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BarNews

WASHINGTON STATE

THE OFFICIAL PUBLICATION OF THE WASHINGTON STATE BAR ASSOCIATION

The 2020 APEX Awards

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



DEC. 2020/JAN. 2021
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*Best Wishes for Peace and Joy this Holiday Season
and a New Year of Health, Happiness and Prosperity.*

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Mutual Aid—and Other Ways to Give Back

Back in January, I made a list of things I wanted to do in the year 2020. Many of these things—learn to make yogurt and do a triathlon, for example—were swiftly abandoned when COVID-19 hit several weeks later. One of the things on my list, however, was to volunteer more. I knew volunteers were needed more than ever during the pandemic, but I wasn't sure where to start. Where do you go to volunteer when most meeting spaces are closed? How do you help other people when you are being told to stay away from them?

Kirsten Abel is the editor of *Washington State Bar News* and can be reached at kirstena@wsba.org.

Then I stumbled upon something called mutual aid. It's not a new concept. Historical examples include the Black Panther Party's breakfast program in the 1960s¹ and fraternal societies' health care and life insurance programs during the early 20th century.² But the idea was new to me. I learned that mutual aid

happens when members of a community come together to offer goods and services to one another. It is a system of support—these days often organized by spreadsheets and Google Docs—that is meant to become permanent. People within a mutual aid network are encouraged to build relationships, stay connected, and continue to support one another outside the structure of a specific organization or event.

Several months ago I signed up through the COVID-19 Mutual Aid Solidarity Network³ in Seattle and started shopping for and delivering groceries to older adults living in and around my neighborhood. Although building relationships with people is a lot more difficult these days, it has been incredibly nice to safely support and connect with people living near me. And in a time when so little feels within our control, it is a relief to do something that helps someone else.

In this issue, we are highlighting some of the ways in which you can volunteer with the WSBA. This organization depends on volunteers to further its mission and there are myriad ways to get involved. On pages 36-42, explore different WSBA committees, boards, and other roles to find one that matches your interests and expertise. **BN**

ON THE COVER

Staff photo illustration; courtesy photos



NOTES

1. <https://atlantablackstar.com/2015/03/26/8-black-panther-party-programs-that-were-more-empowering-than-federal-government-programs/>.
2. www.heritage.org/political-process/report/mutual-aid-welfare-state-how-fraternal-societies-fought-poverty-and-taught.
3. More about the Seattle organization here: <https://covid19helpwa.org/food-assistance/covid19-mutual-aid-solidarity-network-diverse-assistance/>. Other Washington mutual aid networks include Mutual Aid Spokane County (www.mutualaidspokanecounty.com), Yakima Pride (www.yakimapride.org), Tacoma Mutual Aid Collective (<https://tacomamutualaidcollective.com>) and many, many more. If you can, I encourage you to find a mutual aid Google Doc near you and sign up to help.

Washington State Bar News will inform, educate, engage, and inspire by offering a forum for members of the legal community to connect and to enrich their careers.

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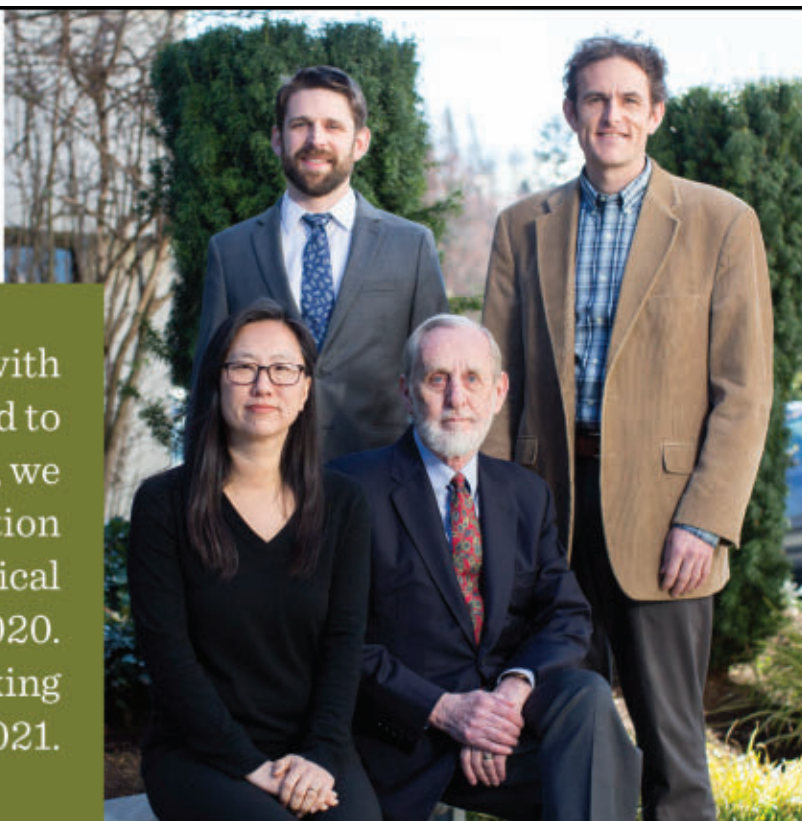
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Stop State-Sanctioned Gambling

The theme of the October 2020 [Bar News] publication was genuine and worthwhile. Paraphrasing: Let's help the poor by providing free legal services. Excellent.

But in an eyebrow-raising juxtaposition, four pages of the same publication brag on the great things lawyers, corporations, elected policy makers, and regulators are doing to expand government-sanctioned gambling in Washington—a scheme that blatantly exploits the state's poor and significantly contributes to the lack of mobility out of poverty for tens of thousands of citizens, the very people we try to help through pro bono representation.

Building assets and the accumulating and investing of savings are the keys to financial peace. Owning a home, a college fund, retirement accounts, and a stock portfolio are the hallmarks of middle and upper-class America, and these assets are all the result of savings. Creating wealth by the accumulation of assets and the investment of savings is the direct opposite of what government-sanctioned gambling like the state lottery

and local casinos represent and encourage.

If Bar members genuinely want to help the poor in a big and meaningful way, we need to dramatically reduce the amount of personal wealth citizens are losing to government-sanctioned gambling. Let's keep helping the poor; but let's not enable others to take [money] away from them.

As a meaningful first step, we urge lawyers who are members of this esteemed Bar association to help poor people by advocating an end to the state's practice of allowing gambling advertising, marketing, and sponsorships, which are exempt from truth-in-advertising regulations under the Federal Trade Commission.

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OMISSIONS: Following publication of the November article, "Diversity at the Seat of Governance," Bar News was made aware of additional "firsts" on the Board of Governors, which we were able to independently verify: Lowell Halverson was the first WSBA president (1990-91) of Native American heritage; Lindsay Thompson was the first openly gay member of the Board of Governors (1998-2001); Anthony Gipe was the first openly gay WSBA president (2014-15).

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Washington State Bar News Submission Guidelines

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

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There's More on the Blog

NWSidebar

THE VOICES OF WASHINGTON'S LEGAL COMMUNITY



Ghost of Courts Past: The Story Behind Washington's Oldest Courthouse

In the July/August 2016 issue of *NWLawyer* (now *Bar News*), Andrew Bergh pointed out in his excellent article, "Washington's Historic Courthouses—Through the Lens: Attorney-Photographer Explores the State," that the beautiful 1887 courthouse in Columbia County is the oldest working courthouse in the state. While Bergh gave a fascinating glimpse [...]

nwsidebar.wsba.org



Attorney General Bob Ferguson Honors Service Members, Calls for Veterans Day MEDAL Volunteers

Each year on Veterans Day, we pause to honor those who have served in our armed forces. We should never forget their contributions to our safety, security, and health. Over the past year, service members have been called to the front [...]

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Supreme Court Applies Corporate Attorney-Client Privilege to 'Functional Employees'

The Washington Supreme Court recently applied the corporate attorney-client privilege to "functional employees" in *Hermanson v. Multicare Health Systems, Inc.* In the privilege context, "functional employees" are not directly employed [...]

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A NOTE FROM THE WSBA EXECUTIVE DIRECTOR

A Look to the Future: Volunteering and Working at the Bar

“And once the storm is over, you won’t remember how you made it through, how you managed to survive. You won’t even be sure, whether the storm is really over. But one thing is certain. When you come out of the storm, you won’t be the same person who walked in. That’s what this storm’s all about.”

— Haruki Murakami, *Kafka on the Shore*

And what a storm we are in. Each of us is facing intersecting and relentless logistical and emotional challenges. Our lives have quite literally changed, and I suspect we will never return to “normal.” For many, it’s an uncomfortable if not frightening realization. But I can’t help but feel hopeful about the opportunity it presents. I want to share with you—in this issue of *Bar News*, dedicated to the extraordinary work of our volunteers—what some of those opportunities look like for the future of working, volunteering, and engaging with the Bar.

My 11-year-old has taught me that my optimistic outlook is not always appreciated and that—like all traits—it carries a light and a shadow side. So before painting a picture of a future that might be, I must acknowledge the very real suffering around us. People we love have died. People in our communities are yearning for equity and desperate for us to learn and grow as a country. Families and friends are deeply divided. I see no “bright side” to this suffering. I do see an opportunity, and a responsibility, to grow from it.

The first step toward meaningful change is often the hardest. But these unprecedented times have given us the needed push to take it. The governor’s work-from-home order in March radically escalated many future-looking conversations and decisions we had on the back burner—we went from a gentle simmer to a roiling boil overnight. Like many of you, we had to quickly transform from an on-site organization to a remote one, all while doing even more to support members and the public.¹

The shift has not been entirely graceful but, almost 10 months later, we have changed our operations in ways that we would have considered impossible pre-pandemic. Having planned many meetings and events over the years at the WSBA, I often lamented

that while the WSBA had the technology infrastructure to offer remote participation, we tended to prioritize the in-person components of these events and treated remote participants like add-ons. Now, out of necessity, we are actually using that technology in ways that invite and support remote participation. The result is that people from all across our state are now able to collaborate on a more equal footing.² Rather than having to take the day off from work to travel to Seattle for a two- or three-hour committee meeting, or strain to follow the conversation over speakerphone, volunteers from every corner of the state and beyond can more fully engage in the work of the Bar with the aid of a computer, webcam, and decent internet connection.

Likewise, we’ve seen our workforce adapt incredibly well to a remote environment. WSBA employees continue to deliver on our core functions (and then some) with professionalism and grace. And while some are eager to get back into the office, some of us are enjoying this newfound flexibility. With the governor’s latest restrictions on public gatherings, we plan to remain almost all remote in our operations through at least March 2021. We now are at a unique intersection—with enough remote experience under our belts and the creation of semi-normal routines, we can begin to envision not only how our operations *could* look in the future, but how they *should* look. I am talking about where we hang our physical shingle. When our lease expires in 2026, can we shrink our physical footprint? Could we establish satellite offices across the state? What will these shifts cost? What might they save?

Have we lost something by not being able to meet and work together in person? By not being able to shake each other’s hands and get to know each other over a cup of WSBA coffee? Absolutely! But I am



Terra Nevitt


*WSBA Interim
Executive Director*

Nevitt can be reached
at terran@wsba.org
or 206-727-8282.

The first step toward meaningful change is often the hardest. But these unprecedented times have given us the needed push to take it.


NEED TO KNOW

Cyber-Data Incident at myWSBA.org

In November, the WSBA discovered a potential data security incident involving myWSBA.org. At the time of publication, and as a precaution, the portal remained offline, causing disruptions for members wanting to log in into their Fastcase and/or Casemaker accounts, purchase a CLE product, pay their license fee, and report MCLEs. The WSBA IT Department is working quickly to relaunch myWSBA.org—safely and securely—as soon as possible. For more information, including temporary logins to Fastcase and Casemaker, visit www.wsba.org. 

moved by what we've learned about our ability to provide a work and volunteer experience that is more accessible, equitable, and welcoming to all.

Which brings me to the other challenge of the day: inequity. The WSBA's leaders have been wrestling with fundamental questions now at the forefront of our nation's conscience: How do we live our values to expand diversity, equity, inclusion, and access to justice in the legal community? The Board of Governors has committed to engaging in deep learning this year on these topics, and if you want to engage in that work alongside us we've curated a number of resources at www.wsba.org/about-wsba/equity-and-inclusion/achieving-inclusion. This work can be deeply difficult and deeply painful, but if we can lean in and do the work seriously, maybe we can finally move beyond our troubled history. I don't have all the answers, but I do have hope.

I hope you too are finding things to feel hopeful about in the midst of this storm. 

NOTES

1. If you haven't already, please check out our COVID-19 resource page at www.wsba.org/covid-19.
2. Anecdotally, we seem to be having a better time achieving quorum for meetings and are moving through agenda items more efficiently. We also have seen better-than-usual attendance at some of our events. For example, the virtually held family law midyear meeting and CLE grew by more than one-third this year. We also experienced record attendance at our virtual MentorLink Mixer hosted by the Washington Young Lawyers Committee in October.



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2020: Brought to You by the Letter P

(Pandemic, Politics, and Protests)

As I write this, three weeks have passed since the election and I am sitting at my dining room table listening to the news about election challenges, recounts, alleged voter fraud, and who will be sworn into office come January. A chaotic end to a chaotic year. As the British might say “omnishambles.” This being the last edition of *Bar News* in 2020, I thought it was a good time to reflect on the year and update you on measures that the WSBA has undertaken during an unprecedented year filled with politics, protests, and a pandemic that continues to ravage our country and the world.

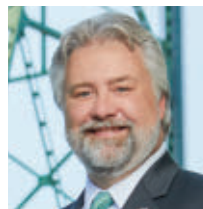
Pandemic

For almost all of us, the year began much differently than it will end. Few could have predicted the pandemic that would seize our nation and the world and dramatically change how we live and work. Many have lost jobs. For those of us who remain employed, working conditions are much different. In March, my dining room became my primary office. Up until then, it was used for an occasional dinner (usually Thanksgiving) and not much else. When we purchased our house several years ago, I viewed it as “wasted space” and a good place for a pool table. My better half objected to the pool table idea, so we filled it with a table we bought from a second-hand store and left it to gather dust. Little did I know that a few short years later I would spend more time at that old table than any other part of my home. Soon I would add card tables that had been stored in the basement, a printer, dual monitors, a rolling cart that I borrowed from the office, and a 1947 wooden Gunlocke swivel chair to assemble my own personal “command center” from which I would practice law and now serve as president to this organization. I’ve participated in countless Zoom meetings since March and look forward to any opportunity that gets me out of the house. What was once the occasional site inspection or journey to the office to sign documents is now an appreciated change of pace.

Early in the COVID-19 emergency, the WSBA recognized the urgency of the situation and the importance of finding ways to help its members and the public through a difficult year. The staff of the WSBA and volunteers formed a joint task force (one externally facing and one internally facing) that worked together to provide resources to assist its members and the public. As a result, the joint task force developed and provided, for free, 14 on-demand

CLEs on COVID-19-related topics to WSBA members. In total, 3,737 members registered for 18,433 free on-demand CLE products (24,765.5 CLE credits) from April 3 through June 30, 2020. Staff and volunteers also developed a free five-session live webinar series entitled “Practicing During a Pandemic,” which was attended by 6,875 people. The joint task force has worked hard to provide the following additional services to members:

- A WSBA COVID-19 resource page for members and the public which can be found at www.wsba.org/covid-19.
- Blog posts on NWSidebar on challenges members are facing during the coronavirus pandemic, including advice on working remotely and self-care during a time of crisis. Those can be found at www.nwsidebar.wsba.org.
- A resource on the WSBA website for small firms around the CARES Act and how to apply for Small Business Association (SBA) Paycheck Protection Program grants and loans, including a free webinar to members featuring a director from the SBA who went over details of the program.
- A collection of resources and information about public-service programs aimed at helping the public during the COVID-19 pandemic posted to the WSBA COVID-19 resource page.
- “Reopening Safely: A Guide for Washington State Law Offices,” published online at www.wsba.org/docs/reopen.



Kyle Sciuchetti

WSBA President

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We saw a year that, for many reasons, will be remembered for its devastating tragedies, yet tempered by the will of its people to see through the adversity, overcome challenges, and slowly lift themselves once again toward a better tomorrow.

Recently, the joint task force collaborated on a survey which has been distributed to all WSBA members. The purpose of the survey is to assess the impact of the pandemic on the legal community, specifically members with active, judicial, and pro bono licenses. The survey will help the WSBA assess ways in which it can continue to assist members and the public throughout the course of the pandemic. The aggregated results will be posted on the WSBA COVID-19 resource page so members can review them and better understand how the pandemic is impacting the profession.

Protests

This year brought to the forefront racial tensions and protests like we haven't seen in 50 years (maybe longer). The names George Floyd, Breonna Taylor, and Ahmaud Arbery are well known in our state and nation. *USA Today* tracked the protests in all 50 states with links to local news coverage.¹ And demonstrations were documented around the world. Communities of people marginalized for far too long demonstrated in the plazas, parks, and streets of our cities and demanded police accountability and an end to systemic racism—a strong reminder that while we have come a long way in this country, we still have a long way to go.

In response to national and world events, the WSBA chartered the Equity & Disparity Work Group—charged with reviewing the rules, regulations, and laws related to the practice of law and the administration of justice, identifying those that facilitate injustice, and working to have them repealed or rewritten. As recognized in the Washington Supreme Court's open letter of June 4, 2020,² that called on the judicial and legal community to work together on racial justice: “[w]e continue to see racialized policing and the overrepresentation of black Americans in every stage of our criminal and juvenile systems The legal community must recognize that we all bear responsibility for this on-going injustice, and that we are capable of taking steps to address it, if only we have the courage and the will.” The Equity & Disparity Work Group comprises a large number of delegates from WSBA committees, boards, sections, and the mi-

nority bar associations, and will advise the WSBA Board of Governors over the next two years. The committee has met twice to date and plans to open up the conversation to the members and the public to explore those policies, rules, and practices that we need to rethink in order to undo systemic racism. This imperative work will continue beyond my presidential year and will serve an important role in improving the justice system to ensure that it is just for all people.

Politics

When asked to describe the 2016 presidential election, people used words such as “weird,” “chaos,” “bogus,” “dramatic,” “disappointed,” “different,” “changing,” “turmoil,” “interesting,” “entertaining,” and “challenging.”³ While these descriptions are generally not positive, they were not surprising given the growing practice of negative campaigning, aimed at disparaging their opponents, by many candidates.⁴

In 2020, an *Associated Press* poll asked Americans to describe the front-runner presidential candidates in one word. “Bumbling,” “jerk,” “liar,” “creepy,” “corrupt,” “old,” and “socialist” were among the responses.⁵ The tone of these words to describe the nation's presidential candidates during this election appears decidedly more ugly, overt, and personal.

Negative campaigning is nothing new. Examples of muckraking going as far back as this nation's first leaders are easily found. What may have been different this year, however, was negative advertising and social media combined with protests from groups supporting candidates on both sides. In a study published earlier this year, Princeton Professor Omar Wasow looked at Black-led protests between 1960 and 1972 and how protest tactics might have influenced news organizations and voters in elections during that 12-year period. Professor Wasow hypothesizes from his research that in the absence of violent protests leading up to the 1968 election, the United States would likely have elected Hubert Humphrey, lead author of the Civil Rights Act of 1964, rather than Richard Nixon, whose “law and order” campaign helped him win the election.⁶ This year,

we experienced both violent clashes and nonviolent civil demonstrations. We saw Joe Biden supporters clash with Donald Trump supporters in our streets and on social media. And we saw an election in which votes were strongly questioned and contested with lawsuits and well-funded media campaigns. What we saw was an eruption of emotions, ideology, and racial tensions that have smoldered for decades.

POSTSCRIPT

The purpose of this article is not to comment on the winner of the election or advocate for the political agenda of one party over another. However, in a year in which we encountered a virus that has killed over 250,000 people in the United States and nearly 1.4 million worldwide, we found people all over the United States willing to risk their safety in order to protest and attend rallies in support of causes, strongly held beliefs, and candidates that reflect the values and mores they hold dear. We did not see apathy. We did not see resigned indifference. We saw an election in which 160 million people (nearly two-thirds of all eligible voters) voted. We saw a year that, for many reasons, will be remembered for devastating tragedies, yet tempered by the will of its people to see through adversity, overcome challenges, and slowly lift themselves toward a better tomorrow. [BN](#)

NOTES

1. www.usatoday.com/in-depth/graphics/2020/06/03/map-protests-wake-george-floyds-death/5310149002/.
2. The June 4 letter from the Washington Supreme Court is available online here: www.courts.wa.gov/content/publicUpload/Supreme%20Court%20News/Judiciary%20Legal%20Community%20SIGNED%20060420.pdf.
3. “How Would You Describe the Election in One Word?” Voice of the Voters, PBS (July 26, 2016), available at www.pbs.org/weta/washingtonweek/web-video/how-would-you-describe-election-one-word.
4. www.cnn.com/2016/11/08/politics/negative-ads-hillary-clinton-donald-trump/index.html.
5. www.cnn.com/videos/politics/2020/03/02/voters-describe-2020-candidates-one-word-avlon-camerota-newday-vpx.cnn.
6. www.cambridge.org/core/journals/american-political-science-review/article/agenda-seeding-how-1960s-black-protests-moved-elites-public-opinion-and-voting/136610C8C040C3D92F041B2EFC3034C/core-reader.

Ring in 2021 by Looking Ahead

*Board of Governors recommends
no increase to lawyer license fees for 2022*

For some, the new year cannot come soon enough—or, rather, the chance to close the book on 2020, which has certainly been filled with unexpected challenges. The Budget and Audit Committee and WSBA Board of Governors, however, are already looking several years ahead, and I want to update you on what we have recommended for the 2022 license fees and beyond. Additionally, I want to take the opportunity, as usual, to update you about the current state of WSBA finances. As I continue in my second year serving as WSBA treasurer, I look forward to ongoing communication, knowledge, and transparency around WSBA finances. The state Bar is our organization, and it is important that we understand and have input into how our license fees are being used to further its mission.

WSBA 2022 LICENSE FEE UPDATE

In November, on the recommendation of the Budget and Audit Committee, the Board of Governors set 2022 lawyer license fees to remain flat (no increase over 2021); this recommendation will now go before the Washington Supreme Court for review. The Board had a significant discussion about this, passionately focused on the goals of lowering expenses, especially in light of COVID-19 impacts on the legal community; providing much-needed and high-quality resources and support for members; and recognizing that we are in the midst of long-range planning.

For some context, the Budget and Audit Committee in August recommended a slight reduction in the 2022 license fee for active lawyers. After discussion with the full Board of Governors, the newly constituted Budget and Audit Committee (whose membership changed in October with the new fiscal year) committed to keeping



Daniel D. Clark

WSBA Treasurer

Clark is a senior deputy prosecuting attorney with the Yakima County Prosecuting Attorney's Office, Corporate Counsel Division. He can be reached at DanClarkBOG@yahoo.com.

NEED TO KNOW

Recommended 2022 active-license fees

- Lawyer: **\$458**
- Limited License Legal Technician: **\$240**
- Limited Practice Officer: **\$200**

the 2022 license fee the same as in 2021. More refined data provided to the committee showed that lowering license fees for the coming years would not be sustainable over the long term without cutting current WSBA services to the membership and the public.

The committee also ultimately recommended that we look to maintain a flat (no increase) lawyer license fee for the next five years, through 2026. The entire Board and Interim Executive Director Terra Nevitt are committed to prudent financial management, and due to the current COVID-19-related uncertainties as well as our long-range planning currently underway, the Board agreed to defer setting rates for 2023 (and beyond) until next fall.

If the Board were to adopt the Budget & Audit Committee's recommendation for the next five years and the Supreme Court approved it, it would represent eight years of the license fee remaining flat for lawyers, even as the annual direct costs of inflation for operating the WSBA increase about \$3.94 per member each year. In other words, our active-lawyer license fee has grown marginally from \$450 to \$458 from 2012 to 2022; but a constant-dollar analysis shows that \$450 in 2012 equals approximately \$400 in 2021 value, a \$50 decrease. The Board of Governors hopes that by keeping annual fees flat, we are showing our dedication to optimizing WSBA operational efficiencies while maintaining outstanding services. We are also relying on annual membership growth to continue to sustain the organization.

Overall WSBA General Fund financial health fiscal analysis

**Note: WSBA leaders purposefully spent down reserves for several years per new fiscal policy.*

FISCAL YEAR	NET INCOME/LOSS	GENERAL FUND RESERVES
FY 2013	\$215,655	\$8,960,722
FY 2014	(\$1,157,702)*	\$7,803,070
FY 2015	(\$2,700,536)*	\$5,102,534
FY 2016	(\$1,723,998)*	\$3,918,536
FY 2017	(\$554,785)*	\$3,363,751
FY 2018	\$432,107	\$3,795,858
FY 2019	\$940,680	\$4,736,538
FY 2020	\$742,695	\$5,479,233

CLIENT PROTECTION FUND FEES

The Board also voted to lower the Client Protection Fund (CPF) per-member annual assessment by \$5 (subject to court approval), which I recommended as an ongoing way to help members during this difficult time. If approved, it will, in fact, lower the total annual cost of licensing for members. Combined with the permanent \$5 dollar

reduction approved in 2020, this proposed additional \$5 dollar reduction **will result in an ongoing \$10 dollar reduction for members from 2020 to 2022 and beyond**, while at the same time assuring that the CPF fund maintains a robust fund balance based on historic payouts.

FINANCIAL SNAPSHOT

The ending fund balances for fiscal year 2020 (Oct. 1, 2019, through Sept. 30, 2020) are as follows:

General Fund

- **\$742,695** increase in net positive fund balance. Projected fund balance: **\$5,579,233**.

Client Projection Fund

- **\$377,486** in net positive fund balance. Projected CPF balance: **\$4,199,495** (all-time high).

CLE Fund


- \$45,000 in net negative* for a fund balance decrease. Projected fund balance: **\$480,625**.

**Note: This negative balance is the result of a dramatic increase in free CLE offerings agreed upon by the Board of Governors and WSBA leadership to help members navigate the impacts of COVID-19.*

Sections Fund

- **\$8,898** in net positive fund balance increase. Projected overall sections combined fund balance: **\$1,204,122**. Each section has an individual fund balance kept segregated by the WSBA.

The WSBA in the last three years has generated a positive net increase to our overall combined restricted and unrestricted General Fund balance of \$2,115,482. We've managed to do that without increasing license fees and despite ongoing annual increases to direct costs such as rent, leasehold excise tax, and software licensing.

In closing, please know that we are continuing to rigorously analyze how to operate as efficiently as possible while maintaining essential member supports and services, and also continuing to look at all areas of the budget to increase revenue opportunities and improve overall efficient use of our license fee revenue and other revenue for the WSBA. It continues to be a tremendous honor to serve as WSBA treasurer and as District 4 governor. Thanks, and please let me know if you have any questions. 



WASHINGTON STATE BAR ASSOCIATION Office of the President

Nominations for the 2021 APEX Awards

Colleagues:

The nomination process for the 2021 APEX Awards has begun. APEX stands for **ACKNOWLEDGING PROFESSIONAL EXCELLENCE**, and these awards are an opportunity to honor those of us in the legal profession who have made noteworthy contributions and achievements in public service, government service, professionalism, pro bono work, diversity, and other areas. Please take the time to nominate an individual or group that is deserving of statewide recognition. Your nomination will help recognize stellar work, inspire the legal community, and provide a much deserved thank-you to legal luminaries who work tirelessly to advance justice, often behind the scenes. You can find more information and the nomination form at: www.wsba.org/awards.

Sincerely,



Kyle Sciuchetti
WSBA President

**Deadline for 2021 APEX Award
nominations: March 15, 2021**

APEX AWARD CATEGORIES

Angelo Petruss Award for Lawyers in Government Service

for a significant contribution to the legal profession, the justice system, and the public

Award of Merit for a recent, singular achievement

Justice Charles Z. Smith Excellence in Diversity Award for a significant contribution to diversity in the legal profession

Legal Innovation Award for programs, processes, or technology that advances or streamlines delivery of legal services

Lifetime Service Award for a lifetime of service to the legal community and the public

Norm Maleng Leadership Award (presented jointly with the Access to Justice Board) for leadership characterized by love of the law and commitment to access to justice

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

Outstanding Young Lawyer Award

for significant contributions to the professional community, especially the community of young lawyers, within their initial years of practice

Pro Bono and Public Service Awards (Individual & Group)

for outstanding cumulative efforts in providing pro bono services or for giving back in meaningful ways to others, to the community, or to the profession

Professionalism Award for professionalism in the practice of law, as defined in the WSBA's Creed of Professionalism

Sally P. Savage Leadership Award in Philanthropy (presented jointly with the Washington State Bar Foundation) for donors, volunteers and supporters who focus on advancing justice and diversity



ACKNOWLEDGING PROFESSIONAL EXCELLENCE

www.wsba.org/awards

In-House Counsel: Things Look Different Here

BY MARK J. FUCILE

“The evolution in legal practice has uniquely affected the in-house attorney-employee and generated unique legal and ethical questions unlike anything contemplated by our Rules of Professional Conduct[.]”

—*Karstetter v. King County Corrections Guild*,
193 Wn.2d 672, 675, 444 P.3d 1185 (2019)

The specific question before the Washington Supreme Court in *Karstetter v. King County Corrections Guild* was whether an in-house counsel could sue a former employer for wrongful discharge. In concluding that such claims are permitted, the justices in their majority opinion, from which our opening quote is drawn, discussed contemporary in-house practice generally.¹ The majority noted that the Rules of Professional Conduct (RPCs) were developed largely from the perspective of traditional law firm practice and went on to distinguish modern in-house positions from private practice: “The duties of today’s corporate attorneys have grown increasingly complex, often including advisory and compliance roles as well as the more general aim of ensuring a successful business.”²

In this column, we’ll survey three areas where the view from in-

house is often different from that in private practice: licensing, confidentiality, and conflicts. It is important to stress, however, that these three are neither an exclusive nor an exhaustive list of the many issues that in-house counsel encounter.³ These three issues are, however, among the most frequently occurring.

LICENSING

In-house counsel may, of course, become members of the Washington State Bar Association by passing the Washington bar exam or through reciprocal admission.⁴ Washington’s licensing rules, however, effectively acknowledge that in-house counsel relocate with their corporate employers more frequently than their counterparts in private practice. Admission and Practice Rule (APR) 8(f) permits in-house corporate⁵ counsel relocating to Washington to be admitted without taking the bar exam or going through the more time-consuming route of reciprocal admission.⁶ APR 8(f) offers a truncated process available to in-house counsel who are actively licensed in another jurisdiction (domestic or foreign) and who work exclusively for their corporate employer or its affiliates.⁷ The license granted under APR 8(f) is limited to practicing for the corporate group involved⁸ and terminates when the





Although legal advice falls within the attorney-client privilege, business advice generally does not.

lawyer leaves the employer. While licensed under APR 8(f), an in-house counsel must also maintain an active license in at least one other jurisdiction. If a court appearance is required, in-house counsel with this limited license need to be separately admitted *pro hac vice* under APR 8(b).

APR 8(f) addresses in-house counsel who have relocated to Washington. RPC 5.5(d)(1), in turn, provides authorization for in-house counsel who are actively licensed in another jurisdiction to provide legal services to their corporate employers in Washington when they are only temporarily within the state.⁹ For example, an in-house counsel based in San Francisco working temporarily on a project for the lawyer's employer at its Seattle office would be covered by RPC 5.5(d)(1). Like APR 8(f), temporary authorization under RPC 5.5(d)(1) includes work for affiliates within a corporate group. Also like APR 8(f), RPC 5.5(d)(1) applies to foreign lawyers—although with the caveat that when the services provided by a foreign lawyer include advice on American law “such advice shall be based on the advice of a lawyer who is duly licensed and authorized by the jurisdiction to provide such advice.” Finally, if a court appearance is required, out-of-state in-house counsel need to be admitted *pro hac vice* under APR 8(b).

CONFIDENTIALITY

Federal and state law have long recognized that corporations and other entities hold their own attorney-client privilege with in-house counsel.¹⁰ Similarly, in-house counsel are subject to the confidentiality rule, RPC 1.6.¹¹ Generally, the privilege extends to legal advice provided to both management and other corporate employees acting on behalf of the corporation.¹² The privilege also extends to communications by both management and corporate employees supplying in-house counsel with information necessary for the latter to render legal advice.¹³

CONTINUED >

JUST RELEASED >

Washington Legal Ethics Deskbook (2d ed. 2020)

Editor-in-Chief: Mark J. Fucile



Reviewed by members of the WSBA Office of Disciplinary Counsel, this deskbook remains the must-have reference for any attorney practicing in Washington—a one-volume comprehensive but practical and accessible resource to help guide you through the ethics and law firm risk-management issues arising in daily practice. It comes with over a dozen digital forms, including sample client conflict consent and withdrawal letters. To review full table of contents and authors, or to order, go to www.wsbacl.org, or call (800) 945-9722.

Two areas, however, can be particularly difficult in applying these general precepts. First, although legal advice falls within the privilege, business advice generally does not. The federal district court in Seattle put it this way: “[I]n-house counsel often act in both a legal and non-legal business capacity, and communications made in this latter capacity are not privileged.”¹⁴ Second, simply passing a document through in-house counsel or copying in-house counsel on an email generally does not confer privilege if the communication does not otherwise meet the standard for privilege. Again, the federal district court in Seattle summarized this point: “Business advice is not protected merely because a copy is sent to in-house counsel. Only if the attorney is ‘acting as a lawyer,’ and giving advice with respect to the legal implications of a proposed course of conduct may the attorney-client privilege be properly invoked.”¹⁵

CONFLICTS

Most in-house counsel work for one corporation or integrated corporate group. In that sense, conflict issues are usually more straightforward than for lawyers in private practice. Under RPC 1.13(a), a lawyer representing an entity generally has only one client: the entity.

At the same time, in-house counsel can encounter conflict issues with corporate constituents and when managing outside counsel.

With respect to corporate constituents, RPC 1.13(f) counsels that “[i]n dealing with an organization’s directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization’s interests are adverse to those of the constituents with whom the lawyer is dealing.” In other words, in-house counsel need to ensure that corporate employees understand that the lawyer represents the corporation and not the employee personally when, for example, interviewing an employee during an internal investigation. Sometimes referred to as “*Upjohn* warnings” or “corporate *Miranda* warnings,” the intent of such clarifying statements by in-house counsel is to avoid inadvertently creating a conflicting attorney-client relationship with the individual employee involved.¹⁶

Mark J. Fucile of Fucile & Reising LLP handles professional responsibility, regulatory and attorney-client privilege matters, and law-firm-related litigation for lawyers, law firms, and legal departments throughout the Northwest. He is a former chair of the WSBA Committee on Professional Ethics and is a member of the Oregon State Bar Legal Ethics Committee. He is a co-editor of the *WSBA Law of Lawyering in Washington*, the editor-in-chief of the 2020 second edition of the *WSBA Washington Legal Ethics Deskbook*, and a co-editor of the *OSB Ethical Oregon Lawyer*. He also teaches legal ethics as an adjunct for the University of Oregon School of Law at its Portland campus. He can be reached at 503-224-4895 and mark@frllp.com.



When managing outside counsel, in-house counsel may need to parse difficult conflict and related relationship-management issues arising from law firm engagement agreements containing proposed advance waivers of future conflicts; in-house counsel may also need to determine whether law firms are acting consistently with conflict provisions in outside counsel guidelines.¹⁷ For in-house counsel, the perspective from the “client side” of conflict management can be considerably more nuanced than from the “law firm side.”

SUMMING UP

Although the holding in *Karstetter* was specific, its broader discussion reflects the evolving scope and unique perspective of in-house practice today. [BN](#)

NOTES

1. Proposed amendments to the comments to RPC 1.13 (organizational clients) and 1.16 (withdrawal) are pending before the Washington Supreme Court to specifically address the *Karstetter* decision. See also ABA Formal Op. 01-424 (2001) (discussing wrongful discharge claims by former in-house counsel).
2. 193 Wn.2d at 679.
3. Other areas include, for example, the contours of the “no contact” rule as applied to in-house counsel (see generally ABA Formal Op. 06-443 (2006)), supervision in the in-house counsel context (see generally WSBA Advisory Op. 2219 (rev. 2017)), and compensation disputes (see, e.g., *Chism v. Tri-State Constr., Inc.*, 193 Wn. App. 818, 374 P.3d 193 (2016)).

4. See also APR 3, which also addresses admission through Uniform Bar Examination score transfer and Washington’s law clerk program.
5. APR 8(f) is also available for lawyers employed by nonprofits. It is not, however, available for lawyers working for a governmental entity. On the latter, RPC 5.5(d)(2) generally permits lawyers licensed out of state who are federal employees to practice here if “authorized by federal law[.]”
6. See also APR 8(f), which also affords an avenue when reciprocal admission is not available, such as with California.
7. See also ABA Formal Op. 95-390 at 9 (1995) (discussing common legal affairs management across a corporate group).
8. APR 8(f)(8) allows an in-house counsel admitted in another American jurisdiction to provide pro bono services through a qualified legal services provider.
9. This temporary authorization extends to governmental lawyers as well. See RPC 5.5, cmt. 16.
10. See generally *Upjohn Co. v. United States*, 449 U.S. 383, 101 S. Ct. 677, 66 L. Ed. 2d 584 (1981); *Newman v. Highland School Dist.* No. 203, 186 Wn.2d 769, 381 P.3d 1188 (2016) (describing *Upjohn* as the leading case nationally on this point and noting that Washington had adopted its principles).
11. See *Karstetter v. King County Corrections Guild*, 193 Wn.2d at 682 (discussing the interplay between suits by in-house counsel against their former employers and the continuing duty of confidentiality); ABA Formal Op. 01-424, *supra* note 1, at 3-4 (same).
12. *Upjohn Co. v. United States*, *supra* note 10, 449 U.S. at 394-95.
13. *Id.*
14. *Chandola v. Seattle Housing Auth.*, 2014 WL 5023518 at *1 (W.D. Wash. Oct. 7, 2014) (unpublished); accord *Thomas v. Kellogg Co.*, 2016 WL 2939099 at *1 (W.D. Wash. May 20, 2016) (unpublished).
15. *Valve Corp. v. Sierra Entm’t Inc.*, 2004 WL 3780346 at *3 (W.D. Wash. 2004) (unpublished); accord *Seneca Foods Corp. v. Starbucks Corp.*, 2005 WL 256594 at *16 (Wn. App. Feb. 3, 2005) (unpublished).
16. See *Youngs v. Peacehealth*, 179 Wn.2d 645, 676, 316 P.3d 1035 (2014) (Stephens, J., concurring in part and dissenting in part) (describing these terms and their intent).
17. See, e.g., *Avocent Redmond Corp. v. Rose Electronics*, 491 F. Supp. 2d 1000, 1006 (W.D. Wash. 2007) (advance waiver); *Atlantic Specialty Ins. Co. v. Premera Blue Cross*, 2016 WL 1615430 at *2 (W.D. Wash. Apr. 22, 2016) (unpublished) (outside counsel guidelines).



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TERRIFIC THIRD DRAFTS

Taking your writing from
bad to good to great

— BY LAUREN E. SANCKEN

“Very few writers really know what they are doing until they’ve done it.”

— Anne Lamott, *Bird by Bird*

I recently submitted a law review article that took me two years to write—almost twice as long as I anticipated. The introduction alone took me weeks, and not because it was particularly involved or even very good. I felt stuck anytime I sat down to write. And then even if I could squeak out a section, I felt compelled to revise it while I was writing it, which caused panic but did not increase my snail’s pace. In hindsight, my main problem was that I couldn’t let myself write a crappy first draft. And because I had labored over the first draft so much, I had a hard time letting go of it when it came time to revise. Maybe this experience is familiar to you.

The way to avoid most writing pitfalls is to expect them, something I have grown to appreciate with each big writing project. While I haven’t mastered the writing and revision process, these tips—gleaned from both legal and non-legal writers—might just help make the endeavor less frightening and more enjoyable.

Write a Crappy First Draft so You Can Write a Terrific Third Draft

“All good writers write shitty first drafts. This is how they end up with good second drafts and terrific third drafts.” The idea of a crappy first draft comes from Anne Lamott in her canonical book on writing, *Bird by Bird*.¹ She makes the pitch that good writing begins by just getting something down on the page. It doesn’t have to be perfect. The job of the second draft is to fix up whatever verbiage is in the first, and the job of the third draft is to check all the details and dot your i’s and cross your t’s.

Most lawyers, and certainly law students, are prone to feeling pressure about their writing. Inevitably, someone is going to read it and pick it apart, whether it’s opposing counsel, a client, a judge, or a professor. It can be difficult to access creativity and energized focus when we anticipate a harsh audience (or allow our inner voice to become that audience). To avoid feeling stifled by a sense of judgment, I try to take the fear and pressure out of writing by giving myself permission and encouragement to write a “just get the ideas down” first draft. I encourage my students to do the same thing, and I emphasize that the magic is in the revision process, not in the first cut. You can’t revise

a blank page, after all. So, kick that pressure down the road to a second or third draft when your future self can better handle it.

Start in the Middle of the Thing

If you can't get the first word on the page, don't start there. Start with whatever section seems the most manageable. For me, that's generally the place with the most concrete rules. In drafting a brief, I often write the facts or a procedural section of the argument first. Those sections can be developed around specific legal rules and a factual record and can act as a nice foundation on which to build. Though it may seem counterintuitive, I often write the introduction last, after I have my arms around my main points. The introduction sets the stage and tone for the brief and provides a hook and a theme. Because it's a more creative part of the brief, I find it's easier to write after I have a more concrete sense of my main points. When I try to tackle it first, I often end up rewriting the whole thing later anyway.

Trust the Revision Process

What's great about the revision process is that it's a *process*. Like most attorneys, I like rules and guardrails, so for me this is the fun part of writing. The goal of my second draft is to make sure it is substantively complete and correct. To get it there, I go through my first draft with an internal checklist: What are the main points or arguments? Is each point factually and legally supported? Have I addressed any necessary counterarguments? Does this draft actually say what I want it to say? If so, good. If not, I revise the first draft until it feels more complete. With a second draft, I've often found it helpful to talk with others about my main arguments and counterarguments. Just talking aloud to a colleague has a way of crystallizing the good points and identifying weaker aspects of a draft. Verbalizing an argument makes it more malleable, and I'm able to revise and edit more efficiently once I've heard my own voice and received feedback from a colleague.

Once I have a second draft, the process of creating a third (and often final) draft begins with sentence-level editing. This is the draft for the persnickety minded. I check to make sure my sentences are active, concise, and varied. I check to see that each para-



If you have a question about legal writing that you'd like to see addressed in a future "Write to Counsel" column by UW Law writing faculty, please submit it to wabarnews@wsba.org, with the subject line "Write to Counsel."

graph has a topic sentence, or a point-first heading,² and I check the citations and aim to catch typos. I also evaluate the tone of the draft: Do I sound like a robot? Overly defensive? Too conciliatory? After I've tidied it up, I'll generally show this draft to a colleague for feedback. Ideally, I'll give myself at least a full day to proofread the draft with fresh eyes before filing it with a court or submitting it for publication.

Slay Your Darlings

In order to revise a draft appropriately, you have to be willing to delete words, phrases, and even sections of hard labor that don't quite fit or serve the purpose of the draft. Alongside this column, and every single brief I've ever written, is a companion document titled "Notes" or "Save for Later," or—if I'm feeling macabre—"Slay Your Darlings." The purpose of this companion document is to create a vacation home for the things that are cluttering up my neat and tidy draft. These things are often dangerous because they carry emotional attachment, usually born of the effort in drafting them. See e.g., all of the jokes that have been edited out of this draft because they are hilarious only to me. Sending the darlings to the purgatory page avoids the psychic chal-

Lauren E. Sancken is an associate professor of teaching and the director of the Moot Court Honor Board at the University of Washington School of Law, where she teaches legal writing courses.



lenge of making any major decisions about whether that witty sentence belongs in the recycle bin. Don't be afraid to cut the noise and declutter your draft. You can always go back and resuscitate those you've slain.

Caution is a Thief

The first draft is for being brave. Try to save your restraint, and caution, for the second and third drafts. While I was working on the aforementioned law review article, I received some advice from a 92-year-old Hollywood screenwriter who happened to live in my apartment building. Lawyers and screenwriters do not have an abundance in common on the surface, but I was lucky that my neighbor thought we could both be in the same taxonomy of writers. One evening, when I confessed to him that I was struggling to write the law review article, he told me, "Caution is a thief. It robs the future of possibilities!"³ The immediate context for this story is that he had inadvertently won a cow at an auction in Texas and could have used it as a reason to explore life as a rancher. But he was terrified of uprooting his life in Los Angeles, so he unwound the sale and went back to California, where he wrote several hit screenplays instead. That's not a bad turn of events, but his point was that if you don't go, you don't know. He encouraged me to stop overthinking things and just write—say what I want to say and see where it might lead. If I tried to control the story and the narrative too much, I might stop it from developing in a compelling way. In short, if life sends you a cow, don't be afraid to become a rancher. **BN**

NOTES

1. Anne Lamott, *Bird by Bird: Some Instructions on Writing and Life* (Pantheon Books 1994).
2. Kathy McGinnis. "Winning with Point-First Writing," October 2019 *Washington State Bar News*, available at <https://wabarnews.wsba.org/wabarnews/library>.
3. While caution is something lawyers have naturally, there are encouraging examples of bolder writing. E.g., a brief in opposition to a motion to dismiss filed in the Southern District of Florida was *not* captioned "Plaintiffs' Opposition to Defendants' Motion to Dismiss"; rather, it was titled "Six Ways Buzzfeed Has Misled the Court (Number Two Will Amaze You)... And a Picture of a Kitten." I'm not sure about the efficacy of this title, or how it landed, but I do admire the courage it took to put it in a draft and keep it in all the way to federal court.

Are We Solving the Right Problems?

‘REFRAMING’ IN THE LEGAL INDUSTRY

BY JORDAN L. COUCH

As lawyers we think of ourselves as professional problem-solvers, but have you ever asked yourself this question: Am I solving the right problems?

When I first started practicing law, I never asked myself that question. Now I do it almost daily. It's a conscious decision I made after I stumbled upon two readings. The first was the report from Washington's Civil Legal Needs Study Update in 2015.¹ Among a number of important findings, the study showed that low-income households have more than nine legal problems in a given year and that 76 percent of civil legal needs go unmet. The second reading was a *Harvard Business Review* article titled "Are You Solving the Right Problems?"² that suggested that the way we define a problem can restrict our ability to solve it. Reading these two works close in time made something click for me. If lawyers are struggling to find clients while 76 percent of legal needs are going unmet, maybe our problem isn't a lack of clients. If low-income families are facing more than nine legal problems in a given year, there's something deeper going on, and approaching those nine problems as discrete legal issues won't solve the deeper problem.

When I reflected on this new understanding one thing became increasingly clear: If I viewed my role as a lawyer as a problem-solv-

er, then I was by most measures failing in that role. It was time I reexamined my approach to client service.

WHAT IS REFRAMING?

Where traditional creative problem-solving tends to focus on brainstorming a large list of possible solutions in order to find the best one, reframing is an approach to problem-solving that shifts focus away from solutions and toward the problem itself. Instead of brainstorming different solutions, reframing focuses on brainstorming different ways to define the problem, thus expanding the realm of possible solutions.

One popular example of reframing is demonstrated by considering the "slow elevator" problem. Imagine a building in which the tenants are complaining about how slow the elevator is. There are a number of ways to solve that problem—like installing a second elevator or getting a faster motor—but each of these possible solutions is incredibly costly. But what if we reframe the problem? The facts are that the elevator moves at a certain speed, a certain number of people need to use the elevator at specific times of day, and people are unhappy while waiting



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for the elevator. The speed of the elevator is expensive to change but the other two facts are much easier to adjust. Starting a “be healthy—use the stairs” campaign would reduce dependence on the elevator. Putting up a mirror or playing lobby music would distract people while they wait for the elevator and decrease their frustration. The “slow elevator” problem is difficult to solve; the “people are bored waiting for the elevator” problem is much easier, and the results are the same.

It may help to diagram different processes of problem-solving. Diagram 1 illustrates the traditional problem-solving method that has been employed by lawyers for decades. A client presents us with a problem, and we apply the same solution to that problem that we and other lawyers have always applied.

In Diagram 2 we see the route often taken by more forward-thinking and innovative lawyers. A client presents us with a problem and rather than simply doing what has been done before, we brainstorm options for how best to solve that problem to serve our client's needs. Think of this as the method that includes trying creative mediation strategies, testing a new contract clause, or using Zoom in courtrooms to increase access and reduce costs.

In Diagram 3 we see reframing at work. Reframing does not accept the problem as it has been defined by the legal system for decades. Instead, we take a step back and investigate the underlying facts to determine if there are different ways to define the problem and thereby expand the possible solutions we can offer to legal consumers.

LEARNING TO REFRAME

Diagrams 1-3 also offer a helpful guide to solving problems through reframing. When

faced with a problem—whether it's from one of your clients or a problem in your firm—resist the very human temptation to jump straight to fixing it. Don't even start thinking about possible solutions yet. Instead, take a moment and write out a list of known facts. As you list the facts, try to do so in an objective way that's free of judgment. It's not “the elevator is slow” but “the elevator moves at X speed.” It's not “my client needs a will”; it's “my client has assets” and “my client will one day die.”

After you have a list of facts, you can begin to explore alternate definitions of the problem. Which of these facts can you change? “My client has assets” is something that can be changed. “My client will one day die” cannot be changed. Once you have narrowed down your list of facts to just those that *can* be changed, you can start thinking about *how* those facts can be changed. You may find that some facts are outside your power to change but possible for your client to change. Don't be afraid to acknowledge that some

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Reframing Problem-Solving

DIAGRAM 1
Traditional Model



DIAGRAM 2
Innovative Model

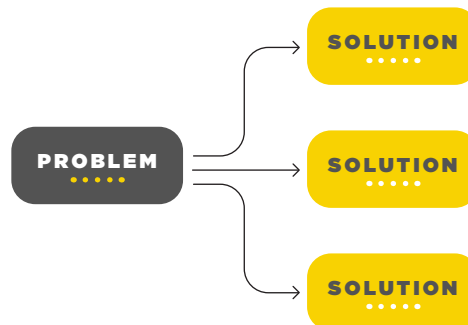
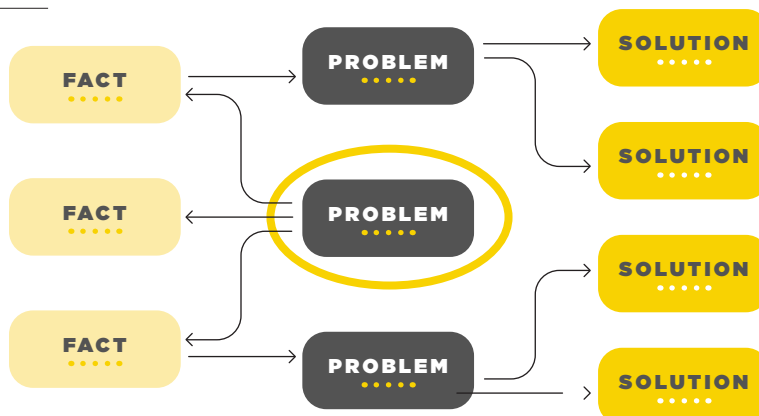


DIAGRAM 3
Inventive Model



“legal problems” are actually not best solved by a lawyer.³

REFRAMING IN LAW

So what does reframing look like in the law? In my inaugural column (“Essential Qualities of Innovative Legal Services,” September 2019 *NWLawyer*) I mentioned a project we worked on at my firm to reduce time spent on the phone. The problem, as we saw it, was that our clients were calling us a *lot*, and responding to them was becoming a much bigger distraction and taking up much more time than, say, responding to emails. Our initial response was to make it easier for our clients to communicate with us by text, email, or a secure portal.

Even though our clients were excited about the new options, almost none of them used them—the solution was a failure. So we went back to the drawing board. For the next few weeks we had everyone on staff write down the reason for every client call. We were gathering facts. What we found was that the largest chunk of calls by far came from clients asking about their biweekly workers’ compensation benefit checks. The problem from our clients’ perspective was not knowing with certainty whether their benefit check had arrived. Offering more types of communication didn’t solve that problem. So we took the system we had created to expand communication options and used it to automatically notify clients when their benefit checks became available. Phone calls and client communications dropped immediately—by more than 30 percent.

Here’s another problem that concerns lawyers: the need for more clients. We spend more and more time and money on marketing our firms and networking in the hopes of drawing in more clients. This all seems normal to us, but from an outside perspective the legal industry is a mess. We spend massive amounts of money fighting over the 24 percent of civil legal consumers who get help while at the same time not engaging the business of the 11 percent who do seek help (but don’t end up getting it)⁴—and we don’t even consider the remaining 65 percent who never seek or get legal help.⁵ So why are we missing so much of the market? We might say it’s because these potential clients can’t afford us or because their issue isn’t one where it’s economically worthwhile to spend the legal fees necessary to resolve it. We might frame the problem as “these aren’t the customers we want,” but from a consumer’s perspective the problem is “no one is offering the services I need.” This is why a company like LegalZoom⁶ is so successful. It’s why Clio CEO and Co-founder Jack Newton refers to the access to justice problem as a “product/market fit problem.”⁷ When we reframe our “lack of clients” problem as a “not offering the right services” problem we open up a new realm of possible solutions.

BUILDING A BETTER LEGAL FUTURE

Earlier I advised you not to be afraid to acknowledge that not every “legal problem”

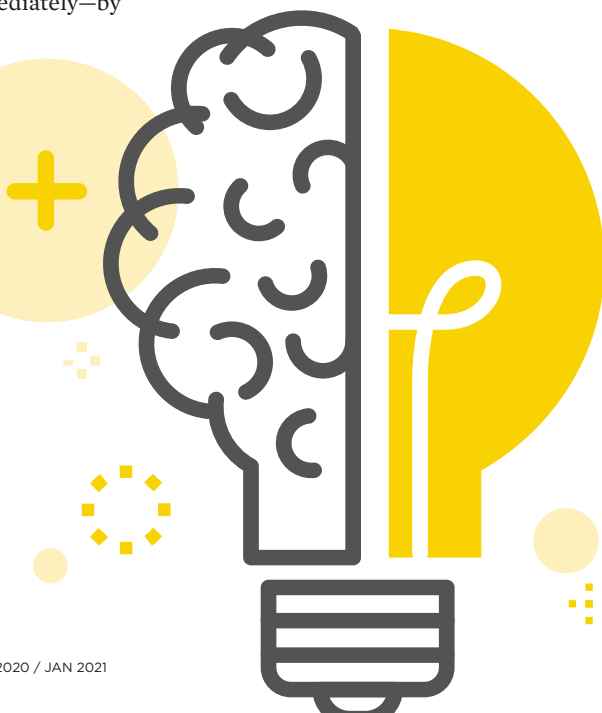
is best solved by a lawyer. If we as lawyers fail to recognize that truth, we will continue to fight each other for a small percentage of clients while the percentage of unmet legal needs continues to grow. In addition to reframing our clients’ problems and the business problems we face in our firms, we need to reframe the legal profession as a whole. Instead of trying to solve access to justice with more pro bono work, perhaps we should question whether every legal issue needs a lawyer to solve it. Maybe instead of trying to reduce the number of *pro se* litigants in court we should take a page from British Columbia’s Civil Resolution Tribunal and redesign courts and the litigation process around the *assumption* that many litigants will be *pro se*.

The harsh reality is that the problems our industry faces, like the slow elevator, cannot be solved simply. More pro bono work will never be enough. Most of the 65 percent of consumers who have not consulted a lawyer in the past will not consult a lawyer in the future. But the solutions to consumers’ unmet legal needs and to lawyers’ need for more clients are solvable if we start asking the right questions. **BN**

NOTES

1. The 2015 Washington Civil Legal Needs Study Update can be found here: https://ocla.wa.gov/wp-content/uploads/2015/10/CivilLegalNeedsStudy_October2015_V21_Final10_14_15.pdf.
2. Thomas Wedell-Wedellsborg, “Are You Solving the Right Problems?” *Harvard Business Review* (January-February 2017), available at <https://hbr.org/2017/01/are-you-solving-the-right-problems>.
3. The *Harvard Business Review* article, *supra* note 2, offers a lot of great tips on how to incorporate reframing into your problem-solving practices. Rather than repeat them here I would highly recommend reading the article yourself.
4. According to the 2015 Washington Civil Legal Needs Study Update (*supra* note 1), “Nearly a third (30%) of those who sought help but could not get it said they could not afford to pay for it. Others reported they were unable to get through on busy phone lines or that nobody returned their calls. Some said they were confused by the information they had received.”
5. 2015 Washington Civil Legal Needs Study Update, *supra* note 1.
6. A “provider of personalized, online legal solutions and legal documents for small businesses and families.” Find more information at www.legalzoom.com.
7. www.clio.com/blog/jack-newton-keynote-2020/.

When faced with a problem—whether it’s from one of your clients or a problem in your firm—resist the very human temptation to jump straight to fixing it.



Section Spotlight

Solo and Small Practice Section

BY SHASHI VIJAY AND JORDAN L. COUCH


Q. What is the most valuable benefit members get from joining your Section that they can't get anywhere else?

A. The Solo and Small Practice Section (SSPS) has a 1,000-member list, which enhances access to an active and resourceful community through the list serve. The members-only area on the website is full of resources that help members further their practice, implement better systems, and gain client referrals.

Q. What is a recent Section accomplishment or current project that you are excited about?

A. The Section's roundtable Zoom meetings. Under the leadership of Executive Committee member Ann Guinn, our Section, in response to the COVID-19 pandemic, was the first to hold these Zoom meetings, which provided a platform to unite our members across the state. The feedback and responses were overwhelmingly positive as members from across the state were happy to be connected virtually in

LEARN MORE >

The Section membership year is Jan. 1-Dec. 31. For more information and to join the Solo and Small Practice Section, or any other Section, visit <https://wsba.org/legal-community/sections/sections>. 

these times of isolation. More importantly, other sections and section leaders adopted this model, and even the Oregon Bar section leaders reached out to us and then followed a similar approach.

At the time of this publication, these roundtables were still ongoing, with the addition of a speaker series component.

The Section's annual conference, which has always been a highlight, was completely virtual on Sept. 25, and this year our Section also hosted a virtual networking event.

Q. What opportunities does your Section provide for members who are looking for a mentor or for somebody to mentor?

A. The SSPS consistently

reaches out to young lawyers and lawyers-to-be. The Section's vision to mentor and give advice is mirrored in the fact that outreach and mentorship programs have been a focus of yearly activities and continue to be one of the top goals for 2020-2021.

Q. What advice do you have for building a successful practice in the area of law related to your Section and how does membership in your Section help do that?

A. The SSPS is constantly

working to improve, aid, and collaborate in order to arrive at best methods to overcome the challenges that solo and small-firm practitioners face. The diversity of our members' practice areas creates an atmosphere conducive to sharing advice and helpful tips. As a result, members are exposed to insights into law office management that are unique, solution-oriented, and mostly failsafe.

Q. In addition to membership in your Section, what are the best ways to stay up on the developing law in this practice area?

A. Staying abreast of developing law in a particular substantive practice area is not the goal of the SSPS; instead, members freely share their experience and knowledge concerning building and running a law practice, law office technology and best practices for processes and procedures, work-life balance, self-care, and professional development. By attending our biweekly virtual roundtables and our bimonthly webinars, members can keep up to date on the best and most recent developments in solo and small-firm practice management. **BN**

Shashi Vijay is the current chair of the WSBA Solo and Small Practice Section and the owner of VJ LAW FIRM PLLC, in Redmond, where she helps individuals and small businesses with startup formation, real estate, estate planning, and related litigation matters. She is also involved with several diversity organizations such as MAMAS, SABAW, WWL, and WSAJ. Outside of work, Shashi is a busy mom raising her 12-year-old son and 8-year-old daughter and loves spending time with her husband and kids. She can be reached at shashi@vjlawfirm.com.



Jordan L. Couch is a partner and cultural ambassador at Palace Law, where his practice focuses on plaintiff's-side workers' compensation and personal-injury litigation. Outside of his practice, Couch is heavily involved in state, local, and national bar associations, advocating for a better, more client-centric future to the legal profession. Find him on social media at [@jordanlcouch](https://twitter.com/jordanlcouch) or email him at jordan@palacelaw.com.



Native American Jewish Justice Montoya-Lewis Tells Us How She Made History

BY EMILY BURACK



Justice Montoya-Lewis was appointed by Gov. Jay Inslee in December 2019 to fill the seat of retiring Chief Justice Mary Fairhurst. In November 2020, Justice Montoya-Lewis was elected to her position by Washington voters.

When Justice Raquel Montoya-Lewis was sworn in to Washington's Supreme Court earlier this month, she became the second-ever Native American person to serve on a state Supreme Court.

"This was never something I really planned on or expected to happen," Montoya-Lewis tells Kveller via phone from her offices in Olympia.

When she first heard of her appointment by Governor Jay Inslee, her reaction was "disbelief," she says. You see, Montoya-Lewis never intended to be a lawyer or a judge—even when she was in law school. "My intention, when I went to law school, was to study how institutions impact people; the law was something that I looked at as being an institution that had incredibly widespread impact," she says. "My goal was

to be a professor, rather than be a lawyer."

Montoya-Lewis was born in Spain in 1968 to a Native American father and an Australian Jewish mother. Growing up, the importance of education was instilled in her by her parents: "From both sides of my family [there is] a very heavy emphasis on the importance of education, which is something that has really been the key to my ability to do what I've done. To take my education seriously, and to be able to go to college and beyond that has absolutely been foundational to my success," she says.

"I think that [my] story is an unusual story and also a very American story," she explains. "My father grew up in the Pueblo of Isleta in New Mexico, and joined the Air Force as a means of being able to go to college. He never really had a plan of staying in the Air Force long term, but that was what he ended up doing. He loved the military."

Due to her father's career, the family moved all over the place: Spain, England, Texas, South Carolina, and more. But they always came back to New Mexico to her family's reservation for important times in her life. Her father retired when she was a junior in high school, and they moved to New Mexico permanently. (He passed away

about 14 years ago.)

Moving to New Mexico "was an opportunity for me to really connect with my Native community," she says. "Growing up, I had a lot of connection with my culturally Jewish heritage from my mother's side of the family."

Montoya-Lewis sees an overlap of her Jewish and Native identities—namely, persistence and resilience, which is something she hopes to transmit to her own children, ages 14 and 17. "On both sides of my family, governments, other entities, really sought to wipe us out," she says. "My father really instilled in me the importance of recognizing that I came from people who persisted, people who were lucky enough to survive, and that my existence is dependent upon those people's persistence and resilience. That's something I hope I pass on to my own children. I hope they pass it on to their [children], because that's a very important concept for both the Jewish side of my family and the Native side of my family."

As it happens, there are very, very few Native American Jewish people. "I have met maybe three others," Montoya-Lewis says. "So, I certainly can't call that number a community. But, we do exist and I think that those communities have a lot in common with respect to those awful histories, and those powerful histories of survival."

Her favorite Jewish tradition is displaying the menorah in the window during Hanukkah. "There's a lot of power in the menorah in the window," she says. "I really felt

that strongly this past holiday season. After the horrible events in New York, I really felt it was really important to be visible in that way. I like the idea of having a presence that says that we're still here."

And her favorite Pueblo tradition is at "the essence of what it means to be Native," as she calls it: a feast day. "On those days, many homes are open to anyone—not just tribal members—who can come in, and sit at what are typically very long tables set up in the biggest room of the house, and take a seat and eat with everyone else. It's been my experience over my life when I've done that, that you are always sitting with people you don't know, and often in houses where you don't know the people who are feeding you. That tradition, to me, is kind of the essence of what it means to be Native: Our homes are open, our hearts are open and we feed people. The spirit of that is something that's very important to me."

Montoya-Lewis's judicial career began with her own tribe. She graduated from University of Washington School of Law in 1992, then she went on to get a master's degree in social work. After graduating, however, she quickly started her judicial career. "I was asked by my own tribe to hear one case, a very complex civil litigation case that the tribal court didn't have a judge with my kind of legal training to hear it," she recalls. "It was really advised by my father, as well as Justice Pamela Minzner, the justice I had clerked for right after law school and before I started practicing law, that I needed more time to be a lawyer before I became a judge. And that was good advice."

"But I didn't take that advice," she adds, laughing. "I chose to do it anyway." It started out with just one case, then another, and eventually, being a tribal judge became a consistent part of Montoya-Lewis's work.

While working as a tribal judge, Mon-

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toya-Lewis also taught at University of New Mexico Law School. She then ended up in Washington as a professor at Western Washington University. "I, again, didn't really have any intention to continue being a judge," she says. But soon enough, in Washington, she served as a Chief Judge for the Lummi Nation, the Nooksack Indian Tribe, and the Upper Skagit Indian Tribe, as well as an appellate judge for the Nisqually Tribe and the Northwest Intertribal Court System.

It is rare for tribal judges to enter the state and federal court systems. In fact, "It's completely atypical," she says.

According to Montoya-Lewis, there are only a handful of state court judges who are Native Americans, and "maybe one other" who worked for tribes then moved to the state court system. And in the federal court system, Montoya-Lewis named the two other Native people she knows of currently working: Diane Humetewa, a U.S. District Judge who is currently in Arizona, and Anne McKeig, a justice in Minnesota who has Native heritage and is currently on the Minnesota State Supreme Court. (Michael Burrage, a member of the Choctaw nation, served as a federal judge from 1994 to 2001.)

"And then there's me," Montoya-Lewis says.


"When I applied for appointment to Superior Court—which is the trial level in

Washington State where we do civil trials and criminal felony trials, among other things—there really was no example that I could see in the country of someone having had a career working for tribes and tribal courts making the leap to the state court side," she says. (Montoya-Lewis served on the Whatcom County Superior Court from 2015 until she started on Washington's Supreme Court earlier this month.) "It was not something I ever expected to happen, because I think it really took some courage and vision on the part of Governor Inslee, who made [my] initial appointment to Superior Court, to imagine that not only that I could do it, but that the community I was going to work with would recognize I was capable of doing that work."

Montoya-Lewis had no role models when she moved from the tribal court system to the state courts. But now, her career is paving the way for others to follow.

"When I've looked for my own role models and people I wanted to model my career after, it certainly took some imagination and some leaps of faith," she says. "I'm hopeful that what I'm doing will be an example, but I also think it's important that I am actually out there actively mentoring people who are interested in this path, who think that there is not a way for them."

Montoya-Lewis is acutely aware of the struggles many Native Americans face in the judicial system. While Native judges are rare, Native Americans are "disproportionately represented on every level of the criminal justice system," she said. In her new role, she is continuing her commitment to justice for all.

"Before you called, I was downstairs by the Supreme Court courtroom, and there was a classroom of third or fourth graders, getting a lesson on the way the court system works," Montoya-Lewis says. "It gives me hope that those kids will see themselves as having any courthouse in their own communities as being a place where they belong. What gives me hope is that there are many doors that are opening that have been closed." 

Montoya-Lewis sees an overlap of her Jewish and Native identities—namely, persistence and resilience, which is something she hopes to transmit to her own children.



COVER
STORY

The 2020 APEX Awards

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

NOTE: APEX Award winners are nominated by WSBA members and members of the public. Nominations are reviewed by the WSBA APEX Awards Committee (made up of members of the WSBA Board of Governors), which makes recommendations to the full Board of Governors. Nominations for the 2021 awards open in January. Visit www.wsba.org/about-wsba/apex-awards for more information and to view the entire 2020 awards presentation ceremony as well as the award winners' videos. Questions can be emailed to barleaders@wsba.org.

Justice Charles Z. Smith Excellence in Diversity Award

Named in honor of the first African-American justice to serve on the Washington Supreme Court, this award goes to a lawyer, law firm, or law-related group that has made a significant contribution to diversity in the legal profession.

Catherine C. A. Romero Redmond

Romero's nomination outlines her significant contributions and support of the next generation of Latinx lawyers. Romero's work with the Hispanic National Bar Association in co-founding the Intellectual Property Law Institute (IPLI) at George Washington University has provided over 180 Hispanic and Latinx law students with an expenses-paid, week-long IP and technology law immersion program. The goal of the program is to increase the number of Latinx law students going into IP and technology law. Romero keeps in touch with the graduates, mentoring them and providing them with a professional network. Since the IPLI program was founded in 2013, the number of Latina attorneys practicing in IP and technology law has increased by 15 percent. Additionally, Romero has volunteered to provide pro bono service to asylum seekers on the Mexico-Texas border. Her day job is as the senior attorney supporting Microsoft's Office of Responsible AI (ORA), which is responsible for setting AI principles and policy, education, and developing best practices.



Outstanding Young Lawyer Award

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

Jordan L. Couch University Place

Couch has done a tremendous amount of work to bring new and young lawyers into the WSBA, and these efforts have had a positive impact on young lawyers.



Award of Merit

This award is the Bar's highest honor and is given to an individual for a recent, singular achievement that may involve a display of exceptional courage in the face of adversity, thus bringing credit to the legal profession. It is awarded to individuals only—both legal professionals and members of the public.

Daniel G. Jones Silverdale

Capt. Jones serves as a Navy Reserve Judge Advocate General (JAG) at Naval Base Kitsap, and as a civilian attorney with the Navy's Region Legal Services Office Northwest (NRLS-NW). At NRLS-NW he is responsible for training all new JAGs as they begin their legal careers, and is often the first mentor for many of these new attorneys. One supporter noted that "any Navy JAG officer who has competently provided legal assistance in the Northwest over at least the past decade has Mr. J to thank."



Angelo Petruss Award for Lawyers in Government Service

Named in honor of Angelo R. Petruss, a senior assistant attorney general who passed away during his term of service on the WSBA Board of Governors, this award is given to a lawyer in government service who has made a significant contribution to the legal profession, the justice system, and the public.

Nancy Koptur Olympia

Koptur is well known in the family law community for her 30 years of service as a staff attorney with the Washington Department of Social and Health Services, Division of Child Support (DCS) in Olympia. She served as the DCS legislative and rules coordinator, and was the "go-to" attorney for all things child-support related. She has been very involved with the WSBA Family Law Section, as an Executive Committee member and frequent list serve contributor.



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COVER STORY

The 2020 APEX Awards

CONTINUED >

Professionalism Award

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

Jean M. McCoy Vancouver

McCoy's nomination is filled with references to her fairness, honesty, and compassion. She is a mentor to new attorneys and is highly respected by the local bar. She practices in the contentious areas of landlord-tenant and creditors' rights law. Judges trust her, and she is a trusted, reasonable practitioner in the community. "Kind" and "diplomatic" are words used to describe her. She also edits the local bar newsletter, *Hearsay*, and has been active in the WSBA Real Property, Probate and Trust Section.



Norm Maleng Leadership Award

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

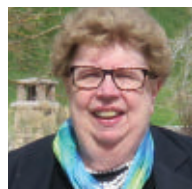
Malou Chávez Seattle

Chávez serves as the deputy director of Northwest Immigrant Rights Project (NWIRP), and supervises a legal team at one of the country's largest nonprofit organizations exclusively focused on providing legal services to immigrants. She is a graduate of Seattle University School of Law and previously worked with NWIRP in Moses Lake and Wenatchee.



Lifetime Service Award

This is a special award given for a lifetime of service to the legal community and the public.



Patricia J. Chvatal Richland

Chvatal's nominators noted her long career in the Tri-Cities as a member of the family law legal community. A 1975 graduate of Gonzaga University School of Law, Chvatal was the first woman to practice law in the area. She began to specialize in family law after volunteering at a women's shelter. Now, 43 years later, Chvatal continues to be a fixture in the community, donating her time and resources to many local causes.



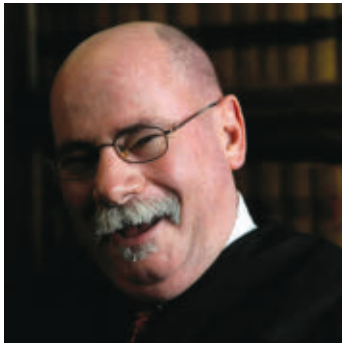
Carol Newell Pidduck Ellensburg

For the past 20 years, Pidduck has served as the executive director of the nonprofit organization Court Appointed Special Advocate (CASA) of Kittitas County. She is responsible for two paid staff, over 25 volunteers, over 100 cases, outreach, and fundraising. The nomination concludes that, "she made the community a better place." Pidduck is a 1976 graduate of Gonzaga University School of Law.



D. Jean Shaw Vancouver

In 1975, Shaw graduated from Gonzaga University School of Law and the next year opened the first all-women law firm in Spokane, with Kathleen O'Connor. Shaw later moved across the state to Vancouver where she practiced real estate law. She also served as assistant general counsel to KinderCare and managed a portfolio of 1,500 properties. Shaw also served a quarter-century on the board of the Humane Society of Southwest Washington, including a term as its president.



Outstanding Judge Award

This award is presented for outstanding service to the bench and for special contribution to the legal profession at any level of the court.

Hon. Michael McCarthy

Yakima

(awarded posthumously)

Judge McCarthy's legacy includes over 20 years of service as a Yakima County judge. He came to Washington from Massachusetts while in service as a VISTA volunteer (the domestic Peace Corps) and began his career in Yakima in 1980, where he served in the Prosecutor's Office, the Yakima County Corporate Counsel's office, Yakima County District Court, and finally Yakima County Superior Court. Judge McCarthy was well respected and well liked by the Yakima legal community; he also served as a judge for Kittitas, Benton, and Franklin counties when conflict cases arose. Judge McCarthy passed away from cancer in February 2020.

CONTINUED >

APPEALS

OVER **600** CASES ARGUED ON THE MERITS

JASON W. ANDERSON | LINDA B. CLAPHAM*

RORY D. COSGROVE | MICHAEL B. KING*^o

JAMES E. LOBSENZ*^o | GREGORY M. MILLER*

SIDNEY C. TRIBE

^oFellow, American Academy of Appellate Lawyers

*Founding Members, Washington Appellate Lawyers Association

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Attorney Fee in Washington,

52 Gonz. L. Rev. 1 (2017)

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Estate of Hunter (\$2.8 million fee award in arbitration)

Easterly v. Clark County, 2 Wn. App. 2d 1066 (2018)

Arnold v. City of Seattle, 185 Wn.2d 510, 374 P.3d 111 (2016)

Bright v. Frank Russell Investments, 191 Wn. App. 73, 361 P.3d 245 (2015)

Tupas v. Washington State Dept. of Ecology, 191 Wn. App. 1036 (2015)

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COVER STORY

The 2020 APEX Awards

CONTINUED >

Legal Innovation Award

This award recognizes legal professionals, law firms, courts, law schools, individuals, or organizations who demonstrate leadership in promoting innovation in the practice of law. Innovation may be defined as programs, processes, or technology that advance or streamline the future of the profession and accessibility/delivery of legal services.

Latinx Legal Day Vancouver

Latinx Legal Day is a collaborative effort to hold a law clinic that creates a safe space specifically for the underserved Latinx community in Clark County. The Latinx Legal Day clinic has been held quarterly since 2016, and over 650 clients have been served. Latinx Legal Day is a collaborative effort among Southwest Washington League of United Latin American Citizens (SW WA LULAC), YWCA Clark County, Latino Community Resource Group, and Clark County Volunteer Lawyers Program.

Pro Bono and Public Service Awards

These awards are presented to an individual, a lawyer, other legal professional, law firm, or other legal entity for outstanding cumulative efforts in providing pro bono services or for giving back in meaningful ways to the public, the community, or the legal profession. Nominations are made in two categories: (1) for an individual, or solo or small firm practitioner; (2) for a multi-person law firm or organization.



Joanna Plichta Boisen Seattle

Boisen's work has focused on creating pro bono positions at private law firms, first at Foster Pepper (now Foster Garvey) and currently at Davis Wright Tremaine, where she serves as the chief pro bono and social impact officer. She is also helping to coordinate the access to justice response to the COVID-19 pandemic in Washington state, and is working with Washington Sen. Patty Murray's office in these efforts.

Thurston County Volunteer Legal Services Olympia

Thurston County Volunteer Legal Services (TCVLS) coordinates volunteer lawyers in Thurston, as well as Mason, Lewis, Grays Harbor, and Pacific counties. In 2019, TCVLS provided 1,550 consultations with 126 volunteer attorneys and another 43 pro-bono representations. The nomination application states that: "The staff and team of volunteer attorneys at TCVLS represent the best and the highest ideals of the legal profession. They give people who have virtually no resources, but who face serious legal challenges or needs, a fighting chance."

Sally P. Savage Leadership in Philanthropy Award

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

Lembhard G. Howell Seattle

The Washington State Bar Foundation states: "The Trustees of the Washington State Bar Foundation voted unanimously to recommend that Lem Howell receive the Sally P. Savage Leadership in Philanthropy Award in 2020. Through his decades as a champion for justice, he exemplifies Sally Savage's spirit of generosity and leadership."



Courtesy photos

Invest in **EQUITY & JUSTICE**

Donate on your
license renewal!

☒ **YOUR GIFT** to the *Washington State Bar Foundation* supports the Washington State Bar Association's Moderate Means Program, and the new Powerful Communities Project, which provides grants to support legal services statewide for our most vulnerable communities. We also proudly support WSBA's important Diversity, Equity & Inclusion work.

☒ **YOUR DONATION** to the *Campaign for Equal Justice* funds 30+ legal aid programs like Northwest Immigrant Rights Project, King County Bar Pro Bono Program, Columbia Legal Services, and TeamChild to advance civil justice for youth and people of color, immigrants, and all who suffer the injustices of poverty and systemic racism.

***Renew your license, renew your commitment
to equity and justice for all.***



The Washington State Bar Foundation and Legal Foundation of Washington (Campaign for Equal Justice) are public charities. Your donations are tax-deductible to the full extent of the law.



DELIVERING JUSTICE TO THOSE VICTIMIZED BY OTHERS.

Our trial attorneys deliver results and justice for clients who have been injured or victimized by others. Our firm understands the emotional, financial and physical impact on families and individuals who have suffered catastrophic injuries, and we take a caring, respectful and victim-centered approach to getting you the results you deserve.

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Recognizing 50-Year Members of the WSBA

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- Steven Whitney Anderson
- Thomas Lennard Anderson
- J. Richard Aramburo
- Edward McDuff Archibald
- Richard Michael Barney
- Donald Macneil Barton
- Stephen R. Black
- Robert Stewart Bock
- Thomas L. Boeder
- Werner Boettcher
- Richard Thurman Brothers
- Charles Sheffield Burdell
- Terrence A. Carroll
- Bruce Clement
- Gerald L. Coe
- Stephen Andrew Cohen
- John Gordon Cooper
- Robert E. Corlett
- Curtis John Coyne
- Gary Michael Cuillier
- Gregory Raymond Dallaire
- Robert R. Davis
- David James DeLaittre
- Michael Doezie
- Edward Leonard Douglas
- Philip Wickstrand Dufford
- John Stephan Ebel
- Stephen Charles Ellis
- Stephen Kerr Eugster
- Stephen Michael Gaddis
- David L. Garrison
- William K. Goodwin
- David Douglass Gould
- Jeffrey Frank Hale
- William Leary Halpin
- Jerold W. Heller
- Stuart Alan Heller
- Dennis Paul Helmick
- John Kent Hoerster
- Everett Allen Holum
- Faith Ireland
- Bartholomew George Irwin
- Dillon Edward Jackson
- Gary E. Jacobson
- John Tony John
- James Martin Johnson
- Matthew Ryan Kenney
- Glenn R. Kessel
- Jan Charles Kielpinski
- Ronald Clarke Kinsey
- John C. Kouklis
- Peter Stephen Lewicki
- Oscar Yale Lewis
- Roger B. Ley
- Donald L. Logerwell
- David James Manger
- George William Martin
- Robert Samuel McConnell
- Thomas Owen McElmeel
- William Sargent McGonagle
- Kent Millikan
- George Richard Morry
- David William Murdach
- Eric Karl Nayes
- James Austin Nelson
- Nicholas Newman
- G. Kenneth O'Mhuan
- David Harding Oswald
- Joel Hathaway Paget
- James Robert Pair
- Darrel Lee Peebles
- Edward W. Pettigrew
- Harry Bill Platis
- Steven H. Pond
- Kelly B. Raynolds
- David W. Robinson
- Carl Francis Roehl
- Charles F. Secrest
- Charles Laurence Senn
- Thomas Ernest Sheldon
- David M. "Mac" Shelton
- David L. Shorett
- Marilyn Dean Sloan
- Gerald A. Smith
- John Joseph Soltys
- John Murray Steel
- Craig Steven Sternberg
- Jerry D. Talbott
- Michael Edward Taylor
- James Robert Uhlir
- Carleton Barnes Waldrop
- Robert John Walerius
- James Patrick Walsh
- M. Fred Weedon
- Robert Dean Welden
- Gordon W. Wilcox
- Wayne L. Williams
- T. Reinhard G. "Ron" Wolff
- Kirk Eugene Youngman
- Jay Henry Zulauf



WHAT HAPPENED IN 1970?

IN THE NEWS

- The U.S. invades Cambodia.
- During a protest against the U.S. expansion of the Vietnam War into Cambodia, four students at Kent State University are killed by the Ohio State National Guard. Nine others are wounded.



- The voting age in the U.S. is lowered from 21 to 18 when **President Richard Nixon** signs the Voting Rights Act Amendments of 1970.

- Anna Mae Hays becomes the first female general in U.S. armed forces history.

SCIENCE & TECHNOLOGY



- **Apollo 13** is launched toward the moon on April 11. The mission is aborted due to an oxygen tank failure, and the crew returns safely to Earth on April 17.
- The first Earth Day is celebrated.

THE AWARD GOES TO ...

- Crosby, Stills & Nash win the Grammy Award for Best New Artist.
- *Midnight Cowboy* wins the Academy Award for Best Picture—the only X-rated film to ever win the award.

ARTS & CULTURE



- **Jimi Hendrix** dies at age 27 in London. Sixteen days later, **Janis Joplin** dies at age 27 in Hollywood.
- The soap opera *All My Children* debuts.

- Three books take turns in the top spot on *The New York Times* Fiction Best Seller list: *The Godfather* by Mario Puzo, *The French Lieutenant's Woman* by John Fowles, and *Love Story* by Erich Segal.

WASHINGTON STATE HISTORY

- The Seattle chapter of the National Organization for Women (NOW) is founded in the chambers of then-King County Superior Court Judge Evangeline Starr.
- Washington's State Department of Ecology is authorized, becoming the first state-level organization of its kind and preceding the formation of the federal Environmental Protection Agency.

24

Ways to Give Back

*Not all volunteer opportunities are the same—
the WSBA offers a variety of options for those looking to
assist the legal community and serve the public*

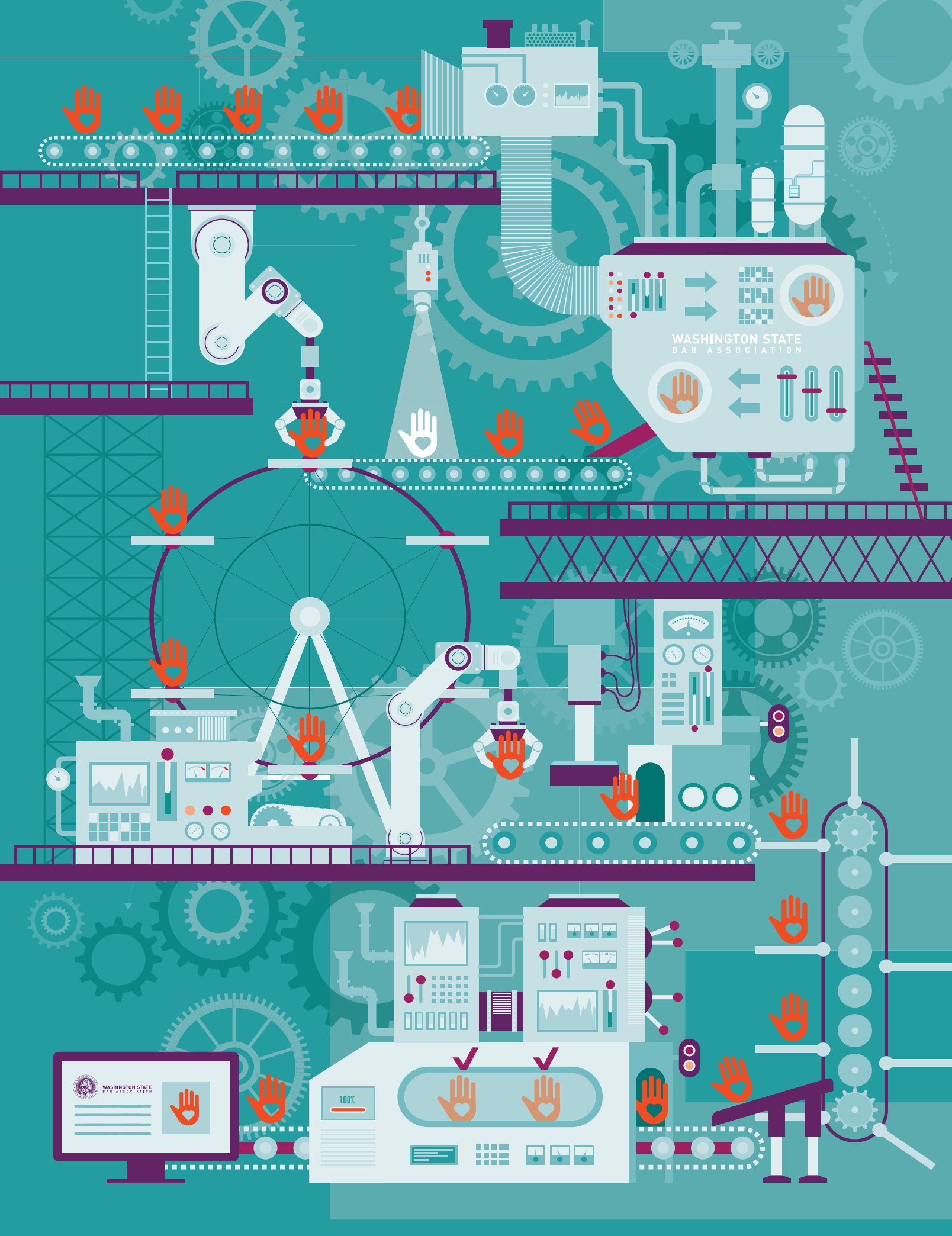
BY PARIS A. ERIKSEN

Year after year, WSBA members and members of the public come together to further the mission of the Washington State Bar Association to serve the public and the members of the Bar, to ensure the integrity of the legal profession, and to champion justice. Much of this work is carried out by volunteers who WSBA President Kyle Sciuchetti has recognized as “the backbone of the regulatory and professional services provided by the state [B]ar.”

Why are volunteers so valuable?

First, the WSBA’s staff and resources are limited. The time and expertise that volunteers donate allow the WSBA to go *beyond* its budget and do more to further its mission. Second, unlike WSBA staff who may be responsible for multiple projects and initiatives, volunteers can commit to and focus on a single body of work about which they feel strongly.

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WASHINGTON STATE
BAR ASSOCIATION

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100%

24 Ways to Give Back

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Why should you consider adding volunteer work with a WSBA committee or board to the demands of a busy practice? Because your perspective is needed to inform the work of the WSBA and affect the direction of the profession. Volunteers speak up, criticize, critique, rethink, retool, and ask questions. This dynamic is critical in pushing the profession and the WSBA forward in a direction that is better able to meet the needs of the public and its members.

Please take a look at the many opportunities to contribute summarized on the following pages, and please consider sharing your time and expertise—and unique perspective—to help keep your membership association and the profession moving forward.

Paris A. Eriksen is the volunteer engagement advisor in the Office of the Executive Director at the Washington State Bar Association. In this role, Eriksen oversees all aspects of the volunteer engagement cycle from recruitment to recognition, which includes managing the appointment process and Board of Governor elections. She can be reached at parise@wsba.org.



SIDEBAR

Apply Online

Most committees and boards have multi-year terms, intended to give members time to develop in-depth understanding of the work and to actively engage in it. All WSBA meetings and events are currently being held in virtual format only, due to COVID-19, which has had the positive effect of allowing better engagement by members from around the state. If you have questions, please email barleaders@wsba.org. Find instructions and the volunteer interest form at www.wsba.org/joincommittee.

WSBA COMMITTEES

The following committees were created by the Board of Governors and are tasked with studying matters relating to the general purpose and business of the WSBA.

Committee on Professional Ethics

- Provides guidance to WSBA members on legal ethics issues in the form of advisory opinions.
- Considers and proposes to the WSBA Board of Governors amendments to the Washington Rules of Professional Conduct (RPCs).
- Considers and reports to the WSBA Board of Governors on amendments and proposed amendments to the ABA Model Rules of Professional Conduct.
- May also conduct periodic outreach to the membership on these subjects.

Time commitment: Three-year term with six meetings per year, 3.5-5 hours per meeting.

Requirements: Must be an active WSBA member or a law professor.

This committee may be right for you if: You have knowledge and experience in legal ethics and legal writing and research, a depth of experience in various practice areas, a keen understanding of the RPCs and the Model Rules, a desire to discuss legal ethics, and the ability to research and draft reports and memos and prepare draft rules.

Continuing Legal Education Committee

- Supports the WSBA and its 29 sections in the delivery of high-quality, mission-focused Continuing Legal Education (CLE).
- Advises on content, speakers, and delivery models.

- Helps identify trends and gaps in legal education that the WSBA is uniquely positioned to fill.

Time commitment: Three-year term with four meetings per year, 2 hours per meeting.

Requirements: Must be an active WSBA member.

This committee may be right for you if: You have an interest in the development and delivery of CLE programs and some experience in CLE program development.

Council on Public Defense

- Unites representatives of the Bar; private and public criminal defense attorneys; judicial representatives appointed by the Washington Supreme Court, the Superior Court Judges Association, and the District and Municipal Court Judges Association; current and former prosecutors; and the public to address new and recurring challenges that impact the public defense system.
- Educates and informs policymakers on issues that need reform and provides concrete proposals that are enhanced by the comprehensive nature of the Council on Public Defense membership.

Time commitment: Two-year term with one 2.5-hour meeting per month plus participation in at least one committee. Total monthly time commitment ranges from 3.5-10 hours.

Requirements: Depending on the needs of the committee, members can be WSBA members, members of the public, prosecutors, public defenders, law school representatives, judicial members, members of local government, or public defense administrators.

This council may be right for you if: You have knowledge and experience with public defense, a willingness to take initiative on tasks and committees, and openness to productive discussion and debate.

Court Rules & Procedures Committee

- Studies and develops suggested amendments to designated sets of court rules on a regular cycle of review.
- Performs the rules study function outlined in General Rule 9 and reports recommendations to the WSBA Board of Governors.

Time commitment: Two-year term with monthly meetings of 1-3 hours each, periodic subcommittee meetings, and outside of meetings, some research, drafting of rule language, and more.

Requirements: Must be an active WSBA member.

This committee may be right for you if:

You have experience with or strong interest in drafting of rules and/or court procedures, and a willingness to commit time to research, drafting, and spirited discussion.

Editorial Advisory Committee

- Works closely with the *Washington State Bar News* editorial team, ensuring that the magazine's content engages, excites, and informs readers.
- Committee members identify and develop possible article topics, write articles, identify and recruit potential authors, review and critique issues of the magazine, and work with staff to develop editorial policy.

Time commitment: Two-year term with a 1-hour meeting each month. Members may be asked to draft articles, recruit authors, review magazine issues, and more.

Requirements: Must be an active WSBA member.

This committee may be right for you if:

You have writing and/or editing experience, a lively interest in and awareness of current developments in the law and of issues relevant to legal practitioners, and a willingness to do outreach to identify and recruit authors with the expertise and experience to write on specific topics.

Judicial Recommendation Committee

- Screens and interviews candidates for state Court of Appeals and Supreme Court positions.
- Makes recommendations that are reviewed by the WSBA Board of Governors and forwarded to the state governor for consideration when making judicial appointments.

Time commitment: Three-year term, and depending on the number of candidates to review, meetings can last at least 3 hours. Prior to each meeting, members review candidate materials and conduct reference checks.

Requirements: Must be an active WSBA member and must abide by committee rules (not endorsing or campaigning for judge positions, etc.).

This committee may be right for you if: You match the criteria of a position the committee is looking to fill: considerations include number of years in practice, geographic location, size of firm, race/ethnicity, gender, sexual orientation, disability status, nature of practice/areas of expertise, employer, and typical client representation (i.e., civil plaintiff or defense, criminal prosecution or defense, government regulatory). The committee comprises 22 members.

Legislative Review Committee

- Reviews legislative proposals brought by WSBA sections or other WSBA committees or entities and makes recommendations for sponsorship or support to the Board of Governors.
- Ensures that WSBA-request legislation (the legislative proposals brought by sections or other WSBA entities that are sponsored by the WSBA Board of Governors) fulfills General Rule (GR) 12 and is vetted both internally and externally. In particular, GR 12 prohibits the WSBA from "tak[ing] positions on political or social issues which do not relate to or affect the practice of law or



SIDEBAR

Other Ways to Volunteer

- **Become a WSBA CLE Faculty Member.** WSBA CLE seminars rely on the time, knowledge, and commitment of WSBA members. For more information, contact cle@wsba.org.
- **Serve on a WSBA Section Executive Committee.** The WSBA has 29 sections with committed executive committees that help plan and implement the member benefits each section provides. Most executive committee members are elected by the section membership. For more information, contact sections@wsba.org.
- **Lead the WSBA by serving on the WSBA Board of Governors.** More information can be found on p. 53 of this issue.

the administration of justice."

- May also consider non-WSBA proposals seeking WSBA input and support.
- May also provide technical support to WSBA sections in drafting of bills where appropriate.

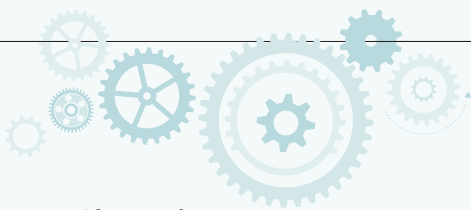
Time commitment: One-year term; the number and duration of meetings depends on the number of legislative proposals to address. Each meeting lasts between 1-3 hours and requires about 1-3 hours of prior preparation.

Requirements: Must be an active WSBA member.

This committee may be right for you if:

You have an interest in the legislative process.

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24 Ways to Give Back

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Pro Bono and Public Service Committee

- Focuses on breaking down the barriers to engaging in public service and pro bono work faced by members.
- Promotes pro bono opportunities.
- Develops public service CLEs to support members doing pro bono work.
- Works with WSBA staff to collaborate with the Alliance for Equal Justice to advance efforts to engage members in pro bono.

Time commitment: Two-year term with monthly meetings lasting 1-2 hours each. Work groups also meet monthly, with some projects requiring time outside of meetings.

Requirements: Must be an active WSBA member; one position is designated to be filled by a member with pro bono status.

This committee may be right for you if: You have interest and/or experience in doing pro bono and public service work and a commitment to advancing the WSBA's mission to serve the public and champion justice.

Washington Young Lawyers Committee

- Works to actively engage new and young lawyers in the activities of the WSBA.
- Develops and conducts activities of value to new and young lawyers.
- Connects new and young lawyers to all WSBA resources.

Time commitment: Three-year term with six 5-hour Saturday meetings per year, with about 1 hour of preparation per meeting. Members are also encouraged to work on one or more committee projects. Time commitment varies per project.

Requirements: Active lawyer members of

the Bar are considered eligible to apply until the last day of December of the year in which the member attains the age of 36 years or until the last day of December of the fifth year after the year in which such member first was admitted to practice as a lawyer in any state, whichever is later.

This committee may be right for you if: You have past volunteer experience, have developed new lawyer programs or benefits, and connections to local new lawyer networks.

WSBA Diversity Committee

- Works to support and implement the WSBA Diversity and Inclusion Plan.
- Supports historically underrepresented groups to enter and stay in the profession.
- Raises awareness in the community and builds coalitions through collaborative relationships on the benefits of diversity through the continued use of the membership study.
- Works with WSBA staff to review, advise, and implement policy, programs, and activities of the WSBA that promote a culture of inclusion.

Time commitment: Two-year term with four meetings lasting 4-5 hours each plus five additional short meetings. Members also participate in committee activities such as mentoring, networking, writing, and educational events.

Requirements: Must be an active WSBA member and have an interest in advancing the WSBA's commitment to diversity, equity, and inclusion within the legal profession.

This committee may be right for you if: You have a genuine interest in the work.

WSBA REGULATORY BOARDS & PANELS

These regulatory boards and panels were created by court rule and are administered by the WSBA.

Adjunct Disciplinary Counsel Panel

- Assists, as needed, the Office of Disciplinary Counsel in carrying out the functions of the lawyer discipline system pursuant to Rule 2.9 of the Rules for Enforcement of Lawyer Conduct.

Time commitment: Five-year term; time commitment varies depending on the complexity of the assignments.

Requirements: Must be an active WSBA lawyer or judge for at least seven years and have no record of disciplinary action.

This panel may be right for you if: You have experience in investigation of wrongdoing and/or law practice management supervision.

Character & Fitness Board

- Conducts hearings to determine whether applicants for admission to the practice of law can establish that they have the good moral character and fitness required to engage in the practice of law.
- Reads hearing materials, considers testimony, and prepares written findings and recommendations for the Washington Supreme Court for final decision and action.

Time commitment: Three-year term with one full-day meeting per month, plus time to review materials prior to each meeting.

Requirements: Must be an active WSBA member or a member of the public. WSBA members must have been licensed to practice for at least five years.

This board may be right for you if: You have the ability to treat all applicants with dignity and respect, maintain an open mind until all evidence has been presented, weigh conflicting evidence and arrive at a decision, state and explain personal opinions in a polite and professional manner, work collaboratively with a group, write clearly and persuasively, and maintain strict confidentiality regarding materials and hearings. Experience working in a judicial position of any type may be helpful, but is not required.

Client Protection Board

- Reviews claims for reimbursement of financial loss sustained by clients of WSBA members who have engaged in dishonest actions or failed to account for client funds.
- Decides on claims up to \$25,000 and makes recommendations to the Board of Governors on claims for greater amounts, with the maximum gift of \$150,000.
- Reviews approximately 80-100 applications for reimbursement per year.

Time commitment: Three-year term with quarterly meetings lasting 2-4 hours each, plus review of materials prior to each meeting.

Requirements: Must be an active WSBA member or a member of the public.

This board may be right for you if: You have attention to detail and willingness to devote time to reviewing materials thoroughly prior to meetings.

Law Clerk Board

- Supervises the Law Clerk Program, an alternative to law school governed by Admission and Practice Rule (APR) 6 and designed to provide educational and practical experience through a combination of work and study with an experienced lawyer or judge.

Time commitment: Three-year term with full board meetings four to six times a year for approximately 6-8 hours each. In addition, members review meeting materials, interview applicants, and more.

Requirements: Must be an active WSBA member.

This board may be right for you if:

You match the criteria of a position the committee is looking to fill: Considerations include geographic distribution of law clerks in the program, a balance of those who completed the law clerk program and law school graduates, and other diversity factors.

SUPREME COURT BOARDS & PANELS

These boards and panels were created by the Washington Supreme Court and are administered by the WSBA.

Access to Justice Board

- Works to achieve equal access to justice for those facing economic and other significant barriers.

Time commitment: Three-year term with time commitment estimated at about 10-20 hours per month.

Requirements: No status requirements; can be a WSBA member of any status or a member of the public.

This board may be right for you if: You have the ability to think strategically; a commitment to equity and justice; demonstrated leadership in equity and justice work, and a proven track record of collaboration, strategic thinking and communication, and fostering processes of renewal and building new leaders. Personal/professional experience working in community-based organizations, civil legal aid programs, pro bono programs, or public defense is a plus. Applications are also encouraged from people who are or have been eligible for civil legal aid services.

Disciplinary Board

- Carries out adjudicative functions and duties according to the Rules for Enforcement of Lawyer Conduct.
- The full 14-member board reviews appeals from hearing officer decisions and also approves or rejects certain stipulations to discipline.
- Three-member review committees review disciplinary investigation reports and appeals from dismissals of grievances.

Time commitment: Three-year term with bi-monthly full board meetings lasting

2-5 hours each and review committee meetings lasting about 2 hours each. In addition, members must review records and do considerable reading and meeting preparation.

Requirements: Must be a WSBA lawyer member or a member of the public. Lawyer members must have been an active attorney or judicial member for at least five years.

This board may be right for you if: You are willing to devote time to review and consider a significant amount of material and to make decisions in a fair and impartial manner. Prior adjudicative experience can be helpful but is not required.

Hearing Officer

- Presides over licensed legal professional discipline and disability proceedings under appropriate court rules.

Time commitment: Initially a two-year term; depending on assignments the time commitment is an estimated 5-15 days per year.

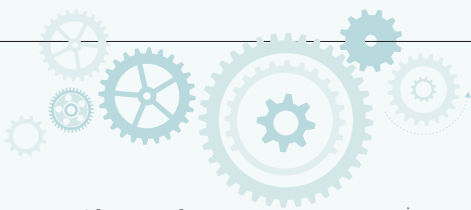
Requirements: Must be an active WSBA members for at least 7 years, have no public discipline record, and have experience as an adjudicator or advocate in contested adjudicative proceedings.

This position may be right for you if: You have experience writing adjudicatory decisions, experience with judicial demeanor, and experience controlling a hearing.

Limited License Legal Technician (LLLT) Board

- Develops and recommends to the Washington Supreme Court general policy and requirements for the LLLT license.
- Works with subject matter experts to write and grade the LLLT practice area examinations and LLLT ethics examination.
- Plays a role in the LLLT discipline system.
- Acts as a group of ambassadors of the LLLT license for the broader legal profession and the public.

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24 Ways to Give Back

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Time commitment: Three-year term with monthly full board meetings lasting about 2 hours each. Additional committees made up of board members meet as needed.

Requirements: Must be an active WSBA member, judicial member, pro bono member, or member of the public.

This board may be right for you if: You have experience with program planning, adult education, marketing, legal practice, exam writing, technology and process automation, business management, legal aid, and/or access to justice reform.

Limited Practice Board

- Develops and recommends to the Washington Supreme Court general policy and requirements for the Limited Practice Officer (LPO) license.
- Works with exam-writing experts to write and grade the LPO practice area examination.
- Develops and approves forms for use by LPOs.
- Plays a role in the LPO discipline system.
- Acts as a group of ambassadors of the LPO license for the broader legal profession and the public.

Time commitment: Three-year term with full board meetings four to six times per year of about 3 hours each.

Requirements: Must be an active WSBA member or business representative of one of the following industries: escrow, lending, title insurance, and real estate.

This board may be right for you if: You have experience in the real estate, mortgage, title, and escrow industries.

Mandatory Continuing Legal Education Board

- Oversees compliance of licensed legal professionals and CLE sponsors with

MCLE requirements (authorized by Admission and Practice Rule (APR) 11).

Time commitment: Three-year term with five meetings per year, plus time reviewing materials and auditing courses.

Requirements: Must be an active WSBA member or a member of the public.

This board may be right for you if: You have a diverse background, teaching experience, and technology skills.

Practice of Law Board

- Works to discover innovative ways to make legal resources and services more accessible and user friendly.
- Educates the public about how to receive competent legal assistance.
- Considers new avenues for people not authorized to practice law to provide legal and law-related services.
- Refers nonfrivolous complaints alleging unauthorized practice of law to appropriate authorities.

Time commitment: Three-year term with monthly full-day meetings, plus pre-meeting preparation.

Requirements: Must be an active WSBA member or a member of the public.

This board may be right for you if: You have an interest in access to justice, innovation, working on collaborative projects, and working on long-term projects.

OTHER POSITIONS

Conflicts Review Officer

- Reviews grievances filed against disciplinary counsel and other lawyers employed by the WSBA, hearing officers, Conflicts Review Officers and Conflicts Review Officers pro tempore, members of the Disciplinary Board, officers and members of the Board of Governors, and staff, attorneys, and judicial officers of the Washington Supreme Court.

Time commitment: Three-year term; depending on assignments, time commitment

is an estimated 10-20 days per year.

Requirements: Must be an active WSBA lawyer member; must have prior experience as a Disciplinary Board member, disciplinary counsel, or special disciplinary counsel; must not have any other role in the WSBA discipline system during the term of appointment.

This position may be right for you if: You have an interest in participating in the licensed legal professional discipline system.

Disciplinary Advisory Round Table

- Acts as a forum for the discussion of issues affecting the discipline system for licensed legal professionals in Washington.
- Provides an annual report to the Washington Supreme Court and the WSBA Board of Governors, including any recommendations for change and the identification of concerns or issues.

Time commitment: Three-year term with one annual training/orientation meeting plus additional 2-hour meetings on an ad hoc basis.

Requirements: Depends on open positions. Openings could include a minority bar association representative, a LLLT, and an LPO.

This position may be right for you if: You have some knowledge of court or administrative-adjudicative processes and rules.

Records Request Appeals Officer

- Conducts review of records disclosure decisions by the WSBA's public records officer.

Time commitment: Initially a one-year term; time commitment depends on the number and frequency of requests.

Requirements: Must be an active WSBA lawyer member.

This position may be right for you if: You have Public Records Act experience (although there are certain key differences between GR 12.4, which applies to the WSBA, and the Washington Public Records Act, RCW 42.56). **BN**



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Change is Coming

New Guardianship, Conservatorship, and Alternatives Act will have broad impact on Washington adults

BY FERD H. MITCHELL AND CHERYL C. MITCHELL

Effective Jan. 1, 2022, Washington's new statutory scheme for replacing established guardianship law seeks to maximize freedom and independence for all adults, even individuals with limitations.

In 2019, the Washington Legislature started to revise the state's guardianship statutes. The starting point was the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (UGCOPAA) developed by the Uniform Law Commission (ULC), which was then modified to create a Washington version of the Uniform Act (SSB 5604, signed by Gov. Jay Inslee on May 21, 2019, and codified in September 2019 as Ch. 11.130 RCW, to become effective Jan. 1, 2021).

However, the new Washington Act resulted in widespread criticism by individuals and advocacy groups concerned that the rights of individuals with disabilities were

not adequately protected, leading to pressure for major revisions to the legislation before it went into effect.

Following several months of hearings, debates, and rewriting, a trailer (follow-on) bill (ESSB 6287) that substantially revised Ch. 11.130 RCW was passed by both houses of the Legislature on March 9 and signed by the governor on April 2. The revised legislation, called here the Washington Guardianship, Conservatorship, and Alternatives Act (WGCAA),¹ becomes effective on Jan. 1, 2022.

The WGCAA, which applies to guardianships for both minors and adults, differs from the Uniform Act in many important ways as a result of being strongly reshaped by public concerns and feedback. This article discusses only the impact on adults, where the most significant and far-reaching changes may be noted.

The WGCAA consists of three major portions that describe how the new law is

to govern guardianships, conservatorships, and alternative arrangements (with such alternatives to be preferred). The nomenclature has also changed:

- “guardians of the person” are now simply “guardians”;
- “guardians of the estate” are now “conservators”;
- “guardians ad litem” are now “court visitors”;
- “alleged incapacitated persons (AIPs)” are now “respondents”;
- and
- “incapacitated persons (IPs)” are now “individuals subject to guardianship (ISGs)” or “individuals subject to conservatorship (ISCs).”

PRIORITY FOR ALTERNATIVE ARRANGEMENTS

Many criticisms of the pre-WGCAA guard-





ianship process have been directed toward the ways in which it often eliminated or suppressed individual decision-making capabilities, as a guardian “took control” of the IP (ISG or ISC under the new Act). A recent report by the American Bar Association (ABA) has strongly endorsed supported decision-making as a preferred alternative to court-ordered control.²

While alternative arrangements are possible under existing guardianship law, they are not as highly prioritized and emphasized as they are under the new law: The final version of the WGCAA directs that a guardian or conservator is to be appointed *only if alternative arrangements for decision-making are not possible*.³ The reasons for any individual limitation are to be thoroughly explored and alternatives are to be sought whenever possible. Any limitations on rights are to be as narrowly tailored as possible.⁴ Alternative protective arrangements are always to be preferred.⁵

One practical effect of this strongly expressed legislative preference will be an increase in time and expense as attorneys and courts investigate alternative arrangements, perhaps resulting in *less* emphasis on alternatives under these pressures.⁶

Under the new law, a guardian may be appointed only if the court finds by clear and convincing evidence that the respondent lacks the ability to meet essential requirements for physical health, safety, or health care and that these needs cannot be met by a protective arrangement as an alternative. A petitioner must explain in a guardianship petition why less restrictive alternatives have not been considered or implemented, and why such alternatives are not possible.⁷ Age, eccentricity, poverty, or medical diagnosis alone do not justify a guardian. Similarly, a conservator may be appointed only if the respondent is unable to manage property or financial affairs even with assistance.⁸

IMPLEMENTATION OF LEGISLATIVE INTENT

The intent of the Washington Legislature with respect to guardianships has long been expressed at RCW 11.88.005:

It is the intent of the legislature to protect the liberty and autonomy of all people of this state, and to enable them to exercise their rights under the law to the maximum extent, consistent with the capacity of each person. The legislature recognizes that people with incapacities have unique abilities and needs, and that some people with incapacities cannot exercise their rights or provide for their basic needs without the help of a guardian. However, their liberty and autonomy should be restricted through the guardianship process only to the minimum extent necessary to adequately provide for their own health or safety, or to adequately manage their financial affairs.

Many features of the pre-WGCAA Chapter 11.88, however, did not follow this expression of intent. Under the WGCAA, all parts of the Act are informed and guided by this intent.

The WGCAA as enacted repeats the first part of this statement of intent,⁹ which was not present in the first version of the law (SSB 5604). The reference to “guardianship process” in the last sentence has been expanded to include “guardianship, conservatorship, emergency guardianship, emergency conservatorship, and other protective arrangements.” The WGCAA provides multiple expressions throughout of legislative intent to maximize the rights of individuals who require assistance.¹⁰

STANDARDIZATION OF GUARDIANSHIP PRACTICES

Pre-WGCAA court practices have often varied county by county, making it difficult to assess the outcomes of guardianship petitions in a consistent way. Given the step-by-step statutory directives throughout the WGCAA, more consistency may develop.

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Change is Coming

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However, the new law also provides extensive waiver authority for the courts to modify almost all statutory requirements, which may lead to a continuing lack of standard approaches to meeting the needs of AIPs and IPs (ISGs or ISCs under the WGCAA). It is yet to be determined how state and local standards may be reconciled.

BROAD RECOGNITION OF CONCERNS OF INTERESTED PARTIES

Pre-WGCCA guardianship statutes have been in effect over an extended period (of decades), often without reflecting the current concerns of interested parties. The final WGCAA, however, evolved with significant input from interested parties, as reflected in the differences between the initial version (SSB 5604) and the follow-up revisions of ESSB 6287. Through this two-phase effort, many interested parties were able to influence the final form of the WGCAA.

ADOPTION OF GUARDIANSHIPS AND CONSERVATORSHIPS

Pre-WGCCA guardianships of the person and estate have often been routinely combined; under the WGCAA, guardianships of the person and estate are to become guardianships and conservatorships, with substantially different provisions governing the two types of actions.¹¹ There should, therefore, be less of a tendency to combine guardianships and conservatorships—and more appropriate matches between statutes and types of actions—depending on interpretation by the courts.

OTHER ASPECTS OF THE WGCAA

Other aspects of the WGCAA seem clearly intended to provide a more structured and orderly approach to arranging for the least restrictive approaches to meeting the needs of ISGs and ISCs. Much more detail is provided regarding all procedures to be followed, although the courts may exercise discretion in many situations. Many of the final provisions of the new law have resulted from modifications to SSB 5604 by ESSB 6287.¹² The following highlights just a few of the new provisions.

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A guardianship petition must include the names and addresses of a defined list of parties who must receive notices as well as copies of all materials,¹³ resulting in increased transparency regarding the action. The court may revise this list based on good cause.

Under the WGCAA,¹⁴ the appointment of a court visitor is to have “no effect on the determination of the adult respondent’s legal capacity and does not overcome the presumption of legal capacity or full legal and civil rights of the adult respondent.” The same directive may be found for conservatorships.¹⁵ Thus, a visitor may investigate but not “take control” of a respondent.

A respondent has the right to choose the medical professional who is to provide a medical evaluation. The court visitor may then choose to obtain a supplemental evaluation from another professional.¹⁶ The evaluation must include a description of the respondent’s medications and the effect of these medications on the respondent’s cognitive and functional abilities. With court permission, an attorney representing the respondent or other notice parties may challenge whether a medical professional has an adequate understanding of such issues.

Medications, diseases, electrolyte levels, dehydration, food deficiencies, and vision or hearing limitations may all contribute to the seeming limitations of a respondent.¹⁷ If adequately diagnosed, such effects may be reversible or accommodated with technology and personalized assistance. Under

the WGCAA, all individuals are assumed to have full capacity. The court has a duty to explore seeming limitations in order to determine the extent of any such limitations with the potential use of assistive technology and personal support.

The required notice to a respondent of the filing of a guardianship or conservatorship petition must list all rights that may be lost. The respondent has a right to be represented by a lawyer (who must be approved by the court), to request a jury trial, and to ask for an alternative protective arrangement.¹⁸

Supported decision-making arrangements are covered.¹⁹ The statutes specifically note that “all adults are assumed to be capable of managing their affairs.” An adult may voluntarily enter into a support agreement; a sample agreement is provided.²⁰ Such an agreement may be pursued as an alternative to guardianship or conservatorship in the same way that a durable power of attorney or care management trust may provide support for individuals and families.²¹

Any person may file a complaint with the court regarding the actions being taken by a guardian or conservator.²² The court is to act to protect the “autonomy, values, preferences and independence” of an ISG. The court must act to resolve the matter.

An ISG/ISC retains the right to associate with other persons of the adult’s choosing except in very restricted circumstances. In general, a guardian or conservator may not isolate an ISG/ISC from desired social relationships.²³

Many demands will be placed on attorneys, the courts, and legal staff as efforts are made to revise existing guardianship procedures and forms. Perhaps most important will be new educational programs to explain how the statutes have changed and how obligations have shifted. Cooperative efforts will be required to achieve the stated objectives of this new Act. **BN**

NOTES

1. Chapter 11.130 RCW is titled the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (UGCOPAA), which is the same as the title of the Uniform Act developed by the ULC; the abbreviation used here emphasizes the unique Washington features of the new law, avoids duplicating the abbreviation for the ULC Uniform Act, and results in a simpler format.

2. "Supporting Decision Making Across the Age Spectrum," American Bar Association (ABA) Commission on Law and Aging, March 2020, www.americanbar.org.
3. RCW 11.130.265 and ESSB 6287 § 308; RCW 11.130.360 and ESSB 6287 § 209.
4. ESSB 6287 § 321.
5. ESSB 6287 §§ 311-319.
6. It is interesting to note that on Aug. 3, 2020, the ABA endorsed new funding and support by Congress for a Guardianship Court Improvement Program. "ABA House of Delegates Urges Congress to Invest in a Guardianship Court Improvement Program," ABA, Aug. 3, 2020.
7. RCW 11.130.265 with ESSB 6287 § 308.
8. RCW 11.130.360 with ESSB 6287 § 209.
9. ESSB 6287 § 801.
10. For example, Sec. 308 of SB 6287 (RCW 11.130.265) directs that a guardian may be appointed only if the respondent's needs cannot be met by an alternative protective arrangement.
11. Statutes for the guardianship of an adult may be found at Article 3 (RCW 11.130.265-355); the conservatorship statutes are found at Article 4 (RCW 11.130.360-575); and protective arrangements are described at Article 5 (RCW 11.130.580-635).
12. The final version of the new Act may be found at RCW 11.130. Those interested in the evolution of the new law may compare SB 5604 and ESSB 6287. A chart comparing these two statutory versions may be found in Chapter 4, *Washington Elder Law and Health Law (Part 1 and Part 2)*, Volumes 26-26A of *Washington Practice*, 2020 editions.
13. RCW 11.130.270.
14. RCW 11.130.280(7) and ESSB 6287 § 309.
15. RCW 11.130.380 as revised by ESSB 6287 § 310.
16. RCW 11.130.290 and ESSB 6287 § 203.
17. John Rubin (Ed), *North Carolina Indigent Defense Manual Series*, UNC School of Government, available at <https://defendermanuals.sog.unc.edu/defender-manual/5>.
18. ESSB 6287 § 321.
19. ESSB 6287, §§ 601-612.
20. At ESSB 6287 § 610.
21. For more information on powers of attorney and trusts, see Chapter 2, Volume 26 of *Washington Practice*, *supra* note 9.
22. RCW 11.130.140 and ESSB 6287 § 307.
23. RCW 11.130.335 and ESSB 6287 § 206.

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| <p>Surowiecki v. Hat Island Community Association,
___ P.3d ___, 2020 WL 5630052 (2020)
(reversal of trial court refusal to address whether HOA assessments were equitable)</p> <p>Bao Xuyen Le v. Molina,
810 Fed. Appx. 550 (9th Cir. 2020) (affirmed rejection of officer qualified immunity in police shooting case)</p> <p>Nelson v. Thurston County,
2020 WL 2838608 (2020) (denying qualified immunity to a police officer who shot a citizen in the back)</p> <p>Messenger v. Whitemarsh,
462 P.3d 861 (2020) (recognizing that a doctor who has sex with a patient the doctor treats for mental health issues can be sued for malpractice)</p> <p>Plein v. USAA Cas. Ins. Co.; Sterling Group, Judges of Benton and Franklin Counties v. Killian,
195 Wn.2d 677, 463 P.3d 728 (2020) (RPC 1.9 interpretation)</p> | <p>Meyers, et al. v. Ferndale School District,
12 Wn. App. 2d 254, 457 P.3d 483 (2020)
(district responsible for student killed by driver who ran off road striking him during improper off campus walk)</p> <p>Coogan v. NAPA,
12 Wn. App. 2d 1021 (2020)
(overturning \$81.5 million judgment)</p> <p>Habu/Chinn v. Topacio, et al.,
12 Wn. App. 2d 1006 (2020)
(reversing enforcement of CR 2A agreement)</p> <p>Hendrickson v. Hempzen Enterprises; Sotebeer; Davenport; Ware, et al.
11 Wn. App. 2d 1047 (2019)
(vacating default judgment entered against commercial tenants)</p> <p>Volkert v. Fairbank Constr. Co. and Ziegler,
8 Wn. App. 2d 399, 438 P.3d 1203 (2019)
(Uniform Health Care Info. Act foreclosed disclosure of all experts' past CR 35 exam reports)</p> <p>Adamson v. Port of Bellingham,
192 Wn.2d 178, 438 P.3d 522 (2019); 923 F.3d 728 (2019) (recognizing liability of Port as premises owner)</p> |
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FEATURE

Consider the Opposite

Recognize and minimize your own
biases in assessing the strengths
and weaknesses of your case



BY STEVE FESTOR

You leave court after losing at trial or on a summary judgment motion thinking: “How did this happen? What did I miss?” You thought the case or argument was a winner, but somehow you still lost.

There are many reasons why you might not foresee a particular result, but one reason may be your cognitive biases.

Similar to optical illusions, cognitive biases can distort our views so that we don’t see the weaknesses in a case. And whether you are a litigator or a transactional lawyer, cognitive biases can impact your practice.

This article focuses on cognitive biases as they affect the practice of law and techniques to minimize them. With practice you can recognize cognitive biases so that you do not automatically fall victim to them and instead understand and analyze information more objectively.

COMMON COGNITIVE BIASES

Cognitive biases cause systematic errors in thinking. The biases are based on mental shortcuts, called heuristics, which subconsciously influence perceptions and judgments. The following is a brief summary of some common cognitive biases.

Partisan/Perspective/Self-Serving Biases

Lawyers are partisan advocates for their clients. However, partisan/perspective bias prevents lawyers from separating themselves from their advocacy role, which can impact their ability to view a dispute objectively. Partisan bias frequently coexists with self-serving bias, which conflates the notion of what is fair with what benefits oneself.

In one study, law students acting as lawyers were given the same case file, with some assigned to represent the plaintiffs and some the defendants. The students were asked to predict a judge’s award in the case and to calculate a fair settlement amount.¹ On average, the lawyers representing the plaintiffs predicted judge’s awards that were \$14,527 higher than the lawyers representing the defendants. The plaintiffs’ fair-settlement values were, on average, \$17,709 higher than the defendants’. “Here we see strong evidence for self-serving interpretations of fairness,” the authors of the study wrote.

Confirmation Bias

Many cognitive biases are reinforced by confirmation bias, under which people select and emphasize facts that support their view while discounting facts that do not.²

One dangerous and common error lawyers can make is to seek only information that is beneficial to their client’s case. Confirming evidence is taken at face value, while contradicting evidence is discounted and more critically scrutinized.

Optimistic Bias

Optimistic bias is an overly optimistic view of the future.³ Optimistic bias can be valuable, but it also clouds our perceptions, particularly when assessing conflict.

Optimistic bias often causes lawyers to underestimate litigation costs, timelines, and risk. Optimistic bias can also cause individuals to believe that they have more personal control over a situation than they actually possess. For lawyers, optimistic bias can cloud the reality that plans and strategies frequently go awry because, for example, the case is transferred to a different judge, jurors dislike a client or witness, or, as in the current situation, an unforeseeable event like a pandemic impairs access to courts.

Availability and Anchoring Heuristics

Lawyers laboring under the availability heuristic will estimate probable outcomes based on how easily similar instances come to mind from memory or intuition.⁴

The availability heuristic is reinforced by the anchoring heuristic, under which lawyers anchor on a known number and then make adjustments away from that number (or “anchor”) based on the details of a particular case. One example of this heuristic would be estimating the future profits of a client’s business by starting with the known profits of a similar business, and then making adjustments based on differences such as number of customers and labor costs.⁵

In this instance, using a known anchor can be a helpful starting point in making an estimate. Problems can arise, however, if sufficient adjustments are not made away from the initial number, and if the differences between the known number and unknown numbers are not sufficiently valued.

If you have ever had opposing counsel refuse to listen to anything you say, even on mundane items like scheduling, you have experienced reactive devaluation.

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Consider the Opposite

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In one study, German judges were provided the same facts concerning a woman caught stealing and were asked to decide the appropriate length of probation in the case. Immediately prior to sentencing, however, the judges were asked to roll dice that were fixed to add up to either nine or three. The judges who rolled nine went on to fix a longer probation period (eight months, on average), and the judges who rolled three a shorter period (five months, on average).⁶

Endowment Effect

Under the endowment effect, people tend to give more value to items they own than they would if they were asked how much they would pay to purchase the same items from someone else. For example, people may be willing to pay \$4 for used music CDs, but if they are selling their own beloved CDs they would value them at \$8.⁷

The endowment effect is based on our subconscious desire to avoid losses and our tendency to weight losses over gains. In the context of litigation, lawyers and clients “own” a lawsuit. Under the endowment effect lawyers may believe a case is worth more than it actually is.⁸

Reactive Devaluation

Under this bias, whatever an opposing party says is immediately discounted for the sole reason that it is coming from the opposing “biased” party.⁹ If you have ever had opposing counsel refuse to listen to anything you say, even on mundane items like scheduling, you have experienced reactive devaluation.

Implicit Bias

Under implicit bias—also known as uncon-

scious bias—a lawyer’s judgments are influenced by subconscious stereotypes applied to people due to their race, gender, age, disability, or ethnicity. When the subconscious stereotypes are negative, implicit bias is particularly pernicious because it can unconsciously further discrimination.¹⁰

CONSIDER THE OPPOSITE

Unfortunately, people instructed to be “fair and unbiased” still process information with their cognitive biases intact.¹¹ Indeed, although a judge’s official role is to act in a fair and unbiased manner, judges are human and, like everyone else, their cognitive biases can result in systematic errors in judgment.¹²

Cognitive biases can be minimized, however, when people “consider the opposite” by taking the time to consider the evidence supporting an opposite judgment and questioning whether their own judgment may be inaccurate or questionable.¹³ The following are some techniques you can use to “consider the opposite” and question your judgment in a methodical way.

Conduct a Premortem

In 2007, research psychologist Gary Klein coined a strategy called a premortem, which is essentially the opposite of a postmortem (such as an autopsy).¹⁴ A premortem is a managerial technique that uncovers the potential pitfalls of a decision before that decision is made. The strategy works as follows: Individuals most knowledgeable about a potential decision gather and are asked to imagine that it is one year in the future, after the decision has been made and implemented. An announcement is made to the group that the decision was an unmitigated disaster. The individuals are not allowed to talk to each other when this is announced. Instead, they privately take five to 10 minutes to write a brief history of that disaster. The group then discusses the papers.

“Unlike a typical critiquing session, in which project team members are asked what might go wrong, the premortem operates on the assumption that the ‘patient’ has died, and so asks what did go wrong,” Klein writes. The safe space created by the premortem, Klein says, allows team members to air their reservations and concerns about a project more easily, thus allowing for those reservations and concerns to be

addressed and increasing the chances that a project will succeed.

In the legal context, lawyers can use a premortem to imagine that they lost a case and to dig deeper into why that happened. Even if the obstacles and pitfalls discovered in a premortem do not dissuade lawyers and clients from making a particular decision or pursuing a specific strategy, they will gain greater risk awareness and be better prepared to address any obstacles or pitfalls going forward.

Invoke a Devil’s Advocate, Mock Jury, or Focus Group

Disinterested third parties can often see cases more objectively than those directly involved, and so another technique to help minimize cognitive biases is to have a disinterested observer play devil’s advocate.¹⁵ Lawyers can designate a colleague who is not working on a matter to act as a partisan for the other side, providing valuable insight without sparking the reactive devaluation that might occur if the other party was speaking directly to them.

As a mediator, I often play devil’s advocate in order to help parties minimize their biases when making critical decisions. This technique enables parties to better understand where the other side is coming from, and also protects lawyer-client relations by helping clients see that when their lawyer understands and articulates both sides of a case it does not mean that the lawyer does not believe in the client’s case or the client. Even if the case does not settle at mediation, the devil’s advocate technique helps the parties to move forward with a much better understanding of the risks.

Interrupt Your Own Thinking

A lawyer’s natural tendency when presented with independent evaluations is to immediately devise counter arguments, which can in turn reinforce cognitive biases. Lawyers must instead slow down their thinking and take the time to critically question their own views before automatically reacting according to their own biases.

CONCLUSION

As a starting point, analyze a past matter where cognitive biases may have interfered with your objectivity. Going forward, consider performing the exercises described.

Steve Festor is the founder of Emerald City Mediation. Festor mediates employment disputes, class actions, personal injury cases, family business disputes, and other complex litigation. Festor’s website is <https://ecitymediation.com> and he can be reached at 206-636-8792 and steve@ecitymediation.com.



You will start to recognize cognitive biases affecting your views and judgments—which is the first step to minimizing bias and risk.

Lawyers who take the time to understand and minimize cognitive biases will become better advocates for their clients. With all your matters, consider the opposite. It will serve you well.¹⁶ **BN**

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3. *Id.* at 255-65.
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14. Gary Klein, "Performing a Project Premortem," *Harvard Business Review* (September 2007), available at <https://hbr.org/2007/09/performing-a-project-premortem>.
15. Robert S. Adler, "Flawed Thinking: Addressing Decision Biases in Negotiation," 20(3) *Ohio State Journal on Dispute Resolution* 683, 765 (2005).
16. Recognizing the cognitive biases judges, juries, and opposing parties may bring to a matter and learning how to either enhance or minimize those biases depending on the situation is another critical high-level skill for lawyers.

1623

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On Board

NEWS FROM THE BOARD OF GOVERNORS & THE WSBA

NOV. 13-14, 2020

A Summary of the Board of Governors Meeting

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

Note: Because of public directives to curb the spread of the coronavirus, the November 2020 meeting was held in a virtual-only format.


TOP 7 MEETING TAKEAWAYS

1 Fiscal Year 21 budget and license fees. The Board of Governors voted to recommend to the Washington Supreme Court to lower the annual Client Protection Fund per-member assessment from \$25 to \$20. They also set the active-lawyer license fee to remain flat at \$458 for 2022 (\$240 for active LLLTs; \$200 for active LPOs). The fees will be sent to the Washington Supreme Court for review, and the Board will reassess fees for 2023 and beyond once long-term planning is complete. More information is available in the Treasurer's Report on page 14.

2 Malpractice insurance. The Washington Supreme Court has published for comment a potential rule

change to require lawyers, with exceptions, to disclose to clients if they do not carry malpractice insurance. As proposed by the WSBA, the addition to Rule of Professional Conduct (RPC) 1.4 would require specified lawyers who lack a minimum threshold of malpractice insurance (\$100,000 per occurrence and \$300,000 in the aggregate) to provide notice and obtain consent from clients. Comments are due April 30, 2021. The proposed rule will be posted for comment here: www.courts.wa.gov/court_rules/?fa=court_rules.proposed.

MORE ONLINE

The agenda, materials, and video recording from this virtual Board of Governors meeting, as well as past meetings, are online at www.wsba.org/about-wsba/who-we-are/board-of-governors. 

3 2021 legislative priorities and WSBA-sponsored bills. Planning for the coming legislative session, the Board approved the WSBA's overall priorities: monitoring and taking appropriate action on legislative proposals related to the practice of law and administration of justice; supporting legislative proposals approved by the Board under GR 12 constraints; and supporting legislative proposals initiated by WSBA sections and approved by the Board. Per the last priority, the Board approved two bills put forth by the Business Law Section: proposed amendments to notice provisions in Washington's Business Corporations Act; and amendments to modernize and align Washington's Nonprofit Corporation Act with the ABA model act.

4 Thank you, volunteers! "This is an unprecedented year, and our WSBA volunteers have responded in unprecedented ways." WSBA President Kyle Sciuchetti delivered this message of gratitude to our more than 1,000 volunteers who are "the backbone of the regulatory and professional services provided by the state Bar."

5 Response to minority bar associations. Governors began the business portion of their meeting by processing and responding to what they heard in October during a listening session with representatives of minority bar associations; the representatives spoke about the impact of harmful comments made at the Board's June 26 meeting. The Board unanimously adopted a response acknowledging those comments were "disrespectful, offensive, and not consistent with WSBA's commitment to diversity, equity, and inclusion" and rededicated itself to promoting and supporting "legal, systemic, and public policy changes that advance race equity and racial justice ..."

SAVE THE DATE

The next regular Board meeting is Jan. 14-15 (pending health directives regarding COVID-19).

LET US KNOW >

To provide feedback to the WSBA Board of Governors, email BoardFeedback@wsba.org. Please note that all WSBA emails are subject to public records request.

6 Equity and Disparity Work Group. The Board's Equity and Disparity Work Group has started meeting to address rules, policies, and procedures in the legal system that have led to disparate outcomes, disproportionately harming people of color. The Work Group will continue to report back to the Board and membership with the goal of including as many voices as possible.

7 Washington State Bar Foundation annual report. Program highlights for 2020 included \$60,000 awarded for Powerful Communities Projects¹ over the past two years, robust support of the Moderate Means Program,² and scholarships to support underrepresented law students and legal projects. The Foundation provides financial support for WSBA programs that promote diversity within the legal profession and enhance the public's access to, and understanding of, the justice system. **BN**

NOTES

1. More information about Powerful Communities Projects here: www.wsba.org/connect-serve/volunteer-opportunities/powerful-communities.
2. More information about the Moderate Means Program here: www.wsba.org/connect-serve/volunteer-opportunities/mmp.

UPCOMING ELECTIONS

Want to Make an Impact?

Become a member of the Board of Governors

Application deadline for district positions is Feb. 16, 2021.

Five positions on the WSBA Board of Governors are up for election in 2021. The open positions represent the following congressional districts as well as one at-large seat:

- **District 1**
- **District 4**
- **District 5**
- **District 7 South**
- **At-large position** (representing new and young lawyers)

The three-year term of office begins at the close of the September 2021 Board of Governors meeting and lasts through Sept. 30, 2024.

➤ **ELIGIBILITY:** Any active member of the Bar may run for the office of governor from the congressional district in which the member is entitled to vote. Any active member of the Bar who qualifies as a young lawyer as defined by Article XII(B) of the WSBA Bylaws (in practice fewer than five years or under the age of 36) may run for the at-large position. Members who have served as a governor for more than 48 consecutive months at the time of filing or application are not eligible to be nominated or to apply for election for a period of 36 months after the conclusion of that term of service.

➤ **BECOMING A CANDIDATE:** To run for the Board of Governors, you must complete the application form that will be posted online at www.wsba.org/elections on Jan. 1, 2021. The WSBA must receive the forms for district positions by 5 p.m. PST on Feb. 16, 2021. The deadline to apply for the at-large position is April 20, 2021. For all positions, a Bar member may nominate another member by completing the application form. For more information, contact Paris Eriksen at parise@wsba.org.

➤ **VOTING:** All active members, as of March 1 of each year, are eligible to vote in the Board election for their district. Active members residing in Washington may only vote in the district of the address of the agent they have designated within the state of Washington for the purposes of receiving service of process as required by APR 13, or, if specifically designated to the executive director, within the district of their primary Washington practice.

The WSBA will use an electronic voting system, and members will not receive a paper ballot unless they request one. Email ballots will be sent on March 15 and must be received by 5 p.m. PDT on April 1.

The at-large governor will be elected later in the year. **BN**

Need to Know

NEWS & INFORMATION OF INTEREST TO WSBA MEMBERS



WSBA NEWS

2021 License Renewal

Renew Your License and Join Sections Online. License renewal must be completed by Feb. 1, 2021, and includes paying the annual license fee and any mandatory assessments, completing the trust account declaration, and disclosing professional liability insurance or financial responsibility. A 30 percent late-payment fee will apply if the annual license fee remains unpaid after that date.

COVID-19. As WSBA staff are working remotely due to the COVID-19 pandemic, we strongly encourage you to complete your license renewal online. Online licensing is compatible with mobile devices. Just log in to www.wsba.org/licensing. When you finish you will immediately receive confirmation that your renewal is complete.

License Fee Payment Options. If you would like to spread your license fee payment over several months, you may want to sign up for our payment plan option. (The balance must be paid in full by Feb. 1, 2021.) If you are experiencing financial challenges, you may qualify for our license fee hardship exemption. Find information about both options at www.wsba.org/payplan. Effective Sept. 10, 2020, a member may be granted a hardship exemption a maximum of two times, on the basis of separate exemption requests, and the exemptions may be granted for consecutive or non-consecutive calendar years.

Pro Bono Status. If you are considering going inactive, pro bono status (formerly known as emeritus pro bono status) is a great alternative that lets

you provide pro bono services through a qualified legal services provider. Starting with the 2021 licensing year, the license fee will be waived for pro bono status members who completed at least 30 hours of pro bono service with a qualified legal services provider in the prior year. Visit www.wsba.org/probono.

MCLE. The Washington Supreme Court ordered an extension of the due date for reporting MCLE credits by one year for licensed legal professionals in the 2018-2020 MCLE reporting period. Licensed legal professionals in the extended 2018-2021 reporting period must complete earning their credits by Dec. 31, 2021, and must complete the certification of their credits by Feb. 1, 2022. Certification for the extended 2018-2021 reporting period will open in 2021. For

more information visit www.wsba.org/mcle.

Join or Renew Your Section Membership. The Section membership year is Jan. 1–Dec. 31. Learn more at www.wsba.org/legal-community/sections/sections.

Judicial Status. Please note that you are required to inform the Bar within 10 days of your retirement or your ineligibility for judicial status (and you must apply to change to another status or to resign). Visit www.wsba.org/licensing to learn more.

IMPORTANT DATE

- **Feb. 1, 2021:** Deadline for requesting a License Fee Hardship Exemption. License renewal must be completed online, or postmarked or delivered to the WSBA.



THE BAR BUZZ



Volunteer as Adjunct Disciplinary Counsel

Learn more about volunteering as an adjunct disciplinary counsel (ADC). ADCs assist as needed in carrying out the functions of the lawyer discipline system pursuant to Rule 2.9 of the Rules for Enforcement of Lawyer Conduct. An ADC must have been an active lawyer or judicial member of the WSBA for at least seven years at the time of appointment. Appointment is for a five-year term. To learn more, contact theaj@wsba.org, or visit www.wsba.org/adc-panel.



VOLUNTEER

Custodians Needed

The WSBA is seeking interested lawyers as potential volunteer custodians of files and records to protect clients' interests. Visit www.wsba.org/connectserve/volunteer-opportunities/act-as-custodian, or contact Sandra Schilling: sandras@wsba.org, 206-239-2118, 800-945-9722, ext. 2118; or Darlene Neumann: darlenen@wsba.org, 206-733-5923, 800-945-9722, ext. 5923.



RESOURCES

New Practice Guides Available

Access two new practice guides—"The Law Firm Guide to Document Retention" and "The Law Firm Guide to Disaster Planning and Recovery"—as well as other law firm guides and templates at www.wsba.org/guides.

Information for Job Seekers and Employers

Visit the WSBA Career Center to view or post job openings at <https://jobs.wsba.org>. The special discounted rate for nonprofit and small-firm employers, to prevent pricing from becoming a barrier as the legal community continues to navigate the effects of the COVID-19 crisis, has been extended through Dec. 31, 2020. Contact Michael Reynolds at 612-968-3431 or michael.reynolds@communitybrands.com for more information.

Free Consultations and Practice-Management Assistance

The WSBA offers free resources and education on practice management issues. For more

HAVE SOMETHING NEWSWORTHY TO SHARE?

Email wabarnews@wsba.org
if you have an item you would
like to place in *Need to Know*.



COVID-19 NEWS TO KNOW

information, visit www.wsba.org/pma. You can also schedule a free phone consultation with a WSBA practice-management advisor to find answers to your questions about the business of law firm ownership. Common inquiries we can help with include technology adoption, opening or closing a law office, and client relationship management. Visit www.wsba.org/consult to get started.

Lending Library

Due to the COVID-19-related closure of the WSBA office, the WSBA Lending Library is closed, but you can continue placing holds online. Visit www.wsba.org/library for more information.

Free Legal Research Tools

The WSBA offers resources and member benefits to help you with your research. Visit www.wsba.org/legalresearch to learn more and to access Casemaker and Fastcase for free.

WSBA MEMBER WELLNESS WSBA Connects

WSBA Connects provides all WSBA members with free counseling on topics including work stress, career challenges, addiction, and anxiety. Visit www.wsba.org/for-legal-professionals/member-support/wellness/wsba-connects or call 800-765-0770.

The 'Unbar' Alcoholics Anonymous Group

The Unbar is an "open" AA group for attorneys that has been meeting weekly for over 25 years. Due to COVID-19, the group is holding virtual meetings via Zoom; contact

them at unbarseattle@gmail.com. You can also find more details at www.wsba.org/for-legal-professionals/member-support/wellness/addiction-resources.

Career Consultation

Get help with your résumé, networking tips, and more—www.wsba.org/for-legal-professionals/member-support/wellness/consultation—or email wellness@wsba.org.

ETHICS Ethics Line

Members facing ethical dilemmas can talk with WSBA professional responsibility counsel for informal guidance. Learn more at www.wsba.org/for-legal-professionals/ethics/ethics-line or call the Ethics Line at 206-727-8284 or 800-945-9722, ext. 8284.

WSBA Advisory Opinions Available

WSBA advisory opinions are available online at www.wsba.org/for-legal-professionals/ethics/about-advisory-opinions. For assistance, call the Ethics Line at 206-727-8284 or 800-945-9722, ext. 8284.

WSBA COMMUNITY NETWORKING Diversity-Stakeholders List Serve

The WSBA Diversity-Stakeholders list serve is for sharing information about diversity, inclusion, and equity issues affecting the legal community. You do not need to be a member of the WSBA to join the list. Please email diversity@wsba.org to join. Recent past newsletters

are posted here: www.wsba.org/about-wsba/equity-and-inclusion/achieving-inclusion.

New Lawyers List Serve

This list serve is a discussion platform for new lawyers of the WSBA. To join, email newmembers@wsba.org.

ALPS Attorney Match

Attorney Match is a free online networking tool made available through the WSBA-endorsed professional liability partner, ALPS. Learn more at www.wsba.org.

WSBA COVID-19 Resource Web Page

All WSBA resources, including member support, law firm management, free CLEs and webinars, information about Washington courts, opportunities to help, and resources for the public, can be found here: www.wsba.org/COVID-19.

Court Emergency Operations & Closures

The Washington Supreme Court has published a COVID-19 response page, which is a compilation of its emergency orders and court modifications: www.courts.wa.gov/newsinfo/index.cfm?fa=newsinfo.COVID19.

Law Office Reopening Guide

The WSBA Coronavirus Response Task Force compiled recommendations for how to safely reopen a law office in Washington. Find the guide "Reopening Safely: A Guide for Washington State Law Offices," at www.wsba.org/docs/reopen.

www.wsba.org/connect-serve/mentorship/find-your-mentor, or email mentorlink@wsba.org.

QUICK REFERENCE Dec. 2020 Usury

The usury rate for Dec. 2020 is 12.00%. The auction yield of the Nov. 2, 2020 auction of the six-month Treasury Bill was 0.112%. The interest rate required by RCW 4.56.110(3)(a) and 4.56.115 for Dec. 2020 is 2.112%. The interest rate required by RCW 4.56.110(3)(b) and 4.56.111 for Dec. 2020 is 5.25%. **BN**

Notices

DISCIPLINE & OTHER REGULATORY NOTICES

Disbarred

Alexander Ying-Chi Chan (WSBA No. 41709, admitted 2009) of Bellevue, was disbarred, effective 10/02/2020, by order of the Washington Supreme Court. Chan's conduct violated the following Rules of Professional Conduct: 1.1 (Competence), 1.3 (Diligence), 1.4 (Communication), 1.5 (Fees), 8.4 (Misconduct).

In relation to his representation of multiple clients in separate immigration matters, the Hearing Officer recommended, and the Supreme Court ordered, that Chan be disbarred following a hearing. Chan was found to have violated the Rules of Professional Conduct by: 1) failing to prepare or file an Application for Provisional Unlawful Presence Waiver on behalf of client A; 2) failing to respond to client A's reasonable requests for information and failing to keep client A reasonably informed about the status of the case; 3) failing to provide a copy of client A's file to the Office of Disciplinary Counsel (ODC); 4) failing to respond to the government's motion to dismiss and failing to file a complaint that adequately stated the legal basis for client B's claim; 5) failing to respond to client B's reasonable requests for information, failing to keep client B reasonably informed about the status of the case, failing to explain to client B the effect of the government's motion to dismiss, and his decision not to respond to the motion; 6) charging client B \$3,500 for doing little

or no work of value to her; 7) failing to provide a copy of client B's file to ODC; 8) failing to timely file an Application for Asylum and for Withholding of Removal for clients C and D and by filing an error-filled asylum application for client D; and 9) failing to respond to client C's reasonable requests for information and failing to keep clients C and D reasonably informed about the status of their cases.

Codee McDaniel, Francesca D'Angelo, and Joanne S. Abelson acted as disciplinary counsel. Alexander Ying-Chi Chan represented himself. Rebecca L. Stewart was the hearing officer. Nadine D. Scott was the settlement hearing officer. The online version of *Washington State Bar News* contains links to the following documents: Hearing Officer's Decision; Disciplinary Board Recommendation; and Washington Supreme Court Order.

Resigned in Lieu of Discipline

Mark Conlin Jobson (WSBA No. 22171, admitted 1992) of Bend, OR, resigned in lieu of discipline, effective 10/09/2020. Jobson agrees that he is aware of the alleged misconduct in disciplinary counsel's Statement of Alleged Misconduct and rather than defend against the allegations, wishes to permanently resign from membership in the Association. The Statement of Alleged Misconduct reflects the following alleged viola-

tions of the Rules of Professional Conduct: 1.3 (Diligence), 3.4 (Fairness to Opposing Party and Counsel), 8.4 (Misconduct).

Jobson's alleged misconduct, as stated in disciplinary counsel's Statement of Alleged Misconduct, related to his role as Special Assistant Attorney General and lead counsel for Washington state with respect to expert preparation and discovery for litigation related to the March 2014 Oso landslide. Disciplinary Counsel's Statement of Alleged Misconduct includes: 1) unlawfully obstructing another party's access to evidence and/or altering, destroying, and/or concealing a document or other material having evidentiary value and/or by counseling and/or assisting another person to do any such act; 2) failing to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party; and 3) failing to act with reasonable diligence and promptness in representing a client.

Marsha Matsumoto acted as disciplinary counsel. Mark Conlin Jobson represented himself. The online version of *Washington State Bar News* contains a link to the following document: Resignation Form of Mark Conlin Jobson (ELC 9.3(b)).

Suspended

Jesse Thomas Anderson (WSBA No. 46426, admitted 2013) of Phoenix, AZ, was suspended for two years, effective 10/07/2020, by order of the Washington Supreme Court. Anderson's conduct violated the following Rules of Professional Conduct: 1.3 (Diligence), 1.4 (Communication), 1.5 (Fees), 3.2 (Expediting Litigation), 8.4 (Misconduct).

In relation to his representation of a client in a dissolution matter, the Hearing Officer recommended, and the Supreme Court ordered, that Anderson be suspended for two years following a default hearing. Anderson was found to have violated the Rules of Professional Conduct by: 1) failing

THESE NOTICES OF THE IMPOSITION OF DISCIPLINARY SANCTIONS AND ACTIONS

are published pursuant to Rule 3.5(c) of the Washington Supreme Court Rules for Enforcement of Lawyer Conduct. Active links to directory listings, RPC definitions, and documents related to the disciplinary matter can be found by viewing the online version of *Washington State Bar News* at www.wsba.org/news-events/Bar-News or by looking up the respondent in the legal directory on the WSBA website (www.wsba.org) and then scrolling down to "Discipline History."

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

Notice of Hearing on Petition for Reinstatement of Dean Dinh Nguyen

A petition for reinstatement after disbarment has been filed by Dean Dinh Nguyen (WSBA No. 30148), who was admitted in 2000 and disbarred in 2012. A hearing on Nguyen's petition will be conducted before the Character and Fitness Board on Friday, April 9, 2021. Anyone wishing to do so may file with the Character and Fitness Board a written statement for or against reinstatement, setting forth factual matters showing that the petition does or does not meet the requirements of Washington State Supreme Court Admission and Practice Rule (APR) 25.5(a). Except by the Character and Fitness Board's leave, no person other than the petitioner or petitioner's counsel shall be heard orally by the Board.

Communications to the Character and Fitness Board should be sent to Renata Garcia, Counsel to the Character and Fitness Board, Washington State Bar Association, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539, or to renatag@wsba.org. This notice is published pursuant to APR 25.4(a).

to timely file a motion for temporary orders; 2) failing to communicate with his client about the status of her case despite multiple requests for information; 3) falsely stating to his client that he had filed a motion for temporary orders when he had not done so; and 4) charging his client fees for preparing a motion for temporary orders that was never filed, resulting in work that was of no benefit to the client.

Debra Slater acted as disciplinary counsel. Jesse Thomas Anderson represented himself. Craig C. Beles was the hearing officer. The online version of *Washington State Bar News* contains links to the following documents: Hearing Officer's Decision; Disciplinary Board Order Declining Sua Sponte Review and Adopting Hearing Officer's Decision; and Washington Supreme Court Order.

Ross Alan Day (WSBA No. 30434, admitted 2000) of Portland, OR, was suspended for 30 days with the entire suspension stayed based on successful completion of one-year term of probation in Oregon, effective 7/01/2019, by order of the Washington Supreme Court imposing reciprocal discipline in accordance with an order of

the Supreme Court of the State of Oregon. For more information, see www.osbar.org/_docs/dbreport/2019/DAYRossA18-160.pdf. Joanne S. Abelson acted as disciplinary counsel. Ross Alan Day represented himself. The online version of *Washington State Bar News* contains a link to the following document: The Washington Supreme Court Order.


Reprimanded

Tyler S. Weaver (WSBA No. 29413, admitted 1999) of Seattle, received two reprimands, effective 9/08/2020, by order of the Chief Hearing Officer. Weaver's conduct violated the following Rules of Professional Conduct: 8.4 (Misconduct).

In relation to representation of multiple clients as a part of his practice specializing in class action lawsuits, Weaver stipulated to two reprimands for: 1) altering an expert's report and sending the altered version to a client while falsely describing it to the client as genuine; and 2) testifying that the altered version of the expert's report was the one that his firm had received from the expert when such was not the case.

Joanne S. Abelson acted as disciplinary counsel. Christopher Ray Hardman represented respondent. The online version of *Washington State Bar News* contains links to the following documents: Order on Stipulation to Two Reprimands; Stipulation to Two Reprimands; and Notice of Reprimand.

Interim Suspension

Tarl Raud Oliason (WSBA No. 11923, admitted 1981) of Seattle, is suspended from the practice of law in the state of Washington pending the outcome of disciplinary proceedings, effective 9/25/2020, by order of the Washington Supreme Court. This is not a disciplinary sanction. 

MORE ONLINE

Access further details of the notices by clicking the links in the online version:

www.wsba.org/news-events/wabarnews. 

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MEDIATION

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Mac has been a lawyer in Seattle for over 40 years. He has tried a wide range of cases including maritime, personal injury, construction, products liability, consumer protection, insurance coverage, and antitrust law.

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FREEDOM OF SPEECH

(See, e.g.):

Yates v. Fithian,
2010 WL 3788272
(W.D. Wash. 2010)

City of Seattle v. Menotti,
409 F.3d 1113 (9th Cir. 2005)

State v. Letourneau,
100 Wn. App. 424 (2000)

Fordyce v. Seattle,
55 F.3d 436 (9th Cir. 1995)

LIMIT v. Maleng,
874 F. Supp. 1138 (W.D. Wash. 1994)

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successful firm is completely turnkey and employs five staff, including the owner. The firm's processes are very well documented, and the practice uses Google Suite allowing for easy remote access. If you are interested in exploring this opportunity, would like the freedom to be your own boss, and/or increase your current book of business substantially, then this is perfect for you. Email info@privatepracticetransitions.com or call 253-509-9224.

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Extremely profitable Seattle immigration law practice that has average gross revenue of over \$1,600,000 the last three years (2017-2019). Even more, in 2019 the gross revenue was over \$1,800,000! This successful firm has substantial advance fees in trust. The practice employs two attorneys in addition to the partners, seven paralegals, three full-time administrative staff, and one part-time support staff. If you are interested in exploring this opportunity, would like the freedom to be your own boss and/or increase your current book of business

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BEYOND THE BAR NUMBER

Maria Hajar

BAR NUMBER: 52334

LAW SCHOOL: University of Washington

➔ Born and raised in Lebanon, I am both a French legal counsel and a U.S. immigration attorney. I graduated from the University of Washington School of Law in 2016, and I currently work as an associate attorney at Gonzales Immigration Law Office in downtown Seattle. I help clients access immigration benefits, I represent them in court, and, most importantly, I help them reunite with their families and loved ones in the U.S. I can be reached at mariah@jgonzaleslaw.com.

I became a lawyer because I always wanted to help people. **Before law school,** I was a legal counsel with the French national electricity company practicing electricity and nuclear law. **My greatest talent as a lawyer** is communicating with clients and setting expectations. **The most rewarding part of my job** is helping families reunite and live in safety in the U.S.

I wish that more lawyers would do pro bono work for low-income immigrant clients. **The most humbling experience I have had as a lawyer** was walking out of the immigration detention center with my client for whom I won a bond hearing. **My favorite app or service for work** is Clio. **I keep up with legal news and developments** by checking

general news and the American Immigration Lawyers Association's website.

During my free time, I sing to my son, Zachary, read, play badminton, and watch movies.

The most memorable trip I ever took was to Monaco, France. So beautiful and almost surreal.

I absolutely can't live without coffee.

If I took one day off in the middle of the week, I would spend time with my son, cook a traditional Lebanese dish, and work out.



I have recently tried or want to try hot yoga.

My best recipe I make at home is Lebanese-style lasagna.

My fitness routine is strength training and running three times a week.

My favorite place in the Pacific Northwest is Mount Erie.

I worry about climate change and the increase of violence against minorities in the world.

I am happiest when reunited with my family once a year.

This changed my life: having a baby!

I grew up in Tripoli, Lebanon.

My fondest childhood memory is spending my summer vacations on the beach with my parents and siblings.

I care about increasing diversity in the legal profession and ending bullying in schools and discrimination against women in politics.

Friends would describe me as sarcastic.

Aside from my career, I am most proud of my husband, who is working full time, earning his MBA, and co-taking care of our baby.

This makes me roll my eyes: "This mailbox is full and cannot accept new messages."

This makes me smile: "Welcome to the United States. This is to inform you that your application for permanent residence has been approved."

My greatest fear is rodents.

My worst habit is eating too much popcorn at the movies.

My idea of misery is very hot weather.

My motto is "When you get tired, learn to rest, not to quit."

My favorite restaurant is Paramount Fine Foods in Vancouver, B.C.

If I had a time machine, I would give it to my husband, who is a huge fan of sci-fi.

I would like to meet (historical person): Martin Luther King Jr. because of the great impact he had on the lives of millions of people.

If I could pick a superpower, it would be to be in two places at the same time.

My favorite band/musical artist is Ed Sheeran (English music); Kadim Al Sahir (Arabic music).

You should give this a try: Visit Marseille, France.

My all-time favorite movie or TV show is *Friends*.

My hero is my brother, Ziad.

If I have learned one thing in life, it is to never give up on things I want to accomplish.

I would like to learn Spanish.

I have been telling others not to miss the movie *Bombshell*.

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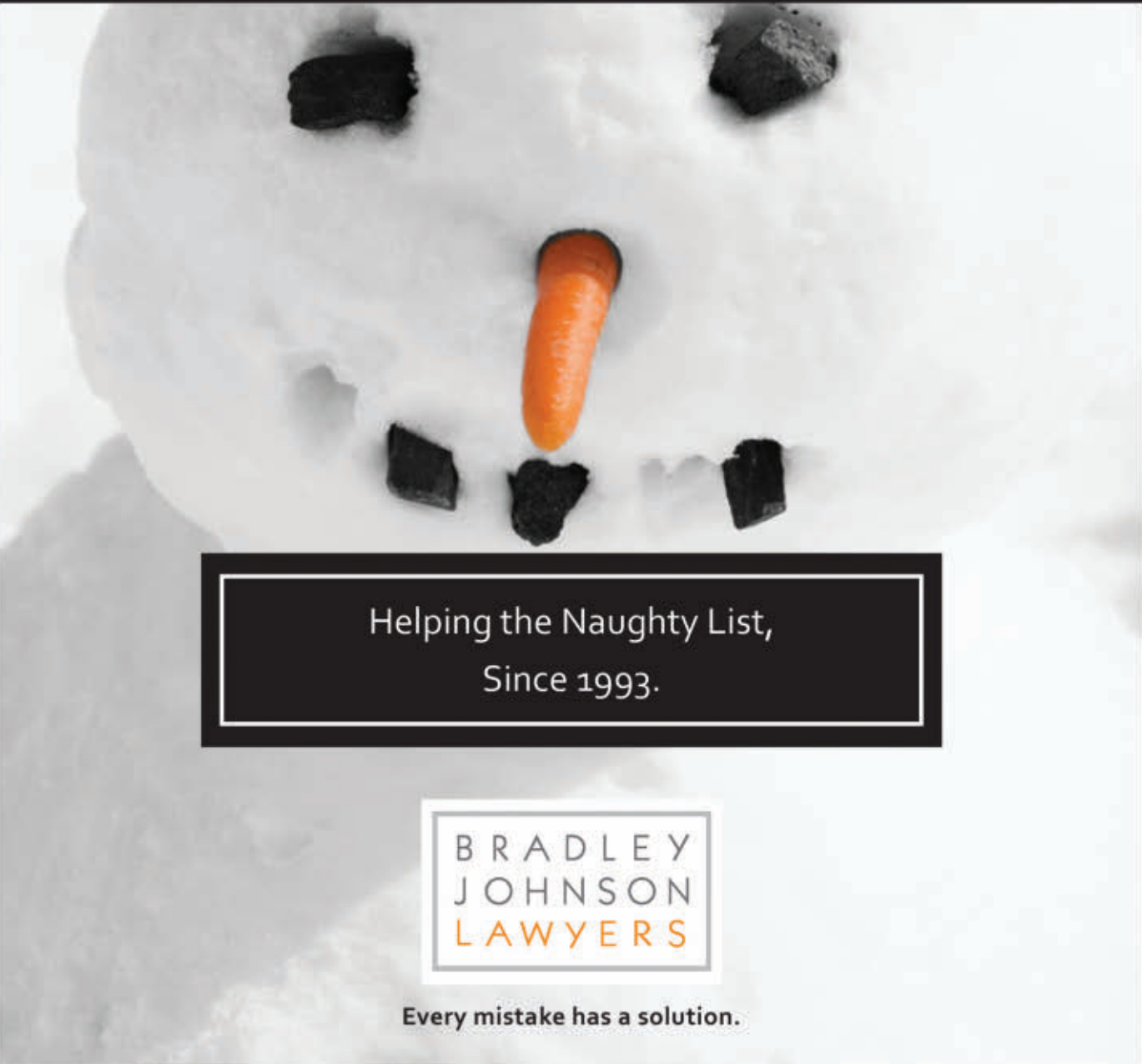
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