courts_rules/ to comment on the LLLT RPC or email Thea Jennings, LLLT Program lead, at theaj@wsba.org to comment on the suggested lawyer RPC amendments.

Join WSBA’s Annual Trial Advocacy Program
The Annual Trial Advocacy Program (TAP) offers attendees a two-day intensive trial-skills training from seasoned trial lawyers and a one-day mock trial two weeks later. This New Lawyer Education seminar is geared toward attorneys working in either the criminal or civil arena, with little to no trial experience, but a strong desire to become trial lawyers. Mark your calendars to attend TAP Oct. 24–25 at the WSBA Conference Center in Seattle. The mock trial will be held Nov. 8. This program offers either 12 or 18 CLE credits, depending on mock trial participation. To learn more or receive notice when registration has opened, contact newlawyers@wsba.org.

WSBA Open Sections Night: Oct. 16, Spokane
You’re invited to attend WSBA’s Open Sections Night, sponsored by the Washington Young Lawyers Committee and the WSBA Sections. This popular event provides an excellent opportunity to network with young attorneys and experienced attorneys who serve as WSBA section leaders. WSBA sections offer a wealth of experience and resources to help new and young lawyers find their footing in a new practice area. Join us Oct. 16, 5–7 p.m., at the Spokane Club, 1002 W. Riverside Ave., Spokane. To RSVP, email newlawyers@wsba.org.

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

Washington Young Lawyers Committee Meeting
The Washington Young Lawyers Committee will meet on Saturday, Oct. 11, at the WSBA offices, 1325 4th Ave., Ste. 600. If you would like to attend, email newlawyers@wsba.org.

2015 License Renewal, MCLE and Sections Information
Complete your license renewal and MCLE certification online—it’s easy. License renewal will begin in mid-October and must be completed by Feb. 2, 2015.

Payment plan option available. If you are experiencing financial challenges, you may contact us about a payment plan option available to all active and inactive members. Payment plans are for three months beginning December 1 and all fees must still be paid in full by Feb. 2, 2015. A one-time hardship exemption is available for active attorney members who qualify. Visit wsba.org/licensing to learn more.

Join or renew your Section membership.
As the section membership year is Oct. 1, 2014, through Sept. 30, 2015, we encourage you to join or renew sections in October to receive the full benefit of the membership.

Certify MCLE Compliance.
If you are in the 2012–14 reporting period (Group 2), then you are due to report CLE credits and certify MCLE compliance. All credits must be completed by Dec. 31, 2014, and certification (C2 form) must be completed online or be postmarked or delivered to the WSBA by Feb. 2, 2015. Visit wsba.org/MCLE to learn more.

Judicial Members.
Judicial members are required to complete the annual license renewal and pay a $50 license fee to maintain eligibility to transfer to another membership class when their judicial service ends. Please note that you are required to inform the Bar within 10 days of your retirement or your ineligibility for judicial membership (and you must apply to change to another membership class or to resign). Visit wsba.org/licensing to learn more.

Remember these dates:
Feb. 2, 2015: Request deadline for optional hardship exemption.
Feb. 2, 2015: License renewal, payment, and Group 2 MCLE C2 certification must be completed online, postmarked, or delivered to WSBA.

The WSBA 50-Year Member Tribute Luncheon
You won’t want to miss this luncheon honoring the careers of WSBA members who have been members for 50 years! Please join us Friday, Oct. 24, at the Renaissance Hotel in downtown Seattle. Honored 50-year members will receive a personal invitation by mail from the WSBA for themselves and one guest. All members of the legal community and guests are invited to attend this celebration.

Reception and registration open at 11 a.m. (no-host bar). Lunch and program begin at noon.

Registration is $45 per person (table of
Need to Know

10=$450). Space is limited. To make your reservation, email wsbaevents@wsba.org, or see page 60. We hope to see you at this very special event!

59th Annual Estate Planning Seminar: Oct. 30–31
Registration is now open for one of the oldest and largest estate planning conferences in the country, brought to you by WSBA-CLE and the Estate Planning Council of Seattle. Join hundreds of attendees from across professional practice areas and a faculty of more than 20 practitioners from around the country and around the state at the Washington State Convention Center in Seattle. Register at www.wsbacle.org/seminars; enter 15436 in the search field.

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

Volunteer Custodians Needed
The WSBA is seeking interested lawyers as potential ELC 7.7 volunteer custodians. An appointed custodian is authorized to act as counsel for the limited purpose of protecting a client’s interests whenever a lawyer has been transferred to disability, inactive status, suspended, disbarred, dies, or disappears and no person appears to be protecting the clients’ interests. The custodian takes possession of the necessary files and records and takes action to protect clients’ 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 their 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.

Legal Community

Council on Public Legal Education Flame of Democracy Award: Call for Nominations
The Council on Public Legal Education is accepting nominations for its Flame of Democracy Award, given to an individual, organization, or group in Washington state that has made a significant contribution to increasing the public’s understanding of law, the justice system or government. The mission of the CPLE is to promote public understanding of the law and civic rights and responsibilities. Nominations, which are due Nov. 1, 2014, should be made in the form of a letter (maximum 500 words) describing the nominee’s work and how it addresses the mission of the CPLE. The letter should also include the name of a reference who can provide additional information about the nominee. Supporting material may also be submitted. Self-nominations are encouraged. All nominations will be kept confidential. Nominations should be addressed to Julia Gold, University of Washington School of Law, P.O. Box 85110, Seattle, WA 98115-1110. Email submissions may be sent to juligold@uw.edu. Further information about the Council may be found at www.lawforwa.org/civics-washington/council-public-legal-education.

Washington State Association for Justice Announces 2014 Award Recipients, 2014–15 Board
In July, the Washington State Association for Justice (WSAJ) presented their annual awards to five outstanding members and one public official. Paul N. Luvera of Seattle received the Pillar of Justice Award from outgoing WSAJ President Stephen Bulzomi. Teri L. Rideout of Tacoma received the WSAJ President’s Award. Mark Kamitomo of Spokane received the Professionalism Award. Andy Miller was named Public Official of the Year for his steadfast dedication to the community, children and education. David Abeyta of Yakima received the New Lawyer “Ready to Soar” Award. The Tom Chambers Trial Lawyer of the Year Award was presented to Ralph Brindley of Seattle. Earlier this year, WSAJ announced additional awards: the Public Justice Award was presented to the Northwest Justice Project, Judge of the Year was presented to then–King County Superior Court Judge (now Justice) Mary Yu, the Excellence in Journalism Award was given to Emily Shugerman, and the Carl Maxey Award was presented to Lorena González.

The WSAJ elected Everett attorney Todd Nichols as its new president and Bellevue attorney Victoria Vreeland as its president-elect. A full list of the 2014–15 board can be found at https://www.washingtonjustice.org.

Lawyers Helping Hungry Children Luncheon: Nov. 4, 2014
The King County Chapter of Lawyers Helping Hungry Children, a nonprofit dedicated to ending childhood hunger in Washington, will hold its annual fundraiser on Nov. 4, 2014, at the Grand Hyatt in Seattle. The luncheon will be emceed by Ian Lindsey, and headlined by keynote speakers Rep. Jim McDermott and former Seattle Mariner Raul Ibanez. Entertainment will be provided by the Hawthorne Elementary School Choir.

The Pierce County Chapter of Lawyers Helping Hungry Children will also hold a breakfast fundraiser on November 4 for emergency food programs in Pierce County. Information about Lawyers Helping Hungry Children is available at www.lhhcwa.org or by contacting Julie Schisel at Julie@lsand.com. For information about the Pierce County Chapter, contact Todd Carlisle at toddc@nwjustice.org.

Ethics

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

400x195 to 564x304

Legal Community

Council on Public Legal Education Flame of Democracy Award: Call for Nominations
The Council on Public Legal Education is accepting nominations for its Flame of Democracy Award, given to an individual, organization, or program in Washington state that has made a significant contribution to increasing the public’s understanding of law, the justice system or government. The mission of the CPLE is to promote public understanding of the law and civic rights and responsibilities. Nominations, which are due Nov. 1, 2014, should be made in the form of a letter (maximum 500 words) describing the nominee’s work and how it addresses the mission of the CPLE. The letter should also include the name of a reference who can provide additional information about the nominee. Supporting material may also be submitted. Self-nominations are encouraged. All nominations will be kept confidential. Nominations should be addressed to Julia Gold, University of Washington School of Law, P.O. Box 85110, Seattle, WA 98115-1110. Email submissions may be sent to juligold@uw.edu. Further information about the Council may be found at www.lawforwa.org/civics-washington/council-public-legal-education.

Washington State Association for Justice Announces 2014 Award Recipients, 2014–15 Board
In July, the Washington State Association for Justice (WSAJ) presented their annual awards to five outstanding members and one public official. Paul N. Luvera of Seattle received the Pillar of Justice Award from outgoing WSAJ President Stephen Bulzomi. Teri L. Rideout of Tacoma received the WSAJ President’s Award. Mark Kamitomo of Spokane received the Professionalism Award. Andy Miller was named Public Official of the Year for his steadfast dedication to the community, children and education. David Abeyta of Yakima received the New Lawyer “Ready to Soar” Award. The Tom Chambers Trial Lawyer of the Year Award was presented to Ralph Brindley of Seattle. Earlier this year, WSAJ announced additional awards: the Public Justice Award was presented to the Northwest Justice Project, Judge of the Year was presented to then–King County Superior Court Judge (now Justice) Mary Yu, the Excellence in Journalism Award was given to Emily Shugerman, and the Carl Maxey Award was presented to Lorena González.

The WSAJ elected Everett attorney Todd Nichols as its new president and Bellevue attorney Victoria Vreeland as its president-elect. A full list of the 2014–15 board can be found at https://www.washingtonjustice.org.

Lawyers Helping Hungry Children Luncheon: Nov. 4, 2014
The King County Chapter of Lawyers Helping Hungry Children, a nonprofit dedicated to ending childhood hunger in Washington, will hold its annual fundraiser on Nov. 4, 2014, at the Grand Hyatt in Seattle. The luncheon will be emceed by Ian Lindsey, and headlined by keynote speakers Rep. Jim McDermott and former Seattle Mariner Raul Ibanez. Entertainment will be provided by the Hawthorne Elementary School Choir.

The Pierce County Chapter of Lawyers Helping Hungry Children will also hold a breakfast fundraiser on November 4 for emergency food programs in Pierce County. Information about Lawyers Helping Hungry Children is available at www.lhhcwa.org or by contacting Julie Schisel at Julie@lsand.com. For information about the Pierce County Chapter, contact Todd Carlisle at toddc@nwjustice.org.

Ethics

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

400x195 to 564x304
Search WSBA Advisory Opinions Online

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

WSBA Lawyers Assistance Program (LAP)

Weekly Job Search Group
The Weekly Job Search Group provides strategy and support to unemployed attorneys. The group runs for seven weeks and is limited to seven attorneys. We provide the comprehensive WSBA job search guide, “Getting There: Your Guide to Career Success,” which can also be found online at www.tinyurl.com/7xhe8b. If you would like to participate or to schedule a career consultation, contact Dan Crystal at danc@wsba.org, 206-727-8267, or 800-945-9722, ext. 8267.

Consultation Through WSBA Connects
Through our partnership with Wellspring, the WSBA is expanding its Lawyers Assistance Program and now offers statewide access to support for lawyers needing help for issues related to mental health and addiction concerns, career management, family, care-giving, daily living, health and well-being, and more. WSBA Connects is offered as a service to members on a voluntary, confidential basis. The program provides an array of consultation services, including professional support for those struggling with depression, work stress, addiction and life transition, among other topics. The first three appointments are offered at no charge. Call toll-free 855-857-WSBA (9722), or go to wsba.org/Resources-and-Services/WSBA-Connects.

Seeking Peer Advisors
Would you like to provide support to another lawyer in your community addressing topics such as mental health and self-care, alcoholism and addiction, or guidance in one’s practice? Lawyers are often uniquely able to be resources to one another in these areas. The WSBA Lawyers Assistance Program is launching a new initiative to reconstitute its peer advisor network. The goal is to build a robust network throughout the state. Skills trainings are being developed and planned. To participate or learn more, see...
As a WSBA member, you already have free access to Casemaker® and the WSBA Lending Library. Books may be borrowed by any WSBA member for up to two weeks. LOMAP requires your WSBA ID and a valid Visa or MasterCard number to guarantee the book’s return to the program. If you live outside of the Seattle area, books can be mailed to you; you will be responsible for return postage. To arrange for a book loan or to check availability, email lomap@wsba.org.

Usury Rate

The average coupon equivalent yield from the first auction of 26-week treasury bills in September 2014 was 0.051 percent. Therefore, the maximum allowable usury rate for October is 12 percent.

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.

**Administrative Law**

**Introducing the Second Edition of the Public Records Act Deskbook**

Nov. 12, Seattle and webcast. CLE credits pending. Presented by WSBA-CLE in partnership with the Administrative Law Section; 800-945-WSBA or 206-443-WSBA. www.wsbcle.org.

**Antitrust**

**Annual Antitrust Seminar**


**Arbitration**

**Serving as an Arbitrator (a.m.) and Trying Your Case in Arbitration (p.m.)**

Oct. 17, Seattle. Presented by the King County Bar Association; www.kcba.org/secure/cleRegistration.aspx.

**Aviation Law**

**41st Annual Pacific Northwest Aviation Law Seminar**

Oct. 10–12, Alderbrook Resort, Union. 9 CLE credits, including .5 ethics pending. Presented by the King County Bar Association; www.kcba.org/secure/cleRegistration.aspx.

**Civil Rights**

**Civil Rights Law Section Seminar**

Nov. 19, Seattle. CLE Credits pending. Presented by WSBA-CLE in partnership with the WSBA Civil Rights Section; 800-945-WSBA or 206-443-WSBA. www.wsbcle.org.

**Construction**

**4th Annual Successful Multi-Family and Mixed Use Development**


**Corporate**

**Once Bitten, Twice Shy: Tips for In-House and Outside Counsel**

Oct. 23, Spokane. 5 CLE credits. Presented by WSBA-CLE in partnership with the WSBA Corporate Counsel and Business Law Sections; 800-945-WSBA or 206-443-WSBA; www.wsbcle.org.

**Mergers and Acquisitions in Technology Industries**

Nov. 7, Seattle. 6 CLE credits. By The Seminar Group; 800-574-4852 or 206-463-4400; www.theseminargroup.net/seminar.lasso?seminar=14.mmawa.

**Criminal Law**

**The 21st Annual Criminal Justice Institute**

Oct. 9–10, Burien. 14.25 CLE credits, including 1 ethics. Presented by WSBA-CLE in partnership with the WSBA Criminal Law Section; 800-945-WSBA or 206-443-WSBA; www.wsbcle.org.

**Environment and Land Use**

**Comprehensive Review of Hydropower in the Northwest**


**3rd Annual Easements in Washington**


**7th Annual Alaska Construction Law**

Nov. 11, Anchorage. 6.25 CLE credits including 1 ethics. By The Seminar Group; 800-574-4852 or 206-463-4400; www.theseminargroup.net/seminar.lasso?seminar=14.colak.

**Construction Project Scheduling and Delay Claims**

Nov. 21, Seattle. 6 CLE credits. By The Seminar Group; 800-574-4852 or 206-463-4400; www.theseminargroup.net/seminar.lasso?seminar=14.cpswa.

**WSBA Law Office Management Assistance Program (LOMAP)**

Casemaker Online Research

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

Learn More about Case-Management Software

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

LOMAP Lending Library

The WSBA Law Office Management Assistance Program Lending Library offers short-term loan of books on the business management aspects of your law office. How does it work? You can view available titles at www.wsba.org/resources-and-services/LOMAP/lending-library. Books may be borrowed by any WSBA member for up to two weeks. LOMAP requires your WSBA ID and a valid Visa or MasterCard number to guarantee the book’s return to the program. If you live outside of the Seattle area, books can be mailed to you; you will be responsible for return postage. To arrange for a book loan or to check availability, email lomap@wsba.org.

**Usury Rate**

The average coupon equivalent yield from the first auction of 26-week treasury bills in September 2014 was 0.051 percent. Therefore, the maximum allowable usury rate for October is 12 percent.

http://bit.ly/104fpwN, contact lap@wsba.org, or 206-727-8268 or 800-945-9722, ext. 8268.
23rd Annual Oregon Water Law Conference
Nov. 6 and 7, Portland. 12.5 CLE credits, including 1 ethics. By The Seminar Group; 800-574-4852 or 206-463-4400; www.seminargroup.net/seminar.lasso?seminar=14.wator.

Preparing for Climate Change — New Regulation and New Litigation

7th Annual Water Rights Transfers
Nov. 13 and 14, Seattle. 11.5 CLE credits. By The Seminar Group; 800-574-4852 or 206-463-4400; www.seminargroup.net/seminar.lasso?seminar=14.wamwa.

Estate Planning
59th Annual Estate Planning Conference

Ethics
Ethical Dilemmas for the Practicing Lawyer
Oct. 16, Mount Vernon. 4 CLE ethics credits. Presented by WSBA-CLE; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

Ethical Dilemmas
Nov. 20, Seattle and webcast. CLE credits pending. Presented by WSBA-CLE; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

Family Law
You’re Older, Now Get Wiser — Death, Age, and Long-Term Marriage Issues
Oct. 17, Seattle. 6.5 CLE credits. Presented by the King County Bar Association; www.kcba.org/secure/cleRegistration.aspx.

General
The Cybersleuth’s Guide to the Internet: Master Google and Other Web Sites for Investigative and Legal Research
Nov. 14, Seattle. 4 CLE credits, including 2 ethics. Presented by the King County Bar Association; www.kcba.org/secure/cleRegistration.aspx.

Legal Lunchbox Series
CIVIL APPEALS
David J. Corbett
Focused on the clear presentation of compelling legal arguments for civil appeals and summary judgment motions. Available for association or referral.
DAVID CORBETT PLLC
www.DavidCorbettLaw.com
253-414-5235

LAWYER DISCIPLINE AND LEGAL ETHICS
Former Chief Disciplinary Counsel
Anne I. Seidel
is available for representation in lawyer discipline matters and advice on legal ethics issues.
206-284-2282
1817 Queen Anne Ave. N., Ste. 311
Seattle, WA 98109
anne@anneseidel.com
www.anneseidel.com

ETHICS and LAWYER DISCIPLINARY INVESTIGATION and PROCEEDINGS
Stephen C. Smith,
former Chair of the Washington State Bar Association
Disciplinary Board, is now accepting referrals for attorney disciplinary investigations and proceedings in Washington, Idaho, Hawaii, and Guam.
HAWLEY TROXELL ENNIS & HAWLEY LLP
877 Main Street
Suite 1000
Boise, ID 83702
208-344-6000
scsmith@hawleytroxell.com

MEDIATION
Mac Archibald
Mac has been a trial lawyer in Seattle for over 40 years. He has tried a wide range of cases including maritime, personal injury, construction, products liability, consumer protection, insurance coverage, and antitrust law.
Mac has over 20 years of experience mediating cases in Washington, Oregon, and Alaska. He has mediated over 1,500 cases in the areas of maritime, personal injury, construction, wrongful death, employment, and commercial litigation.
Mac has a reputation as not only being highly prepared for every mediation, but also for providing as much follow-up as is necessary to settle a case.
LAW OFFICES OF EDWARD M. ARCHIBALD
Mediation Services
601 Union Street, Suite 4200
Seattle, WA 98101
Tel: 206-903-8355 • Fax: 206-903-8358
Email: mac@archibald-law.com
www.archibald-law.com

CIVIL APPEALS
Jason W. Anderson
Clarity gets results.
206-622-0820
anderson@carneylaw.com
MEDIATION

Tom Richardson
Over 30 years of commercial litigation and mediation experience, including business torts, securities, intellectual property, trusts and estates, real estate and boundary disputes, and product liability.
University of Puget Sound Law School (now Seattle University), Assistant Professor – Alternate Dispute Resolution 1982–1989

J. THOMAS RICHARDSON
Cairncross & Hempelmann
524 Second Avenue, Suite 500
Seattle, WA 98104-2323
Direct phone: 206-254-4455
trichardson@cairncross.com

INSURANCE BAD FAITH EXPERT TESTIMONY

- Insurance Fair Conduct Act
- Coverage Denial and Claim Handling
- Reservation of Rights Defense

Bill Hight has 32 years of experience in insurance coverage/bad faith litigation.
Please visit www.HightLaw.com for details of experience and credentials.

WILLIAM P. HIGHT
Email: wph@HightLaw.com
Tel: 360-331-4030
www.HightLaw.com

TRADEMARK COPYRIGHT & PATENT SEARCHES
Expereined Washington office for attorneys worldwide
FEDERAL SERVICES & RESEARCH
Attorney-directed projects at all federal agencies in Washington, D.C., including USDA, TTB, EPA, Customs, FDA, INS, FCC, ICC, SEC, USPTO, and many others.
Face-to-face meetings with Gov’t officials, Freedom of Information Act requests, copyright deposits, document legalization at State Dept. and embassies, complete trademark copyright patent and TTAB files.

COMPREHENSIVE
U.S. Federal, State, Common Law, and Design searches.
INTERNATIONAL SEARCHING EXPERTS
Our professionals average over 25 years’ experience each.

FAST
Normal 2-day turnaround with 24-hour and 4-hour service available.

GOVERNMENT LIAISON SERVICES, INC.
200 N. Glebe Rd., Ste. 321
Arlington, VA 22203
Tel: 703-524-8200
Fax: 703-525-8451
Toll Free: 1-800-642-6564
Minutes from USPTO and Washington, D.C.
info@governmentliaison.com
www.governmentliaison.com

IMMIGRATION REPRESENTATION

Gibbs Houston Pauw
We handle or assist in all types of immigration representation for businesses, families and individuals seeking new or renewed status.
The firm has years of experience in all areas of immigration law, with particular expertise in employer workplace compliance, immigration consequences of crimes, removal defense, and federal court litigation.
Languages include: Spanish, Chinese, Russian, Hindu, Punjabi.

Robert H. Gibbs
Robert Pauw
Gibbs Houston Pauw
1000 Second Ave., Suite 1600
Seattle, WA 98104
206-682-1080
www.ghp-immigration.com

McGAVICK GRAVES, P.S.
Mediation and Arbitration Group
Hon. Rosanne Buckner, Ret.
Barbara Jo Sylvester
Henry Haas
William P. Bergsten
Robert Beale
Cameron J. Fleury
Combined experience of over 240 years. Our team is ready to help resolve your complex matters.
Please visit our website for additional information.

McGAVICK GRAVES, P.S.
1102 Broadway, Suite 500
Tacoma, WA 98402
Local: 253-254-5900
Toll Free: 800-709-7015
www.mcgavickgraves.com
CIVIL APPEALS

Ronald E. Farley

Over 30 years of experience in civil trial and appellate work in both federal and state courts. Available for referral, review, or association regarding your cases.

RONALD E. FARLEY, PLLC
ron@ronaldefarleypllc.com
509-468-8133

ARIZONA LAWSUITS?

William Rinaudo Phillips
available as 32-year experienced trial lawyer licensed in Washington (#12200) and Arizona (#19949).
602-271-7700
wrp@bowwlaw.com

LAW FIRM BREAK-UPS
PARTNER DEPARTURES AND EXPULSIONS

Discreet consultation and litigation of partner withdrawals or expulsions.

SMYTH & MASON, PLLC
have years of experience successfully representing departing partners, expelled partners, and law firms. Operating agreements, divisions of profits, receivables, case files and clients; redistribution of debt and costs.

Don’t go it alone.

SMYTH & MASON, PLLC
71st Floor, Columbia Center
701 Fifth Avenue, Seattle, WA 98104
Tel: 206-621-7100 • Fax: 206-682-3203
www.smythlaw.com

POSITIONS AVAILABLE ads can be found online at the WSBA Career Center: http://jobs.wsba.org.

TO PLACE A CLASSIFIED AD
RATES, DEADLINE, AND PAYMENT:
WSBA members: $40/first 25 words; $0.50 each additional word. Non-members: $50/first 25 words; $1 each additional word. Text must be emailed to classifieds@wsba.org by the first day of each month for the issue following, e.g., Oct. 1 for the November issue. For payment information, see http://bit.ly/NWLawyerAds. Advance payment required; we regret that we are unable to bill for classified ads. These rates are for advertising in NWLawyer only. To place a position-available ad on the WSBA website, see http://jobs.wsba.org. Pricing can be found online. For questions, email classifieds@wsba.org.

Visit the WSBA Career Center!

Services

Legal research and writing attorney. Confidential legal research, drafting of pleadings, formatting, and citation checking for trial- and appellate-level attorneys. Professional, fast, and easy to work with. Call Erin Sperger at 206-504-2655. Sign up for free case law updates at LegalWellspring.com; erin@legalwellspring.com.

Got deadlines? Get LegalMotionSolutions. When you’ve got too many deadlines, too few associates, too much stress and too little time, I can help. I’m Noura Yunker, with LegalMotionSolutions. 360-836-1015. I research and write briefs for overworked attorneys. And you can rely on me for more than just your brief-writing needs. Because I’m a fully licensed and qualified litigator, I can assist you with discovery, and can cover for you in depositions, arbitrations, mediations, and court appearances. Think of me as aspirin for your calendar. When your schedule bites, I’ll relieve the pain. Call Noura Yunker, LegalMotionSolutions. 360-836-1015; noura@legalmotionssolutions.com.

Psychologist: impact assessment, determination of disability and/or employability, rehabilitation planning or earning capacity analysis, and so on. Decades of experience in family and employment, immigration and asylum, elder and disability, and injury and civil rights law. Appreciated by judges. Never impeached. Work samples for serious engagement inquiries. Dr. Diane W. DeWitt is Board Certified with 1,035 assessments; 89 trials; 455 hours of deposition/trial testimony. 425-867-1500; www.VocPsy.com.

Effective brief writer with 20-plus years of civil litigation experience and excellent references available as contract lawyer. Summary judgments, discovery motions, trial preparation, research memos, appeals. State or federal court. Lynne Wilson; lynnewilsonatty@gmail.com or 206-328-0224.

Medical record summary and document review experts! Virtual Independent Para-

Appraiser of antiques, fine art, and household possessions. James Kemp-Slaughter ASA, FRSA, with 33 years’ experience in Seattle for estates, divorce, insurance, and donations. For details, see http://jameskempslaughter.com; 206-285-5711 or jkempslaughter@aol.com.

Nationwide corporate filings and registered agent service. Headquartered in Washington state. Online account to easily manage 1–1,000 of your clients’ needs. www.northwestregisteredagent.com; 509-768-2249; sales@northwestregisteredagent.com.

Experienced contract attorney with strong research and writing skills drafts trial and appellate briefs, motions, and research memos for other lawyers. Resources include University of Washington Law Library and LEXIS online. Elizabeth Dash Bottman, WSBA No. 11791. 206-526-5777; ebottman@gmail.com.


Certified personal property appraiser/estate sale and liquidation services: Deborah Mallory, The Sophisticated Swine LLC. Appraisal and Estate Sale Service, CAGA appraiser with 28 years of experience in estate sales, appraisals for estates, dissolution, insurance and donation. For details, call 425-452-9300, www.sophisticatedswine.com or dsm@sophisticatedswine.com.

Fast cash for seller-carry-back real estate notes, contracts, and divorce liens! We have 40 years’ experience buying private real estate notes. Contact us for an instant quote! Lorelei Stevens, President, Wall Street Brokers, Inc. in Seattle. 206-448-1160 email: lorelei.stevens@gmail.com www.wallstreetbrokers.com; www.divorceliens.com = Member BBB.

BIA appeal briefs (draft text only). Practice limited to immigration for over 15 years. $500 to start, $100 upon satisfaction. Guaranteed that my briefs have won dozens of appeals. (9th Circuit opening brief = $1,800). Need: cashiers’ check; PDF copy of transcript, etc., on CD; 10 days early. AILA member. BBB Accredited Business A+. 9th Circuit published decision. EOIR certified qualified to be an Immigration Judge. Call me. 253-880-9268.

Medical records review expert. Family medicine physician, 23 years’ clinical experience, Musculoskeletal expertise. 206-852-1782; dlavallie14@gmail.com.

Space Available

Downtown Bellevue private office space and paralegal station available December 1st on the 7th floor of the Key Bank Building. Share with two senior lawyers practicing business and estate planning. Ideally tenant should have compatible practice. Fax, copier, high-speed Internet, online access to Tax Library, Westlaw, and Checkpoint, kitchen, administrative assistance and conference room available. Contact Bridgette at bknoll@dljslaw.com or 206-623-6440.

Office Space: One partner office ($1,075; 14’ x 11’) and one associate office ($850; 15’ x 8’) available in downtown Seattle, 20th floor of Pacific Building. Usual amenities. Furnished or unfurnished. Photos at www.glblaw.com/officeopening. Contact Geoff@GLBLaw.com; 206-467-3190.

Available for sublease from law firm: 5 offices, 4 cubicles on 38th floor Bank of America Plaza, 800 Fifth Ave., Seattle, 98104. Three blocks from King County courthouse, adjacent to I-5, shared conference room and kitchen, storage space, front desk, phones, Internet. Prefer single tenant, but will consider multiple. David, 206-805-0135.

Downtown Seattle executive office space: Full- and part-time offices on the 32nd floor of the 1001 Fourth Avenue Plaza Building with short- and long-term lease options. Close to courts and library. Conference rooms and office support services available. $175 and up. Serving the greater Seattle area for over 30 years. Contact Business Service Center at 206-624-9188 or www.bssc-seattle.com for more information.

Two offices, Wells Fargo Center. Congenial downtown Seattle law firm (business IP, tax); tenants include PI, family law. Adjacent assistant space also available. Price range: $900–$1,900. Rent includes receptionist, conference rooms, law library, and kitchen.

Multi-function copiers, fax, broadband Internet available. 206-382-2600. Photos on Craigslist ad: “Wells Fargo Center (SKSP).”

Law office space for lease in prime Issaquah location. Issaquah: Great opportunity for start up, relocation, or expanding law office. Desirable Issaquah location providing 2588 sq ft with multiple rooms, great visibility and high traffic count, abundant parking and convenient freeway access to I-90. Serene view of tranquil Issaquah creek from your rooms. Visit flyer at www.brandsman.com/IssaquahCreekside.pdf. Opportunities are endless. Must see to appreciate. Available now. Call 425-786-1411 or email issaquahoffice@gmail.com.

Vacation Rental

Paris Apartment: At Notre Dame. Vacation rental. Elegant two-bedroom, 1.5-bathroom apartment, in the heart of Paris, owned by WSBA member. 202-285-1201 or angopolin@aim.com.

Will Search

Lost Will: Anyone with knowledge of a will executed by Jill Marie Biringer or Jill Marie Cargill, please contact Theresa Schrempp, 425-289-3444.

Get published!

See your name in lights (well, in ink, anyway) in NWLawyer! For a how-to guide on writing an article for NWLawyer, email nwlawyer@wsba.org. If you have an article of interest to Washington lawyers or a topic in mind, we’d love to hear from you. Need a topic? We have a list of subjects we’d like to cover. NWLawyer relies almost entirely on the generous contribution of articles from WSBA members and others.

Questions? Contact nwlawyer@wsba.org.
Before law school, I was a chemical engineer in the oil and gas industry down in Texas and felt that I was living the movie *Office Space.*

I became a lawyer because I wanted the opportunity to be my own boss and to have a hand in shaping the future. I couldn’t foresee that happening working as an engineer in the oil and gas industry or working in finance for the fashion industry because the focus was too narrow. The focuses in those fields are your plant, your company, or your department. As an attorney, I have the opportunity to help and see the impact of my help on many companies and many people.

In my practice, I work on improving the customer experience and predictability. My job is to make my clients’ lives easier, if possible, and also to help my clients see a return on their investments in our firm. We do that by providing predictive billing methods, by communicating often and openly, by helping them protect their businesses and ideas, and by offering advice on how they can use the protection we offer to create a profit.

My career has surprised me by providing me with the opportunity to go out on my own much sooner than I had previously anticipated (in that idealistic “life plan” you imagine in your early 20s that never quite materializes).

The best advice I have for new lawyers is be open to opportunity and learn to hustle. Even at a larger or established law firm, there is great value in an attorney who is capable of bringing in his or her own clients. Colin and I, for instance, have committed to at least one networking event per week — that means events where we could meet potential clients and not just events where we’re hanging out with other attorneys.

During my free time, I surf, snowboard, do yoga, cook, play with my dogs, drink wine, and check out new breweries and old dive bars.

The most memorable trip I ever took was a clamming and halibut-fishing camping trip out of Westport — that trip was the birthplace for my small law firm.

I enjoy reading fiction. I also enjoy cooking blogs and secretly enjoy ‘tween fiction like *The Hunger Games.*

In my life, I work on improving my patience. It’s a struggle at times, but a useful discipline.

I worry about my husband not getting enough to eat (it’s the Indian mom in me).

Nobody would ever suspect that I have read and thoroughly enjoyed reading graphic novels.

I care about my dogs, my family and friends, and the plight of the honeybees.

Friends would describe me as outgoing and an enthusiastic dancer.

This is on my bucket list: Eating at Jiro’s in Japan.

If I had a time machine, I would be worried about screwing up the space-time continuum.

I would like to learn too many things. The world is too interesting of a place and we have precious little time.

I have been telling others not to miss Brene Brown’s TED talks on vulnerability and shame.

We’d like to learn about you! Go to [www.bit.ly/nwbeyondthebar](http://www.bit.ly/nwbeyondthebar) to download and fill out your own Beyond the Bar submission.

My name is Shreya Ley. I am an entrepreneur, attorney, dog-lover, aspiring chef, and dancing fool. I work at and co-own LayRoots, where my husband, Colin, and I help idea people become business people. We provide intellectual property and outsourced general counsel services to our clients. You can check us out at [www.layroots.com](http://www.layroots.com) or reach me at 206-219-9559 or shreya@layroots.com.

WSBA No. 43751
Isn’t this the real reason we all practice law...

Workers Compensation is about healing families. That’s what we do.

PALACE LAW OFFICES

1-800-270-3883
www.PalaceLaw.com

PERSONAL INJURY  WORKERS’ COMPENSATION  SOCIAL SECURITY

Top 100 National Trial Lawyers
Million Dollar Advocate • Washington Top Lawyers 2013 • Super Lawyer
125,000 lawyers are expert witnesses to our reputation.

CNA understands the potential risks lawyers face every day. Since 1961, our Lawyers Professional Liability Program has helped firms manage risk with a full range of insurance products, programs and services, and vigorous legal defense when it’s needed. As part of an insurance organization with over $60 billion in assets and an “A” rating from A.M. Best, we have the financial strength you can count on.

See how we can protect your firm by contacting John Chandler at 800-767-0650.

As part of the USI family, only Kibble & Prentice can offer you the benefits of WSBA-sponsored professional liability insurance. We are dedicated to handling the professional insurance needs of Washington State lawyers.

www.lawyersinsurance.com