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Communication
A vital part of being a lawyer and a counselor

_— “Sound of Silence,” Simon and Garfunkel_

The longer I am on this planet, the more I realize how vital communication is to nearly every facet of our interactions. It is the lifeblood by which we connect with one another.

In our profession we particularly rely on communication — not only is it the tool by which we ply our trade, but it is also the resource that our clients seek from us and ask us to use on their behalf. One of my law partners many years ago observed that we, as lawyers, are “word contractors.” We construct things with words, whether written or spoken. We create understandings; we resolve disputes; we create wills, contracts, pleadings; we communicate with each other to create understanding; we explain things; we analyze and relate.

Communication is made much easier and much more difficult in this era of technology. We can send messages with lightning speed, but that doesn’t assure communication. In much the way that the Internet has revolutionized our ability to send messages, the same occurred nearly 200 years ago. I am reading _The Greater Journey_ by David McCullough. In a portion of the book, the invention of the telegraph is discussed. Newspapers of the day (1844) proclaimed that “this is indeed the annihilation of space.” Indeed, both the telegraph and the Internet have annihilated time and space, but perhaps have not improved communication.

As I think we all know, communication is a two-way process. Not only must we be able to project, but also we must be able to receive and understand — empathetically understand. When I entered this profession nearly 40 years ago, one of the lawyers whom I was fortunate enough to join and who mentored me for nearly 10 years had on his business sign next to his front door: “Lawyer and Counselor.” I think that captured what I will try to express in this article. In our profession, we are trained to project communication, but not necessarily to receive it empathetically.

By way of illustration, I would like to relate one of my life experiences that framed this dynamic for me in a way that I have come to embrace relating to both “project and receive empathetically.”

The scene is set more than 25 years ago. In prior years, I had the good fortune to do some estate planning for the superior court judge’s bailiff and his wife. Otto was...
I received the letter from the Washington State Bar Association labeled “CONFIDENTIAL” in a very interesting shade of red…one I am sure I hadn’t seen before, nor have I seen since. With a great deal of trepidation (I had never done this before…or, thankfully, since), I opened the letter. It was a complaint filed by Margaret in which she alleged that I had “failed to attend to client’s matters in a timely manner.”

I will spare you the details. I responded to the complaint. I ceased to represent Margaret. The complaint was dismissed.

Five or more years later, I decided it would be a good idea to become a candidate for superior court judge. I made a personal promise to myself that when door-belling, if I noticed one of my yard signs in a yard, I would make a special effort to personally meet and thank the property owner. You guessed it! One afternoon while door-belling, I noticed that one of my yard signs was in Margaret’s yard. A moment of personal moral crisis arose. True to my promise, I cautiously approached her front door. She answered, was shocked to see me, and burst into tears. (Oh boy! Now what?) She quickly asked me to come into her house to talk (are you kidding me?). Something deep inside told me that this was the right thing to do.

Through her tears, she explained that she was so very sorry that she had filed the complaint with the Bar Association. She explained that as soon as she had sent the letter, she called the WSBA to ask if she could withdraw the complaint. She was told that “a card laid is a card played”…well, of course, Doug Ende and the Office of Disciplinary Counsel would never use those terms.

The clincher for me and the reason for taking your time with this story is what she said next. “I had no one in the world to rely on. You were the only person who could help me sort out the present problems in my life. You weren’t able to make yourself available to me to the degree that I wanted. I soon realized that my demands were unreasonable, but I needed you nonetheless.”

Thereafter, I went on to represent Margaret for the remainder of her wonderful life. Sadly, this spring she passed away, having lived a full, although lonely, life. The lesson that I hopefully learned was that playing a significant role in her life, but more importantly, I wasn’t “listening” to her and empathizing with what her professional needs were.

If I were to relate an Aesop’s fable lesson learned from this experience, it would be: “We are lawyers and counselors. We need to listen to our clients to truly ‘hear’ what their needs are. Their needs often are not just the legal analysis that we are so well trained to do.”

As your president, I will endeavor to listen to you. Please communicate with me.

WSBA President Steve Crossland can be reached at steve@crosslandlaw.net or 509-782-4418.
Journey to Vietnam

ABA ROLI delegation shares American law with growing Vietnamese legal profession

This past May, I had the honor of traveling to Vietnam as a member of a delegation sponsored by the American Bar Association Rule of Law Initiative (ABA ROLI). ROLI is a public-service project of the American Bar Association dedicated to promoting the rule of law around the world; it is implementing legal reform programs in more than 40 countries in Africa, Asia, Europe and Eurasia, Latin America and the Caribbean, and the Middle East and North Africa. The trip was funded through a grant ABA ROLI received from the U.S. State Department, Bureau of Educational and Cultural Affairs.

The purpose of our trip was to participate in an educational study tour in order to strengthen the relationship between the U.S. and Vietnamese legal professions. The first phase of the study tour took place in the summer of 2009, when 10 leaders of the Vietnamese legal profession, including public officials, educators, and lawyers, traveled to the United States for three weeks, and met with their U.S. counterparts to discuss American approaches to legal training and lawyers’ professional responsibility.

During the 2009 tour, the Vietnamese delegation visited Washington, D.C., Chicago, and Seattle, spending a whole day at the WSBA offices learning how we run our lawyer regulatory system here in Washington. While Vietnam continues to have a socialist government, the government has embraced a market economy and in the past couple of years has begun to transfer lawyer regulatory functions to the newly formed Vietnam Bar Federation (VBF) as they strive to implement a self-regulated regime similar to the United States and many countries around the world.

There were six of us total in the delegation: four delegates from various places in the United States and two ROLI staff members, one based in Washington, D.C., and one based in Hanoi. In addition to myself, the delegates were Marc Kadish, director of pro bono activities and litigation training for the law firm of Mayer Brown (Marc is in their Chicago office); Mark Schickman, a partner with Freeland, Cooper & Foreman in San Francisco and current member of the ABA Board of Governors; and Professor Theo Myhre, lecturer at the University of Washington School of Law, who teaches, among other subjects, legal analysis, writing and research, contract negotiations and drafting, pre-trial motions practice, advanced civil procedure, and client counseling.

The two ROLI staff members were Catherine Scott, a senior program officer, based in Washington, D.C., and Sarah Garner, country director, who has been living in Hanoi with her husband and three children for more than five years and joined ROLI as country director in Vietnam in August 2010. Sarah actually has some connection to Seattle as well, having completed an M.L.I.S. at the University of Washington Information School.

Vietnam, with a population of roughly 90 million people, is the 13th largest country in the world, yet it has only around 6,000 lawyers. The government hopes to increase the lawyer population to 20,000 by 2020 so it can have a ratio of lawyers to residents closer to Singapore and Thailand at 500 to 1. Vietnam’s economy is considered one of the fastest-growing in the world, with its economic growth being among the highest in the world in the past decade. At a briefing at the U.S. Embassy our first morning, we were told the economy had grown from $400 million in trade to $16 billion.
We were in the country for 10 days, seven days in the capital of Hanoi and three days in Ho Chi Minh City. Each day was packed with meetings. The delegation met each morning around 8:00 for a breakfast briefing and preparation for the day. We generally returned to the hotel around 9:00 each night. Our host for the visit was the Vietnam Bar Federation, so we had many meetings with its leadership in both cities, and a member of the VBF joined our delegation at all of our various meetings during the 10 days. As mentioned above, the VBF was created in connection with ongoing legal system reforms and plays an important role in those reforms, including improving legal education (both in law schools and through continuing legal education), increasing bar membership and those services available through the bar, and enhancing professional regulation through ethics training and codes of conduct.

We also had meetings with the leadership of the Vietnam Lawyers’ Association (VLA), which has been around for nearly 40 years and is composed of members of the legal profession. It has a voluntary membership of close to 40,000 and includes those professionals working in the legal field such as judges, prosecutors, policemen, legal experts, and lawyers. The VLA runs various Legal Consultancy Centers (akin to our civil legal aid offices) around the country, and we traveled to two such centers during our visit.

Finally, we met with many legal educators at universities and also educators from the Ministry of Justice Judicial Academy. Vietnam has a civil law system, and a law degree is earned as a baccalaureate degree. Those wanting to become lawyers, upon completion of this degree, must attend the Judicial Academy for six months and then participate in an 18-month internship. Lawyers must also pass a bar exam. Importantly, many people performing what we would consider legal work are not necessarily “lawyers.” For example, a graduate from a university’s legal department could go in-house at a corporation or work for the government doing legal work directly upon graduation. Indeed, a person could not work for the government doing legal work and be a lawyer. A judge may also take a different track of training through the Judicial Academy and ascend to the bench without being licensed as a lawyer.

Our delegation had many questions about this distinction between legal professionals and queried whether more legal professionals should be subject to the Code of Conduct, as the 6,000 licensed attorneys are. I was pleased to learn at a meeting in Ho Chi Minh City that the revised Code of Conduct about to be implemented in Vietnam is based on Washington’s Rules of Professional Conduct, a copy of which they received when they visited the WSBA in 2009. I promised to forward our revised Rules for Enforcement of Lawyer Conduct once they are approved by our Supreme Court!

Through our meetings with the various groups, it was clear they were interested in learning about certain areas from our delegation: pro bono programs, continuing legal education, skills training, and clinical legal education. With such a large population, living predominantly in rural areas, it is clear the profession is interested in figuring out how best to get legal services out to those living in rural areas. We learned from the Legal Consultancy Centers (LCC) we visited that...
they have created "mobile clinics," where lawyers drive out to the rural areas to spend a day providing legal advice.

The LCC in Hanoi we visited, run by three impressive women retired from the government (one of whom was former vice chief justice of the Supreme Court), has focused education on the chiefs of rural communes. They pointed out that in the communes, when there is a dispute, the people involved go to the chief to help resolve the issue. However, if the chief applies traditional customs, these customs may be out of line with current law, so the LCC has provided training sessions for the chiefs on current law. The disparity between custom and current law seems most acute for women's issues, such as transfer of wealth and land.

At the various legal departments and the Judicial Academy, we had discussions about clinical legal education and skills training. The educators we met with are hoping to create partnerships where legal educators from the United States can help train the trainers, so to speak, by providing workshops on these topics for professors in Vietnam. They were also very interested in trainers who can help with educating about international transactional law, which is clearly a growth area for a country with such a quickly expanding economy. Theo and I also discussed the partnership between the WSBA and the three law schools in our state and how this partnership is helping enhance the professionalism ethic and skills training available to law students in Washington.

In addition to the issues discussed above, it seems overall that the biggest challenge facing the Vietnam legal profession is how to position a profession within a society. While lawyer jokes may still abound in the United States, there is no question that lawyers are highly regarded as a profession in our country. The lawyers we met with during our visit clearly held positions of respect and import in their communities, but we learned that many students do not choose law as a career path so the profession is working to change that trend. With its socialist history, this lack of prominence for the profession is perhaps not surprising, but as Vietnam's economy grows, it will be critical for a system based on the rule of law to flourish and strengthen.

Through this trip, having a view into the Vietnam legal system was not the only remarkable experience, but it was also important from a regulatory standpoint. Our legal community here is being impacted by globalization at a rapid rate, and we are seeing an ever-increasing number of legal professionals from overseas applying for admission to the WSBA. To sit with these legal professionals and educators in Vietnam and learn how their system works firsthand made me realize that one size does not fit all, and we may have to view our admissions criteria through a different lens in the near future.

I spent several years in Asia prior to law school, but I had never traveled to Vietnam during that time. It is an amazing country with wonderful people. If you have not traveled to Vietnam, I encourage you to do so. Please feel free to contact me if there are any insights or tips that might be of interest! 🌈

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

A Chat with Steve Crossland

On September 22, Steve Crossland was sworn in as WSBA president for 2011–2012. A Cashmere native, he received his undergraduate degree in political science from Stanford University, and his law degree from the Northwestern School of Law at Lewis and Clark University, in Oregon. He served as Chelan County deputy prosecuting attorney from 1974–1975, and has worked in private practice since then; he has had his own practice, Crossland Law Office, since 2001.

by Michael Heatherly

What do you see as the one or two biggest issues likely to face the WSBA and the Board of Governors (BOG) during your term as president?

I would like to view them as opportunities. One is to continue to provide leadership on the issue of diversity not only within our Association, but also within our broader community. Another is to serve our members in supporting their needs both within the profession and individually.

The BOG recently voted to continue the requirement that an Eastern Washington lawyer serve as WSBA president at least every four years. The BOG also has voted to continue offering the bar exam in Spokane. How important are measures like this to WSBA members east of the mountains?

I guess I am naïve enough to believe that these measures are important to the Association in general. It sends a message of inclusiveness. In light of the geographical distance from Eastern Washington to King County, which is the place where most Bar activities take place, it is not easy for most Eastern Washington lawyers to feel included. Making sure that lawyers from Eastern Washington are acknowledged has the effect of eliminating the “Cascade curtain.”

Do you have one goal that is your highest priority for your presidency? If so, what is it and how do you plan to achieve it?

I have a number of ongoing goals — diversity, fiscal responsibility for the Association, succession planning, access to justice, to name a few — but my greatest goal is to advance the strategic goals of the Association, which are to enhance the culture of service within the WSBA membership, provide more assistance to lawyers with the business of law practice, provide more assistance to lawyers in avoiding or dealing with the stress of law practice, and conduct a detailed study of the composition of the legal profession and retention rates within the profession in the state of Washington. These are goals that I share personally and strongly believe in.

You are both a sole practitioner and a rural lawyer. In light of the financial challenges involved — which are perhaps more acute than ever because of the still-struggling economy — what do you see as the future of sole practitioners, especially those in rural areas? Will technology and demographic changes benefit or hinder them in the coming years?

I very much believe that the future is bright for rural sole practitioners. People have legal needs, whether they reside in urban or rural areas. Technology has been a tremendous benefit for rural lawyers. One small example is the cost of and access to an adequate law library. In the early years of my practice, a law library was a major expense. Today, technology has virtually eliminated that expense. One concern I have is that if law students continue to graduate with
large student loan debts, it may make it less attractive to move to a small town (as I did) and open up a practice, or to join a small firm for a modest salary. I would like to address student debt and a system or clearinghouse to connect job opportunities in rural areas with young lawyers who are searching for jobs.

What motivated you to run for WSBA president?

The desire to continue to serve our profession was my primary reason for running for president. I have been fortunate to serve on and chair a variety of boards, committees, and sections over the years. Each opportunity was a personally enriching time, if for no other reason than the tremendous people I was able to meet and serve with. However, the most rewarding aspect of those experiences was trying to make a difference in our profession and society.

Washington’s long-time essay-only bar exam is being replaced by a new exam that will include uniform multi-state sections, along with multiple-choice and practical portions, as well as essays. Deciding whether to support the new exam required a year of debate by the BOG. What are your feelings about the change?

I think it is a positive move by our Bar Association and law schools. The law school deans all supported the change and I think it will prove to be advantageous to those passing that exam in the future. The world is shrinking and this reflects that paradigm shift.

Who is the person who had the biggest overall positive influence on you?

Holy cow! That is a blockbuster question. Personally, I would say my wife, who passed away seven years ago. We began dating when we were 16 and raised four wonderful, very successful children over our 41-year relationship. During that time, I was able to grow into adulthood, become a professional, raise our children, develop my life values, and all the while have a soul-mate. Professionally, I would say J. Harold Anderson. Harold moved to Cashmere in 1929 (as he said, “scared later-to-be Senator Warren G. Magnuson from moving to Cashmere”). I knew him when I was a kid and then had the pleasure of practicing with him for nearly 10 years after I moved back to Cashmere as a lawyer. He was brilliant, principled, organized, and well-respected. Many of my habits as a lawyer were instilled by him (not that I acquired all the adjectives I just attributed to him).

Again this year, the loss of court services caused by state and local government budget deficits has been a major topic among WSBA members and the judiciary. What role, if any, do you believe WSBA leadership should play in attempting to maintain court services across the state?

The legal system is at the very core of our system of life in our state and nation. It is critical that the system is preserved and that all citizens have access to it. We are the guardians of that system. Only we, as lawyers and as an association, can champion the need for the preservation of that system. We must carry the message to the funding bodies that this is not only important, it is fundamental and necessary.

Some WSBA members oppose the WSBA president or BOG taking positions on politically or morally controversial subjects. Past issues have included same-sex marriage, WSBA funding of outside civil legal aid programs, and the 2010 Arizona immigration bill. How do you resolve the conflict between the president’s or BOG’s desire to take positions on behalf of the Bar and the fact that many members of our mandatory Bar may hold dissenting views?

We are a mandatory bar and we must be careful to find the fine line between taking political positions and taking positions that are necessary to further the interest of justice. It is necessary that we remember that our Association is a collection of lawyers who have very diverse views, but also that we as a collective body have the responsibility to preserve this system of justice that must provide access to all, regardless of whether we share their particular views or values.

What is the most important lesson you have learned as a lawyer that nobody taught you in law school?

This is the subject of my first President’s Corner column for Bar News (see page 7). I am not a “bully pulpit” sort of person, and I will try to reflect and deflect in my columns and not focus inward. But my first column is about communication. I know this may be a time-worn subject, but I think it is one we should never fail to discuss. It is what we do, but sometimes don’t do very well. I don’t blame the law schools at all for not preparing us better. It is a skill that maybe is acquired only with time and scars. Some of us are born with that skill. Others of us perhaps learn on the job. However, I think over time I have learned to communicate with my clients in a way that I never thought important when I was a law student.

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WSBA Welcomes New President-elect and Class of 2014 Governors

by Stephanie Perry

Michele Radosevich
President-elect

Michele Radosevich received her J.D. summa cum laude from the University of Puget Sound School of Law (now Seattle University School of Law), and her B.A. in political science from Marquette University in Milwaukee. Immediately following graduation from law school, she served as clerk to Washington State Supreme Court Justice Charles W. Johnson. Radosevich is a partner at Davis Wright Tremaine, where she has worked in the commercial litigation department since 1995. Her primary focus is on state and local tax litigation.

One of Radosevich’s areas of expertise is working with the legislature and on legislative issues. A former Wisconsin state senator, she has continued to hone her skills and pursue her interest in this area.

Radosevich spent 10 years on the WSBA Legislative Committee, where she served as chair and vice chair. She has served on the King County Bar Association Legislative Committee, where she also served as chair. She has represented the Washington legislature and the National Conference of State Legislatures in state court litigation touching on the legislature’s role.

A dedicated public servant and a committed, strong, and active supporter of equal access to justice for all, she has devoted time, including two years as chair, to serving on the Equal Justice Coalition, a nonpartisan, broad-based organization working statewide to ensure that all people are treated equally and fairly before the law.

Radosevich has also served on the Board of Directors of the Legal Foundation of Washington (LFW), a not-for-profit organization created at the direction of the Washington State Supreme Court to administer the Interest on Lawyers’ Trust Accounts (IOLTA) program in Washington, which funds programs that enable low-income and vulnerable Washington residents to overcome barriers in the civil justice system. She served as LFW treasurer and secretary. She was recognized by Washington Appleseed, a non-partisan nonprofit organization that advances social justice by bringing together volunteer lawyers and community partners to develop systemic solutions to community needs, in 2008 with its Pro Bono Service Award.

In addition to her legal-related work, Radosevich is known for her involvement in a variety of civic activities, including service on the City of Seattle Ethics and Elections Commission, with a term as chair; involvement in Seattle City Club, including member and vice president of its Board of Directors; and member of the Board of Directors of the Washington State Budget & Policy Center.

She is currently an adjunct professor at Seattle University School of Law and serves on the University’s Alumni Board of Governors. Radosevich has served as a member of the Washington Women Lawyers Board of Directors, and as member and chair of the Washington Appellate Project Board of Directors.

Michele Radosevich

James Armstrong

Daniel Ford
James Armstrong
At-large Governor
James Armstrong served for four years in the United States Marine Corps, received his undergraduate degree in political science from Western Washington University, and earned his law degree from Seattle University School of Law. He currently has his own firm, Armstrong Law Offices, where he focuses his practice on workers' compensation and Social Security disability.

Armstrong has been particularly active in the Loren Miller Bar Association (LMBA), the oldest minority bar association in Washington state. He served for six years on the LMBA Executive Board, including a term as president. While LMBA president, Armstrong represented the organization on the community panel established by Seattle Mayor Mike McGinn to assist in selection of the next Seattle Police chief.

Also during his term as president, he spearheaded a program that involved LMBA members participating as weekend volunteers at a local food bank; led the organization’s participation in a collective project with other Washington minority bar associations to measure the performance of law firms with regard to fairness and diversity in hiring; and was involved with ongoing discussions with the WSBA and Washington’s three law schools regarding diversity.

In addition to membership in the Washington State Bar Association and Loren Miller Bar Association, he is also a member of the Washington State Association for Justice.

In his letter supporting the election of Armstrong, former WSBA President Ronald R. Ward wrote: “James is smart, practical, measured, has a quiet maturity, and possesses the ability to establish instant and usually lasting rapport with individuals from all walks of life…. He is loyal, has great listening skills, a balanced temperament and judgment, and works well with others. As a former president of WSBA, I can intimately attest that the attributes he exhibits are highly valued on the WSBA Board of Governors, where the gravity of the work performed affects 35,000 lawyers and judges in the state and the citizens they represent.”

Daniel Ford
District 7-East Governor
Daniel Ford is statewide advocacy coordinator for the six offices of Columbia Legal Services, a nonprofit law firm that protects and defends the legal and human rights of low-income people. His interest in serving low-income populations began in law school, where he played a key role in establishing a Unemployment Compensation Legal Clinic to serve a low-income neighborhood in Chicago.

He is a graduate of the University of Chicago Law School, and received his undergraduate degree from the University of New Mexico in Albuquerque, where he was born and raised. Ford studied for a year in Quito, Ecuador, where he learned to speak Spanish. In addition to the Washington State Bar Association, he is admitted to the U.S. District Court, Eastern District of Washington; U.S. District Court, Western District of Washington; and the Ninth Circuit Court of Appeals.

Ford began his practice in Wenatchee and the Yakima Valley, and has practiced in Seattle for the past 25 years. Most of his career has been focused on litigation, legislation, and rulemaking to protect the rights of immigrants.

He has been an active member of the Latina/o Bar Association of Washington, serving on its board and as co-chair of its Judicial Evaluation Committee. Ford has served as chair of the Access to Justice Technology Committee and as a member of the WSBA Civil Rights Committee. He has participated in the Seattle University School of Law mentorship program.

Ford’s service extends outside U.S. borders — he has participated in exchanges with Mexican law schools regarding the rights of indigenous workers and the development of pro bono systems.

He has been honored with the Sea Mar Community Health Centers Leadership and Community Service Award, the Latina/o Bar Association of Washington President’s Award, and the Trial Lawyers for Public Justice Achievement Award.

Ford said: “I am excited about the opportunity to serve WSBA members who, in turn, serve our communities. My goals include supporting and expanding the pro bono work around the state; improving WSBA career services in these difficult times; and strengthening the governance and transparency of the WSBA.”
Vernon Harkins
District 6 Governor
Vernon Harkins, currently a partner at Rush, Hannula, Harkins & Kyler, LLP, has practiced law for 35 years. He focuses his practice on plaintiff personal injury and medical malpractice cases. He received both his undergraduate degree and law degree from Gonzaga University, and began his career in Spokane as a deputy prosecuting attorney. Harkins joined his current firm in 1980.

A Tacoma native, his ties to his community are strong. He has served as president of the Alumni Association and as chairman of the Board of Directors for Bellarmine Prep High School. Harkins coached youth sports in Pierce County for many years. He has been active in the Tacoma-Pierce County Bar Association, including a term on its Board of Trustees. He has served as a volunteer hearing officer for WSBA disciplinary proceedings.

In addition to the Washington State Bar Association and Tacoma-Pierce County Bar Association, Harkins is a member of the Washington State Association for Justice, American Bar Association, American Association for Justice, and American Board of Trial Advocates.

Brian Kelly
District 3 Governor
Brian Kelly is a principal in the law firm Hillier Scheibmeir Vey & Kelly P.S. His practice focus is business, tax, real property, probate, and municipal law, with an emphasis on business succession and estate planning. He earned both his bachelor's degree and law degree from the University of South Dakota. In addition to the Washington State Bar Association, he is admitted to practice in the State Bar of South Dakota, U.S. District Court for the Western District of Washington, and the U.S. Tax Court.

Both a lawyer and a certified public accountant, Kelly is a member of the American Institute and Washington Society of Certified Public Accountants. Since 2005, he has served on the Board of Directors of the Olympia Chapter of the Washington Society of CPAs.

Previous State Bar service includes the Budget and Audit Committee, Client Security Fund Board, Judicial Recommendation Committee, and the Limited Practice Board. Locally, Kelly is a member and former president of the Lewis County Bar Association, and has served on the Board of Directors of Lewis County Bar Legal Aid. Since its inception, he has been a Legal Aid attorney providing pro bono legal services on its behalf. Kelly has been an active participant in his community, where his service includes membership in the Chehalis Rotary Club, including a term as president; South Puget Sound Estate Planning Council, including a term as president; board member and president of Centralia College Fund; board member and treasurer of the Lewis County Red Cross; board member of Lewis County Crime Stoppers; board member of the Claquato Cemetery Association; and board member and president of Lewis County (now Cascade) Mental Health. He currently serves on the Board of Directors of Pope John II High School in Lacey.

Bill Viall
District 8 Governor
Bill Viall received his undergraduate degree cum laude and his law degree from the University of Washington. His practice experience includes jury and bench trials in district and superior courts, practice in U.S. district and bankruptcy courts, and appeals to the Washington Court of Appeals and Washington State Supreme Court. For more than 20 years he served as the City Attorney for Normandy Park. Since 1997, he has served as chief operations officer and counsel at Williams Kastner in Seattle.

Viall has been a resident of South King County for 55 years. He graduated from Mt. Rainier High School in Des Moines, from which his children also graduated. He has deep ties to his community — his civic involvement includes service as president of the Highline School District Board; president of the Normandy Park Community Club Board; member of the Meridian Valley Country Club Finance Committee; and involvement in the Boys & Girls Clubs as a youth basketball coach. Viall was a Washington State Senate candidate, in addition to serving as a King County District Court pro tem judge.

Stephanie Perry is the WSBA communications specialist and publications editor. She can be reached at stephaniep@wsba.org.
We’re pleased to announce that
COMMISSIONER JAMES VERELLEN has joined JDR as a panelist.

Before joining JDR, James Verellen served as a Commissioner at Division I of the Washington State Court of Appeals and was a partner in the law firm currently known as Vandeberg, Johnson & Gandara.
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Ms. Summer borrowed $850 from a “payday lender” between January and April 2010. She made payments on the loans totaling $585.12. Then, in December 2010, despite her making the payments — and after less than a year had elapsed — the lender sued Ms. Summer for allegedly owing $2,120. In at least one of the months involved, Ms. Summer was charged interest equivalent to an annual percentage rate of over 1,000 percent.

It’s all too easy to disregard such cases: She signed the agreement, so isn’t she to blame for her own problems? But one might view things differently if, as alleged in Ms. Summer’s counterclaims, the payday lender neither abided by its own agreement, nor made disclosures required by the federal Truth in Lending Act. Even if that had not been the case, anyone who minimizes such cases as a consumer’s bad decision overlooks an important question: Are loan products like the one offered to Ms. Summer legal, and if they are, do they cost Washington too much to tolerate?

Credit, after all, is simply another consumer product. And, from food to pharmaceuticals, there are restrictions on what consumer products our society will accept. We don’t let grocery stores sell cans of tuna with dangerous levels of mercury, and we don’t let pharmacies sell narcotics over the counter. No fine-print disclosure can extend those limits.

Abusive lending is a matter of particular concern, as a loan exists only because our laws and courts enforce agreements that would otherwise be merely paper and ink. It’s not so much a question of whether we want government to intervene, but whether we want government to stop giving lenders who sell harmful financial products the collection tools they require to make their businesses viable.

And so it should be no surprise that Washington has taken steps to curtail abusive lending practices.
Washington’s Consumer Protection and Lending Laws

Under Washington’s usury law, the interest on consumer loans generally cannot exceed 12 percent per annum.² This law has ancient roots. Twelve percent was also the chosen limit of the Roman Empire in 88 BC.³ The very first written usury law dates to 1750 BC.⁴ The American colonies and then the states continued the tradition.⁵ By 1886, every state in the union limited interest rates.⁶

Upon close inspection, though, Washington’s usury law now resembles a slice of Swiss cheese. Federal law preempts state usury limits in some cases,⁷ and many exceptions to the 12 percent limit have been added to Washington law.⁸ Small loans, more commonly called “payday loans,” are one example.⁹

Payday loans are marketed as small, short-term loans.¹⁰ The story told by the payday loan industry has always been that their products are a short-term solution for emergency expenses.¹¹ Since the loan is supposed to be a solution to a short-term financial problem, the lenders assert that borrowers don’t pay substantial interest, despite a high annual percentage rate (391 percent is typical in Washington)¹². It’s a good story, but for many borrowers, sadly, not a true one.

Instead, many borrowers fall into a cycle of long-term, high-cost debt. Because payday loans are expensive and come due quickly, borrowers frequently take out another loan to pay off the first.¹³ Or, in a similar common scenario, borrowers use all available funds paying off the first loan and then are derailed by even small expenses, forcing them to borrow again.¹⁴ The short-term loan becomes a long-term loan at triple-digit interest rates or worse — a problem aptly named the “debt trap.”¹⁵

This is not necessarily the fate of all borrowers. Washington’s Department of Financial Institutions tracks data on the number of payday loans individual consumers receive.¹⁶ For some, payday loans are a rare, short-term option. For many others, they are far from short-term. For them, earnings or Social Security benefits quickly disappear to pay off interest. The loan itself seems never to disappear.

In a financially interconnected society, harm does not fall on borrowers alone.¹⁷ When a Social Security or disability payment is used for interest instead of expenses, our public expenditures are that much less effective.¹⁸ When consumers spend more on interest, they spend less on the consumer goods that drive our productive economy.¹⁹ When people can’t save, public programs and hospitals are later left to make up the difference.²⁰

In many cases, we trust market forces to sort out such problems. Unfortunately, payday lending is a classic failed market. Payday lenders do not compete on price.²¹ Borrowers do not behave as rational consumers because, as a result of confusing disclosures and America’s financial illiteracy, loan terms and risks are often misunderstood.²²

These problems, which resulted from Washington’s legalization of payday loans in 1995,²³ have not gone unnoticed. In 2009, the Legislature enacted new protections to address the debt trap.²⁴ The number of loans a borrower can receive, from all payday lenders, was limited to eight a year.²⁵ Additionally, as an alternative to continuous re-borrowing, borrowers now have the right to convert their loan into an installment payment plan.²⁶

However, debate over the new restrictions continues. A recent bill attempted to remove the eight-loan limit, with supporters claiming borrowers who had hit the limit were being pushed to unregulated Internet lenders.²⁷ There is little empirical...
evidence for this, and the problem is less serious than some suggest. Under Washington law, unlicensed Internet lenders cannot collect on their loans, and as more consumers learn of this protection, Internet lenders may find themselves in a tough spot. Giving out free money is not a wise business strategy. The recent bill is perhaps illuminating in another way, as payday lenders’ support for the bill raises some doubts as to their professed intent to provide payday loans only as short-term solutions.

Whether the reforms fully address the problems of payday lending will no doubt remain an open question. What is not an open question, however, is that Washington has determined, for the safety of consumers and our society, that there is an outermost limit to the harm we will tolerate in our consumer financial products.

A New Loophole?
The loans made to Ms. Summer raise all the old problems. Even more than traditional, pre-reform payday loans, the loans were structured to become unending, high-cost debt. While the payday loan debt trap involves the borrower taking out a new loan to cover the financial hole left by the last one, the loan Ms. Summer received had the rollover built right in. The agreement had no set due date for complete repayment, but instead required a minimum payment of 10 percent of the outstanding debt to be made twice a month. Although hardly obvious, those minimum payments are entirely used up paying off the extremely high interest rate. In other words, the borrower could continue paying on the loan forever.

So why is this not a clear violation of the restrictions on payday loans? Or if it isn’t a payday loan, and therefore falls outside of the usury exception for payday lending, doesn’t the interest rate far exceed the usury limit?

In short, payday lenders think they’ve found a new loophole — a way to avoid both the payday lending restrictions and the usury law. Instead of characterizing the product as a payday loan, these lenders claim to be selling goods on credit, another exception to the usury limit.

Historically, merchants who sold goods on credit were not subject to usury limits. One rationale was that such merchants were not really lenders. They were simply sellers with two prices for their goods — one for cash purchases, another for credit purchases. The other rationale was that the goods purchased on credit were generally large luxury items, so the borrower was likely sophisticated and easily able to resist abusive loan terms by simply refraining from the unnecessary purchase. This traditional usury exemption is preserved by statute in Washington. A seller of goods or services in a “retail installment transaction” may still charge interest above 12 percent on the sale of goods or services on credit. For example, Walmart can sell televisions on credit, and if it decided to do so, there is no limit on the interest rate that it could charge.

In what some might consider a clever move, some payday lenders in Washington have begun to characterize their loans as the sale of goods on credit. Shortly after the payday lending reforms went into effect in January 2010, Ms. Summer began receiving calls from her payday lender advertising a “payday loan alternative.” Instead of receiving cash, she received Safeway gift cards. An employee of the payday lender told her if she wanted to pay bills, she could use the Safeway gift card to purchase a Visa gift card at Safeway, which is what she did. The payday lender also offered gift cards to Fred Meyer and
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“A hero is an ordinary individual who finds the strength to persevere and endure in spite of overwhelming obstacles.”

~ Christopher Reeve

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Candalario Perez, injured when working on a steep cliff, represented by SKWC & Tim Gresback.
Twelve percent per annum; or (b) four percentage points above the equivalent coupon issue yield (as published by the Board of Governors of the Federal Reserve System) of the average bill rate for twenty-six week treasury bills as determined at the first bill market auction conducted during the calendar month immediately preceding the later of (i) the establishment of the interest rate by written agreement of the parties to the contract, or (ii) any adjustment in the interest rate in the case of a written agreement permitting an adjustment in the interest rate.” Wash. Rev. Code § 19.52.020 (2011). The 12 percent rate has been the higher of the two alternative caps for some time now. See Wash. State Dep’t of Fin. Insts., “Interest Rate Factors and Usury Law,” www.dfi.wa.gov/consumers/interest_rates_law.htm (last visited Mar. 3, 2011).


4. Id. at 66.

5. Id. at 85.

6. Id.


10. See Pharrish, Leslie and King, Uriah, Center for Responsible Lending, “Phantom Demand: Short-term Due Date Generates Need for Repeat Payday Loans, Accounting for 76% of Total Volume” (Jul. 9, 2009).


13. See 2009 Wash. Legis. Serv. Ch. 510 § 1 (West) (the Washington Legislature had found that “some small loan borrowers are unable to pay the entire loaned amount when it is due. Many of these borrowers take out multiple loans to pay off the original borrowed sum”).


15. See Pharrish & King, supra note 10, at 5.

16. Wash. State Dep’t of Fin. Insts., 2009 Pay-


23. 1995 Wash. Legis. Serv. Ch. 18 (West).

24. Wash. Rev. Code § 31.45.073(4) (2009);


26. Whatever the policy of these retail stores might be, customers have had little or no difficulty using the store gift cards at the stores to purchase Visa gift cards, which, unlike the store gift cards, can be used nearly anywhere.


28. Id. (noting that “there is no data available on whether illegal loan activity has increased since the law was passed”).


30. See id. To understand why the agreement leads to this result requires putting together a number of provisions. The provisions are referred to by their paragraph number in the agreement: Daily interest is 0.821918%. (¶ 4(a)). The minimum payment amount is set at 10% of outstanding principal at the time of the statement. (¶ 5(c)). The payments are applied first to interest and fees. (¶ 4(b)). As a result, if the daily interest multiplied by the number of days before a minimum payment is due exceeds 10%, that minimum payment will never reach the principal. The time until the first payment is at least 21 days. (¶ 5(b)). Assuming payment is made on the 21st day before interest is charged: 20 x 0.821918% = 16.4%. After the first payment, an additional two weeks will pass. (¶ 5(b)). Assuming payment is made on the 14th day before interest is charged, and not even accounting for the 6.4% of principal left over after the last payment: 13 x 0.821918% = 10.7%.


32. Id.


36. Whatever the policy of these retail stores might be, customers have had little or no difficulty using the store gift cards at the stores to purchase Visa gift cards, which, unlike the store gift cards, can be used nearly anywhere.


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Not (Just) for Profit:

The Social Purpose Corporation Concept

by Drew G. Markham

The Corporate Act Revision Committee (CARC) of the WSBA Business Law Section plans to propose significant changes to the Washington Business Corporation Act that would permit a for-profit corporation to become a “social purpose corporation.”

Do Social Enterprises Need a New Structure?

Harnessing the power of business to address societal ills is a concept that, although dating back to the initial founding of the corporate enterprise, has been discussed and debated for decades. Recently, however, the use of terms such as “green business,” “social enterprise,” “sustainable company,” and “hybrid entity” seems to have exploded. Jargon aside, there is a growing cadre of visionary yet savvy entrepreneurs who are determined to run profitable businesses while maintaining core social missions, such as maximizing use of renewable energy sources, cultivating healthy and desirable working environments, or ensuring that the companies have a positive impact on the local community. Complementing this entrepreneurial drive is an increasing number of investors who recognize the promise inherent in this business model and see it as a good financial investment.

Today’s corporate system, however, does not cleanly support the dual pursuit of money and mission. Most state laws governing corporations have a requirement similar to Washington’s corporate statute, which mandates that directors act “in a manner the director reasonably believes to be in the best interests of the corporation.” Acting in the best interests of the corporation is generally understood to mean that a director must maximize financial value to shareholders. Perhaps one could successfully argue that pursuit of a social mission (such as using only organic ingredients, which are generally more costly than non-organic) would indeed maximize shareholder value (by demanding a greater-than-proportionately higher unit price, thus higher profit). The problem is that few directors are comfortable with the risk of losing that argument or willing to incur
The social purpose corporation must operate its business “in a manner intended to promote positive short-term or long-term effects of, or minimize adverse short-term or long-term effects of, the corporation’s activities upon any or all of (1) the corporation’s employees, suppliers or customers; (2) the local, state, national or world community; or (3) the environment.”

The behavior of directors becomes particularly constrained in the context of a sale of the company. Although its application in Washington is untested, the oft-cited Revlon case causes much consternation in the boardroom around the definition of the best interests of the corporation. As directors consider competing offers, most are unlikely to assume the risk arising from the decision to sell to a potential purchaser on some basis other than the highest price. Other, unquantifiable considerations that a director may wish to analyze along with the bid price may include a potential purchaser’s commitment to maintain the existing workforce or to operate the facility in an environmentally sustainable manner.

What Is a Social Purpose Corporation?
Recognizing the demand for a new structure, CARC began working on statutory language in May 2010. Committee members considered models created by other groups, but after a year of extensive discussion, intense deliberation, and fine-tuning, CARC developed a model unique to Washington. Other models considered included the benefit corporation, which has been adopted in five states and is under consideration in several others; the flexible purpose corporation, which has been introduced in the California State Legislature; and Oregon’s constituency statute amendments.

As drafted, the social purpose corporation is purely voluntary, allowing shareholders of an existing or newly formed for-profit corporation to elect to be governed by a new chapter of the Washington Business Corporation Act. The social purpose corporation must operate its business “in a manner intended to promote positive short-term or long-term effects of, or minimize adverse short-term or long-term effects of, the corporation’s activities upon any or all of (1) the corporation’s employees, suppliers or customers; (2) the local, state, national or world community; or (3) the environment.” In addition, the social purpose corporation may identify one or more specific social purposes for which the corporation is organized.

Another unique provision of the proposed Washington statute deals with the accountability of management. Directors of a social purpose corporation are held to the same standards as directors of a traditional Washington corporation, including acting in a manner that the directors reasonably believe to be in the best interests of the
corporation. While the statute does not require that directors take into account the general or specific social purposes of the corporation in making a particular decision, the statute makes clear that when the director of a social purpose corporation has made a decision that he or she reasonably believes was in furtherance of one or more of the corporation's social purposes, even if that social purpose was more heavily weighted than the creation of economic value, the director is deemed to have acted in the best interests of the corporation. In addition, the proposed statute affirmatively provides that no liability is created with regard to, nor right granted in, any person vis-à-vis the corporation's social purposes.

The social purpose corporation also addresses potential risk for entrepreneurs and investors seeking to maintain the social mission during the life of an early-stage company. The proposed statute includes a super-majority shareholder voting provision designed to make it difficult for new investors or management to shift the company away from the original social mission over time in favor of additional profitability or some other mission.

Finally, the proposed Washington statute generally requires that a social purpose report be issued to shareholders to ensure that the social purpose corporation remains transparent as to its commitment to the general purpose and any specific social purposes. In most cases, the social purpose report must be furnished to shareholders annually and must include a narrative discussion concerning the social purpose of the corporation, including the corporation's efforts intended to promote its social purpose. This narrative discussion may include a discussion of the corporation's objectives, actions taken, and expectations regarding its social purposes. A description of the financial, operating, or other measures used by the corporation in evaluating its performance in achieving its social purposes may also be included in the report.

**When Will the New Model Be Available?**

The proposed statute is in circulation within Washington’s legal and business communities. CARC expects to make a formal proposal to the WSBA’s Business Law Section, the Legislative Committee,
and the Board of Governors. If approved, the proposed legislation will be introduced in the 2012 legislative session.

The social purpose corporation will provide a solid structure for the melding of Washington state’s entrepreneurial drive and humanitarian mindset.

Drew G. Markham is a corporate securities attorney with Wilson Sonsini Goodrich & Rosati, P.C., and worked with CARC to conceptualize and draft the Social Purpose Corporation model. Contributing to this article were John Reed, of Davis Wright Tremaine LLP, and Michael Hutchings, of DLA Piper LLP.

NOTES
1. §23B.08.300(1)(c).
2. In fact, in a recent opinion from the Delaware Court of Chancery, the court stated that “[p]romoting, protecting, or pursuing non-stockholder considerations must lead at some point to [financial] value for stockholders.” eBay Domestic Holdings, Inc. v. Newmark, C.A. No. 3705-CC, 2010 Del. Ch. LEXIS 187 (Del. Ch. Sept. 9, 2010) at *84.
4. In a famous example of this quandary, in 2000 the board of Ben & Jerry’s Homemade Ice Cream chose the conservative route and sold the company to the highest bidder even though that bidder’s commitment to preserving the company’s social mission was questionable. It is widely speculated that the outcome may have been different had the board not felt constrained by corporate law to exclusively consider bid price.
5. Maryland, Vermont, New Jersey, Virginia, and Hawaii.
6. Proposed §23B.20.120.
Lessons Learned?
The Casey Anthony Trial and the Media’s Chilling Effect on Prosecutors

The media’s the most powerful entity on earth.
They have the power to make the innocent guilty and to make the guilty innocent, and that’s power.
— Malcolm X

BY STONE GRISSOM

Thousands of people here in Washington and across the nation were glued to their televisions during the Casey Anthony trial.¹ They weren’t simply obsessed with the law; they were obsessed with Casey Anthony’s guilt. Many were undoubtedly hoping she would also receive a death sentence. After all, the government’s case against her had to be correct. They have almost unfettered prosecutorial discretion in what charges to bring against a defendant. They have police, forensic experts, and crime labs all at their disposal. The government could have charged Casey with numerous felonies. They chose to charge her with physically abusing her child. They chose to charge her with premeditated murder. They chose to seek her execution.

Why, then, after 31 days of testimony, did a unanimous jury spend less than 11 hours deliberating before acquitting Casey of murder, manslaughter of a child, and child abuse? They acquitted her of any culpability in her daughter’s death. In fact, the only convictions the state could secure were four misdemeanors to which the defense had already conceded in opening statements. Is this an example of injustice, or undue influence?

A good portion of my work involves legal consulting with media outlets as well as on-air legal analysis. I have a unique perspective on how the media, perhaps unwittingly at times, influences and pressures prosecutors to

The Casey Anthony Trial and the Media’s Chilling Effect on Prosecutors

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There were legitimate felony charges that could have been brought against Casey and could have carried substantial punitive measures. Yet, the government ignored the glaring flaws in their case and, instead, raised the stakes — death.

overcharge. The Casey Anthony trial stands as a primer. Little Caylee’s death was a tragedy, but it was never clear it was actually a chargeable crime. Casey’s failure to call police to report her daughter missing was bizarre, arguably reprehensible, but certainly not enough to seek the death penalty. The government couldn’t explain how Caylee died, where she died, or whether it was an accident or murder. They had no DNA, no confession, no witnesses, and they were unable to rule out other family members and accidental drowning.

There were legitimate felony charges that could have been brought against Casey and could have carried substantial punitive measures. Yet, the government ignored the glaring flaws in their case and, instead, raised the stakes — death. It was a decision based not on the evidence, but on the media-created public sentiment. A similar decision in any other case would have been unheard of. However, the Casey Anthony trial suffered from the same ailment as the Duke rape case, to some extent as the Dominique Strauss-Kahn case, and several lower-profile local cases I’ve been involved with over the years. The ailment is, simply put, the media and its influence on the government’s actions. In the Duke Lacrosse case, the players were vilified in the media. Their backgrounds were splashed across national television, protests against the team and the university were held, and civil rights leaders, including the Reverends Al Sharpton and Jesse Jackson, held vigils in North Carolina demanding justice. Justice in this case meant nothing short of convictions. In the end, the state attorney general’s office issued a report declaring the players innocent. In the Dominique Strauss-Kahn case, the government’s initial decision to arrest Strauss-Kahn may have been appropriate, given his immediate departure back to France. However, the district attorney’s office obtained a fast-tracked indictment for rape only five days later, locking the government into going to trial. What was the rush?
principles. Media outlets live and die by viewership, so it is no surprise that the media's mantra is drama, and sensationalism equates to ratings. A politician’s indiscretions become a shocking mystery that media outlets compete against one another to make as scandalous and “newsworthy” as possible. Coverage of a missing child and subsequent murder trial can mean millions in revenue and can launch an individual’s career. The Anthony investigation and subsequent trial, thus, is assigned dramatic music out of each commercial break complete with a colorful graphic and snappy slogan, like “Where’s Caylee?,” “The Two Sides of Casey,” and “Verdict Watch.” Believe me, committees sit in rooms and discuss these issues, and sometimes they get advice from consultants familiar with the legal system.

The Anthony trial had emotion and human drama to spare. *Jersey Shore* had nothing on the Anthony trial. The Anthony family’s dysfunctional history was a real-life TV movie playing out before the public’s eyes. It was great television. No, it was fantastic television. Media outlets that had been floundering in the market were seeing a ratings boost — as long as they hyped it up.7 The media, including local affiliates here in Washington, played up speculation that “Tot-Mom”8 killed her daughter and then went out partying while, in the dead of the night, wild animals gnawed on cute little Caylee’s lifeless body in a dark, lonely swamp. You get the picture.9 That’s fine for Hollywood (and it continues to be debated in journalism schools across the country), but the danger comes when an individual’s constitutional liberty interests become subject to the influences of television ratings.

Media outlets care that you watch, and when accuracy conflicts with watchability, guess which wins out? Associate producers give pundits and analysts “fun facts” on an issue, and one can make a very good living doing that. However, that coverage also influences the public. It is important for the government to recognize the difference between the visceral feelings of reality TV viewers and the law. When the government gets caught up in the pressure of the mob mentality, lives get destroyed, and the system is put in jeopardy.

Casey may have killed her daughter. However, it is equally possible that her death was an accident and was not at the hands of Casey. Some might argue that with the verdict, the system worked. But did it? The government’s evidence didn’t warrant the death penalty, but it might have warranted something less popular. Something never charged. That’s the lesson hopefully learned. It belittles our system of justice when a Nancy Grace or Bill O’Reilly show determines a defendant’s charge and ultimate fate.

Stone Grissom complements his journalism career with a background as a practicing trial attorney. After graduating law school at the University of Notre Dame, he began his career practicing complex civil litigation and civil rights. He was named a “Rising Star” three years in a row by Washington Law and Politics. While in Seattle, Grissom became an on-air legal analyst and legal reporter, first locally and then nationally. He has covered such national and international stories as the
civil trial of Michael Jackson, the Scott Peterson trial, and the sentencing of the Green River killer, as well as the trial of Saddam Hussein. He has appeared as a legal analyst on numerous local stations as well as Court TV, MSNBC, Nancy Grace, and Fox. He is currently an anchorman with News 12 Long Island in New York.

NOTES
1. For those who have been living in a cave without Internet or TV for the last three years, Casey Anthony was accused of killing her two-year-old daughter, Caylee, and covering it up while she partied the night away and got a tattoo with the words, “Bella Vita.” The state of Florida charged her with murder, aggravated abuse of a child, aggravated manslaughter of a child, and four counts of lying to police. They were also seeking the death penalty.
2. The government charged Anthony with first degree murder and felony murder to cover alternating scenarios of accidental death by abuse or premeditation. Both theories allow the death penalty in Florida.
3. The defense argued at trial that it was just as reasonable Casey’s mom forgot to put away the ladder to the home’s above-ground pool, and Caylee climbed in and accidentally drowned.
4. The prosecutor’s actions during the pendency of the investigation directly led to his termination and disbarment proceeding, the termination of the coach of the Duke Lacrosse team, the tarnishing of Duke University’s reputation, and the ongoing tarnishing of the Duke Lacrosse players involved.
5. There is a separate issue involving a rape victim’s past being used to smear her potentially legitimate claims, which is legitimate but beyond the scope of this article.
6. Leading up to and during the pendency of the Casey Anthony trial, national media outlets, and, as a result, local media affiliates, almost ignored the debate on raising the national debt ceiling. The Anthony trial gave better Nielsen ratings. Therefore, it got the coverage.
7. Time Warner’s truTV and HLN saw a significant boost in ratings during the Anthony coverage. Even “opinion shows” on all the major networks incorporated coverage of the Anthony trial.
8. A nickname given to Casey Anthony by Nancy Grace.
9. Wait for the upcoming TV movie with Casey Anthony played by Alyssa Milano or Maggie Gyllenhaal.
It typically takes two denials and a hearing to get Social Security Disability benefits. This area of law is complex, with many shifting regulations. Call on SGB.

If your client is unable to work due to injury or disability, we can help with both the initial application and any appeals. We regularly represent people with health issues including depression, head trauma and cancer. Our experienced team is known for being well prepared, thorough and tenacious.

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**Advisory Opinions on Payments to Clients, Mortgage Broker Referrals, Communication with Jurors, Advertising Testimonials, and Discovery Materials**

**by Jeanne Marie Clavere**

The WSBA Rules of Professional Conduct (RPC) Committee responds to inquiries from WSBA members and the Board of Governors regarding the ethical conduct of lawyers arising under the Rules of Professional Conduct. The following is a summary of the latest Advisory Opinions offering direction concerning ethical conduct related to specific hypotheticals submitted to the Committee.

**Ethical duty of a lawyer who guarantees payment on behalf of a client to a creditor from proceeds of settlement or judgment**

A recent Advisory Opinion highlights the issues that can circle back to the forefront of attorneys’ ethical decision-making. In 1990, in Opinion 185, the RPC Committee looked at the issue of the ethical duties of a lawyer who guarantees payment on behalf of a client to a creditor from a judgment or settlement. Advisory Opinion 2200, published in 2010, concurs with the analysis provided 20 years prior, and directs inquirers to Opinion 185.

At times during the representation of a client in a lawsuit, a lawyer may be requested to provide a guarantee to a creditor on behalf of a client that the creditor’s debt will be paid out of any proceeds of the lawsuit. This usually serves as an effective way to get the creditor to stop collection attempts on a debt while the attorney is pursuing a cause of action likely to result in a monetary judgment or settlement.

The RPC Committee opines that, first of all, under RPC 1.2(a), the attorney should not take such a step without the express authorization by the client. Such a guarantee and its implications are clearly within the scope of a client making decisions concerning “the objectives of representation.” And throughout the course of decision-making, the lawyer must explain the request for a guarantee and the steps and impact “to the extent reasonably necessary” to permit the client to make an informed decision. See RPC 1.4(b). At the very least, the lawyer should advise the client that consent to a guarantee to the payment of debts from the judgment or debt will be irrevocable.

This Advisory Opinion also highlights RPC 1.15A(f), which states that when a judgment or settlement is entered into, the lawyer must promptly pay or deliver to the client or third person that property they are legally “entitled to receive.” And if there is disagreement, RPC 1.15A(g) requires that the lawyer maintain any disputed property in trust and make all reasonable attempts to resolve the dispute.

**Accepting referrals from mortgage brokers; paying fees to brokers for subsequent services**

We are fortunate in Washington to have an excellent Advisory Opinion regarding the acceptance of referrals from mortgage brokers and then subsequently paying fees to brokers for services. Advisory Opinion 2203 opines that attorneys can advertise.
to the public, but attorneys are not permitted to pay others to channel professional work directly to them. See RPC 7.2, Comment 5. The RPC Committee explains that a distinction is made between person-to-person referrals and general advertisements. So if referrals are obtained due to general advertisement and do not contain an individualized component or add in a relationship of trust or dependency, then such a referral is appropriate.

However, even if in a non-exclusive reciprocal understanding, the lawyer may have a concurrent conflict of interest issue under RPC 1.7. A concurrent conflict of interests exists if "there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to ... a third party or by a personal interest of the lawyer." Comment 10 to RPC 1.7 specifically states that a lawyer may not allow his or her related business interests to affect representation, such as referring clients to an enterprise in which the lawyer has an undisclosed financial interest. The lawyer must disclose her own personal business interests and obtain the informed consent of the client as is stated in RPC 1.7(b).

In short, a lawyer may pay the reasonable costs of advertising (RPC 7.2), but may not give anything of value to a person for recommending the lawyer's services except, as set forth in 7.2(b), where the organization is a legal services plan or a not-for-profit referral service.

**Post-verdict communication with jurors**

2010 Advisory Opinion 2204 states that, although lawyers involved in post-verdict communication disclosures to jurors do not commit a per se violation of RPC 8.4(d), violations occur in certain circumstances. This is reviewed based on the specific circumstances and in light of the provisions of *Disciplinary Proceeding Against Curran*, 115 Wn.2d 747, 766, 801 P.2d 962 (1990). Lawyers at times want to communicate with jurors post-verdict to obtain feedback and critiques. In general, post-verdict communications are permitted where not expressly prohibited by court rule. Improper conduct occurs when the lawyer discloses excluded evidence to a jury in a manner involving misrepresentation, coercion, duress, or harassment. RPC 3.5(c).

This type of exposure may also be "conduct that is prejudicial to the administration of justice" under RPC 8.4(d). Communication from a lawyer which discloses excluded evidence to a juror after the conclusion of a trial may not be a per se violation of RPC 8.4(d), but can cause problems if there is a suggestion that the jury was deprived of reliable evidence casting the juror's verdict in doubt. This might make jurors less willing to rely on, and limit consideration to, evidence admitted in future cases as the juror's oath requires.

**Testimonials in advertising**

Then there is the age-old dilemma of testimonials in advertising — how much is too much, "over the top," and misleading, in violation of RPC 7.1? 2010 Advisory Opinion 2206 reaches back to prior Advisory Opinions, such as Opinions 1182 and 802, and reaffirms that testimonials must not create an unjustified expectation that the same results could be obtained for other clients in similar matters, without the explanation of the unique circumstances of each client’s case. A best-practice tip is to include an
Obligation to provide (redacted) discovery materials to former client

How does a criminal defense lawyer fulfill her obligation to provide discovery to a former client upon the client’s request post-sentencing? As RPC 1.16(d) states, an attorney has an obligation to surrender to her former client papers to which the client is entitled. Advisory Opinion 2211 confirms that court rules may limit an attorney’s ability to disclose certain information to a client and requires an attorney to comply with any such court rules. RPC 1.4, Comment 7. RPC 3.4(c) directs attorneys to comply with such rules or court orders. Therefore, the RPC require an attorney to comply with the restrictions of CrR 4.7, regardless of whether such information may be or is available through other avenues, such as through the Freedom of Information Act.

2010 Advisory Opinion 2208 further clarifies the issues surrounding contracts for public defender services. The RPC Committee will not insert itself into contract negotiations or assess the reasonableness of such contracts, but reminds lawyers entering into such contracts that RPC 1.8(m)(1)(ii) mandates they ensure that the contract specifically designates a fair and reasonable amount of all investigations services, whether extraordinary or not.

If you need assistance in thinking through some of the difficult issues of an ethical practice in the context of the Rules of Professional Conduct, call the Ethics Line at 206-727-8284 or 800-945-WSBA, ext. 8284. WSBA professional responsibility counsel will help you analyze the ethical issues involved to enable you to make a decision consistent with the requirements of of the Rules of Professional Conduct. Advisory Opinions are on the WSBA website, and you can search by opinion number, year issued, RPC, or keyword(s). See www.wsba.org/advisoryopinions or http://mcle.mywsba.org/io.

Jeanne Marie Clavere is the WSBA professional responsibility counsel and can be reached at jeannec@wsba.org.
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LEADERS FOR THE GLOBAL COMMON GOOD ™
From the Cotton Fields to the Courtroom

BY ERNEST RADILLO

Raised in an immigrant family with parents trying desperately to simply make ends meet, I learned early on to value the importance of hard work. At the age of 16, I worked alongside my father in the cotton fields of California in order to help support my family. When I first began working with him, my father taught me some simple rules: show up on time, treat people with respect, put in an honest day’s work, and your word is your bond. These four basic tenets, which virtually all parents try to instill in their children, served me well in the cotton fields and have shaped how I now practice law.

Incivility has become rife within the legal system. With far too many lawyers taking a win-at-all-costs approach, the legal profession must seek ways to instill in its practitioners a more respectful and civil mindset. In order to solve this problem, we must change the win-at-all-costs mentality that far too many lawyers fall victim to, with a mindset that better reflects the tenets of civil and courteous behavior outlined in the WSBA Creed of Professionalism. These basic tenets include the following affirmations:

- **In my dealings with lawyers, parties, witnesses, members of the bench, and court staff, I will be civil and courteous and guided by fundamental tenets of integrity and fairness.**
- **My word is my bond in my dealings with the court, with fellow counsel and with others.**
- **I will endeavor to resolve differences through cooperation and negotiation, giving due consideration to alternative dispute resolution.**
- **I will honor appointments, commitments and case schedules, and be timely in all my communications.**
- **I will design the timing, manner of service, and scheduling of hearings only for proper purposes, and never for the objective of oppressing or inconveniencing my opponent.**
- **I will conduct myself professionally during depositions, negotiations and any other interaction with opposing counsel as if I were in the presence of a judge.**
- **I will be forthright and honest in my dealings with the court, opposing counsel and others.**
- **I will be respectful of the court, the legal profession and the litigation process in my attire and in my demeanor.**
- **As an officer of the court, as an advocate and as a lawyer, I will uphold the honor and dignity of the court and of the profession of law. I will strive always to instill and encourage a respectful attitude toward the courts, the litigation process and the legal profession.**

There is no question that lawyers have the capacity to eliminate unprofessional behavior, but it will require focused and spirited leadership in order to develop a culture that glorifies and models civility. Judges and senior lawyers can be instrumental in fostering this civility culture by championing civility, rather than just being voices against incivility. Before we create this mindset, we first must remind ourselves why exercising civility as lawyers is of the utmost importance.

Some equate civility with being a push-over, faint of heart, or weak. However, civility goes beyond just the exterior perception of our actions. Civility embodies and demonstrates the respect we owe members of our profession, the court, our clients, jurors, and the general public. Civility includes valuing the reactions, views, and cultures of others. Civility is both an animating spirit and a mode of discourse. Civility establishes limits upon our treatment of others and helps inculcate us against the temptation to demonize those who hold opposing views from our clients’ and our own. It demands that we provide a respectful forum for debate. Civility does not preclude strong-willed debate or confrontation. The most important legal debates are polarizing, e.g., abortion, euthanasia, immigration, and same-sex marriage, to name a few. These issues stir deep passions and bring before us our most fundamentally held beliefs about life, death, economics, and the rights accorded to individuals and societies. These debates are precisely when civility and a measure of grace are most needed.

It is irrefutable that some of the causes of unprofessional behavior, e.g., the stress of practicing law, meeting client demands, and increased competition, have eroded our core tenets of professionalism and civility. Likewise, it’s no secret that lawyers have suffered a great loss in public trust and confidence. Now is the time for us to do something about this state of affairs. The four basic tenets that I learned as a farm worker are not too humble for legal professionals to aspire to and put into practice.

This series is produced in association with:

Ernest Radillo is an associate attorney at Ogden Murphy Wallace, P.L.L.C.’s Wenatchee office. Prior to joining Ogden Murphy Wallace, he worked at Columbia Legal Services, where he focused on employment, class actions, and civil litigation. Radillo is a former recipient of the national Goldmark Equal Justice Internship and other awards including the American Red Cross Certificate of Merit Award, the WSBA Courageous Award, and Seattle University School of Law’s Spirit of Service Award. He is a former president of the Chelan-Douglas County Young Lawyers Division, and serves on numerous boards.

NOTES

1. The WSBA Creed of Professionalism is a statement of professional aspiration adopted by the WSBA Board of Governors on July 27, 2001, and does not supplant or modify the Washington Rules of Professional Conduct.
Many lawyers, judges, and law students struggle with depression, stress, addiction, and compulsive disorders, including problem gambling.

The WSBA Lawyers Assistance Program provides confidential help for these issues. Our professional staff and trained volunteers can assist you — whether you need help or are concerned about a colleague or family member who needs assistance.

We have countless success stories, but we do our work quietly, confidentially, and professionally — so the stories stay with us.
WSBA Board of Governors Meeting
July 22–23, Ocean Shores

At the July 22–23, 2011, meeting in Ocean Shores, the WSBA Board of Governors discussed the Association’s budget for the next fiscal year, which runs from October 2011 through September 2012. The Board is scheduled to vote on the budget at the September 22–23 meeting in Seattle. In related action, the Board voted to maintain license fees at the 2012 level for 2013 and elected a treasurer for the new fiscal year.

2011–2012 Budget and Treasurer

Outgoing Treasurer Patrick Palace and Deputy Director for Finance and Administration Julie Mass outlined the proposed 2011–2012 budget. The budget projects revenues of $16,994,490 and expenses of $16,744,079, figures similar to those of the previous fiscal year. The Board discussed maintaining annual license fees for 2013 at the same levels as 2011 and 2012 ($450 for active, regular members; $200 for inactive and emeritus members). The Board voted to transfer $680,000 from the unrestricted reserve fund into three special reserve funds: $420,000 for facilities reserves, $170,000 for capital reserves, and $90,000 for Board program reserves.

A year ago, budget forecasts projected deficits for the upcoming two fiscal years. Palace noted. However, thanks to spending cuts and other factors, the current projection is for positive balances for each of those years, and control of expenses should allow any future license fee increases to be modest, Palace added. Continuing reduction of expenses, together with reallocation rather than increases of staff, will be needed to avoid deficits in future years, he said.

The proposed 2011–2012 budget calls for the elimination or revision of some WSBA programs to cut costs, including the following:

• The annual Access to Justice/Bar Leaders Conference would become self-supporting. The shift would reduce the ATJ Board and Bar Leaders expenses by $35,000 for the year.
• The Public Legal Education Program and Council on Public Legal Education — which maintain various programs to educate non-lawyers about the legal system — would be eliminated, with only support of some minor educational efforts being retained. The change would save $12,000 per year in costs.
• The Judicial Recommendation Committee, which screens judicial candidates for the state Court of Appeals and Supreme Court, would no longer be a WSBA entity as of fiscal year 2012–2013. The Association would seek to help create an independent statewide organization to take over the duties. The proposed budget includes $6,500 in funding of the committee for 2011–2012, but WSBA funding presumably would cease after that.
• Donations to the “votingforjudges” website, a collective effort to educate the public about judicial candidates, would be discontinued after fiscal year 2011–2012. The Association would seek to help create an independent statewide organization to take over the duties. The proposed budget includes $5,000 in funding for 2011–2012.
• Resources, the printed directory of WSBA members, would be eliminated in 2011–2012. Sales of Resources have declined, as more members rely on the WSBA website’s online directory to obtain contact information for other members. Although the publication still generates just over $20,000 in net revenue, it is expected to eventually turn to a loss, and staff time used to produce it could be put to higher-priority uses.
• The Law Office Management Assistance Program (LOMAP) Roadshow — a series of live educational sessions presented around the state — would be replaced by other forms of outreach. The programming used for the Roadshow would be transferred to the new WSBA Education and Outreach Department, which would present the material via webcasting and combining of the material with other skills-based programming. The LOMAP manager would use time previously spent on the Roadshow to focus on consulting as well as speaking engagements for larger audiences. Although the Roadshow generates net revenue of approximately $15,000 per year, restructuring of the program is expected to result in a significant savings of staff time and an ability to reach more members.

Also at the July meeting, the Board elected Governor Nancy Isserlis, of the Fifth District, to serve as WSBA treasurer and chair of the Budget and Audit Committee for 2011–2012. Isserlis has been with the Spokane firm of Winston & Cashatt since 2004, where her practice focuses on bankruptcy and commercial law. She was a founding member of the Access to Justice Board, and vice president of Columbia Legal Services.

Court Rules

The Board heard first readings of recommendations regarding court rules proposed by the Court Rules and Procedures Committee. The Board is scheduled to vote on possible approval of the recommendations at the September meeting. Any approved recommendations would go to the Supreme Court to be considered for adoption.

Board members discussed recommendations regarding three specific rules. An amendment to Evidence Rule 501(h), regarding privileged communications of journalists, would replace references to case law with a reference to the appropriate statute (RCW 5.68.010). Subsection (h) is the only part of ER 501 that cites to cases rather than statutes. Meanwhile, ER 501(f), the “Husband-Wife” privilege, would be amended to include a reference to statutory provisions that apply the privilege to domestic partners as well.

An amendment to Rule of Appellate Procedure 18.13A (Accelerated Review of Juvenile Dependency Disposition Orders and Orders Terminating Parental Rights) would require the Department of Social and Health Services — or any other supervising agency having the right to consent to an adoption — to serve a notice of intent to deliver its consent on all parties to any termination appeal, and to file a copy in the appellate court in which the appeal is pending. The proposal by the Court Rules and Procedures Committee is an
alternative to a proposal by the Office of Public Defense already under consideration by the Supreme Court Rules Committee.

A proposed amendment to Superior Court Criminal Rule 3.1 would allow a Superior Court judge to control or limit a pro se criminal defendant’s questioning of witnesses in certain circumstances. The amendment was requested by the Superior Court Judges’ Association but is opposed by the WSBA Court Rules and Procedures Committee. Committee members felt the rule was unnecessary, as judges already have broad legal authority to control examination of witnesses. Some members were concerned that addition of the rule might prompt judges to be overly restrictive when dealing with pro se defendants.

ELC Rules Task Force
The Board heard recommendations from the Rules for Enforcement of Lawyer Conduct (ELC) Task Force regarding proposed changes to the rules, which govern the procedures used in the lawyer discipline system. The Board is scheduled to vote on approval of the recommendations at the September meeting.

One proposal that prompted considerable discussion among Board members was an amendment that would allow a corrective note to be added to a Bar member’s disciplinary notice on the WSBA website. Under proposed ELC 3.5(c)(1), where a disciplined lawyer’s case involved a criminal conviction or other adverse court action, if the court action were later conclusively nullified, the lawyer could request that WSBA add that information to the online disciplinary notice.

Some Board members not only voiced support of the proposal but questioned whether online disciplinary notices should remain permanent, especially for admonitions, which fall below suspension or disbarment in terms of seriousness. Citing the power of Internet search engines and consumers’ use of attorney rating sites, several governors and other attendees at the meeting noted that adverse disciplinary information can affect lawyers’ reputations even decades after a disciplinary matter has been resolved.

RPC Work Group on Immigration Issue
The Board voted to create a work group to tackle an issue that has eluded resolution for four years: the ethical propriety of a lawyer using an opposing party’s immigration status to gain advantage for the lawyer’s client in a civil matter otherwise unrelated to the other party’s immigration status. The WSBA Rules of Professional Conduct Committee had spent considerable time drafting hypotheticals and ethical analysis of the issue.

However, Committee Chair Don Curran reported to the Board that no unanimity had developed among Committee members in their analysis of the issues. He expressed doubt that a “bright-line” rule on the topic ever would emerge.

Some Board members voiced dismay that the issue had not yet been clarified, noting that the immigration-status issue is already being faced by many lawyers across the state. However, they acknowledged that the difficulty arose from good-faith differences of opinion.

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—Mike and Julie M., Washington
among the RPC Committee members and other interested parties who had been involved in the process as well.

The Board ultimately voted to create a task force to make decisions on the issue and present a draft ethical opinion to the Board at the October meeting. The task force will include Governor Marc Silverman, of the First District, as well as a small group of stakeholders in the issue and advisers familiar with the RPC.

Home Foreclosure Project

WSBA Executive Director Paula Littlewood advised the Board that a $1.1 million grant from the Washington State Attorney General’s Consumer Protection Division will allow the Home Foreclosure Legal Aid Project to expand and continue for two more years. The funds came from a settlement reached with Wells Fargo regarding home loan practices. Through the program, developed by the WSBA in partnership with the Northwest Justice Project, several hundred Bar members have provided volunteer legal assistance to families whose homes were in danger of foreclosure.

ABA Standards for Language Access

The Board voted to have the WSBA co-sponsor an American Bar Association resolution adopting new ABA Standards for Language Access in Courts. The Standards are intended to assist courts in designing, implementing, and enforcing a comprehensive system of language access services suited to the need in the communities they serve. The resolution urges courts to promptly implement the standards and urges federal and state legislative bodies and executives to provide adequate funding for the programs.

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

The Washington State Bar Association’s 50-Year Member Tribute Luncheon

Wednesday, November 9, 2011
Sheraton Seattle Hotel • 1400 6th Ave., Seattle
Registration and Reception: 11:00 a.m. (no-host bar) • Luncheon Program: Noon

Please join us as we honor the 2011 WSBA 50-year members.
All members of the legal community are invited.

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Registration is $45 per person (table of 10 = $450). To make your reservation, please return this
form (or a photocopy) with your credit-card information or check payable to WSBA. Space is limited,
so please make your reservations early. Reservations and payment must be received by November
2, 2011 (refunds cannot be made after November 2).

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Name as it appears on card _______________________________________________________
Signature ________________________________  (no. of persons)  X  $ _______ (price per person)  =  $ ____________ TOTAL

Please list the names of all attendees and indicate meal choices. Be sure to include yourself.

_________________________________________________________________________
_________________________________________________________________________

☐ chicken  ☐ salmon  ☐ vegetarian
☐ chicken  ☐ salmon  ☐ vegetarian
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_________________________________________________________________________
Announcements

**LYBECK MURPHY LLP**

is pleased to announce that

**Katherine Felton**

has become a partner of the firm.

Kate has practiced with Lory Lybeck and James Murphy since 2004. Her active civil litigation practice includes an emphasis in the area of environmental contamination and remediation litigation. She represents businesses and individual clients in complex, multi-party environmental clean-up and contamination cases under federal and state law, including natural resource damages actions, cost-recovery and contribution actions, and government agency supervised voluntary clean-up actions. In addition, Kate has experience representing clients in employer liability, construction defect and contractor liability, professional liability, fiduciary liability, and business litigation cases.

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Email: klf@lybeckmurphy.com

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**MOSCHETTO KOPLIN McGUIRE**

is pleased to announce

**Caleb M. Oken-Berg**

has become an associate of the firm.

His practice focuses primarily on Family Law. Mr. Oken-Berg is fluent in Spanish and French.

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caleb@mkmlawfirm.com

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**SCARFF LAW FIRM, PLLC**

is pleased to announce

**M. Sadie Sage**

has joined the firm as an associate.

Ms. Sage graduated from University of Washington School of Law in 2010 and obtained her Master of Laws in Taxation in 2011.

206-236-1500
sadie@scarfflaw.com

Our firm’s practice focuses on general business, mergers and acquisitions, estate planning, probate/trust administration, and real estate law.

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Opportunities for Service

**Office of Public Defense Advisory Committee**

*Application Deadline: October 7, 2011*

The WSBA Board of Governors is accepting letters of interest and résumés from members interested in serving a three-year term on the Office of Public Defense Advisory Committee. The three-year term will commence on January 1, 2012, and will expire on December 31, 2014. A written expression of interest and résumé are required for any incumbents seeking reappointment. The Office of Public Defense Advisory Committee meets quarterly to recommend policies for the agency’s appellate indigent defense, trial public defense, and parents’ representation programs; advise the agency on oversight of its programs; make recommendations regarding legislative positions and proposed rules; review budgetary matters; and consider appeals of billing decisions. During the term of appointment, no appointee may: a) provide indigent defense services except on a pro bono basis; b) serve as an appellate judge or an appellate court employee; or c) serve as a prosecutor or prosecutor employee. Committee members receive no compensation for their services as members of the committee, but may be reimbursed for travel and other expenses in accordance with rules adopted by the Office of Financial Management. Please submit letters of interest and résumés to: WSBA Communications Department, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539, or email barleaders@wsba.org.

**Limited Practice Board**

*Application deadline: October 7, 2011*

The WSBA Board of Governors seeks a candidate for appointment to the Limited Practice Board, which oversees administration of, and compliance with, the Limited Practice Rule (APR 12) authorizing certain lay persons to select, prepare, and complete legal documents pertaining to the closing of real estate and personal-property transactions. The candidate’s name will be submitted to the Washington State Supreme Court for appointment, and the appointee will serve a four-year term commencing January 1, 2012, and ending December 31, 2015. In keeping with the member requirements of APR 12, the position must be filled by an active member of the WSBA. A completed application form and résumé are required for any incumbents seeking reappointment. The Board generally meets every other month. Please submit completed application forms, along with résumés (form can be found on the WSBA website at www.wsba.org/legal-community/volunteer-opportunities/volunteer-toolbox/committee-volunteer-tools) to: WSBA Communications Department, 1325 4th Ave., Ste. 600, Seattle, WA 98101-2539, or email barleaders@wsba.org.

**Legal Foundation of Washington Board of Trustees**

*Application deadline: October 7, 2011*

The WSBA Board of Governors is accepting letters of interest and résumés from members interested in serving a two-year term on the Legal Foundation of Washington Board of Trustees. Appointees will serve a term that commences on January 1, 2012, and ends on December 31, 2013. There are three positions available; two are held by incumbents who are seeking reappointment. Incumbents must also submit letters of interest and résumés. The Legal Foundation of Washington is a private, not-for-profit organization that promotes equal justice for low-income people through the administration of IOLTA and other funds. Trustees should have a demonstrated commitment to, and knowledge of, the need for legal services and how these services are provided in Washington. Further information about trustee responsibilities is available upon request by email to caitlinde@legalfoundation.org. Please submit letters of interest and résumés to: WSBA Communications Department, 1325 Fourth Ave., Ste. 600, Seattle, WA 98109-2539, or email barleaders@wsba.org.
2012 Licensing and MCLE Information

Online licensing is a convenient and easy way to complete your license renewal and MCLE certification. The License Renewal form and the Section Membership form will be mailed together in mid-October, and online licensing will be available at that time. Renewal and payment must be completed by February 1, 2012. However, as the section membership year is October 1, 2011, through September 30, 2012, we encourage you to join or renew sections in October to receive the full benefit of the membership. If you are due to report MCLE compliance for 2009–2011 (Group 2), you will also receive your Mandatory Continuing Legal Education Certification (C2) form in the license packet that will be mailed in mid-October. Lawyers in Group 2 include active members who were admitted in 1976–1983, 1992, 1995, 1998, 2001, 2004, and 2007. (Members admitted in 2010 are also in Group 2 but are not due to report until the end of 2014.) All credits must be completed by December 31, 2011, and certification (C2 form) must be completed online or be postmarked or delivered to the WSBA by February 1, 2012. For detailed instructions, go to www.wsba.org.

Judicial Member Licensing

New WSBA Bylaws relating to judicial members will be effective January 1, 2012 (see WSBA Bylaws Art. III, Sections A.3, B, C.2, C.4, H.1.c, H.2 and H.3). Judicial members are now asked to complete annual license renewal forms and pay a $50 license fee if they want to maintain eligibility to transfer to another membership type when their judicial service ends. The Judicial Member License Renewal form will be mailed in mid-October and online licensing will be available at that time. If you have not received your form by the end of October, please log in to www.mywsba.org to complete your renewal or request a new form. If you have any questions or concerns, contact membershipchanges@wsba.org or 206-239-2131.

New Tacoma SSA Hearing Office

The Social Security Administration has opened a hearing office in the historic Foremost Building in downtown Tacoma, located near the Tacoma Dome at Pacific and S. 24th St. The new office is under the direction of the Office of Disability Adjudication and Review. Previously, the Seattle hearing office served all of Western Washington. The Tacoma office is now serving residents living in South King, Pierce, Thurston, Lewis, Grays Harbor, Pacific, and Mason counties who are awaiting hearings before an administrative law judge. The office will have 10 administrative law judges, more than 40 support employees, and handle approximately 5,000 decisions each year.

Seattle Municipal Court Launches Veterans’ Court

Washington’s fifth veterans’ court program was launched in September. The court will help in providing services to veterans with psychological or substance-abuse issues as a result of their military service. Presiding Judge Fred Bonner stated, “I am elated and proud to be part of this effort to address the needs of those who have given so much and who have suffered so much.” Veterans Justice Outreach Coordinator of the VA Puget Sound Health Care System Kevin Devine said, “We know that war-zone military service profoundly affects people. For some, successful reintegration
back into civilian life can be especially problematic and can lead to contact with the criminal justice system. VA Puget Sound welcomes this opportunity to partner with the Seattle Municipal Court to link veterans struggling with war-related mental health problems to the treatment they need."

Get More out of Your Software
The WSBA offers hands-on computer clinics for members wanting to learn more about what Microsoft Office Outlook and Word, as well as Adobe Acrobat, can do for a lawyer. We also cover online legal research such as Casemaker and other resources. Are you a total beginner? No problem. The clinic teaches helpful tips you can use immediately. Bring your laptop or use provided computers. Seating is limited to 15 members. The October 10 clinic will meet from 10 a.m. to noon at the WSBA offices and will focus on Casemaker and other online research resources. On October 13, from 2:00 to 4:00 p.m., we will discuss Outlook and Word. There is no charge and no CLE credit. To reserve your seat, contact Peter Roberts at 206-727-8237, 800-945-9722, ext. 8237, or peter@wsba.org.

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

Monthly and Weekly Job Seekers Groups
The Weekly Job Seekers group provides strategy and support to unemployed attorneys. The group runs for eight weeks and is limited to eight attorneys. We provide the comprehensive WSBA job search guide Getting There: Your Guide to Career Success. The Monthly Job Seekers Group will meet on October 12 from noon to 1:30 p.m. LAP psychologist Dan Crystal will be hosting a roundtable discussion of techniques being used to find a job and how to develop a competi-

Never needed more... ...Never more in need.

- Nearly 30% of Washington residents live below 200% of the poverty level
- Only 1 in 5 people will receive help for an urgent legal problem this year
- Since 2009, top requests for legal help have drastically increased:
  - Domestic Violence Advocacy ▲ 109%
  - Foreclosures ▲ 556%
  - Unemployment ▲ 890%

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

Please consider supporting the Campaign by making a secure online contribution at www.c4ej.org or by sending your donation by mail to the address below.

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more about mindful lawyering at http://wac contemplatedlaw.blogspot.com.

Career on Track?
Has your career turned out the way you planned? Do you have a clear vision for the next five, ten, twenty years? If not, what’s getting in your way? If you’d like some help developing your career plan, call the Lawyers Assistance Program at 206-727-8269 or 800-945-9722, ext. 8269.

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

Learn More about Case-Management Software
The WSBA Law Office Management Assistance Program (LOMAP) maintains a computer for members to review software tools designed to maximize office efficiency. LOMAP staff is available to provide materials, answer questions, and make recommendations. To make an appointment, contact Julie Salmon at 206-733-5914, 800-945-9722, ext. 5914, or juliesa@wsba.org.

Upcoming Board of Governors Meetings
October 28–29, Tacoma
December 9–10, Bellingham
January 26–27, Olympia

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

Usury Rate
The average coupon equivalent yield from the first auction of 26-week treasury bills in September 2011 was 0.071 percent. Therefore, the maximum allowable usury rate for October is 12 percent.
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Disciplinary Notices
These notices of imposition of disciplinary sanctions and actions are published pursuant to Rule 3.5(d) of the Washington State Supreme Court Rules for Enforcement of Lawyer Conduct, and pursuant to the February 18, 1995, policy statement of the WSBA Board of Governors. For a complete copy of any disciplinary decision, call the Washington State Disciplinary Board at 206-733-3926, leaving the case name, and your name and address.

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

Resignation in Lieu of Disbarment
Ben Lawrence Hankin (WSBA No. 12531, admitted 1982), of Bellevue, resigned in lieu of disbarment, effective August 10, 2011. While not admitting to the misconduct in the Statement of Alleged Misconduct, Mr. Hankin admits that the Association could prove the violations, by a clear preponderance of the evidence, sufficient to result in his disbarment. The violations listed in the Statement of Alleged Misconduct include failure to act with reasonable diligence, failure to communicate, conflicts of interest, failure to diligently comply with a discovery request, failure to ensure that a non-lawyer assistant’s conduct is compatible with the professional obligations of the lawyer, and assisting another to engage in the unauthorized practice of law. According to the Statement of Alleged Misconduct:

Attorney K was a member of the Virginia State Bar until 2010 and has never been licensed to practice law in Washington. Since 1985, Mr. Hankin and Attorney K had a business relationship. At times, they shared office space and telephone numbers, and worked together on legal matters. The great majority of Mr. Hankin’s law practice involved providing services for Attorney K, or for entities controlled by Attorney K or his associates.

Sometime in 1996, Clients, who owned an Oregon real estate company, hired Attorney K to provide legal representation for their company. In 2002, while negotiating with a bank to obtain a loan for another client (a limited liability company, hereinafter “LLC,” in which Attorney K also had an interest) Attorney K provided the lender with certain documents allegedly signed by Clients. These documents included a promissory note for $2,568,000, which was provided as a loan guarantee for LLC. LLC defaulted on the loan.

In January 2003, the lender sued Clients, claiming they were liable, as guarantors, for the indebtedness owed to them by LLC. In April 2003, the lender filed a Motion for Summary Judgment to establish Clients’ liability. Clients contacted Attorney K for representation in the suit. Attorney K approached Mr. Hankin to assist in preparing an Answer to the Complaint (“Answer”) and a Response to the Motion for Summary Judgment (“Response”). Mr. Hankin had never previously represented Clients. At the time, Mr. Hankin limited his law practice to nights and weekends, and was employed full time in a pawnshop. Mr. Hankin met with Attorney K for two weekends at a law library to prepare the Answer and Response. Mr. Hankin knew Attorney K was not a Washington-licensed attorney. Mr. Hankin had never met, spoke, or otherwise corresponded with Clients at any time during the representation and did not obtain their authority to act as their lawyer. He relied solely on Attorney K to provide him with “facts” and documents relating to the bank loan. Mr. Hankin never consulted Clients to ascertain if Attorney K’s “facts” were accurate and never personally reviewed the executed promissory note.

Attorney K and Mr. Hankin handwrote a draft Answer and Response. Both the Answer and Response included admissions that Clients had executed the promissory note for $2,568,000 payable to the lender. The admissions minimized Attorney K’s involvement and potential liability in the matter, and exposed Clients to a multimillion dollar judgment. Attorney K, or someone at his direction, prepared and finalized the Answer and Response outside of Mr. Hankin’s presence and without his supervision. Attorney K met Mr. Hankin at the pawnshop to have him sign the pleadings. Mr. Hankin briefly reviewed the pleadings before signing the documents, but made no edits, and left Attorney K with the responsibility of filing them. Mr. Hankin allowed Attorney K to retain all notes, legal research, work product, and documents associated with the case, while not keeping any files of his own. On April 29, 2003, the Answer and Response were filed under the wrong cause number without Mr. Hankin’s supervision or knowledge.

Mr. Hankin’s representation of Clients effectively ended after the preparation and filing of the Answer and Response. During his representation of Clients, Mr. Hankin made no efforts to communicate with Clients regarding factual and legal defenses, did not discuss settlement options with them, and did not contact opposing counsel or request relevant documents from the bank. Mr. Hankin knowingly abdicated his duty to
provide independent legal advice to them. Before undertaking the representation, Mr. Hankin did not disclose to Clients that he had previously represented Attorney K or his associates, or that he had an ongoing business relationship with him. Mr. Hankin did not disclose that his representation of them could be materially limited by his responsibilities to Attorney K and by his own interest in maintaining a business relationship with him. Mr. Hankin did not obtain written waivers from Clients regarding the conflicts of interest.

In May 2003, Clients requested that Mr. Hankin attend a meeting scheduled between the bank and defendants in the suit. Mr. Hankin did not respond to their request, appear at the meeting, or otherwise contact them at any point regarding the bank litigation. Sometime in May 2003, Clients hired new counsel. On May 29, 2003, the Court granted the bank’s summary judgment motion. The court order granting the motion states that the documentation reviewed by the court included both Mr. Hankin’s response to the summary judgment motion and the supplemental response filed by Clients’ new counsel. A judgment of approximately $2,700,000 was entered against Clients in favor of the bank.

On June 27, 2003, Clients filed suit against Attorney K for breach of fiduciary duty and legal malpractice in federal court in Oregon. On June 30, 2004, pursuant to court subpoena, Mr. Hankin appeared for a deposition taken by Clients’ counsel in the federal suit, but did not produce any of the documents subpoenaed. Mr. Hankin refused to answer almost all questions presented to him, instead invoking the Fifth Amendment privilege against incrimination. Mr. Hankin attempted to assert a blanket privilege, refusing even to answer questions which subjected him to no criminal liability. After invoking the privilege approximately 20 times, Mr. Hankin and his counsel walked out of the deposition. Clients’ counsel subsequently filed a Motion for Order Compelling Discovery and for Sanctions against Mr. Hankin for his conduct during the deposition, which the Court granted. The Court found that Mr. Hankin’s conduct was only intended “to frustrate the deposition process.” The Court later entered a judgment of $16,005.23 against Mr. Hankin and his counsel for their conduct during the deposition. On December 14, 2004, Mr. Hankin finally appeared for his deposition.

Mr. Hankin’s conduct violated RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; RPC 1.4(a)(2), requiring a lawyer to reasonably consult with a client about the means by which the client’s objectives are to be accomplished; RPC 1.4(a)(3), requiring a lawyer to keep the client reasonably informed about the status of the matter; RPC 1.4(a)(4), requiring a lawyer to promptly comply with reasonable requests for information; RPC 1.4(b), requiring a lawyer to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; RPC 1.7(a), prohibiting a lawyer from representing a client if the representation involves a concurrent conflict of interest; RPC 1.7(b), allowing a lawyer to represent a client notwithstanding the existence of a concurrent conflict of interest if the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client, the representation is not prohibited by law, the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation, and each affected client gives informed consent, confirmed in writing; RPC 3.4(d), prohibiting a lawyer in pretrial procedure from failing to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party; RPC 5.3(b), requiring a lawyer having direct supervisory authority over a non-lawyer to make reasonable efforts to ensure that the non-lawyer’s conduct is compatible with the professional obligations of the lawyer; and RPC 5.3(a), prohibiting a lawyer from practicing law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assisting another in doing so.

Kevin M. Bank represented the Bar Association. Philip H. Ginsberg represented Mr. Hankin.

Disbarred

Stanley D. Tate (WSBA No. 17943, admitted 1988), of Seattle, was disbarred, effective March 10, 2011, by order of the Washington State Supreme Court. This discipline is based on conduct involving failure to provide competent representation, charging unreasonable fees, incorrectly charging contingent fees, trust account irregularities, failure to maintain records of clients’ funds, failure to safeguard clients’ property or provide a written accounting upon distribution of property, offering false evidence, making false statements to the tribunal, the commission of crimes, and engaging in dishonest conduct that reflects disregard for the rule of the law and demonstrates unfitness to practice law.

Trust Account Irregularities: Mr. Tate was a solo practitioner whose practice, since 1997, consisted largely of personal injury cases. In the 1990s, Mr. Tate opened an IOLTA trust account, which he also used as a general business and personal account. Mr. Tate misappropriated client funds from his trust account on 15 separate occasions between August 2002 and September 2005. The total amount of misappropriated funds was $622,014.00. These funds were clients’ settlement proceeds earmarked to reimburse Personal Injury Protection (PIP) and medical costs. During this time period, Mr. Tate informed clients that all funds earmarked to pay PIP and other costs would be used only for those purposes.

To conceal his misappropriation of client funds, Mr. Tate issued checks reflecting that he was paying “costs” or “fees” when he was actually using the funds for personal purposes. Mr. Tate also concealed the misappropriation of client funds through a series of transfers where he had certified checks issued to insurers with PIP subrogation claims, but ultimately cashed the check himself and used the funds for personal purposes. During the Bar Association investigation, Mr. Tate intentionally concealed the disbursement of funds by writing the word “void” on the front of certified checks, even though the checks had been cashed by him.

On five occasions between January 14, 2004, and February 21, 2007, Mr. Tate submitted trust account declarations to the Bar Association, under penalty of perjury, stating that all trust accounts, client funds, and records were being maintained in compliance with former RPC 1.14. At the time, Mr. Tate knew that he was misappropriating client funds, not placing advance fees into his trust account, and commuting personal funds with client funds. Prior to submitting a February 21, 2007, declaration, Mr. Tate knew that his accountant had not yet been able to create client ledgers or a check register for his trust account and that the Bar Association had filed a formal complaint alleging trust account violations in October 2006. Mr. Tate provided false, deceptive, and misleading testimony to the Bar Association.

Unreasonable Fees: Between 2004 and 2005, Mr. Tate used a handwritten log to keep track of tasks he performed for clients. However, he routinely did not record the amount of time that he spent on tasks contemporaneously. When Mr. Tate generated billing records for services provided on an hourly fee basis, a substantial amount of the time he billed and the dates on which he indicated services were rendered were based on speculation. Mr. Tate’s method for billing clients for services resulted in billing excessive hours that exceeded the time reflected in his handwritten logs.

Mahler Reduction: Mr. Tate was aware that insurers seeking reimbursement of PIP in personal injury cases are required to contribute a share of the legal expenses pursuant to a Supreme Court decision (Mahler reduction). Between 2003 and May 2005, Mr. Tate intentionally paid himself the Mahler reduction on six different occasions, totaling $12,573.90, without the knowledge or consent of his clients, and when the Mahler reduction didn’t apply to a matter. Mr. Tate’s settlement statements intentionally reflected that the entire PIP claim was deducted from the settlement and earmarked...
to pay the insurance carriers.

One client sued Mr. Tate and, in September 2007, he issued a check returning her Mahler reduction. In May 2005, Mr. Tate temporarily ceased taking the Mahler reduction. He began charging a contingent fee on the Mahler reduction in 2006, even though his fee agreement did not provide for the additional fee and he knew the reduction did not apply in some cases. Mr. Tate did not return any of the fees he charged relating to the Mahler reduction until after the Bar Association deposed him on the subject.

Client Matters: Between 2004 and early 2006, in eight separate matters, Mr. Tate engaged in the following conduct:

• In one matter, Mr. Tate misappropriated $4,444.47 and concealed the misappropriation by providing false and misleading testimony during Bar Association proceedings and by omitting documentation regarding the check from the client’s file during discovery.

• In five matters, Mr. Tate deposited advance fees, totaling between $4,831.25 and $30,000, into his general business account and used the funds before they were fully earned. In a fifth matter, Mr. Tate converted $3,000 of advance fees from his IOLTA trust account and spent it for personal purposes.

• In several matters, Mr. Tate created billing statements containing inflated and fabricated charges, which he used to deceptively obtain attorney’s fees and interest from clients and others.

• Mr. Tate submitted declarations and exhibits containing false and deceptive statements to a county personnel board in one matter, and filed false and deceptive pleadings to Superior Court in a second matter.

• In a personal injury matter, where the client sustained a serious head injury that resulted from a hit-and-run driver, Mr. Tate failed to competently investigate potential liable parties.

• In two personal injury matters, including the previous matter, Mr. Tate charged unreasonable and excessive charges in connection with attorney’s lien he asserted in each matter.

• Mr. Tate failed to provide clients with an accounting in two matters notwithstanding requests and, in a third matter, failed to return unearned advance fees or provide the client with a copy of their file after withdrawing from representation.

• Mr. Tate engaged in conduct demonstrating unfitness to practice law in violation of the Rules of Professional Conduct.

Mr. Tate’s conduct violated RPC 1.1, requiring a lawyer to provide competent representation to a client; RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in repre- senting a client; RPC 1.5(a), requiring a lawyer’s fee to be reasonable; former RPC 1.5(c)(2), requiring that a contingent fee consisting of a percentage of the monetary amount recovered for a claimant, in which all or part of the recovery is to be paid in the future, be paid only (i) by applying the percentage to the amounts recovered as they are received by the client or (ii) by applying the percentage to the actual cost of the settlement or award to the defendant; former RPC 1.14(a) and (c), requiring that all funds paid to a lawyer or law firm be deposited in one or more identifiable interest-bearing trust accounts; former RPC 1.14(b)(3), requiring a lawyer to maintain complete records of all funds coming into the possession of the lawyer and render appropriate accounts to his or her client regarding them; RPC 1.15A(a), (b), and (c), prohibiting a lawyer from using, converting, borrowing, or pledging client or third-person property for the lawyer’s own use and requiring that all property of clients or third persons in a lawyer’s possession in connection with a representation be held separate from the lawyer’s own property; RPC 1.15A(e), requiring a lawyer to promptly provide a written accounting to a client or third person after distribution of property or upon request; RPC 1.16(d), requiring that, upon termination of representation, a lawyer take steps to the extent reasonably practicable to protect a client’s interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee or expense that has not been earned or incurred; RPC 3.3(a)(1), prohibiting a lawyer from knowingly making a false statement of fact or law to a tribunal or failing to correct a false statement of material fact or law previously made to the tribunal by the lawyer; former RPC 3.3(a)(4) and current RPC 3.4(h), prohibiting a lawyer from offering false evidence; former RPC 3.3(c), requiring a lawyer who has offered material evidence and comes to know of its falsity to promptly disclose this fact to the tribunal; RPC 8.1(b) prohibiting a lawyer from committing a criminal act (by violating RCW 9.66.020) that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respect; RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; RPC 8.4(d), prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice; RPC 8.4(i), prohibiting a lawyer from committing any act involving moral turpitude, or corruption, or any other act which reflects disregard for the rule of law; and RPC 8.4(n), prohibiting a lawyer from engaging in conduct demonstrating unfitness to practice law.

Jonathan H. Burke and M. Craig Bray represented the Bar Association. Kurt M. Bulmer and Philip A. Talmadge represented Mr. Tate. Lish Whitson was the hearing officer.

Suspected

Dan Gilbreath (WSBA No. 33751, admitted 2003), of Yakima, was suspended for three years, effective June 14, 2011, by order of the Washington State Supreme Court following approval of a stipulation. This discipline is based on conduct involving failure to act diligently, failure to communicate, failure to protect clients’ interests, failure to expedite litigation, engaging in the unauthorized practice of law, and violations of duties imposed by the rules. The suspension will be followed by two years’ probation.

Mr. Gilbreath was ordered suspended by the Washington State Supreme Court, effective June 17, 2008, for non-payment of licensing fees. On June 9, 2008, Mr. Gilbreath signed for and received a certified letter from the Association notifying him of his suspension’s effective date. The letter also reminded him of his obligations under ELC Title 14 to notify his clients, opposing counsel, and the court in any pending proceeding of his suspension and to file an affidavit with the Association demonstrating compliance with those requirements.

Between 2008 and 2010, Mr. Gilbreath engaged in the following conduct:

• Failed to provide copies of discovery requests for information; RPC 1.16(d), requiring a lawyer to promptly make reasonable efforts to communicate with a client or third person or a person in a lawyer’s possession in connection with a representation to the client;

• Failed to pay court-ordered sanctions in two matters;

• Filed a motion for reconsideration and a motion for default in two matters after he was suspended from practicing law on June 17, 2008;

• Failed to respond to clients’ attempts to contact him;

• Failed to take reasonable steps to protect clients interests upon learning that he was suspended from practicing law; and

• Failed to notify clients, opposing counsel, or the court of his suspension, or to file an affidavit with the Bar Association demonstrating that he had complied with the notice requirements of ELC Title 14.

Mr. Gilbreath engaged in this conduct while suspended. In addition to engaging in the aforementioned conduct, between November 18, 2008, and October 1, 2010, Mr. Gilbreath failed to respond to grievances filed against him regarding his representation of clients in four matters.

Mr. Gilbreath’s conduct violated RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; RPC 1.4, requiring a lawyer to keep the client reasonably informed about the status of the matter and promptly comply with reasonable requests for information; RPC 1.16(d), requiring a lawyer, upon termination of representation, to take steps to the extent reasonably practicable
to protect a client’s interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred; RPC 3.2, requiring a lawyer to make reasonable efforts to expedite litigation consistent with the interests of the client; RPC 5.8(a), prohibiting a lawyer from engaging in the practice of law while on inactive status, or while suspended from the practice of law for any cause; and RPC 8.4(l), prohibiting a lawyer from violating a duty or sanction imposed by or under the Rules for Enforcement of Lawyer Conduct in connection with a disciplinary matter.

Leslie C. Allen represented the Bar Association. Lloyd D. Coble represented Mr. Gilbreath. James M. Danielson was the hearing officer.

Reprimanded

Rolando M. Adame (WSBA No. 16006, admitted 1986), of Moses Lake, was ordered to receive a reprimand on April 20, 2011. This discipline was based on conduct involving violation of the Rules of Professional Conduct, misrepresentation, and conduct prejudicial to the administration of justice.

On May 21, 2009, the Washington State Supreme Court entered an Order of Suspension against Mr. Adame for nonpayment of licensing fees and failure to file a Professional Responsibility Disclosure Form. The effective date of Mr. Adame’s suspension was June 1, 2009. On May 26, 2009, an assistant in Mr. Adame’s office signed a certified mail receipt indicating that Mr. Adame acknowledged receipt of a letter from the Washington State Bar Association advising him of the suspension.

After the effective date of his suspension, Mr. Adame appeared in court on two matters over two days, including representing a client in a plea and sentencing hearing. Mr. Adame immediately discontinued the practice of law upon receiving notice of his suspension from a colleague. On his “Application for Change of Membership Status to Active” submitted to the Association in late June 2009 in support of reinstate, the Association denied the application.

Mr. Adame represented himself. Carl J. Carlson was the hearing officer.

Reprimanded

A.E. Bud Bailey (WSBA No. 33917, admitted 2003), of Vancouver, was ordered to receive a reprimand on June 28, 2011, by order of the Washington State Supreme Court imposing reciprocal discipline in accordance with an order of the Supreme Court of the State of Oregon. This discipline was based on conduct involving failure to communicate with a client, failure to abide by a client’s decisions regarding the representation, and accepting a settlement offer without first communicating that offer to the client or obtaining the client’s permission. For more information, see the Oregon State Bar Bulletin (May 2011), available at www.osbar.org.

Mr. Bailey’s conduct violated Oregon’s RPC 1.2(a) (failure to abide by a client’s decision whether to settle a matter); and Oregon’s RPC 1.4 (failure to keep a client reasonably informed and to communicate sufficiently to allow the client to make informed decisions).


Reprimanded

Stephen R. McCue (WSBA No. 12497, admitted 1982), of Helena, Montana, was reprimanded, effective May 18, 2011, by order of the Washington State Supreme Court imposing reciprocal discipline following an order of the Supreme Court of the State of Montana. For more information, see the Montana State Bar Association’s publication The Montana Lawyer (May 2010), available at www.montanabar.org.

Mr. McCue’s professional misconduct is being held confidential under Montana’s Rule 26 conditional admission clause.

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

Non-Disciplinary Notices

Transferred to Disability Inactive Status

Brenda J. Little (WSBA No. 17688, admitted 1988), of Lynnwood, was by stipulation transferred to disability inactive status, effective July 19, 2011. This is not a disciplinary action.

Transferred to Disability Inactive Status

Martha G. Zwicker (WSBA No. 18038, admitted 1988), of Renton, was by stipulation transferred to disability inactive status, effective April 5, 2011. This is not a disciplinary action.
October 31, November 3, 7, 9, and 10 — Seattle. 34.25 CLE credits, including 1.75 ethics. By the Dispute Resolution Center of King County; www.kcdrc.org/training/communitytraining.html.

**Animal Law**

**9th Annual WSBA Animal Law Seminar: The Call of the Wild**

November 7 — Seattle and webcast. CLE credits pending. By the WSBA Animal Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Inspection Law and Subrogation Basics**


**Nuts and Bolts of Representing Nonprofit Organizations, Part 2: Maintaining Nonprofits**

October 27 — Seattle. 2.5 CLE credits. By Washington Attorneys Assisting Community Organizations; 1-888-288-9695; www.waaaco.org.

**27th Annual Antitrust Seminar**

November 3 — Seattle and webcast. 6 CLE credits. By the WSBA Antitrust and Consumer Protection Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**2011 Annual Corporate Counsel Institute**

November 18 — Seattle and webcast. CLE credits pending. By the WSBA Corporate Counsel Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Environmental Law**

**Growth Management Act: Preparing for the Next 20 Years**

October 4 — Seattle and webcast. 6.25 CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Business Law**

**Insurance Law and Subrogation Basics**


**Construction Law**

**Insurance in the Construction Industry**

October 5 — Seattle and webcast. 6.5 CLE credits, including 1 ethics credit. By The Seminar Group; 800-574-4852 or 206-463-4400; www.theseminargroup.net/seminar.lasso?seminar=11.inswa.

**Construction Contracts and Lien Law**


**Construction Contracts and Lien Law**


**Employment Law**

**Annual Labor and Employment Law Conference**

October 10 — Seattle and webcast. 6.25 CLE credits. By the WSBA Labor and Employment Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Ethics**

**Ethics and Social Media**

October 3 — Seattle and webcast. 1.5 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**The Client-Lawyer Relationship**


**Ethical Dilemmas for the Practicing Attorney**

October 19 — Mount Vernon. 4 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Understanding and Managing High Conflict Personalities**

October 24 — Seattle and webcast. 6 CLE credits, including 1.5 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Washington Ethics Highlights**


**Elder Law**

**Retirement Assets and Domestic Relations: It’s More Than Just a QDRO**

October 12 — Seattle and webcast. 6.25 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Estate Planning**

**56th Annual Estate Planning Conference**

October 31—November 1 — Seattle. 14.5 CLE credits pending, including 1 ethics. By the Estate Planning Counsel of Seattle and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Family Law**

**Annual Family Law Section Conference: Dependency: Gaining Perspective on a Complex Issue**

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

October 21 — Seattle and webcast. CLE credits pending. ByWSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.


**Construction Contracts and Lien Law**


**Construction Contracts and Lien Law**


**Construction Contracts and Lien Law**


**Construction Contracts and Lien Law**


**Construction Contracts and Lien Law**


**Construction Contracts and Lien Law**


October 27 — Seattle. 2.5 CLE credits. By Washington Attorneys Assisting Community Organizations; 1-888-288-9695; www.waaaco.org.
October 6 — Seattle and webcast. 6.75 CLE credits, including 1 ethics. By the WSBA Family Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

6th Annual Family Law Hot Topics: War, Peace, and Unhappy Families
October 7 — Seattle. 5.75 CLE credits, including .5 ethics. By KCBA-CLE; 206-267-7057; www.kcba.org/cle.

Retirement Assets and Domestic Relations: It’s More Than Just a QDRO
October 12 — Seattle and webcast. 6.25 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Settlement Guardian ad Litem Training

General

Ethics and Social Media
October 3 — Seattle and webcast. 1.5 CLE ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Evidence with Larry Cohen
October 5 — Seattle and webcast. 6 CLE credits, including 2 ethics pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Mental Illness, Personality Disorders, and Client Management
October 5 — Seattle. 1 CLE credit. By McKinley Irvin Family Law Speaker Series; 206-625-6900; www.mckinleyirvin.com/resources/cle.

Still Haven’t Found What I’m Looking for: Current Issues in Search and Seizure

New Innovations in Jury Research with Donald Vinson and David Markowitz
October 18 — Seattle and webcast. 3.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Ethical Dilemmas for the Practicing Attorney
October 19 — Mount Vernon. 4 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Medicine for Attorneys

Immigration Options for Immigrant Survivors of Domestic Violence: U-Visa under the Victims of Trafficking and Violence Protection Act
October 21 — Seattle. 4.25 CLE credits, including .75 ethics credit. By University of Washington School of Law; 206-543-0059; www.law.washington.edu/cle.

Smart Grid: Today’s Regulation and Tomorrow’s Technology

Understanding and Managing High Conflict Personalities
October 24 — Seattle and webcast. 6 CLE credits, including 1.5 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Trying PIP/UIM and De Novo Cases

Taming Technophobia
November 4 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Trust Account Compliance
November 9 — Seattle and webcast. 2 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Quickbooks for Trust Accounting
November 9 — Seattle and webcast. 2 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Microenterprise 101: Representing Microenterprise Clients
November 15 — Seattle. 2.5 CLE credits.


Practice Tips from the Bench
November 17 — Seattle. 1 CLE credit. By McKinley Irvin Family Law Speaker Series; 206-625-6900; www.mckinleyirvin.com/resources/cle.

Ethical Dilemmas for the Practicing Lawyer
November 14 — Seattle and webcast. 4 ethics credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Time Mastery for Lawyers: Over 100 Ways to Maximize Your Productivity and Satisfaction
November 15 — Seattle and webcast. 6 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Ethical Dilemmas for the Practicing Lawyer
November 17 — Spokane. 4 ethics credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Negotiation Ethics: Winning Without Selling Your Soul – Featuring Marty Latz
November 30 — Tele-CLE. 1.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Inland Empire Intellectual Property Institute: Crucial Insights and Updates on Intellectual Property Law
October 14 — Spokane. 6.5 CLE credits, including 1 ethics. By the WSBA Intellectual Property Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Fundamentals of Intellectual Property

Landlord-Tenant Law
Moderated Video Replay of Residential Landlord/Tenant Law
October 11 — Friday Harbor. 6 CLE cred-
its. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Water Intrusion and Mildew**
October 20 — Seattle and webcast. 6 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Litigation**

**Evidence with Larry Cohen**
October 5 — Seattle and webcast. 6 CLE credits, including 2 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**New Innovations in Jury Research with Donald Vinson and David Markowitz**
October 18 — Seattle and webcast. 3.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Webcast Seminars**

**Ethics and Social Media**
October 3 — Seattle and webcast. 1.5 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Growth Management Act: Preparing for the Next 20 Years**
October 4 — Seattle and webcast. 6.25 CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Evidence with Larry Cohen**
October 5 — Seattle and webcast. 6 CLE credits, including 2 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Insurance in the Construction Industry**
October 5 — Seattle and webcast. 6.5 CLE credits, including 1 ethics. By The Seminar Group; 800-574-4852 or 206-463-4400; www.theseminargroup.net/seminar.lasso?seminar=11.inswa.

**Annual Family Law Section Conference: Dependency: Gaining Perspective on a Complex Issue**
October 6 — Seattle and webcast. 6.75 CLE credits, including 1 ethics. By the WSBA Family Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Insurance Law and Subrogation Basics**

**Annual Labor and Employment Law Conference**

October 10 — Seattle and webcast. 6.25 CLE credits. By the WSBA Labor and Employment Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Retirement Assets and Domestic Relations: It’s More Than Just a QDRO**
October 12 — Seattle and webcast. 6.25 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**New Innovations in Jury Research with Donald Vinson and David Markowitz**
October 18 — Seattle and webcast. 3.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Medicine for Attorneys**

**Water Intrusion and Mildew**
October 20 — Seattle and webcast. 6 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Current Issues in Maritime Law**
October 21 — Seattle and webcast. 6.75 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**What Every Civil Lawyer Needs to Know About Criminal Law**
October 21 — Seattle and webcast. 1.5 CLE credits pending. By King County Washington Women Lawyers; 206-442-0888; www.kcwwl.org.

**Understanding and Managing High Conflict Personalities**
October 24 — Seattle and webcast. 6 CLE credits, including 1.5 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

**Trying PIP/UIM and De Novo Cases**

**27th Annual Antitrust Seminar**
November 5 — Seattle and webcast. 6 CLE credits. By the WSBA Antitrust and Consumer Protection Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.
Taming Technophobia
November 4 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbcle.org.

9th Annual WSBA Animal Law Seminar:
The Call of the Wild
November 7 — Seattle and webcast. CLE credits pending. By the WSBA Animal Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbcle.org.

Trust Account Compliance
November 9 — Seattle and webcast. 2 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbcle.org.

Quickbooks for Trust Accounting
November 9 — Seattle and webcast. 2 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbcle.org.

Ethical Dilemmas for the Practicing Lawyer
November 14 — Seattle and webcast. 4 CLE ethics credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbcle.org.

The Essentials of Handling DUI and DOL Cases
November 15 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbcle.org.

Time Mastery for Lawyers: Over 100 Ways to Maximize Your Productivity and Satisfaction
November 15 — Seattle and webcast. 6 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbcle.org.

2011 Annual Corporate Counsel Institute
November 18 — Seattle and webcast. CLE credits pending. By the WSBA Corporate Counsel Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbcle.org.

Special Needs Trusts
November 29 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbcle.org.

New Developments, Changes, and Challenges in Real Estate
December 2 — Seattle and webcast. 625 CLE credits, including 5 ethics pending. By the WSBA RPPT Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbcle.org.

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**Positions Available**

**Director of public defense** — Grant County is looking for an experienced individual to oversee the criminal defense system for Grant County Superior, District, and Juvenile Courts. The director of public defense supervises the public defense system for Grant County with responsibilities including but not limited to: interviewing, hiring, and training public defenders; establishing department policies and procedures; assigning and reviewing cases; managing department employees; preparing reports; and responding to client complaints. Salary is $10,416–$11,666 per month; DOQ/DOE. Grant County offers a competitive, comprehensive compensation and benefits package. Position posting and application is available at www.co.grant.wa.us. Submit letter of interest, résumé, three references, application, and background release by mail, email, or fax to: Grant County Human Resources, PO Box 37, Ephrata, WA 98823; thechler@co.grant.wa.us, fax: 509-754-6588, EOE.

**Microsoft employment attorney** — 764719 (Redmond, Washington) — Microsoft has an immediate opening for an experienced employment attorney to join the Employment Law Group to work on cutting-edge employment law issues in support of its dynamic and creative Human Resources Department and Senior Leaders. Responsibilities: Advising human resources professionals and business leaders about employment law issues including discrimination, wrongful termination, wage and hour, privacy, and ADA/FMLA. Advising on and handling attorney-directed internal investigations as well as handling demand letters and agency charges. Developing and reviewing written human resources policies and processes, templates, intranet sites, and training materials. Qualifications: minimum of four years of work experience in employment law, including counseling clients, handling significant employment litigation, Juris Doctorate from an ABA-accredited law school with a license to practice law, great written and oral communications skills, with the ability to articulate recommendations. Microsoft is an Equal Opportunity Employer (EOE) and strongly supports diversity in the workplace. Please apply via https://careers.microsoft.com/jobdetails.aspx?ss=&pg=0&so=&rw=1&jid=50344&jlang=en.

**WSBA general counsel** — The WSBA general counsel serves as counsel for the WSBA Board of Governors and the WSBA executive director and handles the WSBA’s legal affairs. In addition, the general counsel oversees the work of staff supporting the Practice of Law Board, the Disciplinary Board, the Court Rules and Procedures Committee, and the Rules of Professional Conduct Committee. Among other duties, the general counsel is responsible for overseeing the administration of the WSBA Ethics Program and custodianships; provides staff support to the Lawyers’ Fund for Client Protection and other WSBA committees and task forces; and is responsible for managing the insurance coverage for the organization and overseeing the member-benefit insurance programs. For details and how to apply, see www.wsba.org/about-wsba/careers/wsbajobs.

**Associate attorney** — Vancouver law firm is seeking a licensed Washington state attorney having a minimum of two years’ litigation experience. The candidate should have consumer bankruptcy experi-
For 75 years, GEICO has stood out from the rest of the insurance industry! We’re one of the nation’s largest and fastest-growing auto insurance companies, thanks to our low rates and great customer service. As a wholly owned subsidiary of Berkshire Hathaway, we offer new hires career advancement in a stable, supportive, and rewarding environment, and an excellent Total Rewards benefits program. Driving your career. Insuring your future. GEICO’s staff counsel office in Tacoma, WA, is seeking a litigation attorney with a minimum of five years’ experience to defend lawsuits pending in the Seattle area. Job duties will include the defense of first- and third-party cases; conducting all aspects of discovery; and assisting with determinations regarding liability, damages, and coverage as requested by the Claims Department. The ideal candidate will possess excellent writing, analytical, and computer skills. Experience in the field of insurance defense and/or personal injury is strongly desired. All applicants must be licensed in the state of Washington. GEICO staff counsel in Tacoma, WA, is seeking an experienced legal secretary/assistant with a minimum of five years’ experience to provide support for staff attorneys. Duties include drafting basic pleadings, scheduling, and file organization. Candidate must be able to manage/prioritize workload. Insurance defense and personal injury experience is a necessity. To apply, go to https://atsprod.geico.com/psp/atsprod/employee/hrms/c/hrs_hram hrs_ce.gbl?page=hrs_ce_hm_pr. Credit and background checks and hair or urine drug tests are required as part of our pre-employment process.

Small, congenial Seattle boutique IP firm with an exclusively transactional practice, and representing a mix of clients, including several Fortune 500 companies, is looking for a full-time, experienced associate attorney. We are serious about our work, but we’re also a fun-loving group of lawyers. Our firm is committed to working with qualified applicants to balance work schedule with the rest of life’s activities, including reasonable billable hours requirements. We are in a great location on the north side of Lake Union near Gasworks Park, where we have a view of downtown Seattle. Applicants should have at least two years of solid experience handling technology transactions, principally licensing and services agreements related to software, managed services, voice/data communications, media/content, and the Internet. Strong drafting, negotiation, and communications skills required. Must be a member of the Washington State Bar Association. Please send résumé, cover letter, and writing sample to Megan McKean (jobs@leibowmckean.com), Leibow McKean PLLC, 205 NE Northlake Way, Ste. 210, Seattle, WA 98105. No phone calls or staffing services. We are an equal opportunity employer.

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I became a lawyer because I started interpreting for my parents when I was in kindergarten.

The future of the practice of law is ever changing and you have to have a commitment to lifelong learning.

If I were not practicing law, I would be selling real estate. I could use all of the same pictures I use in phonebook ads and I wouldn’t need a new wardrobe.

If I could change one thing about the law, it would be for all participants in our criminal justice system — prosecutors, defense counsel, and law enforcement — to change their focus from winning or losing a case to seeking truth and justice.

This is the best advice I have been given: (on the importance of always maintaining ethical conduct) If, at the end of the day, someone has to go to jail, make sure it’s your client.

I would share this with new lawyers: No matter what, never compromise your integrity and your reputation. Be cautious about burning bridges. You never know when you may need to cross those same bridges again. It is important to value your relationships and your friendships with your colleagues throughout your career. They will need your support at times and at other times you will need theirs.

I would give this advice to a first-year law student: Don’t reinvent the way you study. Do what works for you and don’t worry so much about what everyone else is doing.

Technology is imperative to keep up with, understand, and competently represent your clients. Using things like Facebook, MySpace, Twitter, texting, and converting and downloading files are now a very real part of trial preparation and law enforcement investigations.

Someone whose opinion matters to me: My brother Pedro, who also happens to be my best friend.

People living or from the past I would like to invite to a dinner party: Abraham Lincoln, Winston Churchill, and Eleanor Roosevelt. They continue to inspire with their courage, wisdom, and perspective.

I am most proud of this: I am a Mexican immigrant and moved to Washington state in third grade with my parents, who were migrant farm workers. I worked full-time and attended college at night to earn my bachelor’s degree and then went on to law school and became a naturalized U.S. citizen. I’m a testament that hard work, persistence, and a passion to achieve your dreams does pay off.

I am most happy when relaxing and spending time with my close friends and family.

Best stress reliever: Going for a long run. It’s much better than my first choice of eating.

A book I recommend reading: The Slight Edge by Jeff Olson.

What keeps me awake at night: As a trial attorney, I find it difficult not to be completely absorbed with the facts of the case beginning on the days leading up to trial until the verdict comes in. I spend a lot of time analyzing and re-analyzing my strategy and worrying if I am making the right strategic decisions and making the right objections to preserve the record. Having said that, however, very few things are as rewarding as the favorable result of a case well-tried.

Currently playing on my iPod/CD player/record player: Kenny Chesney, AC/DC, Mat Kearney, and Rihanna. I listen to a little bit of everything to keep things interesting.

I can’t live without: My family. At the end of the day, my family is what is most important to me and the reason for everything I do.

The hardest part of my job: Finding a balance between work, family, friends, personal development and education, service to my community, and health and fitness.

The best part of my job: I love the autonomy being in private practice provides. It, of course, has its drawbacks with the stress involved in operating my own practice, but the rewards of being able to maintain a high level of flexibility for my children are well worth it.

My name is Gloria Ochoa and I am a solo attorney in private practice in Spokane. I am the proud mother of four children, ranging in ages from 16 years to five months. I have been in practice for 10 years. I practice mainly criminal defense in both state and federal court. I am on the board of Washington Women Lawyers, a past board member for LBAW, and a volunteer on the Spokane County Juvenile Diversion Neighborhood Accountability Board.
Imperfectly Yours

It has taken me a long time, but I’m finally starting to accept, even appreciate, imperfection — mine and everybody else’s. By nature, I’m a perfectionist. I hate making mistakes, and I’m obsessive-compulsive about certain things. But I’m getting better.

Age-related laziness has something to do with that. But I’ve also found that imperfection can be fun, even endearing.

This summer, I agreed to lend my SUV to a friend who needed it to haul stuff that wouldn’t fit in her Saab. We agreed to swap vehicles for a night. She came to my house to make the trade and show me the eccentricities of her car, which, let’s just say, has a few miles on it.

First, she explained, her car’s manual transmission has no second gear. Second, if the driver’s door is opened more than a foot or so, it gets stuck and can be closed only by performing a ritual I will describe momentarily. I wasn’t too concerned about the missing gear. I have lots of experience with manual transmissions, including some in worse shape than hers. I once drove a car that would stay in third gear only if you jammed an oil can between the shifter and the emergency brake. The Saab’s door situation worried me, though. I realized that opening and closing a car door is such a habitual act that I was bound to throw it open without remembering it gets stuck. Indeed, even though we had just talked about it, I did exactly that as I hopped in to make room for her to back my vehicle out of the driveway.

It was a blessing in disguise, because it gave my friend the opportunity to demonstrate how to close the door once stuck. I retrieved a framing hammer and we initiated a procedure in which I would whack part of the hinge while she simultaneously shoved on the door. It took precise timing, but we eventually got it unstuck. I got in and backed up her car. As she was pulling out of the driveway, I remembered something I had to tell her. So, EVEN THOUGH I HAD JUST SPENT THE LAST 10 MINUTES BASHING HER DOOR WITH A HAMMER TO FIX IT, I threw it open again. After another 10 minutes of hammering and door-rending, she was on her way.

Twenty years ago, this would have infuriated me. Seriously, who drives a car with no second gear and a door that gets stuck? Who hangs out with people who have cars like that? And who is stupid enough to toss open a door — twice! — after just being warned it gets stuck? But actually, by the time we were finished wrangling the door into submission, we were both laughing so hard that it didn’t matter if my neighbors thought we were idiots. It was way more fun than if we had simply swapped keys and been done with it.

I didn’t have to drive anywhere until the next afternoon, when I had been invited to speak at a ceremony for a group of Western Washington University students who had just completed a graduate program. I was to meet one of them in the parking lot, where she was going to give me a parking pass and lead me to the event site. As I drove to campus, I kept repeating, mantra-like, “Don’t get the door stuck. Don’t get the door stuck.”

As I pulled into the lot, I called the student and soon saw her approaching. As I prepared to exit the Saab, I realized I had forgotten to bring my hammer. I shuddered at the prospect of having to hammer-lessly wrestle the door shut — or possibly call a tow truck — in front of a group of impatient college students. Obviously, I couldn’t just leave the car sitting there with the door open. Rather than risking it, I decided I would crawl out through the passenger door.

The student approached the driver’s door, not realizing I couldn’t use it. Furthermore, she didn’t realize — and I haven’t mentioned until now — that the driver’s window didn’t open. So I had to roll back the sunroof and yell to her that I would be materializing shortly through the interior of a car — in and out of the bucket seats, dodging the gear shift and emergency brake levers — before flinging the passenger door open and emerging in an awkward crouch.

Again, years ago I might have simply driven off rather than humiliating myself like that. Instead, after squirming out of the Saab, I told her the whole story and proceeded with my speech, which included the advice to savor the odd moments that reflect life’s imperfections, because those are the things you’ll remember fondly a few years down the road.

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