

## Professional Responsibility and the Challenges Facing the “Telephone Lawyer”

by Marjorie High

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<i>by Adrienne Keith</i>	

As a staff attorney at the Northwest Justice Project’s (“NJP”) Coordinated Legal Education Advice and Referral (“CLEAR”) hotline for the past four years, I have encountered my share of interesting ethical questions. Most of these have directly related to the same overarching question that constantly plagues all providers of legal services for the poor: How far should I go for each client, balancing an oversupply of legal needs against the severe shortage of resources necessary to meet those needs? The Rules of Professional Conduct provide some guidance, but do not always answer this question for the broad array of legal problems I regularly encounter.

NJP’s CLEAR hotline is the statewide access point for low-income legal services, serving every county in Washington except King County. Callers to CLEAR are served by either an attorney or trained paralegal acting under attorney supervision, who gathers relevant financial and contact information and conducts an interview regarding the facts of the caller’s substantive legal issue – all over the phone. If the caller’s legal needs can be effectively served at a distance, the attorney can provide a range of services, from legal advice to “brief service” legal work. If more assistance is required, the caller can often be referred to a local legal aid program if one is available. Unfortunately, due to overwhelming need and limited financial support, a “phone lawyer” is frequently the extent of help that many low-income persons can hope for. As such, my fellow CLEAR advocates and I try to stretch our limited staff resources by providing unbundled legal service. As one can imagine, never meeting our clients face to face creates a unique set of challenges. Adding to the mix is the fact that many CLEAR clients have complex legal issues, a low education level, a lack of literacy skills, difficulty with English, or have mental or cognitive disabilities. In my four years “on-line,” I have discovered that providing unbundled legal services through CLEAR is a uniquely challenging endeavor, posing a range of ethical issues, but is extremely rewarding and ultimately beneficial to the persons served.

First, many of my clients come to me with expectations as to the level of service we can provide. Often they are told to “Call CLEAR for a free lawyer,” or “CLEAR will represent you.” While I would hope this could be true for everyone, I often must begin by lowering expectations. That’s where the tricky part begins. While most callers will at least get counsel and advice, not all will. There are some types of cases we do not take and cannot give advice about, like personal injury cases. Further, many people get more than counsel or advice, but just how much more will depend on the facts of their particular cases and several intangibles such as the perception of the individual’s capacity to advocate on his or her own behalf. Very quickly (within the course of a 30-minute conversation), I must assess the problem, the caller’s competencies or lack of them, and delineate as clearly as possible the scope of the service I may be able to provide, which is often contingent on receipt of supporting documents and further legal research. Ensuring the client understands the scope of my services can be more difficult than it sounds. One example is the case of “Ms. Smith,” a physically and mentally disabled woman. Our first telephone conversation concerned Ms. Smith’s potential claim for an injury. While I thought I was very careful to explain the nature and scope of my limited services, Ms. Smith informed the opposing party’s legal department that I was her lawyer. The opposing party interpreted this to mean that the client was represented and therefore they could no longer communicate directly with her according to RPC 4.2. A couple of quick phone calls cleared up the confusion.

In addition to the need to clearly define the scope of my services, I often have to assess and explain just how much I am willing to do with limited time and often with limited information. Often, callers do not have relevant documents or pleadings at hand. Sometimes, due to the difficulty of finding legal services, people call when facing imminent deadlines. Sometimes there is time to verify facts and collect documents or evidence, but many times I must choose whether to help someone prepare a responsive pleading based solely on his or her representations. CR 11(b) helps to encourage attorneys like myself to step in and provide assistance to persons in dire need of immediate legal help. The rule specifically authorizes the ghostwriting of pleadings based on a self-represented person’s assertion of facts rather than requiring certification under penalty of sanction that all facts presented are true. Because of this, I am able to assist clients to prepare Answers or Responses that preserve their legal rights, where they might otherwise

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## Editor's Column

by Jason T. Vail



I have a good friend who is a first-year law student at Seattle University. In talking with her about her first-year experiences, I have had occasion to reflect on my own time in law school. It is a curious thing: For some reason, my memories of the first year (and, particularly, the first semester) of law school seem far more vivid than those of the following years. Perhaps your experience is the same. However, of all my memories from those initial, exciting, and scary days, I have one memory that is particularly significant—and it comes from a time before classes even began.

In the spring of 1998, I was preparing to begin law school in the fall. As a prospective enrollee, I had the opportunity to tour Gonzaga Law School with a “host student.” I took the day off from my job as an advertising art director (a career I fondly remember as my “former life”) and, with the host student, saw the school, sat in on a class, and got a general taste for the law school environment. As the host student and I talked about the legal vocation, he told me something I have never forgotten: That we, as attorneys, are held to a special ethical standard of conduct in all that we do, especially in our professional lives.

I was profoundly struck by this statement. While I had long contemplated becoming an attorney, this was an aspect of the calling I had never considered before. Of course, it wouldn't be long before I would come to understand the meaning of “Professional Responsibility” and its importance to me as a member of the Bar. And though the ethical hypotheticals posed in law school and on the bar exam may have seemed fairly straightforward and obvious at the time, the real world we face as attorneys presents ethical dilemmas that are far less clear. As a result, we have the opportunity to read, with morbid curiosity, the Discipline Notices section of the *Bar News* every month and wonder whether we, too, could find ourselves in the same situations.

I have become particularly mindful of the complexity of ethical issues since I began teaching legal ethics for paralegals. Paralegals and other legal assistants are bound by the RPCs, and a thorough understanding of the duties imposed by these rules is an integral part of an ABA-accredited paralegal education. Even though I have taught this particular subject for three quarters now and feel confident in my grasp of the subject matter, I am constantly amazed by how difficult some of the students' questions can be; rules that seem, at first look, very black-and-white, can quickly become very grey under the class's inquiries. As a teacher, I have the luxury of being able to take the time to research my students' more perplexing questions. But as a practicing attorney, I may be faced with a confusing ethical dilemma that requires immediate resolution. Thus, I think that

making sure we are operating within the Rules of Professional Conduct can be one of the most challenging aspects of being a young lawyer. Sure, we all know the basics; after all, the rules are generally common sense. (Any of you try bribing a judge lately? I didn't think so.) But it is the nuance and details that can be a source of worries that keep us up at night.

This issue of *De Novo* presents articles on ethical issues confronted by practicing young lawyers. These explore ethical questions that are encountered in the “real world” and not quite in the mold of bar exam questions. Assistant Editor Shelley Ajax, a solo-practitioner from the Tri-Cities, writes about her experience dealing with ethical concerns when billing with PayPal. Attorney Marjorie High of Northwest Justice Project writes about the unique ethical challenges presented to civil legal services attorneys who primarily practice as telephone lawyers on a legal aid hotline. I have also written a piece addressing how the RPCs apply to legal assistants, and your responsibilities as an attorney to ensure compliance. Further, you will find that other substantive articles, like the regular Dear Family Lawyer column, explicitly address how to handle ethical issues that may arise in particular situations. *De Novo* will continue this focus in future issues, but not just on substantive ethics issues. Beginning with this issue, you will find information about opportunities for community and *pro bono* service. I hope that *De Novo* will serve as a vehicle to inform and educate the readership about ways to get involved. This is not only to assist you in meeting your aspirational goal of 30 hours of *pro bono* service per year set out in RPC 6.1, but also to ensure that young lawyers across the state will be able to find ways of serving as forces of good in the communities in which they live.

I know that many of you have encountered unique ethical questions similar to those found in this issue of *De Novo* and invite you to share them with the readership. I also encourage you to submit stories of your own experiences providing *pro bono* or volunteer service, or opportunities of which you are aware to render such service. Exploring interesting ethical questions together and encouraging each other to volunteer and provide assistance where it is needed will help us all to continue to adhere to the high standards of ethical conduct to which we, as attorneys, are held.

*Jason T. Vail is editor of De Novo and a staff attorney with the Seattle office of Northwest Justice Project. He can be reached at 206-464-1519 or jasonv@nwjustice.org. All opinions are solely his own and not those of the WYLD, the WSBA, or De Novo.*

## President's Column

## "New Year, Same Theme?"

by Noah Davis



February 2006 already? &\*\$#!

As cold as some of our wintry days can be, I sure wish we could borrow some of the frostiness and freeze father time. Not only does it seem that I can never get ahead (or even catch

up) on all of my cases, but it also seems that, on the outside of my practice looking in, that time may be slipping away.

On days like today, as I'm locked away in my little corner of the world, I wonder when I can take a year-long world trip, perhaps on a sailboat ride across the globe? Or a five-star jaunt to Nice and the French Riviera? Or perhaps visit the cool blue of the Caribbean, or the pyramids in Cairo? If there's so much I want to do, why am I not doing any of these things at the moment?

So, each week, as I work a little more, learn a little more, and become just a little bit wiser, I find myself in a continual state of self-evaluation, examining my overall outlook, my goals in life, my practice and my future.

Why do I practice law? (Hmm, but then again, why do I do anything that I do in life?)

Is it for the sake of making money? Is it a thirst for knowledge? Is it the sense of accom-

plishment? Is it to fix a system deemed broken? Is it to do my part to contribute to society? Is it altruism, aiming to genuinely help others in need? Perhaps it was for some reason for which I've long forgotten. Or, perhaps it's now the only thing I know.

And from this, I sometimes find myself pondering back to my modest beginnings, long remembering answering the same school-aged occupational question ("What do you want to be when you grow up") with the standard, "Why, I want to be a lawyer, of course."

I was born the part, I felt, destined to right the wrongs of the universe (at least that's how I remember it now), sticking up for the poor and innocent and righting one injustice at a time. Actually, I'm sure that I thought I'd right all the wrongs at once, but later found out that, with as slow as the dial of justice ticks, it's more like one wrong at a time, or one part of one wrong at a time... if I'm lucky... and don't have to appeal.

So now, of course, reality has set in.

But, as frustrating, distressing and disillusional as the practice of law can be, it can also be one of, if not the most, rewarding professional experiences in life. As attorneys, people look to us. And yes, while it's true, that as a group, we are often demeaned and derided, it is also just as true that people turn to us for answers to their questions, for help to their

struggles, for direction, for advice, for freedom, and even for their livelihood.

As attorneys, we hold a special key, a key to the inner fabric and culture of society. A key to the machinery that implements change, a key to knowledge, a key to the courts, to the law, and perhaps to the world itself.

But, as I work on one case of many, at the end of a long week and short weekend, it is so easy to lose sight of the big picture, so easy for me to get lost among the trees, the "why am I doing this" and the "where am I going from here."

That's why we should all step out of our boxes, and look at our lives from the outside, continuing to re-examine, re-direct and re-focus our efforts so that we can stay in control of where we go and do what we want, and not ever allow ourselves to become consumed by what we do.

So, as you continue in 2006, let's continue to redevelop and redefine ourselves, to be inventive, to have plans (and options), to think big and to take on the world, one moment, one day, one thought and one case at a time.

*Noah Davis is the WYLD president and managing member of In Pacta PLLC. He can be reached at nd@inpacta.com. His term as WYLD president runs through September 30, 2006.*

### Professional Responsibility and the Challenges Facing the "Telephone Lawyer" from page 1

be subject to a default judgment or miss a statute of limitations deadline.

Finally, callers occasionally have a diminished mental capacity that has implications for the attorney-client relationship. In these situations, RPC 1.13 directs attorneys to, "as far as reasonably possible, maintain a normal client-lawyer relationship with the client." This may require taking extra time to try to make sure the client fully understands the intricacies of the case or using language and terms the individual can grasp. Often I think of it as "translating" from legalese, and I respect their right to make their own decisions about how to proceed based on my best advice. While one might think that the telephonic means of communication impairs the ability to overcome these challenges, in fact many callers seem more comfortable communicating private information without direct eye contact or with the "anonymity" the telephone provides. If I suspect

that the caller does not have the ability to adequately understand or consider the nature of proceedings and act in their own best interests, I contact a legal aid provider in their resident community to arrange for the caller to meet with a lawyer in person, or seek other assistance consistent with RPC 1.13.

While CLEAR constantly presents me with new and different ethical challenges, I have the support of my colleagues and organization in resolving them. And it is unbelievably rewarding to know that I regularly help people all across the state who would otherwise be lost in the complex landscape of our legal system. Unfortunately, due to funding limitations, not everyone who needs help has access to this service. However, you can help by volunteering to answer these calls yourself. In addition to staff attorneys like myself, CLEAR has a strong contingent of volunteers to help answer the hotline calls. Volunteers come in two to

four mornings or afternoons per month (or more), and spend approximately three hours each session, resulting in nine to 12 additional clients served per person per month. For more information about volunteering on the CLEAR hotline, go to [www.nwjustice.org/about/NJP/volunteer](http://www.nwjustice.org/about/NJP/volunteer) opportunities. It is a great way to fulfill the Supreme Court's recommendation that every attorney give 30 hours of *pro bono* service. Volunteer assistance is vital to overcoming the gap between the need for legal services and the limited resources available to meet this need. Like me, I think you will find this type of practice to be incredibly challenging, educational and rewarding.

*Marjorie High is a staff attorney with the Seattle office of Northwest Justice Project. She can be reached at 206-464-1519, or [marjhigh@nwjustice.org](mailto:marjhigh@nwjustice.org).*

## Can Client's Pay Fees and Retainers Using PayPal? — by Shelley A. Ajax

I opened my solo practice in July of 2005 in the Tri-Cities, and have been weaving and wandering down the road of professional responsibility with a fine-tooth comb. Since I run a general practice, I was faced with the dilemma concerning the multitude of ways to receive payments from clients. All of my work experience for the past 10 years had been based on contingent fee agreements. When I started doing family law, I found out that many clients want to use a credit card! For some, it is the only means to obtain representation. For me, it meant doing my research.

I considered buying a credit card machine, and set out to find the best deals around. But the cost was excessive for my one-person firm, and I was not particularly fond of having that clunky old machine on my desk. While trudging through the various options, I heard about PayPal. PayPal is an online service where others can pay you using their credit card on the Internet. It is commonly used for Internet purchases, such as those made on e-Bay. When you open an account with PayPal, you can link your bank account. When payments arrive, the account owner receives an e-mail message from PayPal indicating there are funds in the account. The account owner can then access the PayPal account and transfer the funds to the proper bank account.

So this gives rise to an ethical question: Can I receive payments from clients through PayPal? At first, I thought the answer was wholly "no." So, I held off, contacted the WSBA ethics line, and received a speedy response. The ethics line did not know either. Apparently, this question had not been asked before.

Deciding to take this further, I wrote the Rules of Professional Conduct Committee. My question was submitted and I received a rather

rapid response. Albeit, the response is Informal Opinion #2108, which means it is the opinion of the committee and not necessarily the WSBA. It appears that a lawyer can accept credit-card payments through PayPal for funds "belonging to the lawyer." To me, this means if the funds are eligible to be placed in the general account, then it is okay to use PayPal. If the funds are supposed to be placed in the trust account, then you cannot use PayPal to accept payments. I would surmise the reasoning behind not being able to use PayPal for funds headed to trust is because the funds would essentially be "parked" in the account for a short period. Makes sense to me.

The opinion explains the conditions for using PayPal for funds belonging to the lawyer. First, the lawyer must explain to the client how the service works and how the funds will be processed. Second, the lawyer must investigate to ensure the processing of payments is "reliable and secure." Third, all fees required by the service must be paid by the lawyer. Finally, PayPal must be an option for the client and not a requirement by the lawyer. Obviously, different facts may change the opinion of the Ethics Committee.

For more information on the inquiry and facts submitted, see Informal Opinion #2108 available at <http://pro.wsba.org/io/search.asp>.

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## The Basics of DUI Defense — by Deborah Frederick

A DUI case might come across your desk, and if you are new to the area, you might not know how to handle the case at first. Terms such as Horizontal Gaze Nystagmus and Romberg might be completely foreign to you. You may not know the difference between a Negligent Driving in the First Degree plea bargain and a Negligent Driving in the Second Degree offer. What to do? Following are some of the basic tools you will need to effectively handle your first DUI case.

**Defending DUIs in Washington** by Douglas L. Cowan, Stephen W. Hayne and Jon Scott Fox

This book will lead you through handling a DUI case. It starts with the 2:00 a.m. phone call and leads you through plea bargaining, deferred prosecutions, and pretrial motions. Especially helpful is the chapter on the Initial Interview. This chapter lists a series of questions, starting with the defendant's medical history and going through the roadside tests and the breath test. The book explains why all these questions are so important and helps you with issue spotting. It also contains extensive trial help, such as cross-examination of the arresting officer.

**Washington Association of Criminal Defense Lawyers (WACDL)** e-mail list serve

The WACDL is a great association to belong to, and its e-mail list serve always contains the latest in what is happening with DUIs in Washington state. Questions can be posted, and others are eager to

help. This is a great resource for learning about DUIs and having your questions answered, especially if you want to know how individual judges are ruling on an issue, such as the constitutionality issue currently under consideration by the Washington State Supreme Court. The website can be found at [www.wacdl.org/member\\_info](http://www.wacdl.org/member_info).

### The National College of DUI Defense

This national organization has a very informational website at [www.ncdd.com](http://www.ncdd.com). Articles include The Twenty Most Frequently Asked Questions About DUI Defense, Field Evidence: Cross Examination on Horizontal Gaze Nystagmus, and Washington Drinking-Driving Penalties with RCW as of July 1, 2005. The college website also offers trial graphic for sale, such as the SFST Board Set and the HGN Measuring Unit. Becoming a member grants you access to their e-mail list serve where you can find the names of the best expert witnesses for your defense.

**The Washington Foundation for Criminal Justice** has a yearly seminar on defending DUIs. Extensive information is given out at this seminar. This year alone, participants received information on probable cause, legislative/case law updates, destroying the datamaster, and defying the Department of Licensing. A great place for information, either find a local attorney with a copy or contact the Washington Foundation for Criminal Justice to see if you can still buy a copy.

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## Legal Ethics and Paralegals: Your Responsibilities and What You Need to Know \_\_\_\_\_ by Jason T. Vail

Until I had the opportunity to teach a Legal Ethics course as a part of Highline Community College's ABA-accredited Paralegal Studies program, I had only the vaguest idea of how ethics rules applied to the paralegals and legal assistants in my office. I assumed that the same confidentiality rules probably applied, and maybe the other Rules of Professional Conduct as well. In truth, I had never really thought about it; in retrospect, I should have known more. After all, working with paralegals and legal assistants is an integral part of most attorneys' practices, and, as it turns out, an attorney bears a significant duty to ensure compliance by his or her paralegal or legal assistant with the RPCs. Failure to meet this obligation could result in serious consequences for the attorney.

I have set forth below some things you should know about how ethics rules pertain to your paralegal, and your associated responsibilities. Please note that for simplicity I use the term "paralegal" to encompass not only paralegals, but also legal assistants, legal secretaries, and any other nonlawyer who works directly with an attorney.

Paralegals are not regulated by their own set of ethical rules. Where attorneys have the Rules of Professional Conduct, paralegals do not have their own similar ethics code. In 1991, the American Bar Association adopted Model Guidelines for the Utilization of Legal Assistant Services, available for download at <http://www.abanet.org/legalservices/paralegals/>. This is a model code, like the Model Rules of Professional Conduct, and it pertains directly to paralegals. As yet, these rules have not been adopted in Washington. In addition, paralegals are not regulated like attorneys, nor are they required to be licensed in Washington State. The National Federation of Paralegal Associations ("NFPA") and National Association of Legal Assistants ("NALA") are the two primary national professional paralegal associations, and membership in either is voluntary. Both organizations have developed their own codes of ethical conduct for their memberships that are similar to the ABA Model Guidelines.

Despite lacking a mandatory ethics code of their own, paralegals are still required to comply with the Rules of Professional Conduct, albeit somewhat indirectly. Under RPC 5.3, an affirmative duty is imposed upon attorneys to ensure that any "nonlawyer employed or retained by or associated with a lawyer" engages in conduct that is consistent with the lawyer's own professional obligations, which includes conformity with the RPCs. The rule imposes a duty on lawyers to supervise nonlawyers to make certain that the nonlawyer complies

with the RPCs. Should the paralegal violate any RPC at the direction of the lawyer, or if the violation is ratified by the lawyer, or if the lawyer fails to take proper remedial action once the violation is known, the lawyer may be held responsible under the RPCs. In a somewhat related rule, the lawyer also has a responsibility, under RPC 5.5, to avoid assisting a nonlawyer in the unauthorized practice of law. In short, the RPCs are applicable to paralegals through the operation of RPC 5.3.

So what happens if the paralegal is not adequately supervised by the attorney and the paralegal engages in the unauthorized practice of law, thereby causing injury to a client? As set forth in *Tegman v. Accident & Medical Investigations, Inc.*, 107 Wn. App. 868, 30 P.3d 8 (2001), the question of whether the paralegal acted negligently while engaged in the unauthorized practice of law will be measured against an attorney's standard of competence, even though the paralegal is not an attorney. Further, the legal negligence of the paralegal may be intertwined with a finding of legal negligence of the part of the attorney and, as in *Tegman*, both may be found jointly liable for payment of damages.

It is important to note that paralegals may engage in certain types of activities that may, at first glance, appear to be the practice of law. General Rule 24 defines "the practice of law," and provides a number of exceptions and exclusions to the definition. Paralegals can fall under these exceptions, including: those who serve as courthouse facilitators, providing information and legal forms to *pro se* parties; those who provide assistance with the preparation of domestic violence protection orders and anti-harassment orders; and those who represent parties in administrative proceedings. But even within these exclusions, the paralegal's conduct will still be governed by the RPCs pursuant to RPC 5.3.

I hope you now have a basic understanding of how paralegals are governed by the RPCs and your responsibility to ensure that your paralegal not only follows the same ethical rules that you do, but also avoids the unauthorized practice of law. If your paralegal has graduated from an ABA-accredited Paralegal Studies program, he or she will have taken a course in legal ethics and will understand the duties imposed by the RPCs and the kinds of conduct that is ethically permissible.

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### *The Basics of DUI Defense from previous page*

#### **Individual Websites**

Several individual websites of some of the top DUI attorneys in the state offer plenty of information. Several informational articles can be found at [www.seattleduilawyer.com/articles.html](http://www.seattleduilawyer.com/articles.html). Likewise, [www.glblaw.com/dui/terms.html](http://www.glblaw.com/dui/terms.html) has a glossary of terms to get you started. And [www.waduidefense.com/waddeptoflicensing.html](http://www.waduidefense.com/waddeptoflicensing.html) has information and forms for fighting the suspension of your client's license by the Department of Licensing.

**If all else fails**, walk down the hall to a neighboring attorney's office who you know handles criminal defense and ask any questions you might have.

The first DUI can be difficult, especially if you are handling an accident or a blood draw. But the above places are great places to go for the latest in what you need to know to provide effective legal representation.

*Deborah Frederick is an attorney at her firm, the Frederick Law Firm in Bellingham, Washington. She is a member of the Washington Association for Criminal Defense Lawyers, the ABA, the WSBA, WSTLA and serves as the Secretary for the Whatcom Women Lawyers chapter of the Washington Women Lawyers group. She can be reached at 360-961-0774 or [fredericklawfirm@msn.com](mailto:fredericklawfirm@msn.com).*

## Meet the Board

### Bertha Diaz



**Trustee District:** Seattle University Law School

**Personal:** I'm originally from El Paso, TX.

**WSBA (Expected) Admit Date:** October 2006

**Education:** Seattle University School of Law, J.D., expected May 2006; Boston College, Bachelor of Arts, May 2002.


**Professional Memberships:** Latina/o Bar Association of Washington Liaison (SU); Seattle University School of Law Student Bar Association; Seattle University School of Law Moot Court Board Member; Women's Law Caucus; Washington Women Lawyers; Hispanic Organization for Legal Advancement; Asian Pacific Islander Law Student Association, Phi Alpha Delta Legal Fraternity-Truman Chapter.

**Hobbies:** Tennis, YWCA mentor.

**How you got involved in the WYLD:** Elected by SU Student Bar Association executive board.

Let us know what the WYLD is up to in your area. Send your stories, articles, photos, reports, or calendars to [denovo@wsba.org](mailto:denovo@wsba.org). Please include author contact information.

### Leadership Opportunity!



Footloose Sailing Association is a Seattle-area nonprofit organization that offers sailing as a recreational and therapeutic outlet to adults and children of all disabilities. We believe anyone can sail a boat and leave their disability behind. We believe everyone will enjoy independence on the water.

We operate under the leadership of a board of directors, comprised of 11 volunteers from various walks of life, as well as an advisory panel. Each director not only helps set the course for Footloose, but also contributes knowledge and advice related to their areas of personal and professional expertise. Advisors are called upon for the latter, but do not make decisions on behalf of the organization.

We occasionally have openings on our Board of Directors or Advisory Panel, and we would like to extend the next opportunity to an interested local attorney. This is a great opportunity to take a leadership role in a growing 501(c)(3) with an exciting and rewarding mission!

### Amy Robinson



**Trustee District:** Northwest District

**Personal:** I grew up in Alaska and moved to the great Pacific Northwest to pursue my education. After graduating from Washington State University, I spent some time traveling in Europe and then settled into a career in Human Resources. After moving to Portland to work for a staffing service, I decided to follow my dream to pursue a law career. I graduated from Lewis and Clark in 2002 and moved "home" to Bellingham in 2003.

**WSBA Admit Date:** 2003

**Education:** Northwestern School of Law of Lewis & Clark College (J.D., 2002); Washington State University (B.A., 1995).

**Employer & Contact Info:** Brett & Daugert PLLC, 300 N. Commercial, Bellingham, WA 98225, Phone: 360-733-0212, Fax: 360-738-2341, [arobinson@brettlaw.com](mailto:arobinson@brettlaw.com), [www.brettlaw.com](http://www.brettlaw.com)

**Areas of Practice:** Employment and Business Law, Civil Litigation, Community Associations.

**Professional Memberships:** Washington Women Lawyers, Whatcom Chapter President; ABA; Member of Oregon and Washington Bar Associations.

**Civic Activities:** LAW Advocates, Board Member.

**Hobbies:** Music, Travel, Outdoor Activities, and Lots of Socializing.

**How you got involved in the WYLD:** I received a warm welcome to my local bar community by the then-YLD Trustee, Elizabeth Li. Having the connection to other young lawyers in the area has really been a wonderful support system as well as a great networking opportunity.

*continued on next page*

Our Board and Advisory Panel meet in Seattle (just South of I-90) on the second Tuesday of each month, from 7:00 p.m. to 9:00 p.m.. Additional time is spent working in committees on fundraising, volunteer recruitment, training, safety, boat maintenance, etc., and volunteering at events.

To find out more about this unique leadership and community-service opportunity, please email Valerie Myers, Footloose vice president and fundraising director, at: [valerie@footloosesailing.org](mailto:valerie@footloosesailing.org). Also, please visit our website at [www.footloosesailing.org](http://www.footloosesailing.org) to learn more about our organization. If you are unable to commit to serving on our board at this time, please consider volunteering, and/or attending our gala auction dinner on March 19, 2006. We gladly welcome sailors and non-sailors alike!

## Meet the Board

### Toni Meacham



**Trustee District:** Southeast

**Personal:** Own and operate a working cattle and horse ranch. Raise foundation Quarter Horses, Braford, Hereford, and Angus cattle. President and founder of the Washington Foundation Quarter Horse Club, Director of the United Braford Breeders, and member of the Washington Cattlemen's Association.

**WSBA Admit Date:** July 2004

**Education:** B.A. in Animal Science with emphasis in Reproductive Science; J.D. at the University of Idaho.

**Employer & Contact Info:** Toni Meacham Attorney at Law.

**Areas of Practice:** General Practice with focus on Agriculture and Water Law.

**Professional Memberships:** WSBA, Grant County Bar Association, WYLD, ABA.

**Civic Activities:** Involved with local 4-H and youth, involved with immigration *pro bono* work in community.

**Hobbies:** Reading, riding, photography, biking, walking, horse and cattle shows.

### Pallavi Mehta Wahi



**Trustee District:** King

**Personal:** Born in New Delhi, India.

**WSBA Admit Date:** November 4, 2002.

**Education:** St. Stephen's College, New Delhi, India (B.A. History (Hons.); Cambridge University (Magdalene College), Cambridge, England, B.A., honors, M.A. (automatic conversion), Cantab, Tripos, Law.

**Employer & Contact Info:** Stokes Lawrence PS, 800 Fifth Avenue, Suite 4000, Seattle, WA 98105, Phone: 206-626-6000, Pallavi.Wahi@stokeslaw.com

**Areas of Practice:** Complex commercial litigation with emphasis on corporate litigation, securities arbitrations, intellectual property litigation and appellate advocacy.

**Professional Memberships:** WSBA; King County Bar Association; ABA; South Asian Bar Association; Asian Bar Association.

**Civic Activities:** South Asian Bar Association (board member); Glass Ceiling Task Force (member); KCBA Ethnic Diversity in the Legal Profession Committee (member); Chaya (current volunteer, past board member and auction chair).

**Hobbies:** Reading.

## The Washington Young Lawyers Division Is Proud to Announce its 2005 Awards Recipients

Everett attorney **Soojin E. Kim** received the Outstanding Young Lawyer of the Year Award for her exceptional leadership and contributions to the profession and her community. The Thomas Neville Pro Bono Award went to Silverdale attorney **Stephen T. King** for his tireless service to Kitsap Legal Services and his dedication to providing *pro bono* legal representation to senior citizens, victims of domestic violence, people with disabilities, and indigent clients. Seattle attorney **Tisha Pagalilauan** of Preston Gates & Ellis received the Professionalism Award for her substantial contribution to the King County Bar Association's Ethnic Diversity in the Legal Profession Committee and her dedication to providing equal access to justice for all members of the community. The Outstanding Affiliate Organization Award was presented to the **Spokane County Young Lawyers Division** in recognition of its outstanding commitment to member and community service through the hard work of its dedicated members.

**Letters of Application Invited for the At-Large Young Lawyer Seat on the WSBA Board of Governors**

*Application deadline: February 28, 2006*

Letters of application are invited for the At-Large Young Lawyer Seat on the WSBA Board of Governors.

This at-large seat is a designated young lawyer seat. To be eligible for this position, a candidate must be a member of the Washington Young Lawyers Division (WYLD) through April 2006. The elected governor will serve a three-year term commencing on October 1, 2006.

For full application and election details, please visit <http://www.wsba.org/lawyers/groups/wyld/default.htm>.



# Dear Family Lawyer

## A column answering family law questions

*“Dear Family Lawyer” is prepared for De Novo by the Family Law Section of the Washington State Bar Association*

### Dear Family Lawyer:

I represent a parent in a divorce. My client and her spouse cannot agree on a parenting plan, and each has expressed concerns about the other’s parenting abilities. The allegations on both sides are quite serious, so the court commissioner has appointed a guardian ad litem to investigate, evaluate, and make a report to the court. I understand that a guardian ad litem’s recommendations may carry great weight. Given the importance of this investigation, I want to help my client better understand the guardian ad litem’s role. Do you have any suggestions?

*Signed, Want to Help*

### Dear Want to Help:

As you have correctly pointed out, it is the role of a guardian ad litem (“GAL”) to investigate the situation of the parties and make a report to the court. A dispute over a child’s residential schedule will often lead to the appointment of a GAL to represent the child’s best interests to the court. The court relies heavily on the GAL’s findings and recommendations, particularly in contested cases where there is little evidence other than the word of the individual parties. Working with GALs in Title 26 family law proceedings presents special challenges for practitioners. Attorneys must not only represent the interests of their clients to a court, they must also represent their clients’ interests when working with GALs. Thus, it is very important to appropriately advise clients on the role of the GAL and how to most effectively communicate with the GAL.

### Counsel your client about the GAL’s role.

Now is the time to call upon the lawyer’s role as counselor. Counsel your client well by explaining the role of the GAL. By signing the order appointing a GAL, your client has released all of her private information to the GAL for her review. This includes mental health records, medical records, and any other information not protected by privilege or by separate court order. Before your client signs

that order, explain this to her. Some of the information the GAL reviews must remain private (for example, records regarding HIV/AIDS), and the information must be kept confidential from third parties, but otherwise all of the information in the GAL’s file is available to both parties to the case upon request, and much or all of it will be reported to the court. It may be necessary to seek protective orders, redactions of certain material in documents, or other protective measures to ensure protection of clients’ confidential information. Consider how the release of information will affect your individual client, and counsel her accordingly.

### Ensure that information gets to the GAL.

Once the order has been signed and the GAL’s investigation is underway, you have an important role in facilitating the flow of information from your client to the GAL. People in conflict, particularly over their children, are often in crisis, and their ability to organize may be impaired. As soon as the order is entered, help your client prepare a list of people he thinks could help the GAL’s evaluation. For example, a child’s teacher, daycare provider, and physician could have helpful information about the child’s wellbeing and your client’s parenting skills. Include on the list names and current contact information for all of these witnesses, and make sure these witnesses know that the GAL may contact them. You should ensure that this list is promptly provided to the GAL, along with any documentary evidence such as police reports, prior parenting evaluation, criminal records, etc.

### Help your client work with the GAL.

The world’s most perfect parent will feel nervous about having her home and intimate family life scrutinized by a stranger. This is natural. Here are some tips to give your client prior to meeting with the GAL.

- Encourage him to be prompt and responsive. A client should keep all appointments with a GAL and try to be on time. A GAL’s

calls and paperwork should be returned promptly.

- Encourage her to remain polite and calm, and to be herself. The GAL has limited opportunities to get to know your client, and to learn about her concerns about her children. It is easier for anyone, including a GAL, to more thoroughly understand the situation if it is calmly communicated. At the same time, these are emotional issues, and the GAL will generally have experience dealing with that.

- Encourage him to be respectful of the GAL’s role. Particularly if the parent develops a positive rapport with a GAL, he may be tempted to call the GAL with questions or new information. This is particularly true if your client is not responsible for paying the GAL for his time. While contacting the GAL with new information is appropriate, remind your client that you are his advocate and you are the appropriate person to contact with questions about the case.

- Discourage your client from verbally attacking the other parent. It is essential that your client explains to the GAL his concerns about the other parent, especially those behaviors that are harmful to the children. Encourage your client to convey these concerns without attacking the other parent personally. Also, there may be many things that have happened between the parents that have caused hurt and anger. Help your client understand what is relevant to the parenting issues. For example, infidelity is generally not relevant to a parenting plan determinations (there may be exceptions depending on the circumstances), even though your client may consider this harmful to the children.

- Help your client focus on what is good for the children. Help your client understand that both the GAL and the court are charged with acting in the child’s best interests. The process will go more smoothly if your client keeps the child’s best interests foremost in her mind as well.

*continued on next page*

*Dear Family Lawyer* from previous page

**Is it appropriate for me as a lawyer to talk with the GAL about my client's case?**

Yes. A GAL is not a judge and thus it is not an *ex parte* communication for a lawyer to talk with a GAL. At the same time, a lawyer has an ethical obligation to protect his client's confidences, and a lawyer talking to a GAL must ensure that the client authorizes every disclosure in such a conversation. Also, it is usually the better practice to copy the opposing party or counsel on any substantive communication. Many lawyers choose to write an opening letter to a GAL immediately after the GAL's appointment to the case. This letter may lay out your client's concerns, include witness contact information and documentary evidence, and should always be copied to the opposing party or counsel. Some lawyers choose not to do this. This author recommends it, as it helps ensure that witness information and documentary evidence get to the GAL in a timely manner.

**Are there other things I should know in order to help my client?**

You should understand the statute and court rules that govern a GAL's work on a case. RCW 26.12 is the statute that authorizes a court to appoint a GAL in a Title 26 family law case. The Washington Supreme Court has promulgated rules that govern the training requirements and ethical behavior of GALs. (See GALR 1-7). Local rules govern appointment procedures, as well as procedures for filing a grievance against a GAL. Finally, attorneys working on family law cases should familiarize themselves with local GAL registries.

**Resources to help you and your client when working with a GAL.**

Finally, there are resources out there to help you have these conversations with your client. There are some helpful publications that you can provide your client for information about how to work with GALs. You can find them at [www.washingtonlawhelp.org](http://www.washingtonlawhelp.org), the website for Northwest Justice Project. You can also call, or have your clients call, the Northwest Women's Law Center's Information and Referral Line at 206-621-7691.

*If you have a question you want answered in this column, send it to: "Dear Family Lawyer" WSBA Family Law Section, 2101 Fourth Avenue, Suite 400, Seattle, Washington 98121-2330.*

*"Dear Family Lawyer" is prepared for De Novo by the WSBA Family Law Section. Nothing in this column is an official opinion of the Family Law Section. To learn more, or to join the Family Law Section, please visit [www.wsba.org/lawyers/groups/familylaw](http://www.wsba.org/lawyers/groups/familylaw).*

## The ABA, YLD, and YOU

The Washington State Bar Association Young Lawyers Division ("YLD") is actively involved with the national activities of the American Bar Association Young Lawyers Division ("ABA"). The YLD encourages you to become an active participant in the ABA through a new committee formed to bring the advantages of ABA membership and programming home to Washington. Your participation in the committee will help bring the following goals to fruition:

- Provide a forum for the discussion of national legal developments: Delegates sent to ABA meetings will have the opportunity to vote on important ABA policies and elections at national conference assembly meetings;
- Provide opportunities to YLD members to receive funding for travel to a quarterly ABA event held in cities such as Louisville, Chicago, Portland, or Honolulu (2005-2006 conferences);
- Help implement ABA annual public service projects in Washington state, such as last year's program, "We the Jury," or this year's program, "Answering the Call";
- Share ABA programming and CLE information and ideas with YLD members;
- Assist the YLD and local bar associations by drafting ABA grant applications, awarded annually;
- Encourage YLD members to apply and run for positions on the ABA;
- Assist YLD members in applying for ABA scholarships to attend national conferences;
- Learn about the ABA, its events, programs, structure, and governing body.

The first YLD ABA committee meeting of the new year will be held on Thursday, February 16, 2006, at noon in the WSBA offices. Bring a friend and join the YLD's preparation for the ABA Midyear spring conference in Portland, Oregon. Details about this year's grant and service opportunities will be available. Although ABA membership is required to attend ABA events, it is unnecessary for membership in the YLD ABA committee. To learn more about the ABA committee, please contact Mark O'Halloran at [markohalloran@earthlink.net](mailto:markohalloran@earthlink.net).

## Bridging the Gap Conference 2006

March 3-4, 2006

Washington State Convention & Trade Center  
Seattle

This low-cost, two-day CLE extravaganza will provide practical skills training in negotiation, mediation, legal writing, ethics, networking, client development and relations, law practice management, and much more! This program is designed to put new lawyers and seasoned practitioners on the fast track to success. Co-Sponsored by the King County Bar Association Young Lawyers Division and the Washington State Bar Association Young Lawyers Division.

Full program details and registration can be found at <http://www.wsba.org/lawyers/groups/wyld/>.

### WYLD Night at the Sonics

Organized by the WYLD Membership Committee

### Seattle Supersonics vs. the LA Clippers

7:30 pm – Friday, April 14, 2006

Visit <http://www.wsba.org/lawyers/groups/wyld/default.htm> for more details and ticket information.



## A Sunset Chat with a Distinguished Lawyer: A Recent Social Event with the WYLD Membership Committee

Hosted by Harish Bharti — by Samantha M. Arango

On December 4, Mr. Harish Bharti, principal of the Law Offices of Harish Bharti and Associates LLC in Seattle, hosted the WYLD Membership Committee for a discussion at his beautiful new home overlooking Puget Sound. Young lawyers mingled over beverages and pizza and watched a stunning sunset before our host spoke about his experiences, gave practice pointers, and took questions from the attorneys.

Mr. Bharti spoke to the WYLD about his philosophical approach to the practice of law.

He cautioned attorneys against practicing solely for the money, and emphasized that winning or losing a case should not be the ultimate goal for an attorney. “Sometimes all that matters is standing up” for a client or a cause, Mr. Bharti advised. Representing a case you believe in 100% and retaining clients you sincerely like will give you more satisfaction than receiving a big fee, says Mr. Bharti. Mr. Bharti takes pride in the fact that he came into the practice of law to “raise hell” on behalf of clients he believes in, and he doesn’t lose sleep over lost verdicts. It was this philosophy that led Mr. Bharti to initiate and settle a class action case on behalf of vegetarians against McDonalds for its use of beef tallow in cooking oil used to make french fries.

Mr. Bharti also gave valuable practice pointers, including how to have confidence in court and the effective use of the first-person narrative voice in delivering an opening statement at trial. First-person narrative, a technique Mr. Bharti has used successfully, allows an attorney to connect more powerfully with a jury.

Mr. Bharti was born and raised in India, yet he reminded the WYLD of American values and the professional virtues of practicing law. In concluding the evening, Mr. Bharti reminded young lawyers that the U.S. legal system, unlike most in the world, gives attorneys much power to do good—and they should. The Membership Committee thanks retiring social co-chair Rob Gaudet for organizing this event.

*Samantha M. Arango is a solo practitioner with a focus in the areas of employment, personal injury and business law. She can be contacted at 206-778-7877, or sam@arangolaw.com.*

### Save the Date!

*The WYLD Membership Committee and the Snohomish County Young Lawyers Division are pleased to co-sponsor*

## A Networking & Social Event at the Everett Silvertips Hockey Game

*in Everett, Washington*

**Friday, March 3, 2006 at 7:00 p.m.**

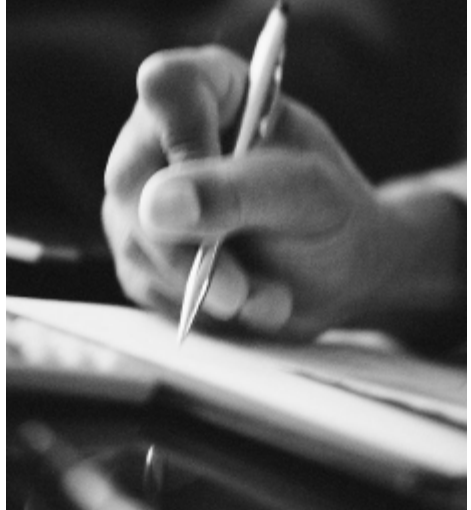
Tickets: **\$13.00** - includes entrance and reserved seating with your young lawyer colleagues  
(*tickets must be purchased by February 22*).

Starting at 5:00 p.m., enjoy food, drinks and pre-game socializing at the **FLYING PIG** located at **2929 Colby Ave.**, just 4 blocks from the Everett Events Center.  
(Just ask for the Young Lawyers Group).

**TO SIGN UP**, or for more information, please contact:

*Kari Petrusek (WYLD Snohomish District trustee) at kpetrusek@bellingram.com; or Julie Rattray (Snohomish County Young Lawyers Division) at julier@snocolegal.org.*

## Soliciting Writers, Articles, and Letters to the Editor



We encourage members of the Washington Young Lawyers Division to submit letters or articles for publication in *De Novo*.

All submissions must contain a daytime telephone number for verification of authorship. Letters and articles may be edited for length and grammar.

Letters and submissions to be included in the next *De Novo* must be received no later than February 15, 2006. The next *De Novo* will be published in April 2006.

Send submissions to:  
[denovo@wsba.org](mailto:denovo@wsba.org)

If e-mail is not possible, send by mail to:

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**De Novo Mission Statement**

*De Novo* is published for the young lawyers of the Washington State Bar Association. Its general mission is to provide a forum for the exchange of ideas, information and commentary, and to encourage discussion amongst the readership regarding the broad experience of young lawyers. *De Novo* additionally serves as a vehicle to facilitate the dissemination of information regarding member services, public service, programs, and activities of the Young Lawyers Division.

Readers are invited to submit correspondence and articles. They may be sent via e-mail to [denovo@wsba.org](mailto:denovo@wsba.org). By submitting articles, the author licenses *De Novo* to publish and permit reprints of the author's article at the sole discretion of the editor. The editor reserves the right to edit articles and correspondence as deemed appropriate.

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## WYLD Express Round 5 – Ski-LE

by Adrienne Keith

*Saturday, February 25, 2006*

Join other young lawyers from across the state for round five of the WYLD's Young Lawyer Express! We welcome all young lawyers who are interested to attend this **free** CLE, which will be held from 2 p.m. to 5 p.m. on Saturday, February 25, 2006. The CLE will be held at the Red Lion in Tacoma, which is located at 8402 South Hosmer Street. The CLE presentation will include a "view from the bench," and will also include other local speakers on topics of interest to young lawyers. For those who wish to stay in the Tacoma area, rooms have been reserved at the Red Lion, and there will be a social event that evening. On Sunday morning, we will head to Crystal Mountain, which is less than an hour from Tacoma. In order to get the most of the day, we will meet at entrance of the lodge at 10 a.m. on Sunday.

For those interested in participating beyond the WYLD Express, Membership Committee meetings are open to all young lawyers; for those who aren't in Seattle, we offer a call-in number to

encourage statewide participation. These meetings are a great way for young lawyers to become more involved and a way to make more connections. The next Membership Committee meetings will be February 21 and March 21, 2006. Among the topics for February's meeting will be finalizing arrangements for the CLE and ski event.

The Membership Committee also welcomes interested young lawyers and law students to attend one of our regular social events, which are announced via our membership list serve. Examples of past events have included a Seattle Seahawks football game, and our upcoming events include an Everett Silvertips hockey game (March 3) and a Seattle Sonics game (April 14). Please contact either [ak@inpacta.com](mailto:ak@inpacta.com) or [amyo@wsba.org](mailto:amyo@wsba.org) to be added to our list serve.

*Adrienne Keith is the chair of the Membership Committee and practices law in the Seattle area. She can be reached at 206-709-8281, or [ak@inpacta.com](mailto:ak@inpacta.com).*