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Beyond the Bar Number: Scott A. Volyn
New Bar News Website is Live

After many months of hard work by the magazine team, we have some exciting news to share: Bar News has a new website. It’s more modern, user-friendly, shareable, and searchable. You can access it at www.wabarnews.org.

On this new platform, you can read individual articles, columns, Beyond the Bar Number features, Section Spotlights, discipline notices, and more. You can also find the November issue in flipbook style, and you can browse the Bar News archive back to 2006. Take a look around, and feel free to let us know what you think.

In this issue (and also online at www.wabarnews.org), Gonzaga Law School Professor George Critchlow writes about one of his most memorable cases (page 28), the Washington Young Lawyers Committee announces its 2021 Public Service & Leadership Award winners (page 26), and former Washington Supreme Court Justice Faith Ireland looks back on 50 years as a member of the WSBA.

Also in the following pages: an ethics column about changes to the lawyer marketing rules (page 14), a look at drug possession law in Washington after State v. Blake (page 38), an overview of two recent Washington Court of Appeals cases dealing with military pension division (page 18), and more.

Kirsten Abel is the editor of Washington State Bar News and can be reached at kirstena@wsba.org.
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In Defense of In-Person Jury Trials

Permanent internet “jury” trial
Civil Rules have been published by the Supreme Court for comment. King County Superior Court proposed the rules [amendments to CR 39 and a new GR 41] asserting they are “imperative for access to justice.” The rules would give judges permanent discretion to deny a proper jury trial and impose an internet trial.

The proposed rules are a barrier to access to justice, widen the privilege gap between wealthy versus disadvantaged parties, and are a material impairment of the constitutional right to a jury trial. More fundamentally, the justification for them is contradicted by King County’s own studies.

First, for internet trials to increase “access to justice” as claimed, there must be equal access to the technology to participate. However, even in King County, approximately 70 percent of the population lacks a reliable high-speed internet connection needed for streaming.2 Approximately 25 percent have other barriers due to language, education, or social issues preventing them from using the technology.3 Those barriers disproportionately disadvantage “Black, Hispanic, and Asian” populations “relative to their size in the population.”4 Id. Those are King County’s own survey conclusions, and access gets much worse outside King County.5 Far from making the process more diverse and open, the proposed rules have the opposite effect.

Second, permanent internet trials favor the wealthy, institutions, and insurance companies who can afford technology and support to put on a more seamless internet trial. As an example, our firm was given a blank check by our client’s insurance company for an internet trial; we hired an outside company, had upwards of seven monitors, stage lighting, high-quality microphones, and at times a person dedicated to do nothing but click through exhibits. What does a litigant without that backing use—an integrated camera/microphone from Amazon propped up on a book?

Third, the CR 39 amendment only considers presenting evidence while ignoring how juries interact with evidence. Internet trials show only faces. At a real trial, juries take the entire measure of a witness: how they act on the stand, their emotion, etc. And most importantly, jurors sit face to face to deliberate. All that is gone over the internet.

Also, an internet jury’s attention is subject to being constantly distracted. In our recent internet trial one juror served her time in bed. Another was caught watching YouTube. The entire panel was obviously “multi-tasking” most of the time—stealthily typing, eyes darting around their screen. It is no response to say a juror will be “caught” and told to stop. By then, they have already missed testimony and evidence.

We would not tolerate that distraction at a jury trial; it is not excusable over the internet. Even worse, what happens when technology fails intermittently as it is wont to do—the audio drops and a juror (or more) misses a critical sentence and no one even knows? In our trial, one juror’s video dropped and the juror was allowed to continue on what was reduced to a phone call.

Fourth, the proposed amended rule is inadequate. It requires a court to issue an order to ensure fair procedure but provides no guidance on what “fair” is or what technology jurors have to have. In our trial, one juror consistently used her cell phone. Jurors cannot consider exhibits reduced to 2-by-3 inches. On the other hand, requiring, e.g., a screen of a certain size worsens the lack of equal access identified above.

Internet trials are a reasonable and necessary stopgap. I have heard positive anecdotal reports. However, that ignores the backdrop: Having no trials for two years, even an internet trial seems great indeed. What a person does when their house is on fire is not what they do when it is not. Once this emergency passes, there is no reason to continue this emergency measure. If parties want to waive their right to an in-person jury trial for an internet trial then fine; however, access to the courtroom cannot be reserved only for cases a judge, however fair-minded and impartial, deems worthy. The promise our entire democracy rests on is that all—no matter how great or small—are worthy of access to the justice of the courtroom.

Despite the enormous impact of the proposal, there has been nearly a total lack of comment to the court. To me that is shocking albeit illustrative of what Anne Seidel observed in a letter in the September issue: There is rule-making due process but...
it is not well publicized. Make your voice heard by writing to the court at supreme@courts.wa.gov. It need not be long but it needs to be quick: the comment period closes Dec. 29.

Dan Bridges, past WSBA treasurer and governor
Seattle

Just Phoning It In

Zoom court is to justice what the telephone is to sex. It might arouse the idea, but it’s never going to give you the real thing unless you get within six feet of someone.

It’s time to stop pretending that this experiment has been an advancement for justice. On the contrary, it has reduced people to pixels, deprived too many of meaningful access to effective assistance of counsel, made the pretrial court experience more intrusive and less efficient for clients, and signaled to the world that what lawyers do is less important or essential than virtual—what might be said about other professions.

The problem with the pre-Zoom court wasn’t that it expected people to show up; it was that it severely punished those who failed to do so. Legislative changes and modifications to the rules of procedure have pretty much solved that problem, leaving Zoom with few arguments to remain a part of the criminal justice system.

Chris Van Vechten
Tacoma

1. The full text of the proposed rules published for comment is available at www.courts.wa.gov/court_rules/?fa=court_rules.proposed.
A TWO-TIERED CHESS GAME

The causation requirement in a legal malpractice action requires proving the merits of the underlying matter — the case within the case — which may be more complex than the professional negligence claim itself.

We have the knowledge and the experience to make the right moves and we would appreciate the opportunity to help you and your client.

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There’s More on the Blog

**NWSidebar**

**The Voices of Washington’s Legal Community**

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**Delving into the Washington Supreme Court Vaccination Order**

Two months ago, the Washington Supreme Court issued an order requiring court employees and contractors either to be vaccinated against COVID-19 or to [...]

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**The Federal Government’s Focus on Debt Collection Post-COVID**

When the pandemic began early last year, the government extended aid to families and businesses everywhere. Funding was provided, payments were deferred, [...]

[.RowStylesSidebar.wsba.org](уетсяSidebar.wsba.org)

**Arbitration Provision in Engagement Agreement Enforced**

The federal district court in Seattle recently enforced an arbitration provision in a lawyer’s engagement agreement in *Dodo International, Inc. v. Parker*, No. [...]

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Michelle Smigel, JD, Broker
One of my all-time favorite movies is the first Back to the Future. In it there is a scene where the main character, Marty McFly, is handed a flier by a passerby asking people in the community to “save the clock tower” from demolition. Evidently, the clock tower stopped working; that is, it stopped being relevant and didn’t keep up with the times. While your WSBA is committed to being relevant, the question is: how does the WSBA stay relevant?

“Relevant” has different meanings. There does not seem to be one accepted definition of “relevant,” nor is there a shortage of “how-to-keep-up-with-the-times” ideas. Different dictionaries have various definitions for the word. Most broadly, it seems that “relevant” means something to do with the “matter at hand,” whatever that means.

“Relevance” is an important term in a variety of contexts. In litigation, there is relevance for evidentiary purposes, relevance for discovery purposes, and relevance for certain causes of action, such as anti-trust cases. In IP contracts, there is the concept of “relevant technology.” In communications or linguistics philosophy there is the notion of “relevance theory.”

“Time waits for no one, and it won’t wait for me,” Mick Jagger of the ever-relevant Rolling Stones famously sang. Staying relevant as a legal professional as one navigates the passage of time also is important. We stay relevant or we risk getting “clocked” like the tower in Back to the Future.

The phrase “staying relevant” also has more than one connotation. Type that phrase into the search function of your favorite browser and you’re likely to find advice on “staying relevant in the workforce”; “steps to becoming and staying relevant” in life; and (not my favorite) “secrets to staying relevant as you age.”

Now and then I get the idea, either by hearing or seeing something, that not much that the Bar Association does has relevance to many members except for the licensing and discipline functions. Last year, a lawyer-member sent an email to a whole group of WSBA members, including me, that probably echoed what other WSBA members are thinking. The sender was unsure of “exactly what the Bar Association does.” Basically, the sender claims that there is a “disconnect” between the Bar Association and one’s passion to be an extremely good legal professional. Here again is that relevance question.

Help Your Bar Association Stay Relevant

President’s Corner

Many of the fundamentals of the practice of law haven’t changed since I first joined our Bar Association. Ethical responsibilities to a client continue to be very important. Legal professionals still represent clients by giving advice, preparing legal documents, and advocating for their clients (in court and elsewhere). Yet many other aspects of being a legal professional are radically different now. Here are just a few examples:

At one time, there were no online research services; almost all research was done by using paper-based research products from a handful of legal publishers. Now most legal research is digitized. Decades ago, many law firms had a combination of “ordinary” IBM Selectric and IBM Mag-card Selectric electric typewriters. Then came a variety of dedicated word-processor computers, with IBM being only one of the offerings. And finally the personal computer revolution replaced dedicated word-processing computers altogether.

Another big change has been in how legal professionals communicate with their clients. While some clients must receive their communications via the mail, email (even text messaging) and Zoom (or other video-conferencing technology) are the general rule now.

Going to the courthouse to look at paper-based court files is gone in many jurisdictions. Court records are online or going online now more than ever. Other types of legal data, like auditor’s records, also are online.

It’s no secret then that the progress of word-processing power (including voice-enabled systems) and other personal-computer-based technologies—coupled with high-speed printers and copiers plus the advances in computerized legal research—allow legal professionals to produce more work (“law product,” if you will) in a shorter time period. In fact, legal professionals simply produce more law product than ever before. This is especially evident in the areas of drafting transactional documents and litigation.

Then, of course, there is the constant tsunami of state and federal legislation changes and additions. One problematic aspect: The ultimate cost of delivering many legal services has not declined.

Help Your Bar Association Stay Relevant

Judge Brian Tollefson (Ret.)
WSBA President
Tollefson is a principal at Black Robe Dispute Resolution Services, PLLC. He can be reached at TollefsonBOG@outlook.com.

Many of the fundamentals of the practice of law haven’t changed since I first joined our Bar Association. Ethical responsibilities to a client continue to be very important. Legal professionals still represent clients by giving advice, preparing legal documents, and advocating for their clients (in court and elsewhere). Yet many other aspects of being a legal professional are radically different now. Here are just a few examples:

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Then, of course, there is the constant tsunami of state and federal legislation changes and additions. One problematic aspect: The ultimate cost of delivering many legal services has not declined.
Staying relevant—that is, keeping up with the times—as a legal professional is more important than ever. While your Washington State Bar Association must continue to stay relevant to all its members and the public, the question is: Is this message getting across?

Member engagement is so important to your Board of Governors that it has formed a Member Engagement Work Group\(^3\) to help the Board “involve bar members and collect their feedback on the board’s work.”\(^4\)

One of the first tasks of this work group has been to create a survey to be sent to the members. Among the topics to be covered in the survey are members’ attitudes toward member benefits such as: the Legal Lunchbox\(^*\) (free monthly CLE credits); live, remote, and on-demand WSBA Continuing Legal Education (CLE) Seminars; deskbooks; the Washington State Bar News magazine; the Ethics Line; the Member Wellness Program; and the free legal research product Fastcase. But the WSBA wants to do more to grow and maintain its relevance to each and every legal professional and the public.

We are listening. Your input and involvement will help the WSBA stay relevant. Whether you’re a recent WSBA member or a seasoned legal veteran, we need you. With your help and input on this survey, the WSBA can keep pace and stay relevant. Marty McFly understood relevance. Let’s keep going into the future and save the clock tower.

NOTES
2. A central claim of relevance theory is “that the expectations of relevance raised by an utterance are precise and predictable enough to guide the hearer toward the speaker’s meaning.” See Wilson & Sperber (2004) Relevance Theory. (in L. R. Horn & G. Ward (eds.), Handbook of Pragmatics (Blackwell), pp 607-632).
The Year Ahead: Stability Even in a Time of Challenge

As we leave the 2021 WSBA fiscal year behind us and look forward to the 2022 fiscal year (FY 22), I want to honor the hard work and dedication of the 2020-21 Budget and Audit Committee members: Governors Brett Purtzer, Tom McBride, Carla Higginson, Matthew Dresden, Lauren Boyd, and P.J. Grabicki. I would also like to give special thanks to past-Treasurer Dan Clark, who has done a remarkable job over the past two years and has been very generous with his time over the last year to prepare me for this role as WSBA treasurer. It is also very important to honor the hard work and dedication of CFO Jorge Perez, Executive Director Terra Nevitt, and everyone who works at the WSBA. Over the last two years, the WSBA reserves have grown approximately $3.6 million, even in the face of the pandemic. It really does take everyone at the WSBA to achieve such an amazing result.

I would also like to thank all the governors willing to serve on the Budget and Audit Committee for FY 22. The Budget and Audit Committee is a huge time commitment and a challenge, but also very satisfying. During FY 22, we expect to face many challenges due to the uncertainty of the post-COVID-19 world. What will the coming year look like for the WSBA and how will it affect the financial future of our organization? How many of the WSBA's staff will continue to work remotely, or at the office full-time, or in some combination of the two? Will the WSBA be able to sublet some of its office space to defray the cost of rent through the remainder of the current lease (which expires in 2026)? This and many other questions will be answered this year, and the answers to these questions will help to determine the financial future of the WSBA. Throughout the year, we will work together to meet these challenges in a way that produces the best result for you, the WSBA members.

A LOOK FORWARD: COMPLETION OF THE 2022 BUDGET
The Board of Governors passed the final version of the FY 22 budget at its September meeting. Here is a quick snapshot: The general fund portion of the FY 22 WSBA budget (see chart on the next page) calls for $21,526,859 in expenditures and $21,437,297 in revenue. While this means there is an anticipated deficit of $89,562, we are confident that we have budgeted conservatively—especially considering the uncertainty created by the pandemic. The WSBA will closely monitor revenue and expenditures over the year and work hard to cap any deficit at the budgeted number or reduce it. It should be noted that over the last two fiscal years, the WSBA budgets have projected deficits but the actuals at year-end put it in the black.

2022 LICENSE FEES, KELLER DEDUCTION, AND PER-MEMBER SECTION CHARGE
The WSBA Board of Governors voted to keep member license fees flat for FY 22. Lawyer license fees have remained flat for the last four years, even though WSBA expenses have increased each and every year. If you think of the WSBA like a retired person on a fixed income, with expenses continuing to increase each and every year, it is truly remarkable that we have been able to keep license fees flat for the last four years. Once again, an amazing accomplishment that must be credited to the hard work of everyone at the WSBA. This does not happen by accident!

The WSBA Board of Governors set the 2022 Keller deduction¹ at $9.02 for active lawyers, as compared to $3.85 for 2021 and $1.55 for 2020. Upon the recommendation of WSBA staff, the Board also voted to set the per-member section reimbursement charge² at $18.75, as compared to $18.23 for 2021. The ability to set this per-member section reimbursement charge at the $18.75 amount is in large part due to WSBA Advancement Department Director Kevin Plachy and his team's hard work to reduce costs and make changes to increase the efficiency within this department.

In closing, it is very important to me that we continue to put members front and center, which means demonstrating value and responsibility in all that we do at the WSBA. I look forward to being your treasurer this next year and facing the many challenges that FY 22 will present.

Bryn A. Peterson
WSBA Treasurer

Peterson is the owner of Peterson Law, PLLC, which specializes in corporate law. He can be reached at bryn.peterson@brynpetersonlaw.com.

NOTES
1. In Keller v. State Bar of California, 496 U.S. 1 (1990), the Court ruled that a bar association may not use mandatory member fees to support political or ideological activities that are not reasonably related to the regulation of the legal profession or improving the quality of legal services.
2. This charge is the amount that sections reimburse the WSBA for the cost of supporting sections.
FISCAL YEAR 2022 BUDGET
General Fund Expenses by WSBA Programs & Services

A 13% Licensing and Admissions Services. Costs to administer admissions and annual licensing processes for nearly 40,000 WSBA members including lawyers, LPOs, and LLLTs; to maintain and respond to questions about members and their public information; and to support the Supreme Court-mandated MCLE Board, which adjudicates issues involving continuing legal education requirements. **$2,739,537**

B 3% Outreach and Engagement. Supports WSBA outreach to the public, legal professionals, bar associations, policymakers, and other stakeholders in order to enhance volunteer recruitment, raise awareness and understanding of WSBA programs and priorities, and create a sustainable stakeholder network. **$726,303**

C 30% Management and Operations. Includes costs associated with the WSBA Board of Governors, leadership, management, and internal support (finance, administration, and human resources). **$6,358,710**

D 5% General Counsel. Legal representation and support to the WSBA, the Board of Governors, and other boards, task forces, and committees; records requests and litigation management; and oversight, interpretation, and analysis of WSBA Bylaws and other legal issues. **$996,039**

E 1% Legislative and Law Improvement Efforts. Supports work with WSBA leadership and sections to formulate positions on legislation, track relevant legislation during session, and provide technical advice on bills and existing statutes to the Legislature. **$271,935**

F 29% Discipline and Disability Systems. Costs to handle consumer inquiries; to investigate, prosecute, and adjudicate written grievances about lawyers, LPOs, and LLLTs (e.g., costs associated with disciplinary counsel, hearing officers, and the Supreme Court-mandated Disciplinary Board); to administer the WSBA audit program; and to educate members and law students about legal ethics, trust account compliance, and the discipline system. **$6,306,945**

G 4% Publications. This category includes costs to develop, design, produce, and distribute WSBA print media and publications, including *Washington State Bar News*, the WSBA's official publication. **$876,195**

H 2% Supreme Court-Mandated Boards and Programs. Costs to support four of six boards and programs mandated by the Supreme Court: (1) Access to Justice Board; (2) Limited License Legal Technician Board; (3) Limited Practice Officer Board; and (4) Practice of Law Board. Costs associated with the Disciplinary Board and MCLE Board, which adjudicate regulatory issues, are included in the Licensing and Admissions Services and Discipline and Disability Systems categories. **$516,805**

I 1% Member Benefits. Includes costs of programs benefiting the WSBA's membership as a part of their annual license fee: (1) legal research tool (Fastcase); (2) monthly CLE programs (Legal Lunchbox™ Series); (3) the Professional Responsibility Program; (4) the Member Wellness Program; and (5) a confidential 24/7 member assistance program (WSBA Connects). **$282,184**

J 5% Public Service, Diversity, and Washington State Bar Foundation Support. Costs to support: (1) WSBA public service programs (including Moderate Means Program, Call to Duty, and other pro and low bono initiatives); (2) work to advance diversity and inclusion in the legal profession; and (3) administrative costs of the Washington State Bar Foundation, which provides grant funding for these activities. **$971,061**

K 1% Sections Administration. Includes staffing and administrative costs to support 29 sections, and to help sections develop “mini-CLEs” that are not offset by per-member charge revenues. **$290,307**

L 6% Member Services and Engagement. Includes costs of outreach, education, training, and support to newly admitted WSBA members. Also includes funding for the WSBA’s mentor programming. **$1,190,837**

TOTAL **$21,526,859**
What’s Left?
Law Firm Risk Management After the Marketing Rule Amendments

BY MARK J. FUCILE

Earlier this year, the Washington Supreme Court adopted a sweeping package of amendments to the lawyer marketing rules in Title 7 of the Rules of Professional Conduct (RPCs) that significantly reduced their regulatory scope in several key respects. At the same time, the economic pressure on law firms large and small to market themselves continues unabated. In this column, we’ll look at what’s left in the marketing rules and the continuing risks that lawyers and their law firms should consider when marketing.

THE AMENDMENTS

The amendments adopted by the Supreme Court in January followed several years of study by multiple bar groups and substantial public comment. At their core, the amendments distill most marketing regulation down to two central concepts reflecting the underlying constitutional limits articulated by the seminal cases of Bates v. State Bar of Arizona, 433 U.S. 350 (1977), on advertising, and Ohralik v. Ohio State Bar Association, 436 U.S. 447 (1978), on solicitation.

Reflecting Bates, lawyer marketing communications are broadly permitted as long as they are truthful. The amendments, therefore, did not change the text of RPC 7.1, which prohibits false or misleading lawyer marketing communications. Rather, the amendments reserve RPCs 7.2, 7.4, and 7.5 and fold their concepts tied to truthfulness into comments to RPC 7.1 which address, respectively, advertising, specialization, and law firm names. Comments 5 through 7 to RPC 7.1, for example, tether the breadth of advertising forms permitted to the requirement of truthfulness. Comment 8, in turn, now permits lawyers to specifically state they are “specialists” as long as that is true. Likewise, Comment 10 to RPC 7.1 continues to permit law firms to use trade names as long as they are not misleading.

Reflecting Ohralik, solicitation under RPC 7.3 is generally permitted unless the contact is misleading, the lawyer knows or reasonably should know that the physical or mental state of the person contacted impairs their judgment on employing counsel, or the solicitation amounts to harassment (including instances where the target informed the lawyer they did not wish to be contacted). Comment 10 to RPC 7.3 provides a non-exclusive list of examples that cross these remaining lines:

Such circumstances and means could be the harassment of early morning or late-night telephone calls to a potential client to solicit legal work, repeated calls at any time of day, solicitation of an accident victim or the victim's family shortly after the accident or while the victim is still in medical distress (particularly where a lawyer seeks professional employment by in-person or other real-time contact in such circumstances), or solicitation of vulnerable subjects, such as persons facing incarceration, or their family members, in or near a courthouse.

The recent amendments are painted against the backdrop of a legal economy where lawyers in private practice face unrelenting pressure to market.
RISK MANAGEMENT

The recent amendments are painted against the backdrop of a legal economy where lawyers in private practice face unrelenting pressure to market. Some regulatory risk remains, but the competitive environment has in many respects shifted the principal risks for law firms beyond that of disciplinary action by the Bar.

Remaining Regulatory Risks. Although the amendments reduced the scope of marketing regulation, it is critical to stress that they did not eliminate marketing regulation altogether. Moreover, anecdotal evidence suggests that regulatory complaints in this regard are as likely to be made by law firm competitors as by consumers of legal services. Discipline is reported quickly on web-based lawyer rating platforms. Law firms, therefore, need to carefully assess the remaining regulations when marketing to avoid inadvertently creating their own “bad news.”

With respect to law firm advertising, Comment 2 to RPC 7.1 notes that even a facially truthful statement can be misleading if sufficient facts are not included. For example, reporting on a law firm website that a lawyer obtained a $1 million verdict for a client would likely be deemed misleading if not accompanied by the qualifier that the verdict was reversed on appeal. Similarly, Comment 3 to RPC 7.1 counsels that disclaimers of results along the line of “past performance is no guarantee of future results” are important in placing results in context. Law firms should periodically review the content of their websites and social media platforms to ensure that results reported remain accurate and that disclaimers include appropriate qualifying language.

With respect to solicitation, regional variations remain. Although Oregon’s version of RPC 7.3 is substantively similar to the new Washington rule, Idaho has thus far retained an older version that generally restricts in-person solicitation and requires that most written solicitations include the words “advertising material.” With both multistate licensing and interstate practice increasingly common, lawyers need to carefully calibrate their marketing to the rules of the jurisdiction concerned.

Beyond Discipline. Given the economic pressure to market, risks are emerging in ways that lawyers don’t necessarily associate with “marketing.” In this column, we’ll look at three.

“Intake” and “outplacement” can present particularly sharp risks. Websites that engage potential clients interactively through mechanisms like chat boxes and pop-up windows (i.e., “intake”) should include disclaimers of both an attorney-client relationship and confidentiality—and then proceed consistently with those disclaimers. Systematic use of conflict checks and engagement agreements remains critical to avoid potentially disqualifying conflicts when taking on new work. With respect to “outplacement,” if a former client isn’t happy and writes a negative online review, a lawyer is not free to reveal confidential information in responding. The ABA recently issued an ethics opinion—Formal Opinion 496 (2021)—that both addresses the limitations on responding to negative online reviews and suggests alternatives.

Under pressure to generate work, lawyers sometimes stray into practice areas in which they are not fully competent. The term of
art used in risk management circles for this is “dabbling.” Last year, the ABA updated its periodic “profile” of legal malpractice claims—reporting statistics from major insurer carriers for the period 2016 to 2019. Nearly 16 percent of all claims for that reporting period involved “failure to know/ properly apply [the] law.”12 These sobering statistics underscore that law firms must invest in adequate training so lawyers are competent to move into new areas and must also have peer review mechanisms in place to dissuade firm lawyers from straying into uncharted waters without the requisite knowledge and resources.

Finally, law firms should closely review broad statements on their websites about their experience and capabilities to ensure they are completely accurate. Under Short v. Demopolis, 103 Wn.2d 52, 691 P.2d 163 (1984), the Washington Consumer Protection Act (CPA), RCW Chapter 19.86, applies to the business aspects of law practice—including “the way a law firm obtains, retains, and dismisses clients.”13 The CPA creates a private right of action that includes (with limitations) treble damages and attorney fees for “unfair or deceptive” acts or practices. Although there is a “public interest” requirement in a CPA claim, RCW 19.86.093(3)(a) permits this element to be met if the act or practice involved “had the capacity to injure other persons[.]”14 Advertising on a website or analogous electronic platform may meet this standard depending on the facts of a given case.15

**SUMMING UP**

By aligning the marketing rules with the constitutional limits first articulated in Bates and Ohralik, the recent RPC Title 7 amendments make the remaining marketing regulations simpler and more straightforward. At the same time, economic pressures will likely continue to nudge risk management in this area toward the practical consequences—and associated safeguards—of that broad ability to market.16

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**NOTES**

1. The Supreme Court also adopted a parallel set of amendments to the RPCs applicable to Limited License Legal Technicians (LLLTs).

2. Two elements of Title 7 did not change substantively. The prohibition on paying for referrals moved from former RPC 7.2(b) to RPC 7.3(b). At the same time, a new provision—RPC 7.3(b)(5)—was added to permit nominal “thank you” gifts that “are neither intended nor reasonably expected to be a form of compensation for recommending a lawyer’s services.” RPC 7.6, which addresses political contributions to obtain government legal work, remains unchanged.

3. The Supreme Court’s order adopting the amendments is SCC 25700-A-1333 (Jan. 8, 2021). The “legislative history” of the amendments recounted in the WSBA’s GR 9 cover sheet and public comments on the proposals are both available in the “[rules] section of the Washington Courts’ website at: www.courts.wa.gov/court_rules/.

4. The Washington amendments followed a similar, but not completely identical, path as their ABA Model Rule counterparts. As a result, some elements of the Washington amendments, such as RPC 7.3 on solicitation, differ from the corresponding ABA Model Rule. The history of the Model Rule amendments is recounted on the ABA website at: www.americanbar.org/groups/professional_responsibility/committees_commissions/ethicsandprofessionalresponsibility/mrpc_rule71_72_73_74_75/.

5. An accompanying technical amendment to RPC 5.5 makes clear that law firms can continue to practice across state lines despite the deletion of former RPC 7.5(b), which formerly regulated the names of multistate law firms and implicitly recognized multistate practice. See RPC 5.5(f) and cmt. 22; see also RPC 7.1, cmt. 14 (cross-referencing RPCs 71 and 5.5 in this regard).

6. Comment 8 goes on to qualify this regarding certifications: “A lawyer may state that the lawyer is certified as a specialist in a field of law if such certification is granted by an organization approved by an appropriate state authority or accredited by the American Bar Association or another organization, such as a state bar association, that has been approved by the state authority to accredit organizations that certify lawyers as specialists.”


8. See Oregon RPC 7.3, Idaho RPC 7.3.

9. See, e.g., Barton v. U.S. Dist. Court for Central Dist. of Cal., 410 F.3d 1104 (9th Cir. 2005) (discussing both kinds of disclaimers in the context of internet marketing).

10. Under Bohn v. Cody, 119 Wn.2d 357, 363, 832 P.2d 71 (1992), whether an attorney-client relationship exists turns on the subjective belief of the putative client and whether that subjective belief is objectively reasonable under the circumstances. Disclaimers can be undermined if, notwithstanding their terms, a law firm leads a website inquirer to believe that the firm is representing that person by, for example, providing detailed individualized legal advice.


12. See also Mark J. Fucile, “The Delicate Art of Responding to Negative Online Reviews,” Apr.-May 2018 WSBA NWLawyer 10.

13. See also RPC 11 (competency).

14. 103 Wn.2d at 61.

15. See Bertelsen v. Harris, 459 F. Supp. 2d 1055, 1063 (E.D. Wash. 2006) (dismissing CPA claim for failure to meet the “public interest” requirement where the court found a fee agreement was a purely private transaction).

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FROM THE SPINDLE

Two cases on the right to trial by jury, and a COVID-19 update

BY BRYAN HARNETIAUX

In two recent cases—one civil, one criminal—the Washington Supreme Court reversed the Court of Appeals opinions, finding in each instance the appellate court had exceeded the bounds of its review and invaded the fact-finding province of the jury.

Limited Nature of Appellate Review Regarding a Civil Jury’s Determination of Damages

In Coogan v. Borg-Warner Morse Tec Inc. (slip op. #98296-1, decided July 8, 2021), a wrongful death action, the Washington Supreme Court reversed a Court of Appeals decision vacating a jury’s damage award totaling $81.5 million, and reinstated the verdict. Doy Coogan died of peritoneal mesothelioma after years of asbestos exposure. His widow, daughters, and estate brought wrongful death and survival actions against Genuine Parts Company (GPC), National Automotive Parts Association (NAPA), and others. After a three-month trial, a unanimous jury awarded a total of $81.5 million in damages against GPC and NAPA. GPC and NAPA moved for a new trial and, later, CR 60 relief. Coogan slip op. at 4-5. The superior court denied all post-trial motions, including a challenge to the damage award as excessive, and affirmed the jury’s verdict in all respects. See id. at 5-6. GPC and NAPA appealed on a number of grounds, and a divided Court of Appeals reversed the damage award as excessive and ordered a new trial on damages. See id. at 6-7. In an unpublished opinion, the majority concluded that the superior court had erred in excluding the testimony of one of GPC and NAPA’s expert witnesses on damages and found that the jury’s award for Doy Coogan’s pain and suffering ($30 million) was excessive. The court remanded for a new trial on damages. See id. at 7. The Coogan family and estate petitioned the Supreme Court for review, which was granted. The court also conditionally granted review on issues raised by GPC and NAPA. This cross-review involved challenges to the entire damage award as excessive and to the denial of CR 60 relief by the superior court, based upon a claim of newly discovered evidence. See id. at 7-8, 37-43.

A unanimous Supreme Court first reversed the Court of Appeals holding that the superior court erred in excluding the testimony of GPC and NAPA’s expert witness on damages, finding no abuse of discretion by the superior court. See id. at 10-16. The court then turned to what it described as the “principal issue in the case,” id. at 8, regarding the proper standard of review for determining whether a jury’s verdict is excessive or the result of passion and prejudice. See id. at 23-37. The court determined:

[T]he Court of Appeals overstepped the limited role appellate courts are supposed to play in our civil justice system and substituted its own subjective judgment for that of the jury and the trial court based on nothing more than the size of the verdict. Because the verdict is supported by substantial evidence and the record does not clearly indicate that the verdict resulted from passion or prejudice, or was so beyond the bounds of justice that no reasonable person could believe it is correct, we reverse the Court of Appeals and reinstate the jury’s verdict in full.

Id. at 9-10; see also id. at 31, 34-37.

In reaching this result, the court examined extensively the facts and law, reaffirm-
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ing the deference required by an appellate court, given “the jury’s constitutional role as ultimate fact finder.” Id. at 31 (citation omitted). In light of its reinstatement of the jury verdict, the court reached the unresolved CR 60 issue raised by GPC and NAPA on cross-review and found that the trial court did not abuse its discretion in denying relief.

Availability of “Necessity Defense” in Criminal Case

In State of Washington, ex rel. Haskell v. Spokane County District Court (slip op. #98719-0, decided July 15, 2021), the Supreme Court addressed the availability of the so-called “necessity defense” in a criminal case. Reverend George Taylor, a long-time climate activist, was charged in Spokane County with two misdemeanors, trespass in the second degree, and unlawful obstruction of a train. The charges stemmed from Taylor organizing and conducting a peaceful protest on Burlington Northern Santa Fe railroad tracks. See Haskell, slip op. at 2-3. Taylor contended his actions were necessary to prevent imminent harms of climate change and train derailment. He had particular concerns about the transportation of coal and oil through Spokane and the dangers posed to public safety and the environment. Taylor raised the “necessity defense,” urging that his actions were justified because he had no other reasonable alternative course of action left. See id.

The Spokane County District Court held an extensive hearing regarding whether Taylor was entitled to present the necessity defense to the jury. See id. at 3. Taylor presented testimony from experts in global ecology, conflict resolution, and the specific harms surrounding train derailments. See id. at 3-4. The district court upheld Taylor’s right to present the necessity defense. See id. at 4.

The state successfully petitioned the superior court, ex parte, for a writ of review of the district court decision; the superior court granted the writ and reversed the district court, disallowing the necessity defense. See id. In a split decision, the Court of Appeals affirmed the superior court ruling, and the Supreme Court granted review. See id.¹

The Supreme Court reversed, with seven justices holding that Taylor had presented sufficient evidence entitling him to present the necessity defense to a jury. See id. at 9-17.² The court explained that this defense is rooted in the right to trial by jury protected by the Sixth Amendment to the United States Constitution and Washington Constitution, Art. I §21 & 22, and identified the elements of the necessity defense as follows:

To raise the necessity defense, a defendant must show by a preponderance of the evidence that (1) [the defendant] reasonably believed the commission of the crime was necessary to avoid or minimize a harm, (2) the harm sought to be avoided was greater than the harm resulting from a violation of the law, (3) the threatened harm was not brought about by the defendant, and (4) no reasonable legal alternative existed.

Id. at 10 (internal quotation and citations omitted).

The court’s analysis principally focused on whether Taylor had presented sufficient evidence on element (4), that no reasonable legal alternative existed. See id. at 11-15. The court specifically rejected the Court of Appeals majority’s view that “[t]here are always reasonable alternatives to disobeying constitutional laws.” Id. at 2 (quoting Court of Appeals majority opinion). The Supreme Court majority concluded that “[l]ooking at these facts as a whole, and in a light most favorable to the defendant, Rev. Taylor has created a question of fact for the jury regarding whether he has tried alternatives that were unsuccessful and had no reasonable legal alternatives.” Id. at 15.

Update: COVID-19 and the Supreme Court

In light of the ongoing COVID-19 crisis, including recent emergence of the highly contagious delta variant, by order dated Aug. 18, 2021 (#25700-B-669), the Supreme Court prohibits any worker from engaging in work for the court after Nov. 1, 2021, unless the worker has been fully vaccinated or qualifies for a recognized exemption. See Order at 4. The order requires documentary proof of vaccination such as the CDC COVID-19 Vaccination Record Card, or photo thereof. A personal attestation that vaccination has been completed is not acceptable. See id. at 4-5. The order also specifies the types of exemptions recognized, the proof required to establish different exemptions, and the range of reasonable accommodations that may apply to unvaccinated workers. Lastly, the order provides that it “will take effect immediately and shall remain in effect until further order of the Washington Supreme Court.” See id. at 6.³

NOTES

1. In the superior court, Taylor invoked RCW 41.20.050 and attempted to disqualify the judge who had granted the petition, but this motion was denied because the judge had already made a discretionary decision in accepting review, albeit ex parte in nature. See Haskell, slip op. at 4. The Court of Appeals apparently affirmed the denial of the disqualification motion. See id.
2. The seven-justice majority first determined that the superior court had properly rejected Taylor’s motion for disqualification under RCW 41.20.050, concluding that the denial of disqualification under the circumstances was consistent with the statute and did not offend Taylor’s due process rights. See Haskell, slip op. at 5-9. A two-justice dissent disagreed, urging that Taylor’s motion for disqualification should have been granted, and that the case should be remanded for review of the necessity defense determination before a different judge. See id. Gordon McCloud, J., dissenting in part, slip op. at 3 & 12, n.4.
3. Ed. Note: At press time, the Supreme Court had not amended or vacated this order.
Section Spotlight

World Peace Through Law Section

BY ANNE WATANABE

Q. What is the most valuable benefit members get from joining your Section that they can’t get anywhere else? World Peace Through Law provides Section members with frequent one-hour CLEs covering a wide range of topics related to human rights and peace worldwide. Because our members (as well as our speakers) are located across the country and overseas, we were doing remote webinars long before the pandemic. Through our list serve, we alert our members to other CLEs and events that may be of interest. Our Section is small and unique. World Peace members are involved in a wide range of practice and interest areas, but we are united in a desire to stay informed about human rights laws and peace through law, whether at home or abroad.

Q. What is a recent Section accomplishment or current project that you are excited about? We’ve initiated several projects that engage our Section with the broader community. Last year, we partnered with the King County Library System to host book group discussions with the public, in which we touched on themes of law and justice. Our innovative past chair, Regina Paulose, developed our “listen in” series, with attorney panelists speaking on matters of race and justice. Topics thus far have included the Black Lives Matter movement, anti-Asian hate crimes during the pandemic, environmental racism, and the intersection of LGBTQ and race identities. We look forward to continuing these important discussions. And this year we’ve partnered with other WSBA sections, as well as the American Bar Association (ABA), to present CLEs that respond to our shared interests. Our incoming chair elect Randy Winn and the WPTL executive committee will continue to engage our members with topics that inspire.

Q. What opportunities does your Section provide for members who are looking for a mentor or for somebody to mentor? We do not have a formal mentorship program, but we have regularly participated in law school events, and we are grateful for the participation of our young lawyer liaisons.

Q. What advice do you have for building a successful practice in the area of law related to your Section and how does membership in your Section help do that? Members can connect with each other via our list serve and tap into the collective knowledge of our membership. And because our members represent a variety of practice areas, including human rights law, there’s a lot of expertise out there. For those interested in human rights careers, being involved with our Section is a way to find out more about relevant organizations and attorneys, not only in Washington, but around the world.

Q. In addition to membership in your Section, what are the best ways to stay up on the developing law in this practice area? Attend our CLEs and other events to learn about individuals and organizations who are active in the areas of law that interest you. Also, the ABA’s International Law Section draws membership nationally and regularly sponsors training and seminars that will help practitioners develop new skills and keep up with new developments.

Anne Watanabe is immediate past chair of the World Peace Through Law Section. She is a land use attorney and pro tem hearing examiner and received her J.D. and M.U.P. degrees from the University of Washington.

For those interested in human rights careers, being involved with our Section is a way to find out more about relevant organizations and attorneys, not only in Washington, but around the world.
SIDEBAR

Titles Available From the Lending Library Related to World Peace Through Law

Diversity, Equity, and Inclusion: Strategies for Facilitating Conversations on Race
By Caprice Hollins and Ilsa Govan

Beyond Survival: Strategies and Stories from the Transformative Justice Movement
By Ejeris Dixon and Leah Lakshmi Piepzna-Samarasinha

The Human Equation: Building Profits by Putting People First
By Jeffrey Pfeffer

Me and White Supremacy: Combat Racism, Change the World, and Become a Good Ancestor
By Layla Saad

Locking Up Our Own: Crime and Punishment in Black America
By James Forman Jr.

So You Want to Talk About Race
By Ijeoma Oluo

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Q: I feel like contracts class in law school didn’t prepare me for the actual issues that get focused on in commercial contracts (indemnification, insurance, limitation of liability, etc.). What is the best way to buff up on these issues to competently represent my client?

A: Broadly speaking, attorneys are either “transactional,” “deal-making” lawyers or they are litigators. Litigators tend to encounter contractual issues downstream, during litigation, whereas deal lawyers work upstream, grappling with issues before they occur, during the contract-drafting stage. The sidebar to this article contains a collection of practical resources recommended in response to the question of how to “buff up” on contract-drafting issues.

Taking a step back from the nitty-gritty of drafting contracts (but not as far back as the law school classroom), lawyers of all stripes will benefit from reflecting on the multiple roles and necessary skills of the contract drafter.

THE CONTRACT DRAFTER AS ADVISOR AND ADVOCATE

The practice of law includes the “selection, drafting, or completion of legal documents or agreements which affect the legal rights of an entity or person(s).” Lawyers who draft contracts are not, however, mere scriveners. In fact, allowing oneself to serve as a mere passive conduit of information may implicate the duty set forth in Washington Rule of Professional Conduct (RPC) 2.1 to “render candid advice” with respect to the representation. The ethical deal lawyer uses the contract as an opportunity to render substantive legal advice and fulfill ethical responsibilities, such as communicating and diligently advancing the client’s interests.

In rendering candid legal advice, the contract drafter must always remember who decides. RPC 1.2(a) provides that “a lawyer shall abide by a client’s decisions concerning the objectives of the representation and, as required by RPC 1.4, shall consult with the client as to the means by which they are to be pursued.”

RPC 1.4(b) requires the deal lawyer to “explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.” The conscientious transactional lawyer uses the contract-drafting process as a
tool for rendering advice to the client about the deal and its ramifications. To “permit the client to make informed decisions” requires discussing issues raised by the proposed deal and contract edits, and using the contract as a primary forum for memorializing how these issues are addressed.

Ethical contract drafting and review under RPCs 1.3 (diligence) and 1.1 (competence) suggest that a lawyer should provide active feedback and due diligence to ensure both attorney and client understand (a) the business deal; (b) the goals of the representation; (c) relevant challenges and issues pertaining to the proposed agreement; and (d) how the client’s interests are protected by the agreement. The contract is not only a substantive document that creates private law among the parties but often is the very means by which the attorney fulfills her ethical obligations.

The duties of diligence and competence also make it prudent for the transactional lawyer to have a reliable process for ensuring nothing gets missed. This is where checklists come in. Checklists help ensure that necessary background tasks and vetting get done and that required attachments and appendices are in order. Checklists ensure that remedies are adequate, that the contract has been properly formed, that risk has been properly allocated, and that the client’s goals have been met. Don’t rely on memory. Use a checklist.

THE CONTRACT DRAFTER AS CLARIFIER

Contracts allow parties to clarify the deal by precisely defining terms, reducing ambiguity, proactively addressing issues, identifying and allocating risk, and clarifying performance obligations and remedies. An attorney can brilliantly navigate a negotiation, but if the provision isn’t clearly reduced to writing, the advantage is squandered.

Clarifying the deal starts with understanding what the parties mean and making sure the contract reflects this meaning. Clarifying the deal means drafting in plain, modern, English—not legalese or Latin archaisms. Clarifying the deal means explaining the ramifications of the deal and its implications—for example, how the contract’s limitation of liability provision limits damages to “direct damages” and how this affects remedies.

Even the process of reviewing and editing the contract can advance clarity. For example, consistently providing explanatory notes to redline edits increases clarity by helping the other party to understand the rationale behind requested changes.

Ambiguous provisions—those passages subject to more than one reasonable interpretation—are the hobgoblin of clear contract drafting. The “contra proferentem rule” is particularly unsettling for the deal lawyer, standing as it does for the proposition that courts construe ambiguous clauses against the drafter. Good deal lawyers root ambiguity out from every nook and cranny.

Ambiguity’s evil sister—inconsistent language—must also be corralled if the contract is to remain clear. Contracts are not the place to dust off your thesaurus. Eschew variety. Use the same word, the same way, to mean the same thing throughout the document. And where the term has a meaning particular to the contract, put it in the definitions section.

THE CONTRACT DRAFTER AS NEGOTIATOR

As a trusted advisor and subject matter expert, the drafter typically finds herself negotiating substantive provisions of the agreement. As negotiator, it pays to deeply understand the client’s business so that your contributions are not merely technical or formulaic but address actual business needs.

The contract negotiator should help her client understand its negotiating range and accompanying metrics, bargaining chips, walkaway point, and the all-important BATNA, or “best alternative to a negotiated settlement” (i.e., alternative to a contractual agreement). Drafting a provision is one thing. Understanding the alternatives is another. The effective dealmaker needs both.

THE CONTRACT DRAFTER AS FUTURIST

While litigators litigate over past events, deal lawyers live in an ex-ante, future-oriented world, pondering how contractual language ultimately affects substantive rights. The

CONTINUED >

WRITE TO US

This is a new semi-regular column, developed in collaboration with members of the Washington Young Lawyers Committee (WYLC), in which experienced practitioners will answer questions from those new to the practice of law. Submit your questions to wabarnews@wsba.org or anonymously here: https://forms.gle/ZNsubSI9LFAfTc9.
The Inside Scoop  
CONTINUED  

effective contract lawyer scrutinizes potential events and scenarios to ensure contract language prevents issues and litigation. To foresee what the future might hold, deal lawyers must understand how the deal might come off the rails. A good question to ask your client is: “What are your greatest fears about this agreement?” Once you understand what failure looks like, you can take steps—like refining performance requirements or remedies—to avoid it.

THE CONTRACT DRAFTER  
AS RISK MANAGER

During the contract-drafting and negotiation phase, parties allocate risk by deciding whether to deal with risk now or later. For example, incorporating vague standards of performance like “best efforts” into the contract is risky. Yet, the (well-advised) parties may sometimes intentionally decide to defer handling the risk until the back end (litigation phase) as opposed to resolving the issue on the front end, by more precisely delineating performance obligations.4

Transactional lawyers help their clients evaluate other risk-management strategies—one of which is simply to walk away from the risk by not agreeing to the deal. Eliminating risk is not always the best outcome, though, because you might eliminate the deal in the process. Rather than walking away from risk completely, a more nuanced approach by a skilled deal lawyer involves employing various risk mitigation strategies, such as obtaining insurance or including limitation of liability clauses.

In addition to transferring risk to a third party (i.e., an insurance carrier), risk can be transferred to the other contractual party. Indemnification provisions are a familiar means of transferring risk but their use often depends on factors outside the lawyer’s control, such as the parties’ relative bargaining power, alternatives, and the value proposition.

Contract lawyers must lean in to their role as risk managers by exploring all four risk management options—(1) walk away, (2) accept, (3) mitigate, or (4) transfer.

THE CONTRACT DRAFTER  
A MULTIFACETED ROLE

As we’ve seen, the contract drafter plays many roles: advisor, advocate, clarifier, negotiator, futurist, and risk manager. Performing these roles effectively requires conscientiously handling details at the runway level while helping your client achieve a 30,000-foot perspective on goals, future contingencies, and trade-offs. In meeting the requirements of all of these roles, the transactional lawyer truly is the straw that stirs the business drink.

Guides to the Nitty-Gritty of Contract Drafting

Here are some excellent resources to help the transactional attorney continue to learn about contracts:

- **Contract Nerds** ([https://contractnerds.com/contract-redlining-etiquette/](https://contractnerds.com/contract-redlining-etiquette/)) is a blog by and for contract lawyers that provides excellent posts on contracts for business attorneys, in-house counsel, contract managers, law students, and anyone else who works with contracts.

- **Bloomberg Law** ([www.bloomberglaw.com/help/transactional-intelligence-center](www.bloomberglaw.com/help/transactional-intelligence-center)) is a subscription-based service that offers online legal content, AI, and analytics for business lawyers, including a “Transactional Intelligence Center” that functions as a “one-stop shop for tools and content created for transactional lawyers” including templates and examples.

- **A Manual of Style for Contract Drafting by Kenneth Adams.** This book offers a comprehensive guide to drafting better contracts and avoiding common drafting pitfalls.

- **Contract Drafting and Negotiation for Entrepreneurs and Business Professionals by Paul Swegle.** This book covers essential aspects of contract law including common mistakes, negotiation tips, drafting advice, and common contract terms.

- **Drafting Contracts: How and Why Lawyers Do What They Do by Tina Stark** ([www.wklegaledu.com/aspen-coursebook-series/id-1121/drafting_contracts_how_and_why_lawyers_do_what_they_do_second_edition](www.wklegaledu.com/aspen-coursebook-series/id-1121/drafting_contracts_how_and_why_lawyers_do_what_they_do_second_edition)). This excellent coursebook provides clear explanations of the business, legal, and drafting issues that are integral to each contract as well as techniques and tips for better drafting and translating the business deal into corresponding contract sections.

- **Sterling Miller’s Ten Things You Need to Know as In-House Counsel** ([https://sterlingmiller2014.wordpress.com/?s=contracts](https://sterlingmiller2014.wordpress.com/?s=contracts)). While not a dedicated contract blog, this general purpose business law blog provides a wealth of knowledge and advice particularly relevant to the transactional lawyer, including posts on minimizing risk in commercial contracts and making contracts easier to sign.

- **Building Better Contracts** ([WSBA CLE Aug. 4, 2021](https://www.wsbacle.org)). This half-day program provides an overview of the purpose and drafting of contracts and covers substance, forms, process, key sections, and more. The recorded on-demand version will be available soon on www.wsbacle.org. Attending CLEs featuring presenters from the WSBA Business Law Section and Corporate Counsel Section is a great way to stay up to date on current issues relevant to drafting contracts. And consider joining one or both of these sections: Section members benefit from the exchange of ideas and information with others practicing in these areas.

**NOTES**

Andy Boes

“Justice will not be served until those who are unaffected are as outraged as those who are.” – Benjamin Franklin

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The Washington Young Lawyers Committee (WYLC) recently asked the legal community to nominate new or young lawyers who are dedicated to serving their communities for the annual Public Service and Leadership Award. The WYLC carefully considered each nominee’s service and contributions to their community to select award recipients with a history of exemplary leadership and commitment to public service.

For each nominee, the committee weighed the following factors: (1) leadership and service in the local community or within a bar association; (2) mentoring; (3) involvement in the WSBA, American Bar Association, and/or local bar association activities; and (4) volunteer work with pro bono or public service programs. The committee balanced the factors in light of the award’s goal of highlighting exceptional public service work of new or young lawyers across Washington.

Within this framework—and after deliberating over many qualified candidates—the committee selected the following four nominees to receive the Public Service and Leadership Award.

Jack Chang is an associate at Davis Wright Tremaine LLP in Seattle and currently serves as the young lawyer liaison for the WSBA Intellectual Property Section.

Jack has an impressive history of mentorship and pro bono work. He has spent countless hours volunteering as a pro bono attorney with the King County Bar Association Family Law Program, the Veterans Consortium Pro Bono Program, and Lawyers Fostering Independence. Jack’s nominator particularly highlighted his work with the Washington Pro Bono Patent Network. Jack focuses his legal practice on intellectual property matters, and he recently gave 50 hours of his time to help an inventor navigate the patent process. Beyond his pro bono work, Jack has volunteered over 100 hours with We the Action’s Election Protection volunteering hotlines, using his Mandarin language skills to help Washington voters. Jack is also a dedicated mentor. As a member of the Leadership Council on Legal Diversity and the Alumni Program at the Seattle University School of Law, Jack has mentored over 15 law students.
Meha Goyal

Meha Goyal is a Washington assistant attorney general for Social and Health Services, Adult Protective Services, and Medicaid Long-Term Care Programs.

Meha's nominator lauded her extensive pro bono work on behalf of immigrants, veterans, and legal aid clinics throughout Washington. Her dedication to public service began in law school, where she interned with the International Centre for Missing and Exploited Children and the U.S. Attorney's Office. Through the Center for Applied Legal Studies, she helped a refugee from El Salvador seek asylum in the U.S. Since becoming a practicing attorney and member of the WSBA in 2020, Meha has represented, pro bono, an army veteran before the U.S. Court of Appeals for Veterans Claims. She is currently representing refugees from Afghanistan seeking humanitarian parole in the U.S. As described by her nominator, Meha's “work speaks to the best that the legal profession can be.”

Neil Weiss

Neil Weiss is a partner at ABC Law Group in Everett.

In the words of his nominator, Neil’s “dedication to the improvement of the child welfare system is truly remarkable.” Neil founded FIRST Legal Clinic in 2019, a free legal service for pregnant women and mothers of newborns at risk of CPS removal. He dedicated hundreds of pro bono hours to the clinic’s successful launch and to representing women through the clinic. Neil’s nominator was struck by his tenacity and tireless commitment to helping better a system that the nominator described as stagnant and slow to change. The committee applauds Neil’s success in launching the clinic, which after only one year has drawn the Washington State Department of Children, Youth, and Families as an official partner.

Diego Rondón Ichikawa

Diego Rondón Ichikawa is an attorney at Vreeland Law in Bellevue.

Praised by his nominator for pro bono work that has made “positive change for the worker and immigrant community,” Diego has demonstrated his steadfast commitment to improving the lives of immigrants in Washington. For the past 10 years, Diego has volunteered with El Centro de la Raza and contributed to the National Employment Law Project and Washington Wage Claim Project. He is a regular volunteer at the legal clinics co-sponsored by the Latina/o Bar Association of Washington and Schroeter Goldmark & Bender. Through the legal clinics, he has provided limited representation to countless people across Washington. He encourages attorneys across the state to volunteer with the clinics. In addition to the positive impact he has had on the recipients of his pro bono efforts, the committee was impressed with Diego’s leadership in the legal community. He serves as a board member of the Latina/o Bar Association of Washington and is the co-editor for the 2022 edition of the Washington State Association for Justice’s Employment Law Deskbook.
THE CASE THAT STUCK WITH ME
When I was young, there were no Black residents in Kennewick, my hometown, just a half-mile across the Columbia River from Pasco. This was not by accident. Kennewick was a “sundown town.” Until the early 1960s, there was a sign on the Kennewick side of the old Pasco-Kennewick bridge warning Black people to leave town by sunset. This was the Inland Northwest where Black residents discerned where they could live by trial and error, by overt or implied threats, and by the largesse or exclusivity of those white people who controlled lending, real estate, contractual covenants, and local government.

I was raised in white, middle-class comfort in a big house on a leafy sycamore-lined avenue. My world was wheat fields and vineyards, swimming and skiing, lemonade stands, and hot summer days. I was unaware that African Americans could not rent or buy homes in my community. The Kennewick public schools taught me about liberty and the pursuit of happiness, Manifest Destiny, and the Emancipation Proclamation, but no one ever talked about how Black people were denied the right to live on my street, Kennewick Avenue.

Sam and Dorothy were born, raised, and married to one another in pre-World War II Mississippi. Like many African Americans, they lived in rural poverty with little chance of rising above the station assigned by history and culture to poor and poorly educated southern Black people. They decided to join the migration out of the South to northern venues they believed would provide economic opportunity and an escape from pervasive discrimination. Sam

PASCO, 1976
Confronting Racism, Redlining, and Housing Discrimination

BY GEORGE CRITCHLOW
heard there were good railroad jobs in the Northwest, so he brought Dorothy to Pasco just after serving with the U.S. Army in the European theater during World War II. Sam worked as a laborer in the old railroad roundhouse that repositioned locomotives back when Pasco was an important railroad hub. The job was steady, and it supported the couple’s growing family.

Living in Pasco offered more opportunity than Mississippi, but post-war Pasco for African Americans was not a Norman Rockwell picture of the American dream. Pasco was a segregated town where custom and practice consigned Black residents to live in several blocks of low-income rentals and modest homes on the city’s east side beyond the railroad tracks. The remainder of the city was predominately white. So was the county, a big county with miles of open, undeveloped land mixed in with large wheat, grass, and potato farms.

Sam and Dorothy were renters. They were never able to afford their own home during Sam’s working years. But, since coming north, the couple dreamed of buying and owning their own place. For decades they had set a little money aside each month to make their goal a reality. It was not until the kids had grown and Sam was retired from his railroad job that the couple finally felt they had saved enough to start shopping for a home they could call their own. They had noticed that a huge parcel of land had recently been developed in Pasco for manufactured homes. The development was complete with curb, gutter, electricity, sewer, and water. It consisted of dozens of vacant lots located just north of east Pasco’s historical Black district. A major sales effort was underway, but no one had yet moved a manufactured home onto a site. The year was 1976—12 years after the enactment of the Civil Rights Act.

The couple did their research and decided to put money down on a manufactured home that would be delivered to them once they had purchased a suitable lot. They knew the lot they wanted. It was situated on the northwest corner of the new development with a view into Pasco to the west and open county land to the north. The parcel was not far from the neighborhood in which they had lived for years as renters. They approached the development’s marketing office and communicated their interest in buying the lot on the northwest corner. The white sales employee politely informed them that, unfortunately, that lot had already been promised to someone else. Sam and Dorothy recovered from their disappointment and quickly decided on an alternative lot. They were surprised to find that that lot had also been sold. They thought it odd there was no public sign or other indication these two lots were unavailable. Not to worry, there were plenty of other newly developed lots that went on for blocks. They expressed interest in still another lot only to be told there was a problem with that lot’s utility hookups, and the lot was not currently for sale. When they inquired about still another lot, and another, they were given varying explanations as to why the lots could not be sold.

Sam and Dorothy did not have the privilege of extensive schooling, but they knew a few things about how the world worked. They knew the official recipe for achieving the American dream: work hard, take care of your family, serve your country, and have faith in God. They had done it all. They were humble, God-fearing people who had raised a family, worked hard, and fought for freedom. Sam and Dorothy also knew the alternative narrative, the lived narrative of people of color who learn from experience that no matter what kind of lives they live, some doors will be closed. The couple politely told the sales agent that they believed the development was not open to Black people. The salesman expressed shock and assured them that if they came back—perhaps in a few months—he was sure he could find them a suitable lot.

Sam and Dorothy did not return to the sales office. They went, instead, to see a lawyer—my father, Ed Critchlow. He quickly filed a discrimination lawsuit in the Franklin County Superior Court alleging violations of the couple’s state and federal civil rights. It was about this time that I graduated from law school and went to work for my...
Living in Pasco offered more opportunity than Mississippi, but post-WWII Pasco for African Americans was not a Norman Rockwell picture of the American dream.
man announce the jury’s answer to the court’s first question: Did the defendant corporation discriminate against Sam and Dorothy based on race—yes or no? The foreman answered, “Yes.” My heart leaped—we won! The foreman went on to answer the second question: “If the answer to the first question is ‘yes,’ what are plaintiffs’ damages?” The foreman lowered his eyes and mumbled the jury’s answer: “Zero.”

I was devastated. The clients were more philosophical. They took the verdict in stride, as they had learned to take things in stride their entire lives. I asked the court’s permission to interview individual jurors, at least those willing to talk with me. Two jurors shared with me how their deliberations led to a verdict of discrimination, but no damage. The explanation went something like this: “Well, yes, the developer did discriminate, you proved that. But you should remember, this is Pasco, and we just felt that your clients were better off and happier living with their own kind rather than forcing themselves into a community that did not want them. So, since your clients were better off, not worse off, we just didn’t see any damage.”

The statement of the jurors’ sense of justice may be the most succinct and forthright declaration of white privilege and racial paternalism I have ever heard.

This statement of the jurors’ sense of justice may be the most succinct and forthright declaration of white privilege and racial paternalism I have ever heard. The trial court refused my request for a new trial. The judge considered the verdict to be a judgment for the defendant. I appealed. A year later the court of appeals reversed the trial court in a written decision that affirmed the legal principle that a verdict of discrimination automatically mandated an award of at least nominal damages and attorney’s fees. The appellate court assessed damages in the amount of $100 and sent the case back to the trial judge to calculate legal fees. In the end, the defendant paid my dad’s law firm several thousand dollars in legal fees and $100 to Sam and Dorothy. My dad instructed me to send the legal fees to our clients. The incongruity of the outcome was just too much for him.

I suppose some might conclude that my clients’ experience was a regrettable but anomalous example of racial bias in a post-Civil Rights Act America. But people whose ancestors were legally treated as chattel know better. The habits and practices of our country’s systemic marginalization of non-white people were evidenced by Pasco’s historic housing patterns, the attitudes and behavior of the defendant’s corporate agents, the minds of the jurors, a justice system composed almost exclusively of white folks, and a trial court judgment that erased a finding of racial discrimination. In the context of racial justice, Pasco (like many towns in America, North and South), was a town that lived in the past, not in some idealized post-racial present.

Our continuing struggle for racial justice in modern times requires us to challenge and overcome the trope that today’s America is post-racial—that slavery, Jim Crow, redlining, school and housing segregation, voting impediments, employment discrimination, and disparate law enforcement practices are things of the past, long since remedied by civil rights laws, court decisions, and social policies. As symbolized in the iconic photo of a jubilant protestor carrying a Confederate flag in the halls of Congress on Jan. 6, the atavistic appeal of racial dominance has not disappeared. It may, in fact, be ascendant.

I hope young lawyers today burn with the same passion for justice that motivated me. But if we are to rid our nation of the vestiges of white supremacy, there must be intentional engagement in all spheres of society, not just reliance on lawyers and the law. We must educate our children and ourselves about our racial history and its tenaciously destructive effects on both individuals and institutions. We must talk about white privilege and the dirty secrets of our past so that young people do not grow up, as I did, learning about the rhetoric of freedom and the rule of law but remaining ignorant about those principles’ imperfect application in modern society. The objective of critical thinking about race is the opposite of what some might argue. It is not about making white people feel bad, it is about making all of us more empathetic and aware of our shared humanity.
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Military Pension Division and Application of Res Judicata

BY MARK E. SULLIVAN AND DANIEL JONES

Two 2020 Washington Court of Appeals opinions dealing with military pension division demonstrate the continued resilience of res judicata as a decisional tool for the courts and contain valuable lessons for domestic practitioners.

Both In re Marriage of Weiser and In re Marriage of Daniels involved disability payments. In Weiser, payments were in the form of Department of Veterans Affairs (VA) disability compensation under U.S.C. Title 38. In Daniels, the payments were military disability retired pay (MDRP) under U.S.C. Title 10, Chapter 61. In neither case was the disability payment divisible as a matter of law under the Uniformed Services Former Spouses’ Protection Act (USFSPA). And yet in both cases the Court of Appeals upheld orders for division.
BACKGROUND: DISABILITY PAYMENTS AND THE U.S. SUPREME COURT
The U.S. Supreme Court first dealt with divorce and military disability payments in Mansell v. Mansell. It held that divisible retired pay does not include amounts waived to obtain VA disability pay, since those benefits are not “disposable retired pay” under 10 U.S.C. § 1408(a)(4), the section of USFSPA which prescribes what can be divided by a state court in a divorce proceeding.

The Mansell case illustrates application of res judicata to bar subsequent attack on an unappealed order—with the result that even a decision that is wrong on the law can result in an enforceable obligation if it is not appealed. That is what happened to Maj. Gerald Mansell. While ruling on the trial court’s inability to divide waived military retired pay, the Court nevertheless stated in a footnote that if the California appellate ruling that upheld division of Maj. Mansell’s VA disability pay was based on res judicata, the matter was settled under state law and there would be no federal constitutional issue. The California state court relied on this footnote to affirm the trial judge’s enforcement of the Mansell settlement agreement, ruling that its prior decision was based on res judicata, not upon a division of the pension. The Supreme Court denied review of this ruling.

The Supreme Court revisited military pension division, disability payments, and remedies in 2017 in Howell v. Howell, stating that courts cannot order indemnification of former spouses who receive reduced pension-share payments due to the retiree’s election of VA disability compensation. Howell did not involve either res judicata or a settlement requiring the retiree to indemnify the former spouse for the pension-share reduction.

DISSOLUTION AND NEGOTIATED PROPERTY DISTRIBUTION AGREEMENTS: WEISER
Andrew and Michelle Weiser divorced in 2011. They divided equally Andrew’s military pension in a court order that provided: “In the event the husband’s military retirement benefit shall be reduced or offset by disability pay, such a reduction shall not reduce the amount the wife is entitled to receive each month under the terms of this order.” In 2012, Andrew received a 30 percent disability rating by the VA, his pension was reduced accordingly, and he began paying Michelle one-half of the remaining pension instead of one-half of the entire (pre-waiver) pension.

In 2017, Michelle moved for enforcement to recover the portion of Andrew’s pension due to her. Andrew responded that under USFSPA and Howell, the court couldn’t order indemnification. Andrew did not move under CR 60 to modify or reopen the decree.

The case was heard by a commissioner who ruled that the court would enforce the decree “because the clear and unambiguous language of the Agreement, demonstrated that the parties intended for Michelle to receive the amounts indicated.” The commissioner subsequently entered a “Military Retirement Order” requiring Andrew to continue paying 45 percent of the community portion of his full pension. It did not require payment of any portion of Andrew’s disability compensation.

Upon Andrew’s revision motion, the superior court refused to change the commissioner’s ruling, concluding that Howell did not apply because the parties had both negotiated the agreement. The court’s findings stated, “By the terms of their agreement, the husband agreed to reimburse the wife for any sum that she lost due to the waiver” and “[Andrew] failed to do so.” Andrew appealed the order. He argued that under Mansell, Howell, and Perkins, the court erred when it granted Michelle’s motion to enforce and when it found that he had agreed to reimburse Michelle for any amount she lost due to the disability waiver. Michelle argued that Howell does not prohibit indemnification and only applies to property divisions imposed by the court.

The Court of Appeals held that application of res judicata was dispositive and that the judge properly concluded that the agreement required Andrew to reimburse Michelle for any amount she

For the lawyer representing the service member or retiree under Washington law, there are important lessons to be learned from these cases.

Mark E. Sullivan is a retired Army Reserve JAG colonel. He practices family law in Raleigh, North Carolina, and is the author of The Military Divorce Handbook (Am. Bar Ass’n 3d ed. 2019). A fellow of the American Academy of Matrimonial Lawyers, Sullivan has been a board-certified specialist in family law for over 30 years. He works with attorneys nationwide as a consultant on military divorce issues in drafting military pension division orders. He can be reached at 919-832-8507 and at mark.sullivan@ncfamilylaw.com.

Daniel Jones is a Navy Reserve JAG captain and deputy director of legal assistance for the Navy Reserve Law Program and assistant deputy force judge advocate for Commander Navy Reserve Forces Command in Norfolk, Virginia. As a civilian, he is a legal assistance attorney and Subject Matter Expert (SME) for Region Legal Service Office Northwest on Bangor Submarine Base in Silverdale. He can be reached at 360-396-7759 and at daniel.g.jones2@navy.mil.
Military Pension Division and Application of Res Judicata

CONTINUED >

lost due to the disability waiver. It also found no error in the ruling that Andrew had agreed to reimburse Michelle for any amount lost due to the disability waiver.

The court also ruled that a trial court lacks the authority to modify even its own decree in the absence of conditions justifying the reopening of the judgment, noting that a matter that has been adjudicated by a competent court may not be pursued further by the same parties. Thus, under the doctrine of res judicata, a party cannot, through a response to a motion to enforce, reopen the settlement agreement as adopted in the dissolution decree. The court also decided that res judicata protected the finality of the unappealed prior order even where the court’s enforcement of that order resulted in a property division that contradicted federal and state law. Legal errors, according to the court, do not overcome the res judicata effect of prior unappealed final judgments.

Dissolution and Negotiated Property Settlement Agreements: Daniels

Unlike Weiser, the trial court in Daniels did not divide a military pension or impose indemnification terms at a contested hearing. As part of a post-dissolution enforcement action, the parties entered into an agreement in order to obtain an equal division of retirement assets.

Rachell Bonds and Nathaniel Daniels divorced after 14 years of marriage; Bonds was an Army captain at the time, and their settlement divided six retirement accounts into equal shares. It stated that the spouse with the greater-valued accounts would equalize the division by paying the difference to the other spouse. Neither Daniels’ civilian pension nor Bonds’ military retirement was to be divided. Valuation of the accounts showed that Bonds’ retirement accounts were worth more, and she owed Daniels.

In 2012, Bonds had not yet divided or paid the agreed-upon portion of her retirement accounts, and Daniels filed a motion to enforce the dissolution decree. Since Bonds’ accounts did not contain sufficient funds, she asked the trial court to divide her military retirement. Granting her request, the court ordered her to pay Daniels $593.22 per month for more than 20 years. The order did not include any limitations as to the source of the money, and granted the trial court continuing jurisdiction in the event of any reduction of Daniels’ part of the pension.

In 2016 Bonds began receiving pension payments, and the Defense Finance and Accounting Service (DFAS) began paying Daniels $593.22 a month. In 2018, however, the Army determined that Bonds was disabled and eligible for military disability retired pay (MDRP). She began receiving non-divisible MDRP instead of regular divisible pension payments and, as a result, DFAS stopped sending monthly payments to Daniels.

Daniels filed a motion to enforce the decree and the 2014 military retirement order. He also moved under CR 60(b)(6) and (11) to vacate the property award and spousal maintenance provisions, requesting an award of new spousal maintenance or an order requiring Bonds to pay the balance of her debt from other sources. Bonds filed her own CR 60(b) motion to vacate the retirement property division provision and argued that the trial court could not divide disability retirement or order indemnification under Howell. The trial court entered an order enforcing the judgment against Bonds.

Bonds appealed, arguing that the trial court’s order was erroneous as a matter of law because it violated Howell by ordering her to indemnify Daniels for his share of the disposable retired pay that she was no longer eligible to receive. In other words, legal errors overcome res judicata.

The appellate court disagreed, finding that Bonds did not appeal the divorce or the 2013-14 orders, nor did she contest the 2014 military pay division order. Thus, the doctrine of res judicata was held to apply, and the trial court’s order remained enforceable.

Lessons Learned from Weiser and Daniels

What is to be learned from these two decisions? For the lawyer representing the service member or retiree under Washington law, there are two takeaways:

- When faced with a court’s order for indemnification, file an appeal. As the Supreme Court’s decision in Howell states, the trial court lacks the power to order indemnification. Do not allow the res judicata effect of the unappealed lower court order to prevent you from raising this error of law under Howell.
- When negotiating a settlement, be sure to avoid agreement on indemnification in the event that there is a reduction in retired pay due to disability.

On the other hand, when the lawyer represents the former spouse, there are four rules for settlement:

- First, state clearly what the parties anticipate. For example, the preface might read: “The parties recognize the possibility of a reduction in Wife’s pension-share amount if Husband elects VA disability compensation or if he receives a disability retirement. They have made provisions for indemnification below.” These factual assertions will give context to the decisions made in the agreement.
- Second, state the duty of the service member or retiree, John Doe. Require that John reimburse or compensate Jane. Do not prohibit John from taking VA disability compensation; such a prohibition is probably unconstitutional and would likely be ignored anyway.
- Third, be sure the language is unambiguous. There needs to be a clear statement requiring reimbursement such as, “If there is any reduction in Jane Doe’s pension share or amount, John Doe will promptly reimburse her for the loss.” If the parties intend to cover consequential damages, rather than just the reduction in Jane Doe’s payments, then the above sentence would end with “reimburse her for any loss or expenses, including consequential damages and interest at the statutory rate.”
- Finally, make sure that both parties
execute the settlement with the proper formalities and that it is incorporated into the divorce decree or entered by the court as a consent order. If it is not appealed (and who appeals a settlement?), it becomes res judicata as to the parties and, under Weiser and Daniels, its requirements are binding on the parties through the doctrine of res judicata.

**NOTES**

1. In re Marriage of Weiser, 14 Wn. App. 2d 884, 475 P.3d 237.
5. The doctrine of res judicata applies when a previous final judgment is identical to the challenged action in A) subject matter, B) cause of action, C) persons and parties, and D) the quality of the persons for or against whom the claim is made. Res judicata bars a party from relitigating claims which have already been decided. It also bars collateral attack; i.e., a claim or motion filed in a different case. In re Marriage of Mason, No. 50009-4-II Consolidated with No. 52959-9-II, 2021 Wash. App. LEXIS 513 (Wash. Ct. App., March 9, 2021) (unpublished), citing In re Marriage of Shortway, 4 Wn. App. 2d 409, 423, 423 P.3d 270 (2018).
6. Id. at 586 n.5 ("Whether the doctrine of res judicata, as applied in California, should have barred the reopening of pre-McCarty settlements is a matter of state law over which we have no jurisdiction.")
10. The election of VA disability compensation by a retiree requires the waiver of an equivalent amount of retired pay under 38 U.S.C. § 5304-5305.
12. Id. at 891.
13. Id.
14. Perkins v Perkins, 107 Wn. App. 313, 26 P.3d 989 (2001) (upholding judge’s ordering military member to pay civilian spouse the same amount as her lost share of his retired pay, as “permanent compensatory spousal maintenance”).
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The Unsettled Policy Landscape of Drug Possession Laws in Washington

BY MARK COOKE

On Feb. 25, 2021, the Washington Supreme Court struck down RCW 69.50.4013, the strict liability statute that made possession of a controlled substance a felony punishable by up to five years in prison. *State v. Blake.* The ruling in *State v. Blake* meant there was no state law making simple possession of drugs a crime unless the Legislature recriminalized it, which it subsequently did, in the 2021 legislative session, via passage of Engrossed Senate Bill (ESB) 5476.

In the debate over ESB 5476, some stakeholders argued that the *Blake* decision was an opportunity for Washington to adopt a new approach to substance use disorders, based on public health solutions. Others advocated for recriminalization. ESB 5476 ended up taking elements of both approaches. It mandates planning for statewide services for people with substance use disorders and provides new resources for services in the meantime, but also recriminalizes knowing possession of counterfeit substances, controlled substances, and legend drugs.

The new legislation makes drug possession crimes misdemeanors with mandatory diversion to services for at least the first two occasions, but these changes are only in effect until July 1, 2023. This means the policy landscape for this issue is unsettled and questions like those that follow remain unanswered regarding the impact of the *Blake* decision and the effect of ESB 5476.

Q&A

**Q.** What are the impacts to people who had been charged with simple possession but not convicted prior to the *Blake* decision or the passage of ESB 5476?

**A.** People with pending drug possession charges at the time of the *Blake* decision were released from jails and their charges dismissed throughout the state. Others awaiting sentencing hearings arguably should have had their sentencing scores recalculated. Hundreds of thousands of people are likely impacted by the *Blake* decision, and stakeholders are now working to address issues like resentencing, record vacating, and reimbursement for legal financial obligations. ESB 5476 and the state budget provided some funding and policy changes in hopes of expediting resolutions for some of these issues. There is also litigation underway that seeks to have past legal financial obligations reimbursed.

**Q.** Does the change in the law provide new arguments for lawyers defending clients who have been charged with possession?

**A.** The *Blake* court ruled that the statute violated the due process clause of the state and federal constitutions because it contained no mental state requirement and thus criminalized “unknowing” drug possession—so that people could be arrested and convicted even if they did not realize they had drugs in their possession. The majority concluded: “The [L]egislature’s police power goes far, but not that far.” Other drug crimes that do not include an intent element could be ripe for a legal challenge, although ESB 5476 amended additional drug crimes beyond simple drug possession to address this issue.

**Q.** What concerns does the 2023 sunset date in ESB 5476 raise?

**A.** ESB 5476 contains a sunset clause for the portions of the bill that amend drug possession crimes, other than for possession of paraphernalia, which means that in July 2023 the state laws will revert to the post-*Blake*, pre-ESB 5476 landscape. Without further changes to the law by the Legislature or voters before July 2023, simple drug possession would become non-criminal again. Because of this uncertainty, local jurisdictions could try to pass their own drug possession statutes to fill the gap, although those laws could be challenged as being preempted by state law depending on how they are structured.

**Q.** Are there long-term consequences to the Legislature’s arguably rushed effort to modify Washington’s drug possession law?

**A.** Dozens of community stakeholders and advocacy organizations provided comments to the Legislature encouraging them to pass legislation that would put Washington on a new and better path, with elimination of criminal penalties for drug use and substance use disorders. Kicking the can down the road on important questions about whether drug possession should be a crime just leads to confusion for everyone. It also comes on the heels of changes already underway as a result of the pandemic. According to the Washington State Institute for Public Policy, between March and December 2020, superior court “filings for drug crimes were down 53 percent.” There is some evidence that enforcement for drug offenses has further plummeted since *Blake.*

Mark Cooke is the policy director of the ACLU of Washington’s Campaign for Smart Justice. He works on criminal legal system, drug, and mental health policy reform. He can be reached at mcooke@aclu-wa.org.
The Unsettled Policy Landscape of Drug Possession Laws in Washington

Continued >

Given the uncertainty around the current state of the law, implementation of ESB 5476 from both the social services and the law enforcement perspectives will be watched closely. The legislation directs the state Health Care Authority to implement a variety of programs and to convene an advisory group to look at issues such as the services that should be made available to people with substance use disorders. If you or someone you know is looking for help please visit www.learnabouttreatment.org.

It is also possible that enforcement will ramp back up, albeit via misdemeanor charges instead of felonies.

Another part of the landscape is the overdose crisis in Washington, which has worsened since 2020 as a consequence of the pandemic as well as the emergence of highly dangerous fentanyl as the primary type of illicit opioid available in Washington. If you or someone you know is looking for help please visit www.learnabouttreatment.org.

Q. With states like Oregon decriminalizing drugs and the increasing number of states legalizing recreational marijuana, is there a trend toward drugs being more broadly decriminalized?

A. As the Washington Supreme Court noted in Blake, Washington’s previous simple possession law “has affected thousands upon thousands of lives, and its impact has hit young men of color especially hard.” Many stakeholders argued that the Legislature should not have decriminalized drug possession, which can create barriers to people trying to access services, and instead should focus on public health responses. While many believe that substance use disorders are a medical condition that should be treated as such, others believe that drug possession related to substance use disorders should be dealt with by the criminal justice system.

In November 2020, Oregon voters overwhelmingly passed Measure 110, which decriminalized possession of controlled substances and established an alternative public health response, partly funded by the state’s marijuana excise tax. This measure was soon followed by passage of legislation, SB 755 (2021), which provided funding for behavioral health services and ensured that these services would be provided statewide. Given that ESB 5476 establishes an advisory committee to determine which services are needed for people with substance use disorders in Washington, the implementation of the public health features of Oregon’s Measure 110 and SB 755 should be closely studied.

Q. If Washington does decriminalize drug possession, does it matter that state and federal drug laws aren’t identical?

A. The federal government can enforce federal laws, but the 10th Amendment to the U.S. Constitution prevents it from compelling states to enact or enforce the same laws. There are many concrete examples of this, including state marijuana laws, state death with dignity laws, and syringe service programs, all of which have taken a different approach than federal law at times. More than 140 million people currently live in states with legalized marijuana, despite the fact that it’s illegal under federal law. Under these precedents, the federal government cannot compel Washington state to criminalize drug possession.

Q. Are there case law developments on this issue people should pay attention to?

A. Some of the collateral issues resulting from Blake—such as how resentencing should play out—could end up in the courts. Litigation is also underway regarding legal financial obligations. For example, a class action lawsuit, Civil Survival et al. v. State of Washington et al., has been filed in King County Superior Court seeking to restore to people legal financial obligations collected or still being claimed by the state of Washington. Similar issues may result in additional litigation.

Q. Have any people with old drug possession convictions had their sentences vacated after Blake and does ESB 5476 have any impact on such requests?

A. The long-term implications for older convictions remain somewhat unclear, but the argument for some type of systematic invalidation could be made under Blake because the court held that the statute was unconstitutional. Other possibilities include individuals seeking to vacate their conviction along with refunds for any fines and fees paid in association with their convictions. Gov. Jay Inslee has also commuted a handful of sentences as a result of Blake, including for people on community supervision by the Department of Corrections. ESB 5476 and the state budget also included some provisions designed to help provide more capacity for hearings for resentencing and vacating criminal records.

NOTES

1. 197 Wn.2d 170, 481 P.3d 521 (2021).
7. 197 Wn.2d at 192.
BLOGGERS WANTED!

Write for the WSBA’s award-winning blog — NWSidebar [nwsidebar.wsba.org].

Connect with the legal community!

For more information, contact blog@wsba.org.
**SUMMER 2021**

**Lawyer Bar Exam Pass List**

Of the 653 candidates who took the Summer 2021 Lawyer Bar Exam, 482 candidates passed. Congratulations! The full pass list is printed below.

<table>
<thead>
<tr>
<th>A</th>
<th>Abdilahi, Dega Ackerman, Justin Agrawal, Gargi Aguirre, Oscar Ahmad, Sabina Malikani Aldrich, Carly Christine AlHowar, Yara Alvarez, Jessica Marie Angiulo, Michael Anthony Au Yeung, Wing Chuk</th>
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<td>C</td>
<td>Calvarez, Spencer Samuel Camarata, Katelyn Cameron, Kody Clark Cameron, Kolby Campbell, Duncan Joseph Campbell-Harris, Dayton Canade, Benjamin Daniel Cardona-Roman, Rolando Carley, Cassandra Carlin, Emma Sarah Carlson, Britt Arram Carlson, Cheyenne Carlson, Wendy Heath Carman, Tyson A. Carranza, Hisral Cayton, Samuel Eric Chan, Kai Chin Shirley Chen, Yinging Chicoine, Sarah Lynne Chien, Timothy Clark, Travis R. Clavere, Sean David Cleaveland, Raymond Vincent Close, Nathaniel Michael Coates, Henry Charles Cochran, Majidah Cody, Faith June Cohn, Sam Coons, Carter Ernest Cooper, Morgan Alexis Corley, Seth Douglas Crane, Natalie Ellen Creighton, Sara Nicole Cresta, Tracy Crook, Mitchell Kyle Cross, Garett Casteel Culbertson, Katherine Elizabeth Cullen, Mary Walker Cybul, Abigail Catherine</td>
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<td>D</td>
<td>Dailey, Joel David D’Alessandro, Alessio Dallas, Danielle Leigh Damito, Christopher Patrick Davis, Christopher Michael Deal, Braydon Aubrey Demeter, Kelsey Frances deMorris, Richard Alexander Dennis, Marguerite Claire DeVerney, Blake Robert Dexter, Kera Elizabeth Dick, Matthew David Dippe, Manila Disney, Macy Donohue, Emily Douglass, Amanda Siobhan Doyle, Sarah DuBois, Madeleine Dutcher, Jay Thomas</td>
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<td>E</td>
<td>Egger, Grace Ehlers, Kyle Andrew Ellentuck, Mimi Hua Ellings, Ruric George Elliott, Nathaniel Scott Emmler, William Bert Erickson, Emily Evans, Garrett Victor Evans, Mary Hannah</td>
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<td>Fairchild, Taylor P. Fawbush, Brandon Michael Feeney, Natalie Renae Flack, Nathaniel Joseph Fleming, Julia Joanna Follis, Grant Foster, Azzia Frank, Jason Richard Frederick, Adam Joseph Freij, Lena A. Frontin, Nicholas Clark Furth, Sydney Jeanne</td>
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<td>I</td>
<td>Ide, Maisie Mackenzie Imes, Carolyn Rae Inveen, Arielle Magen Iyob, Adam</td>
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<td>J</td>
<td>Jacquin, Ashley Marie Jayawardhan, Shweta Jennings, Thea L. Jensen, Maxwell Christian Ji, Mason Johnson, Bethany Faith Johnson Reyes, Andrew Jacob Johnson, Samuel Wilson Jones, DeVaughn Josef Laleh, Lena Jurman, Cecily Kathleen Justin, Emily Rae</td>
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<td>K</td>
<td>Karlstad, Ashley Ann Kawahigashi, Emily Toshie Kefferle, James Joseph Douglas Keo, Monica La Kettel, Christine Libby Khan, Zarsh Akram Kim, Vanessa Yejin Kinkley, Adam Kirk, Tate Bradley Kissel, Elaine Klima, Alexandra Leigh Knapp, Dylan Robert Knight, Jeremy Thomas Knitter, Julia Marie Knowles, Galen Loyd Koga, Dailey Catherine</td>
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Kohan, Sarah Elizabeth
Kolbrick, Paige Christine
Komat, Hiro
Koshi, Kumiko
Kopp, Matthew Alexander
Kozemczak, Virginia
Genevieve
Krecar, Danijela
Krohn, Jay Derek
Krueger, Emily Jean
Kubeska, Alexandra M.
Kuns, Erin Margaret
Kurth, Garrison Patrick

Lambert, Roy E.
Landsberg, Jacob Henry
Lasting, Hannah Marie
Latimer, Katherine Marie
Lecocq, Eleonore Florence
Lee, Christopher Donald
Lee, Edward Carter
Lee, Edward
Leigh, Davis Bourgette
Lee, Kenneth
Le, Kristine
Lee, Kenneth
Le, Le, Xiaoyang
Lilis, Megan Sky
Lindgren, Peter E.
Lucas, Beatrice
Lucido, Kathryn Patricia
Luce, Oliana Marie
Lustig, Robin
Luttman, Russell Marvin
Lynch, Shannon Alice
Lyon, Eleanor Rose
Lytle, Russell

Maier, Samuel A.
Mains, McKenna Montana
Manalac, Maria
Manis, Katrina
Marquez, Sabrina Lean
Martin, Cameron Jay
Martinez, Judy
Martinez, Pedro
Martinez White, Karla L.
Masci, Gina
Masterson, Brian
Matias, Nikolas Joseph
Mauer, Abigail Susan
Mcauley, Conor
McCluskey, Anthony James
McCleary, Kate
McDermott, Daniel
McFarland, Laurel Waxson
Giniss, Iraela C.
McGinnty, Jack P.
McKillop, Connor A.
McKnight, Jesse Sean
McNeill, Kenneth Paul
Mendoza, Katrina Pauline
Mercer, Devon Siokahn
Messersmith, Makoto
Meyer, Josephine Francis
Meyer, Justin L.
Miglarese, Jessica Lynn
Millar, Sam Austin
Miller, Ashley
Miller, Kaitlin Marie
Minke, Christine
Monkman, William
Whitaker
Moody, Christian
Morgan, Robert
Moroney, Julie Catherine
Morrison, Ebony Crystal
Multhaup, Marissa Lewis
Murry, Kyle
Myers, Zachary

Neff, Nolan
Nelson, Alexander Henning
Newman, Andrew J.
Ng, Selena Seying
Nguyen, Grace Nichols, Elaine Ann
Nina, Ana Lucia Bernardes
Noh, Isaac Kim
Nordby, Eden Benay
Norman, Chelsea Ann
Nuehs, Kory

O’Brien, Ashleen Elizabeth
O’Brien, Michael Joseph
O’Keefe, Jacqueline Ann
O’Keefe, Katherine S.
Olanrewaju, Oladoyin
 Olson, Jeremy Adam
Orloff, Rebecca
Osborn, Willa Dorothy
Owan, Cory Nicholson

Pacher, Brandon
Padgett, Sophia
Pahang, Bailey Michaela
Warrior
Palev-Williams, Rebecca
Pappas, Samantha Eve
Parman, Hannah Elizabeth
Mary
Paroff, Andrew
Pascual, Alexander
Patel, Jasmine Rajesh
Patsiga, Sarah
Patterson, Bryan
Kristopher

Paul, Ajit David
Pedro Trujillo, Dalia Selene
Peeters, Casey Austin
Peito, Samantha Kate
Perez Rodriguez, Jannheli
Crystal
Peterson, Sean McGowan
Petit, Dean Lawrence
Phifer, Luke
Phillips, Breanna
Philpot, Anne Elizabeth
Pitts, Emma Elizabeth
Platin, Rachel Kiana
Porter, Grace Justice
Preuss, Kurt W.
Prokop, Shannon
Puglisi, Jozee
Pulsipher, Tyson H.

Quilici, Brendan

Rahn, Jacob Darrell
Rauch, Chelsea Elizabeth
Raymond, Megan Case
Read, Sydney Jacqueline
Redmon, Edward L.
Reid, Taylor James
Rentschler, Zachary
Joseph
Richards, Shermelle
Riggio, Amanda Glory
Rim, Patricia S.
Roberts, Miranda Michelle
Roberts, Sebastian
Joseph
Robertson, Morgan
Elizabeth
Robinet, Chase
Robinson, Christina
Robinson, Katlyn Shelby
Rodriguez, Peggy Lee
Rogers, Michael A.
Romero, Monica
Rosenberg, Joshua Randall
Makaolani
Ross, Rebekah Elizabeth
Rossi, Nicola Marie
Royer, Chris Nathaniel

Samad, Amani Abdul
Schmidt, Nicolas
Schrack, Robert
Scroggins, Coleman
Sebren, Corinne
Sedgwick, Joshua Wayne
Seely, Jennifer Jo
Sellec, Mackenzie
Sevier, Melissa
Shalabi, Malak Mohamed
Shearer, Trevor Jason
Shen, Sicheng
Sillyman, Jacob Dale
Oswalt
Simantov, Amanda
Simon, Rachel
Simonelli, Adrianna
Sims, Troy
Sinko, Becinda
Singh-Cundy, Ryan
Sinkin, Rachel
Slocum, Kylee
Smith, Alisa M.
Smith, Jacob Keenan
Smith, Sarah Rae
Sohl, Rachel
Sowards, Colby
Spadoni, Evan
Spalding, Jacob Maxwell
Spence, Megan
Sproomberg, Kristy Marie
Stacey, Anna Chapman
Steadley, Quinn
Stensch, Kiefer A.
Stevens, Elena
Stewart, Mackenzie
Stinnett, Amy Jane
Stoll, Ashley
Strauss, Josephine Rose
Kelleher
Stuart, Campbell
Pagan, Mark
Skuil-Cattum, Kai Ashby
Suelzle, Paige Butler
Sullivan Lavoie, Tori Anne
Sultani, Ferhad Ullah
Sundier, Stephanie
Suponick, Michael

Taber, Mackenzie Ray
Tadoi, Ashi Raye
Taicz-Blandon, Erica
Theis, Austin
Thomas, Jerry
Thomson, Jeffrey Carl
Thorne, Cody Wayne
Tillman, Bianca Tyler
Trinidad, Oscar Andrew
Turkeri, Yilmaz Evran
Turner, Ryan Douglas

Urban, Skylar Paul

Van Winkle, Constance
May
Vargas Aguirre, Mercedes
Caroline
Vasey, Aaron Lindauer
Verdoyia, Stephanie
Vial, Tierney Elizabeth

Vicente-Flores, Eric
Francisco
Vick, Brandon Michael
Vo, Anthony Nguyen

Wade, James Mark
Wagner, Craig D.
Walker, Jada
Walker, Zenobia Danne
Walsh, Ian Ezra
Wan, Katherine Sheng-Tsung
Wang, Shenger
Ward, Christine Si
Wasisco, Alicia
Wasserman, Rebecca Alice
Wecker, Katherine Marjorie
Wedekind, Nicolas Enrique
Weil, Abraham Mattingly
Weise, Hillary Smith
Wells, Ryan Charles
Wessinger, Benjamin Blake
Westerman, Logan Mark
White, Michael Lee
Wheel, Mackenzie
Katherine
Wiederkehr, Maria
Elizabeth
Wilborn, Reese, Leah Joy
Williams, Emily Ann
Williams, Levi Richard
Willis, Jennifer Ann
Wilson, Caleb Edward
Wimmer, Melanie Lee Neal
Winschel, Grace Alexandra
Wixler, Edward August
Wu, Jenny
Wu, Xiaoxue

Yamada, Tanner Jackson
Yamahoro, Hana
Yazdi, Yasamin
Young, Emmaline Louise
Young, Logan Phillip
Youngblood, Simon
Yzaguirre, Zaine M.

Zale, Matthew
Zapata, Gabriela
Zelasko, Lisa Marie
Zerfas, Lindsay
Zhang, Ying
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DOUBLE HEADER

The WSBA honors two classes of 50-year members at T-Mobile Park

BY WSBA STAFF

On Aug. 25, about 60 WSBA members came to be honored for the achievement of practicing law for 50 years. Representing a combined 3,000 years of service to the public and the legal profession, the 50-year members celebrated their achievement at T-Mobile Park in Seattle.

The celebration was held for members who joined the Bar in 1971 as well as 1970, as the latter group was unable to attend a celebration in 2020 due to COVID-19 restrictions. All attendees were asked to wear masks and provide proof of vaccination prior to entry, in line with recent orders by the Washington Supreme Court.

Speakers such as Washington Supreme Court Chief Justice Steven C. González, Seattle Mariners Executive Vice President and General Counsel Fred Rivera, and then-WSBA President Kyle Sciuchetti praised the members for their commitment and spoke of their many accomplishments over the past five decades. Members of the Board of Governors were also in attendance, including then-President-Elect Judge Brian Tollefson (Ret.), District 8 Governor Brent Williams-Ruth, District 10 Governor Tom McBride, and At-Large Governor-Elect Jordan Couch; as well as WSBA staff and members of the executive leadership team.

“While I may not have been practicing law for 50 years, the one thing we all know is that change is a constant, in our society and in our profession,” Sciuchetti said. “But, one thing that I believe hasn’t changed is our commitment to maintaining a noble profession—one founded on serving the public—a profession we can remain proud of for many anniversaries to come.”

The graduating class of each year provides a snapshot of history and, over time, a window into the progress made in both

1971 CLASS
ROW 3 (L-R): Ernest D. Greco, William Vance Baumgartner, Henry E. Lippek, David Stuart McEachran
ROW 4 (L-R): Joel Benoliel, Alan Alhadef, Brian Jay Kremen, C. Scott East, David Wharry Schiffrin, Larry Jerome Couture

MORE ONLINE

Some honorees could not attend this year’s celebration and are therefore not pictured. For the full list of 50-year members in each class, visit www.wabarnews.org.
the legal profession and society. This year marked the first time in several years that women lawyers were in attendance at the 50-year luncheon.

Special recognition was given to Justice Faith Ireland (Ret.), a 15-year superior court judge who later served as a Washington Supreme Court justice from 1999-2005; and Carole Coe-Hauskins, an administrator and chief labor negotiator for a public electrical utility who also provided legal services to federal prison inmates before going into private practice.

“The Bar has a rich history and you are all a part of that history. Looking back, one has to appreciate the founders of our great state Bar, and their vision for our profession in this state,” Sciuchetti said.

1970 CLASS
ROW 1 (L-R): William Sargent McGonagle, Dennis Paul Helmick, Craig Steven Sternberg, John C. Kouklis, James Robert Pair, Michael Doezie, Hon. Faith Ireland (Ret.), Bruce Clement
ROW 2 (L-R): Wayne L. Williams, Werner Boettcher, Gerald L. Coe, Joel Hathaway Paget, Charles Sheffield Burdell Jr., John Joseph Soltys, Everett Allen Holum, David W. Robinson
ROW 3 (L-R): Ronald Clarke Kinsey Jr., Gerald A. Smith, Gary Michael Cuillier, Curtis John Coyne, Edward W. Pettigrew, John Tony John, Donald Franklin (Guest), Matthew Ryan Kenney

WHAT HAPPENED IN 1971?

1971 CLASS
ROW 1 (L-R): William Sargent McGonagle, Dennis Paul Helmick, Craig Steven Sternberg, John C. Kouklis, James Robert Pair, Michael Doezie, Hon. Faith Ireland (Ret.), Bruce Clement
ROW 2 (L-R): Wayne L. Williams, Werner Boettcher, Gerald L. Coe, Joel Hathaway Paget, Charles Sheffield Burdell Jr., John Joseph Soltys, Everett Allen Holum, David W. Robinson
ROW 3 (L-R): Ronald Clarke Kinsey Jr., Gerald A. Smith, Gary Michael Cuillier, Curtis John Coyne, Edward W. Pettigrew, John Tony John, Donald Franklin (Guest), Matthew Ryan Kenney

IN THE NEWS
- The Nasdaq stock exchange is founded in New York City.
- The U.S. Supreme Court unanimously rules that busing of students can be ordered to achieve racial desegregation in schools.
- The Pentagon Papers are published.

SCIENCE & TECHNOLOGY
- NASA’s Mariner 9 probe becomes the first spacecraft to orbit another planet (Mars).
- The controversial Stanford Prison Experiment is conducted by Stanford psychology professor Philip Zimbardo.

ARTS & CULTURE
- The television show All in the Family airs on CBS.
- Marvin Gaye’s 11th album What’s Going On is released.

STATE HISTORY
- The Evergreen State College opens in Olympia.
- D.B. Cooper parachutes out of a skyjacked airplane over southwest Washington with $200,000 in ransom money.
- Starbucks opens its first store.

AT THE WSBA
- The WSBA launches its statewide Lawyer Referral Service—the third of its kind in the nation—in an effort to “make legal services readily available to all.”
- The WSBA Board of Governors approves a new Code of Professional Responsibility, which replaces the 50-year-old Canons of Ethics.
The WSBA 50-year members celebration—postponed for a year due to COVID-19 and therefore recognizing members admitted to the Bar in 1970 and 1971—was an important milestone for me. The WSBA organized a lovely celebration lunch (proof of vaccination required) on Aug. 25 at the Terrace Room at T-Mobile Park in Seattle.

After delivery of our certificates and 50-year pins, we were asked to sit for a picture. I was honored to sit in the front row, but awed at how it took me back. In 1970 there were 277 people admitted to the Bar. Approximately 36 percent made it to the 50-year mark, and of those 101 attorneys, I was the only woman. Suddenly I felt a 50-year flashback to being the only woman in an all-male peer group—an everyday experience when I was first admitted.

I graduated as one of two women in my class from Willamette University College of Law.

I wanted to be a trial lawyer. I called to answer an ad from a firm seeking a litigation associate. The senior partner asked me if I thought a woman could “stand the rigors of trial practice.” He did not invite me to interview. Fortunately, when I answered another ad, I was invited to interview and the senior partner told me none of the partners liked trial work. I was most welcome there and tried and won my first case in superior court by noon of my second day as a lawyer.

In those early days we all gathered in the Presiding Department to be sent out for trial. I made it a point to dress up so that I would not be mistaken for court staff and handed paperwork. The waiting time was a good way to get to know other lawyers.

There were a few female prosecutors at the time, including Patricia Aitken, who became a superior court judge. She was the only woman of the 67 lawyers admitted in 1965 and received her 50-year pin in 2015. Barbara Durham, also a deputy prosecutor, became the first female Supreme Court chief justice. Betty Fletcher was the first female partner in a major Northwest law firm (now K&L Gates). She went on to become a Ninth Circuit Court of Appeals judge and celebrated her 50 years in the WSBA in 2006. Another female lawyer I encountered early on was Bernice Johnson, a divorce lawyer known politely as “the Barracuda from Ballard.” Aggressive
female lawyers were frequently referred to with another “B” nomenclature. Within a year of becoming a lawyer I was allowed to become a member of the Washington State Trial Lawyers Association board (now Washington State Association for Justice or WSAJ). The president, John R. Lewis, wanted me on the board because the organization was facing a battle in the Legislature over “no-fault” insurance. I had worked three sessions as a Senate staffer and knew all the back doors. I was allowed to be a member on the condition that I would not have a vote. It was tokenism, but I took the token. We defeated no-fault insurance and in the same session got contributory negligence abolished in favor of comparative negligence. After that, women on the board had the vote.

In my second year as a lawyer I was a founding member of Washington Women Lawyers (WWL). The organization was formed because female lawyers were not receiving equal pay for equal work and were frequently disrespected, excluded from teaching continuing legal education seminars, and denied leadership in the Bar. The next year, Betty Fletcher became the first female president of the King County Bar Association. It wasn’t until 1986 that the WSBA had its first female president, Elizabeth Bracelin, who was also a founding WWL member. There have only been three female WSBA presidents since then. WWL celebrates its 50th anniversary this year.

My law practice included personal injury, real estate, business, family law, and selective criminal cases. Family law at that time was looked down on and there were not enough competent and empathetic practitioners. Sex with clients was commonplace. It wasn’t until I was on the Supreme Court 30 years later that sex with clients became contrary to the Rules of Professional Responsibility. Family law is stressful work and I limited it to not more than half of my caseload. I got a lot of

CONTINUED >
WSBA Celebrates 50-Year Members: Reflections of the Only Woman

CONTINUED >

Tough personal injury cases referred from lawyers who saw me as a warrior, in spite of my gender. In the late 70s I decided I would rather be seen as an “expert” than a warrior and began pursuing my M.S. in taxation at Golden Gate University’s Seattle branch, which offered night classes.

When I was interviewed for my first job as a lawyer, the senior partner told me that I would one day be a judge. I was shocked, as I had never thought of such a thing. I don’t know if he saw something in me I didn’t see in myself or if he planted the seed. After 13 years in trial practice I began to think I could have more impact for justice as a judge.

Oddly enough, getting my M.S. in taxation helped me to become a judge. I applied for an open judicial position in 1981 with one class left to get my degree. There were few female superior court judges in the state at that time. Gov. John Spellman applied for an open judicial position in 1981 because I was still going to school. He said, “Judges need to be life-long learners.”

As a judge, I was immediately tapped to be on the judicial education committee. I organized the first full-day program for Washington judges, with national speakers, on issues of women and children in the courts. Topics included women as victims of rape and domestic violence (which was a new term at the time), child custody issues, equitable division of property, including pensions, and adequate child support. After that I became the chair of judicial education for the state. I also helped to create the National Leadership Institute in Judicial Education, which over the next 20 years worked with every state to upgrade their judicial education. The objective was to introduce a curriculum to teach what the highly effective judge needs to know.

That curriculum included medical, scientific, social, and cultural issues as well as law. We also developed a national registry of expert speakers on critical topics.

I chaired the National Association of Women Judges conference in Seattle in 1987. I took the opportunity to create for 20 Washington female lawyers a one-day conference with local and national female judges called “So You Want to be a Judge.” Many of those 20 women became judges. We also launched the Washington Task Force on Gender and Justice at that conference. Its final report was delivered in 1989. An update, “2021: How Gender and Race Affect Justice Now,” was just released and identifies goals for addressing each problem.1

I decided to run for the Supreme Court when there were only two women there. I wanted to help impact system issues as well as do justice in each case. We need justice to be more accessible, affordable, timely, and unbiased. We also needed the judiciary to be more diverse. I was pleased to be on the court when we became the first nine-member Supreme Court in the nation with a female majority.

Female lawyers today face many of the same—and some different—problems than the ones we experienced 50 years ago—especially female lawyers who are mothers.

It was tokenism, but I took the token.

Recent article by American Bar Association (ABA) President Patricia Lee Refo cited a survey that found that 67 percent of female lawyers perceive they are immediately treated as less committed to the profession when they disclose they are becoming a mother.2 On the contrary, men are considered more committed when they become a parent.

Two recent ABA reports, “Walking Out the Door,” and “In Their Own Words: Experienced Women Lawyers Explain Why They Are Leaving Their Law Firms and the Profession,” examine the experiences of women in the legal profession. For example, ABA research revealed that 45 percent of the women surveyed reported they had been denied proper access to business development opportunities because of their gender. In contrast, just 6 percent of men felt the same way. Other concerns from female lawyers included believing they were being used as a diversity token and having a male colleague take credit for work they had done.

These reports also offer suggestions to turn the situation around. Suggestions include:

- Developing a strategy and setting targets to meet specific goals,
- Providing resources to relieve pressures from family obligations that are faced more often by women than men,
- Assessing the impact of firm policies and practices on female lawyers, increasing lateral hiring of women, and
- Ensuring that there is a critical mass of female partners on key firm committees.

The recent NWSidebar article “Building a Culture of Gender Equity: Insights From a Majority-Women-Owned Firm”3 by Kelly Noonan gives a practical example of how the suggestions in the ABA report can be implemented with thoughtful female leadership.

Since retiring from the Supreme Court, I have worked in ADR and find that work rewarding and in service of access to justice. In addition, I have gone back to school to become a life-empowerment coach. In that three-month curriculum, I learned to help clients envision, design, and create the life they love in health, relationships, vocation, and time and money freedom. I find the use of evocative questions learned there also helps in my mediation practice.

I intend to keep paying my WSBA license fee and remaining active in CLEs. I respect and appreciate the WSBA and its benefits to members and to the public. And I urge you, the reader, to check your status and to look forward to receiving your 50-year pin. (Criteria for receiving it includes having a license status as active, inactive, judicial, or emeritus/pro bono.) If you are like me, you may have insights that will amaze you as you look back on 50 years of practicing law. EN

NOTES

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A Summary of the Board of Governors Meeting

Top Meeting Takeaways

1. WSBA Leadership for the New Fiscal Year. The Board honored outgoing President Kyle Sciuchetti and Governors Russell Knight, P.J. Grabicki, and Jean Y. Kang. Chief Justice Steven González swore in WSBA President Judge Brian Tollefson (Ret.), President-Elect Daniel D. Clark, and Treasurer Bryn Peterson, as well as governors starting new terms: Francis Adewale, Sunitha Anjilvel, Daniel D. Clark, Jordan Couch, Serena Sayani, and Alec Stephens.

2. 2022 Budget and Keller Deduction. The WSBA’s new fiscal year began Oct. 1, and the Board approved an FY 2022 budget that maintains current programs and services while holding license fees steady for all members. The budget estimates $24,977,787 in revenue and $24,849,315 in expenses, and the Board had a robust conversation about whether and how to use reserve funds in a strategic way to support the operations budget now and in the future. The Board also approved a 2022 Keller deduction schedule of $9.02 for active lawyer members.

3. Resolution in Memoriam and Thanks. In recognition of the 20th anniversary of the terrorist attacks on Sept. 11, 2001, the Board passed a resolution to honor those who lost their lives on that day and to thank WSBA members who subsequently served in Afghanistan as a judge advocate with the U.S. military or in a civilian capacity—as well as the family members and loved ones who supported our Afghani service people.

4. Amendments to Late Fee Waiver Policy. The Board approved several changes to the WSBA’s policies regarding late payments of license fees, including updates of outdated language. The biggest change is allowing the WSBA to waive late fees based on “extreme financial hardship.”

5. Proposed Changes to RPC 1.15 (Safeguarding Property). The Legal Foundation of Washington, which distributes IOLTA (Interest on Lawyers’ Trust Accounts) funds to legal aid organizations, has recommended an amendment to Rule of Professional Conduct 1.15A to require that unidentified property in a lawyer’s trust account be remitted to the Legal Foundation of Washington rather than transferred to the Department of Revenue as abandoned property under the Uniform Unclaimed Property Act. Based on a request from the Board in October 2020, the Committee on Professional Ethics (CPE) recently submitted a memorandum with several options as to whether the WSBA should support such an amendment. The Board directed the CPE to draft implementing amendments to RPC 1.15A for the Board’s review in November.

6. Exploring How to Strengthen the Structure of the WSBA Diversity Committee. Leaders of the Diversity Committee are considering whether to switch to a council model to better fit within current WSBA bylaws and policies, especially as they pertain to promoting a diversity of voices and representation on the Diversity Committee. The committee will continue its exploration and return with a recommendation.

Other Business

The Board also:

• Approved several proposed amendments recommended by the Court Rules and Procedures Committee, which will now go to the Washington Supreme Court for review. The amendments include: fixes to the Rules of Appellate Procedure to correct errors and update language based on updates to law and other court rules; fixes to the Rules for Appeal of Decisions of Courts of Limited Jurisdiction to address correct errors and improve clarity/readability; and fixes to the Civil Rules for Courts of Limited Jurisdiction (RALJ) to address
SAVE THE DATE

The next regular meetings are Nov. 4-5 and Jan. 13-14. To subscribe to the Board Meeting Notification list, email barleaders@wsba.org.

outdated and gendered language.

- **Had a first reading** of proposed changes to the WSBA bylaws, proposed by the Senior Lawyers Section, to allow sections the option of allowing inactive/honorary WSBA members to join a section as a voting member and to serve as a voting member of a section executive committee.

- **Approved** the Low Bono Section’s request to send a comment to the court in support of proposed GR 40, creating informal domestic relations trials.

- **Held** its annual discussion with the deans of Washington’s law schools (Dean Mario Barnes, University of Washington; Dean Annette Clark, Seattle University; and Dean Jacob Rooksby, Gonzaga). Great news: Law-school applications are up, and the incoming classes of 1Ls are among the most diverse ever. The Board thanked Dean Clark for her service and partnership, as she has announced her retirement as dean at the end of the year. The group also talked about the future of the bar exam and how to promote rural opportunities among law students.

- **Held** a discussion with leaders of the Oregon State Bar, with topics including facility ownership/rental, malpractice insurance coverage, and models for member participation.

**NOTES**

1. In *Keller v. State Bar of California*, 496 U.S. 1 (1990), the Court ruled that a bar association may not use mandatory member fees to support political or ideological activities that are not reasonably related to the regulation of the legal profession or improving the quality of legal services.

2022 LICENSE RENEWAL & SECTIONS INFORMATION

License Renewal
License renewal began in November and must be completed by Feb. 1, 2022. License renewal includes paying the annual license fee and any mandatory assessments, certifying MCLE compliance, completing the trust account declaration, and disclosing professional liability insurance or financial responsibility.

Certify MCLE Compliance
If you are in the extended 2018-2021 or 2019-2021 reporting period, then you are due to report CLE credits and certify MCLE compliance. The deadline for completing credits is Dec. 31, 2021. The certification must be completed online or be postmarked or delivered to the WSBA by Feb. 1, 2022. Visit www.wsba.org/MCLE to learn more.

License Fee Payment Plan Option Available
If you are experiencing financial challenges, you may contact us about our payment plan option available to all licensed legal professionals. Payments may be made in up to five installments with the balance required to be paid in full by Feb. 1, 2022. A license fee hardship exemption is available for active licensed legal professionals who qualify. Visit www.wsba.org/licensing to learn more.

Voluntary Demographic Information
Please update your information at licensing.wsba.org or contact the Service Center to request a paper form. This information assists the WSBA in understanding the demographic makeup of our licensed legal professionals.

The Section Membership Year is Jan. 1–Dec. 31. Visit www.wsba.org/legal-community/sections to learn more.

Pro Bono Status
If you are considering going inactive, pro bono status (formerly known as emeritus pro bono status) is a great alternative that lets you provide pro bono services through a qualified legal services provider. Starting with the 2021 licensing year, the license fee will be waived for pro bono status members who completed at least 30 hours of pro bono service with a qualified legal service provider in the prior year. Visit https://bit.ly/wsbaprobonostatus to learn more.

Judicial Status
Please note that you are required to inform the Bar within 10 days of your retirement or your ineligibility for judicial status (and you must apply to change to another status or to resign). Visit www.wsba.org/licensing to learn more.

Important Dates
- **Dec. 31, 2021**: Licensed legal professionals in the extended 2018-2021 and 2019-2021 reporting period must complete required MCLE credits.
- **Feb. 1, 2022**: Deadline for requesting the one-time License Fee Hardship Exemption.
- **Feb. 1, 2022**: License renewal, payment(s), and MCLE certification, if applicable, must be completed online or postmarked.

Goldmark Award Luncheon
The Legal Foundation of Washington’s 36th Annual Goldmark Award Luncheon will be a virtual gathering on Feb. 22, 2022, from noon to 1 p.m. Please save the date and join LFW in honoring Annie Lee, executive director and co-founder of TeamChild, with the Charles A. Goldmark Distinguished Service Award. All proceeds support civil legal aid for families and youth experiencing poverty in Washington. Register at Legalfoundation.org.

THE BAR BUZZ

Goldmark Award Luncheon

The Legal Foundation of Washington’s 36th Annual Goldmark Award Luncheon will be a virtual gathering on Feb. 22, 2022, from noon to 1 p.m. Please save the date and join LFW in honoring Annie Lee, executive director and co-founder of TeamChild, with the Charles A. Goldmark Distinguished Service Award. All proceeds support civil legal aid for families and youth experiencing poverty in Washington. Register at Legalfoundation.org.

WSBA NEWS

WSBA Board Feedback
Send your feedback to boardfeedback@wsba.org. Please note that all WSBA emails are subject to public records requests.

Receive Notice of Upcoming Board Meetings
Join the Board meeting notice subscription list to receive WSBA Board of Governors meeting notices straight to your inbox! To join, email barleaders@wsba.org or complete the form at www.wsba.org/about-wsba/who-we-are/board-of-governors.

Opportunities to Comment on Proposed Court Rule Amendments
The WSBA encourages members to actively monitor and provide feedback when the Washington Supreme Court is considering amendments to its rules. Keep track of opportunities to comment at www.wsba.org/for-legal-professionals/rules-feedback, or visit the court’s website at http://www.courts.wa.gov/court_rules/?fa=court_rules.proposed.

VOLUNTEER

Character and Fitness Board
The Character and Fitness Board seeks board members from Congressional Districts 4, 8, and 9 with more than five years as an active WSBA member. Members on this unique board conduct hearings...
to determine whether applicants for admission to the practice of law can meet their burden to demonstrate that they have the good moral character and fitness required to engage in the practice of law. Terms are three years. The Board generally convenes one day a month, and most hearings last all day. If interested, please email barleaders@wsba.org or visit www.wsba.org/volunteer.

NJP Board
The WSBA Board of Governors is accepting applications for the Northwest Justice Project (NJP) Board of Directors. The Board of Governors will appoint three attorney members to serve three-year terms, commencing January 2022. Incumbents are eligible to apply. This is an opportunity for accomplished individuals who are passionate about NJP’s mission and who have a commitment to providing high-quality civil legal services to low-income people. For more information, please contact César Torres, cesar@nwjustice.org; or Chiedza Nziramazanga, nzirama2@gmail.com. To apply, email a letter of interest and résumé to barleaders@wsba.org by Nov. 19.

Volunteer with the Lawyer Discipline System
Learn more about volunteering as an adjunct disciplinary counsel (ADC). ADCs assist as needed in carrying out the functions of the lawyer discipline system pursuant to Rule 2.9 of the Rules for Enforcement of Lawyer Conduct. An ADC must have been an active lawyer or judicial member of the
WSBA for at least seven years at the time of appointment. Appointment is for a five-year term. Visit www.wsba.org/adc-panel or contact rachela@wsba.org to learn more.

**Custodians Needed**

The WSBA is seeking interested lawyers as potential volunteer custodians of files and records to protect clients’ interests. Visit www.wsba.org/connect-serve/volunteer-opportunities/act-as-custodian, or contact Sandra Schilling; sandras@wsba.org, 206-239-2118, 800-945-9722, ext. 2118; or Darlene Neumann; darlenen@wsba.org, 206-733-5923, 800-945-9722, ext. 5923.

**RESOURCES**

**DEI Resource Library**

The DEI Resource Library is where WSBA members can learn more about diversity, equity, and inclusion concepts. There are compiled resource lists, books, and articles on the criminal legal system, identity and intersectionality, microaggressions/bias, and race. Visit www.wsba.org/about-wsba/equity-and-inclusion/dei-resource-library.

**Practice Guides Available**


**Special Discount on WSBA Career Center Extended**

Nonprofit, government, and small-firm employers can post job openings on the WSBA Career Center, https://jobs.wsba.org, at 50 percent of standard rates. This special discount, offered to prevent pricing from becoming a barrier as the legal community continues to navigate the effects of the COVID-19 crisis, has been extended through March 31, 2022. Contact Mike Credit at 727-494-6565 Ext 3332 or michael.credit@communitybrands.com for more information.

**Career Consultation**

Get help with your résumé, networking tips, and more—www.wsba.org/for-legal-professionals/member-support/wellness/consultation—or email wellness@wsba.org.

**Free Consultations and Practice-Management Assistance**

The WSBA offers free resources and education on practice management issues. For more information, visit www.wsba.org/pma. You can also schedule a free phone consultation with a WSBA practice-management advisor. Visit www.wsba.org/consult to get started.

**Lending Library**

The WSBA Lending Library is open to members for both in-person and online checkouts. We have made a few changes to be aware of. For more information, visit www.wsba.org/library or email lendinglibrary@wsba.org.

**COVID-19 NEWS TO KNOW**

**Court Emergency Operations & Closures**

The Washington Supreme Court has published a COVID-19 response page, which is a compilation of its emergency orders and court modifications: www.courts.wa.gov/newsinfo/index.cfm?fa=newsinfo.COVID19.

**Law Office Reopening Guide**


**WSBA Advisory Opinions**

WSBA advisory opinions are available online at www.wsba.org/for-legal-professionals/ethics/ethics-line or call 206-727-8284.

**Ethics**

**Ethics Line**

Members facing ethical dilemmas can talk with WSBA professional responsibility counsel for informal guidance. Learn more at www.wsba.org/for-legal-professionals/ethics/ethics-line or call 206-727-8284.

**Judges Need Help Too**

The Judicial Assistance and Services Program (JASP) provides confidential support for judges, or those who are concerned about a judge. Contact Susanna Kanther, Psy.D., at 415-572-3803. Visit www.wsba.org/for-legal-professionals/member-support/wellness/judicial-assistance-service-program.

**The ‘Unbar’ Alcoholics Anonymous Group**

The Washington Unbar Alcoholics Anonymous group for legal professionals has been meeting weekly for almost 30 years. The group meets Wednesdays, 12:15–1:30 p.m., and Sundays, 7–8 p.m. Currently, the group meets online via Zoom, and attorneys from all over Washington participate. For more information and Zoom credentials contact unbarwa@gmail.com.

**WSBA COMMUNITY NETWORKING**

**Sign Up for Low Bono**

The Moderate Means Program connects moderate income clients with family, housing, consumer law, and unemployment cases to legal professionals who offer reduced fees. Family law lawyers and LLLTs are especially needed due to a backlog of cases stemming from the COVID-19 pandemic. Find out more at www.wsba.org/connect-serve/volunteer-opportunities/mmp or email publicservice@wsba.org.

**New Lawyers List Serve**

This list serve is a discussion platform for new lawyers of the WSBA. To join, email newmembers@wsba.org.

**ALPS Attorney Match**

Attorney Match is a free online networking tool made available through the WSBA-endorsed professional liability partner, ALPS. Learn more at www.wsba.org/connect-serve/mentorship/find-your-mentor or email mentorlink@wsba.org.

**The usury rate for November 2021 is 12.00%. The auction yield of the Oct. 4, 2021, auction of the six-month Treasury Bill was 0.056%.”**
Washington State Neutrals

Judge Ronald E. Cox (Ret.)  Judge William L. Downing (Ret.)  Judge Deborah D. Fleck (Ret.)  Judge Helen L. Halpert (Ret.)  Justice Faith Ireland (Ret.)  Judge J. Kathleen Learned (Ret.)  Ann T. Marshall, Esq.

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Washington State Bar Foundation support the Washington State Bar Association’s Pro Bono & Public Service, and Diversity, Equity & Inclusion programs. Initiatives like the Moderate Means Program and the Powerful Communities Project champion justice by helping ensure access to legal services for people throughout Washington.

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Campaign for Equal Justice to fund 40+ legal aid programs like TeamChild, Northwest Immigrant Rights Project, Legal Counsel for Youth & Children and Columbia Legal Services. Your donation advances civil justice for youth and families and all who suffer the injustices of poverty and systemic racism.

Donate on your license renewal and reaffirm your commitment to equity and justice!

wsba.org/foundation

legalfoundation.org
Suspended

Robert Jerry Van Idour (WSBA No. 9701210) of Lewiston, ID, was suspended for 18 months, effective 9/14/2021, by order of the Washington Supreme Court. Van Idour’s conduct violated the following Rules of Professional Conduct: 5.5 (Unauthorized Practice of Law; Multijurisdictional Practice of Law).

In relation to his representation of over 100 clients in Asotin County Superior Court under an indigent defense contract, Van Idour stipulated to a suspension for practicing law in Washington without authorization.

Benjamin J. Attanasio acted as disciplinary counsel. Kevin M. Bank represented Respondent. Donald William Carter was the hearing officer. Andre M. Penalver was the settlement hearing officer. The online version of Washington State Bar News contains links to the following documents: Disciplinary Board Order Conditionally Approving Stipulation; Joint Consent Under ELC 9.1(e)(d); Stipulation to Suspension; and Washington Supreme Court Order.

Reprimanded

Rick J. Wathen (WSBA No. 25539, admitted 1995) of Seattle, was reprimanded, effective 8/13/2021, by order of the hearing officer. Wathen’s conduct violated the following Rules of Professional Conduct: 1.7 (Conflict of Interest: Current Clients), 8.4(c) (Dishonesty, Fraud, Deceit or Misrepresentation), 8.4(d) (Prejudicial to the Admin of Justice).

In relation to his representation of client A in pursuing collections against person B related to a joint property agreement involving certain real property in Seattle, Wathen stipulated to a reprimand for: 1) his negligent conduct in obtaining an amended judgment order and judgment in which he included in his declaration an incomplete spreadsheet as an exhibit and in which the order exceeded the relief requested in the complaint; 2) his negligent conduct relating to and following his representations to the court regarding person B’s attempt to redeem Parcel B in which he failed to honor his promise in court to allow person B five additional days to redeem; and 3) negligent representation of client A when there was a conflict of interest regarding liability for violations of CR 11.

Jonathan Burke and Kathy Jo Blake acted as disciplinary counsel. Jeffrey Paul Downer and Kyle Rekofke represented Respondent. The online version of Washington State Bar News contains links to the following documents: Order Approving Stipulation to Reprimand; Stipulation to Reprimand; and Notice of Reprimand.

Tom Youngjohn (WSBA No. 24170, admitted 1994) of Federal Way, was reprimanded, effective 8/06/2021, by order of the hearing officer. Youngjohn’s conduct violated the following Rules of Professional Conduct: 1.7 (Conflict of Interest: Current Clients), 1.8 (Conflict of Interest: Current Clients: Specific Rules), 8.4(a) (Attempt, Assist or Induce).

In relation to his representation of a client in an immigration matter, Youngjohn stipulated to a reprimand for making sexual comments and extending sexual invitations to the client.

Sachia Stonefeld Powell acted as disciplinary counsel. Anne I. Seidel represented Respondent. The online version of Washington State Bar News contains links to the following documents: Order on Stipulation to Reprimand; Stipulation to Reprimand; and Notice of Reprimand.

MORE ONLINE

Access further details of the notices by clicking the links in the online version: www.wabarnews.org.
Announcements

Schwabe, Williamson & Wyatt

is excited to announce that

Stephanie Berntsen

has been named to its Board of Directors.

Stephanie has been with Schwabe for 19 years. In that time, she has served as Board Nominating Committee Chair, Human Relations Committee Chair, Labor & Employment Practice Group Chair, and as a Board Member for Mentoring Association of Mother Attorneys of Seattle.

As a member of the board, Stephanie will support the firm’s strategic direction and advance Schwabe’s mission to deliver exceptional legal counsel for its clients.

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DAVIES PEARSON, P.C.
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is pleased to announce that

Grace K. Nguyen

has become an Associate of the firm and will practice in the areas of civil and commercial litigation, contract disputes, and general business.

Ms. Nguyen graduated from the University of Washington School of Law. She received her Bachelor of Arts in Law, Societies, and Justice, with Interdisciplinary Honors, cum laude. She attended the University of Amsterdam, Graduate School of Social Sciences Summer Institute 2014.

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(See, e.g.,):
Ground Zero v. United States Navy,
860 F.3d 1244 (9th Cir. 2017)
Yates v. Fithian,
2010 WL 3788272 (W.D. Wash. 2010)
City of Seattle v. Menotti,
409 F.3d 1113 (9th Cir. 2005)
State v. Letourneau,
100 Wn. App. 424 (2000)
Fordyce v. Seattle,
55 F.3d 436 (9th Cir. 1995)
LIMIT v. Maleng,
874 F. Supp. 1138 (W.D. Wash. 1994)

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FOR SALE

Profitable Oregon estate planning law firm ready for new owner (#1153). This busy law firm has a reputation of delivering excellent results. The firm’s service by revenue breakdown is 35% estate planning, 30% probate, 25% FED/real property, and 10% other. As of June 2021, the practice has approx. 50 active clients with over 23,000 clients in the practice’s database inherited from a firm more than 30 years old. With consistent YOY growth, the practice is positioned for continued growth under new ownership. The current owner has offered to transition the practice over the course of up to six months, to continue to help drive business to the new owner. This firm is completely turnkey and ready for the new owner. The current owner is committed to providing transition support for the buyer. Call 253-509-9224 to discuss this opportunity or email info@privatepracticetransitions.com; include “#1153 Established, Successful Portland Area Employment Law Firm Opportunity” in the subject line.

Established, successful employment law firm opportunity (#1126) with sustained success and profitability available in Portland, Oregon. Revenue for the firm shows a YOY increase each of the past two years despite challenges from the COVID-19 pandemic. Average gross revenue from 2018-2020 was more than $840,000, with a high of more than $970,000 in 2020. The firm has an established presence, a strong client referable base, and is well respected in the Northwest legal community. Service by revenue breakdown is 75% employment litigation and 25% employment & labor. The owner is committed to providing transition support for the buyer. Call 253-509-9224 to discuss this opportunity or email info@privatepracticetransitions.com; include “#1126 Established, Successful Portland Area Employment Law Firm Opportunity” in the subject line.

Washington medical malpractice law firm (#1098) with average gross revenue of over $1,500,000 the last three years (2018-2020), and weighted Seller’s Discretionary Earnings (SDE) of over $1,200,000. This successful firm is completely turnkey and employs five staff, including the owner. The firm’s processes are very well documented, and the practice uses Google Suite allowing for easy remote access. If you are interested in exploring this opportunity, would like the freedom to be your own boss, and/or increase your current book of business substantially, then this is perfect for you. Call 253-509-9224 for more information or send an email to info@privatepracticetransitions.com with “#1098 Washington Medical Malpractice Law Firm” in the subject line.

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Perfect family vacation: Gorgeous boutique condominium in Sayulita, Mexico’s quiet north end. Three blocks to beach; terrific surfing! Yoga next door. Newly remodeled, sleeps five (two bedrooms/two baths, elevator, washer/dryer, veranda overlooking huge pool). Daily house cleaning following CDC recommendations. Convenient flight to Puerto Vallarta. Contact: Stacey Bennetts at bennettslaw@comcast.net.

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WASHINGTON STATE BAR ASSOCIATION
Scott A. Volyn

BAR NUMBER: 21829

Scott Volyn is a trial attorney, superior court commissioner pro tem, and college/university professor. Always active in recreationally rich North Central Washington, Volyn is often found running the extensive trail system, open-water swimming in the Columbia and Lake Chelan, and skiing Mission Ridge and the local skate ski trails. A seminary dropout, he has not lost faith.

If you could go back in time, where/when would you go? A self-confessed Hamilton nerd, to the discussions leading to the Federalist Papers.

What did you eat for breakfast this morning? Intermittent fasting—no breakfast.

What’s your favorite breakfast cereal that you’re slightly embarrassed to buy? Cocoa Puffs—no contest.

What is one thing your colleagues may not know about you? I’m pretty good at Bulgarian split squats.

What is your favorite smell? My kids—as infants, not teenagers.

What is your favorite word? Thanks.

What is your favorite podcast? Revisionist History.

What book have you read more than once? A Confederacy of Dunces.

What is the last thing you watched on television? Billions.


If you had to give a 10-minute presentation on one topic other than the law, what would it be? Why the development of recreational trail access is a civil rights issue.

How do you define success as a lawyer? Does the bench respect you and know you will zealously advocate within the bounds of the law? Do juries find you compelling, even when they do not agree with your argument? Is your word your bond, and can be counted upon by other lawyers? Did you put your clients ahead of self-interest? If you can answer yes to these questions, I count that as success as a lawyer.

At the end of your career, how would you like to be remembered professionally? A lawyer who was not fearful of the outcome, and who relished the adversarial process. Someone who consistently held to the belief that equal justice was possible but must be pursued relentlessly. Finally, someone who realized the law was my profession, but not my identity.

If you could change one thing about the legal system, what would you change? So much of the tragic turmoil and difficulty in people’s lives, played out in our courtrooms—especially in criminal cases—are rooted in the failure to properly diagnose and treat mental health issues. If as a state and a society we committed to properly investigating, diagnosing, and providing treatment for those afflicted, the burden of criminal cases in our adult and juvenile courts would be greatly diminished, our jails would be substantially smaller, the overall cost on society considerably lessened. More importantly, the daily struggle of those with issues of mental illness would be alleviated to some extent—and to those suffering, even the smallest amount of relief is deeply felt.
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