

Washington State Bar
Association

MANDATORY MALPRACTICE INSURANCE p.24

NWLawyer



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12 RULES FOR EFFECTIVE CROSS-EXAMINATION



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ON THE DOCKET

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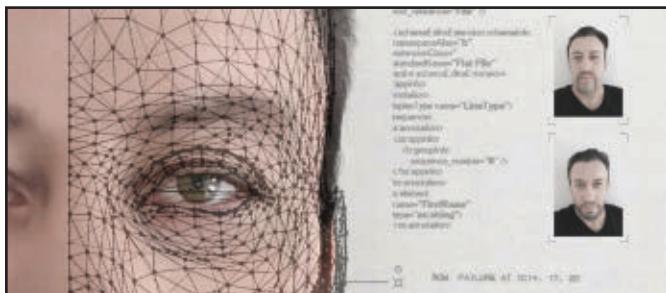
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Inbox

Let us hear from you! We welcome letters to the editor on issues presented in the magazine. Email letters to nwlawyer@wsba.org. NWLawyer reserves the right to edit letters. NWLawyer does not print anonymous letters, or more than one submission per month from the same contributor.

PRESIDENT'S CORNER

I just finished reading your President's Corner in the July-August 2017 edition of *NWLawyer*. Thank you for your commitment to access to justice. I too have been coming to grips with my own white privilege and am striving diligently to be the best anti-racist and ally I can be. As a member of the Access to Justice Board, I look forward to your presidency, hearing your journey, and supporting you in these efforts.

Laura Bradley, Tacoma

In response to the great article regarding removal of bias in the legal profession, I would suggest that any white person interested in eliminating their own bias read *Waking Up White, and Finding Myself in the Story of Race* by Debby Irving. I was shocked that as a white mother of black children, who really really tries to deal boldly with racial issues, how much I still don't know. At least I'm on the path.

Suzanne M.B. Hayden, Port Angeles

I would like to thank Pres. Furlong for his response in the July-August issue regarding the conversation on discrimination in the legal community. It was refreshing to read what he wrote. Too often we talk about discrimination, specifically institutional discrimination, without addressing the flip side of the coin: privilege. While some suffer because of discrimination, others thrive as a result of privilege, much of which we fail to recognize. Thank you for reminding us of this also very necessary conversation piece. We still have a long ways to go for diversity and we all need more training and more sensitivity on how to be more inclusive and to

recognize our own often unrecognized biases and privileges.

Ahoua Kone, Seattle

WSBA COMMUNICATIONS

Regarding the email from WSBA President Bradford E. Furlong dated Fri, Jun 23, 2017, at 12:07 p.m.:

Of all the places where a person should be innocent until proven guilty, it should be the WSBA.

Based on the Board's duty of undivided loyalty to its members, I would have preferred that Mr. Furlong's email indicated that Robin Haynes is innocent until proven guilty, that the professional rules require confidentiality, and that a news release would be forthcoming when and if appropriate.

I believe his wording infers Robin's guilt and raises just that question in the minds of every recipient. His second paragraph is particularly damning in this regard.

I am also troubled that the WSBA immediately purged every reference to Robin Haynes from its website, adding to the inference of guilt.

I prefer to wait until justice runs its course, if there can be any justice under the circumstances.

Inez Petersen, Renton

Like many of you, I received surprising news in late June in my email inbox that the WSBA was undergoing changes in leadership. Hoping to find answers to the cryptic emails about the Board of Governors meeting in June 2017, I visited the Board of Governors' website, which contains the agendas and meeting minutes for their meetings.

However, I was shocked to see there was no notice of any meeting of the Board of Governors in June 2017. I then turned to the WSBA Bylaws to determine if an emergency meeting of the Board of Governors can occur without notice. To avoid boring you with a legal analysis, I will cut to the chase and say that as the WSBA Bylaws are currently

written, the Board of Governors can probably meet without any notice under the circumstances that occurred.

How can this be? As members of the Bar we are called on to promote transparency in the legal process. However, when it comes to the transparency of the organization that regulates our profession—it appears we have left a rather large loophole.

I hope this incident encourages our Board of Governors to take a look at the WSBA Bylaws, and perhaps consider revising them with the goal of greater transparency.

Benjamin Vidic, Portland, OR

RESPONSE FROM EXECUTIVE DIRECTOR PAULA LITTLEWOOD

Thank you to Mr. Vidic for bringing this to our attention in July. Notice of all Board of Governors meetings is

posted on the WSBA website; however, our practice has been to delete such notices for Special Meetings and Emergency Meetings once the date of the meeting passed, which would account for Mr. Vidic's not seeing notice of the June Emergency Meeting when he looked in late June. In response to Mr. Vidic's comments we have changed the practice and now retain notice of all meetings, including Special and Emergency Meetings, on the webpage after the date of the meeting has passed, creating a record of all meetings held each year.



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LAYING THE BEST PLANS TO MEET OUR MISSION—

The Board and staff roll up their sleeves with new governors and an enhanced vision to benefit members and the public

I want to start this month's Corner by welcoming Dan Clark, a Senior Deputy Prosecuting Attorney from Yakima, to the Board of Governors as its newest member. Dan was selected by the Board on Thursday, July 27, and by the next day jumped into office. Congratulations also go out to Bill Pickett, who Dan Clark replaces as the 4th Congressional District Governor. Bill was sworn in as Washington State Bar Association (WSBA) President-elect just before Dan Clark was appointed by the Board. Our members and the public will be well-served by Dan and Bill.

The Board also elected third-year Governor Kim Risenmay to become the 2017-2018 WSBA Treasurer. Kim will come to this post with an excellent background as a three-year member of the Budget and Audit Committee. Kim is a lawyer/CPA practicing tax law. His term as Treasurer will commence at the close of the Board meeting on September 29.

In the July/August issue of *NWLawyer*, I mentioned that I wanted to focus the WSBA on the needs of the profession and the justice system. I recently returned from three days of meetings and a retreat with the Board of Governors and our executive staff. Additionally, five new governors-elect joined us for the meetings and retreat: Kim Hunter from the 9th Congressional District, Paul Swegle from the 7th Congressional District (North), Kyle Sciunchetti from the 3rd Congressional District, Brian Tollefson from the 6th Congressional District, and Alec Stephens, a new at-large governor. All five of our new governors-elect arrived with enthusiasm, were centered on members' needs and engagement, and added new ideas and perspectives to the Board of Governors' deliberations. One more at-large governor, to be nominated by the Washington Young Lawyers Committee (WYLC), will be selected in September to serve out the remainder of Sean Davis' term. (Sean resigned from the Board to take on the position of WSBA General Counsel.) We then will have seven new governors during the 2017-2018 year. We can all look forward to the energy and vision each new governor will bring to the table to add to the experience of our returning governors.

At our meeting and retreat, with excellent help from WSBA staff, the Board and governors-elect were very busy. We took a good look at current WSBA services and again refreshed our understanding of the great unmet legal need in our state. With insights from staff, the Board turned its attention to how legal services might be or might need to be delivered in the future to

address the unmet legal needs of the public and started a conversation aimed at understanding the impact entity regulation might have on the delivery of legal services. Because we all recognize that the access to

justice problem cannot be solved in a vacuum, we acknowledged that any changes in the practice of law must accommodate and help maximize members' legitimate economic expectations.

We also considered how courts may need to operate to improve access to justice as well as the demands that better access will make on judicial infrastructure and funding. Underlying these discussions was recognition of the importance of assuring diversity, inclusion, and equity for marginalized professionals and members of the public. Developing empathy that recognizes institutional and personal barriers and acknowledges the importance of allies was seen as an essential ingredient of true equity for all members and for the diverse clients we serve. Last, but certainly not least, we vigorously discussed—and all agreed—that WSBA outreach must be effective to achieve meaningful member engagement. We discussed engagement strategies, including the importance of governors and officers making personal contact with members through local bar meetings and other opportunities to exchange ideas and information.

From these discussions, the broad outlines of strategies and policies to meet future member needs, to engage members through transparency and outreach practices, and to address the shortfalls in access to justice, began to emerge. These strategies and policies will form the basis for a good deal of the Board's agenda over the next year and possibly beyond. We now must review the outcome of our retreat and begin to chart a course that carries us forward.

[JOIN OUR TEAM]

NWLawyer, the WSBA's award-winning member magazine, is looking for a part-time editor with exceptional editing and writing skills and connection to the legal community. If you or someone you know is interested, the complete position description and instructions for applying can be found at <http://bit.ly/2swSxwg>

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I left the meetings both slightly tired from the intense work and greatly energized by the progress made and the enthusiasm the Board and staff have for the benefit of our members. I sense that significant momentum and commitment exists among present and future Board members—and staff—toward meeting our mission. Everyone worked hard, contributed, and made both the meeting and retreat a success. To all, a big thank you!

We still have a lot to do; please make no mistake about it. There is much hard work ahead, but I am confident that with your support and through collaboration with other entities we will achieve our goals. Indeed, more than anything, we will need the support and involvement of each member as we move forward. I ask you to please pay close attention to WSBA outreach efforts, to become knowledgeable about the issues the Board will be addressing over the coming year, and to comment constructively as we progress. This is your organization; it works best with your involvement and support.

Last, I want to acknowledge the fine work of Governor Jill Karmy, whose term as the governor from the 3rd Congressional District and as WSBA's Treasurer will end in September. Jill has now left for Sweden with her family, where she will spend the next two years studying for an LL.M. Jill's exceptional talents and commitment to our mission have been of great benefit to the Board and WSBA members. Although we will have Jill by telephone at our September meeting, we already miss her presence. NWL

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Member Benefits or Practice Management Discounts?!



With guest columnists
Destinee Evers, Practice Management
Assistance Specialist, and Ana LaNasa-Selvidge,
Member Services and Engagement Manager

Last spring, many of you took a survey we sent out seeking feedback on the discounts WSBA negotiates with vendors on products and services to support your practice. Over 1,200 responses provided valuable insight into your experiences with the products and services—thank you for the input! The survey responses also helped us understand that we have created confusion between what a “member benefit” is and what we would consider a “practice management discount.”

In the survey, we used the term “Member Benefits” to refer to the array of services and products that members are eligible to receive discounts on. That is, those tools and services provided by vendors with whom WSBA negotiates reduced rates and other advantages for members. Members who take advantage of these products and services pay

directly to the vendor. Through your responses, we realized that “Member Benefit” means different things to members—for some, it might mean these discounted products from vendors, but others thought it meant free CLEs like the monthly Legal Lunchbox™ series, the 28 WSBA practice area sections, or the ethics phone line. Your feedback created an “Ah-ha!” moment for us, as we understood that we need to use clearer language in distinguishing WSBA Member Benefits from discounted services and products available from vendors with whom WSBA has a relationship.

As a result, we have created two categories for the various products and services that you can receive by virtue of being a WSBA member. The first category contains things provided to you by WSBA as part of your annual licensing fee (“Member Benefits”). The second category contains things you can access through WSBA, at a discounted rate, from other vendors and organizations (“Practice Management Discounts”). See page 9.

Keep the Feedback Coming!

We hope this column illustrates how valuable your feedback is in helping us understand what is working for you and what

might be unclear or confusing. We hear a lot of different things from members about what the WSBA means to them, and one fairly consistent theme in this feedback is that many of you are not familiar with the wide range of benefits, discounts, and services WSBA provides.

For example, we often hear, “It would be great if the Bar could offer free CLEs,” or “Is there anyone at the Bar I could speak with about a potential ethics issue I am facing?” Yes, we do offer free CLEs—enough to satisfy all of your MCLE requirements! And yes, we do have staff you can connect with by phone on all things ethics-related. These frequent questions reflect a challenge, though:

How can we better communicate and engage with you and ensure that you know about the Bar’s benefits, programs, and services when you need them? One method we’re launching in this issue of *NWLawyer* is “Bar

Buzz,” a new call-out feature that each month will highlight a Member Benefit, a Practice Management Discount, or a “did you know?” blurb around Bar-related services.

We’ll be continuing the conversation around WSBA Member Benefits and the Practice Management Discounts so we can increase members’ awareness of the resources available to them and the impact of those resources on the profession as a whole. Just like AAA is there when you’re broken down on the side of the road, WSBA is here to assist in helping all our members thrive in the profession. So help us understand what services would be helpful to you and we’ll promote those things we are already doing so you know where to turn when you need it!

WSBA Member Benefits, Practice Management Discounts, and many other Bar programs support you in providing high-quality legal services, which in turn builds public trust in our membership and in the legal process—all of which helps advance our mission of ensuring the integrity of the legal profession. When you receive the critical support and resources you need to deliver competent, effective legal services, the profession and the public benefit.



So What Is a **MEMBER BENEFIT?**

Going forward, when WSBA references a Member Benefit, it will mean those services that support you in your practice and are available to you as a member of the WSBA at no additional cost.

PROGRAM/SERVICE	DESCRIPTION
Casemaker	Online legal research tool
Ethics Phone Line	Confidential consultations with members who have questions about their prospective ethical conduct.
Members Assistance Program	Offers groups and individual, confidential consultations promoting wellness and providing referrals.
Practice Management Assistance Program	Consultations with a practice management advisor are confidential and available regardless of geographic location or firm size.
Legal Lunchbox™ webcast series	Free seminars that enable members to earn 1.5 CLE credits each month. Held on the last Tuesday of each month at noon, seminar topics focus on skills, tools, and techniques necessary in 21st century law practice.
Lending Library	A library in the WSBA office in Seattle that allows WSBA members to borrow from a selection of over 400 books. Titles can be searched online and books mailed.
WSBA Connects	Free, confidential counseling available to members in their communities. This service also offers student loan guidance, financial planning, family caregiving support, and much more.



And What Is a **PRACTICE MANAGEMENT DISCOUNT?**

When WSBA refers to a Practice Management Discount in the future, that designation will mean the suite of tools and services offered through vendors outside of WSBA that you pay for directly to the vendor. As previously outlined, WSBA is able to negotiate various discounts and advantages with these vendors on behalf of our members. Through these products and services, WSBA seeks to offer an array of vetted providers, to increase member exposure to new technologies and services, and to reduce the barriers to implementing those technologies and services.

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ABA Books for Bars	15% discount on all ABA publications. Log in to your myWSBA account for the discount code.
Bill4time	20% lifetime discount and free account on bill4time, an online time and billing program.
Client Conflict Check	15% discount and free 30-day trial on Client Conflict Check, a cloud-based client conflict check system.
Clio	10% lifetime discount on Clio, a leading cloud-based practice management platform. Log in to your myWSBA account for the discount code.
LawPay	3 months free, no activation fee and competitive rates on LawPay, a merchant account for lawyers.
WordRake	An editing software tool for lawyers. WSBA members receive a 10% discount on tiered volume pricing. Log in to your myWSBA account for the discount code.
Worldox	12% discount on Worldox®, a document management system (DMS). Log in to your myWSBA account for the discount code.



THE BAR BUZZ

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Treasurer's Report UPDATE

FY18 BUDGET

At its July meeting, the Board of Governors considered the draft FY18 budget, which reflects the cost of Board-directed programs, services, and operations. The draft budget as presented includes general fund revenue of \$18,913,199 and expenses of \$19,528,210. As planned, WSBA is projecting a net loss/use of \$615,011 in reserves. Based on efficiencies and savings seen at the end of FY16 and projected through FY17, and the budget presented, general fund reserves will not fall below the \$2 million level at the end of FY18, consistent with WSBA fiscal policy. The Board will take action on the budget at its September 28-29 meeting in Seattle. If you'd like more details, budget materials may be viewed at www.wsba.org/About-WSBA/Financial-Info. **NWL**

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See your name in lights (well, in ink, anyway) in *NWLawyer*! If you have an article of interest to Washington lawyers or have been meaning to write one, see page 4 for article submission guidelines. *NWLawyer* relies almost entirely on the generous contribution of articles from WSBA members.

Questions? Contact nwlawyer@wsba.org.



BE PART OF THE **SOLUTION**

How Law Firms and Male Colleagues
Can Be Women's Most Effective Allies

by Averil Rothrock

The newsflash echoed around the Washington State Bar Association (WSBA): encouragement of a female lawyer assuming a prominent leadership position to “be a lady” reflects implicit bias and gender stereotypes and should be shelved. So posited an article in the January 2017 edition of *NWLawyer*.

The newsflash was not universally embraced. Letters published in the next month’s edition probed the merit of this assertion. Members of the Bar pushed back, suggesting that encouraging a female attorney embarking on a prominent and important leadership role in the profession to “be a lady” was as harmless as encouraging a male attorney to “be a gentleman.” But it is not the same—and therein lies a disconnect between members who want to support women lawyers but in fact perpetuate behaviors and actions that do not promote equality.

To eliminate gender barriers, all lawyers should use terms with colleagues that they would use with any colleague, male or female. Professionals should not be singled out on the basis of gender. If you mean to encourage a lawyer to be honest, fair, polite, courteous, and sincere, or to be true to himself or herself, or to be professional and upstanding, use those words. Do not use a word that harkens back to a time when women received guests for tea while men litigated cases and stewarded professional associations. Do not use a word like “lady” that connotes stereotypical characteristics: deferential, sweet-natured, uncritical, demure, and modest. Even if “lady” is not used with the intention to invoke these characteristics, such connotations are embedded in history and societal expec-



All members of our Bar can help advance our collective thinking by modernizing our behaviors. The Bar must reflect the society we serve.

tations. To help women break free from the past, we need to modernize our language. While we're at it, please shelve "lady lawyer." As far as I can tell, after hearing this old-fashioned descriptor for 24 years (though mercifully, less and less frequently), it serves only to reinforce the notion that the normative lawyer is masculine. The demise of "lady lawyer" is upon us, and we will all be well-served to see it permanently retired.

A double standard exists that a "gentleman" can be honest, fair, polite, sincere, professional, and upstanding, while also being assertive, bold, forthright, visionary, and direct. When women are told to be ladies, the same qualities are not conveyed. Ladies are not traditionally assumed to be assertive, bold, forthright and direct. Studies repeatedly show that women on the job who demonstrate characteristics associated with acceptable male behavior are not perceived positively. I'm putting that delicately. Such women are often described in distinctly unflattering vernacular.

Further, women should not have to be ladies to succeed professionally. A United States Supreme Court case recognizing sexual discrimination under Title VII of the Civil Rights Act of 1964 involved denial of a partnership in an accounting firm because the female employee was not feminine enough. The facts in *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989), reflect that this accountant had been counseled to "walk more femininely, talk more femininely, dress more femininely, wear make-up, have her hair styled, and wear jewelry." Her evaluations included comments that she was "macho," swore a lot, "overcompensated for being a woman," and should take "a course in charm school." Her male coworkers thought she should be more of a lady than she was when they refused to promote her. This conduct was held to be discrimination based on sex.

Yet another issue lurks when use of "lady" is defended as the equivalent of "gentleman," with the assumption that everyone is covered by these terms. This dichotomy is on its way out. Binary gender identifiers do not capture the range of gender identities. Transgender and gender-queer people prefer other pronouns that are not necessarily correlated to either a lady or a gentleman. In some communities, it is common to introduce oneself by stating the gender pronouns that

one prefers. The more I thought about it, the more I concluded that defending the advice to "just be a lady" is problematic from many standpoints.

All members of our Bar can help advance our collective thinking by modernizing our behaviors. The Bar must reflect the society we serve. We can deliberately challenge ourselves and others to identify and counteract preconceptions and traditional stereotypes. We can all be allies to professional women, demonstrating an awareness of the persisting problems in our profession of chauvinism and sexism. Former WSBA Governor Phil Brady offered some very helpful suggestions in his guest column, "Allies in the Law: Supporting Each Other and Holding Ourselves Accountable" in the February 2017 issue of *NWL*awyer.

The candid reactions of WSBA members to these ideas helped produce discussions that are valuable and contribute to greater understanding. This will lead to more involvement of every member of the Bar in advancing women in our profession. Consider circulating in your office or network the related materials that have appeared in *NWL*awyer. Have a discussion about the topic. Hopefully, your office has female lawyers who can participate in the discussion if they choose. They might share their experiences—and you might be surprised at the stories they have to tell. You might have stories, too. You could tell about the time you interceded when opposing counsel was treating your female colleague badly. Perhaps you called out your own law partner for expressing chauvinism. You could share about a standout associate and how you mentored her, complimented her skills in public, and recommended her to others, and how she is now the best of the best. If your office does not have any female attorneys, maybe you will ask yourself why. If you find that women are underrepresented (which you will, except in those rarest of firms) you can agree that the topic of more fully integrating women in the profession deserves our continuous attention.

To avoid falling into old traps or not doing the part you earnestly want to do to end gender stereotypes and help advance women in the profession, please enjoy the test on the following page. Review the answers. They might help all of us become the allies women need. **NWL**

TEST YOUR KNOWLEDGE

Are You An Effective Ally?



1. True or False: Although women in America generally are paid 70 cents on the dollar compared to men, this is not true for women lawyers, who are close in pay equity.

2. Nationwide, in private law firms, what percentage of attorney positions are held by women? _____ %

3. What is the average percentage of women equity shareholders in private firms? _____ %

4. In civil cases, men are _____ times more likely than women to appear as lead counsel and to appear as trial attorneys. In criminal cases, men are _____ times as likely to appear as trial attorneys.

5. True or False: Men who have stay-at-home wives are more likely than men with working wives to penalize their female coworkers, denying them promotions and viewing them unfavorably.

6. True or False: Washington state leads the nation in the number of female judges on our bench.

7. Name three ways to help women progress within your firm:

1. _____

2. _____

3. _____

8. What are your suggestions for how legal employers should deal with the reality that so many female attorneys are simply lazy and take part-time assignments and work schedules that require the rest of the firm to carry them on their shoulders while they ambivalently pursue careers half-heartedly?

9. How can an attorney who witnesses another attorney behaving like a chauvinist or employing stereotypes address the conduct?

- a) Pretend you did not hear it.
- b) Scrutinize your iPhone with even more concentration.
- c) Later take the attorney aside or call him or her and express disapproval of the behavior.
- d) Speak out immediately to disapprove and end the behavior and make your disapproval clear in front of everyone present.
- e) File a Bar complaint.

10. The women attorneys that I have mentored or supported are:

11. This year to help advance women in the law I resolve to: _____

ANSWERS AND COMMENTARY

1. False. Women lawyers suffer pay inequity like women in other professions and jobs. A typical female equity partner in the 200 largest law firms in the U.S. earns 80 percent of the compensation earned by the typical male equity partner according to the latest statistics from the American Bar Association (ABA) Commission on Women, which were updated in January 2017.¹

2. Nationwide, in private law firms, only **34 percent** of attorney positions are held by women.² Do you know the representation of women attorneys in your firm overall?

3. Currently, as reported by the National Association for Law Placement, among equity partners in multi-tier law firms, 81.9 percent are men, 18.1 percent are women, and 5.8 percent are racial/ethnic minorities.³ **This calls for a sad emoji:** ☹.

4. In civil cases, men are **three times** more likely than women to appear as lead counsel and to appear as trial attorneys.⁴ In criminal cases, men are nearly **four times** more likely than women to appear as trial attorneys.⁵ The majority of male lead counsel (66 percent) in criminal cases appeared for defendants, while the majority of women lead counsel (69 percent) appeared for the government.⁶ For more information on first-chair women lawyers and how we need more of them, see the report from the American Bar Foundation and the ABA Commission on Women in the Profession, "First Chairs at Trial: More Women Need a Seat at the Table."⁷

5. **True.** Men in traditional marriages where their spouses stay at home are more likely to penalize female co-workers than men with working wives.⁸ The researchers noted that: "We found that employed husbands

in traditional marriages, compared to those in modern marriages, tend to (a) view the presence of women in the workplace unfavorably, (b) perceive that organizations with higher numbers of female employees are operating less smoothly, (c) find organizations with female leaders as relatively unattractive, and (d) deny, more frequently, qualified female employees opportunities for promotion. The consistent pattern of results found across multiple studies employing multiple methods and samples demonstrates the robustness of the findings."

6. **False.** Washington does not lead the nation in the number of female judges on our bench. In fact, neighbors Oregon, Idaho, and Montana are among the states that have higher percentages of female judges, according to the National Association of Women Judges' report in 2016, which indicates that 35 percent of Washington's judgeships are filled by women.⁹ Although women comprise 67 percent of the Washington Supreme Court (6/9), which is heartening, that figure does not reflect Washington's overall percentage of women judges in the lower courts, where justice is meted out daily.

7. The ABA Commission on Women in the Profession lists these best practices for law firms to assist women in their career progression:

Ensure equal assignment opportunities: Firms should develop metrics to track assignments to ensure that women are given opportunities to work on significant, high-revenue matters for important clients and partners.

Revamp compensation systems: Billable hours should be de-emphasized and greater significance should be given to the quality and efficiency of the work performed. Crushing billable hour quotas often penalize women,

who typically shoulder both family and professional responsibilities.

Make partnership criteria transparent and monitor progress: Associates must be apprised of the specific competencies and skills they need to advance to partnership. Firms should monitor the advancement of women lawyers, particularly to equity partnership and leadership positions.

Increase business development opportunities: Women lawyers must be provided meaningful business opportunities and training, including access to coaching, networking events, and client-development functions.

Destigmatize alternative work arrangements: A stigma still exists when women utilize or have utilized alternative work arrangements. Law firms should adopt and enforce policies that utilize part-time or flex-time work arrangements without penalty or stigma. Institute gender-neutral evaluation systems. (1) Clearly define performance evaluation criteria and communicate them to the whole firm, (2) educate your supervising lawyers and those responsible for evaluations about implicit biases that can affect performance evaluations, and (3) include substantial numbers of women and minority associates on firm committees that evaluate associates.¹⁰

8. If you thought this was a serious question, you might have to perform extra credit to pass this quiz. Refer back to the goal of destigmatizing alternative work arrangements, above. Commission research has found that women who worked part-time were perceived to be less committed, received more negative performance evaluations, and were not assigned the complex and challenging matters necessary to advance in their firms.¹¹ Consequently, in too many cases, their partnership aspirations were derailed

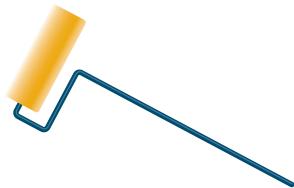
and they left their firms. Destigmatizing alternative work arrangements, therefore, must be a serious goal of legal employers who want to retain and advance women or, for that matter, men who are beginning to shoulder more family responsibilities. While more than 90 percent of law firms have adopted part-time and flex-time work arrangements, less than seven percent of all lawyers avail themselves of these options, and 81 percent of those who opt for such schedules are women. It's time for a cultural shift in our thinking, and this may come at exactly the right time to satisfy millennial lawyers—men and women—and keep them in our profession. Think of Mark Zuckerberg taking parental leave from Facebook to model use of these policies by all genders and set the norm for his company.¹² Our profession also needs to do this, to keep our talent.

9. Hopefully (a) (feigning ignorance of the comment) and (b) (staring at your iPhone) are out, because as lawyers we have a responsibility not to tolerate sexism. Calling the attorney out later (c) is better than nothing, but falls short of being leaders in our communities. Public dissent (d) is probably the best answer because it not only confronts the behavior, it does so publicly in a way that offers immediate support to the target of the behavior. While a Bar complaint (e) might be perceived as extreme, circumstances could arise that warrant it. RPC 4.4 requires that lawyers "shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person...." RPC 8.4(d) and RPC 8.4(h) prohibit conduct prejudicial to the administration of justice, which can include discriminatory conduct,

and RPC 8.4(g) prohibits "a discriminatory act" "in connection with the lawyer's professional activities."¹³

10. Only you know the answers to these questions. Maybe you'll spend time thinking more about this, and commit to action, so that next year you will be proud of your response. So proud, in fact, you will want to show your answer to your wife, daughter, or mother.

11. This one is up to you! Small or large, all actions are welcome.



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NOTES

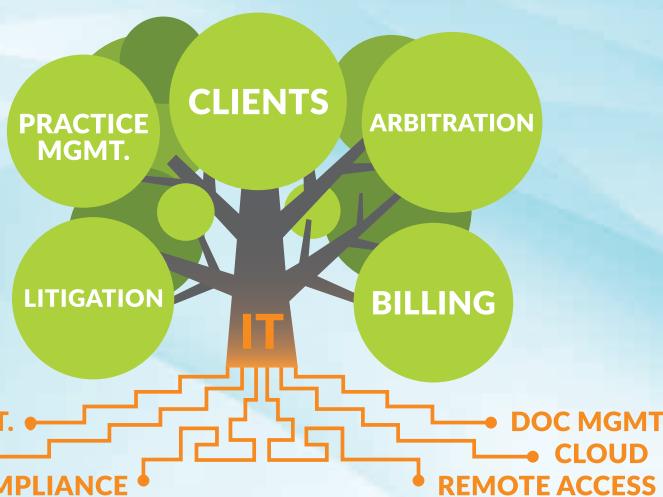
1. http://www.americanbar.org/content/dam/aba/marketing/women/current_glance_statistics_january2017.authcheckdam.pdf (last visited April 20, 2017), citing "Report

of the Ninth Annual National Survey on Retention and Promotion of Women in Law Firms," National Association of Women Lawyers (NAWL) and NAWL Foundation, October 2015. www.nawl.org/p/cm/ld/fid=82#surveys.

2. <http://www.nalp.org/uploads/Membership/2016NALPReportonDiversityinUSLawFirms.pdf> (last visited June 14, 2017), rounding up the exact figure of 33.89 percent. This includes all levels of attorneys, including associates, partners, and positions such as "of counsel." The overall figure for women fell in 2010 and 2011, and again in 2015, but still remains higher than in 2009, when the figure was 32.97 percent. *Id.* Too bad we are speaking of gains in such small increments, i.e., in 2017 women are up one point from 2009.
3. <http://www.nalp.org/0417research> (last visited June 14, 2017), reported from National Association for Law Placement (NALP)'s 2016 statistics. NALP reported

that, broadly speaking, "it does seem to be the case that the distribution of all partners by equity status is moving, albeit in the smallest increments, toward a greater representation by women and minorities, just as women and minorities have made small gains in representation among partners as a whole." *Id.* "[T]he percent of equity partners who were men in 2011 was 84.4%, and fell to 81.9% in 2016. During the same period, the percent of equity partners who were women rose from 15.6% to 18.1%, and the percent of equity partners who were minority rose from 4.7% to 5.8%." *Id.* Sadly, the representation of women remains below pre-recession levels. <http://www.nalp.org/uploads/2016NALPReportonDiversityinUSLawFirmsPressRelease.pdf>

4. http://www.americanbar.org/content/dam/aba/marketing/women/first_chairs2015.authcheckdam.pdf (last visited June 14, 2017).
5. *Id.*
6. *Id.*
7. *Id.*
8. https://www.researchgate.net/publication/256014555_Marriage_Structure_and_Resistance_to_the_Gender_Revolution_in_the_Workplace (last visited April 30, 2017).
9. <https://www.nawj.org/statistics/2016-us-state-court-women-judges> (last visited April 30, 2017).
10. Liebenberg, Roberta D., "Plugging the 'Leaky Pipeline' of Women Attorney Attrition," Vol. 15 No. 9, *American Bar Association: The Young Lawyer* (July/August 2011).
11. *Id.*
12. <http://www.businessinsider.com/mark-zuckerberg-just-made-facebooks-parental-leave-policy-even-better-2015-11> and <http://www.vogue.com/article/mark-zuckerberg-paternity-leave>.
13. See Rothrock, Averil Budge, "Sanctions for Sexist Remarks: Don't Overlook Obnoxious, Demeaning Behavior," *NWLawyer*, March 1, 2016 (reviewing case law where sanctions have been imposed for discriminatory comments on the basis of sex during legal representation).



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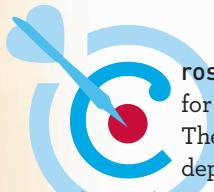
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"Cross-examination is the greatest legal engine ever invented for the discovery of truth. You can do anything with a bayonet except sit on it. A lawyer can do anything with cross-examination if he is skillful enough not to impale his own cause upon it."

—John Henry Wigmore



Cross-examination can be challenging and intimidating for the attorney conducting it as well as for the witness. The initial decision about how to conduct cross-examination depends upon the general approach of the lawyer, who the witness is, and what the testimony being offered is. Some lawyers are more intellectual and logical and, as a result, think of cross-examination from that standpoint. Their cross is focused chiefly on challenging the testimony or opinions of the witness. The downside of this kind of cross-examination is that it can become a confusing struggle between attorney and witness without any clear "winner." While attacks on the substance of relevant and important testimony are important, be careful that your cross-examination doesn't become just a confusing debate.

However, when the primary goal is to challenge the credibility of the witness—with only targeted challenges to the accuracy of the testimony—the focal point of cross-examination becomes the believability and trustworthiness of the witness rather than the specific testimony. A credibility cross-examination avoids the risk of the examination becoming a bewildering argument between two people. If you undermine credibility, it doesn't make a lot of difference what the witness testified to, if the jury doesn't believe him or her. Further, in my experience, jurors tend to focus more on the general impression the witness and lawyer make rather than the substance of what the witness says.

Whatever approach you choose to use in conducting a cross-examination, consider these principles as you prepare:

12 Basic Rules for Effective Cross-Examination

by Paul Luvera



1 Make big points and ignore small ones.

Make your points on cross-examination major ones that are significant to your case and do it without irrelevant details. Ignore issues that aren't important. Don't bore the jury. Make cross-examination on the big issues short, to the point, and interesting.



2 Don't wait for closing argument to explain important points made on cross.

Don't make the mistake of waiting until closing argument to try to ensure that the jury understands the significance of important points made in cross-examination. By asking follow-up questions *during* the cross-examination you can underscore for the jury why the point is important. It is better to deal with the witness trying to explain it away than to lose the drama of the moment or count on the jury to remember it long after it happened. For example, if you impeach a witness, follow-up questions highlight the conflict: "Today you testified the light was green, but in your deposition a year ago you testified, under oath, that the light was red, isn't that true? Yet both can't be true, can they? Your recollection a year ago would be more recent than one year later, isn't that so?"



3 Approach cross-examination as a big picture, not a series of details.

Cross-examination is a continuation of your client's story. It is a repetition of the basic theme of your case. Don't plan your cross-examination as if you were looking through a microscope for details. Make sure your cross-examination is one of the big pictures in the case. No one cares and few will understand a detailed, intellectual, and complicated cross-examination, nor do jurors care about issues they feel aren't important. Moreover, when you waste time on details or the irrelevant, the jury will assume you are not being fair to the witness. Make your points big ones and important ones—think of a rifle and not a shotgun.



4 Don't react to every issue your opponent raises.

Your opponent may try to distract you and the jury by raising issues about insignificant matters. Having a major theme and sticking to it is essential to a successful outcome. What you spend time talking about is what is important in the minds of the jury. Ignore the insignificant and concentrate on the important facts during cross-examination.



5 Have a basic theme and stick to the main story.

You have a story to tell based upon your case themes. You need to develop a central theme that highlights the positives of your case and explains the negatives as well. Stay on theme throughout the trial and be sure to weave your client's story into your cross-examination.



6 Deal with negative issues head on.

The negative issues about your case must be acknowledged and dealt with openly and honestly. They can't be ignored—they are like an elephant in the room. Plan your cross-examination by deciding how to deal with these issues, but be careful not to spend too much time doing so.



7 The right to ask leading questions is a gift. Use it.

Use your right to ask leading questions in cross-examination. If done well, you can tell your client's story through leading questions, irrespective of the answers the witness gives. A series of short and clear leading questions is a powerful way to communicate your client's story to the jury.



8 The three most important rules are: Listen, listen, and listen.

Listen carefully to the witness on direct examination for issues to ask about on cross. Good trial lawyers are not good note-takers. They are good listeners. If you have a prepared outline of questions you plan to ask on cross-examination, you will often be looking at the outline or planning your next question instead of listening to the witness's answers. As a result, you may think you received an answer to your question when you didn't or you may miss important testimony that needs follow-up. Concentrate on what the witness is saying. Think while you work and listen, listen, listen.



9 If you decide to impeach a witness, do it right.

Too often, lawyers lose the drama of the moment while attempting to impeach on cross-examination because they don't do it right. The first step for impeachment is to make sure the witness's statement is significant enough to use. The impeaching material must be clearly inconsistent and not something obscure. The next step is to get the witness totally committed to the inconsistent statement before impeaching. If it is from a deposition, you need to identify the page and line number before bringing out the impeaching evidence. Lay a proper foundation before you attempt impeachment. Do it right or don't do it at all.



Cross-examination should be brief and to the point.

Talk is not cheap when it comes to what you spend your time on in cross-examination. Too many lawyers, after making an important point, go on to overdo it with too much talk. Don't gild the lily. But don't forget to pause long enough or otherwise make clear to the jury the importance of what was said. Make your major points short, simple, and to the point, then move on to the next subject.



Be firm but always fair in cross-examination. Your credibility depends upon the impression you make on the jury. At all times, you need to be firm, professional, and fair with the witness. Make sure you get an answer to your question, but don't brow-beat the witness to get it. Jurors start out by identifying with the witness, not the lawyer, and they regard the overly aggressive lawyer on cross-examination as being unfair. Jurors expect professional conduct from credible and trustworthy lawyers. Be professional and never be a bully or a showboat.



If you use exhibits or slides, do it right. There is nothing worse for a jury than cross-examination about an exhibit they aren't shown. If you are going to talk about an exhibit, make sure it is admitted and that you show or share it with the jury. If you use illustrative slides on cross-examination, be sure they are well done and don't violate the basics of good visuals. Slides that have too many words or print too small to read should never be used.

Historically, lawyers have argued about "the most important part of trial" without any consensus of opinion about the answer. One thing we do know, however, is that jurors are attentive to cross-examination. You can usually count on having the jury's attention at the start of cross-examination, so plan it well, with a powerful start, and end with a strong finish. Follow the basics of good cross-examination to improve your chances of doing an efficient and effective job. The most important secret to good cross-examination is preparation and planning. Take the time to do it right. You owe it to your client. NWL

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TRIAL ADVOCACY TRAINING PROVIDES INVALUABLE “IN COURT” PRACTICE FOR NEW AND YOUNG ATTORNEYS

by Casey Bruner

“Okay, Ms. Smith, let me step back for a second. I want to make sure the jury is clear on the timeline that you are testifying to,” I said, while trying to hide my frustration. “What was the first thing you heard on the night in question?” The panic was starting to set in. My key witness to a domestic violence assault suddenly could not remember the order of events. My client, a young military officer, would have his life and career ruined by a domestic violence conviction. The one person who could help him was getting everything wrong.

I learned a valuable trial skill that day. I learned how to corral a witness who has gone completely sideways in front of a jury. And the best part? It was fake. No one was going to jail, no one was getting fired, and no one’s life was ruined. It was a simulated trial. It was presided over by a sitting King County Superior Court judge, a real jury of nonlawyers, real attorneys on both sides, and actor-witnesses who, like real witnesses, frequently forgot their lines.

Trial advocacy training programs are invaluable to young attorneys. Some attorneys are trained in the basics of trial skills during law school but then spend years with no courtroom experience as they work their way up through their law firms. Other attorneys will practice law for years without ever exercising their trial skills. Trial skills training programs allow attorneys to learn, keep, and hone these skills so that they are ready when they find themselves in a courtroom for the first time.

Despite their value, trial skills training programs are becoming rare. Prosecutors’ offices often train their attorneys in-house, law school programs are exclusive to current students, and large firms sometimes send their associates to national trial training institutes that can be prohibitively expensive for small to medium-sized firms, let alone for solo practitioners.

The Washington State Bar Association’s (WSBA’s) Trial Advocacy Program (TAP) has, for years, met the need for

trial skills training. TAP is a program organized by young lawyers for young lawyers. Each year, attorneys from around the state join together for an intensive two-day trial skills training program, designed to give young attorneys the “in-court” practice they may not otherwise get. They have the opportunity to argue motions in limine, give opening statements, conduct direct and cross-examination, and present closing arguments.

With an emphasis on diverse trial perspectives, the TAP steering committee strives to gather a volunteer faculty comprised of top-tier litigators from all practice areas. Last year, Pierce County Superior Court Judge Jack Nevin demonstrated the value of direct examination and how to give witnesses the best opportunity to tell their stories. Poulsbo City Prosecutor Alexis Foster taught on the admission and authentication of evidence. Portia Moore, of Davis Wright Tremaine, provided real-world examples of direct examination and impeachment. Respected personal injury attorneys Karen Kohler and Felix Luna demonstrated how to give effective opening and closing statements.

For the first time last year, the WSBA Litigation Section and Young Lawyers Committee each presented panels that discussed the real-world challenges young litigators face, including first-time trial experiences and dealing with difficult clients. These panels helped to further connect young lawyers with seasoned litigators. They also provided next steps for those wishing to continue to develop their practices as trial attorneys. (As a side note, the addition of these panels was the idea of steering committee members, who are always looking for ways to make this program more valuable for the attendees. If you have new ideas for the program, and are interested in joining the steering committee, contact newlawyers@wsba.org.)

TAP participants find this program helpful, particularly those in firms where in-court experience can be hard

to come by. One student from a large firm attended because "trial work is, frankly, rare." The program is also an opportunity to "take the plunge" into trial work and see if you have what it takes to be a litigator. One participant, after the program, stated, "I can do this. I can be better. Hearing great attorneys acknowledge their losses is just as helpful as hearing about the wins."

I agree with these participants wholeheartedly. My brief time participating in similar trial skills programs taught me more about substantive law, ethics, legal strategy, and just plain "lawyering" than any passive lecture I ever experienced. I joined TAP and became a co-chair to ensure that these types of programs are affordable and available to any young lawyer who needs them. Consistent with the WSBA's mission to serve the members of the bar and TAP's goal to make

TAP participants find this program helpful, particularly those in firms where in-court experience can be hard to come by.

quality trial skills training programs available to all young attorneys, WSBA New Lawyer Programs will award two scholarships this year to attorneys who need this training but are unable to pay the tuition. Scholarship applications are due by Friday, Sept. 15, 2017. To learn more about the scholarship and how to apply visit: <https://goo.gl/qe8AgP>.

The TAP steering committee has already begun planning for this year's program. TAP is made possible by vol-

unteer young lawyers who help develop the program, experienced litigators who present at the CLE seminar, and volunteer judges and members of the public who create the mock trial experience.

Whether you are a young attorney who wants to make this program better or a seasoned litigator with wisdom to share, please let us know. Together, we can keep providing young litigators with the tools they need to serve the public and champion justice in court-rooms throughout the state. NWL



CASEY BRUNER is an associate at Floyd, Pflueger & Ringer, P.S. and serves as the chair of WSBA's Trial Advocacy Program. He can be reached at cbruner@floyd-ringer.com.

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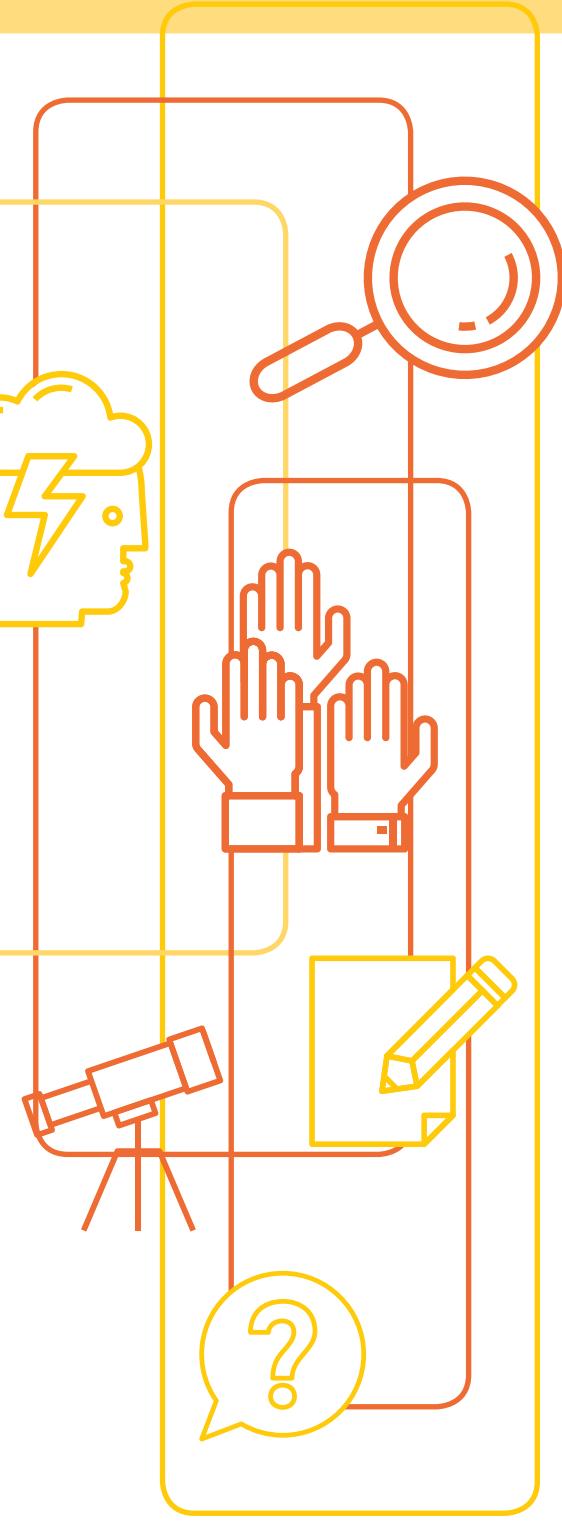
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As the Board of Governors begins considering the issue of mandatory malpractice insurance, it looks forward to getting member engagement and input from the outset of consideration of the topic. We commence the dialogue with two pieces in this issue of *NWLawyer*: this article, which provides the background on the Board's consideration of the topic to date, including a recommendation to create a Task Force to look at the issue in more depth, as well as another piece that provides one point of view in "Perspectives" on page 28. *NWLawyer* hopes to provide a forum for the exchange of ideas, so please share your thoughts by writing to us at nwlawyer@wsba.org.



WSBA BOARD OF GOVERNORS EXPLORES MANDATORY MALPRACTICE INSURANCE

by Kim Risenmay and Douglas Ende

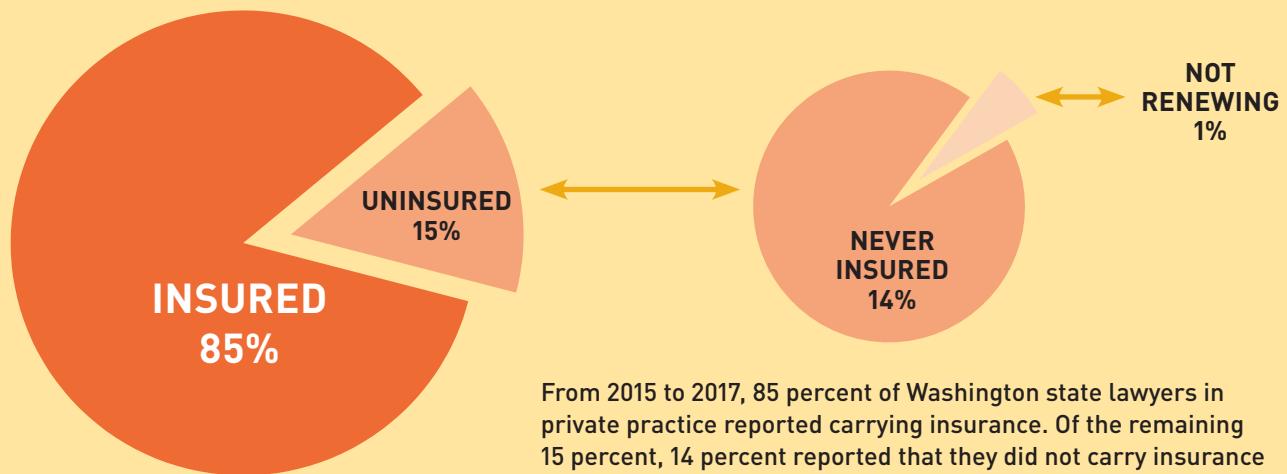
The Washington State Bar Association (WSBA) Board of Governors recently took up the question of whether requiring malpractice insurance for lawyers as a condition of licensing is an appropriate mechanism to help fulfill the regulatory duty to protect the public. The May 2017 Board of Governors meeting included a generative discussion about mandatory malpractice insurance. During a generative discussion, the Board does not make any decisions or take action, but rather seeks to educate participants about the topic and to stimulate a dialogue. During the May 2017 generative discussion, Kim Risenmay, WSBA Governor from District 1, and Douglas Ende, WSBA Chief Disciplinary Counsel, presented general information to the Board about the current status of mandatory malpractice insurance programs in the United States and in other countries, as well as the various methods used to implement such programs. The Board as a whole then discussed whether such a regulatory initiative would help protect the public by ensuring that consumers of legal services in Washington state are financially protected from legal errors. This article highlights some of the features of the Board's discussion.

In Washington, there is a significant discrepancy between the licensing requirements applicable to practitioners with limited licenses and those applicable to lawyers. Under Admission and Practice Rules (APR) 12 and 28, respectively, Limited Practice Officers (LPOs) and Limited License Legal Technicians (LLLTs) are required to show proof of financial responsibility on an annual basis to maintain their licenses. Such financial responsibility is ordinarily established by certification of the existence of professional lia-

ALTHOUGH WASHINGTON ATTORNEYS ARE NOT REQUIRED TO CARRY MALPRACTICE INSURANCE, MOST DO.

2015-2017

Washington lawyers in private practice with liability insurance



From 2015 to 2017, 85 percent of Washington state lawyers in private practice reported carrying insurance. Of the remaining 15 percent, 14 percent reported that they did not carry insurance and one percent did not intend to renew their insurance at the end of its term.

Source: 2015-2017 WSBA annual licensing questions authorized by APR 26.

bility insurance. By contrast, Washington lawyers are not required to establish proof of financial responsibility to maintain their licenses. Washington lawyers are, however, as part of the annual licensing process, required to disclose to the WSBA whether they maintain malpractice insurance. See APR 26. The information is made available to the public through the lawyer directory on the WSBA website. Washington is one of 25 states that require disclosure of malpractice insurance either to the licensing organization or directly to the client. In

recent years, 85 percent of Washington lawyers in private practice reported that they are covered by malpractice insurance. APR 26 reporting data and demographic information also suggest that up to 30 percent of lawyers in solo practice are not covered by malpractice insurance.

Only two U.S. jurisdictions require lawyers to maintain professional liability insurance coverage as a condition of licensing: Oregon and Idaho. These two states use different models to implement their professional liability insurance

requirements. Oregon uses a professional liability fund, while Idaho has opted for an open-market approach. Outside of the U.S., many jurisdictions, including the Australian states, Canadian provinces, and England and Wales, require licensed legal practitioners to maintain professional liability insurance.

A professional liability fund is an adjunct to the jurisdiction's licensing and regulatory systems that acts as the insurance provider for all the jurisdiction's lawyers. Under such a system, lawyers in private practice are obligated

to pay an annual assessment as a condition of licensure, with exemptions for certain practitioners such as in-house counsel and lawyers in government service. The fund administers and pays claims, supports operation of the program, and provides a variety of loss-prevention services. Since 1979, using this model, Oregon's Professional Liability Fund (PLF)

ONLY TWO U.S. JURISDICTIONS REQUIRE LAWYERS TO MAINTAIN PROFESSIONAL LIABILITY INSURANCE COVERAGE AS A CONDITION OF LICENSING:
OREGON AND IDAHO.

has served as the insurance provider for Oregon lawyers in private practice. In order to be licensed in Oregon, active members of the Oregon State Bar (other than those who are exempt)¹ pay an annual assessment to the fund. In 2016, the assessment was \$3,500 per year, with a reduced rate for lawyers in the initial years of practice. The fund provides coverage of up to \$300,000 per claim with a \$300,000 annual aggregate, including defense costs, and a \$50,000 claims expense allowance. In addition to providing coverage, the fund collaborates with the Oregon State Bar to provide loss-prevention services: legal education, practice management programs, and personal assistance programs are all available through the PLF to help reduce the risk of malpractice.² This model makes coverage readily available to those required to have it, but it provides no choice in the selection of an insurer.

In March 2017, following a vote of the members of the Idaho State Bar, the Idaho Supreme Court amended Idaho Bar Commission Rule 302 to require that active members submit proof of current professional liability insurance coverage on an annual basis. This is an example of the open-market model, under which lawyers are free to choose an insurance provider. Idaho Rule 302, which becomes effective in January 2018, requires insurance coverage at a minimum limit of \$100,000 per occurrence with a \$300,000 annual aggregate. Lawyers who do not represent private clients are not required to comply with this provision. This model provides a great deal of choice to lawyers seeking coverage, but will impose some administrative burden on the Bar in tracking proof of coverage and addressing lapses in coverage.

Following the informational presentation, the WSBA Board discussed a number of topics, including the duty

to protect consumers of legal services from the financial consequences of malpractice, the question of why solo practitioners appear more likely to go without coverage, and the 1986 WSBA effort to enact a system akin to Oregon's PLF, which was defeated by member referendum.

The Board of Governors is committed to continuing the conversation and has asked the Board's Executive Committee to consider formation of a task force to explore possible models for adoption of a mandatory malpractice insurance system in Washington. The Board will take action on whether to create the task force at its September 28-29 meeting in Seattle and would welcome member feedback on this issue.³ NWL

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The authors thank WSBA staff Thea Jennings and Maia Crawford-Bernick for research and drafting assistance with this article.

NOTES

1. In Oregon, exemptions from PLF participation apply to members whose principal office is not in Oregon, government lawyers, judges, lawyers employed exclusively

by a business entity (other than a law firm), otherwise-insured legal aid lawyers and public defenders, members employed in a non-law-related field, retired lawyers, unemployed lawyers, and other categories that do not constitute the private practice of law. See Oregon State Bar Professional Liability Fund Bylaws § 3.150 (Jan. 2017).

2. *About the PLF*, available at <https://www.osbplf.org/about-plf/overview.html>
3. To find contact information for the governor from your congressional district, go to www.wsba.org/About-WSBA/Governance.

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A NEW LEGAL STANDARD FOR ATTORNEY MALPRACTICE



The Personal Impact of Malpractice

by Dan Bridges

Washington's Supreme Court fundamentally changed the law of attorney malpractice in *Schmidt v. Coogan*, 181 Wn.2d 661(2014), holding (1) collectability of the underlying judgment is an affirmative defense that must be pleaded and proved by the defendant attorney and (2) an injured client may recover emotional distress damages. This article provides a practical application of *Schmidt* and guidance on how the case's unanswered questions should be answered, and illustrates how the unique injury clients suffer is compounded when their attorney has no insurance.

After falling in a grocery store Ms. Teresa Schmidt endured nearly 20 years of litigation. Her attorney sued the wrong party, having waited until the eve of the statute of limitations to file. Ms. Schmidt had repeatedly asked her attorney to file the case. She testified he told her not ask, with profanity-laden rants, saying he was the attorney. She testified that after she learned the wrong party was sued and her case had been dismissed, her attorney told her the case had no value. Her attorney had no malpractice insurance, made no settlement offers, and avoided collection post-judgment.

The attorney's uninsured malprac-

tice set in motion two jury trials, three trips to Division II, and two trips to the Supreme Court, and required this author to execute against the attorney's office furniture and computers to satisfy the judgment. Once his furniture was executed against he immediately produced a check. Prior to that, he simply refused to pay—either Ms. Schmidt or an insurance premium.

Malpractice Law Post-Schmidt

Schmidt spurred three opinions. Five justices agreed collectability shall be an affirmative defense. That is settled law. Collectability asks whether a judgment in the case that was lost would have been collectible if won. Before *Schmidt* it was the client's burden to prove collectability. Now it is the defendant attorney's burden to "raise uncollectability as an affirmative defense to mitigate or eliminate damages." *Schmidt*, 181 Wn.2d at 669.

Five justices agreed that emotional distress damages should be available but did not agree on the standard to award them. Their availability is now the law but there is no established standard to award them. Justice Wiggins, joined by two justices, authored the lead opinion. Justice Stephens' opinion, joined by Justice Gonzales is, by quirk of syntax, called the dissent but Justice

Wiggins' three-Justice opinion does not a majority make. A concurrence of four justices resolved the case on procedural grounds. Those four likely will determine which standard to adopt when the question is next raised.

Before *Schmidt* there was no Washington law on emotional distress damages in attorney malpractice. A slim national majority has not recognized them but the majority trend does, because awarding only what the client should already have recovered does not make the client whole. This was true in *Schmidt*. Ms. Schmidt experienced an almost 20-year delay due to her attorney's malpractice, suffering the distress of unpaid medical bills accruing interest and the inability to afford treatment. Worse, she suffered the damaged relationship and distress over losing her case with no recompense.

Nationally there are two standards to award emotional distress damages; Justice Wiggins applied one and Justice Stephens the other. The standard Justice Wiggins applied allows general damages only "when emotional distress is foreseeable due to the particularly egregious or intentional conduct of an attorney or the sensitive or personal nature of the representation." *Schmidt*, 181 Wn.2d at 674. Justice Wiggins concluded that is "the national trend." *Id.* It is a

trend but that is an insufficient reason to follow it. Washington does not shy away from providing greater protection than other states. See *York v. Wahkiakum, School Dist.*, 163 Wn.2d 297, 303 (2008). A solid number of states reject that standard, among them *Betts v. Allstate Ins. Co.*, 154 Cal. App. 688, 697 (1994), and *Gore v. Rains & Block*, 189 Mich. App. 729, 740 (1991).

The standard Justice Stephens applied is consistent with the breach of other "special relationships" because, as

not even Justice Wiggins contests, it is well established that the attorney-client relationship is a special relationship. *Schmidt*, 181 Wn.2d at 688. Under this standard the plaintiff must prove general damages but they flow naturally, no differently than in insurance bad faith and medical malpractice, without the additional burdens imposed by Justice Wiggins' standard.

The parties and the court analogized general damages in malpractice to general damages in insurance bad faith. Justice Wiggins' rejected holding attorneys to the same level of accountability as insurance adjusters, saying "an insurer must deal fairly with an insured, giving equal consideration in

all matters to the insured's interests." *Id.* at 677. But so must attorneys. See *Arden v. Forsberg & Umlauf*, 193 Wn. App. 731, 743 (2016). He also distinguished bad faith law, saying the source of an insurer's duty is statutory whereas an attorney's is common law. That misses

ance bad faith..." *Schmidt*, 181 Wn.2d at 676. Two longstanding Court of Appeals cases recognize them and more impliedly do. Their availability is woven into the law. Thomas V. Harris, *Washington Insurance Law*, §7.05 (3d ed. 2012).

Unless Justice Wiggins believes the full court would reject general damages in bad faith cases, offering that as a reason to reject them in malpractice is, in the words of Justice Stephens, "unsatisfying."

Finally, Justice Wiggins rejected general

damages despite their availability in insurance bad faith because "importing insurance bad faith standards... will only cause confusion." Neither Ms. Schmidt nor Justice Stephens argued that bad faith law should be "imported." They offered the uncontroversial fact that the attorney-client relationship is no less special than any other special relationship, attorneys are due no special immunity for their breach of it, and it is inconsistent to create a higher standard for general damages in protection of only attorneys. Indeed, the attorney-client relationship is perhaps the most special of all special relationships and to suggest otherwise, as Justice Stephens explained, "erodes the trust that is

The attorney's uninsured malpractice set in motion two jury trials, three trips to Division II, and two trips to the Supreme Court....

the point: (1) insurers also owe a common law duty, the breach of which gives rise to general damages, and (2) it does not matter how the special relationship arises. Every one has a unique genesis. The issue is having breached the special relationship, what damages are available. Once a relationship is determined to be special, Washington courts uniformly allow general damages for its breach. All except, under Justice Wiggins' opinion, when an attorney commits the breach. Finally, Justice Wiggins rejected comparing general damages in bad faith to malpractice, saying it "places the cart before the horse in that we have never before addressed the availability of emotional distress damages for insur-

In Washington, a person needs a bond to install a toilet. Attorneys entrusted to handle life-altering events need no insurance.

central to (the) relationship by erecting artificial barriers to a client's ability to fully recover damages..." *Schmidt*, 181 Wn.2d at 685. Finally, there is nothing "confusing" about allowing clients to recover emotional distress damages on par with every other special relationship. "Washington cases are unambiguous that legal malpractice damages should fully compensate plaintiffs injured by attorney malpractice." *Shoemaker v. Ferrer*, 143 Wn. App. 819, 829 (2008).

The Path Forward

The stricter standard for general damages will not stand; it is a special immunity for attorneys, inconsistent with Washington law, and bad public policy. Justice Stephens' standard is none of those things and will incentivize attorneys to make reasonable offers and clients to accept them. Washington has long recognized negligence

compensates the injury, it does not punish the conduct. Yet, assuming two clients equally damaged by attorney negligence, Justice Wiggins' standard only compensates the one lucky enough to have been injured by "particularly egregious or intentional conduct." Malpractice is based on negligence, not recklessness or intent. To borrow Justice Wiggins' turn of phrase, it is his standard that places the cart before the horse by making an award of damage contingent on intentional conduct when the claim is negligence and it is the injury that is compensated, not the conduct that is punished.

With no majority opinion and no clear guidance from *Schmidt*, trial judges will decide which standard to apply. They should apply Justice Stephens'. It is the national trend, consistent with case law, and the better policy.

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law, Schmidt illustrates the impact of uninsured malpractice. Attorneys put to pay personally do not make detached decisions. Insurers do not offer nothing for 20 years when liability is clear or require a client to execute against office furniture to satisfy a judgment. Ms. Schmidt may still have had to go to trial but would not have had years of uncertainty as to whether, once she prevailed, she would receive recompense. A more likely outcome is that an insurer would have made an offer to settle. But with no insurance, the judicial system, the public, and Ms. Schmidt endured the burden of nearly 20 years of litigation.

In Washington a person needs a bond to install a toilet. Attorneys entrusted to handle life-altering events need no insurance. Given the complexity of the law even the most diligent attorney may misstep. The WSBA Board of Governors is considering formation of a task force to explore possible models for adoption of a mandatory malpractice insurance system for Washington attorneys. Your input is needed. Please provide it to the governor from your district,¹ or NWLawyer, or both. NWL



DAN BRIDGES was elected to the WSBA Board of Governors, representing District 9, in September 2016.

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

NOTES
1. To find contact information for the governor from your congressional district, go to www.wsba.org/About-WSBA/Governance.



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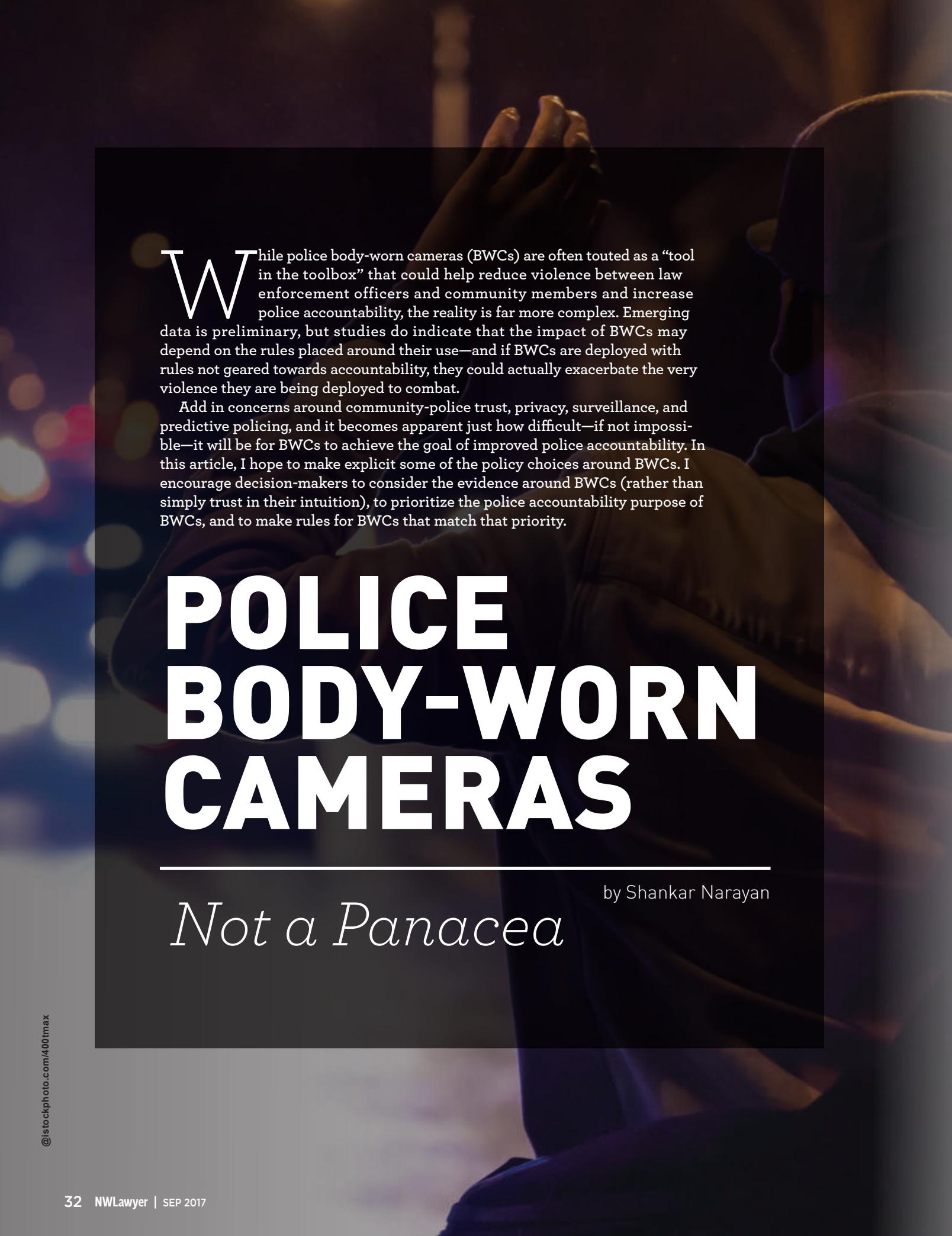
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While police body-worn cameras (BWCs) are often touted as a “tool in the toolbox” that could help reduce violence between law enforcement officers and community members and increase police accountability, the reality is far more complex. Emerging data is preliminary, but studies do indicate that the impact of BWCs may depend on the rules placed around their use—and if BWCs are deployed with rules not geared towards accountability, they could actually exacerbate the very violence they are being deployed to combat.

Add in concerns around community-police trust, privacy, surveillance, and predictive policing, and it becomes apparent just how difficult—if not impossible—it will be for BWCs to achieve the goal of improved police accountability. In this article, I hope to make explicit some of the policy choices around BWCs. I encourage decision-makers to consider the evidence around BWCs (rather than simply trust in their intuition), to prioritize the police accountability purpose of BWCs, and to make rules for BWCs that match that priority.

POLICE BODY-WORN CAMERAS

by Shankar Narayan

Not a Panacea

BWCs Have Failed to Achieve Accountability

In the wake of many high-profile incidents involving violent encounters with law enforcement officers, some community members understandably turned to BWCs as a possible solution.^{1,2,3} Many people have a strong intuitive sense that both officers and the public will behave better when being recorded. Yet it's no secret that the mere fact of recording has failed to reliably deter violent behavior, even when all parties were aware that the recording was being made.⁴ And even where police body-worn cameras were present, they have failed to reliably prevent violence, whether or not they were employed according to rules around their intended use.⁵

Make Policy Based on Evidence, Not Intuition

Rather than relying on unsupported intuition, decision-makers should consider the growing body of evidence about use of BWCs. While there are methodological limitations and further study is warranted, existing studies point at best to a mixed impact of BWCs on violence. And at worst, they indicate that BWCs could actually escalate violence. For example, affording officers broad discretion to turn cameras on and off may be associated with a rise in violent encounters between police and community members. One large-scale study by researchers Barak Ariel and Alex Sutherland found that “[p]olice use of force actually went up by an astonishing 71 percent when officers could turn their cameras on and off at will and went down ... only when they recorded nearly every interaction with the public from start to finish.”^{6,7,8} In addition, Temple University researchers found that “when officers wore body cameras, civilians were 3.64 percent more likely to die,” and hypothesized that “[o]fficers, aware of their bodycams and more certain their use of deadly force would be seen as justified, were less likely to hesitate.”⁹ Other studies also point to these counterintuitive impacts,^{10,11,12,13} and underscore

that BWCs are only as effective as the rules around them.¹⁴ On the other side, while some studies note that BWC use may lead to a reduction in complaints,^{15,16} it's unclear whether that metric is a good proxy for an actual reduction in violence.¹⁷

What Are BWCs For?

These studies should give decision-makers pause about simply endorsing a BWC program as “good” or “bad”—it’s never that simple. Rather, the more helpful questions to ask are: For what purpose do decision-makers intend BWCs to be used, and what rules, if any, will make them effective in achieving that purpose? In my view, BWCs should be employed to improve police accountability and reduce community-police violence, and BWC rules should be geared toward that purpose. Indeed, many members of the public who support BWCs do so based on the idea that BWCs could be an effective tool in reducing community-police violence or holding violent officers accountable.¹⁸

Yet that fundamental question—For what purpose are these devices intended?—is often never asked, let alone answered, prior to the deployment of BWCs. As a result,

Existing studies point at best to a mixed impact of BWCs on violence. And at worst, they indicate that BWCs could actually escalate violence.

laws and rules around BWCs are often a confusing pastiche of intents and purposes, sometimes actively in conflict with one another. A BWC scheme written for the purpose of holding police departments accountable would look very different from one written for the purpose of using BWCs as a general policing tool from which surveillance footage could be used to prosecute whatever crimes might occur within recording range of an officer. This, in turn, would look very different from a

A deep and sustained engagement with communities whose trust in police will be most impacted by police body-worn cameras is also critical.

scheme whose goal was to create a one-stop automated policing tool that incorporates real-time facial recognition and threat scoring (more later on this concern).

Seattle's Problematic BWC Rules

It should be clear by now that rules for body cameras are devilishly complicated to get right—in fact, no jurisdiction has yet managed to do so.¹⁹ The City of Seattle's rules around BWC use illustrate the problem. Lawmakers never articulated a specific purpose for Seattle's BWC program, and the proposed rules for BWC use were written by the Seattle Police Department (SPD)²⁰—the very department whose officers the cameras would presumably be intended to hold accountable. Those rules are in effect as Seattle rolls out BWCs to all patrol officers under Mayor Ed Murray's Executive Order 2017-3.²¹

A close reading of the rules shows confusion over purpose—the policy repeatedly emphasizes evidence-gathering for criminal prosecutions. Depending on context, officers are mandated to capture evidence and record criminal activity, and can override privacy concerns and film without consent in residences and private areas.²² Also problematic in light of the studies cited previously, the policy affords officers a great deal of discretion to turn cameras on and off, making the rules unworkably complex. It contains nebulous base rules and conflicting exceptions to those rules.²³ At times, the policy for recording diverges between video and audio, making it even more confusing.²⁴ Individual units can request year-long exemptions from the chief of police,²⁵ meaning Seattle residents will have no way to ascertain when they are, or are not, being recorded by a BWC. An additional provision immunizes officers for failure to record in a wide range of situations.²⁶

Under the policy, failure to record an incident could be justified under any of

several exceptions that expand officer discretion. And the policy makes clear that one purpose of BWC deployment is as a generalized surveillance tool—a position SPD itself has repeatedly expressed in public forums.²⁷ Yet public debate and City Council oversight over whether such an outcome is desirable have not taken place.

Community-Police Trust: A Critical Factor

Other significant pitfalls are present. Perhaps the most critical issue remains under-examined—the impact of the cameras on community-police trust, and whether that impact varies by demographic. If individuals are less willing to interact with law enforcement because of their reluctance to be recorded, it would undermine efforts to improve community-police relations (and reduce community-police violence). Further, public trust is critical for victims of and witnesses to crime, as well as members of vulnerable communities such as immigrants and refugees—law enforcement's “eyes and ears”—to come forward to assist law enforcement.^{28,29} It would be ironic, indeed, if the very tool purported to reduce violence actually undermined public safety.

While reliable studies on this topic are lacking, some data do indicate a drop in overall community-police interactions in the presence BWC deployment, which would be consistent with the idea that some individuals may be reluctant to be recorded.³⁰ More troubling are indications that members of some vulnerable communities—particularly non-Whites and specifically African-Americans—are less likely to believe that BWCs will actually result in transparency or accountability.^{31,32,33}

State Law and the Feds: More Problems

Washington's Public Records Act (PRA) raises privacy concerns in the context of BWCs. SPD and the American Civil Liberties Union (ACLU) agree that it is impossible to craft a successful local policy without changing the PRA. The PRA trumps local policy and currently would require disclosure of footage that invades privacy and is irrelevant to police accountability. Although the state legislature did enact a stopgap bill³⁴ intended to deal with these challenges, the bill's relevant provisions will sunset by the middle of 2019.³⁵ Local jurisdictions should hit pause on their BWC programs until this critical problem is solved statewide.³⁶

A further problem is that BWCs create a trove of publicly available location data that is also available to the federal government—potentially undermining local policies protecting immigrant and refugee communities. Many local jurisdictions, including Seattle, have passed or are considering resolutions that prioritize protecting immigrant communities, and even the state itself is making efforts to scrub its databases lest information be collected that might reveal an individual's immigration status. Yet the current state records law ensures that footage is maintained for at least 60 days by any jurisdiction rolling out BWCs,³⁷ making it available to be used by the federal government—whether or not intended by the local entity.³⁸ The potential result is that body camera



footage could facilitate federal enforcement actions that undermine local policies enacted to protect immigrants.

What's a Good Scheme?

So is it even possible to create a BWC scheme that allows these powerful tools to advance police accountability without infringing on civil liberties? The jury's still out, but there is certainly a path forward that improves the odds. A good scheme would start with statewide legislation that clearly articulates that the purpose of police body-worn cameras is accountability, not surveillance or increased prosecutions. Such legislation would build a statewide scheme around that premise, eliminating our confusing jurisdiction-by-jurisdiction patchwork of policies. Ideally, it would incorporate the following elements:³⁹

- Officer discretion to turn cameras on and off is minimized—all interactions with the public are recorded, unless an individual explicitly requests on-camera that the camera be turned off.
- That footage goes into a “lockbox” for evaluation and is quickly deleted unless it pertains to accountability—in other words, it is relevant to an investigation of an incident of community-police violence or other police misconduct. Individuals involved in the incident (whether law enforcement officers or community members) or witnesses to it can flag the footage as having accountability value.
- Footage flagged as having accountability value is publicly disclosable, with appropriate redaction, and can be used only for accountability purposes.
- All other footage is quickly deleted.

A deep and sustained engagement with communities whose trust in police will be most impacted by police body-worn cameras is also critical. Yet in Seattle's process, for example, key community voices have been missing and community engagement has been limited.⁴⁰

Predicting the Future: Automated and Possibly Unfair

Even the best possible set of rules



around BWCs may be overshadowed, however, by a looming change—the intent of BWC manufacturers to automate the function of policing. This could lead to a “tech-washing” in which biases in policing are relocated to the algorithms, including those incorporated into BWC systems, used to automate policing functions.⁴¹

Imagine a hypothetical scenario in which I am approached by a law enforcement officer wearing a BWC. The BWC incorporates facial recognition technology that identifies me and gives the officer information about me that may include my neighborhood, associations, criminal history, or even a threat score purported to reflect how dangerous I may be. I have no idea of the basis on which that threat score was generated—because it came from the body camera's manufacturer, which protects its methodology zealously under trade secret law. The officer involved may decide, on the basis of the information he or she

received, that I am a heightened threat and may approach me with gun drawn. That may trigger a response on my part that results in the self-fulfilling prophecy of the interaction turning violent.

This hypothetical is far closer to becoming reality than most realize. The scenario's various elements—body cameras, facial recognition, threat scoring, and data aggregation based on various modes of public and private surveillance—all currently exist. Manufacturer Axon (formerly Taser International) has announced its intention to revolutionize policing by crunching massive amounts of body camera data to create predictive systems that will automate policing.^{42, 43} But the technology that will be used to automate policing is far from neutral. In the words of technologist Ellen Ullman, “[t]echnology is not neutral; it is made by people with intentions.”⁴⁴ As it turns out, vulnerable communities—including low-income individuals, immigrants and refugees, and communities of color—may be particularly at risk from the biases in such predictive, automated deployments of technology.^{45, 46, 47}

A Mixed Bag

I write this article in the aftermath of another police killing in Seattle—that of Charleena Lyles. In the wake of incidents like this, it's understandable that policymakers might try to implement whatever fixes are closest at hand. But BWCs are not the desired quick fix—nor does one exist. The reality is far more complicated and fraught with the possibility of unintended consequences that will exacerbate problems rather than alleviate them.

As BWC rollout occurs in Seattle on a monthly, precinct-by-precinct basis, it is more critical than ever that city leaders make explicit that the purpose of BWCs is police accountability and write BWC rules accordingly. If, conversely, the purpose of BWCs is general surveillance, the public should have the opportunity to weigh in on that potential use. But even in the best-case scenario, BWCs cannot substitute for the

hard work of implementing the many reform measures that have been proven to work to reduce community-police violence.⁴⁸ Nobody wants another avoidable death. But it's far from clear that BWCs will prevent one. NWL



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NOTES

1. Feit, J. (2015, Feb 2). "Bruce Harrell's Fight For Body Cams." <https://www.seattlemet.com/articles/2015/2/2/bruce-harrells-fight-for-body-cams-february-2015>
2. Westneat, D. (2017, June 21). "The fatal police shooting of Charleena Lyles cries out for body cameras. But 7 years on, we still don't have them." *The Seattle Times*. <http://www.seattletimes.com/seattle-news/crime/the-latest-police-shooting-cries-out-for-body-cameras-but-7-years-on-we-still-don-t-have-them/>
3. Miletich, S., & Green, S. (2010, May 8). "Video of SPD officer kicking prone man sparks internal investigation." *The Seattle Times*. <http://www.seattletimes.com/seattle-news/video-of-spd-officer-kicking-prone-man-sparks-internal-investigation/>
4. Take for example, a much-publicized incident near Franklin High School on June 14, 2014, in which an officer assaulted a jaywalking teenager despite being ringed by individuals recording the incident on their mobile devices, see Miletich, S., & Sullivan, J. (2011, December 16). "Seattle police to review tactics, officer's conduct after videotaped punch." *The Seattle Times*. <http://www.seattletimes.com/seattle-news/seattle-police-to-review-tactics-officers-conduct-after-videotaped-punch/>
5. Witness the Alton Sterling case, for example, in which an African-American individual was shot while being held down by law enforcement officers, despite bystander, surveillance camera, and body camera recordings of the incident, see Fausset, R., Pérez-Peña, R., & Robertson, C. (2016, July 6). "Alton Sterling Shooting in Baton Rouge Prompts Justice Dept. Investigation." *The New York Times*. <https://www.nytimes.com/2016/07/06/us/alton-sterling-baton-rouge-shooting.html>
6. Ariel, B., Sutherland, A., Henstock, D., Young, J., Drover, P., Sykes, J.,... Henderson, R. (2016, May 16). "Wearing body cameras increases assaults against officers and does not reduce police use of force: Results from a global multi-site experiment." *European Journal of Criminology*, 13(6), 744 - 755.
7. Funk, M. (2016, October 18). "Should We See Everything a Cop Sees?" *The New York Times*. <https://www.nytimes.com/2016/10/23/magazine/police-body-cameras.html>
8. "...[T]he problem seems to arise mainly when officers are allowed to turn cameras on at times of their own choosing." See: Ariel, Barak. "Do Police Body Cameras Really Work?" *IEEE Spectrum*. 6 Ma6 2016.
9. Funk, M. (2016, October 18). "Should We See Everything a Cop Sees?" *The New York Times*. <https://www.nytimes.com/2016/10/23/magazine/police-body-cameras.html>
10. Pang, M.-S., & Pavlou, P. A. (2016, September 8). "Armed with Technology: The Impact on Fatal Shootings by the Police." *Fox School of Business Research Paper No. 16-020*.
11. Ariel, B., Sutherland, A., Henstock, D., Young, J., Drover, P., Sykes, J.,... Henderson, R. (2016, September). "Report: increases in police use of force in the presence of body-worn cameras are driven by officer discretion: a protocol-based subgroup analysis of ten randomized experiments." *Journal of Experimental Criminology*, 12(3), 453-463.
12. Ready, J. T., & Young, J. T. (2015, September). "The Impact of On-Officer Video Cameras on Police-Citizen Contacts: Findings From a Controlled Experiment in Mesa, AZ." *Journal of Experimental Criminology*, 11(3), pp. 445-458.
13. Ariel, B. (2016, May 6). "Do Police Body Cameras Really Work?" *IEEE Spectrum*. <http://spectrum.ieee.org/consumer-electronics/portable-devices/do-police-body-cameras-really-work>
14. "...police officers must relinquish some of their discretionary power to turn on the BWCs as they deem necessary... optimum deterrence depends on it." See: Ariel, B., Sutherland, A., Henstock, D., Young, J., & Sosinski, G. (2017, January 21). The Deterrence Spectrum: Explaining Why Police Body-Worn Cameras 'Work' or 'Backfire' in Aggressive Police-Public Encounters. *Policing*, pp. 1-21.
15. San Diego Police Department. (2015, Sept. 9). 09-09-15BWCFirstYearStudy.pdf. Retrieved July 11, 2017, from <https://www.sandiego.gov/sites/default/files/legacy/police/pdf/2015/09-09-15BWCFirstYearStudy.pdf>
16. ODS Consulting. (2011). "Body Worn Video Projects in Paisley and Aberdeen Self Evaluation." Evaluation Report.
17. It could be hypothesized, for example,

- that a drop in number of complaints may reflect a drop in the number of interactions between law enforcement and community members reluctant to be recorded by BWCs. Anecdotal evidence also suggests a potential deterrent impact on complaints if law enforcement can assert they have countervailing video evidence.
18. For example, a number of audience members of color attending a public meeting of SPD's African American Community Advisory Council held on January 17, 2017 on the campus of Seattle Vocational College, expressed this view; there was little or no support expressed for the use of BWCs as a surveillance tool.
19. The Leadership Conference on Civil and Human Rights & Upturn. (2016, August). "Police Body Worn Cameras: A Policy Scorecard." <https://www.bwccscorecard.org/>
20. Seattle Police Department. (2017, February 17). "Body-Worn Video Program Community Engagement: Proviso Response Final Report." This document, circulated by SPD, includes draft proposed rules for BWC use, and those rules are cited in this article.
21. Executive Order 2017-03 cites general polls and the federal monitor's semi-annual report, among other declarations, in support of a general rollout of BWCs to all patrol officers beginning immediately (the order is dated July 17, 2017). The polls reflect the flaw in a binary approach to BWCs—they appear to simply ask a yes-or-no question as to whether community members want BWCs; they fail to ask what purpose or rules those community members might support. Nor is there any breakout of poll results by demographic—see endnotes Error! Bookmark not defined. and Error! Bookmark not defined. below for indications that community reaction to BWCs varies by demographic. Significantly, the Executive Order cites no specific study on the impact of BWCs on community-police violence.
22. Seattle Police Department. (2017, February 17). "Body-Worn Video Program Community Engagement: Proviso Response Final Report." Officers are instructed to position cameras to "capture critical evidence" (Section 2), are mandated to record all "on-view infractions and criminal activity" (Id.
- Section 5b), can only stop recording when they believe the recording "will not capture audio/visual evidence regarding the incident or enforcement efforts" (Id. Section 5b), may record protests and demonstrations for the purpose of documenting property damage (and presumably prosecutions around such damage) (Id. Section 5g), can override privacy concerns in sensitive areas such as medical facilities in order to achieve "a direct law enforcement purpose" (Id. Section 5d), and film without consent in residences and private areas if "there is a crime in progress" (Id. Section 5e).
23. For example, in SPD's policy, the baseline is that "employees may initiate recording any time they determine it would be beneficial to capture an event or activity" (Id. Section 5c)—where the term "beneficial" is entirely undefined. There is a list of events that officers are required to record, but a lengthy series of exceptions where the camera may be turned off, including: when the officer believes that continuing to record "will not capture audio/visual evidence regarding the incident or enforcement efforts" (Id. Section 5b); where people are exercising or will exercise their First Amendment rights as determined by the officer, except if a supervisor orders recording or if there is risk of property damage (Id. Section 5g); in sensitive locations such as jails, medical facilities, or residences, again with multiple exceptions for each case or if "any person with legal standing denies permission to record" (Id. Section 5c-e); where an officer determines that "the respect for an individual's privacy or dignity outweighs the need to record an event" (Id. Section 5f); or that recording would "impede or limit the cooperation of a victim or witness" (Id. Section 5).
24. *Id.* Section 5e
25. *Id.* Section 9
26. *Id.* Section 5c
27. For example, at the public meeting of SPD's African American Community Advisory Council held on January 17, 2017 on the campus of Seattle Vocational College, SPD spokesperson Brian Maxey confirmed this position.
28. Tyler, T. R., Goff, P. A., & MacCoun, R. J. (2015, December 3). "The Impact of Psychological Science on Policing in the United States: Procedural Justice, Legitimacy, and Effective Law Enforcement." *Psychological Science in the Public Interest*, 16(3), 75-109.
29. Tyler, T. R., & Fagan, J. (2010). "Legitimacy and Cooperation: Why Do People Help the Police Fight Crime in Their Communities?" (S. K. Rice, & M. D. White, Eds.) *New York University Press*, 84-112.

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30. Ariel, B., Farrar, W. A., & Sutherland, A. (2015, September). "The Effect of Police Body-Worn Cameras on Use of Force and Citizens' Complaints Against the Police: A Randomized Controlled Trial." *Journal of Quantitative Criminology*, 31(3), 509–535.
31. Sousa, W. H., Miethe, T. D., & Sakiyama, M. (2017, March 21). "Inconsistencies in Public Opinion of Body-worn Cameras on Police: Transparency, Trust, and Improved Police-Citizen Relationships." *Policing*.
32. Existing studies paint a complicated picture of this area. Some evidence indicates that "[n]on-White and younger respondents [a]re less likely to have positive views of police performance and ultimately less likely to perceive benefits of BWCs," while those already supportive of police might see greater benefits of BWCs "not as a mechanism to correct bad police behavior, but as a tool to combat negative views of police..." See: Crow, M. S., Snyder, J. A., Crichlow, C. J., & Smykla, J. O. (April 2017). Community Perceptions of Police Body-Worn Cameras: The Impact of Views on Fairness, Fear, Performance, and Privacy. *Criminal Justice and Behavior*, 589-610.
33. Additional evidence indicates that incorporating procedural justice practices into BWC policies improves community member satisfaction significantly. See: McClure, D., La Vigne, N. G., Lynch, M., Golian, L., Lawrence, D., & Malm, A. (2017, June 21). "How Body Cameras Affect Community Members' Perceptions of Police." Urban Institute. <http://www.urban.org/research/publication/how-body-cameras-affect-community-members-perceptions-police>
34. WA HB 2362 - 2015-16
35. The bill itself illustrates the complexity of the problem. It directs law enforcement to engage in a complicated legal analysis to determine what footage should be released—an unworkable scheme that also undermines accountability by once again making law enforcement the arbiters of the public narrative around a given incident.
36. Although the legislature has convened a statewide task force to consider recommendations for the state level around police body cameras, that task force will not make its recommendations to the legislature until late 2017, meaning a statewide law would be enacted in 2018 at the earliest.
37. WA HB 2362, Section 2(14)(j)
38. For example, the federal government regularly runs facial recognition searches on the driver's license databases of states that make those databases available. See Georgetown Law Center on Privacy & Technology. (2016, October 16). "Perpetual Line-Up: Unregulated Police Face Recognition in America." <https://www.perpetuallineup.org/>.
39. Then-State Senator (now Congresswoman) Pramila Jayapal and State Representative Cindy Ryu previously introduced state-level bills with these elements, but neither ever received a hearing in the relevant state legislative committee (WA HB 1910 - 2015-



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- 16, WA SB 5732 - 2015-16).
40. Even that limited community engagement has surfaced concerns over the unintended impacts of BWCs—their explicit use as a tool for prosecutions, for example. These concerns are worth further exploring through nuanced, deep, and sustained engagement, at a time when communities themselves are reevaluating their stance on BWCs. See: Seattle Police Department. (2017, February 17). “Body-Worn Video Program Community Engagement: Proviso Response Final Report.”
41. This is a growing concern among observers, see Kofman, A. (2017, April 30). “Taser Will Use Police Body Camera Videos “to Anticipate Criminal Activity.” <https://theintercept.com/2017/04/30/taser-will-use-police-body-camera-videos-to-anticipate-criminal-activity/>, Edwards, E. (2016, August 31). “Predictive Policing Software Is More Accurate At Predicting Policing Than Predicting Crime.” *HuffPost*. http://www.huffingtonpost.com/entry/predictive-policing-reform_us_57c6ffe0e4b0e60d31dc9120, Burlington, I. (2015, June 1). “What Amazon.com Taught the Cops -- The Tech-Fueled Rise of Predictive Policing.” *Alternet*. <http://www.alternet.org/news-amp-politics/what-amazoncom-taught-cops-tech-fueled-rise-predictive-policing>, Crawford, K. (2016, June 25). “Artificial Intelligence’s White Guy Problem.” *The New York Times*. https://www.nytimes.com/2016/06/26/opinion/sunday/artificial-intelligences-white-guy-problem.html?_r=0, Hutson, M. (2017, April 13). “Even artificial intelligence can acquire biases against race and gender.” *Science | AAAS*. <http://www.sciencemag.org/news/2017/04/even-artificial-intelligence-can-acquire-biases-against-race-and-gender>.
42. Kofman, A. (2017, March 22). “Real-Time Face Recognition Threatens to turn Cops’ Body Cameras into Surveillance Machines.” <https://theintercept.com/2017/03/22/real-time-face-recognition-threatens-to-turn-cops-body-cameras-into-surveillance-machines/>
43. Kofman, A. (2017, April 30). “Taser Will Use Police Body Camera Videos “to Anticipate Criminal Activity.” <https://theintercept.com/2017/04/30/>
- taser-will-use-police-body-camera-videos-to-anticipate-criminal-activity/
44. Ullman, E. (2017, July). [Essay] “Gender Binary.” *Harper’s Magazine*. <https://harpers.org/archive/2017/07/gender-binary/>
45. Angwin, J., Larson, J., Mattu, S., & Kirchner, L. (2016, May 23). “Machine Bias There’s software used across the country to predict future criminals. And it’s biased against blacks.” *ProPublica*. <https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing>
46. Shapiro, A. (2017, January 25). “Reform predictive policing.” *Nature*, 541, 458–460.
47. Spielkamp, M. (2017, June 12). “Inspecting Algorithms for Bias.” *MIT Technology Review*. <https://www.technologyreview.com/s/607955/inspecting-algorithms-for-bias/>
48. These include better training and recruitment practices in police departments, patching the holes in our tattered social safety net to provide better treatment for those with mental illnesses and chemical dependencies, addressing systemic problems of violence through prevention and intervention practices, and much more, see Bagri, N. T. (2017, February 28). “There’s one sure way to reduce police brutality.” *Quartz*. <https://qz.com/921006/theres-one-sure-way-to-reduce-police-brutality/>, Maron, D. F. (2016, July 22). “How to Reduce Police Violence.” *Scientific American*. <https://www.scientificamerican.com/article/how-to-reduce-police-violence/> American Civil Liberties Union. (n.d.). “Fighting Police Abuse: A Community Action Manual.” American Civil Liberties Union. <https://www.aclu.org/other/fighting-police-abuse-community-action-manual>, Center for Policing Equality. (July 2016). “The Science of Justice: Race, Arrests, and Police Use of Force.” http://policinequity.org/wp-content/uploads/2016/07/CPE_SoJ_Race-Arrests-UoF_2016-07-08-1130.pdf.

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Tabingo v. American Seafoods,

188 Wn.2d 41, 391 P.3d 434 (2017)
(allowing punitive damages in maritime unseaworthiness actions)

Arnold v. City of Seattle,

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

Coomes v. Edmonds School Dist. No. 15, Bright v. Frank Russell Investments,

816 F.3d 1255 (9th Cir. 2016) (reversed dismissal of employee’s claim of wrongful discharge in violation of public policy)

Kim v. Lakeside Adult Family Home,

185 Wn.2d 532, 374 P.3d 21 (2016) (establishing cause of action for breach of adult abuse reporting statute)

Chism v. Tri-State Construction,

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

Albertson v. State, DHS,

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

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WSBA Young Lawyers Committee Honors Five Local Leaders

by Zach Davison

The Washington State Bar Association (WSBA) teems with young lawyers dedicated to serving their communities. To identify these achievements, the Washington Young Lawyers Committee (WYLC) recently petitioned the legal community to nominate young or new lawyers for the annual Public Service and Leadership Award (the “Award”). In assessing the record number of responses it received, WYLC’s Subcommittee on Leadership (the “Committee”) considered each nominee’s long-term service or extraordinary contribution to his or her community.

Among the factors weighed by the Committee were each

nominee’s: (1) leadership and service in the local community or within a bar association; (2) mentoring; (3) involvement in WSBA, the American Bar Association, or local bar association activities; and (4) volunteer work with pro bono or public service programs. The Committee balanced these factors in light of the Award’s ultimate goal of highlighting the exceptional work of young lawyers around Washington and promoting a culture of service throughout the Washington Bar.

Within this framework—and after deliberating over many qualified young lawyers—the Committee selected the following five young or new lawyers to receive the Award.



RIDDHI MUKHOPADHYAY

Mukhopadhyay has dedicated her career to serving the survivors of sexual assault. She currently serves as the legal director for the YWCA’s Sexual Violence Legal Services in King and Snohomish County, co-chairs Seattle’s Immigrant and Refugee Commission, and sits on the boards of Legal Voice’s and the Coalition Ending Gender-Based Violence. In describing a situation in which Mukhopadhyay has gone “above and beyond,” her nominator relayed how she argued her first case in the Washington Supreme Court (*Roake v. Delman*) in the morning and then rushed across the Capitol campus to the legislative hearing on SB 5256, a bill to improve sexual assault protection orders, where she provided important testimony in support of the bill. This legislation passed with the assistance of Mukhopadhyay’s advocacy.



HECTOR QUIROGA

Given Quiroga’s impressive list of public service accomplishments (which date back over a decade), it comes as no surprise that he is defined as an “active leader in his community.” Through his law firm, Quiroga has dedicated his time to assisting those in need, including executing a pro bono practice for immigrants and victims of domestic violence, providing legal information to the Spanish-speaking community through weekly radio shows, and implementing a program to hire and mentor immigrants wishing to pursue a college education. Quiroga is the founding partner at the Quiroga Law Office, PLLC, in the Spokane Valley.



LAURA BAIER

Baier’s nominator lauded her extensive volunteer work with Kitsap Legal Services in assisting low-income domestic violence survivors. The Committee was particularly impressed with the positive impact Baier has had on the recipients of her pro bono efforts, along with her extensive involvement in her local community—including sitting on the executive board of the Kitsap County Human Trafficking Task Force and contributing to various local bar associations. As one nominator explained, “Laura goes above and beyond every day... . . . she actively engages all of us with her effervescent personality . . . and literally inspires those around her to ‘do more’ for their communities and [the] local bar.” Baier is currently an associate at the Newbry Law Office in Port Orchard.



ERIC LEAVITT

Beyond Leavitt's steadfast dedication to the legal community, the Committee particularly valued his commitment to the broader public. Among other activities, he is a Cub Scout pack leader, teaches Sunday school, provides Spanish translation services, and regularly contributes to CASA Partners. His dedication to pro bono work contributed to his firm winning the 2016 Small Law Firm of the Year award presented by the Spokane County Bar Association. Leavitt is currently a partner at Addams & Leavitt, PLLC, in Spokane.

KELSEY KITTELESON

Kelsey is from Eastern Washington and her nominator noted that her leadership "ensur[es] that Spokane is home to an open and inclusive legal community that serves the best interests of all of its members." Her commitment to public service is demonstrated by, among other things, her significant involvement in the Spokane County Bar Association and the WSBA, her resolve in carrying at least two pro bono cases per year, her weekly contributions to the Family Law Advice Clinic, and her dedication to the broader public through her work with the Girl Scouts of Eastern Washington and Northern Idaho. Kittleson is currently a partner at Magnin and Kittleson Law Office, PLLC, in Spokane.

Notwithstanding the uniqueness of each nomination, these awardees share many attributes that quickly elevated their submissions to the top of the Committee's pile. Among these commonalities were a profound public service ethic and a track record of putting the needs of others ahead of their own. The WSBA is fortunate to have such dedicated young members and looks forward to many more years of service from them.

For additional information about the Public Service and Leadership Award, or to learn about ways to volunteer with a pro bono or public service program, please visit www.wsba.org. NWL



ZACH DAVISON is an associate at Dorsey & Whitney LLP in Seattle where he focuses on commercial and securities litigation. He will be clerking in the U.S. District Court for the Western District of Washington for the 2017-2018 term, and can be reached at davison.zach@dorsey.com.

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SEEKING AND CELEBRATING RAINBOWS

Reflections on Service as a WSBA Governor

by Andrea Jarmon

So, who do you know?" he asked. I paused for a moment, contemplating both the relevance of the question and the potential impact of my response. Before I could begin to articulate that I didn't have any particular list of names that would invoke social or professional recognition, the Governor moved on to ask who, on the current Washington State Bar Association (WSBA) Board of Governors, I had asked for assistance in gathering support for my candidacy for Governor.

Well, I thought silently, this is not looking so good for me. The conversation recounted above concluded with a recommendation that perhaps it would be best if I withdrew my candidacy, hit the pavement to get my name out there in the legal community, and then, in three years, applied again.

While I contemplated the suggestion, I also contemplated how often minorities seeking positions are confronted and confounded by gatekeepers. The nature of social privilege is such that there are inner circles and centers from which we have traditionally been excluded or—if allowed in—have been silenced or displaced to the periphery. As I sat at the end of the table in the Moses Lake conference room for my interview, I boldly shared these thoughts, fully aware that the person with whom I had engaged was present and would be rendering a vote. Yet I went on to express that it was precisely because I didn't know anyone, because the legal profession does not reflect enough individuals like me, that I needed to be at the table as a Governor of the Washington State Bar Association right then, at that moment.

Seeking a position on the WSBA Board of Governors was not, for me, a long-held goal. In candor, the reality of being a lawyer still baffles me. There are no lawyers in my family. At age 14 in foster care, then in homeless youth shelters, and ultimately as a teenage mother, I certainly did not contemplate ever having "J.D." behind my last name. Yet as baffled and humbled as I am by my journey, it continues to be more mysterious, even in 2017, to others. I have often narrated my experiences grappling with the complexities of race, and gender, and other dynamics as "moving in the body of the legal profession."

Despite what I believe to be our sincere efforts to engage our profession in understanding and implementing programs responsive to the critical necessity and value of diversity, we struggle. We struggle with everything from recruiting and retaining minorities in the legal profession to embracing diversity on various committees and boards. It is not at all uncommon for me to experience being silenced, or having my comments dismissed, until they are validated by a white voice. I have almost been denied access to an executive meeting of the Board because hotel staff did not associate me with being part of the WSBA, let alone a member who would be part of an executive meeting.

Despite these experiences, service on the WSBA Board of Governors has without doubt been an incredible and rewarding three years. Traveling around the state to see the remarkable talent in our profession has been amazing and humbling. Seeing the work that the members of this profession do on a daily basis and the impact it has upon their

local communities makes me proud to be a lawyer and, in particular, it makes me proud to be a Washington lawyer. It has been an honor to serve. It has been a pleasure to observe and learn.

The challenge we continue to face is to ensure that our legal profession reflects not only in spirit, but in body and in practice, the diversity of the communities we serve. So, rather than asking our future colleagues "Who do you know?" we should be recognizing and celebrating the talents and experiences they bring that enhance the rainbow of diversity at the table. NWL



ANDREA S. JARMON

was elected to the Board of Governors in September 2014. She is the managing attorney of Jarmon Law

Group, PLLC, in Tacoma. Her practice focuses on criminal defense and family law, including representation of children and parents in dependency actions. In addition to her law practice, Jarmon is an adjunct instructor at Green River Community College. She has previously served as an assistant attorney general for the Washington State Attorney General's Office, a city prosecutor for Auburn and Seattle, and a full-time paralegal instructor. She received both of her undergraduate degrees and her law degree from the University of Washington. She is a member of the Loren Miller Bar Association and the Tacoma Pierce County Bar Association. She can be reached at ajarmon@jarmonlaw.net



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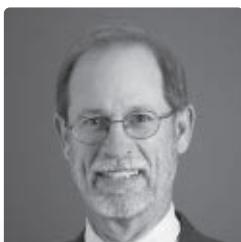
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In Remembrance

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

Philip G. Bardsley

Philip Bardsley was a construction defect attorney for 38 years. He was a founding member of The Northwest Historical Miniature Gaming Society and the miniature gaming convention called Enfilade!, held every Memorial Day weekend in the Pacific Northwest. Philip G. Bardsley died January 3, 2017.

John G. Budlong

John Budlong was born in 1953. He graduated from Ingraham High School in Seattle in 1971 and attended the University of Washington, where he received several degrees: a Bachelor of Arts, Master's Degree in International Studies, and then a law degree from the School of Law in 1982. He practiced law at Stafford Frey (Mertel) Cooper before starting the Budlong Law Firm in 1996. He also wrote and taught on legal topics at legal education seminars, and was a guest lecturer at the University of Washington Law School's trial advocacy program.

John G. Budlong died December 24, 2016, at the age of 63.

Gary D. Box

Gary Box born in Coulee City in 1929. In 1944, he moved with his family to Seattle, where he graduated from Franklin High School in 1947. That same year, he attended the University of Washington. When his National Guard unit was called up for service during the Korean War, he was posted at Fort Lewis and Stewart Air Force Base in New York at the U.S. Military Academy Preparatory School, where he qualified for West Point Academy but was prevented from attending due to color blindness. He

returned to Seattle and in 1954 graduated from the University of Washington School of Law. Soon after, he moved to Ephrata to practice law with his grandfather. While living in Ephrata, he also spent three years as deputy prosecuting attorney and then five years as city attorney. In 1962, he moved to Seattle with his family and worked as a federal attorney in estate and gift tax with the Internal Revenue Service (IRS). He retired from the IRS in 1989 and then pursued a private practice before fully retiring in 1995.

Gary D. Box died on November 15, 2016, at the age of 86.

Harvey H. Chamberlin

Harvey Chamberlin was born in Seattle in 1947. He attended school in Burien and graduated from Glacier High School. He received his law degree from the University of Washington School of Law and also served in the United States Marine Corps. His career in law included working at the Snohomish County Public Defender's Association and then in private practice as a criminal defense lawyer in Snohomish County. He was involved in Big Brothers Big Sisters of America, and was a board member at the Highline and Mill Creek YMCAs.

Harvey H. Chamberlin died on November 26, 2016 at the age of 69.

Christy Gerhart Cufley

Born in Salt Lake City, Utah, in 1953, Christy Cufley was raised in Seattle. She graduated from Willamette University College of Law in Salem, Oregon, in 1978, and then embarked on a career in public service, working as an administrative law judge for the state of Washington and as a judge pro tempore for close to 10 years. After retiring early, she represented unemployment appeal claimants. Much of her spare time was spent in voluntary leadership roles in her community, including the city of Lake Forest Park Board of Adjustment and Civil Service Commission, the board of directors of Teen Hope, and

the Lake Forest Park Rotary. Christy Gerhart Cufley died on November 11, 2016, at the age of 63.

George O. Darkenwald

George Darkenwald was born in 1939 in Fargo, North Dakota. Adopted from an orphanage by his parents, he moved to Olympia in 1941. He graduated from St. Thomas Seminary in 1961 and two years later entered the U.S. Air Force, where he proudly served three years as a captain. In 1969, he enrolled in the University of Washington School of Law. Following graduation, he worked as a prosecutor and then had his own private practice. Toward the end of his career, he headed the paralegal program at South Puget Sound Community College.

George O. Darkenwald died on September 18, 2016, at the age of 77.

Ann E. Fleischli

Ann Fleischli of Kankakee, Illinois, began her career as a poverty lawyer in the southern United States before moving to Madison, Wisconsin. There, she used her background as a lawyer to take on a number of legal challenges. She led two efforts to stop the dismantling of the branch library system, and she sought to prevent construction of a convention center on the shores of Madison. She also tried to establish a magnet school in South Madison. Ann E. Fleischli died on March 20, 2016, at the age of 73.

Beverly Norwood Goetz

Beverly Norwood Goetz was born in San Antonio, Texas, in 1948, and spent her youth in Moses Lake. In 1966, she moved to Seattle to attend the University of Washington. She then attended the University of Puget Sound School of Law, graduating in 1978. In 1983, she joined the Washington Office of the Attorney General, representing the Department of Labor & Industries until she retired in 2015. She supported many groups such as Planned Parenthood and NARAL, and volunteered for Northwest Center Kids and the King County Neighborhood

Legal Clinic in Greenwood. Beverly Norwood Goetz died December 9, 2016, at the age of 68.

Andrew Guy

A longtime partner at Stoel Rives who had retired only recently, Andrew Guy was a strong advocate of pro bono service. He was a member of the WSBA Pro Bono Committee and a past trustee of the King County Bar Association (KCBA). In 2007, he received the Pro Bono Award from the KCBA, where he was also a leading financial contributor to the Bar's foundation, which raises funds to support pro bono legal aid for the indigent and scholarships for minority law students.

Andrew Guy died on November 21, 2015.

William F. Hennessey

William Hennessey was born in 1925 in Boston, Massachusetts. He attended Boston Latin School, Boston College, and Boston College Law School. His undergraduate studies at Boston College were interrupted in order to serve in the U.S. Army for three years in World War II. He was discharged as a first lieutenant. After graduating from law school, he moved to Seattle, where he practiced law for decades.

William F. Hennessey died November 20, 2016, at the age of 91.

Gregory S. McElroy

Gregory McElroy earned a Bachelor of Arts in 1976 from Central Washington University and was a national finalist for the Danforth Foundation Fellowship. He held senior-level staff and management positions in local and regional government, including executive director of a regional planning and environmental regulation agency responsible for state and federal programs, before attending the University of Minnesota School of Law, where he obtained his J.D. in 1985. At McElroy Law Firm, PLLC, he represented industrial, government, agricultural, utility, and natural resource clients throughout Washington.

Gregory S. McElroy died January 14, 2017, at the age of 64.

Daniel T. McGinnity

Daniel McGinnity was born in 1973 in Wausau, Wisconsin. He graduated from Park Falls High School in 1991. Four years later, he earned a Bachelor's Degree in chemical engineering from the University of Wisconsin-Madison. Upon graduation, he worked as a process engineer, quality assurance manager, and manufacturing manager at International Paper Company in De Pere, Wisconsin, and in Reedsport, Oregon. After receiving his J.D. from the University of Oregon Law School with Order of the Coif honors in 2005, he moved with his family to Spokane, where he was a patent lawyer and a partner at Wolfe-SBMC. He was recently part of a team that acquired and renovated the Cold Storage Building in Spokane, where his law firm is currently located.

Daniel T. McGinnity died on July 28, 2016, at the age of 43.

James T. Monahan

James Monahan was born in 1937 in Philadelphia, Pennsylvania. He attended Fordham University in New York, New York, where he earned a Bachelor's Degree in business administration, and then went on to St. John's University School of Law. After passing the New York State Bar exam, he began his career with the Federal Bureau of Investigation. Following this role, he became a corporate attorney and then started his own practice in Seattle.

James T. Monahan died on December 15, 2016, at the age of 79.

H. Stanley Muir III

H. Stanley Muir was born in 1949. He attended Virginia Polytechnic Institute in Blacksburg, Virginia, and worked as an engineer before pursuing a law degree from the College of William and Mary in Williamsburg. A member of the WSBA, he practiced law in Port-

land, Oregon. Among his hobbies were restoring and showing vintage cars. H. Stanley Muir III died on January 30, 2016, at the age of 66.

Louis H. Pepper

Louis Pepper was born near Libertyville, Illinois, in 1924. He spent his youth on farms in several small towns in southern Wisconsin. Following three years as a pilot in World War II, where he was an Army Air Corps first lieutenant in the Pacific Theater, he attended the University of Wisconsin, Madison (taking advantage of the GI bill), where he obtained undergraduate and law degrees in five years. In 1951, after moving to Seattle, he joined the law firm of Tanner Garvin and Ashley, which later became known as Foster Pepper. One of his clients was Washington Mutual Savings Bank, which led him to be regarded as a national expert in mutual savings bank law. He became president and chief executive officer of the bank in 1981. In addition to his professional career, he served as a director on many boards and organizations including the Museum of History and Industry, Museum of Flight, Washington Roundtable, Federal Home Loan Bank, Nature Conservancy, and the Seattle Alliance for Education. After retiring from Washington Mutual in 1991, he remained on the board until 1997.

Louis H. Pepper died on December 23, 2016, at the age of 92.

Mark A. Podrasky

Mark A. Podrasky, of Seattle was born in 1956 in Washington, D.C. He worked for many years in Snohomish County as an attorney and as a mediator. Outside of work, he was passionate about cars and motorcycles and also enjoyed sailing. Mark A. Podrasky died on January 21, 2017, at the age of 60.

Melvyn D. Poll

Melvyn Poll was born and raised in Seattle. He graduated from Lakeside School and then attended the University of Washington, where he earned both a Bachelor of Arts in English and

In Remembrance

a J.D. After graduating, he trained to become an opera singer in Europe. Highlights of his lengthy singing career include lead tenor at the German Opernhaus Kaiserslautern, and several seasons with the Israel National Opera performing Puccini and Verdi roles. In the United States, he debuted with the New York City Opera as Pinkerton in Madama Butterfly and his debut with the Seattle Opera in September 1977 was in that same role. He was a frequent symphony soloist in major cities across the U.S. and also served briefly as an adjunct professor of voice at the University of Washington School of Music. He also volunteered with the Juvenile Diabetes Research Foundation and served as regional chair for the Metropolitan Opera Auditions. Melvyn D. Poll died on January 12, 2017, at the age of 75.

William A. Roberts

William Roberts was born in 1922 in Denver, Colorado. He attended both Roosevelt and Garfield high schools in Seattle and graduated from the University of Washington School of Law. A veteran, he served in the U.S. Army Signal Corps as a first lieutenant in the Philippines. He was also a founding partner of Davies, Roberts, & Reid, which specialized in labor and trust law, where he served as legal counsel to unions, including the Western Conference of Teamsters Pension Trust. He also developed a prepaid legal insurance known as "Group Legal," offering affordable law services. He was recognized by the WSBA for 50 years of distinguished service to the legal profession. William A. Roberts died on January 26, 2017, at the age of 94.

Lawrence A. Robins

Lawrence Robins was born in 1949 in Chicago, Illinois. He attended the University of Illinois and George Washington University Law School. For 37 years, he was a partner at DLA Piper, a global law firm with lawyers located in more

than 40 countries, where he specialized in estate planning. Lawrence A. Robins died on January 7, 2017, at the age of 67.

Amanda B. Rohrkemper

Amanda Rohrkemper was born in 1986 and graduated with honors from Cactus High School in Glendale, Arizona, in 2004. She attended Arizona State University, where she majored in political science and graduated summa cum laude, and then obtained her J.D. from George Washington University Law School in Washington, D.C. She began her career in public service while still in Arizona, where she completed an internship with the Arizona State Legislature. In 2012, she joined the Washington State legislative team as a staff attorney at the Code Reviser's Office. On February 24, 2017, the Washington State Senate adopted a bill to honor her "and the impact she had on her coworkers and the legislature and remember her positive outlook and passion for public service (Senate Resolution 8624, "Honoring Amanda Rohrkemper"). Amanda B. Rohrkemper died on January 19, 2017 at the age of 30.

James D. Rolfe

James Rolfe was born in 1924 and raised in Seattle. He spent his youth pursuing a variety of Pacific Northwest activities, from hiking and summiting many of the peaks in the Olympics, to skiing in the Cascades, to cruising the waters of Washington and British Columbia. After graduating from Lakeside School he enrolled in Dartmouth College and then attended officer training school at the University of Washington and was assigned to duty on the destroyer U.S.S.-Haraden. Following the war, he returned to the University of Washington, where he earned his J.D. from the School of Law. He first joined the law firm of Devin, Hutchinson & Rolfe and then moved to Graham & Dunn, where he remained for the rest of his legal career. A Boy Scout and Scout Leader, he served on the Boy Scouts Chief Seattle Council and was the

recipient of the Silver Beaver Award. James D. Rolfe died on October 28, 2016 at the age of 92.

Raymond H. Siderius

Raymond Siderius was born in 1928 in Seattle. He graduated from O'Dea High School and attended Seattle University after serving in the army in 1945. He obtained his law degree from the University of Washington School of Law, and in 1959 formed his own firm with Charles Lonergan. He continued to handle legal cases in his eighties and also did pro-bono work through the Legal Action Center. Part of Catholic Community Services, the Center was co-founded by his son and offers free legal assistance in King County to qualifying low-income persons. In his free time, he played saxophone and clarinet in an award-winning dance band called "The Gentlemen of Rhythm" and had many other interests, including piano tuning and restoration, wind-surfing, golfing, running and mountain climbing. He also participated in Seafair activities and was a founder of the Seafair Clowns in 1954.

Raymond H. Siderius died December 26, 2016, at the age of 88.

John W. Scholbe

John Scholbe graduated with honors from the University of Washington in 1996, where he earned a Bachelor of Arts in English. He then attended Seattle University School of Law, where he received his J.D. He spent two years as a public defender before joining and becoming an owner in what is today known as Hermann Scholbe, where he became the senior litigating attorney for major injury cases, wrongful deaths, and aviation liability. As an international lawyer, he traveled to work with clients in many countries including Korea, Taiwan, China, Honduras, El Salvador, Costa Rica, and Cambodia. He was an Eagle member of the Washington State Association For Justice, and a member of both the King and Tacoma-Pierce County bar associations. He has also been a guest lecturer and presenter

at continuing legal education (CLE) seminars and has previously been consulted by the King County Judicial Task force of Judges to offer solutions and opinions to enhance the efficiency of King County courts.

John W. Scholbe died on August 19, 2016.

R. Michael Stocking

R. Michael Stocking (Col. USAR, Retired) was born in Seattle in 1941. His family moved to Indiana during World War II, as his father was a commander in the U.S. Navy as a CPA. After they returned to Seattle, he graduated from Seattle Preparatory School and then attended the University of Notre Dame, where he earned an undergraduate degree and was part of the ROTC program. He was commissioned as a second lieutenant in the U.S. Army but his military service was deferred while he was attending the University of Washington School of Law. Upon graduation, he was assigned to the Presidio of San Francisco as a first lieutenant in the U.S. Army's Adjutant General Corp.'s Armed Forces Courier Service. He then returned to Seattle and after serving 30 years with the 6th JAG Military Law Center, he retired from the U.S. Army as a colonel. In addition to his military career, he also practiced law in Seattle, and was recognized for 50 years of service to the legal profession by the WSBA.

R. Michael Stocking died January 11, 2017, at the age of 75.

Bruce L. Tonks

Bruce Tonks was born in 1926 in Schenectady, New York. He is the son of noted physicist Lewi Tonks. Initially, he pursued a career in theater, writing two early-television plays that were produced live in New York. He then became interested in law, attending Columbia Law School and Syracuse University School of Law, graduating in 1962. Two years later, he moved to Seattle, joined the Board of Industrial Alliance Appeals as an administrative

law judge, and remained in that role until 1991.

Bruce L. Tonks died on December 30, 2016, at the age of 90.

Darrell D. Uptegraft Jr.

Darrell D. Uptegraft Jr. was born in Kalamazoo, Michigan, in 1955. His father was a refuge manager for U.S. Fish and Wildlife Service, and so he grew up on national wildlife refuges in New York, Pennsylvania, Minnesota, and Illinois. He earned a Bachelor of Science degree in biology and chemistry from San Francisco State University and then enrolled in the University of Puget Sound School of Law. He clerked for McCluskey, Sells, Ryan, Olbertz & Haberly, Inc. P.S., joined the firm as an associate attorney in 1983, and then became a partner in the Silverdale firm (Ryan, Uptegraft, and Montgomery, Inc.). In the latter years of his career, his practice focused on plaintiff's personal injury. He was an Eagle member of the Washington State Association for Justice and was president of the Kitsap County Bar Association in 1999. On April 15, 2016, the WSBA Board of Governors presented him with its Local Hero Award for his

service to the Kitsap County Bar, for his mentoring of many new attorneys, and for his willingness to teach students about the legal system.

Darrell D. Uptegraft Jr. died on October 23, 2016, at the age of 61.

Carl N. Warring

Born in Oil City, Pennsylvania, in 1944, Carl Warring graduated from high school in Tempe, Arizona. He served in the U.S. Coast Guard and also earned an Associate of Arts degree from Cerritos College, a Bachelor of Arts from Long Beach State University, and a J.D. from Gonzaga University. Following law school, he and his family moved to Moses Lake, where he was elected Grant County District Court Judge. He served there for several years and returned to private practice, a career in Grant County that spanned 41 years. He also helped teachers and students in debate and mock trial competitions at Moses Lake High School, and was a Boy Scout leader.

Carl N. Warring died December 30, 2016, at the age of 72.

The WSBA has also been notified of the passing of Gabriel T. Sheridan.



Robert V. Boeshaar

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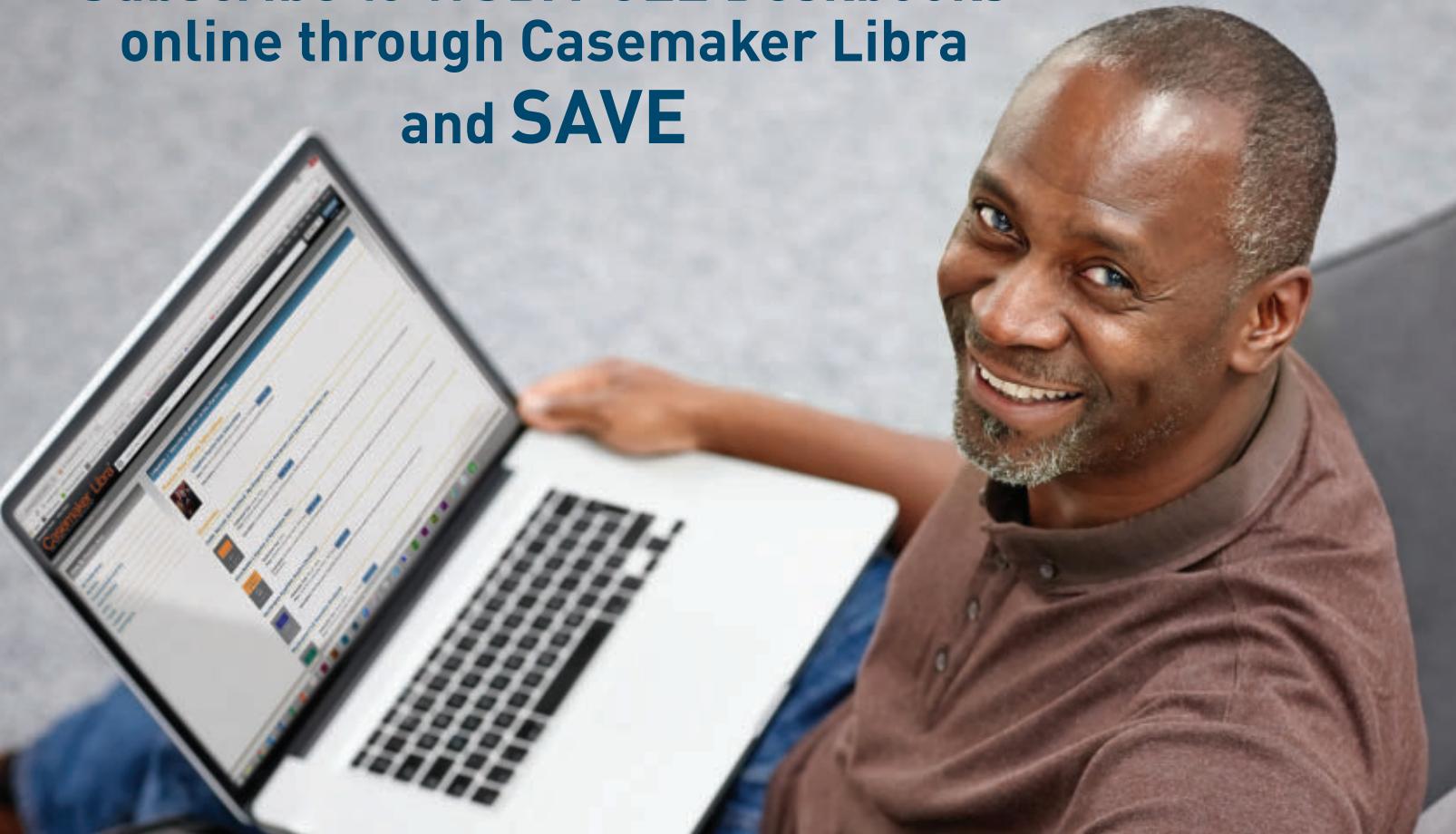
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WSBA BOARD OF GOVERNORS MEETING

JULY 27-29, 2017, UNION

The WSBA Board of Governors met and held a retreat on July 27-29 in Union.

Thursday, July 27

Interview and Selection of 2017-2018 District 4 Governor



District 4 Governor, Daniel D. Clark

With Bill Pickett moving into the President-elect position unexpectedly early, the Board interviewed four candidates for the District 4 Governor seat. After dialogue with each candidate, the Board elected Daniel D. Clark of Yakima to the seat for a term to start immediately. Governor Clark will serve the remainder of Bill Pickett's term (ending in September 2018) and will be eligible to run for a second, full

three-year term. Clark is a senior deputy prosecuting attorney at the Yakima County Prosecuting Attorney's Office. He was sworn in at the meeting by King County Superior Court Judge Barbara Linde.

Election of 2017-2018 WSBA Treasurer

As is customary at the July Board meeting, the Board elected its 2017-2018 Treasurer, District 1 Governor Kim Risenmay. Risenmay comes with excellent experience to serve as WSBA's Treasurer, having served on the WSBA Budget and Audit Committee for two years. Risenmay is a tax attorney and CPA practicing in Redmond. The Board thanked District 3 Governor Jill Karmy for her outstanding service as this year's Treasurer.

WSBA Legislative Work Group Recommendations

The Board discussed the recommendations of the WSBA Legislative Work Group and heard an overview of the Work Group's process and recommendations from Phil Brady, chair and former District 10 Governor. The recommendations cover

several key issues with respect to the WSBA's current Legislative Committee. If adopted, the new system would reduce the size of the Legislative Committee and have it meet ad hoc when legislative proposals from WSBA need to be vetted. The new Committee would be named the WSBA Legislative Review Committee. The Board will vote on these recommendations at the next Board meeting in September.

Proposed Amendment to Article XI Sections re: Legislative Activity

The Board heard from WSBA Director of Advancement and Chief Development Officer Terra Nevitt and Sections Program Manager Paris Eriksen on a proposed amendment to XI(f) of the WSBA Bylaws. The proposed amendment would support Sections taking action effectively and efficiently during the fast-moving legislative process by allowing action to be taken by Section Executive Committees via email under certain circumstances. The Board discussed the amendment and will vote on this issue at the next Board meeting in September.

WSBA Section Bylaws Alignment with WSBA Bylaws

The Board applauded the work of WSBA's 28 sections and the sections team in their work to revise sections' bylaws to align with WSBA Bylaw XI, which was amended by the Board in January. This project required an exceptional amount of volunteer and staff effort and the result was that 25 of 28 sections' bylaws were approved by consent at the July Board meeting.

WSBA General Counsel Sean Davis reported to the Board that two WSBA sections submitted amended bylaws for Board approval that conflict with one or more aspects of the WSBA Bylaws. The Board heard concerns from Executive Committee members of the Family Law Section who felt the Section was not able to adequately serve Limited License Legal Technician (LLLT) members and therefore had voted to disallow them as voting members of the Section. Because LLLTs are members of the WSBA, this proposed amendment conflicts with the WSBA Bylaws. The Antitrust, Consumer Protection and Unfair Business Practices Section's bylaws would have set the annual dues amount for law student members, which is a responsibility reserved to the Board under the WSBA Bylaws. Sections will have the opportunity to submit conforming bylaws for consideration at the September 2017 Board meeting. A third section, Indian Law, has not submitted revised bylaws.

On Board

Local Hero Award

WSBA President Brad Furlong presented the Local Hero Award to Shelton attorney Robert Wilson-Hoss during a luncheon at Thursday's Board meeting. The Local Hero Award is presented to an attorney who has exhibited an "above and beyond" approach toward their local community, by way of community involvement, pro bono, or other volunteer service. Mr. Wilson-Hoss was nominated by the Mason County Bar Association for contributing countless hours and counsel to organizations serving Mason County residents, including: Turning Pointe Domestic Violence Services; the Thurston-Mason County Dispute Resolution Center; the Mason County Bar Association; Pioneer and Shelton School District committees; the Criminal Justice Task Force; and the Mason County Counseling Network. A partner in Hoss & Wilson-Hoss, LLP, he has served several terms as a Mason County judicial commissioner and is known for his expertise in property law and homeowner association law.

Friday, July 28:

Proposed Mandatory Malpractice Insurance Task Force Charter

The Board discussed the recommendation of the Board Executive Committee to create a Mandatory Malpractice Insurance Task Force and adopt a draft charter. The Task Force would investigate proposals for mandatory malpractice insurance and would be comprised of WSBA members, industry professionals, and members of the public. This item will come back for action in September. The Task Force's report to the Board, together with any minority report, is projected to be completed in 2019 after ample opportunity for WSBA member input.



Local Hero Award recipient Robert Wilson-Hoss

Draft WSBA FY2018 Budget

Treasurer Jill Karmy, Chief Operations Officer Ann Holmes, and Controller Mark Hayes presented the draft FY2018 Budget, which reflects the cost of Board-directed programs, services, and operations. The draft budget includes General Fund Revenue of \$18,913,199 and expenses of \$19,528,210. As planned, we are projecting a net loss/use of \$615,011 in reserves. Based on efficiencies and savings seen at the end of FY16 and projected through FY17, and the budget presented, General Fund reserves will not fall below the \$2 million level at the end of FY18, consistent with

WSBA fiscal policy.

The Budget and Audit Committee will make a final presentation of the budget to the Board for approval at the next Board meeting in September.

WSBA Bylaws regarding Officer or Governor Vacancy

The Board discussed the upcoming vacancy of the Immediate Past President position at the end of the fiscal year since the 2016-2017 President had resigned in June. After discussion about whether to leave the position open for the coming year or not, the Board approved a motion directing

that a draft bylaw be presented at September's Board meeting to allow the current Immediate Past President to serve another year-long term, or, in the event the current Immediate Past President is not able or willing to serve an additional year, to appoint another WSBA member to serve in the position, subject to majority vote by the Board. The proposed Bylaw change will be a first reading in September and action, if taken, will occur in November.



President-elect Bill Pickett and King County Superior Court Judge Barbara Linde.

Appointment of Chairs and Vice-Chairs to WSBA Committees and Boards

The Board appointed a slate of committee chairs for the 2017-2018 year.

Amendments to Admissions Policies

The Board approved amendments to the Admissions Policies to align with recent amendments to the Admission and Practice Rules (APR) adopted by the Supreme Court that will become effective September 1, 2017. These amendments are the result of WSBA suggesting the amendments in order to create a coordinated system for admissions, licensing, and mandatory continuing legal education reporting requirements for all member license types. The new system will be more efficient since three different systems for the license types will not be separately maintained.

Board's Annual Retreat

On Friday afternoon and Saturday morning, the Board held its annual retreat. Topics discussed ranged from big-picture issues related to how best to prepare members for a rapidly changing profession as well as how better to engage members and provide more access and transparency of information that might be of interest to members. **NWL**

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A professional portrait of Leonard J. Feldman, J.D. He is a man with a shaved head, smiling warmly at the camera. He is dressed in a dark blue or black suit jacket over a white collared shirt and a blue tie with a subtle geometric or herringbone pattern. The background is softly blurred, showing what appears to be an office or courtroom interior with light-colored walls and possibly a wooden panel or door.



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Opportunity for Service

Northwest Justice Project Board of Directors

Application Deadline: Sept. 8, 2017

The Washington State Bar Association (WSBA) Board of Governors (BOG) is accepting letters of interest and résumés from members interested in serving on the Board of Directors of the Northwest Justice Project (NJP). The BOG will appoint up to four attorneys for terms varying from one to three years, commencing Jan. 2018. Presently, three incumbents are eligible for and may seek reappointment.

The Northwest Justice Project is a 120-attorney, 18-office statewide, not-for-profit law firm providing free legal services to low-income individuals and communities throughout Washington. NJP is funded primarily by the State of Washington Office of Civil Legal Aid and the federal Legal Services Corporation, with additional support from the Legal Foundation of Washington. NJP's Board-approved 2017 operating budget totals \$26 million.

Service on NJP's Board provides an extraordinary opportunity for accomplished individuals who are passionate about NJP's mission and who have a demonstrated commitment to providing high-quality civil legal services to low-income individuals. NJP's Board is responsible for setting program policy; assuring adequate oversight of NJP operations and finances; and supporting, partnering with, and overseeing the Executive Director in his/her leadership role. NJP's Board is a working board. Board members are expected to attend quarterly meetings in Seattle, attend an annual board retreat, and serve actively on two standing committees. Committees typically meet monthly via telephone. Board members are expected to participate in and support NJP legal community activities and fund-raising efforts. Board-related travel and lodging expenses are reimbursed as appropriate.

For more information, please contact César Torres, NJP Executive Director, at: cesart@nwjustice.org; or Monica Langfeldt, Board Development Committee Chair, at: monica@langfeldtlaw.com.

Please email a letter of interest and résumé on or before Thursday, Sept. 8, 2017, to barleaders@wsba.org. Notice of BOG action will follow its Nov. 2017 meeting.

2017 Seattle Citywide Pro Bono Fair Oct. 11, Seattle

Representatives from legal services organizations from across the Seattle area will be available to meet with lawyers and law students looking for pro bono opportunities on Wednesday, Oct. 11, from 4-6 p.m. at the law office of Perkins Coie, 201 3rd Ave #4900, Seattle.

WSBA News

Register Now for the WSBA APEX Awards

The 2017 WSBA APEX Awards (Acknowledging Professional Excellence) will be presented in Seattle on Sept. 28. Help us celebrate the best in integrity, professionalism, diversity, service, justice, and courage. Registration is now open for the event; you'll find the full list of 2017 recipients and registration link on the WSBA website at www.wsba.org/awards.

50-Year Member Tribute Luncheon

On Nov. 3, WSBA will hold its annual Member Tribute Luncheon in Seattle for lawyers and judges who this year celebrate 50 years of WSBA membership. At the event, WSBA President Bradford Furlong and members of the Board of Governors will present these members with 50-year certificates and lapel pins to acknowledge their dedication to the law since 1967. Please email wsbaevents@wsba.org for more information.

WSBA Board of Governors Meetings

Sept. 28–29 at the WSBA offices, Seattle, and via webcast.

With the exception of the executive session, Board of Governors meetings are

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

MentorLink Mixer: New Attorneys and Leadership

Sept. 14, Mt. Vernon

WSBA Mentorship brings together a diverse mix of attorneys to support each other in the interest of advancing and thriving in the legal profession. This MentorLink Mixer is an opportunity for newer attorneys to gain insight into becoming a leader in the legal community. New and experienced attorneys will have the opportunity to participate as mentees and mentors in order to share knowledge about their leadership experiences. The event is hosted by WSBA Mentorship in partnership with the Washington Young Lawyers Committee. 5:30-7 p.m. at the Skagit River Brewery, 404 S. 3rd Street. Light appetizers will be served with a no-host bar. To learn more or if you have questions, email us at MentorLink@wsba.org.

WSBA Community Networking Events

WSBA's Diversity and Inclusion Programs invites you to join us for an evening of networking! The WSBA remains committed to achieving inclusion and supporting the efforts of our local, specialty, and minority bar associations.

Richland

Sept. 21, 5-7 p.m., Tagaris Winery & Tagaris Taverna, 844 Tulip Lane. Light appetizers will be served with a no-host bar.

Spokane

Sept. 22, 5-7 p.m., Gonzaga Law School, 721 N. Cincinnati Street. Light appetizers will be served with a no-host bar. Please RSVP to these events at diversity@wsba.org by Sept. 14. While an RSVP is not required, we'd enjoy knowing that you plan to attend. We look forward to seeing you!

Wenatchee Team Takes Home YMCA Mock Trial Top Prize



Winning team members (from left): Sebastian Pasion, Vivian Noyd, Maks Ballard, Charlotte Rogerson and Xavier Martinez

Washington's YMCA Mock Trial team recently won the national mock trial tournament, held in Chicago, August 1-4. The team earned the highest total score after competing in four trials against other teams from across the country. The competition culminated in a showcase round on the final morning of the tournament, in which the Washington team competed against defending champion Indiana, which finished second.

"These students are incredibly poised and capable and should make all of us in Washington proud!" says Chelan County Superior Court Judge Lesley Allan, who traveled with the team to Chicago and who served as coach along with attorney Tracy Brandt and Westside High teacher and attorney Frank Brandt. "They have worked diligently for the last seven weeks to prepare for the tournament and, clearly, the hard work has paid off." Team member Vivian Noyd was also recognized as one of five top attorneys in the competition. Noyd had previously been recognized as outstanding attorney in the Washington State tournament for both 2016 and 2017.

Washington's second team for the tournament—comprised of Wenatchee High students Estela Navarro, Sophia Castillo, Colin Snyder, Abby Simmons and Cassie Noyd, joined by Keith Heffernan of The River Academy—placed 14th overall.

WSBA Experience Exchange

Sept. 22, Spokane

WSBA's "Experience Exchange" is designed to match new and young lawyers from historically underrepresented backgrounds with seasoned lawyers in the profession for facilitated interaction and meaningful engagement. This Experience Exchange creates an intimate setting over breakfast for new lawyers to connect with and learn from bar and bench leaders that they might not otherwise have access to in the early days of their career. We invite you to join us at this event as we continue to work towards a more inclusive legal community. 8-10 a.m., Herak Center, Gonzaga University, 721 N. Cincinnati Street. Breakfast will be served. For questions or more information, please email Joy Williams, WSBA Diversity

and Public Service Programs manager, at joyw@wsba.org.

Help Reconciling Your Trust Account

Rule 1.15A(h)(6) of the Rules of Professional Conduct requires that trust account records must be reconciled as often as bank statements are generated. For most members, this means reconciling monthly. WSBA auditors have developed a form to help called the Monthly Reconciliation and Review Report. It is an interactive form that takes you step-by-step through a monthly reconciliation process. After you complete it, you can print it and keep it with your records. The form is accessible through the WSBA website at <http://www.wsba.org/Licensing-and-Lawyer-Conduct/IOLTA-AND-CLIENT-TRUST-ACCOUNTS>

Please also see www.wsba.org for additional resources, including the WSBA publication, "Managing Client Trust Accounts, Rules, Regulations and Common Sense," and the recorded seminar, "Managing Client Trust Accounts" (October 2014).

WSBA Launches CLE Faculty Database

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

Join the WSBA New Lawyers List Serve

This list serve is a discussion platform for new lawyers of the WSBA. In addition to

Need to Know

being the best place to receive news and information relevant to new lawyers, this is a place to ask questions, seek referrals, and make connections with peers. To join, email newlawyers@wsba.org.

ALPS Attorney Match

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

Volunteer Custodians Needed

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

Ethics

Facing an Ethical Dilemma?

Members facing ethical dilemmas can

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

Search WSBA Advisory Opinions Online

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

WSBA Lawyers Assistance Program (LAP)

New Online Group: Meditation at Your Desk

Lawyers often struggle to find the time to clear their heads, much less attend a group in person. That's why this brief meditation group will be offered virtually so you can log in at your desk right at the lunch hour. Attorney and meditator Greg Wolk will be leading a 10-week series that meets each Thursday at noon for 30 minutes. The group begins on Thursday, Sept. 14; the cost is \$50. A thoughtful curriculum about building your resiliency as a legal professional has been created and each session will include guided meditation. Sign up at: <http://tinyurl.com/y8x6y99u>.

WSBA Connects

WSBA Connects provides free counseling in your community. All bar members are eligible for three free sessions on topics

including work stress, career challenges, addiction and anxiety, as well as other issues. Upon calling 1-800-765-0770, a telephone representative will arrange a referral using KEPRO's network of clinicians throughout the state of Washington. There is no need to let problems build up unnecessarily. We hope you make the most of this valuable resource.

Weekly Job Group

The Weekly Job Group helps unemployed and dissatisfied attorneys throughout the state to find jobs. Separate from our Virtual Job Group, this offering occurs in-person at WSBA offices. The next group begins Sept. 18. The group meets Monday mornings from 9:30-11 a.m., runs for seven weeks, and costs \$35. Participation is limited to eight attorneys. For more information and to sign up, go to <http://tinyurl.com/y8czwd48>. If you would like to schedule a career consultation or have other questions, contact Dan Crystal at danc@wsba.org.

Judicial Assistance Services Program

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

The "Unbar" Alcoholics Anonymous Group

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

WSBA Law Office Management Assistance Program (LOMAP)

LOMAP Lending Library

The WSBA LOMAP and LAP Lending Library is a service to WSBA members. We offer the short-term loan of books on health and well-being as well as the business management aspects of your law office. How does it work? You can view available titles at www.wsba.org/resources-and-services/lomap/lending-library. Books may be borrowed by any WSBA member for up to two weeks. If you live outside of the Seattle area, books can be mailed to you; you will be responsible for return postage. For walk-in members, we recommend calling first to check availability of requested titles. To arrange for a book loan or to check availability, contact lomap@wsba.org or 206-733-5914.

Casemaker Online Research

Casemaker is a powerful online research

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

Learn More About Case-Management Software

LOMAP maintains a computer for members to review software tools designed to maximize office efficiency. LOMAP staff is available to provide materials, answer questions, and make recommendations.

To make an appointment, contact lomap@wsba.org.

Usury Rate

The maximum allowable usury rate can be found on the Washington State Treasurer's website at www.tre.wa.gov/investments/historicalUsuryRates.shtml.

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ETHICS and LAWYER DISCIPLINARY INVESTIGATION and PROCEEDINGS

Stephen C. Smith,

former Chair of the Washington State Bar Association Disciplinary Board, is now accepting referrals for attorney disciplinary investigations and proceedings in Washington, Idaho, Hawaii, and Guam.

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Suzanna Shaub

has become a Shareholder of the firm

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has become an Associate of the firm

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WARE|IMMIGRATION

announces the opening of its Denver, CO office.

Dan Kowalski

Editor-in-Chief, *Bender's Immigration Bulletin*,
and Online Editor for www.bibdaily.com,
will be Managing Partner there.

The firm has also hired

Charles Mosher

as Managing Partner in its Seattle office, following his many years as in house counsel for CTS International.

Erin Hebert and Laura Buck

have been hired as Associates
in the firm's Metairie office.

Ware|Immigration limits its practice to immigration and nationality law.

DAVIES PEARSON, P.C.

Attorneys at Law

is pleased to announce that

Nikki M. Gasper

has become an Associate of the firm and will practice in the areas of labor and employment, general business, business litigation, family law, and personal injury.

Ms. Gasper graduated from Gonzaga University School of Law, *cum laude*, in 2013. She received her B.A. in Justice from the University of Alaska-Anchorage, *cum laude*, in 2005. She is licensed to practice in both Washington and Alaska.

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DAVISON VAN CLEVE

is proud to announce that

Pat Oshie

has joined the firm as Of Counsel.

Mr. Oshie has over 26 years of experience in energy and business law. Mr. Oshie began his law career at Oshie & Spurgin, Attorneys at Law, where he practiced for 10 years. He then served as a Commissioner for the Washington Utilities and Transportation Commission for almost 12 years. He went on to serve as Associate General Counsel for the Western Electricity Coordinating Council, subsequently transitioning to become Vice President and Associate General Counsel of Peak Reliability. He later served as an Assistant Attorney General of Washington for two years. Mr. Oshie will bring his significant energy related experience to Davison Van Cleve for the benefit of clients in the Pacific Northwest region.

GROFF MURPHY PLLC

is pleased to announce that

Kellen F. Ruwe

has joined the firm as an Associate.

Ms. Ruwe is a 2015 graduate of the University of Washington School of Law.

Ms. Ruwe's practice will focus on construction law, commercial litigation and government contracts.

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Discipline and Other Regulatory Notices

These notices of imposition of disciplinary sanctions and actions are published pursuant to Rule 3.5(c) of the Washington Supreme Court Rules for Enforcement of Lawyer Conduct. Active links to directory listings, RPC definitions, and documents related to the disciplinary matter can be found by viewing the online version of *NWL* 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

Richard Duane Burns (WSBA No. 5561, admitted 1974) of Pomeroy, was disbarred, effective 6/27/2017, by order of the Washington Supreme Court. The lawyer's conduct violated the following Rules of Professional Conduct: 8.4 (Misconduct). Jonathan Burke acted as disciplinary counsel. Richard Duane Burns represented himself. Dana C. Laverty was the hearing officer. The online version of *NWL* contains links to the following documents: Hearing Officer's Decision; Disciplinary Board Order Declining Sua Sponte Review; and Washington Supreme Court Order.

Mona Lisa Cuarte Gacutan (WSBA No. 39344, admitted 2007) of Federal Way, was disbarred, effective 5/08/2017, by order of the Washington Supreme Court. The lawyer's conduct violated the following Rules of Professional Conduct: 1.3 (Diligence), 1.4 (Communication), 1.5 (Fees), 8.4 (Misconduct). Joanne S. Abelson and Francesca D'Angelo represented acted as disciplinary counsel. Kurt M. Bulmer represented Respondent. Bertha B. Fitzer was the hearing officer. James M. Danielson was the settlement hearing officer. The online version of *NWL* contains links to the following documents: Hearing Officer's Decision; Disciplinary Board Order; and Washington Supreme Court Order.

Resigned in Lieu of Discipline

Morris Konstandinos Estep (WSBA No.30328, admitted 2000) of Boerne, resigned in lieu of discipline, effective 7/07/2017. The lawyer agrees that he is aware of the alleged misconduct in disciplinary counsel's Statement of Alleged Misconduct and rather than defend against the allegations, he wishes to permanently resign from membership in the Association. The Statement of Alleged Misconduct reflects the following violations of the Rules of Professional

Conduct: 8.4 (Misconduct). Christine Gray acted as disciplinary counsel. Leland G. Ripley represented Respondent. Kelby D. Fletcher was the hearing officer. The online version of *NWL* contains a link to the following document: Resignation Form of Morris Konstandinos Estep (ELC 9.3(b)).

Mitch Harrison (WSBA No.43040, admitted 2010) of Seattle, resigned in lieu of discipline, effective 5/22/2017. The lawyer agrees that he is aware of the alleged misconduct in disciplinary counsel's Statement of Alleged Misconduct and rather than defend against the allegations, he wishes to permanently resign from membership in the Association. The Statement of Alleged Misconduct reflects the following violations of the Rules of Professional Conduct: 1.1 (Competence), 1.3 (Diligence), 1.4 (Communication), 1.5 (Fees), 1.8 (Conflict of Interest: Current Clients: Specific Rules), 1.16 (Declining or Terminating Representation), 3.2 (Expediting Litigation), 8.4 (Misconduct). M Craig Bray acted as disciplinary counsel. Mitch Harrison represented himself. The online version of *NWL* contains a link to the following document: Resignation Form of Mitch Harrison (ELC 9.3(b)).

Roy Earl Morriss (WSBA No.34969, admitted 2004) of Tacoma, resigned in lieu of discipline, effective 5/17/2017. The lawyer agrees that he is aware of the alleged misconduct in disciplinary counsel's Statement of Alleged Misconduct and rather than defend against the allegations, he wishes to permanently resign from membership in the Association. The Statement of Alleged Misconduct reflects the following violations of the Rules of Professional Conduct: 1.3 (Diligence), 1.4 (Communication), 1.5 (Fees), 1.15A (Safeguarding Property), 1.16 (Declining or Terminating Representation), 8.1 (Bar Admission and Disciplinary Matters), 8.4 (Misconduct). Linda B. Eide acted as

disciplinary counsel. Roy Earl Morriss represented himself. David W. Wiley was the hearing officer. The online version of *NWL* contains a link to the following document: Resignation Form of Roy Earl Morriss (ELC 9.3(b)).

Roger Jay Sharp (WSBA No.12211, admitted 1981) of Vancouver, resigned in lieu of discipline, effective 6/08/2017. The lawyer agrees that he is aware of the alleged misconduct in disciplinary counsel's Statement of Alleged Misconduct and rather than defend against the allegations, he wishes to permanently resign from membership in the Association. The Statement of Alleged Misconduct reflects the following violations of the Rules of Professional Conduct: 1.3 (Diligence), 1.4 (Communication), 1.16 (Declining or Terminating Representation), 3.2 (Expediting Litigation), 8.4 (Misconduct). Natalea Skvir acted as disciplinary counsel. Roger Jay Sharp represented himself. James D. Hicks was the hearing officer. The online version of *NWL* contains a link to the following document: Resignation Form of Roger Jay Sharp (ELC 9.3(b)).

Suspended

Charles M. Greenberg (WSBA No. 17661, admitted 1988) of Edmonds, was suspended for 60 days, effective 6/27/2017, by order of the Washington Supreme Court. The lawyer's conduct violated the following Rules of Professional Conduct: 1.15A (Safeguarding Property), 1.15B (Required Trust Account Records), 5.3 (Responsibilities Regarding Nonlawyer Assistants). Natalea Skvir acted as disciplinary counsel. Charles M. Greenberg represented himself. Seth Aaron Fine was the hearing officer. The online version of *NWL* contains links to the following documents: Disciplinary Board Order Approving Stipulation; Stipulation to 60-Day Suspension; and Washington Supreme Court Order.

Gregory Louis Samuels (WSBA No. 19497, admitted 1990) of Vancouver, B.C. , was suspended for 30 days, effective 7/17/2017, by order of the Washington Supreme Court imposing reciprocal discipline in accordance with an order of the Law Society of British Columbia. Joanne S. Abelson acted as disciplinary counsel. Gregory Louis Samuels represented himself. The online version of NWLawyer contains a link to the following document: The Washington Supreme Court Order.

Interim Suspension

Michele Avalon Michalek (WSBA No. 19461, admitted 1990) of Longview, is suspended from the practice of law in the State of Washington pending the outcome of disciplinary proceedings, effective 6/20/2017, by order of the Washington Supreme Court. This is not a disciplinary sanction.

Carlene M. Placide (WSBA No. 28824, admitted 1999) of Seattle, is suspended from the practice of law in the State of Washington pending the outcome of disciplinary proceedings, effective 6/02/2017, by order of the Washington Supreme Court. This is not a disciplinary sanction.

Daniel Frederick Quick (WSBA No. 26064, admitted 1996) of Seattle, is suspended from the practice of law in the State of Washington pending the outcome of disciplinary proceedings, effective 5/19/2017, by order of the Washington Supreme Court. This is not a disciplinary sanction.

Gary Evan Randall (WSBA No. 15020, admitted 1985) of Woodinville, is suspended from the practice of law in the State of Washington pending the outcome of disciplinary proceedings, effective 5/11/2017, by order of the Washington Supreme Court. This is not a disciplinary sanction.

William H. Waechter (WSBA No. 20602, admitted 1991) of Seattle, is suspended from the practice of law in the State of Washington pending the outcome of disciplinary proceedings, effective 6/30/2017, by order of the Washington Supreme Court. This is not a disciplinary sanction.

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Highly Profitable Clark County Practice that is experiencing steady growth year over year! Case breakdown is approximately 33% Probate, 33% Real Estate, and 33% Business (transactional and litigation). This is a fantastic opportunity to build upon an incredibly profitable practice! Contact justin@privatepracticetransitions.com or call 253-509-9224 to learn more.

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Incredible Family Law Practice that is highly profitable with an amazing reputation. The firm handles divorce, child custody and visitation, relocation, non-parental/grandparent custody, and military family related matters, with average billings per client exceeding \$10,000! Contact justin@privatepracticetransitions.com or call 253-509-9224 to learn more.

Fantastic King County Estate Planning Practice with extremely low overhead (~30%) and SBA financing ready! The case breakdown is approximately 85% Estate Planning, and 15% Probate and Guard-

ianship. This is an excellent opportunity to take over a profitable practice! Contact justin@privatepracticetransitions.com or call 253-509-9224 to learn more.

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

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The poster for the 25th Annual Animal Law Conference features a large, stylized number '25' in the foreground. In the background, two horses are grazing in a field under a bright sky. A circular logo on the left contains the text "CELEBRATING 25 YEARS", "THE ANIMAL LAW CONFERENCE", "1993 25 2017", and "OCTOBER 13-15, 2017 PORTLAND, OREGON". Below the logo, there is a call to action: "USE CODE 'NW' FOR \$25 OFF REGISTRATION" and "10 CLE CREDITS AVAILABLE (INCLUDING 1 HOUR OF ETHICS), PENDING APPROVAL FROM THE WSBA". At the bottom, the website "WWW.ANIMALLAWCONFERENCE.ORG" is listed.

CLE Calendar

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

CIVIL RIGHTS

Civil Rights in the New Federal Administration

September 20, Seattle and webcast. CLE credits pending. Presented by the WSBA in partnership with the WSBA Civil Rights Law Section; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

DISPUTE RESOLUTION

Arbitration Seminar

September 18, Seattle and webcast. CLE credits pending. Presented by the WSBA in partnership with the WSBA Alternate Dispute Resolution Section; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

Mediation Seminar

September 25, Seattle and webcast. CLE credits pending. Presented by the WSBA in partnership with the WSBA Alternate Dispute Resolution Section; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

ELDER LAW

Fall Elder Law Conference

September 8, SeaTac. 6.75 CLE credits (5 Law & Legal Procedure + .75 Ethics + 1 Other). Presented by the WSBA in partnership with the WSBA Elder Law Section; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

ESTATE PLANNING

WSBA Practice Primer: Estate Planning Track—Wills, POAs, and Health Directives

September 13, 20, 27, Seattle and webcast. 6 CLE credits (4.75 Law & Legal Procedure + 1.25 Ethics). Presented by the WSBA; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

ETHICS

The 19th Ethics, Professionalism, and Civility Workshop

September 12, Seattle and webcast. 6 Ethics CLE credits. Presented by the WSBA; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

Ethics in Civil Litigation

September 19, Seattle and webcast. 6.5 Ethics CLE credits. Presented by the WSBA; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

GENERAL PRACTICE

What is Your Value, What are Your Values? Personal Branding for Attorneys

September 7, webinar. 1.5 Other CLE credits. Presented by the WSBA; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

Wait, What? Don't Obfuscate, Communicate! Clear Communications for Attorneys

September 7, webinar. 1.5 Other CLE credits. Presented by the WSBA; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

INTELLECTUAL PROPERTY

IP Essentials

September 22, Seattle and webcast. CLE credits pending. Presented by the WSBA in partnership with the WSBA Intellectual Property Section; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

LEGAL LUNCHBOX SERIES

September Legal Lunchbox

September 26, webcast. 1.5 CLE credits. Presented by the WSBA; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

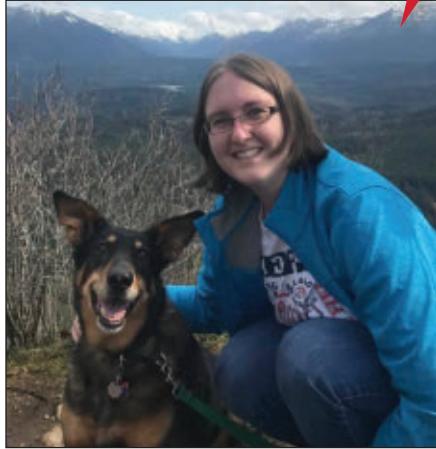
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Beyond the Bar No.



Stephanie L. Messplay

Bar No. #47017

Law School: University of Virginia

My name is Stephanie Messplay, and I have been practicing law for three years at Van Siclen, Stocks & Firkins. Before that, I spent a year clerking at the Washington Court of Appeals. I handle general civil litigation, misdemeanor defense, and appeals. In my spare time, I am out and about around western Washington, often attending local festivals.

- **Before law school**, I worked as a legal secretary for the Employees Retirement System of Texas (ERS).
- **I became a lawyer because** I was inspired by the attorneys I worked for at ERS.
- **In my practice**, I work on improving every day. As a relatively new lawyer, I know I still have a lot to learn.
- **My long-term professional goal is** to argue a case at the U.S. Supreme Court.
- **The most rewarding part of my job is** to help to make my clients' lives a bit easier. Every person who walks through our door is going through something difficult. We may not be able to solve every problem, but even a little bit of help can go a long way. It's nice knowing I made a difference.
- **If I could have tried one famous case, it would be** *Marbury v. Madison*, 5 U.S. 137 (1803).
- **The most humbling experience I have had as a lawyer** was meeting the attorney who tried and argued *Craig v. Boren*, 429 U.S. 190 (1976). He was a guest at a wedding I was in. To hear this man talk about how he made history (almost by accident) was fascinating and inspiring. Plus he worked with U.S. Supreme Court Justice Ruth Bader Ginsburg back in her practicing days, which was really interesting to hear about.
- **The most memorable trip I ever took** was my study abroad in Germany. I visited many places over those five months, including the Winter Olympics in Turin. I even spent four days in Latvia, which isn't exactly a popular tourist destination, even though it perhaps ought to be.
- **I look up to** the other attorneys in my office.
- **I absolutely can't live without** tea. I currently have 12 varieties of loose leaf in my desk. I'm partial to Rooibos and Darjeeling, but my favorites tend to be flavored black teas.
- **I enjoy reading** historical fiction and nonfiction. Right now, I'm reading Ron Chernow's biography of Alexander Hamilton—the one that inspired Lin-Manuel Miranda's musical. It's amazing to learn how one man shaped so much of our country as we know it today.
- **I am happiest** when my husband is not out to sea.
- **I grew up in** southwest Michigan, in a town of about 2,000 people. I am always shocked when I meet someone who has heard of it.
- **Nobody would ever suspect that** I am a military spouse. It's a whole different world that I never imagined myself a part of. The community is wonderful. Deployment, not so much.
- **I regret** not taking advantage of an opportunity to travel to India in college. At the time, I wasn't sure that I was emotionally ready for it, but now I think I just let fear of the unknown get the best of me.
- **This is on my bucket list:** to visit every state in the U.S. I think I'm at 37 right now.
- **This makes me roll my eyes:** Tacoma traffic.
- **My idea of misery** is terrible food for the rest of my life.
- **My favorite restaurant** is really hard to choose! Zippy's in White Center, La Rustica in West Seattle, Kokopelli Grill in Port Angeles, and Silver City Brewery in Silverdale are all great.
- **You'll find me outside in the Northwest doing this:** whale watching or hiking with my dog.
- **My first car was** a red '91 Chevy Cavalier. My friends called it the "crapalier." It broke down a lot.
- **If \$100,000 fell into my lap, I would** put it towards my student loans.
- **If I could get free tickets to any event**, I would go to San Diego Comic-Con. I've been to Emerald City Comicon a few years in a row, and once attended Dragon Con in Atlanta, but I've never been to the biggest, most famous Con of them all. I would love to go if given the chance— in costume, of course.
- **You should give this a try:** hiking on the Olympic Peninsula. I feel like it's underappreciated by those on the east side of the Sound and it really shouldn't be—it's full of gorgeous trails. Hurricane Ridge is especially lovely, and is very beginner-friendly.
- **My all-time favorite movie or TV show is** "Battlestar Galactica."
- **My favorite app for fun** is Pokemon Go.

We'd like to learn about you!

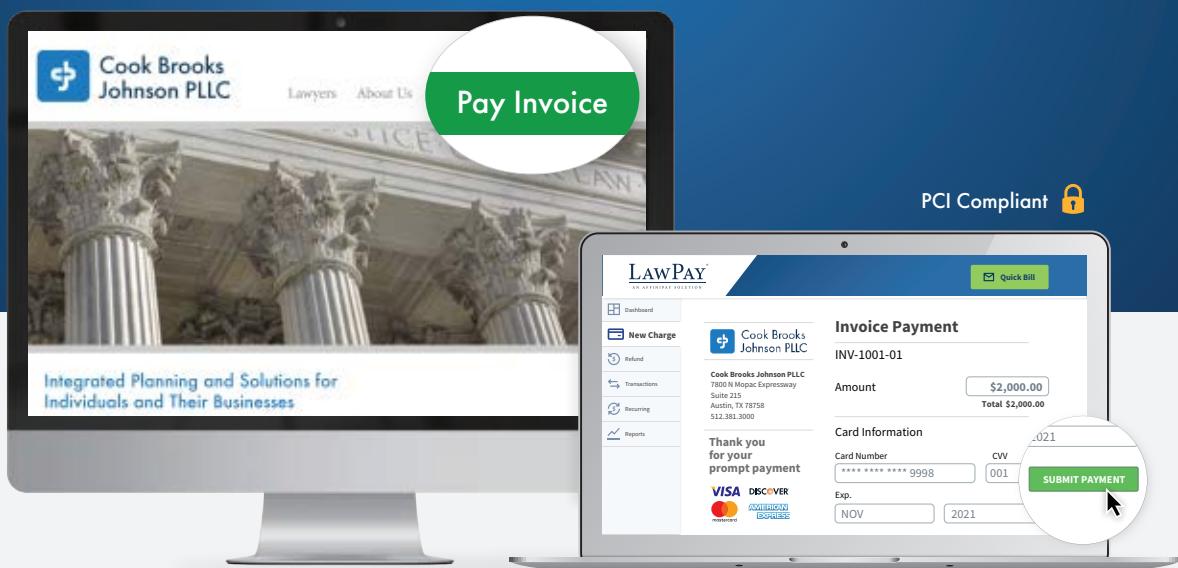
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