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Washington state — A Soviet satellite?

Thanks to the contributors of the minority report for infusing some truth and good sense into the debate about Washington's judicial selection process (April 2008 *Bar News*). The minority correctly recognizes that increased public education is the key to increased public participation in judicial elections.

The majority report proposes a more radical approach: disenfranchising the voters and placing control of judicial selection in the hands of committees. Some questions need to be asked. Who selects the committees? Who selects the selectors for the committees? How do the committees prevent their own biases from influencing judicial selection? A handful of elite committee members, answerable to no one, cannot and should not replace the opinions of many thousands of Washington voters.

It should be remembered that communist Russia, also disdainful and distrusting the voters, placed virtually every aspect of governance under the control of committees. We do not need to repeat this mistake. Washington should retain its present system of election of judges.

Patricia M. Michl, Lake Tapps

The Sperline Plan

Thank you for the stimulating discussion on judicial selection (April 2008 *Bar News*). As evocative as the several articles were, they suffer from a common shortcoming: the assumption is that *one* system would, on balance, be better than others. As the debate moves ahead, it should recognize that the assumption may be wrong. The system we use to select trial court judges should, perhaps, be substantially different

from how we choose appellate judges.

Trial court judges are, essentially, legal technicians. At the other end of the spectrum, the justices of the Supreme Court are policy makers. Technicians should be "hired," based on qualifications, while policy makers should arguably be elected by the people whose values their policy decisions should reflect. This practical dichotomy suggests that we might best be served by a commission selection/retention system in the trial courts and an election system for appellate judges.

There is, however, a countervailing political dichotomy. Voters have the best opportunity to know "local" judicial candidates, who will serve on the courts with which citizens have their primary contacts — the trial courts. Conversely, voters have inadequate opportunity and incentive to know or assess Supreme Court candidates. Accountability, to the extent it is provided by elections, is undoubtedly more important to most citizens as applied to "local" judges rather than appellate judges. This political dichotomy suggests the opposite of the practical one: we should elect trial court judges, and use a merit system of some sort for appellate positions.

Washington already recognizes, within the election system, a distinction between levels of court. Superior Court judges, even though their jurisdiction is statewide, are elected by only the voters of the local judicial district. Court of Appeals elections are open only to people

resident in the pertinent "districts" (which in Division III exist for no other political purpose). Supreme Court judges are, of course, elected by all Washington voters. That this existing distinction is, in some ways, out of step with the practical and political dichotomies I've mentioned, may contribute to some of the current dissatisfaction.

Among "improvements" to the current system called for by Chief Justice Alexander, we should debate what I'll call, for want of any descriptive title, the "Sperline Plan." Supreme Court justices would be elected by the voters of, and be residents of, our Congressional Districts, subject to contested elections. Court of Appeals judges would be appointed (permanently, to retirement) by the Governor. Superior Court judges would be appointed by the Governor from among candidates receiving at least 20 percent of the popular vote in a qualifying election in individual judicial districts. District and municipal court judges would be elected as they are (or should be) now. Trial court judges would be subject to retention elections, which would be staggered rather than bunched in one election year.

There would surely be vociferous objection to the Sperline Plan; the important thing is to debate the value of a selection system that differs among court levels.

Grant County Superior Court Judge Evan E. Sperline, Ephrata



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An Interview with Governor Gregoire

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**WSBA President
Stan Bastian**

My column this month consists of an interview with Washington State Governor Christine Gregoire, who, prior to being elected governor in 2004, spent 12 years as the state attorney general. Her career gives her a unique perspective on the legal profession and some of the issues it confronts in the near future.

Why did you become a lawyer?

I wanted to make a positive difference in people's lives.

When and why did you decide to become a politician?

During my tenure as director of our state's Department of Ecology, Governor Booth Gardner encouraged me to run for attorney general. I prefer to say that is when I decided to become an elected public servant following my appointed public-service days.

Do you think that your legal training and experience has helped your political career? How?

Yes, I do. I believe it has helped me see all sides of the very complicated public-policy issues that face our state. I believe it also has helped me bring people together to solve difficult and divisive public-policy issues.

Did you dream of becoming governor when you were a child, or was it a goal that came later?

I never dreamed of being governor; it was clearly a goal that came later after several years as attorney general.

What was the most interesting issue that you worked on while the attorney general for the state of Washington?

Clearly, this was the master settlement agreement among several states and the tobacco companies. It was significant, complex, high stakes, demanding, historical, and life-changing.

What career achievement are you most proud of, either as a lawyer or politician?



Helping children to be safe from abuse and neglect, get healthcare, and get a good education.

From your perspective as governor, what are some of the critical issues for the legal profession and the WSBA?

I believe that the social justice and access to justice issues are paramount, and I am pleased that the Bar is tackling

them. I see across the state that there are significant barriers for some Washingtonians to our legal system. The efforts of the Bar should be commended in this regard. You are on the front lines, and anything you can do to make more legal services available to those who currently are unable to receive them is a step in the right direction for our state.

What role should the WSBA play in the policy-making process? Should it be more or less involved in the legislative process?

I believe the Bar is a vital part of our state's policy-making and legislative processes. Members of the Bar have exceptional talents and skills and are uniquely qualified to advise Washington's policy makers, especially on the intricacies of business law, property law, and tax law. Bills that are recommendations of the various Bar sections are always well received by our Legislature.

Recently, a Bar Association task force has been studying the way in which judges are selected in this state. The primary interest is to foster a fair and impartial judiciary. Do you believe that judges should be elected, or should this state create a merit selection process followed by retention elections? If the state continues to elect judges, should state law require the election of all judges, including those in municipal courts?

Our state's tradition is of electing judges and many other officials, possibly as many or more than any state in the union. I do not think the voters of our state are prepared at this time to relinquish that cherished right when it comes to judges. I think that there would need to be an unprecedented educational effort to convince the voters that a merit or retention system would be

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an improvement. I think the vast majority of judges in our state would continue to serve under such a system, but I'm not sure the voters would accept it.

There has been some concern recently about judicial campaign donations from private-interest groups. Do you think that we should change the way judicial campaigns are financed, and if so, how?

Yes, I requested legislation last year to provide for public financing of appellate court elections. I was very concerned about the enormous amounts of special-interest money and independent expenditures that flowed into our Supreme Court races in 2006. I believed at the time and still believe that our judicial system would be better served with public financing. I think that in the near future the Legislature will enact such a plan.

Diversity is a core value of the Bar Association, but in reality this is not a very diverse profession. Ninety percent of WSBA members are Caucasian. Only 36 percent are women, only 1.8 percent are Asian, only 2 percent are African-American, only 1.7 percent are Latino/Latina, and only 0.8 percent are Native Americans. In your opinion, what should the Bar Association do to attract more women and people of color into the profession?

I think the Bar and all members need to start mentoring students in our high schools and colleges. This cannot be a voluntary or hit-and-miss project, but a well-organized and sustained effort to recruit underrepresented groups to our profession. We need to show students how exciting and satisfying a legal career can be.

Do you think your future involves a return to the practice of law?

Not right away.

The September 2007 edition of Bar News was dedicated to the issue of marriage equality for same-sex couples. Do you think state law should be changed to allow same-sex marriages? Why?

I have been an ardent supporter of, and signed into law, our domestic partnership act, and this year I look forward to signing a bill that will add many important rights to our existing law.

The WSBA Committee on Public Defense recently studied the death penalty in

Washington and made recommendations about how to improve application of the death penalty in this state and its costs in the justice system. Those recommendations were adopted by the WSBA Board of Governors. The Committee did not take a position regarding whether the death penalty should be retained. What is your opinion? Should the state of Washington continue to use the death penalty in limited circumstances, or is it time to abolish it?

As an attorney general and governor I have supported the death penalty. In this state it is used in very limited circumstances, and that's as it should be. I have been lucky in my first term as governor that I have not been faced with the difficult questions surrounding an execution.

When you were elected in 2004, you won by a small number of votes and the result was then unsuccessfully challenged in court. Has that experience impacted the way in which you have acted as governor or approached your job? How?

I don't believe it has. Even from day one, I told the staff we don't know how long we might be here, so let's just go to work every day and do the right thing. I have tried my best to keep that philosophy at the forefront ever since.

What issues do you most want to tackle in your remaining time as governor?

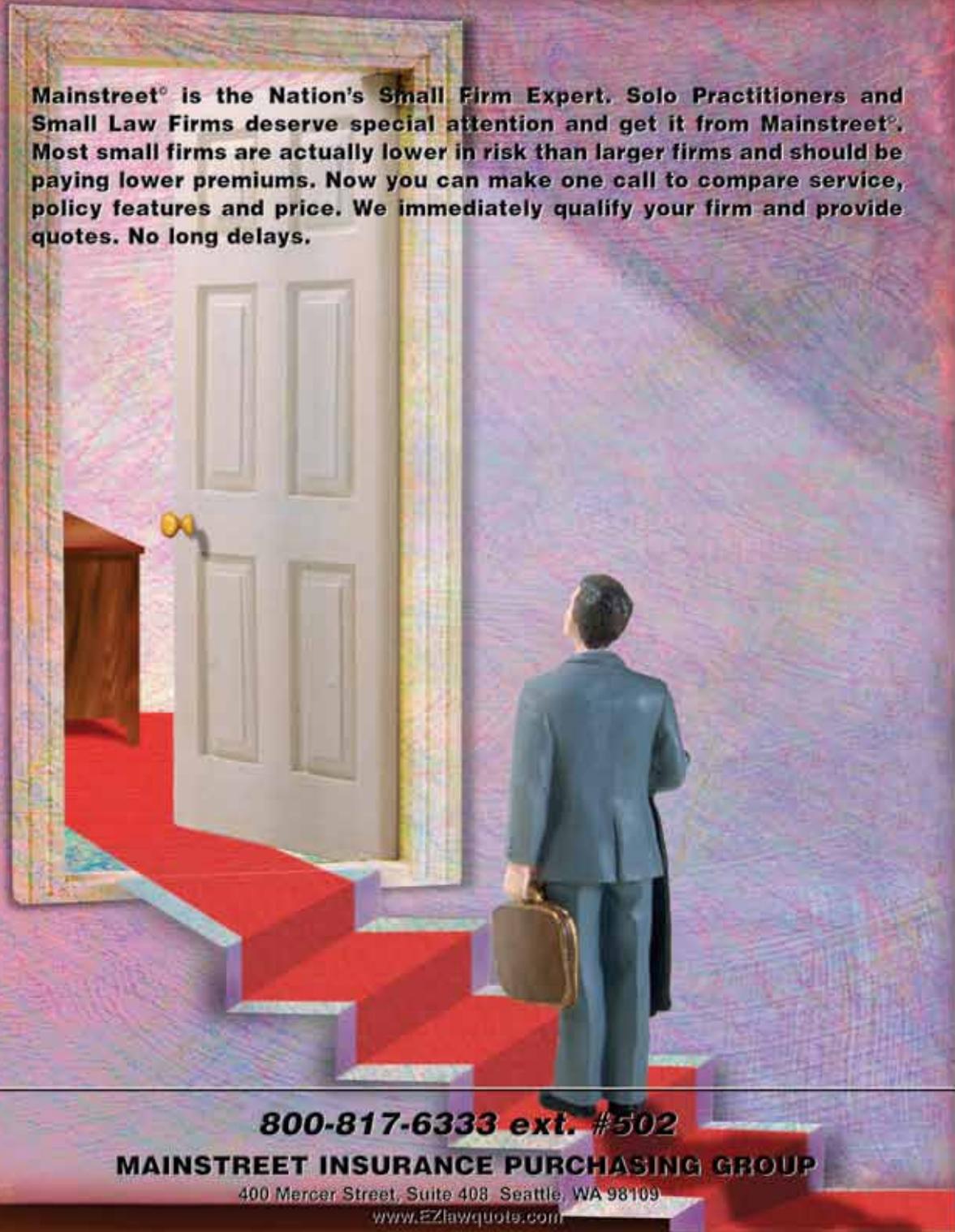
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I appreciate the fact that Governor Christine Gregoire was refreshingly straightforward in this interview. She did not refuse to answer any of my questions, but instead answered all of them candidly and completely. I would also like to thank her general counsel, Richard Mitchell, and her communications director, Pearse Edwards, who helped make this interview possible. ☺

WSBA President Stan Bastian can be reached at stanb@jdsllaw.com or 509-662-3685.

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Legal Technician Talk

Understanding the proposed Admission to Practice Rule on legal technicians



by WSBA Executive Director
Paula Littlewood

and WSBA President
Stan Bastian

What are legal technicians? Where did the idea originate and why? Will legal technicians be allowed to practice law? How will they be licensed and regulated? How much will they charge clients? Will they be governed by ethical rules? Will they help solve the growing justice gap by providing legal advice to low- and moderate-income people?

These are all good questions and our guess is that, prior to picking up this issue of *Bar News*, most of you had not heard about the proposed legal technician rule. This and the next edition of *Bar News* will devote substantial space to the legal technician proposal, and it is our hope, once again, to educate, debate, inform, advise, and stimulate your thoughts on this important issue. This month's issue provides background information on the history of the Practice of Law Board and the proposed legal technician rule. July's *Bar News* will have a number of articles discussing the pros and cons of the idea.

First, some basics. The legal technician proposal was developed by the Practice of Law Board (POLB). One of the primary functions of the POLB is to make recommendations to the Washington State Supreme Court regarding ways non-lawyers may be authorized to engage in certain legal or law-related activities that constitute the practice of law. The POLB has fulfilled this function by developing and now proposing the legal technician rule. This rule was sent to the Supreme Court on January 7, 2008, and the POLB voted unanimously to recommend that it be adopted. As recommended, the legal technician rule would initially be applied only to the area of family law. It is possible that in the future it would be expanded into other practice areas such as landlord/tenant and elder law.

In part, the legal technician rule is an attempt to respond to the unfortunate fact that many people with moderate to low incomes simply cannot afford to pay for lawyers to help with their civil legal problems. If adopted, legal technicians would not be authorized to represent clients in court proceedings or during legal negotiations, but they would be allowed to do the following:

As you read your June and July issues of Bar News, we hope the articles will help inform your own opinions about the proposed rule. ... Our goal this summer is to help educate WSBA members about the proposed rule and to gather feedback from you.

- Review, explain, and complete pleadings and forms.
- Conduct legal research when supervised by a licensed lawyer.
- Draft letters and pleadings when supervised by a licensed lawyer.
- Provide clients with self-help materials and help complete the materials.

The relationship between legal technicians and the client would be governed by the same rules, expectations, and considerations that govern the attorney-client relationship. The technicians would be regulated by a commission appointed by the Supreme Court, but staffed and funded by the Washington State Bar Association.

The educational requirements to be-

come a legal technician would be less than those required to be a lawyer. Instead of an undergraduate college degree and graduation from law school or Washington's Law Clerk Program, a legal technician would be required, at a minimum, to complete a 90-credit associate's degree with a minimum of 45 credits in substantive legal courses. The technician would also be required to work for two years under the supervision of a lawyer prior to going out on his/her own. Finally, all potential legal technicians would be required to take an exam on general substantive and procedural law, including ethics and the workings of the court system.

As you read your June and July issues of *Bar News*, we hope the articles will help inform your own opinions about the proposed rule. The Board of Governors will take this issue up at its September meeting in Seattle and will then communicate with the Supreme Court its position on the proposed rule. Our goal this summer is to help educate WSBA members about the proposed rule and to gather feedback from you. You can view the full text of the rule, the Practice of Law Board's report to the Supreme Court, and other related information at www.wsba.org/lawyers/groups/practiceoflaw/default.htm.

The Supreme Court has also indicated it would like to hear from the WSBA and our members, so please take a moment after reading the two issues of *Bar News* to communicate with your representative on the Board of Governors, the Supreme Court, or one of us. Or, you may send your comments to barnewscomments@wsba.org. We look forward to hearing your thoughts! 

WSBA President Stan Bastian can be reached at stanb@jdsalaw.com or 509-662-3685. WSBA Executive Director Paula Littlewood can be reached at paulal@wsba.org, 206-239-2120, or 800-945-9722, ext. 2120.

An Overview of the Proposed Legal Technician Rule

BY JULIE SHANKLAND

The Washington State Supreme Court adopted General Rule (GR) 24 in 2001, defining the practice of law.¹ The Supreme Court also adopted GR 25 in 2001, creating the Practice of Law (POL) Board and giving that Board the following mission:

The purpose of this rule is to create a Practice of Law Board in order to promote expanded access to affordable and reliable legal and law-related services, expand public confidence in the administration of justice, make recommendations regarding the circumstances under which non-lawyers may be involved in the delivery of certain types of legal and law-related services, enforce rules prohibiting individuals and organizations from engaging in unauthorized legal and law-related services that pose a threat to the general public, and to ensure that those engaged in the delivery of legal services in the state of Washington have the requisite skills and competencies necessary to serve the public.

The Practice of Law Board has worked for the past three years to meet the directive of the Supreme Court to “make recommendations regarding circumstances under which non-lawyers may be involved in the delivery of certain types of legal and law-related services.” The Practice of Law Board has also worked diligently to meet the directive of the Supreme Court to investigate complaints of the unauthorized practice of law. To date, the Practice of Law Board has investigated 167 complaints of the unauthorized practice of law; issued 94 cease-and-desist letters; and authored 11 advisory opinions.

In January 2008, the Practice of Law Board sent a recommendation and proposed rule to the Washington State Supreme Court to meet the mandate of GR 25

with regard to non-lawyer involvement in the delivery of certain law-related services by so-called “legal technicians.” This article introduces the legal technician concept and provides the background to, and an explanation of, the basic components of the proposed rule. More comprehensive information about the Practice of Law Board and the proposed rule can be found at www.wsba.org/lawyers/groups/practice oflaw.

In developing the proposed rule over the past three years, the POL Board has held public hearings in Seattle and Spokane; asked for and received input from WSBA members, the WSBA Board of Governors, and the public; and convened subcommittees for each area of substantive law considered: family law, elder law, immigration law, and landlord/tenant law. Board members have made many presentations at local bar associations, section meetings, and the Access to Justice Conference. After much deliberation, the Board narrowed its focus to family law,² and in January 2008, the Board sent the proposed rule to the Washington State Supreme Court that would provide for the creation and regulation of non-lawyers providing limited legal assistance to *pro se* clients in some family law matters.³ The rule is accompanied by a set of regulations⁴ that establish the Non-Lawyer Practice Commission to Regulate Legal Technicians.⁵

What Is a Legal Technician?

A legal technician is a certified practitioner authorized to engage in the limited practice of law as specified in the proposed rule. A legal technician is authorized to choose and prepare forms, and to give legal advice in limited areas under specified conditions and regulations. A legal technician assists *pro se* litigants with pre-approved forms and advises about the effect of those forms. A legal technician cannot appear in court and does not represent clients or participate in negotiations (Proposed APR B(6)). A legal technician must personally perform the work and

must have a staffed office in Washington for acceptance of service (proposed APR E(2) and (3)). The proposed rule sent to the Court recommends family law as the first area of practice in which to allow legal technician involvement. The 2003 Washington State Civil Legal Needs Study shows family law as one of the highest areas of unmet need.⁶ The POL Board recommended family law for several reasons: the large amount of unmet legal need in this arena, the subcommittee’s recommendation that this is an appropriate area for non-lawyers, and the harm to the public Board members have witnessed in this arena due to the unauthorized practice of law by unregulated non-lawyers.

What Are the Certification Requirements? (Proposed APR C)

A legal technician must be over the age of 18 (proposed APR C (1)), be of good moral character (proposed APR C (2)), and meet both education (proposed APR C (3)) and experience (proposed APR C (4)) criteria. The technician also must comply with pro bono (proposed APR C (5) and G (2)) and CLE requirements (proposed APR G). The technicians will be tested on the RPCs as well as procedural and substantive law (proposed APR C (6)). Technicians may practice in a substantive area only after passing a test in that area. Legal technicians must prove financial responsibility, obtain professional liability insurance, and comply with the RPCs. Legal technicians will have mandatory CLE requirements imposed by the Commission.

Legal technicians must graduate from an ABA- or Commission-approved paralegal/legal assistant program. These may be associate degree programs or other programs that include a minimum of 45 quarter hours of substantive legal courses and 90 total quarter hours. Alternatively, these may be bachelor’s degree programs in paralegal or legal assistant studies, or post-baccalaureate certificate programs in paralegal or legal assistant studies. In addition to the educational requirements,

certificate candidates must have substantive legal experience as a paralegal or legal assistant working under the supervision of a lawyer. Graduates from bachelor's or ABA-approved associate's programs must have two years' experience; all others must have three years' experience. Additionally, each certificate candidate must complete 20 hours of pro bono service prior to taking the certification examination.

The POL Board realized that many applicants may meet the experience requirement, but not the educational requirement. After discussion, the Board determined that the educational requirement would provide a breadth of knowledge that years of experience in one area might not. Although this may lead to a lower number of initial applicants, the Board decided that the combination of education and experience was essential to protection of the public.

Why Would We Need Legal Technicians?

The 2003 Washington State Civil Legal Needs Study,⁷ commissioned by the Washington State Supreme Court, established that the legal needs of the consuming public are not currently being met. Washington's 2008 Courthouse Facilitator Programs for Self-Represented Litigants in Family Law Cases Report (Report) finds that the number of *pro se* litigants in family law matters is increasing (Report, pages 10 and 11).⁸ Additionally, the Report found that 70 percent of the courthouse facilitator customers who indicated they received assistance prior to contacting the facilitator had received assistance from family or friends first (Report, page 26). The Report also states that more than 70 percent of the courthouse facilitator clients received help with forms (Report, page 31). These studies document the need to increase access to justice in the area of family law, with specific emphasis on assistance with forms. Legal technicians could provide services for those who either cannot afford a lawyer or whose legal issues are simple and discrete enough to be completed by a non-lawyer. Technicians must refer clients to lawyers when the legal issues are beyond the scope of the technician's authority.

Another reason cited for the legal technician rule is that non-lawyers already provide legal services and will continue to do so. Regulation of these services is important for consistent quality and protection of the public. The Board's position

is that regulation of non-lawyers will both protect the public from the unauthorized practice of law and assist prosecutors in prosecuting this crime. In a 2005 letter to the Kansas Bar Association, the U.S. Department of Justice stated: "The Justice Department and the Federal Trade Commission believe that the definition of the practice of law should be limited to those activities where specialized legal knowledge and training is demonstrably necessary to protect the interests of consumers. Otherwise, consumers benefit from preserving competition between lawyers and non-lawyers."⁹ The FTC has written letters to many state bar associations and obtained an injunction in at least one instance prohibiting a bar association from unreasonably restraining competition by preventing non-lawyers from providing services, thus signaling the federal government's interest in widening access. The POL Board believes that by actively determining areas of non-lawyer delivery of legal services and setting reasonable regulations, Washington can avoid having these decisions made by others.

Two other states already have certified non-lawyer document-assistant programs. In September 1998, California created legal document assistants.¹⁰ These assistants, who are not authorized to provide legal advice, operate in many counties. In July 2003, the Arizona Supreme Court created the Legal Document Preparers Program. This program requires all individuals and businesses in Arizona that prepare legal documents without the supervision of an Arizona lawyer to obtain a certification.¹¹ This program has operated for almost five years. The Board studied these programs prior to developing the proposed rule and concluded that Washington's unmet legal needs would be more effectively addressed by allowing the non-lawyers to explain the effect of the forms to their *pro se* litigants. Under existing law, this would constitute the practice of law and thus be prohibited conduct for non-lawyers. The legal technician rule will authorize this conduct in a controlled and regulated environment. Both Arizona and California allow the non-lawyers to practice in any substantive law area. The Board specifically decided to require legal technicians to be tested separately in each substantive area. Additionally, the Board requested initial approval of only one area of substantive law to make certain the Board and the Commission have the ability to effectively implement the program.

What Could a Family Law Legal Technician Do?

The proposed rule authorizes legal technicians to do the following (proposed APR D):

- Ascertain whether the problem is within the defined practice area of family law, and if so, obtain relevant facts, and explain the relevancy of such information to the client;
- Inform the client of applicable procedures, including deadlines, documents which must be filed, and the anticipated course of the legal proceeding;
- Inform the client of applicable procedures for proper service of process for motion papers, and proper filing procedures;
- Provide the client with self-help materials prepared by a lawyer or approved by the Commission, which contain information as to statutory requirements, case law basis for the client's claim, and venue and jurisdiction requirements;
- Review pleadings or exhibits presented by the client from the opposing side, and explain the documents;
- Select and complete forms that have been approved by the state of Washington, either through a governmental agency or by the Administrative Office of the Courts or the content of which is specified by statute; federal forms; forms prepared by a lawyer; or forms approved by the Commission; and advise the client of the significance of the selected forms to the client's case;
- Perform legal research and draft legal letters and pleadings, if the work is reviewed and approved by a lawyer;
- Advise the client as to other documents which may be necessary (such as exhibits, witness declarations, or party declarations), and explain how such additional documents or pleadings may affect the client's case; and
- Assist the client in obtaining necessary documents, such as birth, death, or marriage certificates.

In the realm of family law, a legal technician could draft pleading forms in the approved areas, for example: Child Support Orders, Child Support Worksheets, Support Modification Petitions or Responses, Contested or Uncontested Dissolution Petitions and Responses, parenting plans, temporary orders, protective orders, parentage action pleadings, non-parental custody petitions or responses.

A legal technician may explain third-party declarations to a *pro se* litigant, but cannot draft these non-approved forms, unless under the supervision of a Washington lawyer. Legal technicians may draft state-approved domestic-violence forms.

If the legal technician program is successful in family law, the Board will consider recommending that the Court expand it to landlord-tenant law, elder law, or other appropriate substantive areas.

What Are the Practice Limitations?

Legal technicians are not authorized to perform services in the following areas (proposed APR B (6), proposed APR F, and Report to the Court):

- Assisting clients where a party to the action has active military service status, unless the legal technician is under the active and direct supervision of a responsible Washington-licensed attorney;
- Contacting the opposing party or his or her attorney, or entering into negotiations with them;
- Engaging in or responding to discovery procedures, unless the legal technician is under the active and direct supervision of a responsible Washington licensed attorney;
- Drafting non-party witness declarations unless the legal technician is under the active and direct supervision of a responsible Washington licensed attorney (however, an unsupervised legal technician may explain to a client the need for and criteria of such declarations); and
- Providing services related to assisted reproduction parenting issues (RCW 26.26.210 *et seq.*).

When applied to family law, legal technicians must refer the following matters to a Washington lawyer:

- Indian Child Welfare Act (25 U.S.C. 1901 *et seq.*);
- Relocations with minor children (RCW 26.09.405, *et seq.*);
- Parenting Plan modifications (RCW 26.09.260 and 270);
- Disestablishment or rescission of parenting acknowledgement (RCW 26.26.010 *et seq.*);
- Interstate custody — UCCJEA (RCW 26.27.010, *et seq.*);
- Transfer of interests in real estate;

- Division of retirement benefits;
- Division of business property; and
- Contempt proceedings (RCW 26.09.160 and other applicable statutes).

What Is the Cost of This Program?

GR 25 states that the program shall be self-supporting. In working to ascertain what expenditures would be required to run such a program, the Board gathered financial information from the State Bar of Arizona program and from the Limited Practice Officer (LPO) program¹² that is administered by the WSBA. While the Arizona program received a start-up grant, detailed information for the start up of the LPO program is, unfortunately, not available. The legal technician program will have start-up costs, including costs associated with developing tests, administering certification, and collecting data. The fiscal impact for start-up costs for a legal technician program in Washington will need to be investigated further, but as with the LPO program, it would have to be self-sustaining.

What's Next?

The Supreme Court has indicated it will consider the proposed rule in November 2008. The July issue of *Bar News* will contain additional articles discussing the legal technician concept and proposed rule. The WSBA Board of Governors will consider its recommendation with respect to the proposed rule at its September 18–19 meeting in Seattle. If you have questions about the proposed rule or other aspects of the proposal, please contact Julie Shankland at 800-945-9722, ext. 8280, 206-727-8280, or julies@wsba.org. ☎

Julie Shankland is WSBA assistant general counsel and can be reached at julies@wsba.org.

NOTES

1. General Rule 24
Definition of the Practice of Law
(a) General Definition: The practice of law is the application of legal principles and judgment with regard to the circumstances or objectives of another entity or person(s) which require the knowledge and skill of a person trained in the law. This includes but is not limited to:
(1) Giving advice or counsel to others as to their legal rights or the legal rights or responsibilities of others for fees or other

consideration.

(2) Selection, drafting, or completion of legal documents or agreements which affect the legal rights of an entity or person(s).

(3) Representation of another entity or person(s) in a court, or in a formal administrative adjudicative proceeding or other formal dispute resolution process or in an administrative adjudicative proceeding in which legal pleadings are filed or a record is established as the basis for judicial review.

(4) Negotiation of legal rights or responsibilities on behalf of another entity or person(s).
(b) Exceptions and Exclusions: Whether or not they constitute the practice of law, the following are permitted:

(1) Practicing law authorized by a limited license to practice pursuant to Admission to Practice Rules 8 (special admission for: a particular purpose or action; indigent representation; educational purposes; emeritus membership; house counsel), 9 (legal interns), 12 (limited practice for closing officers), or 14 (limited practice for foreign law consultants).

(2) Serving as a courthouse facilitator pursuant to court rule.

(3) Acting as a lay representative authorized by administrative agencies or tribunals.

(4) Serving in a neutral capacity as a mediator, arbitrator, conciliator, or facilitator.

(5) Participation in labor negotiations, arbitrations or conciliations arising under collective bargaining rights or agreements.

(6) Providing assistance to another to complete a form provided by a court for protection under RCW chapters 10.14 (harassment) or 26.50 (domestic violence prevention) when no fee is charged to do so.

(7) Acting as a legislative lobbyist.

(8) Sale of legal forms in any format.

(9) Activities which are preempted by Federal law.

(10) Serving in a neutral capacity as a clerk or court employee providing information to the public pursuant to Supreme Court Order.

(11) Such other activities that the Supreme Court has determined by published opinion do not constitute the unlicensed or unauthorized practice of law or that have been permitted under a regulatory system established by the Supreme Court.

(c) Non-lawyer Assistants: Nothing in this rule shall affect the ability of non-lawyer assistants to act under the supervision of a lawyer in compliance with Rule 5.3 of the Rules of Professional Conduct.

(d) General Information: Nothing in this rule shall affect the ability of a person or entity to provide information of a general nature about the law and legal procedures to mem-

bers of the public.

(e) Governmental agencies: Nothing in this rule shall affect the ability of a governmental agency to carry out responsibilities provided by law.

(f) Professional Standards: Nothing in this rule shall be taken to define or affect standards for civil liability or professional responsibility.

[Adopted effective September 1, 2001; amended effective April 30, 2002.]

2. The recommendation and scope of practice for family law legal technicians was developed by a subcommittee with the following members: Rita L. Bender and Howard H. Marshack, co-chairs, Commissioner Scott Collier, Cherie Cosper, Betty Gould, Gail Hammer, Michelle Storms, and Casey Trupin.
3. For more detailed information on the proposed rule, regulations, and subcommittee report, visit www.wsba.org/reporttocourt/pdf.
4. The full regulations are attached to the report to the Court.
5. Regulation of legal technicians cannot be performed by the Bar Association, because this could lead to complaints of anti-competitive actions. As a trade organization, the WSBA cannot determine who can and cannot practice law; the Washington State Supreme Court makes that decision. The Practice of Law Board is set up directly under the Supreme Court because of the anti-competition issues.
6. 2003 Washington State Civil Legal Needs Study, figure A, page 71. See the full report at www.courts.wa.gov/newsinfo/content/taskforce/CivilLegalNeeds.pdf.
7. www.courts.wa.gov/newsinfo/content/taskforce/CivilLegalNeeds.pdf.
8. www.courts.wa.gov/wscrr/docs/Courthouse%20Facilitator%20Program.pdf.
9. www.usdoj.gov/atr/public/comments/207619.htm.
10. www.leginfo.ca.gov/cgi-bin/displaycode?section=bpc&group=06001-07000&file=6400-6401.6; www.leginfo.ca.gov/cgi-bin/displaycode?section=bpc&group=06001-07000&file=6402-6407; www.leginfo.ca.gov/cgi-bin/displaycode?section=bpc&group=06001-07000&file=6408-6415.
11. www.supreme.state.az.us/cld/ldp.htm; www.supreme.state.az.us/cld/pdf/LDP%20AO2003-14.pdf.
12. LPOs, or limited practice officers, are non-lawyers who are authorized to select, prepare, and complete documents in a form previously approved by the Limited Practice Board for use in closing a loan, extension of credit, sale or other transfer of real or personal property. For further information, see www.wsba.org/info/lpo.htm.

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WSBA Celebrates 75 Years

BY ROBERT D. WELDEN

State Bar Act Establishes the Association as We Know It Today

This year marks the 75th anniversary of the State Bar Act, which established the Washington State Bar Association as an integrated, or unified, bar association.

Although we celebrate our 75th anniversary this year, the roots of the WSBA go back 120 years. In January 1888, the Washington Bar Association was formed in the last year of the Washington Territory. In those days, all lawyers who had cases set for argument before the Supreme Court were required to be present at the beginning of the Court term in January. Sometimes, lawyers were required to wait for days or weeks for their cases to be called on the calendar.

It was in this setting that a group of lawyers met in the Territorial Supreme Court chambers in Olympia, January 19, 1888, to form the Washington Bar Association. (The name was changed to the Washington State Bar Association in 1890.) The first meeting was held during the day and was attended by 35 lawyers. They elected a chairman and secretary, and appointed a committee to draft a constitution. They adjourned until 7:00 that evening. The hand-written minutes of that evening meeting show that the first order of business was the appointment of a committee to investigate charges against a judge, Frank Allyn, filed by attorney D.P. Ballard. They also adopted a resolution appointing a committee to investigate "charges of a grave and serious nature" against the same D.P. Ballard who complained of Judge Allyn. (There is no record that either investigation led to initiation of disciplinary proceedings against either Judge Allyn or Mr. Ballard.)

During that evening meeting, they adopted a constitution for the Association. It provided:

The objects of this Association are to cultivate the science of jurisprudence, promote the administration of justice, uphold and advance the standard of integrity, honor and courtesy in the legal profession, and to establish and

cherish a spirit of brotherhood among its members.

The association originally consisted of 35 lawyers, and membership cost \$5 per year. By 1913, there were about 600 members of the Bar. At that time, it was a purely voluntary organization and did not include all lawyers admitted to practice. In 1914



the President of the Association, Ira P. Englehart of North Yakima, argued there were three reasons for "a strong organization":

First, to observe and discuss proposed legislation; . . . Second, for social intercourse; . . . Third, for the government and discipli-

Above: Father of the State Bar Act and the WSBA's first executive secretary Alfred J. Scheppe. Right: The first issue of Bar News from March 1947 was just four pages. Atomic energy regulation and judicial selection were a couple of the topics on members' minds.

pline of members of the bar, to require members to live up to the ethics and traditions of the profession.

By 1930, as more lawyers were admitted to practice, it was proposed that the Bar Association have a paid executive secretary and a paid representative in Olympia when the Legislature was in session, that it have an official publication, and that it be incorporated. George McCush, of Bellingham, was appointed chairperson of the Incorporation Committee. That committee reported back with a draft of a Bar Association Act to be proposed to the Legislature. Because the



Washington Constitution prohibits creation of corporations by special act, the committee proposed that the Bar Association be created as an agency of the state. The proposed act would create "a complete integrated (i.e., mandatory membership) Bar which is officially organized, self-governed and all inclusive." It proposed an annual license fee of \$5.

This proposal was widely debated over the next few years. One issue was whether the bar should be established directly by legislation (the "State Bar Act"), indirectly by legislation authorizing integration by Supreme Court rule (the "Short Bar Bill"), or simply by court rule. Ultimately, the drafting was taken up by Seattle attorney Alfred J. Schweppe, former dean of the University of Washington School of Law. He argued forcefully and successfully for legislative establishment of the Bar. In 1933, the State Bar Act (Ch. 2.48 RCW) was enacted.

During this period, Mr. Schweppe also agreed to serve, briefly, as the first executive secretary of the Association, and operated the State Bar out of his law office in the Colman Building in Seattle. He soon hired Clydene Morris to serve as executive secretary. The State Bar offices moved to the Dexter Horton Building in 1933, where they shared space with the Seattle Bar Association. In 1947, the combined offices were

moved to street-level offices in the Morrison Hotel across the street from the King County Courthouse.

Ms. Morris served as executive secretary until 1955, when Alice O'Leary Rawls became executive secretary (the position was changed to executive director in 1962). Ms. Rawls was a graduate of the University of Washington School of Law, and had been an assistant attorney general, deputy prosecuting attorney, and director of the King County Family Court.

In 1966, the WSBA office moved to the College Club Building in Seattle. In 1971, G. Edward Friar was hired as assistant executive director, and in 1972 he succeeded to the position of executive director. In 1981, he was succeeded by John Michalik, a lawyer from Minnesota who had been employed as the WSBA's first director of continuing legal education. In 1986, the WSBA office moved to the Westin Building.

Dennis Harwick, the executive director of the Idaho State Bar, became WSBA executive director in 1990. During Mr. Harwick's tenure, the WSBA office moved to Seattle's Fourth and Blanchard Building. In 1998, Mr. Harwick was succeeded by Jan Michels, the

former King County Superior Court clerk. In March 2007, Paula Littlewood, former WSBA deputy executive director, was named executive director, and in December, the WSBA office moved to the Puget Sound Plaza Building on Fourth Avenue in Seattle.

The WSBA currently has more than 30,000 members. To learn more about the WSBA including governance, organization,

related organizations, and demographics, see www.wsba.org/info/history.htm. 

Robert D. Welden is WSBA general counsel and has worked for the WSBA for more than 27 years, currently holding the distinction of being the WSBA's longest-serving member of staff. He can be reached at bobw@wsba.org.

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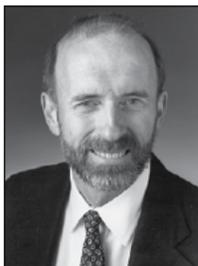
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EDITOR'S NOTE: Since becoming editor, I have hoped to incorporate more human-interest pieces in the Bar News. I suspected there were plenty of good stories among our 30,000 members. I am pleased to report that many of you responded. Following are three excellent examples of the type of stories I have been talking about. In the first piece, a Seattle lawyer

reflects on how serving as a judge advocate with the United States Marine Corps taught him as much about human nature as how to win cases in court. The second is about dealing with a serious illness and how it affects one's view of work. The third piece is about how one attorney drew on his experiences as a lawyer to launch a writing career. — M.H.

Could I Handle the Truth?

BY MICHAEL J. BOND

My First Job as a Lawyer in the Marine Corps

In a gentler era, we were known as “attorneys and counselors.” But when I graduated from law school at Gonzaga University in 1978, I don’t recall having spent any class time learning about the counseling part of the profession. I quickly learned all about it, though, in my first job as a lawyer: as a judge advocate with the United States Marine Corps. My first clients were young, scared recruits with second thoughts about their enlistment. In working with them, I discovered that while winning a big case is great fun, helping people navigate life’s troubles can be even more rewarding. I later moved to the prosecution side and learned another important lesson. I once found myself embroiled in an ethically challenging case, eerily similar to the one portrayed in the Jack Nicholson/Tom Cruise movie *A Few Good Men*. From that experience I learned that the appearance of justice is as important as justice itself. Let me explain.

In the summer of 1975, I completed Marine Corps Officer Candidate School (OCS). I started law school at Gonzaga that fall. The Marines are unique among the services in that all officers, regardless of their jobs, are required to complete the 10-week OCS and then six months of The Basic School before completing the schooling for their particular assignments. All Marine officers go through the same basic training, whether they will go into the combat arms, fly jets or helicopters, or practice law. During the summer breaks from law school at Gonzaga, I went on active duty and worked in the legal office at the 3rd Marine Air Wing Air Base at El Toro, California. I recall that my tenure there began with a humbling experience.

When I reported for duty at El Toro the first time, I had no uniforms because I had not yet gone through The Basic School. Accordingly, I wore a regular civilian business suit. The Orders to report for duty always say simply, “Report to the Commanding General.” Unaware of the proper protocol, I drove through the gate at El



Snapshots of boot camp from the author.



fearing nothing, I walked up to the front of his desk and in my best parade-ground voice said, “Lieutenant Bond, reporting for duty, Sir!”

The General seemed a little amused by this apparition that had suddenly appeared in his office through a door that was never used. After inquiring into exactly who I was and what I was doing there, he hollered for the first sergeant to come take care of me. Outside, the first sergeant took me aside and gently told me that the next time it would be better if I would just come through the front door to the front desk and check in with the corporal. Meanwhile, it would be a good idea if I were to visit the supply building, as soon as possible, and purchase some uniforms, too, Sir!

No worse for wear, I continued my Marine Corps and legal studies. After graduating from law school and passing the bar exam,

Toro, found my way to a building with a sign out front that said “Commanding General,” and parked my car. I walked down the hallways with a certain determination until I saw a door marked “Commanding General” and walked right in. In the office, working at his desk, I found a ramrod-straight guy with a grey flat-top haircut and a bronze, weathered face featuring sparkling blue eyes and a chiseled chin. He wore a stack of ribbons on his chest that reached to his shoulder, and two gleaming stars perched on his shirt lapels. He seemed a bit startled when I burst in the door. But,

my wife, Marianne, and I left Spokane and moved East, where I completed about eight months of training at The Basic School at Quantico, Virginia, and the Naval Justice School at Newport, Rhode Island. We then reported for duty at the Marine Corps Recruit Depot in San Diego, California. This is one of two Marine Corps boot camps where young men are trained to become enlisted Marines; the other boot camp is at Parris Island, South Carolina, where women are also trained to become Marines.

At that point in my budding career as a Marine Corps lawyer I was, as we learned to say at OCS, a highly motivated, high-stepping, highly educated, hard-charging soldier of the sea. And if that weren't enough, I was also a full-fledged lawyer eager to get my first client out of a jam.

I was armed with the Uniform Code of Military Justice (UCMJ), which sets forth the substantive and procedural law that applies to all service members. Notably, the United States Supreme Court cited the UCMJ in the *Miranda*¹ decision when the Court adopted the rights of those accused of crimes to be informed about the right to remain silent. Many argue today that the panoply of rights and procedures under the UCMJ are more than adequate to address the handling of the detainees now held at Guantanamo, Cuba.

In my day, when a Marine was charged with a minor offense that his company commander would deal with, the Marine had a right to consult counsel before the commander could hold what was called a "non-judicial punishment" hearing. And it seemed that the only Marines who ever exercised that right at Marine Corps Recruit Depot (MCRD) were recruits. These were young men who decided — shortly after getting off the bus after flying all night from a small town, getting a very short haircut, and receiving the first seriously loud yelling-at — that they had made a really big mistake and would just as soon go back home. But they signed a contract, the government spent a little money on them so far, and it wasn't as easy as raising your hand and saying, "Excuse me, Sir. Can I go home now?"

I was always intrigued by the difference in training philosophy between the officers and enlisted. From the minute we got off the bus at OCS, our drill instructors were in our faces challenging us to go home just as soon as we asked — they called it "drop on request," or DOR. It seemed like an effective way to challenge a young man to reach a little higher in life and not take the easy way out. After all, who wants to be a quitter? But, for reasons

I hope are well thought out, the enlisted recruits were never given an easy way out.

So these kids who had second thoughts about joining the Marines would create some disturbance or be disrespectful or try to get in trouble, and they would be charged with a minor crime under the UCMJ. My father, who was a Marine Corps officer, too, and once the executive officer of the Marine Barracks at the U.S. Naval Brig at Yokosuka, Japan, told me that, in his day, they referred to the UCMJ as the Uniform Coddling of Military Juveniles. But, thanks to some enlightened thinking, in my era they got a free lawyer before they were convicted and punished.

In the first few weeks of my first real job as a lawyer at San Diego, I would come to work in the morning and find six to 10 freshly shorn young men lined up outside the door to my office waiting to see "their lawyer." They had been charged with crimes and wanted to consult with counsel about their legal rights before submitting to non-judicial punishment. I would bring them in one at a time, sit them down, and try to listen — through torrents of tears — to their tales of woe. It seems like every one of these big and strong guys (and a few little and weak ones, but every one a tough guy) would just cry their eyes out, begging me to do something to help them get home. Instead of doing any real legal work, I was a camp counselor and psychologist who provided a place of refuge where, in as calm and unthreatening a voice as I could muster, I would try to reassure them that it wasn't so bad, there was a reason why they wanted to join, and in a few months they would be glad they stuck it out. All the legal rights in the world were of no use, the rules of evidence and procedure did not apply, and I knew that more yelling wasn't going to be productive. These kids did not need an attorney, they needed a coach; they needed encouragement, not more criticism, and more often than not, it worked.

After I broke in as camp counselor, the boss began to give me some trial work, almost all of which involved allegations that a drill instructor had abused a recruit. For a defense attorney, a drill instructor is one of the best possible clients, because he is carefully selected for the job with a stellar career up to that point and commendations from high-ranking officers and meritorious promotions along the way. The UCMJ provides for a right to a jury trial with peremptory challenges and challenges for cause, and an enlisted man has a right to have one-third of the jury consist of enlisted men and women. The enlisted jury pool were mostly current and former drill instructors who were not inclined to lightly

vote guilty. It took the vote of two-thirds of the members to convict and, if you worked your challenges just right, you'd get a jury in which the vote of at least one of the former drill instructors was necessary. I won my first few cases as a defense lawyer and mistakenly believed it had something to do with my Clarence Darrow-like oratory.

The boss then moved me over to the prosecution and, if you've seen the movie, *A Few Good Men*, I had the job of prosecutor as played by Kevin Bacon in my last year of service. In fact, I had a case very similar to the one portrayed in the movie, and that is how I learned about the importance of the appearance of justice.

In *United States v. Sergeant Thomas Peters*,² a platoon drill instructor was charged with battery at a General Court Martial. He had ordered two of his recruits to "straighten out" another recruit who was caught with chocolate cake from the mess hall in his foot locker. One of these accomplices was a Golden Gloves boxer, and he punched the chocolate-cake culprit once in the belly, rupturing the kid's spleen.

The injured young man survived, but this was a serious problem and it had the attention of the commanding officers all the way to the top. Although a senior officer did not commit suicide as in the movie, the Marine commandant paid us a visit the day before the trial began and spoke to all the officers and non-commissioned officers about recruit abuse. General Barrow was not a Colonel Jessup/Jack Nicholson character. But he was the most senior Marine, a four-star general, and he was speaking to the jury pool, which made for a very interesting jury selection on the first day of trial the next day.

It is a crime under the UCMJ for a commanding officer to seek to influence the decisions of a jury, and the defense attorneys immediately filed piles of motions seeking a dismissal of the charges or change of venue, arguing, not unreasonably, that General Barrow had tainted the entire jury pool. The trial judge denied all the motions, but he allowed individual *voir dire*, and we brought each of the prospective jurors in for questioning about what appeared to be unlawful command influence. Every one of them said: "Yes, Sir, I was there and I recall General Barrow told us about drill instructors who were disloyal stupid cowards, and I especially recall that he said a drill instructor who used a recruit to abuse another recruit was a super-coward and how he wanted none of those in his Marine Corps; and no, Sir, it will have no impact on my decision here."

Sergeant Peters, in fact, committed a

serious crime. Like the desperado who in our criminal law casebook recklessly shot at a passing train and killed a passenger, he set in motion a force likely to commit grievous bodily injury. But he was no desperado; the opposite was true, and he took the stand and testified all about what was a serious error of judgment. He was convicted of battery, reduced in rank to private, dishonorably discharged, and sentenced to a year in prison at the federal penitentiary at Fort Leavenworth; and it's not a win that I brag about.

As lawyers, we know all about rules of law and procedure, case scheduling orders, and the other mechanics of justice, but sometimes the appearance of justice is just as important. ☺

Michael J. Bond graduated from Gonzaga University School of Law in 1978, completed an LL.M. in Sustainable International Development at the University of Washington School of Law in 2004, and has practiced in Seattle since 1982. Since 1997, he has been one of the partners in Gardner Bond Trabolsi PLLC.

NOTES

1. *Miranda v. Arizona*, 384 U.S. 436, 489 (1966).
2. I've changed his name because it happened a long time ago.

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It's Not About the Books... Or Is It?

BY SUZANNE PARISIEN

Reflections on Work in a Time of Crisis

I've not read Lance Armstrong's book *It's Not About the Bike*, but I plan to. It sits among a pile of books at my bedside that got eclipsed by stacks of medical information which became my literary diet after my breast cancer diagnosis last May. At the time of my diagnosis, I was already submerged in a sea of cancer alongside the aunt who raised me following my mother's death many years ago. She was in her final months of life in the terminal stages of ovarian cancer.

I've always counted myself as one of those lucky individuals who genuinely enjoys both the practice of law *and* my job. After my diagnosis, lots of people, including some of my doctors, suggested I take a leave of absence while I underwent treatment. It made sense; after all, I had taken time off to care for my aunt and still had plenty of sick leave. Why then, in the midst of all of this, did I have a renewed interest in work? Why, when it came to my aunt's illness, did I seem to have my priorities straight — with work properly occupying the back burner — but when it came to my own illness did I want and need work so much?

The obvious answer suggested by many is that work provides a "distraction" — maybe, but maybe not. I think I can safely speak for those who have been there when I say that no pleading, brief, or deposition can "distract" you from cancer. No, far more than just a distraction, work provided safety and meaning — the former being easier to recognize than the latter.

Work was safer than home because home was filled with the people and things that I

cherished but had difficulty facing, like my daughters who wanted assurances from me that everything was going to be okay. At the time, I had neither the knowledge nor

conviction to convey assurances. Home was filled with pictures and heirlooms of relatives loved and lost, and I was finding it difficult to face those, too. My second home had always been my aunt's house, but in many ways that was ending. She had always been there for me; and in the different way that children are there for their parents, I was there for her. We both knew that if things were different, she would have taken me to doctor



Above: The author (left) with her aunt, Barb Perlmutter. Below: Suzanne Parisien's office and sometimes refuge.

appointments, cared for the girls, cooked meals, walked the dog, and even tried her hand at ghost-writing an MSJ. But, in reality, she was sick and so was I. Abandoning our mutual roles was excruciating on us both.

On the days when I lacked the focus to work on my own cases, I would read advance sheets, sometimes for

hours at a time, taking strange comfort in the process that perhaps I'd taken for granted after so many years of practice. Gradually, I realized that what was drawing me to work was the order and (some) predictability that the law provides — two things that at the time seemed lost. I didn't comprehend the meaning that work provided until later. I've not read any of Scott Turow's books, but he sums it up pretty well for me with this quote:

The law, for all of its failings, has a noble goal — to make the little bit of life that people can actually control more just. We can't end disease or natural disasters, but we can devise rules for our dealings with one another that fairly weigh the rights and needs of everyone, and which therefore, reflect our best vision of ourselves.

Even in the midst of turmoil, it seems that we want or need to find meaning,



not just in our personal lives, but in our professional lives as well. For me, I like to think that I am working “to make the little bit of life that people can actually control more just.”

Of course, some days, it wasn't *work* that I needed, it was *the office*. I had always used the terms “work” and “the office” interchangeably. Now I know that they are different. After all, if not for the office, where else would I wear my newly amassed collection of wigs? Some days I'd be sporting long red hair, some days a sandy brown shag, and still other days — and my personal favorite — a jet-black short blunt cut with bangs, affectionately named “The Terminator.” And, while witnesses didn't exactly wither under examination by The Terminator, my dog came when I called and the girls made their beds and practiced violin. Regrettably, my husband seemed unaffected by The Terminator; but, all told, not bad. I still chuckle when I think of the poorly timed arrival of our new receptionist trying in earnest to figure out who I was on any given day. Sure, I felt bad about confusing her with all of my wigs, but her expression as she frantically scrolled down the employee roster trying to match my face (and hair) to a name always provided the first laugh of my day.

I'd be remiss if I didn't mention the handmade pillow, notes, flowers, cookies, and, yes, even jewelry that my co-workers bestowed upon me. I needed that, too. Heck, I even had co-workers tripping over each other to cover depositions in Pullman, and it wasn't even football season. These are but a few of the things for which I am grateful. Time and page limitations won't allow for the rest, but if it did, early detection and great doctors would be at the top of my list. I hope women readers will indulge me in a shameless plea to check your breasts regularly, and not let anyone — no matter how many letters follow their name — tell you that a lump is “nothing to worry about.”

It's a new year and I couldn't be happier about turning the page and packing (okay... throwing) away my wigs. I no longer need the safety of *the office*, and of course, I am grateful for that. Better still, I'm comforted to know that *work* can offer meaning in the midst of life's greatest challenges. ☺

Suzanne Parisien is honored to be an assistant attorney general in the Seattle Torts Division and writes this in loving memory of her aunt, Barb Perlmutter.

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warnings. Eric has recently completed an operator course at the BAC DataMaster factory in Mansfield Ohio, and he has lectured other lawyers on defending these complex and difficult cases.

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How I Got to Write for Hollywood

The Plot of a Lawyer's Life Has Many Twists and Turns

BY ROYCE BUCKINGHAM

Do our artistic pursuits outside the law get stifled by our intense legal careers? It's a question a lot of us ask. Here's one perspective from a guy (me) who has tried to make a go of both, for what it's worth.

I didn't always plan to be a lawyer. Growing up in the '70s in Richland, Washington, I dreamed of making up fantasy stories. I loved *Twenty Thousand Leagues Under the Sea*, *The Phantom Tollbooth*, and *The Hobbit*. I collected comic books. I saw *Jaws* at nine years old, then *Star Wars* at 11 and *Alien* at 13. I was even a "Dungeons & Dragons" nerd and created my own imaginary worlds.

By the late '80s, I had earned an English degree from Whitman College and began tinkering with creative writing. However, I felt that I should pursue a "real career" and wound up at the University of Oregon School of Law.

During law school, I scribbled short stories in my "spare time," and, in my third year, I got a call from San Jose State University's literary magazine. They wanted to publish one of my stories. Hooray! But I needed a real career, so I stuffed that story in a drawer and got a great job at the prosecutor's office in Bellingham.

In 1993, I began putting bad guys in jail and submitting fantasy stories to tiny magazines in my elusive "spare time." Soon I'd collected more than 100 rejection letters. Undaunted, I sat down and wrote a novel. It took over a year of my life, and nobody wanted it. Okay, *that* was daunting. But about this time, I discovered screenplays. I loved the form — it was very direct, like me.

Then *Demonkeeper* happened. *Demonkeeper* was a story inspired by a street kid I used to prosecute in juvenile court. I imagined life on the streets as a monster that would eat him up, as it does so many lost children. The *Demonkeeper* script married my love of fantasy with themes I was seeing in the courtroom every day. It won competitions, and, by 1999, I was trying to sell my stories

to Hollywood.

Over the next five years, I had children of my own and moved into adult felony prosecutions. My wife worked full-time too. I stayed up nights — typically until two a.m. — either writing like crazy or preparing for jury trials. This ... was a problem. I even fell asleep at my desk once, *sitting up*. And though I won amateur competitions, I couldn't break in professionally. By now I'd been doing it over 10 years, and I felt like I was chasing a silly dream. In 2004, with my career and family obligations weighing on me, I resolved to quit writing fiction and concentrate on real life.

That same week, Microsoft e-mailed me. They offered me a job writing a fantasy story for an Xbox video game. I impulsively left my legal career and wrote Microsoft an incredible story. A few months later, Microsoft cancelled the project, and I came crawling back to the prosecutor's office to beg for my real job back. My boss was gracious about it, so long as I promised not to fall asleep at my desk anymore.

This time, I decided I was truly done with writing.

Along about here, Atchity Entertainment International (AEI) called and asked if they could read *Demonkeeper*. I sent my script to L.A. again and returned to my felonies, assuming I'd just get another rejection letter. At least, I thought, I'd given my dream of being a writer a shot with the Microsoft gig.

Then AEI called back. They loved *Demonkeeper*. They told me that they'd sell my novel in New York, then sell my script in LA. Yeah, right, I thought ... big talk.

Around Christmas of 2005, AEI sold my

novel, *Demonkeeper*, to Penguin in New York. A month later, they sold my screenplay to Twentieth Century Fox in L.A. *Demonkeeper* is currently on bookshelves everywhere. Fox is developing the movie. My second book,



Goblins, will be out this fall.

Looking back, it occurs to me that achieving this dream wouldn't have been possible without those real-world attributes for which we are famous. We are lawyers. We are smart, committed, hard-working, thick-skinned, multi-tasking professionals. Sure, doing both made me busy, but the traits that make me a lawyer helped me get the job done — plus I didn't have to starve while I was being an artist. In the end, I believe that being a lawyer didn't hinder my creative dream, it helped make it come true. 

Royce Buckingham is a deputy prosecutor for Whatcom County and can be reached at rbucking@co.whatcom.wa.us. Find out more at www.demonkeeper.com.

Mother Teresa in a Black Robe or Pavlov?

BY JEFF TOLMAN

What Is Our Job as Judges?

A friend of mine, and fine jurist, recently had a judicial complaint filed against him for being disrespectful to litigants in his court. Now the Judicial Conduct Commission will hear evidence in an effort to determine a proper resolution.

I'm not surprised. After hearing a recent presentation by the JCC, I finally understood the answer. It's better to be a miserable judge with a good bedside manner than a good judge without one. No judge has ever, to the best of my knowledge, been disciplined for having 85 percent of his decisions overturned on appeal. Many competent judges who never have their decisions overturned get disciplined every year for their poor bedside manner.

At first blush, no one should be disrespectful to litigants, or anyone. Common courtesy is a valued trait, in and out of the courtroom.

But the plot thickens. What is our job as judges? To be kind and gentle? Mother Teresa in a black robe? Or to modify behavior? More of a Pavlov?

One of my first revelations as the Poulsbo part-time municipal judge was that there are people with different priorities than I have. I remember well asking a defendant about failing to appear at his jury trial. He calmly responded, "I forgot."

"Really?" I asked. "How? A jury trial would be a big deal in my life. How do you forget such a thing?"

"Just forgot," he responded. "It isn't the first, or last. It just skipped through my mind."

Now I was genuinely interested in this foreign concept. "Have you ever missed surgery?" I wondered out loud, thinking that an operation, like a jury trial, would

get my full attention.

"Twice."

Now my brain was in fourth gear. What other life activities could I not imagine missing? "Ever miss the birth of a child?"

"Two out of five. Why? Is there a point to this?"

Maybe there really wasn't, except to understand that the work-hard, pay-your-bills, don't-break-wind-in-public rules I was taught aren't universal. There are FM people in this AM world. Some end up as defendants in court.

So how do judges get across the rules society requires to this clientele? Quietly? Or boldly, like Judge Judy on steroids? Can soft words get through in a way that can help the defendants change their behavior and be in court less?

With inexperienced defendants, sure.

At times, though, judges need to have at their disposal harsh words. I need to be able to say, without fear of a judicial complaint, "Mr. Hadley, does it bother you in the least that it takes three strong men to bring your criminal history into the courtroom?" Or, "Mr. Crane, if you don't show up next time, I am going to throw you in jail and heave the key into Liberty Bay. Enough messing with you!"

Of course, these words seem unconscionable to many. Like me, usually.

Until I see a defendant who knows more lawyers than I do. One that yawns as I am imposing the latest sentence. The guy who can mouth my kind and gentle, live-a-good-life speech along with me



through a sarcastic smirk.

Growing up, I was told by my parents not to commit crimes and go to court. Nothing good happens to defendants in court, they

pointed out. Defendants get fined and sent to jail. Community service, appointments with probation officers, and evaluations ordered by judges fill their days. Certainly staying within the bounds of the law has always been my intention. But while Mom and Dad's words were persuasive, watching *Scared Straight* on TV solidified how terrible incarceration would be. After watching it, I doubled — no, quadrupled — my determination to stay crime-free. More than Mom and Dad's urgings, the harsh, blunt words from the prisoners on the TV program scared me straight, and almost incontinent.

Do I hope my friend sits before an understanding panel? Yep. Can I imagine being discourteous to some people in my court? Yep. For the sake of being mean? Never. Only for the sake of getting their attention, and hopefully, to change their behavior so that it includes more time abiding by the law and less time in court. Or at least less time they are scheduled to be in court. ☹️

Jeff Tolman is a partner with Tolman, Kirk & Franz in Poulsbo. Since 1981, he has served as district and municipal court judge pro tem. He can be reached at 360-779-5561 or jefft851@aol.com.

Bye-Bye, Bi

BY ROBERT C. CUMBOW

And Other Thoughts on the State of the Language

A reader wrote me:

I often see the terms bimonthly, biweekly, and biannually in contracts and other documents. These terms drive me crazy because they mean two things at once — in the case of biweekly either: (1) every two weeks; or (2) twice a week. Considering that knowing when and how often something is agreed to be done can be essential to the performance of a contract, you would think that drafters would be more careful.

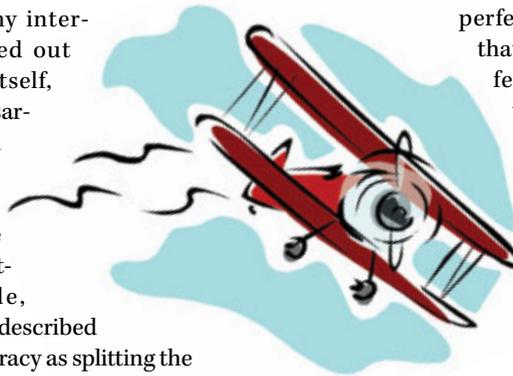
On this point I am an absolutist: “Bi-” means “two,” not “half.” Therefore, no matter what any dictionary may say (most dictionaries these days no longer prescribe correct, logical usage and preserve important distinctions, but only codify popular error), “biweekly” does *not* mean “twice a week,” never did, and never could. The word for “twice a week” is “semiweekly” — that is, occurring every half-week (an awkward time-measure, I admit). “Bimonthly” means every two months, not twice a month; “biannual” means every two years, not twice a year.

My reader remained unpersuaded that this is simply a “common error.” He suggested that if “bi-” means “two,” a contract calling for biweekly payments could mean either a payment every two weeks or two payments every week, and therefore the word truly is ambiguous. But since the word “weekly” is well understood to mean “every week,” then by extension, “biweekly,” which means “two-weekly,” should be equally understood to mean “every two weeks,” and it would be illogical to force it to mean “two times in one week.”

However, my interlocutor pointed out that “bi-,” by itself, does not necessarily distinguish between “two” and “half.” In geometry we speak of “bisecting” an angle, which could be described with equal accuracy as splitting the angle in half or dividing it into two angles. But “sect” means “section” or “part,” and thus “bisect” clearly means “two parts,” not “in half.” Nevertheless, this is a point on which our language is not as precise or as logical as we would wish. We speak of “cutting something in half” and of “cutting something in two,” and we mean the same thing, even though a “half” is only one-fourth of “two.”

On the other hand, no one thinks that a *bisexual* is someone who has only half a sex; it’s someone who participates in both sexes. A *bicycle* has two tires, not half a tire. “*Bi-partisan*” means involving two parties, not doing something twice for one party. Yet a large number of people aren’t sure whether “biweekly” means doing something every two weeks or two times a week. “Bi-” means “two” in “two times a week” just as surely as in “every two weeks.”

The *Random House Unabridged Dictionary* emphatically confirms that “biweekly” means once every other week, but adds that it also — only “loosely” — means twice a week. However, it’s that “loosely” that undoes us. We can’t be sure how the writer intended the term or how the reader will understand — or misunderstand — it. Using the word “biweekly” takes only one word. If you have to explain it, that takes at least three more. Sticking with the “bi-” word therefore will cause ambiguity, verbosity, or both. So we have these once



perfectly good “bi-” words that we now can’t use for fear that they won’t be understood to mean what we know they do mean. It’s like driving in the snow — I’d do just fine if it weren’t for all those other people out there who get it wrong.

So, reluctantly, I recommend (this is the holding) that careful drafters not use the terms “biannual,” “biennial,” “bimonthly,” “biweekly” and the like, because too many people misunderstand them, and that invites confusion where we need clarity. At the same time (this is dicta), I long for a world in which everyone would recognize that each of those words has one precise meaning, that they are not ambiguous or ambivalent at all. But as long as a good number of speakers, writers, readers, and dictionaries *think* they are ambiguous, then they *are*, for, apparently, nothing is either clear or ambiguous but thinking makes it so. And thus, alas, several more once-useful words must be consigned to the fire, and our language is the poorer for it.

If what we mean is “every two weeks,” though, we don’t have to resort to three words. If we aren’t afraid of a little archaism, the word “fortnightly” is still perfectly clear. A “fortnight” is a period of two weeks — a truncation of the term “fourteen-night” — and so “fortnightly” unmistakably means “every two weeks.” I’ll be using it as often as I can, as my protest against losing the “bi-” words.

Seen Any Good Sights Lately?

Another reader wrote:

One grammar item that has been a pet peeve of mine is the ongoing misuse of the words “sight” and “site” and “cite.” Which would you recommend to out of town friends? Sight-seeing or site-seeing? Certainly, unless they came to watch a Supreme Court argument you would never recommend cite-seeing, right? As lawyers, it would seem that knowing when to cite something and being able to distinguish that act from a site visit would be a critical skill, yet I’ve seen some briefs that can’t seem to correctly use these phrases.

I agree that there’s a lot of confusion about sight-site-cite. When we’re touring, we see both sights and sites, but the right word for what we’re doing is sightseeing. That’s because any location is technically a site, but only those especially worth a visit are considered “sights” (as in “a sight worth seeing” or, if it’s a particularly welcome vision, “a sight for sore eyes”).

This raises (not begs) the question of redundancy. What other kind of seeing is there besides “sightseeing”? Can we see anything other than sights? Soundseeing? Well, I suppose if we’re looking out the window at the bay instead of working... but you can’t see tastes, smells, or sounds — you can see only sights — so is “sightseeing” a redundant word? Should it be just “seeing”? Let’s get some lunch and then go out and do some seeing! But as noted above, the word “sight” not only means anything that is visible, as well as the gift of being able to see, but also carries the special sense of something particularly worth seeing. So

sightseeing, as a short form of “seeing the sights,” is a legitimate and sensible word.

But back to the troublesome triptych of sight-site-cite: On a rifle, it’s a sight, not a site, because it’s a device for using the eyes to aim the weapon. On the Web, is it a sight or a site? Well, actually, it’s neither. A so-called “Web site” is actually a set of files that may be copied to one’s computer for viewing by communicating with the server on which those files are stored. You don’t “go” anywhere on the Web, and you don’t “visit sites”; you sit there and copy files. Most people don’t understand this, so no wonder copyright law is in such turmoil.

You may have noticed that I used the term “Web site.” This is the usage preferred by most dictionaries, and by *Wired* magazine’s technology usage guide. One also sees “web site” and “website,” but these, though increasingly used and tolerated, are not the preferred usage, since “Web” is a short form of the name “World Wide Web” (abbreviated “www” in Web addresses), which designates one specific thing and therefore merits its initial capital letters. That name raises another issue, since “worldwide” is actually one word, not two. But I guess when you’ve invented something like the World Wide Web, you can set your own rules for the proper spelling of its name.

That leaves us with “cite,” a verb meaning to point out or call attention to, which can refer to activities as diverse as providing support for an argument, honoring a person for her achievements, or giving a guy a speeding ticket. In our profession, we like to use “cite” as a noun, too, as in the joyous activity known as “cite-checking.”

That’s acceptable legal shorthand around the firm or the *Law Review* office, but in formal legal writing, we should use the noun “citation.”

Now This ...

From time to time, published appellate opinions address the use and meaning of words in the context of deciding legal issues. Most such opinions arise from cases interpreting the language of a contract or construing a statute or regulation. But with increasing frequency, linguistic analysis comes out of cases interpreting the validity and scope of patent claims.

Not long ago, the U.S. Court of Appeals for the Federal Circuit held that the word “an” means one, not “one or more.” Of particular interest in this case is the fact that the Federal Circuit has established a rule that in patent claim construction “a” or “an” customarily *does* carry the meaning “one or more.” So the impact of the recent decision in *TiVo Inc. v. EchoStar Communications* (Fed. Cir. Jan. 31, 2008) is not that “an” — an obviously singular article — has a singular meaning, but rather that the “one or more” rule is not absolute. In the *TiVo* case, the context in which TiVo had used the term “an” clearly limited its meaning to only the singular, the court held. While some patent claim uses of “a” or “an” could mean “one or more,” this specific use, claiming patent in a means of assembling audio and video components into “an MPG stream,” could mean only the singular, since part of the achievement of the patent was to eliminate the need to process audio and video as two separate streams. The upshot was that an EchoStar device assembling audio and video components into two separate MPG streams was held not to infringe TiVo’s patent.

A hat tip to patent lawyers, who labor on the front lines of the “War of Words,” and who know better than most of us that law is a communication profession, and that we are all in the business of clear expression.

Parting Shot

Why do people (and certain software programs) abbreviate “out of office” as “OOF”? Last time I looked, the word office started with an O. ☹

Robert C. Cumbow is a shareholder at the Seattle firm of Graham & Dunn PC. He teaches at Seattle University School of Law. For parts of this column, he acknowledges debts to Tim Woolsey, Patrick J. Murray, and Adam Torem.

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A Family Law Practitioner's Guide

To Navigating the Domestic Partnership Expansion Bill

BY ELIZABETH HERSHMAN-GREVEN AND JUSTIN M. SEDELL

On April 21, 2007, Governor Christine Gregoire signed the Domestic Partnership Registration Act into law. This was a monumental day for Washington's same-sex couples and their families and friends, as well as for opposite-sex couples where one partner is over the age of 62. The Act established a domestic partnership registry that is administered by the Secretary of State, and at present, more than 3,700 couples have registered. However, the Act conferred only approximately 30 of the nearly 500 state-conferred privileges and obligations of marriage to domestic partners. The majority of the rights and responsibilities granted in the 2007 Act concern medical decision-making rights and after-death planning for a deceased partner.

This year, new legislation was introduced to dramatically expand the number of rights and responsibilities conferred on Washington's domestic partners. The House bill passed 62-32 on February 14, 2008, and the Senate bill passed 29-20 on March 4, 2008. Governor Christine Gregoire, who has been a vocal supporter of domestic-partnership rights, signed the bill into law on March 12, 2008. It will go into effect on June 12, 2008.

The new law is a major addition to the 2007 Act that offers far more rights and obligations to Washington's domestic partners. It will affect the practice of law in a variety of fields in addition to family law, including estate planning, probate, guardianships, and criminal law. All attorneys should become familiar with these new statutes so that their clients may benefit from them as soon as possible.

Terminating Domestic Partnerships

Of critical importance, the 2008 Act will dramatically affect the way state-registered domestic partnerships are terminated. Under the 2007 Act, parties to the domestic partnership must file a signed and notarized "Notice of Termination" with the secretary of state and pay a \$50 filing fee. If the notice is signed and notarized by only one party, that party must also serve the other party in compliance with the Act. The secretary of state then issues a

"Certificate of Termination" to both parties 90 days after the notice is filed and the fee paid.

The 2008 Act adds a new section to RCW 26.60 that requires state-registered domestic partners to terminate their partnerships via a dissolution action in Superior Court. An exception was created to allow for fast-track dissolutions when all of the following conditions exist at the time of filing the Notice for Termination:

- The Notice of Termination is signed by both parties;
- Neither party has children under the age of 18, whether born or adopted before or after the registration of the domestic partnership, and neither of the domestic partners, to their knowledge, is pregnant;
- The state-registered domestic partnership is not more than five years in duration;
- Neither party has any ownership interest in real property, whether inside or outside of Washington; or has a lease that does not satisfy certain requirements detailed by the Act;
- The parties must not have any unpaid obligations in excess of \$4,000 incurred by either or both of them after registration of the domestic partnership, excluding the amount of any unpaid obligation with respect to an automobile;
- The total fair market value of community property assets, net of encumbrances, including any deferred compensation or retirement plan, is less than \$25,000 and neither party has separate property assets, net of encumbrances in excess of that amount;
- The parties must have executed an agreement setting forth the division of assets and liabilities of the community property and must execute any and all documents necessary to effectuate that agreement;
- The parties must waive any rights to partner maintenance; and
- Both parties desire the domestic partnership to be terminated.

Superior court domestic-partnership dissolution actions will be filed as family

law actions under RCW 26, rather than as civil complaints. As in a dissolution of marriage, partners will be permitted to bring a motion for temporary orders during the course of partnership dissolution to request temporary maintenance, child support, and parenting plans.

This new termination process may prove difficult in our modern society where people move from state to state, or even country to country, with regularity. Washington's state-registered domestic partners who move to states that do not recognize Washington state partnerships will not be able to dissolve their partnerships in those states, nor will they be able to meet Washington's residency requirements for a dissolution action. The Act does not provide any guidance as to how these couples may dissolve their relationships other than by returning to Washington.

Substantive Changes to Domestic Relations Law

The new legislation authorizes the courts to provide maintenance in actions for dissolution of domestic partnerships on the same grounds as in divorce proceedings. Currently, same-sex couples can file a civil action for division of "community-like" property and debts acquired during their "meretricious" or "intimate committed relationships," but there is no authority for an award of maintenance. This will continue to be the law for unmarried opposite-sex couples and same-sex couples who do not register their partnerships with the state, although the 2008 Act seems likely to impact the evolution of this "intimate committed relationship doctrine" (also known as "meretricious relationship doctrine").

The new legislation also contains interesting provisions regarding parenting and child support. The legislation amends RCW 26.09.050 to provide that in entering a decree of dissolution of domestic partnership, the court shall make provision for a parenting plan for any minor child of the domestic partnership and shall make provision for the support of any child of the domestic partnership entitled to support. Thus, at first blush, it seems that RCW 26.09.050 creates

parental rights for any children raised by domestic partners.

However, the legislation does not amend RCW 26.26.011, which defines a "parent" as an individual who has established a parent-child relationship under RCW 26.26.101. This statute defines a mother as a woman who has 1) given birth to the child; 2) been adjudicated a mother; 3) adopted the child; 4) entered into a valid surrogate agreement under which she is the intended mother of the child; or 5) donated her eggs or served as a surrogate carrier and has effectuated the necessary paperwork to bind her as a parent. This definition of "mother" does not include a non-biological mother of a child born of the

state-register domestic partnership through artificial insemination to her partner, the child's biological mother.

The same statute defines a father as man who 1) had a child in the context of a legal marriage (presumption of paternity); 2) signed an Acknowledgement of Paternity that was not rescinded or successfully challenged; 3) adopted the child; 4) consented to assisted reproduction by his wife; or 5) entered a valid surrogate agreement under which he is the intended father of the child. This definition of "father" does not include the non-biological father of a child born through a surrogacy arrangement to his partner, the child's biological father.

This creates a disconnect between RCW 26.09.050 and RCW 26.26.011. How can the court enter a parenting plan when one partner may not have parental rights to the children in question? Although this is likely to be a litigated issue, parental rights will still be established through the traditional means.

Until this is fully resolved, it is imperative that all same-sex couples with children, including state-registered domestic partners, continue to take advantage of Washington state's second-parent adoption process. If they do not, they may face the devastating reality that the courts will not consider them the child's legal parent for custody purposes, although it may do so for child-support purposes. If the courts do not consider non-biological parents who failed to adopt their partner's biological children as legal parents, these persons will be limited to seeking parental rights under the *de facto* parentage or nonparental custody doctrines. It is unclear if a *de facto* parent has the same legal rights and responsibilities as a legal parent. Moreover, *de facto* parentage is a very difficult, if not impossible, battle to win if the child in question is too young to have formed a lasting, meaningful bond with the non-biological parent.

Conclusion

Representing same-sex couples will have entirely new aspects now that the 2008 expansion bill has been signed into law. Instead of focusing on meretricious relationships and community-like property, family law attorneys representing clients registered as domestic partners can now apply the great majority of RCW 26.09 upon the dissolution of the clients' relationships. Although there will be many parallels to dissolutions of marriage, there will still be critical differences for registered domestic partners, including the opportunity for qualified partnerships to go through the fast-track dissolution.

The law affects many other legal areas in addition to family law and will have a significant impact on how many of us litigate these types of cases. As was the case in California, Washington's domestic-partnership registry may not finish expanding until registered partners have all the same privileges and obligations as married couples in our state. As these rights keep growing, keeping a close eye on these changes will become more and more critical for family law attorneys in Washington. [Ⓝ]

Elizabeth Hershman-Greven and Justin M. Sedell are senior associates with McKinley Irvin PLLC in Seattle.

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Local Hero Honored

On March 7, the WSBA Local Hero Award was presented to **Thomas B. Vertetis** in recognition of his efforts in supporting pro bono programs in his community. The Local Hero Award is presented to lawyers who have made noteworthy contributions to their communities. The award was presented by WSBA President **Stan Bastian** at a reception with WSBA Tacoma-Pierce County Bar Association members and officers of the Kitsap County Bar Association.

Mr. Vertetis volunteers his time regularly to his community. He is a weekly tutor for the McCarver Elementary School Werlin Reading Program. Mr. Vertetis was instrumental in creating the concept and finding the initial sponsorship and committee support for last year's first annual "Art for Equal Justice" fundraiser, held at



Thomas Vertetis receives the local hero award from WSBA President **Stan Bastian**.

the Tacoma Art Museum. As a pro bono attorney, Mr. Vertetis encouraged his firm to commit to sponsorship and staffing of one evening per month at the Tacoma-Pierce County Bar Foundation Neighborhood Legal Clinic, and continues to volunteer to help low-income clients.

WSBA Board Holds Marriage and the Law Forums

The WSBA Board of Governors presented two forums to discuss marriage and the law, same-sex marriage, and domestic partnerships. Combined, 140 people attended the March 7 forum held at the UW campus in Tacoma and the April 25 forum in Spokane at Gonzaga University.



WSBA members participate in a marriage-and-the-law forum.

Gonzaga University Report

by *Spencer Nussbaum, 3L*

Another semester has come and gone at Gonzaga University School of Law. In August 2007, we were excited to welcome the new class of 1Ls, one of the school's strongest entering classes and one of the most diverse. The school hosted a number of events in the fall, one of which was the annual celebration of the Red Mass for the legal profession. The Honorable **Diarmuid F. O'Scannlain**, of the United States Ninth Circuit Court of Appeals, gave the reflection. This year's Distinguished Judicial Service Award was presented to the Honorable **Neal Q. Rielly**, of the Spokane County Superior Court. Judge Rielly has a distinguished record of outstanding service to the community.

Another signature event at the law school is the annual Luvera Lecture, held on October 4, 2007. The guest lecturer was Colonel **William A. Gunn**, U.S. Air Force chief defense counsel of the Department of Defense of Military Commissions. Colonel Gunn's address was entitled "Defending the Guantanamo Detainees: Courage, Public Service, and the Rule of

Law." Colonel Gunn shared his experiences and personal reflections about his work directing the defense effort for detainees brought before military commissions at Guantanamo Bay, Cuba.

Our law school and community continue to work together to promote diversity by collaborating with the WSBA and the

Spokane County Bar Association to present our annual "Building Bridges," a week-long event that joins together student groups such as the Gay-Straight Alliance, the Hispanic Law Caucus, the Reuben J. Clark Law Society, the Multicultural Law Caucus, the Student Diversity Committee, the Women's Law Caucus, and members of the community to present a number of speakers on various topics of interest. The week ended with a day-long CLE entitled "Thinking Strategically about Culture and Diversity," followed by the SCBA's presentation of the Carl Maxey Diversity Fund Scholarship to first-year student **Kimberly Williams** and second-year student **Hector Quiroga**.

Awareness was also the focus of numerous presentations, including the Federalist Society's sponsorship of *New York Times* best-selling author **Dinesh D'Souza**, who shared his views about the recent United States Supreme Court decision on consideration of race in public schools. **Keith McHenry** gave a presentation about the movement called "Food Not Bombs," promoted by Amnesty International. Mr. McHenry spoke of the global movement's history and mission of sharing food with the hungry and striving for peace and social justice. The Health Law Society presented **Sandy Manfred**, of the local Mental Health Therapeutic Court, who spoke on emerging efforts to focus on treatment of defendants

with mental illnesses. A food drive was sponsored by Programs After Dark (PAD), which resulted in providing Thanksgiving dinners to 46 families in need. Other topics included the Endangered Species Act, women in the law, the judicial election process, medical marijuana laws, and immigration assimilation.

Finally, the charity and generosity of our student body continues to pour out for two of our 3L students who are coping with serious illnesses. The SBA

raised \$1,000 to help a classmate and her family remain close to the UW Medical Center, where she is undergoing treatment for ovarian cancer. Blood and bone-marrow registry drives were planned in support of a classmate diagnosed with leukemia and in need of a bone-marrow transplant. Our hearts go out to our friends, and we pray for their swift and complete recovery.

As this brief recap shows, Gonzaga University School of Law is an institution that is passionate about its students and deeply involved in the life of the surrounding community. We are excited about the future, and grateful to our alumni and friends for their continuing support.

Sexual Violence Law Center Opens in Seattle

The Sexual Violence Law Center (SVLC), formerly the legal program of the Washington Coalition of Sexual Assault Programs, has opened in Seattle. SVLC was founded in January 2008 by **Catherine A. Carroll** and **Kelly O'Connell**, attorneys focusing on training and consultation on sexual-violence legal issues. SVLC works with survivors, the legal community, tribal governments, and service agencies within Washington to advance the legal rights of sexual-assault victims. The goal of SVLC is to improve the legal response to survivors of sexual violence through limited direct services, training, technical assistance, and the provision of resource materials to survivors, rape crisis center advocates, and attorneys throughout Washington. For information, contact SVLC at 206-624-0621 or e-mail catherine@wscap.org.



The Honorable S. Brooke Taylor (top right) joins members of the Washington State Supreme Court and fellow judges at a swearing-in ceremony in January.

[org or kelly@wscap.org](mailto:kelly@wscap.org).

2005-2006 WSBA President S. Brooke Taylor Sworn In as Judge

Judge **S. Brooke Taylor** was sworn in as Clallam County's third Superior Court judge in January, the first time in history that the county has had three such judges. Judge Taylor served as 2005-2006 WSBA president.

Spokane County Bar News

Despite being buried in snow most of the winter, the Spokane Bar persevered. The Spokane County Bar Association's annual holiday auction to benefit its Volunteer Lawyer Program was a resounding success and a lot of fun.

In January, the SCBA began celebrating its 100th year of service. We are sponsoring a year of activities that are fun and highlight the public service provided by local attorneys. Our bi-monthly newsletter, *Calendar Call* (which is available online at www.wsba.org), has been running a

"Who's Who?" section of members' photos from past pictorial directories. It's been fun seeing what some attorneys looked like with '70's hair (or even hair at all) and mutton chops!

Bill and Bevan Maxey were instrumental in arranging for University of Washington professor **Dr. Quintard Taylor** to speak at the SCBA's Diversity Luncheon in February. His lecture on "Freedom's Frontier: African

Crane Bergdahl	Efrem Krisher
Paul Chemnick	Larry Levy
John Cooper	Judy Massong
Nancy Curington	Cynthia Morgan
Pat Duffy	Bill Rush
Cliff Freed	Michele Sales
Judit Gebhardt	David "Mac" Shelton
Harry Goldman	Richard Sindell
Don Grant	Jill Haavig Stone
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Americans in Spokane and the Inland Empire 1880-1970" was an interesting and informative presentation before a packed house.

Bill Hyslop received the Smithmoore P. Meyers Professionalism Award in March. It was a special evening, highlighted by singing "Happy Birthday" to Smitty and his lovely wife, Sandi. Bill is a former WSBA governor. April brought a wine tasting at Nodland Cellars, where local attorney **Tim Nodland** and his wife, Tracy, shared their expertise and fine wine to help support our bar and celebrate our centennial. At

the April BOG meeting in Spokane, WSBA President **Stan Bastian** presented a resolution commemorating the SCBA's centennial and presented Local Hero awards to **Pat Johnson** and **Larry Haskell**.

If you ran Bloomsday in May, perhaps you saw SCBA members running/walking/gasping on the course while wearing their blue shirts proclaiming the SCBA's 100 years of service.

Upcoming centennial events include: SCBA's annual golf tournament on June 27, a family picnic in July, and a CLE-cruise on beautiful Lake Coeur d'Alene on August 22.

Thanks to the efforts of **Bev Anderson** of Winston Cashatt and the Blue Spark, the SCBA will be holding a fundraiser for the VLP in September; and in November, the SCBA will be collecting canned food for our local food banks with collection barrels at the courthouses and at Gonzaga's law school.

Law Bits and Briefs

Kelly Walsh, an associate with Schwabe, Williamson & Wyatt's Vancouver, Washington, office, was honored by the *Vancouver Business Journal* as a recipient of the paper's Accomplished and Under 40 award last November.

James F. Nagle has published *1948 — The Crossroads Year*. It is available through Amazon.com.

Jeffrey A. Beaver, of Graham & Dunn in Seattle, was re-appointed in December to another term as co-chair of the American Bar Association's Section of Litigation; Condemnation, Zoning and Land Use Committee.

In November, **Regina Vogel Culbert**, of Merchant & Gould in Seattle, was elected to the Board of Directors of the Washington Lawyers for the Arts. Washington Lawyers for the Arts is a nonprofit service organization dedicated to supporting the arts in Washington state by creating alliances and making legal resources accessible to artists and arts organizations of all disciplines.

James R. Ellis, retired managing partner of Preston Gates & Ellis LLP, Seattle (now the firm of K&L Gates), received the Outstanding Service Award from the Fellows of the American Bar Foundation in February.

Clark County District Court Judge **James P. Swanger** has been selected as co-recipient of the 2008 Street Law Educator of the Year award; he received his well-earned award in April in Washington, D.C.

Irvin W. Sandman, chair of Graham & Dunn's Hospitality Industry Group, was named the 2008 recipient of the Anthony G. Marshall Hospitality Law Award, during the Sixth Annual Hospitality Law Conference in Houston, Texas, in February.

At a ceremony in April, the Law Women's Caucus honored two distinguished alumnae, the Honorable **Betty B. Fletcher**, United States Senior Circuit judge, Ninth Circuit, UW class of 1956, and **Brenda Wil-**

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liams, UW class of 1997, of The Defender Association, for outstanding contributions to women in the law.

The Outreach Committee of the Law Librarians of Puget Sound has awarded the 2008 Community Access to Legal Information Grant to the **Northwest Justice Project** (NJP). NJP used the \$500 grant to fund the production of marketing materials for the Washington LawHelp website (www.washingtonlawhelp.org). Washington LawHelp is dedicated to educating the public on legal issues affecting low-income individuals in Washington state as well as providing self-help materials to *pro se* litigants.

The American Bar Association Criminal Justice Section has named its Minister of



Norm Maleng

Justice Award in honor of the late King County Prosecutor **Norm Maleng**. According to the section: "He [Maleng] was a very effective and, in many ways, a tough prosecutor, being particularly protective of those

he viewed as vulnerable, creating special prosecutorial units to deal with child abuse, sexual assault and domestic violence." In 2006, Norm Maleng was given the section's Minister of Justice Award recognizing his embodiment of the principles enunciated in the ABA Standards for Criminal Justice, Prosecution Function, particularly: "The duty of the prosecutor is to seek justice, not merely to convict."

At their Lincoln Day Banquet in February, WSBA Governor **Salvador A. Mungia** received the Tacoma-Pierce County Bar Association's Bertha M. Snell Award for a lawyer who displays the qualities of tenacity in overcoming adversity and obstacles in his/her quest to become a lawyer or as a lawyer in practice. **Bertha M. Snell**, Washington's first woman lawyer, signed the original articles of incorporation of the Tacoma-Pierce County Bar Association in 1907. Ms. Snell was a member of TPCBA until her death at the age of 89 in 1957.

Beverly A. Benka has been appointed clerk of the United States Bankruptcy Court for the Eastern District of Washington. Ms. Benka previously served as a staff attorney for the Chapter 13 Trustee for the Eastern District of Washington and as a law clerk to Judge **John M. Klobucher**. Ms. Benka is a graduate of Gonzaga University School of Law.

Timothy J. Parker, a shareholder in the firm of Carney Badley Spellman, P.S. in Seattle, was inducted as a fellow of the American College of Trial Lawyers at a ceremony during the 2008 spring meeting of the College in Tucson, Arizona.

Lane Powell shareholder **Michael "Mick" Fleming** was elected as 2008 chairman of the board for the Big Brothers and Big Sisters of Puget Sound, after having been an active board member for seven years.

On March 31, **Anne Bremner**, a partner in the law firm Stafford Frey Cooper,

became the first woman from Washington to be inducted into the International Academy of Trial Lawyers.

In April, **Jennifer K. Wyatt**, an attorney in the Seattle office of Schwabe, Williamson & Wyatt, was appointed to chair the Women in the Profession Committee (WIPC) of the American Bar Association Young Lawyers Division (ABA-YLD). The ABA-YLD is the ABA's largest entity, composed of approximately 147,000 members. In addition, Wyatt was also appointed to sit on the ABA-YLD's Diversity Committee. ☞

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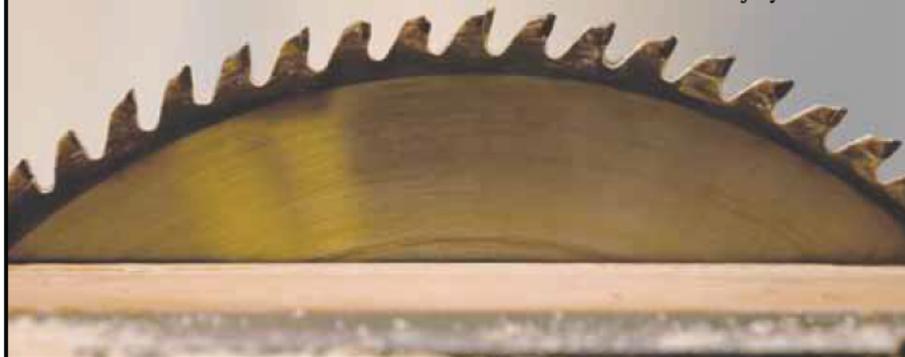
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BY TRACY FLOOD

The Pierce County Minority Bar Association (PCMBA) was established in 1996 with the purpose of facilitating professional development and relationships among the various minority attorneys, judges, and law students who reside or practice in Pierce County. It also seeks to foster diversity in the legal community and serve as a conscience of Pierce County minority communities on legal issues affecting the community.

As PCMBA president since 2007, it has been both an honor and a pleasure to lead this group of dedicated individuals. The PCMBA recently sponsored the ninth annual Youth and Law Community Forum. The forum offered middle- and high-school students the chance to learn about the legal system. Students gathered at the Pierce County Courthouse, and questioned judges and lawyers about specific areas of law. The program involved a mock trial, with practicing lawyers, judges, and police officers role-playing in courtrooms. Later, students observed a K-9 demonstration.

We at the PCMBA are an active group. We have formed a Judicial Evaluations Committee, and we have deep ties to the community. We have joined forces with other county organizations to achieve a common goal of supporting diversity in the legal profession. For example, the PCMBA partners with the R. Merle Palmer Minority Scholarship Foundation, which was established by business leaders in Pierce County some years ago. The Foundation's mission is to help financially disadvantaged minority students in Pierce County earn a post-high-school education by supplying financial, emotional, and spiritual support. The Foundation raises more than \$250,000 annually from individuals, corpora-

tions, and foundations, including the Gates Washington State Achievers Scholarship Program (GWSAP) and the Willamette Program. GWSAP was established by Bill and Melinda Gates, who believe that meaningful access to higher education opens doors to opportunities, especially for low-income and minority students. GWSAP cites to a college board report that found that over 40 percent of

Six in the selection process and partially funds three to five of the students selected.

The Pierce County Minority Bar Association also supports students interested in taking the LSAT exam. We held our first dinner fundraiser on March 14, 2008, at the Tacoma Landmark Convention Center to begin an LSAT study-scholarship, raising \$3,000 for this new project. The dinner fundraiser was

A Commitment to Volunteerism

The Pierce County Minority Bar Association



Above: Students Anna Flood and Danielle Washington assist PCMBA President Tracy Flood with raffle tickets for the Pierce County Palmer Minority Scholarship Fund. Right: Tracy Flood makes opening remarks at the dinner fundraiser.



children from high-income families attained a college or advanced degree after five years of high school matriculation, while only six percent within the lowest income group did the same. The Achievers Program is moving to address this disparity here in Washington state, working comprehensively with 16 high schools with low-income students. The program is designed to encourage high schools to raise academic achievement and increase college enrollment and completion rates for all students, but especially low-income students. The Whitworth "Act Six" Program is a hybrid urban leadership development and college access/retention program. Act Six recruits and selects a diverse, multicultural cadre of approximately 10 of Tacoma's most promising urban student leaders. These student leaders then attend Whitworth College, in Spokane, for a fully funded four-year education program. The Palmer Foundation collaborates with the administration of Act

a successful partnership with the Palmer Minority Scholarship Foundation.

How and why have I been called to volunteerism? Without a doubt, my experience as a fellow with the WSBA Leadership Institute inspired me to leadership in the bar, to public service, and to volunteerism. The WSBA Leadership Institute was created as a tool to recruit, train, and retain young lawyers of traditionally under-represented groups for leadership positions. As a member of the inaugural class, the experience changed the course of my legal career. I was one of 12 eager new lawyers who shared eight months together for concentrated leadership study. Course study spanned both private- and public-sector law, and included support from government leaders such as Washington State Attorney General Rob McKenna, who regularly presents at the Institute. It is because of the ground-breaking and sometimes back-breaking work of 2004-2005 WSBA President

and Leadership Institute founder Ronald Ward, the commitment of 2003–2004 WSBA President and Leadership Advisory Board member David Savage, and the dedication of 2004–2006 WSBA Leadership Institute Chair James Williams, combined with all of the Leadership Institute advisors who rose to the challenge, that this innovative program was established to support diversity and to foster leadership in the profession. The WSBA, through such programs as the Leadership Institute, acknowledges the ongoing need to develop quality diverse leaders statewide. This nationally recognized program continues to inspire new leaders in the profession.

Minority Bar Associations and Upcoming Events

June 28: Minority Bar Associations of Washington is hosting a picnic at Seward Park. For further details, contact Tracy Flood, president of the Pierce County Minority Bar Association, at fltracylaw@aol.com.

Asian Bar Association of Washington
— www.abaw.org

The Cardozo Society
— www.jewishinseattle.org/jf/about/attorneys/attorneys.asp

GLBT Bar Association of Washington
— www.q-law.org

King County Washington Women Lawyers — kcwwl.org

Korean American Bar Association
— www.kaba-washington.org
June 28: 1:30 p.m. — Eighth Annual Benefit Golf Tournament at Trilogy Redmond Ridge with the Korean American Coalition, Washington and the Korean American Health Professionals Association. For registration details, contact Susan Chang, 206-550-3875 or suzychang76@hotmail.com.

Latina/o Bar Association of Washington — www.lbaw.org

Loren Miller Bar Association
— www.lmba.net

Mother Attorneys Mentoring Association of Seattle (MAMAS)
— www.mamaseattle.org

Northwest Indian Bar Association — www.nwiba.org

Pierce County Minority Bar Association
— www.orgsites.com/wa/pcmab

South Asian Bar Association
— www.sabaw.org

Vietnamese American Bar Association
— www.vabaw.com

Washington Attorneys with Disabilities Association
— <http://groups.yahoo.com/group/wash-adg>

Washington Women Lawyers
— www.wwl.org

In 2005, the American Bar Association honored the Leadership Institute with the ABA Partnership Award. The WSBA recently had published a featured article in the *Bar Leaders Magazine*, March/April 2008 edition, entitled “Voice of Experience: Bar Leadership Program Founder Shares Blueprint.”

While I continue to contribute to the WSBA Leadership Institute, I also volunteer elsewhere. Currently I am active with the Washington State Minority Bar Associations Collaboration Project (WAMBAC). This group of minority bar leaders across the state come together each year to organize the Annual Statewide Diversity Conference. This year marked its third year with the theme “Getting Ahead and Giving Back — Diversity in the Legal Community.” Michael Heath and Kim Tran co-chaired the conference. The event was a full-day CLE at Seattle University School of Law on May 30, 2008, with an opening reception co-hosted by Perkins Coie and Starbucks. The conference involved the participation of minority bar associations, including the following: Asian Bar Association of Washington; GLBT Bar Association (QLaw), Korean American Bar Association, Latina/Latino Bar Association of Washington, Loren Miller Bar Association, Mother Attorneys Mentoring Association of Seattle (MAMAS), Northwest Indian Bar Association, Pierce County Minority Bar Association, South Asian Bar Association, Vietnamese American Bar Association of Washington, and Washington Women Lawyers. I am active in the Washington Women Lawyers and served as past-president of the Kitsap County

Washington Women Lawyers, served as chair of the WSBA Civil Rights Committee, and moderated the first Civil Rights Committee Conference: Opportunities, Next Steps, Civil Rights Issues Past, Present, and Future held on April 24, 2008, at Gonzaga University School of Law in Spokane.

There is much strength in coming together for the sole purpose of helping others. When I am sitting with young students, trying to inspire them to great heights, I speak from personal experience. When I lost my mother at age 19 to breast cancer, I raised my younger sister. I had to. I also had to grow up quickly. At times, it was a tremendous strain, but I never lost faith. With the help of my college mentor, I always believed in myself. For those in need in Pierce County and elsewhere, and for students in particular, I volunteer to lend a hand and to be a role model, because I know they can do it.

The Minority Bar Associations of Washington is hosting a picnic at Seward Park on June 28. We'd love to see you there, to share potato salad, BBQ, play some games, and make a friend or two. It will also be an excellent opportunity to network and connect for volunteer opportunities. ☺

Tracy Flood is a Seattle University Law School graduate, is admitted in both state and federal district court, and is currently in solo practice in Port Orchard, focusing on domestic and criminal law. Attorney Wilberforce Agyekum and Assistant Attorney General Maureen Mannix edited this column.

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BY KEVIN BANK

To ascertain whether a client has a meritorious case, or to advocate effectively for a client, a lawyer may need to assume the role of detective. She has to pursue information known only to neutral witnesses, custodians of financial records, or persons associated with the opposing party, and this information may be difficult to obtain. The civil and criminal rules provide ways of obtaining such information through discovery, but discovery can be expensive and time-consuming, and depending on the circumstances, may be permitted only after a lawsuit has been filed. A lawyer, whether directly or through an investigator, might prefer to find out facts less overtly, particularly in the pre-complaint stage. In pursuing such information, the lawyer or investigator may suppose it advantageous to hide or misrepresent his or her true

identity and/or the purpose of the inquiry.¹ The use of such tactics is referred to as “pretexting” or “dissemblance.” To what extent is pretexting permissible under Washington’s ethical rules?

A recent Washington statute clearly prohibits one form of pretexting. RCW

(violating RPC through actions of another); 8.4(b) (committing a criminal act); RPC 8.4(c) (engaging in dishonesty, fraud, deceit, or misrepresentation); RPC 4.4 (obtaining evidence in a manner that violates the legal rights of a third person); and/or 5.3 (requiring that lawyers who supervise non-lawyer

Not Telling the Whole Truth

How much leeway do lawyers or investigators working with them have to feign identity?

9.26A.140, enacted in 2006, makes the knowing receipt of a person’s telephone records without the person’s permission a gross misdemeanor.² Furthermore, it is a class C felony to intentionally sell, knowingly purchase, or fraudulently obtain a person’s telephone records without the person’s permission. Thus, a lawyer who uses fraud or knowingly purchases someone else’s telephone records without permission, or who receives records from another (such as an investigator) that the lawyer knows to have been received without permission of the owner of the records, could be subject to criminal prosecution, and/or civil liability for actual or liquidated damages.³ Furthermore, the lawyer would likely face disciplinary action for violating several Washington Rules of Professional Conduct (RPC), including RPC 8.4(a)

assistants assure that the non-lawyers’ conduct is compatible with the lawyer’s professional obligations).

Although disciplinary cases involving pretexting have been rare in Washington,

Although disciplinary cases involving pretexting have been rare in Washington, a recent case resolved by stipulation to reprimand illustrates how assuming a false identity to obtain information can be perilous for lawyers.

a recent case resolved by stipulation to reprimand illustrates how assuming a false identity to obtain information can be perilous for lawyers.⁴ The lawyer disciplined in that case (respondent), who represented a plaintiff in a personal injury matter, called the home of the soon-to-be defendants. He first spoke to the driver of the vehicle involved in the accident, Kathryn, who was driving her parents’ car. Respondent told Kathryn he was an agent from State Farm, her parents’ insurer, and that he had some documents he wanted to deliver the next day. He asked when a good time would be to have the documents delivered. (He failed to mention that the documents consisted of his client’s summons and complaint.) Kathryn called her mother to the phone. Respondent once again identified himself as a State Farm agent and asked whether

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anyone would be home the next day to receive some documents. When questioned further by the mother as to who he was, respondent said he was working with a process server and misrepresented that he was not a lawyer. Respondent stipulated to violating RPC 8.4(c) and RPC 4.1(a) (making a false statement of material fact or law to a third person).

Clearly, as the above two examples illustrate, certain forms of pretexting may not only violate the RPCs but also could lead to a criminal indictment in Washington. But are any forms of pretexting permitted? Washington has not specifically addressed the issue, but other states have weighed in.

Oregon, Alabama, and Florida have amended their versions of RPC 8.4(c) to permit pretexting in certain circumstances. While the Oregon Rules barring criminal, deceitful, dishonest, and fraudulent conduct by lawyers are identical to Washington's rules,⁵ Oregon includes a "safe harbor" provision stating that:

[I]t shall not be professional misconduct for a lawyer to advise clients or others about or to supervise lawful covert activity in the investigation of violations of civil or criminal law or constitutional rights, provided the lawyer's conduct is otherwise in compliance with these Rules . . . "Covert Activity" . . . means an effort to obtain information on unlawful activity through the use of misrepresentations or other subterfuge. Covert activity may be commenced by a lawyer or involve a lawyer as an advisor or supervisor only when the lawyer in good faith believes there is a reasonable possibility that unlawful activity has taken place, is taking place or will take place in the foreseeable future.⁶

In an ethics opinion interpreting various scenarios under the safe-harbor provision, the Oregon Bar clarified that a lawyer's involvement in covert activity is not protected by the rule if there are no "violations of civil law, criminal law or constitutional rights" to investigate, and emphasized that even then, the lawyer has to believe in good faith that there is a reasonable possibility that the violation has taken place, is taking place, or will take place in the foreseeable future.⁷ The opinion advises that the drafter's use of the term "reasonable possibility" appears to have been a "deliberate attempt to state a

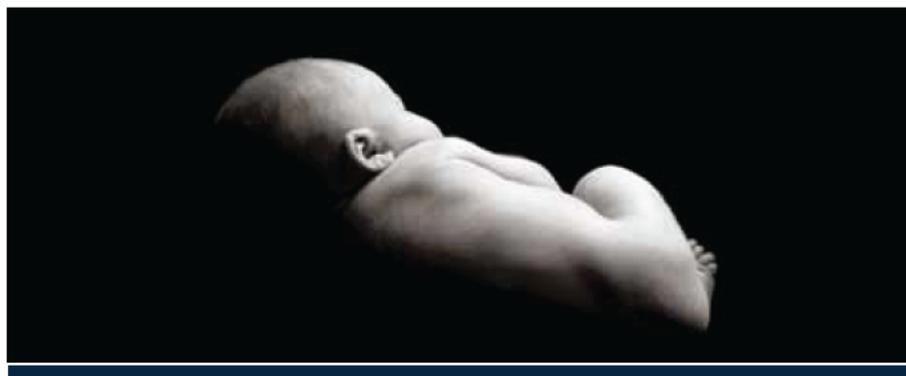
bare-rationality standard" for the lawyer's belief.⁸ Finally, the opinion holds that while the exception in Oregon RPC 8.4(b) makes it appropriate for a lawyer to "commence" or "conceive" of a covert investigation, the exception does not contemplate that the lawyer will directly "speak the deceptive words, take the deceptive action, or undertake an undercover identity in the course of that activity."⁹ Thus, the lawyer who misrepresented himself to be an insurance agent would not be protected by Oregon's safe harbor provision.

Unlike Oregon, Alabama and Florida limit their "safe harbors" to government lawyers involved in law enforcement. In Alabama, a prosecutor "may cause non-lawyers employed by or retained by or associated with the prosecutor" to engage in any action that is not prohibited by law. However, if the action is not prohibited by law, but would nevertheless violate the RPC if done by a lawyer, the lawyer may have only "limited participation in the action."¹⁰ Florida's rule permits a lawyer for a criminal law enforcement agency or regulatory agency to advise or supervise others in an undercover investigation, unless prohibited by law.¹¹

A recent New York ethics opinion spe-

cifically addresses the use of misrepresentation in an even more controversial arena, i.e., by non-government lawyers. It advises that misrepresentation as to identity and purpose may be permissible by investigators used by such lawyers, but only in very limited circumstances.¹² The opinion does not address the extent to which a lawyer can engage in dissemblance directly.

Although New York has not adopted the Model Rules of Professional Conduct (which form a basis for Washington's RPC), its Code of Professional Responsibility includes prohibitions similar to the Washington RPC regarding a lawyer's ethical duties to desist from engaging in deceit, fraud, or misrepresentation.¹³ The New York opinion states that any kind of misrepresentations or uncorrected false impressions used by an investigator whose work is overseen or used by a lawyer that rises to the level of perjury or fraud is clearly barred by ethical rules, as are deceptive evidence-gathering techniques that violate the rights of third parties (such as obtaining confidential records without the owner's permission). However, after analyzing case law, ethics opinions, and some scholarly reviews, the opinion advises that lawyers may ethi-



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cally supervise non-attorney investigators employing pretexting in circumstances where: (i) the investigation is focused on a violation of civil rights (such as “testers” in job discrimination cases) or intellectual property rights (such as investigators posing as consumers interested in purchasing items that allegedly infringe on a competitor’s trademark) and the lawyer believes in good faith that a violation is taking place or will take place imminently; (ii) the evidence sought is not reasonably available through other lawful means; (iii) both the lawyer’s conduct and the investigator’s conduct do

not otherwise violate ethical rules (such as contact with a represented party); and (iv) the dissemblance does not unlawfully or unethically violate the rights of third parties. Finally, the investigator must be instructed not to elicit information protected by the attorney-client privilege.

Pretexting will undoubtedly continue to be a hotly debated issue. For Washington lawyers, it is important to remember that whether and when pretexting may be permissible remains a grey area, and that the Washington RPCs have not created any “safe harbors” that would permit pretexting

by either lawyers or investigators supervised by lawyers. **EN**

Kevin Bank is a managing disciplinary counsel at the WSBA. He has worked at the WSBA since 1999, and prior to that was a consumer-protection attorney with the Federal Trade Commission. This article represents his views, and not those of the WSBA.

NOTES

1. The well-publicized Hewlett-Packard controversy arose from “pretexting” by investigators hired by the company’s Board. The investigators used false pretenses to obtain telephone records of persons suspected of leaking internal discussions to the press. Hewlett-Packard’s general counsel was found to have had knowledge of at least some of the investigator’s activities, which led to her resignation from the company. See Joan C. Rogers, “Scandals Involving Investigators Ensnare Lawyers,” 22 ABA/BNA Manual on Professional Conduct, 507-08 (October 18, 2006).
2. RCW 9.26A.140(2)(a) provides a safe harbor for actions by a government agency or its employees to obtain telephone records in the performance of official duties.
3. RCW 9.26A.140(4).
4. *In re Patrick J. Leahy*, Public No. 07#00036 (September 24, 2007).
5. Compare Oregon RPC 8.4(a)(2) and (3) with Washington RPC 8.4(b) and (c).
6. Oregon RPC 8.4(b).
7. Oregon Formal Opinion No. 2005-173, p. 482, 484 (August 2005).
8. *Id.* at 485.
9. *Id.* at 483.
10. Alabama Rule 3.8(2)(a) and (b).
11. Florida Rule 4-8.4(c).
12. New York County Lawyers’ Ass’n Comm. on Professional Ethics, Op. 737 (May 23, 2007). See also Oregon Formal Op. No. 2005-173 (August 2005) (permitting lawyers to supervise lawful covert activity in the investigation of civil, criminal, or constitutional rights).
13. The New York Rules at issue prohibit a lawyer from engaging in dishonesty, deceit, or misrepresentation (New York DR 102(a)(4)); engaging in illegal conduct that adversely reflects on the lawyer’s honesty, trustworthiness, or fitness as a lawyer (NY DR 102(a)(4)); knowingly making a false statement of law or fact (NY DR 7-102(a)(5)); circumventing a disciplinary rule through the acts of another (NY DR 1-102(a)(2)); and hold a lawyer responsible for the violation of disciplinary rules by non-lawyers when the lawyer orders, directs, or ratifies the misconduct of non-lawyers (NY DR 1-104(d)).

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BY ROBERT D. WELDEN

The Lawyers' Fund for Client Protection Committee meets quarterly to review applications for gifts from the Fund. The Committee is authorized to make gifts less than \$25,000 to eligible applicants. On applications for \$25,000 or more, the committee makes recommendations to the Board of Governors, who are the Fund trustees. At their meeting on February 29, 2008, the Committee conducted the following business.

Adoption of policy regarding potential apportionment of approved payments:

As previously reported, the Committee and trustees (Board of Governors) have been discussing concerns regarding the potential impact on the Fund caused by former attorney Barry A. Hammer, who resigned in lieu of disbarment. Hammer engaged in a Ponzi scheme that has resulted in substantial losses to his clients and investors. There are currently 38 Fund applications regarding him, which, if they all qualified for recovery from the Fund, would total more than \$2.3 million. These are in addition to all other applications to the Fund. The Fund is budgeted to have not more than \$1.1 million available this fiscal year. The Board directed the Committee to proceed on the assumption that the Fund will be limited to the amount budgeted, and to report back to the Board at the end of the fiscal year. At this meeting, the Committee adopted a policy to pay all approved applications up to \$5,000, and to defer any payment above that amount to the end of the fiscal year in September to determine whether additional payments will need to be apportioned against the available funds. The Committee will begin its review of individual Hammer applications in August to determine which qualify for gifts from the Fund.

The following applications were approved:

Jack L. Burtch — WSBA No. 4161 (Aberdeen) — Suspended pending discipline 5/17/07; disbarred 1/31/08

Applicant paid Burtch \$2,000 to bring a bad-faith claim against an insurance company and to remove a lien that had been filed by a contractor against Applicant's

property. Applicant explained that action needed to be taken promptly on the claim against the insurer, as the statute of limitations would expire at the end of the year. Burtch told Applicant that he would have the lien taken care of in a week and would file the lawsuit within two weeks.

In the disciplinary proceeding, the Supreme Court opinion stated that Burtch took no action for several months. Eventually, Applicant discharged him less than 30 days before the statute of limitations was due to expire. She requested a refund of \$1,600. Burtch refused and instead

produced an accounting showing that she owed more than the \$2,000 she had paid. The hearing officer did not find this accounting credible. The Supreme Court opinion states: "There is no evidence, other than his testimony, that Mr. Burtch did anything other than make one phone call to [a contractor] regarding the services he allegedly provided [Applicant]." The Court found that Burtch failed to adequately and accurately explain his fee agreement to Applicant; that he failed to return unearned fees; and that he failed to diligently represent Applicant. The hearing officer

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recommended that Burch pay restitution to Applicant of \$1,900. The Committee approved payment of that amount.

David R. Hellenthal — WSBA No. 18311 (Spokane) — Suspended for 18 months 9/6/07

In 2004, Applicant's mother died and left him approximately \$170,000. Applicant hired Hellenthal because he was concerned about the potential effect of the inheritance on his continued eligibility for government benefits. The inheritance proceeds were

deposited into Hellenthal's trust account.

In a fee agreement letter to Applicant, Hellenthal said he would charge 20 percent of Applicant's inheritance, which he set at \$33,500. He proposed forming a limited liability company (LLC) to purchase a residence for Applicant, and he said he would co-sign for a loan. He said he would form a Supplemental Needs Trust, which would allow Applicant to receive Medicaid benefits for the rest of his life, and that the trust would be made a partner in the LLC. He also agreed to provide care management services for Applicant "for the rest

of your life or mine." He said he would not charge any extra fees, but he would have a 10 percent interest in the LLC. Applicant signed this agreement. Between November 2004 and January 2005, Hellenthal paid himself \$33,000 from Applicant's trust account funds.

He prepared a Supplemental Needs Trust which designated Hellenthal as both trustor and trustee. It provided that Applicant could replace him as trustee. It also provided that upon Applicant's death, the trust estate would be distributed according to Applicant's will or, if he had no will, it would revert back to the trustor, who was Hellenthal. Hellenthal knew at that time that Applicant had no will. At some point he and Applicant discussed drafting a will, but none was ever created.

Hellenthal did not discuss any conflicts of interest with Applicant and did not have Applicant's consent to waive any conflicts. According to Hellenthal's stipulation to discipline, Applicant did not understand that Hellenthal would receive his entire estate if he died without a will, and he did not intend that result. Hellenthal executed the trust, and on January 12, 2005, transferred \$125,000 from his trust account, which he used to fund the trust.

Under Medicaid regulations, a Supplemental Needs Trust would need to include a provision that all benefits paid to the trustor would be repaid to the state upon Applicant's death, and the trust would need court approval. The trust prepared by Hellenthal did not comply with Medicaid regulations and was not approved by a court. It could have made Applicant ineligible for Medicaid benefits and could have subjected him to financial penalties. This was not disclosed to Applicant.

In January 2005, Applicant hired a new lawyer who had Hellenthal removed as trustee. Hellenthal transferred \$125,000 plus interest to Applicant's new trustee. The new lawyer also asked Hellenthal to reduce his fees. Hellenthal refunded a total of \$23,630 in fees, and \$2,169.13 of Applicant's funds that remained in his trust account. The total fees he retained were \$7,130. The Stipulation states that other Spokane-area lawyers charge \$1,000 to \$3,500 for creation of a special needs trust. Hellenthal stipulated to repay Applicant \$5,130.87. He has not done so, and it appears he currently has no means to do so. The Committee approved payment of that amount to Applicant.



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Paul Hernandez — WSBA No. 21015 (Seattle) — Suspended pending discipline 5/25/06

Hernandez is respondent in a default disciplinary proceeding in which it is recommended that he be disbarred. He represented Applicant on a personal injury claim that was settled for \$22,000. Hernandez's settlement accounting showed that he was withholding settlement funds to pay PIP funds to Applicant's insurer (\$1,095.90), and funds owed to a chiropractor (\$1,660.36).

Applicant received a letter from a collection company on behalf of the insurer advising him that their reimbursement had never been paid after Hernandez contacted them to verify the amount of their lien and stating that he was "finally ready to resolve." They demanded payment from Applicant. Subsequently, Applicant received a copy of a letter to Hernandez from another collection agency that the funds owed to the chiropractor remained unpaid. The Committee approved payment of \$2,756.26.

Other Business: The Committee reviewed 10 additional applications that were denied for lack of evidence of dishonest conduct, as fee disputes or claims for malpractice, or because restitution was made.

Restitution: Before payment is made, the Applicant must sign a subrogation agreement with the Fund, and the Fund seeks restitution from the lawyers. Because in most cases those lawyers have no assets, the chief avenue of restitution is through court-ordered restitution in criminal cases. Prosecuting attorneys cooperate with the fund in getting the Fund listed in restitution orders. As of February 2008, six lawyers were making regular restitution payments to the Fund totaling \$20,565 since October 1, 2007. This includes \$15,260 deposited into the Fund pursuant to Supreme Court order from abandoned and unidentifiable funds in the trust account of former attorney Barry A. Hammer. ☺

The Committee chair is Kennewick attorney Christopher J. Mertens. WSBA General Counsel Robert D. Welden is staff liaison to the Committee.

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Congratulations to the 361 candidates who passed the Winter 2008 Bar Exam! The exam was administered in February 2008, at Meydenbauer Center in Bellevue. Of the 484 candidates who took the exam, 74.6 percent passed.

• A •

Adams, Kathleen O'Connor, *Snoqualmie*
 Adams, Ryan Navarra, *Puyallup*
 Alig, Michelle A., *Seattle*
 Allshouse, Sara Darlene, *Las Vegas, NV*
 Amirkia, Amin John, *Bellevue*
 Anastasio, Charity, *Seattle*
 Andrews, Curry Denny, *Port Angeles*
 Andrews, David, *Redmond*
 Armentrout, Sean, *Tacoma*
 Ashbach, Brian Charles, *Anacortes*
 Austin, Katina E., *Chicago, IL*

• B •

Baker, Alice Kathryn, *Washington, DC*
 Baker, Jason A., *Burien*
 Balasbas, Micah Louise, *Lacey*
 Barnes, Courtney Jayde, *Aurora, CO*
 Beauvais, Marvin, *Spokane*
 Bedford, Elizabeth A., *Seattle*
 Belskis, Jessica T., *Seattle*
 Berger, Tymon, *Seattle*
 Bergevin, Jason L., *Anchorage, AK*
 Bernstein, Stacey Scriven, *Renton*
 Biederman, Kurt M., *Seattle*
 Bielenberg, James Edwin, *Kirkland*
 Blair, Kyra Myers, *Carnation*
 Blodgett, Carrie Chapman, *Seattle*
 Bolinger, Stephen J., *Seattle*
 Bowman, Robert L., *Seattle*
 Brady, Carlene M., *Seattle*
 Breitbarth, Jessica H., *Poulsbo*
 Bridges, Kerry E., *Bainbridge Island*
 Briggs, Melissa J., *Seattle*
 Brinkman, Troy Matthew, *Seattle*
 Brooks, Thomas Alton, *Portland, OR*
 Brosier, Joy L., *Spokane*
 Brouder, Margaret Mary, *Seattle*
 Brown, Mamie S., *Bellevue*
 Burgess, Hilary R., *Fairview, OR*

• B •

Cadwell, Brian J., *Kent*
 Calcote, Mary Martha, *Tallahassee, FL*
 Camac, Karla Elizabeth Mary, *Richland*
 Campagna, Joseph A., *Bremerton*
 Carley, Tanya L., *Mill Creek*
 Carmichael, Brian S., *Seattle*
 Cavalieri, Michelle L., *Nashville, TN*
 Charles, Darrell R., *Seattle*

Che, Sieu Khai, *Honolulu, HI*
 Cho, Miriam H., *Bellevue*
 Christensen, Peter C., *Spokane*
 Clark, Peter H., *Kirkland*
 Claypool, Jonathan Anthony, *Seattle*
 Cleveland, Dana, *Nespelem*
 Cohen, Tessa, *Vancouver*
 Collier, Sherry Samara, *Seattle*
 Connor, Theresa, *Olympia*
 Conte, Mary, *Oak Harbor*
 Conway, David Matthew, *San Francisco, CA*
 Cooke, Mark Muzzey, *Seattle*
 Cowan, Jennie Mayberry, *Washington, DC*
 Crutcher, Chelan Lee, *Seattle*
 Cummings, William Siemon, *Bremerton*

• D •

Dahl, Emily F., *Seattle*
 Daian, Anca, *Bellevue*
 Dann, Matthew Grant, *Seattle*
 Darling, Samuel Kirtland, *Cashmere*
 Davis, Cherry Lee, *Port Orchard*
 Davis, Xavier, *Happy Valley, OR*
 Deblois, Eryn Y. K., *Puyallup*
 Defreese III, Austin B., *Everett*
 Delanty, Sarah A., *Seattle*
 DePaola, Donna, *Newcastle*
 Dimock, Christina Nicole, *Seattle*
 Dixon, Derrick, *Seattle*
 Dixon, Jennifer, *Seattle*
 Doerner, Mariko Kathryn, *Sedro Woolley*
 Drabek, Keith Edward, *Seattle*
 Drowley, Richard Douglas, *Renton*
 Drozd, Donald L., *Eastsound*
 Dubow, Jesse Michael, *Mercer Island*
 Duran, Miguel Maria, *Seattle*
 Dwarzski, Noelle Elyce, *Bainbridge Island*

• E •

Edwards, Christopher S., *Spokane*
 Edwards, Kenneth Eugene, *Seattle*
 Eide, Ross Nathaniel, *Seattle*
 Eng, Dennis R., *Renton*
 Ensign, Elizabeth Leota, *Spokane*
 Erb, James Ethan, *Bellingham*
 Espinoza, Jesse, *Silverdale*
 Evans, Diane Louise, *Des Moines*

• F •

Fain, Joseph, *Auburn*
 Fassburg, Blair I., *San Antonio, TX*

Fenzel, Cristin Elizabeth, *Seattle*
 Fischer, Timothy Robert, *Elk*
 Fitzpatrick, Bryan Edward, *North Vancouver, BC*
 Fletcher, Rebekah L., *Seattle*
 Flynn, Colin, *Federal Way*
 Foley, Molly Anne, *Huntington Beach, CA*
 Foley, Pamela Parker, *Gig Harbor*
 Foley, Sharma K., *Plymouth, MN*
 Folsom, Matthew Mackay, *Spokane*
 Foster, David Gregory, *Everett*
 Foster, David Wesley, *Spokane*
 Foster, Timothy Warren, *Portland, OR*
 Franklin, Eric, *Seattle*
 French, Alex, *Seattle*
 Fuller, David Hadley, *Henderson, NV*

• G •

Galbraith, Brien, *Seattle*
 Gaudette, Megan Kathryn, *Medina*
 Geary, David A., *Seattle*
 George, Timothy Adam, *Federal Way*
 Gianoli, Angela Marie, *Ely, NV*
 Gibson, J. Khalia, *Renton*
 Giles, James Daves, *Woodinville*
 Gill, Douglas H., *Lakewood*
 Gim, Han, *Seattle*
 Gomez, Merky I., *Seattle*
 Gotchy, Lauren Mariko, *Seattle*
 Gower, Robert O'Neal, *Olympia*
 Graham, Kjirstin June, *Spokane*
 Graves, Melissa, *Oxford, MS*
 Green, Michelle A., *East Wenatchee*
 Grenier, Gary A., *Seattle*
 Griffith, Joely Andre, *Lynnwood*
 Griffiths, Frank Bradley, *Seattle*

• H •

Haapala, Scott McCleave, *Washington, DC*
 Hale, Sarah Irene, *Seattle*
 Hall, Edgar I., *Murrieta, CA*
 Halverson, Sonja Marta, *Boston, MA*
 Hancock, Emily Margaret, *Seattle*
 Hansen, George, *Yakima*
 Hansen, Jennifer Lynn, *Bainbridge Island*
 Hanson, Kent Bryan, *Minneapolis, MN*
 Hardman, Theodore Robert, *Redmond*
 Hasuko, Roycee Sachie, *Bellevue*
 Hawkins, Karama Halili, *Shoreline*

Hays, Megan McCombs, *Spokane*
 Herschkowitz, Stephen A., *Seattle*
 Hewitt, Allison Taylor, *Pasco*
 Higashi, Meredith Sue Heong, *Mercer Island*
 Hildebrand, Scott E., *Sammamish*
 Hilscher, Malorie Jean Rankin, *Seattle*
 Holden, Ryan H., *Shelton*
 Holtan, Carrie Ellen, *Spokane Valley*
 Hong, Stephen Kyung, *Snohomish*
 Howell, Amanda Beth, *Seattle*
 Howell, Brock, *Prosser*
 Howell, Brooke Washington, *El Sobrante, CA*
 Hynes, Kyran William, *Bellevue*

• I •

Iglesias, Danilo Juan, *Bainbridge Island*
 Imperiale, James Thomas, *San Diego, CA*

• J •

Jacobson, John A., *Snohomish*
 Jaquish, Natalie Ellen, *Seattle*
 Jewell, Stephen Michael, *Spokane*
 Jimenez, John Michael, *Portland, OR*
 Johnson, Chalmers Carey, *Renton*
 Johnson, Logan E., *Houston, TX*
 Jones, Matthew Neal, *Portland, OR*
 Jordan, Patrick Timothy, *Seattle*
 Joseph, Robert, *Seattle*

• K •

Kagie-Shutey, Marie, *Newport*
 Karlsgodt, Paul G., *Denver, CO*
 Kartje, Peter Frank, *Portland, OR*
 Keating, Robert Joseph, *Boulder, CO*
 Keene, Teresa Thais, *Colfax*
 Keim, Benjamin A., *Spokane*
 Keith, Jonathan Harold, *Seattle*
 Kelley, Judith A., *Chicago, IL*
 Khanijou, Siddharth, *Santa Ana, CA*
 Killough, David E., *Mercer Island*
 Kim, Evelyn M., *Bellevue*
 Kim, Hee Sun, *Seattle*
 Kim, Monica Eunjin, *Maple Valley*
 Kim, Suzanne Hyun, *Seattle*
 Kirby, Albert Hensel, *Seattle*
 Kirby, Chad A., *Kenmore*
 Kiviat, LeighAnne Kuiken, *Mercer Island*
 Koch, Wendy Louise, *Spanaway*
 Korb-Nice, Gretchen I., *Seattle*

Krell, Jennae, *Seattle*
Kringel, Christopher Matthew,
Federal Way
Kvasnosky, Noelle Helen, *Seattle*
Kyin, Maureen, *Seattle*

• L •

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Largent, Matthew Christopher,
Phoenix, AZ
Larkin, Matthew Peter,
Washington, DC
LaVonne, Jeanne M., *Tacoma*
Lawn, Iain, *Washington, DC*
Lawrence, Timothy Verne,
Carthage, TX
Lear, Daniel M., *Seattle*
Lee, Yechin, *Boise, ID*
Leonard, Heidi A., *Lake Forest
Park*
Lepinski, Rebecca, *Huntington
Beach, CA*
Lewis, Adam, *Bellevue*
Lewis, Michael Edmond, *Seattle*
Lin, Lixin, *Seattle*
Lindauer, Dominic S. I., *Spokane
Valley*
Liu, Jennifer H.Y., *Renton*
Lofgren, Dana Anne, *Washington,
DC*
Logan, Morag Alison, *Las Vegas,
NV*
Long, Suzanne Elaine, *Seattle*
Lopez, Neil Anthony, *Tacoma*
Lund, Richard Walter, *Woodinville*

• M •

Madigan, Kelly M., *Shoreline*
Maggard, Kacie L., *Ephrata*
Malvar, Ana Beatriz Villela, *Seattle*
Manheim, Elisabeth Marshall,
Mercer Island
Marsh, Cheryll L., *Pleasanton, CA*
Martin, Charles E., *Bainbridge
Island*
Mathison, Mark Philip, *Los
Angeles, CA*
McClellan, Jack Richard, *Spokane*
McCown, Elizabeth Ann,
Wenatchee
McCready, Donna Jeanne,
Bremerton
McFarland, Megan Lammon,
Seattle
McKee, Sean D., *Bellingham*
McLaren, Mark, *Monroe*
McLaughlin, Martha A., *University
Place*
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McMurdo, Steven P., *Poulsbo*
Meltzer, Eric Samuel, *Seattle*
Menon, Yamini, *Monroe, CT*
Mikesh, Benjamin Kendall,
Longmeadow, MA
Miller, Kirk David, *Spokane*
Miller, Ryan Steven, *Seattle*

Miller, Shont E., *Pasadena, CA*
Minnitti, Jessica Lynn, *Seattle*
Miron, Ioana Daniela, *Seattle*
Mizrahi, Joseph Elias, *Seattle*
Moats, Jessica Lynn, *Seattle*
Mohr, Hilary Bramwell, *Seattle*
Moore, Christina F., *Tacoma*
Moran, Kevin Michael, *Coeur
d'Alene, ID*
Morris, Erin Foxton, *Conway, MA*
Motyka, Debora Noemi Audrey,
Seattle
Moua, Dia, *Sacramento, CA*
Mulaney, Charles W., *Seattle*

• N •

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Nasar, Maarij, *Sammamish*
Neal, Andrew Alan, *Mount
Pleasant, MI*
Nelson, Mary Nicole Ray,
Anacortes
Nelson, Michael Jay, *Beaverton, OR*
Newcomb, Jonathan P., *Seattle*
Newhouse, Alex Stephen, *Outlook*
Nitta, Carolyn Boies, *Little Rock,
AR*
Nolan, M. Teri, *Spokane*
Nowlin, Helen M., *Vancouver*
Nyun, Thihan Myo, *Seattle*

• O •

O'Halloran, Catlin C., *Tukwila*
Okpe, Felix Oghenekohwo,
Fairfield, OH
Olson, Anne Wakewood, *Deary, ID*
O'Quinn, Sean F., *Spokane Valley*

• P •

Pannu, Sharan Harpreet Singh,
Kent
Parikh, Ritee Girish, *Bothell*
Parker, Corey Evan, *Kirkland*
Patel, Ankita, *Seattle*
Payne, Julie L., *Vancouver*
Petrini, Shange Holden, *Moraga, CA*
Phan, Quynh-An, *Seattle*
Plas, Mary Katherine, *Olympia*
Pratter, Virginia Paige, *Seattle*
Prosser, John Robert, *University
Place*
Prosser, Ryan, *Seattle*
Puccio, Erik Robert, *Spokane*
Putnam, Jacob, *Seattle*

• Q •

Qi, Yuan, *Lakewood*

• R •

Radillo, Ernest, *East Wenatchee*
Radillo, Penney, *Wenatchee*
Rainey, Lynn D., *University Place*
Ranz, David, *Puyallup*

Rathbun, Kathryn E.C. Spradlin,
Everett
Reed, Daniel J., *San Diego, CA*
Reed, Kevin W., *New Orleans, LA*
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Soi, Toan Phu, *Seattle*
Soto, Eulalia, *Vancouver*
Stell, Kristy Lee, *Seattle*
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Sterling, Sunjay Smith, *Aurora, CO*
Stinson, Summer, *Seattle*
Stock, Matthew J., *Seattle*
Stoffel Brett C., *Keizer, OR*
Stoops, Jamie Lee, *Lake Forest Park*
Stovern, Daniel, *Seattle*

• T •

Tanijo, Steven, *Olympia*
Taylor, Jamila E., *Seattle*
Taylor, Jeffrey Todd, *Liberty Lake*
Tehrani, Diana C., *Warrenton, OR*
Thomas, Folake Victoria, *Calgary,
AB*
Thunen, Edward Roy, *Vancouver*

Titus, Justin William, *Seattle*
Tokita, Karen Mieko, *Bellevue*
Tong, Cindy Ming Hsun, *Bellevue*
Tulanon, Don, *Seattle*
Turlea, Anamaria, *Kirkland*
Turpin, Rachel Bender, *Lake Forest
Park*

• U •

Upadhyay, Kripa, *Seattle*
Urquia, Rafael Edward, *Port
Townsend*
Utz, Diane Carol, *Renton*

• V •

Vernon-Granados, Tamerton,
Moxee
Virant, Meredith Lauren, *Seattle*
Vitikainen, Claire Amanda, *Seattle*
Volbeda, Michael Bruce, *Seattle*
Von Trotha, Lisa, *Seattle*

• W •

Wacker, Mindie L., *Tacoma*
Waendelin, Anna H., *Camas*
Waibel, Cherylyn, *Metuchen, NJ*
Walls, Lori Kathleen, *Seattle*
Walter, Marjorie Alison, *Seattle*
Walters, Casey Michael, *Gilbert,
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Wu, Elizabeth, *Urbana, IL*

• X•Y •

Yeates, Megan Nicole, *Bellingham*
Yoder, Michael Jonathan, *Seattle*
Young, Jason Neil, *Houston, TX*
Young, Jeffrey Sherwin, *Tigard, OR*
Yu, Robert E., *Seattle*
Yung, Danielle Marie, *Seattle*

• Z •

Zaineb, Melissa A., *Puyallup*
Zeinemann, Robert David,
Kirkland
Zerby, David A., *Bethel, AK*
Zimmermann, Amy Elizabeth,
Vancouver
Zobrist, Leanne Marie, *Everett*

Opportunities for Service

Commission on Judicial Conduct

Application deadline: June 30, 2008

The WSBA Board of Governors is seeking applicants interested in serving on the Commission on Judicial Conduct. Two positions are available: one as a member and one as an alternate. The Commission reviews complaints of ethical misconduct and disability against judicial officers, discusses the progress of investigations, and takes action to resolve complaints. The goal of the Commission is to maintain confidence and integrity in the judicial system by seeking to preserve both judicial independence and public accountability. The public interest requires a fair and reasonable process to address judicial misconduct or disability, separate from the judicial appeals system that allows individual litigants to appeal legal errors.

The Commission consists of 11 members who serve four-year terms — six non-lawyer citizens, three judges, and two lawyers. Each member has an alternate whose term coincides with their corresponding member's term. The lawyers must be admitted to practice in Washington and are appointed by the WSBA. Incumbents are eligible for reappointment, limited to two terms as an alternate member and two terms as a full member. Letters of interest and résumés are also required for incumbents seeking reappointment. The term for these positions will commence upon appointment in July 2008, and expire on June 16, 2011. Please submit a letter of interest and résumé to WSBA Bar Leaders Division, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539; or e-mail barleaders@wsba.org.

Further information about the Commission can be found at their website, www.cjc.state.wa.us, or by contacting them at 360-753-4585.

Law Clerk Committee — Two Positions

Application Deadline: June 15, 2008

The Law Clerk Committee is a regulatory board composed of seven lawyers who are appointed for six-year terms. Two terms are ending on September 30, 2008. Members are appointed with consideration for the geographic distribution of the law clerks in the program. The positions starting October 1, 2008, serve primarily the South Sound/Southwestern Washington and Spokane/Eastern Washington regions. Preference will be given to applicants in these areas of the state. The Committee is composed of both law school graduates and those who completed the Law Clerk Program; a balance of experience is sought.

Each Committee member acts as liaison for an average of six law clerks enrolled in the program. A liaison receives monthly exams and certificates to review and assess the law clerks' progress. The Law Clerk Committee meets quarterly in February, May, August, and November. At the quarterly meetings, the liaison makes recommendations to the Committee on petitions of enrolled law clerks and on the admission of new law clerks and tutors to the program, as well as other issues. Screened applicants to the program are required to meet in person with a liaison, so the liaison must be willing to host a meeting in his or her office or travel to the

potential tutor's office. The time commitment is generally four to eight hours per month in addition to the quarterly six-hour meetings and possible special meetings and projects.

Please review APR 6 and the Regulations for the Law Clerk Program at www.wsba.org/lawyers/licensing/apr6rulesandregulations.pdf. General information about the Law Clerk Program is available at www.wsba.org/lawyers/licensing/faq-rule6.htm.

Members interested in participating on the Law Clerk Committee should submit a letter of interest and résumé to: WSBA Bar Leaders Division, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539; or e-mail barleaders@wsba.org. For questions, call 206-239-2112 or 800-945-9722, ext. 2112.

Mandatory Continuing Legal Education (MCLE Board)

Application deadline: June 30, 2008

The WSBA Board of Governors is seeking applications from active WSBA members for appointment to the MCLE Board. One position is available, and members from any district may apply. This is a three-year term commencing October 1, 2008. The MCLE 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. Interested individuals should submit a letter of interest and résumé to WSBA Bar Leaders Division, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539; or e-mail barleaders@wsba.org.

2008 Licensing and Suspension Information

Suspension recommendations sent to the Washington State Supreme Court. If you have not paid your license fees and late fees, or if you are on Active status and have not paid your Lawyers' Fund for Client Protection assessment or filed your Mandatory Professional Liability Insurance Disclosure Form within 60 days of the date a Presuspension Notice was mailed to your address on record (March 14, 2008), your name was on the Suspension Recommendation list sent to the Washington State Supreme Court.

Provide WSBA with current contact information. You are required to keep your contact information current; see Admission to Practice Rule 13. If your contact information has changed, complete and return the Contact Information Change Form available at www.wsba.org/info/newaddresschangeform.pdf. Forms should be mailed to the WSBA, faxed to 206-727-8313, or e-mailed to questions@wsba.org.

For more information. Full explanations of license fees, forms, policies, and deadlines are on the WSBA website at www.wsba.org/lawyers/licensing/annual

[licensing.htm](http://www.wsba.org/licensing.htm). The WSBA Service Center is available to assist you Monday through Friday, 8:00 a.m. to 5:00 p.m., at 800-945-WSBA (9722), 206-443-WSBA (9722), or by e-mail at questions@wsba.org.

Asian Bar Association of Washington to Host 20th Annual National Asian Pacific American Bar Association Convention in Seattle in November 2008

The Asian Bar Association of Washington (ABAW) will host the 20th Annual National Asian Pacific American Bar Association (NA-

PABA) Convention in Seattle on November 20–22, 2008. This event will mark NAPABA's first return to Seattle since ABAW hosted the convention in 1991. The 2008 theme is "Building on Our Legacy: 20 Years of NAPABA." More than 1,200 legal professionals and guests from around the country are expected to attend. For general information about the convention, contact Planning Committee Co-chairs Benes Aldana (206-217-6401 or benesaldana@comcast.net) or Marcine Anderson (206-296-0430 or marcineanderson@comcast.net).

WSBA-CLE Annual Member Appreciation Summer Sale

July 14 – 25, 2008 – Online Orders Only
It only happens once a year! Shop the WSBA-CLE online store for recorded seminars and coursebooks (selected titles only) at substantial discounts. Stock up on A/V credits for your MCLE reporting. Visit the online store at www.wsba.org.

Contract Lawyer Meeting

Discuss the issues with other contract lawyers on June 10 from noon to 1:30 p.m. at the WSBA office. Bring your lunch — coffee is provided — and network with other contract lawyers. For more information, contact Julie Salmon at 206-733-5914, 800-945-9722, ext. 5914, or juliesa@wsba.org.

Success Strategies Workshop

The Success Strategies Workshops hands-on/how-to intensives will teach new-to-practice attorneys or more experienced attorneys the skills and processes to better manage their law practices in an ethical, effective, efficient, and profitable manner. Through a combination of teaching methods and experiences in a confidential workshop setting held at the WSBA office, law office management consultant Ann Guinn will assist attorneys in solo or small firms to develop and reach their career goals. Workshops will be held the first Wednesday of each month from 5:30–8:30 p.m. You may join during any month. Three MCLE-approved CLE credits are available for each workshop. For information or to pre-register, contact Ann Guinn at 253-946-1896 or anngp15@aol.com, or Jennifer Favell, Ph.D., at jenniferf@wsba.org, 206-727-8267, or 800-945-9722, ext 8267.

Recovery Support Group for Lawyers

The Lawyers Assistance Program is offering a new weekly group in Seattle for lawyers in

their first three years of recovery from drug or alcohol dependency. The group meets on Tuesdays from 8:15 to 9:30 a.m. Discussion topics include relapse prevention, improving relationships, work/life balance, and other themes chosen by the group. Coed. Sliding fee scale of \$5–15 per session. Call Abby Smith, LAP addictions counselor, at 800-945-9722, ext. 5988 or 206-733-5988.

Casemaker Online Research

Casemaker is a powerful online research library provided free to WSBA members. To access Casemaker, go to the WSBA

website at www.wsba.org and click on the Casemaker logo on the right sidebar. Click on the Casemaker button to begin. For help using Casemaker, contact Julie Salmon at 206-733-5914, 800-945-9722, ext. 5914, or juliesa@wsba.org, or call the WSBA Service Center at 800-945-WSBA (9722) or 206-443-WSBA (9722).

LAP Solution of the Month: Worried?

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before you know it, you can get way behind in your work. If anxiety has become a problem, call the Lawyers Assistance Program at 206-727-8268 or 800-945-9722, ext. 8268.

Computer Clinic

The WSBA offers a hands-on computer clinic for members. Learn what programs such as Outlook, PowerPoint, Excel, Word, and Adobe Acrobat can do for a lawyer. Are you a total beginner? No problem. The clinic teaches helpful tips you can use immediately. Computers are provided, and seating is limited to 15 members. There is no charge, and no CLE credits are offered. The June 9 clinic will be held from

10:00 a.m. to noon at the WSBA office and will focus on using Casemaker and other online research resources. The June 12 session will be held from 2:00 to 4:00 p.m. and will focus on using Windows menus, the mouse, and making adjustments to the screen. For more information or to RSVP, contact Julie Salmon at 206-733-5914, 800-945-9722, ext. 5914, or juliesa@wsba.org.

Job Seekers Discussion Group

Looking for a job or making a transition? Join us at the Job Seekers Discussion Group the second Wednesday of each month from noon to 1:30 p.m. The next meeting is June 11 at the

WSBA office. The group discusses where to look for jobs, how to grow your network of contacts, strategies for résumés and cover letters, and how to keep yourself organized and motivated. Exchange information and ideas with other lawyers looking to make a change. Come as you are — no need to RSVP. Bring your business cards and practice networking skills. For more information, call 206-727-8269 or 800-945-9722, ext. 8269, or e-mail rebeccan@wsba.org.

Problem Getting a Client to Pay?

Dispute with another lawyer or an expert witness? The WSBA offers two programs to aid in the resolution of disputes involving lawyers. These programs serve both members and the public. The Fee Arbitration Program focuses on fee disputes between a lawyer and his or her client. To participate, both parties must agree to be bound by the arbitrator's decision. The Mediation Program provides a venue for parties to work together to resolve any dispute involving a lawyer, including those between a lawyer and a client, a lawyer and another lawyer, or a lawyer and another professional. Either party to a dispute may initiate fee arbitration or mediation. Both programs are non-disciplinary, voluntary, and confidential. For more information, visit the WSBA website at www.wsba.org/lawyers/services/adr.htm or call the ADR coordinator at 206-733-5923 or 800-945-9722, ext. 5923.

Facing an Ethical Dilemma?

The WSBA Ethics Line can help members analyze a situation involving their own prospective conduct, apply the proper rules, and reach an ethically sound decision. Calls made to the Ethics Line are confidential, and most calls are returned within one business day. Any advice given is intended for the education of the inquirer and does not represent an official position of the WSBA. Call the Ethics Line at 206-727-8284 or 800-945-9722, ext. 8284.

Search WSBA Ethics Opinions Online

Formal and informal WSBA ethics opinions are available online at <http://pro/wsba.org/io/search.asp>, or from a link on the WSBA homepage, www.wsba.org. You can search opinions by number, year issued, ethical rule, subject matter, or keyword. Ethics opinions are issued by the WSBA to assist members in interpreting their ethical obligations in specific circumstances. The opinions are the re-

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sult 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.

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 Jennifer Favell, Ph.D., at 206-727-8267 or 800-945-9722, ext. 8267.

Assistance for Law Students

The Lawyers Assistance Program offers counseling to third-year law students attending Washington schools. Sessions are held in person or by phone. Treatment is confidential and available for depression, addiction, family and relationship issues, health problems, and emotional distress. A sliding-fee scale is offered ranging from \$0–30, depending on ability to pay. Call 206-727-8268, or 800-945-9722, ext. 8268, or visit www.wsba.org/lawyers/services/lap.htm.

Help for Judges

The WSBA Judges Assistance 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.

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. The LOMAP staff is available to provide materials, answer questions, and make recommendations. To make an appointment, contact Julie Salmon at 206-733-5914 or 800-945-9722, ext. 5914, or juliesa@wsba.org.

Upcoming Board of Governors Meetings

June 6, Vancouver • July 25–26, Walla Walla • September 18–19, Seattle

With the exception of the executive session, Board of Governors meetings are open, and all WSBA members are welcome to attend. RSVPs are appreciated but not required. Contact WSBA Executive Director Paula Littlewood at 206-239-2120 or 800-945-9722, ext. 2120, or paulal@wsba.org. The complete Board of Governors meeting schedule is available on the WSBA website at www.wsba.org/info/bog/schedule.htm.

Usury Rate

The average coupon equivalent yield from the first auction of 26-week treasury bills in May 2008 was 1.78 percent. Therefore, the maximum allowable usury rate for June is 12 percent. Information from January 1987 to date is on the WSBA website at www.wsba.org/media/publications/barnews/usury.htm.

Correction

In the In Memoriam section of May 2008 *Bar News*, the date of death for Dion Mathewson was incorrect. The correct date is January 29, 2007. We apologize for the error.

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Formerly a partner in the Portland office of Holland & Knight, LLP, Mr. Leonard will continue to focus on health law and business litigation.

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is pleased to announce that

Xin "Joe" Zhang

has joined the firm as an associate.

Mr. Zhang will focus his practice on international business, real estate and land use, and assisting American and Chinese clients with legal needs arising out of cross-border transactions.

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Calendar

Please check with providers to verify approved CLE credits. To announce a seminar, please send information to:

WSBA Bar News Calendar
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Fax: 206-727-8319
E-mail: comm@wsba.org

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

Business Law

Business Law Midyear

June 5 — Seattle. 6.75 CLE credits, including 1 ethics. By the WSBA Business Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Construction Law

Construction Law Midyear

June 13 — Seattle. 6 CLE credits pending. By the WSBA Construction Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Family Law

2008 Family Law Midyear

June 20-22 — Vancouver, WA. 14.5 CLE credits, including 2 ethics pending. By the WSBA Family Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Making — or Breaking — Your Client's Case: Financial Aspects of Family Law Cases

July 30 — Seattle. 6 CLE credits pending.

By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Law Office Management

Trust Accounts and Setting Up Your Own Practice Bootcamp

June 18 — Seattle. 6 CLE credits, including 1 ethics pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Litigation

Litigation Section Midyear

June 20 — Seattle. 6.5 CLE credits, including 2 ethics pending. By the WSBA Litigation Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

How to Practice More Effectively in Courts of Limited Jurisdiction

June 25 — Seattle. 6 CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Negligent Misrepresentation

July 22 — Tele-CLE. 1.5 CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Making the Most of Expert Witnesses

July 24 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Real Property, Probate and Trust

2008 Real Property, Probate and Trust Section Midyear

June 6-8 — Vancouver, WA. 11.5 CLE credits, including 2.75 ethics. By the WSBA RPPT Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

1031 Tax Exchanges

July 8 — Tele-CLE. 1.5 CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Recent Developments in Real Estate

July 15 — Tele-CLE. 1.5 CLE credits pending. By WSBA-CLE; 800-945-WSBA or

206-443-WSBA.

Real Estate Bootcamp

July 23 — Seattle. 6.5 CLE credits, including 1 ethics pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Research

Legal Research and Writing Bootcamp

June 26 — Seattle. 6 CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Solo/Small Firm

3rd Annual Solo and Small Firm Conference

July 17-19 — Wenatchee. Up to 14 CLE credits, including up to 3 ethics pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Trust Accounts and Setting Up Your Own Practice Bootcamp

June 18 — Seattle. 6 CLE credits, including 1 ethics pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Taxation Law

1031 Tax Exchanges

July 8 — Tele-CLE. 1.5 CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Technology

High Technology Protection Summit

July 25, 26 — Seattle. CLE credits pending. By University of Washington CLE, Washington Law School Foundation. 206-543-0059 or 800-CLE-UNIV.

Trust Accounts

Trust Accounts and Setting Up Your Own Practice Bootcamp

June 18 — Seattle. 6 CLE credits, including 1 ethics pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

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— Francesco di Marco Datini —
Florentine businessman, letter to his wife,
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Stephen C. Smith, former Chairman of the Washington State Bar Association Disciplinary Board, is now accepting referrals for attorney disciplinary investigations and proceedings in Washington, Idaho, Hawaii, and Guam.

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Former Law Clerk,
Washington State Supreme Court;
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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 discipline reports should be read carefully for names, cities, and bar numbers.

Suspended

Anthony R. Castelda (WSBA No. 28937, admitted 1999), of Tonasket, was suspended for 60 days, effective April 7, 2008, by order of the Washington State Supreme Court following approval of a stipulation. This discipline was based on conduct involving failure to deposit an advance fee into a trust account, treating a client's advance fee as a flat fee without her informed consent and after representation had ended, failing to promptly provide a client with an accounting of the fees she had paid to him, and failing to promptly refund an unearned portion of a client's advance fees.

On February 1, 2006, Mr. Castelda met with a client for a consultation to discuss the client's legal needs as a result of the recent death of her husband. The client wanted to have a will prepared for herself, change the names on two property deeds, change the names on three vehicle titles, and record her husband's death certificate and their community property agreement which gave her title to the property. Mr. Castelda agreed to do this work; however, upon learning that she would have to meet Mr. Castelda at the Okanogan courthouse to change the title of three vehicles, the client informed Mr. Castelda that she would take care of transferring the vehicle titles herself. At the February meeting, Mr. Castelda and the client agreed that Mr. Castelda would bill at a rate of \$150 per hour. Mr. Castelda ordinarily has all new clients sign his standard "Retainer and Fee Agreement" that provides for "an initial fee" that is to be billed against but which is described as a non-refundable retainer. The client declined to sign the proposed agreement. Thus, there was no written fee agreement between Mr. Castelda and his client, and the client did not agree to pay Mr. Castelda a nonrefundable retainer. The client left a check for \$1,000 with Mr. Castelda's front desk as she left the office that day. Mr. Castelda's staff deposited the client's \$1,000 check into the law office's operating account. Mr. Castelda believed the fee advance to be a nonrefundable retainer,

and no funds of the client were ever held in Mr. Castelda's client trust account.

On February 2, 2006, Mr. Castelda sent the client a cover letter enclosing a draft will and asking her to bring in her original community property agreement so he could record it with the local County Auditor's Office. Mr. Castelda also sent the client's late husband's death certificate to the County Auditor for filing. On February 6, 2006, the client came to Mr. Castelda's office and executed the will. On February 7, 2006, Mr. Castelda sent the client's original community property agreement to the county auditor for filing. This concluded Mr. Castelda's representation of the client other than providing the client with the recorded documents when they returned from the auditor. The client expected that she would receive a statement from Mr. Castelda in early March as to the portion of her \$1,000 that had been used, but received no such statement. In March 2006, the client went to Mr. Castelda's office to inquire about her account. Mr. Castelda was not in his office and his staff provided the client a statement dated March 1, 2006, from the Timeslips program that Mr. Castelda uses for billings. The statement showed \$480 in hourly charges, \$54 in costs expended, and a \$466 credit balance. The client asked that the credit balance of \$466 be refunded. Mr. Castelda's office staff told the client she would need to talk to Mr. Castelda about a refund.

In March 2006, Mr. Castelda spoke with the client and told her that no refund was owed, as there was a written fee agreement that provided that the \$1,000 was a non-refundable retainer. The client disputed that there was a written fee agreement. Mr. Castelda agreed to review his file and call her back. He reviewed his files and verified that there was no written fee agreement. Mr. Castelda sent the client a letter admitting that he did not have a signed fee agreement for a non-refundable retainer. He explained his general practice to treat retainers as earned at the time they are paid, thus non-refundable. The letter stated: "Given the type of work performed for you, and the services rendered, we feel treating this matter as a flat fee earned in the amount of \$1,000 is more than reasonable." The letter also informed the client that Mr. Castelda had discovered "recording errors" in her billing records, which resulted in additional hourly charges of \$445. Although the letter claimed \$445 in additional charges, the additional entries of time that he put into the Timeslips billing program after the client raised the issue about his fees added only \$377 in additional charges, leaving a credit balance of \$89. Mr. Castelda believed it would have been reasonable to charge the client a \$1,000 flat fee for the work he performed on her behalf. The client believed she agreed to hire Mr. Castelda on an hourly basis only. Mr. Castelda attempted to resolve his differences with the client by sending her a check for \$89, the amount of the refund he thought she would be entitled to if he had agreed to work for her on a straight

hourly fee basis, taking his recording errors into account. The client believed that Mr. Castelda's recording errors, which increased his hourly fees, were unjustified. In July 2006, after the client filed a Bar complaint and disciplinary counsel urged him to refund the balance, Mr. Castelda refunded the balance of \$377 to the client.

Mr. Castelda's conduct violated former RPC 1.5(a), requiring that a lawyer's fee be reasonable; former RPC 1.5(b), requiring a lawyer who has not regularly represented a client to communicate to the client the basis or rate of the fee or factors involved in determining the charges for legal services and the lawyer's billing practices; RPC 1.7(b), prohibiting a lawyer from representing a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless the lawyer reasonably believes the representation will not be affected and the client consents in writing after consultation and a full disclosure in writing of the material facts; RPC 1.8(a), prohibiting a lawyer who is representing a client in a matter from entering into a business transaction with a client or knowingly acquiring an ownership, possessory, security, or other pecuniary interest adverse to a client unless the transaction and its terms are fair and reasonable and fully disclosed and transmitted in writing to the client, the client is given opportunity to seek the advice of independent counsel, and the client consents; former RPC 1.14(a), requiring all funds of clients paid to a lawyer or law firm be deposited in one or more identifiable interest-bearing trust accounts and no funds belonging to the lawyer or law firm be deposited therein; former RPC 1.14(b)(3), requiring a lawyer to maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his or her client regarding them; former RPC 1.14(b)(4), requiring a lawyer to promptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive; and former RPC 1.15(d), requiring a lawyer to take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee that has not been earned.

Leslie C. Allen represented the Bar Association. Dustin D. Deissner represented Mr. Castelda.

Suspended

Joseph A. Holeman (WSBA No. 16320, admitted 1986), of Federal Way, was suspended for 60 days, effective January 23, 2008, by order of the Washington State Supreme Court following ap-

proval of a stipulation. This discipline is based on conduct in two matters involving failure to communicate and failure to promptly pay clients funds belonging to the clients.

Matter 1: Siblings (clients) hired Mr. Holeman in May 2002 to represent them in a lawsuit arising from a motor vehicle accident in May 1999. The case settled in April 2005. Under the terms of the settlement, \$3,000 was paid to each client for their injuries. The checks were sent to Mr. Holeman, and he forwarded them to the clients with instructions to endorse the checks and return them to him. The clients endorsed and returned the checks on July 12, 2005. The clients' mother made numerous attempts to contact Mr. Holeman to find out when the checks would be disbursed. Mr. Holeman's phone was disconnected, and he did not respond to mail or e-mail. In November 2006, after the mother filed a complaint with the Bar Association, Mr. Holeman disbursed \$3,000 to each client from his trust account. The funds were held in trust from July 12, 2005, until they were disbursed on November 20, 2006.

Matter 2: Mr. Holeman represented a client (client) in a personal injury lawsuit. The parties settled the matter in September 2005, and the auto insurance company sent a settlement check to Mr. Holeman for \$54,250. The client's health insurance company asserted a lien against the settlement for the client's medical expenses. Mr. Holeman disbursed the settlement proceeds to the client, but withheld \$3,402.40 in his trust account to pay the lien. Mr. Holeman did not pay the money to the health insurance company. In January 2006, the client received a letter from her health insurance company requesting payment. The client contacted Mr. Holeman. However, Mr. Holeman did not pay the lien or tell the client that he had not paid it. The client eventually hired another lawyer to handle the uninsured motorist (UM) portion of her personal injury claim. In March 2007, the client paid the health insurance company's lien out of the settlement proceeds of her UM claim. In June 2007, after the client filed a complaint with the Bar Association, Mr. Holeman paid her the \$3,402.50 that he was holding in his trust account. The funds were held in Mr. Holeman's trust account from September 7, 2005, until they were disbursed on June 16, 2007.

Mr. Holeman's conduct violated RPC 1.4, requiring a lawyer to keep a client reasonably informed about the status of a matter, promptly comply with reasonable requests for information, and explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; and former RPC 1.14(b)(4), requiring a lawyer to promptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive.

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

Suspended

Jason M. Wong (WSBA No. 34160, admitted 2003), of Tacoma, is suspended until reinstatement by the Army or discharge, effective March 28, 2008, by order of the Washington State Supreme Court, imposing reciprocal discipline in accordance with an order from the Army Judge Advocate General. The suspension resulted from the United States Army's July 13, 2007, summary of indefinite suspension from practice before Army courts-martial and the United States Army Court of Criminal Appeals and revocation of Mr. Wong's Article 27b Uniform Code of Military Justice (UCMJ) certification and his authorization to practice law for the Army.

In November 2006, illegal drugs were discovered with Captain Wong's personal possessions in unopened factory blister packs labeled Rohypnol (flunitrazepam) and Valium (diazepam). Captain Wong admitted to another Army captain that he brought the drugs to the United States from Cambodia and that he used them for claimed sleeping problems. Captain Wong violated Title 21, US Code, and Art. 112, UCMJ, by wrongfully importing and possessing controlled substances.

Captain Wong's conduct violated the Army Rules of Professional Conduct for Lawyers, Army Rule 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 Army Rule 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

M. Craig Bray represented the Bar Association. Leland G. Ripley represented Captain Wong.

Reprimanded

Jane G. Bitz (WSBA No. 22970, admitted 1993), of Spokane Valley, was ordered to receive a reprimand on December 3, 2007, by order of the Disciplinary Board following approval of a stipulation. This discipline was based on conduct involving failure to provide competent representation and conflicts of interest.

In October 1997, Ms. R created an *inter vivos* trust known as the R Farm Trust consisting of approximately 200 acres of farmland and 80 acres of timberland located in Idaho. One of her children, DR, was named as trustee. The beneficiaries of the trust were her children and grandchildren, including DR. Ms. R died in April 2000, leaving a will that provided that her estate was to go to her children and grandchildren, including the Idaho farm and the timberland. The will also provided that if any child desired to sell his or her interest in the Idaho farm, the other heirs would have right of first refusal to purchase the heir's interest in the farmland, and that if the heirs chose to sell the farmland or timberland, they could do so with the consent

of all the tenants in common.

In June 2000, Ms. Bitz was retained by DR to represent him concerning the handling of the R estate. In July 2000, Ms. Bitz met with DR's family to discuss the distribution of the estate. At the meeting, DR presented two offers: one to buy the farmland and one to buy the timberland. One of the other heirs, ER, indicated he wanted to buy out the other heirs' interest in the farmland at the same price as was offered. The heirs agreed to sell the farmland to ER and to give him until January 2001 to secure financing to purchase the property. Ms. Bitz was asked if the agreement should be in writing. She advised that it should be in writing, but the estate should not have to incur the expense, and that since everyone was present and joined in the decision, under the circumstances, the agreement need not be in writing.

In August 2000, Ms. Bitz wrote to ER and advised him that the trust called for all the property to be sold and the proceeds to be distributed equally among the beneficiaries. This was not a correct statement of the terms of the trust agreement or the legal status of the trust. Ms. Bitz's letter also stated that ER's offer was rejected, because the contract to sell to ER was not in writing and not enforceable. Other offers to buy the property were received. Ms. Bitz advised DR that copies of these offers should not go to ER, because he was not to be trusted and might get in the way of closing the other deals. When ER's lawyer requested copies of the current offers, Ms. Bitz replied that the trustee would consider the request. She informed ER's lawyer that ER was not trusted by DR, and this was the reason information concerning pending sales had not been given to ER. Ms. Bitz also informed ER's lawyer that the trustee was given the power and discretion to distribute in cash or in kind under the terms of the trust. This was not a correct statement of the terms of the trust.

In October 2000, Ms. Bitz received an earnest-money agreement from ER's new legal counsel. Ms. Bitz advised the new legal counsel that because the sale agreement with ER was not in writing, it was not enforceable. In January 2001, ER filed a lawsuit against DR and the other beneficiaries, seeking termination of the trust, distribution of all trust property, and specific performance of the oral contract to sell to him. Ms. Bitz's firm was retained to represent the defendants. The fee agreement prepared by Ms. Bitz's firm disclosed a potential conflict of interest among the defendants based on their responsibility for the "circumstances that led to the lawsuit being filed." The fee agreement also disclosed a potential conflict of interest between DR and the other beneficiaries because of the duty he owed to them as trustee. The agreement contained the opinion of Ms. Bitz and her partner that the conflict of interest was outweighed by the economy of having one law firm defend the lawsuit. The opinion of Ms. Bitz

and her partner stated that the claim brought by ER was without merit and would be quickly dismissed. The disclosure had all the defendants agree that DR had acted in the best interests of the beneficiaries in managing the trust and dealing with ER. If anyone did not agree, they were advised to seek separate representation. The conflict disclosure did not address Ms. Bitz's conflict of interest based on her earlier advice to DR as trustee.

In May 2001, and during the pendency of the lawsuit, DR, as trustee, sold the 80 acres of timberland. Ms. Bitz did not advise DR to notify ER of the offer on the timberland, and DR did not do so until after the property was sold. There was no agreement by all of the parties to sell the timberland for the price for which it was sold. In July 2001, Ms. Bitz notified all of the beneficiaries that the trustee had sold the timberland and admitted that the trustee was acting on the advice of her firm to sell the property and close the transaction. Ms. Bitz also disclosed that she had failed to advise them that Washington law required prior written notice to all of the beneficiaries. Ms. Bitz continued to represent the beneficiaries in the pending lawsuit. In November 2001, the farmland was transferred to the beneficiaries.

Also in November, the court issued an oral decision in ER's motion for summary judgment. The court found that the sale of the 80 acres of timberland violated RCW 11.10.140, as the sale was a non-routine transaction that required notice, and that DR as trustee breached his fiduciary duty by not giving said notice. The court also found that the trustee did not wind up the trust within a reasonable time and that the trust should have been wound up within six months, or by October 2000. ER was awarded attorney's fees in the amount of \$20,000. On DR's cross-motion for partial summary judgment, the court denied DR's claim for breach of contract. DR appealed the decision denying him specific performance. Ms. Bitz offered to represent DR and the beneficiaries on the appeal, but DR and the beneficiaries terminated her firm and retained new counsel.

Ms. Bitz's conduct violated RPC 1.1, requiring a lawyer to provide competent representation to a client, which requires possessing the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation; and former RPC 1.7(b), prohibiting a lawyer from representing a client if the representation will be materially limited by the lawyer's responsibilities to another client, a third person, or the lawyer's own interests, unless (1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client, and (2) each client consents in writing after consultation and a full disclosure of the material facts.

Debra J. Slater represented the Bar Association. James B. King represented Ms. Bitz.

[REDACTED]



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Diversity program manager. The Washington State Bar Association is continuing to accept applications for this position, which reports to the Director of Justice and Diversity Initiatives. The diversity program manager will be responsible for yielding the WSBA's commitment to diversity as embodied in WSBA's Guiding Principles. Developing strategy and program direction that enhances all facets of diversity in the legal profession is the primary focus in collaboration with WSBA leadership, the WSBA Board of Governors, and other organizations in the legal community. Facilitating relationships amongst all stakeholders is vital. This position also holds responsibility for recommending, planning, and executing diversity-specific events/programs. The position also provides liaison support to the WSBA Committee for Diversity. Qualifications include a JD; previous

principal responsibilities addressing diversity concerns in a legal setting; public speaking experience, including the development and delivery of CLE-level training; experience writing articles; previous experience working in educational, governmental, nonprofit organizations; and excellent computer proficiency/ literacy skills. Experience working with volunteers is highly desired. To apply, e-mail a cover letter and résumé to hr@wsba.org or visit www.wsba.org for further details.

Professional responsibility counsel. This position manages the Washington State Bar Association's Professional Responsibility Program; provides guidance regarding ethical issues to Bar members, lawyer services director, and staff; acts as secretary to the Rules of Professional Conduct Committee and liaison to Alternative Dispute Resolution (ADR) Committee; provides supervision of the Custodianship, Fee Arbitration, and Mediation programs; supervises inquiries regarding the location of original wills; offers consultation to diversion respondents when required by contract; and develops and participates in speaking engagements on topics of ethics and professional responsibility. Some travel required. Visit www.wsba.org for further details.

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Deputy prosecuting attorney: The Clark County prosecuting attorney has an opening for an entry-level criminal prosecuting attorney, salary \$51,948. Applicants must be a member of the Washington State Bar Association. Please send résumé and cover letter to Shari Jensen, Clark County Prosecuting Attorney's Office, PO Box 5000, Vancouver, WA 98666. Position will remain open until filled. Clark County is an equal opportunity employer.

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Will Search

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Will and info search: Francis M. Roman. DOD: 6/7/2000, Port Orchard. Voluble, Boston accent, 250 lbs., 5'6", dark hair, olive skin, eccentric, big voice, heavy smoker. Call Ken Christensen, 206-622-7330; chrizenlaw@aol.com.

Seeking lost will for Gene G. Gustafson, Walla, Walla, WA. Gene probably updated his will last summer and likely used legal services in eastern/southeastern Washington. Kristi Gustafson, 503-663-2772.

Anyone with information about the last will of Ethel Mae Sharpsteen who lived in King County, Washington, D.O.D. 6/8/2003, please contact Cheryl Grafalo of Montgomery Purdue at 206-682-7090.

Will search for Geraldine L. Foster (nee Otterson) of Monroe, Snohomish County, married to Jack Foster. Please contact Richard Hively at 425-822-1511.



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