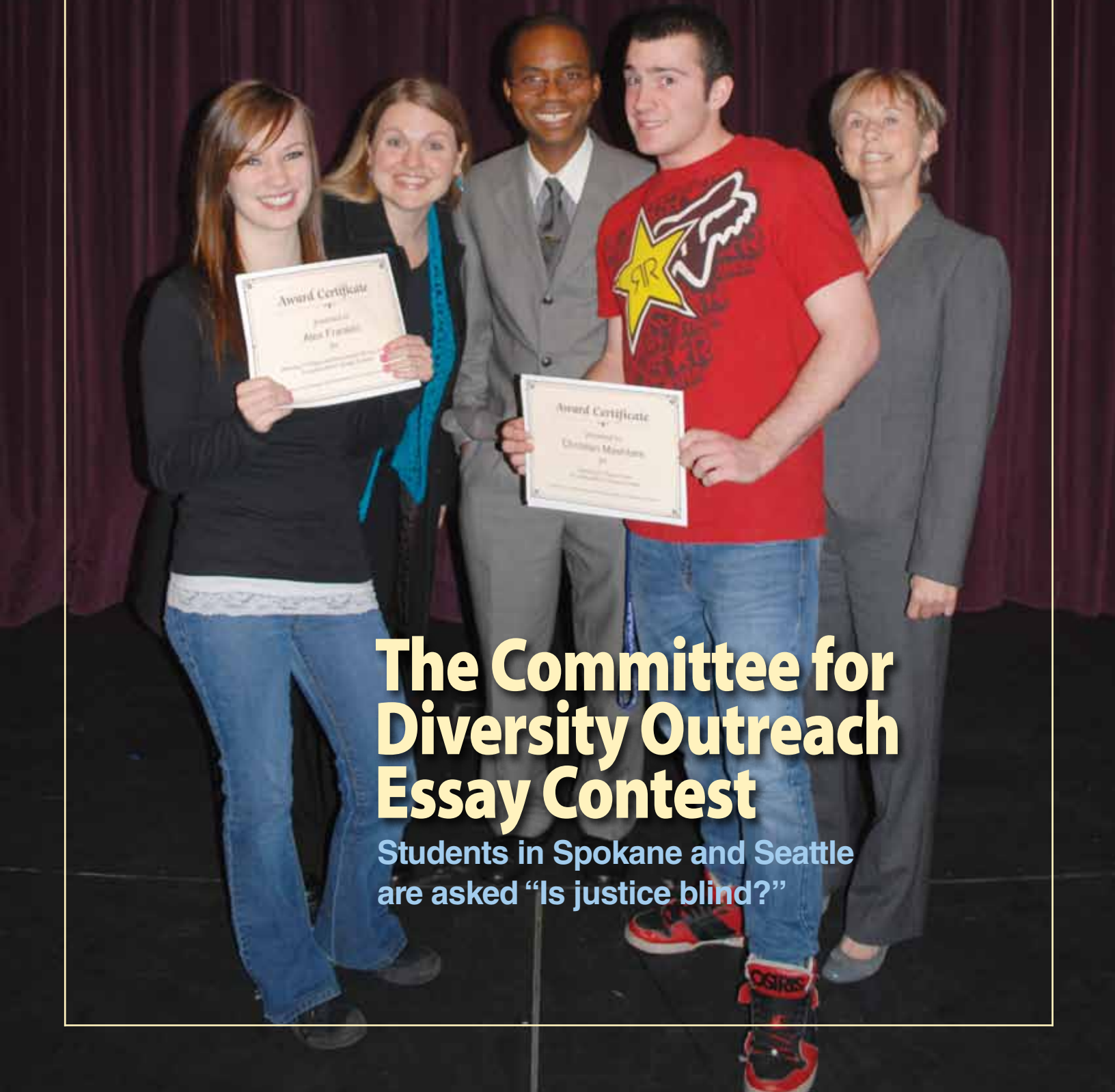
Vol. 64 No.5

Washington State
BarNews
MAY 2010
THE OFFICIAL PUBLICATION OF THE WASHINGTON STATE BAR ASSOCIATION



The Committee for Diversity Outreach Essay Contest

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Cover photo: Spokane's Rogers High School students and essay contest winners strike a pose with members of the WSBA Committee for Diversity. Photo by Tony Iszler.

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Washington State
Bar News

Published by the

WASHINGTON STATE BAR ASSOCIATION
1325 Fourth Ave., Ste. 600
Seattle, WA 98101-2539

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Washington State Bar News (ISSN 886-5213) is published monthly by the Washington State Bar Association, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539, and mailed periodicals postage paid in Seattle, WA. $17.38 of an active member's dues is used for a one-year subscription. For inactive, emeritus, and honorary members, a free subscription is available upon request (contact barnewscomments@wsba.org or 206-727-8213). For nonmembers, the subscription rate is $36 a year. Washington residents please add sales tax; see http://dor.wa.gov for rate.

Postmaster: Send changes of address to:

Washington State Bar News
1325 Fourth Avenue, Suite 600
Seattle, WA 98101-2539

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Deadline: Copy must be received (not postmarked) by the first of each month for the issue following. No cancellations will be accepted after the deadline. Please submit printed copy with check (payable to WSBA) or credit-card information to: *Bar News*, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539. No phone orders, please.

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In praise of jurors

Thank you for your article in the April *Bar News* ["Trial's a Tribulation," April 2010]. I wear the bailiff hat when we have jury trials, but before that, my legal experience really didn't include trials. I have learned to reassure potential (and usually cranky) jurors that I have never seen a juror get done with their experience and not feel glad they had the opportunity to serve. More importantly, this is a crucial reminder to those of us in "the mill" that jurors work hard and make sacrifices in their personal and sometimes economic world, don't get to vent along the way — which I can only imagine results in lost sleep — and that every case is new to a juror. We all should be reminded not to become crass about just another case or whether it is a "good" one or not, and we should remain aware and courteous to every party and every jury that this is a huge event for all of them. I hope others in practice appreciate your well-written perspective.

Christy Martin, Judicial Assistant, Superior Court, Dept. 2, Bellingham

In praise of difference

Mr. Winterstein's letter [Letters to the Editor, March 2010 *Bar News*] regarding the January *Bar News* article about Justice Sotomayor's appointment to the U.S. Supreme Court misses the mark. His response also exemplifies why organizations like the Latina/o Bar Association of Washington (LBAW) continue to exist and why it must continue to inform the legal profession about the role that diversity plays in advancing the principle of *fair and equal* access to justice.

The questions posed by Mr. Winterstein fail to appreciate the beauty and richness of celebrating difference. If we phrase this topic in a race/ethnic neutral manner, isn't it true that different lawyers and judges with varied backgrounds and professional experiences have different perspectives on the merits of a case? Of course it is. Well, Mr. Winterstein, this truth is the essence of Ms. McGrath's article.

Many Latinos unquestionably have a different American experience than Anglo-Americans for a myriad of reasons rooted in our country's history, social norms and economic paradigm. This is undeniable. The fact that some Latinos choose to openly celebrate our heritage and cultural traditions does not make us any less American. Bringing our unique American experience into the courthouse is a good thing. Indeed, these different backgrounds, perspectives, and skill sets are a benefit, not a hindrance, to our entire legal profession.

Being American and being Latino are not mutually exclusive. And the commitment by organizations like the Hispanic National Bar Association and LBAW to diversify the bench, by appointment of Latinos and non-Latinos committed to a diverse bar, benefits the entire legal system and all of the residents of Washington State, including Mr. Winterstein.

Patricia Lally, LBAW President
M. Lorena González, Past LBAW President (2007)

In praise of free speech

A letter in the April [2010] *Bar News* attacked the U.S. Supreme Court decision in *Citizens United v. Federal Election Commission.* The author criticized the Court for giving free speech rights to corporations, and insisted that rights only belong to individuals. He claims corporate speech is a "danger" to democracy because it enables "a small group to wield enormous power." But when the FEC censors speech it is precisely "a small group wielding enormous power," and they are a surrogate for a larger but still small group of 536 people — the President and Congress — who have, through the law that the Court struck down, wielded the enormous power of censoring the speech of 300 million Americans by prohibiting us from pooling our resources to put our opinions before our fellow citizens.

The First Amendment was intended to restrain such abuses of power by the Federal Congress. "Speech," "press," and "assembly" are inherently group activities, as is the free exercise of religion, which includes the pooling of worshippers' funds to buy ads on TV and radio. There is no freedom to speak or publish if you cannot transmit your words to the eyes and ears of others.

If it is a "danger" to democracy to let "a small group wield enormous power," why does FEC law let for-profit businesses like the *New York Times*, CNN, and *Newsweek* get away with expressing political opinions during the heat of elections? After all, NBC is primarily an entertainment company that is just an arm of corporate giant General Electric, which has an enormous financial stake in government energy policy.

The ACLU has leapt to the defense of corporate speech when that speech was obscene rap recordings distributed by companies like CBS Records and Sony. Advertising by legal services

LLCs has been protected as free speech.

How do you distinguish the speech of corporations (including nonprofits) from the speech of other groups of Americans, including labor unions (which were also censored by the statute), chambers of commerce, churches, and university faculties? Will you censor the NAACP, JACL, SCLC, NARAL, NRDC, WWF, FOE, and the WSBA? Will you censor the group political speech of the Democratic and Republican Parties?

Raymond Takashi Swenson, Richland

In praise of President Mungia

A warm thank you to President Salvador Mungia for his President's Corner article "Into the Woods" [April 2010 *Bar News*]. This is by far the most inspirational and insightful piece I've read in the *Bar News* since my admission to practice in 1982. It takes courage to share something as personal as a spiritual quest with your family, let alone the State's legal community! I encourage him to keep writing on this subject, I would buy the book.

Rich Milham, Gig Harbor

No praise for new taxes

On March 16, I received an e-mail from the governor of the district where I live and spend the majority of my practice time, advising me that the BOG had informed the state Legislature that it would support an increase in the B&O tax applicable to lawyers. I am stunned . . . and angry. The State has already announced a large increase in the unemployment taxes. Even if the BOG were trying to use this to avoid other tax issues, I think they missed the point that lawyers are among the group of folks who pay the highest B&O taxes in the state, and I feel they should have pointed that out to the Legislature.

It also is an action of a board that appears to be out of touch with the reality many lawyers in this state face. Not every attorney makes $400 an hour. We're not all Fortune 500 companies. Some of us are practicing in rural areas providing services, such as public defense, to governments hurting for money, and we are already riding thin profit margins.

Some may suggest that I am overreacting. However, when you add the inevitable increases in insurance, water, garbage, electricity, etc., you find yourself wondering how many nickels and dimes could be left. Combine that with skyrocketing health insurance (ours has gone up over 50 percent in less than 14 months) while Congress ineptly lumbers along, and it's more than a little maddening to see that the agency to whom you pay dues has volunteered more of your own money, with no say in advance.

Maybe you can go even further and just tax us small businesses in rural locales completely out of business. Then you can come pick up the keys and run the businesses for us.

Tom Pacher, Coupeville

WSBA Governor and Treasurer Geoffrey Gibbs responds: In response to the letter from attorney Tom Pacher (my constituent) regarding my support of a limited and temporary surcharge on the Business & Occupation tax in lieu of a "sales tax on legal services," let me offer the following points.

- Our legislators and governor are facing an unprecedented fiscal crisis.
- As one who enjoyed more than 15 years in the trenches lobbying in Olympia, I know that just saying "No" to any tax proposal does not lead to inclusion in the budgetary discussions and process. And we (WSBA and the entire legal community) very much need to be "included" in the process to preserve and enhance the funding for critical legal services, civil and criminal, and to protect and increase funding for our judicial system as a whole. "Access to Justice" for all is a concept to which I am fundamentally and irrevocably committed.
- The threat of imposing a "sales tax" on legal services, while not "new," found far more traction in this difficult legislative session. The burden of such a sales tax would fall primarily and disproportionately on sole and small firm practitioners (e.g., in-house counsel would go largely untaxed and multi-state firms might well be able to limit their exposure). The impact of an additional 10 percent added on to any advance fee deposit or retainer would significantly impact family law and criminal defense attorneys as well as others whose clients are less than wealthy. In addition, if a client failed to pay for the entirety of your legal services, you may still be liable for the sales tax (See RCW 82.08.050). As an aside, of the 14 Governors including myself, I am not aware of any who earn $400 per hour as your letter suggests.
- Our support was only for a "temporary" and limited surcharge on the B&O and predicated upon the surcharge applying to all service categories, not just lawyers.
- I respect your opinion in opposition to any tax increase of any kind. As your Governor and a former solo practitioner, I strive to be mindful of the impact on our solo and small firm members in every vote. I note that the foregoing reflects my own opinion as your Governor and should not be construed as the position of the Board of Governors or the WSBA.

Dear Carly

WSBA President Salvador A. Mungia

Hello. I am Carly and I am an eighth grade student.[1] My language arts class and I have been investigating different jobs and I was looking for some information on becoming a lawyer.

For a very long time I have loved the idea of being an attorney. As soon as I heard about the job in fourth grade I knew this was what I wanted to do. Since then I have been planning to go to law school as soon as I get my undergrad [degree]. When my class took an online survey, it told me I would enjoy working in the leading/influencing category. Once I saw this I clicked on it and immediately scrolled down to "L" looking for lawyer. I chose lawyer out of all the jobs because I feel like I would be good at it and really enjoy it. This job seems so fun to me and I was wondering if you could help me learn more about it.

As I researched this career and looked at all of my information, I realized that I have a few questions about it. What do you think is the hardest part of the job? On the other hand, what is your favorite part of the job? Do you have any advice for me to get started into this path?

Sincerely,

Carly

Dear Carly:

We have something in common — I knew at a very young age that I wanted to become a lawyer. And while I knew who Abraham Lincoln was, I had yet to learn the names of Thurgood Marshall, Sandra Day O'Connor, Louis Brandeis, from our own state, William O. Douglas, and not from our state or even from our country but a member of our profession, Gandhi — all giants of the legal profession. And I had yet to discover the fictional character of Atticus Finch and the ideals of the profession that he embodied. I was, however, well-acquainted with another fictional character who was a large influence in my decision to become a lawyer: Perry Mason. Perry Mason had a quality that I admired then, and still admire today — a drive to help others escape injustice. Perry gave a voice to those who otherwise would have no voice. Having seen my parents having at best little voice and often no voice whatsoever, I resolved to become an attorney so that no one could take unfair advantage of my family or me.

But I've already digressed and you've posed some good questions. So let's get on with the business at hand.

Do you have any advice for me to get started on this path?

As you will undoubtedly discover, lawyers love giving advice — but that really doesn't set us apart from anyone else, as giving advice is popular with just about everyone — whether the advice is asked for or not. (It's not the giving, but the taking, of advice that most people have trouble with.) Here are four qualities that will give you a good start in your quest to join our profession.

Learn to write — and write well. Two pieces of advice on learning how to write. First, write — a lot. Each time you write something, read it and figure out how you can make it better. After you've revised what you've written so many times that your head is ready to explode, rewrite it one more time. Then take what you've written to someone that you trust to get their feedback. And then revise your writing some more. Be open to criticism. Learn the rules of grammar and then learn when they can be bent — and when they can be broken. Second, read — a lot. While I've certainly read my share of the classics (but then again I believe in small shares), as far as learning how to write, I like reading contemporary writers: Norman Mailer, Tom (not Harold, heaven forbid) Robbins, Truman Capote, Haruki Murakami, Gabriel García Márquez, Kurt Vonnegut. Each of those writers has a different style. Those are just my favorites — find your own. Learn from writers whose writings hold your attention.

Learn to listen. A good lawyer (as does a good friend) realizes that listening is much more important than talking. Too many people are thinking about what they are going to say while the other person is speaking instead of carefully listening. Avoid that. Listen. When I use the term "listen," that means using both your ears and your eyes — watch the person who is talking to you. In our society, a person communicates much more through body language than the actual words that are spoken.

Learn to question. In other words, don't accept what people tell you just because they are saying it. (This is especially true when they have an interest in convincing you to do so something, such as sales clerks, sellers of cars, and many politicians.) Question whether what people are telling you makes sense. It's okay to trust others, but in the words of that famous American President Ronald Reagan, "Trust, but verify."

Learn to empathize — put yourself in the place of the other. Before you judge classmates for the way they've acted, put yourself in their place. Before you judge teachers, put yourself in their place. View the world from the eyes of others. This will help you when you are an attorney and clients from all backgrounds come to you seeking your help — you will be able to put yourself in their place and realize how much trust they are placing in you to help them in their time of need. Then put yourself in the place of opposing parties and opposing attorneys. Learn to see disputes from everyone's perspectives. You will be a better person for doing so. Society will be a better place for your doing so.

What do you think is the hardest part of the job?

In a word: stress. Attorneys are constantly facing pressures from clients, courts, deadlines. We practice law in an atmosphere that is fast-paced and where the pace is only getting faster. You can't avoid stress while practicing law — so you have to learn to deal with it. Find a healthy way of dealing with stress (mine is exercise and, when possible, getting away for some solitude time) and make sure you deal with it.

What is your favorite part of the job?

The best part of being a lawyer is the ability to change people's lives and, in fact, to change society. You, as an attorney, will have the ability to right wrongs (just as Perry Mason did) for individuals: to help women escape abusive marriages, to keep a family in their home, to protect the elderly from being taken advantage of. You, as an attorney, will have the ability to right societal wrongs: lawyers have been at the forefront of social change in our country by taking on cases to prevent racial discrimination, discrimination against women, censorship of ideas, the inhibition of religious beliefs and practices, and laws infringing upon the right to vote — the examples go on. If you join our profession, you will have a voice that is powerful and that will command attention. Use that voice for good. Use that voice to speak for those in our society who have been robbed of their voice. Use that voice to change people's lives — for the better.

Carly, I wish you all the best in your quest to join our profession. I have only two favors to ask of you should you fulfill that mission. First, make it a goal of yours to leave our profession, and society in general, at least a little bit better than how you found it. Second, send me an invitation to attend your swearing-in ceremony to our state bar association — I hope to still be around when that day comes.

Sincerely,

Salvador A. Mungia, President, Washington State Bar Association

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WSBA President Salvador Mungia can be reached at smungia@gth-law.com.

NOTE

1. I have omitted Carly's last name and the name of her school.

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Is Justice Blind?

This question was posed to students in Spokane and Seattle in an essay contest sponsored by the WSBA Committee for Diversity

Top: (left to right) WYLD Past President Jaime Hawk, Rogers H.S. student and grand-prize winner Alexandra Franklin, WSBA CFD member Francis Adewale, Rogers H.S. student and second-place winner Christian Mashtare, and WSBA CFD member Susan Miller. Bottom: WSBA CFD member Emily Cooper Pura, Cleveland H.S. student and second-place winner Anise Leffall, WSBA CFD Co-chairs Lianne Caster and Bob Taylor, Cleveland H.S. student and first-place winner Maraaunjanique Smallwood, and CFD member Michelle Raiford.

During May, communities throughout Washington state celebrate Law Day with naturalization ceremonies and public events bringing attention to the diversity of our communities. We also introduce the winners of the Washington State Bar Association Committee for Diversity (CFD) Outreach Essay Contest, in which high-school students were asked to write a 500-word essay answering the query, "Is justice blind?"

The CFD Outreach Essay Contest is a new project developed to promote awareness of the benefits of diversity in the legal profession. The project, which targeted high-school students on both sides of the state, was launched in May 2009 as a pilot spearheaded by the CFD Outreach Subcommittee. The purpose of the pilot program was to test the effectiveness of a contest format for outreach efforts aimed at high-school students who may not have considered a career in the law and who may have perspectives on the legal system that will help our profession attract the richly diverse population in our state. Another goal was to expose students to the many facets of a legal career and promote a discussion in their classes of how they, as young citizens, might promote "blind justice."

The process turned out to be a learning experience for students, teachers, and CFD members, and perhaps a sobering wake-up call for WSBA members and all other members of the legal system who take it for granted that "blind justice" is accepted as a fundamental tenet of our society.

The Essay Contest

Two schools participated in the pilot: Cleveland High School in Seattle and Rogers High School in Spokane. They were selected because of their significantly diverse populations. Both schools have a diverse array of students including those from varied ethnic, socio-economic, and cultural backgrounds, as well as students with disabilities. For example, over 70 percent of the students at Rogers are on the federally subsidized lunch program for economically disadvantaged families. As explained by Pat Gibbons, English Department lead and instructional coach and contest liaison at Rogers, many of the students have health issues that affect their ability to learn. In addition, about 17 percent of students are in special education and 25 percent of students are members of ethnic minorities. Some of the students participating in the contest speak English as a second language. Only 30 percent of

the students have computers at home, so many lack computer skills because of limited resources and exposure to technology. Teo Cadiente, the lead Cleveland High School teacher for the contest, has a demonstrated interest in social justice issues on behalf of his students. His course discusses social justice issues and he has actively participated in Seattle University School of Law's Street Law Program.

Outreach Subcommittee members contacted the schools in May 2009. The teacher liaisons — Mr. Cadiente and Ms. Gibbons — enthusiastically embraced the project, which was proposed to them in time to incorporate the essay contest into the 2009–2010 school year lesson plans. The contest was rolled out to the students at the beginning of the school year, in August 2009, and the deadline was Martin Luther King Jr. Day on January 19, 2010. The CFD received more than 100 essays from the two schools combined.

The contest asked the students to write a 500-word essay answering the query, "Is justice blind?" They were prompted to discuss whether justice is indeed blind, or whether such things as race, age, ethnicity, disability, sexual orientation, or other "minority" factors are taken into consideration in our legal system. If justice is not blind, they were asked, what changes are needed to make it so? The topic was discussed and the essays were written in English, history, and civics classes as part of the curriculum.

Although the essay prompt asked "Is justice blind?" the topic was presented as broad and encompassing by the teachers who tied in the essay with the curricula being taught in the various classes. Some students chose to take a stand for social justice rather than explore bias specifically in the legal system. All entrants were passionate in their views. Often, the concept of "blind justice," a familiar metaphor for equality before the law, was interpreted literally by our young writers, i.e., justice does not see or serve those who are poor, of color, from a different culture, or young. However, the essay-contest students' perspectives may also reflect that this concept may not equally apply in their lives — it is this disparity and the interest to promote equality that the CFD wanted to harness in order to build an interest in the legal profession.

The entire CFD membership and more than 20 volunteers from the WSBA Young Lawyers Division (WYLD) helped grade the essays, which were given scores in the following categories: thesis development and organization, personal link, word choice, voice and style, and grammar. The WYLD membership generously contributed an additional $500 in prize money, allowing the CFD to award a $500 first prize and $250 second prize at each school. Of the two first-place essayists, a grand prize winner was chosen, whose essay appears on the next page.

The winners were announced in March at ceremonies hosted by the respective schools. Students from the participating classes, teachers, parents, and WSBA representatives from the CFD and WYLD attended the ceremonies. Student photographers Tony Iszler, from Rogers, and Jazmine Calhoun, from Cleveland, contributed the photographs that accompany this article.

Above left: Cleveland High School teacher Teo Cadiente (on left) and his class pose for a photo with CFD members. Above right: Rogers High School English teacher Laura Watson reviews senior Melinda Wright's composition.

About the Winners

Alex Franklin is the grand winner and first-place winner at John Rogers High School in Spokane. She is a junior in Mr. Dewey's AP English Class, with an interest in psychology, although she said the contest has made her think about the law as a career. She hopes to attend the University of Washington. When Mr. Dewey presented the contest to the class, the students spent some class time brainstorming ideas and discussing examples of "justice served and justice gone wrong." Alex, who said she is a strong believer in "blind justice," did her own research on the issue. She writes about the "Jena 6" proceedings, in Jena, Louisiana, a racially charged trial in 2007 that sparked national outrage and protest. Alex's essay reflects what many of the contest participants had to say in their essays: Justice should be blind, but race, ethnicity, and age all too often are weighed in the balance.

Maraaunjanique Smallwood, a junior in Mr. Cadiente's honors civics course, is the first-place winner at Cleveland High School, in Seattle. Maraaunjanique said she has a great interest in social justice and promoting ethnic diversity in the legal profession. Her essay focused on integrity and fairness within the juvenile justice system. She has participated in Seattle University School of Law's Street Law Project and hopes to obtain a summer internship with the local Future of the Law Institute.

Christian Mashtare, who took second place at Rogers High School, is a senior in Ms. Watson's English class. He thought the essay topic was great and said he is interested in a career in the criminal justice system. In Chris's essay, which had a strong personal link, he shared the experiences of his stepfather, who, as a young African-American, had experienced first-hand the effects of race discrimination in law enforcement.

Anise Leffall, second-place winner at Cleveland, is also a junior in Mr. Cadiente's honors civics course. Like Maraunjanique, she has an interest in social justice. Her essay focused on the life and death of Medgar Evers, the civil rights activist. Anise hopes to attend the University of Washington.

Our congratulations and thanks go to all the students who submitted essays and to the educators who worked with them. You can read each of the winning essays by going to the CFD web page at www.wsba.org/lawyers/groups/diversity.

Why Diversity?

A critical goal for the CFD is ensuring that, as stewards of the legal system, our members

We hold these truths to be blind and unbiased

BY ALEX FRANKLIN

The most significant promise made to American citizens in the Bill of Rights is that all men are created equal. This is why it is so important the justice system remains blind. In a country of equality, race, religion, ethnicity, or sexual orientation is never taken into account when interpreting the law. However, there is reason to doubt whether or not Lady Justice peeks through her blindfold every now and then.

Recently, a court case made national headlines and had everyone wondering whether prejudice had been an issue. It came to be known as Jena Six. In September of 2007, Jena High School was filled with anxiety after a black student sat in the shade of a tree that white students primarily sat in. The next day, three nooses hung from the tree. In the December following, six black students were arrested after beating up a white student who endured bruises and a concussion. An all-white jury charged the boys with attempted second-degree murder and conspiracy. After the case had people around the nation raving, the judge reduced the sentence to battery and conspiracy.

Jena Six is the only court case that got wide attention for discrimination, but statistics show that it happens more often than most people think. According to the U.S. Department of Justice, 18.6 percent of African Americans have a chance of going to prison in their lifetime compared to 10 percent of Hispanics and 3.4 percent of white individuals. With numbers like these, it's difficult to believe that courts are truly blind. Anyone can be victimized in a courtroom by the color of their skin, which is a disheartening reality in a country that claims to see everyone as equals.

The American flag salute contains the phrase "With… justice for all." On the other hand, it also contains the phrase "Under God." Not only is justice impartial towards religion, but as American citizens we are also promised the freedom of choosing our beliefs. But in order to salute the symbol of our nation, we must salute to a God who we may or may not necessarily believe in. The freedom in America is a beautiful thing. But the irony of religion in our own flag salute seems to hinder the goal of freedom rather than attain it. Diversity must be addressed everywhere, from the salute of our flag to our courtrooms.

Henry David Thoreau said, "Under a government which imprisons any unjustly, the true place for any just man is also prison." A man who indeed practiced what he preached, Thoreau spent time in jail standing up for justice. In the early 1800's, he refused to pay taxes to a government that supported slavery and was jailed for one night. A friend visited him and asked why he was there. Thoreau responded, "Why are you *not* here?" Thoreau is a role model for civil duty. Injustice can victimize anyone if no one refutes it.

When several people group together and stick up for what's right, justice can be achieved. In order to achieve justice on a large scale, individuals must become aware of the way they view people who are different and, if necessary, educate themselves so as not to be intolerant. Marian Wright Edelman said, "You just need to be a flea against injustice. Enough committed fleas biting strategically can make even the biggest dog uncomfortable and transform even the biggest nation."

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are committed and prepared to protect the rule of law, guaranteed access to justice, and equality before the law. One of the most obvious ways to ensure equality is to make sure our future lawyers come from all walks of life and represent the diversity of our society. It is of paramount importance that the legal system that protects our citizens reflects the diversity of the citizens it protects. Diversity: this is the key not only to a vibrant, effective legal profession — it is the key to the nation's future.

Promoting Diversity Through the WSBA

The CFD, along with the Board of Governors Diversity Committee and the WYLD Diversity Committee, is charged with promoting diversity within the profession. The CFD's mission is to increase diversity within the WSBA membership and leadership of the legal profession; to promote opportunities for appointment or election of diverse members to the bench; to support and encourage opportunities for minority attorneys to aggressively pursue employment opportunities for minorities; and to raise awareness of the benefits of diversity.

The CFD Outreach Subcommittee

The CFD Outreach Subcommittee works on a variety of projects to engage attorneys, employers, law students, and youth who may be interested in the legal profession. It hopes to expand the essay contest project next year to include tribal schools and other interested schools. The teachers at Rogers High School are already planning how to incorporate the essay contest into civics units on justice and the SAT essay composition class.

In addition to the essay contest, the Outreach Subcommittee hosts an annual reception for Academic Resource Center (ARC) students at Seattle University School of Law. ARC students participate in Seattle University's ground-breaking program, which enables talented students who do not necessarily meet traditional admission requirements for law school to contribute to diversity in the legal profession.

Top: Rogers High School junior Jasmine Walston works on her essay with English teacher Mike Dewey. Bottom: Rogers High School English teacher Tyler Ham explains the contest to his class.

Acknowledgments

Many thanks to the WYLD, who not only contributed time and money to the contest pilot, but have been enthusiastic supporters of outreach efforts throughout the state. The CFD also greatly appreciates the extraordinary time and energy spent by Mr. Cadiente and Ms. Gibbons — two high-school teachers who not only educate their students, but also support their dreams.

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The Jurisdictional Puzzle of Multi-State Paternity and Child-Support Establishment Cases

Factors to consider in determining in which state to bring a parentage, support establishment, or support enforcement action

BY KIM SCHNUELLE

America is a mobile society. With increasing frequency, people leave their hometowns to seek education or careers in other states. While such flexibility often advances personal development, it can create problems when legal obligations for children need to be established. Which state is the proper one in which to bring a paternity action? Where can residential issues be determined? How can support be established for a child in one state when the obligor parent lives in another? Answers to these questions are contained in both the Uniform Interstate Family Support Act[1] (UIFSA) and the Uniform Child Custody Jurisdiction and Enforcement Act[2] (UCCJEA[3]). What the family law practitioner may discover, however, is that the interaction of these two statutes can lead to custody and support establishment issues being bifurcated between two states.

In determining the proper state in which to bring a parentage, support establishment, or support enforcement action,[4] one must first establish personal jurisdiction over the relevant parties. When one party is not a resident of the state of Washington, RCW 26.21A.100 tells us if there is a jurisdictional basis to bring the action in Washington. Under this statute, there are several bases for exertion of personal jurisdiction over a non-resident. First, jurisdiction is proper if the non-resident was personally served with a citation, summons, or notice in Washington, or if he or she submits and consents to such jurisdiction.[5] There is also jurisdiction if the non-resident resided

with the child in Washington, resided in the state and provided prenatal expenses and/or support for the child, or if the non-resident engaged in sexual intercourse in Washington and the child may have been conceived by that act of intercourse.[6] An action can also be properly filed in Washington if the child is residing in the state as a result of the actions or directives of the non-resident, or if there is any other proper basis consistent with the Washington or U.S. Constitution allowing the exercise of personal jurisdiction.[7] Proof of personal jurisdiction may be initially demonstrated by a sworn statement submitted by the petitioner alleging one of these bases.[8] If jurisdiction is proper, an individual litigant or a support agency may initiate this action in Washington.[9] Washington may also serve as a responding tribunal upon request from another state support enforcement agency.[10] Participation by a non-resident in a paternity or support action under UIFSA, however, does not confer personal jurisdiction over the non-resident in other Washington proceedings unless the non-resident commits unrelated acts while physically present in Washington.[11]

Although UIFSA sets out the rules for personal jurisdiction to establish paternity and support obligations, subject-matter jurisdiction over initial child custody and residential provisions is governed by the UCCJEA.[12] The UCCJEA arose out of a conference involving various states regarding the problems of competing jurisdictions, conflicting orders, forum shopping, and the judicial inefficiencies attendant in multi-state involvement in custody and residential issues.[13] Although the UCCJEA uses the term "custody," the statute also governs residential and parenting plan determinations.[14] Personal jurisdiction over the parties is not a requirement for custody determination under the UCCJEA.[15]

Under RCW 26.27.201, there are several bases for subject matter jurisdiction over initial custody and residential determinations. First, custody and residential determinations may be made if: 1) a state is the home state[16] of a child on the date of the proceeding's commencement, or 2) was the home state within six months prior to initiation of the action, the child is absent from the state, but a parent or person acting as a parent[17] continues to live in Washington.[18] Although a temporary absence from the state does not negate home-state status,[19] it is the parties' intent which determines whether an absence is deemed temporary or permanent.[20]

In addition, subject-matter jurisdiction over custody and residential issues continues if another state does not have home-state jurisdiction or if a court of the home state of the child has declined to exercise its jurisdiction because this state is a more appropriate forum for the action.[21] Under this second basis, it is also required that the child and at least one parent or person acting as a parent has a significant connection to this state and that there is substantial evidence available in this state regarding the child's care, protection, training, and personal relationships.[22] Washington state courts may decline jurisdiction for reasons of either inconvenience to the parties or for unjustifiable conduct by a party. In determining whether Washington is an inconvenient forum, the court must consider numerous factors, including the presence and risk of domestic violence, the relative financial circumstances of the parties, any agreements of the parties, the type and location of the evidence needed to render a determination, judicial efficiency, and court familiarity with the case issues.[23] In addition, unless there is an emergency involving child abuse,[24] Washington should decline jurisdiction if the person invoking this jurisdiction has engaged in unjustifiable conduct,[25] unless the parties agree to jurisdiction, Washington state is a more appropriate forum, or no other state has jurisdiction under the statute.[26]

Finally, jurisdiction is also present if all courts which could have jurisdiction decline to exercise jurisdiction through finding that this state is a more appropriate forum or if no other state would have jurisdiction under the statute.[27] A foreign country is treated as if it were a state of the United States for jurisdictional purposes unless the child custody laws of that country violate fundamental human rights.[28]

As mentioned above, the interplay of UIFSA and the UCCJEA can occasionally result in cases being split between different tribunals. For example, imagine that a mother who has lived continuously with her child in Ohio names as an alleged father a man who resides in Seattle. The mother consents in writing to personal jurisdiction in Washington under UIFSA. Paternity and support establishment may be determined in Washington, since the alleged father resides here and the mother has consented to litigation in this state. Custody and residential provisions, however, must be decided in Ohio, where the mother and child reside. In contrast, however, suppose a mother who has lived continuously in Tacoma with her child for two years provides a sworn document that her child was conceived via sexual intercourse in Washington. She names as an alleged father a man who now resides in Texas. Washington has jurisdiction to decide all issues in the ensuing paternity case. Personal jurisdiction over the father can be obtained because of the act of intercourse in the state. Because the child has resided in Tacoma for two years, this state is the child's home state, allowing for the in-state determination of custody and residential issues.

The myriad fact patterns possible in multi-state cases thus require careful analysis by the family law practitioner. Despite the best efforts of counsel and the parties, however, two or more states may ultimately be involved in the final resolution of such a case.

Kim Schnuelle is a high-honors graduate of the University of Washington School of Law with 17 years' experience in prosecution and family law litigation. She is an associate attorney at McKinley Irvin in Seattle, where she focuses on a wide range of family law issues. She welcomes any questions and comments regarding this article and can be reached at 206-625-9600.

NOTES

1. Codified as Chapter 26.21A RCW in Washington state.
2. Codified as Chapter 26.27 RCW in Washington state.
3. The short title of this statute is the Uniform Child Custody Jurisdiction and Enforcement Act, RCW 26.27.011, and the statute is cited as the UCCJEA in all relevant case law.
4. UIFSA and the UCCJEA also govern support and custody modifications. These topics are beyond the scope of this article, however.
5. RCW 26.21A.100(1)(a-b).
6. RCW 26.21A.100(1)(c,d,f).
7. RCW 26.21A.100(1)(e,h).
8. For example, a mother may provide a sworn declaration that she engaged in sexual intercourse in Washington state with the alleged father during the period of conception of the child for whom paternity establishment is sought. Such a sworn declaration may serve as evidence sufficient to confer personal jurisdiction over the non-resident alleged father.
9. RCW 26.21A.200, see also RCW 26.21A.215 (duties of an initiating tribunal).
10. RCW 26.21A.220(2)(a).
11. RCW 26.21A.265(1, 3).
12. To the extent jurisdiction over Indian children is governed by the Federal Indian Child Welfare Act, 25 U.C.C. 1901 et sec; however, those children are not governed by the UCCJEA. RCW 26.27.041.
13. See Custody of A.C. 165 Wn.2d 568, 574 (2009).
14. RCW 26.27.021(3-4), see also *Tostado v. Tostado* 137 Wn.App. 136, 138 (fn.1) (2007).
15. RCW 26.27.201(3).
16. A "home state" is the state in which the child lived with a parent or a person acting as a parent for at least six consecutive months before initiation of the custody action or, if the child is less than six months old, it is the state in which the child has lived from birth with a parent or a person acting as a parent. RCW 26.27.021(7). Term definitions under the UCCJEA are broad. Custody of A.C. 165 Wn.2d at 575.
17. A person acting as a parent is one who has had physical custody of the child for at least six consecutive months within one year prior to start of the custody action or who has been awarded legal custody of the child. RCW 26.27.021(13).
18. RCW 26.27.201(1)(a).
19. RCW 26.27.021(7).
20. *In the Matter of Parentage, Parenting and Support of A.R.K.-K. and N.J.K.* 142 Wn.App. 297, 303 (2007).
21. RCW 26.27.201(1)(b)
22. *Id.*
23. RCW26.21.261, see also *A.R.K.*-K 142 Wn.App. at 306-307.
24. See RCW 26.27.231.
25. "Unjustifiable conduct" is not defined in the statute, however.
26. RCW 26.27.271(1).
27. RCW 26.27.201(1)(c,d).
28. RCW 26.27.051.

Rosanna Peterson *WSBA No. 21343*

- **I became a lawyer because** I believe in our justice system, and I wanted to be a full participant in it.
- **This is the best advice I have been given:** Always give 100 percent to an enterprise and be grateful when anyone else contributes to that same enterprise.
- **I would share this with new lawyers:** Identify your priorities and try to adhere to those priorities as you make career decisions.
- **Traits I admire in other attorneys:** Integrity, honesty, and preparation.
- **I would give this advice to a first-year law student:** Learn to research and write well.
- **People living or from the past I would like to invite to a dinner party:** Shakespeare, Mark Twain, and Oscar Wilde.
- **I am most proud of this:** Balancing family life with my career.
- **I am the most happy when** I have done a good job, whether in my personal or professional life.
- **My favorite non-job activity:** Being with my family.
- **Best stress reliever:** Exercise.
- **I am currently reading** *The Brethren* by John Grisham.

- **My favorite vacation place:** Camping by an ocean.
- **One of the greatest challenges in law today is** providing excellent representation without expending all of the client's finances.
- **If I were not practicing law, I would** be a judge or teaching law.
- **Technology is** an advantage to practitioners, but it can become a tether that constantly connects practitioners to work.
- **Currently playing on my iPod/CD player/record player:** A mixture of classical and '60s rock.
- **This is the best part of my job:** Helping people.

I graduated with a B.A. and M.A. in English. I worked in business until becoming an English professor. From there, I went on to law school. After law school, I was a federal judicial clerk prior to entering into private practice. I practiced primarily in the areas of employment, education, and criminal defense. For a number of years, I have balanced teaching at Gonzaga School of Law with my legal practice. In October 2009, President Obama nominated me to be a U.S. District Court judge for the Eastern District of Washington. I have been married for 39 years (my husband is also a professor) and have two children.

EDITOR'S NOTE: Gonzaga Law Professor Rosanna Peterson was confirmed on January 25, 2010, to the federal bench for the Eastern District of Washington. "Rosanna Peterson is a leader in the Washington state legal community," U.S. Senator Patty Murray said following the 89–0 Senate confirmation vote. "She is a great lawyer, teacher, and mentor, and I believe she will make an exceptional federal judge." Peterson, who worked previously in private practice in Spokane, is Eastern Washington's first female federal judge.

This profile was requested by, and biography was compiled by M. Lisa Bradley, WSBA Editorial Advisory Committee co-chair. Learn more about "Briefly About Me" at www.wsba.org/lawyers/brieflyaboutme.doc.

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Congratulations to JdR panelist Michael Spearman for his recent appointment to the Washington State Court of Appeals Division 1.

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The Perils of Co-Counsel Relationships

Protect your career and your clients by knowing the pitfalls and taking precautions

BY BRIAN J. WAID

Attorneys often jointly represent clients through co-counsel arrangements based on informal agreements supported by little more than a phone call or e-mail, and minimal, if any, client understanding of the co-counsel relationship. This article discusses some of the perils inherent in co-counsel relationships, and simple precautions attorneys can use to reduce potential harm to their clients and liability exposure for themselves.

Am I My Co-Counsel's Keeper?

An attorney is generally *not* liable "for the acts or omissions of a lawyer outside the firm who is working with the firm lawyers as co-counsel or in a similar arrangement."[1] This general rule, unfortunately, can lull an incautious attorney into overlooking liability exposures that naturally flow from the attorney's paramount duties to their clients and co-counsel relationships.

Washington courts have not directly addressed an allocation of responsibility among lawyers involved in co-counsel relationships. Nevertheless, the Washington State Supreme Court provided a good starting point for this analysis in *Mazon v. Krafchick*,[2] in which one co-counsel missed the statute of limitations and the client lost the case as a result. The client sued both lawyers, who both contributed to settle the malpractice claim. Not-at-fault co-counsel then sued the at-fault co-counsel to recover his settlement contribution and damages (including the lost contingent fee). The Supreme Court rejected both claims, explaining *inter alia*:[3]

> We . . . adopt a bright-line rule that no duties exist between cocounsel that would allow recovery for lost or reduced prospective fees. *As co-counsel, both attorneys owe an undivided duty of loyalty to the client . . . .*
>
> [W]e believe that *allowing cocounsel to recover prospective fees would create the opposite incentives to overemphasize the informal divisions of responsibilities between cocounsel, overlook any failings of cocounsel, and later claim that cocounsel's failures were not their responsibility.* Prohibiting cocounsel from suing each other for prospective fees arising from an attorney's malpractice in representing their mutual client provides a clear message to attorneys: *each cocounsel is entirely responsible for diligently representing the client.* [emphasis added].[4]

The attorney litigants in *Mazon* had stipulated that they had been engaged in a "joint venture." When attorneys share potential profits and losses of a joint venture representation, the courts impose vicarious liability on all co-counsel for the malpractice of one.[5] In this context, Washington attorneys should pay close attention to the ramifications of RPC 1.5(e)(1)(ii), which authorizes fee-sharing among co-counsel "in proportion to the services provided by each lawyer or each lawyer assumes *joint responsibility* for the representation [emphasis added]," provided that the client agrees to the fee division in writing. An attorney who enters into a fee-sharing agreement with co-counsel, not based on the proportion of services each co-counsel provides to the client, has most assuredly undertaken a duty to monitor co-counsel's conduct of the representation.[6]

Some courts have refused to impose vicarious liability on co-counsel (e.g., "local counsel") who undertake a limited role in the representation. In *Macawber Engineering, Inc. v. Robson & Miller*,[7] for example, the Eighth Circuit held that local counsel have no duty to monitor lead counsel's conduct of the litigation, because "[w]ere the law otherwise, the costs involved in retaining local counsel would increase substantially . . . local counsel would be bound to review all manner of litigation documents and ensure compliance with all deadlines." The West Virginia Supreme Court, in *Armor v. Lantz*,[8] similarly limits local counsel's duty to the client if the client vests lead counsel with primary responsibility for

the litigation.

Armor based its conclusion, in part, on the theory of a limited engagement under RPC 1.2(c). However, RPC 1.2(c) also requires that the attorney must have obtained client's informed consent to any "limited engagement." Informed consent, in turn, requires that the attorney had first "communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct."[9] Few attorneys are likely to have fully explained the ramifications of a co-counsel relationship to their clients, e.g., informing the client that neither law firm has any responsibility to monitor the conduct of the other, or that the co-counsel arrangement may affect the client's remedies for legal malpractice and breach of fiduciary duty. Regrettably, *Macawber* and *Armor* relied on an assumed limited engagement without also insisting that the attorneys prove that they had complied with the client protections required by RPC 1.2.

Other courts have rejected the "limited role" analysis adopted in *Macawber* and *Armor. Ingemi v. Pelino & Lentz*,[10] for example, reasoned that "[l]ocal counsel must also supervise the conduct of *pro hac vice* attorneys." *Bank Brussels Lambert v. Fiddler Gonzalez & Rodriguez*,[11] authored by then Judge, now Justice Sotomayor, also distinguished *Macawber,* concluding, based on the allegations of that particular conflict of interest case, that "[t]he existence of duty…hinges not on the scope of the agreed representation but rather on an ethical duty [i.e., to protect confidential information] attendant to every representation."

In another variation, the New York Appellate Division applied agency principles to hold that a New York law firm undertook a duty to supervise and "assumed responsibility" for the negligence of a Florida attorney it had retained to enforce a client's judgment.[12] Thus, when no privet exists between the client and both co-counsel, retaining counsel may stand exposed to potential liability under agency principles.

Situations may indeed arise in which you become "co-counsel's keeper." You should therefore consider this exposure before entering into the co-counsel relationship, and address it through a written division of responsibilities among counsel.

Does Co-Counsel Have a Duty to Snitch?

Mazon makes abundantly clear that an attorney's fiduciary duties to the client trump the relationship among co-counsel. The fiduciary duties to act with utmost fairness and good faith toward the client arise upon accepting representation.[13] The fiduciary relationship between attorney and client is neither new, nor unique to Washington. Sir Francis Bacon wrote:

> [T]he greatest Trust, between Man and Man, is the Trust of Giving Counsell. For in other Confidences, Men commit the parts of life; their Lands, their Goods, their Children, their Credit, some particular Affaire; But to such, as they make their Counsellors, they commit the whole: By how much the more, they are obligated to all Faith integrity."[14]

In concrete terms, the attorney's fiduciary duties require undivided loyalty and a strict protection of the client's confidences. In their seminal treatise, *Legal Malpractice,* Mallen and Smith explain the attorney's duty of "undivided loyalty" as follows:[15]

> A corollary of the fiduciary obligations of undivided loyalty and confidentiality is *the attorney's responsibility to promptly advise the client of any important information that may impinge on those obligations.* This means that *there must be complete disclosure of*

all information that may bear on the quality of the attorney's representation. The disclosure must include not only all material facts but also should include an explanation of their legal significance. [emphasis added]

The attorney's fiduciary obligation thus includes a duty to promptly communicate all material information to the client.[16] As a result, an attorney may not remain silent when the attorney becomes aware of a material fact which affects the fiduciary relations; instead, the attorney must make prompt and full disclosure to the client because "[t]he concealment of a fact which one is bound to disclose is an indirect representation that such fact does not exist, and constitutes fraud."[17] This duty of prompt disclosure is, therefore, consistent with the duty of fiduciaries, generally, "to inform the beneficiaries fully of all facts which would aid them in protecting their interests."[18]

A Washington attorney thus breaches the attorney's fiduciary duty if the attorney misrepresents matters to a client, including by failing to disclose material information to the client.[19] An attorney also breaches the fiduciary duty to keep the client informed, as required by RPC 1.4(b), if the attorney delays giving material information to the client.[20]

The attorney's fiduciary duty to promptly disclose extends to facts "which are, or may be, material . . . and which might affect the principal's rights and interests or influence his actions."[21] A "'material fact' is a fact 'to which a reasonable [person] would attach importance in determining his [or her] choice of action in the transaction in question.'"[22]

Accordingly, if an attorney discovers that the client has a potential legal malpractice claim against either the attorney or the attorney's co-counsel, the attorney must promptly notify the client of the mistake, and advise the client to consult with independent counsel concerning the conflict of interest created by the potential legal malpractice claim.[23] Absent such disclosure and informed consent, the attorney's continuing representation conflicts with RPC 1.7.

Nevertheless, in *Leonard v. Dorsey & Whitney,*[24] the Eighth Circuit held that the attorney's duty to disclose only applies to "non-frivolous" malpractice claims which create a "substantial risk" that the client will be adversely affected by the lawyer's self-interest. This circular reasoning allows the lawyer to judge his or her own

self-interest in contradiction to the fundamental premise of RPC 1.2 and RPC 1.7 that the client, and not the lawyer, decide issues which "may" be material and which "might" affect the client or influence the client's decisions.[25] Thus, when a non-frivolous potential malpractice claim arises, the lawyer should choose one of two courses of action: withdraw from continued representation, or make full disclosure to the client, advise the client to seek independent advice concerning the conflict of interest, and obtain the client's informed consent to continued representation. (Beyond having done the right thing under the ethics rules, attorneys who choose this latter alternative often receive the forgiveness and gratitude of their clients, as well as the respect of their colleagues.)

The attorney who ignores these warnings risks working for free, because the courts may refuse to allow an attorney to profit from disregard of the RPC's and fiduciary duties, particularly those involving a conflict of interest, by ordering disgorgement and/or forfeiture of fees.[26]

Thus, if one co-counsel discovers that the other co-counsel may have committed malpractice in co-counsel's joint representation of the client, the fiduciary duty to the client trumps any allegiances between co-counsel. The client must be notified promptly about the potential malpractice claim and advised to seek the advice of independent counsel. Absent full disclosure, not-at-fault co-counsel risks additional exposure to the client for breach of fiduciary duty, including fee forfeiture or disgorgement, as well as possible disciplinary action.[27] In short, co-counsel do indeed have a duty to snitch.

Rule 11 and Local Counsel

Anecdotally, the advent of electronic filing seems to have reduced the role of local counsel. Nevertheless, CR 11, like its federal counterpart, FRCP 11, authorizes sanctions against an attorney who signs a pleading, motion, or legal memorandum. Blaming co-counsel who prepared, but did not sign, the pleadings does not work because "[t]he text of the rule does not provide a safe harbor for lawyers who rely on the representations of outside counsel."[28] Indeed, at least one court jointly sanctioned all of the attorneys, including "local counsel," despite the fact that the offending pleading had been filed electronically without bearing the physical signature of any attorney.[29]

Rule 11 exposure for local counsel has become especially dangerous for non-IP attorneys retained as local counsel in patent cases. For example, the Western District of Washington adopted "Local Patent Rules," LPR 100-140 and Appendixes, in late 2008. Other federal district courts have either recently adopted, or may soon adopt, similar rules. These new procedural rules in patent cases impose extensive and stringent requirements related to pre-filing investigation, pleading, case management, and document preparation requirements, that apply to both plaintiffs and defendants in "all civil actions…which allege infringement of a utility patent or which seek a declaratory judgment that a utility patent is not infringed, is invalid or is unenforceable."[30] Non-compliance with these demanding procedural rules may result in the exclusion of evidence and expert witnesses, rejecting of patent contentions, and Rule 11 sanctions, each of which may lead inexorably to a substantial malpractice claim for the client's resulting loss of patent rights or claims, or liability for damages. Pity the non-IP local counsel who relies on the assurances of co-counsel and thus assumes substantial risks for which local counsel may be totally unprepared.

Local counsel can reduce exposure to sanctions, including under Rule 11, by either refusing to act as local counsel, or assuming an obligation to fully participate and review all filings. These alternatives, of course, may not be particularly practical. Nevertheless, local counsel can also insist that lead counsel enter into an indemnification agreement that requires lead counsel to indemnify and defend local counsel from any and all liability, including sanctions, that may arise out of local counsel's reliance on the work of lead counsel. As with any agreement dividing responsibility among co-counsel, such an agreement will not absolve local counsel from responsibility to fulfill fiduciary or other duties owed to the client; nor will it provide protection against most forms of non-monetary sanctions. It may, however, provide local counsel with a modicum of protection from mistakes made by lead counsel.

Limiting Your Risks

If you agree to enter into a co-counsel relationship, carefully define each attorney's responsibilities in writing and submit that allocation of responsibility to the client for approval. Such an agreement is entirely consistent with RPC 1.2(c). Even though such an agreement may not completely insulate you from joint liability for your co-counsel's errors, a clear delineation of each attorney's role(s) will help to avoid the kind of miscommunications and misunderstandings that often give rise to malpractice. It may also provide you with a potential defense to vicarious liability for your co-counsel's errors under the "limited role" analysis discussed in *Macawber*.

However, if you enter into a disproportionate fee-splitting, or referral fee arrangement under RPC 1.5(e)(1)(ii), do so with full knowledge that you have undertaken a duty to monitor your co-counsel's conduct of the litigation. You may even want to go so far as to confirm that your co-counsel has sufficient malpractice insurance to cover potential claims (although doing so will not endear you to co-counsel).

If your co-counsel commits malpractice, promptly notify the client and advise the client to seek independent counsel to consider whether to continue the representation.

Do not lightly take on the responsibilities of "local counsel." Even a limited engagement agreement under RPC 1.2 will not protect you from liability for court-ordered sanctions pursuant to Rule 11. You can, however, insist that lead counsel enter into an indemnification agreement to indemnify and defend you against any liability for Rule 11 and "inherent authority" sanctions through counsel of your own choosing.

Conclusion

Co-counsel relationships are not without peril. You may indeed be your co-counsel's keeper; your fiduciary duty to the client will always trump your relationship with co-counsel; and local counsel may not rely on co-counsel's assurances as a defense to Rule 11 sanctions. You can, however, take simple precautions that will help protect your clients from potential errors due to misunderstandings, while also reducing your exposure to potential liability and fee forfeiture.

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NOTES

1. Restatement (Third) of Law Governing Lawyers, Section 58, Comment e (ALI 2001).

2. 158 Wn.2d 440, 448-50, 144 P.3d 1168 (2006).
3. *Id.,* 158 Wn.2d at 448-9.
4. Accord, *Evans v. Steinberg,* 40 Wn. App. 585, 699 P.2d 797 (1985) (no cause of action exists in favor of one co-counsel against the other co-counsel).
5. E.g., *Duggins v. Guardianship of Washington,* 632 So.2d 420 (Miss. 1993); *Fitzgibbon v. Carey,* 70 Or. App. 127, 688 P.2d 1367 (1984); *Floro v. Lawton,* 187 Cal. App.2d 657, 10 Cal. Rptr. 98 (1960).
6. See, *Restatement, supra,* Section 58, Comment e.
7. 47 F.3d 253 (8th Cir. 1995).
8. 207 W. Va. 672, 535 S.E.2d 737 (2000). Accord, *Umphreyville v. Gittins,* __F. Supp.2d ___, 2009 WL 3113257 (D. W.Va.); *Ortiz v. Barrett,* 278 S.E.2d 833 (Va. 1981) ("local counsel" liable for their own negligence).
9. RPC 1.0(e).
10. 866 F. Supp. 156 (D.N.J. 1994).
11. 305 F.3d 120, 125 n. 1 (2nd Cir. 2002).
12. *Whalen v. DeGraff,* 53 App. Div.3d 912, 863 N.Y.S.2d 100 (2008). Accord, *Restatement, supra,* Sec. 58, Comment e.
13. E.g., *Perez v. Pappas,* 98 Wn.2d 895, 840-41, 659 P.2d 475 (1983) (attorney owes highest duty to the client); *VersusLaw* v. *Stoel Rives, LLP,* 127 Wn. App. 309, 333, III P.3d 866 (2005) (''highest duty"); *In re Beakley,* 6 Wn.2d 410, 423, 107 P.2d 1097 (1940) ("one of the strongest fiduciary relationships known to the law"); *Bovy* v. *Graham, Cohen* & *Wampold,* 17 Wn. App. 567, 570, 564 P.2d 1175 (1977) ("the punctilio of an honor the most sensitive"); and *Van Noy v. State Farm Mut. Auto. Ins. Co.,* 142 Wn.2d 784, 798 n. 2, 16 P.3d 574 (2001) (Talmadge, J., concurring) ("the law creates a special status for fiduciaries, imposing duties of loyalty, care, and full disclosure upon them").
14. *Ween v. Dow,* 35 A.D.3d 58, 822 N.Y.S.2d 257, 261 (2006), *quoting,* The Essays or Counsels, Civill and Morall 63 (Kierman ed. Oxford Univ. Press, 1985), *quoted in,* Anenson, *Creating Conflicts of Interest: Litigation as Interference with the Attorney-Client Relationship,* 43 Am. Bus. L.J. 173,244 (2006).
15. Mallen and Smith, *Legal Malpractice,* Section 15.22, pp. 782-83 (2008 ed.).
16. RPC 1.4.
17. *Oates v. Taylor*, 31 Wn.2d 898, 903, 199 P.2d 924 (1948) (emphasis added), *quoting*, 37 C.J.S. 244, Fraud §16a. Accord, *Burien Motors v. Balch*, 9 Wn. App. 573, 577-8, 513 P.2d 582(1973) [equating attorney's duty with fiduciary's duty under Restatement (Second) of Trusts §170(2)].
18. *Esmieu v. Schrag,* 88 Wn.2d 490, 498, 563 P.2d 203 (1977) (emphasis added), *quoted with approval, Van Noy, supra,* 142 Wn.2d at 792.
19. See, RPC 8.4(d).
20. *In re: Discipline of Cohen,* 149 Wn.2d 323, 336-7, 67 P.3d 1086 (2003) (attorney disciplined for two-month delay in notification of dismissal).
21. *Mersky v. Multiple Listing Bureau,* 73 Wn.2d 225, 229, 437 P.2d 897 (1968) (emphasis added) (real estate broker/fiduciary must "timely reveal" close ties to subagent).
22. *Guarino v. Interactive Objects, Inc.,* 122 Wn. App. 95, 115, 86 P.3d 1175 (2004), *quoting, Aspelund v. Olerich,* 56 Wn. App. 477, 481-2,784 P.2d 179 (1990) ("material fact" under Securities Act of Washington, RCW 21.20.010(2)); and *Morris v. Int'l Yogurt Co.,* 107 Wn.2d 314, 322-3, 729 P.2d 33 (1986) ("material fact" under FIPA, RCW 19.100.170(2)).
23. See, RPC 1.7 cmt. 10 (2006) ("[I]f the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice"); 1 *Restatement (Third) of the Law Governing Lawyers,* §20, cmt. c, p. 171 (ALI 2000); *In re: Talon,* 86 App. Div.2d 897, 447 N.Y.S.2d 50, 51 (1982) ("An attorney has a professional duty to promptly notify his client of his failure to act and of the possible claim his client may thus have against him"); and Wisc. Ethics Op. E-82-12; N.Y. State Bar Ass'n, Ethics Op. 734.
24. 553 F.3d 609 (8th Cir. 2009).
25. See nn. 21 and 22, *supra.*
26. *In re: Corporate Dissolution of Ocean Shores Park* 132 Wn. App. 903, 913, 134 P.3d 1188 (2006) (An attorney "who fails in his ethical and professional duties may not reap any benefits from his clients' ignorance."). Accord, *Yount v. Zarbell,* 17 Wn.2d 278, 135 P.2d 309 (1943) (denying any fee recovery to non-attorney husband and attorney wife arising out of husband's unauthorized practice of law with wife); *Gustafson v. City of Seattle,* 87 Wn. App. 298, 304, 941 P.2d 701 (1997); and *Eriks v. Denver,* 118 Wn.2d 451, 462-63,924 P.2d 1207 (1992) (fee disgorgement due to conflict of interest).
27. See, *Lapkin v. Garland Bloodworth, Inc.,* 23 P.3d 958 (Okla. App. 2001) (each co-counsel only liable to disgorge the amount of fee each actually received); see further, *Tegman v. Accident & Medical Investigations,* 150 Wn.2d 102, 75 P.3d 497 (2003) (attorneys jointly liable for legal malpractice liability but not jointly liable for third person's related, intentional conduct).
28. *Val-Land Farms, Inc. v. Third National Bank of Knoxville,* 937 F.2d 1110, 1118 (6th Cir. 1991), *quoted with approval, Ideal Instruments, Inc. v. Rivard Instruments, Inc.,* 243 FRD 322 (N.D. Ia. 2007), *modified,* 245 FRD 381. Accord, e.g., *Pavelic & Leflore v. Marvel Entertainment Group, Div. of Cadence,* 493 U.S. 120, 125, 110 S. Ct. 456, 107 L. Ed.2d 438 (1989)(signer has "personal nondelegable responsibility"); *Gonzales v. Texaco, Inc.,* 2007 WL 4208344 (N.D. Cal. 2007) (local counsel sanctioned), *rev'd on other grounds,* 2009 WL 2494324 (9th Cir.).
29. *Ideal Instruments, supra at* n. 28.
30. W.D. Wash., LPR 101 (2008).

Ethical Wills

A Non-Material Gift for the Next Generation

Ethical wills can enhance your relationship with your clients and help set priorities

BY ELANA ZAIMAN

People seek members of your profession to draft their last will and testaments. They want to be sure their material possessions will be properly passed on to the next generation. People also come to you to draft living wills to be sure their medical wishes are known, should the time come when they are unable to make such decisions.

But how do people pass on their non-material legacies, including such things as values, advice, guidance, love, and hopes for their loved ones' future? Isn't passing on non-material gifts as important as passing on material ones?

Certainly, we pass on our non-material legacy by the way we live our lives. Take the young mother who, after her husband's death, works a full-time job and single-handedly raises three children. She makes it a point to be home for dinner, put her children to bed, attend all their important events, and remain present to them during their struggles. This mother's values are clear. She believes in hard work, love, "present-ness," and family. Her children know this about her. It's who their mother is. What more do they need?

While it's true that the most important way we pass on our values is by living them, there is a more formal way we can hand them down. We can write a letter stating our values, dreams, and hopes for the people we love, and we can pass this letter on to them, to be sure they know what we stand for. There's a tradition of writing such a letter, a tradition that dates back to the Middle Ages when a father, nearing the end of his life, would write a letter to his sons (and in some cases his entire family) stating the values he hoped they would carry on. Such a letter is called an "ethical will" because it passes on one's ethical and moral values.

Today, ethical wills are written by people of all ages, genders, and faiths. They are written by people who feel comfortable expressing themselves in writing, and by people who don't. A person does not have to be an accomplished writer to write an ethical will. She just has to have things she wants to say, and she just has to be herself.

Why is knowledge of this tradition valuable to you as lawyers? Being aware of and supporting this tradition can enhance your relationship with your clients and add new dimensions to the ways in which you serve them. For example, you could suggest to clients that they write an ethical will to help inform them of their priorities as they begin to develop or revise their estate plan. Or, if you have clients suffering from terminal illnesses, you could suggest they consider leaving a legacy of their values alongside their testamentary will. Their words would be read, and their voices heard, for generations to come. Additionally, learning more about your clients' values and concerns may increase the services you can provide for them in the long run.

An ethical will is not a legal document, but great care should be taken when writing it so as not to contradict the testamentary will. Ethical wills and testamentary wills should work in concert with one another to enable individuals to leave the fullest legacies possible.

Excerpts from two contemporary ethical wills follow. The first was written by a man named Harold at the age of 83, the age of his father's death. Harold addresses his words to his children:

> Mother and I live modestly. I never succeeded in convincing her to buy a mink coat. She always felt that was showing off. I lived the same way. If we lived luxuriously, we could never have helped the families for most of our married life. You have now reached the stage where you can broaden your philanthropy and in larger amounts. I hope and pray that my and your children will follow the same pattern. (*So That Your Values Live On*, by Jack Riemer and Nathanial Stampfer)

In this next ethical will, a mother writes to her daughter:

> Live each day to the fullest; make each

day count. Be strong and stand firm in what you believe. Don't discourage easily. Have confidence in yourself. Take pride in yourself and in everything you do. Study hard and work hard to reach your goals. Set examples that others will want to follow. Don't be influenced by greedy or immoral persons. Your self respect is the most valuable possession you can own. Deal honestly and fairly with others. Value your friendships and never betray their confidences. (from a brochure written by members of an adult education class at Temple-Emanu-el in Providence, Rhode Island)

Note that even in these small excerpts, while both authors impart their values, they do so in very different ways. The first author delves deeply into one value, while the second author lists a variety of values she considers important. Each of us will write our ethical wills in our own way. Some of us will take time to express our love. Others of us will write at length about forgiveness. Whatever we write will be based on our relationship with the person or persons to whom we are writing. Remember, it is your voice that your children and grandchildren, spouse and siblings, nieces, nephews, and friends want to hear. To begin writing, ask yourselves this question: what values do I want to pass on to the people I love?

An ethical will is not a legal document, but great care should be taken when writing it so as not to contradict the testamentary will. Ethical wills and testamentary wills should work in concert with one another to enable individuals to leave the fullest legacies possible.

It's a powerful process, writing an ethical will. Here, people who have written them explain why:

"I have several types of wills and trusts, but

I was missing something important. The process of writing an ethical will was profound and transforming. I can see myself returning to this document to remind me what is important."

— Linda Breneman, Seattle

"In addition to creating a lasting document for my daughters, I was able to think about aspects of my life that I need to work on, as well as aspects of my life where I feel I've been successful. We don't often get a chance to do that."

— Elizabeth Aylward, Seattle

"I chose to write an ethical will on a beach vacation, away from daily distractions. I wrote to my children, collectively and individually, describing their ancestry, my childhood and formative years, leading to the values that my wife and I share and want them to have and perpetuate, in terms of being purposeful citizens and keeping our family, its values, and Judaism alive. The process required me to write from a perspective of what is sincerely important to me and what future generations of my family should know that mattered."

— Steven M. Friedman, New York, New York

"Writing my first 'ethical will' was like building a nest of everything I wanted to relay to my daughter: my love for her, my vulnerabilities as a mother, my wishes of strength and beauty and a smoother road ahead. It's a truth-teller's love letter — not always easy to craft, not without wavering and tears — but the finish line is like no other."

— Ann Teplick, Seattle

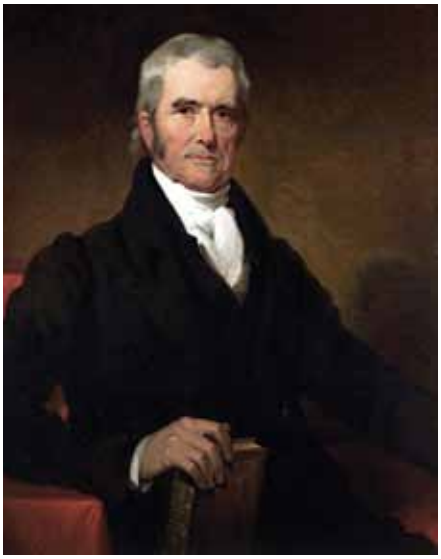
"I wrote an ethical will because I'm diagnosed with a terminal disease at the age of 37, with a wife and three young kids. I wanted to give them something that's me and that can live on in their hearts and minds as they go through life."

— Joshua Isaac, Seattle

I hope these words inspire you to write an ethical will, and to share this tradition of writing ethical wills with your clients. To understand its importance, think about what it would mean to receive an ethical will from someone you love. Imagine reading a letter from a parent telling you how much you mean to her, listing the values she considers important and hopes you will embody, and stating the love she feels for you. If you can imagine receiving such a letter, perhaps it will be easier for you to write one.

I know what it's like to receive such a letter. I was a teenager when my siblings and I received an ethical will from my father. He, and a group of other parents, compiled a brochure of ethical wills they had written and he handed me a copy of this brochure. To this day, I read his ethical will often. I read it when I want to hear his voice. I read it when I want to feel his love. And I imagine it will be to this ethical will that I return after he dies, so I can continue to hear his voice, feel his love, remember his values, and enable his words to continue to guide me.

Rabbi Elana Zaiman is the chaplain for the aged at The Caroline Kline Galland Home and The Summit at First Hill in Seattle. Her work as lecturer, workshop leader, and advisor to those writing ethical wills has taken her throughout the United States and Canada. Zaiman is a published author, currently at work on a book of ethical wills. She can be reached at www.elanazaiman.com.



John Marshall and Me

A Seattle Lawyer's Literary Odyssey

BY MICHAEL SCHEIN

On my bookshelf I have an envelope containing photocopies of John Marshall's trial notes from the case of *Commonwealth v. Randolph* (1793), an infanticide case against Richard and Nancy Randolph, brother- and sister-in-law. Here's the story behind those notes.

I wanted to be a writer, not a lawyer. But I "grew up," got practical, and went to law school. After eight years of trial practice in Vermont I was burned out, and saw in our move west a chance to make a new start. I started teaching, first Law and Society, then American Legal History. While reading a stuffy biography of John Marshall, my eyes were drawn to a two-line footnote reporting a scandalous case he'd defended as a young lawyer. Fascinated, I followed up on the cited sources, then pressed further, until the Virginia Historical Society provided me with actual copies of Marshall's trial notes. A novel was born.

The notes are nothing flashy — they are the notes of a working lawyer, unaware of what history held in store for him. They begin simply: "Carter Page deposes…that he has frequently seen Mr. Randolph and Miss Nancy together, but knows of no criminal conversation . . . he has, however, seen them kissing and fond of each other." They pass this way from witness to witness, including "Mrs. Martha Randolph," who was Thomas Jefferson's daughter, married to defendant Nancy's brother. The notes are all business, but have the allure of drama and living history.

I spent several years — early mornings, evenings, weekends — turning these notes, some letters, and other research, into a historical novel which was eventually published as *Just Deceits: A Historical Courtroom Mystery* (Bennett & Hastings, 2008). The preceding sentence compresses 10 years of misery, as I collected hundreds of rejections from agents and publishers, had agents send out my work and then misplace my file, and had publishers insist on exclusive review and then sit on the manuscript for over a year before rejecting it for reasons unrelated to its merits. In short, I was treated like an unpublished writer, which (within the industry) is a kind of insect. Finally, it was a small press in Seattle that was willing to publish my book, but of course there was no budget for publicity, so the book was poorly distributed and went largely unnoticed.

Am I complaining? Not a bit. I loved every minute of it. I loved the research and the writing. I loved touring in Virginia, including book signings at Marshall and Jefferson's *alma mater*, the College of William and Mary, and at the John Marshall House in Richmond. I loved reading passages in bookstores and at writers' conferences, especially the reading at Partners in Crime bookstore in Greenwich Village, New York City, with my elder daughter present. I loved (and still love) visiting book groups and discussing the themes explored in the book — the conflict in litigation styles between John Marshall and his co-counsel, Patrick Henry (historically accurate!); the love-hate relationship between the sisters, defendant Nancy, and the loyal (betrayed?) wife Judith; the portrayals of slaves and

their influence on the wealthy and powerful Randolphs; the villainous Jack Randolph, who later became a U.S. Congressman. I love getting e-mails and notes from readers who enjoyed *Just Deceits*.

Although we don't always know where the money's coming from, my life is much richer since I became a part-time lawyer and writer. I've written a second historical novel currently being read by a well-established publisher. I'm working on a stage adaptation of *Just Deceits*. And, like many lawyers before me (think Wallace Stevens, Carl Sandburg, and, yes, Chief Justice John Marshall himself), I've also pursued poetry. Why not? I can't help writing poetry, so when my midlife crisis hit, instead of buying a red sports car and marrying a woman half my age, I started sending it out — and *some of it was accepted!* While my poetry "income" after seven years and several Pushcart nominations is miniscule, by factoring in the avoidance of divorce and alimony, poetry is not merely satisfying but also an economically sound move.

Let's be clear: there is nothing fairy-tale in all this. My literary work consumes hundreds of hours a year for very little pay. I still practice law, and I supplement my income by teaching legal history and current events CLEs through my company, Rubric, LLC. Among writer friends, we joke that we're all scratching after 10¢ per hour — the mark of literary success. My book royalties at their peak were less than I could net in two weeks of full-time law practice, and now, 18 months after release, are dwindled down to almost nothing (especially once bookstore returns are subtracted!). My poetry income comes not from publication of the poems, since even if you are among the one percent accepted into a journal, the "pay" is usually only one contributor copy — but from occasional paid readings, manuscript reviews, and work as director of the annual LiTFUSE Poets' Workshop held in Tieton, Washington. Poetry is a labor of love.

But love makes labor light. The interesting people I've met, the connections I've made, remind me that there is a world of kindness and wonder out there. I'm more alive than I was before, and I enjoy getting up and going to work. Buoyed by literary and teaching work, I can dive into the adversarial system refreshed. I learn not only from my experiences in practice, but also from historical research and the freedom of imagination and linguistic discipline of creative writing.

Marshall, in his closing argument in *Commonwealth v. Randolph,* said: "I believe there is no man in whose house a young lady lives, who does not occasionally pay her attentions and use fondnesses, which a person prone to suspicion may consider as denoting guilt," thus simultaneously encouraging the (male) fact-finders to identify with his client, while castigating the accusers as "persons prone to suspicion." Is that not the touch of a budding master? My legal work is enriched by my literary work. Pursue your passion! The best lawyers are fully rounded human beings, and the happiest lawyers are more than the sum of their J.D.s.

As for Richard and Nancy Randolph, you'll have to buy the book to find out whether the hangman got between them and happiness.

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Check Fraud Scams

Be Alert to Phishing — How Not to Fall Prey

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Despite warnings and educational efforts, unsuspecting lawyers and law firms continue to fall victim to fraudsters who commit check fraud. Most of the schemes involve an e-mail from a prospective client who is seeking some type of legal service. Someone needs help collecting a debt, obtaining their share of a divorce settlement — the list goes on. At the WSBA, we receive several "phishing" e-mails a week which are clearly scams. Some of these e-mails appear convincing and can be enticing for lawyers seeking clients and legal work in this tough economy.

The schemes are quickly evolving. As lawyers become more cautious in dealing with Internet clients, so have the fraudsters become more sophisticated in their scams. Previously we saw scams involving debt collection services where the lawyer was sent the debt from a "third party," then asked by the client to wire the funds (less a generous fee) to the client immediately. Now we're seeing "clients" pay fee deposits in excess of the requested fee for services, and then ask that the overpayment be refunded via wire.

The FBI recently published information about scams against two Hawaii law firms resulting in losses of $500,000. Six firms were solicited; two fell prey. According to the FBI, the prospective client sends the law firm a cashier's check for an amount far in excess of the agreed upon fee or advance fee deposit. When the law firm responds that the client has overpaid, the client requests and the unsuspecting firm sends a wire transfer with the refund. Only after the refund do the law firms realize that the cashier's checks are counterfeit. In the current cases in Hawaii, scammers are asking that wire transfers be sent to accounts in South Korea, Taiwan, and Canada.

"Law firms and other professional service providers are cautioned to be on high alert when dealing with clients who come forth via the Internet," the FBI warns. "Furthermore, no wire transfers should ever be sent to clients as refunds until the initial payment from the client has fully cleared the banking system."

Rules of Professional Conduct (RPC) 1.15A(h)(7) states that lawyers may not disburse funds from a trust account until deposits have cleared the banking process and been collected. A deposited item does not become collected funds until it has actually cleared the banking system. At times, there is confusion regarding the difference between collected funds and available funds. Often, banks make funds available for withdrawal before the related funds have been collected, but the depositor is still held liable for the amount of the check if the check is uncollectible. Banks may place a hold on the funds, then release the hold before they have actually collected the funds. Banks may tell you the funds are collected when they really are not. There must be certainty that the funds have actually been collected before a disbursement is made. However, this "certainty" is hard to achieve in a timely manner because sometimes it takes a bank a long time to figure out that a check is fraudulent.

A cashier's check is drawn by a bank on its own funds and signed by the bank's cashier. Lawyers often naively believe that cashier's checks, money orders, or certified checks are as good as cash and "safe." Fraudsters know this and take full advantage of the incorrect assumption. Because the cashier's check is counterfeit, it is no different than counterfeit cash, dollars that are not real. When looking at a cashier's check listing the name of a reputable bank, it appears official, just like George Washington's face on a counterfeit dollar bill. Although a check may look "real," it might not be. And unlike counterfeit bills, there is no way to tell a cashier's check is fraudulent until it makes its way through the banking system and gets "discovered" by the issuing bank (who may initially issue the funds to the lawyer's bank but later take them back after they discover the fraud).

So how can lawyers protect themselves? Here are some tips:

- Do not respond to unsolicited e-mails requesting services similar to those in scams. If the information you are receiving unsolicited is more that a normal person would share with someone they don't know, don't respond. How many real clients send crisis "help me" e-mails out of the blue to people they don't know?
- When confronted with an opportunity that looks too good to be true, be skeptical and take the time to do your own independent and thorough research in locating any companies that might be involved to see if they are legitimate. Do not rely on phone numbers or information provided by the client; make independent contact based upon your research. If you receive a check from a company, call and ask if they issued the check before you try to deposit it.
- Do not be pressured to wire the funds immediately or before you are confident they have cleared the bank. It should be a red flag when you are asked to wire the funds now before you have the time to figure out whether the check is counterfeit or not. The "client" will give you a compelling reason why they need the funds right away, but don't let that influence your good judgment. Remember, it is your money that is at risk; fraudsters are trying to steal from you.
- Talk to your bank about the possibility of a counterfeit check. Be skeptical and question the information you are getting from

your bank to ensure you are not getting incorrect answers from inexperienced bank employees.

- As part of the initial client interview, and later in the fee agreement, make it perfectly clear that you will not be wiring the funds until the funds have actually been collected and that you cannot make any guarantees as to when that will occur. Fraudsters may move on to another attorney at this point, or they may proceed and hope to bully you into paying them when the time comes.

During times of financial uncertainty, collecting from clients can be particularly difficult, and attorneys, like other professionals, will look for creative, legitimate ways to assist with cash flow. However, always be careful not to fall prey to schemes involving a counterfeit transaction (e.g., counterfeit cashier's checks), where on the face it might appear legitimate but below the surface it is a scam.

If you have questions, please contact WSBA Audit Manager Rita Swanson at ritas@wsba.org.

Washington State Access to Justice Conference

WSBA Bar Leaders Conference

Please join us at the 15th annual Access to Justice/Bar Leaders Conference being held June 4–6, 2010, at the Coast Wenatchee Convention Center in Wenatchee.

The conferences will focus on "Transformation: Crisis and Opportunity." The keynote speakers are GOVERNOR CHRISTINE GREGOIRE and LUIS RICARDO FRAGA, associate provost for faculty advancement, Russell F. Stark University professor, and the director of the Diversity Research Institute at the University of Washington.

The Access to Justice and Bar Leaders conferences are held jointly. Registrants are encouraged to cross over between conferences. The registration fee is $125. The registration deadline is May 26, 2010. For the conference registration brochure, please see www.wsba.org/2010brochureatjblconference.pdf. Please contact Sharlene Steele at sharlene@wsba.org if you have questions specific to the Access to Justice Conference or La'Chris Jordan at lachrisj@wsba.org with questions about the Bar Leaders Conference.

Strategic Financial Goal

The WSBA's strategic financial goal is to be fiscally responsible: to operate a well-managed and financially sound association, to be accountable to our members and the public, and to use our resources wisely in ways that accomplish our mission.

Fund Categories

The WSBA accounts for revenues and expenses in four categories: General Fund, Continuing Legal Education (CLE), Sections, and Lawyers' Fund for Client Protection (LFCP).

General Fund

The general fund consists of our regulatory functions and most services to members and the public. It is funded by member license fees and revenues from services. For FY 2009, the general fund had expenses in excess of revenues of $1,488,364. The loss is attributed to the WSBA's $1,500,000 grant to the Legal Foundation of Washington to help fund civil legal aid in Washington state, which was booked as an expense in fiscal year 2009. As of September 30, 2009, the general fund balance was $4,434,591, of which $1,450,000 is designated as an operating reserve, $2,500,000 is designated as a facilities reserve, $300,000 is designated as a capital reserve, and $175,000 is designated as a board program reserve. The remaining $9,591 is unrestricted.

Continuing Legal Education (CLE) Fund

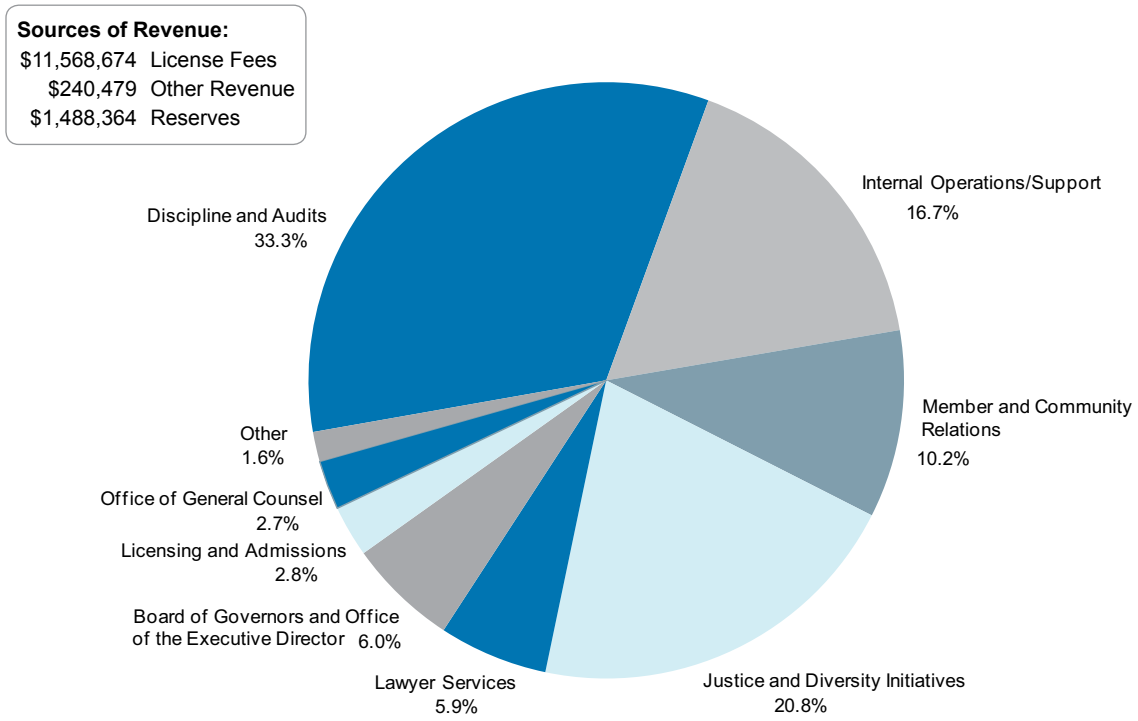
CLE programs and products are entirely self-funded by seminar registration fees and sales of deskbooks and other publications. The CLE fund budgeted for expenses over revenues of $108,375. Actual results were that expenses exceeded revenues by $186,090. In addition, $682,000 of the CLE reserve fund was used to fund the civil legal aid grant to the Legal Foundation of Washington. CLE's fund balance as of September 30, 2009 was $1,079,797.

Sections Fund

The WSBA's 27 sections are a voluntary activity for WSBA members and are supported through section dues and fees for section products and services. All net income from sections is carried forward in each section's net assets for use by that section in future years. The sections budgeted for expenses over revenues of $255,316 (in order to use past accumulated reserves to benefit their members). Actual results for the sections were that expenses exceeded revenues by $93,580. The sections fund balance at September 30, 2009, was $711,521.

Lawyers' Fund for Client Protection (LFCP)

The LFCP may be used for relieving a loss sustained by a person due to the dishonesty of, or failure to account for money entrusted to, a member of the WSBA in connection with the member's practice of law. It is funded by an annual assessment on all active WSBA members. The LFCP fund budgeted for revenues over expenses of $93,147. Actual results were expenses over revenues of $47,164. The LFCP's fund balance as of September 30, 2009, was $184,640.



FY09 General Fund Expenses

Functions Supported by License Fees and Other Net Revenue

WSBA Statements of Activities

	Year ended September 30, 2009			Year ended September 30, 2008		
	2009 Actual Revenue	2009 Actual Expense	2009 Actual Net	2008 Actual Revenue	2008 Actual Expense	2008 Actual Net
Access to Justice	19,472	370,625	-351,153	29,320	400,996	-371,676
Administration	3,561	970,191	-966,630	46,323	1,205,971	-1,159,648
Alternate Dispute Resolution	7,250	61,603	-54,353	7,175	56,935	-49,760
Attorney License Fees	11,568,674	0	11,568,674	11,115,256	0	11,115,256
Audits	218	265,884	-265,666	2,038	205,960	-203,922
Bar Examination and Admissions	1,137,718	1,078,777	58,941	1,010,768	1,040,297	-29,529
Bar Leaders Support	2,250	228,354	-226,104	1,890	277,526	-275,636
Bar News	686,703	983,158	-296,455	710,414	931,715	-221,301
Board of Governors and Office of the Executive Director	36,395	829,710	-793,315	34,475	792,578	-758,103
Communications	6,685	527,549	-520,864	10,733	555,746	-545,013
Discipline	78,429	4,029,664	-3,951,235	134,492	3,896,106	-3,761,614
Human Resources	0	318,065	-318,065	0	298,616	-298,616
Information Technology	0	940,051	-940,051	0	964,814	-964,814
Justice Programs	0	346,162	-346,162	0	181,163	-181,163
Law Office Management Assistance Program	54,707	266,487	-211,780	39,832	242,716	-202,884
Lawyers Assistance Program	46,509	403,361	-356,852	54,584	419,128	-364,544
Legislative	0	264,435	-264,435	0	238,704	-238,704
Licensing and Membership Records	58,782	488,916	-430,134	60,926	545,771	-484,845
Limited Practice Officers	168,855	156,397	12,458	197,851	155,926	41,925
Mandatory Continuing Legal Education	659,945	469,919	190,026	588,094	458,870	129,224
Member Benefits	55,000	47,712	7,288	81,000	47,712	33,288
New Lawyer Education	0	48,620	-48,620	0	46,068	-46,068
Office of General Counsel	231	355,443	-355,212	3,030	378,870	-375,840
Office of General Counsel — Disciplinary Board	0	216,418	-216,418	0	191,530	-191,530
Outreach and Education	19,411	1,820,864	-1,801,453	24,870	291,812	-266,942
Practice of Law Board	0	166,334	-166,334	0	148,041	-148,041
Professional Responsibility Program	0	162,108	-162,108	0	182,491	-182,491
Regulatory Services	248,391	243,299	5,092	251,065	221,103	29,962
Resources Directory	73,481	47,866	25,615	81,884	45,636	36,248
Sections Administration	123,550	230,658	-107,108	103,896	158,471	-54,575
Young Lawyers Division	15,010	220,961	-205,951	22,685	213,772	-191,087
Total Unrestricted — General	**15,071,227**	**16,559,591**	**-1,488,364**	**14,612,601**	**14,795,044**	**-182,443**
Unrestricted — Continuing Legal Education						
CLE Products	764,461	813,849	-49,388	553,126	587,616	-34,490
CLE Seminars	2,345,986	2,482,688	-136,702	2,317,060	2,326,521	-9,461
Total Unrestricted — CLE	**3,110,447**	**3,296,537**	**-186,090**	**2,870,186**	**2,914,137**	**-43,951**
Unrestricted — Sections Operations	448,643	542,223	-93,580	443,806	535,635	-91,829
Restricted — Lawyers' Fund for Client Protection	448,426	495,590	-47,164	475,529	942,964	-467,435
Total	**19,078,743**	**20,893,941**	**-1,815,198**	**18,402,122**	**19,187,780**	**-785,658**

Potential Side Effects

Taking a cue from doctors, lawyers should warn of the potential pains and aches that result from not seeking proper legal counsel

BY JEFF TOLMAN

Years ago, people understood that practicing law was complicated and difficult. The consequences of poor representation, or representing yourself, could be profound. Loss of your home. A judgment against you. A loss or restriction of visitation with your children. Going to jail. Legal matters were known to be multi-faceted, complex, and important, and needed the oversight of trained, experienced professionals.

Lawyers were respected then, like physicians.

Then things changed. The message became: "practicing law really isn't that hard." Court clerks began selling inexpensive forms that self-represented persons could complete. ("Is that all attorneys really do, fill in blanks?") Our State Supreme Court authorized non-lawyer facilitators in county courthouses to assist people with their paperwork ("Why do I need a lawyer to complete documents when the government-provided facilitator hasn't gone to law school?"). Estate-planning documents are easily accessed for no or moderate cost on the Internet ("Why should I pay a lawyer when I can just hit 'print,' then sign the documents?"). The impression is that we attorneys, when cut to our essence, spend our days filling out simple forms. Even folks who can afford legal counsel don't, really, need any.

Doctors, on the other hand (brilliantly, in my view), convey the message that their job is complicated beyond the comprehension of normal humans. One example is how they require a verbalization of potential side effects of any medications advertised to the public. You know the drill. A lovely middle-aged couple is seen bicycling together or skipping stones across a gorgeous, calm lake. The voice-over says something like, "Not feeling beautiful, brilliant, well-centered, and liked by everyone you meet? Ask your doctor about Solvesitall, a clinically proven medication to get you back feeling confident, almost pompous, about yourself and your life."

"Wow!" you turn and tell your spouse. "I think Joe is taking those pills. Maybe I'll get a few from him and try them."

Then the disclaimers begin as the voice-over says softly, "Solvesitall is not for everyone. In clinical testing, three people's toes fell off, two test participants began to lisp, and twelve members of the trial group had the continuous feeling of ants crawling all over them. See your doctor to determine whether Solvesitall is right for you."

"Whoa! No Joe's-got-a-pill-to-lend for me. With those possible side effects, I'm seeing Dr. Zlatos. He'll know if Solvesitall is right for me. He's smart, experienced, and has been to medical school." And off you trot to the M.D., thankful you have someone to help guide you through the complicated medication maze.

Maybe we attorneys need to make the public more aware of the side effects of acting as your own counsel. The commercial would open with a troubled middle-aged couple staring straight ahead, pale as if they've just seen a ghost. The voice-over would say: "Need estate-planning documents, a corporation, a divorce, multi-district class action litigation forms? Want a name change or boundary dispute pleadings? Call 1-800-HOPE-THIS-WORKS for our online documents. Only $10.99 per page. Plus, if you call within the next 12 minutes, we'll throw in six aspirin to help ease your pain. Call us. 1-800-HOPE-THIS-WORKS."

Then the announcer's voice softens and his vocal pace picks up speed: "1-800-HOPE-THIS-WORKS is not for everyone. If you have a combative opponent, someone who has represented themselves in court before and enjoyed the experience, or an opponent who hires a member of the State Bar Association, side effects may include having your opponent's costs and attorney's fees imposed against you, being served with a counter-claim for you to pay money, getting a judgment entered against you, having your wages garnished, going to jail, losing custody of your children or having your visitation time diminished, or losing property. If, after receiving our documents, you have a headache or are distraught for more than four consecutive hours, this may be a sign of a rare and uncommon side effect. Call your lawyer right away."

Maybe then, after hearing the side effects of not having a lawyer, clients would once again realize what we do is multi-faceted, complex, and potentially life-changing.

Jeff Tolman has practiced law in Poulsbo for over 30 years. He has served on the WSBA Board of Governors, in the ABA House of Delegates, and is the part-time Poulsbo Municipal Court judge. He can be reached at tolman@tolmankirk.com.

WSBA Board of Governors Meeting March 5–6, 2010 Bremerton

BY MICHAEL HEATHERLY

The Board of Governors resumed discussion of a possible overhaul of the bar examination and continued work to strengthen WSBA's diversity programs at their March 5–6, 2010, regular meeting in Bremerton.

Regarding the bar exam, the Board began debate last October concerning a possible change from Washington's all-essay, state-specific test to a standardized, multistate version, likely adopting the Uniform Bar Examination (UBE) being developed by the National Conference of Bar Examiners (NCBE). At previous meetings, board members and others had raised questions about the standardized test, including concerns that the format might unfairly discriminate against female and minority applicants. Statistics from past multistate bar exams over several years showed that members of racial/ethnic minorities consistently scored lower than Caucasian examinees.

Before making a decision on whether to switch to the multistate style of test, the BOG asked WSBA staff to compile data from past Washington exams for comparison. The staff gathered results from Washington bar exams as well as demographic and academic data — including undergraduate grade-point averages and Law School Admission Test scores — from the state's three law schools. After WSBA staff compiled the data and performed an initial analysis, they transmitted the information to the NCBE and to an independent educational researcher at the University of Washington. The analysts identified sets of Washington and nationwide data that were as similar as possible then compared outcomes of the two groups.

The general findings from the NCBE report reflected a gap in performance among ethnic groups on the Washington exam that was similar — even slightly more pronounced — than those found on the previously discussed nationwide multistate-type testing. The results also were consistent with those found with similar testing in other professions. Analysis by the UW researcher supported the NCBE findings.

The results appeared to support the position of the NCBE that the gap in bar exam results reflects academic disparities throughout the educational system rather than an inherent unfairness in bar exams.

However, some BOG members still questioned the validity of the findings. Governor Brenda Williams noted that the analysis was still largely carried out by NCBE, which has an interest in defending and promoting its own exam. Governor Brian Comstock questioned why, after so many years, a bar exam has yet to be created that avoids the recognized performance gap. Governor Anthony Gipe questioned the statistical validity of NCBE's comparing its exam to the Washington test. For purposes of the analysis, NCBE arbitrarily chose a specific score (135 points) as the "passing" score, he noted. But when the test is actually administered, the states choose their own passing scores, which differ from state to state.

WSBA Executive Director Paula Littlewood said the long-term significance of the research is that it demonstrates that the law schools and the Bar need to begin their efforts to help students and eradicate academic disparities as soon as they enter law school. She emphasized that there is a direct correlation between law school GPA and passing the bar exam regardless of the exam instrument used. WSBA President Salvador Mungia said the BOG might take final action on the issue at the April or June meeting.

Also at the March meeting, the BOG considered several issues involving WSBA-related diversity policies. Board members approved a policy statement that will apply to appointing members and selecting leaders of the various WSBA committees and task forces. After some tweaking of the language, they voted in favor of statements providing as follows:

> The WSBA has established diversity as one of its Guiding Principles embracing the philosophy to promote diversity, equality and cultural understanding throughout the legal profession. Recognizing this goal, the WSBA President/President-elect commits to diversity in [selecting Chairs of WSBA committees/task forces and selection of appointments to WSBA Committees]. The goal of the President/President-elect shall be to select [committee/task force members for leadership positions and members for committee appointments] whose appointment will further the WSBA policy of diversity, equality and cultural understanding.

The BOG also approved the following definition of "diversity" to serve as a guide in carrying out diversity-related efforts:

> Diversity refers to meaningful representation of and equal opportunities for individuals who self identify with those groups that are under-represented in the legal profession based upon, but not limited to, disability, gender, age, familial status, race, ethnicity, religion, economic class, sexual orientation, gender identity and gender expression. Statewide geographic diversity and area of practice shall also be given consideration.

The Board heard first readings, but did not take action, on two other issues relating to diversity policies. One is a proposed policy to ensure diversity among faculty at WSBA-produced Continuing Legal Education programs. The other is a set of proposed reforms to improve WSBA diversity efforts overall. The latter includes proposals aimed at increasing coordination among three entities: the BOG Diversity Committee, the WSBA Committee for Diversity, and the Washington Young Lawyers Division (WYLD) Committee for Diversity. Ongoing discussions among members of those groups as well as other diversity stakeholders — including WSBA staff, the WSBA Leadership Institute, and the Minority Bar Associations — led to a report concluding that efforts of the three committees have tended to overlap, causing confusion and blunting the overall effectiveness of diversity efforts. Proposals include refinement of the WSBA Committee for Diversity's mission to clarify that it is the primary programming committee for diversity efforts.

In other business at the March meeting, the BOG heard a report from WYLD President Julia Bahner summarizing the Division's recent activities and approved several recommendations from the WSBA Program Review Committee to fine-tune WYLD's operations. Bahner reviewed a number of recent WYLD events including two Board of Trustees meetings and numerous public service, pro bono, and member-outreach efforts. She added that the economic downturn has hit young and new lawyers particularly hard, leaving many with difficulty finding employment and with large student loans looming.

WYLD-related program recommendations approved by the BOG included identification of public service/pro bono and transition to practice as ongoing focus areas for WYLD efforts; consolidation of WYLD CLE and educational programming with the New Lawyer Education Program; and coordination between WYLD and other WSBA departments regarding outreach programs.

Meanwhile, in another issue involving education, the BOG approved several recommendations by the Program Review Committee to enhance the New Lawyer Education Program. The recommendations include continuing to support live seminars produced by local bar associations, increased webcasting of WSBA

seminars for the benefit of NLE participants outside the Seattle area, expanding the content for online programming, and developing increased interactivity in online programming.

Also at the March meeting, the BOG heard the first reading of a proposal regarding a new Code of Judicial Conduct provision involving mandatory recusal and campaign contributions. Proponents asked the Board to encourage the Supreme Court to enact the rule, which would require a judge to recuse from a case upon a party's motion showing that an opposing party provided financial support to the judge's campaign for election. The rule would apply where the contribution exceeded 10 times the state limit for direct contributions. As the limit is currently $1,600 per election cycle per donor, a judge would be required to recuse if an opposing party had contributed more than $16,000 for the primary or general election, or $32,000 for both a primary and general election. BOG action on the proposal is expected at the April 23–24 meeting in Port Angeles.

In other business at the March meeting, the BOG:

- Received an update on the Campaign for Equal Justice from President Mungia, who reported that the annual fundraising program had so far reached a giving rate of approximately 25 percent among lawyers, compared to four percent historically, and over 50 percent among judges, compared to 14 percent historically.
- Heard a report from Executive Director Littlewood, who said membership compliance with license renewals for the year was at 95 percent, compared to 90 percent at the same time last year. She cited the new MyWSBA online tool, which now allows licensing to be completed entirely online, as one reason for the improvement.
- Heard the second reading of a set of proposed changes to the WSBA Bylaws, part of a long-term project to update all of the Bar's organizational rules. The set of proposals discussed at the March meeting included those involving the rules for conducting BOG meetings. If adopted, the rules would no longer refer to an annual meeting of WSBA membership, and the BOG would no longer be authorized to call a special meeting of the membership. However, as a practical matter, the changes would not affect current procedure or deny voting rights of WSBA members or the BOG. In recent history, the September meeting at the end of each fiscal year has been a membership meeting for ceremonial purposes but has not been used to conduct membership voting. The new rules would maintain a referendum process under which members can seek to overturn or modify Board action, enact a resolution, or amend the Bylaws. Also maintained would be the BOG's authority to refer such matters on its own initiative to a direct vote of the membership.

Michael Heatherly is the Bar News *editor and can be reached at barnewseditor@wsba.org or 360-312-5156. For more information on the Board of Governors and Board meetings, see www.wsba.org/info/bog. For more information on issues addressed by the Board, visit the WSBA website at www.wsba.org and click on "News Flash" under "WSBA News and Information."*

*my*wsba: anytime, anywhere

To access *my*wsba, see the link on the WSBA homepage (www.wsba.org) or go there directly (www.mywsba.org).

If you have questions or don't have a valid e-mail address on file, help is only a phone call or e-mail away. The WSBA Service Center is staffed Monday through Friday, 8:00 a.m. to 5:00 p.m., with friendly, knowledgeable representatives eager to be of assistance.

mywsba

Using *my*wsba, you can:

- View and update your profile, which includes address, phone and fax, e-mail, website, etc.
- View your current MCLE credit status and access your MCLE page where you can update your credits
- Complete all of your annual licensing forms (skip the paper!)
- Certify your MCLE reporting compliance
- Pay your annual license fee using MasterCard or Visa
- Make a contribution to LAW Fund as part of the licensing renewal process using MasterCard or Visa
- Join a WSBA section
- Access Casemaker free legal research
- Register for a WSBA CLE seminar
- Shop at the WSBA store (order CLE recorded seminars, deskbooks, *Resources,* etc.)
- Voluntarily report your pro bono hours under RPC 6.1
- Sign up to volunteer for the Home Foreclosure Legal Aid Project
- Access CourtTrax docket research service

www.mywsba.org

Opportunities for Service

Washington State Bar Foundation Board of Trustees

Application deadline: June 30, 2010

The Washington State Bar Foundation (WSBF) is calling for applications for a position as trustee on the Foundation Board. The WSBF is a nonprofit organization whose mission is to foster leadership to further social justice. Foundation trustees serve three-year terms. The bylaws provide for trustees to be selected as follows: three persons from the WSBA Board of Governors, one past president of the WSBA, four WSBA members in good standing, one representative of a minority or specialty bar association, one student from a Washington law school who has completed at least one year of law school, and two non-lawyers. The current opening is for a WSBA member in good standing. Interested WSBA members should submit a letter of interest and résumé to WSBF, Attention: Colleen Crowley, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539; or e-mail colleenc.foundation@wsba.org. The deadline for accepting applications is June 30, 2010.

Limited Practice Board

Application deadline: May 14, 2010

The WSBA Board of Governors seeks a candidate for appointment to the Limited Practice Board, which oversees administration of, and compliance with, the Limited Practice Rule (APR 12) authorizing certain lay persons to select, prepare, and complete legal documents pertaining to the closing of real estate and personal-property transactions. The candidate's name will be submitted to the Washington State Supreme Court for appointment and will serve a four-year term commencing upon appointment and ending December 31, 2013. In keeping with the member requirements of APR 12, the position must be filled by an active member of the WSBA. The board generally meets every other month. Please submit a letter of interest and résumé to: Bar Leaders Division, WSBA, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539 or e-mail barleaders@wsba.org.

American Bar Association (ABA) House of Delegates

Application deadline: May 14, 2010

The WSBA Board of Governors is accepting letters of interest and résumés from members interested in serving on the ABA House of Delegates representing the WSBA. Four delegate positions will be available in August 2010. A written expression of interest and résumé are required for any incumbents seeking reappointment.

The control and administration of the ABA are vested in the House of Delegates, the policy-making body of the ABA. The House, composed of 555 delegates, elects the ABA officers and board, and meets out of state twice a year. Delegate attendance is required.

The WSBA's allowance is $800 per year per delegate. Terms are two years, and members may serve a maximum of three consecutive terms. Those serving on the ABA House of Delegates must be ABA members in good standing throughout their terms. 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.

Washington Pattern Jury Instructions Committee

Application deadline: July 1, 2010

The WSBA Board of Governors is accepting letters of interest and résumés from members interested in serving a four-year term on the Washington Pattern Jury Instructions Committee. One position is available. The four-year term will commence upon appointment and expire on July 15, 2014. The incumbent is eligible for reappointment and must submit a letter of interest and résumé if interested in reappointment. Washington Pattern Jury Instructions Committee members review, discuss, and vote upon instructions in the civil or criminal area as drafted by subcommittees or staff. The committee meets monthly in Seattle on Saturday for three or four hours (except July and August). Because members also serve on subcommittees, the position requires a considerable time commitment. It is a large committee with more than 30 members, including judges and lawyers, and two WSBA representatives. Please submit a letter of interest and résumé to: WSBA Bar Leaders Division, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539; or barleaders@wsba.org.

Board for Court Education

Application Deadline: May 14, 2010

The Board of Governors will be nominating one WSBA member who will be appointed by the Washington State Supreme Court to serve a three-year term on the Board for Court Education. The three-year term will commence on July 1, 2010, and continue through June 30, 2013. A written expression of interest and a résumé are also required for any incumbent seeking reappointment. The Board for Court Education was established by Supreme Court order, and is charged to identify the educational needs of trial-court judges and court personnel, to coordinate educational programs and services, and to recommend programs and budget to meet the educational needs of the Washington judiciary. It is a 15-member board which meets four times a year. Please submit a letter of interest and résumé to: WSBA Bar Leaders Division, 1325 Fourth Ave., Ste. 400, Seattle, WA 98121-2330 or barleaders@wsba.org.

Disciplinary Advisory Roundtable

Application deadline: May 14, 2010

The Board of Governors is seeking applicants to serve on the Disciplinary Advisory Roundtable (DAR), which has been created on a two-year trial basis. There are four positions available: one for a respondents' counsel representative (i.e., a lawyer with experience in the field of lawyer-discipline defense), one for an active WSBA member who is not otherwise involved in the disciplinary process, and two for non-lawyers. The DAR will be composed of the following members: a Washington State Supreme Court justice, the WSBA chief disciplinary counsel, a member of the WSBA Board of Governors, the WSBA executive director, the chief hearing officer, the Disciplinary Board chair, a lawyer from the WSBA Office of General Counsel with responsibility for staffing the Disciplinary Board and/or working with Hearing Officer Panel, and the four positions listed above. The DAR will provide an annual report to the Washington State Supreme Court and the WSBA Board of Governors regarding the state of the discipline system in Washington, including any recommendations for change and the identification of concerns or issues. 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.

Board of Governors Ballots Due May 17

Beginning April 15, all WSBA active members in the 2nd, 7th-Central, and 9th Board of Governors districts have the opportunity to once again help determine the WSBA's future direction and leadership.

For the second year, voting members have the opportunity to cast their votes online, rather than through the traditional paper ballot process. Electronic voting is secure, confidential, and convenient. Members with valid e-mail addresses on file with the WSBA did not receive a paper ballot. All electronic voting began on April 15 and must be completed by 5:00 p.m. PDT on May 17. While the WSBA is encouraging members with e-mails on file with the WSBA to cast votes online, they may request a paper ballot. The WSBA has sent eligible members without e-mail addresses on file the traditional paper ballots. The ballots include instructions on how to access online voting, so those members can vote online if they prefer. Members submitting paper ballots must also make certain to print and sign their name, including their address and Bar number, on the return envelope, and deliver it to the WSBA offices by 5:00 p.m. PDT on May 17. Members may cast votes either online or by paper ballot, but they may vote only once. The WSBA has implemented safeguards to prevent a member from casting multiple votes. The WSBA hopes members will find online, or electronic, voting more convenient than filling out and returning paper ballots. Please contact Emily Robinson at emilyr@wsba.org or 206-239-2125 if you have any questions, or to request a paper ballot.

BOG Election Candidate Statements

Voting is underway for the Board of Governors elections for the 2nd and 7th-Central districts (the election for the 9th district was uncontested this year — congratulations to Governor-elect Susan Machler). Electronic votes and paper ballots will be counted on or about May 17. Following are brief biographical statements received from candidates.

District 2 — Philip Buri

The Bar Association works for all of us, and I would like to represent the lawyers who proudly practice in Whatcom, Skagit, Island, and San Juan counties. I grew up in Spokane, Washington, attended Princeton University and Harvard Law School, and clerked for both the Federal District Court and the State Supreme Court. In 1995, my wife Darcie and I moved to Bellingham, Washington, to raise our family. In 2004, I founded my own firm and practice appellate law at Buri Funston Mumford PLLC with my partners Karen Funston and Tom Mumford.

District 2 — Carrie M. Coppinger Carter

As a Whatcom County native, I would be honored to represent the 2nd Congressional District on WSBA's Board of Governors (BOG). I am familiar with the commitment and demands of serving statewide organizations. My service on WSTLA's BOG (now Washington State Association for Justice) and on the WSBA Disciplinary Board and its Leadership Institute's Advisory Board has fully prepared me for the work at hand. The Disciplinary Board work required review of voluminous materials each month, while Advisory Board work provided a broader understanding of WSBA history, economics, services, and programs. I look forward to being a voice for our District.

District 2 — Matthew J. Daheim

An assistant attorney general since 2001, I have had the opportunity to litigate cases throughout Central and Western Washington. I have served on the WSBA's Court Rules Committee and Professionalism Committee, as well as the co-chair of the Whatcom County Bar Association's Law Day in Schools Committee. I am also actively involved in my children's schools, activities, and sports, and volunteer my time to local community organizations. My commitment to professionalism and public service compel me to volunteer my time and perspective to the BOG and members of this District.

District 7-C — Thomas R. Dreiling

I would like your vote in order to become your next member of the Board of Governors from the 7th Congressional (Central) District. I have a proven leadership commitment to our Bar. I have been a bar examiner for thirty years, past chair of the Character and Fitness Board, past chair of the Lawyers' Fund for Client Protection Board, and past chair of the Creditor Debtor Rights Section. I have previously served as a WSBA delegate to the ABA House of Delegates and am an emeritus member of the William Dwyer Inn of Court. Please

give me this additional opportunity to be of service to the Bar. Thank you.

District 7-C — Judy I. Massong
I have spent my entire legal career helping insured people. Throughout, I have been a strong supporter of the WSBA. I have served as chair and board member of the Litigation Section, a member of the Legislative Committee, Special Prosecutor in disciplinary matters, and on the Lawyers' Fund for Client Protection Board. I also have been an active member and President of the Trial Lawyers Association (now WSAJ) and am currently its liaison to the WSBA BOG. I would consider it an honor to work for the interests of the members as a WSBA Governor for the 7th Congressional District–Central.

District 9 — Susan Machler — Unopposed
Susan Machler grew up in Montana, where she went to a one-room schoolhouse before graduating from the University of Idaho and graduating *magna sum laude* from Seattle University School of Law. She is a partner at Osborn Machler. Her practice focuses on plaintiffs' personal injury litigation and appellate cases. Susan is a member of the State Bar of Montana, the WSAJ, the Montana Trial Lawyers Association, and is listed in "Super Lawyers." She served on the WSAJ Board of Governors and currently serves on the Advisory Council for Lutheran Public Policy Office. Susan also serves as an arts commissioner for the City of Kent.

Grievances Can Now Be Submitted Electronically

A paperless process for submitting a grievance against a lawyer is now available on the WSBA website. Grievances can be submitted electronically without the need to print out a paper form. You can access the electronic form at www.wsba.org/public/complaints. For information about the grievance process, click on "Lawyer Discipline in Washington." Contact the Office of Disciplinary Counsel's Consumer Affairs staff with questions at 206-727-8207 or 800-945-9722, ext. 8207. All grievances against lawyers, regardless of the manner of submission, are confidential to the extent provided by court rule.

Online Licensing for 2010

Licensing Suspensions. The license renewal deadline was February 1. If license fees were not paid by the due date, late fees were assessed and are also due. As required by the WSBA Bylaws, a recommendation for suspension of non-compliant members (members who have not completed and filed required forms or paid fees and assessments owed) is being sent to the Washington State Supreme Court in early May. Any suspensions ordered are expected to be effective in early to mid-May.

Volumes Issued to Date in WSBA-CLE's Washington Real Property Deskbook Series (4th Edition)

The *Real Estate Essentials* set (Vols. 1 and 2, 2009) covers all the fundamental topics, from choice of entity to receiverships, and comes with more than 100 forms on CD. Vol. 3 (2009) covers all major interests in real property, as well as in-depth treatment of the duties of the lawyer, broker, escrow agent, and limited practice officer in real estate transactions, with more than 30 forms on CD. To order, go to www.wsbacle.org and click "CLE Deskbooks" and "Real Property" to view full tables of contents and lists of forms on CD and order online, call or e-mail Order Fulfillment at 206-733-5918 or 800-945-WSBA or orders@wsba.org. Additional stand-alone volumes in this series (which replaces the 1997 third

edition with 2000–2002 supplementation) will be released later in 2010 and in 2011. If you'd like to be advised as new volumes are released, please send a request to orders@wsba.org.

CLE Offers 2010 PowerPass

The 2010 "PowerPass," your pass to steep discounts on tuition for eligible WSBA-CLE seminars, is now for sale. WSBA-CLE presents three cost-savings options for 2010: the new Bronze Personal PowerPass (3 registrations/$498); the Silver Enhanced PowerPass Plus (5 registrations/$800); and the Gold Enhanced PowerPass Plus (10 registrations/$1,500). The Silver and Gold PowerPasses are transferable with the purchaser's permission, and all three PowerPasses include a free one-hour segment of recorded on-demand programming, good for AV-CLE credit. For full product information, terms and conditions, or to purchase, go to www.wsbacle.org and click on "2010 PowerPass."

55 and Over?

WSBA's Lawyers Assistance Program (LAP) sponsors the "Lawyers in Transition: Attorneys 55 and Over" group. A range of topics are covered, such as making changes in one's career, nurturing interests outside of the law, and giving and receiving support to fellow lawyers. The group meets at the LAP offices the first Tuesday of the month; the next meeting is May 4, from 10:30 to 11:45 a.m. The cost is $10 per session. If you are interested in taking part or have questions or recommendations, please contact Dr. Dan Crystal at 206-727-8267 or danc@wsba.org.

"Foundations of American Democracy" Civics Pamphlet

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

LOMAP and Ethics Traveling Seminar

WSBA comes to you! Join us in Aberdeen on May 25 or Port Orchard on May 26. Four credits are available, including some for ethics. Cost is $99. To register, call or e-mail Julie Salmon at 206-733-5914, 800-945-9722, ext. 5914, or juliesa@wsba.org.

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 or go to www.mywsba.org and click on Access Casemaker in the left sidebar. Your login requirements are your WSBA number and your *my*wsba password. For help using Casemaker, contact Julie Salmon at 206-733-5914, 800-945-9722, ext. 5914, juliesa@wsba.org, or call the WSBA Service Center at 800-945-WSBA (9722) or 206-443-WSBA (9722).

Get More out of Your Software

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 May 10 clinic will be held from 10:00 a.m. to noon at the WSBA office and will focus on using Word. The May 13 clinic will meet from 2:00 to 4:00 p.m. and will focus on using Casemaker, CourtTrax, and other online research resources. For more information or to RSVP, contact Julie Salmon at 206-733-5914, 800-945-9722, ext. 5914, or juliesa@wsba.org.

Monthly Job Search Session

Join us May 12 for our monthly job search session. These free informational sessions take place the second Wednesday of each month from noon to 1:30 p.m. at the WSBA office. For more information, call 206-727-8267 or e-mail danc@wsba.org. Come as you are — no need to RSVP unless you would like to attend the meeting by telephone (RSVP by May 10 at 206-727-8268).

Weekly Job Finders Strategy and Support Group

Unemployed? Discouraged — or trying not to be? Our weekly job group focuses on job search basics such as résumés, cover letters, and informational interviewing. The group meets on Monday mornings from 10:30 to noon, and new groups begin every eight weeks. Contact Dr. Dan Crystal at 206-727-8267, 800-945-9722, ext. 8267, or danc@wsba.org if you are interested in this group.

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 Barbara Harper, director of the Lawyer Services Department, at 206-727-8265, 800-945-9722, ext. 8265, or barbarah@wsba.org.

Facing an Ethical Dilemma?

Members facing ethical dilemmas can talk with WSBA's professional responsibility

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

Search WSBA Ethics Opinions Online

Formal and informal WSBA ethics opinions are available online at http://mcle.mywsba.org/IO, 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 result of study and analysis in response to requests from WSBA members. For assistance, call the Ethics Line at 206-727-8284 or 800-945-9722, ext. 8284.

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, 800-945-9722, ext. 8268, or visit www.wsba.org/lawyers/services/lap.htm.

Help for Judges

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

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, 800-945-9722, ext. 5914, or juliesa@wsba.org.

Upcoming Board of Governors Meetings

June 4, Wenatchee • July 23–24, Leavenworth • September 23–24, 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 Margaret Shane at 206-727-8244, 800-945-9722, ext. 8244, or margarets@wsba.org. The complete Board of Governors meeting schedule is available on the WSBA website at www.wsba.org/info/bog/2009_2010meetingschedule.htm.

Usury Rate

The average coupon equivalent yield from the first auction of 26-week treasury bills in April 2010 was 0.269 percent. Therefore, the maximum allowable usury rate for May is 12 percent. Information from January 1987 to date is on the WSBA website at www.wsba.org/media/publications/barnews/usury.htm.

The members of

Pivotal Law Group

formerly Larson, Hart, and Shepherd, PLLC are pleased to announce their new and innovative legal services venture. In addition to partners Mike Larson, Mark Shepherd, and Managing Partner Christopher Thayer, the group welcomes:

Ron Bueing

a nationally recognized state and local tax lawyer, formerly of Deloitte Tax LLP, as Member

Mike Warren

a highly regarded and experienced business and real estate attorney, formerly of Warren & Duggan, PLLC, as Of Counsel

We will continue our current core focus in estate planning, business, real estate, employment discrimination, commercial litigation, medical malpractice, and personal injury; while adding taxation law, with an emphasis on Washington excise taxes and multistate business tax issues.

600 University Street, Suite 1730, Seattle WA 98101
Tel 206-340-2008 • Fax 206-340-1962
www.PivotalLawGroup.com

Sussman Shank LLP

is pleased to announce

Aaron J. Besen

has joined the firm as special counsel and will chair the firm's healthcare practice group.

Mr. Besen has extensive experience representing long-term care providers including skilled nursing, assisted living and independent living facilities, the landlords to these providers and related businesses. His experience includes handling the purchase and sale of operations or real estate of nearly 180 long-term care facilities, management agreements, regulatory issues, contracting issues, financing and complex transactional work. Mr. Besen returns to the firm after three years in private practice and eight years as Vice President and General Counsel to Evergreen Healthcare Management, L.L.C. He serves on the board of the Oregon Health Care Foundation and is a director and the chair of the Compensation and Corporate Governance Committee of EmpRes Healthcare, Inc. He is a member of the American Health Lawyers Association, Oregon Healthcare Association and Washington Healthcare Association.

1000 SW Broadway, Suite 1400, Portland, OR 97205
Tel: 503-227-1111 • Fax: 503-248-0130
www.sussmanshank.com

Wechsler Becker, LLP

announces with regret the retirement due to illness of its founding partner

Mary H. Wechsler

after 31 years of distinction in the practice of law.

Her presence will be deeply missed by the firm and the family law bar. The members of the firm wish her well.

Wechsler Becker, LLP
Family law litigation, arbitration, and mediation
701 Fifth Avenue, Suite 4550
Seattle, WA 98104
Tel: 206-624-4900 • Fax: 206-386-7896
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Sayre Law Offices PLLC

is pleased to announce

Steven M. Sayre

joined the firm effective March 1, 2010.

Mr. Sayre's concentration includes construction law, real estate, and general litigation.

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

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

Disbarred

Stephen D. Cramer (WSBA No. 9085, admitted 1979), of Federal Way, was disbarred, effective February 11, 2010, by order of the Washington State Supreme Court, following an appeal. This discipline is based on conduct involving dishonesty, illegal conduct, deceit, and misrepresentation of his tax liabilities. For more information, see *in re Disciplinary Proceeding against Cramer* __ Wn.2d __ , __ P.3d __ . *Stephen D. Cramer is to be distinguished from Steven A. Kraemer of Portland, Oregon.*

In 1995, the Department of Revenue (DOR) issued Mr. Cramer, a solo practitioner, a certificate of registration for Stephen D. Cramer, PLLC. Mr. Cramer was the sole owner of the PLLC. In 2003, Mr. Cramer stopped filing quarterly excise tax statements and eventually stopped paying taxes altogether. By 2006, he owed nearly $10,000 in back taxes. In April 2006, the DOR notified Mr. Cramer of a pre-hearing scheduled in May to discuss repayment of his tax deficiencies and filing of delinquent tax statements. Mr. Cramer did not appear at the hearing.

In August 2006, the DOR notified Mr. Cramer of a September 2006 hearing to determine the revocation of his PLLC certificate of registration due to outstanding tax warrants and failure to demonstrate the ability to pay past and future tax obligations. Mr. Cramer failed to appear at the hearing. The DOR subsequently issued a preliminary revocation order (PRO) revoking Mr. Cramer's certificate of registration for his PLLC based on his failure to pay taxes from 2003 to 2005. The PRO provided 21 days for Mr. Cramer to request review. Instead, on September 22, 2006, Mr. Cramer notified the DOR that his PLLC would cease doing business and terminate all further operations on September 30, 2006. He executed a notice of dissolution of the PLLC effective September 30, 2006. Two days before sending notice of his intent to dissolve the PLLC to the DOR, Mr. Cramer obtained a certificate of incorporation for a new professional services corporation, The Law Office of Stephen D. Cramer, Inc., PS (PS), from the secretary of state. He listed himself as the sole owner, shareholder, and officer of the PS. Mr. Cramer maintained the same law office space, phone number, office equipment, accounts receivable, and employee as when he operated his PLLC. He transferred his PLLC's assets to the new PS, but not the liabilities. Mr. Cramer did not seek a certificate of registration for his PS with DOR and did not inform DOR of its existence.

On October 6, 2006, the PRO for the PLLC became final. On October 12, 2006, the final revocation order was posted on Mr. Cramer's law office door. The provisions of the order required that it remain posted at the main entrance until the tax warrants were paid, and further advised "it shall be unlawful for any person to engage in business after the revocation of certificate of registration. Persons violating this provision shall be guilty of a Class C felony." Mr. Cramer later removed the posting.

Mr. Cramer operated his unregistered PS from October 2006 to January 2007. The DOR discovered Mr. Cramer's filing with the secretary of state incorporating his PS. On November 22, 2006, the DOR sent a letter to Mr. Cramer, which requested his PS registration number or submission of a completed application for certificate of registration. Mr. Cramer did not respond. When confronted by the DOR in January 2007, Mr. Cramer denied ever having received the November 2006 letter, which had been date-stamped by his office and was later submitted in correspondence to the WSBA in December 2006. Mr. Cramer also claimed he believed the Secretary of State's Office would take care of the registration of his PS with DOR, although he had handled the registration of his PLLC with DOR. On January 8, 2007, Mr. Cramer submitted his application to DOR for the PS. The DOR subsequently determined the PS was a successor to the PLLC and transferred the tax liabilities from the PLLC to the PS. Mr. Cramer did not pay his overdue taxes until DOR began garnishing the bank accounts of his PS in 2008.

Mr. Cramer's conduct violated RPC 8.4(b), prohibiting a lawyer from committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer; RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; RPC 8.4(i), prohibiting a lawyer from committing any act which reflects disregard for the rule of law whether the same be committed in the course of his or her conduct as a lawyer, or otherwise.

Joanne S. Abelson represented the Bar Association. Stephen C. Smith represented Mr. Cramer. Craig C. Beles was the hearing officer.

Suspended

J. Porter Kelley (WSBA No. 1480, admitted 1954), of Tacoma, was suspended for one year, effective January 6, 2010, by order of the Washington State Supreme Court following approval of a stipulation. This discipline was based on conduct involving trust account irregularities, failure to maintain adequate records of client funds, and failure to provide an accounting to client of how funds were spent.

In 2007–2008, Mr. Kelley represented a client in a family law matter. Mr. Kelley received $2,000 from the client as an advance fee, which he deposited directly into his general account instead of his trust account. Mr. Kelley eventually earned the $2,000 advance fee. As the case progressed, Mr. Kelley asked the client for fees as the work was performed. Mr. Kelley's estimate of time spent was based on notations kept in his file, but he did not send contemporaneous billings to the client. Mr. Kelley deposited additional funds he received from the client into his general account. Mr. Kelley did not keep complete records of the funds he received from the client or provide the client with an accounting of the funds she paid him. He sent the client a billing statement after the case was completed and did not bill her for all the time he put into the case.

As part of the investigation of the above matter, the Bar Association subpoenaed trust account records for the years 2006 to 2009 from Mr. Kelley's bank and reviewed his trust account check register. Mr. Kelley did not maintain ledgers for individual clients and his trust account check register was incomplete. He failed to identify a client matter for each disbursement and failed to enter a balance after each transaction. In numerous instances, Mr. Kelley wrote checks out of trust to cash or to himself with no notation on the check or in the register as to the client matter. In at least two instances, Mr. Kelley deposited his own funds into the trust account. On one occasion, Mr. Kelley deposited a check made payable to him from his brother into the trust account and then, seven days later, withdrew the funds. The check from Mr. Kelley's brother was a personal loan and was unrelated to any client matter. On another occasion, Mr. Kelley deposited his own funds into trust in order to pay the mediator in the above matter out of the trust account.

Mr. Kelley's conduct violated RPC 1.15A(c), requiring a lawyer to hold property of clients and third persons separate from the lawyer's own property, which includes: (1) depositing and holding in a trust account funds subject to the rules, (2) depositing into a trust account legal fees and expenses paid in advance until earned or incurred, and (3) identifying, labeling, and appropriately safeguarding any property of clients or third persons other than funds and preserving such records for seven years after return of the property; RPC 1.15A(d), requiring a lawyer to promptly notify a client or third person of receipt of the client or third person's property; RPC 1.15A(e), requiring a lawyer to promptly provide a written accounting to a client or third person after distribution of property or upon request and to provide at least annually a written accounting

to a client or third person for whom the lawyer is holding funds; RPC 1.15A(h)(1), prohibiting funds belonging to the lawyer from being deposited or retained in a trust account except (i) funds to pay bank charges, (ii) funds belonging in part to a client or third person and in part presently or potentially to the lawyer, or (iii) funds necessary to restore appropriate balances; RPC 1.15A(h)(2), requiring a lawyer to keep complete records as required by Rule 1.15B; RPC 1.15A(h)(5), requiring that all trust account withdrawals are made only to a named payee and not to cash; and RPC 1.15B(a), requiring a lawyer to maintain current trust account records.

Joanne S. Abelson represented the Bar Association. Mr. Kelley represented himself.

Reprimanded

Randal B. Brown (WSBA No. 24181, admitted 1994), of Covington, was ordered to receive two reprimands, effective June 23, 2009, following approval of a stipulation by the Disciplinary Board. This discipline is based on conduct while representing two separate clients involving failure to communicate with clients.

Client A: In June 2007, Client A hired Mr. Brown to pursue an administrative proceeding to challenge his special-needs child's individual educational plan. Mr. Brown assured Client A that he would attend an August 2007 meeting with school officials to discuss an educational plan for the child's senior year, but failed to appear at the meeting. Mr. Brown then assured Client A that he would file an administrative complaint, but failed to do so. Thereafter, Mr. Brown did not timely respond to Client A's attempts to contact him about the status of the matter.

Effective December 1, 2007, Mr. Brown closed his private practice and commenced working for a public agency. In February 2008, because his child's senior year was nearly over and Client A was dissatisfied with Mr. Brown's representation, Client A requested that Mr. Brown refund the legal fees that Client A had paid him. Mr. Brown did not respond to any of Client A's requests for a refund.

Client B: In April 2007, Client B hired Mr. Brown to obtain full custody of his child. In September 2007, the court entered a final order with regard to the parenting plan and child support. Thereafter, Mr. Brown considered his representation over, but did not inform his client of that or file a formal notice of withdrawal. After closing his private practice and commencing work for a public agency on December 1, 2007, Client B informed Mr. Brown that the court had set a child support review hearing for December 2007. Mr. Brown told Client B that he had a new job, but did not inform Client B that he could no longer continue to represent him or appear for him at the December 2007 hearing. Mr. Brown did not appear at the December 2007 hearing and did not respond to Client B's subsequent requests for an explanation.

Mr. Brown's conduct violated RPC 1.4(a)(3), requiring a lawyer to keep the client reasonably informed about the status of the matter; and RPC 1.4(a)(4), requiring a lawyer to promptly comply with reasonable requests for information.

Leslie C. Allen represented the Bar Association. Mr. Brown represented himself.

Reprimanded

Michael Joslin Davis (WSBA No. 25846, admitted 1996), of Tacoma, received two reprimands on November 9, 2009, by order of the Disciplinary Board following approval of a stipulation. This discipline is based on conduct involving trust account irregularities, inadequate trust account records, and non-cooperation in a Bar Association investigation. *Michael Joslin Davis is to be distinguished from Michael T. Davis, of Bellevue, and Michael A. Davis, of Scottsdale (resigned).*

During a random investigation of Mr. Davis's trust account, a Bar Association auditor found Mr. Davis's trust account records were incomplete. By not keeping accurate client records, deposit records, or check records, it was not possible for him to determine the ownership of all client funds in his trust account. The auditor also found that Mr. Davis was not removing his own funds from the trust account once ownership of those funds was established, and thereby commingled his funds with the client funds.

In the course of investigating the issues related to his trust account, disciplinary counsel requested that Mr. Davis produce his trust account records for review. Mr. Davis did not make the records available to disciplinary counsel when requested, and only produced records after a subpoena was issued for Mr. Davis to appear with the records.

Mr. Davis's conduct violated former RPC 1.14(a) and current RPC 1.15A(h)(1), requiring that all funds of a client paid to a lawyer be deposited into an identifiable interest-bearing trust account and that no funds belonging to the lawyer be deposited therein except as expressly permitted by rule; former RPC 1.14(b)(3) and current RPC 1.15A(h)(2) and RPC 1.15B, 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; and RPC 8.4(l), prohibiting a lawyer from violating a duty or sanction imposed by or under the Rules for Enforcement of Lawyer Conduct in connection with a disciplinary matter.

Randy V. Beitel represented the Bar Association. Mr. Davis represented himself.

Reprimanded

Sean W. Drew (WSBA No. 14324, admitted 1984), of Niles, Michigan, received a reprimand, effective September 30, 2009, by order of the Washington State Supreme Court imposing reciprocal discipline in accordance with an order from the State of Michigan Attorney Discipline Board following approval of a stipulation. This discipline was based on conduct involving Mr. Drew's failure to communicate with his client regarding the basis or rate of his fee and failure to respond to a lawful request for information from a disciplinary authority. For more information, see the State of Michigan Attorney Discipline Board website at www.adbmich.org/coveo/notices/2009-05-26-08n-153.pdf.

Mr. Drew's conduct violated Michigan's RPC 1.5(b), requiring a lawyer who has not regularly represented a client to communicate to the client, preferably in writing, the basis or rate of the fee before or within a reasonable time after commencing the representation; and Michigan's RPC 8.1(a)(2), prohibiting a lawyer in connection with a disciplinary matter from knowingly failing to respond to a lawful demand for information from disciplinary authority.

Joanne S. Abelson represented the Bar Association. Mr. Drew represented himself.

Reprimanded

Jerry L. Kagele (WSBA No. 4851, admitted 1972), of Spokane, was ordered to receive a reprimand on October 22, 2009. This discipline is based on conduct involving failure to act diligently.

In 2002, Mr. Kagele represented an immigration client who had been placed in removal proceedings and whose wife had previously submitted an I-130 petition (an Immigration Petition for Relative seeking authorization to legally reside in the United States). During a June 2002 hearing before the Immigration Court, Mr. Kagele was directed by the immigration judge to file a copy of the form I-797 receipt notice that had been received by his client's spouse, which would evidence when the I-130 petition had been filed. The immigration judge also directed Mr. Kagele to file a signed form EOIR-28 Notice of Appearance "in the next week." Mr. Kagele had received both a copy of the notice and a signed form from his client in April 2002, but failed to promptly file either as directed.

Mr. Kagele's conduct violated RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client.

Debra J. Slater represented the Bar Association. Kurt M. Bulmer represented Mr. Kagele. David A. Thorner was the hearing officer.

Reprimanded

Jonathan Morrison (WSBA No. 31153, admitted 2001), of Port Orchard, was ordered to receive two reprimands plus one year's probation, effective October 5, 2009, following approval of a stipulation by the Disciplinary Board. This discipline resulted from conduct, while representing two separate clients, involving failure to provide competent representation, lack of diligence, and improper withdrawal.

Client A: In 2008, on behalf of Client A, a defendant in a civil matter, Mr. Morrison faxed Plaintiff's counsel a notice of appearance and an answer to the complaint. Mr. Morrison neglected

to file either document with the court. Mr. Morrison subsequently negotiated with Plaintiff's counsel to continue a hearing on Plaintiff's summary judgment, but did not file a response to the motion for summary judgment. Shortly before the new hearing date, the judge's bailiff advised Plaintiff's counsel that Mr. Morrison had not filed a notice of appearance on behalf of Client A. Had Plaintiff's counsel known that Mr. Morrison had not actually appeared on behalf of Client A, he would have moved for default earlier in the proceeding.

Client B: Mr. Morrison represented Client B in a criminal matter in 2006–2007. He negotiated a resolution with the prosecutor. Client B did not want to accept the resolution, fired Mr. Morrison, and hired new counsel. Mr. Morrison failed to file a notice of withdrawal, return the new counsel's phone calls, or provide the new counsel with Client B's file, all of which impeded the ability of the new counsel to represent Client B. The new counsel subsequently raised, for the first time, Client B's competency to stand trial. Client B was found incompetent and the prosecutor dismissed the criminal matter.

Before being fired, Mr. Morrison also represented Client B in a forfeiture matter related to the criminal proceeding. A default was entered against Client B in that matter. Mr. Morrison failed to move to set aside the default or to perfect the appeal of the default order.

Mr. Morrison's conduct violated RPC 1.1, requiring a lawyer to provide competent representation to a client; RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; RPC 1.16(d), requiring a lawyer, upon termination of representation, to take steps to the extent reasonably practicable to protect a client's interests, such as surrendering papers and property to which the client is entitled; and RPC 8.4(d), prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice.

Joanne S. Abelson represented the Bar Association. Patrick C. Sheldon represented Mr. Morrison.

[redacted]

[redacted]

[redacted]

[redacted]

Suspended Pending the Outcome of Disciplinary Proceedings

Sandeep Baweja (WSBA No. 28936, admitted 1999), of Irvine, California, was suspended pending the outcome of disciplinary proceedings, pursuant to ELC 7.1 (Conviction of a Crime), effective February 18, 2010, by order of the Washington State Supreme Court. This is not a disciplinary sanction.

Suspended Pending the Outcome of Supplemental Proceedings

Douglas P. Ferrer (WSBA No. 15275, admitted 1985), of Seattle, was suspended pending the outcome of supplemental proceedings, pursuant to ELC 8.3(e), effective March 1, 2010, by order of the Washington State Supreme Court. This is not a disciplinary sanction.

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Fax: 206-727-8319
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Information must be received by the first day of the month for placement in the following month's calendar.

Animal Law

8th Annual Animal Law Institute
June 17 — Seattle. CLE credits pending. By the WSBA Animal Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Business Law

Business Law Midyear Meeting
June 10 — Seattle. 3 CLE credits pending. By the WSBA Business Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Bankruptcy Law

Bankruptcy Boot Camp
June 24 — Seattle and webcast. 6 CLE credits pending, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Civil Procedure

Washington Civil Procedure: Let's Do It Right
May 26 — Seattle and webcast. 6.5 CLE credits, including 2 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Construction Law

Construction Law Midyear
June 11 — Seattle. CLE credits pending. By the WSBA Construction Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Criminal Law

Criminal Law Boot Camp
June 2 — Seattle and webcast. 6 CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Environmental Law

2010 Environmental and Land Use Law Section Midyear
May 6–8 — Ocean Shores. 12.5 CLE credits, including 1 ethics credit pending. By the WSBA Environmental and Land Use Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Water Right Transfers in Washington
May 21 — Seattle. By The Seminar Group; 206-463-4400; www.theseminargroup.net/seminar.lasso?seminar=10.wamwa.

Fisheries and Hatcheries: Legal and Regulatory Framework
May 27 — Seattle. By The Seminar Group; 206-463-4400; www.theseminargroup.net/seminar.lasso?seminar=10.hatchwa.

Ethics

Lincoln on Professionalism
June 29 — Seattle and webcast. 2.75 ethics credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Family Law

The Effect of Bankruptcy on Family Law Issues
May 13 — Seattle. 1 CLE credit. By McKinley Irvin. 206-625-9600; www.mckinleyirvin.com.

Practice Tips from the Bench
June 8 — Seattle. 1 CLE credit. By McKinley Irvin. 206-625-9600; www.mckinleyirvin.com.

2010 Family Law Section Midyear
June 18–20 —Vancouver, WA. 14.5 CLE credits, including up to 2 ethics credits pending. By the WSBA Family Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

General

Damages
May 4 — Seattle. By Washington Defense Trial Lawyers; www.wdtl.org/default.aspx?tabid=647.

Intermediate Collaborative Law Skills Training
May 7 — Seattle. 6.5 CLE credits pending. By Seattle Collaborative Law Training and Learning Center; www.collabtraining.com. Contact Rachel, 425-822-0283, rachel@felbecklaw.com.

Sacco and Vanzetti: Bias and the Political Trial
May 12 — Toll-free teleconference with online PowerPoint. 2 CLE credits pending, including 0.5 ethics. By Rubric CLE; www.rubriccle.com; 206-714-3178.

Title 11 Guardianship Guardian *ad Litem* Training — Initial Certification
May 13–14 — Seattle. 13 CLE credits pending. By King County Bar Association; www.kcba.org; 206-267-7004.

2010 Title 11 Guardianship Guardian *ad Litem* Training — Annual Re-Certification
May 14 — 6.5 CLE credits pending. By King County Bar Association; www.kcba.org; 206-267-7004.

Hanging Your Shingle on the Plaintiff's Side
May 20 — Seattle. By WSAJ; www.washingtonjustice.org; 206-464-1011.

Corporate Speech Under Citizens United
May 19 — Toll-free teleconference with online PowerPoint; 2 CLE credits pending. By Rubric CLE; www.rubriccle.com; 206-714-3178.

Lincoln on Professionalism
June 29 — Seattle and webcast. 2.75 ethics credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Health Law

Health Law
June 9 — Seattle. 6 CLE credits pending. By the WSBA Health Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Indian Law

22nd Annual Indian Law CLE Conference
May 21 — Seattle. CLE credits pending. By WSBA Indian Law Section; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Intellectual Property

Licensing Essentials
May 13 — Seattle. 6 CLE credits pending, including .5 ethics. By the WSBA Intellectual Property Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Litigation

Jury Selection
June 16 — Seattle. By WSAJ; www.washingtonjustice.org; 206-464-1011.

Mediation

17th Annual NW Dispute Resolution Conference
April 30–May 1 — Seattle. 9.75 CLE credits, including 1.25 ethics. By the Washington Law School Foundation, WSBA Alternative Dispute Resolution Section, KCBA Alternative Dispute Resolution Section, Washington Mediation Association, and Resolution Washington. www.law.washington.edu/cle; 206-543-0059.

Mediation Training
June 21, 23, 24, 28, and 29 — Seattle. 34.25 CLE credits, including 1.75 ethics. By Dispute Resolution Center of King County; kaseya@kcdrc.org; www.kcdrc.org.

Real Property, Probate, and Trust

Choosing, Managing, and Drafting the Special Needs Trust
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June 4–6 — Vancouver, WA. 11.25 CLE credits, including up to 3.75 ethics pending. By the WSBA Real Property, Probate and Trust Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Webcast Seminars

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Virtual Independent Paralegals, LLC provides full-range comprehensive legal and business services at reasonable rates. Due diligence document review/databasing, medical summarization, transcription, legal research and writing, pleading preparation, discovery, motions, briefs, and in-person trial

support. Because we're 24/7/365 we're able to bridge the 9-to-5 gap. The hours we produce contain no overhead costs, and are thus, all billable. We hit the ground running, providing highest quality results. We're just a phone call or email away. www.viphelpme.com.

Résumé/career consultations for attorneys — 30-minute sessions — $65. Lynda Jonas, Esq., owner of Legal Ease L.L.C. — Washington's Attorney Placement Specialists since 1996 — works with attorneys only, in Washington state only. She has unparalleled experience counseling and placing attorneys in our state's best law firms and corporate legal departments. It is her opinion that more than 75 percent of attorney résumés are in immediate, obvious need of improvement. Often these are quick, but major, fixes. Lynda is uniquely qualified to offer résumé assistance and advice/support on best steps to achieve your individual career goals within our local market. She remains personally committed to helping attorneys land the single best position available to them. All sessions are conveniently offered by phone. Please e-mail legalease@legalease.com or call 425-822-1157 to schedule.

Experienced contract attorney drafts trial and appellate briefs, motions, and memos for other attorneys; many satisfied clients. Resources include LEXIS Internet libraries and UW Law Library. Tell me about your case! Elizabeth Dash Bottman, 206-526-5777, bjelizabeth@qwest.net.

Experienced, efficient brief and motion writer available as contract lawyer. Extensive litigation experience, including trial preparation and federal appeals. Reasonable rates. Lynne Wilson, 206-328-0224, lynnewilsonatty@gmail.com.

Fast cash for seller carry-back notes, www.wallstreetbrokers.com. Fast cash for divorce liens, www.divorceliens.com. New book by Lorelei Stevens, www.fastcashbook.com. Larry and Lorelei Stevens; 800-423-2114. Notes appraised for estates.

Experienced contract attorney: 18 years' experience in civil/criminal litigation, including jury trials, arbitrations, mediations, and appeals. Former shareholder in boutique litigation firm. Can do anything litigation-related. Excellent research and writing skills, reasonable rates. Peter Fabish, pfab99@gmail.com, 206-545-4818.

Clinical psychologist — competent forensic evaluation of individuals in personal injury, medical malpractice, and divorce cases. Contact Seattle office of Gary Grenell, Ph.D., 206-328-0262 or mail@garygrenell.com.

Oregon accident? Unable to settle the case? Associate an experienced Oregon trial attorney to litigate the case and share the fee (proportionate to services). OTLA member, references available, see Martindale, AV-rated. Zach Zabinsky, 503-223-8517.

Legal research and writing by attorney in Spokane, Washington. Gonzaga University graduate, associate editor of law review, excellent skills, and very reasonable rates. Pamela Rohr, 509-928-4100.

Impairment ratings for chiropractic patients, by an independent medical examiner, using the *AMA Guides To the Evaluation of Permanent Impairment*, 5th and 6th Editions. Call for schedule, fees, and specifics by contacting Dr. Michael Upton, DC, at 425-358-1698.

Contract attorney available for research and brief writing for motions and appeals. Top academic credentials, law review, judicial clerkship, complex litigation experience. Joan Roth, 206-898-6225, jlrmcc@yahoo.com.

Experienced nurse-attorney available for litigation support. Ten years' medical-negligence/personal-injury litigation experience, both plaintiff and defense, added to 15-plus years of ED/critical-care nursing. Five years' experience as mediator. Expert medical records review, organization, and analysis; medical/legal research; and obtaining experts, drafting case-specific discovery and briefs. Hourly or flat-rate basis. Contact PJH Litigation Support at hanlon.pj@gmail.com or 206-307-5654.

Experienced patent attorney available for contract work. Patent application drafting; background research. Biotech/medical device/chemical. Reasonable flat fee. Contact Stan Sastry, Ph.D., J.D. 425-357-6241.

Recovering attorney seeking voice-over work! Experienced voice-over artist and narrator with 20-year legal background and fabulous voice would love to record your website audio, podcasts, CLE materials, legal publications, employee and in-house training videos, telephone messaging system, and whatever else you might need! Please contact Jean Hilde-Fulghum at jmhilde@earthlink.net.

Insurance — lawyers professional liability, general liability, and bonds. Independent agent, multiple carriers, 16-plus years' experience. Contact Shannon O'Dell, First Choice Insurance Services, 509-638-2558; 1-888-894-1858; www.fcins.biz.

Investigations and risk management specialist: 21-years command-level criminal investigator experience in New York District Attorney's office; 14 years as corporate director of Global Security and Risk Management. Licensed Washington private investigator. info@rjmriskconsultants.com; 425-279-3857.

Governmental forensic accountant — Susan Busbice, CPA. 18 years' government financial reporting. Trial prep experience. References available. sb1911@comcast.net; 541-791-2194 office; 541-981-0288 cell.

Experienced contract attorney available to assist with overflow work. Services include research, memo, motion and brief writing for criminal and civil cases. Appellate experience. Reasonable rates. Amy Felt, 253-927-1918, amy@feltfamily.net. http://law.feltfamily.net.

Space Available

Downtown Seattle executive office space: Full- and part-time offices available on the 32nd floor of the 1001 Fourth Avenue Plaza Building. Beautiful views of mountains and the Sound! Close to courts and library. Short- and long-term leases. Conference rooms, reception, kitchen, telephone answering, mail handling, legal messenger, copier, fax, and much more. $175 and up. Serving the greater Seattle area for over 30 years. Please contact Business Service Center at 206-624-9188 or www.bsc-seattle.com for more information.

Kent — spacious, fully furnished office(s) in very elegant, newly constructed building. Gated entrance with parking. Totally turn-key. All amenities included. Highly visible location on Meeker Street within walking distance of RJC. Possible referrals. Contact 206-227-8831 or donkron1@msn.com.

Turn-key — new offices available for immediate occupancy and use in downtown Seattle, expansive view from 47th floor of the Columbia Center. Office facilities included

in rent (reception, kitchen, and conference rooms). Other administrative support available if needed. DSL/VPN access, collegial environment. Please call Amy, Badgley Mullins Law Group, 206-621-6566.

Pioneer Square (Seattle) firm offering sublease for two professional offices and one staff office. For details, see Craigslist ad titled "3 Offices Available (Pioneer Square)." Contact Griff Flaherty at 206-682-2616.

Bellevue office space: Two offices available for sublease in downtown Bellevue. Rent includes shared use of conference rooms, small law library, and kitchen. Options include use of copier and covered parking. Please contact asakai@jgslaw.com.

Mill Creek office space for rent. Well-appointed professional office space available. Cubicles: ideal for newly practicing attorney. Conference room: hourly rates available. Call 206-999-7433.

Offices available in downtown Seattle. Available for immediate occupancy, IBM building, new offices, collegial environment. Offices $1,000 per month; with assistant station $1,200. Three offices and two stations available. Rent includes reception, kitchen, copier, fax, postage meter, and conference room. Parking and storage in building available. Please contact Anne-Marie, 206-654-4011, aes@cslawfirm.net.

Belltown (Seattle) law firm offering turn-key sublease. Corner lot building with large windows and beautiful cherry wood interiors. Four professional offices (18' x 14', 18' x 16', 14' x 11', and 14' x 11'), plus two paralegal offices, and two staff work stations. Office share available with use of one of the professional offices and one paralegal office. If shared, the office facilities include furnished reception room with working fireplace, built-in reception desk, furnished conference rooms, library, kitchen, working file room with high-speed copier/fax/scanner, and large basement file storage. Administrative support of high-speed Internet, cable, and VoiceIP is available. Contact accounting@aikenbrownlaw.com.

Pioneer Square (Seattle). Congenial, full-service offices available (Maynard Building). Walking distance to courthouse. Includes receptionist, conference room, messenger service, library, DSL, fax, copier with e-mail scanner, kitchenette. Steve, 206-447-1560.

Downtown/Pike Place Market (Seattle) office space. Sound view office to share with established practitioners. Adjacent to Pike Place Market and Seattle Athletic Club, includes secretarial station, shared receptionist, conference room. Parking available. Contact Gil Levy at 206-443-0670.

Turn-key Tacoma office. 25-year-old phone number and reserved Internet tacomalaw.com and tacomalaw.net. Two conference rooms, nine networked work stations. Fully furnished with copier, computers, phone system, scanner/fax. Private parking lot for up to 10 cars. Available for immediate lease due to family law attorney's appointment to the bench. 253-229-0019.

Everett Mall Way (Everett) office space for rent. In a vibrant location with great business potential a new office is available for immediate occupancy, $1,000/month; with receptionist station, $1,200/month. Rent includes furnished reception room, furnished conference room, high-speed Internet, fax, and copier. Ample parking available. Please contact Olga, 206-355-0702; olia7@hotmail.com.

Downtown beautiful Bellevue office space available — Seeks new tenant to share space, one private office, plus space for secretary, storage, completely equipped with T1, share conference room, telephone, copier, fax, scanner, etc. Please call Winston at 425-213-0553.

Class-A Everett offices — located on the third floor of the Frontier Bank building. Two suites available, 14' x 14' and 16' x 12'. Staff workstations available with potential staff share, full kitchen, new high-speed copier/fax/scanner, conference room with 50" flat screen and digital cable, high-speed Internet. Plenty of parking and close to courthouse. Potential client referrals. View photos at http://photos.frontier302.info. Lease terms negotiable. Contact Mark Olson at 425-388-5516 or mark@mgolsonlaw.com.

Shoreline law office space, $350. Includes use of conference room, lunch room. Great location near Aurora and 185th with parking. Other amenities. Possibility of overflow case load due to association with 30-year experienced counsel. 206-859-3400.

Bainbridge Island executive meeting space. Need a conference room for your next deposition or client meeting that's convenient and portrays the right image for your firm? Business Confluence Professional Meeting Facilities is located next to the ferry terminal on Bainbridge Island. Visit www.BusinessConfluence.com to view our rooms, or call 206-842-4700 to schedule a time or day.

Will Search

Will search for Douglas A. Lindsay, resident of Mukilteo, Washington, who died January 7, 2010. Please contact Stephen A. Eggerman at 425-828-9509, or eggermanlaw@isomedia.com.

Seeking Seattle attorney (ex-Marine) who provided will for Philip Alan Smith (ex-Marine) of Hansville, WA. Capt. Smith died January 18, 2010. Call 360-377-7850 or 206-935-5267.

Last Will of Elizabeth A. Davis of Woodinville, Washington; date of death: March 21, 2009. If you have any information that might help us locate her last will, please e-mail ElizabethDavis.will@gmail.com.

To Place a Classified Ad

Rates: WSBA members: $40/first 25 words; $0.50 each additional word. Nonmembers: $50/first 25 words; $1 each additional word. Blind-box number service: $12 (responses will be forwarded). Advance payment required; we regret that we are unable to bill for classified ads. Payment may be made by check (payable to WSBA), MasterCard, or Visa.

Deadline: Text and payment must be received (not postmarked) by the first day of each month for the issue following, e.g., June 1 for the July issue. No cancellations after the deadline. Mail to: WSBA *Bar News* Classifieds, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539.

Qualifying experience for positions available — state and federal law allow minimum, but prohibit maximum, qualifying experience. No ranges (e.g., "5-10 years"). Ads may be edited for spelling, grammar, and consistency of formatting. If you have questions, please call 206-727-8213 or e-mail classifieds@wsba.org.

The author in his high-school-era bedroom, working on that chord that will drive the ladies wild.

School of Hard Rocks

I was a college drop-out and I'm fine with it. Some of my most notable contemporaries were drop-outs too, including Bill Gates and Paul Allen. They managed to do quite well

for themselves, although I would note that neither rose to the height of editing an official state bar association magazine. While I dropped back into college after a year, I've never regretted my time off, which was the most colorful of my life because of what I dropped out to be: a professional musician. OK, I use "professional" loosely. I still needed day jobs, such as hanging gutters and flipping burgers. But people actually paid me to play music, sometimes enough to cover my bar tab.

Music has always been a vital part of my life. One of the early Christmas gifts I got from my parents was a turntable and a bizarre assortment of records I suspect they dredged from the "free" bin at Goodwill: early Disney TV and movie soundtracks, a compilation of patriotic World War II songs, some big-band jazz, etc. My mom was determined that I become not just a music listener but a performer, so when I was in kindergarten she took me to a music store and attempted to sign me up for — of all things — accordion lessons. Thankfully for me, when the shop owner had me try to play even the smallest accordion in the shop, it was too big for me to manage. Mom relented until years later, when she decided that, rather than the next Flaco Jiménez, I was destined to be the next Herb Alpert. Under duress, I took trumpet lessons the summer after third grade. For a variety of reasons, not the least of which being issues with the "spit valve," my horn-playing career fell flat.

It wasn't until high school that I took up an instrument of my own volition. Being a testosterone-laden adolescent, I was drawn not to the classical or folk instruments, but to the electric guitar. My reasoning was simple: In the long, rich history of the world's music, has a female listener ever been moved to discard an article of clothing during an accordion solo? No. Not even a glove. So while Mom would have loved for her son to have been the next Latin musician/heartthrob in mainstream music, what she got was a kid who would spend thousands of hours of his high-school and college years cranking out the devil's music with a bunch of scraggly, rebellious dudes — and I mean that in a good way. I played guitar and bass, and we plied our craft in various basements, garages, dive bars, and reception halls on the fringes of the post-Hendrix/pre-Cobain Seattle music scene. The longest-running band I was in lasted about a year, the year I quit college.

By the way, here's some free lifestyle advice: If you have never played an instrument, drop what you're doing — especially if it's asbestos litigation or anything involving codicils — go buy or rent an instrument, and sign up for lessons. Or, if you have the eye-hand coordination of a water buffalo, take singing lessons. Then, as soon as you're halfway proficient, find some people to play or sing with. You owe it to yourself. Music wouldn't have survived all these centuries and become such a pervasive part of every culture on earth if it weren't hard-wired into our brains. Few things in life are more transcendent than plucking a string, singing in harmony, or banging a drum with music surging around you.

Having said that, it was not a difficult decision for me to abandon my music career and return to college. An anecdote will illustrate. Our band had played two or three weekends in a row at a bar on First Avenue just south of Pike Place Market. Although the whole building has since been replaced with trendy cafes and boutiques, the area then was authentic old-time Seattle, by which I mean it was a place to avoid if you preferred not to leave in an ambulance. At the end of our stint, the proprietor brought us into his office to discuss our remuneration. He opened a locked cabinet containing numerous items, three of which stood out: a stack of U.S. currency, a baggie of white powder, and a revolver that would have made Dirty Harry nervous. Without explicitly identifying the contents of the baggie, the bar owner suggested we might prefer to receive our wages in convenient powder form, which he generously offered to dispense liberally so as to provide a premium value as compared to the cash. While vociferously expressing our admiration for the flexible compensation package he had developed for his fine business, we politely declined the chemical option. We got our cash and left without incident. Not long after that, I realized that by the time I was age 30 or 40, I probably wouldn't want to be working someplace where payday involved a handgun.

Still, for any college student with an opportunity to play music, travel the world, save the whales — or whatever — for a year, I say go for it. You only get so many chances to rock.

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