

Washington State

# BarNews

MAY 2012

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# Washington State BarNews

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MAY 2012

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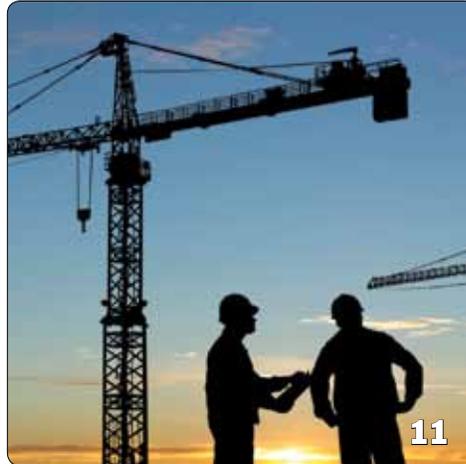
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### Leaving Seattle

I just read the warning on the Seattle "Sick and Safe Leave Act" (*Bar News* April 2012), also known as the 1) Leave Seattle ASAP Act, 2) Occupy Seattle Law Office Act, 3) Renton Landlord Recovery Act, 4) Moving Van Recovery Act, 5) Insurance Attorneys Full Employment Act; 6) Welcome to Renton Act. Your article is timely because there is still time to fire any employees over the limit of

four and you can also check the time left on your Seattle lease, find space in Renton and hire a moving van if you can find one. You ask "Is your firm prepared?," however the proper question is "What have you done today to get out of Seattle?"

*Greg Staeheli, Spokane*

### Referendum Reactions

I must say that the majority of lawyers are really regressive — the things the WSBA does with its money and fees, are really progressive. Guess, the regressive tendency of the United States electorate has now permeated the lawyers, as well as the conservative/regressive public. It is a sorry state for once progressive lawyers in Washington, and I am somewhat ashamed of my peers who voted in the majority — they do not understand what good work will now be lost.

*Julian "Pete" Dewell, Seattle*

You wonder why we are angry about Bar Dues and your magazine cover has "Weekend Getaways" [April 2012 *Bar News*] featured? Can we opt out of this ridiculously overpriced and absolutely irrelevant magazine?

*Heidi Nagel, Seattle*

Just because I enjoy Michael Heatherly's pieces so much, I will be voting "No" on the referendum. I can't take the chance the budget cuts might mean no more *Bar News* and my favorite articles!

*Erin Sullivan-Byorick, Tacoma*

I voted YES for the referendum and share my reasons with those who have the advantage of a bully pulpit. You are supposed to work for me and any admonishment that no, you work for the good of the profession, falls on deaf ears. I and my compatriots that practice law every day are the profession. My goal every day is to be thrifty with money I take in, economize on overhead expenses and serve my clients well. Why are the bar's offices in Seattle? Why is it staffed the way it is? Are the programs and initiatives it

sponsors targeting services to the bulk of WSBA's membership or are they aiming for a broader reach? I fail to see a precise and distinct mission statement regarding the WSBA. Perhaps less money will focus it on a narrower mission and vision. As a regulator, the WSBA has a defined set of responsibilities, yet has taken on many aspirational goals. Consider my vote one for simplicity and service to membership and community through implementation of just those narrow responsibilities. A resolve to be efficient and effective is not grounded in more funding, rather less. Had you spent the same amount of energy seeking to serve us better as you have seeking to increase your cash flow, would your time not have been better spent?

*Stan Muir, Vancouver*

### Another View on Cuba

I've read with interest the comments regarding the piece in the *Bar News* concerning the members of our bar who went to Cuba and wrote an article ["On Law and Life in Cuba: The Cuban Legal Profession and Culture Offer Contrast and Surprises," January 2012 *Bar News*]. Frankly, I'm kind of appalled at the negative one-sided nature of the comments. I suspect they were the only types of comments that the *Bar News* received. Having been born in a semi-foreign country, Canada, and having left Canada at the age of 10, I've tried to put myself in the place of Cubans being forced to leave their country (pretending that a Castro type dictator forced my parents and I to leave Canada). I actually have about 30-plus cousins still living in Canada. I have asked myself whether I could support a total U.S. boycott of Canada for 50-plus years and drive my relatives into poverty and related hunger etc. Would that show love for my remaining relatives? Not in my book. And before any of you peg me as unpatriotic, I served my 20 years in the USAF and Coast Guard. At least the people who argued in Vietnam that they destroyed the village to save it had no loved ones in the village. Small point, but it shows how inhumane our Cuban policy has been.

*Bob Ferguson, Hansville*

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# Continuing the Discussion

## What can be learned from results of the referendum?

The results of the referendum are now in. The membership has voted to reduce the license fees to \$325. Unquestionably, I'm very disappointed, as I was very clear I was voting "No" on the referendum and encouraged others to do the same. However, I'm not here to dissect the outcome. Instead, I'd like to talk about what I learned throughout this process and where we go from here.

First and foremost, I learned that we're not listening, hearing, and talking with the membership in the most effective way. While I can speak volumes about the value I've received from my membership throughout my career, I acknowledge that not every member feels as I do. Simply telling members why the Bar is of great value and integral to the legal profession is not enough.

Your voice matters, and it's time for more thoughtful, focused discussion. As we all know, and I believe can appreciate, complaining is one thing, but getting to the root of issues and rationally discussing and exploring good ideas and improvements is another.

The latter is where I'd like to focus as WSBA moves forward. I'm interested in engaging in discussions about how WSBA best provides value that is relevant to you. My first step in this process was to pose two questions to the membership through an email sent shortly after the referendum results were released. I asked you:

- How can WSBA be of greater value to you?
- How can WSBA better serve the day-to-day practitioner?

Soon, I'll randomly draw 10 names

from those who responded and invite you to join me and Executive Director Paula Littlewood to lunch to discuss your answers, ideas, and more.

All of the responses I receive will be shared and discussed with the Board of Governors. The WSBA is committed to delivering programs and services that matter, make a difference, and meet your needs and the needs of the public we serve.

It is critical we provide multiple ways for you to share thoughts and become involved in important conversations about the future of WSBA and the profession. We're exploring some new ideas, and one of those is online chats with me. I'll be conducting one very soon, and I encourage you to join me online for the opportunity to get questions answered and share thoughts and ideas with me. While I know it won't be the same as conducting an online chat with a celebrity or sports star, we'll try to make it a valuable experience for all who participate.

We're also weighing the idea of holding quarterly town halls, where you'll have the opportunity to join in person or via webcast for open conversations with the Board of Governors and Executive Director Paula Littlewood.

Undoubtedly,

technology allows us to connect anywhere anytime, but we all know that face-to-face remains a critical component of communications. I'm more than willing to meet with your local or county bar and hold candid discussions. After all, working together is the only way we can strengthen our Bar and ensure your priorities are the WSBA's priorities as we face a \$3.6 million budget reduction.

While the referendum outcome was not what I expected, it clearly engaged our membership and brought conversations and issues to the forefront. I want that to continue and will increase my efforts to listen often, engage more, incorporate your input into decisions made by the Board of Governors, and work together to

shape a strong future for our profession and our Bar.

In fact, since the vote I have received emails from literally hundreds of our members responding to the vote. I am gratified to hear from so many of our members. Our organization is alive and we will become even better.

Feel free to stop by my office in Cashmere, call me at 509-782-4418, or email [comments@wsba.org](mailto:comments@wsba.org). I'd like to hear from you. ☺

➤ I'm more than willing to meet with your local or county bar and hold candid discussions. After all, working together is the only way we can strengthen our Bar and ensure your priorities are the WSBA's priorities . . .

*Steve Crossland is the WSBA president and practices in Cashmere.*

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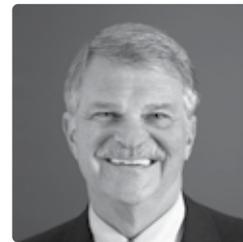
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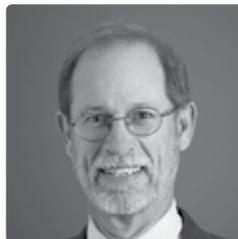
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# The Post-Referendum WSBA: Answering Fundamental Questions

**B**y now, I presume every WSBA member is aware that the referendum to reduce license fees to \$325 has passed. I want to thank all of you who engaged in discussions, provided input, and cast your votes.

The Board of Governors and the staff have already begun grappling with the necessity of reducing the WSBA's budget by \$3.6 million (28 percent).

I've been asked a lot from both attorneys and non-attorneys as to what we heard during the referendum, and what we thought the vote outcome meant. My answer is "we heard a lot." And, while some would want us to declare that the message to the WSBA was clear and concise around one single point, it was not.

If I were to categorize input and feedback from those who cast "yes" votes, it comes down to a handful of common threads:

- The economy is tough, and a reduction in fees means something to my wallet.
- The WSBA is bloated and overgrown. It's time to cut back.
- The WSBA has strayed from its mission and should not take positions on issues that are more political in nature than they have to do with the administration of justice.
- The WSBA should only provide core regulatory functions.
- The WSBA is elitist and doesn't listen to its members.
- The WSBA is hoarding money and building a reserve it doesn't need.
- The WSBA should leave practitioners alone. It provides no value.

- The WSBA spends too much on diversity and access to justice programs, programs that don't benefit most members.

Interpreting what the input means ultimately tells us there is dissatisfaction, but most importantly, it tells us that we must become an even more efficient and effective bar. Change is inevitable, and a change of this magnitude requires the Board of Governors to answer a fundamental question:

Will WSBA adhere to its mission or will it revise its mission and no longer support certain principles and programming?

The answer to this question will drive most decisions.

Whatever the answer, a cut of this magnitude requires a thoughtful and deliberate approach, but one that must move as swiftly as possible. We must provide a balanced budget to the Board of Governors by October 1, and staff who will be impacted deserve to be treated respectfully and fairly and be told as soon as possible.

Early steps in the process involved the Executive Management Team developing

➤ Will WSBA adhere to its mission or will it revise its mission and no longer support certain principles and programming?  
The answer to this question will drive most decisions.

recommended actions, reductions, and eliminations that we presented to the Budget and Audit Committee the week after the referendum results were in. We believed these steps should be taken irrespective of the mission question.

A number of these recommendations will be taken up by the Board at its April meeting (which occurs after the deadline for this column). The recommendations fall generally into three categories: spend down the unrestricted reserve; reduce certain expenses regardless of the mission question; and explore certain revenue-generating opportunities.

A hiring freeze on all positions except those that are mission critical has also been implemented.

Among the expenses recommended for reduction in the pre-mission discussion, there was exploring the option of moving *Bar News* online; eliminating subsidies for sections; eliminating reimbursement for volunteer travel with the offset of a scholarship fund and availability of web cameras; transitioning the WYLD from a division to a committee structure; reducing Board of Governors travel and meeting

expenses by \$100,000; and cutting \$200,000 in miscellaneous staff expenses. In total, the list presented totaled \$1.3 million.

The revenue ideas include charging a nominal fee for Casemaker and making it a revenue neutral budget item. Additionally, WSBA will ask the Court to increase the *pro hac vice* fee.

The Board will have already met before you receive this issue of *Bar News*. They will have either accepted or declined the recommendations above in whole or in part, answered the fundamental mission question, and provided policy-driven direction

to me and our staff as to what the WSBA of the future will be.

We're now working on the how and who, and will continue that process for the next several weeks. While there are still many unknowns ahead, one thing I know is that we will not be doing business as usual. We've heard you, and we're making changes. 

---

*Paula Littlewood is the WSBA executive director and can be reached at paulal@wsba.org.*

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# Construction Contract Draconian Notice Provisions: Is Prejudice Still the Issue?

BY JOHN P. AHLERS AND LINDSAY K. TAFT

*This article is a follow-up to “Notice in Washington Construction Contract: Is Prejudice the Issue?” (52 Washington State Bar News, No. 4, 1998). That piece, written in 1998, explored the inequity of enforcing a construction contract’s claim forfeiture clause in instances where the entity entitled by contract to receive written notice has suffered no prejudice (harm) as a consequence of the tardy claim notice. Although a number of significant reported cases have addressed this issue since 1998, the question of whether a demonstration of prejudice should be a condition precedent to enforcement of a contract’s harsh forfeiture provision remains. This is the first installment of a two-part article addressing the legal issues associated with construction contract claim notice requirements. This first article analyzes the pertinent legal precedent pursuant to which the written notice requirements are analyzed. The second installment will deal with the legal theories employed to get around the harsh forfeiture consequences of a contractor’s failure to comply with the strict notice requirements as well as a call for a return to the “prejudice” standard, which will equitably resolve contract notice questions in the future.*

The majority of construction contracts contain a notice provision detailing how and when the contractor must give notice of a claim or change. Increasingly common in these notice provisions is also a forfeiture clause,<sup>1</sup> which states that if a contractor fails to strictly comply with the notice requirements, the contractor waives or forfeits its ability to recover the costs associated with the change or claim. For instance, a common notice provision requires a contractor to provide immediate oral notice of the event, followed by

written notice within seven days of the event, identifying in detail the basis for the claim. Then, within 30 days of the event, the contractor must provide a written breakdown of all the elements and sub-elements of the claim, including the total increase in the contract amount or contract time being sought. The contractor's failure to strictly comply results in a forfeiture or waiver of its claim (irrespective of the claim's merit).

These notice clauses serve a number of purposes, but the general rationale is that providing prompt and timely notice allows the owner to be involved

in the claim and change process (i.e., remediation efforts) from the very beginning rather than to be informed after the additional costs/delays are incurred.<sup>2</sup> Although, at first blush, the notice provision seems like yet another contract provision that parties may be free to ignore with impunity, the landmark case of *Mike M. Johnson (MMJ)*<sup>3</sup> (a 5-4 decision) drastically changed the landscape of written notice in Washington construction contracts, making Washington state likely the strictest in the nation when it comes to interpretation of written notice in construction

contracts.<sup>4</sup> Under *MMJ*, the notice requirements and claim forfeiture provision are strictly enforced, regardless of whether the claim has merit. For the purposes of this article, this is referred to as the "no-prejudice rule" because the owner need not show that it was prejudiced (harmed) in any way by the late or incomplete notice to deny a contractor's otherwise meritorious claim and, ultimately, obtain the extra work for free.

While the *MMJ* holding may seem axiomatic (the parties must comply with the terms of their contract), the dynamic and schedule-driven nature of construction projects often makes these notice requirements anything but straightforward. Contractors regularly find themselves in situations where 1) the parties dispute whether an "event" triggering the notice requirements has even occurred, 2) the number and magnitude of the changes on a project make it administratively impossible to meet the notice time requirements, or, most commonly, 3) the owner has yet to provide the contractor with the information necessary to meet the requirements in the first place.

For example, in the majority of construction contracts, the design is either prepared by or directed to be prepared by the owner. When changes occur, the owner is, thus, in the best position to analyze the change in relation to the design and is the only party who can decide whether or not to make a design change in the first place.<sup>5</sup> On the other hand, the contractor, who has not participated in the design, is confronted with a change in the midst of coordinating subcontractors, laborers, and material suppliers and must somehow comprehend the full impact of the claim event in short order to comply with the onerous claim notice provisions. Under these circumstances, strict enforcement of the claim notice provisions is inequitable. The owner is in the best position to control the risk of a change (particularly a design change), yet it is the contractor who is saddled with the burden of fully assessing the time and cost impact of the change, and if it fails to do so, it forfeits an otherwise valid equitable adjustment to its contract. In addition, burdening the contractor with the risk of the change, which is generally not prompted by the contractor but instead caused by either outside forces



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or design issues, places a tremendous administrative cost on construction projects. Sophisticated owners of the largest construction projects in both the nation and the state have realized that forfeiture of contractor claims, when there has been no prejudice to the owner, comes at too high a societal price. Thus, many public works owners have opted to employ the prejudice rule, enforcing a forfeiture only where the owner has been prejudiced by the tardy notice. This ensures that society's resources are incorporated into the construction of quality projects rather than in meeting the project's administrative requirements.

### Mike M. Johnson and the No-Prejudice Rule

In *MMJ*, the Washington State Supreme Court relied largely on the shaky legal precedent found in the *Absher* decision<sup>6</sup> to address a contractor's (Mike M. Johnson) sewer construction claim. During construction, Johnson encountered buried phone lines that disrupted the work while the utility conflict was resolved.<sup>7</sup> The contract contained a detailed written notice provision, which included a forfeiture clause.<sup>8</sup> Although the Court found that Johnson did submit several letters claiming it was owed additional compensation, Johnson did not submit a formal "claim" as required in the contract.<sup>9</sup>

Ultimately, the Court upheld dismissal of the case on a summary judgment motion.<sup>10</sup> The Court noted that as a general principal of contract law, procedural contractual requirements must be enforced absent either waiver by the benefiting party or an agreement between the parties to modify the contract.<sup>11</sup> The Court rejected the contractor's argument that, when an owner has actual notice of a contractor's claim, the contractor is excused from compliance with mandatory contractual claim provisions.<sup>12</sup> Rather, the Court held that, unless the party benefiting from the provision waives compliance, actual notice is not an exception to contract compliance.<sup>13</sup>

The dissent in *MMJ*, advocating the prejudice rule, agreed that actual notice is not an exception to contract compliance.<sup>14</sup> The real issue for the dissenting justices was whether the county's actual notice plus its direction to the contractor to proceed amounted to compliance with the contract by the contractor or

waiver of the notice requirement by the county.<sup>15</sup> The dissent asserted the rule should be that when an owner directs a contractor to do work outside the original contract's scope, and then observes the work being done, the owner cannot rely solely on technical non-compliance with a claim provision to deny reasonable compensation, especially when the owner has not been prejudiced by the non-compliance.<sup>16</sup>

### The Prejudice vs. the No-Prejudice Rule

Ostensibly, the no-prejudice rule is

based on the premise that contract notice provisions are bargained for and should not be cast aside. In advocating for the no-prejudice rule, however, the Court fails to acknowledge the three rationales behind the converse prejudice rule: 1) the adhesive nature of public contracts, 2) the public policy considerations of decreasing the burden (and therefore taxpayer costs) of contractors in administering these notice provisions, and 3) the inequity of the owner receiving a windfall due to a technicality. Each of these rationales is persuasive

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in its own right, but taken together, they are illustrative of why so many states and entities have chosen to adopt the prejudice standard.

First, the argument that the courts should not presume to interfere with the freedom of contracting parties ignores that public contracts, as was the contract in *MMJ*, are generally “take it or leave it” documents (referred to as a contract of adhesion<sup>17</sup>), drafted and dictated by the public owner. Thus, public owners, who are clearly in the superior bargaining position, can unilaterally hold contractors to very onerous written notice requirements and any failure to strictly comply results in a forfeiture of an otherwise valid claim.

Second, the *MMJ* decision has caused, at the expense of taxpayers, the cost of contracting in the state of Washington to increase.<sup>18</sup> Owners have made the notice and claim procedures so complicated that it takes flow charts to unravel the various intricacies required for compliance.<sup>19</sup> Contractors, to avoid unreasonable forfeitures of claims, have increased their job administration (and therefore their bids) to provide the owner the necessary correspondence and estimates necessary to avoid waiving otherwise meritorious claims. In turn, to deal with the onslaught of notice correspondence, owners have also increased their project staff.<sup>20</sup> Ultimately, it is the taxpayers who end up bearing the brunt of the cost of this wasteful administrative battle.

Finally, notice provisions are designed to prevent the owner from paying for work not requested and allow the owner to participate in any remediation efforts.<sup>21</sup> Ultimately, the function of the notice requirement is simply to insulate the owner from being prejudiced. Thus, because “if the reason for the rule falls, the rule falls,”<sup>22</sup> in the absence of prejudice, the notice provisions should not be strictly enforced. Nevertheless, the *MMJ* decision has provided owners with a technical “jettison” option by which an owner can deny payment, creating an undeserved windfall, even in the absence of prejudice (i.e., what the provision is designed to protect). In his *MMJ* dissent, Justice Chambers focuses on this rationale:

Under the majority’s holding today, an owner can demand additional

work outside the scope of the original contract, observe the contractor perform that work, discuss the work with the contractor, and yet deny fair compensation for services rendered if, within 15 days, and before the owner's plans are even completed, the contractor fails to submit a written request for additional time for the demanded work or fails to produce an itemized invoice in precise technical format.<sup>23</sup>

Confirming Justice Chambers's fear, today the first step in analyzing a construction claim has moved from the merits of the claim to the threshold issue of whether the contractor strictly complied with the often intricate notice provision. This consequence highlights the unreasonableness of the *MMJ* holding and its transfer of the burden from the owner establishing prejudice to the contractor, who must now avoid tripping on these procedural loopholes.<sup>24</sup>

### The Post-Mike M. Johnson World

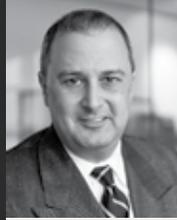
In the eight years since the *MMJ* decision was issued, it has been cited in 20 decisions, only a few of which are significant. What is more telling, however, is what *MMJ* and the cases following *MMJ* fail to address.

### Bignold Remains Good Law

Noticeably absent in both *MMJ* and any of the cases that followed is an express overruling of *Bignold v. King County*,<sup>25</sup> which, as well as a related line of cases,<sup>26</sup> broadly determined that claim forfeiture was avoided when the owner had actual knowledge of the circumstances giving rise to the contractor's claim, directed the contractor to perform, and later denied compensation based on lack of strict compliance:

[T]he [owner] became immediately aware of the changed conditions as soon as they developed and ordered the contractor to perform the changes and extra work involved.... Under such conditions, the county cannot defeat recovery by a contractor even if no written notice was given.<sup>27</sup>

Underlying these decisions is the



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prejudice rule. If the owner was aware of the change and directed the contractor to perform, the owner was not prejudiced by the contractor's procedural notice shortcomings.

Rather than overrule *Bignold*, the court in *MMJ* simply applied a "waiver by conduct" analysis, not an "actual notice" standard, distinguishing *Bignold* by stating that it was the "owner's knowledge of the changed conditions coupled with its subsequent direction to proceed with the extra work that evidenced its intent to waive enforcement of the written notice requirements under the contract."<sup>28</sup> In contrast, the owner's actual notice of the claim in *MMJ* (no subsequent direction was given) was not an exception to the no-prejudice rule. Although the authors believe that the court in *MMJ* misinterpreted the spirit of *Bignold*, the preeminent prejudice case in Washington (*Bignold*) remains good law nevertheless.<sup>29</sup> Thus, *Bignold* continues to provide contractors with a lifeline in the otherwise seemingly one-sided post-*MMJ* world.

### American Safety Continues to Favor Owners

On the other hand, a more recent case, *American Safety Cas. Ins. Co. v. City of Olympia*,<sup>30</sup> seems to once again tip the scales further in favor of the owner. In *American Safety*, the city of Olympia, relying on *MMJ*, sought summary judgment to deny a surety's claim because it did not comply with the contractual notice provisions. In turn, the surety argued that the City waived its right to demand compliance with those procedures by failing to expressly reserve its rights and by agreeing to enter into negotiations.<sup>31</sup> The Washington State Supreme Court, however, found in favor of the City, holding that "waiver by conduct requires 'unequivocal acts' of conduct evidencing an intent to waive."<sup>32</sup> The City never did enter into negotiations as previously agreed and did reserve its rights, albeit on only three occasions. Thus, the Court concluded the City's actions constituted "equivocal conduct."<sup>33</sup> According to the Court, "[e]quivocal conduct by definition cannot be unequivocal," and the City did not waive its right to demand strict compliance.<sup>34</sup>

What is troubling about the *American Safety* case is that, although the Court

hangs its hat on the premise that waiver by conduct requires unequivocal acts evidencing intent to waive, it ignores the double standard this creates with regard to notice forfeiture provisions. An owner is required to make only minimal effort showing some sort of equivocal act to avoid waiving its rights, but a contractor can strictly comply with all but one of the many complicated notice requirements in its contract (by definition equivocal conduct evidencing an intent to comply), yet forfeit its entire meritorious claim. Although, ostensibly, the difference is the explicit forfeiture provision in the contract, such a disparity of treatment is disconcerting. In *MMJ*, for example, the contractor provided several notices of its claim (i.e., equivocal conduct), but simply failed to comply strictly with the claim submission requirements. Such compliance, however, was not enough and the entire claim was deemed waived and forfeited. In contrast, in *American Safety*, simply including a reservation of rights in a few letters is enough to prevent a waiver of the City's defenses. Although *American Safety* correctly states the rule with regard to unequivocal conduct (forfeiture is disfavored<sup>35</sup> because often, as in the case with notice, the punishment doesn't fit the crime), this principle is wholly ignored in the *MMJ* decision.

Moreover, contractors should fear the inequitable result this decision, in combination with *MMJ*, creates. Although *Bignold* remains good law, and an owner cannot escape a valid claim if it has actual knowledge of the circumstances giving rise to a contractor's claim and directs the contractor to perform, presumably under *American Safety*, an owner simply needs to indicate some reservation of its rights to the forfeiture defense one, two, or three times to deny the contractor's claim, after-the-fact, based on a lack of compliance with the notice procedures. In this regard, *American Safety* highlights Justice Chambers's fear in the *MMJ* dissent and even takes it one step further. An owner can 1) have actual notice of a contractor's claim, 2) direct the contractor to perform the additional work, and then 3) deny fair compensation for services rendered if, before the owner's design changes are even completed, the contractor fails to submit a written

request for additional time or produce an itemized invoice in precise technical format, simply because the owner included a reservation of rights boilerplate making its conduct "equivocal." Under *American Safety*, any equivocal conduct prevents a finding of waiver by conduct — this simply does not reflect the true intent of the notice provision.

Finally, as unsettling as the *American Safety* case is, the justices did leave the door open a crack in a footnote.<sup>36</sup> Had the City directed the contractor to focus on performing the work rather than "worrying about assembling documentation to comply with the contractual provisions, then such situation could arguably be construed as an implied waiver."<sup>37</sup> Thus, the Court acknowledges there may be circumstances where there is no prejudice to the owner and a waiver of the contract's forfeiture provision will be implied. ☹

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#### NOTES

1. Many construction contracts contain a clause pursuant to which the contractor "waives" its claim (regardless of the claim's merit) if notice of the claim is tardy — referenced herein as a "forfeiture" clause.
2. See *Mike M. Johnson v. County of Spokane*, 150 Wn.2d 375, 400, 78 P.3d 161 (2003) (dissenting opinion); and *Lindbrook Const. Inc. v. Mukilteo Sch. Dist. No. 6*, 76 Wn.2d 539, 548, 458 P.2d 1 (1969) (dissenting opinion).
3. *MMJ*, 150 Wn.2d at 375.
4. Prior to *Johnson* and its predecessor *Absher Constr. v. Kent Sch. Dist.*, 77 Wn. App. 137, 890 P.2d 1071 (1995), Washington followed the "prejudice" rule, which provided that if the owner was not harmed (prejudiced) by the contractor's failure to comply with the notice provision, the contractor is entitled to recover the costs associated with the additional work performed. See *C.W. Bignold v. King County*, 65 Wn.2d 817, 399 P.2d 611, 614 (1965). The prejudice rule is followed in federal procurement cases. See, e.g., *Mingus*

- Constructors, Inc. v. United States*, 812 F.2d 1387, 1392 (1987).
5. Under the federal *Spearin* doctrine, recognized in Washington, the owner warrants the adequacy and sufficiency of the design. *Dravo Corp. v. Municipality of Metropolitan Seattle*, 79 Wn.2d 214, 218, 484 P.2d 399 (1971) (citing *United States v. Spearin*, 248 U.S. 132, 136, 39 S. Ct. 59, 63 L.Ed. 166 (1918)).
  6. *Absher*, 77 Wn. App. at 137. For a previous analysis of the *Absher* decision addressing the prejudice issue and the gaps in legal reasoning found in the decision, see the article described in the preface to this article.
  7. *Mike M. Johnson*, 150 Wn.2d at 380–81.
  8. *Id.* at 380.
  9. *Id.* at 380–81. A “claim” consists of a demand for an amount of money or a specific amount of additional time. *Id.*
  10. *Id.* at 393.
  11. *Id.* at 391.
  12. *Id.*
  13. *Id.*
  14. *Id.* at 400–01 (dissenting opinion).
  15. *Id.*
  16. *Id.* at 402.
  17. See *Mendez v. Palm Harbor Homes, Inc.*, 111 Wn. App. 446, 459, 45 P.3d 594 (2002).
  18. Public testimony before the Washington Legislature (Judiciary Committee) February 2008 by Associated General Contractors and Washington Utility Contractors Association representatives.
  19. *Id.*
  20. *Id.*
  21. See *supra* note 2.
  22. Anonymous; see also J. Ahlers.
  23. *MMJ*, 150 Wn.2d at 393 (dissenting opinion).
  24. In my previous article (see preface), I theorized that under the prejudice standard, the contractor could bear the burden of establishing lack of prejudice on the owner. My thinking on this issue, however, has matured. Theoretically, one could consider such a “presumption of prejudice” rule, but such a rule would also produce inequitable and inefficient results. The owner should bear the burden of proving it has been prejudiced because the owner is the only party with the relevant information demonstrating whether it was or was not prejudiced — not the contractor — and because the alternate approach would burden the contractor with the virtually impossible task of proving a negative proposition.
  25. 65 Wn.2d 817, 399 P.2d 611, 614 (1965).
  26. *Lindbrook Constr., Inc.*, 76 Wn.2d at 539; *Morango v. Phillips*, 33 Wn.2d 351, 205 P.2d 892 (1949); *American Sheet Metal Works v. Haynes*, 67 Wn.2d 153, 407 P.2d 429 (1965); and *Byrne v. Bellingham Consol. Sch. Dist.*, 7 Wn.2d 20, 108 P.2d 791 (1941).
  27. *Id.* at 822.
  28. *MMJ*, 150 Wn.2d at 388 (emphasis added).
  29. As of the date of this article, the Westlaw KeyCite for *Bignold* includes only three “negative treatment” cases, including *MMJ*, which have distinguished *Bignold*, and does not designate the case as overruled.
  30. 162 Wn.2d 762, 174 P.3d 54 (2007).
  31. *Id.* at 770.
  32. *Id.* at 771 (internal citations omitted).
  33. *Id.*
  34. *Id.*
  35. *John R. Hansen, Inc. v. Pac. Int’l Corp.*, 76 Wn.2d 220, 228, 455 P.2d 946 (1969) (“It is elementary law in this jurisdiction that forfeitures are not favored and never enforced in equity unless the right is so clear as to permit no denial”).
  36. 162 Wn.2d 762, fn. 7.
  37. *Id.*

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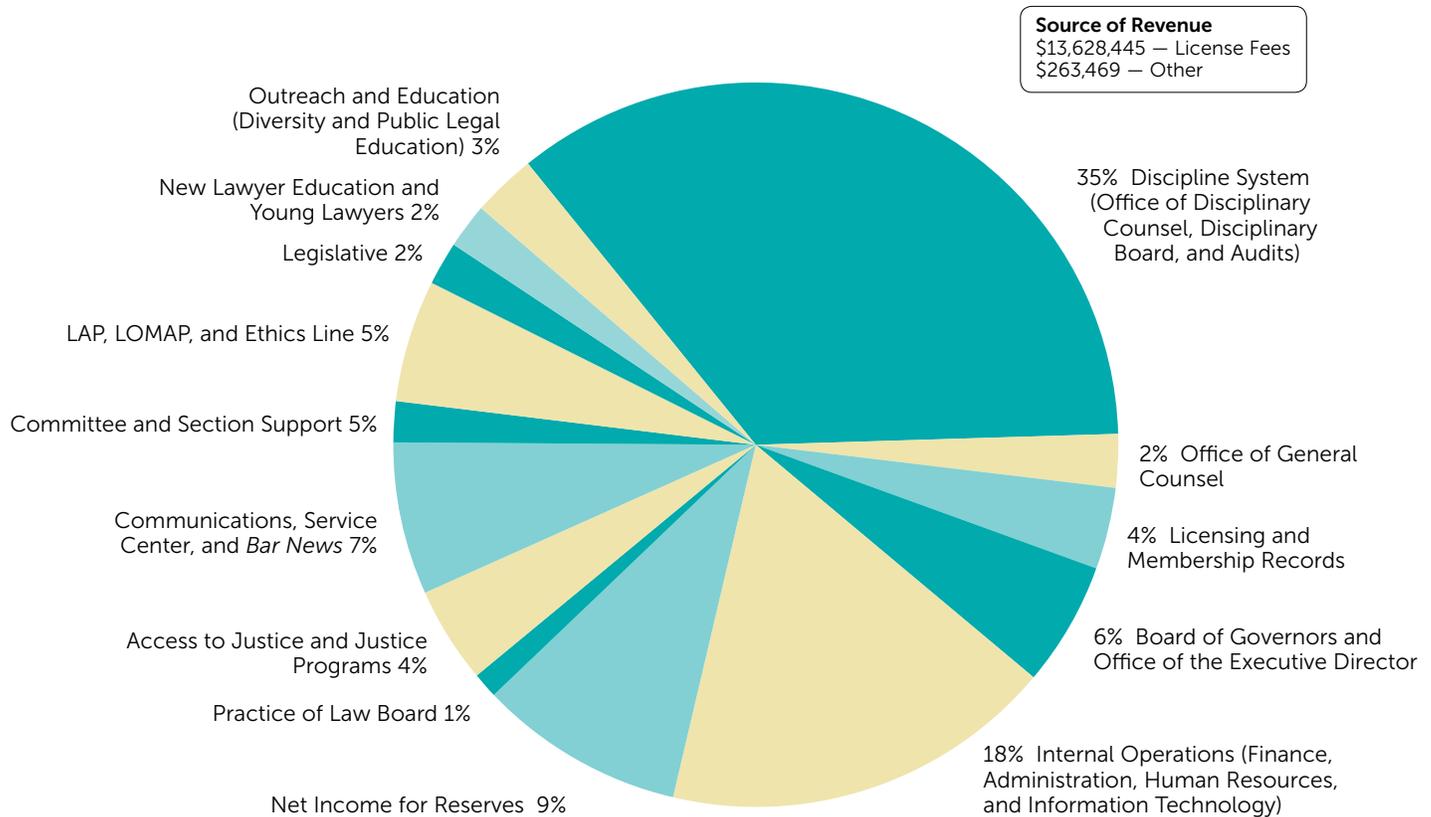


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### Fund Categories

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 2011, the General Fund had revenues in excess of expenses of \$1,279,359. As of September 30, 2011, the General Fund balance was \$7,271,316, of

which \$1,500,000 is designated as an operating reserve, \$3,340,000 is designated as a facilities reserve, \$382,744 is designated as a capital reserve, and \$179,452 is designated as a board program reserve. The remaining \$1,869,120 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 net income of \$47,762. Actual results were that expenses exceeded revenues by \$57,026. The WSBA CLE Fund balance as of September 30, 2011, was \$1,351,465.

### 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 \$111,998 (in order to use past accumulated reserves to benefit their members). Actual results for the sections were that revenues exceeded expenses by \$95,662. The Sections Fund balance at September 30, 2011, was \$773,328.

### 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 \$508,767. However, actual results were that expenses exceeded revenue by \$173,504 due to significant claims received. The LFCP Fund balance as of September 30, 2011, was \$261,320. <sup>(b)</sup>

## WSBA Statements of Activities

	Year ended September 30, 2011			Year ended September 30, 2010		
	2011	2011	2011	2010	2010	2010
	Actual	Actual	Actual	Actual	Actual	Actual
	Revenue	Expense	Net	Revenue	Expense	Net
Access to Justice	30,338	337,795	-307,457	19,847	309,271	-289,424
Administration	31,148	1,064,649	-1,033,501	180,531	994,619	-814,088
Attorney License Fees	13,628,445	0	13,628,445	13,040,394	0	13,040,394
Audits	829	321,710	-320,881	3,927	292,605	-288,678
Bar Examination and Admissions	1,257,627	1,210,308	47,319	1,273,074	1,238,961	34,113
Bar Leaders Support	0	233,039	-233,039	2,500	224,361	-221,861
Bar News	666,271	979,506	-313,235	672,498	994,608	-322,110
Board of Governors and Office of the Executive Director	21,095	789,129	-768,034	36,915	898,502	-861,587
Communications and Service Center	6,677	638,425	-631,748	4,286	574,117	-569,831
Discipline	69,795	4,383,104	-4,313,309	98,174	4,100,403	-4,002,229
Human Resources	0	316,441	-316,441	0	321,971	-321,971
Information Technology	0	1,092,154	-1,092,154	0	948,595	-948,595
Justice Programs	0	291,525	-291,525	160,000	402,689	-242,689
Law Office Management Assistance Program (LOMAP)	60,875	236,178	-175,303	47,151	264,953	-217,802
Lawyers Assistance Program (LAP)	49,773	319,487	-269,714	53,292	361,830	-308,538
Legislative	0	270,380	-270,380	0	220,464	-220,464
Licensing and Membership Records	53,701	559,776	-506,075	59,746	528,186	-468,440
Limited Practice Officers	147,953	126,706	21,247	158,546	133,758	24,788
Mandatory Continuing Legal Education	581,922	486,803	95,119	654,362	478,472	175,890
Member Benefits	65,098	47,712	17,386	59,242	48,006	11,236
New Lawyer Education	9,151	106,508	-97,357	0	65,480	-65,480
Office of General Counsel	7	333,220	-333,213	88	338,162	-338,074
Office of General Counsel — Disciplinary Board	0	275,901	-275,901	0	281,271	-281,271
Outreach and Education	10,932	405,036	-394,104	20,489	328,623	-308,134
Practice of Law Board	20	156,121	-156,101	0	162,355	-162,355
Professional Responsibility Program	0	309,617	-309,617	0	266,861	-266,861
Regulatory Services	339,790	272,981	66,809	255,475	256,145	-670
Resources Directory	58,035	42,446	15,589	67,275	49,227	18,048
Sections Administration	208,886	229,410	-20,524	181,956	219,391	-37,435
Young Lawyers Division	9,970	192,908	-182,938	27,672	216,188	-188,516
<b>Total Unrestricted — General</b>	<b>17,308,338</b>	<b>16,028,975</b>	<b>1,279,363</b>	<b>17,077,440</b>	<b>15,520,074</b>	<b>1,557,366</b>
Unrestricted — Continuing Legal Education						
CLE Products	679,083	676,438	2,645	833,669	796,792	36,877
CLE Seminars	2,613,335	2,673,006	-59,671	2,777,093	2,485,276	291,817
<b>Total Unrestricted — CLE</b>	<b>3,292,418</b>	<b>3,349,444</b>	<b>-57,026</b>	<b>3,610,762</b>	<b>3,282,068</b>	<b>328,694</b>
Unrestricted — Sections Operations	633,926	538,264	95,662	534,174	568,029	-33,855
Restricted — Lawyers' Fund for Client Protection	894,778	1,068,282	-173,504	870,967	620,783	250,184
<b>Total</b>	<b>22,129,460</b>	<b>20,984,965</b>	<b>1,144,495</b>	<b>22,093,343</b>	<b>19,990,954</b>	<b>2,102,389</b>



BY MARK J. FUCILE

**A**lthough attorney liens have existed in statutory form in Washington since 1863, the recent economic climate has renewed focus on them as a collection tool. RPC 1.8(i)(1) allows lawyers to “acquire a lien authorized by law to secure the lawyer’s fee or expenses[.]” Statutory attorney liens come in two varieties in Washington. The first, called a “retaining lien” and codified at RCW 60.040(1)(a)-(b), places a lien for fees over a client’s file and funds in the lawyer’s possession. The second, called a “charging lien” and created by RCW 60.040(1)(c)-(e), places a lien for fees on, respectively, the client’s money held by an adverse party in a proceeding in which the lawyer was involved, an action the lawyer handled successfully for the client, or the resulting judgment in the client’s favor. While charging liens in particular can be a useful collection device, both also come with deceptively dangerous traps for lawyers. In this column, we’ll look at both the “tools” and the “traps.”

### The Tools

Retaining liens are a comparatively modest collection tool. They cannot be “foreclosed” (see, e.g., *Glick v. McIlwain*, 154 Wn. App. 729, 732, 230 P.3d 167 (2010)). Rather, as the Supreme Court put it in *Gottstein v. Harrington*, 25 Wn. 508, 511, 65 P. 753 (1901), “a retaining lien . . . may merely be used to embarrass the client, or, as some cases express it, to ‘worry’ him into the payment of the charges.” Further, a retaining lien is personal to the lawyer (or firm) who did the work that remains unpaid and cannot be assigned. Again, the Supreme Court in *Gottstein* aptly summarized these limitations (at 512): “Possession is of the essence

of this lien, and, once parted with, the right is waived and relinquished.” Similarly, the companion provision granting a lien over client funds in the lawyer’s possession is often of little practical utility precisely because the client may not have the money to pay the lawyer. Moreover, under RPC

ent on a settlement or judgment without first satisfying the lawyer’s lien. RCW 60.40.010(3), in turn, makes attorney liens over an action or judgment “superior to all other liens.” RCW 60.40.010(4) provides that an attorney lien over an action “is not affected by settlement between the parties



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## Attorney Liens: Tool or Trap?

1.15A(g), if the lawyer is holding an advance fee deposit in trust and the client is disputing the bill, the disputed portion must generally remain in trust until the disagreement is resolved. In short, a retaining lien is an automatic, but not overly effective, remedy.

By contrast, charging liens are a potentially powerful collection tool — at least for a lawyer who represented a successful litigant (see *Suleiman v. Cantino*, 33 Wn. App. 602, 606-07, 656 P.2d 1122 (1983) (noting the prerequisite that the lawyer’s work has to create the fund over which the lien is asserted); accord *Department of Labor and Industries v. Dillon*, 28 Wn. App. 853, 858-59, 626 P.2d 1004 (1981)). RCW 60.40.010(2) allows lawyers to pursue their lien claim against adverse parties who paid the cli-

ent on a settlement or judgment without first satisfying the lawyer’s lien. RCW 60.40.010(3), in turn, makes attorney liens over an action or judgment “superior to all other liens.” RCW 60.40.010(4) provides that an attorney lien over an action “is not affected by settlement between the parties to the action until the lien of the attorney for fees based thereon is satisfied in full.” RCW 60.40.010(5) defines “proceeds” broadly to include “any monetary sum received in the action” and generally allows the lien to follow “identifiable cash proceeds[.]” Charging liens under RCW 60.40.010(1)(c) and (e) require notice (see *Jones v. International Land Corp., Ltd.*, 51 Wn. App. 737, 755 P.2d 184 (1988)), while those asserted against the action itself under RCW 60.40.010(1)(d) arise with the filing of the action by operation of law (see *Smith v. Moran, Windes & Wong, PLLC*, 145 Wn. App. 459, 187 P.3d 275 (2008)). Charging liens may be foreclosed either through a supplemental equi-

table proceeding in the matter giving rise to the lien or through a separate action. The lien statute, however, does not specify a particular method for foreclosure. The Court of Appeals in *King County v. Seawest Inv. Associates, LLC*, 141 Wn. App. 304, 315, 170 P.3d 53 (2007) (citation omitted) summarized the procedural discretion available: “[RCW Chapter 60.40] places the question of how to properly adjudicate the lien with the court, requiring it to fashion ‘some form of proceeding by which the matters might be properly adjudicated.’”

With both retaining and charging liens, it is important to note that the Supreme Court in *Ross v. Scannell*, 97 Wn.2d 598, 605-06, 647 P.2d 1004 (1982), held that statutory attorney liens do not attach to real property. To pursue a fee claim against a client’s

real property (absent separate contractual security interests discussed in Comment 16 to RPC 1.8), *Ross* found that the lawyer must instead reduce the claim to a judgment and then seek enforcement of the judgment against the property involved.

### The Traps

Both retaining and charging liens contain potential traps. Lawyers need to be especially wary of these traps because they are almost always encountered after the attorney-client relationship has already broken down — either through withdrawal for nonpayment by the lawyer or discharge by the client. Assertion of lien rights, therefore, can be a particular flashpoint between the lawyer and a former client.

With retaining liens, RPC 1.16(d) governs a lawyer's duties upon termination of a representation. In doing so, it recognizes two competing interests. On one hand, it requires a lawyer to protect the client upon withdrawal or termination by, in relevant part, "surrendering" the client's file. On the other hand, it also recognizes a lawyer's retaining lien. If the two conflict, the WSBA in Ethics Advisory Opinion 181 concluded that a client's need for the file "trumps" the lawyer's possessory lien rights:

A lawyer cannot exercise the right to assert a lien against files and papers when withholding these documents would materially interfere with the client's subsequent legal representation . . . . If assertion of the lien would prejudice the former client, the duty to protect the former client's interests supersedes the right to assert the lien. Accordingly, if the client needs the file the lawyer must give it to the client (or the client's new lawyer) notwithstanding an otherwise valid retaining lien.

A lawyer who wrongfully withholds a client's file may face regulatory discipline under RPC 1.16(d) (see, e.g., *In re Eugster*, 166 Wn.2d 293, 310, 209 P.3d 435 (2009)). Moreover, as the Supreme Court noted in *Eriks v. Denver*, 118 Wn.2d 451, 457, 824 P.2d 1207 (1992), the professional rules reflect our underlying fiduciary duties to our clients. Therefore, wrongfully withholding a file may also expose the lawyer to a civil claim for breach of fiduciary duty if the client was damaged as a result.

With charging liens, lawyers also face regulatory and civil risk.

On the former, lawyers who improperly assert a charging lien are at disciplinary risk under RPC 8.4(d), which governs conduct prejudicial to the administration of justice. As discussed earlier, for example, statutory attorney liens cannot be asserted directly against a client's real property under *Ross v. Scannell*, 97 Wn.2d 598. In *In re Vanderbeek*, 153 Wn.2d 64, 88, 101 P.3d 88 (2004), the Supreme Court disciplined a lawyer for improperly filing a charging lien on a client's real property in spite of *Ross*.

On the latter, charging liens may be invalidated both if they are asserted against assets not subject to the lien and if the underlying fee is improper. *Gustafson v. City of Seattle*, 87 Wn. App. 298, 941 P.2d 701 (1997), illustrates this last point. A lawyer represented both an injured passenger and the potentially at-fault driver in a motor vehicle accident case. The lawyer later withdrew and asserted a lien for the services he provided (based on *quantum meruit*). When the injured passenger retained new counsel and settled the claim, the new lawyer moved to invalidate the first lawyer's lien based on a conflict. The trial court agreed and invalidated the lien.

Although the Court of Appeals reversed for further factual findings on the conflict, it made clear that courts have the authority to invalidate liens. Relying on *Eriks*, the Court of Appeals in *Gustafson* reasoned that because courts can refuse to enforce fee agreements that breach ethical duties (as contracts that violate public policy), they also have the related ability to invalidate resulting liens.

### Summing Up

Although both retaining and charging liens offer collection tools, they both come with potential traps. Releasing a retaining lien will not affect a more effective charging lien and can often avoid making a bad situation even worse. ☞

*Mark Fucile, of Fucile & Reising LLP, handles professional responsibility, regulatory, and attorney-client privilege matters and law-firm-related litigation for lawyers, law firms, and legal departments throughout the Northwest. He is a co-editor of the WSBA's Legal Ethics Deskbook and the OSB's Ethical Oregon Lawyer. He can be reached at 503-224-4895 and mark@frllp.com.*

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The historic Grays Harbor County Courthouse in Montesano. Photo by Todd Timmcke.

## Occurrence at Montesano

### Grays Harbor judge stabbing incites memory of peculiar case

BY MICHAEL HEATHERLY

One morning about 30 years ago, I found myself riding in a car in Montesano, the seat of Grays Harbor County, with three other people. Two were lawyers: Dave Edwards, a former deputy prosecutor who had moved into private practice, and Frank Franciscovich, a recent law school graduate beginning his legal career. The fourth occupant of the vehicle was an itinerant construction worker named Cleve Whiteaker. This was a few years before I began law school. At the time, I was a fledgling newspaper reporter for the *Daily World* in Aberdeen.

You might find some aspects of this seemingly mundane car trip of interest. If Dave Edwards's name sounds familiar,

it's likely because he went on to become a Grays Harbor County Superior Court judge, the brave, if unfortunate, soul who was stabbed in the neck and upper shoulder March 9 of this year while trying to stop a crazed courthouse intruder from attacking a sheriff's deputy. At the time of our long-ago car ride, Edwards and Franciscovich were representing the 64-year-old Whiteaker, who had just been released from the county jail. Now it gets a little weird. Whiteaker was a man who an hour or so earlier had either a) literally gotten away with murder, or b) narrowly avoided going to prison for a murder he didn't commit. Okay, now it gets weirder. Nobody in the car, including Whiteaker, knew whether a or b was true. More about that momentarily.

As for the attack at the courthouse on

March 9 of this year, you probably took appalled notice of it, whether you're a lawyer or a judge. It's the nightmare scenario for those of us who work in the justice system. I happened to be at the WSBA Board of Governors meeting in Walla Walla when it occurred. During a break, I noticed people gathering around someone's laptop computer and asked what was going on. They showed me the early online reports of the incident, in which Edwards was stabbed and the deputy stabbed and shot. Fortunately, their injuries were minor considering the circumstances. Both were released from the hospital that night. The attack was on a Friday, and Edwards, now 63 years old, was back on the bench Monday, which sounded exactly like the Dave Edwards I knew 30 years ago.

As I read Edwards's name in the news

reports, I immediately remembered the *Whiteaker* case. When I learned Edwards had been stabbed while attempting to fend off the courthouse intruder, who was already attacking the deputy, I wasn't surprised. Although in an entirely different context, Edwards showed similar tenacity in representing Whiteaker, who — oddly enough — was charged with stabbing a woman to death with a knife. The passion for justice shown by Edwards and Franciscovich on one side, and Prosecutor Curt Janhunen on the other, is the kind of thing that inspired me to enter law school a few

years later.

As a reporter, I was endlessly fascinated by the human drama played out at the picturesque, historic Grays Harbor County Courthouse, particularly the criminal cases. Of all that I covered, the most remarkable was *State v. Chester Cleveland Whiteaker*. I had become acquainted with Franciscovich, who mentioned that he and Edwards had been appointed to represent Whiteaker. Franciscovich suggested I might want to check out the case, about which I had not previously taken much notice. It turned out to be a

riveting, if tragic, story.

A 47-year-old woman named Jackie Wheeler was discovered dead of a single knife wound to the back, lying in a pool of blood on the filthy floor of unit No. 3 at the low-rent Harmony apartments in downtown Hoquiam. Police detectives described how they had to contend with scurrying cockroaches and layers of hair and detritus on the floor as they searched the apartment for evidence. At the trial, Wheeler was described as a "drifter" who somehow ended up spending time at the Harmony, apparently floating from one unit to another. The Harmony was portrayed by its own residents as a place to crash between binges of drinking at the bars nearby. The beginning of each month was particularly festive, as the residents converted their various Social Security and other checks into alcohol.

Unfortunately for Mr. Whiteaker, he was the tenant of No. 3. But while some circumstantial and physical evidence linked him to the crime scene, nobody could testify that he was in his apartment when the victim died, or that he had any reason to have killed her. And the most remarkable aspect of the case was Whiteaker's position on the matter, in which he never wavered: He was so intoxicated the night of the murder that he had no idea whether he had committed it or not. With no evidence of premeditation to challenge that part of Whiteaker's story, the state charged him with second-degree murder.

I covered the entire jury trial, the transcript of which probably could be made into a Coen Brothers movie, or at least a dinner theater whodunit, with little alteration. Testimony featured a parade of outlandish characters, each with a story more bizarre than the last. At recesses, I would visit with the judge's clerk and the court reporter to marvel at the real-life soap opera unfolding before us. Ultimately, the picture emerged of a chaotic subculture of uprooted outcasts who nonetheless developed a community and looked out for each other as best they could.

As I recall, Whiteaker was a fairly new arrival to the area, having somehow made his way to the Northwest from the southern United States. From descriptions of him given by the trial witnesses, combined with my brief personal interaction with him during our car ride, my impression was of an unusually soft-spoken, humble,



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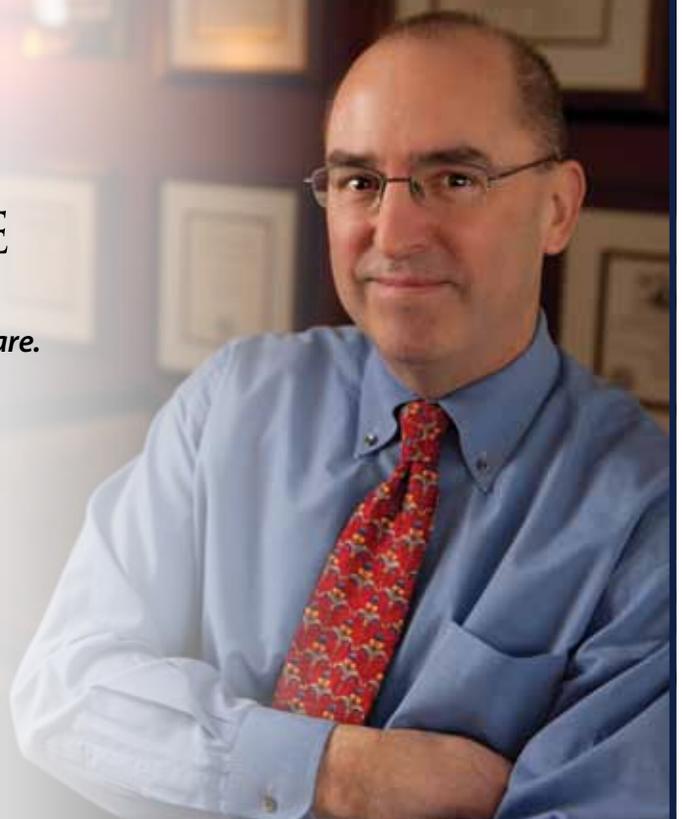
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peaceable individual. Of course, there's no telling how someone might act while highly intoxicated or involved in a heated romantic or sexual encounter — although I don't remember any evidence of the latter possibility emerging at trial.

I can't say that I remember the entire sequence of events at the end of the trial. But I recall spending at least part of the night camped out in the courtroom, trying to catch a few winks while sprawled on the wooden pews. In any event, by early the next morning, I believe, the judge reconvened court and the bailiff read the verdict: not guilty. Honestly, I wouldn't have been surprised at either outcome. While Janhunen, the classic hard-nosed prosecutor, expertly emphasized the physical evidence he had to work with, the overall picture painted by the residents was of an environment where any number of people might have been alone with the victim some time that night. I suspect the jury concluded that Whiteaker was no more likely a murderer than several other local denizens.

As soon as the judge discharged the jury, Janhunen strode to the defense table and confronted Whitaker with a mixture of indignation and grudging concession. Their exchange remains the most memorable I've heard in court as either a journalist or lawyer.

"I hope you didn't do it," Janhunen said sternly.

"I hope so too," Whiteaker replied.

Franciscovich advised me that he and Edwards would be picking up Whiteaker as soon as he was released from jail and taking him to where he was going to be staying for a while. They invited me along for the ride. I gladly accepted, because how often do you get to hang out with a guy who recently killed or didn't kill someone, and doesn't know either way — or, alternatively, is an exceptionally skilled and audacious liar? All I really remember about the trip was that I felt no fear of Whiteaker, and nothing about him made me suspect he would be a threat to society.

Admittedly, I and other observers saw the case partly as morbid entertainment (although the presence of the victim's family constantly reminded us that someone had, indeed, lost a life). But beyond any superficial entertainment value, I formed a lasting impression of the skill and determination of two admirably adept and determined trial lawyers: Edwards and

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**I was inspired 30 years ago to enter this profession by people like Dave Edwards, and even more inspired recently that he was willing to risk his life to help someone being mortally attacked.**

Janhunen. Neither was getting rich or famous on the case. Other than possibly the local radio station, I don't believe anyone but me was covering the case at all. However unfairly, Edwards likely got more media attention for being stabbed himself this year than for anything he has done on the bench or at bar. No, these guys simply believed in what they were doing. The notoriously feisty Janhunen put everything he had into getting a conviction of a man he thought had killed a woman in cold blood, while the similarly pugnacious Edwards was battling just as hard to keep a man he thought was innocent from going to prison, likely for the rest of his life, given that he was already 64.

When people learn that I used to be a journalist, they're curious about why I switched to the practice of law, perhaps one of the few professions even more disparaged than journalism. My stock answer is that among disreputable professions, law pays the best. But seriously, I wanted to do something professionally where I could help people directly, not that it isn't a noble and important calling to inform the public of what is happening in the world as well. Of course, now I can point out that I proudly serve in both capacities. Although in my legal career I have been a civil litigator and have never handled a criminal case (let alone something as colorful as *State v. Whiteaker*), I have tried to put my talents to use and serve my clients with the same conviction displayed by Edwards and Janhunen, and the other excellent lawyers I have met — and worked with and against — over the years.

I can't finish this piece without pointing out how easily it could have been an "in memoriam" to Judge Edwards and the deputy, Polly Davin. Grays Harbor County has no security check point at the courthouse entrance, making it vulnerable to

this kind of tragedy. Courthouse security is one of the issues mentioned in a lawsuit the Grays Harbor County Superior Court judges filed against the county commissioners last December. The lawsuit covered the whole area of proposed budget cuts to the county judicial system, a crisis being faced by counties across the state.

In an interview with my former employer, *The Daily World*, the night after he was stabbed, Edwards said, "If we can't provide a safe atmosphere for the citizens of this community, then they don't truly have access to the courts, and the Washington State Constitution guarantees that the citizens of this state will have safe access to the courts."

I was inspired 30 years ago to enter this profession by people like Dave Edwards, and even more inspired recently that he was willing to risk his life to help someone being mortally attacked. I hope the powers that be will recognize the importance of protecting the lives of people like him and Deputy Davin, who put their lives on the line to give our citizens a chance at justice.

When I was riding in a car 30 years ago with Edwards and his client who had just been acquitted of having stabbed someone, I never imagined that three decades later Edwards, then a judge, would have survived a knife attack of his own, and that I would have been a journalist-turned-lawyer-turned-lawyer/journalist who would write about it for *Bar News*. But like my dad, a silver-miner-turned-U.S.-Navy-submariner-turned-Boeing-accountant, used to say: you never know what's going to happen next. ☺

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Bar News Editor Michael Heatherly practices in Bellingham. He can be reached at 360-312-5156 or [barnewseditor@wsba.org](mailto:barnewseditor@wsba.org).



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### WSBA Board of Governors Meeting

March 9, 2012, Walla Walla

BY MICHAEL HEATHERLY

**A**t the WSBA Board of Governors meeting March 9, 2012, in Walla Walla, the governors further discussed a proposal to reorganize the Board to accommodate a representative from the new 10th U.S. Congressional District. The Board also learned the identities of some of the new Board members who will begin their three-year terms in September.

#### 10th Congressional District Seat

At the December 2011 meeting, the governors had debated how the composition of the Board will be affected by the impending addition of the new congressional district. By state statute, the Board must include at least one member from each congressional district. However, the Board is limited to 15 total seats, all of which already are allocated among the existing congressional districts, at-large positions, and the WSBA president. To accommodate a member from the new district, the Board must either eliminate one of the existing seats or get the Legislature to amend the statute to add a 16th Board position. At the December meeting, Board members expressed skepticism that the Legislature would approve a 16th position. Meanwhile, several members opposed eliminating any of the at-large positions, which under WSBA Bylaws must comprise a representative of the Washington Young Lawyers Division and two representatives from historically under-represented groups.

At the March meeting, a Board subcommittee presented its recommendation. Under the proposal, the at-large positions would be unchanged and the number of representatives from District 7 (covering much of Greater Seattle) would be reduced from three to two, with the third seat being shifted to the new District 10. As the District 7-Central seat is already up for election in 2013, the subcommittee's recommendation is that the election be used instead to fill the new District 10 seat.

As for realigning District 7 into two sub-districts rather than three, the subcommittee recommended that WSBA staff study the district's new boundaries and propose

re-dividing it "in such a way as to achieve well-balanced geographic representation between the two remaining 7th District seats. Staff should consider, as part of the analysis, whether north and south representation would be appropriate or whether east and west should continue."

The Board is expected to vote on the proposal at the June 2012 meeting. In the meantime, Board members and staff are to solicit comments from WSBA members.

#### Incoming Board Members, Elections

WSBA Executive Director Paula Littlewood noted that new Board members will take office in September for Districts 1, 4, 5, and 7-West. She advised the Board that three candidates were unopposed: Ken Masters (District 1), Paul Bastine (District 5), and Barb Rhoads-Weaver (District 7-West). Meanwhile, four candidates were vying for the District 4 position: Brian J. Anderson, J. Jay Carroll, Rickey C. Kimbrough, and Jerry J. Moberg. Voting took place March 15 through April 13, although results weren't available as of press time.

The WYLD at-large position on the Board will be filled in September as well. Finalists will be selected by the WYLD Board of Trustees, and the Board will choose among them to fill the seat. At the March meeting, the Board decided not to temporarily fill the seat of previous WYLD Governor Carla Lee, who chose to leave the position early. Lee had been appointed to complete the previous WYLD governor's uncompleted term before being elected to the three-year term that ends in September.

#### Legislative Update

The Board reviewed the outcome of bills in which the WSBA took interest during the 2012 Legislature. Three bills officially supported by the Board passed the Legislature: 1) Estate tax apportionment — exempting small gifts, from a will or revocable trust, from the statutory estate tax that is apportioned when a decedent fails to provide for apportionment of the estate tax in the will or trust documents, the unpaid tax being reapportioned among the takers of the larger gifts; 2) escrow licensing — addressing separation of powers concerns raised after enactment of a 2010 bill that modified the licensing requirements of attorneys as related to providing escrow services; and 3) social purpose corporations — creating a new type of for-profit corporation that may

include socially beneficial purposes in its charter documents while maintaining conventional for-profit tax structure.

#### Washington Young Lawyers Division

The Board heard a report from WYLD President Dainen Penta regarding the Division's recent activities. Penta noted that in February in Shoreline, the WYLD conducted its 25th First Responder Will Clinic. The program has assisted more than 1,000 first responders and their families by preparing free estate-planning documents. Meanwhile, more than 120 new lawyers attended an "Open Section Night" in Seattle, where they were provided information about the benefits of joining WSBA sections. A similar event is planned for Spokane.

#### Moderate Means Program Launch

Executive Director Littlewood announced that the Moderate Means Program was being officially introduced to the public, with press conferences in Seattle and Spokane. The program is a partnership between the WSBA and the three law schools in the state. Through the program, lawyers, assisted by law students, offer legal help at reduced fees to people whose financial status puts them at 200 to 400 percent of the Federal Poverty Level. People in that financial category generally do not qualify for pro bono programs but also cannot usually afford to pay full attorney fees. See [www.moderatemeanswa.org](http://www.moderatemeanswa.org) for more information.

#### Washington State Bar Foundation Donation Check-off

The Board approved a proposal to include a charitable donation check-off on the annual WSBA license renewal form for the Washington State Bar Foundation (WSBF), which funds WSBA programs such as the Home Foreclosure Legal Aid Project. The check-off would be similar to the one already appearing on the form to support the Campaign for Equal Justice. The WSBF check-off will debut on the 2013 licensing form. ☺

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*Michael Heatherly is the Bar News editor and can be reached at [barnewseditor@wsba.org](mailto:barnewseditor@wsba.org) or 360-312-5156. For more information on the Board of Governors and Board meetings, see [www.wsba.org/bog](http://www.wsba.org/bog). For more information on issues addressed by the Board, see NewsFlash at [www.wsba.org/newsflash](http://www.wsba.org/newsflash).*

# WSBA Moderate Means Program Launched

BY CATHERINE BROWN

On April 3, 2012, the WSBA launched the Moderate Means Program to the public at a press conference in Seattle. WSBA President Steve Crossland, Moderate Means Program participating attorney Kirsten Ridgway Hytopoulos, University of Washington School of Law Dean Kellye Testy, Seattle University School of Law's Access to Justice Institute Director Diana Singleton, and Washington State Supreme Court Chief Justice Barbara Madsen discussed the critical need for legal assistance to help Washington's moderate-income residents, who comprise nearly 30 percent of the state's population. Speakers recognized the innovative partnership between WSBA and Washington's three law schools, which leverages law student volunteers and an "army" of participating lawyers to connect Washington's moderate-income households with affordable legal assistance. A second press conference in Spokane is planned to highlight the valuable work of participating attorneys in eastern Washington and Gonzaga University School of Law which make the Moderate Means Program a statewide success.

The WSBA is very pleased to partner with the three law schools at Gonzaga University, Seattle University, and the University of Washington to form the Moderate Means Program, a statewide reduced-fee lawyer referral service for Washington's moderate-income residents. The Moderate Means Program serves those with incomes too high to qualify for free or pro bono legal assistance, yet who cannot afford full-fee legal representation. Since the program's "soft launch" in June 2011, Moderate Means Program law student volunteers have screened and referred more than 200 moderate-income clients to participating attorneys around the state. Attorneys have had the opportunity to attend free in-person and webcast MCLE-accredited public-service training courses. Are you interested in joining more than 375 of your WSBA colleagues who participate in the Moderate Means Program? Visit [www.mywsba.org](http://www.mywsba.org) to sign up now. Those in need of legal assistance can apply online at [www.moderatemeanswa.org](http://www.moderatemeanswa.org) or call 1-855-741-6930.



"Programs like Moderate Means play a crucial role in our legal system. With so many people unable to afford legal assistance, programs like this ensure that our judges have the information they need to make fair and just decisions. The caring lawyers who participate in Moderate Means help to give meaning to the promise of justice provided in our constitution," said Chief Justice Barbara Madsen.

"We've found that since the downturn in our economy there is a large group of citizens who fall into the moderate-income category, which is between 200–400 percent of the poverty level, and they are finding it harder and harder to fully afford to pay for legal help when they need it," said President Steve Crossland. "The WSBA is proud to partner with our state's law schools and provide a program focused on this large population that has, in many ways, been stuck in the middle with no place to turn."

"After a year spent solely in the classroom, it was a nice change of pace to begin working with clients. In dealing with clients, I started to see the bigger picture of the law I learned in the classroom. More importantly, though, the Moderate Means Program provided me the opportunity to aid a sector of the population that has repeatedly fallen through the cracks. This experience tangibly reminded me that it is both my duty and privilege to legally advocate for those in need, not just those who can afford it." — Molly Rose Fehring, Moderate Means Program Law Student volunteer at Gonzaga University. 

Catherine Brown is the WSBA public service program manager and can be reached at [catherineb@wsba.org](mailto:catherineb@wsba.org).



**Top: Chief Justice Barbara Madsen discusses the Moderate Means Program with volunteer attorney Vincent Humphrey. Middle: UW School of Law Dean Kellye Testy speaks at the press conference. Bottom: Gonzaga's Moderate Means Program staff attorney Laurie Powers trains two law student volunteers, Paul Webber and Grigoiry Sarkasian, in Spokane.**





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

### WYLD Open Section Night

The WSBA Young Lawyers Division (WYLD) and sections partnered to host the second annual Open Section Night in January in Seattle. At the event, section representatives discussed the benefits of section membership and offered resources, contacts, and tips to get started in their practice areas. The WYLD has identified a new lawyer section liaison to assist with integration of young lawyer members and programs for each section. For liaison contact information, visit [www.tinyurl.com/c2dhzws](http://www.tinyurl.com/c2dhzws). Open Section Night introduced 150-plus attorneys to 24 WSBA sections. A similar event is planned for Spokane.

### Chelan Douglas Bar Association Talent Show

Members of the Chelan Douglas Bar Association showcased their non-legal skills at the recent 2012 Talent Show, a fundraiser for the local pro bono legal services office. WSBA President **Steve Crossland**, of Cashmere, participated in the Disco Dance Off competition as a black-leather-clad biker dude. Crossland and the other dancers were upstaged by local bar President **Danielle Marchant**, who boogied her way into first place and took the trophy for Disco Dance Champion. The semi-annual event took place in January at the Wenatchee Community Center and raised about \$5,300 for Chelan Douglas County Volunteer Attorney Services (VAS). All told, about 200 attorneys, support staff, local court workers, and



PHOTO COURTESY OF LTJG EILEEN JOY

**MILITARY JUDGE ADVOCATES** — JAGs and others gather for a photo after completing military legal assistance training.

their families came to the event. Other acts included “Las Chicas Locas,” a recreation of the zombie dance from Michael Jackson’s “Thriller”; a dance by “The Briefcase Brigade”; a good-natured roast of Chelan County Superior Court Judge **John Bridges** by lawyer **Larry Tobiska**; and three bands made up of mostly local attorneys. **Allan Galbraith**, of the Wenatchee office of Davis, Arnel Law Firm, won the Ham Award. Galbraith dressed up as the construction worker from the Village People and danced to “Y.M.C.A.” His high-cut jean shorts were a crowd-pleaser. The winner of the Golden Mic Award for best musical act went to a band headed by Wenatchee’s **Russ Speidel**, who sang lead vocals to Elton John’s “Rocket Man.”

### Military Legal Assistance Training

In January, an Admission to Practice Rule (APR) 8(g) training program to certify military judge advocates for limited admission to practice in Washington state courts took place at Bangor Submarine Base at Naval Station Kitsap, in Bremerton. It was attended by military and civilian legal assistance attorneys from Joint Base Lewis-McChord, Coast Guard Station Seattle, Naval Legal Services Northwest, and the Washington Army and Air National Guard. After attending this training, active duty JAGs who are licensed in states other than Washington will receive a limited license to represent lower enlisted military personnel (E-4 and below)



PHOTOS BY BRIAN SALTS-HAL.COMB

**WYLD OPEN SECTION NIGHT** — The event introduced more than 150 new attorneys to 24 WSBA sections. Above left: WSBA Health Law Section members spread awareness. Above right: Construction Law Section members start a conversation.



**CHELAN DOUGLAS  
BAR TALENT SHOW**  
— CDBA members  
showcased their non-  
legal talents to raise  
funds for pro bono  
legal services.



in Washington state courts. There will be an upcoming swearing-in ceremony at the Washington State Supreme Court for these JAGs who are being admitted to practice under the APR 8(g) program.

### WJP Opens Seattle Office

The World Justice Project (WJP), a multinational and multidisciplinary initiative to advance the rule of law, has opened a West Coast office at 1411 Fourth Ave., in downtown Seattle. Since its inception in 2006, the WJP has worked to advance the rule of law for the development of communities of opportunity and equity world-

wide. The Seattle office works in tandem with the organization's existing Washington, D.C., office. Lead supporters of the WJP include the Bill & Melinda Gates Foundation, Hewlett-Packard Company, Ewing Marion Kauffman Foundation, LexisNexis, Microsoft Corporation, the Neukom Family Foundation, and the GE Foundation. The WJP's multinational and multidisciplinary efforts are aimed at government reforms, development of practical programs on the ground to extend the rule of law, and increased awareness about the concept and importance of the rule of law.

"Advancing the rule of law is a critical endeavor — the rule of law is the key to political stability, economic opportunity, social progress, and fundamental fairness and equity. Without the rule of law, economic growth is stifled, corrupt governments divert public resources needed for public works, and people suffer atrocities," said founder and chief executive officer of the World Justice Project **William H. Neukom**. "Seattle, and Washington state more broadly, has emerged as a hub for international development efforts. We are proud to join the 300 international development nonprofit organizations that are already working in the state to advance the health,

prosperity, and dignity of people around the world," he added.

### Clark County Lawyers Honored

At the Clark County Bar Association's annual Barristers' Ball, held in February, **Peter Fels** received the Volunteer of the Year Award presented by the Clark County Volunteer Lawyers Board; **Loren Etengoff** received the Ken Weber Award; and **Suzan Clark** received the Donald Simpson Award. In addition to the presentation of awards, the Barristers' Ball was notable for its fundraising efforts. With more than 100 members and guests in attendance, over \$3,500

was raised, with the silent auction and raffle benefitting the YWCA SafeChoice Program.

### Steven Kim Teaches Koreans About American Jury System

by *Ian Goodhew, deputy chief of staff for King County Prosecuting Attorney's Office*

Senior King County Deputy Prosecuting Attorney **Steven Kim** has been invited by the South Korean government to spend a year in Seoul teaching Korean prosecutors and government officials on the American criminal



**Yeoghan Choi (consulate general of Korea), Steven Kim (senior deputy prosecutor), and Dan Satterberg (King County prosecutor).**

justice system in anticipation of the country's adoption of a grand jury system. The Ministry of Justice of South Korea has requested Kim to speak on the following two topics during his one-year stay: Why Korea should consider switching to a jury trial system and how to prevent corruption and tampering when setting up a jury system. South Korea adopted an advisory jury system in 2008 in an effort to make its legal system more democratic. Since then, the country's jury practice has been constantly evolving. South Korea's system is similar to the United States' trial-by-jury system, except that the Korean jury's ruling is not legally binding on the judge but is simply an advisory opinion for the judge to consider. Ultimately, the judges have the right to determine the verdict and the sentence, regardless of the opinion from the jury. Kim was invited to lend his expertise to Korean prosecutors because of his extensive criminal jury trial practice and expertise and his fluency in Korean. He has worked for the King County Prosecuting Attorney's Office since 2000.

### Lane Powell Contributes to Atlantic Street Center

Lane Powell donated \$5,000 to the Atlantic Street Center, a nonprofit social service agency in Seattle whose mission is to help families and communities raise healthy,



**L to R: Rick M. Barlow, resource development officer of Atlantic Street Center; Ronald E. Beard, of Lane Powell PC; Edith C. Elion, executive director of Atlantic Street Center; Regina Glenn, vice president of multicultural and small business development for the Seattle Metropolitan Chamber of Commerce; and Teresa Everett, community outreach/volunteer services coordinator at Atlantic Street Center.**

successful children and youth. Lane Powell incorporates “Participate in the Life of Our Communities” as an essential part of its mission statement and culture. The Atlantic Street Center provides counseling, as

announced the election of **Lisa J. Dickin-son** (Spokane) as president of the Board for 2012, along with Seattle’s **Christina Gerrish-Nelson, Richard Harrison,** and **Roger Wynne** as vice president,

well as educational, social, and recreational programs for children, youth, and their families. Atlantic Street Center was founded in 1910. Each year, the Center provides services to approximately 3,000 children, youth, and families residing primarily in central and southeast Seattle.

### Northwest Justice Project’s 2012 Board of Directors

The Northwest Justice Project (NJP)

treasurer, and secretary, respectively. In addition, the WSBA Board of Governors has appointed **Monica Langfeldt**, of Ogden Wallace Murphy PLLC of Seattle; **Russel Speidel**, of Speidel Law Firm of Wenatchee; and **Heather Straub**, of the Law Offices of Heather Straub of Tacoma, to terms which began in January to the NJP Board.

### Benson Wong Receives Washington TVW Award

**Benson Wong**, a business attorney at Keller Rohrback L.L.P., received the Founders Award from the Washington Public Affairs Network (TVW) in February at the annual TVW Gala event. The Founders Award is given annually to someone who demonstrates visionary leadership and is committed to increasing the public’s access to state government. Wong spoke about TVW’s purpose: “TVW’s core mission is to provide the public with gavel-to-gavel coverage of the state’s legislative proceedings in Olympia. TVW also gives the public the opportunity to listen to arguments before the State Supreme Court.”

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**Benson Wong**

### ABA Offers Assistance to Solo Practitioners

The American Bar Association is offering assistance for the nation's largest law practice demographic with its new online Solo and Small Firm Resource Center. ABA President **William Robinson III** appointed a task force in August to focus the association's efforts on the value ABA membership brings to this practice segment. "Solo and small-firm practitioners have unique needs because they don't always have the same resources as large firms," Robinson said. The Solo and Small Firm Resource Center provides online articles, CLE programming, a discussion list for solo and small-firm lawyers, and other information from groups throughout the ABA, including the ABA General Practice, Solo and Small Firm Division, and Law Practice Management Section. The website offers practice management advice, business development strategies, career guidance, advice for handling problem cases and clients, technology reviews, networking events, and more. See [www.ambar.org/soloandsmallfirms](http://www.ambar.org/soloandsmallfirms).

### Bracewell & Giuliani Teams Up with FareStart for MLK National Day of Service

**Robb Crowley, Tracy Davis, Jennifer Flath, Carolyn Robbs, Chris Schenck, Matt Schneller, and Jennifer Stephens**, of Bracewell & Giuliani in Seattle, rolled up their sleeves to perform basic food preparation tasks such as peeling and chopping vegetables and assembling meals at FareStart in Seattle in January as part of the MLK Day of Service. The group joined Americans from all walks of life who participated in this national day of service. FareStart is a nonprofit organization that trains home-

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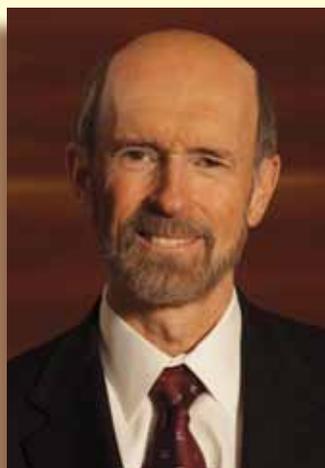
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less and disadvantaged individuals for jobs in the culinary industry, and delivers meals daily to several area homeless shelters.

### LBAW Annual Awards Gala

The Latina/o Bar Association of Washington (LBAW) Gala took place in January, with Colorado Supreme Court Justice **Monica Márquez** giving the keynote address. Among the awards presented were the *Abogado Excepcional* / Extraordinary Attorney Award, given to **Chach Duarte White**. This award is given to a LBAW member whose professional and civic ac-

tivities have significantly contributed to the advancement of LBAW's purpose and mission. **Jorge Barón** received the *Modelo de Excelencia* / Model of Excellence Award, which recognizes an individual, community group, organization, firm, or business for outstanding contributions to the Latina/o community. At the ceremony, LBAW Foundation Scholarship recipients were announced: **Andres Moses** of Gonzaga School of Law, **Lenny Sanchez** from the University of Washington School of Law, and **Sandy Restrepo** from Seattle University School of Law.

### Nancy Isserlis Named "Mover and Shaker" at Women in Business Leadership Awards

Congratulations to WSBA Treasurer and District 5 Governor **Nancy Isserlis**, who was recognized as a "Mover and Shaker" at the 2012 Women in Business Leadership Awards. The Mover and Shaker Award is given to a woman in business leadership who is also involved in many different organizations throughout the community, such as volunteer work or nonprofit boards. A panel of past winners helps to choose the recipients based on their commitment to the community and how many individuals are positively affected by the work being accomplished. The award was presented by *Inland Business Catalyst Magazine* at a breakfast reception held in March.

Additionally, Spokane Mayor **David Condon** named Nancy Isserlis as Spokane's newest City Attorney. Isserlis served as the chair of the Mayor's Transition Committee on Public Safety and currently serves on the Mayor's new Advisory Board on Policing, which is helping interim Chief **Scott Stephens** implement the Mayor's Immediate Police Action Plan. She was strongly involved in the process to enhance citizen oversight of the police and the creation of the City's Office of Police Ombudsman.

### In Brief



**Greg Johnson**, immediate past chair of the BDA; **Lane Powell** Shareholder **Grant S. Degginger**; and **Leslie Lloyd**, president of the BDA. *Photo courtesy of Vivian Hsu of the BDA.*

The Bellevue Downtown Association (BDA) honored Lane Powell Shareholder **Grant S. Degginger** with the 2011 Place Making Award for Leadership in recognition of his 20 years of combined public service to the city in appointed and elected roles, including four years as mayor. Degginger served as the mayor of Bellevue from 2006–2010, as a councilmember from 1999–2012, and has been a member of the City's Planning Commission.

COMMERCIAL LITIGATION

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In December, Dickstein Shapiro's Insurance Coverage Deputy Leader **Jim Murray**, of Washington, D.C., was named one of *Law360's* Insurance MVPs. Jim is a trial lawyer with more than 25 years of courtroom experience

ranging from environmental contribution cases to bank fraud, trademark infringement, securities fraud, and professional liability. The *Law360* MVP distinction was extended to only 92 attorneys nationwide across 16 practice areas for their accomplishments in major litigation or transactions this year.



Lane Powell Shareholder **Heidi Orr**, of Seattle, has been elected as a fellow of the American College of Trust and Estate Counsel (ACTEC). ACTEC is an organization of more than 2,600 trust and estate lawyers and

law professors from the United States and Canada who have been affirmed by their peers as having made outstanding contributions to the practice of trust and estate law.



**John W. Hempelmann**, chairman of Caircross & Hempelmann in Seattle, has been named a 2012 BTI Client Service All-Star in the annual report published by BTI Consulting Group. Attorneys

honored as "Client Service All-Stars" are selected for inclusion based on unprompted recommendations by nearly 250 corporate counsel at Fortune 1000 and other large corporations.



Shareholder **Mike Reilly**, of Lane Powell in Seattle, has been appointed to serve as vice chair of administration of the Board of Regents for Gonzaga University. Reilly has been a member of Gonzaga's Board

of Regents since 2005.

**Bert Markovich**, a shareholder in the Seattle office of regional law firm Schwabe,



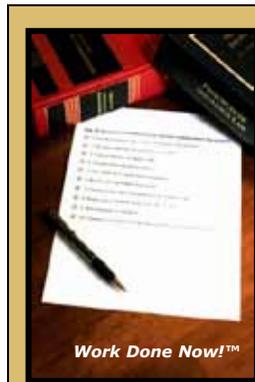
Williamson & Wyatt, recently joined the board of CHOICES Education Group. CHOICES is a Seattle-based national nonprofit organization dedicated to empowering students with vital tools to increase career

and life opportunities.

The Washington State Nursery & Landscape Association (WSNLA) has awarded Bainbridge Island attorney **Jeanne**

**McNeil** its 2012 Lifetime Achievement Award. In addition to a J.D., McNeil has a Masters in international horticulture and is a certified professional horticulturist. She currently serves as WSNLA executive director. WSNLA serves, promotes, represents, and educates Washington's horticultural community.

The Washington Academy of Elder Law Attorneys (WAEALA) elected Wenatchee attorney **Peggy Moxley** as its president for 2012. Moxley has served on the board of WAEALA for the past five years. 



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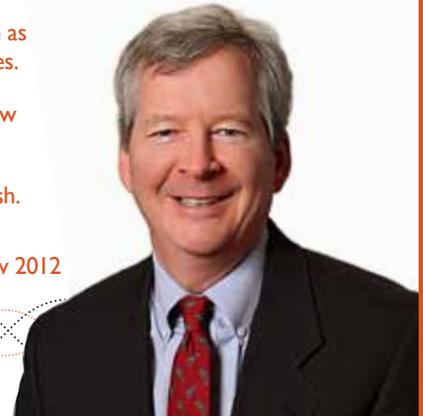
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This In Memoriam section contains brief obituaries of WSBA members. The list is not complete and contains only those notices that the WSBA has learned of through newspapers, magazine articles, trade publications, and correspondence. Additional notices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

### George D. Anderson

George Anderson was born in Lake City, Iowa. He earned a business degree from the University of Iowa and then joined the U.S. Air Force serving in the Korean War. He worked for the Boeing Company after leaving the military. In 1969, Anderson entered the Law School at Creighton University in Omaha, where he earned his J.D. He practiced in Mountlake Terrace and Lynnwood. After becoming ill with cancer in 1991, he retired and traveled around the country in his motor home. In 1996, he moved to Port Ludlow and remained active in law and the community, serving as president of the Community Club and as a consultant for the Jefferson County Water District. He enjoyed fishing and crabbing and would stop at every garage sale along the way.

George Anderson died January 19, 2012, at the age of 79.

### Wilfred G. Bassett

Born and raised in Jackson, Michigan, George Anderson attended the University of Michigan and graduated from its law school. He moved to Washington in 1969. He was a founding member of the Bassett & Morrison law firm and a shareholder for the past 20 years at Graham & Dunn, PC, in Seattle. Bassett authored and was editor-in-chief of *The Washington Civil Trial and Evidence Manual, from Voir Dire to Verdict*, first published in 1978. He was a long-time resident of Mercer Island and member of the Mercer Island Presbyterian Church.

Wilfred Bassett died January 19, 2012, at the age of 70.

### Judge Robert R. Beezer

Judge Robert Beezer was a senior circuit judge of the U.S. Court of Appeals for the Ninth Circuit. A lifelong resident of Seattle, he became a lawyer in 1956 and a federal judge in 1984. Nominated by President Reagan, Judge Beezer was confirmed and received his commission in 1984. He assumed senior status in 1996, and continued to

hear cases for many more years. Among his noteworthy opinions are *Marshall v. Stern* (600 F.3d 1037 (9th Cir. 2010)), *A & M Records, Inc. v. Napster* (239 F.3d 1004 (9th Cir. 2001)), and *Campbell v. Wood* (198 F.3d 662 (9th Cir. 1994)). Prior to his appointment, Judge Beezer was in private practice at the Seattle firm of Schweppe, Doolittle, Krug, Tausend & Beezer. He served as a judge *pro tem*, as a fellow of the American Bar Association, and on the WSBA Board of Governors from 1980 to 1983. He participated in drafting the current Washington State Probate Code. He was a commissioned officer in the U.S. Marine Corps before becoming a lawyer and then served in the Marine Corps Reserve for more than 20 years.

Judge Robert Beezer died March 30, 2012, at the age of 83.

### Katherine S. Belisle

Katie Belisle was born in Honolulu, Hawaii, and spent her early years in Las Vegas, Nevada. She attended the University of Washington and received her J.D. from the University of Puget Sound School of Law. She worked for more than 13 years as a public defender for the Society of Counsel Representing Accused Persons in the children and family division. She served with a variety of child-advocacy organizations, including TeamChild and the Center for Children & Youth Justice. She also was a board or committee member at Camp Nor'wester and her YWCA guild. She enjoyed craftwork including batik, welding, jewelry making, and sewing.

Katie Belisle died February 18, 2012, at the age of 51.

### Myron J. Carlson

Mike Carlson graduated from Everett High School and immediately enlisted in the U.S. Navy V-5 naval pilot training program. He attended Stanford University and received his law degree from the University of Washington School of Law. He served as a King County deputy prosecutor and then joined the Everett law firm of Anderson Hunter, Carlson, and Dewell. He later founded his own firm, where he practiced until retiring in 1992. He served on the WSBA Board of Governors from 1986 to 1989 and on the Washington State Trial Lawyers Association (now Washington State Association for Justice) Board of Governors. Carlson loved cruising and racing on the waters of Puget Sound and around the world.

Mike Carlson died March 2, 2012, at the age of 84.

### Gordon S. Clinton

Born in Medicine Hat, Alberta, Gordon Clinton attended the University of Washington School of Law and attained four honorary doctorates in law. He worked as a special agent for the FBI and served as a lieutenant in the Pacific Theater during World War II. Clinton was Seattle's 43rd mayor, serving from 1956 to 1964. Among his accomplishments, he helped pioneer the 1962 Seattle Century 21 World's Fair, established Seattle's first sister-city relationship with Kobe, Japan, and created the Seattle Human Rights Commission. After holding public office, he returned to his law firm of Clinton, Fleck and Glein. He often served as a judge *pro tem* and on many charitable organizations' boards, and was president of the Greater Seattle Rotary.

Gordon Clinton died November 19, 2011, at the age of 91.

### Sheila L. Corcoran

Sheila Corcoran moved in 1978 with her sons to Cedar Creek 40 miles north of Colville and lived in a 100-year-old adapted horse barn and experienced a pioneer-like lifestyle. Horses were Corcoran's passion and she spent countless months conditioning horses for endurance rides. She worked as a Stevens County EMT and at the Colville Medical Center. Eventually she returned to school and earned a degree in journalism and a law degree from Gonzaga University School of Law. She returned to her home at Marble to develop her law practice but was able to practice for only a few years before becoming compromised by diabetes.

Sheila Corcoran died March 25, 2012, at the age of 61.

### Karl A. Giske

Born in Seattle, Karl Giske attended Roosevelt High School and the University of Puget Sound, where he obtained his law degree. He studied international law and business at the Hague in the Netherlands. He practiced as a real estate lawyer in the Northeast Seattle area.

Karl Giske died January 3, 2012, at the age of 64.

### Judge Bruce E. Horton

Judge Bruce Horton was born in Pasco and earned a bachelor of arts degree from Ev-

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ergreen State College and his law degree from the University of Puget Sound School of Law. He settled in Juneau, Alaska, and then moved to Sitka. He was appointed a magistrate judge and was dedicated to the court system. Judge Horton was an avid outdoorsman and liked hunting, fishing, cooking, and road trips. He and his wife traveled frequently to Mexico and West Coast wineries.

Judge Bruce Horton died January 20, 2012, at the age of 62.

### David L. Martin

Born in Ogallala, Nebraska, Dave Martin's family moved to Quincy where his father ran a dairy farm. He attended Washington State University and graduated from the University of Washington School of Law. He worked briefly at the State Attorney General's Office before being drafted into the U.S. Army. While posted to Fort Myer, Virginia, Martin attended Washington University and obtained a master's degree in labor law. In 1970, he returned to the Seattle area and joined the firm of Lee Smart in 1972, practicing in insurance defense. He enjoyed trips to the family cabin on Camano Island; breeding, training, and racing thoroughbreds; and was always up for a game of blackjack.

Dave Martin died January 11, 2012, at the age of 69.

### Lynne G. Masters

Lynne Masters was born in New York, New York, raised in Pennsylvania, attended Boston University and the University of Massachusetts, and earned her J.D. at Suffolk University Law School. In the 1980s, she moved to Seattle and worked for the city in its Department of Information Technology as a cable franchise administrator. Relocating to Walla Walla, Masters opened a practice focused on advising municipalities on cable television franchise issues. She retired in 2007. She enjoyed power walking, swimming, bicycling, motorcycling, and camping.

Lynne Masters died December 22, 2011, at the age of 59.

### William N. Mehlhaf

Born in Corvallis, Oregon, Bill Mehlhaf spent his entire life in the Willamette Valley. He received his undergraduate degree from Oregon State University and his law degree from Lewis & Clark Law School.

William Mehlhaf died February 4, 2012, at the age of 61.

### Howard K. Michaelsen

Born in Odessa, Howard Michaelsen was drafted into the U.S. Army after high school and served in World War II. He was later stationed in Colorado Springs, Colorado, and fought in Korea in the early 1950s. Returning to Washington, Michaelsen completed his bachelor's degree and then taught history at Stevens Grade School in Spokane. He earned his law degree by attending Gonzaga University School of Law in the evenings. He practiced until retiring in 2007. He served with many community and charitable organizations including the Spokane Lilac Association, North Spokane Lions, Spokane Shriners, and Toastmasters, and played Santa Claus for many years at Spokane nursing homes and hospitals. He loved dancing with his wife of 61 years.

Howard Michaelsen died December 28, 2011, at the age of 84.

### Paul W. Oden

Paul Oden, of Bainbridge Island, attended Dartmouth College, the University of Boulder, and New York University. As a lawyer, his work was focused on tax, wills, and probate law. Prior to practicing law, he was a Peace Corps volunteer on Yap Island in Micronesia and he returned there after law school to help write the Federated States of Micronesia's constitution. He spoke five languages and served as president of the Wing Point Country Club and the Seattle Chamber of Commerce President's Club. Oden loved golf and taking photos of his family.

Paul Oden died March 30, 2012, at the age of 64.

### Russell R. Pearson

Born in St. Paul, Minnesota, Russell Pearson attended Harvard College and graduated *magna cum laude* in 1947. He served in the U.S. Navy in World War II. After receiving his law degree from Harvard Law School, he worked as a U.S. foreign service officer. He came to Seattle in 1961, and served as a deputy prosecuting attorney with King County, was general counsel for Blue Cross of Washington and Alaska, and was associated with several Seattle law firms. His volunteer service included the Municipal League of King County and work at University Congregational United Church of Christ in Seattle.

Russell Pearson died March 24, 2012, at the age of 85.

### Marc R. Roecks

Marc Roecks grew up on a wheat farm outside Fairfield. After high school, he entered the world of real estate and became a member of the Spokane Board of Realtors. In 1989, he graduated from Gonzaga University School of Law. His practice encompassed many fields, including family law, real estate issues, estate planning, collection work, and the elderly. Roecks was a talented musician with a passion for music. He collected and restored musical instruments, including many antique organs.

Marc Roecks died November 14, 2011, at the age of 58.

### Richard I. Sampson Jr.

A Seattle resident his entire life, Richard Sampson attended Roosevelt High School and the University of Washington. He served as an officer in the U.S. Navy during World War II. He continued his education after the war, earning his law degree from the University of Washington School of Law. He was a loyal member of Phi Gamma Delta Fraternity. Sampson practiced law in Seattle for more than 50 years, initially with Jones & Gray and later as a sole practitioner. He enjoyed music and stage performances. He was proud of his Scottish heritage and often entertained others by playing the bagpipes.

Richard Sampson Jr. died February 12, 2012, at the age of 87.

### David A. Stewart

David Stewart grew up in Columbus, Ohio, and attended The Ohio State University and Lewis & Clark Law School. He advocated for organic foods and bicycling and fought against toxins and environmental destruction. He practiced personal injury law. He loved travel and the outdoors and studied environmental and workers' rights issues in Costa Rica.

David Stewart died January 24, 2012, at the age of 41.

### Lauren D. Studebaker

Born in Aberdeen, Lauren Studebaker grew up on Mercer Island. He attended Harvard University and earned his law degree at the University of Washington School of Law. He was involved for many years coaching youth soccer and was voted U.S. Youth Soccer State and Regional Coach of the Year in 1996.

Lauren Studebaker died February 16, 2012, at the age of 77.

*Bar News* has also learned of the death of Edwin V. Dutra Jr. on January 12, 2012. ☹

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## Opportunities for Service

### WSBA Presidential Search

**Application Deadline: May 4, 2012**

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

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

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

The commitment begins in June 2012, following selection. A one-year term as president-elect will begin at the Annual Awards Dinner on September 20, 2012. The president-elect is expected to attend the two-day Board meetings held approximately every five to six weeks, as well as numerous subcommittee, section, regional, national, and local meetings. In September 2013, at the WSBA Annual Awards Dinner, the president-elect will assume the position as president. During his or her service, the president-elect and president will also be required to meet with members of the Bar, the courts, the media, and public and legal interest groups, as well as be involved in the Bar's legislative activities. Appropriate time

will need to be devoted to communication by letter, email, and telephone in connection with these responsibilities. The duties and responsibilities of the president are set forth in the WSBA Bylaws. The Bylaws can be found at <http://bit.ly/xLZbkB>.

### Washington Pattern Jury Instructions Committee

**Application deadline: May 14, 2012**

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, 2016. 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), and 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 letters of interest and résumés to: WSBA Communications Department, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539; or email [barleaders@wsba.org](mailto:barleaders@wsba.org).

### Civil Legal Aid Oversight Committee

**Application deadline: May 14, 2012**

The Civil Legal Aid Oversight Committee is a judicial branch entity established by RCW 2.53.010. It is responsible for overseeing the activities of the Office of Civil Legal Aid (OCLA), reviewing the performance of the OCLA director, and making recommendations to the Legislature, the Supreme Court, and the Access to Justice Board on matters relating to the delivery of state-funded civil legal aid services.

The Civil Legal Aid Oversight Committee consists of 11 members, four of whom are appointed by the Legislature, two by the Board for Judicial Administration, one by the Governor, one by the Washington State Bar Association, and three by the Washington State Supreme Court, upon recommendation of the Access to Justice Board.

The position appointed by the WSBA is the subject of this notice.

This position is for a three-year term commencing July 1, 2012, and running through June 30, 2015. The individual appointed to this position may seek reappointment for a second three-year term. No compensation is provided for service on the Civil Legal Aid Oversight Committee, but members may be reimbursed for travel and other related expenses in accordance with general state policies.

The Civil Legal Aid Oversight Committee seeks members who:

- Have a demonstrated interest and history of involvement in working to ensure equal justice in our state's civil legal system;
- Are committed to promoting bipartisan understanding of and support for state-funded civil legal aid services;
- Are committed to effective no-partisan oversight of the state-funded civil legal aid system;
- Offer relevant leadership experience and/or potential;
- Have relevant client community-based relationships; and
- Will help enhance the ethnic, cultural, geographic, political, and other diversity of the Civil Legal Aid Oversight Committee.

Individuals interested in appointment to the Civil Legal Aid Oversight Committee should submit letters of interest and résumés to: WSBA Communications Department, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539; or email [barleaders@wsba.org](mailto:barleaders@wsba.org).

### ABA House of Delegates

**Application deadline: May 14, 2012**

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 positions will be available in August 2012. 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 policymaking body of the ABA. The House, composed of approximately 550 delegates, elects the ABA officers and board, and meets out of state twice a year. Delegate attendance is required (the alternate would participate in the House of Delegates if one of the

WSBA delegates were unable to attend a meeting, so full voting capacity can exist at all times). The four positions available are for delegates, not the alternate. 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 letters of interest and résumés to: WSBA Communications Department, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539; or email [barleaders@wsba.org](mailto:barleaders@wsba.org).

### Commission on Judicial Conduct

**Application deadline: May 14, 2012**

The WSBA Board of Governors is seeking applicants interested in serving on the Commission on Judicial Conduct. Two positions are available: one as a member and one as an alternate. The Commission reviews complaints of ethical misconduct and disability against judicial officers, discusses the progress of investigations, and takes action to resolve complaints. The goal of the Commission is to maintain confidence and integrity in the judicial system by seeking to preserve

both judicial independence and public accountability. The public interest requires a fair and reasonable process to address judicial misconduct or disability, separate from the judicial appeals system that allows individual litigants to appeal legal errors.

The Commission consists of 11 members who serve four-year terms — six non-lawyer citizens, three judges, and two lawyers. Each member has an alternate whose term coincides with their corresponding member's term. The lawyers must be admitted to practice in Washington and are appointed by the WSBA. Incumbents are eligible for reappointment, limited to two terms as an alternate member and two terms as a full member. Letters of interest and résumés are also required for incumbents seeking reappointment. The term for these positions will commence on June 17, 2012, and expire on June 16, 2016. Please submit letters of interest and résumés to: WSBA Communications Department, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539; or email [barleaders@wsba.org](mailto:barleaders@wsba.org).

The Commission on Judicial Conduct has asked the WSBA to conduct discipline checks on all applicants. Upon receipt of a letter of interest and résumé, applicants

will be sent a form to authorize the WSBA to release to the WSBA Communications Department representative and the Board of Governors all information contained in the member's disciplinary record. Further information about the Commission can be found online at [www.cjc.state.wa.us](http://www.cjc.state.wa.us), or by contacting them at 360-753-4585.

### Community Representatives Sought for WSBA Boards

**Application deadline: May 25, 2012**

The WSBA seeks members of the public to serve on two boards and one council for terms beginning October 1, 2012: the Character and Fitness Board (three-year term), the Practice of Law Board (three-year term), and the Council on Public Defense (one-year term). This is an excellent opportunity for non-lawyers to get an insider's view on how the practice of law is regulated in Washington state. WSBA members are encouraged to share this opportunity with potential applicants. Further information about all of the boards including application instructions is available at [www.tinyurl.com/non-lawyer-volunteers](http://www.tinyurl.com/non-lawyer-volunteers). The application deadline is May 25, 2012. If you have questions, email [barleaders@wsba.org](mailto:barleaders@wsba.org).

### Diversity — Building a Culture of Dignity and Respect — June 28, 2012

Puget Sound Association of Legal Administrators will present a diversity event at the Washington Athletic Club in Seattle. The guest speaker will be Candi Castleberry-Singleton, chief inclusion and diversity officer at University of Pittsburgh Medical Center (UPMC). Attendees will learn how UPMC integrated dignity, respect, culture competency into day-to-day business practices; how UPMC leaders have been engaged and created accountability in their respective business units; how employee engagement has been positively impacted, gaining commitment from employees; and how to augment, reignite, and start a Dignity & Respect Initiative in your organization. Visit [www.psal.org](http://www.psal.org) to register.

### Online Directory of Pro Bono Opportunities

The WSBA is pleased to announce the launch of [www.probonowa.org](http://www.probonowa.org), an online directory of pro bono opportunities around the state. Designed to link attorneys with opportunities to serve low- and moderate-income

clients in Washington, [www.probonowa.org](http://www.probonowa.org) will connect attorneys with organizations in need of pro bono attorneys. As part of WSBA's strategic goal to enhance the culture of service among its members, the WSBA is excited to maximize the valuable work and dedicated commitment of pro bono attorneys. The WSBA will maintain and update [www.probonowa.org](http://www.probonowa.org), ensuring that attorneys seeking volunteer opportunities have the most up-to-date information available needed to link their skills with the clients who need it most. Thanks to the Northwest Justice Project, Probono.net, and the Washington Young Lawyers Division Pro Bono and Public Service Committee for their invaluable partnership and support to launch [probonowa.org](http://probonowa.org).

### Tacoma Foreclosure Legal Clinic Needs Volunteers

Volunteers are needed to help homeowners facing foreclosure. The WSBA Home Foreclosure Legal Aid Project and Tacoma-Pierce County Volunteer Legal Services are seeking volunteer attorneys to help homeowners avoid foreclosure at a free legal clinic on Saturday, May 5, from 10:00 a.m. to 3:00 p.m.

in Tacoma. Free training will also be available for those registered to volunteer at the May 5 clinic. The Northwest Justice Project's Foreclosure Prevention Unit will host a live foreclosure prevention webinar on May 3, from 2:00 to 3:30 p.m. (1.5 CLE credits pending). To register for the webinar and clinic, email Ariel Speser at [ariels@nwjustice.org](mailto:ariels@nwjustice.org).

### Seeking Questionnaires from Candidates for Judicial Appointments

**May 10, 2012, for June 21, 2012, interview; August 3, 2012, for September 14, 2012, interview**

The WSBA Judicial Recommendation Committee (JRC) is accepting questionnaires from attorneys and judges seeking consideration for appointment to fill potential Washington State Supreme Court and Court of Appeals vacancies. Interested individuals will be interviewed by the Committee on the dates listed above. The JRC's recommendations are reviewed by the WSBA Board of Governors and referred to Governor Gregoire for consideration when making judicial appointments. Materials must be received at the WSBA office by

the deadlines listed above. To obtain a questionnaire, visit the WSBA website at [www.wsba.org/jrc](http://www.wsba.org/jrc) or contact the WSBA at 206-727-8212 or 800-945-9722, ext. 8212; or email [judithb@wsba.org](mailto:judithb@wsba.org).

**Cameras in the Courtroom Project Launched**

The U.S. District Court for the Western District of Washington is participating in a national pilot project to evaluate the effects of cameras in the courtroom. The pilot project allows certain civil proceedings to be video recorded in the Seattle courthouse and made available for public viewing, if the parties consent and the presiding judge approves. No criminal proceedings will be recorded.

Under the pilot project, the court will ask parties, at the beginning of newly filed cases, whether they consent to recording.

If one or more of the parties decline, the court will not initiate future requests. If the parties indicate their initial consent, then prior to each hearing, the court will send all parties in the case a form asking whether they consent to recording that hearing. A party may also request that a proceeding be recorded. Visit the court's website at [www.wawd.uscourts.gov/index.htm](http://www.wawd.uscourts.gov/index.htm) for more information regarding the Cameras in the Courtroom Pilot Project.

**2012 Licensing and MCLE Information**

**Licensing Suspensions.** The license renewal deadline was February 1. If license fees were not paid by the due date, late fees were assessed. As required by the Bylaws, a recommendation for suspension of non-compliant members (members who haven't completed and filed required forms or paid fees and as-

sessments owed) was scheduled to go to the Court in late April. Any suspensions ordered are expected to be effective in early May.

**MCLE Suspensions.** The MCLE reporting deadline was February 1. As required by APR 11.6(c), if you were due to complete MCLE requirements for 2009-2011 (Group 2) and have not done so, a recommendation for suspension of non-compliant members (members who have not completed credits, filed the C2 certification form, or paid the late fee) was scheduled to go to the Court in late April. Any suspensions ordered are expected to be effective in early May.

**Judicial Member Licensing**

If you are still eligible for judicial membership and you have not filed your renewal within 60 days of the date of the written notice, your eligibility to transfer to another membership class upon leaving service as a judicial officer will not be preserved. If you are no longer eligible for judicial membership, you must notify the Bar within 10 days and, if you want to continue your affiliation with the WSBA, you must change to another membership class within the Bar. Contact Membership Changes at [membershipchanges@wsba.org](mailto:membershipchanges@wsba.org) or 206-239-2131 if you need to change your membership. For detailed instructions, go to [www.wsba.org](http://www.wsba.org).

**Notice of Hearing on Petition for Reinstatement of Peter A. Slowiaczek**

A petition for reinstatement after disbarment has been filed by Peter A. Slowiaczek, WSBA No. 23649, who was admitted in 1994 and disbarred in 2004. At the time of his suspension and disbarment, Mr. Slowiaczek practiced in Pierce County.

A hearing on Mr. Slowiaczek's petition will be conducted before the Character and Fitness Board on July 13, 2012. Not later than June 29, 2012, at 5:00 p.m., anyone wishing to do so may file with the Character and Fitness Board a written statement for or against reinstatement, setting forth factual matters showing that the petitioner does or does not meet the requirements of Admission to Practice Rule 25.5(a). Except by the Character and Fitness Board's leave, no person other than the petitioner or petitioner's counsel shall be heard orally by the Board.

Communications to the Character and Fitness Board should be sent to: Jean K. McElroy, General Counsel/Chief Regula-

**2012 ACCESS TO JUSTICE CONFERENCE**



**Our New Economic Reality: The Legal Profession's Role**, will be held June 8-10, 2012, in Yakima, in partnership with the Washington State Access to Justice Board and the Washington State Bar Association.

We've all witnessed the shift of the economic climate across the United States these past few years. Washington state has not been immune to these changes and has entered what may effectively be termed a new economic reality. The impact of this economic reality on the legal system means that traditional legal services are no longer able to operate with a business-as-usual

strategy. This is a new era, and the entire legal profession has an important role in responding to the new economic reality ensuring the goal of a just society. The 2012 conference will focus on exploring solutions and building skills to help address the ever-growing legal service needs.

This year's conference includes workshops on the practical use of technology, plain language forms, emotional intelligence in the legal profession, lawyer-self-care, volunteer program resources, legal aid models, and more. For more information, see [www.wsba.org/justiceconference](http://www.wsba.org/justiceconference).

tory Counsel, Washington State Bar Association, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539, or to [jeanm@wsba.org](mailto:jeanm@wsba.org). This notice is published pursuant to APR 25.4(a).



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### Get More out of Your Software

The WSBA offers hands-on computer clinics and webinars for members wanting to learn more about what Microsoft Office Outlook and Word, as well as Adobe Acrobat, can do for a lawyer. We also cover online legal research such as Casemaker and other resources. Are you a total beginner? No problem. The clinic teaches helpful tips you can use immediately. Bring your laptop or use provided computers. Seating is limited to 15 members. The May 14 clinic will meet from 10:00 a.m. to noon at the WSBA offices and online, and will focus on Microsoft Outlook and Word. On May 17, from 2:00 to 4:00 p.m., we will discuss Casemaker and online research. There is no charge and no CLE credit. To reserve your seat and obtain conference call instructions, contact Peter Roberts at 206-727-8237, 800-945-9722, ext. 8237, or [peter@wsba.org](mailto:peter@wsba.org).

### Facing an Ethical Dilemma?

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

### Search WSBA Advisory Opinions Online

WSBA advisory opinions are available online at [www.wsba.org/advisoryopinions](http://www.wsba.org/advisoryopinions).

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

### Just Starting a Practice?

Think “out of the box” and consider purchasing “Law Office in a Box.” For \$79, you

receive an hour of consultation time plus everything you see here: <http://tinyurl.com/3rn75hj>. Questions? Contact Peter Roberts at [peter@wsba.org](mailto:peter@wsba.org), 206-727-8237, or 800-945-9722, ext. 8237.

### Individual Counseling and Consultation

The Lawyers Assistance Program provides treatment for those struggling with depression, work stress, addiction, and life transition, among other topics. Our licensed counselors can offer up to 10 sessions on a sliding scale. The first appointment is \$20.



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We also provide consultations on job seeking and can offer informational and referral resources on a range of topics. Contact us at 206-727-8268, 800-945-9722, ext. 8268, lap@wsba.org, or go to [www.wsba.org/lap](http://www.wsba.org/lap).



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### Weekly and Bi-Monthly Job Seekers Groups

The Bi-Monthly Job Search Group welcomes attorney/career consultant Karen Summerville to WSBA on Wednesday, May 9, from noon to 1:30. She has been consulting with Washington attorneys and law firms for almost 15 years, and will be speaking about identifying one's ideal career within the law, an original approach to networking, and how to master the job interview. The Weekly Job Seekers group provides strategy and support to unemployed attorneys. The group runs for eight weeks and is limited to eight attorneys. We provide the compre-

hensive WSBA job search guide "Getting There: Your Guide to Career Success," which can also be found online at [www.tinyurl.com/7xheb8b](http://www.tinyurl.com/7xheb8b). For more information about monthly and weekly job group programming or to schedule a career consultation, contact Dan Crystal at [danc@wsba.org](mailto:danc@wsba.org), 206-727-8267, or 800-945-9722, ext. 8267.

### Work/Life Balance Group

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

### Interested in Mindful Lawyering?

A growing number of legal professionals across the nation are applying mindfulness-based skills and training to lawyering. The Washington Contemplative Lawyers group meets on the last Wednesday of each month (May 30) at the Lawyers Assistance Program office from 8:15-9:00 a.m. For more information, contact Se-

villa Rhoads at [srhoads@gsblaw.com](mailto:srhoads@gsblaw.com). On Saturday, June 16, from 9:00 a.m. to noon, a meditation workshop for lawyers will be hosted at the Shambhala Center, in Seattle. For more information, contact Greg Wolk at [gregwolk@gmail.com](mailto:gregwolk@gmail.com). Learn more about mindful lawyering at [www.wacontemplativelaw.blogspot.com](http://www.wacontemplativelaw.blogspot.com).

### Upcoming Board of Governors Meetings

*June 8, Yakima*

*July 13-14, Union*

*September 20-21, 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](mailto:margarets@wsba.org). The complete Board of Governors meeting schedule is available on the WSBA website at [www.wsba.org/about-wsba/governance/board-of-governors](http://www.wsba.org/about-wsba/governance/board-of-governors).

### Usury Rate

The average coupon equivalent yield from the first auction of 26-week treasury bills in April 2012 was 0.142 percent. Therefore, the maximum allowable usury rate for May is 12 percent.

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

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

## Disbarred

**Shannon K. Connall** (WSBA No. 33299, admitted 2002), of Portland, Oregon, was disbarred, effective January 12, 2012, by order of the Washington State Supreme Court following a default hearing. This discipline was based on conduct involving the crime of theft, dishonest conduct, and disregard for the rule of law.

At all relevant times, Ms. Connall practiced law at her father's firm in Portland, Oregon. In December 2009, Ms. Connall's law firm began representing Client in a criminal matter. Client's mother gave the firm \$11,000 to be used to post bail for her son. The \$11,000 was not used because Client was never taken into custody. In February 2010, Client's estranged wife hired Ms. Connall to represent her in an unrelated matter and paid the firm \$5,000. In approximately June 2010, Client's mother asked for a refund of the \$11,000 that she had provided for Client's bail. Ms. Connall told her that the \$11,000 had been applied to legal fees owed by Client's wife. This representation was false. Ms. Connall had taken all or part of the funds earmarked for Client's bail. Ms. Connall told Client's estranged wife that she (the wife) owed Client's mother \$11,000. As a result of Ms. Connall's misrepresentation, Client's wife allowed Ms. Connall to charge \$11,000 to her credit card so that the firm would repay Client's mother. Ms. Connall did not use these funds to repay Client's mother. Ms. Connall appropriated the funds for her own use.

In October 2010, Client's estranged wife filed a grievance against Ms. Connall with the Oregon State Bar. Rather than respond to the grievance and other matters, Ms. Connall resigned from the Oregon State Bar effective December 23, 2010. On May 5, 2011, the district attorney filed an Information charging Ms. Connall with first-degree theft in

violation of ORS 164.055(1), which is a felony. Ms. Connall entered a plea of no contest to the first-degree theft charge, and the court entered a finding of guilty on the first-degree theft charge.

Ms. Connall'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 in other respects; RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and RPC 8.4(i), prohibiting a lawyer from committing any act involving moral turpitude, or other act which reflects disregard for the rule of law.

Joanne S. Abelson represented the Bar Association. Ms. Connall did not appear either in person or through counsel. Barbara Ann Peterson was the hearing officer.

## Disbarred

**Victoria N. Smith** (WSBA No. 26569, 1996), of Vashon, was disbarred, effective February 14, 2012, by order of the Washington State Supreme Court, following approval of a stipulation. This discipline is based on conduct involving practicing law while suspended and misrepresentation. *Victoria N. Smith is to be distinguished from Vicki L. Smith of Portland and Vicki M. Smith of Portland.*

Effective March 16, 2006, the Washington State Supreme Court suspended Ms. Smith, who is also known as Victoria N. Hayes, for one year pursuant to a stipulation. The stipulation required Ms. Smith to schedule an independent alcohol evaluation within 60 days of signing the stipulation, comply with any recommendations of the evaluating agency, and pay costs and expenses to the Association. These conditions were required to be completed as a condition of her reinstatement. Ms. Smith has never provided satisfactory proof that she completed the required alcohol evaluation, and was never reinstated from that suspension. In 2010, Client hired Ms. Smith and paid her \$1,500 to represent him in a parenting plan modification. Ms. Smith did not tell Client that her license was suspended. Ms. Smith sent a proposed parenting plan to Client's former wife together with a letter bearing the letterhead "Victoria N. Hayes, Attorney at Law." The letter commented about the proposed plan's health insurance, educational expenses, and other issues, and it closed by requesting Client's wife to contact her to "discuss finalization and entry of orders." In October 2010, Ms. Smith wrote an email to Client's former wife regarding scheduling a mediation, with the words "Victoria Hayes, Attorney at Law" at the bottom of the email. As of November 8, 2010, Ms. Smith had a website, which described herself as "Victoria N. Hayes, Attorney at Law."

On November 10, 2010, Attorney B filed a notice of appearance for Client's former wife. After conducting a routine inquiry, Attorney B found Ms. Smith was not licensed to practice law. Attorney B called Ms. Smith, who provided her Bar number, but did not tell Attorney B that her license was suspended. Attorney B subsequently filed a grievance with the Bar Association. In December 2010, Ms. Smith responded to the grievance and explained that she held herself out as an attorney "in anticipation that her suspension would be lifted," and expressed remorse about her actions. In November 2010, Ms. Smith contacted Client and told him that she could not represent him due to a "problem with her license," and refunded the entire \$1,500. Client's parenting plan issues have been resolved. Ms. Smith represents that she has achieved stability in her personal life and has not engaged in the practice of law since the date she received the grievance, November 14, 2010.

Ms. Smith's conduct violated RPC 1.4(a)(5), requiring a lawyer to consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law; RPC 1.16(a)(1), prohibiting a lawyer from representing a client where the representation will result in a violation of the Rules of Professional Conduct; RPC 5.8(a), prohibiting a lawyer from engaging in the practice of law while on inactive status or while suspended from the practice of law for any cause; RPC 7.1, prohibiting a lawyer from making a false or misleading communication about the lawyer or the lawyer's services; RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and RPC 8.4(1), prohibiting a lawyer from violating a duty or sanction imposed by or under the Rules for Enforcement of Lawyer Conduct in connection with a disciplinary matter.

Erica W. Temple represented the Bar Association. Phillip H. Ginsberg represented Ms. Smith.

## Suspended

**Fiona A.C. Kennedy** (WSBA No. 32385, admitted 2002), of Kirkland, was suspended for two years, effective September 15, 2011, by order of the Washington State Supreme Court following approval of a stipulation. This discipline is based on conduct involving conversion of client funds, failure to safeguard client's property, failure to properly maintain trust account records, failure to protect a client's interests, failure to act with reasonable diligence, failure to communicate, charging an unreasonable fee, failure to communicate the basis or rate of a fee or provide a client in

a contingent fee matter a written statement stating the outcome of the matter, failure to properly supervise a non-lawyer employee, conduct prejudicial to the administration of justice, and failure to cooperate in grievance investigations. Conditions are imposed which must be met upon reinstatement.

Between August 2007 and June 2009, Ms. Kennedy engaged in the following conduct:

- Failed to maintain complete and accurate records of client funds coming into her possession; failed to maintain client funds in her trust account; and failed to reconcile her trust account records as required by the Rules;
- Disbursed funds from her trust account before deposits cleared the banking process; made cash withdrawals from her trust account; and used one client's funds for the benefit of herself or another when she was not entitled to do so;
- Failed to deliver to a client all the funds that the client was entitled to receive or to provide the client with an accounting showing the actual distribution of the client's settlement funds;
- Failed to make reasonable efforts to ensure that the conduct of her non-lawyer assistant was compatible with Ms. Kennedy's professional obligations;
- Failed to adequately communicate to a client the basis and rate of her fee and to explain matters reasonably necessary to permit the client to make informed decisions regarding the representation;
- Failed to respond to a former client's or the client's current lawyer's attempts to contact her and failed to promptly notify a third party regarding her discharge as the client's lawyer; and
- Failed to notify the Bar Association of overdrafts of her trust account; failed to promptly and fully respond to requests for information during grievance investigations; failed to appear for two depositions associated with those investigations or produce all records subpoenaed; and provided inaccurate and misleading testimony during her deposition.

Ms. Kennedy's conduct violated RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; RPC 1.4(a), requiring a lawyer to keep the client reasonably informed about the status of the matter; RPC 1.4(b), requiring a lawyer to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; RPC 1.5(a), prohibiting a lawyer from making an agreement for, charging, or collecting an unreasonable fee or an unreasonable amount for expenses; 1.5(b), requiring that the scope of the representation

and the basis or rate of the fee and expenses for which the client will be responsible be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation; RPC 1.5(c)(3), requiring that, upon conclusion of a contingent fee matter, the lawyer provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination; RPC 1.15A(b), prohibiting a lawyer from using, converting, borrowing, or pledging client or third-person property for the lawyer's own use; RPC 1.15A(c), requiring a lawyer to hold property of clients and third persons separate from the lawyer's own property; RPC 1.15A(e), requiring a lawyer to promptly provide a written accounting to a client or third person after distribution of property or upon request; RPC 1.15A(f), requiring a lawyer to promptly pay or deliver to the client the property which the client is entitled to receive; RPC 1.15A(h)(2), requiring a lawyer to keep complete records as required by the rules; RPC 1.15A(h)(5), requiring that all withdrawals be made only to a named payee and not to cash; RPC 1.15A(h)(6), requiring trust account records to be reconciled as often as bank statements are generated or at least quarterly; RPC 1.15A(h)(7), prohibiting a lawyer from disbursing funds from a trust account until deposits have cleared the banking process and been collected; RPC 1.15A(h)(8), prohibiting disbursements on behalf of a client or third person from exceeding the funds of that person on deposit; RPC 1.15B, requiring a lawyer to maintain current trust account records and listing, at minimum, how the records must be maintained; RPC 1.16(d) requiring that, upon termination of representation, a lawyer take steps to the extent reasonably practicable to protect a client's interests; RPC 5.3(b), requiring a lawyer having direct supervisory authority over a non-lawyer to make reasonable efforts to ensure that the non-lawyer's conduct is compatible with the professional obligations of the lawyer; RPC 8.4(d), prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice; 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.

Marsha A. Matsumoto represented the Bar Association. Kurt M. Bulmer represented Ms. Kennedy.

### Reprimanded

**Jeffrey R. Dundon** (WSBA No. 8051, admitted 1978), of Centerville, Ohio, was ordered to receive a reprimand, effective January 25, 2012, by order of the Washington State

Supreme Court imposing reciprocal discipline in accordance with an order by the Supreme Court of the State of Ohio. This discipline was based on conduct involving neglect of a legal matter, failure to return client property, failure to act with reasonable diligence, and failure to communicate. For further information, see *Disciplinary Counsel v. Dundon*, 129 Ohio St.3d 571, 954 N.E.2d 1186 (2011).

Mr. Dundon's conduct violated Ohio's DR 6-101(A)(3), prohibiting a lawyer from neglecting a legal matter entrusted to him; Ohio's DR 9-102(B)(4), requiring a lawyer to promptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive; Ohio's Prof. Cond. R. 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; Ohio's Prof. Cond. R.1.4(a)(2), requiring a lawyer to reasonably consult with the client about the means by which the client's objectives are to be accomplished; Ohio's Prof. Cond. R.1.4(a)(3), requiring a lawyer to keep the client reasonably informed about the status of the matter; and Ohio's Prof. Cond. R.1.4(a)(4), requiring a lawyer to comply as soon as practicable with reasonable requests for information from the client.

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

### Reprimanded

**John R. Guardi** (WSBA No. 32971, admitted 2002), of Bellingham, was ordered to receive a reprimand following approval of a stipulation by the Disciplinary Board on November 29, 2011. This discipline is based on conduct involving failure to communicate, conflicts of interest, and failure to deposit advance fees into a trust account or provide an accounting of advance fees he received or disbursed.

On two occasions, Mr. Guardi agreed to represent two siblings who were jointly charged with criminal violations in two separate matters. In each matter, Mr. Guardi agreed to provide the representation for a flat fee, but did not enter into a written fee agreement or otherwise satisfy the requirements of RPC 1.5(f)(2). Nevertheless, in each matter, Mr. Guardi failed to deposit and to maintain the advance fees in a trust account. In agreeing to represent the two siblings in one of the matters involving robbery/burglary charges, Mr. Guardi did not fully explain the implications of the concurrent representation or obtain each client's written consent to the concurrent representation. He continued to represent the siblings despite: 1) learning that their accounts were contradictory as to one sibling's knowledge of a firearm being brought to the scene in her vehicle before a third defendant pulled it out during the incident, and

2) receiving a plea offer from the prosecutor that required all three defendants to accept the offer in order to get the deal. A few months after beginning representation, Mr. Guardi's clients discharged him and retained separate counsel. Mr. Guardi did not provide his clients with an accounting of the advance fees he received or disbursed.

Mr. Guardi's conduct violated RPC 1.4(a), requiring a lawyer to promptly inform the client of any decision of circumstance with respect to which the client's informed consent is required by the Rules, reasonably consult with the client about the means by which the client's objectives are to be accomplished, keep the client reasonably informed about the status of the matter, promptly comply with reasonable requests for information, and consult with the client about any relevant limitation on the lawyer's conduct; RPC 1.7(b), allowing a lawyer to represent clients, notwithstanding the existence of a concurrent conflict of interest, if the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client, the representation is not prohibited by law, the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal, and each affected client gives informed consent, confirmed in writing; RPC 1.15A(c)(2), requiring a lawyer to deposit into a trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are

earned or expenses incurred; 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 RPC 1.15A(h)(4), requiring that, for all trust accounts, receipts must be deposited intact.

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

### Reprimanded

**Dieter G. Struzyna** (WSBA No. 12422, admitted 1982), of Bellevue, was ordered to receive a reprimand by the Disciplinary Board following approval of a stipulation on November 29, 2011. This discipline is based on conduct involving conflicts of interest.

In June 2002, Mr. Struzyna loaned \$100,000 to a corporation that later became an LLC. In October 2002, Mr. Struzyna agreed to a joint representation of the LLC and Mr. and Mrs. A with regard to anticipated investments by both clients in a real estate joint venture. Accordingly, Mr. Struzyna provided the LLC and Mr. and Mrs. A with a letter setting forth certain limitations to such a joint representation, as well as certain potential conflicts of interest between them. Mr. and Mrs. A and the LLC agreed to the joint representation. Mr. Struzyna did not disclose to Mr. and Mrs. A the fact of his outstanding loan to the LLC or that he had a potential conflict of interest based on the existence of that loan. Mr. Struzyna also failed to adequately disclose to Mr. and Mrs. A the risks and implications of the joint representation.

Mr. Struzyna's conduct violated RPC 1.7(a), prohibiting a lawyer from representing a client if the representation involves a concurrent conflict of interest and a concurrent conflict of interest exists if the representation of one client will be directly adverse to another client or there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person, or by a personal interest of the lawyer; and RPC 1.7(b), allowing a lawyer to represent a client, notwithstanding the existence of a concurrent conflict of interest, if the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client, the representation is not prohibited by law, the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal, and each affected client gives informed consent, confirmed in writing.

Christine E. Gray represented the Bar Association. Peter Alan Offenbecher represented Mr. Struzyna.



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**Non-Disciplinary Notices**

**Suspended Pursuant to ELC 7.2(a)(3)**

**Dean D. Nguyen** (WSBA No. 30148, admitted 2000), of Seattle, was suspended pending compliance to a request or subpoena, pursuant to ELC 7.2(a)(3), effective March 19, 2012, by order of the Washington State Supreme Court. This is not a disciplinary sanction.

**Transferred to Disability Inactive Status**

**Stephen P. Zagelow** (WSBA No. 6765, admitted 1976), of Olympia, was, by stipulation, transferred to disability inactive status, effective March 8, 2012. This is not a disciplinary action. <sup>(b)(5)</sup>



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

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

### Alternative Dispute Resolution

#### 19th Annual Northwest Dispute Resolution Conference

May 4-5 — Seattle. 9 CLE credits, including 2 ethics. By University of Washington School of Law; WSBA ADR Section, KCBA ADR Section; 206-543-0059; [www.wsba-adr.org/page/northwest-dispute-resolution](http://www.wsba-adr.org/page/northwest-dispute-resolution).

#### Settlement Conference Mediator Training

May 15 — Tacoma. 2.75 CLE credits, including 1 ethics. By Pierce County Center for Dispute Resolution; [www.pccdr.org](http://www.pccdr.org); 253-572-3657; [settlementconference@pccdr.org](mailto:settlementconference@pccdr.org).

#### The Magic of Collaborative Coaching

May 17-18 — Seattle. 9.5 CLE credits. By Seattle Collaborative Law Training Group, 206-249-9145; [www.collabtraining.com](http://www.collabtraining.com).

### Business Law

#### Staying Ahead of the Curve: Emerging Issues for Business Lawyers

May 18 — Seattle and webcast. 6.5 CLE credits, including 1 ethics. By the WSBA Business Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; [www.wsbackle.org](http://www.wsbackle.org).

#### International Law: Dos and Don'ts Doing

#### Business in Asia

June 20 — Seattle and webcast. 6 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; [www.wsbackle.org](http://www.wsbackle.org).

### Construction Law

#### Flood Plain Ruling

May 15 — Seattle and webcast. 1.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; [www.wsbackle.org](http://www.wsbackle.org).

#### Competitive Construction Bidding in 2012

May 17 — Portland. 3.5 CLE credits. By The Seminar Group; 800-574-4852 or 206-463-4400; [www.theseinargroup.net/seminar.lasso?seminar=12.bidor](http://www.theseinargroup.net/seminar.lasso?seminar=12.bidor).

#### Construction Law Section Midyear

June 15 — Seattle and webcast. 6 CLE credits, including 1 ethics. By the WSBA Construction Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; [www.wsbackle.org](http://www.wsbackle.org).

### Creditor/Debtor Law

#### Bankruptcy Boot Camp: The Basics You Need to Know

June 20 — Seattle and webcast. 6 CLE credits, including .75 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; [www.wsbackle.org](http://www.wsbackle.org).

### Criminal Law

#### Criminal Law Boot Camp

June 13 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; [www.wsbackle.org](http://www.wsbackle.org).

### Environmental Law

#### 2012 Environmental and Land Use Law Section Midyear Meeting and Seminar

May 3-4 — Leavenworth. 11.5 CLE credits, including 1 ethics. By the WSBA Environmental and Land Use Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; [www.wsbackle.org](http://www.wsbackle.org).

#### Flood Plain Ruling

May 15 — Seattle and webcast. 1.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; [www.wsbackle.org](http://www.wsbackle.org).

#### Fisheries and Hatcheries: Legal and Regulatory Frameworks

May 25 — Seattle. 6 CLE credits. By The Seminar Group; 800-574-4852 or 206-463-4400; [www.theseinargroup.net/seminar.lasso?seminar=12.htchwa](http://www.theseinargroup.net/seminar.lasso?seminar=12.htchwa).

#### Eminent Domain and Land Use in Hawaii

May 10 — Honolulu. 5.75 CLE credits, including 1 ethics. By The Seminar Group; 800-574-4852 or 206-463-4400; [www.theseinargroup.net/seminar.lasso?seminar=12.emdhi](http://www.theseinargroup.net/seminar.lasso?seminar=12.emdhi).

#### Permitting Residential, Commercial, and Industrial Projects in Washington

May 23 — Seattle. 5.75 CLE credits. By The Seminar Group; 800-574-4852 or 206-463-4400; [www.theseinargroup.net/seminar.lasso?seminar=12.perwa](http://www.theseinargroup.net/seminar.lasso?seminar=12.perwa).

### Family Law

#### The Benefits of Modeling in Divorce Cases

May 9 — Seattle. 1 CLE credit. By McKinley Irvin Family Law Speaker Series; 206-625-9600; [www.mckinleyirvin.com/resources/cle](http://www.mckinleyirvin.com/resources/cle).

#### Family Law Midyear Conference

June 20 — Ocean Shores. 14.75 CLE credits, including 2 ethics. By the WSBA Family Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; [www.wsbackle.org](http://www.wsbackle.org).

### General

#### Superior Legal Writing: Winning with Words

May 9 — Seattle and webcast. 6.75 CLE credits, including .75 ethics credit. WSBA-CLE; 800-945-WSBA or 206-443-WSBA; [www.wsbackle.org](http://www.wsbackle.org).

#### Annual Senior Lawyers Seminar

May 11 — SeaTac. 6.25 CLE credits. By the WSBA Senior Lawyers Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; [www.wsbackle.org](http://www.wsbackle.org).

#### Cyber Security

May 15 — Seattle and webcast. 1.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; [www.wsbackle.org](http://www.wsbackle.org).

### Indian Law

#### 24th Annual Indian Law: Transformations of Federal Indian Law and Transitions in Tribal Law Practice

June 7 — Seattle and webcast. 6.5 CLE credits, including .75 ethics. By the WSBA Indian Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; [www.wsbackle.org](http://www.wsbackle.org).

### Intellectual Property

#### Cyber Security

May 15 — Seattle and webcast. 1.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; [www.wsbackle.org](http://www.wsbackle.org).

### **Intellectual Property: Advanced Licensing**

May 21 — Seattle and webcast. 6 CLE credits, including 1 ethics. By the WSBA Intellectual Property Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

### **Health Law**

#### **Critical Issues in Health Care**

June 14 — Seattle and webcast. CLE credits pending. By the WSBA Health Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

### **International Law**

#### **International Law: Dos and Don'ts Doing Business in Asia**

June 20 — Seattle and webcast. 6 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

### **Landlord-Tenant Law**

#### **Residential Landlord-Tenant Law**

June 20 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

### **Litigation Law**

#### **Washington Civil Procedure: Let's Do It Right! Moderated Video Replay**

May 15 — Friday Harbor. 6.75 CLE credits, including 2 ethics. By the San Juan County Bar Association and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

#### **Personal Injury Law Boot Camp: Planning the Winning Case**

May 16 — Seattle and webcast. 7 CLE credits, including 1 ethics. WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

#### **Reptile, with David Ball and Don Keenan**

May 18-19 — Seattle. CLE credits pending. By Washington State Association for Justice Legal Educational Seminars; 206-464-1011; www.washingtonjustice.org.

### **New Lawyer Education**

#### **Advising the Small- to Mid-sized Business**

May 8 — Seattle and webcast. CLE credits pending. By WSBA New Lawyer Education, WYLD; 800-945-WSBA or 206-443-WSBA; www.wsba.org/nle.

#### **Starting Your Solo Practice**

May 17 — Seattle and webcast. CLE credits pending. By WSBA New Lawyer Education, WYLD; 800-945-WSBA or 206-443-WSBA; www.wsba.org/nle.

### **Personal Injury Law**

#### **Personal Injury Law Boot Camp: Planning the Winning Case**

May 16 — Seattle and webcast. 7 CLE credits, including 1 ethics. WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

### **Real Estate Law**

#### **Real Property Probate and Trust Section Midyear Meeting and Seminar**

June 8-10 — Spokane. 11.5 CLE credits, including 1 ethics. By the WSBA RPPT Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

#### **Construction Law Section Midyear**

June 15 — Seattle and webcast. 6 CLE credits, including 1 ethics. By the WSBA Construction Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

#### **Residential Landlord-Tenant Law**

June 20 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

### **Senior Lawyers**

#### **Annual Senior Lawyers Seminar**

May 11 — SeaTac. 6.25 CLE credits. By the WSBA Senior Lawyers Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

### **Webcast Seminars**

#### **Superior Legal Writing: Winning with Words**

May 9 — Seattle and webcast. 6.75 CLE credits, including .75 ethics credit. WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

#### **Flood Plain Ruling**

May 15 — Seattle and webcast. 1.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

#### **Cyber Security**

May 15 — Seattle and webcast. 1.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

#### **Personal Injury Law Boot Camp: Planning the Winning Case**

May 16 — Seattle and webcast. 7 CLE credits, including 1 ethics. WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

#### **Staying Ahead of the Curve: Emerging**

### **Issues for Business Lawyers**

May 18 — Seattle and webcast. 6.5 CLE credits, including 1 ethics. By the WSBA Business Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

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##### **Transformations of Federal Indian Law and Transitions in Tribal Law Practice**

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#### **Criminal Law Boot Camp**

June 13 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

#### **Critical Issues in Health Care**

June 14 — Seattle and webcast. CLE credits pending. By the WSBA Health Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

#### **Construction Law Section Midyear**

June 15 — Seattle and webcast. 6 CLE credits, including 1 ethics. By the WSBA Construction Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

#### **School Law**

June 19 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

#### **Residential Landlord-Tenant Law**

June 20 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

#### **International Law: Dos and Don'ts Doing Business in Asia**

June 20 — Seattle and webcast. 6 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

#### **Bankruptcy Boot Camp: The Basics You Need to Know**

June 20 — Seattle and webcast. 6 CLE credits, including .75 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

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## **ETHICS**

### **and LAWYER DISCIPLINARY INVESTIGATION and PROCEEDINGS**

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

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Positions available are also  
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### Positions Available

**Lateral partner: Smith Alling, P.S.** seeks a lateral partner to join the firm's sophisticated and diverse business, estate planning, real estate, construction, and litigation practice at its office in Tacoma. Successful candidates will have portable business, excellent credentials, at least 10 years' experience, a good reputation in the legal community, and, most importantly, a willingness to be part of a collegial work environment. Smith Alling, P.S. is widely recognized throughout the Pacific Northwest for the superior legal work it performs on behalf of its corporate clients and individuals. For confidential consideration, send résumé and cover letter to [mmc@smithalling.com](mailto:mmc@smithalling.com).

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**WSBA associate director, regulatory services** — This position oversees the operations of bar admissions, licensing, mandatory continuing legal education (MCLE), and membership records. Also serves as regulatory/policy advisor to the MCLE Board, Limited Practice Officer (LPO) Board, Law Clerk Board, Character and Fitness Board, Board of Bar Examiners, and other boards, committees or task forces as may be assigned by the executive director or general counsel. For more details, visit us at [www.wsba.org/careers](http://www.wsba.org/careers).

**Small downtown Seattle construction and insurance litigation law firm** looking for contract attorney with a minimum of five years of litigation experience. Compensation dependent on experience. Please send cover letter, résumé, writing sample, and two local references to [classifieds@wsba.org](mailto:classifieds@wsba.org), referencing Box 748 in the subject line.

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**Smith Freed & Eberhard** is a litigation law firm focused on providing excellent service to our clients. We are currently seeking a lateral insurance defense partner with an established practice in Seattle. Successful candidates will have portable business, excellent credentials, substantial experience, and a good reputation in the legal community. Candidates must also have the desire to market and develop their current practice and the willingness to be a part of a collegial work environment. Please email your résumé and cover letter, including salary requirements, in confidence to the managing partner, Jeff Eberhard, at jeberhard@smithfreed.com. We offer a competitive salary and benefits.

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**The law firm of Calbom and Schwab, P.S.C.**, with offices in Moses Lake, Wenatchee, and Tri-Cities, is seeking a litigation attorney for its personal injury section. Salary is competitive with statewide rates.

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**Associate: Williams Kastner** is seeking an attorney with at least four years of insolvency/collections work experience for its Seattle office. Applicants should be motivated, hard-working individuals with a strong academic background. Applicants should also have excellent communication and organizational skills. Must be licensed in Washington state. Qualified applicants should send their résumé, writing sample, and copy of their law school transcript to Patti Christiansen, Recruiting Manager, Williams Kastner, 601 Union St., #4100, Seattle WA 98101 or pchristiansen@williamskastner.com.

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for its Tacoma office. Applicants should be motivated, hard-working individuals with a strong academic background. Applicants should also have excellent communication and organizational skills. Applicants must be very familiar with discovery and other aspects of the litigation process and expect to be given major client and case responsibility as soon as possible. Must be licensed in Washington state. Qualified applicants should send their résumé, writing sample, and a copy of their law school transcript to Patti Christiansen, Recruiting Manager, Williams Kastner, 601 Union St., #4100, Seattle WA 98101 or pchristiansen@williamskastner.com.

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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@aiken-lawgroup.com.

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*"DIRECTION" CONTINUED FROM PAGE 64.*

couldn't tell — or didn't care about — the difference. Anyway, I was at the wrong something-something Main Street, and the right one was about 40 miles away.

Most likely, the person who programmed the GPS had never been to either Concrete or Conway. In fact, that person may never have visited the state of Washington, or even the western hemisphere — or maybe even Earth. In any event, it was now almost 9:00 p.m. and I was at least a half-hour away from the David Lindley show, for which I was already an hour late.

My first impulse was to yell, "#&\*\$ this. I didn't want to go to that @%#\*\$& show anyway. That &\$%\*@% David Lindley is just a washed-up hippy and should have retired in 1979." I also very much wanted to throw the GPS out the window. But I took a deep breath and thought no, that would have been the *old* Michael Heatherly, the one who once furiously hurled a hot dog out the window of a moving vehicle to retaliate for the hot dog's having leapt out of the bun when the car hit a bump, resulting in an embarrassing mustard-and-ketchup stain in the crotch area. The new, calmer, mature Michael Heatherly is more philosophical. All things considered, I convinced myself, I have regretted not doing things far more often than I have regretted doing things. Also, overcoming obstacles usually turns out better than giving up on something.

So I composed myself, reversed course, and headed for ConWAY. I eventually arrived at the Muse, a turn-of-the-century barn converted to a bar and music venue. The sprawling parking area was crowded, and I had to park a block or so away. By the time I hiked to the door, it was after 9:30. I was more than 90 minutes late.

Strangely, hardly anyone seemed to be around. Nobody was at the door to sell me a ticket, or even tell me what was going on. The entry way led into a tavern area, where a small stage stood vacant. One or two people sat at the bar in the back of the room, but nobody seemed to notice me. I wondered whether I had missed the entire show.

Then I noticed a hallway on the opposite side of the room, where there appeared to be a line of people heading toward the back of the building. I thought maybe the Lindley concert was taking place in some other part of the venue, so I

caught up with the flow of people and followed along. We turned a corner and ascended a flight of stairs. At the top was the entire second floor of the barn, open to the peaked ceiling and providing an excellent view of the stage from perhaps 100 seats. I immediately realized there had been an opening act that I had missed. But David Lindley had not yet taken the stage.

As I was one of the last people to enter the room, all the seats were already occupied. Considering my circumstances, I realized that standing for the show was a small price to pay (especially since I hadn't yet paid any price, in the monetary sense, to get in). In the corner of my eye, I noticed someone step up beside me, and I hoped things wouldn't get too crowded. I glanced to the side and was astounded to see that the person next to me was the man himself, David Lindley, clutching one of his bouzoukis, or baglamas, or whatever.

Just as I was trying to decide whether it would be cool or not to tell David Lindley how much I idolized him, the venue owner stepped onto the stage and began the introduction. I kept my mouth shut and simply watched Lindley walk to the stage and perform a superb one-man show.

Afterwards, I went downstairs and found the venue owner. I told him my story and offered to retroactively purchase a ticket. Since I had missed the opening act, he gave me a discount, even though my being late had been my own fault. I sat down for a drink and chatted with him and the bartender, telling them how impressed I was with the facility and promising to return.

I think Ms. GPS and I both learned something that night. I learned that you can't believe everything you hear, especially when it emanates from a plastic box stuck to a dashboard. I also learned that giving up at the first sign of trouble is rarely a wise choice. For her part, Ms. GPS learned that just because two towns have buildings with the same address, that doesn't mean those locations will be interchangeable for the device user's purposes. Although my relationship with Ms. GPS went south for a while, we have gotten reoriented. The show is back on the road. 🍷

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

# Tatyana Gidirimski

WSBA No. 32780

- ▶ **I became a lawyer because** I love human interaction, enjoy a challenge, and strive to be a problem-solver.
- ▶ **One of the greatest challenges in law today is** equal access to justice.
- ▶ **If I were not practicing law,** I would practice in the field of psychology.
- ▶ **If I could change one thing about the law,** it would be billable hours.
- ▶ **I would share this with new lawyers:** Be yourself, let your personality shine through.
- ▶ **Traits I admire in other attorneys:** Composure and confidence in any situation.
- ▶ **I would give this advice to a first-year law student:** You will survive, I promise.
- ▶ **People living or from the past I would like to invite to a dinner party and why:** Writer Mikhail Bulgakov (*The Master and Margarita*). With his sense of humor, impeccable taste, and rich life experience, he would make a perfect dinner guest.
- ▶ **Best stress reliever:** Exercise.
- ▶ **I am most happy when** I'm at the end of my daily run.
- ▶ **My favorite hobbies/interests:** Traveling, reading, and running.
- ▶ **I am most proud of this:** Moving to the United States from Russia alone at age 19 and actually making it.
- ▶ **Someone whose opinion matters to me:** My father.
- ▶ **A book I would recommend reading:** *Oryx and Crake*, by Margaret Atwood.
- ▶ **What keeps me awake at night:** Worries about work and second-guessing myself.



- ▶ **Currently playing on my iPod/CD player/record player:** Pink Martini.
- ▶ **My favorite vacation place:** The South of France.
- ▶ **If I could live anywhere,** I would move to Nice.
- ▶ **I can't live without** my family and my friends.
- ▶ **This is the hardest part of my job:** multitasking and constant decision-making.
- ▶ **This is the best part of my job:** multitasking and constant decision-making.

**M**y name is Tatyana Gidirimski and I am an attorney at Short Cressman & Burgess PLLC in Seattle. I have been practicing for nine years. My practice areas are family law, commercial litigation, and employment law. I am a native of Moscow, Russia. I live in Bellevue with my husband, our eight-year-old son, and our dog. I can be reached at 206-389-8238. Check out my profile at [www.scblaw.com/people/tatyana-gidirimski](http://www.scblaw.com/people/tatyana-gidirimski).

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# A Little Direction in Our Lives

*Tonight the bottle let me down.*  
Merle Haggard (1966)

*Tonight the GPS let me down.*  
Michael Heatherly (2012)

**A**t 7:00 p.m. on Thursday, January 5, 2012, I realized I had no recreational plans for the coming weekend. I had been slaving over a hot computer and

had neglected to consider how I might next satisfy the human need for merriment. I clicked open the *Bellingham Herald* live music calendar and a name sprang from the screen: David Lindley.

You've probably never heard of David Lindley, although you probably have heard his work. If I were to find a magical saxophone and rub it, and a genie were to pop out and offer me three wishes, one would be to have half the musical ability of Lindley. He is a virtuoso on just about every stringed instrument in the world. The list includes all the conventional strings you would expect as well as things like the hardingfele, bouzouki, baglama, and cümbüs. I don't even know what those are, but I have no doubt that Lindley absolutely shreds on the cümbüs.

Lindley began his career as a banjo player at Disneyland (of all things) and went on to become one of the great studio and touring musicians in the golden L.A. music scene of the 1970s and 1980s. He worked with artists such as Bob Dylan, James Taylor, David Crosby, Graham Nash, Warren Zevon, Linda Ronstadt, Curtis Mayfield, Dolly Parton, and Rod Stewart. He is perhaps best known as a longtime

sideman for Jackson Browne, but he also fronted his own band, El Rayo-X, and has spent years traveling to learn styles of music from around the world.

Now riveted to the *Herald* music calendar, I read the rest of the listing. The show was to take place in Conway, no more than an hour's drive away. The latter detail was critical, because the next thing I read was that the show was *that night*, starting at 8:00 p.m., an hour hence. For the love of

dispassionate, tone. How could I not follow her orders?

I headed south on I-5, about which there was no controversy. But when I reached the city of Burlington in Skagit County, Ms. GPS instructed me to exit the freeway and take a turn that seemingly would have had me heading east. That seemed wrong, as the town I believed was Conway lay to the west of I-5. Nevertheless, I didn't want to take time to stop

or tinker with the GPS settings. It was already touch-and-go as to whether I was going to make it to the show on time. I chose, fatefully, to put my life in the hands of Ms. GPS.

It was literally a dark and stormy night. The roads Ms. GPS was leading me down were poorly illuminated. Honestly, I wasn't sure where I was, although I knew I was heading in the opposite direction of where I had believed Conway was situated. Perhaps, I thought, I was mistaken as to which community was Conway. That's the degree to which

technology can lull you into a false sense of security. Eventually, I found myself approaching the lights of a small town. "Your destination is on the left," Ms. GPS advised. Well, that seemed unlikely. The only thing to my left was the driveway of a tiny house in a residential development.

I continued until I reached a lighted commercial area and realized Ms. GPS had navigated me to the community of ConCRETE, not ConWAY. It turns out that although each of the towns has only a few streets, they each have a Main Street (as do probably 90 percent of all American towns). And apparently, the little house on Concrete's Main Street has an address similar enough to that of the Muse on Conway's Main Street that Ms. GPS

SEE "DIRECTION," CONTINUED ON PAGE 62.  
SERIOUSLY!



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the bouzouki, I grabbed my coat, phone, wallet, and keys and leapt into my SUV. I didn't worry about the fact that tickets had been sold in advance, and that the show might be sold out. I also didn't worry that I had been to Conway only once and didn't remember specifically where it was. I didn't worry because *I have GPS*.

In hindsight, I realize that "I have GPS" has probably already joined "the water doesn't look that deep" and "I don't think they have bears around here" as famous last words of travelers. But in several years of using GPS, it has never seriously messed me up. And on this night when I punched in the address, the correct name and address of the venue — "The Conway Muse" at something-something Main Street — popped up on the screen, and the familiar disembodied female voice began issuing directions in her customarily confident, if

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