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# WASHINGTON STATE BarNews

OFFICIAL PUBLICATION OF THE WASHINGTON STATE BAR ASSOCIATION

# 2024

# APEX AWARDS

The Acknowledging Professional Excellence  
(APEX) Awards honor exemplary  
members of the legal community,  
including legal professionals, judges,  
and members of the public / p. 28



SEPT. 2024  
VOL. 78, NO. 7





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# New Standards, Pathways, and Procedures

This year has been particularly busy for the Washington legal world. The WSBA adopted new public defense caseload standards, the state Supreme Court approved new lawyer licensing pathways, and an important piece of legislation affecting resolution of family law matters went into effect. Continuing this trend, I want to direct your attention to three pieces in this issue for your consideration and comment:

- 1. Entity regulation pilot test.** This is a fancy phrase for the recently proposed process to start allowing entities or businesses, in addition to individuals, to provide legal services in Washington. The pilot test would implement specific conditions and carefully monitor the entities involved. If you have thoughts or questions, see pages 5 and 48, visit [www.wsba.org/pilot-project](http://www.wsba.org/pilot-project), and send comments to [entityregulationpilot@wsba.org](mailto:entityregulationpilot@wsba.org).
- 2. Pro bono reporting.** The WSBA's Pro Bono and Public Service Committee is exploring the idea of recommending a change to Rule of Professional Conduct (RPC) 6.1, which encourages Washington lawyers to do pro bono work and report their hours to the WSBA each year. The change under consideration would make reporting pro bono hours a requirement rather than an option. *Note: This would not make pro bono service a requirement, just the reporting of pro bono hours each year.* Read more on page 42. Send comments to [publicservice@wsba.org](mailto:publicservice@wsba.org).
- 3. The Uniform Family Law Arbitration Act (UFLAA).** Adopted in 2023 with an effective date of Jan. 1, 2024, Washington's UFLAA is designed to offer parties in family law cases a more efficient and cost-effective alternative to traditional litigation. On page 34, read more about the history and intent of the UFLAA, questions that have arisen since its passage, and recommendations for attorneys, arbitrators, and court officers.

Also in this issue: the 2024 APEX Awards (page 28), continuing coverage of new lawyer licensing pathways approved by the Washington Supreme Court (page 22), an ethics column on navigating conflicts arising from sanctions motions (page 16), a look at the work of the WSBA's Small Town and Rural Committee (page 46), and an introduction—and an invitation—to the WSBA's Pathways to Productivity member wellness group (page 20). [BN](#)

**Kirsten Lacko** is the editor of *Washington State Bar News* and can be reached at [kirstenl@wsba.org](mailto:kirstenl@wsba.org).



**ON THE COVER**  
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### PILOT TEST OF ENTITY REGULATION:

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**WHAT?** Under the guidance of the Washington Supreme Court, the Practice of Law Board and WSBA have drafted a proposal for a timebound pilot project to test entity regulation to gather data on whether to implement regulatory reforms. This would allow entities to provide legal and law-related services in Washington under limited exemptions from the otherwise applicable rules and statutes governing entities practice law.

**WHY?** Online companies and innovative business models are already delivering legal services to the public and their prevalence and sophistication will only expand in coming years. The Court, WSBA, and Practice of Law Board have an overriding interest in better understanding the threats and opportunities these emerging technologies present in terms of safety, quality, and accessibility of legal services for Washingtonians. Conducting a pilot test will ensure that data-driven decisions can be made regarding whether and how to implement any more permanent regulatory reforms.

**HOW?** If approved by the Court, among U.S. jurisdictions, Washington would follow only Utah and Arizona in executing a plan to determine how the delivery of legal services by entities can be regulated in a manner that protects consumers and promotes broader access to legal services. At the conclusion of the pilot test, all the gathered data would be evaluated to determine whether to move forward with a more permanent process for entity regulation.

**SEND FEEDBACK:** [entityregulationpilot@wsba.org](mailto:entityregulationpilot@wsba.org)

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Washington State Bar News relies on submissions from WSBA members and members of the public that are of interest to readers. Articles should not have been submitted to any other publications and become the property of the WSBA. Articles typically run 1,000-2,500 words. Citations should be incorporated into the body of the article and be minimal. Please include a brief author's biography, with contact info, at the end of the article. High-resolution graphics and photographs (preferably 1 MB in size) are requested. Authors should provide a high-resolution digital photo of themselves with their submission. Send articles to wabarnews@wsba.org. The editor reserves the right to edit articles as deemed appropriate. The editorial team may work with the writer, and the editor may provide additional proofs to the author for review.

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Letters to the editor published in *Bar News* must respond to content presented in the magazine and also comply with Washington General Rule 12.2 and *Keller v. State Bar of California*, 496 U.S. 1 (1990). \**Bar News* may limit the number of letters published based on available space in a particular issue and, if many letters are received in response to a specific piece in the magazine, may select letters that provide differing viewpoints to publish. *Bar News* does not publish anonymous letters or more than one letter from the same contributor per issue. All letters are subject to editing for length, clarity, civility, and grammatical accuracy.

\*GR 12.2(c) states that the WSBA is not authorized to "(1) Take positions on issues concerning the politics or social positions of foreign nations; (2) Take positions on political or social issues which do not relate to or affect the practice of law or the administration of justice; or (3) Support or oppose, in an election, candidates for public office." In *Keller v. State Bar of California*, the Court ruled that a bar association may not use mandatory member fees to support political or ideological activities that are not reasonably related to the regulation of the legal profession or improving the quality of legal services.



## Walking in Prosecutors' Shoes

After reading "Walking in Their Shoes" in the June issue of *Washington State Bar News* I was left concerned about some analysis that I thought needed to be included for a more complete picture. Before I go further, I want to say that while I have only ever worked in prosecution, I have immense respect for our public defense

community, and I personally regard them among the finest trial lawyers I have ever encountered. I don't know who these "greet and plea" attorneys are that frequently get mentioned, but I certainly have never met any.

That said, anytime there is a discussion on stresses and strains on one half of a system I think it is important to at least include some of the perspectives of the individuals from the other half of the system even if that perspective is not the main focus of the article. In "Walking in Their Shoes," Mr. Ringley profiles an attorney who indicates that irrespective of any public defender shortage, charges are still being filed. I find this line to be misleading; it suggests that prosecutors do

CONTINUED >

not care whether defendants have adequate access to representation or that public defenders are the only attorneys out there that are overworked. In addition to the existence of a public defender shortage, your readers might also be surprised to learn that there is a severe prosecutor shortage as well. Any new charge filed is also going to end up on the caseload of a prosecutor somewhere who does not enjoy the benefit of pre-existing caseload limits. Secondly, defense attorneys are simply not in a good position to determine how many cases are getting filed as a percentage of total referrals, which is far more informative than just looking at the total number of referrals.

If a jurisdiction consistently files 1,000 cases every year, then it may not look like the number of filings has ever changed. But if over the years the number of referrals has gone from 1,000 to 10,000, then the number of cases filed every year has gone from 100 percent to 10 percent. This is far more telling. I say this because I have spoken to prosecuting attorneys from jurisdictions with defense attorney shortages and they have personally told me that they are not charging otherwise chargeable offenses due to the lack of available counsel. This is a rather significant fact that gets overlooked if one only speaks to a defense attorney who sees the same [total number of] 1,000 cases getting filed every year.

I encourage this publication to also look at the shortages of prosecutors across the state and the triage taking place at the charging level. The fact is that we are all part of the same system, and that system cannot function properly if either side—or both sides—are under-

resourced. I do appreciate the attention though that the article brings to the funding problem. Currently, the state of Washington provides a paltry 3 percent of my county’s public defense budget. Limits placed by the Legislature on a county’s ability to tax combined with the Growth Management Act’s limitation on a county’s ability to develop conspire to create very tight county coffers for public defense, or anything else for that matter. The state must do better. I do wish my colleagues performing defense work the best and I want them to receive more support—after all, we’re all in this together.

**James M. Kennedy**  
*Port Townsend*

### In Response to Changes to Lawyer Licensing

On behalf of my former client, honorable Judge Fred Bonner, now deceased, I want to commend Chief Justice [Steven González] and the [Washington Bar Licensure] Task Force for their commitment to pursue equal justice through equal access to the law for all.

[“Changes to Pathways to Attorney Licensure and New Ways to Measure Competence,” July/Aug. *Washington State Bar News*.] Fifty years ago, in May 1974, Fred Bonner graduated from the University of Washington School of Law, took the bar exam, and was denied certification to the Supreme Court for licensure four times, not due to his lack of knowledge, skill, or ability, but due solely due to an arcane flawed licensure regimen that failed its purpose.

Fred Bonner petitioned the Washington Supreme Court to intervene directly, first in February 1977, to eliminate procedural WSBA rules that were arbitrary, punitive, and operated as a clear impediment to minority bar applicant licensure. Curiously, the then-chief justice denied the petition, concluding thus, in a role reversal oral opinion that disregarded the court’s sole and inherent power to grant or to deny admission to practice law in the state of Washington: “I regretfully find it my duty to deny this application, ...” No. The court’s “duty” was to fix it.

Fred Bonner again took the Washington bar exam and was again denied certification to the

Washington Supreme Court for licensure. In February 1978, Fred Bonner again petitioned the Supreme Court directly to intervene, this time laying bare the arbitrary and discriminatory history, nature, and impact that the WSBA examination regimen had on minority applicants. The chief justice summarily dismissed the Bonner petition thus: “the Court finds that the Supreme Court does not have jurisdiction to initially entertain the matter presently brought before it.” The WSBA eventually changed the discriminatory rules that Fred Bonner identified as impeding licensure, which I believe resulted in an exponential increase in minority admissions to the Washington Bar. Fred Bonner was among the qualified minorities that were licensed as a result. And Fred Bonner served over 25 years as an outstanding Seattle Municipal Court Judge.

It is unfortunate that Judge Fred Bonner did not live to witness the Task Force proposals for future bar admissions with substantive alternative licensure pathway recommendations that promise a meaningful measure of outstanding legal knowledge, skill, and ability, such as Fred Bonner demonstrated as a lawyer and as a judge, in spite of the bar exam.

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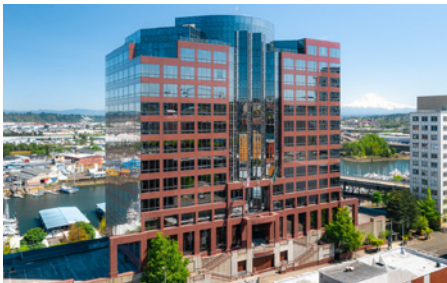
# NW Sidebar

THE VOICES OF WASHINGTON'S LEGAL COMMUNITY

## Court of Appeals Affirms Denial of Withdrawal With Sanctions Pending

Knowing when to withdraw is often a difficult exercise. A recent decision by Division I of the Washington Court of Appeals in Seattle, however, underscored the risks of waiting too long. In *Atlas Debt Holdings, LLC v. Seafood Express, LLC*, 2024 WL 3650246 (Wn. App. Aug. 5, 2024) (unpublished), a law firm was [...]

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## Court of Appeals Affirms Order Prohibiting Pro Se Party From Contacting Represented Opponent

Division II of the Washington Court of Appeals in Tacoma recently affirmed an unusual order prohibiting a *pro se* party from contacting a represented opponent in *Ryan v. Timmerman*, 2024 WL 800259 (Wn. App. Feb. 27, 2024) (unpublished). The plaintiff had been injured as a minor [...]

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GUEST COLUMN

# A Note From Your Bar Foundation President

*To the members of the Washington State Bar Association,*

I am the president of the Washington State Bar Foundation (WSBF) Board of Trustees, and I will use this column to give some information about the history of the WSBF and the work that we do. First, I want to extend gratitude to WSBA Executive Director Terra Nevitt for allowing me to be a guest writer for this month's Bar in Brief column. I am also grateful to WSBA Foundation Development Officer Laura Sanford, who over the last three years worked diligently with me in my roles as WSBF president and vice president. Lastly, I want to thank members of the WSBA for their trust in and support of the WSBF to do the necessary work in the area of access to justice and diversity programs. This year, we emphasized expressing our sincere appreciation for the support of these endeavors. For example, we gathered for an in-person meeting and wrote thank-you notes to various donors and supporters. By doing this, we acknowledge that the work we have done is a collaborative effort between the WSBF and supporting WSBA members.

### WSBF HISTORY

The WSBF was established in 1957 but was inactive for the first several years. In 1980, the WSBF Board of Trustees was reorganized as a 501(c)(3) public charity. The foundation members are made up of trustees from the WSBA Board of Governors and other members of the profession and the community. This includes the WSBA immediate past president, who holds a position as trustee, and the WSBA executive director, who holds the position of secretary.

From 2002 to 2010, the WSBF supported numerous programs, which included being a fiscal sponsor for the Washington Leadership Institute (WLI), LAWFORWA.org, SEA MAR/Access to Justice Technology Project, and Access to Justice Technology Bill of Rights. A diversity scholarship and loan repayment assistance program were also introduced to the WSBF programs.

### WASHINGTON LEADERSHIP INSTITUTE

I was honored to be in the inaugural class of WLI in 2005. I was also the first WLI fellow to serve on the WSBA Board of Governors, from 2010 to 2013. During my tenure, we made the

difficult decision to move WLI to the University of Washington—understanding that the WSBA's creation of the WLI program has continued to benefit our legal community and has received national recognition, celebrating 20 years in 2025.

### APEX AWARDS

From 2013 to the present, the WSBF has been involved with the WSBA's annual APEX Awards. In particular, the foundation and the WSBA jointly present the Sally P. Savage Leadership in Philanthropy Award. This award is named after the foundation's late former leader, who was a catalyst for the organization's refocused mission to sustain the WSBA's efforts to advance justice and diversity, and is given to donors and volunteers who emulate Savage's spirit of philanthropy and generosity. Read about the 2024 recipient of the Sally P. Savage Leadership in Philanthropy Award on page 32.

### POWERFUL COMMUNITIES GRANTS AND OTHER PROGRAMS

Today, the WSBF has been reorganized to support public service and diversity programs. Many organizations in Washington are doing this work, filling in the gaps where lawyers and the government have fallen short in serving the underrepresented and helping to provide access to justice for all. Much of the WSBF's work takes place through the WSBA's Powerful Communities grant program, which has provided funds through more than 60 awards, to nonprofit organizations including the Lavender Rights Project, Living with Conviction, West African Community Council, Kitsap Legal Services, Clark County Volunteer Lawyers Program, Wenatchee for Immigrant Justice, and Kitsap Immigrant Assistance Center. The WSBF also supports the biennial Access to Justice Conference and other equity and justice programs. During the COVID-19



**Hon. Tracy Flood**

**Judge Flood** is from Chicago and came to Kitsap County while serving on active duty in the U.S. Navy. She graduated from Olympic College with an A.A. degree and the University of Washington with two B.A. degrees. She has her J.D. and LL.M. from Seattle University School of Law. Flood is the president of the Washington State Bar Foundation and the Bremerton Municipal Court judge.

Much of the WSBF's work takes place through the WSBA's Powerful Communities grant program.

pandemic, support was provided to some minority bar association and specialty bar association legal clinics.

### WSBF SERVICE

As a judge, I am often isolated in the work that I do. Judges are limited in what we can say and what actions we can take. The work of the WSBF has allowed both me and WSBF Board of Trustees member Gloria Ochoa-Bruck—who is also a judge and fellow of the inaugural WLI class—to stay connected and serve in the Washington state legal community. Our contributions through the foundation benefit those who are voiceless and support many legal nonprofits across the state. I am grateful to our board, which includes lawyers and nonlawyers, for their commitment to our mission.

Practicing law day in and day out, whether civil or criminal, can go without any acknowledgement. Serving on a board, opening a door for someone, completing a survey, or simply showing up often goes without gratitude or appreciation. The COVID-19 pandemic completely changed the dynamics of relationships, exposed collective traumas, and caused us to become disconnected from one another.

Because of these dynamics, I felt it really important to reconnect and say to WSBA members: We appreciate you and your support of the Washington State Bar Foundation. Every day we make choices, and the choice to support the WSBF touches so many lives. My life is one that has been touched by the WSBF and I decided what better way to give back than through service on the board. After the reorganization, the following past presidents began the work that we continue to benefit from today: first WSBF President Ronald Ward (also a past president of the WSBA), second WSBF President Sally P. Savage, and third WSBF President Judy Massong (also a past WSBA governor). I had the pleasure of serving with all of them, and I thank each of them for supporting the vision of the WLI and the mission for the WSBF. Members and staff of the WSBA, without you there is no us. In gratitude, I want to express my heartfelt thanks to each and every one of you for your unwavering support and commitment. [BN](#)



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# Bye-Bye, Farewell: Signing off as WSBA Treasurer

**“My friends, no one, not in my situation, can appreciate my feeling of sadness at this parting. To this place, and the kindness of these people, I owe everything.”**

— Abraham Lincoln's farewell address  
on Feb. 11, 1861, in Springfield, Ill.

**F**riends, this will be my last column as your treasurer. It has been a joy serving our Bar Association. Even a much greater joy: writing this column for the past two years. As you all know, I have the distinction of serving two terms as treasurer and was elected as president-elect earlier this year. The Board of Governors at its last meeting in Moses Lake elected my learned colleague, Kari Petrusek, as the next treasurer. She will be taking over this column in the October issue. This column and our finances are definitely in good hands.

The WSBA treasurer is a unique position. Elected by the Board of Governors to provide oversight on the management of the financial assets and liabilities of the organization, it gives the occupant of the office the opportunity to view, probe, and examine the accounts of the organization. It is also a position of trust and utmost fidelity. As I wrote a while ago on these pages, “The role of WSBA treasurer has not always been as expansive as it is currently. The position has evolved over the years ...” In my first column as your treasurer, I made a solemn promise to be transparent in reporting on, as well as guarded in protecting, our heritage—the practice and business of the WSBA.

I have tried my best to make our Bar Association's books and accounts transparent and open to all its members. I have endeavored to translate arcane fiscal policies to more digestible, readable, and understandable policy documents for all. In the last two years, I am proud to say that I have never missed writing this column for an issue of *Bar News*. I have brought to the fore both the familiar and the recondite, the complex and the uncomplicated WSBA accounting policies and processes to help make the WSBA's fiscal governance accountable to you—the members and the public.

At a recent event, one of our members asked why I made such a big deal of transparency in accounts and finance policy of the Bar. I explained to him that most of the misunderstanding

that occurs among members, staff, and the Board of Governors largely comes down to communication. We are either “speaking at each other,” without an appreciation of the other's point of view, or doing “predatory listening,” hearing only what will justify our assumptions of the other. When we make plain our ideas, suggestions, and policies, as well as listen to one another with clarity and purpose, we will get past our misunderstandings.

That same member then asked whether, during my term as treasurer, I have had to refrain from disclosing information in this column. I responded with resounding candor, “Yes! But not very frequently.” I explained that during the negotiation of the WSBA office lease, I could not write about it, so as to protect our organization's interest. Even when we had negotiated the best deal, I had to hold back and refrain from celebrating it on this page, at least until the deal was finalized (See an upcoming issue of *Bar News* for more details about the lease, which was extended at favorable terms for 10 years at the WSBA's existing location with a 45-percent reduction in space).

As I sign off as your treasurer, I am proud of what we have been able to accomplish. We have never spent beyond our means. Throughout my tenure as treasurer, we never operated on deficit. In fact, we increased our reserves. Despite the instability in the economy, we stuck to our conservative budgeting and had zero substantial queries from audits. These are not only my accomplishments but yours as members of this great organization, too. Thank you for your comments, rejoinders, questions, and encouragement. One of our members who resides in Montana informed me that each time he opens an issue of *Bar News*, he's delighted to read my column. Thank you, Joe!

Of course, I owe a debt of gratitude to WSBA finance staff led by the indefatigable



**Francis A. Adewale**

WSBA Treasurer

Francis Adewale can be reached at francisadewalebog@gmail.com.

Throughout my tenure as treasurer,  
we never operated on deficit.  
In fact, we increased our reserves.

## MORE ONLINE

If you would like more information about the meeting times and materials for the WSBA Budget and Audit Committee, visit [www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/budget-audit](http://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/budget-audit).

duo of Director Tiffany Lynch and Controller Maggie Yu, as well as members of the WSBA Budget and Audit Committee during my first and second terms: Governors Matthew Dresden (District 7), Erik Kaeding (District 8), Nam Nguyen (District 10), Mary M. Rathbone (District 4), Kari Petrasek (District 2), Brett Purtzer (District 6), and Alec Stephens (At Large), all on the committee during my first term; and Kristina Larry (District 8), Brent Williams-Ruth (At Large), Kevin Fay (District 9), Tom Ahearne (At Large), and Jordan Couch (At Large), all on the committee during my second term. They all helped make the WSBA accountable and fiscal policy compliant. Two of my predecessors—Dan Clark and Bryn Peterson—were also a huge help. They shepherded our Bar Association through the COVID-19 years and ensured that the legacy of prudent management of our license fees, which sustain this Association, lives on.

As the treasurer that implemented the annual budget retreat during my first term, I also believe that this new tradition has enabled our Association to plan and focus better.

There is no better way to end this last installment than to wish my good friend Kari Petrasek well as she assumes the reins. As Abraham Lincoln expressed in the quotation at the beginning of this article, “To this place, and the kindness of these people, I owe everything.”

So long, everyone. **BN**

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# CONFLICTS ARISING FROM SANCTIONS MOTIONS:

## *An Analytical Framework*

BY MARK J. FUCILE

**“[R]equests for sanctions should not turn into satellite litigation or become a ‘cottage industry’ for lawyers.”**  
— *Washington State Physicians Ins. Exchange v. Fisons*,  
122 Wn.2d 299, 356, 858 P.2d 1054 (1993)

Sanctions litigation has not become the “cottage industry” the Washington Supreme Court warned against 31 years ago in its seminal *Fisons* decision. At the same time, even a cursory electronic search of Washington trial and appellate decisions will reveal that sanctions motions are relatively common. Some are directed solely against clients.<sup>1</sup> Some are directed solely at lawyers.<sup>2</sup> Still others are directed at both lawyers and their clients.<sup>3</sup> When a sanctions motion is filed by an opposing party, the lawyer on the receiving end can face difficult conflict issues depending on whom the motion is targeted against and the lawyer’s involvement in the underlying conduct. Some conflicts in these scenarios are waivable, while others are not. If not, the lawyer may

be faced with obligatory withdrawal.

In this column, we’ll focus on an analytical framework for determining whether the lawyer involved has a conflict and, if so, whether the conflict can be waived by the client. To put those issues in context, we’ll first briefly survey both the procedural and conflict rules involved.

Before we do, two caveats are in order.

First, although sanctions will form the backdrop for our discussion of conflicts, the accent here will be on conflicts rather than the nuances of particular sanctions rules or statutes.

Second, we’ll focus today on civil rather than criminal proceedings.

### PROCEDURAL RULES

Procedural rules and statutes addressing sanctions are many and varied.<sup>4</sup> Two of the most commonly cited, however, are Washington Superior Court Civil Rules (CR) 11 and 37.<sup>5</sup> Both are patterned generally on their federal counterparts.<sup>6</sup>

CR 11(a) primarily addresses pleadings, motions, and other “legal memorandum[s].”

Under CR 11(a)(1)-(2), an attorney’s signature on that class of documents is “a certificate by ... the attorney that the ... attorney has read the pleading, motion, or legal memorandum, and that to the best of the ... attorney’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances” the document involved “is well grounded in fact” and “is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law[.]” CR 11(a)(3), in turn, includes in the attorney’s certification that the pleading or other paper “is not interposed for any improper purposes, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation[.]” Sanctions under CR 11 can be imposed on a lawyer, the lawyer’s client, or both. The rule vests courts with broad authority to impose an “appropriate sanction”—including attorney fees.<sup>7</sup>

CR 37, in turn, addresses sanctions for a broad spectrum of discovery misconduct ranging from incomplete answers to discovery requests to the failure to comply with discovery orders.<sup>8</sup> Like CR 11, sanctions under CR 37 can be imposed against a lawyer, the lawyer’s client, or both. Sanctions under CR 37 are potentially very broad and can include striking pleadings, limiting evidence, and outright dismissal in addition to attorney fees.<sup>9</sup>





## Lawyer conduct leading to sanctions motions by a litigation opponent may invoke many different Rules of Professional Conduct.

### CONFLICT RULES

Lawyer conduct leading to sanctions motions by a litigation opponent may invoke many different Rules of Professional Conduct. In this article, however, we'll draw a distinction between RPCs that may be involved in the conduct underlying a sanctions motion and the conflict that may be presented when the motion is filed. We'll focus on conflicts once a sanctions motion is filed—however ultimately resolved by the court concerned.

RPC 1.7(a)(2) addresses conflicts between the interest of a lawyer and the lawyer's own client:

(a) Except as provided in paragraph (b) [addressing waivers], a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

...

(2) there is a significant risk that the representation of one or more clients will be materially limited by ... a personal interest of the lawyer.

Comments 8 and 10 to RPC 1.7 elaborate on the nature of the conflict:

[8] ... [A] conflict of interest exists if there is a significant risk that a lawyer's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's ... interests ... . The critical questions are the likelihood that a difference in interests will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client.

[10] The lawyer's own interests should not be permitted to have an adverse effect on representation of a client. For example, if the probity of a lawyer's own conduct ... is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice.

Conflicts under RPC 1.7(a)(2) are often referred to as "material limitation" conflicts because the financial or professional interest of the lawyer may "materially limit" the lawyer's professional judgment to the detriment of the client.<sup>10</sup> In the sanctions context, the concern is whether the lawyer's professional judgment on behalf of the client will be compromised by the lawyer's role in the conduct underlying the sanctions motion and the lawyer's potential interest in avoiding sanctions being entered against the lawyer personally.<sup>11</sup>

As we'll discuss in the next section, some conflicts in this context are waivable by the client but others are not.<sup>12</sup> If the conflict is not waivable, RPC 1.16 ordinarily requires the lawyer's withdrawal (subject to court approval, if applicable). In any event, conflicts—and their implications—must be timely discussed with the client so that the client can make informed decisions about the representation.<sup>13</sup>

### ANALYTICAL FRAMEWORK

At the outset, it is important to underscore that each potential conflict situation turns on its own facts and, as a result, "one size does not fit all." Rather, each situation usually involves its own unique nuances that merit close analysis. That said, there are some recurring patterns that form the contours of a general framework to analyze conflicts in this area. They turn principally on whether the sanctions involved are sought against the client alone, the lawyer alone, or both.

**Client Alone.** If the sanctions are directed solely against the client for asserted misconduct by the client alone, then the lawyer should not ordinarily have a conflict in defending the client. *Magana v. Hyundai Motor America*, 167 Wn.2d 570, 220 P.3d 191 (2010), for example, focused on the corporate defendant—including its in-house legal department—withholding documents rather than outside counsel.<sup>14</sup> Black can fade to gray, however, if the lawyer advised the client concerning the behavior involved. In *Angelo v. Kindinger*, No. 82388-4-I, 2022 WL 1008314 (Wash. Ct. App. Apr. 4, 2022) (unpublished), for example, a party opponent in an arbitration sought sanctions against a lawyer's client for improperly withholding material information and the arbitrator imposed sanctions solely against the client. Later, the client sued the lawyer—arguing, in relevant part, that the lawyer had advised the client to withhold the information concerned and, therefore, had a conflict when the party opponent brought the sanctions motion because the lawyer had an incentive to minimize his role in advising the client. The Court of Appeals reversed summary judgment for the lawyer and his firm—finding the lawyer did have a conflict. The Court of Appeals in *Angelo* also suggested that when the conduct of the client and the lawyer are interwoven and they have the potential to "point fingers" at each other, the conflict is not waivable and the lawyer must withdraw:

At that point [i.e., when the party opponent sought sanctions] ... [the lawyer] ... was in direct conflict with Angelo as to who was to blame for the nondisclosure that eventually resulted in sanctions against Angelo. Despite this

CONTINUED >

conflict, ... [the lawyer] ... did not advise Angelo of the conflict or withdraw from representing him in the arbitration.<sup>15</sup>

**Lawyer Alone.** If the sanctions are directed solely against the lawyer, the lawyer may be able to continue if—depending on the circumstances—the client waives the conflict. In this scenario, although the lawyer bears the direct risk of sanctions—for example, monetary sanctions under CR 11 for making frivolous legal arguments<sup>16</sup>—the client’s case may still be impacted. In *Engstrom v. Goodman*, 166 Wn. App. 905, 271 P.3d 959 (2012), for example, a lawyer improperly obtained a declaration from a represented party in violation of RPC 4.2 (the “no contact” rule) in opposing a request for a trial de novo following an arbitration award for the lawyer’s client. The lawyer was sanctioned—and the court both struck the declaration and ordered the trial de novo. If the reasonably foreseeable risk of injury to the client’s case is remote even if the lawyer is sanctioned, then the lawyer in most circumstances should be able to continue if the client waives the conflict. In some instances, however, either the risk to the lawyer may be so great<sup>17</sup> or the potential harm to the client may be so significant<sup>18</sup> that the conflict ripens into a nonwaivable one because the lawyer cannot reasonably exercise professional judgment on behalf of the client.<sup>19</sup>

**Lawyer and Client.** If the sanctions are directed against both the lawyer and the client, conflict issues quickly come into sharp relief. In *In re Marriage of Wixom and Wixom*, 182 Wn. App. 881, 332 P.3d 1063 (2014), for example, the Court of Appeals disqualified a lawyer *sua sponte* when he tried to shift the blame for jointly sanctioned conduct from himself to his client. The Court of Appeals in *Wixom* noted that the conflict

in that instance is nonwaivable. By contrast, in *K.M.P. by and through Pinto v. Big Brother Big Sisters of Puget Sound*, 16 Wn. App. 2d 475, 483 P.3d 119 (2021), the Court of Appeals found that a conflict was waivable when the lawyer admitted that any responsibility for sanctions was his alone.<sup>20</sup> This suggests that if a lawyer stipulates that any sanctions are solely the responsibility of the lawyer, the conflict may be waivable by the client absent other considerations.

### SUMMING UP

In analyzing potential conflicts arising from sanctions motions, the proverbial “devil is in the details,” and any given situation must be evaluated on its own facts. Nonetheless, framing the analysis around whether the sanctions are sought against the client, against the lawyer, or against the client and the lawyer can be a useful way to bring a measure of clarity to some otherwise murky waters. BN

### NOTES

1. See, e.g., *Magana v. Hyundai Motor America*, 167 Wn.2d 570, 220 P.3d 191 (2010).
2. See, e.g., *Matter of Firestorm 1991*, 129 Wn.2d 130, 916 P.2d 411 (1996).
3. See, e.g., *Washington State Physicians Ins. Exch. v. Fisons*, 122 Wn.2d 299, 858 P.2d 1054 (1993).
4. In addition to CR 11 and CR 37, see also CR 26(g) (certifications on discovery responses), Fed. R. Civ. P. 26(g) (same), CR 30(d) (deposition misconduct), Fed. R. Civ. P. 30(d) (3) (same), RCW 4.84.185 (expenses for opposing frivolous claims), 28 U.S.C. § 1927 (expenses for “vexatious” litigation). Sanctions may be imposed at the appellate level under, among others, Washington RAP 18.9(a) and Fed. R. App. P. 38. Courts also have inherent authority to control the conduct of counsel appearing before them and invoke this authority when, for example, imposing the sanction of disqualification. See *Kaiser Steel Corp. v. Frank Coluccio Constr. Co.*, 785 F.2d 656, 658 (9th Cir. 1986) (discussing authority to disqualify counsel).
5. See generally Elizabeth A. Turner, 3A *Wash. Prac., Rules Practice* CR 11 and CR 37 (7th ed. 2023) (overview of each rule).
6. See Fed. R. Civ. P. 11 and 37.
7. See generally Philip Talmadge, Emmelyn Hart-Biberfeld, and Peter Lohnes, “When Counsel Screws Up: The Imposition and Calculation of Attorney Fees as Sanctions,” 33 *Seattle U. L. Rev.* 437, 446-47 (2010) (surveying Washington case law for determining an “appropriate sanction” under CR 11).
8. CR 26(g) includes a certification requirement similar to CR 11 for lawyers signing discovery

responses. See generally *Mayer v. Sto Indus., Inc.*, 156 Wn.2d 677, 685-86, 132 P.3d 115 (2006) (discussing certification under CR 26(g)). See also Fed. R. Civ. P. 26(g) (analogous federal certification).

9. Washington’s appellate courts have established factors that courts should consider when imposing particular sanctions from this broad range. See generally *Burnet v. Spokane Ambulance*, 131 Wn.2d 484, 496-98, 933 P.2d 1036 (1997) (noting considerations especially when imposing severe sanctions); *Carroll v. Akebono Brake Corp.*, 22 Wn. App. 2d 845, 863-64, 514 P.3d 720 (2022) (same).
10. See generally ABA, *Annotated Model Rules of Professional Conduct* 177-79 (10th ed. 2023) (surveying material limitation conflicts).
11. See *State v. Wood*, 19 Wn. App. 2d 743, 759, 498 P.3d 968 (2021) (addressing conflicts between the professional interests of a lawyer and the lawyer’s client under RPC 1.7(a)(2)); see also *Cal. St. Bar. Formal Op.* 1997-151 (1997) (discussing conflicts in the sanctions context).
12. See RPC 1.7(b) (waivers); RPC 1.7, cmts. 14-15 (discussing waivable and nonwaivable conflicts).
13. See RPC 1.4 (duty of communication); see also ABA Formal Op. 481 (2018) (discussing a lawyer’s duty to inform a client of a possible material error in handling a client’s work); *Shoemaker ex rel. Guardian v. Ferrer*, 168 Wn.2d 193, 225 P.3d 990 (2010) (same).
14. See also *TrueBlue, Inc. v. Marchel*, No. 52665-4-II, 2020 WL 2857610 (Wash.Ct. App. June 2, 2020) (unpublished) (sanctions for discovery misconduct entered against client only).
15. 2022 WL 1008314 at \*10. The Court of Appeals also noted that an unwaived conflict in this scenario may justify fee disgorgement as a remedy for the client affected. *Id.* at \*11.
16. See, e.g., *Matter of Critchlow*, No. 36774-6-III, 2021 WL 734777 (Wash. Ct. App. Feb. 25, 2021) (unpublished) (CR 11 sanctions against lawyer only for asserted frivolous legal arguments).
17. See, e.g., *Ota v. Wakazuru*, No. 82840-1-I, 2023 WL 1962363 (Wash. Ct. App. Feb. 13, 2023) (unpublished) (although remanded for further analysis of sanction factors, lawyer was accused of improperly seeking to influence witness).
18. See, e.g., *Carroll v. Akebono Brake Corporation*, *supra* note 9, 22 Wn. App.2d 845 (although remanded for further analysis of sanction factors, lawyer’s withholding of information about autopsy put client’s case at risk of dismissal as discovery sanction).
19. A generally similar set of considerations arises if an opposing counsel or party files a bar grievance against a lawyer in ongoing litigation. For a discussion of this adjacent area, see ABA Formal Op. 94-384 (1994).
20. The decision in *K.M.P.* came in the context of whether the lawyer had a nonwaivable conflict requiring withdrawal as a result of sanctions motion filed against both the lawyer and the client.

**Mark J. Fucile** of Fucile & Reising LLP handles professional responsibility and risk management for lawyers, law firms, and legal departments throughout the Northwest. He is a former chair of the WSBA Committee on Professional Ethics and has served on the Oregon State Bar Legal Ethics Committee. He can be reached at 503-860-2163 and mark@frllp.com.





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# Pathways to Productivity Groups Launch

Learn to boost job satisfaction and enhance well-being

BY ADELY RUIZ AND MARGEAX GREEN

As a legal professional, you face a multitude of tasks more complex than merely checking boxes; your responsibilities demand meticulous organization, unwavering motivation, and sustained productivity. When you operate efficiently, it sets off a positive chain reaction—boosting job satisfaction, fostering a sense of accomplishment, and even contributing to overall happiness. Conversely, a lack

of productivity can lead to stress, mounting pressure, and adverse effects on your emotional and physical well-being.

## INTRODUCING PATHWAYS TO PRODUCTIVITY

Increasing productivity isn't about mindlessly ticking off 20 tasks in a day without

respite. Instead, it's a collaborative approach that tailors tools and techniques to your unique needs. Recognizing this, the WSBA established the Pathways to Productivity Group. In partnership with WSBA Practice Management Advisor Margeaux Green and Member Wellness Program Clinician and Outreach Lead Adely Ruiz, this initiative focuses on honing legal professionals' skills and techniques to effectively manage their workload.

The program emerged from a shared commitment to empower legal professionals. By completing the initial six-session productivity program, group members not only felt validated in their productivity struggles but also gained newfound abilities to navigate their work tasks more effectively.

## TAKEAWAYS FROM THE INITIAL GROUP

Participants in the first Pathways to Productivity Group came away with both practical tools and shifts in mindset:

- **Automating Routine Tasks.** Participants learned how to automate routine tasks, freeing up time for more meaningful work. They discovered that creating a task list isn't about jotting down every single item. Instead, it involves identifying



the most valuable tasks for the day and planning for the rest in subsequent days. The facilitators emphasized the importance of focusing on one task at a time, rather than juggling multiple tasks that require different types of attention.

- **Time-Blocking for Focused Work.** The power of time-blocking became evident during the sessions. By dedicating specific chunks of time to focused work without distractions, participants improved concentration and productivity.
- **Effective Delegation.** Strategies for delegating tasks effectively were explored. Delegation allows legal professionals to leverage their strengths and distribute workload efficiently. Participants learned that delegation isn't a sign of weakness but a smart approach to achieving more.
- **Prioritizing Self-Care.** Balancing work and personal well-being became a priority. Participants discussed the importance of taking breaks, rewarding themselves, and maintaining a healthy work-life equilibrium.

### MENTAL HEALTH AS A PRODUCTIVITY CORNERSTONE

The group maintained a strong focus on equipping participants with practical skills applicable in the workplace. Simultaneously, we aimed to underscore the critical role of well-being and its impact on productivity. The group members learned that discussing productivity is not about singling out one person and critiquing their work habits. Instead, they discovered that expressing their struggles in a vulnerable way was the key to successfully implementing productivity tips and further enhancing their professional growth. By expressing struggles openly, our participants formed a supportive community that normalized the challenges they face and uplifted each other.

### CONCLUSION

The WSBA is dedicated to supporting and enhancing the skills of its members; therefore, we will be offering Pathways to Productivity groups throughout the year, each

### MORE ONLINE

- Schedule a practice management consultation at [www.wsba.org/consult](http://www.wsba.org/consult).
- Schedule a member wellness consultation at <https://outlook.office365.com/book/WashingtonStateBarAssociation1@wsba.org/>.

targeting different skill sets related to productivity. Check the Member Wellness Program pages at [www.wsba.org/for-legal-professionals/member-support/wellness](http://www.wsba.org/for-legal-professionals/member-support/wellness) for dates of future groups. WSBA members can also consult with Margeaux Green and Adely Ruiz for personalized assistance that is free and confidential. Regardless of your objective or uncertainty about what you want to achieve, our team is here to help. [BN](#)

**Adely Ruiz** previously worked at Sound's Belltown clinic, a community mental health facility where she worked with a vulnerable low-income population. Ruiz also spent several years with the nonprofit organization El Centro de la Raza, where she focused on community engagement and outreach. Ruiz received her master's degree in social work from the University of Washington.



**Margeaux Green** is the practice management advisor at the Washington State Bar Association and a licensed Washington attorney. She assists solo and small-firm legal practitioners to run effective and efficient law practices, focusing on business best practices and legal technology. Prior to joining the WSBA, Green practiced family law for four years at a small Seattle firm. The recommendations in this article are based on her personal opinions; they are not the official position of the WSBA and cannot form the basis of a defense in a malpractice claim or disciplinary proceeding.



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— **Gail Mautner**  
Shareholder, Lane Powell PC

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Changes to Attorney Pathways to Licensure  
and New Ways to Measure Competency:

# YOUR QUESTIONS ANSWERED



CONTINUING COVERAGE: PART 2

## BRIEF HISTORY

Following three years of work by the court-created Washington Bar Licensure Task Force, the Washington Supreme Court entered orders on March 15: (1) adopting the NextGen Bar Exam, with first administration to be in July 2026; and (2) adopting in concept recommendations to implement a graduate apprenticeship, a law school experiential pathway, and an APR 6 apprenticeship as additional pathways to attorney licensure.

The July/August issue of *Bar News* focused on the NextGen Bar Exam. With a bar exam remaining as a pathway (and likely the primary pathway) to attorney licensure, this issue takes a closer look at—and answers some of the (many) questions asked about—the additional pathways to licensure.

## PART 2

### New Pathways to Licensure Approved in Concept by Washington Supreme Court—Now Under Construction

#### PRELIMINARY PATHWAY QUESTIONS

**Q** Is Washington alone in creating alternative pathways to licensure?

**A** No. Across the country, from primary schools to universities to professional-certification processes like medical licensing, compelling data is causing more and more institutions to create alternatives to high-stakes assessments, with a growing body of research that supports performance-based assessments. In the bar-exam realm, Wisconsin and New Hampshire have for years provided ways to demonstrate competency other than the bar exam. In November 2023, Oregon adopted an apprenticeship pathway for law-school graduates. High courts in many jurisdictions—including California, Minnesota, Utah, Nevada, and South Dakota—are creating and/or considering similar alternative pathways.

**Q** Are we “dumbing down” lawyer admissions in Washington so everyone gets in?

**A** No, the intent is to tie the process of becoming a lawyer more closely to skills and competencies. Under the new pathways, every candidate will have to pass a rigorous, skills-based demonstration of competency to earn a law license. The court was persuaded by the research evaluated by the Washington Bar Licensure Task Force (WBLTF), which stated in its report:

The best available data indicates that the bar exam disproportionately and unnecessarily blocks historically marginalized groups from entering the practice of law. In addition to the racism and classism written into the test itself, the time and financial costs of the test reinforce historical inequities in our profession. Despite these issues, data indicates that the bar exam is at best minimally effective for ensuring competent lawyers. Among the deficiencies and common complaints about the bar exam is that it bears little resemblance to actual practice and tends to simply restate the same results already provided by law school grades.

For these reasons and others, the WBLTF proposes creating additional, experiential pathways to bar licensure that protect the public by improving lawyer skills while reducing the unproductive barriers for historically marginalized groups to enter the profession. This proposal would have a substantial positive impact on the profession using the existing infrastructure in law schools and WSBA.

A Proposal for the Future of WA State Bar Admissions Updated Following Public Comment February 28, 2024 (footnotes omitted), available at [https://www.courts.wa.gov/appellate\\_trial\\_courts/SupremeCourt/?fa=supremecourt.LicensureTaskForce.1](https://www.courts.wa.gov/appellate_trial_courts/SupremeCourt/?fa=supremecourt.LicensureTaskForce.1)

**Q** Who is building the new pathways?

**A** The Washington Supreme Court’s March 15 order directed the WSBA to convene a Licensure Steering Committee

to propose rule changes and identify next steps necessary to implement the recommendations. The Steering Committee will be composed of 18 people drawn from many of the entities and communities impacted by the new pathways to lawyer licensing. (The application period for service on the committee closed Aug. 9.) The role of the Steering Committee is to provide high-level direction and decision-making for the implementation process. For information on the makeup of the committee and its role, see [www.wsba.org/Legal-community/Committees-Boards-and-Other-Groups/pathways-to-licensure-steering-committee](http://www.wsba.org/Legal-community/Committees-Boards-and-Other-Groups/pathways-to-licensure-steering-committee). It is anticipated that the Steering Committee’s work will continue for at least 18 months.

## THE 3 PATHWAYS

### 1 Graduate Apprenticeship

**Synopsis:** Law school graduates who successfully complete a six-month program consisting of practice under the guidance and supervision of a qualified attorney plus completion of standardized Admission and Practice Rule (APR) 6 (the Law Clerk Program) coursework may waive out of the bar exam.

**The details:** This pathway will be built on an existing foundation—the tutoring and licensing requirements already codified in APR 6 (Law Clerk Program) and APR 9 (Licensed Legal Intern Program).

APR 6 creates Washington’s Law Clerk Program, by which an individual may gain qualification to sit for the bar exam without attending law school. Applicants must (among other requirements) “be of good moral character and fitness,” be a full-time employee of an approved tutor in a “(i) law office, (ii) legal department, or (iii) court of general, limited, or appellate jurisdiction in Washington State,” and complete four years of coursework at a rate of six courses per year. Tutors must be approved by the WSBA; every tutor must be a member in good standing with no disciplinary sanctions in the last five years and must

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## Changes to Attorney Pathways to Licensure and New Ways to Measure Competency: Your questions answered

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have practiced for at least 10 of the last 12 years, with at least two of those years taking place in Washington. [Note: As part of this proposal the WBLTF recommended reducing the practice requirement for tutors to 7 of the last 10 years.]

APR 9 creates Washington's Licensed Legal Intern Program, by which an individual can be authorized to practice law in a limited and supervised capacity prior to obtaining a full license. An applicant must (among other requirements) be a law student or graduate in good standing who has completed at least two-thirds of their coursework and who has permission from the dean of their law school. Supervising attorneys must be active members in good standing who have practiced for at least three years and who have no disciplinary sanctions at all in the last three years and no suspensions or disbarments in the last 10 years.

Under this proposal law school graduates who wish to become licensed through an apprenticeship would need to meet the requirements of APR 9, and their supervising tutors would be required to meet the requirements of APR 6. This would allow graduates to gain practical skills and demonstrate knowledge through the experience of practicing for six months under the guidance and supervision of a qualified attorney. Graduates would also be required to complete six months of the standardized APR 6 coursework or three courses.

**Why was it recommended?** The WBLTF recommended this pathway as giving Washington more control over the admission of its lawyers, reducing the costs to admission, and creating a less-biased path to entry into the profession while simultaneously ensuring that licensed lawyers have the practical skills and training needed to practice. Acknowledging that historically the APR 6 Law Clerk Program has struggled to find tutors, the WBLTF did not believe this pathway

## MORE INFORMATION

Bar News coverage is continuing—future issues will address investigation and potential implementation of ongoing assessment of lawyers' competence throughout their careers and potential changes to the character and fitness assessment for lawyer licensure. You can also visit the WSBA's New Licensing Alternatives webpage for ongoing updates.

[www.wsba.org/for-legal-professionals/join-the-legal-profession-in-wa/lawyers/pathways](http://www.wsba.org/for-legal-professionals/join-the-legal-profession-in-wa/lawyers/pathways).



would face the same barriers because it is a shorter program that will provide a benefit to law firms: Firms could hire recent graduates who are immediately productive, with no time off needed to study for the bar exam or await results.

## 2 Law School Experiential Pathway

**Synopsis:** Law students who wish to graduate practice-ready and waive out of the bar exam would be required to complete 12 qualifying skills credits and 500 hours of work as an APR 9 licensed legal intern or equivalent providing legal services to actual clients. As part of their bar application, law students would be required to submit a portfolio representing work done during their 500 hours.

**The details:** This experiential pathway would draw upon existing law school courses and ABA standards as well as APR 9 and similar rules to ensure that students have both training and experience in practical lawyering skills at graduation. Under the ABA's law school accreditation standards, law schools are required to offer practical skills courses and students are required to complete at least six skills credits to graduate. Law schools offer a variety of coursework under the skills category such as mediation, pretrial

advocacy, negotiations, criminal motions practice, and contract drafting. These courses have been developed and made mandatory as part of an increasing push in the legal industry to ensure that law schools are teaching not just how to think like a lawyer but how to practice like a lawyer. APR 9 allows law students to practice law under the guidance and supervision of a qualified attorney. Many other states have similar programs. In Indiana, Admission and Discipline Rule 2.1 creates the "Legal Interns" program, which lets students who have completed half of their law school coursework (including some specific classes like ethics) engage in supervised practice. Oregon's Rule for Admission 13 creates a "Law Student Appearance Program" for students who have completed four semesters of coursework. As APR 9 says, these programs play "an important role in the development of competent lawyers and expand[] the capacity of the Bar to provide quality legal services while protecting the interests of clients and the justice system."

[Note: This pathway would require APR 9 to be amended to change the law-coursework-completion requirement from completing two-thirds of candidates' legal education to completing one-half of their legal education.]

**Why was it recommended?** The WBLTF felt that encouraging further engagement in the APR 9 program serves the WSBA's mission "to serve the public and the members of the Bar, to ensure the integrity of the legal profession, and to champion justice." The credit requirement of 12 qualifying skills credits will provide a substantial boost to new graduates' practical lawyering skills, while the 500 hours of work as a licensed legal intern or equivalent providing legal services to actual clients will provide the experience necessary to be practice-ready. Law students would be required, as part of their bar application, to submit a portfolio representing work done during their 500 hours.

## Q Why 500 hours for law school apprenticeship?

**A** Five hundred hours ensures that qualifying students have had practical experience above and beyond the basic activities that most law students will accomplish. Most law students will have

a 2L summer job spending 10 weeks working in a legal capacity. For students who chose to register under APR 9 for that summer, those 10 weeks would constitute 400 hours. That would require students to get an additional 100 hours of experiential work during their 3L year to complete the program (about three hours of work per week).

**Q Do law schools have to provide opportunities for students to achieve the required 500 apprenticeship hours within the curriculum?**

**A** No. Given that most law students engage in legal work during their 2L summer, it is assumed that the majority of students who chose to pursue an experiential path will obtain most or all of the required 500 hours in externships, which can include paid summer work and work during the school year. While some law schools will likely choose to distinguish themselves by offering additional opportunities, the WBLTF's proposal does not impose any requirements on law schools, and it is expected that different law schools will make different choices consistent with their individual academic considerations.

**Q Are law schools obligated to offer the experiential track to students?**

**A** No. The WBLTF proposal does not in itself mandate any action from law schools. It is assumed that law schools, especially those in Washington, will want to offer an experiential pathway to licensure to their students. However, law schools may place caps on the number of students who can participate each year based on whatever needs and criteria the individual school chooses. Students who are unable to graduate and immediately waive out of the bar will still have the opportunity to participate in a graduate apprenticeship and obtain a license through that program. For students who are not able to participate in the experiential track, law schools that wish to help will still have an opportunity to aid those students in obtaining apprenticeships

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## PROFESSIONAL ETHICS

Ethics Advice  
Bar Discipline  
Disqualification Motions  
Fee Disputes  
Judicial Ethics  
Judicial Discipline

**Bellingham Muni. Court v. City of Bellingham,**  
Whatcom Cty. Cause No. 21-2-00541-37 (2022) (disqualification of Bellingham City Attorney)  
**Plein v. USAA Cas. Ins. Co.,** **Arden v. Forsberg & Umlauf,**  
195 Wn.2d 677, 463 P.3d 728 (2020) (RPC 1.9) 189 Wn.2d 315, 402 P.3d 245 (2017) (RPC 1.7)  
**LK Operating, LLC v. Collection Group, LLC,**  
181 Wn.2d 48, 331 P.3d 1147 (2014) (RPC 1.8)

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## YOUR APPEAL SPECIALISTS

**Gardens Condominium v. Farmers Ins. Exchange,**

2 Wn.3d 832, 544 P.3d 499 (2024) (amicus brief for insured on ensuing loss provision)

**Hartford Fire Ins. Co. v. FC Leschi, LLC,**

2024 WL 1856692 (2024) (reversing trial court coverage, extracontractual award against insurer)

**Gordon v. Robinhood Financial, LLC,**

547 P.3d 945 (2024)

(reversing excessive fee sanction award)

**Selim v. Fivos, Inc.,**

2024 WL 3423716 (2024) (concluding that Washington, not Egyptian, law applied in employment case)

**Scott v. City of Tacoma,**

28 Wn. App. 2d 1050, 2023 WL 7327746 (2023), (summary judgment for city on attenuated causation grounds reversed)

**Ebbeler v. WFG National Title Co.,**

29 Wn. App. 2d 1049, 2024 WL 692684 (2024) (reversing dismissal of contract and negligence claims against escrow agent)

**EHouse Dev., LLC v. Lam,**

27 Wn. App. 2d 1055, 2023 WL 5202420 (2023) (affirming seller's retention of non-refundable payment in real estate sale)

**Nay v. BNSF Ry. Co.,**

2023 WL 5740244 (2023) (reversing dismissal on federal preemption grounds of rail crossing claims)

**Jones Estate v. State of Wash.,**

2 Wn.3d 93, 534 P.3d 822 (2023) (reversing dismissal of childhood sexual abuse claims against State on statute of limitations grounds)

**Aguda v. Aguda,**

25 Wn. App. 2d 1069, 2023 WL 2570709 (2023) (successfully dismissing appeal as untimely)

**Schireman v. Williams,**

26 Wn. App. 2d 1003, 2023 WL 2645875 (2023) (reversed trial court's submission of case-within-case causation to jury in legal malpractice action)

**Dr. Conklin v. Univ. of Washington School of Medicine,**

1 Wn.3d 1011, 528 P.3d 362 (2023) (reversing and holding University of WA liable for PRA violations)

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## Changes to Attorney Pathways to Licensure and New Ways to Measure Competency: Your questions answered

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in much the same way the schools aid in obtaining first jobs out of school.

### 3 APR 6 Apprenticeship

**Synopsis:** In order to waive out of the bar exam, APR 6 law clerks would have to complete additional standardized education materials and benchmarks (beyond the APR 6 requirements) under the guidance and supervision of their tutors.

**The details:** APR 6 law clerks would be required to satisfy the same 500-hour requirement of providing legal services to actual clients (which they can do while they are participating in the Law Clerk Program) as an APR 9 licensed legal intern or equivalent is required to do under the Law School Experiential Pathway.

**Why was it recommended:** Historically, a path to licensure through study and apprenticeship under a licensed lawyer has operated since the beginning of the legal profession without any identifiable harm to the public. The existing APR 6 program already accomplishes the goal of training individuals in the experiential side of the practice of law. In addition, APR 6 law clerks are required to complete coursework and be assessed on that coursework throughout the program; participating law clerks and tutors create their own curriculum and exams for all of the required coursework, whereas a standardized exam like the bar exam puts perceptions of APR 6 law clerks on a level playing field with law school graduates. To create an alternative to the bar exam for APR 6 law clerks, the WBLTF recommended the creation of additional standardized educational materials and benchmarks that APR 6 law clerks must complete under the guidance and supervision of their tutors to be eligible to waive the bar exam. The WBLTF further recommended that this Law Clerk Admission Coursework

## ASK US QUESTIONS

Send your questions to [alternativepathways@wsba.org](mailto:alternativepathways@wsba.org). Letters to the editor in response to *Bar News* coverage may be sent to [wabarnews@wsba.org](mailto:wabarnews@wsba.org).

be developed by the WSBA, in conjunction with the Washington law schools and the Law Clerk Board, to dovetail with the requirements of the Law School Graduate Apprenticeship.

## MORE ANSWERS

**Q Will there be a way to tell who became licensed via one of the new pathways versus the bar exam?**

**A** No. Right now, the manner in which someone becomes licensed (e.g., via passing a bar exam, by diploma privilege, or by completing the APR 6 Law Clerk Program) is confidential and not subject to disclosure; we do not anticipate a change to that when new pathways to licensure become available to applicants. Under APR 1(d)(1), “Unless expressly authorized by the Supreme Court or by the applicant, all application records, including related investigation files, documents, and proceedings for admission or for a license to practice law or for enrollment in the law clerk program are confidential and shall be privileged against disclosure, except as necessary to conduct an investigation, hearing, and appeal or review pursuant to these rules.” The WSBA’s lawyer directory available to the public lists only public information including license status, eligibility to practice, and date of admission.

**Q Will there be a difference in the cost and availability of malpractice insurance for lawyers who use a pathway other than the bar exam to demonstrate competency for licensure?**

**A** We do not anticipate that the admission path someone chooses will impact their ability to become insured and the cost

of their malpractice insurance. According to Chris Newbold, chief operating officer and executive vice-president of ALPS, the WSBA-endorsed professional liability insurer, “ALPS does not anticipate a difference in the cost or availability of malpractice insurance for those who pursue and ultimately are licensed by alternative licensure pathways. A condition of attaining a professional liability policy as a private practitioner is to be admitted to practice in the state as set forth by licensure requirements of the Washington Supreme Court. For the foreseeable future, we do not anticipate adding a question as to how licensure was attained on a malpractice insurance application. Thus, we’d be unaware of the licensure path on any submitted application.”

**Q Do we know how the 2020 diploma privilege recipients<sup>2</sup> are faring, where they are employed, and how many grievances have been filed against them (if any)?**

**A** The WSBA plans on surveying diploma privilege recipients regarding their experience in seeking employment and their current employment and will report out results in a future issue of *Bar News*. Information regarding grievances filed against lawyers is confidential.

**Q Will there be incentives for more experienced lawyers to serve as supervisors/tutors?**

**A** Tutors in the APR 6 Law Clerk Program are eligible to earn CLE credit for the time spent providing personal supervision. This option will likely be explored for supervisors in the new pathways. [BN](#)

## NOTES

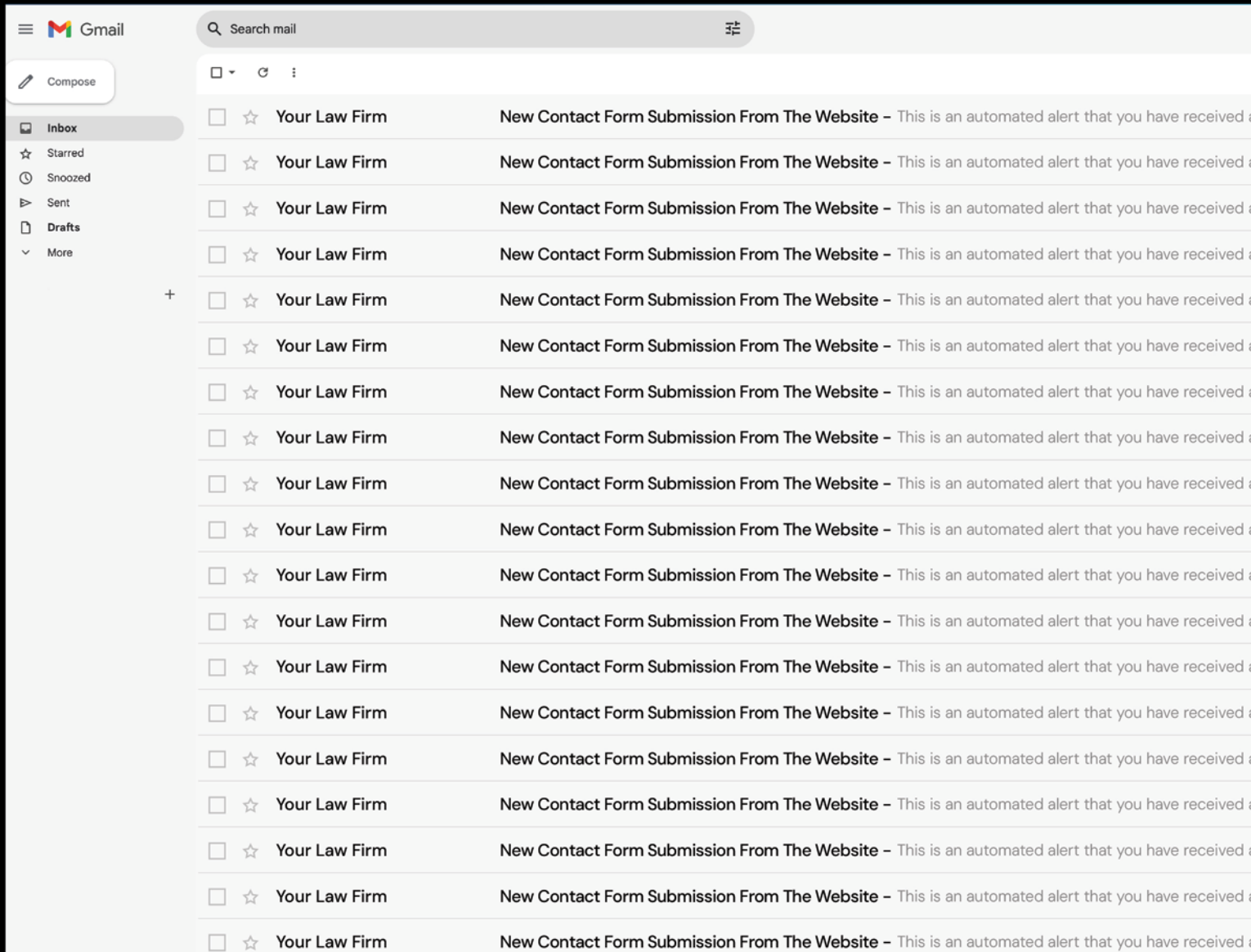
1. Much of the information in this article is taken from the WBLTF report cited and from the Alternative Pathways to Bar Licensure FAQ, available at [www.wsba.org/for-legal-professionals/join-the-legal-profession-in-wa/lawyers/pathways](http://www.wsba.org/for-legal-professionals/join-the-legal-profession-in-wa/lawyers/pathways).
2. In June 2020, in response to the COVID-19 pandemic, the Washington Supreme Court granted “diploma privilege” (licensure without taking/passing the bar exam) to most applicants for the summer 2020 bar examination.



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# PASSING THE BATON:

## *Introduction by a Former APEX Award Winner*

BY MICHAEL GOLDENKRANZ

It's that time of year when the baton gets passed. Current bar leaders become "emeritus" and hand off the torch to their successors. And all of us continue to work together to tackle the challenges of providing legal access to those without, explore how we can best utilize but avoid the dangers of artificial intelligence, ensure our standards are the highest professionally and ethically, and develop more opportunities for motivated students from diverse communities to become lawyers and legal assistants.

### COVER STORY

It's also that time of year when state and county bars select and honor those nominated by their peers, colleagues, and clients who have made a truly significant and enduring difference. And while there are far too many unsung heroes among our Bar, I have for many years looked forward to reading the bios and accomplishments of those selected by the WSBA for its annual APEX Awards.

As a very surprised and humbled 2023 recipient of the Pro Bono and Public Service APEX Award, I read with increased joy, admiration, inspiration, and sometimes even awe about those selected this year. Please take the time to read

about and thank the 2024 honorees. Some remarkably serve our country beyond the bar; some accomplished appellate miracles; one lawyer and his family dealt with unfathomable tragedy by saving another life.

While we were strangers in the past, this year I felt connected and needed to reach out to those recipients. So I wrote to some of those selected—and I treasure their responses.

Whether the awards feel to the recipients like gratitude for a job well done or incentive to continue the good fight, here's what I personally hope those awards will catalyze and continue to inspire for the rest of us:

- 1) **Community leadership and volunteerism beyond the Bar:** Serve on a school board, city or county council, nonprofit board, etc.
- 2) **Mentorship:** Your wisdom and ability to see beyond the here and now is so in need.
- 3) **Writing for legal and especially nonlegal publications:** Pen an op-ed, propose a program, address an issue, or raise the public's awareness about the good happening in the legal profession and the work being done to help those in need.
- 4) **Setting up town hall events** throughout the state where the public can hear about acknowledged and unsung legal heroes and share with legal professionals what they need from us.
- 5) **Pro bono service:** Dive in to help make access to legal services more affordable and available.

With gratitude and appreciation to the legal professionals who are handing off and receiving the baton, and a heartfelt hug to this year's APEX award winners and those who inspired and supported them on their remarkable journeys and accomplishments.

**Michael Goldenkranz** is a retired curmudgeon, community volunteer, very silly grandpa, and 2023 KCBA and WSBA APEX pro bono and public service "tag you're it" guy.



### PLEASE NOTE:

APEX Award winners are nominated by WSBA members and members of the public. Nominations are reviewed by the WSBA APEX Awards Committee (made up of members of the WSBA Board of Governors), which makes recommendations to the full Board of Governors. Nominations for the 2025 awards open in January. Questions can be emailed to [barleaders@wsba.org](mailto:barleaders@wsba.org).

## PROFESSIONALISM AWARD

The Professionalism Award is awarded to a WSBA member who exemplifies the spirit of professionalism in the practice of law, as defined in the WSBA's Creed of Professionalism.

# Capt. Donald J. (John) Kenney



Kenney has been an example of professionalism and sustained community service whose efforts and community contributions have produced tangible, positive effects. Nominators emphasized the extraordinary positive impact his work as a JAG Corps officer has had for service members and their families and the tremendous respect his community feels for him. As a direct result of his professional expertise, Navy commanders had their units ready to deploy at a moment's notice. This capability assured families at home that their sacrifices, along with the national security interest, were protected. He leads by example in everything he does and is someone who can always be trusted to do the right thing. More importantly, he ensures his people know that integrity comes before all else in their decisions.

## CHIEF JUSTICE MARY E. FAIRHURST AWARD OF MERIT

The Chief Justice Mary E. Fairhurst Award of Merit is the Bar's highest honor and is given to an individual for a recent, singular achievement. The singular achievement may involve an individual who has displayed exceptional courage in the face of adversity, thus bringing credit to the legal profession. It is awarded to individuals only — both legal professionals and members of the public.

# Patrick J. Kirby

Though Kirby's nominators stressed his integrity, ethics, professionalism, and commitment to excellence, the WSBA and Kirby's community recognize him for a particular act. In what could only be described as a parent's worst nightmare, the Kirby family faced the tragic loss of their college-age daughter, Bridget, in a DUI accident. While no words can fully capture the depth of this life-altering moment, what deserves recognition is a decision made by the Kirby family approximately 16 months after the devastating loss. In March 2022, the Kirbys and their four boys journeyed to Helena, Montana, for the sentencing hearing to advocate for a suspended sentence for the driver responsible for the loss. With unwavering strength and conviction rooted in their deeply held values of love and faith, Kirby demonstrated an unparalleled act of forgiveness in the face of unimaginable pain. This recognition acknowledges the profound moral conviction that transcends legal norms and societal expectations.

## ANGELO PETRUSS AWARD FOR LAWYERS IN GOVERNMENT SERVICE

The Angelo Petrus Award for Lawyers in Government Service is named in honor of Angelo R. Petrus, a senior assistant attorney general who passed away during his term of service on the WSBA Board of Governors. It is given to a lawyer in government service who has made a significant contribution to the legal profession, the justice system, and the public.

# Lorraine Lee

Lee recently retired after 34 years in public service. She served as a member of the governor's executive cabinet team as the executive director and chief administrative law judge for the state of Washington. She also served as a U.S. Army captain and JAG, as chair and licensing director at the Liquor Control Board, and as counsel and assistant director to the Washington Lottery. In 2017, Lee established a business resource group—the Washington Immigrant Network (WIN) to highlight the untapped potential of Washington's large population of immigrants. WIN was founded to support and expand opportunities for immigrants and serve as a resource for state agencies in creating and sustaining a diverse workforce. Seven years later, WIN has over 300 members and provides mentoring, career development, and a place where everyone can belong. Lee's nominators emphasized her diligence, warmth, collaborative spirit, and optimism.

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### PRO BONO AND PUBLIC SERVICE AWARD (GROUP)

The Pro Bono and Public Service Award for a group is presented to a law firm, organization, or project team for outstanding cumulative efforts in providing pro bono services or for giving back in meaningful ways to the public, the community, or the legal profession.

## Navigate Law Group

When Navigate Law Group first opened in 2014, it was quickly evident that pro bono work and a positive, engaged community presence was part of their ethos. Navigate attorneys have been an integral part of the Clark County Volunteer Lawyers Program (CCVLP), and by extension, legal aid in Clark County. To date, Navigate attorneys have contributed by far the most pro bono hours of any local law firm. CCVLP nominators emphasized that not only are Navigate attorneys consistent and dependable volunteers, they frequently go above and beyond for CCVLP clients. This includes things like setting up extra one-on-one appointments outside of regular volunteer hours, making calls to the opposing party's attorney, drafting documents, connecting the client with additional resources, and working closely with program staff. Navigate Law Group also hosts its own free legal clinic every Thursday evening. This is entirely a volunteer effort on the part of Navigate attorneys, all of whom rotate to contribute to the clinic, which serves as an important backup resource for CCVLP clients. In 2023 alone, the firm logged 288 appointments through its clinic.



### PRO BONO AND PUBLIC SERVICE AWARD (INDIVIDUAL)

The Pro Bono and Public Service Award for an individual is presented to a lawyer or other legal professional for outstanding cumulative efforts in providing pro bono services or who gives back in meaningful ways to the public, the community, or the legal profession.

## Kathleen M. O'Sullivan

A partner at Perkins Coie, O'Sullivan's pro bono legal service has covered high profile cases in a range of legal fields, including immigration law, asylum, civil and human rights, death penalty, and criminal appeals. As a pro bono leader, she also mentors and manages associates and counsel in their pro bono activities. A nominator noted that she has dedicated over 3,000 hours to over 100 pro bono cases over the course of her career thus far. Her determination, patience, and persistence have made a significant impact on the lives of her pro bono clients, as well as in higher policy circles. A nominator emphasized that she doesn't dabble in pro bono work—she digs in and provides quality representation necessary to achieve positive results for her clients. O'Sullivan's volunteer service also includes being a former member of the WSBA Board of Governors, the Washington Young Lawyers Division, the American Law Institute Council, and the Ninth Judicial Circuit Historical Society Board, chair of the Washington State Commission on Judicial Conduct, and chair of the Board of Directors of the YMCA of Greater Seattle.

### LIFETIME SERVICE AWARD

The Lifetime Service Award is a special award given for a lifetime of service to the legal community and the public.



## James E. Ryan

Ryan began the practice of law in 1975 and has remained at the same firm for nearly 50 years. A nominator emphasized Ryan's tremendous respect for attorneys, courts, clients, and the community at large, as well as his vast experience in business law, estate planning, and representation of quasi-governmental agencies and municipalities. He is recognized throughout Kitsap County and the state as an attorney who zealously represents the interests of his clients while at the same time attempting to resolve disputes to avoid needless litigation and further expense. A law partner noted that he has supported and encouraged members of his firm to seek positions on the bench. As a result of this support, 11 members of his firm have been elected or appointed to sit on the bench, either as a municipal, superior, or district court judge.

### JUSTICE C.Z. SMITH EXCELLENCE IN DIVERSITY AWARD

The Justice Charles Z. Smith Excellence in Diversity Award is named in honor of Justice C. Z. Smith, the first African American to serve on the Washington Supreme Court. This award goes to a lawyer, law firm, or law-related group that has made a significant contribution to diversity in the legal profession.

## Professor Robert S. Chang and the Fred T. Korematsu Center for Law and Equality

Professor Chang joined Seattle University School of Law in 2008 and became the executive director of the Fred T. Korematsu Center for Law and Equality upon its formation in 2009. The mission of the Korematsu Center is to achieve lasting social change through research, litigation, advocacy, and clinical education. As one of his nominators who worked with Justice Smith, the diversity award's namesake, noted, "Justice Smith and Professor Chang honor one another in their spirit and in their work and they always have ... Justice Smith and Professor Chang and the Korematsu Center make all of us in the legal profession proud, as they have led us to improve social and race justice as delivered in the legal system."

### NORM MALENG LEADERSHIP AWARD

*Presented jointly with the Access to Justice Board*

The Norm Maleng Leadership Award is given jointly by the WSBA and the Access to Justice Board, in honor of the late King County Prosecutor Norm Maleng's legacy as a leader. He was an innovative and optimistic leader committed to justice and access to justice in both civil and criminal settings. Within the profession, his leadership was characterized by his love of the law and commitment to diversity and mentorship. This award recognizes those who embody these qualities.

## Cynthia F. Delostrinos

One of Delostrinos' mentors emphasized that she best embodies the spirit of kindness and optimism that Norm Maleng personified and represents the next generation of leadership. Delostrinos has served many important roles for the courts, first as the primary staff to the Minority and Justice Commission, later as administrative manager of all commissions, and more recently as associate director of the Office of Court Innovation. A nominator referred to her as the Administrative Office of the Court's "very own rock star." Delostrinos is a graduate of the Washington Leadership Institute (WLI) and now sits on the WLI Board while also serving as a facilitator for some of the monthly sessions. She also served for four years on the Tukwila City Council.



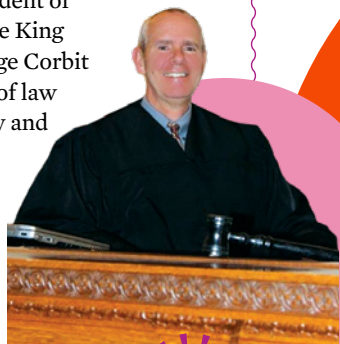
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### OUTSTANDING JUDGE AWARD

The Outstanding Judge Award is presented for outstanding service to the bench and for special contribution to the legal profession at any level of the court.

## Hon. Frederick P. Corbit

Judge Corbit has enjoyed a long, varied legal career, including a federal clerkship and work at private and public interest law firms before his appointment to the bench. Nominators emphasized that, as a bankruptcy judge, Judge Corbit models servant leadership, offering empathy and understanding alongside professionalism and expert knowledge of bankruptcy law and procedure. His nominators also emphasized his tireless volunteer work, including service as a member of the WSBA Access to Justice Board; the Bar Structure Work Group; the WSBA Legislative, Professionalism, and Amicus Committees; the Washington State Task Force for Homeowner Security; Washington Collection Agency Review Board; Washington Appleseed; Consumer Education and Training Services; WSBA Civil Legal Needs Work Group; and Big Brothers Big Sisters of Puget Sound. Judge Corbit also shared his leadership skills by chairing the WSBA Creditor Debtor Rights Section and was president of the Bankruptcy Section of the King County Bar Association. Judge Corbit taught bankruptcy to scores of law students at Seattle University and Gonzaga University. He is a frequent presenter at CLE programs in Washington, Oregon, and Idaho.



### SALLY P. SAVAGE LEADERSHIP IN PHILANTHROPY AWARD

*Presented jointly with the Washington State Bar Foundation*

Sally Savage led the Bar Foundation's renaissance and was a catalyst for its refocused mission to sustain the WSBA's effort to advance justice and diversity. Her clarity, expertise, and vision helped establish a path for enduring support of a strong bar association that provides statewide leadership on matters of profound importance to the profession and the citizenry. Sally's spirit of generosity and leadership continue to inspire all who recognize the transformative potential of philanthropy. Philanthropy means "love of humanity" and focuses on private initiatives for the public good, focusing on quality of life. Sally Savage emulated this spirit of philanthropy in her life, and it is in her memory that we continue to honor donors, volunteers, and friends of the Washington State Bar Foundation who embody Sally's spirit.

## Kirsten D. Barron

Barron's nominators emphasized her exceptional career, dedication to fundraising for civil legal aid, lifetime of volunteerism, and seeking out of new leaders for philanthropy in the legal community. She started working at one of the largest law firms in Whatcom County in 1996, breaking a barrier as one of the first women at a large multipractice firm in the county. Since then, she has gone on to mentor and recruit many women into the profession. She now manages the firm known as Barron Quinn Blackwood, PLLC, in which all three partners are women. Barron has spent her entire career raising funds for civil legal aid and highlighting its need in our society. She has also made an impact on the profession through her service on the Washington Supreme Court's Access to Justice Board and the Public Trust and Confidence Committee, the Washington State Campaign for Equal Justice Commission, and as former chair and board member of LAW Advocates. She has also dedicated countless hours of volunteer service to organizations serving the Whatcom County community.





### OUTSTANDING YOUNG LAWYER AWARD

The Outstanding Young Lawyer Award recognizes one attorney who has made significant contributions to the professional community, especially the community of young lawyers, within their initial years of practice. Recipients must be active WSBA members within five years of admission to any bar association or less than 36 years of age.

## Austin J. Neff

Neff has been indispensable as the young lawyer co-chair for the 2023 and 2024 Trial Advocacy Program. He has gone above and beyond in his duties, including finding quality CLE speakers and judges for the mock trial, redeveloping the mock trial agenda to accommodate remote participants, and even stepping in at the 2023 mock trial to replace a team of attorneys that canceled last minute, learning the case, and preparing a volunteer witness with less than 24 hours' notice. The trial would have not happened without his last-minute assistance. Neff began trying cases to juries during his second year of law school as a Rule 9 Intern with the King County Prosecuting Attorney's Office and as of March 2024 has tried nine cases to verdict, including the largest medical negligence verdict in the history of Lewis County. **BN**

Courtesy photos

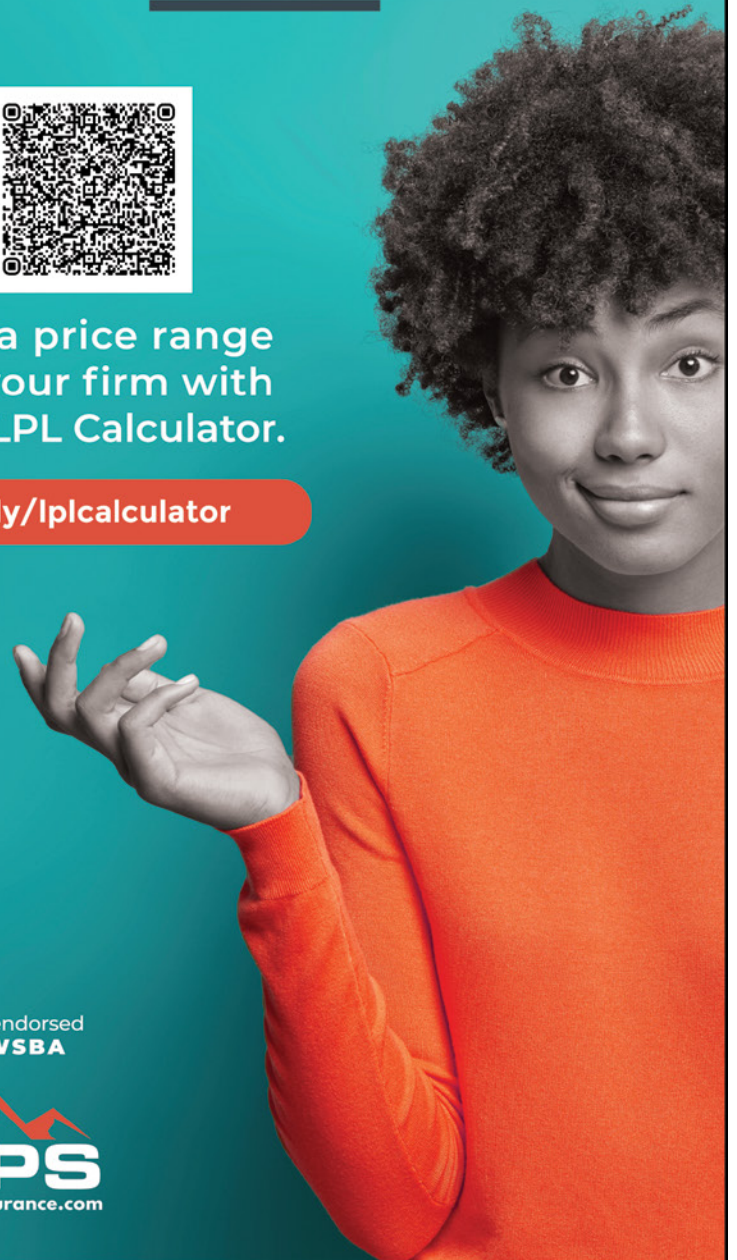
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# Washington's New Uniform Family Law Arbitration Act: *Explanation, Application, and Aspiration*

BY CHERYLL RUSSELL, JACQUELINE JESKE, AND CHRISTOPHER FOX

Washington's Uniform Family Law Arbitration Act (UFLAA) provides a framework for the use of arbitration in resolving family law disputes in Washington state. Washington's UFLAA was adopted in 2023 and became effective Jan. 1, 2024. The 27 statutory sections of the Act contain definitions and establish rules and procedures for conducting family law arbitrations, including the appointment of arbitrators, the scope of their authority, and the enforceability of arbitration awards.

Washington's UFLAA is designed to offer parties in family law cases—such as divorce, child custody, and child support disputes—a more efficient and cost-effective alternative to traditional litigation.

Under Washington's UFLAA, arbitration agreements must be in writing and signed by both parties, and the arbitrator must meet certain qualifications, such as being a licensed attorney and having specific training in family law. The parties may, however, waive some or all of the arbitrator qualifications and criteria. The Act also provides safeguards to ensure the fairness of the process, such as the right to legal representation and

**MORE ONLINE >** Washington's UFLAA is codified as Chapter 26.14 RCW. See <https://app.leg.wa.gov/RCW/default.aspx?cite=26.14>.

the ability to challenge an arbitrator's award in court under certain circumstances.

In this article, we will briefly summarize the history and intent of both the ULC's UFLAA and Washington's UFLAA, address several of the Washington Act's provisions, reference specific wording of the statute, and identify prior court decisions that may have bearing on interpretation and application of the provisions. We also highlight questions that have arisen since enactment and offer suggestions for attorneys, arbitrators, and court officers in implementing Washington's Act.

## A BRIEF HISTORY

In 1990, the American Academy of Matrimonial Lawyers (AAML) began promoting

the use of arbitration in family law matters. The AAML project was completed in 2005. After four years of study, the Uniform Law Commission (ULC) completed the Uniform Family Law Arbitration Act in 2016. To date, seven states, including Washington, have enacted versions of the Act, each of which is different.

## THE ORIGINAL INTENT

In drafting the UFLAA, the ULC incorporated by reference a state's existing arbitration law, with specific attention given to family law, such as property division, alimony, and marital agreements. The Act provides for selection and immunity of arbitrators, discovery protocols, attorney fees, and fair and expeditious resolutions. Except as otherwise provided in Washington's UFLAA, the law applicable to the UFLAA is Washington's Uniform Arbitration Act, Chapter 7.04A RCW. In deference to jurisdictional differences regarding *parens patriae* authority, the ULC's UFLAA presumptively applies to child-related issues

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**Washington's UFLAA is designed to offer parties in family law cases a more efficient and cost-effective alternative to traditional litigation.**



## Washington's New Uniform Family Law Arbitration Act: Explanation, Application, and Aspiration

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but includes a provision for states to opt-out.<sup>1</sup> This is consistent with Washington's history of allowing a state to interfere with parents' rights to raise their children only in very limited circumstances, where the state seeks to prevent harm or a risk of harm to the child.<sup>2</sup>

### WASHINGTON'S UFLAA—CHAPTER 26.14 RCW

The provisions of Washington's UFLAA discussed in this section were selected because of their importance and because, in several instances, they have been subject to differing interpretations and applications by the courts.<sup>3</sup> We have suggested possible court-related workarounds and future legislative amendments where it might be helpful.

### 1 RCW 26.14.070—Qualification and selection of arbitrator

RCW 26.14.070(1) outlines the required qualifications for a family law arbitrator in Washington state.<sup>4</sup> Unless waived by the parties in writing, an arbitrator must be:

- 1) an attorney in good standing admitted to practice in Washington with at least five years of experience practicing family law and a practice consisting of at least 50 percent family law matters, or be a former judicial officer; and
- 2) trained in child development, child and juvenile mental health issues, identifying domestic violence and abuse, and trauma-informed practices, with seven hours of such training each year.

**Comment:** Arbitrators would be well served to complete the minimum annual training in RCW 26.14.070(1)(b), even if they obtain a waiver, as this training was a suggested addition to Washington's version of the UFLAA by the Washington's Superior Court Judges' Association and encompasses more areas of expertise than were originally proposed by the Uniform Law Commission.

### 2 RCW 26.14.120—Powers and duties of arbitrator

#### (a) New powers

The UFLAA expands the authority of family law arbitrators beyond what was previously outlined in Washington's Uniform Arbitration Act, Chapter 7.04A RCW, while reserving certain disputes exclusively to the courts. Under the new law, arbitrators can: (1) appoint experts, with costs borne by the parties (RCW 26.14.120(3)(e)); (2) appoint attorneys or guardians ad litem (GALs) for children (RCW 26.14.120(3)(k) and (j))<sup>5</sup>; and (3) implement protective measures to shield parties from harm, harassment, or intimidation (RCW 26.14.120(3)(l)). Additionally, while arbitrators can impose protective measures, they cannot issue, modify, or enforce protection orders as provided in RCW 7.105. This power remains exclusively with the courts, as stated in RCW 26.14.020(3)(b).

Washington's UFLAA does not, however, provide guidance on several key issues, including: (1) the process for selecting guardians; (2) limits on allocating guardian fees to parties; (3) policies for appointing experts, particularly compared to superior court policies and practices; and (4) procedures for appointments when no case is actively pending. These gaps in the legislation may lead to inconsistencies in arbitration practices and raise questions about the balance between arbitration flexibility and the need for standardized family law procedures.

**Comment:** Arbitrators should continue to follow local county guidelines and state requirements for the qualification, appointment, and payment of guardians ad litem,

#### SIDEBAR

### SAVE THE DATE!

The WSBA will sponsor a CLE on Nov. 15 to meet the annual training requirement for arbitrators in family law disputes set out in RCW 26.14.070(1)(b). There will be an interactive session for questions and answers, as well as presentations by mental health experts. Please bring your questions and comments regarding the UFLAA. More information about the seminar and a registration link will be available at [www.wsba.org](http://www.wsba.org) closer to Nov. 15.

RCW 26.14.120(3)(k) & (j), and to utilize the state form at [www.courts.wa.gov/forms](http://www.courts.wa.gov/forms) to define the GAL's scope of investigation, duty to report, hourly fee, and any caps on payments without advance arbitrator authorization. See form FL All Family 146 Order Appointing Guardian ad Litem for a child.<sup>6</sup>

#### (b) New prohibited powers

The UFLAA statutorily prohibits arbitrators in family law disputes from:

**Granting divorces/separations:**

RCW 26.14.020(2)(a)

**Terminating parental rights:**

RCW 26.14.020(2)(b)

**Granting adoptions or guardianship:**

RCW 26.14.020(2)(c)

**Determining dependencies:**

RCW 26.14.020(2)(d)

**Issuing, modifying, or renewing**

**Domestic Violence Protection Orders:**

RCW 26.14.020(3)(h)

**Granting writs/habeas corpus:**

RCW 26.14.020(3)(e)

**Deciding personal or subject matter jurisdiction:** RCW 26.14.020(3)(f)

**Determining venue:**

RCW 26.14.020(3)(g)

**Permanently modifying a parenting plan based on a finding of substantial change in circumstances:**

RCW 26.14.020(3)(i)

#### (c) What provisions of the UFLAA can be waived?

The Model Act does not discuss waivers, with one comment exception relating to a particular arbitrator's qualifications.<sup>7</sup> Washington's UFLAA does not address any provisions that can be waived. Chapter RCW 26.14 does not specify which, if any, of the required qualifications for an arbitrator can be waived, nor does it state which qualifications must be expressly stated in a written waiver to effectively waive them. The comments to the Model Act, on which Chapter 26.14 RCW is based, note: "The default requirements reflect the importance of the decisions that family law arbitrators make and the need for arbitrators to be sensitive to the presence of family violence."

**Query:** Would a retired attorney on inactive status with domestic violence expe-

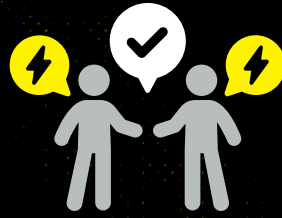
rience not qualify as an arbitrator because they do not meet the specific requirements of RCW 26.14.070(1)?

**Query:** Conversely, what if an arbitrator meets the qualifications set out in RCW 26.14.070, but lacks the specific expertise needed for certain complex family law disputes? Such cases might involve business valuations, complex financial matters, complicated trusts, elder care issues, and real estate disputes. In these and like instances, the case may benefit from an arbitrator with specialized knowledge, experience, or reputation in the relevant field, even if they're not typically a family law arbitrator or qualified under RCW 26.14.070. Note that the comments to the Model Act state, "parties may choose to waive the requirements in selecting a particular individual. Because parties may want an arbitrator with unique expertise, experience, or reputation, this section authorizes parties to select whomever they please."

**Recommendation:** There is some uncertainty (until a Washington appellate court rules) about what can be waived in the statute as well as how to properly waive it. If one or more of an arbitrator's required qualifications under RCW 26.14.070 are being waived, the authors recommend a clear statement of the reason(s) for the waiver in the arbitration agreement so the waiver may withstand challenges based on lack of intent, coercion, or other grounds.

RCW 26.14.030 states, "Except as otherwise provided in this chapter, the law applicable to arbitration is chapter 704A RCW." RCW 26.14.020(3) exempts certain proceedings from the application of Chapter 26.14 RCW. Notably, RCW 26.14.902 provides that Chapter 26.14 RCW applies to family law arbitrations under agreements made on or after Jan. 1, 2024, unless the parties agree to its application for pre-2024 parenting plan agreements.

**Comment:** Many practitioners consider the pre-2024 parenting plan dispute resolution provisions for arbitration to satisfy the RCW 26.14.040(3)(b) requirement for a court-approved arbitration order. The authors agree, provided the court was aware of the extent of any domestic violence at the time the order was entered, which avoids the need for a separate order.



**It may be prudent to define a child-related dispute as any disagreement that could potentially emerge from a parenting plan or child support order.**

**Caution:** If new domestic violence occurs after the prior final plan was entered, practitioners should still seek the court's approval and use the model form "FL All Family 193 Order Allowing or Terminating Arbitration – At Risk Party." Failure to do so may result in the court not affirming and/or enforcing the arbitration award/decision. And the matter will be governed by Chapter 26.14 RCW.<sup>8</sup>

### **3 RCW 26.14.010(4) – What is a child-related dispute?**

Simply put, a child-related dispute is any issue that affects a child. RCW 26.14.010(4) defines a "child-related dispute" as a "family law dispute regarding legal custody, physical custody, custodial responsibility, parental responsibility or authority, parenting time, right to access, visitation, or financial support regarding a child." The term is broad and includes all issues of parenting, child support, post-secondary education, decision making, activities, medical decisions, and more. And, given the breadth of such disputes, it arguably includes peripheral issues such as determining a parent's income to calculate a child support obligation. Consequently, it may be prudent to define a child-related dispute as any disagreement that could potentially emerge from a parenting plan or child support order.

### **4 RCW 26.14.130(2) – What constitutes the "record" of an arbitration hearing on a child-related dispute?**

When considering arbitration of a child-related dispute, keep in mind that RCW 26.14.130(2) mandates that the arbitrator "shall record, electronically or otherwise, any part of an arbitration hearing concerning a child-related dispute." Of note, the statute does not define the manner or format of the record, how long it will be retained, who retains it, or where it will be retained. If the arbitration is conducted on written submissions, the written submissions will constitute the record. But if there is testimony or oral evidence, the issues of how to record the evidence, preserve the evidence, and present it to a subsequent judicial officer must be considered and resolved.

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## Washington's New Uniform Family Law Arbitration Act: Explanation, Application, and Aspiration

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When determining the format of the record, it will be necessary to consider how the record can be presented for judicial review at a subsequent motion and/or hearing for review, vacation, amendment, clarification, or modification. There is no current uniform standard among counties or courts regarding acceptable record formats. While court reporters offer the most straightforward solution, and produce the easiest format to submit to a court, using their services adds cost, which contradicts arbitration's goal of being cost-effective and efficient. The requirement to produce a record may present an access-to-justice issue for low-income parties. Some arbitrators have expressed an intention to provide a flash drive to the parties or to email a link to the audio recording of the Zoom hearing to them. For hearings with oral testimony or evidence, it's essential for the arbitrator and parties to determine and agree in advance how to record, preserve, and present this information in case it is needed for a future judicial officer. The agreement as to the record should be in the signed arbitration agreement.

As noted, RCW 26.14.130(2) does not specify how long the arbitrator must maintain the record. Some arbitrators have indicated an intent to hold the file for seven days after the hearing, others for a longer period, and some indefinitely.

**Recommendation:** Since the statute does not specify how long the arbitrator holds a copy of the record, the authors agree the best practice is to (1) clearly outline the record format (electronic or otherwise) and retention period in the signed arbitration agreement; (2) consider retaining records for one year or until final orders are entered, whichever comes first; and (3) at a minimum, keep records for the 90-day period following notice as per RCW 26.14.180(5).

## 5 RCW 26.14.110— Protection of party or child

RCW 26.14.110(2) provides:



**According to former ULC members involved in drafting the UFLAA with whom we spoke, virtual arbitrations were not considered or discussed during the development process.**

(2) If a party is subject to a protection order or has been convicted of a domestic violence offense, including child abuse, or if an arbitrator determines there is a reasonable basis to believe a party's safety or ability to participate effectively in arbitration is at risk, the arbitrator shall stay the arbitration and refer the parties to court. The arbitration may not proceed unless the party at risk affirms the arbitration agreement in a record and the court determines:

- (a) The affirmation is informed and voluntary;
- (b) Arbitration is not inconsistent with the protection order; and
- (c) Reasonable procedures are in place to protect the party from risk of harm, harassment, or intimidation.

RCW 26.14.110(2)(a)-(c).

**Comment:** When any party to an arbitration occurring after Jan. 1, 2024, has an adjudicated protection order, or criminal conviction involving domestic violence or abuse, referral to court is not optional. The authors agree this requires participants and their counsel to err on the side of caution. This may be done by means of a stipulation with the required affirmations by the at-risk party and a proposed order. While it is unclear how individual judicial officers and courts will determine such matters, it is likely they will review any Judicial Information System (JIS) or criminal and civil history for the parties. It is unclear whether they will require an in-person inquiry (whether virtual or not). This provision was created mainly to address safety concerns for individuals testifying in person during proceedings. This intent was confirmed through discussions with several ULC members.

Chapter 26.14 RCW mandates referral to court upon an adjudication. Thus, where a past protection order has been denied, a mandatory stay does not appear to be required. Stipulated Orders of Continuance (SOCs) pose a thornier conundrum. The typical SOC is a vehicle used in the criminal courts after a domestic violence charge arises and is used to resolve a pending charge with an ultimate dismissal. Once dismissed, it is a final adjudication and would make a stay unnecessary. However, it accomplishes a dismissal by effectively continuing the

pending case for a specified period of time (often months) and is often accompanied by a number of conditions to be performed by a defendant, such as domestic violence treatment. Some experts might opine that as the case is not yet “adjudicated,” the existence of an SOC that is domestic violence or child abuse related does not require referral to court or an arbitration stay. An SOC, however, is far short of a final adjudication. A defendant who is subject to such an order and fails to meet their conditions or has a new charge while the continuance is pending can still face adjudication (and likely conviction) based on their stipulation to the police reports contained in most SOC. A pending criminal charge or SOC raises legitimate concerns given the intent of this provision: protection of vulnerable parties or a child in a child-related dispute.

**Recommendation:** When considering arbitration in cases involving domestic violence or child abuse allegations, the authors recommend the following:

1. **Assess risk carefully:** Determine if there’s a reasonable basis to believe a party’s safety or ability to participate is at risk, given the pending SOC and specific conditions.
2. **Prioritize court referral:** If a criminal case is pending adjudication, even with an SOC, the parties should be referred to court first and comply with the mandatory affirmation process.<sup>9</sup>
3. **Maintain vigilance:** Arbitrators should pay heightened attention throughout the arbitration to ensure the spirit of the Act is not circumvented.
4. **Consider timing:** This approach is advisable even if a prior plan mandates arbitration, particularly if the domestic violence/child abuse incident or SOC occurred after the plan’s entry date.
5. **Stay proceedings if concerns arise:** If the arbitrator becomes concerned about risks to a party or child during arbitration, they must pause the process and refer the parties to court for review, as per RCW 26.14.110(2).<sup>10</sup>

The ULC’s UFLAA was developed before the COVID-19 pandemic, when family law arbitrations were typically conducted in person. According to former ULC members involved in drafting the UFLAA with

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**Jacqueline L. Jeske** is a former King County Senior Deputy Prosecuting Attorney, former King County Family Court Commissioner, author of the arbitration chapter in the *Washington Family Law Deskbook* (Wash. State Bar Assoc. 3d ed. 2022), past chair of the WSBA Family Law Section, and served on the WSBA Family Law Section legislative Committee that participated in the new UFLAA drafting process. After leaving the court, Jeske started Jeske Dispute Resolution and currently provides mediation and arbitration services.

**Christopher Fox** is a contributing author of the *Washington Family Law Deskbook* (Wash. State Bar Assoc. 3d ed. 2022), a member of the Family Law Section Executive Committee, and publisher/editor of the *Washington Family Law Reporter*.

whom we spoke, virtual arbitrations were not considered or discussed during the development process. Since March 2020, the pandemic has significantly impacted legal processes, including a dramatic shift toward virtual arbitrations in Washington. This shift has revealed an unintended consequence of Washington’s UFLAA.

Individuals who have experienced violence or abuse now face additional costs and delays when seeking court permission to participate in virtual arbitrations. The burden is particularly pronounced for these litigants, whether or not they have legal representation or lack the resources to file and seek approval.

This outcome was not the original intent of the drafting committee or the UFLAA. It suggests an area where Washington’s statute might benefit from future legislative action to remove barriers for victims of violence, reduce associated costs, and streamline the process for virtual participation in arbitrations.

Addressing this issue could align the law more closely with current practices and needs, especially in cases involving vulnerable parties.

## 6 RCW 26.14.100— Temporary order or award

### (a) How are temporary orders affected by Chapter 26.14 RCW?

Prior to selecting an arbitrator, the court may order any temporary relief available under RCW 26.09.060 and .197. After an arbitrator is appointed, RCW 26.14.100 authorizes an arbitrator to make a temporary order granting any relief provided for in RCW 26.09.060 (Temporary Maintenance or Child Support) and RCW 26.09.197 (Temporary Parenting Plan), except for a protection order as defined in RCW 26.14.110. If the arbitrator is not available to act, a party may move the court to enter a temporary order, pending further order by the arbitrator or the court.

Before entering a final award, a court may confirm (RCW 26.14.150), correct (RCW 26.14.170), vacate, or amend (RCW 26.14.180) an arbitrator’s temporary award. The time period for each action is not the same and is addressed in different sections of the statute. Some provisions are mandatory and others are discretionary.

An arbitrator’s award is not enforceable as a judgment until confirmed. RCW 26.14.150(4). A court shall confirm an award under RCW 26.14.150(2) if the parties agree in a record, or the time to move under RCW 26.14.170 and 26.14.180 has expired and no motion is pending. Therefore, if an award has not been confirmed, it is advisable to include a provision in the final order(s) confirming the arbitrator’s award(s) when they are entered. Otherwise, the authors suggest, some arbitration awards might never undergo official confirmation for reasons including cost, time, or the specific nature of the award. Examples include quick rulings on matters like schedule changes or extracurricular activities, where parents seeking the decision may not need or want formal confirmation.<sup>11</sup>

A party may move the arbitrator to correct an unconfirmed award, not later than 30 days after receiving notice of an award, (1) due to an evident mathematical miscalculation or evident mistake in a description of a person, thing, or property; or (2) the award is imperfect as to form that does not affect the merits; or (3) to clarify the award.

A party may move the court to correct an unconfirmed award or a corrected award

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## Washington's New Uniform Family Law Arbitration Act: Explanation, Application, and Aspiration

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under RCW 26.14.170 provided it is done no later than 90 days after the arbitrator gives notice under RCW 26.14.140.

A court shall vacate an unconfirmed award under RCW 26.14.180(1) if a party moves and establishes: (a) the award was procured by corruption, fraud, or other undue means; (b) the arbitrator was partial or corrupt or engaged in misconduct that substantially prejudiced the party's rights; (c) the arbitrator refused to postpone a hearing or refused to consider evidence; (d) the arbitrator exceeded the arbitrator's powers; (e) no agreement existed unless the party participated in the arbitration without moving under RCW 26.14.060 prior to the first arbitration hearing; or (f) the arbitration was conducted without proper notice that substantially prejudiced the party. And a court shall vacate an unconfirmed award that determined a child-related dispute if (a) the award does not comply with RCW 26.14.140, (b) is contrary to the child's best interest, (c) the record is inadequate to review the award, or (d) a ground exists under RCW 26.14.180(1).<sup>12</sup> And a court may amend an award subject to vacation rather than vacating it if amending is in the child's best interest.

### 7 De novo review under the UFLAA

In general, while Washington allows for arbitration in family law matters involving children, it has put safeguards in place to ensure that courts can thoroughly review these arbitration awards. This approach balances the benefits of arbitration (such as potentially faster and less adversarial resolution) with the state's responsibility to protect children's interests.

The Uniform Arbitration Act (Chapter 7.04A RCW) generally governs judicial review of arbitration awards, providing only limited grounds for courts to vacate, modify, correct, or confirm awards. While the Uniform Arbitration Act does not explicitly include parenting plan disputes, its broad language could reasonably be interpreted to cover such dis-

putes. However, the Legislature has adopted the UFLAA, Chapter 26.14 RCW, to specifically govern arbitration of child-related disputes, including parenting issues.

RCW 26.14.150(3) outlines the conditions under which a court shall confirm an arbitration award in a child-related dispute. This provision requires the court to review the record and determine if the award: (a) complies with RCW 26.14.140 and other applicable state laws, and (b) is in the best interests of the child. This requirement for the court to review the record and assess the best interests of the child suggests a more comprehensive review than just examining the face of the award. This expands the court's ability to scrutinize child-related arbitration awards. The use of "shall" in RCW 26.14.150(3) makes this review mandatory.

Arbitration decisions are reviewed "de novo." The applicable law under the UFLAA is RCW 26.14.030(1). Consequently, all case law issued prior to the UFLAA (Jan. 1, 2024) decided under RCW 7.04A is the applicable case law to apply under the UFLAA. Historically, de novo review means reviewing the submissions and decision without placing any weight on the previous court findings or decision.

Washington law strongly favors arbitration, and courts accord substantial finality to arbitration awards rendered pursuant to the parties' agreement and RCW 7.04A.<sup>13</sup> Accordingly, judicial review of an arbitration award is exceedingly limited.<sup>14</sup> A court may disturb an award only on the narrow grounds listed in RCW 7.04A.230(1) and only when those grounds appear on the face of the award.<sup>15</sup> And the UFLAA allows limited expansion of the narrow grounds developed under case law.<sup>16</sup>

In an appeal from an arbitrator's award, "an appellate court is strictly proscribed from the traditional full review."<sup>17</sup> Accordingly, the court's review of an award is confined to a review of the decision by the court that confirmed, vacated, modified, or corrected that award.<sup>18</sup>

An arbitrator exceeds his/her authority within the meaning of RCW 7.04A when the arbitration award exhibits a facial legal error.<sup>19</sup> The facial legal error standard is a "very narrow ground for vacating an arbitral award" that furthers the "purposes of arbitration" while preventing "obvious legal error."<sup>20</sup> Further, the facial legal error standard

does not extend to a potential legal error that depends on the consideration of the specific evidence offered or to an indirect challenge to the sufficiency of the evidence. Courts are not permitted to conduct a trial de novo when reviewing the award: they "do not look to the merits of the case, and they do not reexamine evidence." "The error should be recognizable from the language of the award."<sup>21</sup>

In the absence of an error of law on the face of the award, the arbitrator's award will not be vacated or modified.<sup>22</sup> Therefore, judicial review of an arbitration award does not include a review of the merits of the case.<sup>23</sup> Judicial review of an arbitration award is usually limited to the face of the award.<sup>24</sup>

## CONCLUSION

By adopting the UFLAA, Washington's Legislature has reinforced its policy that courts should have ultimate responsibility over parenting disputes.<sup>25</sup> The UFLAA follows the trend of allowing arbitration for child-related disputes but ensures that courts maintain their essential role in overseeing awards that affect children. Washington's UFLAA aims to protect the court's *parens patriae* power—its duty to protect children's interests—by providing for "robust judicial scrutiny" of child-related arbitration awards. [BN](#)

## NOTES

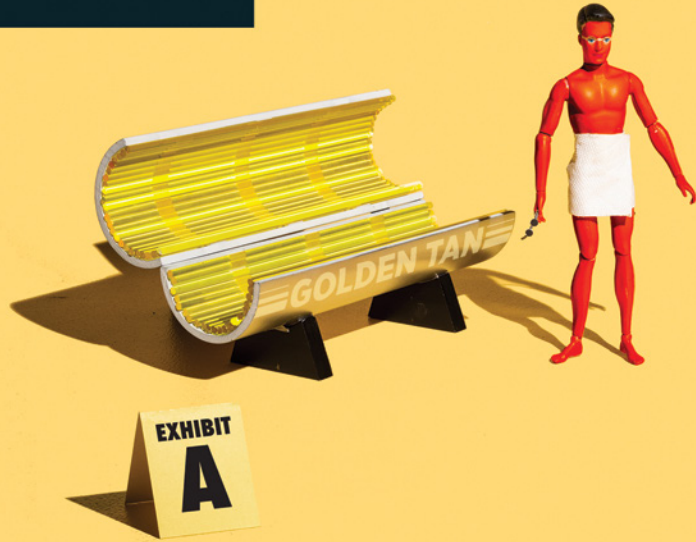
1. The Uniform Law was intended to follow the "trend ... of permitting arbitration of child-related disputes so long as courts retain their essential role in overseeing awards affecting children." Uniform Family Law Arbitration Act § 3 (Scope), Editors' Notes, Comment.
2. Custody of Smith, 137 Wn.2d 1, 969 P.2d 21 (1998); In re Custody of A.L.D., 191 Wn. App. 474, 363 P.3d 604 (2015); H.B.H. v. State, 192 Wn.2d 154, 429 P.3d 484 (2018).
3. In drafting this article, the authors consulted with: Professor Barbara Atwood, the Mary Anne Richey Professor of Law Emerita at the University of Arizona College of Law, and Director of the Family and Juvenile Law Program, who served as ULC commissioner, chairing the ULC Family Law Arbitration Act Drafting Committee; Professor Linda Elrod, the Richard S. Righter Distinguished Professor of Law and Reporter for the UFLAA; and Kari Bearman, Legislative Counsel at the Uniform Law Commission.
4. RCW 26.14.070 Qualification and selection of arbitrator.
5. UFLAA offers no guidance as to whether or not an arbitrator may appoint a GAL when there is no pending action.
6. [www.courts.wa.gov/forms/documents/](http://www.courts.wa.gov/forms/documents/)

FL%20All%20Family%20146%20Order%20Appointing%20GAL%20for%20a%20Child\_2023\_07\_RU\_FINAL.pdf.

7. UFLAA Final Act 2016.pdf.
8. This issue may require future legislative review for several reasons: (1) the ULC made these recommendations when almost all arbitrations were conducted in person; (2) since the COVID-19 pandemic, most arbitrations have shifted to virtual formats; (3) the current court process for affirming agreements and entering orders has become both an obstacle and a financial burden, especially for parties who have experienced abuse or domestic violence, and this remains true even though court access has changed in many counties; and (4) the ULC members we consulted confirmed that virtual arbitrations were not considered when they made their original recommendations. These changes in arbitration practices and their impacts suggest that the existing legislation may need to be updated to reflect current realities.
9. The ULC members we consulted stated that, in their opinion, this particular provision (RCW 26.14.110) cannot be waived.
10. *Id.*
11. The WSBA Family Law Section Legislative Committee specifically and successfully opposed an earlier provision in the bill that mandated a strict confirmation time period, as many arbitrations involve simple, fast, user-friendly proceedings where no benefit is provided by confirmation.
12. RCW 26.14.180(4) (court has authority to vacate or amend an unconfirmed decision).
13. Davidson v. Hensen, 135 Wn.2d 112, 954 P.2d 1327 (1998).
14. The case law is somewhat limited because most cases on this subject are unpublished.
15. Westmark Props., Inc. v. McGuire, 53 Wn. App. 400, 766 P.2d 1146 (1989).
16. Marriage of Pascale, 173 Wn. App. 836, 295 P.3d 805 (2013): "Any doubts regarding the applicability of an arbitration agreement 'should be resolved in favor of coverage.'"
17. Barnett v. Hicks, 119 Wn.2d 151, 829 P.2d 1087 (1992).
18. Expert Drywall, Inc. v. Ellis-Don Constr., Inc., 86 Wn. App. 884, 939 P.2d 1258 (1997).
19. Broom v. Morgan Stanley DW, Inc., 169 Wn.2d 231, 236 P.3d 182 (2010).
20. Broom, *supra* note 18.
21. Salewski v. Pilchuck Veterinary Hosp., Inc., 189 Wn. App. 898, 359 P.3d 884 (2015); Cummings v. Budget Tank Removal & Env't'l Servs., LLC, 163 Wn. App. 379, 260 P.3d 220 (2011).
22. Boyd v. David, 127 Wn.2d 256, 897 P.2d 1239 (1995); Lindon Commodities, Inc. v. Bambino Bean Co., 57 Wn. App. 813, 790 P.2d 228 (1990).
23. Davidson v. Hensen, *supra* note 12.
24. Boyd v. David, *supra* note 21.
25. Kirshenbaum v. Kirshenbaum, 84 Wn. App. 798, 929 P.2d 1204 (1997); In re Parentage of Smith-Bartlett, 95 Wn. App. 633, 640, 976 P.2d 173 (1999).

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# WHAT IS PRO BONO SERVICE AND HOW SHOULD THE WSBA MONITOR IT?

BY GABRIEL HINMAN



Many lawyers lack familiarity with RPC 6.1 and may not realize that their work qualifies as pro bono under this rule.



## SIDEBAR

# SAVE THE DATE!

**The Second Annual Pro Bono CLE**, hosted by the WSBA Pro Bono and Public Service Committee, will occur on Oct. 2, and is available to attorneys, legal professionals, students, and those currently involved with or looking to learn more about what it takes to be involved in pro bono and public service legal work. The purpose is to facilitate access to justice by hosting a conference that helps lower barriers to pro bono work for Washington attorneys, to introduce legal professionals to Washington organizations, and to give Washington organizations an opportunity to recruit and share upcoming events and initiatives. This will be a virtual event (via On24) with facilitated access resources available.

*Three CLEs will be available for free and for credit on October 2, from 9 a.m. - 12:30 p.m. for 3 CLE credits including 1 Ethics:*

- **A View from the Bench:** Judges' Perspectives on Pro Bono
- **Pro Bono Stories:** The Impact of Pro Bono From Those Engaged
- **Pro Bono Ethics:** What You Need to Know to Practice

> **Contact** [publicservice@wsba.org](mailto:publicservice@wsba.org) for more information or to obtain a link to sign up for individual attendance.

“Every lawyer has a professional responsibility” to perform pro bono service. Rule of Professional Conduct (RPC) 6.1. Some time ago, the WSBA Pro Bono and Public Service Committee (PBPS) began reviewing RPC 6.1—the “pro bono rule”—to see if any revisions or updates might aid the WSBA both in encouraging pro bono work and in gathering data about the pro bono work being performed in Washington. The rule currently allows each lawyer the option to report their pro bono hours worked and offers commendation to lawyers who render at least 50 hours each year. In its review of RPC 6.1, the PBPS considered whether the rule should be amended to be consistent with that of 10 other states that *require* all lawyers to report the number of pro bono hours they work each year when renewing their license.

Before the PBPS decides whether to recommend a rule change requiring annual reporting of pro bono hours, it wishes to address the following questions, and then present the potential advantages and disadvantages of such a change.

1. What work meets the definition of “pro bono publico service” under RPC 6.1? Is that a good definition?
2. What does the data say about how much pro bono work is being performed by Washington lawyers?

### DEFINITION OF PRO BONO SERVICE IN RPC 6.1

Before a lawyer can report pro bono service hours to the WSBA, they must know what pro bono service means. RPC 6.1 states:

Every lawyer has a professional responsibility to assist in the provision of legal services to those unable to pay. A lawyer should aspire to render at least thirty (30) hours of pro bono



**Gabriel Hinman** is an associate attorney at Smith Alling P.S. in Tacoma, where he focuses his practice on land use matters and appeals. He chairs the WSBA Pro Bono and Public Service Rules and Policy Subcommittee where he works to enhance access to quality legal representation for all Washingtonians. He can be reached at [gabe@smithalling.com](mailto:gabe@smithalling.com).

publico service per year. In fulfilling this responsibility, the lawyer should:

- (a) provide legal services without fee or expectation of fee to:
  - (1) persons of limited means or
  - (2) charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means; and
- (b) provide pro bono publico service through:
  - (1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization’s economic resources or would be otherwise inappropriate;
  - (2) delivery of legal services at a substantially reduced fee to persons of limited means; or
  - (3) participation in activities for improving the law, the legal system or the legal profession.

Pro bono publico service may be reported annually on a form provided by the WSBA. A lawyer rendering a minimum of fifty (50) hours of pro bono publico service shall receive commendation for such service from the WSBA.

Many lawyers lack familiarity with this rule and may not realize that their work qualifies as pro bono under RPC 6.1. A recent ABA study of nationwide pro bono work noted “disagreement among the surveyed attorneys regarding which services qualify as pro bono and which do not, as well as who qualifies as a person of limited means.”<sup>1</sup> The rule’s flexibility (and comments) help to address these disagreements.

Rule 6.1(a) clearly includes the typical, intuitive definition of pro bono service:

CONTINUED >

## What Is Pro Bono Service and How Should the WSBA Monitor It?

CONTINUED >

“provision of legal services to those unable to pay.” Working for indigent clients free of charge is what many lawyers think of immediately as “pro bono service.” This integral component of pro bono work “recognize[s] the critical need for legal services that exists among persons of limited means” and includes “a full range of activities.” RPC 6.1 cmt. 2. In addition to providing “legal advice” or representing a client in legal proceedings, pro bono work also can include “legislative lobbying,” “administrative rule making,” and “free training or mentoring to those who represent persons of limited means or organizations primarily representing such persons.” *Id.* The broad language of the rule is intended to encompass a wide variety of “legal services” directed toward assisting those unable to afford a lawyer.

But that expansive list of activities constitutes only those covered in RPC 6.1(a). RPC 6.1(b) brings additional categories of legal work into the broad definition of pro bono service.<sup>2</sup> For one, RPC 6.1(b) counts legal services provided at a “substantially reduced fee,” as well as no fee, for organizations promoting a series of public policy-oriented missions. The rule does not define “substantially reduced fee,” leaving those details to the professional judgment of practitioners. This rule is intended, among other things, to promote representation of underfunded nongovernmental organizations pursuing, for example, “First Amendment claims, Title VII claims and environmental protection claims.” RPC 6.1 cmt. 6.

One final type of pro bono service even falls outside the typical category of representing clients at all. RPC 6.1(b)(3) “recognizes the value of lawyers engaging in activities that improve the law, the legal system or the legal profession” and includes a series of non-practice activities, such as volunteering on bar association committees or teaching CLE courses. RPC 6.1 cmt. 8.

Even writing this article in my capacity as a WSBA PBSPC volunteer appears to meet the RPC 6.1(b)(3) definition of pro bono service; i.e., my efforts to “improve”

## According to the ABA, 10 states already require licensed lawyers to periodically report their pro bono hours to their respective state bar associations.

awareness of RPC 6.1 and its details could be viewed as “activities for improving the law, the legal system or the legal profession.” I like to think an article like this helps to support pro bono service in Washington and increases provision of actual “legal service to those unable to pay.” But should writing the article itself qualify as actual pro bono service? Should the rule recognize a distinction between actual “provision of legal services to those unable to pay” and lawyers’ other valuable and commendable contributions to the practice of law?<sup>3</sup> The purpose of this article is not to answer these questions—but they are certainly worth exploring, especially when it comes time to make a recommendation as to whether pro bono service reporting should be made mandatory in Washington.

### WHAT DOES THE DATA SAY ABOUT PRO BONO SERVICE IN WASHINGTON?

To assess the projected benefits of a rule change, the PBSPC wanted to know: How much pro bono work is being performed in Washington? How many hours are worked and how many lawyers volunteer at least some of their time? Under the current rule, with pro bono reporting entirely optional, different data sets paint very different pictures.

### MORE ONLINE

If you have thoughts about this potential rule change, the PBSPC would love to hear from you! Please direct any questions, comments, or concerns to [publicservice@wsba.org](mailto:publicservice@wsba.org).

According to the WSBA’s own data gathered from 2019 to 2022, only a small portion of Washington lawyers performed any pro bono service at all. For example, only 8 percent of Washington lawyers (3,047) in 2019 and 5 percent (2,086) in 2022 reported having performed “at least 1 hour of pro bono work” in the relevant year.<sup>4</sup> The total hours of pro bono work reported by Washington lawyers ranged from 234,691 hours worked (or about 77 hours per lawyer reporting pro bono service) in 2019 to 147,554 hours worked (or about 71 hours per lawyer reporting pro bono service) in 2022. According to this source, pro bono self-reporting is decreasing every year.

These self-reported WSBA numbers appear inconsistent with separate data gathered by the American Bar Association for its 2018 Study: “Supporting Justice: A Report on the Pro Bono Work of America’s Lawyers.” According to that study, which surveyed 47,000 lawyers in 24 states including Washington, “[j]ust over 68% of the [Washington state] attorneys reported having done at least some pro bono in 2016” and Washington had “the lowest percent of attorneys who had never performed pro bono, with only 10% making this claim.” According to the ABA Study, 18.6 percent of Washington lawyers performed at least 80 hours of pro bono work in 2016.

No single source appears to provide a definitive picture and there are reasons to be distrustful of each data set. The WSBA and ABA numbers are entirely voluntary—in fact, the ABA study acknowledged that its survey response rate was only 7.3 percent. It seems reasonably likely that the 7.3 percent who responded to an ABA survey about pro bono service may also be the 7.3 percent most likely to perform pro bono service in Washington. And the WSBA’s data omit all lawyers who perform pro bono service yearly but, for whatever reason, do not report their service on the optional form when it comes time to renew their license.

### SHOULD THE WSBA REQUIRE PRO BONO REPORTING?

The apparently inconsistent data sources help to queue up the question that led to the current PBSPC inquiry and this article: Should RPC 6.1 be amended to make pro bono reporting mandatory each year, rather than optional? According to the ABA, 10

states already require licensed lawyers to periodically report their pro bono hours to their respective state bar associations.<sup>5</sup>

A rule change would serve two primary goals. The first would be to make pro bono data collection a priority for the WSBA. With all the existing inconsistent data, how can the WSBA hope to reliably make decisions about pro bono service policy? What are the “real” numbers? Requiring every licensed Washington lawyer to report their hours yearly when they renew their license may present a better, more comprehensive source of reliable data to guide policymaking about pro bono service.

Data collection is not the only potential benefit of a rule change. The second benefit would perhaps be to encourage more Washington lawyers to do some (or more) pro bono work in the year to come, as they look back on the past year and the number of hours they are about to report when renewing their license. A Florida report about pro bono service noted that, when surveying lawyers in Florida (a mandatory reporting state), “almost all interviewees said they think it makes attorneys think once a year about whether they have provided pro bono legal services, and that makes it worth having.” Pro Bono: Looking Back, Moving Forward, Kelly Carmody & Assoc. (2008) at 85, App’x 8.<sup>6</sup>

However, a rule change would come with potential downsides as well. First, many lawyers who perform pro bono service do not keep meticulous records of their work performed. Some lawyers may appreciate that pro bono service does not require the detailed, hour-by-hour tracking of time necessary for billable work. What ethical obligations would a rule change impose on these lawyers? Would additional record-keeping requirements disincentivize performance of the work at all?

A comprehensive list of potential benefits and downsides to a rule change was compiled by the ABA. See sidebar. Some of the listed benefits include that it “encourages fulfillment of professional responsibility,” “provides data essential for design of successful programs,” and “may raise awareness of need for free or reduced fee legal services.” *Id.* Some downsides include the possibility of unnecessary “administrative costs” and “negative peer pressure,” the difficulty in determining “what type of discipline is appropriate for failure to report,”

## SIDEBAR

### Reasons in Favor of Implementing Voluntary Pro Bono Reporting

- Voluntary reporting is less of a burden on attorneys because it is optional.
- It is not a threat to constitutional rights.
- There is no need to focus energies on discipline.
- It is easy to implement.
- Voluntary reporting may enable the collection of data.
- Data can send a message to non-legal community about their responsibility to fund legal services for [those who cannot afford them.]
- It enables recognition of contributing lawyers.
- It can be inexpensive.
- It facilitates engendering confidence in the Bar.
- It may make demographics collectible.
- The data can be used to enhance the image of lawyers.
- It may raise consciousness about the professional responsibility to provide pro bono legal services.
- It may raise awareness of need for free or reduced fee legal services.
- It may increase monetary contributions to providers of legal services.

### Reasons In Favor of Implementing Mandatory Pro Bono Reporting

- It is a simple mechanism for attempting to increase delivery of legal services to [those who cannot afford them] and level of service to community.
- It is an effective mechanism for collecting reliable, accurate, consistent data to evaluate delivery of pro bono legal services.
- It provides data essential for design of successful programs.
- It may increase monetary contributions.
- Reporting creates positive peer pressure.
- It promotes increased access to justice/courts.
- It promotes involvement in pro bono.
- Requiring reporting promises high rates of reporting.
- Data collected can send a message to non-legal community about their responsibility to fund legal services for [those who cannot afford them].
- It enables recognition of contributing lawyers.
- It may make demographics collectible.

— Source: ABA, “Pro Bono Reporting,” [www.americanbar.org/groups/probono\\_public\\_service/policy/arguments/](http://www.americanbar.org/groups/probono_public_service/policy/arguments/).

and the danger of making pro bono work “a negative rather than positive concept if bar members express opposition.” *Id.* <sup>[BN]</sup>

#### NOTES

1. Supporting Justice IV: A Report on the Pro Bono Work of America’s Lawyers, Standing Committee on Pro Bono & Public Service and the Center for Pro Bono (2018) at 44, [www.americanbar.org/content/dam/aba/administrative/probono\\_public\\_service/other-documents/ls\\_pb\\_supporting\\_justice\\_iv\\_final.pdf](http://www.americanbar.org/content/dam/aba/administrative/probono_public_service/other-documents/ls_pb_supporting_justice_iv_final.pdf).
2. “A lawyer’s responsibility under this Rule can be fulfilled either through the activities described in paragraph (a)(1) and (2) or in a variety of

ways as set forth in paragraph (b).” RPC 6.1 cmt. 5.

3. Notably, under the current optional pro bono reporting system through the WSBA, lawyers are invited to report both 6.1(a) and 6.1(b) hours worked independently so that the WSBA may separately track hours under both subsections of the Rule. Any recommended rule change would maintain this distinction.
4. Administrative data received from the WSBA Regulatory Services Department.
5. Those states include Florida, Hawaii, Illinois, Indiana, Maryland, Minnesota, Mississippi, Nevada, New Mexico, and New York.
6. Report available at [https://supremecourt.flcourts.gov/content/download/242827/file/2008\\_Pro\\_Bono\\_Report.pdf](https://supremecourt.flcourts.gov/content/download/242827/file/2008_Pro_Bono_Report.pdf).

## THE WSBA SMALL TOWN AND RURAL (STAR) COMMITTEE:

# Transforming Legal Deserts Into Legal Oases

BY KEVIN PLACHY, LAURIE POWERS, MERF EHMAN, AND KARI PETRASEK

As part of its ongoing commitment to expand pathways to rural practice and access to justice in small towns and rural communities, the WSBA Small Town and Rural (STAR)<sup>1</sup> Committee pushed forward several initiatives this year. From kicking off the inaugural Rural Practice Summit in June, attending the National Center for State Courts (NCSC) Legal Deserts Summit in Las Vegas, providing summer grants to law students practicing in STAR communities, and hosting rural practice information sessions and job fairs, steady progress is being made.

On June 7, the STAR Committee welcomed over 100 attendees from small towns and rural communities across Washington and neighboring states to the inaugural STAR Summit, held at Gonzaga University School of Law in Spokane. Keynote speakers included Washington Supreme Court Chief Justice Stephen C. González and Ninth Circuit Court of Appeals Judge Salvador Mendoza Jr. Attendees also learned about issues and opportunities in STAR practice and brainstormed solutions. The afternoon breakout sessions provided practical advice on attracting lawyers to rural practice, supporting diversity and navigating intersectionality in rural practice, effectively onboarding and supervising legal interns, and myths and stereotypes about rural practice. Participant engagement was strong throughout the day.

Immediately prior to the summit, WSBA Governor and STAR

The STAR Committee was excited to launch its first annual rural practice summer grants to provide incentives for law students to move to rural communities for summer internship opportunities.

Committee Chair Kari Petrasek, Columbia Legal Services Director Merf Ehman (a STAR Committee member), and WSBA Advancement Department Director Kevin Plachy attended the National Center for State Courts (NCSC) Legal Deserts Summit in Las Vegas. This national conference focused on the shortage of legal services in rural communities throughout the United States and best practices for addressing the shortage. At the conference, the attendees employed Geographic Information Systems (GIS) mapping technology and their own state's data about licensed legal professionals to better understand legal access risk indicators such as drive times to court, court locations, number of active attorneys within particular geographic areas, language access barriers, and broadband/internet availability. This technology provided a more comprehensive understanding of the access to justice gaps within rural areas in various states, including Washington.

Attendees also learned about financial incentive programs adopted by various states throughout the United States and their level of success in attracting attorneys to rural communities. Various other approaches to narrow the access to justice gap were also explored including licensed legal professionals who provide limited-scope representation to clients, new pathways

*Photo below, from left to right: Ashley Cummins, Kevin Plachy, Jesse Lamp, Erin Lloyd, Merf Ehman, Kari Petrasek, and Laurie Powers at the inaugural STAR Summit held at Gonzaga University School of Law in June.*



## SIDEBAR

# A NOTE FROM THE WASHINGTON STATE OFFICE OF PUBLIC DEFENSE

to bar licensure, legal kiosks within rural communities, and different ways in which the Legislature and courts can assist in expanding rural practice. After two days of learning about the various approaches taken to improve rural practice across the country, the STAR Committee representatives came back to Washington not only with fresh ideas but with strong validation, because a good deal of the work the STAR Committee has already done aligns with much of the work being done in other states.

The STAR Committee was excited to launch its first annual rural practice summer grants to provide incentives for law students to move to rural communities for summer internship opportunities with private, nonprofit, and government legal service providers. Three \$5,000 grants were awarded for summer 2024, enabling three law students to afford housing and other living expenses in STAR communities. The STAR Committee will review the success of this first summer, with an eye to expanding the program for summer 2025.

In April 2024, the STAR Committee also partnered with Gonzaga University School of Law to host a virtual interview day, resulting in multiple new attorney hires and summer internship offers in rural areas of Washington. These types of information sessions and job fairs started in 2023 and continue to evolve and expand based on the feedback the STAR Committee receives. This year's outreach included STAR Committee members Rusty McGuire and former STAR Committee Chair Hunter Abell, who went to Washington State University and Eastern Washington University to speak with pre-law students about rural practice. There are plans to visit Spokane Community College and Whitworth University this year as well.

The STAR Committee has also focused

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**Kevin Plachy** is the WSBA Advancement Department director.

**Laurie Powers** is WSBA general counsel and a former member of the STAR Committee.

**Merf Ehman** is the director of Columbia Legal Services and a member of the STAR Committee.

**Kari Petrasek** is the WSBA District 2 governor and STAR Committee chair.

The STAR Committee is engaged in the important work of ensuring that all communities around the state have access to legal representation. At the Washington State Office of Public Defense (OPD), we are drilling down on the problem as it relates specifically to public defenders—lawyers who provide indigent persons with their constitutional or statutory right to counsel.

You likely have heard about the lack of defenders across the state. OPD's mission in this realm is twofold—first, to ensure that public defenders are available statewide and second, to ensure that they are resourced, trained, and ready to provide effective assistance of counsel. As directed by Senate Bill 5780, OPD is launching a new statewide Recruitment & Retention Team to help local public defense programs attract and keep qualified counsel.

This year the Recruitment & Retention Team is developing a Rule 9 internship program to introduce law students to public defense in rural and underserved areas of the state. Along with a paycheck and housing stipend for interns, the Legislature provided OPD with funding to compensate supervising attorneys for the time it takes to show a law student the ropes in their courts and communities.

OPD also is partnering with law schools to engage students to consider a career in public defense. Soon, we'll extend outreach into undergraduate programs and even high schools. We are promoting a future where public defenders reflect a diversity of communities, life experiences, and racial, gender, and ethnic identities.

There is nothing quite like standing by someone and fighting for them in their hour of deepest need. There is little that rivals the high of a righteous win at trial or the honor of hearing the stories of the most marginalized members of your community. OPD is proud of our work, and we hope many others will find their way to this honorable profession. If it sounds like we're veering into your lane, we hope you'll partner with us on these important efforts.

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**LEARN MORE >** For questions about our new Recruitment & Retention work, check out the OPD website at <https://opd.wa.gov/> or reach out to Supervisor Liz Mustin at [Elizabeth.Mustin@opd.wa.gov](mailto:Elizabeth.Mustin@opd.wa.gov).

on outreach and education efforts, offering free CLE programming to WSBA members on topics related to rural practice. The educational programming has reached over 1,300 WSBA members to date. The July 2024 Legal Lunchbox™ CLE program, “Legal Issues Affecting Farm Workers & Agricultural Employers,” was developed in partnership with the STAR Committee and is expected to have over 1,800 attendees.

Rural communities within Washington state are experiencing shortages of legal professionals, and perhaps the most pronounced shortage is in public defense. The STAR Committee is working diligently to address the access to justice gaps and will continue to investigate more innovative and creative options to narrow the gap in rural commu-

nities throughout the state. The STAR Committee maintains an informational email list for those interested in this important work. If you would like to receive email updates, please email [memberbenefits@wsba.org](mailto:memberbenefits@wsba.org) and request to be added. [BN](#)

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### NOTE

1. In April 2021, the WSBA Board of Governors established the Small Town and Rural (STAR) Committee with the goal of ensuring that the practice of law in rural communities is present, growing, and thriving. The STAR Committee consists of 13 members representing a wide spectrum of the legal profession including actively practicing attorneys from rural communities, new lawyers, law school representatives, members of the WSBA Board of Governors, and representatives of qualified legal service providers.

# Need to Know

NEWS & INFORMATION OF INTEREST TO WSBA MEMBERS

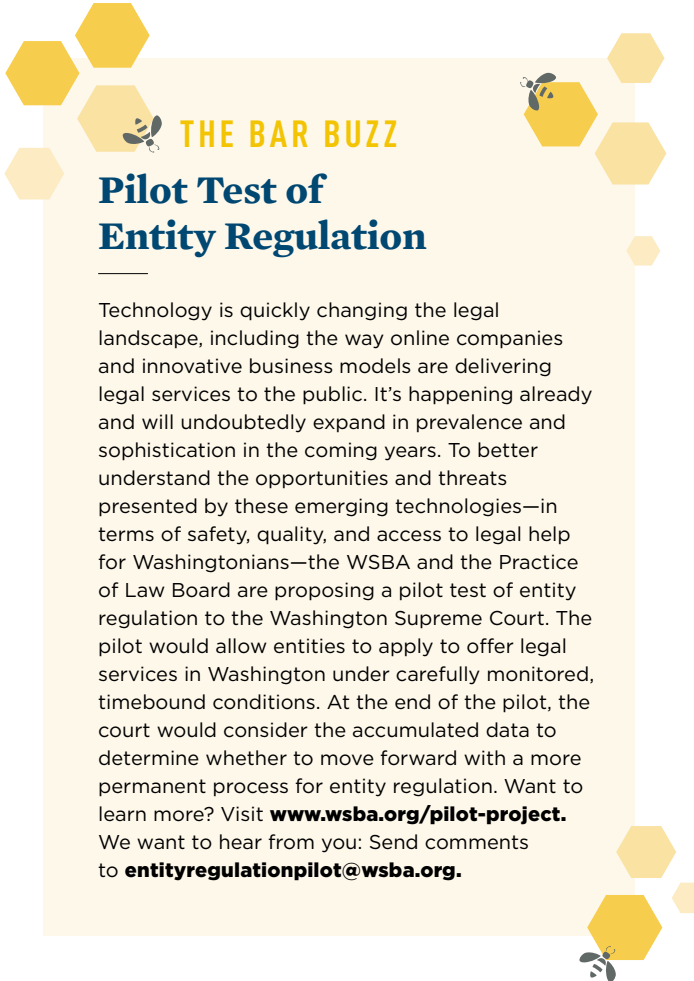
## WSBA NEWS

### **Comment on Proposed Changes to Public Defense Standards**

The Washington Supreme Court is seeking input on proposed changes to the court's adopted standards for public defense. The proposed new standards would lower the maximum caseloads for public defense attorneys, revise some qualification requirements for public defense attorneys, set minimum support staffing requirements for public defense attorneys and offices, and align with the new indigent defense standards adopted by the WSBA in March. The public comment period is open through Oct. 31. Send your comments to [supreme@courts.wa.gov](mailto:supreme@courts.wa.gov) or P.O. Box 40929, Olympia, WA 98504-0929. To learn more, visit [www.courts.wa.gov/newsinfo/?fa=newsinfo.internetdetail&newsid=50456](http://www.courts.wa.gov/newsinfo/?fa=newsinfo.internetdetail&newsid=50456).

### **Spanish Language Access to the Lawyer Grievance Process**

Please help spread the word: Information, directions, forms, and telephone interpreters are now available in Spanish for anyone who would like to contact the state bar with a concern about the ethical conduct of a lawyer. Spanish speakers can click "En Español" on the top menu bar at [www.wsba.org](http://www.wsba.org) to learn more. If you would like flyers to post or cards to hand out to potentially interested people or organizations to spread awareness, please contact [questions@wsba.org](mailto:questions@wsba.org). This is a pilot project that the WSBA hopes to expand to more



## THE BAR BUZZ

### **Pilot Test of Entity Regulation**

Technology is quickly changing the legal landscape, including the way online companies and innovative business models are delivering legal services to the public. It's happening already and will undoubtedly expand in prevalence and sophistication in the coming years. To better understand the opportunities and threats presented by these emerging technologies—in terms of safety, quality, and access to legal help for Washingtonians—the WSBA and the Practice of Law Board are proposing a pilot test of entity regulation to the Washington Supreme Court. The pilot would allow entities to apply to offer legal services in Washington under carefully monitored, timebound conditions. At the end of the pilot, the court would consider the accumulated data to determine whether to move forward with a more permanent process for entity regulation. Want to learn more? Visit [www.wsba.org/pilot-project](http://www.wsba.org/pilot-project). We want to hear from you: Send comments to [entityregulationpilot@wsba.org](mailto:entityregulationpilot@wsba.org).

languages soon. Visit [www.wsba.org/for-the-public/concerns-about-a-lawyer/preocupaciones-por-un-abogado](http://www.wsba.org/for-the-public/concerns-about-a-lawyer/preocupaciones-por-un-abogado).

### **Work at the WSBA**

The WSBA is hiring! Visit [www.wsba.org/career-center/work-at-the-wsba](http://www.wsba.org/career-center/work-at-the-wsba) for all of our current openings and to apply.

### **Help Fill the Moderate Means Legal Need**

The statewide Moderate Means Program serves moderate income clients through a network of attorneys and limited license legal technicians who offer assistance in family,

housing, consumer, and unemployment law cases at reduced fees scaled to the client's income. There is an urgent need for legal professionals to serve. Visit [www.wsba.org/connect-serve/pro-bono-public-service/mmp](http://www.wsba.org/connect-serve/pro-bono-public-service/mmp) for more information and join now through your myWSBA account, [www.mywsba.org](http://www.mywsba.org).

### **Engage With WSBA Leaders**

The Member Engagement Council, which seeks member input and involvement in decision-making processes, wants to hear from you! The first

agenda item of each meeting is reserved for member comments. Meetings occur the first Thursday of each month from 1-3 p.m. via Zoom. All topics are welcome. Visit the events calendar at [www.wsba.org](http://www.wsba.org) for more information.

## VOLUNTEER

### **Northwest Justice Project Board of Directors**

The WSBA Board of Governors is accepting applications to appoint three attorney members to the Northwest Justice Project (NJP) Board of Directors. Appointments are for a term of three years. This is an extraordinary opportunity for accomplished individuals who are passionate about the struggle for equal justice and who are committed to ensuring low-income people in Washington have access to high-quality civil legal assistance and representation. For more information, please contact NJP Deputy Director Hickory Gateless, [hickory.gateless@nwjustice.org](mailto:hickory.gateless@nwjustice.org), or Board Development Committee Chair Sean Waite, [seanhwaite@gmail.com](mailto:seanhwaite@gmail.com). To apply, email a letter of interest and résumé to [barleaders@wsba.org](mailto:barleaders@wsba.org) by Sept. 20. Learn more at [www.wsba.org/connect-serve/volunteer-with-wsba/volunteer-as-a-wsba-representative](http://www.wsba.org/connect-serve/volunteer-with-wsba/volunteer-as-a-wsba-representative).

### **Be a Judge for UW In-House Competitions**

The University of Washington School of Law hosts three in-house competitions during the school year and seeks local attorneys and judges to evaluate,

CONTINUED >

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**Nicholas R. Glancy**  
*Harvard Law School 2006*  
Business  
Transactions,  
Higher Education



**Abigail St. Hilaire**  
*University of Washington 2014*  
Appeals, Employment,  
Civil Rights



**Peter B. Dolan**  
*University of Washington 2014*  
Probate, Eminent  
Domain



**Jacob J. Farrell**  
*The Ohio State University 2022*  
Litigation, Real Estate



**Elisa J. Coates**  
*University of Washington 2022*  
Criminal Defense,  
Protection Orders



**Payton C. Tompkins**  
*Texas Tech University 2023*  
Litigation, Nonprofit



**Alexis J. Laginess**  
*Indiana University 2023*  
Estate Planning,  
Probate



**DICKSON FROHLICH  
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IS PLEASED TO ANNOUNCE

**CHRIS PIERCE-WRIGHT**

HAS BEEN NAMED AS A PARTNER

We are pleased to announce that Chris has been promoted to Partner at Dickson Frohlich Phillips Burgess. Chris specializes in Business, Land Use, and Litigation. Previously, he practiced insurance litigation in Seattle and clerked for Judge Bradley Maxa at the Washington State Court of Appeals. A graduate of the University of Washington School of Law, Chris served as chief managing editor of the Washington Law Review. Congratulations, Chris, on this well-deserved achievement!

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**LAWYER ANNOUNCEMENT**



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**Keller Rohrback L.L.P. is thrilled to announce the promotion of Adele Daniel to partner!**

Adele is a proud member of Keller Rohrback's complex litigation group and practices plaintiff-side environmental, class-action, and consumer litigation.

**Congratulations Adele!**

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**LAWYER ANNOUNCEMENT**

**Need to Know**

CONTINUED >

score, and give feedback to the student competitors. If you are interested in judging the negotiation, mock-trial, and/or appellate advocacy competitions, please email [trialad@uw.edu](mailto:trialad@uw.edu). Find out more at [www.law.uw.edu/academics/experiential-learning/moot-court](http://www.law.uw.edu/academics/experiential-learning/moot-court).

**Legal Clinic  
Volunteers Needed**

A free legal clinic put on by the Latina/o Bar Association of Washington, the King County Bar Association, and El Centro de la Raza is looking for attorney volunteers interested in doing pro bono work. The clinic takes place from 6-8 p.m. on the second Wednesday of every month through November 2024 at El Centro de la Raza in Beacon Hill (2524 16th Ave. S, Seattle, 3rd Floor). Volunteers provide general consultations in areas of the law including immigration, family law, auto accidents, personal injury, worker's rights/wage claims, tenant rights, and criminal law. For more information, email [clinics@lbaw.org](mailto:clinics@lbaw.org).

**RESOURCES  
IOLTA FAQs**

Have questions about trust accounts? Check out the new IOLTA FAQs to learn important information about such topics as unidentified owners and unclaimed property, recordkeeping, disbursements, general banking, reconciliation, and more. Find the FAQs at [www.wsba.org/for-legal-professionals/member-support/practice-management-assistance/iolta-faqs](http://www.wsba.org/for-legal-professionals/member-support/practice-management-assistance/iolta-faqs).

**HAVE SOMETHING  
NEWSWORTHY TO SHARE?**

Email [wabarnews@wsba.org](mailto:wabarnews@wsba.org) if you have an item you would like to place in *Need to Know*.



DISCOUNTS AVAILABLE

## Software & Services for Your Practice

As a member of the WSBA, you have access to the Practice Management Discount Network, a collection of discounts on products and services to help you improve your law practice. We offer discounts on conflict-checking, credit-card processing, encryption, cybersecurity, document editing, document management, e-discovery, marketing and website support, office supplies, practice management software, remote receptionists, and retirement planning. Learn more and access your discounts today at [www.wsba.org/for-legal-professionals/member-support/practice-management-discount-network](http://www.wsba.org/for-legal-professionals/member-support/practice-management-discount-network).

[SCAN TO LEARN MORE >](#)



## Check Out the DEI Resource Library

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

## WSBA Membership Counts

Did you know that the WSBA publishes membership statistics—including total count by license type, location, year of admission, practice type, and certain demographics—refreshed each month as part of the Who We Are page? Visit [www.wsba.org/docs/default-source/licensing/membership-info-data/countdemo\\_20190801.pdf](http://www.wsba.org/docs/default-source/licensing/membership-info-data/countdemo_20190801.pdf), or you can search “WSBA demographics” on any search engine to easily get to the right webpage.

## Free Practice-Management Consultations

The WSBA offers free resources and education on practice management issues. For more information, visit [www.wsba.org/pma](http://www.wsba.org/pma). You can also schedule a free phone consultation with a WSBA practice-management advisor. Visit [www.wsba.org/consult](http://www.wsba.org/consult).

## Virtual Career Guidance Group

This free group meets on the first Thursday of the month at 3 p.m. This is a chance to receive guidance on your résumé, informational interviewing, applying for positions, and where you see yourself in your legal career. This group is led by Dan Crystal, Psy.D. Sign up at [www.wsba.org/for-legal-professionals/member-support/wellness/group-sessions](http://www.wsba.org/for-legal-professionals/member-support/wellness/group-sessions).



## WSBA MEMBER WELLNESS

### Virtual Mental Health Support Group

The free group, *Healing Minds: Managing Persistent or Overwhelming Challenges to One's Well-Being as a Lawyer*, led by WSBA staff Adely Ruiz, LSWAIC, and Dan Crystal, Psy.D., meets the first Thursday of every month from 1-2 p.m. Learn more and sign up at [www.wsba.org/for-legal-professionals/member-support/wellness/group-sessions](http://www.wsba.org/for-legal-professionals/member-support/wellness/group-sessions).

### Telehealth is Here!

The Member Wellness Program is now offering hi-def, HIPAA-protected video consultations using the telehealth portal Doxy.me. Visit [www.wsba.org/for-legal-professionals/member-support/wellness](http://www.wsba.org/for-legal-professionals/member-support/wellness) and click “Book Your Initial Consultation” to schedule time with our licensed providers.

### The ‘Unbar’ Alcoholics Anonymous Group

The Washington Unbar Alcoholics Anonymous group for legal professionals has been

meeting regularly for almost 30 years. The group meets Wednesdays, 12:15-1:30 p.m., and Sundays, 7-8 p.m. Currently, the group meets online via Zoom, and attorneys from all over Washington participate. For more information and Zoom credentials contact [unbarwa@gmail.com](mailto:unbarwa@gmail.com).

### Health Benefits

The WSBA Private Health Insurance Exchange offers members access to the most competitive group health insurance solutions on the market. Enjoy unique cost-saving opportunities, complimentary enrollment technology, valuable HR tools, and voluntary premier-level ancillary benefits with special pricing and concessions. Speak to a benefits counselor and request a free quote today: [www.memberbenefits.com/wsba](http://www.memberbenefits.com/wsba).

### Judges Need Help Too

The Judicial Assistance and Services Program (JASP) provides confidential support for judges or those who are concerned about a judge. Contact Susanna Kanther, Psy.D., at 415-572-3803.

Visit [www.wsba.org/for-legal-professionals/member-support/wellness/judicial-assistance-service-program](http://www.wsba.org/for-legal-professionals/member-support/wellness/judicial-assistance-service-program).



## ETHICS

### Ethics Line

Members facing ethical dilemmas can talk with WSBA professional responsibility counsel for informal guidance. Learn more at [www.wsba.org/for-legal-professionals/ethics/ethics-line](http://www.wsba.org/for-legal-professionals/ethics/ethics-line) or call the Ethics Line at 206-727-8284.

## WSBA Advisory Opinions

WSBA advisory opinions are available online at [www.wsba.org/for-legal-professionals/ethics/about-advisory-opinions](http://www.wsba.org/for-legal-professionals/ethics/about-advisory-opinions). For assistance, call the Ethics Line at 206-727-8284.



## WSBA COMMUNITY NETWORKING

### New Lawyers List Serve

This list serve is a discussion platform for new lawyers of the WSBA. To join, email [newmembers@wsba.org](mailto:newmembers@wsba.org).

### ALPS Attorney Match

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



## QUICK REFERENCE

### Sept. 2024 Usury

The usury rate for Sept. 2024 is 12.00%. The auction yield of the Aug. 5, 2024, auction of the six-month Treasury Bill was 4.881%. The interest rate required by RCW 4.56.110(3)(a) and 4.56.115 for Sept. 2024 is 6.881%. The interest rate required by RCW 4.56.110(3)(b) and 4.56.111 for Sept. 2024 is 10.50%.

# On Board

NEWS FROM THE BOARD OF GOVERNORS & THE WSBA

JULY 17-18, 2024

## A Summary of the Board of Governors Meeting

*The WSBA Board of Governors determines the Bar's general policies and approves its annual budget.*

### TOP MEETING TAKEAWAYS

**1 Honoring Native Practitioners.** The Board held a business meeting for the first time on an Indian reservation, convening in Nespelem at the Colville Confederated Tribes' Lucy F. Covington Center. The theme of the meeting was honoring and learning from our colleagues who hold Tribal status. A panel of practitioners of Indian law spoke about challenges and opportunities, including the need to partner with wider legal communities in Washington to spread awareness of and education about Tribal laws. There are 29 federally recognized Indian Tribes in our state, and it is inevitable that a Washington lawyer will encounter concurrent jurisdiction with one or more of these sovereigns. The Board also learned about the Colville Confederated Tribes' Peacemaker Circle, a restorative justice practice.

**2 Strategic Goals for fiscal year 2025.** In line with member feedback, the Board considered recommendations for next year's strategic goals, and it seems likely they will vote in September to continue with four important areas of focus,

above and beyond daily operations: (1) support for rural practitioners and access to justice in small towns and rural parts of the state; (2) a study of member well-being and expansion/improvement of resources for legal professionals; (3) assessment of technology-related opportunities and threats to determine the WSBA's role vis-à-vis regulation, consumer protection, and support to legal practitioners; and (4) improvement of the experience of belonging among legal professionals and in the legal community. The Board will hold a retreat in October to begin planning the next cycle of three-year strategic goals.

### MORE ONLINE

The agenda, materials, and video recording from this Board of Governors meeting (held in Nespelem), as well as past meetings, are online here: [www.wsba.org/about-wsba/who-we-are/board-of-governors](http://www.wsba.org/about-wsba/who-we-are/board-of-governors). 

**3 Congratulations to the WSBA's Incoming Treasurer.** The Board elected Governor Kari Petrasek as the WSBA's next treasurer; she will begin that role in October for fiscal year (FY) 2025.

**4 Local Hero.** The WSBA recognized Stephen Kozer as a Local Hero, an honor bestowed by the WSBA president in partnership with county bar associations to recognize colleagues who make noteworthy contributions to their communities. Mr. Kozer, the felony supervising attorney at the Grant County Department of Public Defense, was nominated by his colleagues for his leadership, determination, and doggedness in ensuring a robust defense for anyone accused of a crime, no matter their background or financial means.

**5 FY 2025 Budget.** The Board received an update about next year's draft budget. License fees for 2025 have already been set—they will remain stable with no increase. The FY 25 budget reflects cost increases and savings, including a significantly reduced rent rate, with an overall impact of about \$1.25 million of purposeful drawdown of the reserve fund. (Please look for more information about the WSBA's new lease negotiation in an upcoming issue of *Washington State Bar News*.) The Board expects to approve the FY 25 budget at its Sept. 6-7 meeting.

**6 Pilot Test of Entity Regulation.** Executive Director Terra Nevitt provided an update on an important initiative spearheaded by the Practice of Law Board (POLB). One of the WSBA's strategic priorities is to assess technology-related opportunities and threats to determine the role of technology with respect to regulation, consumer protection, and support for legal professionals. Toward that goal, the Board in November voted to support the POLB's proposal to conduct a pilot test of entity regulation under

The next regular meeting is Sept. 6-7, 2024, in Olympia. To subscribe to the Board Meeting Notification list, email [barleaders@wsba.org](mailto:barleaders@wsba.org).



**ABOVE:** The WSBA Board of Governors and others at its July meeting in Nespelem, on the Colville Reservation.



**AT LEFT:** WSBA Executive Director Terra Nevitt presents a \$2,000 gift to Colville Business Council President Jarred-Michael Erickson for use on initiatives addressing Missing and Murdered Indigenous Women (MMIW).

carefully controlled, data-driven conditions. Since then, the WSBA has been working through a myriad of questions about its role in the pilot test. The POLB and the WSBA are now considering next steps in presenting a proposal to the Washington Supreme Court. If approved, Washington would follow only Utah and Arizona in executing a plan to determine how the delivery of legal services by entities, rather than individuals, can be regulated in a manner that protects consumers and promotes broader access to legal services. The proposal draws from the successes and lessons learned in both states. The WSBA plans to keep members well informed as this initiative progresses. Read the draft proposal at [www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/practice-of-law-board](http://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/practice-of-law-board) and read more about the concept for testing entity regulation at <https://digitalcommons.law.seattleu.edu/sjteil/vol14/iss2/2/>.

**7 Representation on the Board for Out-of-State Members.** The Board removed the resident-agent requirement for out-of-state members from WSBA bylaws to align with a recommendation made in May to the Washington Supreme Court to remove this requirement from Admission and Practice Rules (APR). The Board discussed ramifications affecting out-of-state members' eligibility to vote in Board elections. Considering survey feedback, the Board indicated a preference for an option that would retain and clarify the option for out-of-state members to designate, during annual license renewal, their primary in-state location of practice (if applicable), which would make them eligible to vote in that district's Board elections. The Board expects to vote on that option in September. Note: Out-of-state members are still eligible to vote in at-large Board elections.

**8 WSBA Policies Regarding Court-Appointed Boards.** After several years of research and drafting, the Board supported a policy to guide the WSBA's administration of Supreme Court-created boards. Historically, there have been ongoing questions about authority and

governance regarding court-appointed entities that are administered and staffed by the WSBA. Officially, that relationship is created and managed by General Rule 12.3. The new policy provides further clarity about staffing, finances, oversight, and indemnification for these entities. The Board will now recommend adoption of the policy to the Washington Supreme Court.

**THE BOARD ALSO:**

- **Recommended** to the Washington Supreme Court amendments to APR 3(c)(2) to reduce barriers to admission to the practice of law for lawyer spouses of active United States military servicemembers.
- **Heard** a proposed WSBA Bylaw amendment to provide an exemption of the inactive license fee for members who are on inactive status because they are experiencing a significant health condition. The Board expects to vote on this proposal in September.
- **Heard** a proposal to amend the WSBA Bylaws to eliminate the requirement for presuspension notice under APR 17 to be delivered by certified mail; instead, the notices could be delivered by first-class mail or email. The Board expects to vote on this proposal in September; by a straw poll, the majority indicated it favors switching notification requirements from certified mail to first-class mail, recognizing that WSBA staff also emails and calls members to follow up on presuspension notices.
- **Provided** feedback on a proposal to amend WSBA Bylaws relating to MCLE requirements for WSBA members returning to active status. The proposed amendments align competency requirements so that it is not more difficult for a member to return to active status than it is for someone to be admitted to the bar for the first time. The Board expects to vote on this proposal in September. [BN](#)

# In Remembrance

This In Remembrance section lists WSBA members by Bar number and date of death. The list is not complete and contains only those notices of which the WSBA has learned through correspondence from members.

Please email notices to [wabarnews@wsba.org](mailto:wabarnews@wsba.org).

## Kenneth O. Eikenberry

#4348, 12/22/2023

Kenneth Eikenberry was born June 29, 1932, in Wenatchee. He earned his B.A. in political science from Washington State University in 1954 and his J.D. from the University of Washington School of Law in 1959. After law school, Eikenberry worked as an FBI agent and then as a deputy prosecutor for King County. From 1971 to 1976, Eikenberry served as a member of the state House of Representatives (36th District). He was a member of the Republican National Committee twice, as chairman of the Washington Republican Party from 1977 to 1980 and again from 1993 to 1997. In 1981, he succeeded Slade Gorton as Washington's 15th attorney general, a position he held until 1992. During his tenure as attorney general, Eikenberry worked to bring more focus and resources to the state's criminal law enforcement efforts, which helped support the creation of the Office of Attorney General's first formally designated Criminal Prosecution Unit. In 1982, he was appointed to the nine-member President's Task Force on Victims of Crime. He is credited with securing Washington's Victim Bill of Rights and in working with media representatives, to humanize treatment of crime victims in the press. In 1992, he ran for governor but lost narrowly to Democrat Mike Lowry. Eikenberry was a sole practitioner for much of the rest of his career. In retirement, he lived in Olympia and did consulting work. He is survived by his wife of 60 years, Beverly Eikenberry.



## George R. Nethercutt Jr.

#3324, 6/14/2024

George Nethercutt Jr. was born in Spokane on Oct. 7, 1944, to parents George and Nancy (Sampson) Nethercutt. Nethercutt earned his B.A. in English from Washington State University in 1967 and his J.D. from Gonzaga University School of Law in 1971. He started his legal career clerking for U.S. District Court Judge Raymond Plummer in Alaska, then serving as chief of staff for Alaska Senator Ted Stevens. Nethercutt then moved back to Washington to practice law, focusing on adoptions. There he helped facilitate over 2,000 adoptions. He also served as the Spokane County Republican chairman and led the Spokane Chapter of the Juvenile Diabetes Foundation, which helped expand access to treatment and awareness of the disease. In 1994, Nethercutt ran for Washington's 5th Congressional District seat and won, becoming only the second person in U.S. history to defeat a sitting speaker (Thomas S. Foley) of the U.S. House of Representatives. He held the seat from 1995 to 2005, despite campaigning on a three-term limit for members of Congress, and during that time served on the Appropriations Committee and co-founded the Congressional Diabetes Caucus. Nethercutt is described as a person of faith, family, community, and service. He is survived by his wife, Mary Beth Nethercutt; two children, Meredith Nethercutt Krisher and Elliott Johnston Nethercutt; one sister, Nancy Nethercutt Gustafson; one brother, John Irving Nethercutt; and one granddaughter.



**Craig Andersen,**  
#19810, 1/13/2024

**Timothy Anderson,**  
#12571, 6/23/2024

**David Askman,**  
#58164, 5/8/2024

**Paul Beattie,**  
#30277, 5/31/2024

**Matthew Carvalho,**  
#31201, 5/1/2024

**John Costello,**  
#2150, 7/2/2024

**Kevin Vladimir Enamorado,**  
#52945, 7/2/2024

**William Foster,**  
#28566, 2/12/2024

**Don Gulliford,**  
#1825, 3/11/2024

**Clinton Hattrup,**  
#1747, 4/15/2024

**Robert Klein,**  
#6007, 5/8/2024

**Joel Murray,**  
#44786, 6/26/2024

**Theodore Schultz,**  
#651, 3/30/2024

**George Tamblyn,**  
#15429, 7/7/2024

**Carl Teitge,**  
#3108, 4/25/2024

**Lee Voorhees Jr.,**  
#3296, 4/25/2024

## MORE ONLINE >

When available, links to obituaries can be found in the online version of this article at [wabarnews.org](http://wabarnews.org).

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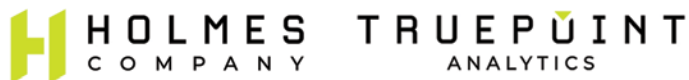
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**VS.**  
**Pricewaterhouse Coopers LLP ("PwC")**

Testifying expert for the Plaintiffs regarding claims PwC violated the applicable Standards of Care for Certified Public Accountants in connection with services rendered to client. Result: Jury verdict in favor of the Plaintiffs, total damages of \$85.5 million, and \$65.5 million apportioned to the Plaintiffs.

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# 2024 Sally P. Savage Leadership in Philanthropy Award

*Presented jointly by the Washington State Bar Association and the Washington State Bar Foundation*



## Congratulations to Kirsten Barron!

In honor of her exceptional career as a lawyer, her dedication to fundraising for civil legal aid, her lifetime of volunteerism, and her continual lifting and recruitment of new leaders for philanthropy in the legal community.

Please consider a gift in honor of Ms. Barron or any of the other inspiring 2024 APEX Award Recipients at [wsba.org/foundation](https://wsba.org/foundation).



# Notices

DISCIPLINE & OTHER REGULATORY NOTICES

## THESE NOTICES OF THE IMPOSITION OF DISCIPLINARY

**SANCTIONS AND ACTIONS** are published pursuant to Rule 3.5(c) of the Washington Supreme Court Rules for Enforcement of Lawyer Conduct. Active links to directory listings, RPC definitions, and documents related to the disciplinary matter can be found by viewing the online version of *Washington State Bar News* at [www.wabarnews.org](http://www.wabarnews.org) or by looking up the respondent in the Discipline Notice Directory at <https://mywsba.org/PersonifyEbusiness/DisciplineNoticeDirectory>.

As some WSBA members share the same or similar names, please read all disciplinary notices carefully for names, cities, and bar numbers.

## Disbarred

**Michael Graham** (WSBA No. 37391, admitted 2006) of Seattle, was disbarred, effective 5/30/2024, by order of the Washington Supreme Court. Erica Temple acted as disciplinary counsel. Leland G. Ripley represented the respondent. Deborah Wechselblatt was the hearing officer.

The lawyer's conduct violated the following Rules of Professional Conduct: 1.15A (Safeguarding Property), 1.4 (Communication), 8.1 (Bar Admission and Disciplinary Matters), 8.4(b) (Criminal Act), 8.4(c) (Dishonesty, Fraud, Deceit or Misrepresentation), and 8.4(l) (Misconduct).

Graham was found to have violated the Rules of Professional Conduct by 1) converting settlement funds for respondent's own use without entitlement to the funds; 2) failing to promptly notify the relevant parties about receipt of the settlement funds; 3) failing to provide a written accounting after distributing the settlement funds from trust; 4) failing to promptly pay or deliver settlement funds to a party that they were entitled to receive; 5) making false statements about the status of the settlement funds and disbursements; 6) failing to respond to requests for a response to a grievance, failing to appear for deposition, and/or failing to produce documents in response to a subpoena; 7) converting funds for respondent's own use without entitlement to the funds; 8) failing to deposit warrants to a client into a trust account; 9)

failing to promptly pay or deliver funds to a client; 10) failing to respond to ODC's requests for a response to a grievance.

Decision documents: Disciplinary Board Order Approving Stipulation; Stipulation to Disbarment; and Washington Supreme Court Order.

## Resigned in Lieu of Discipline

**Ralph Howard Palumbo** (WSBA No. 4751, admitted 1972) of Wolcott, CO, resigned in lieu of discipline, effective 7/17/2024. The lawyer agrees that they are aware of the alleged misconduct in disciplinary counsel's Statement of Alleged Misconduct and rather than defend against the allegations, they wish to permanently resign from membership in the Association. Francesca D'Angelo acted as disciplinary counsel. Bradley S. Keller represented respondent.

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The Statement of Alleged Misconduct reflects the following violations of the Rules of Professional Conduct: 3.4(b) (prohibiting a lawyer from falsifying evidence, counseling, or assisting a witness to testify falsely or offering an inducement to a witness that is prohibited by law), 8.4(d) (prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice).

Palumbo's alleged conduct, as stated in disciplinary counsel's Statement of Alleged Misconduct, included offering an inducement to a witness that is prohibited by law.

Decision document: Resignation Form of Ralph Howard Palumbo ELC 9.3(b).

## Suspended

**Jean Ann Abrahamson Pirzadeh** (WSBA No. 31080 admitted 2001) of Centralia, was suspended for one year and one day, effective 7/22/2024, by order of the Washington Supreme Court imposing reciprocal discipline in accordance with an order of the Supreme Court of the State of Colorado. For more information, see <https://cl.cobar.org/from-the-courts/people-v-abrahamson-pirzadeh-3/>. Henry Cruz acted as disciplinary counsel. Jean Ann Abrahamson Pirzadeh represented themselves.

Decision document: The Washington Supreme Court Order.

**Nicholas Smith** (WSBA No. 46386 admitted 2013) of Phoenix, AZ, was suspended for three years, effective 6/13/2024, by order of the Washington Supreme Court imposing reciprocal discipline in accordance with an order of the Supreme Court of the State of Arizona. For more information, see <https://www.azbar.org/for-legal-professionals/practice-tools-management/member-directory/?m=nicholas-smith-198593>. Henry Cruz acted as disciplinary counsel. Nicholas Smith represented themselves.

Decision document: The Washington Supreme Court Order. **BN**

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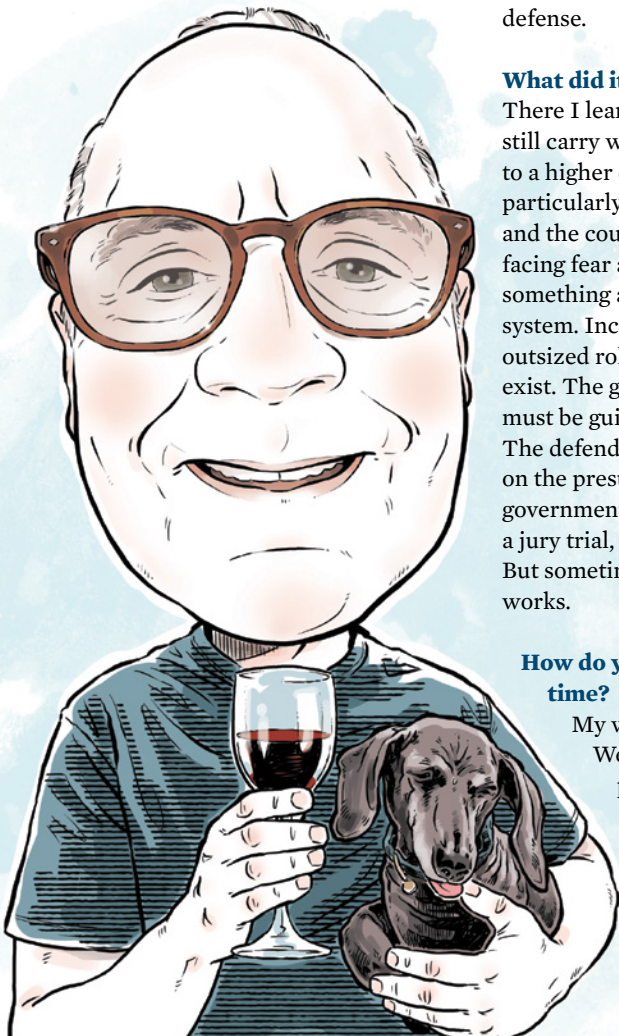
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# Marty Strelecky

BAR NUMBER: 18182

I've practiced law for many years, first with the government, then large and small law firms, and now private business. My current employer, Land Services USA, writes title insurance and closes large commercial real estate transactions. Although not as glamorous as high-stakes litigation, we solve problems and help real estate markets trade more efficiently and with less risk.



### What attracted you to the practice of law?

When I was young, based mostly on what I saw on TV and in the movies, I thought practicing law looked exciting. It also offered a pathway out of my hard-scrabble neighborhood on the South Side of Chicago. Later, I came to see it as a way to give something back, through public service, to the society that gave me the opportunities that I had received in the first place.

### After graduating from law school, did you enter public service?

Yes, as a new lawyer fresh out of law school, I accepted a commission as a lieutenant (junior grade) and served on active duty with the U.S. Navy JAG Corps. I tried criminal courts-martial cases. I alternated between prosecution and defense.

### What did it teach you?

There I learned certain values that I still carry with me today: a sense of duty to a higher cause; empathy for people, particularly the vulnerable in society; and the courage to move forward while facing fear and adversity. I also learned something about the inequities in the system. Income and wealth play an outsized role. And structural imbalances exist. The government's power is vast. It must be guided by fairness and justice. The defendant's power is limited. It relies on the presumption of innocence, the government's burden of proof, the right to a jury trial, and the assistance of counsel. But sometimes this is enough. The system works.

### How do you enjoy spending your free time?

My wife, Teresa, and I like to hike. We also like to visit the national parks. As Ken Burns said, they are "America's Best Idea." I only hope the government and the people stay true to the vision embraced by

Teddy Roosevelt and John Muir, keeping them natural, pristine, and protected.

### What are your favorite memories?

I love spending time with my wife, children, and their significant others, grandson, close personal friends, and my dog, Mia. We usually sit down together over a holiday, a weekend dinner or barbecue, or a spur-of-the-moment get-together. We share good stories, laughter, and warm feelings. It's my happiest place.

### Where are some unusual places that you've lived?

Two come to mind. In the early to mid-1980s, my wife, our children, and I lived in a small town named Nicolosi, near Mount Etna on Sicily. We were stationed there with the Navy. Life there was an adventure, but presented some real challenges, like needing to make an 8-hour drive to the nearest Navy hospital, located in Naples, for the birth of our youngest son. Even so, it was a once in a lifetime experience. Much later, in the mid-2010s, my wife and I lived on a small farm that we owned and worked in the Willamette Valley, Oregon. It was beautiful. I have never felt closer to the land. It also helps explain my weakness for Oregon Pinot Noir.

### What are your favorite movies?

Movies have captivated me ever since I was a young boy. I love classic films, but there are too many great ones to name. I particularly like epics—*Lawrence of Arabia*, *2001: A Space Odyssey*, and *Dances with Wolves*—to name three. And although I like a clever plot, I'm far more interested in the characters, the acting, the cinematography, and the musical score. Having to pick just one, I'll take *Casablanca* as my favorite movie.

### What are your favorite books?

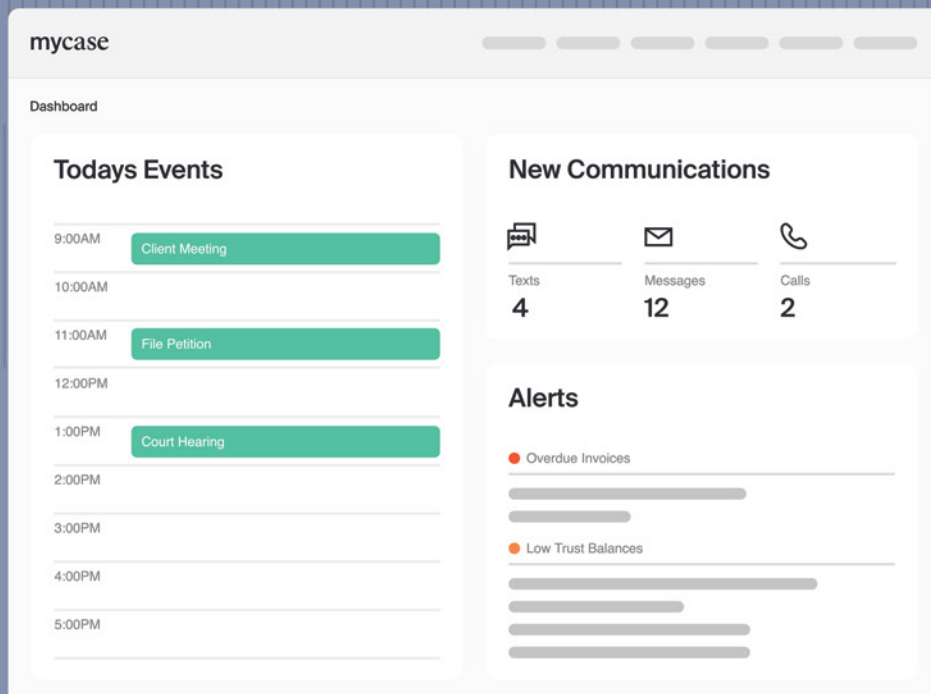
I like *A Prayer for Owen Meany*, followed by *Sophie's Choice*, for fiction. I like *No Ordinary Time* for nonfiction. *A Gentleman in Moscow* currently sits on my nightstand. **BN**

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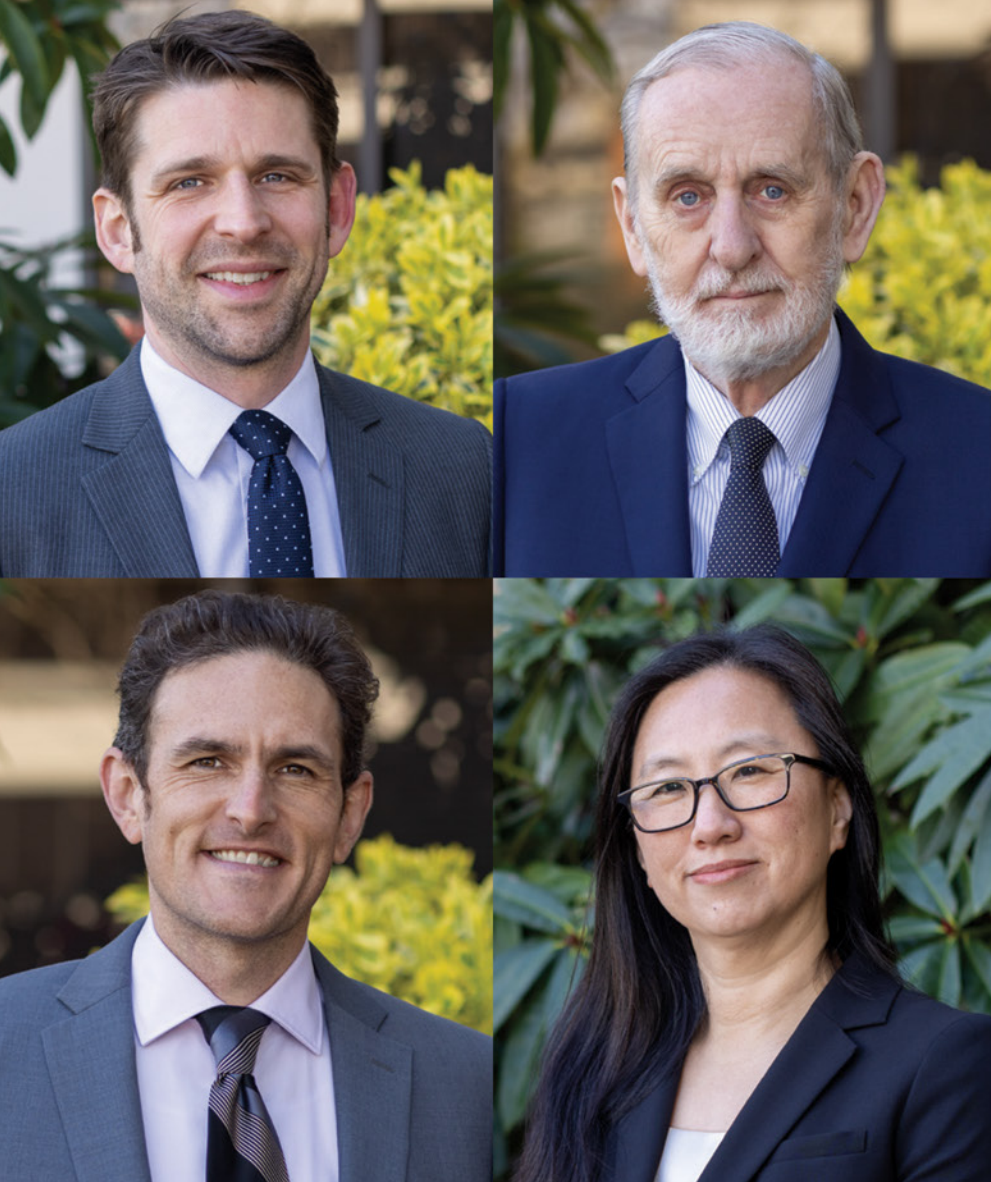
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