

LIFE BEGINS

A Publication of the
Washington State Bar Association
Senior Lawyers Section

Volume 18

Spring 2016

Number 1

From the Editor



As this edition of *Life Begins* was being organized and assembled for printing, a major brouhaha had erupted regarding the recently published proposals of a Sections Policy Workgroup, established by the Board of Governors (BOG) of the WSBA. As (apparently) instructed, this group had recommended major revisions to the structure, operation, and fiscal rules for all WSBA Sections. These recommendations were dropped on the Sections on New Year's Eve, 12/31/15, and we were given 30 days in which to comment/respond.

Two of the most far-reaching and problematic of the Workgroup's recommendations were cookie-cutter (unified/identical) bylaws (i.e., one size fits all) for all Sections and, more importantly, establishing a new policy that, at the end of each fiscal year, any remaining funds of all Sections would 'escheat' (my word) to the Bar Association.

Many of us (officers and Executive Committee Members of various Sections) attended a meeting hosted by the WSBA Workgroup on these proposals on February 4, 2016. Quite a few more were attending online, either by phone or webcast. It was quite clear at that meeting that the recommendations were nearly all considered Draconian and unacceptable.

As a result, the Workgroup has added a number of positions to its roster and the Sections have been nominating people to fill those positions. The last few had to be decided by election and those elected have not yet been announced.

All of the people who I have heard discussing this 'situation' seem to conclude that it is fitting of that old saw: "If it ain't broke, don't fix it!" Five section leaders have been elected and added to the Workgroup. The Workgroup will meet over the next several months. Stay tuned!

Ron Mattson

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The Changing Landscape: 2016 Senior Lawyers Section Conference

May 6, 2016

Seattle Airport Marriott
3201 South 176th Street
Seattle, WA 98188

This seminar has been approved for 7 CLE credits under the 2016 MCLE rules: 2.25 other, 3.25 law and legal procedure, 1.5 ethics.

8:10 a.m.

Welcome and Introductions by Seminar Program Chair
Carole Grayson – Chair, Senior Lawyers Section; University of WA Student Legal Services, Seattle, WA

8:15 a.m. [45 min]

Justice is Blind and Other Great Myths: Bias in the Justice System

Salvador Mungia II – Gordon Thomas Honeywell, Tacoma, WA

While "open your eyes" is usually a good thing to do in the justice system, it unfortunately leads to seeing, and thus making judgments about people, based upon the color of their skin and their gender, among other traits. Justice isn't blind. Judges, attorneys, jurors see all too well. In this session Mr. Mungia will be giving examples of racial and gender bias in society in general and also examples of the prevalence of bias in the justice system.

9:00 a.m. [45 min]

Title IX

Patricia Bostrom – Bostrom Law Offices, Seattle, WA

9:45 a.m.

Break

10:00 a.m. [45 min]

Technology Resources: Finding Answers

Pete Roberts – Practice Advisor, Seattle, WA

10:45 a.m. [45 min]

Ethics of Social Media

Jeanne Marie Clavere – Washington State Bar Association, Professional Responsibility Counsel, Seattle, WA

11:30 a.m.

Networking Lunch (included with tuition)

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12:30 p.m. [non-credit: 5 min]

Election & Senior Lawyers Section Business Meeting

Carole Grayson — Chair, Senior Lawyers Section; University of WA Student Legal Services, Seattle, WA

12:35 p.m. [45 min]

Updates at the Supreme Court

Chief Justice Barbara Madsen — Washington Supreme Court, Olympia, WA

1:20 p.m. [45 min]

ACTEC Ethics Rules as Applied to Estate Planning/ Probate/Guardianship

Karen Boxx — Professor, University of Washington School of Law, Seattle, WA

The American College of Trust and Estate Counsel (ACTEC) has for years put out commentaries to the ethics rules as they apply to estate planning/probate/guardianship practice since the rules are written to guide litigators primarily. The new edition picks up the challenges of FATF, technology, and alters some of the discussions regarding multiple clients and conflicts in the transactional/planning practice. This session will discuss those challenges.

2:05 p.m.

Break

2:15 p.m. [60 min]

LLC Updates

Chris Brown — Karr Tuttle Campbell, Seattle, WA

David Tingstad — Beresford Booth, Edmonds, WA

Need a refresher on the Washington's new Limited Liability Company Act which took effect on January 1, 2016? Are you ready to advise clients about the changes the new Act brings that will affect current and future managers and members of Washington LLCs – as well as anyone doing business with Washington LLCs? This presentation will provide you with the crucial changes in the regulations.

3:15 p.m. [45 min]

Communicating Between Generations

Lisa Voso — Attorney, Voso Impact, Corporate Communications Training, Federal Way, WA

The specific influences and attributes of each generation have shaped their communication preferences and linguistic choices. These differences are apparent when the generations communicate with one another in the workplace. During conversations between individuals from two different generations, each may feel as if different languages are being spoken, and many conflicts in the workplace are caused by these gaps in communication. This workshop will begin with what causes communication conflicts, then will move to a summary of the differences between the generations, and will conclude with ways to build bridges between them.

4:00 p.m. [45 min]

The Role of Trial Lawyers in the Modern Trial

Michael Wampold — Peterson Wampold Rosato Luna Knopp, Seattle, WA

There will be a discussion of how trial lawyers have often misperceived their role in trial. In literature, the hero is the person who rights the wrong. Trial lawyers don't right the wrong – only the jury does that. Thus, trial lawyers are not heroes; jurors are. So what is the role of the trial lawyer? They play the role of the mentor to the hero. This presentation will discuss how to play the role of the mentor in the various phases of trial.

4:45 p.m.

Online Evaluations • Adjourn Conference

**Article Ideas?
Your Input Is Needed!**

Life Begins, the Senior Lawyers Section newsletter, which you are reading at this very moment, works best when Section members actively participate. We welcome your articles and suggestions regarding *your lives in or out of the law*.

Please contact Ron Mattson, editor, to submit an article, if you'd like to write an article, or if you have ideas for article topics. Reach him at (206) 409-0587 or rcmattson@att.net.



WSBA

Event Registration

(Please print clearly)

Registrant / Name: _____ WSBA ID #: _____

Company: _____

Address: _____

*Phone #: _____ *Email: _____

*(Required for Webcast Registration)

Event / Seminar #: 16860STC Omit my name from list of attendees available to program exhibitors & registrant networking list.Title: The Changing Landscape: 2016 Senior Lawyers ConferenceEvent / Seminar Date: May 6, 2016 Amount: \$ _____

Tuition: Section Member \$185 / Non-Section Member \$275 / Join the Section Price \$210 (\$185 + \$25 section membership fee)

Special Needs – Comments: _____

Payment Information

 Cash / Check payable to the WSBA MC Visa Amex*Please note: Our service provider will charge you a separate, non-refundable transaction fee of 2.5% on all bank card transactions. There is no transaction fee if you mail in your check.*

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"The section member tuition rate is available only to current members of the section. If our records indicate that you are not a current member of the section, and your payment is made by check, the WSBA will invoice you're the balance due for the full amount of the non-section member tuition rate. If your tuition payment is made by credit card, by your signature you are authorizing the WSBA to charge your credit card the full amount of the non-section member tuition rate".

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Annual Conference — Senior Lawyers Section

May 1, 2015

By Al Armstrong

This is a continuation of the recap of our Section's May 1, 2015, CLE; Part I was chronicled in the last issue of Life Begins.

Washington Supreme Court Justice Mary Yu

The afternoon's first speaker was Washington Supreme Court Justice Mary Yu. Justice Yu was appointed to the Court in May 2014 and was subsequently elected for the remainder of a two-year term. Previously, she had been a King County Superior Court judge for 14 years. She has amassed a remarkable record of public service, both within and outside of the legal community. She characterized our annual CLE as a "premier event," taking note of the fine lunch served in the open air of the Marriott's atrium.

We Need More Mentorship in Our Bar

Justice Yu noted the need for older lawyers to provide mentorship for newer attorneys. She recalled, from her days as a Superior Court trial judge, younger practitioners struggling with the Rules of Evidence and a lack of familiarity with trial procedures. She observed that many lawyers establish solo practices upon graduation, especially in times of economic downturn and the accompanying slowdown in law firm hiring. Many of these new / younger attorneys don't have a mentor, someone who could guide the newer attorney through the maze of challenges typically encountered in the practice of law. Added to these factors has been the decline in attorney civility; a non-collegial atmosphere can serve to further the sense of isolation felt by newer attorneys. Justice Yu urged older, experienced attorneys to "leave your legacy [of experience] to someone else." She encouraged attorneys considering retirement to act as mentors: "We are wise and we have something to give."

Ethnic and Gender Considerations

Justice Yu offered further observations on the membership of our state bar, using a mainly ethnic and gender-based analysis. She noted that the median age of attorneys of color is 43 (licensed an average of 13 years), while the median age of Caucasian lawyers is 49, licensed an average of 19 years. Mentoring is critical for people of color and women, she contended. She noted that the younger bar membership tends to be more diverse, with greater percentages of women and ethnic minorities, and the same is true for the current law school cohort. She also asserted that members of under-represented attorney-communities (those of color, women, LGBTQ, and those with disabilities) have reported experiencing "social barriers" at their respective workplaces.

Justice Yu concluded her remarks by lamenting the high incarceration rates and fines imposed on many offenders.

The Virtual Law Firm: George O. Tamblyn and Dieter G. Struzyna

Following Justice Yu's talk were the founding members of Advocates Law Group, George O. Tamblyn and Dieter G. Struzyna. The Advocates Law Group is a "virtual law firm": the business of the firm is conducted remotely by the participating attorneys from their individual homes or some other remote location, not from a central office. The concept of virtual law firm originated in the 1990s in London, U.K., the "Mecca" of the virtual firm. Advocates Law Group was founded in 2010, has been a local pioneer in the practical application of the virtual law office model, and is the largest such firm in our state. Mr. Tamblyn and Mr. Struzyna had many years of experience prior to the founding of their enterprise.

Some Benefits of the Virtual Firm

Our speakers bore good news for attorneys weary of the overhead and administrative headaches of the brick and mortar office. A key advantage of the virtual firm, they explained, is the savings on office rent, support staff and other overhead expenses that were borne without question by practitioners using the conventional mode. The virtual firm has minimal physical facilities, if any. Savings realized can be passed on to clients and/or serve to enhance the attorneys' income. They estimated that office overhead in large firms can exceed 60 percent of gross revenues, whereas virtual operations typically have overhead costs in the 15 percent range. Funds can be moved by telephone, billing is done remotely via the Internet, and fees earned can be moved remotely to the operating account. As in other law office arrangements, the virtual firm has company-wide malpractice insurance coverage (premiums apportioned among the members of the firm). Mr. Struzyna cautioned that the firm partners, as in any firm, are still vulnerable to a malpractice claim against a partner attorney. Also, as in any firm, fee splits, both between partners and with respect to associates, need to be worked out in advance. Would-be virtual firm practitioners must ensure that there is adequate technical infrastructure and support and should have a detailed operating agreement, as well as competent bookkeeping.

Issues to Consider When Joining a Virtual Firm

The speakers provided a list of inquiries the practitioner should make if he/she is considering joining a virtual law firm. Points to be covered, in addition to the ones already

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mentioned, are: access to and review of the virtual firm's financial reports and tax returns; confirmation that appropriate procedures are in place relative to the firm's trust account; assurance that all members have malpractice insurance; review of the operating agreement; and, of course, confirming personal compatibility with existing members of the firm, both on a personal level and as practitioners.

With respect to their own enterprise, the speakers outlined their hiring procedures and firm governance policies. A new member is not required to "buy into" the firm; only a relatively small operating account deposit is required. The speakers emphasized how satisfied they have been with the idea and practice of the virtual law firm. Mr. Struzyna was pleased to report that Advocates Law Group has never had to expel anyone from the firm, which is the end product of conscientiously following the foregoing considerations prior to joining or adding members to the enterprise.

Meredith E. Childers and David C. Tarshes of the Northwest Justice Project: Scam Alert!

Our attendees next welcomed Meredith E. Childers and David C. Tarshes of the Northwest Justice Project (NWJP). This is a statewide organization with nine offices throughout the state. Established for the benefit of low-income clients, it is funded by Congress through the National Legal Services Corporation. Ms. Childers is a 2002 graduate of American University College of Law; Mr. Tarshes graduated from Duke University School of Law and is a 30-year veteran of the Davis Wright Tremaine firm.

Our speakers outlined the types of scams that are often used to victimize the unwary, the too-trusting, or the uninformed. They urged the attendees to be alert to fraud practices to protect their clients.

Specific Scams Described

Various scams were categorized: impostor scams, deceptive automobile advertising, credit or debit card fraud, "You're a WINNER!" shenanigans, identity theft, and dishonest loan modification schemes. Scammers can produce some very convincing letterhead and government logos. When the consumer finally discerns the fraud, the scammers are of course long gone.

Some examples:

Impostor scams: IRS scam, "You owe back taxes;" grandparent scam, "Grandpa, I'm traveling and I've lost my wallet, please wire money;" charity scams, "Thank you for donating to the police officers' fund last year. We still need your help." How to put the kibosh on these predators? Ask for written materials, don't wire money, don't share information, don't ever give the caller IDs or email address, and, once a scam is suspected: "Be rude!" Further, potential victims should monitor their bank accounts and

obtain a copy of their credit reports. Be sure to report apparent scam attempts and immediately close bank accounts that may have been compromised. The Northwest Justice Project, as well as the Washington State Attorney General and the U.S. Department of Justice, provide resources to aid victims or potential victims. Complaint forms published by the Washington State Department of Licensing (to be used in cases of unethical/illegal practices in vehicle sales and service) and from the Washington State Office of the Attorney General were also provided.

Our speakers then touched upon some unsavory and illegal automobile sales practices. The practice of "bushing" is forbidden by Washington statute. Bushing, for the uninformed, is the practice of an automobile dealer attempting to change a conditional sales contract more than four business days after signing.

Home Loan and Tax Scams

Mr. Tarshes addressed the issue of fraudulent home loan modification schemes. He advised that home loan scammers include your typical fraudsters — but, alas, they can include attorneys also. These fraudulent operations offer advice that proves to be either useless or is obtainable for free through a HUD-approved housing counselor. Extravagant promises are made with no actual service being provided — the scammers are long gone with the homeowner's money as soon as the fee is collected. The bad guys find victims from foreclosure notices, web advertisements and what are called "affinity scams." That is, the wrongdoer will tell his target that an acquaintance of the prospect referred them or gave them his/her number. Our speakers included a sample demand letter to home loan scammers with their materials, providing the practitioner with an excellent template to use in the service of clients, replete with "cc's" to offices and law-enforcement agencies that are on the lookout for these folks. A sample Superior Court complaint for fraud was also included, for use by the practitioner after the State of Washington Department of Financial Institutions has entered its findings.

Ms. Childers warned of tax scammers that prey on recent immigrants, contacting them by phone, threatening to prosecute or claiming that they have an arrest warrant due to unpaid taxes. Debt collector scams are also on the rise, she advised. Often these calls are preceded by official-looking stationery with prestigious government logos. The phone calls, even if not successful in fleecing the recipient, can also serve to extract crucial information that can be used later or sold to others. In fact, scammers are thought to possess "lead lists" with the names of likely prospects, obtained either through prior dealings with victims or information obtained (or purchased) from other sources.

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Karen Klein: The Legal Risks and Rewards of Social Media

Executive Committee member Karen Klein, a presenter from our last CLE, once again addressed our group. A Bainbridge Island attorney since the early 1980s, she graduated from the University of Michigan and Boston University School of Law. Her practice includes a wide area of business and employment law, as well as acting as general counsel for several enterprises. This year her topic was social media as it relates to the practice of law.

Use of Social Media Now Widespread

She defined social media as “online or electronic communication” and listed some examples: LinkedIn, Twitter, Facebook, and Pinterest among many others. She advised practicing attorneys and others to have a LinkedIn profile, especially since 89 percent of employers utilize LinkedIn during the hiring process.

For website proprietors, she advised that owners have a social media policy which should be reviewed and updated periodically.

Ms. Klein supplemented her talk with relevant excerpts from the RCW and the National Labor Relations Board and referenced these in her presentation. Regarding employment applications vis-à-vis social media in our state, RCW 49.44.200 addresses what employers can and cannot do with respect to employees and electronic communication — that is, social media. The broad rule is that an employer cannot require an employee to disclose his/her login information for the employee’s or [job] applicant’s personal social networking account or interfere with said person’s account activity, but there are exceptions to this broad rule, so the statute needs to be considered in its entirety.

As for using social media postings that reveal the applicant’s race, age, sexual orientation, or other protected status, an employer may want to hire third-party screeners to evaluate social media information in the hiring process to ensure that they are not subject to a claim that they used social media information in an unlawfully discriminatory fashion.

Some Employer Guidelines

Relative to what an employer can and cannot require of their employees relative to the employees’ social media conduct, the National Labor Relations Board (NLRB) issued a recent memorandum about which employer-dictated restrictions (in this case, Wendy’s) of social media use by employees can be considered legitimate and which would impinge on the workers’ NLRB “Section 7” rights. For example, a company rule that “you may not create a blog or on-line group related to your job without the advance approval...” was seen as unlawfully overbroad “because employees have a Section 7 right to discuss terms of em-

ployment with their co-workers or the public....” Ms. Klein advised that a firm or company’s social media policy should not be too restrictive, such as: “Do not criticize the manager;” “Do not discuss employee information outside of work;” or “Do not talk to the media about the company.” She also advises a potential employer to ensure that a social media policy, in cases of legitimate restrictions (e.g., a prohibition against posting personal information about a customer), is supplemented with specificity and by contextual examples. Policies against Internet ethnic and/or racial slurs are deemed legitimate. The employer may require an employee to make it clear on social media that they are speaking for themselves and not the company.

The federal Fair Credit Reporting Act (FCRA) requires employers to follow certain steps when using credit reports to evaluate a prospective employee. This also applies to other types of information, such as criminal records, driving records and the like.

As to the issue of defamation and social media, Ms. Klein noted that a recent Washington Court of Appeals (Division III) case found that a fired and disgruntled employee *could* be sued for defamation by his supervisor for postings he made on his own website. Ms. Klein’s materials referenced RCW 4.24.525, Washington’s “public participation” statute, which was central to the court’s decision in the case.

Lawyer Advertising and Confidentiality

Ms. Klein gave the audience some tips and advice about social media and website advertising. If, in an advertisement, one is quoting someone else’s work, proper attribution to the author is not sufficient; specific authorization usually must be obtained. This also includes use of company or sports emblems or logos. In the case of an attorney’s website, care must be taken to ensure adequate disclaimers are in place. Endorsements must have adequate back-up. Make sure you do not use fake news stories to sell or promote your service. Attorney advertisers on the web should be very careful about bragging about a courtroom victory, lest they violate client confidentiality.

She offered a cautionary tale about a litigant who had settled an age-discrimination suit; the settlement agreement at issue contained a non-disclosure clause. However, the settling party told his daughter about the specific agreement. The daughter then posted a reference to the settlement on her Facebook page. Subsequently, a court ruled that the father had violated the settlement agreement by telling his daughter. Since the father had disclosed a confidential settlement to his daughter, the deal was off and the plaintiff-father received nothing.

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In closing, Ms. Klein reminded the attendees that “commercial speech is not private speech” and “social media is discoverable!”

J. Donald Curran — Avoiding Ethical Lapses as You Age

Our final speaker was Spokane attorney J. Donald Curran, past president of both WSTLA and the Spokane Bar Association, and member and former chair of the WSBA Disciplinary Board. His current practice emphasizes personal injury and representation of lawyers facing disciplinary problems.

Mr. Curran addressed the ethical responsibilities of both retiring and retired lawyers and issues raised by transferring to inactive status or resignation from the Bar. He first outlined some key points that an attorney withdrawing from a firm may wish to keep in mind: (1) the client has an unfettered right to continue to be represented by the withdrawing attorney, or to stay with the firm; (2) take the time to plan on how the transfer of files is to be handled; (3) guard against mishandling of the firm’s proprietary information; and (4) work out fee division.

Mr. Curran touched upon the subject of lawyers impaired by memory loss. A practitioner should be alert to patterns of forgetfulness on the part of his/her fellow attorneys; Mr. Curran emphasized that it is an attorney’s duty to contact the WSBA if the impaired attorney’s ability to practice law is impaired. “Even if you are not in the same firm, you must report!”

Business Transactions with your Client: Approach with Caution

Our speaker advised lawyers to be wary of business transactions with the client; this can be high-risk, and, the lawyer must remember that he/she is a fiduciary with respect to the client/business associate. Business transactions with a client are not intrinsically wrong, but in the event of a bar complaint, the facts will always be construed in favor of the client. And, warned Mr. Curran, in the event of an order to disgorge profits, the attorney will not be covered by malpractice insurance.

When a lawyer changes his/her bar status from active to inactive, he/she is still under the obligation to follow the Rules of Professional Conduct. The lawyer in fact is subject to these rules until death or disbarment. Mr. Curran indicated that the name of an inactive attorney *cannot* be included in his former firm name; a deceased member of the firm *can* be included in the firm name. If an inactive attorney wishes to be re-admitted to active practice, he/she will not typically have to retake the bar exam, but you have to prove that you have kept up with the law, so having taken CLE courses is a plus in that regard. An “of counsel” listing in a firm name cannot be misleading: the attorney must be in active status and must have had a long association with the firm (merely working on one long case with firm members is not enough).

Keep Cool in Response to a Bar Complaint

With respect to client grievances filed with the bar, Mr. Curran advises the attorney not to make angry or rash statements about the client. Doing so may lend validity to the grievance and, keep in mind that any attorney response is sent to the grievant. “Keep your response specific and don’t [unnecessarily] expand on it.” He cautioned that WSBA grievance forms are available on-line. An interesting fact cited by the speaker: if you are the subject of an ongoing disciplinary proceeding, or such a proceeding is known to be imminent, the attorney *can’t* resign (resignation in lieu of disbarment) without the WSBA’s consent and on certain conditions. In disciplinary cases not involving dishonesty or serious crimes (“less serious conduct”), in which the sanction would be a reprimand or admonishment, the disciplinary counsel may refer an attorney to the WSBA Diversion Program. Upon successful completion of Diversion, the grievance is dismissed and there is no finding of misconduct. The aggrieved client has no right to object.

Be Sure to Attend This Year’s Senior Lawyers’ CLE

This year’s **Senior Lawyers’ CLE** will be held in our same location, the **Sea-Tac Marriott, on Friday, May 6, 2016**. We look forward to having everyone back!

This is a publication of a section of the Washington State Bar Association. All opinions and comments in this publication represent the views of the authors and do not necessarily have the endorsement of the Association or its officers or agents.

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