DeNovo AUGUST 2012

The Official Publication of the Washington State Bar Association Young Lawyers Division

WYLD
Washington State Bar Association
YOUNG LAWYERS DIVISION
Volume 26 • Issue 3

Mission-Driven Business, the Social Purpose Corporation, and You

by Kurt E. Kruckeberg and Ben Golden

"Once social business is recognized in law, many existing companies will come forward to create social businesses in addition to their foundation activities. Many activists from the non-profit sector will also find this an attractive option. Unlike the non-profit sector where one needs to collect donations to keep activities going, a social business will be self-sustaining and create surplus for expansion since it is a non-loss enterprise. Social business will go into a new type of capital market of its own, to raise capital."[1]

Pop quiz, young lawyer: Your client, an entrepreneur from Washington state, has an idea that could make the world a better place and make money. To bring her vision to fruition, she needs to form a new entity, quickly raise capital to scale, ensure that her organization's social or environmental purpose will remain intact, and communicate that purpose to potential investors and socially conscious consumers. She wants a self-sustaining and scalable organization that will benefit society, but is uncomfortable with certain tenets of both nonprofit and for-profit business entities. What should you recommend?

Conventional wisdom would lead you to consider incorporating as a nonprofit, limited liability company, or C-corporation. But you recognize that each of these options prioritizes certain of your client's goals at the expense of others. The traditional menu of entity structures lacks the necessary ingredients to solve your client's — and the world's — problems. You're from a generation raised on democratized information, fast-moving capital, and an awareness of how your actions impact the world around you. Just like your entrepreneurial client, you're not satisfied with conventional wisdom or the status quo. You read *De Novo*.

And that's why you know that your client has come to the right spot, young lawyer, because you know about Washington's newest type of business entity, the Social Purpose Corporation (SPC).[2]

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Inside the SPC

"*It* is *possible to merge values with dollars*."[3] Signed into law by Governor Gregoire on March 30, 2012, the SPC became effective on June 7, 2012. Entrepreneurs are now able to form new entities as SPCs, or convert existing corporations to SPCs on a two-thirds vote of outstanding shareholders.

Like a typical corporation, an SPC is a for-profit enterprise, but making money for investors is not an SPC's sole purpose. An SPC must include a provision in its articles of incorporation identifying at least one of the following "general social purposes" that the SPC will promote: the SPC's employees, suppliers, or customers; the local, state, national, or world community; or the environment.

In addition to maximizing shareholder value and a general social purpose, an SPC may also elect to promote a more specific social purpose. Further, a two-thirds vote is required to amend or remove an SPC's designation, securing the future of the corporation's hybrid mission.

SPCs also mitigate the risk of corporate directors' personal liability for using corporate resources to promote social purposes. Despite growing evidence of a positive correlation between corporate sustainability and financial performance,[4] many corporate directors and officers shy away from taking actions that further social or environmental goals for fear of breaching their fiduciary duties. The SPC eliminates this risk, as directors and officers of an SPC may prioritize an SPC's social purpose. Such an action is "deemed to be in the best interests of the corporation," and the directors and officers are shielded from personal liability.

In addition, to promote transparency, an SPC must produce a "social purpose report" for its shareholders and publish the report on its website within four months of the end of each fiscal year. The report must discuss the SPC's social purpose and its efforts to promote that purpose. But even with this reporting requirement, critics still dispute whether SPCs are necessary, too permissive, or just right.

Flash in the Pan or Panacea?

Skeptics abound. The success of SPCs, and social enterprise in general, still faces skepticism from investors, consumers, and even the social entrepreneurs driving this movement, as triple-bottom-line organizations will constantly struggle to balance financial success with their social or environmental missions. Will investors risk lower profits in favor of greater social impact? How will directors, officers, and shareholders deal with the altered liability standards of social entrepreneurship? How will ventures that are not purely commercial transition in and out of this new kind of entity as they grow and evolve? Will the general public be able to distinguish between green-washing and actual sustainable practices, and then support their values with their wallets?

If it ain't broke, don't fix it. Many wonder whether a new entity is really necessary. Nonprofits are forced to be efficient and competitive through competition for funding, and many nonprofits conduct profit-making activities without compromising their exempt status. C-corporation management can fall back on the business judgment rule to justify actions that sacrifice short-term profits. LLCs permit substantial flexibility in drafting operating agreements.

Mandatory vs. permissive. Even proponents of hybrid entities worry that SPCs will be ineffective. More than a dozen states have created new legal entities to serve social businesses in the last several years, but specific legislation has varied from state to state. The most prominent hybrid business model is the Benefit Corporation, which requires a material positive benefit for the company's shareholders, community, employees, suppliers, and the environment, measured against an independent third-party standard. Whereas SPCs permit social and environmental considerations, Benefit Corporations require such deliberations. Uncertain whether to choose a mandatory or permissive hybrid entity model, California passed both Benefit Corporation and Flexible Purpose Corporation legislation (very similar to SPCs) in 2011.

Despite disagreement about whether a mandatory or permissive approach will better serve social enterprise, one thing is clear: social enterprise needs a new flavor of business entity to gain recognition and a supportive community.

It Takes a Village

"*If you build it, they will come*."[5] In conjunction with a new legal entity form, additional efforts should take place to sustain the movement for social enterprise. Such efforts include targeted campaigning to increase awareness of the new entity form, more refined social- and environmental-impact accounting, and more coordinated investment and advocacy to support burgeoning social enterprises.

Fortunately, the Pacific Northwest is well suited to lead this effort, and several organizations are already leading the charge. Fledge LLC, a "conscious company" incubator, will welcome its first cohort this fall. Hub Seattle offers a coworking space for social entrepreneurs to collaborate. Bainbridge Graduate Institute offered the first MBA in sustainable business. #SocEnt Weekend mirrored StartUp Weekend's model by challenging social entrepreneurs to build a company from scratch in a weekend. And Seattle's Social Innovation Fast Pitch offers social enterprises an opportunity to pitch to impact investors.

SPCs are no silver bullet, and they will not be appropriate in every situation. They may, however, help an underserved but growing community of social entrepreneurs do well by doing good. When a client approaches you with an out-of-the-box idea that does not fit neatly into either the nonprofit or for-profit sector, consider giving Washington's newest entity form a chance to defy convention. ◊

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Notes

1. Muhammad Yunus, *Nobel Peace Prize 2006: Nobel Lecture*, 13 Law & Bus. Rev. Am. 267, 272 (2007).
2. Sub. H.B. 2239, 62d Leg., Reg. Sess. (Wash. 2012).
3. Telephone Interview with Bruce Herbert and Larry Dohrs, Chief Executive and Vice President, respectively, of Newground Social Investment, SPC (June 11, 2012). Newground, an investment advisor that "works to meet its clients' financial goals, integrate their values, and contribute to the common good," is the state's first SPC. Newground's founder, Bruce Herbert, said that converting Newground into an SPC was "a natural fit" because Newground operates with an eye toward "sustainability and justice."
4. Edward J. Conlon and Ante Glavas, *The Relationship Between Corporate Sustainability and Firm Financial Performance* (2012), http://business.nd.edu/uploadedFiles/Conlon%20and%20Glavas%202012.pdf.
5. *Field of Dreams* (Universal City Studios, Inc. 1989) (misquoting Shoeless Joe Jackson, as portrayed by Ray Liotta).

Editor's Column

And Now for Something Completely Different

by Claire Been

It's hard to believe that it has been one year since I took the reins of *De Novo*. In that year, a lot has happened. December's issue focused on the Recession and slow recovery, with articles to help young lawyers joining our profession cope with the sluggish job market. April's Around the State issue featured the diverse lives and practices of young lawyers from around Washington. We've enjoyed a surge of fresh involvement and ideas in *De Novo*'s Editorial Advisory Committee, helping to keep *De Novo* interesting and relevant.

The most significant event this year, however, has to be the decommissioning of the Washington Young Lawyers Division. As most people know by now, the Washington State Bar Association budget referendum narrowly passed in April.[1] The referendum reduces license fees to a "bare bones" amount of $325 per member. The referendum means that the WSBA now has to drastically cut the 2013 budget by $3.6 million.[2]

The Board of Governors approved the first round of budget cuts in May. The entire Young Lawyers Division was on the chopping block. Under the proposal, young lawyers would be reorganized into a standing committee of the WSBA. Unfortunately, despite strong lobbying by the WYLD Board of Trustees and other interested parties, the BOG agreed to the cuts, and after 25 years, the WYLD is coming to an end.

The changes will begin with the new WSBA fiscal year, which begins in October 2012. The WSBA hasn't been particularly vocal about announcing these changes. On May 23, 2012, it announced that it was "reaffirming its commitment to young lawyers," but gave few specifics to young lawyers about what these changes will actually mean to them.[3]

The extent of the changes that will come from this transition is unknown. It is likely that many current programs and services offered by the WYLD will be eliminated. *De Novo* cannot escape these changes unscathed. I am saddened to announce that this will be the last issue of *De Novo*, at least in its current form.

The *De Novo* leadership, as well as the Editorial Advisory Committee, is committed to keeping *De Novo* alive in some form. There are several possibilities on the horizon. One possibility is to have young lawyer authors write articles for *Bar News*. There is also talk of *De Novo* taking a newsletter or blog format. These decisions will be made in the coming months.

One thing is for certain: whether the WYLD in its official capacity exists or not, there continues to be a need for WYLD programs and for *De Novo*. The WYLD provides critical educational and service opportunities to young lawyers entering the profession and is a place to network and connect with other young lawyers. *De Novo* acts as a forum for young lawyers to talk about issues they care about and to learn about legal topics and stories of interest. It provides young lawyers with a place to write, edit, and engage with each other in a variety of ways while producing a publication to be proud of. When I was a deferred associate feeling cut off from the legal community, *De Novo* was my way to contribute and connect with my peers. The need for this type of publication will continue, even after the official WYLD turns off the lights.

It seems that it is up to us to engage and keep the most important programs running despite the budget cuts. The power of grassroots organizing is strong, and there is no reason we can't put our heads together and continue to advance the mission and purpose of the WYLD. Most of the vision, the drive, and the grunt work for the majority of programs offered by the WYLD comes from young volunteer lawyers themselves. There is no reason why young lawyers cannot band together with even stronger bonds and continue the programs we care about.

This is my hope for *De Novo*. We welcome your feedback and comments during this time of transition. We want to hear what would be most helpful for young lawyers from the re-imagined *De Novo*. We are looking for writers and leaders for the *De Novo* of the future, whatever its format. If you are looking to connect, or for a good cause to care about, I encourage you to become a part of the *De Novo* Editorial Advisory Committee. We are looking at this year's changes as an opportunity to adjust and become better and more relevant. We are confident that we will come out of these changes stronger than ever and that the voice of *De Novo* will continue. ◊

Notes

1. www.wsba.org/About-WSBA/Governance/Referendum.
2. www.wsba.org/About-WSBA/Shaping-a-New-WSBA/24April2012.
3. www.wsba.org/About-WSBA/Shaping-a-New-WSBA.

Online Directory of Pro Bono Opportunities

The WSBA is pleased to announce the launch of www.ProBonoWa.org, an online directory of pro bono opportunities around the state. Designed to link attorneys with opportunities to serve low- and moderate-income clients in Washington, www.ProBonoWa.org will connect attorneys with organizations in need of pro bono attorneys.

As part of WSBA's strategic goal to enhance the culture of service among its members, the WSBA is excited to maximize the valuable work and dedicated commitment of pro bono attorneys. The WSBA will maintain and update the site, ensuring that attorneys seeking volunteer opportunities have the most up-to-date information available needed to link their skills with the clients who need it most.

Special thanks to the Northwest Justice Project, Probono.net, and the Washington Young Lawyers Division Pro Bono & Public Service Committee for their invaluable partnership and support to launch ProBonoWa.org!

President's Column

Like ZOMBIES in That Video Game, YOUNG LAWYERS Are Everywhere!

by Dainen N. Penta

Greetings (as my tax professor used to say)! By the time you read this, the 2011–2012 bar year will be nearly over and I will be closer to "aging out" of the WYLD. I will never forget these first years as a lawyer, or these experiences with the WYLD. The WYLD has been a "home" for me as a (somewhat) young lawyer. Forging lifelong friendships with colleagues from around the state, and learning a few things, we've even witnessed the birth of at least two "WYLD babies" during my time on the WYLD Board of Trustees. My hope as I leave the WYLD is that you will take advantage of the opportunity to become a bar association and community leader. Meeting WYLD members around the state has been immensely enjoyable and even life-changing.

You may have heard that in April, the WSBA Board of Governors voted to transition the WYLD to a standing committee of the WSBA. While this decision is a major change in many ways, your dedicated WYLD leaders have been working hard to ensure the new "young lawyers committee" (we haven't settled on a name yet, but WYLC makes sense) preserves and enhances what is most important to young and new lawyers in our state. Many new and young lawyers have spoken out in the wake of the recently passed dues referendum — feedback is valued and useful and helps us know what young lawyers need and want in the future. We have learned a great deal about our membership and what the committee's activities and programs should look like in the future.

I would be remiss if I did not thank WYLD President-elect Beth Wilcox Bratton for her hard work this year. A WYLD member from Wenatchee, it has truly been a pleasure to serve with her. Beth will be chair of the Young Lawyers' Committee in the 2012–2013 bar year. Thank you also to the WYLD Board of Trustees, the WYLD committee and program chairs, and our WYLD liaisons for their dedicated service and hard work this year. The young lawyer community in our state would not be what it is today without the enthusiasm of our many volunteers.

We hope you will engage in an ongoing dialogue and conversation with not only young lawyer leaders, but with the Board of Governors and WSBA staff leadership. Speak out about what you want to see from WSBA — it's your bar association. Governors want your feedback to help them make decisions that affect you and the WSBA programs and services offered. Here are some highlights of what the future may look like for new and young lawyers in our state.

- Young and new lawyer programming and services will continue to be broadly integrated into and among the "fabric" of WSBA;
- Voluntary bar associations (county, practice-area, minority/diversity, and special-focus bars) will play a larger role as "affinity groups" for young lawyers, providing camaraderie and connection to the legal community;
- WSBA and the young lawyers' committee will continue to explore innovative mentoring resources for new and young lawyers; and
- Statewide Moderate Means and pro bono will grow and flourish as WSBA continues to encourage un- and underemployed new lawyers to gain practical experience.

Sometimes you look back simply to see how far you've come. In closing (and on another whimsical and slightly weird note), it has been an amazing nearly 10-year ride on this roller coaster we call WYLD. Is the WYLD a wooden coaster or steel? The wooden coaster is old-school and kind of loud,

Speak out about what you want to see from WSBA — it's your bar association. Governors want your feedback to help them make decisions that affect you and the WSBA programs and services offered.

but we've brought it into the modern age precisely for those reasons. The steel coaster is faster and smoother and crazy high, but it also has that safety bar you pull over your head. Are bad philosophical lawyer metaphors > lawyer jokes? I end my final column with lyrics that I hope express the way it feels to move into this next stage of my career as a not-so-young lawyer. I never met a karaoke bar I didn't like, so come sing it loud with me, the WYLD, the yet to-be-named committee, and with other lawyers new and old alike.

I know, I'm caught up in the middle
I cry just a little
When I think of letting go
Oh no, gave up on the riddle
I cry just a little

("Piano in the Dark" by Brenda Russell, as sampled by Bingo Players)

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The Best (and Worst?) Summer Reads

by Sara Wilmot

Sunshine is fighting its way through the overcast skies of the Pacific Northwest on a near-daily basis. Summer has finally arrived and we need to soak up that coveted Vitamin D anytime and anyplace we can get it. With our over-packed schedules and boggled brains, it can be tough to find the perfect book (and the time to read it). But vacation days and great weather give office dwellers the chance to get outside and read something besides case briefs and client files.

To make things easier, we have reviewed some of this summer's most popular books to help you decide if they are worth your time and money. Some of these offerings live up to the hype, while others leave us wondering why they're on the New York Times Bestseller List. Let these reviews help you find that perfect book for your summer respite.

Fifty Shades of Grey, by E.L. James
Review by Allison Peryea

The *Fifty Shades of Grey* trilogy has attracted a lot of attention for its sexually explicit content. These are definitely the type of book my mom would have hidden (and my sister would have located immediately). But what is truly notable about the series is that THESE ARE AMONG THE WORST WRITTEN, MOST POORLY RESEARCHED BOOKS EVER CREATED. People appear to have completely overlooked this scientifically provable fact because of the graphic material. It is like "The Emperor's New Clothes" all over again, except with respect to literary quality and with even less clothing.

First, some background: The series is a rip-off of the Twilight books — minus the supernatural stuff — marketed with insanely ridiculous success to mothers of Bella and Edward fans. As a preliminary matter, I sincerely applaud the author for mining the apparently untapped vein of by-mom-for-mom erotica. I am also very impressed that this person managed to fill THREE books using only about 14 words. These include objectively annoying terms and phrases such as "beguile," "my man," and "fifty shades."

Another interesting aspect of the series is that the author forgot to put a plot in the last two books. The first book had a plot (SPOILER ALERT!): two people meet and fall "deeply, deeply in love" despite their differences. They also fight a lot in an irritating manner evocative of an immature middle-school couple and tell each other how much they love each other. The second and third books simply add a few pages about a crazy ex and a vindictive former employer, which only serve to remind readers that other books are about something.

Despite all the press, once you strip away the racy stuff, there actually is not a lot of envelope pushing in these books. The male character, Christian, is a richer-than-Uncle-Scrooge business whiz hottie who stole Adonis's body. His true love is poor-but-plucky Ana, college senior who has been only to first base and has never been drunk. A true fictional character if there ever was one.

Ana is a Seattle-area girl in her early twenties who quite clearly sprung from the imagination of an author who last visited her early twenties in the 1980s in Great Britain. Ana's favorite phrases are "Jeez," "Oh my," and "Holy cow." She marvels at how attractive her "man" is at the beach in his cutoff jeans, which have not been worn by a fashionable male (exception: hipsters) since Alf was on TV. She and her friends employ U.K. phrases such as "liftgate" (i.e., tailgate) and "throw some shapes" (look it up).

Ana also exhibits behavior that makes my inner feminist want to ditch her reproductive-rights rally and pick a fight with Ana. Ana appears to flirt with an eating disorder — though this is not presented as a concern — picking at her food and delighting in her thinner frame after she starves herself post-breakup. And she swoons over a man who gets enraged at her for wearing short skirts, going out for drinks with friends without permission, and talking to other men. In Normal Land, a woman would have dumped the guy for being a smothering control freak.

One final gripe is that the author sprinkles the Pacific Northwest-based series with area references but often gets the details horribly wrong. Ana, for example, moves into a condo with a view of the Pike Place Market. She also gets a position in book editing. Neither of these things — an affordable two-bedroom downtown condo or an entry-level publishing job — exist in Seattle. There is also an afternoon car chase across the 520 bridge, a physical impossibility given the constant traffic.

I am not going to pretend anyone is picking up this series for anything other than the salacious content or the buzz it has created. Just be warned that sometimes slogging through the emotional-porn-packed pages of amateur prose between the juicy parts feels like work you can't bill to a client.

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Moonwalking with Einstein, by Joshua Foer
Review by Sara Wilmot

We do not often stop to think about the amazing ability of our minds. The brain is the epicenter of our lives, controlling everything from body functions, to creativity, to housing our memories. *Moonwalking with Einstein* not only forces readers to acknowledge the brain's wondrous functions, but also teaches you to use your mind to a fuller potential.

This nonfiction book follows Joshua Foer, a journalist turned amateur mental athlete, and his simple idea turned mild obsession. His mind is now toned, his memory quick. Foer can memorize the exact order of a deck of playing cards in less than two minutes. He can recall names, phone numbers, and series of random digits in an instant.

But Foer was not born this way. He is not a genius or a savant. His IQ is only average. So how does an average aspiring journalist become a top mental athlete, competing in memory competitions around the world? By training his brain, and using simple memory tricks to retain and recall daunting amounts of information.

Moonwalking with Einstein is not only the story of Foer's journey in competitive memorization, it also takes a close look at what it means for us as humans to remember. The book examines the science and history of memory, and how our dependence on technological advancements has deflated our ability to recall some of the simplest bits of information. Ask yourself: how many phone numbers of fam-

ily or close friends can you remember without looking through your cellphone contacts list? For most of us, the answer is not many.

While not all of us aspire to become "mental athletes," training for hours and memorizing dozens of pages of random digits, we would all enjoy an increased ability to remember. Rather than a step-by-step process for memorization, Foer takes readers through his memory training experience. With him, you learn to build a "memory palace," a sort of temple in which you store information you will need later. You learn simple tricks that you can use in everyday life, and gain a greater appreciation of your memory.

After you finish reading *Moonwalking with Einstein*, you will notice your thought process tweaked. The tricks you learn may surprise you. They are simple methods that make a lot of sense, once you accept them. Foer's journey is interesting, and the people he meets along the way are fascinating. The middle of the book drags a bit, but your curiosity regarding how he fares in the memory competitions will push you to the end.

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Steve Jobs, by Walter Isaacson
Review by Dainen Penta

Any young lawyer struggling with a difficult boss will greatly appreciate Walter Isaacson's biography of Steve Jobs. I highly recommend it to anyone interested in an insider's view of Apple; Steve Jobs's founding of, exit from, and return to the company; and Jobs's many contributions to the world we know.

This comprehensive compilation of Steve Jobs's life and career is a quick read, albeit long, at over 650 pages. It paints a picture of a brilliant and driven visionary with a unique talent for, in the words of Wayne Gretzky, "skating to where the puck is going."

Through stories and quotes from those who knew and worked closely with Jobs, the book chronicles Jobs's volatile personality and his frequent refusal to engage with reality. Isaacson paints a picture of Jobs as an inspirational leader who pushed those around him to constantly do better, revolutionizing many segments of the technology industry. In contradiction to his arrogance, nastiness, and temper, Jobs drew inspiration from Zen Buddhism and the arts, especially music. His relentless attempts to achieve Zen seem to manifest in his work, where his fixation with simple, elegant designs often forced his engineering teams to create new solutions that had never been developed.

One of the most interesting themes in the book is Jobs's need for complete control over all systems, both hardware and software. His proponents argue that this improves the consumer experience and contributes to Apple's commercial success. The book does not answer the question of whether Apple will continue to be as successful without Jobs, but Isaacson's biography of Apple's chief "asaholic" leaves no doubt that Jobs did change the consumer computing industry in a major way.

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A Confederacy of Dunces, by John Kennedy Toole
Review by Claire Been

For a book touted as a piece of literary comedic history, I expected to laugh a lot more. Instead, while I was reading *A Confederacy of Dunces*, I felt like I was watching half of Ben Stiller's scenes from *Along Came Polly*, filled with behavior so socially unfortunate that you can't look but you can't quite look away. For the first 50 pages, I could hardly bring myself to continue reading, but boy, was I glad I did in the end.

The book's protagonist is the morbidly obese Ignatius J. Reilly, an over-educated 30-year old who chooses to live at home with his long-suffering mother rather than hold a job. He spends his time instead locked in his bedroom writing a never-ending treatise on the evils of the modern world. Through a series of unfortunate events, he is ultimately forced out into the world to attempt to get and hold...gasp, a job. He secures gainful employment as a hot dog vendor, and proceeds to parade around 1960s New Orleans with an air of superiority and ingratitude that leads you to despise him for the first half of the book.

But slowly, somehow, you find yourself growing fond of him. And you feel a little sorry for him. And you start worrying about him. He is strangely too innocent to navigate New Orleans and its seedy underbelly. I was pulled into the strange cast of characters and the masterful way their stories twist together with Ignatius's. You hardly realize what is happening, but suddenly, you are no longer saying to yourself, "Why am I still reading this?" but you are genuinely engrossed.

Ignatius is not a character that you identify with; he cannot connect with the average person or with society. At times, this book is downright depressing. Yet through the awkward encounters and the cringing, the book somehow takes shape as both humorous and outrageous. I encourage everyone to dust off this classic and give it a try.

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Sarah's Key, by Tatiana de Rosnay
Review by Kari Petrasek

Sarah's Key takes a different look at the Holocaust from the perspective of a French Jewish family. Though fiction, the book reads like a true story.

In July 1942, Sarah, who is 10 years old, and her parents are taken from their home by the French police. Officers are entering homes, arresting Jewish families. But Sarah and her brother have a secret hiding spot: a bedroom cupboard. Before being arrested, Sarah puts her four-year-old brother in their secret spot. She promises to come back for him soon.

Sixty years later, an American journalist who has married a Frenchman is asked to cover the Velodrome d'Hiver's 60th anniversary story. Through her investigation, she discovers that her life is connected to Sarah's and retraces Sarah's life and story. She also learns more about her husband's family, France, and herself.

The book tells the story of how Sarah is sent first to an overcrowded velodrome with her parents and later to a concentration camp at Auschwitz, which she escapes. All the while, she safeguards the key that locks the secret hiding spot. Sarah goes back to find her brother, but what happens when she finds him? You'll have to read *Sarah's Key* to find out. The book depicts not only Sarah's life up to the point when she finds her brother, but also how her life turns out as she grows older.

If you wish to learn about and understand in greater depth the events that took place during Nazi rule, you will find this book interesting. It was very engaging and I found it to be a quick read.

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Judge Accordingly: What You Should Know About Judicial Campaigns

by Scarlett Hunter

This is an exciting year for Washington state's upcoming election season. There is the big presidential election, the battle over Referendum 74, and the choice between Jay Inslee and Rob McKenna for governor. In the midst of all this, Washingtonians will cast their votes in multiple judicial elections, either in the August 7 primary or in the November general election. Washington's judicial races are nonpartisan, which means that unlike many other elections this year, the judicial candidates are not competing to be a party's candidate in the general election in November. This means that many judicial races (i.e., races where one candidate receives over 50 percent of the vote) will be decided in the August primary.

For better or worse, Washington's Constitution mandates judicial elections.[1] While judicial elections are not unique to Washington state, they pose unique challenges, especially when "politics" starts to play a role. In recent past elections, political action committees and special interest groups have dumped large amounts of money into the races for Washington State Supreme Court justice positions.

This upcoming election cycle, there are three open judicial positions on the Supreme Court, eight spots up for election on the Court of Appeals, and more Superior Court judicial races than one can count using all of her fingers and toes (and that's just in King County alone). All three of the open Supreme Court positions are contested, and some of these contests will be very interesting to pay attention to in the upcoming months. We have some familiar names, and some less so, campaigning over the coming months for these positions. As of June 14, 2012, some of the Supreme Court candidates had already raised over $100,000 in campaign contributions.[2]

Because of the higher profile, and possibly higher stakes, of Washington's judicial elections, some candidates — and political action committees and special interest groups — have increased advertising in an effort to reach more Washingtonians. In the upcoming months, we will likely see an increase in advertising for many of our state's elected judicial officers and judicial candidates. It is important to point out that judicial candidates, unlike other political candidates, cannot make certain statements that would violate Washington's Code of Judicial Conduct.

Under Canon 4, a judge or judicial candidate cannot engage in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the judiciary.[3] Judicial candidates are also barred from making false or misleading statements.[4] Candidates cannot make pledges or promises during their campaigns that are inconsistent with the impartial performance of the judicial offices sought by the candidates.[5] By and large, a judicial candidate cannot say that he or she will rule a particular way on a particular issue. Generally, judicial candidates are encouraged to give assurances to the public that they will keep an open mind and carry out their duties impartially.[6] Judicial candidates are generally prohibited from personally soliciting campaign contributions, but may set up campaign committees that raise funds.[7]

Lawyers probably pay more attention to judicial candidates and open judicial positions than the average Washington voter. We have to appear before judges and present our cases. For the majority of lawyers, we want impartial and fair judges with a good temperament. We want judges who adhere to the upmost judicial ethics and act independently so that the public has trust and confidence in our judicial system.

Attorneys have a better understanding of how Washington's courts work than your average voter and usually have some knowledge about particular judges. As a lawyer and someone who should "know about these things," I have fielded many questions from my friends and family about where to get information about a particular judicial candidate or even which judges to vote for. Because the races are nonpartisan, voters cannot just pick a judicial candidate based on an "R" or "D" next to the candidate's name. I refer someone seeking information to votingforjudges.org or the state of Washington Voter's Guide (especially if I am helping my grandparents… the Internet confuses them). Votingforjudges.org is an excellent resource on the judicial candidates. It provides information on the candidate, his or her legal experience and education, and a link to the candidate's website. The website also shows how much money the candidate has raised and who is running against that candidate. Votingforjudges.org also shows how the candidate has been rated by various bar associations.

If you, or your family and friends, need information about a particular judicial race, a great first stop is votingforjudges.org. Bar associations often conduct evaluations of judicial candidates and host judicial candidates for panels or meet and greets. These are good places to find out more information about a particular candidate. Also, newspapers across the state often evaluate and endorse judicial candidates. It may be worthwhile to evaluate a newspaper's reasoning for endorsing a particular candidate before you vote. The goal of judicial elections is to keep our judicial officers accountable to the public, and as the voting public, we want to make informed choices about the candidates we vote for. ◊

Scarlett Hunter is an associate at Schwabe, Williamson & Wyatt, P.C. She is a member of the Washington Committee for Ethical Judicial Campaigns (ethicaljudicialcampaignswa.org.), a nonpartisan group of concerned citizens dedicated to preserving the dignity and integrity of Washington's judicial system. The committee asks that all candidates for Supreme Court and Court of Appeals sign a pledge that they will conduct their campaign in a fair and impartial manner. The committee also monitors judicial campaigns for advertisements or literature that adversely affect the reputation or integrity of Washington's courts. She can be reached at shunter@schwabe.com.

Notes

1. Washington Constitution, Art. IV.
2. www.votingforjudges.org.
3. *See* Canon 4.
4. Canon 4.1, Cmts. 7–10.
5. *See* Canon 4.1, Cmts. 11–15.
6. Canon 4.1, Cmt. 15.
7. *See* Canon 4.1, Cmt. 16 & Canon 4.4.

In Search of Consensus: The Supreme Court and the Ever-Changing Face of Constitutional Law

by Dana O'Day-Senior

2012 has been a monumental year for constitutional law in the United States, with individual rights and the balance between state and federal authority being redefined and reexamined with every slip opinion. And the year is still far from over.

When I volunteered to write a review of recent developments in Constitutional law for *De Novo*, I hoped to glean enough insight to develop a unified theory of Constitutional law for this term, and maybe predict the outcome of cases that may soon come before the Supreme Court. Alas, that is not this article. Instead, I present you with the briefest overview of a small handful of recent Supreme Court decisions followed by a more in-depth analysis of *National Federation of Independent Businesses v. Sebelius*, the Court's recent decision on the constitutionality of the Affordable Care Act. I leave you to draw your own conclusions.

The First Amendment and Free Speech

The Court has heard many free speech cases this year. Among them is *United States v. Alvarez*, 527 U.S. ___, No. 11-210 (June 28, 2012), in which the Court struck down the Stolen Valor Act, which made it a federal misdemeanor to "falsely represent[ ] oneself, verbally or in writing, to have been awarded any decoration or medal authorized by the Armed Forces of the United States . . ."[1] on First Amendment Grounds. Justice Kennedy, in a plurality with Chief Justice Roberts and Justices Ginsberg and Sotomayor, found the Act could not survive the "most exacting scrutiny" required for content-based decisions.[2] Justices Breyer and Kagan concurred in the judgment, but argued a strict rule for content-based restrictions was inappropriate, choosing instead to rely on a balancing of harms and intermediate scrutiny to find the Act unconstitutional.[3] While the Act was decisively found unconstitutional, we are left in the dark as to the appropriate standard for evaluating content-based restrictions on speech.

Also on the free speech front, the Court overruled the Montana Supreme Court's decision that found the Montana law that limits corporate campaign expenditures did not violate the First Amendment. The *per curiam* opinion rejected the Montana Supreme Court's attempts to distinguish *Citizens United v. Federal Elections Commission*[4] outright. However, Justices Breyer, Ginsburg, Sotomayor, and Kagan issued an impassioned dissent, arguing that the Montana court's finding that "independent expenditures by corporations did in fact lead to corruption or the appearance of corruption in Montana" gave the State a compelling interest in limiting corporate campaign expenditures.[5] With another 5–4 decision, it remains doubtful that the issue of corporate campaign spending and protected political speech will be settled anytime soon.

Immigration Reform and Racial Profiling

Also making headlines in recent months was *Arizona v. United States*,[6] the decision that struck down most provisions of Arizona's controversial S.B. 1070, the immigration law that would have created several state crimes addressing undocumented immigrants and those who interacted with them (including employers and landlords). Justice Kennedy, joined by Roberts, Ginsberg, Breyer, and Sotomayor, wrote the majority opinion, holding that most aspects of S.B. 1070 were preempted by federal immigration law.[7] However, the Court upheld the section of the law that requires local law enforcement to take steps when making a stop, detention, or arrest, to determine the immigration status of an individual in certain circumstances. The Court explained it was premature to enjoin this portion of the law before state courts had a chance to construe it and without a showing that the enforcement of this section of the law, in fact, conflicts with federal immigration law.[8]

Given widespread concern that this provision of S.B. 1070, which applies when a "reasonable suspicion exists that the person is an alien and is unlawfully present in the United States,"[9] will lead to racial profiling and other due process and equal protection abuses, the debate on this portion of Arizona's law is likely far from over. On the other hand, it seems clear that states cannot create new immigration-related crimes, but it remains to be seen if states will continue to push the issue.

The Affordable Care Act

Perhaps no more anticipated or surprising of all the cases heard this term was the Court's decision in *National Federation of Independent Businesses v. Sebelius*, No. 11-393 (June 28, 2012), the combined appeal on the constitutionality of the Patient Protection and Affordable Care Act of 2010. However, the decision leaves us with more questions than answers. In the final analysis, the Court upheld the Act by the narrowest of margins, striking down only the provision that would have withdrawn existing Medicaid funds from states that fail to comply with the Act's expanded Medicaid plan.[10] Among the provisions upheld was the controversial individual mandate that requires individuals to procure health insurance or pay a "penalty,"[11] but not under the rationale one might have expected.

Deciphering the decision — and what it means for the future — is complicated by the fractured nature of the court's opinions and reasoning. The case was decided with an unlikely 5–4 majority, with Chief Justice Roberts authoring the majority opinion joined in parts by Justices Ginsberg, Breyer, Sotomayor, and Kagan. The rationale and legal analysis gets murkier because Justice Ginsburg, joined by Justice Sotomayor, and in parts by Justices Breyer and Kagan, issued a concurrence that dissents with portions of the Chief Justice's opinion. Much of the Chief Justice's opinion explains not the Court's rationale, but his own reasons for disagreeing with the rest of the erstwhile majority.

Meanwhile, Justices Scalia, Kennedy, Thomas, and Alito issued a joint dissent (with Justice Thomas drafting his own additional separate dissent), which would have struck down the Act in its entirety. However, since the dissenters largely agreed with the Chief Justice's rationale for the portions of his opinion where he didn't agree with the concurring justices, they create sort of a negative majority on those issues, while granting further credence to the Chief Justice's rationale.

The majority agreed the suit was not barred under the Anti-Injunction Act, which bars suits "for the purpose of restraining the assessment or collection of any tax."[12] When Congress deemed the "shared responsibility payment" a "penalty" and not a tax, they removed it from the jurisdiction of the Anti-Injunction Act, regardless of whether the penalty is in fact a tax for Constitutional purposes.[13]

Chief Justice Roberts went on to opine that the Commerce Clause and Necessary and Proper Clause do not support the Act's individual mandate provision, which requires individuals to procure

their own health insurance or face a penalty in the form of a "shared responsibility payment" to the IRS. "Construing the Commerce Clause to permit Congress to regulate individuals precisely because they are doing nothing would open a new and potentially vast domain to congressional authority."[14] The Chief Justice explained that this would take Congress's powers under the Commerce Clause far beyond *Wickard v. Filburn*,[15] often regarded as the furthest reach of the Commerce Clause into regulating intrastate commerce,[16] and instead allow Congress to compel individuals to purchase almost any product or service to solve almost any problem.[17] Likewise, the Necessary and Proper clause did not help, said the Chief Justice, because the individual mandate was not an exercise of authority "derivative of, and in service to, a granted power," nor was it "narrow in scope."[18] Instead, the mandate would vest Congress with the "extraordinary ability to create the necessary predicate to the exercise of an enumerated power,"[19] allowing Congress to "reach beyond the natural limit of its authority and draw within its regulatory scope those who otherwise would be outside of it."[20] Although the Chief Justice was not joined by any other justice in this portion of the opinion, the dissenters followed similar reasoning in rejecting the Act as a whole. Taken together, the Chief Justice and dissenters create a majority in concluding the individual mandate is not constitutional under the Commerce and Necessary and Proper Clauses.

Chief Justice Roberts went on to say it was important to find the Commerce clause did not support the individual mandate because "the statute reads more naturally as a command to buy insurance than as a tax" and "[i]t is only because the Commerce Clause does not authorize such a command that it is necessary to reach the taxing power question."[21] The Court then turned to the taxing power and, after a discussion of the difference between a tax and a penalty (impermissible under the taxing power), concluded the "shared responsibility payment" incurred through the individual mandate operated as a tax, and was therefore a Constitutional use of Congress' taxing power.[22]

The Court also found Congress had acted within its authority in expanding Medicaid, but held the "stick" it used to get states to comply — completely withdrawing States' existing Medicaid funding — was not permissible under the Spending Clause. That provision was held unconstitutional, not so much because a majority of justices agreed it was unconstitutional, but because no majority agreed it was constitutional. Chief Justice Roberts, joined by Breyer and Kagan, explained he would strike the provision because it crossed the line from encouragement to coercion, equating the threatened consequence to "a gun to the head."[23] He further opined that while the Social Security Act, which includes the original Medicaid program, includes a clause permitting Congress to "'alter, amend, or repeal any provision,'"[24] it does not extend to the expansion included in the Affordable Care Act because the new program "represents a shift in kind, not merely degree."[25]

However, unlike the dissenters (who relied on a very similar rationale, but would have struck down the entire Act, including the Medicaid expansion in its entirety), Justices Roberts, Breyer, and Kagan found the appropriate remedy was to preclude Secretary of Health and Human Services from using 42 U.S.C. § 1396c to withdraw existing Medicaid funds for noncompliance with the Medicaid expansion. They agreed the rest of the Medicaid expansion should stand, bringing them in line with the concurring Justices (Ginsburg and Sotomayor) and creating the judgment of the Court through a hybrid of negative decision and majority opinion.

Looking to the Future

So what does this all mean? Will the Affordable Care Act decision embolden Congress to pass new taxes that affect individuals based on their inaction? And if so, where will courts draw the line between a penalty and a tax? Or will the decision herald a contraction of Congress' powers under the Commerce Clause with increased scrutiny of the carrots and sticks Congress uses to entice states to participate in federal schemes? Is the Chief Justice becoming the new "swing vote" in a perpetually divided Court? If anything is clear from the outcome of *National Federation of Independent Businesses v. Sebelius*, it is that while the justices managed to cobble together a slim majority to determine the outcome of the case, they remain deeply divided (and extremely passionate) about the reasons for that outcome.

What about the recent string of Circuit Court cases addressing the constitutionality of anti-wiretapping laws as applied to individuals filming police carrying out their official duties? How will the shifting alliances on the Court with regard to First Amendment issues come out on this hot-button topic? And what about the series of constitutional challenges to section 3 of DOMA (the Defense of Marriage Act)? All that seems certain is that the old, predictable alliances are gone. Only time will tell what effect these decisions, or any other recent decision, will have on the meaning of the Constitution and its role in the lives of individuals. ◊

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Notes

1. 18 U.S.C. § 704.
2. *Alvarez*, 527 U.S. ___, slip op. at __ (2012).
3. *Id.* at __.
4. 588 U.S. ___ (2010).
5. *American Tradition Partnership, Inc., v. Bullock*, 562 U.S. ___, No. 11-1179, slip op. at 2 (June 25, 2012) (J. Breyer, et al., dissenting).
6. 562 U.S. ___, No. 11-182 (June 25, 2012).
7. *Id.* slip op. at 7–19.
8. *Id.* slip op. at 19–24.
9. Ariz. Rev. Stat. Ann. § 11–1051(B) (West 2012).
10. *National Federation of Independent Businesses v. Sebelius*, 567 U.S. ___, No. 11-393, slip op. at 45–58 (June 28, 2012) [hereinafter ACA Decision].
11. *ACA Decision*, slip op. at 33–44.
12. 26 U.S.C. § 7421(a).
13. *ACA Decision*, slip op. at 11–15.
14. *Id.* at 20.
15. 317 U.S. 111 (1942). In *Wickard*, the court upheld Congress's authority to assess a penalty against a wheat farmer who grew a small amount of wheat for his own consumption that exceeded a quota Congress had established to control wheat prices by limiting supply. *Id.* at 114–15, 128–29. The Wickard Court reasoned the individual farmer's decision to grow wheat for his own consumption allowed him to avoid purchasing wheat on the open market, and taken in the aggregate, individuals behaving like that farmer would have an impact on interstate commerce. *Id.* at 127–29.
16. *ACA Decision*, slip op. at 21 (citing *Lopez v. United States*, 514 U.S. 549, 560 (1995)).
17. *Id.* at 22.
18. *Id.* at 29.
19. *Id.*
20. *Id.* at 29–30.
21. *Id.* at 44.
22. *Id.* at 34–36.
23. *Id.* at 51.
24. *Id.* at 53 (quoting 42 U.S.C. § 1304).
25. *Id.*

A New Attorney's Guide to Arbitration

by Joel Matteson

So the time has come for you to participate in your first arbitration. After putting in your dues, you're finally going to represent your client in front of the trier of fact (in this case, the arbitrator(s) instead of the jury or judge). You know you'll need to be prepared to present your case in much the same way as you would at trial — you'll present evidence, call witnesses, cross-examine the other side's witnesses, and make opening statements and closing arguments. Having recently completed my first few arbitrations, I have some tips to help you prepare for your first arbitration.

What is arbitration?

Arbitration is a formal way of resolving a case without a trial. Unlike trial, there is no jury option in arbitration. Instead, counsel present evidence and testimony before a neutral arbitrator or arbitrator panel that serves as the Trier of Fact. Unless subject to the Rules of Mandatory Arbitration (MAR), the arbitrator's award is final and there is no right to an appeal.

There are two types of arbitration in Washington state — arbitration per agreement (contract) and mandatory arbitration per RCW 7.06 and the Mandatory Arbitration Rules (MAR) as promulgated by the Supreme Court. According to RCW 7.06, any county in the state with a population of more than 100,000 must adopt the MAR rules. A case is subject to MAR when the relief sought is $15,000 or less, or $50,000 or less in counties where the judges have voted for a $50,000 jurisdictional limit.[1]

Either side may appeal an MAR award by filing a "*de novo*" appeal within 20 days of the award or decision regarding a timely request for costs or attorney fees. (Note: just because either side may appeal a MAR award does not mean that MAR is a waste of time. See below for a discussion on Offers of Compromise.) Unlike MAR, if the right to arbitration is based on a contract, the award is usually binding and there is no right to an appeal unless the contract says otherwise.

Why arbitration?

Regarding trials, Judge Learned Hand once commented, "I must say that, as a litigant, I should dread a lawsuit beyond almost anything short of sickness and death." While this statement might seem a bit overdramatic, the fact is, trials are risky, expensive, and time-consuming endeavors.

Compared to trial, arbitration is a relatively less risky, less expensive, and less time-consuming alternative. Because arbitration can lead to a satisfactory result without the downsides of trial, this option must be considered before taking any case to trial.

What you need to know

To arbitrate under MAR, you must file your case with the court and pay a $250 arbitration fee. The court then generates a "strike list" containing the names of five proposed arbitrators. Counsel may cross out the names of two potential arbitrators whom they don't want to hear the case and circle the names of up to two potential arbitrators whom they would like to hear the case. The court then assigns an arbitrator who has not been rejected by either side.

When picking an arbitrator, it's helpful to ask more experienced counsel about their opinions regarding potential arbitrators. It's also a good idea to research each arbitrator's background. If you represent the plaintiff, and one of the arbitrators has served as in-house defense counsel for the last 20 years, you might want to strike that arbitrator.

If you are proceeding under MAR, you will need to serve opposing counsel and the arbitrator with a "pre-hearing statement of proof" at least 14 days before the hearing.[2] At a minimum, your pre-hearing statement of proof must contain a list of witnesses whom you intend to call and a list of exhibits or documentary evidence that you intend to present at the hearing. Failure to disclose witnesses or evidence in the pre-hearing statement of proof may prevent you from presenting the undisclosed evidence or testimony during the hearing.

While MAR 5.2 sets forth the minimum requirements for a pre-hearing statement of proof, you should draft a pre-hearing statement of proof that describes your side of the story in persuasive and compelling terms and lets the arbitrator know why she should decide in your favor.

You'll need to be prepared to present your case in much the same way as you would at trial — you'll present evidence, call witnesses, cross-examine the other side's witnesses, and make opening statements and closing arguments.

One advantage of MAR is that the rules of evidence are relaxed and parties are allowed to present testimony in the form of declarations in lieu of live testimony.[3] Presenting testimony via declaration saves your client the considerable expense of hiring experts to testify live. In a personal injury case, for instance, the plaintiff can save thousands of dollars by having treating doctors sign declarations about their medical opinions, instead of hiring the doctor(s) to testify live. Be sure to include the declarations in your pre-hearing statement of proof.

Another major benefit of MAR is that it shifts the cost of trial onto the losing party if that party decides to exercise its right to appeal the award under MAR 7.1. This breaks tradition with the American Rule regarding litigation costs, where each party usually pays its own attorney fees and costs regardless of outcome. Under

MAR 7.3, "[t]he court shall assess costs and reasonable attorney fees against a party who appeals the award and fails to improve the party's position on the trial *de novo*."

Say, for example, that you represent the plaintiff in a personal injury case. The arbitrator awards your client $30,000. Following the hearing, the defendant files a *de novo* appeal and the case proceeds to trial. If the defendant does not improve his position by obtaining a jury verdict of less than $30,000, he will have to pay your reasonable attorney fees and costs in addition to his own costs and fees. In this scenario, if the plaintiff obtains a $30,000 or greater verdict at trial, the defendant must pay the verdict plus your reasonable costs and fees, which can easily add up to thousands of dollars.

This cost/fee-shift possibility will cause any reasonable party to think twice about appealing an arbitration award. But there's more. RCW 7.06.050 provides that a prevailing party at MAR may substitute the arbitrator's award with a different, lower number in the form of an Offer of Compromise that replaces the MAR award "for purposes of determining whether the party appealing the arbitrator's award has failed to improve that party's position on the trial *de novo*."

Returning to the scenario above, let's say the arbitrator awards your client $30,000 and the defendant files a de novo appeal. You might feel that the award is a bit high because, in your estimation, the jury will probably award your client less than $30,000. What do you do? Realizing that the award does not provide enough incentive to resolve the matter, you obtain your client's consent to make an Offer of Compromise under RCW 7.06.050 for less than $30,000. Here, for instance, you might make an Offer of Compromise for $20,000. Now the pressure is really on your opponent, as you only have to beat $20,000 at trial to trigger the award of costs and fees. Armed with an Offer of Compromise (or two — you can make multiple Offers of Compromise), you can really "tighten the screws" and force your opponent to accept your offer and resolve the case without trial or risk significant additional costs and fees.

Another benefit of MAR is that the rules call for limited discovery — each side gets up to one CR 35 exam, one set of Requests for Admission, and may depose parties only (unless the arbitrator orders otherwise). Best of all, time-consuming interrogatories are not permitted in MAR. Not having to answer interrogatories saves you and your client time, hassle, and money.

For contractually based arbitrations, the terms of the contract control rather than the MAR rules. While many of the advantages of MAR — limited discovery, relaxed rules of evidence, cost/fee shifting — do not necessarily apply in contractually based arbitrations, contractual arbitration still provides a quicker and less expensive way of resolving a dispute, as most arbitrations are completed in a day, rather than several days, as is typical for trials. Where the rules are governed by contract, identify and resolve any ambiguities (such as whether declarations are allowed in lieu of live testimony) in writing well in advance of the arbitration. ◊

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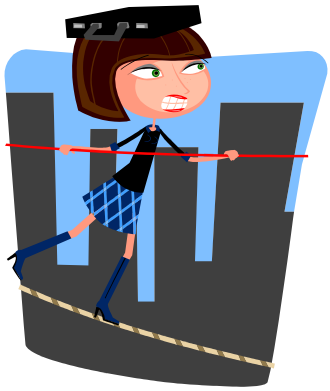
Notes

1. RCW 7.06.020.
2. See MAR 5.2.
3. MAR 5.3(d)(6).

Balancing Acts: Work-life Conflicts Are Just One of the Tightropes a Successful Lawyer Walks

by Allison Peryea

In legal publications, you always read about work-life balance. It is as if there is only one metaphorical tightrope in the life of a lawyer, and it only involves the challenge of preventing your professional duties from overrunning all the other parts of your presumably neglected existence. But I have been practicing law long enough (five years this fall, thanks for asking) to know that I am perpetually going to be falling on one side or the other of that tightrope, and I just don't care anymore. (Which may be the real key to work-life balance: accepting that it is unattainable.)



I have also been practicing long enough to know that the practice of law involves a lot more tightropes than the one mentioned above. In fact, if you step away from the trees and take a look at the whole darn forest, you may see that being a successful lawyer is really about navigating a web of tightropes — some of which can lead you in opposite directions.

But the difficulty of being a young lawyer is that it is hard to see the forest when you are constantly worried about the trees falling on you. For many lawyers new to the practice, the initial focus is on not screwing up — which can be time-consuming when your daily activities consist of screwing up and trying to remedy screw-ups. This leaves little time to ponder the big picture.

But — after five years — I have made the obligatory screw-ups, and I have broadened my perspective, and I have seen the forest. It is full of tightropes.

The foremost tightrope involves figuring out a course of action that is both designed to get a satisfactory result for a client and is justified by the cost of obtaining that result. When I started practicing, high-quality, legally accurate work product was the name of my very naïve game. But a beautifully written summary judgment brief is worth a pile of invisible money if it is not likely to be granted and it took you a solid calendar year to draft it. The focus should always be on a cost-benefit analysis — which may ultimately result in a recommendation to a client not to pursue a matter or to cut losses after a certain point.

A related balancing act is required where attorney advice competes with a client's wishes. This may involve another tightrope: The tension between keeping the focus on resolution when faced with a client's demand for a resounding victory. At this point, I have dealt with enough redundant situations to know how things are often likely to pan out. After seeing fees and emotions spiral out of control on many occasions, I often recommend to clients to strongly consider

compromise. This recommendation may conflict with the reason a client hired the firm — to win. The client's thinking may be: Why pay for a half-full glass of Diet Coke when you ordered a full one? It is up to you to explain that a full glass will likely cost exponentially more than a half-full one — and may be impossible to obtain.

It is important to remember that clients often have a particular plan in mind when moving forward. Clients make the final decisions, so part of your job is selling what you see as their best option (without getting frustrated that they are not jumping on board immediately). It can be difficult to hold a client's hand down a path that you know likely leads to a big attorney bill and no resolution. One option is to turn the client loose. Another, less drastic option (that I employ somewhat regularly) is to reassure the client by letting her know that I have discussed a given strategy with a shareholder (who perhaps the client has a history of working with) and that shareholder has endorsed the strategy.

An additional tightrope: Walking the line regarding employer and client billing expectations. It is an art to find the sweet spot that balances the expectations of both. For those who bill hourly, the elementary method of demonstrating value to an employer is through billing. But a client who receives an extremely large invoice may contest the bill and even reconsider sticking with your firm. (Billing tightropes also come up when a client wants an estimate up front: You want to give them a figure that will satisfy them — and convince them to sign on the dotted line — but will accurately reflect the actual time required for the task.)

One way I have found to help reconcile the billing conflict is to consciously work on several matters each day. This means paying attention to more than the final hourly total for the day. Working on many projects each day prevents a client from having to swallow a large block bill and keeps your caseload moving along. But it requires a relatively hefty caseload and the ability to multitask. And it does not team well with procrastination, which may require focusing on one matter exclusively to meet a deadline.

With experience comes the additional challenge of balancing the need for efficiency with the need for accuracy. Whereas the original focus was on getting things perfect, increased skill and confidence eventually shift the focus to making sure things are "good enough." Instead of aiming for perfection, you need to aim for locating the point of diminishing returns — where, for example, the likely benefit of a continued search for on-point cases or another document revision is outweighed by the expense. The inherent risk of cutting yourself off is that you may make an omission or mistake that continued efforts would have avoided. A way to insulate against client backlash associated with these risks is to fully inform the client about your cost-sensitive approach and invite them to approve more time. (In this economy, clients will usually prefer "good enough" to perfect.)

The tightrope between being responsive to clients without being enslaved by them is another difficulty. Good client relationships start with frequent communication, and working directly with clients is one of the most enjoyable parts of being a lawyer (my most recent client meeting involved eating cookies and talking about cats, two of my favorite activities). But constantly responding to phone calls and emails may stall progress on other matters and drive up fees. It may become necessary to set parameters — in writing — regarding when you will be responding to or taking action as a result of a client contact (e.g., "Email me unless it is a true emergency. Call for emergencies only. It may take a day or two for me to get back to you unless it is an emergency"). Just be sure to comply with your own terms or they will become meaningless.

Another thing I have learned is that clients do not just choose and stick with an attorney because he gives good advice. It's a lot about whether they like you as a person. This creates tension between being Ms. Fun Pants and staying professional. My rule of thumb is to try to make sure all interactions with clients are something my boss or a judge could observe without thinking I need to sign up for etiquette school.

This article just touches on the extent of the balancing acts we must undertake as our practice of law develops. There are many others, including:

- Managing anxiety-provoking events without sufficiently considering their potential gravity (Example: Threats of a frivolous lawsuit. Used to be terrifying, now just amusing and vaguely annoying);
- Trusting your own abilities while continuing to draw from the input of colleagues;
- Having the confidence to disagree with superiors without coming off as a presumptuous brat; and
- Being friendly and cooperative without compromising your clients' interests and generally being a doormat.

We all will fall from these tightropes — or head in the wrong direction on them — on occasion. Shoot, it is hard to succeed in a balancing act when you are just becoming aware that it is on the to-do list. The trick is to enjoy the fact that your tree-dodging days are over because you can finally see the forest. ◊

Allison Peryea is a former editor of De Novo *and an associate with Leahy McLean Fjelstad, located in Kirkland, which provides general counsel services to community associations. She can be reached at allison.peryea@leahyps.com.*

Save the Date: WSBA New Lawyer Education

Preparing a Basic Estate Plan (Live and Webcast)
September 6, 2012
6 general CLE credits (pending)

Trial Advocacy Program
CLE: Saturday and Sunday, October 27–28
WSBA Conference Center
1501 4th Ave., Ste. 308, Seattle, WA 98101
Mock Trial: Saturday, November 10
King County Municipal Courthouse
10.75 gen credits, 1.25 ethics (pending)

Registration information available soon on the NLE page.

The annual WYLD Trial Advocacy Program offers intensive training by litigation experts and a true-to-life mock trial experience. Previous participants commented that the program was "Completely engaging and thought-provoking. Entertaining, real world skill development." "Every young lawyer should attend." For more information, contact Mikaron Fortier, New Lawyer Education Development Specialist at mikaronf@wsba.org or 206-727-8271.

What Marriage Equality Means for Washington

by Cynthia Buhr

Marriage equality in Washington state is looking like a very real possibility. On February 13, 2012, Governor Christine Gregoire signed Senate Bill 6239, which allows same-sex couples to marry and repeals Washington state's Defense of Marriage Act. The law also protects the right of religious leaders and institutions to refuse to perform marriages and provide services, facilities, and goods to same-sex couples who wish to marry.

Despite an effective date of June 7, marriage equality is not yet a reality in Washington. Opponents successfully collected enough signatures to file a referendum putting the matter on the November ballot. This means that marriage equality is not likely to be in existence until December at the earliest, and then only if voters approve Referendum 74.

If the voters pass the bill, Washington state would be the first state to pass marriage equality in a public vote after 32 straight losses for similar bills in both conservative and liberal-leaning States, including a much-publicized battle in California. After President Obama's recent declaration of support, it is looking more promising than ever that marriage equality could survive a public vote. A recent poll by Strategies 360 indicates that 54% of Washington voters support marriage equality.

If marriage equality becomes the law in Washington state, what does this mean in practical terms? The marriage equality law will not add any substantive rights or obligations beyond the state's current domestic partnerships law. Only the name will change. No longer will same-sex legal partnerships be equal but separate in name alone — so the main benefit to same-sex partners is truly an emotional one.

Currently, same-sex couples and couples with at least one partner 62 or older can become registered domestic partners. With the new bill, these registered domestic partnerships will be phased out.

Assuming marriage equality becomes law, most same-sex couples will no longer have the option to register for a domestic partnership. Currently existing domestic partners will have the option to either dissolve their relationship or be automatically converted to a marriage by June 2014. The exception is those domestic partners with at least one partner who is over 62 (including opposite-sex couples). These partnerships will still be allowed to continue as domestic partnerships unless the partners agree to marry.

For same-sex partners who entered into a civil union or domestic partnership in another state, those partners will have the same rights and responsibilities of a married couple. However, if they become permanent residents of Washington, and live in the state for more than a year, they will have to get married if they want to continue to have the rights and responsibilities of marriage.

Additionally, along with the new law allowing same-sex couples to marry, religious leaders and institutions will be legally allowed to refuse to perform marriages for same-sex couples without the risk of being sued. The law also allows religious organizations, religiously-affiliated educational institutions and faith-based social service organizations to refuse to provide services, facilities, and goods to same-sex couples who are seeking to marry.

While this is a big step for same-sex couples who desire legal recognition of their marriage in Washington state, there are countless ways that marriage equality on a state level is limited, as substantial rights and obligations are conferred by federal law. Numerous federal issues are being challenged on multiple fronts, including recognizing same-sex marriage for immigration purposes, full tax purposes, veteran or military benefits, federal employee benefits, social security programs, and retirement account rollovers. Until legislative action or a United State Supreme Court decision on these issues occurs, marriage equality on the state level will continue to fall short of true equality.

No longer will same-sex legal partnerships be equal but separate in name alone — so the main benefit to same-sex partners is truly an emotional one.

Perhaps the biggest challenge for same-sex couples will continue to be portability: same-sex marriages in Washington will not be recognized in the majority of other states. If a Washington couple moves to another state, they will have little-to-no legal recognition of their marriage in many parts of the country, even those benefits conferred upon them by state law, such as being their partner's default power of attorney, or being presumed to be the parent of their partner's biological child if the child was born into their partnership. Therefore, it is still highly recommended that same-sex couples in particular do estate planning, domestic partnership agreements and second-parent adoptions to protect their rights.

For more information on the rights and obligations of same-sex couples in Washington, visit Washington United for Marriage (http://washingtonunitedformarriage.org), Washington Secretary of State (www.sos.wa.gov/corps/domesticpartnerships), Legal Voice (www.legalvoice.org/tools/lgbt.html), or QLaw (www.q-law.org). ◊

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Branding Yourself and Your Law Practice

by Mercedes Riggs

A few months ago, I was chatting with a friend from law school about her latest endeavors, her ongoing job search, and current entrepreneurial projects. Our discussion moved to the topic of developing a brand for our respective businesses (hers non-legal, mine legal). Before that conversation, it never occurred to me that a law practice might need a brand, but I realized that she was on to something. After that conversation, I couldn't help but notice other lawyer's brands (or lack thereof).

I Googled lawyers in my area, lawyers from my alma maters, lawyers in big firms, and lawyers in small firms to see if they had a clear brand, and what that brand said. It appears that many lawyers either didn't know or didn't care about branding. More often than not, a lawyer's bio on his or her website is — well — lacking. Instead of branding, I found dry descriptions aimed at impressing lawyer colleagues, rather than content that would help to connect with prospective clients (this isn't to say that I haven't been guilty of the same thing). Recently, I talked with Mark Britton, the founder of Avvo, and also asked some lawyers about their thoughts on branding.

Lawyers in private practice (especially lawyers in small firms and solos) often forget that they are running a business. According to Britton, while lawyers might love to buy into other brands, and identify with brands, often they see their service as more of a commodity, and figure that they don't need a brand. This couldn't be further from the truth.

Britton mentioned that branding involves a few steps: First, you need to know what you stand for, based on your name or trade name. Second, your target audience needs to understand who you are and associate quality with your trade name. Third, you need to identify the ways to communicate your brand proposition to your target audience.

According to Britton, the first step in developing a brand involves knowing what you stand for, so you should write down three to five things that represent who you are as a lawyer (e.g., efficient, cost-effective). You need to figure out how you want to be perceived, and what you want to say to the world about your great legal services.

"I would say that the most important aspect of branding, really no matter what kind of business you are in, is being your most authentic self," says Rachel Rodgers, a New York attorney who helps lawyers create successful virtual law offices. "Being honest about who you are and why you do what you do can really make you stand out in a profession where people are encouraged to be traditional and basically imitate their elders. The worst thing you can do for your brand is attempt to duplicate what someone else is doing or just saying what you think people/clients want to hear. That doesn't tend to work well at all."

Andrew Legrand, a New Orleans attorney, suggests revealing something that puts you in a less-than-perfect light (see Lee Rosen's "Divorce Discourse" blog (http://divorcediscourse.com.) "Since most bios are filled with nothing but success stories, those who are reading the bio may be amused or connect better when they learn that their potential lawyer isn't perfect, either," says Legrand.

For the second step, Britton says you need to identify your target audience and help them understand who you are. To find your target audience, figure out what kinds of clients you would like to have. Think about your best clients, or your favorite kinds of clients. Think about your profitable cases. Try to understand what you want, what your clients want, what your average client looks for, and how they interact with you and your brand. Then, build a persona for that customer. Shenee Howard, brand engagement expert, offers a digital course on branding aimed towards up-and-coming entrepreneurs called Hot Brand Action.[1] Part of Howard's class covers how to figure out your target audience and identifying and creating personas and character descriptions for the kinds of clients that you typically encounter. Once you've identified your typical clients, you can determine what would be the best ways to reach out and interact with them.

Britton's third step involves interacting with your brand. You also need to think about your core message — the three to six talking points that you're going to deliver throughout your marketing efforts, including the points you want to communicate and the things that you think your clients need. These three to six things are the message that you're going to repeat in every piece of marketing, whether it's ads in magazines, billboards, TV, your social media profiles, or newsletters. One way connect with your target audience is to pursue speaking engagements that your target audience is likely to attend, so they can hear and understand your expertise.

"One thing that is important for a lot of people to understand is that branding is a sum of marketing parts," says Britton. Your brand evolves from the core message that you put out, and over time people will start to remember your name. At a certain point, after your brand is established, your target audience will be familiar with your brand, and will be aware of your core message.

There are many ways to get your brand and core message out there in the ether, including traditional advertising, involvement in social media groups, answering questions on sites like Avvo, engaging in conversations on Twitter and LinkedIn, and interacting with online communities related to your interests and practice areas. Developing a brand with a clear message is a great way to set yourself apart, stand out, and shine. ◊

Mercedes Riggs lives in Vancouver, WA, and recently started her own practice. She can be reached at riggs.mercedes@gmail.com.

Notes

1. Full disclosure: The author has taken Howard's class.

Passive with a Purpose

by Sarah Kaltsounis

Perhaps you've experienced this situation: a senior attorney marks up a draft document you've prepared and scrawled the note "passive voice" (or "PV") throughout the margins. What is passive voice, and why is it a problem? How can you fix it? And when should you politely suggest that you keep your draft just as it is, because passive voice is exactly what you meant to use?

Active and Passive Voice

The voice of a verb indicates the relationship between the verb's action and the participants involved with it: the agent who performs or causes the action, and the target who receives the action. Recall that the basic building blocks of sentences are subjects, verbs, and objects. When a sentence's subject is the agent who performs the verb's action, that verb is in active voice ("John kicked the ball"). But when the sentence's subject is the target that is on the receiving end of the action, then that action verb is in passive voice ("The ball was kicked by John"). The subject in this example, *ball*, isn't doing anything and simply received the action John took.

When Passive Voice Is a Problem

The examples above show one reason why passive voice can be problematic. While the first example —"John kicked the ball" — requires only four words, two additional words are needed to make the second sentence — "The ball was kicked by John" — work properly. Sentences written in passive voice are usually longer and wordier than sentences in active voice. When working on a brief or motion with a strict page limit, every word counts; using active voice is one way to streamline your writing.

Sentences written in passive voice may also suffer because they can be vague or difficult to read. Often they fail to indicate who is responsible for a particular action, and can cause confusion. You can see that problem at work in this next example sentence, a shorter version of one above: "The ball was kicked." The reader's inner voice then wants to ask, "By whom?" Courts are often frustrated by this vagueness caused by passive voice, especially in affidavits and declarations. In one case, a judge explained: "The first sentence of [a paragraph in the affidavit] avers that 'it was discovered that company had grossly manipulated....' Who made the discovery? If Mr. Jones made the discovery, he could readily have said 'I discovered.' Use of the passive voice implies that someone else made the discovery and reported it to Mr. Jones."[1]

How to Change Passive Voice to Active Voice

If a fellow attorney notices a lot of passive voice in your writing, or if you learn to identify it yourself while you're editing, it is easy to remedy. Your first step is to identify the actor. Next, put that actor in the sentence's subject position. Follow it with the verb, and then the target of the verb's action. These steps will make your sentence simpler and shorter, and may force you to determine who an unspecified actor is. Consider the following passive-voice-laden first draft in which each clause's actors are unidentified, and a revision in which the actors (underlined) appear in each clause's subject position:

First draft: "After this complaint about sexual harassment was filed, Gretchen was reassigned to a less-favorable work schedule."

Revision: "After Gretchen filed a complaint about sexual harassment, her supervisor reassigned her to a less-favorable work schedule."

Passive Voice Can Be Useful

Though it is often wordy and problematic, passive voice's faults become strengths in the right situations. Sometimes you want to disguise the actor who was responsible for a particular action! If you're a defense attorney, perhaps it's better from a persuasive standpoint to write, "The cash was taken from the register," than, "The defendant took the cash from the register." Politicians are masters of this strategic use of passive voice, as evidenced by Ronald Reagan's famous acknowledgment that "mistakes were made" (… by whom?) in the Iran-Contra scandal.

When working on a brief or motion with a strict page limit, every word counts; using active voice is one way to streamline your writing.

Or perhaps the actor is irrelevant or unimportant: "The summons and complaint were served on the defendant on August 1, 2011." In that sentence, the identity of the process server doesn't matter. It would needlessly tax the reader's short-term memory to include an irrelevant detail by writing "Seattle Legal Support served the defendant with the summons and complaint on August 1, 2011."

Sometimes the actor is clear from the context, but you may still want to deflect attention from it. This could be true in, for example, employment correspondence attorneys may draft: "This is your final warning. If you continue to violate the dress code, your employment will be terminated." That sounds a bit gentler than "we will fire you" in active voice!

Passive voice may also work well to emphasize the target being acted upon by moving it to the front of the sentence: "The once-extensive natural resources on Blackacre have been pillaged and wasted by BigCorp for over 50 years."

Finally, the very end of a sentence can also be used a position of emphasis, and passive voice allows you to construct a sentence that uses that important position to best effect: "John's injuries were caused by only one person: the defendant."

It is important to learn how to identify passive voice in your writing, and to fix it if it causes problems with vagueness or wordiness. But it's also important to remember that passive voice can be a valuable way to achieve certain rhetorical goals. Ultimately, passive voice should be something that we use deliberately because we've decided it is the best tool for the job, not something we use out of habit because we're not paying attention. ◊

Sarah Kaltsounis teaches legal analysis, research, and writing at the University of Washington School of Law. She can be reached at sarahfk@uw.edu.

Notes

1. *Official Comm. of Unsecured Creditors v. Hendricks*, No. 1:04–cv–066, 2008 WL 3007989, at *4, 2008 U.S. Dist. LEXIS 116318, at *12 (S.D. Ohio Aug. 1, 2008).

There is No Summer in the Courtroom

by Maureen A. Howard

Pacific Northwesterners frequently lament summer's delayed arrival to our verdant corner of the country, and this year is no exception. June was unseasonably cool and wet, and the first official weekend of summer brought grey skies, chilly breezes, and sheets of rain. It is no surprise, then, that each year, as August approaches and summer seems to have truly arrived, locals eagerly search their closets for rarely-used warm-weather attire. Lawyers are not immune from the lure to celebrate summer's overdue arrival by breaking out tank tops, flip-flops, sunglasses, and shorts. Nonetheless, a trial lawyer needs to remember that although summer does eventually arrive to our region, however late that may be, it never arrives inside a courtroom.

Over the last two decades, particularly on the west coast, where there is a more relaxed expectation of formality in professional dress, clothing that was once reserved for "casual Fridays" is now *de rigueur* throughout the work week in many law firms and agencies. It can be easy, then, for a lawyer's working wardrobe to become unconsciously "summerized" when the temperature rises. And while a particular office culture may tolerate or even embrace the idea of colleagues sporting sleeveless dresses, polo shirts, khaki shorts, or short-sleeved Hawaiian-print shirts, a lawyer needs to be mindful that it is never summertime in the courtroom.

When it comes to jury trials, the chances that a "summerized" work wardrobe will bleed from office to courtroom is relatively low, because most trial lawyers develop a keen sensitivity to jurors' expectations and perceptions through their training and experience. In *Beyond a Reasonable Doubt: One Size Does* Not *Fit All When It Comes to Courtroom Attire for Women*, 45 Gonz. L. Rev. 209 (2009/10), I wrote:

> Physical appearance is a serious concern for trial lawyers trying to maximize juror receptivity to their advocacy. To some extent, when it comes to trial work, a juror's perception is a lawyer's reality. When preparing for trial, a lawyer needs to anticipate and consider jurors' expectations, preconceptions and biases about wardrobe and physical appearance. This analysis can be particularly complicated for the female trial lawyer. It may not be your mother's courtroom, but your (or someone else's) mother may be on the jury, harboring outdated or discriminatory expectations about "appropriate" courtroom attire for women. As unjustified as the expectations might be, "a quality trial attorney must consider gender issues, be they stereotype, false or real, when planning his or her case."

Lessons such as these are generally internalized by trial lawyers, prompting most to perform a cautious review of their clothing choices on the day of trial. At less formal hearings, however, such as administrative hearings, or the ex parte or arraignment calendar, there is a much greater risk that inappropriate clothing will inadvertently make its way into the courtroom.

The fact that a hearing is conducted outside the presence of a jury should not lull a lawyer into a false belief that his or her appearance at court is of little consequence. A lawyer's credibility is an invaluable asset with the judge, as well as with the jury, and it should be vigilantly protected. A judge's perception of a lawyer as professional can augment the judge's perception of the lawyer as prepared and competent; part of being perceived as professional is dressing professionally. Professional attire also communicates an appropriate level of respect for litigants, witnesses, court staff, and the judicial system itself.

The risk of a lawyer running off to court for an unanticipated informal hearing without reevaluating his or her summer uniform is not just academic. In my many years in the courtroom, I have personally witnessed lawyers of both genders appear in court in an array of beachwear including flip-flops, tank tops, shorts, bandeau tops, halter tops, basketball pants, sleeveless sundresses, and shirts with spaghetti straps. On more than one occasion, an attorney's clothing has incited a reprimand from the bench. Years ago, when I was a prosecutor assigned to juvenile court, then-Chief Judge Laura Inveen issued a memorandum addressed to "[a]ll professionals appearing in …court" wherein she announced that the judges had adopted behavior and dress standards for those appearing in court in their professional capacity. The judges hoped the policy would "contribute to the creation of a positive work environment which fosters the dignity and respect which we accord all matters pending before the court."

While a particular office culture may tolerate or even embrace the idea of colleagues sporting sleeveless dresses, polo shirts, khaki shorts, or short-sleeved Hawaiian-print shirts, a lawyer needs to be mindful that it is never summertime in the courtroom.

Easy insurance against this professional misstep is to keep a set of "court clothes" at the office, especially during the summer. I ultimately went the extra step of affixing a sign on the inside of my office door that read: "Court?" It was a great self-reminder to stop each time I ran to court, take a breath, and review a checklist of what I needed to bring with me. Over the years, my checklist came to include "court clothes." Happily, this addition saved me substantial embarrassment more than once. ◊

"Off the Record" is a regular column on various aspects of trial practice by Professor Maureen Howard, director of trial advocacy at the University of Washington School of Law. She can be reached at mahoward@u.washington.edu. Visit her webpage at www.law.washington.edu/Directory/Profile.aspx?ID=110.

Practice Success 101

Survival — Part IV

by Pete Roberts

A lawyer encounters countless situations that demand good judgment under a range of circumstances. Knowledge of the law is at the heart of your competence. Experience and skill-building complete your professional arsenal. Practice area often dictates the particular skills you need to better serve your clients. The Association of Legal Administrators identified, through focus group interviews, a range of general skills for a new lawyer through the first six years of practice. These skills enable you to better serve your clients. In previous issues of *De Novo,* I discussed the first three sets of these skills.

The next set of these skills are:

- **Being sensitive to business development opportunities with current clients.** Sometimes a client's legal needs may not be apparent to the client, especially if your client is a larger legal entity. After all, the client's main focus is the success of the business — not looking for legal issues to bring to you. If you can spot possible legal exposure that, if caught, can save the client both worry and money, you will be viewed as a true asset.
- **Acquiring presentation and public-speaking skills.** Be comfortable at the front of the room. Know presentation software such as PowerPoint and the finer points of how to use such software. Be conscious of other speakers and how they present. Once you learn these skills, they become second nature. You will exude confidence and be relied upon to assist with programs within the firm and outside the firm.
- **Understanding the clients' competitive environments.** Clients always appreciate talking about their business. Read the client's trade publications. View the website of the client and the websites of the competition. The web has transformed how business is conducted. Learn as much as possible about local, national, and international dimensions of the client's competitive environment.
- **Developing a personal business development plan.** Your firm should be expecting such a plan from all partners and senior associates. Financial support should be available. A personal business plan includes forecasted billable hours, estimated business-development hours, cultivating existing clients, identifying potential clients, meeting new contacts, attending events that potential clients attend, learning more about your practice area in order to be able to provide better service, and volunteering.
- **Developing a personal business network.** You already have such a network, composed of classmates, clients, and referral sources. Identify who is in this network and find ways to expand it. Social media now plays an important role, so participate in LinkedIn as well as other social media.
- **Identifying, qualifying, and working a prospect.** This skill involves fully understanding who the prospect is. Present yourself over time in a manner that is professional. Perhaps giving information, keeping the prospect informed of relevant legal issues, and providing occasional tickets to a Mariners game may be appropriate.
- **Structuring and drafting a response to a Request for Proposal (RFP).** Clients use RFPs to level the playing field when evaluating several law firms. The format is dictated by the client. If your firm has a marketing director, seek out that person for assistance. Be as responsive as possible and ask questions if something is unclear in the RFP. Remember that the client wants relevant expertise delivered as cost-effectively as possible. Do not pontificate or boast. The overriding goal is to win a chance to appear in person to discuss the response. Identify factual experience within your firm that the client may find helpful for evaluating your firm's ability to assist its needs.
- **Developing a section or department business-development plan.** Work with others in your department as well as with the firm's marketing director. Your own personal business-development plan may serve as a start.
- **Motivating colleagues and subordinates.** Help others to do their jobs better. Sometimes this concept is known as "servant leadership." If people believe that they are listened to and are dealt with fairly, they will respond.
- **Planning and organizing subordinates' time (secretaries, paralegals, junior associates).** Manage deadlines as humanely as possible by describing what the "real" deadline is, as well as the interim check-in deadlines. Proper delegation means:

  - Describing the task
  - Describing why (big picture)
  - Identifying tools and resources
  - Specifying when the task is due
  - Asking the person to repeat back what you are delegating to ensure understanding
  - Emphasizing that the person should tell you immediately if there are obstacles/large delays for completion of the task
  - Encouraging questions
  - Asking the person to inform you when the task is completed

- **Assisting with setting priorities.** What is an obvious priority to you is not always so obvious to others. ◊

Peter Roberts is the practice management advisor with the WSBA Law Office Management Assistance Program (LOMAP). He can be reached at 206-727-8237or peter@wsba.org and www.lomap.org.

Washington Young Lawyers Division 2012 Annual Awards Nominations

Thomas Neville Pro Bono Award
This award recognizes a young lawyer in this state who has generously committed his or her time and efforts to provide legal services for the public good.

Outstanding Young Lawyer of the Year Award
This award honors a young lawyer who has made a valuable contribution to our legal community.

Professionalism Award
The WYLD honors a practitioner from the entire Washington legal community who has greatly enhanced the profession through his or her extraordinarily noble and honorable practice of law.

Outstanding Affiliate Organization Award
This award recognizes an affiliate organization in Washington which has generously committed time and efforts to provide legal services for the public good, public service and community outreach, and/or has made significant contributions to the professional community, especially in the development and training of young lawyers.

Nomination Process
Please complete and submit a nomination form and accompanying materials. Nomination materials will be available at wsba.org/wyld by June 15. Self-nominations will not be accepted.

Nominations must be received by 5:00 p.m. on August 8, 2012. The WYLD Board of Trustees will select the recipients at their August 18 meeting.

New Lawyer Education Focus Groups

Have you ever thought the following:

- Why does starting a law career have to be so "sink or swim?"
- Why isn't there better training to help new lawyers succeed in practice?
- How could I gain the opportunity to moderate, speak at, or develop CLEs?

We're asking for 90 minutes of your time to help create relevant CLE programs that build skills and confidence for new lawyers. Simply pick a date and topic below and share your perspective on steps and challenges for new attorneys:

August 16: Advising closely held (small or mid-size companies) or non-profit entities

August 23: Navigating divorce cases

September 13: Handling employment law issues

All focus groups will run from noon to 1:30 p.m. Attend in person in Seattle or by conference call.

Please RSVP to brianh@wsba.org.

Your input will directly influence content for programs within the next year. Participating in the focus group may also open opportunities for you to continue on with suggesting faculty and shaping the program as a part of the program development team.

Jeannie Bohlman

I am most proud of earning a degree in mathematics, a subject I initially hated.

Nobody would ever suspect that the key to my heart is through my dog, Bruin.

If I could pick a superpower, it would be the Jedi mind trick (or whatever you call it).

I relieve stress by having good food and good drink with good friends.

The best legal/workplace advice I ever received is to pay attention to the details, because the details really do matter.

The best advice I have for young lawyers is to never let anyone else put limits on what you can achieve.

All-time or current favorite book: *A Confederacy of Dunces*, because it is hilarious, and I also first read it while living in New Orleans, which is where the book takes place.

If I were not practicing law, I would crew on a sailboat and travel wherever the wind may take me.

My favorite band is currently Blind Pilot.

If I could change one thing about the law, it would be to ban legalese so that non-attorneys could find the law less intimidating and more accessible.

Before law school, I lived and played in Boulder, Colorado.

Happy hour location/cocktail of choice: Café Presse.

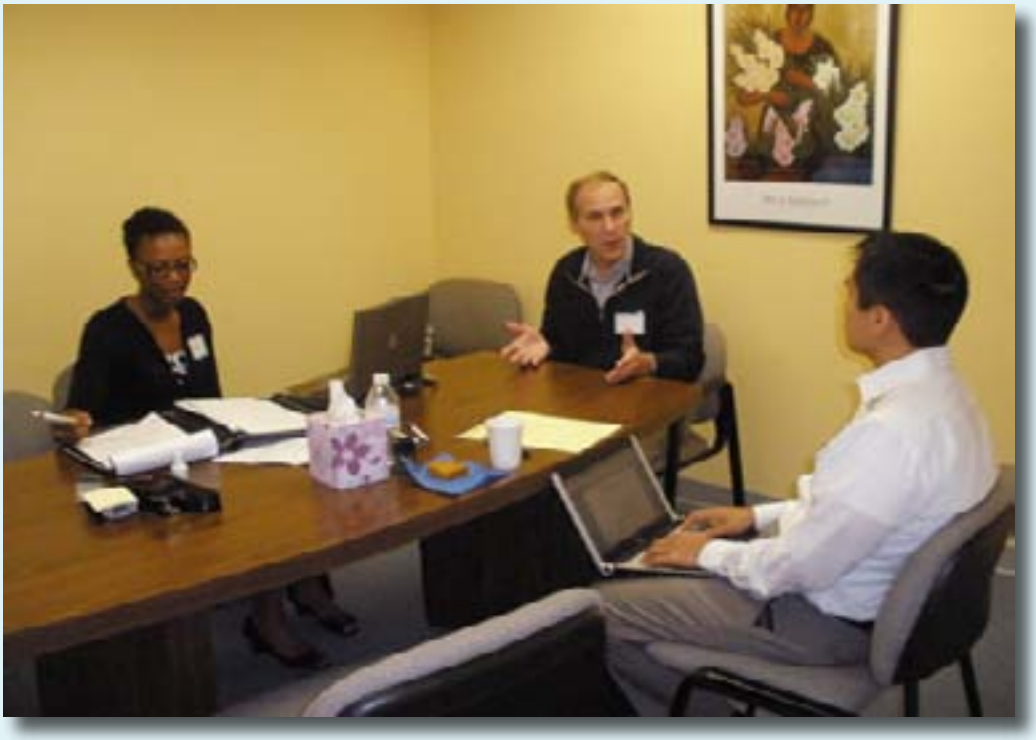
The economy has affected me by giving me a new perspective on saving for retirement.

The best part of my job (or practicing law generally) is building relationships with clients and helping them find effective solutions and reliable peace of mind.

"I spent most of my childhood in Louisville, Colorado, and after moving to Washington, I made my way back to Boulder and graduated from the University of Colorado (go Buffs!) with a degree in mathematics. Despite briefly considering a career in math, I decided to pursue a more directly service-oriented career instead. I moved back to Washington to be near my family and attend Seattle University School of Law, and I had the fortune of clerking for Commissioner Eric Schmidt at the Court of Appeals in Tacoma before becoming an associate at Michael & Alexander PLLC, a boutique employment defense firm in Seattle. My practice currently focuses on employment litigation and counseling for both public and private employers. You can reach me at jeannie@michaelandalexander.com.

Serving Our Seniors Will Clinic

On July 7, 14 attorneys participated in the Serving our Seniors Will Clinic in Everett, where they served 10 low-income seniors by creating wills, power of attorney documents, and health care directives. This clinic pairs new and young lawyers interested in learning about estate planning with experienced estate planning attorneys. Not only do the new and young lawyers get to learn more about estate planning with a hands-on approach, they also get to volunteer their time by helping low-income seniors.



Above: Attorneys Randy Penrod, Natalya Forbes, and James Pautler prepare to meet with a client.

Left: Attorneys Shontrana Gates, David Carson, and John Lee prepare to meet with a client.

Young lawyers enjoy food and drink before attending the July 13 Mariners game together.

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