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ON THE COVER: Proceeds from the sale of these clay birds are donated to charity by Port Townsend’s social purpose corporation Daily Bird Pottery.
Submission Guidelines

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

Thank you very much for your frank, open, and educational article about your addiction. All of us on the bench (35 years for me) have to deal with persons who have become addicted to methamphetamine through experiences such as yours. However, in passing judgment on these persons, it is important for all judges to really understand how quickly the addiction can be in place and the physical and life consequences that result from such an addiction. While I have read and heard about meth addiction through the years, your article, with its obvious truth and frankness, is the most educational source I have had. For that, I thank you and wish you continued success.

Hon. Justin L. Quackenbush, Spokane

Thank you for your courage in telling your amazing story in the June NWLawyer. I just finished reading it and was truly blown away by your honesty and candor. I cannot imagine how much your compelling profile will impact those struggling with addiction, or other significant challenges. I admire all you have overcome to return to the practice of law, and I am proud that you are a member of the Washington bar.

Lucy Helm, Seattle

I just read your article in the June NWLawyer. One word — powerful. Thank you for your courage to share. As a family law attorney, I see addictions destroy otherwise “normal” folks on a daily basis and have consoled many clients who lose their life partners to the love of the high. Your article will be something I share with both the addicts and the left-behind spouse as hope that there is recovery available. Your choice to be open about your struggles has meaning beyond words on a page. As a mom of two teenage boys, this article is heading home for them to read as it gives my statement “drugs can hook you on the first try” some street cred. I see this article for the beauty of its truth from beginning to end. Well done.

Sabrina Layman, Everett

I am a volunteer worker at the sign-up table of a community supper in Federal Way, so I come into contact with a lot of folks whose lives are touched by meth. My practice as an adoption attorney also puts me in contact with birth parents for whom meth is an issue. I have wanted to know more about meth and to better understand what it is like to be in its grip, so your article was a gift. Thank you for your courage in sharing and I wish you a wonderful future.

Michele Gentry Hinz, Auburn

Your article was very well-written and very well-versed. I read every word and clung to every detail with earnest and felt like I was traveling with you through your journey. My world, both personally and professionally, is completely remote and distant from drug use and drug addiction. I have, however, represented countless individuals over the last 15 years charged with possession, delivery, and manufacture of controlled substances. I can now better sympathize with their plights, their struggles, their addictions, and their battles to overcome methamphetamine use. For that, I thank you for making me a better lawyer and a better person. I appreciate you taking the time to share your journey with the rest of us. You are a pillar in our legal community and have every reason to hold your head high. I am grateful the WSBA gave you a second chance to be a lawyer in our bar association.

Erik M. Kupka, Aberdeen

After reading about your life over the last 15 years, I must tell you how inspirational and courageous I feel you are to bare your soul and your story for a bunch of judgmental lawyers! Congratulations to you and your continued commitment to this crazy profession, not to mention the unimaginable strength to recover from a drug addiction and come back to the scene of the crime! I think you are the type of lawyer this state needs and I am glad the WSBA made the right decision to reinstate you.

Barbara J. Black, Moses Lake

Wil Miller’s account of his struggle with meth addiction and recovery is a poignant and moving story. But much of his suffering was maliciously caused by the police state “War on Drugs.” A courthouse guard searching his tiny Altoids tin — the death knell for privacy rights. An ex-lover setting up an entrapment scheme with the police to expose him on KOMO 4 TV — the ultimate betrayal. SWAT teams at his door — bad news! Solitary confinement in a 9’ x 6’ foot cell with fluorescent lights on 24/7 — a form of torture. The real reason for Mr. Miller’s recovery was his own determination and the two saintly ladies on Capitol Hill who operated the B&B. They believed in him and gave him a job when he had nowhere else to turn. There were also friends and family along the way who provided moral support. The Drug War added nothing positive to this story, only suffering.

Tom Stahl, Ellensburg

Get published!

See your name in lights (well, in ink, anyway) in NWLawyer! For a How-To guide on writing an article for NWLawyer, email nwlawyer@wsba.org. If you have an article of interest to Washington lawyers or a topic in mind, we’d love to hear from you. Need a topic? We have a list of subjects we’d like to cover. NWLawyer relies almost entirely on the generous contribution of articles from WSBA members and others.
LUCKY 13

JDR Congratulates Judge Larry Jordan, Ret. for his 13 years of superior service. Here’s looking to many more.
What they don’t teach in school

Remember law school, where you borrowed $150,000 and hired an institution to cram data into your brain until it hurt? Or how about the bar exam, where you were expected to flawlessly retrieve that data to answer random questions for a couple of days at the Tacoma Dome bingo hall or wherever?

And remember how, a week after the exam, about 80 percent of that precious knowledge had escaped through your ears, never to be heard from or needed again? Or maybe that was just me. Nevertheless, I managed to maintain just enough legal knowledge to get a job at a law firm and start working. Notice I did not say “start practicing law.” Because I really can’t call what I was doing practicing law until I had been at it for at least a year. One of the most valuable things I learned after graduating from law school was how little I had learned in law school about actually practicing law.

At its July meeting (see OnBoard, p. 49), the WSBA Board of Governors approved a structured mentorship program through which experienced lawyers statewide will guide new colleagues through the maze of beginning practice. In other words, the Bar is committing to help teach new lawyers the kinds of things they didn’t learn in law school.

Likewise, here at NWLawyer, we also try to give you stuff they don’t teach in school. This month’s issue contains two excellent examples. In “Coming Back to Litigation: Reflections on Returning from the Parent Track” (p. 43), University Place solo practitioner Carol MacKinnon recounts the ups and downs of returning to law practice after a 20-year hiatus to raise her kids. In “What I’ve Learned” (p. 46), Poulsbo lawyer, former WSBA Board member, and longtime Bar News/NWL awyer contributor Jeff Tolman reflects on some things he’s learned about law and life in three-and-a-half decades of representing the legal interests of his fellow human beings.

MacKinnon’s piece thoughtfully contrasts her “once upon a time” early career with the realities of a current solo practice. She acknowledges it’s a mixed bag. Partly because of sheer growth in numbers, lawyers today are generally less well acquainted with one another and the bench, which can lead to less civility. On the other hand, technological changes such as electronic document handling, filing, and services make it possible for solo practitioners to do things they couldn’t have accomplished alone 20 years ago. Some changes, of course, cut both ways. For instance, the cell phone has liberated lawyers from their offices while also virtually putting them on call 24/7.

Even without having taken a hiatus, I’ve noticed the same kinds of changes over the past two decades. One observation of MacKinnon’s that particularly rang true to me was that despite the ever-present pressure of practicing law, many lawyers today are more willing to be honest and just be themselves with other lawyers and with clients. As she points out, 20 years ago a litigator may have been reluctant to admit that his or her temporary unavailability for scheduling a client appointment or court proceeding was because of a vacation or family emergency. We feared that being known to have a personal life might have appeared as a weakness. But I’ve found more and more lawyers in recent years are willing to forthrightly ask if, for example, we can schedule depositions a week later because he or she will be on vacation or has to care for a sick child or parent. Provided it doesn’t prejudice my client’s interests, I’m amenable to making such accommodations. With few exceptions, I’ve found other lawyers willing to do the same for me.

Over the years, I’ve made the transition from a medium-sized firm to a small firm to a solo. I have a small office and my paralegal works independently. I’ve worried whether my “image” with clients and opposing counsel would suffer. But honestly, I’ve seen little difference. If anything, clients appreciate my somewhat more casual approach to communicating with them. I can give them quick answers by email, phone, and sometimes even text messages without their having to make an appointment. Almost all the litigation work I do is against large firms in Seattle, 100 miles away. While they have more staff, they also have more clients and files to handle. I keep my caseload small and narrowly focused enough to keep on top of my cases and keep in touch with my clients despite having fewer resources.

Speaking of clients, in his piece Jeff Tolman shares some of the lessons about human nature — good, bad, and ugly — that he and other lawyers have such a wonderful opportunity to absorb. As he puts it, “Finally, I have learned that law can be one of the most personal, human ways anyone can spend a life.” He’s right. There’s no better place to discover human nature than in a lawyer’s office. They don’t teach that kind of thing in law school.

NWLawyer Editor Michael Heatherly practices in Bellingham. He can be reached at 360-312-5156 and nwlawyer@wsba.org. Read more of his work at nwsidebar.wsba.org.
An online event offering big ideas and real examples for retooling your practice

We all seek ways to thrive in our careers and better serve our clients. The WSBA presents “Mission Possible: Choose the Future of Your Practice,” an event highlighting the latest trends, tools, best practices, and practical tips for you to adapt and thrive in the changing legal profession. This unique online symposium will offer inspiration and real-world examples for retooling your practice, organized by three major themes:

- The New Legal Market & the New Practitioner
- Smart Marketing
- Emerging Business Models

October 1, 2014
Noon–4 p.m.

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#MissionPossibleLaw
I began this year by asking you what you need to succeed. And that indeed has been my journey; a journey across our state, into meetings of all types, with members of small, local, and minority bars, sections, committees, boards, judges, lawmakers, solo and small practitioners, big-firm attorneys, government lawyers, in-house counsel, and more. It has been a journey that allowed me to hear your concerns, your successes and your needs.

The passage of this year has made my vision more clear than ever that the future success of our profession, and the financial success of your firm, relies upon our ability to adapt to the changing economics of the legal market.

Change and Opportunity
It has been the focus of my work this year to highlight the dramatic economic shifts occurring, the need for meaningful change in every office, and to help create opportunities to push out new tools, technology, and services you need to find success today and to thrive tomorrow.

This has been no small task, to be sure, but that’s why we developed a three-year strategic plan focusing on the changing profession and why I asked the BOG to create the Future of the Profession Workgroup.

As a result, this year you have seen advanced CLE programming, more practical articles in the WSBA blog NWSidebar, expansion of NWLawyer, and dedicated editions on topics like technology and mindfulness. LOMAP (Law Office Management Program) and LAP (Lawyer Assistance Program) have been expanded to offer you better access and more information and services to improve your life and your business. We gave you more benefits to help you live better and happier, more tools for legal research, and free lunchtime CLEs.

We were able to do this because our WSBA staff, today more than ever, is comprised of experts in education, communication, marketing, management, human relations, ethics, professionalism, accounting, and more. They, along with our army of lawyer volunteers, have worked tirelessly this year on all fronts to develop and deliver programs and services that provide management, communication, business, and technology tools you need to succeed in this new market.

Future of the Profession
The Future of the Profession Workgroup has also been an important voice for change. I have had the honor to lead this diverse team comprised of small-firm practitioners, startup owners, business consultants, tech experts, CLE designers/educators, and legal service providers, as well as members from the access to justice community, Pro Bono and Legal Aid Committee, Low Bono Section, the WSBA executive management team, and others.

Together we identified the top critical issues facing the future of the profession and have produced a final report which introduces and develops each critical issue before us and provides online resources. Only if we see and understand our hurdles can we face them and overcome them successfully. The future is a tricky place to navigate, but at least it won’t be full of surprises thanks to this workgroup.

In addition, the Workgroup and WSBA staff leveraged these top critical issues facing the future of the profession into a symposium designed to provide concrete instruction, tools, and practical applications to help you meet the challenges of the new economy today and tomorrow.

Mission Possible
The symposium, entitled “Mission Possible: Choose the Future of Your Practice,” will be the first of its kind in this state. We have utilized fresh tech-
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On the Right Track

I am proud to report that we are now on the right track, and that as a result, our Washington State Bar is recognized as one of the most innovative leaders in the country.

The opportunity we have embraced and the type of advances we have made in our Bar in just a year, have made my presidency a dream job. I cannot really convey how lucky I feel to have served during this pivotal time in our history. I thank you for your trust in me and for supporting my vision for the future. I thank so many of you for your kind emails, innovative ideas, and for sharing your needs with me. It has been a pleasure traveling the state, hearing your voice, and learning your story. I am a better leader, and a more humble one, having had this opportunity to stand with you.

So with this last word as your president, I bow in thanks. Namaste. NWL

WSBA President PATRICK A. PALACE is a workers compensation practitioner in Tacoma. He can be reached atpatrick@palacelaw.com or 253-627-3883. Follow him on Twitter: @palacelaw.
We’re Still Listening

Listening Tour III visits the Olympic Peninsula, Island County, and the San Juan Islands

The third annual WSBA Listening Tour this past June found President Palace and I traipsing through the upper portions of the Olympic Peninsula and up into the San Juan Islands. The route commenced with lunch in Montesano followed by an evening reception in Bremerton; that night we drove on to Port Angeles to spend the night and enjoyed a wonderful breakfast conversation the next morning. From Port Angeles it was onto Coupeville on Whidbey Island for lunch, on up to Mount Vernon for an evening reception, then out to the San Juans where we culminated the trip with lunch in Friday Harbor on San Juan Island. A special thank you to WSBA Legal Community Outreach Specialist Sue Strachan, who worked with Bar leadership in all of these communities to plan these great get-togethers and our vigorous schedule!

The turnout was great all along the way—thank you to all of you who took the time to come out and share your ideas with President Palace and me! The groups we met with ranged from 8 people to a high of 20. The groups were wide-ranging in interests and backgrounds, and I believe what struck us most was the generational strata we found in almost every community. As we’ve been writing about and discussing for the past several years, the Baby Boomers are starting to transition out of the practice and we expect to lose more than 50 per-

1. Lunch with Island County Bar members in Coupeville. 2. Lunch with San Juan County Bar members in Friday Harbor. 3. Members of the Skagit County Bar share their concerns in Mount Vernon. 4. President Patrick Palace hangs on tight to the Deception Pass Bridge connecting Whidbey and Fidalgo islands. 5. Sign along the way. 6. The 1914 Clallam County Courthouse in Port Angeles. 7. Members of the Kitsap County Bar chat with President Palace in Bremerton. 8. Members of the Grays Harbor County Bar discuss the issues in Montesano. 9. Executive Director Paula Littlewood, President Palace, and WSBA Legal Community Outreach Specialist Sue Strachan pose in front of public art in Bremerton.
percent of our current members in the next 10–15 years. As we greeted each group, Patrick and I both noticed how few young attorneys seemed to be living in these rural areas and we realized, more than ever, the importance of the Practice Transition Opportunities program we launched two years ago, where people looking to transition out of practice can connect with those transitioning in or those looking for a mid-career shift. Please visit http://bit.ly/VDQ29n for more information on this exciting and important program!

Regardless of the community, we heard the same themes over and over: Casemaker, the Legal Lunchbox Series, the Ethics Line, the Law Office Management Assistance Program, and generally the webcasting of many WSBA CLEs were cited as great services that members appreciated and enjoyed at every stop we made.

We heard a consistent negative feeling about taking the Discipline Notices out of the back of NWLawyer. We explained again that the drafting of the notices took the equivalent of two staff because all copy had to be approved by the respondent or their counsel (if represented) before the WSBA could publish it. The notices were staff intensive in the development of a summary of each case that was acceptable to all parties and our resources are limited. After explaining the process for producing the summaries, most understood why the WSBA had made this difficult decision. That being said, we know that the educational component of the old notices was important, so the Committee on Professional Ethics will be starting a column that will appear in the magazine to complement the discipline notices. Using fictional information as the basis for cases, the columns will highlight common themes from discipline cases that will serve as useful reminders to all of us.

And finally, there was mixed reaction to the name change and format of Bar News to NWLawyer. For the most part, you liked the change and thought the magazine had improved drastically but many still wished for the old Bar News. Patrick also spoke at each stop about the need to increase the license fee in 2016. Universally at every stop, the members said they were willing to pay an increased fee and many of you expressed your understanding of why it was necessary for the Board of Governors to do so.

After three years, I think the presidents and I have covered the whole state! What an amazing state, what an amazing group of members we have. Thank you to all of you who have taken the time to come out over the past three years (sometimes twice!) in order to share your ideas and listen to ours. Next year’s president and I are still discussing the itinerary for the fourth annual WSBA Listening Tour — if you have ideas on where we should go next year, please let me know! NWL

Paula Littlewood is the WSBA executive director and can be reached at paulal@wsba.org.
The Board of Governors took up the draft Fiscal Year (FY) 2015 budget and proposal to set 2016–17 license fees for initial consideration in July. In its review of the budget and a proposed license fee increase, the Board focused on resources necessary to provide regulatory and other services at reasonable value to our 36,000 members. The table below lists some of the Bar’s key programs and services.

<table>
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<tr>
<th>License Fees</th>
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| As reported in prior columns, license fees are the Bar’s primary source of funding for programs, services, and operations. The 2012 referendum dropped fees from $450 to $325 without regard to the actual cost of providing these functions to members. Although license fees historically covered 75 percent of this work, they covered only 64 percent in FY2014. Through increased operational efficiencies, reductions, and prudent use of diminishing reserves, we have been able to hold license fees at this level for three years, through 2015.
| In order to continue to support our obligations to the public, to you, and to the profession, the Board has concluded that license fees will need to increase beginning in 2016. The Board reviewed a proposed license fee of $385 for 2016 and 2017 at its July meeting, which is equivalent to WSBA license fees in 2005–06. The FY2015 budget and proposed license fees for 2016 and 2017 will be presented to the Board for approval on September 18. We will keep you informed of our deliberations. NWL |

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<tr>
<th>DISCIPLINE AND DISCIPLINARY SYSTEMS</th>
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<td>In 2013, the Bar processed 8,503 Consumer Affairs inquiries; reviewed 2,228 written grievances; dismissed 1,839 grievances; concluded disciplinary proceedings with 94 actions imposed (32 disbarments, 30 suspensions, 26 reprimands, and 6 admonitions); concluded 10 disability matters with transfers to disability inactive status; and diverted from discipline 30 less serious grievances.</td>
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MEMBER SERVICES AND PROFESSIONAL DEVELOPMENT

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<tr>
<th>CONFIDENTIAL ETHICS LINE</th>
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<tr>
<td>Members may obtain free help from our confidential Ethics Line to analyze ethical issues and make decisions consistent with the Rules of Professional Conduct.</td>
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<th>LEGAL LUNCHBOX SERIES</th>
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<td>Members may fulfill their MCLE requirements at no cost by attending this monthly, free 1.5-credit webcast CLE held the third Tuesday of each month.</td>
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<th>NEW LAWYER EDUCATION</th>
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<td>New and young lawyers may attend skill-building seminars at reduced rates.</td>
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<th>LAW OFFICE MANAGEMENT ASSISTANCE PROGRAM</th>
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<tr>
<td>Members may obtain phone, online, and in-person consultations and referrals to resources on technology, marketing, financial management, practice transition, and other areas to help achieve and maintain a successful practice.</td>
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<th>CASEMAKER</th>
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<td>Members have free access to a powerful legal research tool.</td>
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<th>WSBA CONNECTS</th>
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<tr>
<td>Members have 24/7 access to a confidential, statewide wellness benefit that helps address issues related to mental health and addiction concerns, career management, family, caregiving, daily living, health and well-being, and more.</td>
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<tr>
<th>WSBA PUBLIC SERVICE PROGRAMS</th>
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<td>Members may earn CLE credit while giving back to their community through the Call to Duty program, which helps address the legal needs of veterans and their families; and through the Moderate Means Program, through which lawyers provide legal assistance at a reduced fee to clients whose income is within 200 to 400 percent of the Federal Poverty Level.</td>
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<th>HARDSHIP OPTION AND PAYMENT PLAN</th>
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<td>This option is available to support members with financial challenges in paying their license fees.</td>
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<tr>
<th>PAPERLESS LICENSE RENEWAL</th>
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<tr>
<td>As part of our organization-wide effort to go “paperless,” WSBA is offering members the opportunity to opt out of receiving a paper license renewal packet in the mail and instead renew online.</td>
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1Discipline data is collected on a calendar-year basis.
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Judicial Diversity Matters

A Conversation with Justice Steven González

by Tsering Kheyap

On the eve of Justice Mary Yu’s swearing-in ceremony at the Temple of Justice, Justice Steven González spoke with me about his thoughts on her appointment and the importance of judicial diversity and shared some ideas for how to ensure our state has the most qualified judiciary.

After our interview, Justice González was kind enough to show me around the Temple of Justice. As an assistant attorney general, I had heard stories about how the Attorney General’s Offices used to be housed in the basement of the Temple and had watched the Court on TVW many times, but it was an entirely different and very special experience to be given a private tour by one of the Court’s newest members. What follows is a condensed and edited version of our interview.

Tsering Kheyap: Starting with a couple of general and seemingly simple questions may help guide our readership through our discussion today about judicial diversity. First, what is judicial diversity?

Justice González: There are a variety of definitions. For me, it’s a bench that represents more closely the people that it serves, the community in which the Court hears cases. There are all kinds of measures you want people from — from a variety of different law schools, different backgrounds, different religions, different undergraduate majors — because the studies show that a diverse
group is a better decision-making group. Particular studies —of juries, for example— show that heterogeneous juries do a better job by all measures than homogeneous juries do. I think the same can be said for judicial bodies who, at the appellate level, meet in groups, but even at the trial court level, where it’s just one judge per case. Those judges still meet as an administrative body and those meetings would benefit from diversity as well.

Why is judicial diversity important?

Not only is it important for diversity of thought and approach, but judges serve as role models as well. Justice isn’t just substance, it’s also appearance, and people will more likely put faith in and respect the outcomes — even if they don’t like those outcomes — if they feel that the bench more accurately reflects the community.

What would you say to those who might ask: “It’s 2014, we have an African-American president, and we will soon have a bi-racial openly gay woman on our state’s highest court. Why are we still talking about diversity?”

The progress, at least on this Court, that you are referencing, the two people of color, happened within the last two-and-a-half years. This is a very new thing. I look forward to the day when diversity on the Court isn’t remarkable. But unfortunately, it still is.

Diversity encourages different points of view. If a court is diverse, does diversity work against consensus building when arriving at decisions that the Court must make?

That’s an interesting question. In order to get anything done on this Court, you need five votes. So the only successful strategy is one that builds consensus and brings others to your view. Now it may be that, with different opinions, that process will take longer. But going back to my earlier point, I still believe the decisions themselves will be better. Diversity of thought and new ideas will come forward when you have different perspectives. And that will make the discussion we have a richer discussion and, I hope, result in better outcomes.

Can you share any examples of how having a diverse judiciary has made a difference in your courtroom, as a judge or as a practicing attorney?

Well, let me change your question a little bit and say a couple of things about why I think it’s so important. Aside from what we’ve already talked about, we need people to see anyone as potentially a judge or justice and not have a fixed idea of what a judge looks like.

We have heard a whole lot more in recent years about implicit bias and we know how that operates. And some anecdotal evidence of it is, when I was a prosecutor for the City of Seattle, a victim of a crime that I was handling the prosecution of would say to me, “Are you really the prosecutor? You don’t look like a prosecutor.” And frequently I was mistaken for, on a good day, the criminal defense lawyer. But more often than not, I was mistaken for the interpreter, or the defendant, or a victim, or a witness when I would arrive in court by people who didn’t know who I was. This means that we still have a long way to go in changing our perception of who is able to fill these roles.

By having diversity on the bench, every day that a diverse judge does a good job in his or her courtroom, we’re saying that we belong, we are part of society, we are also a part of the judicial class, the attorney class, and that’s important not just for people of color to see but for the rest of society to see as well. Little by little, we’ll change that perception, and get rid of the implicit bias that unfortunately persists. I’ve had the same thing said to me as a judge — that I don’t look like the judge, either. I think it’s changing over time, but it’s the same dynamic. Justice Yu will help with that, because people will come in and see her on the bench and see how well-prepared she is, how well-spoken she is, and how carefully she’ll write her opinions. And we’ll come to accept that as the norm.

As for how it might change the cases we accept for review, I think that is hard to measure. As I said before, we have to reach consensus of five before we even accept a case to hear. So it’s about our persuasive authority and building that consensus with a different viewpoint added. For the most part, sexual orientation, or race, or gender won’t make a big difference in the cases. Usually, it’s a legal argument, and we are all able to make those just the same. It may just be a difference in communication style or an additional facet we are interested in and want to discuss. But mostly, we are lawyers, we have been trained in the same way, and we approach the issues with the same dedication to the rule of law.

In an interview with Emily Bazelon for the New York Times, Justice Ginsburg was asked about the then-recent appointment of U.S. Supreme Court Justice Sonia Sotomayor. She said it felt great that she wouldn’t have to be the “lone woman” on the Court anymore. She also said that she felt being the lone woman on the Court was like being in law school in 1956, where she felt that every time she answered a question, she was answering for her entire sex. Do any of those feelings resonate with you as the lone person of color on the Court (until Judge Yu joins)?

At my first law firm, I was the first attorney of color who had been hired there. When I worked at the U.S. Attorney’s Office, I was the only Latino in the entire office. Until this month, I was the only person of color serving on the Court and the staff isn’t as diverse as it could be either. I know what she’s talking about, and how that feels, and sometimes that’s an internal issue, and no one else is thinking about it, but we are ourselves. But I do think that with more diverse voices, there’s more comfort for diverse voices, and people will
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see that Justice Yu and I don’t have the same opinions about everything and will disagree with each other. And I think that’s healthy. Just because we are two people of color does not mean we see the world the same way or we’ll vote the same way on any given case.

Speaking of our State Supreme Court’s newest member, what are your thoughts on Judge Mary Yu being the first Asian American, Latina, and openly gay member of the Court?

She’s a dear friend. I am thrilled to have her on the Court. We shared adjoining chambers for eight years together in King County Superior Court and would confer on cases back then, and I look forward to conferring with her again here. She is a person of tremendous intellect, work ethic, and integrity, and it’s only positive for the state of Washington to have her on our highest Court. She brings that background, plus the background of 14 years as a trial court judge, which I think is invaluable. All the cases we hear, for the most part, came up through the superior courts, and it’s good to have the practical sense of exactly how a case proceeds and what our decisions will look like when they are interpreted and applied by trial courts in the future. I also think she’s going to be a great role model. We get hundreds of school children through the Capitol and through the Supreme Court on tours every year. And I know how great she is with kids. I’m sure she is going to be involved in those tour groups and it can only serve to inspire them and to get them to see themselves sitting on the bench as she is.

Having been appointed to the Supreme Court and now having won a contested election, what are your thoughts on the judicial appointment and election processes?

Mostly, we prefer whatever system got us to where we are. I’ve both been elected and appointed. I think there could be a problem with either system, depending on how they’re implemented. Certainly, in my election, when there weren’t voters’ pamphlets mailed out, the public didn’t know [much about the candidates]; many of them didn’t know without doing more work and I’m convinced that many people didn’t do that extra research. That’s a problem for the quality of the election and the outcome. We want judges selected based on merit, not based on name, gender, party affiliation, or the perception of any of those things.

My view is that if we are going to continue to elect judges, we need to make sure that we are emphasizing civics education from an early age. That we provide, at a minimum, a voter’s pamphlet to every voter in the state, that we provide a forum for dissemination of information about judicial candidates in a meaningful way throughout the state. And, potentially, publicly finance judicial elections. I believe that the appointment process is probably better, but again, if we’re not going to move to that, then I would be in favor
of lengthening the terms that a judge serves. Right now, it’s four years for trial courts and six years for courts of appeal. I think moving toward longer terms would help alleviate the pressure that elections put on courts.

What are some things that surprised you about the process and why?

I think one of the most surprising parts of it was how political it can become and how much pressure there is to take positions on topics that may well come before the Court, which points out to me the need to redouble our efforts in civics education to better explain the role of the courts and a judge in a system of government divided as ours is. So that surprised me a great deal. And then, how expensive it is to run a statewide campaign, which increases the potential for pressure, political pressure, and people feeling like they are owed something because they supported a candidate. I think that’s an unfortunate reality of elections, that you have to run a campaign, especially if there isn’t a voter’s pamphlet statewide and the candidate needs to explain to the public who he or she is. It takes that kind of outreach and running and that surprised me the most.

You won your election by a substantial margin, but in some areas of the state, your opponent, who didn’t even campaign, drew a surprisingly high number of votes. Associate Professor of Political Science at the University of Washington Matt Barreto conducted research that concluded this was in part due to racial bias. Assuming lack of voter information played another part, how can we inform the voters?

I think it’s going to get better every year. I believe that information is the ally of the qualified candidate and ignorance is the enemy of that candidate. Voters want to choose well; voters want good judges. I think it’s hard for them to know how to evaluate that, and often voters look for the familiar cues that they look for when voting in other races and partisan races. And there’s a need for a richer, more complex, more nuanced set of information for the voters to consider. The task is getting that information out there. I believe that I would have done better in the state had voters throughout the whole state had at a minimum a voter’s pamphlet. A pamphlet was only published in 4 counties; there are 39 counties. So that means 35 counties had voters with no information but a ballot with two names on it and voters had to go out and find that information on their own before voting. And I think that was unfortunate.

In addition to increasing civics education early on for folks and in addition to ensuring that our voters have the information they need to make an informed decision, is there anything else that can be done by the State Bar, affinity bar associations, and candidates to address these issues?

Lawyers have an important role to play in judicial elections. We all know that we’ve been asked by people who
aren't lawyers about judicial races in the past. I would encourage all lawyers to do their own research about the candidates and help inform others about how to properly select a judge and what qualities to look for.

I also think that lawyers can take part in what I've described as civics education by speaking at Law Day at elementary, middle, and high schools and at junior colleges — and by helping to register voters and being involved in judicial campaigns. And I don't mean by writing a check, although judges appreciate that because it helps run the campaign. I'm talking about being involved in encouraging diverse candidates to run, helping introduce them to other groups, providing opportunities for them to meet the public, and disseminating information through social media and other ways about judicial races and the importance of voting intelligently in those elections.

The Brennan Center for Justice published a report on improving judicial diversity in 2009. In its report, the Brennan Center found, among other things, that the homogeneity of the state courts it studied was produced by both judicial elections and nominations, so no matter how we choose our state judges, we need to do better at diversifying the bench. In its report, it set forth 10 best practices, mostly geared towards nominating commissions. They include:

- Grapple fully with implicit bias;
- Increase strategic recruitment;
- Be clear about the role of diversity in the nominating process in state statutes;
- Keep the application and interview process transparent;
- Train commissioners to be effective recruiters and nominators;
- Create diverse nominating commissions by statute;
- Maintain high standards and quality;
- Raise judicial salaries; and
- Improve record-keeping.

What are your thoughts on those recommendations as they might apply in our state?

I don't disagree with any of those recommendations. I would add that when we have a diverse appointing commission, that diversity should include non-lawyer community representatives as well, because it isn't just lawyers who should be choosing judges, and it's certainly not just lawyers who vote for them. And the more we're able to include non-attorney groups in the vetting and recommendation of judges, the easier it will be to disseminate information about them. Those very commission members will help spread the word about the candidates who've applied and the importance of voting.

I also mentioned public funding for judicial elections and I would add that — I don't think I heard that recommendation on the list. Of course, making voters' pamphlets mandatory, supporting the webpage that we have (votingforjudges.org) is a great first step, but giving that webpage higher visibility and more promotion would help a great deal. I've been impressed with the work that, for example, the League of Women Voters does in holding judicial forums and trying to educate the public about candidates without taking a position on which can didate is better, but simply helping provide the way to learn about candidates.

Is there anything else about increasing or improving judicial diversity that you would like to share with our readers?

I have a general comment about our law schools and legal education. I'm convinced that chasing rankings in U.S. News and World Report is not a way to improve the quality of the people we admit and graduate into the profession. We should be finding a measure that more accurately predicts the success and quality of advocacy that will be provided by the graduates in the future, including not just the amount of money that they'll make, but their ability to give back and contribute to society as attorneys. So finding those future leaders and making sure that we're admitting them from a variety of backgrounds is key, and I don't think...
the LSAT, for example, measures that potential.

And I don’t understand why we persist in using that as a measure except that it’s required for a ranking in U.S. News and World Report, and I would like law schools to band together and say they’ll no longer use this anachronistic approach to vetting potential candidates. I’d also like to see us much more involved in pipeline projects where the bar and the law schools are encouraging and recruiting promising candidates for application to law school. If we’re still going to use the LSAT, at least helping fund scholarships for LSAT preparation courses, so that people from impoverished backgrounds can be just as prepared for those tests as people from affluent backgrounds.

One last question I’m sure our readership will appreciate: Can you share a tip for practitioners appearing before the Court?

The most important thing to remember at oral argument is to know what you want to ask the Court to do, and to be able to articulate clearly, and when asked that question, not to give a long answer that doesn’t clearly state how you want the Court to rule and why. It’s also important to smile and to speak clearly in a loud voice. I know these things sound basic and a little bit simplistic, but you’d be surprised how often we have advocates come in who aren’t ready to answer that simple question.

Tsering Kheyap is an assistant attorney general in Olympia, where she represents a wide variety of state agencies, including the Secretary of State’s Office, the Department of Retirement Systems, and the Board for Volunteer Firefighters. She serves on the WSBA Committee for Diversity and can be reached at tseringk@atg.wa.gov or 360-664-2510.

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The social purpose corporation (SPC), a new type of for-profit corporation in Washington, turned two this year. The arrival of SPCs in Washington marked a growing national trend of social entrepreneurs who wish to run a profitable business but who also want to contribute to a greater social good. Traditional corporations have a long history of community involvement, but the statutes governing SPCs explicitly allow officers and directors to consider both profitability and social or environmental goals when making decisions. SPCs can be seen as “hybrid” corporations, falling between traditional and nonprofit corporations. At the time this article was written, there were 95 SPCs registered in Washington state. Some of the types of social purposes represented include cultural exchange, art, educational endeavors, farming, information sharing, and urban food. This article provides an overview of the SPC.

A number of other states have adopted the “benefit corporation,” another hybrid business model. A benefit corporation is for-profit, but must have a corporate purpose to create a material positive impact on society and/or the environment. Directors and officers must consider the effects of corporate action or inaction on employees of the corporation, its suppliers and customers, and the community or society. The WSBA Business Law Section’s Corporate Act Revision Committee (CARC) studied benefit corporations and ultimately proposed the SPC in SHB 2239. Governor Gregoire signed the legislation, codified at Chapter 23B.25 RCW, on March 30, 2012. The new RCW chapter is an amendment to the Washington Business Corporation Act.
Under RCW 23B.25.020, an SPC must have at least one general social purpose. An SPC must “promote positive short-term or long-term effects of, or minimize adverse short-term or long-term effects of, the corporation’s activities upon any or all of (1) the corporation’s employees, suppliers, or customers; (2) the local, state, national or world community; or (3) the environment.” An SPC may add additional specific social purposes for which it is organized. To form an SPC, the articles of incorporation must include the words “social purpose corporation” or “SPC”; a statement that the corporation is organized as an SPC governed by RCW Chapter 23B.25; a statement setting forth the corporation’s general social purpose(s) pursuant to RCW 23B.25.020; specific social purpose(s) if the corporation has designated those; and a provision stating the following: “The mission of this social purpose corporation is not necessarily compatible with and may be contrary to maximizing profits and earnings for shareholders, or maximizing shareholder value in any sale, merger, acquisition, or other similar actions of the corporation.” Under RCW 23B.25.040(2)(a), the Articles of Incorporation may contain more restrictive provisions, which can include “[a] provision requiring the corporation’s directors or officers to consider the impacts of any corporate action or proposed corporate action upon one or more of the social purposes of the corporation.”

A key difference between SPCs and traditional corporations is in the directors’ and officers’ discharge of the business judgment rule. SPC directors and officers owe the same duties as traditional corporate directors and officers, but unless the articles of incorporation provide otherwise, they “may consider and give weight to one or more of the social purposes of the corporation as the director [or officer] deems relevant.” If an SPC director or officer takes an action, or fails to take an action, based on a social purpose of the corporation, the director or officer will be deemed to have acted in the best interests of the corporation. The director or officer cannot be held liable for the action or inaction if the director or officer performed her duties in compliance with RCW 23B.25.050 (directors) or RCW 23B.25.060 (officers). This is true even if the action, or failure to take an action, by the director or officer has a negative effect on the SPC’s financial returns.

Only SPC shareholders may bring a suit in the right of a social corporation under RCW 23B.25.080. The person bringing suit must have been a shareholder when the transaction complained of occurred, or a person who became a shareholder through transfer by operation of law from one who was a shareholder at that time. An interesting aspect of this requirement is that it excludes an SPC’s non-shareholder beneficiaries from bringing a suit in the right of the SPC.

SPCs are required to provide an annual social purpose report to shareholders, in addition to reports required of traditional corporations. Under RCW 23B.25.150, the report must include narrative discussion about the social purpose(s), including the corporation’s efforts to promote the social purpose(s).
Perkins Coie partners Stewart Landefeld and Eric DeJong have co-authored Volume I of *Washington Business Entities: Law and Forms*, Second Edition. This indispensable treatise is packed with critical information on creating, maintaining and dissolving Washington State business entities, including corresponding forms.


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The narrative discussion may include the following, related to the corporation’s social purpose(s): short-term and long-term objectives of the corporation; material actions the corporation took during the fiscal year; identification of future material actions the corporation plans to take; and measures the corporation used during the fiscal year. A third-party standard measure of progress toward social purpose goals is not required by the statute, but can be written into the articles of incorporation. If the SPC elects to use a third-party standard for measurement, it must include its progress in its annual social purpose report. A superior court can order an SPC to issue a social purpose report to shareholders if the corporation has failed to do so for two consecutive fiscal years.

Nonprofit corporations and SPCs may have similar goals, but they have important differences. Unlike SPCs, nonprofit corporations do not have ownership interests and cannot distribute profits to members and officers. Nonprofit corporations are essentially held in trust for the public. They often obtain federal 501(c) (3) tax-exempt status, whereas SPCs pay tax. The officers and directors of a nonprofit corporation have to make decisions in line with the organization’s mission. SPC officers and directors can have discretion in their decision-making around the social purpose(s) of the corporation. A 501(c)(3) organization cannot promote or oppose candidates for public office and its lobbying activities are restricted. No such prohibitions apply to SPCs.

Peter J. Smith, a partner at Apex Law Group, devotes a large portion of his practice to advising social entrepreneurs, which often includes the option of incorporating an SPC. He says the most rewarding aspect of his work is “seeing people make that kind of commitment to the greater good,” even after discussing other legal structures for their businesses. Smith is encouraged about the longevity of SPCs, and says, “What we’ll really measure in five years is whether these companies are financially sustainable and what kind of impacts they’ve had on society.”

B Lab, a nonprofit organization, will certify socially or environmentally conscious corporations as “B Corporations,” giving them a “seal of approval” if they qualify under B Lab’s certification standards. B Lab promotes the benefit corporation model, but any type of corporation can attempt to obtain “B Corp” certification. B Lab describes its certification as being to “sustainable business what LEED certification is to green building or Fair Trade certification is to coffee.”

Daily Bird Pottery, in Port Townsend, recently incorporated as an SPC, with the help of attorney Lisa von Trotha. Phoebe and Darby Huffman create “naked pottery” pieces (meaning “you see and feel only the natural clay”). The Huffmans, along with their daughter, Xoe, run the family business, and saw the SPC form as a good fit for their business model. I visited their shop and Darby explained that choosing to be an SPC allowed them the “opportunity to be community-minded” and “inclusive to our employees.” Daily Bird Pottery is a “green” business, starting with the very process they use of not glazing the clay. As part of their commitment...
Darby also explained that forming an SPC allowed them to have a place in the corporate world while recognizing the importance of social and environmental goals in their work.

to environmental sustainability, they donate their extra slop clay back to cob builders,\textsuperscript{10} recycle, and use renewable electricity. Darby and Xoe described many community events in which Daily Bird Pottery participates through Port Townsend’s Main Street program (and others), as well as their commitment to education through support of Jefferson County school art programs and community workshops. Phoebe crafts a bird each day as part of her warming-up process, and they donate the proceeds of the birds’ sale to a different charity each month. They also craft mugs with logos for nonprofit organizations and donate a portion of the profits back to the nonprofits. Darby also explained that forming an SPC allowed them to have a place in the corporate world while recognizing the importance of social and environmental goals in their work.

Social purpose corporations are an exciting development in the law. They offer a wonderful opportunity for entrepreneurs who want to make a good living and give back to their community, the environment, or the world.\textsuperscript{10} NWL

\textsuperscript{10} A cob builder uses a mixture of clay, straw, and sand in construction.
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Over the last few decades, Washington laws have implemented public policy protecting individuals against financial exploitation. In 1999, the Legislature enacted a definition of “financial exploitation” in the Abuse of Vulnerable Adults Act to protect specified groups of vulnerable individuals. In 2009, financial abusers were included as another group of individuals who cannot receive property from an estate under the Slayer Statute. In addition to the more recent public policy of protecting financial interests, Washington laws and courts traditionally have held a decedent’s intent expressed in testamentary documents as the paramount consideration in resolving issues that arise in estate litigation. The Anti-Lapse Statute provides a presumption that a bequest to an individual who predeceases the testator does not lapse, unless a contrary intent is clearly expressed in the testamentary documents.

The Slayer Statute

In light of these policy considerations, Division I of the Washington Court of Appeals recently decided the issue of first impression of “whether the [Anti-Lapse Statute] is triggered when a beneficiary is found to be a financial abuser and deemed to predecease the testator under [the Slayer Statute].” Under the Slayer Statute, a person cannot acquire any property or receive any benefit as a result of a decedent’s death if the person is a slayer or financial abuser of the decedent. A financial abuser is a person who willfully and unlawfully financially exploits a vulnerable adult. The policy behind the Slayer Statute is that persons who commit wrongful acts cannot receive any type of benefit from their wrongful acts. If a testamentary document provides a bequest to a slayer or financial abuser, the slayer or financial abuser is deemed to have predeceased the decedent. Under common law, a bequest to a person who predeceases a testator lapses and is given no effect. The Anti-Lapse Statute was enacted to prevent bequests from lapsing in order to achieve a testator’s presumed intent and to protect the interests of heirs of a beneficiary who predeceases the testator.

In the Division I case, the decedent had four adult children. One of the sons made several large purchases with the decedent’s money and in 2006 prepared the decedent’s will. The specific bequests in the will left a ranch and an airplane to the son, other real property to two other children, and a cash bequest to the other child. However, the only real property the decedent owned at the time of his death in 2011 was the...
In the Division I case, the decedent had four adult children. One of the sons made several large purchases with the decedent’s money and in 2006 prepared the decedent’s will.
beneficiaries reflects the decedent’s intentions. The validity of the testamentary documents is another factor that can change the outcome of cases. Division I did not explicitly address the testamentary capacity or undue influence issues, which had been decided by the trial court. In this case, the trial court upheld the decedent’s will that his son drafted. If the decedent’s will had not been upheld, the result would have been very different, because the property would have passed under a prior valid will or by the laws of intestacy.

The Division I case has significance for both litigation and transactional attorneys. It underscores the importance of carefully and thoroughly drafting estate-planning documents to properly reflect the decedent’s intent. An estate planning attorney’s determination that a person has testamentary capacity is critical to upholding the validity of a will. Drafting testamentary documents to provide for the disposition of property based upon certain express contingencies will ensure that the testator’s intent is clearly known and will be adhered to in the disposition of the estate’s property. If a testator wants a bequest to be conditioned on the beneficiary’s survival of the testator, the use of words of survivorship can play an important role in expressing this intent. Even if estate litigation arises, well-drafted estate-planning documents can assist the court in readily ascertaining the intent of the decedent.

In light of Division I’s decision on this issue of first impression of the relationship between the Slayer Statute and the Anti-Lapse Statute, it will be interesting to see how Washington laws and policy protecting vulnerable individuals against financial exploitation develop further.

NOTES
2. RCW 74.34.
4. RCW 11.84.
5. RCW 11.12.110.
7. RCW 11.84.020.
8. RCW 11.84.010(1).
9. RCW 11.84.030.
11. RCW 11.96A.
12. The case included an issue about attorney’s fees under TEDRA, but that issue is not covered in this article.

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The trial took place at the federal courthouse in downtown Seattle several years ago. The D’Baha Indian Tribe was suing Intrepid Mining Corporation over Intrepid’s plans to expand its uranium mining operations on D’Baha reservation land in Arizona. Counsel for the plaintiff were two experienced litigators, one a partner at a mid-sized Seattle firm, the other an associate at a large Seattle firm. Enjoying Article III life tenure, at least for a half-day, was an associate from another Seattle firm, now a faculty member at the University of Washington School of Law.

Plaintiff’s counsel never disclosed their timesheets, nor did they seem concerned about whether their joint representation of a single client might run afoul of their firm’s conflict-of-interest policies. But a person with knowledge of their activities estimates that each attorney spent at least a half-day preparing the complex case and a half-day trying it.

And defense counsel? The three of them ranged in age from 16 to 18. They were not WSBA members. They were not law school graduates, nor college graduates, nor even high school graduates. Ditto with the witnesses. Several of them still had their learner’s permits. Except for the two “real lawyers” and His Honor, everyone involved in that trial was a high school student engaged in an intellectual combat sport — mock trial — and they were excited to be testing their skills against two professionals. Thorough searches of both Lexis and Westlaw have not disclosed whether the D’Baha tribe obtained the injunction that it sought. But everyone involved agrees that plaintiff’s counsel, defendant’s counsel, and the witnesses all came out as winners at the end of the trial.

To be sure, the D’Baha case was unusual because it pitted the WSBA members against the students. In a typical high school mock trial, students compete against students from other schools, as adults look on and critique. The students in D’Baha were preparing for the national competition in Phoenix that year and three attorneys contributed their time and talent to help the team get ready.

The High-Stakes Game of “Let’s Pretend”

So what motivates three busy litigators to give up well over a day of billable time to work up a case involving an imaginary tribe seeking to block uranium mining on an imaginary reservation? And what motivates high school students to research obsessively into uranium production, geology, Indian law, and the intricacies of equitable relief, just so they can wear suits in a downtown courtroom?

Photo: Franklin High School “attorney” Albert Fuji conducts the direct examination of Franklin “witness” Quinn Angelou-Lysaker at the state competition in Olympia, March 2014. Photo by YMCA Youth & Government.
To answer these questions, consider the following background. Nearly 3,000 high schools around the country have mock trial programs. Over 30,000 students every year compete in local and state competitions with the aim of getting to the national championship in May. For all those programs to thrive, about 9,000 attorneys and judges have to coach the teams, keep score, and preside over the trials. Coaching a high-level team or organizing a major competition takes hundreds of hours of work annually. In Washington state, about 50 schools have mock trial programs. They compete locally and statewide under the auspices of the YMCA Youth and Government program.

During the season, which can stretch from October until May, students practice several days a week, month after month, crafting examinations, developing witness characters, learning the rules of evidence, and debating nuances of ambiguity in affidavits. All that effort comes on top of heavy academic loads, other extracurricular activities, driver’s ed, prom dilemmas, and Snapchat time.

The adult attorneys who support mock trial do it for a lot of reasons, many of them obvious. They enjoy coaching students. Their children are on mock trial teams. They lament the lack of civics classes in many high schools. Or they did mock trial themselves a decade or two ago and want to give something back.

Mock Trials Make for Clearer Thinking

What is less obvious, but more interesting, is how many lawyers say that mock trial makes them better lawyers. Several attorneys interviewed for this article commented on how mock trial coaching helps them approach their own cases with analytical clarity.

Involvement with high school mock trial reminds litigators to “begin with the end in mind,” as the saying goes. “In terms of case strategy, mock trial really helps in defining what my end game is at trial and how that will shape my decisions at every aspect of the litigation from the outset,” says Megan Coluccio, a litigation associate at Sedgwick LLP’s Seattle office. Coluccio was a member of Seattle Prep’s 2004 state championship team and now serves as an attorney-coach there.

Ben Stafford also noted how mock trial reminds him of the ultimate goal in his own cases. Ben was a two-time state mock trial champion at Seattle’s Franklin High School in the 1990s and competed at nationals in Albuquerque and St. Louis. In real life, he practices labor and employment law as counsel at Perkins Coie and is an attorney-coach for his alma mater. (He also represented the fictitious D’Baha tribe a few years ago.) Asked to describe the impact of mock trial on him professionally, Stafford says, “Mock trial not only teaches one the fundamental analytical skills that the practice of law requires, it impresses forcefully the need to always bear in mind the end game — presentation of dueling narratives to a group of people who aren’t as deeply familiar with the facts as are you.” As he puts it, “The core of mock trial is the core of law” because both involve consolidating stray facts into a tight, persuasive narrative.

Similarly, Paul Brown, attorney-coach at King’s Schools in Shoreline and a shareholder at Karr Tuttle’s office in Seattle, said mock trial reminds him “to always keep the final presentation in mind when I’m working on a case.”

Legal Malpractice:
A Two-Tiered Chess Game

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- $1.25 million, underlying personal injury;
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Battle, comments on how mock trial coaching has made him more aware of the need “to master the power of simplicity” as he prepares his own cases in his real-life role as a civil litigator. “I have repeatedly utilized themes developed in the classroom for my own cases, recognizing that if the students can comprehend and understand the theme of my argument, so will a judge and jury,” he says. He also notes how mock trial has honed his own understanding of evidence: “Without a doubt, teaching students the nuances of evidence, particularly hearsay and admissibility issues, has transferred onto my own trial practice. Specifically, recognizing and actually making the appropriate objection has been keenly sharpened by teaching these skills.”

Explaining legal elements and rules of evidence to high school students sharpens an attorney’s own understanding of those concepts and builds confidence in the courtroom. David Ziff teaches law for a living and makes time to coach high school mock trials. His mock trial experience extends back to his college days on Brown University’s collegiate team. He is currently a lecturer and legal writing instructor at the University of Washington, and he practiced as a civil litigator in New York and Seattle. Commenting on the insights that he has gained from working with high school students, Ziff says, “High school students come to mock trial with a wide variety of skill and experience levels. When working with novice students, you are forced to examine and explain the foundational concepts of trial practice. By expressing and explaining what I generally leave to intuition, my work with high school students has made me a more consistent lawyer. The more experienced students are amazingly sophisticated. Their ideas are often creative; they are not weighed down by the millstone of doing something the same way for 10 or 20 years. Working through complex evidentiary or strategic problems with students can therefore provide fresh perspectives on oft-argued legal issues.”

Impact of Mock Trial on New Lawyers
Mock trial benefits attorneys at all stages of their careers. As mock trial continues to grow in popularity, statewide and nationally, more and more attorneys come into the profession with the confidence that comes from high school or college mock trial experience. In high school, Nick Crown was recognized as one of the best “mock-trial attorneys” in the country at the national competition in Dallas in 2007. In college, he was an All-American and helped found the University of Washington undergraduate mock trial program. Now a law student with a stellar academic record at the University of Virginia Law School, Crown says, “Mock trial taught me how to think.” It set him up for success in law school “because the exams are just mini mock trials. You get a set of rules, a fact pattern, and you’re tasked with thinking quickly to present the best arguments for each side. I learned how to do that from high school mock trial.”

Other attorneys not far out of law school credit high school mock trial with giving them a leg up in the profession. Coluccio says, “I think participating in mock trial gives me an invaluable sense...
Mock Trial Makes Students Better Citizens

On the receiving end of the talent and generosity of these professionals are the high school students that they work with. Students benefit from mock trial in all sorts of ways. They find their voices, literally and figuratively. They become members of a competitive interscholastic team. They experience the rewards that come from hard work towards a common goal. They also learn the painful life lessons that effort does not always equal results. They learn vast amounts about the justice system.

Over the course of four years of mock trial, students also become exposed to a myriad of substantive topics from the fertile minds of the case authors. A sampling of Washington state cases since 2009: dismissal of a teacher in an attempted shooting incident at a school; prosecution of an alleged eco-terrorist, based on the destruction of the University of Washington’s Urban Horticulture complex; prosecution of a police officer for unlawful use of deadly force; declaratory judgment suit against a life insurance company for denial of coverage arising out of the death of a bicycle messenger; prosecution of a sovereign citizen member for a conspiracy to blow up a Washington State ferry; and, this past spring, prosecution of a relative for rendering criminal assistance to a fugitive who was allegedly involved in insider trading and murder.

For INFORMATION about how to support high school mock trial in your area, contact the YMCA Youth & Government program in Olympia at 360-357-3475 or visit www.youthandgovernment.org.

In 2014, District Competitions took place in the following counties: Benton, Clark, King, Kitsap, Snohomish, Spokane, and Whatcom. Schools from other counties typically compete in the county closest to them. Based on the district results, these schools competed for the state championship at the Thurston County Courthouse in May 2014:

Archbishop Murphy H.S. (Everett) • Bellevue H.S. • Camas H.S. • Columbia H.S. (White Salmon) • Franklin H.S. (Seattle) • Garfield H.S. (Seattle) • Inernational Community School (Kirkland) • King’s H.S. (Seattle) • Meridian H.S. (Sellingham) • Mt. Spokane H.S. (Mead) • Port Townsend H.S. • Seattle Prep • The River Academy (Wenatchee) • Tri-Cities Prep (Pasco) • University Prep (Seattle)

From his unique perspective as the guiding force in Washington state mock trial for some 25 years and the author of many mock trial cases, Judge William Downing of King County Superior Court observes that mock trial teaches students empathy, which is far more important than trial techniques. “What I’ve always seen as unique about mock trials is the opportunity for students to climb inside issues and learn about the practice of empathy as well as law. The hot-button issues debated — domestic violence, police use of force, immigration reform, whistleblowing — are not examined at arm’s length but rather from inside. The law on these subjects daily impacts the lives of real people and the mock trial students stand in the very shoes of those people.”

Judge Downing also notes how the students benefit from their interactions with the legal professionals who donate their time so generously: “Invariably, the students have their views of the judiciary shaped by what they see embodied in those adult volunteers: a reverence for the concept of fairness and a genuine concern for all who find themselves — for whatever reason — inside a courtroom.” Coach Roger Brodniak, an attorney and teacher at Archbishop Murphy in Everett, remarks: “Through mock trial, young people have a valuable opportunity to be coached and critiqued by real-life attor-
neys and judges. This personal connection tears away the stereotypes they see on TV and in the movies, and helps the students appreciate the importance of respect and professionalism in the law.”

The impact of high school mock trial extends well beyond the synergistic connections between attorneys and students. Teachers see the benefits first-hand. “Mock trial is about articulation and cogent writing,” says King’s teacher-coach Marian Morris. “It teaches persuasion, not just with words, but with voice and action. These are life-long skills that serve students well. I love how English and history teachers can pick the mock trial students out of their classes because they can organize their thoughts and both write and participate in class discussions with clarity and a strong, logical point of view.”

Another teacher at a public school in King County notes the impact of mock trial participation on a broad range of students: “Gifted students love to take over their learning a) to solve the puzzles built into the hypothetical, and b) to measure themselves next to gifted students in other schools who are wrestling with the same puzzles. Struggling students — who, in some cases, are gifted but disaffected — also can thrive in mock trial because it is a family with its own rules, loyalties, responsibilities, and role models, and a deadline when they must be as excellent as they can manage. Everyone on the mock trial team can submerge his or her ego in the team and strive for the common good instead of against one another in classroom competition.”

Even at the middle school level, mock trials can be a powerful teaching tool. For several years, mock trials have been a centerpiece of the humanities curriculum at the Villa Academy in Seattle, thanks largely to the efforts of attorney Michael Guadagno of Seattle’s Nicoll Black & Feig firm. Guadagno says that mock trial develops habits of mind at an early age. “At Villa Academy, the students do two mock trials each year: one is a simple criminal trial laced with constitutional pitfalls; the other a historical piece trying President Andrew Jackson for crimes against humanity for his policy of Cherokee removal. I’ve noticed that our mock trial kids are not as quick to judge a defendant in a trial. They are more likely to see an ongoing trial as a genuine dispute between two parties rather than an automatic indictment of the accused. I’ve also seen this pause to quick judgment show up in other academic and social avenues among the mock trial kids.”

As for the students themselves, their testimonials about what they get out of mock trial could fill up an entire issue of NWLawyer. This comment, by Clarisse Lane of the River Academy in Wenatchee, expresses the view of thousands of competitors around the country. “Mock trial is a big part of my high school experience. I love that it teaches teamwork, diligence, logical thinking, and sportsmanship. Competing in mock trial gives me insight and experience on how the real world works. It has taught me how to debate with an opposing side, while remaining professional and courteous. To me, this civility is a big deal in the real world. Mock trial teaches us how to win and lose in a professional and respectful manner. By understanding how the justice system works, I have been inspired to eventually work in the justice field or a related area. Mock trial is not only a great high school extracurricular activity, but it is great for producing life skills.”

Andy McCarthy, shown here with his daughter Molly, is an active member of the WSBA and a teacher at Seattle Prep. He practiced law in San Francisco and Seattle before joining the Seattle Prep faculty in 1995. Seattle Prep won the National High School Mock Trial Championship in 2014. He thanks the many lawyers, teachers, and students, named and unnamed, who contributed quotations and ideas for this article. McCarthy can be reached at amccarthy@seaprep.org.
Washington is full of legal history — often in its most scenic spots. Your summer vacation destination may very well be the site of a contentious lawsuit, a historic battle, or a centuries-old settlement. How many of these legally historic places have you visited?

**Camano Island**

Less than 90 minutes north of Seattle, Camano Island is a quick getaway from the city that feels much further. The bucolic landscape and Puget Sound views are reminiscent of Orcas and San Juan islands — without the ferry ride. Visit Camano Island State Park and Cama Beach State Park, just a few miles down the road. Cabins and campsites are available at both parks, which also both provide beach access.

Camano Island’s most infamous native son is Colton Harris-Moore, the “Barefoot Bandit,” who led authorities on a two-year international manhunt that ended with his arrest in 2010. Harris-Moore, now 23, was charged with the thefts of a small aircraft, a boat, and two cars, and in the burglaries of at least 100 private residences throughout the Pacific Northwest and Canada. He fled to the Bahamas, where he was arrested and eventually returned to Washington. In 2011, he was sentenced in Island County Superior Court to more than seven years in prison for dozens of charges brought against him by three different counties.

**Lake Chelan**

A summer paradise for sun-seekers, Lake Chelan is a narrow, 55-mile lake in Chelan County tipped on its southeastern end by the City of Chelan, a resort town of 4,000. A popular tourist destination in the warmer months, Chelan is about three hours from both Spokane and Seattle. The nearby town of Stehekin, on the northern portion of the lake, is accessible only by ferry, floatplane, or on foot. The Lake Chelan Boat Co. has had the exclusive right to provide ferry service on Lake Chelan since 1929.

Jim and Cliff Courtney, two brothers seeking to establish a competing ferry service, filed a lawsuit in U.S. District Court in Spokane. They alleged that a Washington law violated the 14th Amendment, which, they argued, protected their right to use the navigable waters of the United States. Federal Judge Thomas Rice dismissed the case in April 2012. The 9th U.S. Circuit Court of Appeals upheld the decision in December 2013, holding that, even if the right to use navigable waters did exist, that right did not extend to operating a commercial ferry open to the public on a lake. The Courtney brothers are appealing the decision to the U.S. Supreme Court.

**Cal Anderson Park, Seattle**

Originally named Lincoln Park for the attached reservoir (built in response to the Great Seattle Fire of 1889), this sunny green space in Seattle’s Capitol Hill neighborhood was also known as Broadway Park before being designated Cal Anderson Park in 2003, after Washington’s first openly gay state legislator.

One of Anderson’s priorities was extending the state civil rights law to include gays and lesbians; he also fought for low-income housing and gun control legislation. Today, this popular urban park features a striking mountain-shaped water fountain feeding a shallow texture pool, a wading pool, a walking path, caged tennis courts, and basketball and dodgeball courts.

**Hanford**

Washington state was a World War II workhorse, and even the most superficial history buff can find key places where the efforts of Washingtonians helped bring about victory. One of those places is the Hanford Site, a nuclear production facility where, starting in 1943, men and women worked to produce weapons-grade plutonium for the U.S. atomic and nuclear arsenal. Today, the site requires environmental cleanup, but the curious and brave can schedule a visit and tour a fair amount of the grounds. The Tri-Cities are downstream from the site on the Columbia, at the bottom of the only remaining free-flowing part of the river, and have embraced the “atomic” aspect of their reputation.

The Washington Attorney General’s Office has historically played a major role in enforcing the Tri-Party Agreement (TPA), the detailed schedule for the U.S. Department of Energy to clean up the site. In 2008, in Washington v. Chu, Washington sued the federal government for missing TPA milestones. The suit was settled in 2010 with new milestones defined and amendments to the TPA. The site has remained a hotspot of controversy with failed storage tanks, sick workers, and looming deadlines.

**Mission Ridge Ski and Board Resort**

Every good-sized town or small city in Washington has a “local hill,” and Wenatchee has Mission Ridge, which also features some WWII history. On Sept. 30, 1944, while on a training mission from Walla Walla, the crew of a B-24 “Liberator” Bomber found themselves off course. In heavy fog...
and rain, they collided into the side of the mountain that would become Mission Ridge Ski area 22 years later. The entire crew perished in the crash. Today, the main chairlift at the ski area bears the name “Liberator” and just off the main run is a memorial displaying a piece of the plane’s wing.

Thrill-seeking skiers in the uphill avalanche-prone area of the resort should take heed: a 2011 law was enacted stating, “A person is guilty of a misdemeanor if the person knowingly skis in an area or on a ski trail, owned or controlled by a ski area operator, that is closed to the public and that has signs posted indicating the closure,” even if the enticing powder is found on public land.

**Chief Garry Park, Spokane**

Spokane hosts two of the nation’s largest public sports events: the Lilac Bloomsday Run (May) and Hoopfest (June) have opened the Inland Empire to hundreds of thousands of visitors for decades. If you’re in town, visit Chief Garry Park, featuring a monument dedicated to Chief Spokan Garry and the Spokane tribe.

Garry was educated at a missionary school in Canada, returning to become an influential leader and spokesman. Garry was known as a steadfast advocate of peace; he worked for decades trying to secure a Spokane tribal reservation on their native lands along the Spokane River, but he was unsuccessful in this goal and eventually died in poverty. Today, the park features a replica pictograph, a salmon sculpture, and interpretive signs about Garry’s life.

**Grand Coulee Dam**

Grand Coulee was built from 1933–38 (completed in 1942) as part of the huge government programs meant to get people back to work during the Great Depression. Today, it has achieved not only the goal of creating jobs, but also flood control, power generation, and irrigation. Seeing the huge dam itself is well worth the trip, and the drive either at the east or west is scenic and unique.

There have been countless legal issues with Grand Coulee at the center including water rights, issues surrounding the salmon migration (flow targets), and the level of Lake Roosevelt.

**Metaline Falls**

Metaline Falls has been recognized as one of the “100 Best Small Arts Towns in America” and is home to bluegrass/folk music, arts, and winter festivals.

But it also has a checkered past: The northeast corner of the state is the home of the criminal investigation of the 40-year-old unsolved murder of Town Marshall George Conff, as documented in *Breaking Blue*, historian Timothy Egan’s account of former Sheriff Tony Bamonte’s investigation of Depression-era institutional corruption and police cover-ups.

**Galloping Gertie, Tacoma**

Sometimes it’s the second largest city in Washington, sometimes it’s the third, but Tacoma is always the home of the Washington State Historical Society, the Chihuly Bridge of Glass, and their corresponding museums. Downtown Tacoma is within a decent hike/walk or short drive to many bridges, including the site of the former “Galloping Gertie,” a bridge built in 1940 that collapsed after only four months under the stress of a 42-mile-per-hour wind.

The ensuing legal battles over newly contructed bridges are a three-decade-long example of the evolution of pleading and toll-road issues in Washington.

**Whatcom Falls**

One of four sets of waterfalls inside Bellingham’s 241-acre Whatcom Falls Park, the picturesque 20-foot-high Whatcom Falls is located on Whatcom Creek, which leads from Lake Whatcom to Bellingham Bay.

It’s also the ancestral location of the Lummi Nation, and the salmon that the Lummi consider a sacred birthright—which has led to decades of legal battles over the wording of peace treaties granting exclusive fishing rights to the Lummi people. “Fish-in” protests were organized during the Fish Wars of the 1960s; Marlon Brando was arrested for participating in a 1964 fish-in, years before famously declining the 1972 Academy Award for Best Actor in protest of Hollywood’s depiction of Indians.

A case pitting the Lummi and other tribes against the sport and commercial fishing industries resulted in 1974’s *Boldt Decision*, awarding the tribes half of all catchable fish from Puget Sound. The decision has been challenged up to the U.S. Supreme Court, but continues to hold.

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The ink on her bar acceptance letter was barely dry when Tristin Sullivan-Leppa dove into her first experience doing pro bono, serving veterans, and providing family law assistance at the WSBA Call to Duty Day of Service. “Being a new member of the WSBA, it felt so awesome to be able to learn about an area of law and then be able to turn around and apply it to a real-life situation,” says Sullivan-Leppa. Only a few weeks after the Day of Service, Sullivan-Leppa accepted her first job as an attorney with the Washington State Division of Child Support. She shares, “I felt so much more confident walking in the first day knowing that I had a little experience in child support.”

Call to Duty Initiative
The WSBA Call to Duty informs, inspires, and involves volunteer attorneys in meeting the legal needs of veterans. The initiative has three main components: 1) an online pledge where volunteers agree to serve the legal needs of veterans in one or more ways this year; 2) free monthly Lunch and Learn webinars, where attorneys can log onto their computers over the lunch hour and hear about veterans’ issues, veteran-focused volunteer opportunities, and resources nationwide; and 3) two semi-annual Day of Service events, based on an innovative pro bono service model where the WSBA partners with a state volunteer lawyer program for a day-long event. As part of this model, volunteers attend free continuing legal education trainings on cultural competency and substantive law in the morning and put their education into action through legal consultation and pro se assistance in afternoon clinics that serve low- to moderate-income veterans and their families.

Day of Service
On a sunny Saturday after Memorial Day, 53 volunteer attorneys kicked off the initiative’s first Day of Service on the campus of Pacific Lutheran University in Tacoma. The WSBA partnered with the Tacoma Pierce County Bar Association’s Volunteer Lawyer Service Program (TPCBA VLSP) for the event. In its role as a partnering agency, TPCBA VLSP identified the venue, helped narrow down the discrete legal issue of focus for the clinic, recruited and screened clinic clients, helped staff the Day of Service, and coordinated post-clinic client follow up.

The morning of the Day of Service, Northwest Justice Project’s Veterans Project attorneys, Adam Chromy and Leo Flor, trained volunteers on how to work with veterans in culturally competent ways. Their sessions included sobering details, such as the fact that 22 veterans commit suicide each day or the fact that 20 percent of post-9/11 veterans are living with a traumatic brain injury.

After being briefed on some of the unique legal and non-law-related challenges faced by veterans, volunteers attended one of two educational tracks, on either parenting plans or child support, conducted by family law lawyers: solo practitioner Larry Couture and Sarah Richardson, division chief of the Family Support Unit at the Pierce County Prosecutor’s Office. At lunch, volunteers reviewed their notes, networked with other volunteers, and found their assigned partners for the afternoon clinics.

After lunch, these teams of partners served in clinics, applying what they learned in the morning by assisting veterans and families of veterans with their parenting plan residential schedules or child support worksheets. In total, volunteers worked on 24 parenting plan residential schedules and child support worksheets.

Lindy Laurence, paralegal and volunteer coordinator for TPCBA VLSP, helped staff the Day of Service. She describes her experience that day: “The legal clinic was inspiring. This was the first time a CLE has ever been paired with a legal clinic, and the feeling in that room was incredible. Hearing the hum of many voices advising clients, witnessing the relief on clients’ faces as they got answers and direction, and the sense of satisfaction the attorneys expressed at being able to address the client issues, was so energizing — simply fantastic!”

Laurence recognized the value of holding such an event. “One client shared that he’d called eight other places and we were the only one able to help him,” she explains. He told her appreciatively, “You even sound excited to do so!” After the Day of Service, TPCBA VLSP continued to assist Day of Service clients with long-term needs. Laurence went on to explain that “other clients have returned for additional services, and have expressed surprise at the breadth of services our program offers — we’ve helped clients from this event get access to bankruptcy advice, landlord–tenant advice, and helped some get a will in place. Other
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A New Pro Bono Model
With CLEs in cultural competence and substantive law, the provision of experienced mentors in the practice area of focus, the ability to work as a team of attorneys, and the identification of a discrete legal issue of focus, the Day of Service model offers a unique and potentially replicable service model that could be applied to pro bono work in other areas of the law.

Laurie Davenport, director of the TPCBA VLSP, notes, “I’ve never been involved with this model before and was surprised to learn that it could be so successful, particularly in an area like family law, which, no matter how narrowly we define our focus, is always complex and full of surprises. I think the immediate reinforcement of classroom teaching with real experience is probably the very best way for new volunteers, or volunteers learning a new area, to have a positive ‘jump off the diving board’ experience which will result in a desire to continue to volunteer . . . it is never a given that such a partnership will be productive and effective, but this one was a real success.”

Ongoing Community Benefits
Part of the ongoing success of the Day of Service has been an expanded pool of new volunteers to TPCBA VLSP, a greater understanding of the needs of veterans in the area, as well as more exposure to legal services available to veterans in the area.

Davenport observes: “We found in working to find clients for the Day of Service legal clinic — rather than waiting for them to come to us — that veterans face a number of significant and unique barriers to seeking legal representation. These include a lack of connection to the community, lack of information about available legal services within veterans’ service organizations, lack of trust, mental and physical health issues, and feeling that they should be able to either afford or handle things on their own. We all expected that when we began publicizing the Day of Service legal clinic, because of the high percentage of veterans in our community, we would be inundated by callers. Not so. It took time, consistent outreach and participation in local veterans’ organizations, getting to know people, learning how veterans get information they trust, for our program to begin getting consistent calls in proportion to the actual number we would expect to call based on percentage of the population.”

Reasons to Engage
Volunteer attorney and WSBA Foundation Trustee Kate Snow says about her experience at the Day of Service, “I would encourage attorneys — regardless of number of years of practice or practice area — to sign up for future service days. There is such a huge need for service members to be able to access legal services, and the Day of Service provides an opportunity for those services to be provided in an accessible manner.”

Vietnam War veteran Paul Burton also participated in the Day of Service. Burton served five-and-a-half years on active duty, including three tours in Vietnam, before going to law school. Throughout his legal career, he has served many veterans, finding that “serving veterans pro bono is both an honor and sacred obligation for fellow veterans.” Burton knows the barriers faced by veterans firsthand. “Veterans are often misrepresented in the media, stereotyped by self-serving interests, and discriminated against in employment.” Recalling his interaction with his clinic client, he remarks, “Listening empathetically is often the greater gift we provide to clients. The client was genuinely thankful for the legal assistance and the experience was very positive.”

Davenport also found herself drawn to this work based on her personal experience with veterans. She says, “I was starting college at the University of Washington during the Vietnam War era. We had a draft then, and our family, friends, boyfriends, etc., were being taken into the armed forces at a high rate — and the people I knew mostly went to war unwillingly, understanding what they were getting into. Vietnam was the first war that was right in front of us, reported on TV nightly so we saw what was really happening, and it was terrifying. We all knew people who were killed there, and for those who came back home, their lives were changed forever. When they returned, they were not treated like heroes, but instead faced tough hurdles such as denial of treatment by the VA for diseases caused by exposure to Agent Orange in Vietnam, etc. Being a Vietnam vet was a tough road. After 9/11, we had no draft, but we had war — another Vietnam very difficult to support. But this time, thousands of young men and women signed up with a passion to defend their country — and because they were so unprepared for what happened to them and what they saw, their lives have been devastated. We’re only beginning to learn the consequences of the Iraq and Afghanistan wars and I am just as frightened as I was in 1966. These people, from all our wars, need our help and I see so many ways in which we can be of service.”

The Day of Service also appealed to attorneys who were volunteering to serve veterans for the first time. Prior to the Day of Service, volunteer Ben Premack had never served veterans. He had, however, done pro bono service before. “When I first started my practice, I did not have many clients,” he says. “I started doing pro bono work. I Googled pro bono opportunities in the area and asked other attorneys what they did to serve.” Premack discovered the Day of Service through a WSBA email announcement.
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“I have a number of friends who are active or retired military. As an attorney, I have certain skills. I thought, why not use these skills to help?” Premak appreciated the Day of Service model. “My partner and I were both relatively new attorneys. Having a mentor there was an excellent resource.” The most impactful part of the day for him was the sense of fulfillment he experienced in helping a client with her parenting plan. “I sat down and helped work out a big issue with someone in their life so that they can move forward instead of being stuck. That feels good.”

While WA Assistant Attorney General Bruce Turcott has done pro bono work in the past on behalf of organizations, the Day of Service was the first time he participated in pro bono work on behalf of an individual or served veterans. Of these new experiences, he says, “I felt it was a good opportunity to volunteer services to veterans because I was aware there was an unmet need.” He continues, “I felt I was able to provide real assistance. I hope to see more Days of Service in the near future and have the opportunity to assist more veterans.”

Get Involved
The WSBA’s next Day of Service will take place in November to coincide with Veteran’s Day. Since February, 185 people have taken the WSBA Call to Duty Pledge. If you are interested in learning how you can serve veterans, take the pledge today. There have been five Lunch and Learn webinars between February and August. To view upcoming webinars and to view past webinars, as well as a link to the pledge, visit wsba.org/calltoduty.

Bina Hanchina-man Ellefsen served as the project lead for the Access to Justice Board and WSBA’s Public Service and Diversity programs. Prior to working at the WSBA, she represented immigrants and refugees as a staff attorney at Northwest Immigrant Rights Project. She can be reached at binahe@gmail.com.
Once upon a time . . . that is no longer a phrase I say almost daily. At first, I employed it only when reading aloud to my children. Then it crept into use in conversation with adults, particularly when someone asked about my employment status:

Once upon a time, I was a litigator; then I became a parent and found that, for me, litigation was incompatible with being the mom I wanted to be, so now I just do transactional work.

Time passed. More changed.

Once upon a time, I was a full-time attorney, but now I just practice law part-time. I’ve had to scale back because I underestimated how much time and attention my children would need from me as they grew older.

My clients were very supportive, granting me the freedom to juggle their work and the demands of daughters seven years apart. I remained close to the litigation world by providing ADR services in my subject matter fields. Mediation customers reported increased confidence in my abilities to solve their disputes because I was a parent of more than one child and therefore, constantly engaged in dispute resolution. With feedback like that, I became very comfortable concentrating on being the best mom I could be and continuing to serve my handful of long-standing clients. Somewhere along the way, I had become seduced by the “mommy track” and was content with the way things were. Once upon a time rolled off my tongue as a matter of second nature.

As more time passed, I saw things from new perspectives. Having distanced myself from working as a full-time litigator, I could better see litigation’s destructive aspects (as a process for resolving disputes, it is only slightly superior to a duel). Having become employed as a parent, I better appreciated that a prompt negotiated compromise yields greater client satisfaction than does a drawn-out battle. I developed an affinity for facilitative mediation because I enjoyed being engaged in a constructive process.

Fast forward to 2014: switching back to the litigation track. Of course, some things will be different (and some things won’t) from the way they were once upon a time. What do I most notice after a 20-year hiatus? In no particular order:

1. In the larger counties, local lawyers no longer know all the judges. As population grows, the number of judges required to serve it grows. Once upon a time, the local lawyers knew the judges, because there just weren’t so many of them. For example, King County has 52 judges (38 at Superior Court) plus 12 commissioners. The sheer size of the legal community does seem to have something to do with what lawyers describe as a “loss of collegiality.”

2. Litigators are now more likely to cross county lines (at least in counties with Puget Sound shorelines). Once upon a time, if you weren’t a member of the local bar, your motion got heard last unless you associated with local counsel. As court websites develop, judicial assistants and local forms are more readily accessible, making it easier to have a multi-county practice. Over the past few years, more than 50 percent of the attorneys appearing before me venture places I would never have thought to go without co-counsel to see that my working copies actually got to the judge in a timely fashion.

3. 24/7 availability of counsel. Thanks
to advances in technology, we do more things for ourselves; concomitantly, we tend to do them on our own time. Because we work evenings and weekends, we develop the expectation that others do so as well. While cellphones liberate an attorney from the traditional office, they tether the attorney to a longer business day. Once upon a time, people did not have their cellphone numbers on their business cards. As a parent, I’m used to being on call 24/7, so it feels natural to exchange cellphone numbers with other lawyers. Once upon a time, I had to just deal with the frustration of not being able to reach someone right away.

4. Efforts to achieve work/life balance are more openly discussed. Once upon a time, when playing hanky, I’d say, “I have a meeting” (as in “meeting” a ski slope or my kid). Nowadays, others see me as available pretty much 24/7 and don’t seem to have a problem with me being unavailable sometimes during a business day. Once upon a time, attorneys didn’t even mention their children to opposing counsel, as it could be viewed as a sign of vulnerability (less likely to try a case). I find that my willingness to discuss my parental activities enhances my relationships with opposing attorneys who either currently have similar demands on their time or once did/hope to. When talking about our children, we are more likely to see the humanity in each other and thereafter are better able to reach someone right away.

5. Mandatory electronic filing has changed more than just the obvious physical processes. For one, it has forced attorneys to divulge their email addresses, so there is no escape from an opposing counsel who is in attack mode. For another, there is less wasted time. Once upon a time, I’d hang around the front desk awaiting the arrival of a responding memorandum due in the mail. Also, mandatory e-filing forces attorneys to get familiar with ever-more-sophisticated technology, increasing their sense of competence and causing them to be more willing to try new programs and apps.

Now that I’ve learned how to do it (thanks to those court websites with great instructional materials and to opposing counsel’s legal assistants who kindly explained what’s customary in the e-filing realm), it turns out that I really like electronic service, because I don’t have to go to the office to see something that has been served.

6. Lawyers have learned how to type. Once upon a time (35 years ago), it was my responsibility to dictate to my secretary on a regular basis so that she didn’t lose her shorthand skills. Seriously, on my first day of work as an associate, the senior partner informed me I was required to dictate at least 30 minutes daily.

7. Once upon a time, we physically signed our names to our court filings. Electronic signatures, especially in the form of “/s/ [Typewritten Name],” are not the psychological equivalent of an original signature. It is a different experience to hold the pen in your hand, feel the paper against your skin, and apply the force necessary to cause the ink to flow onto the page. When you completed the task and looked upon your signature, there was a moment to reflect upon Rule 11. Merely typing the name of the responsible attorney effects a subtle alienation of personal responsibility (especially if someone other than the attorney is the typist).

Perhaps there is no connection, but I don’t see attorneys today being as mindful of Rule 11. Also, state court practice for discovery now lags significantly behind the level of practice for federal court. Not only is Sup. Ct. Civ. P. Rule 33 completely toothless when compared to Fed. R. Civ. P. Rule 33(b)(4), but also there aren’t mandatory initial disclosures (Fed. R. Civ. P. Rule 26(a)(1)). It is no wonder obfuscation in state court discovery persists. Resolving disputes in a cost-effective fashion for the client should not be about hiding the ball.

8. Ordinary citizens cannot afford litigation. Once upon a time, a reasonable estimate for the cost of a trial was $1,000 per day. Today, clients retaining a large Seattle law firm can anticipate $1,000 per hour or more for the personnel associated with a trial. Even at an assumed rate of $250 per hour in an average-sized county for general business work or a simple breach of contract case, how much law can a small business owner afford? Four hours’ worth of legal time approaches one month’s rent for a small commercial space. If your client’s net profit is $10 or $20 per hour, how can they afford to pay you? What lawsuit can be done from start to finish in fewer than 10 hours? Litigation wipes out people’s savings. Is that in their best interests? Early neutral evaluations could help the legal profession remake its business model. If lawyers demonstrate that through their services, clients can achieve early inexpensive dispute resolution, clients will be more likely to ask lawyers for help.

As a full-time parent, I got to spend considerable time conversing with people from all sorts of backgrounds and employment circumstances. Now, the average small businessperson doesn’t seek out legal advice when she should at the inception of a business deal because she fears the expense and is willing to gamble that the deal won’t go bad. In the corporate world, this opportunity for improving the product offering would be viewed as “low-hanging fruit.” The stark reality that I see upon returning is that we lawyers must reinvent business models or become irrelevant.

9. For years, I’ve read articles advancing that there is less civility and a lower level of professionalism in the legal arena, and now I see it, too. As an arbitrator addressing discovery disputes, I’m invariably shocked at the vitriolic email exchanges impulsively sent between attorneys. We all know people say things in email they would never put in a letter, especially if they had a secretary typing it up who could alert them to being out of line. Does the fact that we wear blue jeans to work on non-court days and no longer touch our stationery subconsciously degrade the level of professionalism? Once upon a time, I wore a suit to work five days
a week. I still sleep on correspondence, using the "save to draft" option.

Many things remain the same. There are still lawyers who make it a priority to line their own pockets instead of doing what’s best for the client. Once upon a time, a senior lawyer explained to me that the concept of a case being "ripe" for settlement didn’t so much mean that the issues had been fleshed out as it meant that the other attorney had billed enough hours to the file. There are still lawyers who ignore procedural rules or statutes pertinent to their cases. What scares me is that there appear to be so many of them (perhaps this is an illusion because, with so many more attorneys, even if the percentage of miscreants is the same, the absolute number of them is greater). Litigation is still like a tennis match — lob for lob, stroke for stroke, a one-upmanship contest; it can easily get too personal between the lawyers. Zealous advocates can get swept up in their advocacy, adopting the client’s cause as their own raison d’être. There are still lawyers who fail to keep their eye on the amount of money in controversy. They overlook the potential benefits of an early neutral evaluation or engaging in mediation at the outset of the litigation.

It’s still true that if you don’t have matters in litigation, you have less opportunity to cross paths with other lawyers. I wonder if it’s true on a statewide basis that only in a large firm or doing a lot of litigation do the "old-timers" know young attorneys. I wonder if the advertisements in NWLawyer are as much to gain name familiarity in the community as to garner any particular case.

Once upon a time, I knew the other lawyers in my community. Certainly once you have become a parent, there are so many demands on one’s time it is difficult to “meet and greet” fellow bar members. I come home from Bar functions and imagine ways the young lawyers could get connected to the population of old coots who still have lots to offer (luncheon meetings might work).

My instincts tell me that lawyers’ lack of familiarity with other lawyers is not just a function of the sheer increase in numbers. Mobility and technology have led to changes in our lifestyles. We are more spread out from one another and belong to many different communities. Perhaps this multitude of communities is related to that reported “loss of collegiality.” I didn’t arrive in Tacoma until 1983, so I can’t claim to recall the days when everybody knew everybody, but it was a lot easier to get to know the other lawyers when there were fewer of them and our paths crossed more often.

As I switch back to the track I abandoned, I notice most of all that a generation has come up behind me and many of my contemporaries have assumed judicial positions, retired, or died. In some ways I feel like a young lawyer, but I am too old and have had too many years of practice to be eligible for membership in that group. I should be joining Bar committees whose subject areas interest me, but my work schedule is still driven by the school day, as one child is still at home. Thus, I welcome the effort the WSBA is making to engage all segments of the profession, so we can better know each other. Once upon a time, that wasn’t happening.
What I’ve Learned

Lessons of a Long-time Lawyer

BY JEFF TOLMAN

Years ago, a group of third graders were asked to complete the sentence “I have learned . . .” Their responses were personal (“I learned that my mommy tells me every night ‘I love you,’ and it feels great”), touching (“I learned that pain doesn’t last forever”) and practical (“I’ve learned not to go outside without shoes on if you have a dog”). How would I complete that statement after 35 years as a lawyer?

Lawyers live many lives. We experience life, death, dissolution, incarceration, disputes with neighbors, and the smorgasbord of life’s ups and downs. We attorneys have a wonderful opportunity to gain insight into how to live a good life.

Over my three-and-a-half decades in practice, I’ve learned a number of lessons.

I’VE LEARNED it seldom is, over the long run, the principle of the thing. Anyone who has practiced law more than a month has had a client tell them: “I don’t care what it costs; it’s the principle that’s important!” And, at that moment, it probably is. A year later, or when the legal and emotional fees pile up, a broader view will seem wiser. After hearing the “principle of the thing” speech a hundred times or so, I started responding, “This is great, Mr. Client, if the money means nothing to you, I’d like a $10,000 retainer. My partners will love it, my wife will appreciate it, and, since it is neither here nor there to you, it sounds like we both win.” As my client is trying to catch his breath, I remind him that, like most things in life, going forward in a lawsuit is a combination of risk and reward, considering the time, effort, emotional wear and tear, and money involved.

I’VE LEARNED judges smell a case before they hear it. One afternoon in my Poulsbo judge hat, I was sentencing a young man on a DUI. He attended the sentencing in a Budweiser shirt. Was he grasping the bigger picture? The scent told me not.

I’VE LEARNED the particular character in a story will have the same lines, no matter who plays the part. Females paying child support or maintenance feel the same, and have the same issues, as males paying support or maintenance. The emotions of (different) parents of children charged with a crime will be more similar than dissimilar.

I’VE LEARNED in a probate, the less the heir knew the decedent, the pickier they will be. Siblings tend to see fairness in the bigger picture. As an heir’s familiarity with the decedent dwindles, the picture of fairness gets more precise. I am amazed at the consistency of receiving a call from some heir who never met the decedent. “Mr. Tolman, this is Joe Schmernoff from Walrus Tusk, Alaska. I got your letter indicating I will receive a one-hundred-and-twelfth share of my great-aunt’s estate . . . what was her name again? . . . passed per stripes to me. She and I never had the opportunity to meet, but I always felt innately close to her and want to make sure her wish that the heirs inherit the full value of the estate — and that the assets won’t be reduced by needless costs and attorney’s fees — will be followed. So I’d like a full appraisal of her estate assets, with a summary of what similar items have sold for on eBay and Craigslist in the past 30 days. And, because this should be a simple estate, I trust your fees will be modest — $1,000 is what a guy here told me is the going rate.”

I’VE LEARNED different clients need different things from their lawyer. Some need the security of having a lawyer on their side. Others need information from which they can make decisions on how to proceed. Engineers need a logical answer to their problem. Members of the clergy need to know something good will come from the experience. A one-size-fits-all approach by any lawyer assures mediocrity — both in the lawyer’s professional life and in the client’s case.

I’VE LEARNED to make a motion for instructions when I don’t know how to proceed. Throw the options on the table and let a judge choose the proper course, rather than be paralyzed and simply put the file under your desk by your left foot.

I’VE LEARNED that clients know a lot less about what lawyers do, know, and cost than lawyers think. I always tell new clients what I want out of our contract: to make wages and earn the highest honor an attorney can get — the designation as their lawyer. At the end of each meeting, I always thank my clients for coming to see me. The opportunity to work with them is an honor I am happy to have. There are a lot of good lawyers around. I appreciate them coming to see me.

Finally, I HAVE LEARNED that law can be one of the most personal, human ways anyone can spend a life. Years ago, a 90-year-old client of a 45-year-old Jay Roof said, “Mr. Roof, because of the great guidance you have given me in my life, I think of you as a father.” How great is that!

Tomorrow is another day. Another opportunity to learn in the ever-changing school of life. NWL.
Lawyers and Loan Modification Scams

Avoiding Ethical Pitfalls

BY DAVID HUEY AND BENJAMIN ROESCH

The 2008 national financial crisis precipitated by the collapse of the subprime lending market had devastating consequences for Washington homeowners. Unemployment and mortgage delinquencies rose; real estate values fell. Foreclosures and consumer bankruptcies increased. While the economic recovery is underway, many Washington homeowners are still dealing with the effects of the Great Recession. Distressed borrowers need your legal help, and sometimes that might include a mortgage loan modification or other type of work-out arrangement.

Innumerable companies and organizations, some for-profit and some non-profit, advertise to consumers that they can help. “Lower your debt.” “We will get your loan modified.” “We can stop your foreclosure and work with your lender.” “We guarantee it.” Some of these, especially those with non-profit or government affiliation, can and do help consumers in work-out situations for little or no fee. But other outfits may be less honorable, and some may be simply rip-off artists. One hallmark of these outfits is a large up-front fee. Frequently, little or nothing is done of benefit to the borrower.

Governmental agencies, including the state Attorney General’s office, the state Department of Financial Institutions, and the Federal Trade Commission, have brought pressure to clean up the market and protect citizens. In Washington, state consumer protection laws were strengthened when the state’s mortgage broker laws were expanded to cover loan modification services, and state consumer protection laws were expanded to cover loan modification services, and state consumer protection laws were expanded to cover loan modification services.

At the federal level, the Federal Trade Commission promulgated the Mortgage Assistance Relief Services Rule (MARS), which regulates businesses providing certain services. Attorneys may become subject to MARS by allowing their name to be used in solicitations without actively providing legal services to clients, sharing legal fees for MARS-related services with non-attorneys, or helping non-attorneys engage in the unauthorized practice of law. Attorneys who provide mortgage assistance relief services should familiarize themselves with the FTC’s rule and avoid practices that may run afoul of it. Information may be found at www.1.usa.gov/InAO1G7.

Because some of the laws described above exempt attorneys “while performing services solely incidental to the practice of their profession” and “in the course and scope of his or her practice as an attorney,” some for-profit loan modification companies attempt an end-run around state consumer protection laws by integrating lawyers into their operations. For the licensed Washington attorney, these arrangements can be fraught with risk. If you are solicited for one of these networks, ensure that the company and its business model are operating legally and in compliance with all substantive and licensing laws.

Many do not: In 2012, Washington’s Department of Financial Institutions took 86 enforcement actions against companies for providing unlicensed loan modification services in Washington, filing statements of charges against 40. In 2013, it filed Statements of Charges against 32 more companies — approximately half of which were attorneys or affiliated with attorneys. (See www.dfi.wa.gov/consumers/news/2013/loan-mod-cases.htm.) The Attorney General’s Office has brought several successful actions against loan modification companies because of their systematic use of unfair and deceptive acts and practices. Most recently, the Attorney General’s Office and Department of Financial Institutions coordinated with the Federal Trade Commission and law enforcement officials from other states to bring actions against additional companies across the country operating in unfair and deceptive manners. Ultimately, attorneys must assure themselves that any transactions they are facilitating comply with all applicable laws and are not based on misleading inducements or unfair practices.

Washington attorneys should be wary when solicited by out-of-state companies or lawyers seeking “co-counsel” in Washington for mortgage assistance relief service-related practices. Often, such firms will advertise on Craigslist or other forums to seek Washington attorneys willing to facilitate their operations in this state. For example, William W. Goedrich, Atty, Inc. and the associated company A to Z Marketing, Inc. operated out of California, and had “affiliate” law firms in numerous states, including Washington, that purported to offer mortgage relief assistance services. In 2013, the Federal Trade Commission shut down A to Z Marketing after an investigation revealed that it was a scam. Participation in this type of scheme caused one Washington attorney who answered an Internet recruitment post to violate the Rules of Professional Conduct and ultimately lose her license to practice law.

Make sure you don’t violate any Rules of Professional Conduct. In all circumstances, be mindful of these basic rules:

- You may not share or divide legal fees with a loan modification company (RPC 5.4);
- You may not pay a referral fee to the loan modification company (RPC 7.2);
- You may not aid in the unauthorized practice of law (RPC 5.5);
- You may not form a partnership or joint business with the loan modification company if any of your activities involve the practice of law (RPC 5.4);
- Where someone other than your client pays your fee or recommends your employment, that arrangement does not modify your obligation to your client.

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In other words, even if the loan modification outfit recommends you or your firm, your obligation to provide good legal advice runs to the client and not to the loan modification company (RPC 5.4); and

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_Arzola v. Name Intelligence, Inc., _172 Wn. App. 51 (2012)._


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- You must provide competent representation to your client, so if what the loan modification company is doing to or for your client is questionable or harmful, you may have an obligation to your client that is contrary to the interests of the loan modification company (RPC 1.1).

Finally, Washington attorneys should be aware that resources exist for consumers struggling to retain their homes — and who may not be able to afford an attorney. For example, the Washington Homeownership Center ([www.homeownership-wa.org; 877-894-HOME](http://www.homeownership-wa.org)) provides a resource center for information on foreclosure assistance and connects homeowners with free certified housing counselors and information on legal assistance. The Washington State Department of Financial Institutions has information regarding foreclosure resources and links to Foreclosure Fairness Act brochures in 11 languages available at [www.dfi.wa.gov](http://www.dfi.wa.gov). The Washington State Office of Civil Legal Aid ([www.ocla.wa.gov/aboutOCLA.htm](http://www.ocla.wa.gov/aboutOCLA.htm)) has information on legal aid services to low-income people in Washington state. NWL

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At its June and July meetings, the WSBA Board of Governors continued discussion of a task force’s recommendations to change the Bar’s governance structure, heard a budget committee proposal to increase the annual Bar license fee for the first time since the 2012 membership referendum, and selected a new president-elect. The Board also adopted an official mentorship program for WSBA members, discussed proposed changes to CLE credit requirements, and approved the direction of a brand strategy platform as a part of the ongoing WSBA rebranding project.

Governance Report
At the June and July meetings, the Board continued discussion of a task force report released in April that recommends 16 changes in the way the WSBA is governed. The task force worked independently of the Board and many of its recommendations would require changes to court rules that would need adoption by the Washington Supreme Court rather than the Board. At the June meeting, the Board created a work group that will coordinate debate among WSBA leaders and membership and facilitate an official Board response to the recommendations for consideration by the Court. Under a timeline adopted for the work group, WSBA discussion of the recommendations will continue through summer of 2015 with a final version of the Board response expected in September of that year. (A more detailed summary of the Task Force recommendations appeared in the June 2014 OnBoard regarding the April 25, 2014, Board meeting, which can be viewed at www.nwlawyer.wsba.org/nwlawyer/june_2014#pg46)

At the June 6 meeting: 1. Board Mentorship Work Group Members Mario Cava and Kari Petrasek and Group Co-chairs James Armstrong and Tracy Flood report on their work. 2. WSBA President Patrick Palace presides over the meeting. 3. Gov. Vernon Harkins weighs in on an issue; Gov. Daniel Ford is to his right. 4. Members of the Board of Governors and audience members listen to a report. Photos by Todd Timmcke.
$17.75 million, up from $16.56 million this year. WSBA reserves will be used to fill the gap between revenue and expenditures.

The Budget and Audit Committee also presented its recommendation to increase the annual WSBA membership fee from $325 to $385 for 2016 and 2017. The fee prior to the 2012 member referendum was $450. The referendum reduced the fee to $325 (the 2001–02 fee level), without regard to the actual cost of WSBA programs and operations. Through efficiencies, reductions, and use of reserves, the fee will remain at $325 for three years — through 2015. The Committee’s projections showed that the increase to $385 in 2016 and 2017 is necessary in order to maintain operations, programming, and a prudent level of reserves.

WSBA President Patrick Palace reported that during the annual Listening Tour, in which WSBA leadership meets with Bar members throughout areas of the state, members supported the idea of a moderate fee increase to balance the budget. WSBA Treasurer and Board member Brian Kelly noted that members reaching out to him have echoed this view.

The Board is expected to debate and take action on the 2015 budget and 2016 and 2017 license fee at the September 18–19 meeting in Seattle.

OFFICERS ELECTED

President-elect

At the June meeting, the Board elected Spokane lawyer William Hyslop as WSBA president-elect for FY 2015. He then will be sworn in as president in September 2015 to serve for 12 months. Hyslop practices in civil litigation and dispute resolution for Lukins & Annis, P.S., in Spokane, where he is a principal. He has practiced for the firm since 1980, except for 1991–93, when he served as U.S. attorney for the Eastern District of Washington. He has been involved in a number of WSBA activities and served on the Board in 2000–03. He was awarded the WSBA President’s Award in 2006. Hyslop earned a bachelor’s degree from Washington State University, and master’s in public administration from the University of Washington, and a juris doctor from Gonzaga University School of Law.

In a secret ballot election by the Board, Hyslop defeated opposing candidate Leland Kerr, a Kennewick lawyer who served on the Board in 2009–12. Both candidates received numerous endorsements from WSBA members in writing and in person at the meeting.

Governor at-Large

At the June meeting, the Board elected Seattle lawyer Mario Cava as the 2014–17 Governor-at-large. In a secret ballot, Cava defeated four challengers. Cava is senior litigation auditor at Enterprise Legal Services at Liberty Mutual Insurance Group, Inc. Before his employment at Liberty Mutual, he was a trial attorney for Associated Counsel for the Accused in Seattle from 2006–10. He holds a J.D. from American University Washington College of Law in Washington, D.C., and a bachelor’s degree from Whitman College in Walla Walla.
The Board elected Cava after interviewing him and four other candidates: Paul Richmond, Elizabeth Rene, Jacqueline Justice, and Gloria Ochoa.

**Treasurer**
At the July meeting, the Board elected District 1 Gov. Ken Masters to serve as WSBA treasurer for FY 2015. He was elected to the Board in September 2012. Masters previously chaired the WSBA Court Rules and Procedures Committee and the Amicus Curiae Brief Committee.

**Mentorship Program Adopted**
At the July meeting, the Board approved a proposal for the WSBA to create and manage a statewide mentorship program. The WSBA Mentorship Work Group estimates the initial cost to operate the program at $148,000, which would include a full-time staff member to oversee the project. WSBA would recruit and train mentors and mentees for a structured program that would provide mentorship for a year to each mentee. The program would seek accreditation under the Continuing Legal Education rules so participants could receive CLE credit for their work (See “MCLE Changes Proposed,” below). The program’s stated goals include protection of the public by better preparing attorneys for practice; promotion of ethics, civility, competence, and training to new and transitioning attorneys; and promoting the retention of attorneys of diverse backgrounds. The program would be implemented in phases, beginning with a pilot program. Mentors would be required to have at least five years of experience practicing law as active WSBA members.

Board members generally spoke in favor of the proposed plan and a motion to adopt it passed unanimously. During debate, however, some speakers raised concerns about details of the program, particularly the cost. Immediate Past President Michele Radosevich noted that the program being adopted would be more expensive to the WSBA than an alternative the work group considered, under which the WSBA would have lent support to a mentorship program without taking on the full responsibility of operating it. She cautioned that unanticipated staff work needed to run the program might well raise the cost above $200,000.

Gov. Phil Brady remarked that “this is how we make good lawyers,” adding that law school teaches law but graduates learn how to be lawyers from other lawyers. Gov. Robin Haynes added that the program will benefit the mentors in addition to the mentees. For example, mentees may be able to educate mentors about how to use technology to practice more efficiently, she said.

**MCLE Changes Proposed**
At the July meeting, the Board heard the first reading of a proposal to re-vamp the rules regarding Mandatory Continuing Legal Education. An MCLE task force presented the proposal, which would retain the 45-credit total credit requirement per three-year reporting period but simplify the rules, eliminate the requirement for live credits, and expand opportunities to receive CLE credit for activities other than tak-
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For the first time, the Administrative Law sections of both the Oregon State Bar Association and the Washington State Bar Association are partnering to cosponsor the First Joint Washington–Oregon Northwest Administrative Law Institute this September. This article was written with that CLE in mind to provide a short comparison between the two states’ Administrative Procedure Acts. Key differences between the Oregon and Washington administrative procedure acts (APAs) will be discussed. Part 1 introduces the two APAs; Part 2 focuses on contested cases (Oregon term) and adjudicatory proceedings (Washington term); and Part 3 looks at judicial review. We do not discuss rulemaking because in both states agency staff, rather than attorneys, commonly handle rulemaking tasks. We discuss principles that are helpful for practitioners to understand as paradigmatic differences rather than specific points for limited situations.

Introduction to the APAs

The Washington APA is divided into seven parts. The Oregon APA has more “parts,” but they exist for similar purposes. Both APAs had origins in the 1961 revisions to the Model State APA (See Arthur E. Bonfield, “The Federal APA and State Administrative Law,” 72 Va. L. Rev. 297, 299 n.16 (1986)); however, Washington significantly revised its APA following the 1981 revisions to the Model State APA. Oregon did not adopt the 1981 revisions.

The format of the Oregon and Washington state APAs is similar. Each state’s act controls governmental functions in the areas of rules adoption by administrative agencies, the conduct of hearings that contest the actions taken by at least some administrative agencies, the judicial review of orders issued after the administrative hearings, and legislative review of rules adopted by administrative agencies. The states differ on which agencies must conduct hearings as adjudications, but both states require their administrative agencies to comply with the APA when it comes to the adoption of administrative rules.

Washington’s APA contains a legislative intent section, RCW 34.05.001. As with most legislative intent sections, it sets the tone for the administration and interpretation of the APA itself. Significantly, this legislative intent statement states that courts should interpret provisions of the APA consistently with decisions of other courts interpreting similar provisions of other states, the federal government, and model acts. The Washington State Court of Appeals has cited to the 1981 version of the Model State APA only once (Muckleshoot Indian Tribe v. Dep’t of Ecology, 112 Wn. App. 712, 720–21, 50 P.3d 668, (2002)), but Washington appellate courts have cited to federal administrative law principles several times. (See, e.g., Wells Fargo Bank, NA v. Dep’t of Revenue, 166 Wn. App. 342, 271 P.3d 268 (2012) (federal requirement for finality)).

Oregon does not have such an express policy and its appellate courts often eschew comparisons to the federal and other states’ APAs. In Friends of the Columbia Gorge v. Columbia River Gorge Comm’n, 215 Ore. App. 557, 171 P.3d 942 (2007), the court rejected following a “remarkably similar case” concerning justiciability because it was a federal decision that arose under the federal constitution and analysis under the federal justiciability doctrine is “foreign to Oregon’s approach to justiciability” (Id. at 573–74). Washington court decisions rarely provide a similar detailed analysis of how the comparative provisions are or are not similar.
CONTESTED CASES AND ADJUDICATORY PROCEEDINGS

Central Panel

Both states use a combination of “central panel Administrative Law Judges” and ALJs who are “in-house” with some other state agencies. Oregon’s Office of Administrative Hearings (OAH) is found within its APA, while Washington’s OAH is in a separate chapter of the RCW (ch. 34.12 RCW). In Oregon, the agencies required to use the OAH are identified at ORS 183.635, followed by a list of agencies that “need not” use ALJs from the OAH. Washington works the same way. In “definitions,” RCW 34.12.020(4) defines “state agency” to mean “any state board, commission, department, or officer authorized by law to make rules or to conduct adjudicative proceedings,” followed by a list of exclusions from the scope of “state agency.”

Brief Adjudicative Proceedings and Emergency Adjudicative Proceedings

Washington differs from Oregon in using “brief adjudicative proceedings” (BAPs), found at RCW 34.05.482–494, and “emergency adjudicative proceedings” (EAPs), found at RCW 34.05.479 and .4791. The Oregon APA does not authorize such brief hearings. Perhaps the reason for this difference is Washington’s adoption of the 1981 Model State APA, which allows brief hearings. 1981 MSAPA §§ 4-501, 4-502. The catch phrase for these two types of hearings is “quick and dirty”; these administrative procedures are done fast and without the panoply of procedural details that apply to adjudicative proceedings. (See RCW 34.05.482.)

Here is one interesting difference between standard adjudicative proceedings and BAPs and EAPs. RCW 34.05.452 describes applying the rules of evidence in an adjudicative proceeding. RCW 34.05.410(1) identifies which statutes in Part IV of the APA apply to adjudicative proceedings: they are RCW 34.05.413 through .476; that range includes RCW 34.05.452. BAPs are codified beginning at RCW 34.05.482 and EAPs are codified at RCW 34.05.479. The statute defining using evidence in administrative hearings does not apply to BAPs and EAPs. If RCW 34.05.452 does not apply to BAPs and EAPs, and the Evidence Rules apply only in Washington state courts (Wash. Evid. R 101, “Scope”), what evidence rules apply in BAPs and EAPs? Must witnesses be sworn? Must witnesses have personal knowledge of the facts to which they testify? Is cross-examination allowed? RCW 34.05.482(2) requires, “[b]efore taking action, the presiding officer shall give each party an opportunity to be informed of the agency’s view of the matter and to explain the party’s view of the matter.” The procedure may be very informal compared to an adjudicative proceeding. There is also nothing in the APA that would prevent an agency from adopting an administrative rule that provides for the application of the evidence rules, or the provisions of RCW 34.05.452 itself. Absent an administrative rule answering the question of applying rules of evidence, the decision appears to be left to the discretion of the Administrative Law Judge or other decision maker.

Hearsay Testimony and Findings of Fact

Hearsay in an adjudicative proceeding in Washington is governed by RCW 34.05.452(1): “Evidence, including hearsay evidence, is admissible if in the judgment of the presiding officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs.” That means that “[a]n administrative hearing officer may rely on hearsay for her decision if the hearsay is not the sole basis for the decision” (Pappas v. Emp’t Sec. Dep’t, 135 Wn. App. 852, 854, 146 P.3d 1208 (2006)). Oregon’s APA codifies evidence rules in administrative hearings at ORS 183.450. ORS 183.450(1) contains language similar to Washington’s rule on hearsay evidence: “All other evidence of a type commonly relied upon by rea

sonably prudent persons in conduct of their serious affairs shall be admissible.” Like Washington, Oregon has held that hearsay testimony can be considered in an administrative case (Stacy v. Emp’t Dept., 240 Or. App. 183, 189, 252 P.3d 326 (2010)). However, unlike Washington, under certain circumstances hearsay evidence in Oregon may amount to substantial evidence (Id. at 189, citing Coffey v. Emp’t Dept., 147 Ore. App. 649, 653, 938 P.2d 805 (1997)).

Each state’s act controls governmental functions in the areas of rules adoption by administrative agencies, the conduct of hearings that contest the actions taken by at least some administrative agencies, the judicial review of orders issued after the administrative hearings, and legislative review of rules adopted by administrative agencies.

Exclusionary Rule

Oregon and Washington differ on whether a presiding officer in an administrative proceeding or a reviewing court should exclude evidence obtained from an improper administrative search in an administrative proceeding.

The Washington APA requires that a presiding officer of an adjudicatory proceeding “shall exclude evidence that is excludable on constitutional or statutory grounds” (RCW 34.05.452(1)). The Washington Supreme Court has not applied the exclusionary rule to administrative proceedings; however, divisions I and II of the Court of Appeals have done so (Seymour v. Wash. State Dep’t of

About the WSBA Administrative Law Section

The Administrative Law Section is involved in all areas of administrative law of interest to Washington lawyers, including Washington state administrative law, federal administrative law, tribal administrative law, and interstate compact administrative law. For more information and to get involved, visit www.wsba.org/sections.
In Washington, a party other than the agency may appear and be represented by counsel or another representative, but the non-lawyer representative may do so only in compliance with RCW 183.457(2). The Oregon statute also limits the agencies before which non-lawyer representatives may practice by describing those agencies in ORS 183.457(1).

**Licensing Issues Regarding Expiration of Licenses and Jurisdiction in Administrative Hearings**

The issue sometimes arises whether an agency has jurisdiction to suspend or revoke a license if the license expires before the issue comes on for hearing. In Washington, RCW 34.05.422(3) addresses this issue:

When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, an existing full, temporary, or provisional license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

Similarly, in Oregon, ORS 183.430(1) addresses the same question and provides, in pertinent part:

In the case of any license which must be periodically renewed, where the licensee has made timely application for renewal in accordance with the rules of the agency, such license shall not be deemed to expire, despite any stated expiration date thereon, until the agency concerned has issued a formal order of grant or denial of such renewal.

**JUDICIAL REVIEW**

**Burdens for Challenging an Agency Order**

In Oregon, the proponent of a fact or position in a contested case has the burden to present evidence to support that fact or position, ORS 183.450(2), but judicial review of an order focuses on the standards of review in ORS 183.482(7) and (8) without specifically imposing burdens on judicial review. In Washington, RCW 34.05.570(1)(a) specifies the burden of demonstrating the invalidity of agency action is on the party asserting invalidity.

**APA as Exclusive Remedy**

The Oregon and Washington APAs both provide the exclusive remedy. In Oregon, common law specifies the exclusivity rule; in Washington, the APA specifies the rule.


In Washington, RCW 34.05.510 specifies the Washington APA is the exclusive means of judicial review of agency action with three listed exceptions. Wells Fargo Bank, NA v. Dept of Revenue, 166 Wn. App. 342, 271 P.3d 268 (2012) is a recent example of how Washington courts narrowly construe the exceptions. Wells Fargo’s claim included a claim for declaratory judgment in addition to money; therefore, it did
not fall with the exception for litigation in which the sole issue is money damages or compensation.

**Arbitrary and Capricious Review**

Probably the most distinctive difference in judicial review of contested cases or adjudicatory proceedings is the availability of arbitrary and capricious review under the Washington APA, RCW 34.05.570(3)(i). The Oregon APA does not specify arbitrary and capricious review.

The Washington Supreme Court has defined arbitrary or capricious action as action that “is willful and unreasonable and taken without regard to the attending facts or circumstances. Where there is room for two opinions, an action taken after due consideration is not arbitrary and capricious even though a reviewing court may believe it to be erroneous” (Hillis v. Dep’t of Ecology, 131 Wn.2d 373, 383, 932 P.2d 139 (1997)). “The scope of review under the arbitrary and capricious standard is very narrow, ‘highly deferential’ to the agency and the party challenging an agency decision carries ‘a heavy burden’” (Alpha Kappa Lambda Fraternity v. Wash. St. Univ., 152 Wn. App. 401, 418–22, 216 P.3d 451 (2009)).

Parties in Oregon sometimes argue that agency action has been arbitrary and capricious. The Oregon appellate courts may restate the argument in terms of one of the statutory standards of review (see, e.g., Forelaws on Bd. v. Energy Facility Siting Council, 306 Ore. 205, 223, 760 P.2d 212 (1988), also referring to the term “arbitrary and capricious” as “conclusory epithets”; Cherry v. Dep’t of Educ., 253 Ore. App. 90, 94, 289 P.3d 344 (2012)).

**Review of Orders for Consistency with Interpretive and Policy Statements**

The Oregon APA does not authorize agencies to adopt interpretive or policy statements outside of rulemaking; ORS 183.482(8)(B)(B) provides as grounds for demand, consideration of whether a contested case order is inconsistent with an officially stated agency position or a prior agency practice if the agency does not explain the inconsistency. This recognizes that agencies should act consistently even with informal policies, interpretations, and practices.

In Washington, RCW 34.05.230 expressly encourages agencies “to advise the public of its current opinions, approaches, and likely courses of action by means of interpretive or policy statements. Current interpretive and policy statements are advisory only. To better inform and involve the public, an agency is encouraged to convert long-standing interpretive and policy statements into rules.” Consistent with the advisory nature of interpretive or policy statements, judicial review focuses on the consistency with the rule; There is no express review of an action for consistency with an interpretive or policy statement. RCW 34.05.570(3)(h) provides as grounds for granting relief from an agency decision that its “order is inconsistent with a rule of the agency unless the agency explains the inconsistency by stating facts and reasons to demonstrate a rational basis for inconsistency.”

**Deference**

Deference to an agency’s interpretation of the statutes it administers differs in the two states. In Oregon, the level of deference to an agency’s interpretation of a statutory term depends on the type of statutory term at issue (Springfield Educ. Ass’n v. Springfield School Dist. No. 19, 290 Ore. 217, 221–30, 621 P.2d 547 (1980)), explaining the difference between exact terms, which need no interpretation; inexact terms, which contain a complete express of legislative intent and leave no role for agency interpretation; and delegative terms, for which the legislature provided a role for the agency to complete).

In Washington, the appellate courts accord deference to an agency’s interpretation of a statute if “1) the particular agency is charged with the administration and enforcement of the statute, 2) the statute is ambiguous, and 3) the statute falls within the agency’s special expertise” (Bostain v. Food Express, Inc., 159 Wn.2d 700, 716, 153 P.3d 846 (2007)). But there are several situations in which Washington courts do not defer to the agency, such as an agency determining the scope of its authority, e.g., US West Comms’ns, Inc. v. Wash. Utils. and Transp. Comm’n, 134 Wn.2d 48, 56, 949 P.2d 1321 (1997), and when the court is reviewing a “pure question of law,” e.g., Hunter v. Univ. of Wash., 101 Wn. App. 283, 292 n.3, 2 P.3d 1022 (2000). Washington courts also commonly explain that the court retains the ultimate authority to interpret a statute.

Courts in both states defer to an agency’s interpretation of the rules it adopts, e.g., Don’t Waste Oregon Comm. v. Energy Facility Siting Council, 320 Or 132, 142, 881 P2d 119 (1994); Cobra Roofing Serv., Inc. v. Dep’t of Labor & Indus., 122 Wn App 402, 409, 97 P3d 17 (2004). As with their statutory deference cases, Washington courts almost always caution that the courts retain the ultimate responsibility to interpret a regulation.

**CONCLUSION**

Although there are many similarities between the Oregon and Washington APAs, there are critical differences. Practitioners who practice primarily in one state, but dabble in the other, should carefully study the APA and the court’s interpretation and application.
You are invited to attend

WSBA 50-Year Member Tribute Luncheon

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

RECEPTION AND REGISTRATION: 11 a.m. (no-host bar) • Lunch/Program: NOON

RENAISSANCE SEATTLE HOTEL, 515 Madison St., Seattle

Name ____________________________________________  WSBA No. __________________________

Address ________________________________________________________________________________

Phone _______________________________  Email ______________________________

Affiliation/Organization _________________________________________________________________

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

☐ MasterCard  ☐ Visa  No. ___________________________  Exp. date __________

Name as it appears on card ______________________________________________________________

Signature ______________________________________________________________________________

_____ (no. of persons)  X  $45 (price per person)  =  $ ________ TOTAL

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

________________________________________  chicken  salmon  vegetarian

________________________________________  chicken  salmon  vegetarian

________________________________________  chicken  salmon  vegetarian

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________________________________________  chicken  salmon  vegetarian

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________________________________________  chicken  salmon  vegetarian

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

SEND TO:
WSBA 50-YEAR TRIBUTE LUNCHEON
1325 Fourth Ave., Ste. 600
Seattle, WA 98101-2539
Tel: 206-239-2125 • 800-945-9722, ext. 2125 • Fax: 206-727-8310 • WSBAevents@wsba.org
The 2014 WSBA Annual Awards Dinner

Please join us on Thursday, Sept. 18, 2014, at the Sheraton Seattle Hotel for an evening of inspiration as we celebrate the accomplishments of the 2014 WSBA award recipients. All members of the legal community and guests are invited to attend.

Reception: 5:30 p.m. (no-host bar) • Dinner/Program: 6:30 p.m.
Sheraton Seattle Hotel • 1400 Sixth Ave., Seattle

TO REGISTER ONLINE: Go to www.wsbaawardsdinner.eventbrite.com.
To download the registration form as a PDF and submit via email, go to www.wsba.org/awards.

Name __________________________________________ WSBA No. ____________________
Address ____________________________________________________________________________
Phone ______________________________ Email ______________________________
Affiliation/Organization __________________________________________________________

Registration is $95 per person (table of 10 = $950). To make your reservation, please return this form (or a photocopy) with your credit-card information or check payable to WSBA. Space is limited, so please make your reservations early. Reservations and payment must be received no later than Sept. 11, 2014 (refunds cannot be made after Sept. 11). Seating will be assigned.

☐ MasterCard  ☐ Visa  No. ________________ Exp. date ________________
Name as it appears on card _________________________________________________________
Signature ____________________________________________________________

_____ (no. of persons) X $95 (price per person) = $ ________ TOTAL

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

__________________________________________ ☐ chicken ☐ fish ☐ vegetarian
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All those listed on the same registration form (up to 10) will be seated at the same table.
Need to Know

WSBA News

Be Inspired at the 2014 WSBA Awards Dinner
Join us on Thursday, Sept. 18, 2014, at the Sheraton Seattle Hotel for an evening of inspiration as we celebrate the accomplishments of the 2014 WSBA award recipients. All members of the legal community and guests are invited to attend. See page 59 for details. The 2014 winners are:

**Award of Merit** – Lt. Cmrd. Eric M. Pedersen
Department of Homeland Security, Seattle

**Courageous Award** – Shirley A. Bondon
Administrative Office of the Courts, Olympia

**Excellence in Diversity Award** – Gabriel S. Galanda
Galanda Broadman, PLLC, Seattle

**Lifetime Service Award** – James R. Stoep (posthumous)
Vander Stoep, Remund, Blinks & Jones, Chehalis

**Outstanding Judge Award** – Hon. James M. Riehl
Kitsap County District Court, Port Orchard

**Outstanding Young Lawyer Award** – Alicia R. Levy
Lukins & Annis, P.S., Spokane

**Pro Bono Award** – Gene Siple
Whitman County Community Action Center

**Professionalism Award** – Laura Anglin
Vander Stoep, Remund, Blinks & Jones, Chehalis

**Public Service Award** – Deborah Perluss
Northwest Justice Project, Seattle

**Pro Bono Award** – Gene Siple
Whitman County Community Action Center

**Professionalism Award** – Laura Anglin
Washington Supreme Court, Olympia

**Public Service Award** – Deborah Perluss
Northwest Justice Project, Seattle

**Don’t Miss the 59th Annual Estate Planning Seminar: Oct. 30–31**
Registration is now open for one of the oldest and largest estate planning conferences in the country, brought to you by WSBA-CLE and the Estate Planning Council of Seattle. Join hundreds of attendees from across professional practice areas and a faculty of more than 20 practitioners from around the country and around the state at the Washington State Convention Center in Seattle. Register at www.wsbaclé.org/seminars; enter 15436 in the search field.

**Attend the WSBA 50-Year Member Tribute Luncheon**
You won’t want to miss this luncheon honoring the careers of WSBA members who have been members for 50 years! Please join us Friday, Oct. 24, at the Renaissance Hotel in downtown Seattle. Honored 50-year members will receive a personal invitation by mail from the WSBA for themselves and one guest. All members of the legal community and guests are invited to attend this celebration. Reception and registration open at 11 a.m. (no-host bar). Lunch and program begin at noon.

Registration is only $45 per person (table of 10 = $450). Space is limited. To make your reservation, see page 58 or email wsbaevents@wsba.org for more information. We hope to see you at this very special event!

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

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

Attend a CLE for Free: WSBA Young Lawyers Committee Public Service Incentive Award
Attention new and young lawyers: would you like the opportunity to attend a WSBA CLE for free? Apply to receive a WSBA YLC Public Service Incentive Award. Applications are due Sept. 22. This award was created to encourage and support new and young lawyers who engage or would like to engage in public service activities, as described in RPC 6.1. For more information, contact newlawyers@wsba.org.

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

2015 License Renewal, MCLE and Sections Information
Sign up for paperless license renewal by Sept. 14. Log in to myWSBA.org and check the box to say “yes” to paperless license renewal, MCLE certification, and sections registration. Instead of receiving a paper packet in the mail, we’ll send you an email reminder when it’s time to renew online. While you are logged in, verify and update your contact information, including your email address. License renewal will begin in mid-October and must be completed by Feb. 2, 2015.

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

Join or renew your Section membership. As the section membership year is Oct. 1, 2014, through Sept. 30, 2015, we encourage you to join or renew sections in October to receive the full benefit of membership. See page 60.

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

Remember these dates:
• Sept. 14, 2014: Sign up for paperless license renewal.
• Dec. 1, 2014: Enrollment deadline for optional payment plan.
• Dec. 31, 2014: Group 2 (2012–14) members must complete required MCLE credits.
• Feb. 2, 2015: Request deadline for optional hardship exemption.
• Feb. 2, 2015: License renewal, payment, and Group 2 MCLE C2 certification must be completed online, postmarked, or delivered to WSBA.

Judicial Member License Renewal
Judicial members are required to complete the annual license renewal and pay a $50 license fee to maintain eligibility to transfer to another membership class when their judicial service ends. Sign up for paperless license renewal by Sept. 14. Log in to www.myWSBA.org and check the box to say “yes” to paperless license renewal. Instead of receiving a paper packet in the mail, we’ll send you an email reminder when it’s time to renew online. While you are logged in, verify and update your contact information, including your email address. License renewal will begin in mid-October and must be completed by Feb. 2, 2015.

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.

WSBA Board of Governors Meetings
Sept. 18–19, Seattle; Nov. 14–15, Seattle
With the exception of the executive session, Board of Governors meetings are open, and all WSBA members are welcome to attend. RSVPs are appreciated but not required. Contact Pamela Wuest at 206-239-2125, 800-945-9722, ext. 2125, or pamelaw@wsba.org. The complete Board of Governors meeting schedule is available on the WSBA website at www.wsba.org/bog.

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

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

King County Lawyers March to Support Pride
In June, King County lawyers marched in the Seattle Pride parade. It was the group’s third year marching and they welcome their legal colleagues and families to join them next year. “It was wonderful – the crowds were great, and the lawyers, their families, and friends were well received,” said Rosemarie Warren LeMoine. This year’s parade theme, “Generations of Pride,” celebrated the history of the Northwest’s LGBT rights movement and the ongoing progress the LGBT community has made since first coming out in 1974, the year of the inaugural Seattle Pride celebration.

Legal Foundation of Washington Notice of Public Meeting
The trustees of the Legal Foundation of Washington will meet on Sept. 18 at the Legal Foundation of Washington offices in Seattle. The public may appear in order to comment on the Foundation’s activities between 9–9:30 a.m. This opportunity is made pursuant to Article I, Section 1.7 of the bylaws of the Legal Foundation of Washington.

Snohomish County Public Defender Association’s New Location
The Snohomish County Public Defender Association has relocated offices to the American West Bank Tower. Their new address is 2722 Colby Avenue, Suite 200, Everett, WA 98201-3527. Reception lobby hours are Monday through Friday, 8 a.m. to 5 p.m. Contact them at 425-339-6300 or www.snocopda.org.

Washington Association of Criminal Defense Lawyers Annual Awards
The Washington Association of Criminal Defense Lawyers (WACDL) presented its annual awards recipients at an awards dinner in June. 16 attorneys and others who were instrumental in producing the historic Wilbur v. Mount Vernon, et al. ruling received the Champion of Justice Award; Vanessa Martin received the Anthony Savage Award; Doug Cowan received the William O. Douglas Award; and Patricia Fulton and Mark W. Prothero received the President’s Awards.

WSBA Lawyers Assistance Program (LAP)

Work + Wellness Webcast Series
On Wednesday, Sept. 10, 2014, from noon to 1:30, the Lawyers Assistance Program, in collaboration with the Law Office Management Assistance Program, is excited to offer a panel presentation exploring “Careers in Flux: an Exploration of Career Transitions” for our next Work + Wellness Webcast. Whether you’re considering making a change in your practice area, or shifting from one kind of setting to another (e.g., urban vs. rural, large firm vs. solo practice), it’s invaluable to hear from others who have successfully navigated similar transitions. Our panel of experienced attorneys will candidly discuss their individual mid-career transitions and explore their process in successfully managing this kind of shift, as well as share valuable guidance and lessons learned. There is no cost for this presentation and attendance can be either in-person at the WSBA Conference Center or via live webcast; registration is required. Learn more at www.wsba.org/lap.

Consultation Through WSBAConnects
Through our partnership with Wellspring, the WSBA is expanding its Lawyers Assistance Program and now offers statewide access to support for lawyers needing help for issues related to mental health and addiction concerns, career management, family, care-giving, daily living, health and well-being, and more. WSBA Connects is offered as a service to members on a voluntary, confidential basis. Call toll-free 855-857-WSBA (9722), or go to www.wsba.org/Resources-and-Services/WSBA-Connects.

Seeking Peer Advisors
Would you like to provide support to another lawyer in your community addressing topics such as mental health and self-care, alcoholism and addiction, or guidance in one’s practice? Lawyers are often uniquely able to be resources to one another in these areas. The WSBA Lawyers Assistance Program is launching a new initiative to reconstitute its peer advisor network. The goal is to build a robust network throughout the state. Skills trainings are being developed and planned. To participate or learn more, see www.bit.ly/104fpwN, contact lap@wsba.org, or 206-727-8268 or 800-945-9722, ext. 8268.

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

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Announcements

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Ethics

**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.

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.

WSBA Law Office Management Assistance Program (LOMAP)

**LOMAP Roadshow -- Seattle, Sept. 22**

On Sept. 22, the LOMAP Roadshow visits Seattle! Topics such as how to buy a law office, how to go truly and completely paperless, and digital etiquette will be explored. In addition, a panel of outstanding lawyers will discuss alternative practice models that you can take back to the office and adopt individually to the practice you have now, or whole cloth by redefining your firm completely. These topics and more will stimulate and enlighten. Join us for the entire day or a half-day. Email lomap@wsba.org or call 206-577-5914 or 800-945-9722, ext. 5914, for more information.

**Casemaker Online Research**

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

**Usury Rate**

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

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

Disbarred

Ronald Anthony Gomes (WSBA No. 31074, admitted 2001), of Lacey, was disbarred, effective 5/22/2014, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.3 (Diligence), 1.4 (Communication), 1.6 (Fees), 1.16 (Declining or Terminating Representation), 3.2 (Expediting Litigation), 3.4 (Fairness to Opposing Party and Counsel), 8.1 (Bar Admission and Disciplinary Matters), and 8.4 (Misconduct). Erica Temple represented acted as disciplinary counsel. Leland G. Ripley represented the respondent. Bertha Baranko Fitzer was the hearing officer. The online version of NWLawyer contains links to the following documents: Order Approving Stipulation to Disbarment; Stipulation to Disbarment; and Washington Supreme Court Order.

Disbarred

Heidi L. Hunt (WSBA No. 33499, admitted 2003), of Omak, was disbarred, effective 6/12/2014, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.1 (Competence), 1.3 (Diligence), 1.4 (Communication), 1.7 (Conflict of Interest: Current Clients), 1.15A (Safeguarding Property), 1.16 (Declining or Terminating Representation), 3.2 (Expediting Litigation), 3.3 (Candor Toward the Tribunal), and 8.4 (Misconduct). Linda B. Eide acted as disciplinary counsel. Heidi L. Hunt represented herself. David A. Thorner was the hearing officer. The online version of NWLawyer contains links to the following documents: Hearing Officer’s Decision; Disciplinary Board Recommendation; and Washington Supreme Court Order.

Disbarred

Peter Dirk Nansen (WSBA No. 9142, admitted 1979), of Bellingham, was disbarred, effective 6/12/2014, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.8 Conflict of Interest: Current Clients: Specific Rules, 1.15A (Safeguarding Property), 1.16 (Declining or Terminating Representation), and 4.2 (Communication With Person Represented by Counsel). Joanne S. Abelson and Marsha Matsumoto acted as disciplinary counsel. Peter Dirk Nansen represented himself. Donald William Carter was the hearing officer. The online version of NWLawyer contains links to the following documents: Hearing Officer’s Decision; Disciplinary Board Recommendation; and Washington Supreme Court Order.

Disbarred

Robert Jackson represented himself. The online version of NWLawyer contains a link to the following document: Resignation Form of Danford Duncan Grant.

Suspended

Jeremy D. Benson (WSBA No. 34163, admitted 2003), of Spokane, was suspended for six months, effective 6/12/2014, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.4 (Communication), 1.6 (Confidentiality of Information), 1.8 (Conflict of Interest: Current Clients: Specific Rules), 1.15A (Safeguarding Property), 1.16 (Declining or Terminating Representation), and 8.4 (Misconduct). Joanne S. Abelson acted as disciplinary counsel. Jeremy D. Benson represented himself. Linda Diane O’Dell was the hearing officer. The online version of NWLawyer contains links to the following documents: Hearing Officer’s Decision; Disciplinary Board Recommendation; and Washington Supreme Court Order.

Suspended

Joseph Robert Jackson (WSBA No. 12929, admitted 1982), of East Wenatchee, was suspended for six months, effective 6/10/2014, by order of the Washington Supreme Court imposing reciprocal discipline in accordance with an order of the United States District Court for the Eastern District of Washington. Craig Bray acted as disciplinary counsel. Joseph Robert Jackson represented himself. The online version of NWLawyer contains a link to the following document: The Washington Supreme Court Order. Joseph Robert Jackson is to be distinguished from Joseph Andrew Jackson of...
Suspended

Richard W. Swanson (WSBA No. 4777, admitted 1972), of Everett, was suspended for six months, effective 5/22/2014, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.3 (Diligence), 1.4 (Communication), 1.15A (Safeguarding Property), and 1.16 (Declining or Terminating Representation). Linda B. Eide acted as disciplinary counsel. Richard W. Swanson represented himself. The online version of NWLawyer contains links to the following documents: Order on Approving Stipulation to Six-Month Suspension; Stipulation to Six-Month Suspension; and Washington Supreme Court Order. Richard W. Swanson is to be distinguished from Richard Stephen Swanson of Des Moines.

Suspended

Larry James Landry (WSBA No. 16792, admitted 1987), of Seattle, was suspended for six months, effective 5/22/2014, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.15A (Safeguarding Property) and 1.15B (Required Trust Account Records). Natalie Skvir acted as disciplinary counsel. Joseph John Ganz represented the respondent. The online version of NWLawyer contains links to the following documents: Order on Approving Stipulation to Six-Month Suspension; Stipulation to Six-Month Suspension; and Washington Supreme Court Order.

Admonished

John Gibson (WSBA No. 19407, admitted 1990), of Seattle, was ordered to receive an admonition, effective 5/23/2014, by a Review Committee of the Disciplinary Board. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.15A (Safeguarding Property) and 1.15B (Required Trust Account Records). Marsha Matsumoto acted as disciplinary counsel. John Gibson represented himself. The online version of NWLawyer contains links to the following document: Admonition. John Gibson is to be distinguished from John Clark Gibson of Seattle and John Bradley Gibson of Seattle.

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

Administrative Law

Introducing the Second Edition of the Public Records Act Deskbook
Nov. 12, Seattle and webcast. CLE credits pending. Presented by WSBA-CLE in partnership with the WSBA Administrative Law Section; 800-945-WSBA or 206-443-WSBA; http://bitly/WSBA-CLE.

Antitrust

Annual Antitrust Seminar
Nov. 13, Seattle and webcast. CLE credits pending. Presented by WSBA-CLE in partnership with the WSBA Antitrust, Consumer Protection and Unfair Business Practices Section; 800-945-WSBA or 206-443-WSBA; http://bitly/WSBA-CLE.

Collaborative Law

Professional Mediation Skills Training Program
Oct. 3–5 and 18–19, Seattle. 36 CLE credits, including 2 ethics. By UW School of Law; 800–253–8648 or 206–543–0059; www.law.washington.edu/events.

Collaborative Law Two-Day Training

Construction Law

21st Annual Washington Construction Law

21st Annual Criminal Justice Institute
Oct. 9–10, Burien. 14.25 CLE credits, including 2 ethics. Presented by WSBA-CLE in partnership with the WSBA Criminal Law Section; 800-945-WSBA or 206-443-WSBA; http://bitly/WSBA-CLE.

Elder Law

The 17th Annual Elder Law Conference: Advanced Planning Issues from Annuities to Social Security
Sept. 12, Seattle. 5.75 CLE credits, including 1 ethics. Presented by WSBA-CLE in partnership with the WSBA Elder Law Section; 800-945-WSBA or 206-443-WSBA; http://bitly/WSBA-CLE.

Transitioning into Retirement
Nov. 5, Seattle and webcast. Not for CLE credit. Presented by the WSBA Lawyers Assistance Program. 800-945-WSBA or 206-443-WSBA; http://bitly/WSBA-CLE.

Estate Planning

59th Annual Estate Planning Conference
CLE Calendar

Oct. 31–31, Seattle. Up to 13.5 CLE credits, including 1 ethics. Presented by WSBA-CLE and the Estate Planning Council of Seattle; 800-945-WSBA or 206-443-WSBA; http://bitly/WSBA-CLE.

Ethics

16th Annual Ethics, Professionalism, and Civility Workshop
Sept. 15, Seattle and webcast. 6 CLE ethics credits. Presented by WSBA-CLE; 800-945-WSBA or 206-443-WSBA; http://bitly/WSBA-CLE.

Moderated Video Replay of 15th Annual Ethics, Professionalism and Civility
Sept. 23, Friday Harbor. 6 CLE ethics credits. Presented by WSBA-CLE in partnership with the WSBA Intellectual Property Section; 800-945-WSBA or 206-443-WSBA; http://bitly/WSBA-CLE.

Ethical Dilemmas
Oct. 16, Mount Vernon. CLE credits pending. Presented by WSBA-CLE; 800-945-WSBA or 206-443-WSBA; http://bitly/WSBA-CLE.

Ethical Dilemmas
Nov. 20, Seattle and webcast. CLE credits pending. Presented by WSBA-CLE; 800-945-WSBA or 206-443-WSBA; http://bitly/WSBA-CLE.

How to Succeed in the “Hot Seat”
Sept. 16, Seattle. 2.75 CLE credits. By The Seminar Group; 800-574-4852 or 206-463-4400; www.theseminargroup.net/seminar.lasso?seminar=14.hotwa.

5th Annual Fisheries and Hatcheries

Indian Law

27th Annual Indian Law Symposium
Sept. 11 and 12, Seattle. 11.75 CLE credits, including 1.25 ethics. By UW School of Law; 800-253-8648 or 206-543-0059; www.law.washington.edu/events.

Insurance Law

2014 Comprehensive Insurance Law

Conference
Oct. 16 and 17, Seattle and webcast. 12.5 CLE credits. By The Seminar Group; 800-574-4852 or 206-463-4400; www.theseminargroup.net/seminar.lasso?seminar=14.insrwa.

Intellectual Property

Intellectual Property Basics: A Firm Foundation for the Non-IP Attorney
Sept. 9, Seattle and webcast. 6.5 CLE credits, including .75 ethics. Presented by WSBA-CLE in partnership with the WSBA Intellectual Property Section; 800-945-WSBA or 206-443-WSBA; http://bitly/WSBA-CLE.

WSBA Juvenile Law Section Dependency CLE
Sept. 5, Seattle. CLE credits pending. Presented by WSBA-CLE in partnership with the WSBA Labor and Employment Law Section; 800-945-WSBA or 206-443-WSBA; http://bitly/WSBA-CLE.

Labor and Employment Law

Annual Labor and Employment Law Seminar
Nov. 21, Seattle and webcast. CLE credits pending. Presented by WSBA-CLE in partnership with The WSBA Labor and Employment Law Section; 800-945-WSBA or 206-443-WSBA; http://bitly/WSBA-CLE.

Law Practice Management

Career in Flux: An Exploration of Career Transition
Sept. 10, Seattle and webcast. Not for CLE credit. Presented by the WSBA Lawyers Assistance Program and the WSBA Law Office Management Assistance Program; 800-945-WSBA or 206-443-WSBA; http://bitly/WSBA-CLE.

Mission Possible: Choose the Future of Your Practice
Oct. 1; webcast. Not for CLE credit. 800-945-WSBA or 206-443-WSBA; www.wsba.org/missionpossiblelaw.

Transitioning into Retirement
Nov. 5, Seattle and webcast. Not for CLE credit. Presented by the WSBA Lawyers Assistance Program. 800-945-WSBA or 206-443-WSBA; http://bitly/WSBA-CLE.

Legal Lunchbox Series

Legal Lunchbox Series: Working with Clients with Disabilities
Sept. 30, webcast only. CLE credits pending. 800-945-WSBA or 206-443-WSBA; http://bitly/WSBA-CLE.

Litigation

Tips and Strategies for Effective Pre-Trial Practice
Oct. 21, Friday Harbor and webcast. CLE credits pending. Presented by WSBA-CLE; 800-945-WSBA or 206-443-WSBA; http://bitly/WSBA-CLE.

Building Your Case
Nov. 18, Friday Harbor and webcast. CLE credits pending. Presented by WSBA-CLE; 800-945-WSBA or 206-443-WSBA; http://bitly/WSBA-CLE.

Legal Lunchbox Series: Working with Clients with Disabilities
Sept. 30, webcast only. CLE credits pending. 800-945-WSBA or 206-443-WSBA; http://bitly/WSBA-CLE.

Mediation

Professional Mediation Skills Training Program
Oct. 3–5 and 18–19, Seattle. 36 CLE credits, including 2 ethics. By UW School of Law; 800-253-8648 or 206-543-0059; www.law.washington.edu/events.

Natural Resources

5th Annual Fisheries and Hatcheries

Comprehensive Review of Hydropower in the Northwest
Oct. 9, Seattle and webcast. 6 CLE credits. By The Seminar Group; 800-574-4852 or 206-463-4400; www.theseminargroup.net/seminar.lasso?seminar=14.hydwa.
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(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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Searching for the Will of Robert M. Cor- dova, resident of Pacific County, WA, who died on 9/11/2013. If you have any information about his Will or estate plan, please contact Shelley Buckholtz of Garvey Schubert Barer, 1191 2nd Ave., Ste. 1800, Seattle, WA, 98101, phone 206-816-1454 or fax 206-464-0125.

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Hugh Lewis
WSBA No. 15702

I became a lawyer because the law seemed to be a vehicle for effecting changes in public policy in a predictable fashion.

My greatest talent as a lawyer has been to help people find humor in trying situations.

My greatest accomplishment as a lawyer is to have served on a Real Property, Probate & Trust Section’s Subcommittee tasked with adapting the Uniform Common Interest Ownership Act to Washington’s robust body of background law. We’re nearly done with this effort, which started in 2007.

The best advice I have for new lawyers is to find mentors willing to provide advice and assistance, and not be afraid to ask those mentors for advice and assistance when necessary. Joining a list-serve, such as with a WSBA section, catering to your chosen practice area can be very valuable.

The worst part of my job is worrying about “billable hours.”

During my free time, I design and build hand-planed fly fishing rods from split bamboo, play music, cook fine food, spend time outdoors, and sip martinis in the moonlight with my wife of 30 years.

The most memorable trip I ever took was to Stockholm in December 1995 to watch my father receive the Nobel Prize in Medicine.

Aside from my career, I am most proud of this: In 1989, I co-founded the Wild Fish Conservancy environmental organization, which seeks to improve the plight of wild fish in the north Pacific region through protection of critical habitats and the development of better fisheries management protocols.

I look up to my fellow board members and science staff of the Wild Fish Conservancy (www.wildfishconservancy.org).

I give back to my community by serving in leadership capacities in professional, civic and social organizations.

If I had a time machine, I would be dangerous.

If I could pick a superpower, it would be the ability to fly.

My favorite band/musical artist is Michael Franks.

I would like to learn to improve my Spanish-speaking skills.

My first car was a 1957 Volkswagen Beetle with a tiny rear window.

My name is Hugh Lewis and I practice community association law and real estate development law at my office in Bellingham (www.hughlewislaw.com). I earned my J.D. at The George Washington University Law School in 1973 and was admitted to the WSBA in 1986.

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