THE LEGAL BRIEF

A Publication of the Thurston County Bar Association

Volume 34 Issue 4
September 2016

Inside this issue:

President's Message/Board Members	*1*
View From the Bench	*2*
Classifieds/Ads/Misc Updates	*3,5,7,11, 13*
Young Lawyer's Spotlight	*4*
Thurston County Clerk's Office	*6*
Article by Mark Alexander	*8,10*
Article by Chris Meserve	*9*
TCVLS Update	*12*
Article by Shawn Newman	*14*
Land Trust Article	*15*
Law Library Article	*16*

TCBA Board of Directors
2016-2017

Officers:
Megan Card, President
meganc@buddbaylaw.com

Trevor Zandell, President Elect
tzandell@phillipsburgesslaw.com

Mark L. Wheeler, Secretary
mwheeler@bgwp.net

Janet McClanahan Moody, Treasurer
janet@elderlawwithcare.com

Terry Church, Immediate Past President
terry@olyinjurylaw.com

Leonard K. Lucenko, Jr., Board Member
llucenko@olylaw.com

Christopher John Coker, Board Member
cjcoker@ylclaw.com

Chris Lanese, Board Member
christopherl@atg.wa.gov

Laura Murphy, Board Member
laura@lauramurphylaw.com

William B. Pope, Board Member
wbpope_associates@yahoo.com

John Skinder, Board Member
skindej@co.thurston.wa.us

Patrick O'Connor, Board Member
oconnop@co.thurston.wa.us

President's Message By: Megan Card

Guilty. I admit it openly and honestly. I'm guilty of not abiding by the ***"Words from the Wise"*** from Fred Gentry: **"Always, always answer your phone calls promptly even if it is a call you don't want to make."**

There are cases that we don't enjoy working on. There are facts we don't want to deal with. Research and drafting pleadings that seems arduous. And of course, there are clients and attorneys we just don't want to talk to.

We also know what it's like to be on the other side of the line. You call opposing counsel, the receptionist answers and says, "Let me see if he's available." She comes back and says, "I'm sorry, he's on the other line right now" (as if the receptionist couldn't see he was on the phone to begin with - he's guilty too). My other favorite is, "Oh, I'm sorry he's with a client" - shouldn't the receptionist have known he was in a meeting? *Guilty*.

We all do it. But we shouldn't. Fred knows best. *Listen to Fred.*

After Fred sent me his advice, I tested it out. I took those phone calls. I answered those emails. And it felt *good*. I was dealing with cases I didn't necessarily want to deal with right then and there. But I was handling them and moving on.

I challenge each of you to take Fred's advice and answer or make those phone calls you don't necessarily want to. Respond to that email that has been sitting in your inbox for a week. You will feel surprisingly relieved by doing so, and you will be a better lawyer because of it.

The Thurston County Bar Association held its annual Member Appreciation Barbecue on August 27 at Burfoot Park. I always enjoy the BBQ as a way to get to know the attorneys and judges in our community outside of the courtroom. I also enjoy seeing my peers in their "street" clothes – attorneys are almost unrecognizable without their suits and ties on. It's like an undercover superhero gathering at the park and we're all incognito. Did you know that the Thurston County Superior Court Judges do not wear their black robes to the park? If you haven't made it to the BBQ before, I encourage you to do so next year. Similar to that phone call you don't want to make, once you do it, you'll be glad that you did.

One thing I struggled with a lot as a new lawyer (and even now) was putting myself out there and mingling at network events. Let's be honest – it's uncomfortable and forces you out of your comfort zone. But try saying "yes" next time. Go to the happy hour event. Attend the luncheon. Get involved volunteering! Talk to someone you don't know. When you realize that we're all a bit uncomfortable it makes it easier. Just don't picture everyone in their underwear. You'll be glad that you didn't.

A View From the Bench

The Rest

By Indu Thomas, Thurston County Superior Court Commissioner

Well here we are at the end of summer once again. It always seems to go so fast doesn't it? Summer tends to make us all look up from our desks and enjoy other parts of our lives. Summer vacations with family and of course having our son home from college make life a little more enjoyable. Long warm summer nights motivate us to get more done and to enjoy more of the beautiful outdoors. This summer I managed to build in quite a bit of fun while still getting the work done. As fall approaches I find myself being a bit nostalgic.

As I thought about what to write to all of you, a radio segment that I used to listen to came to mind; *The Rest of the Story* narrated by Paul Harvey. His velvet voice turned the news into entertainment each week on his famous segment. Paul Harvey was a historian telling the story of our nation one entertaining bit at a time.

I was appointed to the bench in April 2007 and am feeling a bit like a historian myself as we have retirement after retirement. By next year only one of the original eight Judges who appointed me will still be on the bench. Change has been a constant and I now find myself saying… "Well we used to" and "Don't you remember..." far more often. In 2007 when people said Commissioner I looked around for Commissioner Neilson. Over time I have grown into the title and the role.

When people ask me how it feels to be back on the Family Law Rotation I usually grin and say it is exhausting. There is a significant amount of reading that is required when one is preparing for and handling the Family Law Calendars. In addition to the routine work of preparing for dockets, I also serve on a number of committees. However, the work is not the whole story. The rest of the story is the people. It has been and continues to be a privilege to serve this community as a Commissioner. I get to help people every day that I come to work.

Some people that I miss are the Judges who have retired. I miss consulting with them and think about the lessons they taught me. As we quickly approach two more retirements I find myself thinking of the things that I have learned from these role models.

Judge Hicks taught me the value of individuality even in the face of criticism. Judge Strophy taught me the power of connections even with the most difficult people. Judge Pomeroy taught me to be joyful in the face of sorrow. Judge Casey taught me to consider the entire perspective without getting lost in the details. Judge McPhee taught me the benefits of thorough preparation regardless of time constraints. Judge Tabor taught me dignity in the face of opposition. Judge Wickham taught me the power of civility even in the face of rudeness.

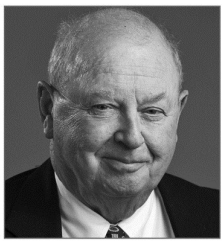
I am grateful for the opportunities that I have had to appear before each of them and to have served with each of them. Congratulations, Judge Tabor and Judge Wickham as you complete your service to the community this year. I am forever in your debt. And that ladies and gentlemen, is the rest of the story.

LOCAL RESOLUTION

JAMS Washington State neutrals are available in our office *and* yours.

Judge Sharon Armstrong (Ret.)

M. Wayne Blair, Esq.



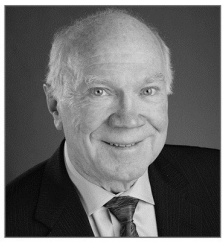
Fred R. Butterworth, Esq.

Judge Paula Casey (Ret.)

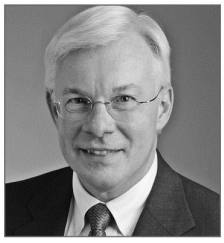
Judge Anne L. Ellington (Ret.)

Judge Deborah D. Fleck (Ret.)

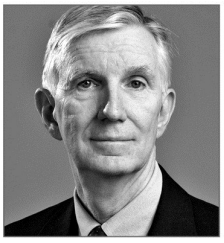
Judge J. Kathleen Learned (Ret.)



Judge Thomas McPhee (Ret.)

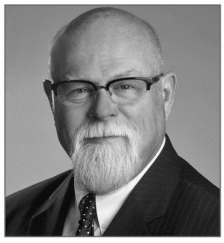


Lawrence R. Mills, Esq.



James F. Nagle, Esq.

Douglas S. Oles, Esq.



Comm. Eric B. Watness (Ret.)

To schedule a mediation or arbitration in the location most convenient for you, call Michelle Nemeth, Business Manager, at 206.622.5267.

www.jamsadr.com

JAMS®

YOUNG LAWYER SPOTLIGHT

BY: MEGAN RUE, YL CHAIR

Armand Resto-Spotts, WSBA No. 50608

aresto-spotts@phillipsburgesslaw.com (360) 742-3509

Armand concentrates his practice in the area of land use, natural resources, and environmental law. He is a former editor-in-chief of the *Journal of Environmental Law* at the University of Oregon School of Law and graduated with honors in 2015. He is now the newest member of the Phillips Burgess team here in Olympia, where he works on all sorts of matters, but primarily in the land use and natural resources fields.

Armand grew up in Las Vegas, and when given a chance, escaped to the Northwest. Being a recent transfer to Washington from Oregon, Armand can tell the difference between the two sides of the Columbia.

Outside work, he usually finds himself trail running, attempting to learn the viola, reading several books concurrently despite his intending not to, and spending far too many hours watching and discussing baseball.

I became a lawyer because: I developed a real fascination with writing during my undergraduate years at Oregon State University. As the editor at the OSU newspaper, I wrote quite a bit on environmental policy and law. With a law school nearby and not particularly interested in journalism, I enrolled in the University of Oregon School of Law. There, I found myself studying primarily environmental and natural resource law. Fortunately, out of law school, I was able to join Phillips Burgess, where I now practice in the legal fields I was writing about not so many years ago.

I would give this advice to a first-year law student: Enjoy the free time.

The hardest part of being a young lawyer is: The learning. How naïve to think all that ended when I graduated from law school.

If I could change one thing about the law, it would be: The formality and habit, particularly with the writing. When I read "COMES NOW," or "heretofore," or "prior/subsequent to," I have to wonder why we still write like this. I can appreciate the practice in keeping legal documents routine and similar in structure, but ALL CAPS? A four-syllable phrase for the word "after"? Let us maybe meditate a little more on whether these habits are adopted or learned.

The future of the practice of law is: Millennials. Here we come… or have been… or will be. Just perpetual millennialism for the next several decades.

One of the greatest challenges in law today is: *Jarndyce v. Jarndyce*, of course.

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 Megan at Megan@morganhill-law.com.

MEDIATION & ARBITRATION SERVICES

Law, Lyman, Daniel, Kamerrer & Bogdanovich, P.S.

Don G. Daniel is available to serve as a mediator and arbitrator. With 33 years of experience as a litigator, mediator and arbitrator Mr. Daniel is well suited to assist parties in resolving disputes. Experienced, neutral and objective alternative dispute resolution in a cost effective manner.

RATE: $250 PER HOUR

ddaniel@lldkb.com

Phone: 360-754-3480 Fax: 360-357-3511

Williams, Wyckoff & Ostrander, PLLC

We have spent over 30 years protecting injured workers in workers' compensation and public pension system disability cases.

Williams, Wyckoff & Ostrander, PLLC
2958 Limited Lane NW
P.O. Box 316
Olympia, Washington 98507
Phone: 360.528.4800
Email: wwo@wwolaw.net
Website: wwolaw.net

We provide free consultations to injured workers and we welcome your referrals.

CAPITOL PACIFIC REPORTING

One call does it all!

Need to schedule an out-of-area deposition . . . .

Capitol Pacific Reporting can arrange all of your court reporting needs locally or nationally!

Our knowledgeable staff will take care of all of the arrangements from locating a reporter and securing a location (if needed) not to mention giving you the comfort of working with a firm you know and trust.

Give us a call today!

Call (800) 407-0148 or e-mail scheduling@capitolpacificreporting.com to schedule your next deposition!

Western Washington's Choice Since 1975

www.capitolpacificreporting.com

What's New in the Clerk's Office
As submitted by Thurston County Clerk, Linda Myhre Enlow -

The Clerk's Office has had one very busy 2016!

We are very pleased to announce that by the time this Legal Brief article goes to print, our office will be fully staffed! We welcomed several new employees into the Clerk's Office and they join an already remarkable professional team.

BREAKING NEWS! A change in the Clerk's Office hours. Effective October 1, we will now be open during the lunch hour. M - F, 8 to 5 pm.

The Clerk's Office recently hosted a Brown Bag lunch for professionals in the legal field. It was very well attended with over 75 folks, not including Court staff making the presentations. We will definitely consider doing more Brown Bags in the future as the short survey completed by attendees indicated that this training was very successful and valued. Thanks to all who participated.

Good news! We have decided to rebrand the Clerk's Office website and have just started the conversation about how the process will evolve for our stakeholders. We will have more updates for the next Legal Brief, but for now – we are excited to make this happen. Along with the launch of our new webpage later on in the Fall, we look forward to streamlining our educational materials showcased on our website. We'd like to hear your suggestions about our website, please!

We are continuing to learn the nuances of Odyssey and all its challenges. We are very proud that Thurston County was one of the pilot counties in Washington for the Odyssey conversion. It has been challenging but very rewarding. We continue to educate ourselves – every day – in the world of Odyssey.

In closing, we wish you all a wonderful Fall from the Clerk's Office!

Rick Hughes, Attorney at Law
Law Office of Richard L. Hughes PLLC
324 West Bay Dr. NW, Ste. 201, Olympia
rick@richardhugheslaw.com
(360) 464-6533

Three decades of experience focused on:

Real estate
Government
Labor & employment
(Employer only)
Arbitration/Mediation Services

ThunderBay Management

Office Space Available*
Near Thurston County Courthouse
-921 Lakeridge Way SW Olympia-
$3700 per Month, Full Service Lease

Nearly 2000 sq. ft. of 1st floor 6 office suite undergoing remodel.
Janitorial service and utilities (excluding phone/internet) included.
We offer above average on-site parking and
24/7 maintenance staff.
Build-to-Suit and rent discount options available for
longer-term leases (36+ months).

Please see our website or call for more information:
www.thunderbaymgt.com
(360) 866-6633

*Additional office space available in other buildings, please see website for details.

GORDON THOMAS HONEYWELL LLP

Employment Rights

Stephanie Bloomfield, James Beck, Andrea McNeely, Eric Gilman and Shelly Andrew

Strategic Employment and Discrimination Representation

Employment cases involve unique and complex legal and evidentiary issues.

- Discrimination
- Failure to Accommodate
- Harassment
- Wrongful Termination
- Family or Medical Leave
- Retaliation
- Covenants Not to Compete
- Trade Secrets

We know the nuances and procedural pitfalls and can effectively present these claims to juries in Federal and State Courts.

Experience Matters, Justice Matters.

gth-law.com

Tacoma: 253-620-6500 • Seattle: 206-676-7500

GTH PICB Employment TCBA 7.5x5 B&W_F.indd 1 4/4/16 12:21 PM

INTEGRATED VS. BIFURCATED BAR ASSOCIATIONS

By Mark Alexander, Attorney at Law, Seattle

To be or not to be – a mandatory or voluntary state bar association? That is the question.[1]

We are not talking about the licensing of lawyers; all 50 states regulate the admission to and practice of law, and provide discipline for errant attorneys. That may be through the state court system's authority to regulate those who practice there through a separation of powers approach (such as Washington[2] and Wisconsin), through legislative action (Oregon), or through the state's constitution (as in California.)

The debate revolves around providing additional services related to the law and lawyers: for example, CLEs, special interest sections, victim compensation, fee disputes, legislation, leadership training, etc. The states are divided between mandatory (aka integrated or unified) and voluntary bar associations. Washington presently has a mandatory bar; why should we question the choice now?

At its Sept. 20-21, 2012 meeting the WSBA Board of Governors created a work group to explore and make recommendations about the governance of the Washington State Bar Association. The result was the June 24, 2014 report of the WSBA Governance Task Force.[3] That report frankly recognized the tension between: a) most WSBA members' belief that WSBA is an "association" of attorneys which serves its members' interests, and b) its historical genesis and authority as a regulatory and disciplinary arm of the state Supreme Court. Among its observations:

> Although the organization is cast as an association of lawyers, its purpose is not that of a traditional "trade association" that operates for the primary or exclusive benefit of its members. In Washington, voluntary bar associations play that role. Rather, the WSBA is charged with the protection and enhancement of the legal system. Other permitted activities further that goal. For example, member services are permitted under GR 12.1(3), not because they serve the interests of the membership, but because they promote a more competent and skilled body of legal professionals *to the benefit of the public*.
>
> Another area of ongoing tension arises from the Supreme Court's creation of six boards that it has assigned to the WSBA for operations, staffing, and funding. These are the Disciplinary Board, the Mandatory Continuing Legal Education (MCLE) Board, the Limited Practice Board, the Access to Justice (ATJ) Board, the Practice of Law Board, and the Limited License Legal Technician (LLLT) Board. While the Court sets the mission of these boards, it provides no funding or staffing for them. Instead, the Court expects funding and staffing to be provided by the WSBA.
>
> Historically, there have been tensions between the Board of Governors and the six boards created by the Supreme Court and placed under the WSBA for purposes of funding and staffing. On these occasions, the WSBA staff has been caught between these two entities. While the WSBA staff is obligated to fulfill the Court's mandate, it is also accountable to the Board.
>
> Examples of these tensions abound. Most recently, the Board of Governors threatened to refuse to allocate license fees to the Practice of Law Board. And while it opposed the creation of Limited License Legal Technicians (LLLTs), it now must provide funding and staffing to the LLLT Board.
>
> The proper role of the Board of Governors vis à vis the WSBA is not clearly defined or well understood. First, as described in Section III above, GR 12.1 permits the WSBA to engage in various pursuits, all of which ultimately should accrue to the benefit of the public. This orientation should be reflected in the governance structure of the WSBA. It is not. Governors are elected by Congressional District. And the WSBA Bylaws note that "[e]ach Governor represents a constituency of the Bar." WSBA Bylaws IV.A.2.b. They direct the Board of Governors to operate as a "representative body of all members." *Id.* at IV.A.2.a. Taken together, these feed into the erroneous notion that Governors should represent the wishes and desires of their "constituents." Indeed, when asked about their roles, both new and experienced Governors have spoken of representing their constituents and fulfilling their "fiduciary duty" to members within their districts.
>
> . . . the WSBA Bylaws should be amended to eliminate characterization of the Board as a representative body whose members represent a constituency of the WSBA.

(continued on page 10)

What's Happening with the WSBA on….
By Chris Meserve

Governance. Since my election to the WSBA Board of Governors last spring, I have been attending Board of Governors meetings, received training from current Governors and Bar staff, and been the recipient of dozens of e-mails on issues facing the Bar. This month, the hot topic is governance.

A 2014 Governance Task Force made recommendations regarding the ways in which the WSBA is administered. The Board of Governors issued its "response" to the Task Force recommendations in 2015. For the past year, a Bylaws Task Force has been addressing the ways in which the Bylaws need to be amended to conform to the "response". The most important recommended changes:

1. The name of the Washington State Bar Association would be changed to "Washington State Bar". Membership in the WSBA would include limited practice officers (LPOs) and limited license legal technicians (LLLTs). Less clear is whether the definition of "member" also includes those with other types of licenses, such as legal interns under Rule 9.

2. Three new members would be added to the Board of Governors, consisting of members of the public and representatives of non-lawyer licensees, i.e., LPOs and LLLTs. Those individuals would be appointed by the Board of Governors or by the Supreme Court after being nominated by the Board of Governors. This would bring total membership on the BOG to 18: Eleven elected from Congressional districts, the past-president, three at-large selected by the BOG, and three non-lawyer representatives.

3. The Bylaws would emphasize that the Supreme Court retains the ultimate control over licensing fees, also known as dues.

4. The Bylaws would also emphasize that members of the Board of Governors represent ALL the members of the Washington State Bar, including lawyers from "outside" their districts as well as non-lawyer members, limited practice officers, licensed legal technicians.

These proposed changes were considered at "first reading" at the August 23rd Board of Governors meeting. They will be up for consideration (and probable adoption) at the meeting scheduled for September 29th and 30th. In the meantime, the WSBA has scheduled a second "town hall" meeting for September 14, 2016 at 4:00 p.m. at the WSBA Conference Center. You can also join the discussion via webcast.

If you are interested in contributing a column to one of our Legal Brief Newsletters, we want to hear from you!! Funny, interesting, educational or even controversial articles written by our TCBA members are always welcome.

Please submit to tcba.info@gmail.com

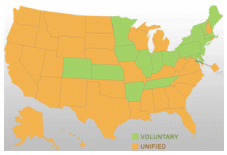
The Real Estate, Land Use, and Environmental Law Section is holding a ½ day CLE on **Tuesday, October 4**. Six panelists will discuss all aspects of **land trusts**, including their role in conservation, donations, tax implications, and tips for working with clients, local governments, and the community.

Our esteemed panelists include Mark Peternell, M. John Way, Laurence Reeves, Joe Kane, Loretta Seppanen, and Andrew Deffobis. Please see the TCBA website for more information: http://thurstoncountybar.com/land-use-section/.

The CLE will be at the Olympia Library's public meeting room, at 313 8th Avenue SE. Sign-in will begin at 12:30, and the presentations will begin promptly at 1:00 and conclude by 5pm. Many thanks to Ann Harrie, with Bean Gentry Wheeler & Peternell, who coordinated this amazing panel. For questions, please contact Martha Wehling at marthaw@atg.wa.gov or (360) 753-6287.

(continued from page 8)
Integrated vs. Bifurcated Bar Associations

A number of states have chosen to serve the different purposes through separate organizations.[5]



Within the last 20 years, challenges have been mounted against mandatory bars in California, Florida, Washington, and Wisconsin, among others. In Nebraska, the state's Supreme Court removed attorney regulation and discipline functions from the state bar association, leaving other services such as legal research and other member programs to be covered by voluntary dues payments. Other states, such as Hawaii, changed from a voluntary to a mandatory bar.[6] In June 2014 the Michigan Bar decided to remain a unified bar, as did the Arizona Bar in September 2015.

Pros and Cons

Advocates of voluntary bars maintain that they are more careful about how dues are spent, and are more responsive to their members, because members' disapproval may be shown by withdrawing their membership and their dues. Members vote with their feet. Although attorneys in a mandatory bar may object under Keller[7] to using their dues for legislation or ideological activities which are not germane to regulating the legal profession or providing legal services, the amounts withheld are typically minuscule. At the same time, attorneys in voluntary bar associations (whether on the state or local level – such as the King County Bar Association) often provide significant volunteer services to the public, as do unified bars.

Separating the mandatory costs for the bar's disciplinary functions from its other services can be eye-opening. On Dec. 6, 2013, the Nebraska Supreme Court ruled that the Nebraska State Bar Association had 25 days to transition from a mandatory bar to a voluntary one. The court took over regulatory functions and imposed an attorney assessment of $98 to cover the cost of attorney registration and discipline. While it required all attorneys to remain members of the NSBA, it made dues in the bar association voluntary.[8] The dues for regular active NSBA members are now $240, and NSBA no longer collects the Supreme Court's mandatory assessment.[9] Within ten years, three mandatory bar associations believe that their bar associations will be a hybrid model similar to Nebraska's.[10] As another example, one practitioner reports that the mandatory license fee for New York (a voluntary bar) is billed every other year, and has remained $300 since 1984. That attorney chose to not join the New York State Bar Association, which was regarded in New York City as being of more interest to those in the state capital. In that case, local bar associations would presumably provide more pertinent services.

Proponents of a mandatory bar argue that, with a larger and more stable base of revenues than their voluntary counterparts, a mandatory bar can commit to more long-term programs and projects. Although a bar's programs and focus change with its leadership, the stability afforded by mandatory membership and fees can be used to better maintain pro bono and public interest programs that serve community needs over the immediate needs of the bar's attorney members.[11]

Since Washington already has a mandatory bar, any transition to separating the bar functions would almost certainly involve both effort and expense. Whether that would be worthwhile to make clear who the bar association(s) serve(s) remains the question.

---

1. Apologies to Shakespeare's *Hamlet*.

2. State ex rel. Schwab v. Wash. State Bar Ass'n, 80 Wn.2d 266, 272, 493 P.2d 1237 (1972); *Graham v. State Bar Association*, 86 Wn.2d 624 (1976); *WSBA v. State of Washington*, 125 Wn.2d 901 (1995).

3.http://www.wsba.org/~/media/Files/Legal%20Community/Committees_Boards_Panels/BOG%20Governance%20Task%20Force/WSBA%20Governance%20Task%20Force%20Report%20and%20Recommendations%20-%20FINAL.ashx

4. The WSBA response to the Governance Task Force Report is at: http://www.wsba.org/~/media/Files/Legal%20Community/Committees_Boards_Panels/BOG%20Governance%20Task%20Force/Report%20of%20the%20WSBA%20Board%20of%20Governors%20on%20Governance.ashx

5. The included map is from the ABA Division for Bar Services, online at: https://www.americanbar.org/groups/bar_services/resources/resourcepages/unifiedbars.html . Reports claim between 32 and 37 states have mandatory state bars, although those numbers apparently include several states which could be counted among the voluntary ranks (e.g., Nebraska, Virginia, N. Carolina, W. Virginia.)

6. Kastner, Jill M., *Mandatory vs. Voluntary: Which State Bar Is Better?*, The Affiliate (ABA Young Lawyers Division, 2008), http://www.americanbar.org/publications/affiliate_home/affiliate_index/yld_affiliate_septoct08_kastner.html

7. Keller v. State Bar of California, 496 U.S. 1 (1990)

8. Kittay, Dan, *Deunification challenge in Michigan, big changes in Nebraska: Part of a trend?*, Bar Leader, vol. 38, no. 5 (ABA, May-June 2014), at http://www.americanbar.org/publications/bar_leader/2013-14/may_june/deunification_challenge_michigan_big_changes_nebraska_part_trend.html

9. http://www.nebar.com/?page=DuesFAQ

10. Unified Bar Fact Sheet, statistics are from an unpublished section from the 2014 Membership, Dues & Finance Survey published by the ABA Division for Bar Services, at https://www.americanbar.org/groups/bar_services/resources/resourcepages/unifiedbars.html

11. Kastner, *op. cit.*

TCBA & Other Upcoming Events

Red Lion CLE:
The next lunchtime CLE is on Friday, September 23, 2016 at 12:00 p.m. at the Red Lion. Topic: "The Role of the Lawyer in Trial: Who is the Hero?" The presenter is Attorney Michael Wampold.

The October CLE will be on Friday, October 28, 2016. Topic: Carbon Credit Program. The presenters are Attorney Ann Harrie with Bean, Gentry, Wheeler, and Peternell and a representative from the Nisqually Land Trust.

November 2016 Issue of the Legal Brief: There is a deadline of October 25, 2016 for submission of articles and advertisements to Heather Ligtenberg at tcba.info@gmail.com.

2016 Holiday Lunch:
Save the date for the 2016 Holiday lunch...Friday, December 9, 2016 at 12:00 p.m. at the Red Lion in Olympia.

Please refer to the "News & Events" section of our website for a full list of upcoming events:
www.thurstoncountybar.com

BROST LAW
A PROFESSIONAL CORPORATION

All of us at Brost Law are delighted to announce our new associate attorney:

Paul Harrison

Paul is originally from Bellevue. He graduated from Washington State University with a double major in English and Political Science, and cum laude from Seattle University School of Law. He enjoys hiking, golfing, snowboarding, and any other activity that gets him outdoors, and rooting for his WSU Cougars.

Paul's legal background includes complex corporate and auto accident litigation, as well as juvenile public defense. He brings a solution focused approach to resolving family law issues, an ability to partner with clients to obtain desired results, and strong advocacy skills.

Paul will practice in all areas of family law including dissolutions, domestic violence protection orders, relocations, and modifications of parenting plans and child support. He will handle cases in Thurston, Grays Harbor, Mason, Lewis, and Pierce counties.

1800 COOPER POINT RD SW #18 ▪ OLYMPIA, WA 98502 ▪ 360.357.0285 ▪ EMAIL@BROSTLAW.COM

THURSTON COUNTY VOLUNTEER LEGAL SERVICES

2016 Board of Directors

In 2004, three organizations signed a Cooperative Agreement committing to promote access to justice by supporting TCVLS and its mission to pro bono civil legal aid. Each of the three partners committed to representation on the TCVLS Board of Directors.

Here are today's representatives:

Representing Thurston County Bar Association:

Terry Church	Church Rietzke, PLLC
Nicole Potebnya	Phillips Burgess, PLLC
Jason Zittel	Jay Goldstein Law, PLLC

Representing Government Lawyers Bar Association:

Phyllis Barney	Attorney General's Office
Grace O'Connor	Attorney General's Office
Laura Watson	Attorney General's Office

Representing Washington Women Lawyers (Capitol Chapter):

Jennifer Benway	Administrative Office of the Courts
Anne Egeler	Attorney General's Office
Emily Nelson	Attorney General's Office

There are also four at-large positions:

Geoff Arnold	Private Practice
Bob Houle	Private Practice
Eric Palosaari	Department of Financial Institutions
Mary Kendall	Senior Vice President First Citizen's Bank

We also have two Judicial Liaisons**: Judge Anne Hirsch** of Thurston County Superior Court and **Judge Dan Goodell** of Mason County Superior Court.

Jennifer Summerville from Northwest Justice Project represents state funded civil legal aid organizations.

2016 Officers for TCVLS Board of Directors:

President	Anne Egeler
Vice President	Geoff Arnold
Secretary	Phyllis Barney
Treasurer	Jason Zittel

TRANSITIONS

While terms begin January 1, we've already said fond farewells to several board members who we would like to publically thank for their contribution to our Board of Directors:

Stephen Manning was a Director representing TCBA since January, 2014 and left the area to accept a position with the City of Seattle. Stephen was also the Treasurer for several years.

Eric Mapes represented TCBA for a short time until he was hired as a public defender for Chelan County and moved to Wenatchee.

Amy Tilger represented Washington Women Lawyers and also left the area to accept a position in the Seattle office of Freimund Jackson and Tardif.

Lauri Leirdahl, also representing Washington Women Lawyers, had another commitment that conflicted with her involvement with the Board.

Judge Christine Schaller was a Judicial Liaison until June when she handed the gavel to Judge Hirsch.

THANK YOU TO CURRENT AND FORMER BOARD MEMBERS!

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

-Daniel Bigelow Diary, 1 May 1854.

Pioneer Olympia lawyer and legislator D R Bigelow helped bring the rule of law to the Pacific Northwest and worked to ensure all had access to their rights.

You can help preserve the Bigelow family legacy and support the work of OHS&BHM in sharing our history to new generations.

Please support **OHS&BHM** by becoming a member!

Online at www.**OlympiaHistory.org**

Name_____

Address_____

City, ST Zip_____

Phone_____

Email_____

Annual Membership: $35 Individual / $25 Student and Senior

$50 Family / $75 Pioneer / $150 Third Century

Make Checks Payable to OHS&BHM

PO Box 1821 Olympia WA 98507

Thurston County Family and Juvenile Court and Thurston County Bar Association proudly present:

Lunchtime Education on
Tuesday, September 27, 2016
at 12:15 p.m.
at Family and Juvenile Court

Topic: Case Law Update
Presented by
Chuck Szurszewski

No registration required.
CLE credit is free. Just show up!

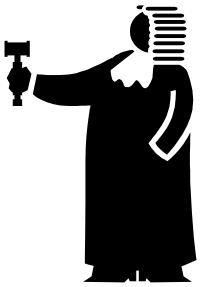
For more information,
email vandere@co.thurston.wa.us

Thurston County Bar Association Judicial Elections Bar Poll

The Thurston County Bar Association released the results from a Judicial Elections Poll in June 2016. The purpose of this poll is to express the preference of our members for the next judicial election to the Thurston County Superior Court.

Pursuant to our By-laws, each candidate who filed for candidacy with the Auditor's Office was listed on the ballot for the Position 1 and Position 7 vacancies of the Thurston County Superior Court.

Ballots were mailed to our membership which totals 359 attorneys. In response, we received 147 valid ballots. The results are as follows:



Thurston County Superior Court – Postion 1

Chris Lanese	99 votes
Laura Murphy	47 votes

Thurston County Superior Court- Postion 7

Jim Foley	17 votes
John Skinder	126 votes

TCBA Summer Barbecue

TCBA members and their families gathered at Burfoot County Park for the organization's 5th annual Member Appreciation Barbecue on Saturday, August 27. Even though board members did the cooking, we are pleased to report that there were no reports of food borne illness.

HOW UPDATED "WHITE COLLAR" FAIR LABOR STANDARDS ACT [FLSA] REGULATIONS IMPACT YOU AND YOUR BUSINESS

BY SHAWN TIMOTHY NEWMAN
ATTORNEY & ADJUNCT BUSINESS LAW PROFESSOR
www.newmanlaw.us

Summary: Effective December 1, 2016, the US Department of Labor will update the "white collar" overtime rules to raise the salary test for executive, administrative and professional employees from $455 ($23,660 annually) to $913 per week ($47,476 annually). An individual earning below that threshold will not be exempt from overtime pay. The updated rule permits additional compensation (e.g. bonuses and commissions) to satisfy up to 10% of the minimum salary level. These levels will update automatically every three years, beginning on January 1, 2020. [1] While the minimum salary levels to qualify as exempt have increased, no changes were made in the duties tests applied to white collar employees. Further, no changes were made to the exemptions for outside salespeople, teachers, lawyers or doctors.

Wage & Hour Laws: The FLSA establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector and in Federal, State, and local governments. Currently, covered nonexempt workers are entitled to a minimum wage of not less than $7.25 per hour under federal law and $9.47 per hour under Washington state law. Overtime pay at a rate not less than one and one-half times the regular rate of pay is required after 40 hours of work in a work week. Some employees are exempt from the overtime pay provisions, some from both the minimum wage and overtime pay provisions and some from the child labor provisions of the FLSA. Exemptions are narrowly construed *against* the employer asserting them. Certain executive, administrative, professional, outside sales workers and certain types of occupations in the computer field are exempt provided they meet *both* the duty and salary tests.[2]

Impact: DOL projects that 4.2 million workers will be directly affected by the change, and that another 8.9 million will be indirectly affected by reducing the ambiguity of their status. The new overtime regulations will present challenges to all businesses. While some employers may be tempted to simply skirt the new regulations through reclassifications and adjusted hiring and salary practices, *beware!* Wage and hour claims are seen as a "fruitful vineyard" by lawyers because the law imposes reasonable attorneys' fees on non-compliant employers.

Recommendations: All employers should: (1) review the duties, salaries and benefits for all exempt employees to determine whether they should remain exempt; (2) for those employees that do not meet the salary or duties tests, determine new hourly rates for those impacted employees but beware of changes on employee benefits (e.g. 401K, health care and vacation); (3) revise or update current timekeeping programs [3] and policies to reflect the changes;

---

1 https://www.dol.gov/whd/overtime/final2016/

2 https://www.dol.gov/whd/overtime/fs17a_overview.pdf

3 There are a number of time and attendance software systems available. Here's a recent review: http://www.softwareadvice.com/hr/time-attendance-comparison/ and (4) implement training for both managers and employees addressing the changes. It is important for employers to monitor overtime or the employer will be held strictly liable.

If you would like more information, assistance or a presentation on this important issue, please contact the Law Office of Shawn Timothy Newman at 866-2322 or e-mail me at shawn@newmanlaw.us

Land Trust Serving Thurston County Landowners

By Loretta Seppanen, Vice-President of the Board of Directors for South of the Sound Community Farm Land Trust,
Laurence Reeves, Conservation Program Manager for Capitol Land Trust,
and Joe Kane, Executive Director of the Nisqually Land Trust

A land trust is a private nonprofit corporation that permanently conserves land for the public good. Our three land trusts – South of the Sound Community Farmland Trust, Capitol Land Trust, and Nisqually Land Trust – are based in Thurston County. We work with private local landowners to protect their land from industrial, commercial and residential development through voluntary agreements called conservation easements, or by acquiring those lands and managing them for permanent conservation.

We play an important role in ensuring that as our region grows and develops, the character of our bountiful open spaces, the productivity of our agricultural lands and the health of our streams and wildlife habitat are preserved.

Our nonprofit status can help provide tax benefits to landowners who work with us. Donations of land, easements or monetary gifts may qualify for federal income, estate or gift tax benefits. And our land-trust status means that we are established to maintain our lands and easements now and in perpetuity.

All land trusts have common attributes, but each of us also has our unique working area, priorities, mission and goals.

- **South of the Sound Community Farm Land Trust** serves farmland owners in Thurston, Lewis and Mason counties who seek to assure their land continues in farm production after they no longer farm themselves. SSCFLT will purchase either an agricultural conservation easement or the land itself, which we then long-term lease to farmers. SSCFLT's approach is designed to provide a financial benefit for the landowner, reduce the cost of getting on the land for the next generation of farmer, and keep the farmland in production.

- **Capitol Land Trust** has been conserving important habitat in Thurston, Mason, Grays Harbor and Lewis counties since 1987 and has protected approximately 6,000 acres over 70 properties. CLT works collaboratively with landowners to conserve all types of land, from critical wildlife habitat to Puget Sound shoreline to working farms and forests. CLT uses a variety of techniques, such as conservation easements, fee acquisitions, life estates and bequests, to best match the needs of each landowner. We also assist local governments in land acquisitions, as well as hold conservation easements as part of federal habitat conservation plans.

- **Nisqually Land Trust** acquires and manages critical habitat to benefit the water, wildlife, and friends of the Nisqually River Watershed, from Mount Rainier National Park to the Billy Frank Jr. Nisqually National Wildlife Refuge, on Puget Sound. NLT holds title to some 5,100 acres of conservation lands in Thurston, Pierce, and Lewis counties. We pursue bold and innovative conservation strategies that support productive local economies, vibrant local cultures and a healthy natural environment, including in particular recovery of threatened Chinook salmon, steelhead trout, northern spotted owls, and marbled murrelets.

News from the Washington State Law Library

A New Chapter

After 14 years of service, Kay Newman retired as Washington State Law Librarian on July 1, 2016. Prior to joining the Washington State Law Library (WSLL), Kay served as Director of the Spokane County Law Library, where she worked from 1996 to 2002. She was also previously an attorney in private practice.

Kay filled many roles at WSLL – librarian, administrator, and sometimes financial officer. She was active in the American Association of Law Libraries and Law Librarians of Puget Sound. Rick Neidhardt, Reporter of Decisions for the Washington State Supreme Court, will serve as interim Washington State Law Librarian until a new librarian is selected.

Senate Confirms 14th Librarian of Congress

In national library news, the United States Senate approved Dr. Carla Hayden as Librarian of Congress in July 2016. Dr. Hayden was appointed by President Barack Obama in February to a ten year term. She is the first African American and the first woman Librarian of Congress in U.S. history. Notably, Dr. Hayden is also one of few librarians to hold the position – many others have been scholars or writers.

New Books & Book Reviews: Highlighting Additions to WSLL's Collection

Constitutional Personae: Heroes, Soldiers, Minimalists, and Mutes by Cass R. Sunstein. Sunstein is the Robert Walmsley University Professor at Harvard Law School. His book examines various approaches to judicial review in the U.S., categorizing them into four archetypes. Sunstein's previous works include *Nudge*, *The Partial Constitution*, and *Simpler*.

Effective Representation of Transgender Clients by program faculty Brandon R. Chun, Demoya Gordon, and Danielle Modeen. Covers legal issues facing transgender people, resources, and best practices.

Ferguson's Fault Lines: The Race Quake That Rocked a Nation edited by Kimberly Jade Norwood. New book from ABA Publishing that includes a foreword by Paulette Brown, president of the American Bar Association, 2015-2016. Contributing authors from academia, law, and media discuss issues regarding race, inequality, and criminal justice in the United States, with a focus on the killing of Michael Brown in Ferguson, Missouri.

How to Get Your Social Media, Email and Evidence Admitted (And Keep Theirs Out) by Diana M. Dearmin, Molly F. Kosten, et. al. NBI CLE materials, including guide and CDs.

Lost in the Weeds: An Introduction to Legal Issues for Business People Leading Cannabis Companies by Joshua Ashby. Billed as *the* reference guide for Washington State recreational marijuana law.

Municipal Law Deskbook by the American Bar Association, State and Local Government Law Section. 2015 edition of the popular treatise on municipal law.

The Rise of Corporate Religious Liberty edited by Micah Schwartzman, Chad Flanders, and Zoe Robinson. Discusses legal rights of religious institutions and how they may or may not extend to for-profit businesses.

Sisters in Law: How Sandra Day O'Connor and Ruth Bader Ginsburg Went to the Supreme Court and Changed the World by Linda Hirshman. New York Times bestseller, NPR Best Book of 2015, and Washington Post Bestseller. Notable author Linda Hirshman examines the relationship between Sandra Day O'Connor and Ruth Bader Ginsburg, the first and second women to serve as United State Supreme Court justices.

WSLL lends books and other materials to public employees for use within the scope of their employment, as well as Washington State Bar Association members working within the state. If you are already a registered borrower at WSLL, visit us in person, contact us by phone (360-357-2136), or email us at (library.requests@courts.wa.gov) to check out books. Borrower registration is available online at: http://www.courts.wa.gov/library/?fa=library.registration.

You can access WSLL's catalog at http://www.courts.wa.gov/library/?fa=library.home. For more information on WSLL's borrowing services, including mail options, see the Library Services page of our website.

Contributed by Washington State Law Library reference staff.