

# THE LEGAL BRIEF

A Publication of the Thurston County Bar Association

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2017-2018

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## President's Message By: Trevor Zandell

Most of us are familiar with the proverb, "To whom much is given, much will be required." Many of us may not feel like we have been "given" anything in terms of our careers or professional lives. Regardless, the reality is that we, as lawyers, hold positions of great power and influence in our society. We help administer the justice system. Without an effective justice system, individual rights, which we hold sacrosanct in our society, are meaningless. It is therefore incumbent upon us lawyers to serve our communities, which have at least entrusted us with our positions of high esteem if not "given" them to us.

It is not surprising that lawyers, with our natural affinity for rules and regulations, have actually codified the duty to give back (while not rendering the same mandatory - at least not yet). Under RPC 6.1, all Washington attorneys have a professional responsibility to assist in the provision of legal services for those who are unable to pay. The bylaws of the Thurston County Bar Association list one of the purposes of the organization as, "To assist nonprofit organizations that provide legal services to the general public for little or no cost, and to assist charitable organizations through donations of time and money."

The best way that an attorney can promote the equal administration of justice is to provide legal services to people who could not otherwise afford them. Sometimes it is easy to make a connection with a potential pro-bono client. An attorney in private practice may receive an inquiry from a person of limited means who happens to be involved in a matter that fits within his or her area of practice. For those of us who find ourselves in those situations, we should endeavor to accept these engagements from time-to-time. Other times it may be more difficult, for a variety of reasons, to make a connection with a potential pro-bono client.

If you are looking for opportunities to serve clients of limited means, you need look no further than Thurston County Volunteer Legal Services (TCVLS). TCVLS is the preeminent organization that provides pro bono legal services to low-income persons in Thurston County (as well as Mason, Grays Harbor and Pacific Counties). The TCVLS board includes several Thurston County attorneys from the private and governmental sectors. TCVLS sponsors regular legal clinics at which volunteer attorneys provide consultation and advice to clients. The organization offers mentorship and training to any attorneys who wish to volunteer but may not be highly experienced in the areas of law with which clients typically require assistance. Presently TCVLS operates five legal clinics each month in Thurston County, and one each month in Mason and Grays Harbor Counties. In addition, the Housing Justice Project (a TCVLS program) represents tenants and even landlords who qualify for their services on the unlawful detainer calendar every week in Thurston County Superior Court.

In addition to the clinics, TCVLS is currently highlighting an initiative to facilitate direct, pro bono representation of low-income clients. In some situations, people simply need a little advice to get headed in the right direction. More often, however, people need lawyers to guide them through the legal system from beginning to end. If you provide your name and contact information to TCVLS, the organization will contact you when there is a client in need of pro bono representation in your practice area. You may accept or decline the matter on a case-by-case basis. If you accept a direct representation matter, TCVLS may be able to supply funds for litigation expenses, such as filing fees or process server fees. If you are interested in volunteering with TCVLS, visit their website at [www.tcvls.org](http://www.tcvls.org) or call their volunteer line at (360) 810-2321.

(continued on page 6)

## **A View From the Bench**

**By Commissioner Kortokrax  
Thurston County Superior Court**



In March of this year, I was appointed to fill the newly-created court commissioner position, and I have been in that role since May. It is amazing how quickly that time has passed (though I must admit that some weeks have gone by quicker than others!), and I am starting to settle into my new role. I had the opportunity to serve as a *pro tem* judge/commissioner in District and Superior Court, and that experience has helped to smooth the transition from practicing law to being a full-time judicial officer.

For those of you who are not familiar with me, I was previously an Assistant Attorney General with the Torts Division of the Attorney General's Office. I also (briefly) served on the TCBA board, providing the state government representative bridge between former board member, Judge Chris Lanese, and current board member, Jackson Maynard. Prior to the AGO, I was in private practice with several firms (former co-workers of mine like to reference my 2 or 3-year "plan" as it relates to changing employment), where I practiced primarily family and juvenile law, with some dabbling in criminal and general civil litigation.

In this current role, my primary responsibilities involve handling the domestic violence protection order calendars (both initial and full hearings), as well as the felony preliminary appearance docket. Additionally, I preside over settlement conferences for family law and dependency matters. Through the hard work of the parties and their counsel, these additional settlement conferences have already resulted in numerous matters resolving in lieu of trial, thereby freeing up trial and other hearing times for the judges.

One of the more daunting challenges self-represented parties face, particularly as it relates to domestic violence proceedings, is simply figuring out how to navigate the system. I encourage members of the bar to take any opportunity to handle a family law matter *pro bono*, in addition to the work that is being performed through other *pro bono* opportunities (such as the Housing Justice Project). I am interested in having discussions about the logistics of having a program similar to the Housing Justice Project made available at the FJC, in order to provide additional information to litigants ahead of their hearings. Any input as to this idea would be welcomed.

In moving forward, I encourage everyone to provide feedback so that I can continue to improve in this position. Additionally, the bench is constantly looking for ways to improve our court system, both locally and state-wide, and it is important to receive feedback from those who practice in Thurston County. However, it is also important to remember that, particularly at the Family & Juvenile Court, we now have five judicial officers and still only four courtrooms, which does provide some limitations.

I appreciate any suggestions to improve the efficiency of the hearings over which I preside. Furthermore, I am happy to answer any questions regarding particular practices or preferences, so that practitioners can know what to expect when appearing front of me. Working with the local bar has been very rewarding, and I look forward to continuing to improve and enhance that relationship.

# LOCAL RESOLUTION

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Armstrong (Ret.)



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Fred R.  
Butterworth, Esq.



Judge William L.  
Downing (Ret.)



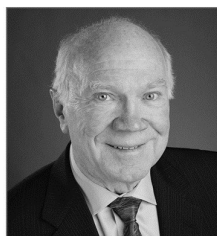
Judge Anne L.  
Ellington (Ret.)



Judge Deborah  
D. Fleck (Ret.)



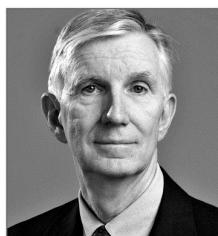
Judge J. Kathleen  
Learned (Ret.)



Judge Thomas  
McPhee (Ret.)



Lawrence R.  
Mills, Esq.



James F.  
Nagle, Esq.



Douglas S.  
Oles, Esq.



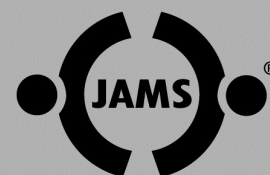
Judge Kim  
Prochnau (Ret.)



Comm. Eric B.  
Watness (Ret.)

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## YOUNG LAWYER SPOTLIGHT

BY JEN DOEHNE, YL CHAIR

### Justin Kover WSBA No. 51117

justinkover@hotmail.com 360-516-6962



Justin is a member of the Nisqually tribe. He has known that he was destined to be a lawyer since the age of seven. In Justin's practice, he serves as the Nisqually Tribal Prosecutor, and practices criminal defense and family law in State court around Thurston, Pierce, and Grays Harbor Counties. He is admitted to practice at five federally recognized Tribes – Nisqually, Chehalis, Puyallup, Quinault, and the Lower Elwha Klallam.

- ♦ **This is the best advice I have been given:** "If you find yourself overwhelmed, start with the first file and keep going." The Honorable Judge John Judge, Latah County Superior Court (Idaho).
- ♦ **I would give this advice to a first-year law student:** Build a network of people who will want to hire you before you go.
- ♦ **A book I recommend reading:** Propaganda by Edward Bernays
- ♦ **I am most happy when:** My cross-examination is going well.
- ♦ **Currently playing on my ipod/CD player/record player:** Freewheel Burning by Judas Priest
- ♦ **If I could live anywhere:** I would still live in Olympia
- ♦ **My favorite vacation place:** Twist Inn, Colville Reservation
- ♦ **What keeps me awake at night:** Coffee
- ♦ **This is the hardest part of my job:** Client expectations
- ♦ **This is the best part of my job:** Getting dismissals for people who really, really deserve it. I got a taste early and it was good.
- ♦ **If I could change one thing about the law, it would be:** To make Westlaw free to all
- ♦ **Trait I admire in other Attorneys:** Loyalty, duty, honor, selfless service, respect, integrity, personal courage, virtue

If you would like to be featured in the Young Lawyer Spotlight or know someone you would like your fellow lawyers to get to know, email Jennifer at [jdoehne@bgwp.net](mailto:jdoehne@bgwp.net)



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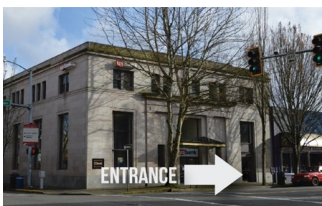
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(continued from page 1)

President's Message By: Trevor Zandell

Another great option for lawyers who are looking for rewarding opportunities to provide pro bono legal services is the Dispute Resolution Center of Thurston County (DRC). Rather than advocating for one party or the other, DRC supplies neutrals to help facilitate the resolution of disputes through mediation and other alternative dispute resolution methods. Similar to TCVLS, local attorneys and judges serve on DRC's board. DRC volunteers work with parties as phone conciliators and as mediators in traditional mediations. Working as a neutral with the DRC requires special training, but you may obtain the necessary training through the organization itself. DRC offers several trainings throughout the year including: professional mediation training, collaborative negotiations, family mediation training, multi-party mediation training, and facilitating effective meetings. Once certified, a volunteer may work on all types of cases or focus on certain types of cases such as family conflicts, small claims court or foreclosures. If you are interested in volunteering for the DRC, visit their website at [www.mediatethurston.org](http://www.mediatethurston.org).

## **Thurston County Family and Juvenile Court presents:**

**Lunchtime Education on Tuesday, November 28, 2017  
at 12:15 p.m. at Family and Juvenile Court**

**Topic: Effect of Conflict on Kids/Overindulgence  
presented by Emily McMason**

No registration required. CLE credit is free. Just show up!  
For more information, email Edith VanderWal at [vandere@co.thurston.wa.us](mailto:vandere@co.thurston.wa.us)

## **Refresh Your Legal Writing** *by Commissioner Rebekah Zinn*

Some lawyers love to write, and enthusiastically devote themselves to all aspects legal writing. This article is for everyone else. I want to emphasize why lawyers should put a little time into writing better and explain how to focus that time.

I am a lawyer and commissioner for Superior Court, and read dozens of pleadings each week. I am also a "word nerd" who became a lawyer in order to write professionally. I do not expect that of other lawyers, but it pains me when poor writing obfuscates the best facts and arguments.

You may lose an argument if the court cannot understand it from your brief. Oral argument may not salvage your genius perspective. You can lose credibility and harm your professional reputation if you fail to include citations or misstate the law or facts. Imprecise contract drafting can lead to lost rights and litigation. Unclear settlement agreements are easily broken. Clients are unlikely to take your advice if they cannot understand it. It is worth it to write better.

If you only have a little bit of time to improve your writing, focus on these things: (1) organize; (2) simplify; and (3) verify.

### **1. Organize**

Legal reading is largely scanning. We do not have time to read pleadings in a leisurely fashion. Instead, we scan for the most important information and want to find it easily. This makes it important to use a highly organized and structured format.

If you struggle with organization, use a formal structure:

- **For objective writing**, like an options-based client advice memo, use IRAC (issue, rule, analysis, and then conclusion).
- **For persuasive writing**, such as a brief, use CRuPAC (conclusion, rules, proof of rule, application, and restatement of the conclusion).

(continued on page 16)

The Washington Courts Historical Society presents a CLE,  
 “Keeping the People Informed: Open Government in Washington State”  
 on Friday December 1, 2017 at the Temple of Justice in Olympia  
 from 9:00 am to 4:30 pm. Net proceeds benefit the work of the Society.

Current Supreme Court Justices, noted practitioners and experts  
 will present on topics including the history of the Washington  
 Public Records Act, open courts, the Public Disclosure  
 Commission, confidentiality of WSBA and judicial disciplinary  
 records, General Rule 31.1 and a concluding ethics presentation  
 on attorney-client issues.

Cost is \$245, \$225 for attendees of the 2015 Washington Courts  
 Historical Society CLE and \$50 for students, lunch included.

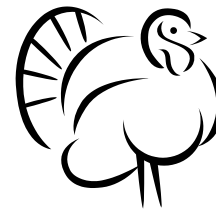
Approved for 5.75 CLE credits, including 1 ethics credit.

For more information and registration see:  
[wacourthistory.org](http://wacourthistory.org) or e-mail [wchs@wacourthistory.org](mailto:wchs@wacourthistory.org).

If you are interested in contributing a  
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Funny, interesting, educational or even  
 controversial articles written by our  
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## News from the Washington State Law Library

### Native American Education Law Display

Washington State Law Library Reference Librarian, Shani Cate, recently compiled a new display for the law library's Main Reading Room. The display, on Native American Education, highlights selected documents from WSLL's collection as well as special collections from a variety of subscription databases such as HeinOnline. Some of the library materials and downloaded documents on display include:

- Bound volumes of the Code of Federal Regulations
- Historic Public Laws and United States Statutes at Large from HeinOnline
- *Indian Education: A National Tragedy-A National Challenge* (Kennedy Report), available on HeinOnline as well as websites such as the [National Indian Law Library](#)
- Selected documents from HeinOnline's [American Indian Law Collection](#)

We invite you to view the display in-person during your next visit to the law library, or contact us to view electronic versions documents of interest to you from HeinOnline. We also suggest looking at the [University of Washington Libraries Digital Collection on American Indians of the Pacific Northwest](#), which includes many images, documents, essays, and maps.

### Email or E-mail? A New Edition of *The Chicago Manual of Style*

A new edition of *The Chicago Manual of Style* was published in September 2017 and is now available on the University of Chicago Press Books [website](#), as well as other book sellers. According to the Washington State Supreme Court's [Reporter of Decisions Style Sheet](#), the 20<sup>th</sup> edition of *The Bluebook: A Uniform System of Citation* is the basic citation resource for Washington appellate court opinions, while the latest edition of *The Chicago Manual of Style* is the authority for punctuation and style matters.

Work on the 17<sup>th</sup> edition of *The Chicago Manual of Style* began shortly after the 16<sup>th</sup> edition was published seven years ago. The 17<sup>th</sup> edition of *The Chicago Manual of Style* features several new changes. Highlights include removing the hyphen in "e-mail", meaning writers should use "email" instead, and using a lowercase "i" for "internet".

For more information on the 17<sup>th</sup> edition of *The Chicago Manual of Style* including news, updates, and grammar and style tips, check out [CMOS Shop Talk](#), a blog from the Chicago Manual of Style, or [@ChicagoManual](#) on Twitter. More information on The Office of the Reporter of Decisions, including style guides or to access free court opinions, is available on the Washington Courts [website](#).

### Did You Know? Law Library of Congress Resources Online

The United States Congress established its law library in 1832. The Law Library of Congress (LLC) now contains more than 2.65 million volumes, making it the world's largest law library. While you can still visit the Law Library of Congress in person, an increasing number of resources are also available through [LLC's website](#). LLC staff also maintains a [blog](#) covering everything from research tips, to rare legal documents, to interviews with library staff.

### Upcoming Holiday Closures

WSLL will be closed on Friday, Nov. 10 (Veterans Day), Thursday, Nov. 23 (Thanksgiving Day), and Friday, Nov. 24 (Native American Heritage Day).

Contributed by Washington State Law Library reference staff.

## **ATTENTION MEMBERS**

If you have **not** provided the TCBA with an email address you may be missing out on important notifications for CLE's and social events. The Legal Brief is the only thing to be printed and mailed in an effort for the TCBA to work towards going green. Please contact [tcba.info@gmail.com](mailto:tcba.info@gmail.com) if you have any questions. Also, please remember to notify us when you change your email address or change addresses. We want to make sure you do not miss anything.



## United Way Day of Caring September 22, 2017

It is with great pleasure that I report that the 2017 United Way Day of Caring was a success for the Thurston County Bar Association. The TCBA team had thirteen dedicated volunteers painting at the Catholic Community Services DREXEL HOUSE over the course of the day from 9 am to 3 pm. We succeeded in painting the waiting area, foyer, two hallways and a kitchen/dining room. I have included some exciting action pictures from the day and two group photos : one for the morning shift and one for the afternoon.



Here's a list of the folks who volunteered: Paul Battan, Shirley Battan, Jackson Maynard, Trevor Zandell, Anne Wilson, Larry Jefferson, Rebecca Glasgow, Allen Miller, Mary Margaret O'Connell, Marie Doctor, Amy Rau, Megan Card, and Lisa Shannon.

***THANK YOU to ALL of the Volunteers!!!***

Jackson Maynard,  
TCBA United Way Day of Caring Chair



### Advertising on the TCBA website

There is a dedicated Advertising page on the TCBA website, [www.thurstoncountbar.com](http://www.thurstoncountbar.com)!

Legal job opportunities & volunteer announcements are **FREE!!**

Any other advertising will be posted at a cost of \$25 for 1 month & up to 175 words

If you are interested or have questions, please contact Heather at [tcba.info@gmail.com](mailto:tcba.info@gmail.com)

### Swearing-in Ceremony on September 21, 2017

The swearing-in ceremony had a total of 12 new attorneys. The guests filled the biggest courtroom (102) and Judge Mary Sue Wilson commented that this was the most well-attended swearing-in ceremony she had presided over. Happy hour afterwards was at the Three Magnets Brewing Co. and it was a big success! It was co-sponsored by TCBA and TCVLS.



The names of the new attorneys are (from top left to right, then bottom left to right): Sarah Nagy, Breanna Knittle, Joseph Mintz, Joshua Dansby, Laura Fedorko, Son Nguyen, Michael Rothwell, Jordyn Jones, Stephanie Roman, Hannah Sells, Diani Taylor Eckerson, Thomas McDowell.

### Interested in getting more involved in the TCBA?

A great way get involved is to join the TCBA CLE or Bench/Bar Committees!

Please contact Heather at [tcba.info@gmail.com](mailto:tcba.info@gmail.com) for more information

### Section/Committee Announcements...

#### Family Law Section

The Family Law Section meets at 12:10 p.m. on the 2nd Tuesday of each month at the Family and Juvenile Justice Center.

Mike DeWitt is the Chair of this section.

If you have any questions please contact Mike at (360) 705-9000 or [Mike.taylorlawgroup@gmail.com](mailto:Mike.taylorlawgroup@gmail.com)

#### Young Lawyer Section

The Young Lawyer Section holds regular Monthly Meetings the first Tuesday of every month.

Jennifer Doehne is the Chair of this section. Her email address is [jdoehne@bgwp.net](mailto:jdoehne@bgwp.net)

Please visit the YL webpage at <http://thurstoncountybar.com/sections/young-lawyer-section/>

## **TCBA & Other Upcoming Events**

**TCBA Member Luncheon and CLE:** The next TCBA Member Luncheon and CLE is on Friday, November 17, 2017 at 11:30 a.m. at Hotel RL. The topic is “ABLE Accounts: A New Tool in Assisting Individuals with Disabilities” presented by Attorney Joshua Brothers.

**Half Day Trial CLE– Part Two:** There will be a half day CLE on November 30, 2017 from 1:00 p.m. until 4:20 p.m. at the Thurston County Superior Court, Courtroom 102. See more information on page 15.

**January 2018 Issue of the Legal Brief:** The deadline to submit articles and advertisements for the January 2018 Legal Brief is December 27, 2017. Please email them to Heather Ligtenberg at [tcba.info@gmail.com](mailto:tcba.info@gmail.com).

**Annual Holiday Lunch:** The Holiday Lunch will be on December 15, 2017 at 12:00 p.m. at the Olympia Golf & Country Club. See more information on page 18.

**Save the Date:** The Annual Meeting & Dinner will be on May 18, 2017 at Indian Summer Golf & Country Club.

Please refer to the “News & Events” section of our website for a full list of upcoming events:  
**[www.thurstoncountybar.com](http://www.thurstoncountybar.com)**

### **Win (or Lose) with Presumptions**

By Paul Battan

The power of a legal presumption can win a case, or can lose a case. It would be unwise to litigate without understanding the presumptions that may apply to the issues in your case, and the burden of proof necessary to overcome adverse presumptions.

When there are legal presumptions in a case, the scales of justice are not level. They are tipped in favor of the presumption. In fact, they may be heavily tipped. If an equal amount of credible evidence is produced on each side of a case, the side favored by a presumption wins. Sometimes, even when there is more evidence against the presumption than for it, the side favored by the presumption wins.

For example, in Washington divorce cases, one presumption is that all the parties’ property is community property. A divorcing party who claims that property is separate must overcome this presumption. To rebut the community property presumption, a party must present clear and convincing evidence that the property fits within a separate property provision of the law. If a party who claims that property is separate can produce only a preponderance of evidence that the property is separate, and not clear and convincing evidence, the claim fails, because a preponderance of evidence fails to overcome the presumption.

How do I know this is true in practice? Because I lost such an issue in a family law trial when the wife, to the surprise of my client and myself at trial, claimed that she had deposited money into a bank account in the husband’s name that we had treated as separate property. She also claimed that they had freely withdrawn funds from this account for their use. Her attorney argued that the funds in the account were community property because any separate funds had been comingled with community funds. We had never discussed this as a community account in any settlement negotiations or trial preparation so were not prepared to prove the character with bank records.

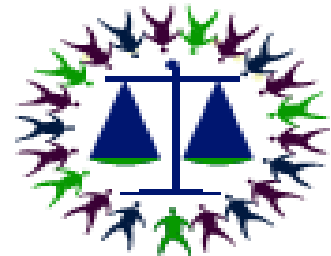
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## **Thurston County Volunteer Legal Services**

PO Box 405 Olympia, WA 98507

360-705-8194

[www.tcvls.org](http://www.tcvls.org)



### **Pro Bono Representation**

The process is set, CLEs are done (for now) and recruitment of volunteer attorneys is underway. TCVLS will begin to identify cases that need pro bono representation. We aren't looking for particularly complex cases, but ones where self-representation is not an option because of client circumstance. We hope you will step up to make a powerful difference in the lives of these individuals.

Through the generosity of The Community Foundation of South Puget Sound and Thurston County United Way/Women United, we do have grant funds available to cover costs that cannot be waived by the court --- like process serving or publication.

*We also need attorneys for the legal advice clinics at the Family Support Center and SafePlace!*

If you are interested in pro bono representation or volunteering at the legal advice clinics, please contact Christa at 360-810-2321.

### **CLEs**

Thank you to those of you who presented during our recent Boot Camp CLEs which happened between over a series of evenings and weekends in September and October. **THANK YOU** to Commissioner Nate Kortokrax,

Commissioner Jonathan Lack, Commissioner Rebekah Zinn, Paul Battan, Forrest Wagner, Bruce Conklin, Chuck Szurszewski, Pat Rawnsley, Alan Anderson, Deric Young, John Vanek, Leslie Owen, Nancy Koptur, Amy Perlman, Shelly Brandt, Jason Quackenbush, and Jennifer Summerville.

TCVLS will have monthly CLEs again beginning in January, 2018. Instead of having the CLEs only during the lunch hour as we used to do, the courses will be offered at a variety of times -- evenings, Saturdays and lunch hours. Stay tuned for more information!

On the topic list: Non-Parental Custody, Health Care/Charity Care, and Consumer Debt. We will include ethics credits whenever possible.

If you have a request for a specific topic, please contact Rachael at 360-688-1376.

### **It's time to start planning for the 2018 Breakfast!**

It's time to prepare your practice's budget for 2018! Don't forget to include a sponsorship for TCVLS' breakfast in your budget. The breakfast is tentatively set for Tuesday, May 8<sup>th</sup> at 7:00 a.m.



THE ALLIANCE  
for Equal Justice

MEMBER



**“I can hardly see why all who are governed by law should not have a voice in making it.”**

Daniel R Bigelow Diary, 1854.



**OLYMPIA HISTORICAL SOCIETY  
& BIGELOW HOUSE MUSEUM**

[WWW.OLYMPIAHISTORY.ORG/MEMBERSHIP/](http://WWW.OLYMPIAHISTORY.ORG/MEMBERSHIP/)

**National Adoption Day Celebration**

Everyone is invited to attend the 13th annual local celebration of National Adoption Day on

**Thursday, November 16, 2017  
at 4:00 p.m. at the  
Thurston County Family  
and Juvenile Court.**

Following the adoption ceremonies, there will be a celebration with food and entertainment for the children to participate in. In addition, each adopted child will receive a teddy bear. Many committed judges, government agency representatives, lawyers, private individuals, families, and program administrators will join together to commemorate this special day.

**Members Corner**

This is the Member's Corner section.

You can make announcements regarding retirement, new hires, births, marriage, in memoriam notices, etc.

This section will be free to members of the TCBA, and is different than our current ad section.

If you have any announcements, please send them to Heather at [tcba.info@gmail.com](mailto:tcba.info@gmail.com)

Saint Michael Catholic Church cordially invites all public officials, judges, and lawyers to a Red Mass on Monday, Jan. 8, 2018 at 12:00 p.m. at 1055 Boundary Street NE, Olympia, WA 98501

The Red Mass is a tradition that dates from the 13<sup>th</sup> century in which participants pray for wisdom as they endeavor to do justice. It is a non-partisan event and open to all in the community.

## **Updates from Thurston County Superior Court Presiding Judge Carol Murphy**

On January 1, 2014, I began serving as Presiding Judge of Thurston County Superior Court. Since that time, the court has faced significant administrative challenges and implemented many changes and improvements.

Security has been a major focus for the court. At the main courthouse complex, security improvements have been made, allowing for electronic package screening. The space at the entrance was reconfigured to improve the safety for court staff and the public. In addition, two attorney meeting rooms were added within the law library. These modifications were done using grants and other funds available to the court outside of the funds allocated in the county budget for its operations. Other internal security measures are in the works as well.

Since major budget cuts in 2008, the court has not had adequate staff to meet the needs of litigants, attorneys, and judges. Since that time, certain needs have increased, such as the need to add technology resources due to a new Case Management System, and the court's reliance on video appearances, and electronic records. In the last couple of years, by redeploying the same or slightly less budget resources, the court has improved its staffing structure, but has not yet been able to add staff such that each Judge has an assigned Judicial Assistant. We continue to work on that need, but the budget remains a major challenge.

The court has taken the lead in implementing changes to processing of felony cases. A critical look was appropriate based upon the increasing number and complexity of criminal cases and the jail moving away from the main courthouse. Many stakeholders are involved in the Felony Leadership Improvement Project (FLIP), which has and will continue to decrease the number of pretrial hearings and move cases toward completion more efficiently.

While addressing the urgent day-to-day needs, the court has also been working on preserving the past and addressing future needs. The Thurston County History Committee has been active for several years, and completed one project (a photo display at the main courthouse complex across from Courtroom 101) with several others in the works. Along with District Court, we have attempted to educate county leaders and the public regarding the serious security and space needs which experts have repeatedly concluded can only be addressed with a new courthouse building. This need presents a daily challenge, but will take many years to address appropriately.

Other projects included decreasing hearings and arrest warrants to collect on criminal legal financial obligations, expanding and improving the Pretrial Services Department, and the upcoming modification of judicial rotations to increase availability to hear civil dispositive motions. Finally, under the leadership of the Court Administrator and FJC judges, numerous improvements have been made to space, staffing, and case processing at Family and Juvenile Court.

Collaboration has been key in implementing any change. I appreciate the support from my colleagues, the Court Administrator, staff, county departments, and community partners. I look forward to focusing on being a better Superior Court Judge and supporting Judge Christine Schaller, who begins serving as Presiding Judge on January 1, 2018.

**Mark Your Calendars:  
The 24<sup>th</sup> Annual Northwest Dispute Resolution Conference  
will take place on March 22-23, 2018,  
at the University of Washington School of Law in Seattle.**

**For more information, please email [info@nwdrconference.org](mailto:info@nwdrconference.org)**

### **Half Day Trial CLE– Part Two**

There will be a half day *Trial CLE– Part Two* on November 30, 2017 from 1:00 p.m. to 4:20 p.m.

Presented by

**Thurston County Superior Court Judge James Dixon  
and Dr. Jill D. Schmid, Ph.D. of Sound Jury Consulting.**

**Cost:**

\$50 for TCBA Members and their Non-Attorney Staff  
\$100 for Non-TCBA Members

**Location:**

Thurston County Superior Court, Courtroom 102

**Registration:**

Please register/pay online on the TCBA website, [www.thurstoncountybar.com](http://www.thurstoncountybar.com)  
or mail a check to TCBA, PO Box 1653, Olympia, WA 98507.

3 Law & Legal Credits are pending approval with the WSBA.



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Refresh Your Legal Writing by Commissioner Rebekah Zinn

Here are some other key areas to focus on:

- Give documents a simple and direct title.
- Start every brief with a clear statement about what you want the court to do, a short synopsis of the case, and a “road map” of the brief’s contents.
- Include well-marked headings and subheadings in your writing.
- The first sentence of a paragraph should mention that paragraph’s content, and the paragraph should generally cover one topic.

This advice works for briefs, and can also apply for contracts, settlement documents, and bar articles.

## **2. Simplify**

Judges are wicked smart. They can understand any legal or factual complexity. It is in everyone’s best interest, though, to explain your subject matter as if you are writing for an ordinary lawyer outside your field of practice. Do not assume that the reader knows your practice area or remembers your facts. You are the expert in your case, having spent the most time with it. Your goal is to convey the complexity of your case in a way the court or your client can understand. Outline legal standards, define specialized terms of art, avoid acronyms, repeat key facts and procedural history, and simplify your language.

There are easy tricks to simplify your language. First, read your writing out loud. You should be able to speak your sentences. If they don’t make sense when spoken, rework them until they do. Do this a little at a time until it feels more natural to write simply.

Looking for more advanced feedback? Use a “readability” function in your document software. Microsoft Word can scan readability during a spell check. Grammarly and similar programs will test readability online and in document software. Use these as reminders to (1) reduce passive sentences, (2) aim for a higher Flesch reading ease score, and (3) achieve a lower Flesch-Kincaid grade level score.

Further, practice simple writing in everyday life. When you write a text or email, take a few extra seconds to edit for simpler and clearer language. Your reader will thank you.

## **3. Verify**

Finally, focus on editing and verification. Edit your work it before finishing it. It is best if you have time in between writing and editing to view it with fresh eyes. For your most important work, collaborate with colleagues to read each other’s writing. Don’t be defensive; be open to criticism.

It is crucial to verify that your statements to the court are correct. If you use boilerplate, check it for changes in the law. Do not state a legal proposition without a citation to support it or a statement that you researched the issue but found no relevant law. All of your facts need to be backed up by evidence and cited. Check your legal and factual citations to make sure they are accurate and at least arguably say what you think they do.

Legal writing is an art. Art is learned and honed through repetition, not merely an innate talent. Every lawyer can improve their writing with intentional practice. This practice and effort can benefit your clients and your professional reputation. Some of us even think it is fun.



(continued from page 11)

Win (or lose) with presumptions By Paul Battan

My client adamantly denied, in his testimony, that the wife's assertions were true. It was all we could do but it was not enough. The judge commented that he tended to believe the husband more than the wife, but this did not meet the burden of proof necessary to overcome the community property presumption, which is clear and convincing evidence. Fortunately (and rather creatively) the judge decided it was not an Aeither-or@ proposition, and he treated the account as having a mixed character, and divided only part of it as community property.

A simple way to gather presumptions is to go to your online legal research tool, such as Lexis Advance, enter your issue along with the word presumption, and you will be directed to relevant cases. For example, a search using the terms Acommunity property@ and Apresumption@ produces 2,030 results.

We always gather facts to support our clients' claims. If you also gather the presumptions that apply to your claims, or the opposing party's claims, you may learn that you must gather a bigger arsenal of facts to overcome a strong presumption favoring the opposing position. Or, if you are fortunate, you may learn that you can actually lose the contest of facts, but still win, because a strong presumption favors your position which the opposing party cannot overcome by clear and convincing evidence.

Presumptions and burdens of proof are not just terms to read about in reports of appellate cases! Learn from my mistake. Gather them in advance, as you would gather the facts in your case, and put them to work for you in your negotiations and your motion and trial practice.

### **ADVERTISING IN THE LEGAL BRIEF**

If you would like to advertise in the LEGAL BRIEF,  
please contact Heather Ligtenberg at [tcba.info@gmail.com](mailto:tcba.info@gmail.com)

- The cost for advertising is \$200 for a full page, \$100 for 1/2 page, \$50 for 1/4 page and \$25 for 1/8 page.
  - All advertisements are subject to approval of the Legal Brief's Editorial Board.
- The LEGAL BRIEF is published bi-monthly. (January, March, May, September and November)
- Visit [thurstoncountybar.com](http://thurstoncountybar.com) for more information on specs and to view past editions of the Legal Brief

## Thurston County Bar Association

# Holiday Luncheon

**Friday, December 15, 2017**  
**12:00 pm**

Registration and social hour to begin at 11:30am

**Olympia Country & Golf Club**  
3636 Country Club Drive, Olympia, WA 98502



### BUFFET TO INCLUDE:

*Chicken Piccata with lemon caper sauce*

*Garlic Mashed Potatoes & Seasonal Vegetable Medley*

*Seasonal Green Salad with house vinaigrette*

*Warm Potato rolls and butter*

*Chocolate Mousse*

\*Meals include coffee/tea and water, tax and gratuity.

**Cost is \$29 per person paid in advance or \$34 at the door**

**Please Note: Pre-payment  
by check or online is  
required by**

**Monday, December 11th**

Please register and pre-pay on the  
TCBA website,  
[www.thurstoncountybar.com](http://www.thurstoncountybar.com)

or send your \$29 check to TCBA,  
PO Box 1653, Olympia, WA 98507

Once your check or online payment is received  
you will be placed on the RSVP list.

Cash or checks payable to TCBA at the door

### ADOPT-A-FAMILY

The Thurston County Bar Association will host the Annual Salvation  
Army Adopt-A-Family drive

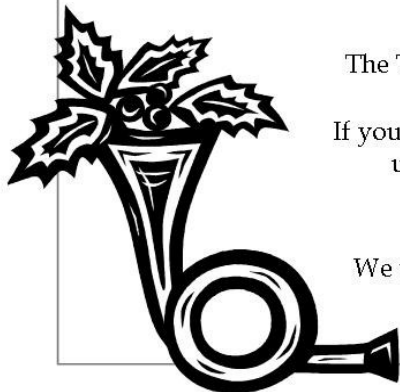
If you would like to participate in the Adopt-a-Family program but are  
unable to attend the luncheon please send your donations to:

TCBA @ PO Box 1653, Olympia, WA 98507

Donations should be made payable to TCBA

We will need to receive your check by **Monday, December 11, 2017**

Please indicate **Adopt-a-Family**



Dear TCBA Members:

With the holiday season fast approaching, it is time, once again, to ask for your assistance with the Thurston County Bar Association's participation in the Salvation Army's Adopt-A-Family Program. As most of you know, the Adopt-A-Family Program matches impoverished families with individuals or group sponsors who will provide them with gifts and other necessities listed on the families' "wish list." The "wish list" includes requests for toys, clothing, sport and electronic equipment and other household essentials like blankets, towels and sheets. Sponsors are asked to provide three or more wrapped gifts (plus stocking stuffers) to each family member on either Monday, December 18, 2017, 9:00 a.m. to 4:30 p.m. or Tuesday, December 19, 2017, 9:00 a.m. to 4:30 p.m. The wrapped gifts should be delivered to the Salvation Army building at 1505 4<sup>th</sup> Avenue East in downtown Olympia. The assignment of families is scheduled to start by November 17, 2017 and we hope to get the families to our sponsors before Thanksgiving.



For the 2016 Holiday Season the TCBA sponsored 40 families (142 individuals) and helped them have a happy holiday season. We are hoping to help and support even more families this year. To sponsor a family please email TCBA Administrative Assistant Heather Ligtenberg at [tcba.info@gmail.com](mailto:tcba.info@gmail.com) with your information and request for a family. The families are categorized as Small (one to three persons), Medium (four to five persons), and Large (six or more persons). Please let Heather know as soon as possible (and no later than Monday, December 11, 2017) if you are willing to participate in this most rewarding event.

The TCBA will continue the tradition of having some individual family members available for adoption at the December 15, 2017 Holiday Luncheon. We are, however, once again encouraging members and firms to sponsor an entire family prior to the Holiday Luncheon. This allows the TCBA to not only sponsor more families, but also allows the membership to have more time for socialization during the luncheon. We are hopeful that those members that cannot attend the luncheon or those who would like to make an early commitment to adopt a family will let us know as soon as possible so the TCBA can continue to make a difference in our community during this holiday season.

I thank you on behalf of the Thurston County Bar Association Board of Directors.

Leonard K. Lucenko, Jr.  
Committee Chair



Please see the letter below from September that Olympia Mayor, Cheryl Selby, sent to the Thurston County Board of County Commissioners offering to engage in a joint feasibility study for locating a new courthouse on City-owned property at Plum and 8<sup>th</sup>. Thank you Mayor Selby!



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[olympiawa.gov](http://olympiawa.gov)

September 19, 2017

The Honorable Bud Blake, Chair  
Thurston County Board of County Commissioners  
2000 Lakeridge Drive SW,  
Olympia, Washington 98502

RE: New County Courthouse

Dear Chair Blake,

On behalf of the Olympia City Council, I can share with you that we are very excited about the prospect of a new County Courthouse in Olympia.

We applaud your leadership for moving forward with this urgent, and long delayed need for all Thurston County residents. We know the challenges regarding operational efficiency, security and convenience for County residents and employees has reached a critical stage at the current Courthouse location.

In the spirit of City-County partnership, the City of Olympia would like to offer the possibility of a joint feasibility study of the City owned property at Plum and 8<sup>th</sup> as a possible new Courthouse site.

The City has substantial real estate holdings here at the Lee Creighton Justice Center and adjoining properties. In addition, the site has access to utilities and good transportation access to I-5 and other key entry points.

The City's proposal is that we work together to conduct the next level of feasibility analysis to determine the viability of this site. We have the ability to share in some of the costs for this work.

Please let us know if you are interested in this exciting proposition.

Sincerely,

Cheryl Selby  
Mayor

cc: Councilmembers  
Ramiro Chavez, County Manager  
Steve Hall, City Manager