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10 Q&A with Incoming WSBA President Robin Haynes
President Haynes answers questions from NWLawyer’s Editorial Advisory Committee

14 The WSBA Welcomes New President-Elect and Class of 2017 Governors
by Stephanie Perry

18 Compassionate Divorce
A New Approach and a Way to Make a Good Living
by Roger B. Ley

29 A Primer on Privacy
How Changes to Privacy Laws on a Global Level May Affect Businesses in the U.S.
by Zainab Hussain

33 Class Action Lawsuits
The Power of Numbers to Change the Law
by Shanna Lisberg

36 Federalism and the Friendly Skies
Can States Regulate the Airline Industry?
by Michael W. Meredith

38 Advancing Diversity in Legal Employment
Program Offers Support for Employers and Students
by Teresa B. Daggett

40 Great Places To Be a Lawyer
Attracting and Retaining Lawyers for Small and Midsize Law Firms
by Robin Schachter

44 Helping Women Entrepreneurs Bridge the Gender Gap
Initiative Supports Equality in Business Leadership
by Linda Walton
The WSBA’s Official Members’ Magazine
NWLawyer will inform, educate, engage, and inspire by offering a forum for members of the legal community to connect and to enrich their careers.

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

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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, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539, and mailed periodicals postage paid in Seattle, Washington (ISSN 2327-3399). For inactive, emeritus, and honorary members, a free subscription is available upon request (contact nwlawyer@wsba.org).

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

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

COLUMNS

5 Editor’s Note
A New Season at the Bar
by Linda Jenkins

7 President’s Corner
Leaders Show Up
by Robin L. Haynes

DEPARTMENTS

4 Inbox

23 Ethics
Unwelcome Visitor: Garnishment of Trust Accounts
by Mark J. Fucile

26 Perspectives
Science and Equity in Public Defense: It’s Numbers, But It’s Not a Game
by Krista Van Amerongen

48 OnBoard
Aug. 23 Board of Governors Meeting, Seattle

50 Practice Made Perfect
by Charity Anastasio

64 Beyond the Bar No.
Jake Brooks

ESSENTIALS

52 Need to Know
News and Information for WSBA Members

56 Announcements

57 Discipline and Other Regulatory Notices

58 Classifieds

60 CLE Calendar

61 Professionals
What an honest and generous piece of writing by Gail Ragen on attorneys and alcohol abuse [“Attorneys and Alcohol Abuse: A Personal Recovery Story,” SEPT 2016 NWLawyer]. I remember as a law student going toe-to-toe with the big firm partner at the call-back dinner — drinking grappa at a fancy New York restaurant. I remember trying to get to the cab without my legs buckling from under me. I got the job. I remember passing the bar exam and being met with shots to drink by another partner. I remember the booze-soaked firm retreat at the Four Seasons — laughing at my fellow associate dancing drunk in the hotel fountain. These events were a minefield.

Twenty years later, not much has changed, as I watched another attorney vomit up a bottle of Pinot Grigio in a well-appointed hotel room. The problem is out in the open, but the solution seems to be a secret.

Eva Luchini, Vancouver, WA
October begins a new year here at the Bar. We have a new president, Robin Haynes, new members of the Board of Governors, and many new volunteers amongst the Bar’s 28 boards and committees, including NWLawyer’s Editorial Advisory Committee (EAC). EAC members provide important input for the magazine, and I’m grateful that so many want to give their time to help make this bar publication one of the best in the country. Many EAC members write articles for the magazine, find new authors and ideas, and provide NWLawyer staff with a wider, balanced perspective from the legal community. In this issue, you’ll see the EAC’s work in the Q&A article with President Haynes (p.10).

As an editor and employee of the Bar, my day involves walking the halls with staff, seeing the hard work, experiencing the challenges, and observing the benefits this organization gains from our volunteers. I have seen so many members give their valuable time here, working to improve and uplift the legal profession, often with that certain passion and tenacity unique to the law. If you are interested in joining us as a volunteer, the Bar will likely have an opportunity that fits your time and interests.

In this issue, we introduce the 85th president of the Washington State Bar Association, Robin Haynes, a long-time leader and volunteer at the Bar, and our fifth woman president. She shares more about her background in her first president’s column, and answers questions from the EAC about the current and future state of the legal profession. There is important information in the article about the Le[a]dBetter Program, which offers legal and business support for women start-up entrepreneurs. For small and midsize firms, we have tips on recruiting and retaining new attorneys. Read about the LEAD program, which matches diverse 1Ls with paid opportunities at Northwest law firms. Some of America’s legal history’s most important decisions are highlighted in an article about class action cases from the past. Explore the ever-expanding field of data privacy laws with a discussion of the European Union’s current laws, and how they can affect U.S. businesses. We have two personal perspectives from attorneys, offering their insight into modern criminal defense, and even the possibility of a compassionate divorce. And if you’ve ever suffered through a nightmare flight on a commercial airline, our Washington Young Lawyers Committee (WYLC) article shares important information about airline passenger rights.

As always, we welcome your comments. Send your letters to the editor and article ideas to nwlawyer@wsba.org. NWL

LINDA JENKINS is the NWLawyer editor and can be reached at nwlawyer@wsba.org.

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Welcome to the 2016-17 WSBA year. I am Robin Haynes, and I will be the WSBA president this year. I am both excited and a little terrified, as being “in charge” of 39,000 lawyers and legal professionals is not unlike trying to pet a grizzly bear cub with his mom watching. Many of you know I’m the youngest-ever to hold this position (sorry, Justice Fairhurst), and I’m only the fifth woman. It’s funny how in the legal profession, an almost 40-year-old is young, while in Hollywood, I would be cast as George Clooney’s mother and Jack Nicholson’s love interest.

I am a California-born, Connecticut-raised Spokane resident. I moved with my parents to Spokane as a teenager — having come from a private school in Connecticut with an accent and an affinity for the New England Patriots, you can imagine what my transition to a public high school in the Spokane Valley was like. I graduated from University High School and then headed to Gonzaga University for 9.5 years. That was not a typo. I’m a rare GU alum — the Triple Zag. I received my BA (English and Political Science with a philosophy minor), my MA in English Literature (more on that below), and my JD all at Gonzaga. The university has yet to name anything after me, as my annual low three-figure donations haven’t quite added up so far.

I’m the first person in my immediate family to graduate from college. My father is a Vietnam War veteran who served 20 years in the Navy before working in tech. We had a computer in our home when I was a kindergartener — 33 years ago. He grew up dirt-poor in Illinois and didn’t have indoor plumbing in his childhood home until he was 13. My father works harder than anyone I know, and he competes with Beyoncé to be my hero. My mother is from the South Bay Area and never finished high school. She was a stay-at-home mom for me and my sisters, and she didn’t start working outside of the home until my dad retired. She made sure we did our homework and read to us nightly as children until we were old enough to read to her. She makes the best Thanksgiving stuffing on the planet. As to why I’m an attorney, I’m the third of three girls. I used to be the quietest and shyest of the bunch, but as my dad says, “No one ever accused a Haynes girl of being nice.” My younger sister and I look like identical twins.

I have been an attorney for a decade. I spent eight years at Reed & Giesa, P.S. in Spokane doing complex commercial litigation — I worked on the two largest case files (in terms of sheer number of pleadings) in the history of Spokane County Superior Court, including a five-year Consumer Protection Act class action for which I served as co-class counsel. I became the firm’s first woman partner five years in — I truly loved working there. I spent a few years at Witherspoon Kelley doing litigation and employment and am very close with many of my former colleagues. Today, I practice with McNeice Wheeler, PLLC, a full-service boutique firm with attorneys working in Spokane, Seattle, and in the sweet spot where the Wi-Fi kicks in on the plane ride to Seattle (that’s me). I practice employment and commercial litigation, and I miss my firm’s boisterous lunches where we turn off the phones, and attorneys, interns, and staff members share a meal and share many laughs.

I’ve been a volunteer at the WSBA since 2010. I served on the Washington Young Lawyers Division, the Washington Young Lawyers Committee, and as a governor-at-large for new and young attorneys. I actually took over a portion of a departing governor’s term, so I am the longest-serving governor in the WSBA’s history. I enjoyed being president-elect where I could take credit for the WSBA’s successes, and tell people that I wasn’t the president yet when I fielded complaints. I have given thousands of hours and flown between Spokane and Seattle about 150 times during those years. My motto is “Leaders show up,” so it’s not surprising that I hit Gold 75K on segments last year. Alaska Airlines has yet to allow me to handle the beverage service and security briefing, despite my requests.

At the WSBA, I have worked with, among many others, the Committee on Professional Ethics, the MCLE Task Force, and the Board’s Legislative Committee. I’m most proud of my work on the MCLE Task Force and my opportunity to speak to the Supreme Court about why the Task Force made decisions such as eliminating the “live” requirement and allowing attorneys to receive CLE credit for law office management and mentoring. I’m passionate about social issues, particularly those related to women’s issues and justice. I embrace technology and alternative ways to practice, so I was pleased to have my official photos taken at Fellow Co-Working in Spokane, a shared-
office concept similar to Seattle’s WeWork.

As I mentioned, I have an MA in English Literature, so I’ve always been intrigued by the Proust Questionnaire. James Lipton has done a version of it “Inside the Actor’s Studio,” and Vanity Fair runs a modern version of it in each issue, which I’ve answered in modified form here. I figured the VF version would give you more insight into me.¹ I can’t wait to work with all of you.²

1 Among other things, I eliminated a few questions, as they lacked relevance, were not reasonably calculated to produce relevant evidence, overbroad, and burdensome.

2 When I drafted this column initially, I didn’t realize that I would also be doing a Q&A. I will avoid Q&As in future issues of NWLawyer.

THE PROUST QUESTIONNAIRE: ROBIN HAYNES

Idea of perfect happiness? Lazy coffee and brunch, followed by a butt-kicking outdoor workout (snowboard, mountain biking), finished with a meal of sushi enjoyed with good friends.

Greatest fear? Being eaten by a grizzly while trail running

Historical figure with whom you most identify? Alexander Hamilton

Living person you most admire? My father and/or Beyoncé

Trait you deplore in yourself? Overthinking

Trait you deplore in others? Replying-all to emails

Greatest extravagance? Breve lattes and shoes

Favorite journey? Currently, the flight home from Seattle and the moment you crest the hill from Spokane’s airport and see the city.

Most overrated virtue? Moderation

Words or phrases you most overuse? “May it please the Court…”

Greatest regret? Big bangs, a spiral perm, The Rachel, acid-washed denim, pegged jeans, and the period from 11-14 when I unironically wore a big “gold” chain.

Greatest love of your life? Alexander McQueen

Talent you’d like to have? Dunking a basketball

Greatest achievement? Reading Joyce’s Ulysses. I did not enjoy it.

If you were to die and come back as one person or thing? A beloved indoor cat

Most treasured possession? Health

Lowest depth of misery? Baggage claim

Favorite occupation? Professor — I had many great teachers, and I date one.

Most marked characteristic? Big smile and bigger heels

Fictional hero? Jack McCoy

Real life hero? Ruth Bader Ginsberg

Favorite writers? Joseph Conrad and Cormac McCarthy

How would you like to die? Not at my desk

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In this issue, we introduce you to 2016–17 WSBA President Robin Haynes. Here, Haynes answers questions from members of NWLawyer’s Editorial Advisory Committee.

What issues are young attorneys facing in our state?

I love young attorneys, and I am saddened that I am no longer one. Many people know that my path to the WSBA presidency was through the Washington Young Lawyers Division (WYLD), the Washington Young Lawyers Committee (WYLC), and as governor-at-large representing new and young attorneys. Sadly, I aged and experienced out of our young lawyer definition during my first year on the Board, but I served as the liaison to the WYLC during that entire time.

Young and new attorneys (not necessarily the same thing) face a lack of jobs and high student debt loads — six figures and anecdotal information of debts as high as $250,000 for undergrad and law school. That’s staggering and crippling. Mentorship is missing for so many new and young attorneys who are hanging out their shingles. The WSBA is working on some parts
of the mentoring problem, but more experienced attorneys really need to step up and shoulder some of that burden. This is a profession, so we should want our newest members to be professionals. My former partner and first boss, Roger Reed, referred to my infirm mentoring as “adult supervision.” He didn’t mean it in a demeaning way and he certainly wasn’t paternalistic, but the notion of having someone who has been there and done that and can help was well received.

What services is the WSBA providing for young lawyers entering the profession?

The WYLC has been exceptional in really doing high-level work to provide resources to our new members. The three WYLC chairs that I worked with as a liaison, Megan Card, Vincent Humphrey, and Helen Ling, were all rock stars committed to outreach and meaningful projects like a functioning and active list serve and the sections liaison program. The WYLC has been working with the Bar to lower tuition rates at CLEs and similar reductions to lower that debt burden.

What would you like to see the WSBA provide for new attorneys?

I think the Bar can help by providing more support in business management issues. Many attorneys, especially new or young attorneys, lack business skills: how to run an office, how to market, and how to handle human resources issues are not always natural skills for lawyers. With so many solo and small-firm attorneys, it’s crucial that we provide business skills and practice management tools so that attorneys can focus on the actual legal work.

The legal profession seems to be experiencing downward pressure on legal fees by clients looking for lower-cost legal solutions and competition from online legal services providers and legal technology. Where do you see the legal profession going and how can attorneys adapt to these changes?

Think about how many attorney-client relationships start: client comes to the office, signs an hourly fee agreement, and the legal work begins. The client is rarely given an estimate for how much something will cost — particularly in a litigation setting. That is so different from other ways consumers purchase services: say, plumbing, where there’s always an estimate, bid, or contract outlining how much things will cost. I think attorneys need to think about how they can deliver services efficiently — embracing technology is key — and think outside the almighty billable hour: flat fees, alternative fee structures, estimates, and value-based billings. Most outside counsel work from big companies in Washington requires budgeting and alternative fee structures.

I also think attorneys need to think less about churning hours on simple document drafting and provide actual legal value to clients — there’s a reason Legal Zoom is so successful. I do occasional work with small businesses, and for a more sophisticated client, I am happy to send them to a document provider if they hire me for a quick review to make any needed corrections.

“It troubles me that we continue to have to talk about why diversity is important... Diversity matters because our clients are diverse and our population is diverse. The same viewpoint and set of experiences do not translate to everyone and may not be the right viewpoint.”

They aren’t going to hire Legal Zoom when they have a problem down the road, they’ll hire me — it’s the value add.

Before joining the Board, I often did consulting projects with Spokane firms on paperless offices, cloud computing, and other efficiencies to save time and lower costs for clients. I work virtually paperless still. I’ve been playing around with things like Kanban and other project-management theories and attend legal “hacking” events as much as possible to find ways to better serve clients, make my job easier, and lower my overhead to keep my rates reasonable. I work at a firm that keeps our rates low, but compensates our attorneys well by turning the standard firm model on its head. We aren’t a pyramid scheme, and the only person who looks at billable metrics is me. Overhead is low and client return and happiness is high.

You said in an interview with the Spokane Journal of Business that the legal profession lacks diversity and is probably one of the oldest and whitest professions. Why do you think diversity is important in the legal profession and why should clients care about diversity when choosing a lawyer?

It troubles me that we continue to have to talk about why diversity is important — I wish that we were past that, but we’re not. A fellow Board member,
The ABA’s recent adoption of rules making it an ethics violation for attorneys to discriminate and show bias is a great move, but in 2016 it is disheartening that people lobbied against adoption of those rules. We’ve had them in Washington for some time, but I’m sad to say that they don’t always work. I’ve been called “honey,” been patted on the head, been questioned as to whether I intended to freeze my eggs, and been told more often than not to let the men talk first — all in professional settings. While running for the WSBA presidency, more than one attorney said, “But haven’t we had enough women presidents?” The stories I have been told by attorneys from traditionally underrepresented backgrounds are heartbreaking and baffling in 2016. We as professionals should not accept that behavior — we need to call it out and be allies against it. I continually wonder that if such horrific sexist remarks can be made to me as a leader, what kind of remarks are being said to others without a voice?

When you have a tough issue of professional ethics and need an opinion or representation before the WSBA or the Commission on Judicial Conduct, or representation in the Supreme Court – CALL us. We know the issues.

Thomas Fitzpatrick
Former member ABA Ethics and Discipline Committees,
ABA Center for Professional Responsibility,
Member of the Commission that wrote the CJC,
Adjunct Professor Seattle University

Philip Talmadge
Sponsored CJC law in 1981, served on Supreme Court Rules Committee that addressed ethics rules, handled In re Niemi, In re Marshall

Elijah Forde, once said that if he and I walked into a courtroom together, we would more likely be viewed as the defendant and the court reporter, not two attorneys. Diversity matters because our clients are diverse and our population is diverse. The same viewpoint and set of experiences do not translate to everyone and may not be the right viewpoint. The criminal justice system certainly is skewed in a way that people never have or no longer trust it.

The diversity metrics from the ABA and the WSBA’s own membership study show that women, attorneys of color, disabled attorneys, and LGBTQ attorneys are leaving the profession within the first five years and not coming back. Nationwide, the number of women attorneys is approaching the number of men attorneys, but women make up less than 20% of equity partners. That’s completely unacceptable. I have experienced blatant and subtle sexism more times than I can count as an attorney. The incoming Board did inherent bias and privilege training at my July retreat meeting, and I plan on continuing the conversation around bias and privilege issues during the upcoming year.

How do you envision addressing the needs of senior/retired lawyers in the Bar in light of the aging population, and how can they be of service to the Bar?

The WSBA has been focusing on the idea of a “second season of service.” Mentorship opportunities, for which attorneys can now receive CLE credits in Washington, and pro bono work are great ways to keep our more experienced attorneys active in the association and in their communities.

How can the Bar continue to reach out to serve attorneys not located in the Seattle metro area?

I live in Spokane, but you wouldn’t know it based on how often I am in Seattle, so this issue really hits home for me. I think our move to webcasting most Board meetings, CLEs, and town halls; embracing technology for committee meetings (conference calls, video conferencing, document sharing); and employing a community outreach specialist are all things that the WSBA is doing well. We need more input from members, though, on how we can better our outreach and our connection with our large and diverse state.

What is your vision for Limited License Legal Technicians (LLLTs) as a resource for increased access to legal services?

I think the LLLT program is brilliant. Our Supreme Court and our Board, along with the LLLT Board, have been very forward-thinking in how to approach unmet legal needs. One idea that a judge in the Office of Administrative Courts brought to my attention in Olympia this year was to train LLLTs to assist clients in administrative proceedings, like L&I or unemployment proceedings. The administrative rules already permit the parties to have a representative during the proceeding, and the representative does not need to be an attorney. Often, the representative does not help the client or the administrative court advance the proceedings, so someone trained to help is a great way to clear up congestion in these courts.

I do think that attorneys need to not see LLLTs as competition, but as opportunities — a place to send a client that can’t pay you full bore for a big family
law fight, but can pay you to argue in court with forms filled out by a LLLT. I am aware of at least one “country lawyer” firm in Ephrata that has supported the training of some of their staff as LLLTs to expand their existing practice base.

What is one thing that people don’t know about you?

One thing a lot of people don’t know about me is that I drive an old car. Not a classic by any means — I drive a 2004 Hyundai Santa Fe that I will drive until it dies. NWL.

WSBA President Robin Haynes can be reached at robin@mcneicewheeler.com. Follow her personal Twitter and Instagram @GirlWonder34.

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The WSBA Welcomes

NEW PRESIDENT-ELECT AND CLASS OF 2017 GOVERNORS

1. Brad Furlong, President-elect

Brad Furlong is a principal at Furlong Butler Attorneys, where he has a general practice concentrating on healthcare, municipal, real estate and land use law. Previously, he was an attorney at Rush, Hannula & Harkins, and Skellenger & Bender. Furlong graduated from the University of Puget Sound Law School (now Seattle University) in 1982 after attending the University of California, Davis, and graduating with an undergraduate degree in broadcast journalism from The Evergreen State College.

Furlong served on the WSBA Board of Governors from 2014–16. As part of that work, he has served on the Personnel Committee since 2014, and as its chair since 2015; on the Executive Committee since 2015; and on the Governance Work Group, Bylaws Work Group, and Strategic Planning Committee. Furlong is a member of the Washington Supreme Court Judicial Ethics Committee and teaches professional ethics for the WSBA.

Furlong was a founding member of the Skagit County Bar Association Bench-Bar Liaison Committee. He is a judge and court commissioner pro tem for Skagit County superior and district courts, a Skagit County hearing examiner pro tem, and serves on the Skagit County Mandatory Arbitration Panel. Furlong has served with the Mount Vernon School District in a variety of roles, including on its
2. Rajeev Majumdar, District 2

Rajeev Majumdar maintains a private civil litigation and business-oriented law practice at the Law Offices of Roger Ellingson, PS in Blaine, WA. He also serves as the prosecutor for several jurisdictions including Blaine, Bellingham’s Mental Health Diversion Court, and the Nooksack Nation. He is an adjunct professor at Western Washington University, where he teaches “Rights, Liberties, Justice in America,” and is the editor of the *Whatcom County Bar Journal*.

Majumdar received his undergraduate degree in biology and philosophy from the Albertson College of Idaho; master’s degrees in international affairs and public administration from the University of Washington; and his law degree from Seattle University School of Law.

In graduate school, he was recruited to work for the National Nuclear Security Administration in Washington, D.C., and was there during the events of 9/11 and afterward. He worked to establish protocols of cooperation between the United States and several other nations to ensure the containment of weapons of mass destruction technology. He also worked for several think tanks and was admitted as an expert witness in King County Superior Court for South Asian cultural matters, before his career in law began.

Since 2008, Majumdar has been involved with LAW Advocates, a local nonprofit that provides free legal help for low-income individuals and families facing urgent, non-criminal legal problems; in 2015, he was elected chair of its board, and later left his practice temporarily to serve pro bono as its interim executive director. He received the WSBA Local Hero Award for his work in improving public access to civil legal aid and advocating for homeless youth. Majumdar also volunteers and serves on the boards of Northwest Youth Services and Sun Community Service.

“Being elected to the Board of Governors to serve my fellow legal practitioners is an honor, but also a duty that I take very seriously,” said Majumdar. “It is my hope that after my term, members of the Bar will feel that they have a more transparent and understandable WSBA that is responsive to their needs and concerns. I’ll do my best to be worthy of the trust my fellow lawyers have put in me.”

3. Dan Bridges, District 9

Dan Bridges is a partner with McGaughey Bridges Dunlap, PLLC. He received his undergraduate degree in political science from the University of Washington and his law degree from the University of Puget Sound (now Seattle University School of Law). Bridges has tried over 50 jury trials in state and U.S. District Court; argued over 30 appeals in Washington Supreme Court, all three divisions of the Washington Court of Appeals, and the U.S. Court of Appeals for the Ninth Circuit; and serves as a superior court arbitrator in four Washington counties.

“After licensing, the overriding mission of the Bar should be to serve the members,” said Bridges. “That requires the Board to appreciate what the majority of members face. Most of us are personally responsible for payroll, rent, staff and medical insurance. We not only practice law, we run small businesses.... I want to serve to help the Bar keep sight of the needs of the practicing members.”

4. Christina Meserve, District 10

Christina Meserve is a family law attorney and has been with Connolly Tacon & Meserve for 36 years, where her practice focuses on arbitration, divorce, custody and support, mediation and prenuptial agreements. She received her undergraduate degree from The Evergreen State College and her law degree from the University of Washington School of Law.

Meserve is a former president of the Thurston County Bar Association. She also served on the board of trustees of The Evergreen State College. Meserve is the only attorney in Thurston County to have been elected as a fellow of the American Academy of Matrimonial Lawyers, a national organization dedicated to promoting excellence in the field of matrimonial law.

At the WSBA, Meserve has served on the Judicial Recommendation, Character and Fitness, and Legislative committees. Early in her career, she was president of Washington Women Lawyers and served as its liaison to the WSBA Board of Governors. “I am concerned about what’s happening with the Bar and want to be part of a solution,” says Meserve.

5. Athanasios L. Papailiou, At-large

Seattle attorney Athan Papailiou is a litigator at Pacifica Law Group. He received his law degree from the University of Arizona and undergraduate degree from the University of Oregon, where he was elected Student Senate president and served as director and vice president of the Duck Store Board of Directors. Before entering private practice, Papailiou served as a judicial law clerk to Justice Debra Stephens of the Washington Supreme Court.

Papailiou’s scholarly interest is juror decision-making. As a member of the University of Arizona’s Law & Behavior Research Group, Papailiou investigated the efficacy of jury instructions addressing the unreliability of eyewitness identification evidence. His published findings were recently featured on NPR’s Morning Edition.

At age 29, Papailiou is currently the youngest member of the WSBA Board of Governors. He also serves on the Board of Directors for the QLaw Foundation. “I’m honored to serve as the at-large governor,” said Papailiou. “I look forward to working with all stakeholders to further the WSBA’s mission.” NWL
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Sometimes you can’t unring a bell.

Old English Idiom

An electrical explosion caused Verl Lee to sustain tinnitus and hyperacusis. His jury verdict was upheld on appeal.

Co-counsel: Craig Weston

Legal Humor

by Jonny Hawkins

“I noticed there isn’t any fine print.”
Divorce should be compassionate, not competitive. To focus on compassion, I start with two basic premises: first, that most people are more benevolent than vindictive when you get to their core. And second, if you think about the welfare of the opposing party in a divorce, imagination magically goes to work. Creative resolutions emerge, often effortlessly. These principles work for disputes and litigation outside the field of family law, so it is worth thinking about in all disputes. You don’t have to tell anyone you’re thinking compassionately about your opponents as you exit the courthouse.

Choosing the compassionate approach
The beginning of the divorce process is crucial. At the first meeting, lawyer and client should have a long conference in which the lawyer determines whether the client is benevolent or whether he or she is determined to be greedy, vindictive, fearful, intransigent, or dedicated to the “sacred” principle of saving face. It may take a while to figure this out. A good question, after the client has had a chance to tell the story their own way, is: Where do you want to be when the divorce is over? An even better question: Where do you want to be when your life is at its end?

I believe that conducting this inquiry is the hardest thing in the world for lawyers. It’s scary and difficult to ask a client questions about their deepest desires. Conflicts of interest lurk like vampires in the night. But it has to be done. If there are children, the answer to these questions must be that all parties will be happiest if the parents remain on good terms, or really, on compassionate terms.
If one party is hurting the other in some way, such as by stealing assets or harming children or others, this is a different story and these ideas apply only in part. In that case, the job of the lawyer is to protect the client from harm, and the function of the court is to enforce the protection of the client. If the lawyer's client is the one harming the other spouse, well, that's beyond the scope of this article.

Having determined the good will of the client, the lawyer and client should think about what is best for the opposing party. Yes, the opposing party. This process generates creative solutions. I don't know why, but it has to do with lawyers deciding affirmatively not to fixate on jousting and planning for trial or some other litigation-based resolution.

Seeking creative solutions
By thinking about the welfare of the opposing party, the lawyer — or both lawyers and both clients — can divide the matrimonial estate in such a way as to increase the wealth of the parties, rather than tearing the wealth into little pieces to be divided among lawyers and clients. Everyone can consider the estate as if the parties were still married and were cooperating to maximize its wealth. Divorce law becomes estate planning law. If there are children, the lawyers and parties can creatively divide the marital responsibilities in such a way as to maximize the benefit to the children. These processes may lead to unconventional settlements. That can be scary and daunting for lawyers, and I’ll get to that next.

Creative lawyers should be cautious lawyers. Lawyers should know what would happen in court if the case were litigated, and they should compare that knowledge with their creative solution. Lawyers should predict the result of conventional divorce litigation, in which the lawyers argue with varying degrees of collegiality about what would happen if they go to court, and settle on that basis. They should conduct this review over and over, to make sure creative solutions make sense compared to settlement based on case law and statutes. An accountant can be eagle-eyed in helping them to make calculations and comparisons.

Accountants can help in many other ways. They can fashion settlements that save the parties money yet still accomplish their goals, as articulated by the lawyers and parties, and they can determine the cash value of different specific settlements. In fact, maybe accountants could manage the whole process. I don’t totally mean that. Accountants don’t know anything about divorce law, and they don’t have a personal book of history about divorce in the real world. But there is a gist of concept that accountants, benevolent accountants, compassionate accountants, can divide property better than we can.

Continual review should reassure lawyers that their proposed settlement is (or is not) reasonable for the client, and,
thinking again of the real world, these processes should help defend the lawyer against malpractice claims if things go wrong, as they sometimes do when people are subject to the tectonic pressures of personal conflict. It’s helpful for the lawyers to be sedulous about keeping the client informed and about being sure the client understands and wants an unconventional settlement.

Of course, it’s more complicated than that. Lawyers and people faced with divorce (or litigation) often do not make generous settlement offers because they are afraid to be vulnerable, and for good reason. People are afraid that if they hold out the olive branch they will be stabbed. Lawyers fear creative settlements that don’t follow case law because they are afraid of the new, and they are afraid of being sued themselves.

**When benevolent negotiation won’t work**

I have talked on many occasions to lawyers and people who have had divorces. Many people have thought the same thing about divorce and litigation for so long, so tenaciously, so opinionatedly, that it is very difficult for them even to listen to the message about approaching divorce (or any legal conflict) from the standpoint of the welfare of the opposing parties.

There are many responses to people who insist that thinking about divorce can never change. Lawyers and their clients have to be patient and determined in their search for a benevolent or compassionate solution. They have to be patient and determined in explaining, over and over again, why a benevolent solution to a dispute is better than a hard-fought result. Lawyers — not the clients, not the accountant, not the psychologists — should lead in fostering determination because lawyers know how to be tenacious in conflict. Tenacity is ingrained in lawyers. Criminal lawyers are particularly good at being determined, and perhaps can cross-train divorce and civil lawyers. Determination is so important that I will say it again: Lawyers and clients have to be determined.

We all know that treachery happens. The benevolent lawyer should have a litigating lawyer available on the sidelines. That lawyer never does anything but lurk in the background armed with legal weaponry. It should be inexpensive to have an experienced courtroom lawyer on retainer, aware of the course of the case, and available to jump into the case if necessary. It’s like the English system of barristers and solicitors; some lawyers do court, other lawyers do office.

Another common objection is that people are selfish and they just want “The benefit of a compassionate divorce is so great that it is worth struggling for.”
the most they can get, so what's the point of trying to be benevolent? Good objection. I go back to point number one; most people are more benevolent to their spouse than hostile, once you get past the fear, vengeance, greed, and face-saving. But yes, people are greedy and self-centered and sometimes they want to hurt back. The answer to that is, once again, be determined to arrive at a solution that benefits both parties, at the same time acknowledging natural human desires, including the desire to have as much as possible. Just keep negotiating, and a solution will arise. Bear in mind the incalculable value of being on good terms with the parties to a conflict for the rest of your life — and that goes for the lawyers as well as the clients. It is likely that if the parties cooperate in dividing the estate, they will be able to maximize its value; whereas if they ask it, they just get a dismembered estate. A divorce should be negotiated as if the parties were still married but just had to separate for some reason outside their marriage, such as a business transfer of one party.

We know that some cases are not suitable for benevolent negotiation, no matter how hard you try, and some lawyers and people will never see or acknowledge the benefits, but that is life in the world.

But the benefit of a compassionate divorce is so great that it is worth struggling for. The parties end up happy with each other. If there are children, this is essential. If there are no children and the parties live in a small town, they won't have to hide from each other and worry that they will see each other at the checkout stand at the grocery. But mostly, the parties will live happily and die happy because they were kind to each other.

Litigated divorce hurts everyone
Now, the bad. This is where everyone gets into trouble: the conventional litigated divorce. Lawyers know statutes, cases, court directives, and judges who control the outcome of divorce cases. They analyze and predict the outcome of a court battle, and they negotiate by arguing their prediction against the prediction of the other lawyer. They “model” the courtroom battle and then settle. They have done this forever, or at least since the 13th or 14th century when courts started keeping records. The trouble is that the lawyers just think warfare. They lose the ability to think about benevolent solutions. The clients fall into this mode too, and soon everyone is fighting. The clients often end up fighting for the rest of their lives, a hideous result. There can be a thrill in combat for lawyers, but it is not a thrill for the clients, who end up hating each other more than when they separated. The lawyers are often unfulfilled because they end up in ceaseless conflict between people who shouldn’t be fighting. They win some, they lose some, and they often don’t get the satisfaction of helping their clients to be happy. They don’t always get paid, either.

This is not to say that a good rumble isn’t exciting, stimulating, and invigorating, and the lawyer rides a warm glow for weeks after a decisive court victory. Yes, trials have their place, but it isn’t in the hearts of your clients.

Lawyers have to learn to discipline themselves to think about the benefits
of compassionate settlement when all about them asks for conflict. This is easy to say, hard to do. The formalities of collaborative law are designed to make it difficult for the lawyers or parties to fall into conflict mode. The two lawyers and two parties to a collaborative divorce conduct four-way, face-to-face meetings because it is more difficult to get feisty with the other lawyer, or for the clients to get feisty with each other, when the other two of the foursome are looking right at them. It’s a law of human nature. Conventional divorce yields bad results, so don’t do it.

**Saving time and money**

And now, the financial. Lawyers first. Lawyering is a business. Lawyers want to make a good living, help their clients, get referrals, and not spend their hard-earned money on unending advertising because they don’t get referrals via happy former clients. Lawyers who can help their clients to have happy divorces and save money should be wildly popular.

For clients, settlements are economi-cal because they are certain. Compassionate divorce should be cheaper than litigated divorce. The marital estate should have more money if the parties work together. Read: tax planning works better when the parties cooperate. Most of all, competitive litigation is uncertain. The professional way to say this legally is: “Going to court is rolling the dice.”

But with settlement you get what you agree to. If you have a claim against your spouse for $50,000, you might have an 80% chance of a court victory. That reduces the value to $40,000. If you have a 70% chance of collecting your court judgment, that reduces your recovery to $28,000 — a lot, but not as much. But you have to pay for attorney time to get that recovery, say $7,000, so, down more. Now, the kicker: you, the party, spent a good part of a year fretting about this claim. You spent time answering lawyer questions and being deposed, your performance at work suffered, and your tummy did not do well in this period either. Call that another $15,000 because you had a good job and you lost a lot of earning power. Your true recovery is $6,000. Not worth it. Not all lawyers understand this, either. That’s the financial.

Settlement is good, stress is expensive, and lawyer fees are high. But people are happy to pay serious lawyer fees if they know their happiness is the result of skillful dispute engineering by their lawyer.

Settle when you can. Be determined. Be aware that the wisdom of a benevolent settlement may emerge from the darkest clouds even though no one can make every case come out right. The benefit is to live knowing that the lawyers and the parties did their best to create a happy relationship for people who asked for help. You can be happy about a divorce.

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**Roger Ley** was a practicing lawyer in Seattle from 1971 until 2007, when he relocated to coastal Oregon. He is now retired, but continues to write on compassionate dispute resolution and courthouse architecture. He can be reached at rley@centurytel.net.
Imagine this scenario: you recently took on a new client in a litigation matter. The client’s case is definitely not front-page news, but notice of the case itself is available in many public databases. You are handling the case on an hourly fee basis. You ask the client to pay an advance fee deposit, which you deposit into your trust account. Shortly after that, you receive a writ of garnishment from a third-party creditor of the client based on an unrelated judgment that the creditor obtained against the client before you ever took on the client. The creditor’s lawyer learned of the client’s present case by seeing it in a public database report and guessed correctly that you might be holding an advance fee deposit in your trust account. Because you just got the case in, the amount sought remains less than the fees that you were planning to charge against the deposit at the end of the month. What now?


In this column, we’ll look at a lawyer’s duties when confronted with a writ and the exceptions.

Lawyers’ duties
Lawyers who have not had the unhappy experience of having a writ of garnishment served on them sometimes assume that client funds in trust accounts are “off limits.” There is, however, no general exemption for such funds under either statutory law (see RCW Chapter 6.27, which governs garnishments) or the RPCs (see RPC 1.15A, which defines duties...
for safekeeping client or third-party property). The Washington Court of Appeals noted the ability to garnish a trust account in *Mayers v. Bell*, 2012 WL 1299327 (Wn. App. April 16, 2012) (unpublished). Although recent economic times have increased the use of trust account garnishments, they have found their way into several appellate decisions over the years (see, e.g., *A & W Farms v. Sunshine Lend and Lease*, Inc., 2003 WL 21513626 (Wn. App. July 3, 2003) (unpublished); *Columbia Val. Credit Exchange, Inc. v. Lampson*, 12 Wn. App. 952, 533 P.2d 152 (1975)). Appeals noted the ability to garnish a trust account garnishment and instructs the lawyer not to distribute the funds to the creditor, this dispute triggers the lawyer’s safekeeping duties under RPC 1.15A(g).

A dispute between the client and the creditor with respect to a writ of garnishment triggers a lawyer’s safekeeping duties because the writ of garnishment is specific to funds in the lawyer’s possession, and has a valid legal basis; namely, the underlying judgment, which is presumptively well-founded and represents a legal obligation from client to creditor.

Advisory Opinion 2220 also defines the steps a lawyer must take under RPC 1.15A when confronted with a writ of garnishment:

- If the client does not dispute the validity of the writ of garnishment, the lawyer is required to distribute the funds in accordance with garnishment procedures. RPC 1.15A(f). However, if the client disputes the validity of the writ of garnishment and instructs the lawyer not to distribute the funds to the creditor, this dispute triggers the lawyer’s safekeeping duties under RPC 1.15A(g).

In the event of a dispute, the lawyer is required to maintain the client funds in trust until the issuing court determines the rights of the judgment creditor and debtor with respect to the client funds, or the client and creditor otherwise resolve their dispute.

**Exceptions**

Advisory Opinion 2220 and case law outline three principal exceptions. First, a writ of garnishment by a creditor of the firm — as opposed to a creditor of one of the firm’s clients — should not typically extend to the firm’s trust account. In *re McGrath*, 178 Wn.2d 280, 308 P.3d 615 (2013), addressed this general principle and disciplined a lawyer for using his trust account to improperly (and unsuccessfully) hide personal assets from his own creditor.

Second, Advisory Opinion 2220 notes that in some circumstances the confidentiality rule — RPC 1.6 — may preclude a lawyer from even acknowledging whether a person is a firm client. Generally, the identity of a client and the simple fact of representation are not protected by at least the attorney-client privilege (see generally R. Aronson & M. Howard, *The Law of Evidence in Washington* (5th rev. ed. 2016) § 9.05[8][a]) when they are matters of open public record, as in our opening hypothetical. In some cases, however, even the identity of a client and the fact of representation are confidential. The duty of confidentiality under RPC 1.6, moreover, extends beyond privilege to include “information relating to the representation of a client[.]” Depending on the circumstances, the very fact that a lawyer has funds held in trust for a client and the amount involved may be considered confidential. In that event, WSBA Advisory Opinion 194 (2009 amd.) counsels that a lawyer should decline to reveal confidential information unless required to do so by court order. Although confidentiality issues in the writ context can be difficult, case law suggests that the far more common scenario involves creditors who have issued writs precisely because the creditor already knows of the attorney-client relationship and perhaps even the fact that funds are being held in trust. *Pagh v. Gibson*, 2014 WL 1018320 (Wn. App. Mar. 17, 2014) (unpublished), for example, involved the garnishment of a trust account on an insufficiently well-founded and represents a legal obligation from client to creditor.
appeal in a practice area where advance fee deposits are the norm.

Third, fees that have been earned by the lawyer but not yet withdrawn from trust may not be subject to the writ. For example, a lawyer may have done work on a matter during the current month but not yet billed for it and withdrawn the amount involved. The attorney lien statute, RCW 60.40.010(3), makes a lawyer’s “charging” lien over an action “superior to all other liens.” Therefore, the lawyer with earned, but unbilled, fees may be one of the parties with a claim to a portion of the garnished funds under RPC 1.15A(g).

Parting thoughts

Case law in this area underscores two related practical points. First, lawyers need to resist the temptation to “reclassify” garnished funds after-the-fact to avoid the writ. In Mayers, for example, the law firm initially responded to a writ by contending that the funds concerned were a “nonrefundable litigation retainer.” When the creditor then filed a fraudulent transfer claim against the law firm, the firm then took the position that the funds were indeed property of the client. That led to a pithy comment from the Court of Appeals: “Legal proceedings are not a shell game, and money received from a client by a law firm cannot be both refundable and nonrefundable.” Because representations about the status of funds are being made to both the creditor and the court that issued the writ, lawyers need to be appropriately truthful in their answers.

Second, the fact that an advance fee deposit on which a representation was predicated is lost to a creditor should not ordinarily excuse the client from replenishing the agreed deposit. The practical problem, of course, is that the client may not have any more money. In State v. Cook, 265 P.3d 342 (Alaska App. 2011), for example, a criminal defense lawyer who had predicated representation on a substantial advance fee deposit was unwilling to proceed with the planned representation when the client was unable to come up with the deposit because his assets were attached by a judgment in a related civil case. A lawyer in this situation needs to promptly assess whether the advance fee deposit will be excused or, if not, whether the lawyer will withdraw if the client cannot make good on replenishing the funds that were garnished.

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

In 1994, 800,000 people were slaughtered in 100 days in Rwanda. Twelve years later, the United Nations was still sorting out the legal issues involved in this genocide. I was privileged with a clerkship at that tribunal. My involvement at the UN confirmed my Passion to Fight Injustice.

But injustice isn’t always massive, and it can happen anywhere. I recently defended someone falsely accused of domestic violence. At trial, the complaining witness took the stand. My rigorous cross-examination proved the entire story was a lie. The judge called a recess. The prosecution dismissed the case. After months of hardship, my client got justice.

- DEMETRI HELIOTIS
Attorney at Law

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As a field biologist, I used drift nets — river cooters, sliders, red-bellies, snappers, and a chicken turtle. What thrives in the ecosystem depends vastly different than practicing law; however, each requires both logic and critical thinking. You have to identify a goal, research how to get there, and implement the means. My field biology goal was to determine the size of the area’s freshwater turtle populations. As a public defender in Yakima, my legal goal is to advocate for equity in our courts.

Effects of life circumstances
As a field biologist, I used drift nets and hoop traps to study freshwater turtle populations in the Weeks Bay Watershed. So, I caught a lot of different turtles — river cooters, sliders, red-bellies, snappers, and a chicken turtle. What thrives in the ecosystem depends on multiple factors: water temperature, flow rate, salinity, substrate, weather, acidity, predator populations, anthropogenic impacts, and so on. The same ecosystem that supports a wonderfully diverse freshwater turtle population also supports gar, sunfish, bass, bowfin, alligators, sharks, crabs, and jellyfish, to name but a few.

Every animal trapped was documented by its common and scientific names. Turtles were marked, weighed, and measured six ways to Sunday. All the data was written by hand and later entered into a database to be analyzed during the winter months.

As with turtles and other living organisms, the well-being of humans is impacted by our life circumstances. As a public defender, I learn about my clients’ lives — where they grew up, their family dynamics, job information, schooling, current living situation, medical information, mental health needs, what resources they have, and what community resources they use. I review each client’s criminal history, warrant history, protection orders, etc. I read the probable cause narrative to get a basic sense of the alleged event which led to my client’s arrest and detention. Then apply the criminal rules on release and the Eighth Amendment to advocate for release or constitutionally appropriate money bail.

Statistics and assumptions
As a biologist, I had to use statistics which relied on a few assumptions in order to make sense of the data I collected. Two assumptions were that during the two-year study period, no turtles were born and none died. Everyone knows this assumption is highly unlikely. During my research, I caught hatching turtles, helped turtles injured by boat propellers, and strongly suspect alligators ate some of my data. However, the general premise is that a stable population will have natality and mortality rates that are similar, essentially canceling each other out. This principle allows us to estimate population size using a capture, mark, and recapture study.

As an attorney, I rely on statistics for equity in our court. The idea is to move away from charge-based decisions to risk-based decisions. We know there are specific factors that are statistically significant with regard to whether an accused person will return to court or commit a new crime if released. These factors are objective and immutable: criminal history, failure-to-appear history, whether the current alleged offense is violent, age at the time of arrest for current alleged offense, and whether the accused has ever spent more than 14 consecutive days in custody post-conviction. The risk assessment is not perfect — we expect a small percentage of people released to be re-arrested on new allegations or to miss a future court date. However, we should not be holding people in jail, pre-conviction, with money bail on the basis of their being homeless, unemployed, minimally educated, chemically-dependent, mentally ill, multicultural, non-English-speaking, and/or some other implicit or explicit bias.

Observations vs. experience
I “do science” pretty well. However, it is difficult to explain to a non-science-oriented person that the alligator snapping turtle you just released isn’t waiting around to get you back when you jump into the water to reset the nets. Similarly, the idea of jumping into a jellyfish bloom to check on whether you caught a terrapin seems close to insanity. Those are self-preservation-oriented feelings. People who observed my work were understandably a little wary of holding down a 30-pound alligator snapping turtle while I drilled holes into its shell. They probably believed, on an intellec-
tual level, that the turtle was just trying to get away, or that the jellyfish couldn’t help stinging when caught in the net. But until they saw me do it effectively without getting hurt — and even sometimes after — they would have continued to avoid it.

Similarly, it is a challenge to explain to socio-economically stable and healthy people what it is like to be homeless, have inadequate food, lack transportation, be without a family, not have a job, and/or be unable to access resources. It is exponentially worse for people who have limited reading and writing skills because they often do not comprehend many of the individual pieces of their situation, much less the big picture. Clients do not exist in a vacuum — every experience they have is then used as a lens through which other experiences are viewed. Many accused persons have no alternative but to rely on their public defender to ensure their case is well-presented. They do not trust easily and sometimes feel hopeless because they truly cannot believe someone cares, even a little bit.

Accepting the data
This leads us to the concept of humility. While trapping in the swamps, I caught a turtle in one freshwater river, marked it, and released it. Many days later, I caught that same turtle in a different river that was also freshwater, but colder and more tannic. The two rivers were separated by saltwater Weeks Bay. I believed the turtle had swum a great distance through somewhat adverse conditions. Imagine a sort of Mission Impossible trek — swimming along in the warm current, dodging alligators, navigating through saltwater with jellies and sharks, swimming upstream in colder water — only to end up in another trap! However, someone I admire and trust believed the simplest and most likely scenario was that I’d accidentally released the turtle in the second river rather than where it was caught in the first river. My ego says: “No. I know what I’m doing.” My humility says, “I could’ve made a mistake. Let’s see if it happens again.”

Humility means my idea is not the only way or the best way, but rather one of many possible ways. After all, my way is shaped by my experiences, which are different from yours. I listen to your idea, thought process, and explanation. You listen to mine. Then we respectfully converse and work out a means to reach the goal. Unfortunately, in the preliminary appearance arena, the status quo has developed into a “money-bail for everyone” habit.

It is absolutely true that if everyone is in jail pre-trial, the chance someone will miss a future court date or commit a crime approaches zero. Regardless of whether their cases go to trial, are dismissed, or otherwise resolved short of trial, we do know that individuals arrested and held in jail for more than 24 hours have a higher rate of recidivism. Specifically, the statistics show that compared to someone released within 24 hours of arrest, low-risk defendants held two to three days are 17% more likely to commit another crime within two years. Increase the jail time to between four and seven days, and there is a 35% increase in the rate of reoffending. Surprised? A defendant jailed for eight to 14 days is 51% more likely to commit a new crime within two years.

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years than a defendant held for less than 24 hours. Our charge-based, money-bail system is actually making things worse. We have statistical analyses which help guide us — however counter-intuitive it may be for us to try them.

**Drawing conclusions**

In the context of representing accused persons at a first appearance, this means we don’t have to keep everyone in jail while cases move forward. There is a lot of lip service given to “innocent until proven guilty.” If we — as a society, a community, and a criminal justice system — really believed in this premise, we would not have roughly 60% of our incarcerated population awaiting trial. The purpose of bail is to ensure that an accused person 1) comes to future court dates and 2) does not commit a new offense. The statistical reality is that reminding people of their court date dramatically reduces the first concern. With regards to the second, simply having someone periodically check in with the accused creates a level of accountability that is effective.

To be sure, it is a balance between the cold, hard statistical facts and the long-used “money-bail for everyone” system. Now is the time for humility — it just might work.

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1. About 1,000.
2. CrR 3.2.
3. U.S. Const. amend. VIII: Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.
4. I also documented alligator tooth marks (very distinctive), algae growth, barnacle growth, shedding, and other turtle issues when observed.
5. These are considered in various permutations. For example, criminal history is broken down into misdemeanors and felonies; failures to appear are separated into within the past two years and older than two years.
6. Sometimes humility isn’t immediate, it can take a few days. Pride sometimes battles to the death with humility.
7. This may result in a raised voice or exasperated tone on occasion.
8. Sometimes referred to as “first appearance.”
10. Id.
11. Id.
12. Id.
14. Often referred to as “community safety” or “dangerousness.”
Data security and privacy issues have increasingly made their way into mainstream news. Once considered too far removed from our everyday experiences, today we consume daily news about massive data breaches, and legal battles between the government and private companies like Apple and Microsoft to compel data disclosure. And perhaps more importantly, we are actually being impacted by hacks, breaches, and disclosure requests in a much more tangible and often debilitating way. Identity theft can wreak havoc in the lives of unlucky participants in the digital economy. Hacked emails and social media accounts can cause jobs to be lost, relationships to be severed, and grave financial losses to individuals and corporations alike.

While it may seem as though privacy as a legal concept has only surfaced because of the pervasive and aggressive use of the internet, the notion that we are entitled to a level of privacy is not new. In many ways, privacy regulations are the outcome of a constant and fluid negotiation between the levels of sharing and withholding that society deems permissible at a given moment. In their seminal article “The Right to Privacy” (4 Harvard L.R. 193, Dec. 15, 1890), Louis Brandeis and Samuel Warren defined privacy as a negative right — the “right to be let alone.” They declared that the law was insufficient to deal with the many facets of privacy one should be able to enjoy. Brandeis and Warren are often credited with having created the foundation for modern privacy laws.

On Dec. 10, 1948, Article 12 of the U.N.’s Universal Declaration of Human Rights (UDHR) created a universal legal protection of privacy, stating: “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.” Addressing the protection of a holistic right to privacy, the UDHR explicitly encompasses bodily, territorial, and communications privacy,
but does not clearly reference information privacy.

In 1970, Germany promulgated the first known modern data protection laws. Motivated by wanting to avoid the repetition of abuse of personal information belonging to millions under the Nazi regime, and with the rapid evolution of information technology and the internet making communication faster and more accessible, Germany paved the way for other nations to enact privacy and data security regulations that deal with information privacy. Specifically, Germany helped to promote regulations dealing with data known as “personally identifiable information” (PII). PII is generally defined as information about an individual that can be used on its own, or in combination with other information, to identify that particular individual. What pieces of information are deemed PII is jurisdiction-specific, although generally, names, telephone numbers, home addresses, and email addresses are considered sensitive PII across the world.

While many countries use a comprehensive approach to developing privacy laws that apply throughout the economy, privacy laws in the U.S. have been developed using a sectoral model: privacy laws apply piecemeal to a selected market segment. The first such privacy law to be enacted in the U.S. was the Fair Credit Reporting Act (FCRA) in 1970. This law mandates accurate and relevant data collection to give consumers the ability to access and correct their information, among other core functions. The Gramm-Leach-Bliley Act (1999), also known as the Financial Services Modernization Act, applies to financial institutions in the U.S., and the Health Insurance Portability and Accountability Act (HIPAA, 1996) creates national standards to protect the privacy and security of personal health information. In each case, the laws promulgated under these acts apply specifically and exclusively to data collection, storage, use, and disclosure in a particular industry or to collectors of the same type of data across different industries.

It would seem, then, that data collected outside of the reach of existing industry-specific laws is subject to no oversight, and the individuals whose PII is improperly collected, stored, used, or disclosed have no recourse or remedy.

The Federal Trade Commission (FTC) fills in many gaps in the sectoral privacy protection afforded in the U.S., under Section 5 of the FTC Act (15 U.S.C. §§ 41-58), which allows the FTC to investigate “unfair and deceptive acts and practices in or affecting commerce” with general authority. The FTC has increasingly used its substantial authority to aggressively police within the context of information privacy and data security, investigating numerous unfair or, more often, deceptive practices against website operators and other online service providers engaged in the collection, use, and storage of users’ PII for failing
to adhere to their stated privacy policies and practices. However, the scope of the Commission’s authority has been challenged, and although it has prevailed so far, it is only a matter of time before the FTC is compelled to curb its enthusiasm.

However, the European Union (EU) may provide the comprehensive and uniform data security and information privacy framework modernization that businesses in the U.S. could benefit from. In October 2015, the Court of Justice of the European Union (CJEU) replaced the EU’s 1995 Data Protection Directive; in its place, the General Data Protection Regulation (GDPR) will become effective in May 2018. The CJEU also invalidates the EU–U.S. Safe Harbor, which governed data transfers between the EU and the U.S. Over the last year, lawyers and lawmakers in the U.S. and E.U. have been working on a negotiated new framework known as the E.U.–U.S. Privacy Shield, providing a legal mechanism for transferring personal information from the EU to the U.S. As a result of the fortified rights to privacy enjoyed by European consumers of online services provided by American companies like Google and Facebook, American companies will need to pay closer attention to their privacy policies and data security protocols, and invest in the education and training of its employees in the proper handling of PII.

What can businesses do to avoid noncompliance?

The basic premise of the Privacy Shield is simple: if a U.S. business has even a single European user, and collects PII from that European user, regardless of whether or not it has offices or significant operations in Europe, the business must comply with the GDPR and the requirements under the Privacy Shield. As is the case with most new regulations, the Privacy Shield is likely to be challenged by some, and welcomed and supported by others. Rather than adopting a wholly wait-and-see approach, what can U.S. businesses do to prepare for Privacy Shield compliance?

1. Create a team

The Schrems case that led to the overhaul of privacy regulations affecting the EU and U.S., and that has thrust information privacy issues firmly into the international spotlight, began because Max Schrems, an Austrian study abroad student at Santa Clara University, was taken aback by a prominent Silicon Valley privacy attorney’s lack of awareness of European privacy laws. His subsequent thesis and activism gained media traction, and the rest is history. Regardless of size, businesses operating online should create a team of specialists to be able to handle matters of cybersecurity, insurance, information technology, and privacy regulation compliance. This may mean hiring specialists — dedicated privacy officers and data security experts. At the very least, businesses should engage with counsel practicing in privacy law to make sure regulatory requirements are being met, to review the coverage of any cyberinsurance policy a business may have, and to deal with civil lawsuits or government audits.

2. Have a plan — and use it

The easiest and most effective way to responsibly collect data, and maintain compliance with federal and state privacy laws as well as foreign requirements of U.S. companies, is for a business to develop, adopt, and implement a privacy policy that is consistent with its purpose of collection and use of PII. Simply having a policy is not good enough — it must be put to use or else risk FTC action under the FTC Act’s “deceptive practices” prong. Once a policy has been agreed internally, companies should publicize relevant portions of the policy that concern users and their data, in a privacy statement that is easily accessible on the company website, mobile applications, software, or other appropriate platforms.

A good privacy policy will outline why the company collects certain data, how it intends to protect such data (especially PII), and what it will do with the data once the stated purpose has been satisfied. Over the last decade, IBM and Ponemon Institute have conducted annual Cost of Data Breach studies: in 2015, the study showed an 11% increase in the total cost of a single data breach in the U.S., and the average cost per lost or stolen record was roughly $217. A solid privacy policy also prepares companies to better respond to data security problems in the event of inadvertent disclosure or an external breach. While there may be no way to ward off the most malicious hackers, businesses need to be prepared to take rapid counteraction and communicate openly about breaches. Such openness may help to manage shareholder and user expectations, as well as to overcome claims of negligence brought by the FTC and other federal agencies, or even foreign entities having jurisdiction to do so.
3. **Review existing relationships**

The main relationships a business needs to focus on in the privacy and data management context are internal with its employees, and external with the vendors, partners, and other third parties that it works with. Employees should be given comprehensive and regularly updated training and education to prevent inadvertent disclosures of sensitive company or user information. When employees at every level are engaged in the process of implementation, maintaining compliance with a stated privacy policy becomes a much less arduous undertaking.

Businesses should also revisit existing agreements with any third parties. These include cloud storage platforms, software and software as a service (SaaS) vendors, and other processors of PII. New regulations may hold the party on whose behalf data is collected, stored, or processed responsible for the actions of these third-party vendors in the event of a breach. Contracts should explicitly include an expectation of certain privacy and data security measures (both technical and physical), clear limitations on liability in the event of mishandling of data or the improper disclosure of PII, and the appropriate representations, warranties, and indemnification language as negotiated between parties.

**Conclusion**

Privacy regulations around the world are only now responding and attempting to address the exponential increase in the amount of highly-sensitive, personally identifiable information provided through the internet every day. While many policy issues must be weighed before we are able to promulgate more robust and uniform privacy laws in the U.S., changes in the EU are forcing American businesses to adapt and comply with new, stricter privacy and data security laws. Businesses will benefit from taking a proactive approach to compliance with the requirements of the Privacy Shield, and attorneys practicing in this area should remain abreast of the on-going revisions and other amendments in privacy law in order to effectively counsel U.S. companies.

**ZAINAB HUSSAIN** is a business attorney specializing in privacy and intellectual property at Foundry Law Group. She thrives on working with innovative companies — whether startups, growth companies, or enterprise-level entities — to manage, protect, and leverage their intellectual assets. When she’s not studying for her CIPP exam, or the patent bar, Hussain is an avid marathoner (on Netflix), enjoys traveling with her husband, and makes time to put brush to canvas as often as possible. She can be reached at zainab@foundrylawgroup.com.
Class action lawsuits have existed since the 13th century in medieval England. These lawsuits were known as “group litigation” and involved groups of people, such as villages or towns, either suing or being sued. By the 1800s, group litigation in England had become replaced by individual litigation and became virtually nonexistent after 1850. However, in the United States, class actions survived due to the efforts of Justice Joseph Story in the early 1800s, who held that all persons interested must be made party to a suit, no matter how numerous they may be.

Criticism of class actions include that class members receive little or no relief. While attorneys are paid large fees for settling, class members often are awarded small or no compensation. Other critics argue that class actions are nothing more than frivolous actions brought by greedy lawyers and plaintiffs. And while some of the largest class actions to date have settlements of $7 billion, what happens when part of that settlement relief comes in the form of changing the behavior of not only the defendant, but also changes the law? Here are some class action lawsuits that have changed the law.

Brown vs. Board of Education of Topeka

In 1951, a class action was filed against the Board of Education of the city of Topeka, Kansas, in the United States District Court for the District of Kansas. The plaintiffs were 13 parents on behalf of their 20 children, and the suit called for the school district to reverse its policy of racial segregation. The three-judge district court ruled in favor of the Board of Education and cited the precedent set in Plessy v. Ferguson of “separate but equal.” The case was appealed to the Supreme Court, and was combined with four other cases from other districts around the country.

In a unanimous decision by the Supreme Court, the Court held that the “separate but equal” educational facilities are inherently unequal and violate the Equal Protection Clause of the 14th Amendment. The Court’s opinion led to the desegregation of schools and is considered one of the defining moments in the civil rights movement.

Lois E. Jenson v. Eveleth Taconite Co. (EVTAC)

Lois E. Jenson began working at the EVTAC mine in 1975. Along with other women workers, she endured a continuous sequence of hostile behavior from male workers including sexual harassment, crude language and drawings, threats, and stalking. After she filed a complaint in 1984 to the Minnesota Department of Human Rights, her tires were slashed in retaliation. In 1988, Jenson’s attorney filed a class action lawsuit on behalf of Jenson and the other women who worked for the mining company. The case would continue for 10 years until 1988 when, just before the jury trial was set to begin, the suit settled out of court and all 15 women were awarded monetary damages. The women’s story became the basis for the movie North Country, starring Charlize Theron.

The Exxon Valdez Oil Spill

In March 1989, the Exxon Valdez supertanker ran aground in Alaska, spilling millions of gallons of oil into the Prince William Sound. The spill affected tens of thousands of people and more than 1,300 miles of coastline. A class action lawsuit against Exxon was filed for the fishermen, Alaska Natives, and landowners whose livings were affected by the spill. Fishermen saw their incomes fall and those who met their dietary needs through hunting and fishing were unable to do so, as central fishing and hunting areas were decimated.
A federal judge found Exxon and Captain Hazelwood (captain of the Valdez) liable for punitive damages and ordered ExxonMobil to pay damages and interest to thousands of commercial fishermen, Alaska Natives and others who were harmed by the spill.

In response to the Exxon Valdez class action lawsuit, Alaska Governor Jay Hammond created the Alaska Oil Spill Commission in 1989 to examine the causes of the oil spill and issue recommendations on potential policy changes. The recommendations issued by the Commission were adopted by Congress and became the Oil Pollution Act of 1990. The Act mandates that companies must have a plan to prevent oil spills that may occur and have a containment and cleanup plan. It also included a clause that prohibits any vessel which has previously spilled more than 1 million U.S. gallons of oil in any marine area from operating in the Prince William Sound.

Master Tobacco Settlement Agreement

During the 1950s, medical journals began publishing articles linking smoking to cancer. Individuals started to sue the companies responsible for manufacturing and distributing cigarettes for the health effects associated with smoking. In the mid 1990s, 40 states initiated litigation against the tobacco industry seeking relief under consumer-protection and antitrust laws. Other states soon followed. In order to settle the individual suits, the tobacco companies Brown & Williamson Tobacco Corporation, Lorillard Tobacco Company, Philip Morris Incorporated, R.J. Reynolds Tobacco Company, Commonwealth Tobacco, and Liggett & Myers entered into a joint settlement.

The state lawsuits sought recovery for Medicare/Medicaid and other public health expenses incurred in the treatment of smoking-induced illnesses. The individual lawsuits also sought to enforce laws designed to reduce smoking by those less than 18 years of age. Under the settlement agreement, the tobacco companies agreed to:

- Restrict their advertising, sponsorship, and lobbying activities, especially as those activities were seen as targeting youth;
- Dissolve the Tobacco Institute, the Center for Indoor Air Research, and the Council for Tobacco Research;
- Create and fund a new anti-smoking advocacy group, called the American Legacy Foundation, that is responsible for campaigns such as The Truth; and
- Make annual payments to the states in perpetuity to compensate them for some of the medical costs of caring for persons with smoking-related illnesses.

Anderson v. Pacific Gas & Electric Co. (PG&E)

As depicted in the movie Erin Brockovich, the residents of the town of Hinkley, California, filed a class action lawsuit in 1993 against PG&E stating that the chromium-6 used to cool the natural gas in the compressor station in Hinkley had leaked into the surrounding groundwater. The plaintiffs alleged that PG&E knowingly dumped the wastewater contaminated with chromium-6, a known carcinogen since 1925, and that the pollution of the groundwater with the carcinogen led to an elevated cluster of illnesses for the population of Hinkley.

The case was referred to arbitration and by the end, PG&E agreed to settle the case. The case was settled for $333 million, the largest settlement ever paid in a direct-action lawsuit in U.S. history. In addition to the monetary damages, PG&E was required to clean up the environment and to stop using chromium-6.

In July 2014, California became the first state to put into effect a maximum contaminant level for chromium-6 in drinking water. It was acknowledged that ingestion of chromium-6 had been linked to cancer in scientific studies of laboratory animals.

Conclusion

Class actions seem to be the lawsuits that everyone hates. There are many websites out there that list all the open and ongoing class action lawsuits and you can even get on a mailing list to be notified of any new class actions that you may be a class member of. But as the above lawsuits have shown, not all class actions are due to greed. Sometimes there are bigger picture benefits, such as safer products, racial integration, or effects on the environment that can encourage class members to file a lawsuit.
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Federalism and the Friendly Skies

by Michael W. Meredith

We have less rights as an airline passenger than a prisoner of war,” announced Kate Hanni, in support of a proposed Washington state Passenger Bill of Rights that would require airlines flying in and out of Washington to provide certain basic services including food, water, and medical care to passengers on flights that have been delayed for more than three hours.¹

Hanni’s advocacy for passenger rights came on the heels of what she called her “flight from hell,” which was canceled due to severe weather and diverted to Austin, Texas. There, according to Hanni, she and her fellow passengers were forced to “wait on the tarmac for nine hours with [nothing but] a bag of pretzels and water from the bathroom.”²

Stories such as Hanni’s are becoming increasingly commonplace: in 2007, for example, after a storm hit the East Coast, JetBlue passengers found themselves stuck on planes for more than 10 hours. As a result of these and similar incidents, more and more states, including Arizona, California, Florida, Indiana, Michigan, New Jersey, Pennsylvania, Rhode Island, and Washington, have responded to calls by consumers for state-law protections of their rights when they fly.

Although Hanni’s story and legislative proposal were popular with many Washingtonians, it put her in direct contention with Seattle-based Alaska Airlines, which has been headquartered in the state since 1940. According to Steve Jarvis, vice president of marketing for Alaska Airlines, the company opposes any Washington state regulation on the subject of passenger protection, arguing that “[i]f passenger protection is required at a higher level then we believe it should be at a federal level to avoid competing and confusing sets of regulations from state to state.”³ Similarly, Megan Lawrence, Alaska Airlines’ director of government affairs, explained that “[i]t’s important to note that many of the factors that lead to extended delays are out of the control of the airlines [therefore] . . . the better, more thoughtful approach . . . is for the airlines, FAA, and [federal] Department of Transportation to work together.”⁴

Although Hanni’s proposed Passengers’ Bill of Rights was never passed into law by the Washington Legislature, it does raise an interesting legal question regarding the ability of states to regulate the largely interstate air-
line companies that operate within their boundaries and what, if any, rights airline passengers should be able to assert after they board their flights.

The Federal Airline Deregulation Act of 1978

The Federal Airline Deregulation Act was passed in 1978 in an effort to limit government “regulation of the airline industry after determining that ‘maximum reliance on competitive market forces’ would best further ‘efficiency, innovation, and low prices’ as well as ‘variety [and] quality ... of air transportation.’” Prior to the passage of the Act, all domestic interstate air transport was under the authority of the Civil Aeronautics Board, a government agency that approved and set airline rates, routes, and operating procedures.

One effect of that deregulatory effort of the Federal Airline Deregulation Act was to preclude states from enforcing any law or provision that affects the price or route of an airline carrier. The law’s preemptive effect is expressly noted in § 41713(b)(1), which provides:

(b) Preemption.—(1) Except as provided in this subsection, a State, political subdivision of a State, or political authority of at least 2 States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier that may provide air transportation under this subpart. 49 U.S.C.A. § 41713(b)(1).

Historically, this provision has been read quite broadly. In Morales v. Trans World Airlines, Inc., for example, the U.S. Supreme Court found that state consumer protection laws regarding advertising were “related to” the business of air transportation and, therefore, preempted by the federal law. Going further, in Brown v. United Airlines, the Court of Appeals for the First Circuit rejected the argument that even common law claims, such as unjust enrichment and tortious interference, could be exempted from the Airline Deregulation Act’s preemptive effect. As such, as a general matter, state courts and state legislatures face an uphill battle when seeking to reign in airline companies through state law.

Are passenger rights states’ rights?

Washington’s proposed Passenger Bill of Rights for airline passengers, however, provides a unique challenge to the traditional line of judicial thinking regarding federal authority over interstate airline travel.

The U.S. Supreme Court has established that if the federal government seeks to pre-empt state law “in a field which the States had traditionally occupied,” any pre-emption analysis must start with the presumption that “the historic police powers of the States were not to be superseded by [a] Federal Act unless that was the clear and manifest purpose of Congress.”

One of the most well-recognized police powers of the states has always been the “health and safety of their citizens.” Indeed, because of the historically clear state authority in this area, there is a “presumption that state or local regulation of matters related to health and safety [are] not invalidated under the Supremacy Clause” or pre-emption doctrines. As such, the protections sought by a “Passenger Bill of Rights” — food, water, and medical attention during extended delays — might reasonably be considered a “health and safety” provision that is within the scope of traditional state authority and thereby escape the pre-emptive effect of the Federal Airline Deregulation Act.

In fact, a similar argument was adopted by the District Court for the Northern District of New York when considering a state-law Passenger Bill of Rights in Air Transport Association of America, Inc. v. Cuomo, which held that “the policy goal of the [Federal Airline Deregulation Act] was to increase competition ... the provisions of the Passenger Bill of Rights are not ... issues [that affect competition between airlines]; they are consumer health and safety issues.”

The future of the Washington Passenger Bill of Rights

That reasoning in Cuomo was ultimately rejected by the Second Circuit Court of Appeals, which found that § 41713(b)(1) expressly pre-empts state law regarding the “services” provided by an airline which — read broadly — can include “provision of labor from the airline to its passengers and encompasses matters such as boarding procedures, baggage handling, and food and drink — matters incidental to and distinct from the actual transportation of passengers.”

But other circuits, including the Ninth, have found that the term “services ... should, instead, be limited to ‘the prices scheduled, origins and destinations of the point-to-point transportation of passengers, cargo, or mail’ but not the ‘provision of in-flight beverages, personal assistance to passengers, the handling of luggage, and similar amenities.’”

As such, a cleverly-worded and argued Passenger Bill of Rights for travelers in Washington that is expressly limited in its application to only “non-services” might fare better against a pre-emption challenge in federal court.

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2. Id.
3. Id.
5. Air Transp. Ass’n of Am., Inc. v. Cuomo, 520 F.3d 218, 222 (2d Cir. 2008).
7. 720 F.3d 60 (2011).
10. Id.
The legal profession has long recognized the need for diversity and inclusion in its ranks. Our bar members need to be as diverse as the populations we serve. Lawyers not only serve in private practice but also as judges, senators, leaders of corporations, prosecutors, public defenders, heads of government agencies, and presidents.

The Puget Sound Area Minority Clerkship Program (PSAMCP) began in 1990 in response to various national surveys showing that the level of minority lawyer involvement in major Seattle law firms had not increased significantly over the previous decade. PSAMCP was founded by representatives from interested law firms, the Loren Miller and Hispanic Bar Associations, and the University of Washington and Seattle University Law Schools. It was endorsed by the Asian, Latino/a, Northwest Indian, and Seattle-King County Bar Associations, as well as the University of Washington and Seattle University Law Schools’ Alumni Associations.

PSAMCP aimed to identify those students whose backgrounds, academic and otherwise, tended to predict successful career performance, and to provide those students with the opportunity to work in a prominent law firm or corporate law department environment. In this way, it sought to diversify the profession by providing opportunity for meaningful participation for underrepresented students seeking to join the profession.

Each summer, PSAMCP offered approximately 10 students the opportunity to have full-time engagement with one of the program’s employers. Periodically, the identity of the participating employers changed both as the result of the budgets of the firms, and as our larger employers developed their own in-house diversity fellowship programs in the mid-2000s. As these larger firms ended their direct engagement, other firms and corporations took their place, allowing the PSAMCP to maintain a stable and consistent cadre of employers offering diverse candidates access to major law firms and corporate practice.

Since its inception, PSAMCP has provided opportunities to over 225 diverse law students from the University of Washington School of Law and Seattle University School of Law. Many of these students are now employed in firms, corporations, and other public service legal positions in the state. Unfortunately, our aspiration for diversity has not yet changed the demographics of our profession. Attorneys have one of the least diverse professions, with 88% of lawyers being white, and women making up only 17% of equity partners.

Though we remained unwavering in our mission, we recognized a need to
ERIC’S STORY

Born in Japan and raised in the Pacific Northwest, Eric Gilman wanted to be a lawyer, but he did not know any. His family’s priorities were hard work and education, but his part-time restaurant jobs and hours of studying could not provide the legal experience he wanted. As an undergraduate, Eric scanned documents at a Bellevue law firm, hoping to see a bit of what lawyers really did, but this did little to further Eric’s understanding of the profession. His first year of law school at Seattle University School of Law had its frustrations, as the good grades did not come as easily as they once had for him. Eric says, “I was struggling to put all of the information I was learning into context. I couldn’t see the forest for the trees.”

Eric landed a 1L summer fellowship at Gordon Thomas Honeywell through what was then the Puget Sound Area Minority Clerkship Program (PSAMCP), and he began working on cases with the mentorship of the firm’s experienced attorneys. “Something clicked after that. I was no longer just trying to memorize facts and legal principles. I began to think about the law like a practicing lawyer,” Eric recalls. His 1L summer allowed him to meet judges and lawyers, which further demystified a community of which he had not previously been a part. Eric made the Dean’s List for his final two years of law school, which he attributes to the insights he gained during his summer position. Eric is now a partner at my law firm.

How to get involved

For employers in Washington that are interested in supporting our diversity initiative, LEAD-WA is an easy way to hire a diverse 1L as a summer fellow. Our participating employers and law schools market the opportunity at Washington’s three law schools, gather application materials and interview the candidates. The organization also provides support to employers who may lack experience hiring and supervising law students.

LEAD-WA’s goals for the 2016–17 school year include:

- Raise $10,000 to fund employment of a LEAD-WA fellow for the summer of 2017 by a legal services agency.
- Increase employer participants to 20, including employers from Eastern Washington.
- Outreach to middle and high school students in ethnically and economically diverse neighborhoods to encourage pursuit of legal careers.

Every employer can help LEAD-WA attain these goals and make the legal profession’s aspirations for diversity a reality. Please visit the LEAD-WA website or contact a board member to learn more about our program. The cost to employers is minimal, but the benefit to the students and to our profession is priceless. NWL

TERESA DAGGETT is the president of Legal Employers Advancing Diversity in Washington (LEAD-WA). She is a corporate and securities attorney at Gordon Thomas Honeywell LLP in Seattle. She can be reached at ttaggett@gth-law.com.

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Finding and retaining great lawyers — from new and mid-level associates to lateral partners — is a vital challenge facing small and midsize law firms. Attracting the right people at the right time to satisfy present client needs is difficult enough; planning for growth, responding to new practice areas, and anticipating succession planning for senior counsel add levels of complexity that make each new attorney hire critical.

The simple approach of putting an ad in the local bar journal or online job board to fill an empty office may no longer produce good choices. The best attorneys are busy working, not searching the job boards. So how can a small or mid-sized firm attract and keep top talent?

Be a “clearly” great place to be a lawyer
Firms where the lawyers enjoy their work and their colleagues, feel valued, are fairly compensated in the relevant market, fulfill a need for their clients, and continue to grow and learn as people and professionals are firms that can attract and retain great new lawyers. It is by no means a simple feat to achieve this status. But the firms that do have a few things in common.

Clear mission for the firm
A firm that understands its role in the legal market and its target clients, and can communicate its specific niche to the world at large, will be able to differentiate itself from other firms. Make it easy for your potential new lawyers to see if their skills and interests will align with the firm’s overall identity.

Clear expectations for lawyers
The less experienced the lawyer, the more critical it is for supervising counsel to explicitly, consistently, and frequently explain what you expect of her or him. This must occur at the outset of the relationship, at each stage of each assignment, at regular and frequent intervals (more than once a year), and as part of an overall growth and success path. Yes, this requires significant effort and time on the part of senior attorneys. But firms that reward senior attorneys for the supervision, training, and mentoring of young lawyers will find long-term payoff in reduced turnover and greater overall career satisfaction across the firm. One of the most frequently given reasons lawyers leave their firms is the lack of regular feedback. Praise good work, correct and refocus work that needs improvement in a respectful manner, and help newer attorneys understand how their tasks fit into the big picture for the clients and their cases.

Clear career development path and support
In this era of job mobility, lawyers need to know that they will be valued and fit into the future of the firm. What skills will they need to progress in the future? How should they develop those skills? If your firm does not have the bandwidth or expertise to train and develop younger lawyers in particular aspects of their career development needs, such as client development, leadership, or case management, let your new lawyers know you will invest in outside resources for them — and then do so. Tell your attorneys about training programs, coaches, and professional development organizations that may provide resources and support not available within the firm, and encourage them to learn new skills and try new approaches.

Clear compensation plan
Explain your firm’s compensation model and business realities to new attorneys, with increasing transparency as they progress from new associates toward partnership. Does your compensation plan reward the behavior you want to encourage? Does it reflect today’s business realities? Is it realistically aligned with your firm’s values and client needs? There is no one-size-fits-all approach to compensating attorneys and different
lawyers will thrive under different compensation plans. Honest disclosure and honest appraisals of what is necessary to be successful under a given compensation structure will avoid mismatched expectations and frustration in attracting and retaining the right lawyers.

Clear the air
Do you know why your lawyers are leaving? Do you know why promising prospects are not accepting your offers? Seek this insight in a variety of ways over time, as formal exit interviews at the time of a departure may not reveal much truth — and you may not be in a position to hear or accept what is being said. Staying in touch with departed attorneys and seeking honest critique from them months later may expose hidden issues that can be corrected.

Tell your story
**WHAT:** Make it easy for lawyers to find and learn about your firm and to picture themselves there. At a minimum, you must have a clean, clear, and informative website and LinkedIn page, with current photographs, bios, and contact information. Dynamic young attorneys who are digital natives will click away in haste from a fussy, static website with outdated black-and-white headshots and stale descriptions of your practice areas, representative matters, and clients. If your site features “news” or a blog, keep it current or take it down. Help your current attorneys and employees to maintain their personal LinkedIn profiles and to use them to highlight recent successes, issues, or decisions of interest to clients, as well as community or civic activities that reveal well-rounded facets of the firm’s personality. Engage your clients on all relevant social media and advertising platforms, and you will be visible to potential attorney recruits who are already there.

**WHO:** After carefully considering the firm’s needs, and what your firm has to offer the right lawyer, create a comprehensive job description. What is the role? What are the characteristics and qualities that a lawyer will need to succeed in your firm? Where are these lawyers currently practicing? What could the future hold for this attorney — in three years, in five, in ten? Be firm about your actual needs, but be flexible as to how those needs can be met. Can someone on-ramp into a full-time position from a solo or part-time practice? Can someone leverage prior business, full-time parenting, or in-house experience into a successful law practice in your firm? Is a top-tier law school really a necessary credential or predictor of long-term success in your firm, or in the practice area you seek to grow? Do you know what diverse or non-traditional lawyers want to see to evaluate your firm, and can you demonstrate that your firm is “walking the walk” to provide support for success?

**WHERE:** Who is your target recruit and where can she or he be found? If you are seeking entry-level attorneys, send
senior associates and junior partners to a variety of law student/young lawyer networking and career development events. Are your firm lawyers speaking at CLEs, conferences and industry events where mid-career attorneys are likely to be present? Does the firm receive recognition for supporting civic and community events that can highlight the firm’s values? Share your events on social media and use technology to raise your profile among the most relevant community. Include the usual job posting boards, but think outside the box to reach busy practitioners.

**HOW:** Your attorneys should be your brand ambassadors. Make sure everyone on the legal and support staff knows the kinds of lawyers the firm is seeking, and provide clear talking points for why the opportunity you have is exciting. Reward your current team’s recruiting efforts. If your lawyers or staff cannot enthusiastically reach out to friends and colleagues to join your firm, you need to know why.

**Get help**
Professional recruiters and consultants knowledgeable in your market can help you identify issues and suggest solutions, if your firm is not attracting the caliber of attorneys you seek. Partnering with a professional may help ensure a durable match and a long-term, successful relationship — and will free you up to do what you do best: practice law and serve your clients. **NWLC**

**Robin Schachter** is a legal recruiter and director of corporate relations at Gamoran Legal Consulting, a boutique recruiting firm that focuses on the Pacific Northwest. A graduate of the UW School of Law, she was a litigation partner at Ryan, Swanson & Cleveland, PLLC, where she served on the hiring committee. She is the immediate past president of the Mother Attorney Mentoring Association (MAMA Seattle), and one of the committee chairs of its “Ladder Down” leadership and coaching program for women attorneys. She can be reached at robin@gamoran-legal.com.

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185 Wn.2d 510, 374 P.3d 510 (2016)
(attorney fees recoverable in administrative proceeding where back pay is awarded)

**Coomes v. Edmonds School Dist. No. 15,**
816 F.3d 1255 (9th Cir. 2016) (reversed dismissal of employee’s claim of wrongful discharge in violation of public policy)

**Kim v. Lakeside Adult Family Home,**
185 Wn.2d 532, 374 P.3d 21 (2016) (establishing cause of action for breach of adult abuse reporting statute)

**Chism v. Tri-State Construction,**
193 Wn. App. 818, 374 P.3d 193 (2016) (successfully restoring in-house counsel’s RCW 49.52 wage claim for unpaid bonuses)

**Segura v. Cabrera,**
184 Wn.2d 587, 362 P.3d 1278 (2015) (TFT submitted successful amicus brief on damages)

**Albertson v. State, DSHS,**
191 Wn. App. 284, 361 P.3d 808 (2015) (court affirms CPS abuse investigation duty and reverses CPS verdict on abuser as alleged superseding cause)

**Bright v. Frank Russell Investments,**
191 Wn. App. 73, 361 P.3d 245 (2015) (fee recovery in employment discrimination case)

**State v. Sykes,**
182 Wn.2d 168, 339 P.3d 972 (2014) (Drug Court therapeutic proceedings not subject to open courts requirement of Washington Constitution)

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HELPING WOMEN ENTREPRENEURS BRIDGE THE GENDER GAP

Initiative Supports Equality in Business Leadership

by Linda Walton
IN A JULY 23, 2014, REPORT ENTITLED “21ST CENTURY BARRIERS TO WOMEN’S ENTREPRENEURSHIP,” THE U.S. SENATE COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP FOUND THAT WHILE WOMEN-OWNED BUSINESSES ARE CRITICAL TO OUR ECONOMY, “WOMEN ENTREPRENEURS HAVE NOT ACHIEVED THEIR FULL POTENTIAL — LARGELY DUE TO ISSUES THEY HAVE FACED FOR MORE THAN THREE DECADES.” The report detailed those challenges in three specific areas: 1) access to capital, 2) access to federal contracting, and 3) access to business counseling. Earlier this year, Seattle law firm Perkins Coie launched a new initiative aimed at assisting women entrepreneurs in reaching their full potential by providing emerging companies that have at least one woman founder or one woman in a senior leadership role with greater access to critical business counseling.

A confluence of commitments
The Le[a]dBetter initiative, inspired by the Lilly Ledbetter Fair Pay Act of 2009, grew out of the confluence of two commitments central to the firm’s 21st-century approach to the practice of law. First, along with many of its market leader clients, the firm has a commitment to diversity and inclusion in the practice of law. Second, the firm has established itself in the representation of emerging companies in a variety of fast-moving industry sectors, including life sciences, Internet, software, digital media, hardware, telecommunications, and clean technology. When a core group of partners — men as well as women — from the firm’s emerging companies and venture capital practice group took a close look at the startling statistics that highlight the barriers to success faced by women entrepreneurs in general, and women entrepreneurs of color in particular, they saw an opportunity to take the firm’s commitment to diversity and inclusion beyond the four walls of the law firm. With the help of colleagues from across practice groups, the emerging companies and venture capital partners developed a program that both supports women-led startups and encourages investors to establish and value a culture of inclusion and gender diversity.

Breaking down barriers that limit access to capital
The Le[a]dBetter initiative includes an educational component, curated networking opportunities, and an alternative fee arrangement program — all designed to offer increased legal support to women-led companies as they navigate the startup ecosystem. Of course, nothing could be more central to the startup ecosystem than access to capital. Nevertheless, a 2014 Babson College study reported a significant gap in venture capital funding between those businesses with a woman on the team and those with no women. Specifically, the researchers found that between 2011 and 2013, only 2.7% of the companies that received venture capital funding had a woman in the CEO role. The same report noted that while more than 97% of venture-funded businesses had male CEOs, 86% of all venture capital-funded businesses had no women at all in management positions. And, according to Female Founders Fund, of the 204 Bay Area startups that received series A funding in 2015, just 8% — 16 firms — were led by women, a 30% decline from the previous year. The statistics are even more dismal for African-American women entrepreneurs. According to a recent report published by Project Diane, an offshoot of Digital Undivided, of the 10,238 startups that raised funds from 2012 to 2014, only 24 startups founded by African-American women received funding.

A key component of the Le[a]dBetter initiative involves education, counseling, and networking opportunities specifically designed to assist women entrepreneurs in breaking down artificial barriers that serve to bar them from accessing capital. The firm’s services in this area are as varied as guiding women-led startups through the development of effective investor pitch materials to introducing female founders to the right investors.

Counseling women-led startups on a wide range of critical early-stage business activities
While money is undeniably the lifeblood of an emerging business, the legal services offered through the Le[a]dBetter initiative are not limited to those designed to expand a startup’s access to capital. The portfolio of Le[a]dBetter legal services extends to those services most often requested by the firm’s emerging growth company clients, including counseling related to protecting intellectual property, regulatory compliance, technology transfer, privacy law compliance, employment law compliance, real estate transactions, and mergers and acquisitions. As noted in the 2014 U.S. Senate Committee on Small Business and Entrepreneurship Report on barriers to women’s entrepreneurship, women entrepreneurs have not achieved their full potential in part due to a lack of access to business counseling. The Le[a]dBetter program offers women entrepreneurs access to legal counsel on a wide range of critical early-stage business activities, including structuring outsourcing arrangements, negotiating trade secret and noncompete agreements with employees, and developing key customer and vendor contracts.

Given the comprehensive nature of critical early-stage business advice, it is not surprising that due to undercapitalization, some women-led startups have been unable to access this type of advice. In an effort to break the “chicken and egg cycle” — undercapitalization that leads to inability to access legal counseling services, which in turn leads to inability to access capital — Le[a]dBetter offers qualifying clients a 15% discount off standard hourly rates for certain legal services for a period of time during the early stages of a typical engagement. The Le[a]dBetter initiative includes...
this critical component in recognition of the disproportionate impact under-capitalization has on women-led and women-owned enterprises.

**Community building**

In its 2015 annual report, the National Women’s Business Council identified community building as one of the major components of the entrepreneurship ecosystem, noting the need for entrepreneurs to connect within and outside of their networks. The Le[a]dBetter initiative contributes to that community building effort by offering participants both access to educational seminars designed to help women entrepreneurs to further enhance their leadership and business skills, and ongoing opportunities to network with other business leaders in locations across the country.

**Conclusion**

“Access to capital, business expertise, and connections to networks of peers and to market opportunities are essential for entrepreneurs to succeed.” The Le[a]dBetter initiative addresses each of these essential elements of success, and by doing so advances a commitment to supporting gender equality in business leadership.

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4. *Id.*, p.32.
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The WSBA Board of Governors (Board) met on August 23 at the WSBA Conference Center in Seattle. The Board heard proposed amendments to GR 12 regarding the roles of the WSBA, suggested amendments to the Admission and Practice Rules (APRs) for administrative coordination of the different types of licenses, the Sections Policy Work Group’s recommendations regarding suggested amendments to Article XI of the Bylaws, and the Bylaws Work Group’s suggested amendments to the remaining Bylaws. Following the Board meeting, the Board also had a Q&A session in order to answer questions from online participants.

Proposed GR 12 Amendments
WSBA Executive Director Paula Littlewood presented an overview of the regulation of the practice of law in Washington. The presentation included a timeline of the Bar’s 126-year history and an explanation of its dual role as an integrated professional association with regulatory functions and member services, which is the more common form for bar associations across the country. GR 12 was adopted by the Supreme Court in 1987, which set out in Court rule the WSBA’s purposes and approved activities.

General Counsel Jean McElroy explained that the suggested GR 12 amendments included a renumbering of the rules in order to add a preamble and a section with regulatory objectives. Proposed GR 12.2 changes terminology to reflect the current role of the WSBA in regulating limited license legal technicians (LLLTs), limited practice officers (LPOs), lawyers, and other legal practitioners.

Proposed GR 12.4 reflects that the Washington State Bar Association will be referred to as the Washington State Bar, as recommended by the original Governance Task Force in 2014. It was explained that the change reflects the Bar’s status as a unified bar that both provides professional services to its members and serves as a regulatory agency.

Suggested Amendments to Admission and Practice Rules for Administrative Coordination
General Counsel Jean McElroy presented suggested amendments to the APRs. McElroy explained that the amendments were being suggested to align the systems for regulating and licensing lawyers, LPOs, and LLLTs in order to achieve greater efficiency and effectiveness in administering these license types.

Sections Policy Work Group Recommendations Regarding Suggested Amendments to Bylaws Article XI
Past-President Anthony Gipe, Chief Operations Officer Ann Holmes, and Director of Advancement Terra Nevitt presented the Sections Policy Work Group’s recommendations. The work group’s proposed amendments were intended to create minimum governance standards that should be useful for all sections. The work group will be preparing a final report, including recommendations about areas for further discussion and whether the work group should continue its work beyond its final scheduled meeting on Sept. 15, 2016.

Additional Proposed WSBA Bylaw Amendments
Past-President Anthony Gipe and General Counsel Jean McElroy presented proposed amendments to additional Bylaws (other than Article XI, noted above). In 2014, the Governance Task Force made 12 general topics of recommendations to the Board, including some changes to the Bylaws. In 2015, the Board adopted its response to the recommendation from the Task Force, and established the Bylaws Work Group to draft proposed changes to the WSBA Bylaws.
Members of the Board also met with the Supreme Court about the Task Force recommendations.

Proposed amendments to the Bylaws include Article I, regarding the name change to “Washington State Bar,” and changes to align this article with GR 12.1; Article III, regarding types of membership and member status, with the most significant change being the suggestion to include LPOs and LLLTs in the definition of “member” of the Bar; Article IV, regarding the governance of the Board, which includes recommended changes that would add public members and an LPO/LLLT member to the Board; and Article XIV, regarding indemnification of volunteers. Some articles had no substantive recommendations for change, or minor changes to terminology for consistency.

The proposed Bylaw amendments were presented for a first reading. Further recommendations and input from members should be submitted to the Board in writing.

**Q&A Session**

A recording of the Aug. 23 Board meeting and the Q&A session is available to view at [www.wsba.org/About-WSBA/Governance/Board-Meeting-Schedule-Materials](http://www.wsba.org/About-WSBA/Governance/Board-Meeting-Schedule-Materials). NWL

For more information on any of these topics, email questions@wsba.org. For more on the WSBA Board of Governors and future meeting dates, see wsba.org/about-wsba/governance.
My husband is a lawyer with a solo practice. I’m not. He’s in hospice and his office landlord called and said he would toss everything out of the office if he did not get paid rent soon. No one is checking his work number, so clients may have also called. Can you tell me what needs to be done about my husband’s practice?

I am sorry to hear of your situation. It is very difficult. You want to be with him, but you need to address life matters, too. A few things need to happen with his practice right away and a couple of those should be done by a lawyer. The first question I always ask is if he had a succession plan in place. Often there is no plan, but if there is, it will tell you who to contact and put that person on the job of sorting out your husband’s practice.

If there is no plan in place, then I encourage you to devise one now. Brainstorm whether your husband has any close colleagues he stayed in contact with and whom he would trust to come into his office and triage where his client cases are in the process of representation. The things that a lawyer would look for are: voicemail logins, passwords to computers and software, keys, an active case file list, and what one of my colleagues affectionately called an if-I-got-hit-by-a-bus-tomorrow folder. That folder should contain a copy of your husband’s malpractice policy and contact information for the carrier, contact information for any vendors he uses to run the business, a copy of the lease agreement and landlord contact information, possibly passwords and other key information, an active case file list, a client file index, trust account number and financial institution, and any other important information your husband identified. (See “Succession Planning Guidelines for the Virtual Practice,” JUN 2016 NWLawyer, p. 46.)

If your husband is a true solo and has no succession plan, then he is probably the only signer on the lawyer trust account, which is an account most lawyers have that could contain client funds. A lawyer must be a signer on this account, so the lawyer stepping in may have to get court permission to access the account and get client money back to clients.

The lawyer stepping in should also determine where your husband’s case files are and if there are any emergencies in them. Voicemails, emails, and actual mail should be checked. Determine and address any emergencies and pay fees or debts. She needs to immediately notify the clients of your husband’s inability to represent them. She may also need to file for continuances, motions to withdraw, and/or substitutions of counsel with the courts. She may need to find a lawyer or lawyers to take cases. The clients always have a choice about who their lawyer will be, but it can be reassuring to give them referrals to lawyers who do similar types of cases. Sometimes there are not many lawyers in smaller communities, so the lawyer triaging the case files will also take the cases. She must do so with caution, as her loyalties and fiduciary duties would then need to switch from your husband and practice to the client.

Your initial concern came from the landlord’s threatening phone call. If your husband’s business owes the landlord rent, it will need to be paid or someone will need to move the files and equipment to a secure location. The malpractice carrier and vendors he worked with should be notified.

There is still some wrap-up to do, but the bulk of the emergencies will be answered by these initial actions. For more information on this topic, see the succession planning page on www.wsba.org and Being Prepared: A Lawyer’s Guide for Dealing with Disability and Unexpected Events by Lloyd D. Cohen and Debra Hart.
I am working on wrapping up a law office for a deceased colleague. She was completely paperless and a professional password creator, but she did not have a plan or write down her passwords to find (trust me — I have hunted!). What do I do to get into her electronic files?

This will happen more and more as law offices tech up without planning. Call the different vendors for any programs she used, because some of them may be web-based and accessible on other devices. There may be some permissions issues and proof you need to supply to those vendors to show you are legitimately trying to access this lawyer’s files for beneficial purposes.

If there are files saved on the actual devices, take them to a computer security expert who could determine what would need to be done and hopefully access the data. Different levels of password protection have varying levels of security and ability to recover from. In some circumstances, it is just a BIOS or CMOS password and your computer consultant could remove a small battery to reset the settings, or she could take out the hard drive and hook it up to another machine, or run a password crack against it to open it up. The computer security person might be able to “break into” the computer and access most or all of the information. Similarly, you may need to prove your colleague is deceased and you are legitimately assisting the law office and her family with the wind-up. NWL

CHARITY ANASTASIO served as the practice management advisor for the WSBA Law Office Management Assistance Program. She attended UW as an undergrad and Seattle University for her law degree. Send your questions to lomap@wsba.org.

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Need to Know

News and information of interest to WSBA members

Email nwlawyer@wsba.org if you have an item you would like to share.

WSBA News

2017 License Renewal, MCLE, and Sections Information

Start date. License renewal will begin Nov. 9 and must be completed by Feb. 1, 2017.

Demographic Information. This year, you may update your demographic information when filing your annual license renewal. With this information, we can better understand the demographics of our membership. Providing confidential demographic information is optional.

License fee payment plan option. If you are experiencing financial challenges, you may contact us about our payment plan option available to all active and inactive members. Payment plans are for three months, beginning Dec. 1, and all license fees must still be paid in full by Feb. 1, 2017. 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 through Sept. 30, 2017, we encourage you to join or renew sections now or when licensing opens to receive the full benefit of the membership.

Certify MCLE compliance. If you are in the 2014–16 reporting period, you are due to report CLE credits and certify MCLE compliance. The deadline for completing credits is Dec. 31, 2016. The certification must be completed online or be postmarked or delivered to the WSBA by Feb. 1, 2017. Visit wsba.org/MCLE to learn more.

Judicial members. Please note that you are required to inform the WSBA 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.

Important Dates

- Dec. 1, 2016: Enrollment deadline for optional payment plan
- Dec. 31, 2016: Members in the 2014–16 reporting period must complete required MCLE credits
- Feb. 1, 2017: Request deadline for optional one-time hardship exemption

- Feb. 1, 2017: License renewal, payment, and MCLE certification must be completed online, postmarked, or delivered to the WSBA

Submit Proposed Changes to the Rules of Appellate Procedures (RAP) and the Rules for Appeal from Decisions of Courts of Limited Jurisdiction (RALJ)

Pursuant to the four-year cycle established by the Supreme Court, each year brings up a different set of rules for the WSBA Court Rules and Procedures Committee’s attention. In 2016–17, the Court’s cycle requires the Committee to review the Rules of Appellate Procedures (RAP) and the Rules for Appeal from Decisions of Courts of Limited Jurisdiction (RALJ). Suggestions regarding these rules or questions about the Committee should be directed to Sherry Lindner at sherryl@wsba.org. Interested individuals are encouraged to participate in the work of the Committee. For more information and a schedule of committee meetings, see www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/Court-Rules-and-Procedures-Committee.

WSBA Launches CLE Faculty Database

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

Open Sections Night in Spokane

New and young lawyers are invited to participate in this networking event in collaboration with the Washington Young Lawyers Committee (WYLC) Thursday, Oct. 20, from 5–7 p.m. at Gonzaga University School of Law (721 N. Cincinnati St., Spokane). Enjoy food, beverages, and door prizes while meeting representatives from many of the WSBA’s 28 sections. Learn more and RSVP at www.wsba.org/Events-Calendar/2016/October/Open-Sections-Night-Spokane.

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.

Take the Call to Duty Pledge

The WSBA Call to Duty initiative is designed to inform, inspire, and involve members in meeting the legal needs of veterans and their families. Take the pledge and commit to serving Washington veterans in 2016. As part of the pledge, we will support you by providing both legal and non-legal resources to serve veterans, education and CLEs, and the chance to answer the various calls to duty in serving veterans. You can sign up to take the pledge at www.mywsba.org/CallToDutyPledge.aspx.

ALPS Attorney Match

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

WSBA Board of Governors Meetings

Nov. 18, Seattle; Jan. 26–27, 2017 (location TBD)

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

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

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

WSBA Lawyers Assistance Program (LAP)

WSBA Connects
WSBA Connects provides free counseling in your community. All Bar members are eligible for three free sessions on topics as broad as work stress, career challenges, addiction, anxiety, and other issues. By calling 800-765-0770, a telephone representative will arrange a referral using APS’s network of clinicians throughout the state of Washington. We encourage you to make the most of this valuable resource.

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 eight attorneys. We provide the comprehensive WSBA job search guide, "Getting There: Your Guide to Career Success," which can also be found online at www.tinyurl.com/7xheb8b. If you’d like to participate or schedule a career consultation, contact Dan Crystal at danc@wsba.org or 206-727-8267.

Mindful Lawyers Group
A growing number of legal professionals across the nation are applying mindfulness-based skills and training to lawyering. The Washington Contemplative Lawyers group meets on Mondays on the 6th floor of the WSBA offices in the LAP group room from noon to 12:45 p.m. For more information, contact Greg Wolk at greg@rekhiwolk.com.

The “Unbar” Alcoholics Anonymous Group
The Unbar is an “open” AA group for attorneys. It has been meeting for over 25 years. Meetings are held Wednesdays from noon to 1:30 p.m. at the Skinner Building at 1326 Fifth Ave., 7th floor. If you are seeking a peer advisor to connect with and perhaps walk you to this meeting, the LAP can arrange this and can be reached at 206-727-8268.

Grief and Loss
Losses of all kinds trigger grief reactions. While these reactions are usually normal and predictable, they can easily overwhelm when you’re already feeling stressed or anxious. Whether you’ve lost a case, a job, pet, loved one, or an aspect of your health, you’ll probably experience grief to some degree. If you’d like a supportive ear, call WSBA Connects at 800-765-0770.

WSBA Law Office Management Assistance Program (LOMAP)

LOMAP Lending Library
The WSBA LOMAP and LAP Lending Library is a service to WSBA members. We offer the short-term loan of books on health and well-being as well as 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. If you live outside of the Seattle area, books can be mailed to you; you will be responsible for return postage. For walk-in members, we recommend calling first to check availability of requested titles. To arrange for a book loan or to check availability, contact lomap@wsba.org or 206-733-5914.

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

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

Usury Rate
The maximum allowable usury rate for October is 12%.
**WSBA Member Benefits**

With these member benefits, you can improve your practice at specially-designed discounts, rates and services.

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Disclaimer: The WSBA does not endorse any product or service listed here. There is no guarantee of a particular result. This information is provided as a convenience. Every lawyer has the obligation to perform their own due diligence in product research, reading the user agreement and determining whether a particular vendor can meet the needs of the law practice within the applicable Rules of Professional Conduct.

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Announcements

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- Dissolution of Domestic Partnership
- Parentage/Paternity
- Child Support
- Parenting Plans
- Non-Parental Custody
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- Asset/Debt Distribution
- Relocation
- Contempt of existing orders
- Modification of existing support/parenting orders
- Post Secondary Support
- Litigation
- Mediation
- Jurisdictional issues

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Tel: 206-624-4900 Fax: 206-386-7896

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**Strata Law Group, PLLC**

is proud to announce

**Adrienne Stuart**

has joined our firm as associate attorney.

Adrienne will join Alexis Squier, Alexandra Moore-Wulsin, and Shannon Ellmers in our boutique firm serving family law clients as they navigate their relationships in transition.

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**Barker Martin, P.S.**

is pleased to announce that

**David F. Silver**

and

**Jim L. Guse**

have been promoted to Partners of the Firm.

David is lead General Counsel in the Seattle office. His practice focuses on advising condominium and homeowner associations regarding all aspects of community association governance.

Jim is leader of the firm’s Insurance Coverage practice group and provides counsel on first party insurance coverage and bad faith actions. In addition to insurance, he is experienced in construction defect and business matters.

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Discipline and Other Regulatory Notices

These notices of imposition of disciplinary sanctions and actions are published pursuant to Rule 3.5(c) of the Washington Supreme Court Rules for Enforcement of Lawyer Conduct. Active links to directory listings, RPC definitions, and documents related to the disciplinary matter can be found by viewing the online version of NWLawyer at http://nwlawyer.wsba.org or by looking up the respondent in the 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.

Resigned in Lieu of Discipline

Brian K. Hammer (WSBA No. 7642, admitted 1977), of Everett, resigned in lieu of discipline, effective 6/21/2016. The lawyer agrees that he is aware of the alleged misconduct in disciplinary counsel’s Statement of Alleged Misconduct and rather than defend against the allegations, he wishes to permanently resign from membership in the Association. The Statement of Alleged Misconduct reflects the following violations of the Rules of Professional Conduct: 1.5 (Fees), 1.15A (Safeguarding Property). Francesca D’Angelo acted as disciplinary counsel. Pamela Marie Andrews represented Respondent. The online version of NWLawyer contains a link to the following document: Resignation of Brian K. Hammer (ELC 9.3(b)).

Suspended

Margaret Diamond Christopher (WSBA No. 24884, admitted 1995), of Seattle, was suspended for two years, effective 8/02/2016, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.3 (Diligence), 1.4 (Communication), 3.2 (Expediting Litigation). Nataliea Skvir acted as disciplinary counsel. Kurt M. Bulmer represented Respondent. Daniel A. Brown was the hearing officer. Evan L. Schwab was the settlement hearing officer. The online version of NWLawyer contains links to the following documents: Order Approving Stipulation; Stipulation to Suspension; and Washington Supreme Court Order.

Reprimanded

Peter Thomas Connick (WSBA No. 12560, admitted 1982), of Seattle, was reprimanded, effective 6/14/2016, by order of the Chief Hearing Officer. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.9 (Duties to Former Clients). Francesca D’Angelo acted as disciplinary counsel. Seth Alan Rosenberg represented Respondent. The online version of NWLawyer contains links to the following documents: Order Approving Stipulation; Stipulation to Reprimand; and Notice of Reprimand.

Suspended

Matthew O’Conner (WSBA No. 27061, admitted 1997), of Seattle, was suspended for six months, effective 7/19/2016, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.5 (Fees), 1.15A (Safeguarding Property), 1.16 (Declining or Terminating Representation). Erica Temple acted as disciplinary counsel. Matthew O’Conner represented himself. Evan L. Schwab was the hearing officer. The online version of NWLawyer contains links to the following documents: Hearing Officer’s Decision; Disciplinary Board Order Declining Sua Sponte Review; and Washington Supreme Court Order.

Suspended

Theodore F. Sumner (WSBA No. 36441, admitted 2005), of Portland, OR, was suspended for three years, effective 7/15/2016, by order of the Washington Supreme Court imposing reciprocal discipline in accordance with an order of the Supreme Court of the State of Oregon. For more information, see https://www.osbar.org/publications/bulletin/16febrmar/discipline.html. Joanne S. Abelson acted as disciplinary counsel. Theodore F. Sumner represented himself. The online version of NWLawyer contains a link to the following document: The Washington Supreme Court Order.

Reprimanded

Kevin L. Gibbs (WSBA No. 23990, admitted 1994), of Bothell, was reprimanded, effective 6/21/2016, by order of the Chief Hearing Officer. The lawyer’s conduct violated the following Rules of Professional Conduct: 4.2 (Communication With Person Represented by Counsel). Benjamin J. Attanasio acted as disciplinary counsel. Kevin L. Gibbs represented himself. The online version of NWLawyer contains links to the following documents: Order Approving Stipulation; Stipulation to Reprimand; and Notice of Reprimand.

Interim Suspension

Todd V. Harms (WSBA No. 31104, admitted 2001), of Richland, is suspended from the practice of law in the State of Washington pending the outcome of disciplinary proceedings, effective 7/08/2016, by order of the Washington Supreme Court. This is not a disciplinary sanction.
To place a print classified ad:

RATES, DEADLINE, AND PAYMENT: WSBA members: $50/first 50 words; $1 each additional word. Non-members: $60/first 50 words; $1 each additional word. Email text to classifieds@wsba.org by the first day of each month for the following issue (e.g., Jan. 1 for the Feb. issue.) Advance payment required. For payment information, see http://bit.ly/NWLawyerAds. These rates are for advertising in NWLawyer only. For questions, email classifieds@wsba.org.

Errors may occur. NWLawyer reserves the right to reject or edit any advertisement. The WSBA is not responsible for the continued publication of classified ads after expiration of the deadline for that issue.

Classifieds

Positions available ads are online.

Job seekers and job posters, positions available ads can be found online at the WSBA Career Center. To view these ads or to place a position available ad, go to http://jobs.wsba.org.

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Effective brief writer with 20-plus years’ state and federal litigation experience available as contract lawyer. Summary judgments, basic pleadings, motions to compel, trial briefs, appeals, research memos, discovery drafting. Excellent references. Superb Avvo rating. Lynne Wilson; 206-328-0224 and LynneeWilsonAtty@gmail.com.

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Contract attorney, experienced in research and writing, drafts trial and appellate briefs, motions and research memos. Summary judgment motions and responses, interrogatories, trial briefs, editing, and cite-checking. Prompt turn-around times, excellent references. Elizabeth Dash Bottman, WSBA #11791, 206-526-5777, ebottman@gmail.com.

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Wills

Will Search: Searching for the Last Will of Glenn Edward Martin. Please contact Dar Grewe, Gore & Grewe, P.S., 103 E. Indiana Avenue, Suite A, Spokane, WA 99207 or 509-326-7500.
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WASHINGTON STATE BAR ASSOCIATION
CLE Calendar

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

**ANTITRUST/CONSUMER PROTECTION**

**Annual Antitrust, Consumer Protection & Unfair Business Practices Seminar**
Nov. 2, Seattle and webcast. Presented by the WSBA in partnership with the WSBA Antitrust, Consumer Protection and Unfair Business Practices Section; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

**APPELLATE**

**Appellate Practice – The Deskbook Edition**
Nov. 30, Seattle and webcast. CLE credits pending. Presented by the WSBA; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

**BUSINESS**

**Create Your Business Plan Workshop**

**CONSTRUCTION LAW**

**Construction Law**
Nov. 4, Vancouver, WA. CLE credits pending. Presented by the WSBA in partnership with the Oregon State Bar; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

**CREDITOR/DEBTOR**

**Liens: What You Need to Know Today**
Dec. 9, Seattle and webcast. CLE credits pending. Presented by the WSBA in partnership with the WSBA Creditor Debtor Rights Section; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

**ENVIRONMENTAL LAW**

**Bridging the North-South Divide in International Environmental Law: The Problem of Climate Control**
Oct. 4, Seattle. 1.5 Law & Legal Procedure credits. Presented by the WSBA in partnership with the WSBA World Peace Through Law Section; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

**ESTATE PLANNING**

**Annual Fall Probate and Trust Seminar**
Dec. 6, Seattle and webcast. CLE credits pending. Presented by the WSBA in partnership with the WSBA Real Property, Probate & Trust Section; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

**ETHICS**

**CLEthics for In-House Counsel**
Oct. 28, Seattle & webcast. 3 Ethics credits. Presented by the WSBA in partnership with the WSBA Corporate Counsel Section; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

**Ethical Dilemmas for the Practicing Lawyer**
Nov. 10, Seattle and webcast. 4 Ethics credits. Presented by the WSBA; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

**The 14th Annual Law of Lawyering Conference (Day 1)**
Dec. 7, Seattle and webcast. 6 Ethics credits. Presented by the WSBA; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

**The 14th Annual Law of Lawyering Conference (Day 2)**
Dec. 8, Seattle and webcast. 6 Ethics credits. Presented by the WSBA; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

**FAMILY LAW**

**Annual Family Law Seminar**
Dec. 14, Seattle and webcast. CLE credits pending. Presented by the WSBA in partnership with the WSBA Family Law Section; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

**GENERAL PRACTICE**

**21st Century Legal Research**
Oct. 7, Seattle and webcast. 3.75 Law & Legal Procedure credits. Presented by the WSBA; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

**Best of CLE (Day 1)**

**Best of CLE (Day 2)**
Dec. 29, webcast moderated replay. CLE credits pending. Presented by the WSBA; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

**LABOR & EMPLOYMENT LAW**

**18th Annual Labor and Employment Law Conference**
Nov. 18, Seattle and webcast. CLE credits pending. Presented by the WSBA in partnership with the WSBA Labor and Employment Law Section; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

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October Legal Lunchbox: Public Service/Pro Bono  
Oct. 25, webcast. 1.5 CLE credits. Presented by the WSBA; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

Nov. Legal Lunchbox: Law and Soccer Practice — Strategies to Balance Work and Family Life  
Nov. 29, webcast. 1.5 CLE credits. Presented by the WSBA; 800-945-WSBA or 206-443-WSBA.

Dec. Legal Lunchbox  
Free recorded seminar available for download during the month of December starting Dec.1. 1.5 CLE credits. Presented by WSBA; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

MARKETING LAW

Advertising and Marketing Law for the 21st Century  
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TAX

Annual Taxation Section  
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Mike has served as an expert witness on disputed fee issues on over 50 occasions, of which he presented live court testimony and formal opinions on issues of disputed lawyer’s fees in over 40 cases.


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michaelc@michaercaryl.com

CRIMINAL APPEALS

(See, e.g., reversed and remanded for new trial):  
State v. Sutherby, 165 Wn.2d 870 (2009)  
State v. Stein, 144 Wn.2d 236 (2001)  
State v. Stegall, 124 Wn.2d 719 (1994)

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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.

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Before law school, I worked as a whitewater rafting guide in Colorado. In my practice, I work on improving my writing skills every day. My career has surprised me by presenting new challenges all the time, so I am never bored. If I could have tried one famous case, it would be TVA v. Hill. Technology has changed the practice of law by giving me flexibility in where I work, and also reduced the amount of paper I have to lug around. During my free time, I cycle, backpack, and garden. The most memorable trip I ever took was backpacking through the Maroon Bells in Colorado. It was four days of epic climbs and amazing views. I absolutely can’t live without basketball. I became a huge Trail Blazers fan in law school. I have recently tried or want to try fly fishing. There are too many beautiful streams in Eastern Washington and Northern Idaho not to get out there. My fitness routine is my morning bike commute. My favorite place in the Pacific Northwest is the Hood River Valley. I grew up in Arkansas. Nobody would ever suspect that I was quite literally raised in a barn. My parents brought me home from the hospital to a barn that had been partially converted to a home. I have the perfect excuse whenever I leave a door open. Friends would describe me as even-keeled. I give back to my community by serving on the Spokane Plan Commission. This is on my bucket list: hike the Pacific Crest Trail. An item I will never throw out is my grandma’s 1969 Gibson guitar. My dream trip would be to New Zealand. I would like to meet Teddy Roosevelt, because no one had a more boisterous spirit than him! My first car was a 1991 Dodge Shadow convertible. My all-time favorite movie or TV show is Arrested Development. If I have learned one thing in life, it is that there is a lot I don’t know.

My name is JAKE BROOKS and I work at Bricklin & Newman, LLP, in our Spokane office. I practice environmental and land use law. After graduating from Lewis and Clark Law School in Portland, Oregon, my fiancée and I moved to Spokane, where we live with our happy dog and grouchy cat. I can be reached at brooks@bnd-law.com or 206-264-8600.

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