

Washington State

BarNews

FEBRUARY 2012

THE OFFICIAL PUBLICATION OF THE WASHINGTON STATE BAR ASSOCIATION

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Washington State BarNews

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FEBRUARY 2012



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Non-Geek Squad

I just finished reading Tom Scribner's article in the December 2011 *Bar News* ("Will the Geek Inherit the Earth? Surviving in the Connected World of the Sole Practitioner"). Three cheers to Mr. Scribner. I am also a non-geek.

Dennis W. Morgan, *Republic*

WSBA Delegation to Cuba

EDITOR'S NOTE: The January issue of *Bar News* featured several articles about a delegation of WSBA members to Cuba. Led by WSBA President Steve Crossland, last October 27 members traveled to Cuba to research the Cuban legal system and engage in a lawyer-to-lawyer exchange. It is important to note that **no WSBA funds** were used for this trip. All delegates paid all of their own expenses. To read about the delegates' experiences and what they learned, see the January issue of *Bar News*.



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Save Our Bar!

The WSBA is proudly leading with fiscal prudence and responsibility, while continuing to meet your needs and the public's

Our association is faced with a member referendum recommending that we reduce our license fee from \$450 to \$325, which takes it down to the level it was a decade ago.

The fact is our current **license fee of \$450 has been set at \$450 for four consecutive years (2010–2013)**. What other organization do you know of that's held license fees steady, while at the same time adding more valuable programs and services, many of them designed to help those most in need?

In an unprecedented move, the Board of Governors voted unanimously in 2011 to keep our 2013 license fee the same for the fourth year in a row. Not only do I feel strongly about my investment in my license fee, I believe strongly in doing what's right in tough times, and that's holding firm on the amount of our license fee.

The BOG and WSBA staff spent considerable time last year reviewing and assessing all the work of the WSBA. The result was cuts in some programs and staff, while also holding overall expense growth to 0.25 percent, even with an increase in membership. This was an arduous process by all parties and resulted in a valuable refocus of our expenditures and programs.

The WSBA has 28 percent more members today than we had a decade ago. We offer more than a dozen additional programs and services. Included in those programs are the state-wide Moderate Means Program, the Home Foreclosure Legal Aid Project,

and free and low-cost CLE programs for new attorneys and those volunteering for our public service programs, just to give you a sample. These are not frivolous additions, but well-thought-out and well-planned programs that meet the specific needs of our membership and the public.

In early March, active members will be sent a ballot electronically or via paper for those without valid emails on file, asking whether you agree or disagree with this proposed rollback of our license fees. **I, for one, will be voting NO and I ask all of you to do the same.**

No profession is immune from our faltering economy, including attorneys.

Many of our practices, both large and small, have felt the financial impact from the economic downturn.

Having been in practice for 38 years, many of those as a sole practitioner in a small town, I've faced numerous challenges in the past. Being a member of WSBA, having access to programs and sections, and getting involved has been critical in helping me both establish and grow my practice. One thing I've learned is that in tough periods like these, it's not the time to start cutting expenses

that provide the most value.

For me, my investment in my license is untouchable. My license not only allows me to practice law in Washington, but also provides me access to numerous programs and services, and a

network of professionals around the state. I would not be the attorney I am today without the WSBA. I have been so fortunate to connect and reconnect with numerous lawyers throughout the state who are not only friends but also wonderful mentors. This value has been true throughout my career.

Our Bar Association is revered among those across the nation. I have found that WSBA

staff, programs, sections, Law Office Management Program (LOMAP), Lawyers Assistance Program (LAP), and CLE are, bar none, the best. I have had the opportunity this past year as president and last year as president-elect to communicate with like persons from other state bar associations across the nation. These impressions that I have of our Bar Association are validated over and over again.

We have a great Bar Association. More important to you as members, I

The reality is this referendum would hurt our members and hurt those we serve, cutting into both our regulatory and trade association functions.

believe that our bar association fulfills its mission of providing services to its members and the public.

As lawyers, we are unique in our country as professionals. We are the only self-regulated profession. This responsibility and privilege is bestowed upon us by our Constitution. We have a tremendous responsibility and opportunity to the people of Washington who have placed their trust in us. We also endeavor to provide help and assistance to our members to make sure that they have all the "tools" to fulfill their commitment to our citizens.

We are the linchpin to allow our soci-

ety to function in the reliable way that it does. We only need to pick up the newspaper each day and look at the world news to see how in other places in the world the rule of law is not working. Indeed, our country can do better, but we are so fortunate to have what we have. I believe to a large extent that what we have is attributable to our reliance on the rule of law and we are the guardians of that cornerstone of our democracy. I personally am more than willing to pay **\$1.23 per day** for my professional license to ensure that I am part of this very crucial part of our way of life.

This referendum potentially puts

WSBA in peril. I believe that goes against who we are, as lawyers, and what we stand for. Slashing our license fee by \$125 may sound like a great savings we'd

Ask yourself: is it worth going backwards? My answer is no. We must continue building integrity and trust in our profession, and upholding the oath we took. It's time we step up and be the leaders we are privileged to be.

all like in our pockets, but we must ask ourselves if it's worth it.

Is it worth slashing the WSBA budget by 26 percent (\$3.6 million) and putting numerous programs and services at risk for cuts or elimination? The reality is this referendum would hurt our members and hurt those we serve, cutting into both our regulatory and trade association functions.

Ask yourself: is it worth going backwards? My answer is no. We must continue building integrity and trust in our profession, and upholding the oath we took. It's time we step up and be the leaders we are privileged to be.

I'd like to hear from you. Feel free to email me at comments@wsba.org with your comments or questions about the referendum or any other topic. 

WSBA President Steve Crossland is from Cashmere and can be reached at 509-782-4418.

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REASONS TO VOTE NO ON THE **LICENSE FEE** **ROLL BACK REFERENDUM:**



WSBA has responded to hard economic times:

- The current license fee of \$450 has been frozen for four years.
- WSBA has cut staff and held expenses to a growth rate of less than 1%.
- WSBA is a mandatory bar that combines regulatory functions with member services. Your annual license fee pays for both discipline and valuable services that support and enhance your practice.

WSBA is mandated to regulate the profession:

- 71% of the license fee is used to pay for mandatory functions (lawyer discipline, regulatory, Supreme Court directed).
- If we don't effectively regulate our profession, others will want to take over that role.
- Other professionals in the state—including physicians and dentists—pay much higher fees for their regulatory functions.

WSBA provides a critical helping hand to new attorneys and to solo and small firm practitioners, such as:

- Law office management assistance program (LOMAP)
- Ethics Line
- Case Maker
- Low cost CLE programs for new attorneys
- Mentoring and practice development

WSBA enables attorneys to work for the common good:

- WSBA trains and organizes attorneys across the state to provide pro bono civil legal services to individuals and families who have been affected by the economic downturn.
- The WSBA sponsored Home Foreclosure Legal Aid Project that has helped Washington citizens stay in their homes.

Attorneys United to Preserve the WSBA, Co-Chairs, **Justice Gerry Alexander(ret.), Stan Bastian,** and **Colleen Kinerk.**

Please join the following in voting NO on the referendum: **Mark Johnson, Sal Mungia, Wayne Blair, Ronald Ward, Ellen Conedera Dial, Joseph P. Delay, Paul Stritmatter, Dick Manning, Dale Carlisle, Dave Savage, Jan Eric Peterson, Doug Lawrence,** and **Eric de los Santos.**



The Meaning of Your License Fee

What do you get as a WSBA member? The WSBA ensures that being a lawyer in Washington state remains a noble and reputable profession.

In past columns I have written about the privileged role lawyers hold in society; as the only peer-regulated profession in the United States and the only profession responsible for an entire branch of government, society has placed its trust in us. With the privilege of our license, we honor that trust and shoulder the responsibility to lead and serve.

As you know, earning that privilege does not come easily, and maintaining it requires an ongoing commitment, which includes renewing your annual license each year. Recently, a WSBA member filed a referendum to put before the membership. It requests that the WSBA reduce its license fee from \$450 to \$325. Given that you'll soon be asked to vote on this referendum, I thought it would be helpful to provide various facts about what your license fee supports.

The WSBA is both a regulatory agency and your trade association. In our state, the Supreme Court has delegated to the WSBA the administrative responsibility to regulate the profession, which includes handling all functions related to admissions, discipline, and overseeing the various requirements to maintain a license to practice law in Washington. In addition to our regulatory function, the WSBA provides valuable programs and services to our 35,000 members that support, enhance, and advance their practices, as well as the profession. At the same time, we honor our commitment to the public

by offering services that support fairness, access, and justice.

Importantly, paying your license fee is the equivalent of obtaining a business license, similar to any other licensed profession. While a number of professions pay less, there are many who pay more, like physicians and surgeons who pay \$675 annually, dentists who pay \$576 annually, or midwives who pay \$525 annually. Even auto dealers pay more, with a license fee of \$760 annually.

Washington is one of 32 states with a mandatory or "unified" bar, charged with administering the regulatory functions for the profession in our state as well as serving as a trade association. Lawyers in the other 18 states pay their license fees to the Supreme Court along with additional fees for a state bar membership.

When looking at other mandatory bars, Washington's fees are on par, particularly with those that serve a membership of comparable size, like Michigan, Georgia,

... paying your license fee is the equivalent of obtaining a business license, similar to any other licensed profession. While a number of professions pay less, there are many who pay more, like physicians and surgeons who pay \$675 annually, dentists who pay \$576 annually . . . Even auto dealers pay more, with a license fee of \$760 annually.

or Wisconsin. When comparing mandatory bars in our own region, you'll find that Oregon's annual license fee is \$492 and Alaska's is \$660. By contrast, attorneys in a "voluntary" state like Massachusetts pay a license fee to the Massachusetts Board of Bar Overseers as well as a voluntary membership fee to the state bar association, for as much as \$660 annually.

I'm proud to be a lawyer. And I'm proud to work in my profession, for my profession, every day as the executive director of the Washington State Bar Association.

When I joined the WSBA as a staff member, I was impressed by how much the bar association in our state does for its members and the public. And I continue to marvel at the dedication and commitment of nearly 1,100 volunteers each year who help us develop and run

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some of the most progressive programming and services for members and the public in the United States. Many of these members help carry out the important regulatory functions we have, all on a volunteer basis. I invite you to explore more about what results from all these efforts at www.wsba.org.

In the coming weeks, you will be hearing more about the referendum. Please look for your ballot to arrive electronically or in the mail (for those without email addresses on record) around March 7. I encourage each of you to vote, because your vote, yes or no, matters.

As always, we’re interested in hearing from you. If you have comments or questions about the referendum or any other matters, please email comments@wsba.org. Thank you. 

Paula Littlewood is the WSBA executive director.

What is a member referendum?

A member referendum is the avenue by which any active member of the WSBA can affect policy set by the Board of Governors. A referendum can reverse or modify a final action taken by the Board of Governors, enact a resolution, or amend the WSBA Bylaws.

Qualifying a referendum

To put a member referendum before the membership, any active member may file a petition for a referendum by meeting the following requirements:

- File the petition with the WSBA executive director within 90 days of a final action, if the subject of the petition seeks to reverse or modify that final action taken by the Board of Governors;
- Provide the exact language of the proposed resolution, Bylaw amendment, or modification/reversal of a Board of Governors’ action;
- Submit signatures from five percent of the WSBA Active membership at the time the petition is filed; and
- Ensure that the subject matter of the referendum complies with the provisions of General Rule 12, which sets out the authorized activities of the WSBA.

Ballot preparation

Any petition for a referendum that meets the above requirements must be put to a vote of the active membership within 90 days of the date that the petition was filed. Prior to that time, the proponents of the action may submit a “statement for” while the opponents of the action may submit a “statement against.” Additionally, each side may submit shorter rebuttal statements. The statements will be included on the ballot.

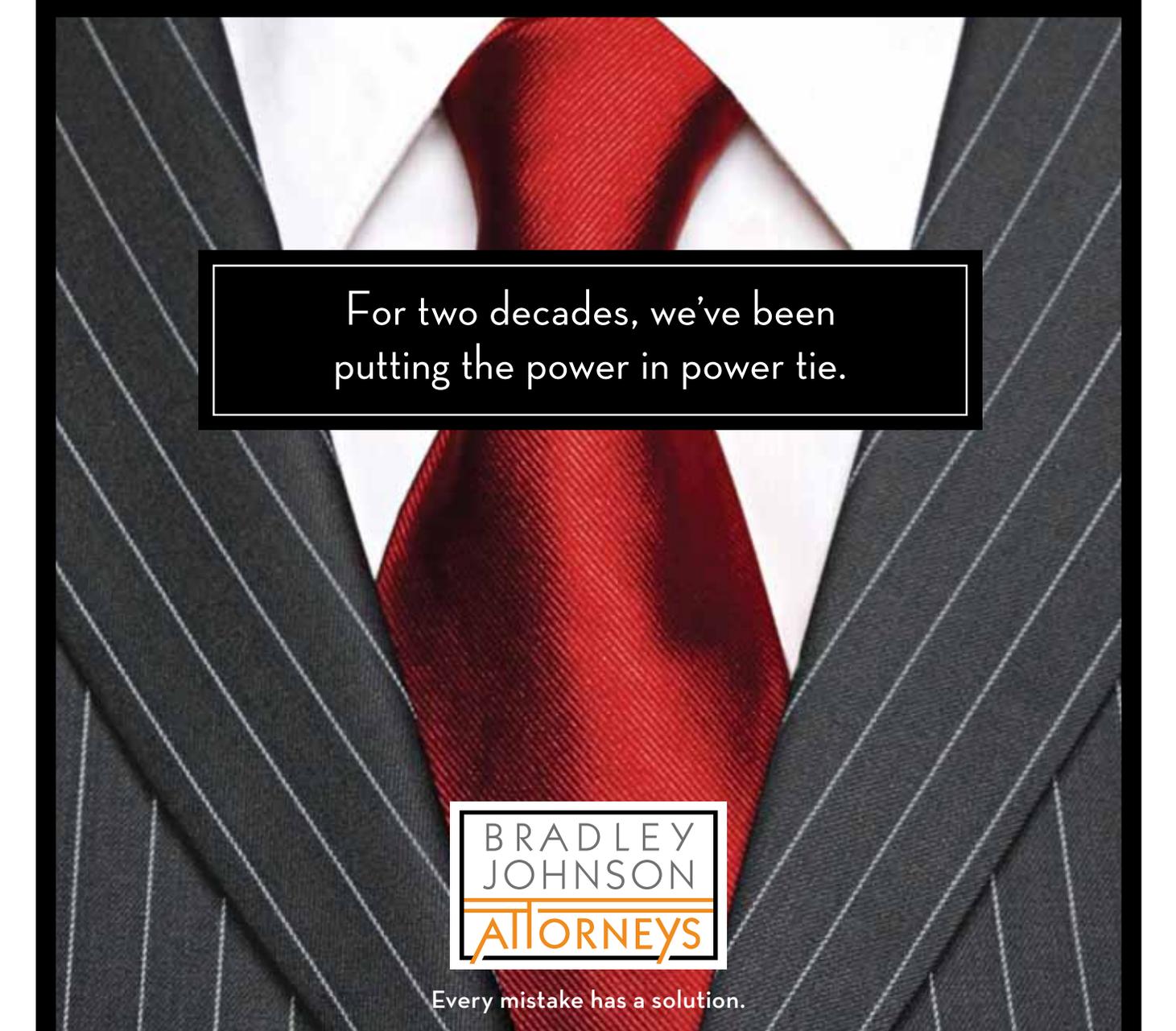
Voting procedures

Pursuant to the WSBA Bylaws, the ballot will be distributed electronically, with paper ballots only going to those without valid email addresses on file with WSBA. The petition and ballot with accompanying statements also will be posted on the WSBA website. WSBA Bylaws require that members are given no less than 30 days to return their ballot from the date of distribution.

Voting results

Paper ballots will be counted in the WSBA office, and electronic ballots will be counted by the online voting vendor. The election process will be supervised by an Election Board of not less than three active members appointed by the president. No less than two members of the Election Board shall be present at any count of paper ballots. Any active member of the Bar may be present during this count.

To pass, a referendum requires a majority of those active members who vote. Results are announced via a broadcast email to members, posted on the WSBA website, and published in *Bar News*.



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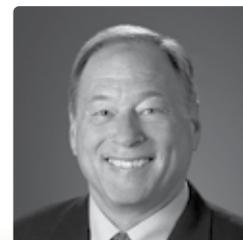
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Writing Success for In-House Counsel

BY PAUL A. SWEGLE

It is a tough reality in this world that many equate poor writing with a poor intellect. This is a bit unfair. Many intelligent folks simply struggle with the written word. Unfortunately, most unintelligent folks share the same struggle, hence the negative presumption. It is also true that clients expect their attorneys to be smart. Alas, attorneys must write well to ensure a successful career.

While strong writing skills are important for all attorneys, in-house attorneys possibly have even more at stake than their law firm peers. In smaller departments, in-house attorneys are asked to write a wide variety of documents with little editorial assistance and for fairly sophisticated internal and external audiences — memos, policy documents, contracts, board resolutions, meeting minutes, regulatory responses, communications with other third parties, etc. Even when not crafting their own documents, in-house attorneys are routinely asked to edit important documents like internal reports, corporate disclosures, presentations, press releases, etc.

As a result, an in-house attorney's

writing skills often become well known by many colleagues with the potential to impact his or her career — direct bosses, heads of other departments, and higher-ups like the CEO, CFO, and board members. This creates opportunities for career advancement — and corresponding risks of career immolation. To ensure a successful career, in-house counsel should work hard to develop a reputation for unassailable writing skills and also for knowing when and how to write in a business environment.

As with any skill, start with basic blocking and tackling. Here are a few tips:

Master the Fundamentals. Good writing requires a command of the rules of grammar and also an understanding of the more subjective composition rules sometimes referred to as “style” — i.e., writing actively instead of passively, using paragraph and sentence organization that leads the reader logically and painlessly, varying sentence lengths to maintain interest, favoring positive statements over inverted negative ones, using clear, definite language, etc. If you have any doubt about your

writing skills, relearn the basics. At a minimum, reading through the 85-page classic *The Elements of Style*, by Strunk and White, may help you avoid the most common word choice and punctuation errors.

Pop quiz: “Here’s a picture of Amy and I.” Do you know what is wrong with this sentence? If not, grammatical errors may pervade your writing. You should take this first recommendation seriously.

Planning and Organization. Approach every writing assignment, large or small, logically and with appropriate preparation. What are you writing? Why? For whom? What level of detail is expected? Think carefully about the assignment. Make sure you understand the desired result. Work backward from there to organize your composition so it flows smoothly and logically from beginning to end.

Minimize. Editing should always include a conscious effort to hunt down and remove every unnecessary word, sentence, and paragraph. Your reader

is not reading for pleasure. He or she is engaged in a task. Make it easy. This requires setting aside “pride of authorship.” Just because you wrote a clever passage doesn’t mean the reader wants to read it. If the draft holds together without it, strike it. And don’t forget about the delete function whenever you find yourself struggling to fix a convoluted sentence. Sometimes the best solution is to delete it.

Avoid Unusual Word Choices. We are all tempted to spice our writing with uncommon word choices. When done correctly, this injects color and variety. The risks, however, frequently outweigh the benefits. It is possible your reader will not instantly understand your meaning and will be slowed down or confused. A more insidious risk is that you will misuse the word and look foolish. Online dictionaries have made it easier to reduce these risks. When in doubt about a unique word choice, though, the best approach may be to go with something more familiar.

The Word “of” is a Red Flag. Search your document for the word “of.” Consider rewriting any sentence containing the word to see if the same idea can be expressed in a cleaner, more direct, or more active style. “A reconciliation of accounts will be performed prior to trustee transition,” for example, can be rewritten more directly as, “We will perform account reconciliations prior to trustee transition.”

Read Aloud. Few editing techniques are more useful than reading aloud. When we read silently, our minds correct, fill in, and otherwise “compensate” for drafting flaws. Reading aloud, even quietly, can override this mechanism. To get the most from this technique, try focusing on specific issues over a series of passes, first concentrating on larger, more general concerns, then on more specific ones. Consider breaking up the analysis this way:

- First pass — listen for organization. Does it flow logically, leading the reader to a well-supported conclusion?
- Second pass — listen for cadence and rhythm. Do the words, sentences, and paragraphs maintain a natural pace that carries the reader forward easily

and purposefully? Are punctuation and changes in sentence length used to create rhythm variations and effective pauses? Or is it choppy, long-winded, droning? Can it be tightened up by eliminating words, sentences, or even paragraphs?

- Third pass — listen for tone. Are there passages that sound pompous or academic? Can they be rewritten in everyday language?

Read aloud, tighten, and fine-tune until the draft sounds close to how you talk in a business environment. Doing this will make your writing easier to

read and to understand.

Visual Inspection. When your draft has passed the above review, look at it as you would a piece of art. It should appear balanced and orderly. How do the four margins and other white spaces look? Should any of the paragraphs be broken up? Would captions, bullets, underlining, or bolding help? Or have they been overused?

Again, these are general tips for writing effectively. Good writing skills are necessary for success as in-house counsel, but they are not sufficient to ensure



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it. Success also depends on adapting your writing to your specific professional and business context. The following section touches on considerations unique to in-house practice.

Above all, in-house counsel must adapt to the reality that they are surrounded by non-lawyers. These constituents have important functions to perform and goals to meet. When legal questions or processes arise, their primary concern is generally, "Will this slow me down?" Or worse yet, "Will this prevent me from meeting my goals?" These constituents often have a view

of law and regulation that is more diffuse and more, shall we say, pragmatic. In-house counsel's career success is dependent upon working productively, efficiently, and positively with these busy, goal-driven non-lawyers. In every interaction with them, instill confidence that you will exercise solid legal judgment and business judgment.

How can in-house counsel ensure that his or her writing adds value and reflects good business judgment?

Avoid Overly Conservative Positions.

Less experienced attorneys often retreat

to the safety of overly conservative positions. That's usually not helpful to the business team. They rightfully expect counsel to roll up their sleeves and be creative. Sometimes getting to "yes" requires in-house counsel to dig deeper, consult more broadly, and think harder about risks than she might have initially expected. The greatest legal epiphanies often come after less ambitious minds have given up. Never discount the ability of non-lawyer colleagues to help you think through what initially appears to be an impasse. Thinking through issues together not only leads to unexpected successes, it also demonstrates business judgment and a commitment to shared goals.

Write Only When Necessary. As with many things in life, when it comes to in-house writing, less is often more. Much of the advice and guidance sought from in-house counsel can and should be conveyed orally. Writing thoughtfully is time-consuming. Save it for when it's truly useful. Putting everything in writing is inefficient and can impair your work quality and responsiveness. It also increases the risk that erroneous or unnecessarily inflexible positions might later harm the client organization.

Do Not "Cover Your Anterior." Always resist the temptation to write CYA memos and emails — missives that say "I told you so" in advance of a potentially bad outcome. In addition to being annoying and divisive, CYA memos expose the client organization to unnecessary risk. As counsel, your role is to counsel and advise. If you have earned the confidence of your non-lawyer colleagues by not frequently hiding behind overly conservative positions, you should always be able to either come to a mutually acceptable course of action or, when necessary, discourage a course of action that subjects the organization to unacceptable risk. In those rare cases when you must "report up" under the Rules of Professional Conduct, do so. But if you frequently feel the need to document concerns in memos to non-lawyer colleagues to protect your own career or reputation, you're either doing something wrong or you're running with a bad crowd.

Will It Fit on One Page? Unlike law firms, where long, analytical memos

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with extensive citations are appreciated, in-house constituents just want the answer. As lawyers, we like to explain our work: i.e., what we were asked to consider; the rules, regulations, and case law we took into account; and how we thoughtfully applied them to the facts at hand. Great, but try this: Write your conclusion first. Then, as succinctly as possible, work backward from there and explain the rules and regulations you considered in reaching your conclusion — until you have filled one page. Whatever doesn't fit stays on the editing room floor. Avoid case citations, long statutory names, legal jargon, and other legalese that non-lawyers ignore anyway. They only want the answer and perhaps just enough more to make them feel a little smarter. Anything more is just for you; keep it to yourself.

100 Percent Certainty Is Not Required. Law firms usually analyze issues to an extremely high degree of certainty. And even then, their answers are often hedged with warnings of uncertainties or of different outcomes should any facts change. This degree of rigor is appropriate for issues in the upper right-hand quartile of the “likelihood — materiality” risk matrix. But for routine, lower-risk questions, the benefits of analysis beyond the 80 percent certainty mark often diminish significantly.

This aspect of in-house work creates important opportunities for in-house counsel to demonstrate good legal and business judgment. Obsessing over the wrong issues is a disservice to your client and to your colleagues. Focus time and energy on the harder, more material issues; keep the other ones moving. If a colleague wants a memo on something immaterial, decline the request or simply give him a one- or two-sentence email so he feels protected — e.g., “Bob, I’ve considered the issue you raised regarding the XYZ project and I do not see any significant regulatory or legal issues. Please see me if you have additional questions.”

Positive Tone. Inject a positive tone whenever possible with in-house clients — “Here’s how we can do this . . .” “Great idea. We may have to do it slightly differently than what you were thinking, but we can still get to the same place . . .” Avoid gratuitously negative language in

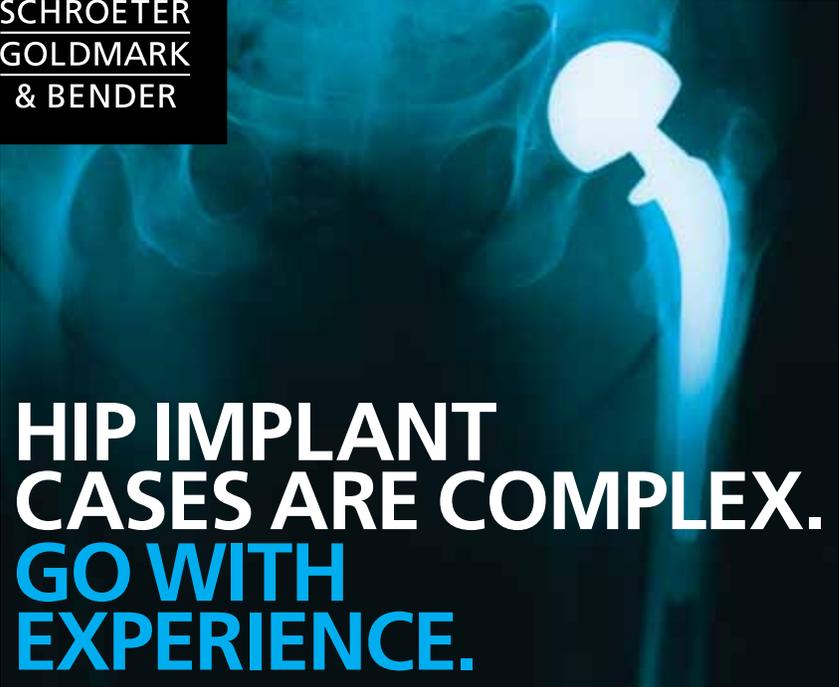
all internal communications, no matter how tempting it might be to stamp out an unimpressive idea. Sights are remembered long after the satisfaction of issuing them has faded.

The Extra Mile. Beyond strictly legal writing tasks, in-house counsel can add value to their organizations by offering to help with technical or even creative writing tasks where appropriate. By developing a reputation as one of the best writers in the organization and by offering to use that skill to support others outside purely legal contexts, in-house counsel can add unexpected value, en-

gage themselves more fully in the organization’s mission, and enhance their reputation as a reliable, competent, and hard-working team member. Listen for situations where corporate disclosures, internal reports, press releases, letters, or other documents need to be written and offer to take a laboring oar. Consider it a vote of confidence when those offers are accepted.

Write Quickly and Actively. Writing should be active and mentally engaging. Get through the process quickly. In a dynamic in-house environment, there is little time for lethargically obsessing

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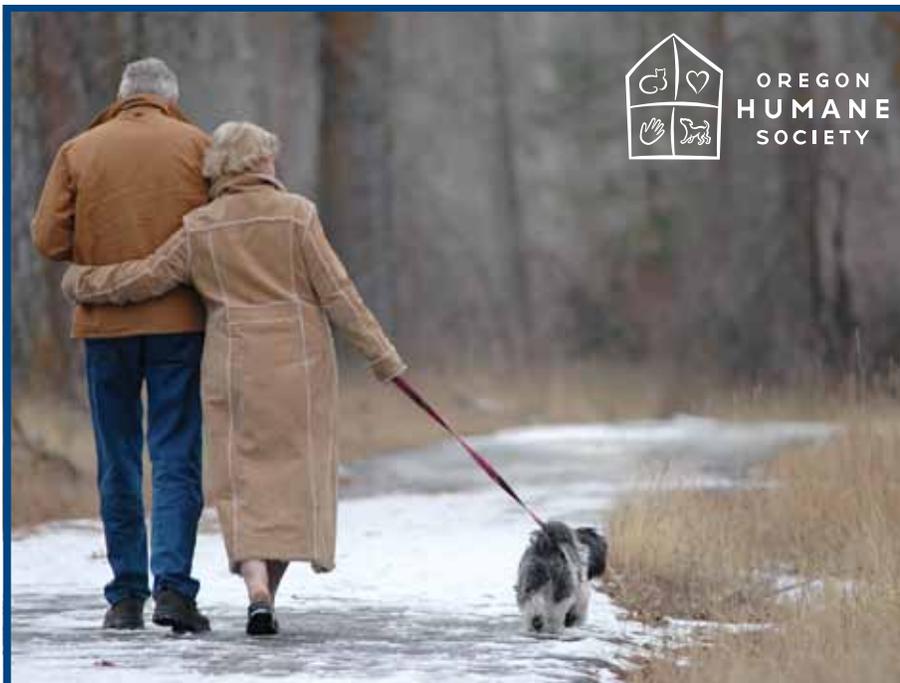
over writing tasks. Get them done fast, get them done right, and move on. It's all about results in-house, not process. A timely document is always more valuable in-house than one that arrives days late after over analysis, hand-wringing, and inefficient editing.

In summary, every in-house counsel should aspire to be the best writer in the company. As an attorney, this should not be a stretch goal. Every attorney should consider it his or her professional obligation to be an outstanding communicator. Written and oral communication are core tools of the trade. If your skills are lacking, you owe it to yourself and to your clients to improve.

In-house counsel should also understand that the financial success of their client requires every employee to find ways to add value. In addition to managing risks, in-house counsel must add value by removing artificial barriers, helping colleagues find paths toward business success, and using their legal and non-legal skills to help colleagues do their work more efficiently and productively. Every written product should be measured against these standards: Did I demonstrate good business and legal judgment, and did I take advantage of every appropriate opportunity to add value? In-house counsel's work is often visible to and important to many throughout an organization. The confidence of these many constituents must be earned. Effective writing is key to building and maintaining that confidence.

Lastly, ambitious in-house counsel should strive to be "thought leaders" within their organizations — someone who demonstrates the ability to see the bigger picture, to see opportunities where others see only challenges, to think a few steps ahead of the crowd, and to add value in discussing business priorities. Expressing yourself skillfully and intelligently so that your ideas are known, appreciated, and sought out can help position you as a thought leader and put you on the path to ever-increasing influence and responsibility. [®]

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WSBA *Class of '61* Celebrates Milestone



by Stephanie Perry

In November 9, guests gathered at the Sheraton Hotel in Seattle to pay tribute to 48 attorneys and judges who celebrated 50 years of WSBA membership in 2011. WSBA President Stephen R. Crossland welcomed honorees, their families, and guests and proudly expressed heartfelt gratitude to the 50-year members for their decades of dedication to the law. The WSBA class of '61 has seen many changes — cultural, political, and societal — during their years in the legal profession. Those who have joined the Bar since owe these individuals a debt of gratitude for their inspirational work, achievements, and half-century of serving the public. In appreciation, President Crossland and members of the Board of Governors presented 50-year certificates and lapel pins to the members who joined the Bar in 1961.

President Crossland reviewed notable events in 1961 (see page 21) worldwide, in Washington, and at the WSBA. Washington State Supreme Court Chief Justice Barbara A. Madsen congratulated the honorees and Jerome Jager, past chair of the

WSBA Senior Lawyers Section, encouraged the members to join the Senior Lawyers Section. Fellow member of the class of 1961 J. David Andrews, who serves on the Board of Directors for the Endowment for Equal Justice, spoke about leaving a legacy through the Endowment. The luncheon concluded with closing remarks by President Crossland; the 20 attending honorees then gathered for a commemorative group photo.



President Crossland addresses honorees and guests at the luncheon.



ROW 1: Patricia and Richard Allen with daughter Kathleen; The Currans — Brendan, Keelin, Charles, and Betsy with 2011–2012 President Steve Crossland; Hon. John Darrah. ROW 2: Chief Justice Barbara Madsen; Governor Nancy Isserlis with Frederick and Marie Halverson; Sandra and Henry Newton. ROW 3: Chelsea, Jerry, and Michelle Hahn; Cleopatra and Edwin Stone; Kenneth and Ann Phillipps. ROW 4: Donald Brockett with son Craig; J. David Andrews; 2010–2011 President Steven Toole with 2001–2002 President and Honoree Dale Carlisle. ROW 5: John and Harold Coe; Jorgen Bader with Governor Susan Machler; Ronald and Ruth Schaps.

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Richard F. Allen, Seattle
Robert L. Anderson, Ocean Shores
J. David Andrews, Seattle
Hon. John K. Arnold, Tacoma
Jorgen G. Bader, Seattle
Robert Baronsky, Tacoma
Donald C. Brockett, Spokane
Fredrick Ross Burgess, Nordman, ID
Dale Louis Carlisle, Tacoma
Harold Bernard Coe, Mercer Island
Donald G. Cohan, Seattle
Bruce Walter Cohoe, Tacoma
Richard Rex Cole, Anchorage, AK
Frank Conklin, Spokane
Charles P. Curran, Kent
Hon. John M. Darrah, Seattle
Roland V. Dietmeier, Woodland
Robert D. Duggan, Orting
Lauritz O. Falk, Spokane
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Hon. Frederick B. Hayes, Tacoma
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Edward G. Lowry III, Newcastle
Hon. Murray A. McLeod, Kent
Joseph Meagher, Omak
Henry Todd Newton, Everett
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Hon. Fred L. Stewart, Olympia
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Lauren D. Studebaker, Bellevue
Robert W. Thomas, Seattle
Hon. Ralph G. Turco, Tacoma

1961: A Moment in Time

- The average **SALARY** is \$5,315, and unemployment is 5.5 percent.
- The average **HOUSE** costs \$17,200.
- A postage **STAMP** is 4 cents, a loaf of bread 21 cents, a gallon of gas 27 cents.
- In February, **BOEING** launches its first Minuteman Intercontinental Ballistic Missile from Cape Canaveral. The three-stage, solid-fueled rocket is designed for rapid launch against a surprise nuclear attack.
- In March, President Kennedy signs an executive order establishing the **PEACE CORPS**. Since 1961, more than 200,000 Americans have joined the Peace Corps, serving in 139 countries.
- In April, the **SPACE RACE** continues, as Soviet cosmonaut Yuri Gagarin becomes the first human in space during a single-orbit flight on Vostok 1. Commander Alan Shepard Jr. becomes the first American in space in a suborbital flight aboard the Mercury 3.
- In April, a team of CIA-trained Cuban exiles fail in their attempt to invade Cuba through the **BAY OF PIGS** and overthrow the government of Fidel Castro.
- In May, the **FREEDOM RIDERS** challenge opposition to the United States Supreme Court decision *Boynnton v. Virginia*, which outlawed racial segregation in the restaurants and waiting rooms in terminals serving buses that cross state lines.
- In August, construction on the **BERLIN WALL** begins, dividing East and West Berlin.
- On August 4, **BARACK OBAMA**, the future 44th president of the United States, is born in Honolulu. Stanley Ann Dunham, his mother, is a Mercer Island High School graduate.
- The Pulitzer Prize in fiction is awarded to **TO KILL A MOCKINGBIRD**, by Harper Lee.
- Popular **SHOWS ON TV** include *Gunsmoke*, *Perry Mason*, *The Andy Griffith Show*, *Candid Camera*, *My Three Sons*, *The Twilight Zone*, and *Mister Ed*. The first episode of *The Dick Van Dyke Show* is filmed, and *ABC's Wide World of Sports* premieres.
- **WEST SIDE STORY** wins 10 Academy awards, including Best Picture.
- The Grammy's Record of the Year goes to "**MOON RIVER**," by Henry Mancini. The Album of the Year is Judy Garland's "Judy at Carnegie Hall."
- The New York Yankees' **ROGER MARIS** hits 61 home runs, breaking Babe Ruth's record set in 1927. In the World Series, the Yankees beat Cincinnati Reds 4–1. Although the Super Bowl does not yet exist, the Green Bay Packers defeat the New York Giants 37–0 in the NFL Championship Game.
- Notable inventions include the **ELECTRIC TOOTHBRUSH** and the cordless power drill.
- Frito corn chips and **PAMPERS** disposable diapers appear in grocery stores, and ibuprofen is introduced.
- Barbie gets a boyfriend as the "**KEN**" doll makes his debut.

In Washington...

- WSBA member **ALBERT D. ROSELLINI** is governor of Washington.
- In April, ground-breaking ceremonies for the **SPACE NEEDLE** are held. It will become the tallest structure in Seattle, 86 feet taller than the Smith Tower.
- In June, residents of First Hill and other Seattle neighborhoods affected by the construction of the **INTERSTATE 5** Freeway stage a protest.
- In August, the **HOOD CANAL BRIDGE** opens.

At the WSBA...

- 122 people pass the **BAR EXAM**, compared with 909 candidates who passed the bar exam in 2011.
- The **CLIENTS' INDEMNITY FUND**, created by Bylaw in 1960, begins operations on January 1.
- In May, Washington observes its fourth annual **LAW DAY**.



PHOTO BY TODD TIMMCKE

Find out what your fellow attorneys are up to. If you would like to contribute to *Around the State* on behalf of your county, minority, or specialty bar organization, or if you have a law-related item of interest, send your submissions to aroundthestate@wsba.org. (Photo above: Clark County Courthouse, Vancouver.)

Access to Justice Board Honors Judge Steven González

In December, the Access to Justice Board honored Judge **Steven González** at a gathering at the WSBA office. Judge González was honored for his service as a 2005–2010 Access to Justice Board member and for serving as chair from 2010–2011. Judge González was appointed to the Washington State Supreme Court by Governor Gregoire to replace retiring Justice **Gerry Alexander**. At the event, **Kirsten Barron** presented Judge González with the Flame of Justice Award, **Raúl Sánchez** read two of his poems, and **Wayne Blair** gave a toast. Many guests stepped up to the podium to express their gratitude to Judge González.

ATJ BOARD HONORS JUDGE GONZÁLEZ

— Photos right (top to bottom): Access to Justice Board Chair Kirsten Barron presents Judge González with the Flame of Justice Award. Northwest Immigrant Rights Project Executive Director Jorge Barón expresses thanks. ATJ Board Member and Past WSBA President Wayne Blair makes a toast. ATJ Board Member Elizabeth Fry gives an address and presents Judge González with a Pendleton blanket. Poet Raul Sánchez recites his poems. Judge González thanks those gathered. Karen Murray of the Associated Counsel of the Accused expresses her gratitude.



PHOTOS BY TODD TIMMCKE

Father of Law-Related Education Turns 100

Civic education leaders from around the nation descended upon the Seattle University School of Law in the fall of 2011 to celebrate the 100th birthday of Dr. **Isidore Starr**, an accomplished lawyer, teacher, and Washington state resident who is widely recognized as “the father of law-related education.” The event was held on Constitution Day (September 17), which is not precisely Starr’s birthday but does reflect his lifelong passion: promoting the public’s understanding of law. (Dr. Starr’s impact on the field is recognized by the ABA through its prestigious Isidore Starr Award for Excellence in Law-Related Education.) At the Constitution Day event, state and national luminaries deliberated how to teach young people about the Constitution, the role of law schools in educating the public, and the future of civic education. Over dinner, attendees shared via speeches, songs, and jokes how Dr. Starr



Dr. Isidore Starr celebrates his 100th birthday with Barbara Miller, executive director of Denver’s Center for Education in Law and Democracy.

educated and inspired them throughout the decades. At Dr. Starr’s request, the evening ended with dancing, in which he vigorously participated.

Lane Powell Hosts 25th Annual Northwest Minority Job Fair

In August, more than 125 attendees participated in the 25th Annual Northwest Minority Job Fair, hosted by Lane Powell PC. Speakers included **John McKay**, former United States Attorney for the Western District of Washington and professor at Seattle University School of Law, and Hon. **Richard A. Jones**, United States District Court Judge for the Western District of Washington. Lane Powell is a co-founder of the Job Fair and has provided its support and participation every year since the Job Fair’s inception. McKay is one of the founding Job Fair Board members, as is Judge Jones, who continues to serve on the Board of Directors. The Job Fair is geared toward those pursuing a career in the legal profession and provides legal employers the opportunity to interview applicants from across the country, while also offering law

students a forum to interact with potential employers and fellow students. “It is our pleasure to contribute to the continued success of the Job Fair, sharing in its commitment to diversifying the legal community,” said **Len Roden**. “We are proud that for the last 25 years, the Job Fair has provided employment and networking opportunities to ethnic minority law students and graduates, many of which have developed into job offers,” added **Stephanie Hanson**.

Len Roden and Stephanie Hanson, both Lane Powell employees and members of the Board of Directors for the Job Fair, have served as coordinators each year since the first Job Fair in 1987.

Seattle Law Firm Selected for Defense Team in Uganda War Crimes Trial

In August, **James D. Pirtle** and **Matthew R. Hale**, of The Sentinel Law Group, PLLC, were selected to be on the defense team for Thomas Kwoyelo, a former combatant in the Lord’s Resistance Army (LRA) from northern Uganda. Kwoyelo is the first person to be tried by Uganda’s new International Crimes Division (ICD), a division of Uganda’s High Court, formerly known as the War Crimes Division. Both Pirtle and Hale studied international human rights and war crimes abroad. Pirtle, who studied war crimes in Prague, immediately contacted the Ugandan attorneys and told them who he was and what the firm could offer. Two Ugandan attorneys and three overseas interns will also be on the defense team.

Lawyers Lend a Hand in United Way Day of Caring

Lawyers from five law firms (Cascadia, Fenwick, Summit, Davis Wright, and Luvera), two United Way–King County (UWKC) board members, the entire office of Major, Lindsey & Africa, the global general counsel for Russell Investments, the general attorney for AT&T, the assistant regional counsel for DHHS, the former general counsel of Sonosite, and Judge **Richard Jones** from the U.S. District Court for the Western District of Washington all participated in the United Way Day of Caring. Volunteers spent their time working the



LANE POWELL HOSTS JOB FAIR — Upper (l. to r.): Hon. Richard Jones, Len Roden, Stephanie Hanson, and Professor John McKay were instrumental in the success of the 25th Annual NW Minority Job Fair. Lower: Attendees take a break and network at the Lane Powell in-house cafe. Photos courtesy of Lane Powell.



UNITEDWAY DAY OF CARING — Pictured above are: Brian Buckley (Fenwick), John Theiss (DWT), Ken Payson (DWT), Marta Lowe (Summit), Janet Freeman (DHHS), Hon. Richard Jones, Rehman Bashey (Major, Lindsey & Africa), Alisa Tazioli (Major, Lindsey & Africa), Peter Danelo (former Heller), Barbara Wright, Tisha Pagalilauan (Cascadia), John Gagliardi (Luvera), Tiffany Greco (Major, Lindsey & Africa), Yana Koubourlis (former Bogle), Mari Horita (UWKC Board member and Major, Lindsey & Africa), Lori Hill (Pacific Real Estate Partners), Cindy Hennessy (AT&T), Kathy Surace-Smith (UWKC Board member, former GC Sonosite), and Brian Golob (Russell).

line, chopping potatoes, moving boxes, filleting salmon, washing dishes, and wiping tables.

Young Lawyers Help Former Service Members in Seattle

In October, young lawyers from throughout the country volunteered in Seattle to educate former service members on available federal veterans' benefits and help them complete the required forms. The public-service event took place at the Pike Market Senior Center and was part of the American Bar Association Young Lawyers Division Fall Conference, held at the same time. The ABA YLD is mobilizing its state and

local bar affiliates throughout the country to offer veterans benefit clinics in their communities. At each clinic, veterans view a multimedia educational video and then meet individually with volunteer lawyers. The lawyers guide the former service members through various requirements and eligibility for federal veterans' benefits and help them complete applications.

Champions of Change: Leaders in Closing the Justice Gap

In October, Attorney General **Eric Holder** hosted a Champions of Change ceremony at the White House, recognizing 16 lawyers who have dedicated their professional lives to expanding access to justice for low-income communities. Champions of Change is a weekly initiative to highlight Americans who are making an impact in their communities and helping our country rise to meet the many challenges of the 21st century. Two WSBA members were among the honorees: **Brad Smith**, general counsel at Microsoft, and **Ron Whitener**, associate justice on the Northwest Indian Court of Appeals. Learn more about the Champions of Change pro-

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- Joining the firm are Associates **COLLEEN A. CODY**, **LISA C. GRIMM**, and **BRENT L. NOURSE**, and Of Counsel **ROGER P. SAUER**.



GARTH A. SCHLEMLEIN is the newly named Managing Member;



THERESA A. GOETZ is now a Named Member;



JAMES G. FICK has joined the firm as a Member; and



MICHAEL P. SCRUGGS has joined the firm as a Member.

gram and view the honorees' blog posts at www.whitehouse.gov/champions.

WSBA Corporate Counsel Section Sponsors Institute

The WSBA Corporate Counsel Section held its 2011 Corporate Counsel Institute in November. The WSBA CLE Conference Center was filled to capacity and 79 participants attended by video conference. The Section's next event will be a quarterly dinner and mini-CLE on February 7 at the Rainier Club in Seattle. Go to www.wsba.org for more information and for online registration, or contact Section Chair **Paul Swegle** at pswegle@ingdirect.com.

Lawyers Helping Hungry Children Hold 20th Anniversary Fundraisers

by Marla Zink and Todd Carlisle

In November, Lawyers Helping Hungry Children celebrated its 20th anniversary year with joint fundraisers in Seattle and Tacoma. The King County Chapter of Lawyers Helping Hungry Children held its annual fundraiser at the Grand Hyatt in Seattle. The luncheon was emceed by **Ian Lindsay**,



CORPORATE COUNSEL INSTITUTE — Above left: Robert Howie, partner with the firm Riddell Williams, educates and entertains with a presentation on employment law. Above right: Corporate Counsel Section Chair Paul Swegle (ING DIRECT ShareBuilder) and event co-chair Holly Petersen (Itron, Inc.) kick off the 2011 Corporate Counsel Institute.

and was headlined by keynote speaker **Joe Whinney**, founder and CEO of Theo Chocolate. Joe Whinney and Theo Chocolate have pioneered the free-trade cacao industry in

an effort to end slavery, poverty, and malnutrition in global cacao farming. The Leschi Elementary School Choir entertained the crowd of almost 200 with several inspiring

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songs. The Pierce County Chapter of Lawyers Helping Hungry Children held its third annual breakfast fundraiser at the Tacoma food bank My Sister's Pantry, and was attended by more than 70 attorneys, including two former WSBA presidents, a large contingent from the Pierce County Prosecuting Attorney's Office, and several Pierce County Superior Court judges. The event raised over \$8,000 for emergency food programs in Pierce County.

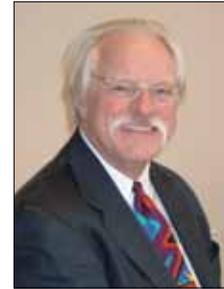
The money raised by Lawyers Helping Hungry Children goes to benefit

organizations that provide food to children of low-income families and for advocacy for childhood hunger issues. Beneficiary organizations include the City of Seattle Summer Food Program, Northwest Harvest, Emergency Feeding Program, WithinReach, CARE, and Children's Alliance. To learn more, see www.lawyershelpinghungrychildren.org.

NOBC Makes Resolution for Robert Welden

In October, retired WSBA General Counsel

Robert D. Welden was honored with a resolution from the National Organization of Bar Counsel (NOBC). Welden retired in



September after 41 years of service to the legal profession. Throughout his career, Welden's overriding commitment has been to public service and client protection. He started his career in 1970 in

private practice, and began his public service with the Seattle Indian Center Legal Services office and the Seattle-King County Public Defender, and joined the WSBA staff in 1981. His public service in the areas of lawyer discipline, court rule development, staff training, transparent governance, and program development has been influential both at the WSBA and in the greater legal community, including on a national level. Welden's leadership was critical to the 1994 Washington State Supreme Court adoption of Admission to Practice Rule 15, which established permanent funding for the WSBA Lawyers' Fund for Client Protection, now one of the premier client protection funds in the nation.

WAACO Provides Much-Needed Nonprofit Assistance

Some of the best nonprofit ideas never come to life. Navigating the tax code or crafting bylaws can be daunting and is often enough to prevent many nonprofits from materializing. But Washington Attorneys Assisting Community Organizations (WAACO) provides free transactional legal assistance to nonprofits and is not only making more nonprofit ideas happen, but helping them stay in existence. Recently when the local Kenyan community wanted to start a rotating collateral pool for small businesses, WAACO found two volunteer attorneys to form the nonprofit and help navigate the heavily regulated banking industry.

According to WAACO's new study, "The Legal Needs of Nonprofits," 92 percent of nonprofits that serve low-income communities have unmet legal needs, primarily because they do not understand how to identify legal issues or how attorneys can help, and are unaware of WAACO's free legal resources. Although WAACO boasts providing \$2 million in legal services and serving 355 nonprofits since 2004, WAACO needs help to expand beyond King County and



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into low-income communities. More attorney volunteers are needed and the community can help by identifying potential clients and providing financial support. To become involved, please email contact@waaco.org.

[In Brief]

Seattle attorney **James S. "Jimmy" Rogers** joined the Board of Directors of the Endowment for Equal Justice in December. The Endowment was established in 1998 as a complementary effort to the Legal Aid for Washington Fund (LAW Fund), which, through its Campaign for Equal Justice annual fund drive raises operating support for Washington's more than 20 civil legal aid programs. Additional information about the Endowment for Equal Justice can be found at www.c4ej.org.

Ryan Durkan was appointed to the Washington State University Board of Regents by Governor **Christine Gregoire** in December. Durkan is an attorney with Hillis Clark Martin & Peterson in Seattle. She is a graduate of WSU and previously served on the Washington State University Foundation Board of Trustees.



In December, Lane Powell attorney **Laura Marquez-Garrett** was named as president of the Board of Directors of The Parkinson's Project. The Parkinson's Project is a 501(c)(3) nonprofit organization committed to transforming the way Parkinson's care is provided by creating a model living environment that inspires life, dignity, and compassion. Marquez-Garrett has been volunteering as a member of the Board since early 2011.

Congratulations to **Matthew Bisturis** and **Tonya Rulli Riddell**, who were named to the *Vancouver Business Journal's* Accomplished and Under 40 Class of 2011. Twenty honorees were selected based on demonstrated professional accomplishments, leadership abilities, efforts on behalf of local nonprofits, and community involvement.

Marjorie Dick Rombauer, University of Washington professor emerita of law, re-

ceived the Outstanding Contributions to Legal Writing Education Award as part of the 2011 Burton Awards for Legal Achievement in June. The awards program is designed to reward major achievements in the law ranging from literary awards to the greatest reform in law.

The WSBA Young Lawyers Division (WYLD) awarded



Joann Plichta Boisen is presented with the Thomas Neville Pro Bono Award by WYLD President Dainen Penta.

attorney **Joanna Plichta Boisen**, of Foster Pepper PLLC, with the 2011 Thomas Neville Pro Bono Award in November. The WYLD Board of Trustees selected Boisen for her commitment to pro bono, her involvement with Washington's access to justice community, and for challenging private law firms to think differently about their commitment to pro bono legal services.

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WSBA members Justice **Bobbe Bridge** (ret.) and **Mary Snapp** were named by the *Puget Sound Business Journal* as 2011 Women of Influence. Justice Bridge is the founding president and CEO of the Center for Children & Youth Justice, and Mary Snapp is corporate vice president and deputy general counsel, Legal Corporate Affairs, at Microsoft.

Sam Baker, partner at Oles Morrison Rinker & Baker, LLP, received the Golden Beaver Award, in the category of Service and Supply, from The Beavers, a heavy engineering construction association, at the group's annual meeting held in January in Los Angeles. Baker's law practice, of over 39 years, focuses primarily on representing construction contractors in evaluating and resolving construction disputes, which often involve complex, multi-party cases.



James Savitt, of Savitt Bruce & Willey LLP, was re-elected as chair of the Pike Place Market Preservation and Redevelopment Authority, the municipal corporation that owns and operates Seattle's famed Pike

Place Market. Savitt was appointed by Seattle Mayor **Mike McGinn**.

Patricia Paul, chair of the WSBA Civil Rights Law Section, visited Bhutan for two weeks in November to lecture on the topic of transformative cultures. Paul lectured in the capital city of Thimphu, at the Royal Academy of the Performing Arts. Paul is also chair of the WSBA World Peace Through Law Section and in December, made a presentation to the section on the Kingdom of Bhutan and "Gross National Happiness and Effective Justice." In July 2012, Paul will be co-convenor at the 54th International Congress of Americanists in Vienna. The theme of the Congress is "Building Dialogues in the Americas." In Vienna, Paul will present the paper she presented in Bhutan. She will be joined by her daughter, Katherine, who will present a paper on the Lushootseed language, based on her research for her undergraduate thesis at Lewis & Clark College.

In September, Chelan Douglas County Volunteer Attorney Services (VAS) announced the following new board members: **David Bentsen, Lou Chernak, Christina Davitt,**

and **Bryan Maroney**. The organization provides free legal services through twice-weekly advice clinics, the Housing Justice Program, senior clinics, and other programs.



Chuck Rullman, an associate in Foster Pepper's Litigation group, was named to the Board of Directors of the Camp Fire USA Central Puget Sound Council in October. Camp Fire is a nationwide youth organization dedicated to providing camping and outdoor experiences for children of all backgrounds.

Geoffrey G. Revelle, a partner in Stael Rives LLP Seattle office, has been re-elected as North American vice-chair and board member of TerraLex®, a global legal network of law firms in October.

The Council on Litigation Management (CLM) announced that **Jacquelyn Beatty** has been selected to be one of the 2011-2012 state chairs for Washington. State chairs assume leadership roles and establish and monitor CLM strategic affiliations for state and local organizations and associations.

Sara Sandford, Garvey Schubert Barer owner, was appointed secretary/operations officer of the American Bar Association International Law Section, one of the largest ABA sections.

Randy J. Aliment, a member in Williams Kastner's Seattle office, was elected as chair of the American Bar Association Tort Trial and Insurance Practice Section (TIPS) for a one-year term that began at the close of the ABA Annual Meeting in Toronto in August. With more than 25,000 members, TIPS unites plaintiff, defense, insurance, and corporate counsel to advance the civil justice system. He is the first Washington chair in the 79-year history of the Section. See the article on the work of the Section on page 31.

The WSBA WYLD online publication, *De Novo*, received first place as part of the ABA Young Lawyers Division Awards of Achievement. 2011 *De Novo* Editor **Allison Peryea** accepted the award. WSBA Communications Specialist/Publications Editor **Stephanie Perry** creates the design and layout. 

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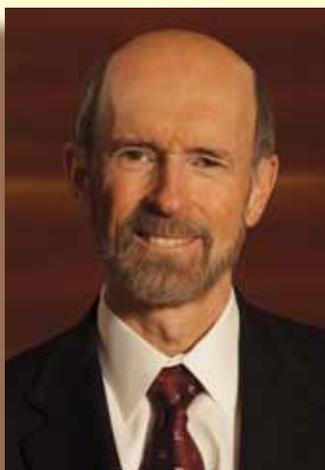
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How Prepared Are We for Cyber Attacks and Other Disasters?

ABA Trial and Insurance Practice Section Focuses on Disaster Preparedness and Security Issues

BY MICHAEL HEATHERLY

When scenes of a natural disaster or act of terrorism hit the media, not many people — even in our profession — think about the legal ramifications of such events. But WSBA member Randy Aliment is dedicating a year to help educate lawyers and others about just that.

Aliment, a partner in the Seattle office of Williams Kastner PLLC, is serving a one-year term as chair of the American Bar Association Tort Trial and Insurance Practice Section. As the theme for his term, he chose the broad subject of disaster preparedness and response. The Section is presenting a series of online and live programs focusing on the legal issues involved. A national meeting of the Section in Seattle last October featured an overview of the subject, a program entitled “Homeland Security 10 Years Later — How Innovation and Technology Have Changed the Approach to Homeland Security Since the 9/11 Attack.”

The program was broken into three seg-

ments, which focused on cyber security, government response to security threats, and insurance protection for “cyber liability” and security-related losses. Each segment included a panel discussion meant to serve as a primer and conversation-starter on the subjects involved. Below is a sampling of comments from the program.

Cyber Security

“Everything today is absolutely dependent on the cyber world,” said Jeffrey Addicott, director of the Center for Terrorism Law at St. Mary’s University School of Law in San Antonio, Texas. Addicott, a retired Green Beret, told how he had recently taken his kids to a movie, only to find that the theater’s computers were down. Not only were the employees unable to sell tickets, he said, but they couldn’t even tell the moviegoers what time the next movie was scheduled to show. That’s how reliant many of us are on computers, he said.

According to Addicott, 85 percent of all computing resources are in the hands of

the private sector, rather than government. That means there is no centralized security system covering the majority of the cyber world, he said. Meanwhile, risks to security come from many angles, and not necessarily those one might expect. Addicott ranks the various risks to cyber security — from most to least likely to occur at a given time — in this order:

- 1) human error (e.g., accidental release of confidential information)
- 2) hacking by business competitors (e.g., stealing data or business secrets)
- 3) cyber crime committed by professional criminals (e.g., identity theft)
- 4) hacking by “script kiddies” (computer-savvy youth looking mainly for thrills)
- 5) cyber terrorism (e.g., politically or ideologically motivated attack on a computer system)

Private businesses are especially vulnerable, Addicott said, because they are built for efficiency and profitability, not security. As a pre-cyber-age analogy, he recounted the tragic story of singer Connie Francis, who was sexually assaulted while staying at a motel in 1974. Her subsequent successful lawsuit against the motel led to reforms in security throughout the lodging industry.

Just as people once had a false sense of security about physical safety, Addicott said, today we have a false sense of security about the cyber world. Unfortunately, it might take some high-profile tragedies — high-tech versions of the Francis case — plus the resulting tort litigation, to get people’s full attention, he said.

Like Addicott, Juval Aviv, president and CEO of Interfor Inc., a New York City-based corporate intelligence and investigation firm, had a recent personal story to tell about cyber security. Aviv had recently bought a bottle of aftershave at a shop in Manhattan, where he lives. He handed the sales clerk his credit card and noticed that she didn’t take it directly to the cash register. Instead, she walked a little ways away, stooped down, and ran the card through a device she removed from her handbag. Aviv confronted her and reported the incident to the police. A detective advised him that he was nearly the victim of one of the many varieties of theft made possible by portable credit card readers. In one common scheme, employees in stores are paid by organized crime rings to swipe customers’ cards through a reader, which transmits identifying information and account numbers to criminals, who store the data

for later use in identity-theft operations. The detective told Aviv that the crime has become so common that they lack the resources to follow up on all the cases.

Such incidents illustrate that cyber crime exists in all areas of everyday life, Aviv said. The practice of law is no exception, he added. He has recently been hired by several law firms who had competitors hacking their data in major litigation cases. Aviv also said that readily available equipment now exists that allows hackers to gain access to smartphones and laptops within minutes. Meanwhile, governments that sponsor cyber spying, such as China, North Korea, and Iran, serve as virtual academies for computer hackers, he said. Even military and government operations with sophisticated security systems have been targets. For example, hackers have attacked the onboard computers of U.S. military airplanes and drones, Aviv said.

Aviv, a retired officer in the Israel Defense Forces, said America has traditionally been known more for reacting to — rather than preventing — security breaches. That attitude will need to change in order to keep up with the rapid growth of cyber threats, he said. Aviv offered a 10-step program by which organizations can prepare

for such threats. His recommendations include such things as conducting a comprehensive inventory of “information assets,” identifying the specific risks facing such assets and ways to control the risks, and developing a recovery plan.

Government Response to Threats

Seattle attorney José Gaitán moderated the second panel discussion, focusing on government response to all types of disasters. He noted the breadth of governments’ exposure to risks, including terrorism. As just one example, the State of Washington ferry system has been identified by the FBI as one of the most likely targets in the United States for maritime terrorism, Gaitán said. The state ferry system is the largest in the country, carrying the equivalent of 26 million passengers per year — more than Amtrak, he added. A single boat can carry as many as 3,000 people at a time, making a single trip a potential disaster. John Batiste, chief of the Washington State Patrol, which is responsible for ferry security, said the state spends \$16 million every two years on security measures.

Meanwhile, other panelists discussed the role of the judiciary in dealing with security issues, particularly terrorism. Hon. John Coughenour, of the U.S. District Court

for the Western District of Washington, along with Jenny Durkan and John McKay (the current and former U.S. attorneys for the District) addressed such issues as the extent to which trials of terrorists should be conducted in closed military commissions rather than in the federal courts.

“We will look back at this period in our history and be ashamed,” said Coughenour, who has been an outspoken critic of trying terror suspects in military commissions, and of indefinite detention at Guantanamo Bay. “We trashed our Constitution because we were afraid.”

Durkan expressed support for generally keeping terrorism trials in the courts, but acknowledged that military commissions are appropriate for certain cases. McKay took a similar position, saying military commissions are the appropriate forum when, for example, the defendant has never taken action within the United States.

Judge Coughenour criticized the recent executive order signed by President Barack Obama authorizing unlimited detention of terror suspects at Guantanamo. Saying “this is a war without end,” Coughenour asked rhetorically whether presidents now have, in effect, free rein to unilaterally order people killed.

He pointed to the case of Anwar al-Awlaki, the Yemeni American who U.S. government officials said was a recruiter and planner for al-Qaeda. Under Obama’s orders, he was killed in an American drone attack in Yemen on September 30, 2011. Two weeks later, his 16-year-old son, also a U.S. citizen, was killed in another drone strike in Yemen.

Durkan and McKay also voiced skepticism about unlimited detention, although McKay acknowledged the measure needs to be available as a “safety card” for extreme cases. He and Durkan said that it appeared al-Awlaki had transformed himself into a legitimate threat to the United States.

Insurance Coverage of Cyber Risks

Kevin Kalinich of Aon Professional Risk Solutions, a Chicago-based risk-management firm, said the insurance industry has been far behind in trying to address cyber security risks. For example, he noted that all insurance excludes coverage for losses from acts of war, but the federal government now has authority to declare cyber attacks as acts of war. In such cases, businesses experiencing huge losses as the result of cyber attacks might find that the losses are not covered by insurance. The industry is

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furiously trying to catch up to these realities, Kalinich said.

Insurers are developing standards to help them more accurately rate the risk of cyber threats and provide appropriate coverage, Kalinich noted. For example, insurers are formulating criteria to use in determining whether retailers meet minimum requirements for credit-card security. Insurers then will be more comfortable writing policies to cover losses involving credit-card theft or fraud, provided that the insureds meet the security criteria. In the meantime, Kalinich said, it is crucial for organizations to analyze their current insurance to see if adequate coverage exists.

In the cyber disasters that have occurred so far, Kalinich added, the greatest economic losses have been the costs to issuing banks to cancel and replace their customers' credit cards after they had been fraudulently used by criminals.

Leib Dodell, CEO and co-founder of ThinkRisk Underwriting Agency, has a background as a media lawyer, having practiced in such areas as libel and intellectual property law. Because of the scope of online communication today, anyone with a website or blog is, in effect, a "media company," said Dodell, whose company specializes in data security coverage. For example, anyone posting information or commentary online has to be concerned about whether the content might expose them to liability for libel or copyright infringement, he said. Few business people are trained to screen material for such exposure, and few think to include coverage for those types of claims when they obtain their basic business policies, Dodell said.

Meanwhile, insurers face daunting tasks in properly rating the risks of cyber disasters, Dodell said. Unlike conventional disasters, such as floods and hurricanes, insurers lack decades of history on which to base their ratings. Meanwhile, unlike other types of disasters, cyber disasters aren't limited by geography. Dodell warned of the potential for a "cyber hurricane," a disaster involving massive losses of data or service, perhaps a chain-reaction incident involving multiple online entities and affecting people throughout the world. Such an event could result in claims involving hundreds or thousands of insurance policies, he said. 

Bar News Editor Michael Heatherly practices in Bellingham. He can be reached at 360-312-5156 or barnewseditor@wsba.org.

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BY MARK J. FUCILE

Since the Washington State Supreme Court's decision in *Short v. Demopolis*, 103 Wn.2d 52, 691 P.2d 163 (1984), the business aspects of law practice have been subject to the Consumer Protection Act (CPA), RCW Chapter 19.86. The CPA generally prohibits "unfair or deceptive acts or practices" in "trade or commerce" under RCW 19.86.020. Economic tensions between lawyers and their clients in recent times — particularly billing and collection disputes — have sharpened the focus of the CPA on law firms. In this column, we'll first briefly survey the elements of a CPA claim and then turn to its particular application to the business of practicing law. Before we do, though, it is important to note at the outset that the CPA is "another" remedy for clients (current and former) in disputes with their lawyers — not an "exclusive" one.

The CPA Generally

As originally enacted in 1961, the CPA addressed deceptive business practices and was enforced by the Attorney General through injunctions and civil penalties. That aspect of the CPA continues, but of more practical import for law firms, a private right of action for damages now codified at RCW 19.86.090 was added in 1970. RCW 19.86.090 also includes treble damages (to \$25,000) and attorney fees.

The Supreme Court outlined five elements for a CPA claim brought as a private action in *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 784-85, 719 P.2d 531 (1986): 1) an unfair or deceptive act or practice; 2) in trade or commerce; 3) which affects the public interest; 4) injury to the plaintiff's business or

property; and (5) a causal link between the unfair or deceptive practice and the injury sustained.

The Supreme Court noted in *Hangman Ridge* (105 Wn.2d at 785) and reiterated more recently in *Panag v. Farmers Ins. Co. of Washington*, 166 Wn.2d 27, 47, 204 P.3d

Wn.2d at 61) as "how the price of legal services is determined, billed, and collected and the way a law firm obtains, retains, and dismisses clients." By contrast, *Short* left issues relating to the quality of legal services to the realm of negligence law rather than the CPA.



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Notwithstanding *Short*, claimants in many circumstances had difficulty with the "public interest" element because they were dealing with essentially private agreements. As *Short* put it (103 Wn.2d at 56): "A breach of a private contract affecting no one but the parties to the contract . . . is not an act or practice affecting the public interest." In *Bertelsen v. Harris*, 459 F. Supp.2d 1055, 1063 (E.D. Wash. 2006), for example,

Lawyer Beware: The Consumer Protection Act

885 (2009), that a claimant "need not show the act in question was intended to deceive, only that it had the capacity to deceive a substantial portion of the public." The Supreme Court observed in *Indoor Billboard/Washington, Inc. v. Integra Telecom of Washington, Inc.*, 162 Wn.2d 59, 75, 170 P.3d 10 (2007), that "[k]nowing failure to reveal something of material importance is 'deceptive' within the CPA." Although many CPA cases focus on deceptive acts, it is important to underscore in the law practice context that "unfair" practices are also prohibited.

Applied to Law Practice

The Supreme Court in *Short* found that the "entrepreneurial aspects of the practice of law" fall within "trade or commerce" under the CPA and further defined those business aspects of law practice (103

the court dismissed a CPA claim against a law firm on this ground in a dispute over a fee agreement. In 2009, however, the Legislature amended the CPA to add RCW 19.86.093(3) so that a claimant can now meet the "public interest" element by showing that the unfair or deceptive act at issue "(a) [i]njured other persons; (b) had the capacity to injure other persons; or (c) has the capacity to injure other persons." Even before the 2009 amendments, *Hangman Ridge* (105 Wn.2d at 790) noted that the "public interest" element could be satisfied if the defendant advertised to the general public. With the advent of law firm websites, lawyers often not only advertise to the general public, but in many instances feature statements that walk directly into the CPA along the lines of "we charge fair prices."

Client Acquisition. The Supreme

Court in *Eriks v. Denver*, 118 Wn.2d 451, 465, 824 P.2d 1207 (1992), held that a lawyer would violate the CPA if the lawyer failed to disclose conflicts “for the purpose of obtaining clients or increasing profits.” In *Eriks*, the lawyer was working for the promoters of a tax shelter at the same time that he took on potential investors in the tax shelter as clients. The former investor clients argued that they would not have hired Eriks had they known he was working for the tax shelter promoters. Although the Supreme Court found that disputed issues of material fact precluded the summary judgment, it also held that the determination of whether particular conduct was driven by “entrepreneurial purposes” is a question of fact. In other words, a jury gets to decide the lawyer’s motive.

Billing. Improper billing practices have long been a staple of disciplinary cases, ranging from “initial switching” on bills to misrepresent who did the work (*In re Dann*, 136 Wn.2d 67, 77, 960 P.2d 416 (1998)), to falsifying expenses (*In re Haskell*, 136 Wn.2d 300, 307-12, 962 P.2d 813 (1998)), to including work outside the scope of the fee agreement (*In re Marshall*, 160 Wn.2d 317, 335, 157 P.3d 859 (2007)). In other contexts (see, e.g., *Indoor Billboard/Washington, Inc. v. Integra Telecom of Washington, Inc.*, 162 Wn.2d at 78-83), the Supreme Court has concluded that deceptive billing practices violate the CPA and that payment alone may be sufficient evidence of injury.

Firms that include standardized “billing practices” as addenda to fee agreements need to make sure both that the “standard practices” comport with the RPCs and that their actual bills mirror their agreements. By labeling them as “standard,” firms effectively invite the conclusion that the “public interest” element of the CPA has been met because they are using them with all of their clients. Similarly, firms that routinely take stock in lieu of fees and advertise that fact on their websites need to meet the high bar for disclosure under RPC 1.8(a) or may face a CPA claim layered in with other remedies if a dispute results. In *Cotton v. Kronenberg*, 111 Wn. App. 258, 273-74, 44 P.3d 878 (2002), for example, the Court of Appeals found that other disciplinary complaints about a lawyer’s fee practices were relevant to show that the “public interest” was invoked for purposes of the CPA in a dispute over property taken in

lieu of fees. Further, firms that allocate overhead expenses, such as computerized legal research or similar items purchased in bulk, should carefully review Comment 1 to RPC 1.5 and WSBA Ethics Advisory Opinion 2120, both of which discuss the critical need for any allocated charges to reasonably approximate actual costs incurred. The very fact of allocation across an entire client base suggests that any improprieties are also allocated across that same client base in a way that invites application of the CPA.

Collections. The federal district court in Seattle noted pungently in *Lang v. Gordon*, No. C10-819RSL, 2011 WL 62141 at *3 (W.D. Wash. Jan. 6, 2011) (unpublished), that “lawyers who are acting as debt collectors are engaging in the entrepreneurial aspects of law rather than practicing law.” Accordingly, firms need to take special care when corresponding with clients (current or former) in an effort to collect a bill to ensure that the statements made in their “dunning letters” are accurate. If they are not, the firm may have opened itself to a counterclaim under the CPA that may quickly deflate the economic value of the bill it was seeking to collect.

Summing Up

The economic hard times of the recent past have put the business aspects of law practice front and center in many attorney-client relationships. Prudent law firm risk management counsels careful review of those practices from client intake to billing to collections — together with how a firm advertises its business practices on the web. Firms may otherwise find themselves facing a CPA claim with its enhanced damages and attorney fee remedies. ☞

Mark Fucile, of Fucile & Reising LLP, handles professional responsibility, regulatory, and attorney-client privilege matters and law-firm-related litigation for lawyers, law firms, and legal departments throughout the Northwest. He is a past chair and a current member of the WSBA Rules of Professional Conduct Committee, a past member of the Oregon State Bar Legal Ethics Committee, and a member of the Idaho State Bar Professionalism and Ethics Section. He is a co-editor of the WSBA’s Legal Ethics Deskbook and the OSB’s Ethical Oregon Lawyer. He can be reached at 503-224-4895 and mark@frllp.com.

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

Alice Marie Blado

From University Place, Alice Blado was senior counsel to the Washington State Attorney General. She enjoyed boating Puget Sound during her 23 years as a member of Day Island Yacht Club. She loved spending time with her family, political discussions, and good wine.

Alice Blado died June 20, 2011, at the age of 61.

Madeleine Ann Fremont Brenner

Born in Manhattan, Madeleine Brenner attended Queens University in Ontario and graduated from the University of Wisconsin Law School. She practiced for 11 years at Foster Pepper and Buck & Gordon before choosing parenting and volunteer work for her vocation. She was an ordained Presbyterian elder. She loved to cook, swim, walk, read, and meet with her women's book/Bible study group.

Madeleine Brenner died October 25, 2011, at the age of 54.

Judge William L. Brown Jr.

A lifelong resident of Tacoma, Judge William Brown served in the Army Medical Corps during World War II. He graduated from the University of Washington School of Law. He served as a city of Tacoma prosecuting attorney and in private practice. In 1967, he was appointed Pierce County Superior Court judge and served for 22 years before retiring. He was chair of the Superior Court Judges' Association and a member of the University Union Club, the Holiday Dance Club, Civitan, and the Tacoma Lawn Tennis Club. He took art classes and enjoyed painting.

Judge William Brown Jr. died October 7, 2011, at the age of 90.

Michael J. Chappell

Michael Chappell had a passion for environmental law and ensuring that Eastern Washington's water was safe and clean.

He moved to Spokane from San Francisco in 2009 and started the Spokane Riverkeeper program. He also founded Gonzaga's Environmental Law Clinic in that same year.

Michael Chappell died September 11, 2011, at the age of 44.

Frank J. Connelly Jr.

Born in Spokane, Frank Connelly obtained a degree in criminal justice from Central Washington University and a J.D. from Seattle University School of Law. He was a certified EMT and ambulance paramedic. After serving as deputy sheriff for Kitsap County, his interest turned to law and law enforcement. He then served as a police officer and detective for the city of Port Orchard. He maintained a professional practice as a consultant and expert witness for police legal issues. He was an instructor and legal technical expert for the Federal Law Enforcement Training Center in Artesia, New Mexico. He was a ham radio enthusiast, collected transistor radios, and enjoyed motorcycles and camping.

Frank Connelly died October 10, 2011, at the age of 59.

Keven J. Davis

Keven Davis was a sports and entertainment lawyer who represented clients such as Sir Mix-A-Lot and Serena Williams. He received his law degree from Berkeley Law—University of California. He lived in California and Seattle until moving his practice to Manhattan. He earned recognition in 2003 from *Sports Illustrated* as one of its 101 Most Influential Minorities in Sports. Davis enjoyed spending time coaching his sons' basketball teams and volunteering on many community boards. He guided many young artists through the legal ins-and-outs of the entertainment industry.

Keven Davis died December 23, 2011, at the age of 53.

Charles Raymond Eberle

Ray Eberle was born on the family farm at Cabbage Flats near Tekoa. He graduated from Tekoa High School, attended North Idaho College, and received his law degree from Gonzaga University School of Law in 1966. He moved to Spokane in 1967 and entered private practice. In 1978, he started his own law firm in the Spokane Valley, where he

practiced for 33 years. He was a member of the Christian Legal Society, Gideons International, and the Union Gospel Mission Foundation Board.

Charles "Ray" Eberle died October 12, 2011, at the age of 73.

Judge Richard A. Headrick

Judge Richard Headrick served as a Port Angeles City Council member and was the council-appointed mayor in 2004–2005. He was a former Clallam County District Court judge.

Judge Richard Headrick died December 7, 2011, at the age of 74.

Ernest M. Ingram

Ernie Ingram was a lifetime Aberdeen resident. His grandfather was one of the early Lake Quinault pioneers. He attended the University of Washington and earned a J.D. from its School of Law in 1950. In 1960, after working in private practice, he founded the firm that is now known as Ingram, Zelasko and Goodwin. He practiced for more than 50 years before retiring in 2006. He provided many hours of pro bono legal work for numerous community organizations. He served with the Grays Harbor Community Foundation, the Grays Harbor Chamber of Commerce, the Aberdeen Rotary Club, United Way of Grays Harbor, and Driftwood Players. He acted in more than 100 Driftwood productions and also focused on set design.

Ernie Ingram died on October 1, 2011, at the age of 85.

Herbert H. Kaiser Jr.

Born in Decatur, Illinois, Herbert Kaiser attended the University of Paris, graduated from Yale University, earned his J.D. from Harvard Law School, and received an M.B.A. from The George Washington University. He enlisted in the U.S. Air Force, served as a loadmaster, and became an intelligence officer. He continued to serve for the next 30 years as member of the Ready Reserve and retired in 1987 as brigadier general. He was awarded the Air Force Distinguished Service Medal when he retired. He practiced law in corporate and public-sector positions and with the Department of the Defense at the Pentagon.

Herbert Kaiser died October 25, 2011, at the age of 79.

Judge Gerald L. Knight

Judge Gerald Knight earned his law degree from the University of Washington School of Law. He became Snohomish County's first full-time court commissioner in 1980. Two years later, he was appointed as a Superior Court judge. He presided over many of the county's most high-profile cases. He loved his family and his job.

Judge Gerald Knight died August 15, 2011, at the age of 68.

Harry Levitch

Harry Levitch was born in Spokane, attended the University of Washington, and received his law degree from Gonzaga University School of Law. He served in the Navy in World War II with the Hospital Corps — many Marines called him "Doc" and he treated Japanese POWs. He later joined the Washington Army National Guard as a judge advocate and retired as a colonel. He was a member of Temple Beth Shalom, the National Guard Association of Washington, and VFW Post #51. He did pro bono work for the Center for Justice in Spokane.

Harry Levitch died August 29, 2011, at the age of 85.

Bonnie M. Martin

Born in Lewiston, Idaho, Bonnie Martin graduated from the University of Idaho and earned her law degree at Gonzaga University School of Law. She served as deputy prosecutor for Kitsap County. She was a member of the Kitsap County Bar Association and the Kitsap County Prosecutors Guild. She enjoyed gourmet cooking, scrapbooking, craft projects, reading, and raising her two daughters.

Bonnie Martin died October 14, 2011, at the age of 45.

Mark S. Moorer

Born in Spokane, Mark Moorer graduated from the University of Idaho and received his J.D. from its School of Law. He had a law practice in Moscow, Idaho, and was known for his civic and community affairs. He was a member of the Potlatch School Board, the Idaho Defenders, and was a former president of the Idaho State Bar. He had a lifelong love of farming and ranching and enjoyed fishing, hunting, and collecting tractors.

Mark Moorer died October 18, 2011, at the age of 52.

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Sidney Charlotte Tribe
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Theodore L. Preg

Born in Buffalo, New York, Ted Preg graduated from Dartmouth College. He served as a line officer in the U.S. Navy during the Vietnam War. That service brought him to Seattle, where he spent 37 years as a lawyer and was a founding member of Preg, O'Donnell & Gillett. His legal practice focused primarily on defense of liability matters. He mentored many lawyers, and enjoyed the challenge of managing attorneys and staff and ensuring the growth of the firm. He loved to play golf and played in Scotland,

Ireland, and at many U.S. courses. He liked spending time at a second house on the water in Skagit County where he watched wildlife, biked, kayaked, and walked his dogs.

Ted Preg died October 22, 2011, at the age of 66.

Arnold B. Robbins

Army Robbins grew up in the Cherry Street neighborhood in Seattle. He graduated from Garfield High School and earned undergraduate and law degrees from the University of Washington. He

spent seven years in the U.S. Army and Army Reserves. He was a partner in the law firm that became Breskin & Robbins for more than 30 years. His involvement in the Jewish community was extensive: he served on the American Jewish Committee, the Temple De Hirsch Sinai Board, and with Endless Opportunities. He loved playing his trumpet in community musical groups, dancing, and traveling the world.

Army Robbins died September 25, 2011, at the age 83.

Albert D. Rosellini

Albert Rosellini was a former Washington State governor who served two terms from 1957 to 1965. He was born to Italian immigrant parents in Tacoma and grew up in the Rainier Valley. He graduated from the University of Washington School of Law in 1933. He then worked for the King County Prosecutor's Office. He ran for a state Senate seat and was elected in 1938. He built a reputation for getting things done and tackling sensitive issues. In 1945, he introduced a bill establishing the University of Washington medical and dental schools. He urged investigation and overhaul of the state's prisons, mental health hospitals, and juvenile homes. He was the first Italian-American and first Catholic governor west of the Mississippi. As governor, he was credited with investments in public infrastructure including the Lake Washington floating bridge for which he supported the Evergreen Point-Montlake location. The bridge was named in 1988 in his honor. He kept active and busy until the end of his life maintaining regular office hours at his firm.

Albert Rosellini died October 10, 2011, at the age of 101.

William H. Rubidge

Born in Tacoma, Bill Rubidge received his bachelor's and law degrees from the University of Washington. His law practice was primarily as an assistant United States attorney. He served as an officer in the U.S. Army. He was a member of Beta Theta Pi fraternity and the Elks. He loved his two Scotty dogs and playing piano by ear. He enjoyed reading history books and maintained an extensive library.

Bill Rubidge died on December 12, 2011, at the age of 76.



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Anthony Savage

Tony Savage was a criminal defense attorney known for defending high-profile clients including Gary Ridgway, the Green River killer; David Lewis Rice, murderer of four members of the Goldmark family in 1985; and Charles Campbell, a convicted rapist who escaped from prison and killed a woman who testified against him and her daughter. Savage was from North Seattle, attended Roosevelt High School, Wesleyan University in Connecticut, and earned his law degree from the University of Washington School of Law. He joined the King County Prosecutor's Office in 1956 and went into private practice six years later.

Tony Savage died January 3, 2012, at the age of 81.

Kenneth A. Schiffler

Born in Bellingham, Ken Schiffler was raised in Lynden. He attended the University of Washington and earned two graduate degrees in communications and law. He served with the Snohomish County Prosecutor's Office and went on to work for the State Court of Appeals. He served as judge *pro tem* in the Snohomish and King county courts. He had a passion for the performing arts and was a gifted musician, playing a variety of instruments. He served as PTA president and a Boy Scout troop leader.

Ken Schiffler died December 3, 2011, at the age of 52.

Judge Theodore F. Spearman

A Bainbridge Island resident since 1983, Judge Ted Spearman was the first African American to join the Kitsap County bench. He was appointed by Governor Gary Locke in 2004 and re-elected twice. He attended Stanford University and earned his law degree at the University of Michigan School of Law. His courtroom decorum was always one of professionalism and mutual respect. He was known for decisions that heightened the standards of protections for nursing and group-home residents and that respected diversity. He served on WSBA committees and boards, including the Civil Rights Committee and the Disciplinary Board. Spearman loved nature, playing golf, and studying Native American culture. He enjoyed music and played the flute and drums.

Judge Ted Spearman died January 3, 2012, at the age of 64.

Judge Fred R. Staples

Fred Staples was the longest-standing judge on the Benton-Franklin Superior Court bench when he retired in 1994. He served as a Franklin County District Court judge for 12 years before being appointed to the Superior Court in 1974. He was known for his numerous efforts to relocate the Benton County seat from Prosser to Kennewick. Staples was interested in genealogy and did extensive

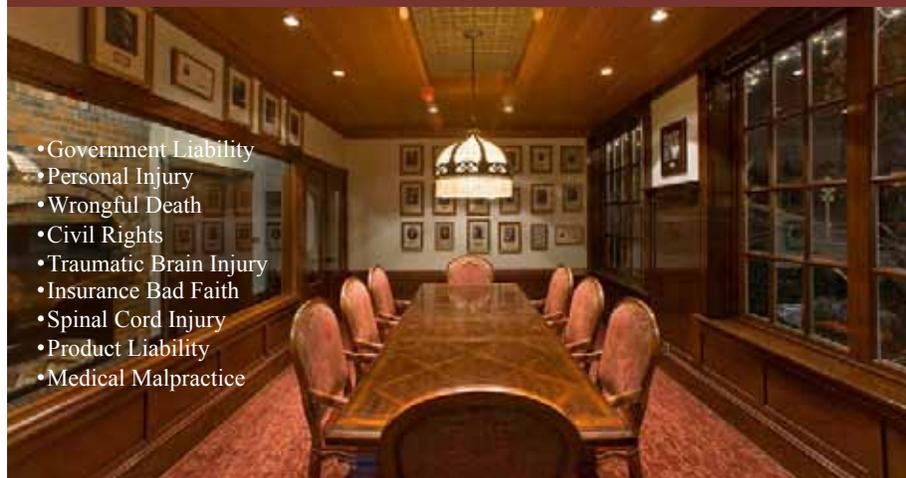
research on his family's history. He discovered a link to the town of Staples, Minnesota, and was thrilled when the town made him a grand marshal for the Fourth of July parade.

Judge Fred Staples died September 19, 2011, at the age of 77.

James M. Stewart

Jim Stewart was born and raised in Aberdeen. It was said his grandmother Jean was credited with suggesting that Sam Benn name his city "Aberdeen" after her home in Scotland. He worked as

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a logger, a car dealer, and at Posey Manufacturing. He attended Grays Harbor College and earned his law degree from the University of Washington School of Law. He served as a U.S. naval officer in World War II and was recalled to active duty for the Korean War. Stewart was awarded the Navy's Gold and Silver stars. He served as a part-time prosecuting attorney and worked for many years in private practice. He was involved in the tree farming and shake and shingle business. Stewart was a member of the Montesano School Board, the Washington Farm Forestry Association, the Masonic Lodge, Wynooche Grange, and was a Boy Scout leader for Troop 16.

Jim Stewart died November 23, 2011, at the age of 96.

Mark D. Theune

Mark Theune grew up in Wisconsin. He was an attorney with the Coupeville firm of Cohen, Manni, Theune, and Manni for more than 25 years. He was the town of Coupeville's prosecuting attorney. Theune was active in his community as a volunteer at St. Augustine Catholic Church in Oak Harbor. He was an experienced diver, underwater photographer, and a member of the board of the Maritime Documentation Society.

Mark Theune died August 15, 2011, at the age of 58.

Thomas W. Top

Born and raised in Olympia, Tom Top attended Olympia High School, the Naval Academy in Annapolis, Maryland, and served for four years in the Navy on a destroyer squadron. He earned his law degree at the University of Washington School of Law. He was chosen to work for the Civil Rights Division at the United States Department of Justice and prosecuted violations of integration policy in school districts in the 1960s under Attorney General Ramsey Clark. After serving with the Justice Department, he worked at several law firms in the Pacific Northwest until retiring in 2001. He loved the outdoors and moved to his cherished log house in Republic in 2002.

Tom Top died December 22, 2011, at the age of 85.

Bar News has also learned of the death of Gary Chung Huie on September 13, 2011, at the age of 60. 

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The WSBA Professionalism Committee considers revisions to the Creed of Professionalism.

We invite you to apply for service on a WSBA committee, board, or panel. Below and on the back of this page, you will find many opportunities to serve. Apply online* through myWSBA.org from January 3 until March 12. Most of the positions begin October 1. For more information, see www.tinyurl.com/wsbavolunteeropps.

* If you need a paper application, please see www.tinyurl.com/wsbacommitteetools or contact Sharlene Steele at 206-727-8262 or barleaders@wsba.org.

Committee, Board, Panel, and Other Positions for 2012–2013

COMMITTEES

Amicus Curiae Brief Committee

Reviews all requests for amicus curiae participation by the WSBA, and provides a recommendation to the Board of Governors pursuant to the WSBA Amicus Curiae Brief Policy. Appointment is for a two-year term.

Committee for Diversity

Works to increase diversity within the membership and leadership of the WSBA; promotes opportunities for appointment or election of diverse members to the bench; supports and encourage opportunities for minority attorneys; aggressively pursues employment opportunities for minorities; and raises awareness of the benefits of diversity. Appointment is for a two-year term.

Continuing Legal Education (CLE) Committee

Provides policy guidance for the WSBA Education and Outreach Department in fulfilling its mission of serving the ongoing education needs of Washington lawyers. The CLE Department and its efforts have to be fiscally self-sustaining, which requires a business focus in the Committee. Standing subcommittees are quality control, technology, section/external relations, and a fourth “as needed” programming sub-committee to support the department in achieving its trademark, “The Innovator in Continuing Legal Education.” Appointment is for a three-year term.

Court Rules and Procedures Committee

Studies and develops suggested amendments to designated sets of court rules on a regular

cycle of review. Performs the rules study function outlined in GR 9 and reports its recommendations to the Board of Governors. The Rules of Appellate Procedure (RAP) and the Rules for Appeal from Decisions of Courts of Limited Jurisdiction (RALJ) are scheduled for review in 2012-2013. Lawyers with experience or interest in these areas are encouraged to apply. Appointment is for a two-year term.

Editorial Advisory Committee

Acts mainly in an advisory capacity, supervising the publication of *Bar News*, including the recommendation of finalists for the editor position for selection by the Board of Governors, and the establishment of guidelines for format, content, and editorial policy. Appointment is for a two-year term.

Judicial Recommendation Committee

Screens and interviews candidates for state Court of Appeals and Supreme Court positions. Recommendations are reviewed by the WSBA Board of Governors and referred to the governor for consideration when making judicial appointments. Appointment is for a three-year term.

Legislative Committee

Reviews proposals from WSBA sections for state legislation that relate to the practice of law and the administration of justice, and makes recommendations to the Board of Governors for a position thereon. Appointment is for a two-year term.

Pro Bono and Legal Aid Committee

Deals with questions in the fields of pro bono and legal aid with respect to: 1) supporting activities that assist volunteer attorney legal services programs and organizations, and encouraging pro bono participation to meet the aspirational goals in RPC 6.1, Pro Bono Publico Service; 2) addressing the administration of justice as it affects indigent persons; and 3) cooperating with other agencies interested in these objectives. Both active and emeritus members may serve. Appointment is for a two-year term.

Professionalism Committee

Recommends programs to increase professionalism by assisting attorneys in fostering better client relations; improving civility among attorneys; and creating and promoting educational opportunities focusing on issues related to professionalism, ethics, and civility. Appointment is for a two-year term.

Rules of Professional Conduct Committee

Considers and responds to inquiries arising under the Rules of Professional Conduct (RPC) and may, upon request, express its opinion to the Board of Governors concerning proper professional conduct. Appointment is for a two-year term.

BOARDS

Character and Fitness Board

Deals with matters of character and fitness bearing on qualifications of applicants for admission to practice law in Washington; conducts hearings on the admission of any applicant; makes recommendations to the Board of Governors and Supreme Court; and considers petitions for reinstatement after disbarment. Appointment is for a three-year term. Prerequisite: Board members must have been an active member of the WSBA for at least seven years at the time of appointment. Four positions are available: applicants must be from District 4, 6, 7, or 9.

Disciplinary Board

Carries out the functions and duties assigned to it according to the Rules for Enforcement of Lawyer Conduct adopted by the Supreme Court. The full board meets at least six times a year, reviewing hearing officer decisions and stipulations. Three-member review committees meet at least an additional three times a year and review disciplinary investigation reports and dismissals. Considerable reading and meeting preparation are required. Appointment is for a three-year term. Prerequisite: Board members must have been an active member of the WSBA for at least seven years at the time of appointment. Three positions are available: one must be filled by a member from District 8, one by a member from District 9, and one by a member from any district.

Law Clerk Board

Supervises the Law Clerk Program in accordance with Rule 6 of the Admission to Practice Rules; considers applications for enrollment in the program; follows the progress of law clerks assigned to liaison; interviews and evaluates law clerks and tutors during the course of study; and certifies that law clerks have successfully completed the program meeting the educational requirement for the Washington State bar exam. The board has regular meetings four times a year and may call additional meetings for special topics. Appointment is for a three-year term. Members are appointed with consideration for the geographic distribution of law clerks in the program, a balance of those who completed the law clerk program and law school graduates, and other factors of diversity.

Lawyers' Fund for Client Protection Board

Pursuant to APR 15, reviews claims for reimbursement of financial loss sustained by reason of an attorney's dishonest actions or failure to account for client funds; decides claims up to \$25,000; and makes recommendations to the Board of Governors on claims for greater amounts. The Board meets four times a year. Appointment is for a three-year term.

Mandatory Continuing Legal Education Board

Approves courses and educational programs that satisfy the educational requirements of the mandatory CLE rule and considers MCLE policy issues, as well as reporting and exception situations. The Board meets five to six times a year. Appointment is for a three-year term.

PANELS

Adjunct Investigative Counsel (AIC) Panel

Panel members assist in carrying out the functions of the lawyer discipline system as needed pursuant to Rule for Enforcement of Lawyer Conduct 2.9. AIC volunteers may be asked to assist staff disciplinary counsel with the investigation of a grievance; serve as independent special disciplinary counsel and represent the Association in the investigation of a grievance or prosecution of a disciplinary case; provide staff disciplinary counsel with an outside opinion on an area of law; serve as a probation monitor following imposition of a disciplinary sanction or suspension; consult with a lawyer under the terms of a diversion contract; or serve as a file custodian when a lawyer dies, disappears, or otherwise becomes incapable of protecting clients' interests. In addition to completing the application form, applicants are required to submit separately a letter of interest (highlighting relevant skills and experience) and résumé to Doug Ende, Chief Disciplinary Counsel, WSBA, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539 or douge@wsba.org. Appointment is for a five-year term. Prerequisites: An AIC must be an active member of the WSBA, have been an active or judicial member of the WSBA for at least seven years, and have no record of disciplinary misconduct.

Hearing Officer Panel

Panel members serve as hearing officers for lawyer disciplinary matters and are expected to make evidentiary rulings, rule on motions, and prepare written findings of fact, conclusions of law, and (as necessary) sanction recommendations according to strict deadlines. Attendance at annual training is required. Hearing officers may not serve as expert witnesses on profes-

sional conduct issues, represent respondents in disciplinary matters, or serve as special disciplinary counsel or adjunct investigative counsel. The Hearing Officer Selection Panel reviews applications and makes recommendations to the Board of Governors for appointments to the panel. In addition to completing the application form, applicants are required to submit separately a letter of interest (highlighting relevant skills and experience), résumé, references, and writing sample to Elizabeth Turner, WSBA, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539 or elizabeth@wsba.org. All application materials and requested information must be submitted before March 12 in order to be considered for appointment, and the Selection Panel may request additional information during the evaluation process. Initial appointment is for one year commencing October 1, 2012, and may be followed by reappointment for five-year terms. Prerequisites: A hearing officer must be an active member of the WSBA, have been an active or judicial member of the WSBA for at least seven years, have no record of public discipline, and have experience as an adjudicator or advocate in contested adjudicative hearings. Please review the Rules for Enforcement of Lawyer Conduct, particularly ELC 2.5 to 2.6 and ELC Title 10, prior to applying.

OTHER POSITIONS

Conflicts Review Officer

The Conflicts Review Officer (CRO) is appointed pursuant to Rule 2.7 of the Rules for Enforcement of Lawyer Conduct. The CRO, with support from the Office of General Counsel, is a lawyer outside the discipline system who reviews and makes initial determinations for grievances filed against disciplinary counsel and other lawyers employed by the Association, hearing officers, and members of the Disciplinary Board, the Board of Governors, and the Supreme Court. The CRO may dismiss the grievance, defer the investigation, refer the attorney for diversion evaluation, or have the grievance assigned to special disciplinary counsel for further investigation. The CRO acts independently of disciplinary counsel and the Association. Three CROs serve staggered terms; each year one CRO will be appointed to a three-year term. The Supreme Court makes the appointments based on recommendations from the WSBA Board of Governors. Prerequisites: The CRO must have prior experience as a Disciplinary Board member, disciplinary counsel, or special disciplinary counsel, and have no other role in the disciplinary system while serving as CRO. If you are interested in the position, please submit a letter of interest, references, and résumé separately from (and in addition to) the application form to Elizabeth Turner, WSBA, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539 or elizabeth@wsba.org. Please review the Rules for Enforcement of Lawyer Conduct, particularly ELC 2.7, prior to applying.

Council on Public Defense

The Council on Public Defense was established to implement the recommendations of the WSBA Blue Ribbon Panel on Criminal Defense, which was appointed by the Board of Governors in spring 2003 as a first step in addressing concerns about the quality of indigent defense services in Washington. Appointment is for a one-year term. Prerequisite: Applicants must not be employed by a government entity or government-funded entity.

WSBA Board of Governors Meeting

December 9–10, 2011,
Bellingham

BY MICHAEL HEATHERLY

At its meeting December 9–10, 2011, in Bellingham, the Board of Governors moved toward possible elimination of admonitions from the disciplinary system, and began discussion of the potentially delicate process of reorganizing BOG seats to accommodate the new 10th U.S. Congressional District. The BOG also voted to support three bills in the 2012 state Legislature, involving estate tax apportionment, escrow licensing, and the formation of social purpose corporations.

Admonitions

The BOG has been working on extensive revisions to the Rules of Enforcement of Lawyer Conduct (ELC), which govern the procedures used in the lawyer discipline system. What has prompted the most debate among BOG members are the provisions involving admonitions, the lowest level of public discipline. In past meetings, several governors raised concerns about the long-term detrimental effects on admonished lawyers' reputations. Some have argued that the ELC Drafting Task Force recommendation to make admonition records permanent would unfairly burden lawyers whose transgressions were modest compared to those who receive more severe disciplinary sanctions. Some had even suggested abolishing admonitions. At its September meeting, the BOG sent the proposal back to the ELC Drafting Task Force for debate and further revision, perhaps even including abolishment of admonitions.

At the December meeting, the BOG discussed the latest draft amendments. The Task Force reiterated its proposal to retain admonitions as a feature of the discipline system, while revising and clarifying provisions regarding public disclosure and permanency of admonition records. But several governors again voiced their concerns about retaining admonitions at all.

Governor Roger Leishman (7th District West) maintained that over the years admonitions have evolved from a relatively informal disciplinary alternative into

something that, in terms of public perception, may be indistinguishable from the higher levels of discipline. For example, an admonition notice looks much the same in *Bar News* and on the WSBA online lawyer directory as a reprimand notice, he said.

Leishman made a motion to send the proposal back to the ELC Task Force with instructions to remove admonitions altogether from the discipline system and instead provide for authority to impose some form of non-public sanction for the types of violations that are now handled as admonitions.

Seconding Leishman's motion was Governor Carla Lee (at-large, WYLD). She noted that because of the difficult job market, many new lawyers are forced to practice alone, increasing the risk of their committing the type of violation that might lead to admonition. The Bar doesn't provide as much guidance and mentorship as it should, she argued, and it needs to show compassion toward such members.

Governor Leland Kerr (4th District) also spoke of moving more toward compassion than strict judgment in cases involving the types of violations to which admonitions apply. In practice, an admonition has become more like a reprimand (a higher level of

discipline) than a non-disciplinary resolution, he said. Governor Marc Silverman (1st District) acknowledged that the BOG had to weigh compassion for disciplined lawyers against the need to protect the public from unscrupulous acts, but a lawyer shouldn't need to wear a virtual "scarlet letter" for years, or even decades, after committing a relatively minor violation, he said.

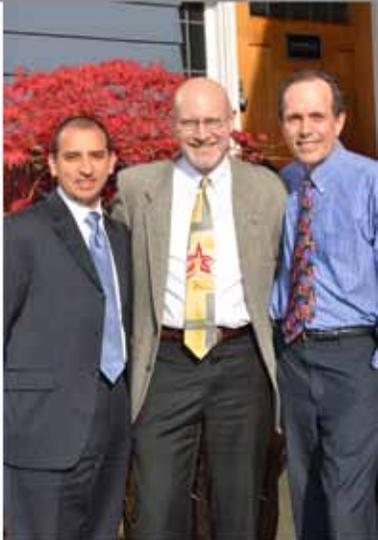
Governor Phil Buri (2nd District), who ultimately cast the only vote against Leishman's motion, pointed out that under the existing system a lawyer who commits a relatively minor violation can be placed into the diversion program rather than receiving public disciplinary action.

Doug Ende, director of the WSBA Office of Disciplinary Counsel, commented that the ELC Task Force drafted its proposal after four years of study by leaders in the field of lawyer discipline. He urged the BOG to defer to the work of the Task Force and approve the current proposal. He indicated that if the current Task Force proposal is ultimately rejected by the BOG, he would seek BOG authorization to advocate for the proposal before the Washington State Supreme Court, which must approve all the ELC revisions for them to go into effect.

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Leishman's motion to send the proposal back to the ELC Task Force to eliminate amendments passed 12-1. A revised proposal is expected to be taken up by the BOG at an upcoming regular meeting.

10th Congressional District BOG Seat

Also at the December meeting, the BOG had its first discussion regarding how the composition of the Board will be affected by the impending addition of a 10th U.S. Congressional District. By state statute, the BOG must include at least one member

from each U.S. Congressional District; however, the Board is limited to 15 total seats. The BOG already has 15 members: one each from congressional districts 1 through 6, three from District 7 (the Seattle metropolitan area), one each from districts 8 and 9, three non-geographically restricted at-large positions, and the WSBA president. One of the at-large positions represents the WYLD, while the other two represent historically under-represented WSBA members, based on such criteria as remote geographic location, gender, and ethnic or sexual minority status (diversity seats).

To accommodate a member from the new district, the BOG must either eliminate one of the existing seats or get the state Legislature to amend the statute to add a 16th position to the BOG. Because each district must have at least one representative, the only options within the 15-seat limit would be to eliminate one of the 7th District seats or one of the three at-large positions.

At the December meeting, Governor Kerr presented the first report from a task force appointed by the BOG to study the issue. The report presented what committee members felt were the three most feasible solutions. They were:

1. Convert one of the three 7th District seats from a geographically defined position to a diversity position, but representing only lawyers within the 7th District. This would eliminate one of the statewide diversity seats.
2. Replace the WYLD seat with the new 10th District position, with no other changes. This would leave the WYLD without a designated representative on the BOG.
3. Depending on the lawyer population in the 7th District once redistricting is completed (the borders of the new 10th District had not been finalized at the time of the December BOG meeting), remove one of the three 7th District seats and use it as the 10th District seat. This would require no change in the at-large seats.

The report also noted, "The Committee was of the opinion that asking the Court or the Legislature to change the number of seats on the Board is not an approach that the Committee would recommend." At the BOG meeting, committee members indicated skepticism that the Legislature would take much interest in a bill that affected only the WSBA.

The statute allows sitting BOG members to serve out their remaining terms despite the addition of a congressional district, and the reorganization does not have to be completed before the 2012 BOG elections. In addressing the committee report, the current holders of all three at-large positions complained that the options offered by the Committee had been formulated without input from entities, such as the minority bar associations, that represent WSBA members who stand to lose representation on the BOG.



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Governor Tracy Flood (at-large) wrote a letter to her colleagues on the Board, pointing out that 2011 was the 10th anniversary of the BOG's addition of the at-large seats. "In that time the seat has been filled by representatives from a variety of traditionally underrepresented groups, i.e., gender, ethnicities, color, geographic, who have contributed richly to the substance and the vision of this association Restriction of those seats would be contrary to the intent embodied in their creation and a grievous step backwards for WSBA." Flood recommended that the proposal be sent back to the Committee to solicit comment from all potential stakeholders. She, together with Governor Susan Machler (9th District), argued — contrary to the Committee's position — that the Bar should seek action by the Legislature to increase the total number of BOG seats if no other solution is available without losing an at-large position.

Governor Lee said that having the young lawyers' voice on the Board is critical, as they represent the future of the profession. Governor James Armstrong (at-large) said that while he recognized that the Committee's suggestions were preliminary, he was troubled that the Committee had done no vetting of them with stakeholders before presenting the report to the BOG.

Governor Daniel Ford (7th District East) moved for the Board to table action on the reorganization until the borders of the 10th District are finalized, but to begin soliciting input from stakeholders in the meantime. The motion passed, with amendments noting that the reorganization would not affect the 2012 BOG elections.

Legislative Proposals

In other business at the December meeting, the BOG voted to sponsor three bills expected to be introduced in the 2012 Legislature. They involve:

- Estate tax apportionment. The bill would exempt small gifts, given pursuant to a will or revocable trust, from the statutory estate tax that is apportioned when a decedent fails to provide for apportionment of the estate tax in the will or trust documents. The unpaid tax is then reapportioned among the takers of the larger gifts.
- Escrow licensing. The bill would address separation of powers concerns raised after the enactment of ESHB

2564 in 2010, which modified the licensing requirements of attorneys as it relates to providing escrow services. The WSBA worked with the Department of Financial Institutions, the agency with regulatory and licensing authority over escrow agents, to reach agreement on this proposal.

- Social purpose corporations. The bill would create a new type of for-profit corporation that allows entities to include beneficial purposes in their charter documents while maintaining the same for-profit tax structure. (For more

information, see the October 2011 *Bar News*, p. 28.) 

Michael Heatherly is the Bar News editor and can be reached at barnewseditor@wsba.org or 360-312-5156. For more information on the Board of Governors and Board meetings, see www.wsba.org/about-wsba/governance/board-of-governors. For more information on issues addressed by the Board, see NewsFlash at www.wsba.org/news-and-events/publications-newsletters-brochures/news-flash.



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Opportunities for Service

WSBA Presidential Search**Application Deadline: May 4, 2012**

The WSBA Board of Governors is seeking applicants for the position of WSBA president for 2013–2014. Pursuant to Article VI (D)(2) of the WSBA Bylaws, the 2013–2014 president-elect may be an individual from anywhere within the state. The WSBA member selected to be president will have an opportunity to provide a significant contribution to the legal profession.

Applications for 2013–2014 WSBA president will be accepted through May 4, 2012, and should be limited to a current résumé, a concise application letter stating interest and qualifications, and no fewer than five or more than 10 references. The Board of Governors will consider endorsement letters received by May 16, 2012. Applications and endorsement letters should be sent to the WSBA Executive Director, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101.

Direct contact with the Board of Governors is encouraged. All candidates will have an interview with the full Board of Governors in open session at the June 8, 2012, Board of Governors meeting in Yakima. Following the interviews, the Board will select the president. Although prior experience on the WSBA Board of Governors may be helpful, there is no requirement that one must have been a member of the Board of Governors or had previous experience in Bar activities. The candidate must be willing to devote a substantial number of hours to WSBA affairs and be capable of being a positive representative for the legal profession. The position is unpaid. Some expenses, such as WSBA-related travel, are reimbursed.

The commitment begins in June 2012, following selection. A one-year term as president-elect will begin at the Annual Awards Dinner on September 20, 2012. The president-elect is expected to attend the two-day board meetings held approximately every five to six weeks, as well as numerous subcommittee, section, regional, national, and local meetings. In September 2013, at the WSBA Annual Awards Dinner, the president-elect will assume the position as president. During his or her service, the president-elect

and president will also be required to meet with members of the Bar, the courts, the media, and public and legal interest groups, as well as be involved in the Bar's legislative activities. Appropriate time will need to be devoted to communication by letter, email, and telephone in connection with these responsibilities.

The duties and responsibilities of the president are set forth in the WSBA Bylaws. The Bylaws can be found at <http://bit.ly/xLZbkB>.

2012 Notice of Board of Governors Election**Nomination/application deadline:****March 1, 2012**

Five positions on the WSBA Board of Governors will be up for election this year. These are the governors representing the 1st, 4th, 5th, and 7th-West* congressional districts, and one at-large position. These positions are currently held by Marc Silverman (1st District), Leland Kerr (4th District), Nancy Isserlis (5th District), Roger Leishman (7th-West District), and Carla Lee (at-large WYLD position**).

The WSBA Bylaws provide that any active member, except a member previously elected to the Board of Governors, may be nominated or apply for the office of governor from the congressional district (or geographical region within the 7th District* or nominated by the WYLD Board of Trustees for the at-large position**) in which such member is entitled to vote. Nominations or applications are made by filing a statement of interest and a biographical statement of 100 words or less.

Generally, members are entitled to vote in the congressional district in which the member resides. All out-of-state active WSBA members are eligible to vote in the district of the address of their agent within Washington for the purpose of receiving service of process as required by APR 5(f), or, if specifically designated to the executive director, within the district of their primary Washington practice. However, the member must reside in the congressional district to be eligible for election.

Nomination and application forms are available from the WSBA Office of the Executive Director, 1325 Fourth Ave., Ste. 600,

Seattle, WA 98101-2539; by phoning 206-239-2125; and on the WSBA website at www.wsba.org/elections.

The WSBA executive director must receive nomination or application forms for district races by 5:00 p.m. PST on March 1, 2012. The Board of Governors determines the official dates of the election. Paper ballots for district elections will be mailed on or about March 15 and must be received by 5:00 p.m. PDT on April 16. For the fourth year, the WSBA will also use an electronic voting system. Members with email addresses on file with the WSBA will not receive a paper ballot unless requested. All electronic voting will also begin on March 15 and must be completed by 5:00 p.m. PDT on April 16. The at-large governor will be elected by the Board of Governors at its June meeting.

Note: Biographical statements of nominated candidates will be published in the April issue of *Bar News*.

* The 7th Congressional District is divided into three sub-districts: East, Central, and West. These sub-districts are distinguished by zip codes, and each has one elected governor. For the coming year, a governor from the West sub-district (zip codes 98013, 98070, 98106, 98107, 98116, 98117, 98119, 98126, 98133, 98136, 98146, 98160, 98166, 98177, 98195, 98199) will be elected.

** The Board of Governors shall elect one at-large governor from nominations made by the Young Lawyers Division Board of Trustees. The Young Lawyers Division Board of Trustees shall nominate two or more candidates who will be members of the YLD at the time of the election.

Legal Services for Indigent Offenders at Stafford Creek Corrections Center and Monroe Correctional Complex**Application deadline: February 17, 2012**

The Department of Corrections will be conducting a competitive procurement searching for providers of legal services for indigent offenders at the Stafford Creek Corrections Center and the Monroe Correctional Complex. Three volunteers are needed to evaluate proposals against an evaluation key, which will be provided. The evaluations will need to be completed in the last two weeks of April and the first week of May 2012. The time re-

quired depends on the number of proposals received, but it is estimated that each volunteer would devote approximately 10–35 hours to this project. Volunteers will need to attend (or participate in by telephone) one or two meetings. Meetings will be held in Olympia.

If you are interested in assisting the Department of Corrections with this project, please submit a brief letter of interest and résumé to WSBA Communications Department, Bar Leaders Division, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101 or email barleaders@wsba.org no later than February 17, 2012. If you have questions or would like additional information, please contact John Nispel, senior contracts attorney, at john.nispel@doc.wa.gov or 360-725-8365.

Seeking Questionnaires from Candidates for Judicial Appointments

Deadlines: *February 10, 2012, for March 23, 2012, interview; May 10, 2012, for June 21, 2012, interview; August 3, 2012, for September 14, 2012, interview*

The WSBA Judicial Recommendation Committee (JRC) is accepting questionnaires from attorneys and judges seeking consideration for appointment to fill potential Washington State Supreme Court and Court of Appeals vacancies. Interested individuals will be interviewed by the Committee on the dates listed above. The JRC's recommendations are reviewed by the WSBA Board of Governors and referred to Governor Gregoire for consideration when making judicial appointments. Materials must be received at the WSBA office by the deadlines listed above. To obtain a questionnaire, visit the WSBA website at www.wsba.org/jrc or contact the WSBA at 206-727-8212 or 800-945-9722, ext. 8212; or email judithb@wsba.org.

2012 Licensing and MCLE Information

Deadline was February 1, 2012. If any portion of your license fee, LFCP assessment, or late fee remains unpaid, or if required forms have not been filed after two months' written notice of your delinquency, a recommendation for suspension will be submitted to the Supreme Court. You may complete licensing requirements either online at www.mywsba.org or on the A1 License Renewal form. For detailed

instructions, go to www.wsba.org. If you were due to complete MCLE requirements for 2009–2011 (Group 2) and have not done so after two months' written notice of your delinquency, a recommendation for suspension will be submitted to the Supreme Court. If you are credit-compliant, you may certify online at www.mywsba.org or on the Continuing Legal Education Certification (C2) form and pay any late fees due. For detailed instructions, go to www.wsba.org.

Judicial Member Licensing

Deadline was February 1, 2012. If you have not filed your renewal within 60 days of the date of the written notice, your eligibility to transfer to another membership class upon leaving service as a judicial officer will not be preserved. You may complete your renewal either online at www.mywsba.org or on the Judicial Member License Renewal form. Please note that a 30 percent late fee of \$15 will be assessed on February 2. For detailed instructions, go to www.wsba.org.

26th Annual Goldmark Award Luncheon — February 24

The Legal Foundation of Washington will present the 2012 Charles A. Goldmark Distinguished Service Award to Justice Gerry L. Alexander at the 26th Annual Goldmark Award Luncheon. The luncheon will be held February 24 at the Sheraton Seattle Hotel between noon and 1:30 p.m. For more information or to register online,

visit www.legalfoundation.org.

"Foundations of American Democracy" Civics Pamphlet

The WSBA offers a pamphlet for the public called "Foundations of American Democracy" that describes the basics of American government: the rule of law, the separation of powers, checks and balances, and a fair and impartial judiciary. It also includes a short quiz and a list of useful websites. Lawyers and judges are encouraged to bring the pamphlet with them when they speak to students or the public in schools, courtrooms, and the community. Teachers may also request the pamphlet for classroom use. The WSBA can provide reasonable numbers of copies at no charge, or the pamphlet may be downloaded from the WSBA website at www.wsba.org. Requests for copies should be directed to Pam Inglesby, WSBA outreach programs manager, at pami@wsba.org.

Facing an Ethical Dilemma?

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

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



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Get More out of Your Software

The WSBA offers hands-on computer clinics for members wanting to learn more about what Microsoft Office Outlook and Word, as well as Adobe Acrobat, can do for a lawyer. We also cover online legal research such as Casemaker and other resources. Are you a total beginner? No problem. The clinic teaches helpful tips you can use immediately. Bring your laptop or use provided computers. Seating is limited to 15 members. The February 13 clinic will meet from 10 a.m. to noon at the WSBA offices and will focus on Casemaker and online research. On February 16, from 2:00 to 4:00 p.m., we will discuss Adobe Acrobat X Pro (not the Reader). There is no charge and no CLE credit. To reserve your seat, contact Peter Roberts at 206-727-8237, 800-945-9722, ext. 8237, or peter@wsba.org.

LOMAP Lending Library

The WSBA Law Office Management Assistance Program (LOMAP) Lending Library is a service to WSBA members. We offer the short-term loan of books on the business management aspects of your law office. How does it work? You can view the titles we have at www.wsba.org/resources-and-services/lomap/lending-library. Books may be borrowed by any WSBA member for up to two weeks. LOMAP requires your WSBA ID

and a valid Visa or MasterCard number to guarantee the book's return to the program. If you live outside of the Seattle area, books can be mailed to you; you will be responsible for return postage. For walk-in members, we recommend calling first to check availability of requested titles. To arrange for a book loan or to check availability, please contact Julie Salmon at 206-733-5914.

Lawyers Assistance Program 15th Annual Statewide Conference: A Thoughtful Approach to Your Practice and Your Career

The 15th annual Lawyers Assistance Program Statewide Conference will take place April 13-15 at Campbell's Resort, in Chelan. Join us in examining ways to better communicate with your clients, set goals for your practice, and take care of yourself in the process. WSBA President Steve Crossland will deliver the keynote for this memorable CLE. For \$120, you will receive 7.5 CLE credits (pending) and three meals. Go to tinyurl.com/82oqozz to sign up or contact Julie Salmon at 206-733-5914 or juliesal@wsba.org.



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Monthly and Weekly Job Seekers Groups

The Weekly Job Seekers group provides strategy and support to unemployed attorneys. The group runs for eight weeks and is limited to eight attorneys. We provide the comprehensive WSBA job search guide "Getting There: Your Guide to Career Success," which can also be found online at tinyurl.com/7xheb8b. The monthly job search group will not be held in February. For more information about monthly and weekly job group programming or to schedule a career consultation, contact Dan Crystal at danc@wsba.org, 206-727-8267, or 800-945-9722, ext. 8267.

Just Starting a Practice?

Think "out of the box" and consider purchasing "Law Office in a Box." For

\$79, you receive an hour of consultation time plus everything you see here: www.tinyurl.com/3rn75hj. Questions? Contact Peter Roberts at peter@wsba.org, 206-727-8237, or 800-945-9722, ext. 8237.

Work/Life Balance Group

The Lawyers Assistance Program (LAP) is offering "From Surviving to Thriving: Achieving a Meaningful Work/Life Balance." This eight-week group offers both specific skills and a supportive environment for this critical topic. If you are interested in participating in the next group, contact LAP therapist Heidi Seligman at 206-727-8269, 800-945-9722, ext. 8269, or heidis@wsba.org.



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The "Blues" or Depression?

Many lawyers are depressed but don't realize it. Symptoms include sad mood, loss of pleasure or interest in activities, weight gain or loss, sleep problems,

feeling restless or slowed-down, fatigue, trouble thinking or concentrating, and thoughts of death. Untreated, it can cause serious work dysfunction and more. Talk to your doctor, or call the Lawyers Assistance Program at 206-727-8268 or 800-945-9722, ext. 8268, to schedule a confidential consultation.

Speakers Available

The WSBA Lawyers Assistance Program offers speakers for engagements at county, minority, and specialty bar associations, and other law-related organizations. Topics include stress management, life/work balance, and recognizing and handling problem-personality clients. Contact the lawyer services coordinator at 206-727-8268 or 800-945-9722, ext. 8268.

Interested in Mindful Lawyering?

A growing number of legal professionals across the nation are applying mindfulness-based skills and training to lawyering. The Washington Contemplative Lawyers group meets on the last Wednesday of each month (February 29) at the WSBA

Lawyers Assistance Program office from 8:15–9:00 a.m. The group explores ways in which mindfulness practices may lead to more effective delivery of quality legal services, increased professionalism, and lawyer well-being and health. For more information, contact Sevilla Rhoads at srhoads@gsblaw.com. Learn more about mindful lawyering at www.wacontemplativelaw.blogspot.com.

Individual Counseling and Consultation

The WSBA Lawyers Assistance Program provides treatment for those struggling with depression, work stress, addiction, and life transition, among other topics. Our licensed counselors can offer up to 10 sessions on a sliding scale. The first appointment is \$20. We also provide consultations on job seeking and can offer informational and referral resources on a range of topics. Contact us at 206-727-8268, 800-945-9722, ext. 8268, lap@wsba.org, or go to www.wsba.org/lap.

Help for Judges

The WSBA Judges Assistance Services

Program provides confidential assistance to judges experiencing personal or professional difficulties. Telephone or in-person sessions are available on a sliding-scale basis. For more information, call the program coordinator at 206-727-8268 or 800-945-9722, ext. 8268.

Casemaker Online Research

Casemaker is a powerful online research library provided free to WSBA members that can be accessed from the WSBA website at www.wsba.org/resources-and-services/casemaker-and-legal-research. For help using Casemaker, contact Julie Salmon at 206-733-5914, 800-945-9722, ext. 5914, juliesa@wsba.org, or call the WSBA Service Center at 800-945-WSBA (9722) or 206-443-WSBA (9722).

Learn More about Case-Management Software

The WSBA Law Office Management Assistance Program (LOMAP) maintains a computer for members to review software tools designed to maximize office efficiency. LOMAP staff is available to provide materials, answer questions,

and make recommendations. To make an appointment, contact Julie Salmon at 206-733-5914, 800-945-9722, ext. 5914, or juliesa@wsba.org.

Upcoming Board of Governors Meetings

- March 9–10, Walla Walla*
- April 27–28, Tulalip*
- June 8, 2012, Yakima*

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

Usury Rate

The average coupon equivalent yield from the first auction of 26-week treasury bills in January 2012 was 0.056 percent. Therefore, the maximum allowable usury rate for February is 12 percent.



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- Only 1 in 5 people will receive help for an urgent legal problem this year
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 - Foreclosures ↑ 556%
 - Unemployment ↑ 890%

Sources: 2010 US Census; King County Crisis Clinic (2008-2010 comparison)

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Donna M. Chamberlin

and

Susannah J. Sharp

have joined the firm as associates.

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GROFF MURPHY, PLLC

is pleased to announce that

Brittany F. Stevens

has joined the firm as an associate.

Ms. Stevens is a 2009 graduate of the University of Washington School of Law, where she was Managing Editor of Production for the *Pacific Rim Law and Policy Journal*.

Ms. Stevens was formerly an associate attorney with Paul Hastings LLP in San Francisco.

Ms. Stevens' practice will focus on complex commercial litigation and construction law.

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**ETTER, McMAHON,
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is pleased to welcome

Jeffrey R. Galloway

as a new Associate with the firm.

Mr. Galloway is a 2011 graduate of Gonzaga University School of Law and practices civil litigation, criminal defense, and labor and employment law in Washington.

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**REID, PEDERSEN,
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is pleased to announce that

John Lee

has joined the firm as an associate attorney. A graduate of the University of Oregon School of Law, John represents and counsels labor unions and their members in matters related to labor, employment, and ERISA law. He also earned graduate and undergraduate degrees from the University of Washington.

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BARKER MARTIN, P.S.

is pleased to announce that

Angie R. Bagby

has become a partner of the firm. Angie has been with Barker Martin since 2006 with her practice focusing on representing community associations in construction defect, insurance coverage and bad faith, breach of contract and indemnity litigation, as well as general counsel matters.

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LYBECK ❖ MURPHY LLP

is pleased to announce that

Andrew H. Salter

has joined the firm as a Partner.

Mr. Salter brings over 30 years of experience litigating a wide variety of cases in Washington, Oregon, Idaho, Alaska, California, and Wyoming before state and federal courts and administrative agencies.

Mr. Salter's practice is currently focused on the litigation of commercial, banking, construction, real estate, environmental and land use disputes.

He graduated *magna cum laude* from Harvard University and obtained his law degree from the Georgetown University Law Center.

Welcome, Andy!

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From 2000 to 2008, Gregg was a principal at JAMS, the largest private alternative dispute resolution (ADR) provider in the world, and before that, was affiliated with WAMS for 12 years, where he earned the "Master Mediator" designation.

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These notices of imposition of disciplinary sanctions and actions are published pursuant to Rule 3.5(d) of the Washington State Supreme Court Rules for Enforcement of Lawyer Conduct, and pursuant to the February 18, 1995, policy statement of the WSBA Board of Governors. For a complete copy of any disciplinary decision, call the Washington State Disciplinary Board at 206-733-5926, leaving the case name, and your name and address.

NOTE: *Approximately 30,000 persons are eligible to practice law in Washington state. Some of them share the same or similar names. Bar News strives to include a clarification whenever an attorney listed in the Disciplinary Notices has the same name as another WSBA member; however, all disciplinary notices should be read carefully for names, cities, and bar numbers.*

Resigned in Lieu of Disbarment

Jacob A. Korn (WSBA No. 28332, admitted 1998), of Seattle, resigned in lieu of disbarment, effective December 1, 2011. While not admitting to the misconduct, Mr. Korn admitted that the WSBA could prove, by a clear preponderance of the evidence, the violations set forth in the Statement of Alleged Misconduct, and that proof of such violations would suffice to result in his disbarment. These violations include failure to properly maintain real estate closing funds, knowingly disobeying an obligation under the rules of a tribunal, failure to properly supervise non-lawyer employees, commission of a criminal act, and violation of a court order. According to the Statement of Misconduct:

Mr. Korn was a solo practitioner in the area of misdemeanor criminal defense. Prior to 2005, Mr. Korn charged clients only flat fees and did not have a trust account. In 2005, Mr. Korn, who had no prior experience in real estate closings or real estate law, formed "Escrow Company" with one of his clients (Mr. B). Mr. B introduced Mr. Korn to Mr. S (a real estate broker) and to Mr. S's wife (a mortgage broker). Mr. Korn, Mr. S, and Mrs. B became the governing officers in Escrow Company, which was incorporated in Washington. Mr. Korn was named president with a 20 percent ownership interest, while Mr. S and Mrs. B each held a 40 percent interest. The incorporation application, prepared by Mr. Korn, listed Escrow Company's place of business as Mr. Korn's law office in Renton.

After several months, Escrow Company, along with Mr. Korn, moved to a suite of offices in Bellevue. Mr. Korn conducted his misdemeanor practice and his work as president of Escrow Company out of an office in the suite leased by Escrow Company. Mr. B suggested to Mr. Korn that Escrow Company should open an IOLTA trust account using Mr. Korn's law license, rather than apply for an escrow

business license. A major purpose of having Mr. Korn appointed as president of Escrow Company was to use his law license to avoid having to comply with licensing requirements and regulation. On January 9, 2006, Mr. Korn, along with Mr. S and Mrs. B, opened a lawyer trust account under Escrow Company's name. All three were signatories on the account. Mr. S and Mr. Korn also opened a business account for Escrow Company.

Between 2006 and 2008, approximately 300 million dollars was processed through the trust account. Mr. Korn did not supervise Mr. S and Mrs. B, who wrote almost all the checks and wire transfers on the trust account. Mr. S controlled the trust account. Mr. Korn did not review the trust account statements in any detail, supervise Mr. S's management of the account, or provide any significant legal services to Escrow Company. While serving as president, Mr. Korn learned how to perform escrow closings and conducted between 20 and 30 closings over a three-year period. Escrow Company had several other non-lawyer employees, none of whose activities were supervised by Mr. Korn.

In early 2008, the FBI began investigating Escrow Company, along with two mortgage companies affiliated with Mr. B and Mrs. B. The United States Post Inspection Service ("Inspection Service") became involved in the investigation and identified at least 69 loan files from different lenders in which the loan application and supporting documentation, which were submitted by the two mortgage companies, included false and fraudulent information. This figure amounted to 87 percent of Escrow Company's closings reviewed by the Inspection Service.

The false information in the files included misrepresentations in appraisal values and inflating or falsifying the employment histories and income of the purchasers. In many of Escrow Company's transactions, Mr. S and Mr. B recruited "straw buyers" to "flip" properties, a process which created more transaction fees for Escrow Company and is used to deceive lenders as to the real purchasers. The Inspection Service reviewed Escrow Company's trust account records and found suspicious payments that were unrelated to the escrow transactions. They also found several files contained multiple HUD-1 settlement statements for the same escrow transaction created for the purpose of deceiving parties as to the true nature of the transaction. An Internal Revenue Service special agent reviewed Escrow Company's accounts and found numerous disbursements to mortgage companies, over three million dollars in disbursements for "settlement agent fees," and millions of dollars in personal payments to Mr. and Mrs. S, and to Mr. B. There were also payments that were clearly unrelated to the loan transactions being closed by Escrow Company.

On July 9, 2008, Mr. Korn was personally served with a subpoena *duces tecum* for his deposition in a lawsuit brought by one of the "straw buyers" against Escrow Company and related entities. The subpoena required production of two specific escrow files as well as documents in Mr. Korn's custody. After failing to appear for his deposition, Mr. Korn eventually appeared on July 22, 2008, but did not produce the subpoenaed documents. Mr. Korn promised to produce the documents the next day, but failed to do so. The presiding judge found Mr. Korn in contempt of court and ordered him to produce "all the documents" identified in the subpoena by August 18, 2008, to purge his contempt. Mr. Korn failed to produce complete escrow files. After a second contempt hearing, the judge instructed opposing counsel to file a grievance with the Bar Association and further ordered terms against Mr. Korn if the remaining documents were not produced that day. Following issuance of that order, Mr. Korn did produce the documents.

After his deposition, Mr. Korn was on notice that Mr. S was using client funds in the trust account for improper purposes, but continued to permit him to manage the account. Escrow Company ceased operations on December 31, 2008. By the end of 2008, Mr. Korn had earned more than \$200,000 as an owner of Escrow Company.

On January 27, 2009, a lending institution filed suit against Mr. Korn, Escrow Company, and numerous other parties, alleging that defendants had created a criminal enterprise to defraud lending institutions. In early 2009, a federal magistrate authorized searches of Escrow Company's offices. Indictments were issued against Mr. and Mrs. B, Mr. and Mrs. S, and other individuals associated with their companies, who all pled guilty to various criminal fraud charges and were sentenced to prison terms of varying lengths. Mr. Korn was not indicted with these defendants. On September 2, 2010, Mr. Korn pled guilty to two misdemeanors: willful failure to file tax returns for 2008 and failure to file IRS 1099-S forms, which are required of attorneys responsible for closing real estate transactions. The guilty plea states that both incidents were the result of "willful failure" to comply with U.S. tax laws. Mr. Korn was sentenced to two months in prison and four months' home confinement.

Mr. Korn violated former RPC 1.14 and current RPC 1.15A(a), requiring a lawyer to ensure that all funds held by a lawyer incident to the closing of any real estate or personal property transaction are held and maintained as set forth in the rules; RPC 3.4(c), prohibiting a lawyer from knowingly disobeying an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists; RPC 5.3(b),

requiring a lawyer having direct supervisory authority over a non-lawyer to make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; RPC 8.4(b), prohibiting a lawyer from committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects; and RPC 8.4(j), prohibiting a lawyer from willfully disobeying or violating a court order directing him or her to do or cease doing an act which he or she ought in good faith to do or forbear.

Kevin M. Bank represented the Bar Association. Mr. Korn represented himself.

Disbarred

Robert E. Beach III (WSBA No. 6710, admitted 1976), of Spokane, was disbarred, effective November 2, 2011, by order of the Washington State Supreme Court following approval of a stipulation. While not admitting to the misconduct, Mr. Beach stipulated that there was a substantial likelihood that the WSBA could prove by a clear preponderance of the evidence the alleged violations of the Rules of Professional Conduct. These violations include failure to act with diligence in representing a client, failure to communicate, charging unreasonable fees, conversion of client funds, and failure to provide client with a written accounting or with funds client is entitled to receive upon request.

In May 2008, Client hired Mr. Beach to represent him in his dispute with a sewer repair company, which had performed defective work on Client's sewer in 2007. Mr. Beach told Client that he would file a lawsuit and handle the entire case for a flat fee of \$2,000. On May 23, 2008, Client paid Mr. Beach \$2,000 and provided him with documents regarding the matter. Mr. Beach did not enter into a written fee agreement with Client and the \$2,000 represented an advance flat fee. Even though he had not yet earned the \$2,000, Mr. Beach deposited the check, less \$100 cash, into his general account and began using the funds for his own benefit.

A few weeks later, Mr. Beach asked Client to pay an additional \$500 for the filing fee and costs related to filing the lawsuit. Client scheduled an appointment with Mr. Beach to pay the requested costs and discuss the case, but Mr. Beach failed to keep the appointment. Over the next several months, Client repeatedly called Mr. Beach and left messages, but Mr. Beach rarely returned their calls and, when he did respond, he merely stated that he was working on the case. Eventually, Client was unable to leave messages because Mr. Beach's voicemail box was full.

On a few occasions, Client or his family members stopped by Mr. Beach's office trying to find him, but Mr. Beach was never there. Later, Client discovered that Mr. Beach had moved without informing him. In September 2008, Mr. Beach contacted Client and told him that he would prepare a complaint against the sewer company

and deliver it to Client for his signature. Mr. Beach did not, however, prepare anything or have any further contact with Client.

Both Client and his new lawyer sent letters to Mr. Beach requesting information about the status of Client's case. Mr. Beach responded with a March 30, 2009, letter admitting his failure to fulfill his professional obligations to Client and offering to refund Client's fee. Mr. Beach did not, however, refund Client's fee or respond to subsequent letters regarding a refund. On September 18, 2009, Client's new lawyer filed a grievance against Mr. Beach with the Bar Association. Mr. Beach did not respond to the grievance, did not refund any of Client's \$2,000 advance fee, did not render an accounting, did not provide Client with copies of any documents from his case, and did not return any of Client's original records.

Mr. Beach's conduct violated RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; RPC 1.4(a), requiring a lawyer to promptly inform the client of any decision of circumstance with respect to which the client's informed consent is required by these Rules, reasonably consult with the client about the means by which the client's objectives are to be accomplished, keep the client reasonably informed about the status of the matter, and promptly comply with reasonable requests for information; RPC 1.4(b), requiring a lawyer to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; RPC 1.5(a), prohibiting a lawyer from making an agreement for, charging, or collecting an unreasonable fee or an unreasonable amount for expenses; RPC 1.15A(b), prohibiting a lawyer from using, converting, borrowing, or pledging client or third-person property for the lawyer's own use; RPC 1.15A(c), requiring a lawyer to hold property of clients and third persons separate from the lawyer's own property; RPC 1.15A(e), requiring a lawyer to promptly provide a written accounting to a client or third person after distribution of property or upon request; RPC 1.15A(f), requiring a lawyer to promptly pay or deliver to the client or third person the property which the client or third person is entitled to receive; and RPC 1.16(d), requiring a lawyer, upon termination of representation, to take steps to the extent reasonably practicable to protect a client's interests, such as surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred.

Marsha A. Matsumoto represented the Bar Association. Mr. Beach represented himself.

Suspended and Reprimanded

John A. Bardelli (WSBA No. 5498, admitted 1974), of Spokane, was suspended for 30 days and reprimanded, effective October 14, 2011, by order of the Washington State Supreme Court following approval of a stipulation. This discipline

is based on conduct in two matters involving failure to diligently represent clients and failure to communicate.

Matter No. 1: In August 2003, Clients A hired Mr. Bardelli on a contingent fee basis to represent them against two defendants in a wrongful death action involving their adult daughter. Their daughter died without a will. Mr. Bardelli filed a probate action to name Mrs. A personal representative for her daughter's estate to enable her to bring the wrongful death action. The probate court required Mrs. A to file an oath with the court. Mr. Bardelli failed to file the oath, and Mrs. A was never appointed personal representative. Mr. Bardelli did not explain the probate process to Clients A or provide them with copies of the probate documents. In November 2004, the court sent Mr. Bardelli an order dismissing the probate action without prejudice. Mr. Bardelli took no further action, failed to provide copies of the documents to his clients, and failed to notify them of the dismissal.

On September 8, 2003, Mr. Bardelli filed the wrongful death action. Mr. Bardelli failed to notify Clients A when one of the defendants' motion for summary judgment was granted in February 2005. Mr. Bardelli appealed the dismissal without Clients A's knowledge or permission. The Court of Appeals affirmed the dismissal. In November 2006, the second defendant moved for summary judgment. Mr. Bardelli failed to file a responsive pleading to the motion, which was noted for hearing on February 2, 2007. He sought a continuance of the summary judgment hearing contending he was ill. After the hearing, the court denied Mr. Bardelli's motion for a continuance, granted defendant's motion, and dismissed the case, in part because Clients A lacked standing to bring suit. Mr. Bardelli failed to notify Clients A of the dismissal of their suit and appealed the dismissal without Clients A's knowledge or permission. The Court of Appeals affirmed the dismissal.

Between 2003 and 2007, Mr. Bardelli generally failed to communicate with Clients A or provide them with copies of documents.

Matter No. 2: Client B hired Mr. Bardelli as replacement counsel in a suit begun in 1991. In August 1999, after the court found in favor of Client B and for Mr. Bardelli on attorneys' fees, Mr. Bardelli filed a judgment against defendants in superior court. When he prepared the judgment, Mr. Bardelli failed to properly identify the defendants or use their legal names. When one of the defendants died in July 2001, Mr. Bardelli was notified of his death, but took no action on the judgment.

In November 2001, Client B believed that Mr. Bardelli was still pursuing his judgment, including a claim against the decedent's estate. Mr. Bardelli did not file a claim with the estate. In 2004, Mr. Bardelli emailed Client B advising that he did not "specialize" in collecting judgments, and would not do so on Client B's behalf. Client B authorized Mr. Bardelli to hire a collection lawyer, but Mr. Bardelli failed to do so. In 2005, Mr. Bardelli

referred Client B to a different lawyer who wrote to Mr. Bardelli and Client B that satisfying the judgment would be unlikely due to the passage of time and insufficient assets of decedent's estate.

Mr. Bardelli's conduct violated RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; and RPC 1.4, requiring a lawyer to reasonably consult with the client about the means by which the client's objectives are to be accomplished, keep the client reasonably informed about the status of the matter, and promptly comply with reasonable requests for information.

Kathleen A.T. Dassel represented the Bar Association. Michael L. Perrizo represented Mr. Bardelli.

Suspended

James A. Lanza (WSBA No. 11625, admitted 1981), of Port Townsend, was suspended for six months, effective November 25, 2011, by order of the Washington State Supreme Court following approval of a stipulation. This discipline is based on conduct involving practicing law while suspended and violating duties on suspension.

Mr. Lanza failed to pay his 2010 annual licensing fees to the Bar Association by the February 1, 2010, deadline. On February 22, 2010, the Bar Association sent Mr. Lanza a pre-suspension notice by certified mail, which gave him an additional 60 days to pay his licensing fees. The letter warned him that if he failed to comply, the Supreme Court would enter an order suspending him from the practice of law. Mr. Lanza signed the return receipt on March 2, 2010, indicating that he had received the notice, but did not take any action to pay his licensing fees within the 60 days.

On May 4, 2010, the Supreme Court entered an order suspending Mr. Lanza from the practice of law effective May 11, 2010, for failure to pay his licensing fees. That same day, the Bar Association sent Mr. Lanza a letter by certified mail informing him of his suspension and its effective date. In that letter, the Bar Association also informed Mr. Lanza of his duties on suspension, including the fact that he was prohibited from any further practice of law until reinstated and that, within 25 days of his suspension, he was required to file an affidavit showing full compliance with notice provisions of ELC Title 14. Mr. Lanza signed the return receipt indicating that he had received the notice of suspension and duties on suspension letter.

Mr. Lanza failed to file an affidavit of compliance as required by ELC 14.3. On June 10, 2010, after the effective date of his suspension, Mr. Lanza signed a collection complaint as the attorney for a collection service company. The complaint was filed in district court. Mr. Lanza's conduct constituted the unauthorized practice of law.

Mr. Lanza's conduct violated RPC 5.5(a), prohibiting a lawyer from practicing law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction; RPC 5.8(a), prohibiting a lawyer from engaging in the practice

of law while on inactive status, or while suspended from the practice of law for any cause; and RPC 8.4(1), prohibiting a lawyer from violating a duty or sanction imposed by or under the Rules for Enforcement of Lawyer Conduct in connection with a disciplinary matter.

Francesca D'Angelo represented the Bar Association. Mr. Lanza represented himself.

Reprimanded

Erick A. Sabo (WSBA No. 24008, admitted 1994), of Port Ludlow, was ordered to receive a reprimand following approval of a stipulation by a hearing officer on August 9, 2011. This discipline is based on conduct involving failure to provide competent representation, failure to act with reasonable diligence in a client matter, and engaging in dishonest conduct.

Between March 2000 and July 2009, Mr. Sabo allowed a client to send out thousands of form collection letters on his letterhead bearing what appeared to be, but was not, his signature. Those letters contained statements of material fact that Mr. Sabo knew to be false and misleading. Mr. Sabo knowingly approved of the form collection letters and authorized the manner in which they were used by the client, but he failed to determine and to advise the client that the use of those letters could subject the client to liability under the Fair Debt Collection Practices Act.

Mr. Sabo's conduct violated RPC 1.1, requiring a lawyer to provide competent representation to a client; RPC 1.3, requiring the lawyer to act with reasonable diligence and promptness in representing a client; RPC 8.4(a), prohibiting a lawyer from violating or attempting to violate the Rules of Professional Conduct, or knowingly assisting or inducing another to do so, or doing so through the acts of another; and RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

Scott G. Busby represented the Bar Association. Mr. Sabo represented himself. Timothy J. Parker was the hearing officer.

[REDACTED]

[REDACTED]



CLE Calendar

CLE seminars are subject to change. Please check with providers to verify information. To announce a seminar, please send information to:

WSBA Bar News CLE Calendar
1325 Fourth Ave., Ste. 600
Seattle, WA 98101-2539
Fax: 206-727-8319
Email: barnewsclalendar@wsba.org

Information must be received by the first day of the month for placement in the following month's calendar.

Alternative Dispute Resolution

Basic Collaborative Law Training

February 23–24 — Seattle. 13 CLE credits, including 1 ethics. By Seattle Collaborative Law Training Group, 206-249-9145; www.collabtraining.com.

Facilitating Negotiations and Working with Clients

March 2 — Seattle. 6.5 CLE credits. By Seattle Collaborative Law Training Group; 206-249-9145; www.collabtraining.com.

Advanced Facilitation Seminar — Beyond Interests

March 7, 14, 21, and 28 (four two-hour classes) — Seattle. 2 CLE credits per session pending. By Seattle Collaborative Law Training Group; 206-249-9145; www.collabtraining.com.

Criminal Law

Enhancing Your Skills for Criminal Practice

February 29 — Seattle and webcast. 7 CLE credits, including 1 ethics. WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsba.org.

Environmental Law

Impacts of FEMA Floodplain Mapping: Regulatory Changes and Implications for Local Jurisdictions and Property Owners

February 1 — Seattle. 6.25 CLE credits. By The Seminar Group; 800-574-4852 or 206-463-4400; www.theseminargroup.net/seminar.lasso?seminar=12.fldwa.

Estate Planning

Ninth Annual Trust and Estate Litigation

March 2 — 6.25 CLE credits, including 1 ethics. Seattle and webcast. WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Family Law

The Million Dollar Divorce: A Focus on the Money

February 22 — Seattle. 6.5 CLE credits. By The Seminar Group; 800-574-4852 or 206-463-4400; www.theseminargroup.net/seminar.lasso?seminar=12.mddwa.

General

Employer Accommodation of Medical Marijuana and Prescription Drugs

February 24 — Seattle. 2.75 CLE credits. By The Seminar Group; 800-574-4852 or 206-463-4400; www.theseminargroup.net/seminar.lasso?seminar=12.mmjwa.

Evidence and Objection Boot Camp

February 21 — Seattle and webcast. 6.25 CLE credits, including 1 ethics. WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Enhancing Your Skills for Criminal Practice

February 29 — Seattle and webcast. 6.25 CLE credits, including 1 ethics. WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Intellectual Property

17th Annual Intellectual Property Institute

March 9 — Seattle and webcast. CLE credits pending. By the WSBA Intellectual Property Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Health Law

Disability Law

March 12 — Seattle and webcast. CLE credits pending. WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Litigation

Evidence and Objection Boot Camp

February 21 — Seattle and webcast. 6.25 CLE credits, including 1 ethics. WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

The Legal Team: Medicine for the PI Practice

February 24 — Seattle and webcast. By WSAJ Legal Educational Seminars; 206-464-1011; www.washingtonjustice.org.

Wrongful Death

March 21 — Seattle and webcast. By WSAJ Legal Educational Seminars; 206-464-1011; www.washingtonjustice.org.

Solo and Small Practice

The Small Law Firm in Today's World

February 24 — Seattle and webcast. 6.5 CLE credits, including 1 ethics. By the WSBA Solo and Small Practice Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Tax Law

M&A Tax Issues: Life of an M&A Deal from a Tax and Accounting Perspective

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Trust and Estates

Ninth Annual Trust and Estate Litigation

March 2 — Seattle and webcast. 6.25 CLE credits, including 1 ethics. WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Webcast Seminars

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The Small Law Firm in Today's World

February 24 — Seattle and webcast. 6.5 CLE credits, including 1 ethics. By the WSBA Solo and Small Practice Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

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17th Annual Intellectual Property Institute

March 9 — Seattle and webcast. CLE credits pending. By the WSBA Intellectual Property Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Disability Law

March 12 — Seattle and webcast. CLE credits pending. WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.



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Busy three-attorney Kennewick law firm seeks a fourth attorney. Personal injury, family law, criminal defense, estate planning, and general civil litigation. Experienced attorney only. Fax cover letter and résumé to Office Manager, Bolliger Law Offices, 509-734-2591.

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Robblee Detwiler & Black, P.L.L.P., a union-side labor law firm in Seattle, is seeking a labor attorney with a minimum of five years of traditional labor law experience, although exceptionally well-qualified candidates with less than five years' experience will be considered. The candidate must have a dem-

onstrated commitment to representing labor unions as well as strong research, writing, and presentation skills in all aspects of litigation: arbitration, NLRB, administrative proceedings, and state/federal court. The firm represents every segment of organized labor across the state, both private and public sector, and offers challenging and diverse work within a collegial and friendly work environment. Please send résumé and two writing samples c/o Richard Robblee at Robblee Detwiler & Black, 2101 4th Ave., Ste. 1000, Seattle, WA 98121 or by email to drobblee@unionattorneysnw.com. No calls, please.

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Legal secretary — employment and labor law: Littler Mendelson, a national employment and labor law firm, is seeking an extraordinary litigation legal secretary for its Seattle office. With over 850 attorneys in 50 offices worldwide,

we provide our clients with a full range of services in the area of employment relations. For more information about the firm, please visit us online at www.littler.com. Job duties: Provide full-service litigation secretarial support for attorneys practicing exclusively employment and labor law. Duties will include drafting correspondence and legal documents; document management, record keeping, and filing; court and agency filings; docketing and calendaring; scheduling and coordinating appointments, meetings, events, and depositions; coordinating itineraries; and making travel arrangements. Additional duties as assigned. Position periodically provides opportunities for extensive interaction with firm clients, and with staff and attorneys from throughout the firm. Required skills and abilities: The successful candidate will possess the skill set and personal poise to "hit the ground running" from the outset. Extensive litigation secretarial experience required, with experience in employment and labor law strongly preferred. Position also requires strong written and verbal communication skills; extensive knowledge of court rules, ECF procedures, etc.; exceptional interpersonal skills, displaying tact, discretion, and a team attitude; the ability to maintain perspective and composure in a fast-paced environment with frequently shifting priorities; strong proficiency in Microsoft Word and Outlook; and basic proficiency with Excel and PowerPoint. Familiarity with document management and case management applications a plus. We offer a pleasant working environment, a competitive salary, and a generous benefits package to all full-time employees. Littler Mendelson is proud to be an equal opportunity employer. If you are a qualified candidate, please email your cover letter, résumé, and salary history to pfrister@littler.com.

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plines will be considered. Candidates with portables will be considered subject to conflict checks. Interested candidates may submit résumés to the attention of D. Brent Kenady at bkenady@wellsstjohn.com.

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WSBA director of justice and diversity programs — The WSBA is seeking a lawyer to institutionalize and facilitate the WSBA's commitment to diversity and continuing leadership in access to justice and public-service-related initiatives. The position manages the department's operations; supervises three program managers; and provides strategic vision, leadership, and community building. For details and how to apply, visit us at www.wsba.org/about-wsba/careers/wsba-jobs.

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WSBA diversity program manager — This position manages the strategic de-

velopment and programmatic direction of the WSBA's efforts to improve diversity in the legal profession and within the organization. The position works to advance the interests of diversity, both in the WSBA organization and among the external legal community. For details and how to apply, see www.wsba.org/about-wsba/careers/wsba-jobs.

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Experienced attorney with published decisions — *King v. King*, 162 Wn. 2d 378; *Rusch v. Rusch*, 124 Wn. App. 229, et al — drafts appeals, litigation pleadings, and demand letters at reasonable contract rate. Law Office of Ken Christensen, 206-389-1548; chriseanlaw@aol.com.

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Scott M. Weitz

WSBA No. 41048

- ▶ **I became a lawyer because** I wanted to work in a profession that is intellectually stimulating on a daily basis, and for the ability to help others.
- ▶ **The future of the practice of law is** bright. While the economy may affect the structure of firms and alter the traditional compensation structure of firms, lawyers are an absolutely necessary part of society, and always will be.
- ▶ **One of the greatest challenges in law today is** the general economic challenges of our clients.
- ▶ **If I were not practicing law,** I would be a stock analyst. I love the analytical/objective nature of assessing business valuations.
- ▶ **If I could change one thing about the law,** it would be the amount of time that could be allocated to each client.
- ▶ **This is the best advice I have been given:** If you're not going to do it right, it's not worth doing at all — from my father.
- ▶ **I would share this with new lawyers:** Law school gave you the basics, but there is so much more to learn about the law, client interaction, and operating a business. These can only be learned while practicing.
- ▶ **Traits I admire in other attorneys:** Hard work, diligence, and trustworthiness.
- ▶ **I would give this advice to a first-year law student:** Life will get better!
- ▶ **Someone whose opinion matters to me:** My staff.
- ▶ **Person living or from the past I would like to invite to a dinner party:** Ben Bernanke (Federal Reserve chairman). He is the most powerful economic figure in the world. I would love to know his assessment of the economy and his plans for improving it.
- ▶ **I am most proud of this:** Starting a firm and having a staff that works well for clients, and enjoys each other's company.
- ▶ **I am most happy when** I'm reading books to my two- and four-year-old daughters.
- ▶ **My favorite hobby/interest:** Golf. I wish I had the time to play more.
- ▶ **What keeps me awake at night:** My caseload — I am constantly making sure I didn't forget anything the day before!
- ▶ **Best stress reliever:** Racquetball. It's a great release to take it out on the little blue ball.



- ▶ **A book I would recommend reading:** *The Creature from Jekyll Island: A Second Look at the Federal Reserve*, by G. Edward Griffin — a great historical reference on the Federal Reserve and monetary policy in the United States.
- ▶ **Technology is** a blessing and a curse. I love the capabilities that it provides, but it takes away from the human interactions that are so important.
- ▶ **My favorite vacation place:** Whistler, B.C. How can you not love it up there?
- ▶ **If I could live anywhere,** I would live in Kirkland, Washington. Perhaps I am biased, but I love the central location and small-town feel.
- ▶ **I can't live without** my family.
- ▶ **Currently playing on my iPod/CD player/record player:** Disney Songs — like I mentioned, I have two young daughters!
- ▶ **This is the hardest part of my job:** Managing the workload.
- ▶ **The best part of my job:** Helping people solve their problems, and giving them the guidance they need to be confident moving forward in their financial futures.

My name is Scott Weitz. I am the managing partner of Weitz Law Firm, PLLC, out of Kirkland. We are a boutique firm that practices real estate, bankruptcy, small business, tax, and estate planning law. We have a staff of eight and really love what we do. I have two wonderful daughters and an amazing wife who somehow puts up with my long hours at the office. Contact me at 425-889-9300 or scottweitz@weitzlawfirm.com.



Have you met Lydia?

In the 1939 Marx Brothers film *At the Circus*, Groucho croons what would become his signature tune, “Lydia the Tattooed Lady.” The piece was written by E.Y. “Yip” Harburg and

Harold Arlen (the team that also composed the magnificent suite of songs for *The Wizard of Oz*). Groucho, playing a lawyer named J. Cheever Loophole, sings:

Lydia, oh Lydia, say, have you met
Lydia?

Lydia the tattooed lady
She has eyes that men adore so
And a torso even more so

Lydia, oh Lydia, that encyclopedia
Lydia, the queen of tattoo

On her back is the Battle of Waterloo
Beside it the Wreck of the Hesperus, too
And proudly above waves the red,
white, and blue

You can learn a lot from Lydia

At some point in my life, I must have seen this movie, because the song came back to me recently, and I haven’t been able to get it out of my mind. And I’m not alone in this. There is a reason why this 72-year-old ditty is relevant again today.

Love. They say it hits you like an arrow to the heart, or a battle ax to the skull, or a war hammer to the kidneys, or a steel mace — well, you get the idea. Over the past several weeks, she has rarely been anywhere but by my side: Lydia. Lydia is gorgeous, fearless, fit, and ceaselessly loyal. Lydia can haul 300 pounds of gear and never needs to eat or sleep. Lydia is the figment of millions of imaginations around the world. Lydia is one bodacious NPC.

That’s “non-player character,” video game-speak for an in-game entity with whom you interact but don’t fully control.

Lydia is a prominent NPC in *The Elder Scrolls V: Skyrim*, which came out last November and has been called by some the greatest video game ever made. I wouldn’t know about that, since I have played only a few video games. In particular, I’d never before tried a role-playing game like



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Skyrim. Whether in video games, movies, or books, I’ve never been into dragons, scrolls, vampires, or similar geekery. I’m one of the 15 inhabitants of earth who have never seen a Harry Potter movie.

(Speaking of geekery, remind me to write a column someday about those “Renaissance faires.” I stumbled onto a Renaissance faire once when I took my dog to the park, and it was one of the weirdest things I’ve ever seen during daylight hours.)

Now where was I — oh yeah — when it comes to video games, I pretty much stick to the old-guy-second-childhood shooting and racing stuff, with an occasional Batman (or the brilliant *L.A. Noire* from earlier last year) thrown in. Then I started hearing about something called *Skyrim*. I saw references to it in social media before I had any idea what it was. I got the impression it was something about to become ubiquitous, something people were sacrificing for. I looked it up and saw the rave reviews. Then I had dinner with my son. Between the miso soup and the fried rice, he told me I had to check out *Skyrim*. He looked mesmerized just uttering the name.

Despite my insistence at not being a geek, I became enthralled by *Skyrim*. In particular, I was entranced by Lydia — a bodyguard assigned to me as a reward for completing a quest early in the game. Lydia makes Xena: Warrior Princess look like Little Orphan Annie. The producers of *Dancing with the Stars* only wish they could offer up a pair with half the flair of Lydia and me jacking up a room full of swamp trolls, then reuniting over their steaming corpses.

For all her ferocity and pulchritude, I have to admit Lydia isn’t exactly the sharpest arrow in the quiver, if you get my drift. She comes up with no ideas, and her best line of dialog (one of her few spontaneous utterances) is something like, “I’ve never seen anything like that before.” Most annoyingly, she seems entirely unable to get out of the bleeping way when that’s all I need her to do. In any doorway or narrow passage, she invariably parks herself at the entrance, staring at me with those smoldering amber eyes, forcing me to elbow her out of the way, to which she responds with a wounded and indignant “ohhh.” Despite that, I have had moments of sheer panic when I couldn’t find Lydia after a melee. I’ve accidentally killed her myself several times with errant projectiles, and I’ve restarted the game from previously saved points every time, knowing I couldn’t go on without her.

If you look up the Marx Brothers’ “Lydia the Tattooed Lady” scene on YouTube, you’ll find recent viewer comments from *Skyrim* players who, like me, couldn’t help but link back through the ages from our new virtual heroine to Groucho’s like-named object of inked-up fascination. I don’t know if our Lydia has tattoos. I’ve never seen her dressed in anything less than an iron breastplate, gauntlets, and armored leather apron. But I’m learning a lot from her nonetheless. ☺

Bar News Editor Michael Heatherly practices in Bellingham. He can be reached at 360-312-5156 or barnewseditor@wsba.org.

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